

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Jail Appeal No. D - 121 of 2022

Conf. Case No. D - 11 of 2022

Present:

Mr. Muhammad Iqbal Kalhoro, J.

Mr. Arbab Ali Hakro, J.

Date of hearing : **17.08.2023**

Date of decision : **17.08.2023**

Mr. Israr Ahmed Shah, Advocate for the appellant.

Mr. Ali Ahmed Khan, Advocate for the complainant.

Mr. Zulfiqar Ali Jatoi, Additional Prosecutor General.

J U D G M E N T

Muhammad Iqbal Kalhoro, J. - Instant appeal was filed by appellants (1) Azad Ali S/o Illahi Bux Mako, (2) Touqeer Ahmed S/o Muhammad Riaz Mako, (3) Falak Sher S/o Gulshan Ahmed Mako and (4) Muhammad Faisal S/o Muhammad Riaz Mako against the impugned judgment dated 13.10.2022, passed by learned Additional Sessions Judge-IV (Hudood), Sukkur in Sessions Case No.04 of 2021, arisen out of Crime No.75 of 2020 of Police Station Baiji Sharif, registered for offences under Sections 302, 147, 148, 149, 337-A(i), 337-F(i), 504, 337-H(2), 459, 460, P.P.C., whereby the appellants were convicted as under:

- (1) *For offence U/S 302 (b) as Tazir R/W Section 460 & 149 PPC they are sentenced to death twice as Tazir on two counts for committing double murder viz. complainant's father Arbi @ Arbelo & brother Parvez, both by caste Jakhro with direction that they be hanged by the neck separately till they are dead subject to confirmation by the Honourable High Court of Sindh Bench at Sukkur as well as to compensate LRs of deceased to the tune of Rs.5,00,000/- each convict (Total Rs.20,00,000/- only) in terms of section 544-A Cr.P.C for payment to LRs of both deceased. In case of failure convict at fault will undergo simple imprisonment for six years and compensation amount will also be recovered from him as arrears of land revenue in accordance with law.*
- (2) *For offence U/S 504 PPC (intentional insult with intent to provoke breach of the peace) they are sentenced with fine of Rs.20,000/- each convict (Total Rs.80,000/-). In case of non-payment convict at fault will undergo simple imprisonment for 06 months.*
- (3) *For offence U/S 148 PPC (rioting being armed with deadly weapons) they are also sentenced with fine of Rs.20,000/- each convict (Total Rs.80,000/-). In case of failure convict at fault will undergo simple imprisonment for 06 months.*
- (4) *For offence U/S 337-F(i) PPC (Jurh Ghayr-Jaifah Damiyah single injury) & 337-L(2) PPC (injury No.2 & 3 Other hurts) they are sentenced to pay Daman of Rs.20,000/- each convict (Total Rs.80,000/-) for payment to injured PW Nadir @ Jameel.*

- (5) For offence U/S 337-L(2) PPC (Other hurts) they are also sentenced to pay Daman of Rs.20,000/- for payment to injured complainant Shah Baig.
- (6) For offence U/S 337-H(2) PPC (Aerial firing to endanger human life) they are also sentenced to pay fine of Rs.10,000/- each convict (Total Rs.40,000/-). In case of failure convict at fault shall undergo simple imprisonment for two weeks.

Trial Court has also made Reference to this Court under Section 374, Cr.P.C. for confirmation of death sentence awarded to the accused.

2. During pendency of the appeal, the legal heirs of deceased Arbelo alias Arbi and Parvez Ali, namely, (1) Shah Baig S/o Arbi alias Arbelo, (2) Mst. Huzooran W/o Arbi alias Arbelo, (3) Bahram S/o Arbi alias Arbelo and (4) Mst. Salihan W/o Bahram filed two separate applications under Sections 345(2) and 345(6), Cr.P.C. The said compromise applications were sent to the trial Court vide order dated 17.05.2023 for holding inquiry in respect of legal heirs of the deceased and to ascertain the genuineness of the compromise.

3. Learned Additional Sessions Judge-IV (Hudood), Sukkur filed his report dated 14.06.2023, wherein he has disclosed that statements of all seven (07) major legal heirs of deceased Arbelo alias Arbi S/o Bahram Chachar and his unmarried son Parvez Ali were recorded regarding their compromise and they have extended no objection on acquittal of convicts. He has further submitted that from the said statements, it has transpired that they have voluntarily compromised without any fear or favour under private settlement; hence, the compromise appears to be genuine, whereby the legal heirs of deceased have forgiven the accused in the name of Almighty ALLAH and waived their right of Qisas or compensation. The report further reveals that apart from seven (07) major legal heirs, deceased have also left seven minors, namely, (1) Mst. Sabra Mai, (2) Mst. Safia, (3) Mst. Afia, (4) Mst. Maira, (5) Saddam Hussain, (6) Mst. Raima and (7) Mst. Fatima.

