IN THE HIGH COURT OF SINDH, CIRCUIT COURT MIRPURKHAS

Criminal Appeal No.S-122 of 2024

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Appellant	Ganesh son of Ajeeto Mengwar, Through Mr. Israr Ali Mari, Advocate.
Respondent	The State through Mr. Shahzado Saleem Nahiyoon, Additional Prosecutor General (Sindh).

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Dates of hearing	**12.11.2025 & 20.11.2025**
Date of Judgment	**09.12.2025**

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JUDGMENT

Shamsuddin Abbasi, J.- Ganesh son of Ajeeto Menghwar, appellant, alongwith Ajeeto son of Taj Menghwar and Gandhi son of Tao Menghwar, was tried by the learned Additional Sessions Judge-I /(MCTC), Sanghar, in Sessions Case No.354 of 2022 (FIR No.19 of 2022) registered at Police Station Perumal, District Sanghar, for offences under Section 302, 201 and 34, PPC. By a judgment dated 23.05.2023 co-accused Ajeeto and Gandhi were exonerated of the charges, but the appellant was held guilty of the offences under Section 302(b) and 201, PPC and sentenced as under:-

> *"(a) The convict namely Ganesh S/o Ajeeto Menghwar is sentenced to suffer rigorous imprisonment for life for the offence punishable under section 302(b) PPC. He is also burdened with Rs.2,000,00/- (Two lac) as compensation in terms of Section 544-A Cr.P.C. which if recovered shall be given to the legal heirs of deceased Meena, in default of which the accused shall undergo S.I for six months more.*
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> *(b) The convict namely Ganesh S/o Ajeeto Menghwar is also convicted to suffer 04 years rigorous imprisonment for the offence punishable under Section 201 PPC.*
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> *47. He is also extended the benefit of Section 382-B Cr.P.C. and the above sentences awarded to the accused Ganesh shall run concurrently".*

2. Complainant Amulakh Menghwar is the brother of deceased Mst. Meena, who was married to the appellant, and one child was born out of the said wedlock. The deceased had frequently complained of maltreatment at the hands of the appellant, his father Ajeeto, and Gandhi, the brother-in-law of her father-in-law, regarding which the complainant party had repeatedly

requested them to refrain from subjecting her to such cruelty. On 11.07.2022, while the complainant was present at his house at about 9:30 p.m. he received a phone call from Ajeeto informing him that his sister had died due to a heart attack. The complainant, accompanied by his cousin Sajjan and other relatives, proceeded to the house of Ajeeto where their relative Ravtio was already present in a frightened and disturbed condition. During the ritual washing of the corpse, the complainant party noticed black mark on the neck of Mst. Meena resembling a ligature mark, whereupon the complainant approached the police station and requested for a post-mortem examination. Police arrived there, shifted the dead body to the hospital, and after post-mortem, handed it over to the complainant party. During the condolence gathering, their relative Ravtio disclosed that on the evening of 11.07.2022, he had gone to the house of Ajeeto as a guest and at sunset had left briefly for Perumal Town to purchase cigarettes. While returning he heard cries and witnessed Ajeeto, his son Ganesh and Gandhi holding Mst. Meena and strangulating her with a wire. Upon seeing him, the accused released Meena, who succumbed to the assault. The accused threatened him with dire consequences if he disclosed the incident, due to which he remained silent out of fear. Upon learning these facts, the complainant approached the police station and lodged the FIR.

3. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction, whereby the appellant and two other co-accused were sent up to face the trial.

4. A charge in respect of offences under Section 302, 201 and 34, PPC, was framed against three accused including appellant. All of them pleaded not guilty and claimed trial.

