

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Appeal No. S – 40 of 2023

(Shahban Ali Korai versus The State)

Date of hearing : **18.12.2023**

Date of decision : **18.12.2023**

Mr. Muhammad Ali Dayo, Advocate for appellant.
Mr. Shafi Muhammad Mahar, Deputy Prosecutor General.

J U D G M E N T

Muhammad Iqbal Kalhoro, J. – Appellant Shahban Ali S/o Qurban Ali Korai has filed this appeal challenging judgment dated 08.04.2023, passed by learned Additional Sessions Judge-I, Mirpur Mathelo in Sessions Case No.256 of 2022 (*Re: The State versus Shahban Ali Korai and another*), arising out of Crime No.60 of 2022, registered at Police Station Mirpur Mathelo U/S 324, 337-F(i), 337-F(ii), 34, 504 PPC, whereby he has been convicted and sentenced as under:

- For offence U/S 324 PPC to suffer RI for four (04) years and to pay fine of Rs.10,000/- (*Rupees ten thousand*), or in case of default in payment of fine, to suffer SI for one month more.
- For offence U/S 337-F(ii) PPC to suffer RI for one year and to pay *Daman* of Rs.20,000/- (*Rupees twenty thousand*) to the injured.
- For offence U/S 337-F(i) PPC to suffer SI for three months and to pay Rs.10,000/- (*Rupees ten thousand*) as *Daman* to the injured.
- Benefit of Section 382-B CrPC has been extended to him and all sentences are ordered to run concurrently.

2. Allegedly, as per brief facts, there was a matrimonial dispute between appellant and complainant party. Hence, the former remained annoyed with the latter and his brothers. On the day of incident viz. 25.03.2022, when complainant and his brother Mehtab Ali was available in their house, at about 06:45 p.m., someone knocked the door. They opened the door and found outside accused Shahban Ali (appellant) with a knife, Shahzad Ali, Qurban Ali and an unknown accused with *lathis*. Accused Qurban Ali started abusing them, then accused Shahzad Ali caused two injuries on Mehtab Ali's chest and little finger of right hand, accused Qurban Ali caused a *lathi* blow to Mehtab Ali on his left elbow, and

remaining two accused also caused *lathi* blows to Mehtab Ali. Resultantly, he fell down crying, which attracted Mehrab Ali and other neighbours, and upon their intervention, accused left the scene. Brother of complainant was taken to Police Station first for a letter for treatment and then to a hospital at Mirpur Mathelo. Thereafter, complainant appeared at Police Station and registered the FIR, as above, on 26.03.2022 at 1500 hours.

3. During investigation, appellant and co-accused Qurban Ali and Shahzad Ali were arrested on 27.03.2022, and from their possession, a knife and two *lathis* were recovered. Meanwhile, accused Qurban died and proceedings against him were abated. The trial against the appellant and co-accused Shahzad Ali started with a formal charge. They pleaded not guilty; therefore, prosecution examined as many as six witnesses, who have produced all the necessary documents. Appellant and co-accused, in their statements U/S 342 CrPC, have denied the allegations and submitted that they are innocent. However, neither they examined themselves on oath, nor led any defence evidence. At the conclusion, the trial Court vide impugned judgment has acquitted co-accused Shahzad Ali, while convicted and sentenced the appellant as above. Hence, this appeal.

4. Learned defence Counsel, at the very outset, submits that he would not press the appeal on merits if period of sentence the appellant has spent in jail is treated as a sentence to him. Learned Deputy Prosecutor General has recorded no objection to it.

5. I have considered request of learned defence Counsel and perused material available on record. It appears that the role assigned to the appellant is of causing knife injury to PW Mehtab Ali, who has received in all three injuries. One injury has been attributed to accused Qurban Ali (since dead), while two injuries are assigned to the appellant: Injury No.1 U/S 337-F(i) PPC is minor in nature, punishable for up to 01 year, whereas, injury No.2 U/S 337-F(ii) PPC, is punishable for up to 03 years. The applicability of Section 324 PPC seems to be doubtful in view of such nature of injuries.

6. The jail roll of the appellant, received on 16.08.2023, reflects that he has remained in jail substantially for 01 year, 04 months & 21 days, has earned remissions of 02 years, 01 month & 19 days, his unexpired portion is 06 months & 20 days including sentence for failure to pay fine. The appellant therefore has already undergone 03 years, 06 months & 10 days, although the maximum punishment U/S 337-F(ii) PPC is up to 03 years.

7. For foregoing discussion, the appeal on merits is **dismissed**. However, the conviction and sentence awarded to appellant U/S 324 PPC is **set aside**, and the conviction and sentence U/S 337-F(i), 337-F(ii) PPC are **maintained** and **converted** into the period already undergone by the appellant and the amount of *Daman* is reduced from Rs.30,000/- to Rs.20,000/-. The appellant shall be released if he is not required in any other custody case, however, on payment of *Daman* of Rs.20,000/- U/S 337-F(ii) PPC to be paid to Mehtab Ali, or in case of default in payment of *Daman*, after suffering SI for two months more.

The appeal is **disposed of** along with pending application, in the above terms.

J U D G E

Abdul Basit