

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Jail Appeal No. S – 32 of 2009

Date	Order with Signature of Hon'ble Judge
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For hearing of case

1. For hearing of MA No.6280/2018
2. For hearing of MA No.6281/2018
3. For hearing of MA No.2875/2016
4. For hearing of main case
(BWs issued)

12.10.2020

Mr. Nisar Ahmed Bhanbhro Advocate for the Appellant
Mr. Khalil Ahmed Maitlo, DPG for the State

JUDGMENT

Aftab Ahmed Gorar, J: Through instant Criminal Jail Appeal, the appellant Behram S/o Fakir Muhammad Pirzado assailed the impugned judgment dated 19.03.2009, passed by learned Additional Sessions Judge, Naushahro Feroze, whereby he was convicted for offence under Section 302 PPC and sentenced to suffer R.I for life imprisonment as *Tazir* and to pay fine of Rs.50,000/-. In case of default in payment of fine, he was ordered to further undergo R.I for 06 months. However, the benefit of Section 382-B Cr.P.C was extended to the appellant.

2. During pendency of instant Criminal Appeal, compromise was arrived at between the parties and such application in terms of Section 345(2), Cr.P.C seeking permission for entering into compromise so also another application under Section 345(6), Cr.P.C for acquittal of appellant Behram were filed, which were duly signed by the appellant Behram as well as Atta Muhammad (brother/ legal heir of deceased). On 08.11.2018, the matter was referred to learned trial Court to examine the veracity and genuineness of the compromise arrived at between the parties. The learned trial Court after examining the material, calling reports from concerned corners and by recording the statements of the

legal-heirs of deceased, submitted the report that one of the legal-heirs namely Shahmir is abroad at Dubai, hence he could not appear nor filed any affidavit in this regard, as such the compromise could not be materialized.

3. Learned Counsel for the appellant submits that though the parties have compromised the offence by filing proper compromise applications, but the same could not be materialized as one of the legal heirs, namely, Shahmir was at Dubai; that though the impugned judgment suffers from certain illegalities, irregularities so also infirmities and discrepancies, but learned counsel for the appellant expressed his readiness not to press the instant appeal on merit if the sentence awarded to the appellant is reduced to that of already undergone, as the appellant is previous non-convict and there is no other instance of appellant's involvement in any case so also appellant has served out adequate portion of his sentence in jail.

4. Learned D.P.G for the State submits that though the offence was compounded between the parties and proper compromise applications were moved, but the same could not be materialized as one of the legal heirs of deceased, namely, Shahmir was abroad at Dubai. However, he recorded no objection, if the sentence awarded to the appellant is reduced to that of already undergone.

5. Having heard the learned counsel for the parties and going through the material available on record including compromise applications filed by the parties seeking permission to compound the offence as well as acquittal of appellant so also report furnished by learned trial Court, it transpires that though the compromise arrived at between the parties was genuine and voluntarily, but the same could not materialized as one of the legal heirs of deceased, namely, Shahmir was abroad at Dubai. Furthermore, as per jail roll dated 30.08.2019, the appellant has served out his substantial portion of sentence for 07-years, 08-months and 11-days and remissions earned by the appellant are 02-years, 10-

months and 11-days, which according to learned D.P.G for the State appears to be an adequate portion of sentence.

6. For the foregoing peculiar facts and circumstances of the case so also by consent of learned D.P.G for the State and following the dictum laid down in case of Muhammad Mumtaz v. Mehtab and another **(2020 SCMR 200)**, while maintaining the conviction awarded to the appellant by learned trial Court vide impugned judgment, instant Crl. Jail Appeal stands dismissed, however, the sentence awarded to the appellant is reduced to that of already undergone. The sentence of fine amount and the term of sentence in default thereof shall remain intact. Appellant Behram son of Fakir Muhammad Pirzado is present on bail. He is directed to deposit the fine amount of Rs. 50,000/- within a period of one month before the Additional Registrar of this Court without fail. In case of failure, office is directed to fix this matter in Court for passing appropriate orders. It is made clear that as and when the fine amount is deposited by the appellant, his bail bond shall stand automatically cancelled and surety discharged and the office shall return the surety documents to the surety after proper verification, identification and as per rules.

7. Instant Crl. Jail Appeal along with listed applications stands disposed of in the above manner.

Judge

ARBROHI