

**IN THE HIGH COURT OF SINDH AT KARACHI****Criminal Appeal No. 493 of 2022****Criminal Appeal No. 494 of 2022**

Appellant : Qadir Dad Solangi  
through Mr. Karamullah Solangi, Advocate

Respondent : The State  
through Mr. Muhammad Iqbal Awan, Addl.P.G.  
a/w Mr. Zahoor Shah, D.P.G. and complainant.

Date of hearing : 24<sup>th</sup> November, 2023

**JUDGMENT**

**OMAR SIAL, J.:** Qadir Dad Solangi was convicted for an offence punishable under section 302(b) P.P.C. and sentenced to life imprisonment and Rs. 400,000 compensation by the learned 5<sup>th</sup> Additional Sessions Judge, Karachi East, vide judgment dated 30.07.2022.

2. During the pendency of this appeal, the legal heirs of the deceased (who was their mother) filed applications under section 345 Cr.P.C. seeking the appellant's acquittal on the ground of compromise. They forgave him in Allah's name and waived their diyat right. The compromise was held to be voluntary and genuine after an inquiry held by the learned trial judge. There was no impediment to allowing the compromise; however, it was reported by the learned trial judge that the deceased had left behind a total of seven legal heirs. The appellant is their father; the dead was their father's first wife. The appellant has four other children from his second wife. Two of the seven legal heirs are minors, so the appellant was ordered to deposit the diyat amount in court. The appellant has no money or property to deposit the diyat. For a considerable amount of time, the eldest son of the appellant has been running from pillar to post to collect the diyat amount on behalf of his father, but as he, too, is a young man, he has failed

to do so. The beneficiaries of the diyat amount themselves want to waive their right to diyat as they say that their father will never be in a position to pay the diyat but that if he is not released, all his eleven children, who are all young and in extreme financial distress, will find it most difficult to survive. While understanding their dilemma, I find it difficult to accept the compromise because of well-settled law principles. The prayer for compounding the offence is therefore dismissed.

3. Although the name of an advocate appears on the record, he has not attended the case for some time, and according to the legal heirs of the appellant, he has told them that he can do nothing. The complainant nor the legal heirs are in a financial position to engage a counsel. Be that as it may, I have re-appraised the evidence led at trial with the assistance of the learned Additional Prosecutor General. The complainant was present in person but expressed his inability to engage a lawyer due to poverty. However, he incessantly requested the court to accept the compromise.

4. The appellant was arrested on 19.05.2019 when the crime weapon, a pistol, was recovered from his possession. He could not provide a licence for the weapon; thus, F.I.R. No. 581 of 2019 under section 23(1)(a) of the Sindh Arms Act 2019 was registered. He was also tried and convicted for this offence and sentenced to a five-year prison term and a Rs. 25,000 fine.

5. The appellant has impugned both judgments through separate appeals; however, the two appeals are so connected that they will be disposed of through this common judgment.

6. At trial, the prosecution examined six witnesses. **PW-1 Zafar Ali** was the complainant. **PW-2 P.C. Asghar Ali** was the policeman who witnessed the appellant's arrest and recovery of a pistol from him. **PW-3 S.I. Umer Hayat** was the policeman who first responded to the news that a dead body had been brought to the hospital. He was also the scribe of the F.I.R. **PW-4 A.S.I. Waseem Abbasi** was the policeman who arrested the appellant and from whose possession he recovered a pistol. **PW-5 Dr. Zakiya Khursheed** was the doctor who did the post-mortem. **PW-6 S.I. Asghar Ali** was the

investigating officer of the case. In his section 342 Cr.P.C. statement, the appellant denied all wrongdoing and claimed that he was at his work when he was told about the murder. He did not examine himself on oath or produce any witness in his defence.

7. The record reveals that there was no evidence against the appellant. No eyewitnesses came forward to testify, nor did any member of the deceased's family record a statement, hold the appellant guilty or testify at trial. While this is a regular occurrence in cases involving honour killings, in the current case, where no honour killing is alleged, it seems odd that nobody came forward to testify. Zafar Ali, the complainant, testified at trial that he was told by his brother Sahib Dad that the appellant had killed his mother; however, for no explainable reason, Sahib Dad did not record a statement with the police, nor did he testify at trial. Zafar Ali's evidence against the appellant is based on hearsay and thus not admissible in evidence.

8. The investigating officer acknowledged at trial that he had not recorded the statement of any other person from the house or the neighbourhood. At trial, the investigating officer tried to give the case an honour killing aspect but acknowledged that when he had concluded his investigation and filed the section 173 report, he had not stated this in that report. The investigation officer did not investigate any more details of the alleged affair or the identity of the alleged lover. Whether the murder took place in the house of the appellant was also not conclusively established. The police first saw the body in the hospital. No blood stains were found at the place where the murder allegedly occurred, though the investigating officer justified this at trial by saying that the floor had been cleaned. He admitted that neither had he seen where the body lay nor did he take any photos nor make a sketch of the incident. On the one hand, he claimed that the bullet casings were lying all spread out in the room, while on the other, he acknowledged that it was the complainant who gave him the casings. He admitted that during the investigation, the appellant had kept telling him about one Gul Mohammad, who he suspected to be behind the murder,

but that he took no steps to investigate that lead. This was a significant lead as Zafar Ali, in his testimony, admitted that their family had to move from Balochistan to Sindh because of the hostility that they had with Gul Mohammad. Zafar Ali remained unsure at trial whether Gul Mohammad was involved in the murder or not. The crime weapon, a pistol, was sent for forensic analysis, and the laboratory reported in its report dated 30.05.2019 that the pistol was not in working condition. The non-working pistol was also handed over to the police by Zafar Ali when it was “hanging on a wall”. In light of this admission, it seems that one, either the police or Zafar Ali, misrepresented himself at trial because the police version was that it was recovered from the possession of the appellant when he was arrested. Zafar Ali was unsure in his testimony whether the appellant was the culprit – *“I cannot say whether the accused is innocent or guilty.”*

9. In the circumstances mentioned above, i.e. the place of recovery of the pistol being doubtful, the bullet casings having been collected is uncertain. The pistol being in a non-working order yet being alleged by the prosecution as being the crime weapon creates doubt about the integrity of the prosecution case regarding the recovery of the weapon.

10. I believe the prosecution failed to establish its case against the appellant beyond reasonable doubt in both the charge of murder and possession of an unlicensed weapon. The benefit of the doubt should have gone to the appellant. Therefore, both appeals are allowed, and the appellant acquitted of the charge. He may be released forthwith if not required in any other custody case. M.A. No. 2642 of 2023 and M.A. No. 2643 of 2023 for the reasons given in paragraph two above, are dismissed.

**JUDGE**