



HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2354 of 1984

Babulal

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Counsel for Appellant(s)	:	Kumar Kuldeep Singh, Ramesh Prasad
Counsel for Respondent(s)	:	A.G.A., Nand Lal Yadav, Prem Chandra

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With

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2355 of 1984

Ghasitawa @ Ghasita and others

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Counsel for Appellant(s)	:	K.k.singh, Ramesh Prasad
Counsel for Respondent(s)	:	A.G.A., Nand Lal Yadav, Prem Chandra

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Court No. – 91

AFR

Reserved On 27.10.2026

Delivered On 13.11.2026

HON'BLE SANTOSH RAI, J.

1. Heard Sri Ramesh Prasad, learned counsel for the appellants, Sri Prem Chandra, learned counsel for the informant, Sri Shyam Narayan Rai, learned AGA for State and perused the materials on record including the trial court records.

2. Both the above-mentioned criminal appeals arise out of the same judgment and order dated 24.8.1984 passed by the learned Sessions Judge, Fatehpur, in Sessions Trial No.451 of 1983, arising out of Case Crime No.12/1983, under Sections 302/34, 323/34 IPC, Police Station Lalauli, District Fatehpur. Since both the appeals relate to the same occurrence, involve common questions of fact and law and arise out of the same judgment, they are being heard and decided together by this common judgment.

3. Criminal Appeal No.2354 of 1984 has been preferred by accused-appellant Babulal, whereas Criminal Appeal No.2355 of 1984 has been preferred by accused-appellants Ghasitawa alias Ghasita, Ramdas and Ramlal. During the pendency of the appeal, appellant Ghasitawa alias Ghasita died. Consequently, the appeal, insofar as it relates to the deceased appellant Ghasitawa alias Ghasita, stands abated under Section 394 Cr.P.C. The present judgment, therefore, concerns the surviving appellants, namely Babulal, Ramdas and Ramlal.

4. The appellants are aggrieved by the judgment and order dated 24.8.1984 passed by the learned Sessions Judge, Fatehpur, in Sessions Trial No.451 of 1983, arising out of Case Crime No.12/1983, under Sections 302/34, 323/34 IPC, Police Station Lalauli, District Fatehpur; whereby they have been convicted and sentenced to five years rigorous imprisonment under Section 325 IPC, sentenced to six months rigorous imprisonment under Section 323 IPC for causing simple hurt to complainant Chunku, sentenced to six months rigorous

imprisonment under Section 323 IPC for causing simple hurt to Smt. Tituli. All the sentences are directed to run concurrently.

5. The prosecution case, in brief, is that there was a dispute between the parties regarding the land in question. On 15.2.1983, at about 10:00 a.m., accused persons started digging the foundation for construction of a building over the land claimed by the informant. When the informant and his family members objected to the same and restrained them from carrying out such construction, the accused persons started abusing and threatening them. Thereafter, all the accused persons, armed with lathis and other hard and blunt objects, assaulted the informant Chunku, Bhadauwa and Smt. Tituli, causing injuries to them.

6. During the course of the incident, Bhadauwa sustained serious injuries on his head and other parts of his body. He was subsequently taken for medical treatment, but ultimately succumbed to his injuries. The informant Chunku and Smt. Tituli also sustained injuries in the same occurrence.

7. On the basis of the written report submitted by the informant, the first information report was registered promptly, within a few hours of the occurrence. The injured persons were also medically examined soon after the incident and their injury reports were prepared. After investigation, the police submitted the charge-sheet against the accused persons.

8. The case was committed to the Court of Sessions and charges were framed against the accused persons under Sections 302/34 and 323/34 IPC. The accused persons denied the charges and claimed to be tried.

9. In order to prove its case, the prosecution examined the informant and injured witness Chunku, other witnesses of fact, the medical witnesses and the police personnel connected with the investigation. The prosecution also produced the relevant documentary evidence, including the first information report,

injury reports, post-mortem report and other papers relating to the investigation. After considering the entire evidence available on record, the learned trial court convicted the accused persons under Sections 325 and 323 IPC and sentenced them to five years imprisonment under Section 325 IPC and six months' imprisonment under Section 323 IPC. The accused persons have challenged the aforesaid judgment and order by filing the present appeals.

10. In brief the grounds of appeals are that the conviction of the appellants are against the weight of evidence on record, conviction of the appellants are bad in law and in any case sentence is too severe.

