

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1289 of 2017

Arising Out of PS. Case No.-92 Year-2015 Thana- CHHATAPUR District- Supaul

Brahmdeo @ Brahmadeo Yadav S/o Late Mahabir Yadav, R/o Village-
Bhagalpur, District- Supaul.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1282 of 2017

Arising Out of PS. Case No.-92 Year-2015 Thana- CHHATAPUR District- Supaul

1. Sudhu Yadav Son of Late Mahabir Yadav Resident of village - Bhagwatpur,
P.S. - Chhatapur, Distt. - Supaul
2. Awadhesh @ Awdhesh Yadav Son of Brahmadeo Yadav Resident of village -
Bhagwatpur, P.S. - Chhatapur, Distt. - Supaul

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 1289 of 2017)

For the Appellant/s : Mr.Sanjay Singh, Senior Advocate
Mr.Praveen Kumar, Advocate
Mr.Rudrank Shivam Singh, Advocate
Mr.Vinod Kumar, Advocate

For the State : Ms.Shashi Bala Verma, APP

For the Informant : Mr.Jitendra Kumar Giri, Adv.

(In CRIMINAL APPEAL (DB) No. 1282 of 2017)

For the Appellant/s : Mr.Sanjay Singh, Senior Advocate
Mr.Praveen Kumar, Advocate
Mr.Rudrank Shivam Singh, Advocate
Mr.Vinod Kumar, Advocate



For the State : Ms.Shashi Bala Verma, APP
For the Informant : Mr.Jitendra Kumar Giri, Adv.

**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA**

**CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)**

Date: 16-05-2025

1. The aforesaid appeals preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”) arise out of the same judgment of conviction and order of sentence dated 06.09.2017 and 08.09.2017 respectively, passed in Sessions Trial No.100 of 2016 (arising out of Chhatapur P.S. Case No.92 of 2015), by the learned Presiding Officer, Fast Track Court-II, Supaul (hereinafter referred to as the “Ld. Trial Judge”), hence these appeals have been heard together and are being disposed off by the present common judgment and order. By the said judgment dated 06.09.2017, the learned Trial Judge has convicted the aforesaid appellants of both the cases for commission of offence under Sections 452 and 302/34 of the Indian Penal Code (hereinafter referred to as the “I.P.C.”). By the order of sentence dated 08.09.2017, the appellants have been sentenced to undergo Rigorous Imprisonment for life under Section 302/34 of the IPC with fine



of Rs.10,000/- each and in default thereof, the appellants have been directed to undergo further 6 months Rigorous Imprisonment. The aforesaid appellants have also been sentenced to undergo R.I. for two years under Sections 452/34 of the I.P.C. Both the sentences have been directed to run concurrently.

2. The short facts of the case are that on 02.05.2015, a written report was submitted by SachendraYadav (P.W.6), who is the son of the deceased Jagdeo Yadav. In the said written report, Sachendra Yadav (hereinafter referred to as the “informant”) has stated that on 02.05.2015, he was sleeping in his house and in the meanwhile at about 1:30 a.m., he heard his father shouting at the door of his house, whereafter he had gone to the door of his house and then he saw that Bramhdeo Yadav (appellant of the first case) was holding a *kudaal* (hoe) in his hand and was assaulting his father on his head by the said *kudaal* (hoe), leading to his head being cut off and then blood started oozing out and he became unconscious. Upon seeing the said incident, the informant had raised *hulla* (alarm) and had gone to his father’s aid to save him, where he found that Naresh Yadav, Awadhesh Yadav (appellant no.2 of the second case), Rajesh Yadav, Kishundeo Yadav (one of the convicts who has



died during the pendency of the present Appeal), Dhawal Yadav, Sudhu Yadav (appellant no.1 of the second case) and Rikesh Yadav were also standing there armed with *lathi*, *farsa*, sword and *kudaal* (hoe), who all had then surrounded the informant whereafter, Bramhdeo Yadav exhorted the other accused persons and said that the root cause of dispute is father and son and since father has already been cut by *kudaal* (hoe), the son is now to be killed, whereupon all the aforesaid accused persons caught hold of the informant and started assaulting him indiscriminately with *lathi* and *danda*. It is also stated by the informant that thereafter, Awadhesh Yadav (appellant no.2 of the second case), who was holding *farsa* in his hand had given *farsa* blow on the right leg of the informant, leading to his leg being cut. The informant has next stated that on account of assault by *lathi*, he had received injuries on his back and shoulder. The informant has stated in his written report that during the course of the said incident, three unknown persons, whom he does not recognize, had entered inside his house and picked up 3 boxes and taken them away, which contained documents pertaining to 19 bighas land apart from containing clothes, jewellery worth Rs.36,000/- and cash amount totalling to a sum of Rs.20,000/-. After the informant had raised alarm,



his elder brother Gajendra Yadav (P.W.1), younger brother Sanjay Yadav (P.W. 2) and his sister-in-law as also his mother had arrived there and recognized the accused persons. After hearing *hulla* (alarm) the people from nearby neighbourhood had arrived there, whereupon the accused persons fled away. The informant has further stated that with the help of the co-villagers and family members, his injured father was taken to Primary Health Centre at Chhatapur, where the Doctor had given preliminary treatment and then he was referred, since his condition was not good, whereupon he was taken to Neuro-Cardio Hospital at Biratnagar, where the doctor declared him to be dead. Thereafter, the informant came along with his dead father to Chhatapur. Lastly, he has stated that the motive of the aforesaid incident is pre-existing land dispute with Bramhdeo Yadav (appellant of the first case). The aforesaid written report was scribed by one Satyanarayan Yadav, who is resident of Village-Bhatni Kumarkhand.

3. On the basis of the aforesaid written report submitted by the informant, a formal FIR bearing Chhatapur PS Case No.92 of 2015 was registered on 02.05.2015 at 8:50 a.m. under Sections 302/452/380/34 of the I.P.C against Bramhdeo Yadav (appellant of the first case), Naresh Yadav, Awadhesh Yadav



(appellant no.2 of the second case), Rajesh Yadav, Dhawal Yadav, Kishundeo Yadav (dead), Rikesh Yadav, Sudhu Yadav (appellant no.1 of the second case) and three unknown persons. After investigation and finding the case to be true qua the accused Bramhdeo Yadav (appellant of the first case) and Sudhu Yadav (appellant no.1 of the second case), chargesheet was submitted against them on 31.07.2015 under Sections 302/452/380/34 of the I.P.C. Thereafter, the Police has submitted chargesheet on 26.10.2015 under Sections 302/452/380/34 of the I.P.C. against Awadhesh Yadav (appellant no.2 of the second case) and Kishundeo Yadav (dead). The Ld. Trial Court had then taken cognizance of the offence under Sections 302/452/380/34 of the I.P.C on 16.10.2015 against the aforesaid appellants and the deceased Kishundeo Yadav. The case was committed to the Court of Sessions on 19.04.2016 and numbered as Sessions Trial No.100 of 2016. On 27.06.2016, charges were framed against the appellants under Sections 302/34, 452/34 and 380/34 of the I.P.C.

4. During the course of trial, 10 witnesses were examined by the prosecution. P.W.1 Gajendra Yadav and P.W.6 Sachindra Yadav (informant) are stated to be eye witnesses to the alleged occurrence. P.W. 2 Sanjay Yadav, P.W.3 Meeno Devi and P.W.5



Nutan Devi are stated to have witnessed the incident partly. P.W.4 Deepo Devi is a hearsay witness. P.W.7 Dr. Kanhaiya Prasad Singh had conducted post-mortem examination of the dead body of the deceased Jagdeo Yadav, while P.W.9 Dr. Lalan Kumar Thakur had prepared the injury Report of P.W.6 Sachendra Yadav (informant). P.W.8 Gyan Prakash Srivastav was the Officer-in-Charge of Chhatapur Police Station on 18.07.2015, while P.W.10 Chandrakant Gauri is stated to be Officer-in-Charge, posted at the Chhatpur Police Station on the date of incident i.e. 02.05.2015.

5. The learned senior counsel for the appellants Shri Sanjay Singh, by referring to the entire evidence and the materials on record has argued that the prosecution has not proved the case beyond all reasonable doubt, hence the Ld. Trial Judge has incorrectly passed the judgment of conviction under challenge. It has been firstly argued that the prosecution has failed to prove the motive behind the alleged occurrence, more particularly that the same was/is a pre-existing land dispute in between the parties. In this connection, it has been submitted that in the FIR, the informant has stated that because of land dispute with Bramhdeo Yadav, the present incident had taken place, whereas it has been pointed out that P.W.1 Gajendra Yadav (brother of



the informant) has stated in his evidence that no muslim resides at the ridge of his land, no dispute is existing with Bhuto and Anis. This witness has also stated in paragraph no.6 of his examination-in-chief that he was having no dispute with Mahavir Yadav (father of Bramhdeo Yadav). The learned senior counsel has also referred to the evidence of P.W. 2 Sanjay Yadav (brother of the informant) to submit that he has stated in his examination-in-chief that he does not know Bhuto and Anis and that he is not having any land related dispute with them, however he has stated that his father is having land dispute with Bramhdeo Yadav (appellant of the first case) from before. The learned senior counsel has also submitted by referring to paragraph no.9 of the evidence of P.W. 2 that it has been stated that Panchayati was held with regard to the disputed land in question and document was also prepared, which was kept in the box and was stolen by three unknown persons at the time of the aforesaid incident. At this juncture, it has been submitted by the learned senior counsel for the appellants that the offence under Section 380 has not stood proved, thus the story of three boxes having been stolen by three unknown persons also does not stand proved. Thus, it is contended that such a plea has been raised to give an impression that the documents relating to



Panchayati have been stolen so that they are not asked to produce the same by way of evidence in order to prove that the land in question was a disputed land and there was pre-existing land dispute in between the parties.

