

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Cr. J. Appeal No.D-52 of 2022
[Confirmation Case No.07 of 2022]

Present:-

Mr. Justice Amjad Ali Sahito

Mr. Justice Miran Muhammad Shah

1. For order on MA No.1255/2025.
2. For hearing of MA No.10447/2024.
3. For hearing of MA No.10448/2024.
4. For hearing of MA No.10449/2024.
5. For hearing of MA No.10450/2024.

Appellants: Hakim Ali, Muhammad Aslam, Jam Khan, Sada Gul and Meenhon Khan Jatoi through Mr. Sameeullah Rind, Advocate.

Respondent: The State through Mr. Shahid Ahmed Shaikh Memon, Additional Prosecutor General Sindh.

Date of hearing: 27.03.2025

Date of Decision: 27.03.2025

J U D G M E N T

Amjad Ali Sahito, J.- Through the above miscellaneous application being MA No.10447/2024, the parties have prayed to accord permission to compound the offence under section 345[2] Cr.P.C. and through application being MA No.10448/2024 prayed for acquittal of the appellants under section 345 [6] Cr.P.C. while by filing MA No.10449/2024 & MA No.1255/2025 the parties have sought the appointment of Mst.Mariyam as 'Wali' being mother of minor legal heirs namely baby Gulailan (daughter) and Zeeshan Ali (son).

2. Through impugned judgment dated 21.04.2022, passed by the learned trial Court / Additional Sessions Judge-I/MCTC, Dadu in Crime No.12/2020 for the offences under

sections 302, 114, 147, 148, 149, 504 PPC registered at PS Jhallo District Dadu, the appellants were convicted and sentenced in the following manner:-

The accused Hakim Ali S/o Waris Jatoi and Jam Khan S/o Waris Jatoi being directly charged with causing sharp side hatchet injuries to deceased Shamshad Ali are convicted U/s 265-H(2) Cr.P.C and they are sentenced to death as Tazir U/s 302(b) PPC. They shall be hanged by their neck till they are dead. While accused Meenhon Khan S/o Waris Jatoi is charged for abetting his companions for committing murder of deceased and his act has been proved through evidence, as far as the presence of accused Muhammad Aslam S/o Waris Jatoi and Sada Gul S/o Meenhon Khan Jatoi being armed with weapons and assisting the co-accused has been proved at the place of incident, however as they did not cause any injury to deceased, therefore, I am the considered view that in attending circumstances, lesser punishment would meet the ends of justice. Thus, accused Meenhon Khan S/o Waris Jatoi is convicted U/s 265-H(2) Cr.P.C and sentenced to suffer imprisonment for life as Ta'zir for committing offence U/S. 302(b) PPC R/W Section 114 PPC. Accused Muhammad Aslam S/o Waris Jatoi and Sada Gul S/o Meenhon Khan Jatoi are convicted U/s 265-H(2) Cr.P.C and sentenced to suffer imprisonment for life as Ta'zir for committing offence U/S. 302(b) PPC R/W 149 PPC. All three present accused are also directed to pay compensation in the sum of Rs.200,000/- (two lac) each to the legal heirs of deceased Shamshad Ali as required U/s 544-A Cr.P.C, in case of default in payment of compensation, the accused shall suffer simple imprisonment for six months more.

3. The compromise applications are supported with the affidavits of legal heirs of the deceased. All the legal heirs have raised their no objection for acquittal of the appellants by stating that they have entered into compromise with them due to intervention of nekmards outside the Court and pardoned them the right of Qisas and Diyat and raised no objection if the appellants are acquitted from the charge.

4. In order to ascertain the genuineness of the compromise between the parties, the compromise applications were sent to the trial Court for thorough inquiry into the matter.

