

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Spl. Anti-Terrorism Jail Appeal No.D- 175 of 2019

Spl. Anti-Terrorism Jail Appeal No.D- 173 of 2019

Spl. Anti-Terrorism Jail Appeal No.D- 174 of 2019

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

1. For orders on MA 191 of 2024
2. For orders on MA 192 of 2024
3. For regular hearing.

Present

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Arbab Ali Hakro

Mr. Rukhsar Ahmed Junejo, Advocate for appellants.

Mr. Muhammad Farooq Ali Jatoi, Advocate for complainant.

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

Date of Hearing & Order: **18-04-2024**

ORDER

MUHAMMAD IQBAL KALHORO J.,- In these appeals, appellants *1. Majid Alias alias Dodo, 2. Mujeeb alias Kharo, 3. Munsif Ali alias Dhano, 4. Azhar Ali, 5. Ashfaq Ali and 6. Murad Ali alias Teddi (Spl. Anti-Terrorism Jail Appeal No.D-175 of 2019)* and legal heirs of deceased *Rashid Ali* have filed applications in terms of sections 345(2) and 346(6) CrPC seeking compounding of the offences and their acquittal on the basis of compromise. Vide order dated 28.02.2024, these applications were sent to the trial Court for ascertaining legal heirs and genuineness of compromise and submitting such report.

2. Learned Judge, Anti-Terrorism Court-1, Sukkur has submitted report dated 21.03.2024, wherein he has disclosed that legal heirs of deceased *Rashid Ali*, who was unmarried, so also injured Wajid Ali 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.

3. Today, Deedar Ali (father), Mst. Firdos Khatoon (mother) being legal heirs of deceased Rashid Ali so also injured Wajid Ali 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 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.

4. 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 7(i)(a) & (b) of ATA, 1997 in this case is concerned, learned counsel for appellants has relied upon the case law reported as *Nawab Siraj Ali and others v. The State* (**2023 SCMR 16**) and stated that no element of terrorism is found in the present case, as the occurrence was a result of personal scuffle over the sale of intoxication/drugs and running of gambling den. He has further argued that the substantive offence under section 302 PPC is compoundable and the parties have compromised with each other. Hence, impediment in the case being non-compoundable is not attracted in this case. This point has been demonstrably elaborated by the Supreme Court in the above case. 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.

5. 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 found voluntary and genuine. Accordingly, for better relations between the parties in future, the compromise applications are accepted. Appellants **1. Majid Alias alias Dodo, 2. Mujeeb alias Kharo, 3. Munsif Ali alias Dhano, 4. Azhar Ali, 5. Ashfaq Ali and 6. Murad Ali alias Teddi** are acquitted of the charge on the basis of compromise. Since in the case, provisions of Anti-Terrorism Act have been misapplied, the conviction and sentence of the appellants in these provisions are also set aside. They shall be released forthwith if not required in any other case subject to deposit of compensation amount, as determined by the trial Court, with the Accountant of this Court. Upon deposit of compensation amount, the Accountant shall disburse the

compensation amount to the legal heirs of deceased after proper verification, identification and as per rules.

6. So far **Crl. Jail Appeals No.D-173 & 174** of 2019 filed by appellants Majid Ali Dodo and Munsif Ali alias Dhanoo against their conviction and sentence for offence under section 24 of Sindh Arms Act, 2013 through common impugned judgment dated 21.08.2019 are concerned, admittedly the empties were secured from the scene of offence on 01.07.2017 and the recovery of alleged crime weapons i.e. unlicensed repeaters was effected from possession of the appellants on 22.08.2017 and both empties and repeaters were sent together to the Ballistic Expert on 22.08.2017. In the case of Nawab Siraj Ali (**supra**), the Supreme Court has been pleased to hold that if the crime empty is sent to the Forensic Science Laboratory after the arrest of accused or together with the crime weapon, the positive report of said laboratory loses its evidentiary value. Sending the crime empty together with the weapon is not a safe way to sustain conviction of the accused and it smacks of foul play on the part of I.O simply for the reason that till recovery of weapon, he kept the empties with him for no justifiable reason. Learned Additional P.G has recorded no objection to the acquittal of said appellants in these appeals also on the above point. Accordingly, we set aside the conviction and sentence of both appellants **Majid alias Dodo and Munsif Ali alias Dhanoo** under section 24 of Sindh Arms Act, 2013. They shall be released forthwith in these appeals/crimes, if not required in any other case.

Captioned appeals along with pending application(s) are **disposed of** accordingly. *Office to place a signed copy of this order in captioned connected matters.*

JUDGE

JUDGE