

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE**

**SHRI JUSTICE SUJOY PAUL  
&  
SHRI JUSTICE PRAKASH CHANDRA GUPTA**

**CRIMINAL APPEAL No. 593 OF 2011.**

**BETWEEN :-**

GANESH PRASAD @ JITENDRA  
KUMAR CHOUDHARY, S/O  
JAGDISH PRASAD CHOUDHARY  
AGED ABOUT 25 YEARS,  
AGRICULTURIST, R/O HARIJAN  
BASTI, KRIPALPUR, P.S.  
KOLGAWAN DISTRICT SATNA.  
M.P.

....APPELLANT

*(BY MS. DURGESH GUPTA, ADVOCATE)*

**AND**

STATE OF MADHYA PRADESH,  
THROUGH POLICE STATION  
KOLGAWAN, DISTRICT SATNA,  
(MP)

....RESPONDENT

*(BY SHRI PRAMOD THAKRE, GOVERNMENT ADVOCATE)*

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Reserved on	:	29/6/2022
Delivered on	:	21/7/2022

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*This criminal appeal coming on for final hearing this day, Justice  
Prakash Chandra Gupta, passed the following :*

**J U D G M E N T**

The appellant/ accused has filed this appeal under section (*hereinafter referred to as* u/s) 374 (2) of the Code of Criminal Procedure (*hereinafter referred to as* CrPC) being aggrieved by the judgment dated 07/01/2011 passed by III<sup>rd</sup> Additional Sessions Judge, Satna in S.T. No 288/2006, whereby learned trial court, has convicted the appellant u/s 302/34 and 323 of the Indian Penal Code (*hereinafter referred to as* IPC) and sentenced to undergo life imprisonment and fine of Rs. 500/- and 6 months of rigorous imprisonment and fine of Rs. 500/- in default of payment of fine to undergo further 3 months and 3 months of rigorous imprisonment respectively.

2. It is undisputed fact that Jagannath, father of Badri Prasad (PW/1), Sanjay Kumar (PW/3), Harprasad (PW/4) and Krishnakar Bharati (PW/9), co-accused Jagdish and witness Prahlad (PW/6) are real brothers and appellant/ accused Ganesh Prasad alias Jitendra Kumar Choudhary is real nephew of witnesses Badri Prasad (PW/1), Sanjay Kumar (PW/3), Harshprasad (PW/4) and Krishnakar Bharati (PW/9). Co-accused persons Shakuntala and Jagdish Prasad are mother and father of the appellant.

3. Prosecution story in brief is that complainant Badri Prasad (PW/1) is an agriculturist and lives at Harijan Basti Kripalpur. His uncle accused Jagdish Prasad used to live in a house situated at his agricultural land. Prahlad (PW/6) and Jagdish Prasad have executed an agreement to sale of some land in favour of deceased Ramesh Sen resident at Kolgawan. On 27/02/2005 deceased Ramesh Sen told Badri Prasad (PW/1) that his uncle Jagdish is trying to sell the land to some other person, thereafter, at 2:15 p.m. complainant and deceased Ramesh Sen went to accused Jagdish's farm. Deceased Ramesh Sen asked Jagdish Prasad why are you selling the land to someone else which has already been sold to him. At that time

accused by abusing the complainant said that have you come here to get the land to deceased Ramesh Sen. In between the quarrel, Jagdish Prasad with his spade and Ganesh with an axe, gave blow on complainant's head and neck respectively with intention to cause death of the complainant. Complainant ran as he saw he was bleeding severely. Complainant saw that Jagdish Prasad and Ganesh Prasad started to hit deceased Ramesh Sen with their spade and axe, as soon as deceased Ramesh tried to run away, Jagdish Prasad and Ganesh Prasad chased him and beat him more severely and deceased Ramesh Sen fell on ground, meanwhile Balipal (PW/15), Sanjay Kumar (PW/3), others came and shouted, thereafter, accused persons fled away. On the basis of information of incident S.I. A.K. Shukla has written FIR (Ex.P-1C) against accused Jagdish Prasad Choudhary and Ganesh Prasad Choudhary.

4. Injured Ramesh Sen and Badri Prasad (PW 1) were sent to District Hospital, Satna for examination. Dr. S.B. Singh (PW/13) has examined both the injured persons and gave an MLC report (Ex.P-8C & 10-C) respectively. On the same day i.e. 27/02/2005 at 04:55 p.m. during treatment Ramesh Sen died. On the basis of letter (Ex. P-11 C) received from Hospital, Marg Intimation (Ex. P-20 C) has been lodged at Police Station Kolgawan. On 27/02/2005 SHO Kolgawan- V.D. Pandey went to mortuary room at District Hospital Satna after giving notice (Ex. P-6 C), he prepared inquest report (Ex. P-7 C). On the same day he sent the body of deceased for Postmortem (*hereinafter referred to as "PM"*) with Constable Rajesh Singh. On 28/02/2005 at 08:50 a.m. Dr. S.B. Singh (PW/13) has conducted PM and gave a PM report (Ex. P-9 C). Dr. S.B. Singh (PW/13) sealed the clothes from the body of deceased and handed over to concerned constable.

