



UPSR010001832019

In the Court of Sessions Judge, Shravasti
Presiding Officer-Dinesh Chand, HJS – UP06538

Sessions Trial No. 23/2019

State of U.P.

..... **Prosecution**

Vs.

1. Pawan Kumar Sharma

2. Arun Kumar Sharma

3. Saroj Kumar Sharma

4. Umashankar s/o Ramnaresh

All sons of Umashankar

All r/o of Village Jogiya, P.S. Malhipur, District Shravasti

.....**Accused Persons**

Case Crime No. 264/2018
u/s- 323/34, 304/34, 504 I.P.C.
P.S.- Malhipur, Distt. Shravasti.

J U D G M E N T

1. The case of accused persons Pawan Kumar Sharma, Arun Kumar Sharma, Saroj Kumar Sharma and Umashankar was committed to the Court of Sessions by the then Chief Judicial Magistrate, Shravasti, vide order dated 27.02.2019 on the basis of charge-sheet submitted by police of P.S.Malhipur, under Sections 323, 304, 504 I.P.C. for trial.

2. In brief, the facts of the prosecution case are that complainant Bhagauti Prasad Sharma s/o Chhedi Ram Sharma, r/o Village Jogiya P.S. Malhipur, District Shravasti had submitted a written report at P.S. Malhipur District Shravasti on 06.11.2018 alleging therein that on 06.11.2018 at approximately 6:00 pm an incident occurred due to an old enmity. The complainant alleged that Pawan Kumar, Arun Kumar and Saroj Kumar all sons of Umashankar, along with Umashankar son of Ramnaresh all being resident of Village Jogiya, P.S. Malhipur, District Shravasti, jointly approached and began hurling verbal abuses at the complainant's brother Shankar Dayal Sharma @ Puttan. When the complainant's brother objected

to the verbal abuse, all four named accused persons surrounded him and brutally assaulted him with sticks (lathi-danda). Due to this severe beating, the complainant's brother collapsed on the spot and became unconscious. Family members immediately rushed him to the hospital for emergency medical treatment. The complainant further stated that when his son Rohit, stepped in to intervene and save his uncle from the attack, the accused persons also assaulted and beat him up. The complainant requested the police to register the report of the incident and take necessary action.

3. On the basis of this written report, an F.I.R. was registered on 06.11.2018 at 20.17 pm at P.S. Malhipur at crime no. 264/2018 under sections 323, 504, 308 against the accused persons Pawan Kumar, Arun Kumar, Saroj Kumar and Umashankar. The entry of which also made in the G.D. no. 059 at 20.17 hours on the same day, i.e., 06.11.2018 at P.S. Malhipur, District Shravasti. Investigation was handed over to I.O. Ravindra Nath Singh.

4. Initially, the FIR was registered under Section 308 of the IPC. However, due to the subsequent death of the victim/injured, the charges were altered to Section 304 of the IPC during the course of the investigation.

5. The investigation of the case was taken up by P.W. 8 Sub-Inspector Rabindra Nath Singh, who prepared the copy of the Chik FIR, the copy of the General Diary (GD) entry, the statement of the scribe Constable Mo. Aslam, and the statement of the complainant, Bhagauti Prasad Sharma and prepared the site plan. Thereafter, the I.O. visited CHC Malhipur, where he perused the medical and injury reports of the injured person, Shankar Dayal Sharma. He received information regarding the death of the injured Shankar Dayal Sharma in connection with the offence. He then perused the copy of the report and recorded the statement of the complainant in the case diary. Following the death of the injured victim, Section 304 I.P.C. (Culpable Homicide Not Amounting to Murder) was added to the case, He also prepared the inquest report Ex. Ka-2 (the body of the deceased Shankar Dayal) and prepared relevant documents i.e. letter to CMO, Ex. Ka-7, Photo nash Ex. Ka-8 (photograph of the deceased), Police Form No. 33 Ex. Ka-9, Challan Nash Ex. Ka-10 and Challan Nash Ex. Ka-11.

