IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.150 of 2018

Arising Out of PS. Case No.-47 Year-2005 Thana- UDAKISHUNGANJ District- Madhepura

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1. Budh Narayan Jha S/o Late Anugrah Jha
2. Mritunjay Jha S/o Budh Narayan Jha, Both R/o Village- Singarpur, P.S.- Uda- Kishunganj, District- Madhepura.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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with

CRIMINAL APPEAL (DB) No. 85 of 2018

Arising Out of PS. Case No.-47 Year-2005 Thana- UDAKISHUNGANJ District- Madhepura

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Santosh Jha @ Santosh Kumar Jha Son of Tej Narayan Jha, Resident of Village- Singarpur, P.S.- Uda Kishunganj, District- Madhepura.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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with

CRIMINAL APPEAL (DB) No. 107 of 2018

Arising Out of PS. Case No.-47 Year-2005 Thana- UDAKISHUNGANJ District- Madhepura

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Dheeraj Jha @ Dheeraj Kumar Jha S/o Tej Narain Jha, R/o Village- Singarpur, P.S.- Uda Kishunganj, District- Madhepura.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :

(In CRIMINAL APPEAL (DB) No. 150 of 2018)

For the Appellant/s : Mr.Ramakant Sharma, Sr. Adv.
Mr.Amarnath Jha, Adv.

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

(In CRIMINAL APPEAL (DB) No. 85 of 2018)

For the Appellant/s : Mr.Ramakant Sharma, Sr. Adv.
Mr.Amarnath Jha, Adv.

For the Respondent/s : Mr.Binod Bihari Singh, APP

(In CRIMINAL APPEAL (DB) No. 107 of 2018)

For the Appellant/s : Mr.Ramakant Sharma, Sr. Adv.
Mr.Amarnath Jha, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date :03-07-2025

1. The aforesaid appeals preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Cr.P.C.”) arise out of the same judgment of conviction and order of sentence dated 29.11.2017 and 07.12.2017 respectively, passed by the learned Court of Additional Sessions Judge, Fast Track Court No.-II, Madhepura in Sessions Trial No.123 of 2006 (arising out of Udakishunganj P.S. Case No.47 of 2005), hence these appeals have been heard together and are being disposed off by the present common judgment and order. By the said judgment dated 29.11.2017,

the learned Trial Judge has convicted all the appellants of the aforesaid appeals under Section 302/34 of the Indian Penal Code (hereinafter referred to as the "I.P.C.") and the appellant no.2 of the first case, namely Mrityunjay Jha as also the sole appellant of the second case, namely Santosh Jha @ Santosh Kumar Jha have further been convicted under Section 323 of the I.P.C.. By the aforesaid order of sentence dated 07.12.2017, all the appellants have been sentenced to undergo Imprisonment for Life under Section 302/34 of the I.P.C. and as far as appellant no.2 of the first case and sole appellant of the second case are concerned, they have also been sentenced to undergo simple imprisonment for six months under Section 323 of the I.P.C.

2. The short facts of the case are that the fardbeyan of Sheela Devi (P.W.6), wife of the deceased Ugra Narayan Jha was recorded by the Assistant Sub-Inspector of Police Shri Umesh Chandra Prasad (P.W.7) on 08.05.2005 at about 02:15 p.m. in the afternoon at Primary Health Centre Udakishunganj. In her fardbeyan, the informant has stated that on 08.05.2005, at about 5 a.m. in the morning, her husband Ugra Narayan Jha was being abused by neighbours, namely (1) Tej Narayan Jha (2) Budh Narayan Jha (3) Mrityunjay Jha (4) Dheeraj Jha and (5)

Santosh Kumar Jha, who were armed with *lathi* and *garasa* in their hand, whereafter her husband had objected to them abusing him, however in the meantime, Budh Narayan Jha and Mrityunjay Jha (appellants of the first case) started assaulting the deceased by *lathi*, resulting in the deceased sustaining injuries on his left temporal region and over the entire body, leading to him falling there. The informant had then gone there to resolve the dispute but Tej Narayan Jha, armed with *lathi,* had assaulted the informant on the wrist of her right hand leading to her sustaining serious injuries on her hand and thereafter blood started oozing out as also she sustained *lathi* injuries on her body. Thereafter, the son of the informant, Sanjeev Kumar Jha (P.W.3) had arrived there to resolve the dispute, whereupon Mrityunjay Jha (appellant no.2 of the first case) armed with *garasa* had assaulted him of his head, leading to him sustaining serious injuries and blood started oozing out therefrom. Santosh Jha had then assaulted Sunil by *lathi* resulting in him sustaining injuries on the thigh of his left leg as also on his left hand. The informant has further stated that the reason for the occurrence is that since before dispute is going on in connection with homestead land and on account of the same, they were assaulted and injured. She has also stated that *hulla* (alarm) was raised

and then several people from the village had arrived there, whereupon the persons engaged in assaulting them had fled away and then with the help of the villagers they were taken for treatment by a Sumo vehicle to Udakishunganj Hospital where the treatment was being carried out. The informant has further stated that the aforesaid statement was read over to her, which she had heard and understood and finding the same to be correct, she had put her right thumb impression before the villagers.

3. On the basis of the aforesaid fardbeyan of the informant, formal First Information Report (hereinafter referred to as the "FIR") bearing Udakishunganj P.S. Case No.47 of 2005 was registered on 08.05.2005 at 02:30 p.m. under Sections 147/148/149/341/323/324/307 and 504 of the I.P.C. against the aforesaid appellants and one other accused namely Tej Narayan Jha, who has died during the pendency of the aforesaid appeals. Subsequently, vide order dated 20.05.2005, Section 302 of the I.P.C. was added on account of death of Ugra Narayan Jha. The Police, after investigation, had found the occurrence to be true and had filed chargesheet on 02.11.2005 against all the aforesaid appellants and one another person under Sections 147/148/149/323/325/307/504 and 302 of the I.P.C. The Ld.

Trial Court has then taken cognizance under Sections 147/148/149/323/325/307/504 and 302 of the I.P.C. vide order dated 10.11.2005 and then the case was committed to the Court of Sessions vide order dated 12.06.2006 and was numbered as Sessions Trial No.123 of 2006. The learned Trial Court had then framed charges against the aforesaid appellants and one another person on 10.08.2006 under Sections 302/34, 325 and 323 of the I.P.C.

4. The prosecution has examined 9 witnesses. Sanjeev Kumar Jha (P.W.3) and Sheela Devi (P.W.6) are stated to be injured eye witnesses, while Ram Narayan Jha (P.W.2) has also been examined on behalf of the prosecution. Nitu Kumari (P.W.5) claims to be an eye witness while Nawal Kishore Thakur (P.W.4) and Krishna Kant Jha (P.W.8) are hearsay witnesses. Dr. Shilwant Singh (P.W.1) had conducted the post mortem examination of the dead body of the deceased while Dr. Rajesh Kishore Sahu (P.W.9) had examined and prepared the Injury Report of Sheela Devi (P.W.6), Sanjeev Kumar Jha (P.W.3) as also supplementary Injury Report of Sheela Devi (P.W.6) and Umesh Chandra Prasad (P.W.7), is the Investigating Officer.

5. The prosecution, by way of documentary evidence, had

proved the following documents, which were marked as exhibits during the course of the trial:-

Exhibit No.	Description
Exhibit No. 1	Post mortem report
Exhibit No. 2	Fardbeyan
Exhibit No. 3	Formal FIR
Exhibit No. 4	Carbon Copy of the Inquest Report
Exhibit No. 5	Injury Report of Sheela Devi
xhibit No. 5/1	Injury Report of Sanjeev Kumar
Exhibit No. 5/2	Supplementary injury Report of Sheela Devi
Exhibit No. 6	X-ray Plate

6. The list of exhibits marked on behalf of the defence are enumerated hereinbelow:-

Exhibit No.	Description
Exhibit A	Forwarding note for examination of injured Budh Narayan Jha and his injury report.
Exhibit A/1	Forwarding note for examination of injured Mrityunjay Jha and his injury report.

7. The Ld. Senior counsel for the appellants of the aforesaid three appeals, Shri Ramakant Sharma has submitted

that as far as Ram Narayan Jha (P.W.2), Sanjeev Kumar Jha (P.W.3), Sheela Devi (P.W.6) and Nawal Kishore Thakur (P.W.4) are concerned, they have not seen the deceased being assaulted by the accused persons and as far as Krishna Kant Jha (P.W.8) is concerned, he is a hearsay witness. Thus, it is submitted that not only the prosecution witnesses are inimical, interested and not impartial but have also not seen as to who had assaulted the deceased, leading to his death, except Nitu Kumari (P.W.5), who claims to be an eye witness. It is further submitted that only one temporal injury has been found on the person of the deceased, however the prosecution witnesses have exaggerated the number of injuries inflicted upon the deceased and in fact, Sanjeev Kumar Jha (P.W.3) has stated in his deposition that he had seen injuries all over the body of the deceased. The Ld. Senior counsel for the appellants has referred to the deposition of Dr. Shilwant Singh (P.W.1) to substantiate the factum of only one injury being found by the Doctor in the post mortem report whereas the son of the deceased, in his evidence as P.W.3 has stated that there were several injuries on the body, thus the evidence of the prosecution is not trustworthy. It is next submitted by referring to the post mortem report that though the Doctor has estimated

the time of death which has elapsed from the time of conducting post mortem examination to be 6 hours, however the occurrence took place about 12 hours back, hence the mode, manner and time of occurrence stands uncorroborated, especially in view of the fact that the Doctor had found during the course of post mortem examination that undigested food was present in the intestine, although the incident took place early in the morning at 5 a.m. and the deceased had been badly assaulted. Thus, it is submitted that the evidence of the prosecution would show that the manner and time of occurrence is varying.

