

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.880 of 2016

Arising Out of PS. Case No.-16 Year-2000 Thana- KARJA District- Muzaffarpur

=====

1. Sachidanand Singh
2. Mitendra Singh
3. Satyendra Singh All sons of Late Sita Ram Singh, and all resident of Village- Fanda, P.S.- Karja, District- Muzaffarpur.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Code of Criminal Procedure, 1973---section 374(2), 389(1)--- Indian Penal Code---section 302, 147, 148, 149, 323, 324---Appeal against conviction--- Evidentiary value of testimony of Injured Eye Witnesses, Interested Witnesses---Medical Evidence vs. Oral Evidence----Non-examination of Investigating Officer----allegation against Appellants is that on account of certain land dispute they resorted to assaulting with weapons upon the deceased as also PW-4 and PW-7, who had intervened to save the deceased, causing injuries to them.

Findings: injured witnesses are accorded special status and they offer an extremely valuable piece of evidence---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---evidence of PW-4 and PW-7 conclusively establishes the fact that these two witnesses suffered injuries at the hands of the accused persons during the course of the occurrence in question---unless and until the medical evidence is irreconcilably in conflict with the oral evidence, the oral testimony of the eye witnesses cannot be doubted---there is specific allegation of assault on the head and correspondingly two injuries have been found on the head of the deceased---it can safely be concluded that there is no

irreconcilable conflict between the oral and the medical evidence which can be sufficient to discard the prosecution case---defence has completely failed to elicit any substantial contradictions from the cross-examination of the witnesses in order to impeach their credibility---closely related witnesses, who have also suffered injuries, would never let the actual assailants go scot-free and frame up others who are not involved in the occurrence---non-examination of the Investigating Officer is not fatal to the prosecution case, especially when no prejudice is likely to be suffered by the accused---in the present case, in the backdrop of cogent, creditworthy and unshaken testimony of prosecution witnesses, especially injured eye witnesses, the issue of non-examination of Investigating Officer gets relegated to the background as it does not assume much significance and does not become a vital consideration---from the evidence adduced by the prosecution, intention to kill the deceased does not get established and moreover, the prosecution has neither been able to establish, nor has alleged presence of premeditated mind of the appellants to cause murder of the deceased---entire occurrence seems to have happened in a sudden fight on the spur of the moment and under the heat of passion, hence the element of intention to cause death of the deceased seems to be missing---instead of sec 302 IPC (murder), Appellants held liable to be convicted under Section 304 Part II of the IPC (culpable homicide not amounting to murder)---appeal partly allowed. (Para 27, 30, 32, 34, 37, 41-43, 47)

(2010) 10 SCC 259, 2023 SCC OnLine SC 1396, AIR 1983 SC 484, AIR 1953 SC 364, (2015) 15 SCC 327, AIR 1982 SC 55Relied Upon. (1996) 2 SCC 317, (2000) 9 SCC 153, (2021) 3 SCC 365, (2018) 8 SCC 228, 1995 SCC (Cri) 165, Cr. Appeal No. 2006 of 2023, (2011)14 SCC 471

.....Referred To.

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... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s

:

Mr. Madhusudan Kumar, Advocate
Mr.Shiva Shankar Sharma, Advocate

For the Respondent/s

:

Mr. Sujit Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
CAV JUDGMENT
(Per: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA)**

Date : 25-03-2025

The present appeal under Section 374(2) read with Section 389(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘Cr.P.C’) has been preferred against the judgment and order of conviction and sentence dated 05.08.2016 and 10.08.2016 respectively, passed by the Court of 2nd Additional Sessions Judge, Muzaffarpur in Sessions Trial No.276 of 2002, arising out of Karja P.S. Case No.16 of 2000, whereby and whereunder the appellants have been convicted under Section 302 read with Section 149 of the Indian Penal Code (hereinafter referred to as ‘IPC’) and they have been



sentenced to undergo life imprisonment with fine of Rs.10,000/- each and in default thereof, they have been directed to undergo simple imprisonment for three months. The appellants have been further convicted under Section 148 of the I.P.C. and sentenced to undergo life imprisonment for 2 years. The appellants have also been convicted under Section 147 of the I.P.C. as also Sections 323 and 324 of the I.P.C., however, no separate sentence has been awarded thereunder. Both the sentences have been ordered to run concurrently.

2. The short facts of the case arising out of the First Information Report based on the fardbeyan of Lal Babu Singh, the informant, whose fardbeyan was recorded at Sadar Hospital, Muzaffarpur on 09.02.2000 at 12:30 PM, is that on the same day, i.e. on 09.02.2000 at around 07:30 AM, while the informant was sitting at his shop and having tea, the accused persons being Sachidanand Singh (appellant no.1), Mitendra Singh (Appellant No.2), Satyendra Singh (Appellant No.3), Mintu Singh and Sakal Mahto came on their tractor and asked them to accompany to the field, with regard to some talks regarding the land. Pursuant to such asking, the informant along with the brother Raj Kishore Singh went to the field while the accused persons had already reached on their tractor. The two



brothers, being the informant (PW-4) and the deceased, arrived later to find that the accused persons were cutting the mustard crops from their fields and on being objected, the accused persons started hurling abuses which was protested by the informant. It was on this issue that Sachidanand Singh (Appellant No.1) took out a farsa which was kept concealed in the tractor from before and his son Mintu Singh took out a knife which he had concealed in his waist. Satyendra Singh (Appellant No.3), Mitendra Singh (Appellant No.2) and Sakal Mahto also brought lathis from the tractor and all of them started assaulting the informant and the deceased by means of lathi, farsa and knife with the intention to kill him. The informant's elder brother Raj Kishore Singh (deceased) was indiscriminately assaulted by farsa and lathi on the head on account of which he became badly injured and also fell being unconscious. The informant alleges that he was also assaulted by means of lathi, danda and farsa resulting in an injury caused on the finger of his right hand, being a bleeding injury. It has been further alleged by the informant, that his cousin Birendra Singh (PW-7), who was working in the adjacent field, came running in his bid to save the informant and the deceased, however he was also assaulted by means of lathi and danda



resulting in an injury on his right wrist. The brother of the informant Raj Kishore Singh was lying in an unconscious state with bleeding injuries and thinking him to be dead, the accused persons left the place of occurrence. During the course of all this, hulla (alarm) was raised, pursuant to which the persons working in the adjacent fields assembled at the place of occurrence, whereafter the accused persons kept the cut mustard crops on the tractor and fled away. Thereafter, it is stated that the informant and others ran to the village, got a jeep and took their brother Raj Kishore Singh along with Birendra Kumar Singh, Pramod Kumar, Jiwach Singh, Pawan Singh, Kalika Singh, Jalim Singh and others to Sadar Hospital, Muzaffarpur, where treatment was being done. The reason for this occurrence has been stated to be that the accused persons wanted to usurp the land which the informant's brother Raj Kishore Singh had got registered from one Jivach Devi and Urmila Devi.

