

IN THE HIGH COURT OF SINDH, CIRCUIT COURT MIRPURKHAS

Criminal Appeal No. S-14 of 2023

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Appellants 1. Abdul Haleem son of Muhammad Ameen.
2. Mumtaz @ Mumtaz Ali son of Abdul Haleem.
3. Uris son of Manjhi.
4. Abdul Rehman son of Manjhi.
5. Ayoub son of Manjhi.
6. Noor Muhammad son of Ameen.
7. Aijaz Ali son of Noor Muhammad.
8. Ghulam Mustafa son of Khair Muhammad.
9. Muhammad Ameen son of Abdul Haleem.
10. Muhammad Zaman son of Mehar.

Complainant Akbar Ali son of Soomar.

Respondent The State.

Criminal Appeal No.S-50 of 2023 {Mirpurkhas}
Criminal Appeal No.S-211 of 2018 {Hyderabad}

Appellants 1. Hakim son of Allah Dino.
2. Ezzo son of Hakim.
3. Pat Bhario son of Hakim.
4. Ahmed son of Pat Bhario.
5. Akbar son of Soomar.
6. Imam Bux son of Soomar.
7. Siddique son of Soomar.
8. Shoeb @ Popat son of Misri.
9. Haji son of Pat Bhario.
10. Javed son of Hakim.
11. Dalan son of Daulat son of Misri.

Complainant Abdul Haleem son of Muhammad Amin.

Respondent The State.
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Mr. Mir Naeem Akhtar Talpur, Advocate for appellants Mumtaz @ Mumtaz Ali, Noor Muhammad and Muhammad Ameen in Crl. Appeal No.S-14 of 2023.
Mr. Ghulamullah Chang, Advocate for appellants Abdul Haleem, Uris, Abdul Rehman, Ayoub, Aijaz Ali, Ghulam Mustafa and Muhammad Zaman in Crl. Appeal No.S-14 of 2023.

Mr. Ishrat Ali Lohar, Advocate for complainant in Crl. Appeal No.S-14 of 2023
Mr. Ishrat Ali Lohar, Advocate for appellants in Crl. Appeal No.S-50 of 2023
Mr. Ghulamullah Chang, Advocate for complainant in Crl. Appeal No.50 of 2023.

Mr. Shahzado Saleem, Additional Prosecutor General {Sindh}.

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Date of hearing **05.11.2025**

Date of Judgment **26.11.2025**

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JUDGMENT

Shamsuddin Abbasi, J.- By means of Criminal Appeal No.S-14 of 2023, Abdul Haleem, Mumtaz @ Mumtaz Ali, Uris, Abdul Rehman, Ayoub, Noor Muhammad, Aijaz Ali, Ghulam Mustafa, Muhammad Ameen and Muhammad Zaman, appellants /accused, have challenged the validity of the judgment dated 26.08.2023, penned down by the learned Additional Sessions Judge-I {MCTC} Tharparkar @ Mithi, in Sessions Case No.84 of 2013 {FIR No.57 of 2013} registered at Police Station Chachro, District Tharparkar, for offences under Sections 302, 324, 147, 148, 149, 114, 504, 337-A(i), 337-F(i) and 337-L(ii), PPC, through which they were convicted and sentenced as under:-

