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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1080 of 2001**

Pradeep, S/o Purshottam Das Vaishnav, aged about 26 years, R/o
Bondha Takhatpur, Bilaspur

---- Appellant

Versus

State of Chhattisgarh Through D.M. Bilaspur.

---- Respondent

Criminal Appeal No. 1082 of 2001

Ashok Kumar, S/o Hanuman Prasad Mishra, Aged about 26 years,
Resident of Amelia, P.S. Rampur (Karchuliyan) District Rewa (M.P)
Presently residing at Police Line Bilaspur, Chhattisgarh

---- Appellant

Versus

State of Chhattisgarh, Through District Magistrate, Bilaspur,
Chhattisgarh.

---- Respondent

Criminal Appeal No. 1136 of 2001

Dharamraj Singh, S/o Bhumneshwar Singh Thakur, aged about 36
Years, R/o Village Rojwa, P.S. Gurh, District Rewa, Presently
residing at Police Line Bilaspur, Tahsil & District Bilaspur,
Chhattisgarh.

---- Appellant

Versus

State of Chhattisgarh Through District Magistrate. Bilaspur,
Chhattisgarh.

---- Respondent

Criminal Appeal No. 1147 of 2001

Nand Kishore S/o Dev Singh Thakur, Aged about 22 years, R/o
Bandha, P.S. Takhatpur, At present R/o 27 Kholi, Bilaspur.

---- Appellant

Versus

State of Chhattisgarh Through D.M., Bilaspur.

---- Respondent**Judgment Reserved on: 01/09/2016****Judgment Delivered on : 28/09/2016**

For Appellants : Ms. Sharmila Singhai, Mr. Ravish Verma,
Mr. H.S. Ahluwalia and Mr. Anand Dadaria,
Advocates.

For Respondent/ : Shri Vinod Deshmukh, Deputy Govt. Advocate.
State

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Justice P. Sam Koshy.

C.A.V. Judgment**Per Deepak Gupta, Chief Justice**

1. By this judgment, four appeals being Criminal Appeals No. 1080 of 2001, 1082 of 2001, 1136 of 2001 and 1147 of 2001 are being disposed of since they arise out of one incident and one judgment of the trial court dated 23.10.2001 passed by the Special Judge (Atrocities), Bilaspur in Special Criminal Case No. 84 of 1996.
2. Pradeep-Appellant in Criminal Appeal No. 1080 of 2001, Ashok Kumar-Appellant in Criminal Appeal No. 1082 of 2001, Dharamraj Singh-Appellant in Criminal Appeal No. 1136 of 2001, and Nand Kishore-Appellant in Criminal Appeal No. 1147 of 2001, have been convicted and sentenced as follows:

Accused/Appellant	Conviction Under Sections	Sentence
Pradeep	302/149 IPC	Rigorous imprisonment for life with fine of Rs. 1000/-. In default, 2 months simple imprisonment.

	331/149 IPC	8 years rigorous imprisonment with fine of Rs. 1000/-. In default, 2 months simple imprisonment.
	3(1)(viii) of the SC & ST (Prevention of Atrocities) Act, 1989	2 years rigorous imprisonment with fine of Rs. 5000/-. In default, 4 months simple imprisonment.
	147 IPC	2 years rigorous imprisonment.
Ashok Kumar	302/149 IPC	Rigorous imprisonment for life with fine of Rs. 1000/-. In default, 2 months simple imprisonment.
	331/149 IPC	8 years rigorous imprisonment with fine of Rs. 1000/-. In default, 2 months simple imprisonment.
	147 IPC	2 years rigorous imprisonment.
Dharamraj Singh	302/149 IPC	Rigorous imprisonment for life with fine of Rs. 1000/-. In default, 2 months simple imprisonment.
	331/149 IPC	8 years rigorous imprisonment with fine of Rs. 1000/-. In default, 2 months simple imprisonment.
	147 IPC	2 years rigorous imprisonment.
Nand Kishore	302/149 IPC	Rigorous imprisonment for life with fine of Rs. 1000/-. In default, 2 months simple imprisonment.
	331/149 IPC	8 years rigorous imprisonment with fine of Rs. 1000/-. In default, 2 months simple imprisonment.
	147 IPC	2 years rigorous imprisonment.

