

that the testimony of injured witness P.W.-1, becomes fairly doubtful on account of the fact that he had not been able to give a correct description of the place where the incident had occurred. If the testimony of P.W.-1 is seen, he had definitely not been able to connect the place of incident with the map as had been given in the site plan which was exhibited as Exhibit - ka8 in the paper book. We are also of the view that the P.W.-1 who was an injured witness had not informed the first informant Shiv Charan Singh about the incident himself. We find after having perused the injury report and the statement of P.w.-2, Dr. S.K. Das that the injuries were so grievous that he could not have spoken aloud and narrate the incident to the first informant Shiv Charan Singh. In the instant case, we find that, in fact, another alleged eye witness Nawab Singh had stated that he had narrated the entire incident to Shiv Charan Singh and on the dictation of Shiv Charan Singh, Om Pal Singh had scribed the first information report and we are, thus, of the view that the P.W.-1 was such a witness who could not be absolutely relied upon for the purpose of convicting the accused persons. We further find that the appellants no. 5 and 8 who were carrying lathies were not armed in such a manner as would make it evident that they had gone with a premeditated mind to do away with the deceased.

14. Thus for all the reasons which we have stated, the criminal appeal is **allowed**. The impugned judgement and order dated 1.3.1984 passed by the Special Judge, Ghaziabad, is set aside. Since the appeal against the appellants no. 1 Iqbal Singh, the appellant no. 2 Onkar Singh @ Rirku, the appellant no. 3 Rakam Singh, the appellant no. 4 Madan Singh, the appellant no. 6 Prakash and the appellant

no. 7 Ishwar has already abated, we confine our judgment and order to the appellant no. 5 Sansar Singh and the appellant no. 8 Krishan Pal, who are being acquitted of all the charges under which they were tried.

15. The appellant no. 5 Sansar Singh and the appellant no. 8 Krishan Pal are acquitted of the charges levelled against them. The appellants are already on bail and they need not surrender. The sureties and bail bonds are discharged.

16. For the hard work which has been put in by the learned Amicus Curiae Mr. Saurabh Sachan, we quantify his fee as Rs. 25,000/- which shall be payable to him by the Legal Services Authority forthwith. The payment be got done under the supervision of the Registrar General of this court.

(2025) 1 ILRA 125
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.01.2025

BEFORE

THE HON'BLE SIDDHARTH VARMA
THE HON'BLE RAM MANOHAR NARAYAN
MISHRA, J.

Criminal Appeal No. 2696 of 1981
 And
 Criminal Appeal No. 660 of 1984

Devendra Kumar @ Jhunna & Ors.

...Appellants

Versus

State of U.P.

...Respondent

Counsel for the Appellants:

S.S. Tewari, Ajay Kumar Pandey, K.K. Srivastava, Roshan Khan, Satish Trivedi

Counsel for the Respondent:

Dga, Mayank Bhushan

A. Criminal Law - Juvenile Justice (Care And Protection Of Children) Act, 2000 - Sections 2(k), 2(l), 7-A, 20 & 49 - Juvenile Justice (Care and Protection of Children) Rules, 2007 - Rules 12 & 98 - Applicability of 2000 Act retrospectively - All persons who were below the age of eighteen years on the date of commission of the offence even prior to 1-4-2001 would be treated as juvenile. If the accused claiming plea of juvenility, was less than 18 years of age, on the date of commission of offence, he is entitled to be treated as juvenile and will be given benefit as per 2000 Act, notwithstanding the fact that the accused was not entitled to the benefit of being a juvenile on the date of offence under Juvenile Justice Act, 1986, as Act was passed after commissioning of this offence. In the instant case the Juvenile in conflict of law, dealt with under the provisions of Juvenile Justice (Care And Protection Of Children) Act, 2000 inspite of the fact that occurrence took place in the year 1976 and during trial of the case Juvenile Justice Act, 1986 was enacted and commenced. (Para 83, 84)

B. Criminal Law - Indian Penal Code, 1860 - Sections 147, 148, 149 & 302 - Common object - Unlawful assembly - Natural witness - Eyewitness credibility - Minor inconsistencies - In the instant case at around 12:00 hours in the day, the deceased, who was the brother of informant was going to his house to take meal from his shop. Accused persons armed with spears (Barchhai) , Tabbals, lathis, all belonging to informant's village waylaid the deceased and attacked him by their weapons. Deceased raised an alarm, the informant and wife of deceased rushed to the spot. Accused persons also gave beating to the informant and wife of the deceased. In the meantime, challenged the accused whereupon they ran away towards east. Deceased died on the spot. Motive was that the deceased was a witness in the murder case and had deposed against the one of accused. *Held* : It was proved beyond reasonable doubt that surviving accused had formed

unlawful assembly together with co-accused on the date and time of the incident and in prosecution of common objection of the assembly they brutally assaulted the deceased in concerted manner by their respective weapons with intention to kill him and caused fatal injuries on his person, which was sufficient to cause death and on account of the injuries sustained in the incident he died instantaneously. Only due to the fact that no punctured wound was found on the person of the deceased, the presence of accused persons who were said to be armed with Barchhai cannot be doubted. Also only due to fact that informant with whom accused persons had strong enmity was spared in the incident by causing simple injuries and was not assaulted by dangerous weapons, his presence cannot be doubted as he stated in his evidence that he and his sister-in-law were rescued by witnesses. PW-5 Jagdish Narain has testified in his evidence that the incident occurred in front of the house and he had seen the incident. This fact is stated in FIR itself that house of Jagdish Narain lies in front of the place of incident and on that reason his presence on the spot is natural as he is supposed to be a witness of the spot and only on account of prior enmity with some accused persons his evidence cannot be brushed aside. From medical evidence, the mode and manner of the incident, and the injuries found on the person of the deceased and injured witnesses, stand proved, and the sworn testimony of the witnesses of fact/eye-witnesses finds corroboration from the medical evidence. Appeal Dismissed (Para 77, 78, 79, 81, 90)

Dismissed. (E-5)

(Delivered by Hon'ble Ram Manohar Narayan Mishra, J.)

1. Criminal Appeal No.2696 of 1981 has been preferred against the judgment and order dated 19.11.1981 passed by VIIth Additional Sessions Judge, (Non-

Metropolitan Area) Kanpur Nagar in S.T. No.75 of 1977 and S.T. No.304 of 1977, and Criminal Appeal No.660 of 1984 arose out of judgment and order dated 18.01.1984 passed in S.T. No.75 of 1977, in both the session trials. All the nine appellants have been convicted for charge under Section 147, 148, 302/149, 325/149 and 323/149 IPC, P.S. Derapur, Kanpur.

2. In S.T. No. 75 of 1977 appellant Devendra Kumar alias Jhunna, Jia Lal alias Dadu, Avdhesh and Smt. Ram Piari and in S.T. No.304/1977 accused Ram Pratap, Bhuneshwar, Bhanu Pratap alias Laluna, Shiv Das and Krishna Kumar alias Chuttan were sentenced to undergo imprisonment for life for charge under Section 302/149 IPC. They were also found guilty for charge under Section 325/149 Cr.P.C., for which they were sentenced to one year's rigorous imprisonment. They were further sentenced to six months rigorous imprisonment under Section 323/149 IPC. Accused Devendra Kumar alias Jhunna, Shiv Das, Krishan Kumar Chuttan were sentenced to one years rigorous imprisonment for charge under Section 147 IPC and accused Ram Pratap, Avdhesh, Bhunesh, Dadu and Lalauna were sentenced to one years rigorous imprisonment under Section 148 IPC.

3. Accused Smt. Ram Piyari was sentenced to life imprisonment for charge under Section 302/149 IPC, one year simple imprisonment for charge under Section 325/149 IPC, six months imprisonment for charge under Section 323/149 IPC and one year simple imprisonment for charge under Section 147 IPC. All the sentences were directed to run concurrently.

4. Criminal Appeal No.660 of 1984 arose against the judgment and order dated 18.01.1984 passed by Learned IVth

Additional Sessions Judge, Kanpur Dehat in S.T. No.75A of 1977, whereby appellant Rajmun was convicted of charge under Sections 148, 302/149, 325/149 and 323/149 IPC. Accused Rajmun is sentenced to life imprisonment for charge under Section 302/149 IPC, one year rigorous imprisonment for charge under Section 148 IPC, one year rigorous imprisonment for charge under Section 325/149 IPC and six months rigorous imprisonment for charge under Section 323/149 IPC.

5. Both the criminal appeals have arisen out of conviction of appellants for the same offence having arisen out of Case Crime No.118 of 1976, under Sections 147, 148, 302/149, 323/149 and 325/149 IPC, PS. Derapur, Kanpur. As both the criminal appeals have arisen out of same incident and offence and all the appellants have been implicated as co-accused during the trial, both the appeals have been clubbed together and are being decided by a common judgment. The appellants were released on bail by orders of these Criminal Appeals on direction of this court in their respective criminal appeals.

6. Heard Sri Ajay Kumar Pandey, learned Amicus Curiae on behalf of the appellants, Sri Rahul Asthana, learned A.G.A. for the State and perused the material available on record.