6. The learned senior counsel for the appellants has also submitted that there is nothing on record to show that dispute was existing with Bramhdeo Yadav (appellant of the first case) with regard to one bigha land, in connection with which Panchayati had taken place. The learned senior counsel for the appellants has next referred to the evidence of P.W.3 Minoo Devi to submit that she has stated in her evidence that land dispute was existing. Reference has been next made to the evidence of P.W.4 to submit that she has also stated in her evidence that land dispute was going on since one year. The land belongs to her husband which is *khatiyani* in nature and Panchayati had also been held with regard to the said land. It has also been stated that P.W.4 has stated in paragraph no.17 of her cross examination that after the accused persons had engaged in obstructing the land in question, a case was filed, however except the dispute regarding the said land, there is no other dispute prevailing vis-a-vis the accused persons and only because of the land dispute in question, the accused persons



have been falsely implicated in the present case. Thus, it is the submission of the learned senior counsel for the appellants that the prosecution has failed to prove the motive for giving effect to the alleged occurrence.

7. The learned senior counsel for the appellants has further submitted that at best, P.W.1 Gajendra Yadav and P.W.6 Sachendra Yadav (informant) can be stated to be eye witnesses of the actual assault. As far as P.W.1 is concerned, he is stated to have seen Bramhdeo Yadav (appellant of the first case) cutting the head of his father by *kudaal* (hoe). P.W.1 has also stated that Bramhdeo Yadav was saying that the root cause of the dispute is father and son and since father has already been killed, only son is left, hence assault him. P.W.1 has also stated in paragraph no.15 of his evidence that the night was moonlit and after he had raised an alarm, people from the neighbouring houses had arrived after 10 minutes and till the time the co-villagers arrived, he had continued raising alarm and when the co-villagers came, he became unconscious and remained such for 10 minutes but he again stated that he was unconscious for 1 hour. P.W.1 had denied the suggestion that they were having land related dispute with muslim people and that they had killed his father. It is thus submitted that the evidence of P.W.1



Gajendra Yadav does not inspire much confidence.

8. It is next contended by the learned senior counsel for the appellants by referring to the evidence of P.W.6 (informant) that he has stated in his evidence that when he opened the door of his house he saw that Bramhdeo Yadav (appellant of the first case) was standing with *kudaal* (hoe) in his hand and the other accused persons had caught hold of his father and had climbed up, whereafter he had tried to catch hold of Bramhdeo Yadav but in the meantime, Bramhdeo Yadav (appellant of the first case) had assaulted his father on his head by *Kudaal* (hoe), leading to his head being cut and then blood started oozing out. It is stated that in the FIR, the informant has not stated that the accused persons had caught hold of his father. It has also been pointed out that P.W.6 has also stated that land dispute in between the father of the informant and Bramhdeo Yadav (appellant of the first case) was going on since one month and they had also filed a case under Section 107 of the Cr.P.C. P.W.6 has also stated that his father had told him that he had purchased the land from one Kurban in the year, 1965 and the same was not given to Bramhdeo Yadav. Thus, the learned senior counsel for the appellants has submitted that the evidence of P.W.6 also does not inspire much confidence. Attention has also been



drawn to the evidence of P.W.6, wherein he has stated that after he raised alarm, his elder brother Gajendra Yadav (P.W.1), younger brother Sanjay Yadav (P.W. 2), sister-in-law Minoo Devi (P.W.3) and mother Deepo Devi (P.W.4) as also Urmila Devi had arrived there, whereafter, Awdhesh Yadav (appellant no.2 of the second case), had hit P.W.6 by *farsa* on his right leg, resulting in him sustaining cut injury and then he was assaulted by *balam* and his leg was destroyed, whereupon P.W.6 had fallen down and had become unconscious and he along with his father was taken to the hospital at Chhatapur, where treatment of his father was also done, however he was referred to Biratnagar where the Doctor declared him to be dead. P.W.6 has also stated that he regained consciousness at Chhatapur at about 10 a.m. Thus, it is submitted that the testimony of P.W.6 is also not trustworthy.

9. The learned senior counsel for the appellants has further submitted that as far as P.W.2 (Sanjay Kumar), P.W.3 (Meeno Devi), P.W.4 (Deepo Devi) and P.W.5 (Nutan Devi) are concerned, they are not eye witness to the assault made upon the deceased. In fact, it has also been argued that if the version as narrated in the FIR by P.W.6 is compared with his evidence, the factum of him being an eye witness also becomes doubtful. It is



also contended that the assault with *balam* by Awadhesh Yadav (appellant no.2 of the second case), is not supported by medical evidence inasmuch as the Doctor P.W.9 has found the injuries sustained by the informant to be simple in nature.

10. The learned senior counsel for the appellants has next submitted that the actual time and place of occurrence is also doubtful inasmuch as P.W.6 has stated in his evidence that after he was assaulted by Awadhesh Yadav (appellant no.2 of the second case), he fell down and became unconscious, whereafter he had regained consciousness at Chhatapur at 10 a.m., hence submission of written report by P.W.6 before the police at 8 a.m. becomes doubtful. Reference has been next made to the evidence of the Doctor (P.W.7), who has conducted post-mortem of the dead body of the deceased to submit that in the post-mortem report, the measurement of the injuries have not been mentioned. It has also been submitted that the doctor has not found any fracture on the skull, hence the injuries sustained by the deceased could not have been inflicted by means of *kudaal* (hoe). The Doctor has found incised and lacerated injuries on the skull bone of the deceased, which cannot be related to injury inflicted by a *kudaal* (hoe), hence in all probability the deceased had fallen by himself and in the process had got injured. The Ld.



senior counsel for the appellants has next stated that no independent witness has been brought forward by the prosecution to support their case, hence apparently, since all the witnesses are closely related to each other as also to the deceased, a false and fabricated case has been set up. It is next submitted that the *kudaal* (hoe) has not been recovered, hence in absence of recovery of the weapon used for killing the deceased, the conviction of the appellants by the Ld. Trial Judge is not appropriate. It is submitted that the means of the light in which the accused persons were identified is also not proved by the witnesses.

11. It has been alternatively argued by the learned Senior counsel for the appellants, that since the prosecution has completely failed to show any intention or motive for causing death of the deceased and since the attending circumstances show that only single blow was inflicted upon the deceased, the present case would not fall within the purview of Section 302 of the I.P.C., rather it could at best attract the provision of Section 304 Part II of the I.P.C., in absence of any intention to cause the death of the deceased.

12. The learned counsel for the informant Shri Jitendra Kumar Giri has submitted that the evidence of all the witnesses are



consistent and the defence has not been able to bring out any contradictions in their statements, hence they cannot be said to be untrustworthy. The evidence of all the prosecution witnesses would demonstrate that the motive is clearly pre-existing land dispute in between the parties. It has also been explained that there was no possibility of presence of independent witness because firstly, the incident took place in the dead of the night at about 1:30 a.m. and secondly, the same took place inside the house of the deceased. Lastly, it is submitted that there may be minor contradictions, nonetheless all the witnesses have supported the case of the prosecution, which goes to prove the guilt of the appellants beyond all reasonable doubts. It is also submitted that P.W.6 (informant) is an injured witness and under the law, the injured witness has a special status and it is expected that he would not wrongly narrate the incident.

13. The learned APP for the State Ms. Shashi Bala Verma has submitted that all the accused persons belongs to one family and admittedly there is a pre-existing land dispute which has also been substantiated by the evidence of the prosecution witness. It is submitted that a bare perusal of the evidence of the witnesses, especially P.W.1 would show that it has been categorically stated that no dispute is existing with Bhuto or Anis and that



land related dispute is existing only with Bramhdeo Yadav (appellant of the first case). It is also submitted by referring to the testimony of P.W.1 that he has stated in his evidence that Bramhdeo Yadav (appellant of the first case) was exhorting the other accused persons by saying that the father and son are the root cause for the dispute, hence they should be killed. As far as P.W. 2 is concerned, it is submitted by the Ld. APP for the State that though he had seen Awadhesh Yadav (appellant no.2 of the second case), assaulting the informant but he had also seen Bramhdeo Yadav (appellant in the first case) holding *kudaal* (hoe) stained with blood inasmuch as he had already assaulted the deceased by *kudaal* (hoe), leading to the deceased being injured badly, resulting in blood oozing from his wounds. It is also submitted that even P.W. 2 has admitted in his evidence that he was not having any dispute with either Bhuto or Anis and infact dispute of the father of P.W.6 was existing with the appellant Bramhdeo Yadav and with regard to the same Panchayati was held as far as one bigha land is concerned, whereafter the Panches had told him to leave the land but the accused persons had not vacated the land. Thus, it is submitted that there is a clear motive behind the incident i.e. a pre-existing land dispute in between the parties.