5. During investigation SHO V.D. Pandey prepared a spot map (Ex. P-12 C) in presence of witnesses. He seized blood stained soil and plain soil from the spot vide seizure memo (Ex. P-13 C). On 28/02/2005 SHO V.D. Pandey (PW/14) seized a sealed packet of clothes of deceased from constable Rajesh Singh and prepared seizure memo (Ex.P-18C). On 18/03/2005 SHO V.D. Pandey (PW/14) seized a *khurpi* from co-accused Shakuntala and prepared seizure memo (Ex. P-15C), on the basis of her disclosure statement (Ex. P-14 C), on the same day, he arrested co-accused Smt. Shakuntala Choudhary vide arrest memo (Ex.P-20 C). On 08/06/2005 Halka Patwari Rajendra Singh (PW/7) prepared a panchnama and a spot map (Ex. P-18 C) (spot map also exhibited Ex.P-26 C) in presence of Krishnakar Bharati (PW 9). On 10/03/2015 SHO V.D. Pandey (PW/14) seized a blood stained sando-banyan on production from Badri Prasad (PW/1) and prepared seizure memo (Ex.P- 2 C). On 08/09/2005 SHO V.D. Pandey (PW/14) arrested co-accused Jagdish Prasad Choudhary vide arrest memo (Ex. P-19C) and at 05:20 p.m. interrogated him before witnesses. Co-accused Jagdish Prasad Choudhary disclosed that he hide the spade on the roof of his house, he prepared disclosure memo (Ex.P- 16C). On the same day at the instance and produced by co-accused Jagdish Prasad Choudhary from the roof of his house a spade has been seized by SHO V.D. Pandey (PW/14) vide seizure memo (Ex.P-17 C). Seized articles were sent for chemical examination vide letter (Ex.P-21 C), statement of witnesses u/s 161 of CrPC has been taken. Appellant/ accused Ganesh Prasad Choudhary was absconded and could not be arrested, hence, charge-sheet has been filed against the co-accused persons, Jagdish Prasad Choudhary and Shakuntala Choudhary.

6. Later on 22/02/2006 at 06:00 a.m. ASI D.R. Sharma (PW/17) took accused Ganesh Prasad Choudhary in his custody before witnesses and

interrogated him. Appellant Ganesh Prasad Choudhary disclosed that he has hidden the axe on the roof of his house, ASI D.R. Sharma (PW/17) prepared disclosure memo (Ex. P-28). On the same day at 06:45 a.m., at the instance and produced by accused Ganesh Prasad Choudhary from his house, ASI D.R. Sharma (PW/17) seized an axe vide seizure memo (Ex.P-29), at 07:00 a.m., he arrested accused vide arrest memo (Ex.P-30). Seized axe was sent for chemical examination vide letter (Ex.P-31). Chemical examination report (Ex.P-32) was received from Forensic Science Laboratory, Sagar (hereinafter referred to as FSL). After completion of investigation charge-sheet has been filed against the present appellant.

7. Learned trial court framed charge against appellant Ganesh Prasad Choudhary u/s 302 in alternate 302/34 of IPC for murder of deceased Ramesh Sen and u/s 307 in alternate u/s 307/34 of IPC for attempt to murder of Badri Prasad (PW/1). The accused abjured his guilt and sought trial.

8. Prosecution examined injured/ eye witness Badri Prasad (PW/1), eye witnesses Ram Naresh (PW/2), Sanjay Kumar (PW/3) and Bali Pal (PW/15). Prosecution has also examined Harprasad (PW/4), ward-boy Dan Bahadur (PW/5), Prahlad (PW/6), Halka Patwari Rajendra Singh (PW/7), Ram Charan (PW/8), Krishnakar Bharati (PW/9), Mahadev Sen (PW/10), Lallu Prasad Sen (PW/11), deceased's son Nitin Sen (PW/12), Dr. S.B. Singh (PW/13), SHO V.D. Pandey (PW/ 14), Lakshman Sen (PW/16), and ASI D.R. Sharma (PW/17).

9. Appellant has been examined u/s 313 of CrPC. He has taken defence that he is innocent and has not committed the offence. Badri Prasad (PW/1) and his real brothers Rajesh, Harprasad (PW/4), Sanjay Kumar (PW/3), Bholu and Krishnakar Bharati (PW/9) have killed deceased Ramesh Sen. They have falsely implicated the appellant, his father and mother. Badri

Prasad (PW/1), deceased Ramesh Sen, Laxmi Yadav, Aslam, Saleem, Rajendra Sen etc. are bhu-mafia. 8.12 acres of land, situated in Kripalpur is owned by State of M.P. which is in possession of appellant and his family members from long ago. Aforementioned persons want to usurp that land, therefore, they have falsely implicated the appellant with the aid of police.

**10.** Appellant has examined in his defence his sister Saraswati (DW/1), uncle (fufa) Sharda (DW/2), Gulabia (DW/3), Gudiya Choudhary (DW/4), Genda Choudhary (DW/5), mother/ co-accused Smt. Shakuntala (DW/6), photographer Brijlal (DW/7) and appellant Ganesh Prasad Choudhary (DW/8) also examined himself.

**11.** It is pertinent to mention here that appellant Ganesh Prasad Choudhary is tried in ST no. 286/2006 (State of M.P. V. Ganesh Prasad Choudhary) and co-accused Jagdish Prasad Choudhary and co-accused Shakuntala tried in ST no. 210/2005 (State of M.P. V. Shakuntala Choudhary and anr.) before the trial court. Both sessions trial cases are tried and decided simultaneously, but evidence of both the cases have been recorded separately and judgment is also passed separately on the same day (i.e. 07.01.2011). The trial court has convicted co-accused Jagdish Prasad Choudhary and acquitted co-accused Shakuntala Choudhary. Co-accused Jagdish Prasad Choudhary filed a criminal appeal 594/2011 which is also decided simultaneously with this appeal but separately.

**12.** The learned trial court has passed the impugned judgment and convicted and sentenced the appellant Ganesh Prasad Choudhary for the offences as mentioned above.

