

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No. 1100 of 2017

Arising Out of PS. Case No.-180 Year-2014 Thana- SIKARPUR District- West Champaran

Ramdhani Ram Son of Late Mingi Ram @ Late Milgi Ram, resident of
Village- Daharwa Tola, P.S. Shikarpur, District-West Champaran

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 992 of 2017

Arising Out of PS. Case No.-180 Year-2014 Thana- SIKARPUR District- West Champaran

1. Surendra Ram S/o Late Laxmi Ram R/o vill - Daharwa Tola, P.S. - Shikarpur, Distt.- West Champaran
2. Kokil Ram S/o Late Dheri Ram R/o vill - Daharwa Tola, P.S. - Shikarpur, Distt.- West Champaran
3. Amar Ram S/o Nagendra Ram R/o vill - Daharwa Tola, P.S. - Shikarpur, Distt.- West Champaran
4. Rajshri Ram s/o Sri Mahngu Ram R/o vill - Daharwa Tola, P.S. - Shikarpur, Distt.- West Champaran
5. Amit Ram S/o Late Bhulai Ram R/o vill - Daharwa Tola, P.S. - Shikarpur, Distt.- West Champaran
6. Paltan Ram S/o Late Kushahar Ram R/o vill - Daharwa Tola, P.S. - Shikarpur, Distt.- West Champaran
7. Raju Ram S/o Sri Bhikham Ram R/o vill - Daharwa Tola, P.S. - Shikarpur, Distt.- West Champaran

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance:

(In CRIMINAL APPEAL (DB) No. 1100 of 2017)

For the Appellant : Mr. Ram Adya Singh, Advocate
Ms. Aishwarya Shree, Advocate

For the State : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 992 of 2017)

For the Appellants : Mr. Ram Adya Singh, Advocate
Ms. Aishwarya Shree, Advocate



For the State

: Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 12-11-2025

The aforesaid appeals have been filed under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”) against the same judgment of conviction and order of sentence dated 30.06.2017 and 10.07.2017 respectively, passed by the learned Court of 3rd Additional Sessions Judge, West Champaran, Bettiah (hereinafter referred to as “the learned Trial Judge”), in Sessions Trial No. 226 of 2015 (arising out of Shikarpur P.S. Case No.180 of 2014), hence they have been heard together and are being disposed off by the present common order and judgment. By the said judgment of conviction dated 30.06.2017 and the order of sentence dated 10.07.2017, all the aforesaid appellants have been convicted under Sections 147, 148 and 302/149 of the Indian Penal Code (hereinafter referred to as “the IPC”) and have been sentenced to undergo one year rigorous imprisonment each under Section 147 of the IPC, two years rigorous imprisonment each under Section 148 of the IPC and life imprisonment under Section 302/149 of the IPC with fine of



Rs.10,000/- each and in case of default of payment of the same, the aforesaid appellants have been further directed to undergo six months simple imprisonment each. All the sentences have been directed to run concurrently.

2. Short facts of the case as per the *fardbeyan* of the informant, Nagina Yadav (P.W.-7), recorded by the Inspector of Police, Anand Kumar (P.W.-8), SHO, Shikarpur Police Station on 21.06.2014 at 10:30 a.m. at the Primary Health Centre, Narkatiaganj is that on 21.06.2014 at about 6:00 a.m. in the morning, he along with other villagers had gone to Dilip Verma of Shikarpur in connection with a dispute pertaining to pond and *nala* (drain) in between Daharwa Tola and Gotha Tola. The villagers of Gotha Tola had also reached there in connection with the said dispute. Dilip Verma had then said that only after examining the documents of both sides, any decision can be taken, whereafter the villagers who had come with the informant had stayed at the place of Dilip Verma and the villagers of Gotha Tola had gone outside. The informant has next stated that his co-villagers, namely Satyendra Yadav (deceased), Ritesh Yadav (PW-3) and Rakesh Kumar (PW-2) had also gone outside the house of Dilip Verma. Panchayati had continued for 1½ hour. At around 8:00 a.m. in the morning, *hulla* (alarm) was



raised loudly near the Baraiya Tola to the effect that they have been assaulted and when the informant along with other villagers had gone towards Baraiya Tola, then they saw that Ramdhani Ram (appellant of the first case), who was holding *lathi* in his hand, was assaulting Satyendra Yadav brutally. The rest of the accused persons including the appellants of the second case, all resident of Daharwa Tola, Shikarpur, District-Bettiah, were armed with *lathi*, *balla* and weapons and they were also assaulting Satyendra Yadav, who had fallen on the ground. The informant has further stated that when he along with other villagers reached there, the accused persons had fled away. The informant along with the help of his villagers had taken the injured Satyendra Yadav to the Primary Health Centre, Narkatiaganj where the doctor had declared him to be dead. The informant has further stated that the occurrence was witnessed by other villagers and had taken place on account of the dispute relating to pond and *nala* (drain) situated in between Daharwa Tola and Gotha Tola. The informant has next stated that he has full belief that the occurrence in question has been committed by the appellants of the aforesaid two cases and others jointly with a common object, who were armed with lethal weapons. The informant has also stated that the accused had surrounded



his cousin brother Satyendra Yadav and assaulted him badly resulting in him being injured grievously leading to his death. The informant has stated that the *fardbeyan* has been read over to him which he has heard and upon understanding the same and finding the same to have been written correctly, he has put his signature over the same.

3. On the basis of the aforesaid *fardbeyan* of the informant, a formal FIR bearing Shikarpur P.S. Case No.180 of 2014 was registered on 21.06.2014 under Sections 147, 148, 149 and 302 of the IPC, at about 11:30 a.m. against 15 accused persons, including the appellants of the aforesaid two cases. After investigation and finding the case to be true qua all the aforesaid appellants, charge-sheets dated 14.09.2014 and 30.09.2014 were submitted by the police under Sections 147, 148, 149 and 302 of the IPC. On going through the charge-sheet and after perusal of the materials collected during the course of investigation, the learned Trial Court had then taken cognizance against the aforesaid appellants under Sections 147, 148 and 302/149 of the IPC, whereafter the case was committed to the Court of Sessions vide order dated 25.05.2015. The Ld. Trial Court had then framed charges against the appellants of the aforesaid two appeals on 01.07.2015 under Sections 147, 148 and 302/149 of



the IPC to which they pleaded not guilty and claimed to be tried.

4. During the course of trial, the prosecution had examined nine witnesses. PW-1 Arjun Yadav and PW-2 Rakesh Kumar Yadav are cousin nephew of the informant while PW-3 Ritesh Kumar is the son of the informant and PW-4 Anita Devi is the wife of the deceased -Satyendra Yadav. PW-5 Raj Kumar Yadav is a co-villager, who has proved the seizure list and PW-7 Nagina Yadav is the informant of the present case. PW-6 Deepu Kumar is a formal witness, who has proved the inquest report while PW-8 Anand Kumar is the Investigating Officer of this case and PW-9 Dr. Ashok Kumar Chaudhary is the doctor, who had conducted the postmortem examination of the dead body of the deceased.

5. The prosecution by way of documentary evidence, had proved the following documents, which were marked as exhibits during the course of the trial:-

Exhibits	Description
Exhibit-1	Signature of the informant on the <i>fardbeyan</i>
Exhibit-2	Forwarding report
Exhibit-2/A	Pagination
Exhibit-3	Formal FIR
Exhibit-4	Postmortem report
Exhibit-5	order-sheets



Exhibit-5/1	Order of Circle Officer, Narkatiaganj
Exhibit-5/2	Order of Sub-divisional Officer, Narkatiaganj
Exhibit-6	Letter No.959 dated 08.08.2015 of Sub-divisional Office, Narkatiaganj, West Champaran.
Exhibit-7	Report given to the Circle Officer
Exhibit-7/1	Application given to the Circle Officer by villagers
Exhibit-7/2	Letter No.544 dated 13.11.2013 of the Circle Office, Narkatiaganj.
Exhibit-7/3	Application of Arjun Kumar
Exhibit-8	Certified copy of khatian
Exhibit-9	Inquest report of deceased Satyendra Yadav

6. The defence by way of documentary evidence, had proved the following documents, which were marked as exhibits during the course of the trial:-

Exhibits	Description
Exhibit-A	Order sheets of Bandobasti Case No.35/95-96
Exhibit-A/1	Bandobasti Khesra Form
Exhibit-A/2	Khesra No.828
Exhibit-B	Order sheets of Bandobasti Case No.52/2001-2002
Exhibit-C	General Information, Circle Office, Narkatiaganj.
Exhibit-C/1	Map of khesra No.828



Exhibit-D	Bandobasti Khesra Prapatra
Exhibit-E	Parcha of Gairmajarua Malik Land
Exhibit-F	License of Fair Rent Determined on Gairmajarua Malik/Aam Land (Rent Roll)
Exhibit-G	Rent Receipt No.491755
Exhibit-G/1	Rent Receipt No.196979
Exhibit-H	Certified copy of deposition of informant-Nagina Yadav

7. The learned counsel for the appellants of the aforesaid two appeals, Mr. Ram Adhya Singh, assisted by Ms. Aishwarya Shree, Advocate has submitted that it would be apparent from the evidence on record that the accused persons had said in the meeting held one day prior to the meeting held at the house of MLA Dilip Verma that in case any decision is taken against them in the meeting held at the house of the said MLA, they would kill the members of Yadav community, however since admittedly no decision was taken in the meeting, there was no motive on the part of the accused persons to have given effect to the alleged occurrence. It is next submitted that there are vital contradictions in the evidence led by the prosecution and a perusal of the deposition of the prosecution witnesses would show that there are inconsistencies in their testimony. It is also submitted that while in the FIR, it has been mentioned by the informant that Ramdhani Ram (appellant of the first case) had



assaulted the deceased, Satyendra Yadav by *lathi*, whereafter other accused persons, including the appellants of the second case had assaulted the deceased, when he had fallen down on the ground, however PW-1 Arjun Yadav, in his deposition has stated that Ranjeet Ram had assaulted the deceased by an iron rod. Thus, it is submitted that the evidence led by the prosecution is at variance with the version as has been narrated in the FIR. It is also submitted that Ex-MLA Dilip Verma has not been examined by the prosecution, which has caused grave prejudice to the defence. In fact, PW-8 Anand Kumar, who is the Investigating Officer of the present case has also stated in his evidence that he has not recorded the statement of Ex-MLA Dilip Verma, thus there is no evidence on record to show that any Panchayati was held at the house of the said MLA Dilip Verma. It is next submitted that PW-8 Anand Kumar has also stated in his evidence that he did not find any drop of blood at the place of occurrence, hence the occurrence as narrated by the prosecution does not seem to be truthful.

8. The learned counsel for the appellants of the aforesaid two appeals has next stated that PW-7 Nagina Yadav has admitted that tank of the motorcycle was broken and the handle was bent, thus the same shows that accident had taken place resulting in death of



the deceased. It is contended that PW-9 Dr Ashok Kr. Chaudhary, who had conducted the postmortem examination of the dead body of the deceased, has stated in his evidence that the injury inflicted by *lathi* cannot be of round shape. Thus, it is submitted that the medical evidence does not support the mode and manner of infliction of injuries as narrated in the FIR apart from there being variance in the medical evidence & the ocular evidence. It is submitted that as per the FIR, 15 persons are stated to have assaulted the deceased, however the postmortem examination report would show that only two injuries have been found on the dead body of the deceased, thus the prosecution has obviously not come out with the actual version and has exaggerated the injuries inflicted upon the deceased. It is stated that PW-9 Dr. Ashok Kumar Chaudary has stated in his evidence that the injuries could have been caused by accident.

