



UPBL010018802018

IN THE COURT OF SESSIONS JUDGE, BALLIA**PRESENT: Anil Kumar Jha, H.J.S.,**

I.D. No. U.P. 06529

Sessions Trial No. 143 of 2018

State of U.P.

-----Prosecution

Versus

- 1- Awadhesh Yadav S/o Late Kapildev Yadav,
 - 2- Ganesh Yadav S/o Late Kapildev Yadav,
 - 3- Sadanand Yadav S/o Ramayan Yadav,
 - 4- Rohit Yadav @ Muneel Yadav S/o Ramesh Yadav
- All are R/o Devadiya, Police Station-Nagra, District-Ballia.

-----Accused persons

Case Crime No. 22/2018**Police Station: Nagra District-Ballia.****U/Ss- 323/34, 304/34,336,504,506 I.P.C****JUDGMENT**

The present Sessions Trial No. 143/2018 came to the fore after the committal order passed by the Ld. Chief Judicial Magistrate, Ballia vide order dated 11.06.2018 and committed against the accused persons namely, Awadhesh Yadav, Ganesh Yadav, Sadanand Yadav and Rohit Yadav @ Muneel Yadav all are R/o Devadiya, Police Station-Nagra, District-Ballia Case Crime No. 22/2018 under Sections 336, 323, 504, 506, 304, 34 I.P.C.

Briefly the prosecution case as per written complaint Exhibit Ka-1 dated 04.03.2018 is that, the complainant/informant Rakesh Singh is a resident of village Devadiya, Police Station Nagra, District Ballia. On 02.03.2018 at about 8:30 A.M., on the date of Holi, the complainant came out of his house and went towards the road about 30 meters from his house. Awadhesh Yadav S/o Kapil Yadav, Rohit Yadav @ Muneel Yadav S/o Ramesh Yadav, Ganesh Yadav S/o Kapil Yadav and Sadanand Yadav S/o Ramayan Yadav were standing armed with thick stick (Lathi-Danda). When the complainant came out of his house, all the accused

started abusing him in filthy language. When the complainant opposed, all the accused came to beat him. He ran towards his house but they caught him at the door and started kicking and punching. Meanwhile, Shiv Kumar Singh S/o late Rama Shankar Singh, Rajesh Singh S/o late Lal Parikha Singh and Ram Badan Singh S/o Shivjapat Singh came from the front side and the complainant requested them to save him. At the same time, the younger brother of the complainant Raman Kumar Singh and Rajesh Singh both sons of Govindar Singh saw him beaten and ran towards him. When the brothers of complainant reached there, Rohit Yadav @ Muneel hit on the head of Raman Kumar Singh with thick stick (Lathi) with intention to kill. Due to which Raman Kumar Singh fell on the ground. When he fell Awadhesh Yadav picked up a boulder stone and hit on the head of Raman Kumar Singh with intention to kill and he became unconscious at the place of incident. The complainant and his brother Rajesh Singh seeing him unconscious started shouting. After hearing the hue and cry, villagers reached the spot and all accused persons said that they had killed one person and complainant along with his brother Rajesh Singh will also be killed and returned back to their home. Raman Kumar Singh taken to P.H.C., Nagra with the help of villagers. Due to his bad condition, Raman Kumar Singh was taken to Mau and from there referred to Varanasi. Raman Kumar Singh was treated at Singh Medical & Research Center, Varanasi and his condition became critical. There is delay in submitting the complaint/information at police station because they had gone to Varanasi. The life of the family member of the complainant is in danger because of the accused persons.

On the basis of above written complaint given by the informant/complainant at Police Station Nagra, District Ballia, a Case Crime No. 22/2018 against unknown persons under Sections 308, 336, 323, 504, 506 IPC was registered on 04.03.2018 at 14:45 hrs and the investigation was handed over to Sub-Inspector Dharmendra Yadav.

During investigation, the Investigating Officer Sub-Inspector Dharmendra Yadav prepared the case diary, check F.I.R. & G.D. of

F.I.R. (Kayami), recorded the statements of Rakesh Singh, Rajesh Kumar Singh, Rambadan Singh and Manohar Singh and prepared the site map at the instance of informant.

After death of the injured Raman Kumar Singh during the treatment, the supplementary statement of complainant was recorded and on the basis of investigation and collected evidence, charge-sheet was submitted against the accused persons Awadhesh Yadav, Rohit Yadav @ Muneel Yadav, Ganesh Yadav and Sadanand Yadav under Sections 336, 323, 504, 506, 304, 34 IPC before the concerned Court.

Learned Chief Judicial Magistrate, Ballia has committed the case to the Sessions Court on 11.06.2018 against the accused persons Awadhesh Yadav, Rohit Yadav @ Muneel Yadav, Ganesh Yadav and Sadanand Yadav for the trial.

Charge was framed on 26.07.2018 against the accused persons namely-Awadhesh Yadav, Rohit Yadav @ Muneel Yadav, Ganesh Yadav and Sadanand Yadav under Sections-323/34, 304/34, 336, 504, 506 I.P.C. Charge was read over and explained to the accused persons. All the accused persons pleaded not guilty and claimed to be tried.

To prove its case, **prosecution** produced following oral as well as documentary evidence.

Specimen Chart for Witnesses Examined

Prosecution Witness No.	Name of Witnesses	Description
1.	Rakesh Singh	Complainant/Eye witness
2.	Rajesh Kumar Singh	Eye witness
3.	Ram Badan Singh	Eye witness
4.	Constable Anil Kumar Sonkar	F.I.R. Writer
5.	Dr. S.K. Gupta	Doctor who medically examined injured Raman Kumar Singh (now deceased) and prepared Medico-legal certificate (MLC).
6.	Manmohan Singh	Witness of Inquest (Panchayatnama)
7.	Dr. Shiv Bahadur Singh Kushwaha	Doctor who conducted postmortem of deceased Raman Kumar Singh

8.	S.I. Ram Dinesh Tiwari	Investigating Officer
9.	Inspector Ghananand Tripathi	Investigating Officer who conducted Inquest proceeding (Panchayatnama)
10.	S.I. Dharmendra Prasad Yadav	Investigating Officer

Specimen Chart for Exhibited Documents

Exhibit No.	Description of the Exhibit	Proved by/Attested by
Ka-1	(Complaint)	Rakesh Singh, P.W.1
Ka-2	Inquest (Panchayatnama)	Ram Badan Singh, P.W.3
Ka-3	Check FIR	Constable Anil Kumar Sonkar, P.W.4
Ka-4	Medical Report (MLC) of Deceased Raman Singh	Dr. S.K. Gupta, P.W.5
Ka-5	Post mortem Report of Deceased Raman Singh	Dr. Shiv Bahadur Singh Kushwaha, P.W.7
Ka-6	Charge-sheet	S.I. Ram Dinesh Tiwari, P.W.8
Ka-7, Ka-8, Ka-9 & Ka-10	Photo Nash, Challan Nash, Letter to C.M.O, Letter to Police Station-Lanka, Varanasi.	Inspector Ghananand Tiwari, P.W.9
Ka-11	Site Map	S.I. Dharmendra Prasad Yadav, P.W.10

After completion of the prosecution evidence, the statement of accused persons was recorded under Section 313 Cr.P.C.

To prove its case, **Defence** produced following oral evidence :-

Oral Evidence:-

1. Sanjeev Kumar Yadav D.W.1

The examination-in-chief of prosecution witnesses recorded in the Court is as follows:-

Rakesh Singh (Complainant) P.W-1 has stated on oath in his examination-in-chief that the incident occurred on 02.03.2018 at 8:30 A.M. It was festival of Holi that day. I was going towards main road that day. The road is 30 meter away from my house. When I was on the way to main road, Awadhesh Yadav, Sadanand Yadav, Ganesh Yadav and Rohit Yadav @ Muneel of my village armed with thick stick (Lathi-Danda) started abusing in filthy language and chased to beat me. I ran towards my house but all the four accused persons caught me and started kicking and punching me. On shouting, Shiv Kumar Singh,

Rajesh Singh S/o Lal Parikha Singh and Ram Badan Singh of my village came to the place of incident. Meanwhile, my brothers Rajesh Singh and Raman Singh came to save me. On seeing Raman Singh, all the four accused persons left me and started beating Raman Singh with thick stick (Lathi-Danda) with intention to kill and Awadhesh Yadav hit Raman Singh with boulder stone. He voluntarily stated that firstly Rohit Yadav hit my brother with thick stick (Lathi) on the head and he fell down and Awadhesh Yadav hit with boulder stone on the head of Raman Singh and my brother became unconscious. My brother Rajesh Singh, Rambadan Singh, Shiv Kumar Singh, myself and Rajesh Singh S/o Lalparikha Singh etc. had seen the incident and intervened. With the help of villagers, I took Raman Singh to Primary Health Center, Nagra where his treatment was done and due to the serious condition of my brother, doctor referred him to Mau. Later my brother was taken to Singh Medical & Research Center, Banaras for treatment. My brother died on 10.03.2018 during treatment. I reported this incident at police station in writing. A case was registered. Sub-Inspector (Daroga Ji) had recorded my statement. I had seen the place of occurrence. I had given an application regarding incident at the police station. The said application is available in the file as Paper No. 4Ka/4 and it is in my hand-writing and signature. I admit and the same is marked as **Exhibit Ka-1**. An application regarding information of death of my brother was given at police station. The said application is available in the file as Paper No. 7Ka/4 and it is in my handwriting and signature. I admit. Investigating Officer had recorded my statement regarding this incident.

Rajesh Kumar Singh P.W-2 has stated in examination-in-chief on oath that the incident is of 02.03.2018 at 8:30 A.M. It was festival of Holi that day. My brother was going towards road that day. Awadhesh Yadav, Sadanand Yadav, Ganesh Yadav and Rohit Yadav @ Muneel of my village armed with thick stick (Lathi-Danda) started abusing in filthy language and chased to beat my brother Rakesh. My brother ran towards his house. All the accused persons had beaten him by kicking and punching. Heard shouting of Rakesh, I and my brother Raman

reached there to save him. All the four accused persons left Rakesh and started beating Raman Singh. Rohit hit with thick stick (Lathi-Danda) on the head of Raman Singh with intention to kill. My brother received head injury and fell on the ground and Awadhesh Yadav picked up a stone lying nearby and hit Raman Singh on his head. He became unconscious. On hearing hue and cry, Shiv Kumar Singh, Rajesh Singh S/o Lal Parikha Singh and Rambadan Singh of my village came to the place of incident. Accused persons ran away threatening to kill them and also uttering one has been killed and you will also be killed. Raman Singh was taken to Primary Health Center, Nagra for treatment in unconscious condition and doctor referred him (Raman Singh) to higher center for treatment. After that Raman Singh was taken to Fatima Hospital, Mau but due to crowd, Raman Singh was admitted in Prakash Hospital, Mau but doctor referred him to Banaras. Thereafter Raman Singh was admitted in Singh Medical & Research Center, Varanasi where my brother died during treatment on 10.03.2018. An application regarding this incident was submitted by my brother Rakesh at police station. Sub-Inspector (Daroga Ji) had recorded my statement.

Ram Badan Singh P.W-3 has stated in examination-in-chief on oath that the incident is of 02.03.2018 at 8:30 A.M. It was festival of Holi that day. I was at my Farmhouse (Dera) on that day. My farmhouse is close to my house. My farmhouse is adjacent to the house of Rakesh Singh in the north-east side. Awadhesh Yadav, Ganesh Yadav, Rohit and Sadanand were standing on the road armed with thick stick (Lathi-Danda). On seeing Rakesh Singh, they started abusing and when he opposed, all the four accused persons chased to beat him with the intention to kill. My nephew ran towards his house due to fear of all the above accused persons. All the accused persons caught him on the way and started kicking and punching. On shouting, Rajesh and Raman reached the place of incident. The accused persons left Rakesh and said that both Raman and Rajesh are the cause of dispute and beaten both of them. Rohit hit with thick stick (Lathi-Danda) on the head of Raman and he fell down. Awadhesh picked up a boulder stone lying nearby and

hit on the head of Raman with intention to kill due to which Raman became unconscious. The accused fled away stating that we had killed him (Raman) and two other persons would be killed. On shouting of Rajesh and Rakesh, I along with Shiv Kumar Singh and Rajesh Singh S/o Lalparikha Singh also came to save them and intervened then the accused persons left from there. His family members and myself also took Raman Singh to the Primary Health Center, Nagra where doctor referred him to Mau due to his serious condition. Later his family member took him to Banaras due to his serious condition and he was admitted to Singh Medical & Research Center and treatment was started. Raman Singh died during the treatment. I reached there before his death. Inquest (Panchayatnama) was prepared in my presence. I put my signature on Inquest (Panchayatnama) which is available in file. I admit and the same is marked as **Exhibit Ka-2**.

Anil Kumar Sonkar P.W-4 has stated in examination-in-chief on oath that I was posted at Nagra Police Station on 04.03.2018. I don't remember the name of the informant. The informant submitted a written application before the Station House Officer. On the basis of that application, Case Crime No. 22/2018 under Sections 308, 336, 323, 504, 506 IPC was registered. The Rapat No. 30 was prepared on computer at 14:45 hours. Check F.I.R. was prepared on computer at my dictation and it is in my handwriting. Investigating officer had recorded my statement. The said F.I.R. is available in the file as Paper No. 4Kha/1. I admit and same is marked as **Exhibit Ka-3**.

Dr. S.K. Gupta P.W-5 has stated in examination-in-chief on oath that I was posted at Community Health Center, Nagra on 02.03.2018. I had medically examined injured Raman Singh S/o Govindar Singh, R/o Village-Devadiya, Police Station- Nagra, District- Ballia at 09:20 P.M. Injured Raman Singh was in unconscious condition. He received injuries on the back and middle of the head. Following injuries were found on his body-

- (i). L.W. 7 cm X 0.5 cm X deep bone on the middle of occipital region of head, 13 cm above from right ear pinna. Injury K.U.O.,

H/o unconscious.

- (ii). L.W. 5 cm X 0.5 cm X deep bone on the back side occipital region of head, 14cm above from back side base of neck. Injury K.U.O., H/o unconscious.
- (iii). Abrasion 7 cm X 0.6 cm on the left hand 8cm below from left wrist joint.
- (iv). Abrasion 8 cm X 0.6 cm on the all finger of right hand, 10cm below from right wrist joint.
- (v). Abrasion of size 1 cm X 0.5 cm on the just left toe.

OPINION

Injury No. 3rd, 4th and 5th are caused by friction against hard and rough surface and simple in nature except Injury No. 1st and 2nd is K.U.O. Advised-X-ray head A.P. and Lateral view/C.T. Scan head. Referred to D.H. Ballia/Azamgarh for X-ray and C.T. Scan & expert opinion. Duration-Fresh.

