

IN THE HIGH COURT OF SINDH, KARACHI

Before:

**Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi**

**Criminal Jail Appeal No.534 of 2010
Confirmation Case No. 06 of 2010
Criminal Jail Appeal No. 03 of 2011**

Appellant : Zainullah son of Gul Islamuddin
Through Syed Samiullah Shah, Advocate

Respondent : The State
Through Mr. Muhammad Iqbal Awan
Deputy Prosecutor General, Sindh

Date of Hearing : 19-11-2019

Date of Order : 29-11-2019

ORDER

ZULFIQAR ALI SANGI---J., The appellant Zainullah son of Gul Islamuddin was tried in Sessions Case No. 436 of 2006, arising out of FIR No. 358 of 2006, under Section 302/34 PPC registered at police station Quaidabad, Karachi and vide Judgment dated 10.11.2010, passed by Sessions Judge, Malir Karachi, he was convicted under Section 265-H (2) Cr.P.C and was sentenced to death under Section 302 (b) PPC for committing murder of deceased Naveed Khan and deceased Sudheer, the sentence of death was subjected to confirmation by this Court.

2. The facts in brief are that the appellant was sent up for trial in FIR No. 358/2006 registered at police station Quaidabad, Karachi, for offences under Section 302, 324 PPC. The complainant party and the appellant are closely related to each other and on the day of incident at about 12:00 noon a quarrel took place between them but the matter was resolved. Thereafter, Zainullah (appellant) beat the elder sister of Sudheer (deceased) namely Mst. Farzana.

Sudheer took the complainant and his younger brother Naveed Khan (deceased) with him and arrived at the house of Zainullah (appellant), where Zainullah, Waheed, Baba Akhtar Zaman and Gul Islamuddin were present. It was about 02:00 P.M and the above said persons pushed them away from the house and while taking position on the roof of their house they started firing with fire arm weapons. Resultantly, Naveed Khan, Sudheer and one passer by Ameer Mohammad Hussain sustained fire arm injuries. The injured were taken by mohalla people to hospital where Naveed Khan succumbed to injuries; however, Sudheer and Ameer Mohammad Hussain were under treatment. The police arrived at the hospital and recorded statement under Section 154 Cr.P.C of complainant. On the next day, injured Sudheer Ahmed also died in ward No.16 of JPMC. After completing the legal formalities so also after recording the evidence, appellant was convicted and sentenced by the trial Court as stated above, therefore, he preferred the instant appeals against his conviction.

3. During pendency of these appeals, the parties filed applications under Section 345(2) Cr.P.C and 345(6) Cr.PC for permission to compound the offence as well as for acceptance of compromise.

4. The compromise applications were sent to learned Sessions Judge Malir, Karachi, for enquiry as to the legal heirs of the deceased persons as well as genuineness or otherwise of compromise between the parties vide order dated 13.06.2017.

5. In compliance of order dated 13.06.2017, Sessions Judge Malir, Karachi, submitted report dated 17.07.2017 and present

appeal was taken up on 12.10.2017 for hearing. After the hearing on compromise application, the enquiry report of Sessions Judge was found unsatisfactory, therefore, the matter was again referred to the Sessions Judge Malir, Karachi, for proper proceedings and for fresh report vide order dated 12.10.2017.

6. Learned Sessions Judge, Malir, Karachi in compliance of order dated 12.10.2017 and after completing all the required legal formalities, submitted his detailed report dated 09.06.2018, wherein the Sessions Judge Malir, Karachi reached at the conclusion that the compromise effected between accused and legal heirs of both the deceased is genuine and voluntary. The statements of the legal heirs of the deceased persons alongwith photocopies of their CNICs, reports of SHO P.S Quaidabad, Mukhtiarkar, FRCs of both the deceased, publications and no marriage certificates of both the deceased were also enclosed with the report.

7. Learned counsel for the appellant contended that all the legal heirs of both the deceased are major and they have waived their right of Qisas and Diyat and have excused the appellant with their free-will and consent without any inducement or pressure and compromise arrived at between the parties, is genuine.

8. Learned Deputy Prosecutor General for the State has raised no objection to the compromise applications of the appellant, in view of the report submitted by Sessions Judge Malir, Karachi which in his view meets all necessary legal requirements in order to give effect to the compromise agreement.

9. We have heard the learned counsel for the appellant and learned D.P.G for the State so also complainant who appeared in person and have perused the record with their able assistance.

10. After considering all aspects of the case, we are of the view that the legal heirs of the deceased are competent to compound/compromise the offence with the appellant/accused. The compromise arrived between the parties on the very face of it appears to be genuine and true, without any due inducement or pressure. They are close relatives to each other and they want to live in peaceful atmosphere within the limits prescribed by Almighty Allah.

11. Considering the relations between the parties and genuineness of the compromise, we feel no hesitation to accept the same as the offence punishable under Section 302 PPC against the appellant is compoundable and has actually been compounded. Resultantly, compromise arrived between the parties is hereby accepted. Consequently, appellant Zainullah son of Gul Islamuddin is hereby acquitted under Section 345(6) Cr.P.C in Sessions Case No. 436 of 2006, FIR No. 358/2006 under Section 302/34 PPC of police station Quaidabad, Karachi. The appellant be released forthwith if not required in any other custody case.

12. In above terms, the Criminal Jail Appeal No. 534 of 2010, Confirmation Case No. 06 of 2010 as well as Criminal Jail Appeal No. 03 of 2011 stand disposed of.

JUDGE

JUDGE