9. The learned counsel for the appellants has further submitted that it is still a mystery as to from where the police had got information about the incident and had reached the Primary Health Centre, Narkatiaganj. Thus, apparently the police had conducted a perfunctory investigation, which has caused grave prejudice to the prosecution. In order to substantiate the said submission, it is stated that inquest report was prepared before lodging of the FIR and the



same shows that blood was oozing out from the head, however the postmortem report does not show presence of blood on any part of the body. Moreover, the police has neither collected any blood sample from the place of occurrence nor the clothes of the deceased were seized by the police. It is submitted that none of the witnesses have stated that their clothes had become blood stained on account of them having carried the deceased to the hospital, which creates a doubt about the story as propounded by the prosecution. It is also submitted that no statement of independent witness has been recorded although several villagers had arrived at the place of occurrence, which has also caused grave prejudice to the aforesaid appellants. The genesis of the case has also not stood proved. In order to show contradictions in between the evidence of the prosecution witnesses, it has been pointed out that PW-2 Rakesh Kumar Yadav has stated in his evidence that motorcycle of Nagina was used for taking the deceased to the hospital whereas PW-7 Nagina Yadav has stated that the motorcycle of Wakil Yadav was used for taking the deceased to the hospital. It is submitted that though PW-1 Arjun Yadav has stated that he had also got injured on account of assault made by the accused persons, however there is no evidence to show that he had visited the doctor, thus his evidence is also not trustworthy. It is next submitted that none of the



other witnesses, save and except PW-1 Arjun Yadav, have levelled any specific allegation of assault by the accused persons on the members of the prosecution party. It is contended that the evidence of prosecution witnesses does not stand corroborated with the medical evidence on record, in view of the fact that though the prosecution witnesses have stated that all the accused persons had assaulted the deceased-Satyendra Yadav badly all over his body, however only two injuries have been found by the doctor on his head as is apparent from the postmortem report and there is no injury on rest of the body of the deceased.

10. The learned counsel for the appellants has next submitted that Section 149 of the IPC is not attracted in the present case. It is stated that there was no common object amongst the accused persons to kill the deceased, hence the appellants of the second case cannot be roped in the present case with the aid of Section 149 of the IPC. In order to buttress the said argument, reference has been made to a judgment rendered by the Hon'ble Apex Court in the case of *Budhwa @ Ramcharan & Ors. vs. State of MP*, reported in *AIR 1991 SC 4*. Reference has also been made to a judgment rendered by the learned Division Bench of this Court in the case *Anant Lal Yadav & Ors. vs. The State of Bihar*, reported in *2011 (3) PLJR 899*, paragraph nos. 22 and 23



whereof are reproduced herein below:-

“22. Having heard the parties, I find that the appellants except appellant No. 6, Baijnath Yadav have been convicted under Section 302 of the Indian Penal Code with aid of Section 149 of the Indian Penal Code. Section 149 reads as follows : -

“Every member of unlawful assembly guilty of offence committed in prosecution of common object:-If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

23. The above provision makes it clear that before convicting accused with the aid of Section 149 IPC, the court must give clear finding regarding nature of common object and that the object was unlawful. In the absence of such finding as also any overt act on the part of the accused persons, mere fact that they were armed could not be sufficient to prove common object. Section 149 IPC creates a specific offence and deals with punishment of that offence. Whenever the court convicts any person or persons of an offence with aid of Section 149 IPC, a clear finding regarding the common object of the assembly must be given and the evidence adduced must show not only the nature of common object but also that the object was unlawful. Before recording a



conviction under Section 149 IPC essential ingredients of Section 141 IPC must be established. The above principles have been reiterated in Bhudeo Mandal v. The State of Bihar (1981) 2 SCC 755.”

11. Thus, it is submitted by the learned counsel for the appellants of the aforesaid two appeals that the case of the prosecution is full of inconsistencies, the witnesses are untrustworthy and even the genesis of the case has not stood proved, hence the impugned judgment of conviction and the order of sentence is full of infirmities, consequently the same is fit to be set aside and the appellants of the aforesaid two appeals are required to be acquitted. It has been alternatively argued that even if the evidence led by the prosecution is believed to be true and considered on its face value, the present case would not fall under Section 302 of the I.P.C. but under Section 304 part II of the I.P.C.

12. The learned Additional Public Prosecutor for the State Ms. Shashi Bala Verma has submitted that the evidences of all the prosecution witnesses are consistent and there is no contradiction, hence they are trustworthy. It is also submitted that there is no doubt that Panchayati was held at the house of the then MLA Dilip Verma and that dispute pertaining to pond and *nala* (drain) was existing in between the parties. It is also not in doubt as is apparent from the evidence of the prosecution



witnesses that the appellant of the first case had assaulted the deceased, whereafter the others including the appellants of the second case had assaulted him resulting in his death on account of injuries caused due to assault made by the appellants of the aforesaid two appeals. It is also submitted that PW-7 Nagina Yadav, i.e. the informant, has categorically stated in his evidence in paragraph no.15 that dispute was going on pertaining to *pokhar* (pond) since one year, the case pertaining to the same was also going on since one year and the disputed land of *pokhar* admeasures about 7½ - 8 katha. The learned Additional Public Prosecutor for the State has next stated that PW-2 Rakesh Kumar Yadav and PW-3 Ritesh Kumar had left the house of the then MLA Dilip Verma along with the deceased –Satyendra Yadav, hence they are the best eyewitness to the occurrence in question and in fact they have also deposed as eye witness in the present case, hence there is no doubt about the guilt of the aforesaid appellants. Thus, it is submitted that there is no infirmity in the impugned judgment of conviction and order of sentence, hence the same is fit to be upheld.

13. Beside hearing the learned counsel for the parties, we have minutely perused both the evidence, i.e. oral and documentary. Before proceeding further, it would be necessary



to cursorily discuss the evidence.

14. PW-1 Arjun Yadav has stated in his deposition that the occurrence dates back to one year two months, at about 8:00 a.m. in the morning, which took place on account of the dispute pertaining to public pond of the village regarding which Panchayati was being held at the house of MLA Dilip Verma in between members of Yadav community and scheduled caste community. Panchayati had continued for an hour and during the course thereof, both sides started quarreling with each other, whereupon the MLA said that both sides should come with their documents. The members of the scheduled caste community did not show any document and then they had left first, whereafter Satyendra Yadav (deceased), Ritesh Yadav (PW-3) and Rakesh Kumar (PW-2) had also left the house of the MLA on a motorcycle and when they reached in the middle of Baraiya Tola- Shikarpur, 15-16 members of the scheduled caste, including the appellants of the aforesaid two appeals were present there. Thereafter, all the accused persons had together made Satyendra Yadav (deceased) alight from the motorcycle and then all the accused persons armed with *lathi* and Ranjeet Ram armed with rod had started assaulting Satyendra Yadav (deceased), leading to Satyendra Yadav having fallen on the



ground, whereupon *hulla* (alarm) was raised, whereafter PW-1 and other witnesses had arrived there running and had seen with their eyes that the accused persons were assaulting Satyendra Yadav and when they tried to intervene, they were also assaulted by the accused persons, after which they had fled away. Satyendra Yadav was then lifted and taken him to Narkatiaganj Hospital where the doctor declared him to be dead. Postmortem examination of the dead body of the deceased was held at Bettiah Hospital. PW-1 has next stated that the police had recorded his statement and the reason for the dispute/quarrel is pond. PW-1 had recognized the accused standing in the dock.

15. In his cross-examination, PW-1 has stated that Nagina Yadav (PW-7) is his cousin uncle. In paragraph No.10 of his cross-examination, PW-1 has stated that in Panchayati there were 12 people from the Yadav community and on the date and time of Panchayati, police was not present there. The members of the scheduled caste had arrived first in the Panchayati and no written decision had taken place in the Panchayati. PW-1 has also stated that he had put forth the case on behalf of Yadav community. In paragraph No.14 of his cross-examination, PW-1 has stated that there was only one motorcycle on which Satyendra Yadav (deceased) had ridden alone and had gone towards the north side of



Baraiya Tola. In paragraph No.15 of his cross-examination, PW-1 has stated that he and others had reached at the house of Dilip Verma at 6:00 a.m. in the morning and after 15 minutes Dilip Verma had come for Panchayati, who had first heard the members of the scheduled caste and they had continued talking for 20-25 minutes. Thereafter, the members of Yadav community had put forth their point for 20-25 minutes. Dilip Verma had then told both the sides that they should bring their respective evidence. PW-1 has stated that no assault had taken place at the house of Dilip Verma. The members of the scheduled caste were about 17-18 in number. All the members of the scheduled caste were from Maharwa Tola. The members of the scheduled caste had left by taking northern side of the road and after 10 minutes, the members of Yadav community had also left. Firstly, Satyendra Yadav (deceased) had left on a motorcycle as also Ritesh Yadav (PW-3) and Rakesh Yadav (PW-2) had left on cycle, while rest 8-9 members of the Yadav community were talking with Dilip Verma, who had talked with them for 3-4 minutes, whereafter *hulla* (alarm) was raised leading to the rest of the members of Yadav community leaving from there.

16. In paragraph No.16 of his cross-examination, PW-1 has stated that the place of occurrence is at a distance of 30 steps from Baraiya Tola and the house of MLA Dilip Verma is at a



distance of one kilometer. One person from Baraiya Tola had also arrived at the place of occurrence, however he does not know his name. In paragraph No.17 of his cross-examination, PW-1 has stated that before he left the house of Dilip Verma, the members of the scheduled caste had already left. In paragraph No.18 of his cross-examination, PW-1 has stated that after *hulla* (alarm) was raised by Rakesh (PW-2) and Ritesh (PW-3), he had gone to the place of occurrence. In paragraph No.19 of his cross-examination, PW-1 has stated that apart from him, 7-8 more persons had arrived at the place of occurrence, namely Nagina Yadav (PW-7), Wakil Yadav, Arjun (PW-1), Shomi Yadav, Satish Yadav, Raju Kumar, Anil Kumar, Vivek Kumar and Manager Yadav, who do not belong to his family. PW-1 has further stated that he and others had gone running towards the place of occurrence by taking the road situated towards northern side of the house of Dilip Verma. He has next stated that when they were going towards the place of occurrence, the accused persons were not returning back after having engaged in assault, but they were still present there and he and others had met the accused persons at the place of occurrence.

17. In paragraph No.20 of his cross-examination, PW-1 has stated that Satyendra Yadav (deceased) had fallen on the ground



and the accused persons were assaulting him. He has also stated that no passer-by was present there. In paragraph No.22 of his cross-examination, PW-1 has stated that the residents of Maharwa Tola, namely, Nagina Yadav (PW-7), Shomi Yadav, Satish Yadav, Raj Kumar Yadav, Anil Kumar, Arjun Kumar (PW-1), Wakil Yadav, Vivek Kumar etc. were present there. In paragraph No.23 of his cross-examination, PW-1 has stated that they had taken the injured on a motorcycle to Narkatiaganj Primary Health Centre. PW-1 has stated that except nose and head, blood was not oozing from any other frontal part of the body of Satyendra Yadav. The motorcycle of Satyendra Yadav had fallen at the place of occurrence, however he cannot say as to who had lifted the motorcycle and taken it away.

18. PW-1 has also stated that he had not checked the pulse of Satyendra Yadav, Narkatiaganj Primary Health Centre is at distance of 5-6 kilometer from the place of occurrence and on the way, Satyendra Yadav did not say anything and he was not conscious. In paragraph No.25 of his cross-examination, PW-1 has stated that nose and legs of Satyendra Yadav (deceased) were intact. In paragraph No.26 of his cross-examination, PW-1 has stated that he had received minor injuries on his body which he had not got treated. In paragraph No.27 of his cross-



examination, PW-1 has stated that blood had fallen on the ground at the place of occurrence. PW-1 has stated that the police officer had recorded his statement by coming to his house and had also made queries from him at the hospital. In paragraph No.30 of his cross-examination, PW-1 has stated that he had told the police officer that all the accused persons had together made Satyendra Yadav fall from the motorcycle and that when they had intervened, they were also assaulted.

