

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction and order of sentence dated 30.08.1994 passed by Shri Devi Dayal Prasad, learned 5th Additional Sessions Judge, Purnia in Sessions Trial No. 194 of 1987, arising out of K. Nagar P.S. Case No. 94 of 1985)

Criminal Appeal (DB) No.430 of 1994

=====

1. Ashok Kumar Yadav, son of Sri Madan Lal Yadav		
2. Ganga Yadav @ Gango Yadav, son of Sri Madan Lal Yadav		
3. Dinesh Yadav, son of Sri Madan Lal Yadav		
4. Bhagwat Yadav, son of Sahdeo Yadav		
5. Dayanand Yadav, son of Musa Lal Yadav		
6. Perma Nand Yadav, son of Dev Narayan Yadav		Appellant/s
	Versus	
The State of Bihar		Respondent/s

With

=====

Criminal Appeal (DB) No. 498 of 1994

=====

Upendra Prasad Yadav, son of Madan Lal Yadav, resident of village Jai Krishnapur Katha, Police Station K. Nagar, District- Purnia.		Appellant/s
	Versus	
The State of Bihar		Respondent/s

=====

Appearance :

(In CR. APP (DB) No.430 of 1994)

For the Appellant/s : Mr. Binay Kumar

For the Respondent/s : Mr. APP

(In CR. APP (DB) No.498 of 1994)

For the Appellant/s : Mr. Binay Kumar

For the Respondent/s : Mr. APP

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 04-01-2018

Both the Cr. Appeals have been filed against the judgment of conviction dated 30.08.1994 and order of sentence dated



31.08.1994 passed by learned 5th Additional Sessions Judge, Purnia in Sessions Trial No. 194 of 1987, arising out of K. Nagar P.S. Case No. 94 of 1985, whereby the appellant Upendra Prasad Yadav of Cr. Appeal (DB) No. 498 of 1994 has been convicted under Sections 148 and 302 of the Indian Penal Code and sentenced to undergo imprisonment for life under Section 302 of the Indian Penal Code and R.I. for 2 months under Section 148 of the Indian Penal Code.

2. Appellant Dinesh Yadav of Cr. Appeal (DB) No. 430 of 1994 has been convicted under Sections 148, 302 read with 149 and 323 read with 149 of the Indian Penal Code and sentenced to undergo imprisonment for life under Section 302 read with 149 of the Indian Penal Code, R.I. for two months under Section 148 of the Indian Penal Code and R.I. for one month under Section 323 read with 149 of the Indian Penal Code.

3. Appellants Ashok Yadav, Ganga Yadav, Bhagwat Yadav, Parmanand Yadav and Daya Nand Yadav of Cr. Appeal (DB) No. 430 of 1994 have been convicted under Sections 147, 302 read with 149 and 323 read with 149 of the Indian Penal Code and sentenced to undergo imprisonment for life under Section 302 read with 149 of the Indian Penal Code, R.I. for one month each under Section 147 and 323 read with 149 of the Indian Penal Code. However, all the sentences have been ordered to run concurrently.



4. Cr. Appeal (DB) No. 430 of 1994 was preferred by Ashok Yadav, Ganga Yadav, Dinesh Yadav, Bhagwat Yadav, Daya Nand Yadav and Parma Nand Yadav, whereas Cr. Appeal (DB) No. 498 of 1994 was preferred by Upendra Prasad Yadav. The appellants of Cr. Appeal (DB) No. 430 of 1994 were released on bail vide order dated 16.09.1994, whereas the sole appellant Upendra Prasad Yadav of Cr. Appeal (DB) No. 498 of 1994 was released vide order dated 04.09.1995.

