



2025:CGHC:14281-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 1530 of 2024**

Sheikh Saleem S/o. Sheikh Kareem Aged About 40 Years R/o. Ward No.31, Atal Awas, Kanchan Bagh, Rajnandgaon, District - Rajnandgaon (C.G.)

---Appellant

versus

State Of Chhattisgarh Through P.S. Kotwali, District - Rajnandgaon (C.G.)

--- Respondent

CRA No. 1798 of 2024

1 - Salman Alias Vicky Khan S/o. Hamid Khan Aged About 26 Years R/o Kanchan Baag Atal Awas, Ward No. 31, Rajnandgoan, P.S. Kotwali, District - Rajnandgaon (C.G.)

2 - Kartik Ram Tembekar S/o Narendra Kumar Tembekar Aged About 20 Years R/o Kanchan Baag Atal Awas, Ward No. 31, Rajnandgoan, P.S. Kotwali, District - Rajnandgaon (C.G.)

3 - Premchand Alias Bittu S/o Krishna Bansfod Aged About 25 Years R/o Kanchan Baag Atal Awas, Ward No. 31, Rajnandgoan, P.S. Kotwali, District - Rajnandgaon (C.G.)

4 - Mukul Netam S/o Bhaiyalal Netam Aged About 19 Years R/o Kanchan Baag Atal Awas, Ward No. 31, Rajnandgoan, P.S. Kotwali, District - Rajnandgaon (C.G.)

---Appellants

Versus

State Of Chhattisgarh Through Police Station - Kotwali District -
Rajnandgaon (C.G.)

--- Respondent

CRA No. 1800 of 2024

Simon Peter S/o Shri George Willam Peter Aged About 23 Years R/o
Ward No. 31, Atal Awas, Kanchan Bagh, Rajnandgaon (District),
Chhattisgarh - 491441

---Appellant

Versus

State Of Chhattisgarh Through Aarkshi Kendra, Basantpur, District
Rajnandgaon, Chhattisgarh

--- Respondent

For Appellant-Sheikh Saleem and Appellants-Salman @ Vicky Khan, Premchand @ Bittu and Mukul Netam	:	Ms.Aditi Shinghvi, Advocate in CRA Nos.1530/2024 & CRA No.1798/2024
For Appellant No.2- Kartik Ram Tembekar	:	Mr.Chitendra Singh, Advocate in CRA No.1798/2024
For Appellant-Simon Peter	:	Mr.Aagney Sail, Advocate in CRA No.1800/2024
For Respondent	:	Mr.S.S.Baghel, Deputy Government Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, C.J.

25/03/2025

1. Since the aforesaid three criminal appeals have been filed against the impugned judgment dated 23.07.2024 passed by the Additional Sessions Judge, Rajnandgaon in Sessions Case No.21/2021, they were clubbed & heard together and being disposed of by this common judgment.
2. Appellants-Sheikh Saleem, Salman @ Vicky Khan, Kartik Ram Tembekar, Premchand @ Bittu, Mukul Netam and Simon Peter have preferred these three criminal appeals under Section 374(2) of the CrPC questioning the impugned judgment dated 23.07.2024 passed by the Additional Sessions Judge, Rajnandgaon in Sessions Case No.21/2021, by which they have been convicted for offences under Sections 324 (three times) and 302 of the IPC and sentenced to undergo RI for three years and fine of Rs.2000/-, in default of payment of fine to further undergo RI for one month on each count and imprisonment for life and fine of Rs.5000/-, in default of payment of fine to further undergo RI for two years.
3. Case of the prosecution, in nutshell, is that appellants Salman @ Vicky Khan, Simon Peter, Mukul Netam, Premchand @ Bittu Baspod, Kartik @ Bhau Tembekar used to sit in the square in front of Raja Sriwas's house and consume drugs and tease the girls of the locality, therefore, Raja Sriwas and his friend Parvez Qureshi had stopped the said appellants from sitting in front of his house in January, 2020, then all the said accused had threatened to fight with Raja Sriwas and Parvez Qureshi. On 21.09.2020 at

