

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Cr. Jail Appeal No.S-51 of 2021
(Ghulam Qadir Tunio and others v/s The State)

DATE ORDER WITH SIGNATURE OF HON'BLE JUDGE

1. For orders on office objection "A"
2. For hearing of main case.

Appellants: Ghulam Qadir Tunio and others
Through Mr. Razi Khan Chandio, Advocate.

Complainant: Munir Ahmed
Through Mr. Suhendar Kumar Gemnani, Advocate

The State: Through M/s. Ali Anwar Kandhro, Additional Prosecutor General
Zain-ul-Abidin Abbasi, Assistant Prosecutor General

Date of hearing: 28-08-2025

Date of Decision: 12-09-2025

J U D G M E N T

NISAR AHMED BHANBHRO, J. Through the instant Criminal Jail Appeal, the appellants (1) Ghulam Qadir son of Lal Bux Tunio, (2) Ghulam Zakriya son of Ghulam Qadir Tunio, (3) Junaid Ahmed son of Ghulam Qadir Tunio and (4) Abdul Samad son of Ghulam Qadir Tunio have challenged the judgment dated 30-10-2021 (**impugned judgment**), passed by the court of learned 1st Additional Sessions Judge/MCTC, Kamber, (**Trial Court**), in Sessions case No.419/2021, stemming from FIR No.171/2021 of Police Station Sadar Kamber, wherein the appellants were convicted and sentenced as follows:

(i) *For offence punishable under section 337 A(i) (Shajjah - I - Khafifa a single injury) with Daman of Rs 40,000 for payment to injured PW Munir Ahmed Tunio and R.I for one year as Ta'zir. In case of non-payment of Daman convict at fault will remain under S.I till payment of due amount of Daman by him.*

(ii) *For offence punishable under section 337 F(i) RW Section 34 PPC (jurh Ghyar Jaifah Damiyah two injuries) with Daman of Rs 10,000 each injury (total Rs 20,000) for payment to injured P.W Mohammed Kashif Tunio and R.I for one year as Tazir. In case of non-payment of Daman convict at fault will remain under S.I till payment of due amount of Daman by him.*

(iii) *For offence punishable under section 506 RW Section 34 PPC they are sentenced to R.I (Ta'zir) for Two years and fine of Rs 40,000. In case of non-payment of fine, convict at fault will remain under S.I for six months more.*

2. Precisely narrated, the facts of the prosecution case as unfolded in the FIR lodged by the complainant Munir Ahmed are that mother of the complainant inherited landed property and shop. She during her life time, enjoyed peaceful possession of the property. After the death of complainant's mother, her brother raised dispute over the property. On the eventful day viz. 11.07.2021 complainant, his son Kashif and brother Parvez Ahmed went to look after the lands. It was about 1030 hours in the morning, when the accused every one namely Ghulam Qadir, Ghulam Zakria having pistols, Yehya with hatchet, Kaberiya with lathi, Junaid with lathi, Lal Bux with gun, Abdul Samad with lathi and two unidentified accused having guns came there. Ghulam Qadir gave hakals to the complainant party and instigated the other accused to kill complainant party. Accused Ghulam Zakriya caused pistol butt blow over the mouth of complainant, accused Junaid and Abdul Samad caused lathi blows to Kashif over his body, during scuffle accused Junaid slipped and fell down. The accused went to the village while hurling abuses. The complainant appeared at police station and recorded complaint.

3. Investigation took its course, on 10-08-2021, ASI Raza Muhammad submitted final report of the case for offence punishable u/s 336, 506/2, 337-A(i) PPC, in the court of Civil Judge & Judicial Magistrate-II, Kamber. After supply of police papers and documents to the accused, case R&Ps were sent up for sessions trial, which were ultimately received by the Learned Trial Court for disposal in accordance with law.

4. On 09-10-2021, Learned Trial Court indicted the accused for the charge, in terms of section 265(D) Cr.P.C, to which they pleaded not guilty and claimed for trial, vide pleas recorded in terms of section 265-E Cr.P.C.

