



2025:AHC:163697-DB

Judgment reserved on 14.08.2025

Judgment delivered on 16.09.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD
GOVERNMENT APPEAL No. - 1781 of 1982

State of U.P.		Appellant
	Versus	
Noorul Hasan and Others		Respondents

Counsel for Appellant	:	A.G.A.
Counsel for Respondents	:	P.K. Giri, Pawan Giri

Connected With
CRIMINAL APPEAL No. - 1228 of 1982

Mohd. Hasan and Others		Appellants
	Versus	
State of U.P.		Respondent

Counsel for Appellant	:	P.K. Giri, R.N. Pandey
Counsel for Respondents	:	A.G.A., Rajeev Kumar Singh

Court No. - 46

HON'BLE RAJIV GUPTA, J.
HON'BLE SUBHASH CHANDRA SHARMA, J.
(Delivered by Hon'ble Rajiv Gupta, J.)

1. The instant government appeal has been filed against the judgment and order dated 30.04.1982 passed by VIII Additional Sessions Judge, Azamgarh in Sessions Trial No 150 of 1980 (State of U.P. Vs. Noorul Hasan and Others), by which,

accused respondent Nos.1 & 2 Noorul Hasan and Abdul Hasan have been acquitted of the offences under Sections 147, 302/34, 323/34 IPC while convicting the accused respondent Nos.3, 4 & 5 Mohd. Hasan, Anwar and Khairul Bashar under Section 325/34 IPC and awarding each of them, three years rigorous imprisonment and further, under Sections 323/34 IPC and sentencing each of them, to undergo rigorous imprisonment for a period of one year.

2. Against the said order of conviction and sentence, a Criminal Appeal No. 1228 of 1982 (Mohd. Hasan and Others Vs. State of U.P.) has been filed by Mohd. Hasan, Anwar and Khairul Bashar, challenging their order of conviction and sentence. Since, both the appeals have been filed against the same judgment and order, therefore, government appeal as well as criminal appeal has been connected and heard together and are being disposed of by a common judgment and order.

3. Heard Shri A.N. Mulla, learned A.G.A. for the State, Shri Pawan Giri, learned counsel for the accused persons, Shri Rajeev Kumar Singh, learned counsel for the first informant and perused the trial court record.

4. At the very outset, learned A.G.A. has pointed out that appellant/accused-respondent Khairul Bashar has already passed away on 12.03.2004 and as such, instant appeals qua Khairul Bashar has been dismissed as abated by this Court vide its order dated 09.05.2025 and now, the government appeal survives only for accused-respondents- Noorul Hasan, Abdul Hasan, Mohd. Hasan and Anwar, whereas criminal appeal survives only for Mohd. Hasan and Anwar.

5. Learned counsel for the appellants has next submitted that during the pendency of the instant appeals, appellant nos.1 & 2 in Criminal Appeal and accused-respondents in Government Appeal had entered into a compromise dated

21.06.2025 with Azizur Rahman and Fiyazur Rahman, both sons of the deceased Mohd. Zaheer and Mohd. Shahnawaz, son of the injured Mahboob Hasan and Faizul Hasan, son of injured Mohd. Hasan.

6. After the compromise dated 21.06.2025 made between the parties, an application has been filed on their behalf in Criminal Appeal with the prayer that in view of the said compromise, the conviction and sentence awarded by the trial court vide judgment and order dated 30.04.1982 be set aside and the applicants be acquitted.

7. It has further been submitted by learned counsel for the appellants that one Government Appeal No. 1648 of 1982 (State of U.P. Vs. Mohd. Hasan and Others) was also filed against the same judgment and order dated 30.04.1982 passed by VIII Additional Sessions Judge, Azamgarh for enhancement of the sentence under Section 325 IPC, however, the same has been dismissed by this Court vide its order dated 06.05.1983. Even, a Criminal Revision No. 971 of 1982 (Mohd. Hasan Vs. Noorul Hasan and Others) has also been dismissed by this Court vide its order dated 17.08.2022.

8. The prosecution story as unfurled in the F.I.R. lodged by one Mohd. Hasan is that on 24.04.1979 at about 5:00 PM, first informant Mohd. Hasan was coming out from the Mosque after offering prayer and when, he was at the stair-case, his shoe hit the *Khatpati* of Khairul Bashir, who started hurling abuses and questioned him as to why he did so. The first informant Mohd. Hasan apologized for the said act and asked to spare him as the said incident had occurred accidentally, however, Khairul Bashir slapped the first informant Mohd. Hasan, thereafter, first informant Mohd. Hasan returned back to his house and narrated the entire incident to his son Mahboob Hasan, who questioned Khairul Bashir as to why he slapped his father,

however, in the meantime, assailants Noorul Hasan, Abdul Hasan, Mohd. Hasan, Anwar and Khairul Bashir, armed with *Lathi* and *Rambha* reached there and started assaulting his son Mahboob Hasan and when, Mohd. Zaheer, brother-in-law of the first informant Mohd. Hasan, tried to intervene, he was also assaulted by them and on raising alarm, Kaleem, Mushtaq, Mohd. Saleem and several other persons reached there and intervened. His brother-in-law Mohd. Zaheer is in a critical condition, as such, he has been admitted in Civil Hospital, Mau, where after preliminary medical examination, he has been referred to District Hospital, Azamgarh.

9. On the basis of the said written report of the first informant Mohd. Hasan, FIR was registered vide Case Crime No. 215 of 1979, under Sections 147, 323, 307 IPC at Police Station Mau, District Azamgarh at 06:30 P.M.

10. In the meantime, the victim Mohd. Zaheer has been medically examined at Civil Hospital, Mau by Dr. S.K. Singh (P.W.-8) on 24.04.1979 at 06:10 P.M. His injuries as noted by the Doctor are mentioned herein below :-

(i) Lacerated wound 5 cm x 2 cm x bone deep on the right side of the head, 5 cm above the right eye-brow with swelling and deformity of bone (parietal) swelling 6 cm x 5 cm. Advised X-Ray of right side of the head at District Hospital, Azamgarh. Brain matter is out in some pieces.

(ii) Complaint of pain in the body and vomiting.

(iii) Patient is in semi-conscious condition.

Types of injuries :- under observation and patient's condition is serious. Caused by blunt weapon and duration is fresh.

11. Furthermore, injured Mahboob Hasan, who also received injuries in the said incident, was also medically examined

by Dr. S.K. Singh (P.W.8) on 24.04.1979 at 06:45 P.M. His injuries as noted by the Doctor are mentioned herein below :-

(i) Lacerated wound 3 cm x 0.5 cm x muscle deep on upper jaw. 2 cm above the upper lips just below the nasal nostrils.

(ii) Complaint of pain in the upper teeth but no external injury is seen.

All injuries are simple in nature caused by hard blunt object. Duration fresh.

12. Thereafter, the first informant Mohd. Hasan also reached the Civil Hospital, Mau, where he too was medically examined by Dr. S.K. Singh (PW-8) on 24.04.1979 at 07:15 P.M. His injuries as noted by the Doctor are mentioned herein below:

(i) Lacerated wound 5 cm x 0.5 cm x bone deep 4 cm above left eye-brow. Advised X-Ray of head at District Hospital, Azamgarh.

(ii) Lacerated wound 1.5 cm x 0.3 cm x muscle deep on the left forearm, outer sides 4.5 cm below the left elbow joint.

(iii) Lacerated wound 1 cm x 0.5 cm x skin deep on right leg, 3 cm above the right ankle joint.

Types of injuries:- All are simple type, except no.1, which is under observation. Caused by blunt weapon and duration is fresh.

13. Thereafter, even one of the accused Khairul Bashar also reached at the Civil Hospital, Mau on his own and he too was medically examined by Dr. S.K. Singh (PW-8) on 24.04.1979 at 9:30 PM. His injuries are mentioned herein below :-

(i) Lacerated wound 3 cm x 8 cm x bone deep of the left side of the head. Advised X-Ray of head (parietal bone left side), 5 cm above the left eye-brow.

(ii) Contusion 6 cm x 2 cm on the right upper arm, 4 cm below the right shoulder joint. Reddish in colour.

Type of injuries :- All are simple type, except injury no.1, which is under observation. Caused by blunt weapon and duration is fresh.