8. It is further submitted by the Ld. Senior Counsel that the appellants had no intention to kill the deceased and the incident had taken place at the spur of the moment, which would be clear from the deposition of Umesh Chandra Prasad (P.W.7) (Investigating Officer), who has stated in his evidence that he had recorded the statement of independent witness who had told him that Panches had distributed the property amongst both the parties, however on 08.05.2005 at 5:00 a.m. in the morning, while Mrityunjay Jha (appellant no.2 of the first case) was going towards the field along with his buffalo for grazing purposes, Ugra Narayan Jha (deceased) had told him to go

through his own land leading to quarrel having erupted in between them and then assault had taken place amongst both the parties. In fact, it has been submitted that the deposition of Umesh Chandra Prasad (P.W.7) would show that Budh Narayan Jha and Mrityunjay Jha (appellants of the first case) had also sustained injuries and their injury reports have been brought on record by way of Exhibit-A and A/1. Krishna Kant Jha (P.W.8), an independent witness has stated in his evidence that assault had taken place in between Ugra Narayan Jha (deceased) and Budh Narayan Jha (appellant no.1 of the first case), leading to the said Ugra Narayan Jha being injured badly and thereafter, he had died in the hospital. Thus, it is submitted that it was not a one sided fight but a free for all fight in between the parties. Therefore, alternatively it is submitted that even if the evidence led by the prosecution is believed to be true 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.

9. The Ld. Senior counsel for the appellants, on the issue of applicability of Section 34 has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Constable 907 Surendra Singh and Another Vs. State of Uttarakhand,***

reported in ***2025 SCC Online SC 176***, to submit that it is a well settled principle of law that for convicting the accused with the aid of Section 34 of the I.P.C., it must be established that all the accused had pre-planned and shared a common intention to commit the crime with the accused who has actually committed the crime and it must also be established that the criminal act has been done in furtherance of the common intention of all the accused. Paragraph no.18 of the said judgment being relevant is being reproduced hereinbelow:-

> "*18. By now it is a settled principle of law that for convicting the accused with the aid of Section 34 of the I.P.C. the prosecution must establish prior meetings of minds. It must be established that all the accused had preplanned and shared a common intention to commit the crime with the accused who has actually committed the crime. It must be established that the criminal act has been done in furtherance of the common intention of all the accused. Reliance in support of the aforesaid proposition could be placed on the following judgments of this Court in the cases of:*
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> *(i) Ezajhussain Sabdarhussain v. State of Gujarat [(2019) 14 SCC 339];*
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> *(ii) Jasdeep Singh alias Jassu v. State of Punjab [(2022) 2 SCC 545];*
>
> *(iii) Gadadhar Chandra v. State of West Bengal [(2022) 6 SCC 576]; and*

(iv) Madhusudan v. State of Madhya Pradesh [2024 SCC OnLine SC 4035].”

10. The Ld. Senior counsel for the appellants has next relied on a judgment rendered by the Hon’ble Apex Court in the case of ***Vasant @ Girish Akbarasab Sanavale and Another Vs. State of Karnataka***, reported in ***2025 SCC Online SC 337***, paragraphs no.53, 59, 62, 64, 75, 80, 81 and 90 whereof are reproduced hereinbelow:-

53. On the other hand, under Section 34, IPC, a mere agreement, although it might be a sufficient proof of the common intention, would be wholly insufficient to sustain a conviction with the application of Section 34, IPC, unless some criminal act is done in furtherance of the said common intention and the accused himself has in some way or the other participated in the commission of the said act.

59. As observed by the Privy Council in the case of Barendra Kumar Ghosh v. Emperor, AIR 1925 PC 1 (C), "It is to be remembered that in crimes as in other things 'they also serve who only stand and wait". The following observations of Mookerjee, J. in the case of Emperor v. Barendra Kumar Ghosh, AIR 1924 Cal 257 (FB) (D) are relevant in this connection:

"It is the expectation of aid, in case it is necessary to the completion of the crime and the belief that his associate is near and ready to render it which encourage and embolden the chief perpetrator, and

incite him to accomplish the act. By the countenance and assistance which the accomplice thus renders, he participates in the commission of the offence.

62. At p. 308 col. (1) of the same case Ghose J. has quoted the following illuminating passage from Poster's Criminal Law:

"Several persons set out together, or in small parties, upon one common design, be it murder or other felony, or for any other purpose unlawful in itself, and each taketh the part assigned to him; some to commit the act, others to watch at proper distances and stations to prevent a surprise, or to favour, if need be, the escape of those who are more immediately engaged. They are all, provided the act be committed, in the eye of the law present at it; for it was made a common cause with them, each man operated in his station at one and the same instant towards the same common end, and the part each man took tended to give countenance, encouragement and protection to the whole gang, and to ensure the success of their common enterprise. To sum up persons executing parts of a crime separately in furtherance of a common intention are equally guilty".

64. The word 'criminal act' is used in Section 34, IPC in the broadest possible sense. It would cover any word, gesture, deed or conduct of any kind on the part of a person whether active or passive, which tends to support the common design.

75. It is, therefore, evident that every person charged with the aid of Section 34, must in some form or the other participate in the offence in order to make him liable thereunder. For the above reason, I find myself unable to endorse the argument of the appellants' learned counsel that a guilty associate merely present on the spot cannot be said to participate in the commission of the offence.

80. The distinction between Section 34, IPC, and Section 149, IPC in this regard has been brought out by Lord Sumner in the well-known case in AIR 1925 PC 1 (C) thus:

> *"There is a difference between object and intention, for, though their object is common, the intentions of the several members, may differ and indeed may be similar only in respect that they are all unlawful, while the element of participation in action which is the leading feature of S. 34, is replaced in S. 149 by membership of the assembly at the time of the committing of the offence".*

81. In Bashir v. State, AIR 1953 All 668 (F) which is a Bench decision of the Allahabad High Court, it was observed by Desai J. that:

> *"All the persons who are sought to be made liable by virtue of S. 34 must have done some act which is included in the 'criminal act'. One who has not taken any part in doing the criminal act cannot be made liable under the section", (p. 671 col 1).*

90. As held by this Court in Suresh Sakharam Nangare v. The State of Maharashtra, JT (2012) 9 SC 116, if common intention is proved but no overt act is attributed to the individual accused, Section 34 of the code will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent Section 34 cannot be invoked. In other words, it requires a pre-arranged plan and pre supposes prior concert therefore there must be meeting of mind."

11. Reliance has also been placed on a judgment rendered by the Ld. Division Bench of the Bombay High Court, reported in ***AIR Online 2024 BOM 1707*** (***Jayanand Arjun Dhabale and others vs. State of Maharashtra***), paragraphs no.20, 21, 36 and 37 whereof are reproduced hereinbelow:-

"*20. The Hon'ble Apex Court in the case of Jasdeep AIROnline 2022 SC 13(supra), in paras 21 to 24, 26 to 28 has observed as under.*

"21. Section 34 of the IPC creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one into others in pursuance to a common intention. Onus is on the prosecution to prove the common intention to the satisfaction of the court. The quality of evidence will have to be substantial, concrete, definite and clear. When a part of evidence produced by the prosecution to bring the accused within the fold of Section 34 of

the IPC is disbelieved, the remaining part will have to be examined with adequate care and caution, as we are dealing with a case of vicarious liability fastened on the accused by treating him at par with the one who actually committed the offence.

22. What is required is the proof of common intention. Thus, there may be an offence without common intention, in which case Section 34 of the IPC does not get attracted.

23. It is a team effort akin to a game of football involving several positions manned by many, such as defender, mid- fielder, striker, and keeper. A striker may hit the target, while a keeper may stop an attack. The consequence of the match, either a win or a loss, is borne by all the players, though they may have their distinct roles. A goal scored or saved may be the final act, but the result is what matters. As against the specific individuals who had impacted more, the result is shared between the players. The same logic is the foundation of Section 34 of the IPC which creates shared liability on those who shared the common intention to commit the crime.

24. The intendment of Section 34 of the IPC is to remove the difficulties in distinguishing the acts of individual members of a party, acting in furtherance of a common intention. There has to be a simultaneous conscious mind of the persons participating in the criminal action of bringing about a particular result. A common intention qua its

existence is a question of fact and also requires an act "in furtherance of the said intention". One need not search for a concrete evidence, as it is for the court to come to a conclusion on a cumulative assessment. It is only a rule of evidence and thus does not create any substantive offence.

26. The word "furtherance" indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion.

27. There may be cases where all acts, in general, would not come under the purview of Section 34 of the IPC, but only those done in furtherance of the common intention having adequate connectivity. When we speak of intention, it has to be one of criminality with adequacy of knowledge of any existing fact necessary for the proposed offense. Such an intention is meant to assist, encourage, promote and facilitate the commission of a crime with the requisite knowledge as aforesaid.

28. The existence of common intention is obviously the duty of the prosecution to prove.

However, a court has to analyse and assess the evidence before implicating a person under Section 34 of the IPC. A mere common intention per se may not attract Section 34 of the IPC sans an action in furtherance. There may also be cases where a person, despite being an active participant in forming a common intention to commit a crime, may

actually withdraw from it later.

(Emphasis supplied)

21. In the Case of Gadadhar Chandra AIROnline 2022 SC 360 (supra), the Supreme Court observed that -

"As consistently held by this court, common intention contemplated by Section 34 of IPC pre-supposes prior concert. It requires meeting of minds. It requires pre-arranged plan before a man can be vicariously convicted for the criminal act of another. The criminal act must have been done in furtherance of the common intention of all the accused. In a given case, the plan can be formed suddenly. In the present case, the non-examination of two crucial eye-witnesses makes the prosecution case about the existence of a prior concert and pre-arranged plan extremely doubtful."

