IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No. 1160 of 2016

Arising Out of PS. Case No.-15 Year-2007 Thana- ADAPUR District- East Champaran

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1. Laxman Sah Son of Vishwanath Sah
2. Inar Sah Son of Panna Lal Sah
3. Vijay Sah Son of Mahanth Sah
4. Ajay Sah Son of Mahanth Sah
5. Mahanth Sah Son of Late Banshi Sah
6. Ramekbal Sah Son of Late Jiya Lal Sah

All the Above are Residents of Village-Harpur, Police Station-Harpur, District-East Champaran

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

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Appearance:

For the Appellant/s	:	Mr. Bindhyachal Singh, Sr. Adv.
		Mr. Bipin Kumar Singh, Adv.
For the State	:	Mr. Dilip Kumar Sinha, Adv.
For the Informant	:	Mr. Uma Shankar Verma, Adv.
		Mr. B.K. Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE NANI TAGIA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 06-03-2025

The present appeal under Section 374 (2) and Section 389 (2) of the Code of Criminal Procedure, 1973 (hereinafter

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referred to as “the Cr.P.C.”) has been preferred against the judgment of conviction and order of sentence dated 27.08.2016 and 02.09.2016 respectively, passed in Sessions Trial No. 936 of 2007 (arising out of Adapur P.S. case No. 15 of 2007) by the learned VIIIth Additional Sessions Judge, East Champaran at Motihari (hereinafter referred to as “the learned Trial Judge). By the said judgment, the learned Trial Judge has convicted the Appellant No. 1 under Section 147 and 302 of the Indian Penal Code (hereinafter referred to as “the IPC”) and has sentenced him to undergo two years imprisonment under Section 147 of the IPC and life imprisonment under Section 302 of the IPC with a fine of Rs. 10,000/- and in default thereof, the Appellant No. 1 has been directed to undergo additional six months rigorous imprisonment. As far as the Appellants No. 2 to 6 are concerned, they have been convicted under Section 147 of the IPC and Section 149/302 of the IPC and have been sentenced to undergo two years imprisonment under Section 147 of the IPC and life imprisonment under Section 149/302 of the IPC with fine of Rs. 10,000/- each and in default thereof, they have been directed to undergo further six months rigorous imprisonment. Both the sentences have been ordered to run concurrently.

2. Short facts of the case are that on 24.01.2007, a written

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report was submitted by Suresh Prasad (the informant) before the Officer-in-Charge, Police Station-Harpur (Adapur, East Champaran), wherein he has stated that he is resident of Harpur and on 24.01.2007 at about 06:30 am in the morning, his elder brother, Shiv Nath Prasad was coming after easing himself and when he had reached at the door of the house of Ram Darshan, Laxman Sah (Appellant No. 1), Awdhesh Sah, Mahanth Sah (Appellant No. 5), Vijay Sah (Appellant No. 3), Ajay Sah (Appellant No. 4), Ram Ekbal Sah (Appellant No. 6), Sanjay Sah, Inar Sah (Appellant No.2) and Ram Sewak Sah had surrounded him, who were sitting there from before. Thereafter, these accused persons had caught hold of the elder brother of Suresh Prasad (informant), namely Shiv Nath Prasad and had started assaulting him as also abusing him. In the meantime, Laxman Sah had given a *lathi* blow on the forehead of Shiv Nath Prasad, resulting in his elder brother becoming injured and falling down on the ground. Thereafter, the rest of the accused persons had also assaulted him with *lathi* and *fatha,* leading to his elder brother becoming unconscious. The witness to the occurrence, namely, Ram Darshan Sah, Santosh Prasad, Vinod Sah, Manoj Prasad and Ram Ekbal Prasad had intervened leading to his life being spared. During the course of

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intervention, Awadhesh Sah had given a *lathi* blow on the right hand of Ram Darshan Sah leading to his right hand being fractured, whereafter Mahanth Sah had taken out a sum of Rs. 600/- from the pocket of the elder brother of Suresh Prasad (informant) which he had earned upon selling vegetables. The informant, namely, Suresh Prasad, has further stated that on the previous day i.e. on 23.01.2007 in the night the accused persons, without any reason, had assaulted Shambhu Sah and Biru Kumar badly and injured them, whereafter he had given information about the same to the Officer-in-Charge and then the Office-in-Charge had come in the night and had seen the injured. It has been stated that on account of the said reason, today's occurrence has taken place and the condition of his elder brother Shiv Nath Prasad is critical, hence the Doctor at Duncan Hospital, Raxaul has referred him to PMCH, Patna, for further treatment. He has also stated that his elder brother Shiv Nath Prasad was admitted at Duncan Hospital, Raxaul, in an unconscious state.

3. After the aforesaid written report dated 24.01.2007 was submitted by Suresh Prasad, a formal FIR bearing Adapur (Harpur) P.S. case No. 15 of 2007 was registered for offences under Sections 147/148/149/341/323/ 325/307/379/504 of the

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IPC on 25.01.2007 at about 12:30 hours. Since Shiv Nath Prasad had died, Section 302 of the IPC was added vide order dated 06.02.2007. After investigation and finding the case to be true qua the appellants and others, the police had submitted charge-sheet on 01.07.2007 under Sections 147,148,149,323, 325, 341 and 302 of the IPC. The learned Trial Court had taken cognizance of the offences under Sections 147,148,149,341, 323,325 and 302 of the IPC against the appellants and others by an order dated 06.07.2007. Thereafter, the case was committed to the Court of Sessions and was numbered as Sessions Trial No. 936 of 2007. After taking into consideration the charge-sheet and the materials collected during the course of investigation, the learned Trial Judge had framed charges against the Appellant No. 1 under Sections 147 and 302 of the IPC, vide order dated 04.01.2008 and under Sections 147 and 302/149 of the IPC against the Appellant Nos. 2 to 6, vide order dated 04.01.2008, to which they pleaded not guilty and claimed to be tried.

4. During the course of trial, nine witnesses have been examined. While P.W.1 Baijnath Prasad is the cousin of the deceased, P.W.4 Kisnawati Devi is the wife of the deceased and P.W.5 Suresh Prasad is the informant of the present case as also

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the brother of the deceased. P.W.6 Shravan Sah is the cousin brother of the deceased. P.W.7 Ganesh Ram is the Investigating Officer. P.W.8 Dr. Arun Kumar Singh is the Doctor, who had conducted postmortem of the body of the deceased and P.W.9 Dr. S. K. Paswan is the Doctor who had examined the injured. As far as P.W.2 Ram Darshan Sah (injured) and P.W.3 Mahendra Sah are concerned, they are independent witnesses.

5. Sri Bindhyachal Singh, the learned Senior Counsel for the appellants, assisted by Sri Bipin Kumar Singh, Advocate, has submitted that the written report dated 24.01.2007, leading to lodging of the FIR on 25.01.2007 is not the earliest version. It is stated that the written report dated 24.01.2007 has been signed by Suresh Prasad i.e. the informant, but the same is admittedly not in his writing and during the course of his evidence, P.W.5 Suresh Prasad has admitted that the same was scribed by Meghnath Prasad, however, he has not been examined by the prosecution in the present case. It is also stated that the written report dated 24.01.2007 does not even contain any recital to the effect that the FIR was read over to the informant who had understood the same and had then put his signature after finding the same to be correct. It is also stated that P.W.5 Suresh Prasad (informant) has stated in his evidence that he had filed case

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against 17 persons, however, the FIR dated 25.01.2007 is against 9 persons only. Thus, it is submitted that the initial version has been suppressed. It is also stated that P.W.7 i.e. the Investigating Officer of this case has stated in his evidence that he had recorded the statement of Ram Darshan Sah at 11:15 pm on 24.01.2007 itself, thus the same being the first version should have formed the basis of registration of the FIR in question, however, the said statement of Ram Darshan Sah has not been exhibited by the prosecution, which also creates doubt about the case of the prosecution. It is next contended that there has been delay in lodging the FIR for which there is no plausible explanation, hence the case as propounded by the prosecution is concocted. In this regard, it is stated that though the occurrence had taken place on 24.01.2007 at about 06:30 am in the morning and the written report was also submitted before the Officer-in-Charge, Harpur (Adapur) Police Station, on 24.01.2007 itself, nonetheless, the FIR was registered only on 25.01.2007 at about 12:30 hours and in fact, Ganesh Ram (Investigating Officer) has stated in his evidence that though he had started investigation on 24.01.2007 itself and had forwarded the written report to the Officer-in-charge, Police Station Adapur for instituting FIR, nonetheless, it appears that the said forwarding note has been

