

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.168 of 2020

Arising Out of PS. Case No.-34 Year-2018 Thana- AMDABAD District- Katihar

Mohammed Ajmal, Son of Mohammad Ainuddin, Resident of Village - Balua,
Gopalpur Sij Tola, P.S.- Amdabad, District - Katihar, Bihar

... .. Appellant

Versus

1. The State of Bihar
2. Md. Hakim Son of Late Abdul Rauf Resident of Village - Balua, P.S.-
Amdabad, District - Katihar, Bihar
3. Md. Ishaque Son of Late Abdul Rauf Resident of Village - Balua, P.S.-
Amdabad, District - Katihar, Bihar
4. Md. Manir Son of Late Abdul Rauf Resident of Village - Balua, P.S.-
Amdabad, District - Katihar, Bihar
5. Md. Najrul @ Bhola Son of Late Abdul Rauf Resident of Village - Balua,
P.S.- Amdabad, District - Katihar, Bihar
6. Md. Sagir Son of Md. Rafiq Resident of Village - Balua, P.S.- Amdabad,
District - Katihar, Bihar

... .. Respondents

with

CRIMINAL APPEAL (SJ) No. 449 of 2020

Arising Out of PS. Case No.-34 Year-2018 Thana- AMDABAD District- Katihar

MD. ISHHAQUE @ ISHHAQUE ALI Son of Abdul Rauf Resident of
Village- Balwa, P.S.- Amdabad, District- Katihar.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (SJ) No. 469 of 2020

Arising Out of PS. Case No.-34 Year-2018 Thana- AMDABAD District- Katihar

HAKIM @ MD. HAKIM S/o Late Abdul Rauf Resident of Village- Balua,
P.S.- Amdabad, Distt- Katihar.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with



CRIMINAL APPEAL (SJ) No. 473 of 2020

Arising Out of PS. Case No.-34 Year-2018 Thana- AMDABAD District- Katihar

MD. MANIR S/o Md. Rashid Resident of Village- Balua, P.S.- Amdabad,
Distt- Katihar

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (SJ) No. 611 of 2020

Arising Out of PS. Case No.-34 Year-2018 Thana- AMDABAD District- Katihar

NAJRUL HAQUE @ MD. NAJRUL @ BHOLA Son of Late Abdul Rauf
Resident of Village - Balua, P.S.- Amdabad, District - Katihar.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (SJ) No. 629 of 2020

Arising Out of PS. Case No.-34 Year-2018 Thana- AMDABAD District- Katihar

MD. SAGIR Son of Md. Rafique Resident of Village - Balua, P.S.- Amdabad,
District - Katihar.

... .. Appellant

Versus

THE STATE OF BIHAR

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 168 of 2020)

For the Appellant/s : Mr. Surendra Kumar Singh, Advocate
Ms. Tulika Singh, Advocate

For the Respondent/s : Mr. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (SJ) No. 449 of 2020)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

For the Informant : Mr. Surendra Kumar Singh, Advocate
Ms. Tulika Singh, Advocate

(In CRIMINAL APPEAL (SJ) No. 469 of 2020)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

For the Informant : Mr. Surendra Kumar Singh, Advocate
Ms. Tulika Singh, Advocate

(In CRIMINAL APPEAL (SJ) No. 473 of 2020)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

For the Informant : Mr. Surendra Kumar Singh, Advocate
Ms. Tulika Singh, Advocate



(In CRIMINAL APPEAL (SJ) No. 611 of 2020)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
For the Respondent/s : Mr. Bipin Kumar, APP
For the Informant : Mr. Surendra Kumar Singh, Advocate
Ms. Tulika Singh, Advocate

(In CRIMINAL APPEAL (SJ) No. 629 of 2020)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
For the Respondent/s : Mr. Bipin Kumar, APP
For the Informant : Mr. Surendra Kumar Singh, Advocate
Ms. Tulika Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 21-03-2025

These appeals have been filed against the judgment dated 03.12.2019 and order dated 11.12.2019 passed in Sessions Trial No. 247 of 2018, arising out of Amdabad P.S. Case No. 34 of 2018 (hereinafter referred to as the 'impugned judgment/order') by learned District & Sessions Judge, Katihar (hereinafter referred to as the 'learned trial court').

2. By the impugned judgment, the learned trial court held respondent nos. 2 to 6 (Cr. Appeal (DB) No. 168 of 2020) not guilty for the offence under Sections 504, 302/149 of the Indian Penal Code (in short 'IPC') and acquitted them accordingly but found them guilty and convicted them for the offences under Sections 147, 149, 341, 325, 304 Part II of the IPC, further respondent no.5 has been found guilty and separately convicted for the offence under Section 148, 326 and 307 IPC. The respondent



no. 2 to 6 have been sentenced to undergo three years rigorous imprisonment for the offence under Section 147 IPC, one month simple imprisonment for the offence under Section 341 IPC, three years rigorous imprisonment and fine of Rs. 3,000/- for the offence under Section 325 IPC and ten years rigorous imprisonment and fine of Rs. 10,000/- each for the offence under Section 304 Part II/149 IPC. In default of payment of fine they have been ordered to undergo one year simple imprisonment. Respondent no. 5 has been further sentenced to undergo three years rigorous imprisonment for the offence under Section 148 IPC and five years rigorous imprisonment and fine of Rs. 5,000/- for the offence under Section 307 IPC. In default of payment of fine he has been ordered to undergo six months simple imprisonment. Since the respondent no.5 was sentenced under Section 307 IPC, learned trial court did not deem it necessary to sentence him under Section 326 IPC. It was ordered that all the sentences shall run concurrently.

3. The appellant in Cr. Appeal (DB) No. 168 of 2020 is aggrieved by the impugned judgment whereby the respondent nos. 2 to 6 have been acquitted for the offences under Section 504, 302/149 IPC and convicting the respondent nos. 2, 3, 4 and 6 guilty for lesser offence under Sections 147, 341, 325 and 304 part II IPC and the respondent no.5 guilty only under Sections 147,



341, 325, 304 Part II, 148, 326 and 307 IPC. This appellant is also aggrieved by the impugned order awarding the nominal/lesser punishment/sentence to respondent nos. 2 to 6.

4. *Vide* order dated 06.09.2024, Cr. Appeal (DB) No. 168 of 2020 was ordered to be tagged with Cr. Appeal (SJ) No. 629 of 2020, Cr. Appeal (SJ) No. 611 of 2020, Cr. Appeal (SJ) No.449 of 2020, Cr. Appeal (SJ) No.473 of 2020 and Cr. Appeal (SJ) No.469 of 2020 preferred by the respondent nos. 2 to 6 against the impugned judgment of conviction and sentence.

