



2026:AHC-LKO:11340-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 492 of 1982

Ram Narain And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Petitioner(s) : R.S. Shukla, Brij Mohan Sahai, Raj Priya Srivastava, Rajendra Prasad Mishra
Counsel for Respondent(s) : Govt. Advocate

Court No. -10

Reserved on 02.12.2025

Delivered on 13.02.2026

A.F.R.

**HON'BLE RAJNISH KUMAR, J.
HON'BLE ZAFEER AHMAD, J.**

(Per : Rajnish Kumar, J.)

(1) Heard Sri Rajendra Prasad Mishra, learned counsel for the appellants and Sri Arunendra, learned A.G.A. for the State.

(2) The instant Criminal Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (here-in-after referred as Cr.P.C.) has been filed against the judgment and order dated 18.06.1982 passed by learned IInd-Additional Sessions Judge, Gonda in Sessions Trial No.209 of 1979, arising out of F.I.R./Crime No.71 of 1979, under Sections 147, 148, 149, 302 of the Indian Penal Code, 1860 (here-in-after referred as I.P.C.), Police Station Kotwali Dehat, District

Gonda, whereby the appellants have been convicted and sentenced under Section 302/34 I.P.C. for life imprisonment.

(3) The case of the prosecution, in short, as disclosed in the F.I.R. (Ex. Ka-2), is that one Devi Prasad son of Samai Deen got registered a case of murder in December, 1978 against complainant of the present case, namely Rajendra Prasad and his deceased uncle Ram Shanker at Police Station Kotwali City, District Gonda, wherein both i.e. the complainant Rajendra Prasad and his uncle Ram Shanker were bailed out. It is alleged that on account of the said case, Ram Narain son of Samai Deen was keeping much enmity with them. It has further been stated that on 08.03.1979 at 08:00 AM, the complainant Rajendra Prasad and his uncle Ram Shanker headed for Village Khamariha, where his uncle Ram Shanker has his cultivation. At 10:30 AM they reached in Village Khamariha and after seeing the work of cultivation, they proceeded at about 02:00 PM from Village Khamariha to Village Madadeva and when they reached Village Salpur (Sajpur) at about 03:00 PM, Gur Charan Kori of his village met them. The complainant Rajendra Prasad, his uncle Ram Shanker and Gur Charan Kori were coming on foot. At about 04:00 PM, on the road in front of Village Patkhauli, the accused Ram Narain son of Samai Deen, Janendri son of Lalta Prasad, Ram Phere son of Lalta Prasad, Resident of Village Mahadeva, Police Station Kotwali Dehat, District Gonda, Naiyer son of Ram Anuj R/o Village Gaura, Police Station Mankapur, District Gonda, who is son-in-law of Samai Deen and Ram Uggar son of Mata Prasad R/o Village

Pathkauli, Police Station Kotwali Dehat, District Gonda, armed with lathi, ballam and farsa, came out from field of Arhar crop, located at west side of the road, and chased them with intention to assault. Ram Uggar shouted to kill them. In the meantime, five accused persons surrounded Ram Shanker at about 100 gaj on the eastern side of the road and started assaulting him, therefore, the complainant, Rajendra Prasad raised alarm, on which Laxmi Prasad son of Amrica Prasad R/o Village Pipri and Bhikham Datt R/o Village Dhanauli, who were passing from the road, came running and scolded, on which the accused fled away towards the east. It has also been stated in the report that the complainant alongwith Gur Charan Kori went towards Ram Shanker and found that Ram Shanker had died on account of injuries sustained by him and, thereafter, leaving Gur Charan and others near the dead body, he has come for information, therefore, report may be written and appropriate action may be taken. Accordingly, on the basis of written report (Ex. Ka-2), the F.I.R. was lodged at Police Station Kotwali (Dehat), District Gonda at 18:45 hours on 08.03.1979 vide Chik F.I.R. (Ex. Ka-5), under Sections 147, 148, 302/149 I.P.C. and the same was registered in G.D. at Serial No.32 (Ex. Ka-6).

(4) Investigation of the case was entrusted to Sub Inspector B.N. Singh (P.W.-6). He recorded the statement of complainant at the Police Station itself and then went to the place of occurrence at 10:30 PM. However, inquest proceedings could not be held for want of source of light in the night and, accordingly, it was held in the following

morning. The Investigating Officer also prepared diagram of the dead body, challan of the dead body and letter to C.M.O. He also recovered blood-stained and plain soil from the place of occurrence and prepared memo of the dead body. The dead body was sealed in a cloth and sent for post mortem. He then prepared the site plan. He searched for the accused with no result. Further investigation of the case was taken up by the S.O.

- (5) Dr. Y. N. Pathak; P.W.-1 conducted the post mortem of the dead body of the deceased and prepared post mortem report on 09.03.1979. The Investigating Officer, after recording the statements and completion of the investigation, submitted charge sheet. The case was committed to sessions on 07.08.1979. The Sessions Court framed charges under Sections 147 and 302/149 I.P.C. on 28.01.1980. The accused persons pleaded not guilty to the charges and claimed to be tried.
- (6) In order to prove its case, the prosecution produced Dr. Y. N. Pathak as P.W.-1, Complainant Rajendra Prasad as P.W.-2, Gur Charan as P.W.-3, Bhikam Dutt as P.W.-4, Mohd. Umar as P.W.-5 and I.O. Brij Narain Singh as P.W.-6 and Government Finger Print Expert Shiv Mangal Pandey was examined as C.W.-1 and Nanhu as C.W.-2.
- (7) The prosecution also produced and proved the post mortem report as Ex. Ka-1, written F.I.R. as Ex. Ka-2, receipt and counter foil regarding purchase of cattle as Ex. Ka-3 & Ex. Ka-4, chik F.I.R. as Ex. Ka-5, G.D. of registration of case as Ex. Ka-6, inquest report as Ex. Ka-7, diagram of dead body as Ex. Ka-8, challan as Ex. Ka-9, letter to

C.M.O. as Ex. Ka.10, memorandum of blood stained and plain soil as Ex. Ka-11, site plan as Ex. Ka-12, extract of Khatauni of deceased Ram Shanker as Ex. Ka-13 and receipt as Ex. Ka-14 in documentary evidences. The prosecution also produced sweater etc. of the deceased as Material Ex. 1 to 8 and blood stained and plain soil of earth as Material Ex. 9 & 10. C.W.-1 has also proved his expert report and cognate papers as Ex. C-1 to C-8.

