

for causing injuries to complainant-Vijay Kumar and they have been sentenced as follows :-

Sr. No.	Under Section	Imprisonment	Fine	Default of payment of fine
1	458 IPC	RI for 10 years (2 counts)	Rs.2000 (2 counts)	2 months SI
2	302/34 IPC	RI for life	Rs.2000	2 months SI
3	324/34 IPC	RI for 1 year	Rs.500	1 months SI
4	25(1)(b)(B) of Arms Act	RI for 1 year	Rs.500	1 months SI

2. We propose to deal with both the appeals analogously and dispose of both these appeals by this common judgment.

3. It is not in dispute that the accused persons and victims including the injured are residents of the same village and are known to each other. It is also not in dispute that they are having previous animosity and a criminal litigation was also in progress between them before the incident.

4. The brief facts of the case are that Vijay Kumar-complainant is a teacher and is a resident of village Simariya, Gotegoan District Narsinghpur. On 13.2.2003 when Vijay Kumar was sleeping inside the house and his parents Shivdas Gumasta and Parvati Bai were sleeping in the *Veranda* of their house, in the night at about 3 O'clock he woke up on hearing some quarrel and saw that his mother and father were being assaulted by the appellants by sword, gupti and farsa. Vijay Kumar shouted and tried to stop them from assaulting his parents whereupon the appellants attacked at him as well and caused injuries. After hearing the noise, his brother Rajendra,

sister-in-law Saroj and neighbours Ramsevak, Rameshwar Gumasta, Govind, Kashiram, etc. came on the place of the incident. As a result of the injuries inflicted by the appellants Shivdas Gumasta and Parwati Bai died on the spot while the appellants fled away from the place of incident.

5. The information of the incident was sent to the police station, Gotegoan, whereupon the police came to the spot and recorded the marg intimation No.13/2003 and registered Crime No.96/2003 under Sections 458, 302, 307 read with Section 34 of IPC.

6. During investigation, autopsy was conducted on the body of the deceased persons and the injured person was also medically examined. The appellants were arrested and on their instance weapons used in the offence were recovered and sent for FSL. The FSL report was received. After completion of other formalities, the charge sheet was filed under Sections 458, 302 and 307/34 of IPC before the Judicial Magistrate 1st Class from where it was committed to the Sessions Judge, who had made over it to the trial Judge.

7. The learned trial Court framed the charges against the appellants under Section 458 of IPC for committing lurking house trespass, 302 (302/34) of IPC for committing murder of Shivdas Gumasta, 302 (302/34) of IPC for committed murder of Parvati Bai and 307/34 of IPC for attempting murder of complainant Vijay Kumar and Section 25 (1-b) b of Arms Act for possessing the deadly weapons at the time of crime. The accused persons abjured their guilt and claimed to be tried. Their defence is that they are innocent and because of previous enmity with the complainant Vijay's family and other

witnesses, they have been falsely implicated in the offence. In defence oral evidence of witnesses Prakash Chand Sharma and Govind has been adduced.

8. The learned trial Court has found all the appellants guilty of causing lurking house trespass, committing murder of Shivdas Gumasta and Parvati Bai and causing injuries to Vijay Kumar and possessing deadly weapons and using them in crime has convicted them for offence punishable under Sections, 458, 302 (two counts), 324 read with Section 34 of IPC and under Section 25 (1-b) b of Arms Act and imposed the sentence as mentioned above.

9. In this appeal on behalf of the appellants findings of the learned trial Court have been assailed on the ground that the prosecution witnesses who have deposed as eye witnesses in fact had not seen the incidence. It is submitted that all the witnesses are related with each other and because of animosity, have claimed to be eye witnesses at a later stage. The counsel for the appellants submits that the evidence of the prosecution witnesses ought not to have been accepted as the same is full of contradictions and omissions and is inconsistent on the basis of which no inference regarding the guilt of the accused persons can be drawn, hence, the conviction and sentence imposed on the appellants deserves to be set aside and they be acquitted.

10. On the other hand the learned GA appearing on behalf of the respondent/State has opposed the aforesaid contention and submitted that the evidence with regard to the incident is unimpeachable and the act of the appellants categorically comes within the purview of the commission of the offences; hence, the appeal be dismissed.

11. Having considered the contentions of learned counsel for the parties and on perusal of the record, it is evident that the death of the deceased Shivdas Gumasta and Parvati Bai has taken place on 13.02.2003 on account of the injuries sustained by them. The medical evidence clearly establishes that the injuries on the body of the deceased persons were inflicted by sharp cutting objects and were on the vital parts of the body. It is also clear from the medical evidence that the injuries were sufficient to cause death in the ordinary course of nature. As far as the injuries on the body of the complainant Vijay Kumar are concerned, though they are simple in nature but have been inflicted by sharp edged weapons.