about 20:00 P.M. Raja Srivas went in his car CG-08-AM-0429 along with his driver Suraj to Station Para and picked up Pervez Qureshi and Sohail Raza bringing them to his home for dinner which they ate on the terrace. After dinner Raja Srivas escorted his guests Pervez Qureshi and Mohd. Sohail Raza out of his home to his car which was parked right in front of the home with the driver waiting inside the car. As all three were getting into the car it is alleged that the appellants came from the side of the Water Tank and started abusing Raja Srivas and attacked Pervez Qureshi who died. Raja Sriwas, his daughter Pooja Srivas and Mohd. Sohail Raza also received injuries. Thereafter, the appellants entered their house and started beating and abusing them and thereafter ran away with the weapons from the spot. Dehati nalsi and dehati merg intimation were registered by Smt.Ranjita Srivas (PW-3) vide Exs.P-1 and P-2. FIR was registered vide Ex.P-33. Inquest was prepared over the body of the deceased vide Ex.P-35. Spot map was prepared by the investigating officer vide Ex.P-3. Bloodstained soil and plain soil were recovered from the spot vide Ex.P-5. Memorandum statement of appellant Salman @ Vicky was recorded vide Ex.P-9. Memorandum statement of appellant Shaikh Salim was recorded vide Ex.P-10. Memorandum statement of appellant Kartik Tembekar was recorded vide Ex.P-11. Memorandum statement of appellant Premchand @ Billu was recorded vide Ex.P-12. Memorandum statement of appellant Simon Peter was

recorded vide Ex.P-13 and memorandum statement of appellant Mukul Netam was recorded vide Ex.P-14. One sword, full pant stains with blood and t-shirt stains with blood were seized from appellant Salman Khan vide Ex.P-15. One iron rod, lower pants stains with blood and t-shirt stains with blood were seized from appellant Shaikh Salim vide Ex.P-16. One knife, jeans fullpant stains with blood and full shirt stains with blood were seized from appellant Kartik Tembekar vide Ex.P-17. One sword stains with blood, jeans stains with blood and full shirt stains with blood were seized from appellant Premchand Basphod vide Ex.P-18. One battle axe stains with blood, jeans stains with blood and t-shirt stains with blood were seized from appellant Simon Peter vide Ex.P-19. One sword stains with blood, jeans stains with blood and full shirt stains with blood were seized from appellant Mukul Netam vide Ex.P-20. The appellants were arrested on 22.09.2020 vide Exs.P-21 to P-26. MLC of injured Pooja Srivas was conducted by Dr.Anil Mahakalkar (PW-9) vide Ex.P-27 and found a cut wound on left side of waist measuring 5x1cm and extending up to the skin surface. MLC of injured Mohd.Sohail Raza was conducted by the same doctor vide Ex.P-28 and found the following injuries:

- “1. Cut wound measuring 3 x 2cm was present on right shoulder up to muscle surface.
2. Cut wound measuring 3 x 2cm was present on left forearm upto muscle surface from which bleeding was taking place.

3. Cut wound measuring 2 x 1cm x skin surface was present on right leg.

4. Crushed wound on left thigh measuring 3 x 2 cm.”

MLC of injured Raja Srivas was also conducted by the same doctor vide Ex.P-29 and found cut wound on left hand measuring 5 x 3cm which was present deep into the muscle and was bleeding. The muscle and tendon were cut.

4. Dead body of deceased Parvez Qureshi was sent for postmortem to Government Hospital, Rajnandgaon where Dr.Ashay Kumar Ramteke conducted postmortem over the body of the deceased vide Ex.P-30 and found following injuries:-

“1. Cop wound was present over head measuring 18 x 7.9 x cavity deep exposing soft tissue, muscle, fracture of cranial bones and brain and skull were exposed. It was hemorrhagic and red in colour.

2. Chop wounds present over face and lower part of mandible and injury was caused by injury no. 01 and size of all arc injuries was uniform measuring 22 cm x 31 cm x 8 cm, fracture of cavity and soft tissue, muscle head, bones and mandible and tongue were exposed, hemorrhagic and red in colour.

3. Incised wound injury was present on the front part of neck measuring 3 x 1 cm x muscle deep and 10 x 1 cm x muscle deep, located 8 cm and 9 cm above the manubrium ridge and 22 and 23 cm above the right nipple, was hemorrhagic red in colour.

4. Stab wound present on right side of chest measuring 1 cm x 0.5 cm x muscle deep and located

8 cm above the manubrium ridge and 14 cm above the right nipple and was hemorrhagic in red colour.

5. Incised wound present on the front of the chest and was seven-toothed, measuring 7.2 cm x 0.5 cm x tissue and was located 17 cm above the right nipple and 14 cm above the left nipple and was hemorrhagic and red in colour.

6. Incised wound present on right side of chest measuring 3 x 1 cm deep in lump and was 12 cm below right nipple and 14 cm above navel, it was hemorrhagic and red in colour.

