

IN THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Appeals No. 156 & 157 of 2019

Present: Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Abdul Mobeen Lakho

Appellants: Arif Abbasi, Faizan Abbasi and Adil Abbasi
through Mr. Ajab Khan Khattak advocate

The State: Mr. Muhammad Iqbal Awan Deputy
Prosecutor General Sindh

Complainant: Shabbir Ahmed Khan through Mr. Mamoon
A.K.Sherwany advocate

Date of hearing: 08.04.2021
Date of announcement: 14.04.2021

JUDGMENT

Mohammad Karim Khan Agha, J.- Arif Abbasi, Faizan Abbasi and Adil Abbasi appellants were tried by learned Anti-Terrorism Court-XVI, Karachi. After full-dressed trial, appellants were convicted under Section 302(b) PPC for causing qatl-e-amd of deceased Sodheer Ahmed, Wazeer Ahmed and Muhammad Nawaz and sentenced to rigorous life imprisonment with direction to pay fine of Rs.100,000/-each and in case of failure, to suffer S.I for six months more. Appellants were also ordered to pay compensation of Rs.100,000/- each to the legal heirs of deceased as provided under Section 544-A Cr.P.C and in default, they were ordered to suffer S.I for six months more. Appellant Arif Abbasi was also convicted under Section 23(1)(a) of Sindh Arms Act, 2013 and sentenced to suffer S.I for five years and to pay fine of Rs.10,000/-. In case of default in payment of fine, appellant was ordered to suffer SI for three months more. All the sentences were directed to run concurrently and the appellants were also extended benefit of section 382-B Cr.P.C.

2. Precisely the facts as disclosed by complainant Shabbir Ahmed Khan in FIR No.92/2015 registered at P.S Paposh Nagar, Karachi for offences under Sections 302/34 PPC read with section 7 of Anti-Terrorism

Act, 1997 are that on 31.05.2015, he was available at his hotel along with his brothers namely Sodheer Ahmed and Wazeer Ahmed as well as his brother-in-law namely Muhammad Nawaz when at about 2215 hours, accused Faisal @ Mota, Arif, Faizan and Adil duly armed with weapons came there and fired upon them. Due to such firing his brothers as well as his brother-in-law received fire arm injuries. Thereafter, accused ran away from the place of occurrence. Injured were brought at the Abbasi Shaheed Hospital where brothers of the complainant Sudheer and Wazeer were found expired whereas his brother-in-law expired during treatment after 1-1½ hour. After registration of the aforesaid FIR, the investigation was carried out by Inspector Ali Hyder Shah. Appellants were arrested on 01.06.2015 and on the pointation of accused Arif Abbasi, police recovered crime weapon i.e. pistol from his house. FIR No. 97/2015 under Section 23(1)(a) of Sindh Arms Act 2013 was registered at P.S Paposh Nagar against accused Arif Abbasi on behalf of State.

3. After conclusion of investigation, appellants were challaned to the Anti-Terrorism Court whereas, accused Faisal Abbasi @ Mota was declared proclaimed offender and proceedings under Section 87/88 Cr.P.C were initiated against him.

4. Upon indictment, accused pleaded not guilty and claimed trial. At trial, the prosecution examined 10 prosecution witnesses, who produced and exhibited the relevant documents before the learned trial Court. Thereafter, prosecution side was closed.

5. Statements of accused were recorded under section 342, Cr.P.C. in which they have denied the allegations and professed their innocence. They have neither examined themselves on oath nor produced any witness in their defence.

6. After hearing the learned counsel for the parties, learned trial court convicted and sentenced the appellants as mentioned earlier in this judgment.

7. During pendency of the titled appeals, the appellants and the legal heirs of the deceased filed application for extending permission with respect to effect compromise between the parties. Vide order dated

11.12.2020, the compromise application was sent to learned trial court for conducting entire due proceedings and submitting report regarding genuineness of the compromise. In compliance thereof, learned trial court sent its report dated 04.03.2021, which reads as under:

"1) After receiving the compromise applications along with affidavits accompanied by order of Honourable High Court at Karachi, Sindh, the reports from the concerned departments were sought, as to verify the number and authenticity of the legal heirs of all the three deceased namely: 1) Muhammad Nawaz Khan s/o Ghulam Haider Khan, 2) Sudheer Ahmed and 3) Muhammad Wazeer both sons of Fazal ur Rehman Khan.