Prosecution case

5. The informant, namely, Md. Ajmal in his *fardbeyan* recorded on 03.03.2018 at about 07:30 PM at PHC, Amdabad, District- Katihar alleged that on the same day at about 03:30 Hours, after offering *namaz*, he along with his uncle Mamiruddin had come to the Amdabad market for buying vegetables. After buying vegetables, both of them were returning home at about 06:00 PM in the evening and when they reached near the field west to Karwala More, (1) Md. Ishaq, (2) Md. Raseed, (3) Md. Hakim, (4) Md. Nazrul, (5) Md. Mazir, (6) Alauddin, (7) Sageer, (8) Md. Rafiq, who were already present there, surrounded the informant and his uncle, then Md. Raseed instigated others to kill them. On his instigation, Md. Nazrul @ Bhola assaulted the



informant on his head by a sword due to which he became seriously injured. In the meantime, Md. Ishaq also started assaulting the informant on his left leg by rod due to which his leg got fractured and blood started oozing out. Md. Mazir and Md. Hakim also started assaulting the informant's uncle by their swords due to which also he became seriously injured. Md. Sageer, Md. Rafiq and Alauddin all started recklessly assaulting the informant's uncle on his leg due to which his both legs were fractured and started bleeding. All the accused persons fled away leaving both the injured persons in near-dead condition. The informant alleged that they had prior enmity also. The reason of the alleged incident is the earlier ongoing land dispute between the parties.

6. On the basis of this written application, a First Information Report being Amdabad P.S. Case No. 34 of 2018 dated 03.03.2018 has been registered under Sections 341, 323, 324, 325, 307, 504/34 IPC against accused persons, namely, (1) Md. Ishaque, (2) Md. Rashid, (3) Mr. Hakim (4) Md. Nazrul, (5) Md. Manir, (6) Allauddin, (7) Md. Sagir and (8) Md. Rafique. After completion of investigation, police submitted charge-sheet bearing number 92/2018 dated 08.06.2018 under Sections 147, 148, 149, 341, 325, 326, 307, 302/504 IPC against (1) Md. Manir,



(2) Md. Ishaque, (3) Md. Hakim, (4) Md. Nazrul @ Bhola and (5) Sagir keeping the investigation pending against other accused persons. Upon submission of charge-sheet, the learned Magistrate took cognizance *vide* order dated 20.06.2018 of the offences under Sections 147, 148, 149, 341, 325, 326, 307, 302 and 504 IPC and the case was committed to the court of Sessions on 27.06.2018 where Sessions Trial No. 247 of 2018 was registered on 10.07.2018. Vide order dated 05.11.2018 charges were framed under Section 307, 302, 325, 326, 504, 149 and 147 IPC and explained to them to which they denied.

7. During trial, the prosecution produced as many as eleven witnesses and proved some documentary evidences. The full description of the witnesses and the documents proved on behalf of the prosecution are being provided hereunder for a ready reference:-

List of Prosecution Witnesses

PW-1	Md. Ajmal
PW-2	Rafique
PW-3	Md. Jiyaul Haque
PW-4	Arsad Ali
PW-5	Akmal Hussain
PW-6	Jinnat Ali
PW-7	Dr. S.M. Thakur
PW-8	Dr. Ramrekha Suman
PW-9	Dr. Dayanand Ray
PW-10	Dr. Mahtabuddin
PW-11	ASI Harishankar Singh



List of Prosecution Exhibits

Ext.-01	Signature of the PW-1 Md. Ajmal in Fardbayan.
Ext.-2	Sign of Dr. S.M. Thakur on postmortem report
Ext.-3	Postmortem report
Ext.-2/1	Sign of Dr. Dayanand Ray on postmortem report
Ext.-4	Injury report of Ajmal Hussain
Ext.-5	Injury report of Manirul Haque
Ext.-6	Fardbeyan
Ext.-7	Registration of FIR on fardbeyan
Ext.-8	Formal FIR
Ext.-9	Arrest memo of Md. Manir
Ext.-10	Photocopy of Inquest Report
Ext.-11	Application for adding Section 302 of IPC
Ext.-12	Certified copy of FIR of Amdabad P.S. Case No. 88 of 2017
Ext.12/1	Certified copy of Charge Sheet of Amdabad P.S. Case No. 88 of 2017
Ext.12/2	Certified copy of Order sheet of Amdabad P.S. Case No. 88 of 2017
Ext. 13	Certified copy of FIR of Amdabad P.S. Case No. 76 of 2015
Ext. 13/1	Certified copy of charge sheet of Amdabad P.S. Case No. 76 of 2015
Ext.14	Certified copy of FIR of Amdabad P.S. Case No. 35 of 2015
Ext.14/1	Certified copy of charge sheet of Amdabad P.S. Case No. 35 of 2015
Ext. 14/2	Certified copy of cognizance order of Amdabad P.S. Case No. 35 of 2015
Ext. 15	Certified copy of FIR of Amdabad



	P.S. Case No. 54 of 2011
Ext. 15/1	Certified copy of charge sheet of Amdabad P.S. Case No. 54 of 2011
Ext. 16	Certified copy of FIR of Amdabad P.S. Case No. 61 of 2005
Ext. 16/1	Certified copy of Charge sheet of Amdabad P.S. Case No. 61 of 2005
Ext.17	Certified copy of FIR of Amdabad P.S. Case No. 42 of 2004
Ext. 17/1	Certified copy of Charge sheet of Amdabad P.S. Case No. 42 of 2004
Ext. 17/2	Certified copy of cognizance order of Amdabad P.S. Case No. 42 of 2004
Ext. 18	Certified copy of Informatory Petition No. 480 of 2018

List of Exhibits on behalf of Defence

Ext.-A	Certified copy of FIR of Amdabad P.S. Case No. 35 of 2018
Ext.-A/1	Certified copy of Charge Sheet No. 263/2018 of Amdabad P.S. Case No. 35 of 2018
Ext.-B	Certified copy of FIR of Amdabad P.S. Case No. 86 of 2017
Ext.-B/1	Certified copy of Charge Sheet of Amdabad P.S. Case No. 86 of 2017
Ext.-B/2	Certified copy of cognizance order of Amdabad P.S. Case No. 86 of 2017
Ext.-C	Certified copy of FIR of Amdabad P.S. Case No. 195 of 2017
Ext.-C/1	Certified copy of charge sheet of Amdabad P.S. Case No. 195 of