7. The brief facts of the case as culled out from the case of prosecution are that on 29.06.1976 at around 12:00 hours in the day, when the deceased Sheo Narain who was the brother of informant Lalaram was going to his house to take meal from his shop, the accused persons namely Avdhesh, Ram Pratap, Bhuneshwar were armed with spears (*Barchhai*), Dadu, Lalauna, Rajmun were carrying (*Tabbals*), Shiv Das, Jhunna,

Chuttan and Smt. Ram Piari carrying lathis, all belonging to informant's village waylaid the deceased and started attacking him by their respective weapons. The deceased raised an alarm, the informant and Smt. Vimla wife of deceased rushed to the spot to rescue the deceased. The accused persons also gave beating to the informant and Smt. Vimla, wife of the deceased. In the meantime, witnesses Jagdish Narain, Ram Chander, Nanhey, Asharfi Lal, Mahadev challenged the accused whereupon they ran away towards east. The deceased died on the spot. The informant Lala Ram and Smt. Vimla had also sustained injuries. The motive of the offence as stated by the informant in FIR is that he was a witness in the murder case of Ram Gopal of the village who had deposed against accused Ram Pratap and others in an earlier murder case. Ram Pratap and others were convicted by court of sessions and were sentenced to 20 years imprisonment. The convicts were enlarged on bail by orders of High Court in Appeal, by this reason accused persons were harbouring grudge against the informant and his family members.

8. The written report Ext. Ka-3 was filed by Lala Ram PW-2 at the Police Station, Derapur, six miles away from the village Chilauli, where the murder was committed at 2:15 pm. On its basis Chick FIR Ext. Ka-22 was drawn by Head Moharir Ram Raj Singh, PW-9. He also made entry in the general diary at report No.18 dated 29.06.1976 at 02:15 pm, whereof copy is Ext. Ka-23. Injuries found on the person of Lala Ram were also noted in the general diary. The investigation of the case was entrusted to S.I. Sri Ram Singh, PW-8. He left for the scene of the crime immediately. He prepared inquest report Ext. Ka-5 on the dead body of the

deceased. Blood stained Dhoti Ext. 2 Shri Ext.3, Baniyan Ext. Ka-4 found on the dead body of Shiv Narain were taken into custody and placed in a sealed cover and Fard Ext. Ka-11 was prepared. He also took into custody blood stained Lathi Ext-5 and blade of Barchi Ext-6 found near the dead body under fard Ext. Ka-12. The Lathi was cut into three pieces and both the items were placed under sealed covers. The Investigating Officer thereupon searched the houses of the accused Ram Pratap, Bhunesh etc. but the accused were not found. Memos of search Ext. Ka-13 to Ka-17 were prepared. Thereafter, the Investigating Officer, prepared a diagram of the dead body Ext. Ka-18, report for postmortem examination Ext. Ka-19 and Ka-20 respectively, and challan lash Ext. Ka-21. The dead body was sealed in a cloth-sheet and was entrusted to constables Sri Subhan Ali and Ram Pal for being taken to the Head Quarters for post mortem examination. Sub Inspector Sri Mata Prasad P.W.7, who had reached there after the dead body had been sent and he had taken over the investigation. He had also collected in the presence of S.I. Sri Ram Singh, blood stained earth Ext.7 and plain earth Ext.8 from the scene of occurrence and Fard Ext. Ka-8 was prepared in this behalf. S.I. Sri Ram Singh returned to the police station with the sealed bundles. S.I. Sri Mata Prasad recorded the statements of the witnesses and prepared site-plan Ext.Ka-7. He sent the injured Smt. Vimla Devi and Lala Ram for medical examination with letters Ext. Ka-1/1 and Ka-2/1.

9. Head Moharir Sri Ram Raj Singh P.W.9 had made entry in the general diary at report No.34 on 29.6.1976 at 10:15 P.M. when S.I. Sri Ram Singh returned to the Police Station with five sealed bundles.,

Copy of the general diary is Ext.Ka-24. These bundles were sent to Chief Medical Officer's Office through Constable Sri Komal Singh for being forwarded to the Chemical Examiner, Agra, on 22.7. 1976 as per entry in the general diary, a report No. 11, copy of which is Ext.Ka-25. As per affidavit Ext. Ka-28, filed by Sri Komal Singh he had brought these bundles, with seals intact on 22.7.1976. Sri Vikram Singh, Clerk of the Office of Chief Medical Officer, Kanpur, has filed affidavit Ext.Ka-27 to the effect that he had received these five bundles and had despatched the same that very day to Chemical Examiner Agra. According to the report of the Chemical Examiner, Agra, Ext. Ka-29, blood-stained earth, shirt, Dhoti, Baniyan, blade of Barchi and pieces of Lathi were found stained with blood. According to the report of the Serologist Ext .Ka-30, the blood-stained earth and Baniyan had human blood of Group- "O" the blood was dis-integrated on Barchi and Lathi.

10. The injured Smt. Vimla Devi was examined by Dr. Surendra Singh (P.W.-1) on 29.6. 1976 at 8 P.M. when he found the following injuries on her person and prepared injury report Ext. Ka-1.

1. Contusion 8 Cm. x 2 Cm. on back, below right scapula region oblique in direction.

2. Contusion 7 Cm. x 2 Cm. on right hand just below the right elbow joint.

3. Contusion 6 Cm. x 2 Cm. on right hand about 4 Cm. above the right wrist joint on lateral aspect.

4. Three contusions in area of 9 Cm. x 5 Cm. on right fore arm about 8 Cm. above the wrist joint on the medial aspect.

5. Contusion 6 Cm. x 2 Cm. on right thigh about 8 Cm. above the right knee joint.

Injuries Nos. 1,2,3 and 5 were found to be simple and injury No.4 was kept under observation for which Xray was advised. The injuries in the doctor's opinion were about half day old and could have been caused by a blunt weapon Like a Lathi.

11. Dr. R.Prakash P.W.3, Radiologist, had taken X-ray of the right fore-arm of Smt. Vimla Devi on 29.6.76 and he found the lower 1/3rd right radius fractured for which he had issued his report Ext. Ka-4.

12. Dr. Surendra Singh P.W.1 had also examined Lala Ram at 8.30 P.M. and issued injury report Ext. Ka-2, Following injuries were found on his persons :-

1. Contusion 6 Cm. x 2 Cm. on right side of back below right scapular region oblique in direction.

2. Contusion 8 Cm. X 1 ½ cm on right upper hand about 7 Cm. below the shoulder joint on lateral aspect.

3. Contusion 6 Cm. X 1 ½ Cm. on right thigh about 10 Cm. above the knee joint on lateral aspect.

13. These injuries were also about half day old according to his opinion and might have been caused, at 12.00 Noon on 29.6.76. Injuries were simple and caused by blunt object.

14. The dead body of the deceased was sent through Constable Sri Subhan Ali and Constable Ram Pal Singh to the mortuary on 29.6.1976 duly sealed for which Constable Sri Subhan Ali has filed his affidavit Ext. Ka-26. He had also identified the dead body before the Medical Officer at the time of its post mortem examination.

15. Dr. B.K. Jain P.W.-6 had performed the post mortem examination on the dead body of the deceased Shiv Narain on 30.6.1976 at 4.30 P.M. He had found that the deceased was about 40 years of age. Death had taken place about one day earlier. Rigor-mortis had passed off and decomposition had just set in. He found the following ante-mortem injuries on the dead body;

(i) Incised wound 6.5 Cm. x 4 Cm. x 4 Cm, brain cavity deep on the front and middle of head 6 Cm. above the bridge of nose, frontal bone cut under-neath. Brain matter coming out of the wound.

(ii) Incised wound 3 Cm. x 1.5 Cm. x bone cut underneath on the right side front of head 4 Cm. above the right eye-brow.

(iii) Incised wound 2 Cm. x 1 Cm. x muscle deep on the right side face just outer to right eye brow.

(iv) Incised wound 3 Cm. x 1.5 Cm. x bone cut underneath on the right side head 11 Cm. above right ear.

(v) Incised wound 4 Cm. x 1.5 Cm. x bone cut underneath on the right side head 4 Cm. above right ear.

(vi) Incised wound 4 Cm. x 2 Cm. x bone cut underneath on the right side head 3 Cm. behind injury No. (v)

(vii) Incised wound 10 Cm. x 6.5 Cm. x Occipital bone cut underneath on the back of head oblique 3 1/2 Cm. behind right ear.

(viii) Abraised contusion 13 Cm. x 6 Cm. on the back of left Shoulder and outer side left arm.

(ix) Abraised contusion 6 Cm. x 4.5 Cm. on the back of left elbow.

(x) Incised wound 2 Cm. x 1 Cm. x muscle deep on the front of left leg in middle.

(xi) Abraised contusion 9 Cm. x 6 Cm. on the back of right elbow.

(xii) Contusion 19 Cm. x 4 Cm. on the left side back oblique

(xiii) Contusion 21 Cm. x 5 Cm. on the right scapular region and middle of back oblique.

(xiv) Contusion 12 Cm. x 6 Cm. on the left buttock.