12. As far as the involvement of the accused persons in the crime is concerned, complainant Vijay Kumar (PW-1) has narrated the incident with considerable precision and his statement remained unimpeachable during the course of cross-examination. The First Information Report was lodged by him at 04:30 am on 13.02.2003 in which time of incident has been shown to be of 03:00 am, which shows that the report is lodged immediately after the incident. Looking to the distance (8 kilometers) of Police Station, Gotegaon from the place of incident it does not seem that any unnecessary delay has been caused in lodging the FIR. The factum of incident narrated in the FIR corroborates the oral evidence of Vijay Kumar (PW1). From the version of the Investigating Officer S.S. Rajput (PW11) the version of Vijay Kumar (PW-1) finds support that the FIR has been lodged without any delay.

13. Prosecution witnesses Ramsevak Gumasta (PW-3), Rameshwar Prasad (PW-4) and Rajendra (PW-9) are also the

witnesses who have claimed to reach on the place of incident where the incident has taken place. From their statements it is clear that though they did not see the attack on the deceased Shivdas Gumasta and Parvati Bai by the accused persons from the very beginning, but they reached the place of incident just after the fatal attack on the deceased persons. They support the prosecution case upto the extent of attack by the accused persons on Vijay Kumar by deadly weapons. By their statement it also appears that on reaching the spot they saw the deceased persons were lying on the spot and they also saw fatal injuries on their body. Although these witnesses are not the direct eye witnesses of the incident of causing fatal injuries on the body of the deceased by the appellants but circumstances stated above depict that they have reached just after the incident which has taken place with the deceased persons and they saw the incident which has taken place with the injured person Vijay Kumar who was already present in the house of the deceased persons.

14. Complainant Vijay Kumar has categorically stated in his statement that at the time of incident the accused Indrajeet Patel, Naresh Sahu, Rajesh Jain and Ganpat Sahu were armed with farsa, bakka, sword and gupti respectively. During the course of investigation the said arms have been recovered from these accused persons by the Investigating Officer, S.S. Rajput (PW11) on getting information under Section 27 of the Evidence Act and recorded their memorandum as Ex.P-9, Ex.P-10, Ex.P-19 and Ex.P-20 and thereafter, seized those arms vide seizure memo (Ex.P-11, Ex.P-12, Ex.P-21 and Ex.P-22). It is also pertinent to mention here that these seized arms were sent for FSL enquiry and the report of the FSL investigation (Ex.P-

34) shows that most of the arms recovered from the accused persons contained blood stains, and the weapon which has been recovered from the possession of the appellant Indrajeet was having human blood.

15. In the light of the above discussion, the ocular evidence of complainant and other prosecution witnesses is reliable. It is also supported by medical evidence and other supporting evidence. As far as the contention of the defence that most of the witnesses are the family members of the deceased persons and having inimical relations with the accused persons therefore their statements are unreliable and deserve to be ignored, the same deserves to be rejected and is not sustainable in the light of the judgment of the Supreme Court in the case of **Indrapal Singh Vs. State of UP (2008) 16 SCC 64** wherein it has been held that if the eye witnesses are related to the deceased, their evidence has to be accepted if found to be reliable and believable because they would honestly be interested in ensuring that the real culprits are punished.

16. In view of the aforesaid discussions, it is proved beyond doubt that on the date of incident the accused persons committed lurking house trespass armed with deadly weapons in the residential house of complainant Vijay Kumar and after entering into the house, they committed murder of Shivdas Gumasta and Parvati Bai and also attacked Vijay Kumar and caused injuries upon his person. As mentioned above, at the time of the incident, all the accused persons were armed with deadly weapons, hence, the learned trial Court has rightly held the accused persons guilty.

17. After considering all the facts and circumstances and the evidence on record, we are of the considered opinion that, there is no ground or merit to interfere in the findings of the learned trial Court. The learned trial Court has rightly convicted the appellants under Sections 458, 302/34, 324/34 IPC and Section 25(1)(b)(B) of Arms Act for committing lurking house trespass, murder of Shivdas Gumasta and Parvati Bai and causing injuries to complainant-Vijay Kumar after due and proper appreciation of the oral and documentary evidence on record. Hence, no case is made out to interfere with the findings of the learned trial Court. This appeal against the conviction of the appellants, deserves to be and is hereby dismissed. The appellants who are in jail shall remain incarcerated to undergo the remaining part of their sentence and those who are on bail, their bail bonds are directed to be cancelled and they are directed to be taken into custody forthwith to undergo the remaining part of their sentence.

18. Copy of this judgment be sent to the trial Court for information and compliance alongwith the record immediately.

(R.S. Jha)
Judge

(Mohd. Fahim Anwar)
Judge