

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Appeal No. **133** of **2016**

1. For order on M.A. No.3429/2016 (*Appl. u/sec 5, Limitation Act*)
2. For order on M.A. No.3430/2016 (*Appl. for Exemption*)
3. For hearing of case.
4. For hearing of M.A. No.3431/2016 (*Appl. u/sec. 426, Cr.P.C.*)
5. For hearing of M.A. No.12793/2021 (*Appl. u/sec. 5, Limitation Act*)
6. For hearing of M.A. No.12795/2021 (*Appl. u/sec. 345 (2), Cr.P.C.*)
7. For hearing of M.A. No.12796/2021 (*Appl. u/sec. 345 (6), Cr.P.C.*)

29.4.2022

Mr. Raham Ali Rind, advocate for the appellant.
Ms. Seema Zaidi, D.P.G.

2. **M.A. No.3430/2016.** Exemption application is granted.
4. **M.A. No.3431/2016.** Learend counsel for the appellant does not press this application; hence, the same stands dismissed as not pressed.
5. **M.A. No.12793/2021.** In view of the Order passed on 10.12.2021 by this Court on M.A. No. 12794/2021, this application has become infructuous; hence the same is dismissed, accordingly.
- 6&7. M.As. No.12795/2021 & 12796/2021.** Through instant criminal appeal, appellant Hasan Daad s/o Rasool Daad has impugned the judgment, dated 30.11.2015, passed in Sessions Case No. 1125/2014, arising out of Crime No. 366/2014, registered under sections 302, 324, 114, 34, P.P.C. at Police Station Shah Latif Town, Karachi whereby the learned 1st Addl. Sessions Judge, Malir, Karachi convicted him for the offences under section 302(b) & 324, P.P.C. and sentenced him to suffer imprisonment for life and R.I. for seven years, respectively, and to pay compensation of Rs. 50,000/- to the legal heirs of the deceased, as provided under section 544-A, Cr.P.C. Both the sentences were; however, ordered to run concurrently.

During pendency of the appeal, both these compromise applications were filed by the appellant and Mst. Asma, the mother of the

deceased jointly, which vide order, dated 10.12.2021, were transmitted to the trial Court for verification and genuineness of the compromise. Such report, dated 28.02.2022, received through the Office of MIT-II under inward No. 854, dated 03.03.2022, is available on record.

It reflects from the perusal of the said report that the counsel for the complainant filed an application under section 345(4), Cr.P.C. along with affidavit of the complainant for her appointment as *Wali* for three minor legal heirs, namely, (i) Baby Fatima (ii) Abdul Qudoos and (iii) Baby Iqra, which was allowed by the learned trial Court subject to final approval of this Court. It further reflects that the learned trial Court has submitted said report after completing all requisite formalities. As per report, deceased Hamza was a bachelor and his father and grandparents were already died; he left behind him six legal heirs, namely, (i) Mst. Asma (*mother*) (ii) Arsh Bibi (*sister*) (iii) Muhammad Bilal (*brother*) (iv) Fatima Sadaf (*minor-sister*) (v) Abdul Qudoos (*minor-brother*) and (vi) Iqra (*minor-sister*). The major legal heirs of the deceased have recorded their statements on oath. They have forgiven the appellant in the name of almighty Allah without receiving any compensation and have also waived right of *Qisas* and *Diyat* against the appellant; so also, *Wali*/Mst. Asma has waived the right of *Qisas* on behalf of minors.

In compliance of the order, dated 28.04.2022, the appellant has already deposited Rs. 17,76,071/-, being the total share amount of *Diyat* of minor legal heirs named-above with the Nazir of this Court, as the *Wali* can waive the right of *Qisas* on behalf of minor(s) but share(s) of *Diyat* cannot be waived, as per dictum laid down by the Apex Court in the case of *Almar Shah v. The State* (1999 SCMR 2047) and *Nawab-ul-Hassan & 7 others v. The State* (2003 SCMR 856).

Learned A.P.G. present in Court contends that she has examined the case and records her no-objection for the acceptance of compromise applications.

Perusal of the impugned judgment and record reveals that the offence for which the appellant has been convicted is compoundable and the same does not fall within the scope of *fasad-e-felaz*; hence, M.A. No.12795/2021 is allowed by permitting the parties to compound the offences.

Accordingly, appointment of Mst. Asma as *Wali* of the above-named minors is approved and compromise application being M.A. No.12796/2021 is allowed. Resultantly the impugned judgment is set aside. Consequently, appellant Hasan Daad s/o Rasool Daad is acquitted under section 345(6), Cr.P.C. He shall be released forthwith if not required in any other case.

The Nazir of this Court is directed to invest the diyat amount of minors, namely, (i) Baby Fatima Rs. 4,44,018/- (ii) Abdul Qudoos Rs. 8,88,035/- and (iii) Baby Iqra Rs. 4,44,018/- (total Rs. 17,76,071/-) in some profitable Government scheme separately, which shall be paid to them on their attending majority, as per rules.

1. M.A. No.3429/2016. This application stands dismissed on being infructuous

Appeal stands disposed of.

JUDGE