4. Learned Counsel for the appellants submits that though names of minor legal heirs of deceased have not been disclosed by the appellants, but it is mentioned in the proforma for effecting compromise under the Qisas and Diyat Ordinance, filed along with compromise applications, that "Compensation waived by the major/adult legal heirs of the deceased but the share of the minor will deposit in the (mode of cash amount) Bank on the name of minor legal heirs as per their share."

5. The major legal heirs of deceased Arbelo alias Arbi and Parvez Ali, namely, (1) Bahram, (2) Mst. Salihan, (3) Mst. Huzooran, (4) Shah Baig, (5) Mst. Razia, (6) Mst. Kalsooma and (7) Shahzore have appeared before this Court and admitted their signatures/thumb impressions on their affidavits and contents of the same

and reiterated their submissions made before that learned Additional Sessions Judge-IV (Hudood), Sukkur that they have voluntarily forgiven the accused in the name of Almighty ALLAH without any coercion, compulsion or inducement and waived their right of Qisas and Diyat.

6. On 27.06.2023, learned Counsel for the appellants submitted that one of the appellants wants to deposit Diyat amount due upon him in pursuance of compromise reached at between the parties, and this Court ordered that the amount, which is being paid, shall be taken by the Accountant and its disposal will be subject to final order of this Court. Thereafter, learned Counsel for the appellants, under cover of his statement dated 07.07.2023, has filed a deposit slip of Diyat Amount of Rs.13,36,686/- (*Rupees thirteen lac thirty six thousand six hundred eighty six*) credited to the Account of Additional Registrar of this Court.

7. This Court, vide order dated 08.08.2023, directed the office to determine Diyat-share of each minor in tabular form and submit report. Accordingly, office of this Court has submitted its report, wherein shares of minor legal heirs of deceased Arbelo alias Arbi, **as per notification issued for Financial Year 2022-2023**, are calculated as under:

Sr. No.	Name of Legal Heir	Relation	Age	Diyat Share	Amount
1	Mst. Sabra Mai	Daughter	15	2:01	167,086
2	Mst. Safia	Daughter	13	2:01	167,086
3	Mst. Afia	Daughter	11	2:01	167,086
4	Mst. Maira	Daughter	10	2:01	167,086
5	Saddam Hussain	Son	8	2:01	334,171.5
6	Mst. Raima	Daughter	7	2:01	167,086
7	Mst. Fatima	Daughter	6	2:01	167,086
Total Share of Minor Legal Heirs					1,336,686

Similarly, shares of minor legal heirs of deceased Parvez have been calculated as under:

Sr. No.	Name of Legal Heir	Relation	Age	Diyat Share	Amount
1	Mst. Sabra Mai	Sister	15	2:01	171,353
2	Mst. Safia	Sister	13	2:01	171,353
3	Mst. Afia	Sister	11	2:01	171,353
4	Mst. Maira	Sister	10	2:01	171,353
5	Saddam Hussain	Brother	8	2:01	342,706
6	Mst. Raima	Sister	7	2:01	171,353
7	Mst. Fatima	Sister	6	2:01	171,353
Total Share of Minor Legal Heirs					1,370,823

8. Today, learned Counsel for the appellants has filed a statement on behalf of the appellant, who has already deposited Diyat amount with this Court, stating therein that in case new notification for the year 2023-2024 is issued by the Finance Division, Government of Pakistan, the said appellant shall pay the difference amount of Diyat accordingly.

9. In this state of affairs, learned Additional P.G. for the State and learned Counsel for the complainant have recorded no objection to the grant of permission to compound the offence and acceptance of permission subject to deposit of share of minors in Diyat amount and compensation amount awarded to the legal heirs of deceased.

10. We have heard the learned Counsel for the parties and perused the material available on record.

11. It is an admitted position that the compromise arrived at between the parties is voluntary and genuine; hence, for better relations between the parties in future, we grant permission and accept compromise for peaceful and living relations between the parties. So far Diyat-share of minor legal heirs of deceased is concerned, Accountant of this Court is directed to verify issuance of latest notification by the Federal Government about rate of Diyat, and if any change is found, he shall re-determine the share of minors in the light of said notification within seven (07) days. Thereafter, the appellants shall deposit the said amount with Accountant of this Court within sixty (60) days. On deposit of such share amount within specified period or earlier to it, same may be deposited in some Government profitable scheme, from where the amount shall be released to aforesaid minors on attaining age of majority subject to proper verification.

12. The appellants shall also deposit compensation amount of Rs.5,00,000/- each, making total amount of Rs.20,00,000/- with Accountant of this Court within sixty (60) days, and on its receipt, same be distributed amongst all legal heirs as per their share, however, share of minors be deposited in some Government profitable scheme, wherefrom the amount shall be released to aforesaid minors on attaining age of majority subject to proper verification.

13. After deposit of share amount of minors in Diyat and compensation by the appellants, the matter be placed before the Court for issuance of release writ of the appellants.

14. Criminal Jail Appeal stands **disposed of** in the above terms. Consequently, Reference made by the trial Court for confirmation of death sentence of the appellants is declined in the circumstances of the case. Office is directed to place a signed copy of this order in the captioned connected matter.

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