S.No.	Name(s) of accused with role	Offence(s) under which convicted	Sentence(s) awarded
1	2	3	4
1.	All the abovenamed accused are convicted for committing the offence	U/S 147,148,149 & 114 PPC	To suffer imprisonment for one year and pay fine of Rs.10,000/- each and in case of non-payment of fine they shall suffer S.I. for ten days more.
2.	All the abovenamed accused are convicted for committing the offence	U/S 504 PPC	To suffer imprisonment for one year and pay fine of Rs.2000/- each and in case of non-payment of fine, they shall suffer S.I. for ten days more.
3.	Accused Mumtaz @ Mumtaz Ali s/o Abdul Haleem & Ayoub s/o Manjhi, both by caste Uner, for causing murder/Qatl-e-Amd of deceased Mumtaz s/o Khamiso, Uner, by causing him hatchets & Lathi injuries on his head & other parts of body.	U/S 302(b) & 34, PPC	To suffer imprisonment for life as Ta'zir and pay Rs.200,000/- (rupees two hundred thousand) each as compensation to the legal heirs of deceased as provided U/S 544-A, Cr.P.C.
4.	Accused Urs s/o Manjhi & Aijaz Ali s/o Noor Muhammad, both by caste Uner, for causing sharp side hatchet injuries to injured Ahmed on his head & other parts of body	U/S 337-A(i) PPC	To pay Rs.5,000/- as Daman towards expenses incurred on treatment of victim/injured Ahmed as provided U/S 337-Y(a) PPC and to suffer imprisonment for one year as Ta'zir.
5.	Accused Noor Muhammad s/o Ameen & Abdul Rehman s/o Manjhi, for causing hatchet & lathi blows to injured Pat Bhario on his head & arm.	U/S 337-A(i) PPC	To pay Rs.5,000/- as Daman towards expenses incurred on treatment of victim/injured Pat Bhario as provided U/S 337-Y(a) PPC and to suffer imprisonment for one year as Ta'zir.
		U/S 337-L(ii) PPC	To suffer imprisonment for one year.
		U/S 337-F(i) PPC	To pay Rs.5,000/- each as Daman towards expenses incurred on treatment of

			victim Pal Bhario as provided U/S 337-Y(a) PPC and to suffer imprisonment for one year as Ta'zir.
		U/S 337-F(vi) PPC	To pay Rs.20,000/- as Daman towards expenses incurred on treatment of victim Pat Bhario as provided U/S 337-Y(a) PPC and to suffer imprisonment for five years as Ta'zir.
6.	Accused Abdul Haleem s/o Muhammad Ameen & Ghulam Mustafa s/o Khair Muhammad, by caste Uner, for causing lathi blows to injured Hakim on his head and back side of body.	U/S 337-A(i) PPC	To pay Rs.5,000/- each as Daman towards expenses incurred on treatment of victim/injured Hakim as provided U/S 337-Y(a) PPC and to suffer imprisonment for one year as Ta'zir.
		U/S 337-L(ii) PPC	To suffer imprisonment for one year.
		U/S 337-F(i) PPC	To pay Rs.5,000/- each as Daman towards expenses incurred on treatment of victim Hakam as provided U/S 337-Y(a) PPC and to suffer imprisonment for one year as Ta'zir.
7.	Accused Muhammad Ameen s/o Abdul Haleem fir causing lathi blows to injured Javed on his head & other parts of body.	U/S 337-A(i) PPC	To pay Rs.10,000/- as Daman towards expenses incurred on treatment of victim Javed as provided U/S 337-Y(a) PPC and to suffer imprisonment for one year as Ta'zir.
8.	Accused Zaman s/o Mehar for causing lathi blows to injured Muhammad Essa on his head, shoulder & back side of body.	U/S 337-A(i) PPC	To pay Rs.5,000/- as Daman towards expenses incurred on treatment of victim/injured Muhammad Essa as provided U/S 337-Y(a) PPC and to suffer imprisonment for one year as Ta'zir.
		U/S 337-L(ii) PPC	To suffer imprisonment for one year.

All the sentences awarded herein above as described in the table shall run concurrently and the accused are, however, awarded the benefit of section 382-B Cr.P.C. Accused Mumtaz Ali is produced in custody from Central Prison Mirpurkhas. He is remanded back to custody while remaining accused are present on bail, their bail bonds stand cancelled and sureties discharged., They are taken into custody and all the abovenamed accused persons are remanded to Central Prison, Mirpurkhas, to serve out the above sentence(s). The copy of this judgment be delivered to accused on free of cost and such receipt be obtained from them for keeping it in this file of the case.

