

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No. S- 144 of 2019

DATE ORDER WITH SIGNATURE OF JUDGE(S)

1. For hearing of application u/s 345(2) Cr.P.C (M.A-12210 of 2021).
2. For hearing of application u/s 345(6) Cr.P.C (M.A-12211 of 2021).

Mr. Muhammad Sachal R. Awan, Advocate for the appellants, alongwith the appellant Zafar Ali (on bail).

Mr. Sana Memon, A.P.G.

Mr. Ghulamullah Chang, Advocate for the complainant.

Mst. Husna and Mst. Khanzadi, mother and widow of the deceased, are present in Court along with the learned counsel for the complainant.

Date of hearing: 27.02.2023

Date of order: 06.03.2023

**ORDER**

**Mohammad Karim Khan Agha, J.**-Through instant appeal, appellants Ahmed Khan and Zafar Ali have assailed conviction and sentence awarded to them, as mentioned in the concluding para (Point No.4) of the impugned judgment dated 18.05.2019, passed by the learned Ist. Additional Sessions Judge/Model Criminal Trial Court, Badin, in Sessions Case No.154 of 2017, emanating from Crime No.18 of 2017, registered at Police Station Nindo, under section 302, 324, 504, 509, 34 PPC.

2. Appellant Ahmed Khan as set out in the impugned judgment, was convicted and sentenced to suffer life imprisonment with payment of compensation amount of Rs.600,000/- to the legal heirs of the deceased; whereas appellant Zafar Ali was convicted for causing injuries to Mst. Irum and sentenced to suffer One Year R.I with Daman Rs.30,000/-, to be paid to the injured and for causing injuries to Mst. Yasmeen sentenced to suffer 03 years with payment of Daman of Rs.100,000/- to the injured. During pendency of the matter, complainant and legal heirs of the deceased namely Haji Khan

(Complainant) Mst. Husna Wd/o late Muhammad Hashim (injured and mother of the deceased), Mst. Khanzadi Wd/o deceased, Mst. Irum (injured), Mst. Yasmeen (injured) as well as the appellants/accused Ahmed Khan and Zafar Ali 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 permission to compound the offence and as a result thereof acquittal of the appellants. The said applications were sent to the learned Ist. Additional Sessions Judge/MCTC, Badin, 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 24.11.2023, which is available on record.

3. Learned counsel for the appellants as well as the learned counsel for the complainant submit that the offence is compoundable and all the legal heirs of deceased except Mst. Husna and Mst. Khanzadi, mother and widow of the deceased, have pardoned the appellants without claiming any diyat amount; whereas the said two legal heirs namely Mst. Husna and Mst. Khanzadi after receiving the Diyat amount to the extent of their respective shares, have also extended their no objection to the compromise; therefore, the listed 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, Badin, 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. Admittedly, the offence is compoundable and the parties i.e. the appellants and the legal heirs of the deceased as well as the complainant have filed joint applications for compounding the offence and acquittal of the appellants. These

applications were sent to the trial court for verification of the legal heirs of deceased and genuineness of compromise and such report has been received, last but relevant para of the same is as under:-

*“As per enquiry, conducted by this Court, it reveals that the father of deceased Javed Ali namely Muhammad Hashim is no more in this world. The deceased Javed Ali was married with Mst. Khanzadi. The deceased was issueless. The deceased has left behind, Haji (the brother), Mst. Khanzadi (widow), Mst. Husna (the mother), Mst. Saran, Mst. Shahnaz, Iram, Mst. Rasoolan and Mst. Hajran. Out of them Mst. Rasoolan and Hajran are minors. They all have stated that they have patched up with the accused persons Ahmed Khan and Zafar Ali. They have stated that they have filed compromise application before Honourable High Court of Sindh. It is pertinent to mention that out of above named legal heirs of deceased, the legal heirs Baby Rasoolan and Baby Hajran are still minors. The legal heirs namely Mst. Khanzadi, (the widow of deceased Javed), Mst. Husna, (the mother of deceased Javed Ali) have claimed Diyat amount from the accused persons. However, the legal heirs Mst. Saran, Mst. Shahnaz (the sisters of deceased) and injured Mst. Yaseena have not claimed any compensation from accused.”*

*Hence this report of compromise is being submitted for kind perusal along with statements of legal heirs of deceased Javed Ali.”*

6. It appears from the said report that after adopting other required formalities, statements of the legal heirs were recorded. That two of the sisters of the deceased namely Baby Rasoolan and Baby Hajran are still minors; whereas the legal heirs namely Mst. Khanzadi and Mst. Husna, (widow and mother of the deceased) have claimed Diyat amount from the accused persons. However, the remaining legal heirs Mst. Saran, Mst. Shahnaz (the sisters of deceased) and injured Mst. Yaseena have not claimed any compensation from accused.

7. In view of the said report, notices were issued to the legal heirs in particular Mst. Khanzadi and Mst. Husna, (widow and mother of the deceased) in order to ascertain the correct position. Today, pursuant to such notices, the said legal heirs of the deceased namely Mst. Khanzadi and Mst. Husna are present in person; whereas the appellant Zafar Ali is present on bail. Mst. Khanzadi and Mst. Husna (widow and mother of the deceased Javed Ali, respectively) state that in respect of diyat amount they have received their due shares in shape of cattle including buffaloes and cows; therefore, they have no

objection if the compromise is accepted and as a result thereof the appellants are acquitted of the charge. To substantiate such assertion, learned counsel for the complainant has also filed statement duly signed by him as well the said legal heirs. The statement is also supported by the affidavits of said Mst. Husna and Mst. Khanzadi, same is taken on record.

8. Learned counsel for the appellants as well as the learned A.P.G and the learned counsel for the complainant have stated that both parties have compounded the offence and all major legal heirs of the deceased including Mst. Husna and Mst. Khanzadi, who after receiving their due share of diyat extended no objection, 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. The legal heirs present, as mentioned above have also affirmed such contentions. As regard the minor legal heirs of the deceased namely Baby Rasoolan and Baby Hajran, some Wali should be appointed on their part and thereafter the diyat amount to the extent of their respective shares should be deposited with the Additional Registrar of this Court, who shall deposit the same in any Government profit yielding scheme and shall return the same to the aforementioned minor legal heirs on attaining their majority.

9. In view of the above, the compromise between the parties which 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 same 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 and the parties are allowed to compound the offence. Resultantly, the application under Section 345(6) Cr.P.C. is also allowed and the appellants are acquitted in view of the compromise arrived at between the parties. Consequently, the conviction and sentence awarded by the trial court is set-aside only to the extent of imprisonment; however, as regard the payment of fine and the Daman as mentioned in the concluding para

of the impugned judgment viz Rs.600,000/-, Rs.30,000/-, Rs.100,000/-, as well as the share of diyat in respect of the aforesaid minor legal heirs Baby Rasoolan and Baby Hajran the appellants are liable to furnish a surety/security equal to the said amounts before the Additional Registrar of this Court with an undertaking to ensure payment of all the aforementioned amounts of compensation and Daman to the concerned injured as well as the legal heirs as directed in the impugned judgment are paid within a period of six months without fail. Subject to fulfilling such condition, the appellant Ahmed Khan shall be released forthwith if not required in any other custody case, whereas the appellant Zafar Ali is present on bail, his bail bonds are cancelled and surety stands discharged.

10. Accordingly, the appeal stands disposed of in the above terms.