



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

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL
&
HON'BLE SHRI JUSTICE RAMKUMAR CHOUBEY**

**CRIMINAL APPEAL No. 13937 of 2024
SHRIRAM SHARMA AND OTHERS
Versus
*THE STATE OF MADHYA PRADESH***

Appearance:

Shri Sankalp Kochar, Advocate for the appellants.
Shri Manas Mani Verma, Government Advocate for the State.
*Shri Anil Khare, Senior Advocate assisted by Shri Anand Kumar
Sharma, Advocate for the objector.*

**CRIMINAL APPEAL No. 14282 of 2024
BALBIR THAKUR
Versus
*THE STATE OF MADHYA PRADESH***

Appearance:

Shri Sharad Verma, Advocate for the appellant.
Shri Manas Mani Verma, Government Advocate for the State.
*Shri Anil Khare, Senior Advocate assisted by Shri Anand Kumar
Sharma, Advocate for the objector.*

**CRIMINAL APPEAL No. 14287 of 2024
AANISH KHAN
Versus
*THE STATE OF MADHYA PRADESH***



Appearance:

*Shri Sharad Verma, Advocate for the appellant.
Shri Manas Mani Verma, Government Advocate for the State.
Shri Anil Khare, Senior Advocate assisted by Shri Anand Kumar
Sharma, Advocate for the objector.*

CRIMINAL APPEAL No. 23 of 2025

MONU TANTUVAY

Versus

THE STATE OF MADHYA PRADESH

Appearance:

*Shri Neeraj Pathak, Advocate for the appellant.
Shri Manas Mani Verma, Government Advocate for the State.
Shri Anil Khare, Senior Advocate assisted by Shri Anand Kumar
Sharma, Advocate for the objector.*

CRIMINAL APPEAL No. 42 of 2025

KISHAN SINGH @ KISSU

Versus

THE STATE OF MADHYA PRADESH

Appearance:

*Shri Dinesh Kumar Upadhyay, Advocate for the appellant.
Shri Manas Mani Verma, Government Advocate for the State.
Shri Anil Khare, Senior Advocate assisted by Shri Anand Kumar
Sharma, Advocate for the objector.*

CRIMINAL APPEAL No. 213 of 2025

SOHAIL KHAN

Versus

THE STATE OF MADHYA PRADESH



Appearance:

*Shri Sharad Verma, Advocate for the appellant.
Shri Manas Mani Verma, Government Advocate for the State.
Shri Anil Khare, Senior Advocate assisted by Shri Anand Kumar
Sharma, Advocate for the objector.*

CRIMINAL APPEAL No. 219 of 2025

ANISH PATHAN

Versus

THE STATE OF MADHYA PRADESH

Appearance:

*Shri Sharad Verma, Advocate for the appellant.
Shri Manas Mani Verma, Government Advocate for the State.
Shri Anil Khare, Senior Advocate assisted by Shri Anand Kumar
Sharma, Advocate for the objector.*

CRIMINAL APPEAL No. 297 of 2025

GOLU @ DEEPENDRA THAKUR AND OTHERS

Versus

THE STATE OF MADHYA PRADESH

Appearance:

*Ms.Smita Varma, Advocate for the appellant Nos.1 to 4,6,7,8.
Ms.Shikha Dwivedi, Advocate for appellant No.5.
Shri Manas Mani Verma, Government Advocate for the State.
Shri Anil Khare, Senior Advocate assisted by Shri Anand Kumar
Sharma, Advocate for the objector.*

CRIMINAL APPEAL No. 363 of 2025

SHAIENDRA SINGH PARIHAR @ SHAILU

Versus

THE STATE OF MADHYA PRADESH



Appearance:

*Shri Sankalp Kochar, Advocate for the appellant.
Shri Manas Mani Verma, Government Advocate for the State.
Shri Anil Khare, Senior Advocate assisted by Shri Anand Kumar
Sharma, Advocate for the objector.*

CRIMINAL REVISION No. 995 of 2025
SOMESH CHOURASIYA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

*Shri Anil Khare, Senior Advocate assisted by Shri Anand Kumar
Sharma, Advocate for the petitioner.
Shri Manas Mani Verma, Government Advocate for the State.*

CRIMINAL APPEAL No. 1087 of 2025
CHANDU ALIAS KAUSHLENDRA SINGH

Versus

THE STATE OF MADHYA PRADESH

Appearance:

*Shri Surendra Singh, Senior Advocate assisted by Shri Kapil Pa-
thak, Advocate for the appellant.
Shri Manas Mani Verma, Government Advocate for the State.
Shri Anil Khare, Senior Advocate assisted by Shri Anand Kumar
Sharma, Advocate for the objector.*

CRIMINAL APPEAL No. 1196 of 2025
RAJA DON @ RAJENDRA AND OTHERS

Versus

THE STATE OF MADHYA PRADESH



Appearance:

Ms.Smita Varma, Advocate for the appellants.
Shri Manas Mani Verma, Government Advocate for the State.
Shri Anil Khare, Senior Advocate assisted by Shri Anand Kumar
Sharma, Advocate for the objector

CRIMINAL APPEAL No. 2202 of 2025

SOMESH CHOURASIYA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Anil Khare, Senior Advocate assisted by Shri Anand Kumar
Sharma, Advocate for the appellant.
Shri Manas Mani Verma, Government Advocate for the State.

Date of hearing : 21.11.2025
Date of judgment : 20.1.2026

JUDGMENT

As Per : Justice Vivek Agarwal

These appeals under Section 374(2) of the Code of Criminal Procedure, 1973 (for short “Cr.P.C”) originate out of judgment dated 30.11.2024 passed by II Additional Sessions Judge-Hatta, Sessions Division-Damoh in Sessions Trial No.30/2019 (State of Madhya Pradesh Police versus Raja Don @ Rajendra & 27 Others) whereby twenty-five



accused persons, namely, Raja Don @ Rajendra, Golu @ Deependra Thakur, Balveer Thakur, Aanish Khan S/o.Guddu Khan, Monu Tantuvay, Anish Pathan S/o.Ajim Pathan, Amjad Pathan, Shriram Sharma, Lokesh Patel, Sohail Khan S/o.Mohammad Haneef @ Hannu Pathan, Shahrukh Khan, Bhansingh Parihar, Akash Thakur, Sandeep Tomar, Khoobbchand @ Nanna, Vikram Singh, Sukendra Athiya, Indrapal, Chandu @ Kaushalendra Singh, Mazhar Khan, Kishan Singh, Sohail Khan S/o.Sabbir Khan, Phuklu, Shailendra Singh Parihar @ Shailu, Govind Singh have been convicted for the offence under Section 148 of the Indian Penal Code, 1860 (for short “I.P.C”) and sentenced to rigorous imprisonment for three years with fine of Rs.1,000/- each with default stipulation of rigorous imprisonment for thirty days. They have also been convicted for the offence under Section 302 read with Section 149 of the I.P.C and sentenced to imprisonment for life with fine of Rs.10,000/- with default stipulation of rigorous imprisonment for thirty days. They have also been convicted for the offence under Section 323 read with Section 149 of the I.P.C as regards the injured and sentenced to undergo rigorous imprisonment for one year with fine of Rs.500/- with default stipulation of rigorous imprisonment for thirty days. All the jail sentences were directed to run concurrently. Criminal Appeal No.2202/2025 & Criminal Revision No.995/2025 have



been filed by the complainant party seeking enhancement of sentence to death penalty.

2. The accused persons, namely, Vikas Patel and Ratnesh Patel have been acquitted from all the charges whereas appellant Chhotu @ Trilok Singh was absconding during trial. Similarly, the other party has filed Criminal Revision No.995/2025 seeking enhancement of punishment and claiming death penalty for each of the accused persons.

3. The prosecution case in short is that the complainant Mahesh Prasad had approached Police Station Hatta, District Damoh on 15.3.2019 and reported that he is involved in the profession of contractorship and has a damar plant at Dholiyakheda, which is looked after by himself and his brother Devendra (since deceased). On 15.3.2019 at about 10:45 AM, the complainant Mahesh Prasad himself, deceased Devendra, Somesh, Ashok Chourasia and his son Animesh Chourasia had reached their damar plant on their motorcycles with a view to open their office and after getting off the motorcycles when they were going inside and he was urinating by the side of the office, at that time, a black colour duster car, a red colour classic vehicle, a jeep and a TUV vehicle alongwith four other motorcycles reached the plant and they were occupied by Chandu @ Kaushalendra Singh, Govind, Golu @ Deependra Thakur, Shriram Sharma, Amjad Pathan



@ Bootha, Lokesh Singh, Indrapal Patel alongwith others, who were armed with lathis, rods & dandas. The accused party came running and the accused Govind abused the deceased Devendra asking him as to why he had changed the party and all the accused persons started beating Devendra. When Somesh tried to intervene then he too was beaten with rods and lathis. Both the accused persons, namely, Chandu @ Kaushalendra Singh and Govind had beaten Devendra with rod and lathi on his legs, chest, neck whereas Golu @ Deependra Thakur had caused injuries on his stomach, throat and back. The accused Lokesh and Indrapal had beaten injured Somesh with lathi and rod, as a result of which, Somesh had sustained injuries on his hands and chest. When the other persons working in the plant rushed there, the accused persons boarding their vehicles ran away towards Patera. Animesh, Ashok and Mahesh Prasad had taken the deceased Devendra and injured Somesh to Hatta Hospital. The aforesaid incident was seen by all the members of the damar plant. From Hatta hospital, the deceased Devendra and injured Somesh were referred to Damoh.