	2017
Ext.-C/2	Certified copy of cognizance order of Amdabad P.S. Case No. 195 of 2017
Ext.-D	Certified copy of FIR of Amdabad P.S. Case No. 145 of 2018
Ext.-D/1	Certified copy of charge sheet of Amdabad P.S. Case No. 145 of 2018
Ext.-D/2	Certified copy of cognizance order of Amdabad P.S. Case No. 145 of 2018
Ext.-E	Certified copy of judgment dated 26.11.2008 passed in G.R. No. 990 of 2004
Ext.-F	Certified copy of judgment dated 23.04.2008 passed in G.R. No. 544 of 2005
Ext.-G	C.C. of Sale Deed No. 1024 dated 24.01.1988
Ext.-H	C.C. of Sale Deed No. 12393 dated 17.07.2014
Ext.-I	C.C. of Sale Deed No. 2603 dated 20.02.2018
Ext.-J	C.C. of Sale Deed No. 16386 dated 01.10.2018

Findings of the Learned Trial Court

8. Learned trial court found from the record that PWs-2, 3, 4 and 5 are the related and interested witnesses so there evidences are required to be considered with more care and circumspection. PWs-2, 3, 4, 5 and 6 have deposed as eyewitness to the occurrence. Learned trial court did not find any discrepancy in the evidences of PWs-2, 3, 4, 5 and 6 on the point of causing grievous injury by means of sword on the head of Md. Ajmal by



accused Nazrul and further causing grievous injury by means of rod to Maniruddin and Md. Ajmal by other accused persons as evidences of these witnesses get corroborated from the evidence of the informant Md. Ajmal (PW-1). Learned trial court found that PW-6 is an independent witness and evidence of this witness also found corroboration from the medical evidence of PW-8 and PW-10.

9. The learned trial court took the evidence of PW-1, PW-4, PW-6 and PW-11 (the I.O.) for establishing the place of occurrence and found that there is consistency in the evidence of these witnesses and came to the conclusion that place of occurrence has been proved from the evidence of these witnesses.

10. The learned trial court, after perusal of the records found that land dispute is an admitted fact between the parties but it is a natural and double-edged weapon which can be a motive for the crime as also the ground for false implication of the accused persons. Presence of PW-6 at the place of occurrence was found natural being the resident of the place of occurrence and his evidence corroborates the evidence of PWs-2, 3, 4 and 5. Learned trial court found that no evidence has been produced by the defence regarding the suggestion given to the prosecution witnesses in respect of injury received by Md. Ajmal and



Maniruddin (since deceased) in a motorcycle accident and that injury proved fatal to Maniruddin. The learned trial court found the prosecution witnesses to be the eyewitnesses and did not find any material to raise doubt over their evidences and in this regard, the argument advanced by the defence that the accused persons have been falsely implicated in this case due to enmity has been held baseless.

11. On perusal of the records, learned trial court found from the evidence of informant (PW-1) that accused Ishaque assaulted on his right leg with a rod, whereas the medical witness (PW-10) deposed that informant received injury on his left leg. Learned trial court did not take it as a discrepancy citing the interest of justice because the eyewitnesses have deposed in their evidence that informant was assaulted by the accused persons on his leg by rod. Learned trial court found from the evidence of medical witness (PW-8) that in the postmortem report of Maniruddin, the death was found due to some embolism as a result of multiple major bone fracture by physical assault and the same found corroboration from the evidence of PW-1 to PW-6.

12. Learned trial court after analysing the evidence available on the record came to the conclusion that the allegation of assault by the accused persons by means of sword and rod in



furtherance of common object after surrounding Md. Ajmal and his uncle Maniruddin due to enmity in the background of land dispute, injuring them badly as a result of which Maniruddin died has been proved by the prosecution by the evidence of PW-1 to PW-6 duly supported by the medical witnesses (PW-8 and PW-10).

13. So far as the accusation for the offence under Section 302 IPC is concerned, the learned trial court found that Maniruddin died during treatment due to grievous injuries received on his both legs in the occurrence after nineteen days in the hospital which shows that the accused persons had no intention to cause death of Maniruddin and the prosecution has failed to prove the charge under Section 302 IPC against the accused but they have proved the charge under Section 304 Part-II IPC and accordingly, the learned trial court held the respondent nos. 2 to 6 in Cr. Appeal (DB) No. 168 of 2020 not guilty for the offence under Sections 504, 302/149 IPC and further held them guilty for the offence under Sections 147, 149, 341, 325 and 304 Part-II IPC and further respondent no.5 has been separately convicted for the offence under Section 148, 326 and 307 IPC.

Cr. Appeal (DB) No. 168 of 2020

14. This appeal has been preferred by the informant being aggrieved by the judgment of the learned trial court holding



that the charges under Sections 504, 302/149 IPC were not proved by the prosecution beyond all reasonable doubts. According to the appellant, the learned trial court has wrongly held the respondent nos. 2, 3, 4 and 6 guilty for lesser offences under Sections 147, 341, 325 and 304 Part-II of the IPC and also held the respondent no. 5 guilty only under Sections 147, 341, 325, 304 Part-II, 148, 326 and 307 of the IPC and awarded nominal/lesser/punishment sentence.

15. Learned counsel for the appellant submits that Md. Ajmal (PW-1) has specifically stated that all the accused persons had assaulted the informant as well as his uncle with sword and iron rod, whereafter his uncle succumbed to his injuries during treatment. He also identified the accused persons in the court.

16. Rafique (PW-2) has deposed before the court that when he heard loud noises, he went to the place of occurrence. He had found Rafique, Rashid, Saqeem, Hakeem, Ishaque, Nazrul, Manir, Sagir and Alauddin indulged in assaulting the informant and his uncle with sword and iron rod. He has also stated that there were injuries on the head and legs of the informant and that the accused Nazrul had hit on the head of the informant with sword due to which he got severe injuries and was admitted in the hospital where the uncle of the informant died.



17. Md. Jiaul Haque (PW-3) had also gone to the place of occurrence in between 5:30-6:00 PM. He has claimed to have seen the accused persons assaulting the informant as well as his uncle with sword and iron rod.

18. Arshad Ali (PW-4) has supported the prosecution case. He had seen all the accused persons assaulting the informant and his uncle.

19. Jinnat Ali (PW-6) has stated in his deposition that when he was going from the Karbala More then he saw that all the accused persons came out and then started assaulting the informant and his uncle with iron rod and sword. He has stated that the accused Nazrul hit on informant's head with sword and then accused Sageer hit informant on his leg and all the accused assaulted his uncle Maniruddin due to which they got severe injuries.