14. After registration of the F.I.R. based on the written report of Mahboob Hasan, the investigation of the said case was handed over to Station Officer S.I. Sukh Sagar Shukla (PW-7), who thereafter, on receiving a memo drawn by Dr. S.K. Singh, reached at the Civil Hospital, Mau, meanwhile, injured Zaheer was referred to District Hospital, Azamgarh. The Investigating Officer while being present at the Civil Hospital, Mau received the chik F.I.R. through a constable and started the investigation. He collected the injury reports of the victims and made it part of the case diary. Thereafter, Azizur Rahman, son of Zaheer handed him over the blood stained *Lungi* of the victim Zaheer, which was taken in his possession and its *fard* recovery memo was prepared, which has been proved and marked as Ext. Ka-10.

15. The Investigating Officer then interrogated Dr. S.K. Singh, Medical Officer, who examined the injuries of the victims and thereafter, reached the place of the incident and stayed there in the night. On the next day i.e. 25.04.1979, the Investigating Officer interrogated the injured witnesses Mahboob Hasan and Mohd. Hasan and prepared the site plans, which have been proved and marked as Exhibits Ka-11 and Ka-12 and thereafter, interrogated the injured Mahboob Hasan and Mohd. Hasan and collected the blood-stained earth and plain earth and prepared its recovery memo, which have been proved and marked as Exts. Ka-13 and Ka14. He thereafter collected the brick lying in the courtyard of Zaheer and prepared its *fard* recovery memo, which has been proved and marked as Exts. Ka-15 and 16. He thereafter collected the blood-stained clothes of Mahboob Hasan

and Mohd. Hasan and prepared its *fard* recovery memo, which have been proved and marked as Exhibits Ka-17 and Ka-18.

16. At this stage, after preparing the said recovery memos, the investigation of the said case was handed over to S.H.O. N.K. Verma, who thereafter investigated the matter.

17. In the meantime, an information was received at Police Station Kotwali, Azamgarh regarding death of injured Zaheer at the District Hospital, Azamgarh. On getting the said information, S.I. Ehsan Ahmed (P.W.1) reached at the District Hospital, Azamgarh and conducted the inquest on the person of the deceased Zaheer and after preparing the relevant documents, namely, challan nash, photo nash, letter to R.I., letter to C.M.O., sample seal, sent the dead body for the post-mortem. The said documents have been proved and marked as Exts. Ka-2 to Ka-5. Thereafter, an autopsy was conducted on the person of the deceased Zaheer by Medical Officer Dr. G.M. Lal (PW-9).

18. As per the post-mortem report, deceased Mohd. Zaheer suffered a single injury being lacerated stitched wound 3" long. On opening the stitch 3" x 1" x bone deep with fracture of skull.

19. On internal examination, scalp was found fractured on injury no.1, skull of right temporal frontal region was also found broken. The Doctor has noted the cause of death to be coma, due to ante-mortem injuries. The said post-mortem report has been proved and marked as Ext. Ka-22 by P.W.9 Dr. G.M. Lal.

20. The Investigating Officer S.I. Sukh Sagar Shukla (PW-7), after collecting the cogent evidence and material and recording the statement of the relevant witnesses Mohd. Hasan, Mahboob Hasan, Mumtaz, Azizul Rahman, Mohd. Zaheer proceeded with the investigation, however subsequently, the investigation was taken over by S.H.O. N.K. Verma, who after making the requisite investigation and collecting the relevant

material, submitted the charge-sheet against the five nominated accused persons, which has been proved and marked as Exhibit Ka-23.

21. On the basis of the said charge-sheet, learned Magistrate had taken cognizance, however, since the case was exclusively triable by the court of Sessions, it was made over to the court of Sessions, who on its turn, transferred it to the court of VIII Additional Session Judge, Azamgarh, where it was registered as Sessions Trial No. 150 of 1980. The trial court thereafter framed the charges against the accused persons under Sections 147, 302/149, 323/149 IPC vide order dated 09.09.1980.

22. The accused persons abjured the charges pleaded not guilty and claimed to be tried.

23. The prosecution in order to prove the guilt against the accused persons, examined the following prosecution witnesses.

24. S.I. Ehsan Ahmad as PW-1, who had conducted an inquest on the person of the deceased. PW-2 Head Constable Rajpat Yadav, who, on the relevant date and time, on the basis of written report handed over to him, had lodged the F.I.R. and prepared the corresponding G.D. Entry, which have been proved as Exhibit Ka-6 and Exhibit Ka-7. PW-3 Mohd. Hasan is the eye-witness as well as injured in the instant case. PW-4 Kamaruddin is also an eye-witness of the incident. PW-5 Mahboob Hasan is also an eye-witness as well as injured in the instant case. PW-6 Mohd. Saleem is another eye-witness of the incident. PW-7 S.I. Sukh Sagar Shukla is the first Investigating Officer, who investigated the case. PW-8 Medical Officer Dr. S.K. Singh, who had examined the injuries of injured Zaheer, Mohd. Hasan, Mahboob Hasan and Khairul Bashir. PW-9 Medical Officer Dr. G.M. Lal, who had conducted an autopsy on the person of the deceased and prepared the post-mortem report. PW-10 Mohd.

Haneef is a Panch witness and is also the witness of recovery of blood-stained, plain soil and blood-stained cloth of Mahboob Hasan.

25. After recording the testimonies of the prosecution witnesses, statement of the accused persons were recorded under Section 313 CrPC, wherein, they denied the prosecution story and stated that they have been falsely implicated due to enmity.

26. Accused persons, in their defence, produced DW-1 to DW-5 and got their testimonies recorded.

27. After recording the entire testimonies of the witnesses and hearing the accused persons, the trial court acquitted the two accused persons namely Noorul Hasan and Abdul Hasan under Sections 147, 302/34, 323/34 IPC, however, convicted Mohd. Hasan, Anwar and Khairul Bashir for the offence under Sections 325/34, 323/34 IPC and sentenced them accordingly vide impugned judgment and order dated 30.04.1982.

28. Against the order of acquittal, the instant government appeal has been preferred against all the five accused-respondents, namely, Noorul Hasan, Abdul Hasan, Mohd. Hasan, Khairul Bashir and Anwar with the prayer to allow the said appeal, set aside the acquittal of all the five accused for the offences under Sections 147 and 302/149 IPC and convict all of them under the said Sections, on the contrary, criminal appeal has been filed by Mohd. Hasan, Anwar and Khairul Bashir with the prayer to acquit them for the offences, for which, they were convicted and sentenced i.e. under Sections 325/149 & 323/149 IPC.

29. Before dealing with the merits of the instant appeals, it would be apt to discuss the testimony of the witnesses in brief, adduced during the course of trial.

30. PW-1 Ehsan Ahmad, S.I., has conducted the inquest on the person of the deceased and prepared the inquest report, which has been proved and marked as Exhibit Ka-1. Thereafter, he has prepared other relevant documents, namely, photo nash, challan nash, letter to C.M.O., letter to R.I. and sample seal, which have been proved and marked as Exhibit Ka-1 to Exhibit Ka-5. Thereafter, dead body has been handed over to the Constable for taking it to the Mortuary for post-mortem.

31. The said witness has not been cross-examined at all and his cross has been marked to be nil.

32. PW-2 Rajpat Yadav, who on the relevant date, was posted as Head Constable at Police Station Mau. The written report by the first informant Mohd. Hasan was handed over to him, on the basis of which, he had drawn the chik FIR and prepared corresponding G.D. entry being G.D. Entry No. 36 at 18:30 Hours. The said documents have been proved and marked as Exhibit Ka-6 and Exhibit Ka-7 respectively.

33. During cross-examination, the said witness has stated that after registration of the F.I.R., the investigation of the said case was handed over to S.I. Sukh Sagar Shukla. He further stated that on 24.04.1979, no report by Rahim Ullah, son of Abdul Rahman on behalf of the accused Khairul Bashir was submitted including the medical report. It is wrong to state that on the said report, no FIR was registered and the same was kept at the Police Station. It is further wrong to state that after 4-5 days of the incident, when Rahim Ullah reached at the Police Station to collect the written report, then his report alongwith medical report was handed back to him. He further denied the suggestion that F.I.R., in the instant case, has been lodged later after due deliberation and consultation with them.