5. At trial, to prove charge prosecution examined following witnesses:

- i. *Complainant injured Munir Ahmed Tunio (PW-01, Exh-03)*
- ii. *He tendered in evidence FIR.*
- iii. *Eyewitness Pervaiz Tunio (PW-02, Exh-04)*
- iv. *Injured eyewitness Muhammad Kashif (PW-03, Exh-5)*
- v. *Author cum I.O ASI Raza Muhammad Tunio (PW-04, Exh-6)*
He tendered in evidence entries No.6, 7, 8, 10, 11 and 12, memo of inspection of injuries of both injured, memo of site inspection, memo of arrest of three accused persons and attested PS copy of medical referral letter.
- vi. *Dr. Irfan Ali Rahujo (PW-05, Exh-07)*
He tendered in evidence original letter purportedly issued by Dental Surgeon Civil Hospital Kamber, two provisional and two final MLCs of injured Munir Ahmed and Muhammad Kashif Tunio.
- vii. *Mashir Abid Ali (PW-06, Exh-08)*

6. On conclusion of the prosecution evidence, the statements of the accused were recorded (Exh-10 to 16) in terms of section 342 Cr.P.C, wherein they professed innocence

and denied charge. The accused neither opted to state on oath nor adduced evidence in defense.

7. Learned Trial Court after hearing the parties through Learned Counsel, convicted the appellants Ghulam Qadir, Ghulam Zakriya, Junaid Ahmed and Abdul Samad as aforementioned; hence this appeal.

8. Mr. Razi Khan Chandio, Learned Counsel for the appellants contended that the appellants were innocent, they were implicated in a false case due to annoyance over landed property. He argued that there were material contradictions in the evidence of prosecution witnesses. He argued that medical evidence differed from ocular account. He argued that prosecution was burdened to prove its case beyond shadow of doubt but it failed. He argued that as an axiomatic principle of law, the benefit of doubt if any in prosecution case must be resolved in favor of the accused. He placed reliance upon the case of Khalid @ Khalidi and 2 others Versus the State (2012 SCMR 327), the case of Mst. Sughran Begum and another Versus Qaiser Sheeraz and others (2015 SCMR 1142), case of Khalid Mehmood and another Versus The State and others (2021 SCMR 810) and the case of Tariq Pervez Versus The State (1995 SCMR 1345). He prayed to set aside the conviction and acquit the appellants of the charge.

9. Mr. Suhendar Kumar Gemnani Learned Counsel for the Complainant contended that the prosecution proved its case beyond shadow of doubt. The injured witnesses fully supported the prosecution case and despite of lengthy cross examination the evidence of the prosecution witnesses could not be shattered. He contended that medical evidence supported the ocular account. He contended that the appellants were habitual offenders as they were convicted in similar nature case by the Court of Learned Ist Judicial Magistrate Kamber. He argued that Learned Trial Court rightly convicted the appellants. He prayed for dismissal of appeal.

10. Mr Ali Anwer Kandhro, Learned Additional Prosecutor General assisted by Mr. Zainul Abideen Abassi Learned Assistant Prosecutor General contended that the appellants were rightly convicted by Learned Trial Court. There was no misreading or nonreading of the evidence. However, he conceded to the legal position that in terms of the non obstante clause of section 337 – N PPC conviction for the hurts can be sustained only in the case when accused were habitual and desperate offenders. He prayed to maintain the conviction.

11. Heard Arguments, reappraised prosecution evidence and examined the material available on record.

12. Reappraisal of the evidence reflected that in the instant case FIR was promptly lodged. The ocular account was furnished by injured witnesses PW Munir Ahmed (injured witness), and PW Muhammad Kashif (injured witness). Both these witnesses sustained injuries during the occurrence. Both the injured witnesses contradicted each other on material points. PW 1 Munir Ahmed deposed that appellant Ghulam Zakriya caused him butt blows over mouth. He did not depose that due to said injury his tooth was broken. He deposed that after the incident they came home, thereafter went to police station, recorded FIR and obtained letter for treatment. PW 3 injured Muhammad Kashif deposed that appellant Ghulam Zakriya caused pistol butt blow to his father, who started bleeding, appellants Abdul Samad and Junaid Ahmed caused him lathi blows over left arm and other parts of the body. He deposed that he did not notice that tooth of his father was broken. Further per deposition of the PW1 injured Munir Ahmed, Pw 2 Pervaiz Ahmed and PW 3 injured Muhammad Kashif that the injured Muhammad Kashif sustained injury over left arm, whereas such injury did not find mention in the mashirnama of inspection of injury. Per deposition of PW 1 Munir Ahmed that he lost his tooth in the incident, but such fact neither finds mention in FIR nor in the inspection memo of the injuries. PW 3 injured Muhammad Kashif deposed that they were examined by the Doctor at hospital at about 11:30 AM, whereas per record the FIR in the present case was recorded at 11:30 AM. Presence of the witnesses at two different places at the same time was not possible in the real life.

