

UPBR010061972015



IN THE COURT OF SESSIONS JUDGE, BAREILLY, (U.P.)

Present- Vinod Kumar-III, (H.J.S.)

Sessions Trial No. 575 of 2015

State of Uttar Pradesh

.....Prosecution

VERSUS

**Gaya Prasad S/o Makhan Lal, R/o village Khundara, P.S Jahanabad,
District Pilibhit.**

.....Accused

Case Crime No. 227 of 2015

U/S 302 I.P.C.

Police Station Nawabganj, District Bareilly (U.P.)

JUDGMENT

1. This Sessions trial preferred against accused Gaya Prasad, arises from the Case Crime No. 227 of 2015, U/S 302 I.P.C. P.S. Nawabganj, District Bareilly after receiving charge sheet and thereafter has been committed to the Court of Sessions by the then Chief Judicial Magistrate, Bareilly vide order dated 08.09.2015 for trial.

2. The factual scenario of the prosecution case as depicted in the typed written report (Tahrir) Ex. Ka 1 dated 06.06.2015, which is given by Munna Lal S/o Sohan Lal, R/o Faridapur Gaanga @ Nawada, P.S. Nawabganj, District Bareilly to the I/C Inspector Police Station Kotwali Nawabganj, District Bareilly is that complainant's brother Prempal S/o Sohan Lal is residing at Ratan Lal Khandsari Barat Ghar situated near the

Premi Hotel, Kasba Nawabganj, district Bareilly. Yesterday, on 05.06.2016, at around 9:00 p.m., Gaya Prasad S/o Makhan Lal resident of village Khundara, P.S. Jahanabad, District Pilibhit, who currently lives on rent at Har Prasad's house, old Panghaili river bridge (in front of Krishna Inter College) alongwith his two companions called his brother Prempal from Ratan Lal Khandsari Barat Ghar at around 09:00 hours and brought him to Har Prasad's house where they shoved his brother Prempal from the roof at around 10:00 hours. On receiving the information of that fact, when the complainant came to the said house of Har Prasad, he found his brother Prempal in underwear and vest only, his mobile SIM no. 7060221032 and booking of advance around Rs. 1,00,000/- were found missing from his brother's possession and the complainant admitted his brother by taking him to Ram Murti Medical College, Bhojipura for treatment where his condition remained critical and request for lodging the report was made in the application by the complainant. On the basis of written tehrir Ex. Ka-1 of complainant a case was registered on 07.06.2015 at 16:35 hours at Case Crime No. 227/2015 U/s 307 I.P.C. at P.S. Nawabganj, District Bareilly against accused Gaya Prasad S/o Makhan Lal and two unknown persons and chik F.I.R. Ex. Ka-9 was prepared and same was entered in G.D. Rapat No. 27 at 16:35 hours on the same day and copy of the same is available as Ex. Ka-10 on record. Thereafter, the case was entrusted to Sub-Inspector, Sri Harigovind Singh of P.S. Nawabganj, District Bareilly for investigation. As per prosecution story, on 06.06.2015 at 01:56 a.m. injured Prempal Gangwar S/o Sohanlal was admitted in Sri Ram Murti Smarak Institute of Medical Science, Bareilly for medical treatment. As per Ex. 5-ka copy of B.H.T. in which brief history of present illness of the injured is mentioned that "patient had fallen from height on 05.06.2015 and ear was bleeding from right ear. According to the patient's attendant patient alleged H/o fall from height (second floor) around 10:00 p.m. Patient was alcoholic. All these complains the patient is unconscious and pupils are fixed and dilated. All these complains the patient came here for the further management." As per prosecution story, during treatment in the above named hospital the injured Prempal Gangwar expired on 06.06.2015 at 03:06 p.m. All the relevant report, diagnosis report, injury report, death

memo etc. from the time of admission in hospital to death of injured Prempal are available on record, which are Ex. Ka-5/1 to Ex. Ka-5/27. As per prosecution story, on 06.06.2015 at 06:00 p.m. death memo of the deceased Prempal Gangwar was sent to the Station Officer police station Bhojipura, district Bareilly by the concerned doctor and that information was entered at Rapat No. 39 at 18:25 hours on 06.06.2015 in G.D. of P.S. Bhojipura, district Bareilly and after receiving that information on 06.06.2015 S.I. Subodh Kumar, constable 1987 Rakesh Kumar and H.G. 2191 Hariprasad went to the mortuary of hospital from police station Bhojipura alongwith relevant papers and *Jild Panchayatnama* for preparing the inquest report of deceased Prempal. The copy of the G.D. and death memo of the deceased Prempal is Ex. Ka-17 and copy of the G.D. of the same is Ex. Ka-18 are available on record and on 06.06.2015, up to 19:40 hours an inquest report of the dead body of deceased Prempal Gangwar S/o Sohanlal Gangwar aged about 37 years was prepared in mortuary house of S.R.M.S. Hospital and signature of the punches have been obtained on the inquest report which is available as Ex. Ka-11 on record. Thereafter, for the purposes of conducting the postmortem of the dead body of deceased Prempal all the relevant police papers Ex. Ka-14 Photo Nash, Ex. Ka-12 Specimen Seal of the dead body of the deceased Prempal, Ex. Ka-13 Challan Nash (Police Form No. 13), Ex. Ka-15 Letter to R.I. and Ex. Ka-16 Letter to C.M.O. were prepared and the dead body of the deceased Prempal S/o Sohanlal Gangwar was sent to the district postmortem house, Bareilly alongwith above papers and on 07.06.2015 from 02:30 p.m. to 03:00 p.m. the postmortem examination of the dead body of the deceased Prempal was conducted by Dr. Lalit Kumar Saxena Medical Officer in postmortem house, district Bareilly and he prepared the postmortem report on which Ex. Ka-4 is marked. As per postmortem report Ex. Ka-4 at the time of postmortem of the dead body of the deceased Prempal the following antemortem injury were found on the dead body of the deceased Prempal:-

1. Contusion size 12cmx7cm on right side of skull just above the right ear underneath temporal bone fractured.
2. Contusion of size 7cmx6cm on back of skull in occipital region. 6

cm above the neck underneath occipital bone fractured.

3. Multiple abrasion of size 7cmx4cm on middle of back.
4. Contusion of size 15cmx10cm on left side of chest just below clavicle underneath ribs 1 to 4 are fractured.

As per postmortem report the cause of death of deceased was due to Comma Shock & Hemorrhage due to Antemortem injuries.

As per prosecution story, complainant Munna Lal S/o Sohan Lal again submitted an application Ex. Ka-2 on 07.06.2015 in the police station Nawabganj, district Bareilly stating that regarding his brother Prempal S/o Sohan Lal, complainant gave a First Information on 06.06.2015. In this regard it is also informed that when he took his brother to Dr. M.P. Arya for the treatment then Dr. M.P. Arya denied the treatment of his brother, then he and his family members went to S.R.M.S. Hospital, Bhojipura for the treatment of his brother, where his brother was admitted and kept on Ventilator in a dying state, where approx at 02:00 p.m. the doctors of S.R.M.S. Hospital declared his brother dead. On seeing the dead body of his brother by him and his family members, marks of injury on head and neck and twisting with rope mark on neck were found on his body. Seeing that it clearly indicates the murder and hence made a request for altering the case to murder and also requested for legal action against accused. On the basis of the same and upon the death report of Prempal the case was altered from Section 307 I.P.C. to Section 302 I.P.C. and the same was entered in the G.D. Rapat No. 33 at 19:00 hours on 07.06.2015 and a copy of the same is available on record. During investigation, Ex. Ka-6 Site Plan was prepared by the I.O. on 08.06.2015 and on the same day the cloth of the injured Prempal, bunch of Key, spectacle, Hankey, Mobile phone, R.C. of Motorcycle bearing Registration No. U.P. 25-A.L.-3053, Small Diary, Driving License, Diary of Telephone Nos. and Rs. 8905 cash were given in Supurdagi to deceased's brother Munna Lal S/o Sohan Lal resident of Faridapur Gaanga and a Fard Supurdagi of the same was prepared by the I.O. which is Ex. Ka-3 on record. On 09.06.2015, a blood stained cemented piece of floor and normal piece of floor and earth were taken by the I.O. and for the same, Fard was prepared by the I.O. which is Ex. Ka-7 on record. During the investigation the I.O. sent the specimen of

Mall to the Forensic Science Laboratory, Lucknow which docket is as Ex. Ka-19 on record. During investigation Investigating Officer obtained the CDR (Call Detail Report) which is Ex. Ka-21 available on record. Investigating Officer also recorded the statement of the complainant as well other witnesses and after completion of the investigation a charge-sheet against accused Gaya Prasad was prepared and submitted by the I.O. in the concerned Court U/S 302 I.P.C. which is available as Ex. Ka-8 on record and against unknown accused investigation was continued.

3. After receiving the charge-sheet and all police papers filed by the I.O. in this case cognizance U/s 302 I.P.C. was taken against accused Gaya Prasad by the then C.J.M., Bareilly vide order dated 20.08.2015 and copy of all the relevant police papers were given to the accused Gaya Prasad U/s 207 Cr.P.C. by the Court of concerned Magistrate. Since, the said offence is Sessions triable due to which, the case was committed to the Court of Sessions on 08.09.2015 by the then learned C.J.M., Bareilly.

