

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Jail Appeal No.S-249 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For orders on MA-7186/23 (u/s 345(2) Cr.P.C)
For orders on MA-7187/23 (u/s 345(6) Cr.P.C)
For hearing of MA-7600/19
For hearing of main case

25.09.2023

Mr. Muhammad Imran Choudhry advocate for appellant.
Ms. Rameshan Oad, A.P.G. for the State.

Date of hearing: 25-09-2023
Date of decision: 25-09-2023

ORDER

ZULFIQAR ALI SANGI, J:- Through instant criminal Jail appeal, the appellant Riaz Shar has assailed the judgment dated 23.08.2019, passed by learned Additional Sessions Judge-I/Model Criminal Trial Court, Mirpurkhas in Sessions Case No. 281 of 2017, (**re: State vs. Ali Nawaz and others**) culminated from Crime No.19/2017, registered at Police Station, Dilbar Khan Mehar for offences punishable under Sections 302, 324, 337-F(iii), 337-F(vi), 109 and 34, P.P.C, whereby he has been convicted u/s 302(b), P.P.C and sentenced to undergo life imprisonment as *Tazir* for committing the murder of deceased Murad and to pay compensation of Rs.5,00,000/- as provided under section 544-A, Cr.P.C to the legal heirs of deceased Murad and in case of default thereof, he shall suffer SI for one year more. He was also convicted under section 337-F(iii), PPC to suffer RI for one year as *Tazir* and to pay Rs.100,000/-only as Daman to PW/injured Ali Murad whereas he was also convicted under section 337-F(vi), PPC and sentenced to suffer RI for two years as *Tazir* and to pay Rs.100,000/-only as Daman to PW/injured Ali Murad; however, benefit of section 382-B Cr.P.C was extended to the appellant and the above sentences shall run concurrently.

2. During pendency of this appeal, the parties have filed joint applications under section 345(2) and 345(6) Cr.P.C along with affidavits of the complainant Jani, who is sole legal heir of the deceased. Vide order dated 25.08.2023, this court sent these applications to the trial court to hold inquiry

with regard to the genuineness of the compromise arrived at between the parties and submit its report. The report from trial court dated 13.09.2023 has been received. The trial court in order to ascertain the legal heirs of deceased, called the reports from Mukhtiarkar (Revenue), Taluka Sindhri, Secretary Union Council Phulladiyoon, Taluka Sindhri and S.H.O Police Station Dilber Khan Mahar. During the process of said inquiry no any person appeared before the trial court to file objections in respect of name of legal heir of Murad Shar. Notice was also got published in daily "KAWISH", newspaper, Hyderabad dated 10.09.2023 in this regard.

3. Learned counsel for the appellant contended that complainant who is sole legal heir of the deceased has patched up with the appellant on the intervention of nek mards of the locality as such the complainant/legal heir has not claimed any Diyat, Qisas and compensation etc; because he has pardoned the appellant in the name of 'Almighty Allah'. He has, therefore, prayed for acceptance of the compromise and for acquittal of the accused.

4. Learned Assistant Prosecutor General for the State has raised no objection to the compromise applications of the appellant, in view of the report submitted by the trial court. According to him, the report meets all necessary legal requirements in order to give effect to the compromise agreement.

5. I have heard the learned counsel for the appellant and learned A.P.G for the State and have perused the record with their able assistance.

6. The complainant, who is sole legal heir of deceased namely Murad appeared before the trial Court and submitted that he has compounded the offence with the accused without any pressure and he has no objection, if, the compromise be accepted.

7. Record reflects that Trial Court has also recorded the statement of above named person, who stated in his statement that he has entered into compromise with present accused and has pardoned and forgiven him in the name of 'Almighty Allah' with his sweet and free will without any pressure, compulsion, coercion or inducement. He has no objection, if, the appellant/accused is acquitted.

8. After considering all aspects of the case, I am of the view that the complainant who is sole legal heir of the deceased is competent to compound/compromise the offence with the appellant/accused. The

compromise arrived between the parties on the very face of it appears to be genuine and true, without any due inducement or pressure.

9. Considering genuineness of the compromise, I feel no hesitation to accept the same as the offence punishable under Section 302 PPC against the appellant is compoundable.

10. Keeping in view the above facts, the compromise arrived between the parties is hereby accepted. Consequently, appellant Riaz son of Bukshan Shar is hereby acquitted under Section 345(6) Cr.P.C in Sessions Case No. 281/2017, arising out of FIR No.19/2017, under Sections 302, 324, 109 and 34, PPC of Police Station Dilbar Khan Mehar. The injured PW Ali Murad has not entered into compromise and the appellant was convicted under section 337-F(iii), PPC to suffer S.I. for one year as Tazir and to pay Rs.100,000/- only as Daman to PW/Injured Ali Murad and appellant was also convicted under section 337-F(vi), PPC and sentenced to suffer RI for two years as *Tazir* and to pay Rs.100,000/- only as Daman to PW/injured Ali Murad with further directions that all the sentences shall run concurrently. In such circumstances, learned counsel for appellant submits that appellant has served out the sentence, however, ready to deposit amount of Rs.2,00,000/- (two lacs) as Daman in respect of both the injuries received by the injured Ali Murad and he does not press the appeal against the said conviction. Since the appellant has served out the sentence awarded to him by the trial Court in respect of injuries caused to injured Ali Murad and only has to pay Daman amount of Rs.2,00,000/-, therefore, the appeal is disposed off in the terms that the appellant be released forthwith on the payment of Daman amount of Rs.200,000/- before the Additional Registrar of this Court. Till the payment of Daman amount, he shall remain in jail.

11. In above terms, the instant Criminal Jail Appeal stands disposed of.

JUDGE