



UPBL010020272025

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

I.D. No. U.P. 06529

Sessions Trial No. 494 of 2025

State of U.P.

-----Prosecution

Versus

- 1- Bittu Yadav S/o Lallan Yadav R/o Imiliya Tola Narayanpur, Police Station- Narhi, District-Ballia
- 2- Shivam Rai @ Kariya S/o Umesh Rai
- 3- Priyanshu Rai S/o Pawan Rai
- 4- Rudresh Rai @ Shivam Rai S/o Lalu Rai @ Namon Narayan Rai
Serial No. 2, 3 & 4 are R/o Narayanpur, Police Station- Narhi, District- Ballia.

-----Accused persons

Case Crime No. 01/2025**Police Station: Narhi, District-Ballia.****U/s-103(1)/3(5), 109/3(5), 352 BNS****JUDGMENT**

The present Sessions Trial No. 494/2025 came to the fore after the committal order passed by the Ld. Chief Judicial Magistrate, Ballia vide order dated 24.04.2025 and committed against the accused persons namely, Bittu Yadav S/o Lallan Yadav R/o Imiliya Tola Narayanpur, Police Station- Narhi, District-Ballia, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai all are R/o Narayanpur, Police Station-Narhi, District-Ballia Case Crime No. 01/2025 under Sections 103(1), 109, 352, 3(5) BNS.

Briefly the prosecution case as per written complaint of the complainants Urmila Devi and Laxman Gupta, Exhibit Ka-1 is that on 01.01.2025 at about between 7:00 P.M. - 08:00 P.M., Golu Verma S/o Late Kanhaiya Seth and Prashant Gupta S/o Laxman Gupta Village-Sikandarpur, Police Station- Narhi, District Ballia sons of both the complainant have been murdered by Shivam Rai S/o Umesh Rai, Bittu Yadav, Priyanshu Rai S/o Pawan Rai, Rudresh Rai S/o Lalu Rai and

others with Axe (Tangi) and Dao (Big Knife) near Pragya School.

On the basis of above complaint of the complainants, F.I.R was registered at Police Station Narhi, District-Ballia having F.I.R. No. 01 of 2025, under Sections- 103(1) BNS against the accused persons namely Bittu Yadav, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai. Later on during investigation Sections 109, 352, 3(5) BNS were added.

After investigation the Investigating Officer submitted charge-sheet against accused persons namely Bittu Yadav, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai under Sections-103(1), 109, 352, 3(5) BNS which is marked as Exhibit Ka-17.

Charge was framed against the accused persons namely, Bittu Yadav, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai on 15.05.2025 in S.T. No. 494/2025 Case Crime No.01/2025 under Sections-103(1)/3(5), 109/3(5), 352/3(5) BNS. 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.	Jeetu Gupta	Injured witness
2.	Rahul Gupta	Eye witness
3.	Urmila	Complainant
4.	Bhorik Prasad Gupta	Panchayatnama/Inquest witness
5.	Constable Rikh Dev Yadav	Munshi
6.	S.I. Ajay Sahni	Who conducted Inquest
7.	Dr. Prakash Chandra Rai	Doctor
8.	Dr. Manish Jaiswal	Who conducted postmortem
9.	Inspector Nadeem Ahmad Faridi	Investigating Officer
10.	DSP Sunil Chandra Tiwari	Investigating Officer

Specimen Chart for Exhibited Documents

Exhibit No.	Description of the Exhibit	Proved by/Attested by
Ka-1,	Complaint	Urmila, P.W.3
Ka-2 & Ka-3	Inquest (Panchayatnama) of Prashant Gupta and Inquest (Panchayatnama) of Ajay Kumar Verma @ Golu Verma FIR, G.D of FIR (Kayami)	Bhorik Prasad Gupta, P.W.4
Ka-4 & Ka-5	G.D of FIR (Kayami) and Check FIR	Constable Rikh Dev Yadav P.W.5
Ka-4A, Ka-5A, Ka-6, Ka-7, Ka-8, Ka-9, Ka-10 & Ka-11	Letter to R.I & Letter to C.M.O, Police Form No. 13 and Photonash of deceased Prashant Gupta and Letter to R.I & Letter to C.M.O, Police Form No. 13 and Photonash of deceased Ajay Kumar Verma @ Golu Verma	S.I. Ajay Sahni P.W.6
Ka-12, Ka-13 & Ka-14	Registration and reference slip of injured Jeetu Gupta, MLC of injured Jeetu Gupta, Supplementary Report of injured Jeetu Gupta	Dr. Prakash Chandra Rai P.W.7
Ka-15 & Ka-16	Post mortem Report of deceased persons Ajay Kumar Verma @ Golu Verma & Prasant Gupta	Dr. Manish Jaiswal, P.W.8
Ka-17	Charge-sheet	Inspector Nadeem Ahmad Faridi, P.W.9
Ka-18, Ka-19 & 20	G.D. of Recovery Memo (Fard), Site Map, Certified copy of recovery memo (Fard)	DSP Sunil Chandra Tiwari, P.W.10

Specimen Chart for Material Objects/Muddamals

Material Object No.	Description of the Exhibit	Proved by/Attested by
1.	White cloth in which Axe was covered	DSP Sunil Chandra Tiwari, P.W.10
2.	Axe (Taangi)	DSP Sunil Chandra Tiwari, P.W.10
3 & 4	Boxes of blood soaked soil and plain soil of deceased Prashant Gupta	DSP Sunil Chandra Tiwari, P.W.10
5 & 6	Boxes of blood soaked soil and plain soil of deceased Ajay Kumar Verma @ Golu Verma	DSP Sunil Chandra Tiwari, P.W.10
7 & 8	Blood soaked soil and plain soil of deceased Prashant Gupta	DSP Sunil Chandra Tiwari, P.W.10
9 & 10	Blood soaked soil and plain soil of deceased Ajay Kumar Verma @ Golu Verma	DSP Sunil Chandra Tiwari, P.W.10

After completion of the prosecution evidence, the statement of accused persons was recorded under Section 351 B.N.S.S.

To prove its case, Defence produced following oral as well as documentary evidence :-

Defence Evidence

1. Suresh Rai D.W-1

Documentary Evidence:-

Documentary evidence filed with List of Documents 51 Kha:-

1. Pen drive relating to so called injured Jeetu- 01 piece.
2. Photograph showing Jeetu putting deceased in the vehicle- 02 pieces.

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

Jeetu Gupta P.W-1 has stated on oath in his examination-in-chief that I was studying in last year at Saraswati Shishu Mandir Narayanpur High School. Along with me, my friend Bholu Verma, who is also from my village, studied there. Shivam Rai @ Kariya Rai, Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav all are residents of Narayanpur Mauja were threatening to beat my friend Bholu Verma on 15.12.2024. When we asked why they are threatening then the above four persons moved away from there. We complained about this to the Principal Suresh Rai. Suresh Rai had also complained about those four persons to their guardians. We had informed our family about this threatening two days later.

On 01.01.2025 in the night at about 07:00 P.M. to 08:00 P.M., when I was going to Narayanpur to get milk then in front of the Beer shop the above four persons Shivam Rai @ Kariya Rai, Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav surrounded me. Due to the complaint which was made to Principal Suresh Rai against them, Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav caught hold me and Shivam Rai @ Kariya attacked with Axe (Tangi) on my neck with the intention to kill me. I had wrapped a muffler around my neck and head, due to which my neck was not cut, but I received grievous injury. The blade of the Axe (Tangi) turned. I got injury with the backside of the Axe (Tangi), due to which I fell down on the spot. When

my cousin Prashant Gupta tried to save me, Priyanshu, Rudresh and Bittu also caught hold of him and Shivam @ Kariya attacked with Axe (Tangi) on the neck of Prashant and Prashant fell down on the spot. Ajay Verma @ Golu also arrived and tried to save Prashant, then Priyanshu, Rudresh and Bittu caught hold of him also and Shivam Rai @ Kariya Rai attacked with Axe (Tangi) on the neck of Ajay Verma @ Golu. Due to attack by Shivam Rai @ Kariya with Axe (Tangi), Prashant Gupta and Ajay Verma @ Golu died on the spot. Rahul Gupta and Amarnath Verma had also arrived at the place of incident and had witnessed the incident, but due to fear of the above four persons they could not do anything. The above four accused persons fled away from the place of occurrence while abusing and threatening. Prashant and Golu were taken away from the spot. I also went to the Narhi Government Hospital immediately after the incident. The doctor examined me and gave me medicines. On the next day, I again went to Narhi Hospital. The doctor referred me Ballia Hospital for CT Scan after examining my injuries. Sub-Inspector (Daroga Ji) had recorded my statement and I also showed him the place of occurrence. I already knew the above four persons. The above mentioned four persons had earlier come to the school and threatened to kill me and Bholu Verma. Electric light was lit in the shops located at the place of occurrence and the entire incident took place in that electric light. Other people also witnessed the incident.

Rahul Gupta P.W-2 has stated in examination-in-chief on oath that I had three brother. My elder brother Prashant Gupta, myself (Rahul Gupta) and Arjun Gupta. My elder brother Prashant Gupta was engaged in electrical work. The incident took place on 01.01.2025 between 07:00 PM and 08:00 PM. At that time, I along with Amarnath Verma was returning from Narayanpur to our locality Sikandarpur. I was using Narayanpur-Kotwa road. I reached near beer shop just before the Kotwa Tri-Junction. I saw Priyanshu Rai, Rudresh Rai, Shivam Rai and Bittu Yadav were arguing with Jeetu Gupta S/o Bhorik Gupta of my village. At that moment, Priyanshu Rai, Rudresh Rai and Bittu Yadav caught hold Jeetu Gupta and Shivam Rai @ Kariya attacked with Axe (Tangi)

on neck of Jeetu Gupta with intention to kill him. At that time, Jeetu had tied muffler around his neck, so his neck was not cut but he fell down after getting injury. My elder brother Prashant Gupta tried to save Jeetu, but Priyanshu Rai, Rudresh Rai and Bittu Yadav caught hold of my brother and Shivam Rai @ Kariya hit with Axe (Tangi) on the neck of my brother Prashant, due to which Prashant fell down in pool of blood. Golu Verma S/o Kanhaiya ran to save Prashant but the above-mentioned Priyanshu Rai, Rudresh Rai, Bittu Yadav and Shivam Rai @ Kariya chased him to beat. Golu ran towards south direction to save his life, but after going about 10–15 steps, Priyanshu Rai, Rudresh Rai and Bittu Yadav caught hold of him and Shivam Rai @ Kariya hit with Axe (Tangi) on the neck of Golu Verma, due to which Golu Verma also fell down after getting injuries. Due to assault by the above mentioned persons, Prashant Gupta and Golu Verma died on the spot. The above four persons Priyanshu Rai, Rudresh Rai, Bittu Yadav and Shivam Rai @ Kariya fled away from the place of occurrence carrying the Axe (Tangi). Amarnath and I saw the incident. We had informed our families and the family of Golu Verma about this incident. The police arrived on the spot and took away the dead bodies of Prashant Gupta and Golu Verma. Sub-Inspector had recorded my statement.

Urmila (Complainant) P.W-3 has stated in examination-in-chief on oath that the incident is of 1st January 2025 at about 08:00 P.M. At that time I was at my house. At that moment, Rahul S/o Laxman and Amarnath came to my house and told me that “quarrel has taken place between Jeetu and Shivam Rai, Priyanshu Rai, Rudresh Rai and Bittu Yadav. Jeetu was beaten by these people due to which Jeetu fell down. They also told me that Prashant S/o Laxman and Golu (who is my son) had gone to save Jeetu, Prashant was also beaten and thereafter Golu was also beaten. They further stated that Priyanshu, Rudresh and Bittu had caught hold of these persons, while Shivam Rai hit them with Axe (Tangi) on the neck, due to which Prashant and Golu died on the spot.” On the basis of the statements of Rahul and Amarnath, I got the complaint written by Rajesh Gupta, read it and gave it at the police

station after affixing my thumb impression on it. Prashant S/o Laxman had also been murdered in the same incident, therefore Laxman also signed on the same written complaint. The said complaint is available in the file as Paper No. 4Ka/4 which was read over to the witness, the witness stated that this is the same written complaint which I had got written by Rajesh and gave at the police station after affixing my thumb impression. I admit and the same is marked as **Exhibit Ka-1**. Sub-Inspector had recorded my statement.

Bhorik Prasad Gupta P.W-4 has stated in examination-in-chief on oath that my mobile number is 8299152720 which I use even today. Prashant Gupta and Golu Verma of my village had been murdered by Shivam Rai, Bittu Yadav, Priyanshu Rai and Rudresh Rai on 01.01.2025. My son Jeetu Gupta was also injured in that incident. I reached there on receiving information about the murder of Prashant Gupta and Golu Verma, where the Inspector of Narhi Police Station also arrived. The dead bodies of both the deceased were brought to the District Hospital Ballia from there. I also came to Ballia Hospital with dead bodies. Inquest (Panchayatnama) of both the deceased persons was prepared by Sub Inspector (Daraga Ji) and got my signatures on those Inquests (Panchayatnamas). The Inquest Report (Panchayatnama) of Prashant Gupta is available in the file as Paper No. 9Ka/7 and 9Ka/8 and the Inquest Report (Panchayatnama) of deceased Ajay Kumar Verma @ Golu Verma is available in the file as Paper No. 9Ka/9 and 9Ka/10 and it bears my signature. I admit and the same are marked as **Exhibit Ka-2** and **Exhibit Ka-3** respectively. The investigating officer had recorded my statement.

