

Neutral Citation No. - 2025:AHC:36314-DB

Reserved On:- 25.11.2024

Delivered On:- 12.03.2025

Case :- CRIMINAL APPEAL No. - 419 of 2013

Appellant :- Pramod Yadav

Respondent :- State of U.P.

Counsel for Appellant :- A.K. Mishra, Devottam Pandey, Dileep Kumar, K.N.

Rai, Ramkirti Singh, Shashi Bhushan Kunwar

Counsel for Respondent :- Satyendra Kumar Pandey, Sudhakar Pandey

Hon'ble Siddharth, J.

Hon'ble Subhash Chandra Sharma, J.

(Delivered by Hon'ble Siddharth, J.)

1. Heard Sri Kamal Krishna, learned Senior Counsel assisted by Sri Shashi Bhushan Kunwar and Sri Vinay Saran, learned Senior Counsel assisted by Sri Pradeep Kumar Mishra, learned counsel for the appellant; Sri Pulak Ganguli and Sri Haridwar Singh, learned counsel for the respondent; learned A.G.A for the State and perused the trial court record.

2. The above noted criminal appeal has been filed against the judgement and order dated 24.11.2012, passed by Additional Sessions Judge, Court No. 3, Ballia, in Sessions Trial No. 176 of 2010, State of U.P vs. Ganesh Verma and Others, by which the appellant has been convicted for committing the offence under Section 302 IPC and awarded sentence of life imprisonment and fine of Rs. 10,000/-; in default of payment of fine to further undergo 3 months additional imprisonment. In Sessions Trial No. 175 of 2010 under Section 4/25 of Arms Act he has been awarded sentence of one year rigorous imprisonment and a fine of Rs. 500/- and in default of payment of fine of further undergo one month's additional imprisonment. All the sentences are to run concurrently.

Case :- CRIMINAL APPEAL No. - 4941 of 2012

Appellant :- Vinod Yadav

Respondent :- State of U.P.

Counsel for Appellant :- K.N. Rai, Shashi Bhushan Kunwar, Sudhakar Pandey

Counsel for Respondent :- Satyendra Kumar Pandey

3. Heard Sri Shashi Bhushan Kunwar, learned counsel for the appellant; Sri Satyendra Kumar Pandey, learned counsel for the respondent; learned A.G.A for the State and perused the material placed on record.

4. The above noted criminal appeal has been filed against the judgement and order dated 24.11.2012, passed by Additional Sessions Judge, Court No. 3, Ballia, in Sessions Trial No. 176 of 2010 – State of U.P. vs. Ganesh Verma and Others, by which the appellant has been convicted for committing the offences under Section 302 IPC read with Section 34 IPC and awarded sentence of life imprisonment and fine of Rs. 10,000/- and in default of payment of fine to undergo 3 months additional imprisonment.

Case :- CRIMINAL APPEAL No. - 4823 of 2012

Appellant :- Ganesh Verma

Respondent :- State of U.P.

Counsel for Appellant :- Atul Kumar Singh, Dileep Kumar, Sunil Kumar

Counsel for Respondent :- Satyendra Kumar Pandey, Sudhakar Pandey

5. Heard Sri S.D. Dwivedi Mishra, learned counsel for the appellant; Sri Sudhakar Pandey, learned counsel for the respondent; learned A.G.A for the State and perused the material placed on record.

6. The above noted criminal appeal has been filed against the judgement and order dated 24.11.2012, passed by Additional Sessions Judge, Court No. 3, Ballia, in Sessions Trial No. 176 of 2010, State of U.P. vs. Ganesh Verma and Others, by which the appellant has been convicted for committing the offences under Section 302 read with Section 34 IPC and awarded the sentence of life imprisonment and a fine of Rs. 10,000/- and in default of payment of fine to undergo 3 months additional imprisonment.

Case :- CRIMINAL APPEAL No. - 4901 of 2012

Appellant :- Mahesh Verma

Respondent :- State of U.P.

Counsel for Appellant :- Sudhakar Pandey, Suresh Dhar Dwivedi

Counsel for Respondent :- Satyendra Kumar Pandey

7. Heard Sri Shashi Bhushan Kunwar, learned counsel for the appellant; Sri Satyendra Kumar Pandey, learned counsel for the respondent; learned A.G.A for the State and perused the material placed on record.

8. The above noted criminal appeal has been filed against the judgement and order dated 24.11.2012, passed by Additional Sessions Judge, Court No. 3, Ballia, in Sessions Trial No. 176 of 2010, State of U.P. vs. Ganesh Verma and Others, arising out of Case Crime No. 64 of 2010, under Section 302 IPC read with Section 34 IPC, Police Station- Bairiya, District- Ballia, by which the appellant was convicted and sentenced for life imprisonment and fine of Rs. 10,000/- for committing the offence under Section 302 IPC and in default of payment of fine to undergo three months additional rigorous imprisonment.

Case :- CRIMINAL APPEAL No. - 4879 of 2012

Appellant :- Parmatama Prasad Gupta

Respondent :- State of U.P.

Counsel for Appellant :- Girish Kumar Singh

Counsel for Respondent :- Sudhakar Pandey

9. Heard Sri Girish Kumar Singh, learned counsel for the appellant; Sri Sudhakar Pandey, learned counsel for the respondent; learned A.G.A for the State and perused the material placed on record.

10. The above noted criminal appeal has been filed against the judgement and order dated 24.11.2012, passed by Additional Sessions Judge, Court No. 3, Ballia, in Sessions Trial No. 176 of 2010, State of U.P. vs. Ganesh Verma and Others convicting and sentencing the appellant for committing the offence under arising out of Case Crime No. 21 of 2010, Police Station- Bairia, District- Ballia,

convicting and sentencing the appellant under Section 193 IPC for imprisonment of two years rigorous imprisonment and fine of Rs. 1,000/-. In default of payment of fine to undergo one month's further rigorous imprisonment.