16. On internal examination, the Medical Officer had found that the frontal, temporal and right parietal and occipital bones were cut under injuries Nos. 1 to 7. Brain was cut and was coming out. Stomach was empty. Small intestines contained a little digested food and large intestines contained faecal matter. In the opinion of the Doctor, cause of death was shock and hemorrhage as a result of ante-mortem injuries. Dr. Jain had prepared and proved post-mortem report Ext. Ka-6.

17. After completing the investigation, Sub Inspector Sri Mata Prasad P.W.7 submitted the charge-sheet Ext. Ka-9 against the accused Jia Lal alias Dadu, Rajmun, Avdhesh, Devendra and Smt. Ram Piari, on 28.8.1976. They were committed to stand their trial in the Sessions Court by the Chief Judicial Magistrate, Kanpur Dehat, under his order dated 26.3.1977. The police could not apprehend the other accused inspite of issue of proclamation under Section 81 Cr.P.C. and after issuing warrants of attachment as also attachment of the movable properties of Ram Pratap, Bhunesh, Lalauna alias Bhanu Prakash and of Shiv Das, on 5.9.1976 and consequently, charge-sheet Ext. Ka-10 was submitted against the accused Ram Pratap, Bhunesh, Bhanu Prakash alias Lalauna, Krishan Kumar alias Chhuttan, as absconders. They were committed to stand their trial in the Sessions Court by the Chief Judicial

Magistrate under his order dated 28.10.1977.

18. Both the Sessions cases were consolidated and S.T. No.75/1977 was made the leading case. All the accused except Rajmun were charged under Sections 147, 148, 302/149, 325/149 and 323/149 I.P.C. to which they pleaded not guilty. During the trial, the accused Rajmun jumped bail and his case had to be separated from S.T. No.75 of 1977 under order dated 22.7. 1980 vide S.T. No.75 A of 1977. The accused were tried for charge under Sections 147, 325/149, 302/149, 323/149, 148 IPC.

19. In support of its case, the prosecution has examined nine witnesses in all. Of these, Dr. Surendra Singh P.W. 1, Dr. R. Prakash, Radiologist, P.W.3 and Dr.B.K.Jain P.W.6 are the medical Officers and their evidence has already been referred to above, while stating the prosecution case. Sub-Inspector Sri Mata Prasad P.W.7 and Sub-Inspector Sri Ram Singh PW-8 are the Investigating Officers and P.W.-9 Head Moharrir Sri Ram Raj Singh is a formal witness who had prepared check F.I.R. and made entries in the general diary P.W-2 Sri Lala Ram, brother of the deceased, PW-4 Smt. Vimla Devi wife of the deceased and P.W.-5 Jagdish Prasad are the eye-witnesses. The accused persons also examined five witnesses in their defence, including the accused Ram Pratap who has been examined on his request.

20. We may now refer to the evidence of the eye-witnesses examined by the prosecution.

21. Supporting the prosecution case, Sri Lala Ram P.W.-2 brother of the

deceased, Sheo Narain, has deposed that Ram Gopal of his village was murdered and the accused Ram Pratap, Bhunesh, Avdhesh, Dadu, Rajmun and others were tried for that murder, for which he had given evidence and these accused were convicted and sentenced to 20 years' rigorous imprisonment by the Sessions Court. At the time of the murder of his brother, these accused had been released on bail by the Hon'ble High Court during the pendency of their appeal. They bore enmity against him and members of his family.

22. The witness further deposed that about a year and eight months' back, at about 12 noon, his brother Sheo Narain was returning from his shop. He was also following him. When his brother reached in front of the house of Jagdish Narain on the passage, the accused Ram Pratap, Bhunesh, Avdhesh, carrying Barchi (spears), and the accused Dadu, Rajmun Lalauna carrying Tabbals and the accused Sheo Das, Jhunna, Chhuttan and Smt. Ram Piari carrying Lathies, came there. He could not notice from which side they had come. The accused started attacking his brother with Barchi, Tabbals and Lathies. His brother raised an alarm. The witnesses came running to rescue him. The wife of his brother, Smt. Vimla Devi also came there. Jagdish Narain, Nanhey, Asharfi Lal, Mahadeo, Ram Chander had also come. The accused attacked the witness and also Smt. Vimla Devi with Lathies. On the intervention of the witness, the accused ran away towards the east. His brother died on the spot. Smt. Vimla had also suffered injuries. The witness further deposed that he had prepared the report Ext. Ka-3 and had gone to the police Station Derapur, where it was filed. He identified the shirt, Dhoti and Baniyan Exts. 1 to 3 as the clothes worn by the deceased at the time of

the incident. He further deposed that at the time of the incident, blood had fallen on the ground where his brother had fallen down after fatally hurt. He further deposed that a Lathi and blade of Barchhi were found near the dead body, which were stained with blood. The witness also stated that the accused Lalauna was a real brother of the accused Ram Pratap, and Sheo Das accused was the cousin of the accused Ram Pratap. Jhunna and Chhuttan were also related to Ram Pratap. All the other accused belongs to the party of Ram Pratap and were his supporters. Smt. Ram Piari was the mother of the accused Dadu.

23. In his cross-examination, the witness has stated that Jagdish Narain, who was a prosecution witness in this case, was informant of the earlier murder trial against the accused Ram Pratap etc. and the deceased Ram Gopal of the said murder trial was the brother of Jagdish Narain. The accused Ram Pratap was the Pradhan of the village but he did not know if he was a Principal in a School at Ladpur Pad. He also stated that even before the murder of his brother, the accused had tried to Gherao them. He also claimed to have sent an information to the Superintendent of Police Kanpur, but the matter was not pursued further. He admitted that Sri Kalika had filed a complaint against him, his brother u/s 307 I.P.C. Rajjan and the witness Jagdish Narain, who claimed that it was a false complaint and had been dismissed. He admitted that in a case under Section 324 I.P.C. against Hirdaya Narain he had appeared as a witness and the accused was sentenced.

24. He further submitted that his shop was about one furlong away from the scene of occurrence on the road side. On coming towards the village, in some portions

agricultural fields were lying on both sides, there are khaliyans. The shop was, however, in the abadi. He denied that there were any bushes along the passage from the shop to his house. The witnesses further deposed that his brother was not an eye witness in the murder of Ram Gopal, brother of Jagdish Narain, but his brother used to do pairvi in the case. He further stated that his brother used to press him for giving evidence and to state the truth. He admitted that this fact was not mentioned by him in the FIR, but he claimed that he had told about it to the investigating officer. However, his statement under Section 161 Cr.P.C. did not find any mention about it. The witness could not give the date or month of making the application to the Superintendent of Police regarding the attempts of the accused to Gherao them nor to give the names of the witnesses of those incidents. He admitted that no mention about it was made by them in the FIR. He did not remember if he had told about it to the Investigating Officer, but he did not give copy of the application to him. He also testified that he and his brother had only one house in village Chilauli and they live jointly. The land was in the name of their father at the time of incident. Although their father died 3-4 years back, it was only during the consolidation that their chaks were separated after the murder of his brother. He also admitted that he had constructed a separate house in Rura and the deceased had purchased land from Babbu Shukla in his own name, but he denied that he and his brother were living separately since before the incident of this case. He admitted that he had a ration card in Rura also, while his brother had a ration card in village Chilauli. They had a small shop of betel and Cigarettes etc. He admitted that he and his brother were prosecuted by Sheo Datt

Bajapi. It was a false case and they had been acquitted. He further stated that he had not noticed the Lathi and the blade of Barchhai before writing the report, but he noticed it when he came out of his house after writing the report. He did not think it necessary to add it in the report before filing it. He claimed that he had sustained injuries on his back and on his waist. Although the hospital was only 40 mts. away from the police Station, yet he had not been sent for medical examination immediately after the filing of the report. He came with the investigating officer and was medically examined latter in the evening.

25. PW-1 further stated that at the time of incident, Jagdish Baba was 12-14 paces away from the scene of occurrence. He and Nanhey who was also at the same distance had asked the accused to refrain from beating the deceased. The accused had not tried to attack Jagdish. The marpeet took place only for half a minute. The Tabbal was about 4 finger wide and was of the shape of *Axe (Kulhari)*. All the *Tabbals* were of the same shape. All the accused had attacked from all the sides. The *ballam* was of the size of 4-5 fingers. Smt. Vimla Devi had wept after the incident, but she had not taken the head of her husband in her lap, neither she had embraced the dead body. The clothes of Smt. Vimla Devi or of the witness were not stained with the blood of the deceased. Apart from the enmity on account of his giving the evidence, the accused bore enmity against them for other reasons also. Ram Pratap had also filed a case under Section 379 IPC in which they were acquitted. They had three houses in the Chulauli. One of the houses had been sold. They have a house adjoining the house of accused Dadu, and in the third house had therein shop. At the time of

murder of Ram Gopal, his parents used to live in Phatak Wala house and as they were not keeping good-health, he used to stay with them in that house. But ordinarily, he lived in the house adjoining the the house of the accused Dadu. In his cross examination on behalf of accused Dadu the witness has admitted that in the house of Dadu, there were only two members namely the accused Dadu and his mother Smt. Ram Piari. Dadu had no enmity against them, except his giving evidence against him in the murder case of Ram Gopal. He denied the suggestion that Dadu and his brother had been implicated with a view to get them punished and their houses may have been usurped by the witnessed.

