

Stereo HCJDA 38.  
Judgment Sheet  
**IN THE LAHORE HIGH COURT, LAHORE**  
JUDICIAL DEPARTMENT

**Criminal Appeal No.79782-J/2022**

**Zafar      vs      The State**

**Criminal Appeal No.79783-J/2022**

**Mazhar      vs      The State**

**Criminal Appeal No.79784-J/2022**

**Feroz      vs      The State**

**J U D G M E N T**

Date of hearing:	<b><u>20.02.2024</u></b>
Appellants by:	Mr. Akhtar Ali Haral, Advocate for Zafar (appellant in Crl. Appeal No.79782-J/2022), Mazhar (appellant in Crl. Appeal No.79783-J/2022) and Feroz (appellant in Crl. Appeal No.79784-J/2022).
State by:	Syed Farhad Ali Shah, Prosecutor General, Punjab, Ms. Nuzhat Bashir and Mr. Muhammad Arshad Farooqi, Deputy Prosecutors General, Punjab.
Complainant by:	Mr. Amjad Qayyum Baloch, Advocate.

**FAROOQ HAIDER, J.:-** This single judgment will dispose of **Crl. Appeal No.79782-J/2022** filed by Zafar (appellant) against his “conviction & sentence”, **Crl. Appeal No.79783-J/2022** filed by Mazhar (appellant) against his “conviction & sentence” and , **Crl. Appeal No.79784-J/2022** filed by Feroz (appellant) against his “conviction & sentence, as all these appeals have arisen out of one and the same judgment dated: 31.10.2022 passed by learned Addl. Sessions Judge, Lalian, District Chiniot/trial court.

2.      Zafar, Mazhar and Feroz (appellants in aforementioned appeals, hereinafter to be referred as appellants) were tried in case arising out of FIR No.431/2018 dated: 25.11.2018 registered under Sections: 302, 34 PPC at Police Station: Lalian, District Chiniot and trial court after conclusion of the trial has convicted and sentenced the appellants *vide* impugned judgment dated: 31.10.2022 as under:-

<u>Convictions</u>	<u>Sentences</u>
Under Section: 302 (b) PPC	<b>“Fourteen years”</b> each as <i>Ta’zir</i> with payment of compensation of Rs.1,00,000/- each to the legal heirs of Muhammad Hayat (deceased) under Section: 544-A Cr.P.C.  Benefit of Section: 382-B Cr.P.C. was also extended in favour of all the three appellants.

3. During pendency of the titled appeals, Zafar (convict/appellant) filed **Crl. Misc. No.1/2023**, Mazhar (convict/appellant) filed **Crl. Misc. No.1/2023** whereas Feroz (convict/appellant) preferred **Crl. Misc. No.2/2023** under Section: 345 of the Criminal Procedure Code, 1898 for verification of compromise between the parties and release of the appellants/convicts on the basis of compromise, whereupon said miscellaneous applications along with annexures were sent to the learned Sessions Judge, Chiniot to enquire the genuineness of the compromise between the parties, record statements of the legal heirs of the deceased and also to confirm that interest of the minor legal heirs, if any, was duly secured and safeguarded. In compliance thereof, learned Sessions Judge, Chiniot, furnished reports bearing letter No.1757/D-4 dated: 30.10.2023 (in Crl. Appeal No.79782-J/2022), bearing letter No.1755/D-4 dated: 30.10.2023 (in Crl. Appeal No.79783-J/2022) and bearing letter No.1756/D-4 dated: 30.10.2023 (in Crl. Appeal No.79784-J/2022) detailing therein that after obtaining reports from Tehsildar/AC-1, Lalian and Station House Officer, Police Station: Lalian, District Chiniot, he came to the conclusion that Muhammad Hayat (deceased) was survived by the following legal heirs: -

<b>Sr. No.</b>	<b>Name of the legal heirs</b>	<b>Relationship with the deceased</b>
1.	Mst.Fatima	Widow
2.	Mst. Khatoon	Widow
3.	Muhammad Asad	Son
4.	Mst. Saima Bibi	Daughter
5.	Mst. Iram	Daughter
6.	Mst. Kiran	Daughter
7.	Zulifqar	Brother

8.	Mst. Nooran Bibi	Sister
9.	Mst. Khairan/Muneeran Bibi	Sister
10.	Mst. Shehnaz	Sister
11.	Muhammad Uqba	Bhanja
12	Mst. Samina Bibi	Bhanji

