

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Jail Appeal No. 326 of 2024
(Yousuf vs. The State)
Confirmation Case No.04 of 2024
Crl. Jail Appeal No.325 of 2024
(Phull and others vs. The State)

Date of hearing	Order with signatures of Judge(s)
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1. For hearing of M.A.No.7209/2019 (u/s 345(2))
2. For hearing of M.A.No.7210/2024 (u/s 345(6))
3. For orders on MA No.5702/2024
4. For orders on MA No.6934/2024
5. For hearing of main case
6. For hearing of MA No.6935/2024

02.09.2024

M/s. Muhammad Daud Narejo, Muhammad Yousif Narejo and Anjli Talreja, advocates for the appellants
Mr. Khalid Hussain, advocate for the complainant
Mr. Abrar Ali Khichi, Addl. P.G for the State

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It is the case of the prosecution that the appellants by forming an unlawful assembly and in the prosecution of its common object, not only murdered Saleem but caused injuries to PW Moosa intending to commit his murder, for which they were booked and reported upon by the police.

After the trial, the appellants were convicted and sentenced by learned 1st Additional Sessions Judge/MCTC Thatta, in the following terms;

“Therefore, I convict the accused Yousuf son of Ali, by caste Gandro, under section 265-H(2) Cr.PC, for an offence under section 302(b) P.P.C. for killing Saleem son of Paryo alias Paryal, byu caste Gandro and he is sentenced to death, as Tazir. He be hanged by his neck till he is dead. He shall also pay an amount of Rs.100,000/- (Rupees on lack) to the heirs of the deceased Saleem son of Paryo alias Paryal, by caste Gandro, as compensation, as provided under Section 544-A Cr.PC. Such compensation shall be

recoverable as arrears of land revenue. In case of default, he shall undergo simple imprisonment for 01 month.

52. *I also convict the accused Haji Ishaque son of Ali, by caste Gandro, under section 265-H(2) Cr.PC, for an offence under section 302(b), read with section 114 P.P.C. for abetting the rest of the accused to kill the complainant party; resultantly Saleem son of Paryo alias Paryal, by caste Gandro died, and he is therefore sentenced to undergo imprisonment for life as Tazir, considering his role, in the commission of the offence. He shall also pay an amount of Rs.100,000/- to the heirs of the deceased Saleem son of Paryo alias Paryal, as compensation, as provided under section 544-A Cr.P.C. Such compensation shall be recoverable as arrears of land revenue. In case of default, he shall further undergo simple imprisonment for 01 month.*

53. *I also convict the accused Phull son of Ali, by caste Gandro, Tayyab son of Habib, by caste Gandro, and Sudheer son of Behram, by caste Gandro, under section 265-H(2) Cr.P.C for an offence under section 302(b), readwith section 149 P.P.C, for becoming members of the unlawful assembly, the assault of which resulted in the unfortunate death of Saleem son of Paryo alias Paryal, by caste Gandro, and they are therefore sentenced to under imprisonment of life as Tazir, considering their roles in the commission of the offence. They are also directed to pay Rs.100,000/- each, to the heirs of the deceased Saleem son of Paryo alilas Paryal, as compensation, as provided under section 544-A Cr.PC. Such compensation shall be recoverable as arrears of land revenue. In case of default, they shall further undergo simple imprisonment for 01 month.*

54. *I also convict the accused Phull son of Ali, by caste Gandro, Yousuf son of Ali, by caste Gandro, Tayyab son of Habib, by caste Gandro, Sudheer son of Behram, by caste Gandro and Haji Ishaque son of Ali, by caste Gandro under section 265-H(2) Cr.P.C for an offence under section 337-A(ii) PPC read with section 149 PPC, for the causing the injuries to the victim Moosa son of Paryo alias Paryal Gandro and sentence them to suffer imprisonment for one year as Tazir and to pay Arsh equal to five percent of Diyat under section 334-A(ii), P.P.C i.e. an amount of Rs.96,780, to victim /injured Mooso son of Paryo alias Paryal Gandro. As number of accused in the case is five, therefore, each of the accused is liable to pay an amount of Rs.19,356/-. I also convict them for an offence under section 337-F(i) PPC read with section 149 PPC and sentence them to suffer simple imprisonment for six months and to pay an amount of Rs.5,000/- (Rupees five thousand) each, on account of Daman. In default of payment of Arsh, the shall be dealt in accordance of Section 337-X PPC and in default of payment of Daman, they shall be dealt in accordance with the Section 337-Y P.P.C."*

The appellants being aggrieved of the above-said conviction and sentence preferred two separate jail appeals before this Court, while the learned trial Court also referred the matter to this Court for confirmation of the death sentence.

On hearing of the appeals and reference, the appellants filed applications for permission to compound the offence with the legal heirs of the deceased and injured and for their acquittal by way of compromise; those were assigned to the learned trial Court for inquiry and report.

On inquiry, it was reported by the learned trial Court that the deceased Saleem was survived by the following legal heirs;

- (i) Mst. Saleemat (mother),
- (ii) Mst. Razia (wife),
- (iii) Baby Sahiran (daughter),
- (iv) Raheem Bux (brother),
- (v) Basar (brother),
- (vi) Moosa (brother he is also one of the injured),
- (vii) Darya Khan (brother)
- (viii) Aslam (brother)
- (ix) Sohrab (brother)
- (x) Eidan (brother).

All the adult legal heirs of the deceased by filing their respective affidavits and recording their statements have pardoned the appellants by waving their right of "*Qisas*" and "*Diyat*" against them. Besides, P.W Moosa being injured also waived his right of "*Qisas*" and "*Diyat*" (compensation) against the appellants. Mst. Saleemat being *Wali* of baby Sahiran pardoned the appellants by waiving the right of "*Qisas*" against them and they in turn deposited an amount of Rs.10,67,797/- as a *Diyat* money under her share with the learned trial Court.

It is contended by learned counsel for the appellants that the parties have compounded the offence on intervention of their *Nekmards*; without fear or favour and it is true and voluntarily, therefore, it should be accepted and they should be acquitted of the charged offence by way of compromise, which is not opposed by learned Addl. PG for the State and learned counsel for the complainant.

Heard arguments and perused the record.

The compromise arrived at between the parties is appearing to be true and voluntarily; it appears to have been entered without coercion or compulsion, it has not been objected by any one; therefore, it is accepted in the best interest of the peace and brotherhood to be prevailed between the parties; consequently, the appellants are acquitted of the charged offence in terms of compromise by resorting to provision of section 345(6) Cr.PC and shall be released forthwith, if is not required to be detained in any other custody case.

The death reference is answered in negative.

The *Diyat* money under the share of minor baby Sahiran deposited to be invested by the learned trial Court in some profitable scheme with National Saving Centre to be withdrawn by her on attaining the age of majority.

The instant Crl. Jail Appeals and Reference for confirmation of death sentence are disposed of in the above terms along with the listed application(s).

JUDGE

JUDGE