(Emphasis supplied)

In the case of Jai Bhagwan and others AIR 1999 SC 1083 (supra), the Supreme Court observed that -

"10. To apply Section 34, IPC, apart from the fact that there should be two or more accused, two factors must be established: (i) common intention and (ii) participation of the accused in the commission of an offence. If common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability, but if participation of the accused in the crime is proved and common intention

is absent, Section 34 cannot be invoked. In every case, it is not possible to have direct evidence of common intention. It has to be inferred from the facts and circumstances of each case."

(Emphasis supplied)

36. Thus, the evidence on record does not show that the prosecution has proved two conditions as enumerated above to attract Section 34 of the IPC against accused Nos.2 to 4. Therefore, we are of the view that the findings recorded by the learned Judge are contrary to the evidence on record. The learned Judge has not considered the ingredients of Section 34 of the IPC or the law laid down by the Hon'ble Apex Court in various decisions and has recorded the findings based on conjectures and surmises. Which are not sustainable in the eyes of the law and same are liable to be set aside to the extent of applicability of Section 34 of the IPC against accused Nos.2 to 4, and to that extent, the findings are required to be quashed and set aside.

37.As a result, we are of the opinion that the prosecution has proved the charge against accused No.1-Jayanand under Section 302 of the IPC. Hence, we maintain the findings of the trial Court to the extent of holding accused No.1-Jayanand guilty of the offence punishable under Section 302 of the IPC. However, the prosecution has failed to prove the common intention as contemplated under Section 34 of the IPC, i.e. presupposes prior concert, meeting of minds or prearranged plan before a man can be vicariously

convicted for the criminal act of another. Hence, the prosecution has failed to prove the ingredients of Section 34 of the IPC against accused Nos.2 to 4, who have been implicated only with the aid of Section 34 of the IPC. Hence, we answer the point partly in the affirmative to the extent of accused No.1 and negative to the extent of accused No. 2 to 4. We also maintain the conviction of the appellant Nos. 1 to 4 under Section 452 of the IPC, which they have already undergone. Therefore, the appeal must succeed partly to that extent."

12. Lastly, the learned senior counsel for the appellants has placed reliance on a judgment rendered by the Hon'ble Apex Court in the case of ***Mala Singh and others vs. State of Haryana***, reported in ***AIR 2019 SC 1026***, paragraphs no. 57, 62 and 63 whereof are reproduced hereinbelow:-

"*57. In other words, in our view, the prosecution failed to adduce any evidence against the three appellants to prove their common intention to murder Mahendro Bai. Even the High Court while altering the charge from Section 149 IPC to Section 34 IPC did not refer to any evidence nor gave any reasons as to on what basis these three appellants could still be proceeded with under Section 34 IPC notwithstanding the acquittal of remaining eight co-accused.*

62. The prosecution, in our view, never came with a case that all the 11 accused persons shared a common intention under Section 34 IPC to eliminate Mahendro

Bai and nor came with a case even at the appellate stage that only 3 appellants had shared common intention independent of 8 co-accused to eliminate Mahendro Bai.

63. When prosecution did not set up such case at any stage of the proceedings against the appellants nor adduced any evidence against the appellants that they (three) prior to date of the incident had at any point of time shared the "common intention" and in furtherance of sharing such common intention came on the spot to eliminate Mahendro Bai and lastly, the High Court having failed to give any reasons in support of altered conviction except saying in one line that conviction is upheld under Section 302/34 IPC in place of Section 302/149 IPC, the invoking of Section 34 IPC at the appellate stage by the High Court, in our view, cannot be upheld."

13. The learned APP for the State, Shri Binod Bihar Singh, assisted by Ms. Shashi Bala Verma, has submitted that Sanjeev Kumar Jha (P.W.3) and Sheela Devi (P.W.6) are injured eye witnesses and in fact Sheela Devi (P.W.6) has been grievously injured, as is apparent from her Injury Report and they have fully supported the prosecution's version. It is also submitted that neither the evidence led by the prosecution contains any contradiction nor is inconsistent, hence the same is required to be taken into consideration for the purposes of proving the guilt of the appellants. It is also submitted that the appellants

were definitely having the intention to assault the members of the prosecution party inasmuch as they were carrying *lathi* and *garasa* and even motive is prevailing in the present case since land dispute pertaining to homestead land is existing in between the parties since long. It is stated that Sanjeev Kumar Jha (P.W.3), Nitu Kumari (P.W.5) and Sheela Devi (P.W.6) are eye witness to the alleged occurrence and they have supported the case of the prosecution, hence it is submitted that the conviction of the appellants should be upheld, especially on account of the deceased having sustained injuries on his vital parts. It is contended that the manner of occurrence stands corroborated from the Inquest Report as also by the medical evidence i.e. the post mortem report. It is next contended that Nawal Kishore Thakur (P.W.4), Nitu Kumari (P.W.5) and Umesh Chandra Prasad (P.W.7) have all deposed regarding existence of land dispute and on account of the same the appellants have given effect to the aforesaid occurrence in question, leading to death of the husband of the informant as also resulting in Sanjeev Kumar Jha (P.W.3) and Sheela Devi (P.W.6) sustaining injuries. In nutshell, it is submitted that the evidence led by the prosecution definitely proves the guilt of the appellants, hence no interference is required with the

judgment of conviction and order of sentence passed by the Ld. Trial Court.

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

15. Ram Narayan Jha (P.W.2) has stated in his evidence that the occurrence dates back to 08.05.2005 at about 5 a.m. in the morning when he was sleeping in his house and after hearing *hulla* (alarm) he woke up and had gone to the place of occurrence, where he saw that Ugra Narayan Jha had become injured and had fallen down on the ground as also the hand of his wife had been broken and blood was oozing out. He has also stated that the son of Ugra Narayan Jha had received injuries on his forehead and blood was oozing out, however when he reached at the place of occurrence, the assault was over and he had seen the accused Budh Narayan Jha and Mrityunjay Jha running away from the place of occurrence towards the eastern side but he had not seen any weapon in their hand and both of them were running empty handed. He has also stated that he had not seen the actual assault. P.W.2 had recognized the accused persons standing in the dock. P.W.2

has next stated that the assault had taken place on account of homestead land. In cross examination, P.W.2 has stated that there was no cattle feeding pot or peg at the place where the injured had fallen.

16. Sanjeev Kumar Jha (P.W.3) is the son of the informant and he has stated in his deposition that the occurrence dates back to 08.05.2005 at about 5 a.m. in the morning when he was sleeping in his house and had woken up upon hearing sound of *hulla* (alarm), whereafter he had gone to the place of occurrence and had seen his father lying in an injured and unconscious condition. The injury was on his forehead and when he had gone to save him, accused Mrityunjay Jha had assaulted him by the back portion of *garasa*. Thereafter, Tej Narayan Jha and Dheeraj Jha had assaulted the mother of P.W.3 by *lathi*. He has next stated that while his sister Nitu Kumari (P.W.5) had tried to intervene she was also injured, however he did not see as to who had assaulted her. P.W.3 has stated that he saw that his father had fallen down but still Tej Narayan Jha, Dheeraj Jha and Santosh Jha were assaulting him by *lathi*, whereafter he had gone to intervene, however the said persons had also assaulted him. P.W.3 had recognized the accused present in the dock as also claimed to recognize the other

accused persons. P.W.3 has stated that Tej Narayan Jha is cousin brother of his father. In cross-examination, P.W.3 has stated that during the course of treatment, the clothes of his father were opened, whereupon he saw that he had injuries all over the body. He has also stated that though his father was in an unconscious condition but still the accused persons were assaulting him by *lathi*. P.W.3 had seen injury on the right side of the forehead of his father and the hand of his mother had broken as also he had been inflicted injuries at 3-4 places. The sister of P.W.3 had also received injury at one place on her leg and P.W.3 had received injuries on his forehead and left hand. P.W.3 has also stated that in the night of occurrence, he was at his home along with his father and his father had eaten chappati and slept at 9-9:30 p.m., whereafter he woke up in the morning after hearing sound of *hulla* (alarm). His father used to feed the cattle and at the time of occurrence, cattle was tied at the door of his house and the cattle feeding pot was also there. P.W.3 has denied the suggestion that because of land dispute, the accused persons have been falsely implicated.

17. Nawal Kishore Thakur (P.W.4) has stated in his deposition that on the day of occurrence, it was Sunday and the occurrence dates back to 14 months at about 5:00 a.m. in the

morning when he was at Singarpur at the house of his brother-in-law, namely Ugra Narayan Jha (deceased) and at that time he had gone for easing himself, when he heard *hulla* (alarm) and then he came back running and saw that his brother-in-law had fallen down, the hand of his sister Sheela Devi had been broken as also the head of his nephew Dilkush had been injured badly and his niece Nitu Kumari had also received *lathi* injuries. He had also seen the accused persons, namely Budh Narayan Jha, Mrityunjay Jha, Tej Narayan Jha, Dheeraj Jha and the younger son of Tej Narayan Jha armed with *lathi*. Thereafter, the injured persons were taken to the hospital at Kishunganj, however his brother-in-law Ugra Narayan Jha was referred to Madhepura, whereafter they had gone to Madhepura Hospital where during the course of treatment he died. He had recognized the accused persons present in the dock as also claimed to recognize the other accused persons. In cross examination, P.W.4 has stated that the place of occurrence is at a distance of 7 kms from his village, he is engaged in agricultural work in his village and often goes to the in-laws place of his sister. He has next stated that prior to the date of occurrence, neither any message had come to him nor there was any festival nor there was any reason to go to Singarpur.

