

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

Criminal Appeal No.S-164 of 2021

Date of hearing: 05.12.2022.
Date of Judgment 05.12.2022.

Appellant Ashique Hussain S/o Khair Muhammad
Through Mr.Yaseen Leghari Advocate

The State : Through Ms. Sana Memon, Asstt. P.G
Sindh.

JUDGMENT

Muhammad Saleem Jessar, J.- Through instant criminal appeal, above named appellant has assailed the judgment dated 30.08.2021, passed by learned Sessions Judge, Tando Allahyar, in Sessions Case No.115 of 2018 (re: The State v. Ashique Hussain), arising out of Crime No.58 of 2018, registered with P.S Chambar for offences under Sections 324 and 34, PPC, whereby he has been convicted and sentenced to undergo R.I for three years for offences under Sections 337-A(ii),337-A(iv) and 337-F(i), PPC and to pay daman and Arsh of Rs.416603/- to injured Ahmed and in case of default thereof he shall serve six months more. However, benefit of Section 382-B Cr.P.C was extended to the appellant.

2. At the very outset, learned Counsel for appellant submits that as per jail roll dated 02.12.2022, appellant has remained as under trial prisoner in Central Prison for about 14 months and 17 days without remission and has earned remission 15 months and four days and his unexpired sentence is four months and nine days upto 02.12.2022. He further submits that appellant is sole bread earner of his family; besides he has been facing hardships of the proceedings since inception of the case viz. 2018; therefore, he has sufficiently been punished. He next submits that per impugned judgment he has been awarded three years rigorous imprisonment, out of which he has served out major portion of said punishment and for remaining

period, he would not contest appeal on merits if this Court may consider the period he has already undergone.

3. Learned Assistant P.G Sindh has very candidly extended her no objection.

4. Heard and perused the record.

5. Perusal of record, it reflects that appellant after full dressed trial was convicted and sentenced to suffer R.I for three years and to pay Daman and Arsh of Rs.416603/- to injured vide impugned judgment. Per learned Counsel, the appellant has served out major portion of his sentence and being first offender and only bread earner of his poor family, his sentence may be considered to one already undergone by him. Per jail roll, the appellant has served out 02 years 07 months and 21 days including remission. The sentence served by appellant is sufficient to learn lesson from; therefore, I, while taking lenient view against appellant hold that appellant has made out his case where he deserves leniency being proposed by learned Counsel.

6. In view of above, I dismiss this appeal on merits and maintain conviction and sentence awarded to appellant by learned trial Court vide impugned judgment dated 30.08.2021; however, reduce the sentence awarded to appellant to one already undergone by him. As far as, Daman and Arsh amount of Rs.416603/- is concerned, the same shall be paid to injured by appellant, in case of default, appellant shall remain in jail S.I for three months instead of six months. Appellant is produced in custody and sent back to jail authorities with directions that he shall be released forthwith if he is not required in any other custody case; however, his release shall be subject to payment of Daman and Arsh amount as mentioned above, in default thereof, he shall remain in jail S.I for three months more. Appeal is disposed of accordingly.

JUDGE