5. At trial, the prosecution has examined as many as eleven witnesses. The gist of evidence, adduced by the prosecution, in support of its case, is as under:-

6. Dr. Asma appeared as witness No.1 Ex.8, Mehmood Khan (Tapedar) as witness No.2 Ex.9, complainant Amulakh as witness No.3 Ex.11, Ravtio as witness No.4 Exd.12, Sajjan as witness No.5 Ex.13, Sangtio Mal as witness No.6 Ex.14, PC Ghulam Nabi as witness No.7 Ex.15, Ghulam Faiz Sajid, Civil Judge & Judicial Magistrate, as witness No.8 Ex.16, SIP Qamaruddin (Investigating officer) as witness No.9 Ex.17, WHC

Muhammad Sachal as witness No.10 Ex.18 and WHC Khan Muhammad as witness No.11, Ex.19. All of them have exhibited certain documents in their evidence and were subjected to cross-examination by the defence. Thereafter, the prosecution closed its side vide statement Ex.20.

7. Statements under Section 342, Cr.P.C. of appellant and co-accused Ajeeto and Gandhi were recorded at Ex.21, Ex.22 and Ex.23 respectively. They have denied the allegations imputed upon them by the prosecution, professed their innocence and stated their false implication. They, however, opted not to make a statement on Oath under Section 340(2), Cr.P.C. and did not produce any witness in their defence.

8. Upon conclusion of the trial, the learned Trial Court acquitted co-accused Ajeeto and Gandhi, however, the appellant was held guilty of the offences charged with and, thus, convicted and sentenced as detailed in para-1 (supra), which necessitated the filing of the instant appeal.

9. It is contented on behalf of the appellant that he has been falsely implicated in this case by the complainant as otherwise he has nothing to do with the alleged offence and has been made victim of the circumstances; that no independent witness has been produced by the prosecution in support of its case and the witnesses who have been examined are interested and related to complainant as well deceased, hence their testimony cannot be termed as trustworthy and confidence inspiring; that they were inconsistent with each other rather contradicted on crucial points; that the ocular account produced by the prosecution does not align with the medical evidence; that the medical officer has opined the cause of death to be hanging, whereas according to the prosecution the deceased was done to death by strangulation; that nothing incriminating was recovered from the possession of the appellant and the alleged recovery of the cable is a foisted one. Moreover, such alleged recovery does not further the prosecution's case as the witnesses of recovery are also closely related to the complainant party; that the learned trial Court did not appreciate the evidence adduced by the prosecution and defence taken by the appellant in line with the applicable law and surrounding circumstances and acquitted two co-accused relying on the same evidence; that the learned trial Court based its findings on misreading and non-reading of evidence and awarded conviction without application of a conscious judicial mind, hence the conviction and sentence awarded to the appellant, based on such findings,

are not sustainable in law and liable to be set-aside and the appellant deserves to be acquitted of the charge and prayed accordingly.

10. The learned Additional Prosecutor General (Sindh), while rebutting the submissions advanced by learned counsel for the appellant, supported the impugned judgment, asserting that it is founded upon a fair and proper appraisal of the evidence and material placed on record. He contended that the prosecution witnesses, while appearing before the learned trial Court remained consistent on all material aspects and despite being subjected to lengthy cross-examination nothing favourable to the defence or detrimental to the prosecution's version could be elicited from them. He further submitted that the medical evidence is fully in consonance with the ocular account and corroborates the narrative set forth by the complainant in the FIR and that the argument regarding the medical officer having shown the cause of death as hanging allegedly inconsistent with the prosecution case of strangulation is of no avail to the appellant. According to him, the prosecution has produced reliable ocular evidence duly supported by medical as well as circumstantial evidence, all of which has been rightly relied upon by the learned trial Court. He argued that the prosecution has successfully proved its case against the appellant beyond the shadow of reasonable doubt, thus the appeal merits dismissal and the conviction and sentence awarded by the learned trial Court are liable to be maintained.

11. I have heard the learned counsel for both the sides, given my anxious consideration to their submissions, and also scanned the entire record carefully with their able assistance.