26. PW-4 Vimla Devi, who is wife of the deceased Sheo Narain. She stated in her evidence that the incident occurred four years and four months back, at about noon, she was present in her house and she was trying to get her infant baby female child aged about two and a half year sleep. When she heard shrieks of her husband Sheo Narain who was crying that he was being killed come fast, she rushed out of the house. She also heard shouts of accused persons. When the witness and other reached at the door of the house of Dadu, accused Smt. Ram Piari and Jhunna who were present in the court at the time of evidence, started beating them. She saw the accused Dadu alias Jiya Lal, Lalauna, Sheo Das, Bhunesh, Aavdhesh, Ram Pratap, Chhuttan, Jhunna and Smt. Ram Piari alongwith Rajmon were attacking her husband. Lalauna, Dadu and Rajmon had Tabbals, while Bhunesh, Avdhesh and Ram Pratap had Barchhai, the remaining accused Lathies. She also deposed that her brother-in-law Lala Ram had come from the western side. The accused Sheo Das and Chhuttan had attacked Lala Ram. Her

husband was attacked in front of the door of Jagdish Narain and Jagdish Narain and Nanhey were present in front of the house of Jagdish. 4-5 other accused persons who did not belong to her village had also come. All of them had raised hue and cry when the accused ran towards the east. Her husband had fallen down on the spot and had died instantaneously. She had sustained injury on her hand, on her upper leg, and on her back and at some other places, which were caused by Smt. Ram Piari and Jhunna. Her brother-in-law, Lala Ram had gone to file report at the police station Derapur. The police accompanied him from police station, her brother-in-law had written report and took it to police station. The Sub Inspector had carried out inquest of the body and transmitted the body from the spot. Thereafter another Sub Inspector reached there who recorded her statements of witness and her brother-in-law. Her medico legal examination was conducted at hospital and a temporary posture was drawn on her right hand, it was 09:00 hours in the night, therefore she was sent back to her house with a police personnel. The police took her at Rousla Hospital next day in the morning; but due to power cut X-ray of her hand could not be carried out. She went thereafter at the place where postmortem was being done. She was sent to her parental place at Shastri Nagar by her brother-in-law (*Jeth*) in the company of a person. X-ray of her hand was conducted thereafter on some date. Accused bore enmity with her husband as it was witness in the murder of his elder brother Ram Gopal.

27. The witness stated in her cross-examination that in her knowledge the accused had no other enmity except that her husband's brother had given evidence against the accused Ram Pratap etc. in the

murder case of Ram Gopal. She also stated that her husband used to look after his cultivation and had set up a shop on the road side. Her husband and Lala Ram live jointly in the same house and would jointly cultivate the land. The shop on the road side also belonged to both the brothers. Her parents-in-law were living in Phatak Wala House, but food was cooked only in their house situated near the scene of occurrence. Sometime, her husband also slept at the shop.

28. PW-4 further stated that she and Lala Ram were not beaten in front of the house of Jagdish. She could not remember if she had told the Investigating Officer about their beaten in front of the house of Jagdish Narain, though her version before the Investigating Officer is that witness Lala Ram and she herself were beaten in front of the house of Jagdish Narain. When Lala Ram came to rescue the deceased, four or five persons came from the western side and Lal Ram went back four or five paces. He again advanced, thereupon the accused ran away. When Lala Ram had turned back, his face was towards west and he had gone upto the house of Bane and Chhotey which adjoined each other.

29. PW-4 further stated that Barchhi was not pointed, but was flat (*chapti*) and was 4-5 fingers long and one or two fingers in width. The *Tabbal* was 4-5 fingers wide and 2-3 fingers deep. The *marpeet* took place for half a minute after he reached the scene of occurrence. She had not embraced her husband's dead body but had wept sitting by its side. Her clothes were not stained with his blood.

30. She next stated that that her husband had gone to the shop after

answering the call of nature in the morning at 07:30 am alongwith Lala Ram. The shop was being filled with earth. She had stated on her own that her husband had gone to the shop without eating anything. She had sent her daughters aged about 10 and 8 years at the shop to convey that food was ready at 11:30 am. Lala Ram's wife had gone to her parents' house those days. Shiv Das and Chhuttan had beaten Lala Ram, when he was coming from the side of the shop. She did not remember if she had told it to the Investigating Officer, but it does not appear in her statement under Section 161 Cr.P.C. that Lala Ram was beaten by Shiv Das and Chhuttan.

31. The witness denied defence suggestion that her husband was attacked while he was going to answer the call of nature or was returning after easing himself in the darkness. She also denied defence suggestion that she deposed falsely on being tutored by her brother-in-law. She clarified that she had herself witnessed the incident. She is blessed of 5 children and she cannot tell a lie, her children are in front of her. Smt. Ram Piari was healthy at that time, but now she has become old. She also denied the suggestion that she got her injuries manufactured falsely. There was bright sunlight in days of incident. The relationship between the witness and her brother-in-law and husband were cordial. Lathi and Pola were lying near the dead body of her husband which was lying towards north. He was lying on a site of culvert, his legs were eastwards and head was westwards.

32. PW-5 Jagdish Narain, the last eyewitness had deposed that he was sitting in front of his house. Nanhey Tewari was sitting with him. He deposed that at about mid-day, the deceased was coming from

west and was proceeding towards his house and had reached in front of the house of witness, when the accused persons came out of the house of accused Dadu, alongwith Rajmun and attacked the deceased with their arms. The witness attributed the same weapons to the accused persons which are shown in the statements of other eye-witnesses. PW2 Lala Ram and PW4 -Vimla Devi.

33. According to the witness when the deceased had raised alarm, his wife Smt. Vimla Devi came out of the house when she reached near the house of accused Dadu she was attacked by Smt. Ram Piari. Lala Ram was coming behind the deceased. He challenged the accused whereupon, he was attacked by Shiv Das and Chhuttan near the door of Chhotey. Mahadeo, Asharfi, Ram Chander had also come from the west side. These persons as well as the witness Nanhey asked the accused persons to refrain from killing. Shiv Narain alias Rajjan pleaded to leave him, whereupon the accused persons ran away towards east. Shiv Narain had died on the spot. He had also stated that Nanhey, Mahadev, Asharfi and Ram Chander have colluded with the accused and they intend that the accused be acquitted. The informant Lala Ram came back at around 03:30 pm alongwith police, the witness acknowledged his signature on inquest report, which is marked as Ext. Ka-5. He also stated that the Sub Inspector visited the spot after inquest who recorded his statements. In cross-examination the witness has stated that he was an eye-witness and informant in the murder of his brother Ram Gopal. Raj Narain is not an eye-witness in that case and Nanhey a witness in the present case is real brother of Raj Narayan. Ram Swaroop was a witness in murder case of Ram Gopal, he had given eye-witness account in the murder case of

his brother Ram Gopal. He was also informant in the case Ram Pratap, Bhunesh, Avdhesh, Jia Lal alias Dadu, beside Rajmon, Rameshwar and Jagannath (in all seven persons) were tried for murder of his brother. Five were sentenced to life imprisonment and two were sentenced to two year's rigorous imprisonment. He admitted that he and his brother Ram Gopal were tried for having caused hurt to one Chunnu in which Prem Narain father of Ram Pratap accused had given evidence and they were sentenced to six months' rigorous imprisonment. The witnesses admitted that the litigation had taken place 20 years back, over the house presently occupied by Dadu between Dadu's father Munni Lal and Har Prasad, cousin of witness in which Har Prasad had lost. The witness denied that he wanted to usurp Dadu's house and added that there was no one in his family except the witness himself.

34. He further stated that he was sitting in the *Dehri* of his house and Nanhey was sitting 4-5 steps away on the Chabutra since about an hour before the incident. Many people were passing on the way. He claimed that 1 and 1/2 or 2 hours before the murder, the accused had gone into Dadu's house in separate manner and were carrying their arms. He had inquired from the accused as to why they were going with the arms. He had not suspected anything wrong. He further stated that although he had become afraid of the accused but had not told any other villager or Nanhey about the assembly of the accused. He had seen Shiv Narain coming at a distance 10-15 paces but he did not call and warn him. He remained in his *Dehri* thinking that he will go inside the house if there was any danger to him. When the accused started attacking Shiv Narain, he

only asked the accused to refrain from doing so and made no other attempt to save his life. Smt. Vimla Devi was beaten, 7-8 steps away from her husband in front of the door of Dadu. The blade of Barchhi was about 4 fingers' long and 3 fingers wide. The Tabbal was of five fingers, circular like an Axe.

35. He further deposed that deceased was a Mahajan while the witness is a Brahmin. The deceased had some land and did its cultivation himself. The deceased had no mango tree to keep watch over the crop during the night. His fields were situated on two or three sides of the village, some where 6 to 8 furlongs away.

36. The witness also stated that Lala Ram's brother Chunni had died in his childhood and one Savitri had filed objection before the Consolidation Authorities which were dismissed, he added that right since the murder of Ram Gopal the accused Ram Pratap was creating trouble. He admitted that he was a witness of the sale deed in respect of Phatak Wala House executed by Lala Ram, and he had given evidence in the proceedings under Section 145 Cr.P.C., in which the accused Ram Pratap was arrayed as opposite parties. He also admitted that he had opposed accused Ram Pratap in the election.

