2026:AHC:103395-DB

A.F.R.
Reserved

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1978 of 2011

Krishan Pal @ Lala and Anr.

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Counsel for Appellant(s)	:	Ajay Sengar, Amar Nath Singh, Barun Pratap Singh, Jaiprakash Narain Raj, Prashant Vyas, Rajiv Lochan Shukla, S.p. Sharma, Sanjay Singh, Shagun K. Saran, Surendra Singh, Tarun Pratap Singh, Vijay Singh Sengar, Vinod Kumar
Counsel for Respondent(s)	:	Amit Misra, Govt. Advocate, Harish Chandra Mishra, Mahesh Chandra Chaturvedi (senior Adv.), Suresh C. Dwivedi, Vikas Tiwari, Vimlendu Tripathi

---

WITH

CRIMINAL APPEAL No. - 1821 of 2011

Bahadur

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Counsel for Appellant(s)	:	Devesh Kumar, Prashant Vyas, Rajiv Lochan Shukla, Rajrshi Gupta, Rizwan Ahamad, Vidhu Bhushan Singh
Counsel for Respondent(s)	:	Amit Misra, Govt. Advocate

WITH

CRIMINAL APPEAL No. - 1868 of 2011

Udham Singh Alias Matauli

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Counsel for Appellant(s)	:	Prashant Vyas, Rai Sahab Yadav, Rajiv Lochan Shukla, Rajrshi Gupta, Rizwan Ahamad, S.m.g. Asghar, V.m. Zaidi
Counsel for Respondent(s)	:	Amit Misra, Govt. Advocate

WITH

CRIMINAL APPEAL No. - 2004 of 2011

Raghunath Alias Batauli

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Counsel for Appellant(s)	:	Prashant Vyas, Rai Sahab Yadav, Rajiv Lochan Shukla, Rajrshi Gupta, Rizwan Ahamad, S.m.g. Asghar, V.m. Zaidi
Counsel for Respondent(s)	:	Amit Misra, Govt. Advocate

WITH

CRIMINAL APPEAL No. - 2195 of 2011

Ranjeet

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Counsel for Appellant(s)	:	Prashant Vyas, Rai Sahab Yadav, Rajiv Lochan Shukla, Rajrshi Gupta, Rizwan Ahamad, S.m.g. Asghar, V.m. Zaidi
Counsel for Respondent(s)	:	Amit Misra, Govt. Advocate

Court No.43

HON'BLE SALIL KUMAR RAI, J.
HON'BLE DR. AJAY KUMAR-II, J.

(Per : DR. AJAY KUMAR-II, J.)

1. The validity and sustainability of the judgment and order dated 11.03.2011 passed by Additional Sessions Judge, Court No.1, Jhansi in Sessions Trial No.282 of 2008 (State Vs. Rishipal and others) arising out of Case Crime No.1223 of 2007 under Sections 147, 148, 149, 302, 323, 307 IPC and Section 7 Criminal Law Amendment Act, Police Station Nawabad, District Jhansi has been challenged by way of instant five connected criminal appeals, whereby the appellants Krishna Pal alias Lala, Rishi Pal, Raghunath, Ranjeet, Bahadur and Udham were convicted and sentenced to undergo imprisonment for life under Section 302/149 IPC with a fine of Rs.10,000/- each, in default thereof, to further undergo one year additional rigorous imprisonment, to undergo one year rigorous imprisonment under Section 323/149 IPC, to undergo one year rigorous imprisonment under Section 148 IPC and to undergo six months rigorous

imprisonment under Section 7 Criminal Law Amendment Act. All sentences were directed to run concurrently.

2. Since these criminal appeals arise out of same case number and judgment, therefore, all these appeals have been heard together and are being decided by a common judgment. Criminal Appeal No.1978 of 2011 is being treated as a leading case.

3. The prosecution story, in brief, finds place in the F.I.R., which was lodged on the basis of the written report Ex.Ka.-1 given by informant Manoj Kumar, wherein it was narrated that on 01.07.2007 at 10:00 P.M., the informant Manoj Kumar son of Ramashanker, resident of Mustra Village, P.S. Nawabad, District Jhansi with his brothers Pushparaj alias Pushpendra, Ashok and informant's cousin Jagdish, informant's mother Bitti Bai and wife of Pushparaj namely, Vimla Devi were watching T.V. in their room after having dinner and at that moment they heard knocking at the door of the informant's house, to which all of them went towards the door and as soon as the brother of the informant Pushparaj opened the door, they saw Krishan Pal alias Lala son of Bhagwandas, Rishi Pal son of Sher Singh of village Mairi and Raghunath alias Batauli son of Gajraj from the informant's village were standing there, armed with Guns and Rifles while Ranjeet son of Gajraj was armed with an axe, Bahadur son of Betali was armed with a spear and Udham son of Kamal Singh was carrying a knife. All of them with a common object came to the door and threatened Pushparaj to kill him for pursuing the case filed against them by Rajesh of village Meri. Thereafter, all the accused started assaulting the brother of the informant with butts of weapons, axe and spear. When the informant's side tried

to save him, the accused also made assault upon them and pelted stones also. Hearing the noise, people from the neighbourhood reached there, on which the accused opened several rounds of fire to scare them, which resulted into chaos. The people from the neighbourhood ran away and hid themselves. In this incident, the informant's mother Bitti and his sister-in-law / bhabhi Vimla also sustained injuries. The brother of the informant Pushparaj alias Pushpendra was brought in a critical condition and was admitted to the Medical College, Jhansi where he is undergoing treatment. On the gathering of the villagers and the raising of noise, the accused persons fled away from the spot, while firing shots. The incident was witnessed by the villagers and they also identified the accused persons in the electric light.

4. After the incident, informant Manoj Kumar brought his brother Pushpraj to Medical College, Jhansi where Pushpraj was medico legally examined at 1:15 A.M. on 02.07.2007. Thereafter, Manoj Kumar moved a written report / tehrir Ex.Ka.-1 in the Police Station Nawabad, District Jhansi on which first information report bearing Case Crime No.1223 of 2007 was registered at 1:35 A.M. on 02.07.2007. Informant / injured Manoj Kumar was also medico legally examined by Dr. Harish Kumar at 1:50 A.M. on 02.07.2007 in Medical College, Jhansi. During the course of treatment, injured Pushpraj alias Pushpendra succumbed to his injuries at 5:10 A.M. on 02.07.2007. Thereafter, aforesaid first information report was converted under section 302 IPC. After registration of the case, "*chitthi majroobi*" (letter for medical examination of injured) were prepared at the concerned police station for injured Bitti Bai and Vimla Devi.

Smt. Bitti Bai was medico legally examined at 9:40 A.M. on 02.07.2007 and injured Vimala Devi was examined at 10:00 A.M. on the same day by Dr. Narendra Kumar.

5. When Pushpraj alias Pushpendra, the brother of the informant was brought in a critical condition and was admitted to the Medical College, Jhansi, he was medically examined by Dr. Harish Kumar on 02.07.2007 at 1:15 A.M., who found following injuries on his person :

(i) Lacerated wound measuring 5 cm. x 1 cm. bone deep on the left side of the upper part of forehead. Blood was oozing.
(ii) Multiple contusion over back of left shoulder of size 0.5 cm. x 0.5 cm. x muscle deep. X-ray was advised. Swelling was present.
(iii) Lacerated wound 0.5 cm. x 0.5 cm. x bone deep on right forearm on lateral aspect 5 cm. above to elbow joint. Fresh bleeding and swelling was present. X-ray was advised.
(iv) Traumatic swelling in left forearm just above to elbow joint. X-ray was advised.
(v) Multiple contusions of size 0.5 cm. x 0.5 cm. on dorsal aspect of left palm with swelling. Wound was red. X-ray was advised.
(vi) Lacerated wound on the front of right leg 6 cm. x 0.5 cm. x bone deep, 11 cm. below the knee-cap. Fresh bleeding was present. X-ray was advised.
(vii) Lacerated wound 0.5 cm. x 0.5 cm. x bone deep on the inner side of left ankle. Fresh bleeding and swelling was present. X-ray was advised.

The doctor opined that all injuries were fresh and caused by some blunt object. The medical report of injured Pushpraj alias Pushpendra is Ex.Ka.6.

6. Within 4 hours of preparation of the aforesaid injury report, the injured, Pushpraj alias Pushpendra, died on the very same day, i.e., 02.07.2007 at 5:10 P.M. The autopsy of the deceased was performed by Dr. Raj Narayan on 02.07.2007 at 3:00 P.M., who found following ante mortem injuries on the person of the deceased Pushpraj alias Pushpendra :

(i) Stitched wound 6 cm. in length horizontally situated present over left side of forehead 5 cm. from left eyebrow. ***6 stitches and clotted blood present****.*

(ii) Contused swelling 18 x 3 cm. present over right side of middle of chest.
(iii) Lacerated wound 3 cm. x 2 cm. present on outer surface of middle of right arm. ***Broken bone was visible and clotted blood was present.***
(iv) Stitched wound of 5 cm. of length present on front of right leg at middle vertically situated ***5 stitches present. Clotted blood present.***
(v) Contusion present around left leg at middle.
(vi) Stitched wound of 3 cm. present on medial side of left ankle. ***3 stitches present****.*
(vii) Stitched wound of 4 cm. present on right sole at middle ***3 stitches present****.*
(viii) Abrasion present on the back on the area of 15 cm. x 10 cm. on left side of back.
(ix) Abrasion present on the outer surface of upper part of left thigh measuring 26 cm. x 8 cm.
(x) Contusion around the left elbow.
Clotted blood was present over the injuries.