The learned trial Court vide its letter dated 17.12.2024 has submitted its report, wherein it is reported the learned trial Court called reports from Mukhtiarkar (Revenue) Dadu, SHO PS Jhallo and the Assistant Manager (V & R) NADRA Sukkur through In-charge NADRA Dadu regarding legal heirs of deceased and notice to general public was also published in daily newspaper Kawish Hyderabad dated 13.08.2023. It is further reported that the deceased Shamsad Ali Bux left his legal heirs namely Mst. Khanzadi (Mother), Mst. Mariam (widow), Baby Gulailan (daughter/ minor) and Zeeshan Ali (son/minor). In their statements, recorded by learned trial Court, all the legal heirs namely Mst. Khanzadi (mother of deceased), Mst. Mariam (widow of deceased) and Raza Muhammad (complainant/brother of deceased) have raised their no objection for acquittal of the appellants by stating that they have entered into compromise with them due to intervention of nekmards outside the Court and pardoned them the right of Qisas and Diyat and raised no objection if the appellants is acquitted from the charge.

5. On 11.02.2025, legal heirs of deceased namely Mst. Mariam and Mst. Khanzadi appeared before this Court and stated that they have been paid by way of land and a sum of Rs.1000,000/- (Rupees ten lac) has been acknowledged. On 18.03.2025, learned counsel for the appellants submitted a copy of sale deed wherein apparently the subject property has been transferred in the name of mother of minors; however, the said documents was not accepted as it was lacking the benefit in favour of minors, as such, learned counsel stated that the said sale deed has since been got cancelled and now sale deed shall be got effected wherein the share of the mother and minors shall be separately specified according to their entitlement. However, this Court ordered to file a report in respect to the property by the concerned Mukhtiarkar as to the market value thereof. In response to this order, Mukhtiarkar Taluka Dadu through its letter dated 07.03.2025 submitted that

the value of an agricultural land area 02.37 acres vide Survey No.323 is Rs.73,12,500/-.

6. Today, learned counsel for the appellants has filed a statement whereby shown the respective shares of the legal heirs of the deceased as well as submitted a Photostat copy of sale deed in respect of agricultural land Survey No.323 in sale area 2-37 acres in deh Choi Tapo Dadu District Dadu transferred in favor of legal heirs Mst. Mariam, the mother of deceased, baby Gulailan and Zeeshan Ali the minor legal heirs of deceased separately.

7. Since all the legal heirs of the deceased appeared in Court and have confirmed the contention of compromise applications and stated that they have entered into compromise with the appellants with their own freewill and consent and without any inducement and excused the right of Qisas and Diyat to the appellants in the name of Almighty ALLAH. They have also raised no objection for acquittal of the appellants. The offence is compoundable. There is no objection for grant of compromise and acquittal of the appellants as the legal heirs of deceased have pardoned the right of Qisas & Diyat to the appellants in the name of Almighty ALLAH. Therefore, in order to keep cordial relations and harmony between the parties in future and strike off the enmity between them, the permission to compound the offence is allowed under section 345 [2] Cr.P.C. Resultantly, the impugned judgment is set-aside.

8. Since, a sale deed in respect of agricultural land Survey No.323 in sale area 2-37 acres in deh Choi Tapo Dadu District Dadu has been transferred in favor of legal heirs Mst.Mariam, the mother of deceased, baby Gulailan and Zeeshan Ali the minor legal heirs of deceased separately, as such, Miscellaneous Applications being M.A. No.10449/2024 and M.A. No. 1255/2025 stand allowed with reference to the order dated 18.03.2025. Accordingly, the appellants are acquitted of the charge under section 345 [6] Cr.P.C. The

appellants shall be released forthwith if not required in any other custody case.

9. As a result of above findings, the reference bearing No.07 of 2022 submitted by the trial Court for confirmation of death sentence to the appellants namely Hakim Ali and Jam Khan is answered in negative.

10. With above modification, Criminal Jail Appeal No.D-52 of 2022 preferred against the impugned judgment is disposed of along with listed applications.

JUDGE

JUDGE

Abdullah Channa/PS