34. PW-3 Mohd. Hasan is an injured witness, who is alleged to have suffered injuries in the incident, in question, and

has been medically examined. He stated that in the east of house of Abdul Samad, there was a lane and the house of Noorul Hasan lies in the east of the said lane and towards the south of the lane, house of Mohd. Zaheer (deceased) is situate. Thus, house of the parties are situate adjoining to each other. He further stated that about two years back, on the relevant date and time, he alongwith others had gone to offer prayer at the Mosque and while, he was coming out, his shoes hit the *Khatpati* of Khairul Bashar, resulting into an altercation between the two and though, he tried to explain that the said incident had accidentally occurred, however, Khairul Bashar slapped him. In the meantime, a large number of persons had assembled there and pacified both of them, however, he reached his house and narrated the entire incident to his son Mahboob Hasan, who set out from the eastern door of his house followed by him, where in the lane, they met accused Noorul Hasan, Mohd. Hasan, Khairul Bashar, Abdul Hasan and Anwar, who questioned Khairul Bashar as to why he has assaulted his father, to which, he stated that he will further assault him. On further altercation, all the accused persons entered in the house of Noorul Hasan and the accused Khairul Bashar and Abdul Hasan armed with iron rod (*Rambha*), whereas Noorul Hasan, Mohd. Hasan and Anwar armed with lathi came out and followed the said witness, who had proceeded towards the south and Khairul Bashar assaulted his son Mahboob Hasan with *Rambha*, pointed portion of which hit his mouth and thereafter, assaulted him. His son in the meantime entered in the house and brought a danda and gave 2-3 blows to Khairul Bashar, when his brother-in-law Zaheer came out in order to rescue them. At the relevant time, on the exhortation by Khairul Bashar, Abdul Hasan gave a *Rambha* blow on the head of Zaheer, his brother-in-law, consequent to which, he fell down, however, somehow he stood up and thereafter, again fell in the courtyard. On the alarm raised, Kamaruddin, Mushtaq Ahmad and Salim also reached at the

place of the incident and witnessed the incident. Since, his brother-in-law had suffered serious injuries, he was immediately rushed to the hospital, where the Doctor referred him to Azamgarh for advance treatment, who was sent to District Hospital, Azamgarh. A report was drawn by him, which was scribed by one Fayyaz and read out to him and through Fayyaz, the said report was sent to the Police Station.

35. During cross-examination, it is stated that in the Mosque, only Khairul Bashar had assaulted him. The said incident has been witnessed by a large number of persons and the beating continued for 2-4 minutes and thereafter, three victims had received injuries and they were rushed to the hospital and have been medically examined there alongwith Zaheer. Thereafter, Zaheer was referred to Azamgarh, however, he was sent back to his house and by that time, Investigating Officer reached the hospital, Zaheer was taken to higher centre for advance treatment at Azamgarh. He further denied the suggestion that report in this case was lodged with deliberation and concoction with the police. He further stated that in the course of the incident, Mahboob had come out of the house followed by him and in the meantime, assailants had reached there in the lane and when, Khairul Bashar reached at the doorsteps, his son asked him as to why he has assaulted his father and at the relevant time, Khairul Bashar and other accused persons were empty handed, however, when Khairul Bashar stated to further assault him, the assailants entered into the house of Noorul Hasan and brought the weapons and thereafter, assaulted the victims with their respective weapons. The said incident was duly stated to the Investigating Officer, however, if he has not recorded the said facts in his statement, he cannot assign any reason for the same, however, in the FIR, he has not stated as to who had assaulted Zaheer with *Rambha*. He further candidly stated that his brother-in-law was not assaulted by Khairul Bashar but only Abdul Hasan assaulted

him with *Rambha*. He had not stated to the Investigating Officer that Khairul Bashar also assaulted his brother-in-law with *Rambha*. He further stated that it is wrong to say that Mushtaq Ahmad, Salim and Kamaruddin had not reached there to offer prayer at the Mosque and had not witnessed the incident. He further stated that no one will accept that Khairul Bashar assaulted his son, while he was assaulted by Noorul Hasan, Anwar and Mohd. Hasan.

36. Further in his cross-examination, he stated that his son was assaulted by pointed side of *Rambha* and when he was assaulted, Zaheer came to rescue him and then, he was also assaulted. He further denied the suggestion that when Khairul Bashar assaulted him, he get annoyed and called his brother-in-law Zaheer. He further denied the suggestion that they were armed with lathi, danda stood there waiting for Khairul Bashar to arrive in order to assault him. He further denied the suggestion that Khairul Bashar seeing them, had entered in his house. It is further denied that they entered into the house of Khairul Bashar and started assaulting him and in an attempt to rescue Khairul Bashar, assailants assaulted them. He further denied the suggestion that sons of Khairul Bashar has been falsely implicated.

37. PW-4 Kamaruddin is another eye-witness of the incident. He, in his examination-in-chief, has stated that on the relevant date and time, they were returning from the Mosque after offering prayer at about 5:00 PM, when several other persons were present and suddenly, shoes of Mohd. Hasan hit the *Khatpati* of Khairul Bashar, resulting in an altercation. Mohd. Hasan tried to apologize, however, Khairul Bashar slapped him, they somehow pacified both of them and they all went back to their house. It is further stated that while he was returning to his house, he saw Khairul Bashar and Abdul Hasan armed with *Rambha* and accused Noorul Hasan, Mohd. Hasan and Anwar

armed with lathi, danda standing at the doorsteps of Mohd. Hasan and when Mahboob Hasan questioned Khairul Bashar as to why he has assaulted his father, then he replied to further assault him. Khairul Bashar assaulted Mahboob Hasan with *Rambha* and on raising an alarm, a large number of persons reached there alongwith Zaheer. Thereafter, on the instigation of Khairul Bashar, Abdul Hasan assaulted him, whereas Mahboob Hasan assaulted Khairul Bashar by a danda. On account of assault, Zaheer received injuries and fell down in his house. After his death, an inquest was prepared by the Investigating Officer, which has been proved and marked as Exhibit Ka-1.

38. During cross-examination, he candidly stated that he is not on inimical terms with Khairul Bashar. He further stated that on the relevant date and time, 10-12 persons were offering prayer at the Mosque, when the incident occurred. He further stated that he alongwith Zaheer had gone to Azamgarh in a Taxi, where he was declared dead and the information of which was sent to the Investigating Officer. He further denied the suggestion that he was not present at Mau Hospital nor at Azamgarh Hospital. He further stated that at about 5:30 PM, he had reached Mau Hospital and at about 10:00 PM, he had reached at Azamgarh Hospital.

39. He further stated in his cross-examination that when, he reached at the place of the incident, Khairul Bashar and Abdul Hasan were standing there armed with *Rambha*, whereas other three accused persons armed with lathi, danda were not standing at their doorsteps but in the lane. Mahboob Hasan was also present in the lane. When he reached there, both sides were pushing each other and proceeded towards the west, thereafter, an assault by lathi, danda started, however, by that time, Zaheer had not reached there. He had informed the Investigating Officer that Khairul Bashar assaulted Mahboob Hasan by a *Rambha* but could not state as to why his such statement was not recorded.

He further stated that in his presence, accused persons had not come out of their house, rather they were standing there armed with weapons. Mahboob Hasan assaulted Khairul Bashar by a danda after Zaheer was hit and received injuries. He further stated that though he is relative of Zaheer but is not trying to conceal the said fact. He further stated that at the relevant date, time and place of the incident, 40-50 persons had reached there, however, they were neither related with the first informant nor with the accused persons.

40. PW-5 Mahboob Hasan is another injured witness of the incident and he, in his testimony, has stated that on the relevant date and time at about 5:00 PM, his father had gone to the Mosque for offering prayer, however, he was present in his house and when, his father returned back after offering prayer, he informed him that Khairul Bashar slapped him as his shoes had hit the *Khatpati* of Khairul Bashar and when, he set out from his house to enquire as to why Khairul Bashar assaulted his father, he found the accused Khairul Bashar, Noorul Hasan, Abdul Hasan, Anwar and Mohd. Hasan standing there. On asking Khairul Bashar as to why he had assaulted his father, he stated to further assault him and then, all the accused persons entered into the house of Noorul Hasan and came out armed with lathi, danda and *Rambha*. He candidly pointed out that Noorul Hasan was armed with lathi, Mohd. Hasan was armed with lathi, Anwar was armed with danda, Khairul Bashar and Abdul Hasan were armed with *Rambha*. When the accused-assailants came out armed with their respective weapons, they proceeded towards the west followed by his father, when Khairul Bashar assaulted him with *Rambha*, which hit him from the pointed side of *Rambha*, he then entered in his house from the south door raising alarm and at the relevant time, Mohd. Hasan, Noorul Hasan and Anwar were assaulting his father. When, he again came out armed with danda, his maternal uncle reached there raising alarm, on which, Khairul

Bashar exhorted Abdul Hasan to kill him and on his exhortation, Abdul Hasan assaulted Zaheer with *Rambha*, consequent to which, he fumbled and fell down. He, in his defence, gave two danda blows to Khairul Bashar. After receiving injuries, his maternal uncle raised himself and went in the courtyard, where he fell down. On the alarm raised, Kamaruddin, Salim and Mushtaq, Mohd. Haneef, etc. had reached there and tried to pacify them and thereafter, assailants left for their house. His maternal uncle Zaheer, his father and he himself had received injuries and were taken to the Hospital at Mau, where all the three were examined. After medical examination, his maternal uncle Zaheer was sent to Sadar Hospital, Azamgarh for advanced treatment. On the next day, it was revealed that he succumbed to his injuries.