He has also stated that his statement was recorded by the police on the third day of the occurrence at Singarpur at about 5 a.m. in the morning at the house of his brother-in-law.

18. P.W.4 He has next stated that dispute was existing in between the parties on account of homestead land. The disputed land was measured three times and on all the three occasions panchnama was prepared, which bears the signature of the deceased and his brothers. The panches were from Singarpur. The deceased was the eldest amongst his brothers. He has further stated that one month prior to the date of occurrence as also two months prior to the date of occurrence, Panchayat was held and he was present in all the three Panchayatis. The Panchayati was accepted by Ugra Narayan Jha and all his brothers. A map of the land in question was prepared by the Amin, which was signed by all the brothers, whereafter all the parties were handed over a copy each. Budh Narayan Jha did not accept the first Panchayati and he also did not accept the second and third one. P.W.4 has next stated that the brother of the deceased had settled on the disputed land as also is at present staying there and there are seven houses on the disputed land out of which two are pucca houses and five are hay-huts and the pucca house of his brother-in-law is

situated towards the west from where the house of Budh Narayan Jha is situated at a distance of 15-20 rope length (as per local measurement 1 rope length= 30 ft) and in between there is one small way as also there is one open field in between, where cattle feeding pot, peg and well are situated.

19. P.W.4 has also stated that his brother-in-law had fallen towards the western side of the pucca house of Budh Narayan Jha at a distance of 3-4 lagga (in local measurement 1 lagga= 6 ft). He has next stated that the deceased had fallen towards the southern side of the well at a distance of 3 rope length and no blood had fallen at the place where he had fallen, however mud was present on his body. At the time of occurrence, Budh Narayan Jha had two oxes and two buffaloes. He has stated that the house of Budh Narayan Jha is on the eastern side of the place of occurrence and towards the northern side of the place of occurrence, three hay huts are situated while on the eastern side, four hay huts are situated and the occurrence had taken place in between the same.

20. P.W.4 has next stated that all around, the doors of the houses of people are situated. He has stated that Babusaheb, Ram Narayan (P.W.2), Bachan Jha and other villagers had arrived at the place of occurrence and he was also present

there. P.W.4 has denied to have told the police that when he was at home, he got information that Ugra Narayan Jha, his sister Sheela Devi and Raju have been assaulted, whereafter he had reached Singarpur where he got information from his sister that on account of the homestead land, the said occurrence had taken place. The statement of P.W.4 was recorded when the police had arrived at the place of occurrence and at that time many villagers had arrived there, whereafter he had taken the police inside the courtyard and made them meet his sister, whereupon the police had started investigation.

21. Nitu Kumari (P.W.5) has stated in her deposition that the occurrence dates back to 15-16 months and the day was Sunday, at about 5:00 a.m. in the morning, when she was sleeping in her house and upon hearing the sound of *hulla* (alarm) being raised by her mother she woke up and ran and went to the place of occurrence, whereupon she saw that Budh Narayan and Mrityunjay Jha were assaulting his father, namely Ugra Narayan Jha by *lathi* and when her mother had gone to save him, Tej Narayan Jha had assaulted her by *lathi* as also when his brother Sanjeev Kumar Jha had gone to save him, Mrityunjay Jha had assaulted him by *garasa* on his head. She has also stated that when her grandmother had gone to save

him, Budh Narayan Jha had also assaulted her and when she had gone to save them, she was also assaulted by the accused persons. Thereafter, the neighbours had arrived there leading to the accused persons fleeing away, whereafter the injured persons were taken to Kishunganj for treatment but they were referred to Madhepura and at Madhepura father of Nitu Kumari (P.W.5) had died. Nitu Kumari (P.W.5) had recognized the accused persons standing in the dock and had claimed to recognize the absent accused persons. In cross examination P.W.5 has stated that Ugra Narayan Jha is her own Baba and her grandfather are Turant Lal Jha and Anugrah Lal Jha, who are brothers. Turant Lal Jha has got one son, namely Tej Narayan Jha, who in turn also has a son, namely Dheeraj Jha, who are accused in the present case. She has also stated that towards the northern side of her courtyard, the courtyard of Tej Narayan Jha is situated, towards the southern side courtyard of Bachan Jha is situated, towards the eastern side courtyard of Budh Nath Jha is situated and on the west residential area of fishermen is situated.

22. P.W.5 has next stated that her mother had raised *hulla* (alarm) from the door of her house as also her father had raised alarm and upon her father raising alarm, her mother had gone

there, whereafter her mother had raised *hulla* (alarm), whereupon she and her brother had also gone to the place of occurrence and then she saw that her father had fallen down and injuries were present on his forehead as also on his entire body apart from little bit blood flowing from his ear. She has next stated that by the time people came, all the accused persons had fled away. She has also stated that she did not see any injury on the person of Mrityunjay Jha and Budh Narayan Jha. She has admitted that land dispute was going on since 3-4 years and the accused persons were forcibly demanding share in the land purchased by her father in her mother's name. Prior to the occurrence Panchayati was held 3-4 times and then her father had accepted the decision but the accused persons had not. She has next stated that her mother had sustained injuries on right hand and she had fallen at the place of occurrence as also her father had fallen nearby. She has also stated that at the time of occurrence all were sleeping and the accused persons must have conspired for assaulting the members of the prosecution party. P.W.5 has next stated that mother of Budh Narayan Jha is her grandmother. She has also stated that there was no dispute with regard to the way. P.W.5 has further stated that at the place where her father and mother had fallen, there

was no cattle feeding pot made of cement or any peg.

23. Sheela Devi (P.W.6) has stated in her deposition that the occurrence dates back to 08.05.2005 at 5:00 a.m. in the morning when she was in her courtyard and then she heard *hulla* (alarm) from the side of the door, whereafter she went running towards the door and saw that her husband had fallen down and Budh Narayan Jha and Mrityunjay Jha armed with *lathi* were standing there. She has next stated that Tej Narayan Jha, Dheeraj Jha and Santosh Jha were also engaging in assault and when she went to save her husband, the accused persons had also assaulted her. She has next stated that she was assaulted on right hand by Tej Narayan Jha, whereafter her son Sanjeev Jha and daughter Nitu Kumari had arrived there, whereupon Sanjeev was assaulted by Mrityunjay Jha by *garasa* on the head and her daughter was slapped. She has also stated that her husband had become unconscious on account of being assaulted and accused persons had fled away thinking that he has died. Upon hearing *hulla* (alarm), neighbours had arrived there and then her husband was taken to Kishunganj where she and her son were also treated, however her husband was referred to Madhepura where he died. At Kishunganj, the Officer In-charge had come at the hospital and recorded her

statement which was read over to her and then she had made her thumb impression over the same since her right hand had been broken. She had recognized the accused persons standing in the dock and claimed to recognize the other accused, who are not present there.

24. In cross examination, P.W.6 has stated that from Singarpur, Kishunganj is at a distance of 2 ½ kos (1 kos =2 mile). She has also stated that her injured husband was taken away in a Sumo vehicle which belongs to one Pramod Singh. She has next stated that when she had seen her husband she had talked to him and at Kishunganj, she had talked with the police and at that time her husband was not able to talk. She has stated that she and her son had shown the injury of her husband to the Doctor and they had stayed at Singarpur, after the incident for half an hour. She has also stated that they had brought her husband in an injured condition, from the place of occurrence to the house and kept him on a cot over which quilt and bedsheet was present and during the said half an hour she had made her husband drink water. P.W.6 has further stated that it took 15 minutes to reach Kishangaj Hospital by a Sumo vehicle, where they had stayed for 10 minutes and then she had got admitted in the hospital at Kishunganj itself. She has also

stated that when she had talked with her husband, he had told her that all the five accused persons have assaulted him and this fact was also disclosed before the police. The learned counsel for the accused persons had declined to cross examine this witness any further on the pretext that the said witness was present all throughout in the Court at the time of recording of the evidence of other witnesses in the past, hence the said witness was discharged by the Learned Trial Court.

25. P.W.7 Umesh Chandra Prasad is the Investigating Officer of the present case, who has stated in his deposition that he was posted as Assistant Inspector of Police at Udakishunganj Police Station on 08.05.2005 and he was handed over the investigation of Udakishunganj P.S. Case No.47 of 2005 on that day. He has identified the farbeyan which is in his writing and bears his signature and the same has been marked as Exhibit-2. P.W.7 has stated that the formal F.I.R. is also in his writing and the same bears the signature of Officer In-charge, which has been marked as Exhibit-3. P.W.7 has also stated that he had recorded the re-statement of the informant and conducted inspection of the place of occurrence. The place of occurrence of the said case is at village-Singarpur Tola, where the deceased is stated to have been assaulted and injured by the

accused persons. He has next stated that he had recorded the statement of witnesses and during the course of investigation, he came to know that Ugra Narayan Jha has died during the course of treatment at Madhepura Sadar Hospital, whereafter he had received the Inquest Report from the Madhepura Police Station as also had received the injury reports of the other injured persons.

