

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

Criminal Appeal No.S-83 of 2017

Appellant: Shafquat Gopang through Syed Zafar Ali Shah, Advocate.

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 appellant has impugned judgment dated 01.04.2017, passed by the learned trial Court/1st Additional Sessions Judge, Dadu in S.C. No.273/2016 [Re-The State v. Ghulam Shabbir and another], Crime No.59/2016 for the offences under sections 324, 337-F (ii), 3377-H (ii), 337-L (ii), 504, 34 PPC registered at PS B-Section Dadu, whereby the appellant was convicted for the offence punishable under section 337-F (ii) PPC and sentenced to imprisonment for 03 years and to pay Daman of Rs.25000/- [Rupees twenty five thousand only] to complainant/injured Hubdar Ali. While co-accused Ghulam Shabbir was acquitted of the charge.

2. Facts of the prosecution case are that complainant, Hubdar Ali Gopang, reported that on 31.05.2016, an altercation took place involving his brother-in-law, Ghulam Shabbir. The complainant, along with his brother Bahram and Raza Hussain, was at home when the door was knocked. Upon answering, he saw his brother-in-law Ghulam Shabbir holding a pistol, his cousin Shafquat armed with a dagger, and two unknown persons standing the outside. Out of them, accused Ghulam Shabbir aimed his Pistol upon complainant, abused him and

disclosed that complainant was harassing his sister; hence, he would not be spared. Meanwhile accused Ghulam Shabbir made fire shot from his Pistol upon complainant, but the complainant saved himself, caused fist to accused, snatched Pistol from accused and also caused butt blow to accused to that accused Shafquat tried to hit dagger in the abdomen of complainant, but complainant raised his arm which hit on his left arm. On cries of complainant and fire shot commotions witnesses Baharam and Raza Hussain came there and saw the accused persons. Accused persons caused kicks and fists blows to complainant, snatched Pistol from him and went away making aerial firing. The complainant came at P.S, obtained letter and after getting treatment from Civil Hospital Dadu he lodged instant FIR.

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

4. Learned counsel for the appellant contends that though the case against the appellant is fit for his acquittal on merits. However, since he is first offender, 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 appellant is not a previous convict, habitual, hardened, desperate or dangerous criminal nor committed the offence on the pretext of honor, therefore, the appellant may be dealt with in view of section 337-N PPC and

the sentence to imprisonment for three years for the offence 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 appellant.

5. 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 appellant.

6. Heard and perused the material available on record.

7. On careful perusal of the material available on record, it appears that prosecution has not been able to establish case under section 324 PPC against the appellant. However, succeeded to establish case under section 337-F (ii) PPC and accordingly, the appellant has 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 pretext of honor." In this case, the prosecution has not provided any evidence to suggest that the appellant meets the criteria defined in Section 337-N PPC. Therefore, he cannot be awarded a sentence of imprisonment by way of Ta'azir under.

8. Admittedly, the provisions of section 337-N (2) PPC are squarely attracted in the case of appellant as the prosecution has not produced any proof to show that the accused is a previous convict, a habitual, hardened, desperate or dangerous criminal, therefore, I am of the considered view that the rigorous imprisonment for three years awarded to the appellant 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 appellant payable to the complainant/injured as mentioned in the judgment of learned trial court is upheld and maintained. The appellant present on bail was directed to deposit the above said amount with the

Accountant of this Court, as such, the appellant deposited Daman amount of Rs.25000/- with the Accountant of this Court and placed on record such deposit receipt. Consequently, his 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 Hubdar Ali Gopang after issuing notice to him.

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

JUDGE

Abdullah Channa/PS
Hyderabad.
Dated 13.01.2025.