41. During cross-examination, the said witness stated that when his father was returning back from the Mosque, he was present in the house and at the relevant time, his father was annoyed being slapped by Khairul Bashar and consequent thereto, he set out from his house to enquire as to why Khairul Bashar had assaulted his father. At the relevant time, Kamaruddin, Salim and Mushtaq were also present there and the assailants, who were five in number, were also present there empty handed. He then enquired from Khairul Bashar as to why he has slapped his father and at the relevant time, his father was also present there, to which, Khairul Bashar stated that he will further assault him and thereafter, the assailants entered in their house to bring the weapons, however, he did not follow them. Thereafter, the assailants came out armed with respective weapons, he did not enter in his house and only stated as to why they had assaulted his father once, and again have come out armed with weapons to assault him and proceeded towards the south, however, he was assaulted by *Rambha*, consequent to which, he ran towards his house to rescue himself and came out with a danda, when his father was being assaulted by the

assailants and in the meantime, on the exhortation of Khairul Bashar, Abdul Hasan assaulted Zaheer with the *Rambha*. His father was also assaulted there. When Abdul Hasan rushed to assault Zaheer, then in order to rescue him, he did not gave any blow to him, however, in order to save himself, he assaulted Khairul Bashar as he too was armed with *Rambha*. He further stated that he had stated to the Investigating Officer that Khairul Bashar stated that “अभी क्या मारा है- अभी और मारेंगे और तुम्हे भी मारेंगे I”, however if the said fact has not been recorded by the Investigating Officer, he cannot assign any reason for the same. He further stated that factum of accused entering in the house of Noorul Hasan with an intention to bring lahti, danda was also stated to the Investigating Officer, however, if the said fact has not been recorded, he cannot assign any reason for the same. He also informed the Investigating Officer that on the exhortation of Khairul Bashar, Abdul Hasan assaulted Zaheer, however, if the said fact has not been recorded by the Investigating Officer, then he cannot assign any reason for the same. He further, in his cross-examination, has stated that all the three victims were medically examined by the Doctor and when after treatment, he came out, he found Fayyaz sitting there and further, saw his father, getting a report scribed by Fayyaz. After the medical examination, the Investigating Officer had also reached there. He further stated that a *Rambha*, by which, an assault was made, was 6 m.m. thick and 1 meter in length. The two accused were armed with *Rambha* and they were pointed and he received injuries by the pointed portion of the *Rambha*. He further denied the suggestion that in the incident, *Rambha* was not used. He further reiterated that incident has taken place in the manner as disclosed by him, however, the Investigating Officer has not recorded his statement in the manner as alleged.

42. PW-6 Mohd. Salim is another eye-witness of the incident and he, in his examination-in-chief, has stated that at

about 5:00 PM on the relevant date, he had visited the Mosque and Abdul Hasan, Mohd. Hasan, Noorul Hasan, Anwar and Khairul Bashar, Kamaruddin, Mohd. Hasan and Mohd. Haneef accompanied him. After offering prayer in the Mosque were returning back to their home, the shoes of Mohd. Hasan hit the *Khatpati* of Khairul Bashar and he immediately apologized for the same, however, Khairul Bashar started assaulting him, however, they intervened and thereafter, left for their home. After some time, he went in the house of Mohd. Hasan and stated that Khairul Bashar had assaulted him and when, he questioned as to why they hit his father, then Noorul Hasan and others stated that they will further assault him and then entered in the house of Khairul Bashar and Anwar, Mohd. Hasan, Noorul Hasan armed with danda, whereas Khairul Bashar and Abdul Hasan armed with *Rambha* came out and on being questioned by Mahboob Hasan, Khairul Bashar assaulted him with *Rambha* causing injury to him, who entered in the house and then, Zaheer came out and questioned them, then Khairul Bashar exhorted Abdul Hasan to assault, consequent to which, Abdul Hasan assaulted Zaheer with *Rambha*, consequent to which, he received injuries on his head and fell down. Mahboob Hasan thereafter given two danda blows to Khairul Bashar and the said incident is said to have also been witnessed by Kamaruddin, Mohd. Haneef and Mohd. Mushtaq. After falling down, Zaheer stood up and went in the courtyard and there, fell down in an unconscious state. Accused persons retrieved to their houses. Mohd. Hasan and Mahboob Hasan took the injured Zaheer to Government Hospital, Mau, where they were medically examined, however, Zaheer was referred to Azamgarh for advance treatment and on the next day, he died in the hospital.

43. During cross-examination, he stated that he is not on visiting terms with Mohd. Hasan nor is in friendship with Zaheer. He further stated that when the accused-assailants reached at the southern door of Mahboob Hasan, then he came

out and questioned Khairul Bashir as to why he has assaulted his father, on which, Khairul Bashir stated that they will further assault him, on which, assailants entered in the house and brought the weapons and started assaulting Mahboob Hasan and Mohd. Hasan, however, they did not made any attempt to rescue them and at the relevant time, 25-30 persons have assembled there. He further stated that he did not saw Zaheer to be armed with any weapon nor he assaulted, the assailants by a lathi. He further denied to have given any statement to the police that Zaheer had also given 2-3 lathi blows in order to rescue him and if, such statement has been recorded by the Investigating Officer, then he cannot assign any reason for the same.

44. PW-7 S.I. Sukh Sagar Shukla is the Investigating Officer of the instant case and he, in his examination-in-chief, has stated that on 24.04.1979, the instant case was registered at the Police Station in his presence. At about 6:10 PM, a memo sent by the Medical Officer Dr. S.K. Singh, was received by him stating therein that three persons have been admitted and out of them, medical condition of Mohd. Zaheer was serious. On getting the said memo, he set out for the hospital and on reaching there found that Zaheer was in a serious condition and had left for higher treatment at Azamgarh. He had collected the blood-stained clothes of Zaheer and prepared its recovery memo and then, interrogated Dr. S.K. Singh and on the next day i.e. 25.04.1979, recorded the statement of Mohd. Hasan and Mahboob Hasan and inspected the place of the incident and prepared the site plan of the incident, where Zaheer had fallen down and also collected the blood-stained earth and plain earth and prepared its recovery memo and had also collected the blood-stained clothes of Mahboob Hasan and Mohd. Hasan, which have been proved and exhibited.

45. PW-7, in his testimony, has further stated that "गवाह मुहम्मद हसन ने यह बयान नहीं दिया था "मुलजिमान को हमने दावत में नहीं बुलाया

था जिसकी रंजिश थी।" इस गवाह ने अपने कथन में यह भी नहीं कहा था "अभी क्या मारा है और मारेंगे"। वाद में ये धमकी देते रहे थे। इस गवाह ने यह भी नहीं बताया कि मुलजिमान नूरुल हसन के घर में घुसकर रम्भा डण्डा लाये" इस गवाह ने ऐसा बयान भी नहीं दिया था "कि मेरा लड़का घर में गया व वहां से डण्डा लेकर निकला व खैरुल बशर पर बचाव में दो डण्डा चलाया।" इस गवाह ने यह कहा था खैरुल बशर के ललकारने पर अब्दुल हसन ने रम्भा से प्राणघातक चोटे पहुंचायी" इस ने अपने व जहीर को खैरुल बशर व अब्दुल हसन के द्वारा रम्भे से मारना बताया है। इस गवाह ने खैरुल बशर व अब्दुल हसन दोनों के द्वारा रम्भा से मारना नहीं बताया है। इस गवाह का इस सम्बन्ध में बयान यह लिखा है-

"मेरा साला मुहम्मद जहीर घर में से शोर सुनकर निकला कि खैरुल बशर व अब्दुल हसन ने उसे रम्भा से सर पर हचक कर जान मारने की नियत से चोट पहुंचायी तथा मुझे भी बुरी तरह से मारे पीटे।"

46. PW-7 has further denied the suggestion that the report said to be given by Khairul Bashar was taken away by Rahim Ullah after medical examination, which was kept by them and the case was not registered. He further denied the suggestion that relevant documents were later returned back to Khairul Bashar.

