



2025:AHC-LKO:78638-DB

Judgment reserved on 19.11.2025
Judgment delivered on 28.11.2025
Neutral Citation No.- 2025:AHC-LKO:78638-DB
**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. 877 of 1982

Jairam and othersAppellants
Versus
State of U.PRespondent

Counsel for Appellants : Ram Prakash Shukla, Rajesh
Kumar Dwivedi, Vikas Verma
Counsel for Respondent : A.G.A., S.K. Mehrotra,

**Connected With
GOVERNMENT APPEAL No. 216 of 1983**

State of U.PAppellant
Versus
Shambhu Prasad and othersRespondents

Counsel for Appellant : Govt. Advocate
Counsel for Respondents : Rajesh Kumar Dwivedi

Court No. - 30

HON'BLE RAJIV GUPTA, J.
HON'BLE PRAMOD KUMAR SRIVASTAVA, J.
(Delivered by Hon'ble Rajiv Gupta, J.)

1. Heard Shri Rajesh Kumar Dwivedi, learned Amicus Curiae for the surviving accused-appellant no.5- Ram Jiyawan, Shri Shiv Nath Tilhari, learned A.G.A. for the State and perused the trial court record.

2. The instant criminal appeal has been filed against the judgment and order dated 30.10.1982 passed by Sessions Judge, Faizabad in Sessions Trial No. 117 of 1982 (State of U.P. Vs. Shambhu Prasad and others), arising out of Case Crime No.

269 of 1980, under Sections 147, 148, 149, 323, 324, 325, 302 IPC, Police Station Maharaj Ganj, District Faizabad, whereby accused-appellants have been convicted for the offence punishable under Section 304 Part-II read with Section 149 IPC and awarded the sentence of five years rigorous imprisonment, under Section 323 read with Section 149 IPC and awarded the sentence of six months rigorous imprisonment, under Section 147 IPC and awarded the sentence of one year rigorous imprisonment, with default stipulations. All the sentences have been directed to run concurrently.

3. During the pendency of this criminal appeal, appellant no.1- Jairam and appellant no.2- Lalloo @ Ramanand had passed away and their appeal was dismissed as abated vide order dated 04.07.2018, appellant no.3- Raja Ram, appellant no.4- Maya Ram and appellant no.6- Shambhu Prasad had also passed away and their appeal was also dismissed as abated vide order dated 02.08.2017 and now, the instant criminal appeal survives only for the appellant no.5- Ram Jiyawan, son of Birja Prasad.

4. As per the prosecution case as unfolded in the first information report lodged by one Hanuman Prasad (PW-1) vide written report (Exhibit Ka-1) dated 27.11.1980, which was registered vide Case Crime No. 269 of 1980, under Sections 147, 148, 149, 323, 324, 325, 302 IPC, Police Station Maharaj Ganj, District Faizabad, vide G.D. Report No.19 at 11:00 hours dated 27.11.1980 (Exhibit Ka-7) and the chik F.I.R. (Exhibit Ka-6) prepared by Constable Rajeshwar Singh on the relevant date and time.

5. As per the allegations made in the first information report, it is alleged that on 27.11.1980 at about 8:00 AM, first informant Hanuman Prasad and his father Ram Autar and his uncle Jwala Prasad were sowing and ploughing their field, which they had taken on a mortgage about five years back from one

Kallu Pandey. Meanwhile, accused Shambhu Prasad, Raja Ram, Birja Prasad, Maya Ram, Lalloo @ Ramanand and Ram Jiyawan, armed with lathi and farsa, reached there and exhorted to kill them. All the accused persons assaulted the three victims by lathi and farsa, consequent to which, they fell down. On alarm being raised, Alladin, Tribhuwan Dutt Singh and Shiv Poojan also reached there, then the accused persons made good their escape. Ram Autar had received injuries on his head by farsa and other injuries on both forearm were caused by lathi, resulting in fracture injuries. Informant Hanuman Prasad and his uncle Jwala Prasad received injuries on their head as well as on other parts of the body.

6. It is further stated that Birja Prasad was armed with farsa while rest of the accused persons were armed with lathi, who left the place of incident after extending death threats to the victims. Informant Hanuman Prasad brought his father Ram Autar on a cot and his uncle Jwala Prasad on a cycle at the Police Station, from where, his father Ram Autar was taken to Maya Bazaar Hospital, where he was declared dead by the attending Doctor. On account of assault made by the accused persons, his father Ram Autar died and he then reached the Police Station alongwith his corpse.

7. On the basis of the written report, a first information report was lodged in Police Station Maharaj Ganj, District Faizabad on 27.11.1980 at 11:30 AM. The said first information report was lodged in the presence of Investigating Officer S.O. Ram Karan Yadav, Police Station Maharaj Ganj, who was entrusted with the investigation. The Investigating Officer then got conducted the inquest on the person of the deceased Ram Autar in the Police Station itself and thereafter, recorded the statements of Hanuman Prasad and Jwala Prasad and thereafter, sent them to P.H.C., Maya Bazaar for medical examination of their injuries. The inquest report has been proved and marked as Exhibit Ka-8

and alongwith the inquest, other relevant documents, namely, photo nash, challan nash, letter to R.I., letter to C.M.O., and sample seal were also prepared, which has been proved and marked as Exhibit Ka-9 to Ka-12. After conducting the inquest, corpse was sealed by preparing the sample seal and was handed over to the Constables Shri Kant Pandey and Surya Kant Srivastava for carrying it to the mortuary for conducting the post-mortem. On 27.11.1980, the two injured Jwala Prasad and Hanuman Prasad have also been medically examined by Dr. R.N. Singh, Medical Officer, P.H.C., Maya Bazaar (PW-4), who noted their injuries, which are as under :-

Injuries of injured Jwala Prasad :-

(i) Lacerated wound 2-½ cm x ½ cm x scalp deep over (R) side of head, antero posterior & 10-1/2 cm above (R) ear.

