IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No. 131 of 2016

Arising Out of PS. Case No.-197 Year-2013 Thana- BAGAHA District- West Champaran

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1. Sukai Mahto @ Shukai Mahto Son of Late Lalbabu Mahto, resident of Village - Kotawakapardhika, P.S.- Bagaha, District - West Champaran
2. Arbind Mahto Son of Sharma Mahto, resident of Village- Kotawakapardhika, P.S.- Bagaha, District - West Champaran
3. Moti Mahto @ Motilal Mahto Son of Late Jagarnath Mahto, resident of Village - Kotawakapardhika, P.S.- Bagaha, District - West Champaran
4. Shambhu Mahto @ Shukul Mahto Son of Sharma Mahto, resident of Village - Kotawakapardhika, P.S.- Bagaha, District - West Champaran

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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with

CRIMINAL APPEAL (DB) No. 176 of 2016

Arising Out of PS. Case No.-197 Year-2013 Thana- BAGAHA District- West Champaran

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Chhota Mahto S/o Late Lalbabu Mahto, resident of Village - Kapardhika, P.S. - Bagaha, District - West Champaran.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance:
(In CRIMINAL APPEAL (DB) No. 131 of 2016)

For the Appellant/s : Mr. Ram Chandra Sahni, Advocate

For the Respondent/s : Ms. S.B. Verma, APP

(In CRIMINAL APPEAL (DB) No. 176 of 2016)

For the Appellant/s : Mr. Ram Chandra Sahni, Advocate
For the Respondent/s : Ms. S.B. Verma, APP

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

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

Date: 04-09-2025

The aforesaid appeals preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "CrPC") arise out of the same judgment of conviction and order of sentence dated 17.12.2015 and 18.12.2015 respectively, passed in Sessions Trial No. 267 of 2014 (arising out of Bagaha P.S. Case No.197 of 2013), by the learned 3rd Additional Sessions Judge, Bagaha (hereinafter referred to as the "learned Trial Judge"), hence these appeals have been heard together and are being disposed off by the present common judgment and order. By the said judgment dated 17.12.2015, the learned Trial Judge has convicted all the appellants of the aforesaid appeals under Section 148 of the Indian Penal Code (hereinafter referred to as the "IPC") and Section 302 read with Section 149 of the IPC and they have been sentenced to undergo imprisonment for life under Section 302/149 of the IPC with fine of Rs.10,000/- each and in default thereof, they have been further directed to undergo simple imprisonment for six months separately. The

appellants of the aforesaid two cases have also been directed to undergo simple imprisonment for a period of one year under Section 148 of the IPC. Both the sentences have been directed to run concurrently.

2. Short facts of the case are that the *fardbeyan* of the informant, namely, Kishore Mahto was recorded by Jainath Prasad, Sub-Inspector of Police, Bagaha Police Station on 11.05.2013 at 07:45 p.m. at Emergency Ward of Sub-divisional Hospital, Bagaha, West Champaran. The informant Kishore Mahto has stated in his *fardbeyan* that on 11.05.2013 at about 03:45 in the evening, his elder brother Adalat Mahto along with Prahlad Mahto (PW-2) and Nandu Mahto (PW-3) had gone to the mango orchard situated towards west of village-Kotwa Kapardhika for cutting branch of mango tree for making stool (*peedha*) for marriage purpose and during the course thereof, the appellants and others totaling ten in all had arrived there. Chhota Mahto was armed with *farsa,* Sukai Mahto and Arbind Mahto were armed with *bhala* while all others were armed with *lathi* and *danda*. As soon as the aforesaid accused persons had arrived there, Chhota Mahto started assaulting the elder brother of the informant with *farsa* with the intention of killing him, whereafter Prahlad Mahto and Nandu Mahto, who were cutting

the branch of mango tree had tried to save themselves and during the course thereof, Prahlad received injury on the left small finger with the butt of axe. Thereafter, Prahlad Mahto and Nandu Mahto had fled away, fearing that they would be assaulted and came running to the house, however in the meantime the accused persons had caught hold of the elder brother of the informant, namely Adalat Mahto and with an intention to kill him, Chhota Mahto had assaulted him with *farsa* on his right arm and on the portion below elbow of the wrist of left hand as also on the right leg below knee, resulting in the deceased being cut badly. Thereafter, Arbind Mahto had assaulted the elder brother of the informant by *bhala* on his waist, leading to deep injury being inflicted. The informant has further stated in his *fardbeyan* that his cousin brother, who was along with his elder brother, had come to the house and informed him about the occurrence, whereafter they had gone to the place of occurrence where the informant saw his elder brother in an unconscious state, whereupon they had taken him to the Sub-divisional Hospital, Bagaha for treatment, from where he was referred for better treatment to Bettiah. The informant has further stated that it is his claim that the accused persons had assaulted his elder brother with the intention of

killing him, have badly cut his hands and legs and there is little chance of his survival. The *fardbeyan* was read over to the informant, which he had also read and heard and after having understand the same as also finding the same to be correct, he had put his thumb impression over the same in presence of his nephew Pramod Mahto.

3. On the basis of the aforesaid *fardbeyan* of the informant, namely Kishore Mahto, a formal FIR bearing Bagaha P.S. Case No. 197 of 2013 was registered for the offences under Sections 147/148/149/447/323/324/326/307/504/34 of the IPC on 11.05.2013 at 21:00 hours. Subsequently, on account of death of Adalat Mahto (deceased), Section 302 of the IPC was added by the learned Trial Court, vide order dated 13.05.2013. After investigation and finding the case to be true against the six accused persons, namely Sharma Mahto, Arbind Mahto, Parikha Mahto, Chhota Mahto, Sukai Mahto @ Harendra Mahto and Moti Mahto, the police had submitted charge-sheet dated 13.8.2013. Thereafter, the police had submitted another charge-sheet dated 31.12.2013 against Shukul Mahto @ Shambhu Mahto, however female members were not sent up for trial. The learned Trial Court had then taken cognizance of the offences under the aforesaid sections against all the appellants vide

orders dated 09.04.2014 and 10.04.2014, whereafter the case was committed to the Court of Sessions by an order dated 10.4.2014 and was numbered as Sessions Trial No. 267 of 2014. After taking into consideration the charge-sheet and the materials collected during the course of investigation, the Ld. Trial Court framed charges against the aforesaid appellants, vide order dated 28.05.2014 under Sections 147, 148, 149, 447/149, 323/149, 324/149, 326/149, 307/149, 302/149 and 504/149 to which they pleaded not guilty and claimed to be tried.

4. During the course of trial, the prosecution has examined 14 witnesses, PW-1 Gopal Mahto, PW-2 Prahlad Mahto, PW-3 Nandu Mahto and PW-5 Rajendra Mahto are stated to be eye witnesses. The prosecution has also led the evidence of PW-4 Binod Mahto, PW-9 Pramod Mahto, PW-10 Jawahir Ram, PW-13 Kishore Mahto (informant) and PW-14 Ram Prasad Ram. As far as PW-6 Manoj Patel and PW-12 Lallan Thakur are concerned, they have been declared hostile. PW-7 Dr. Ashok Kumar Chaudhari had conducted the postmortem examination of the dead body of the deceased Adalat Mahto while PW-8 Dr. A.K. Tiwari had examined and prepared the injury reports of the injured persons, i.e. Gopal Mahto (PW-1) & Prahlad Mahto (PW-2), as also had examined Adalat Mahto before his death. PW-11

Suraj Kumar Gupta is the Investigating Officer of the case.

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

Exhibit No.	DESCRIPTION
Exhibit-1	Signature of Nandu Mahto on seizure list.
Exhibit-2	Writing and signature of Dr. A. K. Chaudhari on the photo copy of the postmortem report of the deceased Adalat Mahto.
Exhibit-3	Writing and signature of Dr. A. K. Tiwary on the injury report of Adalat Ram.
Exhibit-4	Writing and signature of Dr. A. K. Tiwari on the injury report of Gopal Mahto.
Exhibit-5	Writing and signature of Dr. A. K. Tiwari on the injury report of Prahlad Mahto.
Exhibit-6	Formal FIR of Bagaha P.S. Case No.197 of 2013
Exhibit-7	Writing and signature of Jay Nath Prasad on the *fardbeyan* of Kishore Mahto.
Exhibit-8	Chargesheet No. 257/13 dated 13.08.2013 produced by Ganesh Ram.

6. The defence had not examined any witness, however the list of exhibits marked on behalf of the defence are enumerated herein below:-

Exhibit No.	DESCRIPTION
Exhibit-A	Certified copy of plaint of Title Suit No. 39/2011.
Exhibit-B	Certified copy of written statement filed by defendants no.1 to 5 in Title Suit No. 39/11.

Exhibit-C	Certified copy of the deposition of Adalat Mahto in T.S. No.39/11.
Exhibit-C1	Certified copy of the deposition of Prahlad Mahto in T.S.No.39/11
Exhibit-C2	Certified copy of the deposition of Nandu Mahto in T.S.No.39/11.
Exhibit-D	Certified copy of deposition of Moti Mahto in T.S.No.39/11.
Exhibit-E to E/15	Certified copies of Parcha Forms and rent receipts.

