IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

&

HON'BLE SHRI JUSTICE RAJEEV KUMAR SHRIVASTAVA

ON THE 11TH MAY, 2022

CRIMINAL APPEAL NO. 324 OF 2011

Between:-

1. GHANSHYAM YADAV, SON OF MAGAN YADAV, AGED 54 YEARS, OCCUPATION AGRICULTURE
2. KALLU YADAV, SON OF VAN SINGH, AGED 64 YEARS, OCCUPATION AGRICULTURE
3. RAMSEVAK SON OF MAGAN YADAV, AGED 64 YEARS, OCCUPATION AGRICULTURE
4. NARENDRA SON OF LAKHAN YADAV, AGED 24 YEARS, OCCUPATION BAKRI-PALAN
5. BHARAT YADAV, SON OF GHANSHYAM YADAV
6. VAN SINGH SON OF MAGAN YADAV, AGED 74 YEARS, OCCUPATION AGRICULTURE

7. CHANDAN SINGH, SON OF VAN SINGH, AGED 39 YEARS
8. RAVINDRA YADAV, SON OF RAMKISHAN YADAV, AGED 26 YEARS, OCCUPATION AGRICULTURE
9. PRAKASH SON OF MAGAN YADADV, AGED 32 YEARS, OCCUPATION AGRICULTURE
10. RAMKISHAN YADAV, SON OF MAGAN YADAV, AGED 50 YEARS, OCCUPATION PRIVATE TEACHER

…. APPELLANTS

(SHRI ANOOP NIGAM- ADVOCATE FOR APPELLANTS NO. 1, 2, 3 & 5 TO 10 AND SHRI A.K.JAIN, ADVOCATE FOR APPELLANT NO.4)

AND

STATE OF MADHYA PRADESH THROUGH POLICE STATION DURSUDA, DISTRICT DATIA (MP)

….RESPONDENT

(BY SHRI C.P. SINGH-PUBLIC PROSECUTOR)

A N D

CRIMINAL APPEAL NO. 483 OF 2011

Between

ARVIND ALIAS LALLA, AGED 25 YEARS,

SON OF JAGAT SINGH, OCCUPATION AGRICULTURE, RESIDENT OF VILLAGE BAGUDHARN FIROZ, DISTRICT DATIA (MP)

…. APPELLANT

(BY SHRI ANOOP NIGAM- ADVOCATE)

AND

STATE OF MADHYA PRADESH THROUGH POLICE STATION DURSUDA, DATIA (DISTRICT DATIA) MADHYA PRADESH

….RESPONDENT

(BY SHRI C.P. SINGH- PUBLIC PROSECUTOR)

Reserved on : **25th of April, 2022**
Delivered on : 11th of May, 2022

This appeal coming on for final hearing, ***Hon'ble Shri Justice Rajeev Kumar Shrivastava,*** *passed the following:*

JUDGMENT

This common judgment shall also govern disposal of Criminal Appeal No.483 of 2011 filed by appellant -Arvind alias Lalla. Since the factual matrix in both the criminal appeals is

same, therefore, for the sake of convenience, they are heard simultaneously.

(2) Being dissatisfied with the judgment of conviction and sentence dated 29-03-2011 passed by Special Judge & Additional Sessions Judge, Datia (MP) in Sessions Trial No.123 of 2006, both Criminal Appeals under Section 374(2) of CrPC has been preferred, by which appellants have been sentenced and convicted as under:-

Offence	**Sentence**
Section 148 of IPC	Two-two years rigorous imprisonment
Section 302/149 of IPC for commission of murder of deceased Sahab Singh and Ramswaroop	Rigorous Life Imprisonment with fine of Rs.2,000/-
Section 323/149 of IPC (three counts) for causing injuries to injured Hakim Singh, Afsar and Smt. Avdeshbai	Six- six months rigorous imprisonment

All the sentences were directed to run concurrently. All the appellants were directed to pay Rs.10,000- Rs.10,000/- as compensation to legal representatives of deceased Sahab Singh and Ramswaroop.

(3) In brief, case of the prosecution is that on 11-09-2006, at around 11:45 am, complainant Hakim Singh (PW4) lodged a report at Police Station Dursada, District Datia with the allegation that on the said date, at around 08:30 in the morning, his uncle Sahab Singh had gone outside for attending the call of nature. Accused Ghanshyam Yadav, Ramkishan, Bharat & Prakash armed with farsa, Vansingh armed with luhangi, Ramsewak, Ravindra, Arvind, Narendra, Kallu and Chandan armed with lathi reached the agricultural field and hurled abuses and when his uncle Sahab Singh objected to it, all accused persons within intention to kill committed marpeet by their respective weapons with his uncle as a result of which, his uncle Sahab Singh sustained injuries on various parts of his body and blood started oozing. When he along with his father Ramswaroop, uncle Afsar, aunt Avdeshbai and grand-mother Prembai came there for rescue, all accused persons committed "marpeet" with them as a result of which, his father Ramswaroop sustained injuries on various parts of his body and blood started oozing, his uncle Afsar sustained contusion injury

on his head and his aunt Smt.Avdeshbai sustained injuries on her head and blood started oozing after sustaining injuries on various parts of her body. His grand-mother Prembai also sustained contusion on her head. Complainant Hakim Singh also sustained injuries on his head and blood started oozing after sustaining injuries by him on the finger of his right hand and left leg. On the basis of aforesaid report lodged by complainant Hakim Singh, FIR was lodged at Crime No.72 of 2006 vide Ex.P9 for commission of offences under Sections 147, 148, 149, 294, 323, 307 of IPC. The injured persons were sent for medical examination on the same day i.e. 11-09-2006. On the basis of merg intimation vide Ex.P14 and Ex.P48 of death of Ramswaroop and Sahab Singh, *Merg* Report No.405/2006 and *Merg* Report No.406/2006 were recorded separately. Postmortem of deceased Sahab Singh and Ramswaroop were conducted on 12-09-2006. Matter was investigated. Blood stained and plain soil were collected. Accused were arrested. Deadly weapons i.e. farsa, lathi and luhangi were seized and the same weresent to FSL for

examination. Statements of witnesses were recorded and after completion and other formalities, the police filed charge sheet before the Court concerned from where, the case was committed to Sessions Court for its trial.

