

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.416 of 2015

Arising Out of PS. Case No.-48 Year-2012 Thana- CHAND District- Kaimur (Bhabua)

1. Satay Narayan Yadav Son of Millu Yadav
2. Devendra Yadav @ Pintu Yadav Son of Ram Lakhan Yadav Both are Resident of Village- Hansreon, P.S.- Chand, District- Kaimur Bhabua.

... .. Appellants

Versus

The State Of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 422 of 2015

Arising Out of PS. Case No.-48 Year-2012 Thana- CHAND District- Kaimur (Bhabua)

1. Ram Gahan Yadav Son of Bal Kishun Yadav,
2. Shyam Narayan Yadav Son of Ramdhyan Yadav,
3. Hoshila Yadav Son of Sudama Yadav,
4. Vakil Yadav Son of Sundar Yadav,
5. Ramji Yadav Son of Sachan Yadav, Both are Resident of Village- Hansreon, P.S.- Chand, District-Kaimur Bhabua.

... .. Appellants

Versus

The State Of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 431 of 2015

Arising Out of PS. Case No.-48 Year-2012 Thana- CHAND District- Kaimur (Bhabua)

1. Bal Kishun Yadav Son of Late. Kaval Yadav,
2. Sunnar Yadav Son of Late. Purushotam Yadav,
3. Ram Lakhan Yadav Son of Bal Kishun Yadav,
4. Kanhaiya Yadav Son of Late. Kailash Yadav,
5. Murahu Yadav Son of Bal Kishun Yadav, All are Resident of Village - Hansreon, P.S.- Chand, District- Kaimur Bhabua .



... .. Appellants
Versus
The State Of Bihar
... .. Respondent

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with
CRIMINAL APPEAL (DB) No. 443 of 2015
Arising Out of PS. Case No.-48 Year-2012 Thana- CHAND District- Kaimur (Bhabua)

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1. Vansh Narayan Yadav Son of Late Hari Charan Yadav
2. Ganesh Yadav Son of Sundar Yadav Both are Resident of village - Hansreon,
P.S. Chand, District - Kaimur Bhabua

... .. Appellants
Versus
The State Of Bihar
... .. Respondent

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Appearance :
(In all Appeals)
For the Appellants : Mr. Vikramdeo Singh, Advocate
Mr. Shyameshwar Kumar Singh, Advocate
Ms. Kanchan Kumari, Advocate
For the Respondent State: Ms. Shashi Bala Verma, A.P.P.
For the Informant : Mr. Bindhyachal Singh, Senior Advocate
Ms. Suruchi Ananad, Advocate
Mr. Uday Pratap Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE KHATIM REZA
C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 18-01-2023

A judgment of conviction dated 21.04.2015 and the consequent order of sentence dated 28.04.2015 passed by the learned Additional Sessions Judge-II, Kaimur, Bhabhua, in Sessions Trial No. 473 of 2012 (CIS No. 2603 of 2014), arising out of Chand P.S. Case No. 48 of 2012, are under challenge in all



these four appeals, preferred under Section 374(2) of the Cr.P.C., and, therefore, they have been heard together and are being disposed of by the present judgment and order.

2. There are altogether 14 appellants in these appeals, who have been convicted of the offences punishable under Section 302 read with Section 149 of the IPC. The appellants Ram Gahan Yadav (appellant No. 1 in Cr. Appeal (D.B.) No. 422 of 2015), Murahu Yadav (appellant No. 5 in Cr. Appeal (D.B.) No. 431 of 2015), Ramji Yadav (appellant No. 5 in Cr. Appeal (D.B.) No. 422 of 2015) and Devendra Yadav @ Pintu Yadav (appellant No. 2 in Cr. Appeal (D.B.) No. 416 of 2015) have been convicted for the offence punishable under Section 148 of the IPC also. After recording their conviction, learned trial court has imposed following sentences: -

Appellant Number	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
CRIMINAL APPEAL (DB) No. 416 of 2015				
Satay Narayan Yadav (Appellant No. 1)	302/149 of the Indian Penal Code	For Life	50,000/-	The sentence of life will not be less than 20 years of imprisonment and he will have to serve 5 years of rigorous imprisonment in addition there too.
Devendra Yadav @Pintu Yadav (Appellant No. 2)	302/149 of the Indian Penal Code	For life	10,000/-	The sentence of life will not be less than 20 years of imprisonment and he will have to serve 5 years of rigorous imprisonment in addition there too.
	148 of the Indian Penal Code	R.I. for 3 years	20,000/-	R.I. for 6 months
CRIMINAL APPEAL (DB) No. 422 of 2015				



