

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Before:

Mr. Justice Khalid Hussain Shahani
Mr. Justice Muhammad Jaffer Raza

Cr. Appeal No.D-54 of 2023
Cr. Conf: Case No.D-12 of 2023

Appellant	:	Yaqoob alias Ismail alias Muhammad Ismail s/o Muhammad Umar Jakhrani Through Mr. Rafique Ahmed K. Abro. Advocate.
Respondent	:	The State Through Mr. Nazeer Ahmed Bhangwar, Deputy Prosecutor General, for the State.
Date of hearing	:	08.07.2025
Date of Decision	:	15.07.2025

J U D G M E N T

Khalid Hussain Shahani J.- The appellant, Yaqoob alias Ismail alias Muhammad Ismail, was convicted and sentenced to death under Section 302(b) PPC as *Ta'zir* by the learned 1st Additional Sessions Judge/MCTC, Kandhkot, in Sessions Case No.241 of 2021 arising out of FIR No.04 of 2021 registered at Police Station Bhittai Colony. The charge further included Section 311 PPC read with Section 34 PPC.

2. During pendency of the appeal, compromise applications were filed under Sections 345(2) and 345(6) Cr.P.C., supported by affidavits of the legal heirs of deceased Mst. Ghulam Fatima, namely Sharafuddin and Mst. Shah Bibi, the father and mother respectively. Consequently, this Court granted permission under Section 345(2) Cr.P.C. and referred the matter to the learned trial Court for conducting a thorough inquiry into the genuineness, voluntariness, and legal competence of the compromise.

3. The learned trial Court, after completing the inquiry, submitted its report dated 02.05.2025, affirming that the legal heirs of the deceased had voluntarily and unconditionally pardoned the appellant in the name of Almighty Allah, and waived their rights of *Qisas*, *Diyat*, and *Arsh*. No element of coercion, fraud, or undue influence was detected.

4. The learned Deputy Prosecutor General raised objection on the premise that the offence under Section 311 PPC is not compoundable, and therefore, compromise may not be permissible. However, this objection is devoid of legal merit in light of the authoritative pronouncement of the Hon'ble Supreme Court in the case of *Iqrar Hussain and others v. The State and another* (2014 SCMR 1155), wherein it was conclusively held that Section 311 PPC—being a residual provision—is attracted only where *Qisas* is not enforceable due to absence or incapacity of legal heirs, or where the offence results in *fasad-fil-arz*. In the cited case, the Hon'ble Supreme Court ruled that where no aggravating circumstance or evidence of *fasad-fil-arz* is established, the accused cannot be convicted under Section 311 PPC upon a valid compromise.

5. In the instant matter, neither the trial Court at the time of judgment nor the prosecution during the compromise proceedings brought forth any specific material or circumstance indicative of *fasad-fil-arz*. Thus, in the absence of such aggravating factors, the offence remains compoundable in nature under Section 302 PPC as *Ta'zir*.

6. In view of the binding precedent laid down in *Iqrar Hussain* (supra) and further fortified by *Khan Muhammad v. The State* (2005 SCMR 599), we are of the considered view that there exists no legal bar to acceptance of the compromise. Accordingly, permission to compound the offence is granted under Section 345(2) Cr.P.C., and the compromise is accepted under Section 345(6) Cr.P.C.

7. Resultantly, the appellant is acquitted of the charge under Section 302 PPC. The conviction and sentence awarded by the learned trial Court stand set aside. The appellant shall be released forthwith if not required in any other custody case.

8. The death reference is answered in the negative.

9. Appeal stands disposed of along with all pending application(s) in terms of the compromise.

JUDGE

JUDGE