year. The conviction of appellant under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is hereby set aside.

41. The appellant is on bail. He is directed to surrender before the trial court for undergoing the remaining sentence, within a month from the date of this judgment, failing which the learned trial court will be at liberty to proceed against him, in accordance with law. The fine, if deposited, by the appellant, shall be paid to the victim 'K'.

42. Let the trial court record along with a copy of this judgment be transmitted to the trial court concerned through Registrar (Compliance) forthwith, for compliance.The compliance report be also submitted to this Court.

(2025) 5 ILRA 787
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 23.05.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE JITENDRA KUMAR SINHA, J.

Criminal Appeal No. 16 of 1986

Sia Ram & Ors. ...Appellants
Versus
State ...Opposite Party

Counsel for the Appellants:
Sri P.N. Mishra, Sri Javed Alam (A.C.)

Counsel for the Opposite Party:
A.G.A.

Criminal Law - Indian Penal Code, 1860 - Sections 302/149, 304 Part II/149, 325/149 & 323/149 – Criminal Procedure Code, 1973- Section 313 – Appreciation of evidence of inimical and injured witnesses - While appreciating the testimony of the inimical witness closer scrutiny is required - Exception 4 to Section 300 IPC – Sudden fight without premeditation – Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner - Conversion of conviction from Section 302/149 IPC to Section 304 Part II/149 IPC - Appellants along with several others were charged for forming unlawful assembly and assaulting Shyam Lal when he resisted the grazing of accused's bullocks in his field. Trial court convicted all under Sections 302/149 IPC with life imprisonment besides conviction under Sections 325/149 and 323/149 IPC. On appeal, during pendency, the appeal abated for most accused and survived only for Sukh Ram and Bhupal. Prosecution relied on testimony of injured witnesses and medical evidence. Defence challenged delay in FIR, contradictions in witnesses' statements, and absence of specific proof as to who inflicted the fatal blow. *Held :* Court held that the testimony of inimical witnesses requires closer scrutiny but injured witnesses PW-1 and PW-2 were found reliable. Independent witness PW-5's presence was disbelieved. Medical evidence disclosed ten injuries on deceased of which only two were on vital parts, one fatal lathi blow on the head being responsible for death. From the appreciation of evidence on record it was found that the injury received by all the five injured were simple in nature whereas only one lacerated wound and one contusion was found on the head of the deceased Shyam Lal. All the accused except accused Sukh Ram were armed with lathi and Sukh Ram was armed with Kanta. There was only one incised wound on the person of the deceased which was not on the vital part. Prosecution not been able to successfully prove that the act of the accused was premeditated and that accused took undue advantage. Incident took place due to sudden fight. Prosecution not been able to prove that the offence committed by the accused falls under Section 302 IPC. The offence committed by the accused falls under Part II of Section 304 IPC. Prosecution failed to prove that there was

an intention on the part of the accused to commit the murder of the deceased Shyam Lal because only one lacerated wound has been found on his head. A large number of persons assaulted the deceased by lathies and one lathi fell on the head of the deceased which proved fatal, therefore, the intention of causing death cannot be inferred. Prosecution failed to prove offence against surviving appellants Sukh Ram and Bhupal under Section 302/149 IPC. Considering that the incident occurred more than 40 years back and appellants had already undergone about two months' imprisonment, sentence reduced to period already undergone with fine of Rs. 25,000/- each payable to heirs of deceased. Conviction under Sections 325/149 and 323/149 IPC maintained but sentence modified to run concurrently. Appeal partly allowed. (Para 35, 38, 39)

Allowed. (E-5)

(Delivered by Hon'ble Jitendra Kumar Sinha, J.)

1. Heard Sri Javed Alam, learned Amicus Curiae for the appellants, Sri O.P. Dwivedi, learned AGA-Ist for the State and perused the record.

2. Present Criminal Appeal has been preferred against the judgement and order dated 21.12.1985 passed by learned Additional District and Sessions Judge, Budaun in Sessions Trial No. 455 of 1983 convicting and sentencing the appellant nos. 1 to 15 under section 302 read with section 149 IPC with life imprisonment and 3 years rigorous imprisonment and fine of Rs. 1000/- each of them under section 325 read with 149 I.P.C. and in default of payment of fine to further undergo three months rigorous imprisonment, further convicting all the accused under section 323 read with section 149 I.P.C. and sentencing each of them to 6 months rigorous imprisonment.

