

Its of Case

- 1- For Its of M. A No. 1165/2021 (348, 5.)
- 2- For Its of M. A No. 1166/2021 (348, 4.)
- 3- For Its of M. A No. 1167/2021 (348, 6.)

- Enquiry report as flag "C"
- Accountant's report as flag "B"


28.5.2021,

Mr. Riaz Hussain Choro Counsel for
the appellant.

Mr. Asif Ali Bhatti, DPH

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Arguments heard. Reserved for
judgment.


Judge

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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Jail Appeal No.S-106 of 2019

Appellants : Khan Mohammad Chandio & others,
through Mr. Riaz Hussain Khoso, Advocate.

Respondent : The State, through Mr. Aitbar Ali Bullo,
Deputy Prosecutor General.

Date of hearing : 28.05.2021.

Date of Order : 4.06.2021.

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ORDER.

Omar Sial, J.: Khan Mohammad, Moutabar, Lal Mohammad, Nadir, Tarique, Ishaque and Nazeer, all Chandio by caste, were sentenced to life imprisonment as well as directed to pay a fine of Rs.500,000/- (or spend another 6 months in prison in default of the payment) by a judgment dated 30-10-2019 passed by the learned 1st Additional Sessions Judge, Shahdadkot. They were convicted under section 302(b), P.P.C. for the murder of Mehboob Ali. It is this judgment that has been impugned in this appeal.

2. During pendency of this appeal it appears that the legal heirs of the deceased forgave the convicts. Accordingly, they moved an application under section 345(2), Cr.P.C. (being C.M.A. 1165 of 2021) seeking permission of this Court to compound the offence. This application should have been filed under section 345(5), Cr.P.C. Office to correct the error in red ink. Simultaneously, an application under section 345(4), Cr.P.C. (being C.M.A. 1166 of 2021) was filed seeking appointment of Janul Khatoon as the wali of the 3 minors Mujahid, Zafarullah and Mazhar for the purposes of the compromise. Janul is the wife of the deceased and the 3 minors are their children. Yet another application (being C.M.A. 1167 of 2021) was filed under section 345(6), Cr.P.C. seeking acquittal of the convicts on the basis of the compromise.

3. The documents connected with the compromise were sent to the learned 1st Additional District & Sessions Judge, Shahdadkot to determine the genuineness of the compromise and vide its report dated 28-4-2021 the

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learned court confirmed that the compromise was genuine and that the legal heirs of the deceased had waived their right to *diyat* and forgiven the convicts. The legal heirs have all also appeared in this Court and confirmed that they have forgiven the convicts.

4. As mentioned above, 3 legal heirs of the deceased, namely, Mazhar Ali (16 years), Zafarullah (15 years) and Mujahid (14 years) are still minors, hence, it was ordered by this Court on 7-5-2021 that their share of *diyat* be deposited in this Court until such time as they are majors. The *diyat* of the 3 minors has been calculated to be Rs.911,319/- and a report of the accountant in this regard is on file.

5. An offence under section 302(b), P.P.C. is compoundable. The legal heirs of the deceased Mehboob Ali have all sworn affidavits that they have compromised with the convicts, compounded the offence, have forgiven them in the name of Allah and waived their right to *diyat* and the learned trial court has confirmed the number of legal heirs as well as the genuineness of the compromise, C.M.A. No. 1165 and 1166 of 2021 are allowed. C.M.A. 1167 of 2021 is allowed subject to the deposit of the *diyat* amount of the 3 minors. Once the *diyat* amount is deposited and the office confirms the deposit, the convicts shall stand acquitted under section 345(6), Cr.P.C. and released forthwith if not required in any other custody case.

6. The appeal stands disposed of in terms of this compromise.

 4/6/21
JUDGE