20. Dr. Ramrekha Suman (PW-8) had conducted the postmortem on the dead body of the victim Maniruddin. PW-8 has stated that he was posted at Sadar Hospital and had examined Maniruddin. He had found the injuries on the left tibia and fibula. There was a nailing of left leg with stitched wound of fracture and P.O.P. plaster was applied on right leg. On opening of plaster, stitched wound with fracture of right tibia and fibula bone was



found, a cannula over right forearm and chest leads over chest wall were present.

21. Dr. S. M. Thakur (PW-7) and Dr. Dayanand Ray (PW-9) were the Medical Officers at Sadar Hospital on 22.03.2018 and they have stated that under their supervision, Dr. Ramrekha Suman (PW-8) had conducted the postmortem of the deceased victim Maniruddin at 9:00 PM on which both of them had signed. The signatures of PW-7 and PW-9 have been marked as Exhibit '2' and Exhibit '2/1' respectively.

22. Hari Sankar Singh (PW-11) is the main Investigating Officer of the case who has stated that on 03.03.2018, he was present in Amdabad Police Station as Sub-Inspector. He has identified the *fardbeyan* of the informant which has been marked Exhibit '6'. The pagination done on the *fardbeyan* is Exhibit '7' and formal FIR along with signature has been marked as Exhibit '8'. On 03.03.2018, he took charge of the investigation of the case and he issued requisition for the treatment of informant and Maniruddin. He inspected the place of occurrence on 04.03.2018 and recorded the statement of the witnesses Md. Rafique, Md. Arshad and Md. Jinnat and according to their testimony, the place of occurrence of the offence is west side of Karbala More in the *baigan* field/plot of Rajkumar. PW-11 had arrested accused Md.



Manir and recorded his defence statement. On 16.03.2018, he received the injury report of the informant and has further stated that on 21.03.2018, Maniruddin died during treatment in the hospital and as such on 23.03.2018, he gave an application before the Magistrate to add Section 302 IPC in the FIR which has been marked Exhibit '11'.

23. Dr. Mahtabuddin (PW-10) was the Medical Officer posted at Primary Health Centre who had examined the injury of the informant on 03.03.2018. He had found three injuries on the body of the informant which were grievous in nature caused by sharp and blunt weapon. He had conducted the examination of Manirul Haque and had found (i) Compound fracture of right tibia and fabula and (ii) Compound fracture of left tibia and fabula. There was an abrasion on the left shoulder. The injury reports of the informant and Manirul Haque have been identified by this witness which have been marked as Exhibit '4' and Exhibit '5' respectively.

24. Learned counsel for the informant-appellant has submitted that from the evidences on the record it has been clearly proved that the accused persons were involved in the commission of the offence. The witnesses have supported the prosecution case and withstood the test of cross-examination. It is submitted that the



prosecution has been able to prove its case beyond all reasonable doubt.

25. Learned counsel submits that the learned trial court could not appreciate that respondent nos. 2 to 6 are the desperate criminals of the locality and they are involved in number of criminal cases. It is stated that Md. Hakim, Md. Ishaque and Nazrul @ Bhola are accused in seven cases, details of which have been given in the report dated 06.03.2018 submitted by ASI of Amdabad Police Station. It is, however, not denied that this report was not exhibited in course of trial and no separate charge was framed on this ground and accused had no opportunity to explain it during their 313 CrPC statement. It is his submission that the respondent nos. 2 to 6 are guilty of offences under Section 302 of the IPC.

Submissions on behalf of Respondent Nos. 2 to 6

26. The respondent nos. 2 to 6 in Criminal Appeal (DB) No. 168 of 2020 are the appellants in Criminal Appeal (DB) No. 449 of 2020, Criminal Appeal (DB) No. 469 of 2020, Criminal Appeal (DB) No. 473 of 2020, Criminal Appeal (DB) No. 611 of 2020 and Criminal Appeal (DB) No. 629 of 2020.

27. Mr. Ajay Kumar Thakur, learned counsel for the appellants, assisted by Mr. Bipin Kumar, learned Advocate and Mr.



Ritwik Thakur, learned Advocate, has led the arguments on behalf of the appellants. Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State has opposed these appeals on behalf of the State. Mr. Surendra Kumar Singh, learned Advocate representing the appellant in Criminal Appeal (DB) No. 168 of 2020 has appeared for the informant in these appeals in opposition.

28. Learned counsel for the convicts-appellants have assailed the impugned judgment of conviction and order of sentence. It is submitted that the learned trial court could not take notice of the material contradictions in the prosecution evidence. It is submitted that in his evidence, the informant (PW-1) has stated that the occurrence has taken place due to land dispute. According to him, he and his uncle Md. Maniruddin (deceased) were returning from Amdabad Market. When they reached in the field downwards to Karbala More then the accused persons surrounded them. They had concealed themselves and were sitting in a planned manner. Rashid ordered to kill him and his uncle, whereafter all the accused persons started assaulting both of them. It is pointed out that according to this witness, Ishaque had assaulted him on his right leg and he started bleeding but from the injury report (Exhibit '4') of this witness, it would appear that the doctor had not found any injury on the right leg of this witness. It



is pointed out that the doctor had found (i) cut injury on the vault of the skull 6 cm x 1 cm x bone deep, (ii) Compound left tibia and fibula fracture and (iii) swelling on left forearm. It is pointed out from paragraph '3' of his deposition that with respect to the said occurrence, Tara Khatoon, wife of Nazrul, had lodged a case and this witness has stated that in said case, his father and uncle are the accused. It is further pointed out that prior to this occurrence, Md. Hakim had lodged a case against the brother of this witness and others which is Amdabad P.S. Case No.195 of 2017. This witness has further admitted that prior to this occurrence, Bibi Angura had lodged a case against his father and other persons giving rise to Amdabad P.S. Case No.86 of 2017. PW-1 has admitted that there are about 10 cases between the parties.

