

**IN THE HIGH COURT OF SINDH, CIRCUIT
COURT, LARKANA**

Criminal Revision Application No.S-33 of 2017

Applicant: Nawaz Ali, through Mr. Mohsin Ali Pathan,
Advocate.

The State: Mr. Khadim Hussain Khoonharo, Addl.P.G.

Date of hearing: 21.12.2018

Date of decision: 21.12.2018

ORDER

KHADIM HUSSAIN TUNIO, J.- Through instant criminal revision application filed under section 435 and 439 Cr.P.C, the applicant has challenged the order dated 10.07.2017, passed by the learned 1st Additional Sessions Judge Kandhkot, who while modifying the sentence by learned trial Judge dated 20.05.2017, under Section 337-F(v) PPC for applicant and reduced it to one year S.I and to pay *daman* of Rs.25,000/-, also u/s 337-F(vi) PPC was reduced from three years S.I and *daman* Rs.100,000/- in *daman* to one year S.I and Rs.50,000/- in *daman*. The sentence under Section 504 PPC was reduced from six months S.I and to fine of Rs.2,000/- to three months S.I and fine of Rs.1,000/-. Applicant was also given benefit of Section 382-B Cr.P.C.

2. Briefly, facts of the prosecution case are that the complainant Jeal Khan lodged F.I.R on 28.09.2016 at Police Station Ghulam Sarwar Sarki, stating therein that there was a dispute between him and Mehboob Bahalkani who had been asking them to withdraw the case. On 27.09.2016, the complainant took his brother namely Aijaz Ahmed

on his motorcycle to drop him at Tangwani high school, and was joined by his cousin Wali Muhammad on their way. At about 08:00 A.M when the complainant party reached Jeal Laro, another motorcycle followed them and collided with their rear side, resulting in the complainant party to fall down. The complainant identified the applicant Nawaz Ali who was armed with a lathi along with two unknown accused persons out of which one was armed with a lathi. The accused persons got off from their motorcycle and the applicant called a hakal and started to abuse the complainant party, soon followed by a lathi blow to PW Aijaz Ahmed on his right leg, who raised cries and fell down, after which the unknown accused persons started causing lathi blows to his face. The complainant party raised cries for help after which the accused party fled away towards the east side. The complainant approached the police station, obtained letter for treatment and took treatment at RHC Tangwani and took the injured PW to Larkana Civil Hospital and then lodged the FIR.

3. After registration of FIR, the matter was investigated by police and after completion of the same, the case was challaned before the court of law showing the present applicant in custody, who was later released on bail and joined the trial.

4. A formal charge was framed against the applicant to which he pleaded not guilty and claimed to be tried. During trial, the prosecution examined the complainant, PW Aijaz, HC Gul Khan, ASI/IO Muhammad Ayoub, PW/Mashir Fida Hussain, Dr. Maqbool Ahmed, Dr. Gul Bahar and Dr. Rasheed Ahmed. Thereafter the side of the prosecution was closed.

5. Statements of applicant was recorded under Section 342 Cr.P.C. in which the applicant denied all allegations levelled against him and pleaded his innocence. The applicant did not examine himself on oath nor examined any witness in his defence.

6. After hearing the learned counsel for the parties, applicant was convicted vide judgment dated 20.05.2017. The applicant filed Criminal Appeal before learned Sessions Judge, Kashmore at Kandhkot, which was dismissed by learned 1st Additional Sessions Judge, Kandhkot vide his judgment dated 10.07.2017, who took a lenient view and reduced the sentence from three years SI and Rs.50,000/- in *daman* to one year SI and 25,000/- as under Section 337-F(v), three years SI and Rs.100,000/- to one year SI and Rs.50,000 in *daman* as under Section 337-F(vi) and six months SI and fine of Rs.2,000/- to three months SI and fine of Rs.1,000/- as under Section 504.

7. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated by the complainant party due to enmity; that all the PWs are relatives to the complainant, hence are very interested; that the medical evidence majorly contradicts the ocular testimony which diverts the alleged eye witness to be the ocular witnesses of the incident, which makes the case of the prosecution highly doubtful; that the complainant had lodged the FIR after due consultation and due deliberations, which detracts from the truth of the prosecution story; that there is a delay in the lodging of FIR without any logical reasoning behind it; that the entire prosecution evidence is in form of ocular testimony though since all the PWs are inmates of the same house it cannot be stamped with all truth in this matter; that

there is no independent witness either and confirmatory piece of evidence in the form of strong circumstantial evidence is also missing; that the trial Court as well as the appellate Court have totally erred in relying on the vacuum-laden evidence, whereby they convicted the applicant; that the learned trial Court has turned deaf ears towards the cannons of appreciation of evidence as lead by the Honourable Apex Courts.

8. Conversely, the learned Additional Prosecutor General has opposed the instant criminal revision application and supported the impugned judgments of both courts below.

9. I have given due consideration to the arguments advanced by the learned counsel for the parties and perused the record.

10. Though the applicant has confined his revision application to the extent of reduction of *daman* amount from Rs.150,000/- to Rs. 75,000/- and fine of Rs.2,000/- to Rs.1,000/-, whereby not challenging the conviction, so awarded by the trial Court. However, the perusal of the record shows that applicant had caused injuries in a *brutal* manner and prosecution *did* bring sufficient evidence to establish the charge against the applicant for the offences wherein he has been convicted. In absence of any prima-facie illegality or mis-reading of the evidence resulting into miscarriage of justice the interference into conclusion of conviction even would not be necessary. Accordingly, the instant Cr. Revision Application merits no consideration and all the conviction and sentences against applicant are upheld except *daman* amount to which I shall come later.

11. It would suffice for the plea of applicant regarding reduction of *daman* amount that *daman* is not a sort of compensation but is a *punishment* as defined by Section 53 of the Code (PPC), hence payment thereof cannot be relaxed merely by remaining in jail. The *daman* amount is determined by the Court within meaning of Section 337-Y which reads as:-

“Value of daman: (1) The value of daman may be determined by the Court keeping in view:-

- (a) the expenses incurred on the treatment of victim;
- (b) Loss or disability in the functioning or power of any organ; and
- (c) the compensation for the anguish suffered by the victim

The applicant has not been able to pin-point any illegality in *daman* amount, so determined by trial Court or that such determination is in excessive or is in deviation to above criterion. Although, the Appellate Court had already taken a lenient view by reducing the applicant’s sentence and also the *daman* amount, without assigning any cogent reason whatsoever. Therefore, any further reduction in the *daman* amount cannot be justified. However, let us peruse subsection (1a) and (2) of Section 337-Y itself which reads as under:-

“(1a) the daman may be made payable in lump sum or in installments spread over a period of five years from the date of the final judgment;”

“(2) Where a convict fails to pay daman or any part thereof within the period specified in sub-section (1a), the convict may be kept in jail and dealt with in the same manner as if sentenced to simple imprisonment until daman is paid in full or may be released on bail if he furnishes security or surety equivalent to the amount of daman to the satisfaction of the Court or may be released on parole as may be prescribed in the rules.”

12. From above, it requires no debate that there can be any exception to the payment of *daman* amount, therefore the Courts cannot make payment subject to any detention period in jail. In short, either the convict has to remain in jail till payment of *daman* or may be released on bail which too with an object to enabling the convict to pay the *daman* amount in full or installments. Therefore, I find it in all fairness that amount of *daman* under Section 337-F(v) shall be paid by the convict/applicant in twenty installments of Rs.2,500/-, each to be deposited with the trial Court on or before 5th of every calendar month and the amount of *daman* under Section 337-F(vi) shall be paid by the applicant in twenty installments of Rs.1,250/- each to be deposited with the trial Court on or before 5th of every calendar month. The installments would commence from the date of this judgment. If period of sentence completes before the completion of payment of full *daman* amount then he shall be released on bail subject to furnishing solvent surety in the sum of Rs.50,000/= which (the *surety*) would continue under obligation till payment of full *daman* amount. Needless to add that in case of default, such amount (remaining *daman* amount) would be recoverable from the surety directly. The judgment is modified only to such extent i.e. manner of payment of *daman*.

These are the reasons for the short order dated 21.12.2018.

J U D G E