**13.** The learned counsel for the appellant submitted that the prosecution has failed to prove its case beyond reasonable doubt. Findings recorded by the trial court are contrary to the admitted facts, law and circumstances of the case. From the perusal of statement of prosecution witnesses, it shows

that appellant possessed only agricultural equipment which does not come under the definition of deadly weapon. Incident is alleged to take place in the field of appellant where he along with his family used to perform the work of agriculture. Therefore, it could not have been alleged that the appellant and his family members had any intention or any preparation to make a murderous assault or to commit murder of deceased. There are only two injuries on the body of deceased, this fact also does not show any intention to commit murder of deceased by appellant or others. Agreement to sale of land has not been filed by the prosecution in the case, therefore, origin of incident is doubtful. The trial court failed to consider that the deceased was admitted in the hospital for 10-12 days, thereafter, he expired and has not appreciated the evidences available on record properly. Most of the witnesses are close relatives of injured Badri Prasad (PW/1). There are material omissions and contradictions in their statements. The trial court has committed error to believe on the statement of prosecution witnesses and disbelieve on the statements of defence witnesses. Appellant has proved his defence but trial court has erred by not believing on it while the defence in comparison to the prosecution evidence is more natural and believable, therefore, findings arrived upon against the appellant.

14. Counsel for the appellant has relied upon judgments delivered in the case of **Bahadur Singh V State of Punjab (1992)(II) M.P.W.N. 139; Arjun and anr. V State of C.G. (2017) (I) GLH 509** and **Vaman Ramo Vs. State of M.P. CRA No. 847/2008 (Judgment dated 17/05/2018)**.

15. *Per contra*, learned Government Advocate for State opposed the submission and has submitted that judgment of conviction and sentence is in accordance with law. Further he submitted that the learned trial court has evaluated the statement of witnesses properly. Therefore, the appeal is liable to be rejected.

16. Learned counsel for the parties confined their arguments to the extent indicated above.

17. It is considerable that whether deceased Ramesh Sen died on 27/02/2005 and his death was culpable homicidal in nature and whether Badri Prasad (PW/1) has received injury on the same day.

18. Badri Prasad (PW/1) has stated that due to injury on the body, deceased was taken to district hospital Satna by police official on 27/02/2005 and the next day he came to know that deceased Ramesh Sen did not survive, his statement is supported by Ramnaresh Sen (PW/2), Sanjay Kumar (PW/3), Harprasad (PW/4) and Balipal (PW/15).

19. Dr. S.B. Singh (PW/13) has stated that on 27/02/2005 constable Koushal Prasad P/S Kolgawa brought Ramesh Sen for medical examination and treatment to the district hospital, Satna. During examination following injuries were found on the body of Ramesh.

1. Incised wound- with bleeding and brain matter piece seen in wound. Size 10.5 x 2.4 cm intra cranial cavity upto brain starting from 8 cm above medial end of left eyebrow over left front parietal region of head, going partly and right align mid line crossing it and running over right parietal bone area of head and have slight curve to right at its distal 1/3<sup>rd</sup> part.

2. Swelling- 7 x 4 cm on occipital region of head upper part.

20. Dr. S.B. Singh (PW/13) opined that injury no. 1 was caused by heavy cutting object and injury no. 2 caused by hard and blunt object, duration between both the injuries is within 3 hours. Injury no 1 was fatal to life and he advised x-ray for injury no 2. He further stated that injured Ramesh Sen admitted in surgical ward for further treatment he has given MLC report (Ex. P-8C).

21. Dr. S.B. Singh (PW/13) stated that after death of Ramesh Sen, he sent an intimation to SHO-Kolgawan. Ward boy Danbahadur (PW/5) deposed that on 27/02/2005 Dr. S.B. Singh (PW/13) has given intimation (Ex.P-19C), in regards to death of Ramesh Sen, thereafter, he produced aforesaid intimation to Police Station Kolgawan. On the basis of aforesaid intimation Marg intimation (Ex.P-20 C) has been written in Police Station-Kolgawan.

22. SHO V.D. Pandey (PW/14) stated that on 27/02/2005 he went to mortuary room at District Hospital Satna and after giving notice (Ex.P-6-C) he prepared Lash Panchnama (Ex.P-7C) of dead body of deceased Ramesh Sen. He further stated that after writing letter he sent dead body for PM.

23. Dr. S.B. Singh (PW/13) stated that at 08:50 p.m. on 28/02/2005 constable Rajesh Singh produced dead body of deceased, thereafter, he conducted PM of dead body. As per PM report (Ex. P-9C) Dr. S.B. Singh (PW/13) received and conducted PM of a dead body at 08:50 am on 28/02/2005.

**General Examination:-**

Dead body was cold, Rigor mortis was present, both eyes were closed, blood stained injuries were on head, swelling was present on right eye-lead pupils were dilated, mouth was partly open, blood stains were present on head, neck and trunk.

**Injuries**

Dr. S.B. Singh (PW 13) has found following injuries on the dead body:-

1. Incised wound with blood clot and with brain matter piece size 10.5 x 2.4cm x intro cranial cavity starting from 8 cm above medial end of left eyebrow over left front parietal region of head,

going partly and right align mid line crossing it and running over right parietal bone area of head and have slight curve to right at its distal 1/3<sup>rd</sup> part. The wound has slight convexity to left at its distal part. Edge of wound was clear cut slight contusion everted. Skin, soft tissues, bone, membrane of brain, venous-sinus, vessel and fronto parietal lobe of brain (3.5cm depth in brain), 5 cm fracture on right frontal bone and 1 cm on right parietal bone, bony piece of inner table at cut bone side were absent. Bony piece were present over right parietal bone of brain.. Some of the brain tissues were absent at wound site. Blood and blood clot was present on brain surface. Depth of wound was in lower and slight right direction.