11. Prosecution case, as per F.I.R., is that on 31.01.2010 at about 6 p.m the informant, after closing his shop of tractor parts, reached the shop of his brother, Om Prakash, alongwith his brother-in-law (*Saadhu*), Sanjay Verma and Dinesh Verma, brother-in-law (*sala*) of his brother, Om Prakash who were living different localities of the same village. There he came to know that his brother, Om Prakash, had gone to his godown from his shop. The informant and his companions reached the godown at 6.30 p.m where they heard noise behind the godown. They ran towards the place of noise, where they saw that their brother, Om Prakash, was caught by accused, Ganesh Verma and Mahesh Verma, of village- Bibi Tola and appellants, Pramod Yadav and Vinod Yadav of Jawahar Tola. Pramod Yadav assaulted his brother, Om Prakash by '*Daon*' (incised weapon) in his hand with intention to cause his death. He hit on the head of his brother and his head got broken in two parts. When the informant and his companions tried to apprehend the appellant, Pramod Yadav, he made second assault on the left hand of his brother which got cut near the elbow. After seeing the informant and his companions, all the four accused, leaving the brother of the informant, ran towards the agricultural field. The informant reached near his brother and found him dead. Number of persons witnessed the incident.

12. The trial of S.T. No. 176 of 2010, proceeded against the appellant, Pramod Yadav, regarding commission of offences under section- 302 IPC, charges under Section 302 read with section 34 IPC were framed against appellants, Vinod Yadav, Ganesh and Mahesh Verma and charges under Section 193/197 were framed against appellant, Parmatma Prasad Gupta.

13. With regard to recovery of weapon, S.T. No. 175 of 2010, proceeded against appellant, Pramod Yadav, only.

14. In S.T. No. 176 of 2010, to prove the prosecution case, prosecution produced P.W.1, Jai Prakash Verma (informant); P.W.2, Sanjay Kumar Verma; P.W.3, Prabhu Nath; P.W.4, Vinod Kumar Singh; P.W.5, Dr. Narendra Kumar; P.W.6, Jagannath Prasad and P.W.7, R.P. Sharma.

15. Thereafter statements of accused were recorded under section 313 Cr.P.C wherein they alleged false implication in this case on the basis of fabricated documents.

16. The defence produced D.W.1, Kapoor Chand Verma; D.W.2, Raj Kishore Yadav; D.W.-3, Ijhar Ahmad and D.W.4, Dr. R.N. Upadhaya as defence witnesses before the trial court.

17. P.W.-1, in his examination-in-chief, repeated the contents of F.I.R and further stated that when the informant alongwith his companions, Sanjay and Dinesh, reached the shop of his brother, Om Prakash (deceased), they found his younger brother, Ram Prakash, sitting in the shop who informed them that Om Prakash had gone to godown. He further stated that there was sufficient light on the place of incident since there was arrangement of inverter also in the godown. In his cross-examination, P.W.-1 stated that his shop is situated 1/1/2 kilometre towards the west of his village Jawahar Tola. In between there is grave of Maharaj Baba in village Tiwari Ki-Sikli. No one speaks lies in his area and he is also not lying. He alongwith deceased, Om Prakash and sometimes Ram Prakash after closing their shops used to go to Jawahar Tola where they lived. They also lived in the house in the godown of his brother. On the date of incident no member of his family was present in the godown. The house of witness, Manoj Yadav, is situated in Jawahar Tola. P.W.1 denied knowledge of any criminal litigation of Pramod Yadav and Vinod Yadav with witness, Manoj Yadav. Pramod Yadav and Vinod Yadav lived separately with their families. Pramod Yadav got job on the post of clerk on compassionate basis after death of his father, Gorakhnath Yadav and thereafter on the basis of fabricated degree became teacher in the same inter college. Vinod Yadav is also teacher in Montessori

School and has litigation with managing committee of school with Kameshwar Yadav, which is pending before the High Court.

18. In further cross-examination, P.W.-1 stated that civil litigation of his family with family of Vinod Yadav and Pramod Yadav is pending since time of his father and it is still pending. The accused had caught hold of his brother on the ground. Accused Ganesh, Mahesh, and Vinod caught him below the waist. While Pramod Yadav assaulted him twice by '*Daon*', which was subsequently recovered on his pointing out. He had shown the bulb in front of godown to the investigating officer but he can not tell why he did marked the same in the site plan. He does not remember whether any blood was found on his clothes and the number of persons who had collected on the spot after hearing the noise. Rajendra Verma and Arvind Verma and many others had reached there. He had shown the inverter in his godown to the investigating officer but why he did not mentioned the same in the case diary, he cannot tell the reason. He denied any knowledge of operation of accused, Pramod Yadav, by Dr. Parmatma Prasad Gupta before the incident. Prior to the incident murder of Gorakhnath Yadav, father of Pramod Yadav, took place. He does not knows who was accused in the aforesaid case. He denied that murder of his father was caused by unknown accused. P.W.1 stated that his agricultural land is towards the west of the place of incident wherein vegetables were sown at the time of incident. The vegetables were sown by Babita wife of Bhagwan. He had given his agricultural field to Babita without taking any money from her. Babita is aged 30-35 years like Om Prakash. He denied that Om Prakash had illicit relationship with Babita whose husband resides out side. P.W1 admitted that he did not mentioned in his report that when he went to the shop of his brother, Om Prakash, his younger brother, Ram Prakash, was present in the shop. He admitted that this fact also does not finds place in his statement recorded under section 161 Cr.P.C. He stated that Sanjay and Dinesh had gone with him to meet Om Prakash. Om Prakash must be having some reason for calling them which he does not knows.

19. P.W.2, Sanjay Kumar Verma, admitted that deceased, Om Prakash, was his brother-in law (*saadhu*). He had gone to shop of P.W.1 at 5 P.M. where Dinesh Verma also came. They went to the shop of Om Prakash where his younger brother, Ram Prakash, was found. They reached the godown of Om Prakash at 6.30 P.M. where they heard noise on the western side of the godown. On reaching there he saw that appellants, Mahesh, Ganesh and Vinod had thrown Om Prakash on the ground and were firmly catching hold of him when appellant, Pramod Yadav, assaulted on the head of Om Prakash by '*Daon*' in his hand. When they proceeded towards him, Pramod Yadav caused second blow on left elbow of Om Prakash and it got detached from the hand.