Patient was in unconscious condition. Injury No. 1 & 2 was very dangerous which was on the head of Raman Singh. Paper No. 7Ka/2 is available in the file which is in my handwriting and it bears my signature. The same is marked as **Exhibit Ka-4**. Patient was K.U.O and referred to District Hospital, Ballia for X-ray and C.T. Scan. Sub-Inspector (Daroga Ji) had recorded my statement. I told him regarding treatment done.

Manmohan Singh P.W-6 has stated in examination-in-chief on oath that on 10.03.2018, Sub-Inspector (Daroga Ji) had prepared the Inquest (Panchayatnama) of deceased Raman Singh S/o Govindar Singh aged about 22 years, Village-Devadiya, Police Station- Nagra, District-Ballia. The said Inquest (Panchayatnama) was available in the file and it bears my signature along with signature of other witnesses. I admit and the same is already marked as Exhibit Ka-2. Investigating Officer had recorded my statement.

Dr. Shiv Bahadur Singh Kushwaha P.W-7 has stated in examination-in-chief on oath that I was posted as Medical Officer on 10.03.2018. I was on duty at the Mortuary House, B.H.U. Varanasi as

per the order of C.M.O. Varanasi on that day. The dead body of deceased Raman Singh S/o Govindar Singh R/o Village-Devadiya, Police Station- Nagra, District- Ballia was brought before me by Constable Hemant Kumar Pandey and Sahatam Ram, Police Station Sagra, District-Varanasi in a sealed condition. After matching the seal with the sample seal and finding it correct, the seal was opened and found the dead body of above deceased and post-mortem was started at 05.15 P.M. Eyes and mouth of the deceased were closed. Rigor mortis was present in the whole body.

Antemortem Injuries

- (1). Stitched wound 9cm over left fronto parietal area of head, 3cm outer to middle, 3cm above & medial to left ear. On opening scalp burr hole of 3cm diameter present over left side fronto parietal region of head along with bone cut & pasted along with # of frontal bone & right parietal bone.
- (2). Stitched wound 7cm over top of head, 21cm above root of nose.
- (3). Stitched wound 4cm over right side of occipital region of back of head, 12cm behind right ear, touching to midline.
- (4). Stitched wound 3cm over front of neck.

Internal Examination

- (1). Fracture was found on scalp frontal bone and right parietal bone. Meninges- lacerated & congested. Brain- lacerated & congested, subdural hematoma present. Brain- weight 1222 gm.
- (2). Neck-defined in ante-mortem injuries. Teeth-16/16.
- (3). Chest-both pleura congested, Lungs-congested. Pleural cavity-weight right 695 gm. and left 484 gm. Pericardium-congested. Heart- weight 218 gm. All chamber full with blood.
- (4). Peritoneum- congested. Stomach- 100 ML fluid present. Small intestine- mucus and gas and large intestine- fecal material and gas. Liver- congested and weight- 1268 gm. Spleen- congested and weight- 109 gm. Kidney- both congested. Weight of right kidney- 127 gm and left kidney- 125 gm.

OPINION-

Date & time of death- 10.03.2018 at 12.10 P.M. at Singh Medical & Research Center Pvt. Ltd. Maldahiya, Varanasi which is shown in enclosure no. 9.

Cause of Death- Coma as a result of head injuries.

The postmortem report is available before me. It is in my handwriting and it bears my signature. I admit and the same is marked as **Exhibit Ka-5**.

Sub-Inspector, Ram Dinesh Tiwari P.W.-8 has stated on oath in his examination-in-chief that I was posted as In-charge at Police Station-Nagra, District-Ballia. On that day, I took investigation of Case Crime No. 22/2018 under Sections 304, 336, 323, 504, 506 IPC registered at the police station. The said case had been registered on 04.03.2018 under Sections 308, 336, 504, 506, 323 IPC and investigation was conducted by Sub-Inspector Dharmendra Prasad Yadav of Nagra Police Station. Due to the death of Raman Singh, Section 304 IPC was added during investigation. Thereafter, investigation of the case was taken up by me. I perused the papers prepared by the previous investigating officer, copy of Check (Nakal Check), Copy of G.D. (Nakal Rapat), statement of FIR writer, statement of informant and inspection of place of occurrence. Accused persons Ganesh Yadav and Sadanand Yadav had been arrested and challaned to Court. On 20.03.2018, I received and perused the inquest report (Panchayatnama) and postmortem report of deceased Raman Singh and it was recorded in the case diary. Accused persons Awadhesh Yadav and Rohit Yadav were absconding and were also planning to dispose of their movable and immovable properties. On this basis, I moved an application on 27.03.2018 before the Hon'ble Court for proceedings under Sections 82 and 83 Cr.P.C. against them. On 31.03.2018, accused Awadhesh Yadav was arrested and his statement was recorded and he was challaned to Court. On 27.04.2018, accused Rohit Yadav @ Muneel Yadav was arrested and his statement was recorded and he was challaned to Court. On 06.05.2018, the statement of witnesses Shiv Kumar Singh, Rambadan Singh and Rajesh

Singh was recorded. On 08.05.2018, statement of Constable Hemant Kumar Pandey, Constable Sahatam Ram, inquest witness Sub-Inspector Ghananand Tiwari, Dr. P.S. Verma (Neuro Surgeon), Dr. B.S. Kushwaha, Dr. S.K. Gupta, Constable Rajiv Kumar Saroj, Constable Arvind Kumar Patel, Constable Vimlesh Singh, Sub-Inspector Dharmendra Prasad Yadav, Constable Sunil Kumar Saroj, Constable Vinod Kumar Maurya, Constable Deepak Yadav and Constable Amit Kumar was recorded. On 13.05.2018, statement of witnesses Rajesh Singh, Jai Shankar Singh and Ravikant Yadav was recorded. Charge-sheet No. 43/2018 was prepared through CCTNS by me and I had submitted the charge-sheet in the Court on 13.05.2018 against the accused persons Awadhesh Yadav, Ganesh Yadav S/o Late Kapil Dev Yadav, Sadanand Yadav S/o Ramayan Yadav, Rohit Yadav @ Muneel Yadav S/o Ramesh Yadav, R/o Devadiya, Police Station-Nagra, District-Ballia under Sections 304, 336, 323, 504, 506 I.P.C. after getting sufficient evidences in the form of statements recorded by the previous investigating officer i.e. statement of informant, statement of witnesses, statement of F.I.R. writer, inspection of place of occurrence and statement recorded by me i.e. statement of informant, statement of doctor, statement of Sub-Inspector who had conducted the Inquest and other collected evidences. The charge-sheet is available in the file as Paper No. 3Ka/1 to 3Ka/10. Charge-sheet was shown to the witness through V.C. and the witness told that this is the charge-sheet which was prepared on CCTNS by me and it bears my signature. I admit and the same is marked as **Exhibit Ka-6**.

Inspector, Ghananand Tripathi P.W.-9 has stated on oath in his examination-in-chief that on 10.03.2018, I was posted as In-charge Inspector at Police Chauki-Roadways, Police Station Sagra, District-Varanasi. I received information from Singh Medical & Research Center, Varanasi that day and I reached at Singh Medical & Research Centre Pvt. Ltd., Maldahiya, Police Station Sagra, District Varanasi along with constable Hemant Kumar Pandey and Sahatam Ram. The dead body of Raman Singh S/o Govindar Singh, R/o-Devadiya, Police

Station-Nagra, District Ballia was kept in the mortuary house. The family members of the deceased were present there. After taking out the dead body from the mortuary house, I appointed Mahamohan Singh, Ram Badan Singh, Rajesh Kumar Singh, Jai Shankar Singh and Ravikant Yadav as witnesses of inquest (Panchan) and informed them about their duties and responsibilities and inquest proceedings were conducted. The deceased was aged about 22 years old male, wheatish, round face, single strong body, eye, nose, ear and weight were average. He was wearing light pink underwear and sacred thread (Rakshasutra) on his right hand. On inspection of the injuries on the body of deceased, a bandage tied around the head due to head injury was found and another bandage was tied below the neck and right shoulder. When the witnesses of inquest were asked individually and collectively regarding the death of the deceased, they had stated that the injuries received during the incident due to which he was admitted to the hospital on 02.03.2018 and he died during the treatment. My opinion was also the same as inquest witnesses. However, to ascertain the actual cause of death, post-mortem was found necessary. Therefore, after sealing the body in a white cloth and preparing a sample seal, the dead body was handed over in sealed condition to constable Hemant Kumar Pandey and Sahatam Ram for post-mortem. The inquest report was prepared in my handwriting and it bears my signature and after reading over it to the appointed inquest witnesses, their signatures were obtained. The inquest (Panchayatnama) Paper No. 8Ka/1 is available in the file. I admit and same is already marked as Exhibit Ka-2. Other documents related to inquest report (Panchayatnama) are also available in the file as Papers no. 8Ka/4 Photo Nash, Paper No. 8Ka/5 Challan Nash, Paper No. 8Ka/6 letter to C.M.O. and Paper No. 8Ka/7 letter to Police Station Lanka. I admit and the same are marked as **Exhibit Ka-7, Exhibit Ka-8, Exhibit Ka-9 and Exhibit Ka-10** respectively.

Sub-Inspector, Dharmendra Prasad Yadav P.W.-10 has stated on oath in his examination-in-chief that on 04.03.2018, I was posted as Sub-Inspector at Police Station-Nagra, District-Ballia. I received

investigation of registered Case Crime No. 22/2018 under Section 323, 504, 506, 336, 308 IPC against accused Awadhesh Yadav and Others. On that day, the statement of F.I.R. writer, Nakal Check writer, Nakal Rapat writer constable moharir Anil Kumar and statement of informant was recorded. I also inspected the place of occurrence at the instance of the informant and prepared a Site Map in my handwriting and the said Site Map is available in the file as Paper No. 5Ka and it is in my handwriting and it bears my signature. I admit and same is marked as **Exhibit Ka-11**. Medical report of the injured Raman Singh was received. I perused the medical report and annexed it in the case diary. The information regarding death of the injured Raman Singh was received on 13.03.2018 that the injured Raman Singh died during the treatment on 10.03.2018 at 12.10 P.M. On the above information Section 304 I.P.C. was added. Accused persons were absconding and were also planning to dispose of their movable and immovable properties. On this basis, I moved an application before the Hon'ble Court for N.B.W. and proceedings under Sections 82 & 83 Cr.P.C. against them. Accused persons Ganesh Yadav S/o Kapil Yadav and Sadanand Yadav S/o Ramayan Yadav, R/o-Devadiya, P.S.-Nagra, District-Ballia were arrested from Rasra Railway Station and recorded their statement and challaned to Court. Due to addition of Section 304 I.P.C., further investigation was completed by Inspector Sri Ram Dinesh Tiwari.

The prosecution headed by Ld. DGC (Crl.) closed its evidence by making endorsement on the margin of the order sheet dated 29.11.2025.

After completion of prosecution evidence, statement of accused persons Awadhesh Yadav, Rohit @ Muneel Yadav, Ganesh Yadav and Sadanand Yadav was recorded under Section 351 B.N.S.S. (S. 313 Cr.P.C.). Accused persons denied most of the allegation and stated the prosecution story to be incorrect. Accused persons stated that there was political rivalry due to Gram Pradhan Election and they had been falsely implicated.

Defence has examined defence witness Sanjeev Kumar Yadav as DW-1.

Sanjeev Kumar Yadav D.W.1 has stated on oath in his examination-in-chief that it was the festival of Holi on 02.03.2018. The time was about 8:00 A.M. in the morning. I had gone to buy meat at Devadiya meat market. Rajesh Singh and Rakesh Singh, R/o-Devadiya told the shopkeeper to first give meat to them. This resulted in start of abuses. There was crowd at the shop and stone-pelting began. I did not see Rohit @ Muneel R/o Devadiya at the shop. Rohit @ Muneel did not live in the village, perhaps he lived in Jaipur (Rajasthan). Later on, I came to know that one person had got injury and later I came to know the name of injured as Raman Singh. Sub-Inspector (Daroga Ji) recorded my statement.

Heard Ld. DGC (Crl.) Shri Sanjeev Kumar Singh for the State assisted by learned counsels Shri Rangbali Singh, Kaushal Kumar Singh and Subash Chandra Srivastava and learned defence counsel Shri Dinesh Kumar Tiwari for accused persons Awadhesh Yadav, Ganesh Yadav & Sadanand Yadav and learned defence counsel Shri Nirbhay Narayan Singh for accused Rohit Yadav @ Muneel Yadav.

Learned DGC (Crl.) for the State assisted by three private counsels initiated the argument and submitted that the incident took place on 02.03.2018 at 08:30A.M. in village Devadiya from road to the door of the complainant. F.I.R. was registered on 04.03.2018 at 14:45 P.M. He further argued that the slight delay in registration of F.I.R. is explained in the written complaint Exhibit Ka-1 itself. The deceased was taken to Primary Health Center, Nagra and he was further taken to Mau as the condition of the deceased (at that time injured) was serious. The deceased was taken to Varanasi from Mau and he was medically treated at Singh Medical & Research Center, Varanasi. The F.I.R. could be registered only when improvement was found in the condition of the deceased. He also argued that the place of occurrence is a fixed place near door of the house of Sheshnath Singh started from the door of the house of complainant. He also argued that the meat shop in the village area is not a permanent structure and the meat shop is a temporary

arrangement which is removed after selling the meat. He also argued that the incident at meat shop is not the prosecution story rather it was brought by the defence in the cross-examination and it can be ignored. He has submitted that the eye-witnesses were present at the place of occurrence and they have proved the incident beyond reasonable doubt. He also argued that the postmortem was conducted at B.H.U. and the postmortem report mentions about death at Singh Medical & Research Center, Varanasi and this proves the prosecution case that the deceased was under treatment at Singh Medical and Research Center, Varanasi. Learned DGC (Crl) further submitted that the defence has admitted the presence of accused and witnesses at the place of occurrence at the time of incident. He argued that the offence committed by the accused persons are proved by the prosecution beyond all reasonable doubt. Thus prayed for conviction of the accused persons.