2. Swelling- 7 x 4 cm on occipital region of head upper part.

### **Internal Examination**

Pleura, lungs, liver and kidney were pale. Semi-digested food was present in stomach faecal matter was present in large intestine. Rest of inner parts of body were healthy, urinary bladder was empty.

### **Opinion**

Dr. S.B. Singh (PW 13) opined that injury no 1 is caused by sharp object and injury no 2 is caused by hard and blunt object. Both of the injuries are ante-mortem in nature. Injury no 1 was dangerous and sufficient in ordinary course of nature to cause death. Cause of death is shock due to haemorrhage and injury to vital region. Death was caused within 24 hours of the pm. He further said that he sealed the clothes of deceased and the sealed packet of the same was given to the concerning constable. After completion of the pm he gave pm report (Ex. P- 9C).

**24.** Badri Prasad (PW/1) has deposed that on 27/02/2005 he has also received injuries on his neck, left wrist and on head. Dr. S.B. Singh (PW/13) stated that he has examined injured Badri Prasad (PW/1) and gave MLC report (Ex.P-10C). He further stated that he has found following injuries on the body of Badri Prasad (PW/1):-

1. Lacerated wound 8.5 x 5 cm x bone deep on right parietal region and adjoining left parietal region of head.
2. Lacerated wound 5 x 0.5 x 0.3 cm on left side of neck.
3. Abrasion wound bloodish right mid lab anterior size 2 x 1/2 cm.
4. Lacerated wound bloodish size 1.5 x 0.5 x 0.5 cm back of left forearm.
5. Swelling 4 x 2 cm left forearm mid region.
6. Swelling 6 x 3 cm on right hip joint
7. Complaining of not able to see, he was advised to examine and opinion by eye surgeon.

**25.** Dr. S.B. Singh (PW 13) opined that injury No. 1 to 6 were caused by hard and blunt object, within duration of 3 hrs. Injury no 3 & 4 were simple in nature, he advised to get x-ray of injury no. 1,2,5 & 6 and he has also advised examination and opinion of injury No 1 & 2 to surgical specialist, for injury 2 & 6 to orthopedic surgeon and for injury No. 7 to eye Surgeon. He admitted the patient in Ward No. 1. There is no x-ray report or opinion of any surgical, orthopedic surgeon or eye surgeon to show that injuries of Badri Prasad (PW/1) were grievous in nature. Therefore, it appears that injuries present on the body of Badri Prasad (PW/1) were of simple in nature.

**26.** The testimonies of aforementioned witnesses remained unchallenged in the cross-examination which proves that the deceased Ramesh Sen died due to the injuries caused upon him and his death is homicidal in nature

and on the other hand it is also proved that Badri Prasad (PW/1) has received injuries on the same day and aforesaid injuries were simple in nature.

**27.** In view of aforementioned discussions, it is clear that the appellant Ganesh Prasad and co-accused Jagdish Prasad both have beaten deceased Ramesh Sen and injured Badri Prasad (PW/1) with the aid of axe and spade respectively. From the statement of Dr. S.B. Singh, it is also clear that incised wound and swelling were present on the body of deceased and lacerated wound, abrasion and swelling were present on the body of injured Badri Prasad (PW/1). Therefore, it is found proved that injuries of deceased Ramesh Sen and Badri Prasad (PW/1) were caused by appellant Ganesh Prasad and co-accused Jagdish Prasad in furtherance of common intention with the aid of an axe and a spade.

**28.** Next question is whether the aforementioned injuries of deceased Ramesh Sen and injured Badri Prasad (PW/1) were caused by appellant-Ganesh Prasad and co-accused Jagdish Prasad in furtherance of common intention with the aid of an axe and a spade.

**29.** The trial court has relied on the statement of Badri Prasad (PW/1), Ram Naresh (PW/2), Sanjay Kumar (PW/3), Harprasad (PW/4) and Balipal (PW/15). Badri Prasad (PW/1) stated that his uncles Jagdish (co-accused) and Prahlad (PW/6) do agricultural work on 8 acres of land situated behind Yadav farmhouse. His both uncles live in the house built on the aforesaid land. His uncle Jagdish Prasad and Prahlad (PW/6) after receiving money executed agreement to sell the aforementioned land in favour of deceased Ramesh Sen. On 27/02/2005 deceased Ramesh Sen told him that his both uncles are telling to sell the aforesaid land to someone else and have taken money thereafter, at around 2:00 to 2:15 p.m. Ramesh took Badri Prasad (PW/1) along with him to accused Jagdish's

farm. At that time accused Jagdish his wife Shakuntala and son appellant Ganesh Prasad were working. Ramesh parked his motorcycle near the house of appellant and asked Jagdish Prasad that why was he selling the land to someone else. Followed by the same Shakuntala started abusing the deceased and thereafter, Jagdish Prasad with spade gave a blow on his neck Shakuntala with *Khurpi* gave a blow on his left wrist and appellant Ganesh Prasad gave a blow with an axe on head due to injury he felt down on land. Deceased Ramesh Sen started to run, at that time Ganesh Prasad by axe and Jagdish Prasad by spade gave blow on his head, due to injury deceased felt down at the spot. Sanjay Kumar (PW/3) and Balipal (PW/15) came running to the spot after hearing the noise of fight. Then accused persons fled away.

**30.** Balipal (PW/15) and Ram Naresh Sen (PW/3) both are alleged to be labour of Yadav farm. Balipal (PW/1) deposed that at the time of incident he was cleaning alongwith Ram Naresh (PW/3) near boundary. Accused person Jagdish Prasad, his wife Shakuntala (DW/6) and son Ganesh Prasad were threshing mustard seeds, at that time deceased Ramesh Sen and Badri Prasad (PW/1) came by motorcycle, stopped near accused person's house and started to talk to accused Jagdish. He saw that accused Jagdish and Ganesh were carrying a spade and axe respectively and they gave a blow to Badri Prasad (PW/1) and as Ramesh Sen ran, he was beaten up by the accused persons (i.e. Jagdish Prasad and Ganesh Prasad) by spade and axe respectively. He saw a wound on the head of deceased.