- (8)** The defence produced extract of statement of P.W.-1 as Ex. Kha-1, affidavit of Rajendra Prasad etc. as Ex. Kha-1(A) to Kha-4 and expert's reports etc. as Ex. Kha-5 to Kha-9, copy of charge sheet as Ex. Kha-10, copy of statement of Ram Shanker as Ex. Kha-11 and police report under Sections 107/116 Cr.P.C. as Ex. Kha-12.
- (9)** The trial Court, after affording opportunity of hearing to the learned Government Counsel as well as learned counsel for the defence, passed the impugned judgment and order of conviction and sentence. Hence, this appeal has been filed on behalf of the appellant No.1; Ram Narain, appellant No.2; Gyanendri (Janendri), appellant No.3; Ram Pher and appellant No.4; Ram Uggar alias Ram Ugra.
- (10)** During pendency of this appeal, the appellant No.2; Gyanendri (Janendri) and the appellant No.3; Ram Pher died, therefore, the appeal on their behalf abated. Hence this appeal survives only on behalf of the appellant No.1; Ram Narain and the appellant No.4; Ram Uggar alias Ram Ugra.

(11) Learned counsel for the appellants submitted that the appellants have been convicted and sentenced by the impugned judgment and order without considering the evidence and material on record appropriately. He further submitted that there are contradictions in the evidence of the prosecution witnesses, presence of the P.W.-2 and P.W.-4 i.e. complainant on the spot is doubtful, there is material contradiction in the testimony of P.W.-2, P.W.-3 and C.W.-1. He further submitted that the P.W.-2, P.W.-3 and C.W.-1 are of one village and they are interested witness. He further submitted that injuries does not tally with the alleged weapon used in the crime and the post mortem report also does not support the prosecution case. He further submitted that the signatures on the receipt of purchase of Ox are not tallied either in the report of the hand writing expert submitted by the appellants or in the report of the Government Hand Writing Expert, who appeared as court witness. He further submitted that as per prosecution story, Ram Pher and Gyanendri were armed with farsa, Ram Uggar and Naiyer with lathi and Ram Narain with bhala in their hands. The learned trial Court has acquitted the Naiyer giving benefit of doubt, therefore, Ram Uggar is also entitled to be acquitted on the benefit of doubt but the learned trial Court failed to consider it and convicted him also. He also submitted that the aunt/chachi of the deceased Ram Shanker, who was material witness, has not been examined. He further submitted that the trial vitiated on account of non application of mind because the statement of the accused persons under Section 313 Cr.P.C. has been

recorded under the old Cr.P.C. i.e. under Section 364 of the Code of Criminal Procedure, 1898. He further submitted that the evidence was closed in the trial Court on 03.05.1981 and since the judgment was not pronounced by the Presiding Officer, who has passed the impugned judgment and order, even after fixing several dates for judgment, therefore, an application was moved before this Court i.e. High Court for transfer of the case and the case was transferred by means of the order dated 05.10.1981 to the Court of Second Additional District and Session Judge and in the meantime, the said Presiding Officer had assumed the charge of Second Additional District and Session Judge and he passed the impugned judgment and order, whereas when the case was transferred by this Court from his Court on a transfer application, he could not have decided it, therefore, the impugned judgment and order is not sustainable in the eyes of law.

(12) On the basis of above, learned counsel for the appellants submitted that the impugned judgment and order is liable to be set aside and the appellants are liable to be acquitted. He relied on **Anil Phukan Vs. State of Assam; AIR 1993 SC 1462, State of Karnataka Vs. Babu and Others; AIR 1994 SC 31, Suresh Rai and Others Vs. State of Bihar; AIR 2000 SC 2207, Surendra Koli Vs. The State of Uttar Pradesh & Another; Curative Petition (Crl.) No..... of 2025 @ Diary No.49297 of 2025 in R.P. (Crl.) No.395/2014 in Crl. A. No.2227 of 2010, Indrakunwar Vs. The State of Chhattisgarh; 2023 LiveLaw (SC) 932, Kalicharan & Ors. Vs. State of Uttar Pradesh;**

**2022 LiveLaw (SC) 1027 and Reena Hazarika Vs. State of Assam;
(2019) 13 SCC 289.**

(13) Per contra, learned A.G.A. submitted that the impugned judgment and order of conviction and sentence has rightly been passed by the learned trial Court in accordance with law. He further submitted that the F.I.R. was lodged promptly and merely because there are minor contradictions in the evidence of the prosecution witnesses and the Court witnesses, it cannot be said that their testimony is not reliable. He further submitted that the post mortem report corroborates the prosecution case and there was strong motive. He further submitted that the fact of sale of Ox was raised by the defence and in this regard an affidavit was also filed, which was sealed immediately. He further submitted that recording of statement of the appellants under Section 313 Cr.P.C. on the proforma of old Act can be an irregularity but not an illegality, on account of which, the trial may be said to have vitiated.

(14) On the basis of above, learned A.G.A. submitted that the appellants have rightly been convicted and sentenced by the impugned judgment and order, which has been passed by a reasoned and speaking order. It has also been submitted that the arguments advanced by learned counsel for the appellants that even after transfer of the case to the Court of Second Additional District and Session Judge from the Court of the Presiding Officer, who has passed the impugned order, he could not have passed the order and the impugned judgment and order is liable to be set aside, is misconceived and not tenable for the reason,

firstly, no such order has been produced and the same was considered by the trial Court and after passing an order, trial was decided, which was not challenged. Secondly, learned counsel for the appellants also failed to show any prejudice caused to the appellants on account of it. Thus, learned A.G.A. submitted that the appeal has been filed on misconceived and baseless grounds and none of the contentions of learned counsel for the appellants are sustainable. The appeal is liable to be dismissed.

(15) We have considered the submissions of learned counsel for the parties and perused the records.

(16) One of the grounds of challenge to the impugned judgment and order is that even after closure of evidence on 03.05.1981, since the judgment was not pronounced by the Presiding Officer of the concerned Court, which was being held by the Officer, who has passed the impugned judgment and order at that time, therefore, an application was moved before this Court for transfer of the case and the case was transferred by means of the order dated 05.10.1981 by this Court to the Court of Second Additional District and Session Judge and in the meantime, the said Presiding Officer had assumed the charge of Second Additional District and Session Judge, therefore, in view of the order passed by this Court, he could not have decided the case. However, the order passed by this Court is neither available in the Trial Court's record nor the same has been produced by learned counsel for the appellants.

(17) On perusal of the Trial Court's record, it is found that on 13.05.1981, the evidence of C.W.-1 was recorded and the case was fixed for arguments on 28.05.1981. Thereafter some dates were fixed for arguments. On 08.07.1981, the case was adjourned on account of transfer of the Presiding Officer and on 14.07.1981, certain documents were placed on record by learned counsel for the accused. By means of the order dated 05.10.1981, the case was transferred to the Court of Second Additional Session Judge as per order of the High Court. However, neither the date of order of the High Court is mentioned nor the case number of the High Court is mentioned. It could also not be produced and shown by learned counsel for the appellants. The C.W.-2 was examined on 03.05.1982. Thereafter statement under Section 313 Cr.P.C. of accused were recorded and the case was fixed for arguments. On 24.05.1984, it was fixed for 29.05.1982. On the said date, after hearing arguments, the case was fixed on 31.05.1982 for judgment. However, on an application moved by the accused subsequently, the date was changed to 07.06.1982.