37. PW-6 Dr. B.K. Jain has stated that injuries Nos. 2,4,5,6 and 7 could be caused by a heavy sharp cutting weapon which includes a *Tabbal* and injury Nos. 3 and 10 could be caused by a sharp edged weapon whose sharp edge was of about 2 cm. Ballam and Barchhi are included in such instruments. In his opinion, the injuries Nos. 8, 9, and 14 could be caused by a blunt weapon like a *Lathi*. Instantaneous

death was possible from these injuries and the injuries could have been caused on 29.06.1976 at about 12:00 noon.

38. Dr. B.K. Jain PW-6 has stated in his cross-examination that the time of death given by him, on the basis of rigor-mortis and de-composition. He stated that rigor-mortis passed off in upper limbs between 18 to 36 hours de-composition sets in after the rigor-mortis passes off. He has estimated the time having regard to the fact that it was the month of June and to the climate of Kanpur. He had not mentioned in the report as to in which part of the body, decomposition had started. He admitted that he had not found any punctured or penetrating wound and that Barchhi and *Ballam* were weapons of piercing. He ruled out that the death could have taken place 36 hours earlier. Injuries Nos. 1, 2, 4, 5, 6, and 7 had been caused. He agreed with the observation of Modi that shape and size of a wound generally corresponds to the weapon used in inflicting the injuries. He also stated the injuries Nos. 11, 12, 13 and 14 and 8 were on the back side of the body and could be caused by a fall on rough and hard surface.

39. Sub-Inspector Sri Mata Prasad PW-7 has stated that he has not shown in the site-plan or in the case diary the place from where the witnesses saw the occurrence. He had also not shown separately the places where Lala Ram and Smt. Vimla Devi were attacked. He admitted that an application dated 02.07.1976 moved by Sri Rajeshwar Prasad Dixit, uncle of Ram Pratap, accused had been sent to him for inquiry and affidavits were also filed by Ram Adhar and Sheetal Prasad. He had learnt in the course of investigation that Sheo Das accused was a dealer of Sugar and the statement of supply

Inspector was also recorded by him. The witness also proved in his examination by the Court in the course of his cross-examination, the proclamation issued by the Chief Judicial Magistrate under Section 82 Cr.P.C. against the accused Ram Pratap, Bhunesh and Lalauna on 09.07.1976, marked Ext. C-1/1 to C-1/3. He also deposed that he had made attachment of the property of these accused under Fard Ext. C-2 on 05.09.1981. Warrants issued against the accused Ram Pratap, Bhunesh, Lalauna Sheo Das, and Ext. 3 to 7 and the reports made by him have also been proved by him. He has also proved the Fard of attachment of the property of accused, Sheo Das, marked Ext. C-10 and their compliance reports marked C-9/1 and C-9/2 have also been proved by the witness. The property of the accused Chhuttan was also attached on 05.09.1976 under Fard C-11. In his cross-examination by the counsel of the accused, he stated that he had not made any report of the sale of the attached property. He denied that the houses of the accused were not searched or the accused Ram Pratap was not absconding.

40. In his further cross-examination, the witness has stated that Lala Ram had not told him that the deceased Sheo Narain used to do Pairvi in the Ram Gopal's murder case, or he used to ask Lala Ram to give evidence. Lala Ram had also not told him that he had made any application to the Superintendent of Police prior to this murder. Lala Ram had also not said in his statement that Lathi and blade of Barcchi were left by the accused on the spot. He had also not told him that the deceased was walking ahead, while he was following him. Smt. Vimla Devi had told him that she and Lala Ram were also attacked in front of the house of Jagdish Narain. She had not told him that Smt. Rama Piari and Chhunna

had beaten her, nor had she told him that Lala Ram was beaten by Chuttan and Sheo Das. Smt. Vimla Devi had also not said before him that the accused had said that the deceased should be put to death otherwise, he will also make a statement like Ram Gopal.

41. The prosecution has also filed a certified copy of the judgment passed by the Additional Sessions Judge, Kanpur. Sri M. Wahajuddin, on 21.12.1972, convicting the accused Ram Pratap, Bhunesh, Jiya Lal, Avdhesh and three others including Rajmun whose case has been separated, under Section 302/149 IPC and sentenced them to imprisonment for life, besides passing a sentence under Sections 147/148 IPC for the murder of Ram Gopal.

42. On conclusion of prosecution evidence the accused persons were examined under Section 313 Cr.P.C. , wherein they admitted that accused Ram Pratap, Avdhesh, Bhunesh and Dadu (as well as Rajmun whose case was separated) from S.T. No.76/76 were tried for committing the murder of Ram Gopal and was sentenced to life imprisonment by court of Session, but they claimed that in appeal their sentence was reduced to six years. The accused also admitted that Lala Ram, brother of the deceased had given evidence in that case, but they denied that the deceased had done pairvi in that case. They also admitted that accused Ram Pratap, Avdhesh, Bhunesh and Lalauna are real brothers and Shiv Das was their cousin. Smt. Ram Piari stated that accused Chhuttan and Jhunna were related to Ram Pratap etc. She claimed that she and her son Dadu had no connection with the other accused. They denied that they bore enmity with the deceased since the time of murder of Ram Gopal. They admitted that on 29.06.1976, the

accused who had been sentenced for the murder of Ram Gopal were on bail pending their appeal. They denied having committed murder of Shiv Narain on 29.06.1976 at about noon in front of the house of Jagdish Narain or having caused hurt to Smt. Vimla Devi or Lala Ram when they tried to rescue the deceased.

43. Accused Avdhesh, Ram Pratap and Bhunesh are real brothers. The informant Lala Ram had lodged a false report at Police Station with regard to murder of Shiv Narain alias Rajjan. This case was instituted due to enmity with the family of his maternal grandfather. He was on bail in Appeal after being convicted in murder case of Ram Gopal. He is not aware of the outcome of Forensic Science Laboratory (FSL) report. The witnesses have deposed falsely against him. The accused did not adduce any evidence in defence, his defence of denial.

44. Accused Jhunna alias Devendra Kumar claimed in his statement under Section 113 Cr.P.C. that he and his father Chhunna alias Krishna Kumar had gone to village Aureri riding motorcycle, as his cousin sister had died and they returned a day after this incident. Accused Krishan Kumar alias Chhuttan has supported the version of Jhunna alias Devendra Kumar.

45. Accused Bhanu Prakash alias Lalauna has stated that his brother Ram Pratap was village Pradhan, he was innocent. The police wanted to file final report, but has been won over by the informant Raja Ram. Therefore, he had surrendered on 28.02.1977. He claimed that police had shown the attachment of his property fictitiously.

46. Accused Shiv Das has claimed that he was a retailer in Sugar and had gone to

Derapur on the date of incident, and he was not present in the village at the time of the incident. He surrendered on 28.02.1977 when the police colluded with Raja Ram. Accused Dadu stated that he was a poor man and had been wrongly implicated due to enmity with Jagdish with whom his father had litigation. Bhunesh stated that he was a brother of Ram Pratap who was the village Pradhan and there was a party-faction in the village. On the fateful day, he claimed that he had gone with Budhi, son-in-law of Jhau Lal for doing pairvi in the case at 06:30 am before the Consolidation Court and remained there the whole day and returned in the evening.

47. The accused Ram Pratap had claimed that he was falsely implicated. He was Principal of a private School in Ladpur Panth and in connection with the report of the school building, he used to go there between 27.06.1976 and 30.06.1976 every day at 07:30 am in the morning and used to return back at 06:00 pm, he was present on the school on the date and time of the incident.

48. Accused Avdhesh has also stated that he had been implicated on account of enmity.

49. The accused persons produced five witnesses in their defence and have filed some documents as well. The accused Ram Pratap has also examined himself after moving an application under Section 315 Cr.P.C.. Accused Ram Pratap had deposed that he was M.A. B.Ed. And Principal of Janata Vidyalaya, Ladpur Panth. He had an old enmity with the informant Lala Ram as well as the eye witness Jagdish Narain. He denied that he was amongst the persons, who committed the murder of Sheo Nasrain alias Rajjan. He also stated that it was

wrong to say that Shiv Narain was murdered at 12:00 noon in front of the house of Jagdish Narain. He further stated that between 29.06.1976 and 28.10.1977, he had stayed in the village and had been teaching the children in the school at Ladpur Panth at village Chilauli and had been looking after the work of Gram Pradhan. He remained Gram Pradhan of village Chilauli since May 1972 to till date. He also stated that he handed over the copies of cashmemo etc. in connection with the repair of the school building to the investigation officer.