47. Dr. S.K. Singh is the Medical Officer, who had examined the injuries of Mohd. Zaheer (deceased), Mahboob Hasan and Mohd. Hasan and Khairul Bashar (accused) which have already been discussed in the earlier part of the judgment. He, in his testimony, has further stated that injury no.1 received by Mohd. Zaheer could be caused by an iron rod but the injuries of Mohd. Hasan cannot be caused by some sharp object but by any blunt object. He has further candidly stated that all the injuries could be caused on 24.04.1979 at 5:00 PM. Seeing the injuries of Mohd. Zaheer, he had sent a memo to the Police Station stating therein the injuries of Mohd. Zaheer are dangerous, which has been proved and marked as Exhibit Ka-9. Even, the injuries of accused Khairul Bashar have also been examined by him.

48. During his cross-examination, he stated regarding the injuries of Mohd. Hasan and Mahboob Hasan but he did not send any information of their injuries as they were not grievous and has also proved the injuries sustained by Khairul Bashar, which has been marked as Exhibit Kha-2. He further stated that injuries of any of the injured cannot be caused by sharp portion of the weapon and the injuries of all four victims could be caused by a danda.

49. PW-9 Dr. G.M. Lal is the Medical Officer, who had conducted an autopsy on the person of the deceased and has noted the ante-mortem injuries, which have already been discussed in the earlier part of the judgment, however, the said witness was not cross-examined and his cross-examination has been noted to be nil.

50. PW-10 Mohd. Haneef is the witness of *fard* recovery memo of blood-stained earth and plain earth and prepared two *fard* recovery memos, which have been prepared and marked as Exhibit Ka-3 and Exhibit Ka-14. He is also the witness of *fard* recovery memo, which has been proved and marked as Exhibit Ka-15 and Exhibit Ka-16 and also other recovery memos, which have been proved and marked as Exhibit Ka-17 and Exhibit Ka-18. The said witness is also one of the *panch* witness and he has signed the inquest, which has been proved and marked as Exhibit Ka-1.

51. In his cross-examination, he has stated that the Investigation Officer had collected the blood-stained brick from the place of the incident and has reached there as Mohd. Zaheer was his neighbour and thereafter, returned back to his house. He further denied the suggestion that no blood was found at the place of the incident, which has been collected by the Investigating Officer.

52. After concluding the prosecution evidence, statement of the accused-appellants Noorul Hasan, Mohd. Hasan, Abdul Hasan, Anwar and Khairul Bashar were recorded under Section 313 CrPC. The accused-appellants in their statement recorded under Section 313 CrPC claimed the entire evidence of prosecution witnesses to be false and fabricated and denied the prosecution story and stated that on account of enmity, they have been falsely implicated.

53. The accused persons, in their defence, had also produced as many as five defence witnesses and their testimony, in brief, is being discussed.

54. DW-1 Mohd. Inam stated that on 24.04.1979, Khairul Bashar got a report scribed by him, which was read out to him and thereafter, he had put his signatures on the said report, which has been proved and marked as Exhibit Kha-1.

55. In his cross-examination, he stated that after scribing the said report, he had handed it over to Khairul Bashar, which has been produced today before him. He has appeared to depose on the instructions of Khairul Bashar, who had asked him to prove the report scribed by him. He has further denied the suggestion that the said report has been subsequently manipulated by him.

56. D.W.-2 Rahim Ullah is another defence witness and he has stated that on 24.04.1979, he had taken an application, which has been proved and marked as Exhibit Kha-1 alongwith medical report of Khairul Bashar to the Police Station Mau and had handed over it to the Police, however, its copy was not given to him and he was asked to come later to collect the same. He does not know if any F.I.R. was registered, however, when he went in the Police Station to collect the report, he was told that the report will be given to Khairul Bashar.

57. During his cross-examination, he stated that he had taken an application at the Police Station at about 10:30 P.M., however, in his presence, Constable had not noted it down and he does not know, if an information is given, it is reduced in writing. He had sought the copy of the registered application, which he had carried to the Police Station. He does not know if Khairul Bashar had gone on the next day to collect the report. He further denied the suggestion that he did not went to the Police Station alongwith report and he is falsely deposing in the instant case.

58. D.W.-3 Dr. V.K. Mehra is the Medical Officer and he, in his examination-in-chief, has stated that on 22.04.1979, he had examined Abdul Hasan, who was suffering from pain in chest and hypertension and he was advised for pathological test and produced a medical certificate, which has been proved and marked as Exhibit Kha-2.

59. In his cross-examination, he stated that the said medical certificate has not been recorded in the Register and denies that the forged certificate has been prepared.

60. D.W.-4 Dr. Mohd. Ansari is another Medical Officer, who had examined Abdul Hasan on 22.04.1979 and had prepared the cardiogram, which has been proved and marked as Exhibit Kha-3 and he was advised for complete bed rest.

61. During cross-examination, he stated that Abdul Hasan was a heart patient of first stage but is competent to carry out even the hard work.

62. D.W.5. Abdul Majid is the Maulvi and has validly obtained such degree.

63. In his cross-examination, he stated that at the relevant time, he has not brought his degree of Maulvi, which is kept with him.

64. The trial court, after appreciating the evidence and material available on record and by placing reliance upon the testimony of the injured witnesses and other eye-witnesses of the incident, has held that the prosecution has successfully proved the case against the accused-appellants Khairul Bashar, Anwar and Mohd. Hasan, however, convicted them only for the offence under Sections 325 read with 34 IPC and Sections 323 read with 34 IPC and acquitted Noorul Hasan and Abdul Hasan by extending benefit of doubt to them by holding that their presence at the time of the incident seems to be doubtful and accordingly sentenced Khairul Bashar, Anwar and Mohd. Hasan under Sections 325 read with 34 and Sections 323 read with 34 IPC.

65. Being aggrieved and dissatisfied by the said judgment and order, State of U.P. preferred the instant Government Appeal challenging the impugned judgment and order with the prayer that the trial court has illegally acquitted Noorul Hasan and Abdul Hasan by extending benefit of doubt to them, though, their presence and participation in the incident is cogently and firmly established by the prosecution and further, prayed that all the accused persons Khairul Bashar, Anwar, Mohd. Hasan, Noorul Hasan and Abdu Hasan should have been convicted for the offence under Sections 147 and 302/149 IPC and on the contrary, only Khairul Bashar, Anwar and Mohd. Hasan have been convicted for the offence under Sections 325 read with 34 IPC and Sections 323 read with 34 IPC, which should be reversed and all the accused persons are liable to be convicted for the offence under Sections 147 and 302/149 IPC.

66. Apart from the aforesaid Government Appeal, accused-appellants Khairul Bashar, Anwar and Mohd. Hasan had also preferred their Criminal Appeals with the prayer that they have been illegally convicted and sentenced for the offence under Sections 325 read with 34 IPC and Sections 323 read with 34 IPC and as such, they be acquitted.

67. Since, both the appeals; Government Appeal as well as Criminal Appeal arise from the same impugned judgment and order, therefore, both the appeals are disposed of by a common judgment and order.

68. It is germane to point out here that during the pendency of the aforesaid appeals, accused Khairul Bashar has already passed away and as such, his appeal has been dismissed as abated.

69. Learned AGA for the State in support of the Government Appeal has submitted that the trial court in the instant case has not appreciated the evidence and material available on record in right perspective and has illegally recorded the findings of acquittal in favour of Noorul Hasan and Abdul Hasan, though, their presence and participation in the incident has been cogently, firmly and clinchingly established by the prosecution.

70. Learned AGA has further submitted that as per the prosecution case, Abdul Hasan was the main assailant, who had assaulted the victim-deceased Mohd. Zaheer by a *Rambha* hitting him on his head, consequent to which, he suffered serious head injury and later succumbed to the said injury, however, the trial court, without there being any cogent evidence and material to doubt the presence of Abdul Hasan, has illegally recorded the finding of acquittal in favour of him, which is a patent error committed by the trial court and as such, the finding of acquittal recorded in his favour, is patently perverse and illegal and is liable to be set aside.

71. Learned AGA has further submitted that even from the entire evidence and material available on record including the evidence of two injured witnesses, the presence and participation of Noorul Hasan in the incident has also been cogently, firmly and clinchingly established by the prosecution, yet on the basis of surmises and conjectures, the trial court has illegally recorded the

finding of acquittal in his favour doubting his participation in the incident and as such, the said finding being patently perverse and illegal is liable to be set aside and both the acquitted accused persons Noorul Hasan and Abdul Hasan are liable to be convicted by reversing their acquittal.