12. The prosecution's case is primarily founded upon the testimony of sole eye-witness Ravtio, the judicial confession of the appellant though he subsequently retracted the same while recording his statement under Section 342, Cr.P.C. and the alleged recovery of the crime weapon, i.e. a wire/ cable of a mobile charger, said to have been effected on the pointation of the appellant. Placing reliance upon this evidence, the learned trial Court proceeded to record a conviction. Here I deem it appropriate to first examine the testimony of eye-witness, who appeared as PW-4 at Ex.12, and established his presence at the place of occurrence, which remained unshaken during cross-examination. He reiterated in material particulars the facts earlier narrated by him in his statement recorded by the Investigating Officer during investigation. He supported the version set-forth in the FIR, furnished a detailed account of

the incident and categorically implicated the appellant in the commission of offence charged with. He convincingly explained his presence at the crime scene by deposing that on 11.07.2022 he stayed at the house of Ajeeto as a guest, he had gone to Perumal Town to purchase cigarettes and upon returning at about 9:00 pm heard cries emanating from the house of Ajeeto and entering the house he saw Ajeeto, Ganesh, and Gandhi holding Mst. Meena and strangulating her with a wire and upon noticing his presence all three released her and she found dead. He further deposed that the accused persons threatened him not to disclose the incident to anyone and he remained silent out of fear. He also deposed that when the complainant and other family members arrived at the place of occurrence and inquired about the incident, they were initially informed that Meena had died of a heart attack, however, while giving bath to the dead body the complainant and his relatives noticed blackish marks on her neck whereupon the complainant informed the police. The police arrived, shifted the dead body of Meena to Civil Hospital, Sanghar for post-mortem examination and subsequent thereto handed it over to the complainant. The body was thereafter taken to Perumal for burial, following which they returned to their village Ali Akbar Shah, Taluka Dour, District Shaheed Benazirabad, and subsequently approached the Nekmards, upon whose advice the complainant proceeded to the police station and lodged the FIR.

13. The testimony of eye-witness Ravtio stands supported by the statements of the complainant Amulakh and PW-5 Sajjan, who appeared at Ex.11 and Ex.13 respectively. Admittedly, both these witnesses are not eye-witnesses of the incident and their evidence is hearsay; nevertheless, they consistently deposed that upon reaching the place of occurrence, they were initially informed that Mst. Meena had died due to a heart attack. However, while giving bath to the deceased, they observed blackening around her neck, whereupon the complainant proceeded to the police station and informed the police. The police thereafter arrived at the scene, shifted the dead body for post-mortem examination, and subsequently handed it over to the complainant. The complainant has further deposed that after the funeral rites, they saw Ravtio disturbed and upon inquiry about his anxiety, he disclosed that on the day of the occurrence he had been a guest at the house of Ajeeto, where he stayed overnight. He further narrated that when he returned after going out to purchase cigarettes, he heard cries, and upon entering the house saw that accused are strangulating her with a wire. On seeing him, the accused

released her, and she was found dead. He also stated that the accused had threatened him with dire consequences if he revealed the incident, due to which he initially remained silent. PW Sajjan, however, did not support the complainant on this aspect and stated that after the funeral rites, Ravtio narrated the occurrence to his father Ranjeeto and his uncle Padio. Both witnesses, nevertheless, remained consistent on each material point despite undergoing lengthy cross-examination and fully supported the account narrated in the FIR, implicating the appellant in the commission of the offence. Hence, the minor contradiction is of no legal significance. Nothing favourable to the defence could be elicited from their testimony. Their evidence, in no manner, weakens or adversely affects the prosecution's case regarding the appellant's involvement in the murder of the deceased.

14. As regards the contention that the conviction rests solely on the testimony of a single eye-witness, who is a close relative of both complainant and the deceased, therefore, in absence of independent corroboration, the learned trial Court erred in placing reliance upon the testimony of sole eye-witness while convicting the appellant. No doubt, PW Ravtio is a relative being the brother of complainant's wife, who appeared as a solitary eye-witness, but it will not advance the case of defence because general public in society always feel reluctant to depose against the culprits due to fear of earning enmity etc. However, It is a well-established principle of law that testimony of a witness which is trustworthy and inspiring confidence cannot be discarded merely on the ground of his close relation with complainant or deceased. A close relative, if shown to be a natural and truthful witness of the occurrence, cannot be branded as an interested witness merely on account of relationship. The testimony of such a witness may be discarded only if it is established that he or she was motivated by malice, enmity or any other ulterior consideration. In the present case, no material has been brought on record to demonstrate any animosity, grudge or ill-will on the part of this witness against the appellant. The law is now well settled on the point that the fact of relationship of a witness with the complainant or with the deceased would not be sufficient to smash the evidence adduced by such witness or to disbelieve his credibility as well as legal sanctity. Even otherwise the rule requiring independent corroboration of testimony of related or interested witness is a rule of prudence which is not to be applied rigidly in each case especially when the Courts of law do not feel its necessity. Mere relation of a witness with any of the parties would not dub