4. On the basis of the report of the complainant Mahesh Prasad, the police personnel at Police Station Hatta, District Damoh registered the first information report vide Crime No.143/2019 (Exhibit P/1) against the



accused persons, namely, Chandu Singh, Govind Singh, Golu @ Deependra Thakur, Shriram Sharma, Amjad @ Bootha, Lokesh Singh and Indrapal Patel for the offence under Sections 294, 323, 324, 307, 147, 148, 149 and 506 of the I.P.C. The spot map (Exhibit P/2) was prepared. They had recovered the blood soaked as well as plain soil from the spot. Similarly, the blood soaked and plain Gitti alongwith one pair of blue-coloured slipper, one broken danda and a bamboo stick were also recovered. The seizure memo was prepared vide Exhibit P/3. The injured Somesh and the deceased Devendra were subjected to medical examination. During the admission of injured Somesh, his statements were recorded by the Tahsildar at Jabalpur and since the deceased Devendra died during treatment, the merg intimation was given to the Police Station Vijay Nagar, District Jabalpur. The merg No.0/19 was registered under Section 174 of the Cr.P.C. The information of death of deceased Devendra is Exhibit P/146 whereas the merg intimation is Exhibit D/10. The notice was given for merg investigation vide Exhibit P/23. The naksha panchayatnama was prepared vide Exhibit P/24. The postmortem of deceased Devendra was conducted and the dead body was handed over to the relatives of the deceased. On the basis of the said merg report, the Police Station Hatta, District Damoh had recorded the Merg No.14/19.



5. During investigation, the statements of the eye-witnesses, namely, injured Somesh Chourasia, Mahesh Chourasia, Dassu @ Dashrath Yadav, Pravveen Chourasia, Santosh Chourasia, Pradeep Khateek, Mahesh Sharma, Ashok Chourasia, Animesh Chourasia, Sandhya Chourasia, Lata Chourasia, Manish Chourasia, Sanjay Chourasia were recorded by the police under Section 161 of the Cr.P.C whereas the statements of Somesh Chourasia, Pradeep Khateek, Dassu @ Dashrath @ Dashrath Yadav and Mahesh Sharma were recorded in Court under Section 164 of the Cr.P.C.

6. During investigation, it came to the knowledge that before giving effect to the incident on 15.3.2019, the accused persons had assembled in the house of Indrapal situated at Gandhi Ward, a fact which was corroborated from the CCTV camera installed in the house of Indrapal and the identification panchnama was obtained through eye-witness Praveen Chourasia where Praveen Chourasia had identified the accused persons as Indrapal, Golu @ Deependra Singh, Lokesh Patel, Balveer Singh, Shailendra Singh Parihar @ Shailu, Chhotu @ Trilok, Khoobchand Patel, Sohail Khan S/o.Mohammad Haneef, Sohail Khan S/o.Sabbir Khan, Aanish Khan S/o.Guddu Khan, Anish Pathan S/o.Ajim Pathan, Raja Don @ Rajendra Ahirwar, Monu Tantuvay, Shahrukh Pathan, Akash Parihar, Sukendra Athiya, Vikram Singh, Bhansingh, Kishan Thakur, Sandeep



Tomar and Phuklu Thakur. He had also identified a grey colour creta car belonging to accused Golu @ Deependra Thakur, a black colour duster car belonging to accused Indrapal, a black colour open jeep belonging to Amjad and one red colour Mahindra TUV 300. The aforesaid cars were seized and thereafter the memorandum statements of the accused Golu @ Deependa Singh, Lokesh Patel, Indrapal Patel, Amjad @ Bootha, Shrim Sharma, Sohail Khan, Balveer Thakur, Raja Don @ Rajendra, Bhansingh, Akash, Shahrukh Pathan, Sandeep Tomar, Sukendra Athiya and Vikram Singh were recorded. The accused persons were arrested and were sent to the judicial remand where their test identification parade was carried out. On the identification of Chandu @ Kaushalendra Singh, the material used in giving effect to the incident was searched from a place near culvert at a pond situated in village Manjhgawan but no recovery could be made and thereafter Section 201 of the I.P.C was added.

7. During investigation, it was discovered that Vikas Patel was part of the conspiracy. After the incident, the absconded accused Govind Singh, Lokesh Patel, Shriram Sharma, Golu @ Deependra Thakur, Amjad and Balveer were provided money, mobile, sim etc at his restaurant situated at Jhansi. The mobile phones were disposed of in a pond at Jhansi and later they were recovered from the said pond. The concerned MLC doctor and



the postmortem doctor were subjected to query reporting and during analysis of the cyber report, it has come on record that all the accused persons were in close contact with each other and at the time of the incident, their location was at Hatta. During investigation, certain firearms were recovered but it will not be out of place to mention here that all the accused persons have been acquitted from the charges under the Arms Act, 1959.

8. On completion of the investigation, final report was submitted before the Chief Judicial Magistrate, Damoh and thereafter the matter was committed to the Court of Session. It has come on record that during trial, the case was transferred by the Principal District & Sessions Judge, Damoh to Hatta. The accused persons abjured their guilt and pleaded complete innocence. The trial was conducted and they have been convicted and sentenced as mentioned hereinabove.

9. The prosecution examined 59 witnesses (PW.1 to PW.59) and produced 317 documents (Exhibit P/1 to Exhibit P/317) and also produced 87 physical articles (marked as Article-A1 to Article-A87) on record whereas the defence examined 19 witnesses (DW.1 to DW.19) and produced 119 documents (Exhibit D/1 to Exhibit D/119) on record.



10. Shri Surendra Singh learned Senior Advocate assisted by Shri Kapil Pathak, Advocate appearing for two of the appellants, namely, Govind Singh and Chandu @ Kaushalendra Singh submits that allegation against the appellants is of causing murder of Devendra and causing injuries to Somesh Chourasia (PW.2). From the testimony of Mahesh Chourasia (PW.1) and Somesh Chourasia (PW.2), Animesh Chourasia (PW.4) and Ashok Chourasia (PW.7), who is brother of Mahesh Chourasia (PW.1), it is evident that the deceased Devendra had sustained 27 injuries but all were on his legs.

11. Learned Senior Advocate for the appellants submits that the allegation against Chandu @ Kaushalendra Singh and Govind Singh is that they were armed with rods and had caused injuries to deceased Devendra whereas the allegation against Lokesh and Indrapal is of causing injuries to Somesh with lathi and rod. The FIR is against only 7 named persons and Dr.Sourabh Jain (PW.9) had conducted the MLC of deceased Devendra vide Exhibit P/41. Pradeep Khateek (PW.6) and Dassu @ Dashrath Yadav (PW.8) state that they had visited Devendra at hospital during his treatment and Devendra had given an oral dying declaration. Thereafter, the injured was referred to Damoh and from Damoh to Jabalpur where it is stated that at Abhana, Devendra gave a dying declaration to Manish Chourasia



(PW.10) and Sanjay Chourasia (PW.45). Learned Trial Court did not believe in the so called dying declaration given by Devendra to Manish Chourasia (PW.10) and Sanjay Chourasia (PW.45).

12. It is pointed out by learned Senior Advocate for the appellants that Dr.R.L.Thakuriya (PW.33), who was working as Chief Medical Officer at Shalby Hospital, Jabalpur, states that as per the history of the incident recorded in Exhibit D/9, it is mentioned that the deceased Devendra and injured Somesh Chourasia (PW.2) were assaulted by the unknown persons. The deceased Devendra expired when intimation was sent to the Police Station Vijay Nagar vide Exhibit P/146 again mentioning a fact that the injured was assaulted by the unknown persons. The information given by Mahesh Chourasia (PW.1) at Police Station Hatta, District Damoh is infact recorded by the Assistant Sub Inspector B.M.Choubey (PW.39) but the aforesaid fact was suppressed by the prosecution. Infact, Mahesh Chourasia had given a written complaint and it was obligatory on the part of the Assistant Sub Inspector B.M.Choubey (PW.39) to have brought on record that written complaint revealing the actual contents of the report. The aforesaid report was given at 12.18 PM whereas Exhibit P/1 was prepared at 14.15 hours. The postmortem was conducted vide Exhibit P/148 by Dr.Vivek Shrivastava (PW.34). Learned Trial Court relied on the eye-



witnesses Mahesh Chourasia (PW.1), Somesh Chourasia (PW.2), Praveen Chourasia (PW.3), Santosh Chourasia (PW.5), Pradeep Khateek (PW.6), Ashok Chourasia (PW.7), Dassu @ Dashrath Yadav (PW.8) out of which, Praveen Chourasia (PW.3) and Santosh Chourasia (PW.5) were cooks at the plant. The oral dying declaration given by the deceased Devendra at Abhana to Manish Chourasia (PW.10) and Sanjay Chourasia (PW.45) is rejected by the Trial Court in Paragraph No.205 of the impugned judgment.

13. It is submitted by learned Senior Advocate for the appellants that Rambai Parihar is wife of Govind. She was sitting MLA of Pathariya and has been examined as DW.10. Chandu is brother of Govind and is brother-in-law of Rambai Parihar. Rambai Parihar made a complaint to the Governor through the Collector when the Special Investigation Team was constituted, which gave its report vide Exhibit D/24. As per the version of the accused Govind, he was in his village Gopura and Chandu was at is village Hinauta. The Station House Officer Dharmendra Kumar Singh (PW.57) alongwith TV crew and public were present at PHC Hatta. No Dehati Nalishi was recorded. No statements of injured were recorded. Thus, non-production of the written complaint by Mahesh Chourasia (PW.1) given to B.M.Choubey (PW.39) is fatal to the prosecution case.



14. It is submitted by learned Senior Advocate for the appellants that there are three lawyers in the family of the complainant Mahesh Chourasia and infact they fabricated the case. The FIR (Exhibit P/1) is inadmissible and looking to the fact that the deceased Devendra died on the next day at about 2:10 AM at Jabalpur and all the injuries were caused on non-vital part of the body, the conviction needs to be altered from one under Section 302 to Section 304 Part-II of the I.P.C.