Before parting with this judgment, it is essential to mention here that this court is aware of the fact that in this case, murder of an innocent man has been committed on account of petty dispute of fetching water from the Govt. well between them and a charge of Qatl-e-Amd is proved against accused Mumtaz @ Mumtaz Ali s/o Abdul Haleem & Ayoub s/o Manjhi for which normal penalty of death should be awarded and leniency in any case should not be shown except where strong mitigating circumstances for lesser sentence are brought on record and this court finding certain factors

leading to mitigating circumstances, such as age of accused, their poor condition, being halting from same family, so also previous non-convicts and first offenders, therefore, this Court is of the lenient view that in this attending facts & circumstances of the case, the sentence of imprisonment for life would meet the ends of justice. Reliance is placed on 2010 MLD 860 (Peshawar).

With utmost respect, the case law relied upon by the learned counsel for accused are not helpful to the facts and circumstances of the present case, and it is well settled that every criminal case has its own peculiar facts and circumstances”.

2. Worth to mention here that during trial accused Manjhi died and proceedings against him were abetted vide order dated 29.03.2023.

3. Hakim, Ezzo, Pat Bhario, Ahmed, Akbar, Imam Bux, Siddique, Shoeb @ Popat, Haji, Javed and Dalan @ Daulat, appellants in Criminal Appeal No.S-50 of 2023, have also called into question the judgment dated 13.09.2018, handed down by the learned Additional Sessions Tharparkar @ Mithi, in Sessions Case No.91 of 2013 {FIR No.60 of 2013} registered at Police Station Chachro, District Tharparkar, for offences under Sections 147, 148, 149, 114, 337-A(i), 337-F(i) and 504, PPC, through which they were convicted and sentenced as under:-

S.No.	Name(s) of accused with role	Offence(s) under which convicted	Sentence(s) awarded
1	2	3	4
1.	All the abovenamed accused are convicted for committing the offence (as shown in column No.3)	U/S 147,148,149 & 114 PPC	To suffer imprisonment for two years and pay fine of Rs.2,000/- each and in case of non-payment of fine, they shall suffer S.I. for ten days more.
2.	-do-	U/S 504 PPC R/W section 114 PPC	To suffer imprisonment for one year and pay fine of Rs.1,000/- each and in case of non-payment of fine, they shall suffer S.I. for ten days more.
3.	Accused Hakim s/o Allahdino for causing blunt side hatchet injuries to injured Mumtaz s/o Abdul Haleem	U/S 337-F(i) PPC	To pay Rs.5,000/- as Daman towards expenses incurred on treatment of victim Mumtaz s/o Abdul Haleem as provided U/S 337-Y(a) PPC and to suffer imprisonment for one year as Ta'zir.
		U/S 337-L(ii) PPC	To suffer imprisonment for one year.
4.	Accused Ezzo s/o Hakim for causing lathi blows to complainant Abdul Haleem	U/S 337-L(ii) PPC	To suffer imprisonment for one year.
5.	Accused Pal Bhario s/o Allahdino for causing blunt side of hatchet injuries to complainant Abdul Haleem	U/S 337-L(ii) PPC	To suffer imprisonment for one year.

6.	Accused Ahmed s/o Pal Bhario for causing lathi blows to injured Ameen s/o Ameen s/o Abdul Haleem	U/S 337-A(i) PPC	To pay Rs.10,000/- as Daman towards expenses incurred on treatment of victim Ameen s/o Abdul Haleem as provided U/S 337-Y(a) PPC and to suffer imprisonment for two years as Ta'zir.
7.	Accused Akbar s/o Soomar for causing hatchet blows on the head of injured Muhammad Ayoub	U/S 337-A(i) PPC	To pay Rs.10,000/- as Daman towards expenses incurred on treatment of victim Muhammad Ayoub as provided U/S 337-Y(a) PPC and to suffer imprisonment for two years as Ta'zir.
8.	Accused Imam Bux s/o Soomar for causing lathi blows to injured Noor Muhammad	U/S 337-F(i) PPC	To pay Rs.5,000/- as Daman towards expenses incurred on treatment of victim Mumtaz s/o Abdul Haleem as provided U/S 337-Y(a) PPC and to suffer imprisonment for one year as Ta'zir.
9.	All the above accused are also convicted for jointly causing injuries to injured Abdul Rehman s/o Majeed	(i) U/S 337-A(i) PPC R/W section 114 PPC (ii) U/S 337-F(ii) PPC R/W Section 114 PPC	To pay Rs.3,000/- by each accused as Daman towards expenses incurred on treatment of victim Abdul Rehman as provided U/S 337-Y(a) PPC and to suffer imprisonment for one years as Ta'zir. To pay Rs.2,000/- by each accused as Daman towards expenses incurred on treatment of victim Abdul Rehman as provided U/S 337-Y(a) PPC and to suffer imprisonment for one years as Ta'zir.