Ram Gahan Yadav (Appellant No. 1)	302/149 of the Indian Penal Code	For life	50,000/-	The sentence of life will not be less than 20 years of imprisonment and he will have to serve 5 years of rigorous imprisonment in addition there too.
	148 of the Indian Penal Code	R.I. for 3 years	20,000/-	R.I. for 6 months
Shyam Narayan Yadav (Appellant No. 2)	302/149 of the Indian Penal Code	For life	50,000/-	The sentence of life will not be less than 20 years of imprisonment and he will have to serve 5 years of rigorous imprisonment in addition there too.
Hoshila Yadav (Appellant No. 3)	302/149 of the Indian Penal Code	For life	50,000/-	The sentence of life will not be less than 20 years of imprisonment and he will have to serve 5 years of rigorous imprisonment in addition there too.
Vakil Yadav (Appellant No. 4)	302/149 of the Indian Penal Code	For life	50,000/-	The sentence of life will not be less than 20 years of imprisonment and he will have to serve 5 years of rigorous imprisonment in addition there too.
Ramji Yadav (Appellant No. 5)	302/149 of the Indian Penal Code	For life	50,000/-	The sentence of life will not be less than 20 years of imprisonment and he will have to serve 5 years of rigorous imprisonment in addition there too.
	148 of the Indian Penal Code	R.I. for 3 years	20,000/-	R.I. for 6 months
CRIMINAL APPEAL (DB) No. 431 of 2015				
Bal Kishun Yadav (Appellant No. 1)	302/149 of the Indian Penal Code	For Life	50,000/-	The sentence of life will not be less than 20 years of imprisonment and he will have to serve 5 years of rigorous imprisonment in addition there too.
Sunnar Yadav (Appellant No.2)	302/149 of the Indian Penal Code	For Life	50,000/-	The sentence of life will not be less than 20 years of imprisonment and he will have to serve 5 years of rigorous imprisonment in addition there too.
Ram Lakhan Yadav (Appellant No. 3)	302/149 of the Indian Penal Code	For Life	50,000/-	The sentence of life will not be less than 20 years of imprisonment and he will have to serve 5 years of rigorous imprisonment in addition there too.
Kanhaiya Yadav (Appellant No. 4)	302/149 of the Indian Penal Code	For Life	50,000/-	The sentence of life will not be less than 20 years of imprisonment and he will have to serve 5 years of



				rigorous imprisonment in addition there too.
Murahu Yadav (Appellant No. 5)	302/149 of the Indian Penal Code	For Life	50,000/-	The sentence of life will not be less than 20 years of imprisonment and he will have to serve 5 years of rigorous imprisonment in addition there too.
	148 of the Indian Penal Code	R.I. for 3 years	20,000/-	R.I. for 6 months
CRIMINAL APPEAL (DB) No. 443 of 2015				
Vansh Narayan Yadav (Appellant No. 1)	302/149 of the Indian Penal Code	For Life	50,000/-	The sentence of life will not be less than 20 years of imprisonment and he will have to serve 5 years of rigorous imprisonment in addition there too.
Ganesh Yadav (Appellant No. 2)	302/149 of the Indian Penal Code	For Life	10,000/-	The sentence of life will not be less than 20 years of imprisonment and he will have to serve 5 years of rigorous imprisonment in addition there too.

3. We have heard Mr. Vikramdeo Singh, learned counsel appearing on behalf of the appellants, Ms. Shashi Bala Verma, learned Additional Public Prosecutor representing the State and Mr. Bindhyachal Singh, learned Senior Counsel appearing on behalf of the informant in all these appeals.

4. The wife of the victim, Rajkumari Devi (PW 8) is the informant, based on whose *fardbeyan* recorded by the S.H.O. of Chand Police Station in the district of Kaimur, F.I.R. came to be registered giving rise to Chand P.S. Case No. 48 of 2012. In her *fardbeyan*, recorded at 6.45 PM on 22.07.2012, the informant disclosed that her husband Arjun Yadav (the deceased) was returning home on foot from Hatta Bazar. When he was hardly 100 yards away east from his house, his co-villagers, Ram Gahan



Yadav (appellant no.1 in Cr.Appeal (D.B.) No. 422/15), Murahu Yadav (appellant no.5 in Cr.Appeal (D.B.) No. 431/15), Ram Lakhan Yadav (Appellant no. 3 in Cr.Appeal (D.B.) No. 431/15), Kanhaiya Yadav (Appellant no.4 in Cr.Appeal (D.B.) No. 431/15), Devendra Yadav @ Pintu Yadav (Appellant no. 2 in Cr.Appeal (D.B.) No.416/15), Ramjee Yadav (Appellant no. 5 in Cr.Appeal (D.B.) No.422/15), Shyam Narain Yadav (Appellant no. 2 in Cr.Appeal (D.B.) No.422/15), Vakil Yadav (Appellant no. 4 in Cr.Appeal (D.B.) No.422/15), Ganesh Yadav (Appellant no. 2 in Cr.Appeal (D.B.) No.443/15), Hosila Yadav (Appellant no. 3 in Cr.Appeal (D.B.) No.422/15), Satya Narain Yadav (Appellant no. 2 in Cr.Appeal (D.B.) No.422/15), Vansh Narain Yadav(Appellant no. 1 in Cr.Appeal (D.B.) No.433/15) and Sunar Yadav (Appellant no. 2 in Cr.Appeal (D.B.) No.416/15), who were variously armed with *lathi*, *ballam* and *gandasa* were waiting for the deceased and the moment the deceased reached near the site of the Bank of a pond, the appellant Ram Gahan Yadav exhorted others to encircle him and kill him, whereupon all the aforesaid persons started assaulting the deceased with *lathi*, *ballam* and *gandasa* indiscriminately. At the time of occurrence, informant was working in a nearby vegetable field and upon seeing her husband being assaulted by the accused persons, she rushed to save him and



in that course, she lay her body on her husband, the deceased, so as to cover him and thus protect him from assault. Thereafter, the appellants Ram Gahan Yadav, Murahu Yadav, Ramji Yadav and Devendra Yadav @ Pintu Yadav injured her by assaulting her with *lathi*, and by holding her hands and legs, they threw her nearly 10 yards away in a swamp. She kept on making desperate attempts to save her husband, but all the accused persons killed her husband by giving blows with *lathi*, *ballam* and *gandasa*. She further disclosed that her agnates Chandra Bhushan Yadav (PW 5), Ram Dayal Yadav (PW 1) and Ashok Singh Yadav (PW 7), who lived nearby, also rushed to rescue the deceased, but they had to beat a retreat as the accused persons chased them also. The genesis of the occurrence, as disclosed in the FIR, was land dispute between Ashok Kumar Yadav and the agnates of the deceased and the persons named in the FIR.