7. Incised wound present on right side of abdomen measuring 3 x 1 cm x tissue depth and was located 18 cm below right nipple and 10 cm above navel, was hemorrhagic red in colour.

8. Incised wound present on left outer side of chest measuring 10 cm x 0.7 cm x tissue depth, tailing was present on the injury and this injury was present 10.2 cm below left nipple and 19 cm below manubrium stony, it was hemorrhagic in red colour.

9. Multiple incised wounds present on the front side of the chest, ranging in size from 9.5 x 0.2 cm x tissue depth to 3 x 0.2 cm x tissue depth and were hemorrhagic red in colour.

10. Multiple aberrant contusions present on left shoulder and armpit measuring 7.2 x 4 cm and one was present on front of chest and left side of chest measuring 11.4 x 7.3 cm and 6.8 x 2.4 cm and was red in colour

11. Chop wound present in lower one third of right arm measuring 9 cm x 5 cm muscle deep and located

29 cm below right shoulder and 3 cm above right oblique fossa and was hemorrhagic in red colour.

12. Chop wound present on the anterior and inner side of right arm measuring 9 cm x 4.4 cm x muscle deep and located 22 cm below right axilla and 7 cm medial to right oblique fossa and was hemorrhagic in red colour.

13. Incised wound present on right wrist measuring 3 x 2.3 x tissue depth and was hemorrhagic in red colour.

14. Incised injury present in right paw measuring 7 cm x 1 cm x muscle depth and there was oiling in the injury and this injury was present 5.9 cm below the lower part of the right thumb finger and 3.2 cm above the right wrist and was hemorrhagic in red colour.

15. Chop wound present on right thumb measuring 5.56 x 3 cms was deep to the bone and right thumb was separated from the base and muscle, soft tissue fracture was exposed to the bone of the hand and it is present 5 cm below the lateral finger of right thumb and 4.5 cm above the right wrist and was hemorrhagic and red in colour.

16. Aberrant contusion measuring 14.4 cm x 2.1 cm was present from right shoulder to right arm and was red in colour.

17. Chop wound present on right knee measuring 7 x 2 cm x bone deep and fracture was present in patella bone was hemorrhagic red in colour.

18. Chop wound present on right foot 1 cm below injury no. 17 and 36 cm above right heel whose size was 9 cm x 2.5 cm x bone deep and fracture of right

tibia bone was present which was hemorrhagic in red colour.

19. Incised wound present in the middle one third of the right leg and towards the front and it was 19 cm above the right heel and 18 cm below the right knee, measuring 4 cm x 1.5 cm x muscle deep, it was hemorrhagic in red colour.

20. Chop wound present on the front side of left leg measuring 7 cm x 3 cm x bone deep and it was present 12 cm below the right knee and 24 cm above the left heel and fracture of left tibia and fibula bone was present and was hemorrhagic red in colour.

21. Incised wound present on the front side of left leg measuring 6 x 1.5 cm x 0 tissue depth and was located 19 cm above the left heel and 17 cm below the left knee and the injury had oiling and was hemorrhagic in red color Incised injury was present on outer side of left knee measuring 7 x 1 cm by tissue depth and was located 4 cm outward from left joint and 42 cm above left heel and was hemorrhagic in red colour.

23. Incised wound present on left knee measuring 2 x 0.7 cm x 0.7 cm tissue deep present towards front was hemorrhagic and red in colour.

24. Incised wound was present on the anterior side of left thigh, it was tooth like, measuring 10 cm x 0.5 cm x tissue depth, it was located 5.3 cm above the left knee and 9.8 cm above the left fossa, it was hemorrhagic and red in colour.

25. Incised wound present in the middle part of the front side of the chest, it was tooth like, measuring 13 cm x 0.5 cm x tissue depth and was present 6.9 cm

below the right nipple and 8.2 cm below the left nipple, it was hemorrhagic and red in colour.

26. Incised wound present on the anterior side of abdomen, it was tooth like, measuring 17 cm x 0.5 cm x tissue deep and was located 4.6 cm above the umbilicus and 6.2 cm below the injury point 25, it was hemorrhagic and red in colour.

27. Chop wound present on left wrist and left hand was separated below left wrist measuring 9 cm x 7 cm x bone deep and muscle soft tissue was exposed and fracture of lower part of radius and ulna bone was red in colour.

28. Incised wound present on left paw, three fingers next to thumb of left hand measuring 2.5 x 1.5 cm bone deep, 2 x 1 cm bone deep, 2 x 1 cm bone deep and 2 x 1 cm bone deep and were hemorrhagic in red colour.