3. It appears that a separate trial was conducted against accused-Jawahar with regard to Special Criminal Case pending against him and that

judgment was delivered later on 29.07.2004 and as such, there are two sets of statements of the witnesses, but we will refer to the first set of statements recorded in the trial against all the accused persons because Jawahar has been acquitted and no appeal has been filed against his acquittal.

4. The prosecution story is that deceased-Udal Singh Gond was working as an employee of Pradeep, Appellant in Criminal Appeal No. 1080 of 2001. Pradeep suspected that Udal Singh Gond had committed theft in his house. He had lodged a complaint with Takhatpur Police Station. Dharamraj Singh-Appellant in Criminal Appeal No. 1136 of 2001 and Ashok Kumar, Appellant in Criminal Appeal No. 1082 of 2001 went to village Bandha to investigate the crime. They first went to the house of Pradeep through Kotwar. It is alleged that Udal Singh was beaten up first in the house of Pradeep, then he was taken back to his own house and he was again beaten up there. Thereafter, the accused persons informed the family members of Udal Singh Gond that they were taking him to Takhatpur police station, but in fact took him to the Government School building in village Bandha and beat him throughout the night. In the morning, they brought Udal Singh Gond back to his house on a bi-cycle. At that time, Udal Singh Gond was in a bad condition and could not even move. He was again beaten up and then realising that the condition of Udal Singh Gond was getting worse, the accused persons took him to the Hospital at Lormi where he was declared dead. The report was lodged by the police officials and the matter was investigated. After the investigation, all the Appellants alongwith one Jawahar Yadav were charged with having committed murder of Udal Singh Gond and other offences. Jawahar has been acquitted and the other four accused have been convicted and sentenced as aforesaid. Hence, these appeals.

5. Information regarding death of Udal Singh Gond (Exhibit P-10) was given at the instance of Dr. Anil Kumar Gupta (PW-13) who in his report (Exhibit P-7) sent to the Police Station Incharge, Lormi informed that one dead body had been brought to him by Head Constable of Police Station, Takhatpur, who had stated that during investigation of a theft case, the aforesaid person had died. Immediately thereafter, the said Head Constable left the Hospital stating that he was going to inform the Police Station at Lormi. Villagers of Bandha were present alongwith the dead body. Thereafter, on the basis of the merg intimation (Exhibit P/8), FIR (Exhibit P/10) was recorded. Thereafter, the matter was investigated and after investigation, all the accused persons were charged with having constituted an unlawful assembly, having committed murder of Udal Singh Gond and having committed offences under Section 147, 302, 331, 201 read with Section 149 of the Indian Penal Code and also having committed offence under Section 3(1)(iii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
6. At the outset, it may be mentioned that some facts are not in dispute. It is not disputed that the deceased-Udal Singh Gond was apprehended in connection with a theft case lodged by Appellant-Pradeep. It is also not disputed that Appellants-Dharamraj Singh and Ashok Kumar had gone to village Bandha to investigate the matter. The defence appears to be that the deceased was already a weak person, who died due to natural causes. According to the accused, the deceased was beaten by his own brother and they had never beaten him.
7. It would also be pertinent to mention that the occurrence took place on 05/06.01.1992 and the statements of the witnesses were recorded many years later in the year 2000. First of all, we shall make reference to the statement of Alha (PW-4), elder brother of the deceased. He states that