3. On the basis of the aforementioned fardbeyan, Karja P.S. Case No.16 of 2000, was instituted on 10.02.2000 at 10.00 am under Sections 147, 148, 149, 323, 324 and 307 of the I.P.C. and subsequently, vide order dated 21.02.2000, section 302 of the I.P.C. was also added. The FIR was instituted against



five accused persons being Sachidanand Singh (Appellant No.1), Satyendra Singh (Appellant No.3), Mitendra Singh (Appellant No.2), Mintu Kumar and Sakal Mahto. After investigation, chargesheet was submitted on 15.06.2000 under Sections 147, 148, 149, 323, 324, 307 and 302 of the I.P.C. against the appellants, whereafter cognizance was taken vide order dated 04.07.2000 under the same sections against all the five FIR named accused persons. The case was committed to the Court of Sessions on 18.04.2002 and numbered as Sessions Trial No.276 of 2002, however the trial of two accused persons was split on account of the fact that one Sakal Mahto was declared as an absconder at that point of time, who subsequently died and the other accused Mintu Kumar was declared a juvenile, so his case was sent to the Juvenile Justice Board. The charges were framed by the learned trial court on 03.04.2003 against the appellants under Sections 147, 148, 302/149, 307/149, 324 and 323 of the I.P.C.

4. The prosecution in order to substantiate its case, examined 10 witnesses during the course of trial, they being PW-1 Jalim Singh (cousin of the deceased), PW-2 Julie Kumari (daughter of the deceased), PW-3 Pramod Kumar Singh, (cousin of the deceased), PW-4 Lal Babu Singh (the informant himself



as also brother of the deceased), PW-5 (Dr. Dharendra Prasad Singh), who has examined the two injured witnesses being PW-7 (Birendra Singh) and PW-4 (Lal Babu Singh), PW-6 (Jay Ram Singh), who has been declared hostile, PW-7 (Birendra Singh), who is an injured eye-witness and also signatory to the fardbeyan, PW-8 (Jiwach Singh), who has also been declared hostile by the prosecution, PW-9 (Dr. Arun Kumar Singh), who conducted the postmortem examination of the dead body of the deceased and PW-10 (Shyam Sundar Singh), who is a formal witness and he has proved the formal FIR, which has been marked as Exhibit-4.

5. Coming to the arguments as advanced by the learned counsel for the appellants Sri Madhusudan Kumar, his first submission is that the oral allegations with regard to the assault upon the deceased does not get corroborated by the medical evidence, inasmuch as all the witnesses have consistently deposed that appellant no.1 i.e. Sachidanand Singh assaulted the deceased Raj Kishore Singh by means of farsa, whereas the evidence of PW-9 (Dr. Arun Kumar Singh), who conducted the postmortem examination of the dead body of the deceased, would indicate that there is no sharp cutting injury, rather the cause of death has been indicated to be, no doubt,



head injury but caused by a hard and blunt object and its impact. Learned counsel for the appellants further submits that as against the allegation of other accused persons also having assaulted the deceased, PW-9 (Dr. Arun Kumar Singh), has categorically stated that he has not found injury on other parts of the body but for the two stitched wounds on the head.

6. The further submission of the learned counsel for the appellants is also with respect to the fact that all the witnesses are related to each other and although, the occurrence has taken place in an open field, no independent witness has come forward to support the case of the prosecution. It is also the submission of the learned counsel for the appellants that there is no seizure list on record and as a matter of fact neither the blood soaked mud, nor the weapons used were seized by the Investigating Agency. This also leads to his next argument that the Investigating Officer of the case has not been examined during the course of trial, which has caused prejudice to the defence.

7. With regard to the veracity of the testimony of the witnesses, learned counsel for the appellants has invited the attention of the Court to PW-1 (Jalim Singh), stating that he is an eighty years old man and since he was at his *bathan*, it was



not possible for him to witness the occurrence which happened at the field. The evidence of PW-2 (Julie Kumari) has been assailed on the ground that she does not seem to be an eye-witness although claiming herself to be one, in view of paragraph 2 of her cross-examination which talks about the deceased and the informant going to the field but she does not speak about herself accompanying them to the field or going there subsequently. With regard to PW-3 (Pramod Kumar Singh), the submission made by the learned counsel for the appellants is to the effect that he has categorically stated in his evidence that he was at home at the time of occurrence and he came to the place of occurrence on hulla and found Raj Kishore Singh in a pool of blood. Although, in the very next breath, the witness has stated about witnessing the occurrence but the previous statement makes it clear, to some extent, that he had not seen the actual occurrence but had seen the accused persons armed with respective weapons that they were holding. However, the learned counsel for the appellants, has not been able to comment much on the two injured eye witnesses, PW-4 (Lal Babu Singh) and PW-7 (Birendra Singh), but for the fact that they are related and interested witnesses and, therefore, they have framed up the appellants on account of being



inimically disposed towards them.

8. It has been alternatively argued by the learned counsel for the appellants, that since the prosecution has completely failed to show any intention or motive for causing death of the deceased and since the attending circumstances show that the occurrence happened at the spur of the moment, followed by some abuses and resistance offered by the prosecution side as also the fact, that despite the allegation that the accused persons were armed with farsa, no sharp cutting injury was found on the deceased, the present case would not fall within the purview of Section 302 of the I.P.C. rather it could at best attract the provision of Section 304 Part II of the I.P.C., in absence of any intention to cause the death of the deceased.

9. Before proceeding further, we would like to discuss the judgments relied upon by the learned counsel for the appellants. Reference has been made on a case law reported in **2019(2) PLJR 1171 (Munna Gope vs. State of Bihar)** on the point of non-examination of the Investigating Officer and reliance has been placed on paragraph-16 of the said judgment, however, the facts and circumstances of the present case being different, we do not find the said judgment to be applicable in



the present case. Further reliance has been placed on a judgment reported in **1999(3) All PLR 328 (Nageshwar Sao vs. State of Bihar)** and reference has been made to paragraphs no. 9, 13, 15 and 16 of the said judgment. This judgment relates to the testimony of related witnesses and that such evidence of related and interested witnesses must be scrutinized with extreme care and caution, however, rest of the judgment has been delivered on the particular facts and circumstances of the said case, as such we find that it is not in dispute that one has to be circumspect while evaluating the evidence of the related witnesses. The learned counsel for the appellants has also relied upon a judgment reported in **2023(2) PLJR 835 (Ramesh Choudhary vs. The State of Bihar)** and has referred to paragraphs no. 14 and 19, upon perusal whereof, we once again find that the said judgment has been passed in a different set of facts and circumstances and paragraph no. 19 specifically relates to the duty of prosecution to prove, by scientific expert evidence, the weapon used by an accused if such weapon was seized by the police during the course of investigation, however the facts of the case at hand is quite different and the situation being such in the present case that no seizure of weapon has been shown, we do not find this judgment to be applicable to



the present case. The learned counsel for the appellants has further relied upon a judgment reported in **2019(1) PLJR 571** (*Anand Singh vs. State of Bihar*) to raise the issue of delay caused in lodging of the FIR. However, in the present case in hand, we do not find that there is any delay in lodging of the First Information Report, rather the fardbeyan of the informant was recorded on the same day the incident had taken place, i.e. on 09.02.2000 at 12:30 PM. whereafter the FIR was registered on the basis of the said fardbeyan on 10.02.2000. Hence, this judgment also does not seem to be applicable in the facts and circumstances of the present case.

