

IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Appeal No.499 of 2024
[Allah Bux @ Kano and others v. Aftab Hussain and another]

Date Order With Signature Of Judge

21.01.2025.

M/s. Abdul Wahab Baloch, Muhammad Imran Qureshi and Ahmed Ali, advocates for appellant.

Mr. Fahim Hussain Panhwar, Deputy Prosecutor General.

Mr. Faiz Hussain Samo, advocate for complainant.

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J:- By the impugned judgment, the appellants have been convicted and sentenced as under:-

1. Section 324 PPC, R.1 ten years with fine of Rs.50,000/- to each injured and in case default they shall suffer three months S.I.
2. Section 337-A(i) PPC, R.1 two years with fine of Rs. 1,00,000/- to injured and in case default he shall suffer three months S.I.
3. Section 337-F(iii) PPC, R.I. three years and sentenced to pay Daman in the sum of Rs.2,00,000/- to injured.
4. Section 337-F(vi) PPC, R.I seven years and sentenced to pay Daman in the sum of Rs.2,00,000/- to injured.
5. Section 147 PPC, R.1 three years with fine of Rs. 20,000/- and in case default they shall suffer three months S.I.
6. Section 148 PPC, R.1 three years with fine of Rs.20,000/- and in case default they shall suffer three months S.I.
7. Section 504 PPC, R.I two years with fine of Rs.20,000/- and in case default they shall suffer three months S.I.
8. Section 337-L(ii) PPC, R.I two years and sentenced to pay Daman in the sum of Rs.2,00,000/- to injured.
9. All the sentences awarded hereinabove to the accused shall run concurrently with benefit of section 382-B PPC, if applicably to any accused.

10. All the accused present in Court are taken into custody and sent to Jail with conviction warrant to sever the sentence awarded to them by this Court today, their bail bond stands cancelled and sureties are hereby discharged.

2. As per brief facts of FIR, on 18.07.2022 when complainant was returning to his house along with his brother Mehtab Hussain, he was waylaid by the appellants in a street near Garibabad market, Taluka Mirpur Sakro at about 2120 hours. They were armed with Lathies and iron rods. They allegedly abused the complainant and his brother and then all the appellants caused iron blows to complainant and his brother on different parts of their bodies. As a result, they sustained multiple injuries. On cries, they were saved by people standing nearby. After which, the complainant and his brother came at Police Station, received a letter for treatment, came at Rural Health Centre, Gharo, from where they were referred to Karachi for better treatment. After getting medical attention, complainant appeared at Police Station and registered FIR as above on 20.07.2022.

3. During the investigation, appellants Allah Bux, Maqbool, Mehar Ali and Israr were arrested on 21.07.2022. After usual investigation, the Challan u/s 173 Cr.P.C. was submitted in the Court against the appellants leading to framing of a formal charge against them. They pleaded not guilty and claimed trial.

4. In the trial, the prosecution examined five witnesses including victims, I.O. and Medico-legal Officer. These witnesses have submitted all the necessary documents; FIR, memos, medical certificates etc. After evidence of the prosecution, statements of appellants under section 342 Cr. P.C. were recorded, in which, they have simply denied the allegations against them. In the end, the appellants were convicted and sentenced in terms of para. 1 of this Judgment.

5. Learned counsel in defence has submitted that appellants are innocent; there are material contradictions in the evidence of

prosecution; from the place of incident no blood was collected; there are contradictions in medical evidence and ocular account; the record shows that only under one police letter the injured were referred to medical treatment but the Doctor in his evidence has stated that through two letters of police the injured appeared before him for medical examination; no specific role has been assigned to any of the appellants and in a petty matter, the entire family has been involved; the appellants were not armed with any deadly weapons, hence applicability of section 324 PPC is not without a doubt; final medical certificate was issued after a period of six months and the same is not reliable.

6. On the other hand, learned counsel for the complainant has supported the impugned judgment and has prayed for dismissal of this appeal.

7. Learned DPG, on the other hand, has stated that the case against the appellants is proved but not u/s 324 PPC and hence the appellants may be convicted and sentenced under the provisions of relevant injuries sustained by the victims.

8. I have perused material available on record and considered submissions of the parties. The prosecution has examined complainant as PW-01, who is also the victim; he has narrated entire episode in his evidence; assigned specific role to the appellants, who were duly armed with iron rods and lathies (clubs). He has meticulously described the different parts of his body where he was hit by the appellants. He has also disclosed that his brother Mehtab Hussain was also injured by the blows caused by the appellants. He has also described the manner, in which, they were saved from the appellants by the neighbors. He has been substantially supported by his brother Mehtab Hussain PW-02, who has reiterated the same facts in his evidence. He has categorically stated that appellants, armed with iron rods and lathies/clubs had

caused various blows to his brother complainant Aftab Hussain and to him. He has also identified each accused with the weapons and exclusive role played by him. Their evidence is supported by PW-05 Dr. Muhammad Aslam. In his evidence, he has stated that on 18.07.2022, the very day of incident, complainant Aftab and Mehtab were referred to him for the treatment. On the person of Aftab, he found following injuries:-

Injury No. 1 Swelling right hand middle figure size 1/2 x 1 / 2 cm.

Injury No.2 Lacerated wound on left leg size 7cm x 1 / 2 cm.

Injury No.3 Bruise on left thigh front 8cm x 1/2 cm.

Injury No.4 Puncture wound near anal orifice between buttocks ½ x ½.

Injury No 5 Lacerated wound on right side of head size about ½ cm X 1/4 cm (skin deep).