20. Thereafter all the accused vanished towards the west side. A bulb was lightening the place of incident. He knew the accused since before the incident. Number of persons came on the spot. They saw Om Prakash, who had died. The deceased, Om Prakash, had dispute of land with accused, Ganesh and Mahesh, when Om Prakash had made complaint against accused, Pramod Yadav, for obtaining job in education department on the basis of fabricated educational certificate. In his cross examination he admitted that he had gone to the shop of Om Prakash because he had called him. He had also called Dinesh on his shop. He had not informed the investigating officer about these facts. When they reached shop of Om Prakash only Ram Prakash was sitting there and there was no customer in the shop. The accused had not thrown Om Prakash on the ground before him. Om Prakash had already fallen on the ground and he was caught firmly below his waist by Ganesh, Mahesh and Vinod. Before they reached the place of incident Om Prakash had suffered injuries. Blood was scattered around. None of us tried to chase away the accused. The investigating officer found blood only on the place of incident and at no other place. Jai Prakash picked up Om Prakash and stated that he has died. One of the accused was only having '*Daon*' which was 1/1/2 ft. long and 3 inches broad. He was not made to sign on any documents regarding the incident along with Dinesh. At the time of inquest proceedings a hundred watt bulb was lighting the western side of house of Om

Prakash. The inquest proceedings on dead body of Om Prakash took place before him and Dinesh but they were not made to sign there. Further in the cross examination P.W.-2 denied that he had not seen the incident and because of being relative of Om Prakash, he has given false statement. His house is situated 2/1/2 km. towards the southern side from the place of incident where he does job of washing cars. Om Prakash had called him on phone. He had also called Dinesh on phone at about 12 P.M. on 31.1.2010. He admitted that he did not inform these facts to the investigating officer. He admitted that Om Prakash had suffered injuries before he could see. When the neighbours reached the place of incident accused had already eloped.

21. P.W.-3 proved that recovery of '*Daon*' used in the incident was made on the pointing out of appellant, Pramod Yadav, from the open place. In cross examination he stated that weapon which was recovered before him is not before him. He proved that the recovery memo was prepared on the place of recovery and the weapon was sealed in a cloth. His signature along with signature of Raj Narain were taken on the recovery memo.

22. P.W.4, Vinod Kumar Singh, proved that on 4.2.2010 he had gone to Dr. Parmatma Prasad Gupta along with Chandrama Prasad where accused Pramod and Vinod were sitting. They were requesting the doctor to give them some certificate which may save them from the criminal prosecution in this case. His statement in this regard was recorded by the investigating officer on 6.2.2010. He admitted that nothing was given in writing to accused, Pramod Yadav and Vinod Yadav by the doctor before him. He stated that he cannot tell whether prior to the incident operation of Hydrocele of accused, Pramod Yadav, was performed by Dr. Parmatma Prasad Gupta or not.

23. P.W.5, Dr. Narendra Kumar, proved the injuries suffered by the deceased, which are as follows:-

Ante-mortem Injuries:

(1) Decapitated of head at the level of nasal bone, upper end of both ear pinna (incised wound 58 cm in circle cut through and through), wound is horizontally placed.

(2) Part-I – Contusion – upper part of head at the level of nasal bone and upward end of both ear pinna.

(3) Part-II – Contusion of lower part of head (partial nose, mouth, containing teeth, neck and trunk).

- Both parts of body is interconnected each other.

(4) Incised wound 5cm above from left eyebrow, size 5 cm x 1 cm.

(5) Incised wound 10cm x 4cm x muscle deep, obliquely placed on left side of neck, muscle deep.

(6) Incised wound 6cm x 4cm on the back of left elbow joint.

(7) Incised wound 3cm x 1cm on upper end of left forearm.

(8) Incised wound 3cm x 2cm x muscle deep on left hand dorsal surface.

(9) Incised wound 2cm x 1cm on right hand dorsal surface.

(10) Incised wound 5cm above from left nipple on left side of chest size 2 cm x 1 cm.

(11) Incised wound 5cm x 3cm muscle deep left facial region.

24. P.W.-5 further stated that there was 200 ml semi digested food present in the stomach of the deceased and death of the deceased had taken place one day ago. The postmortem was conducted on 01.02.2010 and doctor admitted that the death of the deceased could have been caused on 31.1.2010 at 6.30 p.m. He further opined that except injury no.1 all the injuries were caused to the deceased after surrounding him from all sides. He opined that injury no.1 could have been caused by Sword. The dimension of all the injuries are different and they could have been caused by different weapons. Weapons used in causing injuries are not before him.

25. P.W.-6 proved that he registered case on the basis of application given to him by P.W.-1 and also made G.D. entries accordingly.

26. P.W.-7, investigating officer of this case, proved the record of the investigation conducted by him, the recovery of weapon, mud samples and clothes of the deceased. In his cross-examination, he added that he has not mentioned presence of any electric bulb but at the time of inspection he found one bulb above the shutter of the godown and other electric bulb on the western wall of the same. He also denied that informant gave him statement that when he reached the shop of Om Prakash, he found his younger brother, Ram Prakash, sitting therein. He also denied that Sanjay and Dinesh informed him that since Om Prakash had called them, they went to meet him. The aforesaid witness was recalled and in his cross examination he stated that no enmity of Mahesh and Ganesh with deceased was found proved. Appellant, Ganesh Verma and Mahesh Verma had criminal history of 8 and 7 cases, respectively.

27. In the statement of accused recorded by the trial court under section 313 Cr.P.C. they alleged false implication in this case on the basis of fabricated documents. Appellant, Mahesh, stated that he alongwith Ganesh have been implicated by Rajesh and Prem Shanker because of ligation and enmity with them. He had printed a pamphlet against S.H.O. R.P. Sharma, from his press, which was distributed by Surendra Singh in public and therefore aforesaid S.H.O. was annoyed with him and he falsely implicated him alongwith his brother, Ganesh Verma.