5. It is noted, at this juncture, that the appellant Bal Kishun Yadav was not named in the FIR and his name surfaced during the course of investigation as one of the participants of commission of the offence.

6. An inquest report (exhibit 7) of the dead body of the deceased was prepared. The informant was given medical treatment as she had sustained injuries.



7. The police, upon completion of investigation, submitted its charge-sheet against all the 13 persons named in the FIR, who are appellants herein as well as Bal Kishun Yadav, who, as has been noted, is appellant No. 1 in Cr. Appeal (D.B.) No. 431 of 2015, for the offences punishable under Sections 147, 148, 149, 3423, 235, 307, 302, 504 and 120B of the IPC. Thereafter, cognizance was taken by the learned Magistrate on 18.10.2012. The case was subsequently committed to the court of Sessions for trial. The trial court thereafter framed charges of the appellants for commission of the offences under various provisions of the IPC as under: -

Appellant	Charges framed under Section
CRIMINAL APPEAL (DB) No. 416 of 2015	
Satay Narayan Yadav (Appellant No. 1)	All charged u/s 302/149 & 504 of the Indian Penal Code
Devendra Yadav @ Pintu Yadav (Appellant No. 2)	U/s 302/149, 307, 323, 325, 147, 148, 504 of the Indian Penal Code
CRIMINAL APPEAL (DB) No. 422 of 2015	
Ram Gahan Yadav (Appellant No. 1)	Charged u/s 302/149, 307, 323, 325, 147, 148 & 504 of the Indian Penal Code
Shyam Narayan Yadav (Appellant No. 2)	Charged u/s 302/149 & 504 of the Indian Penal Code
Hoshila Yadav (Appellant No. 3)	Charged u/s 302/149 & 504 of the Indian Penal Code
Vakil Yadav (Appellant No. 4)	Charged u/s 302/149 & 504 of the Indian Penal Code
Ramji Yadav (Appellant No. 5)	Charged u/s 302/149, 307, 323, 325, 147, 148 & 504 of the Indian Penal Code
CRIMINAL APPEAL (DB) No. 431 of 2015	
Bal Kishun Yadav (Appellant No. 1)	Charged u/s 302/149 & 504 of the Indian Penal Code
Sunnar Yadav (Appellant No.2)	Charged u/s 302/149 & 504 of the Indian Penal Code
Ram Lakhan Yadav (Appellant No. 3)	Charged u/s 302/149 & 504 of the Indian Penal Code



Kanhaiya Yadav (Appellant No. 4)	Charged u/s 302/149 & 504 of the Indian Penal Code
Murahu Yadav (Appellant No. 5)	Charged u/s 302/149, 307, 323, 325, 147 148 & 504 of the Indian Penal Code
CRIMINAL APPEAL (DB) No. 443 of 2015	
Vansh Narayan Yadav (Appellant No. 1)	Charged u/s 302/149 & 504 of the Indian Penal Code
Ganesh Yadav (Appellant No. 2)	Charged u/s 302/149 & 504 of the Indian Penal Code

8. As the appellants pleaded not guilty, they were put to trial.

9. At the trial, altogether 11 witnesses were examined including the Investigating Officer Ram Rahan Singh (PW 11), Dr. Kanhaiya Singh (PW 10), who had treated the injured informant and Dr. Kanhai Mahto (PW 9), who had held the postmortem examination. Other prosecution witnesses 1 to 8 claim to be the eyewitness to the occurrence.

10. Before advertng to the evidence of the prosecution's witnesses, it is considered useful to take note of the evidence of the of the Doctor (PW 9), who had conducted the postmortem examination and the Doctor (PW 10), who had examined the injured informant. The Doctor proved following *antemortem* injuries on the dead body of the deceased: -

“1. Lacerated wound 3"x1/2"x scalp deep found over vault of skull centrally placed longitudinal in direction.



2. *Sharp cut wound 2 1/2"x1/2"x scalp deep over left parietal region of skull.*

3. *Sharp cut wound 3" x3/4"x scalp deep over left parietal region 1/2" below the injury no. 2.*

4. *Incised wound right elbow joint posterially 1" x 1/2"x1/2".*

5. *Incised wound right wrist joint 1/2"x1/4"x1/4".*

6. *Sharp cut penetrating wound over right ankle joint 3/4" x 1/4" x bone deep.*

7. *Multiple matted wound bruise of various shape and sizes over back of chest.*

8. *Diffused swelling with deformity present over right lower leg. Fracture of both tibia and fibula lower end.*

On dissection – Skull depressed fracture of middle of head bone. Brain matter and meninges found lacerated. Collection of dark blood in cranial cavity present. Chest cavity – Both lungs found pale and intact. Heart both chamber found empty and intact. Stomach contained digested food particle. Small intestine contained small amount of food and gases. Large intestine contained fical matter gases of food and gases large intestine contained faecal matter gases spleen, liver and both kidneys found pale and intact. Urinary bladder contain 100 ml urine.”



