

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.336 of 1995

1. Rama Chaudhary.
2. Hari Chaudhary.
3. Laxman Chaudhary.
All sons of Chhanguri Chaudhary.
4. Bharat Chaudhary, son of Late Gamhu Chaudhary.
5. Akhlesh Chaudhary, son of Bharat Chaudhary.
6. Rajan Chaudhary, son of Phelo Chaudhary.
All resident of village Bishanpur, P.S. Mansahi, District-Katihar.
... .. Appellants.
Versus
The State of Bihar.
... .. Respondent.

with
CRIMINAL APPEAL (DB) No. 353 of 1995

Prasadi Choudhary , son of Changuri Chaudhary, resident of village
Bishanpur, P.S. Mansahi, District Katihar.
... .. Appellant.
Versus
The State of Bihar
... .. Respondent.

Appearance :

(In CRIMINAL APPEAL (DB) No. 336 of 1995):

For the Appellants : Mr. Amish Kumar, Advocate.
Mr. Prabhakar Thakur, Advocate.

For the State : Ms. Shashi Bala Verma, A.P.P.

(In CRIMINAL APPEAL (DB) No. 353 of 1995):

For the Appellant : Mr. Amish Kumar, Advocate.
Mr. Prabhakar Thakur, Advocate.

For the State : Mr. Manish Kumar No.2, A.P.P.

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 09-12-2021

Criminal Appeal (DB) No.336 of 1995 is filed by
accused no.1 Hari Chaudhary, accused no.2 Laxman Chaudhary,
accused no.3 Rama Chaudhary, accused no.4 Akhlesh
Chaudhary, accused no.6 Bharat Chaudhary and accused no.7



Rajan Chaudhary. Criminal Appeal (DB) No.353 of 1995 is filed by accused no.9 Prasadi Choudhary. The appellants/accused, by these appeals are challenging the Judgment and Order dated 15.09.1995 and 16.09.1995 respectively passed by the learned Sessions Judge, Katihar, in Sessions Case No.267 of 1991, wherein in all 9 accused were put on trial. Two out of them, i.e., accused no.5 Ranjeet Choudhary and accused no.8 Rohit Choudhary came to be acquitted by the learned trial court. That is how, the remaining 7 accused are before this Court in the instant appeals.

Appellant/accused no.1 Hari Chaudhary, appellant/accused no.2 Laxman Chaudhary, appellant/accused no.3 Rama Chaudhary, appellant/accused no.4 Akhlesh Chaudhary and appellant/accused no.7 Rajan Chaudhary came to be convicted of the offences punishable under Section 302 read with Section 149 of the Indian Penal Code and Section 147 of the Indian Penal Code whereas appellant/accused no.6 Bharat Chaudhary came to be convicted for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code. For want of the charge, he was not convicted of the offence punishable under Section 147 of the Indian Penal Code by the learned trial court. Appellant/accused no.9 Prasadi Choudhary is convicted



of the offence punishable under Section 302 of the Indian Penal Code and for want of the charge for the offence under Section 147 of the Indian Penal Code, he was not convicted on that count by the learned trial court. The convicted accused were sentenced to suffer imprisonment for life. No separate sentence came to be awarded for the offence punishable under Section 147 of the Indian Penal Code to the concerned accused persons. For the sake of convenience, the appellants shall be referred to in their original capacity as the accused.

2. The facts leading to the prosecution of the accused projected from the police report can be summarized thus:

(a). The incident in question took place at about 06.30 A.M. of 03.06.1989 near the house of first informant/P.W.1 Jugal Choudhary at village-Bishanpur Rakha Tola falling under the jurisdiction of Police Station Mansahi, District-Katihar. It is averred by the prosecution that the accused persons had formed an unlawful assembly with common object of committing crime of murder of Manoj Kumar Choudhary-son of the first informant and for assaulting the members of the prosecuting party over the dispute regarding falling of the tree. In prosecution of the common object of their unlawful assembly,



members thereof caused murder of Manoj Kumar Choudhary and caused hurt to the members of the prosecuting party.