28. Appellant, Vinod Yadav, stated that criminal case regarding murder of his father is pending against Ramdheer Singh, present Chairman of District Panchayat. He has got him and Promod Yadav, his cousin falsely implicated in this case.

29. Appellant, Parmatma Prasad Gupta, stated in his statement that he performed operation of Hydrocele of appellant, Pramod Yadav, which was registered in his register. He was caught from his house by the inspector. who got his register destroyed and demanded Rs. One lac., otherwise he would be implicated in this case. Since he refused to pay the aforesaid amount to the

inspector, he was falsely implicated in this case. Other appellant also alleged false implication in this case.

30. In defence, appellant, Appellant, Parmatam Prasad Gupta, produced documentary evidence to prove his qualification. Appellants, Ganesh Verma and Mahesh Verma, produced documents to prove enmity with police with regard to their litigations with their opponents.

31. Defence also produced medical register of jail. It was proved by D.W.2, Dr. Raj Kishore Yadav, Lab Technician. Medical examination report of appellant, Pramod Yadav, was proved by D.W.-4, Dr. R.N. Upadhyay.

32. By the judgement and order of conviction and sentence dated 24.11.2012, appellants have been convicted and sentenced by trial court, hence above noted appeals have been preferred by them.

33. Learned counsel for the appellants has submitted that no motive of commission of crime has been mentioned in the First Information Report. The First Information Report also does not contains any recital that the deceased had called the witnesses to meet him. Further presence of Ram Prakash, was not mentioned in the First Information Report on the shop of Om Prakash, the deceased. There is no recital in the First Information Report that witnesses saw that the deceased had fallen on the ground and appellants, Vinod, Ganesh and Mahesh had caught hold of his hands and legs. Learned counsel for the appellants has further submitted that Section 34 of IPC is not attracted in the present case. He has further submitted that prior concert or pre-arranged plan to kill the deceased has not been established and only act assigned to the appellants, Vinod Yadav, Mahesh Verma and Ganesh Verma is of catching hold, which too is highly doubtful. It has further been submitted that First Information Report is ante timed. There is overwriting in the column of description of injuries in *Panchayatnama*. Case Crime Number was not initially there in the same. The injuries mentioned in the postmortem report have been mentioned in the same serial as in the inquest report. It has been submitted that P.W.1 is brother of the deceased and P.W.2, is

real brother-in-law of the deceased, who are highly inimical, partisan, interested and chance witnesses and their evidence should have been received with the great amount of caution. There was no evidence that deceased called the witnesses at his shop in the First Information Report and also in the statements recorded under section 161 Cr.P.C. Neither P.W.1 nor P.W.-2 admitted that they met Ram Prakash at the shop of Om Prakash. Ram Prakash was never summoned by the trial court by exercising powers under section 311 Cr.P.C. to test the prosecution case and veracity of statements of P.W.1 and P.W.2.

34. While P.W.1 stated in the First Information Report as well as in his deposition during trial that deceased was thrown on the ground, P.W.2 did not subscribed to the same and stated that Om Prakash was not thrown on the ground before him. Specific question was put to P.W.2 as to for what purpose deceased had called him and P.W.1 at his shop but P.W.2 did not stated anything. P.W.1 and P.W.2 reached the place of incident together but there is difference in their versions of witnessing the incident. P.W.2 admitted that when he saw Om Prakash he has already suffered injuries. P.W.1 and P.W.2 testified only to giving two blows by promod Yadav to deceased by Banka. First blow was given on head and the second on the left elbow of the deceased. P.W.-1 and P.W.-2 claimed that his left arm was severed from elbow but it is not supported by inquest report, postmortem report and recovery memo. Total eleven injuries were suffered by the deceased on different parts of his body and there is only explanation of nine injuries. No weapon of assault was recovered from the place of incident nor any of the witnesses stated that accused persons vanished with the weapons of assault in their hands. The incident took place on 31.1.2010 at 6.30 P.M. in banana grove situated on back side of godown of the deceased. The sun set had taken place at 5.25 P.M. and there was every possibility of fog present at 6.30 P.M. There is no description of light in the First Information Report nor in the site plan. From the site plan it is evident that witnesses have seen the incident from 25 steps away and in the absence of any source of light, it was impossible for them to see the incident. The Apex court in the case of *State Vs. Ashok Kumar & others*,

1979, Vol.3, SCC Page-1 held that from such a distance the witnesses cannot see the features of accused in the moon light.

35. It has been further argued that recovery of ‘*Daon*’ made on 25.2.2010, on the pointing out of appellant, Pramod Yadav, was not in accordance with law since no disclosure statement of accused, Pramod Yadav, was recorded before recovery of weapon of assault. P.W.1 has stated that after 4-5 days of the incident, the weapon used in the crime was recovered. P.W.2, admitted that on 2.2.2010 he heard that ‘*Bhujali*’ has been recovered. P.W.3, Prabhu Nath, who is witness of recovery of weapon, has admitted that after 1 or 2 days of the incident he has gathered from the newspaper that weapon of assault has been recovered. In the F.S.L report no definite opinion has been given regarding classification of blood. P.W.3, Prabhu Nath, was an accused in a case under section 308 I.P.C. in which deceased, Om Prakash and his father, Shri Ram Verma, were his sureties. The defence filed documentary evidence in this regard which was not considered by the trial court.

36. Regarding *alibi* set up by appellant, Pramod Yadav, it has been argued that operation of Hydrocele of appellant, Pramod Yadav, was performed by Dr. Parmatma Prasad Gupta on 31.1.2010 in Lifeline Hospital.

37. D.W.1, Kapoor Chandra Verma, proved that on the same day his wife, Ranjo Devi was operated for fistula in the hospital between 3-4 P.M. and thereafter the operation of appellant, Pramod Yadav, was performed.