4. According to said reports, surviving legal heirs of Muhammad Hayat (deceased of the case) are two widows namely Mst. Fatima and Mst. Khatoon, son namely Muhammad Asad, daughters namely Mst. Saima Bibi, Mst. Iram and Mst. Kiran, brother namely Zulifqar, sisters namely Mst. Nooran Bibi, Mst. Khairan/Muneeran Bibi and Mst. Shehnaz, nephew (*Bhanja*) namely Muhammad Uqba and niece (*Bhanji*) namely Mst. Samina Bibi; said reports further reveal that all of them except Zulifqar and Mst. Khairan Bibi/Muneeran Bibi (brother and sister of the deceased, respectively) have entered into compromise with the appellants with their free will and consent and without any coercion and have forgiven them (convicts/appellants) in the name of Allah Almighty by waiving their right of *Qisas* and *Diyat* and have no objection if they are acquitted from this case on the basis of compromise. In above scenario, learned Sessions Judge, Chiniot submitted that compromise is incomplete because two legal heirs namely Zulifqar and Khairan Bibi/Muneeran Bibi (brother and sister of the deceased, respectively) have got recorded their statements with the averments that they have not entered into compromise with the appellants/convicts. However, being not satisfied with the aforementioned reports, fresh reports were requisitioned from learned Sessions Judge, Chiniot, *vide* order dated: 24.01.2024 passed by this Court with the direction to prepare list of legal heirs of the deceased now competent to enter into compromise in the case and in pursuance of the same, learned Sessions Judge, Chiniot has furnished fresh reports bearing letter No.226/D-4 dated: 30.01.2024 (in CrI. Appeal No.79782-J/2022), letter No.227/D-4 dated: 30.01.2024 (in CrI. Appeal No.79783-J/2022) and letter No.228/D-4 dated: 30.01.2024 (in CrI. Appeal No.79784-J/2022) again on the similar footings while mentioning/clarifying therein that Rehman (father of the deceased) died before the murder of Muhammad Hayat

(deceased), however, Fatima Bibi (mother) died after the occurrence and she (Fatima Bibi) was survived by one son namely Zulifqar and four daughters namely Nooran Bibi, Khairan, Shehnaz and Bakhtan, one paternal grandson namely Muhammad Asad, three paternal granddaughters namely Saima Bibi, Iram and Kiran; said pedigree table further reflected that Bakhtan (fourth daughter of Fatima Bibi/sister of Muhammad Hayat deceased) also died after the occurrence leaving two children namely Muhammad Uqba and Samina Bibi and finally it was again mentioned in said reports by learned Sessions Judge, Chiniot that compromise has not been effected between the appellants and all the legal heirs of Muhammad Hayat (deceased).

5. Learned counsel for the appellants submits that Rehman (father of the deceased) and Mst. Fatima Bibi (mother of the deceased) have died whereas remaining legal heirs of the deceased i.e. both widows, son and daughters of the deceased have entered into compromise with all the three appellants who have been convicted under Section: 302 (b) PPC and sentenced under *Ta'zir*, therefore, compromise has been effected in accordance with law and reports of learned Sessions Judge, Chiniot while mentioning that compromise is incomplete because one brother and one sister of the deceased have not entered into compromise is against the settled principles of law on the subject, therefore, to said extent said reports are not having any legal value and as such are liable to be ignored. Learned counsel finally prays for acceptance of these appeals and acquittal of the appellants on the basis of compromise.

6. Learned Prosecutor General, Punjab assisted by learned Deputy Prosecutors General, Punjab submits that in this case, deceased is survived by son, daughters and two widows and though at the time of murder of Muhammad Hayat (deceased), his mother namely Fatima Bibi was also his legal heir but after her death, now only direct surviving legal heirs of Muhammad Hayat (deceased) can effect compromise because punishment has been awarded under *Ta'zir* and in such backdrop, sisters, brother, nephew and niece cannot be termed as surviving legal heirs of the deceased; finally submits that reports of learned Sessions Judge, Chiniot to

said extent are misconceived, however, submits that since offence under Section: 302 (b) PPC is compoundable and same has rightly been compounded by surviving legal heirs of the deceased, therefore, in the peculiar facts and circumstances of the case, he has no objection on the acceptance of these appeals and acquittal of appellants/convicts in this case on the basis of compromise.

7. Learned counsel for the complainant while adopting/supporting arguments advanced by learned counsel for the appellants as well as learned Prosecutor General, Punjab assisted by learned Deputy Prosecutors General, Punjab, submits that he has no objection on acceptance of these appeals and acquittal of the appellants.