29. Chop wound present in middle one third of left forearm measuring 11 x 5 cm x bone deep and muscle soft tissue was present fracture in left radius and ulna bone was exposed and the injury was present 14.2 cm above the elbow 27 cm and 115 cm below the left elbow and was hemorrhagic in red colour.

30. Incised wound present on the front side of left arm measuring 7 cm x 15 cm x tissue depth and was located 6 cm above the left cubital fossa and 15 cm below the left shoulder. It was hemorrhagic in red colour.

31. Incised wound measuring 7 x 6.5 cms x 2.5 cms bone deep was present on the posterior and outer side of middle one third of left arm and was 12 cms

above the left elbow and 12 cms below the left shoulder and was hemorrhagic red in colour.

32. Incised wound measuring 7.6 cm x 0.2 cm x tissue depth was present on the left shoulder and was hemorrhagic in red colour 33. Aberrant contusion present in the inner middle one-third of left arm measuring 8.4 cm x 3 cm in red colour.

34. Chop wound measuring 11 cm x 3 cm x muscle deep was present in the posterior middle one third of left leg and was hemorrhagic red in colour present 16 cm below left fossa and 16 cm above left ankle.”

The doctor has opined that cause of death is due to haemorrhage and shock following injuries sustained and nature of death was homicidal. Patwari also prepared the spot map vide Ex.P-36. Seized articles were sent to FSL for chemical examination and as per FSL report (not exhibited), human blood was found on sword (Article C) seized from appellant Salman Khan, knife (Article I) seized from appellant Kartikram Tembekar, battle axe (Article O) seized from appellant Premchand Baspod, jeans pant (Article S) seized from appellant Mukul Netam.

5. After due investigation, all the appellants were charge-sheeted for the aforesaid offences in which they abjured their guilt and entered into defence stating inter-alia that they have not committed any offence and they have falsely been implicated in crime in question.

6. In order to bring home the offence, the prosecution examined as many as 16 witnesses and exhibited 49 documents Exs.P-1 to P-49.
7. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 23.07.2024, proceeded to convict the aforesaid appellants for the aforesaid offences and sentenced them as aforementioned, against which, these criminal appeals have been preferred.
8. Ms.Aditi Shinghvi, learned counsel for learned counsel for appellant-Sheikh Saleem in CRA No.1530/2024 and appellants-Salman @ Vicky Khan, Premchand @ Bittu and Mukul Netam in CRA No.1798/2024 submits that the name of appellant-Sheikh Salim does not find place in the FIR. As per dehati nalsi (Ex.P-1) recorded at the instance of Smt.Ranjita Srivas (PW-3) only 5 accused persons have been named. Similarly, in the FIR which was registered on the date of incident itself, the name of other five appellants have been mentioned. The name of appellant Sheikh Salim is not present in the FIR (Ex.P-33). A perusal of cross-examination of Rahul Mogre (PW-1) who is one of the eyewitnesses to the incident would show that he had taken the name of appellant Sheikh Salim for the first time in the Court. Similarly, Mohd.Sohail Raza and Smt.Ranjita Srivas (PW-3) have also stated in para 23 and para 18 respectively of their cross-examination that they are naming appellant Sheikh Salim for the first time in the Court and that their statements under Section 161

CrPC does not mention the name of appellant Sheikh Salim. Investigating officer Virendra Chaturvedi (PW-16) has also stated in para 47 of his cross-examination that the FIR and dehati nalsi and also the statement of the injured witness Raja Srivas only had the names of 5 accused persons. It has been further submitted on behalf of the appellants that seizure and memorandum witnesses Yashwant Chandel (PW-7) and Kuldeep Sewte (PW-8) are having criminal records and their testimonies cannot be relied upon. As per the investigating officer Virendra Chaturvedi (PW-16) in para 30 of his cross-examination the seizure and memorandum witnesses have criminal records and he has not summoned any other witness for this purpose. She also submits that the FSL report has not been exhibited, neither any question has been put to the appellants under Section 313 CrPC in relation to FSL report. Further, there is no document to show that when were the samples sent for FSL and when the same were received by the Laboratory. In absence of the same, FSL cannot be relied upon.

9. Mr.Chitendra Singh, learned counsel appearing for appellant-Kartik Ram Tembekar submits that conviction and sentences awarded by the trial Court are not proper under the facts and circumstances of the case. Moreover, the prosecution has not proved his story beyond reasonable doubt. He further submits that so-called eye witnesses namely Raja Srivas, Smt.Ranjita Srivas, Ku.Pooja Srivas, Mohd.Sohail Raja, Kamal Sen and

Rahul Mongre had seen the incident as per the prosecution who are the interested witnesses, whose credibility is often considered less than that of disinterested witness, but in the present case, the trial Court had appreciated as a whole and had convicted the appellant. As such, the criminal appeal deserves to be allowed and the impugned judgment so far as it relates to appellant-Kartik Ram Tembekar deserves to be set aside.