(ii) Traumatic swelling 5 cm x 4 cm over (R) shoulder.

(iii) Traumatic swelling 7 cm x 5 cm over dorsum of (R) hand at ulna side.

(iv) Traumatic swelling 7 cm x 4 cm over back of (L) wrist.

Note: *(i) All injuries simple & caused by blunt weapon.*

(ii) Duration of injury fresh as wound is bleeding.

(iii) One linear scar 2 cm long along radial aspect of (L) index finger.

Injuries of injured Hanuman Prasad :-

(i) Lacerated wound 3 cm x ¾ cm x scalp deep over (R) side of head, transverse & 7 cm above (R) ear.

(ii) Abrasion 3 cm x 1 cm over (R) shoulder blade 11 cm above inferior angle of (R) scapula.

(iii) Contusion 19 cm x 2 cm over back crossing from (R) to (L) 9 cm inner to injury no.2.

(iv) Contusion 8 cm x 2 cm over (R) side of back 11 cm below injury no.2.

(v) Contusion 18 cm x 2 cm just below injury no.4 & oblique from (R) to (L).

(vi) Contusion 11 cm x 2 cm just below injury no.5 & oblique.

Note: *(i) All injuries simple and caused by blunt weapon.*

(ii) Duration of injury fresh as wound is bleeding.

(iii) One mole 1 cm above (R) eyebrow.

The said injuries of injured Jwala Prasad and Hanuman Prasad have been proved and marked as Exhibit Ka-2 and Ka-3.

8. The Investigating Officer thereafter proceeded to the place of incident and prepared the site plan, which has been proved and marked as Exhibit Ka-13. At point "A" of the site plan, blood was recovered, from where, he had collected the plain earth and blood-stained earth, kept it in a container and sealed it and prepared the recovery memo, which has been proved and marked as Exhibit Ka-14.

9. On the same day, Investigating Officer arrested the accused Raja Ram, who, while apprehending, received injuries. Accused Shambhu Prasad was also arrested from the sugarcane field and brought to the Police Station and G.D. entry was made, which has been proved and marked as Exhibit Ka-15. He then recorded the statements of Tribhuwan Dutt Singh, Alladin and Shiv Poojan.

10. On 28.11.1980, an autopsy was conducted on the person of the deceased Ram Autar and as per the post-mortem report, he received eight injuries on his head. On internal examination, no abnormality was found on the scalp. Membrane and brain were congested. The said post-mortem report has been proved and marked as Exhibit Ka-17.

Post-mortem injuries of deceased Ram Autar :-

Dr. R.S. Mishra stated to have conducted post-mortem examination on the dead body of Ram Autar on 28.11.1980 at

about 10 A.M. He furnished the following datas connected with the post-mortem examination:-

(i). Age about 60 years.

(ii). Probable time of death was about one day.

(iii). Thin built emaciated body.

(iv). Rigor mortis passed of in upper extremities and present in lower extremities.

Ante-mortem injuries :-

(i). Lacerated wound 6 cm. x 2 cm-in the side of scalp 10 cm. above left ear, bone deep.

(ii). Contusion 4 cm. x 2 cm. on upper 1/3rd of lower upper arm. Colour bluish.

(iii). Contusion with swelling 6 cm. x 4 cm. with fracture shaft of humerus (left).

(iv). Contusion 1 cm. x 0.5 cm. upper 1/3rd of left fore-arm. Colour bluish.

(v). Contusion with swelling 3 cm. x 6 cm. upper 2/3rd of Right fore-arm with fracture. Right ulna with dislocation of right elbow joint.

(vi). Contusion 1.5 cm. x 0.5 cm. on right fore-arm 5 cm. below right elbow joint on exterior aspect. Colour bluish.

(vii). Contusion 0.5 cm. x 0.5 cm on right fore-arm 3 cm. above right writ joint. Colour bluish.

(viii). Contusion 3 cm. x 1 cm. on left side of back 2 cm. from the mid-line.

Internal examination

(i). Pleura – Right NAD Left side fibrosis and adherent to lung tissues in its lower lobe.

(ii). Emphysematous bullae with caseous tissues in the upper lobe of right lung.

(iii). Emphysematous bullae all over. Caseous tissues with multiple cavities all over.

(iv). Large intestines was filled with faecal matter and gases.

(v). Small intestine empty.

(vi). Stomach contained 2 Oz liquid contents.

In the opinion of Dr. R.S. Mishra death was caused on account of shock and haemorrhage due to the ante-mortem injuries.

The post-mortem report proved by the Dr. R.S. Mishra and is marked as Exhibit Ka-17.

11. On the same day i.e. 28.11.1980, Dr. Harnam Singh (DW-2), Medical Officer, P.H.C., Bakhshi Talaab, Lucknow had also examined the injuries received by accused persons Jairam, Birja and Ram Jiyawan.

The injuries of accused Jairam :-

(i) Contused swelling 4 cm x 1-½ cm on left upper arm, side 7 cm above the left elbow joint, blue in colour, in position.

(ii) Contusion 2 cm x 1-½ cm on right forearm outer 3 cm above right wrist joint, blue in colour.

(iii) Contusion on left thigh upper part, medial side 12 cm above left blue in colour.

Note: *(i) All injuries are simple.*

(ii) Caused by blunt object.

(iii) Duration about two days old.

The injuries of accused Birja Prasad :-

(i) Contusion 3 cm x 1-½ cm on right upper arm, outer side blue in colour 4 cm above cubital fossa horizontal/oblique in position.

(ii) Contused swelling 5 cm x 1-½ cm on left leg 7 cm below tibial tuberosity, oblique in position blue in colour, C/o pain in chest but no mark of external injury.