19. PW-2 Rakesh Kumar Yadav has stated in his deposition that the occurrence dates back to 21.06.2014 at about 6:00 a.m. in the morning, when he along with Nagina Yadav (PW-7), Wakil Yadav, Satish Yadav, Ritesh Yadav (PW-3), Shomi Yadav, Manager Yadav, Raj Kumar Yadav (PW-5), Satyendra Yadav (deceased), Romal Yadav, totaling 20 in number had gone to the house of MLA Dilip Verma for Panchayati purpose. PW-2 has further stated that before they had arrived there, the appellants of the aforesaid two cases and others, totaling 16-17 in all, had arrived there for Panchayati in connection with the dispute pertaining to pond and *nala* (drain). MLA Dilip Verma had conducted Panchayati for 1-1½ hours and when no solution could be arrived, the MLA told them to first bring their respective documents and then Panchayati will be held,



whereafter all the accused persons started saying something and then they left, however the MLA had detained the members of Yadav community. After five minutes he, i.e. PW-2, Satyendra Yadav (deceased) and Ritesh Yadav (PW-3) had left on a motorcycle, however they were stopped by the accused persons in between Baraiya Tola and Shikarpur. Thereafter, Ramdhani Ram (appellant of the 1st case) had pushed Satyendra Yadav from the motorcycle and then all the accused persons had together assaulted Satyendra. Ranjit Ram had then assaulted with rod and other accused persons armed with *lathi* had started assaulting Satyendra Yadav, whereafter he (PW-2) and Ritesh Yadav (PW-3) had fled away in order to save themselves but in the meantime, they had also received minor injuries. The witnesses had then arrived leading to the accused persons fleeing away. Satyendra Yadav was lifted and taken to Narkatiaganj Hospital where the doctor had declared him to be dead. PW-2 has further stated that some days back, the accused persons had held a meeting at the Panchayat Bhawan and they had decided that in case the outcome of Panchayati was not favorable to them, they would kill the members of the Yadav community, whoever they meet. PW-2 had recognized the accused persons standing in the dock.



20. In cross-examination, PW-2 has stated that the Investigating Officer had recorded his statement. In paragraph No.13 of his cross-examination, PW-2 has stated that the pond in question is a public pond, all the villagers take water from the same and there is no evidence that the said pond belongs to Yadav community. In paragraph no.18 of his cross-examination, PW-2 has stated that since 1½ years prior to the present occurrence, dispute was going on pertaining to the said pond, which is a public pond. In paragraph no.29, PW-2 has stated that the accused persons had together first left the place where the Panchayati was being held and from the place of occurrence, gate of Sikarpur house is visible. PW-2 has also stated that while the accused persons were leaving the place where Panchayati was being held, they were abusing and had engaged in unwarranted talks. In paragraph No.37 of his cross-examination, PW-2 has stated that he had gone there on cycle. Satyendra Yadav had left the house of MLA situated at Sikarpur along with PW-2 Rakesh Kumar Yadav and PW-3 Ritesh Kumar. PW-2 has stated that he cannot say as to whether any person had come there on motorcycle. PW-2 has further stated that the motorcycle had reached the place of occurrence within 2-3 minutes, where the accused persons had stopped them and the said place is



situated towards the northern side of the house of Dilip Verma, where road is situated and few people go on the same.

21. PW-2 has stated that after motorcycle was stopped by the accused persons, they had surrounded them, however the accused persons had not covered their mouth/face, but they were wearing *pagari* (turban). The accused persons had surrounded the motorcycle and had stood there, whereafter they started abusing Satyendra Yadav and had made his motorcycle fall on the ground, resulting in PW-2 having got scared and then he, in order to save himself, had fled 25 steps towards southern side as also had started raising *hulla* (alarm) and was also shouting that accused persons are engaging in assault. PW-2 has next stated that he was raising *hulla* while standing on the road and then Ritesh Yadav (PW-3) had also started fleeing in order to save his life. PW-2 has stated that upon him raising *hulla*, the members of Yadav community had come from the southern side for saving them. PW-2 has next stated that about 10-11 persons had come to save them, who are also witness in the present case and the said witnesses had themselves witnessed the occurrence but he had not told them about the occurrence. Subsequently, when the witnesses had arrived, the accused persons had fled away.

22. In paragraph no.38 of his cross-examination, PW-2 has



stated that after being injured Satyendra Yadav had fallen on the road on the eastern side and at a distance of 1½ hand, his motorcycle was lying. PW-2 has stated that he cannot say about the damage to the motorcycle, however Satyendra Yadav had fallen on his face. PW-2 has next stated that Satyendra Yadav was not writhing in pain and he was not saying anything as also he was not breathing. He (PW-2) and other witnesses had not turned back and seen Satyendra Yadav but they had lifted him and taken him to the hospital, however he was not having any injury on his back and legs but blood was oozing out from the back portion of the head and was also falling from his nose. PW-2 has further stated that they had then put Satyendra Yadav on the motorcycle of Nagina Yadav (PW-7) and taken him to Government Hospital at Narkatiaganj, which is at a distance of 5-6 kilometer from the place of occurrence. He has also stated that at the place of occurrence, blood had fallen and there fields are situated on both the eastern and western side.

23. PW-2 has further stated that he had stayed at the place of occurrence for half an hour, however he does not remember as to how many witnesses had come from Baraiya Tola. PW-2 has also stated that neither he nor Ritesh Yadav had received any injury. In paragraph No.43 of his cross-examination, PW-2 has



stated that he cannot say as to how many injuries were sustained by Satyendra Yadav on account of *lathi* blows and he had not seen other injuries, however he had seen the injury inflicted at the back of the head of Satyendra Yadav. In paragraph No.44 of his cross-examination, PW-2 has stated that his statement was recorded by the police officer at the Narkatiaganj Hospital on the date of occurrence where lots of people were present.

24. PW – 3 Ritesh Kumar has stated in his deposition that the occurrence dates back to 21.06.2014 at about 8:00 a.m. in the morning. He has stated that the occurrence had taken place on account of dispute pertaining to pond and *nala* (drain). PW-3 has further stated that the accused persons and the members of Yadav community had come at the house of Shikarpur MLA Dilip Verma and he said that both the parties should show their respective documents and Panchayati was held, however when decision could not be taken in the Panchayati, MLA said that both parties should go and come with documents. Thereafter, the accused persons had left the house of MLA and then the members of Yadav community had left. After 10 minutes of the members of the scheduled caste community having left the said place, Satyendra Yadav (deceased), Ritesh Yadav (PW-3) and Rakesh Kumar (PW-2) had left on a motorcycle and when they



reached in between Baraiya Tola and Shikarpur, Ramdhani Ram (appellant of the first case) and other accused persons, including the appellants of the second case, totaling 16 in all had stopped their motorcycle and had started abusing them. Thereafter, the said accused persons had made Satyendra Yadav fall from his motorcycle, whereafter they started assaulting Satyendra Yadav by *lathi* and had injured him. Satyendra Yadav sustained injuries on his head and blood started oozing from his nose, whereafter PW-3 raised *hulla* (alarm) leading to the witnesses coming there, resulting in the accused persons fleeing away. Satyendra Yadav was then lifted and taken on a motorcycle to Narkatiaganj Government Hospital where the doctor declared him to be dead. PW-3 had recognized the accused standing in the dock.

25. In paragraph No.6 of his cross-examination, PW-3 has stated that at the house of Dilip Yadav, during Panchayati the members belonging to the informant's caste and the accused persons were present and no other person from other caste was present there. In paragraph No.7 of his cross-examination, PW-3 has stated that at the time of Panchayati, no document was produced regarding the said pond being a public pond. He has stated that in Maharwa Tola, people of various caste reside. In paragraph No.8 of his cross-examination, PW-3 has stated that



Dilip Verma had heard the accused persons for 25 minutes as also had heard the members of the informant's caste for 25 minutes. At the time of Panchayati, the accused persons were not armed. The accused persons had left the house of Dilip Verma at about 7:00-8:00 a.m. and at that time PW-3 was not wearing a watch. PW-3 has also stated that after ten minutes of the accused persons having left the said place, the members of informant's caste had also left the house of Dilip Verma but at the house of Dilip Verma, the accused persons had quarreled and had engaged in abusing others, however Dilip Verma did not call the police and instead told them to bring documents.

26. PW-3 has next stated that first of all, Satyendra Yadav, Rakesh and Ritesh had left the house of Dilip Verma on a motorcycle, however he cannot say as to from whom Satyendra Yadav had brought the motorcycle and he does not remember its registration number. He has also stated that the distance of Baraiya Tola from the house of Dilip Verma is about $\frac{1}{2}$ kilometer and the land situated up to $\frac{1}{4}$ kilometer from the house of Dilip Verma belongs to Dilip Verma. He has stated that at the time of leaving the house of Dilip Verma, the accused persons had not talked either with Satyendra Yadav or Rakesh (PW-2) or him (PW-3). PW-3 has also stated that the accused



persons had told the members of Yadav community present there that whoever goes to the public pond would be killed by them. In paragraph No.9 of his cross-examination, PW-3 has stated that when they had left on motorcycle, no other vehicle was plying on the said road.

27. In paragraph No.10 of his cross-examination, PW-3 has stated that they had met about 18 accused persons at the place of occurrence and the accused persons were standing at the place of occurrence in the form of a *gang* on the side of the road as also they had surrounded the road and had left no space. PW-3 has also stated that on both sides of the road, mud way is present. The motorcycle was being driven by Satyendra Yadav. After reaching the place of occurrence, Satyendra Yadav had got afraid and had not stopped the motorcycle but the accused persons had stopped the motorcycle of Satyendra whereupon PW-3 and Rakesh had told Satyendra to move ahead but by that time the accused persons had pushed the motorcycle of Satyendra and had surrounded Satyendra Yadav. The accused persons had pushed the motorcycle and had made it fall, whereupon PW-3 had fled away towards southern side and he did not receive any injury. Rakesh (PW-2) had also not received any injury and the motorcycle was also not damaged.



Thereafter, PW-3 also started shouting after moving 5-7 steps. The accused persons had not covered their face and when the witnesses had arrived, PW-3 was standing there. He has also stated that when he raised *hulla* (alarm), the members of the Yadav community had arrived at the place of occurrence. The accused persons had assaulted Satyendra and injured him badly. Satyendra had received injury on his head. No injury was sustained by Satyendra on his neck, shoulder and back. PW-3 has stated that he had not seen any injury on the buttock and legs of Satyendra, however lot of blood had fallen from the head of Satyendra. PW-3 has also stated that he had seen the accused persons, 18 in all assaulting Satyendra on his head, nose and forehead but he had not seen the pulse of Satyendra at the place of occurrence. PW-3 has stated that at the hospital, the police officer had recorded the statement given by him but he had not given his statement in writing to the police officer.

28. PW-3 has stated that the statement of some of the witnesses was recorded by the police officer at the hospital while that of other witnesses was recorded at the place of occurrence and his statement was recorded both at the hospital and at the place of occurrence. In paragraph no.11 of his cross-examination, PW-3 has stated that he had made statement before



the police officer to the effect that the accused persons had pushed the motorcycle on the way, had abused them and had then started assaulting by *lathi*, leading to Satyendra receiving injury at the back of his head as also blood had started oozing out of his nose. PW-3 has also stated that he had told the police officer that the persons belonging to the caste of accused persons had also engaged in abusing them. In paragraph No.12 of his cross-examination, PW-3 has stated that the members belonging to Yadav community of Maharwa Tola did not have any quarrel with the members of other caste.