he recognizes all the accused persons. Udal Singh Gond was his younger brother. They were two brothers and three sisters. This witness states that Udal Singh Gond used to work as a labourer and also used to work as with Appellant-Pradeep. This witness states that on the date of occurrence, at about 5-6 pm, all the accused persons called the deceased from his house and took him to the house of Appellant-Pradeep. He also states that the accused persons had stated that they would be taking the deceased to Takhatpur. However, they did not take him to Takhatpur but kept beating him and after beating him they brought him back to their house. At that time, this witness was also in the house. In the house, all the accused had beaten the deceased in his presence. This witness states that the accused persons were asking his brother (the deceased) where he had kept the money. The deceased did not reply because due to the beating he had become listless. He states that the accused were using lathis and shoes to beat the deceased. Again, they picked up the deceased and said that they were taking him to Takhatpur. However, instead of taking him to Takhatpur, they kept the deceased in the school itself in the night. According to this witness, his brother (the deceased) was beaten up in the school also. In the morning, all the accused persons again brought the deceased home by placing him on a bi-cycle. Again the accused were asking the deceased where he had kept the money. But when the deceased refused to say anything, the accused took the deceased out of the house and paraded him in the street. The accused placed the deceased on a bi-cycle because he was not in a condition to walk and was unconscious. Thereafter, again the accused stated that they were taking the deceased to Takhatpur however, instead of taking him to Takhatpur, they took the deceased to Lormi by Bus. This witness further states that his maternal uncle-Pratap Singh Dhruw @ Chhunna (PW-5) came and told him that Udal Singh Gond died as soon as he reached

Lormi. Then, he alongwith some other villagers went to Lormi where the dead body of Udal Singh Gond was lying on the veranda of the Hospital and there was no one with the body. This witness then lodged an oral report with the Police Station, Lormi. Thereafter, the body of his brother was taken to Bilaspur where its postmortem was done. In cross-examination, he states that he saw that his brother was beaten up on three occasions. He further states that he had surmised that his brother would not survive. He admits that he did not lodge any report about the incident, but explains that he did not do so because it was the police officials who were beating his brother and where was he to lodge the report. It was only after his brother died that he got courage to lodge the report. This witness has been cross examined at great length. He states that on the first occasion, in the evening, his brother was taken from the house by the accused on the pretext that they were taking him to Police Station, Takhatpur. They did not inform the family members that they were going to keep the deceased in the local school building. He admits that his maternal uncle Ram Singh was Sarpanch of the village. According to him, even his uncle did not advise him to file a police report. He also admits that his uncle Ram Singh is behind the bars in connection with killing of Ramashray, brother of accused Jawahar. He also admits that on the first occasion, when his brother was brought back to home, village Kotwar-Radhe Shyam and other villagers were present. He did not ask the Kotwar why his brother was being beaten up. He admits that 10-15 members of their family were at home. He denied the suggestion put to him that he in the courtyard of his house, had inflicted two-three lathi blows on the deceased on the ground that the deceased by committing theft had brought bad name to the family. In cross-examination, this witness also states that his sister-Doojbai and her husband were present at the time of occurrence and he denied the suggestion that they were at

Lamkena village. He also states that he had not gone to the school at night when his brother was kept there. He very fairly states that he did not see the accused beating his brother in the school. He however clarifies that when his brother was brought home next morning on a bi-cycle, he was unconscious and therefore he presumed that his brother must have been beaten in the school.

8. Ramlal (PW-1) is the father of the deceased. He recognized the Appellants-Pradeep and Nand Kishore but not the two police officials. This witness was almost blind at the time when his statement was recorded and it is obvious that he had no sense of time. His statement was recorded in the year 2000 but he states that his son Udai Singh Gond died 5-6 years back. He further states that first his son was beaten up by Appellants-Pradeep, Nand Kishore and Jawahar and thereafter, they had called the police and the police personnel had beaten his son. According to him, these five persons first took the deceased to the house of Appellant-Pradeep. In the evening, the accused brought the deceased back to their home and again beat the deceased. At that time, Raja Ram (PW-2), Dooj Bai (PW-3), Alha (PW-4), Narbadiya Bai (PW-6), Hirammat Bai (PW-14) and other villagers were present. He states that then the accused persons while beating his son took him outside the house and said that they were taking the deceased to Police Station, Takhatpur. Next morning, his son (the deceased) was brought by Raja Ram (PW-2) and a person from the Cycle Shop on a bi-cycle to their house. At that time, his son was unconscious. His arms and legs were listless. They brought the deceased home for a minute. Later he was told by the villagers that all the accused had gone to village Lormi and also taken his son. He was told by Chhunna that his son has died in the Lormi Hospital. He then went to Lormi Hospital and made a report and he is unsure that whether the