him as an interested witness because interested witness is one who has, of his own, a motive to falsely implicate the accused, is swayed away by a cause against the accused, is biased, partisan, or inimical towards the accused, hence any witness who has deposed against the accused on account of the occurrence, by no stretch of imagination can be regarded as an "interested witness". There can be cases like the present one where implicit reliance can be placed on the testimony of a related witness if it otherwise inspiring confidence of the Court. It is noteworthy that witness having some relation with deceased some time, particularly in murder cases, may be found more reliable, because they, on account of their relationship with the deceased, would not let go the real culprit or substitute an innocent person for him. The eye-witness has fully supported the case of the prosecution and deposed full account of the incident and directly involved the appellant in the commission of offence. He has sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence in clear cut manner. He while appearing before the learned trial Court provided full support to the case of the prosecution. He was subjected to lengthy cross-examination by the defence but could not extract anything from him as he remained stick to his stance and amply proved the identification of appellant. Thus, the evidence discussed by me in this paragraph evaporate all other possibilities for murder of deceased except stated by the prosecution witnesses before the learned trial Court. It is a settled principle that any eye-witness's version cannot be discarded by the Court merely on the ground that such eye-witness happened to be a relative or friend of the deceased. Reliance in this behalf may well be made to the case of *Muhammad Aslam v The State* (2012 SCMR 593), *wherein the ocular version had been furnished by PW-6, who was real son of deceased and PW-7, the other eyewitness, who was cousin of the complainant and their statements were not discarded on the ground that they made consistent statement against the accused and specific role of firing was attributed.* In another case of *Mirza Zahir Ahmed v The State 2003 (SCMR 1164), two eye-witnesses PW Muhammad Zaheer and Muhammad Shafiq were closely related to deceased, but they had furnished trustworthy evidence to support the prosecution case. It was held by the Hon'ble Supreme Court that "the statements of both the witnesses get corroboration from each other. As far as the medical evidence is concerned, it being in the nature of conformity has also substantiated their version, therefore, the evidence of these prosecution witnesses cannot be discarded merely for the reason that they were closely related to Tariq Javed deceased".* Likewise, in the cases of *Khizar Hayat v. The State* (2011 SCMR 429) and *Amal Sherin*

and another v. The State through A.G. (PLD 2004 Supreme Court 371) wherein the Hon'ble Supreme Court while dilating upon the evidentiary value of statement of related witnesses has ruled as under:-

> *"The trial Court was not justified to reject eye-witness account furnished by complainant Khan Amir PW and Hakim Gul PW merely on the ground of being related and interested particularly when appellants had not been able to establish on record that the above mentioned witnesses had nourished any grudge or ill will against them and deposed with a specific motive".*

I am, therefore, of the considered view that the testimony of an eye-witness cannot be discarded merely on account of his relationship with the deceased and a conviction can lawfully be sustained on such evidence if it inspires confidence. The contention raised by learned counsel is, thus, misconceived and untenable.

15. Adverting to the confessional statement of the appellant, it is observed that while recording his statement under Section 342, Cr.P.C. the appellant resiled from his judicial confession and asserted that he had made such statement under pressure and due to maltreatment by the police. It is significant to note that an innocent woman, who happened to be the appellant’s wife, was brutally killed by strangulation using a wire/ mobile charger cable. The primary basis which weighed with the learned trial Court in convicting the appellant was his own judicial confession recorded before the Magistrate. The pivotal question that now arises for consideration is whether a confession, subsequently retracted by an accused during trial, retains its admissibility and can form the foundation for conviction. The law is now well settled that a retracted confession whether judicial or extra-judicial if found to be true, voluntary, and confidence inspiring can form the sole basis for conviction without the requirement of further corroboration. Though ordinarily Courts exercise caution and seek independent corroboration before placing reliance on a retracted confession, such corroboration is not an inflexible legal requirement rather it is a rule of prudence aimed at ensuring that the confession is free from doubt. Thus, if the Court is fully satisfied regarding the voluntariness and truthfulness of a retracted confession, it may lawfully form the basis of conviction.

