

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Crl. Appeal No. D- 11 of 2020,
Cr. Conf. Case No.D-11 of 2020

Date of hearing
11.02.2021.

Order with signature of Judge

1. For orders on M.A. No. 599/2021.
2. For orders on M.A. No. 5392/2020.
3. For hearing of M.A. No.5393/2020.
4. For hearing of M.A. No.5394/2020.

Mr. Ahmed Bux Abro, Advocate for the appellant.
Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

ORDER

1. Learned Counsel pleads urgency on the ground that the parties have entered into compromise. Urgency application is granted.

2. Dismissed as infructuous.

3 & 4. Appellant Bashir son of Mumtaz, by caste Mirbahar, was tried in Sessions Case No.30/2010, re-State v. Mohammad Nawaz and others, based on **Crime No.150/2009 of P.S Wagan**, and vide judgment dated **31.01.2020**, passed by the learned First Additional Sessions Judge/MCTC, Kamber, he was convicted for offence under Section 302(b), PPC and sentenced to "**death as Tazir**" to be hanged by the neck till he is dead, subject to confirmation by this Court and to pay Rs.10,00,000/- as compensation to the legal heirs of deceased Zahid Hussain in terms of Section 544-A, Cr.P.C, in default thereof to suffer S.I for six months more.

Against his conviction and sentence, the appellant filed instant appeal, which was admitted for regular hearing on 12.02.2020. However, during pendency of the appeal, the appellant entered into compromise with the legal heirs of deceased and such applications under Section 345(2), Cr.P.C (M.A. No.5393/2020) and under Section 345(6), Cr.P.C (M.A. No.5394/2020) were filed, which by virtue of order dated 22.12.2020 were sent to the learned trial Court, for enquiry as to the legal heirs of the deceased as well as genuineness or otherwise of compromise between the parties.

Pursuant to directions of this Court, the learned trial Court/1st Additional Sessions Judge/MCTC, Kamber has conducted enquiry and after completion of codal formalities has submitted report dated 11.01.2021, to the effect that the compromise between the parties is genuine and the legal of the deceased including Mst. Najma alias Sanam, the second widow of the deceased, have exonerated/forgiven the appellant in the name of Almighty Allah. Besides, all the legal heirs, who are all major, have waived their right of *Qisas* and they do not claim any monetary compensation, such as, *Diyat* from the appellant.

Today, except Mst. Najma alias Sanam, all other legal heirs, namely, Mst. Iqbal Khatoon (mother, having CNIC No.43403-0586646-0), Sahab Tunio (son, having CNIC No.43403-0419146-5), Awais Tunio (son, having CNIC No.43403-0408309-1), Mst. Imtiaz Khatoon (daughter, having CNIC No.43403-0773724-0) and Mst. Murk Khatoon (daughter, having CNIC No.43403-0646107-2), are present along with their original CNICs and they all affirm the contents of compromise applications as well as report of the trial Court. They submit that they have pardoned the appellant and have no objection if the compromise is accepted and the appellant/accused is acquitted of the charge. Mst. Najma alias Sanam, the second widow of deceased Zahid Hussain Tunio, has reportedly married to one Saeed Ahmed, the brother of deceased, therefore, she has not come today. She, however, had appeared before the trial Court during enquiry proceedings, besides her affidavit has also been filed by learned Counsel for the appellant under the cover of his statement dated 26.01.2021. Learned Counsel, therefore, submits that by granting permission to the parties to compound the offence, compromise arrived at between them may be accepted and the appellant may be acquitted in terms of compromise.

The learned DPG has raised no objection for granting permission to the parties to compound the offence, accepting compromise between the parties and acquitting the appellant in result of compromise.

Heard parties and perused the record.

The offence is compoundable, besides legal heirs have waived the right of their "*Qisas* and *Diyat*", hence there is no impediment, which may restrain or restrict the parties from entering into

compromise or the Court from granting permission and accepting such compromise. All the legal heirs of deceased appeared before this Court and categorically stated that they have pardoned the appellant and have also waived their right of "*Qisas & Diyat*". This fact also gets support from the report furnished by the trial Court, which reveals that compromise between the parties appears to be voluntary, genuine and without any duress or coercion and since there is no other impediment to allow the compromise, therefore, permission to compound the offence is accorded to the parties, and in result thereof the compromise between the parties is hereby accepted. Consequently, appellant Bashir son of Mumtaz, by caste Mirbahar is acquitted of the charge in terms of compromise. The appellant is behind Bars, he shall be released forthwith, if his custody is not required in any other case.

The appeal stands disposed of in the above terms. Consequently, Cr. Reference No.D-11/2020 filed by trial Court u/s 374, Cr.P.C is answered in negative and disposed of accordingly.

~~JUDGE~~

Singh
JUDGE

Qazi Tahir PA *