14. It is next submitted by the Ld. APP for the State that even P.W.3 has admitted in her evidence that the accused persons were carrying weapons, which were used for assaulting the deceased and the informant. It is also submitted that P.W.6 has narrated the incident vividly and has stated that when he opened the door of his house, he saw Bramhdeo Yadav (appellant of the first case) holding a *kudaal* (hoe), by which he had assaulted his father on his head, resulting in him sustaining cut injury and then blood started oozing out. He has also stated about the other accused persons catching hold of his father. P.W.6 has also stated that Bramhdeo Yadav (appellant of the first case) had told his accomplice that he had already killed the father, hence now the son should be assaulted. Thus, it is submitted by the Ld. APP for the State that ample evidence is available on record to show the complicity of the appellants in the alleged occurrence and it cannot be said that the Ld. Trial Judge has committed error in convicting the appellants for the offences alleged. The Ld. APP for the State has next referred to the injury report prepared by Dr. Lalan Kumar Thakur (P.W.9), who was posted as a Doctor at Primary Health Hospital, Chhatapur on the alleged date of occurrence and the injury report of the injured witness, namely Sachendra Yadav (P.W.6) i.e. the informant was prepared by



him. By referring to the said injury report (Exhibit-3), the Ld. APP for the State has submitted that the same would bear it out that Dr. L K Thakur had examined the appellant on 02.05.2015 at 03:30 a.m., hence the contention of the appellants to the effect that the evidence of P.W.6 shows that he had become unconscious upon being assaulted and had regained consciousness at Chhatapur at 10 a.m. does not seem to be probable. It is next contended that there is no variance in between the ocular and medical evidence, hence the mode and manner in which the deceased had sustained injuries stands explained.

15. Besides hearing the learned counsel for the parties, we have minutely perused both the evidence i.e. oral and documentary. Before proceeding further, it is necessary to cursorily discuss the evidence.

16. P.W.1 Gajendra Yadav is the brother of the informant and son of the deceased. He has stated in his evidence that the incident dates back to 02.05.2015 at about 1:30 a.m. in the night when he was sleeping in the room of his house and then he heard his father and brother Sachendra Yadav (P.W.6) shouting, whereafter he ran and went to the door of his house and saw that Bramhdeo Yadav has cut the head of his father by *kudaal* (hoe).



He has stated that his brother Sachendra Yadav was also assaulted. Awadhesh Yadav had given a *farsa* blow on the right leg of Sachendra Yadav, leading to his brother becoming unconscious. He has stated that eight accused persons named in the FIR were present at the place of occurrence. P.W.1 has next stated that Bramhdeo Yadav said that the root cause of the dispute is father and son and since the father has already been killed, the son be also assaulted. He has further stated that his brother Sanjay Yadav, sister-in-law and mother had then arrived there and all of them had raised an alarm, whereafter the co-villagers had arrived but the accused persons had fled away by then. He has stated that his father was taken to the health centre at Chhatapur from where he was referred to Biratnagar and upon reaching there, he was declared dead. He has also stated that he had then brought back his father from Biratnagar and post-mortem was held at Supaul. He has next stated that there is pre-existing land dispute. He has recognized the accused persons standing in the dock. In cross examination, P.W.1 has stated that he knows Anis and Bhuto Khan of his village. He has stated that he has got 20-21 bighas of land situated at Bhagwatpur Mauza. P.W.1 has next stated that on the ditch adjacent to his land, no muslim person is present and he never had any dispute with



Bhuto.

17. P.W.1 has next stated that Bhuto and Anis used to tell him since five years that he should take the land which they have given and leave the rest of the land and they used to cultivate the said 2 bigha land on their own. P.W.1 has also stated that they had no dispute with Mahavir Yadav, who is father of Bramhdeo Yadav. In paragraph no.14 of his cross examination, P.W.1 has stated that alarm was not raised with full force and when he had gone out of his house, the villagers had not arrived there, however he had seen eight accused persons but he had not seen anyone else. In paragraph no.15 of his cross examination, P.W.1 has stated that it was a moonlit night and after seeing eight accused persons, he had raised alarm, whereafter people from the neighbourhood had arrived after 10 minutes. He has further stated that till the time the villagers arrived, he became unconscious and came to the room where he remained unconscious for 10 minutes, however he has then stated that he was unconscious till 10 a.m. He has also stated that after he regained consciousness, no person came before him. He has denied the suggestion that they were having land related dispute with muslim people and his father was killed by them.



18. P.W.2 Sanjay Yadav is the brother of the informant and son of the deceased and he has stated in his evidence that the incident dates back to 02.05.2015 at about 1:30 a.m. in the night, when he was sleeping in his house and then he had heard the sound of shouting of his father Jagdeo Yadav and his brother Sachendra Yadav, whereafter he had gone to the door of his house and his brother Gajendra Yadav had reached there before him. He has also stated that after he had gone to the place of occurrence, his brother and sister-in-law had also arrived there from behind. P.W.2 has further stated that after all of them had gone to the door of the house they saw their father smeared with blood. He has also stated that all the other accused persons named in the FIR were armed with *lathi* and *farsa*, who had assaulted his brother Sachendra Yadav (P.W.6). He has stated that Awadhesh Yadav had assaulted his brother Sachendra Yadav by *farsa* on his right leg. All of them, including the mother of P.W.2, his brother and others had then raised alarm together, whereafter the co-villagers had started assembling there and then the accused persons fled away. Thereafter, three unknown miscreants had stolen boxes from the house in which jewellery worth Rs.36,000/- and cash amount of Rs.20,000/- was kept. He has also stated that jewellery worth 30,000/- was kept in the



box, apart from clothes, etc. He has next stated that with the help of the co-villagers, his father was taken to Chhatapur along with his brother, where the Doctor found the condition of his father to be serious, hence he had referred him to hospital at Biratnagar where the Doctor said that he has died.

19. P.W.2 has next stated that he had made a statement before the police on the second day as per the incident witnessed by him. He has also stated that there was land related dispute in between the parties, which had resulted in the occurrence in question. He had recognized the accused persons standing in the dock. In paragraph no.4 of his cross examination, P.W. 2 has stated that he used to stay at Ludhiana with his relative Awadhesh Yadav. In paragraph no.8 of his cross examination, P.W.2 has stated that he does not know Bhuto Khan and Anish who may be resident of the village in question, however he is having no knowledge and he has got no land related dispute with them. He has also stated that his father was having land related dispute with Bramhdeo Yadav from before and Panchayati was also held with regard to the said dispute. In paragraph no.9 of his cross examination, P.W.2 has stated that he cannot remember as to in which year the Panchayati was held. He has also stated that after the Panchayati, document was made



and the same was signed by Umesh Chandra Mandal, who was the Member of the District Panchayat. He has also stated that Panchayati had taken place for one bigha land and the Panches had told them to vacate the land, however the accused persons said that they would not leave the land in question. P.W.2 has further stated that the Panches had given the document to his father in his hand which was kept in a box but the same was stolen, thus, whether the documents would be available or not, he cannot say. He has also denied the suggestion that there was no land related dispute with Bramhdeo Yadav (appellant of the first case) and that on account of land dispute, Bramhdeo Yadav has been wrongly implicated by creating a conspiracy.

20. P.W.3 Meeno Devi is the wife of P.W.1 Gajendra Yadav and sister-in-law of the informant. P.W.3 has stated in her evidence that the incident dates back to 02.05.2015 at about 1:30 a.m while she was sleeping at her house, when she heard an alarm being raised by her father-in-law Jagdeo Yadav and brother-in-law Sachendra Yadav, whereupon she had gone running to the door of her house and firstly her husband P.W.1 had gone there. She has also stated that her mother P.W.4 and sister-in-law P.W.5 had also gone along with her and then she saw that Bramhdeo Yadav had cut his father-in-law by *kudaal*



(hoe) and was holding *kudaal* (hoe) in his hand on which blood stains were present. Awadhesh Yadav had assaulted his brother-in-law by *farsa* and rest of the FIR named accused persons had also assaulted his brother-in-law. She has also stated that upon alarm being raised, co-villagers had arrived there and taken her father-in-law to Chhatapur along with his brother-in-law. Her father-in-law was then referred to Biratnagar and her brother-in-law was treated at Chhatapur. She has also stated that when her father-in-law reached Biratnagar, the Doctor declared him dead. P.W.3 has further stated that three unknown persons had entered the house and stolen three boxes containing a sum of Rs.36,000/- and clothes. She has also stated that the incident took place on account of land dispute. The land belongs to Jagdeo Yadav and because of the land dispute he was killed. P.W.3 had recognized the accused persons standing in the dock. She has stated that Jagdeo Yadav was 60-65 years old and he was not sick, however he was treated long back. In paragraph no.5, she has stated that she has witnessed the occurrence with her eyes.