4. The then Addl. Sessions Judge, Court No. 2, Bareilly Sri Devendra Singh on 03.11.2015 has framed charge against the accused Gaya Prasad U/S 302 I.P.C. The charge was read over and explained to the accused to which he pleaded not guilty and claimed for trial.

5. In support of its case, the prosecution has adduced 08 witnesses namely Munna Lal as P.W. 1, Vinod Kumar as P.W. 2, Dal Chand as P.W. 3, Dr. Lalit Kumar as P.W. 4, Dr. Shashank Shah as P.W. 5, Inspector Mukesh Kumar as P.W. 6, Anil Kumar as P.W. 7, Inspector Subodh Kumar as P.W. 8 and as documentary evidence of the prosecution **Ex. ka-1 & 2** Tahriri report of complainant Munna Lal, **Ex. ka-3** Fard Supurdginama, **Ex. ka-4** postmortem report, **Ex. ka-5/1 to Ex. Ka-5/27** B.H.T. and other relevant document of medical treatment of the deceased Prempal, **Ex. ka-6** Site Plan, **Ex. ka-7** Fard of blood stained cemented piece of floor and normal piece of floor and earth, **Ex. ka-8** Charge-sheet, **Ex. ka-9** Chik F.I.R., **Ex. ka-10** copy of G.D., **Ex. ka-11** Inquest Report, **Ex. ka-12** Specimen Seal, **Ex. ka-13** Challan Nash, **Ex. ka-14** Photo Nash, **Ex. ka-15** Letter to R.I., **Ex. ka-16** Letter to C.M.O., **Ex.**

ka-17 Tahrir of complainant regarding missing of mobile dated 20.11.2020 and again **Ex. ka-17** Medical papers of S.R.M.S. Hospital, **Ex. ka-18** Carbon copy of G.D., **Ex. ka-19** Letter to Forensic Science Laboratory, **Ex. ka-20** Request letter for Call detail of mobile phone, **Ex. ka-21**, CDR (Call Detail Report) of mobile phone are available on record which have been proved by the prosecution witnesses.

6. In support of defence version accused has produced neither oral nor any documentary evidence.

7. At the time of argument, the learned counsel for the defence adduced the following case law for perusal of this Court:-

(I.) *Megha Singh vs State of Haryana AIR 1995 SC 2339, 1995 CriLJ 3988, (1996) 11 SCC 709.*

(II.) *CRIMINAL APPEAL NO. 1522 of 2008 Javed Masood and Anr. Vs State of Rajasthan.*

(III.) *Appeal (crl.) 325 of 2003 Mukhtiar Ahmed Ansari vs State (N.C.T. of Delhi).*

(IV.) *Criminal Appeal No. 142 of 2015 (Arising out of S.L.P. (Crl.) No. 1156/2013) dated 20.01.2015 TOMASO BRUNO vs State of U.P.*

(V.) *(2015) 88 AcrC 46 State of U.P. vs Rajjo and others.*

(VI.) *(2014) 85 AcrC 182 : (2014) 4 ADJ 60 : (2014) 2 AllCrlRulings 1567 : (2014) 4 AllLJ 472 Sita Ram Seth and others vs State of U.P.*

8. A written argument is also filed on behalf of accused Gaya Prasad.

9. I have heard the learned counsel for the defence and learned D.G.C. (Criminal) for prosecution at large and perused the evidences available on record. I have also perused the written argument filed on behalf of learned counsel for defence and case laws cited above.

10. Prosecution witness **P.W. 1** Munna Lal S/o Sohan Lal is the complainant of the case and brother of deceased Prempal has stated in his examination-in-chief that deceased Prempal was his real brother, he lived

in Ratan Lal Khandsari Barat Ghar. On 05.06.2015, his brother Prempal was called by Gaya Prasad and his two associates at 09:00 p.m. in the night. Gaya Prasad lived at Har Prasad's house in Nawabganj. They took his brother there and shoved him from the roof. Gaya Prasad took his brother Prempal in front of him. Gaya Prasad took his brother on the pretext of returning the borrowed money and also for providing the Prasad of Purnagiri. In the night at 10-10:30 o'clock, he got information that his brother has fallen from the roof, then he reached at Har Prasad's house where his brother was found wearing underwear and vest and his mobile and the advance booking amount were missing. Prempal was in a critical condition. He took his brother Prempal to S.R.M.S. Hospital, Bhojipura and admitted his brother. This witness also stated that he typed the tahrir in Nawabganj and gave it to the police station Nawabganj. Seeing the tahrir paper no. 17ka/2, this witness said that this is the same tahrir which he had typed and gave in the police station. He also identified his signature on it, on which Ex. Ka-1 is marked. On 07.06.2015, Prempal was put on ventilator in S.R.M.S. Hospital, Bhojipura. He died on 07.06.2015 at 02:00 P.M. He and his family members saw his brother's body. There were injuries on the head and neck and mark of twisting of rope were present on the body of his brother, which seemed to be a murder, whose information he had given in writing at the police station. Seeing the tahrir paper no. 17ka/1 attached in the file, this witness said that this is same tahrir which he had given in the police station. He also identified his signature on it, on which Ex. ka-2 is marked. The recovered Kurta-Pajama, one "Angocha", two key chain, one motorcycle, one NOKIA mobile, Insurance diary, Rs. 8905/- of deceased Prempal were given in possession of this witness. Seeing the Supurdaginama Paper no. 6-Ka, this witness said that this is the same Supurdaginama, on which Ex. ka-3 is marked. The panchayatnama of dead body of deceased was prepared before him. Site Plan was also prepared before him. He also said that Daroga Ji recorded his statement. This witness also stated in his examination-in-chief on 09.02.2021 that the recovered materials related to this case were given in his possession. He alongwith the above said material is present in the Court which belonged to deceased Prempal. One pair of Kurta-Paijama of white color

on which material Ex.-1 is marked, one “Angocha” on which material Ex.-2 is marked, one bunch of key on which material Ex.-3 is marked, and the second bunch of four key on which material Ex.-4 is marked, a key of motorcycle as material Ex.-5 and spectacle on which material Ex.-6 is marked, a hankey of blue colour on which material Ex.-7 is marked, a small diary as material Ex.-8, a diary of telephone no. as material Ex.-9, R.C. of a motorcycle bearing no. U.P. 25 AL 3053 on which material Ex.-10 is marked and a NOKIA mobile on which material Ex.-11 is marked. The above materials are lost somewhere and information regarding the same has been given to the Police Station by him on which his signature alongwith the stamp of the police station is present and on this application Ex. Ka-17 is marked. The Police gave him Rs. 8905/- in cash, which was in his custody and he came to the Court alongwith those money which was also of deceased Prempal. There were 89 notes of rupees 100, one note of rupees 5 and on these notes material Ex.-12 to 102 is marked, the Supurdaginama is attached in the file on which Ex. Ka-3 is marked.

11. Prosecution witness **P.W. 2** Vinod Kumar S/o Gulab Rai has stated in his examination-in-chief that the incident is of 05.06.2015, at 10:00 P.M. This witness also stated that he alongwith his villager Arvind Kumar were going to their house from bypass to old bridge. On reaching the old bridge near Sri Krishna Inter College a lot of noise was heard. At that time they did not stop and went on. He felt that it is the voice of Prempal. He told Arvind that it is the voice of Prempal, then they returned and saw that Prempal was lying on the Chabutara of Gaya Prasad. Then, Bechelal told them that Prempal was forcefully shoved from the roof by Gaya Prasad and his wife and father-in-law and two unknown people. They took Prempal to Ram Murti Hospital with the help of others, where he died. Gaya Prasad, his wife and father-in-law have murdered Prempal. This witness also said that Daroga Ji recorded his statement.

12. Prosecution witness **P.W. 3** Dal Chandra S/o Jamuna Prasad, has stated in his examination-in-chief that Gaya Prasad came alone to meet Prempal at the Barat Ghar. This witness also stated in his examination-in-

chief that he was present there. After some time he went, then Prempal also said that he has to go and called his watchman and went on motorcycle with Mukesh, then he do not know where Prempal went. On next day he came to know that Prempal had fallen from the roof of Gaya Prasad. On 16.06.2015, he gave an affidavit to S.P. Bareilly by registered post stating in that on 05.06.2015, at 09:00 P.M. Prempal was sitting in the office of Barat Ghar with Dharmendra, then Gaya Prasad came to meet Prempal. Prempal asked Gaya Prasad for his lent 50,000/- rupees, on this Gaya Prasad asked Prempal to come to his house and settle the accounts. Prempal had gone to Gaya Prasad's house with Mukesh in front of him. Later, he came to know that Gaya Prasad alongwith his wife Poonam @ Pushpa, father-in-law Kaderam and two other people, injured Prempal by shoving him from the roof, due to which later on he died. He told Daroga Jee regarding the affidavit, why Daroga Jee did not wrote the same, he do not know.