15. Shri Surendra Singh, learned Senior Advocate assisted by Shri Kapil Pathak, Advocate for the appellants in Criminal Appeal No.1087/2025 places reliance on certain judgments of the Apex Court as well as this Hon'ble High Court and they are **Ramsai and others versus State of Madhya Pradesh AIR 1994 SC 464, B.K.Channappa versus State of Karnataka (2006) 12 SCC 57, Adu Ram versus Mukna & Others (2005) 10 SCC 597, Parashram versus State of Madhya Pradesh 1970 J LJ Short Note 113, Sevi & Another versus State of Tamil Nadu & Others 1981 (Supp) SCC 43, Sheikh Meheboob @ Hetak & Others versus State of Maharashtra (2005) 10 SCC 387, Ram Das versus State of Maharashtra (1977) 2 SCC 124, Marudanal Augusti versus State of Kerala (1980) 4 SCC 425, Mayur Panabhai Shah versus State of Gujarat (1982) 2 SCC 396, Lallusingh S/o.Jagdishsingh Samgar versus**



State of Madhya Pradesh 1996 M.P.L.J 452, Hrishankar versus State of M.P. 1996 J.L.J 442, H.Siddiqui (dead) by LRs versus A.Ramalingam (2011) 4 SC 240, U.Sree versus U.Srinivas (2013) 2 SCC 114.

16. Shri Sankalp Kochar, learned counsel for the appellants in Criminal Appeal No.13937/2024 & Criminal Appeal No.363/2025 supports the arguments advanced by Shri Surendra Singh, learned senior counsel for appellant in Criminal Appeal No.1087/2025 and places reliance on certain judgments of the Apex Court as well as this Hon'ble High Court and they are **Devinder versus State of Haryana AIR 1997 SC 454, Mahendra Singh & Others versus State of Madhya Pradesh (2022) 7 SCC 157, State of Haryana versus Ram Singh (2002) 2 SCC 426, Sudarshan & Another versus State of Maharashtra (2014) 12 SCC 312, Meharaj Singh (L/Nk) versus State of U.P. (1994) 5 SCC 188, State of Uttar Pradesh versus Mangal Singh & Others (2009) 12 SCC 306, Asraf Biswas versus State of West Bengal Criminal Appeal No.840/2013, Manoj & Others versus State of Madhya Pradesh (2023) 2 SCC 353, Tomaso Bruno and another versus State of Uttar Pradesh (2015) 7 SCC 178, Jugut Ram versus State of Chhattisgarh (2020) 9 SCC 520, Heikrujam Chaoba Singh versus State of Manipur (1999) 8 SCC 458, Jitendra Kumar Mishra @ Jittu versus State of Madhya Pradesh**



(2024) 2 SCC 666, Prem Narain & Another versus State of Madhya Pradesh (2007) 15 SCC 485, Jafarudheen & Others versus State of Kerala (2022) 8 SCC 440, Kehar Singh & Others versus State (Delhi Administration) (1988) 3 SCC 609, Ramesh & Another versus State of Karnataka (2024) 9 SCC 169, Sachin versus State of Maharashtra 2019 SCC Online Bom 1080, Pratap Singh & Another versus State of M.P (2005) 13 SCC 624, Moti & Others versus State of U.P. (2003) 9 SCC 444, Boddella Babul Reddy versus Public Prosecutor, High Court of Andhra Pradesh (2010) 3 SC 648, Dayal Singh & Others versus State of Uttaranchal (2012) 8 SCC 263, Mohd. Muslim versus State of Uttar Pradesh (Now Uttarakhand) (2023) 7 SCC 350, Ramprasad versus State of Maharashtra (1999) 5 SCC 30, Sunder Singh versus State of Uttaranchal (2010) 10 SCC 611, Ramcharan (dead) & Others versus State of M.P (2023) 2 SCC 163, Deepak Kumar versus Ravi Virmani & Another (2002) 2 SCC 737, Vijay Singh versus State of Bihar 2024 SCC Online SC 2623, Anand Ramachandra Chougule versus Sidarai Laxman Chougala & others (2019) 8 SCC 50, Kannaiya versus State of M.P 2025 SCC Online SC 2270, Sakhawat versus State of U.P 2025 SCC Online SC 1205, Gireesan Nair & Others versus State of Kerala (2023) 1 SCC 180, Babloo versus State of M.P 2009 SCC Online MP



102, Ankush Maruti Shinde & Others versus State of Maharashtra (2019) 15 SCC 470, Harihar Prasad Prasad Etc versus State of Bihar (1972) 3 SCC 89, Madhu Limaye versus State of Maharashtra (1977) 4 SCC 551, Anand Ramachandra Chougule versus Sidarai Laxman Chougala & Others (2019) 8 SCC 50.

17. Ms.Smita Varma, learned counsel appearing for the appellants in Criminal Appeal No.297/2025 and Criminal Appeal No.1196/2025 places reliance on certain judgments of the Apex Court as well this Hon'ble High Court and they are **Rajendra Singh & others versus State of Uttaranchal 2025 SCC Online SC 2148, Dauwalal @ Ganesh Devangan & Others versus State of Madhya Pradesh (Now State of Chhattisgarh) (2019) 4 SCC 538, Bir Singh versus State of Uttar Pradesh (1977) 4 SCC 420, Amar Singh versus State (NCT of Delhi) (2020) 19 SCC 165, Radha Mohan Singh @ Lal Saheb & Others versus State of U.P. (2006) 2 SCC 450, Kumersingh & Others versus State of M.P 2006 SCC Online MP 583, Noor @ Nooruddin versus State of Karnataka (2007) 12 SCC 84.**

18. Shri Manas Mani Verma, learned Government Advocate for the State in his turn supports the impugned judgment of conviction and places reliance on two judgments of the Apex Court and they are **Ram Singh**



versus State of Rajasthan (2012) 12 SCC 339 & Nitya Nand versus State of Uttar Pradesh & Another (2024) 9 SCC 314.

19. Shri Anil Khare, learned Senior Advocate assisted by Shri Anand Kumar Sharma, Advocate for appellants in Criminal Appeal No.2202/2025 and the petitioner in Criminal Revision No.995/2025 and also the objector in all other criminal appeals in his turn submits that looking to the brutality while maintaining the conviction under Section 302 of the I.P.C, the sentence imposed upon the appellants be altered from one of life imprisonment to death penalty.

20. In the present case, the accused persons have made a claim for their acquittal whereas the complainant party has prayed for conversion of sentence from one of life imprisonment to death penalty.

21. We have heard learned counsel for the parties and gone through the record.

22. The facts of the present case can be seen in a precise manner and be summarised from the case of the prosecution as is obtained from the FIR (Exhibit P/1) pertaining to Crime No.143/2019 at Police Station Hatta, District Damoh whereby the FIR was recorded on 15.3.2019 at 14.40 hours after receiving intimation at the police station at 12.18 hours about the incident, which took place from 10:45 to 10:50 AM. As per the FIR, it is



alleged that the accused persons had arrived in different vehicles and they being armed with lathis and iron rods, abused Devendra asking him as to why he had changed his party and they had beaten Devendra and when Somesh tried to intervene, he had also sustained injuries. The author of the FIR, Mahesh Chourasia (PW.1) states that he had seen the accused persons running towards Patera and then he himself, Animesh Chourasia (PW.4) and Ashok Chourasia (PW.7) had taken Devendra and Somesh to Hatta Hospital. The incident was seen by all employees of the plant and from Hatta, they were referred to Damoh when this witness Mahesh Chourasia approached the police station to lodge report saying that Devendra and Somesh were brutally beaten and they are not able to speak.

23. Mahesh Chourasia (PW.1) is not only author of the FIR (Exhibit P/1) but also an eye-witness to the incident. He states that seven accused persons are known to him and they have been identified by him in presence of the Naib Tahsildar at Sub Jail Hatta and the Central Jail, Sagar. He named seven persons as Chandu @ Kaushalendra Singh, Govind, Golu @ Deependra Thakur, Lokesh Singh, Indrapal Patel, Shriram Sharma and Amjad Pathan and further states that remaining other accused persons can be identified by him on seeing them. He had identified Shriram Sharma before the Court. He had identified Amjad Pathan when shown through



video conferencing so also Indrapal Patel. He could not identify Shahrukh. This witness had identified Sohail Khan on the basis of face recognition but could not give his name. Another accused Aanish Khan was also identified in similar pattern.

24. It has come on record that no photographs were attached to the arrest memo of Sandeep Tomar and Chandu @ Kaushalendra Singh. The proceedings of the Court were published in daily newspaper though the Court expressed that it had not directed publication of any of the proceedings in the newspaper. In Paragraph No.7 of the examination-in-chief carried out on 28.11.2020, this witness had identified Shriram Sharma, Aanish Khan, Chandu @ Kaushalendra Singh, Indrapal Patel, Amjad Pathan, Shahrukh, Sohail Khan, Lokesh Patel, Balveer Singh, Golu @ Deependra Thakur, Raja Don, Monu Tantuvay, Anish Pathan and when the Court asked their names then they were the same as were narrated by this witness (PW.1).

25. In Paragraph No.10, Mahesh Chourasia (PW.1) states that he had seen Chandu @ Kaushalendra Singh, Govind Singh, Golu @ Deependra Thakur, Shriram Sharma, Amjad Pathan, Lokesh Patel, Indrapal Patel arriving at the place of the incident and then it is stated that there were 15-20 other persons but this fact with regard to presence of 15-20 persons as mentioned



in examination-in-chief in Paragraph No.10 is missing in the FIR wherein presence of other accused persons has not been shown.

26. In Paragraph No.13, it has come on record that Animesh Chourasia and Ashok Chourasia and this witness Mahesh Chourasia had called a vehicle and had taken injured Somesh and severely injured Devendra and unconscious with broken limbs Somesh to the Hospital for treatment and on account of excessive injuries, they were referred to Damoh. After the patients were taken to Damoh, he had reached the police station between 12:15 to 12:30 and had given report at Police Station Hatta. After lodging of the FIR, the spot map (Exhibit P/2) was prepared and certain seizures were made.