11. He deposed in his examination in chief that the cause of death was shock and hemorrhage caused by the above mentioned injuries. He further deposed that the injury No.1, 7 and 8 were caused by hard and blunt substances and the injuries No. 2, 3, 4 and 5 were caused by sharp cutting weapon and injury No. 6 was caused by a sharp pointed weapon. The postmortem examination was conducted at 11.30 AM on 23.07.2012. PW 9 testified that the time elapsed since death was between 12-24 hours.

12. PW 10 proved following injuries on the person of the injured informant: -

“(i) Swelling over wrist joint of left hand 2"x1". X-Ray. A.P. view/ Lateral view.

(ii) Swelling over back 2"x2".

(iii) Complain of pain whole body.

Opinion:- Injury No. 2 & 3 are simple in nature caused by hand and blunt substances. Injury No. 1 reserved for X-Ray.

Age of injury :- Within 6 hours.”

13. According to him, injury No.1 was grievous in nature based on the x-ray report, which depicted fracture of first metacarpal bone of the left hand. He deposed that the injury report was based on examination of x-ray plate.



14. The informant (PW 8) fully supported the prosecution's case, as was disclosed by her in her *fardbeyan*, and included the name of the appellant Bal Kishun Yadav (appellant No. 1 in Cr. Appeal (DB) No. 431 of 2015), who, according to her, was carrying a gandas. According to her, appellants Ram Gahan Yadav, Bal Kishun Yadav, Vakil Yadav, Hosila Yadav, Ramji Yadav and Shyam Narain Yadav were carrying gandas and appellants Murahy Yadav, Devendra Yadav @ Pintu Yadav and Satya Narain Yadav were carrying *ballam*, whereas other appellants, namely, Ram Lakhan Yadav, Kanhaiya Yadav, Vansh Narain Yadav, Sunnar Yadav and Ganesh Yadav were carrying *lathi*. She further supported the prosecution's case that other persons had rushed to the place of occurrence after hearing the noise including Anil Singh Yadav (PW 3), Baljeet Yadav (PW 2), Ram Dayal Yadav (PW 1), Ashok Kumar Yadav (PW 7), Guddu Yadav (PW 6) and Chandar Bhushan Yadav (PW 5). Eyewitnesses PWs 1, 5, and 7 fully supported the prosecution's case as regards the place and manner of occurrence.

15. Upon completion of examination of the prosecution's witnesses, in order to afford the accused persons opportunity to explain the circumstance appearing in the evidence against them, the trial court questioned them, in compliance with



the requirement under Section 313 of the Cr.P.C.. The appellants denied the said circumstances against them. No defence witness was produced at the trial.

16. The trial Court, upon appreciation, analysis and scrutiny of the evidence adduced at the trial has found these appellants guilty of the offences and has sentenced them to imprisonment and fine as noted above by its impugned judgment and order.

17. Mr. Vikramdeo Singh, learned counsel appearing on behalf of the appellants has submitted that it is evident from the *fardbeyan* itself that according to the informant there was dispute between the appellants and Ashok Singh Yadav (PW 7), which, according to her, was the reason behind the occurrence. He has submitted that for a dispute with said PW 7, Ashok Singh Yadav, there would have been no occasion for these appellants to have assaulted the deceased. He has accordingly submitted that the prosecution has miserably failed to establish the motive behind the occurrence. He has further submitted that the deposition of the informant (PW 8) is not fully reliable as, in the *fardbeyan*, she had asserted that Ram Gahan Yadav (appellant No. 1 in Cr. Appeal (DB) No. 422 of 2015) had instigated the others to kill the deceased, whereas this fact does not emerge from her deposition at



the trial. He has argued that there is no specific attribution of use of particular weapon to either of the appellants in order to establish a case under Section 302 of the IPC. According to him, the witnesses do not appear to be truthful, and their evidence is belied by the medical evidence. He has referred to the evidence of the prosecution's witnesses extensively in order to convince this Court that they are not consistent on the point of the nature of weapon, which the appellants were carrying and had used to assault the deceased. Referring to the evidence of PW 5, he has submitted that though according to said witness, he too was assaulted by the appellants on his wrist, but there is no medical report or proof of his treatment to corroborate his evidence. He has further submitted, questioning the correctness of the manner of the occurrence as disclosed in the *fardbeyan* that the informant was thrown away in a swamp at a distance of nearly 10 yards from the place of occurrence when she had gone to save her husband. He contends that the depositions of PW 3 and PW 4 contradict the evidence of other witnesses inasmuch as they have stated that the informant was dragged to the swamp. He has further argued that Guru Dayal Singh Yadav (PW 4) has not named Sunnar Yadav and Kanhaiya Yadav. Further, PW 5 has not named Kanhaiya Yadav as one of the assailants. He has further submitted that on careful



scrutiny of the evidence of the prosecution's witnesses, the place of occurrence itself has become doubtful. He has also submitted that according to PW 8, the informant, the deceased had gone to Hatta Bazar for purchasing articles for Puja for the *Pachaia* festival. In her cross examination (para 14), she deposed that she had not seen any article brought by the deceased. He further submits that on one hand the informant claimed that she was pushed/thrown away in the nearby swamp ditch, PW 1, in his deposition, has stated that there was no swamp in the field. He has also contended, referring to the deposition of the Investigating Officer in paragraph 11 that no mud on the clothes of the deceased was found. He has further submitted that on one hand the informant (PW 8) deposed that a ditch of swamp was shown to the Investigating Officer (PW 11), the PW 11, in his deposition, has stated that he had not seen any ditch of swamp. Further, no article was found near the dead body though according to the prosecution's case, the deceased had gone to purchase articles and was coming back with the articles. He would argue that the prosecution failed to prove the genesis of occurrence. He contends that according to the case of the prosecution, the land dispute was going on between PW 7 Ashok Singh Yadav and the appellants. The deceased was only a witness in the said case. Ashok Singh