On internal examination, the right arm bone, left arm bone and elbow joint were found to be fractured. Right leg bone was also found fractured, which were corresponding with the aforesaid injuries.

On further internal examination, right side 5th & 6th ribs of the deceased were found fractured and the broken ribs were found inserted in the right lung. Right side of thoracic cavity was found filled with clotted blood. Trachea was also found filled with clotted blood. Right lung was found to be torn on anterior surface and clotted blood was also present there. Pleura was also found to be torn on right side. As per postmortem report Ex.Ka.-4, the deceased died at Medical College on 02.07.2007 at 5:10 A.M.

As per opinion of the Doctor, the cause of death of the deceased was due to shock and haemorrhage, as a result of antemortem injuries.

7. In this incident, the informant Manoj Kumar, his sister-in-law / bhabhi Vimla Devi (wife of the deceased Pushpraj alias Pushpendra) and his mother Bitti Bai also sustained injuries.

8. The injuries inflicted on the body of the injured Bitti Bai were examined by Dr. Narendra Kumar on 02.07.2007 at 9:40 A.M. at Medical College, Jhansi, who noted following injuries on her person :

(i) Lacerated wound of 1 cm. X 0.5 cm. with blood clot over posterior aspect of left wrist skin deep with swelling of 4.5 cm. X 4.5 cm. On posterior aspect of left hand. X-ray was advised.

(ii) Traumatic reddish swelling of 5 cm. around right ankle with tenderness. X-ray was advised.

As per doctor's opinion, both injuries were caused by hard and blunt object.

9. Dr. Narendra Kumar also medically examined the injured Vimla Devi on the same day at 10:00 A.M. and found injuries on her person as under :

(i) Traumatic reddish swelling of 5 cm. x 3.5 cm. at posterior medial aspect of right forearm. Tenderness was present. X-ray was advised.

(ii) Traumatic reddish swelling of 4.5 cm. X 4 cm. at posterior aspect of right hand. Tenderness was present. X-ray was advised.

(iii) Abrasion of 1 cm. x 05. cm. with clotted blood at anterior aspect of left knee.

As noted by doctor, injuries no. (i) & (ii) were caused by hard and blunt object and injury no. (iii) was caused by friction of hard and rough surface and was simple in nature.

10. Informant of the case Manoj Kumar was also examined by Dr. Harish Kumar on 02.07.2007 at 01:50 A.M., who noted following injury on his person :

(i) Traumatic swelling at left arm above the elbow joint. There was no visible external injury. X-ray was advised.

The Doctor opined that injury was fresh and caused by some blunt object. The injury was kept under observation.

11. Sub-Inspector Salim Ali P.W.9 started the investigation and he, after recording the statement of informant Manoj Kumar, visited the spot and on the pointing out of Smt. Bitti Bai, prepared the site plan Ex.Ka.-9. He also recovered an empty cartridge of 315 bore from the spot as well as one green-coloured used lungi and one light yellow-coloured used towel, both having blood stains and prepared the recovery memo Ex.Ka.10. Thereafter, he recorded the statements of some other witnesses. After receiving the information of the death of the injured, case was converted under section 302 IPC. He also prepared the inquest report Ex.Ka.-11 of the deceased. The then S.H.O. Ashwani Kumar Sinha P.W.10 took over the investigation and recorded the statement of witnesses of inquest and obtained non-bailable warrants and processes under section 82 Cr.P.C. against accused Udham Singh and Krishna Pal alias Lala. After the transfer of Inspector Ashwani Kumar Sinha P.W.10, Inspector Gaya Prasad Gautam P.W.11 took over the investigation and sent the recovered items to Forensic Science Laboratory. After recording the statements of some witnesses, he completed the investigation against Rishipal, Raghunath alias Batauli, Ranjeet, Bahadur and Udham Singh and submitted charge-sheet no.327 / 07 Ex.Ka.-18 under Sections 147, 148, 149, 307, 302 IPC and Section 7 Criminal Law Amendment Act and investigation against accused Krishna Pal alias Lala was kept pending. After

his transfer, next S.H.O. Devi Prasad Shukla concluded the investigation against accused Krishna Pal alias Lala and since accused Krishna Pal alias Lala was found absconding, charge-sheet against him was submitted by the police in '*Mafroori*' (abscondence).

12. The learned Magistrate took congnizance upon the charge-sheets and committed the case to Court of Sessions, as prima facie charge was for the Sessions triable offence.

13. Accused appeared before the Court of Session and after hearing both the parties, charges were framed against them under Sections 148, 323/149, 302/149 IPC and Section 7 Criminal Law Amendment Act. The accused persons denied the charges levelled against them, pleaded not guilty and claimed to be tried.

14. To bring home the charges against the accused, the prosecution produced in all eleven witnesses in oral evidence. They are P.W.1 Manoj Kumar (brother of the deceased and the informant / injured), P.W.2 Vimla Devi (wife of deceased / injured), P.W.3 Dr. Narendra Kumar (Doctor, who conducted medico legal examination of Bitti Bai and Vimla Devi and prepared their injury reports), P.W.4 Dr. Raj Narayan (autopsy surgeon, who conducted postmortem of the deceased and prepared the autopsy report), P.W.5 C.C. Sher Singh (who prepared Chik F.I.R.), P.W.6 Dr. Harish Kumar (Doctor, who conducted medico legal examination of deceased and informant), P.W.7 C.C. Ram Magan Singh (who made entry of registration of F.I.R. in G.D. and thereafter made entry of addition of Section 302 I.P.C. in G.D.), P.W.8 Daftari Bhagwan Das (who brought

original injury register), P.W.9 S.I. Salim Ali (first Investigating Officer), P.W.10 S.H.O. Ashwani Kumar Sinha (second Investigating Officer) and P.W.11 Inspector Gaya Prasad (third Investigating Officer).

15. In documentary evidence, written report / Tehrir Ex.Ka.-1, injury report of injured Bitti Bai Ex.Ka.-2, injury report of injured Vimla Devi Ex.Ka.-3, Postmortem Report of deceased Ex.Ka.-4, Chik F.I.R. Ex.Ka.-5, injury report of injured Pushpraj Ex.Ka.-6, injury report of informant Manoj Kumar Ex.Ka.-17, copy of the G.D. Entry Ex.Ka-7, G.D. Entry relating to death of the deceased Pushpraj and addition of Section 302 I.P.C. in crime Ex.Ka.-8, Site Plan Ex.Ka.-9, Seizure Memo of empty cartridges / clothings of deceased Pushpraj Ex.Ka.-10, Inquest Report Ex.Ka.-11, letter related to postmortem of the deceased of R.I. Ex.Ka.-12, letter to C.M.O. Ex.Ka.13, Police Papers Ex.Ka.-13, Ex.Ka.-14, Photo nash Ex.Ka.-15, sample seal Ex.Ka.-16, Report of Forensic Science Laboratory Ex.Ka.-17, charge-sheet against accused Rishi Pal, Raghunath, Ranjeet, Bahadur and Udham Ex.Ka.-18 and charge-sheet against accused Krishan Pal Ex.Ka.-19 have been filed and proved. One green-coloured used lungi of deceased, one used light yellow-coloured towel of the deceased and one empty cartridge of 315 bore recovered from spot have been produced and proved as Material Objects 2, 3 & 4 respectively.

16. After conclusion of evidence, statements of accused persons were recorded under Section 313 Cr.P.C., in which they pleaded that F.I.R. in this case was lodged belatedly. Motive to commit the crime has not been proved by the prosecution. They

further pleaded that they belong to different villages and their common object to commit the incident has also not been proved by prosecution. Earlier, a case was registered against the informant Manoj Kumar, his real brothers Ashok and Pushpraj and their father Ramashanker relating to murder of one Ram Swaroop and accused were witnesses of that case and they also gave testimony in the said murder case, due to which there was enmity going on between the parties. Political rivalry and pending litigations between the parties were also pleaded by the accused. It was also stated that the deceased of this case Pushpraj was a man of criminal antecedents and several criminal cases were registered against him, therefore, some unknown persons killed him and in order to create pressure upon them in the case of murder of Ramswaroop, they have been falsely roped in this case.

17. Trial Court, having heard learned counsel for parties and going through entire record, vide impugned judgment and order, convicted and sentenced the accused-appellants as above. Hence, feeling aggrieved with said judgment and order, present accused-appellants have filed these criminal appeals against their conviction.