7. The learned counsel for the appellants of the aforesaid two cases has submitted that the postmortem report of the deceased Adalat Mahto, prepared by PW-7 shows that the deceased had received six injuries by sharp cutting substance, however the evidence of the prosecution witnesses shows that apart from the appellant Arbind Mahto and Chhota Mahto, rest of the appellants had assaulted by *lathi* but no injury has been found on the person of the deceased, which can be said to have been inflicted by hard and blunt substance. It is further submitted that the injury report of Gopal Mahto, which has been marked as Exhibit-4 shows that the injuries have been caused by hard and blunt substance, nonetheless the evidence shows that he was assaulted on left and right thigh by *bhala*, however no injury has been found on the person of Gopal Mahto, which may

be attributable to a sharp cutting weapon. Thus, it is submitted that the evidence of the prosecution witnesses is not trustworthy and cannot be used to prove the guilt of the appellants beyond all reasonable doubts. It is next contended that though PW-1 has stated that 50-60 people had come at the place of occurrence, but most of the witnesses examined on behalf of the prosecution are interested and related witnesses. It is also contended that while PW-1 has stated that Adalat Mahto was conscious after he had been assaulted, PW-10 and PW-14 have stated that Adalat Mahto had become senseless after being assaulted. It is also stated that the deceased had not received any injury on the vital parts, therefore the appellants did not have any intention to kill the deceased. Thus, alternatively it is argued that the present case shall fall within the purview of Section 304 Part-II of the IPC. It is also submitted that neither inquest report has been exhibited much less proved nor the first Investigating Officer has been examined, which has caused grave prejudice to the appellants. It is also submitted that the evidence led by the prosecution would show that main assailants are the appellants Arbind Mahto and Chhota Mahto, however as far as the other appellants are concerned, no specific role has been attributed and they have not stated to have assaulted the deceased. As far

as the factum of Gopal Mahto being assaulted by the appellants is concerned, it has been submitted that the statement recorded under Section 313 of the CrPC of the appellants would show that the said circumstance has not been put to the appellants, thus it is submitted that the same cannot be used against them. Therefore, as far as the allegation of assault of Gopal Mahto by the appellants is concerned, the same does not stand proved on the ground of the said circumstance having not been put to the appellants while recording their statements U/s. 313 CrPC. In this regard, reliance has been placed on a judgment rendered by the Hon'ble Apex Court in the case of ***Ajay Singh vs. State of Maharashtra***, reported in ***AIR 2007 SC 2188***, para nos. 11 to 14 whereof are reproduced herein below:-

> ***"11.*** *So far as the prosecution case that kerosene was found on the accused's dress is concerned, it is to be noted that no question in this regard was put to the accused while he was examined under Section 313 of the Code.*
>
> ***12.*** *The purpose of Section 313 of the Code is set out in its opening words- "for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him". In Hate Singh Bhagat Singh v. State of Madhya Bharat [1951 SCC 1060] it has been laid down by Bose, J. (AIR p. 469, para 8) that the statements of the accused persons recorded under Section 313 of the Code "are among the most important matters to be considered at the trial". It was pointed out that:*

> *"8. ... The statements of the accused recorded by the committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box [and that] they have to be received in evidence and treated as evidence and be duly considered at the trial."*

This position remains unaltered even after the insertion of Section 315 in the Code and any statement under Section 313 has to be considered in the same way as if Section 315 is not there.

13. *The object of examination under this section is to give the accused an opportunity to explain the case made against him. This statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus.*

14. *The word "generally" in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which*

the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give."

8. Reliance has also been placed by the learned counsel for the appellants on a judgment rendered by the Hon'ble Apex Court in the case of ***Kalicharan & Ors. vs. State of Uttar Pradesh***, reported in ***(2023) 2 SCC 583***, paragraph nos. 27 to 29 and 32 whereof are reproduced herein below:-

"27. *Questioning an accused under Section 313 CrPC is not an empty formality. The requirement of Section 313CrPC is that the accused must be explained the circumstances appearing in the evidence against him so that accused can offer an explanation. After an accused is questioned under Section 313CrPC, he is entitled to take a call on the question of examining defence witnesses and leading other evidence. If the accused is not explained the important circumstances appearing against him in the evidence on which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought on record against him. He will not be able to properly defend himself.*

28. *In para 21 of the decision of this Court in Jai Dev v. State of Punjab [Jai Dev v. State of Punjab, AIR 1963 SC 612], it was held thus:*

"21. In support of his contention that the failure to put the relevant point against the appellant Hari Singh would affect the final conclusion of the High Court, Mr Anthony has relied on a decision of this Court in Hate Singh v. State of Madhya Bharat [Hate Singh v. State of Madhya Bharat, 1951 SCC 1060]. In that case, this Court has no doubt referred to the fact that it was important to put to the accused each material fact which is intended to be used against him and to afford

him a chance of explaining it if he can. But these observations must be read in the light of the other conclusions reached by this Court in that case. It would, we think, be incorrect to suggest that these observations are intended to lay down a general and inexorable rule that wherever it is found that one of the points used against the accused person has not been put to him, either the trial is vitiated or his conviction is rendered bad. The examination of the accused person under Section 342 is undoubtedly intended to give him an opportunity to explain any circumstances appearing in the evidence against him. In exercising its powers under Section 342, the court must take care to put all relevant circumstances appearing in the evidence to the accused person. It would not be enough to put a few general and broad questions to the accused, for by adopting such a course the accused may not get opportunity of explaining all the relevant circumstances. On the other hand, it would not be fair or right that the court should put to the accused person detailed questions which may amount to his cross-examination. The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity. It is obvious that no general rule can be laid down in regard to the manner in which the accused person should be examined under Section 342. Broadly stated, however, the true position appears to be that passion for brevity which may be content with asking a few omnibus general questions is as much inconsistent with the requirements of Section 342 as anxiety for thoroughness which may dictate an unduly detailed and large number of questions which

may amount to the cross-examination of the accused person. Besides, in the present case, as we have already shown, failure to put the specific point of distance is really not very material."

29. *In para 145 of the well-known decision of this Court in Sharad Birdhichand Sarda v. State of Maharashtra [(1984) 4 SCC 116], it was held thus:*

"145. It is not necessary for us to multiply authorities on this point as this question now stands concluded by several decisions of this Court. In this view of the matter, the circumstances which were not put to the appellant in his examination under Section 313 of the Criminal Procedure Code, 1973 have to be completely excluded from consideration."

32. *Therefore, we considered whether the case can be remanded for framing of a proper charge and for recording additional statements of the accused under Section 313. But the incident is of December 2000. Therefore, it will be unfair to the accused if they are called upon to answer the circumstances appearing against them in evidence about the incident which has taken place more than 22 years back. In fact, such a course will cause serious prejudice to the accused."*

9. Thus, it is submitted by the Ld. counsel for the appellants that the Ld. Trial Judge has erred in convicting the appellants, hence they are fit to be acquitted inasmuch as the prosecution has failed to prove their guilt beyond all reasonable doubt.

10. *Per contra*, the learned APP for the State, Ms. Shashi Bala Verma, has submitted that the appellants were armed with lethal weapons and as far as the appellants Arbind Mahto and Shukai Mahto are concerned, they were armed with *bhala* while Chhota

Mahto was armed with *farsa* and rest of the appellants were armed with *lathi* and all of them had indiscriminately assaulted the deceased – Adalat Mahto badly leading to his death on the very same day. It is also submitted that all the prosecution witnesses have deposed consistently and the defence has failed to elicit any contradictions in their evidence. It is next stated that even one injury is enough for causing death, nonetheless in the present case, several injuries were inflicted upon the deceased – Adalat Mahto. Thus, it would not matter as to whether the injury was inflicted on vital or non-vital parts of the body of the deceased inasmuch as the injuries were so grievous in nature that the death was inevitable. It is also submitted that the motive is also present in the present case inasmuch as there is pre-existing land dispute and a civil dispute is also going on in between the parties. Thus, it is submitted that the judgment of conviction and the order of sentence passed by the learned Trial Judge does not require any interference, as such the same is required to be upheld.

11. 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 led by the prosecution.

12. PW-1 Gopal Mahto has stated in his deposition that the occurrence dates back to 15 months and 5 days at about 03:45 in the evening. He has stated that he was near the place of occurrence in his field situated near the grove of Adalat Mahto. Adalat and Prahlad had arrived for making stool (*peedha*) out of mango wood. The said persons then started cutting branch of mango tree, whereafter Chhota Mahto and Arbind Mahto had cut the leg of Adalat as also cut his hand and had then assaulted him in his stomach by *bhala*. Parikha Mahto, Moti Mahto, Sharma Mahto, Shambhu Mahto, Sukai Mahto and 4-5 females armed with *lathi* and *farsa*, had also arrived there and had engaged in assault. Prahlad had ran away after being assaulted and when PW-1 had gone there, the accused persons started assaulting him as well resulting in him sustaining injuries. He has also stated that he received *bhala* blow on his left leg. PW-1 has next stated that he was taken to Bettiah for treatment. He has stated that his treatment as also that of Prahlad was undertaken and while Adalat was being taken to Bettiah, he died on the way near cantonment. PW-1 had recognized the accused persons, namely, Chhota Mahto, Sharma, Sukai, Moti and Parikha Mahto, who were standing in the dock.

13. In cross-examination, PW-1 has stated that he is the

agnate of the deceased – Adalat but the accused persons are not his agnates. He has also stated that a land dispute was going on in between the informant and the accused persons in which the land pertaining to grove is also involved and one case is going on before the Sub-Judge in which he is also one of the plaintiff and the evidence is going on. He has also stated that the said case pertains to nine and a half bigaha land and the accused persons have only nine and a half bigaha land. In paragraph no.4 of his cross-examination, PW-1 has stated that his statement was recorded by the police in the night of the date of occurrence and the statement of Adalat, Prahlad and Nandu was also recorded. PW-1 has further stated that he had said before the police that his field is situated near the place of occurrence and upon being informed, he had gone to the grove where he saw all the accused persons, armed with *lathi*, *danda*, *phatta*, assaulting Adalat as also saw that Moti, Sukai, Mukul @ Shambhu, Parikhan were assaulting by *lathi-danda*. PW-1 has also stated that he had stated before the police that he had seen that Adalat had been grievously injured on his hand and leg. In paragraph no.5 of his cross-examination, PW-1 has stated that after sustaining injuries, he had become unconscious and he had regained consciousness at 5:00-6:00 hours in the evening. He has also stated that when

he had gone to the place of occurrence, Prahlad and Adalat were conscious and he had spoken with them whereupon they had disclosed as to who had assaulted them. Thereafter, 50-60 people from the village had arrived there and were standing separately. They were then referred for treatment to Bettiah and then Adalat, Prahlad and PW-1 had gone to Bettiah. He has also stated that while Adalat was being taken to Bagaha, he was conscious and when he was being taken to Bettiah, he was speaking. Medicine was given to him and thereafter, saline water was also administered. In paragraph no.6 of his cross-examination, PW-1 has stated that he was assaulted by *bhala*, which had got inserted 2-3 inch inside, however his head had not been injured. In paragraph no.7 of his cross-examination, PW-1 has stated that the grove is at a distance of one bigaha from the village. He has also stated that adjacent to the grove, houses of Harihar Mahto, Kashi Yadav, Kamlesh Yadav and Bhim Yadav are situated. He has next stated that if *hulla* (alarm) is made from the grove, he can hear the same at his house. Bagaha Police Station is situated at a distance of 8-9 kilometre from the grove and Bhairavganj Police Station is at a distance of 9-10 kilometre from Kapardhika village. In paragraph no.8 of his cross-examination, PW-1 has stated that after he was injured,

he had not gone into the grove and at that time mango fruit was growing in the mango grove. He had also seen the partly cut branch of mango tree and the same is hanging from the tree till date. He has stated that Prahlad had climbed the tree to cut the branch of mango tree. PW-1 has next stated that blood had fallen down on the ground and the ground was plain since no grass had grown over the same. He has next stated that the police officials had seized the blood soaked mud. In paragraph no.9 of his cross-examination, PW-1 has stated that after Adalat had died, he was brought home but he had stayed in the hospital for 5-6 days. He has also stated that he along with Adalat, Prahlad, Kishore and their family members had gone to the hospital. In paragraph no.10 of his cross-examination, PW-1 has stated that the land over which the grove is situated is in the name of Bihari and is a khatiyani land and he had died 70 years ago. He has denied the suggestion that the accused persons have been wrongly implicated in the present case on account of land dispute. He has also denied the suggestion that in the night, Adalat had gone to pluck mangoes and he was killed by unknown accused persons.