(4) Accused persons abjured their guilty and in order to lead evidence in their support, accused Prakash Yadav examined himself as DW1 whereas Raghuvir Singh Yadav and Moolchandra Yadav were examined as DW2 and DW3. Prosecution proceeded to examine its witnesses. In all, as many as 19 witnesses were examined by prosecution, in its support.

(5) Learned Trial Judge, after appreciating the entire evidence led by Prosecution and relying on the same, found charges against appellants as proved and accordingly, convicted and sentenced them for offence as indicated above in paragraph (2) of this judgment and acquitted all the appellants of charge under Section 294 of IPC for causing simple injuries to injured Prem Bai.

(6) It is contended on behalf of appellants that complainant are the members of appellants' family and this fact has been admitted

by Avdeshbai (PW2) in her Court statement. The presence and any act committed by appellants at the time of incident does not find proved in spite of the fact that the Trial Court has committed an error in convicting and sentencing the appellants. It is also contended that there are eleven accused amongst them four were armed with farsa and remaining seven were armed with lathi and luhangi.As per the postmortem report, death of deceased had been caused by inflicting injuries from sharp edged weapon on their head and not caused by lathi. There were two incised wounds and remaining two were mark of abrasion on the body of deceased Ramswaroop and there are allegations of causing injuries against seven accessed persons, who were armed with lathi and luhangi, whereas as per the opinion of doctor, death of Ramswaroop is caused by scratching on the road. In such a view, charge of murder of Ramswaroop does not find proved against the appellants. Same opinion regarding the deceased Sahab Singh has been given by the doctor and charges lelled against seven accused persons does not find proved. In fact, seven out of eleven accused

armed armed with lathi, would have assaulted Sahab Singh and Ramswaroop, then both deceased would have sustained grievous injuries of hard and blunt object. The authenticity of eyewitnesses is suspicious because there is contradiction between evidence of PW1 Afsar and remaining eye-witnesses. Hence, it is prayed that the impugned judgment deserves to be set aside, being contrary to established principle of law. In support of contention, learned counsel for appellants has relied on the judgment of Hon'ble Apex Court in the case of **Jugut Ram vs. State of Chhattisgarh** [Criminal Appeal No. 616 of 2020 Arising out of SLP (Crl.) No.7416 of 2018, decided on 16th September 2020]

(7) *Per contra,* counsel for the State supported the impugned judgment and submitted that prosecution evidence is fully corroborated by medical evidence and there is no infirmity in the impugned judgment. The Trial Court did not err in convicting and sentencing appellants for the aforesaid offences. Hence, prayed for dismissal of these appeals.

(8) It would be necessary to dilate on the questions mentioned

hereunder for determination of appeals are:-

(A)As to whether death of deceased Ramswaroop and Sahab Singh was homicidal nature or not?

(B) As to whether culpable homicide is amounting to murder or not ?

() As to whether appellants were unlawfully assembled on the spot with common object causing death of both deceased Ramswaroop and Sahab Singh as well as causing injuries to injured Hakim Singh, Afsar and Smt.Avdeshbai or not ?

(9) Dr.R.S.Parihar(PW3) in his evidence deposed that on 11-09-2006, **injured Ramswaroop** was medically examined by him and the following injuries were found on the body of injured Ramswaroop:-

"Injury No.1:- Lacerated wound was present over left side of face, lateral to left eye size 2cm x ½ cm x ½ cm.

Injury No.2:- Lacerated wound was present over right parietal region of skull size 3 ½ cm x 1cmx bone deep.

Injury No.3:- Lacerated wound was present over right parietal region of skull near injury No.2 size 3cmx1cm x bone deep.

Injury No.4:- Contusion was present over left

side of face below left ear size 2 ½ cm x 2cm.

Injury No.5:- Lacerated wound was present over right parito-occipital region of skull size 2 ½ cmx1cm x bone deep.

Injury No.6:- Incised wound was present over left forearm size 3cmx 2cmx bone deep

Injury No.7:- Incised wound was present over left shoulder size 2 cm x 1cmx 1cm.

According to this witness, injury nos.1 to 5 wee caused hard and blunt object and injury no. 6 and 7 were caused by sharp cutting object. Injury No.4 and 7 were simple in nature and injury Nos.1, 2,3,5,6 were dangerous to life. Duration of all injuries were within 24 hours of medical examination. MLC report is Ex.P1. X-ray was advised and injured Ramswaroop was referred to JA Hospital Gwalior.

(9) Dr. Ajay Gupta (PW12) on 12-09-2006 conducted postmortem of **deceased Ramswaroop** after identification of deceased by complainant Hakim Singh and after receipt of requisition form. PM report is Ex.P19. The doctor found following ante-mortem injuries on the body of deceased:-

"(1) stitched wound having 3 stitches and 5 cm long vertically placed, over right side parietal area of scalp, on cutting stitches, margins sharply cut. Bone

underneath the wound having cut effect, meninges and brain matter also cut. Scalp surrounding the stitched wound ecchymosed,

(2) stitched wound present over anteriority of left forearm dorsolaterally 5 cm long having 3 stitches on cutting stitches margins sharply cut muscle and ulna bone underneath also having cut effect,

(3) Red abrasion left elbow posterio-laterally 2x 1 cm size,

(4) Red abrasion right elbow posteriorly 2 x 1 cm size. "

According to doctor, injury Nos. 1 and 2 were caused by sharp edged weapon. Head injury was sufficient to cause death of deceased in the ordinary course of nature. Injury Nos.3 and 4 were caused by hard and blunt or surface object. Death of deceased was due to shock and haemorrhage and was homicidal in nature. Duration of death of deceased was within 12 to 36 hours since postmortem examination.