18. Heard Sri G.S. Chaturvedi, learned senior counsel assisted by Sri Prashant Vyas and Sri J.P.N. Raj, learned counsel for the appellants and Sri Vimlendu Tripathi, learned counsel for the complainant / informant and Sri Vikas Goswami, learned AGA-I for the State in Criminal Appeal No. 1978 of 2011 (Krishna Pal @ Lala and another vs. State of U.P.). We have also heard Sri Amit Kumar Pandey holding brief of Sri Rajrshi Gupta, learned

counsel for the appellants and Sri Vimlendu Tripathi alongwith Sri Gaurang Dwivedi holding brief of Sri Suresh Chand Dwivedi, learned counsel for the complainant / informant and Sri Vikas Goswami, learned AGA-I for the State in Criminal Appeal Nos. 1821 of 2011, 1868 of 2011, 2004 of 2011 and 2195 of 2011.

19. Assailing the impugned judgment on various grounds, learned counsel for the appellants have submitted that as per prosecution story, all the accused were armed with deadly weapons in the alleged incident, however, no incised or punctured wound or gunshot injury is found on the body of the deceased. Even, no blood has been found on the street, whereas as per prosecution witnesses, the alleged incident had happened at the place of alleged occurrence. The prosecution has withheld material witnesses namely Ashok (real brother of the deceased), Smt. Bitti Bai (mother of the deceased), Rama Shanker (father of the deceased), Jagdish (maternal brother of the deceased). Due to previous enmity, all the accused have been falsely implicated. The prosecution has failed to prove the place and manner of incident. There is no injury on the vital part of the body of the deceased or any other injured and that too of any deadly weapon like rifle or knife or axe. Lastly, learned counsels for the appellants argued that act, if any, is covered under section 304 IPC and, therefore, the conviction and sentence of the accused is liable to be converted and reduced accordingly.

20. On the other hand, learned A.G.A. for the State and learned counsel for the complainant while vehemently opposing the submissions made by the learned counsel for the appellants, have contended that the prosecution has successfully proved its case

beyond reasonable doubt. The evidence of prosecution witnesses is trustworthy and reliable and as per the established legal principles, the conviction can always be successfully recorded on the basis of the evidence of eyewitnesses. While going through the evidence on record, it cannot be said that the offence under Section 302/149 IPC is not made out against the appellants. The learned trial Court has not committed any error of law or of fact, in convicting and sentencing the accused-appellants under Section 302/149 IPC. It is a case of cold-blooded murder of a young man and all the relevant evidence to record the conviction of the appellants is available on record. The false implication theory does not find any basis in the light of the evidence on record. There is no merit in the appeal and learned A.G.A. as well as learned counsel for the complainant thus urged for the dismissal of appeal.

21. In the light of above arguments, following questions arises for consideration in present appeal :

(i) Whether prosecution could be said to have proved its case against the appellants - convicts beyond reasonable doubt ?

(ii) Whether non-examination of other witnesses present on spot namely, injured Bitti Bai, deceased's father Ramashanker and deceased's brothers Ashok and Jagdish is fatal to prosecution and an adverse inference is to be drawn against the prosecution or not ?

(iii) Whether the present case is a case of culpable homicide not amounting to murder and, therefore, conviction / sentence of the appellants – convicts is liable to be converted / reduced under Section 304 IPC ?

ANALYSIS

Oral Evidence on Record

22. The prosecution has examined informant – injured Manoj Kumar as P.W.1 and injured Vimla Devi as P.W.2. Both of these witnesses are injured witnesses and on the strength of their depositions, the learned trial Court has decided the case against appellants. Therefore, evaluation of deposition of these two witnesses will be dealt with later on in this judgment.

23. Dr. Narendra Kumar P.W.3 medico legally examined injured Bitti Bai and Vimla on 02.07.2007 at 9:45 A.M. and 10:00 A.M. respectively in Medical College, Jhansi and prepared their injury reports, which have been proved by this witness as Ex.Ka.-2 and Ex.Ka.-3. The injuries noted by this doctor on the body of Bitti Bai and Vimla have already been mentioned in paragraph 8 and 9 of this judgment. In the opinion of this doctor, all the injuries sustained by injured Bitti Bai might have been caused by some hard and blunt object and injuries no.1 and 2 sustained by injured Vimla might have been caused by some hard and blunt object, however, injury no.3 might have been caused by friction from some hard and blunt surface. This doctor opined that duration of injuries of both the injured was 6 to 24 hours. Both the injured have been medico legally examined in the morning of 02.07.2007, therefore, as per deposition of this witness, the injured could have sustained those injuries on 01.07.2007 at 10:00 A.M.

24. Dr. Raj Narayan P.W.4 is an autopsy surgeon, who has conducted the postmortem examination of the deceased Pushparaj alias Pushpendra on 02.07.2007 at 3:00 P.M. The

antemortem injuries noted by this doctor in his postmortem report have already been mentioned in paragraph 6 of this judgment. The injury no.1 noted by this doctor to be a stitched wound of 6 cm. in length, situated over left side of forehead, 5 cm. from left eyebrow, having six stitches, with clotted blood present. Likewise injuries no.4, 6 and 7 noted by this doctor to be of stitched wounds having stitches on it, reveals that the deceased Pushparaj was provided some medical treatment promptly. A total of ten antemortem injuries were noted by this autopsy surgeon and on internal examination, this autopsy surgeon found that 5th and 6th rib of the deceased were broken and were found piercing the right lung. Blood was found to be deposited in chest cavity as well as in trachea. Both right and left humerus bones, left elbow joint and right tibia were also found to be fractured corresponding to antemortem injuries found on the body of the deceased. Right lung anterior surface was found to be torn with clotted blood present therein. From the body of the deceased, one grey-coloured underwear was recovered. This witness has proved the postmortem report of the deceased as Ex.Ka.-4. He has specifically stated that the deceased had died at 5:10 A.M. on 02.07.2007 in Maharani Laxmi Bai Medical College Hospital, Jhansi. On his cross-examination, this witness stated that no bone was found broken below injury no.1 and injuries no.3, 4, 5, 6, 7, 8, 9 & 10 were found on non-vital parts of the body of the deceased and injury no.2 could also have been caused if deceased falls on some hard object. However, from his deposition and from perusal of the postmortem report Ex.Ka.-4, it is clear that the deceased was mercilessly beaten resulting into fractures of his

right and left humerus bones, left elbow joint, right tibia, 5th and 6th ribs. He was so mercilessly beaten that his 5th and 6th ribs after being broken, entered into the right lung, thereby causing blood to be stored in the right side of the thoracic cavity. Even deceased's right pleura was found torn and trachea was also found filled with clotted blood. Anterior surface of the deceased's right lung was also found torn and clotted blood was also found inside the same. **Therefore, the death of the deceased is a homicidal death**.

25. Constable 1078 Sher Singh P.W.5, was the scribe of first information report, who is a formal witness and has proved the first information report as Ex.Ka.-5.

26. Dr. Harish Kumar P.W.6 medico legally examined Pushpraj alias Pushpendra at 1:15 A.M. on 02.07.2007 and prepared his injury report, which has been proved by this witness as Ex.Ka.-6. This witness found a total of seven injuries on the body of the deceased which have already been mentioned in paragraph 5 of this judgment. He found a total of five lacerated wounds and in his opinion, the injuries found on the body of Pushpraj have been caused at 10:00 P.M. on 01.07.2007. This witness has specifically stated that all injuries noted by him could have been caused by some blunt object like the handle of the axe, stick, butt of gun and blunt side of axe. **This witness has also stated that injuries no.1 and 2 found on the body of the deceased were on his vital part**. It is important to observe here that this doctor found multiple contusions over his left side back, on which swelling was also present. This witness was cross-examined and in his cross-examination he stated that injury no.1 was simple in nature,

however, injury no.2 was kept under observation. He further stated that there was no incised wound on the body of the injured, therefore, no injury from sharp edged portion of axe or spear or knife could have been caused. He further denied the suggestion of defence that no injury could have been caused from Gun.

27. This witness was again recalled on the request of prosecution and has deposed that in the injury report of injured / informant Manoj Kumar, which is Ex.Ka.-17, he found only one injury as a traumatic swelling on left arm above the elbow joint. He advised X-ray of the aforesaid injury. However, no supplementary report of this injury has been proved by the prosecution. In the opinion of the doctor, this injury has been caused at 10:00 P.M. on 01.07.2007. Injured Manoj Kumar was medico legally examined at 1:50 A.M. on 02.07.2007 in Medical College, Jhansi and this witness found the aforesaid injury as a fresh injury which could have been caused during six hours. Therefore, informant Manoj Kumar could have been injured on 01.07.2007 at 10:00 P.M.

28. Constable Clerk Ram Magan Singh P.W.7 is a formal witness, who has made an entry in G.D. No.2 at 1:35 A.M., regarding registration of first information report and the aforesaid G.D. has been proved by this witness as Ex.Ka.-7. This witness has also proved G.D. No.8 time 5:45 A.M. dated 02.07.2007 whereby Section 302 IPC was added in the aforesaid crime number. The aforesaid *tarmeeme* G.D. has been proved by this witness as Ex.Ka.-8.