13. The medical evidence was not in consonance and corroboration with the ocular account. In the injury cases, the injury itself speaks and gives evidence. The ocular account was on variance to the medical account to the extent of the nature, time, locale and impact of the injuries on the person of the injured PWs. Medico Legal Officer (MLO) Dr Irfan Ali was examined as PW 5 in the present case. He produced provisional and final medico legal certificates (MLC) of the injured. Per provisional MLC available at page 61 and 65 of the paper book PW1 injured Munir Ahmed was examined by MLO at 03:06 PM, PW3 injured Muhammad Kashif was examined at 03:10 PM on 11.07.2021. Per prosecution story the time between the injury sustained and examination of the injured should have been 4 hours and 30 minutes. Per opinion tendered in the column of the MLC, the injuries were fresh, meaning thereby that the incident had not taken place at 10:30 AM as alleged by the prosecution. In the final MLC issued for injured PW 1 Munir Ahmed, the MLO opined that the injury fell within the definition of Itlaf – I - Salahiyat tooth. During evidence before Learned Trial Court MLO PW 5 Dr Irfan Ali resiled from the opinion tendered in MLC and in reply to a question conceded that the said injury did not fall within the definition of Itlaf – I – Salahiyat. He deposed in cross examination that ***“It is correct to suggest that Itlaf – I Salhiyat is not applicable in the case of injury sustained by injured Munir Ahmed.”*** This admission on the part of MLO PW5 Dr Irfan Ali coupled with the fact that

the time of injury over the person of injured demonstrated that the MLC issued in favor of injured PW 1 Munir Ahmed and PW 3 Muhammad Kashif was managed.

14. It is another important aspect of the case that PW 1 injured Munir Ahmed did not complain for removal of tooth in FIR as well as in his evidence before trial court, but surprisingly MLO issued him the MLC for the said injury. However when taken to task during cross examination PW 5 MLO Dr Irfan Ali frankly conceded to the factual position that the said injury did not fall within the definition of Itlaf I Salahiyat Tooth. For this very reason the Learned Trial Court did not award conviction for the charge of the offence punishable under section 336 PPC. Moreover, per prosecution case, the complainant PW 1 Muneer Ahmed sustained injury over mouth, in the memo of inspection of injury it was mentioned that the blood oozed from the injury, but surprisingly no any signs of injury over the lips were noted.

15. For the discussion made herein above, it can be safely held that the case of the prosecution is shrouded in mystery and doubts. It is a settled proposition of law that prosecution is burdened to prove the charge beyond shadow of doubt free from surmises and conjectures. It is the quality not the quantity of evidence required to award conviction. Doubt if any created in prosecution case would tilt in favor the accused, who is considered to be the favorite child of the criminal law.

16. It is an axiomatic principle of law that a single circumstance in the prosecution case creating reasonable doubt in the prudent mind was sufficient to discredit the prosecution story. Benefit of such doubt is extended in favor of the accused as a matter of right and not grace.

17. This view is fortified by the dictum laid down by the Honorable Supreme Court of Pakistan in the case of Qurban Ali Versus the State reported as 2025 S C M R 1344, wherein it has been held that:

13. In our view, if all these factors, as noted above, are considered it could not be said that the prosecution has proved its case beyond reasonable doubt. The depositions of various prosecution witnesses, complainant etc., as noted above, do reflect contradictions and doubts. It is a settled proposition of law that in case of contradictions and doubts the benefit of the same must be extended to the accused. Reference in this regard may be made to the case reported as Abdul Jabbar and another v. The State (2019 SCMR 129) wherein it was observed that:

"it is the settled principle of law that once a single loophole is observed in a case presented by the prosecution much less glaring conflict in the ocular account and medical evidence or for that matter where presence of eye-witnesses is not free from doubt, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused."

18. Moreover, the appellants were convicted for the offences punishable under section 337 Ai and 337 Fi and sentenced to suffer rigorous imprisonment for one year as ta'zir. Legislation by inserting section 337 N in Pakistan Penal Code had imposed certain conditions for inflicting punishment of Ta'zir in the cases of hurts. It would be conducive to reproduce section 337 N for academic purposes:

337N. Cases in which qisas for hurt shall not be enforced.

(1) The qisas for a hurt shall not be enforced in the following cases, namely;

(a) when the offender dies before execution of qisas ;

(b) when the organ of the offender liable to qisas is lost before the execution of qisas:

Provided that offender shall be liable to arsh, and may also be liable to ta'zir provided for the kind of hurt caused by him;

(c) when the victim waives the qisas or compounds the offence with badl-i-sulh ; or

(d) when the right of qisas devolves on the person who cannot claim qisas against the offender under this Chapter:

Provided that the offender shall be liable to arsh, if there is any wali other than the offender, and if there is no wali other than the offender he shall be liable to ta'zir provided for the kind of hurt caused by him.