Constable Munshi Rikh Dev Yadav P.W-5 has stated in examination-in-chief on oath that on 02.01.2025, I was working as Constable Munshi at Narhi Police Station, District-Ballia. A complaint was submitted before me in the office by the complainants Urmila Devi, W/o late Kanhaiya Seth and Laxman Gupta S/o late Ramanand Gupta. It was entered in the G.D Rapat No.4 at 00:26 hrs on 02.01.2025 through CCTNS by the computer operator on my instructions. On the basis of

the above complaint submitted by the complainant, Check FIR No. 01/2025 under Section 103 (1) BNS vs Shivam Rai etc. was prepared on CCTNS by the computer operator on my instructions. The G.D and Check FIR which were prepared under my instructions. The copy of the G.D. Kayami is available in the file as Paper No. 4Ka/2 it bears my signature, Copy of Check FIR is available in the file as Papers No. 4Ka/1 to 4Ka/3 and it bears the signature of Station House Officer and seal of station is affixed. I admit and the same are marked as **Exhibit Ka-4** and **Exhibit Ka-5** respectively.

Sub-Inspector Ajay Sahni P.W.-6 has stated on oath in his examination-in-chief that on 02.01.2025, I was posted as Trainee Sub-Inspector at Police Station-Narhi, District-Ballia. On that day, I got information from Munshi that deceased Prashant Gupta S/o Laxman Prasad Gupta and deceased Golu Verma @ Ajay Kumar Verma S/o late Kanhaiya Seth, R/o Sikandarpur, Police Station-Narhi, District-Ballia related to Case Crime No. 01/2025 under Section 103 (1) BNS have been murdered near the Narayanpur liquor distillery. On this information, I along with Constables Nirbhay Singh and Sohan Singh had reached at the Mortuary House Ballia. The dead bodies were kept in the cold room. With the help of mortuary staff and family members, the dead bodies were brought out and the proceedings of inquest (Panchayatnama) of the dead bodies were started as per rules. In the presence of the family members and telling their rights and duties, the proceeding of inquest (Panchayatnama) was started on 02.01.2025 at 00:26 hrs. Five persons were appointed Panchan from among the people. Appointed Panchans were Vishambar Verma S/o Shivpujan Verma R/o Narayanpur Police Station-Narhi, District-Ballia, Rajesh Gupta S/o late Ramanand Prasad Gupta R/o Sikandarpur, Jitendra Kumar Verma S/o of Rajendra Prasad Verma R/o Saraikota Kotwa Narayanpur Police Station-Narhi District-Ballia, Bittu Gupta S/o Manoj Gupta R/o Saraikota Police Station-Narhi and Bhorik Prasad Gupta S/o late Nanhak Prasad Gupta R/o Sikandarpur Police Station-Narhi, District-Ballia.

Body description- The dead body of deceased Prashant Gupta was kept in lying position, head was in the east side, legs were in the west side, both hands were by the side of his waist, his feet were also lying parallel.

Outfits- A blue full-sleeved T-shirt, blue jeans with brown leather belt and black half pant underneath.

Appearance- Height-average, eyes, ears and nose-average, wheatish complexion, long hair on the head, age about 30 years.

Injury- cut mark on the left rib.

Witnesses of Inquest (Panchan)- On taking collective and individual opinion from the appointed witnesses of inquest (Panchan), they unanimously said that Prashant Gupta S/o Laxman Gupta has been murdered by hitting him with Axe (Tangi) and Dao.

My opinion was also similar to inquest witnesses (Panchans). The death of deceased was unnatural. It was necessary to conduct a postmortem of the deceased to know the actual cause of death, therefore the dead body was kept in a kit bag and sealed and sent for post mortem. After completing the proceeding of inquest (Panchayatnama), signature of the inquest witnesses (Panchans) and companions were made on it. Inquest Report (Panchayatnama) is available in the file as Papers No. 9Ka/7 to 9Ka/8. It is in my handwriting and signature. I admit and the same is already marked as Exhibit Ka-2. Letter to R.I, Letter to C.M.O , Police Form-13 and Photonash are available in the file as Papers No. 10Ka/13 to 10Ka/16. These are in my handwriting and signature. I admit and the same are marked as **Exhibit Ka-4, Exhibit Ka-5, Exhibit Ka-6 & Exhibit Ka-7** respectively. Similarly, the inquest (Panchayatnama) of deceased Golu @ Ajay Kumar Verma S/o Kanhaiya Seth, related to the same incident, is also completed in the Mortuary House Ballia. Witnesses of inquest (Panchan) who were appointed for the deceased Prashant Gupta, the same were also appointed for the deceased Golu @ Ajay Kumar Verma.

Body description- The dead body of deceased Prashant Gupta (It seems that due to clerical mistake the name of the deceased mentioned

in the statement as Prashant Gupta whereas it is actually Ajay Kumar Verma @ Golu) was kept in lying position, head was in the east side, legs were in the west side, both hands were by the side of his waist, his feet were also lying parallel.

Outfits- Red colour full-sleeved T-shirt, a blue inner, a leather belt on his waist, brown pants and warm inner and underwear underneath. He also wore a garland and an amulet in his neck.

Appearance- Height-average, eyes, ears and nose-average, wheatish complexion, long hair on the head, age about 30 years.

Injury- cut mark on the left side of neck.

Witnesses of inquest (Panchan)- on taking collective and individual opinion from the appointed witnesses of inquest (Panchan), they unanimously said that Golu @ Ajay Kumar Verma S/o Late Kanhaiya Seth has been murdered by hitting him with Axe (Tangi) and Dao.

My opinion was also similar to inquest witnesses (Panchans). The death of deceased was unnatural. It was necessary to conduct a postmortem of the deceased to know the actual cause of death, therefore the dead body was kept in a kit bag and sealed and sent for post-mortem. After completing the proceeding of inquest (Panchayatnama), signature of the inquest witnesses (Panchans) and companions were made on it. Inquest Report (Panchayatnama) is available in the file as Papers No. 9Ka/9 to 9Ka/10. It is in my handwriting and signature. I admit and the same is already marked as Exhibit Ka-3. Letter to R.I, Letter to C.M.O , Police Form-13 and Photonash are available in the file as Papers No. 10Ka/22 to 10Ka/25. These are in my handwriting and signature. I admit and the same are marked as **Exhibit Ka-8, Exhibit Ka-9, Exhibit Ka-10 & Exhibit Ka-11** respectively. The investigating officer had recorded my statement.

Dr. Prakash Chandra Rai P.W.7 has stated on oath in his examination-in-chief that I was working as Medical Officer at C.H.C, Narhi on 02.01.2025. That day, Jeetu Gupta S/o Bhorik Prasad Gupta, age- 16 years, male, R/o Sikandarpur, Police Station-Narahi, District-Ballia came to me for treatment and medical examination. Emergency

Slip No. 2286 of my hospital was issued. I examined his injuries and found 4 X 5 cm swelling on the back of his head. N.C.C.T scan was advised. CT Scan report of injured Jeetu Gupta was received on 27.03.2025 and perused it. No fracture was found in C.T Scan report. On the basis of the said report, a supplementary injury report was prepared on 27.03.2025 stating that injuries were simple. The above emergency slip is available in the file as Paper No. 10Ka/7. It is in my handwriting and signature. The medical report which was prepared by me in my hand-writing and signature is available in the file as Paper No. 10Ka/9. Supplementary medical report which was prepared by me in my hand-writing & signature is available in the file as Paper No. 10Ka/57. I admit and the same are marked as **Exhibit Ka-12, Exhibit Ka-13 & Exhibit Ka-14** respectively. Injured Jeetu Gupta also visited C.H.C, Narhi on 01.01.2025 and he was examined by Dr. Anjali Suman and an Emergency Slip No. 2278 was issued. I have mentioned this in my medical examination report Paper No. 10 Ka/9. The Sub-Inspector (Daroga Ji) of Police Station-Narhi had recorded my statement.

Dr. Manish Jaiswal P.W-8 has stated in examination-in-chief on oath that I was working as Medical Officer (Superintendent) at C.H.C Rasra on 02.01.2025. I was posted on duty at the Mortuary House Ballia that day, as per the order of C.M.O. Ballia. That day, the dead bodies of deceased Ajay Kumar Verma @ Golu Verma S/o late Kanhaiya Seth and deceased Prashant Gupta S/o Laxman Prasad Gupta both R/o Sikandarpur, Police Station-Narhi, District-Ballia were brought before me inside a deadbody kit in a sealed condition for post mortem at Mortuary House Ballia by Constable Nirbhay Singh and Constable Sohan Singh, Police Station-Narhi, District-Ballia. After matching the seal with the sample seal and finding it correct, the seal was opened and the dead bodies of above deceased were found. The dead bodies were identified by above mentioned police personnel.

Post mortem of deceased Ajay Kumar Verma @ Golu Verma started at 02:00 P.M. and ended at 02:30 P.M. on 02.01.2025. Dead body of deceased was brought in the District Hospital on 02.01.2025 at 02:45

A.M. alongwith papers with dead body. Age of the deceased- 30 years, male, weight- 55 kg, height- 155 cm, slim built. One underwear, one vest, one inner, one lower and one pant were found on the body of the deceased. Rigor mortis was present in the upper and lower parts of the body. Eyes and mouth of the deceased were closed.

Antemortem Injuries

- (i) Incised wound of size 8 cm x 5 cm bone deep on the left side of neck.
- (ii) Lacerated wound of size 1.5 cm x 0.5 cm on the right side just below the right corner of mouth.

Internal Examination

Brain- weight 1110 gm. Left pleura was lacerated and blood was present in pleural cavity. Lungs- right lung pale, weight right 410 gm. and left lung lacerated weight 350 gm. Heart- weight 225 gm., both chamber empty. Stomach- fluid present, small intestine- pasty material and large intestine- faecal material and gases. Liver including Gall Bladder- weight 1390 gm., Gall Bladder- half filled. Spleen-pale, weight- 190 gm. Kidney- both pale, weight right 110 gm. and left 100 gm.

The time since death of deceased is within one day. Cause of death is shock and hemorrhage as a result of ante mortem injuries.

Dead body of the deceased was handed over to Constable Nirbhay Singh along with three sealed envelopes and ten enclosures after post mortem. Post mortem report was prepared by me on computer and I signed it. The said report is available in the file as Paper No. 9Ka/4 to 9Ka/6, it bears my signature. I admit and the same is marked as **Exhibit Ka-15**.

Post mortem of deceased Prashant Gupta started at 02:30 P.M. and ended at 03:00 P.M. on 02.01.2025. Dead body of deceased was brought in the District Hospital on 02.01.2025 at 02:50 A.M. as per the papers which were brought along with dead body. Age of the deceased- 30 years, male, weight- 52 kg, height- 150 cm, medium built. One full sleeved T-shirt, one jeans and one half pant on the body of the deceased.

Rigor mortis was present in the upper and lower parts of the body. Eyes were opened and mouth of the deceased were closed.

Antemortem Injuries

(i) Stab wound of size 3 cm x 2 cm adjacent to left clavicle skin.

Internal Examination

Brain- weight 1100 gm and pale. Left pleura was lacerated and blood was present in pleural cavity. Lungs-both were collapsed and pale, weight right 380 gm. and left 350 gm. Heart- weight 210 gm., right chamber full and left chamber empty. Stomach- fluid present, small intestine- liquid pasty material and large intestine- faecal material and gases. Liver including Gall Bladder- weight 1370 gm., Gall Bladder- half filled. Spleen- pale, weight- 170 gm. Kidney- pale, weight right 100 gm. and left 100 gm. Urine bladder-empty.

The time since death of deceased is within one day. Cause of death is shock and hemorrhage as a result of ante mortem injuries.

Dead body of the deceased was handed over to Constable Nirbhay Singh along with three sealed envelopes and ten enclosures after post mortem. Post mortem report was prepared by me on computer and I signed it. The said report is available in the file as Paper No. 9Ka/1 to 9Ka/3, it bears my signature. I admit and the same is marked as **Exhibit Ka-16**. Investigating officer had recorded my statement. Injury no.1 of deceased Ajay Kumar Verma @ Golu and injury of deceased Prashant Gupta are possible to have been inflicted with Axe between 07:00 to 08:00 o'clock on 01.01.2025.

Inspector, Nadim Ahmad Faridi P.W.-9 has stated on oath in his examination-in-chief that I was working as Inspector in Charge of Police Station-Narhi, District-Ballia on 17.02.2025. I took up the investigation of FIR No. 01/2025 under Sections 103(1), 109, 352, 3 (5) BNS registered at Police Station that day. The investigation of the above case was done by the previous investigating officer. I perused the papers prepared by the previous investigating officer and after perusal it was recorded in the C.D. The named accused persons of the case were in judicial custody and kept in the district jail. A representation was

submitted before the Hon'ble Court for their remand for further fourteen days.

On 16.03.2025, the statement of Constable Sohan Singh and Constable Nirbhay Singh was recorded, who took the dead body for postmortem and on the same day, the statement of Sub-Inspector Ajay Sahni was recorded, who prepared the Inquest Report (Panchayatnama). On 20.03.2025, the statement of Head Constable Habib Ahmed was recorded, who took the material related to the incident to FSL Ramnagar Varanasi. On 24.03.2025, the statement of Dr. Manish Jaiswal was recorded, who had conducted the postmortem. On 27.03.2025, I met with Dr. Prakash Chand Rai who conducted the medical examination of the injured Jeetu Gupta and showing him the C.T. Scan report of injured and got a supplementary report and on the same day statement of Dr. Prakash Chand Rai was recorded. On 29.03.2025, statement of FIR writer Constable Mohrir Rikh Dev Yadav was recorded and the statement of the accused Rudresh Rai @ Shivam Rai, who was in judicial custody in the District Jail Mau, was recorded by going to the District Jail Mau with the permission of the Hon'ble Court.

I had submitted Charge-sheet No. 67/2025 in the Court on 29.03.2025 against the accused persons 1. Bittu Yadav S/o Lallan Yadav R/o Imilia Tola Narayanpur. 2. Shivam Rai @ Kariya S/o Umesh Rai. 3. Priyanshu Rai S/o Pawan Rai. 4. Rudresh Rai @ Shivam Rai S/o Lalu Rai @ Namo Narayan Rai resident of Narayanpur, Police Station Narhi, District-Ballia under Sections 103 (1), 109, 352, 3(5) BNS after collecting sufficient evidence by me and perusal of papers prepared by previous investigating officer. The FSL report was awaited. The said charge sheet is available in the file as Paper No. 3Ka/1 to 3Ka/7 and it bears my signature. I admit and the same is marked as **Exhibit Ka-17**.