6. On the basis of evidence, which was collected by the I.O., during investigation the charge against accused persons Pawan Kumar Sharma, Arun Kumar Sharma, Saroj Kumar Sharma and Umashankar u/s 323, 504,

304 I.P.C. was framed on 05.04.2019, by which they pleaded no guilty and claimed for trial.

7. To prove its case, the prosecution has examined P.W.1 Bhagauti Prasad Sharma, who is complainant, P.W.2 Rohit Kumar Sharma, P.W.3 Balram @ Baliram Vishwakarma, P.W.4 Mahesh Kumar Sharma, P.W.5 Ramsuhavan Mishra, P.W.6 Dr. Imran Moid, P.W.7 H.C, Mohd. Aslam, P.W.8 I.O. Rabindra Nath Singh, P.W.9 Dr. Satya Sharan and P.W. 10 H.C. Rajnikant Singh, in its oral evidence and in documentary evidence, prosecution has produced written report Ex. Ka-1, inquest report Ex. Ka-2, post-mortem Ex. Ka-3, chik FIR Ex. Ka-4, copy of G.D. entry Ex. Ka-5, site plan Ex. Ka-6, application to CMO Ex. Ka-7, photo nash Ex. Ka-8, police for no. 33 Ex. Ka-9, challan nash Ex. Ka-10 and Ex. Ka-11, charge-sheet Ex. Ka-12, medical report of Shankar Dayal Sharma Ex. Ka-13 and medical report of Rohit Ex. Ka-14, application to R.I. regarding the death of Shankar Dayal Sharma Ex. Ka-15 and copy of G.D. Ex. Ka-16.

8. Statements of accused persons u/s 313 Cr.P.C. were recorded on 24.02.2026 in which accused persons have denied the prosecution case and stated that witnesses have falsely given the statements.

9. In statements under Section 313 of the Cr.P.C., the accused persons stated that they intended to produce defence evidence, but despite various opportunities given by the court on various dates, defence evidence was not produced. Consequently, the opportunity to produce defence evidence has been closed by the court on 08.05.2026.

10. **P.W.1 Bhagauti Prasad Sharma**, who is a complainant in this case has stated on oath in his examination-in-chief that the incident occurred about two to three years ago. The time was 6:00 PM. At that time, he was not at home; he had gone to the field. His younger brother, Shankar, had returned home before him. What happened with his brother, he does not know. A quarrel had taken place with his younger brother by Arun Kumar, Pawan Kumar, Saroj Kumar, and a quarrel had also taken place with Uma Shankar. Those people beat up his brother. They were also hurling abuses. Even today, those people are threatening the complainants. His brother had sustained severe injuries, they took his brother to Malhipur Hospital, Bhinga Hospital, and Bahraich Hospital. The police station personnel got the report written. The police personnel took his brother to the police station, and he also reached there following them. He got an application written and submitted it

at the police station. His signature is made on it. Upon being shown and read out paper no. A4/3 enclosed in the record, he stated that this is the same application which he had submitted, upon which his signature is inscribed; he verified the same and it was marked as Exhibit Ka-1. In this assault, his son Rohit was also injured, and Rohit's medical examination was also conducted. During the course of medical treatment, his brother died due to the injuries sustained in the incident. The accused persons, Pawan Kumar, Arun Kumar, Saroj Kumar, and Uma Shankar, are his neighbors. An old enmity had been ongoing with them. His younger brother died at the hospital. The inquest proceedings were also conducted right there, and along with other persons, he had also affixed his signature on the inquest report.

The original inquest witness paper was shown to him, whereupon he stated that his signature is inscribed on it. This was prepared in his presence. He verifies the same. It was marked as Exhibit Ka-2. Regarding the incident, the police personnel had interrogated him.

11. P.W.2 Rohit Kumar Sharma, has stated on oath in his examination-in-chief that the incident occurred about three years ago on the day of the first Diwali. The time was 5:40 PM. Pawan Kumar, Arun Kumar, Saroj Kumar, and Uma Shankar, who are residents of his village, owing to an ongoing enmity, were beating his uncle, Shankar Dayal, with lathis and danda (wooden sticks) and were hurling abuses. Upon being forbidden and upon trying to rescue his uncle, these persons, while abusing him, began to beat him as well. His uncle, Shankar Dayal, became unconscious on the spot itself. Upon intervention by the people, the accused persons left the place. He and his uncle were taken to Malhipur Hospital, and his father, Bhagauti Prasad, went to Police Station Malhipur to give information, whereupon his uncle was referred from there in an unconscious state, and they took him to the Trauma Center. During the course of treatment, due to the injuries sustained therein, his uncle died. He still feels weak today due to the injuries he sustained at that time. The sub-inspector had recorded his statement regarding the incident. All the accused persons had sticks and iron rods (or lathis/wooden staves) in their hands, and they were beating him and his uncle with those very weapons.