Prosecution has produced following case law in support of his argument:-

1. Rajesh Yadav & Anr. Vs State of U.P. 2022(1) JIC 570 (S.C.)
2. State of U.P. Vs Shane Haidar 2015(1) JIC 680 (ALL)
3. Rampal Singh & others Vs State of U.P. 2021(1)ACR 877 (Allahabad High Court)
4. Dilawar Singh and others Vs State of Haryana 2014 (87) ACC 686 (Supreme Court).
5. Sahabuddin and another Vs State of Assam 2013(80) ACC 1002 (Supreme Court).
6. State of U.P. Vs Raghubir Singh 2014(84) ACC 622 (Allahabad High Court).
7. Rajneesh Dwivedi Vs State of U.P. 2014 (85) ACC 169 (Allahabad High Court)

Learned defence counsel for the accused persons Awadhesh Yadav, Sadanand Yadav and Ganesh Yadav has submitted that the conduct of the witnesses are unnatural. Despite presence of many persons at the place of occurrence, no one defended the deceased. He also argued that Shiv Kumar Singh and Rajesh Singh are not examined

whereas they were independent witnesses who were present at the place of occurrence as per written complaint and evidence of the prosecution. He further argued that the F.I.R. is highly delayed. He further argued that the injury of the deceased is not found inflicted with the weapon allegedly used by the accused persons. He also submitted that there is discrepancies in ocular and medical evidence with regard to injuries. He also argued that the place of occurrence is shifting in nature and the site map itself brings contradictions regarding place of occurrence. He also argued that the prosecution has brought three places of occurrence and therefore the place of occurrence being shifting in nature and therefore prosecution version cannot be relied. He also submitted that there were many independent persons but no one tried to catch accused nor examined by the prosecution. He argued that the alleged eye-witnesses of the incident were present at the place of occurrence as none of them tried to hold the accused who were carrying thick stick (Lathi) only. The prosecution evidence suffers from material contradictions and inconsistencies and therefore not reliable. He also argued that only interested witnesses are examined and no independent witnesses have been examined despite their availability. He also submitted that the accused persons have been falsely implicated due to political enmity as the wife of the accused Ganesh Yadav defeated Ram Badan P.W.3 in Panchayat Election. He also argued that the prosecution has failed to prove its case beyond reasonable doubt.

Thus prayed for acquittal of all three accused persons namely, Awadhesh Yadav, Ganesh Yadav and Sadanand Yadav.

Learned defence counsel for the accused Rohit Yadav @ Muneel Yadav has also submitted on the same line as argued by the learned defence counsel for three accused persons discussed above. He additionally submitted that the crime weapon large stone (Boulder) allegedly used by the accused has not been recovered. He has also argued that the F.I.R. is highly delayed and ante-timed. Learned counsel has repeated his argument on all points already argued by learned defence counsel for the three accused persons above. He finally

submitted that the prosecution has failed to prove its case against the accused Rohit Yadav @ Muneel Yadav and prayed for acquittal of the accused persons.

Learned counsels for the accused persons Awadhesh Yadav, Ganesh Yadav and Sadanand Yadav has produced following case law in support of his argument:-

1. Tori Singh and another Vs State of U.P. 1962(1) Cri. L.J. 469 (S.C.)
2. Ram Narain Singh Vs State of Punjab 1975 SCC (Cri) 571
3. Matlab Ali Vs State (Acr. J.) 1972 Page-112
4. Purshottam and another Vs State of Madhya Pradesh 198 CRI. L.R. 1298 (S.C.)
5. Ghurai Vs State 1995 ACC Page-270 (AHC)
6. Bisram and another Vs State 1986 ACC 223 (Lucknow Bench)
7. Bhagirath Vs State of Madhya Pradesh 1976 Cri.L.J. (S.C.)

Learned counsel for the accused Rohit Yadav @ Muneel Yadav has produced following case law in support of his argument:-

1. Kannaiya Vs State of Madhya Pradesh 2025 INSC 1246/2025 SCO. LR 10.
2. Nand Lal and others Vs State of Chhattishgarh 2023 (123) ACC 955 (Supreme Court).
3. Mohd. Muslim Vs State of U.P. (Now Uttarakhhand) 2023 (124) ACC 932 (Supreme Court).
4. Natthoo and others Vs State of U.P. 2020 (110) ACC 146 (Allahabad High Court).
5. Mohd. Akhtar @ Kari and others Vs State of Bihar and another 2019 (106) ACC 259 (Supreme Court).
6. Brijesh Kaushal and another Vs State of U.P. 2022 (118) ACC 549 (Allahabad High Court).
7. Smt. Indrawati Devi Vs State of U.P. and others 2026(134) ACC 865 (Allahabad High Court).

The relevant laws attracted in this Sessions Trial are as follows :-

Section 299 I.P.C.:-

Culpable homicide.- Whoever, causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge, that he is likely by such act to cause death, commits the offence of culpable homicide.

Explanation 1. a person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.- where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skillful treatment the death might have been prevented.

Explanation 3.- the causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Section 304 I.P.C.:-

Punishment for culpable homicide not amounting to murder-

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without an intention to cause death, or to cause such bodily injury as is likely to cause death.

Section 323 I.P.C.

Punishment for voluntarily causing hurt- Whoever, except in the case provided for by Section 334, voluntarily causes hurt, shall be punished

with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Section 336 I.P.C.

Act endangering life or personal safety of others- Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

Section 504 I.P.C.

Intentional insult with intent to provoke breach of the peace-Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 506 I.P.C.

Punishment for criminal intimidation- Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc. And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

State Amendment Uttar Pradesh

Imprisonment of 7 years, or fine or both-Cognizable-Non-bailable-Triable by Magistrate of the first class-Non-compoundable. Vide Notification No. 777/VIII 9-4(2)-87, dated 31st July, 1989, published in U.P. Gazette, Extra.,

Pt. A, Sec. (kha), dated 2nd August, 1989.

On the basis of the argument advanced by the parties above, the following **points for determination** arises before this Court:-

1. Whether F.I.R. is delayed ? If yes, then whether the delay is explained sufficiently ?
2. Whether the place of occurrence is shifting in nature or prosecution has proved it as fixed place of occurrence ?
3. Whether the medical evidence and ocular evidences corroborate each other with regard to the injuries inflicted upon the deceased Raman Kumar Singh and injured/complainant Rakesh Singh ?
4. Whether the prosecution has proved presence of the eye-witnesses at the place of occurrence at the time of incident ?
5. Whether the prosecution has proved its case against all the accused persons beyond all reasonable doubt ?

Point for determination no. 1

Whether F.I.R. is delayed ? If yes, then whether the delay is explained sufficiently ?

The date of incident is 02.03.2018 at about 08:30 A.M. The F.I.R. was registered on 04.03.2018 at 14:45 P.M. as shown in the check F.I.R. Exhibit Ka-3. Learned DGC (Crl) has argued that though there is delay in registration of F.I.R. but it has been explained in the written complaint Exhibit Ka-1. It is mentioned in the written complaint Exhibit Ka-1 that after the incident he (complainant Rakesh Singh) and other villagers together took Raman Kumar Singh to Primary Health Center, Nagra and from there they all taken away Raman Kumar to Mau due to bad condition and from there again he was referred to Varanasi. The medical treatment of Raman Kumar Singh is going on in Singh Medical and Research Center, Varanasi and his condition is very serious. All the family members had gone to Varanasi therefore there is delay in giving the written complaint at police station. Crime No. 22/2018 was registered on 04.03.2018 at 14:45 P.M. under Sections 308, 336, 323, 504, 506 I.P.C. and later on, after death of Raman Kumar Singh on

10.03.2018 at Singh Medical and Research Center, Varanasi, Section to 304 I.P.C. was added. Charge was framed by the learned predecessor on 26.07.2018 under Sections 323/34, 304/34, 336, 504, 506 I.P.C. against all the four accused persons Awadhesh Yadav, Ganesh Yadav, Sadanand Yadav and Rohit Yadav @ Muneel Yadav.

Rakesh Singh P.W.-1 has stated at Page-1 that he took his brother Raman Kumar Singh to Primary Health Center, Nagra. After treatment he was referred to Mau by the doctor seeing his serious condition and from Mau he was taken to Singh Medical and Research Center, Varanasi where his brother was under going treatment but his brother died on 10.03.2018. Undoubtedly when the brother of a person is lying on death bed and the injuries are serious and dangerous to life then the family members like brothers, mother, father etc. would make their best effort to save the life first. In the cross-examination P.W.-1 has stated at Page-4 that they had gone to Nagra hospital by tempo at 08:45 A.M. in the morning. He has further stated that about 09:15 A.M., they went to Mau from Nagra hospital and reached there in one hour at around 10:15 A.M. They had first gone to Fatima Hospital, Mau but there was huge crowd and so they went to Prakash Hospital, Mau. P.W.-1 has further stated that they all were present in Prakash Hospital, Mau for about one and half hour. Later they took Raman Kumar to Singh Medical and Research Center, Varanasi. P.W.-1 has stated at Page-6 that he was busy in the treatment therefore he could not inform. They reached Singh Medical and Research Center, Varanasi at about 02:30 P.M. and was immediately admitted. After admission of Raman Kumar Singh, he could not inform at police station as his mobile was discharged. He could not get his mobile charged as he was busy in the medical treatment of his brother. P.W.-1 has stated at Page-8 that while going to hospital he did not go to the Police Station Nagra because the condition of Raman Kumar Singh was not good. He further stated that he came to his home on 04.03.2018 at about 01:00 P.M. from Singh Medical and Research Center, Varanasi. His father, his youngest brother and his mother were present in house with family. They asked about the

incident. Afterwards he wrote the written complaint Exhibit Ka-1 in his home at about 02:20 P.M. and gave it at police station. The check F.I.R. Exhibit Ka-3 shows the distance of place of occurrence from police station is 1 K.M. and the complainant is resident of the Devadiya village where the place of occurrence is situated. If the complainant P.W.-1 started at or after 02:20 P.M. from his home at Devadiya village then he would reach police station situated at about 1 K.M. from his village in next 10-15 minutes and that is why F.I.R. was registered on 04.03.2018 at 14:45 P.M. It means that after some improvement in the condition of deceased Raman Kumar Singh and after completing initial formalities, he returned to his village on 04.03.2018 and got the F.I.R. registered by giving written complaint at the police station on 04.03.2018. The prosecution has explained the delay in registration of the F.I.R. Since the real brother of the complainant was seriously injured having life threatening injuries therefore it is natural for the complainant to protect life of his brother first and completing the formalities of registration of F.I.R. later. The medical examination of deceased Raman Kumar Singh (at that time injured) was done by Dr. S.K. Gupta, Medical Officer at Primary Health Center, Nagra on 02.03.2018 as private M.L.C. Exhibit Ka-4. This M.L.C. Exhibit Ka-4 shows two lacerated wound on head region with two abrasion injuries on hand & finger along with superficial skin injury. Doctor of Primary Health Center, Nagra had kept 1 & 2nd injury i.e. head injuries under observation and had advised X-ray as well as C.T. Scan of head. The treating doctor, Dr. S. K. Gupta had also referred to District Hospital, Ballia/Azamgarh and the duration is shown as fresh This MLC was done at 09:20 A.M. The injuries recorded by Dr. S. K. Gupta P.W.-5 shows that the injuries of deceased Raman Kumar Singh was serious in nature and this finally gets proved when Raman Kumar Singh died after one week on 10.03.2018.

In **Dilawar Singh Case Law (Supra)**, it is held by Hon'ble Court in Para-21 that, "...where delay in lodging complaint and registration of F.I.R. has been satisfactorily explained, the delay by itself was no ground for disbelieving the prosecution evidence particularly when it

had been accepted both by the Sessions Court and the High Court...."

Thus on the analysis of evidences above, it can be concluded that there is delay in registration of F.I.R. but the delay has been explained by the prosecution properly.

Point for determination no. 2

Whether the place of occurrence is shifting in nature or prosecution has proved it as fixed place of occurrence ?

As per written complaint Exhibit Ka-1 dated 04.03.2018, the incident took place on 02.03.2018 at about 08:30 A.M. in the morning. When the complainant came out of his house and was going towards main road situated at about 30 meter from his house. Accused persons Awadhesh Yadav, Ganesh Yadav, Sadanand Yadav and Rohit Yadav @ Muneel Yadav armed with thick stick standing on the road started abusing him. When he forbade them from abusing then all the four accused persons chased him (complainant P.W.-1) and he ran towards his house but he was caught near the door of his house and was kicked and punched. When his brother Raman Kumar Singh and Rajesh Kumar Singh came to save him on his shouting then all the accused persons left him (complainant) and started beating his brother Raman Kumar Singh. The site map Exhibit Ka-11 prepared and proved by S.I. Dharmendra Prasad P.W.-10 has shown place of occurrence on the north side of Malap-Nagra main road and denoted by letter 'A'. The place of occurrence denoted by letter 'A' is on the south side of the house of Sheshnath Singh and it is also on the south side of the house of complainant Rakesh Singh but at some distance. The place of occurrence denoted by letter 'A' shown in the site map Exhibit Ka-11 is definitely the place where the deceased Raman Kumar Singh is alleged to be beaten by all the four accused persons. In order to ascertain actual place of occurrence the prosecution evidences needs to be scrutinized in detail. The incident of beating of deceased Raman Kumar Singh is preceded by abusing complainant Rakesh Singh P.W.-1 followed by chasing him and then kicking and punching him near the door of his house by the accused persons. It is also pertinent to mention that there is

a vacant land of Sahab Singh on the south side of the house of complainant Rakesh Singh P.W.-1. The I.O. Dharmendra Prasad P.W.-10 has shown a pathway from the Malap-Nagra main road towards north side between the house of Sheshnath Singh and vacant land of Sahab Singh going towards the house of the complainant. Thus the vacant land of Sahab Singh and the pathway makes the entire place a vacant land. The Malap-Nagra main road is about 30 meter from the house of the complainant. During beating and chase, the accused and the victim cannot remain static rather they will keep changing their places by few meters. P.W.-1 has stated at Page-10 that when the accused persons chased him to beat after abusing him in the name of mother and sister, he ran towards his house but all the accused persons caught him mid way and started beating him by kicking and punching. When he shouted for help then villagers Shiv Kumar Singh, Rajesh Singh, Ram Badan Singh etc. came and meanwhile his brothers Rajesh Singh and Raman Singh came to save him. After seeing Raman Singh all the four accused persons left him (complainant) and started beating Raman Singh. P.W.-1 has further clarified the place of occurrence when he was cross-examined. P.W.-1 has stated in his cross-examination at Page-3 that there is house on the north-west side from the place of occurrence. There is vacant land of Sahab Singh to the east of the house of the Sheshnath Singh. The house of Subhash Singh is to the west of the house Sheshnath Singh. The house of Sheshnath Singh is at a distance of about 15-20 steps from the place of occurrence. The house of the complainant is about 20-30 steps from the house of Sheshnath Singh on north-east side. There is a pathway from his house to road on the east side of the house of Sheshnath Singh. He reached at the place of occurrence by using that pathway. There is no house on the south side from the place of occurrence and the road. On perusal of the site map Exhibit Ka-11, the I.O. has shown wheat grown on the farming land to the south of Malap-Nagra main road. P.W.-1 has clearly stated in the cross-examination that he reached the place of occurrence by using this pathway situated on the east side of the house of Sheshnath Singh and

the I.O. P.W.-10 has also shown the same pathway leading to the place of occurrence denoted by letter 'A' and the house of the complainant in the north side. To this extent the place of occurrence is near the house of Sheshnath Singh and on the north side of Malap-Nagra main road. So far as the place where the complainant was beaten by kicking and punching and whether he told the I.O. about the accused dragging the complainant from his house becomes insignificant as the prosecution has focused more on the incident of beating of Raman Kumar Singh and the place of occurrence in this regard. The defence tried to mix up two places of occurrence and tried to show contradictions by mixing them and using it interchangeably. However it is made clear that the place of occurrence as brought by the prosecution is actually place where Raman Kumar Singh was beaten by the accused persons and not where the complainant Rakesh Singh P.W.-1 was beaten, as death of Raman Kumar Singh acquired prominence compared to kicking and punching of Complainant Rakesh Singh P.W.-1. Wherever the place of occurrence is used in present case it actually means the place where the deceased Raman Kumar Singh was beaten by the accused persons and not the place where kicking and punching of the complainant Rakesh Singh took place. P.W.-1 has stated in the cross-examination on Page-7 that his brother Raman Singh was beaten near the road. His brother Raman was beaten at a distance of 2-3 steps from the concrete road (Damar Road) on the north side.