Dy. S.P. Sunil Chandra Tiwari P.W.-10 has stated on oath in his examination-in-chief that I was working as Inspector in Charge at Police Station-Narhi, District- Ballia on 01.01.2025. I took up the investigation on 02.01.2025 of FIR No. 01/2025 under Section 103(1) BNS vs. Shivam Rai & Others, registered at the police station. On that day, I

took the Copy of Check (Nakal Check), Copy of Rapat (Nakal Rapat), statement of the complainant Smt. Urmila Devi and after finding the offence of Section 109 BNS in the case, Section 109 BNS was added. On the same day, search was conducted for injured Jeetu Gupta, I came to know that he had gone to the District Hospital for treatment and his family members had also gone to the District Hospital for the post-mortem of the deceased Prashant Gupta and Golu Verma where the post mortem was being done. On the same day, raid was conducted to arrest the named accused. I along with companions were present near Bharat Petrol Pump in Govindpur on 03.01.2025 in search of the wanted accused persons in the above case. We received information through an informer (Mukhbir) that the accused of the said case is trying to escape via Ramgarh Bharouli. On this information, we moved towards Bharouli, a man was seen walking towards Bharouli. On seeing policemen, he started running. We had formed the second police team and also cordoned the area. Surrounded from both sides, the fleeing man got down in the fields near a culvert (Puliya) on the Baghauna highway. As soon as he descended, he opened fire on police party with intention to kill us. We narrowly escaped, but the man who fired, we have challenged him and informed that you are surrounded from all sides, surrender or you will be killed. Upon this, the surrounded man again fired a shot to target the police team with intention to kill from which we escaped somehow. He was not surrendering despite repeated requests and seeing no other option of defence I took the pistol of Sub Inspector Ajay Sahni and fired a shot in the air to alert him. The accused immediately responded and fired a shot at police party with intention to kill. The police party exhorted the suspect in self-defense, I fired a shot, which hit the person in front of us and he fell down and started moaning. As soon as the person fell down, we reached near him at 06:17 while using necessary force. A pistol, an empty cartridge and a live cartridge were found beside him. Surrounding area was searched in the light, an Axe (Tangi) was also found lying there. On prior information, the field unit team also reached the spot. When the fallen man was

examined closely, a bullet was found hit on the shin of his left leg and which passed piercing through shin. On asking the name and address of the injured criminal, he told his name Shivam Rai S/o Umesh Rai R/o Narayanpur, Police Station-Narhi. During interrogation, he told that on 01.01.2025, Golu Verma was murdered at a beer shop in Narayanpur with this Axe (Tangi) by him along with his companions Bittu Yadav, Priyanshu Rai and Rudresh. When Jeetu Gupta came to intervene, he was also beaten and injured. Pistol, cartridges, shells, Axe were seized and recovered by the police from the place where accused fell after getting injured. The said Axe (Tangi) is crime weapon of this incident. Pistol, cartridges and crime weapon Axe (Tangi) were stamped and a recovery memo (Fard) was prepared and got signature of accused on it. A copy of Recovery Memo (Fard) was given to accused and again got his signature on it. I along with accompanying policemen also signed the recovery memo (fard). Statement of accused was recorded and challan was sent to the Court. Entry of arrest of accused was recorded as Rapat No. 18 time 16:30 dated 03.01.2025 in G.D. The said G.D. is available in the file as Paper No. 11Kha/12. I admit and the same is marked as **Exhibit Ka-18**. On 04.01.2025, Medical report and CT scan report of injured Jeetu Gupta was received and it was recorded after perusal. On the same day, supplementary statements of injured witness Jeetu Gupta, witness Laxman Gupta and complainant Urmila Devi were recorded. On the same day, the place of occurrence was inspected at the instance of injured Jeetu Gupta and prepared a Site Map in my handwriting. The said site map is available in the file as Paper No. 5Ka/1. It is in my handwriting and it bears my signature. I admit and the same is marked as **Exhibit Ka-19**. On the same day, the statements of eye witnesses Suresh Rai and Sachinath Rai were recorded. On 05.01.2025, the post-mortem reports of deceased Prashant Gupta and Golu Verma @ Ajay Kumar Verma was received which was perused and annexed it in the case dairy. After inspection of place of incident by the field unit, necessary action was taken and blood soaked soil and plain soil etc. were collected. The report was received, perused and annexed it in the

case diary. On 06.01.2025, information was received about the surrender of accused Priyanshu Rai S/o Pawan Rai before the Hon'ble Court. On the same day, a representation was submitted to the Hon'ble Court to record the statement of accused by going to Mau District Jail. On 08.01.2025, information was received about the arrest of accused Rudresh Rai @ Shivam S/o Namon Narayan Rai @ Lallu Rai in Bihar. On that information, a warrant B was issued from the Hon'ble Court to summon the aforementioned accused and executed as per rules. On 09.01.2025, information was received about the surrender of accused Bittu Yadav S/o Lallan Yadav R/o Narayanpur, Police Station-Narhi before the Hon'ble Court. On 10.01.2025, permission was obtained from the Hon'ble Court to record the statements of the accused persons at District Jail. Sections 352, 3(5) BNS were added in the case, and representation was submitted for change in remand. On 10.01.2025, the statements of witnesses of Inquest (Panchayatnama) Vishambar Verma, Jitendra Kumar Verma, Bittu Gupta, Bhourik Prasad and Rajesh Gupta (writer of the complainant) were recorded. On 12.01.2025, the statements of accused persons Priyanshu Rai and Bittu Yadav were recorded with the permission of Court by going to the District Jail Mau. On 18.01.2025, the statements of eyewitnesses of the incident Rahul Gupta and Amarnath Verma were recorded. On 25.01.2025, a receipt was received regarding goods related to the incident, received at FSL Ramnagar Varanasi which was perused and annexed in the case diary. Thereafter, I (investigating officer) was transferred. Recovery memo (Fard) was prepared in connection with the murder weapon Axe (Tangi) which was recovered from the accused Shivam Rai. Photocopy of Recovery memo (Fard) is available in the file as Paper No. 11 Kha/31 to 11Kha/33. The original copy of Recovery memo (Fard) is attached to FIR No. 5/2025 registered at the Police Station under Section 109 BNS and 3/25 Arms Act vs. Shivam Rai and the case is pending in the Court of A.S.J Court No. 4. The certified copy of recovery memo (Fard) was filed in this file with the permission of the Hon'ble court. It is available in the file as Paper No. 29Kha/1 to 29Kha/3 and it bears my signature. I

admit and the same is marked as **Exhibit Ka-20**. The seal was broken and the bag was opened with the permission of the Court. A white cloth-wrapped Axe with a bamboo stick was found inside. Paper is pasted on the handle, 41-Sero-25 was mentioned on that paper. A small signature of the Deputy Director, Forensic Science Laboratory, Varanasi is mentioned. FIR No. 1/25 Section 103(1), 109 BNS, Police Station Narhi vs. Shivam Rai and Others was mentioned on the white cloth of Axe and a small signature was there. Seeing this signature, the witness said that this is my signature. I admit. White cloth is marked as **Material Exhibit-1**. Seeing the Axe, the witness said that this Axe was recovered from the accused Shivam Rai during the investigation and it was sent to F.S.L, Varanasi for examination after being stamped. Axe is marked as **Material Exhibit-2**. Four transparent plastic boxes were found sealed in that bag. These boxes were wrapped in white cloth. The cloth of two boxes mentioned FIR No. 1/25, Section 103(1), 109 BNS. Blood-soaked soil, plain soil were recovered from near the place of occurrence of deceased Prashant Gupta and another two boxes were found mentioned FIR No. 1/25 Section 103(1), 109 B.N.S. Blood-soaked soil, plain soil were recovered from near the place of occurrence of deceased Golu Verma. A small signature was mentioned on the clothes of those four boxes. Seeing the signature, witness said that these are my signatures. I admit. Clothes are marked as **Material Exhibit-3, Material Exhibit-4, Material Exhibit-5** and **Material Exhibit-6** respectively. Both the boxes belong to deceased Prashant Gupta were opened, there are some particles of soil in both of them. On seeing it, the witness said that in one of these two boxes there was blood soaked soil and in the other one there was plain soil. The other two boxes which belong to deceased Golu Verma, one of them contains blood-soaked soil and the other contains plain soil. On seeing it, the witness said that this soil was collected in all the four boxes by the field unit from the place of incident. The said blood soaked soil and plain soil were obtained from the field unit and sent by me for examination to F.S.L Ramnagar, Varanasi. I admit and the same are marked as **Material Exhibit-7**,

Material Exhibit-8, Material Exhibit-9 and Material Exhibit-10 respectively. This blood soaked soil and plain soil were collected by the field unit after inspecting the place of incident on 01.01.25. I have entered it in the G.D dated 05.01.25.

The prosecution headed by Ld. DGC (Crl.) closed its evidence by making endorsement on the margin of the order sheet dated 26.03.2026.

After completion of prosecution evidence, statements of accused persons Bittu Yadav, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai were recorded under Section 351 B.N.S.S. Accused persons denied most of the allegation and stated the prosecution story to be incorrect.

Defence has examined defence witness Suresh Rai as D.W.1.

Suresh Rai D.W.1 has stated in his examination-in-chief on oath that I am working as Principal at Saraswati Shishu Mandir, Village Narayanpur. No threat of beating was given to Jeetu Gupta and Bholu Verma by Shivam Rai @ Kariya Rai, Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav from Village Narayanpur, at my school on 15.12.2024. Neither Jeetu Gupta and Bholu Verma made any complaint to me, nor did I make any complaint to the parents of Shivam Rai @ Kariya Rai, Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav. On the road from Kotwa Narayanpur Chatti to Kanuan village, there are beer and liquor shops on the roadside in my village. House of many people are located on the other side. Pragya School is located approximately 100 meters west of these shops.

Heard learned D.G.C (Criminal) for the State Shri Sanjeev Kumar Singh, learned defence counsel Shri Ramjee Rai for the accused persons Priyanshu Rai and Shivam Rai @ Kariya, learned defence counsel Shri Anil Kumar Rai for the accused Rudresh Rai @ Shivam Rai and learned defence counsel Shri Jai Govind Rai for the accused Bittu Yadav.

Learned D.G.C (Criminal) initiated the argument for the state and submitted that the date of incident is 01.01.2025 between 07:00-08:00 P.M. in the night at Narayanpur Chatti near beer shop. The FIR was promptly registered in the night after a gap of about 4-5 hours on

02.01.2025 at 00:26 hours. He argued that the accused persons murdered two young man Prashant Gupta and Ajay Verma @ Golu in a gruesome manner and attempted to kill one person Jeetu Gupta. He argued that the complainant Urmila is not an eye witness and she had stated on the basis of information received from others and therefore use of broad bladed sword (Dao) is mentioned in the written complaint. He further argued that the crime weapon used is Axe (Tangi) and not broad bladed sword (Dao). He submitted that motive is not relevant in the present case as the prosecution has proved its case with the help of injured witness and eye witness. He also argued that for the offence of attempt to murder, intention to kill is important and not the injury. He also argued that the accused persons intentionally killed two men and attempted to kill injured Jeetu Gupta. He also argued that Kotwa or Kotwa Narayanpur Chatti both are same. He further argued that nature of injuries corroborates with the crime weapon Axe (Tangi) which was recovered at the behest of accused persons. He also argued that the place of occurrence is near beer shop and Pragya School is just nearby. He also submitted that Pragya School is used as landmark and it is nearby so the same is used to locate the actual place of occurrence. He further argued that the presence of injured witness and eye witness at the place of occurrence is proved by the prosecution. He also submitted that the photograph and pen drive relied by the defence counsel can be read against the defence even if it is not admissible as per Evidence Act. He also argued that the witnesses identified accused persons in the light available at beer shop. Learned DGC finally submitted that the prosecution has proved its case against all the accused persons beyond all reasonable doubt. Thus prayed for conviction of all the accused persons Bittu Yadav, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai for the charged offences.

Prosecution has not produced any case law in support of his argument.

Learned defence counsel for the accused persons Shivam Rai @ Kariya and Priyanshu Rai submitted that there is no mention of injury of

Jeetu Gupta in FIR. Had Jeetu received injury on the date of occurrence then he must have been medically examined on 01.01.2025, but the medical OPD was made on 02.01.2025 just to create evidence. He also argued that the place of occurrence near Pragya School has not been proved by the prosecution. Pragya School and beer shop are separated by about 100-150 Meter distance. He also argued that he has filed photographs and pen drive as defence evidence which shows Jeetu Gupta was not wearing Muffler and had not received any fatal injury. He also argued that FIR mentions about broad bladed sword (Dao) and Axe (Tangi) in the written complaint but the Dao has neither been recovered nor been proved by the prosecution. He also argued that the motive of complaint to the Principal of Saraswati Sishu Mandir has not been proved by the prosecution. He also argued that prosecution evidences suffers from material contradiction. Ocular and medical evidence do not corroborate each other. One of the prosecution witness has stated that one deceased was hit with Axe and other was hit with Dao but prosecution has failed to prove it. He further argued that the investigating officer has submitted about fire by fire arm but no cartridge or fire arm was recovered. He further submitted that prosecution has failed to prove its case against accused persons Priyanshu Rai and Shivam Rai @ Kariya beyond all reasonable doubt. Thus prayed for acquittal.

