

JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Appeal No.S-09 of 2026
[Abdul Jabbar @ Pappu v The State]

Counsel of Appellant : Mr. Muhammad Yaseen Khaskheli, Advocate

Counsel of Respondents : Mr. Neel Parkash, Deputy Prosecutor General.
Mr. Nadeem Abbasi, Advocate for Complainant.

Date of Hearing : 16.09.2026

Date of Judgment : 29.09.2026

JUDGMENT

Muhammad Humayon Khan, J.: Through the instant Criminal Appeal, the appellant/accused Abdul Jabbar @ Papu has called in question the judgment dated 22-12-2025 passed by the learned First Additional Sessions Judge/MCTC, Sanghar, in Sessions Case No.509 of 2024, arising out of Crime No.115 of 2024, P.S. Sanghar, registered under Sections 394, 337-F(v) and 34 PPC, whereby he was convicted under Section 265-H(ii) Cr.P.C. for the offence punishable under Section 337-F(v) PPC and sentenced to pay daman of Rs.200,000/- to injured PW Qamar Zaman Nizamani, with the direction that in case of non-payment he shall remain in prison till payment thereof, whereas co-accused Abdul Rehman and Luqman were acquitted by extending them the benefit of doubt. The appellant, feeling aggrieved by his conviction and sentence, has preferred the present appeal seeking setting aside of the impugned judgment and his acquittal.

2. Briefly stated, the prosecution case is that on 15-05-2024 at about 10:00 p.m., complainant Suhrab Nizamani, accompanied by his brother Qamar Zaman Nizamani, was returning on motorcycle bearing registration No.HBC-9737 from the farmhouse of their uncle when, near the bungalow of Haji Pir Bakhsh Junejo on Sanghar-Mirpurkhas Road, they were allegedly intercepted by three persons riding a motorcycle. According to the complainant, the assailants initially had their faces covered, which became uncovered during resistance, whereupon they were identified as appellant Abdul Jabbar @ Papu and co-accused Abdul Rehman and Luqman. It was alleged that the appellant struck Qamar Zaman with the butt of a pistol on his right hand, while the co-accused took possession of the motorcycle and all three fled from the spot. The injured was thereafter taken first to the police station and then to Civil Hospital, Sanghar, where he was medically examined. Subsequently, the matter was reported to police and Crime No.115 of 2024 was registered at P.S. Sanghar under Sections 394, 337-F(v) and 34 PPC.

3. Upon completion of investigation, the accused were sent up for trial and a formal charge was framed, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined complainant Suhrab Nizamani, injured Qamar Zaman Nizamani, Dr. Abid Hussain Umrani and Investigating Officer SIP Lal Bahadur Pathan, besides producing the relevant medical and investigative documents. After closure of the prosecution evidence, statements of the accused under Section 342 Cr.P.C. were recorded, wherein they professed innocence and alleged false implication; however, they neither examined themselves on oath under Section 340(2) Cr.P.C. nor led any evidence in defence.

4. The learned First Additional Sessions Judge/MCTC, Sanghar, upon conclusion of the trial, vide judgment dated 22-12-2025, acquitted co-accused Abdul Rehman and Luqman by extending them the benefit of doubt, whereas the present appellant Abdul Jabbar @ Papu was convicted under Section 265-H(ii) Cr.P.C. for an offence punishable under Section 337-F(v) PPC and was directed to pay daman of Rs.200,000/- to injured Qamar Zaman Nizamani, with the consequence of remaining in prison until payment thereof. The appellant deposited the said amount on the same day, and was thereafter released. Feeling aggrieved by his conviction and sentence, he has preferred the instant Criminal Appeal.