11. Learned counsel for the appellants has submitted that the accused persons are innocent and have falsely been implicated due to the previous land dispute between the parties. It is further submitted that the prosecution witnesses are interested witnesses and their statements are not reliable. There are contradictions regarding the manner of assault, the number of injuries and the individual role assigned to the accused persons. It is also submitted that one of the prosecution witnesses has not supported the prosecution case and, therefore, the prosecution version is not trustworthy.

12. Learned counsel has further submitted that the injuries sustained by the accused persons have not been properly explained by the prosecution. It is argued that the occurrence was a result of a dispute between the parties and the prosecution has suppressed the actual genesis of the incident. It is also submitted that the surviving appellants are more than 60 years of age and, therefore, they deserve the benefit of probation instead of being directed to undergo the remaining sentence.

13. Per contra, learned A.G.A. has supported the judgment and order passed by the trial court. It is submitted that the FIR

was promptly lodged, the injured witnesses have supported the prosecution case and their statements are duly corroborated by the medical evidence. The involvement of the accused persons is established from the oral as well as documentary evidence. There is no good ground to interfere with the conviction and sentence awarded by the trial court.

14. Learned A.G.A. has also informed the Court that no appeal or revision seeking enhancement of the conviction or sentence has been filed by the State or the victim against the impugned judgment.

15. I have considered the rival submissions advanced by learned counsel for the parties and have carefully perused the judgment of the trial court, the oral and documentary evidence available on record and the other relevant materials.

16. At the outset, it is relevant to mention that the occurrence took place on 15.2.1983 at about 10:00 a.m. The FIR was lodged promptly, within a few hours of the incident. The broad and essential facts relating to the commission of the offence, the manner of assault, the weapons used by the accused persons and the injuries sustained by the injured persons have been clearly mentioned in the FIR. The medical examination of the injured persons was also conducted soon after the incident and the corresponding injury reports were prepared. In my considered opinion, the prompt lodging of the FIR and the immediate medical examination of the injured persons lend assurance to the prosecution case. There is no unexplained delay in lodging the FIR which may create any reasonable doubt regarding the genesis of the occurrence or the participation of the accused persons.

17. The informant Chunku, who has been examined as P.W.-1, is himself an injured witness. He has specifically stated that the occurrence took place on account of a land dispute between the parties. According to his testimony, when the accused persons

started digging the foundation for construction of a building over the land claimed by the informant, they were restrained from doing so. On this objection, the accused persons started abusing and threatening the informant and his family members and thereafter assaulted them with lathis and other hard and blunt objects.

18. P.W.-1 has clearly described the involvement of the accused persons in the occurrence. He has stated that the accused persons jointly participated in the assault and caused injuries to the informant and the other injured persons. He has also attributed the participation of accused Babulal in causing injuries to the injured persons in furtherance of their common intention. It is a settled principle of law that the testimony of an injured witness ordinarily carries greater evidentiary value because his presence at the place of occurrence is established by the injuries sustained by him. Unless there are strong and convincing reasons to disbelieve such testimony, the same cannot be discarded merely on the ground that the witness is related to the deceased or the informant.

19. In the present case, the testimony of P.W.-1 finds support from the contemporaneous medical evidence. His presence at the place of occurrence is not doubtful. Nothing material has been brought on record during his cross-examination to discredit his testimony regarding the participation of the accused persons. It is true that when several persons simultaneously assault three injured persons with lathis and other hard and blunt objects, it may not always be possible for an injured witness to give an exact account of the number of blows inflicted by each accused or to identify with mathematical precision the particular injury caused by each individual accused. Such minor variations are natural in the circumstances of the occurrence and cannot be treated as

material contradictions so as to discard the entire prosecution case.

20. I further find that another prosecution witness, namely P.W.-2 Mangawa, has not fully supported the prosecution version regarding the actual assault. However, he has stated that he reached the place of occurrence subsequently. Merely because this witness has not supported the prosecution case in its entirety, the reliable testimony of the injured witness P.W.-1 cannot be discarded. The evidence of each witness has to be assessed independently on its own merits.

21. It is also relevant to examine the testimony of the other witness of fact, who is related to the accused persons. The defence has attempted to discredit his testimony on the ground that he is the uncle of the accused persons and is related to the informant's side. However, relationship with either party is not, by itself, a ground to reject the testimony of a witness. The Court is required to examine whether the statement is natural, consistent and supported by the other evidence on record.