All the sentences awarded herein above as described in the table shall run concurrently and the accused are, however, awarded the benefit of section 382-B Cr.P.C. They are present on bail, their bail bonds stand discharged., They are taken into custody and remanded to Central Prison, Hyderabad through Superintendent Sub-Jail, Mithi to serve out the above sentence(s). The copy of this judgment be delivered to accused on free of cost and such receipt be obtained from them for keeping it in this file of the case”.

4. Short but relevant facts of the case are that Akbar Ali son of Soomar, one of the appellants in Criminal Appeal No.S-50 of 2023 and complainant in Criminal Appeal No.S-14 of 2023) lodged FIR No.57 of 2013 at P.S. Chachro, District Tharparkar against appellants /accused in Criminal Appeal No.S-14 of 2023 for commission of murder of Mumtaz son of Khamiso inflicting injuries on his head and other parts of body and causing injuries to Ahmed, Pat Bhario, Hakim, Javed and Muhammad Essa with the blows of hatchets and lathis. Per contents of the FIR, there was a Government well, which was

being used jointly by the villagers turn by turn, however, since last one month the complainant party was being restrained by Ayoub and others. It is stated that on 14.09.2013 his cousin Pat Bhario and others were fetching water from the well. It was about 8:00 pm when Ayoub alongwith his companions, armed with hatchets and lathis, came there and stopped them from fetching water and also used abusive language upon which the complainant party resisted and stopped them from using such language. Meanwhile, the accused party, on the instigation of Abdul Haleem, jointly attached upon the complainant party with hatchets and lathis and inflicted injuries to Mumtaz son of Khamiso, Ahmed, Pat Bhario, Hakim, Javed and Muhammad Essa with the blows of hatchets and lathis. They were shifted to hospital and provided medical treatment, however, Mumtaz son of Khamiso succumbed to his injuries. The complainant went to P.S. and lodged FIR on 15.09.2013.

5. On the other hand, Abdul Haleem son of Muhammad Ameen reported the same incident to police vide FIR No.60 of 2013 stating therein that they had a acrimony with Mumtaz son of Khamiso and others over fetching of water from well. On 14.09.2013 they were fetching water from the well per their turn. It was about 8:00 pm when Mumtaz son of Khamiso alongwith his companions, armed with hatchets and lathis, came there and started abusive language by stating that why they are fetching water despite of their warning. Meanwhile, on the instigation of other accused, Mumtaz son of Khamiso attacked upon Mumtaz son of Abdul Haleem with hatchet and inflicted blows on his back side and other parts of the body. The other accused also jointly attacked the complainant party and caused injuries to complainant Abdul Haleem, Ameen, Muhammad Ayoub, Noor Muhammad and Abdul Rehman inflicting blows with the hatchets and lathis and thereafter made their escape good. The injured persons were referred to hospital where they were provided medical treatment and thereafter the complainant appeared at P.S. and lodged FIR on 16.09.2013.

6. Pursuant to the registration of FIRs, the investigations were followed and in due course separate challans were submitted before the Court of competent jurisdiction in each case, whereby the appellants /convicts were sent-up to face the trial by way of counter FIRs registered against each other with regard to the same incident.

