

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

Criminal Appeal No.S-23 of 2024

Appellant: Shambho S/o Kastooro,
In person.

Respondent: The State
Through Mr. Shahzado Saleem, APG.

Complainant: Beejal Ram,
Through Mr. Sultan Shoro, advocate.

Date of hearing: 09.09.2025.

Date of Decision: 09.09.2025.

JUDGMENT

Amjad Ali Sahito, J.- Through the above captioned appeal, the appellant has impugned judgment dated 25.11.2016, passed by the learned trial Court/Assistant Sessions Judge-II, Mirpurkhas in S.C No.171/2013 [Re-The State v. Shambho and others], Crime No.23/2013 for the offences under sections 324, 504, 337-A(i), 147, 148 and 149 P.P.C registered at PS Phulladiyoon, whereby the appellant was convicted for the offence punishable under sections 337-A(ii) and 337-F(v) P.P.C and sentenced to imprisonment for three years and to pay *Arsh* of Rs.84,016/- to the injured Bhar Mal in easy installments within two years.

2. Facts of the prosecution case are that the complainant, Beejal Ram, lodged an FIR on 26-07-2013 at about 11:00 p.m, stating that there existed a long-standing brotherly dispute between him and Shambho Meghwar. He reported that on 25-07-2013, after having dinner, he and his son Bhar Mal were sitting in front of their house when, at around 11:00 p.m., Shambho (armed with an iron rod), Chando (with a lathi), Bhagwano (with a lathi), Girdari (with a lathi), and Bhooran (with a lathi) arrived and declared they would not let them go. When the complainant tried to prevent

them from abusing, Chando struck Bhar Mal on the head with the iron rod, causing him to fall unconscious. At that time, Geno and Barjang Meghwar also reached the spot, raising cries. The accused persons then left for their houses. Subsequently, the complainant shifted his injured son to Civil Hospital, Mirpurkhas, for medical treatment. Thereafter, complainant came at P.S and lodged the FIR.

3. After usual investigation, the case against the appellant/ 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. Appellant is present in person and submits that sentence awarded to him may be reduced to the time he had already remained in prison. He further submits that he is poor person and cannot deposit *Arsh* amount imposed through the impugned judgment by learned trial court, therefore, he prayed for reduction in the fine amount.

5. On the other hand, learned A.P.G has conceded the same and also recorded his no-objection in this regard while learned counsel for the complainant supported the impugned judgment and request for dismissal of instant Criminal Appeal.

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 324 P.P.C against the appellant. However, succeeded to establish case under section 337-A(ii) and 337-F(v) P.P.C 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. Further the instant F.I.R was lodged in the year 2013 and since then the appellant is attending the trial court as well as this court.

8. Admittedly, the provisions of section 337-N (2) P.P.C 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 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 *Arsh* passed against the appellant payable to the injured as mentioned in the judgment of learned trial court is upheld and maintained. The *Arsh* amount of Rs.84,016/- imposed under Section 337-A(ii) P.P.C is reduced to Rs.40,000/-, in view of the appellant's financial condition and overall circumstances. The appellant present on bail was directed to deposit the above said amount with the Accountant of this Court, as such, the appellant deposited *Arsh* amount of Rs.40,000/- with the Accountant of this Court and placed on record such deposit receipt. Consequently, his bail bond stands 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 *Arsh* amount to the injured namely Bhar Mal after issuing notice to him.

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

JUDGE

Faisal