

THE HIGH COURT OF SINDH AT KARACHI

Cr. Appeal.No.342 of 2024

a/w

Cr. Appeal.No.343 of 2024

Present

Mr. Justice Dr. Syed Fiaz ul Hassan Shah

Date of hearing: 24.09.2025

Date of Judgment 24.09.2025

Appellant : Shahzad S/o. Niaz Hussain
[Cr. Appeal No.342/2024] through Mr. Liaquat Ali Khan advocate

Appellant : Shahzad S/o. Niaz Hussain
[Cr. Appeal No343/2024] through Mr. Liaquat Ali Khan advocate

The State : Through Mr. Muhammad Noonari, D. P.G

JUDGMENT

Dr. Syed Fiaz Ul Hassan Shah, J.- Appellant Shahzad son of Niazs Hussain has impugned the judgment dated 27.04.2024 passed by learned Additional Sessions Judge-XIII, Karachi East, for offence under Sections 397/394/337-D & 337-F(iii) PPC as well as under Section 23(1)(a) of Sindh Arms Act, 2013, whereby after full-fledged trial, the appellant was convicted and sentenced to undergo various terms of imprisonments. Appellant was also extended benefit of section 382-B Cr.P.C.

2. After hearing at length, the learned Counsel for the appellants contend that he would be satisfied and shall not press instant appeals on merits, if the sentences awarded to the appellant is reduced to one already undergone by him. They further submit that appellants are poor persons and are only bread earner of his family, as such, while taking lenient view, his sentences may be reduced to one already undergone. Such proposal is not disputed by the learned Addl. P. G Sindh.

3. I have heard learned counsel for both appellants and learned DPG and perused the material available on record. In order to satisfy myself, I have re-

assessed the evidence of the prosecution at trial. In order to prove its case, prosecution has examined 07 witnesses, who have fully supported the prosecution case on its salient features viz. arrest of the appellant on the spot at committing robbery. However, during robbery complainant received gunshot injury. Prosecution witnesses were cross examined at length, but nothing favourable could be brought on record. I have therefore, come to the conclusion that prosecution has successfully proved its case against the appellant. Appellant is 27 years of ages at the time of recording his 342 Cr.P.C statement; He is not previous convicts and are only bread earners of his family. The jail roll of appellant dated 15.08.2024 depict that appellant has served sentence of 5 years and two months including remission.

4. Quantum of punishment is not only discretion of the Court, which has to be exercised while considering the circumstances of the case, but also is an independent aspect of Criminal Administration of Justice which, too, requires to be done keeping the concept of punishment in view.

5. Since, appellant is not pressing captioned appeals on merits but seeking reduction of sentences, therefore, I would examine the legality of such plea. Conceptually, punishment to an accused is awarded on the concept of retribution, deterrence or reformation so as to bring peace which could only be achieved either by keeping evils away (criminals inside jail) or strengthening the society by reforming the guilty. There are certain offences, the punishment whereof is with phrase "not less than" while there are other which are with phrase "may extend up to". Thus, it is quite obvious and clear that the law itself has categorized the offences in two categories regarding quantum of punishment. For one category the Courts are empowered to award any sentence while in other category the discretion has been limited by use of the phrase 'not less than'. Such difference itself is indicative that the Courts have to appreciate certain circumstances before setting quantum of punishment in first category which appear to be dealing with those offences, the guilty whereof may be given an opportunity of "reformation" by awarding less punishment which how low-so-ever, may be, will be legal. The concept of reformation should be given much weight because conviction normally does not punish the guilty only but whole of his family/dependents suffer too. A reformed person will not only be a better brick for society but may also be helpful for future by properly raising his dependents. In any event, in the case of **State through Deputy Director (Law), Regional Directorate, Anti-Narcotics Force vs. Mujahid Naseem Lodhi**

(PLD 2017 SC 671), in the matter of sentence, it is observed that "*in a particular case carrying some special features relevant to the matter of sentence a Court may depart from the norms and standards prescribed above but in all such cases the Court concerned shall be obliged to record its reasons for such departure.*"

6. The appellant has already acquitted in both cases of same nature of crime separately registered for snatching and illegal possession of weapon registered under Section 23(i) Sindh Arms Act, 2013 which were registered in same series of transaction just after fifteen [15] minutes. Let the appellant be provided a chance to improve himself.

7. Under the Pakistan Penal Code, particularly Chapter XVI-A is an Arsh sentence constitutes a form of compensation prescribed by Islamic injunctions for specific categories of hurt. As per Section 337-D, Arsh is awarded in cases where the injury falls within the ambit of defined bodily harm, and its quantum is determined in proportion to the nature and severity of the injury. In order to make Arsh sentence to be legally sustainable, the following conditions must be satisfied:

i- Proper Classification of Hurt: The injury must be categorically established under the relevant provisions of the PPC, such as Sections 337-A to 337-L, which enumerate various forms of hurt eligible for Arsh, Daman, or Diyat. **In Muhammad Aslam v. The State (PLD 2009 SC 18)**, the Supreme Court held that the classification of injury under the correct statutory provision is a sine qua non for awarding Islamic compensation.

ii- Cogent Medical Evidence: The nature, extent, and impact of the injury must be substantiated through reliable and expert medical testimony. **In Ghulam Mustafa v. The State (2017 SCMR 89)**, the Court emphasized that medical evidence must unequivocally support the prosecution's claim regarding the type of hurt inflicted, failing which the conviction and corresponding Arsh sentence cannot be upheld.

8. As with other penal sanctions, the burden lies on the prosecution to prove the elements of the offense, including the eligibility for Arsh, beyond reasonable doubt. **In Muhammad Yousaf v. The State (PLD 2016 SC 581)**, it was reiterated that Islamic punishments under the PPC must be grounded in clear, credible, and admissible evidence. While judicial determination of quantum of the amount of Arsh must be calculated in accordance with the statutory guidelines and judicial precedents, ensuring proportionality and fairness. The Court in

Abdul Hameed v. The State (2020 YLR 1450 Lahore) held that arbitrary or unsupported quantification of Arsh renders the sentence vulnerable to reversal. In light of the above, where the nature of hurt is not clearly established or the evidence falls short of the required standard, the imposition of Arsh becomes legally untenable. The principle of fiqh al-jurh (Islamic jurisprudence on bodily harm) mandates precision in classification and compensation, aligning with both statutory and evidentiary requirements. Therefore, the sentence for payment of Arsh (one-third of Diyat amount) is unsustainable while in the absence of Arsh sentence Daman is reduced to Rs.25000/- instead of 50000, looking to the extreme financial hardship of the Appellant who is inside jail and his old parents appeared before this Court and seemed to be financially broke down.

9. In view of above, conviction and sentence of the appellant u/s 394-397/337-D/337-F(iii) PPC and u/s 23(i), A Sindh Arms Act, 2013 vide judgment dated 27.04.2024 are maintained, but his sentences on all counts are reduced to the period already undergone by him, when sentence of Arsh is set aside and sentence for payment of Daman is reduced to Rs.25,000/=. With regard to conviction period in lieu of fine, same also include the sentence already undergone by him. Accordingly, appellant shall be released forthwith on payment of Rs.25000/= as Daman amount if not required in any other custody case.

10. Captioned Criminal Appeals stand disposed of in the above terms. Office to place signed copy of this judgment in connected appeal.

JUDGE

Zeeshan/P.A