(b). According to the prosecution case, there was one Jhunjhuna tree near the thatched house of first informant/P.W.1 Jugal Choudhary. The accused persons on the date and time of the incident started cutting that tree. First Informant/P.W.1 Jugal Choudhary protested and tried to prevent the accused persons from cutting that tree. Thereupon accused persons namely Prasadi Choudhary, Hari Chaudhary, Laxman Chaudhary, Rama Chaudhary, Akhlesh Chaudhary and Bharat Chaudhary, who were armed with lathies and Farsa started abusing and beating first informant/P.W.1 Jugal Choudhary. They started taking away the tree cut by them. When the members of the prosecuting party tried to prevent them, the accused persons started beating them. Accused no.4 Akhlesh Chaudhary gave a blow of Farsa on the head of first informant/P.W.1 Jugal Choudhary and other accused persons assaulted him by sticks. They also assaulted P.W.11 Zhalo/ Zhalia Devi wife of P.W.1 Jugal Chaudhary by means of sticks. When Manoj Kumar Chaudhary (since deceased) attempted to save his parent from beating, accused persons assaulted him by means of sticks. Appellant/accused no.9 Prasadi Choudhary



wrapped the scarf around the neck of Manoj Kumar Chaudhary and started dragging him towards the field. Manoj Kumar Chaudhary became unconscious. As villagers started gathering on the spot, after beating the members of the prosecuting party, accused persons ran away.

(c). By taking with him Manoj Kumar Chaudhary, his father first informant/P.W.1 Jugal Chaudhary and others went to the Police Station-Mansahi. There P.W.1 Jugal Chaudhary lodged the report which came to be recorded by P.W.13 Shyam Narayan Pandey, the Investigating Officer. He then sent injured P.W.1 Jugal Chaudhary, his wife P.W.11 Zhalo/Zhalia and their son Manoj Kumar Chaudhary to the Hospital. However, on the way to the Hospital, Manoj Kumar Chaudhary succumbed to the injuries. Rest of the injured were medically treated by P.W.9 Dr. L.N. Mandal at Sadar Hospital, Katihar. Dead body of Manoj Kumar Chaudhary was dispatched to the Sadar Hospital, Purnea, where P.W.4 Dr. R.D. Raman conducted the post-mortem examination. Routine investigation followed, the statement of the witnesses came to be recorded and on completion of investigation, the accused persons were charge-sheeted.

(d). The learned trial court framed the charge.



Accused persons pleaded not guilty and claimed to be tried.

(e). In order to bring home the guilt of the accused persons, the prosecution examined in all 14 witnesses. The accused entered in defence and had examined three defence witnesses namely Md. Hashim, Birendra Prasad and Laxhman Choudhary. The defence of the accused persons was that of total denial.

(f). Upon hearing the parties, the learned trial court was pleased to convict the appellants/accused and to sentence them by the impugned Judgment and Order as indicated in the opening paragraph of the Judgment.

3. We have heard Mr. Amish Kumar and Mr. Prabhakar Thakur, the learned Advocates appearing for the appellants/accused. It is argued on behalf of the appellants that the evidence adduced by the prosecution is scanty and lacunae. There is no iota of evidence to infer formation of an unlawful assembly with a common object as alleged by the prosecution. On the contrary, evidence on record shows that the tree was on the land of the accused persons. It is further argued that there cannot be any application of Section 149 of the Indian Penal Code to the case in hand and even the appellant/accused Prasad Choudhary cannot be convicted for the offence punishable



under Section 302 of the Indian Penal Code. There was no intention to commit the murder of the deceased. As against this, Ms. Shashi Bala Verma and Mr. Manish Kumar No.2, learned Prosecutors appearing for the Respondent-State supported the impugned Judgment and Order of conviction and sentence by stating that there are eye witnesses to the incident in question and the evidence of the prosecution is trustworthy and reliable.

