

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.S-154 of 2016

Appellants: Manzoor, Raja, Mushtaque and Dur Muhammad through associate of Syed Tarique Ahmed Shah namely Mr. Ammar Ahmed, Advocate.

Complainant: NEMO.

Respondent: The State through Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Date of hearing: 13.01.2025.

Date of Decision: 13.01.2025.

J U D G M E N T

Amjad Ali Sahito, J. Through the above captioned appeal, the appellants have impugned judgment dated 20.08.2016, passed by the learned trial Court/Additional Sessions Judge, Matiari in Sessions Case No.475 of 2012 [Re-The State v. Manzoor and others], Crime No.63 of 2012 for the offences under sections 324, 337-A(i), 337-F(i), 337-F(ii), 337-L(ii), 504 & 34 PPC registered at PS Saeedabad, whereby the learned Trial Court after full dressed trial convicted and sentenced the appellants as stated in para No.18 of the impugned judgment contents thereof are reproduced below:

“18. The upshot of above discussed reasons is that prosecution has succeeded to prove charges u/s 337 A(i), 337 F (i), 337 F (ii) and 337 L (ii) PPC against the accused beyond the shadow of reasonable doubt, hence, I convict all the accused u/s 265 H (ii) Cr.P.C for offence u/s 337 A (i) PPC, and sentence them to pay Damn Rs. 10,000/ each to complainant / Pw-1, and further sentence them to suffer S.I for one year. I further convict them for offence u/s 337 F (i) PPC and sentence them to pay Daman Rs.30,000/ each to complainant / Pw-1. I further convict them for offence u/s 337 F (ii) PPC and sentence them to pay Daman Rs. 10,000/ each to complainant / Pw-1 and further sentence them to suffer S.I for 2 years. I further convict all the accused for offence u/s 337 L (ii) PPC, and sentence them to suffer S.I for 1 year. All the

sentences of imprisonment shall run concurrently. All the accused are acquitted u/s 265 H (i) Cr.P.C of the charge u/s 324 PPC while extending benefit of doubt to them. The accused are present on bail, hence, they are taken into custody, and they be remanded to central prison Hyderabad along with conviction warrant / slip to serve out the sentences. The accused Dur Muhammad had remained in custody since 23.05.2012 to 22.06.2012 hence benefit of section 382 B Cr.P.C is extended to him. The bail bonds of accused stand cancelled and surety stands discharged. Order accordingly.”

2. The facts of the prosecution case are that on 15.05.2012 at about 1830 hours appellants / accused duly armed with pistols, hatchet and stick reached in the agricultural land of complainant Aneel situated in Deh Fatehpur, of them, appellant Dur Muhammad (since dead) made straight fire to complainant with intent to kill him while remaining accused namely Raja, Manzoor and Mushtaque caused butt of pistol, hatchet and stick to him in presence of witnesses, hence FIR registered against them.

3. After usual investigation, the case against the accused was challaned and evidence of the prosecution witnesses as well as statement of accused recorded and after hearing the parties, learned trial Court passed the impugned judgment.

4. Per learned counsel after filing this appeal the application under section 426 Cr.P.C was filed before this Court and same was allowed subject to furnishing solvent suety in the sum of Rs.50,000/- each and P.R bonds in the like amount to the satisfaction of Additional Registrar of this Court with further direction to deposit additional amount of Rs.50,000/- each in all as Daman with the Additional Registrar of this Court till final disposal of instant criminal appeal.

5. The record reflects that said amount was deposited by the appellants Manzoor, Raja, Mushtaque and Dur Muhammad (since dead). Appellants Manzoor and Raja informed the Court that appellant Mushtaque having no knowledge of today's date, as such, could not attend the Court, therefore, they pray that his absence may be condoned. Ordered

accordingly. As far as appellant Dur Muhammad is concerned during pendency of this appeal he has expired as intimated by appellants Manzoor and Raja today, as such, appeal in hand to his extent is abated. Surety is discharged and to be returned to applicant/surety on proper verification as per procedure.

6. Learned counsel for the appellants contends that though the case against the appellants is fit for their acquittal on merits. However, since they are first offenders, as such, he contends that all the cases of hurt provided for in Chapter XVI, P.P.C. the normal punishment to be awarded to an offender is payment of arsh or daman and optional additional punishment of imprisonment as Ta'azir provide for the relevant offence can be awarded to an offender where he is a previous convict, habitual, hardened, desperate or dangerous criminal or the offence has been committed by him in the name or on the pretext of honor and in the case of such an offender the sentence of imprisonment as Ta'azir is not to be less than one-third of the maximum imprisonment provided for the hurt caused. He contended that neither the appellants are previous convicts, habitual, hardened, desperate or dangerous criminals nor committed the offence on the pretext of honor, therefore, the appellants may be dealt with in view of section 337-N PPC and the maximum sentence except other offence is to imprisonment for two years punishable under section 337-F (ii) PPC may be set aside and only daman amount as ordered in the impugned judgment is liable to be paid by the appellants which they have already done so vide order dated 29.08.2016.

7. On the other hand, learned A.P.G. Sindh supports the impugned judgment; however, she concedes that there is no previous criminal record of the appellants.

8. Heard and perused the material available on record.

9. On careful perusal of the material available on record, it appears that prosecution has succeeded to establish case under sections 337-A(i), 337-F(i), 337-F (ii) & 337-L(ii) PPC

and accordingly, the appellants have been convicted and sentenced. However, yet there is section 337-N PPC, which ought to have been taken into consideration by the learned trial Court which stipulates that imprisonment by way of Ta'azir can only be imposed if the convict is a "previous convict, habitual or hardened criminal, or has committed the offense in the name or on the pretext of honor." In this case, the prosecution has not provided any evidence to suggest that the appellants meet the criteria defined in Section 337-N PPC. Therefore, they cannot be awarded a sentence of imprisonment by way of Ta'azir.

2. Admittedly, the provisions of section 337-N (2) PPC are squarely attracted in the case of appellants as the prosecution has not produced any proof to show that the accused are previous convicts, habitual, hardened, desperate or dangerous criminals, therefore, I am of the considered view that the rigorous imprisonment for two years awarded to the appellants is against the norms of section 337-N PPC, hence, the same is **set aside**. However, the conviction with regard to payment of Daman passed against the appellants payable to the complainant/injured as mentioned in the judgment of learned trial court is **upheld and maintained**. Record reveals that vide order dated 29.08.2016 appellants were directed to deposit the amount of Rs.50,000/- each in all as Daman with the Additional Registrar of this Court till final disposal of instant criminal appeal which they complied with to this effect a statement filed by their counsel dated 08.09.2016 is also available in the Court file, as such, the appellants had already deposited Daman amount of Rs.200,000/- with the Accountant of this Court and placed on record such deposit receipt in shape of said statement dated 08.09.2016. The appellants being present on bail except Dur Muhammad (since dead), as such, their bail bonds stand cancelled and surety discharged. The surety papers shall be returned to the surety by the Additional Registrar after proper verification and identification. The Accountant of this Court shall hand over the said Daman

amount to the complainant/injured namely Aneel Gahoti after issuing notice to him.

10. With the above modification in the impugned judgment, the appeal is accordingly **disposed of**.

JUDGE

Muhammad Danish
Hyderabad.
Dated 13.01.2025