

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No. D- 58 of 2017.
Crl. Reference No. D- 10 of 2017.

Present:

Mr. Justice Muhammad Saleem Jessar.
Mr. Adnan Iqbal Chaudhry.

1. For hearing of M.A. No. 5279/2018.
2. For hearing of M.A. No. 5280/2018.
3. For hearing of M.A. No. 5281/2018.
4. For hearing of main case.

Mr. Ali Nawaz Ghanghro, Advocate holding brief for Mr. Athar Abbas Solangi, Advocate for appellant.
Mr. Muhammad Noonari, D.P.G.

Date of hearing: 05.03.2019.
Date of order: 05.03.2019.

ORDER

Muhammad Saleem Jessar, J- Appellant Ali Mustafa son of Muhammad Haneef Chandio was tried and convicted in Sessions Case No.431/2014, Re: State v. Ali Mustafa, emanated from *Crime No.132/2014 of P.S Mehar*, registered for offences punishable under Section 302 P.P.C, vide judgment dated 11.11.2017, passed by learned 1st Additional Sessions Judge, Mehar, whereby the appellant was convicted and sentenced to “*death*” and was directed to pay compensation of Rs.100,000/- to legal heirs of deceased and in default thereof to suffer S.I for six months more.

2. Appellant Ali Mustafa, against his conviction and sentence filed instant appeal, whereas the learned trial Court made captioned Reference for confirmation of death sentence. However, during pendency of the appeal, the appellant entered into compromise with legal heirs of deceased and such applications in terms of Section 345 Cr.P.C. were moved, which were sent to learned trial Court, for enquiry as to verify the legal heirs of the deceased as well as genuineness or otherwise of compromise between the parties.

3. The learned trial Court submitted report dated 07.02.2019, which is available with the file. In its report, the learned trial Court has mentioned that during course of enquiry reports with regard to legal heirs of deceased from concerned Mukhtiarkar, SHO and NADRA authorities were called, so also it got published such notice in the daily newspaper "Kawish". The learned trial Court has further mentioned that during enquiry proceedings, statements of major legal heirs of deceased were recorded, who affirmed the fact of compromise between them, as volunteer. In the end, the learned trial Court, has reported that compromise between the parties is volunteer, genuine and without any duress and coercion.

4. Moreover, according to report of the trial Court, deceased had left in all nine legal heirs, namely, Ali Munawar (husband), Mst. Saima, Mst. Maria, Mst. Mahnoor, Mst. Fazila, Mst. Komal (daughters), Mansoor Hussain (son), Ghulam Qadir and Mst. Shaharbano (father and mother).

5. All the major legal heirs of deceased also appeared before this Court and categorically stated that they pardoned the appellant in the name of Almighty Allah, and waived off their right of "*Qisas & Diyat*".

6. Besides, major legal heirs, there are four minor legal heirs, namely, baby Mahnoor, baby Fazila, baby Komal (daughters) and master Mansoor Hussain (son). In such like cases, where deceased leaves behind minors, their interest is to be safeguarded on the basis of their share in the "*diyat*" amount, which is a prescribed one. As such, the Accountant of this Court was directed to calculate the share of aforesaid minors in respect of "*diyat*" amount, as per gazette notification issued by Government of Pakistan for current year and submit his report. Accordingly, the Accountant has furnished his report, which reflects that as per gazette notification issued by Government of Pakistan, an amount of Rs.2,055,936 (*Rupees two million fifty five thousand, nine hundred and*

thirty six only) has been notified and declared as "*Diyat*" for financial year 2018-2019.

7. As such, in order to safeguard the interest of the minors the appellant would be liable to pay their share in the "*diyat*" amount. Amongst legal heirs left by deceased five are major, i.e. husband, father, mother and two daughters, while four are minors, and according to calculation, an amount of **Rs.1,444,050/-** comes in the share of five major legal heirs, whereas an amount of **Rs.611,886/-** becomes share of minor legal heirs in the "*diyat*" amount, which is to be paid by the appellant.

8. The learned counsel for the appellant submits that the appellant is ready and willing to pay share of minor legal heirs in the "*diyat*" amount within some reasonable time.

9. The learned D.P.G appearing for the State raised no objection, if listed applications are allowed.

10. In these circumstances, the appellant is directed to pay share of minor legal heirs in the "*diyat*" amount which becomes **Rs.611,886/-**, within some reasonable period. Once, the aforesaid amount is deposited, the office is directed to invest the amount of "*diyat*" in respect of minors in some profitable scheme of the government as per practice and procedure, till they attain the age of majority.

11. Since interest of minors stands safe guarded, therefore, there will be no impediment to allow the compromise with the appellant. As, the report furnished by the trial Court reveals that compromise between the parties appears to be volunteer, genuine and without any duress and coercion, therefore, permission to compound the offence is accorded to the parties, and in result whereof compromise between the parties is hereby accepted and appellant Ali Mustafa Chandio is acquitted of the charge in terms of compromise **subject to deposit of share of "*Diyat*" of minor legal heirs worth Rs.611,886/- (Six hundred thousand, eleven hundred, eight hundred and eighty six rupees)**. The appellant is reportedly

confined in jail; his release writ should be issued, as soon as the share of minors is deposited by him in the Court.

12. The Appeal and Reference alongwith listed applications stand disposed of in the above terms.

JUDGE

JUDGE

Ansari/*

For Dissection/ Disposed of Matters.

1. For orders on M.A. 1570/2019 (U.A)
2. For orders on M.A. 1571/2019 (SOLA)