72. Learned AGA has further submitted that from the testimony of two injured witnesses, which, by no stretch of imagination, can be said to be doubtful, the prosecution has cogently and firmly established the case against all the accused-assailants, who in furtherance of a common object, has caused injuries to Mohd. Hasan and Mahboob Hasan and further, to Mohd. Zaheer, who, on receiving the head injury, later succumbed to his injury in the hospital and thus, they all are liable for being convicted for the offence under Sections 147 and 302/149 IPC. The contrary finding recorded by the trial court holding only three of them to be guilty that too only for the offence under Sections 325 read with 34 IPC and Sections 323 read with 34 IPC is patently illegal and perverse and therefore, is liable to be set aside and instead, they all are liable to be convicted for the offence under Sections 147 & 302/149 IPC. The contrary view taken by the trial court is based on surmises and conjectures and therefore, is liable to be set aside.

73. Learned AGA has further submitted that both the witnesses P.W.-3 Mohd. Hasan and P.W.-5 Mahboob Hasan are the injured witnesses and they, in their testimony, have cogently and firmly established the prosecution case against the accused-assailants and despite their lengthy cross-examination made by the defence, no material contradiction, which goes to the root of the case, could be pointed out by the defence. Both the witnesses even after lengthy cross-examination, have withstood the cross-examination and have fully supported the prosecution story in all material particulars and the defence has failed to elicit any material contradictions in their testimonies and therefore, they

have been rightly held to be reliable witnesses. Even, the testimony of eye-witnesses has proved the prosecution story to the hilt and no material contradiction could be pointed out in their testimony and thus, they all are truthful witnesses, however, trial court without there being any cogent or reliable material to doubt their presence and participation of accused-assailants Noorul Hasan and Abdul Hasan, has illegally held their presence to be doubtful by extending benefit of doubt to them, which on the face of it, is wholly illegal, perverse and against the material on record and is therefore liable to be set aside.

74. Per contra, learned counsel for the accused-assailants has not been able to point out any material contradictions in the statement of the prosecution witnesses so as to doubt the credibility of the said witnesses, however, he has submitted that during the pendency of these appeals before this Court, accused-assailants Mohd. Hasan and Anwar have executed a compromise with Azizur Rahman and Fiyazur Rahman, both sons of the deceased Mohd. Zaheer as well as Mohd. Shahnawaz, son of injured Mahboob Hasan and Faizul Hasan, son of the first informant Mohd. Hasan (now deceased).

75. Learned counsel for the accused-assailants has further submitted that during the pendency of these appeals, first informant Mohd. Hasan and injured Mahboob Hasan have already passed away and a compromise deed dated 21.06.2025 has been executed by their sons as well as son of the deceased, wherein they have stated that now, they do not want the accused persons to be convicted and sentenced.

76. He has further submitted that the incident has occurred on 24.04.1979 and more than 45 years have already lapsed since the alleged incident and that the accused as well as injured persons are resident of the same village and during the pendency of these appeals, cordial relations have developed

between the family members of both the parties and both the parties have been living happily in the same locality and as such, in the facts and circumstances of the case and on the basis of the said compromise made between the parties, the instant appeal be allowed and all the accused-assailants be acquitted and the dispute between the parties be given a quietus on the basis of compromise made between them.

77. Having considered the rival submissions made by learned counsel for the parties and having gone through the material on record, the moot question that falls our consideration is **(i)** whether the order of acquittal passed against the accused-assailants Noorul Hasan and Abdul Hasan is just, proper and legal in the facts and circumstances of the case and further **(ii)** as against Mohd. Hasan and Anwar, the conviction recorded by the trial court only under Sections 325/34 and 323/34 IPC is just, proper and legal, looking to the gravity of the offence and the evidence led by the prosecution or **(iii)** that that they all are liable to be convicted for the graver offences, charged with, under Sections 147 and 302/149 IPC, or **(iv)** it is a case of culpable homicide not amounting to murder punishable under Sections 304 Part-I or Part-II of the IPC.

78. We have already gone through the evidence adduced by the prosecution and the genesis of the occurrence and role attributed to the assailants herein. PW-9 Dr. G.M. Lal was examined by the prosecution being the Medical Officer, who conducted the post-mortem on the person of the deceased. The Doctor has noted only a single injury on the head of the deceased Zaheer and the cause of death has been noted to be coma due to ante-mortem injury. The injuries caused to the other two injured are noted to be simple in nature. Even injuries are said to have been caused to assailant Khairul Bashir also in the incident, which too has been medically examined and proved by Dr. S.K. Singh (P.W.8).

79. In the backdrop of the said facts and circumstances of the instant case, next important legal issue is whether prosecution has been able to prove the charge of Section 302/34 IPC. In ***Dhupa Chamar & Ors Vs. State of Bihar, (decided on 02.08.2002)***, the Hon'ble Supreme Court had to grapple with a case of death caused by single *bhala* blow in the neck. A question arose whether clause 'Thirdly' of Section 300 I.P.C. is attracted. The Hon'ble Supreme Court observed as below:-

"The ingredient 'intention' in that Clause is very important and that gives a clue in a given case whether offence involved is murder or not. Clause Thirdly of Section 300 of the Penal Code reads thus:- "Thirdly, if it is done with the intention or causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or" Intention is different from motive. It is the intention with which the act is done that makes difference, in arriving at a conclusion whether the offence is culpable homicide or murder."

80. In the celebrated and landmark judgment given by the Hon'ble Supreme Court in ***Virsa Singh Vs. State of Punjab reported in AIR 1958 SC 465***, it was held as below :-

"To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300, 3rdly"; (i) First, it must establish, quite objectively, that a bodily injury is present; (ii) Secondly, the nature of the injury must be proved; These are purely objective investigations. (iii) Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further and, Fourthly, it must be proved that the injury of

the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.”

81. The Hon'ble Supreme Court in ***Dhupa Chamar (supra)***, quoted from another judgment of itself given in ***Jai Prakash Vs. State (Delhi Administration), (1991) 2 SCC 32***, in which, the meaning of term 'knowledge' and 'intention' was elaborated as below :-

*“It can thus be seen that the 'knowledge' as contrasted with 'intention' signify a state of mental realisation with the bare state of conscious awareness of certain facts in which human mind remains supine or inactive. On the other hand, 'intention' is a conscious state in which mental faculties are aroused into activity and summoned into action for the purpose of achieving a conceived end. It means shaping of one's conduct so as to bring about a certain event. Therefore, in the case of 'intention' mental faculties are projected in a set direction. Intention need not necessarily involve premeditation. Whether there is such an intention or not is a question of fact. In Clause Thirdly the words "intended to be inflicted" are significant. As noted already, when a person commits an act, he is presumed to expect the natural consequences. But from the mere fact that the injury caused is sufficient in the ordinary course of nature to cause death it does not necessarily follow that the offender intended to cause the injury of that nature. However, the presumption arises that he intended to cause that particular injury. In such a situation the court has to ascertain whether the facts and circumstances in the case are such as to rebut the presumption and such facts and circumstances cannot be laid down in an abstract rule and they will vary from case to case. However, as pointed out in ***Virsa Singh's case (supra)***, the weapon used, the degree of force released in wielding it, the antecedent relations of the parties, the*

manner in which the attack was made that is to say sudden or premeditated, whether the injury was inflicted during a struggle or grappling, the number of injuries inflicted and their nature and the part of the body where the injury was inflicted are some of the relevant factors. These and other factors which may arise in a case have to be considered and if on a totality of these circumstances a doubt arises as to the nature of the offence, the benefit has to go to the accused.”

82. The Hon’ble Supreme Court of India, in ***Criminal Appeal No. 2043 of 2023 (Anbazhagan Vs. The State represented by the Inspector of Police)***, decided on 20.07.2023, differentiated between word ‘intent’ and ‘knowledge’ observing that intention which is a state of mind can never be precisely proved by direct evidence as a fact; it can only be deduced or inferred from other facts which are proved the intention may be proved by *res-gestae*, by acts or events previous or subsequent to the incident or occurrence. The relevant consideration may include nature of weapon used, place where injury was inflicted, nature of injury, the opportunity available to the accused.

83. The Hon’ble Supreme Court quoted from the ***Kudumula Mahanandi Reddi MANU/AP/0128/1960 : AIR 1960 AP 141***, as below :-

‘18. ... A man's intention has to be inferred from what he does. But there are cases in which death is caused and the intention which can safely be imputed to the offender is less grave. The degree of guilt depends upon intention and the intention to be inferred must be gathered from the facts proved. Sometimes an act is committed which would not in an ordinary case inflict injury sufficient in the ordinary course of nature to cause death, but which the – offender knows is likely to cause the death. Proof of such knowledge throws light upon his intention.’