report was lodged at his instance or at the instance of his son, Alha (PW-4). This witness is totally illiterate and can only put thumb mark. He admits that alongwith him, five-ten villagers of Bandha had gone to Lormi. He also admits that accused Nand Kishore @ Butti had already reached Lormi Hospital. This witness also admits that he did not lodge any report when the accused persons were beating his son. A suggestion was put to this witness that on the next day at about 12 noon, Pratap Singh of Lormi and Raja Ram (PW-2) informed him that the Station House Officer (Daroga) had called him to Lormi. He therefore first went to the police station and then to the Hospital. He however states that when he went to Lormi, Raja Ram stayed back at village Bandha. A suggestion has been put to this witness that his son Alha (PW-4) gave four-five blows of lathi to the deceased. This witness replied that he has no knowledge about the same and nothing like this happened in his presence.

9. Raja Ram (PW-2), who is brother-in-law of the deceased, has turned totally hostile. According to him, he was not even present on the date when occurrence took place. His version is that he and his wife Dooj Bai (PW-3) both left Bandha immediately after the *Chhati* ceremony of the daughter of the deceased. He has been cross examined at length on this aspect but since he is a hostile witness, no reliance can be placed on his statement.
10. Dooj Bai (PW-3), is the sister of the deceased and wife of Raja Ram (PW-2). She has however fully supported the prosecution case. Her version is that after *Chhati ceremony*, she and her husband continued to stay in village Bandha and after the death of her brother (the deceased), they stayed for 13 more days. Therefore, she totally belies the statement of Raja Ram (PW-2). She has otherwise supported the prosecution version that all the accused persons had beaten the deceased. They had

beaten the deceased in the courtyard of their house and then they took the deceased saying that they were going to take him to Takhatpur Police Station. However, the deceased was not taken to the Police Station but was kept in a school building at night where he was beaten further. Next day morning, her brother was taken to Lormi where he died. She has not supported the police version with regard to certain other aspects. However, those are not very material. Most of the cross-examination to this witness is that she and her husband Raja Ram (PW-2) had left village Bandha immediately after the *Chhati* ceremony. She has denied the suggestion. A suggestion was put to her that when her brother was being beaten up by the accused, then all the family members were turned out of the house and beating was being done inside the house. She admits that none of the family members had tried to save the deceased. The attempt in the cross-examination is that since there were 20 houses in the village belonging to Gond tribals and they were more than a hundreds of them, they should have prevented the deceased from being beaten up. In cross-examination, she admits that they did not report the matter to the police at night and according to her. She also states that all the accused had again come in the morning and at that time her brother was almost unconscious.

11. Pratap Singh Dhruv @ Chhunna (PW-5) states that on 05.01.1992, two police officials came from Takhatpur Police Station. One was Head Constable and another was Constable. They had come to investigate a complaint of theft lodged by Appellant-Pradeep against the deceased. First, the police officials questioned the deceased near the shop of Appellant-Pradeep and then took him to his house and questioned there. They abused the deceased at his house and also beat him up. They were also asking the deceased where he had kept the money. Then they said that the deceased will not give any information in his house and they

should take him to Takhatpur Police Station. Thereafter, while abusing and beating the deceased, they took him away from the house. Next morning, on 06.01.1992, all the accused brought the deceased in a totally unconscious position on a bi-cycle of Laxman Jaiswal. They first brought the deceased to his house and they again took him to the school. They again questioned the deceased. When the accused persons saw that the condition of the deceased was serious, then they took him to Lormi. This witness alongwith others also accompanied the deceased to Lormi. At Lormi, Dr. Anil Kumar Gupta (PW-13) informed them that Udal Singh Gond was dead. He then came back to village Bandha and informed his father of the deceased and other villagers. Then, they again accompanied the family members of the deceased and went to Lormi. This witness has been confronted with the statement made under Section 161 CrPC. He admits that next morning, he came to know that Udal Singh Gond had been beaten up. He alongwith other villagers went to see the deceased in the school. None of the family members of the deceased went there. He states that he does not remember whether from the school Appellant-Nand Kishore had gone to his house. The statement of this witness recorded under Section 161 CrPC has been proved as Exhibit D/3. In this statement, it has been mentioned that in the morning, he came to know that Udal Singh Gond had been beaten up. He also came to know that the house of the deceased had been searched in the night and also in the morning. Therefore, this witness may not have actually seen the incident but his statement is relevant under Section 6 of the Evidence Act because immediately after the occurrence he came to know that the accused had beaten the deceased.