Note: *(i) All injuries are simple.*

(ii) Caused by blunt object.

(iii) Duration about two days.

The injuries of accused Ram Jiyawan :-

(i) Contused swelling 3 cm x 1 cm on left forearm, in front blue in colour 5 cm below cubital fossa oblique in position.

(ii) C/o pain back, neck and chest but no mark of external injury.

(iii) Contusion 3-½ x 1 cm on left leg on medial side 5 cm below left knee joint, Horizontal/Oblique in position, blue in colour.

Note: *(i) All injuries are simple.*

(ii) Cause by blunt object.

(iii) Duration about two days old.

The said injuries have been proved and marked as Exhibit Kha-2, Kha-3 and Kha-4 by D.W.-2 Dr. Harnam Singh.

12. The Investigating Officer thereafter collected the necessary evidence and material on record and concluded the investigation and submitted the charge-sheet, which has been proved and marked as Exhibit Ka-16.

13. On the basis of the said charge-sheet, learned Magistrate had taken cognizance, however, since the case was exclusively triable by the court of Sessions, it was committed to the court of Sessions, where it was registered vide Sessions Trial No. 117 of 1982 (State of U.P. Vs. Shambhu Prasad and Others).

14. The trial court, on 05.06.1982, framed the charges against all the accused-appellants under Section 302 read with Section 149 IPC. Apart from it, charge under Section 148 IPC was framed against the co-accused Birja, while under Section 147 IPC, charge was framed against the co-accused persons, namely, Shambhu Prasad, Raja Ram, Maya Ram, Jairam and Ram Jiyawan. Further, charge under Section 323 read with Section 149

IPC was also framed against all the accused-appellants on 21.10.1982.

15. The charges were then read out and explained to the accused-appellants, who abjured the charges pleaded not guilty and claimed to be tried.

16. During the course of trial, the prosecution in order to bring home the guilty against the accused-appellants, examined as many as seven prosecution witnesses including three eye-witnesses of the incident, namely, Hanuman Prasad as PW-1, Tribhuwan Dutt Singh as PW-2, Alladin as PW-3, Dr. R.N. Singh, Medical Officer, P.H.C., Maya Bazaar as PW-4, Raj Dev as PW-5, who has proved the pro-notes, Investigating Officer S.O. Ram Karan Yadav as PW-6, Dr. R.S. Mishra, Medical Officer, District Hospital, Faizabad as PW-7. Their testimony, in brief, is enumerated below :-

17. PW-1 Hanuman Prasad is the son of the deceased-Ram Autar and he is an eye-witness of the incident. He testified that deceased Ram Autar is his father, while Jwala Prasad is his uncle and Shiv Poojan is his cousin. Accused-appellants are cousins and the residents of the village Bijra, Police Station Maharaj Ganj.

18. It is further stated that plot no. 484 admittedly belongs to Kallu Pandey. Kallu Pandey had sold the western portion of the said plot, measuring 1 bigha and 4 biswas to Maherun Nisa and Hasibun Nisa about four years back, while eastern portion of the said plot, measuring 2 bighas and 17 biswas was mortgaged to his father Ram Autar (deceased) in lieu of a loan of Rs.3,100/-, which was advanced through two pro-notes about six years back. Kallu Pandey was unable to re-pay the said loan, consequent to which, he had executed a fresh pro-notes in connection with the said loan and therefore, the crops

grown on the said plot were taken by him. On the south-west of the said plot, plot of Alladin is situate at a distance of 100 paces and further, at a distance of 150 paces, plot of Tribhuwan is situate.

19. PW-1 Hanuman Prasad further testified that about 1 year 9 months back at about 8:30 AM, he was sowing the wheat crop in his field, while Ram Autar and Jwala Prasad were ploughing their field. In the meantime, Raja Ram and other accused persons reached there. Birja Prasad was armed with farsa and rest were armed with lathi. Shambhu, on reaching there, exhorted to kill them. On the said exhortation, assailants started assaulting him, Jwala Prasad and Ram Autar and on raising alarm, Tribhuwan, Alladin and Shiv Poojan also reached there. Accused Birja, by his farsa, hit his father, while other accused assaulted him and his uncle. Apart from Birja, his father Ram Autar was also assaulted by other accused persons, who, on receiving injuries, fell down. On arrival of the witnesses and on their scolding, accused-assailants ran away. After escaping of the accused persons, Ram Autar was taken on a cot to Gaya Hospital. He alongwith Jwala Prasad also accompanied him there, where the attending Doctor declared him dead. He then got scribed a report of the incident from one Chandra Bhushan, which has been proved and marked as Exhibit Ka-1. Alongwith the said report and corpse of his father, they reached the Police Station Maharaj Ganj and handed over a report to the Constable, on the basis of which, a first information report was registered. On the same day, he alongwith Jwala Prasad were medically examined.

20. During the course of cross-examination, PW-1 Hanuman Prasad testified that all the accused are the residents of the same village and number of mortgaged plot is 484, however, it was not mentioned in the first information report. When the incident occurred, Shambhu stated that sale-deed of the plot no.

484 has been executed by Kallu Pandey. PW-1 Hanuman Prasad further testified that Birja had not hit him or his uncle with a farsa, rather Birja hit his father Ram Autar on his head by farsa. One blow of farsa was given by him. While Birja was assaulting his father, other accused persons were assaulting him and his uncle Jwala Prasad. Apart from Birja, he had not seen any of the accused persons, assaulting his father. At the time of incident, he, his father and his uncle Jwala Prasad were empty handed. The accused persons were not assaulted by anyone with lathi-danda nor he had seen any injury on the person of the accused. The incident lasted for 2-3 minutes.