Yadav was present at the place of occurrence. In such circumstance, there would have been no reason why, instead of killing Ashok Singh Yadav, they would have killed the deceased with whom there was no dispute. He has further argued that it is evident from the evidence of PW 3 that the accused persons and the informant's family have common lineage. In any view of the matter, the prosecution did not establish as to what was the immediate cause behind the occurrence as the civil cases pending between said Ashok Singh Yadav and the accused persons were of 2008.

18. He has lastly made his alternative submission that in any view of the matter, considering the nature of *antemortem* injuries said to have been sustained by the deceased, at the maximum a case may be said to be made out under Section 304 (Part-II) of the IPC and not under Section 302 of the IPC. In support of this contention, he has submitted that Dr. Kanhai Mahto (PW 9), in his deposition, has stated that injuries No. 1, 2 and 3 were caused on a vital part, i.e., skull of the deceased's body by a sharp cutting weapon, but the depth of the injuries have been found to be only scalp deep. Referring to the Modi Medical Jurisprudence 25th edition, he has submitted that scalp is the skin, covering the cranium and, therefore, had it been the intention of



the appellants to cause death of the deceased, they could have caused more severe injuries than what is said to have been caused by them. He has also submitted that all other injuries have been found to be on non-vital parts of the body, not specifically attributed to any appellant. Further, PW 9, the Doctor, who had held the *postmortem* examination did not depose that the injury was sufficient in the ordinary course of nature to cause death.

19. He has placed reliance on the Supreme Court's decision in the case of *Chuttan and Others v. State of M.P.* (1994 AIR SCW 1746 : 1994 Cr. L.J. 2097) in support of his submission that considering the nature of the *antemortem* injuries said to have been caused by the appellants, their conviction for the offence punishable under Section 302 of the IPC is not justified and that the trial court ought to have convicted the appellants for the offence punishable under Section 304 (Part-II) of the IPC, instead. He has also placed reliance on another Supreme Court's decision in the case of *State of Punjab vs. Tejinder Singh and Another*, reported in 1996(1) PLJR 15 with reference to paragraph 8 thereof, to bolster his contention.

20. He has also submitted that from the evidence of Investigating Officer (PW 11), it appears that after having learnt about the occurrence, he had proceeded to the place of occurrence,



but the nature of information, which was received by him has been withheld by the prosecution, which also creates a reasonable doubt on the veracity of the prosecution's case.

21. Ms. Shashi Bala Verma, learned Additional Public Prosecutor appearing for the State has argued that the prosecution's witnesses have been consistent in their depositions to the effect that the deceased was assaulted by all these appellants using different weapons. The place of occurrence has been proved by the Investigating Officer and other prosecution witnesses. She further submits that it emerges from the evidence of the Doctor, who had conducted the postmortem examination that the deceased was brutally assaulted, indiscriminately by deadly weapons leading to his death. She accordingly submits that the finding of conviction recorded by the trial court does not suffer from any infirmity requiring this Court's interference.

22. Mr. Bindhyachal Singh, learned Senior Counsel appearing on behalf of the informant rejoining the submissions advanced on behalf of the appellants has submitted that the prosecution's witnesses No. 1, 5, 7 and 8 have fully supported the time, date and the manner of the occurrence. He has argued that there is no significant variation in the evidence of the prosecution's witnesses as to the kind of the weapons which they were carrying.



He has further submitted that the prosecution's witnesses No. 1, 4, 5, 6, 7, 8 and 11 have consistently deposed that they had noticed rain water near the place of occurrence. The Investigating Officer (PW 11), in his deposition, clearly deposed that he had seen presence of rain water near the adjacent south field of one Kishwant Patel, but he had mistakenly failed to mention the said fact in the case diary. He has placed reliance on a recent decision of Supreme Court in the case of ***Bhagchandra v. State of Madhya Pradesh***, reported in [2022(2) BLJ (SC) 143] : 2021 SCC OnLine SC 1209, to submit that minor variations, if any, in the prosecution's evidence, insignificant in nature, cannot have any effect on the prosecution's case, there being overwhelming incriminating evidences adduced at the trial to establish guilt of these appellants. He has submitted that as the prosecution's narrative in the FIR is fully supported by ocular evidence adduced at the trial and the ocular evidence is corroborated by the medical evidence, no interference is warranted by this Court in the present set of appeals.

23. We have carefully perused the impugned judgment and order of the trial court as well as the evidence adduced at the trial, which are available with the lower court records. We have



given our thoughtful consideration to the rival submissions advanced on behalf of the parties.