16. In the present case PW-8, the Judicial Magistrate before whom the appellant recorded his statement under Section 164, Cr.P.C. on 19.07.2022, unequivocally affirmed that the confessional statement of

appellant Ganesh was made voluntarily and truthfully. In response to Question No.1, the appellant stated that he had been arrested by the police the previous day/evening. To the specific questions regarding any pressure, threat, inducement, or coercion to make a confession, he categorically replied "No". He further denied that he was being made an approver and asserted that he is making the confession of his own free will. He also replied in the affirmative to the questions confirming that he is giving the statement before a Magistrate and that the statement could be used against him for conviction. Ultimately, he expressly stated that he is making the confession because he killed his wife. Any procedural irregularity in recording the confession was cured by the Magistrate's specific questions and caution to the appellant that he was under no obligation to make a statement and that any confession could be used against him as evidence. It is significant to note that the appellants never alleged before the trial Court that his confession was extracted involuntarily. Though he subsequently retracted him, the confession was rightly relied upon because the details narrated therein including the manner of commission of offence stood fully corroborated by the prosecution witnesses. The motive disclosed by the appellant in his confessional statement, coupled with his unequivocal admission of guilt with regard to commission of murder of his wife, further fortifies the conclusion that the statement was voluntary and true. The mere fact that the confession was recorded after a lapse of three days, as pointed out by the defence, does not, in the circumstances of the present case, cast any doubt on its reliability or diminish its evidentiary worth.

17. Coming to the recovery of the crime weapon viz wire /mobile charger cable, the record demonstrates that pursuant to the disclosure made by the appellant he voluntarily led the police party to his house and produced the said wire/ mobile cable, used in the commission of the offence, which he had concealed beneath the bed. The wire was sealed at the spot in the presence of mashirs Dharaj and Sangtio. It is also noteworthy that one of the mashirs, Sangtio, appeared as PW-6 (Ex.14) and fully supported the recovery effected on the pointation of the appellant. He deposed that on 18.07.2022, he accompanied SIP Qamar Din Channa, co-mashir Dharaj and other police officials, along with the accused/ appellant, who led them to his house and produced the wire from underneath the bed, which was taken into possession by SIP Qamar Din. The memo of recovery was prepared and the wire sealed in his presence as well as that of co-mashir Dharaj. This witness is also a mashir

of the proceedings conducted under Section 174, Cr.P.C., the site inspection, and the handing over of the deceased's last-worn clothes by the WMLO to the Investigating Officer, and while supporting the prosecution case, he acknowledged his signatures on all the relevant memos.

18. The contention raised is that the learned trial Court, on the very same set of evidence, acquitted co-accused Ajeeto and Gandhi, yet convicted only the appellant by relying upon evidence that had been disbelieved to their extent. It is argued that, on this ground alone, the conviction and sentence awarded to the appellant is unjustified and that he is entitled to acquittal. This contention, on the face of it, is not legally correct. The learned trial Court acquitted co-accused Ajeeto and Gandhi on the premise that the prosecution had failed to bring on record any corroborative evidence supporting the testimony of the sole eye-witness insofar as they were concerned. Conversely, the appellant was convicted as there was substantially more incriminating material against him such as recovery of crime weapon and his judicial confession observing that his case stood on an entirely different footing from that of the co-accused. The findings of the learned trial Court are based on fair evaluation of evidence and documents brought on record. Thus, acquittal of co-accused is of no benefit to the appellant. The principle of *"falsus in uno falsus in omnibus"* has no universal application and it is by now well settled that the Courts have to *"sift the grains from the chaff"* in order to reach at a just and fair conclusion. Reliance may well be made to the case of *Munir Ahmed & another v The State and others* (2019 SCMR 79). The fact that evidence of prosecution witnesses was not believed in respect of co-accused on certain aspects does not mean that the same cannot rely upon in respect of appellant on other aspects if find to be trust worthy, reliable and confidence inspiring. I am convinced that the learned trial Court has appreciated the evidence and scrutinized the material available on record in complete adherence to the principles laid down by the Hon'ble Superior Courts in various pronouncements and has rightly reached a just conclusion by relying on the direct evidence, duly supported by circumstantial evidence and further corroborated by the medical evidence. There is no denial to the fact that the learned trial Court has taken into account all the aspects of the matter as well as the submissions raised by the learned counsel for the appellant minutely and found the appellant guilty of the offence with which he has been charged.