14. PW-2 Prahlad Mahto has stated in his evidence that the occurrence dates back to 16 months at about 03:45 p.m. when he had gone to cut wood in his grove and along with him, Adalat

Mahto and Nandu (PW-3) had also gone. He has also stated that he had gone to cut wood for making stool for marriage of his daughter and at that time Adalat started preparing *khaini* (tobacco). PW-2 has further stated that at that time, Moti, Sarikha, Sharma, Chhota, Shukul @ Shambhu, Parikha and five ladies had arrived there and while Chhota was armed with *farsa*, Arbind was armed with *bhala*, Shambhu was armed with sword, the rest were armed with *lahti* and *phatta*. Thereafter, upon being ordered by Moti, Chhota had assaulted Adalat by *farsa*, resulting in cutting of his both arms and right leg and the same had separated, whereafter the other accused persons started assaulting by *danda* and *phatta*. Gopal had then come to save him but he was assaulted by *bhala* on his thigh, whereafter PW-2 was also assaulted by *lahti* on his left hand, resulting in breaking of his three fingers. In paragraph no.3, PW-2 has stated that he had then taken Adalat and Gopal to Bagaha Hospital, whereafter they had gone to Bettiah and there Adalat had died at 11:00 p.m. in the night. PW-2 had recognized the accused persons standing in the dock, namely, Sharma, Moti and Harendra @ Sukai Mahto. In paragraph no.5 of his cross-examination, PW-2 has stated that the accused persons are not his agnates, however in between them civil case is going on

pertaining to partition of land in question, however no application has been given before in the circle for partition. He has also stated that the grove is situated at a distance of one kilometre from his village towards the western-southern side and on the southern side of Kapardhika village.

15. In paragraph no.7 of his cross-examination, PW-2 has stated that Sharma was present at the grove from before and he had then called the other accused persons. PW-2 has also stated that earlier no quarrel had taken place with Sharma and he was armed with *tangi* (axe). PW-2 has stated that upon seeing the accused persons coming there, his brother did not flee away. The accused persons had come from the northern side of the grove and after seeing the accused persons, he had jumped from the tree, besides the branch of the bamboo tree, however he was not injured. He has also stated that they had stayed at the grove for 10-15 minutes. In paragraph no.9 of his cross-examination, PW-2 has stated that after Sharma had gone, other accused persons had come within two minutes and at that time, he was over the tree and others, who were standing beneath the tree did not try to flee away and after 10 minutes Nandu had gone to the village, raising alarm but he was not assaulted by the accused persons. Gopal (PW-1) had then come to save them but he was also

assaulted by *bhala* from the front from a distance of 5-6 hands on the left thigh. PW-2 has also stated that Adalat was assaulted within five minutes by the accused persons and at that time also he was on the tree and his body parts had got separated but he did not die there. PW-2 has further stated that blood was present over the cloth of Adalat and both his hands and left leg had been cut as also had got separated from the body. PW-2 has further stated that he had received injury on his finger on the hand below wrist and x-ray of the hand was done at Bagaha Hospital. He has stated that where the hand had broken, swelling was present. PW-2 has next stated that the injuries were present all over the body of Gopal and injuries were also present on the back and in the front.

16. In paragraph no.10 of his cross-examination, PW-2 has stated that the police official had come at the place of occurrence after Adalat and Gopal had gone away and not in his presence. He has also stated that they had gone to Bagaha Hospital by tempo and he, his wife, Adalat and Kishore had sat in the tempo. He has stated that they had gone from the village by tempo to Banchatti, which is at a distance of 150 metre from his house. He has further stated that when they had gone to Bagaha, they had crossed Bagaha Police Station in between,

which is situated beside the road and they had also passed through the said road where the said police station is situated, however nobody had gone to Bagaha Police Station to give information. In paragraph no.11 of his cross-examination, PW-2 has stated that they were admitted at Bagaha Hospital and after giving medicine, they were referred immediately. They had reached Bagaha at 05:00 p.m. where they had stayed for an hour and then they were referred to Bettiah where they had gone by government ambulance and while they were going to Bettiah, Adalat died on the way. He has also stated that they had reached Bettiah at 8-9 p.m. in the night where postmortem examination of the dead body of the deceased was held. PW-2 has stated that the case was neither registered at Bettiah nor at Bagaha Police Station, however the police had come at Bagaha and they had met the police for the first time at Bagaha. In paragraph no.12 of his cross-examination, PW-2 has stated that he had given his clothes and that of Adalat to the police at Bagaha.

17. PW-3 Nandu Mahto has stated in his evidence that the occurrence dates back to 11.05.2013 at about 03:45 p.m. in the evening when he was at his house and Prahlad had told him to come along with him to the grove for cutting wood for preparing stool for marriage, whereafter he along with Adalat Mahto and

Prahlad Mahto had gone to the grove and then Prahlad had climbed on the tree for cutting the branch of the tree, however after ten minutes, Chhota Mahto, Sukai Mahto, Parikh Mahto, Sharma Mahto, Moti Mahto, Arbind Mahto and Shukul @ Shambhu Mahto had arrived there. Chhota was armed with *farsa* while Arbind was armed with *bhala* and the rest of people were armed with *lathi* and *phatta*. As soon as the accused persons had arrived there, Chhota had assaulted Adalat by *farsa* on his arm and thereafter, he had given a second blow on the other arm resulting in both arms having hung down and then he had given third blow of *farsa* on the leg of Adalat resulting in his left leg having been cut. Arbind had then assaulted Adalat by *bhala* on the left rib cage. In the meantime, brother of PW-3, namely Gopal (PW-1) had arrived there, whereupon all the accused persons started assaulting him by *lathi* and then Arbind had assaulted him on his leg by bhala. The elder brother of PW-3, namely Prahlad Mahto, who was on the tree was also assaulted by *lathi* resulting in three fingers of his right hand being broken. In paragraph no.3, PW-3 has stated that Adalat Mahto died at Bettiah Hospital and treatment had also taken place at Bagaha Hospital. He has also stated that the police had recovered leaves and mud laced with blood from the place of

occurrence, whereafter seizure-list was prepared which he has identified and the same has been marked as Exhibit-1. He had recognized all the accused persons standing in the dock.

18. In paragraph no.5 of his cross-examination, PW-3 has stated that the tree from which the branch was being cut was a dried tree. He has next stated that after Prahlad had seen the accused persons, he had climbed down slowly whereupon *tangi* (axe) had fallen down from his hand. He has stated that one case is going on in the Munsif court in between them and the accused persons and in the said case PW-3 is also a party and the said case pertains to the grove land as well. The grove land is about 12 katha, the said land is khatiyani and the khatiyan is in the name of Bihari Mahto, however the accused persons do not belong to his family. PW-3 has also stated that they did not get the receipt made for the said land but he is 4th generation of Bihari Mahto, who has died. PW-3 has stated that they had not ever made any attempt to get the said land transferred in their name. In paragraph no.6 of his cross-examination, PW-3 has stated that the branch of the tree was being cut prior to 10 minutes of arrival of the accused persons and while the branch was still attached to the tree and had not been cut completely, the accused persons had arrived from the northern side armed

with *bhala* in their hand. PW-3 has also stated that he had seen the accused persons as soon as they had entered the grove. He has also stated that the entry point to the grove is at a distance of 3 *laggi* (stick length). He has next stated that on the northern side of the grove, *rasta* (way) is there and anybody coming from the village is visible from there. He has stated that upon seeing the accused persons, he had not made an attempt to run away and the accused persons had first assaulted Adalat upon coming there, however he had not gone to save Adalat but had stood up. In paragraph no.7 of his cross-examination, PW-3 has stated that Adalat had not sustained any injury either on his back or on his head and he was sitting down and after being assaulted, he moved around but fell down, whereafter they had remained at the grove for half an hour. He has stated that they had also assaulted by *bhala* by holding the same by both hands and not by throwing *bhala*. The front portion of *bhala* was four finger length wide. He has stated that Prahlad had not fled away but he had stood there and was present there for half an hour. He has also stated that no outsider from Kapardhika village had come. Thereafter, people from his house including his brother Rajendra (PW-5), Pramod (PW-9), Kishore (PW-13) and others had arrived there. Gopal (PW-1) had also arrived earlier and he was

standing in the field.

19. In paragraph no.8 of his cross-examination, PW-3 has stated that he had not stated before the police that after assault had taken place, he had met Gopal on the way. He has also stated that the accused persons had badly injured the body of Gopal, *bhala* blow had been inflicted on his left leg and *bhala* injuries were present on both legs, i.e. two injuries on the left leg and one on the right leg. PW-3 has also stated that he has stated before the police that Arbind was holding *bhala* and Chhota was holding *farsa* in his hand. He has stated that he had not stated before the police that the accused persons had assaulted Prahlad by *bhala* and *farsa*. He has next stated that phone call was made to the police by a mobile from the grove, however the police had not arrived there but he met the police at Bagaha Hospital for the first time. He has also stated that Adalat was brought to the road from the grove by Pramod, Prahlad and Kishore after being lifted and at the place where he was kept on the ground, blood had fallen and in fact blood had been falling down all throughout the *rasta* (way). In paragraph no.9 of his cross-examination, PW-3 has stated that they had reached Bagaha Hospital at 05:00 p.m. in the evening by tempo which was being driven by Mukesh and he was also present there. He has also

stated that though on the way to Bagaha Hospital, Bagaha Police Station is situated in between, however they had not stopped there and had not gone to the police station but had rang Bagaha Police Station upon which the police officer had told him to stay there and they would come there. He has also stated that Adalat had died in the hospital at Bettiah. In paragraph no.10 of his cross-examination, PW-3 has stated that he had reached home from Bagaha at 05:30 p.m. while Adalat and Gopal had been referred to Bettiah, but he had not gone to Bettiah Hospital. On the next day, at about 10-11 a.m., Prahlad had brought the dead body from Bettiah and Gopal had stayed there and he had come after 4-5 days. PW-3 has denied the suggestion that because of previous land dispute with the accused persons, under a conspiracy they have been falsely implicated in the present case.

