

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

Cr. Appeal No. D- 203 of 2019  
Conf. Case No. 49 of 2019  
Cr. Appeal No. S- 361 of 2019  
Cr. Appeal No. S- 362 of 2019

**BEFORE:**

Mr. Justice Naimatullah Phulphoto  
Mr. Shamsuddin Abbasi

Appellants: Aijaz Ali and another in Cr. Appeal No. D- 203 of 2019 through Mr. Ahsan Gul Dahri Advocate.

Appellant: Fayaz Ahmed in Cr. Appeal No. S- 361 of 2019 through Mr. Ahsan Gul Dahri, Advocate

Appellant: Aijaz Ali in Cr. Appeal No. S- 362 of 2019 through Mr. Ahsan Gul Dahri Advocate.

Complainant: Anwar Ali through Mr. Ali Raza Channa, Advocate

Respondent: The State through Mr. Shahzado Saleem Nahiyoan, Addl. P.G.

Date of hearing: 10.02.2022

Date of decision: 16.02.2022

**ORDER**

**SHAMSUDDIN ABBASI J.** - Appellants Aijaz Ali son of Ghulam Shabir Dahri and Fayaz Ali both sons of Ghulam Shabir were tried by learned 1<sup>st</sup> Additional Sessions Judge / MCTC Shaheed Benazirabad in S.C No. 838 of 2014 (re- The State v. Aijaz Ali and another) arising out of Crime No.36 of 2014 registered at police station Bandhi under Section 302 & 34 PPC. After full dressed trial they were convicted and sentenced as under:-

“Therefore, in exercise of powers conferred by Section 265-H(ii) Cr.P.C., accused Aijaz Ali son of Ghulam Shabir Dahri is convicted for committing murder of deceased Roshan Ali and offence punishable under Section 302(b) PPC. He is sentenced to death and he shall be hanged by neck till he is dead. The accused / convict Aijaz Ali son of Ghulam Shabir Dahri shall, in view of Section 544-A Cr.P.C. and judgment reported as 1995 SCMR 1776, pay compensation to the tune of rupees two hundred thousand only (Rs.2,00,000/-) to the legal heirs /

walis of deceased Roshan Ali, failing which the convict shall undergo further simple imprisonment of six months.

In exercise of powers conferred by Section 265-H(ii) Cr.P.C, accused Fayaz Ali son of Ghulam Shabir Dahri is also convicted for committing murder of deceased Roshan Ali and offence punishable under Section 302(b) PPC. He is sentenced to death and shall be hanged by neck till he is dead. The accused / convict Fayaz Ali son of Ghulam Shabir Dahri shall, in view of Section 544-A Cr.P.C. and judgment reported as 1995 SCMR 1776, pay compensation to the tune of rupees two hundred thousand only (Rs.2,00,000/-) to the legal heirs / walis of deceased Roshan Ali, failing which the convict shall undergo further simple imprisonment of six months.

Appellant Aijaz Ali was also tried in S.C. No.589 of 2014 arising out of Crime No.40 of 2014 at police station Bandhi under Section 25 of Sindh Arms Act, 2013 and after full dressed trial he was convicted and sentenced as under:-

“accused Aijaz Ali son of Ghulam Shabir Dahri is convicted under Section 265-H(ii) Cr.P.C. for committing an offence punishable under Section 25 of Sindh Arms Act, 2013 and sentenced to undergo R.I for period of five (05) years and pay fine of rupees ten thousand only (Rs.10,000/-). In case of default in payment of fine, the accused shall undergo S.I for period of six (06) months more. Perusal of record shows that accused was arrested in this case on 17.06.2014 and remained in custody in this case till today i.e. 08.11.2019. It is therefore ordered under Section 382-B Cr.P.C. that the above period of detention shall be counted towards substantive sentence of imprisonment awarded to the accused.

Appellant Fayaz Ali was also tried in S.C. No. 590 of 2014 arising out of Crime No. 41 of 2014 at police station Bandhi for offence under Section 25 Sindh Arms Act, 2013 and after full dressed trial he was also convicted and sentenced as under:-

“accused Fayaz Ahmed son of Ghulam Shabir Dahri is convicted under Section 265-H(ii) Cr.P.C. for committing an offence punishable under Section 25 of Sindh Arms Act, 2013 and sentenced to undergo R.I for period of five (05) years and pay fine of rupees ten thousand only (Rs.10,000). In case of default in payment of fine, the accused shall undergo S.I for period of six (06) months more. Perusal of record shows that accused was arrested in this case on 17.06.2014 and remained in custody in this case till today i.e. 08.11.2019. It is therefore ordered under Section 382-B Cr.P.C. that the above period of detention shall be counted towards substantive sentence of imprisonment awarded to the accused.