3. Vide order dated 16.7.2024, the appeal stood abated in respect of appellant no. 1- Sia Ram S/O Durgt, appellant No. 3 Dori S/O Kesho, appellant no. 4 Ragghu S/O Rohan, appellant no. 5- Dharam Pal S/O Rohan, appellant no. 6 Toti S/O Khyali, appellant no. 8- Rameshwar S/O Bhoji, appellant no. 9- Mool Chand S/O Bhoji, appellant no.- 10- Man Singh S/O Bhoji, appellant no. 11- Janki S/O Kewal, appellant no. 12 Munshi S/O Kewal, appellant no. 13- Baboo S/O Hari, appellant No. 14 Ram Singh S/O Neksoo and appellant No. 15 Moti S/O Behari. Now the appeal is surviving only in respect of appellant no. 2 Sukh Ram S/O Sia Ram and appellant no. 7- Bhupal S/O Khyali.

4. The prosecution story, in brief, is that informant Chet Ram gave a report to the police station on 22.3.1982 stating therein that in the evening of 21.3.1982 at about 5 P.M. his brother Shyam Lal saw the bullocks of the accused Rameshwar grazing his field of wheat. Seeing damage to his crop, Shyam Lal caught the bullocks and was taking them to cattle pound and when he came near the land of Gram Samaj, accused Rameshwar objected to him for taking away bullocks but Shyam Lal said that bullocks had destroyed his crops, therefore, he would not let the bullocks free. On this, Rameshwar called his family members and soon Sukh Ram armed with Kanta, Siya Ram, Dori, Ragghu, Dharam Pal, Toti, Bhupal, Rameswar, Mool Chand, Maan Singh, Janki, Munshi, Anar, Babu, Ram Singh and Moti, all armed with lathi reached there. The accused Siya Ram exhorted his colleagues to settle the matter with the informant's brother on which informant's brother Shyam Lal raised noise. Hearing his noise the witnesses Mahaveer, Punni, Chet Ram (informant), Natthu, Shiv Dayal,

Natthu Lal, Daal Singh, Lal Singh came there and saw the accused were beating Shyam Lal with their lathies. When the informant and witnesses tried to defend Shyam Lal, accused persons had also beaten them as a result of which Mahaveer, Chet Ram, Punni, Shiv Dayal, Nathu sustained injuries. The informant's brother Shyam Lal, after telling about the incident died on the spot.

5. On the basis of above information, first information report was lodged and inquest of the dead body was conducted and same was sent for post mortem.

5.1. It is also mentioned in the FIR that one case under section 307 I.P.C. was lodged by accused side against the prosecution side in which prosecution side were acquitted and due to this relationship between prosecution side and the accused side were inimical.

6. Medico legal report of injured Chet Ram, Punni, Nathu, Shiv Dayal were also prepared as they received injuries in the incident. X-ray reports of injured Nathu son of Narayan, Mahaveer and Chet Ram were also prepared.

7. The investigating officer after conducting the investigation submitted the charge sheet to learned Magistrate who took cognizance on the charge sheet and committed the case to the court of session. The case was transferred to the court of learned Ist Additional District and Sessions Judge, Budaun for trial. Learned trial court framed charges against accused Siya Ram, Sukh Ram, Dori, Raghoo, Dharam Pal, Toti, Bhupal, Rameshwar, Mool Chand, Man Singh, Janki, Munshi, Babu, Ram Singh and Moti under sections 148, 147, 302 r/w 149, 307 r/w 149, 325 r/w 149 and 323 r/w 149 I.P.C. whereas accused Sukh Ram has also been charged under section 324 I.P.C. Accused pleaded not guilty and claimed for trial.

8. The prosecution has examined as many as eight witnesses, namely, informant Chet Ram- P.W.1, Punni-P.W. 2, Dr. M.L. Verma- P.W.3, Manak Singh-P.W. 4, Daal Singh-P.W. 5, Dr. S.R. Gupta, P.W. 6 who has conducted the post martem of deceased Shyam Lal, Harish Chandr, S.I.-P.W. 7 and Om Prakash Singh- P.W. 8. After closure of the prosecution evidence, the statement of all the accused persons have also been recorded under section 313 Cr.P.C. wherein accused appellant No. 2 Sukh Ram and appellant no. 7- Bhupal have admitted in their statements recorded under section 313 Cr.P.C. that some litigation took place between the prosecution party and the victim and the incident had taken place due to that but they have denied their involvement in the case and have denied that they have committed the offence.