5. The prosecution case, in brief, is that on 08.06.1985 at about 10.30 A.M. the informant saw that one she-goat was tied with the Tatti towards west of his Phus constructed house and he was tying the same in a vacant land situated west of it, the accused Upendra Yadav and Ashok Yadav arrived there and abused him and accused Ashok caught hold of his neck and accused Upendra started assaulting him with fist. In the meantime, the uncle of the informant Sukhdeo Yadav (deceased) came from Badhar and attempted to remove both the accused from the informant, but on the alarm of Upendra Yadav, other accused, namely, Ganga Yadav, Dinesh Yadav, Bhagwat Yadav, Naresh Yadav (since dead), Parmanand Yadav, Dayanand Yadav, Kameshwar Yadav, Doman Lal Sah, Dinesh Sah, Dareshwari Devi and Bachia @ Rita Devi (both not sent up for trial) reached there being armed with bow and arrow, lathi,



Phatta, Farsa etc. The family members of the informant like Sumitra Devi (wife of Sukhdeo Yadav), his mother and father etc. also reached there. In the meantime, the accused pushed Sukhdeo Yadav down on the earth and accused Ashok Yadav and Ganga Yadav caught hold of him and accused Upendra Yadav after taking bow and arrow from the hands of Deinesh Yadav shot at his chest. Sukhdeo Yadav died at the spot. The aunt and mother of the informant were assaulted with Phattra by Rita Devi and Dareshwari Devi. Other accused also assaulted other persons of the family of the informant and they also abused them. The cause behind this occurrence is land dispute with father of accused Upendra Yadav and Ashok Yadav.

6. On the basis of the fardbeyan of the informant K. Nagar P.S. Case No. 94 of 1985 dated 08.06.1985 was registered for the offence under Sections 147, 148, 149, 323, 307 and 302 of the Indian Penal Code.

7. The police after investigation submitted charge-sheet against 12 accused persons under Sections 147, 148, 149, 323, 307 and 302 of the Indian Penal Code. Thereafter the learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions, as the offence was triable exclusively by the Court of Sessions. The trial court framed charge against all the accused persons, except the accused Upendra Prasad Yadav, have



pleaded total innocence and they have claimed that the entire prosecution is false and fabricated, whereas the Upendra Prasad Yadav has taken the plea of *alibi*.

8. On behalf of the prosecution 16 witnesses were examined. P.W.1 is Gena Lal yadav, P.W.2 is Thothi Sharma, P.W.3 Dhirendra Prasad Yadav is the informant of this case. P.W.4 is Sumitra Devi, P.W.5 is Bhagwati Devi, P.W.6 is Arun Kumar Yadav, P.W.7 is Subhag Lal Sharma, P.W.8 is Baban Sharma, P.W.9 is Mangan Yadav. P.W.10 is Amir Chand Yadav, P.W.11 is Tenger Sah, P.W.12 is Dr. A. K. Choudhary, who has conducted post-mortem on the dead body of deceased. P.W.13 is Jitan Yadav, P.W.14 is Umesh Kant Jha and P.W.15 is Ramakant Jha and P.W.16 is Dayanand Thakur. Out of them P.W.3 is the informant of the case. P.Ws.1, 2, 4, 5, 6, 7, 8, 9 and 13 have claimed to be the eye witness of the occurrence where they claimed that Upendra Yadav has intentionally caused death of Sukhdeo Yadav. The allegation leveled by all the prosecution witnesses is that Upendra Yadav has given arrow blow to Sukhdeo Yadav, who succumbed to the injuries. Out of the witnesses examined on behalf of the prosecution P.W.10 was tendered and none of the parties have asked any question about the occurrence. P.W.11 has not stated anything with regard to the occurrence, either his deposition in the case confined to the ownership of the land in dispute.



P.W.14 is a formal witness, who has proved the fardbeyan Ext.3. P.W. 15 is also a formal witness, who has proved Ext.4 Series and Ext.5 (different pages of the case diary and inquest report). P.W.16 is also a formal witness, who has proved the rent receipt. P.W.12 is the doctor, who conducted the post-mortem of Sukhdeo Yadav. In addition thereto 9 Exhibits have been placed on record on behalf of the prosecution.

