

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Jail Appeal No. S – 147 of 2019

Date

Order with Signature of Hon'ble Judge

Hearing of case

1. For hearing of MA No.7604/2020
2. For hearing of MA No.7605/2020
3. For hearing of MA No.7606/2020
4. For hearing of main case
(Report of Accountant at flag 'A')

22.03.2021

Mr. Shabbir Ali Bozdar Advocate for the Appellants
Mr. Khalil Ahmed Metlo, DPG for the State

ORDER

Aftab Ahmed Gorar, J; Through instant Criminal Jail Appeal, the appellants Habibullah, Ghulam Nabi and Meeral have impugned the judgment dated 18.07.2019 passed by learned 1st Additional Sessions Judge (MCTC), Naushahro Feroze, whereby he has convicted and sentenced the appellants u/s 265-H(ii) Cr.P.C, in the following terms;-

(a) For offence u/s 302(b) r/w Section 149 PPC to suffer R.I for life as Tazir and to pay Rs.200,000/- (two lac) each as compensation u/s 544-A Cr.P.C to the legal-heirs of deceased with fine of Rs.50,000/- (Fifty thousand) each, in case of default in payment of fine they shall undergo S.I for six months more.

(b) For offence u/s 147 PPC to suffer RI for one year and fine of Rs.10000/- each and in case of default in payment of fine they shall undergo SI for one month more.

(c) For offence u/s 148 PPC to suffer RI for two years and fine of Rs.10000/- each and in case of default in payment of fine they shall undergo SI for two months more.

(d) For offence u/s 504 PPC to suffer RI for one year and fine of Rs.5000/- each and in case of default in payment of fine they shall undergo SI for one month more.

The benefit of Section 382-B Cr.P.C was also extended to the appellants/accused and all the sentences were ordered to run concurrently.

2. It is pertinent to mention here that one of the appellants namely Habibullah passed-away in the Jail during pendency of the appeal, therefore, the proceedings against him were abated vide order dated 07.09.2020 by this Court.

3. During pendency of instant Criminal Appeal, the legal-heirs of deceased Khan Muhammad patched-up with remaining two appellants namely Ghulam Nabi and Meeral and filed an application under Section 345(2), Cr.P.C seeking permission for entering into compromise so also another application under Section 345(6), Cr.P.C for acquittal of appellants namely Ghulam Nabi and Meeral, which were duly signed by the appellants namely Ghulam Nabi and Meeral as well as legal-heirs of deceased Khan Muhammad namely Hafeezan (widow), Pathani (mother), Siraj Ahmed (son), Sanam, Zaibul, Naheedan, Faiza (daughters) and Arshad Ali (son) supported by the affidavits of major legal-heirs namely Mst. Pathani (mother), Mst. Hafeezan (widow) and Siraj Ahmed (son). On 14.12.2020, the matter was referred to learned trial Court to examine the veracity and genuineness of the compromise arrived in between the parties. The learned trial Court after examining the material, calling reports from concerned corners and by recording the statements of the legal-heirs of deceased has approved the compromise reached between the parties as genuine and without duress.

4. Learned Counsel for the appellants Ghulam Nabi and Meeral submits that matter has been compromised between the appellants as well as the legal-heirs of deceased Khan Muhammad, who are closely related to each

other; that the major legal heirs have waived off their right of Diyat amount, whereas, there are five minor legal-heirs namely Sanam, Zaibul, Naheedan, Faiza and Arshad Ali, the daughters and son of the deceased and their share of Diyat amount is fixed total **Rs.14,75,468.00** (Fourteen lacs, seventy five thousands, four hundred and sixty eight rupees) for which the appellants have mutated an area of (00-20) ghuntas agricultural land out of S.Nos.466 and 469 situated in Deh Bhorti-I, Taluka Kandiaro, District Naushahro Feroze in favour of the minor legal-heirs of the deceased and the valuation of the above area has been ascertained by the Mukhtiarkar (Revenue), Kandiaro vide his report dated 15.03.2021 as Rs.700000.00 (Seven lacs); that the appellants are ready to deposit the remaining amount of **Rs.7,75,468.00** (Seven lacs, seventy five thousands, four hundred and sixty eight rupees) in cash before this Court. He lastly submits that after depositing of the remaining amount, the release writ of the appellants namely Ghulam Nabi and Meeral, may be issued by acquitting the appellants.