(2) Notwithstanding anything contained in this Chapter, in all cases of hurt, the court may, having regard to the kind of hurt caused by him, in addition to payment of arsh, award ta'zir to an offender who is a previous convict, habitual or hardened, desperate of dangerous criminal or the offence has been committed by him in the name or on the pretext of honour:

Provided that the ta'zir shall not be less than one-third of the maximum imprisonment provided for the hurt caused if the offender is a previous convict, habitual, hardened, desperate or dangerous criminal or if the offence has been committed by him in the name or on the pretext of honour.

(Bold italic is for emphasis)

19. Through the non obstante clause contained in section 337 N PPC, the legislature has left it at the discretion of the court to convict an accused for the charge of causing hurts. But exercise of such discretion to award conviction under Ta'zir for the hurt is subject to a condition that the accused was a previous convict, habitual or hardened, desperate criminal or the offence was committed in the name or pretext of honor. The dominant rationale of interpretation of any legislative instrument is to bring to light the intention of the legislature and the foremost sense of duty of the Courts is to catch on the same through reference to the language used. The expression "*Non-obstante*" is a Latin terminology which connotes 'notwithstanding anything contained'. This turn of phrase, for all intents and purposes invests powers in the legislature to set down any provision which may have an overriding effect on any other legal provision under the same law or any other laws, being a legislative apparatus and method of conferring overriding effect over the law or provisions that qualifies such clause or section of law. A non-obstante clause is commonly put into operation to signify that the provision should outweigh regardless of anything to the contrary. The non-obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect.

20. The non obstante clause in section 337 N, left it at the discretion of the Court trying the offence to award conviction to the accused who was dangerous, desperate, hardened or previous convict or the offence was committed under the pretext of honor. In absence of any evidence as to above mentioned category of the accused, the ordinary conviction for the hurts would be arsh or daman as the case may be. It is well settled elucidation of law that conviction in the offences carrying minor punishment had a reformatory concept. Rather to put an accused in jail, a reprimand to mend the ways in future was treated as a sufficient punishment. The legislature, therefore in its wisdom incorporated non obstante clause in section 337 N PPC laying down conditions for conviction and sentence as Ta'zir for the hurts caused.

21. Reappraisal of the evidence reflected that in the present case, the prosecution witnesses had sustained simple injuries. There was no material available on record to elicit that the appellants were previous convicts, dangerous or desperate criminal and offence was committed under the pretext of honor. On the contrary it was established that parties were closely related to each other, having dispute over landed property. The discretion exercised by the Learned Trial Court for convicting the appellants to undergo RI for one year as ta'zir for hurts thus was not tenable under the law.

22. Learned Trial Court convicted the appellants for the charge of the offence punishable under section 506 PPC. An accused is convicted for the charge of an offence

under section 506 PPC when ingredients of the offence of criminal intimidation defined under section 503 PPC were attracted. Section 503 PPC reads as under:

503. Criminal intimidation. *Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.*

Explanation.— *A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.*

Illustration A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. Intentional insult with intent to provoke breach of the peace. Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

23. Perusal of the above provision of law made it vivid and crystal clear that an offence of criminal intimidation would be committed when accused threatened the complainant with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. In the present case there was no evidence that pursuant to the threats the complainant party committed an act which they were not legally obliged to do or omitted to do an act which they were bound to do. As such from the evidence available on record, no offence punishable under section 506 PPC was made out, hence the conviction awarded to the appellants for the said offence was result of the misinterpretation of facts thus not tenable under the law.

24. On reappraisal of the evidence on record, I have arrived at an irresistible conclusion that the prosecution has miserably failed to prove guilt of the appellants through cogent and confidence inspiring evidence. The prosecution's evidence is riddled with doubt, contradictions and material discrepancies. The appellants were entitled to a concession under the benefit of doubt not as a matter of grace but as a matter of right. Consequently, this Jail Appeal is allowed. The conviction and sentence awarded to the appellants (1)

Ghulam Qadir son of Lal Bux Tunio, (2) Ghulam Zakriya son of Ghulam Qadir Tunio, (3) Junaid Ahmed son of Ghulam Qadir Tunio and (4) Abdul Samad son of Ghulam Qadir Tunio vide impugned judgment dated 30-10-2021, passed by the court of learned 1st Additional Sessions Judge/MCTC, Kamber, in Sessions case No.419/2021, “The State Versus Ghulam Qadir Tunio and others”, stemming from FIR No.171/2021, of Police Station Sadar Kamber, stands set aside. The appellants are acquitted of the charge. The appellants are present on bail; their bail bands stand cancelled and surety discharged.

The appeal stands disposed of.

Dated:12.09.2025

JUDGE

Larkana

Approved for reporting