10. Now, advertng to the arguments made by the learned Additional Public Prosecutor for the State, Shri Sujit Kumar Singh, it has been submitted by him that the conviction of the appellants has been made with the aid of Section 149 IPC and in the FIR allegations have been levelled against five accused persons forming an unlawful assembly with the common object of causing death of the deceased, which clearly attracts Section 302 read with Section 149 of the IPC. Learned counsel for the State further submits that the quality of evidence is always an important consideration and in the present case despite the fact that the witnesses are related to



each other, one fact is undeniable that at least two of the prosecution witnesses being PW-4 (Lal Babu Singh) and PW-7 (Birendra Singh) are injured eye witnesses, thus it is submitted that their testimony is the best evidence available in support of the case of the prosecution, inasmuch as, a person even though related would not let the real assailant go scot free and secondly the testimony of the injured witnesses more or less establishes their presence on the scene of occurrence.

11. In addition to these submissions, it has also been argued by the learned APP for the State that PW-4, being the informant himself, has given a prompt statement in the form of his fardbeyan and PW-7 (Birendra Singh) is a signatory to the said fardbeyan. The learned counsel for the State has also stressed on the fact that the injury reports of the two injured prosecution witnesses are also on record being Exhibit-2 and 3, duly proved by PW-5 (Dr. Dharendra Pd. Singh), who had examined the two injured witnesses. Further, in response to the argument of the learned counsel for the appellants with regard to PW-1 (Jalim Singh) that he was at his *bathan* and thus it would not have been possible for him to witness the occurrence, our attention has been invited to the evidence of PW-4 (the informant), as recorded in paragraph-2, which amply



demonstrates that the said *bathan* is adjacent to the place of occurrence i.e. the field. On strength of such evidence, learned counsel for the State contends that ruling out the possibility of PW-1 (Jalim Singh) being an eyewitness to the occurrence has no legs to stand. Similarly, he has also laid stress on the reliability of the other prosecution witnesses.

12. 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.

13. PW-1 (Jalim Singh) happens to be cousin of the deceased and also claims to be an eye witness to the occurrence. He states in his examination-in-chief that he was at his bathan when the occurrence had taken place, he saw the appellants and others variously armed, who were assaulting the deceased Raj Kishore Singh and he died during the course of treatment, subsequently. This witness in his cross-examination admits that the deceased was his brother, however, they were separate in their house and landed property. PW-1 has further stated in his cross-examination that he had stated before the Investigating Officer that Sachidanand Singh (Appellant No. 1) had assaulted the appellants by means of farsa while Mintu



Singh had assaulted by knife. He had stated before the Investigating Officer that he had seen Raj Kishore Singh (deceased) in an injured and unconscious condition at the place of occurrence with bleeding from head and nose, pursuant to which Raj Kishore Singh was taken to hospital in the morning at 8:00-9:00 AM. He has stated that he did not go to the hospital and further his statement was taken by the Investigating Officer on the same day and it would be wrong to say that his statement was taken after two and half months.

14. PW-2, Julie Kumari is the daughter of the deceased and she also claims to be an eye witness. In her examination-in-chief this witness has stated that the occurrence had taken place in the morning at 7:00 AM and her father Raj Kishore Singh (deceased) was assaulted by Sachidanand Singh (Appellant No. 1) by means of farsa, Mintu Singh by means of knife and Satyendra Singh (Appellant No. 3), Mahendra Singh and Sakal Mahto had assaulted by means of lathi, on account of which her father got injured and was taken to the hospital. The deceased, however, died during the course of treatment. She further claims to identify the accused persons. In her cross-examination, PW-2 Julie Kumari has stated that her father went to the field at 7:00 AM along with her uncle who is the



informant (PW-4). She has also stated that deceased was taken to the hospital and was not brought home. She has lastly made a general statement that she goes to the field.

15. Pramod Kumar Singh (cousin of the deceased), has been examined as PW-3 and he too, claiming to be an eye witness, states that the occurrence dates back to three and half years back at 07:30 AM in the morning while he was at home. He categorically states that hulla (alarm) was raised, whereupon he reached the place of occurrence to find Raj Kishore Singh in a pool of blood. He, however, in the next breath states that he saw Sachidanand Singh (Appellant No. 1), Mitendra Singh (Appellant No. 2), Sakal Mahto and Mintu Singh were assaulting. He has also stated that he witnessed Sachidanand Singh (Appellant No. 1) armed with farsa, Satyendra Singh (Appellant No. 3), Sakal Mahto armed with lathi and Mintu Singh armed with knife, assaulting Raj Kishore Singh (deceased). He has also stated that Lal Babu Singh i.e. the informant (PW-4) and Birendra Singh (PW-7) also got injured in the course of the incident, however he can not name as to who assaulted Lal Babu. This witness has further stated that Raj Kishore Singh was brought to the *bathan* of Jalim Singh (PW-1) and was taken to Sadar Hospital on a jeep from where



he was referred to PMCH for further treatment where he eventually died. In the cross-examination, he has stated about his relationship with the deceased being his cousin and has also stated that his house is adjacent to the house of Raj Kishore Singh.

16. The next witness whose evidence assumes significance, is Lal Babu Singh (the informant of the present case), who has been examined as PW-4. He is also the brother of the deceased and an injured eye witness. This witness, while giving an eye-witness account of the occurrence, has stood by the narrative given in his fardbeyan. He states about all the five accused persons, named in the FIR, coming on a tractor and asking them to come to the field, pursuant to which, they also went to the place of occurrence, to find the accused persons cutting the mustard crops, to which the informant and others protested. On such resistance offered, Sachidanand Singh (Appellant No. 1) assaulted Raj Kishore by means of farsa, Mitendra Singh (Appellant No. 2) and others also assaulted by means of lathi causing serious injuries to the deceased. The deceased was then taken to Sadar Hospital for treatment where he was referred to PMCH. This witness states that he had given his statement at PMCH and has identified his signature



on the fardbeyan, which has been marked as Exhibit-1. In cross-examination, this witness has stated that there was no house near the place of occurrence but the *bathan* of Jalim Singh (PW-1) was there. He has further deposed that the place of occurrence is a field where mustard crops were sown, which belonged to Raj Kishore Singh and the occurrence of assault happened due to cutting of these mustard crops. It is stated that the informant and others had reached the place of occurrence 15-20 minutes after the accused persons.

17. This witness (PW-4) has further stated that the accused persons had sickle in their hands while the informant and the deceased were not armed. After altercation started, it is stated that his nephew also reached at the place of occurrence and they were total six persons, out of whom two persons were assaulted by the accused persons. He claims that he was also standing there and he received 4-5 lathi blows as also injury by knife. This witness further claims that his brother got injured after him. He has further stated that six persons had gone to save his brother, who had witnessed the occurrence and making a reference to the injuries sustained by him, he has stated that he received injuries on his finger and wrist whereas Raj Kishore Singh (deceased) had sustained injuries on his head and chest



but he did not have any injuries on the other part of his body. He has also stated that the deceased was taken to the hospital in an unconscious state. In his further cross-examination, PW-4 has stated that the police had recorded the statement of his brother i.e. the deceased in his presence at Sadar Hospital. He further discloses his relationship with the other witnesses and he has denied the suggestion given by the defence that the accused persons were also assaulted during the course of the occurrence and he had no knowledge whatsoever that they had also got admitted in SKMCH for treatment. He also expresses his total ignorance about another case being Karja P.S. Case No. 20 of 2000, relating to the same occurrence.