27. In Paragraph No.16, Mahesh Chourasia (PW.1) states that Jila Panchayat President Shivcharan Patel and Pathariya M.L.A Rambai Parihar were part of the conspiracy. The main accused persons were Indrapal Patel, Chandu @ Kaushalendra Singh, Golu @ Deependra Thakur and Lokesh Patel. It has also come on record that the Court had recorded demeanour of this witness while putting a note below Paragraph No.23 and above Paragraph No.24.

28. In Paragraph No.24 of the cross-examination, Mahesh Chourasia (PW.1) admits that before signing the FIR (Exhibit P/1), he had read the



FIR and then signed it. In Paragraph No.25 of his cross-examination, this witness admits that with regard to the identification of the other accused persons, he had not made any complaint to the Court that their pictures were shaky while they were made to appear through video conferencing. He admits that prior to the date of the cross-examination, he had identified all the accused persons as were appearing on television screen. This witness admits that he has three advocates in his family, namely, Neeraj Chourasia, Vivek Chourasia and Sanjay Chourasia.

29. Mahesh Chourasia (PW.1) in Paragraph No.30 of his cross-examination admits that if name of a person is not known then his physical description is important. In Paragraph No.31, this witness admits that in his examination-in-chief, he had given details of all those, who were present at the time of the incident. He denies preparation of the spot map (Exhibit P/4) saying that he does not remember as to what is mentioned in the spot map. In Paragraph No.32, this witness admits that in Exhibit P/1, though he had mentioned that the other persons had come but had not given their number to be 15-20 persons. In Paragraph No.35, this witness admits that he had correctly mentioned in his report (Exhibit P/1) that Somesh and Devendra were unable to speak. In Paragraph No.47, this witness admits



that in the FIR (Exhibit P/1), he had not made any mention with regard to creta vehicle.

30. In Paragraph No.49, Mahesh Chourasia (PW.1) admits that the named persons were armed and other persons were also armed but he cannot say as to how many persons were armed in total. In Paragraph No.51, this witness states that after lodging of the report, the spot map (Exhibit P/2) was prepared. In Paragraph No.57, a suggestion has been given to this witness that the pamphlets were circulated to arrest the accused persons but he denies that on the basis of such pamphlets, he had identified the accused persons. In Paragraph No.58, this witness admits that neither in the FIR (Exhibit P/1) nor in his case diary statement (Exhibit D/9), he had not mentioned physical attributes of the unknown persons. In Paragraph No.60, this witness states that he cannot say as to whether the CCTV cameras have been installed in his office or not.

31. As far as the argument of Shri Surendra Singh, learned Senior Advocate is concerned that handwritten copy of the FIR was not produced, is irrelevant because Mahesh Chourasia (PW.1) states that he had seen report being typed on the computer. In Paragraph No.74, Mahesh Chourasia (PW.1) admits that as to after how many days of the incident, the accused persons were identified, could not be recalled by him. However, he admits



that Test Identification Parade vide Exhibit P/16 was carried out on 3.5.2019 while the Test Identification Parade vide Exhibits P/9, P/10 & P/12 was carried out on 14.5.2019. In Paragraph No.75, this witness admits that the name of Sandeep, Sukendra Athiya, Raja and Akash were not mentioned in the FIR. He states that he had not mentioned their physical attributes also in the FIR. In Paragraph No.117, this witness states that he has no information that on the date of the incident, Shivcharan Patel had lodged a report saying that the CCTV cameras from the spot be seized and a false implication is being made against several persons. In Paragraph No.118, he denies the fact that the SDOP, Hatta had seized the CCTV cameras from the damar plant. This witness admits that he had not recorded the name of Aanish Khan S/o.Guddu Khan and Anish Pathan S/o.Ajim Pathan in the FIR. In Paragraph No.144, this witness admits that when Devendra and Somesh were being beaten, he had not gone to save them due to fear and in Paragraph No.145, he admits that there were no injury marks on the face and head of either deceased Devendra or injured Somesh. In Paragraph No.199, this witness admits that in his report (Exhibit P/1) and the statement (Exhibit D/1), he did not mention about presence of Santosh and Pradeep Chourasia at the place of the incident. This witness admits that the deceased Devendra was his younger brother whereas Somesh is son of



deceased Devendra. In Paragraph No.207, this witness admits that he had not given any written complaint to the police personnel.

32. Somesh Chourasia (PW.2) is the injured witness. He had given a dying declaration vide Exhibit P/19 on 15.3.2019 at 8:15 PM where Dr.D.S.Chouhan had certified that he was in a position to record dying declaration. In his dying declaration, this witness had taken names of Golu @ Deependra Thakur, Govind, Chandu @ Kaushalendra Singh, Shriram Sharma, Indrapal Patel, Lokesh Patel, Arvind, Amjad. He states that his father was a regular and active member of the Bahujan Samaj Party. On 12.3.2019, they had joined the Congress Party, therefore, Rambai Parihar, who was MLA from the Bahujan Samaj Party, thought that she might lose her political authority and, therefore, they were attacked by the family members of Rambai Parihar. He states that when he and his father were standing in Siddhi Vinayak Dharamkanta Campus then 30-35 armed persons had come. They had fired certain shots in air. Thereafter, they were beaten by dandas, pipes and rods. He had identified three persons at Hatta Jail, namely, Vikram, Khoobchand and Sukendra Athiya vide Exhibits P/20, P/21 and P/22. At Sagar Jail, he had identified Sandeep, Raja Don @ Rajendra, Balveer Thakur, Bhansingh, Akash, Aanish Khan S/o.Guddu Khan and Anish Pathan S/o.Ajim Pathan, Monu Tantuvay, Sohail for which



identification panchnamas Exhibits P/5, P/6, P/7, P/8, P/9, P/10, P/11, P/12, P/13, P/14 were prepared.

33. Somesh Chourasia (PW.2) in his cross-examination admits that on registration of a case for impersonation in VYAPAM, he had left his MBBS course. He states that he and his father were granted bail in that matter at a Special Court at Bhopal. In Paragraph No.26, this witness admits that after reading his dying declaration (Exhibit P/19), he had put his signatures on the dying declaration. In Paragraph No.27, this witness admits that at about 3:30 PM, he had learnt about the death of his father. In his dying declaration (Exhibit P/19), he had not mentioned that because of pain and agony, he was not able to record complete statement. In Paragraph No.30, this witness admits that in his dying declaration (Exhibit P/19), he had not recorded a fact that “Sohail Khan, Mazhar Pathan, Shahrukh Pathan, Aanish Khan S/o.Guddu Khan and Anish Pathan S/o.Ajim Pathan, Monu Tantuvay, Balveer Thakur, Raja Don, Sukendra Athiya, Khoobchand Patel, Vikram Singh, Bhansingh, Akash Singh and Sandeep Tomar are known to him by name and face”.

34. In Paragraph No.43, Somesh Chourasia (PW.2) admits that from the time of the incident till recording of the declaration at Shalby Hospital, Jabalpur, he had not informed anybody about the incident. In Paragraph



No.52, this witness states that he cannot give definite description of the assailants. On his own, he states that 24-25 persons had beaten them. He further states that he does not remember any special sign or mark with regard to the identified persons but, however, he states that since the incident is running through his mind for last two years, therefore, he could identify all the accused persons.

35. In Paragraph No.58, Somesh Chourasia (PW.2) admits that the documents, copies of which were obtained, contain photo and footage of the accused persons. The footages are of the date of incident. They are from a camera from Baijnath Dham Colony. He admits that he had seen the footage and CD and, therefore, it is evident that in the light of this part of the evidence that the dock identification of the accused persons were made after the appellants had seen the CCTV footage and CD etc containing photographs etc of the accused persons, such dock identification is rendered inadmissible in the eyes of law.

36. In Paragraph No.62, Somesh Chourasia (PW.2) admits that in the Dharamkanta Parishar upto his office except for he himself, his father and Mahesh, nobody else was present. In Paragraph No.76, this witness admits that when his father had fallen down then on his call, Mahesh had arrived. Thereafter, when the assailants had left the place of the incident then



Ashok, Praveen, Santosh and Dassu had reached the place of the incident. Thus, infact the injured witness Somesh and his uncle, the author of the FIR, Mahesh, are only two witnesses to the incident and others have been planted subsequently.

37. In Paragraph No.85, Somesh Chourasia (PW.2) admits that Golu @ Deependra Thakur had not made any use of firearm i.e.mouser at the place of the incident. He admits that nobody had used the firearm at the place of the incident. In Paragraph No.110, this witness admits that earlier he had given a statement to the effect that “it is correct to say that the police was going ahead with its proceedings and was making different persons as accused, who were treated to be correct by us” was stated by him in hurry and he wanted to say something else, namely, “after identification of the accused, he used to decide as to whether they were accused or not”. This u-turn taken by this witness and that too not immediately but after the lunch break appears to be unnatural.

38. In Paragraph No.118, Somesh Chourasia (PW.2) admits that in his dying declaration (Exhibit P/19), he had falsely mentioned the incident of firing in air. In Paragraph No.127, this witness admits that at the time of the incident, the CCTV cameras were installed at the damar plant. He admits that the CCTV footage was seized by the police personnel. In Paragraph



No.140, he states that while giving the dying declaration (Exhibit P/19), he had not mentioned that the persons, who are not named in the dying declaration, if are made to appear, then he can identify them. He admits that in his dying declaration (Exhibit P/19), he had not mentioned as to which of the accused had beaten him and his father Devendra with which of the weapons. In Paragraph No.146, this witness denies that at the time of the incident, there were CCTV cameras installed in his office.