(18) The learned trial Court passed an order on 07.06.1982 on the point of transfer of the case, in view of ensuing shift in order of Session Judge after hearing learned counsel for the parties. It is mentioned in the order that the case was transferred to the said Court by order passed by the High Court on 28.09.1981. It was not a case transferred to the said Court under the transfer order passed by him as In-charge Sessions Judge in July, 1981 but one made by the High Court on 28.09.1981. It

has been observed that this fact was never brought to his notice earlier and the order was filed in the Court of Third Additional Session Judge, Gonda and since this case found mention in the list of cases directed to be transferred under Section 409 Cr.P.C., it was taken to have landed in the said Court in compliance of that order. He further recorded that he had gone through the Hon'ble High Court's order and it appears from the perusal of that order that it was transferred to his Court by name, therefore, the case was to be disposed of by him alone under the existing position. Lastly, it has been recorded that the accused also said that he should dispose of the case. The said order was not challenged.

(19) In view of above, since the order passed by this Court has not been placed before this Court and is also not in the Trial Court's record, the position, as emerged from the aforesaid order, could not be doubted in any manner. The consent of the appellants for disposal of the case by the said Presiding Officer and the Court is also recorded in the said order. Thus, this Court does not find any illegality or error in disposal of the case by the said Presiding Officer. Even otherwise, learned counsel for the appellants has failed to show any prejudice caused to the appellants on account of passing of the impugned order by the said Presiding Officer. This Court also does not find any prejudice to have been caused to the appellants on account of the aforesaid facts. Thus, the contention raised by learned counsel for the appellants is misconceived and not tenable, hence rejected.

(20) The other ground raised by learned counsel for the appellants is that the learned Trial Court recorded the statements of the appellants under Section 364 of the Code of Criminal Procedure, 1898 on the proforma prescribed for the same, whereas the said Act was not in existence because the said Act was repealed by Section 484 of the Code of Criminal Procedure, 1973, which came into force w.e.f. 01.04.1974, therefore, the entire proceedings are vitiated and liable to be quashed. The Code of Criminal Procedure, 1898 was repealed by Section 484 but, by means of the Section 484(2)(b) Cr.P.C., 1973, all forms prescribed alongwith others, which were enforced immediately before commencement of the said Code, have been deemed respectively to have been published, issued, conferred, prescribed defined, passed or made under the corresponding provisions of this Code, which is extracted here-in-below:-

"all notifications published, proclamations issued, powers conferred, forms prescribed, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the Old Code and which are in force immediately before the commencement of this Code, shall be deemed, respectively, to have been published, issued, conferred, prescribed, defined, passed or made under the corresponding provisions of this Code;

(21) Section 8 of The General Clauses Act, 1897 provides Construction of references to repealed enactments. It provides that where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any

instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted. In view of above, the object of the provision is that where any act is repealed and re-enacted, references in any other enactment or instrument to provisions of the repealed former enactment must be read and construed as references to the corresponding provision of re-enacted new provision, unless a different intention appears. Thus, the reference to the provision in the format, on which the statement under Section 364 Cr.P.C., 1898 was recorded, would be referable to Section 313 Cr.P.C., 1973.

(22) In view of above, the forms prescribed under the old Act have been deemed to have been prescribed under the corresponding provisions of Code of Criminal Procedure, 1973. Perusal of the records indicates that though the statement under Section 313 Cr.P.C. of the accused/appellants were recorded, but it started on the proforma prescribed for statement under Section 364 of the Criminal Procedure Code, 1898 on 10.05.1982, whereas in the order sheet of the said date, it has been mentioned that the statement of accused persons were recorded under Section 313 Cr.P.C.

(23) Learned counsel for the appellants failed to point out any discrepancy, illegality or error in the statements of the appellants under Section 313 Cr.P.C. except above. This Court is of the view that it may be an irregularity and cannot be said to an illegality affecting the trial or merit of case in itself, on account of which the whole trial may be said to

have vitiated. Even otherwise, learned counsel for the appellants has failed to point out any discrepancy or illegality in the statements of the appellants recorded under Section 313 Cr.P.C., as referred in the order sheet of the said date, in any manner or it may have caused any prejudice to the appellants in any manner. It is also settled in law that merely by mentioning of wrong provision, the order or any proceeding etc. cannot be said to be vitiated and set aside. Even otherwise, it may have been a procedural violation only, therefore, the appellants have to show that on account of it, they could not get proper opportunity to defend them and it prejudiced them in any manner, but they failed to do so. Thus, the contention in this regard is wholly misconceived and not tenable and liable to be repelled, repelled accordingly.

(24) The Hon'ble Supreme Court, in the case of **Indrakunwar Vs. The State of Chhattisgarh (Supra)**, has held that under Section 313 Cr.P.C., the Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered. Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision. However, this statement does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872. However, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

(25) Similar view has been expressed by the Hon'ble Supreme Court in the cases of **Kalicharan & Ors. Vs. State of Uttar Pradesh (Supra)** and **Reena Hazarika Vs. State of Assam (Supra)**. The relevant paragraph No.19 of the judgment rendered in the case of **Reena Hazarika Vs. State of Assam (Supra)** is extracted herein below:-

"19. Section 313, Cr.P.C. cannot be seen simply as a part of audi alteram partem. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2), Cr.P.C. The importance of this right has been considered time and again by this court, but it yet remains to be applied in practice as we shall see presently in the discussion to follow. If the accused takes a defence after the prosecution evidence is closed, under Section 313(1)(b) Cr.P.C. the Court is duty bound under Section 313(4) Cr.P.C. to consider the same. The mere use of the word 'may' cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available is an entirely different matter. If there has been no consideration at all of the defence taken under Section 313 Cr.P.C., in the given facts of a case, the conviction may well stand vitiated. To our mind, a solemn duty is cast on the court in dispensation of justice to adequately consider the defence of the accused taken under Section 313 Cr.P.C. and to either accept or reject the same for reasons specified in writing."

(26) The Hon'ble Supreme Court, in the case of **State of Uttar Pradesh Vs. Sudhir Kumar Singh and Others; (2021) 19 SCC 706**, held that breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused. Where procedural and/or substantive provisions of law embody the principles

of natural justice, their infraction per se does not lead to invalidity of the orders passed.