(10) Similarly, Dr.RS Parihar (PW3) in his deposition stated that on 11-9-2006 he was posted as Medical Officer in CHC, Bhander. Injured Sahab Singh was medically examined by him and one incised wound over right parietal region of skull size 10 cm x ½ cm x bone deep with bleeding was found on the body of

injured Sahab Singh and it was caused by sharp cutting object and injury was dangerous to life. MLC report is Ex.P2. Doctor advised for X-ray and injured Sahab Singh was referred to JA Hospital.

(10) Dr. Nikhil Agrawal (PW9) on 12-09-2006 conducted postmortem of **deceased Sahab Singh** after receipt of requisition form Ex.P17 as well as after identification of dead body of deceased Sahab Singh by complainant Hakim Singh. Dr. Agrawal found following ante-mortem injuries on the body of deceased Sahab Singh:-

> (1) An abrasion of 4cm x2.5 cm, reddish in colour and present on left shoulder;
> (2) Two small abrasions on left lip margin at lateral part 1cm x 1cm each 2 cm size;
> (3) An abrasion at sacrococcygeal region over back 4 cm x 2 cm reddish in colour;
> (4) A cut wound present over head on right side 7 cm above the mid of left eyebrow extending posterity in straight manner measuring about 16cm x 1cm, underneath bone showing cut effect and depth of wound is 2 cm and more deep in the centre;
> (5) A lacerated wound of size 2 cm x 1 cm present over head of left side 6 cm above the left ear, scalp deep."

According to doctor, injury no.4 appears to be due to a

sharp edged and heavy weapon and sufficient to cause death in the ordinary course of nature. Death of deceased was due to shock and haemorrhage as a result of head injury. Duration of death within 12 hours to 36 hours since postmortem examination. Death of deceased was homicidal in nature and injury caused to sharp edged and heavy weapon.

(11) It would be appropriate to throw light on the relevant provisions of Sections 299 and 300 of Indian Penal Code.

The Law Commission of United Kingdom in its 11th Report proposed the following test :

> "The standard test of 'knowledge' is, Did the person whose conduct is in issue, either knows of the relevant circumstances or has no substantial doubt of their existence?"
> *[See Text Book of Criminal Law by Glanville Wiliams (p.125)]*

"Therefore, having regard to the meaning assigned in criminal law the word "knowledge" occurring in clause Secondly of Section 300 IPC imports some kind of certainty and not merely a probability. Consequently, it cannot be held that the appellant caused the injury with the intention of causing such bodily injury

as the appellant knew to be likely to cause the death of Shivprasad. So, clause Secondly of Section 300 IPC will also not apply."

The enquiry is then limited to the question whether the offence is covered by clause Thirdly of Section 300 IPC. This clause, namely, clause Thirdly of Section 300 IPC reads as under:-

> "Culpable homicide is murder, if the act by which the death is caused is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death."

(12) The argument that the accused had no intention to cause death is wholly fallacious for judging the scope of clause Thirdly of Section 300 IPC as the words "intention of causing death" occur in clause Firstly and not in clause Thirdly. An offence would still fall within clause Thirdly even though the offender did not intend to cause death so long as the death ensues from the intentional bodily injury and the injuries are sufficient to cause death of the deceased in the ordinary course of nature. This is also borne out from illustration (c) to Section 300 IPC which is being

reproduced below:-

> "(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death."

Therefore, the contentions advanced in the present case and which are frequently advanced that the accused had no intention of causing death of deceased is wholly irrelevant for deciding whether the case falls in clause Thirdly of Section 300 IPC.

(13) The scope and ambit of clause Thirdly of Section 300 IPC was considered by the Supreme Court in the decision in **Virsa Singh Vs. State of Punjab AIR 1958 SC 465** and the principle enunciated therein explains the legal position succinctly. The accused Virsa Singh was alleged to have given a single spear blow and the injury sustained by the deceased was "a punctured wound 2"x =" transverse in direction on the left side of the abdominal wall in the lower part of the iliac region just above the inguinal canal. Three coils of intestines were coming out of the wound." After analysis of the clause Thirdly, it was held: -

> "The prosecution must prove the

following facts before it can bring a case under S. 300 "Thirdly"; First, it must establish, quite objectively, that a bodily injury is present; Secondly, the nature of the injury must be proved. These are purely objective investigations. 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.

Once these three elements are proved to be present, the enquiry proceeds further and, 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. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout), the offence is murder under S. 300 "Thirdly". It does not matter that there was no intention to cause death, or 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 (there is no real distinction between the two), or even 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."

(14) In the case of **Arun Nivalaji More vs. State of Maharashtra (Case No.Appeal (Cri.) 1078-1079 of 2005)**, it has been observed as under :-

> "**11**. First it has to be seen whether the offence falls within the ambit of Section 299 IPC. If the offence falls under Section 299 IPC, a further enquiry has to be made whether it falls in any of the clauses, namely, clauses 'Firstly' to 'Fourthly' of Section 300 IPC. If the offence falls in any one of these clauses, it will be murder as defined in Section 300IPC, which will be punishable under Section 302 IPC. The offence may fall in any one of the four clauses of Section 300 IPC yet if it is covered by any one of the five exceptions mentioned therein, the culpable homicide committed by the offender would not be murder and the offender would not be liable for conviction under Section 302 IPC. A plain reading of Section 299 IPC will show that it contains three clauses, in two clauses it is the intention of the offender which is relevant and is the dominant factor and in the third clause the knowledge of the offender which is relevant and is the dominant factor. Analyzing Section 299 as aforesaid, it becomes clear that a person commits culpable homicide if the act by which the death is caused is done
>
> (i) with the intention of causing death; or
>
> (ii) with the intention of causing such bodily injury as is likely to cause death; or

(iii) with the knowledge that the act is likely to cause death."

