

Judgment sheet.
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

Cr. Appeal No.S-221 of 2009.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For regular hearing.

Date of hearing: 24 .08.2017.

Date of judgment: 24.08.2017.

Appellant: Through Syed Madad Ali Shah, Advocate

The State Through Mr. Shahid Ahmed Shaikh, D.P.G.

None present for complainant.

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J U D G M E N T :-

ABDUL MAALIK GADDI, J :- SHO of PS Saeedabad has reported in writing alongwith Death Registration Certificate issued by NADRA to the effect that appellant No.2 Walidino son of Muhammad Hayat Suhibjo has been expired, report is taken on record. The proceedings against appellant No.2 Walidino is ordered to be abated.

2. However, through instant appeal, the appellant Rehmatullah has assailed the legality and propriety of the judgment dated 12.10.2009 passed by learned Ist Additional Sessions Judge, Hyderabad in Sessions Case No.688 of 1997 (Re:State vs Rehmatullah and another), emanating from Crime No.10 of 1997 for offence under sections 451(2), 457, 324, 337-F(i) PPC, registered at P.S. Saeedabad, whereby the learned trial court after full-dressed trial convicted and sentenced the appellant as stated in the findings on para No.14 of the impugned judgment, which reads as under:-

“14- Perusal to the above discussion, I arrived to this conclusion that prosecution has succeeded to prove its case, beyond the shadow of doubt, resultantly following sentences are awarded to both the accused:-

1. Under section 457 PPC 05- years R.I each and fine Rs.10,000/-each in default of fine 03-years S.I each.
2. Under section 451 R.I for 02-years each and fine Rs.10,000/-each, in default of fine 01-year S.I each.
3. Under section 337-F(i) PPC R.I for 1-year each and daman amount Rs.10,000/-payable to the victim by each accused total Rs.20,000/-. In default 06-months S.I to each accused.”

3. Brief facts of the case of prosecution as disclosed in the FIR are that complainant Akber alias Akan on 22.3.1997 registered FIR, stating therein that he is residing alongwith his brother Jamal Khan, Sher Muhammad Khan, Haji Vikio Khan and maternal uncle Sajan Khoso. They own buffaloes, bullock and goats and they keep guard over their houses during night time. On 21.3.1997 complainant and his maternal cousin Muhammad were keeping guard over their houses when at about 3-00 a.m. two persons came in the house and stood near cattle. They identified those persons on the light to be Khadim Ali Suhibjo and Waloo. They raised hakals and the said persons started running. Complainant party raised cries and chased them, they found that third person was standing outside and he has started running with them, he was identified on torch light as Rehmatullah Suhibjo and was having country made pistol. Khadim Ali was armed with lathi, whereas Waloo was armed with hatchet Muhammad Khoso went near thieves and tried to catch to them. Khadim Ali caused lathi blow to him, whereas Rehmatullah fired at him which missed. Muhammad Khoso in his defence caused hatchet blow to Khadim Ali. Complainant also caused lathi blow to Khadim Ali, who fell down and Muhammad Khoso caught hold of him who died then and there, while accused Walidino

and Rehmatullah made their escape good. In the meantime Jamal Khan and Sajan reached there. Complainant left those persons over dead body and he himself went to inform their nekmard Ghulam Ali Khoso and subsequently complainant lodged FIR.

4. It is stated by the learned counsel for the appellant that on merit though the appellant has a good case for his acquittal on the ground that case of the prosecution is false and the evidence of the prosecution witnesses are on record, is contradictory to each other. He further submits that the appellant is facing agony of protracted trial since 1997 without his fault. According to him this appeal has been filed in the year 2009 and appellant is appearing in Court for the last 20 years, therefore, he would be satisfied and shall not press this appeal on merit, if the sentences awarded to the appellant by the learned trial court are reduced to the period which he has remained in jail and the fines are remitted. Per learned counsel the appellant has remained in jail for a considerable period. Thereafter, the appellant was granted bail by this Court under section 426 Cr.P.C vide order dated 02.11.2009 and since then appellant is attending this Court regularly and the appellant is in young age and he has no past criminal history. The appellant is only source for earning of his family.

5. Learned D.P.G after going through the record tenders no objection to above proposal.

6. I have thoroughly examined the record with the able assistance of learned D.P.G and Counsel for the appellant. In view of the record, I am of the opinion that the conviction of the appellant is based on cogent reasons. The appellant is first offender. No past criminal history against him is placed on record. He is young in age and remained in jail for a considerable period, therefore, in the present scenario of the case, the appellant has been sufficiently punished. Under these circumstances, he needs to be given chance in his life to rehabilitate himself.

7. Consequently, in view of above, I dismiss this appeal on merits, however, reduce the sentence to one already undergone by the appellant and fine is hereby remitted. Appellant is present on bail, his bail bonds stand cancelled and surety discharged.

JUDGE

Ahmed/Pa