12. P.W.3 Balram alias Baliram Vishwakarma, has stated on oath in his examination in chief that he knows Bhagauti Prasad Sharma, as well as Pawan Kumar, Arun Kumar, Saroj, and Uma Shankar. He resides in Mauza

Jogia, but the village falls under Shamshegarh where he lives. He cannot state whether any quarrel took place between the family of Bhagauti Prasad and Pawan Kumar etc. He also cannot state who beat Rohit Kumar and Shankar Dayal. At the time of the incident, he was not present at the spot, therefore he has no information regarding the incident. Later on, he had heard that Shankar Dayal had passed away, how he died, he cannot state. The Sub-Inspector did not record his statement. This witness did not support the prosecution and he was declared hostile on the request of D.G.C (CrI.).

13. P.W.4 Mahesh Kumar Sharma, has stated on oath in his examination in chief that the incident pertains to the year 2018. The time was 6:00 PM. Over some matter, Pawan Kumar, Arun Kumar, Saroj Kumar, and Uma Shankar, residents of his village, were hurling abuses at Shankar Dayal alias Puttan. Over this very matter, the aforementioned Pawan Kumar, Arun Kumar, Saroj Kumar, and Uma Shankar began to beat Shankar Dayal with lathis and danda, due to which he became unconscious on the spot. When son Bhagauti Prasad came to rescue him, those people also beat him up and abused him. Shankar Dayal Sharma became unconscious on the spot. They took him to Malhipur Hospital. From Malhipur, he was taken to Bahraich. From Bahraich, he was taken to Lucknow, where he died during the course of treatment. The Sub-Inspector asked him about this incident, and he stated the same.

14. P.W.5 Ramsuhavan Mishra, has stated on oath in his examination in chief that the incident took place ten or eleven years ago. His brother-in-law, Shankar Sharma, had died. His sister gave him information. Upon information, he reached her village. Before his arrival, the police personnel had already taken his brother-in-law to Malhipur Hospital. When he reached Malhipur Hospital, his brother-in-law was referred from there to District Hospital, Bahraich. From Bahraich, they were referred to Medical College, Lucknow. Where, during treatment, he died. From Lucknow, they brought him back to Malhipur Police Station. There, the inquest of the dead body was conducted. He had made his signature on the panchayatnama. The police personnel had only asked him his name and address. The witness identified and verified his signature made on the panchayatnama, paper numbers A8/1 to A8/3 available on the record, upon which Exhibit Ka-2 is already marked.

15. P.W.6 Dr. Imran Moid, at present posted as a Pediatrician at Community Health Center, Karnailganj, Gonda, has stated on oath in his

examination in chief that on 08.11.2018, he was posted as a Pediatrician at the Joint District Hospital, Bhinga, Shrawasti. On that day, his duty was assigned at the Postmortem House. On that day, he conducted the postmortem of the dead body of the deceased Shankar Dayal alias Puttan, aged about 35 years, son of Chhediram, resident of Village Jogiya, Police Station Malhipur, District Shrawasti. The said dead body was brought before him by Constable Harikesh Singh P.N.O. 152710042 and Constable Ajay Kumar P.N.O. 112502599, Police Station Malhipur, District Shrawasti.

External Examination- The length of the deceased's body was 162 centimeters, the physical build was of average and moderate stature. Rigor mortis was present in both the upper and lower parts of the deceased's body. Both eyes were closed, the mouth was open, and the lower teeth were visible. The tongue was inside the mouth. During the examination, the following ante-mortem injuries were found on the body of the deceased:-

1- Abrasion 2 cm x 0.5 cm, present on top of head, 13 cm above the glabella.

2- Abrasion 2 cm x 1 cm, present on the left side back of shoulder, 5 cm below the shoulder joint.

3- Abrasion 6 cm x 2 cm, present on the left side of the scrotum/testis, 2 cm below the root of the penis. Additionally, a swelling of 10 cm x 7 cm was also found on the scrotum/testis.

Internal Examination- External injury no. 1, as mentioned above, was found on the head. A blood clot was accumulated beneath this injury. Beneath this blood clot, there was a fracture, the length of which was 10 cm, and it was linear in nature. This fracture extended from the bridge of the nose upwards onto the head (wherein fractures of the parietal and frontal bones were present. A blood clot was also present beneath this fracture.) Brain, Neck, Mouth, Tongue, Pharynx, Lungs, Liver, Spleen, Kidney were found to be pale. In the heart, a blood clot was present on the right side, whereas the left side was empty. Approximately 150 ml of digested food material was present in the stomach. Semi-solid material was present in the small intestine, whereas gas was present in the large intestine. The scrotum/testis was found swollen.