18. The next witness to be considered is Dr. Dharendra Prasad Singh (PW-5), who has examined the injuries of PW-7 Birendra Kumar Singh and PW-4 Lal Babu Singh. PW-5 had examined Birendra Kumar Singh, PW-7 and found the following injuries upon his body:-

(1) Swelling with abrasion over left forearm size 1"x1".

(2) Abrasion over left index finger size 1/2"x1/2".

(3) Swelling over right wrists size 1"x1".

He has opined that the nature of weapon used was a



hard and blunt substance while the nature of injury suffered was simple in nature, inflicted within six hours.

19. PW-5 has also examined the injuries of Lal Babu Singh, PW-4 on the same day i.e. on 09.02.2000 at 11:00 AM and found the following injuries upon his body:-

(1) Sharp cut over right index finger size 1"x1/4".

(2) Sharp cut over right middle finger size 1/4"x1/4".

(3) Swelling over left forearm size 1/2"x1/2".

(4) Swelling over left calf size 1"x1".

PW-5 has opined that the injuries no. 1 and 2 were caused by a sharp weapon whereas injuries no. 3 and 4 were caused by hard blunt substance. He has indicated the nature of injuries to be simple and the time of injury has been stated to be within six hours. This witness has identified his signature on both the injury reports and the same have been marked as Exhibit-2 and Exhibit-3, respectively. He has also stated that injuries no. 1 and 2 of Lal Babu Singh may have been caused by sharp weapon such as farsa, however, the evidence indicates that this witness was not cross-examined by the defence even on repeated call.

20. Two of the witnesses being PW-6 Jay Ram Singh



and PW-8 Jiwach Singh have not supported the case of the prosecution in their evidence, hence were declared hostile by the prosecution. In such view of the matter, with nothing substantial coming even in their cross-examination, we do not feel it necessary to discuss the evidence of these two witnesses.

21. PW-7 Birendra Singh, who happens to be the cousin of the deceased, is also an injured eye-witness. He has stated in his evidence that the occurrence is of 09.02.2000 at 07:00 AM when he was working in the field adjacent to the place of occurrence. He claims to have seen all the five FIR named accused persons having been armed with lathi and farsa coming to the place of occurrence and getting into an altercation with Raj Kishore Singh, the deceased, who was already present in the field. He has made specific reference to Sachidanand Singh (Appellant No. 1) giving a farsa blow on the head of the deceased, which hit at the back side of his head, besides others also engaging in assault, pursuant to which, Raj Kishore Singh (deceased) fell on the ground and became unconscious. This witness has stated that he along with Lala Singh @ Lal Babu Singh intervened to save Raj Kishore but the accused persons also assaulted them. Thereafter, they took Raj Kishore in an injured condition to Sadar Hospital, Muzaffarpur from where



the doctor referred him to PMCH, where he was treated for the whole night but he succumbed to the injuries received by him on 10.02.2000 and then his postmortem was done at PMCH. This witness has further stated that on the statement made by him and Lal Babu Singh, the case was instituted and the same was recorded at the Sadar Hospital. He has further stated that the statement of Lal Babu Singh was recorded in his presence and he had made his signature over the said fardbeyan, which has been marked as Exhibit-1/1. During the cross-examination, he has reiterated the fact that he was doing irrigation work in his field when the accused persons had arrived at the place of occurrence. He has further stated that upon an alarm being raised at the time of occurrence, villagers came to the place of occurrence, they being Jalim Singh (PW-1), Jiwach Singh (PW-8), Jay Ram Singh (PW-6), Padarath Singh, Kalika Singh, Pramod Kumar Singh (PW-3), Surendra Singh and others. It has been stated by him that the deceased was taken to the hospital while he was bleeding from his nose and was unconscious, however he did not see any other mark of violence or injuries on other parts of the body of the deceased. In his cross-examination, he has also stated that he had seen blood at the place of occurrence and there were mustard crops on the said



land. He has, however stated that the Appellant No. 1, Sachidanand Singh was not making any claim over the said land. His further cross-examination would indicate that he has stated that it is not a fact that he had not made any statement before the Investigating Officer with regard to him witnessing the incident in the manner as alleged.

22. PW-9 Dr. Arun Kumar Singh is the doctor, who has conducted the postmortem examination of the dead body of the deceased Raj Kishore Singh on 10.02.2000 at 01:15 PM at PMCH, Patna. On such examination, the doctor has found that rigor mortis was present all over the body, however, there was no decomposition. He had found the head bandaged and had found the following ante-mortem external and internal injuries on the person of the deceased.

(1) One stitch wound of 1" length on skull in midline 3" from nosebridge.

(2) One stitch wound of 1" length on right side of skull 1" right from middle 4" right eyebrow and 5" from right ear.

On Dissection:-

Haematoma under scalp was found in frontal right temporal right parietal and right side of occipital region. One communicated fracture on 9"x7" area involving frontal left and right temporal, right parietal and right occipital



bone.

Extradural and subdural haematoma was found of both side of brain more on right side.

In general, all viscera were found congested.

Stomach contend about 250 ml. clay colour fluid. Bladder was empty.

In the opinion of the doctor the time elapsed since the death of the deceased till the time of the examination was approximately 12 hours and the cause of death was head injury. The doctor has further opined that hard and blunt object and its impact was the nature of violence and has further stated that opinion on injury no. 1 and 2 can be obtained from the Surgeon. The postmortem report is a photo copy of the original postmortem report which was written by the said witness in his writing as also signed by him, which has been marked 'X' for identification. During his cross-examination, PW-9 has stated that the original postmortem report is not before him, he has not written the age of injuries and he did not get the opportunity to see the injuries before the stitches were made as also has stated that this kind of injury is not possible upon fall. The doctor has also categorically stated in his cross-examination that he did not find any other injury on any other part of the body of the deceased.

23. The last witness being Shyam Sundar Singh,



examined as PW-10, is a formal witness and he has proved the formal FIR by way of identifying the hand writing of the scribe of the FIR, namely Niranjana Oraon, who was the then Officer-in-Charge of the Police Station. The formal FIR has been marked as Exhibit-4.

24. After closing the prosecution evidence, the learned Trial Court recorded the statement of the appellants on 16.02.2016 under section 313 Cr.P.C. for enabling them to personally explain the circumstances appearing in the evidence against them, however, they have not given any explanation in their statements and have just said that they would give a written explanation.

25. The defence has not produced any evidence, either oral or documentary, for consideration of the Court. The Ld. Trial Judge upon appreciation, analysis and scrutiny of the evidence has reached at a finding of guilt of the appellants and has sentenced them accordingly to imprisonment and fine by way of its judgment and order.

Analysis and Consideration

26. We have perused the impugned Judgment of the Ld. Trial Judge, the entire materials on record and have given thoughtful consideration to the rival submissions made by the



Ld. Counsel for the Appellants as well as the Ld. APP for the State.