The defence has further admitted in the cross-examination at Page-7 that he (complainant Rakesh Singh) was beaten at about 30 steps on the east side from south door of Sheshnath Singh and his brother Raman Singh was beaten at about 10 steps from south door of Sheshnath Singh on the south side, which is near the concrete road (Damar Road). The defence has further admitted the place of occurrence near concrete road as P.W.-1 has stated that he did not see the accused persons came to the concrete road from which side. The above oral evidences clearly gets corroborated from the site map Exhibit Ka-11 as the I.O. has shown the place of occurrence i.e. incident of beating of

Raman Kumar Singh at place denoted by letter 'A'. This place is nearby Malap-Nagra main road and place shown by letter 'A' is on the north side near the above main road.

With regard to admissibility of the site map (sketch map) Exhibit Ka-11. Learned defence counsel has relied upon **Tori Singh Case Law (Supra)**. The Hon'ble Court has held in Para-7 that, "... the site map/sketch map is not more than a statement made to the police during investigation. It is hit by provisions of Section 162 Cr.P.C. In the present case also even if the site map Exhibit Ka-11 is hit by Section 162 Cr.P.C. still the oral evidence regarding place of incident of beating the deceased Raman Kumar Singh and Rakesh Singh P.W.-1 is clearly proved by the prosecution.

Thus the above case law does not give any benefit to the defence so far as the offence committed by the accused persons are concerned.

Rajesh Singh P.W.-2 has stated in the cross-examination that when he reached the place of occurrence at that time four accused persons Ganesh Yadav, Awadhesh Yadav, Sadanand Yadav and Rohit Yadav @ Muneel Yadav were present. Besides these four accused persons his brother Raman Kumar Singh and Rakesh Singh were present.

Ram Badan Singh P.W.-3 has stated in his cross-examination at Page-7 that on his arrival at place of occurrence 12-14 people were present there. He had seen thick stick (Lathi-Danda) in the hands of the accused persons and he did not see any dangerous weapon in their hands. P.W.-3 has stated at Page-8 that he has seen beating of informant Rakesh Singh on the north side door of the house of complainant and entire incident took place there. The incident of beating took place at the door of the house of Rakesh Singh. The defence has not asked about incident of beating of Raman Kumar Singh and the place of beating of Raman Kumar Singh. The entire cross-examination done by the defence with P.W.-3 regarding place of beating was relating to the complainant Rakesh Singh. P.W.-3 has also stated at Page-8 that he saw the incident of beating on the north door of the house of complainant but at the same

time he has also stated that he reached late and the incident of beating took place on the north door of the house of complainant Rakesh Singh. He did not see any incident of beating at any other place except beating on north door of the house of complainant. It is possible that P.W.-3 arrived late therefore he did not see the incident of beating on the south side door of the house of complainant.

The prosecution story and the evidence of Rakesh Singh P.W.-1 has been that on 02.03.2018 the accused persons standing on the Malap-Nagra main road and on seeing the complainant, they started abusing him and chased. The complainant P.W.-1 ran towards his house to save himself but the accused persons caught him somewhere near south door of the house of the complainant. The accused persons kicked and punched him. Thereafter Raman Kumar Singh and Rajesh Singh came to intervene and save the complainant Rakesh Singh and then accused persons started beating Raman Kumar Singh at place shown by letter 'A' in the site map Exhibit Ka-11. If P.W.-3 did not see beating of the complainant on the south door of the house of the complainant then how he could see the incident of beating of Raman Singh at the place shown by letter 'A' in the site map Exhibit Ka-11. P.W.-3 has stated that he saw the incident of beating on the north door of the house of the complainant and did not see the incident of beating elsewhere. This clearly means that Ram Badan Singh P.W.-3 neither saw the incident of beating of complainant Rakesh Singh P.W.-1 at the south door of the house of complainant nor he saw the incident of beating of Raman Kumar Singh at the place of occurrence on the south side of the house of Sheshnath Singh shown by letter 'A' in the site map Exhibit Ka-11. Thus it can be concluded that Ram Badan Singh P.W.-3 has either not seen the incident or he is falsely deposing in the Court that he saw the entire incident. The evidence of Ram Badan Singh P.W.-3 is not found reliable at all on the point of place of occurrence. The evidence of Ram Badan Singh P.W.-3 with regard to place of occurrence is wholly unreliable and therefore his evidence may be discarded on this point.

Ram Badan Singh P.W.-3 has stated in the cross-examination at

Page-5 that he has a building having seven rooms. It has main door on the east side and there is veranda in front of main door. It means that the veranda is on the east side. P.W.-3 has further stated that there is brick pathway (Khadanza) adjacent to his house on the east side. There is house of the informant Rakesh Singh at a distance of about 20 meter on the south-west side from his house. It means the house of P.W.-3 is at a distance of about 50 meter from the Malap-Nagra main road. He has stated in the cross-examination at Page-8 that he was in his house when he heard shouting and he went to the place of occurrence at a distance of 25-26 meter on the west side. He reached at the place of occurrence 1-2 minutes delayed. He has also stated that he did not see anyone beating Rajesh Singh with stick. He also did not see anyone beating informant Rakesh Singh because he arrived 1-2 minutes late. P.W.-3 has stated at Page-8 that the Malap-Nagra concrete road (Damar Road) is on the south side at a distance of 48-50 meter from his house. P.W.-3 could not see the incident of beating of informant/complainant Rakesh Singh because he reached late. He has further stated that since he arrived late therefore he saw the incident of beating on the north door of the house of the Rakesh Singh and he did not see the incident of beating at any other place. In the same breath P.W.-3 has stated that he saw only Rohit Yadav beating with stick and did not see any other accused. He has also stated that he had stated to the Investigating Officer (I.O.) that since he arrived late and he saw Rohit Yadav was beating Raman with stick from front. P.W.-3 has stated at Page-9 that he had told the Investigating Officer (I.O.) that on the exhortation of Awadhesh Singh, accused Sadanand Singh took brick in his hand and hit Raman Singh on back of his head and Raman Singh fell unconscious. However P.W.-3 contradicted this statement on Page-13 and denied giving any such statement to the Investigating Officer (I.O.) that Sadanand Singh picked a brick with his hand and hit Raman Singh on the back of his head. Thus the evidences of Ram Badan Singh P.W.-3 is full of material contradiction. Therefore his entire evidences becomes unreliable. It is also pertinent to note that P.W.-3 was in his house when the incident

took place. His house is at a distance of 50 meter on the north side from concrete Malap-Nagra main road. The prosecution has also not proved by evidence that despite his (P.W.-3) house having main door on the east side and veranda in front of main door, obviously on the east side and brick pathway (Khadanza) adjacent to his house on the east side then how he could see the presence of accused persons armed with thick stick on the south side main road. How he heard abusive language hurled upon the complainant Rakesh Singh from a distance of 50 meter followed by seeing chase and beating of the complainant as he has stated in his examination-in-chief. Thus the entire evidences of Ram Badan Singh P.W.-3 is wholly unreliable and it cannot be relied upon. P.W.-3 himself has stated in the cross-examination at Page-4 that he was a candidate in 2015 Election of Village Pradhan in his village. He lost his Village Pradhan Election to Anita Yadav W/o accused Ganesh Yadav. Anita Yadav was elected as Village Pradhan of her village. This could be the reason for P.W.-3 for falsely implicating the accused persons.

Learned defence counsel has relied upon **Bisram Case Law (Supra)** where the Hon'ble Court held in Para-23 that, "....in his statement P.W.-1 Parwan has deposed that Bahoran was present at the place of occurrence, whose testimony for reasons already indicated above is not acceptable. Parwan has deposed to have seen the incident from the canal Patri which appears to be at a great distance from the scene of occurrence. Apart from it, this witness is also inimical to the accused persons... Thus in view of the facts and circumstances no reliance can be placed on his testimony."

In the present case, both the injured and eye-witnesses Rakesh Singh P.W.-1 and Rajesh Singh P.W.-2 are real brothers of deceased Raman Singh. Accused persons were already kicking and punching Rakesh Singh P.W.-1 and on his shouting, deceased Raman Singh and Rajesh Singh P.W.-2 came to save him. Rakesh Singh P.W.-1 and Rajesh Singh P.W.-2 both have seen the incident of beating the deceased Raman Kumar Singh. The presence of both the witnesses at the place of occurrence on the date of incident is found wholly reliable.

Thus due to difference in factual matrix of above case law with the present case, the above case law is not attracted hence, no benefit can be given to the accused.

Learned defence counsel has relied upon **Bhagirath Case Law (Supra)**, the Hon'ble Court held in Para-11 that, "It is well settled that the prosecution can succeed by substantially proving the very story it alleges. It must stand on its own legs. It cannot take advantage of the weakness of the defence. Nor can the court, on its own make out a new case for the prosecution and convict the accused on that basis.

In the present case, the prosecution has proved the case on its own legs and it has not taken advantage of the weakness of defence. The defence has admitted the presence of prosecution witnesses and presence of accused persons. The defence has also admitted the incident of beating by the accused persons. The admission and suggestion binds the accused persons and accused cannot take this plea that the defence counsel was not authorised to admit by hurling suggestions and asking questions in the cross-examination as it is held by the Hon'ble Supreme Court in **Balu Sudam Khalde and Another Vs. The State of Maharashtra Criminal Appeal No. 1910/2010** decided on 29.03.2023.

This has never been the prosecution case that the incident took place at or near meat shop. The defence has given suggestion to P.W.-1 at Page-5 that due to dispute in purchase of meat at meat shop, Raman Kumar Singh was beaten by the people present around meat shop and due to Stampede Raman Kumar Singh got injured accidentally. Similarly, defence has asked Ram Dinesh Tiwari (first I.O.) in the cross-examination at Page-5 regarding statement of Sanjay Kumar under Section 161 Cr.P.C. regarding some dispute at meat shop. Sanjay Kumar has not been examined by the prosecution nor examined as defence witness by defence. However P.W.-8 has stated that the incident definitely took place at meat shop, although it is not clear as to which incident on 02.03.2018 at meat shop defence has referred in his cross-examination. Even the statement of P.W.-8 that Sanjay Kumar told him that Raman Kumar Singh and Rakesh Singh reached meat shop and told

the shopkeeper to give him meat first and give meat to others later, otherwise they will get his shop closed. In that statement also there is no statement regarding incident of beating of Raman Singh and Rakesh Singh by accused persons at meat shop.

Sanjeev Kumar Yadav DW-1 is resident of Siswar Khurd, P.S.-Rasra and he has stated that he went to Devadiya meat shop to purchase meat on 02.03.2018 at about 08:00 A.M. in the morning. DW-1 has stated in his evidence about use of abusive language in connection with demand of meat by Rajesh Singh and Rakesh Singh. Stone pelting started. He did not see Rohit Yadav @ Muneel Yadav at that place. Rohit Yadav @ Muneel Yadav did not live in the village and perhaps he lives in Jaipur, Rajasthan. Again the defence has tried to shift the place of occurrence to meat shop. Since the defence has brought meat shop as place of occurrence by way of suggestion to P.W.-1, P.W.-8 and also by defence witness DW-1, therefore the burden lies on the defence to prove the place of occurrence or any incident of Stampede due to dispute in connection with meat purchase lies on the defence.

DW-1 has stated in cross-examination at Page-2 that Rasra market is at a distance of 5-6 K.M. from his house. He knows that Rasra is municipality area. There are uncountable meat and chicken shop in Rasra. He has further stated that Nagra is at a distance of about 6-7 K.M. from his village. Devadiya is at a distance of 1 K.M. from Nagra. He went to purchase meat at Devadiya despite the fact that the distance of Rasra or Nagra from his village compared to the distance of Devadiya is very less. He has further stated that the incident of 08:00 A.M. was told to the I.O. He has old relation in the house of Pappu Yadav S/o Uma Shankar in village Devadiya where he keeps going. DW-1 has stated after taking much time at Page-3 that he knows Rohit Yadav @ Muneel Yadav because he lives in the neighborhood of his relative. He has also stated that he keeps visiting at the residence of Rohit Yadav @ Muneel Yadav before the incident. Despite being Holi he did not meet his relative Pappu Yadav and Rohit Yadav @ Muneel Yadav on Holi festival. This witness Sanjeev Kumar Yadav DW-1 has

gone to purchase meat at village Devadiya situated at a distance of about 8 K.M. from his village Siswar Khurd. He has admitted that there are lot of meat-chicken shop in Nagra & Rasra and Rasra & Nagra is at a very less distance from village Devadiya. It is not convincing that Sanjeev Kumar Yadav DW-1 went to far away village Devadiya just to purchase meat despite its availability at nearby place Nagra or Rasra that too on the occasion of Holi. He had old relation in village Devadiya but on Holi festival also he did not go to meet his relative Pappu Yadav. Thus the evidence of DW-1 do not still confidence with regard to his presence at the meat shop Devadiya village. Therefore the only evidence brought by the defence to prove the place of occurrence somewhere at meat shop Devadiya village and accused Rohit Yadav @ Muneel living in Jaipur, Rajasthan could not be proved by the defence.

Learned defence counsel has relied upon **Brijesh Kaushal Case Law (Supra)**, where the Hon'ble Court has held in Para-45 that, "...it is settled proposition of law that the witnesses of both the sides (prosecution and defence) sail on the same boat, both have to be given same treatment at par to appraise on the touchstone of credibility and truthfulness....". In the present case, the defence witnesses was not found credible and truthful, though treated at par by this Court.

The above case law is not attracted in the present case. Hence due to difference in factual matrix, no benefit of above case law can be given to the accused.