9. The prosecution has also proved documentary evidence, as injury report-Ext. Ka 1, Ka 2, Ka 3, Ka 4 & Ka 5, Supplementary report- Ext. Ka 6 & Ka 7, X-Ray report- Ext. Ka 8 & Ka 9, Panchayatnama- Ext. Ka 10, site plan with index- Ext. Ka. 18, recovery memo of blood stained and plain soil- Ext. Ka. 19, Charge sheet 'mool'- Ext. Ka 20, F.I.R.-Ext. Ka. 21 and written report- Ext. Ka. 24.

10. Learned counsel for the appellant submitted that the first information report is highly delayed for which no explanation has been offered by the prosecution. Learned counsel further submitted that the incident took place in

day light in the village but no single lady has been named as witness which makes the prosecution case highly doubtful. Further, learned counsel submitted that four injured witnesses belong to one family and all the injuries suffered by them are fabricated so as to give colour to the prosecution case. It has also been submitted by learned counsel that the deceased used to supply cartridges to the dacoits. The deceased had a gun which was seized by the police and the deceased has ceased to supply the cartridges to the dacoits and on account of this dacoits killed the deceased. Learned counsel further submitted that the weapon used in the offence has not been recovered.

11. Learned counsel further submitted that large number of persons have been roped in this case and prosecution has not been successful to prove which accused gave the fatal blow to the deceased. He further submitted that there are material contradictions in the statement of witnesses which go to the root of the case causing doubt on the prosecution version.

12. On the other hand, learned AGA submitted that one person has died and five persons have received injuries in the incident. He further submitted that such a large number of persons receiving injuries itself supports the version of the prosecution. He further submitted that explanation of delayed F.I.R. as given by the informant is satisfactory as fall of night took place soon after the incident and no arrangement of any conveyance could be made for reaching the police station.

13. Learned AGA further submitted that admittedly there was enmity between prosecution side and the deceased and enmity has resulted in the commission of the offence committed by the accused. All the injured witness have supported the prosecution case and P.W. 5 Dal Singh is an independent witness who has also supported the prosecution case.

14. Learned counsel submitted that in view of the above, prosecution has been able to prove its case against the surviving appellants Sukh Ram and Bhupal beyond reasonable doubt and learned trial court has passed well reasoned judgement which needs no interference by this court. Lastly, he submitted that appeal deserves to be dismissed.

15. This court is tasked with the duty to re-appreciate evidence available on the record of the learned trial court so as to reach at the conclusion whether the prosecution has been able to bring home the charge against surviving appellants Bhupal and Sukh Ram beyond the shadow of reasonable doubt.

16. Hon'ble Supreme Court in the case of ***Baljinder Singh @ Ladoo and others vs. State of Punjab, Criminal Appeal No. 1389 of 2012*** has held in paragraph no. 12 and 13 as under :-

"12. Also, it is worth indicating that P.W.3, P.W.4, and P.W.5 are "injured witnesses" or "*injured eye-witnesses" in this case. The sworn testimonies provided by injured witnesses generally carry significant evidentiary weight. Such testimonies cannot be dismissed as unreliable unless there are pellucid and substantial discrepancies or contradictions that undermine their credibility. If there is any exaggeration in the deposition that is immaterial to the case, such exaggeration should be disregarded; however, it does not*

warrant the rejection of the entire evidence. Therefore, the suspicion raised by the appellants regarding the genesis of the case is rendered unfounded.

13. The abovementioned conclusion stands fortified with reference to paragraph 26 of the decision of this Court in Balu Sudam Khalde and Anr. vs. State of Maharashtra12. The relevant passage is reproduced as under:

"26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) 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.

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

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

(e) 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.

(f) 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."