10. Mr. Aagney Sail, learned counsel for appellant-Simon Peter in CRA No.1800/2024 submits that the impugned judgment has come to be passed in violation of the settled principles of criminal jurisprudence which entitle the accused to the benefit of doubt. Learned trial Court erred in not appreciating that the prosecution failed to establish that the appellant had given the forceful blow to deceased Parvez Qureshi on any of the vital organs of the body leading to his demise. This is when prosecution led evidence of at least five eye-witnesses i.e. PW2 - Mohd. Sohail Raza, PW3 - Smt. Ranjita Srivas, PW4 - Raja Srivas, PW5 - Komal Sen and PW6 - Pooja Srivas. These were eye-witnesses from close quarters/range and except two i.e. PW3 and PW5 who viewed the incident from the ration shop inside the home (car was at about 5-6 feet from shop), the rest of the eye-witnesses (PW2, PW4 & PW6) are allegedly involved in the incident and get hurt (simple injuries). Even so, none of them describe the body part on which the appellant hit the deceased and the impact/consequence of the blow. Instead, all these eye-witnesses

give a general statement that all six accused persons started hitting accused persons with weapons (sword, metal rod, axe, knife). Hence, in the absence of any clear identification of the blow given by the appellant which led to the homicide, he is entitled to the benefit of doubt and for a lesser punishment under Section 72 IPC.

11. He further submits that learned trial Court erred in not appreciating that all five eye-witnesses are interested witnesses who are family members. Raja Srivas (PW-4) states that he was friends with deceased for 2-3 years and had gone to pick up in his car and bring deceased to his home for dinner on the fateful night. Smt. Ranjita Srivas (PW-3) who is wife of Raja Srivas (PW-4) stated that she considered deceased as elder brother of husband. PW6 is daughter of PW3 & PW4 and PW5 is nephew of PW4. PW2 was friends with deceased since last 8-10 years and had come to have dinner with him to the home of PW4 on the fateful night. Hence, all of them by virtue of being close friends / family, they shared hostility to the accused persons, which as per settled law, requires careful examination of their evidence and scrutiny of its infirmities by learned trial Court before deciding to act upon it. Considering that all five eye-witnesses are interested witnesses, learned trial Court failed to consider the discrepancies and contradictions in the evidences of the five eye witnesses about the following:-

(i) Discrepancy in the evidences of PW2, PW3 & PW4 about the location i.e. position of the victims i.e. PW2 & PW4 and deceased vis-à-vis the car at the time of attack.

(ii) Discrepancy in evidence of PW2 and PW4: as per Mohd Sohail Raza (PW2), during the incident/attack Raja Shrivias (PW4) goes back inside his home to get something and faints inside, doesn't come outside, whereas, as per PW4 he was dragged inside his home by his daughter and after going inside he never fainted.

(iii) Discrepancy in evidence of PW5 & PW3, as per PW3 during the incident PW5 went to the rescue whereas, as per PW5 he did no such thing.

12. He also submits that learned trial Court did not appreciate that the prosecution failed to examine even a single independent witness from the neighbouring houses in the locality to support its case. There are only two so-called independent witnesses which prosecution could name in the final report, out of which only one i.e. Rahul Mogre (PW-1) was examined who admitted to standing at a distance of about 70-80 feet from the scene of crime and who knew the deceased victim since childhood thereby making him an interested witness. As such, the criminal appeal deserves to be allowed and the impugned judgment sofar as it relates to

appellant-Simon Peter deserves to be set aside. He relied upon the judgment of the Supreme Court in the matter of **Ram Lal v. Delhi Administration** reported in **(1973) 3 SCC 466**, **Ninaji Raoji Boudha v. State of Maharashtra** reported in **(1976) 3 S.C.R. 428**, **Richhpal Singh Meena v. Ghasi @ Ghisa & Ors.** reported in **(2014) 9 S.C.R. 857**, **Virsa Singh v. State of Punjab** reported in **1958 SCR 1495**, **Takdir Samsuddin Sheikh v. State of Gujarat** reported on **(2011) 10 SCC 158** and **State of Haryana v. Shakuntala & Ors.** reported in **(2012) 3 SCC 113**.