4. We have carefully examined the record and proceedings including the oral as well as the documentary evidence adduced on the record. We have also considered the submissions so advanced.

5. At the outset, it needs to be noted that even according to the prosecution case, the incident of murderous assault on Manoj Kumar is a fall out of the incident of cutting the tree which was near the house of informant/P.W.1 Jugal Chaudhary. As per the prosecution case, P.W.1 Jugal Chaudhary was opposing and protesting the act of cutting of the said tree by the accused persons and was preventing them to carry the fallen tree. The incident of assault took place in that process.

6. Let us therefore examine whether the prosecution is successful in proving the homicidal death of Manoj Kumar Chaudahry and assault on the members of the prosecuting party



by the accused. It will also have to be seen whether those acts were done by the accused persons in prosecution of common object of their unlawful assembly.

7. The evidence of P.W.1 Jugal Chaudhary, P.W.2 Rameshwar Chaudhary, P.W.3 Bhola Chaudhary, P.W.5 Jogi Chaudhary, P.W.6 Bateshwar Chaudhary alias Bateshwar Mandal, P.W.7 Bipin Choudhary, P.W.10 Raj Kishore Choudhary and P.W.11 Zhalo/ Zhalia shows that in the incident of assault, Manoj Kumar Chaudhary was injured and he was initially taken to the Police Station and, thereafter, he was referred to the Hospital. All these witnesses have unanimously stated that on the way to the Hospital, Manoj Kumar Chaudhary died. Their evidence on this aspect is not challenged by the defence.

8. P.W.4 Dr. R.D. Raman had conducted the post-mortem examination on dead body of Manoj Kumar Chaudhary on 03.06.1989. It is apposite to quote the relevant paragraphs of the evidence of P.W.4 Dr. R.D. Raman.

“.....found the following ante-mortem injuries on the dead body:

(i). Abrasion over left shoulder 1” x 1/2”.

(ii). Lacerated wound on skull vertex horizontal 1” x 1/2” x skin deep.



- (iii). Dislocated upper cervical vertebra with diffused swelling of neck. No ligature mark was found. Bleeding from nose present.

On dissection of neck:

Fracture and dislocation of Ist cervical vertebra from skull with compressed trachea, Mussels and soft tissues of neck contains blood, clot and haematoma formation.

On dissection of skull:

Intracranial haemorrhage present in upper part of brain tissues, meninges congested, no fracture of skull bone.

On dissection of chest and abdomen:

Lungs- congested and on cutting dark blood coming out.

Heart- Right side filled with blood.

Liver, Spleen and Kidney:-congested and normal.

Stomach contain some brownish fluid (about 100 M.L. like Tea).

Bladder-Empty.

Cause of death: Head injury followed by asphyxia due to strangulation of neck by some soft substance (may be cloth) with dislocation of Ist cervical vertebra.

Injury No.1 and 2 were caused by hard and blunt substance.”

This autopsy Surgeon opined that the injury on neck of the deceased Manoj Kumar Chaudhary was sufficient in the



ordinary course of nature to cause his death. The duly proved report of post-mortem examination is at Ext.1. With this evidence the prosecution has established the homicidal death of Manoj Kumar Chaudhary caused on 03.06.1989.

9. P.W.9 Dr. L.N. Mandal of the Sadar Hospital, Katihar has stated that on 03.06.1989 he examined P.W.11 Zhalo/Zhalia Devi and found the following injuries on person:

- (i). Abrasion 3" x 1/2" over upper left thigh.
- (ii). Contusion 3" x 2" over right forearm.

This Medical Officer has also examined P.W.1 Jugal Choudhary on 03.06.1989 and found the following injuries on him:

- (i). Lacerated wound 1½" x 1/2" x 1/4" over left parietal region of skull.
- (ii). Contusion 2" x 1" over left elbow.
- (iii). Contusion 2" x 1" over left knee.
- (iv). Abrasion 1/2" x 1/2" over left heel.