22. On examination of his statement, I find that he has also described the occurrence and the participation of the accused persons in causing injuries with hard and blunt objects. His testimony, to the extent it is consistent with the prosecution version and supported by the medical evidence, provides further assurance to the prosecution case. I find no sufficient reason to reject the entire testimony merely on account of his relationship with the parties.

23. The medical evidence is an important circumstance in the present case. From the injury reports of the injured persons, it appears that all the three injured persons sustained injuries on different parts of their bodies, including the head and face. The informant Chunku sustained lacerated wounds on the occipital region of the head and on the left parietal region of the head. Smt. Tituli also sustained lacerated wound on her nose. The

deceased Bhadauwa sustained serious injuries on vital parts of his body, particularly the head and the right temporal region.

24. Following injuries were found on the body of the injured persons:-

"Injuries of Bhadauwan:-

1. Lacerated wound on the right parietal region of the head 6cmsx1cmx1cm.

2. Contusion on the right temporal region near pinna 3.5cmsx3 cms.

Injuries of Chunku:-

1. Lacerated wound on the occipital region of the head 1½ cmx1/2cmx1/2cm.

2. Lacerated wound on the left parietal region of the head 1cmx1/2cmx1/4cm.

Injuries of Smt. Tituli:-

1. Lacerated wound on the nose 1/2cmx1/4cmx1/4cm"

25. Following ante-mortem injuries were found on the dead body of Bhadauwan:-

> *"1. Stitched wound 3" in length over the right side of the parietal region 4" above the ear and 5" above the right eye brow placed longitudinally.*
>
> *2. Contusion 3"x2$^{1/2}$" over then right temporal region just in front of the tragus of the right ear.*
>
> *3. Contusion 1"x1/2" over the left frontal region ½" above the corner of the left eye.*
>
> *4. Abrasion 2"x1/2" over the lateral aspect of the left forearm ½" below the left elbow joint.*
>
> *Internal examination- there was* ***a depressed fracture in the right parietal bone. The right temporal bone was also fractured.*** *The membranes of the brain were lacerated and perforated. Clotted blood was present on the outer surface of the membranes. The brain was also lacerated and clotted blood was present on it. The cause of death was shock and haemorrhage resulting from ante-mortem injuries.*

26. Thus, post-mortem report of deceased Bhadauwa records four injuries, including one stitiched wound, two contusions on the head and abrasion on forearm. The medical evidence further indicates fractures of the temporal and parietal bones. The injuries were caused by a hard and blunt object.

27. On comparison of the injury report and the post-mortem report, I do not find any material contradiction regarding the nature and number of injuries. The post-mortem examination was conducted after the death of Bhadauwa, and the findings recorded therein are consistent with the serious head injuries described in the prosecution evidence. The fracture of the temporal and parietal bones is a significant circumstance. It establishes that considerable force was used while causing injuries to the deceased. The injuries were not confined to any ordinary or insignificant part of the body but were caused on vital parts, particularly the head. The medical evidence, therefore, substantially corroborates the ocular testimony regarding the use of hard and blunt objects and the manner in which the injured persons were assaulted. There is no material discrepancy between the medical evidence and the basic prosecution version.

28. It is also relevant to mention that the deceased did not sustain only one superficial injury. The post-mortem report records four injuries, including two contusions on the head, and the underlying bones were fractured. The nature, number and location of these injuries are relevant circumstances for appreciating the common intention and knowledge of the assailants. In my opinion, the evidence relating to the nature of injuries cannot be considered in isolation. It has to be examined along with the manner of assault, the weapons used, the parts of the body targeted and the participation of the accused persons. The totality of these circumstances establishes that the assault was serious and was not merely an accidental consequence of a minor quarrel.

29. There is one more important circumstance which requires consideration. After completion of the prosecution evidence, the accused persons were examined under Section 313 Cr.P.C. In his statement, accused Ghasitawa alias Ghasita stated, in

substance, that his sons Ramdas and Ramlal had also caused injuries to Chunku and the deceased, although they had also inflicted six to seven blows upon him. Similarly, accused Ramdas stated that the occurrence had taken place in the manner stated by his father. These statements are relevant circumstances while considering the defence version and the presence and participation of the accused persons at the place of occurrence.

30. It is settled law that the statement of an accused recorded under Section 313 Cr.P.C. is not substantive evidence and cannot, by itself, be treated as a substitute for proof of the prosecution case. However, an admission or an explanation contained in such a statement may be considered along with the other evidence on record. In the present case, the statements of the accused persons lend further support to the prosecution version regarding the presence and participation of Ramdas and Ramlal in the occurrence. The prosecution case, in any event, stands independently established by the testimony of the injured witness and the medical evidence.

31. The next submission of learned counsel for the appellants is that the prosecution has not explained the injuries allegedly sustained by the accused persons. I have considered this submission. It is true that the existence of injuries on the accused persons may be a relevant circumstance in a particular case, particularly where the injuries are serious and their non-explanation creates doubt regarding the origin or genesis of the occurrence. However, such a principle cannot be applied mechanically in every case. In the present case, no material has been brought on record to establish that the informant or the injured persons had assaulted the accused persons in the manner suggested by the defence. No criminal case against the informant or the injured persons in respect of the alleged assault upon the accused persons has been shown to have been

registered. The mere assertion that the accused persons had also sustained some injuries does not, by itself, demolish the prosecution case.

32. The prosecution evidence, particularly the testimony of P.W.-1, is consistent regarding the initial dispute, the assault and the injuries caused to the deceased and the other injured persons. The medical evidence also supports the prosecution version. In these circumstances, the plea regarding injuries to the accused persons does not create any reasonable doubt regarding their participation in the occurrence. I, therefore, find no force in the submission of learned counsel for the appellants that the prosecution case should be disbelieved on this ground.

33. From the evidence discussed above, it is apparent that the occurrence arose out of a dispute regarding the land and the construction of a building. The accused persons came together and participated in the assault when the informant and his family members objected to the digging of the foundation. The nature of the occurrence, the participation of the accused persons, the use of lathis and other hard and blunt objects and the injuries caused to three persons establish their concerted participation in the incident. The acts of the accused persons have to be appreciated in the light of Section 34 IPC, which embodies the principle of joint liability for an act done in furtherance of the common intention of all.

34. The prosecution is not required to establish that each accused caused a particular injury where the evidence establishes their participation in the joint assault and the existence of common intention. The nature of participation and the circumstances of the occurrence have to be considered as a whole. In the present case, the testimony of P.W.-1, read with the medical evidence and the other circumstances, establishes the participation of the surviving appellants in the occurrence. I find no material contradiction or inherent improbability which

may justify interference with the findings recorded by the trial court in this regard.

35. I have also examined the manner in which the learned trial court appreciated the evidence and arrived at its conclusion. The original charge against the accused persons was under Sections 302/34 and 323/34 IPC. However, after appreciation of the evidence, the learned trial court convicted them under Sections 325 and 323 IPC and awarded five years imprisonment under Section 325 IPC and six months' imprisonment under Section 323 IPC.

36. The evidence on record, particularly the post-mortem report, cannot be treated as evidence of an ordinary assault. The deceased sustained four injuries including two contusions on his head, including two contusions, and the temporal and parietal bones were fractured. The medical evidence establishes that substantial force was used in causing injuries to vital parts of the body. The nature and number of blows, the weapons used, the parts of the body where the injuries were inflicted and the circumstances in which the assault took place are relevant factors for determining the nature of the offence. These circumstances are also relevant for examining whether the assailants had the requisite knowledge that their acts were likely to cause death. In my considered opinion, the learned trial court was required to examine these circumstances with greater care and in the light of the ingredients of the relevant provisions of the IPC. The medical evidence and the ocular testimony required a more complete and proper appraisal, particularly with regard to the serious injuries sustained by the deceased. Thus, at least the appellants were required to be convicted under section 304 IPC. The trial court has committed material legal error in appraisal of oral and medical evidence.

37. In the case of **Virsa Singh vs. State of Punjab 1958 SCC OnLine SC 37** the Hon'ble Supreme Court has held as under:-

""14. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 "thirdly".

15. First, it must establish, quite objectively, that a bodily injury is present.

16. Secondly, the nature of the injury must be proved; these are purely objective investigations.

17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

18. Once these three elements are proved to be present, the enquiry proceeds further and.

19. Fourthly, it must be proved that the injury of the type just described, made up of the three elements set out above, is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

20. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout), the offence is murder under Section 300 "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduce, that the injury was accidental or otherwise unintentional."

38. In the case of **State of Madhya Pradesh vs. Goloo Raikwar and another (2016) 12 SCC 139** the Hon'ble Supreme Court has held as under:-

"10. … So far as the question of inconsistency between the medical evidence and the ocular evidence is concerned, the law is well settled that, unless the oral evidence available is totally irreconcilable with the medical evidence, the oral evidence would have primacy. In the event of contradictions between medical and ocular evidence, the ocular testimony of a witness will have greater evidentiary value vis-à-vis medical evidence and when medical evidence makes the oral testimony improbable, the same becomes a relevant factor in the process of evaluation of such evidence. It is only when the contradiction between the two is so extreme that the medical evidence completely rules out all possibilities of the ocular evidence being true at all, that the ocular evidence is liable to be disbelieved."

39. In the case of **State of Madhya Pradesh vs. Goloo Raikwar and another (2016) 12 SCC 139** the Hon'ble Supreme Court has held as under:-

> *"8. In State of A.P. v. Rayavarapu Punnayya [State of A.P. v. Rayavarapu Punnayya, (1976) 4 SCC 382 : 1976 SCC (Cri) 659] , this Court had to deal with a similar situation. In that case, the accused, 5 in number, beat the victim with sticks on the legs and arms of the deceased and when hospitalised the deceased succumbed to his injuries. The medical officer who conducted the autopsy opined that the cause of death was shock and haemorrhage resulting from multiple injuries and the said injuries were cumulatively sufficient to cause death in the ordinary course of nature. The question arose whether in such a case when no significant injury had been inflicted on a vital part of the body, and the weapons used were sticks and the accused could not be said to have the intention of causing death, the offence would be "murder" or merely "culpable homicide not amounting to murder". This Court answered the question in these terms : (SCC p. 394, para 39)*
>
> *"39. … All these acts of the accused were preplanned and intentional, which, considered objectively in the light of the medical evidence, were sufficient in the ordinary course of nature to cause death. The mere fact that the beating was designedly confined by the assailants to the legs and arms, or that none of the multiple injuries inflicted was individually sufficient in the ordinary course of nature to cause death, will not exclude the application of clause Thirdly of Section 300. The expression "bodily injury" in clause Thirdly includes also its plural, so that the clause would cover a case where all the injuries intentionally caused by the accused are cumulatively sufficient to cause the death in the ordinary course of nature, even if none of those injuries individually measures up to such sufficiency. The sufficiency spoken of in this clause, as already noticed, is the high probability of death in the ordinary course of nature, and if such sufficiency exists and death is caused and the injury causing it is intentional, the case would fall under clause Thirdly of Section 300. All the conditions which are a prerequisite for the applicability of this clause have been established and the offence committed by the accused, in the instant case was 'murder'."*

40. Upon an overall consideration of the ocular testimony, the statement of the deceased, the medical evidence and the attending circumstances, this Court finds that the trial court's assessment of the nature and gravity of the offence is open to 'serious doubt'. The extensive injuries sustained by the deceased, the fractures and the medical opinion regarding the cause of death required a more searching examination of the applicability of Sections 302 or 304 IPC. Nevertheless, in the absence of an appeal for enhancement or for alteration of the conviction to a graver offence, this Court does not consider it

appropriate to enhance the punishment or convert the conviction into one under Section 302 or Section 304 IPC in the present appeal. The surviving appellant cannot be subjected to an enhanced conviction or sentence without due regard to the applicable statutory provisions, the scope of the proceedings and the safeguards of fair hearing.

41. It is also relevant that the judgment of conviction was delivered by the then Sessions Judge, Fatehpur, Sri N.K. Maheshwari on 24.8.1984. More than four decades have elapsed since the decision of the trial court. Having regard to the extraordinary passage of time, the nature and scope of the present appeal, and the absence of any challenge seeking enhancement, this Court considers that reopening the matter for the purpose of enhancement would serve no fruitful purpose at this belated stage. This consideration, however, shall not be construed as approval of any infirmity in the trial court's appreciation of the evidence.

42. The manner in which the learned Presiding Officer has ignored material evidence and failed to undertake a proper, objective and holistic appreciation of the ocular and medical evidence reflects a serious dereliction in the discharge of judicial responsibility. Such perfunctory and erroneous appraisal of evidence, particularly in a case involving the ‘death’ of a person following grievous injuries including fractures on parietal and temporal bone, is not merely an error of appreciation but undermines the very object of criminal adjudication. A mechanical approach to the evaluation of material evidence, resulting in findings divorced from the record, is tantamount to making a mockery of the criminal justice system and cannot be countenanced in the administration of justice.

43. However, it is equally important to notice that the present proceedings are appeals preferred by the accused persons

against their conviction and sentence. No appeal or revision seeking enhancement of the conviction or sentence has been filed by the State or the victim. Learned A.G.A. has also fairly stated this position before this Court.