24. It emerges from the evidence on record that the *fardbeyan* was recorded at 6.45 PM on 22.07.2012. The occurrence is of 4.30 PM of the same date, as disclosed in the FIR. The distance of the police station from the place of occurrence has been shown in the FIR as 10 Kms.. The postmortem examination was conducted at 11.20 AM on the next day, i.e., 23.07.2022 as is evident from the *postmortem* report (exhibit-2) wherein time elapsed since the death of the deceased has been recorded as between 12-24 hours. Eyewitnesses have, in their depositions, narrated the weapons used for assaulting the deceased. According to their deposition, sharp cutting weapon (*gandasa*), sharp cutting pointed weapon (*ballam*) and hard and blunt weapon (*lathi*) were used to assault the deceased by all the persons put to trial. The *postmortem* report corroborates the nature of assault made by the appellants, with the use of weapons as deposed by the prosecution's witnesses in their evidence at the trial. On closer scrutiny of the evidence adduced at the trial, we notice that the eyewitnesses PW 1, PW 5, PW 7 and PW 8 have consistently deposed that the appellants of Cr. Appeal (DB) No. 422 of 2015 and appellant No. 1 of Cr. Appeal (DB) No. 431 of 2015 were



carrying *gandasa*. The appellants of Cr. Appeal (DB) No. 443 of 2015 and appellants No. 2, 3 and 4 were carrying *lathis*, the appellants of Cr. Appeal (DB) No. 416 of 2015 and appellants of Cr. Appeal (DB) No. 431 of 2015 were carrying *ballams*. Further, the eyewitness to the occurrence are consistent in their deposition that all the appellants, after creating an unlawful assembly for the purpose of killing the deceased, had assaulted him. Further, PW 3, in his evidence, while supporting the prosecution's case as an eyewitness, has explained the motive behind killing of the deceased. He deposed that Arjun Yadav (the deceased) used to make pairvi in the title suit and was an intelligent and effective person and, therefore, he was killed. This aspect has been supported by PW 5 in his deposition.

25. Much emphasis has been laid on the subsequent inclusion of the name of the appellant Bal Kishun Yadav (Appellant No.1 in Cr. Appeal (DB) No. 431 of 2015) by the prosecution during the course of investigation, whose name did not figure in the *fardbeyan*, in order to make out a case that his implication is apparently an afterthought and is false. It has been argued that subsequent false implication of the said appellant casts a shadow of doubt on the entire case of the prosecution. The said submission does not convince this Court. We will, however,



address the question of conviction of the appellant Bal Kishun Yadav, later as his name was not originally mentioned in the FIR. Considering the consistent ocular evidence of the prosecution's witnesses, who have withstood the test of cross-examination, in our opinion, minor discrepancies in their evidence cannot affect the prosecution's case as the prosecution's witnesses do not appear to be untrustworthy. PW 8, the informant herself had sustained injuries. The fact that she had sustained injuries has been proved by the Doctor.

26. We must not, at this juncture, fail to notice the submission made on behalf of the appellants to the effect that the prosecution has failed to prove, as to the use of which weapon is attributable to which of the appellants and similarly causation of which injury is attributable to which of them and for the said reasons also the finding of guilt recorded by the trial court requires interference by this Court. The said submission is not acceptable to this Court since all the appellants have been convicted of the offence punishable under Section 302 read with Section 149 of the IPC.

27. Unlawful assembly has been defined under Section 141 of the IPC as an assembly of five or more persons, if the common object of the persons composing that assembly is to



commit, *inter alia*, an offence. It is trite that the common object has to be inferred from the facts and circumstances of each case. The common object is to be discerned from the membership of the assembly, the weapons used, the nature of injuries caused and other surrounding circumstances.

28. Section 149 of the IPC ordains that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person, who, at the time of committing of that offence, is a member of the same, is guilty of that offence.

29. In the present case, as has been discussed above, all the appellants had created an unlawful assembly within the meaning of Section 141 of the IPC to commit an assault on the deceased. Be it noted that an assembly, which might not be unlawful, when it assembled, may subsequently become an unlawful assembly. It has been consistent case of the prosecution that all the appellants had assaulted the deceased variously with deadly weapons. The deceased was brutally assaulted by the appellants with the use of various weapons. The submission advanced on behalf of the appellants, with reference to the nature of injuries that there was no intention to kill the deceased even if



the prosecution's case of assault is accepted, is untenable for the reason that it emerges from the evidence of the prosecution's witnesses that the deceased was given repeated blows in his skull. Injuries No. 2 and 3 in the skull and left parietal region have been found to have been caused by sharp cutting weapon. In the other parts of the body, *antemortem* injuries caused by the sharp pointed weapons have been found on the person of the deceased. The postmortem report, duly proved by the Doctor, goes to suggest that different weapons were used simultaneously to assault the deceased, which corroborates the case of the prosecution as unfolded in the *fardbeyan* and set out at the trial by way of evidence.

30. Section 300 of the IPC defines murder as under: -

"300. Murder.—*Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—*

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient



*in the ordinary course of nature to cause death,
or—*

4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

31. It is evident on a plain reading of Section 300 of the IPC that there are four circumstances when a culpable homicide amounts to murder, except in the cases excepted in the said provision. The four circumstances are : - (i) if the act by which the death is caused is done with the intention of causing death; (ii) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause death of the person; (iii) if it is done with an intention to cause any bodily injury to any person or the bodily injury intending to be inflicted is sufficient in the ordinary course of action to cause death; and (iv) if the person committing the act knows that it is so imminently dangerous that it must, in all probabilities, cause death or such bodily injury as is likely to cause death and cause such act without any excuse for incurring the risk of causing death or such injury as aforesaid.