21. PW-1 Hanuman Prasad further denied the suggestion that on account of assault, his father did not receive any farsa injury. It is also wrong to state that in the incident, no farsa was used. It is also wrong to state that at the time of incident, Shambhu Prasad, Maya Ram and Lalloo @ Ramanand were not present. He further testified that it is wrong to say that on the day of incident, accused Jairam, who had taken the plot no. 484 through a sale-deed, was getting it ploughed. It is also wrong to state that in the meantime, he alongwith Jwala Prasad and Ram Autar, armed with lathi, reached there and restrained Jairam to plough the field. It is also wrong to state that when Jairam refused to abide by them, they assaulted him with the lathi. It is also wrong to state that on the alarm raised by Jairam, Ram Jiyawan, Birja and Raja Ram, armed with lathi, reached there and they started assaulting them. It is also wrong to state that they, in their self defence, wielded lathi blows causing injuries to them.

22. PW-2 Tribhuwan Dutt Singh is another eye-witness of the incident. He testified that six years back, Ram Autar had mortgaged a plot from Kallu Pandey and on the west side of the said plot, at a distance of 150 paces, his plot is situate and there is a clear visibility between the two plots. About 1 year and 10

months back, at about 8:30 AM, he had gone at his plot and was ploughing it, then he saw Ram Autar and Jwala Prasad ploughing their field and Hanuman Prasad, son of Ram Autar was sowing the wheat crops. On hearing the hue and cry, he reached at the field of Ram Autar and saw the accused Shambhu, Raja Ram, Laloo, Maya Ram, Jairam, Ram Jiyawan and Birja Prasad present there. The accused Birja Prasad was armed with farsa and rest were armed with lathi. Shambhu questioned Ram Autar and Jwala Prasad that he had taken the plot, in question, through a sale-deed, then why they are ploughing it. Ram Autar stated that he had taken the plot on mortgage from Kallu Pandey. This resulted into hot talks between them. On the exhortation of Shambhu, all the accused persons started assaulting the victims Ram Autar, Jwala Prasad and Hanuman Prasad. The accused Birja assaulted Ram Autar by a farsa, who fell down receiving injuries. Alladin and Shiv Poojan had also reached there.

23. PW-2 further testified that Kallu Pandey had not mortgaged the land in his presence. When he reached at the disputed plot, then the assault had not started, rather, abuses were being hurled. When Birja assaulted Ram Autar, he had scolded them. He cannot state if Birja assaulted others. He had not counted the injuries on the person of Ram Autar. He further denied the suggestion that he had not witnessed the incident and the report was lodged on his advice. He further denied the suggestion that he was on inimical terms with Shambhu Prasad.

24. PW-3 Alladin is another eye-witness of the incident. He testified that on the south-west of the plot, in question, at a distance of 100 paces, is his field, where Ram Autar was murdered and Hanuman Prasad and Jwala Prasad were assaulted. About 1 year and 10 months back, at about 8:30 AM, he was sowing wheat in his field, while Ram Autar and Jwala Prasad were ploughing their field, while Hanuman was sowing

wheat crop. When he heard the hue and cry, he reached at their field and saw Shambhu Prasad, Raja Ram, Birja, Maya Ram, Ram Jiyawan, Lalloo @ Ramanand and Jairam present there. Birja was armed with farsa, while rest were armed with lathi. Shambhu Prasad stated that he had taken the field, in question, through a sale-deed, then why Ram Autar and others are ploughing it. Ram Autar stated that he had taken the plot on mortgage from Kallu, on which, Shambhu exhorted to assault. Birja assaulted Ram Autar with farsa, while other accused assaulted Jwala Prasad and Hanuman. Ram Autar fell down receiving injuries. Tribhuwan and Shiv Poojan also reached there. On scolding, the assailants left the place of incident.

25. On being cross-examined, PW-3 testified that the Investigating Officer had interrogated him on the day of incident at the Police Station, where he stayed for one and a half hour. The number of his plot is 393 and after his reaching at the plot in question, assault had started. Hanuman and his family members had no lathi-danda nor they wielded it. He had himself seen Birja giving a blow by a farsa, which hit Ram Autar on his head, only one blow was given. He had not seen Birja assaulting any other victims. He further denied the suggestion that he did not actually witnessed the incident and under the influence of Pradhan, is falsely deposing.

26. PW-4 Dr. R.N. Mishra is the Medical Officer, who had examined the injuries of Jwala Prasad and Hanuman Prasad. He further pointed out that the said injuries were simple in nature and could be caused by blunt object like lathi and he has proved the injury report, which have ben marked as Exhibits Ka-2 and Ka-3.

27. On being cross-examined, PW-4 testified that the said injured persons were examined on the basis of *majroobi chitthi*. The injuries have been noted as fresh i.e. within six hours

of the incident and no blood clot was found on the injuries of the victims.

28. PW-5 Raj Dev is the witness of incident, who had executed the pro-notes and stated that on 06.06.1979, Kallu Pandey had taken a loan of Rs.3,100/- from Ram Autar and executed two pro-notes in favour of Ram Autar, which was written by him and bears their signatures, which has been proved and marked as Exhibit Ka-4 and Ka-5. Since, Kallu Pandey was unable to re-pay the loan, fresh pro-notes were executed and in lieu of interest amount of loan, Kallu Pandey had given his land to Ram Autar.

29. On being cross-examined, PW-5 testified that no written agreement was executed and as an interest, Ram Autar will plough the land belonging to Kallu. The said pro-notes were signed by Kallu Pandey, however, it has been signed in the name of Kallu. He further denied the suggestion that forged pro-notes were prepared to give colour to the incident. The Investigating Officer did not record his statement.

30. PW-6 S.O. Ram Karan Yadav is the Investigating Officer of the case and at the relevant time, he was posted at Police Station Maharaj Ganj. He testified that on 26.11.1980 at about 11:00 AM, first informant Hanuman Prasad had given a written report in respect of the incident, which has been proved and marked as Exhibit Ka-1 to the Head Constable Rajeshwar Singh in his presence, on the basis of which, the first information report was registered, which has been proved and marked as Exhibit Ka-6. On the basis of the said first information report, corresponding G.D. Report No. 19 at 11:00 hours has been prepared, which has been proved and marked as Exhibit Ka-7. First informant Hanuman Prasad had brought the injured- Jwala Prasad and the dead body of his father Ram Autar at the Police Station. He was accompanied with Jwala Prasad, who was also

an injured. The inquest on the dead body of the deceased- Ram Autar has been prepared by S.I. T.N. Mishra. He prepared the site plan, wherein at point "A", he had found the blood. Thereafter, he arrested the accused Raja Ram from the village Bijra and the accused Shambhu from the sugarcane field and recorded the statements of Tribhuwan and Alladin.

31. On being cross-examined, he testified that except the pro-notes, no other document was produced before him to show the mortgage and the said pro-notes were returned back. He further denied the suggestion that accused Raja Ram and Shambhu Prasad reached at the Police Station and despite all their efforts, their reports were not registered and they were arrested. He further denied the suggestion that Raja Ram and Shambhu Prasad were not arrested from their village nor Raja Ram received injuries during his arrest, rather he received injuries during the incident.

32. PW-7 Dr. R.S. Mishra is the Medical Officer, who conducted an autopsy on the person of the deceased and details of which has already been mentioned in the earlier part of the judgment. He further stated that injuries on the person of the deceased could be caused on 27.11.1980 at 10:00 AM. He further stated that the injury no.1 on the person of the deceased could not have been caused by a farsa even if it is blunt because the said injuries have full laceration and there is no incised wound or mark of abrasion. Post-mortem report was drawn by him, which has been proved and marked as Exhibit Ka-17. Apart from injury no.1, there is no chance of bleeding either internally or externally in respect of other wounds. There should have been some bleeding in injury no.1. None of the said injuries were fatal for life. Looking to the state of lungs, it appears that the deceased was a patient of tuberculosis and his tuberculosis was at a quite advanced stage.

33. Now, at this stage, prosecution evidence was concluded. After concluding the prosecution evidence, statement of the accused-appellants under Section 313 CrPC has been recorded by putting all the incriminating circumstances to them. The accused-appellants denied the incriminating circumstances and claimed that they have been falsely implicated.

34. The accused-appellant Raja Ram, in reply to the question no. 25 put to him in his statement recorded under Section 313 CrPC, categorically stated that on the day of incident, plot no. 484, which he had purchased through a sale-deed. Accused Jairam was ploughing/sowing the said field, when Hanuman Prasad, Jwala Prasad and Ram Autar, armed with lathi, reached there and asked him not to plough the field, when Jairam refused to abide by them, then all the three of them started assaulting Jairam, who raised alarm and on his alarm, Ram Jiyawan, Birja and he, armed with lathi, reached there, then Hanuman Prasad, Jwala Prasad and Ram Autar started assaulting them and they, in their self defence, also wielded lathi. He alongwith Ram Jiyawan, Birja and Jairam received injuries. He alongwith Shambhu reached the Police Station to lodge the report, however, their report was not registered and they were arrested and their injuries were examined in jail.

35. Similarly, Ram Jiyawan, sole surviving accused-appellant, in reply to the question no. 25 put to him in his statement recorded under Section 313 CrPC, candidly stated that the incident took place in the manner as stated by Raja Ram and he also received injuries in the incident and was medically examined.

36. The accused persons thereafter entered in their defence and have produced two defence witnesses, i.e. DW-1 Ummed Ali, Compounder and DW-2 Dr. Harnam Singh. For

appreciating the entire defence evidence and material on record, their testimony, in brief, is also enumerated.

37. DW-1 Ummed Ali is the Compounder in District Jail, Faizabad and he had produced the Injury Register having injury report of Raja Ram prepared by Dr. Hari Shankar, Jail Doctor, which has been proved and marked as Exhibit Kha-1, however, he has not been cross-examined by the prosecution and his cross-examination has been marked to be Nil.

38. DW-2 Dr. Harnam Singh is the Medical Officer, Bakhshi Talaab, Lucknow, who had examined the injuries of three injured, namely, Jairam, Birja and Ram Jiyawan on 28.11.1980 at 6:30 PM and had proved their respective injuries, which has been proved and marked as Exhibit Kha-2, Kha-3 and Kha-4.

39. On being cross-examined, he testified that all their injuries were simple in nature and most of the injuries were superficial and some of them may be self inflicted.

40. The trial court after appreciating the evidence and material on record held that all the accused persons except Birja in furtherance of their common object, inflicted the injuries on the person of Hanuman Prasad and Jwala Prasad and also inflicted injuries on the person of Ram Autar (deceased), who shortly, succumbed to his injuries and thus, convicted the six accused-appellants, namely, Jairam, Lalloo, Raja Ram, Maya Ram, Ram Jiyawan and Shambhu Prasad, for the offence under Section 304 Part II read with Section 149 IPC, 147 IPC and Section 323 read with Section 149 IPC and awarded the sentence of five years rigorous imprisonment, on the first count, six month rigorous imprisonment for the offence under Section 323 read with Section 149 IPC and one year rigorous imprisonment for the offence under Section 147 IPC. All the sentences to run concurrently, while acquitting Birja of all the charges framed against him.

41. Being aggrieved by the said order of conviction and sentence, the instant appeal has been preferred by the appellants, however, during the pendency of the appeal, all other appellants died and their appeals have already dismissed as abated and now, the appeal survives only for the accused-appellant no.5- Ram Jiyawan.

42. Learned counsel for the appellants has submitted that the trial court in the instant case has not appreciated the evidence and material on record in right perspective and has illegally recorded the finding of conviction and sentence against the appellants, which is bad in law.

43. Learned counsel for the appellants has further submitted that the trial court has misread, mis-appreciated and mis-interpreted the evidence and material on record and has illegally recorded the finding of conviction and sentence against the appellants, while acquitting the accused Birja of all the offences charged with.

44. Learned counsel for the appellants has next submitted that even according to the prosecution own case, as per the allegations made in the first information report as well as from the testimony of the three eye-witnesses of the incident examined before the trial court, specific role of assaulting the deceased- Ram Autar on his head by Birja, who is said to be armed with farsa, has been alleged, however, in the post-mortem report, since no farsa injury was marked by the Doctor, as such, his participation in the incident is found to be false and he has been given a clean acquittal, however, other accused persons, who are said to be armed with lathi, have been convicted on the same set of evidence by placing implicit reliance upon the testimony of the three eye-witnesses of the incident, which is patently illegal, against the material on record and is liable to be set aside.

45. Learned counsel for the appellants has further submitted that even according to the prosecution own case, there was some dispute regarding the plot of land, on which, the incident is alleged to have taken place, while the first informant and the deceased Ram Autar claimed to have possession over the disputed plot on the basis of mortgage made by Kallu Pandey, the owner of the plot in question, while on the contrary, accused persons claimed that Jairam had purchased the said plot of land from Kallu Pandey on the basis of a sale-deed and was in its possession and on the day of the incident, co-accused Jairam was ploughing and sowing the said field, when the rival party, namely, Jwala Prasad, Hanuman Prasad and Ram Autar (deceased) reached there and asked Jairam not to plough the said field and when, he refused to abide by them, then they started assaulting Jairam and on alarm being raised by Jairam, they also reached the place of incident and a free fight took place between them, in which, both the sides had received injuries and have been medically examined. However, the trial court, by completely ignoring the injuries received by the accused-appellants, has illegally recorded the finding of conviction and sentence against the appellants, which is bad in law and is liable to set aside. Moreover, even during the cross-examination of PW-1 Hanuman Prasad, specific question has been put to him regarding manner of incident, in which, three persons from the side of the defence have received injuries but it has been falsely denied by PW-1 and thus, he has suppressed the origin and genesis of the occurrence, however, the trial court completely overlooked this vital aspect of the matter and recorded the finding of conviction and sentence against the appellants, which is bad in law and is liable to be set aside.

46. Learned counsel for the appellants has next submitted that defence has given ample evidence in the form of statement of DW-2, which clearly establishes the fact that at-least

three accused persons, namely, Jairam, Birja Prasad and Ram Jiyawan also received injuries on their person and have been medically examined, however, no explanation whatsoever was given by the prosecution in respect of the said injuries and by recording a cryptic finding that since number and nature of injuries on the side of the prosecution, which are manifestly more numerous and serious, than those alleged to have been suffered on the side of the defence and as such, even assuming that injuries were sustained during the course of some *marpeet*, yet the appellants are liable to be convicted and sentenced. This finding recorded by the trial court is patently illegal and perverse and therefore, is liable to be set aside. Consequently, the conviction and sentence recorded by the trial court is also liable to be set aside.

47. Learned counsel for the appellants has next submitted that it is well settled principle of law that in case, prosecution while adducing the evidence suppresses the origin and genesis of the occurrence, particularly, the manner, in which, the incident has taken place, then the appellants are entitled for benefit of doubt, however, the trial court has completely overlooked this vital aspect of the matter and has recorded the finding of conviction and sentence against the appellants, which is bad in law and is liable to be set aside.

48. Per contra, learned AGA for the State has supported the impugned judgment and order and has submitted that the trial court has appreciated the entire evidence and material on record in right prospective and has rightly convicted the accused-appellants, which does not suffer from any illegality or error of law and as such, is liable to be affirmed.

49. Learned AGA has further submitted that in fact, all the six appellants in furtherance of the common object after forming of an unlawful assembly has committed the offence of causing death of the deceased Ram Autar, while causing the

injuries to the two witnesses, namely, Jwala Prasad and Hanuman Prasad, as such, they are liable to be convicted under Section 302 IPC instead of under Section 304 Part II of IPC as recorded by the trial court.

50. Learned AGA has further submitted that all the three eye-witnesses of the incident have supported the prosecution case in all material particulars and therefore, being the wholly reliable witnesses, their testimony can not be discarded and on the basis of which, trial court has rightly convicted the accused persons by the impugned judgment and order, which does not suffer from any illegality or error and therefore, is liable to be affirmed.

51. Learned AGA for the State, to buttress his arguments, has relied upon the decisions of Hon'ble Apex Court passed in the cases of :-

- (i) State of Madhya Pradesh Vs. Man Singh (2003) Law Suit (SC) 747,
- (ii) Takhaji Hiraji Vs. Thakore Kubersing Chamansing (2001) Law Suit (SC) 804,
- (iii) Rajendra Singh Vs. State of Bihar (2000) Law Suit (SC) 694,
- (iv) Lakshmi Singh Vs. State of Bihar (1976) Law Suit (SC) 325,
- (v) Dharnidhar ; Ram Sanahi & Ors Vs. State of U.P. (2010) Law Suit (SC) 442,
- (vi) Parshuram Vs. State of M. P. MANU/SC/1208/2023,
- (vii) State of Rajasthan Vs. Mehra & Ors (2020) Law Suit (SC) 389,
- (viii) Budh Singh Vs. State of Madhya Pradesh (2007) Law Suit (SC) 703,
- (ix) Ramesh Singh and Ors Vs. State MANU/SC/5762/2018 and has primarily submitted that since the injuries sustained on the

defence side are simple in nature as pointed out by the doctor, as such, the prosecution is not duty bound to explain those injuries and the appellants are not entitled to be extended any benefit on such lapse of the prosecution. The citations relied upon by the learned AGA, however, are distinguishable on facts and the relevant law applicable to the instant case shall be discussed in the later part of the judgment.