29. It is pointed out that the informant (PW-1) has given the description of the place of occurrence and according to him, there is a *baigan* field in the north of the place of occurrence, a wheat field in the west and maize field in the east but he did not know the name of the owner of the field. According to him, the place of occurrence is '*aar*' (ridge) of the field, which is 1-2 feet in width. The occurrence had taken place in the *baigan* field and in the middle of the '*aar*' (ridge) blood had fallen in huge quantity. According to him, police had seized the blood stained soil but that



was not sealed. The seized blood soaked soil was not produced in court. He has stated that in his village there are 800-900 houses of Muslims but all are not his relatives. Md. Rafique who is witness in this case is his *fufera bhai*, Arshad is his *fufa*, witness Jinnat is his *fufera bhai*, Md. Akmal is his own brother and Md. Jiaul is his cousin brother. Learned counsel for the appellants has submitted that it is evident from the deposition of PW-1 that with respect to the same occurrence, Tara Khatun, wife of Nazrul had lodged a case. The FIR of the said case has been brought on record by the defence which has been marked Exhibit 'A'. The certified copy of the charge sheet of the Amdabad P.S. Case No. 35 of 2018 has also been proved as Exhibit 'A/1' on behalf of the defence. It is submitted that the parties are highly inimical, they are from a common ancestor and they have been fighting on account of land dispute. All the prosecution witnesses are closely related to the informant, therefore, their evidences were required to be examined with more circumspection and care.

30. Learned counsel submits that according to PW-1, after the occurrence had taken place, villagers had called the police whereafter both of them were taken to the Amdabad Hospital, from Amdabad Hospital they were brought to Sadar Hospital and then their treatments were done in Katihar Medical College. He



was treated for 21 days in the hospital whereas his uncle died in course of treatment. It is submitted that who had informed the police has not been revealed in course of investigation and trial. Who carried the PW-1 and his uncle to Primary Health Centre has also not been disclosed and the said police officer has not been examined. The prosecution story about how the injured persons were brought to the Primary Health Centre changed in course of trial.

31. It is further submitted that PW-1 has admitted in paragraph '28' that he had seen Nazrul (one of the appellants) being taken to Amdabad Primary Health Centre. The defence suggested this witness that he had assaulted Nazrul for which his wife had lodged a case and only in order to save himself, the present case was lodged. The defence further suggested this witness that he and his uncle got injuries in a motorcycle accident and taking advantage of the said injury, he had lodged a false case. This defence was denied by the witness. Learned counsel, however, submits that the learned trial court could not appreciate the material contradiction in the evidence of PW-1 and other witnesses. Md. Rafique (PW-2) is not an eyewitness to the occurrence. He went to the place of occurrence after hearing *hulla* that Maniruddin and Ajmal are being assaulted by son of Rauf



Maulvi while returning from market after purchase of vegetables. It is pointed out that according to PW-1, the place of occurrence is situated at a distance of one kilometer from the market and the Amdabad Police Station is also situated at a distance of one kilometer. The claim of PW-2 that he could reach the place of occurrence and had seen that the accused persons were assaulting Ajmal and Maniruddin by sword and rod cannot be believed. This witness has stated in paragraph '3' that children had brought *khatia* (cot) from the house on which Ajmal and Maniruddin were taken to Amdabad Primary Health Centre. This witness has stated that in between his house and the place of occurrence, house of several persons are situated. In between his house and place of occurrence, the house of Khushal, Arshad, Bhotu and Ishu are situated.

32. Learned counsel submits that despite this fact that there are houses of several persons, no independent witness has supported the prosecution case. It is thus submitted that in absence of an independent witness, conviction on the basis of closely related, interested and inimical witnesses in the present case would not be safe.

33. Learned counsel submits that according to PW-2, blood had fallen on the earth at the place of occurrence and in the



baigan field also soil were soaked with blood but the evidence of the I.O. (PW-11) would show that he had visited the place of occurrence on 04.03.2018 in the morning hour and had recorded the statement of Md. Rafique, Md. Arshad and Md. Jinnat. He had inspected the place of occurrence. In course of his inspection, the I.O. had not found any article of the accused persons. He had not found any sign of struggle and fight. He had also not found any sign of movement of footmark at the place of occurrence. I.O. (PW-11) has stated that at the place of occurrence, no plant was trampled or broken. He did not find any maize field nearby the place of occurrence. He had not found any bag or a bag containing vegetables at the place of occurrence. He has further stated in paragraph '32' that on the date of occurrence itself, he had issued requisition for injury of the accused Nazrul @ Bhola. He was also injured in the said occurrence. On the strength of the statement of the I.O. (PW-11), learned counsel for the appellants submits that in this case, the I.O. had not found any sign of occurrence at the given place of occurrence and the prosecution has suppressed the injury of accused Nazrul @ Bhola, therefore, it will prove fatal to the prosecution.

34. Learned counsel for the convicts-appellants has assailed the impugned judgment referring the deposition of PW-2



in paragraph '53' where he has stated that the *baigan* field, which is the place of occurrence, had been irrigated by water and it was a *kutchi* land in which *baigan* plants were broken but there was no footmark. It is submitted that the evidence of PW-2 on this point is not believable as it is neither corroborated by the evidence of PW-1 nor by the evidence of PW-11. The defence again suggested PW-2 that Ajmal and Maniruddin both had fallen down from motorcycle in which they had received injuries but because of prior enmity, they had falsely implicated the appellants.

35. Learned counsel further submits that Jiaul Haque (PW-3) has stated that his house is situated at a distance of 500 meters from the place of occurrence. He heard *hulla* in the village that Maniruddin and Ajmal are being assaulted, whereafter he ran and reached the place of occurrence. It is submitted that this witness is also not an eyewitness. He reached the place of occurrence only after hearing *hulla* and his house is situated at a distance of 500 meters, which is half kilometer from the place of occurrence. This witness is the cousin brother of the informant. His attention was also drawn towards his earlier statement made before police in which he had not taken name of Sakim. This witness denied his previous statement made before police but the I.O. (PW-11) has stated in paragraph '21' and '22' of his evidence



that neither this informant (PW-1) nor any other witness had taken the name of Sakim as an accused. Thus, it is evident that Sakim was involved in this case at a later stage with an afterthought. Referring to the evidence of PW-3, learned counsel submits that according to him, the *baigan* field was not irrigated by water and it was a dry land. This is in complete conflict with the evidence of PW-2.

36. Learned counsel has further submitted that PW-4 is not an eyewitness of the occurrence. He claims to have reached the place of occurrence at first. He had also reached the place of occurrence only after hearing *hulla* in his house. This witness has stated that on the date of occurrence, he had not seen Nazrul in injured condition, but the I.O. has clearly stated in his deposition that Nazrul was also injured in the said occurrence. According to this witness, Maniruddin (the deceased) is his cousin brother. It is thus submitted that this witness has though tried to depose as an eyewitness of the occurrence, but from his evidence it is clear that he was not present at the place of occurrence.