29. Daftari Bhagwan Das Sharma P.W.8 is a formal witness, who brought original injury register regarding injured Manoj and

has certified that photocopy available on record is correct as per the original brought by him. The original injury report of injured Manoj was available in said injury register at page 89 on OPD No.921.

30. Sub-Inspector Salim Ali P.W.9 was the first Investigating Officer, who started the investigation and reached Medical College, Jhansi where he found that Pushpraj was being treated by doctors and he was not in a position to speak. He recorded the statement of informant Manoj Kumar who was present in the Emergency Ward. Thereafter, he prepared the site plan on the pointing out of injured Bitti Bai. Site plan has been proved by this witness as Ex.Ka.-9. He also recovered an empty cartridge of 315 bore from the spot, as well as one green-coloured used lungi and one light yellow-coloured used towel, both were having blood stains and accordingly prepared recovery memo, which has been proved by this witness as Ex.Ka.10. When he returned to police post, he recorded the entry of G.D. No.8 time 5:45 A.M. dated 02.07.2007 in C.D., whereupon the case was converted from section 307 IPC to section 302 IPC and, therefore, he requested S.H.O. for further investigation by either S.H.O. or someone else under his direction. He also prepared the inquest report of the deceased Pushpraj, which has been proved by this witness as Ex.Ka.-11. Other papers related to inquest report have been proved by this witness as Ex.Ka.-12 to Ex.Ka.-16. He also proved one green-coloured used lungi, one light yellow-coloured used towel and an empty cartridge as Material Exbs.2, 3 & 4.

31. The then Incharge Inspector / S.H.O. Ashwani Kumar Sinha has been examined as P.W.10, who took over the

investigation from first Investigating Officer Salim Ali, and recorded the statement of witnesses of inquest and also recorded statements of accused Raghunath Singh, Ranjeet Singh, Bahadur and Rishipal Yadav and obtained non-bailable warrants and processes under section 82 Cr.P.C. against accused Udham Singh and Krishna Pal alias Lala. He recorded the statement of Udham Singh and was searching accused Krishna Pal alias Lala. Thereafter he was transferred to district Jalaun.

32. Inspector Gaya Prasad Gautam P.W.11 was the last Investigating Officer, who took over the investigation after P.W.10, and sent the recovered items to Forensic Science Laboratory for examination and F.S.L. Report has been proved by this witness as Ex.Ka.-17. This witness also recorded the statement of Dr. Raj Narayan and after completing the investigation he filed charge-sheet no.327/07 against Rishipal, Raghunath alias Batauli, Ranjeet, Bahadur and Udham Singh and has proved the same as Ex.Ka.-18. However, the arrest of accused Krishna Pal alias Lala was still remaining. After his transfer, next S.H.O. Devi Prasad Shukla concluded the investigation against accused Krishna Pal alias Lala and since accused Krishna Pal alias Lala was found absconding, charge-sheet against him was submitted by this witness in '*Mafroori*' (abscondence), which has been proved by this witness (P.W.11) in secondary evidence as Ex.Ka.-19.

33. A perusal of Forensic Science Laboratory Report Ex.Ka.-17 reveals that lungi and towel of deceased Pushpraj, which were recovered from murder spot and underwear recovered from the body of the deceased, along with one empty cartridge recovered

from the spot, all were sent to Forensic Science Laboratory for examination. As per aforesaid Forensic Science Laboratory Report, human blood was found on the aforesaid lungi, towel and underwear of the deceased.

(i) Whether prosecution could be said to have proved it's case against the appellants - convicts beyond reasonable doubt ?

34. In the present case, prosecution has examined injured – informant Manoj Kumar as P.W.1 and injured Vimla Devi as P.W.2 and on the strength of depositions of these two witnesses, the trial Court has convicted all the appellants. Therefore, in these criminal appeals against conviction we need to appreciate the oral evidence of these two witnesses.

35. On the point of appreciation of oral evidence of a witness the Apex Court in **Balu Sudam Khalde v. State of Maharashtra, (2023) 13 SCC 365** held the law in the following words :

> "***Appreciation of oral evidence***
>
> ***25.*** *The appreciation of ocular evidence is a hard task. There is no fixed or strait jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:*
>
> *"I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.*
>
> *II. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.*

III. When eyewitness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction.

Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness."

[See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat [Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217 : 1983 SCC (Cri) 728 : AIR 1983 SC 753] , Leela Ram v. State of Haryana [Leela Ram v. State of Haryana, (1999) 9 SCC 525 : 2000 SCC (Cri) 222 : AIR 1999 SC 3717] and Tahsildar Singh v. State of U.P. [Tahsildar Singh v. State of U.P., 1959 SCC OnLine SC 17 : AIR 1959 SC 1012]

26. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

26.2. Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

26.6. *The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.*

27. *In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their*

statements, will have a bearing upon the value which a court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.”

36. The Hon’ble Supreme Court in the case of **Bhagwan Jagannath Markad v. State of Maharashtra, (2016) 10 SCC 537** explained that :

> ***“ 19.*** *While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent statement. Section 145 of the Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the previous statement which is to be used for contradiction. The former statement should have the effect of discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not every discrepancy which affects the creditworthiness and the trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting the credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted [Leela Ram v. State of Haryana, (1999) 9 SCC 525, pp. 532-35, paras 9-13 : 2000 SCC (Cri) 222] . Want of independent witnesses or unusual behaviour of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinised to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a “partisan” or “interested” witness may lead to failure of justice. It is well known that principle “falsus in uno, falsus in omnibus” has no general acceptability [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381, pp. 392-93, para 15 : 2003 SCC (Cri) 32] . On the same evidence, some accused persons may be acquitted while others may be convicted, depending upon the nature of the offence. The court can differentiate the accused who is acquitted from those who*

are convicted. A witness may be untruthful in some aspects but the other part of the evidence may be worthy of acceptance. Discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the normal discrepancy does not affect the credibility of a witness.

20. *Exaggerated to the rule of benefit of doubt can result in miscarriage of justice. Letting the guilty escape is not doing justice. A Judge presides over the trial not only to ensure that no innocent is punished but also to see that guilty does not escape. [Gangadhar Behera case, (2002) 8 SCC 381, p. 394, para 17]*

31.*As already observed, the discrepancies of trivial nature could not be the basis of rejecting the evidence of injured eyewitnesses nor non-examination of some of the witnesses be a ground to reject the prosecution case when injured eyewitnesses were examined.*

32.*We may also refer to the judgment of this Court in Masalti v. State of U.P. [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] to the effect that the evidence of interested partisan witnesses though required to be carefully weighed, the same could not be discredited mechanically. When a crowd of unlawful assembly commits an offence, it is often not possible to accurately describe the part played by each of the assailants. Though the appreciation of evidence in such cases may be a difficult task, the court has to perform its duty of sifting the evidence carefully*.

37. The Hon'ble Apex Court in **State of M.P. v. Balveer Singh, (2025) 8 SCC 545** has held that when eyewitness are examined at length, it is quite possible for them to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.The role of courts in such circumstances assumes greater importance and it is expected of the courts to deal with cases like one in hand, in a more realistic manner and not allow the criminals to go scot-free on account of procedural technicalities, perfunctory investigation or insignificant lacunas in the evidence as otherwise serious crimes would go unpunished.

38. In the light of above well settled legal position regarding appreciation of oral evidence, we shall now be evaluating the depositions of injured - informant Manoj Kumar P.W.1 and injured Vimla Devi P.W.2. Manoj Kujmar P.W.1 has stated in his examination-in-chief that on 01.07.2007 at 10:00 P.M., his brother Pushpraj alias Pushpendra, he himself, his brothers Ashok and Jagdish, his mother Bitti Bai and Pushpraj's wife were all watching television inside the room after having taken their dinner. At that time, on hearing the sound of knocking at the door of their house, everyone went towards the door. His brother Pushpraj opened the door and as soon as he opened it, Krishan Pal alias Lala, Rishi Pal and Raghunath alias Batauli carrying rifles in their hands, Ranjeet carrying an axe in his hand, Bahadur having a spear in his hand, Udham Singh having a knife in his hand, all of them simultaneously threatened his brother that why he is doing pairvee / pursuing the case against them filed on behalf of one Rajesh of village Mairi and threatened him to kill. Thereafter, they all collectively assaulted him with an intention to kill. When informant and his family members tried to rescue Pusphraj, then they all were also beaten by the accused. **They all were attacked with the butt of rifle, axe, spear etc**. On hearing their screams, people from the surrounding area arrived on the spot, whereupon accused fired several rounds of fire causing a stampede on the spot. In the incident, informant himself, his mother Bitti Bai and bhabhi Vimla Devi sustained injuries. His brother Pushpraj sustained serious injuries and was brought to Medical College in a critical condition, where he was under treatment. The accused have been identified in the electric light.

This witness proved the written report / tehrir as Ex.Ka.-1, which is stated to be in his handwriting bearing his signature.