13. On the other hand, Mr.S.S.Baghel, learned Deputy Government Advocate appearing for the respondent/State supports the impugned judgment and submits that the prosecution has proved its case beyond reasonable doubt and the learned trial Court after considering all incriminating materials and circumstances available against the accused persons rightly convicted them for the aforesaid offences. Hence, the instant criminal appeals being bereft of merits are liable to be dismissed looking to the commission of offence done by the accused persons.
14. We have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
15. The first question for consideration would be, whether death of deceased Parvez Qureshi was homicidal in nature ?

16. On behalf of the prosecution, Dr. Akshay Kumar Ramteke who conducted postmortem on the body of deceased Parvez Qureshi vide Ex.P-35 has been examined as PW-10 and opined that cause of death is due to haemorrhage and shock following injuries sustained and death is homicidal in nature. After hearing learned counsel for the parties and after considering the submissions, we are of the considered opinion that the finding recorded by the trial Court that death of deceased Parvez Qureshi was homicidal in nature is the finding of fact based on evidence available on record. It is neither perverse nor contrary to record. We hereby affirm that finding.

17. In the present case, Mohd. Sohail Raza (PW-2), Raja Srivas (PW4) and Pooja Srivas (PW-6) are injured eyewitnesses. Mohd. Sohail Raza (PW-2) has stated in para 2 of his evidence that the incident took place on 21.09.2020 at around 9.30 P.M. in Kanchanbag. He and Parvez had gone to Raja Srivas's house for dinner. Raja Srivas brought Parvez from Station Para to Kanchanbagh in his car and he was called after receiving a phone call. He, Raja Srivas and Parvez all three had dinner at Raja Srivas's house and after dinner came down from the house, took a U-turn in the car, driver of the car Suraj was sitting in the car and he started the car. As soon as he opened the gate of the car, the appellants present in the Court started hitting Parvez, Raja Srivas and him with weapons. When Raja Srivas came to save Parvez, the appellants also assaulted Raja Srivas. The

appellants assaulted Parvez with a sword, rod and axe. He was also hit with an axe and sword, both his arms, shoulders, waist and both knees were injured. In para 3 of his evidence, he has stated that the appellants surrounded Parvez Qureshi and killed him. Parvez died in front of him. The appellants also vandalized the car. He ran away from the spot on foot and reached Soni Petrol Pump. Then he asked for a phone from Soni Petrol Pump and called his friend Riyaz Jhaludhia. Riyaz Jhaludhia took him on his bike to the District Hospital, Rajnandgaon for first aid. He was admitted in the District Hospital for three days.

18. Raja Srivas (PW-4) has stated in para 2 of his evidence that the incident is of 21.09.2020. He went to pick up Parvez Qureshi and Mohd.Sohail in his car at around 7:00-7:30 P.M. and brought them to his house in Kanchanbagh at around 8:00 P.M. They had dinner and then talked and to go out of the house. He, Parvez and Sohail left together at around 10:00 P.M. to drop them at their home. In para 3 of his evidence, he has stated that as soon as three of them were standing near the car to get in, the appellants came from near the tank, out of which Salim was holding a rod, Bau @ Kartik was holding an axe and Simon Peter was holding an axe. The other three appellants were holding swords. The appellants said Parvez Qureshi that he comes from outside and comes to the locality and starts bullying others and started abusing and beating him. Due to the said beating, deceased Parvez got injuries on his head and entire body, due to which,

Parvez Qureshi died on the spot itself. In the said incident, he got an injury on his hand. In the said incident, his daughter Pooja Srivas who came to intervene also got injuries near her thigh. In para 4 of his evidence, he has stated that the appellants used to sit in front of water tank, smoking ganja and eating pills and teasing the girls of the locality, to whom Parvez had advised not to sit here and consume drugs and it was regarding the same matter that there was a difference of opinion between the appellants and deceased Parvez Qureshi.

19. Pooja Srivas (PW-6) has stated in para 2 of her evidence that the incident took place on 21.09.2020 at around 9.30 P.M. Parvez Qureshi and Sohail came to their place for dinner. After dinner, Parvez and Sohail came down from their house to go home and when they reached near the car, six accused present in the Court came from behind the tank and started beating them. In para 3 of her evidence, she has stated that the appellants had swords, axes, knives and rods and attacked with them, due to which Parvez Qureshi died on the spot and Sohail and her father Raja Srivas and she also got injured. He got injured in the waist and her father got injured in the hand. In para 4 of her evidence, she has stated that before the incident, the appellants used to sit near the water tank near their house and used to tease the girls passing by. Once she was also teased by appellant Kartik, which she told to her father and parental uncle (bade papa) Parvez Qureshi. When Parvez Qureshi tried to reason with the

appellants, they threatened him. The appellants vandalized the door of the house and the car.