37. Akmal Hussain (PW-5) is admittedly not an eyewitness to the occurrence. He was in Delhi at the time of occurrence.



38. Jinnat Ali (PW-6) has stated that he was at Karbala More at the time of occurrence and had seen the occurrence. In his cross-examination, this witness has stated that he resides outside in Delhi and Punjab and he comes home only once or twice in a year. He could not say the description of the land for which the parties have a dispute. He had gone to meet Manir after 4-5 days of the occurrence whereafter he had never gone. Learned counsel for the appellants has submitted that this witness is *mamera bhai* of Ajmal (PW-1). He has stated that he had not seen any injury on the body of Ajmal @ Bhola and this shows that he is not speaking the truth.

39. Dr. S. M. Thakur (PW-7) has proved the postmortem report of the deceased Maniruddin which has been marked Exhibit '2'. He has stated in his cross-examination that there is no sign of physical assault except fracture. He has also stated that fracture mentioned in the postmortem report may be caused due to motorcycle accident.

40. Dr. Ramrekha Suman (PW-8) has stated that he had conducted the postmortem in observation of Dr. S.M. Thakur and Dr. D. N. Ray on the dead body of Maniruddin. According to him, the cause of death was cardiorespiratory arrest due to some embolism as a result of multiple major bone fracture by physical assault. In his cross-examination, he has stated that stitched wound



assigned that the person was brought after treatment. He has stated that embolism may be caused during treatment and has further stated that such type of fracture may be caused due to motorcycle accident.

41. Dr. Dayanand Ray (PW-9) was also a part of the team of the doctors who conducted the postmortem. He has stated in the postmortem report that there is no sign of physical assault except fracture. He has also stated that fracture mentioned in the postmortem report may be caused due to motorcycle accident.

42. Dr. Mahtabuddin (PW-10) had examined Ajmal Hussain (PW-1) and found three injuries on his body. He had also examined Manirul Haque (deceased). Both the injury reports have been marked Exhibit '4' and '5' respectively. This witness has also stated that injuries caused on the person of injured Manirul Haque and Ajmal Hussain may be caused due to motorcycle accident. Learned counsel for the appellants has heavily relied upon the evidence of these doctors to make a submission that the defence taken by the accused persons are getting support from the evidence of the doctors. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Anand Ramachandra Chougule vs. Sidarai Laxman Chougala** reported in (2019) 8 SCC 50, **Nallabothu Ramulu v. State of A.P.** reported in (2014)



12 SCC 261 and **Mohan Lal v. State of Rajasthan** reported in **(1999) 9 SCC 209** . It is his submission that the learned trial court has disbelieved major portion of the prosecution case. The place of occurrence has not been duly proved. The injury of accused has not been proved by prosecution and the manner of occurrence has also not been proved, therefore, the learned trial court has committed error in convicting the persons for the alleged charges. It is submitted that so far as the charge under Section 302/149 IPC is concerned, the learned trial court has rightly acquitted the accused persons of the said charges as there was no evidence at all to support the prosecution case.

Submissions on behalf of the State

43. Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State has opposed these appeals preferred by the informant as well as the convicts. She has submitted that admittedly it is a case of land dispute and several cases are pending between the parties. The learned Additional Public Prosecutor has submitted that the learned trial court has not committed any error in appreciation of the evidences available on the record. It is submitted that the motive behind the occurrence has been duly proved. There is a case and counter case between the



parties in which the same place has been shown as place of occurrence.

44. Learned Additional Public Prosecutor submits that even as PWs-2, 3, 4 and 5 are closely related witnesses of the informant, their evidences cannot be thrown out on this ground alone. They are getting corroborated by the evidence of PW-6, PW-8 and PW-10. The defence suggested the prosecution witnesses in course of cross-examination that Md. Ajmal and Maniruddin were injured in a motorcycle accident but the defence has not brought any evidence to prove that Md. Ajmal and Maniruddin had got injured in a motorcycle accident and because of that they died. Learned Additional Public Prosecutor submits that all the accused persons had assaulted the informant and his uncle on the given date, place and time of occurrence by sword and *lathi* causing grievous injuries to them and during the treatment of these injuries Maniruddin died. It is submitted that there may be some minor discrepancies in the evidence of the prosecution witnesses, those will not prove fatal to the prosecution. The statement of PW-1 that he had suffered injury on the right leg even if not getting corroborated from the injury report showing injury on his left leg, it would be a trivial issue and cannot create any dent in the prosecution story. In these



circumstances, it has been submitted that the judgment of the learner trial court needs no interference and all the appeals are liable to be dismissed.

Consideration

45. We have heard learned counsel for the parties, learned Additional Public Prosecutor for the State as also perused the trial court records.

46. In the present case, as per the prosecution story, the occurrence took place at '*aar*' (*Ridge*) of the *baigan* field and the *baigan* field situated west to Karbala Mor. It is this place where the eight named accused persons are said to have surrounded the informant and his uncle. The occurrence took place on 03.03.2018 at about 06:00 hours when the informant and his uncle were returning after purchasing vegetables from Amdabad Market. The market is situated at a distance of one kilometer from the place of occurrence. Contrary to the case of the prosecution, the counter case being Amdabad P.S. Case No. 35 of 2018 registered on the same day (03.03.2018) (Exhibit 'A') at the instance of Tara Khatoon wife of Md. Nazrul @ Bhola at the same time, claimed that when the husband of the informant was returning from Amdabad Bazar, the six named accused persons including the deceased armed with lathi and dagger surrounded her husband.



Md. Tazir and Md. Jamrul caught hold of him while Vadu and Manir assaulted her husband by dagger on the back and Pakura of left hand causing him serious injuries. Tara Khatoon has further alleged in her fardbeyan recorded by SI Upendra Singh at Primary Health Centre, Amdabad at 07:45 PM on 03.03.2018 that on *hulla*, villagers came and they brought her husband to Primary Health Centre, Amdabad for treatment. The FIR of counter case has been marked Exhibit 'A' without objection.

47. After investigation in the counter case, police submitted a chargesheet bearing No. 263 of 2018 dated 11.11.2018 (Exhibit 'A/1') against Md. Nazir, Md. Jamrul, Md. Tazir, Annuddin and Badu @ Ajmal. Tara Khatoon, wife of Md. Nazrul @ Bhola is the informant of this case in hand. It is, therefore, evident that police had found the occurrence true. Both the parties have given the same place of occurrence. In course of cross-examination of the prosecution witnesses, the defence did not suggest to the prosecution witnesses as to where the motorcycle accident had taken place.