**31.** Ram Naresh (PW/2) also stated that at the time of incident he was cutting grass alongwith Balipal (PW/15). At the same instance they heard noise near accused Jagdish's house, then saw accused Jagdish and Ganesh with spade and axe respectively were beating Badri Prasad (PW/1), as Ramesh tried to run, he was beaten up by the accused persons and

deceased received a wound on his head resultantly. Sanjay Kumar (PW/3) deposed that at about 2:00-2:30 p.m. on 27<sup>th</sup> February, he was grazing the cows then he saw accused persons (i.e.. Jagdish Prasad and Ganesh) with their spade and axe, gave blow to Badri Prasad (PW/1) and deceased Ramesh, because of which Ramesh received injuries on his head and waist. Harprasad (PW/4) is real brother of Badri Prasad (PW/1) is not an eye-witness of incident, he deposed that Bhura Choudhary told him that his brother Badri Prasad (PW/1) was lying down on the side of Rewa Road, thereafter, he saw his brother sustained injuries on his head, neck, hand and leg. Badri Prasad (PW/1) told him that accused persons have beaten him. Then Harprasad (PW/4) saw Ramesh, lying unconscious on the ground and his brain matter was out.

32. Badri Prasad (PW/1) stated that FIR (Ex/P-1C) has been lodged on his intimation, though the prosecution has not examined the writer of FIR, but on perusal of FIR (Ex/P-1C), it appears that on the basis of information given by Badri Prasad (PW/1) FIR (Ex/P-1C) has been written by S.I. Ajay Shukla at Police Station Kolgawan at 2:40 p.m. on the same day. Therefore, it is clear that FIR (Ex. P-1C) lodged within 25 minutes at P/S Kolgawa against accused person Jagdish Choudhary and Ganesh Choudhary on the basis of intimation given by Badri Prasad (PW/1). Thereafter, on the same date in medical examination deceased and Badri Prasad (PW/1) were found injured. As per letter (Ex. P-11C) and Marg intimation (Ex.P-20C), deceased died within 1:35 hrs. of incident.

33. In the judgment of ***Rajinder Singh and anr. V State of Haryana [AIR 2009 SC 1734]***, Hon'ble the Apex Court observed that:-

*“23. ...It is well settled that if the witness is related to the deceased, his evidence has to be accepted if found to be reliable*

*and believable because he would inter alia be interested in ensuring that real culprits are punished.”*

34. The Supreme Court in the case of ***Rizan V State of Chattisgarh, reported in [(2003) 2 SCC 661]*** has held as under

*“6. We shall first deal with the contention regarding interestedness of the witnesses for furthering the prosecution version. Relationship is not affected to effect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegation against an innocent person. Foundation has to be laid in plea of false implication is made. In such a case the court has to adopt a careful approach and analyses.”*

35. In the instant case, Badri Prasad (PW/1) is an injured eye-witness of the incident. FIR (Ex. P-1C) was lodged against appellant and co-accused Jagdish Prasad in P/S Kolgawan within 25 minutes of the occurrence of incident. On the same day injuries were found on the body of deceased Ramesh Sen and Badri Prasad (PW/1) during medical examination. Statement of Badri Prasad (PW/1) is also supported by FIR (Ex. P- 1C) and statement of Dr. SB Singh (PW/13). Ram Naresh (PW/2) and Balipal (PW/15) are independent eye-witnesses of incident. Statement of aforesaid both the independent eye-witnesses have supported the statement of Badri Prasad (PW/1). Sanjay Kumar (PW/3) is also an eye-witness of the incident and though Harprasad (PW/4) is not an eye-witness of the incident but he saw injuries on the body of deceased and Badri Prasad (PW/1) just after the incident. Though both the aforesaid witnesses are real brothers of injured Badri Prasad (PW/1) but on the sole ground their statement can not be discarded. There is nothing to show that Sanjay Kumar (PW/3) and Harprasad (PW/4) are interested to falsely implicate the accused persons.

There is no material omission and contradiction in the statements of aforementioned witnesses to cause injuries on the body of deceased and injured Badri Prasad (PW/1) by means of spade and axe by the accused persons. Therefore, statement of aforementioned witnesses are reliable. Hence, learned trial court has not erred to believe on the statements of aforementioned witnesses.

**36.** SHO V.D. Pandey (PW/14) has stated that at the instance and presence of of Balipal (PW/15) and Betu Choudhary, he prepared a spot map (Ex. P- 12 C) on 27/02/2005. Balipal (PW/15) also supported his statement that police has prepared a spot map (Ex.P-12C) in his presence. Aforesaid statement of both the witness appears to be reliable. Halka Patwari, Rajendra Singh (PW/7) deposed that as directed by P/S Kolgawa he went to the spot on 09/06/2005 and prepared spot map Ex. P-26C (this spot map also exhibited Ex. P-18C by the trial court). Krishnakar Bharati (PW/9) stated that Halka Patwari prepared spot map (Ex. P-18C) in his presence as per the prosecution both the witnesses are not eye witness of incident, they have not said anything about who had told them the place of incident. Therefore, statement of both the above witnesses is not reliable.