20. PW-4 Binod Mahto is the son of the deceased and he has stated in his deposition that the occurrence dates back to 22 months at about 03:45 p.m. in the evening when his father Adalat Mahto had gone to the grove for cutting branch of the tree for making stool for marriage purpose. He has stated that the grove is situated near Kapardhika. He has also stated that his father had gone along with Nandu Mahto (PW-3) and Prahlad (PW-2) to the grove. He has next stated that while Adalat was

sitting beneath the tree, Prahlad Mahto had climbed the tree and was cutting wood when Chhota Mahto, Moti Mahto, Sharma Mahto, Arbind Mahto, Shukul Mahto, Parikha Mahto and Harendra Mahto had arrived there, whereafter Chhota Mahto had assaulted Adalat Mahto by *farsa* and cut him as also his both arms and right leg were cut, which had hung down. PW-4 has next stated that Arbind Mahto had then assaulted Adalat Mahto in his stomach by *bhala*. PW-4 has also stated that Parikha was armed with *lahti*, Sharma was armed with *bhala*, Arbind was armed with *bhala*, Moti was armed with *bhala*, Chhota was armed with *farsa,* Harendra was armed *with* bhala and Shukul was armed with *lathi*. Thereafter, Gopal had gone to save them and after the occurrence had taken place, other persons had arrived from behind, however in the meantime the accused persons had assaulted and broken the leg of Gopal as also he had been assaulted badly on his knee by Sukai and Arbind. In paragraph no.3, PW-4 has stated that he, Pramod (PW-9) and Prahlad (PW-2) had taken Adalat to the Government Hospital at Bahaga, however the doctor had shown his helplessness, whereafter they had reached Bettiah at 10:00 p.m. in the night where the doctor had seen Adalat and declared him to be dead. He had recognized the accused person standing in

the dock and claimed to recognize the other accused persons.

21. In cross-examination, PW-4 has stated that his statement was recorded at 07:00 p.m. in the evening by the police on the date of occurrence and he had not stated before the police that after Prahlad Mahto and Nandu Mahto had come running home, they had narrated the entire incident, whereafter they had gone to the place of occurrence. In paragraph no.6 of his cross-examination, PW-6 has stated that he is neither on talking terms with the accused persons nor they visit each other house. In paragraph no.7 of his cross-examination, PW-4 has stated that Nandu and Prahlad had not fled towards his house however, he has again stated that they had come running to the house. PW-4 has also stated that he cannot say as to whether they had met Pramod or not but at that time, though Pramod was at home but he had gone into the village. He has also stated that the branch of tree was partly cut. PW-4 has next stated that the assault was made by *bhala* from a hand's distance and then it was pulled. The *bhala* was three finger length wide in the front.

22. PW-4 has also stated that he had stayed in the grove for half an hour and then he had taken away his father from the grove by lifting him on his hands and at that time, his father was speaking and was saying that he was assaulted by *farsa* and

bhala which he, his brother Pramod (PW-9), Gopal (PW-1), Prahlad (PW-2), wife of Prahlad, namely Tetari Devi had also heard on the way. PW-4 had gone to Bagaha Hospital where he had reached at 07:00 p.m. and he had sat on the seat of tempo with his father, where blood had fallen not only in the tempo but had spread all over his body. He has also stated that while going to Bagaha Hospital, nobody had got down from the tempo on the way at the Bagaha Police Station. He has stated that after they had reached the hospital, the doctor had examined after ten minutes, while his father was lying on the bed and after bandage was applied on the injury of his father, he was referred to Bettiah, whereafter they had taken father on an ambulance to Bettiah where they had reached at 09:30-10:00 p.m. in the night, however the doctor had not treated him at Bettiah and upon examination, the doctor said that Adalat has died. PW-4 has also stated that he, Prabhu, Pramod (PW-9), Prahlad (PW-2) and Kishore (PW-13) had gone to Bettiah. On the next day, after the postmortem examination was done, the dead body was brought at 11:00 a.m. PW-4 has denied that on account of previous enmity, the accused persons have been falsely implicated in the present case.

23. PW-5 Rajendra Mahto has stated in his deposition that the

occurrence dates back to 22 months at about 03:45 p.m. in the evening when he was beneath a tree near the village at the canal. The marriage of the daughter of Prahlad was going to be solemnized, hence Prahlad (PW-2), Nandu (PW-3) and Adalat (deceased) had gone to cut wood for making stool for marriage purposes, whereafter Prahlad had climbed on the tree and was cutting the branch of the tree while Nandu Singh was slowly walking by and Adalat was sitting near the tree and preparing *khaini* (tobacco). The accused persons including the appellants had then gone to the said place. Chhota was armed with *farsa*, Arbind with *bhala*, Shukul with *khand* (weapon used to cut buffalo) and others were armed with *lahti-phatta* and they had gone to the said grove while Prahlad was cutting branch of the tree and Adalat was sitting and preparing tobacco. As soon as the accused persons had reached there, Chhota had assaulted Adalat with *farsa* resulting in his both arms being cut, whereafter Chhota had assaulted on his leg resulting in the same being cut and then Arbind had assaulted Adalat by *bhala* in the belly and Shukul had assaulted by *khand* on the ribs of the chest, whereupon other accused persons had started assaulting by *lathi-phatta*. Gopal had then come running to save them, however he was also assaulted by *lathi* resulting in his leg being

broken and then Shukul had assaulted him on his right leg with *bhala*. PW-5 has next stated that the accused persons had then fled away, whereafter Adalat and Gopal were taken by Kishore, Nandu, Prahlad and their sons to the road after being lifted by them. PW-5 has also stated that he was watching the incident from a distance of 2-3 bigaha. He has stated that he had also gone along with Adalat to Bagaha Hospital where the doctor had tied bandage and referred him to Bettiah, whereafter they had taken Adalat to Bettiah but he had returned back from Bagaha, however Adalat had died at Bettiah. PW-5 had recognized the accused persons standing in the dock.

24. In paragraph no.4 of his cross-examination, PW-5 has stated that a civil case pertaining to the land where the occurrence had taken place is going on before the Munsif Court and he is also a plaintiff in the said case but the said case has not been filed for his possession and the area of the grove is 12 katha. He has also stated that partition has not taken place in between the parties and the dispute between the parties pertain to 10 bigaha land. In paragraph no.5 of his cross-examination, PW-5 has stated that his statement was recorded by the police on the day of occurrence at the hospital at 08:00 p.m. in the night and in his statement made before the police, he had not stated

that Prahlad had come running to home and then he had said about the incident, whereafter he had gone to the grove. In paragraph no.6 of his cross-examination, PW-5 has stated that the grove is at a distance of 2-3 bigaha from his house. Prahlad was sitting in the grove near the tree on the eastern side. He has also stated that prior to him reaching the grove, three persons were present there, namely Prahlad (PW-2), Nandu (PW-3) and Adalat (deceased) and he had stayed at the grove for ten minutes, during which period no other person had come there. He has also stated that he had reached there after Nandu and the accused persons had held *khand* by both hands, whereafter they had assaulted and the entire *khand* had got inserted.

25. PW-5 has also stated that there were five injuries on the body of Adalat and Prahlad had received injury only on his finger. He has stated that at the place of occurrence, Prahlad (PW-2), Nandu (PW-3), Kishore (PW-13), Brajesh, Pramod (PW-9), Binod (PW-4) and Rajendra (PW-5) were present. In paragraph no.7 of his cross-examination, PW-5 has stated that 10-11 people had gone in the tempo. He has also stated that he had returned back to his home after sometime and after an hour, he received a phone call from Bettiah that Adalat has died, however he did not go to Bettiah. In para no.8 of his cross-

examination, PW-5 has stated that Gopal had received injuries on 3 places by *bhala* and *farsa*. PW-5 has denied the suggestion that on account of land dispute, the accused persons have been falsely implicated in this case.

26. PW-6 Manoj Patel has stated in his deposition that the occurrence dates back to 3-4 years back. He has stated that he was not present at the place of occurrence and his statement was not recorded by the police, hence he was declared hostile, nonetheless the learned Additional Public Prosecutor had cross-examined him on behalf of the prosecution, however nothing significant could be elicited.

27. PW-7 Dr. Ashok Kumar Chaudhari is the doctor, who had conducted the postmortem examination of the dead body of Adalat Mahto on 12.05.2013 and he has stated in his deposition that on the said date, he was posted as Medical Officer, MJK Hospital, Bettiah. He had found the following ante-mortem injuries on the dead body of Adalat Mahto upon external examination:-

> "(i) one incised wound over right arm 2½" x ¼" x bone cut with fracture of lower part of humerus.
>
> (ii) one incised wound over right leg lower part, size-2½" x ¼ " to bone cut with fracture of Tibia,

(iii) one incised wound over right leg upper part 2½" x ¼" x bone cut with fracture of Tibia.

(iv) one incised wound over left forearm size-2½" x ¼" x bone cut with fracture of radius and ulna.

(v) one incised wound over left palm size- 2½ " x ¼" x bone cut.

(vi) one incised wound over right iliac crest (lower part of the abdomen) size- 2½" x ¼" x iliac bone cut."

PW-7 on dissection had found the following: -

Above injuries were confirmed. All abdominal viscera were found pale, hard. Both heart-chambers empty. Stomach -empty. Urinary bladder- empty. Time elapsed since death - within 24 hours. All the injuries are ante-mortem caused by sharp cutting substance.

The cause of death has been stated by PW-7 to be shock and hemorrhage due to above injuries. In paragraph no.3 of his deposition, PW-7 has stated that the postmortem report has been prepared by him and bears his signature as also he has identified the photocopy of the postmortem report, which has been marked as Exhibit-2. He has also stated that the dead body was identified by Pramod Mahto, son of the deceased. In para no.5 of his cross-examination, PW-7 has stated that hands and legs are not vital parts of human body. The injuries in the lower part of abdomen are not involving intestine and abdominal viscera.