Learned defence counsel for accused Rudresh Rai @ Shivam Rai submitted that the complaint do not mention name of witnesses. There is no mention of nature of injuries received by Jeetu Gupta in FIR. Jeetu Gupta is a planted witness as he was not present at the place of occurrence at the time of incident. He argued that it is a case of blind murder as the incident was not seen by any of the witnesses. He submitted that motive of the crime has not been proved by the prosecution. The place of occurrence is shifting in nature. FIR mentions about Pragya School but in evidence it is 100-150 steps away from beer shop. The prosecution has further suggested the place of occurrence at Kotwa Chhatti which is 500 steps away from Pragya School. The I.O.

has not shown the presence of eye witnesses at the place of occurrence in his site map. He further argued that the prosecution evidence is contradictory in nature with regard to manner of occurrence. It is not possible to inflict injury on the neck of the deceased if three accused persons catch hold of deceased either from the front side or from the back side. He also argued that injuries of Jeetu Gupta is not dangerous to life and he was examined by police after three days. He also argued that the prosecution evidence suffers from evidence of interested witness as Jeetu Gupta P.W.1 is son of Bhorik Prasad Gupta P.W.4. Rahul Gupta P.W.2 is real brother of deceased and is a interested witness. The evidence of interested witness cannot be relied. He also argued that the medical evidences clearly shows three different nature of injuries and it is not possible to come from one crime weapon. He further argued that Rahul Gupta P.W.2 was examined by the police after 18 days and therefore his evidence cannot be relied upon. He also argued that prosecution has failed to prove source of light as the incident was between 07:00-08:00 P.M. on 1st January. In January it is foggy nights. He argued that the role assigned to accused Rudresh Rai @ Shivam Rai to catch hold deceased along with two other accused and therefore it is not possible to inflict injury on the neck of the deceased. The prosecution has failed to prove its case against accused Rudresh Rai @ Shivam Rai beyond all reasonable doubt. Thus prayed for acquittal of Rudresh Rai @ Shivam Rai.

Learned defence counsel for accused Bittu submitted that the prosecution has failed to prove the place where inquest took place. The FIR was registered at 00:26 hours then how it is possible to start inquest at the same time. Prosecution has not proved that dead body was in the police station at that time. The prosecution evidences are contradictory with regard to place of inquest as one witness says that inquest was conducted at place of occurrence and another says inquest was conducted at mortuary house. He also argued that there was no source of light at beer shop and I.O. did not find any bulb in beer shop. There is no recovery of crime weapon from accused Bittu Yadav and has no

criminal history. He further argued that the prosecution has failed to prove its case beyond all reasonable doubt and therefore he deserves to be acquitted.

Learned defence counsel for the accused Rudresh Rai @ Shivam Rai has produced following case law in support of his argument:-

- 1- Sudheer Kumar Verma Vs. State of U.P., in Criminal Appeal No.1251 of 1986 along with Criminal Appeal No. 595 of 1987 decided on 29.04.2003

Learned defence counsels for the accused persons Shivam Rai @ Kariya, Priyanshu Rai and Bittu Yadav have not produced any case law in support of their argument.

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

Section 100 B.N.S:-

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 101 B.N.S:-

Murder - Except in the cases hereinafter excepted, culpable homicide is murder,

(a) if the act by which the death is caused is done with the intention of causing death, or

(b) if the act by which the death is caused is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or -

(c) if the act by which the death is caused is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

(d) if the person committing the act knows that it is so imminently dangerous that it must, in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.

Exception 1.- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

Provided that provocation is not, -

(a) sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person;

(b) given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

(c) given by anything done in the lawful exercise of the right of private defence.

Explanation – Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2 – Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3 – Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith believes to be lawful and necessary for the due discharge of his duty as such public servant and

without ill-will towards the person whose death is caused.

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

Explanation- It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5 – Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Section 103 B.N.S:-

Punishment for murder.— (1) Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

(2) When a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other similar ground each member of such group shall be punished with death or with imprisonment for life, and shall also be liable to fine.

Section 109 B.N.S:-

Attempt to murder – (1) Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

(2) When any person offending under sub-section (1) is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death or with imprisonment for life, which shall mean the remainder of that person's natural life.

Section 352 B.N.S:-

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 3(5) B.N.S:-

Acts done by several persons in furtherance of common intention—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

On the basis of the arguments advanced by the parties, following **Points for Determination** arises before this Court in this Sessions Trial :-

1. Whether the F.I.R is delayed ? If yes, then whether delay is satisfactorily explained by the prosecution ?
2. What is the motive of the commission of the offence ? Whether it is relevant in the present case ?
3. Whether the place of occurrence is fixed or is shifting in nature ?
4. Whether the accused persons Bittu Yadav, Priyanshu Rai, Shivam Rai @ Kariya and Rudresh Rai @ Shivam Rai surrounded Jeetu Gupta on 01.01.2025 at about 07:00-08:00 P.M. near beer shop and accused Shivam Rai @ Kariya Rai inflicted injury on Jeetu Gupta with Axe (Tangi) on his neck with intention to kill and further accused Shivam Rai @ Kariya Rai inflicted injuries on Prashant Gupta on his neck when he came to protect Jeetu Gupta and inflicted injury on Ajay Verma @ Golu on his neck when Ajay Verma tried to protect Prashant Gupta with the active help and support of Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav in furtherance of common intention to kill Jeetu Gupta, Prashant Gupta and Ajay Verma @ Golu and Prashant

Gupta and Ajay Verma @ Golu died due to injuries inflicted by Shivam Rai @ Kariya Rai ?

5. Whether the ocular evidence and medical evidence regarding injuries found on the body of the deceased persons Prashant Gupta and Ajay Verma @ Golu corroborates each other and are connected with crime weapon ?
6. Whether the charges levelled against the accused persons by the prosecution have been proved beyond reasonable doubt and whether the accused are liable to be convicted ?

Point for Determination No. 1:-

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

As per prosecution case in view of written complaint Exhibit Ka-1, the date of incident is 01.01.2025 in the night between 7:00-8:00 P.M. The F.I.R was registered in the intervening night of 01/02.01.2025 at 00.26 A.M. Check F.I.R Exhibit Ka-5 shows the place of occurrence situated at a distance of 20 Km from police station in the south side. A joint written complaint Exhibit Ka-1 was given at police station and the complainant Urmila Devi P.W.1 has put her thumb impression and Laxman Gupta signed the written complaint. The complainant Urmila Devi is the mother of deceased Ajay Verma @ Golu Verma and complainant Laxman Gupta is the father of deceased Prashant Gupta. The above facts clearly discloses that there is a time gap of about 4-5 hours in getting the FIR registered at police station.

Rahul Gupta P.W.2 has stated in the cross-examination at Page-4 that he reached home from the place of incident within 5-6 minutes to inform them. P.W.2 has further stated at Page-5 that seeing the injuries, he did not immediately run away towards his house, he hid in a nearby forest like area. He remained there for about 10-20 minutes. When accused persons fled after inflicting injuries upon deceased persons and injured then he went to home.

Urmila P.W.3 has stated in the cross-examination at Page-3 that Rahul and Amarnath had informed her at about 08:00 or 08:15 P.M. She

had gone to place of occurrence within 10 minutes after receiving information. Again stated that she had gone after half an hour. She stayed at the place of occurrence for about 15 minutes. She has further stated that she had gone to Police Station that night. She got the complaint written by Rajesh Gupta. Rajesh Gupta had brought paper to write complaint. She had reached police station with complaint at 11:00 P.M.

As per evidence of Rahul Gupta P.W.2 and Urmila P.W.3, it clearly shows that after receiving information of incident at about 8:00-8:15 P.M. Urmila P.W.3 went to the place of occurrence at about 08:45 P.M and she stayed at the place of occurrence for about 15 minutes. It means that she returned her home at about 9:20 P.M. She must have suffered mental shock after seeing the dead body of her son and definitely she would take some time to organise herself. It was cold winter night on 1st January and being rural area it must have taken some time to arrange conveyance for going to police station. She travelled a distance of about 20 K.M. from her house. P.W.3 has stated at Page-3 that she reached police station at 11:00 P.M that night. Constable Munshi Rikh Dev Yadav P.W-5 has stated in the cross-examination at Page-1 that Urmila and Laxman Gupta came to Police Station with a written complaint. Complaint writer Rajesh had also come with them. P.W.5 has stated at Page-2 that he got complaint (Tahrir) at about 11:55 P.M. Some time must have been consumed at police station to fulfill the procedural formalities to register the FIR.

Thus in the background of the above facts and circumstances as well as analysis of evidences, it can be concluded that though about 4-5 hours elapsed in getting the FIR registered but it cannot be termed as delayed registration of FIR.

Point for Determination No. 2:-

What is the motive of the commission of the offence ? Whether it is relevant in the present case ?

Jeetu Gupta P.W-1 has stated in his evidence discussed in detail above. Jeetu Gupta has stated that he and his friend Bholu Verma were

studying last year (15.12.2024) at Saraswati Shishu Mandir Narayanpur High School. Shivam Rai @ Kariya Rai, Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav, all residents of Narayanpur Mauja had threatened to beat his friend Bholu Verma on 15.12.2024. The motive of the crime is complain about this threat to the Principal of above school Suresh Rai. Suresh Rai had also complained about those four persons to their guardians.

Due to the complaint made to Principal Suresh Rai, the above four persons Shivam Rai @ Kariya Rai, Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav surrounded Jeetu Gupta in front of the beer shop on 01.01.2025 in the night at about 7:00 - 8:00 P.M. and Shivam Rai @ Kariya Rai hit Jeetu Gupta with intention to kill with Axe (Tangi). When his cousin Prashant Gupta tried to save him (Jeetu Gupta), Prashant Gupta was attacked and injury was inflicted on the neck of Prashant Gupta with Axe (Tangi). When Ajay Verma @ Golu tried to save Prashant, then the accused persons also attacked Ajay Verma @ Golu on the neck with Axe (Tangi). Due to the attack by Shivam Rai @ Kariya with Axe (Tangi), Prashant Gupta and Ajay Verma @ Golu died on the spot.

Jeetu Gupta P.W-1 has stated in his cross-examination at Page-5 that he had made complaint to the Principal only. He had not given any information to the police or any officer. P.W.1 has further stated that the accused persons had threatened to kill Bholu at Saraswati Shishu Mandir School before this incident. The accused persons did not threat him first. They threatened him when he spoke. They told him that if he told anyone then they would kill him also.

Urmila P.W.3 has stated in her cross-examination at Page-4 that they had no dispute with Bittu Yadav.

Suresh Rai D.W.1 has denied any complaint made by Jeeta Gupta against the accused persons regarding any threat in his examination in chief. The examination in chief of Suresh Rai D.W.1 is mentioned above.

D.W.1 has stated in his cross-examination at Page-2 that he can't

tell if anyone threatened someone outside the school premises. Jeetu Gupta didn't complain him. D.W.1 has further stated that he has knowledge that two persons had been murdered at Kotwa Chatti on 01.01.2025. He has further stated that later he got information that Jeetu Gupta student of his school was also injured in the incident. The accused persons in this incident are Shivam Rai @ Kariya, Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav all of his village. His caste is Bhumihar. The accused persons of this incident, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai also belong to his caste. Among them, Shivam Rai @ Kariya is his neighbor. He has normal relation with the above accused.

In **Makrand Singh and others Vs. State of UP [2022(2)] JIC 218 (All)]** the Hon'ble Court has referred **Pratap Singh Vs. State of UP 2021 SCC online All. 686** in Para-29, wherein the Hon'ble Court held that, "motive is not relevant in the case of direct evidence, where dependable ocular version is available. Once there is evidence forthcoming on the basis of an eye-witness account i.e consistently narrated by the multiple witnesses motive is hardly relevant." Though the motive is important but it is not of much relevance when the case is based on the testimony of injured witness and eye-witness. Learned counsel for defence has relied upon **Sudheer Kumar Verma case law (supra)** wherein the Hon'ble Court held that when there is direct evidence of murder then absence of motive or proof of motive becomes insignificant.

The present case is also based on the testimony of injured witness Jeetu Gupta P.W. 1 and eye witness Rahul Gupta P.W.2. The quality and reliability of the injured and eye witness would be discussed in the next point for determination. If the testimony of the injured and eye witness is found credible and trustworthy then the motive of the offence becomes insignificant.

Thus the case law relied by the defence discussed above also supports the conclusion arrived at by this Court.

Thus on the basis of analysis of evidences and the principles of law propounded above, it can be concluded that the motive is relevant in the present case but it is not sine qua non for proving the case in view of the case being based on testimony of injured and eye witness.

Point for Determination No.3:-

Whether the place of occurrence is fixed or is shifting in nature ?

