

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

Criminal Appeal No.S- 53 of 2005

DATE	ORDER WITH SIGNATURE OF JUDGE
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30.01.2023.

Mr. Qutub-u-Din Abbasi, Advocate for appellants.
Ms. Sana Memon, A.P.G for State.

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Appellants are present on bail. Heard arguments. Reserved for
orders.

Tufail

Compromise

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IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No. S- 53 of 2005

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on application u/s 345(2) Cr.P.C (M.A- 12532 of 2022).
2. For orders on application u/s 345(6) Cr.P.C (M.A- 12533 of 2022).
3. For hearing of M.A- 6628 of 2017.
4. For hearing of the main case.

30.01.2023

Mr. Qutub-u-Din, Advocate for the appellants, alongwith the appellants on bail.

Ms. Sana Memon, A.P.G.

JUDGMENT/ORDER

Mohammad Karim Khan Agha, J.-Through instant appeal, appellants Rustam and Dilshad have assailed conviction and sentence awarded to them, as mentioned in the concluding para of the impugned judgment dated 07.04.2005, passed by the learned Ist. Additional Sessions Judge, Dadu, in Sessions Case No.366 of 1997, emanating from Crime No.02 of 1997, registered at Police Station Jhallo, under sections 302, 342 and 34 PPC.

2. The appellants as set out in the impugned judgment, were convicted and sentenced to suffer life imprisonment with fine of Rs.50,000/- each by the learned trial Judge. During pendency of their appeal before this court the legal heirs of the deceased namely Waris alias Imamuddin and Ali Hassan (brothers of the deceased) as well as the appellants/accused Rustam and Dilshad have jointly moved applications under sections 345(2) and 345(6) Cr.P.C, on the ground that they have compromised the matter outside the court in the name of ALMIGHTY ALLAH and on the intervention of nekmards of the locality, therefore, they filed aforementioned applications seeking compounding of the offence and resultant acquittal of the appellants. The said applications were sent to the learned Ist. Additional Sessions Judge/MCTC, Dadu, for conducting an inquiry in respect of the legal heirs of deceased and genuineness of compromise between the parties who has submitted his report dated 27.01.2023, which is available on

record. The said report shows that while conducting inquiry as to the genuineness of the said compromise, except report of the Mukhtiarkar he had also called family-tree of the deceased Muhammad Bux from NADRA, which revealed that one Mst. Sakeena being legal heir of the said deceased is also there, hence notice was issued to said Mst. Sakeena, who also appeared before the learned Court. Thereafter, the learned Judge had himself recorded the statements of Waris alias Imamuddin and Mst. Sakeena; and, since the other legal heir viz Ali Hassan Chandio was confined in Central Prison, Hyderabad, at the direction of learned Sessions Judge, Hyderabad, Judicial Magistrate-IX, Hyderabad has recorded the statement of said Ali Hassan. The report further reveals that at the time of his murder, deceased Muhammad Bux had left Waris alias Imamuddin, Ali Hassan (brothers) and Mst. Sakeena (sister), as his surviving legal heirs.

3. Learned counsel for the appellants submits that the offence is compoundable and all the legal heirs of deceased have pardoned the appellants, therefore, compromise applications may be accepted and the appellants may be acquitted in terms of compromise.

4. Learned Addl. P.G after going through the compromise applications and the report of the learned Ist. Additional Sessions Judge, Dadu, submits that entire exercise carried out by him is in accordance with law hence she has no objection if compromise application is accepted and as a result thereof, the appellants are acquitted in terms of compromise.

5. I have heard the learned counsel for the parties and have examined the file minutely. Perusal of the order sheet dated 08.12.2022, shows that one Muhammad Waris alias Imamuddin (brother of deceased) was present and supported the contents of the aforementioned compromise applications.

6. Admittedly, the offence is compoundable and the parties i.e. the appellants, and the legal heirs namely Muhammad Waris alias Imamuddin and Ali Hassan have filed joint applications for compounding the offence and acquittal of the appellants. These applications were sent to the trial court for verification of legal heirs of

deceased and genuineness of compromise and report has been received which reveals that reports from concerned SHO and Mukhtiarkar as well as family tree from NADRA were called and notice in daily Kawish newspaper dated 05.01.2023 was published. As per reports of SHO and Mukhtiarkar as well as the family tree of NADRA no other person except the aforementioned 03 legal heirs claiming to be legal heir of the deceased came in picture and nobody objected to the compromise.

7. Today the appellants are present on bail. Learned counsel for the appellants as well as the learned A.P.G have stated that both parties have compounded the offence and legal heirs of the deceased have pardoned the appellants in the name of ALMIGHTY ALLAH and they also do not claim any diyat, daman or compensation, hence they have no objection if the appellants are released by this court.

8. In view of above, the compromise between the parties appears to be genuine and not the result of any coercion or compulsion and since the parties seem to be related to each other, the compromise is likely to promote harmony between them and peace in the society. There appears to be no impediment legal or otherwise in accepting the compromise between the parties. Accordingly, the application under Section 345(2) is accepted. The parties are allowed to compound the offence.

9. Resultantly, the application under Section 345(6) Cr.P.C. is also allowed. The appellants are acquitted in view of the compromise arrived at between the parties. Resultantly, the conviction and sentence awarded by the trial court is set-aside. The appellants are present on bail. Their bail bonds are cancelled and surety stand discharged. They are free to go. Both the miscellaneous applications listed at serial No.1 and 2 stand allowed.

10. As regard the application, listed at serial No.3, moved by the applicant/surety Rasool Bux viz M.A- 6628 of 2017 for return of surety documents, learned A.P.G has extended her no objection, hence the same is allowed. Let subject to any legal impediment the

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surety documents be returned to the applicant/surety upon proper verification and identification.

11. The appeal stands disposed of in the above terms.