

IN THE HIGH COURT OF SINDH KARACHI

Cr. Jail Appeal No.574 of 2019
Confirmation Case No.29 of 2019

Before:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Mobeen Lakho,

1. For hearing of M.A No.9581/2019
2. For hearing of M.A No.10446/2019
3. For hearing of M.A No.10447/2019
4. For hearing of main case.

Syed Gulzar Hussain Sherazi, Advocate for the Appellant.
Mr. Mohammad Iqbal Awan, Deputy Prosecutor General.

Date of hearing 13.01.2020.
Date of announcement 16.01.2020

JUDGMENT

Mohammad Karim Khan Agha. The appellant Najamuddin son of Fakharuddin was tried in Sessions Case No. 112 of 2018, *Re: "The State v. Najamuddin"* emanating from Crime No.12 of 2018, registered at PS Bin Qasim under Section 302, PPC and vide judgment dated 05.09.2019, passed by learned 1st Additional District & Sessions Judge, Malir Court, Karachi the appellant was convicted for causing murder of Muhammad Hussain and sentenced to death as Tazir under section 302(b) P.P.C and was also ordered to pay fine of rupees 2.5 million to the legal heirs of the deceased under section 544-A Cr.P.C and in case of failure to pay such fine, he shall further undergo simple imprisonment of 06 months. The appellant filed a jail appeal against his conviction.

2. The brief facts of prosecution case as appearing in the FIR are that on 21.01.2018 at about 1130 hours, inside Madarsa Tuition Centre, Islami Manzil, Jalali Basti, Eidu Goth, Pipri Bin Qasim, Karachi the accused committed Qatle-e-Amd of the son of Saleemullah namely Muhammad Hussain aged about 09 years by hitting him with a stick (Danda) of 1½ feet.

3. During pendency of the appeal, the parties filed application u/s.345(2) Cr.P.C. and 345(6) Cr.P.C. for permission to compound the offence and compromise the matter.

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4. The compromise applications were sent to learned District & Sessions Judge Karachi West for enquiry as to the legal heirs of the deceased, namely Saleemullah (Father) and Shamiana Bibi (Mother) as well as genuineness or otherwise of compromise between the parties. Learned District and Sessions Judge submitted report dated 22.11.2019 mentioning that the parties had compromised the matter as is evident from para 4 of his report which is reproduced as under;

"4. On 22.11.2019 legal heirs namely Saleemullah son of Gul Daraz Khan and Mst. Shamiyana Bibi wife of Saleemullah appeared. Their statements on oath were recorded wherein they both verified contents of their compromise application and accompanying affidavits and submitted that deceased was their real son aged about 10 years. From their statement on oath it came on record that apart from both parents deceased had no other legal heirs and they had forgiven the accused Najamuddin in the name of ALMIGHTY ALLAH without seeking any compensation. They further clarified that the compromise has been reached without any coercion and pressure and they had also waived their rights of Qisas and had no objection if accused is acquitted. (The original statement on oath, copy of CNIC and affidavit in support of compromise application are also filed as annexure-C to H respectively.)"

5. Learned counsel for the appellant submits that both legal heirs of the deceased are major and they have waived their right of Qisas and Diyat and 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.

6. The learned DPG for the State has no objection to the compromise application of the appellant and submits that from his review of the same all necessary legal requirements to give effect to the compromise have been complied with.

7. We have heard the learned counsel for the appellant, the learned DPG and have perused the record available before us.

8. In view of the above facts and circumstances we are of the 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 Najamuddin son of Fakharuddin is hereby acquitted u/s 345 (6) Cr.PC for the offense for which he was convicted and sentenced under Section 302 PPC. As such the appellant shall be released forthwith if not required in any other custody case.

9. The above jail appeal against conviction is disposed of along with all pending applications in the above terms and the confirmation reference is answered in the negative.