(27) Adverting to the facts of the present case, the incident had occurred on 08.03.1979 at about 04:00 PM. The F.I.R. of the incident was lodged on the same date at about 06:45 PM at Police Station Kotwali Dehat, District Gonda. The distance of the Police Station and the place of occurrence is about 6.5 miles. The F.I.R. (Ex. Ka-5) was lodged on the basis of written complaint (Ex. Ka-2) of P.W.-2; Rajendra Prasad. The G.D. entry of the same was made, which was proved as Ex. Ka-6 by the Investigating Officer; Brij Narain Singh. The Investigating Officer also proved the F.I.R., the time of lodging of the F.I.R. and start of investigation. Thus, the F.I.R. was lodged promptly and there was no delay in lodging the F.I.R. The learned Trial Court also, after considering the evidence and material on record, found that there was no delay in lodging the F.I.R. and it has not been lodged in consultation with anybody.

(28) So far as the motive for perpetration of the crime is concerned, the learned Trial Court has recorded a finding that there is proximate and perpetuated motive for the crime by the accused. The learned Trial Court found that the motive is locative in the nomination of the complainant and the deceased in the roll call of murders of Samai Deen father of Ram Narain, who was murdered in December, 1978. The P.W.-2; Rajendra Prasad has deposed in his examination-in-chief about the motive and stated that he and the deceased Ram Shanker, who was

his uncle, were accused in the aforesaid murder of Samai Deen. They were released on bail, barely 22 days ago of the incident. This fact has also been mentioned in the F.I.R. He also stated that his father's cousin, accused Ram Pher and Gyanendri wanted to cultivate his land and infact they cultivated for two *fasli* years. The accused Naiyar, son-in-law of the aforesaid Samai Deen, also stated that his uncle Ram Pher had assaulted accused Ram Ugra about three years ago and a criminal case under Section 325 I.P.C., emanating therefrom, was pending, when his murder took place. In the cross-examination, he has not deviated from his statement in examination-in-chief, which may create any doubt about his statement. Though the defence tried to show that the complainant, Rajendra Prasad had some illicit nexus with the widow of his uncle Ram Shanker and he was murdered in the night by somebody else but they have falsely been implicated. However, it failed to prove it or extract anything from the complainant, which may infer in any manner about the illicit nexus between the complainant and the widow of the deceased.

(29) This is a case of direct evidence and eye witness account. In the case of direct evidence, motive is insignificant if the ocular evidence is strong enough to record the finding of guilt and in such circumstances, motive can only have a corroborative role and not more than that. Thus, this case is to be tested on the basis of ocular evidence adduced by the prosecution and the material placed on record.

(30) The complainant Rajendra Prasad appeared as P.W.-2. He stated that about 18 months back, he was going alongwith his uncle Ram Shanker from his home to Khamaria, where his uncle had five and half bighas of land, which was being ploughed. They had gone to see it. They reached Khamaria at 10:00 AM and after seeing the field, which was half ploughed by Sattar, they, as per their commitment, went towards Sajpur market at 10:30 AM for purchasing bull for Gurcharan Kori of his village. Gurcharan Kori met them in Sajpur market then they went to Dhanepur by taxi and there in the Vardahi market, they purchased the bull from Nanhu of their village. The doctor had passed the bull and a receipt of which was given. After purchasing the bull, all the three persons came back to Sajpur by tempo. They had asked the owner of the bull, Nanhu, to handover the bull in the village. From there, he and his uncle went to Khamaria and Gurcharan went to Sajpur market to see bull for his maternal uncle, as his maternal uncle had asked him to see a bull of a man in Sajpur and if it is good, he would purchase it. He and his uncle Ram Shanker went to Khamaria on foot asking Gurcharan that they will meet him after returning in Sajpur and then they will go together. He and his uncle Ram Shanker returned from Sajpur at 02:00 PM, where Gurcharan met.

(31) He further stated that they took tea and then they started for their village on foot, which is about 1.5 – 1.75 miles. They were coming from Utraula Dhanepur Road and reached near village Patkhauli at about 04:00 PM, where the accused Ram Narain, Ram Pher, Janendri,

Ram Ugra and Naiyar were sitting in the field of Arhar in the West of the road and when they reached near to it, all the five accused came out and chased them. Ram Narain was having a gun in his hand, Ram Pher and Janendri were having farsa in their hands and Naiyar and Ram Ugra were having lathi in their hands. He further stated that accused Ram Ugra came ahead and exhorted to kill and with this exhortation, he gave a blow of lathi on the knee of Ram Shanker. His uncle crying ran towards the east, he and Gurcharan ran towards the north. They suddenly dragged Ram Shanker about 100 yards towards the east in the field of gram and canola (राई) having canola (राई) harvested and gram standing. Ram Shanker fell there and the accused persons kept on beating with the aforesaid arms. He and Gurcharan started shouting from the road, on which the witnesses Bhikham Datt and Laxmi Prasad came. Laxmi was having lathi, who was going towards south and Bhikham was going by cycle towards the north. The witnesses scolded but the accused ran away, but only after killing Ram Shanker. Thereafter, they went near the deceased and found him dead. Thereafter, leaving Gurcharan near the dead body, he went to his house. The witnesses also remained there.

(32) He also stated in his evidence that he knows the accused Ram Narain, Ram Pher, Janendri, Ram Ugra and Naiyar. Father of the Ram Narain was murdered and he and his uncle i.e. the deceased Ram Shanker were accused in the said case and they were released on bail, barely 22 days ago from the date of incident. Ram Pher and Janendri are his co-tenure

holders. Their father and his Aaja were real brothers. After death of his father, he started living with the deceased Ram Shanker. The accused Ram Pher and Janendri wanted to plough his field but on account of his company with Ram Shanker, they could not do it, therefore, they were keeping enmity with Ram Shanker and after the death of Ram Shanker, for two half years, they ploughed the field. Naiyar is son-in-law of Samai Deen. Samai Deen was father of accused Ram Narain, in whose murder he and his uncle were accused. His uncle Ram Shanker had beaten the accused Ram Ugra about three years ago, on account of which, a case under Section 325 I.P.C. was instituted and on account of the aforesaid enmity, the accused have committed crime.