12. Narbadiya Bai (PW-6) is the wife of the deceased. She in fact has been now employed in the police department and is working in the women

Police Station at Bilaspur, after the death of her husband. According to her, in the morning, on the date of occurrence, Appellant-Pradeep came to their house to call her husband. Her husband said that he had come back late at night and would come later. At about 11:00 am, mother of Appellant-Pradeep came to their house and made an allegation that Udal Singh Gond had stolen Rs. 10,000/-. As soon as her husband returned after bathing, she informed him. Then her husband went to the house of Appellant-Pradeep to inform Pradeep that he had not committed any theft. On the same day, in the evening at about 5-6 pm, Kotwar-Radhe Shyam came to their house and called the deceased. At about 7-8 pm, the police personnel namely Dharamraj Singh and Ashok Kumar Mishra alongwith other accused came to their house and caught hold of her husband and took him away. The police personnel beat her husband with *lathis* inside the house. All the accused persons were asking her husband that where he had kept the money. They all started beating her husband. The police personnel also abused her. Later on, they took her husband saying that they were taking him to Takhatpur Police Station. However, they kept her husband in the school and throughout the night, all the accused beat her husband. Next morning, at about 6 am, they brought her husband home. He was unconscious. He was brought on a bi-cycle. She wanted to give water to her husband, but the police personnel abused her and did not even permit her to give water to her husband. Then they took her husband in an unconscious condition stating that they were taking him to Takhatpur. She states that this is all she knows. She has been confronted with by her statement recorded under Section 161 CrPC, but there are no material contradictions. In her statement recorded under Section 161 CrPC, there is no mention of Appellant-Pradeep coming in the morning or his mother making allegation of theft. However, it is mentioned that there was some theft in the house of Appellant-Pradeep.

She also mentioned that Radhe Shyam, Kotwar had come to their house to ask for the deceased. In this statement, it is also mentioned that the police personnel alongwith Appellants-Jawahar, Pradeep and Nand Kishore took her husband and they had tied his hands behind his back. The police personnel had beaten her husband with *lathis* in her presence.

13. Laxman (PW-8) has turned hostile and not supported the prosecution case. The statement of Krishna Kumar Dubey (PW-9) is not very relevant. S.R.Chandra (PW-10), at the relevant time, was the Assistant Sub Inspector at Lormi Police Station. He has recorded the intimation sent from the Hospital (Exhibit P-7) and merged intimation (Exhibit P-8).

14. Radhe Shyam (PW-12) is the Kotwar of the village. According to him, Appellants-Dharamraj Singh and Ashok Kumar came to him and informed him that there has been a theft in the shop of Pradeep and the theft has been committed by Udal Singh Gond (the deceased). The deceased used to work in the shop of Appellant-Pradeep. This witness was asked to call the deceased. He brought the deceased near the house of Appellant-Pradeep. The deceased was questioned by Head Constable-Dharamraj Singh. The deceased denied that he had committed any theft. His version is that when they told Udal Singh Gond that they would take him to Police Station, then he admitted that he had committed theft. According to him, theft was for about Rs. 3000/-. This witness further states that at about 06:00 pm, Head Constable and the Constable took the deceased to the Police Station, but at about 08:00-08:30 pm, Head Constable-Dharamraj Singh and Constable-Ashok Kumar again brought the deceased and thereafter they took him to the house of the deceased where he was again questioned that where he had kept the money. In the evening, the police personnel and the deceased stayed in the school building and he had made arrangements for their food. According to this witness, in the