21. P.W.3 has further stated that she had first heard the sound of shouting of her father-in-law and then she heard the sound of shouting of her brother-in-law. She has stated that her father-in-



law was sleeping alone. In paragraph no.9 of her cross examination, P.W.3 has stated that before she had reached the place of occurrence, her husband and brother-in-law had reached there, however she has again stated that nobody had reached there. She has stated that when she reached the place of occurrence, Brahmdeo Yadav was holding *kudaal* (hoe) and Awadhesh Yadav and others were holding *lathi* and *farsa* in their hands. In paragraph no.13 of her cross examination, P.W.3 has stated that the Police Station is at a distance of 12 kms from her house and the Police arrived there after half an hour as also the people had arrived there after 15 minutes of her reaching there. In paragraph no.16 of her cross examination, P.W.3 has stated that the land dispute was existing in between her father-in-law and the accused persons from before. In paragraph no.17 of her cross examination, P.W.3 has stated that knowledge about occurrence was there from before. She has stated that blood had not fallen down on the ground but had fallen on the mattress and had also spread on the floor, however the blood soaked soil was not seized by the Police. She has stated that the assault was made twice on the head of her father-in-law. She has also stated that the neighbours had not witnessed the incident.

22. P.W.4 Deepo Devi is wife of the deceased and mother of



the informant. She has stated in her deposition that the occurrence dates back to 02.05.2015 at about 1:30 a.m. in the night, when she was in her room and was sleeping with her children and then she heard her husband shouting that he has fallen on the ground, whereafter she had gone there and saw that Brahmdeo Yadav was standing and there was blood stains on the *kudaal* (hoe), which he was holding as also his husband had fallen down. She has also stated that Sachendra Yadav was also standing there, who is her son. She also saw Awadhesh Yadav, Rajesh Yadav, Naresh Yadav, Rikesh Yadav, Kishundeo Yadav and Sudhu Yadav standing there, who had caught hold of her son and were also assaulting him. P.W.4 has further stated that she had only seen this much and thereafter, she became unconscious and fell on the ground. She has also stated that land dispute is existing, the land is in the name of her husband and the accused persons were harassing them. The husband of P.W.4 was then taken to the hospital when he was alive and then he had died there. P.W.4 had recognized the accused persons standing in the dock. In para no.3 of her cross examination, P.W.4 has stated that she had gone to the place of occurrence upon *hulla* (alarm) being raised but his son had reached the place of occurrence before her and when she reached there, she



saw that Brahmdeo Yadav was standing there with *kudaal* (hoe) and Awadhesh Yadav was also standing there and they had caught hold of her husband, apart from Rajesh Yadav having also caught hold of her husband. She has also stated that her husband is aged about 60 years and was not ill.

23. In paragraph no.6 of her cross examination, P.W.4 has stated that her statement was recorded by the police on the next day at about 8 a.m. in the morning at the door of her house. She has also stated that her daughter-in-law Minoo Devi and Nutan Devi had also given their statements. In paragraph no.8 of her cross examination, P.W.4 has stated that she had seen the occurrence by her own eyes and she had seen the *kudaal* (hoe) as also seen Brahmdeo Yadav assaulting by *kudaal* (hoe). In paragraph no.9 of her cross examination, P.W.4 has stated that upon hearing the shouting of her husband, she had gone running outside and had reached near him, whereafter she saw that blood stains were present on the clothes and the mattress as also the blood had spread over an area equivalent to two hands. In paragraph no.10 of her cross examination, she has stated that the Chowkidaar had taken away the mattress and the blood stained clothes which her husband had worn after she had given the clothes to the Police. In paragraph no.11 of her cross



examination, P.W.4 has stated that land dispute is going on since past one year and the land belongs to her husband as also the land is *khatiyani*. She has also stated that Panchayati was also held pertaining to the land in question and after Panchayati, both the sides have been barred from tilling the land and at the moment, paddy is growing on the land in question. She has also stated that they had also sown rice.

24. In paragraph no.13 of her cross examination, P.W.4 has stated that upon alarm being raised, many people from the neighbourhood had come and she was unconscious. In paragraph no.14 of her cross examination, P.W.4 has stated that at the place where her husband was sleeping, there was no provision for light and the lantern was lit upto 10 p.m. and thereafter, she was sleeping in dark. In paragraph no.15 of her cross examination, P.W.4 has stated that she was not able to see as to what was happening outside in the dark and whatever her son has told her, she has narrated. In paragraph no.16 of her cross examination, P.W.4 has stated that the accused persons who were standing are agnets and neighbours and she recognizes them. In paragraph no.17 of her cross examination, P.W.4 has stated that the accused persons had stopped them and surrounded the land in question and thereafter case was filed.



She has also stated that apart from land dispute, there is no other enmity with the accused persons. P.W.4 has also stated that on account of land dispute, they have been made accused. In paragraph no.18 of her cross examination, P.W.4 has stated that there is no land dispute with Anis and Bhuto. In paragraph no.21 of her cross examination, P.W.4 has stated that the place of sleeping of her husband is at a distance of 10 hands from the place where she was sleeping. P.W.4 has also stated that she had gone at the place of occurrence after half an hour of hearing the sound. Finally, she has stated that it is not a fact that because of land dispute, the accused persons have been wrongly implicated.

25. P.W.5 Nutan Devi is the wife of the informant and she has stated in her deposition that the occurrence dates back to about 1 ½ years, month-Baisakh and the occurrence had taken place in the midnight when she was sleeping in her house. She has stated that *hulla* (alarm) took place at the door and her father-in-law was shouting, whereafter her husband (P.W.6) had firstly gone there and then her elder brother-in-law Sanjay Yadav (P.W.2), elder sister-in-law and mother-in-law (P.W.4) had gone there along with her. She has further stated that upon going there, she found that the forehead of her father-in-law was cut and blood was oozing out as also Brahmdeo Yadav



(appellant of the first case) was holding *kudaal* (hoe) and Sudhu Yadav, Kishundeo, Rajesh, Awadhesh, Naresh, Rikesh and Dhawal were present there, armed with *lathi* and *farsain* their hand. She has next stated that *hulla* (alarm) had been raised at the door of her house. Thereafter, the aforesaid people i.e. her husband, her elder brother-in-law and elder sister-in-law were also assaulted by the accused. P.W.5 has also stated that thereafter, her husband and other persons had together taken father-in-law to Chhatapur, Supaul. She has also stated that the accused persons claim that the land belongs to them, whereas the fact is that the land is her's and is in the name of her father-in-law. She has also stated that she recognizes Kishundeo Yadav, Awadhesh Yadav, Brahmdeo Yadav and others. She has stated that her father-in-law died on the same day at Supaul.

26. In her cross examination, P.W.5 has stated that land dispute is existing in between both the parties since 2-3 years and on account of the land dispute, there is strained relationship in between the parties. In paragraph no.3 of her cross examination, P.W.5 has stated that she was told about the incident by many people, including her husband, who was at his house and had not gone to the hospital at Supaul. In paragraph no.4 of her cross examination, P.W.5 has stated that her husband



had given information about the occurrence at 8 a.m. in the morning. In paragraph no.5 of her cross examination, P.W.5 has stated that her statement was recorded by the police on the next day of the incident. In paragraph no.6 of her cross examination, P.W.5 has stated that the land with regard to which dispute is existing, is being tilled by her father-in-law as also by her husband. In paragraph no.9 of her cross examination, P.W.5 has stated that all the accused persons are neighbours, whom she recognizes and Brahmdeo Yadav had remained Sarpanch of the village. In paragraph no.10 of her cross examination, P.W.5 has stated that she cannot say as to who had taken away the boxes from her house. In para no.12 of her cross examination, P.W.5 has stated that whatever she has stated today was actually witnessed by her.

27. In paragraph no.14 and 15 of her cross examination, P.W.5 has stated that the police arrived at the place of occurrence at 1 p.m. in the afternoon and when the police arrived, her father-in-law was at the Doctor's place. In paragraph no.16 of her cross examination, P.W.5 has stated that Brahmdeo Yadav (appellant of the first case) was holding *kudaal* (hoe) in his hand and others were holding *lathi* and *farsa* in their hand, however she cannot specifically say about the



same. In paragraph no.17 of her cross examination, P.W.5 has stated that it was lighted at the time of occurrence, her father-in-law was sleeping in the house and on the door her elder brother-in-law and others sleep. In paragraph no.18 of her cross examination, P.W.5 has stated that her husband had gone after 10 minutes of the occurrence and all those who were present in house had woken up upon hearing *hulla* (alarm). In her cross examination, P.W.5 has stated that she had not given the blood stained clothes to the police. The blood had fallen on the ground and the police had not seized blood soaked mud as also she had not given *kudaal* (hoe) to the police. In paragraph no.22 of her cross examination, P.W.5 has stated that her father-in-law had become unconscious after sustaining injuries. In paragraph no.23 of her cross examination, P.W.5 has stated that after the land dispute is sorted out, no enmity would exist, however the case was filed due to land dispute.