(33) He further stated that after reaching his house, he wrote a report on a paper and after seeing the report, he stated that it is the same report, which was written by him and it was marked as Ex. Ka-2. From the house he went to Kotwali and gave the report to Munshi and the Munshi gave him chik. He further stated that the Inspector had recorded his statement at the Police Station. Thereafter, the Inspector came with him to his house and after consoling his aunt etc. they went to the place of incident. In the meantime, night stood advanced, therefore, the Investigating Officer sent for a cot from his house and he stayed at the place of occurrence. The inquest was prepared in the morning. He was also witness to the inquest and proved his signatures on the inquest report. Thereafter, the Investigating Officer prepared the site plan on his pointing out. Seeing the site plan, he stated that the site

plan was rightly prepared. Thereafter, a sealed bundle containing blood stained and earth stained yellow sweater of the deceased was opened, which he proved of his and marked as Ex. 1 to 8. He stated that no cut or gap in the sweater was visible. There was, however, a blood stained and earth stained cut on the lower portion and another on the collar of the coat, shown by the witness. In the cut on the coat, brown threads stood turn, while yellow ones were intact. The witness also showed the dried up under clothing of the coat resulting from blood. He also showed the cut mark above the bloody spot on the shirt with warp intact. He also maintains that on the inner side too, there were locative bigger bloody spots emitting bloody odour. He then showed bloody patches on the Dhoti with a cut on the lower part. The Dhoti was in shambles. The witness did placing of those pieces to make Dhoti one piece on the floor. He also showed a bloody mark on the Dhoti in the middle, which became a bloody train of desperate pieces. He also showed two holes lengthwise near the border of the Dhoti. The underwear was shown to be tattered. He then showed some reddish matter agglutinated to the underwear and maintained that it smelt of faecal matter.

(34) In the cross-examination, Rajendra Prasad had maintained his evidence given in examination-in-chief. He also stated that receipt of bullock sale is bearing his signature and those of others and he and Ram Shanker were the witnesses of that receipt prepared in the cattle fair and removal of receipt by the accused from the pocket of deceased

Ram Shanker. He stated that loan for purchase of bullock could be taken from co-operative society through veterinary doctor only. He also stated that the doctor gave a sum of Rs.2,112/- that day for purchase of two bulls, from which, the said two bulls were purchased. The receipt was kept by the Ram Shanker in his pocket, which was snatched by the accused. However, he could not tell what other things were robbed by the accused. He further stated in the cross-examination that on account of anguish at that time, he omitted to explain his visit to Dhanepur in the company of Ram Shanker and Gurcharan in F.I.R. and in his statement to the Investigating Officer and the affidavit (Ex. Kha-1A) sworn at the time of bail. However, the fact of going for purchasing of bulls has been mentioned in the F.I.R. The meeting of Gurcharan with the complainant and the deceased at Sajpur at 03:00 PM is also mentioned in the F.I.R. In fact, as born out from the record and the finding recorded by the learned Trial Court, the defence has produced the receipt and the doctor's certificate and the counter foil receipt was summoned and sealed in Sessions Court at the time of bail. Those receipts are Ex. Ka-3 and Ex. Ka-4 in the prosecution evidence and Ex. Kha-3 and Ex. Kha-4 in the defence evidence, wherein Gurcharan figures as vendee and Nanhu as vendor of the two bulls. Thus, it can not be contended that the F.I.R. does not contain anything regarding his visit to Dhanepur cattle fair with the deceased.

(35) In his cross-examination, he has also deposed that he, Gurcharan, Nanhu and Ram Shanker reached to the doctor at 12:00 noon, who had

obtained his and his deceased uncle's signatures and thumb impression of the Gurcharan and Nanhu. Thereafter, the veterinary doctor had given money to Gurcharan, who handed over to Nanhu. He also disclosed the distance of the doctor's office i.e. about 1.5 - 2 furlongs from the cattle fair. He has denied the suggestion given by the defence that they had not gone to the cattle fair and forged thumb marks were obtained on the receipt. Even otherwise, the learned Trial Court has rightly recorded that once the plea was taken in the bail application by the defence before the Trial Court in this regard, then they themselves cannot have put it to any doubt. In his further cross-examination, he had explained the omission of the details of his and Ram Shanker's going to Khamaria to supervise their field being ploughed by Sattar and his statement to the Investigating Officer on the plea of anguish and their visiting to Khamaria finds mention therein.

(36) The P.W.-2 has also added that Rajaram had two real brothers whereas Ram Shanker was their step brother and he maintained that Ram Shanker owns 25 bighas of land at Mahadeva. However, he could not tell as to how he got it. He had also asserted that Ram Shanker owned 5.5 bighas of land at Khamaria but failed to show its acquisition and denied the suggestion of the defence that the land at Khamaria is cultivated by Rajaram and he volunteered to produce papers showing Ram Shanker's tenure holdership of that land. Ex. Ka-13 and Ex. Ka-14 are the revenue papers filed by the witness and Ex. Kh-13 is the khatauni showing about 8 - 9 acres of land at Khamaria, whereas Ex.

Ka-14 is a copy of receipt of land revenue of 3-45 issued to Ram Shanker on 10.09.1975. Thus, on the basis of the said evidence, the learned Trial Court has recorded that the witness has shown the up to date position in the revenue records and also his stand that the land revenue was paid up to 4 - 5 years ago stood proved. In contradiction to the same, the defence failed to produce any cogent evidence and substantiate its case that Ram Shanker had no right over the land in Khamaria, when the incident took place. Thus, the stand of the complainant that he and the deceased Ram Shanker had visited Khamaria to look after their cultivation stands proved and production of Rajaram by the defence to substantiate their case that Ram Shanker had left his right over the land in Khamaria when the incident took place could not be proved create any doubt about the prosecution case.

(37) The learned Trial Court, after considering the material and evidence on record, has recorded that the tillage etc. are matters of detail to be told in the witness box and could not render his testimonial credibility shrunken, therefore, the only missing link of visit of both for purchasing bulls to Dhanepur and their return to Khamaria via Sajpur stands explained. He has also demolished the suggestion given by the defence that the deceased Ram Shanker had no land at Khamaria.

(38) P.W.-2, Rajendra Prasad has deposed in his evidence that from Khamaria, he alongwith the deceased Ram Shanker had proceeded towards the home and in the way they stopped at Sajpur, where P.W.-3, Gurucharan joined them at 03:00 PM and all the three had taken tea and

besan namkeen there at that time. Thereafter, they proceeded when the incident took place. P.W.-3, Gurucharan has supported the prosecution version and the evidence of P.W.-2 and there is no material contradiction in his evidence in examination-in-chief as given in comparison to P.W.-2, Rajendra Prasad. He has also maintained that loan transaction had taken place between him and Amin Ram Pher before the actual sale. The learned Trial Court has recorded a finding, after considering the evidence of P.W.-2 and P.W.-3, that the slight dichotomy between their evidences show that their evidences are natural and they are not tutored witnesses. This Court is in agreement with the finding recorded by the learned Trial Court.