38. D.W.2, Raj Kishore Yadav, Lab Technician, testified that he performed blood test of appellant, Pramod Yadav and Ranjo Devi, on the recommendation of Dr. Parmatma Gupta. D.W.-4, Dr. R.N. Upadhyay, medically examined Pramod Yadav in jail and found signs of stitches on his Scrotum. In his report submitted before the trial court in pursuance of the order dated 25.2.2010 of the trial court, he testified these facts.

39. The fact of deceased calling P.W.1 and P.W.2 to meet him at his shop was a circumstance, which was not put before the appellants under section 313 Cr.P.C. Similarly circumstance that '*Daon*' was recovered from the mango grove of Aditya Tiwari, was also not put before the appellants under section 313 Cr.P.C.

40. It has finally been submitted that Ramdheer Singh and Vikram Singh are real brothers. Vikram Singh was Ex-M.L.A. from Ballia and Ramdheer Singh was Zila Panchayat Adhyaksha. Prior to the present incident murder of Gorakhnath Yadav, father of appellant, Pramod Yadav, had taken place in which Ramdheer Singh was an accused. Therefore, appellant, Pramod Yadav, has been falsely implicated at the instance of Ramdheer Singh and Vikram Singh in this case through P.W.1.

41. Learned counsel for the informant has submitted that from the statements of P.W.-1 and P.W.-2 it is clear that they reached the scene of incident after hearing the noise behind the godown. They saw appellants, Ganesh, Mahesh and Vinod, catching the deceased and appellant, Pramod Yadav, causing injuries to Om Prakash by '*Daon*'. P.W.-1 and P.W.-2 proved the prosecution case beyond reasonable doubt and there is nothing in this statements which may prove that they tried to falsely implicate the appellants in this case.

42. D.W.-4, Dr. R.N. Upadhyay, examined the appellant, Pramod Yadav, on 25.02.2010 (after 25 days of his alleged operation of Hydrocele by Dr. Parmatma Gupta) and still found that stitches were there. D.W.-4 stated that soluble stitches get absorb after 10 to 15 days and therefore it was clear that superficial stitches were made on the scrotum of appellant, Pramod Yadav, only to prove his *alibi* set up before the trial court. The motive of the crime was clearly established by the prosecution before the trial court. Appellant, Pramod Yadav, was appointed as Assistant Clerk under the dying in harness rules in Narhari Baba Inter College, Ballia and subsequently he got appointment on the post of Assistant Teacher on the basis of fake certificate of Shiksha Visharad. Challenging the appointment of appellant, Pramod Yadav, on the post of Assistant Teacher, deceased, Om Prakash

Verma, filed the Civil Misc. Writ Petition No. 46461 of 2009 and after calling for personal affidavit on District Inspector of Schools, Ballia, salary of appellant, Pramod Yadav, was stopped by this court in the year 2009. Hence, the murder of Om Prakash Verma was committed on 31.01.2010 by appellant, Pramod Yadav, along with other appellants.

43. Further P.W.-1 has stated in his statement before the trial court that there was civil dispute between his family and the family of appellants, Pramod Yadav and Vinod Yadav, since the time of their father. Hence, there was double motive for the appellants, Pramod Yadav and Vinod Yadav, to commit the murder of Om Prakash Verma. Appellants, Pramod Yadav and Vinod Yadav, have been convicted in a Case Crime No. 307, 325, 34 IPC and their Criminal Appeal No. 1361 of 2009 (Jai Govind Yadav and Others vs. State of U.P.) is pending before this court and while being released on bail in the aforesaid appeal, they have committed the present crime in dispute. Criminal history of appellants have already been discussed by the trial court. Appellant, Pramod Yadav, has criminal history of 2 cases. Appellant, Vinod Yadav, has criminal history of 5 cases. Appellant, Ganesh Yadav, has criminal history of 13 cases and appellant, Mahesh Verma, has criminal history of 10 cases. It has been submitted that the criminal appeals preferred by the appellants are devoid of merits and deserve to be dismissed by this court.

44. Learned A.G.A. has vehemently opposed the submissions made by the learned counsel for the appellants. He has submitted that arguments of the counsel for the appellants that First Information Report is ante timed is without any basis. Merely because of some discrepancies in the investigation conducted by the investigating officer the entire prosecution case can not be thrown out. It is settled law that First Information Report is not required to be encyclopedia. Non mentioning of the presence of Ram Prakash on the shop of Om Prakash in the First Information Report cannot be a ground for disbelieving the prosecution case. Motive of crime was proved from the fact that Pramod Yadav had got

appointment on the post of clerk on compassionate basis in place of his father, Gorkhnath, who was murdered. Thereafter he obtained appointment on the post of Assistant Teacher on the basis of fabricated degree. Deceased challenged his appointment before this court. Accused, Vinod Yadav was teacher in Montessori School and was having litigation with committee of management. It has come in the statement of P.W.1 that there was dispute between the family members of P.W.1 and family members of accused Pramod and Vinod since time of their father. Further presence of source of light in the godown and western wall of godown was admitted by P.W.7. The *alibi* of operation of Hydrocele of Pramod Yadav was not proved before the trial court. D.W.4 has admitted that stitches of hydrocele operation are soluble and they get absorbed in the skin within 10-15 days. He cannot say whether such stitches were made or not. D.W.4, further stated that there is possibility of superficial stitching without any internal probe of scrotum of Pramod Yadav. Dr. Parmatma Prasad Gupta issued fake certificate in favour of the accused and hence he was tried and convicted by the trial court under section 193 I.P.C. for rigorous imprisonment of two years and fine of Rs. 1,000/-. The defect in investigation cannot be a ground for acquittal of the accused persons. The explanation of eleven injuries by prosecution stands proved from the fact that when P.W.1 and P.W.2 reached the scene of the incident when the deceased had already fallen on ground and earlier he was subjected to nine injuries by other accused persons. Witnesses aforesaid only saw the incident from the stage when the deceased was being subjected to last two injuries caused by Pramod Yadav from 'Daon'. Earlier part of the incident did took place before they arrived therefore they did not stated anything regarding the same, therefore prosecution case is based on correct facts.