28. P.W.6 Sachendra Yadav is the informant of the present case, who has stated in his deposition that he had filed the case and the occurrence dates back to 02.05.2015 at about 1:30 a.m. in the night when he was sleeping in his room. Suddenly, he heard his father shouting at the door of the house and as soon as he ran and opened the door, he saw Brahmdeo Yadav armed



with *kudaal* (hoe) and Kishundeo Yadav, Sudhu Yadav, Rajesh Yadav, Awadhesh Yadav, Naresh Yadav, Ritesh Yadav and Dhawal Yadav, having caught hold of his father and having climbed over him. P.W.6 has further stated that he had tried to catch hold of Brahmdeo Yadav but in the meantime, he had given a *kudaal* (hoe) blow on the head of his father, whereafter severe bleeding started from his head on account of it being cut. Thereafter, Brahmdeo Yadav told his accomplice that father has already been killed, hence they should kill the others, whereafter all the accused persons had surrounded them from all sides, who were armed with *lathi*, *farsa*, *balam* and sword and then they assaulted P.W.6 indiscriminately, whereupon P.W.6 raised an alarm, leading to his elder brother Gajendra Yadav (P.W.1), younger brother Sanjay Yadav (P.W. 2), sister-in-law Minoo Devi (P.W.3), mother Deepo Devi (P.W.4) and Urmila Devi having arrived there. Thereafter, Awadhesh Yadav (appellant no.2 of the second case) had given a *farsa* blow on the right leg of P.W.6, resulting in cut injury and then they had assaulted him with *balam* and destroyed his leg, leading to him falling down and having become unconscious. Thereafter, his brother, mother and other family members as also co-villagers had arrived there and taken him and his father to the hospital at Chhatapur where



his and his father's treatment was done, however his father was referred to Biratnagar, where the Doctor declared him to be dead. He has also stated that he regained consciousness at Chhatapur at 10 a.m. and he had given his written report, scribed by Satyanarayan Yadav as told by him at the nearby police station, which also bears his signature, which he has recognized and the same has been marked as Exhibit-1.

29. P.W.6 has further stated that when he had gone to file FIR someone from the house had come and told him that three boxes are also missing from the house in which documents relating to 19 bighas land were kept, apart from the said boxes containing his I-card, cash totalling to a sum of Rs.36,000/-, jewellery and clothes as also cash to the tune of Rs.20,000/-. He has also stated that he can't recognize the three persons who had taken away the boxes. P.W.6 has next stated that the reason for occurrence is that Brahmdeo Yadav was saying that the land belongs to him, which actually belongs to P.W.6, however he had not shown any document. He has also stated that his father, at the time of Panchayati, had gone there with documents, kewala and receipt, whereafter the Panches had given decision in favour of P.W.6 and his family members and had said that his father should be allowed to cultivate the land in question,



however 2-3 days thereafter, the occurrence in question had taken place. P.W.6 had recognized the accused persons present in the dock. P.W.6 has next stated that all the accused persons had surrounded his father and snatched documents from him and had taken it away. In paragraph no.4 of the cross examination, P.W.6 has stated that land dispute was going on in between his father and Brahmdeo Yadav since past one month for which a case under Section 107 Cr.P.C. had been filed by them. He has also stated that his father had purchased the land from Kurban in cash in the year, 1965 and the same was not given to Brahmdeo Yadav. In paragraph no.5 of his cross examination, P.W.6 has stated that Bhuto Miya is his co-villager whom he knows, however there is no dispute with him with regard to the said land in question and it is not a fact that he is hiding the fact that Bhuto Miya does not allow his father to go to the said land. In paragraph no.11 of his cross examination, P.W.6 has stated that upon *hulla* (alarm) being raised, he had woken up, but he did not make any attempt to wake up his wife and brothers as also his neighbours because immediately upon hearing *hulla* (alarm), the accused persons had assaulted him, resulting in him becoming unconscious, whereafter he regained consciousness in the hospital, where Doctor and co-villagers



were present but upon regaining consciousness, he did not see the co-villagers but he was then lifted and taken away by the police. P.W.6 has also stated that he remained at the Police Station upto 2:00 hours.

30. P.W.7 Dr. Kanhaiya Prasad Singh is the Doctor, who had conducted the post-mortem examination of the dead body of the deceased and he has stated in his deposition that on 02.05.2015, he was posted at Sadar Hospital, Supaul and had conducted the post-mortem examination of the dead body of Jagdeo Yadav, aged about 68 years, whose dead body was brought and identified by Chaukidar Shiv Shankar Paswan. He has further opined that on external appearance, he found the deceased to be average built, height about 5ft. 7 inches, eyes closed, mouth semi open, rigor mortis present, hair mixed and matted with blood as also blood clots were present on the face of the deceased. On external examination, P.W.7 had found the following injuries:-

“Incised injury from the lateral aspect of skull to lower portion of chin, cavity deep with incised injury to corresponding structure with incision of pinna on right side.”

On dissection, P.W.7 found the following:-

Right temporoparietal bone of skull incised with laceration of membrane and brain matter with blood



clots present in the skull,

All the structure of face corresponding to above mentioned injury including muscles, arteries, bone, veins were incised,

Chest wall, ribs and cartilage-NAD,

pleura-NAD, larynx and trachea-NAD,

lungs-pale,

pericardium-pale,

heart empty large vessel collapse,

abdominal wall-NAD,

peritoneum-NAD,

mouth incised injury corresponding to above mentioned external injury,

stomach contains small quantity of digested and semi digested food materials. Both small and large intestine contains gas, liquid and faeces.

Liver and spleen-pale,

both kidney-pale,

bladder contains small quantity of residual urine.

Both external and internal genitals-NAD.

P.W.7 has opined as follows:-

- (1) All the above mentioned injuries are anti-mortem in nature.
- (2) Cause of death due to haemorrhage and shock caused by above mentioned injuries by sharp cutting substance.
- (3) Time elapsed since death 6-24 hours.

P.W.7 has stated that the post-mortem report has been



prepared by him in his writing, which also bears his signature and the same has been marked as Exhibit-2. P.W.7 has next stated that sharp cutting instrument, may be *kudaal*.

31. In his cross examination, P.W.7 has stated that death after injury is in between 6 to 24 hours and that external injury was found on skull and no clotting of blood was found on spot of external injury. He has also stated that he had found blood on the face of the deceased and the same was also mentioned by him in his report. In paragraph no.10 of his cross examination, P.W.7 has stated that such type of injury may be caused by *Talwar* (sword) but not by knife. In para no.11 of his cross examination, P.W.7 has stated that he cannot say about the exact time of death, however he can only say that it was in between 6 to 24 hours. He has stated that he has no knowledge about making private notes.

32. P.W.8 Gyan Prakash Srivastav has stated in his examination-in-chief that on 18.07.2015, he was the Officer-in-Charge, Chhatapur and had assumed the investigation of Chhatapur P.S. Case No.92 of 2015 as also had recorded the statement of injured Sachendra Yadav in the case diary, whereafter he had received Supervision Note 1 and 2 and then he had handed over the charge to Rajnish Kumar Keshri on



20.7.2018. In cross examination, he has stated that after assuming charge of investigation, he did not record the statement of any witness. In para no.4 of his cross examination, P.W.8 has stated that he did not get much opportunity to conduct investigation.

33. P.W.9 Dr. Lalan Kumar Thakur has stated in his deposition that on 02.05.2015, he was posted at Primary Health Centre, Chhatapur and on that day, he had examined injured Sachendra Yadav at 3:30 p.m. & had found following injuries on his person:-

- i. Swelling over vertex of head 2 ½”
- ii. Bruise right side of forehead 2”x 1”
- iii. Incised wound outerspect of right leg 1”x 1/6”x skin deep

Injury no. i and ii caused by hard and blunt substance-simple in nature.

Injury no.iii caused by sharp cutting substance- simple in nature.

Marks of identification- mole on right side chest.

Age of injury -within 6 hours.

P.W.9 has further stated that the Injury Report was prepared by him in his writing and bears his signature, which has been marked as Exhibit-3. In his cross examination, P.W.9



has stated that injury no.i and ii can also occur on account of honeybee bite and can also take place on account of falling on hard substance. With regard to injury no.iii, P.W.9 has stated that it can also take place by falling on sharp stone. He has also stated that he has not mentioned the colour of the injury and all the three injuries can be self-inflicted.