26. P.W.7 has next stated that on the basis of the statement of the witnesses, post mortem report and inquest report, he had found the occurrence to be true and had filed the chargesheet. He has identified the carbon copy of the Inquest Report which was received from Madhepura Police Station, which is in the writing of Assistant Sub-Inspector of Police Shiv Nandan Singh and bears his signature, which has been marked as Exhibit-4 with objection. In cross examination, P.W.7 has stated that he had recorded the statement of Krishna Kant Jha (P.W. 8), that of the panches as also that of Ram Narayan Jha (P.W. 2), Brajesh Jha, Chuna Jha and Chandra Kishore Jha. He has also stated that both the parties used to participate in the Panchayati, the panches had made signature on the Panchnama but they did not use to listen to the Panches and instead used to get ready to beat each other. P.W. 7 had also recorded the

statement of independent witnesses, namely Chaturi Mandal, Chandeshwar Jha and Udakant Jha, who had told him that the Panches had divided the property in question as also ‘way’ was left for both the parties to go through the same, whereafter both the brothers had made their signature over the panchnama. They had also disclosed that on 08.05.2005 at 5:00 a.m. in the morning, son of Budh Narayan Jha, namely Mrityunjay Jha was going towards the field along with his buffalo for grazing purposes, when Ugra Narayan Jha (deceased) told him to go through his own land and the same led to quarrel having erupted and then assault had taken place in between the parties.

27. P.W. 7 has further stated that in paragraph no.100-101 of the case diary, he has stated about receiving injury report from Udakishunganj on 30.10.2005 of the injured Budh Narayan Jha and Mrityunjay Jha, which he has identified. P.W.7 has stated that the requisition for obtaining the injury reports was sent by the In-charge of Budhma O.P., Shyam Bihari Ram, which is in his handwriting and he had sent Budh Narayan Jha in an injured condition for treatment and on the said basis, the doctor had examined him and prepared his injury report. Similarly, In-charge Budhma O.P. had found Mrityunjay Jha to be injured and had also sent him for examination. The treatment of both,

father and son was done at Primary Health Centre, Udakishunganj. P.W.7 has stated that Budhma O.P. is camp of Kishunganj Police Station. P.W.7 has next stated that he had received the injury reports of the aforesaid two persons from the Government hospital, which has been marked as Exhibit-A and A/1. P.W.7 has also described the place of occurrence and has further stated that occurrence is stated to have taken place on account of dispute pertaining to homestead land and not on account of dispute of way. He has also stated that the house of the accused persons and the informant are situated side by side and on the eastern side of the place of occurrence, the pucca house of Budh Narayan Jha is situated. P.W.7 had received the documents of partition in the form of panchnama, however he had not made any investigation with regard to the connected land. He has also stated that since the villagers had not trusted the said panchnama, how he could have trusted the same. P.W.7 has next stated that he had not found any criminal history of the accused persons and he had not recorded the statement of either Budh Narayan Jha or Mrityunjay Jha, after they had surrendered before the Court. He has denied the suggestion that he had not investigated the case properly.

28. P.W.8, Krishna Kant Jha has stated in his evidence that

the occurrence dates back to 6-7 years and when he heard hulla (alarm) he came outside his house and saw that Tej Narayan Jha, Dheeraj Jha and Santosh were standing at the gate as also he had seen Budh Narayan Jha and Mrityunjay Jha. He has stated that at that time, assault had already taken place and the same had taken place in between Ugra Narayan Jha and Budh Narayan Jha, leading to Ugra Narayan Jha having been injured badly. Ugra Narayan Jha had died while being taken to the Hospital. The wife and children of Ugra Narayan Jha had also been assaulted. He had recognized the accused persons standing in the dock. In his cross examination, P.W. 8 has stated that the courtyard of Budh Narayan Jha and Ugra Narayan Jha (deceased) is at one place where Ugra Narayan Jha had fallen and was lying there, however there was no cattle feeding pot situated there. He has next stated that the family members of Budh Narayan Jha were not present there and he can’t say as to how many people arrived there as soon as he reached there.

29. P.W. 9 Dr. Rajesh Kishore Sahu has stated in his evidence that on 08.05.2005, he was posted as Medical Officer, Primary Health Centre, Udakishunganj and on that day he had examined Smt. Sheela Devi and had found the following

injuries on her person:-

(i) Lacerated wound between angle of thumb and right palm

(ii) Swelling over right wrist ½'' X ¼''

X-ray advised – Opinion kept reserved at that time

Later on x-ray plate produced that shows fracture of wrist bone, so nature of injury no. (ii) is grievous and that of injury no.(i) is simple.

P.W. 9 has stated that the said injury report is in his pen and signature and the same has been marked as Exhibit-5. P.W. 9 has stated that the injured was referred for further treatment to Sadar Hospital, Madhepura. P.W. 9 had identified the x-ray plate of the wrist of Smt. Sheela Devi, done at Shiv Shakti X-ray, which shows fracture of radius of right wrist and the same has been marked as Exhibit -6.

30. P.W. 9 has further stated that on the very same day, he had also examined Sanjeev Kumar, son of Ugra Narayan Jha and had found the following injuries:-

(i) lacerated wound on left side of scalp 2" x ½"

(ii) swelling over left nostril.

Nature of injury – simple

P.W. 9 has stated that the said injury report is in his pen and signature and the same has been marked as Exhibit-

5/1.

After getting x-ray of Smt. Sheela Devi, P.W. 9 has issued a supplementary injury report on 29.05.2005 from which the nature of injury no.(ii) has been found to be grievous, which has been stated by P.W.9 to be in his pen and signature and the same has been marked as Exhibit -5/2. In cross examination, P.W.9 has stated that both the injured persons were not known to him prior to their examination. Shiv Shakti X-ray is a private entity. He has also stated that the x-ray plate does not bear the name of the injured nor any mark but one date is mentioned which shows that the same was done on 08.05.2005 and only one x-ray report was shown by the injured, on the basis of which he had opined that injury no.(ii) of Sheela Devi is grievous. P.W. 9 has also stated in his cross examination that while injury no.(i) of Sheela Devi may have occurred by falling on hard substance, injury no.(ii) may also have occurred by falling on a hard and blunt substance and the injury of Sanjeev is simple which may have occurred on account of falling on a hard substance.

31. P.W.1 Dr. Shilwant Singh is the doctor who had conducted the post mortem of the dead body of the deceased, namely Ugra Narayan Jha at 05:30 p.m. on 08.05.2005 while

he was posted as Medical Officer at Sadar Hospital, Madhepura and he had recorded the following findings :-

Rigor mortis present in all four limbs. The following injuries were found:-

(i) An abrasion on the right side of forehead measuring 2.5 cm x 0.2 cm

(ii) Swelling on left temporoparietal region measuring 6.6 cm x 4.3 cm and on dissection of the scalp, left parietal bone was found fractured and on opening the scalp- cranium was full of blood and the parietal lobe (left side) was lacerated.

(iii) Bleeding from the left ear-tympanic membrane was ruptured.

P.W. 1 has stated that the cause of death is shock and brain injury due to above mentioned injuries and the weapon used is hard and blunt substance. He has stated that the time elapsed since death is within six hours. P.W.1 has stated that the post mortem report is in his pen and signature and the same has been marked as Exhibit-1. In cross examination, P.W. 1 has stated that he has not mentioned about noticing any bandage on the dead body. He has also stated that undigested food material was found in the stomach and after six hours of taking meal, stomach becomes empty. He has next stated that injury no.(ii) is not possible ordinarily by fall.

32. After closing the prosecution evidence, the Ld. Trial Court recorded the statement of the aforesaid appellants on 11.06.2013 under Section 313 of the Cr.P.C. for enabling them to personally explain the circumstances appearing in the evidence against them, however them claimed to be innocent.

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

34. We have perused the impugned judgment of the Ld. Trial Court, the entire materials on record and have given thoughtful consideration to the rival submissions made by the Ld. Senior Counsel for the appellants and the Ld. APP for the State. The first and foremost aspect, which is required to be adjudged is as to whether any ocular evidence is available on record to prove the guilt of the aforesaid appellants for the offences with which they have been charged. The prosecution has led the evidence of Ram Narayan Jha (P.W.2), Sanjeev Kumar Jha (P.W.3), Nawal Kishore Thakur (P.W.4), Nitu Kumari (P.W.5), Sheela Devi (P.W.6) and Krishna Kant Jha (P.W.8) to prove the guilt of the accused persons apart from

having led the evidence of Umesh Chandra Prasad (P.W.7), the Investigating Officer of the case in question, Dr. Shilwant Singh (P.W.1), who had conducted the post mortem examination of the dead body of the deceased and Dr. Rajesh Kishore Sahu (P.W.9), who had prepared the injury report of Sanjeev Kumar Jha (P.W.3) and Sheela Devi (P.W.6) and based upon the same, the Ld. Trial Judge has convicted the appellants whereas on the contrary, the appellants have primarily taken the defence that except Nitu Kumari (P.W.5), there is no eye witness to the alleged occurrence, the prosecution witnesses have exaggerated injuries, there are inconsistency and contradictions in the evidence of the witnesses, hence the prosecution witnesses are not trustworthy, both the manner and time of occurrence has not stood corroborated/proved and Section 34 is not attracted in the present case. Alternatively, the Ld. Senior Counsel for the appellants has submitted that the appellants did not have any intention to kill the deceased and the incident happened at the spur of the moment, which is clear from the evidence of Umesh Chandra Prasad (P.W.7), thus at best the present case would fall under Section 304 Part II of the I.P.C.