9. The trial court on scrutiny of the evidence disbelieve the case of Upendra Prasad Yadav as to *alibi* and on the basis of the evidence on record found Upendra Prasad Yadav guilty for intentional killing of Sukhdeo Yadav and as such found guilty under Sections 148 and 302 of the Indian Penal Code, whereas the appellants Ashok Yadav, Ganga Yadav, Bhagwat Yadav, Parmanand Yadav and Daya Nand Yadav have been convicted under Sections 147, 302 read with 149 and 323 read with 149 of the Indian Penal Code. The trial court also found the appellant Dinesh Yadav of Cr. Appeal (DB) No. 430 of 1994 guilty and has been convicted under Sections 148, 302 read with 149 and 323 read with 149 of the Indian Penal Code.

10. However, the trial court held out that the prosecution has miserably failed to prove the charges against Kameshwar Yadav, Doman Lal Sah @ Domi Lal Sah, Dinesh Sah,



Deo Narayan Yadav and Chandi Yadav and as such acquitted them from the charges leveled.

11. In the instant case, out of 16 witnesses examined on behalf of the prosecution. P.W.15 is the second investigating officer of the case, who has not examined any of the prosecution witness and as such he is not the competent witness on the point of commission of occurrence and the investigation in the instant case. Learned counsel for the appellants submitted with reference to non-examination of the investigating officer, who conducted the investigation and examined the witnesses under Section 161 of Cr.P.C. that appellants have suffered immense prejudice on account of non-examination of the investigating officer in this case. He submitted that the trial court has failed to appreciate the witnesses examined on behalf of the defence in support of their case of innocence, particularly, on the point of *alibi*. Appellant Upendra Prasad Yadav has made a specific claim as to *alibi*. He claimed that at the relevant time, he was in the college and in support of his claim of *alibi* the Principal of R. L. College, Madhav Nagar, Purnia, namely, Janardan Prasad Yadav, was examined as D.W.1 and documents were also placed on record to demonstrate that at the relevant time Upendra Prasad Yadav was present in the College and as such he was not present at the relevant time at the place of occurrence.



12. Referring to the discussion of the trial court, he submitted that the trial court has committed error in disbelieving the case of *alibi* of appellant Upendra Prasad Yadav, appellant of Cr. Appeal (DB) No. 498 of 1994, simply on the ground that the records of the College and the deposition of the Principal are not conclusive material to accept the case of *alibi* of appellant Upendra Prasad Yadav.

13. Learned counsel appearing on behalf of the appellants referring to major contradictions in the prosecution witness as to the manner of occurrence, as different witnesses examined on behalf of the prosecution has stated different story as to the place of occurrence, submitted that in such a case the non-examination of investigating officer of the case is crucial and caused prejudice to the appellants, as the investigating officer of the case has not found any blood mark at the place of occurrence and there are major contradiction in the matter of place of occurrence in the deposition of prosecution witnesses. The prosecution witnesses are at variance in the manner the occurrence took place. Referring to the deposition of P.W.3 (informant of the case) and contradictory version of P.Ws. 2, 7, 8 and 9, learned counsel for the appellants submitted that there is major contradictions in the version of the prosecution witnesses on the point of commission of crime and the participation of accused persons



in the commission of crime. The motive behind the commission of crime also varies as per the prosecution witnesses. As per P.W.3, the reason of crime was the scuffle on account of tying she-goat, whereas P.W.1 has deposed that the scuffle took place on account of dispute of putting of Khutta in the Tanti. Same was the version of P.W.4 as to the reason behind this scuffle. P.W.5 in her deposition has stated that the occurrence took place when the informant's side tried to surrounding the tree by Tatti, whereas P.W.13 has stated that the occurrence took place on account of scuffle over uprooting of the Plantain tree.

