

## IN THE HIGH COURT OF SINDH, KARACHI

Before: Mr. Justice Muhammad Saleem Jessar.

### Criminal Appeal No. 659 of 2019

Appellant Pervaiz Ali : Through Mr. Mr. Raham Ali Rind Advocate.  
State : Through Mr. Zahoor Shah D.P.G, Sindh, for the State.  
Date of hearing : 04.02.2021  
Date of Order : 04.02.2021

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### ORDER

Muhammad Saleem Jessar, J- Appellant Pervaiz Ali son of Ghulam Abbas was tried and convicted in Sessions Case No.796/2017, Re: State v. Pervaiz Ali and another, arising out of *Crime No.64/2017 of P.S Bin Qasim*, registered for offences punishable under Section 302, 201, 34 P.P.C, vide judgment dated **28.09.2019**, passed by learned 1<sup>st</sup> Additional Sessions Judge Malir, Karachi, whereby the appellant was convicted and sentenced to amount of Diyat for year 2019-20.

2. Appellant Pervaiz Ali, against his conviction and sentence, filed instant appeal. However, during pendency of the appeal, the appellant entered into compromise with legal heirs of deceased and such applications in terms of Sections 345(2) and 345(6) Cr.P.C. 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 04.08.2020, 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 SHO and NADRA authorities were called, so also it got published such notice in the daily newspaper "Kawish" in its issue of 08.07.2020. The learned trial Court has further mentioned that during enquiry proceedings, statements of major legal heirs of deceased were recorded, who affirmed the fact of compromise between them.

4. Moreover, according to report of the trial Court, deceased had left in all nine legal heirs, namely, Mst. Begum (mother), Mst. Sajida (Sister), Mst. Qurbana @ Sitara (Sister), Mst. Tameeza (Sister), Baby Heer (Sister), Baby Shahneela (Sister), Master Ali Gohar (Brother), Master Gulzar (Brother and Pervez Ali (Husband/convict).

5. All the major legal heirs of deceased also appeared before this Court and categorically stated that they have pardoned the appellant in the name of Almighty Allah, and waived off their right of "*Qisas & Diyat*".

6. Besides, major legal heirs, there are five minor legal heirs, namely, Mst. Tameeza, Baby Heer, Baby Shahneela, Master Ali Gohar and Master Gulzar (sisters and brothers). In such like cases, where deceased leaves behind him some minors, their interest is to be safeguarded on the basis of their share in the "*diyat*" amount, which is a prescribed one.

7. On the last date of hearing, legal heirs Mst. Begum (CNIC 45205-7661548-8) mother deceased along with her minors namely, Tameeza, Baby Heer, Baby Shahneela, Master Ali Gohar and Master Gulzar were present before the Court and affirmed the compromise. Today, Mst. Khalida, namely, Mst. Qurbana @ Sitara wife of Muhammad Hanif Hisbani [CNIC No.45205-3350530-2] present also affirms the contention of compromise effected by her as well as accused/appellant. Another sister of deceased Mst. Khalida, namely, Mst. Sajida wife of Rajib Ali Sonio is also present, however, her CNIC has been applied for its issuance through Token No.24, having tracking I.D. No.302541116579. She also affirms the contention of compromise effected between her as well as accused/appellant.

8. Learned counsel for the appellant submits that the offence is compoundable and the sentence awarded to appellant is only Diyat amount for which mother of the deceased is alive and has categorically stated in her statement/deposition before the trial/enquiry Court as well as before this Court; hence, she being competent, has rightly waived the right Diyat. As far as minor legal heirs, who are brothers and sisters of the deceased, are not direct descendent and the trial has also allowed the application filed by the mother of the deceased under section 345(4) Cr.P.C. Hence, compromise effected between the parties seems to be genuine one, therefore, they may be allowed to live peacefully by

maintaining law and order as well as tranquility within the vicinity. In support of his contention, he places reliance upon the cases (i) *MUHAMMAD YOUSAF Versus THE STATE and others (PLD 2019 Supreme Court 461)*, (ii) *WAHEED and another Versus The STATE and others (2017 SCMR 1990)*, (iii) *KIFAYAT and 3 others Versus SAMI ULLAH and 2 others*).

9. The learned D.P.G appearing for the State, in view of above, has recorded his no objection, if listed applications are allowed.

10. Since, legal heirs of the deceased present in person, affirm the compromise effected between them as well as accused/appellant, therefore, there will be no impediment to allow the same with the appellant. As, the report furnished by the trial Court reveals that compromise between the parties appears to be voluntary, genuine and without any duress and coercion, therefore, permission to compound the offence is accorded to the parties, and in result whereof compromise between the parties is hereby accepted and appellant Pervaiz Ali son of Ghulam Abbas is acquitted of the charge in terms of compromise. The appellant is confined in Central Prison, Karachi. He shall be released forthwith, if his custody is no longer required by the jail authorities in any other custody case.

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

**JUDGE**

Zulfiqar/PA