evening, after giving meals, he, Appellants-Pradeep and Nand Kishore returned to their house and nothing else happened in his presence. He again went to the school in the morning. The deceased was sleeping and he woke up the deceased. The deceased wanted to ease himself and the deceased made a statement to the police that he had purchased clothes with the money which he had stolen. This witness further states that then they again came to the house of the deceased and at that time, Raja Ram (PW-2) and Ram Singh were present. Thereafter, the deceased was again brought to the school. This witness also states that when the deceased was taken to the house from the school in the morning, his brother-in-law Raja Ram (PW-2) had put him on a bi-cycle. At that time, the deceased was feeling weak. The deceased walked to his house from the bi-cycle and told his family members that money is lying in the house. However, no money was found in the house. Thereafter, again the deceased was made to sit in the bi-cycle and was taken to the house of Pradeep where Appellant-Pradeep questioned the deceased as to where he had kept the money. According to the deceased, he had not eaten the whole day and also on the previous night and therefore, he was feeling weak. Again, the deceased was taken on the bi-cycle to the school. At that time, Raja Ram (PW-2), Appellants-Nand Kishore, Pradeep, Jawahar also accompanied them. According to this witness, father of the deceased, Ramlal (PW-1) and uncle of the deceased, Dhani Ram also came to the school. The deceased denied that he had committed any theft. Thereafter, the deceased lay down on the ground and the police personnel said that let us take him to Lormi Hospital. In answer to a Court question, this witness replied that the bus stand is at a distance of 50 steps from the school and the deceased was carried from the school.

15. Statement of Dr. Anil Kumar Gupta (PW-13) is important because he states that one Constable of Takhatpur Police Station brought a dead body and informed him that the person had died during questioning. The said Constable told that he would come back after lodging a report in the Police Station. However, he never came back.
16. Hirmat Bai (PW-14) states that on the first day, all the accused except Appellant-Jawahar came to their house at 5:00 pm. They had beaten the deceased in her presence and thereafter they took him away from the house beating him. Then they went to the school where they again beat him. Next morning, at about 7:00 am, they brought the deceased home. He could not walk at that stage. This witness identified the police personnel. They again took the deceased from the house and he died because of the injuries sustained.
17. Titari Bai (PW-15) states that the accused had tied the hands of the deceased with a shawl. They also beat him up. The police personnel were using *lathis* and the other accused persons giving him fist blows. While beating the deceased, they took him out. Again, in the morning, they brought the deceased back. He was made to sit on a bi-cycle. He was virtually unconscious. The wife of the deceased, Narbadiya Bai (PW-6) wanted to give water to him but the accused did not permit her to give water. Thereafter, they took the deceased back.
18. The next important witnesses are Dr. A.P.Rai (PW-7) and Dr. R.Bhattacharya (PW-11), who had conducted the postmortem on the person of the deceased. They have proved the postmortem report (Exhibit P-3) and as per the postmortem report, the following injuries were found on the person of the deceased:

- "1. Bruise, left malar region 2 ½ cm x 2 cm
2. Bruise, left mastoid region 2 cm x 1 ½ cm

3. Bruise, right zygomatic region 2½ cm x 2cm with abrasion 1 ½ cm x 1 cm
4. Bruise, left dorsum of hand ill defined 8cm x 6 cm
5. Lacerated wound left leg lower 1/3 anteriorly 1½ cm x 1/2 cm bone deep and clotted blood present
6. Bruise, left side of chest was posterior to 10 x 8 cm
7. Bruise, left calf posteriolateral 16 cm x 12 cm
8. Bruise, left thigh anterior 12 cm x 2 ½ cm
9. Bruise, lower 1/3 right thigh 6 cm x 2 ½ cm
10. Bruise, left thigh upper 1/3rd 8 cm x 2 ½ cm
11. Lacerated wound right occipital region 1 ½ cm x ½ cm x ½ cm clotted blood present.
12. Bruise, left elbow posteriorly 2 ½ cm x 2 cm
13. Right leg mediolaterally lower 1/3 transversely placed 4cm x ½cm bruise
14. Avulsion right great toe nail bed."

The opinion of the Doctors is that the death was caused due to shock.

The Doctors have stated that the injuries were homicidal in nature and all the injuries together were sufficient to cause death. There is no cross examination to these witnesses.