As per version of P.W.9 Dr. L.N. Mandal, injuries suffered by these witnesses were simple in nature caused by hard and blunt substance like lathi.

10. Evidence of the prosecution as quoted in the foregoing paragraphs makes it clear that apart from homicidal death of Manoj Kumar Chaudhary, the prosecution has also



established that P.W.1 Jugal Chaudhary and P.W.11 Zhalo/Zhalia were injured in the incident that took place on 03.06.1989.

11. Now, let us examine the evidence of these injured witnesses as well as other witnesses adduced by the prosecution. It is needless to mention that injured witnesses are stamped witnesses whose presence on the scene of the occurrence cannot be disputed, if it is established that they have suffered injuries in the incident in question. As son of these injured witnesses died in the incident in question, their evidence will have to be examined carefully, particularly in the light of the fact that out of all nine accused persons who were put up for the trial, two of them came to be acquitted by the learned trial court. It is in the evidence of P.W.1 Jugal Chaudhary that upon hearing the sound of cutting the tree, he came out of the house and saw accused persons cutting his Jhunjhuna tree. They were armed with Farsa, axe and sticks. He stated that he asked them not to cut the tree and the accused persons started beating him. Therefore, his son Manoj Kumar and his wife P.W.11 Zhalo/Zhalia along with his father-in-law Khokha Chaudhary came to rescue him. P.W.1 Jugal Chaoudhary further stated that accused No.1 Hari Chaudhary gave a blow of stick on his head whereas accused no.4 Akhlesh



Chaudhary gave a blow of Farsa on his head. Accused no.2 Laxman Chaudhary gave a blow of stick to his wife Zhalo/ Zhalia whereas accused no.3 Rama Chaudhary gave a blow of stick to his father-in-law Khokha Chaudhary. P.W.1 Jugal Chaudhary has candidly stated that accused no.9 Prasadi Choudhary gave a blow of stick on the head and neck of Manoj Kumar Chaudhary and as soon as Manoj Kumar Chaudhary fell down, accused no.9 Prasadi Choudhary wrapped his scarf around the neck of Manoj Kumar Chaudhary and started pulling Manoj Kumar Chaudhary. He further testified that as P.W.3 Bhola, P.W.12 Ganga and others had gathered there, the accused persons ran away and then he went to the police station and lodged the report. Cross examination of this witness shows that the tree which was cut, was just 10 steps away from his house and even when the accused persons were taking away the tree, he was pulling that tree by his hand. In cross examination he also confirmed that he saw assault on Manoj when he was conscious and has honestly admitted that he came to be slightly fainted for 2-4 minutes subsequently. P.W.1 Jugal Choudhary has stated in the cross examination that the sale deed of the piece of land where that tree was standing was got executed in his favour by accused no.9 Prasadi Chaudhary but denied that



the said plot of land was in possession of the accused persons.

12. We have perused the evidence of this first informant Jugal Chaudhary carefully. He had suffered injuries in the incident. Even P.W.13 Shyam Narayan Pandey, the Investigating Officer, has vouched that when P.W.1 Jugal Chaudhary came to the police station he was having bleeding injury on his head and swelling all over his body. The material elicited from cross examination of this witness is supporting his version that he had witnessed assault on his son Manoj Kumar Chaudhary. There is no reason to disbelieve the evidence of this first informant and his version is gaining corroboration from the F.I.R. lodged by him with promptitude.

13. P.W.11 Zhalo/Zhalia is the wife of P.W.1 Jugal Chaudhary and the mother of the deceased Manoj Kumar. She has also narrated the incident of assault on them. As per her version, accused no.9 Prasadi Choudhary was cutting their tree and as her husband Jugal Chaudahry opposed, the incident of assault took place. She stated that the accused persons assaulted her husband and she was also assaulted by them. She has named the assailants and stated that because of assault by accused no.1 Hari Chaudhary, accused no.2 Laxman Chaudhary, accused no.3 Rama Chaudhary and accused no.9 Prasadi



Choudhary, her son Manoj Kumar Chaudhary fell down. She stated that accused no.4 Akhlesh Chaudhary and accused no.6 Bharat Chaudhary also assaulted Manoj Kumar Chaudhary. Thereafter, according to her version, accused no.9 Prasadi wrapped a scarf around the neck of Manoj Kumar Chaudhary and dragged him. So far as the incident of beating her, her husband Jugal Chaudhary and her son Manoj Kumar Chaudhary, there is nothing in her cross examination to disbelieve her version. Her evidence as such is corroborating the version of her husband P.W.1 Jugal Chaudhary.

14. P.W.2 Rameshwar Chaudhary is an eye witness to the incident. It is elicited from his cross examination that in his presence, the accused persons were beating the victims. He stated that accused no.4 Akhlesh Chaudhary gave a blow of Farsa on the head of P.W.1 Jugal Chaudhary, accused no.3 Rama Chaudhary gave a blow of stick on P.W.11 Zhalo alias Zhalia. As per his version, accused no.9 Prasadi Choudhary wrapped a scarf around the neck of Manoj Kumar Chaudhary and started dragging Manoj Kumar Chaudhary.

15. P.W.3 Bhola Choudhary is brother of P.W.2 Rameshwar Choudhary. This witness, as seen from his cross examination, was just 10 steps away from the spot of the



incident. He stated that when the members of the prosecuting party were opposing the acts of cutting of the tree by accused no.9 Prasadi Chaudhary, accused persons started beating P.W.1 Jugal Chaudhary, P.W.11 Zhalo alias Zhalia and their son Manoj Kumar Chaudhary as well as Khokha Chaudhary. As per version of this witness, accused no.9 wrapped a scarf around the neck of Manoj Kumar Chaudhary and started dragging Manoj Kumar Chaudhary. Cross examination of this witness has not yielded anything in favour of the defence.

16. P.W.5 Jogi Choudhary is son of Khokha Chaudhary. He has narrated the incident by stating that by blunt side of Farsa, accused no.4 Akhlesh Chaudhary gave a blow on the head of P.W.1 Jugal Chaudhary. Accused no.9 Prasadi Choudhary, accused no.3 Rama Chaudhary and accused no.1 Hari Chaudhary have also beaten Yugal Chaudhary by sticks whereas Manoj Kumar Chaudhary was beaten by accused no.9 Prasadi Choudhary and accused no.4 Akhlesh Chaudhary. As per his version, accused no.3 Rama Chaudhary, accused no.2 Laxman Chaudhary and accused no.1 Hari Chaudhary assaulted P.W.11 Zhalo/Zhalia by sticks. This witness has also testified that it was accused no.9 Prasaid Chaudhary who wrapped a scarf around the neck of Manoj Kumar Chaudhary and started



dragging him and then Manoj Kumar Chaudhary became unconscious. In cross examination of this witness, the prosecution case regarding the assault came to be cemented. In cross examination this witness has stated that as P.W.1 Jugal Chaudhary was opposing the falling of tree, accused Prasadi and Akhlesh started assaulting him. He further clarified that Manoj Kumar Chaudhary was dragged by accused no.9 Prasadi Choudhary upto the distance of “10 ropes” meaning thereby that Manoj was dragged to a sufficiently long distance. Siimilar is the evidence in respect of the incident coming from the mouth of P.W.6 Bateshwar Choudhary alias Bateshwar Mandal, P.W.7 Bipin Choudhary and P.W.10 Raj Kishore Chaudhary. All of them are unanimously stating that it was accused no.9 Prasadi Choudhary who wrapped the scarf around the neck of Manoj Kumar Chaudhary and pulled him. They have also stated that accused persons had assaulted P.W.1 Jugal Chaudhary and P.W.11 Zhalo/Zhalia. However, P.W.12 Ganga Choudhary has turned hostile to the prosecution.

