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<p class=MsoBodyText align=center style='text-align:center;line-height:150%'>Cr. Appeal No.D-122 of 2006<o:p></o:p></p>

<p class=MsoBodyText align=center style='text-align:center;line-height:150%'>Cr. Appeal No.D-123 of 2006<o:p></o:p></p>

<p class=MsoBodyText align=center style='text-align:center'>Cr. Reference No.D-30 of 2007<o:p></o:p></p>

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<p class=MsoBodyText align=left style='margin-left:1.5in;text-align:left;line-height:normal'><u>PRESENT<o:p></o:p></u></p>

<p class=MsoBodyText align=left style='margin-left:1.5in;text-align:left;line-height:normal'>Mr. Justice Khawaja Naveed Ahmed,<o:p></o:p></p>

<p class=MsoBodyText align=left style='margin-left:1.5in;text-align:left;line-height:normal'>Mr. Justice Ghulam Dastgir A. Shahani,<o:p></o:p></p>

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<p class=MsoBodyText align=left style='text-align:left;line-height:normal'>Appellants <u>Ali Bux and Imdad Ali Chandio and</u> <o:p></o:p></p>

<p class=MsoBodyText align=left style='text-align:left;line-height:normal'>in both appeals. <u>Ashique Ali through Mr. Habibullah<o:p></o:p></u></p>

<p class=MsoBodyText align=left style='text-align:left;line-height:normal'> <u>G. Ghori, advocate.<o:p></o:p></u></p>

<p class=MsoBodyText align=left style='text-align:left;line-height:normal'><u><o:p> </u></p>

<p class=MsoBodyText align=left style='text-align:left;line-height:normal'><o:p> </o:p></p>

<p class=MsoBodyText align=left style='text-align:left;line-height:normal'>Respondent <u>The</u><u> State through Mr. Mushtaq Ahmed<o:p></o:p></u></p>

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3'> <u>Abbasi, Asst. Advocate General.</u><u><o:p></o:p></u></p>

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<p class=MsoBodyText align=left style='text-align:left;line-height:normal'>Date of hearing <u>23.4.2008.</u> Date of Judgment <u>23.4.2008.</u><o:p></o:p></p>

<p class=MsoBodyText align=left style='text-align:left'><o:p> </o:p></p>

<p class=MsoBodyText align=center style='text-align:center'><u>J U D G M E N T.</u><u><o:p></o:p></u></p>

<p class=MsoNormal style='text-align:justify;line-height:200%'><u>KHAWAJA NAVEED AHMED, J.-</u>The appellants were convicted vide judgment, dated 22.12.2006, by the learned III-Additional Sessions Judge, Dadu, for offence under Sections 302, 114, 34, P.P.C, and appellant Ashiq Ali was sentenced to death, as Tazir, while appellants Ali Bux and Imdad Ali were sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.100,000/=, which, if recovered, was ordered to be paid to the legal heirs of deceased, to the extent of 50 per cent, and in default in payment of fine the appellants were to undergo rigorous imprisonment for six months further, and the benefit under Section 382-B, Cr.P.C, was extended to them.<o:p></o:p></p>

<p class=MsoNormal style='text-align:justify;line-height:200%'>2.<span

The learned advocate for the appellants has argued at some length. The deceased has died with gunshot injury. The relevant portion of medical report is reproduced hereunder :-

On external examination of deceased, I found following injury on the person of deceased:

"Firearm through and through wound (open wound) 20 cm x 10 cm from lower part of right side of face to left tempo occipital area of skull."

From external and internal examination of the deceased, I am of the opinion that death occurred due to brain damage and

haemorrhage, shock caused by injury by firearm weapon, which was ante mortem in nature and sufficient to cause death in ordinary course of life.

The other two appellants, namely, Ali Bux and Imdad Ali, are stated to be armed with hatchet and lathi respectively.

According to medical

report, no injury of hatchet or lathi is found on the person of the deceased.<o:p></o:p></p>

<p class=MsoNormal style='margin-top:12.0pt;text-align:justify;line-height:200% '>4. Learned Counsel for the appellants vehemently argued that Ali Bux and Imdad Ali have not shared common intention with the main accused and as such they have been wrongly sentenced by the learned trial Court. We have perused the judgment of the trial Court, medical report as well as evidence of the parties. No doubt parties had inimical terms. Regarding main accused/appellant Ashique Ali, the learned Counsel has argued that though the eye-witnesses have deposed against him, but there is no corroborative evidence to support their ocular testimony and as such, their testimony cannot be relied upon in the circumstances of the case. The learned Counsel has prayed for setting aside the conviction and sentence, as the appellants have been convicted upon the evidence of witnesses, who had enmity with the accused persons.<o:p></o:p></p>

<p class=MsoNormal style='margin-top:12.0pt;text-align:justify;line-height:200% '>5. Mr. Mushtaq Ahmed Abbasi, the learned Asst. A.G., has strongly supported the judgment of the trial Court and has stated that the learned Additional Sessions Judge (Mr. Khalid Hussain Shahani) has rightly reached on the conclusion that accused/appellant Ashique Ali had killed deceased with the gunshot, while the other two co-accused have facilitated the murder. On enquiry, he has informed that the co-accused have remained in jail for about four years.<o:p></o:p></p>

<p class=MsoNormal style='margin-top:12.0pt;text-align:justify;line-height:200% '>6. We are satisfied with the judgment passed by the learned trial Court. However, keeping in view the single gunshot injury, which has not been repeated by the assailant, we fee that this is the case where the sentence can be reduced from death to imprisonment for life. The learned Counsel for the appellants Mr. Habibullah G. Ghori said that he will be satisfied if the sentence of the appellant Ashique Ali is reduced from death to imprisonment for life and sentence of co-accused, namely, Ali Bux and Imdad Ali is reduced to already undergone. The learned Asst. A.

G., Mr. Mushtaq Ahmed Abbasi said that the request of Mr.
G. may be considered.<o:p></o:p></p>

<p class=MsoNormal style='margin-top:12.0pt;text-align:justify;line-height:200% '>7. Keeping in view the mitigating circumstances, mentioned above, we maintain the conviction of all the three appellants and reduce the sentence of appellant Ashique Ali from death to imprisonment for life with benefit of Section 382-B, Cr.P.C. Other two appellants Ali Bux and Imdad Ali have remained in jail for about four years. Their sentence is reduced to one already undergone. Appellant Ashique Ali is further imposed fine of Rs.50,000=, which will be treated as compensation under Section 544-A, Cr.P.C. In case this fine is recovered, it shall be given to the legal heirs of the deceased immediately. In case of default in payment of fine, he has to suffer further imprisonment for one year in lieu of fine. Appellants Ali Bux and Imdad Ali are in custody, they shall be released forthwith if not required to be detained in any other case.<o:p></o:p></p>

<p class=MsoNormal style='margin-top:12.0pt;text-align:justify;line-height:200% '>8. Criminal Appeals No.D-122 and D-123 of 2006 and Criminal Reference No.D-30/2007, stand disposed of. <o:p></o:p></p>

<p class=MsoNormal style='text-align:justify'><o:p> </o:p></p>

<p class=MsoNormal style='text-align:justify'> JUDGE<o:p></o:p></p>

<p class=MsoNormal style='text-align:justify'><o:p> </o:p></p>

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