28. PW-8 Dr. A. K. Tiwari is the doctor who had examined Adalat Mahto (deceased), Gopal Mahto (PW-1) and Prahlad Mahto (PW-2). He has stated that on 11.05.2013, he was posted as D.S. at Sub-divisional Hospital, Bagaha and on the said date at 06:30 p.m., he had examined Adalat Mahto and found the following injuries on his person:-

> "(i) Compound fracture of right tibia and fibula.
>
> (ii) Incised wound over mid of right leg 4" x ½" x ½" red in colour.
>
> (iii) Incised wound over right leg 3" x ½ " x ¼" red in colour.
>
> (iv) Incised wound over right iliac fossa 3" x 1½" x ¼" red in colour.
>
> (v) Left forearm amputated.
>
> (vi) Incised wound over right arm 3" x ½" x 1" red in colour.
>
> (vii) Fracture of right humerus of right arm (compound fracture).
>
> (viii) Incised wound over right arm 3" x 1½" x ½" medial to injury no.6."

PW-8 has stated that the aforesaid injuries were caused by sharp cutting weapon and the duration of the injuries is within six hours. He has also stated that the condition of patient is very serious and dangerous to his life. PW-8 had identified the injury

report prepared by him, which is in his writing as also he had identified his signature put over the same and the same had been marked as Exhibit-3.

29. PW-8, on the same day, i.e. on 11.05.2013 had also examined Gopal Mahto (PW-1) at 06:40 p.m. and found the following injuries on his person:-

> "(i) Lacerated wound over left leg 1½" x ½" x 2½" red in colour.
>
> (ii) Lacerated wound over right knee ½" x ½" x ¼" red in colour.
>
> (iii) Abrasion over right cheek 1" x ½" x superficial, swelling around it.
>
> (iv) Right hand swollen.
>
> All caused by hard blunt substance. Duration within six hours. Patient was advised X-ray of affected parts."

PW-8 has further stated that later on, x-ray plate was provided which showed commuted fracture of right ulna and commuted fracture of proximal phalanx-III, IV and V fingers. He also found intercondylar right femur fracture and right shoulder was dislocated. He has next stated that all the injuries cumulatively are dangerous to life. PW-8 had identified the injury report prepared by him in his writing as also his signature made over the same, which had been marked as Exhibit-4.

30. PW-8 has stated that on the same day, i.e. on 11.05.2013 at 06:50 P.M, he had examined Prahlad Mahto (PW-2) as well and found the following injury:-

> "(1) Lacerated wound over right little finger ½" x ¼" superficial red in colour."

PW-8 has stated that the aforesaid injury has been caused by hard and blunt substance and duration of injury is within six hours as also nature thereof is simple. PW-8 had identified the injury report prepared by him in his writing as also his signature put over the same, which had been marked as Exhibit-5. In his cross-examination, PW-8 has stated that injury no.6 of Adalat is incised but not penetrating. He has stated that *bhala* causes penetrating wound. The injuries of Gopal and Prahlad may be sustained by falling on hard substance. PW-8 has denied the suggestion that his report is collusive in nature.

31. PW-9 Pramod Mahto is the son of the deceased and he has stated in his deposition that the occurrence dates back to 11.05.2013 at 03:45 p.m. when he was coming from his in-laws' place to his home and when he had reached near Kotwa village, he heard *hulla* (alarm) and then he went in the grove and saw that Chhota Mahto has cut both hands of his father by *farsa* and both the hands were hanging as also he had assaulted his father

by *farsa* on leg and had cut it. Sukai Mahto and Arbind Mahto had assaulted his father-Adalat by *bhala* on his waist, whereafter other accused persons had assaulted his father by *lathi*. In the meantime, Gopal had come to save him, however Chhota Mahto had assaulted him by *lathi*. Arbind and Sukai had also assaulted Gopal by *bhala* on his knee. Gopal was also assaulted by other accused persons by *lathi*. Thereafter, people present there had taken the father of PW-9 to Bagaha Hospital along with Gopal Mahto for treatment where the doctor had referred them to Bettiah and at Bettiah, the doctor had declared his father to be dead. He has also stated that on account of marriage of daughter of his uncle, they had gone to cut the wood of mango tree and then the said occurrence had taken place. He had recognized the accused persons standing in the dock. In paragraph no.4 of his cross-examination, PW-9 has stated that his in-laws' place is situated towards northern side at a distance of 3 kilometre and the grove is situated towards the western side of his house at a distance of half a kilometre. In paragraph no.5 of his cross-examination, PW-9 has stated that he had started from his in-laws' place at 03:15 p.m. in the evening and while he was coming through the way besides the canal, he had not met anyone. In paragraph no.6 of his cross-examination, PW-9 has

stated that his statement was recorded by the police only at Bettiah and not at any other place and the said statement was taken by Bettiah police on the second day, at about 09:00 a.m. He has stated that when he was giving his statement, Kishore Mahto, Prahlad Mahto, Gopal Mahto besides several other persons were present there, whose name he cannot say.

32. In paragraph no.7 of his cross-examination, PW-9 has stated that the motive for the occurrence is land dispute and from before a civil case is going on between the parties. He has also stated that he had not stated before the police that his father Adalat Mahto was cutting branch of the tree. He has stated that he had not gone home but after hearing *hulla* (alarm), he had firstly gone to the grove towards eastern corner and had seen Chhota assaulting his father, whereafter his father's hand had hung down as also he had seen Chhota cutting the leg of his father, whereupon other people started arriving there. He has also stated that from before Prahlad, Adalat, Nandu Mahto and Kishore Mahto were present there. He has next stated that his father had fallen down and blood was oozing out from his body and his hands and leg had been cut as also he had been injured by *bhala* twice on the left side but his father was conscious and was speaking as also had told him that while Prahlad Mahto was

cutting wood, Chhota Mahto had come and assaulted by *farsa*. Thereafter, the persons present there had lifted the father of PW-9 and taken him to the road and then he was taken to Bagaha Hospital, from where his father was taken to Bettiah Hospital but he did not become unconscious on the way. In paragraph no.8 of his cross-examination, PW-9 has stated that blood had fallen on the road and Gopal had been hit by *bhala* on the knee and his left leg had been broken as also Prahlad had received injury on the ring finger of his left hand. He has also stated that they had reached at Bettiah at 09:00 p.m. in the night and had gone to the Government Hospital, where his father was admitted and then the doctor had come and said that he has died. PW-9 has denied the suggestion that on account of civil case, the accused persons have been falsely implicated in the present case and has stated that it is not a fact that his father was a person of short-temper, hence some unknown miscreants had killed him.

33. PW-10 Jawahir Ram has stated in his deposition that the occurrence dates back to two years one month at 04:00 p.m. while he was at the house of Tapan Ram, when he saw that Nandu, Prahlad and Adalat had come and had started cutting wood, whereafter four persons of the other party, i.e. Chhota Mahto, Sharma Mahto, Parikh Mahto and Arbind Mahto had

arrived there armed with *lathi, bhala and farsa*. While one person, namely Prahlad had climbed on the tree and was cutting wood, quarrel started taking place leading to Prahlad and Nandu having fled away. Adalat was sitting and preparing tobacco and the aforesaid four persons started assaulting him by *lathi, bhala* and *farsa* leading to his both hands being cut as also his leg was cut. Thereafter, Adalat was lifted and taken for treatment. He had recognized the accused persons standing in the dock. In cross-examination, PW-10 has stated that the grove is situated at a distance of an acre of land. There is also a school on the northern side near the grove. He has also stated that when the accused persons came out of the village, everyone had seen them but the villagers had not accompanied them and he had also not gone. PW-10 has stated in his cross-examination that he had reached at the grove after 20 minutes of the occurrence and at that time Adalat was unconscious and Nandu and Prahlad had fled away, whereafter he had gone back to his house. In paragraph no.4 of his cross-examination, PW-10 has stated that Adalat had fallen flat on the ground and blood stains were present all over his clothes as also his shirt was cut. He has next stated that his statement was not recorded by the police and since long case is going on in between the parties pertaining to

the said land. He has denied the suggestion that upon being tutored by the prosecution, he is giving the present statement against the accused persons.

34. PW-11 Suraj Kumar Gupta is a police official and he has stated in his deposition that on 27.12.2013, he was handed over the charge of investigation of Bagaha Police Station Case No. 197 of 2013 by the then In-charge of the police station, namely Subhash Singh and then he had gone through the case-diary. He has further stated that he had recorded the statements of Ranjit Kumar, Manoj Patel (PW-6), Lalan Thakur (PW-12) and Ram Prasad Rai (PW-14). He had received the third supervision note of the senior officials. He had filed Charge-Sheet No. 549/13 under Sections 147, 148, 149, 447, 323, 324, 307, 302, 504/34 of the IPC. He has next stated that the formal FIR of Bagaha Police Station Case No.197 of 2013 is in the writing of the then Officer-in-charge, Ganesh Rai and bears his signature, which he has identified and the same has been marked as exhibit. He has also stated that the *fardbeyan* of the informant Kishore Mahto (PW-13) is in the writing of Sub-Inspector, Bagaha Police Station, Jainath Prasad and he had also signed the same which he has identified and the same has also been marked as exhibit. He has stated that in the aforesaid case, Charge-Sheet No. 257 of

2013 dated 13.08.2013 was also filed, which he has identified and the same has been marked as exhibit. In paragraph no.2 of his cross-examination, PW-11 has stated that Ganesh Rai is alive and works at Motihari while Jainath Prasad is posted at Balmiki Police Station. He has also stated that FSL report of the articles sent for examination has not been received and he had not made any effort to obtain the same. He has also stated that the place of occurrence has been mentioned in paragraph no.35 of the case-diary and the branch of the tree was being cut by a saw. He has stated that it has not been mentioned in the case-diary as to where the statements of the witnesses were recorded. In paragraph no.39 of the case-diary, the statement of Shrawan Thakur has been recorded to the effect that the grove is in possession of the family member of Sharma Mahto since several years and there were big trees in the grove. Lastly, PW-11 has stated that it is not a fact that his investigation is defective.

35. PW-12 Lallan Thakur has stated in his deposition that the incident dates back to about two years, however he does not know as to who had carried out the killing and for what reason. He has also stated that he had not made any statement before the police. The said witness had been declared hostile, however he was cross-examined but nothing significant could be elicited.