39. In Paragraph No.170, Somesh Chourasia (PW.2) admits that from the time of the incident till the death of his father Devendra, he had no conversation with Devendra. He admits that at the time of the incident, his father was having a mobile phone in his hand, which had fallen down but was never recovered. He admits that he had no conversation with the doctor at Damoh Hospital. He states that he had not given any detail to the doctor at a hospital at Jabalpur also. In Paragraph No.176, this witness admits that how the incident took place and who had given effect to the incident was narrated by him for the first time at Shalby Hospital where his dying declaration was recorded. In Paragraph No.183, he admits that several Youtube videos were broadcasted in the matter, which were seen by this witness on several occasions. He admits that when he had reached the Sub Jail Hatta then identification was not carried out immediately. This witness



like Mahesh Chourasia (PW.1) admits that since the incident took place on Friday, the damar plant was closed.

40. In Paragraph No.201, Somesh Chourasia (PW.2) admits that in Exhibit D/9, the medical report of Shalby Hospital, it is mentioned that unknown person had caused beating then it is stated that it does not contain signature of the person, who had received the report. This witness denies a suggestion that he and his uncle Sanjay Chourasia had informed the doctor that the incident was given effect to by the unknown persons. This witness admits that in his dying declaration (Exhibit P/19), the name of Arvind Singh is wrongly mentioned infact another name of Golu is Deependra Thakur and, therefore, by mistake, the name of Arvind Singh was mentioned.

41. The other witnesses are admittedly not eye-witnesses to the incident as admitted by Somesh Chourasia (PW.2) and he has admitted only presence of Mahesh Chourasia, deceased Devendra and that of himself, therefore, there is no point of discussing hearsay evidence of the other witnesses.

42. Dr.Sourabh Jain (PW.9) had carried out the MLC of Devendra and Somesh Chourasia and had found following injuries on the body of Devendra:-



चोट क्रमांक01:-आहत देवेन्द्र के दाहिने हाथ की छिंगली में एक कटा हुआ घाव था, जिसमें से हड्डी दिख रही थी और क्लिनिकली उसमें अस्थिभंग था, उक्त चोट के लिए मेरे द्वारा आहत को एक्सरे की सलाह दी थी।

चोट क्रमांक02:-आहत के बाये पैर के निचले हिस्से में एक फटा हुआ घाव एवं आसपास सूजन भी मौजूद थी, जिसका आकार 3x0.5 cm हड्डी की गहराई तक था एवं क्लिनिकली अस्थिभंग लग रहा था, उक्त चोट के लिए मैंने आहत को एक्सरे की सलाह दी थी।

चोट क्रमांक03:-आहत के दाहिने पैर में दो फटे हुए घाव थे, जिनका आकार क्रमशः05cmX0.5cm एवं 03cmX0.5cm जो कि मासकी गहराई तक था एवं जिसमें कि मसल्स रपचर्ड थे, उक्त चोट के लिए भी मैंने आहत को एक्सरे की सलाह दी थी।

चोट क्रमांक04:-आहत देवेन्द्र के दाहिने घुटने पर दो ब्रूस थे, जिनका आकार क्रमशः 06cmX4cm एवं 08cmX4cm था, साथ में सूजन भी मौजूद थी. उक्त चोट के लिए भी मैंने आहत को एक्सरे की सलाह दी थी।

चोट क्रमांक05:-आहत देवेन्द्र को चोट क्रमांक 04के नीचे एक और ब्रूस और एवरेजन था, जिसका आकार 05cmX3cm था।

चोट क्रमांक06:-आहत देवेन्द्र के दाहिने जांघ के नीचे की तरफ एक छिला हुआ घाव था, जिसका आकार 03cmX0.5cm था।

चोट क्रमांक07:-आहत देवेन्द्र की दाहिने जांघ में बाहर की तरफ दो ब्रूस थे, जिनका आकार 20cmX4cm एवं 07cmX3cm था, उक्त चोट के लिए भी मैंने एक्सरे की सलाह दी थी।

चोट क्रमांक 08:-आहत की पीठ में एक छिला हुआ घाव था, जिसका आकार 4cmX2cm था।

चोट क्रमांक09:-आहत देवेन्द्र की पीठ पर कई सारे ब्रूस मौजूद थे, जिनका आकार लगभग 05cmX2cm एवं 20cmX2cm था, उक्त चोट के लिए भी मैंने एक्सरे की सलाह दी थी।

चोट क्रमांक10:-आहत देवेन्द्र के दाहिने कान के मेस्ट्रॉयड रीजन के पास एक ब्रूस मौजूद था, जिसका आकार 06cmX3cm था।



चोट क्रमांक11:-आहत देवेन्द्र बायी जांघ पर दर्द होना बता रहा था, इसलिए उक्त चोट के लिए भी मैंने एक्सरे की सलाह दी थी।

चोट क्रमांक12:-आहत देवेन्द्र पेट में दर्द होना बता रहा था, इसलिए उक्त चोट के लिए भी मैंने सोनोग्राफी एवं एक्सरे की सलाह दी थी।

अभिमत: मेरे मतानुसार आहत देवेन्द्र को आई चोट क्रमांक 02 से लेकर चोट क्रमांक 10 तक की चोट सख्त एवं मौथली वस्तु द्वारा आना संभव है। चोट क्रमांक 05 चोट क्रमांक 06, चोट क्रमांक 08, चोट क्रमांक 10 सामान्य प्रकृति की थी। चोट क्रमांक 01 धारदार एवं सख्त वस्तु द्वारा आना संभव है एवं बाकी सभी चोटों के लिए मैंने एक्सरे एवं सर्जिकल ऑर्थोपेडिक ऑपिनियन के लिए सलाह दी थी, जिससे उनका नेचर डिसाईड हो सके। आहत देवेन्द्र को आई उक्त सभी चोट मेरे परीक्षण के लगभग 06 घंटे के भीतर आना संभव है।

43. Dr.Sourabh Jain (PW.9) had given opinion that the injury Nos.2 to 10 were caused by hard and blunt object. Injury Nos.5,6,8,&10 were general in nature. Injury No.1 was caused by sharp and hard object. The doctor had advised X-ray and referred the patient to the surgical opinion.

44. Dr.Sourabh Jain (PW.9) had found following injuries on the body of Somesh Chourasia:-

चोट क्रमांक01:-आहत सोमेश के दाहिने अग्रभुजा पर एक ब्रूस मौजूद था, जिसका आकार 10cmX2cm था, उक्त चोट के लिए मैंने एक्सरे की सलाह दी थी।

चोट क्रमांक02:-आहत सोमेश की दाहिने कलाई पर एक ब्रूस मौजूद था, जिसका आकार 6cmX2cm था, उक्त चोट के लिए मैंने एक्सरे की सलाह दी थी।

चोट क्रमांक03:-आहत सोमेश की बायी अग्रभुजा पर अंदर की तरफ एक ब्रूस मौजूद था, जिसका आकार 05cmX3cm था।

चोट क्रमांक04:-आहत सोमेश की बायी कोहनी पर एक छिला हुआ धाव था, जिसका आकार 2cmX0.5cm था।



चोट क्रमांक05:-आहत सोमेश की बायीं जांघ पर एक ब्रूस मौजूद था, जिसका आकार 20cmX2cm था, उक्त चोट के लिए मैंने एक्सरे की सलाह दी थी।

चोट क्रमांक06:-आहत सोमेश की दाहिने पैर में दो ब्रूस थे, जिनका आकार क्रमशः 05cmX3cm एवं 3cmX2cm था।

चोट क्रमांक07:-आहत सोमेश के बाये पैर में घुटने के नीचे दो ब्रूस मौजूद थे, जिनका क्रमशः 20cmX2cm एवं 15cmX2cm था, उक्त चोट के लिए मैंने एक्सरे की सलाह दी थी।

चोट क्रमांक08:-आहत की बायीं जांघ पर एक ब्रूस था, जिसका आकार 06cmX2cm था, उक्त चोट के लिए मैंने एक्सरे की सलाह दी थी।

चोट क्रमांक09:-आहत सोमेश के दाहिने भुजा पर एक ब्रूस था, जिसका आकार 06cmX3cm था।

चोट क्रमांक10:-आहत सोमेश की दाहिने कोहनी पर एक छिला हुआ घाव मौजूद था, जिसका आकार 2cmX1cm था।

चोट क्रमांक11:-आहत सोमेश की बायीं तरफ गर्दन पर एक ब्रूस था, जिसका आकार 3cmX1.5cm था।

चोट क्रमांक12:-आहत की बायीं तरफ कमर में एक ब्रूस था, जिसका आकार 5cmX2cm था।

अभिमत: आहत सोमेश को आई समस्त चोटों से सख्त एवं मौथली वस्तु से आना संभव है एवं मेरे परीक्षण के 06 घंटे के भीतर आना संभव है। आहत सोमेश को आई चोट क्रमांक 03, 04, 06, 09, 10, 11, 12 सामान्यप्रकृति की थी एवं चोट क्रमांक 01, 02, 05, 08, 07 की प्रकृति एक्सरे होने के पश्चात् डिसाईड हो पाता एवं उक्त आहत को भी मैंने ऑर्थोपेडिक एवं सर्जिकल स्पेशलिस्ट को दिखाने की सलाह दी थी एवं दोनों आहतों को प्राथमिक उपचार के उपरांत जिला अस्पताल दमोह के लिए रेफर कर दिया था। मेरे द्वारा आहत देवेन्द्र चौरसिया एवं सोमेश चौरसिया के संबंध में तैयार प्री एम.एल.सी. रिपोर्ट प्र.पी.41 है, जिसके ए से ए भाग पर मेरे हस्ताक्षर हैं।



45. Dr.Sourabh Jain (PW.9) had given opinion that the injuries were caused by hard and blunt object within six hours of the incident. Injury Nos.3,4,6,9,10,11,12 were general in nature. The nature of injury Nos.2,5,7,8 could have been decided after X-ray only. He had not seen any injury on any of the vital part of the body. The doctor in Paragraph No.30 of his cross-examination states that he had received a letter, an iron belcha, three white colour plastic pipes, four baseball bats, two bamboo sticks, one spade and one iron rod asking as to whether the injuries found on the body of the injured could have been caused with those objects, which were answered by him in affirmative vide query report (Exhibit P/42). Similar facts were asked with regard to Somesh Chourasia which too were answered by the doctor in affirmative vide Exhibit P/43. In cross-examination, this witness admits that the condition of both the patients were not good. He had not asked the injured as to who had beaten them. The injured had also not informed them as to who had beaten them.