19. The foregoing circumstances, when examined collectively, exclude every reasonable hypothesis of the appellant's innocence. I am, therefore, of the considered view that the learned trial Court has rightly relied upon the direct testimony of the sole eye-witness, duly supported by the circumstantial evidence in shape of recovery of crime weapon, the judicial confession of the appellant and the medical evidence available on record and justifiably found no basis to extend any presumption of innocence in favour of the appellant. The contention that the medical evidence contradicts the ocular account on the ground that the Medical Officer opined that death occurred due to hanging, whereas the witnesses stated that the deceased was done to death by strangulation carries no weight. The distinction between hanging and strangulation is often technical in nature, and there is every possibility that the witnesses, being illiterate persons, described the cause of death as strangulation in simple terms. In these circumstances, the alleged conflict between the medical evidence and the ocular account is inconsequential and does not adversely affect the prosecution case. Consequently, the appeal, to the extent that it challenges the conviction, is dismissed on merits. However, it has come on record that there was no prior ill-will or enmity between the spouses, though they repeatedly quarreled with each other over domestic affairs. The confessional statement of the appellant further reveals that on the day of the incident a dispute arose when the deceased refused to obey his instructions and pushed him. This enraged the appellant, who in a fit of anger strangulated her with a wire. These circumstances demonstrate that the occurrence took place as a result of sudden provocation, following a quarrel after exchange of hot words, which led the appellant on the spur of the moment to commit the act. It is, therefore, apparent that the appellant had no premeditated intention to commit the offence, which occurred on spur of the moment. With the element of intention being absent, the act of the appellant/ accused squarely falls within the Exception (4) of the previous Section 300, P.P.C., which by that time was punishable under section 304, P.P.C. For the sake of convenience and ready reference Exception 4 of the then section 300, P.P.C. is reproduced below:-

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

20. No doubt, neither old Section 300 nor exceptions thereto are available at present on the Statue book, however, it is laid down by the Hon'ble Supreme Court in the case of *The State v. Muhammad Hanif and 05 others* (1992 SCMR 2047) that all the matters which were initially dealt with by erstwhile section 304, P.P.C. are now to be considered under Section 302(c), PPC. The same view has been repeated and upheld by the august apex Court in a number of cases. Guidance is taken from the case of *Muhammad Ashraf alias Nikka v The State* (2022 SCMR 1328), wherein it has been held as under:-

> *"However, as discussed above, we have observed that the case advanced by the prosecution is based upon facts not properly brought forth, rather there are certain flaws in the narration of the same particularly manner of occurrence, number of accused persons and suppression of facts, hence as an abundant caution, we refrain to accept finding of both courts below rather consider it a case of sudden affair, coupled with the fact, material facts were suppressed, hence keeping in view the act of each individual, we consider that the case of the petitioner is covered by section 302(c), P.P.C. As he has already served out major portion of sentence which is more than 15 years, hence it seems adequate to meet the ends of justice. As a consequence, we convict the petitioner under section 302(c), P.P.C. and sentence him to imprisonment for the period which he has already undergone.*
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> *7. For what has been discussed above, this petition is converted into appeal, partly allowed and the impugned judgment is modified as stated in the preceding paragraph. The petitioner shall be released from jail forthwith unless detained/required in any other case. The above are the detailed reasons of our short order of even date.*