13. Prosecution witness P.W. 4 Dr. Lalit Kumar Saxena has stated in his examination-in-chief that on 07.06.2015, he was posted as Medical Officer in women hospital Bareilly and on the same day he was on duty for postmortem in postmortem house. On that day, the dead body of deceased Prempal S/o Sohan Lal Gangwar, R/o Faridapur Gaanga @ Nawada, P.S. Nawabganj, Bareilly aged about 37 years, was brought by constable Rakesh Kumar and H.G. Har Prasad in sealed position alongwith all relevant police papers for conducting the postmortem. With the dead body of the deceased, Prem Singh brother of the deceased and Ramesh Chandra brother-in-law of the deceased were present, who identified the dead body of the deceased. The postmortem examination of the dead body of the deceased was conducted by this witness on 07.06.2015, from 02:30 P.M. to 03:00 P.M. The general examination of the deceased was conducted. The height of the deceased was 171 cm and the body was of average. Rigor mortis was present on the dead body. Bleeding from right ear was continued from the dead body of the deceased.

External Examination:-

1. Contusion of size 12cmx7cm on right side of skull just above the

right ear underneath temporal bone fractured.

2. Contusion of size 7cmx6cm on back of skull in occipital region 6 cm above the neck underneath occipital bone fractured.
3. Multiple abrasion of size 7cmx4cm on middle of back.
4. Contusion of size 15cmx10cm on left side of chest just below clavicle underneath ribs 1 to 4 are fractured.

Internal Examination:-

The wrinkles inside the head were torn. Blood clot in the brain. 16/16 teeth were present in the mouth. The left pleura was torn. Half a litre of blood had accumulated in the chest. Left lung was torn. Heart was empty. Stomach was fit and empty. Liver, Pancreas, spleen, both kidneys and genitals were normal.

Cause of death and time:-

According to this witness the death of the deceased as shown in the records of the hospital took place on 06.06.2015, at 03:06 P.M. he agree for that and the cause of death was Comma, Shock and Hemorrhage.

He also stated that the postmortem report was prepared by him in his own hand-writing and signed by him, which is attached in the file, on which Ex- ka-4 is marked.

14. Prosecution witness P.W. 5 Dr. Shashank Shah has stated in his examination-in-chief that on 06.06.2015, he was posted as Neurosurgeon in Ram Murti Medical College and Hospital, Bhojipura, Bareilly. On that day, in the above said hospital, Prempal Gangwar, aged about 37 years S/o Sohan Lal Gangwar, R/o village Nawada, P.S. Nawabganj, district Bareilly was admitted in injured position at 01:56 A.M. by Satypal, who claimed himself to be brother of the injured. His treatment was started by this witness and was treated under his supervision. The medical examination of injured was conducted by him and in medical examination it is revealed that patient was in a state of Comma and bleeding was continued from his right ear. Both the pupils of the eyes were dilated and there was no physical movement in the body of patient. This witness also stated in his examination-in-chief that C.T. scan of the patient's brain was also conducted and prepared, in which a large amount of blood leakage was found inside the head and there was a lot of

pressure in the veins of the brain. His blood test was also conducted. During the treatment, he died on 06.06.2015, at 03:06 P.M. He also filed the photocopy of BHT of injured, which is attested and signed by him, on which Ex. 5ka/1 to 5ka/27 is marked. As per his opinion, the death of the patient was due to severe head injuries.

15. Prosecution witness **P.W. 6** Inspector Mukesh Kumar has stated in his examination-in-chief that on 08.06.2015, he was posted as S.S.I. in P.S. Nawabganj. He received the investigation of Case Crime No. 227/2015, U/S 302 I.P.C. He also stated that before him the above case was investigated by S.I. Sri Har Govind Singh, because the said case was registered u/s 307 I.P.C. On 07.06.2015, at G.D. No. 33 at 19:00 hours, Sri Munna Lal, the complainant of the said case, came to the police station and filed a tahrir written in Hindi and stating his signature, in which it is stated that the injured Prempal died in Ram Murti Hospital during treatment and it was murder, on the basis of which Section 302 I.P.C. was added in the said case and the investigation was handed over to this witness. This witness stated that he studied the earlier investigation and on the same day recorded the statement of complainant Munna Lal, who was present in police station at that time. Then, he inspected the place of incident with complainant and on the pointing out of complainant he prepared the Site Plan in his own hand-writing and sign, which is attached in the file, on which Ex. ka-6 is marked. On the same day, he mentioned the copy of Fard “Fard Supurdaginama of money, papers of motorcycle, two key chain, one key of motorcycle, which were said to be of the deceased, which was prepared by Sri Har Govind Singh” in C.D., which is attached in the file, on which Ex. ka-3 is marked. On 09.06.2015, he mentioned the Inquest Report and Postmortem Report of deceased in C.D. On the same day, in the presence of witnesses Rajaram and Tulsiram he prepared the Fard of blood stained cemented piece of floor and normal piece of floor and earth and kept it in separate box. He read over the Fard to the witnesses present on the spot, which was written and signed by him. The Fard Paper no. 11ka is attached in the file, on which signatures of witnesses Rajaram and Tulsiram are present, and Ex. ka-7 is marked and the copy of the same is

mentioned in Case Diary. On 10.06.2015, he started searching the accused of the said case Gaya Prasad and mobiles of deceased Prempal and accused Gaya Prasad was put on surveillance. This witness also said that he went to the place of incident and recorded the statement of Rajaram, who is the witness of the Fard. He also recorded the statement of Rampal Tiwari. On 11.06.2015, at 10:30 hours, on the information of informant, he arrested the accused Gaya Prasad at Ambedkar Chauk and recorded his statement. On 14.06.2015, he recorded the statement of Smt. Pushpa wife of Gaya Prasad. On 19.06.2015, he recorded the statement of Har Prasad owner of the house where incident occurred. On 23.06.2015, he made search for Manager and Servant of Barat Ghar. On 28.06.2015, he again made the search for Chaukidar Mukesh and Manager Dharmendra of Barat Ghar but they did not traced. On 19.07.2015, a copy of the receipt of blood stained cemented piece of floor and normal piece of floor and earth, which was sent to the Forensic Science Laboratory for testing on 16.07.2015, was mentioned in Case Diary. On the same day, he recorded the statement of Mukesh, the servant of Barat Ghar, who was present at the Barat Ghar and he also recorded the statement of Dharmendra, Manager of Barat Ghar. On 20.07.2015, the statement of Vijay Pal Singh, Mahesh Chandra who is the witness of Inquest, Dharmpal and Prem Singh were recorded by this witness. He also recorded the statement S.I. Subodh Kumar who prepared the Inquest Report. On 30.07.2015, he went to Ram Murti Medical College and obtained the medical report of deceased Prempal and copied the same in Case Diary and recorded the statement of Dr. Shashank Shah. On the same day he recorded the statement of witnesses Vinod Kumar, Arvind Kumar, Dal Chandra and Benche Lal in police station and on the same day he filed the Charge-sheet Sheet No. 137/2015, U/s 302 I.P.C. against accused Gaya Prasad in the Court, which is attached in the file, in his own hand-writing and signed by him, on which Ex. ka-8 is marked. He also stated in his examination-in-chief that deceased Prempal died which memo is attached in the file, on which Ex. ka-17 is marked. This memo is mentioned in G.D. G.D. is attached in the file, on which Ex. ka-18 is marked. Material alongwith docket was also sent to Forensic Science Laboratory, Lucknow, the copy of which is attached in the file, on which

Ex. ka-19 is marked. A letter was sent for obtaining the CDR of the accused, deceased and complainant of this case, which is attached in the file, on which Ex. ka-20 is marked and received the CDR related to this case, which is Paper no. 24k/1 to 24k-10, on which Ex. ka-21 is marked. In relation to normal soil and blood stained soil, a report was received from the police station that the Head Moharir has been dismissed, so it is impossible to present the normal soil and blood stained soil in the Court, the report of which is attached in the file, which is paper no. 14-Kha.

16. Prosecution witness **P.W. 7** Anil Kumar has stated in his examination-in-chief that on 07.06.2015, he was posted as CC (Constable Clerk) in P.S. Nawabganj. On the same day, on the basis of the typed Tahrir given by complainant Munna Lal Chik F.I.R., U/s 307 I.P.C. against Gaya Prasad and others was typed on computer and prepared by this witness, which is entered in G.D. Rapat No. 27 at 16:35 hours, which is typed on computer and prepared by him. Chik F.I.R. and G.D. for registration of case was typed on computer and prepared by this witness, which is signed by him. Ex. ka-9 is marked on Chik F.I.R. and Ex. ka-10 is marked on G.D. of registration of case. This witness also stated that Investigating Officer recorded his statement.

17. Prosecution witness **P.W. 8** Inspector Subodh Kumar has stated in his examination-in-chief that on 06.06.2015, he was posted as SI in P.S. Bhojipura. Inquest proceeding of dead body present in the mortuary of the Ram Murti Medical College falls within the area of police station Bhojipura. He reached the mortuary of S.R.M.S. Hospital alongwith his associates police personnel of P.S. Bhojipura, after entering the same in G.D. No. 39. The dead body was kept in the mortuary. The family member of the deceased were present there. The proceedings of Inquest was started by him after appointing the Panches, mentioned the position of dead body, shape, clothes and injuries. The opinion and signatures of the panches were obtained by him after that he written his opinion. The details of the documents prepared on that time are mentioned as Exhibits. Seeing the earlier mentioned paper no. ka-1 dated 12.07.2016, attached in the file, this witness said that, this paper is in his own hand-writing and

signed by him. He identified the same on which Ex. ka-11 is marked. Bleeding continued from right ear and nose of the deceased. There was blue mark on the stomach. There was swelling on the head. Blue mark was present on the neck and all other body parts. As per opinion of the panches, deceased died due to fall from the roof and the exact cause should be ascertained. Seeing the all relevant papers Specimen Seal, Challan Lash, Photo Lash, Letter to R.I., Letter to C.M.O., he stated that all these papers were prepared by him at that time. He identified his hand-writing and signature. On these papers Ex. Ka-12 to Ka-16 is marked. He also stated that the dead body of deceased and all relevant papers were sent to postmortem house alongwith Constable Rakesh Kumar and H.G. Har Prasad by him.