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appended subsequently in order to cover the delay and in fact, the FIR was registered on the next day i.e. on 25.01.2007 and was received in the Court belatedly on 27.01.2007. Thus, it is submitted that apparently the earliest version of the incident in question has been withheld and a concocted version of the incident has been brought on record for the purposes of registration of FIR. The learned Senior Counsel for the appellants has further submitted that the witnesses who have been examined by the prosecution are though stated to be eye-witnesses but it is not a fact that they are eye-witnesses, inasmuch as they had arrived at the place of occurrence much after the occurrence had taken place. In this connection, it is submitted that as far as P.W.6 Shravan Sah is concerned, he has stated in paragraph No. 2 of his evidence that at the time when Suresh Sah had filed the case he was outside and had returned home in the evening. Thus, it is submitted that P.W.6 is admittedly not an eye-witness. Similarly, it is stated that as far as P.W.4 (Kisnawati Devi) is concerned, she has stated in her evidence in paragraph No. 1 that after she raised *hullah*, Mahendra (P.W.3), Santosh, Vinod and Suresh (P.W.5) had arrived there. Hence, it is submitted that admittedly, P.W.3 and P.W.5 had arrived at the place of occurrence after the occurrence

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had already taken place, thus they cannot be stated to be eye-witnesses. P.W.4 (Kisnawati Devi) has also stated in her evidence in paragraph No. 4 that when she had reached the place of occurrence, her husband had become unconscious, meaning thereby that she was also not present at the time her husband had been assaulted, thus she cannot also be an eye-witness. P.W.4 has also stated in her evidence that after she had raised an alarm, Ram Darshan (P.W.2) had arrived at the place of occurrence. Thus, it is submitted that even P.W.2 cannot be stated to be an eye-witness. In nutshell, the argument of the learned Senior Counsel for the appellants is that all the aforesaid witnesses are hearsay witnesses and not eye-witnesses as is apparent from the evidence led by the prosecution.

6. The learned Senior Counsel for the appellants has next contended that it is surprising that though the place of occurrence is at the middle of the village in question, still the prosecution has examined only interested witnesses and not independent witnesses, which further creates a doubt about the case of the prosecution. It is submitted that most of the witnesses have been examined by the Police after lapse of considerable time of the occurrence which also leads to the inference that the correct version has not come on record. The

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learned Senior Counsel for the appellants has further submitted that it has come in the evidence of the prosecution that at the place of occurrence, there were 24-25 persons, however none of the independent witnesses have been examined. It is also contended that the prosecution story does not corroborate with the medical evidence. The learned Senior Counsel for the appellants has referred to the evidence of P.W.8 Dr. Arun Kumar Singh to submit that no external injury of *lathi* blow has been found on the head of the deceased, thus the manner of occurrence is belied. It is also stated that P.W.9 Dr. S. K. Paswan has stated that the injuries are within 24 hours, however, the fact is that the injury was stated to have been inflicted upon Ram Darsan Sah on 24.01.2007 at about 6:30 am, whereas Dr. S. K. Paswan had examined the injured person, namely, Ram Darsan Sah, on 25.01.2007 at 1:45 pm, hence the manner of occurrence is not proved. In this connection, the learned Senior Counsel for the appellants has referred to Section 45 of the Indian Evidence Act and has also referred to a judgment, rendered by the Hon'ble Apex Court, reported in AIR 1960 SC 706 (***Smt. Nagindra Bala Mitra and Anr. vs. Sunil Chandra Roy and Anr.***) to submit that value of a medical witness is not merely a check upon the testimony of eye-witnesses but it is also an

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independent testimony because it may establish certain facts, quite apart from the other oral evidence. The learned Senior Counsel for the appellants has also submitted that motive of the occurrence has not been proved. Thus, in nutshell the evidence of the prosecution witnesses would show that none of the witnesses are eye-witnesses, hence their evidences cannot be said to be credible or trustworthy, thus the conviction of the appellants is perverse. Lastly, it is submitted that even if all the evidences adduced by the prosecution are accepted to be true on their face value, it would be apparent that though there is one injury but 12 accused persons have been convicted and even the Appellant No.1 had not engaged in repeated blow, hence he had no intention to kill the deceased, thus the present case would fall within the ambit of culpable homicide not amounting to murder. Thus, it is submitted that the judgment and order of conviction and sentence is fit to be set aside.

7. *Per contra*, the learned APP for the State, Sri Dilip Kumar Sinha, has submitted that the Appellant No.1 has given a *lathi* blow on the head of the deceased and the evidence of the Doctor, who has conducted postmortem, i.e. P.W.8 would show that the cause of death is head injury, hence the offence committed by the Appellant No.1 stands corroborated by the

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evidence on record. It is further submitted that as far as lodging of F.I.R. on the basis of written report dated 24.01.2007 is concerned, there is no lacuna inasmuch as after the Police received the written report dated 24.01.2007, the same was forwarded to the Office-in-Charge, Harpur (Adapur) Police Station, whereupon the F.I.R. was registered on 25.01.2007 at 12:30 hours. It is also submitted that the present case arises out of case and counter case. It is contended that the evidence of relatives and family members cannot be discarded, however the same is required to be carefully scrutinized and appreciated before any conclusion is made to rest upon it, regarding the convict / accused in a given case. Thus, it is submitted that the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased and in case, the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can and certainly should be relied upon. Reference, in this connection has been made by the learned APP for the State on a judgment, rendered by the Hon'ble Apex Court in the case of ***Yogesh Singh vs. Mahabeer Singh and Others,*** reported in **(2017) 11 SCC 195**. It is next contended by the learned APP for the State that in the present case, the evidence of prosecution witnesses are credible and trustworthy,

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hence, fit to be relied upon for the purposes of upholding the conviction of the appellants. It is also submitted that in case, direct evidence is available, motive does not play much role. In this connection, reliance has been placed on a judgment, rendered by the Hon'ble Apex Court in the case of ***Shivaji Chintappa Patil v. State of Maharashtra,*** reported in ***(2021) 5 SCC 626***. It is also stated that all the witnesses are eye-witnesses and it is wrong to say that they are not eye-witnesses, as would be apparent from their evidence on record. It is also stated that there is no material contradiction in the evidence led by the prosecution and the evidences of the prosecution witnesses are consistent and cogent. It is next stated that the present case is not a case of 304 Part-II of the IPC since the Appellant No.1 had given three *lathi* blows on the head of the deceased leading to his subsequent death. As far as the Appellants No. 2 to 6 are concerned, they are members of unlawful assembly, hence, they have been convicted under Section 302 of the I.P.C. with the aid of Section 149 of the IPC. Thus, it is submitted by the learned APP for the State that there being no contradictions in the evidence of the prosecution witnesses, who are consistent in their testimony, no interference is required in the judgment of conviction and the order of

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sentence, rendered by the learned Trial Judge, hence the appeal is fit to be dismissed.

8. 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.