34. P.W.10 Chandrakant Gauri has stated in his deposition that he was posted as Officer-in-Charge, Chhatapur Police Station on 02.05.2015 and on that day, he had received a written report from the informant, namely Sachendra Yadav (P.W.6), wherein he had mentioned about killing of his father and the assault made by the accused persons. He has also stated that on the basis of the written report, he had registered Chhatapur P.S. Case No.92 of 2015 dated 02.05.2015 under Sections 302/452 and 380/34 of the I.P.C. The formal FIR is in the writing of *Munsi* (Clerk) Ramesh Kumar, which also bears his signature and the same has been marked as Exhibit-4. P.W.10 has next stated that he had assumed the investigation of the case and had then prepared the Inquest Report, which also bears his signature, however the Inquest Report is not before him. He has also stated that he had sent the dead body of the deceased for post-mortem examination and had also recorded the re-statement of the



informant wherein the informant had fully supported the version as recorded in the FIR. P.W.10, has also stated that he had then proceeded from the Police Station to the place of occurrence and inspected the same and had also recorded the statement of witness Gajendra Yadav (P.W.1), who was present at the place of occurrence. He has also stated that the place of occurrence falls under the Chhatapur Police Station at Village-Bhagwatpur, Ward No.8 and is situated towards the western side of State Highway-9. He has next stated that the accused persons had assaulted the informant and his father and injured them badly, whereafter the father of the informant, namely Jagdeo Yadav had died during the course of treatment.

35. In paragraph no.7 of his cross examination, P.W.10 has stated that he had recorded the statement of Gajendra Yadav (P.W.1) at the place of occurrence, apart from recording the statement of Minoo Devi (P.W.3), Nutan Devi (P.W.5) and Deepo Devi (P.W.4). In paragraph no.8, P.W.10 has stated that he had also recorded the statement of Sanjay Yadav (P.W. 2) and all the witnesses had fully supported the occurrence. In paragraph no.9, P.W.10 has stated that the occurrence had taken place on 02.05.2015 at 1:30 a.m. in the night and information was received at the Police Station at 1:50 a.m. He has also stated



that the distance of the Police Station from the place of occurrence is about 12 kms. In paragraph no.10 of his cross examination, P.W.10 has stated that it takes 30-35 minutes to reach the place of occurrence from the Police Station by a fast vehicle. He has stated that FIR was registered at 8 a.m. on the basis of information received at 1:30 a.m. in the form of written report, which was given at the Police Station by the informant Sachendra Yadav. He has also stated that Sachendra Yadav was injured, however he had not written the Injury Report of Sachendra Yadav. He has stated that as per the FIR, none else other than Sachendra Yadav was injured.

36. In paragraph no.12 of his cross examination, P.W.10 has stated that at the time when he received information, the deceased had died. He has stated that he had started the investigation after 8:50 a.m and he had left for the place of occurrence at 9:50 am. He has also stated that he had left the Police Station after recording the statement of the informant. He has next stated that the ambulance containing the dead body of the deceased reached the Police Station at about 9 a.m. and then re-statement of the informant was recorded and at 9 a.m., Inquest Report was also prepared. In paragraph no.14, P.W.10 has stated that no paper was given to him with regard to



treatment of the deceased at Primary Health Centre, Chhatapur. He has also stated that it has been mentioned in the FIR that the deceased was taken to Primary Health Centre, Chhatapur, however he had not gone to Primary Health Centre, Chhatapur for verification of the said fact. In paragraph no.15, P.W.10 has stated that the informant, in his re-statement had not disclosed the time of death of the deceased. The death of the deceased had taken place at Neuro-Cardio Hospital, Biratnagar, however he had not verified the same. In paragraph no.16 of his cross examination, P.W.10 has stated that he had prepared the Inquest Report at the Police Station in the ambulance and copy of Inquest Report, kept in the case diary is before him. In the Inquest Report, he had not mentioned about blood stains on the clothes of the deceased. He has also stated that he had seen injury marks over the waist and below the neck, however he had not found any blood stains. In paragraph no.19, P.W.10 has stated that no blood marks were found outside the door of the house of the informant.

37. In paragraph no.20, P.W.10 has stated that he did not see any such thing at the place of occurrence, from which it would transpire that killing had taken place. In paragraph no.22 of his cross examination, P.W.10 has also stated that all the witnesses,



whose statements were recorded by him belong to the same family and they were sleeping at the time of occurrence and had arrived at the place of occurrence after hearing *hulla* (alarm). In paragraph no.24 of his cross examination, P.W.10 has stated that when he reached at the place of occurrence, he had recorded the statement of the witnesses present there, however he had not recorded the statement of any independent witness. In paragraph no.25, P.W. 10 has stated that he had not made any effort to recover the weapon and had not found the weapon at the place of occurrence. In paragraph no.26, P.W.10 has stated that he had not conducted any raid at the house of the accused persons to recover the weapon. In the FIR, the motive of the occurrence has been stated as land dispute, however he had not conducted any investigation on the point of land dispute. In paragraph no.27 of his cross examination, P.W.10 has stated that in the corner of the written report, name of the scribe has been mentioned as Satyanarayan Yadav, however he had not recorded his statement but he belongs to Kumarkhand Police Station.

38. After closing the prosecution evidence, the Ld. Trial Court recorded the statement of the aforesaid appellants on 27.07.2017 under Section 313 of the Cr.P.C for enabling them to personally explain the circumstances appearing in the evidence



against them, however they claimed to be innocent and said that they would furnish defence witness.

39. The learned Trial Court upon appreciation, analysis and scrutiny of the evidence adduced at the trial, has found the aforesaid appellants guilty of the offence and has sentenced them to imprisonment and fine as stated above, by its judgment and order.

40. We have perused the impugned judgment of the Ld. Trial Court, the entire materials on record and have given thoughtful consideration to the rival submissions made by the Ld. Counsel for the appellants as well as the Ld. APP for the State. The first and foremost aspect which is required to be adjudged is as to whether any ocular evidence is available on record to prove the guilt of the aforesaid appellants for the offences with which they have been charged. The prosecution has led the evidence of P.W 1 Gajendra Yadav, P.W. 2 Sanjay Yadav, P.W. 3 Minoo Devi, P.W.4 Deepo Devi, P.W.5 Nutan Devi and P.W.6 Sachendra Yadav (informant of the present case) to prove the guilt of the accused and based on the same, the Ld. Trial Judge has convicted the appellants whereas on the contrary, the appellants have primarily taken the defence that the said witnesses are not eye witnesses and they have not witnessed the commission of



the alleged occurrence. In this regard, upon examining the evidence of P.W. 1 Gajendra Yadav, we find that he has stated in his deposition that in the night of 02.05.2015 while he was sleeping in the night in the room of his house, he heard his father and brother Sachendra Yadav (P.W. 6) shouting, whereafter he ran and went to the door of the house and saw that Brahmdeo Yadav (appellant of the first case) has cut the head of his father by *kudaal* (hoe) and then his brother was assaulted by Awadesh Yadav (appellant no.2 of the second case) by inflicting *farsa* blow on his right leg. P.W. 1 has also stated that in the meantime, the other witnesses, examined by the prosecution, had also arrived there and then they had raised alarm, whereupon the co-villagers had arrived, whereafter the accused persons had fled away, whereupon the deceased was taken to Health Centre at Chhatapur from where he was referred to Biratnagar but upon reaching there, he was declared dead. P.W. 1 has also stated that the motive for the said occurrence is pre-existing land dispute. P.W. 1 has next stated in his evidence that he had seen eight accused persons there, including the appellant no.1 of the second case.

41. As far as P.W. 2 Sanjay Yadav is concerned, he has stated in his deposition that in the night at about 1:30 a.m. while he



was sleeping in the room of his house, he heard his father and brother Sachendra Yadav (P.W. 6) shouting, whereafter he ran and went to the door of his house where his brother Gajendra Yadav (P.W. 1) had already reached before him and saw that his father was smeared with blood as also he saw that all the aforesaid appellants and other accused persons named in the FIR, armed with *lathi* and *farsa*, were assaulting his brother Sachendra Yadav (P.W. 6), whereafter Awadesh Yadav, the appellant no.2 of the second case had assaulted his brother Sachendra Yadav (P.W. 6) by *farsa* on his right leg and in the meantime, the other witnesses examined by the prosecution had arrived there, leading to them raising an alarm, resulting in the co-villagers having assembled there, whereupon the accused persons had fled away. P.W. 2 has further stated that land dispute was existing in between the parties which has led to the occurrence in question and in fact his father (deceased) was having land related dispute with Brahmdeo Yadav (appellant of the first case) from before. Now, coming to P.W. 3 Minoo Devi, she has also stated in her deposition that in the night of 02.05.2015 at about 1:30 a.m. when she was sleeping in the room of her house, she heard her father and brother Sachendra Yadav (P.W. 6) shouting, whereafter she went running to the door of her house and saw that



Brahmdeo Yadav (appellant of the first case) had cut his father-in-law with *kudaal* (hoe) and was holding the *kudaal* (hoe) on which blood stains were present and her husband had fallen down, whereafter all the accused persons, including Sudhu Yadav (appellant no.1 of the second case) had assaulted her son Sachendra Yadav (P.W. 6). She has also stated that in the meantime, other witnesses had arrived including the villagers and then the accused persons had fled away. She has next stated that she had seen the occurrence with her own eyes.