46. Dr.R.L.Thakuriya (PW.33) had examined Devendra Chourasia, who was brought in a dead condition to Shalby Hospital, Jabalpur for which he had given intimation to Vijay Nagar Police vide Exhibit P/146. The doctor had also examined injured Somesh. It was revealed that the injured was beaten in the campus of Siddhi Vinayak Dharamkanta. He had lost



consciousness for about 30 minutes. When examined, he was conscious. His blood pressure was 110/70. His pulse was 100 per minute. The doctor had found the following injuries on his person:-

चोट क्र. 01-कंटचूजन जिसका आकार 4गुणित 3सेमी. था जो कि बायें कंधे पर था।

चोट क्र. 02-कंटचूजन बाये एलबो पर था जिसका आकार 2 सेमी. गुणित 1.5 सेमी था।

चोट क्र. 03-कंटचूजन जिसका आकार 2सेमी, गुणित 1सेमी था जो कि बांये हाथ पर था।

चोट क्र. 04-कंटचूजन जिसका आकार 3सेमी. गुणित 2सेमी. था जो कि दांये कंधे पर था।

घोट क्र. 05- कंटचूजन जिसका आकार 3सेमी. गुणित 2सेमी. था जो कि दांये हाथ पर था।

चोट क्र. 06-कंटचूजन जिसका आकार 2सेमी. गुणित 1.5सेमी. था जो कि दांये हाथ की कलाई पर था।

चोट क्र. 07-कंटचूजन जिसका आकार 2सेमी. गुणित 1सेमी. था जो कि दांये हाथ पर था।

चोट क्र. 08-कंटचूजन जिसका आकार 4सेमी. गुणित 2.5सेमी. था जो कि दोनों जांघों पर एवं घुटने पर सामने की तरफ था।

चोट क्र. 09-कंटचूजन जिसका आकार 3सेमी. गुणित 1.5सेमी. था जो कि पैर के बीच में था।

चोट क्र. 10-कंटचूजन जिसका आकार 12सेमी. गुणित 4सेमी. था जो कि कई कंटचूजन मार्क पीठ पर थे।

चोट क्र. 11-छिला हुआ निशान बांये पैर के बीच में सामने की तरफ था।

47. Dr.R.L.Thakuriya (PW.33) admits that the uncle of Somesh, namely, Sanjay had informed him that they were beaten by the unknown persons on



which the report Exhibit P/9 was prepared. He admits that in his MLC report (Exhibit P/147), he had not mentioned as to which of the injuries were sustained with which of the objects. He admits that the time of preparation of report Exhibit P/147 is not mentioned.

48. Dr.Vivek Shrivastava (PW.34) had conducted the postmortem on the body of deceased Devendra alongwith Dr.Abhishek Singh and Dr.Mukesh Agrawal and had found stitched wounds on the lower part of both the legs. The cause of death was excessive blood loss, neurogenic shock and multiple injuries caused with hard and blunt object. The duration of death was 12 hours when the postmortem was performed. All the injuries were antemortem and homicidal. They all were sufficient in the normal course of nature to cause death. He admits that there were no injuries on the vital organs like head, chest and lungs. The doctor, however, states that the heart of Devendra was normal.

49. Dr.Anupam Shrivastava (PW.35) was posted as Radiologist at Shalby Hospital, Jabalpur on 15.3.2019 and he had carried out CT scan brain of Somesh Chourasia.

50. Bhumika Pandey (PW.37) states that she was working as Tahsildar at the relevant point of time and had recorded dying declaration of Somesh Chourasia as contained in Exhibit P/19.



51. Assistant Sub Inspector B.M.Choubey (PW.39) is the author of the FIR (Exhibit P/1) lodged by Mahesh in which Mahesh had taken the names of Chandu Singh, Govind Singh, Golu @ Deependra Thakur, Shriram Sharma, Amjad Pathan @ Bootha, Lokesh and Indrapal as the accused persons. He states that the injured persons were beaten with rods and lathis. This witness states that Mahesh had given oral intimation. He admits that without seeing the MLC, he had recorded the FIR under Section 307 of the I.P.C. He admits that it is not mentioned in MLC (Exhibit P/41) as to at what time, it was received in the police station. He admits delay of about 3 hours 55 minutes in lodging of the FIR. He admits that in the FIR (Exhibit P/1), it is not mentioned that Amjad Pathan @ Bootha was armed with which of the weapons. He admits that there is some typographical error where accused Indrapal is mentioned as Indal. In Paragraph No.17, this witness denies a suggestion that any rough noting of the incident was made by him. This contradicts the submission made by Shri Surendra Singh, learned Senior Counsel that the FIR (Exhibit P/1) is not to be treated as a valid document in absence of Kachcha writing on the basis of which the FIR was recorded.



52. When all these facts and evidence that has come on record is taken into consideration then firstly the delay of about 3 hours 55 minutes in lodging of the FIR cannot be said to be fatal.

53. Reliance is placed by Shri Surendra Singh, learned Senior Advocate appearing for two of the appellants on the judgment of the Apex Court in **Sevi & Another versus State of Tamil Nadu & Others (supra)** to contend that an officer-in-charge of a police station should not carry FIR book with him to the place of occurrence. The aforesaid judgment has no relevance to the facts & circumstances of the present case because it is nobody's case that the Investigating Officer had taken the FIR book for lodging of the FIR to the site. In the present case, admittedly, the FIR was lodged at the police station by Mahesh Chourasia (PW.1).

54. Reliance is placed on the judgment of this Hon'ble High Court in **Lallusingh S/o.Jagdishsingh Samgar versus State of Madhya Pradesh (supra)** to contend that the prosecution should not withhold the evidence collected during investigation. In the present case, there is no such allegation of withholding of evidence in the hands of the prosecutor and, therefore, even the ratio of law laid down by a Division Bench of this Hon'ble High Court in **Lallusingh S/o.Jagdishsingh Samgar versus State**



of Madhya Pradesh (supra) is of no avail to the facts & circumstances of the present case.

55. As far as Short Note 113 in case of **Parashram versus State of Madhya Pradesh (supra)** is concerned, it is held that if FIR is not produced by the prosecution in the Trial Court then conviction is bad-in-law has no application to the facts & circumstances of the present case.

56. As far as the law laid down in **U.Sree versus U.Srinivas (supra)** is concerned, it deals with a case of permanent alimony and also on the aspect of how secondary evidence is required to be adduced, again has no application to the facts & circumstances of the present case.

57. Similarly, in **H.Siddiqui (dead) by LRs versus A.Ramalingam (supra)**, the Apex Court was dealing with the aspect of secondary evidence again is not in question before this Court and, therefore, this judgment too is of no assistance to the appellants.

58. As far as **Mayur Panabhai Shah versus State of Gujarat (supra)** is concerned, the ratio of law in that case is that there is no irrebuttable presumption that the doctor as eye-witness is truthful witness. In the present case, there is no such pleading that there was any falsehood in the testimony of Dr.Vivek Shrivastava (PW.34), who conducted the postmortem of deceased Devendra, therefore, the ratio of law laid down in



Mayur Panabhai Shah versus State of Gujarat (supra) is also not available to the facts & circumstances of the present case.

59. Reliance is placed on the judgment of the Apex Court in **Ram Das versus State of Maharashtra (supra)** to contend that if two inferences are possible, the Court should accept one, which favours the accused but in the present case in view of the testimony of Mahesh Chourasia (PW.1) and Somesh Chourasia (PW.2), as far as the acts of seven accused persons, namely, Chandu @ Kaushalendra Singh, Govind, Golu @ Deependra Thakur, Shriram Sharma, Amjad Pathan @ Bootha, Lokesh Singh, Indrapal Patel, are concerned, there is no iota of doubt and, therefore, the aforesaid judgment will help only the other accused persons/convicted appellants and not these seven as mentioned hereinabove.

60. Thus, when the ratio of law laid down in **Ram Das versus State of Maharashtra (supra)** is applied then benefit of doubt can be extended in favour of those, whose names are not mentioned in the FIR (Exhibit P/1) and also in the dying declaration and not to the others, who have been specifically named in the FIR (Exhibit P/1) and the dying declaration (Exhibit P/19) respectively.

61. There is a caveat in Exhibit P/19 as explained by Somesh Chourasia (PW.2) that Arvind Singh has been erroneously mentioned and, therefore,



except for Arvind Singh, all others being same as are mentioned in the FIR (Exhibit P/1) and it is not the case of the defence that Mahesh Chourasia (PW.1) had time to tutor the injured witness Somesh Chourasia (PW.2) inasmuch as admittedly, Mahesh Chourasia (PW.1) was at Damoh/Hatta whereas Somesh Chourasia (PW.2) was getting treatment at Jabalpur and the dying declaration (Exhibit P/19) was recorded at Jabalpur. There is independent corroboration of the name of the aforesaid seven accused persons, therefore, we are of the opinion that benefit of doubt, which accrued in favour of the accused persons other than aforesaid seven accused persons.

62. Reliance is placed on **Sheikh Meheboob @ Hetak & Others versus State of Maharashtra (supra)** wherein it is held that how appreciation of evidence is to be carried out. It says that if first contemporaneous document in the form of written report lodged by the father of the deceased to the police is not produced on record then it raises a doubt against the prosecution case and the accused is entitled to the benefit of doubt but in the present case, the FIR is available on record and the Investigating Officer B.M.Choubey (PW.39) has categorically denied receiving of a written complaint from Mahesh Chourasia (PW.1). Similarly, Mahesh Chourasia (PW.1) too has denied giving any written complaint to the police



official, therefore, the ratio of law laid down in **Sheikh Meheboob @ Hetak & Others versus State of Maharashtra (supra)** wouldnot be applicable to the facts & circumstances of the present case.

63. In **B.K.Channappa versus State of Karnataka (supra)**, the ratio of law laid down by the Apex Court is that in face of contradictions and discrepancies especially when witnesses were examined after a gap of five years of the alleged occurrence then appreciation of evidence requires that the contradictions, inconsistencies, exaggerations or embellishments should be correctly appreciated.

64. In the present case, we have discarded the testimony of all other so called family members and other eye-witnesses except Mahesh Chourasia (PW.1), who is author of the FIR and Somesh Chourasia (PW.2), who is an injured eye-witness in view of the testimony of Somesh Chourasia (PW.2) that at the time of the incident in the campus of damar plant starting from weighbridge (Dharamkanta), only two persons were available besides the deceased Devendra, namely, Somesh Chourasia (PW.2) himself and on his raising alarm, Mahesh Chourasia (PW.1), who was answering the call of nature had reached the place of the incident when the accused had run away.



65. We have carefully considered the testimony of Mahesh Chourasia (PW.1) and Somesh Chourasia (PW.2) so also the material recoveries corroborated by the concerned doctor through his query reports (Exhibits P/43 & P/44) and when the ratio of law laid down in **B.K.Channappa versus State of Karnataka (supra)** is applied to the facts & circumstances of the present case then involvement of the seven named accused persons forming an unlawful assembly cannot be discarded or disbelieved.

66. As far as the law laid down in **Ramsai and others versus State of Madhya Pradesh (supra)** is concerned, it deals with the contradictions in the oral dying declaration. Learned Trial Court already rejected one set of oral dying declaration and we are of the opinion that both sets of oral dying declaration allegedly given by the deceased Devendra at Abhana have been rightly discarded by learned Trial Court in Paragraph 205 of the impugned judgment referring to the judgment of the Apex Court in **Bodh Raj @ Bodha & Others versus State of Jammu & Kashmir (2002) 8 SCC 45** and, therefore, once the Trial Court has rejected the oral dying declaration of deceased Devendra, who later on succumbed to the injuries and we are also of the opinion that starting from Dr.Sourabh Jain (PW.9) to Dr.R.L.Thakuriya (PW.33), the deceased Devendra was not in a condition to record oral dying declaration or otherwise, therefore, in absence of the



conviction being based on the testimony of the oral dying declaration, the judgment of the Apex Court in **Bodh Raj @ Bodha & Others versus State of Jammu & Kashmir (supra)** too is not of any assistance to the appellants.

67. Shri Sharad Verma, Shri Sankalp Kochar, Shri Dinesh Kumar Upadhyay, Ms.Smita Varma, Shri Neeraj Pathak, Ms.Shikha Dwivedi, Advocates appearing for the other accused persons place reliance on the judgment of the Apex Court in **Harihar Prasad Prasad Etc versus State of Bihar (supra)** wherein the ratio of law is that if chances of repetition of offence are remote then circumstances exist for awarding a lenient sentence.

68. A plea has been taken by Shri Surendra Singh, Senior Advocate supported by other learned counsel appearing for the accused persons that all the injuries were caused on non-vital parts and, therefore, the case will fall under Section 304 of the I.P.C. In this regard, the judgment of the Apex Court in **Virsa Singh versus State of Punjab AIR 1958 SC 465** is relevant wherein the Apex Court in Paragraph Nos.12 & 13 has noted as under:-

“12. To put it shortly, 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.

13. 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. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it



can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.”

69. Thus, it is evident that the defence was required to make a case to escape from the consequences to show that the injury was accidental or otherwise unintentional.

70. When the aforesaid aspect is taken into consideration in the light of the evidence of Mahesh Chourasia (PW.1) and Somesh Chourasia (PW.2), Dr.Sourabh Jain (PW.9), Dr.R.L.Thakuriya (PW.33) & Dr.Vivek Shrivastava (PW.34) then it cannot be said that the injuries sustained by the deceased Devendra were either accidental or otherwise unintentional, therefore, the plea of learned counsel for the accused persons that the case will fall under Section 304 of the I.P.C is not made out.

71. In **Madhu Limaye versus State of Maharashtra (supra)**, the ratio of law is that inherent power may be invoked for quashing interlocutory orders but we fail to understand that how this judgment will be applicable to the facts & circumstances of the present case.

72. Similarly, reliance is placed on the judgment of the Apex Court in **Kehar Singh & Others versus State (Delhi Administration) (supra)** but we fail to understand that how the aforesaid judgment will be applicable to the facts & circumstances of the present case when the Apex Court has categorically held that agreement between parties to do illegal act itself is



punishable and performance of illegal act pursuant to the illegal agreement is not necessary.

73. Reliance is placed on the judgment of the Apex Court in **Heikujam Chaoba Singh versus State of Manipur (supra)** on the aspect of evidentiary value of the dying declaration to the effect that the dying declaration without corroboration is not admissible. However, in the present case, the dying declaration of Somesh Chourasia (PW.2) is not read as a dying declaration but as his previous statement and is being used for limited purpose of omissions and contradictions.

74. Similarly, reliance is placed on the judgment of **Radha Mohan Singh @ Lal Saheb & Others versus State of U.P. (supra)** wherein it is held that in case of members of the unlawful assembly had no common object to murder the deceased or that members of the unlawful assembly knew that the murder was likely to be committed in prosecution of the common object of the assembly then conviction from one under Section 302 read with Section 149 of the I.P.C can be converted to one under Section 326 read with Section 149 of the I.P.C.

75. Reliance is placed on the judgment of the Apex Court in **Noor @ Nooruddin versus State of Karnataka (supra)**, it is a judgment on Section 34 of the I.P.C dealing with common intention whereas we are



dealing with aspect of Section 149 of the I.P.C i.e. common object, therefore, the judgment of **Noor @ Nooruddin versus State of Karnataka (supra)** has no application to the facts & circumstances of the present case.

76. In **Balwant Singh versus State of Haryana (1972) 3 SCC 769**, it is held by the Apex Court that when injuries are caused in prosecution of common object of all accused persons armed with deadly weapons to cause grievous hurt then even assuming that particular accused was not author of the injury, it does not exculpate him.

77. In **Malempati Pattabi Narendra versus Ghattamaneni Maruthi Prasad AIR 2000 SC 2195**, it is held by the Apex Court that conviction of the assailant or assailants, who inflicted grievous injuries, which resulted in the death of the victim cannot be limited to Section 326. Such assailants cannot escape from conviction under Section 302 at least with the help of Section 34 if not with Section 149 IPC. In the present case, ratio of the aforesaid judgment is squarely applicable and, therefore, plea of leniency or alteration of conviction is not made out.

78. In **Anand Ramachandra Chougule versus Sidarai Laxman Chougala & Others (supra)**, the Apex Court has held that unfair investigation will vitiate trial but in the present case, we do not find any element of unfair or biased investigation favouring deceased/injured.



79. Similarly, in **Ankush Maruti Shinde & Others versus State of Maharashtra (supra)**, the Apex Court has held that impartial and truthful investigation is imperative but in the present case, since no lacunas have been brought to our notice in conduction of the investigation then the ratio of law laid down in **Ankush Maruti Shinde & Others versus State of Maharashtra (supra)** will not be applicable to the facts & circumstances of the present case.

80. In **Amar Singh versus State (NCT of Delhi) (supra)**, the ratio of law laid down by the Apex Court is that the testimony of sole eye-witness can be used only when it is wholly reliable.

81. In the present case, the defence has tried to point out that at Shalby Hospital, Jabalpur, earlier at the time of the admission, it was mentioned that the assailants were unknown and later on the dying declaration was recorded in the evening where Somesh Chourasia (PW.2) gave the names of certain persons but it is an admitted fact that Sanjay Chourasia (PW.45), who got Somesh and Devendra admitted in the hospital, is not an eye-witness. If he was not knowing the chronology of events and the incident then a statement attributed to him and not to the injured Somesh Chourasia cannot be used against them.



82. Besides this, there is independent corroboration of two eye-witnesses, namely, Mahesh Chourasia (PW.1) and Somesh Chourasia (PW.2) recording statements at two different places at two different points of time before two different authorities and to that extent the dying declaration (Exhibit P/19) to the extent it corroborates with the FIR (Exhibit P/1) is acceptable in the eyes of law.

83. In **Mahendra Singh & Others versus State of Madhya Pradesh (supra)**, the Apex Court has held that there are three types of witnesses, namely, (a) wholly reliable; (b) wholly unreliable; (c) neither wholly reliable nor wholly unreliable and when the witness is wholly reliable, the Court should not have any difficulty inasmuch as conviction or acquittal could be based on the testimony of such single witness.

84. In the present case, Mahesh Chourasia (PW.1) and Somesh Chourasia (PW.2) are wholly reliable witnesses. Somesh Chourasia (PW.2) is infact an injured witness and when his testimony is analyzed and corroboration is found in the testimony of Mahesh Chourasia (PW.1) then we are of the opinion that their testimony is sufficient to record the finding of conviction to great extent as far as seven named accused persons are concerned.

85. Reliance is placed on the judgment of the Apex Court in **Ramesh & Another versus State of Karnataka (supra)**, which deals with reversal of



findings by the High Court. The High Court had reversed the finding of acquittal recorded by the Trial Court but the facts being different, the ratio of law laid down in **Ramesh & Another versus State of Karnataka (supra)** too will not be applicable to the facts & circumstances of the present case as far as seven named accused persons are concerned.

86. As far as ratio of law laid down in **Jitendra Kumar Mishra @ Jittu versus State of Madhya Pradesh (supra)** is concerned, it provides that when dying declaration is inherently not reliable then benefit of doubt should be extended. Even the judgment of **Jitendra Kumar Mishra @ Jittu versus State of Madhya Pradesh (supra)** too will not be applicable to the facts & circumstances of the present case.