27. We have already discussed the contents of First Information Report in detail earlier and the same discloses, in brief that upon resistance offered by the deceased and the informant to cutting of mustard crops by the accused persons, verbal altercation followed by 'maarpeet' (assault) ensued between the parties, further leading to the accused persons resorting to assaulting with their respective weapons like lathi, danda, farsa etc. upon the deceased as also PW-4 (Lal Babu Singh) and PW-7 (Birendra Singh), who had intervened to save the deceased, causing injuries to them.

28. Out of the ten witnesses examined by the prosecution in its favour, PW-1 Jalim Singh, PW-2 Julie Kumari, PW-3 Pramod Kumar Singh, PW-4 Lal Babu Singh and PW-7 Birendra Singh claim to be eye witnesses to the occurrence in question. On going through the discussion made hereinabove in the preceding paragraphs with regard to the evidence of the witnesses of the present case, it is apparent that they have supported the case of the prosecution and substantial contradictions have not been elicited in their cross-examination to doubt the veracity of their testimony. PW-1 Jalim Singh



seems to be a quite natural witness as he was in his *bathan* at the time of occurrence, as such had witnessed the occurrence. As indicated earlier, it is clear from the evidence of the informant Lal Babu Singh that *bathan* of PW-1 is in close vicinity of the place of occurrence and it has been specifically stated that there is no house in between. In such view of the matter, it cannot be said that PW-1 was not in a position to witness the occurrence. So far as PW-2 is concerned, although she gives an eye witness account of the occurrence in her examination-in-chief but in her cross-examination she has only talked about her father (deceased) and her uncle (informant) to have gone to the place of occurrence and has further given a very general statement with regard to herself that she goes to the field. This leads us to have some doubt, as to whether this witness had actually seen the occurrence or not. However, the defence, in her cross-examination has not been able to elicit contradictions, so as to impeach her evidence, hence her evidence cannot be held to be totally untrustworthy. The evidence of PW-3, Pramod Kumar Singh, reveals that at one point he was at home and had reached the place of occurrence on hulla to find the deceased Raj Kishore Singh in a pool of blood. However, he has also deposed that he witnessed the assault made on the deceased Raj Kishore



Singh but cannot say as to who assaulted the informant Lal Babu Singh. Once again, it is a fact that nothing much has been elicited by way of contradiction, in his very short cross-examination, to doubt his presence at the place of occurrence, if not at the time of occurrence but immediately thereafter.

29. We would seek to delve upon the evidence of PW-4 Lal Babu Singh and PW-7 Birendra Singh separately as their testimony is enough to pin the Appellants and prove their guilt, apart from relying upon the corroborative evidence of PW-5 Dr. Dhirendra Prasad Singh, who had examined the injuries of these two witnesses. PW-4 (Lal Babu Singh), being the informant, has narrated the entire prosecution story in his fardbeyan and has stood by his narrative during the course of trial in his deposition. PW-7 Birendra Singh has also supported the case of the prosecution and he, besides being the signatory to the fardbeyan (Exhibit-1/1), has also been named in the fardbeyan itself as an eye witness who was working in the adjacent field and had also got injured at the hands of the accused persons. This witness has stood the test of cross-examination and we do not find any ambiguity in his evidence to doubt his presence at the place of occurrence. It would also be worthwhile to refer to the evidence of PW-5, Dr. Dhirendra Prasad Singh at this juncture, as he is



the doctor who had examined the injuries of both PW-4 Lal Babu Singh and PW-7 Birendra Singh and the injury reports have been marked as Exhibit-2 and Exhibit-3 respectively. Although the injuries sustained by the two witnesses are, no doubt, simple in nature but there are as many as three injuries of hard and blunt substance on the person of PW-7 (Birendra Singh) and at least four injuries on the person of PW-4 (Lal Babu Singh), out of which, two of the injuries have been opined to have been caused by sharp weapon with a further clarification made by the doctor that those two injuries may have been caused by a sharp weapon such as Farsa. The trial court records reveal that on repeated calls, no one had turned up for cross-examining this witness, hence, no question can be raised on the injury reports being collusive in nature. The evidence of PW-4 (Lal Babu Singh) and PW-7 (Birendra Singh) read with the evidence of PW-5 (Dr. Dharendra Prasad Singh), conclusively establishes the fact that these two witnesses suffered injuries at the hands of the accused persons during the course of the occurrence in question.

30. Thus, the aforesaid two witnesses, i.e. PW-4 and PW-7 can be safely categorized as injured eye witnesses and there is no doubt that the injured witnesses are accorded special



status and they offer an extremely valuable piece of evidence. We would like to refer to the judgment rendered by the Hon'ble Apex Court in the case of *Abdul Sayeed Vs. State of Madhya Pradesh*, 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 been very rightly held that convincing evidence is required to discredit an injured witness. We think it proper to quote para no. 29 and 30 of the said judgment herein below:-

“29. While deciding this issue, a similar view was taken in *Jarnail Singh v. State of Punjab* [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] , where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under : (SCC pp. 726-27, paras 28-29)

“28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa v. State of Karnataka*



[1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In *State of U.P. v. Kishan Chand* [(2004) 7 SCC 629 : 2004 SCC (Cri) 2013] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan v. State of Haryana* [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.”

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of



the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

31. The status of the injured eye witness has also been discussed 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 an injured witness unless compelling reasons exist to doubt the same. We think it proper to quote para no. 26 of the said judgment herein below:-

“26. The High Court has gone wrong in its appreciation of the case, both on facts as well as on law. The statement of an injured eye-witness is an important piece of evidence which cannot be easily discarded by a Court. Minor discrepancies do not matter. In *State of M.P. v. Mansingh*, (2003) 10 SCC 414 where conviction of the accused by the trial court, *inter alia*, under Section 302, was set aside by the High Court on the so called discrepancies of an injured witness this court while allowing the State's appeal against the acquittal said this:

“9. *The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Merely because there was no mention of a knife in the first information report, that does not*



wash away the effect of the evidence tendered by the injured witnesses PWs 4 and 7. Minor discrepancies do not corrode the credibility of an otherwise acceptable evidence. The circumstances highlighted by the High Court to attach vulnerability to the evidence of the injured witnesses are clearly inconsequential.”

32. It would now be important to take into consideration the other argument advanced by the learned counsel for the appellants to the effect that the medical evidence does not completely corroborate the oral account given by the prosecution witnesses, in as much as, as against the specific allegation of assault made by the appellant no.1 Sachidanand Singh by means of farsa on the head of the deceased, the injury on the head of the deceased, in the opinion of Dr. Arun Kumar Singh (PW-9), who had conducted the postmortem examination of the body of the deceased, has been caused by hard and blunt object and its impact. With regard to this submission of the learned counsel for the appellants, we find that two ante-mortem injuries found on the person of the deceased were both stitched wounds and besides giving an opinion with regard to the nature of the violence as that of being by hard and blunt object and its impact, this witness further states that opinion about injuries nos. 1 and 2 can be obtained from the concerned Surgeon. The very fact that two injuries are stitched wounds, it was not



possible for the doctor conducting the postmortem examination to give a conclusive opinion about nature of violence. In cross-examination, PW-9 (Dr. Arun Kumar Singh) has further stated that he did not have the opportunity to have a look at the injury before being stitched. He has further clarified that such injury would not be possible on fall.

