

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Crl. Appeal No.D-35 of 2020.
[Conf:Case No.15/2020]

Before:

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Irshad Ali Shah.

- 1.For hearing of M.A.No. 5719/2020 (345(2)Cr.PC).
- 2.For hearing of M.A.No.5720/2020 (345(6)Cr.PC).
- 3.For hearing of M.A.No.5721/2020

12.11.2020

Mr. Ahsan Gul Dahri, Advocate for the appellant.
Mr. Shahzado Saleem Nahiyoon, D.P.G for the State.

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Irshad Ali Shah-J; It is alleged that the appellant and co-accused Adnan in furtherance of their common intention committed Qatl-e-amd of Noor Muhammad by causing him fire shot injures, for that they were booked and reported upon by the police.

2. On conclusion of trial, co-accused Adnan was acquitted while appellant Irfan Ali was convicted for offence punishable u/s 302(b) PPC and was awarded death penalty with compensation of five lac payable to the legal heirs of the said deceased, in default whereof to undergo Simple Imprisonment for six months by learned Vth Additional Sessions Judge / MCTC, Nawabshah vide his judgment dated 20.03.2020, which is impugned by the appellant before this Court by preferring the instant appeal. Learned trial Court has also made a reference in terms of section 374 Cr.P.C for confirmation of death sentence to the appellant.

3. During course of hearing of instant appeal, the appellant filed applications for permission to compound the offence with the complainant party and for his acquittal by way of compromise.

4. On enquiry based on report of Mukhtiarkar it was reported by learned trial Court that deceased Noor Muhammad on his death was survived by the following legal heirs;

Sr.No.	Name of legal heir	Relationship with deceased	Age
01.	Mst. Irum wd/o deceased Noor Muhammad	Widow	-
02.	Ms. Minahil	Daughter	05 years
03.	Muhammad Yousif	Brother	49 years
02.	Sajjad Hussain	Brother	48 years
03.	Babar Hussain	Brother	42 years
04.	Mudasir Hussain	Brother	32 years

5. Mst. Irum was not made a party to compromise application, she on enquiry came before learned trial Court and recorded no objection to acquittal of the appellant by stating that she has pardoned the appellant by waiving her right of Qisas and Diyat against him.

6. Baby Minahil, the minor legal heir of the deceased through her "*Wali*" (Muhammad Yousif) was fair enough to say that she has waived the right of "*Qisas*" against the appellant while "*Diyat*" money as per her share which comes to be Rs.1,388,677/, the appellant has deposited for her with the Accountant of this Court, which is invested in some profitable scheme to be encashed by her on attending the majority.

7. The adult legal heirs of the deceased have also pardoned the appellant by waiving their right of Qisas and Diyat against him, which is evident of their statements recorded by learned trial Court on inquiry.

8. Whatever is stated by the complainant, legal heirs of the deceased and "*Wali*" of minor finds support from their affidavits, which they have filed alongwith the instant applications.

9. It is contended by learned counsel for the appellant that the parties have compounded the offence on intervention of their Nekmards, without fear or favour and it is true and voluntarily. By contending so, he sought for acquittal of the appellant by way of compromise.

10. Learned D.P.G for the State has recorded no objection to the acquittal of the appellant by way of compromise.

11. We have considered the above arguments and perused the record.

12. The compromise which is arrived at between the parties is appearing to be true and voluntarily, it apparently has been affected by the parties on at the intervention of their Nekmards, it is appearing to be without any coercion or compulsion, it has not been objected by any one. It is therefore, accepted in the best interest of the peace and brotherhood to be prevailed between the parties.

13. Consequently, the appellant is acquitted of the offence for which he was charged, tried and conviction by learned trial Court, in terms of compromise by resorting to provision of section 345(6) Cr.PC. He shall be released forthwith, if is not required in any other custody case.

14. The instant appeal and reference together with the listed application[s] are disposed of accordingly.

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