If the offence is such which is covered by any one of the clauses enumerated above, but does not fall within the ambit of clauses Firstly to Fourthly of Section 300 IPC, it will not be murder and the offender would not be liable to be convicted under Section 302 IPC. In such a case if the offence is such which is covered by clauses (i) or (ii) mentioned above, the offender would be liable to be convicted under Section 304 Part I IPC as it uses the expression "if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death" where intention is the dominant factor. However, if the offence is such which is covered by clause (iii) mentioned above, the offender would be liable to be convicted under Section 304 Part II IPC because of the use of the expression "if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death" where knowledge is the dominant factor.

12. What is required to be considered here is whether the offence committed by the appellant falls within any of the clauses of Section 300 IPC.

13. Having regard to the facts of the case it can legitimately be urged that clauses Firstly and Fourthly of Section 300 IPC were not attracted. The expression "the offender knows to be likely to cause death" occurring in clause Secondly of Section 300 IPC lays emphasis on knowledge. The dictionary meaning of the

word 'knowledge' is the fact or condition of being cognizant, conscious or aware of something; to be assured or being acquainted with. In the context of criminal law the meaning of the word in Black's Law Dictionary is as under: -

> "An awareness or understanding of a fact or circumstances; a state of mind in which a person has no substantial doubt about the existence of a fact. It is necessary ... to distinguish between producing a result intentionally and producing it knowingly. Intention and knowledge commonly go together, for he who intends a result usually knows that it will follow, and he who knows the consequences of his act usually intends them. But there may be intention without knowledge, the consequence being desired but not foreknown as certain or even probable. Conversely, there may be knowledge without intention, the consequence being foreknown as the inevitable concomitant of that which is desired, but being itself an object of repugnance rather than desire, and therefore not intended."

In Blackstone's Criminal Practice the import of the word 'knowledge' has been described as under: -

> 'Knowledge' can be seen in many ways as playing the same role in relation to circumstances as intention plays in relation to consequences. One knows something if one is absolutely sure that

> it is so although, unlike intention, it is of no relevance whether one wants or desires the thing to be so. Since it is difficult ever to be absolutely certain of anything, it has to be accepted that a person who feels 'virtually certain' about something can equally be regarded as knowing it."

(15) Section 299 of Indian Penal Code runs as under :-

> "**299. Culpable homicide**.-- Wheoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

(16) Section 299 of IPC says, whoever causes death by doing an act with the bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Culpable homicide is the first kind of unlawful homicide. It is the causing of death by doing :

> (i) an act with the intention of causing death;
> (ii) an act with the intention of causing such bodily injury as is likely to cause death; or
> (iii) an act with the knowledge that it is was likely to cause death.

Without one of these elements, an act, though it may be by its nature criminal and may occasion death, will not amount to the offence of culpable homicide. 'Intent and knowledge' as the ingredients of Section 299 postulate, the existence of a positive mental attitude and the mental condition is the special *mens rea* necessary for the offence.The knowledge of third condition contemplates knowledge of the likelihood of the death of the person. Culpable homicide is of two kinds : one, culpable homicide amounting to murder, and another, culpable homicide not amounting to murder. In the scheme of the Indian Penal Code, culpable homicide is genus and murder is species. All murders are culpable homicide, but not *vice versa*. Generally speaking, culpable homicide *sans* the special characteristics of murder is culpable homicide not amounting to murder. In this section, both the expressions 'intent' and 'knowledge' postulate the existence of a positive mental attitude which is of different degrees.

(17) Section 300 of Indian Penal Code runs as under :-

> "**300. Murder.--** Except in the cases hereinafter excepted, culpable homicide is

> murder, if the act by which the death is caused is done with the intention of causing death, or--
>
> *Secondly*.-- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or--
>
> *Thirdly*.-- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or--
>
> *Fourthly*.-- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

(18) "Culpable Homicide" is the first kind of unlawful homicide. It is the causing of death by doing ;(i) an act with the intention to cause death; (ii) an act with the intention of causing such bodily injury as is likely to cause death; or, (iii) an act with the knowledge that it was likely to cause death.

(19) Indian Penal Code recognizes two kinds of homicide :(1) Culpable homicide, dealt with between Sections 299 and 304 of IPC (2) Not-culpable homicide, dealt with by Section 304-A of IPC. There are two kinds of culpable homicide; (i) Culpable

homicide amounting to murder (Section 300 read with Section 302 of IPC), and (ii) Culpable homicide not amounting to murder (Section 304 of IPC).

(20) A bare perusal of the Section makes it crystal clear that the first and the second clauses of the section refer to intention apart from the knowledge and the third clause refers to knowledge alone and not the intention. Both the expression "intent" and "knowledge" postulate the existence of a positive mental attitude which is of different degrees. The mental element in culpable homicide i.e., mental attitude towards the consequences of conduct is one of intention and knowledge. If that is caused in any of the aforesaid three circumstances, the offence of culpable homicide is said to have been committed.

(21) There are three species of *mens rea* in culpable homicide(1) An intention to cause death; (2) An intention to cause a dangerous injury; (3) Knowledge that death is likely to happen.

(22) The fact that the death of a human being is caused is not enough unless one of the mental state mentioned in ingredient of

the Section is present. An act is said to cause death results either from the act directly or results from some consequences necessarily or naturally flowing from such act and reasonably contemplated as its result. Nature of offence does not only depend upon the location of injury by the accused, this intention is to be gathered from all facts and circumstances of the case. If injury is on the vital part, i.e., chest or head, according to medical evidence this injury proved fatal. It is relevant to mention here that intention is question of fact which is to be gathered from the act of the party. Along with the aforesaid, ingredient of Section 300 of IPC are also required to be fulfilled for commission of offence of murder.

(23) In the scheme of Indian Penal Code, “Culpable homicide” is genus and “murder” is its specie. All “Murder” is “culpable homicide” but not vice versa. Speaking generally 'culpable homicide sans special characteristics of murder' if culpable homicide is not amounting to murder.

(24) In the case of **Anda vs. State of Rajasthan** reported in

1966 CrLJ 171, while considering "third" clause of Section 300 of IPC, it has been observed as under:-

> "It speaks of an intention to cause bodily injury which is sufficient in the ordinary course of nature to cause death. The emphasis here is on sufficiency of injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary way of nature and when this exists and death ensues and causing of such injury was intended, the offence is murder. Sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused, and sometimes both are relevant. The determinant factor is the intentional injury which must be sufficient to cause death in the ordinary course of nature."

(25) In the case of **Mahesh Balmiki vs. State of M.P.** reported in **(2000) 1 SCC 319,** while deciding whether a single blow with a knife on the chest of the deceased would attract Section 302 of IPC, it has been held thus :-

> "There is no principle that in all cases of single blow Section 302 I.P.C. is not attracted. Single blow may, in some cases, entail conviction under Section 302 I.P.C., in some cases under Section 304 I.P.C and in some other cases under Section 326 I.P.C. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or

> non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him. In the instant case, the deceased was disabled from saving himself because he was held by the associates of the appellant who inflicted though a single yet a fatal blow of the description noted above. These facts clearly establish that the appellant had intention to kill the deceased. In any event, he can safely be attributed knowledge that the knife blow given by him is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death."

(26) In the case of **Dhirajbhai Gorakhbhai Nayak vs. State of Gujarat** reported in **(2003) 9 SCC 322**, it has been observed as under :-

> "The Fourth Exception of Section 300, IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but

the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300, IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on

> account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'."

(27) In the case of **Pulicherla Nagaraju @ Nagaraja vs. State of AP** reported in **(2006) 11 SCC 444**, while deciding whether a case falls under Section 302 or 304 Part-I or 304 Part-II, IPC, it was held thus :-

> "Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In

fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under section 302, are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre- meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."

(28) In the case of **Sangapagu Anjaiah v. State of A.P. (2010) 9 SCC 799,** Hon'ble Apex Court while deciding the question whether a blow on the skull of the deceased with a crowbar would attract Section 302 IPC, held thus**:-**

> "**16.** In our opinion, as nobody can enter into the mind of the accused, his intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a crowbar as the weapon of offence. He has further chosen a vital part of the body i.e. the head for causing the injury which had caused multiple fractures of skull. This clearly shows the force with which the appellant had used the weapon. The cumulative effect of all these factors irresistibly leads to one and the only conclusion that the appellant intended to cause death of the deceased."

(29) In the case of **State of Rajasthan v. Kanhaiyalal** reported in **(2019) 5 SCC 639,** this it has been held as follows:-

> "**7.3** In **Arun Raj [Arun Raj v. Union of India, (2010) 6 SCC 457 : (2010) 3 SCC (Cri) 155]** this Court observed and held that there is no fixed rule that whenever a single blow is inflicted, Section 302 would not be attracted. It is observed and held by this Court in the aforesaid decision that nature of weapon used and vital part of the body where blow was struck, prove beyond reasonable doubt the intention of the accused to cause death of the deceased. It is further observed and held by this

Court that once these ingredients are proved, it is irrelevant whether there was a single blow struck or multiple blows.

7.4 ***In Ashokkumar Magabhai Vankar [Ashokkumar Magabhai Vankar v. State of Gujarat,*** **(2011) 10 SCC 604 : (2012) 1 SCC (Cri) 397]** , the death was caused by single blow on head of the deceased with a wooden pestle. It was found that the accused used pestle with such force that head of the deceased was broken into pieces. This Court considered whether the case would fall under Section 302 or Exception 4 to Section 300 IPC. It is held by this Court that the injury sustained by the deceased, not only exhibits intention of the accused in causing death of victim, but also knowledge of the accused in that regard. It is further observed by this Court that such attack could be none other than for causing death of victim. It is observed that any reasonable person, with any stretch of imagination can come to conclusion that such injury on such a vital part of the body, with such a weapon, would cause death.

7.5 A similar view is taken by this Court in the recent decision in Leela Ram (supra) and after considering catena of decisions of this Court on the issue on hand i.e. in case of a single blow, whether case falls under Section 302 or Section 304 Part I or Section 304 Part II, this Court reversed the judgment and convicted the accused for the offence under Section 302 IPC. In the same decision, this Court also considered Exception 4 of Section 300 IPC and observed in para 21 as under: (SCC para 21)

> "**21**. Under Exception 4, culpable homicide is not murder if the stipulations

> contained in that provision are fulfilled. They are: (i) that the act was committed without premeditation; (ii) that there was a sudden fight; (iii) the act must be in the heat of passion upon a sudden quarrel; and (iv) the offender should not have taken undue advantage or acted in a cruel or unusual manner."

(30) In the case of **Bavisetti Kameswara Rao v. State of A.P.** reported in **(2008) 15 SCC 725,** it is observed in paragraphs 13 and 14 as under:-

> "**13.** It is seen that where in the murder case there is only a single injury, there is always a tendency to advance an argument that the offence would invariably be covered under Section 304 Part II IPC. The nature of offence where there is a single injury could not be decided merely on the basis of the single injury and thus in a mechanical fashion. The nature of the offence would certainly depend upon the other attendant circumstances which would help the court to find out definitely about the intention on the part of the accused. Such attendant circumstances could be very many, they being (i) whether the act was premeditated; (ii) the nature of weapon used; (iii) the nature of assault on the accused. This is certainly not an exhaustive list and every case has to necessarily depend upon the evidence available. As regards the user of screwdriver, the learned counsel urged that it was only an accidental use on the spur of the moment and, therefore, there could be no intention to either cause death or cause such bodily injury as would be

sufficient to cause death. Merely because the screwdriver was a usual tool used by the accused in his business, it could not be as if its user would be innocuous.