45. After hearing the rival submission and going through the material on record, we find that the motive of crime has clearly been assigned to appellants, Pramod Yadav and Vinod Yadav. As argued by the learned counsel for the informant and learned A.G.A there was civil litigation pending between the family of P.W.-1 and the appellants, Pramod Yadav and Vinod Yadav, aforesaid

since the time of their father. The additional reason of enmity was challenging of appointment of appellant, Pramod Yadav, by the deceased, Om Prakash, on the post of Assistant Teacher before this court by filing Civil Misc. Writ Petition No. 46431 of 2009, wherein this court found that absorption of appellant, Pramod Yadav, on the post of Assistant Teacher in a recognized intermediate college was illegal and show cause notice was issued as to why recovery of entire amount of salary paid to appellant, Pramod Yadav, should not be recovered from his personal assets. District Inspector of Schools, Ballia was also directed to file his affidavit in this regard. The payment of salary of Pramod Yadav was stopped in pursuance of the order passed by this court on 04.09.2009. This appears to be the motive on the part of appellant, Pramod Yadav, which resulted in murder of Om Prakash. No suggestion was given to P.W.-1 regarding involvement of some other person who may have motive to commit the murder of Om Prakash. Trial court has dealt with this issue elaborately and also the issue that mere absence of mentioning motive in F.I.R will not affect the prosecution case when there is eye-witnesses account and subsequent proof of motive of crime by the prosecution before the trial court.

46. It is settled law that F.I.R cannot be considered to be encyclopedia (see *Jarnail Singh vs. State of Punjab, 2009(6) Supreme 526*). It is also not substantial piece of evidence. Non-mentioning of name of brother of deceased, Ram Prakash, in F.I.R would not be fatal for prosecution case. Ram Prakash did not saw the incident hence trial court has not erred in summoning him before it.

47. The basic purpose of filing a First Information Report is to set the criminal law into motion. A First Information Report is the initial step in a criminal case recorded by the police and contains the basic knowledge of the crime committed, place of commission, time of commission, who was the victim, etc. The term 'First Information Report' has been explained in the Code of Criminal Procedure, 1973 by virtue of Section 154, which lays down that:

“Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

48. F.I.Rs. can be registered by a victim, a witness or someone else with the knowledge of the crime. The police can record three different kinds of statements. The first kind of statement is one which can be recorded as an F.I.R., the second kind of statement is one which can be recorded by the police during the investigation, and the third kind of statement is any kind of statement which would not fall under any of the two categories mentioned above. Evidence is the matter of testimony manifesting the fact on a particular precision or circumstances. The First Information Report is not by itself a substantial piece of evidence and the statement made therein cannot be considered as evidence unless it falls within the purview of Section 32 of the Evidence Act.

49. The argument of the counsel for the appellants that F.I.R was ante-timed does not appears to be correct. The incident took place on 31.01.2010 at about 06:30 p.m and F.I.R has been lodged on the same day at 07:30 p.m. All the appellants were named in the F.I.R which shows that their identity was not in doubt when the F.I.R was lodged. The argument that at the time of inquest report case crime number was not in existence and was not recorded thereon is incorrect. Case crime number has been mentioned on the inquest report.

50. The arguments that the place of incident is doubtful since no evidence of any struggle was found on the place of incident deserves consideration.

51. From the statement of P.W.-1 it is clear that all the four appellants were catching hold of Om Prakash Verma and then Pramod Yadav took out the ‘Daon’ and caused fatal injury to the deceased before his eyes on his head and left hand. It is not the prosecution case that deceased was resisting the appellants when the witnesses reached place of incident. The deceased was firmly caught by the

appellants and he was not able to move from their hold. Therefore, it is clear that no struggle took place on the place of incident which would have left some tell tale sign on the spot proving that the incident took place on the particular place and around. However, the blood stained and plain earth were collected from the place of incident and F.S.L report regarding the same was filed before the trial court.

52. The argument regarding lack of source of light on the spot points out to the mistake on the part of investigating officer of not mentioning the same in the site plan. However, he has admitted in his statement before the trial court, recorded as P.W.-7, that there were two bulbs present on the scene of incident. One was on the western wall of godown and other was above the shutter of godown.

53. The argument from the appellant's side that there were 11 injuries found on the person of deceased but only two were explained by the prosecution is without substance. P.W.-1 has stated that only two injuries on head and left hand of the deceased were caused before him when he reached the scene of incident. The appellants, Ganesh Verma, Mahesh Verma and Vinod Yadav, were firmly catching hold of the deceased and then Pramod Yadav caused the fatal injury on the head of deceased by '*Daon*'. Clearly the prosecution proved the incident from the time when it was seen by the witnesses. There was no attempt made by the prosecution to prove the 9 injuries found on the person of the deceased in inquest and post-mortem by concocting any false story before the court. Nine injuries were suffered by the deceased prior to the arrival of P.W.-1 and P.W.-2 on the scene of incident. It appears that prior to causing of fatal head injury to the deceased, he was subjected to other injuries by the appellants. However, he was alive when the witnesses reached the scene of incident and the fatal injury on his head was caused before the P.W.-1. There is nothing in the statement of P.W.-1 which may compel this court to disbelieve the prosecution case.

54. P.W.-2 has stated that after he reached the place of incident, injuries were caused to the deceased. This is also not unbelievable since the fatal blow was

caused to the deceased within fraction of minutes and P.W.-1 and also P.W.-2 saw the same.

55. The argument of counsel for the appellant that it was 6:30 p.m in the month of January and in pitch darkness it was not possible for the witnesses to identify the accused in the absence of source of light deserves consideration. In this case the accused were well-known to P.W.-1 and the deceased prior to the incident and they were promptly named in the F.I.R within one hour of the incident. Therefore, it cannot be said that they could not have been identified due to poor visibility.