32. In the present case, the appellants, according to the ocular evidence, had assaulted the deceased simultaneously with sharp cutting weapons, pointed weapons and *lathi* etc. The assaults were made on vital parts of the body of the deceased, i.e., his skull and parietal region with sharp cutting weapon. It is unlikely that they would not know that the said act was so imminently dangerous that that would cause death or such bodily injuries as in probability cause death. In our considered opinion, thus, the joint act of these appellants fall under Section 300 of the IPC punishable under Section 302 of the IPC and not under Section 304 (Part-II).

33. In the present case it is not an individual act of one of the appellants, which led to death of the deceased, rather it was committed by all of them with a common object. The Conviction of the appellants by the trial court for the offence punishable under Section 302 of the IPC is with the aid of Section 149 thereof. Section 149 of the IPC reads as under: -

“149. Every member of unlawful assembly guilty of offence committed in prosecution of common object: If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person



who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

34. Once the Court reaches the conclusion that the ingredients of Section 149 of the IPC are fulfilled, every person, who, at the time of committing the offence, was a member of assembly, has to be held guilty of the offence. The Supreme Court in the case of ***Joseph v. State***, reported in **(2018) 12 SCC 283**, has held that after such finding, it would not be open to the court to see as to who actually did the offensive act nor would it be open to the court to require the prosecution to prove which of the members of the assembly did which of the ingredients of Section 149 of the IPC. It is true that before recording the conviction under Section 149 of the IPC, essential ingredients of Section 141 of the IPC must be established.

35. In the case of ***Rajendra Shantaram Todankar v. State of Maharashtra***, reported in **(2003) 2 SCC 257**, the Supreme Court has dealt with two parts underlying Section 149 of the IPC for invoking the vicarious liability under the said section and has held in paragraph 14 as under: -

“14. Section 149 of the Penal Code, 1860 provides that if an offence is committed by any member of an unlawful assembly in



prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of the committing of that offence, is a member of the same assembly is guilty of that offence. The two clauses of Section 149 vary in degree of certainty. The first clause contemplates the commission of an offence by any member of an unlawful assembly which can be held to have been committed in prosecution of the common object of the assembly. The second clause embraces within its fold the commission of an act which may not necessarily be the common object of the assembly, nevertheless, the members of the assembly had knowledge of likelihood of the commission of that offence in prosecution of the common object. The common object may be commission of one offence while there may be likelihood of the commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. In either case, every member of the assembly would be vicariously liable for the offence actually committed by any other member of the assembly. 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 the unlawful assembly. It is difficult indeed, though not



impossible, to collect direct evidence of such knowledge. An inference may be drawn from circumstances such as the 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 the behaviour of the members soon before, at or after the actual commission of the crime. Unless the applicability of Section 149 — either clause — is attracted and the court is convinced, on facts and in law, both, of liability capable of being fastened vicariously by reference to either clause of Section 149 IPC, merely because a criminal act was committed by a member of the assembly every other member thereof would not necessarily become liable for such criminal act. The inference as to likelihood of the commission of the given criminal act must be capable of being held to be within the knowledge of another member of the assembly who is sought to be held vicariously liable for the said criminal act. These principles are settled. Applying these tests to the facts found proved beyond reasonable doubt, Accused 1 to 5 can be held liable for the offence under Sections 302/149 IPC for the assault resulting in the death of Gopikrishna while Accused 6 and 7 can be held liable for their individual acts of assault committed on Sanjay Patil.”



36. It would be useful to take note of yet another Supreme Court's decision in the case of ***Allauddin Mian v. State of Bihar***, reported in (1989) 3 SCC 5, wherein the Supreme Court has laid down the essential requirement in order to fasten vicarious responsibility on any member of an unlawful assembly and has held that the prosecution must prove that the act constituting an offence was done in prosecution of the common object of that assembly or the act done is such as the members of that assembly knew to be likely to be committed in prosecution of the common object of that assembly. Every member of an assembly renders himself liable for the criminal act or acts of any other member or members of that assembly provided the same is/are done in prosecution of the common object or is/are such as every member of that assembly knew to be likely to be committed. Relevant portion of paragraph 8 of the decision in case of ***Allauddin Mian*** (supra) is being reproduced hereinbelow: -

“8.Therefore, in order to fasten vicarious responsibility on any member of an unlawful assembly the prosecution must prove that the act constituting an offence was done in prosecution of the common object of that assembly or the act done is such as the members of that assembly knew to be likely to be committed in prosecution of the common object of that



assembly. Under this section, therefore, every member of an unlawful assembly renders himself liable for the criminal act or acts of any other member or members of that assembly provided the same is/are done in prosecution of the common object or is/are such as every member of that assembly knew to be likely to be committed. This section creates a specific offence and makes every member of the unlawful assembly liable for the offence or offences committed in the course of the occurrence provided the same was/were committed in prosecution of the common object or was/were such as the members of that assembly knew to be likely to be committed. Since this section imposes a constructive penal liability, it must be strictly construed as it seeks to punish members of an unlawful assembly for the offence or offences committed by their associate or associates in carrying out the common object of the assembly. What is important in each case is to find out if the offence was committed to accomplish the common object of the assembly or was one which the members knew to be likely to be committed. There must be a nexus between the common object and the offence committed and if it is found that the same was committed to accomplish the common object every member of the assembly will become liable for the same. Therefore, any offence committed by a member of an unlawful assembly in prosecution of any one



or more of the five objects mentioned in Section 141 will render his companions constituting the unlawful assembly liable for that offence with the aid of Section 149, IPC.”