14. In **State of Karnataka Vedanayagam [(1995) 1 SCC 326 : 1995 SCC (Cri) 231]** this Court considered the usual argument of a single injury not being sufficient to invite a conviction under Section 302 IPC. In that case the injury was caused by a knife. The medical evidence supported the version of the prosecution that the injury was sufficient, in the ordinary course of nature to cause death. The High Court had convicted the accused for the offence under Section 304 Part II IPC relying on the fact that there is only a single injury. However, after a detailed discussion regarding the nature of injury, the part of the body chosen by the accused to inflict the same and other attendant circumstances and after discussing clause Thirdly of Section 300 IPC and further relying on the decision in Virsa Singh vs. State of Punjab [AIR 1958 SC 465], the Court set aside the acquittal under Section 302 IPC and convicted the accused for that offence.

The Court (in **Vedanayagam case [(1995) 1 SCC 326 : 1995 SCC (Cri) 231] , SCC p. 330, para 4)** relied on the observation by Bose, J. in Virsa Singh case **[AIR 1958 SC 465]** to suggest that: (Virsa Singh case **[AIR 1958 SC 465],** AIR p. 468, para 16)

> "16. With due respect to the learned Judge he has linked up the intent required with the seriousness of the injury, and that, as we have shown, is not what the section requires. The two matters are quite separate and distinct, though the evidence about them may sometimes overlap."

The further observation in the above case were: **(Virsa Singh case [AIR 1958 SC 465]** , AIR p. 468, paras 16 & 17)

> "**16.** The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.…
>
> 17. It is true that in a given case the enquiry may be linked up with the seriousness of the injury. For example, if it can be proved, or if the totality of the circumstances justify an

> inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one of fact."

(30) On perusal MLC as well as Postmortem reports of deceased, it is apparent death of both deceased Ramswaroop and Sahab Singh was homicidal in nature.

(31) Section 149 of Indian Penal Code runs as under :-

> "**149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.--** If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."

(32) There are two essential elements covering the act under Section 149 of Indian Penal Code, which are as under:- (i) The

assembly should consist of at least five persons; and (ii) They should have a common object to commit an offence or achieve any one of the objects enumerated therein.

(33) For recording a conclusion that a person is guilty of any offence under Section 149 of IPC, it must be proved that such person is a member of an "unlawful assembly" consisting of not less than five persons irrespective of the fact whether the identity of each one of the five persons is proved or not. If that fact is proved, the next step of inquiry is whether the common object of the unlawful assembly is one of the five enumerated objects specified under Section 141 of IPC.

(34) The common object of assembly is normally to be gathered from the circumstances of each case such as the time and place of the gathering of the assembly, the conduct of the gathering as distinguished from the conduct of the individual members are indicative of the common object of the gathering. Assessing the common object of an assembly only on the basis of overt acts

committed by such individual members of the assembly is not permissible.

(35) In the matter of **Dani Singh v. State of Bihar [(2004) 13 SCC 203],** the Hon'ble Apex Court has observed as under :-

> "The emphasis in Section 149 IPC is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but

> that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression 'in prosecution of common object' as appearing in Section 149 has to be strictly construed as equivalent to 'in order to attain the common object'. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149, IPC may be different on different members of the same assembly."

(36) In the case of **Mahadev Sharma v. State of Bihar [(1966) 1 SCR 18]**, the Hon'ble Apex Court has discussed about applicability of Section 149 of IPC and observed as under :-

> "The fallacy in the cases which hold that a charge under Section 147 is compulsory arises because they overlook that the ingredients of Section 143 are implied in Section 147 and the ingredients of Section 147 are implied when a charge under Section 149 is included. An examination of Section 141

> shows that the common object which renders an assembly unlawful may involve the use of criminal force or show of criminal force, the commission of mischief or criminal trespass or other offence, or resistance to the execution of any law or of any legal process. Offenses under Sections 143 and 147 must always he present when the charge is laid for an offence like murder with the aid of Section 149, but the other two charges need not be framed -separately unless it is sought to secure a conviction under them. It is thus that Section 143 is not used when the charge is under Section 147 or Section 148, and Section 147 is not used when the charge is under Section 148. Section 147 may be dispensed with when the charge is under Section 149 read with an offence under the Indian Penal Code."

(37) It is relevant to mention here that if all the necessary ingredients are present in a case when charges were framed under Section 149 of IPC, each member of unlawful assembly shall be held liable. The condition precedent is that the prosecution proves the existence of unlawful assembly with a common object, which is the offence.

(38) In **Kuldip Yadav vs. State of Bihar [(2011) 5 SCC 324]**, it is held that a clear finding regarding nature of the common object of the assembly must be given and the evidence discussed must show not only the common object, but also that the object

was unlawful, before recording a conviction under Section 149 of IPC. Foremost essential ingredient of Section 141 of IPC must be established.

(39) We have heard the learned counsel for the parties at length and perused the evidence available on record.

(40) Afsar (PW1) in his evidence deposed that when his brother Sahab Singh had gone to agricultural field for attending call of nature, accused Ghanshyam, Ramkishan, Prakash, Bharat armed with farsa, Vansingh armed with luhangi, accused Ramsewak, Chandan, Kallu, Narendra, Arvind, Ravindra armed with lathi came there and hurled abuses. When his brother Sahab Singh objected to it, all of them committed "marpeet" with him by means of their respective weapons. This witness further deposed that when he along with Prembai, Avdeshbai, Ramswaroop, Hakim Singh and others reached there for rescue of Sahab Singh, all accused persons also committed marpeet with them. On raising of hue and cry, his nephew Vijay Ram and Pawan also reached there and thereafter, all accused fled away from the spot after

committing marpeet. This witness further deposed that thereafter, they brought his brother Ramswaroop and injured Sahab Singh on a tractor to police station where report was lodged. This witness in para 6 of his evidence denied that due to turtle of tractor-trolley they had sustained injuries. This witness in para 8 of his cross-examination deposed that accused Ghanshyam, Ramkishan, Bharat, Prakash were armed with farsa, Vansingh was armed with luhangi and remaining accused persons were armed with lathi at the time of incident.

