

**IN THE HIGH COURT OF SINDH, CIRCUIT
COURT HYDERABAD**

Criminal Appeal No. S-126 of 2010

Mr. Syed Zaffar Ali Shah, advocate for the appellant.
Mr. Shahzad Saleem Nahiyoon, Additional P.G.

Date of hearing: 13.09.2021
Date of decision: 17.09.2021

ORDER

Khadim Hussain Tunio, J- Appellant Shoukat Ali Jarwar was tried in Sessions Case No. 82 of 2004, emanating from Crime No. 88/2004, registered at PS Digri under sections 302, 114 and 34 PPC, and vide judgment dated 03.04.2010, passed by learned Sessions Judge Mirpurkhas, he was convicted and sentenced to suffer life imprisonment and a fine of Rs. 50,000/- to be paid as compensation to the legal heirs of the deceased, in case of default of which he was ordered to suffer simple imprisonment for six months more. However, benefit of S. 382 (b) Cr.P.C was extended to him.

2. Appellant, against his conviction, filed the instant appeal. However, during pendency of the appeal, the appellant entered into compromise with the legal heirs of deceased and such applications u/s 345 (5) and 345 (6) Cr.P.C were moved, which were sent to the learned Sessions Judge, Mirpurkhas for verification of legal heirs of deceased and genuineness of compromise arrived at between the parties.

3. The learned Sessions Judge, Mirpurkhas submitted his report dated 05.04.2021. In his report, the learned Sessions Judge has

mentioned that during the course of enquiry, he called reports with regard to legal heirs of deceased from SHO P.S Digri, Mukhtiarkar (Rev) Digri and NADRA, so also such notice was published in daily newspaper "*Kawish*" Hyderabad on 02.04.2021. The learned Sessions Judge further mentioned that during the inquiry, the legal heirs of the deceased reiterated the contents of their statements coupled with affidavits to be true and reaffirmed that the compromise is voluntary.

4. Learned counsel for the appellant has argued that all the legal heirs of the deceased are major besides one minor daughter of deceased; that they have waived their rights of their share in Diyat with their freewill and without any pressure or duress. However, learned Additional Prosecutor General has contended that share of Diyat amount be paid to the minor daughter of the deceased to safeguard their interest.

5. Having heard the learned counsel for the parties and perused the record. As for the legal heirs of the deceased Nazar Muhammad, the details regarding the same are listed below:-

S. No.	Name	Relation with deceased	Age about
1	Mst. Mir Zadi	Mother	76 years
2	Mst. Lal Khatoon	Wife	47 years
3	Sajjad Hussain	Son	27 years
4	Mst. Shakeela	Daughter	23 years
5	Sajid Hussain	Son	20 years
6	Mst. Nayab	Daughter	17 years

6. All the legal heirs of deceased Nazar Muhammad appeared in person before this Court and admitted the contents of the compromise application to be true and correct. The only one minor legal heir left in this case is Mst. Nayab who is 17 years old and even though her mother has forgiven the appellant Hothi being her wali, in such like cases, the interest of minors is to be

safeguarded on the basis of their share in the “*Diyat*” amount, which is a prescribed one. In this respect, reliance is placed on the case of *Muhammad Anwar v. The State (PLD 2012 SC 769)*, wherein the Hon’ble Apex Court has been pleased to observe that:-

“In case there are some minor legal heirs of the deceased, their natural guardian i.e. mother or father, as the case may, do forgive the convict but their interest is to be safeguarded by paying them their due share as Diyat amount according to the rate of Diyat prevailing at the time of arriving at of the compromise between the parties as contract could not have retrospective effect. More so, under section 299(e) of Pakistan Penal Code Diyat means the compensation specified in section 323 of the Code *ibid* payable to the heirs of the victim according to which value of Diyat shall have to be fixed by the court subject to the Injunctions of Islam as laid down in the Holy Quran and Sunnah and keeping in view the financial position of the convict and the heirs of the victim which shall not be less than the value of thirty thousand six hundred and thirty grams of silver. According to subsection (2) of section *ibid* the amount of Diyat shall be declared by the Federal Government by notification in the official gazette on the first day of July each year or on such date as it may deem fit which shall be the value payable during a financial year.”

7. According to gazette notification issued by the Government of Pakistan, an amount of **Rs. 4,261,205/-** (Rupees Four Million Two Hundred Sixty One Thousand Two Hundred Five Only) have been notified and declared for 30,630 grams of silver as Diyat amount for the **Financial Year 2021-2022**. As such, in order to safeguard the interest of the minor legal heir of the deceased namely Mst. Nayab, the appellant Shoukat Ali would be liable to pay her share in the “*Diyat*” amount. Amongst the legal heirs of the deceased, all major one have waived their rights to their share in Diyat, however, the minor’s interest is to be safeguarded as already held. An amount of **Rs.503,059/-** was calculated as the share of minor legal heir of the deceased to be paid by appellant Shoukat Ali Jarwar.

8. Since the interest of minor baby Nayab stands safeguarded; there will be no impediment to allow the compromise

with the appellant. Accordingly, permission to compound the offence is accorded to the parties, and in result whereof the compromise between the parties is hereby accepted as the alleged offences are compoundable. Consequently, the appellant is acquitted u/s 345 (6) Cr.P.C in terms of compromise. The appellant Shoukat Ali is ordered to pay the share of the minor legal heir which becomes **Rs.503,059/-** in lump sum with this office. The office is directed to invest the amount of "*diyat*" in respect of the minor namely baby Nayab in some profitable scheme of the government as per practice and procedure. The appellant is reportedly on bail, his bail bond stands cancelled and surety discharged.

9. Appeal stands disposed of in the above terms along with listed applications.

JUDGE