84. The Hon'ble Supreme Court further reproduced para 26 from Kudumala judgment as below :-

“26. ...Where the evidence does not disclose that there was any intention, to cause death of the deceased but it was clear that the accused had the knowledge that their acts were likely to cause death the accused can be held guilty under the second part of Section 304 I.P.C. The contention that in order to bring the case under the second part of Section 304 I.P.C., it must be brought within one of the exceptions to Section 300 I.P.C. is not acceptable.”

‘Knowledge’ and ‘intention’ are essential ingredients of offence of culpable homicide as defined in Section 299 of I.P.C.

Section 299 I.P.C. is as below :-

“Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.”

85. Bearing in mind the test suggested in the aforesaid decision and also bearing in mind that our legislature has used two different terminologies ‘intent’ and ‘knowledge’ and separate punishments are provided for an act committed with an intent to cause bodily injury which is likely to cause death and for an act committed with a knowledge that his act is likely to cause death without intent to cause such bodily injury as is likely to cause death, it would be proper to hold that ‘intent’ and ‘knowledge’ cannot be equated with each other. They connote different things. Sometimes, if the consequence is so apparent, it may happen that from the knowledge, intent may be presumed. But it will not mean that ‘intent’ and ‘knowledge’ are the same. ‘Knowledge’ will be only one of the circumstances to be taken into consideration while determining or inferring the requisite intent.

86. Further, it is germane to point out here that in another case reported in **2006 (11) SCC 444, Pulicherla Nagaraju @ Nagaraja Reddy Vs. State of A.P.**, the Hon'ble Supreme Court has laid down various relevant circumstances from which the intention could be gathered. Some relevant considerations are the following:-

(i) The nature of the weapon used, (ii) whether the weapon was carried by the accused or was picked up from the spot, (iii) whether the blow is aimed at the vital part of the body, (iv) the amount of force employed in causing injury, (v) whether the act was in the course of sudden quarrel or sudden fight, (vi) whether the incident occurred by chance or whether there was any premeditation, (vii) whether there was any prior enmity or whether the deceased was a stranger, (viii) whether there was a grave or sudden provocation and if so, the cause for such provocation, (ix) whether it was heat of passion, (x) whether a person inflicting the injury has taken undue advantage or has acted in a cruel manner, (xi) whether the accused persons has dealt a single blow or several blows.

87. Thus, while defining the offence of culpable homicide and murder, the framers of the IPC laid down that the requisite intention or knowledge must be imputed to the accused, when he committed the act, which caused the death in order to hold him guilty for the offence of culpable homicide or murder as the case may be. The framers of the IPC designedly used the two words 'intention' and 'knowledge', and it must be taken that the framers intended to draw a distinction between these two expressions. The knowledge of the consequences which may result in the doing of an act is not the same thing as the intention that such consequences should ensue. Except in cases where mens rea is not required in order to prove that a person had certain knowledge, he "must have been aware that certain

specified harmful consequences would or could follow.” (Russell on Crime, Twelfth Edition, Volume 1 at page 40).

88. The phraseology of Sections 299 and 300 respectively of the IPC leaves no manner of doubt that under these Sections when it is said that a particular act in order to be punishable be done with such intention, the requisite intention must be proved by the prosecution. It must be proved that the accused aimed or desired that his act should lead to such and such consequences. For example, when under Section 299 it is said “whoever causes death by doing an act with the intention of causing death” it must be proved that the accused by doing the act, intended to bring about the particular consequence, that is, causing of death. Similarly, when it is said that “whoever causes death by doing an act with the intention of causing such bodily injury as is likely to cause death” it must be proved that the accused had the aim of causing such bodily injury as was likely to cause death.

89. Thus, in order that the requirements of law with regard to intention may be satisfied for holding an offence of culpable homicide proved, it is necessary that any of the two specific intentions must be proved. But, even when such intention is not proved, the offence will be culpable homicide if the doer of the act causes the death with the knowledge that he is likely by his such act to cause death, that is, with the knowledge that the result of his doing his act may be such as may result in death.

90. The important question, which is engaged for our careful consideration in this case is, whether the fact and in the given circumstances of the case, we should maintain the conviction of the accused-assailants for the offence under Sections 325/34 IPC, or we should further alter it to Section 304 Part-II of the IPC.

91. Sections 299 and 300 of the IPC deal with the definition of 'culpable homicide' and 'murder', respectively. In terms of Section 299 of IPC, 'culpable homicide' is described as an act of causing death (i) with the intention of causing death or (ii) with the intention of causing such bodily injury as is likely to cause death, or (iii) with the knowledge that such an act is likely to cause death. As is clear from a reading of this provision, the former part of it emphasises on the expression 'intention' while the latter upon 'knowledge'. Both these are positive mental attitudes, however, of different degrees. The mental element in 'culpable homicide', that is, the mental attitude towards the consequences of conduct is one of intention and knowledge. Once an offence is caused in any of the three stated manners noted-above, it would be 'culpable homicide'. Section 300 of the IPC, however, deals with 'murder', although there is no clear definition of 'murder' in Section 300 of the IPC. As has been repeatedly held by this Court, 'culpable homicide' is the genus and 'murder' is its species and all 'murders' are 'culpable homicides' but all 'culpable homicides' are not 'murders'. (see *Rampal Singh vs. State of U.P.*, (2012) 8 SCC 289).

92. The scope of clause thirdly of Section 300 of the IPC has been the subject matter of various decisions of this Court. The decision in ***Virsa Singh (supra)*** has throughout been followed in a number of cases by this Court. In all these cases the approach has been to find out whether the ingredient namely the intention to cause the particular injury was present or not? If such an intention to cause that particular injury is made out and if the injury is found to be sufficient in the ordinary course of nature to cause death, then clause thirdly of Section 300 of the IPC is attracted.

93. The Hon'ble Supreme Court further in its decision in ***Criminal Appeal No. 2043 of 2023 (supra)*** has thus held that the distinction between culpable homicide (Section 299 of the

IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

94. The court must address itself to the question of mens rea. If Clause thirdly of Section 300 of the IPC is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

95. Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary course of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

96. When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

97. Now, we recapitulate the facts and circumstances of the case that on the fateful day of the incident, the first informant Mohd. Hasan was coming out from the Mosque after offering prayer and when he was at the stair-case, his shoe hit the *Khatpati* of Khairul Bashar, who started hurling abuses and questioned him as to why he did so. The first informant Mohd. Hasan apologized for the said act and asked to spare him as the said incident had occurred accidentally, however, Khairul Bashar slapped the first informant Mohd. Hasan. Thereafter, first informant Mohd. Hasan returned back to his house and narrated the entire incident to his son Mahboob Hasan, who set out and questioned Khairul Bashar as to why he had slapped his father, to which, he stated that he will further assault him and on further altercation, all the accused-assailants entered in the house of Noorul Hasan and the accused Khairul Bashar and Abdul Hasan armed with iron rod (*Rambha*), whereas Noorul Hasan, Mohd. Hasan and Anwar armed with lathi, followed the said witnesses, who had proceeded towards the south and Khairul Bashar assaulted his son Mahboob Hasan with his *Rambha*. His son, in the meantime, entered in the house and brought a danda and gave 2-3 blows to Khairul Bashar, when his brother-in-law Zaheer came out in order to rescue them. At the relevant time, on the exhortation of Khairul Bashar, Abdul Hasan gave a *Rambha* blow on the head of Zaheer, his brother-in-law, consequent to which, he fell down and later died.

98. Thus, in the said incident, Mahboob Hasan and Mohd. Hasan received injuries alongwith Zaheer, who subsequently succumbed to his injuries, while on the other side, Khairul Bashar also received injuries and has been medically examined.

99. It is true that the deceased Zaheer, on account of coma and internal head injury, succumbed, however, the important question is whether that by itself is sufficient to draw an inference that the accused-assailants intended to cause such bodily injury as was sufficient to cause death.

100. In the light of the aforesaid discussions and keeping in view the entire evidence adduced during the course of trial, we are of the opinion that the Clause Thirdly of Section 300 of the IPC are attracted as intention of the accused-assailants to cause death for such bodily injury, which he knew to cause the death of the other person or being sufficient in the ordinary course of nature to cause death, is not proved.

101. Moreover, from the evidence adduced by the prosecution also, it is apparent that the incident has occurred on a very trivial dispute when the shoes of Mohd. Hasan hit the *Khatpati* of Khairul Bashar and despite apology tendered by him, Khairul Bashar slapped him. Thereafter, first informant Mohd. Hasan returned back to his house and narrated the entire incident to his son Mahboob Hasan, who set out and questioned Khairul Bashar as to why he had slapped his father, however, in the meantime, accused-assailants Noorul Hasan, Abdul Hasan, Mohd. Hasan, Anwar and Khairul Bashar armed with lathi and *Rambha* reached there and started assaulting his son Mahboob Hasan and when, Zaheer Hasan, brother-in-law of the first informant, also reached there and tried to intervene, he was also assaulted by them. In the said assault, Khairul Bashar also suffered injuries, therefore, the accused-assailants, after forming

an unlawful assembly, had assaulted the victim, consequent to which, Mahboob Hasan, Mohd. Hasan and Zaheer received injuries on one side, whereas Khairul Bashir also received injuries on the other side.

