

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Jail Appeal No.D- 19 of 2018
Confirmation Case No.D- 01 of 2018
Crl. Jail Appeal No.S- 17 of 2018
Crl. Jail Appeal No.S- 18 of 2018

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

1. For orders on MA 93/2024
2. For orders on MA 5847/2018
3. For hearing of MA 1202/2023
4. For hearing of MA 1197/2023
5. For hearing of MA 1198/2023
6. For regular hearing.

Present

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

M/s Israr Ali Shah and Syed Naimat Ali Shah, Associates of Mr. Qurban Ali Malano, Advocate for appellants, who have also filed powers on behalf of appellants in Crl. J.As No.S- 17 & 18 of 2018.

Mr. Ubedullah Ghoto, Advocate for complainant.

Mr. Zulfiqar Ali Jatoi, Additional P.G for the State.

Date of Hearing & Order: **05-03-2024**

ORDER

MUHAMMAD IQBAL KALHORO J.,- Appellants *Muhammad Aslam and Qurban alias Papoo* along with others (*Crl. Jail Appeal No.D-19 of 2018*) were tried by learned Sessions Judge, Gohtki in Sessions Cases No.336 of 2013, arising out of Crime No.78 of 2013 registered at P.S, A-section, Ghotki, for offences under sections 302, 324, 114, 337H(ii), 147, 148 & 149 PPC and vide impugned judgments dated 25.01.2018, appellants along with co-accused Rajib (*since acquitted by this Court on the basis of compromise*), and co-appellant Lohar (since died) have been convicted for offences amongst others, under section 302(b) PPC and sentenced to death as Ta'zir with fine of Rs.200,000/- each 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 *Muhammad Aslam and Qurban alias Papoo* and legal heirs of deceased *Muhammad Umar Gadani and Abdul Qadir* have filed applications in terms of sections

345(2) and 346(6) CrPC. Vide order dated 14.12.2023, compromise applications were sent to the trial Court for ascertaining legal heirs and genuineness of compromise and submitting such report.

3. Learned Sessions Judge, Ghotki has submitted report dated 13.01.2024, wherein he has disclosed that major legal heirs of deceased **Muhammad Umar Gadani and Abdul Qadir** 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 Abdul Qadir Gadani, namely, baby Iram, baby Zakiya, baby Iqra (daughters) and Ali Dost (son) are concerned, Mst. Hameedan (widow of deceased and mother of minor legal heirs) has already moved application (MA-1202 of 2023) for her appointment as their Wali, which are allowed by consent and she is appointed as Wali of the minors, which is by consent **allowed.**

4. Today, Ghulam Qadir, Muhammad Panah, Mai Shabeeran, Mai Sughran, Mai Amina and Mai Rehmat being legal heirs of deceased **Muhammad Umar Gadani** as well as Mst. Sharma, Mst. Hameedan, Muhammad Ameen, Mubeen Ali and Muhammad Azhar, being major legal heir of deceased **Abdul Qadir Gadani** have appeared before this Court and admitted their signatures/thumb impressions on their affidavits and contents of the same. They have further stated to have voluntarily forgiven both 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. Mst. Hameedan, the Wali of above named minors of deceased Abdul Qadir Gadani 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 her minor children.

5. The Accountant has submitted report determining the share of Diyat amount of baby Iram, baby Zakiya, baby Iqra (daughters) and Ali Dost (son) minor legal heirs of deceased Abdul Qadir Gadani to the tune of

Rs.2,175,839.66, 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. So far application of section 311 PPC (*Fasad-Fil-Arz*) in this case is concerned, this Court vide order dated 05.04.2023 has already observed that the trial Court has not made any observation which may warrant application of section 311 PPC. Hence, it was treated as a simple murder case and then acquitted co-accused Rajib on the basis of compromise in Crl.J.A.No.D-36 of 2020 vide order 11.04.2023.

7. This legal position, learned counsel appearing on behalf of the complainant as well as learned Additional P.G have conceded and recorded no objection to the grant of permission to compound the offence and on the basis of which to acquit the appellants.

8. 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 *Muhammad Aslam and Qurban alias Papoo* are acquitted of the charge on the basis of compromise subject to payment Diyat amount of **Rs.2,175,839.66**, as share of minors. They shall be released forthwith subject to deposit of Diyat amount of minors baby Iram, baby Zakiya, baby Iqra (daughters) and Ali Dost (son) minor legal heirs of deceased Abdul Qadir Gadani 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.

9. So far as the case against co-appellant **Lohar Gadani** is concerned, the Senior Superintendent, Central Prison & Correctional Facility Sukkur had already submitted a comprehensive report that said appellant being prisoner had expired in emergency ward of GMC, Hospital Sukkur on 13.01.2020. He had also submitted all the relevant reports to show that said appellant died of natural death while he was in jail. Hence, by consent, appeal against appellant **Lohar Gadani** stands abated in terms of section 431 CrPC. Consequently, **Crl. Jail Appeal No.D-19 of 2018** along with listed applications is accordingly **disposed of** in the above terms. Whereas, **Confirmation Case No.D- 01 of 2018** is answered in **negative**.

10. So far **Crl. Jail Appeals No.S- 17 & 18 of 2018**, filed by appellants Qurban Ali alias Papoo and Muhammad Aslam Gadani against their conviction and sentence for offence under section 24 of Sindh Arms Act, 2013 through impugned judgments dated 25.01.2018, are concerned, their counsel has submitted that since appellants have been acquitted in main case on the basis of compromise and they have already served out their sentence of R.I five years including the term of sentence of S.I two months for default in payment of fine amount, he does not want to proceed with these appeals on merit and under instructions does not press the same, to which learned Additional P.G has recorded no objection. Accordingly, while maintaining their conviction and sentence, as awarded by the trial Court, both Crl. Appeals No.S-17 & 18 of 2018 are **dismissed**.

Office to place a signed copy of this order in captioned connected matters.

JUDGE

JUDGE