39. Examination-in-chief of P.W.1 was recorded on 23.03.2009 and only after a very brief cross-examination, an adjournment application was moved by the defence on which the case was adjourned. Thereafter, on 04.06.2009, 16.06.2009, 07.07.2009 and 23.07.2009, his detailed cross-examination was conducted. It is thus clear that cross-examination of this witness could be completed only after four months of recording of his examination-in-chief and that too on four different dates. Therefore, in this background, some contradictions are bound to occur in the statement of this witness.

40. P.W.1 is an injured witness and from the deposition of Dr. Harish Kumar P.W.6 and injury report of this witness Ex.Ka.-17, he has suffered injuries in the incident. In **State of Haryana Vs. Krishan, A.I.R. 2017 Supreme Court 3125**, it was held that deposition of an injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies. The same view was reiterated in **Laxman Singh Vs. State of Bihar, (2021) 9 SCC 191** by holding that deposition of injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein. Evidence of injured witness is entitled to a great weight and very cogent and convincing grounds are required to discard his evidence. **Therefore, evidence of P.W.1 is certainly entitled to a great weight**.

41. In the instant case, in his cross-examination, this witness (P.W.1) has stated that his brother - deceased Pushpraj was a practising advocate in District Court and has also fairly conceded regarding criminal cases pending against him and the deceased.

42. Learned counsel for the appellants drew the attention of this Court towards paragraphs no.52 and 53 of the cross-examination of this witness conducted on 16.06.2009 in support of appellants' argument that inspite of use of sharp cut weapons, there was no incised or sharp cut injury on the body of deceased. It is the specific case of the appellants that inspite of appellants being armed with deadly weapons, no ante-mortem injury on the body of the deceased and any injury on the body of either of the three injured was found to have been caused by these deadly weapons and therefore, it was vehemently argued that the prosecution story on this account is suspicious in itself. In the backdrop of this specific argument, informant/injured Manoj Kumar PW-1 has specifically stated that deceased as well as injured were attacked by butts of rifles, axe, spear etc. P.W.1 in these paragraphs has stated that Ranjit was beating his brother Pushpraj after throwing him to the ground. He cannot tell how many times Ranjit assaulted Pushpraj with axe. Udham Singh was assaulting Pushpraj with knife. He stated that assault with axe and knife lasted for about 2, 3 minutes. During these 2, 3 minutes, he (informant) and his brother came there to save the deceased and when he tried to save the deceased, he was hit by the butt of rifle, thereafter he did not try to save the deceased because he was also threatened to kill. He could not see who had hit him from his back. **This witness in paragraph no.52 of his cross-examination**

has specifically stated that whenever Pushpraj was being assaulted, he would turn to save himself. Thus, it is clear that whenever Pushpraj was assaulted with axe or knife, in this duration of 2 - 3 minutes, he turned and saved himself from the sharp edges of these weapons. P.W.1 in his examination-in-chief, has specifically stated that they (including deceased) were assaulted with the butt of rifles, axe and spear. It is thus clear that deceased Pushpraj and other injured were assaulted with blunt side of sharp edged weapons and that is why there is no sharp cut or incised or punctured wound either on the body of the deceased or any of the injured. Therefore, we are of the opinion that the arguments of learned counsel for the appellants that no injury from any of the deadly weapons was found on the body of the deceased makes prosecution's case suspicious, is completely devoid of merit and from above analysis, we are of the opinion that aforesaid argument is not helpful to the appellants.

43. In paragraph no.69 of his cross-examination, P.W.1 has affirmed the prosecution version. He stated that as soon as his brother (Pushpraj) opened the main door on hearing the sound of knocking, he (deceased) was dragged to the street and accused started making assault upon him. Informant himself, his mother, his brother Ashok and Jagdish came to the street to save him but they all were also beaten. Ashok and Jagdish did not sustain injuries. They were threatened by the accused. In paragraph 95 of his cross-examination done on 23.07.2009, this witness stated that the main door of his house is situated in southern direction where there is an iron gate. When some one enters through the said iron gate and after entering into the courtyard from eastern

side, there is a room whose gate is in western side. In the northern side from the courtyard, there are several rooms and stairs. In paragraph no.96 of his cross-examination, he stated that at the time of incident deceased Pushpraj alongwith his family was residing in the room, situated in eastern side. **This part of his deposition fully corroborates the site plan Ex.Ka.-9.** In paragraph no.98 of his cross-examination, this witness further affirmed the prosecution version that informant, his brother Ashok, Jagdish, his mother Bitti Bai and his sister-in-law / bhabhi Vimla Devi came on door alongwith Pushpraj. This witness has also stated that accused opened fire, just to create terror / panic.

44. **P.W.1 has been cross-examined extensively. However, his deposition as far as date, time, place and manner of incident is concerned, remained consistent throughout.**

45. Smt. Vimla Devi, who is the wife of deceased Pushpraj, has been examined as P.W.2 and this witness is also the injured witness of the incident. P.W.2 Smt. Vimla Devi in her deposition has stated that on 01.07.2007 at 10:00 P.M., her family members including her husband Pushpraj, her husband's brothers Ashok, Manoj and Jagdish, her mother-in-law Bitti Bai and father-in-law Ramashanker were watching T.V. Suddenly, they heard knocking sound from the iron gate and upon hearing the same they all went towards the gate. Her husband Pushpraj opened the door, Krishan Pal alias Lal was an absconder at that time, Rishi Pal and Raghunath alias Batauli, who all were armed with rifles and guns, Ranjeet, who was carrying an axe, Bahadur, who was having a spear and Udham Singh, who was carrying a knife, they all came together and caught hold of her husband and warned that he (her

husband) is doing pairvee from the side of Rajesh against them and therefore, they will kill him. **Thereafter they all started assaulting her husband with butt / blunt side of spear, axe, knife and rifles / guns in front of their door.** They all (family members of deceased) tried very hard to save Pushpraj and she (P.W.2) even clung / embraced her husband but the accused pushed her away. She sustained injuries. They raised alarm on which people of the vicinity came on the spot and accused in order to create terror among them, fired from their guns which caused chaos in their village. She, her brother-in-law Manoj and mother-in-law Bitti Bai sustained injuries in the incident. Her husband also sustained multiple injuries. At the time of incident, there was electric light over there. Her husband was brought to the Medical College by their family members and he died during the course of his treatment. All the accused are present in Court.

46. Examination-in-chief of P.W.2 was recorded on 09.10.2009 and her cross-examination was deferred, thereafter she was cross-examined on 23.10.2009, 09.03.2010, 20.03.2010 and 02.04.2010. It is thus apparently clear that this injured witness was cross-examined on four different dates at length and her deposition could be completed in about eight months. Therefore, some contradictions are bound to occur in her deposition.

47. P.W.2 in her cross-examination has stated that she is not aware about directions. However, she stated that adjacent to her house, house of village watchman Sitaram is situated and adjacent to Sitaram's house, the house of his son and thereafter house of Hukum Singh Yadav are situated. She also stated that in front of their main door, there is another house of village

watchman Sitaram. **This part of her deposition fully corroborate the site plan Ex.Ka.-9.** She further deposed that on the date of incident, her husband Pushpraj was taken to hospital in their tractor-trolley. Their tractor was parked inside their courtyard and after the incident, main iron gate was opened and her husband was taken to the hospital in tractor-trolley. She further stated that all those houses which are situated in front of their house were having electric bulb outside their houses. She further deposed that when her husband was thrown on the ground and was assaulted, the said assault continued for about 2 - 3 minutes. She cannot tell that during assault made upon her husband whether knife, spear, lathi, stick, axe struck her husband. Accused although fired during the incident, but they did not fire on her husband or on this witness or any other family members. Jagdish did not sustain injuries in the incident. However, she tried to save her husband but she was threatened. **This witness also has been cross-examined extensively. However, her deposition as far as date, place and manner of incident is concerned, remained consistent throughout except some minor contradictions.** Moreover, P.W.2 in her examination-in-chief has clearly stated that her husband (deceased Pushpraj) was assaulted with blunt side / butt of rifles / guns, spear, axe and knife. Therefore, no sharp cut or incised or punctured wound were found on the body of the deceased, which strengthens our conclusion that deceased and other injured were assaulted with blunt sides of spear, axe and knife and butt of rifles / guns, which fact does not make the prosecution case suspicious.

No unnecessary delay in registration of F.I.R.