Learned Defence counsel has relied upon **Matlab Ali Case Law (Supra)** where the Hon'ble Court has held that the shifting of place of occurrence is always a serious matter and casts doubt on the veracity of the prosecution story.

In the present case, the evidence with regard to place of occurrence has been discussed and found that the place of occurrence is not shifting in nature. In fact defence has tried to unnecessarily create confusion by clubbing the place where the complainant was beaten with another place at few meters distance where the deceased was beaten. The place of occurrence where the deceased was beaten remains fixed

place and the evidences remains consistent and intact on this point. The place where complainant was beaten is also a fixed place.

Thus due to difference in factual matrix, the above case law is not attracted and hence no benefit can be given to the accused persons.

On the analysis of entire evidences above, it can be concluded that the place of occurrence on the south side of the house of Sheshnath Singh and at a distance of few steps from Malap-Nagra main road on the north side denoted by letter 'A' in the site map Exhibit Ka-11 is proved by the prosecution.

Point for determination no. 3

Whether the medical evidence and ocular evidences corroborate each other with regard to injuries inflicted upon the deceased Raman Kumar Singh and injured/complainant Rakesh Singh ?

As per written complaint Exhibit Ka-1 the incident took place on 02.03.2018 in the morning at about 08:30 A.M.. The incident began with abuse of the complainant Rakesh Singh by the accused persons and was chased and thereafter complainant ran towards his house but the accused persons caught him on the way to his house and started kicking and punching. When his brothers Rajesh Singh and Raman Singh came to save him then all the accused persons started beating Raman Singh. Rohit Yadav firstly beaten Raman Singh with stick (Lathi). His brother fell unconscious and meanwhile Awadhesh Yadav hit his brother on his head with boulder stone and his brother became unconscious.

Rakesh Singh P.W.-1 has stated that all the accused persons started beating Raman Singh with thick stick. Rohit Yadav hit his brother with stick on his head and Awadhesh Yadav hit him with boulder stone. P.W.-1 has stated in his cross-examination at Page-4 that his brother was being beaten by all the accused persons and meanwhile Rohit Yadav hit him on head forcefully with stick and his brother fell down. Thereafter Awadhesh Yadav picked up boulder stone lying nearby and hit his brother Raman Singh on his head. The boulder stone must be of about 1 Kg. weight. Again on Page-6 he has stated that his brother Raman Singh was beaten up with thick stick by all the four accused

persons. Similarly, Rajesh Singh P.W.-2 has also stated that Raman Singh was beaten first by Rohit Yadav on his head by thick stick and Awadhesh Yadav hit Raman Singh with boulder stone. P.W.-2 has stated in his cross-examination that Raman Singh was beaten with thick stick and boulder stone. In the cross-examination P.W.-2 has stated at Page-6 that out of four accused persons his brother Raman Singh was hit by Rohit Yadav with thick stick on his head and he fell down thereafter Awadhesh Yadav hit him on his head with boulder stone.

Dr. S.K. Gupta P.W.-5 working at C.H.C. Nagra had medically examined deceased Raman Singh (at that time injured) on 02.03.2018 at 09:20 P.M. and prepared and proved injury report as Exhibit Ka-4. Medico-legal certificate Exhibit Ka-4 shows time of medical examination at 09:20 P.M. It seems that Dr. S.K. Gupta has mistakenly written P.M. instead of A.M. in the MLC Exhibit Ka-4. He found two lacerated wounds bone deep, one on the middle of occipital region of head and other back side of occipital region of head. Raman Singh was examined in his unconscious stage. The injured at that time was also having two abrasion on the left hand and another on the fingers of right hand. Last injury was superficial skin injury. Dr. S.K. Gupta kept 1st and 2nd injury under observation and advised x-ray and C.T. Scan of head and referred to District Hospital, Ballia/Azamgarh and also for expert opinion. P.W.-5 has also recorded the duration of injuries as fresh. Dr. S.K. Gupta P.W.-5 has nowhere stated regarding nature of weapon used for inflicting such injuries. The ante-mortem injuries found during postmortem and proved by Dr. Shiv Bahadur P.W.-7 as Exhibit Ka-5. Dr. Shiv Bahadur Singh Kushwaha P.W.-7 found three stitched wounds on the head region, one on the left fronto-parietal area, another on the top of the head and third on the right side of occipital region on the back of the head. There was 4th stitched wound on the front of the neck.

Dr. S.K. Gupta P.W.5 found two injuries on the head of Raman Singh but Dr. Shiv Bahadur P.W.-7 found three injuries at the time of postmortem. It is possible that when Dr. S.K. Gupta was treating the injured on 02.03.2018 at 09:20 A.M. the injuries were fresh and

bleeding and it might have swelling and therefore, he could see only two head injuries whereas at the time of postmortem the swelling must have reduced. The deceased was under medical treatment for about one week as he died on 10.03.2018, whereas injuries were inflicted on 02.03.2018. For about 8 days the deceased was undergoing medical treatment. At the time of postmortem the swelling must have reduced and therefore three head injuries were visible to Dr. Shiv Bahadur P.W.-7. The ocular version of the eye witnesses has clearly stated that the deceased Raman Singh was inflicted with thick stick blow on his head and also boulder stone injury inflicted on the head. Thus there is no contradiction in the medical evidence and oral version of eye witnesses.

Dr. Shiv Bahadur P.W.-7 has recorded ante-mortem injuries. In the examination-in-chief P.W.-7 has also not stated about the nature of crime weapon which would have been used to inflict the ante-mortem injuries found on the person of the deceased Raman Singh. Even in cross-examination of Dr. Shiv Bahadur P.W.-7 there is no evidence regarding nature of crime weapon used inflicting the injuries on the person of the deceased Raman Singh.

It is established principles of law that if the oral testimonies of the witnesses are trustworthy and reliable then even if there is some discrepancies in the formal or government witnesses then that would not adversely affect the prosecution case. In the medical evidence, both the doctors have not stated about the nature of weapon used to inflict injuries upon deceased Raman Kumar Singh, however the prosecution evidences have clearly and consistently proved use of thick stick and boulder stone by the accused persons. The injuries found on the head of the deceased Raman Singh were lacerated and bone deep. Lacerated wound is possible to come when the victim is hit with hard and blunt object. In the present case such hard and blunt object by which injuries inflicted upon the deceased Raman Kumar Singh must be thick stick or even boulder stone. The prosecution witnesses have consistently stated about the use of thick stick and boulder stone in their evidences. The investigating officer has not recovered the crime weapon

i.e. thick stick or boulder stone. This could be laps on the part of investigating officer and maximum it can be treated as defective investigation. It is held by the Hon'ble Court in **Raghubir Singh Case Law (Supra)** in Para-34 that, "...there is mighty difference between a negligent investigation and a dishonest investigation. Investigating Officer may not be diligent enough to perform his duties well. He may be lackadaisical in his approach and be remiss in the observance of rules and regulations....". The Hon'ble Court further held in Para-36 that, "....it is also a point of relevance to consider and find in a given case as to what has been the purpose behind dishonest activities of the police, whether the dishonesty committed was to damage the prosecution or to bolster it up. No doubt, if in a given case the Court comes to the conclusion that the police had been guilty of indulging in some activity which was a calculative sabotage aimed purposely to water down the charge or where the investigation is found to be 'designedly defective' or 'purposely perfunctory' to help the accused or to damage the prosecution then the prosecution shall be given full allowance and the accused shall never be allowed to gain any capital out of it....".

In the present case, the investigating officer did not try to get the crime weapon recovered and tried to sabotage the prosecution case. The investigation appears purposely perfunctory or investigation was designedly defective to help the accused persons. S.I. Ram Dinesh Tiwari P.W.-8 (I.O.) had arrested the accused Awadhesh Yadav on 31.03.2018 and accused Rohit Yadav on 27.04.2018. P.W.-8 did not try to get the crime weapon thick stick and boulder stone recovered at the behest of the arrested accused persons Rohit Yadav @ Muneel Yadav and Awadhesh Yadav. Thus no effort made for getting the crime weapon recovered appears designedly defective or purposely perfunctory investigation to sabotage the prosecution case and help the accused persons. So far the injuries inflicted upon the complainant Rakesh Singh P.W.-1 and his brother Rajesh Singh P.W.-2 are concerned then it would be worth mentioning that they were not medically examined. As per prosecution evidences discussed above, the complainant Rakesh Singh

P.W.-1 was kicked and punched. Rajesh Singh P.W.-2 has stated in the cross-examination at Page-3 that when he tried to save his brother Rakesh Singh then he was not beaten by thick stick rather he was slapped on his cheek. He was feeling pain. He did not show the injuries to doctor.

Learned defence counsel has relied upon **Purshottam Case Law (Supra)**, where the Hon'ble Court has held that where there is contradictions between the medical testimony and the alleged eye-witness regarding fatal injuries of the deceased then the medical testimony is to be preferred.

In the present case, there is no contradiction between the medical evidence and the evidence of eye-witnesses with regard to injuries of deceased Raman Singh as discussed above.

Thus due to difference in factual matrix, the above case law is not attracted in the present case and hence, no benefit can be given to the accused.

On the basis of analysis of evidences, it can be concluded that the ocular evidence regarding use of thick stick and boulder stone and the medical evidence regarding lacerated injuries on the head of the deceased stands corroborated.

Point for determination no. 4

Whether the prosecution has proved presence of the eye-witnesses at the place of occurrence at the time of incident ?

As per written complaint Exhibit Ka-1 the complainant Rakesh Singh P.W.-1 has stated that at the time of incident of beating him (Rakesh Singh), Shiv Kumar Singh, Rajesh Singh S/o Lal Parikha Singh and Ram Badan Singh were passing by. He requested for saving him. Meanwhile his younger brothers Raman Singh and Rajesh Singh sons of Govindar Singh came running towards him. Thus Shiv Kumar Singh, Rajesh Singh S/o Lal Parikha Singh, Ram Badan Singh, Raman Singh (Deceased) and Rajesh Singh S/o Govindar Singh were allegedly present at the place of occurrence on the date of incident. The MLC Exhibit Ka-4 for examination of Raman Kumar Singh on 02.03.2018 at

09:20 A.M. shows that deceased Raman Kumar Singh (at that time injured) was taken to Primary Health Center, Nagra by his brother Rajesh Singh. Rajesh Singh P.W.-1 has stated in his evidence that on 02.03.2018 he was going towards main road at about 08:30 A.M. in the morning situated at a distance of about 30 meter then the accused persons of his village Awadhesh Yadav, Sadanand Yadav, Ganesh Yadav and Rohit Yadav @ Muneel Yadav armed with thick stick abused him in the name of mother and sister due to old enmity and chased him to beat. He ran towards his home but he was caught on the way and was kicked and punched. The defence has admitted seeing of accused persons by Rakesh Singh P.W.-1 when he came out from his house and walked about 15 feet. Defence has also admitted that P.W.-1 was going towards south side from his house and accused persons were coming towards north side. P.W.-1 has stated at Page-2 that all the accused persons were armed with thick stick. They started abusing him on seeing. When he asked accused persons as to why they are abusing him then all the accused persons started beating him. He did not get his injuries examined by a doctor. The place where the accused persons beaten him had a soil pathway and there is a Shreefal tree. Thus the defence admits not only presence of Rakesh Singh P.W.-1 rather also admits going towards road side on south direction from his house where all the accused persons had beaten him. P.W.-1 has stated in the cross-examination at Page-3 that again defence admits the presence of Rakesh Singh P.W.-1 and presence of accused persons on the north side of the main road. The presence of complainant Rakesh Singh P.W.-1 at the place of occurrence on the date of incident gets further fortified when the defence asked the places in and around the place of occurrence i.e. the place where the deceased Raman Singh was beaten to death. He has stated at Page-3 that there is house of Sheshnath Singh to the north-west side of the place of occurrence. The house of Sheshnath Singh is at about 15-20 steps from the place of occurrence. Defence has further admitted that the accused persons had stated to the I.O. in his statement under Section 161 Cr.P.C. that he told the I.O. that accused persons

dragged him from door and beaten him on the pathway. He did not tell the I.O. that he was kicked and punched at the door. P.W.-1 has further stated in the cross-examination at Page-6 that he was beaten up on the south side at a distance of about 15-20 feet from the door of his house.

He has further stated that when he was shouting then Raman Singh and Rajesh Singh reached and thereafter accused persons left him (Rakesh Singh P.W.-1) and started beating his brother Raman Singh. He has stated at Page-7 that the pathway on the north side from main road and at a distance of about 20 meter there is Shreefal tree and he was beaten up there. His brother Raman Singh was beaten up near road. His brother Raman Singh was beaten at a distance of 2-3 steps on the north side from the main peach road (concrete-damar road). He was beaten at about 30 steps on the east side from the south door of Sheshnath Singh and his brother Raman Singh was beaten at about 10 steps on the south side from the south door of Sheshnath Singh and which is near the main concrete road (Damar Road). Rajesh Singh P.W.-2 has stated that his brother Rakesh Singh went out from the house towards main road on 02.03.2018 at about 08:00 A.M. He and his brother Raman Singh ran to save his brother Rakesh Singh on his shouting and then all the four accused persons started beating his brother Raman Singh. He has supported the prosecution story and also stated almost the same fact as stated by Rakesh Singh P.W.-1. He has stated in the cross-examination at Page-1 that at the time of incident he was in the house. When he reached at the place of occurrence at that time there were four people Awadhesh Yadav, Sadanand Yadav, Ganesh Yadav and Rohit Yadav @ Muneel and besides these four persons his brother Raman Singh and Rakesh Singh were present at the place of occurrence. Thus in the cross-examination presence of Rajesh Singh P.W.-2, Rakesh Singh P.W.-1 and all the four accused persons are admitted by the defence and proved. He has stated at Page-3 that he ran to save his brother when he was beaten up, all the four accused persons were carrying thick stick and they were kicking and punching his brother Rakesh Singh. The incident of beating took place between the Shreefal tree and Nagra-Malap main road. The

defence has admitted that he (Rajesh Singh P.W.-2) was slapped on the cheek when he tried to save his brother and he was not beaten with stick. P.W.-2 had stated at Page-4 that Raman Singh had fallen on the north side from the main concrete road at a distance of 50 meter and the incident took place there. The incident took place on the north side at a distance of about 150-200 meter from the farming land of Shyam Lal. He has stated at Page-5 that he reached the place of occurrence with his brother Raman Singh. His brother Rakesh Singh was being beaten by accused persons. The accused persons were beating with thick stick, kick and punches. He had seen the accused persons beaten Rakesh Singh. For the first time when he saw the accused persons then they were beating Rakesh Singh. P.W.-2 had stated at Page-7 that his brother Rakesh Singh was beaten near Shreefal tree on the soil pathway between his house and main road. He saw Rakesh Singh getting injured from a distance of about 50 meter. The place where Rakesh Singh was being beaten by accused persons, Raman Singh, all the four accused persons, himself and his brother Rakesh Singh were present.