**37.** SHO V.D. Pandey (PW/14) deposed that he seized blood stained soil and plain soil from the spot and prepared seizure memo (Ex. P-13C). His statement is supported by Balipal (PW/15). In this respect statement of both the witnesses are reliable. SHO V.D. Pandey (PW/14) further deposed that on 10/03/2005 he seized a sando banyan from Badri Prasad (PW 1) and prepared seizure memo (Ex. P-2C). Badri Prasad (PW/1) stated that police has seized a sando banyan from him. Krishnakar Bharati (PW/9) also stated that police has seized a blood stained sando banyan from his brother Badri Prasad (PW/1). Therefore, it is clear that statement of SHO VD Pandey (PW/14) is supported by Badri Prasad (PW/1) and Krishnakar

Bharati (PW/9). SHO V.D. Pandey (PW/14) further stated that on 28/02/2005 he seized a sealed packet containing cloth of deceased from constable Rajesh Singh produced from Distt. Hospital, Satna and prepared seizure memo (Ex.P-18C).

**38.** ASI D.R. Sharma (PW/17) stated that at 06:00 AM 22/09/2006 he took accused Ganesh Prasad in his custody and interrogated him, he disclosed that he hid an axe on the roof of his house, Harijan Basti at Kripalpur vide disclosure memo (Ex. P-28). Further he said that at 06:45 a.m. on the same day at the instance and produced by accused Ganesh Prasad from roof of his house seized an axe and prepared seizure memo (Ex. P-20). He also said that he arrested accused Ganesh Prasad vide arrest memo (Ex. P-30). Lakshman Sen (PW/16) has supported his statement and stated that police interrogated accused Ganesh Prasad and seized an axe from his instance and produced from roof of his house and arrested accused Ganesh Prasad and prepared memorandum (Ex. P-28, P-29) and arrest memo (Ex. P-30). Statements of both the witnesses appear to be reliable.

**39.** SHO VD Pandey (PW/14) said that he has sent the seized articles to FSL, Sagar alongwith letter dated 30/04/2005 (Ex. P-21C). He further stated that he has also sent seized axe to FSL Sagar alongwith letter (Ex. P-31) of SP Satna for chemical examination, wherefrom report (Ex. P-32) has been received. On perusal of FSL report (Ex. P-32), it appears that axe seized from accused Ganesh Prasad, blood stains were found but source of blood and blood group was not identified. Apart from that, FSL report has not been filed in respect of blood stained soil seized from spot, sando banyan seized from Badri Prasad (PW/1) and cloth seized from the body of deceased. Therefore, FSL report (Ex. P-32) is not helpful for the prosecution.

*Defence of appellant/ accused*

40. Appellant had taken first defence that Badri Prasad (PW/1) and his brother Rajesh, Harprasad (PW/4), Sanjay (PW/3), Bhola and Krishnakant Bharati (PW/9) have killed Ramesh Sen and they have falsely implicated appellant, his father and mother.

41. Saraswati (DW/1) stated that around 4-5 years ago (from court statement date 23/10/2009) she was cutting mustard crops with Shakuntala (co-accused) and 1-2 other labours. At around 12:00 to 01:00 p.m. Badri Prasad (PW/1) his brother and some other persons came by 3 motorcycles and Badri Prasad (PW/1) while abusing Shakuntala (co-accused), said that, that land belongs to him, vacate it. Shakuntala denied him, but he did not stop abusing, then Shakuntala went to report it in P/S. Thereafter, she saw that Badri Prasad (PW/1) and his brother were going towards well. She also saw that Badri Prasad (PW/1) and his brothers were chasing a man but she could not see who was beating whom. Later on she came to know that the person who was being chased by Badri Prasad (PW/1) and others, died. Her statement supported by Gulabiya (DW/3), Gudiya Choudhary (DW/4), Genda Choudhary (DW/5) and Shakuntala (DW/6). Accused Ganesh Prasad Choudhary (DW/8) also stated that on 27/02/2005 his mother (DW/6) and his both aunts (bua) were cutting mustard crops. He had gone to market at around 10-11 a.m. and came home at about 3:00 to 3:30 p.m., then shopkeepers stopped him at road and told him that Badri Prasad (PW/1) and his brothers have brutally beaten Ramesh Sen. Thereafter, he went to the house of her aunt Saraswati (DW/1) at village Patwara. Later he came to know that his father and mother have been accused for false charges. Badri Prasad (PW/1), Sanjay Kumar (PW/3), Harprasad (PW/4), Krishnakar Bharati (PW/9), Nitin Sen (PW/12) and Balipal (PW/15) have denied in their cross-examination that at the time of incident Badri Prasad

(PW/1), his brothers and some other persons went to the farm of accused Jagdish and abused Shakuntala (DW/6) and they have killed deceased Ramesh Sen.

**42.** Saraswati (DW/1) in paragraph 5 of cross-examination stated that, she did not see that who was beating deceased. She is sister of accused Ganesh. Gulabiya (PW/3) stated in paragraph 1 of examination-in-chief that she knows deceased Ramesh but in paragraph 3 she stated that Badri Prasad (PW/1) and his brothers were chasing a man and beating him. But she has not clearly stated that they were doing the same with deceased Ramesh. Gudia Choudhary (DW/4) in paragraph 1 of her examination-in-chief stated that she knows Badri Prasad (PW/1) and his brothers but in paragraph 4 of cross-examination stated that she does not know Badri Prasad (PW/1). Gendra Choudhary (DW/5) admitted in paragraph 3 of her cross-examination that she did not see Badri Prasad (PW/ 1) beating someone. Accused Ganesh Prasad Choudhary (DW/8) and Shakuntala (DW/6) have not stated anything in this respect that Badri Prasad (PW/1) and his brother have killed Ramesh Sen. Therefore, statements of aforesaid witnesses is not reliable.

**43.** Second defence of accused Ganesh Choudhary is that 8.12 acres government land is in possession of his family from a long time. Ramesh and his brothers wanted to usurp the aforementioned land. Therefore, they have falsely implicated accused with the aid of police in this case.