48. In the present case, the alleged incident is reported to be of 10:00 P.M. on 01.07.2007 and the first information report of the same has been registered in Police Station Nawabad, District Jhansi at 1:35 A.M. on 02.07.2007. Therefore, the first information report has been registered within 3 hours 35 minutes of the occurrence of the incident in the police station, which is situated at a distance of about 6 kilometer from the place of incident. In the incident, a total of four persons from the side of informant got injured and one injured even succumbed to injuries within 4 hours of the preparation of his injury report. It is clearly mentioned in the first information report that the informant brought his brother injured Pushpraj to Medical College, Jhansi from the spot, where the aforesaid injured was admitted and his treatment started, thereafter the informant approached the concerned police station for registration of the first information report. **Therefore, in this background, the first information report seems to be registered promptly without any unnecessary delay.**

Motive

49. It is the case of prosecution that deceased Pushpraj was doing Pairavi in a case lodged by one Rajesh of village Mairi against accused Krishna Pal. It is also admitted position that both Pushpraj and appellant Krishna Pal were having their respective criminal history. As per written report / Tehrir (Ext. Ka-1), aforesaid Pairavi by Pushparaj annoyed the appellant Krishna Pal and was the motive behind this murder. PW-1 and PW-2 both in their respective depositions have clearly stated that all accused arrived at the spot and knocked at their main gate (iron gate), which was closed and when the main gate was opened by

deceased Pushpraj, all of accused were found standing outside their main gate armed with deadly weapons and threatened Pushparaj for doing Pairavi and started assaulting him. PW-1 in his cross examination has stated that his brother deceased Pushpraj was doing practice as an advocate in court since last 10-11 years. PW-1 has also admitted pendency of various criminal cases against him and his brother Pushpraj. PW-1, however, in his cross examination has stated that he, his father, brother Pushpraj and Ashok were accused in the murder of their fellow villager Ram Swaroop Kushwaha in which they all were acquitted. In the aforesaid murder case, accused Raghunath @ Batole was eye witness, who had deposed against them in FTC Court. After their acquittal in the aforesaid case, another false FIR of robbery was lodged against him, but finding it false, a final report was filed in the aforesaid case. Appellant Bahadur was Tehrir writer of the aforesaid murder case. PW-1 denied all suggestions of the defense that accused appellants were falsely implicated because of aforesaid murder case. PW-1 in para-62 of his cross examination has stated that Ashok, Devendra, Bablu of village Mairi alongwith one Kushwaha boy of village Kotha Bhaper were murdered four months prior to murder of his brother Pushpraj. The appellant Krishna Pal was the accused in the aforesaid four murders of village Mairi. Few of accused of aforesaid murder case of village Mairi were absconding at the time of murder of his brother. In para-92 of his cross examination, PW-1 has denied to have any enmity of his brother Pushpraj with accused Krishna Pal and Rishipal.

50. PW-2 in her cross examination has stated that the appellant Krishna Pal was an accused in the four murders of village Mairi and was absconding. The aforesaid murders were committed 4-5 months before the murder of her husband. She in her cross examination has supported her deposition given in examination in chief that the deceased was threatened for doing Pairavi of aforesaid murders on behalf of one Rajesh. It is thus clear that there was a murder incident in village Mairi in which four persons were murdered and the appellant Krishna Pal was an accused in the same, who was absconding at the time of present incident.

51. It has come in the deposition of both PW-1 and PW-2 that Pushpraj was doing Pairavi in the aforesaid four murders on behalf of one Rajesh of village Mairi, which annoyed the appellant Krishna Pal and therefore, it became the motive for him to murder deceased Pushpraj. Both deceased Pushpraj and appellant were having criminal history and in this background Krishna Pal alongwith his companion accused wanted to give a message to the villagers that if anyone ever dared to do any Pairavi against Krishna Pal or his associates, will be dealt with similar fate. It has also come on record that a case of murder of one Ram Swroop Kushwaha was registered against informant - injured Manoj, his brothers deceased Pushpraj and Ashok, and his father. The appellant Bahadur was the scribe of written report / Tehrir in the aforesaid case and Raghunath @ Batole was eye witness, however, it has also come on record that the informant - injured Manoj PW-1, deceased, their father and brother all were acquitted in the aforesaid case. The aforesaid acquittal also had

given motive to appellant Raghunath @ Batole and Bahadur to take revenge. However, just 4-5 months of the present incident, the appellant Krishna Pal became an accused as well as absconder in the four murders of village Mairi and deceased was doing Pairavi in the aforesaid case, therefore, the appellant Krishna Pal alongwith his other companion had the motive to commit murder of Pushparaj. **Therefore, we are of the opinion that the prosecution has been able to prove aforesaid motive behind the present murder.**

52. The informant-injured Manoj Kumar PW-1 and Smt. Vimla Devi, the wife of the deceased PW-2 in their respective depositions have consistently stated that on 01.07.2007 at 10:00 pm, the appellants-accused persons knocked the main iron gate. At that time, PW-1 and PW-2, deceased Pushpraj and their other family members Ashok and Manoj (maternal brothers of the deceased), Bitti Bai (mother of the deceased) and Ramashankar (father of the deceased) were watching T.V. On hearing the knocking sound, Pushpraj and others went towards main iron gate and Pushpraj opened the door. Outside their main gate, Krishna Pal @ Lala, Rishi Pal and Raghunath were carrying rifles in their hands, Ranjeet was carrying an axe in his hand, Bahadur was carrying a spear in his hand and Uddham Singh was carrying a knife in his hand. All of these accused simultaneously, threatened Pushpraj for doing pairvi from the side of Rajesh against them and by dragging Pushpraj collectively made an assault on him.

53. P.W.1 and P.W. 2 have not specifically stated that any blow was inflicted directly with sharp edged side of either spear, axe or knife. Both of these witnesses have specifically stated that firing

was resorted to terrorize the family members of the deceased as well as people who have gathered from the surrounding area, because of which, there was stampede on the spot. From the very beginning, it is not the case of the prosecution that the deceased or any of the injured has sustained any sharp cut injury. Oral or documentary evidence available on record proves that PW.-1 and PW-2 both have sustained injuries during the incident, which in the opinion of doctors have been found to be sustained from some hard and blunt object. Therefore, PW-1 and PW-2 are the injured witnesses, who have deposed consistently regarding the presence of the appellants on spot and they all were armed with deadly weapons. Date, time, place and manner of incident has been proved by these witnesses. There is no inconsistency or contradictions in their depositions as far as presence of the appellants and their active participation in the crime and the date, time or place of incident is concerned. It is also important to observe here that the prosecution has been able to prove motive behind the crime. In Rajesh's case, the appellant Krishna Pal was being prosecuted and Pushpraj was doing pairvi in this case and this was the motive for Krishna Pal to kill Pushpraj. P.W.1 in his cross- examination has clearly stated that deceased was wearing a lungi over his underwear and was also carrying a towel. His (deceased's) lungi and towel fell on the spot during the assault, which were recovered from the spot by first Investigating Officer and were sent to Forensic Science Laboratory for examination along with underwear found on the body of the deceased during postmortem. The FSL Report Ex.Ka.-17 corroborates this part of deposition of P.W.1 because in FSL Examination, lungi, towel

and underwear all were found having human blood. As far as argument of learned counsels for appellants that no blood was found on spot is concerned, this is a lapse on the part of Investigating Officer, indicative of defective investigation. Law is well settled that no benefit can be given to accused if prosecution has proved its case from trustworthy depositions of eyewitnesses. From the incident as narrated by PW-1 and PW-2, it is crystal clear that there was no intention to kill any other member of Pushpraj's family. The informant Manoj Kumar, deceased's widow Vimla Devi, deceased's mother Bitti Bai tried to save Pushpraj, but they were also injured with blunt side of weapons, meaning thereby that the appellants have no intention to kill any other family members of the deceased Pushpraj. It has also come on record that Pushpraj was mercilessly beaten and there was no resistance from the side of Pushpraj. Therefore, the appellant did not feel any need to either shoot him or to cause injury from sharp side of sharp cut weapon. The appellants have mercilessly beaten the deceased Pushpraj in front of their main gate and were giving a message that if any one is going to do any pairvi against them, such person will also be taught a similar lesson.

54. **Therefore, we are of the opinion that the prosecution has been able to prove it's case against the appellants-convicts beyond reasonable doubt and question no.1 is answered in affirmative.**

(ii) Whether non-examination of other witnesses present on spot namely, injured Bitti Bai and deceased's brothers Ashok and Jagdish, is fatal to prosecution and an adverse inference is to be drawn against the prosecution or not ?

55. In the present case, informant Manoj Kumar, his mother Smt. Bitti Bai and his bhabhi Vimla Devi (wife of deceased) also sustained injuries. However, Smt. Bitti Bai has not been examined as prosecution witness and as per first information report, informant's brothers Ashok and Jagdish were also present on spot, however, these two alleged eyewitnesses have also not been examined. In this backdrop, learned counsel for the appellants have vehemently argued that material witnesses have been intentionally withheld by the prosecution and, therefore, an adverse inference has to be drawn against the prosecution. Law on this point is well settled that it is not the number of witnesses, which is important and material for prosecution to prove it's case, rather it is the quality of the deposition of the witnesses, which is important and material for the prosecution to prove it's case.

56. In **Bhimappa Chandappa v. State of Karnataka (2006) 11 SCC 323**, the Hon'ble Supreme Court held that testimony of a solitary witness can be made the basis of conviction. The credibility of the witness requires to be tested with reference to the quality of his evidence which must be free from blemish or suspicion and must impress the Court as natural, wholly truthful and so convincing that the Court has no hesitation in recording a conviction solely on his uncorroborated testimony.

57. The Hon'ble Apex Court in **Joy Devaraj v. State of Kerala, (2024) 8 SCC 102** has held that even otherwise, Section 134 of the Evidence Act, 1872 ordains that no particular number of witnesses is required, in any case, to prove a fact. Therefore, it is not the law that a conviction cannot be recorded unless there is oral testimony of at least two witnesses matching with each other.