36. PW-13 Kishore Mahto is the informant of the case and has stated in his deposition that the occurrence dates back to 11.05.2013 at 03:45 p.m. The marriage of the daughter of Prahlad was going to be solemnised and for the purposes of making a stool, Nandu (PW-3), Adalat (deceased) and Prahlad (PW-2) had gone to cut the branch of the tree. While Prahlad was cutting the branch of the tree and Nandu and Adalat were on the ground, Sharma Mahto, Chhota Mahto, Parikhan Mahto, Moti Mahto, Arbind Mahto, Shukul Mahto, Sukai Mahto @ Harendra Mahto and his sons and family members had arrived there and started assaulting. Chhota Mahto had assaulted Adalat by *farsa* resulting in his both hands being cut and his right leg was also cut and only skin was attached to the body. Thereafter, Arbind had assaulted Adalat on his waist by *bhala*. Prahlad was assaulted by Sharma Mahto by *lathi* resulting in his fingers being broken. The other accused persons had assaulted Gopal, leading to his arm and leg being broken and on his right thigh, Shambhu Mahto had inflicted injury by *bhala*. In paragraph no. 2, PW-13 has stated that land dispute is going on in between the accused persons and the members of the prosecution side for which one title suit is pending. In paragraph no.4 of his cross-examination, PW-13 has stated that upon phone call being made,

the police officer had come from the police station to the village, when he had gone for medical treatment.

37. In paragraph no.6 of his cross-examination, PW-13 has stated that his statement was recorded by the police only once and whatsoever he had stated before the police, he is stating before the Court. He has also stated that he had not stated before the police that his cousin brother had returned back to home and told others about the incident whereafter, they had reached at the place of occurrence and had taken his elder brother in an unconscious state for treatment to Bagaha. PW-13 has further stated that at the time of occurrence, he was ploughing in the adjacent field on the western side. He has also stated that several co-villagers, namely, Dharmdev Thakur, Mukesh Yadav, Shambhu Yadav, Phirangi Sah and Shankar Sah, etc. had arrived there. In paragraph no.7 of his cross-examination, PW-13 has stated that he was ploughing field since 02:00 p.m.. He has next stated that he had left his house at 01:30 for ploughing his field and had reached the grove at 03:45 p.m., when he saw that assault was taking place, whereafter he had raised *hulla* (alarm) and then people from the nearby area had arrived there leading to the accused persons fleeing away. Adalat Mahto had stayed at the grove for 15 minutes and at that time he was speaking and

was saying that he be taken for treatment since his legs and hands have been cut. Thereafter, Adalat was put in a tempo by PW-13, Prahlad, Nandu, Rajendra and at that time, he had tied the injury of Adalat.

38. PW-13 has also stated that *dhoti* of Adalat was opened and given to the police officer. Adalat was taken to the hospital by tempo and he had gone to the hospital while speaking. He has also stated that on the way to Bagaha Hospital from the house, the police station is situated in between, however he had neither gone to the police station nor given his statement. His statement was recorded at the hospital. Adalat was kept at Bagaha Hospital for an hour, where the doctor had administered saline and after initial treatment he was referred and at that time also Adalat was speaking. He has also stated that they had gone to Bettiah by ambulance along with Prahlad, Pramod, Binod and Gopal. He has next stated that he had stayed at Bettiah in the night and had returned on the next date at 10:30 a.m. He has stated that Adalat was not admitted at Bettiah Hospital but he was kept there for postmortem examination. In paragraph no.9 of his cross-examination, PW-13 has stated that when he was giving his statement to the police, Prahlad was also present there and Pramod had gained knowledge about the police case. He has

next stated that the sharp portion of *farsa* is two and a half inch wide and one feet in length. *Farsa* was bent (curved) and *bhala* was sharp (pointed), about four finger length in width. He has also stated that on the body of Gopal, injuries were at eight places and he had been inflicted with injury on his thigh by *bhala*, which had penetrated inside. PW-13 has stated that it is not a fact that on account of land dispute, the accused persons have been falsely implicated in this case.

39. PW-14 Ram Prasad Ram has stated in his deposition that the occurrence dates back to two years at about 04:00 p.m. in the evening while he was ploughing the field of Kishore, when he heard *hulla* (alarm) whereupon he went running to the place of occurrence and saw that hands and legs of Adalat have been cut and blood was oozing out. Prahlad, Kishore, Nandu and Gopal were present there. He has also stated that after seeing blood, he became perplexed and went back to his home. He has next stated that at the time he came to the place of occurrence, quarrel had already taken place and Chhota Mahto was holding *farsa*, while Sharma Mahto, Moti and Parikha were holding *lathi*. He had recognized the appellants present in the dock. In cross-examination, PW-14 has stated that his statement was recorded by the police in the village after 10 days of the

incident. In cross-examination, PW-14 has stated that the field of Kishore is situated on the western side of the grove at a distance of 4-5 katha length and in the field sugar cane is growing. He has also stated that at the time when he went to Adalat, at that time Harihar, Koiri and some females had arrived there. He has stated that when he went there, accused persons and Harihar were present and Adalat had become unconscious, however he had not tied the injuries of Adalat. He has stated that he had come back from the place of occurrence after 10 minutes and that land dispute is existing in between the parties.

40. After closing the prosecution evidence, the learned Trial Court recorded the statement of the appellants of the aforesaid two appeals on 05.10.2015 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 and have stated that they have been falsely implicated on account of land dispute and they would give evidence.

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

judgment and order.

42. We have perused the impugned judgment of the learned Trial Court, the entire materials on record as also the evidence adduced at the trial and have given our thoughtful consideration to the rival submissions made by the learned counsel for the appellants as well as the learned APP for the State.

43. The first and foremost aspect, which is required to be adjudged is as to whether any ocular evidence is available on record to prove the guilt of the aforesaid appellants for the offences with which they have been charged. The prosecution has led the evidence of PW-1 Gopal Mahto, PW-2 Prahlad Mahto, PW-3 Nandu Mahto, PW-4 Binod Mahto, PW-5 Rajendra Mahto, PW-9 Pramod Mahto, PW-13 Kishore Mahto and PW-14 Ram Prasad Ram, apart from having led the evidence of the doctors, i.e. PW-7 Dr. Ashok Kumar Chaudhari and PW-8 Dr. A.K. Tiwari as also the Investigating Officer, i.e. PW-11 Suraj Kumar Gupta and based upon the same the learned Trial Court has convicted the appellants. Whereas, on the contrary, the appellants have primarily taken the defence that most of the witnesses produced by the prosecution are interested and related, the medical evidence does not support the injuries sustained by the deceased and as far as the factum of Gopal

Mahto being assaulted by the appellants is concerned, the same does not stand proved on the ground of the said circumstances having not been put to the appellants while recording their statements U/s. 313 Cr.P.C.. Alternatively, the learned counsel for the appellants has submitted that the appellants did not have any intention to kill the deceased, inasmuch as no injuries have been inflicted by the appellants on the vital parts of the body of the deceased, thus at best, the present case would fall under Part-II of Section 304 of the IPC.

44. We find, upon having examined the evidence led by the prosecution that the place of occurrence, date and time of occurrence and the mode and manner of occurrence has stood proved, which is apparent from the deposition of the injured eye witnesses, i.e. PW-1 Gopal Mahto and PW-2 Prahlad Mahto as also from the evidence of other eye witnesses, i.e. PW-3 Nandu Mahto, PW-5 Rajendra Mahto, PW-9 Pramod Mahto, PW-13 Kishore Mahto and PW-14 Ram Prasad Ram, apart from that of the Investigating Officer (PW-11 Suraj Kumar Gupta). We find that as far as the mode and manner of occurrence is concerned, PW-1 Gopal Mahto, PW-2 Prahlad Mahto and PW-3 Nandu Mahto have all stated that the incident dates back to 11.05.2013 at about 03:45 p.m. in the evening when they had gone to the

mango grove of Adalat Mahto for cutting mango wood for making stool (*peedha*) for being used in the marriage of the daughter of Prahlad Mahto. While Prahlad Mahto had climbed on a tree to cut a branch of the tree, Adalat Mahto and Nandu Mahto were beneath the tree and Adalat was preparing *khaini* (tobacco). Thereafter, the appellants had arrived there and while Chhota was armed with *farsa*, Arbind was armed with *bhala*, Shambhu was armed with sword and rest of the appellants were armed with *lahti* and *phatta.* Chhota had then assaulted Adalat by *farsa* resulting in cutting of his both arms and right leg and the same had separated, whereafter the other accused persons had assaulted him by *danda* and *phatta.* In the meantime, Gopal had arrived there to save him, but he was assaulted by *bhala* on his thigh and then PW-2 Prahlad Mahto was also assaulted by *lahti* on his left hand, resulting in breaking of his three fingers. As far as PW-1 Gopal Mahto is concerned, he was near the place of occurrence in his field situated near the mango grove of Adalat Mahto and he had witnessed the alleged occurrence as also was assaulted by the appellants resulting in him sustaining grievous injuries. At this juncture, it would be relevant to state that PW-8 Dr. A. K. Tiwari had not only examined Adalat Mahto (deceased) but had also examined PW-1 Gopal Mahto and PW-2

Prahlad Mahto and has stated in his evidence that the injuries caused on the person of Adalat Mahto and Gopal Mahto are serious and dangerous to their life and as far as PW-2 Prahlad Mahto is concerned, though the injury has been caused by hard and blunt substance but the same is simple in nature. We find it relevant to state here that it is a well settled law that injured witnesses are granted special status and they offer an extremely valuable piece of evidence. In this regard, reference be had to a judgement rendered by the Hon'ble Apex Court in the case of ***Abdul Sayeed vs State of Maharashtra***, reported in ***2010 (10) SCC 259***, wherein it has been held that where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in-guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. It has also been held that convincing evidence is required to discredit an injured witness.