20. The Supreme Court in **Balu Sudam Khalde and Anr. v. State of Maharashtra** reported in **2023 SCC OnLine SC 355** held as under:

“26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) 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.

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

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

(e) 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.

(f) 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.

(emphasis supplied)”

21. Rahul Mongre (PW-1), Smt.Ranjita Srivas (PW-3) and Komal Sen are eye-witnesses of the incident. Rahul Mongre (PW-1) has stated in para 2 of his evidence that the incident took place on 22nd September, 2020 at 9.30 P.M. His friend Lav Kumar came to his house to meet him. Lav Kumar told him that he had some work with Parvez and they should go to his house. So he went to Parvez’s house at Solah Kholi Milan Chowk with Lav Kumar. On reaching Parvez’s house, they found that he was not at home and had gone to Raja Srivas’s house in Kanchanbagh. Lav Kumar and he were both going to Kanchanbagh. Before reaching Kanchanbagh, the appellants were beating Parvez Qureshi near the water tank in Kanchanbagh. Seeing this, they stopped at a distance. The appellants were also beating Sohail and Raja Srivas and were vandalizing their Swift car.

22. Smt.Ranjita Srivas (PW-3) has stated in para 2 of her evidence that the incident took place on 21.09.2020 at around 10.30 P.M. at their house Kachanbagh Atal Awas. On the date of incident, after 7.30 P.M. Parvez Qureshi and Mohd. Sohail came to their house for dinner. Their car, whose driver was Suraj, went to pick up Parvez and Sohail. After dinner, when they were leaving to go

home, six appellants were hiding near the water tank and as soon as Sohail and Parvez were sitting in the car, the appellants said to Parvez Qureshi that you come to their locality and do bullying. The appellants abused Parvez Qureshi and said that you come to their locality and do bullying and started beating him. Appellant Salim was holding a rod, Kartik was holding a small knife and Simon Peter was holding an axe. With the said weapons, the appellants started beating deceased Parvez Qureshi and injured Mohammad Sohail and Parvez Qureshi died on the spot due to the said beating.

23. Komal Sen (PW-5) has stated in para 2 of his evidence that the incident took place about a year ago at around 11.30-12.00 P.M. Parvez had come to his house. He was asleep so he cannot tell who else was with him. He woke up on hearing the shouts of his maternal uncle and other family members and saw that a fight was going on. His maternal uncle had come running inside the house after getting injured. When he looked from the shop side, appellant Salman was hitting Parvez with sword, appellant Simon Peter with an axe and Mukul Netam with a sword, Kartik with a knife and appellant Prem Bansfod with a sword. Appellant Salim was holding a rod.

24. In criminal cases, the credibility of witnesses, particularly those who are close relatives of the deceased, is often scrutinized. However, being a relative does not automatically render a witness

"interested" or biased. The term "interested" refers to witnesses who have a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused due to enmity or personal gain. A "related" witness, on the other hand, is someone who may be naturally present at the scene of the crime, and their testimony should not be dismissed simply because of their relationship to the deceased. Courts must assess the reliability, consistency, and coherence of their statements rather than labelling them as untrustworthy.

25. The distinction between "interested" and "related" witnesses has been clarified in **Dalip Singh v. State of Punjab, 1954 SCR 1453**, where the Supreme Court emphasized that a close relative is usually the last person to falsely implicate an innocent person. Therefore, in evaluating the evidence of a related witness, the court should focus on the consistency and credibility of their testimony. This approach ensures that the evidence is not discarded merely due to familial ties, but is instead assessed based on its inherent reliability and consistency with other evidence in the case.

26. Thus, it is clear that the evidence of a "related witness" cannot be discarded only on the ground of relationship. On the contrary, why a "related witness" would spare the real culprit in order to falsely implicate some innocent person? There is a difference between "related witness" and "interested witness". "Interested witness" is a witness who is vitally interested in conviction of a

person due to previous enmity. The “Interested witness” has been defined by the Supreme Court in the matter of **Mohd. Rojali Ali v. State of Assam**, reported in **(2019) 19 SCC 567** as under :

“13. As regards the contention that all the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an “interested” witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between “interested” and “related” witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see *State of Rajasthan v. Kalki*; *Amit v. State of U.P.*; and *Gangabhavani v. Rayapati Venkat Reddy*). Recently, this difference was reiterated in *Ganapathi v. State of T.N.*, in the following terms, by referring to the three-Judge Bench decision in *State of Rajasthan v. Kalki*: (Ganapathi case, SCC p. 555, para 14)

“14. “Related” is not equivalent to “interested”. A witness may be called “interested” only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be “interested”.”