33. The law relating to conflict between oral and medical evidence is well settled to the effect that unless and until the medical evidence is irreconcilably in conflict with the oral evidence, the oral testimony of the eye witnesses cannot be doubted. The Hon'ble Supreme Court has held in the case of *Solanki Chimanbhai Ukabhai vs. State of Gujarat* reported in *AIR 1983 SC 484* that unless the medical evidence completely rules out all possibilities of injuries taking place in the manner alleged, the testimony of the eye witnesses cannot be thrown out. This judgment also finds reference in the case of **Abdul Sayeed** (supra). Thus, with regard to the argument raised by the appellant to the effect that the case of the prosecution is fit to be thrown out on the basis of some conflict between the oral and the medical evidence is fit to be rejected. Looking at the entire case in totality and considering the fact that there is specific allegation of assault on the head and correspondingly two



injuries have been found on the head coupled with haematoma having been found under the scalp on the occipital region and one communicating fracture on the right temporal parietal regions, it can safely be concluded that there is no irreconcilable conflict between the oral and the medical evidence which can be sufficient to discard the prosecution case. It is also to be considered that the head injury is cause of death of the deceased.

34. Learned counsel for the appellants has also contended that most of the witnesses who have been examined in support of the case of the prosecution are related witnesses and, therefore, they can also be said to be interested witnesses. With regard to the above contention it is no doubt true, that if the witnesses are closely related, their evidence has to be scrutinized with care and caution. Taking all due care and caution, we have analyzed the evidence of the prosecution witnesses, specially the informant (PW-4) and Birendra Singh (PW-7) who are also the injured eye witnesses and in backdrop of the evidence of the witnesses of such sterling quality, it would not be safe and proper to doubt the veracity of the prosecution case, especially in view of the fact that the defence has failed to elicit any major contradictions. After all, it is the quality and not the quantity of evidence which has a bearing on



adjudication of any case. Moreover, the prosecution case since beginning has been that it was the informant and the deceased who were called to the field for some land related talks and besides the informant (PW-4), PW-1 (Jalim Singh) and PW-7 (Birendra Singh) were the natural witnesses who were present in the vicinity of the place of occurrence and had all witnessed the occurrence in question. It is stated once again, at the cost of repetition, that the defence has completely failed to elicit any substantial contradictions from the cross-examination of the witnesses in order to impeach their credibility. It also needs to be kept in mind that closely related witnesses, who have also suffered injuries, would never let the actual assailants go scot-free and frame up others who are not involved in the occurrence.

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

“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to



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

36. Yet another contention raised on behalf of the defence is that the Investigating Officer of the case has not been examined and his non-examination has caused prejudice to the defence, however, merely arguing such an issue without pointing out any prejudice to have been caused to the defence on account of non-examination of the Investigating Officer, would not hold any ground. The defence has failed to raise any doubts upon the oral testimony of the prosecution witnesses and has also not raised any such questions which can relate to the issue of prejudice having been caused due to non-examination of the Investigating Officer.



37. As far as the law laid down on the issue of non-examination of the Investigating Officer, by the Hon'ble Apex Court is concerned, we would refer to a Judgment rendered by the the Hon'ble Apex Court in the case of ***Behari Prasad Vs. State of Bihar***, reported in ***(1996) 2 SCC 317: AIR 1996 SC 2904***, wherein it has been held that non-examination of the Investigating Officer is not fatal to the prosecution case, especially when no prejudice is likely to be suffered by the accused. It has also been clarified in the said judgment that a case of prejudice likely to be suffered by an accused must depend on the facts of the case and no universal straight jacket formula should be laid down that non examination of Investigating Officer *per se* vitiates a criminal trial. The view of the Hon'ble Supreme Court, in its another judgment, reported in ***(2000) 9 SCC 153***, in the case of ***Bahadur Naik vs. State of Bihar*** is that non-examination of the Investigating Officer as a witness for prosecution is of no consequence when no material contradictions have been brought out and it has also not been shown as to what prejudice has been caused to the appellant due to such non-examination, especially in a situation when the accused has not been able to otherwise shake the credibility of the prosecution witnesses.



38. There is no quarrel on the proposition, however, that there may be certain situations where non-examination of Investigating Officer would become a vital consideration and the prosecution must take effective steps to ensure that the Investigating Officer steps into the witness box for better adjudication of a criminal case as he is one person who is almost there when the criminal law is set into motion. However, we have no hesitation to hold that in the present case, in the backdrop of cogent, creditworthy and unshaken testimony of prosecution witnesses, especially injured eye witnesses, the issue of non-examination of Investigating Officer gets relegated to the background as it does not assume much significance and does not become a vital consideration in the facts of the present case.

39. Learned counsel for the appellants has also made an argument with regard to non-seizure of the blood soaked mud and the weapons used. These facts may be termed as some shortcomings on behalf of the investigating agency but the same would definitely not be enough to question the reliability of the evidence of the eye witnesses who are said to be eyes and ears of justice.

40. Thus, after consideration of the entire prosecution



evidence and its careful analysis, we can safely conclude that their evidence is cogent, convincing, creditworthy and reliable, hence there is nothing to doubt the genuineness of their testimony, on the basis of which the learned Trial Court has convicted the appellants.

41. We would now take up for consideration the alternative argument raised by the counsel for the appellants that the present case does not fall within the ambit of Section 300 IPC, hence applicability of Section 302 IPC giving the punishment for murder would not be attracted. The contention raised on behalf of the defence is that the death of the deceased has taken place in a sudden fight in the heat of passion and the Appellants had no intention to cause death of the deceased, hence, in such view of the matter, the offence could at best be covered under Section 304 Part II IPC and not under Section 302 IPC. We have given a careful consideration to this argument raised by the counsel for the appellants. So far as the facts of the case are concerned, it is apparent, not only from the evidence led by the prosecution but also from the First Information Report that the appellants were cutting the mustard crop from the field which belonged to the deceased and his family and this became the bone of contention between the rival parties. The



occurrence started with a verbal altercation between the parties and led to heated exchange of words, eventually leading the appellants to assault the deceased and others. From the entire conspectus of the case and considering the factual matrix, it can be gathered that the act done by the appellants, who had caused death of the deceased, was with a knowledge that such act is likely to cause death but the facts are not such, so as to establish the intention of the appellants to cause death of the deceased. “Intent” and “knowledge” are ingredients of Section 299 IPC and so far as an act done by an accused which causes death with a knowledge that the death was likely to be caused by such act but they did not have any intention to cause death, would come within the purview of Section 304 Part II IPC.

42. Having considered the facts and circumstances of the present case and the well settled law on the issues raised in the present Appeal, 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.

43. We have perused the entire evidence on record and we find that the intention to inflict a particular bodily injury seems to be absent and the entire occurrence seems to have



happened in a sudden fight at the spur of the moment and the deceased was assaulted with the knowledge that the same is likely to cause bodily injury which in turn is likely to cause death of the deceased but without any intention to cause death. It is also a fact that the doctor (PW-9) who had conducted the postmortem examination of the dead body of the deceased, has also not given a specific opinion that the two injuries suffered by the deceased were sufficient to cause death in ordinary course. Thus, the significant factor is intentional injury which must be sufficient to cause death in the ordinary course.

