

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No.D-102 of 2021

[Confirmation Case No.22/2021]

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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Present:

Mr. Justice Naimatullah Phulpoto

Mr. Justice Shamsuddin Abbasi

1. For hearing of MA-10804/2021
2. For hearing of MA-10805/2021
3. For hearing of MA-10806/2021

Appellants/accused:

*Illahi Bux and Abdul Hameed, both sons of
Mehrab Khan, through
Mr. Ahsan Gul Dahri,
Advocate.*

The State:

*Through Mr. Shawak Rathore, Deputy
Prosecutor General.*

Date of Hearing:

08.02.2022

Date of Order:

08.02.2022

ORDER

NAIMATULLAH PHULPOTO, J- Appellants Illahi Bux and Abdul Hameed, both sons of Mehrab Khan, were tried by learned Ist Additional Sessions Judge / MCTC Shaheed Benazirabad in Sessions Case No.196 of 2009. After regular trial, vide judgment dated 01.09.2021, both appellants were found guilty. Appellant Illahi Bux S/o Mehrab Khan was convicted for committing Qatl-e-Amd of deceased Abdul Rasheed and Hafiz Irfan under Section 302(b) PPC and sentenced to death on two counts. Accused Illahi Bux was directed to pay compensation of Rs.200,000/- for each deceased, to be paid to the legal heirs of the deceased in terms of Section 544-A Cr.P.C. In case of default in payment of compensation, appellant Illahi Bux was ordered to suffer S.I for six months. Appellant Abdul Hameed was also convicted under Section 302(b) PPC as Ta'zir read with Section 109 PPC and sentenced to

imprisonment for life on two counts. Appellant Abdul Hameed was also directed to pay compensation of Rs.200,000/- for each deceased, to be paid to the legal heirs of the deceased in terms of Section 544-A Cr.P.C. In case of default in payment of compensation, appellant Abdul Hameed was directed to suffer SI for six months. Trial Court made reference to this Court for confirmation of death sentence awarded to appellant Illahi Bux as required under Section 374 Cr.P.C. Both appellants being aggrieved and dissatisfied from judgment dated 01.09.2021 filed appeal.

2. Appeal was admitted for regular hearing. During pendency of the appeal, compromise application was filed by the appellants as well as legal heirs of both deceased on prescribed proforma. In order to ascertain the genuineness or otherwise of the compromise arrived at between the parties, compromise application was sent to the trial Court for holding inquiry and report. Trial Court submitted inquiry report dated 22.12.2021, from the statements of legal heirs of both the deceased mentioned in the report, the trial Court came to the conclusion that legal heirs of the deceased have pardoned both the convicts / appellants in the name of Allah almighty without receiving any compensation except the share of minor legal heirs of deceased Abdul Rasheed namely Muhammad Talha, Muhammad Mavia, Muhammad Zubair (sons) and baby Tooba (daughter). This Court vide order dated 27.01.2022 directed the learned Advocate for the appellants as well as Additional P.G to calculate share of the minors of the deceased. Today, the learned Advocate for the appellants as well as learned Deputy Prosecutor General have calculated the share of the minors of deceased Abdu Rasheed. The total Diyat amount of both deceased has been calculated as Rs.42,61,205/- out of which, the share of minor legal heirs named above came to Rs.14,08,565/-. However, this Diyat amount in respect of the minor sons and daughter of deceased Abdul Rasheed is subject to

the verification of Additional Registrar / Accountant of this Court. As regards to the application under Section 345(2) Cr.P.C is concerned, learned Advocate for the appellants submits that there is genuine compromise between the parties due to intervention of Nekkards of the locality, for better relations between the parties in future. Learned trial Court held inquiry and came to the conclusion that the compromise between the parties is genuine, without compulsion or external force. Learned Deputy Prosecutor General recorded no objection on the ground that the offences committed by the appellants are compoundable with the permission of Court.

3. In our considered view, the offences under Sections 302, 34 PPC are compoundable with permission of Court and provisions of Section 345 (2-A) Cr.P.C are not attracted to this case. Legal heirs of both the deceased have forgiven the appellants in the name of Allah almighty. The Honourable Supreme Court of Pakistan in Criminal M.A No.324 of 2020 & JP No.524 of 2019 vide order dated 16.03.2021 allowed the compromise application for offence under Section 302 PPC and directed that Diyat amount of the minors be deposited in some profit bearing Government scheme so that the interest of the minors be safeguarded. The order dated 16.03.2021 is reproduced as under:-

“Through his report, the learned District & Sessions Judge, Mirpur Khas has verified the authenticity of the compromise entered into between the legal heirs of the deceased and the applicant, whereby they have forgiven the applicant in the name of the Almighty Allah, however since amongst the legal heirs are two minor daughters of the deceased/victim. We would therefore direct the learned District & Sessions Judge, Mirpurkhas to determine the amount of diyat, the said two minors are entitled to, have the same deposited in some profit bearing Government scheme so that the interest of the minors be safeguarded and they may be paid the amount along with the return/profit earned thereon, upon their gaining maturity.”

4. In view of the above, the parties are allowed to enter into compromise for better relations between them and application for compromise

(M.A No.10804 of 2021) is allowed. In result of the compromise, the appellants are acquitted under Section 345(6) Cr.P.C. However, **subject to the payment of share of above named minor legal heirs of deceased Abdul Rasheed i.e. Rs.14,08,565/- as calculated by learned Advocate for appellants as well as learned Deputy Prosecutor General subject to the verification of Additional Registrar / Accountant of this Court, which shall be deposited in some Government profitable scheme so that interest of minors be safeguarded and they may be paid the amount alongwith the return / profit earned thereon upon their gaining maturity and then office shall issue release writ for both the appellants and appellants shall be released if not required in some other case.**

5. The M.A No.10805 of 2021 (compromise application) is allowed in the above terms. So far as the Criminal Appeal No.D-102 of 2021 is concerned, it is disposed of in view of above terms and resultantly the Confirmation Reference made by the trial Court is accordingly answered in negative.

JUDGE

JUDGE

Shahid