14. In criminal cases, it is often the case that the offence

is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in *Dalip Singh v. State of Punjab*, wherein this Court observed: (AIR p. 366, para 26)

“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.”

15. In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in *Jayabalan v. State (UT of Pondicherry)*: (SCC p. 213, para 23)

“23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be

ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.”

27. Though the eyewitnesses who have been examined in the present case were closely related to the deceased, their testimonies are consistent with respect to the accused persons being the assailants who inflicted wounds on the deceased. As is revealed from the sequence of events that transpired, one of the family members was subjected to an assault. It was thus quite natural for the other family members to rush on the spot to intervene. The presence of the family members on the spot and thus being eyewitness has been well established. In such circumstances, merely because the eyewitnesses are family members, their testimonies cannot be discarded solely on that ground.
28. The trial Court has convicted the appellants for offence under Sections 324 and 302 of the IPC.
29. Admittedly, in the present case, there are six appellants and all the appellants with common intention formed unlawful assembly with intent to commit murder murder of deceased Parvez Qureshi and in furtherance of common object committed murder of deceased Parvez Qureshi.
30. 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.

31. In **Krishnappa v. State of Karnataka** reported in **(2012) 11 SCC 237**, the Supreme Court while examining Section 149 IPC held as follows:-

“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.”

32. Thus, this Court 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 149 IPC. 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.

33. As a matter of fact, the Supreme Court in **Vinubhai Ranchhodbhai Patel v. Rajivbhai Dudabhai Patel** reported in **(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. The Supreme Court has held:

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

a provision conceived in the larger public interest to maintain the tranquility 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.”

34. It is clear from the evidence of injured eyewitnesses Mohd.Sohail Raza (PW-2), Raja Srivas (PW4) and Pooja Srivas (PW-6) that the appellants were part of the unlawful assembly which committed the murder of Parvez Qureshi and also caused injuries to them. Though they were extensively cross-examined, their testimonies in this regard could not be shaken.

35. From perusal of the records, it transpires that the the appellants formed unlawful assembly with intent to cause death of deceased Parvez Qureshi and in furtherance of common intention they

have caused death of deceased Parvez Qureshi and also caused injuries to injured Mohd.Sohail Raza (PW-2), Raja Srivas (PW4) and Pooja Srivas (PW-6). As such, the judgments cited by Mr.Aagney Sail, learned counsel for appellant-Simon Peter are distinguishable to the facts of the present case.

36. Considering the statements of injured eyewitnesses Mohd.Sohail Raza (PW-2), Raja Srivas (PW4) and Pooja Srivas (PW-6), also considering the evidence of eyewitnesses Rahul Mogre (PW-1) Smt.Ranjita Srivas (PW-3) and Komal Sen (PW-5), evidence of Dr.Akshay Kumar Ramteke (PW-10) who conducted autopsy over the body of deceased Parvez Qureshi vide Ex.P-30, evidence of Dr.Anil Mahakalkar (PW-9) who conducted MLC of injured Mohd.Sohail Raza (PW-2), Raja Srivas (PW4) and Pooja Srivas (PW-6) and further considering the material available on record and it is the case where six appellants participated in a fight resulting in death of deceased Parvez Qureshi, we are of the considered opinion that the appellants are liable to be convicted under Section 302/149 of the IPC instead of Section 302 of the IPC, but in the present case, the trial Court has erroneously convicted the appellants under Section 302 of the IPC, which deserves to be and is hereby set aside. As such, they are convicted under Section 302/149 of the IPC for committing murder of deceased Parvez Qureshi and under Section 324 (three times) of the IPC for causing injuries to Mohd.Sohail Raza (PW-2), Raja Srivas (PW4) and Pooja Srivas (PW-6) and

sentenced to undergo imprisonment for life and fine of Rs.5000/-, in default of payment of fine to further undergo RI for two years and RI for three years and fine of Rs.2000/-, in default of payment of fine to further undergo RI for one month on three counts.

37. The present criminal appeals stand **dismissed** with the aforesaid modification.

38. It is stated at the Bar that the the appellants are in jail, they shall serve out the sentence as modified by this Court.

39. Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

40. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellants are undergoing their jail terms, to serve the same on the appellants informing them that they are at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of the High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice