

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

**Cr. Jail Appeal No. D- 47 of 2013 &
Confirmation Case No. 02 of 2013**

1. For hearing of MA 4092-14.
2. For hearing of MA 7408-14.

Present:
**Mr. Justice Abdul Rasool Memon &
Mr. Justice Aftab Ahmed Gorar.**

Mr. Sikandar Ali Junejo Advocate for appellant.
Mr. Ubedullah K. Ghoto Advocate for complainant.
Mr. Zulfiqar Ali Jatoi, Additional P.G.

Date of hearing: 31-08-2017.
Date of Judgment: 31-08-2017

J U D G M E N T

ABDUL RASOOL MEMON J., Legal heirs of deceased Arbi, namely, Mumtaz Ali, Sabzal, Mst. Muradan, Mst. Sahiban, Mst. Zakia and Mst. Jindal and injured, namely, Abdullah, Bakhshal and Ali Murad filed applications under sections 345(2) and 345(6) CrPC. Said compromise applications were sent to the trial court for holding an enquiry in respect of legal heirs of deceased and to ascertain the genuineness of the compromise.

2. Learned Sessions Judge, Ghotki filed his report dated 15.02.2015, wherein he has disclosed that apart from legal heirs, deceased has also left three minors namely, Mst. Sahiba, Sahib and Mst. Zakia. He has also disclosed that Rahib has gone to Saudi Arabia, however, he has sworn his affidavit of compromise through Consulate General of Pakistan at Jeddah and in his affidavit he has stated that he has forgiven to the accused in the

name of Almighty and thereby waived the right of Qisas and Diyat. Thereafter, again matter was referred to learned Sessions Judge, Ghotki. Learned Sessions Judge, Ghotki submitted his report dated 03.10.2016, wherein he disclosed that one Sahib was concealed being legal heir of deceased, however, in report dated 16.02.2015 learned Sessions Judge disclosed that above seven legal heirs were examined by him who in their statements have voluntarily forgiven the accused in the name of Almighty ALLAH and waived their right of Qisas and Diyat.

3. Learned counsel for appellant submits that minor legal heirs of deceased were not concealed but their names are mentioned in the proforma for effecting compromise under the Qisas and Diyat Ordinance filed alongwith compromise applications. However, he has filed application for appointing of Mumtaz Ali as Wali of minors. By consent, said application is allowed. Office to allot MA number to it. He has also filed statement showing shares of Diyat amount which minors are entitled to receive.

4. Legal heirs of deceased Arbi, namely, Mumtaz Ali, Sabzal, Mst. Muradan, Mst. Sahiban, Mst. Zakia and Mst. Jindal appeared before this us and they have admitted their signatures/thumb impressions on their affidavits and contents of the same and further submit that they were examined by learned Sessions Judge, Ghotki and stated that they have voluntarily forgiven to the accused in the name of Almighty ALLAH without any coercion, compulsion or inducement and waived their right of

Qisas and Diyat. Mumtaz Ali, Wali of minors is present and states that he being brother of minors and his interest is not adverse to that of minors he being brother of minors waived right of Qisas on behalf of minors. Injured, namely, Abdullah, Bakhshal and Ali Murad have already filed their affidavits before learned Sessions Judge, Ghotki and their statements were recorded and they waived their right of Qisas and Diyat and recorded no objection to the acquittal of appellant subject to deposit of shares of minors and compensation amount of Rs.300,000/- to the legal heirs of deceased while Rahib has already sworn affidavit through Consulate General of Pakistan at Jeddah and he also appeared before this court on 07.06.2017.

5. In view of above circumstances, learned Additional P.G for the State recorded no objection to the grant of permission to compound the offence and acceptance of permission subject to deposit of share of minors and compensation amount awarded to the legal heirs of deceased.

6. Learned counsel for complainant also recorded no objection in the above terms.

7. We have carefully heard the learned counsel for the parties, perused the impugned judgment, reference, compromise applications and reports of the trial court regarding ascertaining the genuineness of compromise between the parties.

8. In our view above and looking to the circumstances of this case on the basis of reports of trial Court about the correctness and genuineness of

compromise arrived at between the parties is voluntary and genuine and for better relations between the parties in future, we grant permission and accept compromise for peaceful and coexistence relations between the parties. So far share of minors is concerned, Accountant of this court is directed to verify latest Notification of rate of Diyat issued by the Federal Government in the month of July, 2017 and determine the shares of minors in the light of said Notification within 07-days and appellant shall deposit the said amount with the Accountant of this Court within 60-days. On deposit of share amount within 60-days or earlier to it, same may be deposited in some Government profitable scheme and same shall be released to minors on attaining majority subject to proper verification. The appellant shall also deposit compensation amount of Rs. 300,000/- with the Accountant of this Court within 60-days and on receipt of said amount, same be distributed amongst all legal heirs as per their share and shares of minors be deposited in some Government profitable scheme and same shall be released to minors on attaining majority subject to proper verification. On deposit of share amount of minors and compensation amount by the appellant, the matter may be placed before court for issuance of release writ of appellant.

9. Criminal Jail Appeal stands disposed of in the above terms. Consequently, reference for confirmation of death sentence is declined in the circumstances of the case.

JUDGE

JUDGE