29. PW-4 Anita Devi has stated in her deposition that the occurrence dates back to 1½ year at about 6:00 a.m., in the morning when she was at her house and her husband had gone to the house of Dilip Verma for Panchayati. She heard that the accused persons including the aforesaid appellants have committed the murder of her husband, namely Satyendra Yadav & the accused persons were saying that they have killed Satyendra Yadav. She then came out of the house and went to the place of occurrence, where she saw that blood had fallen on the ground and the people told her that Satyendra had been taken to Narkatiaganj Hospital, whereafter she went to the Hospital, however by that time her husband had died. PW-4 has stated that her statement was recorded by the police



officer, who had sent the dead body of her husband for postmortem examination. In paragraph no.5 of her cross-examination, PW-4 has stated that she was not present at the place of occurrence at the time of assault.

30. PW-5 Raj Kumar Yadav has stated in his deposition that the occurrence dates back to 1½ year at about 8:00 a.m. in the morning. He has stated that one day back, the members of the scheduled caste had held a meeting and decided that in case Panchayati goes against them, they would kill the members of Yadav community. PW-5 has also stated that on the date of occurrence, at about 6:00 a.m. in the morning, they had gone to the house of MLA Dilip Verma for Panchayati at Shikarpur and at that place members of the scheduled caste and Yadav community had also reached. Thereafter, MLA Dilip Verma told both sides to bring their respective documents, whereafter he would conduct Panchayati. Panchayati was to take place regarding a public pond, however nobody had brought any document. The members of Yadav community had stayed back at the house of Dilip Verma while the members of scheduled caste had left the house of Dilip Verma and after 5 minutes Satyendra (deceased), Rakesh (PW-2) and Ritesh (PW-3) had left on a motorcycle, however on the way near Baraiya Tola,



these persons were stopped and assaulted by the members of the scheduled caste. The accused persons, including the aforesaid appellants, totaling 15-16 in all, were engaged in assaulting them. Satyendra had become injured and had fallen down, whereafter Rakesh (PW-2) and Ritesh (PW-3) had raised *hulla* (alarm), whereupon PW-5 and others reached there and saw that the accused persons were assaulting Satyendra, who had fallen on the left side of road. Thereafter, they had lifted Satyendra and taken him to Narkatiaganj Government Hospital where he was declared to be dead and then the police had arrived there. PW-5 had recognized the accused persons standing in the dock.

31. In paragraph No.21 of his cross-examination, PW-5 has stated that firstly, the members belonging to the scheduled caste had left the house of Dilip Verma and after five minutes only Satyendra (deceased), Rakesh (PW-2) and Ritesh (PW-3) had left on a motorcycle and when he reached at the place of occurrence, he found Satyendra having fallen on the side of road on his face and blood was oozing out from his ears and nose as also his head had cracked. PW-5 had then made Satyendra sit on the motorcycle on which Rupal Yadav was sitting on the driving seat, whereafter Ritesh also sat on the said motorcycle and Satyendra was made to sit in between them, after which he was taken to the hospital. He has also stated in his



cross-examination that the police had not arrived at the place of occurrence in his presence. Satyendra was not able to speak, but he was breathing. In paragraph No.29 of his cross-examination, PW-5 has stated that he had made his statement before the officer-in-charge.

32. PW-6 Deepu Kumar has stated in his deposition that inquest report was prepared on 26.06.2014 (should be 21.06.2014) on which he had put his signature which he has recognized and the same has been marked as Exhibit-1. He had recognized the accused persons standing in the dock. In his cross-examination, PW-6 has stated that he cannot say as to who had prepared the inquest report but one police officer had got his signature made on the paper.

33. PW-7 Nagina Yadav is the informant of the present case and he has stated in his deposition that he has filed a case against 15 persons including the aforesaid appellants. He has stated that the occurrence dates back to two years at about 8:00 a.m. in the morning when he was at the house of Dilip Verma and Panchayati was taking place in between the members of Yadav community and that of the scheduled caste community pertaining to pond. Panchayati had taken place for 1½ hour and during the course thereof mood of the members of the scheduled



caste community had become hot, whereafter Dilip Verma told them to bring documents and then he would take a decision. Dilip Verma had then told the members of the scheduled caste to proceed ahead while he had told the members of the Yadav community to stay. Subsequently, Ritesh (PW-3) and Rakesh (PW-2) along with Satyendra Yadav had sat on a motorcycle and left the place. The members of the scheduled caste community had stopped in the middle of the road situated in between Baraiya Tola and Shikarpur and then the appellant of the first case had assaulted Satyendra Yadav with *lathi* on his temporal region, leading to Satyendra sustaining injury on the back of his head, whereafter the persons travelling with Satyendra Yadav started shouting and running away and in the meantime, PW-7 and other villagers had arrived there, including Sipahi Yadav, Wakil Yadav, Raj Kumar Yadav (PW-5), Mahendra Yadav and Santosh, etc. leading to the accused persons fleeing away. Satyendra was then taken to Narkatiaganj Hospital for treatment, where the doctor declared him to be dead.

34. PW-7 has next stated that his statement was recorded by a police constable and dead body of the deceased was sent for postmortem examination. PW-7 has further stated that his statement was recorded by the officer-in-charge, which was read



over to him and upon having understood the same, he had put his signature which he has identified and the same has been marked as Exhibit-1. PW-7 has stated that one day before the day of occurrence, the members of the scheduled caste community had held a meeting and had decided that in case decision of the panchayat is unfavorable to them they would assault the member of the Yadav community whom they meet. PW-7 had recognized the accused persons standing in the dock. In paragraph No.15 of his cross-examination, PW-7 has stated that the dispute was going on since one year pertaining to the pond in question and a case was also going on since one year. The area of pond is 7 ½ -8 katha. In paragraph No.22 of his cross-examination, PW-7 has stated that the members of the Yadav community had filed a case against settlement, however no decision has been taken yet in favour of the members of the Yadav community. It is stated that no decision has yet been pronounced by the Court regarding the pond being a public pond. He has also stated that in the present case, all witnesses belong to Yadav community. In paragraph No.26 of his cross-examination, PW-7 has stated that Shobhi Yadav is also a witness in the present case but he has been influenced by the members of the scheduled caste community, hence he has not



given evidence. PW-7 has stated that Satyendra is his cousin brother. In paragraph No.31 of his cross-examination, PW-7 has stated that he has no enmity with the person of the Gotha Tola.

35. PW-7 has also stated that prior to the occurrence in question, no assault had taken place in between him and the accused persons. In paragraph No.51 of his cross-examination, PW-7 has stated that his statement was recorded by the officer-in-charge of the police station, not only at the hospital but also at the place where death of the deceased had taken place and at the place where the dead body was kept as also at the place of occurrence. In paragraph No.52 of his cross-examination, PW-7 has stated that prior to giving his statement, he had not consulted members of the Yadav community. In paragraph No.56 of his cross-examination, PW-7 has stated that he has deposed before this Court in the same manner as he had made statement earlier. In paragraph No.57 of his cross-examination, PW-7 has stated that in his earlier statement, he had told the police that one day prior to the date of occurrence in question, the members of the scheduled caste had held a meeting amongst themselves and had decided that in case the decision of the panchayat is not made in their favour, they would assault the members of the Yadav community. In paragraph No. 69 of his



cross-examination, PW-7 has stated that there was no pre-fixed programme of Panchayati to be held at the house of Dilip Verma on the day of occurrence and he had come from Patna one day prior to the day of occurrence, however the members of the scheduled caste had gone to the house of Dilip Verma and then he had called the members of Yadav community.

36. In paragraph No.75 of his cross-examination, PW-7 has stated that the members of scheduled caste community had reached first for Panchayati, however though they were not armed with any weapon at the house of Dilip Verma, but they were carrying *lathi*. In paragraph No. 76 of his cross-examination, PW-7 has stated that at the house of Dilip Verma, the members of the scheduled caste community had not brought any papers/documents & the members of the Yadav community had also not brought any papers, hence no Panchayati was held in writing. In paragraph No.80 of his cross-examination, PW-7 has stated that the members of the scheduled caste had left the house of Dilip Verma at around 07:30 a.m. in the morning, however the members of Yadav community had stayed back. In paragraph No.81 of his cross-examination, PW-7 has stated that on the north side of Bariaya Tola and Shikarpur house, village road is situated, which is pitched and after five minutes of the



members of the scheduled caste community having left the house of Dilip Verma, Satyendra (deceased), Rakesh (PW-2) and Ritesh (PW-3) had left on their motorcycle while PW-7 and others had gone on foot. In paragraph No.82 of his cross-examination, PW-7 has stated that the members of the scheduled caste community were not having any motorcycle. In paragraph No.86 of his cross-examination, PW-7 has stated that after seeing assault, Ritesh and Rakesh started shouting and moving away and then people belonging to Baraiya Tola also began shouting, however he cannot say as to who all from Baraiya Tola were shouting. PW-7 has also stated that people were shouting that the members of the scheduled caste community have engaged in assault and have injured the aforesaid persons badly. PW-7 has also stated that other persons were also present with him. In paragraph No.91 of his cross-examination, PW-7 has stated that on seeing them, the accused persons had fled away. He has also stated that at the place where the accused persons were assaulting by *lathi*, nobody was present in the circumference of 5-7 hand's length.

37. In paragraph No.92 of his cross-examination, PW-7 has stated that he has given his statement to the effect that the accused persons were brutally assaulting the deceased Satyendra



Yadav. In paragraph No.94 of his cross-examination, PW-7 has stated that he did not get any chance to save Satyendra Yadav when he was being assaulted by the accused persons. In paragraph No.95 of his cross-examination, PW-7 has stated that he had seen blood falling from side of temporal region, back of head and from the nose of the deceased. He has also stated that Satyendra Yadav had fallen on the side of the road towards the eastern side. He has next stated that blood stains were present on the shirt and pant of Satyendra and blood had also fallen on the ground. In paragraph No.98 of his cross-examination, PW-7 has stated that the Officer-in-charge of the Police Station had not gone at the place of occurrence. In paragraph No.99 of his cross-examination, PW-7 has stated that the handle of the motorcycle had got bent and the tank of the motorcycle had been broken. In paragraph No.100 of his cross-examination, PW-7 has stated that Satyendra was sitting in front while on the back Ritesh and Rakesh were sitting, however Ritesh (PW-3) did not sustain any injury but while he had jumped from the motorcycle and was fleeing away, he had received minor injury. In paragraph No.101 of his cross-examination, PW-7 has stated that the motorcycle had fallen towards the eastern side of pitch road.

38. In paragraph No.102 of his cross-examination, PW-7 has



stated that he had occasion to stay at the place where assault had taken place for two minutes and during the course thereof, who had come, he cannot say. Satyendra was taken to the hospital on the motorcycle of Rumal Yadav. In paragraph No.106 of his cross-examination, PW-7 has stated that the Officer-in-charge of the Police Station had not seen the motorcycle on which Satyendra had come. In paragraph No.107 of his cross-examination, PW-7 has stated that the police had not taken away the torn clothes of Satyendra Yadv. In paragraph No.108 of his cross-examination, PW-7 has stated that he had not seen any damage being caused to the body parts of Satyendra. In paragraph No. 109, PW-7 has stated that except blood, no other sign was present on the body of the deceased-Satyendra Yadav. In paragraph No.110 of his cross-examination, PW-7 has stated that the Officer-in-charge of the Police Station had not seized any soil from the place of occurrence.