It is the quality of evidence and not the quantity that matters. If the evidence of a solitary witness appeals to the Court to be wholly reliable, the same can form the foundation for recording a conviction.

58. The Apex Court in the case of **Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434** has held that the prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. The accused can also examine the cited, but not examined witnesses, if he so desires, in his defence. It is the discretion of the prosecutor to tender the witnesses to prove the case of the prosecution and "the Court will not interfere with the exercise of that discretion unless, perhaps, it can be shown that the prosecution has been influenced by some oblique motive". In an extraordinary situation, if the Court comes to the conclusion that a material witness has been withheld, it can draw an adverse inference against the prosecution, as has been provided under Section 114 of the Evidence Act. Undoubtedly, the public prosecutor must not take the liberty to "pick and choose" his witnesses, as he must be fair to the Court, and therefore, to the truth. In a given case, the Court can always examine a witness as a Court witness, if it is so warranted in the interests of justice. In fact, the evidence of the witnesses must be tested on the touchstone of reliability, credibility and trustworthiness. If the Court finds the same to be untruthful, there is no legal bar for it to discard the same.

59. The Hon'ble Supreme Court while summarising the law in the case of **Ravasaheb v. State of Karnataka, (2023) 5 SCC 391**

has observed that when a case involves a large number of offenders, prudently, it is necessary, but not always, for the court to seek corroboration from at least two more witnesses as a measure of caution. Be that as it may, the principle is quality over quantity of witnesses.

60. The Apex Court in the case of **Avtar Singh v. State of Haryana, (2012) 9 SCC 432** has interpreted the law as :

> *"18. The learned counsel further submitted that though the prosecution would claim injuries on several persons of the complainant party, the other persons who were stated to have been injured or were present at the place of occurrence were not examined. In this context, it will be relevant to refer to the decision of this Court reported in Tej Parkash v. State of Haryana [(1996) 7 SCC 322 : 1996 SCC (Cri) 412] wherein this Court held that all the witnesses of the prosecution may not be called and it is sufficient if witnesses who were essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution. The legal position has been stated in para 18 as under : (SCC p. 330)*
>
> > *"18. In support of his contention that serious prejudice was caused to the appellant by non-examination of Phool Singh who had been cited by the prosecution as one of the witness, Mr Ganesh relied upon Stephen Seneviratne v. R. [(1936) 44 LW 661 : AIR 1936 PC 289] , Habeeb Mohammad v. State of Hyderabad [(1953) 2 SCC 231 : AIR 1954 SC 51 : 1954 Cri LJ 338 : 1954 SCR 475] and State of U.P. v. Jaggo [(1971) 2 SCC 42 : 1971 SCC (Cri) 401] . The aforesaid decisions can be of little assistance to the appellant in the present case. What was held by the Privy Council and this Court was that witnesses who were essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution whether the effect of their testimony is for or against the case for the prosecution and that failure to examine such a witness might affect a fair trial. It was also observed that all the witnesses of the prosecution need not be called. In the present case, the witnesses who were essential to the unfolding of the narrative had been examined."*
>
> *19. The law on this aspect can be succinctly stated to the effect that in order to prove the guilt of the accused, the prosecution should*

make earnest effort to place the material evidence both oral and documentary which satisfactorily and truthfully demonstrate and fully support the case of the prosecution. Where there were several persons stated to have witnessed the incident and the prosecution examined those witnesses who were able to depose the nature of offence committed more accurately leaving no room for doubt about the involvement of the accused in the occurrence and the extent of their involvement with specific overt act and also were able to withstand the cross-examination by maintaining the sequence and the part played as originally stated, it will be wholly irrelevant and unnecessary to multiply the number of witnesses to repeat the same version."

61. The Apex Court in State of **M.P. Vs. Balveer Singh, (2025) 8 SCC 545** has held that there is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subordination of witnesses.

62. In the case of **Jodhan v. State of M.P., (2015) 11 SCC 52**, the Hon'ble Supreme Court has held that the testimony of the injured witness has its own significance and it has to be placed reliance upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and inconsistencies. As has been stated, the injured witness has been conferred special status in law and the injury sustained by him is an inbuilt guarantee of his presence at the place of occurrence.

63. Thus law on this issue is well settled that no particular number of witnesses is required in any case to prove a particular fact. It is the quality of the evidence and not the quantity, which matters, if the evidence of a solitary witness appeals to the Court to be wholly reliable, the same can form the foundation in recording a conviction. The prosecution is not bound to examine

all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. If number of persons are injured in an incident, then it is not essential for the prosecution to examine all such witnesses and the prosecution may choose to examine such number of witnesses, who in it's opinion are essential to prove the prosecution story. In a given case, not only the accused but Court can always examine a witness as a Court witness, if it is so warranted in the interest of justice. The defence can examine any cited witness, who has been dropped by the prosecution, if it so desires. Therefore, the prosecution can prove its story not only with the help of a reliable solitary witness, but can also call some other witnesses, not necessarily all the eyewitnesses or all the injured witnesses, which it finds essential for proving it's case. There might be a number of reasons for the prosecution for not examining all the cited witnesses in a case, if quality of the oral evidence of a single witness or any number of witnesses adduced by it, are sufficient to prove it's case.

64. In the present case, informant Manoj Kumar and deceased's wife Vimla Devi have been examined as prosecution witnesses and both of these witnesses are injured witnesses. Examination-in-chief of injured Manoj Kumar P.W.1 was of about 3 pages, whereas his cross-examination was of more than 39 pages, running into 160 paras. On 04.06.2009, 16.06.2009, 07.07.2009 and 23.07.2009, his (P.W.1's) detailed cross-examination was conducted. It is thus clear that cross-examination of this witness could be completed only after four months of recording of his examination-in-chief and that too on four different dates. Examination-in-chief of P.W.1 was recorded on 23.03.2009 and

only after a very brief cross-examination, an adjournment application was moved by the defence on which the case was adjourned. Examination-in-chief of injured Vimla Devi P.W.2 was concluded in 3 pages, however, her cross-examination was concluded in 28 pages. Examination-in-chief of P.W.2 was recorded on 09.10.2009 and her cross-examination was deferred, thereafter she was cross-examined on 23.10.2009, 09.03.2010, 20.03.2010 and 02.04.2010. It is thus apparently clear that this injured witness was also cross-examined on four different dates at length and her deposition could be completed in about eight months.

65. It is thus, apparently clear that both these injured witnesses i.e. P.W.1 and P.W.2, were extensively cross-examined that too on several dates and their depositions could be concluded in several months. In this background, their depositions were bound to have minor contradictions. PW-1 and PW-2 have deposed consistently regarding the presence of the appellants on spot armed with deadly weapons. Date, time, place and manner of incident has been proved by these witnesses. There is no inconsistency or contradictions in their depositions as far as presence of the appellants and their active participation in the crime and the date, time or place of incident is concerned. Probably, when these witnesses have been extensively cross-examined, the prosecution has decided not to examine any other eyewitness or injured of the incident. Therefore, non-examination of other witnesses present on the spot, who are family members of the deceased as well as of these witnesses, is not fatal at all and no adverse inference can be drawn against the prosecution

for non-examination of those other witnesses present on the spot. Therefore, we do not find any force in the arguments of learned counsel for the appellants as far as withholding of material witnesses by the prosecution is concerned. Informant Manoj Kumar is the younger brother of the deceased Pushpraj, who has been examined as P.W.1, who is also an injured witness. **Question No.2 is answered accordingly.**

(iii) Whether the present case is a case of culpable homicide not amounting to murder and, therefore, conviction / sentence of the appellants – convicts is liable to be converted / reduced under Section 304 IPC ?

66. The Supreme Court while analyzing difference between culpable homicide amounting to murder and culpable homicide not amounting to murder in **Anbazhagan V. State Represented by the Inspector of Police (2024) 20 SCC 500** in paras 39-44 has held that-

> *"39" This Court in Phulia Tudu (2007) 14 SCC 588 has observed that the academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the courts. The confusion is caused if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300 of the IPC. The following comparative table will be helpful in appreciating the points of distinction between the two offences:-*

Section 299	*Section 300*
A person commits culpable homicide if the act by which the death is caused is done-	*Subject to certain exceptions culpable homicide is murder if the act by which death is caused is done-* *Intention*

(a)with the intention of causing death; or *(b)with the intention of causing injury as is likely to cause death; or*	*(1)with the intention of causing death; or* *(2)with the intention of causing such bodily injury as the of endor knows to be likely to cause the death of the person to whom the harm is caused; or* *(3)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*
(c) with the knowledge that the act is likely to cause death	*Knowledge* *(4) with the knowledge that the act 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 is mentioned above*

“40”Clause (b) of Section 299 of the IPC corresponds with clauses (2) and (3) of Section 300 of the IPC. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the of ender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the ‘intention to cause death’ is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the of ender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This clause (2) is borne out by illustration (b) appended to Section 300 of the IPC.

