

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Appeal No.S-74 of 2024

Appellant: Muhammad Younus S/o Zikiria,
Through Mr. Rao Faisal Ali, Advocate.

Respondent: The State
Through Mr. Ghulam Abbas Dalwani, DPG.

Date of hearing: 08.08.2025.

Date of Decision: 08.08.2025.

JUDGMENT

Amjad Ali Sahito, J. Through the above captioned appeal, the appellant has impugned judgment dated 11.05.2019, passed by the learned trial Court/Additional Sessions Judge-I/MCTC, Mirpurkhas in S.C No.115/2010 [Re-The State v. Muhammad Younus], Crime No.125/2010 for the offences under sections 302, 324, 504 and 34 P.P.C registered at PS Town, Mirpurkhas, whereby the appellant was convicted for the offence punishable under section 337-A (i) PPC and sentenced to imprisonment for 01 year and to pay compensation of Rs.10,000/- [Rupees Ten Thousand only] to injured Manzoor.

2. Facts of the prosecution case are that complainant, Muhammad Suhail, reported that on 15-04-2010 he himself and his brothers Shoaib Malak and Kashif Malak were standing over their respective Fruit carts, where their servant Manzoor Ahmed Khaskheli also brought his Fruit cart, who told that when he was crossing the MANYARI Cart of Younus Shaikh, then Younus and his brother Shahid alias Guddu abused him and during such narration at about 1145 hours Shahid alias Guddu having knife in his hand, Younus having knife in his hand and Baqar having knife in his hand came there and while abusing accused Shahid alias Guddu caused knife blows over the face and chest of Kashif with intention to kill him, while Younus

caused knife blows to servant Manzoor Ahmed Khaskheli over his head and other parts of his body and Baqar caused knife blow over the left thigh of Shoaib and due to knife blows blood was oozing. The complainant raised cries, on which so many neighbour shop-keepers came and rescued them. Thereafter the complainant appeared at Police station and lodged the report.

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 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 one year for the offence under section 337-A(i) PPC may be set aside and only compensation amount as ordered in the impugned judgment is liable to be paid by the appellant.

5. On the other hand, learned D.P.G Sindh supports the impugned judgment; however, he 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 sections 302 and 324 P.P.C against the appellant. However, succeeded to establish case under section 337-A(i) 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 one year 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 compensation passed against the appellant payable to the 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 compensation amount of Rs.10,000/- 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 compensation amount to the injured namely Manzoor after issuing notice to him.

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

JUDGE

Faisal