7. Both cases were tried separately and ended in convictions and sentences as detailed in paras-1 and 3 {supra}. Aggrieved of their

convictions, both parties filed their respective appeals, listed above, which are being decided together through this single judgment.

8. Both learned counsels appearing in Criminal Appeal No.S-14 of 2023 while referring to the case of the prosecution as well as depositions of witnesses has submitted that there was a free fight between two groups and both parties have lodged their respective FIRs against each other regarding the same incident and both have been convicted. It is next submitted that the incident occurred on sudden provocation over fetching of water from the well and no evidence has been brought on record to establish the requisites of common object and common intention shared by the attackers including Mumtaz @ Mumtaz Ali son of Abdul Haleem and Ayoub son of Manjhi, who have been awarded life imprisonment under Section 302(b), PPC, hence in absence of any element of sharing common object and common intention as well as lack of premeditation, the incident was one of a sudden fight, which attracts the provision of Section 302(c), PPC and not under Section 302(b), PPC. It is also submitted that the learned trial Court has recorded convictions in both cases and awarded different sentences per role assigned to each accused despite of the fact that they have actively participated in the commission of offence, hence awarding conviction of life imprisonment to appellant Mumtaz @ Mumtaz Ali and Ayoub under Section 302(b), PPC is illegal and against the principle of natural justice. By arguing so, they submit that they would not press the appeal on merits if the convictions and sentences awarded to appellants Mumtaz @ Mumtaz Ali and Ayoub are converted from Section 302(b), PPC to Section 302(c), PPC.

9. The learned APG has conceded the above position and recorded his no objection for conversion of sentences awarded to appellant Mumtaz @ Mumtaz Ali and Ayoub from Section 302(b), PPC to Section 302(c), PPC. The learned counsel appearing in Criminal Appeal No.S-50 of 2023 also admits the above situation and records no objection. He, however, submitted that his clients have acted in self defence and they have been wrongly convicted.

10. I have given my anxious consideration to the submissions of respective parties and gone through the entire material available before me with their able assistance.

11. Admittedly, both parties are related *inter se*. They conjointly went to the place of incident to fetch water from the well where alleged incident occurred and both sides have lodged their respective FIRs against each other

for assault, commission of murder and inflicting injuries with the blows of hatchets and lathis. During such fight Mumtaz son of Khamiso lost his life whereas other members from both sides sustained injuries with the blows of hatchets and lathis. The evidence that has come on record reveals that there was a free fight and all accused have actively participated in the commission of offence and played different role and the learned trial Court too found both parties guilty of the offences charged with and awarded different convictions per role assigned to each accused. It is, thus, made clear that the incident was one of a sudden fight between two groups over fetching of water from the well and there was no element of sharing of common intention and common object and the incident occurred without prior premeditation.

12. As to the question of unlawful assembly is concerned, suffice to state that charge for an offence committed as a member of an unlawful assembly is different from a charge for an offence committed with common object as a member of such assembly. It is noteworthy that there had been a dispute over fetching of water from the well and this fact has been admitted by both parties in their respective depositions coupled with the registration of counter FIR against each other, which lead to a presumption that there was a free fight and both parties have actively participated in the commission of offence, hence not only the aggression on one party cannot be assumed to be true but the question of common object would also not arise. In the circumstances, when the situation leads to free fight between two sides and one party suffered loss of a life of one person and other members from each side sustained injuries, one cannot be held responsible and it is difficult to say which party has initiated the episode and which side exceeded the right of self-defence. Reliance in this behalf may well be made to the case of *Mushtaq Hussain and another v The State* (2001 SCMR 45), wherein it has been held as under:-

"Accused if not had raised the plea of self-defence during trial either in his statement under S.342, Cr.P.C. or at the time of cross-examination of prosecution witnesses, Court however, could infer the same from the evidence led during trial if it was tenable---As benefit of cross-version was given to accused of cross-case, same would be extended to both the accused particularly when two eye-witnesses were injured but had charged the acquitted co-accused as well for causing injuries to them---Both the courts below had found that there was a cross-case and no definite finding could be given about aggression made by both the accused".