48. The learned trial court has upon examination of the evidences on record found that there is no discrepancy in the evidence of the prosecution as regards the place of occurrence as the witnesses are the residents of village of the place of



occurrence. We agree with the finding of the learned trial court that the place of occurrence has been duly proved by the prosecution.

49. So far as the motive behind occurrence is concerned, it is evident that both the parties are descending from common ancestor Md. Siddique. The informant and the deceased are nephew and uncle respectively. There is a chequered history of enmity on account of land dispute. The learned trial court has examined the evidences of prosecution witness no. 2, 3, 4 and 5 who are closely related to the informant and has concluded that their enmity with the accused persons is natural but from the evidence of PW-6, it would not appear that he had any enmity with the accused persons or he was closed to the informant. His presence at the place of occurrence is not doubtful. PW-6 has been taken as an independent witness who has corroborated the statement of PWs-2, 3, 4 and 5.

50. We have gone through the evidence of PW-6. He has stated in his examination-in-chief that in between 05:30-06:00 PM, he was at Karbala Mor, he had seen Manir and Ajmal going to his home after purchasing vegetables from Amdabad Market. This witness has stated that when the informant and his uncle came down to the *baigan* field, the accused persons who had concealed themselves in the maize field came out and surrounded Manir and



Ajmal and started assaulting them by sword, rod and lathi. According to this witness, Md. Nazrul, Md. Hakim and Md. Manir were armed with sword. Md. Rafique, Md. Rasid, Md. Shager and Md. Allauddin were armed with rod and Md. Sakil was armed with lathi. There were altogether nine accused and the accused persons were assaulting Ajmal and Manir. In the cross-examination, this witness has stated that his statement was recorded by police on the next day of the occurrence. This witness has stated that Nazrul and Ishaque are the brother-in-law of Allauddin who have nothing to do with the land. This witness has stated that in the village relationship, Ajmal is his *mamera bhai*. The attention of this witness was drawn towards his previous statement made before the police, in which he had not taken name of Shakib. The witness denied the suggestion. The I.O. (PW-11) has stated that none of the witnesses had taken name of Shakib in course of investigation. Name of Shakib is not mentioned in the fardbeyan of the informant.

51. To this court, it appears that PW-6 is not a closely related witness and his presence at the place of occurrence cannot be doubted. This witness has supported the prosecution case to a large extent. He has supported the manner of occurrence as alleged in the fardbeyan of the informant by saying that Nazrul had



assaulted Ajmal by sword on his head. He has stated that it was Sagir who had assaulted Ajmal by rod and thereafter all the accused persons had assaulted Ajmal. This part of his statement that all the accused persons had assaulted Ajmal is not corroborated by the injury report (Exhibit '4'). Dr. Mahtabuddin (PW-10) has proved the injury report of the informant. He had found following injuries on his body;-

“(i) cut injury vault of skull 6cm × 1cm × bone deep
(ii) Compound fracture of left Tibia and Fibula
(iii) Left forearm swelling
age of injury- within 24 hours
Weapon- (1) Sharp, (2) Blunt
Nature of injury -Grievous”

52. The defence has suggested to the prosecution witnesses including the informant in dock that the injuries were caused to the informant and his uncle in a motorcycle accident and from the cross-examination part of the evidence of doctor (PW-10), it would appear that the doctor opined in course of cross-examination that the injuries caused on the person of the injured Manirul Haque and Ajmal Hussain may be caused due to motorcycle accident. To this Court, it appears that the Doctor (PW-10) has contradicted his own statement in the examination-in-chief because in examination-in-chief he has clearly opined about the age of injury, weapon and nature of injury. PW-10 has also proved



the nature of injury of the deceased which has been marked Exhibit '5'. He had found the following injuries on his body:-

“(i) Compound fracture of Right Tibia and Fibula
(ii) Compound fracture of Left Tibia and Fibula
(iii) Abrasion Left Shoulder
Age of Injury – Within 12 hours
Weapon -Blunt
Nature of Injury- Grievous”

53. Thus, in the injury report (Exhibit '5') also the Doctor has recorded the nature of injuries. It is evident that there were compound fracture of right tibia and fibula and left tibia and fibula, to this Court it appears that such injuries could not have been caused in a motorcycle accident at the place of occurrence. There is no witness on this point and the learned trial court has rightly concluded that the defence has not brought any evidence on the point of motorcycle accident. We find that in the counter case lodged by Tara Khatoon (Exhibit 'A'), there is no mention of the motorcycle accident and the injuries caused to the informant and his uncle in the said motorcycle accident. This Court would, therefore, conclude that the stand of the defence that Ajmal and his uncle (deceased) suffered injuries in motorcycle accident is only an afterthought. The evidence of PW-10 is contradictory on the point of his opinion in paragraph '7' of his deposition.

54. We, therefore, find that this is a fit case in which the Court should rely upon the ocular evidences to the extent they



inspire confidence of the Court and no doubt may be raised against the ocular evidences on the strength of the opinion of the doctors who have stated in their cross-examination that the injuries caused on the person of the injured may be caused due to motorcycle accident. The motive behind the occurrence and the manner of occurrence stand duly proved from the evidence of the informant (PW-1) and the evidence of co-villager Jinnat Ali (PW-6). So far as the evidence of PWs-2, 3, 4 and 5 are concerned, they are closely related witnesses and inimical to the defence, therefore, their evidences have been examined with all circumspection and care by this Court. They corroborate the evidences of the informant and that of Jinnat Ali (PW-6).

55. In course of argument, learned counsel for the informant-appellant in Cr. Appeal (DB) No. 168 of 2020 has submitted that the learned trial court has committed error in acquitting the accused persons for the charges under Sections 504 and 302/149 IPC as not proved. While dealing with this aspect of the matter and considering an appeal against acquittal, this Court has kept in mind the principles governing the case of acquittal as laid down by Hon'ble Supreme Court in the case of **H.D. Sundara vs. State of Karnataka** reported in **(2023) 9 SCC 581**.



56. We would examine the reasons provided by the learned trial court in this regard. In the impugned judgment, the learned trial court has held that Manirul Haque suffered grievous injuries on his both legs. He died 19 days after the occurrence, in course of his treatment in hospital. The learned trial court has opined that from the material on the record, it is clear that the accused persons had knowledge that death may be caused by the assault committed by them on Manirul Haque but the accused persons had no intention to kill Manirul Haque. It is for this reason, the learned trial court has acquitted respondent nos. 2 to 6 of the charges under Sections 302/149 IPC.