(39) He has also stated that bulls purchased by him were later sold to some Kurmi after six months of the said purchase. He has stated in his cross-examination that he and Nanhу had headed towards Dhanepur with the pair of bullocks from their Village Mahadeva and the distance was of nine miles, which was covered by 12:00 Noon. He met Rajendra and Ram Shanker at Dhanepur and after purchasing the bulls, he went towards home. He has also stated that about 6 - 7 days prior to the incident, he had gone to the veterinary doctor to contract the loan for purchase of bulls and the day before the incident, Amin Ram Pher asked him to go to the cattle fair and had the sale transaction reduced into writing. He has stated in his cross-examination that on that day he had gone only to purchase bulls and there was no other work to him. He had made reference of his visit to Village Dhanepur for purchasing

of bulls in his statement under Section 161 Cr.P.C., however, he does not know as to why it has not been mentioned. He has also stated that he had told the Inspector that the accused had searched the pocked of Ram Shanker and took out a paper but he does not know as to why it is not in his statement recorded under Section 161 Cr.P.C. He had also told the Inspector about visiting Sajpur for purchase of bulls and for seeing the bulls for his maternal uncle. He has also stated that his statement was recorded by the Inspector near the dead body. He has also stated that he has filed an affidavit in this case after two months of the murder. He has further stated in his cross-examination that he had not seen the accused beating Ram Shanker by farsa and ballam in his back or stomach, however, he had seen them beating on head. He also stated that the farsa was blown on head only and the dhoti of the deceased was cut and no other cloth was cut. He also stated that the father of Laxmi had taken away the bullock cart and Laxmi and Bhikham Datt were at the spot till the Inspector had come. He also stated that the Inspector had not taken any statement in the night. He has denied the suggestion that Ram Shanker was alone and was killed in the dark and looted and he had not seen the incident.

(40) The P.W.-4, Bhikham Datt has stated that on the date of incident, he was going in his relationship in the north of his village from his house by cycle at about 04:00 PM in the evening. While he reached ahead of Mahadeva Village, he saw Gurcharan, Ram Shanker and Rajendra coming from north. When they reached near Patkhauli Village, they

cried, then he heading his cycle rapidly, saw that Ram Narain, Ram Pher, Janendri, Naiyar and Ram Ugra came from the west and started beating Ram Shanker in front of Village Patkhauli. It was the field of canola (राई) and they hit in the said field. Ram Pher and Janendri had farsa in their hands, Ram Narain had bhala in his hands and Naiyar and Ram Ugra had lathi in their hands. Ram Shanker had some paper in his pocket, which was taken out by the accused, on which, he had also shouted. He further stated that the accused persons, after killing Ram Shanker, ran away towards the east. The incident was seen by Laxmi, Gurcharan, Rajendra etc. beside him. Rest of the persons were at distance. When he went near Ram Shanker, he found him dead. Rajendra Prasad went to the Police Station keeping him stay there. He remained there for some time and thereafter went in his relationship.

(41) He stated in his cross-examination that his statement was recorded by the Inspector after 8 - 10 days in Mahadeva. He had told the Inspector about his visit to Uttari Village. It was not told as to where he had gone and the work for which he had gone. He has further stated that he had informed to the persons in Uttari about the murder, who asked him not to return being an eye witness. He has denied the suggestion that on account of relative of Ram Shanker, he is giving a false evidence. He has also stated in his cross-examination by the Court that he knows the wife of Ram Shanker, who is aunt of Rajendra and Rajendra alongwith his family lives there. His younger brother and aunt also live there. The

age of Rajendra would be 20 - 25 years. He is Mota Brahmin (मोटा ब्राह्मण) and in Mota Brahmin, marriage takes places up to old age. He, in regard to the allegation of illicit relation of the wife of Ram Shanker with Rajendra, stated that it is made by the bad people and not by good people. His presence on the spot and the manner of assault told by him is in consonance with the evidence of P.W.-2 and P.W.-3, therefore, neither his presence on the spot can be doubted nor his testimony and nothing could also be shown to create any doubt about it.

(42) In view of above, P.W.-2, P.W.-3 and P.W.-4 are the eye witnesses, who have proved the incident and nothing material could be extracted from them, which may create any doubt about their testimony, except minor contradictions, which are natural. It is very obvious that two persons cannot tell about an incident or anything in one and the same language or same manner and it may vary on account of their memory and way of expression, which may differ from person to person. However, there is consistency in their ocular evidence in regard to the incident, according to which when the complainant and the deceased reached near Patkhauli on Uttaraula Dhanepur Road at about 04:00 PM, all the accused persons, who were sitting in the field of Arahari in the west of road, came out with gun, farsa and lathi in their hands and assaulted the deceased in the manner as stated above and ran away only after killing him. Thus, all the accused persons, who arrived with the weapons as disclosed above, were sitting in the field of Arahari near the place of incident with intention to kill the deceased and when the deceased

alongwith the complainant reached near the place of incident, they suddenly appeared and on the exhortation and blow of lathi of one accused, all of them dragged, assaulted and killed him.

(43) Section 34 of I.P.C. provides that when a criminal act is done by several persons with a pre-meditated mind of committing crime, each of them is liable for the said criminal act in the same manner as if it was done by him alone. Section 34 I.P.C. is extracted here-in-below:-

*"34. **Acts done by several persons in furtherance of common intention.** - When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."*

(44) The Hon'ble Supreme Court, in the case of **Ramesh Singh @ Photti Vs. State of A.P.; AIR 2004 (SC) 4545**, held that essence of the liability under Section 34 I.P.C. is to be found in the existence of a common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention and the inference can be gathered by the manner in which the accused arrived at the scene, mounted the attack, determination and concert with which the attack was made, from the nature of injury caused by one or some of them. It has further been held in this regard that an illegal omission on the part of such accused can indicate the sharing of common intention. Thus, the totality of circumstances is to be taken into consideration in each case. The relevant paragraph 12 is extracted here-in-below:-

"12. To appreciate the arguments advanced on behalf of the appellants it is necessary to understand the object of incorporating Section 34 in the Indian Penal Code. As a general principle in a case of criminal liability it is the primary responsibility of the

person who actually commits the offence and only that person who has committed the crime can be held to guilty. By introducing Section 34 in the penal code the Legislature laid down the principle of joint liability in doing a criminal act. The essence of that liability is to be found in the existence of a common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention. Thus, if the act is the result of a common intention then every person who did the criminal act with that common intention would be responsible for the offence committed irrespective of the share which he had in its perpetration. Section 34 IPC embodies the principles of joint liability in doing the criminal act based on a common intention. Common intention essentially being a state of mind it is very difficult to procure direct evidence to prove such intention. Therefore, in most cases it has to be inferred from the act like, the conduct of the accused or other relevant circumstances of the case. The inference can be gathered by the manner in which the accused arrived at the scene, mounted the attack, determination and concert with which the attack was made, from the nature of injury caused by one or some of them. The contributory acts of the persons who are not responsible for the injury can further be inferred from the subsequent conduct after the attack. In this regard even an illegal omission on the part of such accused can indicate the sharing of common intention. In other words, the totality of circumstances must be taken into consideration in arriving at the conclusion whether the accused had the common intention to commit an offence of which they could be convicted."

(45) The testimony of P.W.-2, P.W.-3 and P.W.4 cannot be disbelieved merely because they are either relative or of the same village, on account of which they may be said to be interested witnesses, because their evidence is consistent and nothing could be extracted from them to create any doubt about their testimony, when considered whole and appropriately.

(46) The Hon'ble Supreme Court, in the case of **Anil Phukan Vs. State of Assam (Supra)**, has held that mere relationship with the deceased is no ground to discard his testimony if it is otherwise found to be reliable and trustworthy. In the normal course of events, a close relation would be the last person to spare the real assailant of his uncle and implicate a

false person. However, the possibility that he may also implicate some innocent person along with the real assailant cannot be ruled out and therefore, as a matter of prudence, we shall look for some independent corroboration of his testimony, to decide about the involvement of the appellant in the crime.

(47) The Hon'ble Supreme Court, in the case of **State of Karnataka Vs. Babu and Others (Supra)**, considering the facts of the case and observing that conduct of the children and the wife of the deceased was unnatural for the reason that in the first instance both the children could not have left their father alone after he had been beaten mercilessly and in any case after knowing from her children about the occurrence; instinctively the wife should have rushed to the place of occurrence immediately, dismissed the appeal on the ground that in spite of the eye witnesses evidence of two children of the deceased, the Court is not able to take the case against the respondents beyond doubt. It is not applicable on the facts and circumstances of the case in hand and distinguishable.

(48) Now, it is to be seen as to whether the post mortem report and the injuries also support the prosecution case or not, though in the case of ocular evidence, it is not very material.

(49) The P.W.-1, Dr. Y.N. Pathak, who was posted as Medical Officer in the Sadar Hospital, Gonda and conducted the post mortem of the dead body of the deceased on 09.03.1979, has stated that the deceased had died about a day ago, Rigor Mortis was present on all four limbs and

there was no decomposition. He proved the post mortem report, which was marked as Ex. Ka-1 and gave an opinion that the cause of death was due to coma, shock and hemorrhage due to cumulative result of ante-mortem injuries. He has proved the following injuries sustained by the deceased in the incident:-

Antimortem Injuries

1. *Lacerated wound: 1.5 cm x .5 cm. x bone deep on the front left Leg, 12 cm below left knee joint.*
2. *Lacerated wound 1 cm x .5 cm x bone deep left leg, 8 cm below knee joint.*
3. *Lacerated wound 1.5 cm x .5 cm x bone deep and fracture of both bones leg joint below left knee.*
4. *Penetrating wound .5 cm x .5 cm x muscle deep on the front of left thigh, 12 cm above knee joint. Spindle shaped; Margins clean cut.*
5. *Contusion: 18 cm x 6 cm on the back of left thigh in the middle with fracture of bone underneath.*
6. *Contusion, 14 cm X 8 cm on the left.*
7. *Contusion, 18 cm x 2 cm on the left side abdomen vertically placed.*
8. *Contusion, 13 cm x 2 on the left side abdomen chest, transversely placed.*
9. *Contusion, 16 cm x 2 cm on the left side abdomen, just above injury no.8 at nipple.*
10. *Contusion, 4 cm x 2 cm on the back of wrist joint.*
11. *Multiple contusion, 46 cm x 22 cm on the right side on front of asilume in whole.*
12. *Abrasion, 2 cm x 1 cm on the right wrist joint outerside.*
13. *Contusion, 12 cm x 7 cm on the right thigh middle front fracture underneath.*
14. *Penetrating wound, .5 cm x .5 cm x muscle deep on the front of Rt. thigh, 14 cm above the joint. Spindle shaped. Margins are clean cut.*
15. *Lacerated wound, 13 cm x 1 cm (1.5 cm x 1 cm) on the right leg front 8 cm below knee joint.*
16. *Lacerated wound 2.5 cm x .5 cm x bone deep and fracture of right libia, 10 cm below the right knee joint.*
17. *Incised wound 1.5 cm x 1 cm x bone deep on the right side chin. Fracture of lower jaw, bone present.*
18. *Incised wound 2 cm x .5 cm x skin deep on the tip of chin.*
19. *Incised wound 2 cm x 1 cm x bone deep on the left side of chin.*

20. *Incised wound, 1 cm x .25 cm x lip cut with fracture of lower jaw and two teeth.*

21. *Incised wound, 1.5 cm x .5 cm x bone deep over left eye-brow.*

22. *Lacerated wound, 3 cm x 1 cm x scalp on right side head, 6 cm above left ear.*

23. *Incised wound 9 cm x 2 cm x bone deep on right side of head, 12 cm above right ear.*

24. *Lacerated wound, 1.5 cm x 1 cm x skin deep over back of head, 8 cm below right ear.*

25. *Contusion, 30 cm x 18 cm on left side back scapula.*

(50) He further stated that right parietal, occipital and frontal bones were fractured and all the ribs from 1 to 9 on both sides were found fractured. Heart was full of blood and weighed 220 gms. Lower jaw bone was fractured. Stomach was empty. Small intestines were half full and large intestines were full of faecal matter. A dhoti, coat, sweater, kurta, underwear, taviz, janeoo and kardhan were recovered, which were sealed and handed over to the constable. He further stated that all the injuries could have come by lathi, farsa and ballam and the probable time of death was 04:00 PM on 08.03.1979. In regard to injury Nos.4 and 10, he stated that they were also of superficial depth and could have been caused by a light sharp pointed object. Ballam is a heavy weapon. On a query of the Court, he stated that the said injuries were possible from the tip of a ballam. Bone was not cut but fractured. Injuries No.21, 23, 17 and 20 were on tense structure. He has also stated that by a blow of lathi on the tense structure, the injury in the shape of an incised wound comes. Under the injury No.21, bone was neither fractured nor cut. Under the injury No.23, bone was not cut but fractured. Injury Nos.17, 20, 21 and 23 were possible by hard impact

blunt objects. Thus, the injuries sustained by the deceased and proved by the doctor are in consonance with the weapons to have been used by the accused persons in the incident as proved by the P.W.-2, P.W.-3 and P.W.-4.

(51) The injuries proved by the doctor indicate that the assault by the convicts was highly brutal. The injuries are consistent with the ocular account of manner of assault given by the eye witnesses and weapons used as proved by them. Thus, the injuries suffered by the deceased and post mortem report also supports the prosecution case.

(52) The learned Trial Court, after considering the injuries and the evidence on record, has also recorded a finding that the injuries scribable to lathi stands explained by participation of lathi man Ram Ugra of Village Mahadeva itself and since the other accused Naiyar alias Rajkumar was of distant place and his presence was found doubtful, he has been acquitted. This Court does not find any illegality or error in it and the appellant, Ram Ugra is not entitled for any parity with the acquittal of co-accused, Naiyar alias Rajkumar as his participation in the crime has been proved and he was of the same village, of which, the other appellants belong. Even otherwise, an accused is not entitled for parity in acquittal with other accused, merely because both have been shown having used same weapon of assault, unless the complicity of the said accused is also not proved or found doubtful, therefore, the contention of learned counsel for the appellant in this regard is misconceived and not tenable, hence rejected.