Though Rajesh Singh P.W.-2 has stated that the distances like 150-200 meter, fall of Raman Singh seen from a distance of 50 meter, Shreefal tree at a distance of 50 meter from the south side of his house etc. are only in approximation and not the exact distance measured by the witness. In **Dilawar Singh Case Law (Supra)**, the Hon'ble Court has held in Para-16 by referring case law, State of H.P. Vs Mast Ram 2004 (50) ACC 599 that, "....it has been stated that there is no set rule that one must react in a particular way, for the natural reaction of man is unpredictable. Everyone reacts in his own way and hence, natural human behaviour is difficult to prove by credible evidence...". It is held in Para-17 that, "Behaviour of the witnesses or their reactions would differ from situation to situation and individual to individual. Expectation of uniformity in the reaction of witnesses would be unrealistic and no hard and fast rule can be laid down as to the uniformity of the human reaction." Thus reaction of Rajesh Singh P.W.-2 regarding distances mentioned above may not be in conformity

with the exact distance or in conformity with the evidence given by Rakesh Singh P.W.-1 but the evidence regarding presence of all the four accused persons, arrival of P.W.-2 with Raman Singh to save his brother Rakesh Singh P.W.-1 remains unscathed/intact.

In **Dilawar Singh Case Law (Supra)**, the Hon'ble Court held in Para-24 that, "While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth...". Thus after reading the entire evidence of witness Rajesh Singh P.W.-2 regarding the presence of Rakesh Singh P.W.-1, Rajesh Singh P.W.-2 and all the four accused persons the ring of truth in this regard is found intact.

So far as the presence of Ram Badan Singh P.W.-3 is concerned, it has also been discussed above in the point for determination no. 2 in detail and concluded that his evidence with regard to his presence at the place of occurrence on the date of incident is not found credible and reliable.

Thus the above evidences not only proves presence of Rakesh Singh P.W.-1, Rajesh Singh P.W.-2 rather also proves the presence of all the four accused persons at the place of occurrence on the date of incident.

Point for determination no. 5

Whether the prosecution has proved its case against all the accused persons beyond all reasonable doubt ?

The prosecution case starts with written complaint Exhibit Ka-1. As per written complaint Exhibit Ka-1 the incident took place on 02.03.2018 at around 08:30 A.M. When the complainant Rakesh Singh was going towards main Malap-Nagra road from his house, all the four accused persons started abusing the complainant and chased him. The complainant ran towards his house to save himself but the accused persons caught him on the way and kicked and punched him. Shiv Kumar Singh, Rajesh Singh S/o Lal Parikha Singh and Ram Badan Singh were passing by and he requested for saving him. Meanwhile his younger brother Raman Singh and Rajesh Singh came running to save

him. Accused persons left Rakesh Singh and started beating Raman Kumar Singh. Accused Rohit Yadav @ Muneel Yadav hit Raman Kumar Singh on his head forcefully with thick stick (Lathi) with intention to kill. Afterwards Awadhesh Yadav picked up boulder stone lying nearby and hit Raman Singh on his head with intention to kill.

Complainant Rakesh Singh P.W.-1 has stated in his evidence that all the four accused persons had chased him when he objected to the use of abusive language by the accused persons and caught him on the way to his house and kicked and punched him. His brother Raman Kumar Singh and Rajesh Singh came to save him on shouting then accused persons left the complainant Rakesh Singh and started beating Raman Singh. Accused Rohit Yadav @ Muneel Yadav hit Raman Singh on his head forcefully with thick stick with intention to kill followed by Awadhesh Yadav hitting Raman Singh with boulder stone on his head.

Defence has admitted seeing the accused persons while the complainant Rakesh Singh on the south side from his house. Defence has also admitted the presence of accused armed with thick stick by asking question in the cross-examination on Page-2 where P.W.-1 has stated that all the accused persons armed with thick stick in their hands. Just on seeing the complainant Rakesh Singh, accused persons started abusing him. When he asked why they are abusing then accused persons started beating. He got injuries on his face and leg. All the accused persons had beaten. He ran away towards his house after beaten by the accused persons. Accused persons caught him on the soil pathway (Kachi Sadak) and beaten him near the Shreefal tree.

In **Balu Sudam Khalde and Another Vs. The State of Maharashtra Criminal Appeal No. 1910/2010** decided on 29.03.2023 the Hon'ble Court has held in Para-25 that "The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

"I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have

a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

- II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.
- III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.
- IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.
- V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.
- VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.
- VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.
- VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.
- IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to

expect a witness to be a human tape recorder.

- X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.
- XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.
- XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.
- XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness."

In **Balu Sudam Khalde Case Law (Supra)** the Hon'ble Court has propounded principles of law relevant to the present case in Para-26, 38, 39, 41, 42 and 44 are as follows:-

- 26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:
 - (a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.
 - (b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.
 - (c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.
 - (d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

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

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

38. Thus, from the above it is evident that the suggestion made by the defence counsel to a witness in the cross-examination if found to be incriminating in nature in any manner would definitely bind the accused and the accused cannot get away on the plea that his counsel had no implied authority to make suggestions in the nature of admissions against his client.
39. Any concession or admission of a fact by a defence counsel would definitely be binding on his client, except the concession on the point of law. As a legal proposition we cannot agree with the submission canvassed on behalf of the appellants that an answer by a witness to a suggestion made by the defence counsel in the cross-examination does not deserve any value or utility if it incriminates the accused in any manner.
41. The principle of law that in a criminal case, a lawyer has no implied authority to make admissions against his client during the progress of the trial would hold good only in cases where dispensation of proof by the prosecution is not permissible in law. For example, it is obligatory on the part of the prosecution to prove the post mortem report by examining the doctor. The accused cannot admit the contents of the post mortem report thereby absolving the prosecution from its duty to prove the contents of the same in accordance with law by examining the doctor. This is so because if the evidence per se is inadmissible in law then a defence counsel has no authority to make it admissible with his consent.
42. Therefore, we are of the opinion that suggestions made to the

witness by the defence counsel and the reply to such suggestions would definitely form part of the evidence and can be relied upon by the Court along with other evidence on record to determine the guilt of the accused.

44. During the course of cross-examination with a view to discredit the witness or to establish the defence on preponderance of probabilities suggestions are hurled on the witness but if such suggestions, the answer to those incriminate the accused in any manner then the same would definitely be binding and could be taken into consideration along with other evidence on record in support of the same.

P.W.-1 has earlier stated that first he was abused and then on objection the accused persons chased him and caught him on the way and kicked and punched him. In the cross-examination P.W.-1 has stated that the accused persons had beaten him and then he ran towards his house and accused persons caught him on the soil pathway and beaten him near the Shreefal tree. There is slight variation in the evidence of P.W.-1 but the witness cannot be expected of stating every fact that too after a gap of almost one year as if, the videotape is replayed. The incident of beating preceded by abuse and chase had taken place in such a quick succession that the witness may tend to have overlapping memories and may exaggerate on certain facts. If overall evidence has ring of truth then such exaggeration, omission and minor contradictions can be overlooked. This aspect gets further fortified where P.W.-1 has stated at Page-4 in the cross-examination that his brother was beaten by all the accused persons. Meanwhile Rohit Yadav @ Muneel Yadav hit with thick stick on his head with great force then his brother fell down. Awadhesh Yadav picked up boulder stone lying nearby and immediately hit his brother Raman Singh on his head. The boulder stone would have been of about 1 Kg weight. The stone was picked up by Awadhesh Yadav with one hand. This clearly proves the prosecution case with regard to inflicting injuries upon the deceased Raman Kumar Singh by all the four accused persons who were armed with thick stick. P.W.-1

has further stated at Page-6 that he was beaten on south side from the door of his house at a distance of 15-20 feet. When he was standing then also accused persons were hitting him and when he fell down then they were kicking him. When he shouted then Raman Singh and Rajesh Singh reached and all the four accused persons left him (Rakesh Singh P.W.-1) and started beating his brother Raman Singh with thick stick and Raman Singh fell down. He has further stated that he did not give blood stain clothes of Raman Singh to investigating officer (Daroga Ji) because medical treatment to the injured at that time was necessary. Even if the blood stain clothes were not given to the investigating officer then also it will not adversely affect the prosecution case. Maximum it can be treated as defective investigation. The case law with regard to defective investigation has already been discussed above. The defence has repeatedly admitted the incident of beating of deceased Raman Kumar Singh by the accused persons. Again defence has asked questions in the cross-examination to P.W.-1 at Page-7 where he has stated that the accused persons began to beat him (Rakesh Singh P.W.-1) on the pathway at a distance of 20 meter on the north side from main road near a Shreefal tree. The defence counsel vehemently argued that the investigating officer has not shown Shreefal tree in the site map Exhibit Ka-11. Again this may be designedly defective or purposely perfunctory investigation done by the investigating officer by not showing Shreefal tree in the site map. But this alone would not be treated as adverse to the prosecution and only for this reason, benefit cannot be given to the defence. P.W.-1 has further stated at Page-7 that his brother Raman Kumar Singh was beaten near main road. His brother was beaten at the place 2-3 steps on the north side to the main concrete road and Raman Kumar Singh fell down there. Again defence has asked question on the same line and P.W.-1 has stated that the complainant was beaten at a distance of about 30 steps on the east side from the south door of Sheshnath Singh and his brother Raman Kumar Singh was beaten at a distance of about 10 steps on the south side of the south door of Sheshnath Singh and it is near main concrete road.

Rajesh Singh P.W.-2 has also supported the prosecution version in his examination in chief. The examination in chief has already been discussed above under various points for determination and it is not repeated for the sake of brevity. In the cross-examination P.W.-2 has stated at Page-1 that he was in his house at the time of incident. When he reached the place of occurrence at that time four accused persons Ganesh Yadav, Sadanand Yadav, Awadhesh Yadav and Rohit Yadav @ Muneel Yadav were present. Besides these four persons his brother Raman Singh and Rakesh Singh were present at the place of occurrence. P.W.-2 has further stated at Page-3 that firstly accused persons began to beat Rakesh Singh on the road and he had seen. He was standing in the corner at a distance of about 100-150 meter on the north side from the main road. He ran to save his brother when he was beaten up on the road. All the four accused persons armed with thick stick were kicking and punching his brother Rakesh Singh. His brother was lying on the ground and was kicked in that position. At the time of beating, his brother had fallen near the Shreefal tree. The accused persons had beaten him also between Shreefal tree and main road by kicking and punching and also beaten with stick. The incident of beating took place between Shreefal tree and Nagra-Malap main concrete road and nowhere else. P.W.-2 said so with respect to the incident of beating Rakesh Singh P.W.-1 and not with regard to the incident of beating of Raman Kumar Singh. Learned defence counsel tried to ask question in the cross-examination by mixing up the place of occurrence regarding beating of complainant Rakesh Singh P.W.-1 and the incident of beating of Raman Singh. Defence has tried to create confusion but it is crystal clear from the evidences of the prosecution discussed so far that from house of the complainant up to 30 meter main Malap-Nagra concrete road, two incident of beating took place. One incident of beating started somewhere on the soil pathway near Shreefal tree between main road and south of the house of the complainant Rakesh Singh P.W.-1. Another incident of beating took place with the deceased Raman Singh when he came to save his brother Rakesh Singh P.W.-1. There cannot be

evidence with mathematical precision by measuring exact length from the house of complainant at which place exactly Raman Singh reached to save his brother Rakesh Singh P.W.-1. It is also matter of common sense that in a situation of incident of beating by four (4) persons, the injured or victim cannot stand still at one place rather the injured/deceased will keep moving from one place to another place to save his life. It is possible that Raman Singh and Rajesh Singh tried to save his brother Rakesh Singh near Shreefal tree which is somewhere between the main Malap-Nagra road and the house of the complainant. While Raman Singh tried to save his brother Rakesh Singh P.W.-1 so he (Raman Singh) must have also moved few meters towards south side main Malap-Nagra road and Raman Singh was beaten up few steps north of the main road and at some distance on the south side from south door of the Sheshnath Singh as shown by investigating officer by letter 'A' in the site map Exhibit Ka.-11. P.W.-2 has also stated at Page-3 that when he tried to save his brother Rakesh Singh then he was slapped on his cheek and not beaten by thick stick. He has further stated that Raman Singh was beaten with thick stick and boulder stone. The stone was fit to be picked up by hand. He cannot tell whether the boulder stone was broad, long or circular. It is immaterial that P.W.-2 has not given dimension of the boulder stone. P.W.-2 has again stated at Page-5 that he reached the place of occurrence with his brother Raman Singh. His brother Rakesh Singh was beaten by accused persons. They were beating Rakesh Singh with thick stick and were also kicking and punching. P.W.-2 has clearly stated that Rakesh Singh was not beaten on his door. The evidence given by P.W.-1 regarding the incident of beating Rakesh Singh P.W.-1 by all the accused persons at the door means at some distance from the door of the house. It has consistently been the case of the prosecution from mouth of the complainant Rakesh Singh P.W.-1 that the accused persons beaten him when he ran from the main road towards his house and accused persons caught him on the way and started kicking and punching him near Shreefal tree. It is never the prosecution case that the accused persons beaten Rakesh Singh P.W.-1

right at the door of the house. Again defence admitted by asking question to Rajesh Singh P.W.-2 at Page-5 where he has stated that he saw accused persons beating Rakesh Singh When gaze fell on the accused persons for the first time then they were beating Rakesh Singh. Repeatedly the defence is asking the question and the prosecution witness P.W.-2 has categorically proved the prosecution version and repeatedly admitted the incident of beating Rakesh Singh and Raman Kumar Singh.

The defence again cross-examined Rajesh Singh P.W.-2 on 20.01.2021 after a gap of about one year when they last cross-examined on 17.02.2020. In order to get some contradiction defence repeatedly asked the same question. P.W.-2 has stated at Page-6 in the cross-examination on 20.01.2021 that out of four accused persons his brother Raman Singh was hit with thick stick by accused Rohit Yadav @ Muneel Yadav on his head and Raman Singh fell down after stick blow, thereafter Awadhesh Yadav hit him (Raman Singh) with boulder stone on his head. The stone was of the size and it was able to be picked up with one hand. Again he has unnecessarily asked this question to P.W.-2 at Page-7 and this witness again stated the same evidence that his brother Rakesh Singh was beaten at the place between main road and Shreefal tree on the soil pathway. He had seen beating of Rakesh Singh from a distance of about 50 meter. He has again stated that the place where accused persons were beating Rakesh Singh and Raman Kumar Singh, all the four accused persons as well as himself (Rajesh Singh P.W.-2) along with Rakesh Singh were present at that place. P.W.-2 has stated at Page-8 that he was present in the village on the date of incident.