45. It would also be apt to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Birbal Nath vs State of Rajasthan,*** reported in **2023 SCC Online SC 1396**, wherein it has been held that greater evidentiary value is attached to the

injured witness unless compelling reasons exist to doubt the same. It would also be pertinent to refer to yet another judgment rendered by the Hon'ble Apex Court in the case of ***Balu Sudam Khalde & Anr. vs. State of Maharashtra***, reported in ***(2023) 13 SCC 365***, paragraph No. 26 whereof is reproduced hereinbelow:-

> "*26. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:*
>
> *26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.*
>
> *26.2. Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.*
>
> *26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.*
>
> *26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.*
>
> *26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.*
>
> *26.6. The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.*"

46. We also find that PW-5 Rajendra Mahto was beneath a tree near the canal at the time of occurrence and he has stated that he had seen the incident from a distance of 2-3 bigha and has Ad-verbatim recited the sequence of events as has been narrated by the aforesaid injured eye witnesses. We also find that PW-9 Pramod Mahto, son of the deceased, who was coming from his in-laws' place has stated in his evidence that when he had reached near Kotwa village, he heard *hulla* (alarm) and then he had gone running inside the grove, whereupon he saw Chhota having cut the hands and legs of his father by *farsa* as also Sukai and Arbind had assaulted his father by *bhala* on his waist and then other accused persons had assaulted him by *lathi* apart from Arbind and Sukai having also assaulted Gopal on his legs by *bhala*. As far as PW-13 Kishore Mahto (informant) is concerned, he is stated to be ploughing the field situated adjacent, on the western side of the mango grove since 2 p.m. and he is also stated to have witnessed the aforesaid incident and had recited the sequence of events as have been narrated by the aforesaid injured eye witnesses. PW-14 Ram Prasad Ram is stated to be ploughing the field of the informant and upon *hulla* (alarm) he had gone to the place of occurrence and had seen the incident. Thus we find that the

ocular evidence of the aforesaid witnesses, i.e. PW-1, PW-2, PW-3, PW-5, PW-9, PW-13 and PW-14 are cogent, convincing, creditworthy and reliable as also have stood the test of cross-examination, apart from being totally reconcilable and consistent with the medical evidence and moreover, the defence has not been able to elicit any contradictions while cross-examining the said witnesses. Hence, there is no reason to create any doubt about the truthfulness of the said witnesses, thus there is no reason to doubt the guilt of the appellants of the aforesaid appeals in the alleged occurrence, which stands proved beyond all reasonable doubt.

47. As regards the contention of the learned counsel for the appellants that as far as the postmortem report of the deceased Adalat Mahto is concerned, all the six injuries inflicted upon his body have been found to have been caused by sharp cutting substance, however the ocular evidence shows that he was also assaulted by *lathi* by some of the appellants but no injury has been found to have been inflicted by hard and blunt substance and similarly as far as Gopal Mahto is concerned, the injury report shows that all the injuries inflicted on his person have been caused by hard and blunt substance, however the evidence on record would show that he was assaulted by *bhala*. In this

regard, it would suffice to state that as far as Adalat Mahto is concerned, he has also suffered fracture on various parts of the body which can obviously been caused by hard and blunt substance and as far as Gopal Mahto (PW-1) is concerned, he has sustained lacerated wound which can also be as a result of *bhala* blow, inasmuch as a *bhala* consists of two portions, one is shaft usually made of bamboo/wood and another is its metal head, hence shaft can very well cause an injury attributable to hard and blunt substance. Thus, the aforesaid arguments advanced by the learned counsel for the appellants has got no force. It has been also submitted by the learned counsel for the appellants that most of the witnesses are interested and related, hence they are not trustworthy. However, in this regard, as far as the issue of credibility of a related/interested witness is concerned, we may quote paragraph no. 26 of an old classic judgment rendered by a Three-Judge Bench of the Hon'ble Apex Court, in the case of ***Dalip Singh and Others vs. The State of Punjab***, reported in ***AIR 1953 SC 364***, which is reproduced herein below:-

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

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

48. As regards the lacuna in the case of prosecution to the effect that the circumstance of Gopal Mahto being assaulted by the appellants has not been put to them while recording of their statements under Section 313 Cr.P.C., thus such circumstances which were not put to the appellants in their examination under Section 313 Cr.P.C. have to be completely excluded from consideration. In this regard, we find that the ocular evidence of the prosecution witnesses would show that there is no doubt about the mode and manner of occurrence which we have already held to have been proved and the defence has not been

able to discredit the testimony of the prosecution witnesses, from which we find that the deceased was not only assaulted by Chhota Mahto by *farsa* and by Arbind Mahto and Sukai Mahto by *bhala* but also by other appellants by *danda* and *phatta*. Hence, even if the circumstance of Gopal Mahto being assaulted is left out of consideration for the moment, we find that all the appellants are members of an unlawful assembly and were having common object to commit the aforesaid crime in question. It is a well settled law that if an offence is committed by any member of an unlawful assembly in furtherance of the common purpose, or if members knew such an offence was likely to be committed, then every member of that assembly is liable for that offence. It is equally a well settled law that 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 and by invoking Section 149 of the IPC, the members of an unlawful assembly can be punished on the ground of vicarious liability even though they are not accused of having inflicted fatal injuries. Reference in this regard be had to a judgement rendered by the Hon'ble Apex Court in the case of ***Nitya Nand***

vs. State of U.P. & Anr., reported in ***(2024) 9 SCC 314,*** paragraph nos. 41 to 48 whereof are reproduced hereinbelow:-

> ***"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 149 IPC. Section 149 IPC says that every member of an unlawful assembly shall be guilty of the offence committed in prosecution of the common object. Section 149 IPC is quite categorical. It says that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of committing of that offence, is a member of the said assembly; is guilty of that offence. Thus, if it is a case of murder under Section 302 IPC, each member of the unlawful assembly would be guilty of committing the offence under Section 302 IPC.*
>
> ***44.*** *In Krishnappa v. State of Karnataka [(2012) 11 SCC 237], this Court while examining Section 149 IPC held as*

follows: (SCC p. 243, paras 20-21)

> *"20. It is now well-settled law that the provisions of Section 149 IPC 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 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. This principle ropes in every member of the assembly to be guilty of an offence where that offence is committed by any member of that assembly in prosecution of common object of that assembly, or such members or assembly knew that offence is likely to be committed in prosecution of that object.*
>
> *21. The factum of causing injury or not causing injury would not be relevant, where the accused is sought to be roped in with the aid of Section 149 IPC. 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] held that Section 149 IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. By application of this principle, every member of an unlawful assembly is roped in to be held guilty of the offence committed by any member of that assembly in prosecution of the common object of that assembly. The factum of causing*

injury or not causing injury would not be relevant when an accused is roped in with the aid of Section 149IPC. The question which is relevant and which is required to be answered by the court is whether the accused was a member of an unlawful assembly and not whether he actually took part in the crime or not.

46. *As a matter of fact, this Court in Vinubhai Ranchhodbhai Patel v. Rajivbhai Dudabhai Patel [(2018) 7 SCC 743] has reiterated the position that Section 149 IPC 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 (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:

> *"5. ... When a concerted attack is made on the victim by a large number of persons it is often difficult to determine the actual part played by each offender. But on that account for an offence committed by a member of the unlawful assembly in the prosecution of the common object or for an offence which was known to be likely to be committed in prosecution of the common object, persons proved to be members cannot escape the consequences arising from the doing of that act which amounts to an offence."] Section 149IPC is one such provision. It is a provision conceived in the larger public interest to maintain the tranquillity of the society and prevent wrongdoers (who actively collaborate or assist the commission of offences) claiming impunity on the ground that their activity as members of the unlawful assembly is limited.*

***

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

offence of murder is likely to be committed."

(emphasis in original)

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

49. We thus find from the evidence of the prosecution witnesses that all the accused persons, including the appellants of the aforesaid two appeals were members of unlawful assembly as also they had participated in the incident in prosecution of the common object of that assembly and as a result of commission of the offence in question, Adalat Mahto

has died, hence all the aforesaid appellants, who were members 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 may have died primarily on the account of fatal blow inflicted by the appellant of second case, i.e Chhota Mahto as also by the appellant no. 1 and appellant no.2 of the first case, namely Sukai Mahto and Arbind Mahto respectively, nonetheless all the other appellants and other accused persons are liable to be convicted under Section 302 of the IPC with the aid of Section 149 of the IPC, keeping in view the law laid down by the Hon'ble Apex Court in the case of ***Nitya Nand*** (supra).

50. 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 medical evidence on record, i.e the postmortem report and injury reports 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.

51. We would now take up for consideration the alternative argument advanced by the learned counsel for the appellants to the effect that the appellants had no intention to cause death, inasmuch as all the injuries have been inflicted on non-vital parts of the body of the deceased and moreover, it is apparent from the case as set up by the prosecution that at the time of occurrence, apart from the deceased PW-2 Prahlad Mahto and PW-3 Nandu Mahto were present at the place of occurrence as also other witnesses, i.e. PW-1 Gopal Mahto, PW-5 Rajendra Mahto, PW-9 Pramod Mahto, PW-13 Kishore Mahto and PW-14 Ram Prasad Ram had also arrived there. Moreover, it is evident from the evidence of PW-2 that Sharma Mahto was present at the grove from before and he had then called the other accused persons, whereafter the other accused persons had arrived there within two minutes and then they had engaged in overt-act as aforesaid, which also shows that the appellants did not have any premeditated mind to kill anyone. In fact, it does not appear from the evidence on record that

repeated *farsa/bhala/lathi* blows were inflicted on the deceased apart from the fact that the medical evidence would show that no injury has been inflicted on the vital parts of the body of the deceased. Hence, we are of the view that the present case would not fall within the purview Section 302 of the IPC rather it would, at best attract Section 304 Part-II of the IPC, in absence of any intention to cause death of the deceased.

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

it would be culpable homicide not amounting to murder.

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

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

> *26. After analysing the entire evidence, it is evidently clear that the occurrence took place suddenly and there was no premeditation on the part of the appellants. There is no evidence that the appellants made special preparation for assaulting the deceased with the intent to kill him. There is no dispute that the appellants assaulted the deceased in such a manner that the deceased suffered grievous injuries which were sufficient to cause death, but we are convinced that the injury was not intended by the appellants to kill the deceased.*
>
> *27. In the facts and circumstances of the case, in our considered opinion, the instant case falls under Section 304 Part II I.P.C. as stated above. Although the appellants had no intention to cause death but it can safely be inferred that the appellants knew that such bodily injury was likely to cause death, hence the appellants are guilty of culpable homicide not amounting to murder & are liable to be punished under Section 304 Part II I.P.C.*"

54. Thus, based on an encapsulation of the above mentioned facts and circumstances of the case and the law prevailing on the subject matter, it has weighed upon us to come to a finding that the present case would fall under Section 304 Part-II of the IPC, especially in view of the fact that from the evidence adduced by the prosecution, intention to kill the deceased does not get established and the elements of intention to cause death seems to be missing, however it can safely be inferred that the appellants knew that the bodily injuries inflicted upon the deceased on account of the assault made by them was likely to

cause death. Therefore, upon considering the entire case of the prosecution and the evidence adduced in support of the same, we feel that the appellants of all the aforesaid two appeals are liable to be convicted under Section 304 Part-II of the IPC. As such, the conviction of the appellants under Section 302/149 of the IPC and the sentence of rigorous imprisonment for life with fine of Rs.10,000/- each, awarded there under are set aside and instead the appellants are convicted under Section 304 Part-II of the IPC, however conviction under Section 148 of the IPC would stand against the appellants but with no separate sentence being awarded there under.