39. PW-8 Anand Kumar is the Investigating Officer of the present case and he has stated in his deposition that he was posted as Officer-in-charge of Shikarpur Police Station on 21.6.2014 and the *fardbeyan* of Nagina (PW-7) was taken in his presence, whereafter a formal FIR bearing Shikarpur P.S. Case No.180 of 2014, dated 21.06.2014 was registered and he had



prepared the forwarding note, which is in his writing and bears his signature which he has identified and the same has been marked as Exhibit-2. Endorsement was made by Uday Narayan Singh, Assistant Sub-Inspector of Police in his writing, which he has identified and the same has been marked as Exhibit- 2/A. The formal FIR, which is in the writing of ASI, U. N. Singh and bears his signature, has also been identified by him (PW-8) and the same has been marked as Exhibit-3. PW-8 has further stated that he had assumed investigation of the said case on 21.6.2014, whereafter he had taken the *fardbeyan* of the informant and prepared the inquest report of the deceased as also had prepared the challan of the dead body of the deceased and sent the same for postmortem examination to MJK Hospital, Bettiah. Thereafter, he had recorded the restatement of the informant, who had given his restatement, fully supporting his earlier statement. Thereafter, PW-8 had recorded the statements of witnesses, namely Shomi Yadav, Raj Kumar Yadav (PW-5), Ritesh Kumar (PW-3), Rakesh Yadav (PW-2) and Dhirendra Yadav, who all had substantiated the occurrence. PW-8 has stated that during the course of investigation, he had gone to the Primary Health Centre, Narkatiaganj, to the place of occurrence, and had also inspected the place of occurrence.



40. In paragraph No.8 of his examination-in-chief, PW-8 has stated that the place of occurrence is within Shikarpur Police Station and in between Bairaiya Tola and D.K. Shikarpur, village-pitch road is situated. He has also stated that the place of occurrence is at a distance of 70-80 yards towards south of Baraiya Tola. He has described the boundaries of the place of occurrence. In paragraph No.10 of his examination-in-chief, PW-8 has stated that he had recorded the statement of Anita Devi (PW-4) of Daharwa Tola, who is wife of the deceased as also he had recorded the statement of Rupal Yadav. He had also recorded the statement of witnesses to the inquest report, namely Deepu Kumar (PW-6) and Arjun Yadav (PW-1), both of whom had substantiated the occurrence. In paragraph No.11 of his examination-in-chief, PW-8 has stated that in the village, conflict had arisen in between the members of two communities, whereafter he had deputed one *chaukidar*. PW-8 had registered a formal FIR bearing Shikarpur P.S. Case No.180 of 2014 dated 21.06.2014 under Sections 147, 148, 149 and 302 of the IPC against 15 named accused persons. In paragraph No.15, PW-8 has stated that on 19.7.2014, he had received Report-1 and on 28.07.2014, he had received supervision note of the Supervising Officer, Narkatiaganj. On 04.09.2014, he had received



Supervision Note-2 of the Superintendent of Police, West Champaran. On 11.09.2014, he had received the post-mortem examination report of the deceased-Satyendra Yadav. PW-8 has also stated that he had filed charge-sheet under Sections 147, 148, 149 and 302 of the IPC on 14.09.2014 and 30.09.2014 against the FIR named accused persons.

41. In cross-examination, PW-8 has stated that Panchayati was held in between the people of Daharwa Tola and Gotha Tola. He has also stated that Panchayati was held at the house of Dilip Verma and thereafter, the occurrence had taken place but he had not recorded the statement of Ex-MLA Dilip Verma. In paragraph No.27 of his cross-examination, PW-8 has stated that when no settlement was arrived at, the people of Gotha Tola had left the house of Dilip Verma while the people of informant's side had stayed there. Thereafter, three persons of the informant's side, namely deceased-Satyendra, Ritesh (PW-3) and Rakesh (PW-2) had left from the said place. In paragraph No.29 of his cross-examination, PW-8 has stated that he had not investigated as to what type of documents, pertaining to *nala* (drain) and pond were produced before Dilip Verma. In paragraph No.37 of his cross-examination, PW-8 has stated that he had recorded the statement of the persons living near the



pond and *nala* (drain), including the informant and others, however they have not stated that their house is situated near the pond or *nala* (drain), but they have stated that they belong to the said tola/village. PW-8 has also stated that the informant's side are members of Yadav community whereas the accused persons are members of scheduled caste community.

42. In paragraph No.42 of his cross-examination, PW-8 has stated that though there was dispute in between both the parties from before pertaining to pond and *nala* (drain), however he had not conducted any investigation with regard to the said issue. In paragraph No.45 of his cross-examination, PW-8 has stated that he had not found any sign of blood at the place of occurrence because it had rained and this fact has been recorded by him in the case-diary in paragraph no.12 on 21.06.2014. He has also stated that the place of occurrence is situated at a distance of 70-80 yards towards the south of Baraiya Tola. In paragraph No.48 of his cross-examination, PW-8 has stated that during the course of investigation, he had not seen the motorcycle of the deceased on which he was travelling and the same has not been mentioned in the case-diary. In paragraph No.50 of his cross-examination, PW-8 has stated that save and except the deceased, nobody had been injured. In paragraph No.51 of his cross-



examination, PW-8 has stated that Arjun Kumar (PW-1) had not stated in his statement made before him that the accused persons had jointly made Satyendra Yadav fall from his motorcycle. He has also stated that Arjun (PW-1) had also not stated before him that he had sustained injuries. PW-8 has next stated that Rakesh Kumar (PW-2), in his statement made before him, had not stated that Ranjeet had assaulted Satyendra by rod. PW-8 has also stated that Nagina Yadav (PW-7) had not stated in his *fardbeyan* that one day prior to the occurrence, the members of the scheduled caste community had held a meeting in which they had decided that in case the decision of panchayat is not made in their favour, they would kill members of the Yadav community, who so ever they meet.

43. PW-9 Dr. Ashok Kumar Chaudhary has stated in his deposition that on 21.06.2014, he was posted at MJK Hospital, Bettiah as Civil Assistant Surgeon and on the same day, at about 04:15 p.m., he had conducted postmortem examination of the dead body of Satyendra Yadav. The dead body of Satyendra was brought and identified by *chaukidar* No. 4/13, namely Bhot Yadav and relatives Satish Yadav and Arjun Yadav. PW-9, upon external examination of the dead body of the deceased-Satyendra Yadav, had found the following:-



“Rigor mortis found in all limbs.

Injury No.1- *Swelling mark over right temporal and partial region.*

Injury No. II- *Swelling over occipital region.”*

PW-9, upon dissection, had found the following:-

“Scalp was incised. Hematoma present below scalp over periosteum in right temporal region. On further dissection, right temporal part of scalp was found fractured. Brain tissue were contused. Blood clots were present and blood was found in cranial cavity. Heart- left side full. Right side empty. Stomach empty. All vesra was found pale.”

PW-9 has stated that time elapsed since death is within 24 hours and all the above injuries have been caused by hard and blunt substance. PW-9 has also stated that the cause of death is shock and hemorrhage due to head injury. PW-9 has further stated that the postmortem report has been written by him in his writing, which bears his signature and the same has been marked as Exhibit-4.

44. In his cross-examination, PW-9 has stated that he had found two swelling injuries on the body of the deceased. He has also stated that if the injuries are of swelling nature, bruise should be there. He has stated that swelling is present and blood vessels have been fractured. In paragraph No.8 of his cross-



examination, PW-9 has stated that he has not mentioned size of swelling in the postmortem report. In paragraph No.9 of his cross-examination, PW-9 has stated that wherever swelling is present, colour will change, if bruise is present. PW-9 has also stated that he had inspected the entire body of the deceased and on the body of the deceased, neither mud nor sand was present. In paragraph No.13 of his cross-examination, PW-9 has stated that in case injury is inflicted by *lathi* on an alive person, bruise will be formed. In paragraph No.14 of his cross-examination, PW-9 has stated that the injuries of *lathi* cannot be of round shape. In paragraph No.15 of his cross-examination, PW-9 has stated that as a result of injury of *lathi* two similar bruise may occur. In paragraph No.16 of his cross-examination, PW-9 has stated that exact time of death cannot be stated, however the same is estimated by seeing rigor mortis. In paragraph No.17 of his cross-examination, PW-9 has stated that he had not found injury below the neck of the deceased. In paragraph No.18 of his cross-examination, PW-9 has stated that the type of injury depends on the type of *lathi* blow inflicted on the body of a person. In case *lathi* blow is inflicted horizontally, the injury will also be horizontal. In paragraph No.22 of his cross-examination, PW-9 has stated that he had not found the head of



the deceased to be cracked. In paragraph No.23 of his cross-examination, PW-9 has stated that the injuries found on the body of the deceased could have been caused by an accident. In paragraph No.24 of his cross-examination, PW-9 has stated that it is not a fact that the postmortem report is not scientific.

45. DW-1 Hakim Ram has stated in his deposition that rent receipt of the year 2013-14 is in the writing and signature of Bhikam Prasad. DW-1 has identified the writing and signature of Bhikam Prasad. He has stated that the rent receipt bearing Zamabandi No.744 has been issued in the name of Madan Ram and Surendra Ram, which has been marked as Exhibit-G. He has further stated that rent receipt of the year 2015-16, issued in favour of Surendra Ram and Madan Ram, is in the writing of Halka Karamchari Nagina Baitha. DW-1 has also identified the signature of Nagina Baitha. The rent receipt bearing Zamabandi No.744, area 62 decimal, of the year 2015-16 has been marked as Exhibit-G/1.

46. After closing the prosecution evidence as well as defence evidence, the learned Trial Court recorded the statement of the appellants on 01.03.2017 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



themselves to be innocent and stated that they will give supporting evidence.

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

48. We have perused the impugned judgment of the learned Trial Court, the entire materials available on record and have given thoughtful consideration to the rival submissions made by the learned counsel for the appellants as well as the learned APP for the State.

49. 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 qua the offences with which they have been charged. The prosecution has led the evidence of PW-1 Arjun Yadav, PW-2 Rakesh Kumar Yadav, PW-3 Ritesh Kumar, PW-4 Anita Devi, PW-5 Raj Kumar Yadav and PW-7 Nagina Yadav to prove the guilt of the accused persons apart from having led the evidence of PW-8, i.e. the Investigating Officer of the present case and PW-9 Dr. Ashok Kumar Chaudhary, who has conducted the post-mortem



examination of the dead body of the deceased and based upon the same the learned Trial Judge has convicted the appellants, whereas on the contrary, the appellants have primarily taken the defence that motive for giving effect to the occurrence in question has not stood proved, there are vital contradictions and inconsistencies in the testimony of the witnesses, the medical evidence does not support the mode and manner of infliction of the injuries, independent witnesses have not been examined, PW-8 has stated in his evidence that he did not find any blood at the place of occurrence, the evidence of PW-7 shows that accident might have taken place leading to death of the deceased and the evidence adduced does not show that the appellants have given effect to the occurrence in question in prosecution of common object, hence Section 149 of the IPC is not attracted.