52. Having considered the rival submissions made by learned counsel for the parties, the facts that emerge for our consideration is that the incident, in question, is said to have taken place on 27.11.1980 at about 8:00 AM, when the informant party is said to have been ploughing and sowing the field, which is said to be in their possession on the basis of mortgage executed by Kallu Pandey in favour of Ram Autar and at the same time, rival party is said to have reached there to dis-possess them from the field and the incident is said to have occurred causing death of Ram Autar as well as the injuries to the first informant Hanuman Prasad and his uncle Jwala Prasad.

53. On the contrary, the accused persons claimed that appellant Jairam had purchased the plot, in question, through a sale-deed from Kallu Pandey and the said plot was in his possession and on the day of incident, Jairam was ploughing and sowing the said field, when the rival party, namely, Jwala Prasad, Hanuman Prasad and Ram Autar reached there and asked Jairam not to plough the said field and when, he refused to abide by them, then the complainant's party started assaulting Jairam, thereafter, other appellants reached there and a free fight took place between them, in which, both the sides have received injuries and the injured from both the sides have been medically examined and their respective injuries have also been proved and exhibited.

54. As per the prosecution case and the testimony of all the three eye-witnesses of the incident, accused Birja armed

with farsa and other accused persons armed with lathi-danda, reached the place of incident and thereafter, on the exhortation of Shambhu, Birja, armed with farsa, gave a blow on the head of the deceased Ram Autar, while other accused persons assaulted the other two witnesses, namely, Hanuman and Jwala Prasad, however, when we carefully go through the post-mortem report of the deceased- Ram Autar as well as statement of PW-4 Dr. R.N. Singh, who conducted an autopsy on the person of the deceased, we find that the deceased Ram Autar did not suffer any incised wound, which could have been caused by a farsa, rather all the injuries on the person of the deceased are either contusion or lacerated wound and PW-4 Dr. R.N. Singh has candidly testified that all the injuries were simple in nature and could have been caused by a blunt object like lathi.

55. Thus, from the said testimony of the eye-witnesses, it is clear that though all the three eye-witnesses of the incident have candidly stated that the deceased- Ram Autar was assaulted by Birja by a farsa, which hit him on his head, however, there is absolutely no incised wound caused to the deceased, which creates a serious dent in the prosecution story and makes the testimony of all the three eye-witnesses of the incident to be highly doubtful. Relying upon the said ambiguity, though it is specific case of the prosecution and the witnesses that Birja assaulted the deceased by a farsa on his head, however, finding no corresponding farsa injury on the head of the deceased or to the other two injured, namely, Hanuman Prasad and Jwala Prasad, Birja has been honourably acquitted of all the charges framed against him and further, the said order of acquittal has attained finality and has not been challenged at all by the prosecution even in the connected Government Appeal filed by the State, though, against the order of conviction and sentence against the other appellants, connected Government Appeal No. 216 of 1983 (State of U.P. Vs. Shambhu Prasad and Others) has

been preferred by the State but the said government appeal has not been preferred as against Birja and his clean acquittal by the trial court stands reaffirmed, though, as per the prosecution story, he was the main accused causing farsa injury on the head of the deceased, responsible for the killing of Ram Autar but on the same set of evidence, he has been given a clean acquittal. This circumstance further creates a serious dent about the veracity of the prosecution story and renders it doubtful.

56. It is further germane to point out here that when we go through the testimony of the witnesses and the documentary evidence proved and exhibited, we find that the incident, in question, not only the complainant's party i.e. first informant-Hanuman Prasad and Jwala Prasad have received injuries and have been medically examined but on the contrary, even from the side of accused, at-least three persons, namely, Jairam, Birja and sole surviving appellant Ram Jiyawan have also received injuries on their person and have been medically examined and their injuries have been duly proved by DW-2 Dr. Harnam Singh and has been marked as Exhibit Kha-2, Kha-3 and Kha-4.

57. However, when we go through the entire testimony of the three prosecution witnesses, we find that the said witnesses have not made a whisper regarding the injuries found on the person of the defence side, though they have been duly proved and exhibited. Even the manner, in which, it has been caused at-least to the three accused persons, namely, Birja, Jairam and sole surviving appellant Ram Jiyawan itself has been completely suppressed, which clearly suggests that the prosecution is not coming up with clean hands and is trying to suppress the genesis and origin of the occurrence and in such circumstance, we are of the opinion that sole surviving appellant Ram Jiyawan is entitled to get the benefit of doubt as held by the Hon'ble Apex Court in several of its decisions, particularly, in the case of **Bhagwan**

Sahai and Another Vs. State of Rajasthan reported in (2016) 13 SCC 171, wherein it has been held that once the Court came to a finding that the prosecution has suppressed the genesis and origin of the occurrence and also failed to explain the injuries on the person of the accused including death of father of the appellants, the only possible and probable course left open was to grant benefit of doubt to the appellants.

58. The said view has further been reiterated by the Hon'ble Apex Court in ***Pankaj Vs. State of Rajasthan reported in (2016) 16 SCC 192***, wherein it was emphasized that when the genesis and manner of the incident itself are doubtful, conviction cannot be sustained. The Court held as under :-

“25. It is a well-settled principle of law that when the genesis and the manner of the incident is doubtful, the accused cannot be convicted. Inasmuch as the prosecution has failed to establish the circumstances in which the appellant was alleged to have fired at the deceased, the entire story deserves to be rejected. When the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence. After having considered the matter thoughtfully, we find that the evidence on record in the case is not sufficient to bring home the guilt of the appellant. In such circumstances, the appellant is entitled to the benefit of doubt.”