(53) The PW.-6, Brij Narayan Singh, the Investigating Officer has proved the F.I.R. as Ex. Ka-5 and its entry in G.D. at Rapat No.32 at 18:45 hours as Ex. Ka-6. He further stated that he has recorded the statement of Kandhai; the complainant at the Police Station and thereafter he proceeded towards the spot where he reached about 10:30 PM in the night. There was no arrangement of light. He sent the constable for lantern, which was brought by him, however, its light was very dim, therefore, he remained there and in the morning, he firstly prepared the inquest report. He proved the inquest report, the photolash prepared by him and a letter to the CMO, which have been marked as Ex. Ka-8, Ex. Ka-9 and Ex. Ka-10. He had collected blood stained mud, which was near the dead body and plain mud in presence of the witnesses, which has been marked as Ex. Ka-11. Thereafter, he inspected the spot and prepared the site plan, which has been marked as Ex. Ka-12. The investigation was taken up by the Inspector on 11th day. In his cross-examination, he stated that the F.I.R. was written at 18:45 hours and he started the investigation at 19:15 hours, when he started to reduce F.I.R. in case diary. He remained busy at Police Station up to 21:20 hours. He denied the suggestion regarding ante-dating of the F.I.R. by stopping the case diary at the Police Station. He has also stated that he had gone by cycle, not by jeep. He further stated that the Inspector had proceeded at 10:35 as per the case diary and he reached at the spot in some minutes. He also stated that as per case diary, the Inspector had returned, though he has not mentioned that he had come by a vehicle

but as per his memory, he had come by a jeep. He has also denied the suggestion regarding lodging of forged report of Idrish under Section 498 I.P.C. to show the correct time of ante-time reporting. Thereafter extensive cross-examination has been made from him but nothing could be extracted, which may create any doubt about the veracity of his evidence or investigation. In the cross-examination, he has stated that he had not searched the houses of the accused persons because their houses were locked, which was mentioned in the case diary. However, no memo was prepared. He has further stated that witness Rajendra had told him that after seeing the agricultural work in Village Khamaria, they had proceeded from Khamaria to their Village Mahadeva at about 02:00 PM. He has also stated that witness Gurucharan had not told him that the accused persons had taken out a paper from the pocket of deceased Ram Shanker. He had told about the purchase of bull in Sajpur but he had not made any reference of his bulls and his maternal uncle's bulls. He has denied the suggestion that some unknown persons had lodged the F.I.R. of the dead body at the Police Station and he had prepared the aforesaid story. He has also denied the suggestion that after spot inspection with Rajendra in the village, the F.I.R. was lodged in the morning. The judgment of **Surendra Koli Vs. The State of Uttar Pradesh & Another (Supra)** relied by learned counsel for the appellant in this regard is not applicable on the facts and circumstances of this case.

(54) In view of above, the incident and the manner of assault and the arms, by which the assault was made and place of incident, have been proved by the aforesaid witnesses. The learned Trial Court has recorded the findings in accordance with law after considering the pleadings and evidence on record by reasoned and speaking order.

(55) One of the grounds of challenge is that the visit of the deceased and the complainant to the cattle market, Sajpur is not tenable on the ground that since the bulls of Nanhu were purchased, who was of the same village i.e. village of the complainant and the deceased, therefore, there was no question of going to the market as the said bulls could have been purchased in the village itself. The other ground has been raised on the ground that the receipts of purchase of bulls could not be proved as the thumb impressions were not proved either in both the experts opinion, out of which, one was conducted by the Court. So far as the plea on the ground of purchase of bulls of Nanhu of the same village from market is concerned, P.W.-2, the complainant Rajendra Prasad has stated that loan for purchase of bulls could have been taken from the co-operative society through veterinary doctor only, therefore, they had gone to the cattle market for doctor's certificate and received the receipt and the loan amount. So far as the proof of thumb impression on receipt is concerned, the learned Trial Court recorded that the experts have given opinion that two sets of thumb marks differ, however, the experts infact found interse similarity between thumb marks purporting to be those of Rajendra and Ram Shanker on the receipt in question. Even

otherwise, it was merely an expert opinion and if the receipts could not have been proved in a case of ocular evidence, it cannot be a ground for suspecting the prosecution case and acquittal, when by the ocular evidence the complicity of the accused persons in crime has been proved.

(56) The Hon'ble Supreme Court, in the case of **Suresh Rai and Others Vs. State of Bihar (Supra)**, has held that Inquest Report cannot be treated as substantive evidence but may be utilised for contradicting the witness of inquest. It has also been held that Inquest Report is prepared by the Investigating Officer to find out prima facie the nature of injuries and the possible weapon used in causing those injuries as also the possible cause of death. It is of no assistance to the appellants in the facts and circumstances of the instant case.

(57) In view of above and considering the over all facts and circumstances of the case, it has been proved beyond reasonable doubt by the prosecution that the accused/appellants with the common intention and in furtherance thereof assaulted the deceased with intention of causing death and left the place of incident only after killing despite the alarm by the witnesses. Thus, on the basis of evidence and material on record and the findings recorded by the learned Trial Court, this Court does not find any illegality or error in the impugned judgment and order, which has been passed by a reasoned and speaking order after considering the evidence and material on records and none of the grounds taken by the appellants are tenable in the eyes of law.

(58) The appeal is misconceived and is liable to be dismissed, which is accordingly **dismissed**, upholding the impugned judgment and order passed by the learned Trial Court. The conviction of the appellants for the offence punishable under Section 302/34 I.P.C. is upheld and the sentence awarded to them under Section 302/34 I.P.C. is confirmed.

(59) The appellant No.2; Gyanendri (Janendri) and the appellant No.3; Ram Pher had died during pendency of the appeal, whereas the appellant No.1; Ram Narain and the appellant No.4; Ram Uggar alias Ram Ugra are on bail, therefore, the appellant No.1; Ram Narain and the appellant No.4; Ram Uggar alias Ram Ugra are directed to surrender within two weeks from today before the Chief Judicial Magistrate concerned, who shall send them to jail to serve out the remaining sentence. In case the appellant No.1; Ram Narain and the appellant No.4; Ram Uggar alias Ram Ugra do not surrender within a period of two weeks from today, the Chief Judicial Magistrate concerned shall take appropriate steps for arrest of the appellant No.1; Ram Narain and the appellant No.4; Ram Uggar alias Ram Ugra.

(60) Let a copy of this judgment alongwith the Trial Court's record be transmitted to the Court concerned forthwith for information and compliance.

(Zafeer Ahmad,J.) **(Rajnish Kumar,J.)**

Order Date :- 13.02.2026
Saurabh/-