17. Now, the question which falls for consideration is whether the acts of beating the deceased by the accused persons other than appellant/accused no.9 Prasadi Choudhary were done for prosecution of the common object of the unlawful



assembly. It needs to be noted that appellant/accused no.9 Prasadi Choudahry was convicted for the offence punishable under Section 302 of the Indian Penal Code simplicitor without aid of Section 149 thereof. However, so far as the rest of the accused persons are concerned, the learned trial court has held that as they were the members of the unlawful assembly and were prosecuting the common object, they are vicariously liable for the murder of the Manoj Kumar Choudhary committed by accused no.9 Prasadi Choudhary. It hardly needs to mention that Section 149 IPC does not create separate offence. It creates a constructive or vicarious liability for acts done in prosecution of the common object of that assembly, by all members of unlawful assembly. Vicarious liability envisaged by Section 149 of the IPC extends to rope in every member of such assembly only when:-

- a) the acts done in prosecution of the common object of the unlawful assembly and
- b) such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object of the unlawful assembly. The word “knew” is indicative of a state of mind at the time of commission of the



offence and cannot be interpreted to mean
“might have known”.

Thus once the Court holds that certain accused persons formed an unlawful assembly and an offence is committed by any member of that assembly in prosecution of common object of that assembly, or such, as the members or the assembly knew to be likely to be committed in prosecution of that object, every person who at the time of committing of that offence was a member of the same assembly, is to be held guilty of that offence. This is because everyone must be taken to have intended the probable and natural result of the combination of the acts in which he joined. Thus Section 149 IPC makes every member of an unlawful assembly at the time of committing of the offence, guilty of that offence on establishing the criteria stated above. If such conditions as stated above are fulfilled, then it is not open to the court to see as to who actually did the offensive act. The court cannot then further require the prosecution to prove which of the member of the unlawful assembly did which of the offensive act. Every member of such unlawful assembly then becomes responsible of the acts of offence committed by another members, in prosecution of the common object of such assembly. It needs to be kept in mind



that whether a member of such unlawful assembly was aware as regards to likelihood of the commission of a particular offence in prosecution of common object can be gathered from all surrounding circumstances like nature of the assembly, arms carried by it, behaviour of members of such assembly at or before the occurrence etc.

18. Having said so, we must hasten to add that the court is required to determine the issue in every case before it as to 'whether the offence was committed by any member of the unlawful assembly in prosecution of the common object or whether an offence was such as the members of that assembly knew to be likely to be committed.' The accused should not, merely by reason of his association with other members of an unlawful assembly be held vicariously liable for each and every offence committed by his associates, which he himself neither intended nor knew to be likely to be committed. Members of an unlawful assembly may have committing of object only upto a certain point. Beyond that point they may differ in their objects. In such fact situation, the knowledge possessed by each member as to what offence is likely to be committed in prosecution of their common object shall also vary. Whether a member of an unlawful assembly was aware as regards



likelihood of commission of another offence or not would depend upon facts and circumstances of each case such as background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and behaviour of the members soon before, at and after commission of the crime etc. A mere possibility of the commission of the offence would not necessarily enable the court to draw an inference that the likelihood of commission of such offence was within the knowledge of every member of an unlawful assembly. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and the accused was actuated by that common object. The word object means the purpose or design. In order to make it common it must be shared by all. It does not require a prior concert and common meeting of minds before the attack.

