

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Present:

MR. JUSTICE NAIMATULLAH PHULPOTO
MR. JUSTICE SHAMSUDDIN ABBASI

Criminal Appeal No.D-27 of 2017
Confirmation Case No.10 of 2017

- 1. For hearing of MA 8094/2017**
- 2. For hearing of MA 8095/2017**

Date of hearing: 07.05.2018.
Date for Announcement of Judgment: 07.05.2018

Appellant: Wali Muhammad
Through Mr. Choudhry Aftab Ahmed Warraich,
Advocate.

Complainant: Zahid Hussain
Through Mr. Raja H. R Naurang, Advocate.

The State: Through Syed Meeral Shah A.P.G.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Appellant Wali Muhammad son of Muhammad Moosa was tried alongwith Muhammad Moosa, Umar, Mst. Rasheeda and Gul Muhammad (since acquitted) by learned IInd Additional Sessions Judge, Mirpurkhas in Sessions Case No. 150/2012 arising out of Crime No.09/2012 registered u/s. 302, 34 PPC at P.S Dangan Bhurgari. Vide judgment dated 21.03.2017, Appellant Wali Muhammad was convicted u/s 302(b) PPC and sentenced to death. He was ordered to be hanged by neck till his death, however, subject to confirmation by this Court. Appellant was further directed to pay compensation of Rs.5,00,000/- to the legal heirs of deceased. In case of non-payment of compensation, it was ordered that appellant Wali Muhammad shall suffer S.I for 05 months more. While, remaining

accused namely Muhammad Moosa, Mst. Rasheeda, Gul Muhammad and Umar alias Umardin were acquitted of the charge. Trial court has made Reference to this Court U/s. 374, Cr.P.C for confirmation of death sentence or otherwise.

2. Appellant Wali Muhammad preferred this appeal against his conviction and sentence recorded by the trial court bearing Criminal Appeal No.D-27/2017, which was admitted for regular hearing by this Court vide order dated 28.03.2017. During hearing of the appeal, compromise application was filed on prescribed proforma by the legal heirs of deceased namely Mst. Sumaira and Appellant. Compromise Application sent to the trial court, in order to ascertain the genuineness or otherwise of the compromise arrived at between the appellant and legal heirs of the deceased.

3. Learned Additional Sessions Judge-II, Mirpurkhas conducted inquiry, recorded statements and has submitted the report, in which it is mentioned that the compromise between the parties is genuine and voluntarily. Relevant portion of the report is reproduced as under:-

*“(f) In their statements on oath the complainant, mother and father of the deceased above named deposed that they have forgiven the convict Wali Muhammad S/o Muhammad Moosa B/c Khaskheli in the name of Almighty Allah, due to intervention of the nekmards and elders of family, as, convict above named was close relative i.e son of real sister namely Rasheeda of Mst. Saira, the mother of deceased Mst. Sumera. Above named complainant and legal heirs also deposed that they have **forgiven** above named convict with their **own consent and freewill** and without any eternal pressure, threat, coercion or money consideration and so also waived their right of **Qisas & Diyat** and compensation giving their **no objection**, if Honourable court acquits above named convict in above case / crime by setting aside the judgment/conviction. **The certified true copies** of their statements are enclosed herewith for consideration and further necessary action, please.*

g) In the light of above statements on oath of the complainant and legal heirs above named of the deceased, it is clear that their

*compromise with the convict above named is **genuine and voluntary.***

4. Today, the legal heirs of deceased namely father Muhammad Naeem and mother Mst. Saira voluntarily appeared before this Court. They have been identified by Counsel for complainant. Once again they are admitting before this Court that the compromise is genuine and voluntary. They have forgiven the accused / appellant in the name of Almighty ALLAH. They have waived the right of Qisas. Both legal heirs submit that firstly they didn't claim compensation but today they have stated that they have received the same from the Appellant.

5. Mr. Choudhry Aftab Ahmed Warraich, Advocate for Appellant submits that offence u/s 302 PPC is compoundable with permission of Court and there is genuine compromise between the parties, the same may be accepted. Mr. Raja H. R Naurang, Advocate, appearing on behalf of the complainant has recorded no objection. Syed Meeral Shah A.P.G. for the State has also argued that compromise is lawful and without any pressure.

6. Offence is compoundable with permission of the Court. Trial court has held detailed inquiry and recorded statements of the legal heirs of the deceased and came to the conclusion that the compromise was genuine and voluntary. Today, parents of deceased Mst. Sumaira are present in Court and repeated the same version that they have entered into compromise and have forgiven the Appellant Wali Muhammad in the name of Almighty ALLAH. They do not claim anything. However, they state that they have received compensation from the Appellant.

7. In view of the above, we are satisfied that the compromise is genuine, permission to enter into compromise is allowed for better

relations between parties in future. Consequently, compromise application is allowed. Accordingly, Appellant Wali Muhammad son of Muhammad Moosa is acquitted by way of compromise u/s. 345(6), Cr.P.C. Conviction and sentence recorded by trial court vide judgment dated 21.03.2017 are set aside for above stated reason. Appellant shall be released forthwith if he is no more required in some other case. Reference for confirmation of death sentence made by the trial court is answered in negative.

In the view of above, Appeal is disposed of.

JUDGE

JUDGE

A.H.