87. The defence examined Shailendra Singh S/o. Mahipal Singh Parihar, who states that he is innocent. The warrant was issued against Shailu Thakur S/o. Nepal Thakur, but fact of the matter is that this Court has recorded acquittal for Shailendra Singh Parihar. He has only stated about himself and has not said anything about absence of other seven accused persons, whose conviction is being maintained. Hence, the testimony of Shailendra Singh Parihar (DW.1) as far as other seven accused persons are concerned, is of no assistance.



88. The defence examined Monu @ Jaikumar Tantuvay as DW.2. He too has been acquitted by this Court as his name was not mentioned in the FIR so also in the dying declaration. This witness too has not stated anything about others, therefore, in view of his acquittal recorded by this Court, his testimony cannot be read beyond his own case.

89. The defence examined Anees Khan as DW.3. He too has not stated anything about others.

90. The defence examined Shivcharan Patel as DW.4 and he has also not stated anything about others. This witness in his testimony states that he had given an application Exhibit D/36 in writing to the Superintendent of Police containing his signatures for seizure of CCTV cameras installed at the place of the incident. When no action was taken on his application and the complainant had destroyed the evidence then he had made an application to the Member of Parliament, Prahlad Patel and on the basis of which, Prahlad Patel had written a letter to the Superintendent of Police, Damoh. However, he submits that when no action was taken against the complainant party for destroying the evidence of CCTV footage then he had filed Writ Petition No.9512/2019 (Exhibit D/42) before the High Court in which vide order dated 13.05.2019, the High Court had directed the Superintendent of Police to take action, but he stated that in terms of the



directions of the High Court, the CCTV camera was seized, but it was neither played nor any inquiry was conducted in that behalf. Thereafter, he had given a letter to His Excellency, the Governor of Madhya Pradesh to the effect that his son, namely, Indrapal Patel was being falsely implicated.

91. Shivcharan Patel (DW.4) admits that at earlier point of time, he was Mandal Adhyaksh of Bhartiya Janta Party and he had enmity with Devendra Chourasia, who was a worker of Bahujan Samaj Party. However, it is evident from his testimony recorded in Paragraph No.4 that this witness was not present at the time of the incident and when on way to Bhopal, he was near Sagar at about 2:00 Noon, he had received intimation that unknown persons had attacked Devendra and Somesh at Siddhi Vinayak Dharamkanta and his son was sought to be falsely implicated. His contention is that because of political rivalry, his son has been falsely implicated. However, in cross-examination, this witness admits that after decision in the Writ Petition on 13.5.2019, he had not filed any application under Right to Information Act but had moved an application after five years on 12.08.2024 vide Exhibit D/48. In Paragraph No.18 of his cross-examination, this witness admits possessing of black colour Duster Vehicle.

92. Praveen Sharma (DW.5) is son of Shriram Sharma. He has deposed about false implication on account of political rivalry.



93. But, both these witnesses i.e. Shivcharan Patel (DW.4) and Praveen Sharma (DW.5) have not discharged their burden in support of their plea of alibi of absence of Indrapal and Shriram Sharma, Surendra Singh Parihar (DW.6), Sangeet Singh (DW.7), Ajay Tomar (DW.8), have given evidence to the effect that on 15.03.2019, he had gone to Village Hanauta for preparation of Loksabha election as wife of Chandu @ Kaushalendra Singh was given ticket of Bahujan Samaj Party and then stated that Chandu @ Kaushalendra Singh had taken meeting at Village Hanauta on 15.03.2019 at 10:00 A.M., which was Panchayat meeting upto 12:00 Noon, but this evidence does not fulfil the requirements of the law laid down by the Apex Court in **Pappu Tiwary versus State of Jharkhand (2022) 17 SCC 664** wherein referring to Section 11 of the Indian Evidence Act, 1872, it is held that in case of plea of alibi burden of proof is upon the accused and the accused is required to prove such plea with certainty so as to completely exclude the possibility of its presence on the spot. On facts, if plea of alibi is not proved then no benefit can be accrued in favour of the accused person. Thus, it is evident that the accused persons failed to discharge their burden of proving plea of alibi.

94. Thus, when the ratio of law laid down by the Apex Court and cited by learned counsel for the appellants is taken into consideration and tested in



the backdrop of law laid down by the Apex Court in **Nitya Nand versus State of Uttar Pradesh & Another (supra)**, admittedly, seven persons, who had reached the place of the incident, armed with deadly weapons like rods, lathis and dandas, formed an unlawful assembly and since their conviction is on the basis of constructive liability under Section 149 of the I.P.C then it is evident that since Section 149 of the I.P.C creates a constructive vicarious liability on the members of the unlawful assembly for the unlawful acts committed by any other members of such assembly roping in every member of the assembly to be guilty for an offence, where that offence is committed by any member of that assembly in prosecution of that or other members or assembly knew that offence is likely to be committed in prosecution of that object.

95. Since seven of the accused persons, namely, Chandu @ Kaushalendra Singh, Govind, Golu @ Deependra Thakur, Shriram Sharma, Amjad Pathan @ Bootha, Lokesh Singh, Indrapal Patel have been named in the FIR (Exhibit P/1) and their names are also mentioned in the dying declaration (Exhibit P/19) given by Somesh Chourasia (PW.2), we are of the opinion that they formed unlawful assembly and were pursuing a common object and, therefore, in the light of the judgment of the Apex Court in **Nitya Nand versus State of Uttar Pradesh & Another (supra)**, the finding of



conviction of Chandu @ Kaushalendra Singh, Govind Singh, Golu @ Deependra Thakur, Shriram Sharma, Amjad Pathan @ Bootha, Lokesh Singh, Indrapal Patel recorded by learned II Additional Sessions Judge-Hatta, Sessions Division-Damoh in Sessions Trial No.30/2019 vide impugned judgment dated 30.11.2024 for the offence under Sections 148, 302 read with Section 149, 323 read with Section 149 of the I.P.C cannot be faulted with. Therefore, the conviction and sentence against the appellants namely appellants Chandu @ Kaushalendra Singh, Govind Singh, Golu @ Deependra Thakur, Shriram Sharma, Amjad Pathan @ Bootha, Lokesh Singh, Indrapal Patel is hereby affirmed and it is directed that these appellants shall undergo remaining part of their jail sentence.

96. As far as the other accused persons, namely, Raja Don @ Rajendra, Balveer Thakur, Aanish Khan S/o.Guddu Khan, Monu Tantuvay, Anish Pathan S/o.Ajim Pathan, Sohail Khan S/o.Mohammad Haneef @ Hannu Pathan, Shahrukh Khan, Bhansingh Parihar, Akash Thakur, Sandeep Tomar, Khoobbchand @ Nanna, Vikram Singh, Sukendra Athiya, Mazhar Khan, Kishan Singh, Sohail Khan S/o.Sabbbir Khan, Phuklu, Shailendra Singh Parihar @ Shailu are concerned, in the FIR (Exhibit P/1), there is no mention of other persons being aggressors or part of the unlawful assembly. We are conscious that the FIR (Exhibit P/1) is not an encyclopaedia but we



are also conscious that absence of names of the other accused persons or their physical description and then subsequently roping them in, on account of political enmity, if allowed, to stand, then it will, amount to travesty of justice.

97. It is also true that even Somesh Chourasia (PW.2) while recording the dying declaration had taken names of the above seven accused persons. In his cross-examination, he clarified that the name of Arvind Singh has been wrongly mentioned under a mistaken notion and, therefore, when these two documents are taken into consideration then conviction of the remaining accused persons, namely, Raja Don @ Rajendra, Balveer Thakur, Aanish Khan S/o.Guddu Khan, Monu Tantuvay, Anish Pathan S/o.Ajim Pathan, Sohail Khan S/o.Mohammad Haneef @ Hannu Pathan, Shahrukh Khan, Bhansingh Parihar, Akash Thakur, Sandeep Tomar, Khoobbchand @ Nanna, Vikram Singh, Sukendra Athiya, Mazhar Khan, Kishan Singh, Sohail Khan S/o.Sabbir Khan, Phuklu, Shailendra Singh Parihar @ Shailu, cannot be sustained in the eyes of law and the benefit of doubt needs to be accorded in their favour. They be set at liberty forthwith if not required in any other case.

98. Resultantly, Criminal Appeal No.14282/2024, Criminal Appeal No.14287/2024, Criminal Appeal No.23/2025, Criminal Appeal



No.42/2025, Criminal Appeal No.213/2025, Criminal Appeal No.219/2025, Criminal Appeal No.363/2025, Criminal Appeal No.1196/2025 are allowed. Criminal Appeal No.13937/2024 as regards the appellants Sohail Khan S/o.Sabbir Khan, Mazhar Khan, Shahrukh Khan & Khoobbchand @ Nanna is allowed and as regards the appellants Shriram Sharma, Amjad Pathan @ Bootha & Indrapal Patel is dismissed. Criminal Appeal No.297/2025 as regards the appellants Bhansingh Parihar, Akash Thakur, Sandeep Tomar, Sukendra Athiya & Phuklu is allowed and as regards the appellants Govind Singh, Golu @ Deependra Thakur & Lokesh Singh is dismissed. Criminal Appeal No.1087/2025 filed by the appellant Chandu @ Kaushalendra Singh is dismissed.

99. As far as Criminal Appeal No.2202/2025 & Criminal Revision No.995/2025 filed by the complainant party seeking enhancement of sentence to death penalty are concerned, there is no material on record to concede their demand. There is no criminal history brought to our notice. Even learned Senior Counsel Shri Anil Khare has failed to draw a comparative statement of aggravating and mitigating circumstances to point out that how aggravating circumstances outweigh the mitigating circumstances so to show indulgence in the matter of modification of sentence and, therefore, Criminal Appeal No.2202/2025 & Criminal



Revision No.995/2025 filed at the behest of the complainant party deserve to and are hereby dismissed.

100. Let record of the Trial Court be sent back.

(Vivek Agarwal)
Judge

(Ramkumar Choubey)
Judge

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