

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Jail Appeal No.D-34 of 2021
Cr. Conf. Case No.D-28 of 2021

PRESENT:

**Mr. Justice Naimatullah Phulpoto,
Mr. Justice Khadim Hussain Tunio,**

1. For orders on office objection.
2. For hearing of M.A. No.616/2022.
3. For hearing of M.A. No.617/2022.
4. For hearing of M.A. No.618/2022.
5. For hearing of M.A. No.619/2022.
6. For hearing of Main Case.

Mr. Ajmair Ali Bhutto, advocate for the appellant.
Mr. Ali Anwar Kandhro, Addl. P.G.

Date of hearing : 13.09.2022.
Date of Order : 13.09.2022.

ORDER.

Naimatullah Phulpoto, J.- Appellant Lal Mohammad son of Faqeer Mohammad Brohi was tried by the learned First Additional Sessions Judge/MCTC, Kamber in Sessions Case No.345/2021, re-The State v. Lal Mohammad Brohi & others (Crime No.61/2021, registered at P.S Sijawal). After regular trial, the appellant was convicted by the trial Court for offence under Section 302(b), PPC read with Section 34, PPC and awarded capital punishment of death as Tazir for committing qatl-i-amd of deceased Shahnawaz Brohi, subject to confirmation by this Court, and was ordered to pay Rs.500,000/- (Rupees Five Lac) as compensation to be paid to the legal heirs of deceased in terms of Section 544-A, Cr.P.C., in default of the payment thereof to suffer S.I. for six months more, vide judgment dated 18.9.2021. Instant appeal was filed by the appellant with prayer for setting aside the conviction and his acquittal of the charge. Trial Court made reference for confirmation of death sentence as required by law.

2. This appeal was admitted for regular hearing on 24.11.2021. During the pendency of the appeal, an application bearing No.616/2022 was filed for permission to enter into the compromise and another application bearing No.619/2022 for acquittal of the appellant by means of the compromise, with the prayer that the parties have entered into the compromise and as a result thereof parents of the deceased and wife have pardoned the appellant/convict and also waived their right of Qisas and do not claim compensation etc. So far minor legal heirs of the deceased are concerned, due share of Diyat is due to them. It is prayed that compromise may be accepted and appellant may be acquitted of the charge by means of the compromise. Along with the proforma, affidavits of the legal heirs of the deceased are filed affirming the fact of the compromise. It was accompanied with the details of the legal heirs of deceased.

3. The offence under section 302, PPC has three parts. Under section 302(a) an accused can be punished with death as Qisas; under section 302(b) with death or imprisonment for life as Tazir having regard to the facts and circumstances of the case if the proof specified in section 304 of the P.P.C. is not available and under section 302(c) with imprisonment of either description up to 25 years where according to the Injunctions of Islam the punishment of Qisas is not applicable. By virtue of the provisions of section 345(2) of the Cr.P.C. the offence under section 302 of the P.P.C. has been made compoundable by the heirs of the victim subject to permission of the Court. Before allowing composition of the offence the Court is duty bound to ascertain whether the compromise is genuine and made by the legal heirs of the deceased with their own free-will and whether the acquittal of the convict will be in the interest of the parties and the society. Once the above conditions are satisfied and the Court permits composition of the offence the convict has to be acquitted by virtue of the provision of subsection (6) of section 345 of the Cr.P.C. which is reproduced below for ready reference:-

“The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.”

4. As the offence of qatl-i-amd being compoundable in nature, therefore, compromise application needed consideration. Therefore, to verify the genuineness of the compromise effected between the parties and also to determine the fact of effecting of the compromise without any duress and compulsion and also to confirm the details of the legal heirs of the deceased, compromise application was marked to the trial Court with a direction to hold inquiry regarding genuineness or otherwise of the compromise and submit a comprehensive report to that effect. On completion of the process of the verification of the fact of compromise, trial Court submitted the report, in which it is stated that there is genuine compromise between the parties.

5. We have heard the learned Counsel for the appellant, learned Addl. P.G. for the State, wife of the deceased and the parents of the deceased, who voluntarily appeared. Minors of the deceased are also present. The wife of the deceased waived her right of Qisas and Diyat so also the parents of the deceased. Learned Prosecutor recorded his no objection on the compromise application.

6. In the present case, deceased Shahnawaz Brohi left behind following legal heirs at the time of death.

Sr.#	Name	Relation	Age about	Amount of share
1.	Mst. Shehar Bano	Wife/Widow	39 years	Rs.539,815.5/-
2.	Ahmed Nawaz @ Muhammad Nawaz	Son	11 years	Rs.755,741.7/-
3.	Muhammad Rafique	Son	07 years	Rs.755,741.7/-
4.	Ali Nawaz	Son	04 years	Rs.755,741.7/-
5.	Gul Bano	Daughter	09 years	Rs.377,870.85/-
6.	Noor Bano	Daughter	06 years	Rs.377,870.85/-
7.	Parveena	Daughter	05 years	Rs.377,870.85/-
8.	Shazia	Daughter	03 years	Rs.377,870.85/-

7. Mst. Shehar Bano wife of deceased, has forgiven the appellant in the name of Almighty Allah and does not claim/waive compensation and share of Qisas/Diyat. Parents of the deceased voluntarily appeared and stated that they have also forgiven the appellant due to intervention of the nekmards of the locality in the name of Almighty Allah and waived the right of Qisas/Diyat.

8. Share of Diyat of each minor has been determined by the office as above. In this case, the mother of the minors, namely, Mst. Shehar Bano asserted that she has waived right of Qisas on behalf of the minors being their mother and natural guardian, but claimed Diyat for the minors admissible as per law.

9. It is stated that parties are related to each other. In the view of above, for better relations between the parties in future, permission to enter into the compromise is allowed. Resultantly, compromise application is allowed. The appeal is allowed. Appellant is acquitted by means of the compromise u/s 345(6), Cr.P.C. **The appellant shall not be released till deposit of the *diyat* share amount of minors**, as already determined by the office, which shall be invested in some profit bearing Government scheme, so that the interests of the minors be safeguarded and they may be paid the amount with the return/profit earned thereon, upon their gaining maturity. Rightly reliance is placed upon an unreported judgment of Hon'ble Supreme Court passed in the Case of *Karim Bux v. The State* **(Criminal MA No.324/2020 & JP No.524/2019)**. Consequently, reference made by the trial Court for confirmation of death sentence is answered in negative.

10. The appeal as well as confirmation reference are disposed of in the above terms.

JUDGE

JUDGE