(Emphasis Supplied)

59. Similar view has been expressed by the Hon'ble Apex Court in the recent decision reported in ***2025 SCC OnLine SC 2270 Kannaiya Vs. State of Madhya Pradesh***.

60. Thus, in view of the aforesaid settled principle of law in the given facts and circumstances of the case, we are of the opinion that the sole surviving accused-appellant Ram Jiyawan is entitled for being extended the benefit of doubt.

61. It is further germane to point out here so far as the factum of causing injuries to the accused-appellant Jairam, Birja and Ram Jiyawan is concerned, when we go through the

testimony of PW-1 Hanuman Prasad, an injured witness of the incident, we find that the defence has drawn the attention of the said witness regarding the injuries received by the aforesaid accused persons, however, it has been candidly denied by PW-1 Hanuman Prasad, wherein he testified that “मैं, मेरे पिता व मेरे चाचा घटना के समय खाली हाथ थे। मुल्जिमों को मेरे सामने किसी ने लाठी डन्डे से नहीं मारा था। मैंने किसी मुल्जिम को घटना के समय चोट नहीं देखी।”

62. This part of the testimony, when tested on the anvil of truthfulness and the numerous injuries sustained by atleast three appellants, namely, Jairam, Birja and Ram Jiyawan himself, which has been duly proved by DW-2 Dr. Harnam Singh, clearly suggests that the said injured witness is not coming out with whole truth and is suppressing the very origin and genesis of the incident, which makes his testimony doubtful. In this respect, further testimony of PW-1 Hanuman Prasad is relevant, wherein he has stated that “बिरजा ने फरसा से मुझे या मेरे चाचा को नहीं मारा था। बिरजा ने मेरे सामने ही मेरे पिता को फरसे से मारा था। फरसे का एक वार बिरजा ने किया था। जब बिरजा, मेरे पिता को मार रहे थे, उसी दौरान अन्य मुल्जिमान, मुझे व मेरे चाचा को मार रहे थे। मैंने बिरजा के अलावा किसी और मुल्जिमान को मेरे पिता को मारते नहीं देखा। यह गलत है कि मारपीट में मेरे पिता को फरसे की कोई चोट नहीं आयी और फरसा, मारपीट में इस्तेमाल नहीं हुआ।”

63. In the light of the said testimony, when we test the truthfulness of PW-1 Hanuman Prasad, viz-a-viz, the post-mortem report of the deceased, wherein no farsa injury is said to have been caused and the Doctor has categorically stated that all the injuries are simple in nature and caused by a blunt object. The testimony of PW-1 Hanuman Prasad becomes doubtful and suspicious, which further renders prosecution case doubtful and creates a serious dent in the prosecution story. Even the testimony of other two witnesses, namely, Tribhuwan and Alladin, when tested on this ground also becomes highly doubtful as they too in their testimony has candidly testified that Birja assaulted the deceased Ram Autar with farsa on his head, however, in the post-

mortem report, no such farsa injury is found, which makes their testimony inconsistent with the post-mortem report and renders it highly doubtful and difficult to believe.

64. It is further germane to point out here that even according to the prosecution own case in the said incident, Jwala Prasad, uncle of the deceased, is also said to be present at the time of incident and is said to have received injuries and has been medically examined, yet the prosecution has failed to produce the said witness and has withheld him for the reasons best known to the prosecution, which further creates a serious dent in the prosecution story and makes it doubtful.

65. It is further germane to point out here that the trial court while recording the conviction against the appellants, has recorded a cryptic finding that since number and nature of injuries on the side of prosecution, which are manifestly more numerous and serious, than those alleged to have been suffered on the side of the defence and as such, even assuming that the injuries were sustained during the course of same *marpeet*, yet the appellants are liable to be convicted and sentences.

66. This finding recorded by the trial court, in our opinion, is patently illegal, perverse and erroneous and therefore, is liable to be set aside, which further weakens the prosecution story and consequently, the conviction and sentence recorded by the trial court against the only surviving accused-appellant Ram Jiyawan is also liable to be set aside by extending benefit of doubt to him and more so, when the main accused Birja, on the same set of evidence, has been given a clean acquittal, which order has attained finality as the same has not been challenged by the State in connected government appeal.

67. Thus, in the backdrop of the aforesaid facts and circumstances of the case, when we take a holistic view of the entire prosecution case, particularly, the testimony advanced by

the witnesses and recapitulating the entire evidence, we find that the sole surviving appellant Ram Jiyawan is also liable to be acquitted by extending the benefit of doubt to him in the given facts and circumstances.

68. In view of the foregoing discussions, we are of the opinion that the instant appeal is liable to be allowed and is accordingly **allowed**. The impugned judgment and order passed by the trial court convicting and sentencing the sole surviving accused-appellant Ram Jiyawan is **set aside** and he is acquitted of all the charges, for which, he has been tried and convicted. The appellant is on bail. He need not to surrender and his bail bonds stands discharged subject to the compliance of Section 437-A of Cr.P.C. to the satisfaction of the trial court.

69. The connected Government Appeal No. 216 of 1983 (State of U.P. Vs. Shambhu Prasad and Others), for the reasons assigned herein-before, is also having no force and is liable to be dismissed and is accordingly **dismissed**.

70. Let a copy of this judgment and order be sent to the trial court alongwith trial court record for information and necessary compliance.

71. Before parting with the judgment, we appreciate the assistance rendered by learned Amicus Curiae Shri Rajesh Kumar Dwivedi. An honorarium of Rs.10,000/- is directed to be paid to learned Amicus Curiae for rendering effective assistance in the matter. The said amount be paid to him within a period of one month from today.

(Pramod Kumar Srivastava, J.) (Rajiv Gupta, J.)

November 28, 2025,

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