

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Jail Appeal No.D-112 of 2022
Confirmation Case No.D-08 of 2022
Crl. Jail Appeal No.S- 65 of 2022

Date of hearing	Order With Signature Of Judge.
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Hearing of Case

1. For hearing of MA 1506/2022
2. For hearing of MA 1507/2022
3. For hearing of MA 11/2023
4. For hearing of MA 649/2023
5. For regular hearing.

Present

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Arbab Ali Hakro

Mr. Alam Sher Bozdar, Advocate for appellants.
Mr. Aftab Ahmed Shar, Additional P.G for the State.

Date of Hearing & Order: **21-02-2024**

ORDER

MUHAMMAD IQBAL KALHORO J.,- Appellants Wakeel Ahmed Kandhro (*Crl. Jail Appeal No.D-112 of 2022*) and Jamaluddin Kandhro, the Juvenile Offender (*Crl. Jail Appeal No.S-65 of 2022*) were tried by learned Additional Sessions Judge-1(MCTC), Khairpur in Sessions Cases No.473 and 473-A of 2020, arising out of Crime No.51 of 2020 registered at P.S, Shaheed Murtaza Mirani, for offences under sections 302, 311 & 114 PPC and vide impugned judgments dated 23.09.2022, appellant Wakeel Ahmed has been convicted for offence u/sections 302 & 311 PPC and sentenced to death, while appellant Jamaluddin has been sentenced to imprisonment for life as Ta'zir for offence under sections 114 r/w section 302 PPC with compensation of Rs.1,00,000/- to be paid to legal heirs of deceased in terms of section 544-A CrPC and in case of default, to suffer S.I for six months more.

2. During pendency of appeals, appellants Wakeel Ahmed Kandhro and Jamaluddin and legal heirs of deceased Mst. Shahul have filed separate applications in terms of sections 345(2) and 346(6) CrPC. Vide order dated 11.10.2022, compromise applications were sent to the trial Court for ascertaining legal heirs and genuineness of compromise and submitting such report.

3. Learned Additional Sessions Judge-I, Khairpur has submitted reports dated 08.11.2022, wherein he has disclosed that major legal heirs of deceased Mst. Shahul were examined by him, who in their statements have voluntarily, without any fear, pressure or any inducement forgiven the appellants in the name of Almighty ALLAH and waived their right of Qisas and Diyat. So far minor legal heirs of deceased, namely, Mour, Shoukat Ali, Zuhaib, Sheraz Ali (sons) and Shahnaz (daughter) are concerned, one Mukhtiar Hussain Khatoon has already moved applications in both matters for his appointment as their Wali/Guardian-ad-litem, which are allowed by consent and he is appointed as Wali of the minors.

4. On 01.02.2024, Mst. Hakim Zadi (mother), Mst. Sardaran, Mst. Lailan, Mst. Marvi and Mst. Phaphul (sisters) of deceased appeared before this Court and admitted their signatures/thumb impressions on their affidavits and contents of the same. They further stated to have voluntarily forgiven the appellants in the name of Almighty ALLAH without any coercion, compulsion or inducement and waived their right of Qisas and Diyat and recorded no objection to the acquittal of appellants. Mukhtiar Hussain, the Wali of above named minors has also stated on oath to have forgiven the appellants in the name of Almighty Allah and waived the right of Qisas on behalf of minors.

5. The Accountant has submitted report determining the share of Diyat amount of all minors to the tune of Rs.5,631,585/-, in terms of latest Notification dated 4th September, 2023, issued by the Government of Pakistan, Finance Division.

6. We have carefully heard the learned counsel for parties, perused the impugned judgment, compromise applications and report of the trial Court regarding genuineness of compromise between the parties. No doubt, the appellant Wakeel Ahmed has also been convicted for offence under section 311 PPC (*Fasad-Fil-Arz*), but learned counsel for appellants has argued that for the purpose of this section, the expression *Fasad-Fil-Arz* shall include the past conduct of the offender, or whether he has any previous conviction, or in the brutal or shocking manner the offence has been committed which is outrageous to the public conscience (or the offence relates to honour crime), or if the offence is considered as potential danger

to the community, (or if the offence has been committed in the name or on the pretext of honour, but these ingredients are lacking in this case, as such section 311 PPC, being misapplied, is not attracted in this case. This legal position, learned Additional P.G has conceded and recorded no objection to the grant of permission to compound the offence and on the basis of which to acquit the appellants.

7. Therefore, in our humble view and looking to the circumstances of this case on the basis of report of learned trial Court, the compromise arrived at between the parties is voluntary and genuine. Accordingly, for better relations between the parties in future, the compromise applications are accepted. Appellants Wakeel Ahmed Kandhro and Jamaluddin Kandhro are acquitted of the charge on the basis of compromise subject to payment Diyat amount of Rs.5,631,585/-, as share of minors. They shall be released forthwith subject to deposit of Diyat amount of minors, namely, Mour, Shoukat Ali, Zuhaib, Sheraz Ali (sons) and Shahnaz (daughter) so also compensation amount, as determined by the trial Court, with the Accountant of this Court, if not required in any other custody case. Upon deposit of Diyat and compensation amount to the extent of minors, the Accountant shall invest the same in any profitable bearing government scheme for the ultimate benefit of the minors, who shall be entitled to receive the said amount along with profit on being attaining the age of majority. Whereas, amount of compensation to the extent of major legal heirs of deceased shall be released to them after due formalities.

8. The **Crl. Jail Appeals No.D-112 & S-65 of 2022** along with listed applications are accordingly **disposed of** in the above terms. Whereas, **Confirmation Case No.D-08 of 2022** is answered in negative. *Office to place a signed copy of this order in captioned connected matters.*

JUDGE

JUDGE