5. Learned D.P.G for the State submits that though the offence is compoundable, however, the Court is required to examine whether the ingredients of Section 311 PPC are applicable under the facts and circumstances of the instant case, learned Counsel for appellants read-out the impugned judgment and the evidence available on record and submits that neither such suggestion has been made by the complainant in F.I.R or prosecution while submitting Challan nor such suggestion was made by the learned trial Court while framing charge against the appellants/accused. It has been further contended that ingredients of Section 311 PPC do not attract in the instant case as neither appellants have any criminal record nor they were ever convicted, whereas, the offence allegedly committed was not brutal or shocking in manner, nor it suggests that it was outrageous to the public conscience. It has been further stated that the alleged offence does not refer to any honour killing. It has been prayed that since the matter has been compromised between the parties, whereas, the

appellants namely Ghulam Nabi and Meeral and the legal-heirs of deceased Khan Muhammad are related to each other, whereas, the offence is compoundable, hence the same may be accepted.

6. Heard the learned Counsel for the parties, perused the record, and the impugned judgment passed in instant case so also gone through the contents of the compromise application filed under Section 345(2) Cr.P.C for granting permission to enter into compromise and another application under Section 345(6) Cr.P.C for acquittal of the appellants namely Ghulam Nabi and Meeral as well as the report submitted by learned trial Court, which prima-facie reflects that compromise arrived at between the appellants namely Ghulam Nabi and Meeral and legal-heirs of deceased Khan Muhammad has been made voluntarily. On 18.01.2021, the major legal-heirs of the deceased Khan Muhammad namely Mst. Pathani, Mst. Hafeezan and Siraj Ahmed appeared and reiterated the contents of listed applications and the affidavits filed by them and stated that they have waived off their right of Qisas and Diyat so also do not claim any compensation.

7. So far share of minor heirs is concerned, there are five minor legal-heirs namely Sanam, Zaibul, Naheedan, Faiza and Arshad Ali and the Accountant of this Court has furnished report showing entire share amount of the minors to the tune of Rs.14,75,468.78. Out of which the appellants/accused have given agricultural land admeasuring (00-20) Ghuntas out of S.Nos. 466 and 469 situated in Deh Bhorti-I, Taluka Kandiaro, District Naushahro Feroze by way of registered sale deed and such Khata has also been mutated in the names of the said minors in the record-of-rights. Pursuant to orders of this Court, the Mukhtiarkar (Revenue) Kandiaro has also submitted the report showing the value of the aforesaid area of the landed property as Rs.7,00,000.00 (Seven Lacs). However, for remaining Diyat amount of Rs.7,75,468.00 (Seven lac, seventy five thousands, four hundred and sixty eight rupees), learned counsel for

the appellants/accused undertakes to deposit the same with the Accountant of this Court.

8. In view of the above, since the major legal-heirs of the deceased Khan Muhammad have forgiven the appellants/accused namely Ghulam Nabi and Meeral in the name of Almighty Allah in order to keep the relations better in future and have also waived off their right of Diyat / compensation. Prima-facie, it appears that ingredients of Section 311 PPC are not attracted in the instant case, keeping in view the nature of alleged offence, as argued by learned Counsel for appellants and learned Deputy Prosecutor General, which fact has not been controverted by learned Deputy P.G for the State. The appellants namely Ghulam Nabi and Meeral are directed to deposit the remaining Diyat amounting to Rs.7,75,468.00 (Seven lac, seventy five thousands, four hundred and sixty eight rupees), in the name of minor legal-heirs namely Sanam, Zaibul, Naheeda, Faiza and Arshad with the Accountant of this Court, who shall deposit the same in some profitable scheme as per their respective share. The minors after attaining their age of majority shall be entitled to receive / collect the aforesaid Diyat amount of their share including the profit thereof from this Court. Accordingly, the compromise application is accepted and the appellants namely Ghulam Nabi and Meeral are acquitted from the charge. The appellants namely Ghulam Nabi and Meeral are in custody. The appellants namely Ghulam Nabi and Meeral shall not be released unless the remaining share of the Diyat amount to the tune of Rs.7,75,468.00 (Seven lac, seventy five thousands, four hundred and sixty eight rupees), in the names of minor legal heirs is deposited with this Court. The listed compromise applications are allowed in the aforesaid terms.

9. The Criminal Jail Appeal No.S-147/2019 stands disposed of in the above terms.

Judge

ARBROHI