9. P.W.1 Baijnath Prasad is the cousin brother of the deceased and he has stated in his deposition that the occurrence dates back to one year and one month at 6:30 am in the morning at which time he was going for easing himself and when he had reached at the door of the house of Ram Darshan Sah, he saw that Shiv Nath Sah had been surrounded by Sri Lal Sah, Om Prakash Sah, Madan Sah, Ambika Sah, Laxman Sah (Appellant No.1), Mahanth Sah (Appellant No.5), Ramekbal Sah (Appellant No.6), Mahavir Yadav, Panna Lal Sah, Sanjay Sah, Inar Sah (Appellant No.2), Bigan Sah and Ajay Sah (Appellant No.4). P.W.1 has further stated that Awadhesh Sah, Ashok Sah, Jawahir Bhagat and Ram Sevak Sah were assaulting by *lathi* and all of them were holding *lathi* in their hands. He has also stated that first of all, Laxman Sah (Appellant No.1) had assaulted Shiv Nath Sah twice by *lathi*, whereafter he had fallen down and then all the people had also assaulted him. Shiv Nath

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Sah had then become unconscious and when alarm was raised, Ram Darsan Sah (P.W.2) had gone there to save him and he was also hit by Awadhesh Sah by *lathi* on his right hand, leading to his hand being fractured. P.W.1 has next stated that the occurrence was witnessed by Manoj Prasad, Ram Ekbal Sah, Santosh Prasad, Hardyal Sah, Mahendra Sah (P.W.3), Hiralal Sah, Ashok Sah and Shravan Sah (P.W.6). Thereafter, several people had come from the village and the injured was taken in an unconscious state to Duncan Hospital but he was referred to PMCH, Patna, since his condition was not good. P.W.1 has also stated that one day earlier to the said occurrence, quarrel had taken place in between the children and then Shiv Nath Sah had informed the Police Station and on account of the same, Mahanth Sah and Ramekbal Sah said that he has crossed his limits. He had recognized the accused persons standing in the dock. In cross-examination, P.W.1 has stated that Ram Balak Sah, Hira Sah and Yadav Lal Sah are his brothers and he is son of Ram Balak Sah. P.W.1 has further stated that Shiv Nath Sah died at Patna and Shravan Sah (P.W.6) had also filed his farbayan there. P.W.1 has stated that he cannot say as to how many accused persons have been named in the said fardbayan, however, in the present case, there are 17 accused persons, who

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are all co-villagers and out of them nine are named in the written report. P.W.1 has also stated in his cross-examination that his statement was recorded by the Police and he had stated before the Police that after the deceased Shiv Nath Sah had fallen down, Mahant Sah (Appellant No. 5), Vijay Sah (Appellant No. 3), Ajay Sah (Appellant No. 4) and others had also assaulted him by *lathi*. P.W.1 has disclosed that the place of occurrence is surrounded by the houses of Kishori Sah, Bhikhari Sah, Ram Darsan Sah (P.W.2) and Ram Surat Tiwari. P.W.1 has also stated that the house of the accused persons is situated at a distance of half kilometer from the place of occurrence and when he reached at the place of occurrence, 8-10 persons were present there, namely Manoj Sah, Hardyal Sah, Mahendar Sah (P.W.3), Vinod Sah, Hiralal Sah, Santosh Sah, Ram Darsan Sah (P.W.2), Shravan Sah (P.W.6), Suresh Sah (P.W.5) and others. At that time Shiv Nath Sah had fallen down on the south side of the road, people had lifted Shiv Nath Sah and were taking him to the Doctor for treatment, whereafter he had also accompanied them. P.W.1 has stated that he had seen injuries on the body of Shiv Nath and innumerable *lathi* blows had been inflicted on the body of Shiv Nath. P.W.1 has next stated that no blood had dropped where Shiv Nath had fallen down and the right hand of

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Ram Darsan (P.W.2) had been fractured, whereafter the same was plastered and he had seen his full hand plastered. P.W.1 has also stated in his cross-examination that he had seen redness on the body and forehead of the deceased Shiv Nath Sah as also on his nose and back, however he had not counted as to at how many places he had received injuries. He has stated that Shiv Nath died after 5-6 days of the incident at Patna. P.W.1 has also stated that Shravan (P.W.6) is brother of Shiv Nath and he was present in the village on the date of occurrence. P.W.1 has next stated that Shravan had also gone to Duncan Hospital to get Shiv Nath treated and he had also accompanied them. He has stated that written report was submitted by Suresh Prasad for lodging F.I.R and the statement of Shravan was recorded at Patna but he cannot say as to whose name he had given in the said statement. P.W.1 has further stated that Shiv Nath did not regain consciousness prior to his death. P.W.1 has also stated that counter case bearing Adapur P.S. Case No.14 of 2007 was filed. P.W.1 has also stated that the treatment of Ram Darsan was done at Adapur but he does not remember as to whether he had seen injuries on the body of Ram Darsan (P.W.2), however he had met Ram Darsan after 5-7 days of the occurrence in the village and then he had only seen plaster on his hand.

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10. P.W.2 Ram Darshan Sah has stated in his deposition that the occurrence dates back to one year and seven months at about 6:30 am in the morning and at that time he was at his house, however upon coming outside his house he saw that Shiv Nath Sah has been surrounded by 17-18 persons, namely, Mohan Sah, Vijay Sah (Appellant No. 3), Ajay Sah (Appellant No. 4), Jawahir Sah, Awadhesh Sah, Ashok Sah, Ramekbal Sah (Appellant No. 6), Ram Sevak Sah, Laxman Sah (Appellant No. 1), Shiv Lal Sah, Om Prakash Sah, Mahavir Yadav, Ambika Sah, Madan Sah, Panna Lal Sah, Inar Sah (Appellant No. 2) and Sanjay Sah. The accused persons were abusing and Awadhesh Sah had ordered to kill, whereafter Laxman Sah (Appellant No. 1) had given three *lathi* blows on the forehead of Shiv Nath Sah, leading to him falling down and when he reached there, he was also assaulted with *lathi* by Awadhesh and then all the accused persons had started assaulting by lathi, fists, slaps and legs. Thereafter, Shiv Nath Sah was taken to the hospital and subsequently, he came to know that after 5-6 days of the date of occurrence, he had died in the hospital. P.W. 2 had recognized the accused persons standing in the dock. In cross-examination, P.W.2 has stated that counter case was filed by Vijay Sah bearing Adapur P.S. Case No. 14 of 2007 in which he and his

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three sons are accused. P.W.2 has further stated that his statement was recorded by the police and he had disclosed the names of Jawahir, Ashok, Srilal, Om Prakash, Mahavir, Panna Lal and Ambika before the police. His statement was recorded by the police in the night of the date of occurrence. P.W.2 has also stated that he does not know where the case was written. P.W.2 has further stated that he had told the police that after hearing *hulla* (Alarm), he had gone to the place of occurrence and there he was also assaulted leading to fracture of his hand. P.W.2 has next stated that he had received injury at one place, which was inflicted by *lathi* and his treatment was done at Adapur. P.W.2 has further stated that he had neither given X-Ray report nor injury report to the Investigating Officer. P.W.2 has also stated in his cross-examination that when he reached the place of occurrence then 18-20 people were present there, Shiv Nath Shah was standing but he did not see any injury on his body and after 3-4 minutes of him having reached there, he had received injury. P.W.2 has further stated that when the accused persons were assaulting Shiv Nath, no body tried to save him and Shiv Nath was assaulted by *lathi*, slaps and legs while he was standing. He has also stated that he cannot state as to on which part of the body of Shiv Nath, injury was inflicted

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and he had not seen the injuries inflicted on him, however, he was inflicted with *lathi* blow on his head on the right temporal region. The second *lathi* blow was inflicted above the neck. P.W.2 has also stated that he did not see any injury over the head of Shiv Nath. He has stated that after being inflicted by third *lathi* blow, he had fallen down. He has also stated that he cannot state as to on which parts of the body of Shiv Nath injury was inflicted apart from head and cannot also state about the number of injuries sustained by him. He has stated that thereafter, the family members had arrived and taken Shiv Nath. P.W.2 has further stated that his treatment was not done in the village and he cannot say as to whether the police had recorded the statement of Shiv Nath or not.