13. Admittedly, no previous animosity or ill-will has been brought on record by both the parties. It is, however, noted that both parties have set forth a motive and leveled allegations against each other claiming that they acted in self defence as being restrained from fetching water from the well on turn and the other party was aggressor. This could not be treated a strong motive, which has remained in mystery. The burden to prove the motive rests upon the party alleging the same. Here in this case both parties though alleged motive of imposing restrictions of fetching water from the well, but failed to establish the same. The law in this regard is very much settled by now that absence of motive or absence of proof of the same would be a sufficient mitigating circumstance to determine the quantum of sentence. More so, this is a case of a single assault upon the deceased by Mumtaz @ Mumtaz Ali son of Abdul Haleem and Ayoub son of Manjhi without any effort on their part to repeat it when there had been sufficient opportunity of repeating the same. The medical evidence adduced by the Medical Officer in both the cases supports the ocular version. Record demonstrates that the fight was result of heat of passion developed upon a sudden quarrel over fetching of water from the well, which shows that all accused acted impulsively and not with premeditated intent. Given that the occurrence was sudden and unpremeditated, and since the prosecution failed to establish any common object in both matters, the learned Trial Court has correctly confined the conviction of the appellants in FIR No. 57 of 2023 to the specific roles attributed to each of them. At this juncture, it would be appropriate to reproduce Section 149, PPC, which reads as under:-

"Section 149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence"

14. In my humble view, the learned Trial Court failed to appreciate that the conviction and sentence of life imprisonment, awarded to appellants Mumtaz @ Mumtaz Ali and Ayoub, were based merely on the allegation that they caused injuries to the deceased. Importantly, no overt act has been specifically attributed to either appellants during the occurrence. Therefore,

considering the facts and circumstances of the case, the liability of the appellants, Mumtaz @ Mumtaz Ali son of Abdul Haleem and Ayoub son of Manjhi, if any, would fall under Section 302(c), PPC and not under Section 302(b), PPC. Guidance is taken from the judgment, delivered on 18.09.2025 in the case of *Asif Hussain v The State*, wherein a three members bench of Hon'ble Supreme Court of Pakistan, head by Athar Minallah, J., ruled as under:-

"8. We are, therefore, of the view that the prosecution has proved its case against the petitioner beyond the shadow of any doubt. However, it is not a case, which attracts the provisions of section 302(b) PPC. In our humble view, the provisions of section 302(c) PPC, are attracted in this case because admittedly, there was no previous enmity between the petitioner and his brother Atif Maqsood (deceased). Although it was alleged that at the time of occurrence, the deceased asked the petitioner that there were complaints of theft etc against the petitioner from the people of the area but no witness of the area who had lodged such complaint against the petitioner was produced in the prosecution evidence. No FIR, rupt or any application which was filed against the petitioner qua the above-referred allegation was brought on the record. We are, therefore, of the view that the above-referred reason/motive of the occurrence has not been proved in this case against the petitioner through any convincing evidence. It appears that something else had happened, immediately, prior to the occurrence, which provoked the petitioner and he inflicted a single Churri blow on the body of the deceased. The occurrence took place at the spur of moment when hot words were exchanged between the petitioner and his brother Atif Maqsood (deceased) and the occurrence took place. The petitioner inflicted a single injury on the body of the deceased and he did not take any undue advantage during the occurrence by repeating injuries on the body of the deceased. We are, therefore, of the view that the ingredients of offence under section 302(c) PPC, are attracted in this case instead of section 302(b) PPC. The provision of section 302(c) PPC, was introduced through the Qisas and Diyat Ordinance, 1990. It is true that the law makers have not defined that what are the cases falling in clause (c) of section 302 PPC and the matter has been left to the Courts to decide it on a case to case basis but this Court in the case of "Ali Muhammad v. Ali Muhammad and another" (PLD 1996 Supreme Court 274), has declared that there should be no doubt that the cases covered by the exceptions to the old section 300 PPC read with old section 304 PPC thereof, are cases which were intended to be dealt with under the new clause (c) of section 302 PPC. Relevant part of the said judgment at page Nos.290 & 291, is reproduced hereunder for ready reference:-

- "29.....*
- (1)*
- (2)*
- (3)*

there should be no doubt that the cases covered by the exceptions to the old section 300 PPC read with old section 304 PPC thereof, are cases which were intended to be dealt with under clause (c) of the new section 302 PPC".