2) Report of NADRA dated 08-02-2021 of deceased Muhammad Nawaz S/O Ghulam Haider Khan suggest that there are 7 legal heirs of deceased, out of them are his wife, 4 daughters and 2 sons, so the real legal heirs would be his wife namely Shaheen, his daughters namely Shazima, Aiman, Ayesha, Aqsa Nawaz and his sons Muhammad Umar Nawaz and Muhammad Umair Nawaz (NADRA report is enclosed as annexure A-01). In the report of NADRA as Annex A-01 and Mukhtiarkar (Revenue) as Annex B-02, regarding legal heirs of deceased Muhammad Nawaz, name of his Mother is not mentioned, whereas in report of Investigation Officer/PI Ali Haider Shah as Annex C-01 and C-02 and as per compromise application Mother name as "Khatoon Bibi" is mentioned vividly as legal heir of deceased Muhammad Nawaz; so total legal heirs of the deceased Muhammad Nawaz are eight in numbers.

3) Report of NADRA dated 10-02-2021 of deceased Sudheer Ahmed S/O Fazal ur Rehman Khan was also brought on record by NADRA, which suggest that, there are as many as nine legal heirs of deceased, out of them his father; Fazal ur Rehman, mother Dil Afza, wife Rizwana Bibi are the real legal heirs (NADRA report Annex as A-02) whereas, six (brothers and sisters) would not be his legal heirs (reference 2006 SCMR 1744, if required).

4) Reports of NADRA dated 25-01-2021 of deceased Muhammad Wazeer S/O Fazal ur Rehman Khan suggest that, there are ten legal heirs of deceased, out of them are his father, mother, sister and brothers so the real legal heirs would be his wife namely Kanwal Nazeer, his only child/son Muhammad Mubashir, father Fazal ur Rehman and mother Dil Afza (NADRA report is enclosed as annexure A-03); (reference 2006 SCMR 1744, if required).

5) The report of Mukhtiarkar as Annex B-01 to B-02 was submitted regarding legal heirs of all the three deceased which is as under:

1. Muhammad Wazir S/O Fazl ur Rehman CNIC No.42101-8389983-7

S.No	Name of Legal Heirs	Relationship with Deceased
01	Mst. Kanwal	Wife/Widow
02	Mubashir	Son

2. Sudheer Ahmed s/o Fazl ur Rehman CNIC No.42101-1501672-3

S.No	Name of Legal Heirs	Relationship with Deceased
01	Mst. Rizwana	Wife/Widow
02	Misbah	Son
03	Anusha	Daughter
04	Sofia	Daughter
05	Muhammad Ansar	Son

3. Muhammad Nawaz s/o Ghulam Haider Khan, CNIC No.42101-8996366-1

S.No	Name of Legal Heirs	Relationship with Deceased
01	Mst. Shaheen	Wife/Widow
02	Shazima	Daughter
03	Aiman	Daughter
04	Ayesha	Daughter
05	Aqsa	Daughter
06	Umar	Son
07	Umair	Son

Note: In the report of NADRA Annexure A-02 regarding legal heirs of Sudheer Ahmed S/O Fazal ur Rehman name of his children are not mentioned, whereas in the report of Mukhtiarkar at Annexure B-01 as well as in the Performa of Compromise, name of all children and legal heirs of deceased Sudheer Ahmed S/o Fazal ur Rehman are mentioned along with date of birth.

- 6) IO/PI Ali Haider Shah also submitted his report regarding legal heirs of all three deceased persons which is annex as C-01 to C-07.

7) Notice of compromise application got published in Daily Newspapers (Awami Awaz, Daily Jang and The Nation) as Annex D-01 to D-03 for inviting objections, but no one surfaced from public for filing objection till the time of signing of the report.

8) All the adult legal heirs of deceased persons namely 1) Muhammad Nawaz S/o Ghulam Haider Khan, 2) Sudheer Ahmed and 3) Muhammad Wazir both sons of Fazl ur Rehman appeared and recorded their statement as annex E-01 to E-05, F-01 to F-03 and G-01, who have categorically confirmed about the number of real legal heirs and genuineness of compromise on oath in the open court.