56. The argument of the counsel for the appellant that there was no disclosure statement of appellant, Pramod Yadav, recorded before affecting recovery of weapon deserves consideration. The judgment of Apex Court in the case of ***Ramanand @ Nandlal Bharti vs. State of U.P., AIR 2022 Supreme Court 5273*** has laid down the procedure for recovery of incriminating weapons / arms as follows:-

“66. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in Pulukuri Kottaya and Others v. Emperor, AIR 1947 PC 67, which have become locus classicus, in the following words:

"10. It is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

67. What emerges from the evidence in the form of panchnama is that the appellant stated before the panch witnesses to the effect that "I will show you the weapon used in the commission of offence". This is the exact

statement which we could read from the discovery panchnama and the Investigating Officer also could not have deposed as regards the exact statement other than what has been recorded in the panchnama. This statement does not suggest that the appellant indicated anything about his involvement in concealment of the weapon. Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source. He may have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered weapon, he was the person who concealed it, least it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the panchnama of the discovery of weapon and the evidence in this regard is that he disclosed that he would show the weapon used in the commission of offence. In the same manner we have also perused the panchnama Exh.32 wherein the statement said to have been made by the accused before the panchas in exact words is "the accused resident of Roghada village on his own free will informs to take out cash and other valuables".

68. What emerges from the evidence of the investigating officer is that the accused appellant stated before him while he was in custody, "I may get discovered the murder weapon used in the incident". This statement does not indicate or suggest that the accused appellant indicated anything about his involvement in the concealment of the weapon. It is a vague statement. Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source also. He might have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered the weapon, he was the person who had concealed it, least it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the substantive evidence as regards the discovery of weapon is that the appellant disclosed that he would show the weapon used in the commission of offence."

57. The Apex Court in the same judgment has delineated the requirements of procedure for such recovery in paragraph no. 53 which as follows:-

"53. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his blood stained clothes then the first thing that the investigating officer

should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.”

58. From the consideration of above proposition of law propounded by the Apex Court, it is clear that the recovery of ‘Daon’ made at the pointing out of appellant, Pramod Yadav, is not in accordance with law and therefore, the conviction of appellant for committing the offences under Section 4/25 Arms Act in S.T. No. 175 of 2010 is not justified.

59. It is now well settled that non recovery of the weapon of crime is not fatal to the prosecution case and it not *sine qua non* for conviction, if there are direct reliable witnesses as held in **Rakesh vs. State of U.P., (2021) 7 SCC 188**.

60. Regarding argument of learned counsel for the appellants that P.W.-1 and P.W.-2 are highly interested witnesses and their statements before trial court ought not to have been accepted, we find that no person will let the real culprits

go scot-free while roping false one on account of enmity. It is double edged weapon which can be used for false implication and also for commission of offence, therefore, it cannot be said to be the sole ground to discredit the eye-witness account.

61. In ***Ramashish Rai Vs. Jagdish Singh, (2005) 10 SCC 498***, the following observations were made by the Supreme Court:

“The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well-settled principle of law that enmity is a double- edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence.”

62. The next limb of argument of learned counsel for the appellants is that the prosecution had examined highly interested and relative witnesses and they have not produced any independent witness in support of its case. No doubt the witnesses of fact examined in the case are brother and brother-in-law of the deceased but relationship itself is not a ground to reject the testimony of witness, rather such witness would be last person to leave the real culprit and falsely implicate any other person.

63. In the case of ***Brahm Swaroop and another vs. State of U.P. (2011) 6 SCC 288*** the Hon'ble Apex Court in Para No. 21 has observed as under :-

“Merely because the witnesses were related to the deceased persons, their testimonies cannot be discarded. Their relationship to one of the parties is not a factor that affects the credibility of a witness, more so, a relation would not conceal the real culprit and make allegations against an innocent person. A party has to lay down a factual foundation and prove by leading impeccable evidence in respect of its false implication. However, in such cases the Court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible evidence.”

64. The Court also referred to cases of ***Dalip and others vs. State of Punjab A.I.R. (1953) SC 364; Masalti vs. State of U.P. (A.I.R.) 1965 SC 202.***

65. In ***Masalti vs. State of U.P. (A.I.R.) 1965 SC 202***, the Hon'ble Apex Court observed in Para No.14 :-

“but it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on sole ground that it's partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it's partisan cannot be accepted as correct.

66. It is common knowledge that village life is faction ridden and involvement of one or the other in the incident is not unusual. One has also to be cautious about the fact that wholly independent witnesses are seldom available or are otherwise not inclined to come forth, lest they may invite trouble for themselves in future. Therefore, relationship of eye-witnesses, inter se, cannot be a ground to discard their testimonies. There is no reason to suppose the false implication of the appellants at the instance of the eye-witnesses. It would also be illogical to think that witnesses would screen the real culprits and substitute the appellants for them.

67. This Court has also made such observations in Para No.14 of ***Rameshwar and others vs. State 2003 (46) ACC 581***.

68. Regarding the argument that the trial court has wrongly refused to accept the *alibi* set up by the appellant, Pramod Yadav, before the trial court, this court finds that the appellant, Pramod Yadav, claimed that he was operated by the Dr. Parmatma Prasad Gupta, for ailment of hydrocele on the date of incident itself between 4-5 p.m., when the incident took place at 06:30 p.m. Therefore, he claimed that after the operation he was not able to move and his implication in this case is false.

69. This court finds that Dr. Parmatma Prasad Gupta, could not produce any evidence of operating appellant, Pramod Yadav, in nursing home. D.W.-4, Dr. R.N. Upadhyay, clearly stated before the trial court that he examined appellant,

Pramod Yadav in jail and found that on the left side of his scrotum 5 white coloured stitches were present. The skin between the stitches were healthy and no discharge was apparent from the stitches. He similarly found four stitches on the right side of scrotum. He admitted that in such operation absorbable stitches are used which get dissolved within 10-15 days. It is clear that if the operation of appellant, Pramod Yadav, took place on 31.01.2010 there was no possibility of presence of stitches of his scrotum 25.02.2011 when he was examined by D.W.-4, Dr. R.N. Upadhyay, in jail. The presence of white stitches on his scrotum proved that appellant, Pramod Yadav, managed to get stitches on his scrotum only to support his *alibi*. The trial court has clearly recorded the finding of fact in this regard which do not suffer from any infirmity.