Exceptions to the old section 300 PPC, read as under:-

When culpable homicide is not murder: Exception 1: *Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.*

The above exception is subject to the following provisos:-

First : That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly : That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly : That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Exception 2 : Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary of the purpose of such defence.

Exception 3 : Culpable homicide is not murder if the offender being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4 : Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Exception 5 : Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Old section 304 PPC, is also reproduce hereunder:-

304. Punishment for culpable homicide not amounting to murder : Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention, of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

Keeping in view above-mentioned circumstances of the instant case and the above-referred provisions of law and the case law, the case of the petitioner squarely falls within the ambit of Exception 4 of the erstwhile section 300 PPC. Reference in this context may also be made to the judgments reported as "Azmat Ullah v. The State" (2014 SCMR 1178) and "Muhammad Abbas and another v. The State" (2023 SCMR 487). The relevant part of the judgment of "Azmat Ullah" supra at page Nos.1180 & 1181, reads as under:-

A bare perusal of the F.I.R., the statements made by the eye-witnesses before the learned trial Court and the findings recorded by the learned Courts below clearly shows that there was no background of any ill-will or bitterness between the appellant and his deceased brother and that the incident in issue had erupted all of a sudden without any premeditation whatsoever. The medical evidence shows that the deceased had received one blow of a chhurri on his chest whereas another blow was received by him on the outer aspect of his left upper arm. The doctor conducting the post-mortem of the dead-body had categorically observed that both the injuries found on the dead-body of the deceased could be a result of one blow of chhurri. These, factors of the case squarely attract Exception 4 contained in the erstwhile provisions of section 300, P.P.C. It has already been held by this Court in the case of Ali Muhammad v. Ali Muhammad and another (PLD 1996 SC 274) that the cases falling in the exceptions contained in the erstwhile provisions of section 300, P.P.C. now, attract the provisions of section 302(c), P.P.C. The case in hand was surely a case of lack of premeditation, the

incident was one of a sudden fight which was a result of heat of passion developed upon a sudden quarrel and no undue advantage had been taken by the appellant nor had he acted in a brutal or unusual manner. In these circumstances Exception 4 contained in the erstwhile section 300, P.P.C. squarely stood attracted to the case in hand and, thus, the case against the appellant fell within the purview of the provisions of section 302(c), P.P.C.

5. *Keeping in view the facts and circumstances of the case this appeal is partly allowed, the conviction of the appellant for an offence under section 302(b), P.P.C. is converted into that for an offence under section 302(c), P.P.C. and consequently his sentence is reduced from rigorous imprisonment for twenty-five years to rigorous imprisonment for ten years.*

*Likewise, in the case of **“Muhammad Abbas”** ibid at page No.492, it was observed as under:-*

However, so far as the quantum of punishment is concerned, we are of the view that the occurrence took place at the spur of the moment and there was no pre-meditation on the part of the petitioners. Admittedly, the occurrence took place in the house of the petitioners where the complainant party had brought a jirga for return of Mst. Shakeela, niece of the complainant, who was married with petitioner Muhammad Nawaz against the will of her parents. A bare perusal of the record reveals that something happened immediately before the occurrence, which provoked the petitioners and they caused churri blows on the person of the deceased. On our specific query, learned Law Officer and learned counsel for the complainant could not deny the fact that the occurrence took place at the spur of the moment. Admittedly, both the petitioners did not repeat their act. There was no deep rooted enmity between the parties. In these circumstances, the learned High Court ought to have taken a lenient view. Consequently, we convict the petitioners under section 302(c), P.P.C. and sentence them to fourteen years RI each. The amount of fine and the sentence in default whereof shall remain intact.

