

THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No. 68 of 2020
[Muhammad Imran alias Lal and another v. the State]

Appellants : Muhammad Imran alias Lal and
Muhammad Kashif alias Asif
through Mr. Subhan Javed,
Advocate.

The State : Through Siraj Ali Khan Chandio,
Additional Prosecutor General,
Sindh along with SIP, Amanat, P.S.
Zaman Town, Karachi.

Legal heirs of Deceased : Wasim and Shakir, both son of
Muhammad Sabir are present in
Court.

Date of hearing : 22-03-2023

Date of decision : 28-03-2023

J U D G M E N T

Adnan Iqbal Chaudhry J.- This appeal under section 410 Cr.P.C. is against the judgment dated 11-01-2020 delivered by the V-Additional Sessions Judge, Karachi East in Sessions Case No. 1513/2016 convicting and sentencing the Appellants as follows:

“..... that accused persons in furtherance of common intention during commission of robbery on the force of deadly weapon, on resistance of deceased Fahad and Shahid opened fires upon them, as a result of which Fahad sustained bullet injury on his neck and Shahid sustained bullet injury on his head and during the treatment both deceased succumbed to their injuries. Thus, accused Muhammad Imran alias Lala and Muhammad Kashif alias Asif have committed offence under section 397 read with section 302 r/w section 34 PPC as discussed above. The extreme sentence is capital sentence but the mitigating sentence is the exception, hence, keeping in view the circumstances as there is no any motive behind the murder of deceased and the both accused are young age persons and it is sudden act due to resistance while commission of the offence of robbery as well as the fact that the complainant /

P.W-1 and P.W-2 Shakir in their evidence have specifically deposed that they have forgiven the accused persons in the name of Almighty Allah. Therefore, I have decided to take lenient view while awarding sentence under the attending circumstance, therefore, the present accused Muhammad Imran alias Lala and Muhammad Kashif are convicted under section 265-H(ii) Cr.P.C. and awarded sentences as under:-

For the offence punishable under section 302(b)/34 PPC accused persons Muhammad Imran alias Lala and Muhammad Kashif alias Asif to suffer R.I. for life as Tazir (each) and pay Rs.1,00,000/- each (Rupees One Lac only (each) as compensation under section 544-A Cr.P.C. to the legal heirs of deceased Fahad and Shahid.

For the offence punishable under section 397/34 PPC accused persons Muhammad Imran alias Lala and Muhammad Kashif alias Asif to suffer R.I. 7 years each (seven years each).

The accused persons are also given the benefit of section 382-B Cr.P.C. and the above sentences shall also run concurrently with the sentences of other cases, if any.”

2. Pending appeal, M.A. No.s 12260/2022, 12261/2022 and 13544/2022 were received under section 345 Cr.P.C. for permission to compound the offence, signed by the Appellants and supported with the affidavits of the Complainant Umer Uddin who is the father of the deceased Fahad, and Shakir who is brother of the deceased Shahid, stating that on the intervention of nek-mards the legal heirs of both deceased have compromised with the Appellants and have forgiven them in the name of the Almighty.

3. By order dated 19-10-2022, the aforesaid applications were referred to the trial court to determine the genuineness of the compromise. The trial court has submitted a comprehensive inquiry report dated 15-03-2023 which is to the following effect:

- (i) that the legal heirs of deceased Fahad are his parents, namely Umer Uddin and Mst. Salma. Though the said deceased also has three siblings, however, they are excluded from inheritance by surviving parents;
- (ii) that the legal heirs of the deceased Shahid are his siblings, namely Shakir, Waseem and Mst. Mehnaz;

- (iii) that after publication of the requisite notice, affidavits in support of the compromise applications were filed by the remaining legal heirs of both the deceased; and their statements were recorded wherein they have stated that they have pardoned the Appellants in the name of the Almighty, have waived the right of qisas and diyat, and that the compromise is voluntary without any pressure;
- (iv) that the trial court is satisfied that there are no other legal heirs, and that compromise appears to be voluntary, without duress or coercion.

4. In view of the report of the trial court as aforesaid, and since the offence of section 302(b) PPC is compoundable under section 345(2) Cr.P.C., there appears no reason to withhold permission to compound said offence. Counsel for both sides further pray that quantum of compensation awarded under section 544-A Cr.P.C. may also be reduced as the Appellants do not have the means to pay the same. Learned APG does not object.

5. Regards the other offence, viz. of section 397 PPC which is not compoundable under section 345 Cr.P.C., the jail roll of the Appellants show that excluding remissions but with the benefit of section 382-B Cr.P.C., Muhammad Imran has served nearly 5 years and Muhammad Kashif nearly 6 years of their sentence, but with remissions they have served a sentence of 12 and 13 years respectively. Thus both Appellants have served out the entire sentence of 7 years awarded to them for the offence of section 397 PPC.

6. In view of the foregoing, M.A. Nos. 12260/2022, 12261/2022 and 13544/2022 are allowed and the parties are permitted to compromise and compound the offence of section 302(b) PPC. In such mitigating circumstances, the compensation payable by each Appellant to the legal heirs of the deceased is reduced to Rs.40,000/- payable upon release in 4 equal monthly installments. The sentence for the offence of section 397 PPC having been served as aforesaid, the Appellants Muhammad Kashif and Muhammad

Imran are acquitted under sub-section (6) of section 345 Cr.P.C. in Sessions Case No. 1513/2016 emanating from FIR No. 404/2016 lodged at P.S. Zaman Town, Karachi. Issue release writ to the jail authority who shall release the Appellants forthwith if they are not required in any other case. Appeal is disposed of accordingly.

JUDGE

KARACHI:
DATED: 28-03-2023

*PA/SADAM