70. Now only question, which is left for consideration is whether in the facts and circumstances of the present case and the evidence on record appellants, Vinod Yadav, Ganesh Verma and Mahesh Verma, have been rightly convicted under Section 302 IPC with the aid of Section 34 IPC by the trial court.

71. It is well settled principle of law as considered by the Apex Court in the case of ***Gadadhar Chandra vs. State of Bengal, (2022) 6 SCC 576***, that common intention pre-supposes prior concert, a pre-arranged plan, and meeting of minds before an accused can be held vicariously liable for the criminal act of co-accused. The criminal act must have been done in furtherance of common intention of all the accused.

72. Now applying the aforesaid principle of law as laid down by the Apex Court, we find that P.W.-1, P.W.-2 and P.W.-3, have not assigned any motive of crime to the appellants, Mahesh Verma and Ganesh Verma. They are also not proved to be related as friends of appellants, Pramod Yadav and Vinod Yadav. P.W.-7, the Investigating Officer, has also not found any motive for commission of the crime in dispute by the aforesaid appellants. None of the prosecution witnesses have seen them committing the actual act of causing injury to the deceased. They have been generally implicated along with appellants, Vinod

Yadav and Pramod Yadav, have been assigned the role of catching hold of deceased. The role of causing two fatal injuries to the deceased have been assigned to appellant, Pramod Yadav. None of the witnesses have alleged that the appellants, Mahesh Verma and Ganesh Verma, were having some weapon in their hands while they were running away from the place of incident. The investigating officer has also not been able to make any recovery of weapon on their pointing out. Therefore, the implication of appellants, Mahesh Verma and Ganesh Verma, on the premise that they had common intention to cause the murder of deceased does not appears to be proved beyond reasonable doubt.

73. Moreover, the Apex Court in the case of ***Ramsheesh Yadav and others vs. State of Bihar, (1999) 8 SCC 555***, has held that for proving common intention, prior concert or meeting of minds is essential. Even if an offence is committed at the spur of the moment, prior concert must be there. Merely because three appellants held the deceased, and forth one gave fatal blow by ‘*daon*’ on the head of the deceased, causing fatal injury to him, it cannot be held that the other three shared common intention with the main accused, to commit the murder of the deceased.

74. As per Section 3 of the Indian Evidence Act, 1872, a fact can be said to have been proved when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act up on the supposition that it exists. The court undertakes this exercise of examining whether the facts alleged including the particular criminal acts attributed to the accused are proved or not.

75. At this point, it may be also relevant to mention an observation made by ***Lord Denning, J. in Miller v. Miller of Pensions (1947) 2 All ER 372, 373 H:***

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the

community if it admitted fanciful possibilities to deflect the court of justice....”

76. Thus, the requirement of law in criminal trials is not to prove the case beyond all doubt but beyond reasonable doubt and such doubt cannot be imaginary, fanciful, trivial or merely a possible doubt but a fair doubt based on reason and common sense.

77. We are of the view that appellants, Ganesh Verma and Mahesh Verma, deserves to be granted benefit of doubt and acquittal from all charges. The charges against them have not been proved beyond reasonable doubt by the prosecution.

78. However, the role of the appellant, Vinod Yadav, is at par with appellants, Ganesh Verma and Mahesh Verma, but we find that he is brother of appellant, Pramod Yadav, against whom the motive of the crime has been conclusively proved. The implication of appellant, Vinod Yadav, cannot be doubted in view of the fact that it has come in an evidence that there was civil dispute pending between family of P.W.-1 and appellants, Pramod Yadav and Vinod Yadav, since the time of their fathers. Further motive against appellant, Pramod Yadav, proved was the filing of writ petition by the deceased challenging his appointment on the post of Assistant Teacher before this court and stoppage of his salary by the orders of this court. The enmity between appellant, Pramod Yadav and Om Prakash, the deceased and their families was old one and this resulted in the murder of deceased, Om Prakash, for which the appellants, Pramod Yadav and Vinod Yadav, have rightly been held responsible and convicted and sentenced accordingly. We do not find any error in the judgment of the trial court in this regard and confirm the findings of the trial court and the conviction and sentence awarded to them, except the conviction and sentence of appellant, Pramod Yadav, under Section 25/4 of Arms Act in S.T. No. 175 of 2010 which is being set aside.

79. Regarding Dr. Parmatma Prasad Gupta, we find that he made attempt to save the appellant, Pramod Yadav, but was caught and sentenced by the trial court

for maximum period to two years. Under the peculiar facts and circumstances of this case, while his conviction by the trial court is upheld, his sentence is reduced to period of sentence already undergone before trial court and this court.

80. Conviction and sentence of appellant, Pramod Yadav in S.T. No. 175 of 2010 is set aside and hence Criminal Appeal No. 419 of 2013, Pramod Yadav vs. State of U.P is partly allowed.

81. Criminal Appeal No. 4941 of 2012, Vinod Yadav vs. State of U.P., is hereby dismissed.

82. The appellants, Pramod Yadav and Vinod Yadav, are on bail. Their bail bonds are cancelled and sureties are discharged. They are directed to surrender within a month and carry out the remaining sentence.

83. Criminal Appeal No. 4823 of 2012, Ganesh Verma vs. State of U.P., Criminal Appeal No. 4901 of 2012, Mahesh Verma vs. State of U.P and Criminal Appeal No. 4879 of 2012, are allowed. Their bail bonds are cancelled and sureties are discharged.

84. Criminal Appeal No. 4879 of 2012 preferred on behalf of Parmatma Prasad Gupta, is partly allowed. While the conviction awarded to the appellant is confirmed, his sentence is reduced to the period already undergone. Appellant is on bail. His bail bond is cancelled and sureties are discharged.

85. Registry is directed to return the record of trial court and notify this judgment to the trial court too within period of two weeks.

Order Date :- 12.03.2025

Rohit

(Subhash Chandra Sharma, J.) (Siddharth, J.)