As per written complaint Exhibit Ka-1, the place of occurrence is shown to be near Pragya School. Jeetu Gupta P.W.1 has stated in his examination in chief at Page-1 that he was going to Narayanpur in the night between 7:00-8:00 P.M. then all the accused persons caught Jeetu Gupta near beer shop. Thus according to P.W.1 the place of occurrence is near beer shop. In the cross-examination P.W.1 has stated at Page-3 that his house and the house of deceased is situated in village Sikandarpur at the bank of river Ganges. The concrete road (Damar Road) of Bharauli - Ghazipur is at a distance of about half kilometer from his (Jeetu Gupta P.W.1) house. The dak bungalow is about 500 meter on the east side from his house. It is correct that there are shops on the both sides of the concrete road and this place is called as Kotwa Chatti. Village Narayanpur is about 400 meter on the north side from Kotwa Chatti. Rahul Gupta P.W.2 has stated in his cross-examination at Page-2 that the incident took place in front of beer bhatti (shop) and dead bodies were lying there. Pragya School is about 100-150 meter on the north side from beer bhatti (shop). Urmila P.W.3 has stated in her cross-examination at Page-2 that both the dead bodies were lying at some distance from Pragya School gate on the north side. Bhorik Prasad P.W.4 has stated in his cross-examination at Page-6 that the beer and the wine shops are on the road going towards Kanuwan from Kotwa Tri-Junction and Pragya School is to the west of the wine and beer shop. He had seen both the dead bodies on the brick pathway side of the Kanuwan Raod. Pragya School is at a distance of 15 meter from the place where he had seen the dead bodies lying. One dead body was lying in front of country made wine shop and another dead body was lying in front of beer shop. Both were at a distance of 5-7 steps (Faal). It is pertinent to note that Urmila P.W.3 has stated about dead bodies lying near Pragya School, however she is not the eye witness. She has stated in her evidence on Page-1 that she got the complaint Exhibit Ka-1 written by Rajesh Gupta on the information given by Rahul and

Amarnath. It is important to note that when a mother (Urmila P.W.3) had lost her son in a gruesome murder that it cannot be expected of her to tell the complaint writer Rajesh Gupta with mathematical precision with minute details. Certain facts are mentioned and certain facts are lost. This shows that the contents of the written complaint is not concocted and got written in a shocking mental state. Therefore the evidence of Urmila P.W.3 has a limited importance. The evidences regarding place where dead bodies are shown to be lying in front of beer and wine shops is on the road going towards Kanuwan from Kotwa Narayanpur Chatti or Kotwa Tri-Junction. The evidences of Rahul Gupta P.W.2 and Bhorik Prasad Gupta P.W.4 clearly proves the fact that Pragya School is near the beer and wine shops. P.W.2 has stated Pragya School to be 100-150 meter from beer shop whereas P.W.4 has stated the Pragya School to be at 15 meter from wine and beer shops. Suresh Rai D.W.1 has also stated that there are beer and wine shops on the road side in his village on the road running from Kotwa Narayanpur Chatti towards village Kanuwan. The Pragya School is at a distance of about 100 meter from the above shops. In the cross-examination D.W.1 has stated that Kotwa Narayanpur has three Mauja, one is Kotwa Narayanpur, second is Sikandarpur and third is Saraikota. Sikandarpur is at a distance of about 2 K.M. from Kotwa Narayanpur. He has further stated in the cross-examination at Page-2 that he has information about murder of two persons on 01.01.2025 at Kotwa Chatti. Jeetu Gupta P.W.1 has stated in the cross-examination at Page-3 that village Narayanpur is at a distance of about 400 meter on the north side from Kotwa Chatti. The above evidences clearly proves that this entire area is known as Kotwa Narayanpur Chatti. The place of occurrence is in front of beer and wine shops as shown by the Investigating Officer P.W.10 in the Site Map Exhibit Ka-19. Pragya School is one of the landmark situated in the nearby vicinity. Whether Pragya School is about 100 meter or about 15 meter on the west side from wine and beer shops, it will be termed as nearby area. The wine and beer shops are only shops and by itself it does not denote any particular place. When it is said that

the wine and beer shops near Pragya School then location of beer and wine shops becomes specific and the place becomes certain and identifiable. Even the defence evidence also proves the Pragya School is located at about 100 meter from wine and beer shops. Thus the wine and beer shops can be held to be nearby Pragya School, which is at a distance of few meters. No eye-witnesses have said that the place of occurrence is at the gate of Pragya School or near the gate of Pragya School. Thus the place of occurrence is in front of beer and wine shops on the Kotwa Narayanpur Chatti area and the road going towards Kanuwan. This place of occurrence is identified to be located at some distance from Pragya School.

On the basis of analysis of above evidences it can be concluded that the prosecution has proved place of occurrence and it is not shifting in nature.

Point for Determination No.4:-

Whether the accused persons Bittu Yadav, Priyanshu Rai, Shivam Rai @ Kariya and Rudresh Rai @ Shivam Rai surrounded Jeetu Gupta on 01.01.2025 at about 07:00-08:00 P.M. near beer shop and accused Shivam Rai @ Kariya Rai inflicted injury on Jeetu Gupta with Axe (Tangi) on his neck with intention to kill and further accused Shivam Rai @ Kariya Rai inflicted injuries on Prashant Gupta on his neck when he came to protect Jeetu Gupta and inflicted injury on Ajay Verma @ Golu on his neck when Ajay Verma @ Golu tried to protect Prashant Gupta with the active help and support of Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav in furtherance of common intention to kill Jeetu Gupta, Prashant Gupta and Ajay Verma @ Golu and Prashant Gupta and Ajay Verma @ Golu died due to injuries inflicted by Shivam Rai @ Kariya Rai ?

First of all it is to be seen whether Jeetu Gupta P.W.1 was present at the place of occurrence at the time of incident. Bhorik Prasad Gupta P.W.4 has stated in the cross-examination at Page-4 that when he (P.W.4) reached the place of occurrence then two police men took away his son Jeetu on motorcycle. Learned defence counsel has admitted

presence of Jeetu Gupta at the place of occurrence with deceased by asking question to this witness P.W.4 at Page-7 that whether in photo based on videography shows a boy as Jeetu or not. P.W.4 could not say anything in this regard as the photo was blurred. It shows that Jeetu Gupta P.W.1 was present at the place of occurrence on the date of incident and this statement has come in the cross-examination of defence. Although this photograph has not been proved by the defence in accordance with the provisions of Indian Evidence Act. However, by admitting Jeetu Gupta present in the photograph corroborates the prosecution evidence regarding presence of Jeetu Gupta at the place of occurrence at the time of incident. Dr. Prakash Chandra Rai P.W.7 has stated in his evidence at Page-1 that injured Jeetu Gupta had come to C.H.C Narhi on 01.01.2025 and he was medically examined by Dr. Suman. A medical slip No. Emergency 2278 was also made in that connection. The above said emergency prescription issued by C.H.C Narhi dated 01.01.2024 in the name of Jeetu Gupta E-2278 is on record as Paper No. 10Ka/8. This emergency slip shows date 01.01.2024 and it has been clarified by the Investigating Officer Inspector Nadim Ahmad P.W.9 who has filed Charge-sheet Exhibit Ka-17. The learned defence counsel has clarified this clerical mistake when he cross examined P.W.9 at Page-3. P.W.9 has stated at Page-3 in the cross-examination that Jeetu Gupta had gone to Government Hospital Narhi on 01.01.2025. Doctor has possibly committed mistake in recording date as 01.01.2024 O.P.D. slip registration no. E-2278. This also proves that Jeetu Gupta P.W.1 went to C.H.C. Narhi on 01.01.2025 to get medical treatment. Defence has examined a witness Suresh Rai as D.W.1. D.W.1 has stated at Page-2 that he came to know later that a student Jeetu Gupta of his school got injured in that incident. Shivam Rai @ Kariya, Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav are of his village and made accused in this incident. Learned defence counsel for the accused Rudresh Rai @ Shivam Rai and Bittu Yadav has cross-examined Jeetu Gupta P.W.1. P.W.1 has stated at Page-6 that when the accused persons had caught him at that time Prashant and Golu were present at a distance

of 5-6 steps. Golu and Prashant were enjoying. The assailant was beating him. The assailant hit him two times on his head and neck and so he fell down. When he fell down then the assailant did not beat him further rather started beating them. He had not seen any weapon with three accused persons who had caught him. Thus the defence admits not only presence of Jeetu Gupta P.W.1 at the place of occurrence rather admits that three accused persons Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav had caught him and one assailant Shivam Rai @ Kariya hit him.

The statement of Jeetu Gupta P.W.1 in examination in chief is regarding threat to beat his friend Bholu Verma by all the accused persons. When he made a complaint to the Principal Suresh Rai then the above named four accused persons surrounded him (Jeetu Gupta P.W.1) on 01.01.2025 at 7:00-8:00 P.M. in front of beer shop. Due to complaint made by him to the Principal of the Saraswati Shishu Mandir School, the accused persons Priyanshu Rai, Rudresh Rai @ Shivam Rai, Bittu Yadav caught him and Shivam Rai @ Kariya hit him with Axe on his neck with intention to kill him. Since he was wearing Muffler around his neck, therefore he did not receive any cut injury on his neck but got serious injury. His cousin Prashant Gupta came to protect him (Jeetu Gupta P.W.1) and later Ajay Verma @ Golu came to protect Prashant Gupta then the accused Shivam Rai @ Kariya inflicted injuries on the neck of Prashant Gupta and Ajay Verma @ Golu with Axe. The detail examination in chief of Jeetu Gupta P.W.1 has already been discussed above. Jeetu Gupta P.W.1 has stated in his cross-examination at Page-4 that beer shop is at a distance of 8-9 steps on the west side of the concrete road (Damar Road). A country made wine shop is also nearby. There are houses on the adjacent sides of the beer and wine shops but he can't tell the name of the owner of the houses. He had fallen at about 10 steps from the beer shop on the north side after receiving injury. Prashant was also lying at a distance of 2-3 steps from him on the south side and Golu Verma @ Ajay was lying at a distance of 10-15 steps from Prashant on the south side. The above evidence gets corroborated

from the Site Map Exhibit Ka-19 prepared and proved by Investigating Officer Sunil Chandra Tiwari P.W.10. In the Site Map Exhibit Ka-19 beer shop is shown by Letter 'A' and the I.O. P.W.10 has shown the murder of Prashant Gupta in front of beer shop and denoted by 'XX'. From the body of the Prashant on the south side, body of Golu Verma is shown lying and denoted by 'X'. Thus the oral evidence of Jeetu Gupta P.W.1 gets corroborated with Site Map Exhibit Ka-19. Learned defence counsel for the accused persons Shivam Rai @ Kariya and Priyanshu Rai did not do any further cross-examination from P.W.1 with regard to the evidence that all the accused persons surrounded Jeetu Gupta and accused Shivam Rai @ Kariya hit Jeetu Gupta with Axe on his neck. There is no cross-examination with regard to the evidence of P.W.1 that when Prashant Gupta tried to protect Jeetu Gupta then three accused persons caught him and Shivam Rai @ Kariya hit Prashant Gupta on his neck with Axe. There is no cross-examination regarding evidence of P.W.1 that when Ajay Verma @ Golu tried to protect Prashant Gupta then three accused persons surrounded him and accused Shivam Rai @ Kariya hit Ajay Verma @ Golu on his neck with Axe. The above evidences remained uncontroverted with regard to role of facilitation and support by accused Bittu Yadav, Priyanshu Rai and Rudresh Rai @ Shivam Rai and inflicting injuries by accused Shivam Rai @ Kariya upon deceased persons Prashant Gupta and Ajay Verma @ Golu and injured Jeetu Gupta on their neck with Axe.

Thus on the basis of above evidences, it is proved that Jeetu Gupta P.W.1 was not only present at the place of occurrence on the date of incident rather he also got injuries in the beating by accused Shivam Rai @ Kariya Rai.

Even the defence admits the presence of Prashant and Golu nearby Jeetu Gupta. It is not the case of the prosecution that three accused persons Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav were carrying any weapon or they hit injured or the deceased with any weapon. In fact defence has admitted the role of the above three named accused persons assigned by the prosecution is of catching

hold of injured Jeetu Gupta P.W.1 and later deceased persons Prashant Gupta and Ajay Verma @ Golu. If the above named three accused persons had not actively participated in catching hold of injured Jeetu Gupta and deceased persons Prashant Gupta and Ajay Verma @ Golu then accused Shivam Rai @ Kariya might not have been successful in injuring one Jeetu Gupta and killing two persons single-handedly.

The examination in chief of Rahul Gupta P.W.2 has already been discussed in detail above. Rahul Gupta P.W.2 is brother of deceased Prashant Gupta. P.W.1 has stated in the cross-examination at Page-3 that when Urmila, Rahul, Laxman and Amarnath came to the place of occurrence then all of them were lying on the earth. He was taken to hospital by Rahul, Laxman and Amarnath. Rahul Gupta P.W.2 has stated at Page-2 that he (P.W.2) and Amarnath had seen the incident and informed at his home and to the family of Golu Verma regarding incident. In the cross-examination on Page-2 he has stated that he had informed Urmila and Laxman. He had informed Urmila at her home and informed his family members after going to his home. He has further stated that the incident took place in front of beer bhatti (shop) and the dead bodies were lying there. Thus the evidence of P.W.1 and P.W.2 discussed above clearly shows that Rahul Gupta P.W.2 informed Urmila and his father Laxman at his home after seeing the incident and later all of them came to the place of occurrence and saw all three lying on the earth. P.W.2 has stated at Page-3 that if Jeetu has said that Urmila, Laxman, Rahul Gupta and Amarnath had come to the place of occurrence after the dead bodies were lying on the earth then it would be wrong. The defence has not clearly asked whether all the four persons Urmila, Laxman, Rahul and Amarnath came together or came separately. It is possible that all of them had come separately. Therefore the statement of P.W.2 at Page-3 is not of much importance.

P.W.2 has stated in the cross-examination at Page-4 that the accused persons had caught Jeetu from behind and both the deceased from front. All the accused had caught in arms. Thus the defence admits the presence of accused persons as well as presence of Jeetu. It is not

possible for all three accused persons to catch hold of one person in arms together whether injured Jeetu or deceased Prashant Gupta or Ajay Verma @ Golu. Only one person can catch hold of a person in his arms at a time. Once a person has embraced another in his arms then it is not possible for other person to similarly catch hold of that person by embracing him in his arms from either back or front side. It is possible that one person will hold one arm and another person will hold another arm and third person will embrace that person surrounding his chest, abdomen or waist area. In such situation it becomes easier to immobilise the person and another person has clear view to hit him on his neck. In the present case the person is Jeetu Gupta firstly and Prashant Gupta and Ajay Verma @ Golu secondly and thirdly. The answer in the cross examination is dependent upon the framing of the question by the defence. The above evidences of prosecution witnesses have come depending on the nature of question asked by the defence. Learned defence counsel has referred **Sudheer Kumar Verma case law (supra)** wherein the Hon'ble Court held in **Para-18** that the role of appellant Musa Chikwa @ Virendra was catching hold of the deceased from front by embracing waist and therefore injury on chest is not possible. As per evidence of Jeetu Gupta P.W.1 and Rahul Gupta P.W.2 in the present case the accused Priyanshu Rai, Bittu Yadav and Rudresh Rai @ Shivam Rai caught Jeetu from behind and deceased Prashant and Ajay Verma @ Golu from front. In either of the case the head and neck region is freely available for hitting with the crime weapon Axe (Tangi). It also depends upon the height of the accused in comparison to the victim. Moreover, the accused persons catching from behind or front side may adjust their upper torso to allow the assailant Shivam Rai @ Kariya to hit the injured Jeetu Gupta and deceased Prashant Gupta and Ajay Verma @ Golu on his neck. Thus in present case the injury is possible to be inflicted on neck of deceased. Thus due to difference in factual matrix of above case law from the present case, it is not attracted. Thus no benefit can be given to the defence. P.W.2 has further stated in the cross-examination that Jeetu was lying in front of wine bhatti, Prashant

was lying to the north of Jeetu and Golu was lying to the south of Jeetu. He was not carrying mobile with him. He had reached his home from place of occurrence within 5-6 minutes to give information. The accused has again admitted through the defence counsel that not only Jeetu, Prashant and Golu were lying near wine bhatti (shop) rather Rahul Gupta P.W.2 went to home to inform about the incident taking place at the place of occurrence and reached within 5-6 minutes. He was not carrying mobile that is why he went home to inform. It is possible that after receiving information, his father Laxman Gupta and mother Urmila of deceased Ajay Verma @ Golu, Amarnath and Rahul came, may be separately, as stated by P.W.1 at Page-3. Rahul Gupta P.W.2 informed Urmila and Laxman. Urmila came to the place of occurrence. Urmila P.W.3 has stated in her cross-examination at Page-3 that she had gone to the place of occurrence and she stayed there for about 15 minutes. She had seen her son lying on earth at the place of occurrence. Dead body of her son was lying on the spot. P.W.3 has stated at Page-4 that she had seen the neck of her son was cut. Apart from that she could not see any other injury. This does not mean that Rahul Gupta P.W.2 was not present at the place of occurrence at the time of incident.