9. *In the light of above discussion, this petition is converted into an modified, the conviction awarded to Asif Hussain (appellant), is converted from the charge under section 302(b) PPC to section 302(c) PPC and he is awarded the sentence of twelve (12) years R.I. The compensation and imprisonment in default thereof awarded against the petitioner by the learned trial Court and upheld by the learned High Court are maintained. Benefit of section 382-B Cr.P.C, is also extended to the petitioner/appellant”.*

15. Keeping in view the peculiar facts and circumstances of the case and placing reliance on the judgment of the Hon'ble Supreme Court (supra), I am of the view that the convictions and sentences of life imprisonment, awarded to the appellants /accused Mumtaz @ Mumtaz Ali son of Abdul Haleem and Ayoub son of Manjhi under Section 302(b), PPC are not in accordance with law. The same is, therefore, converted to Section 302(c), PPC. As per the jail roll, appellant Mumtaz @ Mumtaz Ali has served 22 years, 1 month and 19 days, while appellant Ayoub has served 8 years, 11 months and 6 days as of 04.11.2025, including remissions earned by them. Accordingly, the sentences awarded to both appellants are reduced to the period already undergone; however, the remaining convictions and the sentences imposed in lieu of fine and compensation shall remain intact. It is further clarified that the convictions and sentences awarded to remaining appellants /convicts are

upheld and also reduced to the period which they have already served out. It is noteworthy that both parties are facing trial as well as Appellate Court since 14.09.2013 on the charges of offence under sections 337-A(i), 337-F(i), 337-F(ii), 337-F(vi), 337-L(ii), 147 and 148 PPC which provides punishment which may extend upto two years except in Section 337-F(vi) PPC. However, learned trial court sentenced them for one year to that extent. The conviction and sentence is modified and reduced to the period of which they have already served out. However, as for part of conviction and sentence in lieu of Daman as provided under section 337-Y(a) PPC and fine amount of Rs.2,00,000/- (Two Hundred Thousand) each remain intact against applicants Mumtaz @ Mumtaz Ali and Ayoub. With these modifications, the Criminal Appeal No.S-14 of 2023 stands dismissed. It is, however, noted that appellants/convicts Abdul Haleem, Uris, Aijaz Ali, Ghulam Mustafa, Muhammad Ameen, and Muhammad Zaman have already served out their sentences and have been released from prison, as stated by their counsel, whereas appellants/convicts Abdul Rehman and Noor Muhammad are present on bail. Their bail bonds stand cancelled and surety discharged. As to the recovery of the amount of Daman as provided under Section 337-Y(a), PPC, the matter is remanded to the learned Trial Court to recover the same within a period of one month. In case the appellants/convicts fail to pay the same, they shall be taken into custody until recovery of the Daman.

16. Insofar as Criminal Appeal No.S-50 of 2023 is concerned, it is noteworthy that both parties have played active role in the commission of offence and caused injuries to the members of other parties inflicting blows with hatchets and lathis and the learned trial Court has awarded convictions and sentences to each accused per role assigned to him in the FIR as well as depositions of witnesses. The contention of the learned counsel that they have acted in their defence is legally not correct in view of my findings in paragraph 12 {supra}. The Criminal Appeal No.S-50 of 2023, being bereft of any merit, stands dismissed. The convictions and sentences awarded to the appellants/ convicts are modified to the period they have already served, and they have been released from prison after payment of the fine amount, including the amount of Daman, as stated by their counsel. However, the learned Trial Court is directed to verify this fact from the Jail Authorities, and in case it is found that they have not paid the Daman amount, notice shall be issued for recovery of the same within a period of one month. In the event of failure to do so, they shall be remanded to prison until recovery

of the Daman amount. Appellant /convict Pat Bhario has expired during pendency of this appeal and proceedings against him stand abetted.

Both the appeals are dismissed in above terms.

JUDGE