

(63)

ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

Criminal Jail Appeal No. D-01 of 2021 a/w

Cr. Confirmation Case No. D-01 of 2021.

Date of hearing	Order with signature of Judge
25.10.2023.	

PRESENT:

*Mr. Justice Muhammad Saleem Jessar
Mr. Justice Khadim Hussain Soomro*

1. For hearing of M.A No.2367/2023. (Appln. U/S 345(5) Cr.P.C)

2. For hearing of M.A No.2368/2023. (Appln. U/S 345(6) Cr.P.C)

3. For hearing of main case.

Mr. Muhammad Bilal Bhutto, Advocate for appellant.
Mr. Ali Anwar Kandhro, Additional Prosecutor General, Sindh

ORDER

Muhammad Saleem Jessar, J- Appellant Wazir @ Arbab @ Abdul Khalique @ Khakoo by caste Kalhoro was tried and convicted in Sessions Case No.479/2015, Re: State v. Wazir @ Arbab @ Abdul Khalique @ Kakoo, arisen out of ***Crime No.31/2016 of P.s Behram***, registered for offences punishable under Sections 302, 148 and 149 PPC, vide judgment dated **22.12.2020**, passed by learned 1st. Additional Sessions Judge/Model Criminal Trial Court, Kamber, whereby the appellant was convicted and sentenced to "***Imprisonment for life***" and were directed to pay compensation of Rs.10,00,000/- to legal heirs of deceased Razique Dino Kalhoro and in default thereof to suffer S.I for Six months more.

2. Against their conviction and sentence the appellant filed instant appeal, which was admitted for regular hearing on 14.01.2021. However, during pendency of the appeal, the appellant entered into compromise with legal heirs of deceased and such applications were moved, which were sent to learned trial Court, for enquiry as to verify the legal heirs of the deceased as well as genuineness or otherwise of compromise between the parties.

3. The learned trial Court submitted report dated **04.07.2023**, which is available with the file. In its report, the learned trial Court has mentioned that during course of enquiry reports with regard to legal heirs of deceased from concerned Mukhtiar, SHO and NADRA authorities were called. The learned trial Court has further mentioned that during enquiry proceedings it came on record that deceased Razique Dino Kalhoro left a widow, four daughters and three sons as his surviving legal heirs. The learned trial Court recorded statements of Mst. Shahida, Mst. Sajida, Sajid Ali and Amjad Ali as legal heirs of deceased, who affirmed the fact of compromise between them. However, as per report of learned trial Court remaining legal heirs of deceased could not appear as they were out of station.

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4. Today, legal heirs of deceased Razique Dino Kalhoro namely Mst. Sajida begum (daughter) having CNIC No. 43404-0574285-2, Mst. Shahida Khatoon (daughter) having CNIC No.43404-0636129-2, Sajid Ali (son) CNIC No.43404-2879552-9, Shahid Hussain (son) CNIC No.43404-0461586-7 Mst. Bakhtawar (daughter) having CNIC No.43404-0587513-0, Mst. Ateeqa (daughter) having CNIC No.43404-0653491-8, Mst. Hameeda Khatoon (Widow) bearing CNIC No.43404-0587779-6, and Amjad Ali (son) having CNIC No.43404-0409070-9, have been produced; they have filed their respective affidavits thereby affirming the fact that they have patched up with appellant Wazir @ Abdul Khalique @ Khakoo by caste Kalhoro and pardoned him and do not claim "**Qisas & Diyat**". All the legal heirs of deceased appeared before this Court and categorically stated that they pardoned the appellants and waived off their right of "**Qisas & Diyat**".

5. Learned Addl.P.G appearing for the State, raised no objection to the grant of these applications.

6. Heard. Record perused.

7. Under the scheme of Criminal Procedure Code, there is no restriction or category provided for any competence or otherwise of a person entering into a compromise. 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 for entering into compromise. In case of *Abdul Majeed v. The State* reported in 2001 P.Cr.L.J 318 (Karachi), this Court while dealing with identical issue has maintained as under:

"The compounding of offence is regulated under section 345, Cr.P.C. it does not provide for any competence or otherwise of a person entering into a compromise nor does it restrict a Muslim or a non-Muslim from entering into such compromise. The only qualification for entertaining such application is the compoundability of the offence and in this case the offence for which appellants were charged and sentenced is under section 320 P.P.C. They were convicted to undergo R.I. for five years and to pay Diyat amount equivalent to the value of 30630 grams of silver amounting to Rs.3,06,300. All the legal heirs of the deceased have given their respective affidavits whereby they have compounded the offence and expressed their desire to forgive the appellant. Section 320 P.P.C. is mentioned in the second column of the table wherein compoundable offences are listed and it is so provided that the offence falling under section 320 may with the permission of the Court before which any prosecution for such offence is pending be compounded by the person mentioned in the third column of the table and in the instant case father Manik and Shrimati Ilma the mother of the deceased have given their respective affidavits to forego the Qisas and Diyat. There is no other restriction in the provision of 345, Cr.P.C or qualification attached as to person between whom the compounding can be affected, therefore, I am of the view that compounding of the offence can be affected between a Muslim and non-Muslims and even between non-Muslims inter se. The applications are in order duly supported by respective affidavits of exoneration. The Permission to compromise is granted and compromise is accepted as required under section 345 (6) Cr.P.C. Resultantly the appellant is to be released forthwith if not required in other case. All the applications stand disposed of. Appeal accepted."

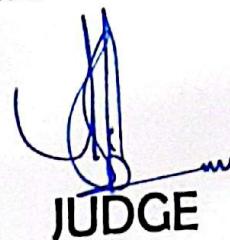
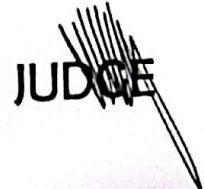
8. Since, all the legal heirs of deceased appeared before this Court and categorically stated that they pardoned the appellants and waived off their right of "**Qisas & Diyat**". This fact also gets support from the report furnished by the trial Court, which reveals that compromise between the parties appears



to be volunteer, genuine and without any duress and coercion and since there is no any other impediment to allow the compromise, therefore, permission to compound the offence is accorded to the parties, and in result *whereof* compromise between the parties is hereby accepted. Consequently, the appellants Wazir @ Arbab @ Abdul Khalique @ Khakoo by caste Kalhoro is acquitted of the charge in terms of compromise. The appellant is reportedly behind Bars, he shall be released forthwith, if his custody is not required in any other case.

09. The appeal alongwith listed applications stand disposed of in the above terms.

10. In the light of above as well as inquiry report submitted by learned trial court the murder reference No.01 of 2021 submitted by trial court for confirmation is hereby answered in negative.


JUDGE
JUDGE

S.Ashfaaq/-