P.W.2 has stated in the cross-examination at Page-5 that Bharauli-Ghazipur road is in East-West direction and he is having beetle shop (Paan ki dukaan) on this road at Kotwa Chatti on the south side. The place of occurrence of this incident would be around 400 meter from his shop. His house is about 100-150 meter from his shop. He has further stated at Page-5 that he did not run towards his house immediately on seeing the injured falling after getting injury rather he hid himself nearby forest like area. He remained there for about 10-20 minutes. He kept hiding there till the accused persons were beating. He went home when accused persons fled away after beating. Rahul Gupta P.W.2 has again stated at Page-6 that he reached the place of occurrence from north side. He had seen the incident from a distance of 40-50 meter. The conduct of this witness is natural. Prashant Gupta and Ajay Verma @ Golu had come to protect Jeetu Gupta but they were killed by the

accused Shivam Rai @ Kariya with active support and help from three accused persons Bittu Yadav, Priyanshu Rai, Rudresh Rai @ Shivam Rai. Had he also gone to intervene and protect injured or deceased then he (Rahul Gupta P.W.2) might also have been killed. P.W.2 has stated at Page-7 that Urmila Devi had two sons Golu Verma and Bholu Verma. Golu Verma has died. He is seeing Golu in his village since his (P.W.2) consciousness. He is not from his family nor he is his co-sharer. Thus Rahul Gupta P.W.2 is not related to Ajay Verma @ Golu.

The examination in chief of Bhorik Prasad Gupta P.W-4 is discussed in detail above that Prashant Gupta and Golu Verma of his village had been murdered by Shivam Rai, Bittu Yadav, Priyanshu Rai and Rudresh Rai on 01.01.2025. His son Jeetu Gupta was also injured in that incident.

Bhorik Prasad Gupta P.W.4 has stated in his cross-examination at Page-2 that he had reached the place of occurrence at about 8:00 P.M. When he reached the dead body of both the deceased were lying on the spot. P.W.4 has further stated at Page-6 that he had seen the dead body of both the deceased by the side of road. He had seen both the dead bodies on the brick pathway side of the Kanuwan Raod. One dead body was lying in front of country made wine shop and another dead body was lying in front of beer shop. Both were at a distance of 5-7 steps (Faal).

The examination in chief of Dr. Prakash Chandra Rai P.W.7 is discussed in detail above that on 02.01.2025 he examined the injuries of injured Jeetu Gupta and found 4 X 5 cm swelling on the back of his head. N.C.C.T was advised. On perusal of C T Scan report of injured Jeetu Gupta, no fracture was found. On the basis of the said report, a supplementary injury report was prepared on 27.03.2025 stating that injuries were simple.

Dr. Prakash Chandra Rai P.W.7 has stated in his cross-examination at Page-2 that he had medically examined injured Jeetu on 02.01.2025. Dr. Anjali Suman had medically examined injured Jeetu Gupta on 01.01.2025, but no medico legal certificate was made

regarding details of injury that day. P.W.7 has further stated that Jeetu had only swelling behind his head. He found simple swelling behind the head of Jeetu Gupta. It was neither contused swelling nor traumatic swelling.

The examination in chief of Dr. Manish Jaiswal P.W-8 is discussed in detail above. P.W.8 had conducted post mortem of deceased Ajay Verma @ Golu Verma and Prashant Gupta. Post mortem of Ajay Verma @ Golu started at 02:00 P.M. and ended at 02:30 P.M. on 02.01.2025. Following ante mortem injuries were found on his body:-

Ante mortem Injuries

- (i) Incised wound of size 8 cm x 5 cm bone deep on the left side of neck.
- (ii) Lacerated wound of size 1.5 cm x 0.5 cm on the right side just below the right corner of mouth.

The time since death of deceased Ajay Verma @ Golu is one day. Cause of death is due to shock and hemorrhage as a result of above ante mortem injuries.

Post mortem of deceased Prashant Gupta started at 02:30 P.M. and ended at 03:00 P.M. on 02.01.2025. Following injury was found on his body:-

Ante mortem Injuries

- (i) Stab wound of size 3 cm x 2 cm adjacent to left clavicle skin.

The time since death of deceased Prashant Gupta is one day. Cause of death is due to shock and hemorrhage as a result of above ante mortem injury. P.W.8 has also stated that injury no.1 of deceased Ajay Verma @ Golu and injury of Prashant Gupta is possible to have come from Axe on 01.01.2025 between 7:00-8:00 P.M. in the evening.

Dr. Manish Jaiswal P.W.8 has stated in his cross-examination at Page-3 that deceased Prashant Gupta had only one injury on his body. It was stab wound. Stab wound is also stated as Penetrating wound or punctured wound. Stab wound is received by pointed weapon knife, spear, arrow of bow. Stab wound has depth. Deceased had no injury on trachea. Deceased had injury of stab wound nearby collar bone. P.W.8

has further stated at Page-4 that deceased Ajay Kumar Verma @ Golu Verma had two injuries. Both the injured have total three injuries. First Stab wound, second incised wound and third lacerated wound. All the three injuries of both deceased are different in nature. All the three injuries are not possible to have come with one weapon. Incised wound comes from sharp cutting weapon and lacerated wound comes from hard & blunt weapon. Dr. Manish Jaiswal P.W.8 has already stated that injury no. 1 of Ajay Verma is incised wound and it is possible to come from Axe. Similarly P.W.8 has also stated that stab wound of Prashant Gupta is also possible to come from Axe. It is worth mentioning that in the cross examination defence has cleverly clubbed incised and stab wound with the lacerated wound and then asked a compound question and that is why P.W.8 has denied all the three injuries to come from one weapon. The Axe has various shapes. The nature of injury depends upon the manner in which it is used. If greater force is applied on the pointed part of the Axe and with that force it hits on the clavicle part then it may give appearance of stab wound. If the Axe is used straight with force then it will definitely give incised wound. However there is no change of crime weapon by the prosecution. It is through out case of the prosecution that sharp edge weapon Axe was used. The swelling injury on occipital region is possible to come if blunt side Axe hits the occipital part of skull. If blunt side of Axe hits the occipital part of skull then lacerated wound is possible. Therefore no contradiction found in the evidence of Dr. Manish Jaiswal P.W.8 so far as nature of injuries of both the deceased are concerned.

So far as OPD slip registration no. E-2286 dated 02.01.2025 Exhibit Ka-12 is concerned, it shows that Jeetu Gupta was examined and referred to District Hospital Ballia for NCCT Brain by Dr. Prakash Chandra Rai P.W.7. The OPD Slip Exhibit Ka-12 also shows that original was made by Dr. Anjali Suman. Supplementary report for OPD slip E-2278 was also made by Dr. Prakash Chandra Rai and proved by him as Exhibit Ka-13. The supplementary report shows that there was swelling in the occipital region of size 4 cm x 5 cm. The supplementary

report Exhibit Ka-13 has been made on the injury letter addressed by Narhi police station to the In-charge Medical Officer CHC Narhi Ballia. The supplementary medical report Exhibit Ka-14 shows Jeetu Gupta had simple injury caused by blunt object as reported by Dr. Satish Choudhary Radiologist. There is some delay in getting the injury report (MLC) of Jeetu Gupta prepared by the prosecution on 02.01.2025 but the first doctor, Dr. Anjali Suman had already recommended some medicine on 01.01.2025. RTA (Road Traffic Accident) is written on the OPD slip registration no. E-2278 dated 01.01.2024 (seems clerical mistake in place of 2025) may be because Jeetu Gupta went to CHC Narhi on his own and he was not sent with injury letter by the concerned police station. Merely for this reason the injury report/MLC Exhibit Ka-12, supplementary report Exhibit Ka-13 and Exhibit Ka-14 alone cannot make the prosecution case doubtful.

Learned defence counsel had argued that I.O. mentions about use of fire arm but no fire arm or cartridge were recovered. It is pertinent to mention that the present case is based on use of Axe (Tangi) as crime weapon and not the use of fire arm. The use of fire arm might relate to some other offence of different crime number. In this connection P.W.10 has stated in his evidence at Page-4 that case under Section 109 BNS and Section 3/25 Arms Act is pending in the Court of A.S.J.-IV. Thus the argument of the defence on this point is irrelevant and baseless.

Learned defence counsel had vehemently argued about not proving the source of light at the place of occurrence on the date of incident. The incident is of 01.01.2025 at 7:00 to 8:00 P.M. in the night. Jeetu Gupta P.W.1 has specifically stated at Page-2 that there was electricity and light was there in the shops near the place of occurrence. The entire incident took place and seen by people in the electrical light. The place of occurrence is in an around Kotwa Narayanpur Chatti area. In any market area electrical light would definitely be there for conduct of business. In absence of light, business cannot be conducted in the market area. The place of occurrence is not inside home or any secluded area of the village where absence of light may be possible. P.W.1 has

stated in the cross-examination at Page-5 that he had shown the places having bulb light near beer shop to the investigating officer (Daroga Ji). Learned defence counsel has cross examined P.W.1 in detail about source of light at Page-7. P.W.1 has stated that there was light at the place of occurrence that day. There were 5-6 shops open near the place of occurrence at the time of incident. There were customers present at the shops. The defence has not asked P.W.1 that whether there was fog on 01.01.2025 at the time of incident. Generally month of January is foggy but it is not necessary that every winter night of January would have dense fog. Even in fog visibility varies from 20-30 meters to couple of hundred meters. The time of incident was between 7:00 - 8:00 P.M. in the night and therefore generally at this time there is not much dense fog. Sunil Chandra Tiwari P.W.10 has stated in his cross-examination at Page-6 that he did not investigate about electrical bulb and tube light in the place nearby place of occurrence. Merely because the I.O. did not investigate about source of light at the place of occurrence will not make the incident doubtful nor it will disprove the fact of existence of light at the place of occurrence. It is pertinent to note that the place of occurrence is a market area that too near beer shop. During winter season generally people purchases beer and wine and therefore there must be presence of people in the shop. If the place of occurrence is market area then business is possible only when there is light in the shops in the market. The defence has not produced any evidence to the contrary that there was any load shedding or there was malfunctioning of the electricity or there was any routine electricity cut at the time of the incident. Even in the rural areas the government is supplying electricity in abundance and a judicial notice may be taken in this regard. Thus the source of light stands proved by the prosecution evidences and it cannot be doubted merely because the investigating officer has done some defective investigation by not collecting evidence regarding bulb or electricity.

Undoubtedly murder of two young men took place on 01.01.2025 in the Kotwa Narayanpur Chatti in front of beer shop. The inquest

proceedings are routine formal act done by the police. Even if inquest is not done then it alone cannot be considered fatal for the prosecution case. The defence had argued that there is contradictory evidence with regard to place of inquest. Sub-Inspector Ajay Sahni P.W.6 has stated at Page-1 that the dead bodies were kept in the cold room. With the help of mortuary staff and family members, the dead bodies were brought out and the proceedings of inquest (Panchayatnama) of the dead bodies were started. P.W.6 has stated in his cross examination at Page-4 that it took about 45 minutes to reach mortuary house from Narhi police station. It would have taken 3-4 hours to complete the inquest paper at Mortuary house. P.W.6 has stated at Page-6 that he had read all the enclosures of inquest and went to mortuary house to conduct inquest of both the dead bodies. Inspector Nadim Ahmad Faridi P.W.9 has filed Charge-sheet Exhibit Ka-17. He has stated in his cross-examination at Page-2 that as per statement of Constable Sohan Singh and Constable Nirbhay Singh the inquest of both the deceased was conducted at place of occurrence. Sunil Chandra Tiwari P.W.10 has stated at Page-10 that Bhorik Prasad Gupta told him (P.W.10) that inquest proceedings was done on the spot by S.I. Kuldeep Kumar. He has stated at Page-11 that he had also signed inquest. He further clarified in the cross-examination at Page-11 that on the spot means mortuary house. The above evidences clearly shows that inquest of dead bodies was conducted at mortuary house. Although P.W.9 has stated that inquest was conducted at place of occurrence but it is not his statement rather he has said so on the basis of statements of two constables. Those two constables are not examined. Therefore, the statement of P.W.9 based on such constables cannot be relied upon.

Recovery of crime weapon Axe (Tangi)

The proviso to Section 23 Bhartiya Sakshya Adhiniyam (BSA) serves as a vital legal exception. It provides that if an accused person while in police custody provides information that leads to the discovery of a relevant fact, that specific information is admissible in court, regardless of whether it amounts to a confession.

