

**IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.**

Criminal Appeal No.S-33 of 2017

Date of hearing: 08.05.2017

Date of decision: 08.05.2017

Appellants : Pir Bux and another  
Through Mr. Karamullah Memon, Advocate.

Respondent : The State  
Through Mr. Shahid Ahmed Shaikh, A.P.G  
-.-.-.-.-.

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

**ABDUL MAALIK GADDI, J** – The appellants have impugned the judgment dated 31.01.2017 passed by the learned Additional Sessions Judge Khipro in Sessions Case No.303/2016 pertaining to crime No.33/2016 u/s 324, 337-H(ii), 504 PPC P.S. Khahi District Sanghar, whereby the appellants were convicted and sentenced on various counts / offences as stated as under:-

The accused Pir Bux and Abi @ Hassan Mari are convicted u/s 265-H(2) Cr.P.C. and sentenced as follows:-

1. Accused Pir Bux and Abi @ Hassan sentenced for the offence u/s 504 r/w Section 34 PPC to suffer R.I. for (01) one year each.
2. Accused Pir Bux sentenced for the offence punishable u/s 337-H(2) PPC and sentenced to suffer RI for (02) two months.
3. Accused Abi @ Hassan is convicted for the offence punishable u/s 324 PPC and sentenced to suffer RI for (02) two years and fine of Rs.20,000/- (Rupees twenty thousand only) and in case of failure thereof to undergo S.I for six months more. He is convicted for the offence punishable u/s 337-A(ii) PPC and

directed to pay Arsh Rs.84,016/- (5% of Diyat) to injured victim Muhammad Bakhtas provided u/s 337-Z PPC and to suffer (02) two years RI as Tazir. He is also convicted for the offence punishable u/s 337-L(2) to suffer RI for (01) one year. In case of failure to pay the Arsh, the convict Abi @ Hassan shall be dealt with as provided u/s 337-X PPC.

All the sentenced awarded to both accused as Tazir shall run concurrently. Benefit of Section 382-B Cr.P.C. is also extended to both accused Pir Bux and Abi @ Hassan and their earlier detention period in this case shall be counted in a sentence awarded to them as above. It is further clarified that accused Pir Bux is also convicted in S.C. No.227/2016, Crime No.34/2016 u/s 23(1) (a) SAA of PS Khahi and the sentences awarded in both sessions cases shall run concurrently as provided in Section 397 Cr.P.C.

2. The brief facts of the prosecution story as per FIR are that on 16.07.2016 complainant Lal Bux Mari appeared at PS Khahi, lodged FIR, alleged therein that he had restrained Abi @ Hassan Mari from crossing in front of his house. On 15.07.2016 complainant and his sister's sons namely Khalid and Bakht were present on the path adjacent to their house when at about 1600 hours accused Abi @ Hassan and Pir Bux came on 125 motorcycle while accused Sher Khan and one unidentified came on black colour china motorcycle via path of houses of complainant party, to whom complainant party restrained to which accused abused, thereafter all the accused got down from their motorcycles. It is further alleged that accused Abi @ Hassan took hatchet from his motorcycle while accused Pir Bux took out pistol from fold of his Shalwar and made aerial fire, meanwhile accused Abi @ Hassan caused blow and sharp side hatchet blows to PWs Bakht on his head and other parts of body and unidentified accused inflicted knife blow to PW Bakht to commit his murder and accused Sher Khan took lathi from his motorcycle and caused lathi

blows to Khalid. The complainant party offered resistance in which accused Abi @ Hassan and Pir Bux sustained injuries. On commotion the villagers came there running and having seen them accused went away while making aerial fires by making sit accused Abi @ Hassan on motorcycle.

3. It appears from the record that learned Trial Court after full dressed trial convicted and sentenced the appellants as stated above.

4. Today, this appeal is fixed for final arguments. Learned Counsel for the parties have been heard but after hearing the learned counsel for the parties at some length learned counsel for appellants submitted that on merits though the appellants have a good case for their acquittal, but they are facing the agony of protracted trial since 2016, therefore, according to him, he would be satisfied and shall not press this appeal on merits if the sentences awarded to the appellants by the learned Trial Court is reduced to the period which they have remained in Jail. It is stated by the learned A.P.G that the appellants are in Jail since 17.07.2016.

5. Learned A.P.G has also raised no objection on the above proposition.

6. I have thoroughly examined the record. I am of the view that the conviction of the appellants is based on cogent reasons. The appellants are in jail since 17.07.2016 which appears that the appellants have been sufficiently punished. The appellants are first offenders. No past criminal history against them is placed on record.

7. Consequently, the conviction is maintained, however, the sentences awarded to the appellants by the Trial Court are reduced to

one which the appellants have already undergone and the fine of Rs.20000/-to appellant Abi alias Hassan is reduced to Rs.5000/-.

8. As far as the payment of Arsh Rs.84016/- for payment to injured victim Bakht Ali as provided under Section 337-Z PPC is concerned, in this respect learned counsel for the Appellant Abi alias Hassan submits that he is poor person and cannot afford to pay the Arsh amount at one time, as such, he has prayed that appellant Abi alias Hassan may be allowed to pay the amount of Arsh in 9 equal installments on monthly basis. The appellant Abi alias Hassan is directed to pay the said amount in 09 equal monthly installment before the Additional Registrar of this Court and in this connection he is directed to furnish surety in the sum of Rs.84016/- and P.R Bond in the like amount to the satisfaction of Additional Registrar.

9. The appellant Pir Bux shall be released forthwith if not required in any other case whereas appellant Abi alias Hassan shall be released forthwith if not required in any other case after payment of fine as mentioned above as well as furnishing surety equal to amount of Arsh Rs.84016/- before the Additional Registrar of this Court.

It is made clear that in case monthly installments towards Arsh amount as mentioned above have not been deposited before the Additional Registrar of this Court, the same shall be recovered through process of arrears of land revenue.

10. With the above modification in the sentence, Arsh and fine, this appeal is dismissed.

JUDGE