Likewise in the case of *Bashir Ahmed and others v The State and another* (2022 SCMR 1187, The Hon'ble Supreme Court observed as follows:-

> *11. Provision of section 302(c), P.P.C. is somewhat similar to the erstwhile section 304, P.P.C. The provision of section 302(c) in the original text was an exception of section 302, P.P.C. while following the requirements of erstwhile section 304, P.P.C. This provision covers all those offences which were committed resulting into culpable homicide not amounting to murder and as such cannot be equated with the requirements for application of sentences as provided under section 302(a)(b), P.P.C. Any occurrence though resulted into an act of homicide but it was committed without element of mens rea, pre-meditation or ill design, would squarely attract the provision of section 302(c), P.P.C. The framers of the law while inserting the said provision provided sentence of imprisonment which may extend to 25 years. The sentence of 25 years is clothed with discretionary powers of the court contrary to sentences provided under section 302(a)(b), P.P.C. Broadly speaking this distinction qua the discretionary power to inflict sentence is based upon the fact that the law makers were conscious of the situations like free fight, case of two versions,*

undisclosed story, sudden affair, question of ghairat, absence of mens rea, self-defence and cases initiated due to the element of sudden provocation. In ordinary speech, the meaning of 'provocation' is said to be incitement to anger or irritation. In English law it has a meaning based on anger but it is a word used to denote much more than ordinary anger. To extenuate the killing of a human being provocation has always needed to be of a special significance. Throughout in the proceedings of the cases it is seen to be something which incites immediate anger or "passion", which overcomes a person's self-control to such an extent as to overpower or swamp his reason. In other words provocation is when a person is considered to have committed a criminal act partly because of a preceding set of events that might cause a reasonable person to lose self-control. Analyzing the concept of 'provocation in law under the Common Law of England, Lord Devlin, delivering the judgment of the Judicial Committee of the Privy council in Lee ChunChuen v. The Queen (1963 1 All ER 73) held as under: -

> *"Provocation in law consists mainly of three elements the act of provocation, the loss of self-control, both actual and reasonable, and the retaliation proportionate to the provocation."*

So, it can be said that there are mainly four elements which need to be established to avail the defence of provocation i.e. (i) the provoking circumstances, (ii) the accused's loss of self- control resulting from the provoking circumstances, whether reasonable or not; (iii) whether the provocation could have caused the ordinary person to lose self-control, (iv) the retaliation was proportionate to the provocation. Whether the accused's loss of self-control was a result of the provoking circumstances is a subjective test. To prove the element of provocation, there are two more conditions i.e. (i) it should be prompt, and (ii) it was retaliated without inordinate delay. We have also noticed that apart from the circumstances narrated above inviting application of section 302(c), P.P.C. another situation has now erupted in the society having direct nexus with such like situations, i.e. a deliberate and malicious act intended to outrage religious feelings of any class of people by insulting its religion or religious rituals by use of derogatory remarks, which further extend the scope of cases falling under the ambit of sudden provocation".

21. For the foregoing reasons and placing reliance on the case law (supra), the conviction and sentence awarded to the appellant is converted from Section 302(b), PPC to Section 302(c), PPC. As he has already served major portion of sentence, which is 10 years, 05 months and 06 days up to 19.11.2025, including remissions, as reflected from the jail roll, and further the sentence of four years awarded to him under Section 201, PPC has been ordered to run concurrently. In these circumstances, it would adequately serve the purposes of both deterrence and reformation if the sentences awarded to the appellant are suitably modified and reduced keeping in view the peculiar facts of

the case particularly that he is a young man and father of a minor child, who requires his care, attention and affection and that he is a first time offender with no previous conviction. As a consequence, the convictions and sentences awarded to the appellant through the impugned judgment dated 23.05.2023, are reduced to one already undergone, which include the sentence awarded in lieu of fine. The appellant shall be released forthwith from prison, if not required to be detained in connection with any other matter. With these modifications, Criminal Appeal No.S-122 of 2024 stands dismissed.

JUDGE