

THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Criminal Jail Appeal No. S-05 of 2021

Appellants: (1). Mst. Shahazadi w/o Mukhtiar Ali Khoso.
(2). Farzana w/o Deceased Shaman Ali Khoso.
Through Mr. Muhammad Sharif R. Awan, Advocate.

The State: Through Mr. Aitbar Ali Bullo, Deputy Prosecutor
General, Sindh

Date of Hearing: 25.09.2023

Date of Judgment: 25.09.2023

Criminal Jail Appeal No. S-06 of 2021

Appellant: Mukhtiar Ali son of Mashqooe Ali Khoso.
Through Mr. Muhammad Sharif R. Awan, Advocate.

The State: Through Mr. Aitbar Ali Bullo, Deputy Prosecutor
General, Sindh

Date of Hearing: 25.09.2023

Date of Judgment: 25.09.2023

JUDGMENT

Shamsuddin Abbasi, J.: Through this single Judgment, I intend to decide aforementioned criminal jail appeals filed by the appellants as all three appellants were convicted and sentenced together through single Judgment dated 12.01.2021, passed by learned First Additional Sessions Judge (MCTC), Kamber in Sessions Case No.345/2020 (*Re-The State v/s. Mukhtiar Khoso and others*), arising out of Crime No.45 of 2020, registered at Police Station Bahram for the offence punishable under sections 302, 34 P.P.C.

2. The appellants after full dress trial were convicted under section 302 (b) P.P.C and sentenced to Imprisonment for Life. The benefit of section 382-B Cr.P.C. was also extended to the appellants.

3. During pendency of these appeals parties have entered into compromise and have filed compromise applications under sections 331 P.P.C., 345(4), 345(6) & 345(2) Cr.P.C. and the matter was sent to the learned Trial Court for enquiry about verification and genuineness of compromise between the parties.

The learned trial Court after completing all codal formalities and recording statements of the legal heirs of the deceased has furnished its report vide endorsement dated 07.04.2023. It reveals that compromise between the parties is genuine, voluntary and without any coercion and compulsion. Learned trial Court has given the details of legal heirs, which shows that deceased has father, mother, five brothers, four sisters and two daughters.

4. Learned counsel for the appellants-accused submits that the parties have voluntarily entered into compromise on intervention of nekmarks of the locality; complainant and the legal heirs have forgiven the appellants-accused in the name of Almighty Allah and have also waived his right of Qisas and Diyat. He further submits that as per Mohammadan Law brothers and sisters are not amongst the legal heirs of the deceased if he is married, therefore, the sole surviving legal heirs are father, mother and daughters of deceased Shaman Ali Khoso, who have forgiven the appellants-accused in the name of Almighty Allah without claim of Badl-e-Sulh / monitory compensation.

5. Learned Deputy Prosecutor General has recorded his no objection on the ground that the legal heirs of the deceased have voluntarily forgiven the right of Qisas and Diyat.

6. Heard learned counsel for the respective parties and have perused the material available on record. Legal heirs of the deceased Shaman Ali Khoso and appellants-accused have jointly filed compromise applications under sections 345(5) & 345(6) Cr.P.C. and the matter was referred to the learned Trial Court for enquiry regarding genuineness of the compromise between the parties. The learned Trial Court after enquiry has furnished its report, which reveals that the legal heirs of the deceased have pardoned the appellants-accused in the name of Almighty Allah and do not claim right of Qisas and Diyat. The legal heirs have also filed their affidavits raising no objection in case the appellants are acquitted. It has come on record that the deceased has father, mother, five brothers, four sisters and two minor daughters. Per Mohammadan Law, the mother, father and daughters in the present circumstances are the legal heirs of the deceased and the brothers and the sisters are not amongst the legal heirs of the deceased. The deceased had two minor legal heirs (daughters) namely Mehnaz alias Amina and Baby Fatima, their share of diyat amount has been calculated by the Accountant of this Court, amounting to Rs,28,79,016/-. Learned counsel for the appellants has filed application for depositing share amount of the minor daughters in five equal installments on the ground that the appellants are poor persons and they are not in a position to deposit due share amount in lump sum, therefore, application was allowed and the appellants were directed to deposit the due share amount in five installments each of Rs.575,803/- and in terms of order

dated 18.09.2023, the appellants have deposited first installment of Rs.5,75,803/- in the office of the Accountant of this Court. The Accountant of this Court is further directed to receive remaining four installments in favour of two minor babies Mehnaz alias Amina and Fatima and deposit the same in some profitable scheme. One Mukhtiar Ali Khoso has also filed affidavit, stating therein that he will stand the surety for payment of rest of installments on behalf of the appellants. The said Mukhtiar Ahmed has also produced certified copy of Deh Form VII-B in respect of survey No.507/B, of Deh Qaim Gopang, Tapo Kalhoro, Taluka Miro Khan, District Kamber-Shahadadkot., which was duly verified by the Mukhtiarkar concerned, who stated in his report that the aforesaid land has value of Rs.28,79,016/-. Mukhtiarkar is directed to mortgage the aforesaid property in favour of the Court in the revenue record till final payment of the installments as per schedule dated 18.09.2023 given by the learned counsel for the appellants and signed by surety Mukhtiar Ali Khoso. However, it is made clear that in case of failure in depositing the installments, the appellants shall be remanded back to jail till recovery of surety amount from the surety Mukhtiar Ahmed. The schedule of installments given by the learned counsel for the appellants is as under:

1.	18.09.2023	Rs.5,75,803/-
2.	18.09.2024	Rs.5,75,803/-
3.	18.09.2025	Rs.5,75,803/-
4.	18.09.2026	Rs.5,75,803/-
5.	18.09.2027	Rs.5,75,803/-

At this juncture I rely upon the case law reported as *Bashir Ahmed v/s. The State* (PLD 1995 Karachi-5) and *Sartaj Ahmed and others v/s. Mushtaq Ahmed and others* (2006 SCMR 1916).

7. In view of above, compromise application filed under section 345(5) Cr.P.C is allowed and compromise is accorded to the parties to compound the offence and application under section 354(6) Cr.P.C. is also allowed and appellants Mukhtiar Ali, Mst. Shahzadi and Mst. Farzana are acquitted of the charge by way of compromise. They shall be released forthwith, if not required in any other criminal case.

Appeals are disposed of in the above terms.

JUDGE