102. Thus, in the backdrop of the said circumstances, the next question that arises for our consideration is whether the accused-assailants would be guilty in the Part-I or Part-II of Section 304 IPC as is evident from the record. The accused-respondents apparently were to beat the deceased and the injured but certainly, not with an intention to kill him. To us, it appears that at the most, it can be said that the act of the accused-assailants in hitting, was done with the knowledge that it was likely to cause death but without any intention to cause the death or cause such bodily injury as it likely to cause death. The case of the accused-assailants therefore clearly falls under Section 304 Part-II of the IPC. The trial court did not apply its judicial mind in proper perspective and rather, on the basis of the evidence adduced, the presence and the participation of Noorul Hasan and Abdul Hasan has been found doubtful and thus, has given a clean acquittal to them while convicting the accused-assailants Mohd. Hasan and Anwar only under Sections 325/34 and 323/34 of IPC.

103. However, when we go through the entire evidence, we find that injured witnesses as well as other witnesses have narrated the incident in clear terms and has adduced ample evidence in the form of their oral testimony, corroborated by the medical evidence that all the five accused-assailants were present at the time of the incident and they, with an intention to give sound beating, assaulted Mohd. Hasan, Mahboob Hasan and Zaheer, with lathi and *Rambha*.

104. It is germane to point out here that it is the consistent testimony of the injured witnesses that Abdul Hasan,

on exhortation of Khairul Bashir, had assaulted Zaheer with a *Rambha* on his head, consequent to which, he received serious injuries and later, succumbed.

105. Further, as per their testimony, it is the specific case that Noorun Hasan, who was armed with lathi alongwith Mohd. Hasan and Anwar, had assaulted Mohd. Hasan by lathi, consequent to which, he received injuries and was medically examined. Thus, from the evidence adduced, by no stretch of imagination, in our opinion, it can be said that Noorul Hasan and Abdul Hasan were not present at the time of the incident and did not participate in it. The contrary finding recorded by the trial court is therefore patently perverse, illegal and against the material on record and as such, keeping in view the settled principle of law in appreciating the evidence in a government appeal, the said finding is liable to be reversed being based on patent illegal and against the material on record.

106. Thus, keeping in view the entire evidence adduced during the course of trial, we find that the presence of all the accused-assailants Noorul Hasan, Abdul Hasan, Mohd. Hasan, Anwar and Khairul Bashir, being five in number, is clearly established by the prosecution and further that they, after forming an unlawful assembly, had assaulted Mohd. Hasan, Mahboob Hasan and Zaheer causing injuries to them, consequent to which, Zaheer later succumbed.

107. Thus, in the backdrop of the entire evidence adduced during the course of trial, we are of the opinion that all the five accused-assailants were present at the time of the incident and after forming an unlawful assembly, had assaulted the victims causing injuries to them and death of Zaheer.

108. Thus, the conviction of the surviving accused-assailants Mohd. Hasan and Anwar under Sections 325/34 and 323/34 of IPC is against the material on record, perverse and

illegal and in the backdrop of the entire circumstances of the case, we are of the opinion that all the surviving accused-respondents are liable to be convicted under Section 304 Part-II/149 and 323/149 of IPC and the contrary view taken by the trial court in this respect is patently illegal and against the material on record and is, therefore, set aside and all the surviving accused-assailants Noorul Hasan, Abdul Hasan, Mohd. Hasan and Anwar are convicted for the offences under Sections 304 Part-II/149 and 323/149 of IPC.

109. Now, coming to the question of sentence, we find that the incident in question has taken place on 20.04.1979 and 46 long years have already lapsed.

110. It is further germane to point out here that now, at the relevant time, accused Noorul Hasan is aged about 79 years, accused Mohd. Hasan is aged about 74 years, accused Abdul Hasan is also about 79 years and the accused Anwar is aged about 66 years and all of them are senior citizens.

111. Apart from the said facts, there is one more glaring circumstance in the said appeal. Now, both the injured Mahboob Hasan and Mohd. Hasan have already passed away and convicted accused-assailants Mohd. Hasan and Anwar have executed a compromise dated 21.06.2025 with Azizur Rahman and Fiyazur Rahman, both sons of the deceased Zaheer as well as Mohd. Shahnawaz, son of the injured Mahboob Hasan (now deceased) and Faizul Hasan, son of the first informant-injured Mohd. Hasan (now deceased), wherein, they have categorically stated that the accused-respondents and they are residing in the same *Mohalla* and have resolved their all disputes and differences and now, have started participating together in the festival and marriages and cordial relationship have been developed between the family members of both the parties and have been living happily with each other and they do not want to further litigate

between themselves nor want the accused-assailants to be sentenced.

112. The said compromise has been brought on record in the connected criminal appeal and thereafter, this Court vide order dated 04.07.2025 directed that the said compromise dated 21.06.2025 be verified by the Chief Judicial Magistrate, Mau by ensuring their personal appearances on 10.07.2025 before the court concerned. The Chief Judicial Magistrate, Mau shall verify the said compromise deed made between the parties and submit its report.

113. Pursuant to the said order, both the parties appeared before the Chief Judicial Magistrate, Mau on 10.07.2025 and in their presence, the compromise deed dated 21.06.2025 has been verified and a report dated 08.08.2025 has been forwarded to this Court by the Chief Judicial Magistrate, Mau, wherein, it has been stated that in verification to the said compromise, Noorul Hasan, Abdul Hasan, Mohd. Hasan and Anwar Ahmad, surviving accused-assailants and Azizur Rahman and Fiyazur Rahman, both sons of the deceased Zaheer, Mohd. Shahnawaz, son of injured Mahboob Hasan and Faizul Hasan, son of injured-first informant Mohd. Hasan appeared on behalf of the prosecution side and acknowledged the said compromise and accepted its contents, consequent to which, it was verified by the learned Magistrate and a report dated 08.08.2025 has been forwarded to this Court. Thus, in view of the aforesaid facts and circumstances of the case, it has been prayed by learned counsel for the accused-respondents Noorul Hasan, Abdul Hasan, Mohd. Hasan and Anwar that they be sentenced only for the period undergone by each of them.

114. Per contra, learned AGA for the State has submitted that looking to the nature of offence and compromise made between the parties, apart from the period already

undergone by each of the accused-respondents, they also be sentenced for a fine of Rs. 25,000/- each, which should be paid to the victims as compensation, which would subserve the interest of justice.

115. Having considered the rival submissions made by learned counsel for the parties and taking into consideration the fact that Noorul Hasan and Abdul Hasan have already undergone 22 days of incarceration, Mohd. Hasan and Anwar have already undergone 35 days of incarceration, as such, we are of the opinion that they all be sentenced for the period undergone by each of them and further, a fine of Rs. 25,000/- is imposed upon each of them, which on deposition shall be paid to the legal heirs of the victims as compensation. In case of default of payment of fine, accused-respondents shall undergo further rigorous imprisonment for the period of three months. The instant government appeal is accordingly **partly allowed**.

Criminal Appeal No. - 1228 of 1982

(Mohd. Hasan and Others Vs. State of U.P.)

116. The instant criminal appeal has been filed against the judgment and order dated 30.04.1982 passed by VIII Additional Sessions Judge, Azamgarh in Sessions Trial No 150 of 1980 (State of U.P. Vs. Noorul Hasan and Others), by which, the accused-appellants have been convicted for the offences under Sections 325/34 IPC and awarded the sentence to each of them, three years rigorous imprisonment and further, under Sections 323/34 IPC and awarded the sentence to each of them, one year rigorous imprisonment.

117. However, since the government appeal has been partly allowed and the accused-appellants have been convicted for the offence under Section 304 Part-II/149 and 323/149 of IPC and awarded the sentence of period already undergone by each of them with a fine of Rs.25,000/- each, as such, in terms of the

order passed in connected government appeal, the instant criminal appeal is **dismissed**.

118. Let a copy of this judgment and order alongwith trial court record be forwarded to the trial court concerned for information and necessary compliance. Necessary compliance report be submitted within a month.

(Subhash Chandra Sharma, J.) (Rajiv Gupta, J.)

September 16, 2025

Nadim