IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Revision Application No. 94 of 2023

Applicant	:	Dawood through Mr. Muhammad Munsif Jan, Advocate
Respondent	:	The State through Mr. Muhammad Iqbal Awan, Addl.P.G.
Accused persons	:	Namoos Khan and Mudheer Khan through Mr. Aijaz Muhammad Bangush, Advocate
		Legal heirs of the deceased through Ms. Iqra Khan, Advocate
Date of hearing	:	15th December, 2023

ORDER

OMAR SIAL, J.: Namoos Khan and Mudheer Khan were accused of killing 3 persons. F.I.R. No. 107 of 2003 was registered at the Kharadar police station. After a full trial, the learned 2nd Additional Sessions Judge, Karachi (South-West), on 28.09.2007, convicted the accused under section 302(a) P.P.C. and sentenced them both to death. The convicts appealed the sentence before the High Court, and a Divisional Bench of the Court on 22.03.2016 converted the conviction of the convicts from 302(a) to 302(b) P.P.C. The sentence was converted from death to life imprisonment. The convicts then appealed to the Supreme Court, but on 04.08.2016, the Supreme Court upheld the order of the High Court. After the final judgment of the Supreme Court, applications under section 345(2) and 345(6) Cr.P.C. were filed by the parties before the learned 4th Additional Sessions Judge, Karachi (South). On 30.03.2023, the learned Judge dismissed the applications. The parties have now approached this Court.

2. I have heard the learned counsels for the convicts, the legal heirs of the deceased, and the learned Additional Prosecutor General. While the former two counsels requested the Court to allow the compromise, the learned Additional Prosecutor General believed that the order should be upheld in light of the judgment titled **Mohammad Yousuf vs The State (PLD 2019 SC 461)**. My observations and findings are as follows.

3. The three boys who were killed in the present case were all brothers, and all of them were unmarried at the time of their deaths. When they died, they left behind their parents and four siblings, but soon after that, both parents also died. The three deceased persons had only three brothers and a sister left. All four siblings have compounded the offence, and their compromise has been held to be valid. The learned trial court, however, was of the view that the remaining four siblings could not compound the offence as, at the time of the death of the three boys, their parents were the only legal heirs, and since both parents have now died, the right to compound the offence cannot devolve upon their siblings and thus they lack the required legal status.

4. The case relied upon by the learned trial court and the learned Additional Prosecutor General in support of their decision and argument, respectively, was **Mohammad Yousuf vs The State (PLD 2019 SC 461)**. It is with much respect that I do not concur with the view taken by them.

5. The facts of the case before the Supreme Court in ***Mohammad Yousuf*** (supra) were that Mohammad Aslam was murdered, for which he was convicted under section 302(b) P.P.C. and sentenced to death. Aslam died, leaving behind his father (Waryam), widow (Razia) and son (Akmal).

6. During the pendency of the appeal, the accused reached a compromise with Razia and Akmal but not with Waryam. Waryam died before the compromise proceedings could culminate. After his death, a fresh application seeking acquittal based on compromise was filed. It was confirmed during an inquiry that Razia (widow) and Akmal (son) had forgiven the accused. The learned Sessions Judge who had conducted the

inquiry, however, highlighted in his report that four brothers of the deceased Aslam had not forgiven the accused. The learned Judge, however, went on to hold that the brothers of the deceased were not his legal heirs and thus, for a compromise, it was immaterial whether they had forgiven the accused or not. The High Court accepted the compromise, and an acquittal order was made under section 345(6) Cr.P.C. The brothers of the deceased went to the Supreme Court complaining that their objection to the compromise was not taken into consideration and, therefore, the compromise was not a valid one. The Supreme Court held:

> *In the present case of Ta'azir, the offence of murder of Mohammad Aslam could be compounded only by the legal heirs of the said victim, and all the surviving heirs of that victim had voluntarily compounded the said offence with respondents 2 and 3. The High Court was, therefore, quite correct in holding that the appellant and his brothers, who were heirs of a subsequently dying heir of the victim, were not relevant to compounding the offences.*

7. The brothers and sisters referred to in the judgment were brothers and sisters of the deceased; however, in that case, they were excluded from the list of inheriting heirs as the widow and the son of the deceased were alive and had agreed to the compounding. The Supreme Court earlier in **Sartaj and others vs Mushtaq Ahmed and others (2006 SCMR 1916)** had also observed that "*there is no difference of opinion in the Sunni or Shia schools of thought as far as the exclusion of brothers and sisters of the deceased by the father is concerned.*" In that case, too, the father of the deceased was alive, and the challenge to the compromise had been made by the siblings and stepmother of the deceased, saying that they were also entitled to compromise.

8. In the current case, the deceased left only his brothers and sisters behind as heirs. He died single, his brothers and sisters are also all single

and his parents had also died. There is also no grandfather. There appears to be no impediment to their entitlement to compound an offence of Ta'azir.

9. Given the above, the impugned order is set aside. The learned trial court had not concluded whether the compromise was genuine. It had dismissed the applications as being not maintainable. The parties shall file fresh applications under section 345 Cr.P.C. before the learned trial court, which shall proceed as appropriate.

JUDGE