The defence has not disputed recovery of crime weapon Axe. As per recovery memo of crime weapon Exhibit Ka-20 it is shown that accused Shivam Rai @ Kariya was fired upon by the police in defence. The bullet fired by the police hit the accused at 06:17 hours. When police reached near injured person then they saw one country made pistol, one empty cartridge and one live cartridge and also one Axe was lying adjacent to the person seen in the light. The person lying told his name as Shivam Rai @ Kariya S/o Umesh Rai. When he was strictly asked about the incident of 01.01.2025 then he said that this Axe was used to murder Golu Verma and Prashant Gupta in association with his companion/friend Bittu Yadav, Priyanshu Rai and Rudresh Rai @ Shivam Rai. He further stated about the Axe found on the spot that he murdered Prashant Gupta and Golu Verma with the Axe on 01.01.2025 to establish his dominance and also inflicted injury to injured Jeetu Gupta with this Axe. Investigating Officer Sunil Chandra Tiwari P.W.10 has also stated that police fired on the accused Shivam Rai @ Kariya at 06:14 hours. There was one country made pistol, one empty cartridge and one live cartridge lying by his (accused) side and also one Axe was also lying nearby. When he was asked about the incident then he said that he used this Axe to murder Golu Verma and injuring Jeetu Gupta on 01.01.2025 near beer shop at Narayanpur with the help of his friend Bittu Yadav, Priyanshu Rai and Rudresh Rai. There is no mention about any arrest of the accused Shivam Rai @ Kariya in the present case Crime No. 01/2025. There is no independent witness to the alleged recovery of the crime weapon. The police has not recorded statement of the accused Shivam Rai @ Kariya. It means that the accused Shivam Rai @ Kariya has not given any information to the police leading to discovery of new fact in police custody. Thus there is no discovery as a result of information given by the accused in police custody. It is also unbelievable that the accused Shivam Rai @ Kariya was carrying crime weapon Axe since 01.01.2025 till the alleged recovery of the crime weapon Axe on 03.01.2025 in the evening at 06:17 hours. The alleged police fire upon accused Shivam Rai @ Kariya took place on the

highway at Baghauna. Many persons from the public must be passing through the highway at Baghauna either by vehicle or on foot. Police did not try to get independent witness for this alleged recovery of crime weapon Axe. Thus the entire recovery proceedings and recovery of Axe is in violation of the proviso to Section 23 Bhartiya Sakshya Adhiniyam (BSA) old Section 27 Indian Evidence Act.

Regarding photo and pen drive submitted by defence as evidence

Learned defence counsel for accused persons Shivam Rai @ Kariya and Priyanshu Rai has filed one pen drive and four photographs on two pages with list of documents on 15.04.2026. There is no compliance of Section 63 Bartiya Sakshya Adhiniyam (BSA) and particularly Section 63(4)(C). The old Section was Section 65 B Indian Evidence Act outlining how to prove the authenticity of electronic records.

The Hon'ble Supreme Court in **Pune Bar Association v. Union of India & Ors. [Writ Petition(s)(Civil) No(s). 599/2026]** decided on **22.05.2026** upheld the constitutional validity of Section 63(4) of the Bharatiya Sakshya Adhiniyam (BSA), which governs the admissibility of electronic evidence.

Mandatory Certification: The electronic record must be accompanied by a certificate signed by a person in charge of the computer/device and an expert, detailing how the device was operating and how the record was produced.

To prove the authenticity of the evidence, the submitting party must provide a mandatory certificate under Section 63(4). This requires:-

Part A: Filled out and signed by the person managing or controlling the device. It requires specific details, including the cryptographic HASH value of the electronic record.

Part B: Signed by a qualified cyber forensics or computer science expert to verify the data's extraction and integrity.

The Hon'ble Court provided the following key clarifications regarding expert certification:

Scope of an Expert: The Court ruled that the expert authorized to sign the certification (Part B) is not limited only to government-notified examiners under Section 79A of the IT Act.

Competency: Any individual with recognized skills and expertise in computer science and cyber forensics can validly sign the certificate, provided the trial court is satisfied with their credentials.

Hash Value Requirements: The Court rejected challenges to the stringent hash value disclosure framework, treating it as a necessary safeguard for modern digital records.

In the present case learned defence counsel has filed photographs made from the videography. The above requirements of Section 63 (4) (C) discussed above has not been complied with. Thus the photographs and pen drive, arguably recorded through mobile, is held not admissible in view of the principles of law propounded by the Hon'ble Apex Court in **Pune Bar Association case law (supra)**.

Suresh Rai D.W.1, though examined by the defence with regard to motive of the crime, his evidence is relevant in other context also. D.W.1 has admitted about existence of beer and wine shop at Kotwa Narayanpur Chatti on Kanuwan Road. He has also admitted existence of Pragya School on the west side from the beer and wine shops at a distance of 100 meter. D.W.1 has also admitted regarding murder of two persons on 01.01.2025 at Kotwa Chatti. He has also proved that his student Jeetu Gupta got injury in that incident. He has stated that Shivam Rai @ Kariya, Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav are accused in the incident. Thus the defence evidence also corroborates the prosecution case with regard to incident in front of beer and wine shops located on Kanuwan Road at Kotwa Narayanpur Chatti. His evidence has also corroborated Jeetu Gupta receiving injury in the same incident in which two persons were murdered. Thus the defence evidence has the effect of proving presence of Jeetu Gupta at the time of incident at the place of occurrence.

Act of accused persons Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav supporting the main accused Shivam Rai @ Kariya:-

Jeetu Gupta P.W.1 has stated at Page-1 that all the accused persons Shivam Rai @ Kariya, Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav came together and surrounded him. Three accused persons Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav caught hold of him thereby facilitated the main assailant Shivam Rai @ Kariya to hit Jeetu Gupta on his neck with Axe. It is a different matter that Jeetu Gupta did not get serious injury because he had wrapped muffler around his neck. Again these three accused persons played active role in catching hold of Prashant Gupta and Ajay Verma @ Golu so that deceased gets immobilised by virtue of active help and support given by these three accused persons Bittu Yadav, Priyanshu Rai and Rudresh Rai @ Shivam Rai. P.W.1 has stated at Page-7 that the accused persons who had caught hold of injured and deceased were repeatedly saying to kill.

Rahul Gupta P.W.2 has stated at Page-1 that all the accused persons Priyanshu Rai, Rudresh Rai, Shivam Rai and Bittu Yadav was arguing with Jeetu Gupta and at that moment, Priyanshu Rai, Rudresh Rai and Bittu Yadav caught hold of Jeetu Gupta and accused Shivam Rai @ Kariya hit with Axe (Tangi) on his neck with intention to kill him. Jeetu had wrapped a muffler around his neck, so his neck was not cut but he fell down after getting injury. His elder brother Prashant Gupta tried to protect Jeetu then Priyanshu Rai, Rudresh Rai and Bittu Yadav caught hold of his brother and Shivam Rai @ Kariya hit with Axe (Tangi) on his neck. Golu Verma tried to protect Prashant but the above-mentioned Priyanshu Rai, Rudresh Rai and Bittu Yadav caught hold of him and Shivam Rai @ Kariya hit with Axe (Tangi) on his neck.

This shows that all the accused persons actively acted in furtherance of common intention to inflict injury upon Jeetu Gupta with intention to kill and when Prashant Gupta came to protect Jeetu Gupta and later when Ajay Verma @ Golu came to protect Prashant Gupta then accused Shivam Rai @ Kariya hit deceased Prashant Gupta and Ajay Verma @ Golu on their neck with Axe in furtherance of common intention to kill Prashant Gupta and Ajay Verma @ Golu. This act of

inflicting injuries by Axe proved fatal for the deceased Prashant Gupta and Ajay Verma @ Golu. The above evidences clearly proves that Bittu Yadav, Priyanshu Rai and Rudresh Rai @ Shivam Rai acted in furtherance of common intention to kill Prashant Gupta and Ajay Verma @ Golu and inflict injury upon Jeetu Gupta with intention to kill. The injury found by Dr. Prakash Chandra Rai P.W.7 in the supplementary report Exhibit Ka-13 shows that there was swelling on the occipital region on the head of Jeetu Gupta. The ingredients for the offence of attempt to murder under Section 109 BNS requires an act done with the intention or knowledge to kill. Not necessarily there should be injury sufficient to cause death. But if hurt is caused then the offence gets aggravated for the purpose of sentence. However, in the present case there was not only intention to kill Jeetu Gupta which is actually reflected and proved in the form of murder of two persons namely Prashant Gupta and Ajay Verma @ Golu, rather reflected also with injury inflicted on the occipital region on the head of Jeetu Gupta. Thus the swelling injury on the occipital region of Jeetu Gupta along with murder of Prashant Gupta and Ajay Verma @ Golu clearly proves that all the four accused persons Bittu Yadav, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai had intention to kill Jeetu Gupta, Prashant Gupta and Ajay Verma @ Golu. The three accused persons first caught hold of Jeetu Gupta and thereafter Prashant Gupta and later Ajay Verma @ Golu. These accused persons Bittu Yadav, Priyanshu Rai and Rudresh Rai @ Shivam Rai knew that Shivam Rai @ Kariya inflicted fatal injury on the neck of Prashant Gupta with their active aid and support (above named three accused persons). Knowledge can definitely be imputed on all the above three accused that when they would catch hold of second deceased Ajay Verma @ Golu then the accused Shivam Rai @ Kariya would inflict fatal blow to Ajay Verma @ Golu in the same manner as was inflicted on the neck of the first deceased Prashant Gupta. Had the three accused not caught hold of deceased persons and injured Jeetu Gupta then Shivam Rai @ Kariya might not have been successful in inflicting fatal injuries on deceased

and injury to Jeetu Gupta. Thus all the four accused persons acted in furtherance of common intention to kill and this common intention was shared by all the three accused persons Bittu Yadav, Priyanshu Rai and Rudresh Rai @ Shivam with Shivam Rai @ Kariya. Even P.W.1 has stated at in his cross examination at Page-7 that the accused persons who caught hold, saying repeatedly to kill-kill. It is a different matter that injured Jeetu Gupta did not receive fatal injury on the vital part and thus survived but deceased Prashant Gupta and Ajay Verma @ Golu were not lucky enough to survive.

Thus on the basis of analysis of entire evidences discussed above, it can be concluded that the accused persons Bittu Yadav, Priyanshu Rai, Shivam Rai @ Kariya and Rudresh Rai @ Shivam Rai surrounded Jeetu Gupta on 01.01.2025 at about 07:00-08:00 P.M. near beer shop and accused Shivam Rai @ Kariya Rai inflicted injury on Jeetu Gupta with Axe (Tangi) on his neck with intention to kill and accused Shivam Rai @ Kariya Rai killed Prashant Gupta and Ajay Verma @ Golu by inflicting injuries on their neck in furtherance of common intention of all the accused persons.

Point for Determination No.5:-

Whether the ocular evidence and medical evidence regarding injuries found on the body of the deceased persons Prashant Gupta and Ajay Verma @ Golu corroborates each other and are connected with crime weapon ?

As per ocular evidence, Jeetu Gupta P.W.1 has stated in his cross-examination at Page-4 that he received injury on the left side behind the neck from the backside of Axe. P.W.1 has stated at Page 6 & 7 that he was hit two times on his head and neck. P.W.1 has further stated that blood was not oozing out from his neck and injury of head. P.W.2 has stated in his cross-examination at Page-3 that the accused persons inflicted injuries with Axe (Tangi). P.W.2 has stated at Page-5 that blood was not oozed out from the injury of Jeetu. As per medical evidence, Dr. Anjali Suman has examined injured Jeetu Gupta on 01.01.2025 but only

medicine was prescribed. Next day on 02.01.2025, Dr. Prakash Chandra Rai P.W.7 has examined the injuries of injured Jeetu Gupta and prepared the MLC report Exhibit Ka-13. Supplementary report Exhibit Ka-14 was also prepared by him (P.W.7) and he has stated that there was swelling on the occipital region and it is possible to come from blunt object. If head part of the blunt object collides with skull then it may give swelling injury and the injury would be received from the blunt side of the Axe. Thus the injury of the injured Jeetu Gupta gets corroborated from the medical evidence.

P.W.1 has stated at Page-1 that both the deceased Prashant Gupta and Ajay Verma @ Golu were hit on their neck with Axe. P.W.1 has stated in his cross-examination at Page-4 that Prashant and Golu had injury in the right side on the neck. Rahul Gupta P.W.2 has stated at Page-1 that his brother Prashant Gupta was hit on his neck with Axe and Golu Verma was also hit on his neck with Axe. Urmila P.W.3 has stated in her cross-examination at Page-4 that except for the cut injury on the neck of her son there was no other injury. The Inquest Reports of Prashant Gupta Exhibit Ka-2 and Ajay Verma @ Golu Exhibit Ka-3 shows that deceased Prashant Gupta had deep cut mark injury on left rib and deceased Ajay Verma @ Golu had deep cut mark on the left side of neck. Inquest reports (Panchayatnama) of both the deceased persons are proved by Bhorik Prasad Gupta P.W.4.

During the course of fight of beating that too in winter night, no one can say with precision that it actually hit in the area or slightly up or down. Moreover, P.W.2 has seen the incident from a distance of 40-50 meter from forest like area. Therefore if P.W.2 has seen the incident from a distance of 40-50 meter then it is possible that it may look that Axe has fallen on neck area but actually it has fallen on clavicle of chest area, which is just adjacent to neck. It depends upon the structure and shape of the Axe, deciding the nature of injury, whether cut or punctured wound or stab wound would come. Dr. Manish Jaiswal P.W.8 has stated at Page-3 that injury no.1 incised wound of deceased Ajay Verma @

Golu and stab wound of deceased Prashant Gupta on the clavicle bone of the chest area is possible to come from Axe.

The defence had argued that there is contradiction between the statement of Jeetu Gupta P.W.1 and the statement of Dr. Manish Jaiswal P.W.8. Jeetu Gupta P.W.1 has stated in his cross-examination at Page-4 that Prashant and Golu had injury in the right side on the neck but as per inquest reports and post mortem reports of both the deceased, it is found that injuries were on the left side of the neck of both the deceased. During gruesome act of murder it is not possible for this witness P.W.1 to recollect every bit of incident. Even the incident happens in such quick succession it can't be expected of a person to tell every minute detail with mathematical precision as if Jeetu Gupta P.W.1 has photographic memory.

