

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Appeal No.D-92 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For hearing of MA No.1800/2022 u/s 345(2) Cr.P.C
2. For hearing of MA No.1801/2022 u/s 345(6) Cr.P.C
3. For hearing of MA No.1802/2022 u/s 345(4) Cr.P.C

19.04.2023

Syed Shahzad Ali Shah advocate for appellant.

Mr. Nazar Muhammad Memon, Addl.P.G Sindh.

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Appellant was convicted and sentenced u/s 302(b) PPC to death and to pay compensation of Rs.200,000/- to the legal heirs of deceased Mst. Hajjani in terms of Section 544-A CrPC and in default thereof to suffer SI for six months more by learned 1st Additional Sessions Judge/MCTC Shaheed Benazirabad vide impugned judgment dated 07.08.2021 in S.C. No.47/2021 arising out of FIR No.315/2020 of police station Kazi Ahmed, under Section 302, 504 PPC. He preferred instant appeal before this Court which was admitted for regular hearing. During pendency of this appeal, the complainant and legal heirs of deceased and the appellant compromised the matter outside the court in the name of Almighty Allah and on the intervention of nekmards of the locality. Therefore, they filed applications under section 345(2), 345(4) & 345(6) Cr.P.C seeking compounding of the offence, appointment of wali and resultant acquittal of the appellant. The said applications were sent to the trial court for conducting an inquiry in respect of legal heirs of deceased and genuineness of compromise between the parties who has submitted his report dated 20.04.2022 which is available on record.

Learned counsel for the appellant submits that the offence is compoundable and all the legal heirs of deceased including complainant have pardoned the appellants, therefore, compromise application may be accepted and the appellants may be acquitted in terms of compromise.

Learned Additional Prosecutor General Sindh after going through the compromise applications and the report of the learned trial court submit that entire exercise carried out by it is in

accordance with law hence he has no objection if compromise application is accepted.

We have heard the learned counsel for the parties, complainant and legal heirs of the deceased, who have confirmed factum of compromise and their pardon to the appellant, and examined the file minutely.

Admittedly, the offence is compoundable and the parties i.e. the appellant, complainant and legal heirs of the deceased have filed joint applications for compounding the offence, appointment of Wali and acquittal. These applications were sent to the trial court for verification of legal heirs of deceased and genuineness of compromise. The report has been received which reveals that reports from concerned SHO, NADRA, and Mukhtiarkar were called and notice in daily kawish newspaper was published. As per reports of SHO, NADRA, and Mukhtiarkar no other person claiming to be legal heir of deceased came in picture and nobody objected to the compromise. The legal heirs have already stated in statements before Sessions Judge that they have compounded the offence and have pardoned the appellant in the name of Almighty Allah and they also do not claim any diyat, daman or compensation, hence they have no objection if the appellant is released by this court. In view of above, the compromise between the parties appears to be genuine and not the result of any coercion. The compromise is likely to promote harmony between parties and peace in the society. There appears to be no impediment legal or otherwise in accepting the compromise between the parties. Accordingly, the application under Section 345(2) is accepted. The parties are allowed to compound the offence. Resultantly, the application under Section 345(6) Cr.P.C. is also allowed. The appellant is acquitted in view of the compromise arrived at between the parties. Resultantly, the conviction and sentence awarded to the appellant by the trial court are set-aside.

Notwithstanding it has come on record that deceased has two minor legal heirs, Zameer Ali her son who is 10 years old and her daughter Mst. Nazia who is 9 years old. By order dated 17.08.2022, after receiving the report from the trial court regarding genuineness of the compromise, the accountant of this court was directed to submit a report determining the share of the minors to

diyat, which the learned counsel for appellant had undertaken to deposit for execution of compromise between the parties. The accountant has submitted the report dated 19.08.2022, according to which share of minor son namely Zameer Ali is Rs.1217488/- whereas share of minor daughter Mst. Nazia is Rs.608743/-. The appellant is directed to deposit the shares of the minors with the Additional Registrar of this Court. After deposit of the share amount of the minors, office shall invest the same in some profitable scheme which shall be returned to the minors along with such profit on their attaining age of majority in accordance with law. Only after the amount of share of each minor in toto is deposited, office shall issue release writ of the appellant and the jail authority on receiving the release writ shall release the appellant forthwith, if he is not required in any other custody case.

The appeal stands disposed of accordingly. The death reference No.18 of 2021 against appellant is replied in negative and also stands disposed of accordingly.

JUDGE

JUDGE

Ali Haider