Injury No.6 Bruise on back of chest 15cm x 1/2 cm parallel.

Injury No.7 Bruise on left scapular region size about 4cm x 1/2 cm.

Injury No.8 Bruise on right shoulder size about 20cm x 1 cm.

Injury No.9 Bruise on left cubital fossa size about 5cm x 1/2 cm

He has opined that injury Nos. 3, 6, 7, 8 and 9 were declared by him as other injuries, whereas, injury Nos. 1 to 4 were reserved for final opinion. In the final certificate, he has declared the same injuries as *Jurh Gyhar Jaifah Mutalahimah* under section 337-F(iii) punishable up to three years. Whereas, on the person of Mehtab, he found following injuries:-

Injury No.1 lacerated wound on left mid of head size about 5cm x 1/2 cm (skin deep).

Injury No.2 Occipital region size 2cm x 1/2 x cmx x 1/2 cm.

Injury No.03 swelling on right hand medial palmer side size about 2 cm x 1 cm.

Injury No 4 Bruise on right scapula size about 10 cm x 1 cm.

Injury No 5 Bruise on back of chest parallel size about 10 cm x ½ cm.

According to him, injuries No. 1 and 3 were reserved for radiologist report and injury Nos. 2, 4 and 5 were declared as other injuries. In final certificate, he has declared such injuries as *Gyayr Jaifah Munaqqillah* under section 337-F(vi) PPC, punishable up to seven years.

9. PW-03 ASI Nazar Hussain is the one who had registered the FIR on the statement of complainant. He had also visited the place of incident and prepared such memo in presence of mashirs and then on 21.07.2022 on spy information he had arrested four appellants Maqbool and Mehar from Fatima Garden, Allah Bux and Israr, and had recovered iron bars and clubs from them and prepared such memo of recovery and arrest. He has disclosed all such facts in his evidence.

10. PW-04 is the mashir in whose presence the injuries of victims were examined and such memo was prepared. He has also confirmed in his evidence that on 20.07.2022 place of incident was inspected by the police in his presence and such memo was prepared. He has also stated in evidence that on 21.07.2022 the police had arrested above named accused in his presence and recovered lathies and iron rods and thereafter police had prepared such memo.

11. A perusal of the above evidence leads me to conclude that prosecution has established its case against the appellants insofar as causing injuries u/s 337-F(iii) and 337-F(vi) PPC to the victims are concerned . On a petty matter, it appears that the appellants on the day of incident waylaid the complainant and his brother and caused them multiple injuries. This is not only confirmed by the complainant and his brother in their evidence but by supporting evidence of medico-legal

officer who on examination found multiple injuries on the person of victims, which he has verified in his evidence. The appellants were already known to the victims and have been named in the FIR with specific role. Therefore, there is no chance of mistaken identity or substitution. Even otherwise in the cases of injuries and murder, it is very rare to substitute the real culprit with the fake one.

12. Learned defence counsel has rendered lengthy arguments to support his appeal. Nonetheless, he could not point out to any contradiction in the evidence of victims. Although, the witnesses have been subjected to a reasonably lengthy cross-examination but not a single contradiction or discrepancy has come on record to give its benefit to the appellants. The investigation conducted by the police supports all the facts in that the injuries were inspected in presence of mashirs, one of whom has come forward and verified the same in his evidence in addition to confirming the fact that place of incident was visited by the police in his presence and appellants were also arrested.

13. The above discussion as far as injuries to the victims are concerned shows that prosecution has succeeded in establishing the case against the appellants. However, it is an admitted fact that appellants were not armed with any deadly weapon and the injuries sustained by the victims are also on non-vital parts. As per law, the offence under section 337-F(iii) PPC is punishable up to three years, whereas, under section 337-F(vi) PPC is punishable up to seven years. Since none of the appellant was armed with any deadly weapon and it is not even the case of prosecution that intention of appellants was to commit murder of the victims, the sentence awarded to the appellants under section 324 PPC viz. ten years is set aside.

14. The Jail Roll of the appellants shows that appellants namely (1) Allah Bux @ Kano s/o Ghulam Hussain Detho, (2) Maqbool s/o Muhammad

Sachal Detho, (3) Israr s/o Allah Bux and (4) Mehar Ali s/o Imam Bux Detho have been given the following remission:

Sentence served excluding remission up to			Remission earned			Un-expired portion of sentence		
Y	M	D	Y	M	D	Y	M	D
00	07	09	03	03	00	07	04	21
			1/5 th Special Remission of Total Sentence awarded by the Government of Pakistan on the eve of 14 th August 2022 is included			Except Daman		

However, the sentences awarded to the appellants under sections 337-A(i), 337-L(ii), 337-F (iii) and 337-F(vi) PPC for causing injuries to the witnesses are maintained but converted to the period already undergone by the appellants due to the reason that appellants are the first offenders, as there is no record showing that they have previously been involved in such offence. However, the fine amount of Rs.1,00,000/- and modified amount of Daman for the injuries to the tune of Rs.1,00,000/- each under sections 337-L(ii), 337-F(iii) and 337-F(vi) PPC shall remain the same. The appellants shall be released on the payment of fine or after suffering three months S.I. in lieu of which; and in addition, on payment of Daman in the sum of Rs.1,00,000/- for each injury to the victim under sections 337-F(iii), 337-F(vi) PPC and 337-L(ii) PPC as determined by the trial Court, or on expiry of three (03) months more. After their release the daman shall be recovered from them as arrears of land revenue.

The appeal is accordingly disposed of in the above terms.

JUDGE

HANIF