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.”

The Hon'ble Court held further in **Para-26** that “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.”

In the instant case it is possible that the evidences of Jeetu Gupta P.W.1 and Rahul Gupta P.W.2 has some discrepancy and contradictions but in view of the above principles of law propounded by the Hon'ble Court in **Balu Sudam Khalde case law (supra)** the same can be ignored.

Thus on the basis of analysis of evidences and the principles of law propounded above, it can be concluded that the ocular evidence

with regard to injury of the injured Jeetu Gupta and injuries to the deceased persons Prashant Gupta and Ajay Verma @ Ajay Verma @ Golu gets corroborated from medical evidence.

Point for Determination No.6:-

Whether the charges levelled against the accused persons by the prosecution have been proved beyond reasonable doubt and whether the accused are liable to be convicted ?

The prosecution evidences have been discussed in detail in points for determination above. On the basis of the analysis of evidences, the conclusion has been drawn that the accused Shivam Rai @ Kariya has intentionally inflicted injuries on the neck of the deceased persons Prashant Gupta and Ajay Verma @ Golu with the help of co-accused Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav in furtherance of common intention of all. Ante mortem injuries found on the neck of both the deceased Prashant Gupta and Ajay Verma @ Golu Verma are sufficient in the ordinary course of nature to cause death. Thus the injuries inflicted upon both the deceased Prashant Gupta and Ajay Verma @ Golu Verma and injured Jeetu Gupta by the accused persons Shivam Rai @ Kariya with active help and support of Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav were intentional and not accidental. The medical evidence discussed in detail above that those injuries inflicted upon both the deceased Prashant Gupta and Ajay Verma @ Golu Verma were sufficient in ordinary course of nature to cause death of both the deceased. Thus the offence of murder of both the deceased Prashant Gupta and Ajay Verma @ Golu Verma by the accused persons have been proved by the prosecution beyond all reasonable doubt.

The intention to kill is very much reflected from the act of the accused by choosing the body part i.e. neck connecting the occipital area of the head of injured Jeetu Gupta, where Shivam Rai @ Kariya hit with dangerous weapon like Axe. The essential ingredients of Section 109 BNS is complete the moment he inflicted blow on the neck

connecting occipital region with Axe and something beyond his control happened due to which injured did not get injury dangerous to life. Another aspect regarding the intention to kill gets reflected when accused Shivam Rai @ Kariya hit Prashant Gupta on his neck who had come to protect Jeetu Gupta, resulting into death of deceased Prashant Gupta. The intention to kill shown by the accused Shivam Rai @ Kariya is further fortified when in the same transaction he hit Ajay Verma @ Golu on the neck area when he came to protect Prashant Gupta. The entire incident of hitting Jeetu Gupta, Prashant Gupta and Ajay Verma @ Golu took place in the same transaction and within few minutes. The cumulative act of the accused Shivam Rai @ Kariya supported actively by co-accused Priyanshu Rai, Rudresh Rai @ Shivam Rai and Bittu Yadav resulting into two death is sufficient to prove the intention of the assailant Shivam Rai @ Kariya shared by all the three accused persons to kill all the three namely Jeetu Gupta, Prashant Gupta and Ajay Verma @ Kariya. During cold winter night muffler is wrapped around neck and is a very common warm cloth people use across the globe. Thus use of the muffler by injured Jeetu Gupta in the winter night of 01.01.2025 is very natural. Muffler is generally thick woollen cloth. It is also possible that due to woollen texture of the muffler it absorbed the force generated by accused Shivam Rai @ Kariya while using the Axe hitting on the neck connecting occipital region and therefore Jeetu Gupta did not get any cut injury on the neck or occipital region. Defence counsel has not cross examined P.W.1 to impeach the credibility and veracity of Jeetu Gupta P.W.1 and Rahul Gupta P.W.2 regarding use of muffler by injured Jeetu Gupta at the time of incident. Thus the fact that Jeetu Gupta was wearing muffler remains uncontroverted even after the cross examination of witnesses Jeetu Gupta P.W.1 and Rahul Gupta P.W.2. Thus the prosecution has proved the offence under Section 109 BNS beyond all reasonable doubt.

The prosecution evidences have been discussed above in greater detail. No particular abusive language was used by the accused persons. The prosecution witness of facts Jeetu Gupta has only stated that the

said four accused persons fled away from the place of occurrence by abusing and threatening. No specific abusive word has been proved by the prosecution. Thus the prosecution has failed to prove that the accused persons acted to intentionally insult the injured and deceased persons with intent to provoke breach of peace. Thus the offence under Section 352 B.N.S. has not been proved by the prosecution 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 Bittu Yadav, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai under Sections 103(1) read with Section 3(5) and 109 read with Section 3(5) B.N.S. beyond all reasonable doubt. The prosecution has failed to prove the charged offence under Section 352 B.N.S beyond all reasonable doubt against the accused persons. Thus the the accused persons Bittu Yadav, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai are liable to be given benefit of doubt for the offence under Section 352 B.N.S.

On the basis of the conclusion arrived at under various points for determination, the accused persons Bittu Yadav, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai are liable to be convicted under Sections 103(1) read with Section 3(5) and 109 read with Section 3(5) B.N.S. Accused persons Bittu Yadav, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai are liable to be acquitted under Section 352 B.N.S.

ORDER

Accused persons namely, Bittu Yadav, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai are convicted under Sections 103(1) read with Section 3(5), 109 read with Section 3(5) B.N.S.

Accused persons Bittu Yadav, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai are acquitted under Section 352 B.N.S.

Accused persons namely, Bittu Yadav, Priyanshu Rai and Rudresh Rai @ Shivam Rai are present in the Court today. They are on bail. Accused Shivam Rai @ Kariya is present in the Court in judicial custody. The accused persons Bittu Yadav, Priyanshu Rai and Rudresh Rai @ Shivam Rai be taken into custody. Their bail bonds are cancelled and sureties are discharged.

Put up on 08-06-2026 for hearing on sentence.

Dated: 04.06.2026

(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: 04.06.2026

(Anil Kumar Jha)
Sessions Judge,
Ballia

I.D. No.-U.P. 06529

11.06.2026

File is produced for hearing on sentence.

Earlier it was fixed for hearing on sentence on 08.06.2026 and the argument was heard. Learned D.G.C (Criminal) filed an application 56 Kha seeking time for filing laws on the point of sentence. On 10.06.2026 learned D.G.C (Criminal) again filed an application 57 Kha seeking time to file law on the point of sentence on rarest of the rare case as he could not get it. The case was adjourned for filing of case law for 11.06.2026.

Heard learned defence counsel for convicts Bittu Yadav, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai and learned D.G.C (Criminal) for the state again along with cited case laws.

Learned D.G.C (Criminal) filed following case laws:-

1. Bachan Singh Vs. State of Punjab, AIR 1980 SC 898

2. Macchi Singh and Others vs. State of Punjab, AIR 1983 Supreme Court 957.

The convicts Bittu Yadav, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai are present in judicial custody.

Learned defence counsel for convict Rudresh Rai @ Shivam Rai argued that his role is only with regard to catching hold of injured and two deceased persons. His case does not fall under the category of rarest of the rare case. Thus, prayed for minimum sentence.

Learned defence counsel for convict Bittu Yadav argued that he is a poor person and therefore requested for minimum sentence and also minimum fine.

Learned defence counsel for convicts Shivam Rai @ Kariya and Priyanshu Rai argued that their case do not fall under the category of the rarest of the rare case. Thus, prayed for minimum sentence.

Learned D.G.C (Criminal) for the state argued that the gruesome murder of two deceased falls under the category of rarest of the rare case. The convicts intended to kill one person and when deceased persons tried to save the injured then they were murdered in a brutal manner. He further argued that convicts Shivam Rai @ Kariya

committed heinous crime under Section 109 (1) and 118(1) BNS in the same night of 01.01.2025 after a gap of about 3 hours at 23:30 P.M. in the night just after gruesome murder of two deceased persons in this case. The case is registered at Police Station- Bhawarkol, District- Ghazipur and injured Ashish Rai having 4 injuries on the vital part of his body. The case crime No. 02/2025 is registered on 02.01.2025 at 11:11 hrs. He further argued that convict Shivam Rai @ Kariya has long criminal history having crime no. 159/2025 under Section 111(1) and 351(3) BNS where all the four convicts are accused in that case. The convicts threatened the prosecution witnesses of the present case and therefore all the witnesses were examined in the Court under police protection. He further argued that a Case Crime No. 05/2025 under Sections 109 BNS and 3/25 Arms Act at P.S. Narhi District Ballia is also registered against convict Shivam Rai @ Kariya. Case Crime No. 146/2024 under Sections 323, 504, 506 I.P.C. Police Station- Narhi, District- Ballia is also registered against him. Learned DGC (Criminal) further argued that there are six criminal history against convict Rudresh Rai @ Shivam Rai.

- (i) Case crime no. 71/2022 under Sections- 323, 504 I.P.C. Police Station-Narhi, District-Ballia.
- (ii) Case crime no. 182/2023 under Sections- 323, 504, 506, 427 I.P.C. Police Station-Bhawarkol, District-Ghazipur.
- (iii) Case crime no. 342/2024 under Section- 60 Excise Act, Police Station-Narhi, District-Ballia.
- (iv) Case crime no. 272/2024 under Sections- 191(2), 324(2), 351(2), 352 BNS, Police Station-Narhi, District-Ballia.
- (v) Case crime no. 59/2023 under Sections- 147, 148, 149, 307, 323, 324 I.P.C., Police Station-Nahri, District-Ballia.
- (vi) Case crime no. 176/2020 under Sections- 3/25 Arms Act, Police Station-Narhi District- Ballia.

He also argued that there is a criminal history against convict Priyanshu Rai as Case Crime No. 157/2024 under Sections 191(2), 115(2), 352, 351(3) BNS, Police Station-Bhawarkol, District-Ghazipur. At the end of the argument learned D.G.C (Criminal) submitted that the convict Shivam Rai @ Kariya has no respect for human life and it is reflected from the fact that after committing two brutal gruesome murder in the night at 8:00 P.M. on 01.01.2025 with the help of co-

convicts Bittu Yadav, Rudresh Rai @ Shivam Rai and Priyanshu Rai, he further committed offence of attempt to murder in the same night after a gap of about 3 hours. Besides above criminal history, there are two NCR also. Learned D.G.C (Criminal) prayed for maximum sentence of capital punishment for all the convicts.

In **Bachan Singh case law (supra)** it is held by the Hon'ble Court that life imprisonment is the rule and the death penalty is exception. Capital punishment is reserved only for the most extreme, exceptionally heinous crimes where the alternative of life imprisonment is "unquestionably foreclosed". The brutality of the crime, the vulnerability of victim e.g. children or the elderly, betrayal of trust, premeditation and whether the crime shocks the collective conscience of society are the aggravating factor and may be considered while awarding death sentence. Only in rarest of the rare case, death sentence should be awarded by the Court.

In **Macchi Singh Case law (supra)** the Hon'ble Court observed that if the manner of commission of offence is extremely brutal, grotesque, diabolical or revolting manner (e.g. mutilation, baking alive).

The motive of the crime demonstrates total depravity and meanness (e.g. a contract killing for money).

When the nature of the crime is anti social like bride burning, dowry deaths and mass murders.

The magnitude of the crime and its impact on the society must be there.

It also depends upon the personality of victim whether the victim is a public figure or completely defenceless person.

In view of arguments advanced and principles of law discussed above, once again I perused the file and evidences on record. In the present case when the above touchstone in the form of guiding principles of law with regard to rarest of the rare category of the case propounded by the Hon'ble Court above, the convict Shivam Rai @ Kariya inflicted single fatal injury on the neck of deceased Ajay Verma

@ Golu and single fatal injury in the area of clavicle bone near neck of deceased Prashant Gupta. There is not even repeated injury inflicted by the convict Shivam Rai @ Kariya much less then offence being brutal, grotesque, diabolical or revolting. There is no brutality of exceptional nature or total depravity nor the victims are vulnerable. The deceased persons came to rescue another person and consequently the convict hit the deceased. It does not have the effect of shaking the conscience of the community or society. Thus on the basis of the principles of law regarding rarest of the rare case as held by the Hon'ble Apex Court in the above case laws, I am of the considered opinion that the act of the convicts Shivam Rai @ Kariya does not fall within the category of rarest of the rare case and so is the case of other co-convicts.

Thus, 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 **Bittu Yadav, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai** are sentenced with Life Imprisonment to each convict with a fine of Rs. 75,000/- (Seventy Five Thousand Rupee Only) each convict under Section **103 (1)** read with **3(5) B.N.S.**, Ten Years (10 Years) imprisonment to each convict with a fine of Rs. 50,000/- (Fifty Thousand Rupee Only) each convict under Section **109** read with **3(5) B.N.S.**

ORDER

The convicts **Bittu Yadav, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai** each are sentenced with Life imprisonment and with a fine of Rs 75,000/- (Seventy Five Thousand Rupee Only) each under Section **103 (1)** read with **3(5) B.N.S.** In default of payment of fine, Bittu Yadav, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai each shall further undergo additional imprisonment for Three Years (03 Years).

The convicts **Bittu Yadav, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai** each are sentenced with Ten Years (10 Years) imprisonment and with a fine of Rs. 50,000/- (Fifty Thousand Rupee Only) each under Section **109** read with **3(5) B.N.S.**

In default of payment of fine, Bittu Yadav, Shivam Rai @ Kariya, Priyanshu Rai and Rudresh Rai @ Shivam Rai each shall further undergo additional imprisonment for Two Years (02 Years).

Out of total amount of fine, 50% shall be paid as compensation to the legal heirs of the deceased persons Prashant Gupta and Ajay Verma @ Golu under Section 395 BNSS (Section 357 Cr.P.C.). It shall be shared in equal proportion by the legal heirs of the deceased persons Prashant Gupta and Ajay Verma @ Golu.

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 468 BNSS (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: 11.06.2026

R.S.Sen

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