18. After completing the prosecution evidence, statement of accused Gaya Prasad U/S 313 Cr.P.C. was recorded on 24.09.2019 and 06.12.2021 in which accused has stated that he is innocent and has been falsely implicated.

19. From the perusal of the F.I.R. and documentary as well as oral evidence stated above, facts and event of the case coming out in chronological order are as under :-

(i) On 05.06.2015, at 09:00 P.M. deceased Prempal was called by Gaya Prasad and his 2 unknown companion from the Barat Ghar, (whose detailed address is mentioned in the Ex. ka-1 Tahriri report) and they came alongwith Prempal in the house of Har Prasad.

(ii) On 05.06.2015, at 10:00 P.M. accused Gaya Prasad and his two unknown associates accused alongwith deceased Prempal ride on the roof of the house of Har Prasad and accused Gaya Prasad shoved the deceased Prempal from the roof of the house of Har Prasad.

(iii) On 05.06.2015, after receiving the information of that fact complainant Munna Lal came to the said house of Har Prasad then he found his brother Prempal in underwear and vest only and his mobile SIM no. 7060221032 and money around 1 lacs which was booking advance were found missing from the possession of his brother Prempal.

(iv) On 06.06.2015, at 01:56 A.M. injured Prempal was brought to Sri

Ram Murti Medical College, Bhojipura by his brother/complainant Munna Lal in seriously injured position for treatment and on the same date and time injured Prempal was admitted in Sri Ram Murti Smarak Medical College, Bhojipura, Bareilly for treatment.

(v) On 06.06.2015, at 02:00 A.M. injured Prempal was examined by the concerned doctor of the above mentioned hospital, where systematic examination was not done due to the seriousness of the patient Prempal and the general condition of the injured Prempal was very serious and at that time the injured/patient was unconscious and his pupils were fixed and dilated.

(vi) On 06.06.2015, a typed written report (Tahrir) Ex. ka-1 was given by Munna Lal S/o Sohan Lal mentioning the fact in tahrir in P.S. Nawabganj, district Bareilly for lodging the F.I.R.

(vii) On 07.06.2015, at 16:35 hours on the basis of the Ex. ka-1 (Tahriri Report) a case was registered at P.S. Nawabganj, district Bareilly at Case Crime No. 227/2015, U/s 307 I.P.C. against named accused Gaya Prasad S/o Makhan Lal and 2 unknown persons and chik F.I.R. Ex. ka-9 was prepared and the same was entered in G.D. Rapat No. 27 at 16:35 hours on the same day and copy of the same is Ex. ka-10 on record.

(viii) After registration of the F.I.R. the case was entrusted to Sub-Inspector Har Govind Singh of P.S. Nawabganj, district Bareilly for investigation.

(ix) On 06.06.2015, at 03:06 P.M. injured Prempal expired during treatment in the Ram Murti Smarak Institute of Medical Science, Bareilly.

(x) On 06.06.2015, at 06:00 P.M. death memo of the deceased Prempal Gangwar was sent to the Station Officer Police Station Bhojipura, district Bareilly by the concerned doctor and that information was entered at Rapat No. 39 at 18:25 hours on 06.06.2015 in the G.D. of police station Bhojipura, district Bareilly.

(xi) On 06.06.2015, up to 19:40 hours an inquest report of the dead body of deceased Prempal Gangwar S/o Sohan Lal Gangwar was prepared in mortuary house of S.R.M.S. Hospital and signature of the punches have been obtained on the inquest report by the S.I. Subodh Kumar of police station Bhojipura, district Bareilly.

(xii) For the purposes of conducting the postmortem of the dead body of the deceased Prempal on 06.06.2015, at 19:40 hours the dead body of the deceased Prempal alongwith relevant papers Ex. ka-14 Photo nash, Ex. ka-12 Specimen seal of the dead body of the deceased Prempal, Ex. ka-13 Challan nash (Police form no. 13), Ex. ka-15 letter to R.I. and Ex. ka-16 letter to C.M.O. were sent to the District Postmortem House, Bareilly.

(xiii) On 07.06.2015 from 02:30 P.M. to 03:00 P.M. the postmortem examination of the dead body of the deceased Prempal was conducted by Dr. Lalit Kumar Saxena Medical Officer in postmortem house, district Bareilly and he prepared the postmortem report Ex. ka-4.

(xiv) As per postmortem report Ex. ka-4 at the time of postmortem of the dead body of the deceased Prempal the following antemortem injuries were found on the dead body of the deceased Prempal :-

1. Contusion size 12cmx7cm on right side of skull just above the right ear underneath temporal bone fractured.
2. Contusion of size 7cmx6cm on back of skull in occipital region. 6 cm above the neck underneath occipital bone fractured.
3. Multiple abrasion of size 7cmx4cm on middle of back.
4. Contusion of size 15cmx10cm on left side of chest just below clavicle underneath ribs 1 to 4 are fractured.

(xv) As per postmortem report the cause of death of deceased was due to Comma Shock & Hemorrhage due to Antemortem injuries.

(xvi) On 07.06.2015, complainant Munna Lal S/o Sohan Lal again submitted an application (Tahrir) Ex. ka-2 in the police station Nawabganj, district Bareilly with the request of altering the case in murder and for taking the legal action against the accused.

(xvii) On the basis of the same and death report of deceased Prempal the case was altered from Section 307 I.P.C. to Section 302 I.P.C. on 07.06.2015 and same was entered in the G.D. Rapat No. 33 at 19:00 hours of police station Nawabganj, District Bareilly.

(xviii) On 08.06.2015, Ex. ka-6 Site Plan was prepared by the I.O.

(xix) The I.O. took the statement of the witnesses during the course of investigation and submitted a Charge-sheet U/s 302 I.P.C. against accused Gaya Prasad in the Court of C.J.M. Bareilly and against unknown accused investigation was going on.

(xx) On 08.09.2015, case was committed to the Court of Sessions by the then learned C.J.M. Bareilly.

(xxi) On 03.11.2015, a charge U/s 302 I.P.C. was framed against the accused who pleaded not guilty and claimed for trial.

(xxii) In support of its case, prosecution examined 08 witnesses namely Munna Lal as P.W. 1, Vinod Kumar as P.W. 2, Dal Chand as P.W. 3, Dr. Lalit Kumar as P.W. 4, Dr. Shashank Shah as P.W. 5, Inspector Mukesh Kumar as P.W. 6, Anil Kumar as P.W. 7 and Inspector Subodh Kumar as P.W. 8

(xxiii) On 24.09.2019 and 06.12.2021 the statement of accused Gaya Prasad was recorded u/s 313 Cr.P.C, in which he claimed to be innocent.

20. As per prosecution story, on 05.06.2015, at 09:00 P.M., accused Gaya Prasad alongwith two associates voluntarily called the deceased Prempal from Ratan Lal Khandsari Barat Ghar and came alongwith Prempal at the house of Har Prasad and with the intention of killing the deceased, accused Gaya Prasad shoved the deceased from the roof. Consequently, deceased Prempal sustained serious injury and during the treatment on the consequences of that injury on 06.06.2015 at 03:06 P.M. Prempal died in Ram Murti Smarak Institute of Medical Sciences, Bareilly.

21. Now, in this case I am going to discuss on this aspect that whether prosecution proved the motive of the accused for committing the crime in this case or not?

In Ex. ka-1 it is clearly mentioned that when the complainant reached at the house of Har Prasad then he found that his brother Prempal was only in underwear and vest and his mobile SIM No. 7060221032 and money for advance booking approx 1 lacs were found missing and in Ex. ka-1 it is also clearly mentioned by the complainant Munna Lal that his brother Prempal was called by Gaya Prasad and he came alongwith his brother at the house of Har Prasad. P.W. 1 Munna Lal in his examination-in-chief clearly stated that on 05.06.2015 Gaya Prasad and two other persons in the night at 09:00 P.M. called his brother Prempal and they went to the house of Har Prasad alongwith his brother. He also stated in

his examination that Prempal went alongwith Gaya Prasad for pretext of returning back the money which was lent by Prempal to Gaya Prasad. In his examination-in-chief he also stated that at the time of occurrence his mobile phone and advance money of booking amount of Rs. 1 lacs which was with the deceased Prempal were missing. P.W. 3 Dalchandra stated in his examination-in-chief that on 05.06.2015 at about 09:00 P.M. Prempal was sitting alongwith Dharmendra in the office of the Barat Ghar then Gaya Prasad came there for meeting with Prempal and thereafter Prempal demanded Rs. 50,000/- money which was lent to Gaya Prasad then Gaya Prasad replied to Prempal that come to my house and settle the accounts. Thereafter, Prempal went to the house of Gaya Prasad alongwith Mukesh in front of him. Thereafter, he came to know that Gaya Prasad alongwith his wife Poonam @ Pushpa, father-in-law Kaderam and two other persons shoved Prempal from the roof of Har Prasad's house and Prempal was injured and thereafter he died.

Motive behind a crime is relevant factor of which evidence can be given. Motive is double edged weapon. On one hand it causes accused to commit crime and on the other hand it works as catalyst in falsely roping the accused in the case. It is only the perpetrator of crime alone who knows as to what circumstance prompted him to certain course of action leading to the commission of crime. Different persons react differently under given circumstances. Now a days murders are being committed on very trivial issues. It is difficult to find a straight jacket formula as to how and in what manner a person would react and to achieve his motive could go to what extent in the commission of crime under a particular circumstance. It is true that in a case relating to circumstantial evidence motive does assume great importance but to say that the absence of motive would dislodge the entire prosecution story is perhaps giving this one factor an importance which is not due and (to use the cliché) the motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy. **Sanaullah Khan vs. State of Bihar; 2013 (81) ACC 302 (SC) ; Tomaso Bruno & Anr. v. State of U.P., 2015(2) Supreme 278.** One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the appellant but suspicion, howsoever strong, also cannot be a

substitute for proof of the guilt of the accused beyond a reasonable doubt. **(Sampath Kumar v. Inspector of Police, Krishnagiri; 2012 (2) Supreme 561** Existence of a motive for committing a crime is not an absolute requirement of law but it is always a relevant factor, which will be taken into consideration by the courts as it will render assistance to the courts while analyzing the prosecution evidence and determining the guilt of the accused. **(Alagupandi vs. State of Tamil Nadu; 2012 Cr.L.J. 3363 (SC).** If the evidence of the eye-witnesses is trustworthy and believed by the court, the question of motive becomes totally irrelevant. **(Brahm Swaroop v. State of U.P.; AIR 2011 SC 280).** Motive is not a sine qua non for the commission of a crime. Moreover, it takes a back seat in a case of direct ocular account of the commission of the offence by a particular person. In a case of direct evidence the element of motive does not play such an important role as to cast any doubt on the credibility of the prosecution witnesses even if there be any doubts raised in this regard. If the eye-witnesses are trustworthy, the motive attributed for the commission of crime may not be of much relevance. Failure to prove motive or absence of evidence on the point of motive would not be fatal to the prosecution case when the other reliable evidence available on record unerringly establishes the guilt of the accused as held by the Hon'ble Court in **State of U.P. vs. Nawab Singh, 2005 SCC (Criminal) 33** and **Rambabujha vs. State of U.P., 2003(46) ACC 892 (Allahabad – D.B.) & Shivraj Bapuray Jadhav vs. State of Karnataka, (2003) 6 SCC 392.**

So, seeing all the facts and circumstances of the case and evidence available on record it is clear that accused Gaya Prasad committed that criminal act with deceased Prempal for usurping the money of the deceased Prempal and on the basis of the evidence available on record and for want of any contrary evidence it is clearly proved that prosecution has been successful in proving the motive of the accused for committing the offence beyond the shadow of reasonable doubt.

22. Now, in this case I am going to discuss on this aspect that whether in this matter there is any unnecessary delay for lodging the F.I.R. or not.

As per prosecution case, Tahriri report Ex. ka-1 and ka-2, chik

F.I.R. Ex. ka-9, in this case incident occurred on 05.06.2015 at 10:00 P.M. and injured was admitted by his brother Munna Lal S/o Sohan Lal in Sri Ram Murti Smarak Institute of Medical Sciences, Bareilly on 06.06.2015 at 01:56 A.M. and in the case the Tahriri report Ex. ka-1 was typed and submitted by the complainant Munna Lal in police station Nawabganj, District Bareilly and in this case F.I.R. was lodged in the police station Nawabganj on 07.06.2015 at 16:35 hours and the distance of the place of occurrence to police station is only 2 kilo meter. So, in this case it is clear that although, there is a delay for lodging the F.I.R. but seeing the facts and circumstances of the case specially this fact that complainant is farmer least educated person and belonging to the rural background and firstly he admitted his brother in the hospital at Bareilly city in a critical situation thereafter, he gave the Tahriri Report in the police station for lodging the F.I.R. The delay in lodging the F.I.R. is very natural and logical and such delay caused is not unnecessary delay and such delay is in compelling situation. So, on the basis of such facts and circumstances it is clear that such delay is not fatal for prosecution.

23. In course of proving the prosecution story, the prosecution produced Munna Lal S/o Sohan Lal, who is the complainant of the case and brother of the deceased Prempal as P.W. 1. He supported the prosecution story in his examination-in-chief. The examination-in-chief of P.W. 1 Munna Lal has already discussed above. In cross-examination he supported all the prosecution story as stated in his examination-in-chief. He stated in his examination-in-chief that on 05.06.2015, his brother Prempal was called by Gaya Prasad and his two associates at 09:00 p.m. in the night. Gaya Prasad lived at Har Prasad's house in Nawabganj. They took his brother there and shoved him from the roof. Gaya Prasad took his brother Prempal in front of him. Gaya Prasad took his brother on the pretext of returning the borrowed money and also for providing the Prasad of Purnagiri. In the night at 10-10:30 o'clock, he got information that his brother has fallen from the roof, then he reached at Har Prasad's house where his brother was found wearing underwear and vest and his mobile and the advance booking amount were missing. Prempal was in a critical condition. He took his brother Prempal to

S.R.M.S. Hospital, Bhojipura and admitted his brother. This witness also stated that he typed the tahrir in Nawabganj and gave it to the police station Nawabganj. Seeing the tahrir paper no. 17ka/2, this witness said that this is the same tahrir which he had typed and gave in the police station. He also identified his signature on it, on which Ex. Ka-1 is marked. On 07.06.2015, Prempal was put on ventilator in S.R.M.S. Hospital, Bhojipura. He died on 07.06.2015 at 02:00 P.M. He and his family members saw his brother's body. There were injuries on the head and neck and mark of twisting of rope were present on the body of his brother, which seemed to be a murder, whose information he had given in writing at the police station. Seeing the tahrir paper no. 17ka/1 attached in the file, this witness said that this is same tahrir which he had given in the police station. He also identified his signature on it, on which Ex. ka-2 is marked. The recovered Kurta-Pajama, one "Angocha", two key chain, one motorcycle, one NOKIA mobile, Insurance diary, Rs. 8905/- of deceased Prempal were given in possession of this witness. Seeing the Supurdaginama Paper no. 6-Ka, this witness said that this is the same Supurdaginama, on which Ex. ka-3 is marked. The panchayatnama of dead body of deceased was prepared before him. Site Plan was also prepared before him. He also said that Daroga Ji recorded his statement. This witness also stated in his examination-in-chief on 09.02.2021 that the recovered materials related to this case were given in his possession. He alongwith the above said material is present in the Court which belonged to deceased Prempal. One pair of Kurta-Paijama of white color on which material Ex.-1 is marked, one "Angocha" on which material Ex.-2 is marked, one bunch of key on which material Ex.-3 is marked, and the second bunch of four key on which material Ex.-4 is marked, a key of motorcycle as material Ex.-5 and spectacle on which material Ex.-6 is marked, a hankey of blue colour on which material Ex.-7 is marked, a small diary as material Ex.-8, a diary of telephone no. as material Ex.-9, R.C. of a motorcycle bearing no. U.P. 25 AL 3053 on which material Ex.-10 is marked and a NOKIA mobile on which material Ex.-11 is marked. The above materials are lost somewhere and information regarding the same has been given to the Police Station by him on which his signature alongwith the stamp of the police station is present and on this

application Ex. Ka-17 is marked. The Police gave him Rs. 8905/- in cash, which was in his custody and he came to the Court alongwith those money which was also of deceased Prempal. There were 89 notes of rupees 100, one note of rupees 5 and on these notes material Ex.-12 to 102 is marked, the Supurdaginama is attached in the file on which Ex. Ka-3 is marked. Although, the defence counsel cross-examined P.W. 1 Munna Lal, and from the perusal of the statement of P.W. 1 Munna Lal it is clear that there are some discrepancies in his examination-in-chief and cross-examination statements but this fact cannot be ignored that this witness belongs to rural area and is of a farmer background and he is least educated person and his statement was recorded approximately after a gap of 1 to 6 years from date of incident so, such type of discrepancies in his statement is very natural and again it is also clear that such discrepancies are insignificant which cannot damage the prosecution story. So, seeing in the light of the above situation, fact and circumstances of the case it is clear that the statement of P.W. 1 Sri Munna Lal cannot be said to be suspicious. So, on the perusal of statement of P.W. 1 Sri Munna Lal it is clear that the statement of P.W. 1 is true, correct and reliable and on the basis of the same prosecution story is proved.

24. In course of proving the prosecution story, the prosecution produced Vinod Kumar S/o Gulab Rai as P.W. 2. He fully supported the prosecution version in his examination-in-chief. The detailed examination-in-chief of P.W. 2 is already discussed above. In cross-examination he supported the prosecution story as stated in his examination-in-chief. In his examination-in-chief he stated that the incident is of 05.06.2015, at 10:00 P.M. This witness also stated that he alongwith his villager Arvind Kumar were going to their house from bypass to old bridge. On reaching the old bridge near Sri Krishna Inter College a lot of noise was heard. At that time they did not stop and went on. He felt that it is the voice of Prempal. He told Arvind that it is the voice of Prempal, then they returned and saw that Prempal was lying on the Chabutara of Gaya Prasad. Then, Bechelal told them that Prempal was forcefully shoved from the roof by Gaya Prasad and his wife and

father-in-law and two unknown people. They took Prempal to Ram Murti Hospital with the help of others, where he died. Gaya Prasad, his wife and father-in-law have murdered Prempal. This witness also said that Daroga Ji recorded his statement. Although, the defence counsel cross-examined P.W. 2 Vinod Kumar, and from the perusal of the statement of P.W. 2 Vinod Kumar it is clear that there are some discrepancies in his examination-in-chief and cross-examination statements but this fact cannot be ignored that this witness belongs to rural area and is of a farmer background and he is least educated person and his statement was recorded approximately after a gap of one and half years from date of incident. So, such type of discrepancies in his statement is very natural and again it is also clear that such discrepancies are insignificant which cannot damage the prosecution story. So, seeing in the light of the above situation, fact and circumstances of the case it is clear that the statement of P.W. 2 Sri Vinod Kumar cannot be said to be suspicious. So, on the perusal of statement of P.W. 2 Sri Vinod Kumar it is clear that the statement of P.W. 2 is true, correct and reliable and on the basis of the same prosecution story is proved.

25. In course of proving the prosecution story, the prosecution produced Dal Chandra S/o Jamuna Prasad as P.W. 3. He fully supported the prosecution version in his examination-in-chief. The detail of examination-in-chief of P.W. 3 is already discussed above. In cross-examination, he supported the story as stated in his examination-in-chief. In examination-in-chief he stated that Gaya Prasad came alone to meet Prempal at the Barat Ghar. This witness also stated in his examination-in-chief that he was present there. After some time he went, then Prempal also said that he has to go and called his watchman and went on motorcycle with Mukesh, then he do not know where Prempal went. On next day he came to know that Prempal had fallen from the roof of Gaya Prasad. On 16.06.2015, he gave an affidavit to S.P. Bareilly by registered post stating in that on 05.06.2015, at 09:00 P.M. Prempal was sitting in the office of Barat Ghar with Dharmendra, then Gaya Prasad came to meet Prempal. Prempal asked Gaya Prasad for his lent 50,000/- rupees, on this Gaya Prasad asked Prempal to come to his house and settle the

accounts. Prempal had gone to Gaya Prasad's house with Mukesh in front of him. Later, he came to know that Gaya Prasad alongwith his wife Poonam @ Pushpa, father-in-law Kaderam and two other people, injured Prempal by shoving him from the roof, due to which later on he died. He told Daroga Jee regarding the affidavit, why Daroga Jee did not wrote the same, he do not know. Although, the defence counsel cross-examined P.W. 3 Dal Chandra, and from the perusal of the statement of P.W. 3 Dal Chandra it is clear that there are some discrepancies in his examination-in-chief and cross-examination statements but this fact cannot be ignored that this witness belongs to rural area and is of a labor class and he is illiterate person and his statement was recorded approximately after a gap of 2 years from date of incident. So, such type of discrepancies in his statement is very natural and again it is also clear that such discrepancies are insignificant which cannot damage the prosecution story. So, seeing in the light of the above situation, fact and circumstances of the case it is clear that the statement of P.W. 3 Sri Dal Chandra cannot be said to be suspicious. So, on the perusal of statement of P.W. 3 Sri Dal Chandra it is clear that the statement of P.W. 3 is true, correct and reliable and on the basis of the same prosecution story is proved.

26. In course of proving the prosecution story, the prosecution produced Dr. Lalit Kumar Saxena as P.W. 4. As per prosecution case, he prepared the postmortem report after externally and internally examined the dead body of deceased Prempal. The detail of examination-in-chief of P.W. 4 Dr. Lalit Kumar Saxena is already discussed above. He proved the postmortem report of deceased Prempal as Ex. Ka-4. In cross-examination he supported the story as stated in his examination-in-chief. In examination-in-chief he stated that on 07.06.2015, he was posted as Medical Officer in women hospital Bareilly and on the same day he was on duty for postmortem in postmortem house. On that day, the dead body of deceased Prempal S/o Sohan Lal Gangwar, R/o Faridapur Gaanga @ Nawada, P.S. Nawabganj, Bareilly aged about 37 years, was brought by constable Rakesh Kumar and H.G. Har Prasad in sealed position alongwith all relevant police papers for conducting the postmortem. With the dead body of the deceased, Prem Singh brother of the deceased and

Ramesh Chandra brother-in-law of the deceased were present, who identified the dead body of the deceased. The postmortem examination of the dead body of the deceased was conducted by this witness on 07.06.2015, from 02:30 P.M. to 03:00 P.M. The general examination of the deceased was conducted. The height of the deceased was 171 cm and the body was of average. Rigor mortis was present on the dead body. Bleeding from right ear was continued from the dead body of the deceased.

External Examination:-

1. Contusion of size 12cmx7cm on right side of skull just above the right ear underneath temporal bone fractured.
2. Contusion of size 7cmx6cm on back of skull in occipital region 6 cm above the neck underneath occipital bone fractured.
3. Multiple abrasion of size 7cmx4cm on middle of back.
4. Contusion of size 15cmx10cm on left side of chest just below clavicle underneath ribs 1 to 4 are fractured.

Internal Examination:-

The wrinkles inside the head were torn. Blood clot in the brain. 16/16 teeth were present in the mouth. The left pleura was torn. Half a litre of blood had accumulated in the chest. Left lung was torn. Heart was empty. Stomach was fit and empty. Liver, Pancreas, spleen, both kidneys and genitals were normal.

Cause of death and time:-

According to this witness the death of the deceased as shown in the records of the hospital took place on 06.06.2015, at 03:06 P.M. he agree for that and the cause of death was Comma, Shock and Hemorrhage.

He also stated that the postmortem report was prepared by him in his own hand-writing and signed by him, which is attached in the file, on which Ex- ka-4 is marked. Although, the defence counsel cross-examined P.W. 4 Dr. Lalit Kumar Saxena, but from the perusal of the statement of his cross-examination, it is clear that there is nothing in cross-examination which makes the statement of P.W. 4 to be suspicious. So, on the perusal of the statement of P.W. 4 Dr. Lalit Kumar Saxena, it is clear that the statement of P.W. 4 is true, correct and reliable and on the basis of the same prosecution story is proved.

27. In course of proving the prosecution story, the prosecution produced Dr. Shashank Shah as P.W. 5. The detail of examination-in-chief of P.W. 5 is already discussed above. He supported the prosecution story in his examination-in-chief. In cross-examination, he supported the prosecution story as stated in his examination-in-chief. He proved the Ex. 5Ka/1 to 5ka/27. In examination-in-chief he stated that on 06.06.2015, he was posted as Neurosurgeon in Ram Murti Medical College and Hospital, Bhojipura, Bareilly. On that day, in the above said hospital, Prempal Gangwar, aged about 37 years S/o Sohan Lal Gangwar, R/o village Nawada, P.S. Nawabganj, district Bareilly was admitted in injured position at 01:56 A.M. by Satypal, who claimed himself to be brother of the injured. His treatment was started by this witness and was treated under his supervision. The medical examination of injured was conducted by him and in medical examination it is revealed that patient was in a state of Comma and bleeding was continued from his right ear. Both the pupils of the eyes were dilated and there was no physical movement in the body of patient. This witness also stated in his examination-in-chief that C.T. scan of the patient's brain was also conducted and prepared, in which a large amount of blood leakage was found inside the head and there was a lot of pressure in the veins of the brain. His blood test was also conducted. During the treatment, he died on 06.06.2015, at 03:06 P.M. He also filed the photocopy of BHT of injured, which is attested and signed by him, on which Ex. 5ka/1 to 5ka/27 is marked. As per his opinion, the death of the patient was due to severe head injuries. Although, the defence counsel cross-examined P.W. 5 Dr. Shashank Shah, but from the perusal of the statement of his cross-examination, it is clear that there is nothing in cross-examination which makes the statement of P.W. 5 to be suspicious. So, on the perusal of the statement of P.W. 4 Dr. Shashank Shah, it is clear that the statement of P.W. 5 is true, correct and reliable and on the basis of the same prosecution story is proved.

28. In course of proving the prosecution story, the prosecution produced Inspector Mukesh Kumar as P.W. 6. As per prosecution story, he is the investigating officer of the case. He fully supported the

prosecution story in his examination-in-chief. The detail of examination-in-chief of P.W. 6 is already discussed above. In cross-examination he supported the story as stated in his examination-in-chief. In examination-in-chief he stated on 08.06.2015, he was posted as S.S.I. in P.S. Nawabganj. He received the investigation of Case Crime No. 227/2015, U/S 302 I.P.C. He also stated that before him the above case was investigated by S.I. Sri Har Govind Singh, because the said case was registered u/s 307 I.P.C. On 07.06.2015, at G.D. No. 33 at 19:00 hours, Sri Munna Lal, the complainant of the said case, came to the police station and filed a tahrir written in Hindi and stating his signature, in which it is stated that the injured Prempal died in Ram Murti Hospital during treatment and it was murder, on the basis of which Section 302 I.P.C. was added in the said case and the investigation was handed over to this witness. This witness stated that he studied the earlier investigation and on the same day recorded the statement of complainant Munna Lal, who was present in police station at that time. Then, he inspected the place of incident with complainant and on the pointing out of complainant he prepared the Site Plan in his own hand-writing and signed by him, which is attached in the file, on which Ex. ka-6 is marked. On the same day, he mentioned the copy of Fard “Fard Supurdaginama of money, papers of motorcycle, two key chain, one key of motorcycle, which were said to be of the deceased, which was prepared by Sri Har Govind Singh” in C.D., which is attached in the file, on which Ex. ka-3 is marked. On 09.06.2015, he mentioned the Inquest Report and Postmortem Report of deceased in C.D. On the same day, in the presence of witnesses Rajaram and Tulsiram he prepared the Fard of blood stained cemented piece of floor and normal piece of floor and earth and kept it in separate box. He read over the Fard to the witnesses present on the spot, which was written and signed by him. The Fard Paper no. 11ka is attached in the file, on which signatures of witnesses Rajaram and Tulsiram are present, and Ex. ka-7 is marked and the copy of the same is mentioned in Case Diary. On 10.06.2015, he started searching the accused of the said case Gaya Prasad and mobiles of deceased Prempal and accused Gaya Prasad was put on surveillance. This witness also said that he went to the place of incident and recorded the statement of

Rajaram, who is the witness of the Fard. He also recorded the statement of Rampal Tiwari. On 11.06.2015, at 10:30 hours, on the information of informant, he arrested the accused Gaya Prasad at Ambedkar Chauk and recorded his statement. On 14.06.2015, he recorded the statement of Smt. Pushpa wife of Gaya Prasad. On 19.06.2015, he recorded the statement of Har Prasad owner of the house where incident occurred. On 23.06.2015, he made search for Manager and Servant of Barat Ghar. On 28.06.2015, he again made the search for Chaukidar Mukesh and Manager Dharmendra of Barat Ghar but they did not traced. On 19.07.2015, a copy of the receipt of blood stained cemented piece of floor and normal piece of floor and earth, which was sent to the Forensic Science Laboratory for testing on 16.07.2015, was mentioned in Case Diary. On the same day, he recorded the statement of Mukesh, the servant of Barat Ghar, who was present at the Barat Ghar and he also recorded the statement of Dharmendra, Manager of Barat Ghar. On 20.07.2015, the statement of Vijay Pal Singh, Mahesh Chandra who is the witness of Inquest, Dharmpal and Prem Singh were recorded by this witness. He also recorded the statement S.I. Subodh Kumar who prepared the Inquest Report. On 30.07.2015, he went to Ram Murti Medical College and obtained the medical report of deceased Prempal and copied the same in Case Diary and recorded the statement of Dr. Shashank Shah. On the same day he recorded the statement of witnesses Vinod Kumar, Arvind Kumar, Dal Chandra and Benche Lal in police station and on the same day he filed the Charge-sheet Sheet No. 137/2015, U/s 302 I.P.C. against accused Gaya Prasad in the Court, which is attached in the file, in his own hand-writing and signed by him, on which Ex. ka-8 is marked. He also stated in his examination-in-chief that deceased Prempal died which memo is attached in the file, on which Ex. ka-17 is marked. This memo is mentioned in G.D. G.D. is attached in the file, on which Ex. ka-18 is marked. Material alongwith docket was also sent to Forensic Science also sent to Forensic Science Laboratory, Lucknow, the copy of which is attached in the file, on which Ex. ka-19 is marked. A letter was sent for obtaining the CDR of the accused, deceased and complainant of this case, which is attached in the file, on which Ex. ka-20 is marked and received the CDR related to this case, which is Paper no. 24k/1 to 24k-

10, on which Ex. ka-21 is marked. In relation to normal soil and blood stained soil, a report was received from the police station that the Head Moharir has been dismissed, so it is impossible to present the normal soil and blood stained soil in the Court, the report of which is attached in the file, which is paper no. 14-Kha. Although, the defence counsel cross-examined P.W. 6 Inspector Mukesh Kumar, but from the perusal of the statement of his cross-examination, it is clear that there is nothing in cross-examination which makes the statement of P.W. 6 Inspector Mukesh Kumar to be suspicious. So, on the perusal of the statement of P.W. 6 Inspector Mukesh Kumar, it is clear that the statement of P.W. 6 is true, correct and reliable and on the basis of the same prosecution story is proved.

29. In course of proving the prosecution story, the prosecution produced Anil Kumar as P.W. 7. As per prosecution story, he registered the case and prepared the chik F.I.R. and entered into the G.D. He fully supported the prosecution version in his examination-in-chief. The detail of examination-in-chief of P.W. 7 Anil Kumar is already discussed above. In cross-examination he supported the story as stated in his examination-in-chief. In examination-in-chief he stated on 07.06.2015, he was posted as CC (Constable Clerk) in P.S. Nawabganj. On the same day, on the basis of the typed Tahrir given by complainant Munna Lal Chik F.I.R., U/s 307 I.P.C. against Gaya Prasad and others was typed on computer and prepared by this witness, which is entered in G.D. Rapat No. 27 at 16:35 hours, which is typed on computer and prepared by him. Chik F.I.R. and G.D. for registration of case was typed on computer and prepared by this witness, which is signed by him. Ex. ka-9 is marked on Chik F.I.R. and Ex. ka-10 is marked on G.D. of registration of case. This witness also stated that Investigating Officer recorded his statement. Although, the defence counsel cross-examined P.W. 7 Anil Kumar, but from the perusal of the statement of his cross-examination, it is clear that there is nothing in cross-examination which makes the statement of P.W. 7 to be suspicious. So, on the perusal of the statement of P.W. 7 Sri Anil Kumar, it is clear that the statement of P.W. 7 is true, correct and reliable and on the basis of the same prosecution story is proved.

30. In course of proving the prosecution story, the prosecution produced Inspector Subodh Kumar as P.W. 8. As per prosecution story, he prepared the inquest report Ex. ka-11 of the deceased Prempal and he also prepared all the relevant police papers for conducting the postmortem examination of the dead body of the deceased Prempal. He supported the prosecution story in his examination-in-chief. The detail of examination-in-chief of P.W. 8 is already discussed above. In his cross-examination he supported the story as stated in his examination-in-chief. In examination-in-chief he stated that on 06.06.2015, he was posted as SI in P.S. Bhojipura. Inquest proceeding of dead body present in the mortuary of the Ram Murti Medical College falls within the area of police station Bhojipura. He reached the mortuary of S.R.M.S. Hospital alongwith his associates police personnel of P.S. Bhojipura, after entering the same in G.D. No. 39. The dead body was kept in the mortuary. The family member of the deceased were present there. The proceedings of Inquest was started by him after appointing the Panches, mentioned the position of dead body, shape, clothes and injuries. The opinion and signatures of the panches were obtained by him after that he written his opinion. The details of the documents prepared on that time are mentioned as Exhibits. Seeing the earlier mentioned paper no. ka-1 dated 12.07.2016, attached in the file, this witness said that, this paper is in his own hand-writing and signed by him. He identified the same on which Ex. ka-11 is marked. Bleeding continued from right ear and nose of the deceased. There was blue mark on the stomach. There was swelling on the head. Blue mark was present on the neck and all other body parts. As per opinion of the panches, deceased died due to fall from the roof and the exact cause should be ascertained. Seeing the all relevant papers Specimen Seal, Challan Lash, Photo Lash, Letter to R.I., Letter to C.M.O., he stated that all these papers were prepared by him at that time. He identified his hand-writing and signature. On these papers Ex. Ka-12 to Ka-16 is marked. He also stated that the dead body of deceased and all relevant papers were sent to postmortem house alongwith Constable Rakesh Kumar and H.G. Har Prasad by him. Although, the defence counsel cross-examined P.W. 8 Inspector Subodh Kumar, but from the perusal of the statement of his cross-examination, it is clear that there is

nothing in cross-examination which makes the statement of P.W. 8 to be suspicious. So, on the perusal of the statement of P.W. 8 Inspector Subodh Kumar it is clear that the statement of P.W. 8 is true, correct and reliable and on the basis of the same prosecution story is proved.

31. Now in this case, I am going to consider the documentary evidence which has been adduced by the prosecution in support of prosecution story. Ex. Ka-1 is tahriri report which was given by complainant Sri Munna Lal for lodging of F. I. R. and the same has been proved by P. W. 1 Sri Munna Lal which is available on the record. Ex. Ka-2 is also another tahriri report which was given by the complainant Sri Munna Lal mentioning therein all the fact of the case and regarding the death of injured Prempal dated 07.06.2015 for necessary legal action against the accused and same has been proved by P. W. 1 Sri. Munna Lal which is available on the record. Ex. Ka-3 is the Fard Supurdaginama which is proved by P.W. 1 Sri. Munna Lal. Ex. Ka-4 is the Postmortem Report of the deceased Prempal which is proved by P.W. 4 Dr. Lalit Kumar Saxena. Ex. Ka5/1 to Ex. Ka5/27 is copy of B.H.T. and other relevant document of medical treatment of deceased Prempal which is proved by P.W. 5 Dr. Shashank Shah. Ex. Ka-6 is Site Plan which is proved by P.W. 6 Inspector Mukesh Kumar, Ex. Ka-7 is the Fard of blood stained cemented piece of floor and normal piece of floor and earth which is proved by P.W. 6 Inspector Mukesh Kumar, Ex. Ka-8 is Charge-sheet against the accused Gaya Prasad U/s 302 I.P.C. which is proved by P.W. 6 Inspector Mukesh, Ex. Ka-9 is the chik F.I.R. which is proved by P.W. 7 Sri Anil Kumar, Ex. Ka-10 is copy of the G.D. which is proved by P.W. 7 Sri Anil Kumar, Ex. Ka-11 is the Inquest Report of the deceased Prempal which is proved by P.W. 8 Inspector Subodh Kumar, Ex. Ka-12 is the Specimen Seal of the dead body of the deceased Prempal which is proved by P.W. 8 Inspector Subodh Kumar, Ex. Ka-13 is Challan Nash (Police Form No. 13) which is proved by P.W. 8 Inspector Subodh Kumar, Ex. Ka-14 is Photo Nash which is proved by P.W. 8 Inspector Subodh Kumar, Ex. Ka-15 is letter to R.I. which is proved by P.W. 8 Inspector Subodh Kumar, Ex. Ka-16 is letter to CMO which is proved by P.W. 8 Subodh Kumar, Ex. Ka-17 is Tahrir of complainant related to missing of mobile which is

proved by P.W. 1 Sri Munna Lal, Ex. Ka-17 is death memo of deceased Prempal which is proved by P.W. 6 Inspector Mukesh Kumar, Ex. Ka-18 is carbon copy of G.D. which is proved by P.W. 6 Inspector Mukesh Kumar, Ex. Ka-19 is docket to Director F.S.L. Lucknow which is proved by P.W. 6 Inspector Mukesh Kumar, Ex. Ka-20 is letter of request for providing the C.D.R. which is proved by P.W. 6 Inspector Mukesh Kumar, Ex. Ka-21 is the CDR (Call detail report) which is proved by P.W. 6 Inspector Mukesh Kumar. Material Ex. 1 to material Ex. 102 which details are mentioned in the statement of P.W. 1 Munna Lal, produced before the Court during the trial, which has been proved by P.W. 1 Munna Lal. Although after the perusal of serial numbers of the exhibits, it is clear that there is a clerical mistake in mentioning the serial number on the exhibits but from the perusal of evidence available on record, it is clear that this is only a clerical mistake and on the basis of that the presumption of the innocence of the accused cannot be drawn. So, in this case all the above-mentioned documents filed by the prosecution in support of its version are legally proved by the prosecution and on the perusal of said documentary evidence, it is also clear that the prosecution has been successful in proving the prosecution story by way of documentary evidence as well.

32. Learned counsel for defence advanced the pronouncement of the Hon'ble Supreme Court in *Megha Singh vs State of Haryana AIR 1995 SC 2339, 1995 CriLJ 3988, (1996) 11 SCC 709* I fully believe and respect the pronouncement of Hon'ble Supreme Court, but the facts of this case is totally different with the facts of the case referred above. Hence, the above pronouncement is not applicable in the present case. The plea taken by the learned counsel for defence lacks merit having no force.

33. Learned counsel for defence advanced the pronouncement of the Hon'ble Supreme Court in *CRIMINAL APPEAL NO. 1522 of 2008 Javed Masood and Anr. Vs State of Rajasthan (Supreme Court)* I fully believe and respect the pronouncement of Hon'ble Court, but the facts of this case is totally different with the facts of the case referred above. Hence,

the above pronouncement is not applicable in the present case. The plea taken by the learned counsel for defence lacks merit having no force.

34. Learned counsel for defence advanced the pronouncement of the Hon'ble Supreme Court in *Appeal (crl.) 325 of 2003 Mukhtiar Ahmed Ansari vs State (N.C.T. of Delhi)* I fully believe and respect the pronouncement of Hon'ble Supreme Court, but the facts of this case is totally different with the facts of the case referred above. Hence, the above pronouncement is not applicable in the present case. The plea taken by the learned counsel for defence lacks merit having no force.

35. *Learned counsel for defence advanced the pronouncement of the Hon'ble Supreme Court in Criminal Appeal No. 142 of 2015 (Arising out of S.L.P. (Crl.) No. 1156/2013) dated 20.01.2015 TOMASO BRUNO vs State of U.P. I fully believe and respect the pronouncement of Hon'ble Supreme Court, but the facts of this case is totally different with the facts of the case referred above. Hence, the above pronouncement is not applicable in the present case. The plea taken by the learned counsel for defence lacks merit having no force.*

36. Learned counsel for defence advanced the pronouncement of the Hon'ble Allahabad High Court in *(2015) 88 AcrC 46 State of U.P. vs Rajjo and others* I fully believe and respect the pronouncement of Hon'ble Allahabad High Court, but the facts of this case is totally different with the facts of the case referred above. Hence, the above pronouncement is not applicable in the present case. The plea taken by the learned counsel for defence lacks merit having no force.

37. Learned counsel for defence advanced the pronouncement of the Hon'ble Allahabad High Court in *(2014) 85 AcrC 182 : (2014) 4 ADJ 60 : (2014) 2 AllCrlRulings 1567 : (2014) 4 AllLJ 472 Sita Ram Seth and others vs State of U.P.* I fully believe and respect the pronouncement of Hon'ble Allahabad High Court, but the facts of this case is totally different with the facts of the case referred above. Hence, the above pronouncement is not applicable in the present case. The plea taken by

the learned counsel for defence lacks merit having no force.

38. Although, some irregularities occurred by the Investigating Officer during investigation but in the light of the evidence produced by the prosecution, I am with the opinion that these irregularities is not fatal for prosecution.

39. Prosecution produced factual witnesses of the incident. In their oral evidence, they supported the prosecution story. On the basis of the oral as well documentary evidence adduced by the prosecution and discussion thereof, I am with the opinion that on 05.06.2015 at about 21:00 hours from the place of Ratan Lal Khandsari Barat Ghar within the limit of kasba & police station Nawabganj, accused Gaya Prasad and his associates called Prempal the brother of complainant and alongwith Prempal went to the house of Har Prasad and with the intention of killing Prempal, accused Gaya Prasad shoved Prempal from the roof of Har Prasad's house at 22:00 hours. Consequently, Prempal sustained serious injuries and as resultant during treatment Prempal succumbed to death on 06.06.2015.

40. After detailed analysis of the above case and perusal of the entire evidences available on record, I am of the considered opinion that the accused Gaya Prasad was involved in the said commission of murder and the prosecution is successful in proving the offence punishable under section 302 I.P.C. against accused Gaya Prasad beyond reasonable doubt so, accused Gaya Prasad is liable to be convicted for the offence punishable U/s 302 I.P.C.

41. Therefore, accused Gaya Prasad is convicted for the offence punishable under section 302 I.P.C.

42. Convict Gaya Prasad is present in the Court. He is bail out. Therefore, the personal bonds and sureties of convict Gaya Prasad is hereby, cancelled and his sureties are discharged from their bail liabilities and convict Gaya Prasad be taken into custody immediately.

43. For hearing on the quantum of punishment of the convict, the file be put on 20.02.2023 meanwhile the convict be kept in jail. Convict Gaya Prasad be summoned from jail on the date fixed. Convict Gaya Prasad may produce his written argument, documentary evidence or affidavit in his support, if any.

(Vinod Kumar-III)

Sessions Judge,

Dated: 15.02.2023

Bareilly, (U.P.)

(Id.No. UP5401)

Dated: 20.02.2023

44. Case called out. Convict Gaya Prasad is present before the court in judicial custody. It is stated by the learned defence counsel that convict Gaya Prasad do not want to adduce any written argument, documentary evidence or any affidavit in his support on the quantum of punishment.

45. Heard the learned counsel for defence and learned D.G.C. (Criminal) on quantum of punishment. Learned counsel for defence argued for sympathetic consideration about imposition of sentence on convict, whereas the learned D.G.C.(Cri.) has argued that the convict is to be punished severely by a deterrent punishment.

46. After considering the facts and circumstances of present case, it is clear that the instant matter does not fall in the category of rarest of the rare case, so, I find it appropriate to punish the convict Gaya Prasad sentenced for the offence U/S 302 I.P.C. for life imprisonment and Rs. 50,000/- (Fifty Thousand) fine and in default of fine, an additional imprisonment for 02 years (two years). So, the convict Gaya Prasad is liable to be punished for above-mentioned punishment.

ORDER

47. Convict Gaya Prasad is, hereby, punished for the offence U/S 302 I.P.C. for life imprisonment and Rs. 50,000/- (Fifty Thousand) fine and in default of payment of fine, an additional imprisonment for the period of 02 years (two years).

48. Any previous detention in this very case crime number if any, shall be set off from above-mentioned punishment.

49. In this case, after realization of fine imposed upon the convict Gaya Prasad, the amount of Rs. 25,000 (Twenty Five Thousands) shall be released in favour of complainant Sri Munna Lal S/o Sohan Lal, R/o village Faridapur Gaanga @ Nawada, P.S. Nawabganj, District Bareilly and in case of his death, the same shall be released in favour of his legal successor, if any.

50. Let a copy of this judgment be given to the convict free of cost for preferring appeal, if any.

51. Conviction warrant be prepared accordingly.

(Vinod Kumar-III)

Sessions Judge,

Bareilly, (U.P.)

(Id.No. UP5401).

Dated:20.02.2023

Judgment signed, dated and pronounced in the open court today.

(Vinod Kumar-III)

Sessions Judge,

Bareilly, (U.P.)

(Id.No. UP5401).

Dated:20.02.2023