

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 706 of 2019

Appellants : Jamil and Muhammad Iqbal
through Mr. Saifullah, Advocate

Respondent : The State
through Mr. Hussain Bux Baloch, Addl.P.G.

Complainant : through Mr. Attaullah Bhutto, Advocate

Date of hearing : 4th November, 2022

JUDGMENT

Omar Sial, J.: Jamil and Mohammad Iqbal were nominated accused in F.I.R. No. 381 of 2017 registered under sections 324, 337-A(i) and 34 P.P.C. at the Saeedabad police station. Both faced trial. Both were convicted and sentenced as follows:

- (i) Imprisonment for life for an offence under section 302(b) and 34 P.P.C. and a fine of Rs. 200,000 each as compensation to the legal heirs of the deceased Sajjad or stay in prison for another 6 months.
- (ii) Mohammad Iqbal was also convicted under section 337-A(i) P.P.C. and sentenced to 1 year in prison and payment of daman to the injured Mohammad Nawaz.

2. During the pendency of the appeal, the appellants and the legal heirs of the deceased Sajjad filed an application under section 345(5) Cr.P.C. seeking permission of this court to compound the offence. An application under section 345(6) Cr.P.C. has also been filed that the appellants be acquitted on account of the compromise reached between the parties. The documents of compromise were sent to the court of the learned 10th Additional Sessions Judge, Karachi West to determine whether the compromise was genuine. The learned trial court vide its report dated 07.10.2022 has confirmed that after the requisite inquiry it has come to the conclusion that the compromise is genuine and that the same may be accepted.

3. In view of the above and as an offence under section 302 P.P.C. is compoundable, permission to compound the case is given. Accordingly, the appellants may be released as being acquitted under section 345(6) Cr.P.C.

4. As far as Mohammad Iqbal is concerned, in addition to the murder of Sajjad, he is also sentenced for an offence under section 337-A(i) for a period of 1 year as well as payment of daman for causing injury to Mohammad Nawaz. The quantum of daman was not specified in the judgment of the learned trial court. Several notices were issued to Mohammad Nawaz through the bailiff of the court as well as the concerned SHO. All notices remained unserved as Mohammad Nawaz, according to his brother is a very difficult person and refuses to accept notice.

5. The jail roll dated 09.07.2021 reflects that Mohammad Iqbal has been in prison, till that date, for a period of 3 years and 2 months and 16 days. Mohammad Iqbal has therefore served his sentence for the offence under section 337-A(i) as the two sentences have been treated to run concurrently. The question remains is that of payment of daman. The family of Mohammad Iqbal are present in court and submit that they do not have the means to pay the daman. If they beg, borrow and steal, even then they will be able to muster up a maximum of Rs. 100,000. They therefore plead for leniency on this account.

6. As mentioned above, it seems that the injured Mohammad Nawaz does not want to assist in these proceedings.

7. Section 337-A(i) P.P.C. provides that

337-A. Punishment of shajjah. *Whoever, by doing any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, causes:*

(i) shajjah-i-khafifah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to two years as ta'zir;

8. The word "daman" is defined in section 299 (d) P.P.C. to mean the compensation determined by the court to be paid by the offender to the victim for causing hurt not liable to arsh. Section 337-Y P.P.C. provides that the value of daman may be determined by the court keeping in view (i) the expenses incurred

in the treatment of the victim (ii) loss or disability caused in the functioning or power of any organ; and (iii) the compensation for the anguish suffered by the victim. The error which appears to have crept into the judgment of the learned trial court is that the quantum of daman to be paid has not been specified, nor has it been specified whether the unspecified amount of daman was to be paid lump sum or in installments.

9. It appears from the evidence recorded at trial, that Nawaz was vague throughout the trial as to what injuries had he specifically received. It seems that a tooth of his might have broken from what he said. Some light is shed on the injuries when Dr. Ali Raza Rajpar (who was the doctor who examined Nawaz) appeared as a witness for the prosecution. The doctor testified that Nawaz had a swelling on his right forehead and right forearm, one incisor was missing, there was an abrasion on his left hand. The injuries received by Nawaz were minor in nature and no organ was lost or impaired. This is also supported by the fact that the prosecution witnesses testified that Nawaz had been discharged from the hospital in a couple of hours. In the following circumstances and keeping in view the guideline provided in section 337-Y P.P.C., it would be appropriate if the appellant Mohammad Iqbal is directed to pay daman lump sum and in the amount of Rs. 100,000 to the injured Nawaz.

10. The appeal of Mohammad Iqbal to the extent of him causing injuries pursuant to section 337-A(i) P.P.C. is dismissed. He has already completed the sentence of imprisonment which was given to him for this offence. As regards the payment of *daman*, Mohammad Iqbal may be released upon providing evidence that daman of Rs. 100,000 has been paid and if he is not required in any other custody case.

11. The appeal along with the listed applications stand disposed of in the above terms.

JUDGE