

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

Criminal Appeal No.S-48 of 2023

Appellant: Kanji S/o Neelo,
Through Mr. Wishan Das Kolhi,
Advocate.

Respondent: The State
Through Mr. Neel Parkash, D.P.G Sindh.

Complainant: Harchand S/o Mahadev,
Through Mr. Satram Sonani Bheel,
Advocate.

Date of hearing: 02.10.2025.

Date of Decision: 02.10.2025.

JUDGMENT

Amjad Ali Sahito, J. Through the above captioned appeal, the appellant has impugned judgment dated 28.11.2023, passed by the learned trial Court/Additional Sessions Judge, Khipro in Sessions Case No.510/2023 [Re-The State v. Kanji and others], Crime No.37/2023 for the offences under sections 324, 336, 337-A(i), 337-F(i), 504 and 34 P.P.C registered at PS Khipro, whereby the appellant was convicted for the offence punishable under section 337-A (i) and 504 P.P.C and sentenced to imprisonment for R.I for 02 years and to pay *Daman* of Rs.30,000/-.

2. Facts of the prosecution case are that accused Kanji and others had previously assaulted the complainant, for which a criminal case was registered and is still pending before the court. Due to that matter, Kanji and his associates frequently threatened the complainant with dire consequences. On 22-02-2023, at around 10:00 a.m., the complainant, along with his father Mahadev (aged about 46 years) and his brother Asan, was on the way to fetch water. When they reached a katcha path, they saw the accused standing there: Kanji armed with a hatchet, Prem with a hatchet,

Sagram carrying a lathi, and Giyan with a hatchet. Upon seeing them, Kanji abused the complainant, saying that since they had not withdrawn the earlier case, they would now face the consequences. The complainant's father objected to the abuse, whereupon Kanji struck him with a hatchet blow on the right side of his head, near the ear. Immediately after, Giyan delivered a hatchet blow to his father's right wrist. As his father cried out and fell to the ground, all of the accused collectively attacked him with hatchets and lathis, inflicting injuries on his body. The complainant and his brother raised cries, after which Kanji and the others fled towards their village. The complainant then observed his father bleeding profusely from the injuries. He arranged transport, took him to Police Station Khipro for a referral letter, and then brought him to the hospital. After receiving first aid, his father was referred to Hyderabad for further treatment. The complainant subsequently went to the police station and lodged the 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 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 P.P.C and the sentence to imprisonment for two years for the offence under section 337-A(i) P.P.C may be set aside and only Daman 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 324 P.P.C against the appellant. However, succeeded to establish case under section 337-A(i) and 504 P.P.C and accordingly, the appellant has been convicted and sentenced. However, yet there is section 337-N P.P.C, 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 P.P.C. Therefore, he cannot be awarded a sentence of imprisonment by way of Ta'azir under.

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 rigorous imprisonment for two years awarded to the appellant is against the norms of section 337-N P.P.C, hence, the same is set aside. However, the conviction with regard to payment of *Daman* passed against the appellant payable to the injured as mentioned in the judgment of learned trial court is upheld and maintained. The *Daman* amount of Rs.30,000/- imposed under Section 337-A(i) P.P.C is reduced to Rs.10,000/-, 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 *Daman* amount of Rs.10,000/- 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 *Daman* amount to the injured namely Mahadev after issuing notice to him.

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

JUDGE

Faisal