**44.** Accused Ganesh Prasad Choudhary (DW/8) stated that in greed of land, Badri Prasad (PW/1) has falsely implicated accused by gaining sympathy of police. Still the land mafiya (bhu-mafiya) are bothering him, his father and mother. Prahlad (PW/6) in paragraph 6 of cross-examination admitted that Badri Prasad (PW/1), Aslam, deceased Ramesh and Rajan were working as brokers of land. He also stated that they had a gang and

they threatened to vacate the land of accused persons but Badri Prasad (PW/1) in paragraph 21 of cross-examination denied that in order to usurp the land, conspired with police and doctor and have falsely made an accused for the offences. Prahlad (PW/6) has not supported prosecution story and prosecution has declared him hostile. Therefore aforementioned statements of Prahlad (PW/6) and Ganesh Prasad Choudhary (DW/8) is not reliable.

**45.** Apart from that accused Ganesh Prasad Choudhary stated that on the date of incident he and his father Jagdish Prasad were not present at the spot. At 8:00 a.m. his father went to Bharhutnagar to repair and polish shoes and at 10:00-11:00 a.m. he went to market to buy fertilizer. His statement is supported by Shakuntala (DW/6). But injured and eye-witnesses clearly stated that at the time of incident accused Ganesh Prasad and his father were present at the spot. Therefore, aforesaid defence of appellant is not reliable.

**46.** Brijlal Arya (DW/7) is a photographer, he stated that he had taken photographs Article A/1 to A/11 from the land of accused persons situated at Kripalpur. Further he stated that he had taken photographs of house of accused which was burnt when they were in jail. In paragraph 3 of cross-examination he admitted that he had taken photographs in year 2006 (i.e. at around 10 months later of incident) therefore, aforesaid photographs are not relevant in this case.

**47.** Ganesh Prasad Choudhary (DW/8) stated that after the date of incident he used to live in his aunt's (bua) home and after two years his father was released on bail from jail then his father told him that he is also required in the case as an accused person. He wants to surrender to the court at that time police came by Marshall Jeep with Badri Prasad (PW/1) and his brothers. Badri Prasad (PW/1) and Krishna Kumar entered in his

house and dragged him inside the jeep. At that time police beaten him and locked him up. While being beaten he received internal injuries and police produced him in the court on the third day. At that time he told about the incident to the Magistrate. As per order of Magistrate he was examined by doctor. Sharda (DW/2) has also supported accused Ganesh's statement in his deposition. But appellant has not produced any medical certificate or other document. Therefore, his statement is not reliable.

**48.** Though Prahlad (PW/6) in paragraph 5 of cross-examination admitted that if any person is standing on the boundary wall of Yadav farm, he can not see the front of accused house due to standing tuvar crops in the land of accused. But labours of Yadav farm Ram Naresh (PW/2) and Balipal (PW/15) clearly stated that they have seen the incident and their statement is found trustworthy. Hence, statement of Prahlad (PW/6) is not reliable. Therefore, the trial court has not erred to disbelieve the statement of accused and his defence witnesses.

**49.** Nitin Sen (PW/12) is son of deceased Ramesh Sen, has deposed that appellant after receiving earnest money of Rs. 25,000/- has executed an agreement to sale the land in favour of his father Ramesh Sen. Prahlad Choudhary (PW/6) has not supported the case of prosecution and after declaring him hostile in paragraph 2 of cross-examination he has stated that he has no knowledge that appellant has executed an agreement to sale the land in favour of deceased Ramesh Sen. Further he denied that he had also signed the agreement. Therefore, it is clear that Prahlad (PW/6) has not supported the case of prosecution. Agreement to sale was a substantial evidence, but the same has not been produced in the case. Hence, statement of aforementioned witnesses is also not reliable but this case depends on the statement of the injured and eye-witnesses, therefore, merely non-filing of agreement to sale does not affect the prosecution case

and on this ground, the statement of aforementioned witnesses can not be discarded.

50. In view of aforementioned discussions, it is clear that Badri Prasad (PW/1) categorically stated that at the time of incident appellant Ganesh Prasad and co-accused Jagdish Prasad Choudhary dealt a blow by spade and axe on the head of deceased Ramesh Sen and appellant Ganesh Prasad Choudhary and co-accused Jagdish Prasad also dealt a blow by spade and axe to this witness also. Statement of this witness is also supported by eye-witnesses Balipal (PW/2), Sanjay Kumar Choudhary (PW/3), Ram Naresh Sen (PW/4) and Dr. S.B. Singh. Therefore it is proved that the aforementioned injuries of deceased Ramesh Sen and injured Badri Prasad (PW/1) were caused by appellant Ganesh Prasad and co-accused Jagdish Prasad Choudhary in furtherance of their common intention.

51. Next question arises that, whether the accused Ganesh Prasad and co-accused Jagdish Prasad inflicted such bodily injury to deceased Ramesh Sen with intention to cause death.