The evidenciary value of Ram Badan Singh P.W.-3 has already been discussed above. The evidence of Ram Badan Singh P.W.-3 is found wholly unreliable and therefore the evidence of Ram Badan Singh P.W.-3 may be discarded.

The evidences of Rakesh Singh P.W.-1 and Rajesh Singh P.W.-2 discussed above have clearly proved the prosecution version of beating

Rakesh Singh P.W.-1, Rajesh Singh P.W.-2 and the deceased Raman Kumar Singh. There is nothing in the cross-examination which may make the prosecution evidence unreliable and false. In fact defence has admitted the presence of witnesses and all the four accused persons Awadhesh Yadav, Ganesh Yadav, Sadanand Yadav and Rohit Yadav @ Muneel Yadav at the place of occurrence on the date of incident.

Learned Defence counsel has relied upon the **Ram Narain Singh Case Law (Supra)** with regard to unnatural conduct of the witnesses Rakesh Singh P.W.-1 and Rajesh Singh P.W.-2 for not saving the deceased Raman Singh. The ocular version of the prosecution evidence through mouth of Rakesh Singh P.W.-1 and Rajesh Singh P.W.-2 has been discussed in greater detail. The complainant Rakesh Singh P.W.-1 was lying on the ground as a result of punching and kicking by the accused persons. When his brothers deceased Raman Singh and Rajesh Singh P.W.-2 came to save him then all the accused persons left Rakesh Singh P.W.-1 lying on the ground and started beating Raman Singh. During such beating the turn of events are so quick and rapid that no time is really left to save the victim. The deceased was given stick blow on the head and boulder stone blow on his head. Rakesh Singh P.W.-1 was at some distance from Raman Singh. Rajesh Singh P.W.-2 must have been somewhere near the place of incident but the repeated blow on the head of deceased Raman Kumar Singh took place in such quick and rapid manner that nobody could get time to save Raman Singh. Therefore it cannot be said that Rakesh Singh P.W.-1 and Rajesh Singh P.W.-2 exhibited any unnatural conduct by not trying to save his deceased brother Raman Singh.

Thus due to the difference in factual matrix, the above case law is not attracted. Hence no benefit can be given to the accused persons.

Learned defence counsel has also relied upon **Ghurai Case Law (Supra)**. The Hon'ble Court has held in Para-15 that the wife of the deceased did not try to save her deceased husband and the conduct is unnatural. It was further held in Para-16 that had Smt. Shriwati been present at the venue as alleged by prosecution, she would also have

visited with the same fate which Jograj had met whereas she had not received a single injury at the hands of the accused. The Hon'ble Court has held the behaviour of the wife of the deceased absolutely queer and against the human conduct.

In the present case, it is not a case of sole eye-witness. There are two eye-witnesses Rakesh Singh P.W.-1 and Rajesh Singh P.W.-2. Both the witnesses were beaten by the accused persons. In fact Rakesh Singh P.W.-1 was initially beaten by the accused persons and when the deceased and his brother Rajesh Singh P.W.-2 came to save his brother Rakesh Singh P.W.-1 then the deceased was beaten up by the accused persons. Even Rajesh Singh P.W.-2 was slapped on his cheek, though not inflicted with life threatening injuries. No unnatural conduct on the part of Rakesh Singh P.W.-1 and Rajesh Singh P.W.-2 was found in the facts and evidence of the case.

Thus, the above case law is not attracted in the present case due to difference in factual matrix, hence no benefit can be given to the accused persons.

Learned defence counsel for accused Rohit Yadav @ Muneel Yadav has relied upon **Kannaiya Case Law (Supra)**. The Hon'ble Court has held in Para-60 that when the prosecution has failed to establish the genesis of the occurrence and the place of incident with any degree of certainty. The suppression of the genesis of occurrence and the shifting of the place of incident demolish the very substratum of the prosecution case. In the present case, the genesis of occurrence started with incident of beating Rakesh Singh and later incident of beating deceased Raman Kumar Singh is clearly established. The shifting of place of occurrence is not found proved on the basis of the prosecution evidence. Thus due to difference in factual matrix, the above case law is not attracted and therefore no benefit can be given to accused.

Learned defence counsel has relied upon **Mohd. Muslim Case Law (Supra)**, where the Hon'ble Court has held in Para-13 that, "...on account of the infirmities such as ante-timing of the F.I.R. loses its

evidentiary value." The Hon'ble Court has further held in Para-23 that, "...there was unnatural behaviour and conduct of the son and nephew of the deceased, ante-timing of the F.I.R., non-production of Loi Blanket and cycle alleged to be that of the accused left behind at the site of the incident, compels us to doubt the presence of son and nephew of the deceased at the site." In such circumstances, the Court given benefit of doubt to the appellant/accused. In the present case, neither the F.I.R. is ante-timed nor the material infirmities is found in the F.I.R. There is no occasion for unnatural behaviour and conduct of the witnesses.

Thus due to difference in factual matrix, the above case law is not attracted in the present case. Therefore no benefit can be given to the defence.

Learned defence counsel has relied upon **Natthoo Case Law (Supra)**, where the Hon'ble Court has held inconsistency in the complaint with regard to the crime weapon and discrepancies in the cause of death of the deceased, delay in lodging of F.I.R., no explanation of the delay, contradiction and inconsistency in the evidence of the prosecution witnesses, difference in medical and ocular evidence with regard to injuries found on the body of the deceased etc. The Hon'ble Court has held that if two view are possible on the basis of material on record, the views favouring to the accused has to be adopted. Conviction and sentence was set aside by the Hon'ble Court. In the present case, there is no discrepancies in the FIR and cause of death. There is no material contradictions and inconsistencies in the evidences of eye-witnesses nor there is any discrepancy in the medical evidence and ocular version of the eye-witnesses.

Thus due to difference in factual matrix, the above case law is not attracted. Therefore no benefit can be given to the accused.

Learned defence counsel has relied upon **Mohd. Akhtar @ Kari Case Law (Supra)**, where the impugned judgment was set aside merely on the ground that the eye-witnesses could not identify the accused persons in the available light, enmity between the accused persons and family of informant, delay in lodging F.I.R. providing opportunity to

falsely implicate the enemies, no independent witnesses examined. In the present case, there is no infirmity in the FIR, though F.I.R. is delayed but it is sufficiently explained. The evidence of the real brothers who are naturally available in the house were present at the place of occurrence nearby and the evidence were found credible and reliable.

Thus due to difference in factual matrix of the above case law with the present case, the above case law is not attracted. Therefore no benefit can be given to the accused.

Section 34 of I.P.C.- Act done by accused persons in furtherance of common intention under Section 34 I.P.C.

Rakesh Singh P.W.-1 has stated in his evidence that all the four accused persons Awadhesh Yadav, Ganesh Yadav, Sadanand Yadav and Rohit Yadav @ Muneel Yadav armed with thick stick were present on the main road. When they saw the complainant Rakesh P.W.-1 then all the four accused persons chased and caught him and started punching and kicking him. Rakesh Yadav P.W.-1 had stated at Page-4 in the cross-examination that his brother was beaten by all the four accused persons, meanwhile Rohit Yadav hit forcefully on his head with thick stick. When his brother fell on the ground then Awadhesh Yadav picked up boulder stone and hit his brother Raman Singh on his head. P.W.-1 has further stated at Page-6 that when he was standing then also accused persons were beating him and when he fell down then also the accused persons were beating him. He has further stated that when he shouted, his brothers Rajesh Singh P.W.-2 and Raman Singh came to save him then all the four accused persons left him and started beating his brother Raman Singh. All the four accused persons left the place of occurrence together on arrival of villagers saying that they had killed him (Raman) and two other persons would be killed. The presence of all the four accused persons at the place of occurrence and beating by all the four accused persons jointly, clearly proves that all of them acted in furtherance of common intention to inflict injuries upon the deceased Raman Singh intentionally and knowingly, in juxtaposition to accidental injuries. Similarly, Rajesh Singh P.W.-2 has also proved that all the four

accused persons came together and chased his brother Rakesh Singh P.W.-1. All the four accused persons were kicking and punching Rakesh Singh P.W.-1. In the cross-examination P.W.-2 has stated that when he reached at the place of occurrence, all the four accused persons Awadhesh Yadav, Ganesh Yadav, Sadanand Yadav and Rohit Yadav @ Muneel Yadav were present. Besides them, his brother Raman Singh and Rakesh Singh were also present at the place of occurrence. Thus the ingredient of acting in furtherance of common intention is proved by the prosecution.

(I). Plea of Alibi:-

The defence has set up its case regarding living of accused Rohit Yadav @ Muneel Yadav in Jaipur as he did his B.Tech from Jaipur. P.W.-1 had stated at Page-3 that he has no knowledge that accused Rohit Yadav @ Muneel Yadav did his B.Tech from Jaipur and used to live in Jaipur. Defence has asked question to Rajesh Singh P.W.-2 regarding stay of Muneel in Jaipur (Rajasthan). P.W.-2 has stated at Page-5 that he cannot tell whether Muneel lived in Jaipur or not. He has also stated that he does not know educational qualification of Muneel. P.W.-2 had stated at Page-8 that the accused Rohit Yadav keeps visiting village. He does not live in village. Rohit Yadav lives in Jaipur. He was present in the village on the date of incident. Ram Badan Singh P.W.-3 had stated at Page-12 that Rohit Yadav was student at the time of incident. It may be possible that Rohit Yadav was student of B.Tech and would have lived in Jaipur. However, no B.Tech. certificate of any collage in Jaipur is produced by defence. Thus from the above, it appears that the defence has tried to take the plea of alibi that at the time of incident accused Rohit Kumar Yadav was doing his B.Tech from Jaipur and used to live in Jaipur. S.I. Ram Dinesh Tiwari P.W.-8 has stated in his cross-examination at Page-3 that he does not know whether accused Rohit Yadav was doing B.Tech in Rajasthan or not. Dharmendra Prasad Yadav P.W.-10 I.O. has stated in his cross-examination at Page-2 that during investigation he did not investigate about the fact that whether Rohit Yadav was studying in the coaching for B.Tech in Jaipur or not. P.W.-10

has also stated the suggestion to be wrong that despite knowing the fact that the accused Rohit Yadav was doing coaching for B.Tech in Jaipur but he did not investigate the case on that aspect.

Accused Rohit Yadav has stated in his statement under Section 351 BNSS that he is innocent. He is falsely implicated. He used to live in Jaipur.

Defence has examined Sanjeev Kumar Yadav DW-1. He has stated that he had gone to purchase meat in Devadiya meat shop on 02.03.2018 at about 8 AM in the morning. He did not see Rohit Yadav @Muneel Yadav R/o Devadiya at meat shop. Rohit Yadav @ Muneel Yadav did not live in the village and perhaps he lived in Jaipur, Rajasthan. The evidence of DW-1 has been appreciated in the point for determination no. 2 above in great detail and it is not repeated herein. The evidence of DW-1 that he came to purchase meat to Devadiya village situated at a distance of 8 KM. from his village whereas there is a big market at Nagra and Rasra. He has also stated that the distance of Nagra and Rasra market is much less than the distance of Devadiya. Despite Holi he did not visit the old relative Pappu Yadav S/o Uma Shankar nor visited Rohit Yadav @ Muneel Yadav who is stated to be neighbour of his old relative. How it is possible that a person come to a far away Devadiya village compared to nearby Nagra and Rasra market to purchase meat and still he has not purchased meat. Despite it was Holi on 02.03.2018 but he did not meet his old relative Pappu or his acquaintance Rohit Yadav @ Muneel who is neighbour of his old relative. Thus the evidence of DW-1 for the plea of alibi cannot be relied upon. The plea of alibi set up by the defence could not be proved. In such a situation adverse inference can be drawn against accused Rohit Yadav @ Muneel Yadav as plea of alibi could not be proved by the defence. In **Sahabuddin Case Law (Supra)**, the Hon'ble Court has held in Para-25 that, "Once, the Court disbelieves the plea of alibi and the accused does not give any explanation in his statement under Section 351 B.N.S.S. (313 Cr.P.C.), the Court is entitled to draw adverse inference against the accused. At this stage, we may refer to the

judgment of this Court in the case of Jitender Kumar Vs State of Haryana, where the Court while disbelieving the plea of alibi had drawn an adverse inference and said that this fact would support the case of prosecution." In **Shane Haidar Case Law (Supra)**, it is held in Para-52 by the Hon'ble Court by referring Ram Naresh Vs. State of Chhattisgarh, (2012) 4 SCC 257, where the Hon'ble Court observed that, "The object of recording of a statement under Section 313 Cr.P.C. is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires but once he does not avail the opportunity, the consequences in law must follow." The Hon'ble Court further held in Para-54 by referring Binay Kumar Singh Vs State of Bihar, AIR 1997 SC 322 where it was held that, "Once the prosecution succeeds in discharging its burden it is incumbent on the accused, who adopts the plea of alibi to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. The burden of the accused is rather heavy, therefore, the strict proof is required for establishing the plea of alibi." The defence did not examine anyone from the coaching institute where he was allegedly studying for B.Tech nor any other proof to establish the plea of alibi regarding his presence in Jaipur at the time of incident has been produced. Basis of alibi is also changing from doing B.Tech to doing coaching for B.Tech.

Thus the defence has failed to establish the plea of alibi taken by the defence for accused Rohit Yadav @ Muneel Yadav.

(II). Related witness and its reliability:

The defence has vehemently argued that Rakesh Singh P.W.-1, Rajesh Singh P.W.-2 and deceased Raman Kumar Singh are real brothers. Ram Badan Singh P.W.-3 is uncle of the complainant Rakesh Singh P.W.-1 and prosecution witness Rajesh Singh P.W.-2. It was also argued by the defence that the evidences of Rakesh Singh P.W.-1, Rajesh Singh P.W.-2 and Ram Badan Singh P.W.-3 cannot be relied as all of them are related to the deceased and therefore they are interested witnesses. It is trite law that a related witness cannot be turned as an interested witness per-se. There is no proposition in law that the

relatives are to be treated as untruthful witnesses. In **Rajesh Yadav Case Law (Supra)**, it is held by the Hon'ble Court in Para-28, "...one has to see the place of occurrence along with other circumstances. A related witness can also be a natural witness. If an offence is committed within the precincts of the deceased, the presence of his family members cannot be ruled out, as they assume the position of natural witnesses. When their evidence is clear, cogent and withstood the rigor of cross-examination, it becomes sterling, not requiring further corroboration. A related witness would become an interested witness, only when he is desirous of implicating the accused in rendering a conviction, on purpose." In **Darya Singh Vs State of Punjab AIR 1965 SC 328**, it was held by the Hon'ble Court that, "The evidence of any eye-witness who is a near relative of the victim, should be closely scrutinised but no corroboration is necessary for acceptance of his evidence." In **Harbans Kaur Vs State of Haryana 2005(2) JIC 533 (SC)**, it was held by the Hon'ble Court in Para-6 that, "There is no proposition in law that relatives are to be treated as untruthful witness. On the contrary, reason has to be shown when the partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused."

In the present case, the place of occurrence is near the house of the deceased Raman Kumar Singh. The real brothers of the deceased, Rakesh Singh P.W.-1 and Rajesh Singh P.W.-2 who were present in the house at the time of incident, are the natural witnesses who came to the place of occurrence on shouting of Rakesh Singh P.W.-1. In fact Rakesh Singh was beaten up and his brothers Raman Singh and Rajesh Singh came to save him on his shouting and the accused persons beaten Raman Singh to death, albeit after few days. The evidence of Rakesh Singh P.W.-1 and Rajesh Singh P.W.-2 are found wholly reliable and intact on material aspects.

The evidences of Rakesh Singh P.W.-1 and Rajesh Singh P.W.-2 cannot be discarded merely on the ground that they are the real brothers of the deceased Raman Kumar Singh.

Learned defence counsel has relied upon **Nand Lal Case Law**

(Supra), the Hon'ble Court has held in Para-28 that, "...the witnesses are also interested witnesses, in as much as they are close relative of the deceased. That there was previous enmity between the two families, on account of election of Sarpanch, has come on record."

In the present case, it has already been discussed on the basis of the evidences and found the oral testimony of both the witnesses Rakesh Singh P.W.-1 and Rajesh Singh P.W.-2 credible, cogent and trustworthy. They are brothers of the deceased Raman Singh but are not interested witnesses. No enmity could be brought on the record between the family of the deceased and the family of the accused persons. The testimony of Ram Badan Singh P.W.-3 is found wholly unreliable with whom the accused persons might have some political enmity but the testimony of the P.W.-3 is not taken into account.

Thus due to difference in factual matrix of Nand Lal case with the present case, the same is not attracted. No benefit can be given to the accused persons.

(III). Motive of case:

The defence argued about the motive of the case as old enmity due to Gram Panchayat Election and defeat of Ram Badan Singh P.W.-3 and victory of Anita Devi W/o accused Ganesh Yadav. It is pertinent to mention herein that, firstly the evidence of Ram Badan Singh P.W.-3 is found to be wholly unreliable. The basis of the judgment is not the evidence of Ram Badan Singh P.W.-3 rather the judgment is based on the evidence of Rakesh Singh P.W.-1, Rajesh Singh P.W.-2 and all other oral and documentary evidences of prosecution. It is established principles of law that in the case of direct evidence motive loses its significance. In **Rajneesh Dwivedi Case Law (Supra)**, it is held by the Hon'ble Court in Para-11 that, "...as far as motive is concerned, in case of direct evidence motive loses its value."...

In the present case, the defence could not show as to why the complainant Rakesh Singh P.W.-1 and Rajesh Singh P.W.-2 would falsely implicate the accused persons in the incident of beating of his brother deceased Raman Singh and sparing the real culprit. Although

P.W.-1 was given suggestion at Page-5 that he has falsely implicated the accused persons due to enmity relating to Pradhani and groupism. The defence could not prove the enmity for false implication of accused persons. The defence has not explained as to why the complainant/injured/eye-witness Rakesh Singh P.W.-1 and injured/eye-witness Rajesh Singh P.W.-2 would spare the real culprit and falsely implicate the accused persons in the incident of beating of their real brother deceased Raman Kumar Singh, who ultimately died of the injuries inflicted in the incident of beating by the accused persons.

Thus the present case is based on the testimony of direct evidence and therefore the motive loses its importance.

(IV). Non-recovery of crime weapon:

It is established principles of law that if oral evidence led by the prosecution is reliable regarding manner of occurrence then non-recovery of crime weapon becomes insignificant. In **Rampal Singh Case Law (Supra)**, it is held by the Hon'ble Court in Para-21 (II) that, "Similarly, the non-recovery of assault weapon is also not found decisive to the charge, as the ocular evidence led by the prosecution was reliable as to the manner of occurrence. Similarly, the absence of recovery of blood-stained clothes etc. of the victim/injured witnesses, though not desirable in a trial such as this, at the same time, by very nature it would remain an inadequacy or defect in the police investigation that may not discredit the prosecution evidence, as the ocular evidence is otherwise creditworthy."

Thus in the present case, the ocular evidence led by the prosecution regarding manner of occurrence is reliable and therefore non-recovery of crime weapon or the blood-stained clothes of victim becomes insignificant.

Learned defence counsel has relied upon **Smt. Indrawati Devi Case Law (Supra)**, where the Hon'ble Court has held that the bullet recovered from the body of the deceased not sent to F.S.L. for examination. There is no F.S.L. report to prove the use of alleged pistol in commission of crime. There is no independent witness of recovery. In

the present case, it is not a case of use of pistol or firearm and therefore no question of sending bullet or firearm for F.S.L. examination. In the present case, thick stick (Lathi) and boulder stone were used as crime weapon by the accused persons. There is no recovery of crime weapon and therefore, there is no question of sending it to F.S.L. for any examination.

Thus, due to difference in factual matrix of the above case law with the present case, the above case law is not attracted in the present situation. Therefore no benefit can be given to the accused persons.

On the basis of analysis of evidences under all points for determination discussed above, Raman Singh was given repeated blow on the vital organ head. As per evidence of Dr. S.K. Gupta P.W.-5, the Injuries No. 1 & 2 of deceased Raman Kumar Singh (injured at that time) were very dangerous to life. The accused persons Rohit Yadav @ Muneel Yadav and Awadhesh Yadav knew that if they hit deceased Raman Kumar Singh on head then it would cause death. Thus Rohit Yadav @ Muneel Yadav hit him on head with thick stick with great force. Accused Awadhesh Yadav hit Raman Kumar Singh on head with boulder stone. The other two accused persons Sadanand Yadav and Ganesh Yadav were also beating Raman Kumar Singh with stick in furtherance of common intention of all to hit him with intention to cause death. Repeated blow shows their intention to cause death of deceased Raman Kumar Singh. The head injuries resulted into death of deceased Raman Kumar Singh. Thus the offence of Section 304 Part-I I.P.C. is proved by the prosecution beyond all reasonable doubt.

The accused persons have abused complainant Rakesh Singh P.W.-1 in the name of mother and sister but no specific word of abusive language is stated in the evidence. The prosecution has not proved that the accused persons intentionally insulted complainant Rakesh Singh P.W.-1 to such an extent that the complainant and deceased would be provoked to commit breach of peace. Thus the offence of Section 504 I.P.C. is not proved by the prosecution beyond all reasonable doubt.

The kicking and punching of complainant Rakesh Singh PW-1

and slapping on the cheek of Rajesh Singh PW-2 was not of such degree that it would have endangered their lives or personal safety. Both of them have not even undergone medical treatment. Thus the beating of Rakesh Singh and Rajesh Singh are of lesser magnitude. Thus the offence of Section 336 I.P.C. is not proved by the prosecution beyond all reasonable doubt.

Rajesh Singh P.W.-2 had stated in his evidence that when his villagers Shiv Kumar Singh, Rajesh Singh S/o Lal Parikha Singh and Ram Badan Singh reached the place of occurrence then the accused persons fled away threatening them to kill and also said that one of the brothers has been killed and both of them (Rakesh Singh P.W.-1 and Rajesh Singh P.W.-2) would also be killed. The evidences in this regard have already been discussed in above point for determination. Thus the prosecution has proved the offence of criminal intimidation under Section 506 Part-II I.P.C. beyond all reasonable doubt.

On the basis of the conclusion arrived at under various points for determination, I am of the considered opinion that the prosecution has successfully proved the charged offences against accused persons Awadhesh Yadav, Rohit Yadav @ Muneel Yadav, Ganesh Yadav and Sadanand Yadav under Sections 304 Part-I read with Section 34, 323 read with Section 34, 506 Part-II I.P.C beyond all reasonable doubt. The prosecution has failed to prove the charged offences under Section 336 & 504 I.P.C. beyond all reasonable doubt against the accused persons.

Thus accused persons Awadhesh Yadav, Rohit Yadav @ Muneel Yadav, Ganesh Yadav and Sadanand Yadav are liable to be given benefit of doubt for the offence under Sections 336 & 504 I.P.C.

Thus the accused persons Awadhesh Yadav, Rohit Yadav @ Muneel Yadav, Ganesh Yadav and Sadanand Yadav are liable to be convicted under Sections 304 Part-I read with Section 34, 323 read with Section 34, 506 Part-II I.P.C. Accused persons Awadhesh Yadav, Rohit Yadav @ Muneel Yadav, Ganesh Yadav and Sadanand Yadav are liable to be acquitted under Sections 336 & 504 I.P.C.

ORDER

Accused persons Awadhesh Yadav, Rohit Yadav @ Muneel Yadav, Ganesh Yadav and Sadanand Yadav are convicted under Sections 304 Part-I read with Section 34, 323 read with Section 34, 506 Part-II I.P.C.

Accused persons Awadhesh Yadav, Rohit Yadav @ Muneel Yadav, Ganesh Yadav and Sadanand Yadav are acquitted under Sections 336 & 504 I.P.C

Accused persons Awadhesh Yadav, Rohit Yadav @ Muneel Yadav, Ganesh Yadav and Sadanand Yadav are present in the Court today. They are on bail. All the above named accused persons be taken into custody. Their bail bonds are cancelled and sureties are discharged.

Put up on 17-07-2026 for hearing on sentence.

Dated: 14.07.2026

(Anil Kumar Jha)
Sessions Judge,
Ballia
I.D. No.-U.P. 06529

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

Dated: 14.07.2026

(Anil Kumar Jha)
Sessions Judge,
Ballia
I.D. No.-U.P. 06529

17.07.2026

File is produced for hearing on sentence.

The convicts Awadhesh Yadav, Rohit Yadav @ Muneel Yadav, Ganesh Yadav and Sadanand Yadav are present in judicial custody.

Heard learned counsel Shree Srinivas Rai for all the three convicted persons Awadhesh Yadav, Ganesh Yadav & Sadanand Yadav, learned counsel Shree Nirbhay Narayan Singh for convict Rohit Yadav @ Muneel Yadav and learned D.G.C (Criminal) for the State.

Learned defence counsel Shree Srinivas Rai for all the above three convicted persons submitted that convict Ganesh Yadav is having bad health and he is under medical treatment. Convict Sadanand Yadav is a student and his entire life will be ruined and convict Awadhesh Yadav is a teacher. Learned counsel requested for sentencing them with minimum imprisonment.

Learned defence counsel Shree Nirbhay Narayan Singh has submitted that leniency should be adopted and minimum sentence should be awarded to the convict Rohit Yadav @ Muneel Yadav.

Learned DGC (Crl.) for the State submitted that convict Ganesh Yadav has a criminal history under various sections including Section 338 B.N.S. He further submitted that the convicts repeatedly hit deceased Raman Kumar Singh on his head and this shows intentionally inflicting injuries upon vital organ head. None of the convicts deserves any leniency. Thus prayed for maximum sentence and fine.

In view of the arguments advanced by the parties, once again I perused the file and the evidences on record. The convicted persons inflicted repeated blow on the head of deceased Raman Kumar Singh. This shows that the convicted persons were acting in cruel manner and they wanted to ensure death of the deceased. I am of the considered opinion that in the facts and circumstances of the case, the ends of justice would be accomplished if the convicts Awadhesh Yadav, Rohit Yadav @ Muneel Yadav, Ganesh Yadav and Sadanand Yadav each are sentenced with life imprisonment with a fine of Rs. 1,00,000/- (One Lakh Rupee Only) each under Section 304 Part-I read with Section 34 I.P.C, One year (01 year) imprisonment to each convict with a fine of

Rs. 1,000/- (One Thousand Rupee Only) each under Section 323 read with Section 34 I.P.C. and Four years (04 years) imprisonment to each convict with a fine of Rs. 25,000/- (Twenty Five Thousand Rupee Only) each under Section 506 Part-II I.P.C.

ORDER

The convicts **Awadhesh Yadav, Rohit Yadav @ Muneel Yadav, Ganesh Yadav** and **Sadanand Yadav** each are sentenced with Life imprisonment and with a fine of Rs 1,00,000/- (One Lakh Rupee Only) each under Section 304 Part-I read with Section 34 I.P.C. In default of payment of fine, Awadhesh Yadav, Rohit Yadav @ Muneel Yadav, Ganesh Yadav and Sadanand Yadav each shall further undergo additional imprisonment for Three years (03 Years).

The convicts **Awadhesh Yadav, Rohit Yadav @ Muneel Yadav, Ganesh Yadav** and **Sadanand Yadav** each are sentenced with One Year (01 Year) imprisonment and with a fine of Rs. 1,000/- (One Thousand Rupee Only) each under Section 323 read with Section 34 I.P.C. In default of payment of fine, Awadhesh Yadav, Rohit Yadav @ Muneel Yadav, Ganesh Yadav and Sadanand Yadav each shall further undergo additional imprisonment for Three months (03 Months).

The convicts **Awadhesh Yadav, Rohit Yadav @ Muneel Yadav, Ganesh Yadav** and **Sadanand Yadav** each are sentenced with Four years (04 Years) imprisonment and with a fine of Rs. 25,000/- (Twenty Five Thousand Rupee Only) each under Section 506 Part-II I.P.C. In default of payment of fine, Awadhesh Yadav, Rohit Yadav @ Muneel Yadav, Ganesh Yadav and Sadanand Yadav each shall further undergo additional imprisonment for One Year (01 Year).

Out of total amount of fine, 50% shall be paid as compensation to the legal heirs of the deceased Raman Kumar Singh under Section 357 Cr.P.C. It shall be shared in equal proportion by the legal heirs of the deceased person if there is more than one legal heir.

The case property/material exhibit, if any, shall be disposed of in accordance with law after the expiry of Appeal period. In case Appeal is filed then the case property/material exhibit, if any, shall be

disposed of as per direction of the Hon'ble Appellate Court.

A free copy of the judgment and order be given to the convicts.

All the punishment shall run concurrently.

The convicts are liable to be given benefit of Section 428 Cr.P.C for adjustment of period spent in jail.

Conviction warrant be prepared accordingly and convicts be sent to the District Jail, Ballia for undergoing punishment.

A copy of the judgment and order be sent to the District Magistrate, Ballia.

Dated: 17.07.2026

(Anil Kumar Jha)
Sessions Judge,
Ballia
I.D. No.-U.P. 06529

Steno: Bagadad Ali