5. Before proceeding to examine the merits of the appeal, learned counsel for the appellant, Mr. Muhammad Yaseen Khaskheli, was specifically queried as to whether, at the time of payment of daman before the learned trial Court, he had raised any objection or otherwise placed it on record that such payment was being made under protest and subject to the appellant's right to assail the conviction and sentence in appeal. Learned counsel answered in the affirmative. He was, therefore, further called upon to point out from the record any written application, statement, endorsement or other contemporaneous material, whether handwritten or otherwise, evidencing such protest or reservation of the appellant's right while making payment of daman. Learned counsel, however, could not draw the attention of this Court to any such material. I have myself carefully gone through the R&P of the learned trial Court. At page 205 thereof is the statement dated 22-12-2025 whereby injured Qamar Zaman acknowledged receipt of Rs.200,000/- towards daman in the presence of Mr. Muhammad Yaseen Khaskheli, learned counsel representing the accused before the trial Court, and Mr. Faisal Khan Nizamani, learned counsel for the complainant; yet, the said statement contains no endorsement, objection or protest suggesting that payment was being tendered subject to the appellant's right of appeal. More significantly, at page 211 of the R&P, Mr. Khaskheli himself made a statement/undertaking on behalf of accused Abdul Jabbar to pay the daman amount of Rs.200,000/-, again without recording any protest, qualification or reservation that such payment was being made subject to the right of appeal. Thus, notwithstanding the assertion now made before this Court, the contemporaneous trial Court record, as presently pointed out, does not

reflect that any such reservation or protest was recorded at the time the daman was undertaken to be paid or was actually received.

6. I have heard learned counsel for the parties on the preliminary question and examined the relevant trial Court record. The question is whether this appellant, having caused the whole of the only substantive punishment imposed upon him to be paid on the day of judgment, without a contemporaneous reservation and having obtained his release on that footing, can thereafter maintain an appeal to undo the conviction on which that very punishment rested. The question can be answered on the procedural record without deciding whether the prosecution proved the charge. I therefore express no view on the merits of the conviction.

7. A criminal judgment has two conceptually distinct stages. First, the Court determines the charge: an accused whom it finds guilty is convicted; one whom it finds not guilty is acquitted. Upon conviction, the Court determines the lawful consequence, or sentence, for the proved offence. Bryan A. Garner (ed.), Black's Law Dictionary, 9th ed. (2009), pp. 384 ('conviction') and 1485 ('sentence'), uses the terms in this sense. In *Abdul Aziz Siyal v. Javed and others* (Criminal Miscellaneous Application No. S-302 of 2019, High Court of Sindh, Sukkur Bench, decided 24.12.2021), this Court likewise distinguished the declaration of guilt from the ensuing decision on punishment, while discussing a probation order. The distinction matters here: payment of daman is performance of a sentence following conviction; it is not a substitute for a verdict of not guilty.

8. Section 53 PPC specifies the punishments available under that Code, including qisas, diyat, arsh, daman, ta'zir, death, imprisonment for life, rigorous or simple imprisonment, forfeiture and fine. Daman is judicially assessed compensation payable for hurt not liable to arsh (section 299(d) PPC); section 337-Y PPC governs its assessment, payment and the consequence of default. Section 337-F(v) PPC makes the offender liable to daman and permits imprisonment as an additional punishment. The trial Court here imposed daman alone; it did not award a substantive term of imprisonment. Its direction regarding custody operated only in default of payment. Since Rs.200,000/- was paid in full, that contingency did not arise and the punishment actually awarded stood wholly satisfied. Rehabilitation may inform a disposition such as probation under section 5 of the Probation of Offenders Ordinance, 1960; it is not a separate punishment enumerated in section 53 PPC. See *Adeel Rasheed v The State and another* PLD 2022 SC 795, in which the Supreme Court considered release on probation as a rehabilitative disposition following conviction.

9. Where substantive imprisonment is awarded, its execution proceeds by lawful custody unless a statutory provision postpones or suspends it or the Court makes another authorised order. Section 382-A Cr.P.C. concerns postponement of

execution in the limited cases of imprisonment described there, upon furnishing bail. Section 426(1) Cr.P.C. permits the appellate Court, for recorded reasons, to suspend execution pending appeal and, if the appellant is confined, to release him on bail or his own bond. Section 426 is a provision for suspension pending appeal, not a power to place an offender on probation. The probationary jurisdiction arises under the Ordinance of 1960. These distinctions prevent payment of a monetary sentence for immediate release from being treated as though the Court had suspended an unserved sentence. No order postponing or suspending execution is shown in the record of the payment now under consideration.