17. Hon'ble Supreme Court in paragraph no. 27 of the case of ***State of Uttar Pradesh vs. Naresh and Others, 2011 SCC Online SC 450,*** observed as under:-

"27. The evidence of an injured witness must be given due weightage being a stamped witness, State V DAYA CHAND FIR no.299/10 PS NARELA Page No.10 of 16 thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions CRL. A. No. 694/2010 Page 7 of 13 and discrepancies therein. (Vide Jarnail Singh v. State of Punjab,m Balraje v. State of Maharashtra and Abdul Sayeed v. State of M.P.)"

18. In ***Mahavir Singh vs. State of Madhya Pradesh, Criminal Appeal No.***

1141 of 2007, Hon'ble Supreme Court has observed in paragraph no. 18 as under:-

"18. The High Court has attached a lot of weight to the evidence of the said Madho Singh (PW 9) as he is an independent witness. On perusal of the record, it appears that the said person already had deposed for the victim family on a number of previous occasions, that too against the same accused. This being the fact, it is important to analyze the jurisprudence on interested witness. It is a settled principle that the evidence of interested witness needs to be scrutinized with utmost care. It can only be relied upon if the evidence has a ring of truth to it, is cogent, credible and trustworthy. Here we may refer to chance witness also. It is to be seen that although the evidence of a chance witness is acceptable in India, yet the chance witness has to reasonably explain the presence at that particular point more so when his deposition is being assailed as being tainted."

19. In ***Vinod Jaswantray Vyas (Dead) through Lrs. vs. the State of Gujrat, Criminal Appeal No. 2038 of 2017,*** Hon'ble Supreme court observed in paragraph nos. 44 and 45 as under:-

"44. We are conscious of the proposition that where there are contradictions inter se between the opinion of the Medical Jurist and the ocular testimony, generally, the evidence of the eyewitnesses should be given precedence. However, where the contradiction is so prominent that it completely demolishes the version of the eyewitnesses who are interested and partisan, in such cases, the Court should be circumspect in admitting the evidence of the eyewitness while ignoring the convincing opinion of the Medical Expert.

45. Our view is fortified by the judgment of this Court in the case of Bhajan Singh alias Harbhajan Singh and Others. v. State of Haryana wherein, it was held as below: -

"38. Thus, the position of law in such a case of contradiction between medical and ocular evidence can be crystallised to the 8 (2011) 7 SCC 421 effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved."

(emphasis supplied)

20. Admittedly, relationship between the prosecution side and the accused side was inimical as it is clear from the version of the first information report due to previous criminal case registered under section 307 I.P.C. against prosecution side by the accused side.

21. It is well settled that while appreciating the testimony of the inimical witness closer scrutiny is required. It is held in paragraph no. 33 to 38 of Hon'ble Supreme Court Judgement ***Raju Alias Balachandran and others vs. State of Tamil Nadu, (2012) 12 SCC 701,***which reads as under:-

"33. For the time being, we are concerned with four categories of witnesses

– a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorization of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required.

34. In the present case, PW-5 Srinivasan is not only a related and interested witness, but also someone who has an enmity with the appellants. His evidence, therefore, needs to be scrutinized with great care and caution.

35. In ***Dalip Singh v. State of Punjab, 1954 SCR 145*** *this Court observed, without any generalization, that a related witness would ordinarily speak the truth, but in the case of an enmity there may be a tendency to drag in an innocent person as an accused – each case has to be considered on its own facts. This is what this Court had to say:*

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

36. How the evidence of such a witness should be looked at was again considered in ***Darya Singh v. State of Punjab, (1964) 3 SCR 397****. This Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities taken into account. It was observed that where the witness shares the hostility of the victim against the assailant, it would be unlikely that he would not name the real assailant but would substitute the real assailant with the "enemy" of the victim. This is what this Court said:*

"There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be

interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it…….. [I]t may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of the enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars."

37. More recently, in Waman v. State of Maharashtra, (2011) 7 SCC 295 this Court dealt with the case of a related witness (though not a witness inimical to the assailant) and while referring to and relying upon Sarwan Singh v. State of Punjab, (1976) 4 SCC 369, Balraje v. State of Maharashtra, (2010) 6 SCC 673, Prahlad Patel v. State of Madhya Pradesh, (2011) 4 SCC 262, Israr v. State of Uttar Pradesh, (2005) 9 SCC 616, S. Sudershan Reddy v. State of Andhra Pradesh, (2006) 10 SCC 163, State of Uttar Pradesh v. Naresh, (2011) 4 SCC 324, Jarnail Singh v. State of Punjab, (2009) 9 SCC 719 and Vishnu v. State of Rajasthan, (2009) 10 SCC 477 it was held:

"It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care."

38. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in Dalip Singh and pithily reiterated in Sarwan Singh in the following words:

"The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied

that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration."

22. In paragraph no. 18 of the Hon'ble Supreme Court judgement passed in ***State of Haryana vs. Mohd. Yunus and others, (2024) 3 SCC 180*** which reads as under:-

"18. Although, appellant – Mohd. Jamil (A2) and Akhtar Hussain (A4) were tried separately and the statement of witnesses were recorded twice, firstly, in the trial against three accused persons (Mohd. Yunus (A1), Mohd. Jamil (A2) & Ghasita (A3)) and secondly, in the trial against Akhtar Hussain (A4), the fact remains that both the star witnesses of the prosecution namely Deenu (PW-7) and Ahmad (PW-8) are disbelieved in the second trial by clearly stating that their statements are contradictory, the facts are twisted and improvements are made. For trial under Section 302 IPC, if a witness is branded as untrustworthy having allegedly twisted the facts and made contrary statement, it is not safe to impose conviction on the basis of statement made by such witness. When there is an effort to falsely implicate one accused person, statement made by such an eyewitness cannot be relied without strong corroboration. Moreover, there is material on record proving previous enmity between the parties as mentioned in paragraph 25 of the trial court judgment."

23. In the backdrop of the above, this court has to appreciate the evidence of the prosecution witness.

24. P.W.1 Chet Ram who is the informant of the case has supported the prosecution case in his examination-in-chief and has stated that appellant Sukkhi(Sukh Ram) was armed with kanta and other accused were armed with lathies had assembled at the place of occurrence and they were beating Shyam Lal. On hearing, Lal Singh and Nathu reached at the place of occurrence.

25. This witness is an injured witness. This witness is consistent in cross examination regarding his narration of the incident. The defence has not been able to extract any material contradiction from the cross examination of this witness.

26. Similarly, P.W. 2 Punni who is also injured witness has supported the prosecution case in his examination in chief. In cross examination there are some improvements but they are not of such nature so as to erode the credibility of this witness.

27. P.W. 3 Dr. M.L. Verma has conducted the medical examination of the injuries of the witnesses. He prepared injury reports of each witnesses which are Ext. Ka.1, Ext. Ka 2, Kxt. Ka 3, Ext. Ka 4 and Ext. Ka. 5.

28. Similarly, P.W. 5 Dal Singh who is said to be independent witness has stated in his examination in chief that he and his brother Lal Singh had gone to purchase potato from the field of Natthu Pandit and he saw the incident. In cross examination, this witness has stated that marriage of the daughter of his brother Vijay Singh was scheduled to take place three weeks later and for the purpose of marriage, he had gone to purchase potato.

29. It is highly improbable and unbelievable that a person residing in a village will go to purchase potato for

marriage ceremony scheduled three weeks later.

30. Further this witness has stated in his cross examination that he had given some wrong statement to the investigating officer regarding the incident. This witness has further made some material improvement in his statement before learned trial court to his earlier statement made before the investigating officer. The presence of this witness at the place of occurrence is doubtful, therefore, the prosecution cannot take advantage of the evidence of this witness.

31. P.W. 6 Dr. S.P. Gupta who conducted the post mortem of the deceased Shyam Lal and prepared post mortem report Kxt. Ka 15 according to which the deceased Shyam Lal has received ten injuries out of which injury no. 1 and 7 are on the vital part and other injuries are on non vital part. The injuries received by deceased are as under:-

A. Lacerated wound 1 cm m 0.5 cm over the left side of head 10 cm above the ear with contusion in an area of 14 cm x 13 cm on the left side of head. On dissection clotted blood was present under the injury no. 1. There was depressed fracture of left parietal bone with liner fracture of frontal bone.

B. Abraded contusion 1.5 cm x 1 cm on the middle part of nose on the front aspect.

C. Contusion in an area of 13 cm x 14 cm on the dorsum of left.

D. Lacerated wound 1.5 cm x 0.5 cm on the lateral aspect of middle phalynx of little finger right hand. Fracture present under bhobynx.

