

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Maqbool Baqar
Mr. Justice Syed Mansoor Ali Shah

Criminal Appeals No. 155 and 156 of 2018

(Against the judgment dated 21.12.2017 passed by the High Court of Balochistan, Sibi Bench at Quetta in Criminal Appeal No. (S) No. 53 of 2017 and Criminal Revision (S) No. 22 of 2017)

<i>Abdul Wahab, etc.</i>	<i>(in Cr. A. 155 of 2018)</i>	
<i>Abdul Wahab</i>	<i>(in Cr. A. 156 of 2018)</i>	...Appellants
	versus	
<i>The State, etc.</i>	<i>(in both cases)</i>	...Respondents

For the appellants:	Syed Ayaz Zahoor, ASC <i>(in both cases)</i>
For the State:	Syed Baqar Shah, State Counsel <i>(in both cases)</i>
For the complainant:	Mr. Zahoor-ul-Haq Chishti, ASC <i>(in both cases)</i>
Date of hearing:	10.01.2019

JUDGMENT

Asif Saeed Khan Khosa, J.:

Criminal Appeal No. 155 of 2018

Abdul Wahab, Ghulam Ishaque, Abdul Jabbar and Muhammad Ismail appellants and another had allegedly chopped

off the right ear of one Ahmed Ali in an incident taking place at about 10.00 A.M. on 06.02.2016 in Goth Muhammad Azam Magsi in the area of Police Station Shaheed Malik Muhammad Ali, District Jaffarabad regarding which FIR No. 8 was registered at the said Police Station during the same morning. After a regular trial the appellants were convicted by the trial court for an offence under section 334, PPC and were sentenced to rigorous imprisonment for five years and to pay *Arsh* equal to *Diyat* in equal shares to the victim. The appellants challenged their convictions and sentences before the High Court through an appeal and Nisar Ahmed complainant also filed a revision petition before the High Court seeking enhancement of the sentence of imprisonment passed against the appellants. Through the impugned judgment the High Court upheld the convictions and sentences of Ghulam Ishaque, Abdul Jabbar and Muhammad Ismail appellants recorded by the trial court whereas the said Court enhanced the sentence of imprisonment passed by the trial court against Abdul Wahab appellant to rigorous imprisonment for seven years while maintaining the remaining punishment imposed upon him. Hence, the present appeal by leave of this Court granted on 13.02.2018.

2. Leave to appeal had been granted in this case in order to examine as to whether the provisions of section 337-N(2), PPC stood attracted to the facts of this case or not and if the said provisions were applicable to the case in hand then whether the punishments of imprisonment could have been passed against the appellants by way of *Ta'zir* or not. We have noticed that according to the provisions of section 337-N(2), PPC a punishment of imprisonment by way of *Ta'zir* can be passed against a convict only if the convict is "previous convict, habitual or hardened, desperate or dangerous criminal or the offence has been committed by him in the name or on the pretext of honour". It is pertinent to notice that the trial court as well as the High Court did not observe anything about such credentials of the appellants. It had been held in the cases of Ali Muhammad v. The State (PLD 2009 Lahore 312), Mazhar Hussain v. The State and another (2012 SCMR 887) and

Haji Maa Din and another v. The State and another (1998 SCMR 1528) that in a case pertaining to causing of hurt unless the provisions of section 337-N(2), PPC are attracted to the case of the convict he cannot be awarded a sentence of imprisonment by way of *Ta'zir*. In the present case the appellants had initially resorted to ineffective firing and no firearm injury had been received by any of the members of the complainant party. It was alleged that Abdul Wahab appellant had then cut the right ear of Ahmed Ali (PW2) with the use of a knife and there was some doubt available on the record as to whether the ear was cut off through the use of a knife or it was bitten off by the said appellant. Be that as it may, there was no serious motive on the part of the appellants and the asserted motive had never been proved through any independent evidence. Admittedly the appellants were not previous convicts and there was no evidence of previous involvement of the appellants in any criminal case. It is not denied that no issue of honour was involved in commission of the relevant offence by the appellants. In this view of the matter in terms of section 337-N(2) the appellants could not have been punished with imprisonment by way of *Ta'zir*.

3. For what has been discussed above this appeal is partly allowed, the convictions of the appellants for the offence under section 334, PPC recorded and upheld by the courts below are maintained, the order passed by the trial court regarding payment of *Arsh* equal to *Diyat* by the appellants in equal shares is modified in terms of the provisions of section 337R, PPC, the appellants are held to be liable to pay *Arsh* equal to one half of *Diyat* in equal shares and the sentences of imprisonment by way of *Ta'zir* passed against the appellants are set aside. The appellants had been admitted to bail by this Court upon suspension of their sentences during the pendency of this appeal through the order dated 13.02.2018. They are ordered to deposit *Arsh* equal to one half of *Diyat* in equal shares with the trial court within the next six months from today failing which they shall be taken into custody and shall be dealt with in accordance with the law. This appeal is disposed of in these terms.

Criminal Miscellaneous Application No. 6-Q of 2018 in Criminal Appeal No 156 of 2018

4. This miscellaneous application is allowed in the terms prayed for therein. Disposed of.

Criminal Appeal No.156 of 2018

5. In view of the judgment passed by this Court in the connected Criminal Appeal No. 155 of 2018 this appeal has lost its relevance and the same is disposed of.

Judge

Judge

Judge

Islamabad
10.01.2019

Approved for reporting.

Arif