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

(i) ***Camilo Vaz vs. State of Goa,*** reported in ***(2000) 9 SCC 1***;

(ii) ***Rampal Singh vs. State of U.P.,*** reported in ***(2012) 8***

SCC 289;

(iii) ***Ankush Shivaji Gaikwad vs. State of Maharashtra***, reported in ***(2013) 6 SCC 770***;

(iv) ***Chenda vs. State of Chhattisgarh***, reported in ***(2013) 12 SCC 110***;

(v) ***Surain Singh vs. State of Punjab***, reported in ***(2017) 5 SCC 796***;

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

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

56. It would be apt to refer to a judgment rendered by the Hon'ble Apex Court, reported in ***(2011) 14 SCC 471* (*Buddhu Singh & Others Vs. State of Bihar)***, wherein once again the issue of conversion of conviction from Section 302 IPC to Section 304 Part-II of the 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 No. 8 and 9 of the said judgment herein below:-

> "*8. Considering the overall material, we are of the view that there is hardly anything on record which can be said against accused Ledwa Singh and Balchand Singh though the common intention on their part could be attributed since they had done the overt act of grappling with and pinning down the deceased. Now, seeing that his father and brother had been grappling with the deceased, accused Buddhu Singh dealt an axe-blow which could not be said to be intended towards the head. It could have landed anywhere. However, it landed on the head of the deceased. Therefore, the element of intention is ruled out. Again the defence raised on behalf of the accused that there could not have been the intention to commit the murder of the deceased is justified by the fact that accused Buddhu Singh did not repeat the assault. Under the circumstances, we feel that the prosecution has been able to establish the guilt of the accused persons under Section 304 Part II I.P.C.*
>
> *9. We, accordingly, modify the finding of the High Court and convert the conviction of the accused from Section 302 I.P.C. to Section 304 Part II I.P.C. and sentence each of them to the period already undergone. Accused Buddhu Singh is stated to be in jail for the last five years whereas other accused persons, namely, Ledwa Singh and Balchand Singh are stated to be in jail for the last ten years. They be released from the jail forthwith unless they are required in any other case.*"

57. We would also like to gainfully reproduce paragraph nos.18 and 19 of the judgment rendered by the Hon'ble Apex Court in the case of ***Gopal Singh vs. State of Uttarakhand***, reported in (***2013) 7 SCC 545*** hereinbelow: -

> "*18. Just punishment is the collective cry of the society.*

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

fancy. It should be embedded in the conceptual essence of just punishment.

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

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

"10. The respondent was tried for the offence under Sections 302 and 201 IPC. With the evidence on record, it was clearly established that the respondent was author of the fatal injury in question. The trial court, with reference to the nature of the act of the respondent and the attending circumstances, convicted him for culpable homicide not amounting to murder

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

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

> *"12. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in Sevaka Perumal v. State of T.N. [(1991) 3 SCC]*
>
> *13. Criminal law adheres in general to the principle*

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

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

15. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and

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

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

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

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

(emphasis supplied)

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

of Haryana, (2000) 5 SCC 82; State of M.P. v. Saleem, (2005) 5 SCC 554; Ravji v. State of Rajasthan, (1996) 2 SCC 175; State of M.P. v. Ghanshyam Singh, (2003) 8 SCC 13] and, while observing that the facts and circumstances of the case show "a despicable aggravated offence warranting punishment proportionate to the crime", this Court found no justification for extending the benefit of probation or for reduction of sentence. On the question of sentencing, this Court re-emphasised as follows:

> *"84. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.*
>
> *85. The principle of proportionality in sentencing a crime-doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence."*
>
> *(emphasis supplied)*

13. Therefore, awarding of just and adequate punishment to the wrongdoer in case of proven crime remains a part of duty of the court. The punishment to be awarded in a case has to be commensurate with the

gravity of crime as also with the relevant facts and attending circumstances. Of course, the task is of striking a delicate balance between the mitigating and aggravating circumstances. At the same time, the avowed objects of law, of protection of society and responding to the society's call for justice, need to be kept in mind while taking up the question of sentencing in any given case. In the ultimate analysis, the proportion between the crime and punishment has to be maintained while further balancing the rights of the wrongdoer as also of the victim of the crime and the society at large. No straitjacket formula for sentencing is available but the requirement of taking a holistic view of the matter cannot be forgotten.

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

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

> *"304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing*

such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

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

17. So far the mitigating factors, as taken into consideration by the High Court are concerned, noticeable it is that the same had already gone into consideration when the trial court awarded a comparatively lesser punishment of 3 years' imprisonment for the offence punishable with imprisonment for a term that may extend to 10 years,

or with fine, or with both. In fact, the factor that the incident had happened on the "spur of the moment": had been the basic reason for the respondent having been convicted for the offence of culpable homicide not amounting to murder under Section 304 Part II IPC though he was charged for the offence of murder under Section 302 IPC. This factor could not have resulted in awarding just a symbolic punishment. Then, the factor that the respondent was 26 years of age had been the basic reason for awarding comparatively lower punishment of 3 years' imprisonment. This factor has no further impelling characteristics which would justify yet further reduction of the punishment than that awarded by the trial court. Moreover, the third factor, of the respondent himself taking his father to hospital, carries with it the elements of pretence as also deception on the part of the respondent, particularly when he falsely stated that the victim sustained injury due to the fall. Therefore, all the aforementioned factors could not have resulted in further reduction of the sentence as awarded by the trial court.

18. The High Court also appears to have omitted to consider the requirement of balancing the mitigating and aggravating factors while dealing with the question of awarding just and adequate punishment. The facts and the surrounding factors of this case make it clear that, the offending act in question had been of the respondent assaulting his father with a blunt object which resulted in the fracture of skull of the victim at parietal region. Then, the respondent attempted to cover up the crime by taking his father to hospital and suggesting as if the victim sustained injury because of fall from the roof. Thus, the acts and deeds of the respondent had been of killing his own father and then, of furnishing false information. The homicidal act of the respondent had, in fact, been of patricide; killing of one's own father. In such a case, there was no further scope for leniency on the question of punishment than

what had already been shown by the trial court; and the High Court was not justified in reducing the sentence to an abysmally inadequate period of less than 4 months. The observations of the High Court that no useful purpose would be served by detention of the accused cannot be approved in this case for the reason that the objects of deterrence as also protection of society are not lost with mere passage of time.

19. In the given set of facts and circumstances, the observations in Jinnat Mia v. State of Assam, [(1998) 9 SCC 319] on the powers of the High Court to review the entire matter in appeal and to come to its own conclusion or that the practice of this Court not to interfere on questions of facts except in exceptional cases shall have no application to the present case, particularly when we find that the High Court has erred in law and has not been justified in reducing the sentence to a grossly inadequate level while ignoring the relevant considerations.

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

59. We would now like to give a careful consideration to the facts of the present case for the purposes of awarding a proper sentence, considering the principles laid down by the Hon'ble Apex Court in a catena of judgments, as has been referred to

hereinabove in the preceding paragraphs. The facts and circumstances of the present case depicts that the appellants did not cause any fatal injuries on the vital parts of the body of the deceased and moreover, it does not appear that repeated blows were inflicted by the appellants upon the deceased apart from the fact that though the incident had taken place on 11.05.2013 at 03.45 p.m., however the deceased was first taken to Bagaha Hospital where they had reached at about 5 p.m. in the evening and had stayed there for an hour, whereafter they had gone to Bettiah and reached there at 8-9 p.m. but the deceased is stated to have been brought dead at Bettiah Hospital, which can also be said to be an mitigating circumstance, inasmuch as proper treatment was not given immediately to the deceased. This leads us to a prudent consideration that the appellants never planned to inflict such type of injuries which would cause death of the deceased, hence this takes away the element of intention of causing death. Factually, the appellant no.1 of the first case, i.e Sukai Mahto @ Shukai Mahto, the appellant no.3 of the first case, i.e Moti Mahto @ Motilal Mahto and the appellant no.4 of the first case, i.e Shambhu Mahto @ Shukul Mahto have been in custody for around one year, while the appellant no.2 of the first case Arbind Mahto has been in jail

for around 10 years. As far as the sole appellant of 2nd case, namely Chhota Mahto is concerned, he has been in custody for around 12 years.

60. Now, adverting to the requirement of balancing the aggravating and mitigating factors and circumstances in which a crime has been committed on the basis of really relevant circumstances, though we find that the appellants of the aforesaid appeals have been suffering the rigors of trial since the year 2013, i.e. for a substantially long period of about 12 years and they are stated to be having a clean antecedent, however considering the principles laid down by the Hon'ble Apex Court to the effect that with mere passage of time, the objects of deterrence as also protection of society are not lost, there is no scope for leniency on the question of sentencing. Moreover, the appellants have now stood convicted for the offence of culpable homicide not amounting to murder under Section 304 Part-II of the IPC, though they were charged and had also been convicted by the Ld. Trial Judge for the offence of murder under Section 302/149 of the IPC, hence we are of the view that no symbolic punishment should be awarded, especially in view of the principle of proportionality in prescribing liability according to the culpability of each kind of

criminal conduct, inasmuch as showing of undue sympathy to impose inadequate sentence would do more harm to the justice system, leading to undermining the public confidence in the efficacy of law as also would be resultantly counterproductive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

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

62. The appellant no.2 of the first case Arbind Mahto and the sole appellant of 2nd case, namely Chhota Mahto have now stood convicted under Section 304 Part-II of the IPC and sentenced to undergo rigorous imprisonment for 5 years by the instant judgment, however since they have already undergone sentence of more than five years and are in custody, they are directed to be released from jail forthwith unless required in any other case.

63. As far as the appellant no.1 of the first case, i.e Sukai Mahto @ Shukai Mahto, the appellant no.3 of the first case, i.e Moti Mahto @ Motilal Mahto and the appellant no.4 of the first case, i.e Shambhu Mahto @ Shukul Mahto are concerned, since they have also now stood convicted under Section 304 Part II of the IPC and sentenced to rigorous imprisonment for 5 years by the instant judgment, their bail bonds are hereby cancelled and they are directed to surrender before the learned Trial Court within a period of four weeks from today, for being sent to jail for serving the remaining sentence.

64. Accordingly, the aforesaid two appeals bearing Criminal Appeal (DB) No.131 of 2016 and Criminal Appeal (DB) No.176 of 2016 are partly allowed to the extent indicated hereinabove.

(Mohit Kumar Shah, J)

I agree.
Shailendra Singh, J

(Shailendra Singh, J)

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