35. We find upon having examined the evidence led by the

prosecution that the place of occurrence as well as the date and time of occurrence have stood proved, which is apparent from the deposition of Ram Narayan Jha (P.W.2), Sanjeev Kumar Jha (P.W.3), Nawal Kishore Thakur (P.W.4), Nitu Kumari (P.W.5), Sheela Devi (P.W.6), Krishna Kant Jha (P.W.8) and Umesh Chandra Prasad (P.W.7), who is the Investigating Officer of the present case and had not only inspected the place of occurrence but has also in detail described the same in his deposition. As far as the mode and manner of occurrence is concerned, Sheela Devi (P.W.6), who is the informant of the present case has stated that the incident dates back to 08.05.2005 at about 5 a.m. while she was in her courtyard and then she heard *hulla* (alarm) being raised by her husband, whereupon she went running to the door and saw that her husband (deceased) had fallen down on the ground and the appellants of the first case were standing there, armed with *lathi* as also the appellants of the second and third case, including one Tej Narayan Jha were also engaging in assaulting the deceased. She had then gone to save her husband but she was also assaulted, especially by Tej Narayan Jha on her right hand, whereafter her son Sanjeev Kumar Jha (P.W.3) and Nitu Kumari (P.W.5) had arrived there leading to her son being

assaulted by Mrityunjay Jha (appellant no.2 of the first case) by *garasa* on his head and her daughter was also slapped. Sheela Devi (P.W.6) has also stated that she had talked with her husband who had told her that all the five accused persons including the appellants have assaulted him and the said fact was also disclosed by her before the police. Nawal Kishore Thakur (P.W.4) has stated in his evidence that he was at Singarpur at the house of his brother-in-law on the day of the incident and while he had gone to ease himself in the morning at around 5:00 a.m., he heard *hulla* (alarm), whereafter he came running and saw that his brother-in-law had fallen down, her sister's hand had been broken, the head of nephew Dilkush had been badly injured and Nitu Kumari (P.W.5) had also received *lathi* injuries. He has further stated in his evidence that he saw all the appellants standing there armed with *lathi* and his statement was also recorded by the police.

36. Now coming to the evidence of Sanjeev Kumar Jha (P.W.3), we find that he has stated therein that on the day and time of occurrence he was sleeping, however he got up upon hearing the sound of *hulla* (alarm), whereafter he went to the place of occurrence and saw that his father was lying in an injured and an unconscious condition, whereafter he had gone

to save him but the appellant no.2 of the first case had assaulted him by the back portion of *garasa.* Thereafter, he saw that though his father had fallen down on the ground but still Tej Narayan Jha and the appellants of the second and third case were assaulting him by *lathi*. Tej Narayan Jha and the appellant of the third case had assaulted mother of P.W.3 by *lathi* and his sister Nitu Kumari (P.W.5) was also assaulted by the accused persons. As far as Nitu Kumari (P.W.5) is concerned, she has stated that on the aforesaid day and time of occurrence, while she was sleeping she heard *hulla* (alarm) being raised by her mother, whereafter she went to the place of occurrence and saw the appellants of the first case assaulting her father by *lathi*. Thereafter, Sanjeev Kr. Jha (P.W.3) had gone to save his father, however the appellant no.2 of the first case had assaulted him by *garasa* and then appellant no.1 of the first case had assaulted the grandmother of Nitu Kumari (P.W.5) as also P.W.5 was assaulted by the accused persons, however when the neighbours arrived, the accused had fled away.

37. We have also gone through the evidence of Ram Narayan Jha (P.W.2), who had though reached at the place of occurrence after the assault had taken place but he has stated that the deceased had been badly injured and had fallen on the

ground, the hand of the wife of deceased had broken, son of the deceased had received injuries on forehead and both the wife and son were bleeding. He has also stated that he had seen the appellants of the first case running away. Now, coming to Krishna Kant Jha (P.W.8), we find that he is an independent witness and he has stated in his evidence that after *hulla* (alarm) was raised, he had come outside the house and had seen the appellants of the first case, the appellant of the second case and one Tej Narayan Jha standing at the gate. Thus, we find that the aforesaid witnesses produced by the prosecution have not only proved the mode and manner of occurrence but also the date, time and place of occurrence, as has been narrated by the informant in his fardbeyan.

38. As far as the injuries inflicted upon the deceased Ugra Narayan Jha as also upon Sanjeev Kumar Jha (P.W.3) and Nitu Kumari (P.W.5) are concerned, Ram Narayan Jha (P.W.2) has stated that the deceased was badly injured and had fallen on the ground, the hand of the wife of the deceased had been broken and blood was oozing out as also the son of the informant had received injuries on his forehead from where blood was oozing out. In this regard Sanjeev Kumar Jha (P.W.3) has stated in his evidence that he had seen his father lying in an injured and

unconscious condition with injuries on his forehead as also all over his body. He has also stated that he had sustained injuries on his forehead and left hand while his sister had been inflicted injures upon her leg and her mother had also sustained injuries inflicted by *lathi* blows. Nawal Kishore Thakur (P.W.4) has also stated in his evidence that he had seen his brother-in-law (deceased) having fallen down on the ground badly injured as also he had seen that her sister's hand had been broken, the hand of his nephew Dilkush was badly injured and Nitu Kumari had been inflicted with *lathi* injuries. Nitu Kumari (P.W.5) has stated that she had seen her father having fallen down on the ground in an injured condition and injuries were present on his forehead as also all over his body and blood was oozing out from his ear. She has also stated that others were also injured. Sheela Devi (P.W.6) has stated that she had seen the deceased having fallen down in an injured condition and she had sustained injuries on her right hand while Sanjeev Kumar Jha (P.W.3) had received injuries on his head and Nitu Kumari (P.W.5) had also sustained injuries. We have also perused the evidence of Dr. Rajesh Kishore Sahu (P.W.9), who was posted as Medical Officer, Primary Health Centre, Udakishunganj and had examined Sheela Devi (P.W.6) and

Sanjeev Kumar Jha (P.W.3) on 08.05.2005 as also had prepared their Injury Reports, which have been identified by him and as far as Sheela Devi (P.W.6) is concerned, the same has been marked as Exhibit-5 and 5/2, while that of Sanjeev Kumar Jha (P.W.3) has been marked as Exhibit-5/1 which goes to prove the factum of Sanjeev Kumar Jha (P.W.3) and Sheela Devi (P.W.6) have sustained injuries attributable to the accused persons.

39. At this juncture itself, it would be relevant to consider the evidence of Dr. Shilwant Singh (P.W.1), who had conducted the post mortem examination of the dead body of the deceased, namely Ugra Narayan Jha at 05:30 p.m. on 08.05.2005 and had found various injuries, as has already been discussed hereinabove in the preceding paragraphs. P.W.1 had also found rigor mortis to be present in all the four limbs of the deceased and he has opined that cause of the death of the deceased is on account of shock and brain injury due to the injuries found by him, as stated in the post mortem report and the weapon used is hard and blunt substance. The post mortem report has been identified by Dr. Shilwant Singh (P.W.1) to be in his pen and signature and the same was marked as Exhibit-1. Thus, we find that the death of Ugra Narayan Jha had taken

place on account of shock and brain injury due to the injuries inflicted upon him by the accused persons and the weapon used by them i.e. *lathi* also stands substantiated since Dr. Shilwant Singh (P.W.1) has stated that the weapon used is hard and blunt substance.

40. Now coming to the evidence of Umesh Chandra Prasad (P.W.7) i.e. the Investigating Officer of the present case, who was posted as Assistant Inspector of Police at Udakishunganj Police Station on 08.05.2005, we find that he has identified and proved the fardbeyan, F.I.R., carbon copy of Inquest Report and had also conducted the inspection of the place of occurrence regarding which he has given detailed description in his evidence. P.W.7 had also filed the chargesheet and he has stated in his evidence that he had recorded the statement of Panches, independent witnesses Rajesh Jha, Chuna Jha, Chandra Kishore Jha, Chaturi Mandal, Chandeshwar Jha, Udakant Jha, Ram Narayan Jha (P.W.2), Krishna Kant Jha (P.W.8) and other witnesses. P.W. 7 has also stated in his evidence that the independent witnesses and others had disclosed before him that altercation had taken place between Ugra Narayan Jha (deceased) and Mrityunjay Jha (appellant no.2 of the first case) as also with other accused persons

leading to him being assaulted, resulting in his death subsequently. Thus, the mode and manner, date, time and place of occurrence stands proved and corroborated by the evidence of Umesh Chandra Prasad (P.W.7) as also from the evidence of other witnesses, as discussed hereinabove in the preceding paragraphs.

41. We shall now advert to the contention raised by the Ld. Senior Counsel for the appellants to the effect that there is only one eye witness to the alleged occurrence. In this regard, we find that Nitu Kumari (P.W.5) is not only the eye witness to the alleged occurrence but Sanjeev Kumar Jha (P.W.3) and Sheela Devi (P.W.6) are also eye witnesses, as is apparent from their evidence, discussed hereinabove in the preceding paragraphs and as far as Ram Narayan Jha (P.W.2) is concerned, he had seen the appellants of the first case running away from the place of occurrence after the assault had taken place while Nawal Kishore Thakur (P.W.4) had seen all the appellants armed with *lathi* and his brother-in-law having fallen down and injured badly, her sister's hand having been broken, head of nephew Dilkush injured badly and Nitu Kumari (P.W.5) having received *lathi* injuries. In fact Krishna Kant Jha (P.W.8) had also seen the appellants of the first and second case standing at

the gate when he had come out of his house after hearing *hulla* (alarm). Thus, it cannot be said that the mode and manner, date, time and place of occurrence have not stood proved by the evidence led by the prosecution. The other issue raised by the Ld. Senior Counsel for the appellants is that the injuries sustained by the deceased have been exaggerated by the prosecution witnesses and the evidence of the prosecution witnesses is not trustworthy. As discussed hereinabove in the preceding paragraphs regarding the witnesses examined by the prosecution, we find that neither there is any inconsistency nor any contradiction can be found in the evidence of the prosecution witnesses and moreover, the defence has utterly failed to illicit any contradiction while cross examining the prosecution witnesses, hence we do not find the prosecution witnesses to be untrustworthy.