11. P.W.3 Mahendra Sah has stated in his deposition that the occurrence dates back to 8-9 months at about 6:00 am in the morning when he was at his house and after he heard *hulla* (alarm), he reached the house of Ram Darshan (P.W.2) and saw that assault was taking place and Ram Sewak, Ramekbal (Appellant No. 6), Mahanth Sah (Appellant No. 5), Ajay Sah (Appellant No. 4), Vijay Sah (Appellant No. 3), Awadhesh Sah, Ashok Sah, Jawahir Sah, Panna Lal Sah, Sanjay Sah, Inar Sah (Appellant No. 2), Ambika Sah, Madan Sah, Mahavir Raut,

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Laxman Sah (Appellant No. 1), Srilal Sah and Om Prakash Sah were assaulting Shiv Nath Sah. Thereafter, Awadhesh Sah had ordered to kill, whereafter Laxman Sah (Appellant No. 1) had charged with his *lathi* and had assaulted Shiv Nath Sah 2-3 times on his forehead and then all the persons started assaulting him, whereupon he became unconscious. Thereafter, Ram Darshan Sah (P.W.2) was also assaulted and he received a *lathi* blow on his hand which was inflicted by Awadhesh Sah resulting in fracture of his hand. Thereafter, Shiv Nath Sah was taken to Patna and he died there after six days. He has also stated that earlier quarrel had taken place among the children and on account of the said incident, assault had taken place. P.W.3 had recognized the accused persons standing in the dock. In his cross-examination, P.W.3 has stated that there was no prior enmity and from the house of Ram Darshan, his house is situated at a distance of 1-2 house. P.W.3 has further stated that the accused persons had filed a counter case and his statement was recorded after one month of the incident. P.W.3 has also stated that the houses of the accused are situated at a distance of 15-20 houses of the place of occurrence. In his cross-examination, P.W.3 has further stated that he cannot say as to how many people were present at the place of occurrence when

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he had gone there and at that time, Shiv Nath Sah had not fallen on the ground as also he had seen the injuries inflicted on the body of Shiv Nath Sah, which had been inflicted at three places and all the three injuries were distinct. He has stated that immediately after he reached the place of occurrence, Shiv Nath Sah had fallen down upon being hit by lathi. Shiv Nath was hit by three blows of *lathi*. He has also stated that he cannot say as to how many l*athi* blows were inflicted on Shiv Nath. He has next stated that upon falling down, he did not receive injury on his head. P.W.3 has also stated in his cross-examination that 17 people were assaulting by *lathi* and the same continued for 15-20 minutes. He has stated that blood was not oozing out and Shiv Nath had fallen on brick soling road but he had not seen sign of *lathi* blow on his body. He has stated that one *lathi* blow was inflicted on Ram Darshan (P.W.2), who was treated at Duncan Hospital, Raxaul. Shiv Nath had become unconscious and P.W.3 had not talked with him. As far as Ram Darshan is concerned, his hand was plastered for one and a half month. P.W.3 has stated that his statement was recorded after one month. P.W.3 has finally stated that he cannot say as to after how many days of the occurrence, Shravan (P.W.6) brother of Suresh, had filed the case.

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12. P.W.4 Kisnawati Devi is the wife of the deceased and she has stated in her deposition that the occurrence dates back to about two years, the day being Wednesday at about 06:30 in the morning when her husband was going to Gawas (male sitting place). P.W. 4 has further stated that when she had gone in front of the Gawas of the house of Ram Darshan (P.W.2), she saw that 17 persons had surrounded the deceased, namely, Mohan Sah, Vijay Sah (Appellant No. 3), Ajay Sah (Appellant No. 4), Jawahir Sah, Awadhesh Sah, Ashok Sah, Ramekbal Sah (Appellant No. 6), Ram Sevak Sah, Laxman Sah (Appellant No. 1), Shiv Lal Sah, Om Prakash Sah, Mahavir Yadav, Ambika Sah, Madan Sah, Panna Lal Sah, Inar Sah (Appellant No. 2) and Sanjay Sah. Thereafter, Mahanth Sah (Appellant No. 5) had ordered to kill stating that Shiv Nath has given statement against him in the police station, whereupon Laxman Sah (Appellant No.1) had hit her husband with *Fatta* (*bamboo stick*) on his head and upon sustaining injury he fell down and then all the other accused persons started assaulting him by *lathi* (*bamboo stick*). Thereafter, Ram Darshan Sah (P.W.2) came there to save him but he was also assaulted by *lathi* resulting in fracture of his hand. P.W. 4 has further stated that she had also gone to save her husband but she was pushed and then she had raised an alarm

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whereupon Mahendra (P.W.3), Santosh, Vinod and Suresh (P.W.5) had arrived there and then the accused persons had fled away. P.W.4 has next stated that her husband was taken to Duncan Hospital for treatment where the Doctor had asked to take him to another place and at that time her husband was not conscious. P.W. 4 has also stated that her husband was then taken to PMCH, Patna and during the course of treatment, he died after 5-6 days. She had recognized the accused persons standing in the dock. In her cross-examination, P.W. 4 has stated that she had given her statement before the police and had taken the name of Om Prakash and Ambika and had also stated in her statement that Laxman (Appellant No.1) had assaulted her husband twice by l*athi*. She has also stated that her statement was recorded after two days of the incident and the police had made enquiries from her only once. She has also stated that after the occurrence she did not get any chance to talk to her husband. She has stated that there was no enmity with her husband. She has also stated that Gawas is situated at a distance of 2-3 bamboo length from the house of Ram Darshan (P.W.2) towards the east. She has next stated that firstly, her brother-in-law Suresh had filed a case against nine accused at Harpur Police Station and after 6 days, Shravan Sah (P.W.6) had filed a case

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against 15 persons. P.W. 4 has also stated that on the date of occurrence Shravan was not there and he came afterwards. She has stated that near the place of occurrence, houses of Ram Darshan (P.W.2) and Kishori Sah are situated. She has also stated that she stays at her house and at Gawas where one buffalo also stays. In paragraph No. 4 of her cross-examination, P.W.4 has stated that at the time of going towards the place of occurrence her husband was moving in the front and she was following him and then her husband was surrounded by the accused persons and assaulted, whereafter he had fallen down on the ground. She has also stated that when she reached near her husband, he had become unconscious and at that time, 20-25 people had surrounded her husband. She has next stated that when the accused persons were assaulting him, Ram Darshan (P.W.2) was not present there and when she had raised alarm then Ram Darshan had arrived after 10 minutes. Thereafter, Ram Darshan (P.W.2) had lifted Shiv Nath and taken him to hospital. P.W.4 has also stated that before Ram Darshan (P.W.2) had come, Santosh and others had already arrived. P.W.4 has also stated that her husband had received three injuries on his forehead. She has also stated that injuries were also present all over the body. P.W.4 has also stated that blood had not fallen

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from the body of Shiv Nath and after his death she had seen his dead body but she cannot say as to at what places injuries had been inflicted since medicine had been applied on the injuries. She has also stated that her husband died in the hospital and after the occurrence, he had not regained consciousness.

13. P.W.5 Suresh Prasad, who is the brother of the deceased and is the informant of this case has stated in his deposition that the occurrence dates back to 24.01.2007 at about 06:30 am in the morning when he was at the door of his house, Shiv Nath was coming back after easing himself and when he had reached at the door of the house of Ram Darshan, the accused persons, namely, Laxman Sah (Appellant No. 1), Sri Lal Sah, Om Prakash Sah, Mahanth Sah (Appellant No. 5), Bigan Sah, Ajay Sah (Appellant No. 4), Ram Sevak Sah, Ramekbal Sah (Appellant No. 6), Jawahir Sah, Awadhesh Sah, Ashok Sah, Panna Lal Sah, Inar Sah (Appellant No. 2), Mangal Sah, Madan Sah, Ambika Sah and Mahavir Yadav were already present there from before, armed with *lathi* and *fatha*. Thereafter, Awadhesh and Mahanth (Appellant No. 5) ordered to kill Shiv Nath since he had called police, whereafter Laxman (Appellant No.1) had given 2-3 *lathi* blows on the head of Shiv Nath and then he had fallen down, whereupon all the accused persons had also

