

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
Cr. Appeal No.S-101 of 2004

| DATE | ORDER WITH SIGNATURE OF JUDGE |
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For regular hearing.

26-09-2017

Syed Shafique Ahmed Shah, Advocate for appellant a/w appellant.

Syed Meeral Shah DPG.

None present for complainant.

J U D G M E N T :-

ABDUL MAALIK GADDI, J- By means of this criminal Appeal, appellant has assailed the legality and propriety of the judgment dated 21.06.2004 passed by the learned Sessions Judge, Mirpurkhas in Sessions Case No.62 of 2001 (Re: Muhammad Sultan & another), whereby the learned trial court after full-dressed trial convicted and sentenced the appellant/accused for offence punishable U/S 337-D and 337-A(ii) PPC to suffer RI for a period of 05 years on each count and Arish amounting to Rs.80,000/-, and for offence U/S 337-F(i) PPC to suffer RI for a period of 6 months more and Daman amounting to rs.3000/-on each count. All the sentences shall run concurrently. However, the benefit of section 382-B Cr.P.C was extended to the appellant/accused.

3. Briefly narrated the facts of the prosecution case as disclosed in the FIR lodged by complainant Asghar Ali on 26.11.1998 at

2050 hours, are that there was dispute between him and his cousins namely Muhammad Afzal s/o Muhammad Haneef and Muhammad Sultan s/o Pir Muhammad Arain on the lands of his uncle late Abdul Aziz. About 8/9 days before the incident, widow of Abdul Aziz had died, on which he, his brother Anwar Ali and cousin Manzoor Ali, went to Maqbool Ahmed in Ammerabad, for FATIHA at about 05:30 pm, where Maqbool Ali was not available. Muhammad Afzal and Muhammad Sultan were already present there. They offered FATIHA. Thereafter Afzal and Sultan told them why they had come, they replied to have come for offering FATIHA. It is further alleged that after this, Muhammad Afzal took out a Dagger from his fold and started causing Dagger blows on the left under arm of complainant's brother Anwer Ali, while Sultan caused lathi blows to Manzoor Ali. Abdul Majeed and Abdul Shakoor came there and rescued them from the accused. After leaving the injured in the hospital, he lodged the FIR.

4. It is stated by the learned counsel for the appellant that on merits 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 2001 without his fault. According to him this appeal has been filed in the year 2004 and appellant is appearing in Court for the last 13 years,

therefore, he would be satisfied and shall not press this appeal on merits, if the sentence awarded to the appellant by the learned trial court is reduced to the period which he has remained in jail. Per learned counsel appellant has remained in jail for the period of about two years. Thereafter, the appellant was granted bail by this Court under section 426 Cr.P.C vide order dated 19.05.2006 and since then appellant is attending this Court regularly and the appellant is very old aged having 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 old in age, who remained in jail for a considerable time, 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, the appellant deserves leniency. While taking lenient view, I dismiss this appeal on merits; however, reduce the sentence to one already undergone by the appellant and fine

so imposed against him by the trial court is hereby remitted. Appellant is present on bail, his bail bonds stand cancelled and surety discharged.

JUDGE

Ahmed/Pa