Learned trial court in compliance of Section 374 Cr.P.C. sent reference for confirmation of death sentence.

Appellants have impugned the aforesaid convictions and sentenced awarded to them by the trial court before this Court. During pendency of these appeals parties have entered into compromise outside the court and filed applications under Section 345(2) and 345(6) Cr.P.C. In order to ascertain genuineness or otherwise of compromise between the parties the matter was referred to learned trial court for holding enquiry and report. Learned trial court has furnished enquiry report dated 1.10.2021 which reveals that the legal heirs of deceased Roshan Ali have pardoned both the appellants without receiving any compensation and in the name of Almighty Allah and they have also forgiven their right of Qisas and Diyat and compromised with the appellants voluntarily without any duress or coercion. However learned trial court recorded the statements of legal heirs.

Learned counsel for appellants has submitted that legal heirs of deceased Roshan Ali Dahri entered into compromise with the appellants due to intervention of nekmards and they have waived of their right of Qisas and Diyat and forgiven the appellants in the name of Almighty Allah. He further states that all the legal heirs have filed their affidavits before this court along with compromise application.

On the other hand, learned Addl. P.G. as well as learned counsel for complainant have recorded their no objections on the acquittal of appellants due to compromise between the parties.

Admittedly offence under Section 302 PPC is compoundable. It has come on record that the parties have entered into compromise and the matter was referred to the trial court for enquiry regarding genuineness and correctness of compromise between the parties. Learned trial court called report from Mukhtiarkar Taluka Daur, SHO PS Bandhi and NADRA and thereafter learned trial court recorded the statements of legal heirs of deceased who have pardoned the appellants in the name of Almighty Allah without taking any compensation or Diyat and recorded their no objection on the acquittal of appellants of the charge of murder of deceased. According to the report of learned trial court compromise between the parties is volunteer and without any duress or coercion. Relevant portion of report is reproduced as under:-

“That from the statements of above mentioned legal heirs of deceased Roshan Ali, all the above named legal heirs of the deceased who appeared before this Court have pardoned both the convicts in the name of Allah without receiving any compensation. No other person claiming to be legal heir of the above named deceased has come forward in response to publication of notice in daily newspaper Awami Awaz, nor name of any other person has come to light in the reports furnished by Mukhtiarkar Revenue Taluka Daur, SHO PS Daur and Assistant Director NADRA Sukkur. The statements of above named legal heirs of the deceased, appears to be voluntary, without any duress and coercion. However, both brothers of deceased namely Sahib Ali and Shahid Ali who were residing in Saudi Arabia for labour purpose have not appeared before this Court for recording their statements”.

In view of above applications MA No. 8730 of 2021 under Section 345(2) Cr.P.C. is allowed. Consequently MA No.8731 of 2021 is allowed. Appellants are acquitted of the charge of murder of deceased Roshan Ali by means of compromise under Section 365(6) Cr.P.C. Appellants shall be released forthwith if not required in other custody case.

As far as Cr. Appeal No. D-361 of 2019 and Cr. Appeal No. D- 362 of 2019 whereby the appellants were convicted and sentenced under Section 25 Sindh Arms Act, 2013 for five years in a case of recovery of weapon without license learned counsel for appellants has not pressed these appeals on merits and submits that the appellants have served out the sentence.

Learned A.P.G. has also admitted the same position.

In compliance of court order dated 10.2.2022 jail roll has been furnished by Senior Superintendent Central Prison & Correctional Facility Hyderabad which reveals that the appellants have served out sentence of 07 years 07 months and 23 days on 10.2.2022 therefore these appeals have become infructuous which are dismissed as not pressed.

In view of above appeal No. D-203/2019 is allowed. The appellant shall be released forthwith if not required in any other case.

Reference bearing Confirmation Case No. 49 of 2019 is replied in negative.

JUDGE

JUDGE