

JUDGMENT SHEET  
**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT, HYDERABAD.  
Cr. Appeal No.S-50 of 2004

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

For regular hearing.

**26-09-2017**

Appellants Muhammad Essa and Mevo are present on bail.

Mr. Hidayatullah A. Abbasi, Advocate for appellants.

Syed Meeral Shah DPG .

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

**ABDUL MAALIK GADDI, J-** It is stated by the learned counsel for the appellants that appellant Sher Khan son of Mir Hassan has been died by his natural death during pendency of this appeal, sufficient report is on record also affirms that appellant No.3 Sher Khan has been expired and proceedings against deceased Sher Khan has already been ordered to be abated vide order dated 30.4.2015.

2. By means of this criminal Appeal, appellants assailed the legality and propriety of the judgment dated 04.03.2004 passed by the learned IVth Additional Sessions Judge, Hyderabad in Sessions Case No.556 of 1997 (Re: Muhammad Essa and others), whereby the learned trial court after full-dressed trial convicted and sentenced all the accused persons to suffer RI for 10 years each for the offence punishable under section 336 Q & D, R.I for two years each for offence punishable U/S 337-F(i) Q & D and R.I for two years for offence punishable U/S 504

PPC. All the sentences shall run concurrently and the accused were directed to pay Rs.10,000/-each as daman to the injured Haji Mehmood and in case of their failure to pay the same, the accused shall suffer RI for three months more each. However, the benefit of section 382-B Cr.P.C was extended to the accused for the period which they already remained in jail.

3. Brief facts of the prosecution case as unfolded in the FIR briefly are that the complainant and his brother Haji Mehmood alongwith their family are residing in village Ali Murad Jamali Taluka Hala. They are zamindars and his younger brother Haji Mehmood has also a cement and iron shop at Bakhar Mori. About 7/8 months ago his brother Haji Mehmood had purchased a plot from Haji Gul Muhammad Jamali in the sum of Rs.60,000-00, which transaction was objected brother of Haji Gul Muhammad namely Sher Khan on the ground that he intends to purchase the same, to which the complainant party informed that the plot was purchased with consent of Haji Gul Muhammad for valuable consideration and such faisla was also made by the nekmards Haji Kamil Khan Jamali. On the said plot rooms are already constructed and brother of the complainant Haji Mehmood recently had constructed a boundary wall. On 26.9.1996 the complainant and his brother Haji Mehmood were standing in the public street near the disputed plot when at about 9-00 a.m. accused Sher Khan

armed with hatchet, Mevo armed with lathi and Essa armed with double barrel gun all residents of Ali Murad Jamali came there. The accused Sher Khan gave abuses to complainant and his brother and asked them that he had already prevented them from purchasing the plot but inspite of that they purchased the plot. On this Haji Mehmood restrained accused Sher Khan from giving abuses, upon which the accused Sher Khan started causing hatchet blows to Haji Mehmood while accused Mevo gave lathi blows to Haji Mehmood. The complainant raised cries and tried to rescue his brother. On cries PWs Haji Ameen and Abdul Salam came there. The accused on seeing them went away abusing the complainant party while accused Essa made firing from his gun in air. Thereafter the complainant brought the injured Haji Mehmood at Hospital at Saeedabad and went to PS Saeedabad and lodged the report. The above named accused persons on account of a dispute over a plot have caused lathi and hatchet injuries to Haji Mehmood on his head and arms.

4. It is stated by the learned counsel for the appellants that on merits though the appellants have a good case for their 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 appellants facing agony of protracted trial since 1997 without their fault. According to him this appeal has been filed in the

year 2004 and appellants are 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 appellants by the learned trial court is reduced to the period which they have remained in jail. Per learned counsel appellants have remained in jail for a considerable period. Thereafter, the appellants were granted bail by this Court under section 426 Cr.P.C vide order dated 26.05.2004 and since then appellants are attending this Court regularly and the appellants are very old aged having no past criminal history. The appellants are only source for earning of their 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 appellants. In view of the record, I am of the opinion that the conviction of the appellants is based on cogent reasons. The appellants are first offender. No past criminal history against them is placed on record. They are very old in age, who remained in jail for a considerable time, therefore, in the present scenario of the case, the appellants have been sufficiently punished. Under these circumstances, they need to be given chance in their life to rehabilitate themselves.

7. Consequently, in view of above, the appellants deserve leniency. While taking lenient view, I dismiss this appeal on merits; however,

reduce the sentence to one already undergone by the appellants and fine is hereby remitted. Appellants are present on bail, their bail bonds stand cancelled and surety discharged.

JUDGE

Ahmed/Pa