50. Having examined the evidence led by the prosecution, we find that the place of occurrence as well as the date and time of occurrence apart from the mode and manner of occurrence has stood proved, as is apparent from the deposition of the eye witnesses, i.e. PW-1 Arjun Yadav, PW-2 Rakesh Kumar Yadav, PW-3 Ritesh Kumar, PW-5 Raj Kumar Yadav and PW-7 Nagina Yadav. At this juncture, we would deal with the evidence of the eye witnesses. PW-1 Arjun Yadav has stated in his evidence that



the occurrence took place on 21.06.2014 at 8:00 a.m. in the morning on account of dispute pertaining to public pond of the village regarding which Panchayati was being held at the house of MLA Dilip Verma in between the members of the Yadav community and the scheduled caste community, however no decision could be taken in the Panchayati, whereafter the members of the scheduled caste community had left first and then the deceased Satyendra Yadav, PW-3 Ritesh Yadav and PW-2 Rakesh Kumar had also left the house of the MLA on a motorcycle and when they had reached in the middle of Baraiya Tola and Shikarpur, 15-16 members of the scheduled caste community, including the appellants of the aforesaid two appeals, who were present there from before had together made Satyendra Yadav (deceased) alight from the motorcycle and then all the accused persons armed with *lathi* had started assaulting the deceased-Satyendra Yadav leading to the deceased having fallen on the ground, after which *hulla* (alarm) was raised and then PW-1 and other witnesses had arrived there running and had seen with their own eyes that the accused persons were assaulting Satyendra Yadav (deceased) and when they had tried to intervene, they were also assaulted. Subsequently, Satyendra Yadav was taken to Narkatiaganj Government Hospital,



however he was declared dead by the doctor present there. As far as PW-2 Rakesh Kumar Yadav is concerned, he has also deposed on similar line as has been done by PW-1 Arjun Yadav and he has further stated that after he along with the deceased and PW-3 Ritesh Yadav had left the house of MLA on a motorcycle, they were stopped by the accused persons in between Baraiya Tola and Shikarpur, whereafter Ramdhani Ram (appellant of the first case) had pushed deceased from the motorcycle and then all the accused persons had together assaulted Satyendra, whereupon he (PW-2) and Ritesh Yadav (PW-3) had fled away in order to save themselves.

51. Now coming to PW-3 Ritesh Kumar, he has also deposed in similar manner as has been done by PW-1 and PW-2 and has stated that he along with the deceased-Satyendra Yadav and Rakesh Kumar (PW-2) had left on a motorcycle and when they reached in between Baraiya Tola and Shikarpur, Ramdhani Ram (appellant of the first case) and other accused persons, including the appellants of the second case, totaling 16 in all had stopped their motorcycle, had started abusing them and had then made the deceased fall from his motorcycle, after which they started assaulting Satyendra Yadav by *lathi* as also had injured him, leading to him sustaining injuries on his head and blood started



oozing out from his nose. PW-3 had then raised *hulla* (alarm) leading to the witnesses coming there, resulting in the accused persons fleeing away. PW-5 Raj Kumar Yadav has stated in his deposition that he along with other members of his community had gone at about 6:00 a.m. in the morning to the house of MLA Dilip Verma for Panchayati at Shikarpur where the members of the scheduled caste and Yadav community had also reached, however no decision could be arrived at, whereafter while the members of the scheduled caste community had left the house of Dilip Verma, the members of Yadav community had stayed back at the house of Dilip Verma and after 5 minutes the deceased-Satyendra, PW-2 Rakesh Kumar Yadav and PW-3 Ritesh Kumar had left on a motorcycle but on the way near Baraiya Tola, these persons were stopped and assaulted by the members of the scheduled caste community including the appellants leading to Satyendra becoming injured and having fallen down, after which PW-2 Rakesh Kumar Yadav and PW-3 Ritesh Kumar had raised *hulla* (alarm), whereupon PW-5 and others reached there and saw the appellants assaulting Satyendra, who had fallen on the left side of road. Subsequently, Satyendra was taken to Narkatiaganj Government Hospital where he was declared dead.



52. PW-7, who is the informant of the present, has also deposed on similar lines as that of the aforesaid witnesses and has further stated that upon *hulla* (alarm) being raised by the persons travelling with Satyendra Yadav, he and other villagers had arrived at the place of occurrence and had seen the accused persons brutally assaulting the deceased as also had seen blood falling from the side of temporal region (back of head) and from the nose of the deceased, whereafter co-villagers had taken the deceased to Narkatiaganj Government Hospital for treatment, however there he was declared dead. The Investigating Officer of this case, i.e PW-8 Anand Kumar has also substantiated the occurrence in question and has stated that he had recorded the statement of witnesses and all of them have corroborated the mode and manner in which the appellants had given effect to the occurrence in question. Thus, we find from the evidence of PW-1, PW-2, PW-3, PW-5 and PW-7, who are the eye witnesses to the alleged occurrence apart from the evidence of PW-8 that the mode and manner, date and time and place of occurrence have stood proved, hence the guilt of the accused persons including the appellants stands proved beyond all reasonable doubt. As far as motive of the accused persons for giving effect to the alleged occurrence is concerned, the same has also stood established by



the prosecution's evidence, inasmuch as all the aforesaid five eye witnesses have stated in their respective testimony that the occurrence had taken place on account of ongoing dispute in between the members of the Yadav community and that of scheduled caste community pertaining to pond and *nala* situated in between Daharwa Tola and Gotha Tola.

53. At this juncture, it would be relevant to refer to the evidence of PW-9 Dr. Ashok Kumar Chaudhary, who has conducted post-mortem examination of the dead body of the deceased and on examination of the dead body, he has found two injuries, i.e. swelling mark over right temporal and parietal region and swelling over occipital region. PW-9 has further found that scalp was incised, hematoma was present below scalp over periosteum in right temporal region, the right temporal part of scalp was found fractured, brain tissues were contused, blood clots were present and blood was found in cranial cavity. PW-9 has opined that all the above injuries have been caused by hard and blunt substance and the cause of death is shock and hemorrhage due to head injury. Thus, we are of the view that the medical evidence not only fully corroborates the ocular testimony of the eye witnesses, but also completely substantiates the injuries which have been caused in the manner alleged and



moreover, there is no irreconcilable conflict between the oral and medical evidence which warrants discarding the case of the prosecution, hence in no case the ocular evidence can be thrown out. In this regard, reference be had to a judgment rendered by the Hon'ble Apex Court in the case of ***Solanki Chimanbhai Ukabhai vs. State of Gujarat***, reported in ***(1983) 2 SCC 174***.

54. Thus, upon consideration of the entire case of the prosecution and its careful scrutiny, we can safely conclude that the evidence of the prosecution witnesses, especially PW-1 Arjun Yadav, PW-2 Rakesh Kumar Yadav, PW-3 Ritesh Kumar, PW-5 Raj Kumar Yadav and PW-7 Nagina Yadav are cogent convincing, creditworthy and reliable, hence there is no reason to doubt the genuineness of their testimony on the basis of which the learned Trial Court has convicted the appellants of the aforesaid two appeals. We also find that no contradiction has been drawn by the defence while cross-examining the said witnesses and there is no material contradiction in their evidence. In fact, all the prosecution witnesses have deposed almost consistently apart from the fact that PW1, PW-2, PW-3, PW-5 and PW-7 are eye witnesses to the alleged occurrence. Hence, we find that the evidence of prosecution witness is credible, trustworthy, being consistent and cogent, thus is fit to



be relied upon to establish the guilt of the appellants.

55. Yet another aspect of the matter is that the prosecution's evidence would show that the accused persons including the appellants of the aforesaid two appeals were present at the place of occurrence from before, had surrounded the deceased, PW-2 and PW-3 and had made the deceased alight from the motorcycle, whereafter they had engaged in assaulting the deceased, hence undoubtedly the appellants are members of unlawful assembly, who had given effect to the occurrence in question in prosecution of the common object of that assembly. We may point out that it is a well settled law that in cases where large number of accused persons constituting an unlawful assembly are alleged to have attacked and killed one or more persons, it is not necessary that each of the accused should inflict fatal injuries or any injury at all and by invoking Section 149, the members of an unlawful assembly can be punished on the ground of vicarious liability even though they are not accused of having inflicted fatal injuries. Reference, in this connection, be had to a judgment, rendered by the Hon'ble Apex Court in the case of *Nitya Nand vs. State of Uttar Pradesh & Anr.*, reported in *(2024) 9 SCC 314*, paragraphs no. 41 to 48 are reproduced herein below:



“41. Section 141IPC defines “unlawful assembly”. It says an assembly of five or more persons is designated as unlawful assembly if the common object of the persons composing that assembly is to commit an illegal act by means of criminal force.

42. As per Section 148IPC which deals with rioting armed with deadly weapon, whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. “Rioting” is defined in Section 146IPC. As per the said definition, whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

43. This brings us to the pivotal section which is Section 149IPC. Section 149IPC says that every member of an unlawful assembly shall be guilty of the offence committed in prosecution of the common object. Section 149IPC is quite categorical. It says that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of committing of that offence, is a member of the said assembly; is guilty of that offence. Thus, if it is a case of murder under Section 302IPC, each member of the unlawful assembly would be guilty of committing the offence under Section 302IPC.

44. In Krishnappa vs. State of Karnataka [(2012) 11 SCC 237], this Court while examining Section 149 IPC held as follows :

“20. It is now well-settled law that the provisions of Section 149IPC will be attracted whenever any offence committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or when the members of that assembly knew that offence is likely to be committed in prosecution of that object, so that every person, who, at the time of committing of that offence is a member, will be also vicariously held liable and guilty of that offence. Section 149IPC



creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. This principle ropes in every member of the assembly to be guilty of an offence where that offence is committed by any member of that assembly in prosecution of common object of that assembly, or such members or assembly knew that offence is likely to be committed in prosecution of that object.

21. The factum of causing injury or not causing injury would not be relevant, where the accused is sought to be roped in with the aid of Section 149IPC. The relevant question to be examined by the court is whether the accused was a member of an unlawful assembly and not whether he actually took active part in the crime or not.”

45. Thus, this Court in Krishnappa case [(2012) 11 SCC 237] held that Section 149 IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. By application of this principle, every member of an unlawful assembly is roped in to be held guilty of the offence committed by any member of that assembly in prosecution of the common object of that assembly. The factum of causing injury or not causing injury would not be relevant when an accused is roped in with the aid of Section 149IPC. The question which is relevant and which is required to be answered by the court is whether the accused was a member of an unlawful assembly and not whether he actually took part in the crime or not.

46. As a matter of fact, this Court in Vinubhai Ranchhodbhai Patel vs. Rajivbhai Dudabhai Patel [(2018) 7 SCC 743] has reiterated the position that Section 149IPC does not create a separate offence but only declares vicarious liability of all members of the unlawful assembly for acts done in common object. This Court has held :

“20. In cases where a large number of accused constituting an “unlawful assembly” are alleged to have attacked and killed one or more persons, it is not necessary that each of the accused should inflict fatal



injuries or any injury at all. Invocation of Section 149 is essential in such cases for punishing the members of such unlawful assemblies on the ground of vicarious liability even though they are not accused of having inflicted fatal injuries in appropriate cases if the evidence on record justifies. The mere presence of an accused in such an “unlawful assembly” is sufficient to render him vicariously liable under Section 149 IPC for causing the death of the victim of the attack provided that the accused are told that they have to face a charge rendering them vicariously liable under Section 149IPC for the offence punishable under Section 302IPC. Failure to appropriately invoke and apply Section 149 enables large number of offenders to get away with the crime.

22. When a large number of people gather together (assemble) and commit an offence, it is possible that only some of the members of the assembly commit the crucial act which renders the transaction an offence and the remaining members do not take part in that “crucial act” — for example in a case of murder, the infliction of the fatal injury. It is in those situations, the legislature thought it fit as a matter of legislative policy to press into service the concept of vicarious liability for the crime. [Ramu Gope v. State of Bihar, 1968 SCC OnLine SC 74, para 5 : AIR 1969 SC 689, p. 692, para 5: “5. ... When a concerted attack is made on the victim by a large number of persons it is often difficult to determine the actual part played by each offender. But on that account for an offence committed by a member of the unlawful assembly in the prosecution of the common object or for an offence which was known to be likely to be committed in prosecution of the common object, persons proved to be members cannot escape the consequences arising from the doing of that act which amounts to an offence.”] Section 149IPC is one such provision. It is a provision conceived in the larger public interest to maintain the tranquillity of the society and prevent wrongdoers (who actively collaborate or assist the commission of offences) claiming impunity on the ground that their activity as members of the unlawful



assembly is limited.