19. Learned counsel for the Appellants argued that there are lot of contradictions in the statements of the witnesses. It is submitted that Raja Ram (PW-2) has clearly stated that he was not present at the place of occurrence, and therefore, the statement of his wife-Dooj Bai (PW-3) cannot be believed. However, it is denied that Udal Singh Gond was in the custody of the police personnel. On behalf of Appellants-Pradeep and Nand Kishore, it is argued that there is nothing on the record to show that these two persons gave any beating to the deceased. The case set up by the accused is that the deceased was unwell and died due to weakness. In the alternative, it is submitted that this is not a case of murder and at best it is a case of causing simple injuries.

20. While appreciating the evidence of the witnesses, certain facts will have to be kept in mind. The victim and most of the witnesses are tribals. They

are illiterate persons. Secondly, their statements were recorded 8-10 years after the occurrence took place. From the records, we find that the delay in trial of the case took place for two reasons, firstly, the accused Jawahar was absconding and secondly, it is more than apparent that the accused who are police personnel managed to delay the trial on one pretext or the other. Appellants-Dharamraj Singh, Ashok Kumar, Nand Kishore and Pradeep were released on bail after spending 126, 127, 44 and 27 days respectively in custody. Thereafter, they delayed the trial. When the statements of the witnesses are recorded after such a long period, there are bound to be some discrepancies.

21. The main argument made on behalf of the accused persons is that Raja Ram (PW-2) was not present. This, in our opinion, is totally incorrect. Dooj Bai (PW-3) has clearly stated that her husband, Raja Ram (PW-2) was present. The other witnesses including Kotwar (PW-12) have stated that Raja Ram (PW-2) was present. A suggestion has been put to the father that next morning from the school Udai was brought on the bi-cycle to the house by Raja Ram. It is therefore obvious that Raja Ram (PW-2) was telling lie in the Court and no reliance can be placed on his statement. Though, there may be discrepancies in the statements of the witnesses, from perusal of the statements of all the witnesses, it is absolutely clear that first the deceased was beaten up in his own house by all the accused and thereafter the deceased was taken away from his house and he was being beaten by all the accused. The family members and the villagers were told that the accused were taking the deceased to Takhatpur Police Station, but in fact he was kept in village school building itself. It is true that there is no direct evidence with regard to his being beaten up in the school but it is proved on record that when the deceased was brought to the house next morning, he was almost unconscious. He could not even

walk. He was placed on a bi-cycle and brought to the house. This itself clearly indicates that he had been beaten mercilessly in the night. The other argument is that Appellants-Pradeep and Nand Kishore were not in the school at night. We will deal with this issue later on.

22. Appellants-Pradeep and Nand Kishore were present in the morning. Even if they were not present at night, in the morning they, alongwith other accused again beat the deceased. It was only when his condition became worse, then they took him to the hospital. The cruelty of the accused persons can be gauged from the fact that when the wife of the deceased wanted to give him water in the morning, the accused did not even permit to do so.

23. Another submission made by learned counsel for the Appellants is that the family members and other villagers took no steps to lodge a report with the police in the evening or even in the next morning. We are dealing here with a case relating to illiterate tribal persons. We are dealing with a case where protectors and enforcers of law have taken the law into their own hands and they alongwith complainant party have beaten a tribal to death only on the suspicion of theft of some money. Fro the evidence on record, it stands proved that the deceased was badly beaten up by the accused. Accused-Jawahar has been acquitted and therefore, we need not say anything against him since no appeal has been filed by the State. However, all the other accused had beaten the deceased and therefore, we are convinced that the version of Alha (PW-4) and other witnesses, is correct that the deceased was beaten first in his own house and then taken to a village school building while being beaten. The circumstances in the next morning clearly show that the deceased was beaten further at night and in the next morning, even if the deceased was in comatose condition, he was again beaten.

24. The only issue is what is the offence committed. It is urged that there was no intention to kill the deceased. The deceased was not beaten with any deadly weapon but was beaten with *lathis* and given fist blows etc. However, number and nature of injuries though mainly bruises clearly show that the deceased was beaten mercilessly. It may be true that the accused had no intention of causing death or injuries sufficient in the ordinary course of nature to cause death, but we have no hesitation in coming to the conclusion that they were aware that their merciless beating could lead to death of deceased. This is especially in view of the fact that even if the deceased was unconscious, he was still beaten by the accused. Furthermore, we are of the opinion that all the accused are equally responsible for the death of the deceased and causing injuries to him.