50. He stated in the cross-examination that in the murder case of Ram Gopal, he was also convicted and sentenced for life imprisonment alongwith accused Ram Gopal, Avdhesh, Ramesh, Dadu and Rajmun, but the sentence was reduced in appeal by High Court to six years rigorous imprisonment. At the time of murder of Sheo Narain, they were on bail during the pendency of appeal before Hon'ble High Court. He also admitted that Lala Ram had given evidence in the murder case of Ram Gopal and Jagdish Narain was the informant in that case. He, however denied that Shiv Narain had done pairvi in the earlier murder trial. The school of which he was a Principal was 14 Kms. Away and in the month of June, it was closed. He used to go there in connection with the repair work, where Phoos Bangla (thatched bangalow) was being raised. His attendance was not marked in any register.

51. In support of plea of alibi, the accused Ram Pratap had examined DW3 Sheetal Prasad who claimed that he was a Manager of Janta Vidyalaya, in the village Laluapur. The school building was being repaired and the repair-work was being looked after the Ram Pratap, who was then

Head Master of the School. The repair work began on 27.06.1976. He also deposed that Ext. Kha-1 bearing dated 22.07.1976 . The account of repairs was maintained by Ram Pratap and the school was situated in his residential house.

52. DW-2 Sidh Nath, who deposed that he was Pradhan of the village Aurandi, Police Station Sikandra, District Kanpur Dehat. He further deposed that Chhuttan and Jhunna accused of this case had come to his village early in the morning till day evening between 27th June to 30th June 1976. Chuttan and Jhunne are falsely implicated in this case.

53. DW-4 Rajeshdhar Dwivedi, a Supply Inspector, who had deposed that accused Shiv Shankar was not present on the spot on the date and time of incident. Shiv Das was retailer of Sugar and grain in village Chilauli and on 29.06.1976 he had gone to village Chilauli for verification of the stock of Shiv Lal and had made an endorsement on register, marked as Ext. Ka-9. He has also proved his endorsement as Ext. Kha-2 thereon. He reached the spot at 08:30 am in the morning after the verification. Shiv Das had accompanied him to Derapur. He got down from the bus at 11:00 am at Derapur and then they got separated on that date. Shiv Das kept on contacting him through out the day till 04:00 pm from time to time.

54. DW-1 Rameshwar had deposed that early in the morning when he awoke at around 4:30 – 5:00 am he heard a lot of hue and cry in front of his door. He slept in the night in the courtyard of the house, he came out and saw that Jagdish and Lala Ram were laying down Sheo Narain @ Rajjan. The house of Rajjan situates towards east of his house. He reached on the spot and

saw that Rajjan had died. On hearing the hue and cry, wife of Rajjan and many villagers reached there. He inquired from Lala Ram about the incident and that he tried to speak something but Jagdish took him away. The police reached after 2-3 hours later and he told the police whatever he had seen. He got up on that day around 05:00 am. The Sub Inspector had interrogated him, but he is not sure as to whether he had recorded his statement. On noticing the dead body it appeared that he died around one hours earlier. Ram Gopal was killed in the village in the year 1971 and the witness was also convicted and sentenced in that case.

55. The VIIth Additional Sessions Judge, (Non- Metropolitan Area) Kanpur Nagar after considering the submissions of learned counsel for the prosecution and defence and on appreciation of evidence on record recorded verdict of guilt against accused Devendra Kumar alias Jhunna, Jia Lal alias Dadu, Avdhesh, Smt. Ram Piari in S.T. No.75 of 1977 and consolidated S.T. No. 304 of 1977 against Ram Pratap, Bhuneshwar, Bhanu Prakash alias Laluna, Shiv Das and Krishan Kumar alias Chuttan for charges under Sections 147, 148, 302/149, 323/149 and 325/149 IPC and they were sentenced as stated above. All the sentences were directed to run concurrently.

56. Accused Rajmun had absconded during proceedings in S.T. No.75/1977 by order dated 22.07.1980 Learned trial court separated his case from co-accused persons. The accused Rajmun was later on apprehended and he was tried separately in S.T. No.75A of 1977. He was charged by learned trial judge on 01.07.1983 under Sections 148, 302/149, 323/149, 323/149 IPC and charges were read over and

explained to him in hindi who pleaded not guilty and claimed to be tried.

57. In support of his case, the prosecution examined Lala Ram, the informant of the case, PW-2 Smt. Vimla Devi the wife of the deceased, PW-3 Jagdish Narain as witnesses. After recording of statements of PW-1, PW-2 and PW-3, learned counsel for the accused Sri K.G. Pradhan dispensed with the proof of the documents relied by prosecution which were placed on record. He stated that the factum of death of deceased Sheo Narain has been admitted. He also admitted that a postmortem was done on the dead body of the deceased. He did not agitate or dispute the genuineness of any of the documents on record. He admitted that genuineness of all the documents without any reservation and did not like to cross examine any of the formal witnesses.

58. At this juncture learned State Counsel submitted that the prosecution case has been proved because there was no need or necessity of examination of any of the formal witnesses. Learned counsel for the accused had not opposed the prayer of the prosecution and accordingly prosecution evidence was closed.

59. Learned Trial Judge after, hearing the submissions of prosecution and defence and appreciating the evidence on record, recorded a verdict of conviction of accused appellant Rajmun in S.T. No.75A of 1977 for charge under Sections 302/149, 323/149, 325/149 and 148 of IPC and sentenced to life imprisonment for charge under Section 302/149 IPC, one year rigorous imprisonment for charge under Section 148 IPC, one year rigorous imprisonment for charge under Section 325/149 IPC and six months rigorous

imprisonment for charge under Section 323/149 IPC.

60. The accused Rajmun in his statement under Section 313 Cr.P.C. stated that he was convicted alongwith co-accused persons in murder trial of Ram Gopal and he was sentenced to 20 years rigorous imprisonment, but the sentence was commuted to six years imprisonment by High Court. Deceased Sheo Narain was not a pairokar of earlier murder trial.

61. It is noteworthy that during the pendency of instant Criminal Appeal appellant No.2 Jia Lal alias Dadu, appellant No.4 Smt. Ram Piari, appellant No.5 Ram Pratap, appellant No.6 Bhunesh, appellant No.7 Bhanu Prakashs alias Laluna and appellant No.8 Shiv Das died in during pendency of Criminal Appeal No.2696 of 1981, therefore appeal was got dismissed against them as abated by orders of this Court.

62. This appeal survives only in respect of appellant No.1 Devendra Kumar alias Jhunna, appellant No.4 Avdhesh and appellant No.9 Krishan Kumar alias Chuttan in Criminal Appeal No.2696 of 1981 and in Criminal Appeal No.660 of 1984 in respect of sole appellant Rajmun.

63. Thus in nutshell, out of ten convicts/appellants six appellants have died during the pendency of their respective appeals and four appellants are surviving.

64. The plea of juvenility was taken by appellants Avdhesh and Devendra Kumar alias Jhunna. This Court vide order dated 14.07.2023 that the juvenility of the accused- appellant no.1 (Devendra Kumar @ Jhunna son of Kishan Kumar) and accused-appellant no.3 (Avdhesh Chandra son of Prem Narain) be determined by the

competent Court/Authority under the Juvenile Justice (Care and Protection of Children) Act, 2015 within one month from today. The District Judge, Kanpur Dehat and the Superintendent of Police, Kanpur Dehat shall provide copies of all relevant papers to the Juvenile Justice Board within a week of the communication of this order to them. The Registrar General shall ensure that a copy of this order is sent to the District Judge, Kanpur Dehat within four days for compliance.

65. In compliance of Court's order dated 14.07.2023 the Juvenile Justice Board, Ramabai Nagar, Kanpur Dehat had submitted a report dated 25.08.2023, wherein it is stated that at the time of incident appellant No.3 Avdhesh was juvenile. Similarly vide communication dated 25.09.2023 the Principal Judge, Juvenile Justice Board, Kanpur Dehat has submitted his report, wherein he has stated that at the time of incident dated 29.06.1976 the appellant No.1 Devendra Kumar alias Jhunna was juvenile. On these set of facts, this is obvious that out of four surviving appellant No.1 Devendra Kumar Jhunna and appellant No.3 Avdhesh in Criminal Appeal No.2696 of 1981 are held to be juvenile at the time of incident.

66. Learned counsel for the appellants submitted that according to FIR version it is informant Lala Ram with whom the accused persons were having grudge and harboring animosity, as he had deposed against some of the accused persons in the present case in murder trial of Ram Gopal, the brother of PW-5 Jagdish Narain.

67. PW-3 Lala Ram has assumed role of eye-witness in the case and if he was present on the spot when deceased Sheo Narain was killed, there was no occasion

for the accused appellants to spare him. The injuries detected on the person of PW-3 Lala Ram are of simple in nature and can be manufactured. This fact has emerged in the evidence of so called eye-witnesses that three persons had attacked the deceased by Barchhi(spear) which is a pointed weapon, but no punctured wound was found in the postmortem report of the deceased. The approximate time of death shown in postmortem report suggests that incident occurred in wee hours on the date.

68. He also contended that learned trial courts have not considered the evidence of defence witnesses and brushed aside their evidence in cursory manner, whereas this is settled law that evidence of defence witnesses deserves equal regard as that of prosecution witnesses.