“41” Clause (b) of Section 299 of the IPC does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 of the IPC can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result; of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In

clause (3) of Section 300 of the IPC, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299 of the IPC, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 of the IPC and clause (3) of Section 300 of the IPC is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word 'likely' in clause (b) of Section 299 of the IPC conveys the sense of probable as distinguished from a mere possibility. The words "bodily injury…..sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

"42" For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries suf icient to cause death in the ordinary course of nature. The decision in the case of Rajwant Singh v. State of Kerala, AIR 1966 SC 1874, is an apt illustration of this point.

"43" The scope of clause thirdly of Section 300 of the IPC has been the subject matter of various decisions of this Court. The decision in Virsa Singh (supra) has throughout been followed in a number of cases by this Court. In all these cases the approach has been to find out whether the ingredient namely the intention to cause the particular injury was present or not? If such an intention to cause that particular injury is made out and if the injury is found to be sufficient in the ordinary course of nature to cause death, then clause thirdly of Section 300 of the IPC is attracted.

"44"Analysing clause thirdly and as to what the prosecution must prove, it was held in Virsa Singh (supra) as under:-

> *"15. First, it must establish, quite objectively, that a bodily injury is present;*
>
> *16. Secondly, the nature of the injury must be proved; These are purely objective investigations.*
>
> *17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended…*

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

19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is suficient 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 of ender."

It was further observed as under:-

"20. … 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." (Emphasis supplied)

The Apex court also observed in para 66 that

"66"Few important principles of law discernible from the aforesaid discussion may be summed up thus:-

"66.1"When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate : 'A' is bound hand and foot 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

"66.2" Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five

exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

"66.3" To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

"66.4"Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

"66.5" Section 304 of the IPC will apply to the following classes of cases:

> *(i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section,*
>
> *(ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC,*
>
> *(iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.*

“66.6” To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

“66.7” The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

“66.8” The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC

“66.9” The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

“66.10” Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary cause of nature to cause death also makes a culpable homicide a murder if death has actually been caused and

intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

"66.11" When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

"66.12" Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the of ence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

"66.13" In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.

67. In the light of above well settled position of law regarding murder and / or culpable homicide not amounting to murder, we are again evaluating the oral as well as documentary evidence available on record to arrive on a just conclusion. The accused persons arrived at the spot armed with deadly weapons, in a premeditated manner, to murder Pushpraj and to give villagers a clear message. The prosecution has successfully proved the motive behind the murder of the deceased. It is a case in which all the accused have participated with a premeditated plan as well as in furtherance of their common object of murdering the deceased. In this background, injuries sustained by the deceased

are carefully evaluated, which is clear from perusal of the postmortem report Ex.Ka.-4, that the deceased was mercilessly beaten resulting into fractures of his right and left humerus bones, left elbow joint, right tibia, 5th and 6th ribs. He was so mercilessly beaten that his 5th and 6th rib after being broken entered into right lung thereby causing blood being stored in right side thoracic cavity. Even deceased's right pleura was found teared and trachea was also found filled with clotted blood. Anterior surface of the deceased's right lung was also found teared and clotted blood was also found inside the same. The deceased was mercilessly beaten on 01.07.2007 at 10:00 P.M. and, therefore, was rushed for treatment to the Medical College, Jhansi, where he arrived at 1:50 A.M. on 02.07.2007. The deceased succumbed to injuries within four hours of preparation of his injury report and had actually died within seven hours of sustaining injuries. In his postmortem, the autopsy surgeon found four stitched wounds, having total seventeen stitches. In the lacerated wound found present on outer surface of middle of right arm, his (deceased) broken bone was clearly visible. The nature of injuries found in the postmortem report of the deceased clearly reveals the amount of force employed by the members of unlawful assembly in causing ante-mortem injuries to the deceased. The nature of injuries so caused by the appellants on the person of the deceased, as found and noted in his autopsy report, clearly reveals that those injuries were sufficient to cause death in natural course.

68. Hon'ble Supreme Court in **Pulicherla Nagaraju Vs. State of A.P., 2007 (1) SCC (Cri) 500**, has observed that there may be cases of murder, where the accused attempts to avoid the penalty

for murder by attempting to put forth a case that there was no intention to cause death. It is for the Courts to ensure that the cases of murder punishable under Section 302 I.P.C., are not converted into the offence punishable under Section 304 Part I / II. This observation of the Hon'ble Supreme Court again found approval in **State of Uttarakhand Vs. Sachendra Singh Rawat, (2022) 4 Supreme Court Cases 227**.

69. All the appellants came together and after committing murder of Pushpraj ran together by resorting to fire for threatening the family members of Pushpraj and their neighbours, which is clearly indicative of premeditated plan. The manner in which, Pushpraj was brutally attacked, mercilessly beaten and grievously injured, shows not only their intention but their knowledge also. The accused could have very easily murdered the deceased either by single gunshot or by a single blow of sharp cut deadly weapon being carried by them, but instead they chose to murder by mercilessly assaulting the deceased from blunt side of their weapons, in presence of his family members, to give a stern message to everyone in village not to interfere in their matters and not to do any type of pairvi against them, else be ready to face the same consequence. All the accused in furtherance of their common object came on spot armed with deadly weapons and mercilessly thrashed the deceased, when the family members tried to save the deceased from their clutches, they were also beaten, resulting into injuries to P.W.1, P.W.2 and mother of the deceased namely Bitti Bai. The accused arrived in a premeditated design and they committed offence in such a manner to spread a wave of terror in the village and society. The

manner in which the accused arrived on spot with deadly weapons and thereafter assaulted the deceased and type of injuries inflicted by them from the blunt side of the deadly weapons clearly indicates their intention to cause the murder of the deceased. In the mercilessly thrashing, the deceased's both hand, one leg and two ribs were fractured, which is clearly indicative of the extent of force used by the accused persons in the incident. All the accused persons arrived on the spot with deadly weapons and, therefore, it can be easily presumed that they all have the knowledge that murder is likely to be committed. Therefore, all the accused in a preplanned manner arrived at the spot with deadly weapons and formed an unlawful assembly and had thus assaulted the deceased. Every member of the unlawful assembly has actually participated in commission of the offence. Therefore, being members of unlawful assembly in prosecution of their common object, they all are liable for the offence of murder of the deceased. It is not a case of sudden quarrel or sudden fight or a case of free-for-all fight. It is also not a case where the incident had occurred by chance. It is neither a case of grave and sudden provocation or a case in the heat of passion. It is also not a case where only a single blow has been inflicted.

70. Therefore, any reasonable person with any stretch of imagination can come to a conclusion that injuries so mercilessly caused on the various parts of the body of the deceased would cause death were sufficient in the ordinary course of nature to cause death. The blunt side of deadly weapons were intentionally used to cause such injuries and, therefore, the case of appellants -

convicts squarely falls within clause thirdly of Section 300 I.P.C. It is not a case which is covered under anyone of five exceptions of Section 300. Therefore, the appellants - convicts have been rightly convicted in the commission of murder of the deceased Pushpraj. It is not a case of culpable homicide not amounting to murder and, therefore, conviction / sentence of the appellants - convicts is not liable to be converted / reduced under Section 304 I.P.C. Question No.3 is accordingly answered in the negative.

71. In the light of foregoing discussions and considering the entire aspects of the matter and looking to the circumstances, under which the present offence has been committed, we are of the view that the impugned judgment and order passed by the trial Court is well thought and well discussed and the trial Court has rightly held that the prosecution has succeeded to prove the guilt of the accused appellants beyond reasonable doubt. The conviction in the case in hand is a right ending and sentence as imposed is proper. As such, the impugned judgement and order passed by the trial Court is liable to be upheld and the Appeals having no force are liable to be dismissed. **Question No.3 is, therefore, answered in the negative.**

72. No good ground to interfere in the well reasoned judgment of the trial court is made out. Thus there is no merit in the present criminal appeals. Consequently, the judgment and sentence dated 11.03.2011 passed by Additional Sessions Judge, Court No.1, Jhansi is hereby '**Affirmed**'.

73. The appellant Krishan Pal alias Lala is in jail. He shall serve out remaining part of sentence imposed upon him by the trial Court.

74. The appellants Rishi Pal, Raghunath alias Batauli, Ranjeet, Bahadur and Udham Singh alias Matauli are on bail. Their personal and surety bonds are cancelled and they are directed to surrender before the Court concerned forthwith, who shall take them into custody and send them in jail for serving out the remaining sentence imposed upon them by the trial Court. In case they fail to surrender, as directed above, the Court concerned is directed to take coercive action against them in this regard.

75. Let a copy of the judgment be provided immediately to the appellant Krishan Pal alias Lala through Superintendent Jail, free of cost.

76. The record of the 'Trial Court' be sent back immediately with a copy of this judgment for necessary information and compliance.

77. The Appeals fail and are hereby **Dismissed**.

78. Pending applications including bail applications, if any, stand disposed of accordingly.

May 6, 2026.
ss

(Dr. Ajay Kumar-II,J.) (Salil Kumar Rai,J.)