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

“9. Section 300 IPC is in two parts. The first part is when culpable homicide can be said to be the murder and the second part is the exceptions when the culpable homicide is not murder. The relevant part of Section 300 IPC for our purpose would be Clause 4 to Section 300 and Exception 4 to Section 300 IPC. As per Clause 4 to Section 300 IPC, if the person committing the act knows that it is so imminently dangerous that it must, in all



probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury, such culpable homicide can be said to be the murder. However, as per Exception 4 to Section 300, culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. As per Explanation to Exception 4 to Section 300 IPC, it is immaterial in such cases which party offers the provocation or commits the first assault.”

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

“**23.** Considering the nature of the injury caused to the deceased and the weapons i.e. lathi and gandasi (sickle) used by them, it cannot be ruled out that they assaulted the deceased with the knowledge that the injury may cause death of the person. Moreover, there is no evidence from the side of the prosecution that the accused persons preplanned to cause death and with that intention they were waiting for the deceased coming from the field and then with an intention to kill the deceased they assaulted him.

24. It is a well-settled proposition of law that the



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

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

27. In the facts and circumstances of the case, in our considered opinion, the instant case falls under Section 304 Part II IPC as stated above. Although the appellants had no intention to cause death but it can safely be inferred that the



appellants knew that such bodily injury was likely to cause death, hence the appellants are guilty of culpable homicide not amounting to murder and are liable to be punished under Section 304 Part II IPC.”

46. We find after analyzing the entire evidence that in the present case too, there is no evidence that the appellants had made special preparation for assaulting the deceased with the intent to kill him, rather the occurrence took place after a verbal altercation and heated exchange of words while the appellants till that time were admittedly not armed with any weapons. As per the evidence of the prosecution, the appellants were engaged in cutting the mustard crops, which the informant and the deceased objected to and thereafter, the verbal embroil started taking a serious turn and ‘maarpeet’ (assault) ensued, with the appellants picking up the weapons of assault and inflicting blows on the deceased causing grievous injury to him, apart from inflicting injuries upon two other witnesses PW-4 (informant) and PW-7 (Birendra Singh), when they tried to intervene.

47. Thus, based on a conspectus of the abovementioned facts and circumstances of the case and the law prevailing on the subject matter, it has weighed upon us to come to a finding that the present case would fall under Section 304



part II of the IPC, especially in view of the fact that from the evidence adduced by the prosecution, intention to kill the deceased does not get established and moreover, the prosecution has neither been able to establish, nor has alleged presence of premeditated mind of the appellants to cause murder of the deceased. The entire occurrence seems to have happened in a sudden fight on the spur of the moment and under the heat of passion, hence the element of intention to cause death of the deceased seems to be missing.

48. Therefore, upon consideration of the case of the prosecution and the evidence adduced in support of the same, we feel that the Appellants are liable to be convicted under Section 304 Part II of the IPC. As such, the conviction of the appellants under Section 302/149 IPC and the sentence of imprisonment for life awarded thereunder along with fine of Rs.10,000/- are set aside and instead the appellants are convicted under Section 304 Part II of the IPC. However, conviction under Sections 147, 148, 323 and 324 IPC would stand against the appellants but with no separate sentence being awarded thereunder.

49. Before coming to the sentence part, we would like to refer to few case laws wherein the conviction of the accused



persons have been converted from Section 302 IPC to one under Section 304 Part II IPC and lesser than the maximum sentence has been awarded or the accused persons have been sentenced to undergo the custody period already undergone by them.

50. In the case of *Randhir Singh vs. State of Punjab* reported in *AIR 1982 SC 55*, while altering the conviction of the appellant from Section 302 IPC to Section 304 Part II IPC upon consideration of the totality of the circumstances, the sentence of life imprisonment was reduced to rigorous imprisonment for five years. The facts of the case was that the appellant had given a blow with a *Kassi* on the head of the deceased who suffered injuries on his head and later on succumbed to the injuries received. Paragraphs-9 and 10 of the said judgment are being quoted hereunder for ready reference:-

“9. In our opinion, having regard to the totality of circumstances viz. there is only one injury, that the weapon was not carried by the appellant in advance, that there was no premeditation, that he was a young college going boy, that there was some altercation between the deceased and his father and that the death occurred nearly after six days, one can only say that the appellant must be attributed the knowledge that he was likely to cause an injury which was likely to cause death. Under these circumstances, in our opinion, the appellant is shown to have committed an offence



under Section 304 Part II of the Penal Code, 1860 and he must be convicted for the same and sentenced to suffer rigorous imprisonment for five years.

10. Accordingly this appeal is allowed and the conviction of the appellant is altered from Section 302 of the IPC to Section 304 Part II of the IPC, and the sentence of life imprisonment is reduced to rigorous imprisonment for five years.”

51. We would also like to refer to a judgment rendered by the Hon’ble Supreme Court of India, by a three judges bench, reported in *(2018) 8 SCC 228 (Deepak Vs. State of Uttar Pradesh)*, wherein the facts were that the assault by way of a sword blow by the appellant in the rib-cage area of deceased caused a punctured wound and subsequently led to the death of the deceased. The case was also supported by an injured witness and other eye witnesses. However, the Hon’ble Supreme Court, on consideration of the entire evidence concluded that the occurrence had taken place in the heat of the moment without premeditation, hence altered the conviction of the appellant from Section 302 IPC to Section 304 Part II IPC and also altered the sentence to the period of custody already undergone by the accused. Paragraphs-7 and 8 of the judgment are quoted hereunder for ready reference:-

“7. On consideration of the entirety of the evidence, it can safely be concluded that the



occurrence took place in the heat of the moment and the assault was made without premeditation on the spur of time. The fact that the appellant may have rushed to his house across the road and returned with a sword, is not sufficient to infer an intention to kill, both because of the genesis of the occurrence and the single assault by the appellant, coupled with the duration of the entire episode for 1½ to 2 minutes. Had there been any intention to do away with the life of the deceased, nothing prevented the appellant from making a second assault to ensure his death, rather than to have run away. The intention appears more to have been to teach a lesson by the venting of ire by an irked neighbour, due to loud playing of the tape recorder. But in the nature of weapon used, the assault made in the rib-cage area, knowledge that death was likely to ensue will have to be attributed to the appellant.

8. In the entirety of the evidence, the facts and circumstances of the case, we are unable to sustain the conviction of the appellant under Section 302 IPC and are satisfied that it deserves to be altered to Section 304 Part II IPC. It is ordered accordingly. Considering the period of custody undergone after his conviction, we alter the sentence to the period of custody already undergone. The appellant may be released forthwith if not required in any other case.”

52. We would also like to refer to the case of **Joseph Vs. State of Kerala**, reported in **1995 SCC (Cri) 165** wherein



the accused had attacked the deceased after a heated exchange of words between them over the stake of money in gambling, with a lathi and inflicted two blows on the head of the deceased as a result of which the deceased fell on the ground. The accused had then given a third blow on the deceased but the same had missed. It was held by the Hon'ble Supreme Court of India that the whole occurrence was a result of a trivial incident and in such circumstance it could not be said that the accused, who inflicted two lathi blows on the head of the deceased, intended to cause injury, sufficient to cause death. At most, it could only be said that he had knowledge that by inflicting such injuries, death would be the likely result. In such view of the matter, the Hon'ble Supreme Court of India, while holding the accused to be guilty of committing culpable homicide not amounting to murder, convicted him under Section 304 Part II of the IPC and sentenced him to undergo five years rigorous imprisonment, as recorded in paragraph '3' of the said judgment.