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assaulted him, however when Ram Darshan (P.W.2) had gone to save him, he was also hit by *lathi* resulting in his right hand being fractured. In the meantime, several persons had arrived there resulting in the accused persons fleeing away. The condition of the brother of P.W.5 had become serious, thus he was taken to Duncan Hospital where the Doctor had referred him to PMCH, Patna and then he was taken to PMCH, Patna where he died after six days during the course of treatment. P.W.5 has further stated that the *fardbeyan* was scribed by Meghnath Prasad and after writing the same, he had read it over to him and then he had put his signature over the same, which he has identified and has been marked as Exhibit-1. PW-5 has also stated that one day prior to the incident, the Officer-in-Charge had come on account of quarrel having taken place in between the children. In cross-examination, P.W.5 has stated that a counter case has been filed by Vijay Sah in which he is an accused. He has also stated that Shravan Sah had also filed a case at Harpur Police Station and has also filed one case at Patna in connection with the present incident on 31.01.2007. P.W. 5 has next stated that the case was filed in the Police Station on the basis of his written report, which was scribed by Meghnath Prasad and was filed on 24.01.2007 at about 9:00 pm

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before the police. He has next stated that the Police Station is at a distance of one and a half kilometers from his house and he had filed written report against 17 persons. P.W.5 has also stated in his cross-examination that Ram Darshan (P.W.2) is his brother, witness Baijnath (P.W.1) is his cousin brother and Ram Ekbal's son is Santosh, both of whom are accused in the case filed by him. P.W.5 has also stated in his cross-examination that witness Ram Darshan (P.W.2) is his cousin brother. He has stated that counter case was filed on the same day. P.W.5 has next stated that near the place of occurrence, houses of Kishori Sah, Bikhari Sah, Ram Surat Tiwari, Bahadur Pandit, Dhruv Sah, Ramashish Mahto and Ramanand Raut are present, however, they are not witnesses in the present case. In paragraph-10 of his cross-examination, P.W.5 has stated that when he reached at the place of occurrence, Shiv Nath Sah was standing and there was no injury on his body, however after receiving injury, he had fallen down and had been inflicted with 3-4 *lathi* blows on his head. He has also stated that all the accused persons were assaulting Shiv Nath Sah by *lathi* repeatedly, however he has stated that he cannot say as to how many *lathi* blows were inflicted on Shiv Nath Sah. He has also stated that *lathi* blows were inflicted on Shiv Nath Sah for five

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minutes, however he has stated that he cannot say as to whose *lathi* had hit Shiv Nath Sah at which part of the body. He has next stated that after being inflicted by *lathi* blows, Shiv Nath Sah had become unconscious. He has also stated that blood was not present on his clothes. Thereafter, Hardyal, Mahendar, Vinod, Manoj, Devi Lal, Ramekbal and Santosh had lifted Shiv Nath and taken him to Duncan hospital where the Doctor had put bandage on the wounds. He has also stated that they had gone to the hospital by Tata Sumo and Baijnath (P.W.1), Shravan (P.W.6), Manoj and Devilal had also gone to the hospital. P.W.5 had also gone up to Raxaul i.e Duncan hospital, where the police had not recorded the statement and on the same day, Shiv Nath was referred to PMCH, Patna. He has also stated that Meghnath is resident of Harpur.

14. P.W.6 Shravan Sah has stated in his deposition that the occurrence dates back to two years and five months at about 6:30 am in the morning when he was coming back after easing himself and when he had reached near the house of Ram Darshan Sah (P.W.2), the accused persons had caught hold of his elder brother Shiv Nath Sah and Radhe Sah had ordered to kill him, whereupon Laxman Sah (Appellant No. 1) had hit on the head of Shiv Nath and then Mahanth Sah (Appellant No. 5),

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Ajay Sah (Appellant No. 4), Vijay Sah (Appellant No. 3), Ram Sevak Sah, Ramekbal Sah (Appellant No. 6), Om Prakash Sah, 17 accused in all had also assaulted Shiv Nath, whereupon his brother Shiv Nath had fallen down and then he was taken to Duncan hospital where he was referred to PMCH, Patna and there he died after six days. He has stated that on account of altercation having taken place between the children of the parties, the present occurrence has taken place. He has next stated that the inquest report was prepared by the police, which has been signed by him and the same has been marked as Exhibit-2 with objection. P.W.6 has also stated that Suresh Prasad (informant) is his brother and the deceased Shiv Nath Sah was his elder brother. P.W.6 has also stated that he cannot say as to against how many persons FIR has been lodged. P.W.6 has also stated that at the time when Suresh Prasad had filed the case, he was outside and he had come to his house in the evening at about 4:00 pm, whereafter he had then inquired about the incident and then he had gone to Raxaul where Shiv Nath was admitted, however he did not talk with Shiv Nath. P.W.6 has next stated that the informant is brother of the deceased and after six days he had also filed a case at Patna. He has also stated that he had not gone to Raxaul along with the deceased.

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He has stated that Shiv Nath Sah was taken to Raxaul in an injured condition by Suresh Prasad (P.W.5), Baijnath and 2-4 other persons. He has stated that he had gone to see Shiv Nath Sah at Raxaul hospital and when he was referred to Patna, he had also gone to Patna. He has also stated that his statement was recorded at 10:00 am in the morning and he had stated in his statement made before the police that on account of Saraswati Puja, quarrel had taken place in between the children leading to the present incident. He has also stated that he was with the deceased till his death and injuries were present all his body. P.W.6 has further stated that postmortem of the deceased was conducted at Patna. He has also stated that Devi Lal's son is one of the witness of this case.

15. P.W.7 Ganesh Ram is the Investigating Officer of the present case and he has stated in his deposition that on 24.01.2007, he was posted as Officer-in-charge of Harpur Police Station and on that day at 9:00 pm he had received the written report of the informant, namely Suresh Prasad, whereafter he had forwarded the same to Adapur Police Station for registration of formal FIR and had also assumed the investigation of the said case. P.W.7 has proved the formal FIR as also has identified the signature of the Officer-in-charge, which has been marked as

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Exhibit-3. P.W.7 has also stated that after assuming investigation, he had recorded the restatement and at 23:15 hours he had reached at the place of occurrence, whereafter he had recorded the statement of witness, namely Ram Darshan Sah (P.W.2). On 25.1.2007, he had again gone to village Harpur at 9:20 am and had recorded the statement of the witnesses. P.W.7 has stated that he had also recorded the statement of witnesses, namely Baijnath Prasad (P.W.2), Ram Ekbal Sah, Santosh Sah, Ramji Sah and Vinod Sah. Again on 26.01.2007, he had gone to the house of Shiv Nath Sah and recorded the statement of witnesses Kisnawati Devi (P.W.4), Baban Prasad, Hira Lal Sah and Hardyal Sah. On 31.01.2007, during the course of investigation, he came to know that treatment of Shiv Nath Sah was being carried out at PMCH and he had died there during the course of treatment on 30.01.2007. On 5.02.2007, he had filed an application for adding Section 302 of the IPC. On 12.02.2007, he had received postmortem report of the deceased and on 13.02.2007, the fardbeyan of the brother of the deceased namely, Shravan Sah was recorded at PMCH by Police Officials of Pirbahore Police Station, Patna, which was received by him. On 22.02.2007, he had recorded the statement of Shravan Sah (P.W.6) and Mahendra Sah (P.W.3). P.W.7 has next stated that he

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had filed charge-sheet against the accused persons under Sections 147,148,149,341,323,325 and 302 of the IPC on 01.07.2007. In cross-examination, P.W.7 has stated that at 23:15 hours on the date of incident, he had seen Ram Darshan Sah (P.W.2), however he has stated that he does not know as to whether his treatment was done or not, nonetheless, he has recorded his statement. P.W.7 has also stated that in the written report, names of 9 accused persons have been written. In paragraph No. 5 of his cross-examination, P.W.7 has stated that according to paragraph No. 1 of the case diary, written report was submitted on 24.01.2007 at 9:00 pm in the night and FIR was registered on 25.01.2007 at 12:30 pm. P.W.7 has also stated that during the course of investigation, he had not met Shiv Nath. In paragraph No. 8 of his cross-examination, P.W.7 has stated that in his restatement, informant has stated that Laxman (Appellant No. 1) had inflicted 2-3 *lathi* blows on the head of the deceased and he has also stated that after he had fallen down, other accused persons namely, Mahanth (Appellant No. 5), Ramekbal (Appellant No. 6), Inar Sah (Appellant No. 2), Vijay Sah (Appellant No. 3) and others had also assaulted the deceased by *lathi*. He has also stated that during the course of investigation, he had not received any injury report from

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Duncan Hospital. He has next stated that in paragraph No. 6 of the case diary, he had recorded the statement of Ram Darshan Sah (P.W.2), wherein he had stated that the deceased was being assaulted by Laxman Sah (Appellant No. 1), Awadhesh Sah, Mahanth Sah (Appellant No. 5), Vijay Sah (Appellant No. 3), Ajay Sah (Appellant No. 4), Ramekbal Sah (Appellant No. 6), Sanjay Sah, Inar Sah (Appellant No. 2) and Ram Sevak Sah, who had surrounded the deceased. P.W.7 has also stated that in the case diary, he has not mentioned about the injury sustained by Ram Darshan Sah, however, after the deceased had fallen down, Mahanth Sah (Appellant No. 5), Vijay Sah (Appellant No. 3), Ajay (Appellant No. 4), Inar (Appellant No. 2) and others had assaulted the deceased. P.W.7 has stated that in paragraph No. 20, it has been recorded that Ramji Sah had stated that when he reached the place of occurrence, all the accused persons had fled away. In paragraph No. 30, the statement of Kisnawati Devi has been recorded, wherein she has stated that after she had raised alarm, other witnesses had arrived and when Ram Darshan Sah had come to save the deceased, Awadhesh had inflicted a *lathi* blow on his hand resulting in fracture of his hand. She has stated that upon alarm being raised by her other villagers namely, Santosh, Manoj etc.

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had arrived. P.W.7 has referred to paragraph No. 124 of the case diary to state that counter case had also been filed.

16. P.W.8 Dr. Arun Kumar Singh is the Assistant Professor, Forensic Department of Patna Medical College and Hospital. P.W.8 has stated in his deposition that on 31.01.2007, he was posted as Tutor in Patna Medical College and on the same day, he had conducted the postmortem examination of the dead body of Shivnath Sah, which had commenced at 1:00 pm. The findings of P.W.8 are as follows:-

> ***"External appearance***
>
> *Average built rigor-mortis present all over. Foley's Catheter present. Right eye blacken.*
>
> ***Following ante-mortem, external and internal injuries were found on the dead body of the deceased:-***
>
> *No. 1- One healed abrasion 1 ½" x ½" on front of nose. On dissection, there was hematoma under scalp in both frontal, both parietal and both temporal region on head. There was comminuted fracture of left frontal, left temporal, left parietal, right parietal and right temporal bones. There was separation of calomel suture also. There was extradural hematoma 4 ½" x 3 ½" on left frontal, left temporal, left parietal region of brain. Brain was congested. Heart contained little blood on right side, left empty. Stomach contained greenish fluid about 100 ml. All other viscera were found congested. Bladder*

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empty.

Opinion

(1). Time since death 06 to 24 hours from the time of postmortem examinations.

(2). Cause of death head injury.

(3). Nature of violence hard and blunt substance and its impact."

P.W.8 has further stated that the Postmortem report was written by him and bears his signature, which he has identified and has been marked as Exhibit- 4. In cross-examination, P.W.8 has stated that he had found one healed 1½" x ½" abrasion on the outer part of the nose of the body of the deceased, however he had not found any other external injury on the body of the deceased. He has also stated that if assault is made by lathi on head, external injury will not be inflicted, however it may also be inflicted. In paragraph No. 7 of his cross-examination, P.W.8 has stated that in case of presence of lot of hair on the head or cloth (turban) being present on the head, external injury is not seen. He has also stated that it takes one month to resolve hematoma. He has also stated that hematoma can be formed even by falling on hard substance or hitting a hard substance. P.W.8 has next stated that he has not found any external injury on the head of the deceased and he had not stated in his

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postmortem report as to what type of weapon was used.

17. P.W.9 Dr. S.K. Paswan is the Doctor, who had examined the injured witness, namely Ram Darshan Sah (P.W.2). P.W. 9 has stated in his deposition that on 25.01.2007, he was posted at Primary Health Centre, Adapur and on that day at about 1:45 pm, he had examined Ram Darshan Sah and found the following injuries:-

> *"(1). Swelling 3" x 2" near lower end of lower ulna.*
>
> *X-Ray A.P. & lateral view shows evidence of lower end of ulna bone.*
>
> *(2). Age of injuries- within 24 hours.*
>
> *(3). Nature of injuries- Grievous in nature, hard and blunt substance."*

P.W.9 has identified the injury report, which he has stated is in his writing as also he has identified his signature made over the same and the same has been marked as Exhibit No. 5. In cross-examination, P.W.9 has stated that on the injury report, neither thumb impression nor signature of the injured is present. He has also stated that even if a person falls on his hand, such type of injury can be caused. P.W.9 has next stated that in his injury report, reference of X-Ray plate has not been made since technician does not give his report and at the moment, X-Ray is not present before him.

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18. After closing the prosecution evidence, the learned Trial Court recorded the statement of the appellants on 24.07.2015 under Section 313 of the Cr.P.C. for enabling them to personally explain the circumstances appearing in the evidence against them, however they claimed themselves to be innocent, nonetheless in reply to a question being put to them as to what they have to say in their defense, they answered that they have to say nothing.

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

20. A bare perusal of the evidence of the prosecution reveals that on 24.1.2007 at 6:30 am in the morning, the elder brother of Suresh Prasad (the informant), namely Shiv Nath Prasad (deceased), was coming after easing himself and when he had reached at the door of the house of Ram Darshan Sah (P.W.2), the appellants herein and other accused persons had surrounded him, who were sitting there from before, whereafter Laxman Sah (Appellant No. 1) had given *lathi* blows on the forehead of the deceased Shiv Nath Prasad resulting in him sustaining

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injuries and falling down on the ground, whereupon the Appellants No. 2 to 6 and others had also assaulted the deceased Shiv Nath Prasad with *lathi* and *fatta* leading to the deceased Shiv Nath Prasad becoming unconscious and then Ram Darshan Sah (P.W. 2) had intervened to save the deceased, however the accused person, namely Awadhesh Sah had given a *lathi* blow on his right hand leading to his right hand being fractured. In fact, other family members and co-villagers had also arrived at the place of incident and had watched the occurrence. The deceased Shiv Nath Prasad was taken to Duncan Hospital at Raxaul, but he was referred to PMCH, Patna where he died during the course of treatment after 5-6 days of the incident. At this juncture, it would be relevant to mention that P.W.1 Baijnath Prasad, P.W. 2 Ram Darshan Sah, P.W.3 Mahendra Sah, P.W. 4 Kisnawati Devi, P.W. 5 Suresh Prasad and P.W. 6 Shravan Sah are the eye-witnesses to the aforesaid occurrence and they have deposed consistently with regard to the overtact engaged in by the appellants herein and others, which has also stood the test of cross-examination. It is a well-settled law that minor discrepancies, if any, in the prosecution's evidence being insignificant in nature, cannot have any effect on the case of the prosecution in case of overwhelming incriminating evidences

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adduced at the trial to establish the guilt of the appellants.

21. The prosecution's narrative in the FIR is fully supported by the ocular evidence adduced at the trial and the ocular evidence is corroborated by the medical evidence, inasmuch as the Doctor has categorically stated in his evidence that the cause of death is head injury caused by hard and blunt substance.

