

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Arshad Hussain Khan

Criminal Appeal No.155 of 2020
Confirmation Case No.08 of 2020

Appellant:	Ayesha D/o. Muhammad Naeem Iqbal through Mr. Manzoor Ahmed Rajput, Advocate
Complainant:	Saleem Iqbal through Mr. Abid Akram, Advocate.
For State:	Mr. Muhammad Iqbal Awan, Additional Prosecutor General.
Date of hearing:	22.12.2021
Date of Announcement:	24.12.2021

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Ayesha in the instant appeal has assailed the judgment dated 12.02.2020 passed by Learned Additional Sessions Judge-I, Karachi South in a Sessions Case No.1141 of 2013 arising out of Crime No.186 of 2013 u/s. 302/397/34 PPC P.S. Baloch Colony, Karachi whereby the appellant was convicted under Section 302(b) PPC and sentenced to death. The appellant was also directed to pay compensation amount of Rs.300,000/- to the legal heirs of the deceased as required under section 544-A Cr.P.C. and in default of payment she has to undergo simple imprisonment for six months.

2. Appellant Ayesha against her conviction and sentence filed instant appeal. However, during pendency of the appeal, appellant entered into compromise with legal heirs of deceased and such applications in terms of Section 345 Cr.P.C. were moved, which were sent to learned trial Court for enquiry as to verify the legal heirs of the deceased as well as genuineness or otherwise of compromise between the parties.

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3. The learned trial Court submitted report dated 11.12.2021 which is available with the File. In its report, the learned trial court has mentioned that during course of enquiry reports with regard to legal heirs of deceased from concerned Assistant Commissioner, SHO and NADRA authorities were called so also it got published such notice in the daily newspaper "Jang" on 17.11.2021 but no objection to compromise application was received. The learned trial court has further mentioned that during enquiry proceedings, statements of major legal heirs of deceased were recorded who affirmed the fact of the compromise between them. Deceased Muhammad Waseem Iqbal had left four legal heirs namely Saleem Iqbal, father, Mst. Bilqees Akhtar, Mother, Muhammad Nadeem Iqbal, brother and Mst. Zaira Khurram sister.

4. All the legal heirs of deceased, who are majors, appeared before the trial court and categorically stated that they have compromised with only accused Mst. Ayesha d/o Muhammad Naeem Iqbal on payment of Diyat amount Rs.42,61,000/- without any coercion and compulsion outside the court and they have pardoned the accused Mst. Ayesha in the name of Al-Mighty Allah and they have no objection if accused Mst. Ayesha is acquitted of the charge under S.302/34 PPC.

5. Learned counsel for the appellant states that legal heirs of the deceased are major and they have excused the appellant with their free-will and consent, without any inducement or pressure and the compromise arrived at between the parties is genuine. It is further stated that since the legal heirs of the deceased have been paid Qisas & Diyat amount therefore accused Mst. Ayesha be acquitted of conviction u/s.302-(b)/34 PPC and Confirmation case be answered in negative in respect of Ayesha.

6. The learned Addl. Prosecutor General, Sindh and learned counsel for the complainant have no objection to the compromise application of the appellant Mst. Ayesha and learned APG has confirmed that such compromise meets all legal requirements.

7. In view of the above facts and circumstances we are of the view considered view that the legal heirs are competent to compound / compromise the offence with the accused. The Compromise arrived at between the parties on the very face of it appears to be genuine and true and without any due inducement or pressure. There is no hesitation for us to accept the same as the offence punishable under Section 302 PPC against the appellant is compoundable and has actually been compounded. Resultantly compromise arrived between the parties is hereby accepted. Consequently, appellant Mst. Ayesha daughter of Muhammad Naeem Iqbal is hereby acquitted u/s.302-(b) PPC

8. With respect to the offence under Section 397 PPC of which the appellant Ayesha was also convicted and sentenced we have examined the record and found that this offence has been proved beyond a reasonable doubt and learned counsel for the appellant under instructions does not press this conviction on merits but only seeks a reduction in sentence on the basis that she has already under gone most of her sentence.

9. We note that the appellant was convicted and sentenced to R.I. for 10 years for an offence u/s.397 PPC. However, sentence for the offence under section 397 PPC is for not less than seven (07) years, the appellant has already served nearly nine (09) years in jail for this offence and since she does not press her appeal on merits and in respect of her conviction u/s.397 PPC only requests for reduction in sentence on the basis that she has nearly served out her entire sentence and that both learned Additional Prosecutor General, Sindh and learned counsel for the complainant have no objection if her sentence is reduced from 10 years to the time already served out which shall include any fine or compensation payable we hereby maintain her conviction u/s 397 PPC **but** reduce her sentence under S.397 PPC from 10 years RI to time already served in custody including any compensation or fine.

10. The upshot of the above discussion is that that the appellant is acquitted of the charge under S.302 (b) /34 PPC and the confirmation reference in so far as it relates to her is answered in the negative. The

appellant stands convicted under S.397 PPC and her conviction is maintained however her sentence is reduced to time already served in jail including any fine and compensation payable and the appellant shall be released unless she is wanted in any other custody case.

11. The above criminal appeal is disposed of in the above terms and confirmation reference is answered in the negative to extent of appellant / accused Mst. Ayesha daughter of Muhammad Naeem Iqbal.