25. Reliance has been placed on the judgment of the Apex Court in *Maiku & Others v. State of U.P* {(1989) Supp 1 SCC 25} in which it was held that if a policeman commits violence resulting in death of the suspect, Section 147 with the aid of Section 149 IPC would not be attracted and therefore conviction of the accused under Sections 147 and 149 IPC be set aside.

26. Reliance has been placed on the judgment of the Apex Court in *Dalip Singh & Others v. State of Haryana* {(1993) Supp (3) SCC 336 } in which it was held that where the death takes place during police custody, the burden shifts on the police to show that the deceased was not in their custody. In the present case, it is admitted that the death took place when Udal Singh Gond (the deceased) was in the custody of the police and this is also the statement of the Doctor.

27. The decision rendered by the Apex Court in *Lal Babu Jha v. State of Bihar* {(2007) 15 SCC 748} is not relevant to the facts of the case.

28. In *Haricharan & Others v. State of Madhya Pradesh & Others* {(2011) 4 SCC 159}, the Apex Court held as follows:

"35. We are, however, unable to agree that any of the appellants could take advantage of any of the legal submissions made by the learned counsel in the facts and circumstances of this case. It has become necessary to remind ourselves of the principles laid down by this Court in the case of *D.K. Basu Vs. State of West Bengal*⁷. In the aforesaid landmark judgment, this Court declared that custodial violence, including rape, torture and death in the lock up, strikes a blow to the rule of law. It was emphasised that custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law. It is aggravated by the fact that crimes in custody are committed by persons, who are charged with the solemn responsibility to protect the fundamental rights of all the citizens. These crimes are committed under the shield of uniform and authority within the four walls of police station or lock up, the victim being totally helpless.

37. The Supreme Court, as the custodian and protector of the fundamental and the basic human rights of the citizens, would view with deep concern any allegation made against the police officials about custodial crimes. In the present case, we are dealing with the torture of detainee, resulting in death. Using any form of torture for extracting any kind of information, from a suspect was declared to be "neither right, nor just, nor fair." It was specifically laid down that though a crime suspect must be interrogated — indeed subjected to sustain and scientific interrogation — determined in accordance with the provisions of law, he cannot, however, be tortured or subjected to third degree methods or eliminated with a view to elicit information or extract a confession. The aforesaid observations of this Court, in our opinion, have been totally disregarded in the present case."

29. Learned counsel for the Appellants has also relied upon the judgment of the Apex Court in *Kuldip Yadav & Others v. State of Bihar* (AIR 2011 SC 1736). However, here also, the Court held that each case will have to be decided on its own facts and where any overt act cannot be attributed to other accused persons, they cannot be convicted. As far as the present case is concerned, all the eyewitnesses have stated that the two police personnel as well as other co-accused had beaten the deceased. This beating went on mercilessly for more than 14-15 hours. The police

officials used *Lathis* and the other gave fist blows etc. to Udal Singh Gond. We are therefore of the view that all the four accused were guilty of the offence under Section 304 Part II IPC.

30. We have no hesitation in holding that all the accused had one common object to beat Udal Singh Gond (the deceased) mercilessly with a view to extract a confession out of him and they are guilty of an offence under Section 331 IPC. Therefore, they acted in furtherance of their common object and all are equally guilty.

31. In view of the above discussion, the appeals are allowed to the limited extent that the conviction of the Accused-Appellants under Section 302 IPC is converted to one under Section 304-Part II IPC read with Section 34 IPC and all the Appellants are sentenced to undergo rigorous imprisonment for 10 years. Their conviction and sentence under Section 149 is set aside. Their conviction and sentence under Section 331 IPC is upheld. All the sentences shall run concurrently. The Appellants, who are on bail are directed to surrender or be taken into custody forthwith to undergo the remaining part of the sentence.

32. A copy of this judgment shall be sent to the Trial Court and in case the Appellants do not surrender within 30 days from the date of pronouncement of the judgment, the Trial Court shall ensure that the Appellants are arrested and are made to undergo the sentence imposed upon them.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE