

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.05 of 2022
Criminal Jail Appeal No.27 of 2022

Date	Order with signature of Judge
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1. For hearing of case.
2. For hearing of MA No.171 of 22.
3. For hearing of MA No.11469/23
4. For hearing of MA No.11470/23

Date of hearing and order: 29.11.2023

Mr. Shamim Iqbal Soomro advocates for the Appellants
Mr. Muhammad Munsif Jan advocate alongwith Mr. Muhammad Imran advocate for the appellant Lal Bux in Criminal Jail Appeal No.27 of 2022
Ms. Kanwal Sindhu advocate for the complainant
Mst. Shanul and Abdul Hai, mother and father of the deceased are present in person
Syed Meeral Shah Bukhari, Additional PG alongwith SI Shaukat Ali PS Sukhan Karachi

The appellants Shoaib and Lal Bux were sent up for trial for the offenses under sections 302, 201,202 and 34 PPC, arising out of F.I.R. No.264 of 2017 of Police Station Sukhan, and were convicted and sentenced to Life Imprisonment and also directed to pay compensation under Section 544-A Cr. P.C in the sum of Rs.500,000/- each to legal heirs of the deceased and in default thereof, the appellants would also suffer SI for six months more, vide judgment dated 04.12.2021 passed by the learned III-Additional Sessions Judge (Model Criminal Trial Court) Malir Karachi in Sessions Case No.636/2017.

2. During the hearing of these appeals, parties reached a compromise and filed such applications. Keeping in view such development, this Court vide order dated 12.10.2023, referred the matter to the trial court for the determination of compromise arrived between the parties; and, the trial Court vide report dated 17.11.2023 narrated that the compromise applications filed under sections 345(2) and 345(6) Cr. P.C., accompanied by affidavits of Abdul Hai and Mst. Shanul were read over and explained to them in their Sindhi language; and, inquired from both of them about the genuineness and correctness of the contents of the compromise applications.

3. It has also come on record that both the father and mother of the deceased Altaf Hussain, in their statements, as well as through verbal verification, categorically stated that they had forgiven the appellants namely Shoaib and Lal Bux, in the name and for the sake of Almighty Allah. They both were specifically inquired about their intent to exercise the right of *Qisas* and *Diyat*, to which both of them stated in categorical terms that they did not wish to exercise any right of *Qisas*. They both also stated that they did not wish to receive any *Diyat* or

compensation, in respect of their compromise with the above-named appellants. It has also come on record that both legal heirs of the deceased categorically stated that they had forgiven the accused voluntarily, with their own free will and consent, without any duress/pressure. They also stated that they did not have any objection if the above-named accused were/are acquitted. They also positively identified their signatures/thumb impressions, as available on the four compromise applications, filed under Sections 345(2) and 345(6) Cr.P.C. in the above appeals. They also positively identified their signatures/thumb impressions as available on the accompanying affidavits and biometric verifications recorded before the learned trial/this Court. They also stated that their deceased son Altaf Hussain was unmarried.

4. From the above proceedings conducted by the trial Court, it transpires that no one from the public appeared before the trial Court to object to the above-mentioned applications of compromise, filed in the captioned appeals, despite the publication of notices in Daily 'EXPRESS'.

5. The complainant/father Abdul Hai and Mst. Shanul/mother, who are also present in person along with their counsel state that the deceased Altaf Hussain was unmarried and further submit that they have filed the applications under Sections 345(2) and 345(6). Cr.P.C. in both of the appeals i.e. Criminal Appeal No.05/2022 and Cr. Jail Appeal No.27 of 2022, voluntarily, without any duress and any consideration in the shape of compensation or *Diyat* and in the name and for the sake of Almighty Allah.

6. The learned counsel for the appellants submits that the legal heirs of the deceased entered into a compromise with the appellants and the trial Court has submitted the report and prayed for allowing this compromise application. At this stage, I enquired from the learned counsel for the appellants whether the sisters and brothers of the deceased as disclosed in the proforma for effecting compromise can be considered legal heirs and whether they have compromised with the appellants. Learned counsel has submitted that brothers and sisters of the deceased were/are not legal heirs of the deceased in the presence of the mother and father. The learned counsel further states that the mother and the father of the deceased have pardoned the appellants in the name of Almighty Allah and waived their right of *Qisas* and *Diyat* and have no objection if the appellants are acquitted of the charge.

7. The learned A.P.G. has also gone through the compromise application and statements along with the report submitted by the trial Court and he has no objection if the compromise application is accepted, permission is accorded, and the appellants are acquitted from the charge.

8. The contentions of the parties seem to be correct in terms of law laid down by the Supreme Court in the case of Sartaj & others v Mushtaque Ahmed &

others 2006 SCMR 1916 where it is held that when the deceased left behind him of father mother, brothers, and sisters, the mother takes one-sixth and father takes the reminder, to the total exclusion of the brothers and sisters as such the father and mother of the deceased being his only legal heir was/is competent to enter into compromise within the contemplation of Section 345 of the Cr.P.C. additionally, the table of share in Muhammadan Law by D.F Mullah according to which in the absence of the child of a son, the father inherits as a residuary.

9. The aforesaid proposition has been endorsed by the learned counsel for the complainant as well as APG.

10. In view of the compromise and the statements recorded by the trial Court during the inquiry, and categorical statements made by the complainant/father Abdul Hai and Mst. Shanul/mother before this Court, therefore, while relying upon the cases of Mureed Sultan and others vs. The State (2018 SCMR 756) and Manzoor Ahmed Shah and others v. The State and others (2019 SCMR 2000) for better relations between the parties in future permission is granted the compromise applications are accepted. Consequently, in the light of the report of the trial Court I am satisfied that there is genuine compromise between the parties, besides offence is also compoundable. Resultantly, the appellants are acquitted of the charge and the impugned judgments dated 04.12.2021 (The State v Muhammad Shakeel & others) passed by the trial Court in Sessions Case No.636 of 2017 are set aside in terms of the aforesaid compromise reached between the parties. The appellants shall be released forthwith if not required in any other case.

11. Both appeals stand disposed of in the above terms.

12. At this stage, Mr. Muhammad Munsif Jan advocate has drawn the attention of this Court towards the order dated 20.2.2023, whereby he was appointed as counsel for the pauper appellant Lal Bux in Criminal Jail Appeal No.27 of 2022 on State expenses, but he has not yet received his fee. Let a copy of this order be sent to the learned Prosecutor General Sindh as well as to the Secretary Law and Parliamentary Affairs, Government of Sindh for compliance of the aforesaid order.

JUDGE