xxx xxx xxx

It is not the intention of the legislature in enacting Section 149 to render every member of an unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to invoke Section 149 it must be shown that the incriminating act was done to accomplish the common object of the unlawful assembly. Even if an act incidental to the common object is committed to accomplish the common object of the unlawful assembly it must be within the knowledge of other members as one likely to be committed in prosecution of the common object. If the members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of the common object they would be liable for the same under Section 149, IPC.” In the instant case, however, the members constituting the unlawful assembly had gone to the house of PW 6 to kill him. That was the common object of the unlawful assembly. For accomplishing that common object it was not necessary to kill the two girls who were not an hindrance to accused 1 and 2 accomplishing their common object. We are, therefore, of the opinion that accused 3 to 6



cannot be convicted for the injuries caused to the two minor girls by accused 1 and 2 with the aid of Section 149, IPC. We, therefore, set aside the conviction under Section 326/149, IPC, and also the sentence imposed on accused 3 to 6 on that count. We, however, hold accused 3 and 4 guilty under Sections 447 and 148, IPC, and confirm the sentences awarded to them on those counts. So also we hold accused 5 and 6 guilty under Section 447 and 147, IPC and confirm their sentences for the said offences.”

37. It is also settled position of law that whether the members of the unlawful assembly really had a common object to cause the murder of the deceased has to be decided in the facts and circumstances of each case, nature of weapons used by such members, the manner and sequence of attack made by those members on the deceased and the circumstances under which the occurrence took place. It is an inference to be deduced from the facts and circumstances of each case [see: ***Lalji v. State of U.P.***, reported in (1989) 1 SCC 437; ***Sk. Ishaque v. State of Bihar***, reported in (1995) 3 SCC 392 and ***Joseph*** (supra)].

38. In the background of the discussions hereinabove with reference to Section 141 read with 149 of the IPC, we are required to examine the legality of the finding of conviction recorded by the trial court in its impugned judgment. From the



evidence of the prosecution's witnesses, we notice that all these appellants were armed with weapons and all of them were assaulting the deceased, who died at the place of occurrence. In such view of the matter, in our considered opinion, Section 149 of the IPC has been rightly invoked by the learned trial court for holding them guilty of the offence punishable under Section 302 thereof. Their common intention can be inferred from their common act, which, in the Court's opinion, stood proved by the injured eye witness (PW 8), i.e., the informant, supported by other eyewitnesses. Learned trial court has rightly rejected the case of the defence that though there was accusation against 14 persons of having assaulted the deceased only eight injuries were found and, therefore, the prosecution's case was not trustworthy. The trial court has rightly held all the members of the unlawful assembly to be guilty of the offence punishable under Section 302 of the IPC even if few of them had not, in fact, given any blow. Accordingly, in our opinion, conviction of the appellants for commission of the offence punishable under Section 302/149 of the IPC does not require any interference by this Court.

39. Further, the appellants appellants Ram Gahan Yadav (appellant No. 1 in Cr. Appeal (D.B.) No. 422 of 2015), Murahu Yadav (appellant No. 5 in Cr. Appeal (D.B.) No. 431 of 2015),



Ramji Yadav (appellant No. 5 in Cr. Appeal (D.B.) No. 422 of 2015) and Devendra Yadav @ Pintu Yadav (appellant No. 2 in Cr. Appeal (D.B.) No. 416 of 2015) have been convicted of the offences punishable under Section 148 of the IPC. Section 148 of the IPC reads as under: -

"148. Rioting, armed with deadly weapon.—Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

40. Rioting has been defined under Section 146 of the IPC as under: -

146. Rioting.—Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting."

41. Considering the finding that these appellants were armed with deadly weapons and being member of an unlawful assembly used force/violence, in our considered view, their conviction under Section 148 of the IPC by the trial court is also justified.



42. In view of the above mentioned discussions, we are of the view that the impugned judgment of conviction dated 21.04.2015 and a consequent order of sentence dated 28.04.2015 passed by the learned Additional Sessions Judge-II, Kaimur, Bhabhua, in Sessions Trial No. 473 of 2012 (CIS No. 2603 of 2014), arising out of Chand P.S. Case No. 48 of 2012, does not require any interference, except in case of the appellant, Bal Kishun Yadav of Criminal Appeal (DB) No. 431 of 2015.

43. Now, coming to the finding of conviction as regards the appellant Bal Kishun Yadav of Cr. Appeal (DB) No. 431 of 2015 is concerned, we cannot lose sight of the fact that the FIR in the present case contains detail description of the manner of occurrence and participation of the persons named in the FIR in commission of the offence. Absence of this appellant's name in the FIR and his subsequent implication after substantial delay can be said to be upon deliberation amongst the prosecution witnesses. In our considered opinion, in the facts and circumstances of the case, benefit of doubt can be given to the appellant No. 1 Bal Kishun Yadav of Cr. Appeal (DB) No. 431 of 2015.

44. Accordingly, the appellant No. 1 Bal Kishun Yadav of Cr. Appeal (DB) No. 431 of 2015 stands acquitted of the



charges. He is on bail. He is discharged from the liability of the bail bonds and the sureties, if any.

45. The appellants of Cr. Appeal (D.B.) No. 422 of 2015 and rest of the Cr. Appeal (D.B.) No. 431 of 2015 are on bail. Their bail bonds stand cancelled. They are directed to surrender before the court below for them to be sent to jail for serving the remaining sentence.

(Chakradhari Sharan Singh, J)

Khatim Reza, J: I agree.

(Khatim Reza, J)

Pawan/-

AFR/NAFR	NAFR
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