14. Referring to the deposition of P.W.7, learned counsel appearing on behalf of the appellants submitted that while he was examined under Section 164 Cr.P.C., he stated that Ashok Kumar Yadav and Upendra Yadav have shot arrow on the deceased, which stands contradicted by the other witnesses on the point of shooting arrow and on the point of distance from where the arrow was shot. Learned counsel referring to the post-mortem report and the deposition of P.W.12, who conducted the post-mortem of the deceased, highlighted the contradiction in the time of occurrence and the time of death, as per the post-mortem and the manner of assault.

15. Referring to the discussion of the trial court, he submitted that the trial court has disbelieved the story with regard to



several accused persons. In the instant case, 12 persons were made accused and out of 12 accused persons, the trial court has acquitted five accused persons holding that the prosecution has miserably failed to bring home the charges.

16. So far as the appellant Upendra Prasad Yadav of Cr. Appeal (DB) No. 498 of 1994 is concerned, he has pleaded *alibi* in the instant case. Learned counsel for the appellants submitted that from the scrutiny of the prosecution case, it would be manifest that the informant has claimed that his family including Sumitra Devi, mother, father and others have been assaulted by the family members of the accused persons' family, but none of the family members were charge-sheeted in the instant case, which is indicative of the falsehood in the present case. He submitted that the alleged occurrence took place on 08.06.1985, nearly 32 years back. From the perusal of the fardbeyan, it would transpire that the occurrence took place on account of scuffle on tying she-goat in the open field. Therefore, the appellants' counsel submitted that in a case of sudden fight on account of dispute over tying she-goat in the open field, the occurrence took place and, as such, even if the prosecution case on its face value is accepted, it may be a case under Section 304 Part-II of the Indian Penal Code and not under Section 302 of the Indian Penal Code.

17. Learned A.PP appearing on behalf of the State



submitted that in the instant case, the trial court has rightly convicted the appellants and against whom the prosecution witnesses were not consistent they were acquitted in the instant case and on the basis of ocular evidence the appellants have been rightly convicted.

18. We have considered the rival submissions of the parties and also examined the entire material on record. From the deposition of Doctor (P.W.12) and the post-mortem report, it is seen that there is only one arrow blow, which was taken as fatal injury. During his cross-examination, the doctor has admitted that the post-mortem was conducted on 09.06.1985 at 1.30 P.M. and from the opinion of the doctor, the death took place nearly about 40-46 hours before the post-mortem examination. The version of the doctor stands contradictory with the witnesses, who claimed that they have seen the occurrence of shooting arrow on the deceased. As per the eye witnesses the injury was caused from a close distance, whereas the doctor was of the definite opinion that such injury cannot be caused from a close distance.

19. We have also closely scrutinize the deposition of the witnesses and on scrutiny of the evidence, we are of the view that the appellants' counsel is substantially correct in his submission that the prosecution witnesses are at variance in the matter of place of occurrence, manner of occurrence and also the genesis of occurrence.



However, all the prosecution witnesses are consistent on the point that the occurrence of shooting arrow is preceded by scuffle between the informant's and the appellants' side. In addition to the contradictions in the prosecution witnesses on the point of time of occurrence, place of occurrence, manner of occurrence, we find that while examining the accused persons under Section 313 of Cr.P.C., the trial court has acted in breach of mandate of Section 313 of Cr.P.C. and contrary to the law laid down by the Hon'ble Apex Court the trial court has not confronted the accused persons with the adverse material and none of the materials relied upon for the purpose of conviction of the appellants were confronted during examination under Section 313 Cr.P.C. The law laid down in the case of **Anup Lal Yadav and Another Vs. The State of Bihar**, reported in **(2014) 10 SCC 275**, para 11 to 14 is settler on the point. Para. 11 to 14 of the judgment is quoted herein below for ready reference:

"11. In this context, we may profitably refer to a four-Judge Bench decision in *Tara Singh v. The State*, reported in AIR 1951 SC 441, wherein, Bose, J. explaining the significance of the faithful and fair compliance of Section 342 of the Code as it stood then, opined thus:

"30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers



made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in



each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice."

12. In *Hate Singh Bhagat Singh v. State of Madhaya Bharat*, reported in AIR 1953 SC 468, Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the code expressed thus:-

"8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal P.C. are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused, person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness-box."

13. The aforesaid principle has been reiterated in *Ajay Singh v. State of Maharashtra*, reported in (2007) 12 SCC 341, in following terms:



"14. The word "generally" in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give."

14. In view of the aforesaid enunciation of law, there can be no scintilla of doubt that the when the requisite questions have not been put to the accused it has caused immense prejudice to him, more so, when there is no evidence to establish his complicity in the alleged abduction."



20. Statement recorded under Section 313 of the
accused persons are as follows:

उपेन्द्र प्रसाद यादव

प्रश्न :- क्या गवाहों का ब्यान सुना है ?

उत्तर :- जी हाँ।

प्रश्न :- कहा जाता है कि दिनांक 8.6.85 को आपने अपने सामान्य उद्देश्य की पूर्ति के लिये नाजायज मजमा बनाकर सुखदेव यादव की हत्या तीर धनुष से की थी तथा धीरेन्द्र प्र० यादव, जीतन लाल यादव, सुमित्रा देवी के साथ मारपीट किया था। क्या कहना है ?

उत्तर :- जी नहीं । ऐसी बात नहीं है ।

प्रश्न :- क्या सफाई में कुछ कहना है ?

उत्तर :- जी नहीं।

अशोक कुमार

प्रश्न :- क्या गवाहों का ब्यान सुना है ?

उत्तर :- जी हाँ।

प्रश्न :- कहा जाता है कि दिनांक 8.6.85 को आपने अपने सामान्य उद्देश्य की पूर्ति के लिये तीर धनुष से लैस होकर नाजायज मजमा बनाकर सुखदेव यादव की हत्या की थी तथा धीरेन्द्र प्रसाद यादव, जीतन लाल यादव, सुमित्रा देवी के साथ मारपीट किया था। क्या कहना है ?

उत्तर :- जो नहीं । ऐसी बात नहीं है ।

प्रश्न :- क्या सफाई में कुछ कहना है ?

उत्तर :- जी नहीं।

गंगा यादव

प्रश्न :- क्या गवाहों का ब्यान सुना है ?



उत्तर :- जी हाँ ।

प्रश्न :- कहा जाता है कि दिनांक 8.6.85 को आपने अपने सामान्य उद्देश्य की पूर्ति के लिये नाजायज मजमा बनाकर सुखदेव यादव की हत्या की थी तथा धीरेन्द्र प्रसाद यादव, जीतन लाल यादव, सुमित्रा देवी के साथ मारपीट किया था। क्या कहना है ?

उत्तर :- जी नहीं । ऐसी बात नहीं है ।

प्रश्न :- क्या सफाई में कुछ कहना है ?

उत्तर :- जी नहीं ।

भागवत यादव

प्रश्न :- क्या गवाहों का ब्यान सुना है ?

उत्तर :- जी हाँ ।

प्रश्न :- कहा जाता है कि दिनांक 8.6.85 को आपने अपने सामान्य उद्देश्य की पूर्ति के लिये नाजायज मजमा बनाकर सुखदेव यादव की हत्या की थी तथा धीरेन्द्र प्रसाद यादव, जीतन लाल यादव, सुमित्रा देवी के साथ मारपीट किया था। क्या कहना है ?

उत्तर :- जी नहीं । ऐसी बात नहीं है ।

प्रश्न :- क्या सफाई में कुछ कहना है ?

उत्तर :- जी नहीं ।

दयानंद यादव

प्रश्न :- क्या गवाहों का ब्यान सुना है ?

उत्तर :- जी हाँ ।

प्रश्न :- कहा जाता है कि दिनांक 8.6.85 को आपने अपने सामान्य उद्देश्य की पूर्ति के लिये नाजायज मजमा बनाकर सुखदेव यादव की हत्या की थी तथा धीरेन्द्र प्रसाद यादव, जीतन लाल यादव, सुमित्रा देवी के साथ मारपीट किया था। क्या कहना है ?

उत्तर :- जी नहीं । ऐसी बात नहीं है ।



प्रश्न :- क्या सफाई में कुछ कहना है ?

उत्तर :- जी नहीं ।

परमानंद यादव

प्रश्न :- क्या गवाहों का व्यान सुना है ?

उत्तर :- जी हाँ ।

प्रश्न :- कहा जाता है कि दिनांक 8.6.85 को आपने अपने सामान्य उद्देश्य की पूर्ति के लिये नाजायज मजमा बनाकर सुखदेव यादव की हत्या की थी तथा धीरेन्द्र प्रसाद यादव, जीतन लाल यादव, सुमित्रा देवी के साथ मारपीट किया था। क्या कहना है ?

उत्तर :- जी नहीं । ऐसी बात नहीं है ।

प्रश्न :- क्या सफाई में कुछ कहना है ?

उत्तर :- जी नहीं ।

21. We find that in the present case, the trial court has miserably failed to follow the mandate of law under Section 313 of Cr.P.C. and the judgment of the Apex Court in the case of **Anup Lal Yadav and Another Vs. The State of Bihar** (supra), but the fact remains that the deceased died due to sustaining arrow injury. The witnesses are consistent on the point of arrow injury and the background of the case that there was scuffle between the parties leading to arrow shot, which proved fatal. From the post-mortem report, we find that there is only one arrow blow on the person of deceased.

22. Thus, taking the totality of the facts situation, we



find that although there are many area where the prosecution has not been able to establish the place of occurrence, time of occurrence, manner of occurrence beyond all reasonable doubts and departure under Section 313 of Cr.P.C., yet in the attending facts and circumstances, we notice that apart from sole appellant Upendra Prasad Yadav of Cr. Appeal (DB) No. 498 of 1994 none has inflicted any injury on the deceased and at the best they are members of the unlawful assembly. The allegation against the appellant Upendra Prasad Yadav of Cr. Appeal (DB) No. 498 of 1994 appears to be only giving one arrow blow in the backdrop of the scuffle over tying the she-goat, which falls in the category of offence under Section 304 Part-II of the Indian Penal Code.

23. In the totality of the facts situation, we are of the considered view that the appellant Upendra Prasad Yadav of Cr. Appeal (DB) No. 498 of 1994 has remained in custody for a considerable long time. The occurrence took place on 08.06.1985, approximately 32 years back, the trial court consumed nearly 9 years in convicting the appellant and the appeal remained pending for 23 long years before this Court. We find that in the totality of the facts situation ends of justice require that the conviction of the appellant Upendra Prasad Yadav of Cr. Appeal (DB) No. 498 of 1994 under Section 302 of the I.P.C. is not sustainable and is accordingly



converted into one under Section 304 Part-II of the Indian Penal Code. Considering the fact that the other appellants of Cr. Appeal (DB) No. 430 of 1994 are only the members of the unlawful assembly, we, accordingly, convert their conviction under Section 304 Part-II read with Section 147 of the Indian Penal Code and in the peculiar facts and circumstances, the period of sentence is reduced to period already undergone.

24. In view of the above, both the appeals are partly allowed The conviction of all the appellants are converted from Section 302 of the Indian Penal Code to under Section 304 Part-II of the Indian Penal Code and the period of sentence is reduced to period already under gone. Since all the appellants are on bail, they are discharged from the liabilities of their bail bonds.

25. With the aforesaid modification in the judgment of conviction and order of sentence of the trial court, the appeals are partly allowed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.01.2018
Transmission Date	17.01.2018