(41) Smt. Avdeshbai (PW2) in her evidence deposed that on the date of incident when her husband Sahab Singh had gone to agricultural field for attending call of nature, accused Vansingh, Ramkishan, Ramsewak, Ghanshyam, Prakash, Chandan, Kallu, Narendra, Ravindra, Arvind and Bharat came there and accused Ghanshyam, Bharat, Ramkishan and Prakash and Vansingh armed with farsa and remaining accused persons armed with lathi and they all abused in filthy languages to her husband and her husband objected to it. All accused surrounded her husband and

committed "marpeet" with him. This witness further deposed that she, Hakim Singh, Afar, Prembai and Ramswaroop came there for rescue, all accused persons also committed "marpeet" with them. On seeing witnesses Vijay Ram and Pawan, all accused fled away from place of occurrence. This witness in para 5 of her evidence deposed that she does not know as to whether Ramsewak was armed with luhangi or not and caused any injury to her husband. This witness further deposed that it is incorrect to say that her husband had caused any injury either to any of accused or accused Vansingh.

(42) Hakim Singh (PW4) in his evidence deposed that at the time of incident accused Ghanshyam, Ramkishan, Bharat wee armed with with farsa, acused Van Singh armed with luhangi, accused Ramsevak, Ravindra, Arvind, Narendra, Chandan and accused Kallu armed with lathi reached the spot and hurled abuses and thereafter committed marpeet with his uncle Sahab Singh as a result of which, his uncle Sahab Singh sustained injuries on various parts of body. When her father Ramswaroop,

uncle Afsar, aunt Avdeshbai and grand-mother Prembai reached there for rescue, all accused also committed "marpeet" with them as a result of which, all of them also sustained injuries. On seeing witnesses Vijay ram and Pawan, all accused led away from place of occurrence.

(43) Sanjay Shrivastava (PW5) in his evidence deposed that as per direction of Tahsildar, he had prepared *Naksa* of agricultural field where incident took place vide Ex.P12. Chandrabhan (PW6), in para 9 of his cross-examination deposed that he could not say as to whether any unknown persons have committed murder of Ramswaroop and Sahab Singh.

(44) Kehar Singh (PW7) in his evidence deposed that on 11-09-2006 he was posted as Head Constable at Police Station Dursuda and he had recorded merg no.12/2006 under Section 174 of CrPC. Vijayram Yadav (PW8) in para 4 of his cross-examination deposed that in his presence, the police had prepared spot map where incident had taken place vide Ex.P16 carrying his signature from "A to A".

(45) Pawan Yadav (PW10) in his evidence deposed that from a distance he saw that accused persons were committing "marpeet" with complainant party by means of farsa, lathi and luhangi. He further deposed that on his arrival at place of occurrence, all accused persons fled away from spot. This witness in para 17 of his cross-examination deposed that although he had earlier stated to police about the fact, but he could not say as to why police did not mention in his case diary statement Ex.D4 that *jawar* crops were standing in agricultural field.

(46) Deshraj Yadav (PW11) in para 3 of his evidence deposed that the police personnel although had taken his signature while preparing Ex.P18 by pressure, but further admitted that he had not given any complaint to concerning SP.

(47) Suresh Singh (PW13) who was posted as Constable in Dursada Police Station deposed that clothes of deceased Ramswaroop and Sahab Singh in sealed cover were brought by him to police station from JA Hospital vide Ex.P20 and Ex.21.

(48) Brijendra (PW14) is the witness of seizure memo of farsa,

lathi and luhangi in whose presence, on the basis of memorandum of accused persons, from possession of accused Ghanshyam one farsa, from accused Kallu one lathi, from Ramsewak one lathi, from Narendra one lathi, from Bharat one farsa and from Arvindra one lathi and from Vansingh one luhangi were seized respectively vide seizure memo Ex.P30, Ex.P32, Ex. P34, Ex. P36, Ex.P38, Ex.P40, Ex.P42, Ex.P44 and Ex. P46 respectively.

(49) Hazuri Lal Sharma (PW16) as Head Constable posted at Dursada is the witness who had arrested accused Prakash Yadav and Chandan Yadav vide arrest memo Ex. P45 and Ex. P44.

(50) R.P, Sharma (PW17) in his deposition stated that on 12-09-2006 he was posted as ASI at Police Station Kampoo. On the said date, he had received a merg intimation regarding conduction of investigation relating to death of deceased Sahab Singh and Ramswaroop on 12-09-2006 which was recorded by Head Constable Arvind Singh. After death of both deceased, safina forms Ex.P49 and Ex.P50 were prepared. *Lash panchnama* was prepared vide Ex.P10 and Ex.P11. Requisition forms Ex.P17 and

Ex.P19 were prepared and sent to Forensic Department of JA Hospital. Thereafter, dead bodies of both deceased were handed over to their family members vide Ex.P51 and Ex.P52.

(51) Lalsingh Yadav (PW19) in his evidence deposed that on 11-09-2006 he has posted as ASI in Police Station Dursuda. On the said date, on the basis of complaint made by Hakim Singh, FIR at Crime No.72/2006 was got registered by him vide Ex.P9. Spot map Ex.P16 was prepared by him in the presence of witnesses Vijayram and Deshraj. Bloodstained and plain soil were collected vide Ex.P18. Acused persons were arrested vide arrest memo Ex.P22 to Ex.P28. On the basis of memorandum of accused persons, lathi, farsa and luhangi were seized vide seizure memo vide Ex. P30, Ex.P32, Ex.P34, Ex.P36, Ex.P36. Ex.P38, Ex. P40, Ex.P42, Ex. P44 and Ex. P46.