69. He next submitted that PW5 Jagdish Narain is a highly interested witness. He has been a witness in murder trial of Ram Gopal as well as in murder trial of Sheo Narain alias Rajjan. He is real brother of Ram Gopal, the deceased in earlier murder trial and some of the appellants in present appeal were accused and convict in the earlier murder trial. Although their sentence was later on commuted by the High Court. Therefore, PW-5 has every reason to seek conviction of present appellants in murder trial of Sheo Narain, due to strong enmity with them due to murder of his brother. Some accused persons have adduced clinching evidence of alibi and their presence elsewhere at the time of incident, but same has been overlooked by learned trial court while recording conviction against all the accused persons. The conduct of PW-4 Smt. Vimla Devi who is wife of the deceased is highly unnatural as PW-1 and PW-4 both have admitted that she did not

try to embrace or touch the deceased even when he was left on the spot after being brutally assaulted by accused persons as she supposed him to be dead. No blood stain of the deceased were found on her clothes.

70. DW-5 deceased Ram Pratap has categorically stated in his evidence that the incident occurred at wee hours on the date of incident and is is wrongly shown to have occurred at 12:00 noon. He has stated that he saw deceased Sheo Narain lying dead, when he reached the spot after hearing hue and cry at around 05:00 am and he was told by the witnesses that he was killed around one hour earlier. There is old enmity between him and informant Lala Ram and witness Jagdish Narain. He has been falsely implicated in this case due to village partybandi. He has been Gram Pradhan since 29.06.1997 to 28.10.1977. On meticulous analysis of the depositions in cross-examination of witnesses of fact namely Lala Ram, Smt. Vimla Devi and Jagdish Narain, they have claimed that they had seen the incident, becomes highly doubtful. In fact, the deceased was killed in the darkness at early hours of the day on 29.06.1976 and none of the eyewitnesses had seen the occurrence, and subsequently on due deliberations with police the accused persons were named in the FIR due to previous enmity. The informant side had strong motive to falsely implicate the accused persons and for that reason PW-5 Jagdish Narain, the brother of the deceased Ram Gopal who was deceased in earlier murder case has been projected as an eye witness in the present case. This is trite law that evidence of partisan witnesses needs meticulous and close scrutiny. None of the witnesses are independent. According to prosecution version itself there appeared a number of persons at the time of incident,

but no independent witness has been produced in support of prosecution case. The medical evidence adduced by PW-6 Dr. B.K. Jain, the author of postmortem report of the deceased is not in conformity with the eyewitness account and in case of medical inconsistency with eye-witness account the benefit of doubt is liable to be extended to appellants.

71. Per contra, learned A.G.A. submitted that this is a broad day light murder case and FIR has been lodged just after two hours of the incident by real brother of the deceased. The distance of police station from place of occurrence is 6 mile as per Chick FIR. Therefore, the FIR has been lodged with utmost promptness which fortifies the authenticity of prosecution version. The accused persons have strong motive to commit the offence. PW-2 and 4 who are brother and wife of deceased had themselves received injuries due to assault caused by accused persons when they tried to rescue the deceased. Therefore, the injuries are proved by evidence of doctor who conducted medico legal examination, therefore, their presence on the spot cannot be disbelieved. The deceased had suffered as many as 14 external injuries and serious injuries were found in internal examination of the deceased also, which corroborates the facts that a number of persons were involved in causing fatal assault on deceased. Blood stained Blade and Barchhi were found on the spot by investigating officer.

72. He further contended that even in cross-examination of eye-witnesses no such fact emerged which would cause a reasonable doubt on authenticity of prosecution case. Learned trial judge have recorded the convictions of the accused appellants and sentenced them in

accordance with law. The impugned judgments are based on proper appreciation of evidence on record. No significant infirmity in the impugned judgments could be shown in contention raised on behalf of the appellants. The impugned judgments need no interference and the same deserve to be affirmed by this Hon'ble Court.

73. We have re-appreciated the evidence on record in the light of submissions made by learned counsel appearing for the parties.

74. In the instant case date and time of incident is stated to be 29.06.1976 at 12:00 hours in the day and FIR was lodged at the instance of informant Lala Ram on the same day at 02:15 pm at P.S. Derapur Kanpur. On the basis of written report in Chik FIR Ext. Ka-22, the distance between police station and place of occurrence is shown as six miles. The informant is real brother of the deceased and also an eyewitness alongwith other eye-witnesses Vimla Devi the injured and wife of deceased, Shiv Narayan, Jagdish, Nanahey, Asharfi Lal and Ram Chand. Vimla Devi also received simple and grievous injuries in the incident who has been examined as PW-4 during trial. Keeping in view the facts and circumstances of the case and the fact that FIR was lodged just after two hours of the incident, it may be held that FIR in the case has been lodged with utmost promptitude without any unreasonable delay which increases the reliability in FIR and it rules out any embellishment, after thought or embroidery in prosecution version. There is nothing on record to suggest that FIR is ante timed. Informant Lala Ram and Vimla Devi the wife of Sheo Narain were also examined by government doctor, PW-1 Dr. Surendra Singh at P.S. Derapur on 29.06.1976 at

around 08:00 pm to 08:30 pm, their medico legal examination was conducted as police case and no doubt can be raised about authenticity of their injury report which reveals that Smt. Vimla Devi has received five injuries on her person at the time of her medico legal examination, out of which one injury was found grievous which was on her wrist joint. Informant Lala Ram also sustained three injuries which were found simple in his medico legal examination report. The evidence of injured witness is held on high-pedestal in comparison to evidence of other witnesses, as persons of an injured witness on the place of incident appears more probable than other witnesses. In prosecution version every accused has been assigned specific weapon and this fact has been proved in evidence of witnesses of facts.

75. According to FIR version and evidence of witnesses of facts namely PW-1 Surendra Singh, PW-2 Lala Ram, PW-4 Vimla Devi and PW-5 Jagdish Narayan, this fact is proved that at the time of incident accused, Devendra Kumar alias Jhunna, Shiv Das, Krishna Kumar alias Chuttan and Ram Piari were armed with lathi, Ram Pratap, Avdhesh and Bhunesh were armed with Barchhai (a pointed sharp edged weapon), Dadu, Lalauna and Rajmun were armed with Tabbal (a heavy sharp edged weapon) attacked the deceased Shiv Narain alias Rajjan by surrounding him on public way in the village in front of the house of Jagdish Narain PW-5. The accused persons were prompted by motive to commit the offence, as prior to this incident dated 29.06.1976 one Ram Gopal of the village was killed in which accused Ram Pratap and other were also accused and the informant Lala Ram had testified in that murder case against Ram Pratap and others, in which Ram Pratap and others

were convicted and sentenced to twenty years imprisonment, subsequently they were enlarged on bail. This fact is stated in FIR itself that accused persons Ram Pratap and others were hand in gloves with the informant and his family members due to bad enmity. The deceased was going to take meal at his home at the time of incident when he was waylaid by the accused assailants and due to fatal injuries caused by accused persons in concerted manner, he died on the spot.

76. In postmortem report of deceased Shiv Narayan, he appears to have received as many as fourteen injuries on his person, out of which there are eight incised wounds are found on different parts of head and face. The deceased received six incised wounds on his head and one incised wound on the frond of left leg, other injuries are abrasion and contusion. In internal examination, frontal, right temporal and right parietal and occipital bones cut found, the doctor has also opined that the cause of death was shock and hemorrhage due to ante-mortem injuries. Thus, the medical evidence proves that the injuries of deceased Shiv Narain were sufficient to cause death and all the accused persons armed by their respective weapons on the date time and incident in concerted manner with intention to kill.

77. PW-6 Dr. V.K. Jain had proved postmortem report of the deceased Shiv Narain as Ext. Ka-6 by his evidence. He has stated in his evidence that he performed postmortem examination on the deceased Shiv Narain on 30.06.1976 at 04:40 pm, who had received fourteen injuries on his person, his stomach was empty, semi-digested food was found in small intestine and faecal matter was present in large intestine. He stated in his examination in

chief that injury No.1,2,3,4,5,6 and 7 found on the person of the deceased were caused by some heavy sharp edged weapon, in which Tabbal is also included. Injuries No.3 and 10 could also be caused by some sharp edged weapon, which edge is around 2 cm in width in which Ballam and Barchhai may also be included. Injury Nos. 8,9,11 and 14 might have been caused by Lathi. The injuries found on the person of the deceased were sufficient to cause death in the ordinary course of nature. Instantaneous death was probable by such injuries found on the persons of the deceased. In cross-examination he stated that Tabbal is heavy sharp edged weapon and he had not found any punctured or penetrating wound by Tabbal, Barchhai and Ballam are penetrating weapons. Injury Nos.1,2,3,13, 14 and 8 can be caused by fall on hard surface. Therefore, from medical evidence also the mode and manner of the incident, and injuries found on the person of the deceased and injured witnesses Lala Ram and Vimla Devi are proved and the sworn testimony of witnesses of fact/eye witnesses finds corroboration from medical evidence in this case. The doctor has opined in his evidence that the injuries found on person of the deceased were mostly caused by some heavy sharp edged weapon like Tabbal and some injuries would have been caused by a weapon like Barchhai/Ballam. This statement of PW-4 Vimla Devi in cross examination on behalf of the accused persons that Barchhai taken by three accused persons namely Avdhesh, Prem Narain and Munesh were flat and not pointed, cannot be disbelieved. Thus on the basis of arguments of learned counsel for the appellant, it cannot be assumed that only due to the fact that no punctured wound was found on the person of the deceased, the presence of accused persons

who were said to be armed with Barchhai cannot be doubted or in other words only on that count their presence on the place of occurrence will be ruled out.