10. An appeal against conviction by an Additional Sessions Judge ordinarily lies to this Court under section 410 Cr.P.C.; section 423(1)(b) Cr.P.C. enables the appellate Court, in a competent appeal, to reverse both the finding and the sentence. The sentence depends for its legal foundation upon the conviction: if the conviction is judicially set aside, the sentence founded upon it must also fall, with consequential directions to be made as the law requires. The present appellant pleaded not guilty and was tried; the special restriction in section 412 Cr.P.C. for a conviction on a plea of guilty has no application. The point is instead whether the appellant's own unqualified implementation of the sole sentence, followed by release, forecloses the inconsistent course now proposed. Mere completion of a custodial term is not, by itself, the question decided in this appeal.

11. On the facts, there is no uncertainty about what was implemented. Page 211 of the R&P contains the undertaking given by Mr. Muhammad Yaseen Khaskheli, Advocate, on behalf of the appellant, to pay Rs.200,000/- as daman. Page 205 records the injured person's acknowledgment of its receipt on 22.12.2025 in the presence of counsel. Payment secured the appellant's release that very day. Neither entry records payment under protest, a reservation of the right of appeal, or an application to postpone or suspend the sentence. Counsel was afforded the opportunity in this appeal to identify any such contemporaneous material and could identify none. His present assertion cannot supply a qualification absent from the proceedings in which the sentence was discharged.

12. The closest reported authority is *Riaz Hussain v The State and others* (2022 P.Cr.LJ 1793. There, a convict paid the daman imposed upon him immediately after judgment, secured his release, and later obtained an acquittal in appeal. On examining the statutory scheme and the fact that the punishment had already been executed, the High Court held that his appeal had been incompetent and set aside the consequential acquittal and reimbursement orders. The decision also explains that invoking the sentencing Court's machinery to discharge diyat, arsh or daman and obtain release entails an election inconsistent with later seeking to undo the conviction. It is persuasive authority on the precise effect of the

immediate, complete and unqualified performance of a daman-only sentence; the material features of that holding are present here.

13. The later Division Bench decision in *Manzoor Hussain v The State and others* (2024 P.Cr.LJ 2036; PLJ 2024 Cr.C. 822 held that a trial Court could not create a procedure for depositing arsh and daman ‘under protest’ in order to release convicts, bypassing the statutory routes governing execution and suspension. That case involved a purported express reservation and additional imprisonment; it is cited for the narrower procedural point, and is not treated as deciding the facts of this appeal. The position here is clearer: no reservation at all was recorded, there was no substantive custodial term to suspend, and the only imposed daman was actually delivered to the injured person.

14. The principle against accepting the benefit of one course and then disavowing its foundation reinforces this conclusion. In *Attaullah v Abdur Razaq and another* PLD 2002 SC 534, the Supreme Court rejected contradictory positions taken by the same litigant on the competence of his own appeal. That decision concerns appellate forum, not payment of daman, and is relied upon only for its general rule against approbation and reprobation. The same doctrine of election is explained in Halsbury’s Laws of England, 4th ed. (Reissue), vol. 16, para. 957, p. 844: the taking of a benefit under one chosen course can preclude its subsequent inconsistent disavowal. These authorities do not dispense with the criminal statutes; they explain why the appellant’s undertaking, complete payment and release must be considered together when applying the directly relevant rule in Riaz Hussain.

15. In the particular circumstances established by the record, the appellant accepted the conviction’s only operative penal consequence through counsel, paid it in full without recorded objection, and obtained release upon its complete execution. He cannot retain the advantage of that concluded course while asking this Court to adjudicate an inconsistent challenge to the conviction on which it depended. The preliminary objection therefore succeeds. Criminal Appeal No. S-09 of 2026 is dismissed as not maintainable in these circumstances. The trial Court’s conviction and the already satisfied sentence remain undisturbed. Nothing in this judgment decides the evidence, the appellant’s guilt on an independent appraisal of the record, or the merits of any ground of appeal. Office shall transmit a copy of this judgment with the record to the learned trial Court in accordance with law.

JUDGE

APPROVED FOR REPORTING
FAISAL