(52) Dr.R.S.Parihar (PW3) in his deposition stated that on 11-9-2006 he was posted as Medical Officer in CHC, Bhander. Injured Afsar, complainant Hakim Singh and Prembai were medically examined by him on the same day. MLC reports are

Ex.P3 to Ex.P5. No bone injury of Afsar and complainant Hakim Singh was found as per X-ray reports Ex.P7 and Ex.P8.

(53) Accused Prakash examined himself as DW1 and pleaded that he has been falsely implicated by complainant party and he has not caused death of deceased. Similarly, DW2 Raghuvir Singh Yadav in his statement denied that his son-in-law Ramkishan and his son Ravindra both were present at the place of occurrence as Ravindra was studying by staying with him. Mulchand Yadav (DW3) in his evidence although deposed that some unknown persons have committed murder of deceased but he did not give any information to police in this regard which is clear from para 3 of his cross-examination. In para 3 of his cross-examination, he deposed that after receiving SMS from Court he has come to Court for giving his evidence on behalf of accused. On analysing the evidence of Defence Witnesses, the learned trial Court has rightly disbelieved their evidence in order to save the accused.

(54) The contention of learned counsel for the appellants that the Trial Court has committed an error in convicting appellants on

basis of evidence of related witnesses and no independent witness has been produced by the prosecution. The said contention of the counsel for the appellants has no force. In the matter of **Guru Dutt Pathak vs. State of Uttar Pradesh, reported in (2021) 6 SCC 116,** the Hon'ble Apex Court has held that mere non-examination of independent witnesses and/or in absence of examination of any independent witnesses, would not be fatal to prosecution case. Similarly, in the matter of **Asharam Tiwari vs. State of Madhya Pradesh,** reported in **(2021) 2 SCC 608,** the Hon'ble Apex Court has held that if PW1 and PW4 are both injured witnesses and they were found to be reliable and truthful, then there is no reason why they would falsely implicated another. The Hon'ble Apex Court has further held that failure to examine any available independent witness is inconsequential. It is quality of evidence and not number of witnesses that is relevant. Merely because witnesses being related to deceased, that by itself would not affect the credibility of testimony of such witnesses. If for the plea of false implication proper foundation is laid, then the Court

by adopting a cautious approach will analyze the evidence to find its credibility as held by the Hon'ble Apex Court in the case of **Gangadhar Behera and Others vs. State of Orissa,** reported in **(2002) 8 SCC 381.**

(54) In the case at hand, although witnesses Afsar (PW1), Smt. Avdesh Bai (PW2) and complainant Hakim Singh (PW4) are related to deceased but their evidence is fully supported the prosecution version and they are found to be trustworthy and reliable, then non-examination of independent witnesses would not be fatal to prosecution case.

(55) The next contention of counsel for the appellants that injuries suffered by injured witnesses can be self-inflicted and as per opinion of Dr. Parihar, injuries suffered by Afsar, complainant Hakim Singh and Prembai were simple in nature is concerned, the testimony of injured witness has its own efficacy and relevancy. The witnesses sustained injuries on their bodies would show that they were present at the place of occurrence and they have seen the occurrence by themselves. Therefore, if there is an any minor

discrepancy in their evidence, then it does not affect prosecution case.

(56) It is the say of the counsel for the appellants that in a case where large number of assailants and victims are involved in the alleged offence, it would be prudent to follow rule of appreciation of evidence by trial Court. From perusal of impugned record and the findings arrived at by the trial Court, it cannot be said that the Court has not followed rule of appreciation of evidence in the case at hand. In this regard, reliance can be placed in the matter of **Krishnegowda and Others vs. State of Karnataka,** reported in **(2000) 1 SCC 306.**

(57) On analyzing the evidence of prosecution witnesses as well as documentary and medical evidence, it appears that all the appellants with their respective weapons like farsa, lathi and luhangi unlawfully assembled on the spot and hurled abuses at the place of occurrence, where one of deceased Sahab Singh had gone to attend the call of nature and thereafter, with common object, inflicted injuries on deceased Sahab Singh and on hearing hue and

cry when complainant Hakim Singh along with his father Ramswaroop and other family members reached the spot, all accused persons also inflicted injuries on deceased Ramswaroop as well as to complainant Hakim Singh and others, as a result of which deceased Ramswaroop and Sahab Singh died in the hospital on the next date of incident i.e. 12-09-2006. As such, the prosecution has rightly established its case beyond reasonable doubt that all accused persons have committed the offence with common object and participated in committing the crime.

(58) In view of above discussion, we are fully in agreement with the finding recorded by Trial Court in convicting and sentencing the appellants. No interference is warranted. Both criminal appeals being devoid of merits, are hereby **dismissed.**

(59) The judgment of conviction and order of sentence dated 29-03-2011 passed by Special Judge and Additional Sessions Judge, Datia (MP) in Sessions Trial No.123 of 2006 is hereby **affirmed.**

(60) As per the report dated 30/09/2021 received from Central

Jail, Gwalior, since appellants Ghanshyam, Kallu, Bharat, Chandan Singh and Ramkishan are stated to be in Jail, therefore, they shall remain in jail to serve out the remaining jail sentence and since appellant Prakash died, therefore, his appeal stands dismissed as abated. Rest of accused who are on bail, their bail bonds and surety bonds are cancelled and they be directed to surrender before the Trial Court to serve out the remaining jail sentence, as awarded by the Trial Court.

Let a copy of this judgment be sent to the concerning jail authorities and also a copy of this judgment along with record be sent to concerning trial Court for information and compliance.

(G. S. Ahluwalia)
Judge

(Rajeev Kumar Shrivastava)
Judge

MKB