78. PW-5 Jagdish Narain has testified in his evidence that the incident occurred in front of the house and he had seen the incident. This fact is stated in FIR itself that house of Jagdish Narain lies in front of the place of incident and on that reason his presence on the spot is natural as he is supposed to be a witness of the spot and only on account of prior enmity with some accused persons his evidence cannot be brushed aside.

79. Learned trial court has rightly discarded the defence evidence which has been adduced on the point that occurrence took place in wee hours of the day in the darkness and none of the witnesses had seen the incident and accused persons are named in the FIR due to partybandi and earlier an enmity on account of murder of Ram Gopal which took place some years earlier to this incident. Informant Lala Ram has stated in his evidence that accused persons were planning to kill him and his family members, as he had deposed against them in murder case of Ram Gopal. Accused persons are related together and they are associated with Gram Pradhan, Ram Pratap. Deceased was stated to be on way to home to take his meal in the noon from his shop and the witness was behind him. He could not see that from which direction the accused persons arrived, they attacked his brother by their respective weapons and on hearing his scream he ran towards him, in the meanwhile wife of deceased Vimla Devi and witnesses had also arrived there. Accused persons assaulted him and Vimla Devi by lathis and on interference of witnesses they ran

towards east. Only due to fact that informant with whom accused persons had strong enmity was spared in the incident by causing simple injuries and was not assaulted by dangerous weapons, his presence cannot be doubted as he stated in his evidence that he and his sister-in-law Vimla Devi were rescued by witnesses. PW4 Vimla Devi and PW5 Jagdish Narain have also given eye-witness account of the incident and supported the prosecution version. PW-5 Jagdish Narain has been examined as eye witness and in his evidence this fact has also emerged that some of the accused persons in the present trial were convicted and sentenced by the court in the murder case of Ram Gopal, his brother. A defence suggestion has been given to this witness that he had opposed the accused Ram Pratap in Gram Pradhan election and for that reason he was in opposition to him after he was elected in the election.

80. So far as motive is concerned motive is specifically attributed to accused persons against the informant PW-1 Lala Ram who is real brother of the deceased. Hon'ble Supreme Court in a catena of judgments including a recent judgment in **Chandan Vs. The State (Delhi Admin) 2024 Live Law (SC) 288** held that lack or absence of motive on the part of the accused is in consequential when direct evidence establishes the crime.

81. On re-appreciation of evidence adduced during trial and giving a meticulous perusal of judgment under appeal, we are of the considered opinion that prosecution has been successful to prove its case where reasonable doubt against surviving accused Devendra Kumar alias Jhunna, Krishna Kumar alias Chuttan, Rajmun and Avdresh. This fact is proved

beyond reasonable doubt that surviving accused had formed unlawful assembly together with co-accused on the date and time of the incident and in prosecution of common objection of the assembly. They brutally assaulted the deceased in concerted manner by their respective weapons with intention to kill him and caused fatal injuries on his person, which was sufficient to cause death and on account of the injuries sustained in the incident he died instantaneously. This fact is also proved beyond doubt that in prosecution of common object surviving accused and co-accused persons assaulted the informant Lala Ram and wife of deceased namely Smt. Vimla Devi and caused them simple and grievous injuries. Therefore, the charge under Sections 302/149, 325/149 and 323/149, 147 IPC is proved against surviving accused persons and charge under Section 148 IPC is also proved against accused Avdhesh. Therefore, we find no legal or factual error in the impugned order passed by learned trial court, whereby surviving accused and co-accused persons were convicted of the aforesaid charges. The prosecution has successfully proved charges framed against appellants beyond reasonable doubt.

82. Accused/appellants Devendra Kumar alias Jhunna and Avdhesh were found juvenile on the date of incident in an inquiry carried out by Juvenile Justice Board, Kanpur Dehat, and on the basis of report of Juvenile Justice Board they are held to be juvenile on the date of incident.

83. Hon'ble Supreme Court in **Satya Deo Alias Bhoorey Vs. State of U.P. AIR 2020 (SC) 4526** considered the claim of juvenility made by an accused taken at the stage of first appeal before High Court where incident had occurred on 11.12.1981.

Hon'ble Supreme Court considered the various provisions of Juvenile Justice (Care And Protection Of Children) Act, 2000 and after giving a thoughtful consideration to statutory provisions held in paragraph 15 that it is, thus, manifest from a conjoint reading of Sections 2(k), 2(l), 7-A, 20 and 49 of the Act of 2000, read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 that all persons who were below the age of eighteen years on the date of commission of the offence even prior to 1-4-2001 would be treated as juvenile, if the accused claiming plea of juvenility was less than 18 years of age on the date of commission of offence, he is entitled to be treated as juvenile and will be given benefit as per 2000 Act, notwithstanding the fact that the accused was not entitled to the benefit of being a juvenile on the date of offence, under Juvenile Justice Act, 1986 as Act was passed after commissioning of this offence.

84. Accordingly the juvenile in conflict of law in the present case namely Devendra Kumar alias Jhunna and Avdhesh will be dealt with under the provisions of Juvenile Justice (Care And Protection Of Children) Act, 2000 in spite of the fact that occurrence took place in the year 1976 and during trial of the case Juvenile Justice Act, 1986 was enacted and commenced.

85. Consequently conviction of surviving Appellants for above stated charged recorded by the trial court is affirmed, so sentence awarded to Juvenile accused Devendra @ Jhunna and Avdhesh is quashed. Sentence awarded to appellants Krishna Kumar @ Chuttan and Rajmun is affirmed.

86. However, on the basis of foregoing reasons the accused Devendra Kumar alias Jhunna and Avdhesh having being held as

juvenile in conflict of law on the date of incident by Juvenile Justice Board concerned, their conviction is upheld for said charges, but their sentence is set-aside.

87. In the light of aforesaid judgment the appellants Devendra Kumar alias Jhunna and Avdhesh are liable to be dealt with under Section 15 of Juvenile Justice (Care and Protection of Children) Act, 2000 which is reproduced as under:-

15. Order that may be passed regarding juvenile

(1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it so thinks fit,

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;

(b) direct the juvenile to participate in group counselling and similar activities;

(c) order the juvenile to perform community service;

(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(f) direct the juvenile to be released on probation of good conduct and

placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(g) make an order directing the juvenile to be sent to a special home for a period of three years: [Substituted by Act 33 of 2006, Section 12, for Clause (g) (w.e.f. 22-8-2006).

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

(2) The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an order.

(3) Where an order under clause (d), clause (e) or clause (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law: Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after

making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

(4)The Board shall while making a supervision order under sub-section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be under whose care the juvenile has been placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.

Prior to its substitution, Clause (g) read as under:-(g) make an order directing the juvenile to be sent to a special home,-(i) in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years;(ii) in case of any other juvenile for the period until he ceases to be a juvenile:Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit."

88. As the appellants Devendra Kumar alias Jhunna and Avdresh have attained the age of majority many decades ago, no purpose of law will be served to keep them in special and juvenile home.

89. Apart from that the appellants Devendra Kumar alias Jhunna and Avdresh are directed to deposit Rs.50,000/- fine before the court concerned, which will be payable as compensation to Vimla Devi-PW-4 the wife of the deceased Shiv Narain and in case of her death, the said amount will be paid to her legal heirs to the satisfaction of trial court.

90. Appeal stands **partly allowed** in respect of appellants Devendra Kumar @ Jhunna and Avdresh, as the sentence awarded

to them by trial court is quashed and they have been dealt with under Section 15 of Juvenile Justice (Care and Protection of Children) Act, 2000. Appeal is dismissed in respect of convict Krishna Kumar @ Chuttan and Rajmun.

91. As conviction and sentence passed by learned court below in respect of accused Krishan Kumar alias Chuttan and Rajmun is affirmed in present appeal by this judgment and they have been enlarged on bail during the pendency of appeal, they are directed to surrender before the trial court to serve the sentence awarded by court below in impugned judgment within two weeks and in case of their non-appearance the trial court shall ensure their arrest by issuing appropriate process against them, and on their appearance they will be sent to jail custody for undergoing the sentence as awarded by trial court and affirmed by this Court.

92. Let a copy of this judgment be sent to court below/ Session Judge, as the case may be for necessary compliance.

93. This court appreciates the valuable assistance and hard work which has been put in by Sri Ajay Kumar Pandey, learned Amicus Curiae, we quantify his fee as Rs.25,000/- which shall be paid to him by the High Court Legal Services Authority, Allahabad High Court. Learned Registrar General of the High Court will oversee the payment.

(2025) 1 ILRA 149

REVISIONAL JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 03.01.2025

BEFORE

THE HON'BLE MANJIVE SHUKLA, J.

Criminal Revision No. 1237 of 2024

Shamima & Ors.

...Revisionists

Versus

State of U.P. & Anr.

...Opposite Parties