

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

Cr. Appeal No.D-55 of 2021

*Present:-  
Mr. Aftab Ahmed Gorar, J  
Mr. Agha Faisal, J.*

Appellants: Muhammad Hayat and Abdul Razzaque both sons of Allah Rakhio, through Mian Taj Muhammad Keerio, Advocate.

Respondent: The State through Mr. Nazar Muhammad Memon, Additional Prosecutor General, Sindh.

Date of hearing: 29.12.2021  
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Appellants Muhammad Hayat and Abdul Razzaque were tried by learned 1<sup>st</sup> Additional Sessions Judge/MCTC Badin, vide Sessions Case No.331 of 2020 for offence under sections 302, 324, 459, 365-B/511, 506(2), 114, 337-H(2), 504, 35 P.P.C of P.S. Khoski. On the conclusion of trial vide Judgment dated 19.01.2021, appellant Muhammad Hayat was convicted under section 302(b) P.P.C and sentenced to imprisonment for life directing him to pay compensation amount of Rs.500,000/- (five lac only) to the legal heirs of deceased Mehro Khan in case of default to further undergo S.I for one year while appellant Abdul Razzaque was convicted for committing offence under section 324 P.P.C awarded five years rigorous imprisonment with fine of Rs.100,000/- the same was ordered to be paid to injured and in default whereof to further undergo S.I for one year; he was also directed to pay Daman of Rs.50,000/- in respect of injuries No.1 and 2 however for injury No.3 Arsh amount is five percent of diyat amount was directed to pay to injured Mst. Niamat otherwise he will remain in custody as simple imprisonment; for causing injuries No.4 and 5 he was directed to pay Daman amount of Rs.50,000/- to injured Mst. Niamat.

2. During pendency of appeal, M.A. No.11955 of 2021 under section 345 (5) Cr.P.C was moved by the legal heirs of the deceased, injured Mst. Niamat as well as appellants for permission to enter into compromise. Another M.A. No.11956 of 2021 was also moved with submission that parties had arrived at a compromise and in result thereof the legal heirs waived of the right of Qisas and Diyat. It was prayed that compromise be accepted and the appellants may be acquitted of the charge. Along-with the aforesaid application affidavits on prescribed proforma of the legal heirs of the deceased as well as injured Mst. Niamat have also been filed.

3. Compromise applications were sent to the trial Court with the direction to hold inquiry regarding the genuineness or otherwise of the compromise arrived at between

the parties. Trial Court after holding the inquiry submitted reported dated 04.12.2021 stating therein that per statement of legal heirs and injured Mst. Niamat they have clearly deposed that they have forgiven the accused persons in the name of ALLAH the almighty. The list of legal heirs of deceased as well as injured are as under:

- |    |                |                 |                                       |
|----|----------------|-----------------|---------------------------------------|
| 1. | Lal Muhammad   | Son/Complainant | (CNIC No.41104-5911812-3)             |
| 2. | Mst. Sakina    | Widow           | (CNIC No.41104-1262249-4)             |
| 3. | Ghamshad Ali   | Son             | (CNIC No.41104-8856270-7)             |
| 4. | Mir Hassan     | Son             | (CNIC No.41104-3375170-5),            |
| 5. | Gul Hssan      | Son             | (CNIC No. Nil Mobile No.0342-8327525) |
| 6. | Mst. Sher Bano | Daughter        | (CNIC No.41104-7245511-8)             |
| 7. | Mst. Khairi    | Daughter        | (CNIC No.41104-7160911-2)             |
| 8. | Mst. Niamat    | Injured         | (CNIC No.41104-4337186-8)             |

4. As trial Court in the report dated 04.12.2021 has mentioned that legal heirs of deceased as well as injured have forgiven accused Muhammad Hayat and Abdul Razzaque in the name of ALLAH the almighty and did not claim Qisas and Diyat. For the satisfaction of the Court we have also heard learned Additional Prosecutor General, Sindh Mr. Nazar Muhammad Memon, appearing for the State who affirms such position and perused the affidavits of legal heirs and injured. All the legal heirs as well as injured Mst. Niamat stated that they have forgiven the appellants Muhammad Hayat and Abdul Razzaque in the name of ALLAH the almighty and waived their rights of Qisas and Diyat.

5. In the instant case, appellants were charged for the offence of Qat-i-Amd of Mehro Khan due to matrimonial dispute. On the conclusion of the trial, they were found guilty of the offence thereby convicted as stated in supra(I). Offence of murder is compoundable in nature. While the right of same vests with the legal heirs of the victim with reference to section 345, Cr.P.C. In addition thereto a right of Waiver is available to a sane adult "Wali" of a victim. In exercise thereof he/she can waive his right of Qisas without acceptance of any compensation as provided under section 309 P.P.C. But section 310 PPC is an addition thereto, which also empowered a sane "Wali" of a victim to compound his right of Qisas on accepting of compensation. In view of the mentioned provisions only a sane adult "Wali" can exercise the right of waiver or compounding to forgo the right of Qisas with or without compensation. But, in both cases the discretion lies with the court to accept the compromise or the settlement if it fulfilled all the legal heirs requirements, and to make an order of acquittal or conviction

of the offender keeping in view the facts and circumstances of the case and nature of the offence.

6. In the present case, all the legal heirs and injured are adults, they appeared before the learned Trial Court and stated that they entered into compromise with accused persons without any duress or compulsion with their freewill being the legal heirs of the deceased and injured.

7. In view of above discussion as offence is compoundable, permission to the parties to enter into compromise is allowed for better relations between the parties in future. Consequently, compromise application is allowed. Resultantly, appellants Muhammad Hayat and Abdul Razzaque both sons of Allah Rakhio are acquitted under section 345(6) Cr.P.C in FIR No.83 of 2019 registered at P.S. Khoski under sections 302 etc P.P.C.

8. In the view of above, while allowing the compromise applications, appeal is disposed of in above terms.

JUDGE

JUDGE

*\*Muhammad Danish\**