E. Abraded contusion 1 cm x 0.5 cm on the joint of ring finger right side.

F. Contusion 8 cm x 1.5 cm on the back of left side of chest placed obliquely 2 cm below the scapular angle.

G. Contusion 11 cm x 2 cm on the back of chest left side placed obliquely 8 cm below the injury no. 6.

H. Contusion 11 cm x 2 cm on the lateral side of left chest back.

I. Multiple contusion in an area of 18 cm x 7 cm on the back of left side abdomen.

J. Contusion 5 cm x 1.5 cm on the lateral aspect of left arm 4 cm below the left shoulder. On opening clotted blood was present in the muscle.

32. P.W. 7 Harish Chandra S.I. and P.W. 8 Om Prakash Singh are investigating officer of the case. P.W. 4 Manak Singh is the witness of inquest.

33. Sixteen persons have been charged for inflicting injuries on the deceased Shyam Lal. The prosecution has not been able to prove who caused the fatal blow. Moreover except injury no. 1 which is lacerated wound on the head and injury no. 7 which is contusion on the head, no other injuries are on the vital parts. The incident took place at the spur of the moment.

34. Exception 4 of Section 300 IPC reads as under:-

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

35. From the appreciation of evidence on record it is found that the injury received by all the five injured are simple in nature whereas only one lacerated wound and one contusion have been found on the head of the deceased Shyam Lal. All the accused except accused Sukh Ram were armed with lathi and Sukh Ram was armed with Kanta. There is only one incised wound on the person of the deceased which is not on the vital part, therefore, the prosecutiont has not been able to successfully prove that the act of the accused was premeditated and that accused took undue advantage. The incident took place due to sudden fight, therefore the prosecution has not been able to prove that the offence committed by the accused falls under section 302 IPC.

36. Hon'ble Supreme Court in paragraph no. 9 of the judgement of ***Mahesh Balmiki Alias Munna vs. State of M.P., (2000)1 SCC 319*** held as under:-

"9. Adverting to the contention of a single blow, it may be pointed out that there is no principle that in all cases of single blow Section 302 I.P.C. is not attracted. Single blow may, in some cases, entail conviction under Section 302 I.P.C., in some cases under Section 304 I.P.C and in some other cases under Section 326 I.P.C. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him. In the instant case, the deceased was disabled from saving himself because he was held by the associates of the appellant who inflicted though a single yet a fatal blow of the description noted above. These facts clearly establish that the appellant had intention to kill the deceased. In any event, he can safely be attributed knowledge that the knife blow given by him is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death."

37. Hon'ble Supreme Court in paragraph no. 7 of the judgement of ***Stalin vs. State represented by the inspector of police, (2020) 9 SCC 524***, held as under:-

"7. Heard learned counsel on behalf of the respective parties at length. As observed hereinabove, the only aspect which is required to be considered in the present appeal is whether the appellant – accused has committed an offence punishable under Section 302 IPC or any other lesser offence, more particularly, Section 304 Part II IPC?

7.1 It is the case on behalf of the appellant – accused that as it is a case of single injury, Section 302 IPC shall not be attracted and the case would fall under Section 304 Part II IPC. While considering the aforesaid submission, few decisions of this Court on whether in a case of single injury, Section 302 IPC would be attracted or not are required to be referred to:

7.1.1 In ***Mahesh Balmiki v. State of M.P., (2000) 1 SCC 319****, this Court while deciding the question of whether a single blow with a knife on the chest of the deceased would attract Section 302 IPC, held thus: (SCC pp. 32223, para 9) "9. ... there is no principle that in all cases of a single blow Section 302 IPC is not attracted. A single blow may, in some cases, entail conviction under Section 302 IPC, in some cases under Section 304 IPC and in some other cases under Section 326IPC. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him. In the instant case, the deceased was disabled from saving himself because he was held by the associates of the appellant who inflicted though a single yet a fatal blow of the description noted above. These facts clearly establish that the appellant had the intention to kill the deceased. In any event, he can safely be attributed the knowledge that the knifeblow given by him was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death." 7.1.2 In Dhirajbhai Gorakhbhai Nayak v. State of Gujarat (2003) 9 SCC 322, this Court while discussing the ingredients of Exception 4 of Section 300 IPC, held thus: (SCC pp.32728, para 11) "11. The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution (sic provocation) not covered by the first exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of selfcontrol, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon an equalfooting. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the*

ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage"." 7.1.3 In Pulicherla Nagaraju v. State of A.P. (2006) 11 SCC 444, this Court while deciding whether a case falls under Section 302 or 304 Part I or 304 Part II IPC, held thus: (SCC pp. 45758, para 29):

"29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters — plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may." 7.1.4 In ***Singapagu Anjaiah v. State of A.P. (2010) 9 SCC 799,*** *this Court while deciding the question whether a blow on the skull of the deceased with a crowbar would attract Section 302 IPC, held thus, (SCC p. 803, para 16):*

"16. In our opinion, as nobody can enter into the mind of the accused, his intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a crowbar as the weapon of offence. He has further chosen a vital part of the body i.e. the head for causing the injury which had caused multiple fractures of skull. This clearly shows the force with which the appellant had used the weapon. The cumulative effect of all these factors irresistibly leads to one and the only conclusion that the appellant intended to cause death of the deceased." 7.1.5 In State of Rajasthan v. Kanhaiya Lal (2019) 5 SCC 639 this Court in paragraphs 7.3, 7.4 and 7.5 held as follows:

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

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

7.5. A similar view is taken by this Court in the recent decision in Leela Ram (supra) and after considering catena of decisions of this Court on the issue on hand i.e. in case of a single blow, whether case falls under Section 302 or Section 304 Part I or Section 304 Part II, this Court reversed the judgment and convicted the accused for the offence under Section 302 IPC. In the same decision, this Court also considered Exception 4 of Section 300 IPC and observed in para 21 as under: (SCC para 21) "21. Under Exception 4, culpable homicide is not murder if the stipulations contained in that provision are fulfilled. They are: (i) that the act was committed without premeditation; (ii) that there was a sudden fight; (iii) the act must be in the heat of passion upon a sudden quarrel; and (iv) the offender should not have taken undue advantage or acted in a cruel or unusual manner." 7.1.6 In the case of Bavisetti Kameswara Rao (supra), this Court has observed in paragraphs 13 and 14 as under:

"13. It is seen that where in the murder case there is only a single injury, there is always a tendency to advance an

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

14. In ***State of Karnataka v. Vedanayagam [(1995) 1 SCC 326 : 1995 SCC (Cri) 231]*** *this Court considered the usual argument of a single injury not being sufficient to invite a conviction under Section 302 IPC. In that case the injury was caused by a knife. The medical evidence supported the version of the prosecution that the injury was sufficient, in the ordinary course of nature to cause death. The High Court had convicted the accused for the offence under Section 304Part II IPC relying on the fact that there is only a single injury. However, after a detailed discussion regarding the nature of injury, the part of the body chosen by the accused to inflict the same and other attendant circumstances and after discussing clause Thirdly of Section 300 IPC and further relying on the decision in Virsa Singh v. State of Punjab [AIR 1958 SC 465] , the Court set aside the acquittal under Section 302 IPC and convicted the accused for that offence. The Court (in Vedanayagam case [(1995) 1 SCC 326 : 1995 SCC (Cri) 231] , SCC p. 330, para 4) relied on the observation by Bose, J. in Virsa Singh case [AIR 1958 SC 465] to suggest that: (Virsa Singh case [AIR 1958 SC 465], AIR p. 468, para 16) "16. ... With due respect to the learned Judge he has linked up the intent required with the seriousness of the injury, and that, as we have shown, is not what the section requires. The two matters are quite separate and distinct, though the evidence about them may sometimes overlap." The further observation in the above case were:*

(Virsa Singh case [AIR 1958 SC 465] , AIR p. 468, paras 16 & 17) "16. ... The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it.

Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question;

and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.

17. ... It is true that in a given case the enquiry may be linked up with the seriousness of the injury. For example, if it can be proved, or if the totality of the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one of fact; ..." (emphasis supplied)" 7.2 From the above stated decisions, it emerges that there is no hard and fast rule that in a case of single injury Section 302 IPC would not be attracted. It depends upon the facts and circumstances of each case. The nature of injury, the part of the body where it is caused, the weapon used in causing such injury are the indicators of the fact whether the accused caused the death of the deceased with an intention of causing death or not. It cannot be laid down as a rule of universal application that whenever the death occurs on account of a single blow, Section 302 IPC is ruled out. The fact situation has to be considered in each case, more particularly, under the circumstances narrated hereinabove, the events which precede will also have a bearing on the issue whether the act by which the death was caused was done with an intention of causing death or knowledge that it is likely to cause death, but without intention to cause death. It is the totality of the circumstances which will decide the nature of offence."