42. As regards, P.W. 5 Nutan Devi, she has stated in her evidence that the occurrence took place around midnight while she was sleeping in her house and upon hearing *hulla* (alarm) at the door as also upon hearing her father-in-law shouting, her husband P.W. 6 had firstly gone there and then she along with other witnesses examined by the prosecution had also gone there and then she found that the forehead of her father-in-law had been cut, blood was oozing out, Brahmdeo Yadav (appellant of the first case) was holding *kudaal* (hoe) in his hand and the other accused persons including Sudhu Yadav (appellant no.1 of the second case) were standing there, armed with *lathi* and *farsa*, whereafter the said accused persons had assaulted Sachendra Yadav (P.W. 6) and others. She has also stated that



she had actually witnessed the occurrence and the same had occurred on account of land dispute between the parties existing since 2-3 years.

43. Now, coming to the informant Sachendra Yadav (P.W. 6), we find that he has stated in his deposition that the occurrence dates back to 02.05.2015 at about 1:30 a.m. in the night when he was sleeping in his room and then he heard his father shouting at the door of his house, whereupon he ran and opened the door and saw that Brahmdeo Yadav (appellant of the first case), armed with *kudaal* (hoe) and other accused persons including the appellant of the second case had caught hold of his father and had climbed over him, however while he had tried to catch Brahmdeo Yadav (appellant of the first case), he inflicted *kudaal* (hoe) blow on the head of his father, leading to his head being cut, whereafter blood started oozing out. Thereafter, Brahmdeo Yadav (appellant of the first case) had exhorted others to kill the informant, whereupon all the accused persons including the appellants of the second case had assaulted him with *lathi*, *farsa*, *balam* and sword indiscriminately P.W.6 had then raised an alarm and thereafter, all the witnesses had arrived there, whereupon Awadesh Yadav (appellant no.2 of the second case) had given *farsa* blow on the right leg of the informant,



resulting in him sustaining cut injury. The other accused persons had then assaulted the informant with *balam* and destroyed his leg. He has also stated that on account of land dispute going on in between his father and Brahmdeo Yadav (appellant of the first case), the present occurrence has taken place.

44. On going through the discussion made hereinabove in the preceding paragraphs with regard to the evidence of the prosecution witnesses, it is apparent that they have supported the case of the prosecution and no contradictions have been elicited in their cross examination to doubt the veracity of their testimony. In fact all the aforesaid prosecution witnesses i.e. P.W. 1 to P.W. 6 have definitely seen Brahmdeo Yadav (appellant of the first case) holding a *kudaal* (hoe) in his hand stained with blood and the deceased Jagdeo Yadav having fallen down on the ground besides him. In fact P.W.1 Gajendra Yadav and P.W. 6 Sachendra Yadav have also seen Brahmdeo Yadav (appellant of the first case) inflicting *kudaal* (hoe) blow on the head of the deceased, leading to his head being cut, whereafter blood started oozing out. Moreover, it is evident from the evidence of the prosecution witnesses that all of them have deposed that they had seen Awadesh Yadav inflicting *farsa* blow on the right leg of the informant i.e. Sachendra Yadav (P.W. 6)



as also had seen the other accused persons assaulting the informant. We also find that Sachendra Yadav (P.W. 6) is an injured witness and it is a well settled law that injured witness is granted special status and they offer an extremely valuable piece of evidence. In this regard, reference be had to a judgment rendered by the Hon'ble Apex Court in the case of *Abdul Sayeed vs State of Maharashtra*, reported in **2010(10) SCC 259**, wherein it has been held that where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in-guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. It has also been held that convincing evidence is required to discredit an injured witness.

45. Reference be also had to a judgment rendered by the Hon'ble Apex Court in the case of *Birbal Nath vs State of Rajasthan*, reported in **2023 SCC Online SC 1396**, wherein it has been held that greater evidentiary value is attached to the injured witness unless compelling reasons exist to doubt the same.

46. As regards the place of occurrence, all the prosecution



witnesses i.e. P.W.1 to P.W.6 have deposed that the same is the door of the house of the informant/ his father (deceased) and the same also stands corroborated from the evidence of P.W. 10, namely Chandrakant Gauri, i.e. the then Investigating Officer-cum-Officer Incharge of Chhatapur Police Station. The motive for carrying out the aforesaid occurrence stands substantiated from the testimony of the prosecution witnesses i.e. P.W.1 to P.W.6, who have all stated that pre-existing land dispute in between the deceased and Brahmdeo Yadav (appellant of the first case) have resulted in the accused persons giving effect to the aforesaid occurrence.

47. As far as the issue of credibility of a related/intrested witness is concerned, we are tempted to quote paragraph no. 26 of an old classic judgment rendered by a Three Judges Bench of the Hon'ble Apex Court, in the case of ***Dalip Singh and Others vs. The State of Punjab***, reported in ***AIR 1953 SC 364***, which is reproduced herein below:-

“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen



the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

48. Now, coming to the contention raised by the Ld. Senior Counsel for the appellants to the effect that the medical evidence does not support the ocular evidence, we find that on the contrary, the post mortem report of the deceased definitely corroborates the injury inflicted by Brahmdeo Yadav (appellant of the first case) by kudaal (hoe) and infact P.W.7 Dr. Kanhaiya Prasad Singh (the doctor, who has conducted post mortem examination of the dead body of the deceased) has opined that cause of death is hemorrhage and shock caused by injuries mentioned in the post mortem report by sharp cutting substance and in his cross examination, he has stated that the sharp cutting instrument may be *kudaal* (hoe). The law relating to conflict



between oral and medical evidence is well settled to the effect that unless and until the medical evidence is irreconcilably in conflict with the oral evidence, the oral testimony of the eye witnesses cannot be doubted. The Hon'ble Apex Court has held in the case of *Solanki Chimanbhai Ukabhai vs. State of Gujarat*, reported in *AIR 1983 SC 484* that unless the medical evidence completely rules out all possibilities of injuries taking place in the manner alleged, the testimony of the eye witnesses cannot be thrown out. Thus, we find that there is no irreconcilable conflict between the oral and the medical evidence which would warrant discarding the prosecution case. We also find that the ocular evidence of P.W. 1 to P.W. 6, which are cogent, convincing, creditworthy and reliable as also have stood the test of cross examination, are totally reconcilable and consistent with the medical evidence, hence there is no reason to create any doubt about the guilt of the appellants in the alleged occurrence, which stands proved beyond all reasonable doubts. As regards non-seizure of the blood-soaked mud and the weapons used, we find that these facts may be termed as some short comings on behalf of the investigating agency but the same would definitely not be enough to question the reliability of the evidence of the eye witnesses who are said to be eyes and



ears of justice.

49. We also find that the Ld. Trial Court has rightly convicted the appellants of the second case for the offences punishable under Section 302 with the aid of Section 34 of the I.P.C. inasmuch as all the accused persons had together arrived at the place of occurrence, armed with *kudaal*, *lathi*, *farsa*, *balam* and sword and it is apparent from the evidence of P.W.1 to P.W.6 that they shared a common intention to commit a criminal act, as aforesaid.

50. Thus, taking into account an overall perspective of the entire case, emerging out of the totality of the facts and circumstances, as indicated hereinabove and having perused the entire evidence on record, we find that the evidence led by the prosecution is cogent, convincing, creditworthy and reliable, hence there is nothing to doubt their testimony, on the basis of which the Ld. Trial Court has convicted the appellants. Therefore, there is no reason to create any doubt about the guilt of the appellants of the aforesaid two appeals in the alleged occurrence which stands proved beyond all reasonable doubts.

51. We would now take up for consideration the alternative argument raised by the Ld. Senior counsel for the appellants to the effect that the appellants had no intention to cause death



inasmuch as only single blow was inflicted on the head of the deceased and as far as the informant Sachendra Yadav (P.W.6) is concerned, farsa blow was inflicted on his right leg i.e. on the non-vital part of the body causing simple injury, thus the present case would not fall within the purview of Section 302 of the I.P.C. rather it would at best attract the provision of Section 304 Part II of the I.P.C., in absence of any intention to cause the death of the deceased. We have given a careful consideration to the argument raised by the Ld. Senior Counsel for the appellants. So far as the facts of the present case are concerned, it is apparent not only from the evidence adduced by the prosecution but also from the F.I.R. that the accused persons, all armed with *kudaal* (hoe), *farsa*, *balam* and sword had arrived at the door of the house of the deceased, surrounded him and thereafter, Brahmdeo Yadav (appellant of the first case) had inflicted single *kudaal* (hoe) blow on the head of the deceased while Awadesh Yadav had inflicted *farsa* blow on the right leg of the informant, namely Sachendra Yadav, however neither repeated blows were inflicted upon the deceased/the informant nor the accused persons had ensured that the deceased and the informant were assaulted brutally in such a manner so as to cause their death. From the entire conspectus of the case and



considering the factual matrix, it can be gathered that the act done by the appellant(s), who had caused death of the deceased, was with a knowledge that such act is likely to cause death but the facts are not such, so as to establish the intention of the appellant(s) to cause death of the deceased. “Intent” and “knowledge” are ingredients of Section 299 IPC and so far as an act done by an accused which causes death with a knowledge that the death was likely to be caused by such act but they did not have any intention to cause death, would come within the purview of Section 304 Part II IPC. Having considered the facts and circumstances of the present case as also the well settled law on the said issue, we safely conclude that the present case, in absence of any intention on the part of the appellants to cause death, cannot be described as murder but it would be culpable homicide not amounting to murder.