57. From the evidence on the record, we find that the accused persons had assaulted Manirul Haque causing bone fracture of tibia and fibula of both legs. The Doctor (PW-10) has proved the injury report (Exhibit '5') of the deceased. He did not find any injury on any vital part of the body. The injuries were caused by blunt weapon. As per prosecution case, some of the accused persons were armed with sword but no sword injury has been found on the body of the deceased. The fact that Manirul Haque (deceased) remained admitted in hospital for nineteen days whereafter he had developed 'embolism' during treatment which led to his death, has come in evidence of Dr. Ramrekha Suman



(PW-8). PW-8 has clearly opined that the cause of death was due to cardiorespiratory arrest due to some 'embolism' as a result of multiple major bone fracture by physical assault. In his cross-examination, PW-8 has opined that "embolism may be caused during treatment". Thus, we do not find any perversity in the opinion of the learned trial court that the accused persons had no intention to cause death of Manirul Haque (deceased). Therefore, the charge under Section 302/149 IPC cannot be taken as proved.

58. In such circumstance, this Court would not interfere with the judgment of the learned trial court as regards acquittal of the accused persons/respondent nos. 2 to 6 of the charge under Section 302/149 IPC. Cr. Appeal (DB) No. 168 of 2020 is, therefore, dismissed.

59. We have already discussed the evidence of the prosecution witnesses as regards the place, date and time of occurrence as also the manner of occurrence. The motive behind the occurrence has also been discussed hereinabove. One of the arguments advanced on behalf of the convicts-appellants is that the prosecution in this case has suppressed the injury of Nazrul who had also suffered injury in the same occurrence. Learned counsel has relied upon the judgment in the case of **Anand Ramachandra Chougule** (supra) to submit that the burden lies upon the



prosecution to prove the allegation beyond all reasonable doubts. So far as the accused is concerned, he has only to create a doubt about the prosecution case and the probability of its defence. It is submitted that if the accused takes a defence, which is not improbable and appears likely and there is some material in support of such defence, the accused is not required to prove anything further. It is submitted that with regard to the same occurrence, FIR has been lodged and the I.O. has stated that Nazrul was taken to PHC for treatment but injury sustained by Nazrul has not been brought on record and has been suppressed by the prosecution which would create sufficient doubt.

60. We find from the judgment of the Hon'ble Supreme Court in the case of **Anand Ramachandra Chougule** (supra) that in the said case, the police had not investigated the FIR lodged by the accused with regard to the same occurrence and the Hon'ble Supreme Court was of the view that the failure of prosecution to act fairly and place all relevant materials with regard to the occurrence before the Court enabling to take just and fair decision has caused serious prejudice to them. The Hon'ble Supreme Court distinguished the another judgment of the Hon'ble Supreme Court in the case of **Dayal Singh versus State of Uttaranchal reported in (2012) 8 SCC 263** saying that **Dayal Singh's** case is



distinguishable on its own facts as it did not relate to suppression of materials with regard to the accused during the trial in addition to the failure to investigate. A defective investigation shall be completely different from no investigation at all coupled with the suppression of the injury report arising out of another FIR with regard to the same occurrence. The relevant paragraph '22' of Dayal Singh's case which has been quoted by the Hon'ble Supreme Court in the case of **Anand Ramachandra Chougule** (supra) is being reproduced hereunder:-

“14. The observations in *Dayal Singh*⁷ are pertinent, as follows : (SCC p. 277, para 22)

“22. Even the present case is a glaring example of irresponsible investigation. It, in fact, smacks of intentional mischief to misdirect the investigation as well as to withhold material evidence from the court. It cannot be considered a case of bona fide or unintentional omission or commission. It is not a case of faulty investigation simpliciter but is an investigation coloured with motivation or an attempt to ensure that the suspect can go scot-free.””

61. We find from the evidence on the record that no doubt the injury report of Nazrul was not brought on record by the prosecution but the FIR of the counter case (Exhibit 'A') and the chargesheet (Exhibit 'A/1') submitted in the said case were very

7. *Dayal Singh v. State of Uttaranchal*, (2012) 8 SCC 263 : (2012) 4 SCC (Civ) 424 : (2012) 3 SCC (Cri) 838 : (2012) 2 SCC (L&S) 583



much available on the record. The evidence of the I.O. as regards the fact that Nazrul was taken to PHC for treatment is also available on the record. There was no pleading in this case that the police had not investigated the counter case. In our considered opinion, in the facts of the present case only because the injury report of Nazrul has not been brought on record, it would not result in doubting the whole prosecution case and throw away the same on this ground alone.

62. Having discussed the entire materials on the record, we are, however, persuaded to take a view that learned trial court is not correct in holding that the case would be covered under Section 304 Part II of the IPC. The Section 304 Part II IPC (now Section 105 of the Bharatiya Nyaya Sanhita, 2023) reads as under:-

“304. Punishment for culpable homicide not amounting to murder. – Whoever commits culpable homicide not amounting to murder, shall be punished with ¹[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

1. Substituted by Act 26 of 1955, S. 117 and Sch., for “transportation for life” (w.e.f. 1-1-1956).



63. From the evidence on the record, it is clear that Manirul Haque (deceased) was not assaulted on any vital part of the body. The accused armed with sword had not even given any blow to Manirul Haque (deceased) and all the injuries are on tibia and fibula and one abrasion on the left shoulder by blunt substance. The death of Manirul Haque is as a result of the embolism which developed in course of treatment after about 19 days of treatment. In such circumstance, the conviction under Section 304 Part II would not sustain. We set aside that part of the conviction and sentence and acquit the accused persons/convicts of the said charges.

64. So far as the conviction and sentence under Sections 147, 149, 341 and 325 IPC is concerned, the same requires no interference by this Court. Further, conviction of Nazrul @ Bhola under Section 148, 326 and 307 IPC also requires no interference by this Court. In result, Cr. Appeal (SJ) No. 449 of 2020, Cr. Appeal (SJ) No. 469 of 2020, Cr. Appeal (SJ) No. 473 of 2020, Cr. Appeal (SJ) No. 611 of 2020 and Cr. Appeal (SJ) No. 629 of 2020 are partly allowed to the extent indicated hereinabove.

65. It is reported that the convicts/appellants are on bail, they would surrender in the learned trial court within the period of six weeks from today and shall undergo the remaining sentences, if



any. Learned trial court shall take appropriate steps to procure the appearance of the convicts/appellants to serve their remaining sentences.

66. These appeals are disposed of accordingly.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

Rishi/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.04.2025
Transmission Date	08.04.2025