34. For mulcting liability on the members of an unlawful assembly under Section 149, it is not necessary that every member of the unlawful assembly should commit the offence in prosecution of the common object of the assembly. Mere knowledge of the likelihood of commission of such an offence by the members of the assembly is sufficient. For example, if five or more members carrying AK 47 rifles collectively attack a victim and cause his death by gunshot injuries, the fact that one or two of the members of the assembly did not in fact fire their weapons does not mean that they did not have the knowledge of the fact that the offence of murder is likely to be committed.”

47. It is true that there are certain lacunae in the prosecution. The scribe Kuldeep was not examined. Similarly, the younger brother Laxmi Narain was not examined though it has come on record that Laxmi Narain was killed in the year 1993 and in that case one of the accused is the appellant himself. It is also true that neither any country-made pistol was recovered nor any cartridge, empty or otherwise, recovered. However, the appellant has been roped in with the aid of Section 149IPC. Therefore, as held by this Court in Yunis v. State of M.P. [(2003) 1 SCC 425], no overt act is required to be imputed to a particular person when the charge is under Section 149 IPC; the presence of the accused as part of the unlawful assembly is sufficient for conviction. It is clear from the evidence of PW 1 and PW 2 that the appellant was part of the unlawful assembly which committed the murder. Though they were extensively cross-examined, their testimony in this regard could not be shaken.

48. In view of what we have discussed above, we have no doubt in our mind that the trial court had rightly convicted the appellant under Section 148 IPC read with Sections 302/149 IPC and that the High Court was justified in confirming the same. The question framed in para 16 above is therefore answered in the affirmative.”



56. We find from the evidence led by the prosecution that all the aforesaid appellants are members of unlawful assembly, who were together waiting from before at the place of occurrence for the members of Yadav community to pass by and when the deceased-Satyendra, PW-2 Rakesh Kumar Yadav and PW-3 Ritesh Kumar had reached at the place of occurrence, these persons were stopped and assaulted by the members of the scheduled caste community including the appellants leading to Satyendra becoming injured and having fallen down. We further find from the evidence on record that although the offence in question was primarily committed by the appellant of the first case leading to death of Satyendra Yadav (deceased), nonetheless the appellants of the second case, who are members of unlawful assembly, had acted in prosecution of illegal common object of that assembly, hence all the accused persons including the appellants of the aforesaid two appeals being members of the said unlawful assembly at the time of commission of the offence in question are definitely guilty of that offence, i.e. one under Section 302 of the IPC with the aid of Section 149 of the IPC, thus even though the deceased might have died primarily on account of fatal blow inflicted by the appellant of the first case, nonetheless the appellants of the



second case are liable to be convicted under Section 302 of the IPC with the aid of Section 149 IPC keeping in view the law laid down by the Hon'ble Apex Court in the case of *Nitya Nand* (supra). Consequently, we find that enough evidence has been brought on record by the prosecution to prove the allegations leveled against the appellants of the aforesaid two appeals beyond pale of any reasonable doubt and upon consideration of the evidence led by the prosecution, we find that the appellants have rightly been convicted under Sections 147, 148 and 302/149 of the IPC.

57. Now adverting to the arguments advanced by the learned counsel for the appellants to the effect that there was no motive for giving effect to the occurrence in question since no decision had been taken in the Panchayati, we find that this aspect of the matter has already been dealt with hereinabove in the preceding paragraphs and we have found that ample evidence has been led by the prosecution to show existence of motive qua the appellants for having given effect to the occurrence in question. As regard PW-8, i.e. the Investigating Officer having not found any blood at the place of occurrence, we find from his evidence that he has explained this aspect of the matter by stating that since it had rained, no blood could be found at the place of



occurrence. As far as the arguments raised by the learned counsel for the appellants to the effect that medical evidence does not support the mode and manner of infliction of injury is concerned, the same has already been dealt with hereinabove in the preceding paragraphs and we find that there is no variance in between the medical evidence and ocular evidence. The issue regarding applicability of Section 149 of the IPC has also been dealt with in the preceding paragraphs and the arguments raised by the learned counsel for the appellants to the effect that the element of common object is missing, stands belied from the evidence available on record.

58. Now coming to the last issue raised by the learned counsel for the appellants to the effect that there are vital contradictions and inconsistencies in the testimony of the prosecution witnesses, we find that neither there is any grave inconsistency nor serious contradictions exist in the evidence of the prosecution witnesses. It is a well settled law that minor omissions or variations or infirmities in the evidence are never considered to be fatal and the same cannot be a ground for rejection of evidence in its entirety and the same also do not affect the credibility of the witnesses account inasmuch as minor discrepancies in eye witnesses' testimony are natural, while a



completely flawless testimony may indicate tutoring. Reference in this connection be had to a judgment rendered by the Hon'ble Apex Court in the case of **Rammi vs. State of M.P.**, reported in **(1999) 8 SCC 649**. Reference be also had to a judgment rendered by the Hon'ble Apex Court in the case of **State of U.P. vs. Krishna Master & ors.**, reported in **(2010) 12 SCC 324**, paragraph no.15 whereof is reproduced herein below:-

“15. Before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.”

59. 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 considering the evidence, which has been brought on record to prove the allegations levelled against the appellants beyond pale of any reasonable doubt as well as considering the credibility and trustworthiness of the evidence of the prosecution, which has not been discredited during the course of cross-examination coupled with the postmortem report and for the foregoing reasons, we find that there is no reason to create any doubt in our minds. 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 doubt. Hence, having examined the materials available on record, we do not find any apparent error in the impugned judgment of conviction and order of sentence.

60. We would now take up for consideration the alternative argument advanced by the learned counsel for the appellants to the effect that the appellants had no intention to cause death. In this regard we find from the evidence led by the prosecution that the deceased has been assaulted by lathi, however evidence of PW-9 Dr. Ashok Kumar Choudhary would show that only two injuries, i.e. swelling mark over right temporal and parietal region and swelling over occipital region has been found on the



dead body of the deceased, which shows that neither deceased had been assaulted repeatedly nor the appellants had any premeditated mind to kill anyone apart from the fact that the appellants had not assaulted any other person. Moreover, it can be culled out from the testimony of the eye-witnesses, other than those who were accompanying the deceased that when they had arrived at the place of occurrence after hulla (alarm) was raised, the accused persons had immediately fled away instead of inflicting further injuries upon the deceased, with the intention of brutally killing him. Thus, it does not appear from the evidence on record that repeated lathi blows were inflicted on the deceased and that the appellants had intended to cause death. Hence, we are of the view that the present case would not fall within the purview Section 302 of the IPC rather it would, at best attract Section 304 Part-II of the IPC, in absence of any intention to cause death of the deceased.

61. 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 an 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. A bare reading of Section 299



I.P.C. would show that “Intent” and “knowledge” are ingredients of Section 299 I.P.C. 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 the accused did not have any intention to cause death, would come within the purview of Section 304 Part II of the I.P.C. 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 a murder but it would be culpable homicide not amounting to murder.

62. We may refer to a judgment rendered by the Hon’ble Apex Court in the case of ***Litta Singh & Anr. Vs. State of Rajasthan***, reported in ***(2015) 15 SCC 327***, wherein the Hon’ble Supreme Court of India while converting the conviction under Section 302 to 304 Part-II of the IPC has held as under:-

“23. Considering the nature of the injury caused to the deceased and the weapons i.e. lathi and gandas (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 & 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 I.P.C. 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 I.P.C.”

63. Thus, based on an 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



IPC, especially in view of the fact that from the evidence adduced by the prosecution, intention to kill the deceased does not get established and the elements of intention to cause death seems to be missing, however it can safely be inferred that the appellants knew that the bodily injuries inflicted upon the deceased on account of the assault made by them was likely to cause death. Therefore, upon considering the entire case of the prosecution and the evidence adduced in support of the same, we feel that the appellants of all the aforesaid two appeals are liable to be convicted under Section 304 Part-II of the IPC. As such, the conviction of the appellants under Section 302/149 of the IPC and the sentence of rigorous imprisonment for life with fine of Rs.10,000/- each, awarded there under are set aside and instead the appellants are convicted under Section 304 Part-II of the IPC, however conviction under Section 147 and 148 of the IPC would stand against the appellants but with no separate sentence being awarded there under.

64. Before coming to the sentencing part, we would like to refer to few case laws wherein the conviction of the accused persons has 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) 8 SCC 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.

65. It would be apt to refer to a judgment rendered by the Hon'ble Apex Court, in the case of ***Buddhu Singh & Others Vs. State of Bihar***, reported in ***(2011) 14 SCC 471***, wherein once again the issue of conversion of conviction from Section 302 IPC to Section 304 Part-II of the IPC was raised although in the said case 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 No. 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 I.P.C.

9. We, accordingly, modify the finding of the High Court and convert the conviction of the accused from Section 302 I.P.C. to Section 304 Part II I.P.C. 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.”

66. We would also like to gainfully reproduce paragraph nos.18 and 19 of the judgment rendered by the Hon’ble Apex



Court in the case of **Gopal Singh vs. State of Uttarakhand**,
reported in **(2013) 7 SCC 545** hereinbelow: -

“18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect - propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a



number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment.

19. A court, while imposing sentence, has to keep in view the various complex matters in mind. To structure a methodology relating to sentencing is difficult to conceive of. The legislature in its wisdom has conferred discretion on the Judge who is guided by certain rational parameters, regard been had to the factual scenario of the case. In certain spheres the legislature has not conferred that discretion and in such circumstances, the discretion is conditional. In respect of certain offences, sentence can be reduced by giving adequate special reasons. The special reasons have to rest on real special circumstances. Hence, the duty of the court in such situations becomes a complex one. The same has to be performed with due reverence for the rule of law and the collective conscience on one hand and the doctrine of proportionality, principle of reformation and other concomitant factors on the other. The task may be onerous but the same has to be done with total empirical rationality sans any kind of personal philosophy or individual experience or any a priori notion.”

67. It would be apposite to refer to a judgment rendered by the Hon’ble Apex Court in the ***State of Madhya Pradesh vs. Suresh***, reported in ***(2019) 14 SCC 151***, paragraph nos.10 to 20 whereof are reproduced herein below:-

“10. The respondent was tried for the offence under Sections 302 and 201 IPC. With the evidence on record, it was clearly established that the respondent was author of the fatal injury in question. The trial court, with reference to the nature of the act of the respondent and the



attending circumstances, convicted him for culpable homicide not amounting to murder under Section 304 Part II IPC and let him off for the offence under Section 201 IPC because he had been convicted for the main offence. This part of the order of the trial court having attained finality and having not been questioned even in this appeal, we would leave the matter as regards conviction at that only. However, the question remains as to whether all the facts and circumstances of case taken together justify such indulgence that the punishment of rigorous imprisonment for a period of 3 years, as awarded by the trial court, be reduced to that of 3 months and 21 days? In our view, the answer to this question could only be in the negative.

11. In State of M.P. v. Ghanshyam Singh [(2003) 8 SCC 13], relating to the offence punishable under Section 304 Part I IPC, this Court found sentencing for a period of 2 years to be too inadequate and even on a liberal approach, found the custodial sentence of 6 years serving the ends of justice. This Court underscored the principle of proportionality in prescribing liability according to the culpability; and while also indicating the societal angle of sentencing, cautioned that undue sympathy leading to inadequate sentencing would do more harm to the justice system and undermine public confidence in the efficacy of law. This Court observed, inter alia, as under:

“12. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in Sevaka Perumal v. State of T.N. [(1991) 3 SCC]

13. Criminal law adheres in general to the principle of



proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges, in essence, affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence, sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably, these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread.

14. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilised societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

15. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be



delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Mc Gautha v. California [1971 SCC OnLine US SC 89 : 402 US 183 (1971)] that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case is the only way in which such judgment may be equitably distinguished.

17. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic a view merely on account of lapse of time in respect of such offences will be result wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by a string of deterrence inbuilt in the sentencing system.

19. Similar view has also been expressed in Ravji v. State of Rajasthan [(1996) 2 SCC 175]. It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been



committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to & be consistent with the atrocity & brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'."

(emphasis supplied)

12. In *Alister Anthony Pareira v. State of Maharashtra*, [(2012) 2 SCC 648], the allegations against the appellant had been that while driving a car in drunken condition, he ran over the pavement, killing 7 persons and causing injuries to 8. He was charged for the offences under Sections 304 Part II and 338 IPC; was ultimately convicted [*State of Maharashtra v. Alister Anthony Pareira*, 2007 SCC OnLine Bom 1490] by the High Court under Sections 304 Part II, 338 and 337 IPC; and was sentenced to 3 years' rigorous imprisonment with a fine of Rs 5 lakhs for the offence under Section 304 Part II IPC and to rigorous imprisonment for 1 year and for 6 months respectively for the offences under Sections 338 and 337 IPC. Apart from other contentions, one of the pleas before this Court was that in view of fine and compensation already paid and willingness to make further payment as also his age and family circumstances, the appellant may be released on probation or his sentence may be reduced to that already undergone. As regards this plea for modification of sentence, this Court traversed through the principles of penology, as enunciated in several of the past decisions [This Court referred, amongst others, to the decisions in *State of Karnataka v. Krishnappa*, (2000) 4 SCC 75; *Dalbir Singh v. State of Haryana*, (2000) 5 SCC 82; *State of M.P. v. Saleem*, (2005) 5 SCC 554; *Ravji v. State of Rajasthan*, (1996) 2 SCC 175; *State of M.P. v. Ghanshyam Singh*, (2003) 8 SCC 13] and, while observing that the facts and circumstances of the case



show “a despicable aggravated offence warranting punishment proportionate to the crime”, this Court found no justification for extending the benefit of probation or for reduction of sentence. On the question of sentencing, this Court re-emphasised as follows:

“84. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.

85. The principle of proportionality in sentencing a crime-doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”

(emphasis supplied)

13. Therefore, awarding of just and adequate punishment to the wrongdoer in case of proven crime remains a part of duty of the court. The punishment to be awarded in a case has to be commensurate with the gravity of crime as also with the relevant facts and attending circumstances. Of course, the task is of striking a delicate balance between the mitigating and aggravating circumstances. At the same time, the avowed objects of law, of protection of society and responding to the society's call for justice,



need to be kept in mind while taking up the question of sentencing in any given case. In the ultimate analysis, the proportion between the crime and punishment has to be maintained while further balancing the rights of the wrongdoer as also of the victim of the crime and the society at large. No straitjacket formula for sentencing is available but the requirement of taking a holistic view of the matter cannot be forgotten.

14. In the process of sentencing, any one factor, whether of extenuating circumstance or aggravating, cannot, by itself, be decisive of the matter. In the same sequence, we may observe that mere passage of time, by itself, cannot be a clinching factor though, in an appropriate case, it may be of some bearing, along with other relevant factors. Moreover, when certain extenuating or mitigating circumstances are suggested on behalf of the convict, the other factors relating to the nature of crime and its impact on the social order and public interest cannot be lost sight of.

15. Keeping in view the principles aforesaid, when the present matter is examined, we find that the respondent is convicted of the offence under Section 304 Part II IPC. Section 304 IPC reads as under:

“304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder, shall be punished with 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.”



16. Therefore, when an accused is convicted for the offence under Part II of Section 304 *ibid.*, he could be sentenced to imprisonment for a term which may extend to a period of 10 years, or with fine, or both. In this case, the trial court chose to award the punishment of 3 years' rigorous imprisonment to the respondent. The punishment so awarded by the trial court had itself been leaning towards leniency, essentially in view of the fact that the respondent was 26 years of age at the time of the incident in question. However, the High Court further proceeded to reduce the punishment to the period already undergone (i.e. 3 months and 21 days) on consideration of the factors: (i) that the incident had taken place on spur of the moment; (ii) that the respondent was 26 years of age at the time of incident; and (iii) that the respondent himself took his father to hospital. On these considerations and after finding that the respondent had spent 3 months and 21 days in custody, the High Court concluded that "no useful purpose would be served in sending the appellant back to jail". We are clearly of the view that, further indulgence by the High Court, over and above the leniency already shown by the trial court, was totally uncalled for.

17. So far the mitigating factors, as taken into consideration by the High Court are concerned, noticeable it is that the same had already gone into consideration when the trial court awarded a comparatively lesser punishment of 3 years' imprisonment for the offence punishable with imprisonment for a term that may extend to 10 years, or with fine, or with both. In fact, the factor that the incident had happened on the "spur of the moment": had been the basic reason for the respondent having been convicted for the offence of culpable homicide not amounting to murder under Section 304 Part II IPC though he was charged for the offence of murder under Section 302 IPC. This factor could not have resulted in awarding just a symbolic punishment. Then, the factor that the respondent



was 26 years of age had been the basic reason for awarding comparatively lower punishment of 3 years' imprisonment. This factor has no further impelling characteristics which would justify yet further reduction of the punishment than that awarded by the trial court. Moreover, the third factor, of the respondent himself taking his father to hospital, carries with it the elements of pretence as also deception on the part of the respondent, particularly when he falsely stated that the victim sustained injury due to the fall. Therefore, all the aforementioned factors could not have resulted in further reduction of the sentence as awarded by the trial court.

18. The High Court also appears to have omitted to consider the requirement of balancing the mitigating and aggravating factors while dealing with the question of awarding just and adequate punishment. The facts and the surrounding factors of this case make it clear that, the offending act in question had been of the respondent assaulting his father with a blunt object which resulted in the fracture of skull of the victim at parietal region. Then, the respondent attempted to cover up the crime by taking his father to hospital and suggesting as if the victim sustained injury because of fall from the roof. Thus, the acts and deeds of the respondent had been of killing his own father and then, of furnishing false information. The homicidal act of the respondent had, in fact, been of patricide; killing of one's own father. In such a case, there was no further scope for leniency on the question of punishment than what had already been shown by the trial court; and the High Court was not justified in reducing the sentence to an abysmally inadequate period of less than 4 months. The observations of the High Court that no useful purpose would be served by detention of the accused cannot be approved in this case for the reason that the objects of deterrence as also protection of society are not lost with mere passage of time.

19. In the given set of facts and circumstances, the observations in Jinnat Mia v. State of Assam, [(1998) 9



SCC 319] on the powers of the High Court to review the entire matter in appeal and to come to its own conclusion or that the practice of this Court not to interfere on questions of facts except in exceptional cases shall have no application to the present case, particularly when we find that the High Court has erred in law and has not been justified in reducing the sentence to a grossly inadequate level while ignoring the relevant considerations.

20. To sum up, after taking into account all the circumstances of this case, we are of the considered view that the High Court had been in error in extending undue sympathy and in awarding the punishment of rigorous imprisonment for the period already undergone i.e. 3 months and 21 days for the offence under Section 304 Part II IPC. In our view, there was absolutely no reason for the High Court to interfere with the punishment awarded by the trial court, being that of rigorous imprisonment for 3 years.”

68. We would now like to give a careful consideration to the facts of the present case for the purposes of awarding a proper sentence, considering the principles laid down by the Hon’ble Apex Court in a catena of judgments, as has been referred to hereinabove in the preceding paragraphs. The facts and circumstances of the present case depict that repeated lathi blows were not inflicted upon the deceased apart from the fact that the appellants had not assaulted any other member of the prosecution party who were present at the place of occurrence. Further, the testimony of the eye-witnesses of the present case



would show that when the witnesses had arrived at the place of occurrence after *hulla* (alarm) were raised, the accused persons immediately fled away instead of inflicting further injuries with the intent to brutally kill the deceased. Thus, after analyzing the entire evidence on record, it is evidently clear that the occurrence took place without any premeditation on the part of the appellants. The appellants had never planned to inflict such injuries that would cause the death of the deceased, as there is no evidence to suggest that they made any special preparation for assaulting the deceased with the intent to kill him. Moreover, it is not in dispute that the appellants have assaulted the deceased in such a manner, which has resulted in infliction of injuries sufficient to cause death, however we find that the appellants did not intend to cause his death. Hence, in these circumstances, the element of intention to cause death appears to be absent and the same has not stood conclusively proved.

69. Factually, the appellant of the first case, i.e Ramdhani Ram has been in custody for around eleven years while the appellants of the second case, i.e. Surendra Ram, Kokil Ram, Amar Ram, Rajshri Ram, Amit Ram, Paltan Ram and Raju Ram have served sentence to the extent of about one year and one month.



70. Now, advertent to the requirement of balancing the aggravating and mitigating factors and circumstances in which a crime has been committed on the basis of relevant circumstances, though we find that the appellants of the aforesaid appeals have been suffering the rigors of trial since the year 2014, i.e. for a substantially long period of about 11 years and they are stated to be having a clean antecedent, however considering the principles laid down by the Hon'ble Apex Court to the effect that with mere passage of time, the objects of deterrence as also protection of society are not lost, there is no scope for leniency on the question of sentencing. Moreover, the appellants have now stood convicted for the offence of culpable homicide not amounting to murder under Section 304 Part-II of the IPC, though they were charged and had also been convicted by the Ld. Trial Judge for the offence of murder under Section 302/149 of the IPC, hence we are of the view that no symbolic punishment should be awarded, especially in view of the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct, inasmuch as showing of undue sympathy to impose inadequate sentence would do more harm to the justice system, leading to undermining the public confidence in the efficacy of law as also



would be resultantly counterproductive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

71. Thus, taking into account an overall perspective of the entire case, as indicated hereinabove as also considering the principles of sentencing laid down by the Hon'ble Apex Court, as aforesaid, apart from the fact that we have already convicted the appellants under Section 304 Part-II of the IPC, we deem it fit and proper to sentence the appellants, for the altered conviction, to undergo rigorous imprisonment for 5 years each.

72. The appellant of the first case, i.e Ramdhani Ram has now stood convicted under Section 304 Part II of the IPC and sentenced to undergo rigorous imprisonment for 5 years by the instant judgment, however since he has already undergone sentence of more than five years and is in custody, he is directed to be released from jail forthwith unless required in any other case.

73. As far as the appellants of the second case, namely Surendra Ram, Kokil Ram, Amar Ram, Rajshri Ram, Amit Ram, Paltan Ram and Raju Ram are concerned, since they have also now stood convicted under Section 304 Part II of the IPC



and sentenced to rigorous imprisonment for 5 years by the instant judgment, the bail bonds of the said appellants are hereby cancelled and they are directed to surrender before the learned Trial Court within a period of four weeks from today, for being sent to jail for serving the remaining sentence.

74. Accordingly, the aforesaid two appeals bearing Criminal Appeal (DB) No.1100 of 2017 and Criminal Appeal (DB) No. 992 of 2017 are partly allowed to the extent indicated hereinabove.

I agree.
Shailendra Singh, J

(Mohit Kumar Shah, J)

(Shailendra Singh, J)

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