52. We may refer to a Judgment rendered by the Hon’ble Apex Court in the case of *Khokhan @ Khokan Vishwas Vs. State of Chhattisgarh*, reported in *(2021) 3 SCC 365*, wherein the Hon’ble Supreme Court of India, in paragraph-9 has considered Exception-4 to Section 300 IPC and has held as under:-

“9. Section 300 IPC is in two parts. The first part is



when culpable homicide can be said to be the murder and the second part is the exceptions when the culpable homicide is not murder. The relevant part of Section 300 IPC for our purpose would be Clause 4 to Section 300 and Exception 4 to Section 300 IPC. As per Clause 4 to Section 300 IPC, 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, such culpable homicide can be said to be the murder. However, as per Exception 4 to Section 300, culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. As per Explanation to Exception 4 to Section 300 IPC, it is immaterial in such cases which party offers the provocation or commits the first assault.”

53. In ***Litta Singh and another Vs. State of Rajasthan***, reported in **(2015) 15 SCC 327**, the Hon’ble Supreme Court of India while converting the conviction under Section 302 to 304 Part II IPC has held as under:-

“23. Considering the nature of the injury caused to the deceased and the weapons i.e. lathi and gandasi (sickle) used by them, it cannot be ruled out that they assaulted the deceased with the knowledge that the



injury may cause death of the person. Moreover, there is no evidence from the side of the prosecution that the accused persons preplanned to cause death and with that intention they were waiting for the deceased coming from the field and then with an intention to kill the deceased they assaulted him.

24. It is a well-settled proposition of law that the intention to cause death with the knowledge that the death will probably be caused, is a very important consideration for coming to the conclusion that death is indeed a murder with intention to cause death or the knowledge that death will probably be caused. From the testimonies of the witnesses, it does not reveal that the accused persons intended to cause death and with that intention they started inflicting injuries on the body of the deceased. Even more important aspect is that while they were beating the deceased the witnesses reached the place and shouted whereupon the accused persons immediately ran away instead of inflicting more injuries with the intent to kill the deceased.

26. After analysing the entire evidence, it is evidently clear that the occurrence took place suddenly and there was no premeditation on the part of the appellants. There is no evidence that the appellants made special preparation for assaulting the deceased with the intent to kill him. There is no dispute that the appellants assaulted the deceased in such a manner that the deceased suffered grievous injuries which



were sufficient to cause death, but we are convinced that the injury was not intended by the appellants to kill the deceased.

27. In the facts and circumstances of the case, in our considered opinion, the instant case falls under Section 304 Part II IPC as stated above. Although the appellants had no intention to cause death but it can safely be inferred that the appellants knew that such bodily injury was likely to cause death, hence the appellants are guilty of culpable homicide not amounting to murder & are liable to be punished under Section 304 Part II IPC.”

54. Thus, based on encapsulation of the above mentioned facts and circumstances of the case and the law prevailing on the subject matter, it has weighed upon us to come to a finding that the present case would fall under Section 304 Part (II) of the I.P.C., especially in view of the fact that from the evidence adduced by the prosecution, intention to kill the deceased does not get established and moreover, the elements of intention to cause death seems to be missing. Therefore, upon considering the entire case of the prosecution and the evidence adduced in support of the same, we feel that the appellants of both the aforesaid two appeals are liable to be convicted under Section 304 Part (II) of the I.P.C. As such, the conviction of the appellants under Section 302/34 of the I.P.C. and the sentence of



imprisonment for life awarded there under along with fine of Rs.10,000 are set aside and instead the appellants are convicted under Section 304 Part (II) of the I.P.C., however conviction under Section 452/34 of the I.P.C. would stand against the appellants but with no separate sentence being awarded there under.

55. Before coming to the sentence part, we would like to refer to few case laws wherein the conviction of the accused persons have been converted from Section 302 IPC to one under Section 304 Part (II) IPC and lesser than the maximum sentence has been awarded or the accused persons have been sentenced to undergo the custody period already undergone by them. In this connection, reference be had to the following judgments rendered by the Hon'ble Apex Court:-

- (i) Camilo Vaz vs. State of Goa, reported in (2000) 9 SCC 1;
- (ii) Rampal Singh vs. State of U.P., reported in (2012) 8SCC 289;
- (iii) Ankush Shivaji Gaikwad vs. State of Maharashtra, reported in (2013) 6 SCC 770;
- (iv) Chenda vs. State of Chhattisgarh, reported in (2013) 12 SCC 110;
- (v) Surain Singh vs. State of Punjab, reported in (2017) 5



SCC 796;

(vi) Anbazhagan vs. State, reported in 2023 SCC OnLine SC 857; and

(vii) Velthepu Srinivas vs. State of Telangana, reported in 2024 SCC OnLine SC 107.

56. It would also be apt to refer to a judgment rendered by the Hon'ble Supreme Court of India, reported in **(2011)14 SCC 471 (Buddhu Singh & Others Vs. State of Bihar)**, wherein once again the issue of conversion of conviction from Section 302 IPC to Section 304 Part II IPC was raised although the death was caused by an axe blow on the head of the deceased. The Hon'ble Apex Court, considering the absence of element of intention, held that the offence constituted culpable homicide not amounting to murder and converted the conviction of the accused from Section 302 IPC to Section 304 Part II IPC and sentenced each of them to the period already undergone. We think it proper to quote paragraphs-8 and 9 of the said judgment herein below:-

“8. Considering the overall material, we are of the view that there is hardly anything on record which can be said against accused Ledwa Singh and Balchand Singh though the common intention on their part could be attributed since they had done the overt act of grappling with and pinning down the deceased. Now,



seeing that his father and brother had been grappling with the deceased, accused Buddhu Singh dealt an axe-blow which could not be said to be intended towards the head. It could have landed anywhere. However, it landed on the head of the deceased. Therefore, the element of intention is ruled out. Again the defence raised on behalf of the accused that there could not have been the intention to commit the murder of the deceased is justified by the fact that accused Buddhu Singh did not repeat the assault. Under the circumstances, we feel that the prosecution has been able to establish the guilt of the accused persons under Section 304 Part II IPC.

9. We, accordingly, modify the finding of the High Court and convert the conviction of the accused from Section 302 IPC to Section 304 Part II IPC and sentence each of them to the period already undergone. Accused Buddhu Singh is stated to be in jail for the last five years whereas other accused persons, namely, Ledwa Singh and Balchand Singh are stated to be in jail for the last ten years. They be released from the jail forthwith unless they are required in any other case.”

57. In view of the law laid down by the Hon’ble Apex Court, in the abovementioned judicial pronouncements, we would also like to give a careful consideration to the facts of the present case for the purpose of awarding a proper sentence. The facts and circumstances of the present case depicts that the appellants



had never intended to cause any serious injury to anyone, which would have caused death. It would also be seen that the deceased sustained only single injury on the head, as would be apparent from the evidence of P.W. 9 Dr. Lalan Kumar Thakur and the informant (P.W. 6) sustained simple injuries. This leads us to a prudent conclusion that the appellants never planned to commit an act which would cause death of the deceased, hence this takes away the element of intention of causing death or any kind of serious bodily injury to the prosecution side.

58. We may also take into consideration the fact that the appellant no.1 of the first case has remained in custody for about 10 years while the appellants of the second case have also remained in custody for more than 5 years, though they are on bail at the moment, apart from the fact that the appellants of the aforesaid two appeals have also suffered the rigors of trial for a substantially long period. Thus, taking into account an overall perspective of the entire case, as indicated hereinabove, as also considering the fact that the appellant of the first case, who had assaulted by *kudaal* (hoe) has remained in custody for about 10 years and appellants of the second case, who are alleged to have inflicted simple injuries upon the informant, have remained in custody for more than 5 years, apart from the fact that we have



already convicted the appellants under Section 304(II) of the I.P.C, we deem it fit and proper to sentence the appellants, for the altered conviction to the period of sentence already undergone.

59. The appellant of the first case, namely Brahmdeo Yadav, who is in custody, is directed to be released from jail forthwith unless required in any other case.

60. As far as the appellants of the second case, namely Sudhu Yadav and Awadesh Yadav are concerned, since they are on bail, they are discharged from the liability of their bail bonds.

61. Accordingly, the aforesaid two appeals bearing Criminal Appeal (DB) No.1289 of 2017 and Criminal Appeal (DB) No.1282 of 2017 are partly allowed to the extent indicated hereinabove.

(Mohit Kumar Shah, J)

I agree
(Soni Shrivastava, J)

(Soni Shrivastava, J)

sonal/-

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