52. Learned counsel for the appellant has placed reliance on the judgment of ***Bahadur Singh (Supra)*** where the Hon'ble Apex Court has held that:-

*“Having regard to the nature of injuries on the accused particularly Jit Singh and Bahadur Singh (the appellants) it is clear that they must have received injuries at the hands of the deceased and his followers who were in the Court premises. The accused have taken a specific plea in the trial Court that the deceased and other P.Ws dealt blows with dang (lathi). A-1 and A- 5 inflicted two injuries on the deceased. No doubt the right of self-defence cannot be weighed in golden scales. But the accused*

*by using gandasas and inflicting such serious injuries have exceeded the same. Having gone through the medical evidence as well as the specific plea of the accused, a reasonable doubt arises regarding their right of self-defence but in our view, they have exceeded the same. The injuries on the deceased were very serious and the accused have used heavy cutting weapons like gandasas. Therefore they have clearly exceeded the right of self-defence. Therefore Exception II to section 300 is attracted and the offence committed by them would be one punishable under section 304 Part I I.P.C. Accordingly, we set aside the conviction of the appellants under section 302 I.P.C. and the sentence of imprisonment for life. Instead we convict them under section 304 Part I I.P.C. and sentence each of them to suffer seven years R.I. The appeal is partly allowed.”*

**53.** In the judgment of *Arjun and Anr. (Supra)*, the Hon'ble Apex Court has held that:-

*“25. When and if there is intent and knowledge, then the same would be a case of section 304 Part I IPC and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then the same would be a case of section 304 Part II IPC. Injuries/incised wound caused on the head i.e. left parietal region and right temporal region and also occipital region, the injuries indicate that the appellants had intention and knowledge to cause the injuries and thus it would be a case falling under section 304 Part I IPC. The conviction of the appellants under section 304 read with section 304 IPC is modified under section 304 Part I IPC. As per the Jail Custody Certificates on record,*

*the appellants have served 9 years 3 months and 13 days as on 2nd March, 2016, which means as on date the appellants have served 9 years 11 months. Taking into account the facts and circumstances in which the offence has been committed, for the modified conviction under section 304 Part I IPC, the sentence is modified to that of the period already undergone.”*

54. In the judgment of **Vaman Rao (Supra)**, the Hon’ble Apex Court has held that:-

*“27. In the present case, as held in foregoing paragraphs the incident had happened all of sudden, there was no premeditation, the act was done in heat of passion. There is also evidence that the deceased and appellant both had beaten to each other by fists and kicks. The deceased and P. W. 1 went to the house of the appellant. The deceased abused him in filthy language.”*

55. In the judgment of **Dharam & ors. (Supra)**, the Hon’ble Apex Court has held that:-

*“16. The other question which now remains to be considered is as to what is the exact nature of the offence committed by the appellants. The injury, which proved to be fatal, is 10cm x 3cm. x 3cm on left parietal bone which fractured the underlying bone and pierced the brain matter. We do not propose to hold that such an injury, if caused, would not attract the provisions of Section 302, IPC. Nevertheless, the question which requires serious consideration is whether having regard to the peculiar circumstances in which the incident took place and the fact that the deceased and the appellants happened to be blood relations,*

*this particular injury, which was found to be sufficient in the ordinary course of nature to cause death in the instant case, was an injury intended by the appellants. Having regard to the nature of the injuries sustained by both the closely related parties, we are of the view that the fatal injury was not inflicted with the intention to cause death or an injury likely to cause death of the deceased. We feel that in the very nature of things, the appellants could not have entertained any intention to cause death of their brother/ uncle. We are, therefore, of the opinion that the offence committed by the appellants would fall within the ambit of Section 304, Part-II, IPC.”*

**56.** On the above discussions, it is found that death of deceased was homicidal in nature, therefore, it is also relevant that to consider here Section 300 of IPC which 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-  
2ndly.-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-  
3rdly.-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-  
4thly.-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.*

*Exception 1.-When culpable homicide is not murder.-Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.*

*Exception 2.-Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.*

*Exception 3.-Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.*

*Exception 4.-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.*

*Exception 5.-Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.”*

57. The following observation was made by this court in the case of ***Manoj Singh vs State Of M.P.[I.L.R 2022 M.P. 924]***:-

(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.”*

**58.** Looking at the evidences adduced describing the circumstances just before the incident, where Badri Prasad (PW 1) and deceased Ramesh Sen went to the house of co-accused Jagdish Prasad with respect to talk about the agreement to sale the land. It is certain that there was no provocation from the side of Badri Prasad (PW 1) and deceased Ramesh Sen, therefore, the case does not fall in the first exception u/s 300 of IPC. On the other hand the fourth exception to section 300 of IPC can also not be applied in the instant case as it is apparent that Badri Prasad (PW/1) and deceased Ramesh Sen went to talk about the agreement to sale the land wherein the accused persons without the control over their rage started to give blows right after a few arguments with their spade and axe respectively to Badri Prasad (PW1) and deceased Ramesh Sen, irrespective of the fact that the deceased and injured were there without any object in order to get into a fight with the accused persons, which clearly shows that the accused persons took the undue advantage or acted in a cruel manner or unusual manner. Therefore, it can be concluded that the accused persons acted in a cruel manner which debars them to get them into the ambit of fourth exception to section 300 of IPC. Act of the appellant neither comes in ambit of any other exception of section 300 of IPC. Looking to the nature of injuries on the head of deceased, it appears that accused persons have caused injuries to deceased which falls under section 300 of IPC. Act of accused persons would not fall in any of the exceptions of Section 300 of IPC. It can be observed that the blows inflicted on the deceased were in furtherance of common intention of accused which were formed at spur. Therefore, it is clear that the accused persons have intentionally caused

death of deceased in furtherance of their common intention, and have voluntarily caused hurt to injured Badri Prasad (PW/1).

**59.** Hence, the learned trial court has properly assessed and evaluated the evidence available on record and has rightly convicted and sentenced appellant u/s 302/34 and 323/34 of IPC.

**60.** In the view of above discussion, we find that there is no error committed by the learned trial court in convicting the appellant/ accused for the aforementioned offences and sentence passed by the learned court is also adequate. Therefore, impugned judgment is hereby affirmed. The appeal being devoid of merits, is hereby **dismissed**.

**(SUJOY PAUL)**  
**JUDGE**

**(PRAKASH CHANDRA GUPTA)**  
**JUDGE**