19. We have already noted in the preceding paragraphs of our Judgment that the incident took place because of protest by P.W. 1 Jugal Chaudhary to the act of cutting the tree by accused no.9 Prasadi Choudhary. The incident took place thereafter suddenly. The accused persons were not armed with dangerous weapons. They had not even indulged in



challenging P.W.1 Jugal Chaudhary before cutting of the tree. P.W.1 Jugal Chaudhary appeared on the scene of occurrence when accused persons were cutting the tree. Because of protest and opposition from the P.W.1 Jugal Chaudhary, evidence on record shows that accused person started beating him as well his family members by sticks. Though it is claimed that accused no.4 Akhlesh Chaudhary had given a blow of Farsa on the head of P.W.1 Jugal Chaudhary, P.W.5 Jogi Choudhary has made the position clear by stating that the assault was by blunt side of Farsa. On this aspect the evidence of P.W.9 Dr. L.N. Mandal, who examined P.W.1 Jugal Choudhary is very clear. P.W.1 Jugal Choudhary has not suffered any incised wound which could have been attributed to a blow of Farsa. He had suffered lacerated wound and P.W.9 Dr. L.N. Mandal had attributed that wound to hard and blunt object. It transpires that the blow was from blunt side of Farsa. Thus the manner in which the incident took place, the dispute due to which the incident took place, the nature of weapons used by the accused persons so also their behaviour soon before, at and after commission of the crime makes it clear that they were not having any common object of commission of the crime of murder of Manoj Kumar Choudhary. On the contrary they were only interested in cutting



and removing the tree and that too which was situated on the land not belonging to P.W.1 Jugal Choudhary. Therefore, in my considered opinion, appellants/accused persons in Criminal Appeal (DB) No.336 of 1995 cannot be made vicariously liable for the act done by accused no.9 Prasadi Choudhary, who is appellant in Criminal Appeal (DB) No.353 of 1995. Accused no.1 Hari Chaudhary, accused no.2 Laxman Chaudhary, accused no.3 Rama Chaudhary, accused no.6 Bharat Chaudhary and accused no.7 Rajan Chaudhary have assaulted the victims namely P.W.1 Jugal Chaudhary and P.W.11 Zhalo/Zhalia by means of lathies whereas accused no.4 Akhlesh Chaudhary had assaulted P.W.1 Jugal Choudhary by means of blunt side of Farsa which is an instrument of cutting. They all are therefore liable for their individual acts committed by them during the incident. Hence, we hold that accused no.1 Hari Chaudhary, accused no.2 Laxman Chaudhary, accused no.3 Rama Chaudhary, accused no.6 Bharat Chaudhary and accused no.7 Rajan Chaudhary had committed the offence of voluntarily causing hurt to the members of the prosecuting party making them liable for conviction for the offence punishable under Section 323 of the Indian Penal Code. Appellant/accused no.4 Akhlesh Chaudhary is liable for conviction for the offence of



causing voluntarily hurt to P.W.1 Jugal Choudhary by a dangerous weapon-Farsa punishable under Section 324 of the Indian Penal Code.

20. So far as the accused no.9 Prasadi Choudhary (Appellant in Criminal Appeal (DB) No.353 of 1995) is concerned, evidence of the prosecution witnesses is unerringly pointing out that he had wrapped the scarf around the neck of the deceased Manoj Kumar Chaudhary and dragged Manoj Kumar Chaudhary. According to the learned counsel for this appellant the offence cannot travel to one punishable under Section 302 of the Indian Penal Code. Reliance is placed on the Judgment in **Sarman and Ors. Vs. State of Madhya Pradesh {MANU/SC/0096/1993}** to buttress this proposition.

21. It needs to reiterate that murder is a gravest form of culpable homicide, which has its peculiar characteristic required to be proved before a person is to be held guilty for committing murder as defined U/s 300 of the IPC. It requires judicial scrutiny of the prevailing facts. Merely the fact that death of human being is caused is not enough to constitute offence of murder. Unless one of the mental status mentioned in ingredient of Section 300 is present, the act causing death cannot amount to culpable homicide amounting to murder. It



must be proved that there was an intention to inflict the particular bodily injury actually found to be present. The intention of the person causing the injury has to be gathered from careful examination of the facts and circumstances of each case. The intention to cause the requisite type of injury is a subjective inquiry and then there would be further inquiry whether injury was sufficient in ordinary course of nature to cause the death is of objective nature.