53. A reference may also be made to the Judgment rendered in the case of *N. Ramkumar vs. The State Rep. By Inspector*, in *Cr. Appeal No. 2006 of 2023*, wherein the Hon'ble Supreme Court of India, considering the entire prosecution case,



altered/converted the conviction of the appellant to one under Section 304 Part II IPC from Section 302 IPC and sentenced him to imprisonment to the period already undergone by him. The relevant paragraphs no.20 and 21 are being quoted hereunder:-

“20. Thus, it emerges from the case law analysed herein-above for converting the sentence imposed under Section 302 to Section 304 Part II the facts unravelled during trial will have to be seen. In the facts of the case on hand, it is discernible that there was no premeditation to cause death or the genesis of occurrence and the single assault by the accused and duration of entire episode, were factors to adjudge the intention. The offence can be brought clearly within the ambit of Section 304 Part-II IPC. In the instant case it can be noticed that appellant and the deceased were in love with each other. The fact that deceased had stopped talking to the appellant and she was talking to her neighbour Mr. Sudhakar had ignited the mind of the appellant to be furious about the conduct of the deceased and he was upset about this change of attitude of the deceased. Even according to the testimony of PW-1, who is none other than mother of the deceased there was altercation between the appellant and the deceased and exchange of words between appellant and deceased with regard to their love affair. On being confronted by the appellant as to why the accused had stopped talking to him and as to why she was trying to



develop friendship with Sudhakar and the answer given by the deceased had resulted in appellant's getting infuriated and in that spur of the moment he caught hold of her hair and banged her head to the wall which resulted in blood oozing out and on seeing this he ran away from the scene of the incident. Thus, the single assault by the appellant coupled with the duration of the entire period having occurred for about 2-3 minutes would not be sufficient to infer that he had the intention to kill the deceased. Had there been any intention to do away with the life of the deceased, obviously the appellant would have come prepared and would have assaulted the deceased with pre-meditation. Yet another factor which cannot go unnoticed, the appellant had obviously approached the deceased and intended to confront her as to why she was not talking to him though they were in love and also to clear the doubts about she being friendly with Mr. Sudhakar (neighbour) and in this factual scenario, heated exchange of words have taken place and enraged by her reply the appellant has banged her head on the wall in a fit of fury, which cannot be inferred that he had any intention to take away her life, particularly when he was in love with her.

21. In the aforesaid analysis of law and facts, we are of the considered view that the present appeal deserves to be allowed in part. The conviction of the appellant under 302 is altered/converted to one under Section 304 part II of the Indian Penal Code for the altered conviction, the appellant is



sentenced to the imprisonment to the period already undergone and shall be released forthwith if not required in any other case.”

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

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



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

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

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

56. The facts and circumstances of the present case depict that the appellants had called the informant and the



deceased to the field for the purpose of holding some talks related to the land in question. It is not the case of the prosecution that the appellants were armed when the informant and the deceased reached at the place of occurrence but they were engaged in cutting mustard crops which was objected to by the prosecution side. It is also a fact, which is also admitted in the evidence that the accused persons were using sickle (which is sharp cutting weapon) for cutting the crops but they never used the same for purpose of assaulting the prosecution side. It was only subsequently that arms like Lathi, Danda and Farsa were picked up for assault, after the altercation between the parties started taking a serious turn. Moreover, in the FIR itself it was indicated that after the entire incident of assault, the appellants loaded the mustard crops in the tractor, which goes to show that this was the only purpose for which they had come to the field and they never intended to cause the death or any bodily injury to anyone.

57. The factum of the appellant nos. 2 and 3 only giving lathi blows that too after taking out the same subsequently from the tractor makes it abundantly clear that they had never intended to cause any serious injury to anyone, much less causing death. It would be seen that the deceased



sustained only two injuries on the head, although grievous in nature and no other injury was found on his body by the doctor or even as per the evidence of the prosecution witnesses. This leads us to a prudent conclusion that the accused persons/appellants never planned or premeditated to commit an act of assault, much less to commit an act which would cause death of the deceased. This takes away the element of intention of causing either death or any kind of serious bodily injury to the prosecution side and whatever ensued as a result of the resistance provided by the informant and the deceased to the accused persons from cutting mustard crops, was an unfortunate incident causing loss of life, which happened on the spur of the moment in a sudden fight and heat of passion.

58. The medical evidence would also show that the deceased did not die immediately but was taken to the hospital and he died during the course of treatment. The other two injured eye witnesses being PW-4 (informant) and PW-7 (Birendra Singh) also received simple injuries on non-vital part of the body. This is also indicative of the fact that there was complete absence of any intention to cause any serious injury to anyone.

59. We have also noticed from the evidence that the



prosecution witnesses have levelled specific allegation with regard to appellant no.1 Sachidanand Singh who was armed with farsa, as being the first one to assault the informant and the deceased whereas general allegations of inflicting lathi blows have been made with respect to other accused persons including appellant nos.2 and 3 without indicating any specifics about the assault. A perusal of the evidence of both the injured eye witnesses PW-4 (informant) and PW-7 (Birendra Singh) would confirm this fact.

60. We may also take into consideration the fact that the occurrence took place in the month of February of the year 2000, hence the appellants suffered the rigours of trial for a substantially long period and were convicted finally in the year 2016. At the time of recording of their statements under Section 313 Cr.P.C., they were in the age group of in-between 50 to 55 years. Now, after lapse of 9 years from the date of conviction and more than 25 years from the date of incident, they have either become senior citizens or are standing on the brink of the same.

61. Thus, taking into account an overall perspective of the entire case, emerging out of the totality of the facts and circumstances, as indicated hereinabove, as also considering the



fact that the appellant no.1, who is stated to have engaged in assault by farsa, has remained in custody for more than 9 years and the appellants no.2 and 3 Mitendra Singh and Satyendra Singh, who have been alleged to have been armed with only lathi and there being a general allegation qua them of giving lathi blows upon the deceased and the two injured persons, have remained in custody for 4½ years, we come to a finding that the present case would fall under Part II of Section 304 of the IPC. In such view of the matter, we find that the appellants are required to be convicted under Section 304 Part II of the IPC, thus the conviction of the Appellants under Section 302 read with Section 149 of the IPC and the sentence of life imprisonment awarded thereunder along with fine of Rs. 10,000/- are set aside and instead the appellants are convicted under Section 304 Part II of the IPC and for the altered conviction, the Appellants are sentenced to the period of custody already undergone.

62. The appellant no.1 Sachidanand Singh who is in custody, is directed to be released from jail forthwith unless required in any other case. The appellants no.2 and 3 Mitendra Singh and Satyendra Singh, respectively are on bail, hence they



are discharged from the liability of their bail bonds.

63. Accordingly, the appeal is partly allowed to the extent indicated above.

(Soni Shrivastava, J)

Mohit Kumar Shah, J. : I agree.

(Mohit Kumar Shah, J)

S.Sb/Arvind-

AFR/NAFR	AFR
CAV DATE	17.03.2025
Uploading Date	25.03.2025
Transmission Date	25.03.2025