9) The perusal of all the statement of all the legal heirs of deceased persons suggest that they have entered into compromise with the convicted accused persons namely 1) Arif Abbasi, 2) Faizan Abbasi and Adil Abbasi all sons of Mir Afzal as well as with absconding accused namely Faisal, out of their free will, without any fear, threat and coercion, they have waived the right of Qisas, widows of all three deceased persons, being natural guardian of Minor children have also waived the right of Qisas also on behalf of their respective children (as per sub section 2 of section 310 PPC) i.e. Mst. Shaheen widow of Muhammad Nawaz at annex E-02 has waived the right of Qisas on behalf of her minor children

namely 1) Umar (D.O.B. 2005), 2) Miss Aqsa (D.O.B. 2008), 3) Umair (D.O.B. 2013); Rizwana Bibi widow of Sudheer Ahmed at annex F-03 has waived the right of Qisas on behalf of her minor children namely 1) Miss Misbah (D.O.B. 19.12.2008), 2) Miss. Anusha (D.O.B. 27.09.2010), 3) Sofia (D.O.B. 01.07.2012), 4) Muhammad Ansar (D.O.B. 26.12.2015); Mst Kanwal widow of Muhammad Wazir at annex G-03 has waived the right of Qisas on behalf of her only minor child namely 1) Muhammad Mubashir (D.O.B. 01.07.2015).

Note:- Minor children have not received the compensation.

Findings:-

In view of the reports of Mukhtiarkar, NADRA, IO/PI Ali Haider Shah, notices published in Daily Newspapers "Awami Awaz", "Daily Jang" and "The Nation" so also statements of legal heirs the number and authenticity of legal heirs is established; no other person has appeared for objection; the statements and compromise applications have also disclosed all the legal heirs including minors; the statements of all adult legal heirs of three deceased confirm that compromise entered into respectively and collectively by each and all of them is genuine, free from pressure, coercion and/or any intimidation; the right of Qisas has been waived by each of them and all of them so also on behalf of minor legal heirs by their respective mothers (widows), no compensation has been claimed by any of the legal heirs, however, right of Diyat of minor cannot be waived as per section 309(1)(b) PPC."

8. After receipt of the above report, on 18.02.2021, the Nazir of this Court was directed to determine the due share of compensation/diyat of the minors and to submit such report. In compliance of such directions, the Nazir submitted his report dated 25.03.2021 wherein submitted that total share of minors which came to Rs.42,38,356/- being diyat amount calculated as per Notification. Today counsel for the appellants submitted that total amount of Rs.42,38,356/- as per Nazir's Report has been paid and in lieu thereof produced receipt of the Nazir.

9. Since the appellants have deposited the share of diyat amount as calculated by the Nazir and learned counsel for the complainant as well as learned DPG are satisfied that all the legal requirements are complied with and raised no objection for allowing compromise application as prayed.

10. Since, interest of minors stands safeguarded; therefore, there will be no impediment to allow the compromise with the appellants. As, the report furnished by the trial court reveals that compromise between the parties appears to be voluntary, genuine and without any duress and

coercion, therefore, permission to compound the offence is accorded to the parties and as a result whereof, compromise between the parties is hereby accepted and appellants Arif Abbasi, Faizan Abbasi and Adil Abbasi are acquitted of the charges under S.302 (b) PPC in terms compromise. Nazir is directed to deposit the Diyat amount of the minors in any Government profitable scheme, which shall be payable to them as and when they may attain majority.

11. For the foregoing reasons, Special Criminal Anti-Terrorism Appeal No. 156 of 2019 stands disposed of in the above terms.

12. As regards to the Special Criminal Anti-Terrorism Appeal No. 157 of 2019 is concerned, the same is preferred by appellant Arif Abbasi against his conviction and sentence under section 23(1)(a) Sindh Arms Act, 2013, which is a non-compoundable offence, hence, instant appeal is being decided on merits to the extent of said offence.

13. We have gone through the prosecution evidence, which transpires that prosecution has proved its' case under Section 23(1)(a) of Sindh Arms Act 2013 against the appellant Arif Abbasi through cogent and confidence inspiring evidence. Therefore, we hold that prosecution has proved its' case beyond any shadow of reasonable doubt against appellant Arif Abbasi. However, at this juncture, learned counsel for the appellant has submitted that appellant has served out his sentence therefore, he may be released. On perusal of record it transpires that appellant Arif Abbasi was convicted under Section 23(1)(a) of Sindh Arms Act 2013 and was sentenced to suffer S.I for five years and to pay fine of Rs.10,000/- and in default, he was ordered to suffer SI for three months more. We have gone through Jail Roll dated 19.09.2020, which reflects that appellant has served his sentence including remission upto 28.09.2020 as 05 years, 06 months and 13 days, learned trial court had ordered that the sentences run concurrently, therefore, we are in agreement with the learned counsel for the appellant Arif Abbasi, that he has served out his sentence in the above referred offence.

14. In the view of above, Special Criminal Anti-Terrorism Appeal No.157/2019 is dismissed, however, Superintendent, Central Prison

Karachi shall release the appellant Arif Abbasi, if he is not required in any other custody case as he has already served out his sentence for his conviction under the Sindh Arms Act.

15. The above appeals stand disposed of in the above terms