

**HIGH COURT OF SINDH, CIRCUIT COURT  
AT HYDERABAD**

**Cr. Appeal No.S-202 of 2022**  
[Gul Sher @ Sher & another versus The State]

Date	Order with signature of Judge
Appellants :	Through Mr. Shahnawaz Ali advocate
Complainant:	None present
The State :	Through Mr. Nazar Muhammad Memon Addl: P.G
Date of hearing:	23.01.2024
Date of decision:	23.01.2024

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**ORDER**

**KAUSAR SULTANA HUSSAIN J.-** Through captioned appeal appellants have called into question judgment dated 12.11.2022 passed by learned II<sup>nd</sup> Additional Sessions Judge Badin in Sessions Case No.415 of 2021 [**The State versus Gul Sher @ Sher & Others**] outcome of Crime No.104 of 2021 registered at P.S Matli for offences punishable under Sections 324, 114, 504, 337-F(v), 337-A(i), 337-F(i), 337-L(ii) and 34 PPC, whereby they have been convicted and sentenced as follows:

- (i) **For offence under Section 324 read with Section 34 PPC:** Appellants have been convicted and sentenced to suffer R.I for five years with fine of Rs.50,000/- each and in case of default in payment thereof they have been directed to further suffer S.I for six months.
- (ii) **For offence under Section 504 read with Section 149 PPC:** Appellants have been convicted and sentenced to suffer R.I for six months with fine of Rs.2,000/- each and in case of default in payment thereof they have been directed to further suffer S.I for three months.
- (iii) **For offence under Section 337-F(v) read with Section 34 PPC:** Appellants have been directed to pay Daman of Rs.50,000/- each to injured-complainant Allah Bachayo @ Bacho.

- (iv) **For offence under Section 337-F(i) read with Section 34 PPC:** Appellants have been directed to pay Daman of Rs.10,000/- each to injured-complainant Allah Bachayo @ Bacho.
- (v) **For offence under Section 337-A(i) read with Section 34 PPC:** Appellants have been directed to pay Daman of Rs.10,000/- each to injured-complainant Allah Bachayo @ Bacho.
- (vi) **For offence under Section 337-L(ii) read with Section 34 PPC:** Appellants have been directed to pay Daman of Rs.2,000/- each to injured-complainant Allah Bachayo @ Bacho.

However, all the sentences have been ordered to run concurrently and appellants have been extended benefit of Section 382-B Cr.P.C. By means of impugned judgment the trial Court has also ordered that appellants will remain in jail till realization of Daman amount.

2. Facts of the case find elaborate mention in the memo of appeal as well as impugned judgment, hence there is no need to reproduce the same here for the sake of brevity. However, the allegation against the appellants as per FIR is that on 08.07.2021 they alongwith co-accused had caused injuries to complainant Allah Bachayo @ Bacho on account of some strained relations.

3. After registration of FIR both the present appellants were arrested and on completion of investigation challan was submitted before the competent Court of law, whereby co-accused were shown as absconders. On completion of necessary formalities the co-accused were declared as proclaimed offenders and the case against them was kept on dormant file, whereas the case against present appellants was proceeded. In support of their case prosecution examined five witnesses, who exhibited and acknowledged certain documents. Then prosecution's side was closed and statements of appellants as required under Section 342 Cr.P.C were recorded, wherein they denied the allegations of prosecution witnesses and claimed innocence, however, neither they examined themselves on Oath nor led any evidence in their defense. Finally the learned trial Court after hearing the arguments of parties convicted and sentenced the appellants, as mentioned supra.

4. Learned counsel for the appellants submits that appellants have served out their entire sentence and they are only behind the bar for want of Daman amount. He further submits that in compliance of Order dated 22.01.2024 the Daman

amount has been deposited with the Additional Registrar of this Court, hence, under instructions, he does not press this appeal on merit, therefore, office may be directed to issue release writ. He produced the receipt dated 22.01.2024.

5. I have heard the learned counsel for the appellants as well as learned Additional P.G and have perused the material available on record.

6. From the perusal of impugned judgment it appears that for offence under Section 324 read with Section 34 PPC the appellants were convicted and sentenced to suffer R.I for five years with fine of Rs.50,000/- each while for offence under Section 504 read with Section 149 PPC they were convicted and sentenced to suffer R.I for six months with fine of Rs.2,000/- each and in case of non-payment of fine amount they had to further suffer S.I for six and three months respectively; however, all the sentences were ordered to run concurrently and they were also awarded benefit of Section 382-B Cr.P.C. Besides the appellants were directed to pay Daman amount of Rs.50,000/-, 10,000/-, 10,000/- and 2,000/- each (**Total Rs.1,44,000/-**) to injured-complainant for offences under Sections 337-F(v), 337-F(i), 337-A(i) and 337-L(ii) read with Section 34 PPC respectively and it was ordered by the trial Court that appellants will remain in jail till realization of Daman amount.

7. However, from the perusal of jail roll dated 26.12.2023, furnished by Senior Superintendent Central Prison Hyderabad, it appears that appellants have served 02 years, 05 months and 11 days of their sentence and earned remissions of 03 years, 11 months and 12 days and on calculation the total whereof becomes **06 years, 04 months and 23 days**, which is beyond the sentence(s) awarded to the appellants by way of impugned judgment and also covers the sentence required to be served by the appellants in case of non-payment of fine amount and now the appellants are only behind the bar for want of Daman amount, but the receipt produced by the learned counsel for the appellants shows that the required Daman amount of Rs.1,44,000/- has been deposited on behalf on behalf of the appellants before the Additional Registrar of this Court.

8. In view of above since the appellants have served out their entire sentence, awarded to them by the learned trial Court including the sentence required to be served by them in case of non-payment of fine amount and are only behind the bar for want of Daman amount which, as mentioned above, has been deposited on their behalf before the Additional Registrar of this Court, and the learned counsel for the appellants, under instructions, does not press this appeal on merit and praying for issuing of directions for release of appellants, therefore, there is no legal impediment to issue such directions. Accordingly, captioned appeal stands

dismissed as not pressed with directions to office to first verify the deposit of Daman amount, as required according to impugned judgment, on behalf of the appellants and then issue such intimation/release writ to concerned jail authorities in present crime. Office is further directed to disburse the Daman amount in favour of injured-complainant Allah Bachayo @ Bacho, however, subject to identification and verification in accordance with law.

**JUDGE**

Sajjad Ali Jessar