22. In fact, the appellants have not been able to show any material contradiction in the statement of the witnesses, inasmuch as though the statements made by the witnesses under Section 161 Cr.P.C. were put to P.W.7 Ganesh Ram (Investigating Officer) to elicit his response, however a bare perusal of the evidence of P.W.7 would show that as far as P.W. 1 is concerned, no contradiction could be extracted, inasmuch as P.W.7 has stated in his evidence that P.W.1 had told him that Laxman Sah (Appellant no.1) had inflicted 2-3 *lathi* blows on the head of the deceased and when he fell down, others had also assaulted him by *lathi* and *fatta*. As far as P.W.2 is concerned, P.W.7 has stated in his evidence that he had stated before him that the deceased was assaulted by the appellants. As regards P.W. 4 (Kisnawati Devi), P.W.7 has stated in his evidence that when she had raised an alarm, other witnesses had arrived. However, as far as P.W.3, P.W.5 and P.W.6 are concerned, their

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statement made under Section 161 Cr.P.C. were not put to P.W. 7 (Investigating Officer) to elicit his response. Thus, considering the ocular evidence of the prosecution witnesses, which has stood the test of cross-examination, in our opinion, minor discrepancies in their evidence cannot affect the prosecution case, hence the prosecution witnesses do not appear to be untrustworthy.

23. Now coming to the submissions made by the learned Senior Counsel for the appellants, we find that he has argued vehemently that the written report dated 24.1.2007, submitted by the informant leading to lodging of the FIR on 25.1.2007 is not the earliest version since firstly, the same is not in his writing and secondly, the scribe of the said written report, namely Meghnath Prasad has not been examined by the prosecution, apart from the fact that the written report dated 24.1.2007 does not even contain any recital to the effect that the FIR was read over to the informant, who had understood the same and had then put his signature after finding the same to be correct. We find that unnecessary efforts have been made to create a lacuna, but the fact remains that the informant, namely Suresh Prasad (P.W.5), has stated in his evidence that the written report was though scribed by Meghnath Prasad, but the same

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was read over to him and then after understanding the same, he had put his signature over the same, which has duly been identified and has been marked as Exhibit-1. Another aspect of the matter is that no question has been put to the witness, especially to the informant i.e. P.W.5 in cross-examination regarding untruthfulness of the written report and that the same is fabricated, hence the unchallenged part of the evidence of a witness has to be relied upon. It is a well-settled law that in absence of question being put to the witness in cross-examination to a particular fact and circumstance, the unchallenged part of the evidence of such a witness is to be relied upon. Reference, in this connection, be had to a judgment, rendered by the Hon'ble Apex Court in the case of ***Gian Chand & Others vs. State of Haryana***, reported in **(2013) 14 SCC 420**, as also to a judgment rendered by the Hon'ble Apex Court in the case of ***Laxmibai vs. Bhagwantbuva***, reported in **(2013) 4 SCC 97**, paragraph no. 40 whereof is reproduced herein below:-

> *"40. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not*

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possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination-in-chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses."

24. We also find that as far as lodging of FIR on the basis of written report dated 24.1.2007 is concerned, there is no lacuna, inasmuch as after the police had received the written report dated 24.1.2007 at 9:00 pm, the same was forwarded to the Officer-in-Charge, Harpur (Adapur) Police Station, whereupon the FIR was immediately registered on 25.1.2007 at 12:30 hours and then, the same was sent to the Court on 27.1.2007. Thus, we

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find that the argument advanced by the learned Senior Counsel for the appellants that the earliest version of the incident in question has been withheld merits no consideration.

25. The learned Senior Counsel for the appellants has next tried to impeach the credibility of the prosecution witnesses and has submitted that they are actually not eye-witnesses, inasmuch as they had arrived at the place of occurrence much after the occurrence had taken place. It has been submitted that as far as P.W. 4 Kisnawati Devi is concerned, she has stated in her evidence that after she raised *hulla*, Mahendra Sah (P.W.3), Santosh, Binod and Suresh (P.W.5) had arrived there. It has also been submitted that P.W.4 has stated in her evidence that when she had reached the place of occurrence, her husband had become unconscious, meaning thereby that she was also not present at the time her husband was being assaulted. As far as P.W.6 Shravan Sah is concerned, it has been submitted that he has stated in his evidence that when Suresh Sah had filed the case he was outside and had returned home in the evening, thus, P.W.6 is also not an eye-witness. It is also submitted that most of the witnesses have been examined by the police after lapse of considerable time of the occurrence and moreover, the prosecution story does not corroborate with the medical

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evidence. It is also submitted that the motive of the occurrence has not been proved, thus in nutshell, the case of the appellants is that the evidence of the prosecution witness would show that none of them are eye-witnesses, hence their evidence cannot be said to be credible or trustworthy, thus the conviction of the appellants is fit to be set aside. We find from a bare perusal of the evidence of the prosecution that the prosecution witnesses have deposed consistently with regard to the overtact engaged in by the appellants and others, which has also stood the test of cross-examination, hence minor discrepancies in their evidence cannot effect the prosecution case, especially since we have already come to a conclusion that the prosecution witnesses do not appear to be untrustworthy. As far as P.W. 4 is concerned, she has stated in her evidence that while her husband was moving in front she was following him and she had seen the appellants assaulting her deceased husband, which has also stood the test of cross-examination, thus minor contradiction would not impact the case of the prosecution. As far as P.W. 5 i.e. the informant, Suresh Prasad, is concerned he has also stated in his evidence that he had witnessed the incident and had seen the appellants assaulting the deceased Shiv Nath, which has also stood the test of cross-examination. As regards P.W.6 Shravan

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Sah, we find that he has consistently stated in his evidence that after he was coming back after easing himself and had reached the house of P.W. 2, the appellants and others had caught hold of the deceased Shiv Nath and then the Appellant No. 1 had hit on the head of the deceased, whereafter the other accused persons had assaulted the deceased, however the appellants are seeking to take advantage of the statement made by him in his evidence to the effect that he was outside when Suresh had filed case but we find that the incident had taken place at 6:30 am in the morning of 24.1.2007, whereafter the written report was filed at 9:00 pm on the same day, hence there is no discrepancy in the statement of P.W.6. Thus, we find that the appellants have failed to show that P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and P.W.6 are not eye-witness to the incident in question. In fact, all the prosecution witnesses have deposed consistently and there is no material contradiction in their evidence, apart from the fact that they have also stated in their evidence to be eye-witness to the alleged occurrence, hence we find that the evidence of prosecution witnesses are credible and trustworthy being consistent and cogent, thus, is fit to be relied upon to establish the guilt of the appellants. It is a well-settled law that in case, direct evidence is available, motive does not play much role. We

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also find that the witnesses have consistently deposed that the accused Awadhesh Sah had assaulted P.W. 2 Ram Darshan Sah on his right hand leading to his right hand being fractured. We further find that the ocular evidence is fully supported by the medical evidence.

26. Yet another aspect of the matter, which has been canvassed by the learned Senior Counsel for the appellants is that though there is one external injury on the body of the deceased, but 12 accused persons have been convicted and even the Appellant No. 1 had not engaged in repeated blow, hence he had no intention to kill the deceased, thus the present case would fall within the ambit of culpable homicide, not amounting to murder. In this regard we find by going through the evidence of P.W. 8 Dr. Arun Kumar Singh, who had conducted the postmortem examination of the dead body of the deceased Shiv Nath Sah that though externally one healed abrasion 1 ½" x ½" was found on front of nose, however on dissection, there was hematoma under scalp in both frontal, both parietal and both temporal region on head. There was comminuted fracture of left frontal, left temporal, left parietal, right parietal and right temporal bones. There was extradural hematoma 4 ½" x 3 ½" on left frontal, left temporal, left parietal region of brain and brain

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was congested. Thus several grievous injuries were found on dissection.