42. At this juncture, it would be relevant to state that Sanjeev Kumar Jha (P.W.3) and Sheela Devi (P.W.6) are injured eye witnesses and it is a well settled law that injured witnesses are granted special status and they offer an extremely valuable piece of evidence. In this regard, reference be had to a judgment rendered by the Hon'ble Apex Court in the case of ***Abdul Sayeed vs State of Maharashtra***, reported in ***2010 (10)***

SCC 259, wherein it has been held that where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in-guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. It has also been held that convincing evidence is required to discredit an injured witness.

43. It would also be apt to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Birbal Nath vs State of Rajasthan,*** reported in 2023 **SCC Online SC 1396**, wherein it has been held that greater evidentiary value is attached to the injured witness unless compelling reasons exist to doubt the same. It would also be pertinent to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Balu Sudam Khalde & Anr. vs. State of Maharashtra***, reported in ***(2023) 13 SCC 365***, paragraph No. 26 whereof is reproduced hereinbelow:-

> "*26. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:*
>
> *26.1.The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless*

there are material contradictions in his deposition.

26.2. Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

26.6. The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded."

44. As regards the doubt being raised by the Ld. Senior Counsel for the appellants with regard to the actual time of occurrence by placing reliance on the evidence of Dr. Shilwant Singh (P.W.1), who has stated in his evidence that the time elapsed since death is within 6 hours, we find that Dr. Shilwant Singh (P.W.1) has also stated in his evidence that rigor mortis

was present in all the four limbs, meaning thereby that the time elapsed since death was definitely more than 6 hours. In this regard, we would like to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Virendra Vs. State of U.P.***, reported in ***(2008) 16 SCC 582***, paragraph no. 25 whereof is reproduced hereinbelow:-

> *25. It is mentioned at p. 125 of Modi's Medical Jurisprudence and Toxicology, Edn. 1977 that in general rigor mortis sets in 1 to 2 hours after death, is well developed from head to foot in about 12 hours, is maintained for about 12 hours and passes off in about 12 hours. In the instant case rigor mortis was present in lower extremities at the time autopsy was conducted on the dead body after 30 hours. As according to ocular testimony the deceased was murdered on 5-10-1979 at about 10.00 a.m. and the doctor conducted autopsy on the dead body on the next day at about 4.30 p.m. after 30 hours of death but rigor mortis was found present in lower extremities. Had he died on 4-10-1979 at about 10.00 p.m. or so rigor mortis would have passed off from the dead body completely at the time of autopsy. Thus the ocular testimony that he was murdered on 5-10-1979 at about 10.00 a.m. stands corroborated from the medical evidence pinpointing that rigor mortis was present in lower extremities at the time when the autopsy was conducted on the dead body after 30 hours.*

45. We, upon perusal of the evidence on record also find that the ocular evidence of Ram Narayan Jha (P.W.2), Sanjeev Kumar Jha (P.W.3), Nawal Kishore Thakur (P.W.4), Nitu Kumari (P.W.5), Sheela Devi (P.W.6) and Krishna Kant Jha (P.W.8) are cogent, convincing, creditworthy and reliable as also have stood the test of cross-examination apart from being totally reconcilable and consistent with the medical evidence, hence there is no reason to create any doubt about the guilt of the appellants of the aforesaid appeals in the alleged occurrence, which stands proved beyond all reasonable doubts.

46. As regards the contention raised by the Ld. Senior Counsel for the appellants to the effect that the appellants of the aforesaid appeals cannot be convicted under Section 302 of the I.P.C. with the aid of Section 34 of the I.P.C., inasmuch as for the said purpose, it must be established that all the accused pre-planned and shared common intention to commit the crime with the accused who had actually committed the crime and that criminal act has been done in furtherance of common intention of all the accused. We find that in the present case, all the appellants of the aforesaid appeals were present at the place of occurrence, armed with *lathi* and that too early in the morning at about 5:00 a.m., when generally the people of the

village were sleeping and it is apparent from the evidence on record that all of them shared a common intention to commit a criminal act, as aforesaid and had in fact in furtherance of their pre-mediated concert and common intention assaulted the deceased, Sanjeev Kumar Jha (P.W.3), Nitu Kumari (P.W.5) and Sheela Devi (P.W.6), hence all the accused persons including the aforesaid appellants stand jointly liable for the offence committed under Section 302 of the I.P.C. In fact, it is a trite law that Section 34 does not create a distinct offence but is a principle of constructive liability and in order to incur a joint liability for an offence, there must be a pre-arranged and pre-mediated concert between the accused persons for doing the act actually done, however there may not be a long interval between the offence committed and the pre-meditation and the plan can be formed suddenly and moreover, the prosecution is not required to prove that an act was done by a particular person. Thus, the contention put forth by the Ld. Senior Counsel for the appellants that there was no pre-planning amongst the accused persons who committed the said crime, hence they would not be held liable to be convicted with the aid of Section 34 is not legally tenable in the eyes of law. In this regard, it would be apt to refer to a judgment rendered by

the Hon'ble Apex Court in the case of ***Gulab Vs. State of UP,*** reported in ***2022 (12) SCC 677*** paragraph Nos. 24, 25, 27 and 31 whereof are reproduced herein below:-

> "***24.*** *Section 34 IPC provides that:*
>
> > "***34. Acts done by several persons in furtherance of common intention****— When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."*
>
> ***25.*** *The well-established principle underlying the above provisions emerges from the decision of Vivian Bose, J. in Pandurang v. State of Hyderabad [AIR 1955 SC 216] where it was held :*
>
> > "*32. Now in the case of Section 34 we think it is well established that a common intention presupposes prior concert. It requires a prearranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all. [Mahbub Shah v. King Emperor [1945 SCC OnLine PC 5]. Accordingly, there must have been a prior meeting of minds. Several persons can simultaneously attack a man and each can have the same intention, namely, the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the section because there was no prior meeting of minds to form a*

prearranged plan. In a case like that, each would be individually liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others; and if the prosecution cannot prove that his separate blow was a fatal one he cannot be convicted of the murder however clearly an intention to kill could be proved in his case. [Barendra Kumar Ghosh v. King Emperor [1924 SCC OnLine PC 49 and Mahbub Shah v. King Emperor [1945 SCC OnLine PC 5] As their Lordships say in the latter case, 'the partition which divides their bounds is often very thin: nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice.' [Mahbub Shah v. King Emperor, 1945 SCC OnLine PC 5]

33. The plan need not be elaborate, nor is a long interval of time required. It could arise and be formed suddenly, as for example when one man calls on bystanders to help him kill a given individual and they, either by their words or their acts, indicate their assent to him and join him in the assault. There is then the necessary meeting of the minds. There is a prearranged plan however hastily formed and rudely conceived. But prearrangement there must be and premeditated concert. It is not enough, as in the latter Privy Council case, to have the same intention independently of each other e.g. the intention to rescue another and, if necessary, to kill those who oppose."

27.*Emphasising the fundamental principles underlying Section 34, this Court held that:*

27.1. *Section 34 does not create a distinct offence, but is a principle of constructive liability.*

27.2. *In order to incur a joint liability for an offence there must be a prearranged and premeditated concert between the accused persons for doing the act actually done.*

27.3.*There may not be a long interval between the act and the premeditation and the plan may be formed suddenly. In order for Section 34 to apply, it is not necessary that the prosecution must prove an act was done by a particular person.*

(Underlining mine)

27.4. *The provision is intended to cover cases where a number of persons act together and on the facts of the case, it is not possible for the prosecution to prove who actually committed the crime.*

31. *The evidence on the record clearly establishes a common intention in pursuance of which the appellant exhorted Idrish to kill the deceased. The prosecution is not required to prove that there was an elaborate plan between the accused to kill the deceased or a plan was in existence for a long time. A common intention to commit the crime is proved if the accused by their words or action indicate their assent to join in the commission of the crime. The appellant reached the spot with a lathi, along with Idrish who had a pistol. The appellant's*

exhortation was crucial to the commission of the crime since it was only after he made the statement that the enemy has been found, that Idrish fired the fatal shot. The role of the appellant, his presence at the spot and the nature of the exhortation have all emerged from the consistent account of the three eyewitnesses."

47. 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 injury reports as also the postmortem report and for the reasons mentioned hereinabove, 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 three appeals in the alleged occurrence which stands proved beyond all reasonable doubts. Hence, having examined the materials available on record, we do not find any apparent error in the impugned judgment of conviction.

48. We would now take up for consideration the alternative argument advanced by the Ld. Senior Counsel for the appellants to the effect that the appellants had no intention to cause death and the occurrence had taken place at the spur of the moment inasmuch as not only they were merely armed with *lathi* but only one or at best two injuries have been found on the dead body of the deceased and from the medical evidence, it does not appear that repeated *lathi* blows were either inflicted on the rest of the body of the deceased or the other injured persons i.e. Sanjeev Kumar Jha (P.W.3) and Sheela Devi (P.W.6), hence the present case would not fall within the purview of Section 302 of I.P.C., rather it would at best attract Section 304 Part II of the I.P.C., in absence of any intention to cause death of the deceased. We have given a careful consideration to the aforesaid argument advanced by the Ld. Senior Counsel for the appellants. As far as the present case is concerned, it is apparent not only from the evidence adduced by the prosecution as also from the FIR that the accused persons, all armed with *lathi* had assaulted the deceased, Sanjeev Kumar Jha (P.W.3), Nitu Kumari (P.W.5) and Sheela Devi (P.W.6), however neither repeated blows were inflicted upon the deceased nor upon the other injured witnesses nor the

accused persons had ensured that the deceased, Sanjeev Kumar Jha (P.W.3), Nitu Kumari (P.W.5) and Sheela Devi (P.W.6) were assaulted in such a brutal manner so as to cause their death.