38. In view of exception 4 of section 300 IPC, the offence committed by the accused falls under part II of section 304 IPC as from the evidence available on record, the prosecution has failed to prove that there was an intention on the part of the accused to commit the murder of the deceased Shyam Lal because only one lacerated wound has been found on his head.

39. It is also submitted that a large number of person assaulted the deceased by lathies and one lathi fell on the head of the deceased which proved fatal, therefore, the intention of causing death cannot be inferred. In view of the above, the prosecution has failed to prove offence against surviving appellant no. 2 Sukh Ram and appellant no. 7 Bhupal under section 302 r/w 149 IPC.

40. Appellant Bhupal has undergone imprisonment of two months 24 days whereas appellant Sukh Ram has also undergone imprisonment of 2 months 18 days. The appellants Sukh Ram is aged about 60 years whereas appellant Bhupal is aged about 75 years.

41. Considering the fact that incident took place more than 40 years ago and in view of law laid down by Hon'ble

Apex Court in ***State of Madhya Pradesh vs. Shyamlal and others, Criminal Appeal No. 1254 of 2024,*** we are of the view that following sentence would sub-serve the ends of justice:-

42. Appellant Sukh Ram and Bhupal are sentenced to period already gone under section 304 IPC part II read with 149 of the IPC and they are also sentenced to fine of Rs. 25,000/- each and fine thus imposed shall be paid to the victim.

43. Thus, this appeal deserves to be ***partly allowed***. The impugned judgement and order of learned trial court dated 21.12.1985 convicting and sentencing the appellant under section 302 r/w 149 IPC is set aside and they are convicted under section 304 part II read with section 149 I.P.C., section 325 r/w 149 I.P.C. and section 323/149 I.P.C. They are sentenced to period already undergone concurrently and pay fine of Rs. 25,000/- each. The total fine imposed shall be paid to the victim as compensation to the legal heir/ heirs of the deceased Shyam Lal. In default of payment of fine they will undergo imprisonment of three months. The appellants are directed to deposit the fine before the learned trial court within one month.

44. Let a copy of this order be communicated by the Registrar (Compliance) to the Chief Judicial Magistrate concerned for compliance within a week.

45. The Chief Judicial Magistrate, Budaun is also directed to send his compliance report within two months to this Court.

46. Lower court record be sent to the concerned Court forthwith.

47. Registrar General of this Court is also directed to pay an honorarium of Rs. 15,000/- to Sri Javed Alam, learned Amicus Curiae for rendering effective assistance in the matter.

(2025) 5 ILRA 803
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 01.05.2025

BEFORE

THE HON'BLE MRS. SANGEETA CHANDRA, J.
THE HON'BLE AJAI KUMAR SRIVASTAVA-I, J.

Criminal Appeal No. 482 of 2004

Rajesh & Anr. ...Appellants
Versus
State of U.P. ...Opposite Party

Counsel for the Appellants:
R.P. Singh, K.K. Singh, Kailesh Nath Mishra, L.K. Gupta

Counsel for the Opposite Party:
G.A.

A. Criminal Law - Criminal Procedure Code,1973-Section 374(2)-Indian Penal Code,1860-Sections 363, 366 & 376-Indian Evidence Act,1872-Section 114A-challenge to-conviction-Appellants were convicted for raping a 15 year old girl-The FIR alleged that the accused, with the help from others, lured the minor girls 'S' and 'A' took them to Haryana -Victim 'S' gave detailed statements u/s 161 and 164 CrPc, accusing both the accused of forcibly abducting and repeatedly raping her-Victim 'A' turned hostile during trial and denied rape, claiming she went willingly and wanted to marry accused Rajesh-Held, When the prosecutrix is a minor any alleged consent to sexual activity is legally irrelevant-Conviction u/s 376 IPC is sustainable even in absence of physical injuries or medical proof of recent rape-The consistent and uncontroverted statement of the victim u/s 161 and 164 Crpc, when found trustworthy, is sufficient to sustain conviction without