44. Therefore, while examining the correctness of the impugned judgment, this Court cannot, in the present appeals preferred by the accused persons, proceed to enhance their conviction or sentence without the requisite proceedings and compliance with the law governing enhancement. The observations made herein regarding the nature of the injuries and the medical evidence are for proper appreciation of the prosecution case and shall not be treated as an order enhancing the conviction or sentence of the appellants.

45. Thus, in the light of above circumstances, I further find that the conviction of the appellants under Sections 325 and 323 IPC is supported by reliable ocular and medical evidence. The learned trial court has rightly found that the appellants participated in the assault and caused grievous as well as simple injuries to the injured persons. No ground has been made out by the appellants to interfere with the aforesaid findings.

46. It is also relevant that the learned trial court has already taken a comparatively lenient view while recording conviction under Sections 325 and 323 IPC, instead of recording conviction under the graver charge. In the absence of any appeal or revision seeking enhancement, this Court is not required to undertake any enhancement exercise in the present proceedings. However, the appellants cannot claim any further reduction in their conviction or sentence when the findings recorded by the trial court are supported by the evidence on record.

47. Learned counsel for the appellants has lastly submitted that the surviving appellants are now more than 60 years of

age and, therefore, they may be extended the benefit of probation instead of being required to undergo the remaining sentence.

48. I have considered this submission. There is no doubt that the age of an accused, his antecedents, social circumstances and the possibility of his reformation are relevant considerations while examining a request for release on probation. However, the grant of probation is not automatic merely because an accused has attained an advanced age.

49. In the present case, the occurrence resulted in serious injuries to three persons, including the death of one person. The deceased sustained four injuries on vital parts of his body, particularly the head, and the medical evidence establishes **fractures of the temporal and parietal bones**. The informant and another injured person also sustained injuries. The nature of the occurrence, the manner of assault, the use of hard and blunt objects and the consequences of the acts of the accused persons are relevant circumstances which cannot be ignored. The request for probation has to be considered in the light of the entire incident and not merely on the basis of the present age of the appellants. Considering the facts and circumstances of the case, the nature of the injuries, the participation of the appellants and the seriousness of the occurrence, death of one of injured, I do not find any good or sufficient reason to extend the benefit of probation to the surviving appellants.

50. On an overall consideration of the entire evidence, I find that the prosecution has successfully established the occurrence and the participation of the surviving appellants. The prompt FIR, the testimony of the injured witness, the supporting circumstances and the medical evidence form a consistent chain and establish the prosecution case beyond reasonable doubt. The minor discrepancies and variations pointed out by learned counsel for the appellants do not go to

the root of the prosecution case. The testimony of the injured witness cannot be discarded on account of such minor variations, particularly when it is corroborated by the medical evidence.

51. Except for the legal error committed by the learned Presiding Officer in the appreciation and evaluation of the evidence, as discussed hereinabove, I do not find any illegality, perversity or material error in the findings of the trial court convicting the surviving appellants under Sections 325 and 323 IPC. The conviction and sentence awarded by the trial court do not call for interference in these appeals.

52. Consequently, both the criminal appeals, namely Criminal Appeal No.2354 of 1984 and Criminal Appeal No.2355 of 1984, insofar as they relate to the surviving appellants Babulal, Ramdas and Ramlal, are hereby **dismissed**.

53. The conviction and sentence awarded by the learned Sessions Judge, Fatehpur, under Sections 325 and 323 IPC are hereby **affirmed**.

54. The surviving appellants, namely Babulal, Ramdas and Ramlal, are directed to surrender before the court concerned **within ten days from today** to serve out the remaining part of their sentences.

55. In case they fail to surrender within the aforesaid period, the court concerned shall take appropriate coercive steps in accordance with law to secure their presence and execute the sentence.

56. The period already undergone by the appellants in custody shall be given due set-off in accordance with Section 428 Cr.P.C., as applicable.

57. Let a copy of this judgment along with the trial court record be transmitted to the court concerned *within a week* for necessary compliance.

58. The Registrar (Compliance) is also directed to serve a copy of this order **within 48 hours** by FAX/e-mail to the concerned trial court through District & Sessions Judge concerned for compliance.

(Santosh Rai,J.)

November 13, 2026
RA

Digitally signed by :-
RAZIQ ALI
High Court of Judicature at Allahabad