49. 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. “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 murder but it would be culpable homicide not amounting to murder.

50. We may refer to a Judgment rendered by the Hon’ble Apex Court in the case of ***Litta Singh and another 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 I.P.C. has held as under:-

> "*23. Considering the nature of the injury caused to the deceased and the weapons i.e. lathi and gandasi (sickle) used by them, it cannot be ruled out that they assaulted the deceased with the knowledge that the injury may cause death of the person. Moreover, there is no evidence from the side of the prosecution that the accused persons preplanned to cause death and with that intention they were waiting for the deceased coming from the field and then with an intention to kill the deceased they assaulted him.*
>
> *24. It is a well-settled proposition of law that the intention to cause death with the knowledge that the death will probably be caused, is a very important consideration for coming to the conclusion that death is indeed a murder with intention to cause death or the knowledge that death will probably be caused. From the testimonies of the witnesses, it does not reveal that the accused persons intended to cause death and with that intention they started inflicting injuries on the body of the deceased. Even more important aspect is that while they were beating the deceased the witnesses reached the place and shouted whereupon the accused persons immediately ran away instead of inflicting more injuries with the*

intent to kill the deceased.

26. After analysing the entire evidence, it is evidently clear that the occurrence took place suddenly and there was no premeditation on the part of the appellants. There is no evidence that the appellants made special preparation for assaulting the deceased with the intent to kill him. There is no dispute that the appellants assaulted the deceased in such a manner that the deceased suffered grievous injuries which were sufficient to cause death, but we are convinced that the injury was not intended by the appellants to kill the deceased.

27. In the facts and circumstances of the case, in our considered opinion, the instant case falls under Section 304 Part II 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."

51. 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 I.P.C., especially in view of the fact that from the evidence adduced by the prosecution, intention to kill the deceased does

not get established and moreover, the elements of intention to cause death seems to be missing. Therefore, upon considering the entire case of the prosecution and the evidence adduced in support of the same, we feel that the appellants of all the aforesaid three appeals are liable to be convicted under Section 304 Part (II) of the I.P.C. As such, the conviction of the appellants under Section 302/34 of the I.P.C. and the sentence of rigorous imprisonment for life awarded there under are set aside and instead the appellants are convicted under Section 304 Part (II) of the I.P.C., however conviction under Section 323 of the I.P.C. would stand against the appellant no.2 of the first case, namely Mrityunjay Jha as also against the sole appellant of the second case, namely Santosh Jha @ Santosh Kumar Jha but with no separate sentence being awarded there under.

52. Before coming to the sentence part, we would like to refer to few case laws wherein the conviction of the accused persons have been converted from Section 302 I.P.C. to one under Section 304 Part (II) I.P.C. 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***.

53. It would be apt to refer to a judgment rendered by the Hon'ble Apex Court, reported in ***(2011) 14 SCC 471* (*Buddhu Singh & Others Vs. State of Bihar)***, wherein once again the issue of conversion of conviction from Section 302 I.P.C. to Section 304 Part II of the I.P.C. was raised although the death was caused by an axe blow on the head of the deceased. The Hon'ble Apex Court, considering the absence of element of intention, held that the offence constituted culpable homicide not amounting to murder and converted the conviction of the

accused from Section 302 I.P.C. to Section 304 Part II I.P.C. and sentenced each of them to the period already undergone. We think it proper to quote paragraphs-8 and 9 of the said judgment herein below:-

> "*8. Considering the overall material, we are of the view that there is hardly anything on record which can be said against accused Ledwa Singh and Balchand Singh though the common intention on their part could be attributed since they had done the overt act of grappling with and pinning down the deceased. Now, seeing that his father and brother had been grappling with the deceased, accused Buddhu Singh dealt an axe-blow which could not be said to be intended towards the head. It could have landed anywhere. However, it landed on the head of the deceased. Therefore, the element of intention is ruled out. Again the defence raised on behalf of the accused that there could not have been the intention to commit the murder of the deceased is justified by the fact that accused Buddhu Singh did not repeat the assault. Under the circumstances, we feel that the prosecution has been able to establish the guilt of the accused persons under Section 304 Part II 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."

54. We have made an in-depth analysis of the principles pertaining to sentencing and find that the same have been congruously and succinctly laid down by the Hon'ble Apex Court in a catena of judgments, rendered in the cases of ***Santa Singh vs. State of Punjab***, reported in ***1976 (4) SCC 190***, ***Tholan vs. State of Tamil Nadu***, reported in ***1984 (2) SCC 133***, ***Sevak Perumal & Anr. Vs State of Tamil Nadu***, reported in ***1991 (3) SCC 471***, ***State of Uttar Pradesh vs. Shri Kishan*** reported in ***2005 (10) SCC 420***, ***Gopal Singh vs. State of Uttarakhand,*** reported in ***2013 (7) SCC 545*** and ***Pratap Singh @ Pikki vs. State of Uttarakhand***, reported in ***2019 (7) SCC 424***. It would be apropos to summarise few important principles of law discernible from the aforesaid Judgments rendered by the Hon'ble Apex Court, herein below:-

(i) A proper sentence is amalgam of many factors, which are being enumerated herein below:-

— the nature of the offence,

— the circumstances - extenuating or aggravating - of the offence,

— the prior criminal record, if any, of the offender,

— the age of the offender,

— the record of the offender as to employment,

— the background of the offender with reference to education, home — life, sobriety and social adjustment,

— the emotional and mental condition of the offender,

— the prospects for the rehabilitation of the offender,

— the possibility of return of the offender to a normal life in the community,

— the possibility of treatment or training of the offender,

— the possibility that the sentence may serve as a deterrent to crime by the offender or by others.

(ii) Undue sympathy to impose inadequate sentence has been held to do more harm to the justice system since the same undermines the public confidence in the efficacy of law and society. 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., inasmuch as if the courts do not protect the injured, the injured may then resort to private vengeance.

(iii) For deciding just and appropriate sentence to be awarded for an offence, after giving due consideration to the facts and circumstances of each case, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of relevant circumstances in a dispassionate manner by the Court.

(iv) The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

(v) Imposition of sentence without considering its effect on the social order in many cases may in reality be 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 view merely on account of lapse of time in respect of such offences will be resultwise 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.

(vi) 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 and be consistent with the atrocity and 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.

55. 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*** (supra) 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."

56. 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. [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 McGautha 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 resultwise 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 and be consistent with the atrocity and 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."

57. 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 depicts that the appellants had not intended to cause any fatal injury to anyone, which would have caused death. It would also be seen that the deceased sustained one or at best two injuries, as would be apparent from the evidence of Dr. Shilwant Singh (P.W.1), whereas Sanjeev Kumar Jha (P.W.3) sustained simple injury while Sheela Devi (P.W.6) also sustained not so serious injury on non-vital part of her body, as would be apparent from the evidence of Dr. Rajesh Kishore Sahu (P.W.9). This leaves us to a prudent consideration that the appellants never planned to inflict such type of injuries which would cause death of the deceased muchless death of Sanjeev Kumar Jha (P.W.3) and Sheela Devi (P.W.6), hence this takes away the element of intention of causing death or inflicting any kind of serious repeated bodily injury upon the members of the prosecution side.

58. Factually, the appellant no.1 of the first case has remained in custody for more than 8 years, the appellant no.2 of the first case has been in custody for about 8 years. As far as the appellant of the second case is concerned, he has remained in custody for about 3½ years while the appellant of the third case

has remained in custody for less than six months. Now, adverting to the requirement of balancing the aggravating and mitigating factors and circumstances in which a crime has been committed on the basis of really relevant circumstances, we find that the prosecution witnesses, i.e. Ram Narayan Jha (P.W.2), Nawal Kishore Thakur (P.W.4), Nitu Kumari (P.W.5) and Krishna Kant Jha (P.W.8), have in their evidence nowhere deposed that the appellants of the second case and third case had either assaulted the deceased or the injured witnesses and as far as prosecution witnesses, Sanjeev Kumar Jha (P.W.3) & Sheela Devi (P.W.6) are concerned, they have also not levelled any specific allegation of any sort of overt-act qua the said two appellants, although general and omnibus allegations have been levelled qua them, nonetheless it is apparent from the evidence on record that all the appellants shared a common intention to commit a criminal act, as aforesaid and had in fact in furtherance of their pre-mediated concert and common intention given effect to the occurrence in question.

59. Though, we find that the appellants of the aforesaid three appeals have been suffering the rigors of trial since the year 2005,i.e. for a substantially long period of about 20 years and they are 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 I.P.C., though they were charged and had also been convicted by the Ld. Trial Judge for the offence of murder under Section 302/34 of the I.P.C., 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.

60. 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 I.P.C., we deem it fit and proper to sentence the appellants, for the altered conviction, to undergo rigorous imprisonment for 5 years each.

61. The appellant no.1 of the first case, namely Budh Narayan Jha and the appellant no.2 of the first case, namely Mritunjay Jha have 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 they have already undergone sentence of more than five years and are incustody, they are directed to be released from jail forthwith unless required in any other case.

62. As far as the appellant of the second case, namely Santosh Jha @ Santosh Kumar Jha and the appellant of the third case, namely Dheeraj Jha @ Dheeraj Kumar Jha 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 two 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.

63. Accordingly, the aforesaid three appeals bearing Criminal Appeal (DB) No.150 of 2018, Criminal Appeal (DB) No. 85 of

2018 and Criminal Appeal (DB) No.107 of 2018 are partly allowed to the extent indicated hereinabove.

(Mohit Kumar Shah, J)

I agree.
Shailendra Singh, J

(Shailendra Singh, J)

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