

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Jail Appeal No.S-78 of 2021

[Abbas and others v. The State]

1. *For hearing of application u/s 345(2) Cr.P.C.
(M.A-8015 of 2021)*
2. *For hearing of application u/s 345(6) Cr.P.C.
(M.A-8016 of 2021)*
3. *For hearing of application u/s 345(4) Cr.P.C.
(M.A-8017 of 2021)*
4. *For hearing of bail application u/s 426 Cr.P.C.
(M.A-4124 of 2021)*

Appellants: Abbas and others through Mr. Muhammad Saleem Mastoi, Advocate

Respondent: The State through Ms. Rameshan Oad, A.P.G Sindh

Complainant: Shoukat Ali through Mr. Zulfiqar Ali Chandio, Advocate

Date of hearing & judgment: 23.05.2022

JUDGMENT

SALAHUDDIN PANHWAR, J. Through miscellaneous application bearing No.MA No.8015 of 2021, the parties have prayed to accord permission to compound the offence under section 345(2) Cr.P.C. and through application being MA No. 8016 of 2021 prayed for acquittal of the appellants under section 345 (6) Cr.P.C, who through impugned judgment dated 28.04.2021, passed by the learned Additional Sessions Judge-I/Model Criminal Trial Court, Dadu, in Sessions Case No.607 of

2017 (The State V Abbas and others), emanating from Crime No.12 of 2017, registered at Police Station Digh Bala, under sections 302, 324, 114, 504, 337-A(i), 337-L(ii) and 34 PPC, were convicted and sentenced to undergo imprisonment for life as Ta'zir and to pay Rs.100,000/- (Rupees one hundred thousand) each as compensation to the legal heirs of deceased in terms of section 544-A Cr.P.C, in case of failure, they shall undergo S.I for six months more. The appellants/accused were also convicted and sentenced in the following terms:

“U/S 324 PPC R/w 114 & 34 PPC

All accused are sentenced to suffer rigorous imprisonment for seven years and fine of Rs.30,000/- (thirty thousand) each. In default thereof, they shall suffer S.I for three months more.

U/S 504 PPC R/W 114 & 34 PPC

All accused are sentenced to suffer rigorous imprisonment for one year and fine of Rs.10,000/- (ten thousand) each. In default thereof, they shall suffer S.I for one month more.

U/S 337-A(i) PPC:

Accused Abbas is sentenced to pay Daman Rs.10,000/- to injured and in case of failure of payment of Daman he shall suffer S.I for two months.

U/S 337-L(ii) PPC:

Accused Abbas is sentenced to pay Daman Rs.10,000/- to injured and in case of failure of payment of Daman they shall suffer S.I for two months.

2. The compromise applications are supported with the affidavits of complainant Shoukat Ali as well as legal heirs of deceased namely Mst. Hawa (mother), Mst. Razia (Widow) and injured Jamsher Lund. All the legal heirs of the deceased as well as the complainant and injured P.W have raised their no

objection for acquittal of the appellants by stating that they have entered into compromise with them due to intervention of nekmards outside the Court and pardoned them the right of Qisas and Diyat amount in order to maintain good relations.

3. In order to ascertain the genuineness of the compromise between the parties, the compromise applications were sent to the trial Court for thorough inquiry into the matter. The learned trial Court vide its letter dated 24.09.2021 has reported that in compliance of the order of this Court, statements of major legal heirs of deceased Akbar Lund namely Mst. Hawa (mother), Mst. Razia (widow), Shoukat Ali (brother/complainant) and Jamsher (brother/injured), were recorded. All the major legal heirs of the deceased for their own as well as on behalf of the minor legal heirs namely Baby Shakeelan (daughter) and Zahid (son), in their statements have categorically stated that they have pardoned the accused in the name of Almighty ALLAH and waived the right of Qisas; as well as the amount of Daman in favour of accused with their own free will, consent and without any coercion and recorded their no objection if the appellants are acquitted from the charge. The learned trial Judge has also called reports from concerned Mukhtiarkar, SHO and NADRA regarding legal heirs of deceased, who in their respective reports have also mentioned the said legal heirs of the deceased. Record reflects that publication for inviting objections from the interested persons with regard to compromise between the parties was made in daily newspaper Kawish but nobody came forward to raise any objection before the trial Court.

4. Learned Counsel for appellants submits that major legal heirs of the deceased have waived off their share of Diyat and Daman in favour of appellants, however, as regard the shares of the minors namely Baby Shakeelan and Zahid, the appellants are ready to deposit the amount of the Diyat in respect of their respective shares before this Court.

5. Learned A.P.G. Sindh, who is present in Court in connection with other cases while waiving notice of compromise applications has also extended her no objection on the plea that all offences are compoundable.

6. Since the offence(s) are compoundable, hence, there is no impediment for grant of compromise and acquittal of the appellants as the legal heirs of deceased have pardoned the appellants in the name of Almighty ALLAH; however, subject to payment of Diyat amount in favour of minors, which shall be done after verifying the shares of the minor legal heirs by the Accountant of this Court in the present case. Therefore, in order keep cordial relations and harmony between the parties in future, the permission to compound the offences is allowed under Section 345 (2) Cr.P.C. Resultantly, the appellants are acquitted of the charges under Section 345 (6) Cr.P.C. The Accountant of this Court shall verify the shares of the minors in respect of Diyat amount, which after depositing before him shall be invested in any Government profit yielding scheme, as well as after attaining the minors their age of majority shall be paid to them upon moving proper application. After the Diyat amount in respect of the minors' respective shares is deposited

as mentioned above, release writ of appellants shall be issued, however, subject to fulfillment of all legal formalities.

7. In view of above, the instant Criminal Appeal stands disposed of along with listed applications.

JUDGE

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