In fact, P.W.8 has opined that the cause of death is head injury caused by hard and blunt substance. We also find that the prosecution witnesses have consistently deposed that 2-3 *lathi* blows were inflicted by the Appellant No. 1 resulting in the deceased sustaining injuries and falling down on the ground, whereafter all the other appellants and other accused persons had assaulted the deceased by *lathi* and *fatta*. Thus, we find that on account of Appellant No. 1 having repeatedly assaulted the deceased by *lathi* on his forehead resulting in hematoma and fracture at several places on the head / skull, as is apparent from the postmortem report, the deceased Shiv Nath Prasad died, hence the deceased was not only assaulted brutally by Appellant No. 1 but also by others including the appellants No. 2 to 6. Nonetheless, we find that it is a settled law that in cases where a large number of accused persons constituting an unlawful assembly are alleged to have attacked and killed one or more persons, it is not necessary that each of the accused should inflict fatal injuries or any injury at all and by invoking Section 149, the members of an unlawful assembly can be punished on the ground of vicarious liability even though they are not

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accused of having inflicted fatal injuries. Reference, in this connection, be had to a judgment, rendered by the Hon'ble Apex Court in the case of ***Nitya Nand vs. State of Uttar Pradesh & Anr.,*** reported in **(2024) 9 SCC 314**, paragraphs no. 41 to 48 are reproduced herein below:-

> *"41. Section 141 IPC defines "unlawful assembly". It says an assembly of five or more persons is designated as unlawful assembly if the common object of the persons composing that assembly is to commit an illegal act by means of criminal force.*
>
> *42. As per Section 148 IPC which deals with rioting armed with deadly weapon, whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. "Rioting" is defined in Section 146IPC. As per the said definition, whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.*
>
> *43. This brings us to the pivotal section which is Section 149IPC. Section 149IPC says that every member of an unlawful assembly shall be guilty of the offence committed in prosecution of the common object. Section 149IPC is quite categorical. It says that if an offence is*

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committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of committing of that offence, is a member of the said assembly; is guilty of that offence. Thus, if it is a case of murder under Section 302IPC, each member of the unlawful assembly would be guilty of committing the offence under Section 302 IPC.

44. In Krishnappa v. State of Karnataka [Krishnappa v. State of Karnataka, (2012) 11 SCC 237 : (2013) 1 SCC (Cri) 621] , this Court while examining Section 149IPC held as follows : (SCC p. 243, paras 20-21)

> *"20. It is now well-settled law that the provisions of Section 149IPC will be attracted whenever any offence committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or when the members of that assembly knew that offence is likely to be committed in prosecution of that object, so that every person, who, at the time of committing of that offence is a member, will be also vicariously held liable and guilty of that offence. Section 149IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. This principle ropes in every member of the assembly to be guilty of an offence where that offence is committed by any*

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member of that assembly in prosecution of common object of that assembly, or such members or assembly knew that offence is likely to be committed in prosecution of that object.

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

45. Thus, this Court in Krishnappa case [Krishnappa v. State of Karnataka, (2012) 11 SCC 237 : (2013) 1 SCC (Cri) 621] held that Section 149 IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. By application of this principle, every member of an unlawful assembly is roped in to be held guilty of the offence committed by any member of that assembly in prosecution of the common object of that assembly. The factum of causing injury or not causing injury would not be relevant when an accused is roped in with the aid of Section 149IPC. The question which is relevant and which is required to be answered by the court is whether the accused was a member of an unlawful assembly and not whether he actually took part in the crime or not.

46. As a matter of fact, this Court in Vinubhai

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Ranchhodbhai Patel v. Rajivbhai Dudabhai Patel [Vinubhai Ranchhodbhai Patel v. Rajivbhai Dudabhai Patel, (2018) 7 SCC 743 : (2018) 3 SCC (Cri) 340] has reiterated the position that Section 149IPC does not create a separate offence but only declares vicarious liability of all members of the unlawful assembly for acts done in common object. This Court has held : (SCC pp. 752-53 & 756, paras 20, 22 & 34)

> *"20. In cases where a large number of accused constituting an "unlawful assembly" are alleged to have attacked and killed one or more persons, it is not necessary that each of the accused should inflict fatal injuries or any injury at all. Invocation of Section 149 is essential in such cases for punishing the members of such unlawful assemblies on the ground of vicarious liability even though they are not accused of having inflicted fatal injuries in appropriate cases if the evidence on record justifies. The mere presence of an accused in such an "unlawful assembly" is sufficient to render him vicariously liable under Section 149IPC for causing the death of the victim of the attack provided that the accused are told that they have to face a charge rendering them vicariously liable under Section 149IPC for the offence punishable under Section 302IPC. Failure to appropriately invoke and apply Section 149 enables large number of offenders to get away with the crime.*
>
> *22. When a large number of people gather together*

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

34. For mulcting liability on the members of an

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

47. It is true that there are certain lacunae in the prosecution. The scribe Kuldeep was not examined. Similarly, the younger brother Laxmi Narain was not examined though it has come on record that Laxmi Narain was killed in the year 1993 and in that case one of the accused is the appellant himself. It is also true that neither any country-made pistol was recovered nor any cartridge, empty or otherwise, recovered. However, the appellant has been roped in with the aid of Section 149IPC. Therefore, as held by this Court in Yunis v. State of M.P. [Yunis v. State of M.P., (2003) 1 SCC 425 : 2003 SCC (Cri) 341] , no overt act is required to be imputed to a particular person when the charge is under Section 149IPC; the presence of the accused as part of the unlawful assembly is sufficient for conviction. It is clear from the evidence of PW 1 and PW 2 that the appellant

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was part of the unlawful assembly which committed the murder. Though they were extensively cross-examined, their testimony in this regard could not be shaken.

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

27. We thus find from the evidence of the prosecution witnesses that all the accused persons including the Appellants No. 2 to 6 were members of unlawful assembly and the offence in question was primarily committed by Appellant No. 1 leading to death of Shiv Nath Prasad, as also by the other accused persons including the Appellants No. 2 to 6, who are members of the unlawful assembly, in prosecution of the common object of that assembly, hence all the accused persons including the appellants, who were member of the said unlawful assembly at the time of commission of the offence in question, are definitely guilty of that offence i.e. the one under Section 302 of the IPC by invocation of Section 149 of the IPC. Thus, even though the deceased had died primarily on account of fatal blow inflicted by the Appellant No. 1, nonetheless the appellants No. 2 to 6 and other accused persons are liable to be convicted under

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Section 302 of the IPC with the aid of Section 149 IPC, keeping in view the law laid down by the Hon'ble Apex Court in the case of ***Nitya Nand*** (supra). Now coming to the conviction of the appellants under Section 147 IPC, this Court finds that rioting has been defined under Section 146 of the IPC, which reads as follows:-

> *"146. Rioting- Whenever force or violence is used by an unlawful assembly, by any members would be, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting."*

Section 141 IPC defines unlawful assembly as an assembly of five or more persons, if the common object of the persons composing that assembly is to commit an illegal act by means of criminal force. Section 147 provides for punishment of rioting. This Court finds, considering the evidence led by the prosecution that the appellants have rightly been convicted under Section 147 IPC. We also find that the present case will not fall within the ambit of Section 304 Part-II of the IPC since the Appellant No. 1 had given repeated *lathi* blows on the head of the deceased leading to his subsequent death and as far as the Appellants No. 2 to 6 are concerned, they being members of unlawful assembly, they have rightly been convicted under

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Section 302 of the IPC with the aid of Section 149 of the IPC.

28. Considering the facts and circumstances of the present case and the evidence, which has been brought on record to prove the allegations levelled against the appellants beyond pale of any reasonable doubt as well as considering the credibility and trustworthiness of the evidence of the prosecution, which has not been discredited during the course of cross-examination coupled with the postmortem report and for the reasons mentioned hereinabove, we find that there is no reason to create any doubt in our minds. We have examined the materials available on record and do not find any apparent error in the impugned judgment of conviction and order of sentence, hence, the same does not require any interference.

29. Accordingly, the present appeal i.e. Criminal Appeal (DB) No. 1160 of 2016 stands dismissed.

30. In view of the fact that the present appeal has stood dismissed, the bail bonds of Appellants No. 2 to 6, who were granted bail during the pendency of the present appeal by an order dated 21.12.2016, are hereby cancelled and they are directed to surrender before the learned Trial Court for being sent to jail for serving the remaining sentence. As far as Appellant No. 1, namely, Laxman Sah, is concerned, he is

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already in custody, hence, he is directed to serve the remaining sentence.

I agree. **(Mohit Kumar Shah, J)**

Nani Tagia, J :

(Nani Tagia, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	10.02.2025
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