

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Jail Appeal No. S – 139 of 2011

Date

Order with Signature of Hon'ble Judge

For hearing of main case

(P.O & letter issued for Jail Roll)

20.11.2020

Appellant Gul Hassan Brohi produced in custody
Mr. Abdul Rehman Kolachi, DPG for the State

JUDGMENT

Aftab Ahmed Gorar, J; Through instant Criminal Jail Appeal, the appellant Gul Hassan S/o Ghous Bux Brohi has assailed the impugned judgment dated 04.10.2011, passed by learned 1st Additional Sessions Judge, Sukkur, (Sessions Case No.24/2004 re- State Vs. Gul Hassan and another, Crime No.83/2003 of Police Station 'B' Section Sukkur, under Sections 302, 324, 148 & 149 PPC) whereby he was convicted for charged offence and sentenced to suffer Imprisonment for Life and to pay fine of Rs.100,000/- (One Lac). In case of default in payment of fine, he was ordered to further undergo R.I for 06 months, the fine if recovered be paid to the legal-heirs of deceased as compensation provided by Section 544-A Cr.P.C. However, the benefit of Section 382-B Cr.P.C was extended to the appellant.

2. During pendency of instant Criminal Jail Appeal, the 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 Gul Hassan were filed, which were duly signed by the appellant Gul Hassan as well as the legal-heirs of deceased Muhammad Saleh namely Dad Muhammad, Ghulam Muhammad, Gul Muhammad (brothers), Mst. Zarbibi (widow), Karim Bux (father), and Mst. Bibi Khatoon, mother, respectively. On 28.08.2017, 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 vide dated 16.02.2018 furnished the incomplete report for want of appearance of the rest of the legal-heirs of deceased except Mst. Zarbibi (widow), Mst. Bibi Khatoon (mother) and Gul Muhammad (brother). Again this Court vide order dated 11.02.2019 referred the matter to the trial Court for conducting enquiry afresh about the genuineness of the compromise arrived at between the parties and submit such report within 30 thirty days. In compliance of the said order a report dated 25.03.2019 was furnished by trial Court mentioning therein that despite fixing the matter for appearance of the legal-heirs, but they did not appear. Thereafter the report dated 15.04.2019 was received from trial Court stating therein that legal-heirs of deceased namely Mst. Bibi Khatoon (mother), Ghulam Muhammad, Gul Muhammad and Dad Muhammad (brothers), Mst. Zarbibi (widow), Jan Muhammad and Deen Muhammad (sons), Bibi Zainab, Lam Bibi and Bibi Hasma alias Haleeman (daughters) appeared before the trial Court, their statements were recorded, wherein

they have stated that they have patched up with accused Gul Hassan, whereas, the father of the deceased namely Karim Bux has passed away, hence such reports were called from the SHO and Mukhtiarkar concerned regarding his death. The final report dated 06.05.2019 was received from learned trial Court / Additional Sessions Judge-III, Sukkur, in which it is categorically stated that after examining the material, calling reports from concerned corners and by recording the statements of the legal-heirs of deceased the compromise arrived at in between the accused Gul Hassan and the legal-heirs of the deceased is genuine, but could not materialize due to death of the complainant Karim Bux being one of the legal-heirs of the deceased.

3. Appellant Gul Hassan who is produced in custody submits that though he has been pardoned by the legal-heirs of the deceased Muhammad Saleh and such compromise report has been furnished by the learned trial Court, but the same could not be materialized due to death of one of the legal-heirs of the deceased namely Karim Bux (father), who was died after filing the compromise application; that though the impugned judgment suffers from certain illegalities, irregularities so also infirmities and discrepancies, but the appellant expressed his readiness not to press the instant Criminal Jail Appeal on merits, if the conviction and sentence awarded to him is reduced to that of already undergone, as he is not previous convict and there is no other instance of appellant's involvement

in any case so also appellant has served-out major 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, Karim Bux has died after filing the compromise application. However, he recorded no objection, if the conviction and sentence awarded to the appellant is reduced to that of already undergone.

5. Having heard the appellant and learned DPG for the State and after 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 Karim Bux has died after filing the compromise application. Furthermore, as per jail roll dated 18.11.2020, the appellant has served out his substantial portion of sentence for 16 years, 10 months and 13-days and remissions earned by the appellant are 05 years, 10 months and 19 days, which according to learned D.P.G for the State appears to be a substantial 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, the instant Criminal Jail Appeal stands dismissed, however, the conviction and sentence including the sentence of fine amount and the term of sentence in default whereof awarded to the appellant is reduced to that of already undergone. Appellant Gul Hassan S/o Ghous Bux Brohi is produced in custody. He is remanded to jail with direction that he shall be released forthwith, if not required in any other criminal / custody case.

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

Judge

ARBROHI