8. **Arguments heard. Record perused.**

9. Admittedly in this case, appellants have been convicted under Section: 302 (b) PPC and sentenced as *Ta'zir*. It is trite law that direct surviving legal heirs of the deceased are quite competent to effect compromise under Section: 345 (2) Cr.P.C. where punishment has been passed as *Ta'zir*. In this case, Mst. Fatima and Mst. Khatoon (two widows of the deceased), Muhammad Asad (son), Saima Bibi, Iram and Kiran (daughters of the deceased) are the only surviving legal heirs of the deceased as Rehman and Mst.Fatima Bibi (father and mother of the deceased, respectively) have died. It is worth mentioning here that Rehman (father of the deceased) died prior to murder of the deceased, however, though Mst.Fatima Bibi (mother) died after the occurrence yet her legal heirs cannot be termed as legal heirs of Muhammad Hayat (deceased) by any stretch of imagination for the purpose of compromise in this case. In this regard, guidance has been sought from the dictum laid down by the larger Bench of Supreme Court of Pakistan in case titled as **“MUHAMMAD YOUSAF versus THE STATE and others.”** (PLD 2019 Supreme Court 461); relevant paragraphs of said judgment are hereby reproduced for ready reference:-

**“7. It is not disputed that the case in hand is a case of Ta'zir and not of Qisas because the proof required for a case of Qisas in terms of section 304, P.P.C. was not adduced in this case before the trial court. It may be clarified here that a criminal case becomes a case of Qisas when, after the case has reached the trial court, either a confession is**

made by the accused person before the trial court during the trial or Tazkiva-tul-shahood (scrutiny of the witnesses before trial of the accused person) is undertaken by the trial court and unless either of the said two things happen before the trial court every criminal case is to be treated as a case of Ta'zir at every stage of the case including the stage of investigation. Compounding of offences in cases of Ta'zir is governed by section 345, Cr.P.C. and according to section 345(2), Cr.P.C. (as the said legal provision stood in the year 2005 when the offences in the present case had been committed) the offence of qatl-i-amd under section 302, P.P.C. could be compounded with the permission of the relevant court "By the heirs of the victim other than the accused or the convict if the offence has been committed by him in the name or on the pretext of karo kari, siyah kari or similar other customs or practices". The said legal provision was amended on 21.10.2016 and it presently reads as "By the heirs of the victim subject to the provisions of section 311, P.P.C.."  
According to the law in this country succession opens at the time of death of a person and upon his death his assets automatically stand devolved upon those who are entitled to inherit from him in specified shares in terms of his personal law and such inheriting persons are called the heirs of the deceased. There is, thus, no confusion in our law that an heir is a person who is entitled to inherit from the deceased at the time of his death. In view of this settled and recognized principle when the law of the land provides that in a case of Ta'zir an offence of qatl-i-amd under section 302, P.P.C. may be compounded by the "heirs of the victim" and when an heir of a victim is only a person who inherits directly from the victim then what is clearly meant by section 345(2), Cr.P.C. is that only a person who can directly inherit from the victim is the person who can compound the offence of qatl-i-amd of the victim and none else."

"10. In the present case of Ta'zir the offence of murder of Muhammad Aslam could be compounded only by the heirs of the said victim and all the surviving heirs of that victim had voluntarily compounded the said offence with respondents Nos.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 the matter of compounding of the offence."

"11. The argument that in his lifetime Warvam, the father and one of the heirs of Muhammad Aslam deceased, had refused to join the compromise between the remaining heirs of the deceased and respondents Nos. 2 and 3 and, therefore, after the death of Warvam any compromise between the remaining heirs of Muhammad Aslam deceased and the said respondents could not be complete without the heirs of Warvam joining the same had failed to impress the High Court and we have also not felt persuaded to accept the same. As already observed above, the concept of devolving of the right of Qisas upon an heir of an heir/wali of the victim relevant to a case of Qisas is not applicable to cases of Ta'zir. In the absence of any devolving of the capacity to compound in a case of Ta'zir the capacity to compound possessed by an heir of the victim at the time of murder of the victim stands exhausted upon the subsequent death of that heir. Being the father and an heir of Muhammad Aslam deceased Warvam had a capacity to compound the relevant offence but he had not compounded the offence during his own lifetime and upon Warvam's death his capacity to compound stood exhausted and the same was not heritable as Warvam's heirs were not heirs of Muhammad Aslam deceased because they did not, and could not, inherit from him. After Warvam's death his heirs could not be treated as heirs of Muhammad Aslam deceased and the only heirs of

Muhammad Aslam deceased left in the field at such stage were those surviving heirs of Muhammad Aslam deceased who could inherit directly from him and they could compound the offence throughout their lifetime irrespective of timing of Warvum's death. In cases of Ta'zir section 345(2), Cr.P.C. does not specify any time when compounding of an offence may take place and the provisions of section 345(2), Cr.P.C. do not place any embargo upon compounding of the relevant offence by the surviving heirs of a victim at a time when one or more of the heirs of the victim has/have already died. Placing an embargo upon the surviving heirs of a victim in such a situation may amount to committing violence upon the provisions of section 345(2), Cr.P.C. which we are not ready to commit."