22. In order to ascertain whether the act of accused no.9 Prasadi amounts to murder, one will have to keep in mind each and every circumstance while drawing inference. Accused no.9 Prasadi Choudhary was aware that members of the prosecuting party were being beaten. Evidence of the prosecution witnesses shows that he had wrapped the scarf around the neck of deceased Manoj Kumar Chaudhary and then forcefully dragged him to a certain distance which one of the witnesses is describing as '10 ropes'. The result of his acts in dragging the deceased Manoj Kumar Chaudhary after wrapping his neck by that scarf is seen from the evidence of P.W.4 Dr. R.D. Raman which we have quoted in the foregoing paragraphs. Because of forceful dragging by accused no.9 Prasadi Choudhary, Manoj Kumar Chaudhary had suffered fracture and



disclocation of first cervical vertebra from the skull with compressed trachea. Ultimately, he succumbed to this injury, which according to P.W.4 Dr. R.D. Raman was sufficient in the ordinary course of nature to cause death of a human being.

23. It is now well understood that in the scheme of the Indian Penal Code “Culpable homicide” is the genus and “murder” is the species and generally speaking “culpable homicide” sans “special characteristics of murder is culpable homicide not amounting to murder”. The Indian Penal Code recognizes three degrees of culpable homicide. The first degree of culpable homicide is “murder” which is defined by Section 300 and made punishable under Section 302 IPC. The second degree is culpable homicide as defined under Section 299 and made punishable under Section 304 Part I, IPC. The third degree of culpable homicide is made punishable under Section 304 Part II of the IPC. The Hon'ble Apex Court in the case of **Willie Slancy V/s State of M.P. AIR 1956 SC 116** has stated that whether the accused causing the death of another and had no intention to kill, then the offence would be murder only if, (1) the accused knew that the injury inflicted would be likely to cause death, or (2) that it would be sufficient in the ordinary course of nature to cause death or, (3) that the accused knew that



the act must in all probability could cause death and if the case cannot be placed as high as that and the act is only likely to cause death and there is no special knowledge, the offence comes under Section 304(II), I.P.C. The Apex Court in the case of **Kirkar Singh V/s State of Rajasthan (1993) 4 SCC 238** has again held that in a given case if the case does not fall in any of the exceptions, it is the duty of the prosecution to prove that the offence is of murder and the ingredients of clauses (1 to 4) of Section 300 are satisfied.

24. In the case in hand, wrapping the neck of the victim by a scarf and dragging him certainly reflects intention of the accused no.9 Prasadi Choudhary to cause death of victim Manoj Kumar Choudhary. Even otherwise, such an act was certainly done despite the knowledge that such an act is so eminently dangerous that it must in all probabilities will cause death of Manoj Kumar Choudhary. Therefore, we uphold the finding of the trial court that appellant/accused no.9 is guilty of the offence punishable under Section 302 of the Indian Penal Code for causing the murder of Manoj Kumar Choudhary.

25. In the result, the following orders:

(I). Criminal Appeal (DB) N0.336 of 1995 is partly allowed. Conviction and resultant sentence imposed upon the



appellants in this appeal for the offences punishable under Section 302 read with Section 149 of the Indian Penal Code and 147 of the Indian Penal Code recorded by the learned trial court is quashed and set aside. Instead, appellants/accused no.1 Hari Chaudhary, accused no.2 Laxman Chaudhary, accused no.3 Rama Chaudhary, accused no.6 Bharat Chaudhary and accused no.7 Rajan Chaudhary are convicted for the offence punishable under Section 323 of the Indian Penal Code whereas appellant/accused no.4 Akhlesh Chaudhary is convicted for the offence punishable under Section 324 of the Indian Penal Code. They are sentenced to suffer the sentence which they have already undergone.

(II). Criminal Appeal (DB) No.353 of 1995 filed by the appellant/accused no.9 Prasadi Choudhary is dismissed.

(A. M. Badar, J)

Sunil Kumar Panwar, J:-

(Sunil Kumar Panwar, J)

P.S./-

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