"15. As a result of the discussion made above we have not been able to take any legitimate exception to the impugned judgment passed by the Lahore High Court, Multan Bench, Multan. The case in hand was not a case of Qisas but was of Ta'zir. Under the Islamic law of inheritance the brothers of Muhammad Aslam deceased in this case did not inherit from the deceased directly and even when the father of Muhammad Aslam deceased, an heir of the said deceased, subsequently died the brothers of Muhammad Aslam deceased, including the present appellant, did not become Muhammad Aslam deceased's heirs because they stood excluded by a surviving son of Muhammad Aslam deceased who was closer to the deceased in degree in the matter of inheritance. In this case of Ta'zir only the heirs of the deceased could compound the offence of murder and the appellant and his brothers, all brothers of Muhammad Aslam deceased, did not and could not inherit from Muhammad Aslam deceased either directly or through their father and, thus, they never qualified as "heirs of the victim" for the purposes of section 345(2), Cr.P.C. This appeal is, therefore, dismissed."

*(emphasis added)*

Though as per reports of learned Sessions Judge, Chiniot (mentioned above), compromise is incomplete between the legal heirs of the deceased and the appellants because Zulifqar and Mst. Khairan Bibi (brother and sister of the deceased, respectively) have not entered into compromise, however, keeping in view the dictum laid down in **Muhammad Yousaf's case** (*supra*), Zulifqar and Mst. Khairan Bibi (mentioned above) are not legal heirs of Muhammad Hayat (deceased of the case) for the purpose of compounding the offence as this is case of *Ta'zir*, so aforementioned reports of learned Sessions Judge, Chiniot to said extent are misconceived and as such discarded.

Learned counsel for the appellants, learned Prosecutor General, Punjab assisted by learned Prosecutors General, Punjab as well as learned counsel for the complainant are not at variance for sanctioning the approval to the compromise reached between the appellants and aforementioned surviving legal heirs of Muhammad Hayat (deceased). Statements of above said legal heirs of the deceased reflect that the compromise between the

appellants and above said legal heirs is genuine and they have arrived at a compromise with their free will and without any duress or coercion. In view thereof, when the proposed compromise between legal heirs of the deceased and appellants is likely to promote the cause of peace in the locality/society as well as betterment of present and coming generations of the parties and particularly when no element of “*Fisad-fil-Arz*” within the meaning of Section: 311 PPC has been found from the facts and circumstances of the case, then it is appropriate to grant permission/leave for effecting the compromise within the meaning of Section: 345 (2) (5) Cr.P.C. Hence, permission/leave for effecting compromise between the appellants and legal heirs of the deceased is granted by allowing the application bearing Crl. Misc. No.1/2023 {filed by Zafar (appellant) in Crl. Appeal No.79782-J/2022}, application bearing Crl. Misc. No.1/2023 {filed by Mazhar (appellant) in Crl. Appeal No.79783-J/2022} and application bearing Crl. Misc. No.2/2023 {filed by Feroz (appellant) in Crl. Appeal No.79784-J/2022}. Accordingly, titled appeals bearing **Crl. Appeal No.79782-J/2022**, **Crl. Appeal No.79783-J/2022** and **Crl. Appeal No.79784-J/2022** are also accepted, as a result whereof, convictions recorded and sentences awarded to Zafar, Mazhar and Feroz (appellants) *vide* judgment dated: 31.10.2022 passed by learned Additional Sessions Judge, Lalian, District Chiniot/trial court, are hereby set-aside, Zafar, Mazhar and Feroz (appellants/convicts) are acquitted of the charge within the meaning of Section: 345 (6) Cr.P.C. in case arising out of F.I.R. No.431/2018 dated: 25.11.2018 registered under Sections: 302, 34 PPC at Police Station: Lalian, District Chiniot. Appellants will be released forthwith if not required in any other case.

**(Farooq Haider)**  
**Judge**

**“Approved for reporting.”**

**(Farooq Haider)**  
**Judge**

This judgment has been dictated, pronounced,  
prepared and signed on 20.02.2024.

\*Asif\*