Medical Opinion- In the opinion of doctor, the death occurred approximately 01 day prior. The immediate cause of death appears to be

hemorrhage and shock which was due to ante-mortem injuries received on the head.

The witness, after perusing the post-mortem report annexed as Paper No. A9/1 in the case file, stated that this post-mortem report was prepared by him, which bears his signature, which he verifies, and upon which Exhibit Ka-3 has been marked.

16. P.W.7 Head Moharrir Mohd. Aslam, at present posted at Naveen Modern, District Shrawasti, has stated on oath in his examination in chief that on 06.11.2018, he was working at Police Station Malhipur on the post of Constable Moharrir. On that day, a written application bearing his signature regarding assault was given by the complainant Bhagauti Prasad Sharma against Pawan Kumar, Arun Kumar, Saroj Kumar, and Umashankar. Upon the instructions of the SHO, on the basis of this very complaint, it was got computerized by him by dictating it to the computer operator Manish Verma, which certifies the computerized F.I.R. enclosed in the record as paper no. A4/1 to A4/2 in which Exhibit Ka-4 was marked on it. On the basis of the complaint, case crime No. 264/2018 under Sections 323, 504, 308 of Police Station Malhipur was registered, and on the basis of that very F.I.R., the institution/entry of the case in the General Diary (G.D.) was also got computerized. This witness has proved the G.D. entry paper no. A10/2 on which Exhibit Ka-5 was marked. The Investigating Officer had recorded his statement.

17. P.W.8 I.O. Rabindra Nath Singh, currently posted as the in-charge of the IGRS Cell in Kushinagar, made a statement under oath via video conferencing from the office of the Superintendent of Police, V.C. Cell, Kushinagar, has stated on oath in his examination in chief that on 06.11.2018, he was posted as a Sub-Inspector at Police Station Malhipur. On that day, case crime No. 244/2018 under Sections 323, 504, and 308 I.P.C. was registered at Police Station Malhipur against Pawan Kumar, Arun Kumar, Saroj Kumar (sons of Umashankar), and Umashankar (son of Ramnaresh). The investigation of the case was subsequently assigned to him. Upon taking over the investigation, the witness prepared case diary No. 1 on the very same day. In this entry, he perused the copy of the Chik FIR, the copy of the General Diary (GD) entry, the statement of the scribe Constable Mohd. Aslam, and the statement of the complainant, Bhagauti Prasad Sharma. At the instance of the complainant, he inspected the place of

occurrence and prepared the site plan. Thereafter, the witness visited CHC Malhipur, where he perused the medical and injury reports of the injured person, Shankar Dayal Sharma. It was there that he received information regarding the death of the injured Shankar Dayal Sharma in connection with the offence. He then perused the copy of the report and recorded the statement of the complainant in the Case Diary. Following the death of the injured victim, Section 304 I.P.C. (Culpable Homicide Not Amounting to Murder) was added to the case, and a copy of the report regarding the enhancement of sections was perused. Subsequently, the witness went to village Jogiya, conducted the inquest proceedings on the body of the deceased Shankar Dayal Sharma, and sent the body for a post-mortem examination. This witness has identified and proved paper No. A6/1 (site plan) in his handwriting and signature which was verified and marked as Ex. Ka-6. He also identified his signature on the inquest report which was verified and marked as Ex. Ka-2. The witness then perused paper number A8/5 (a letter from the CMO Shrivasti), paper number A8/6, the Photo nash (photograph of the deceased), Paper No. A8/7 (Police Form No. 33), Paper No. A8/8, and A8/9 Challan Nash (Challan of the Dead Body) annexed to the case file. He deposed that these specific documents were dictated by him and prepared through Sub-Inspector Ravindra Kumar Singh. He verified that they bore his signatures, and they were marked as Exhibit Ka-7, Exhibit Ka-8, Exhibit Ka-9, Exhibit Ka-10, and Exhibit Ka-11 respectively. This witness further stated that on 12.11.2018, he prepared CD No. 3, in which he recorded the statements of the injured Rohit Kumar Sharma and witnesses Baliram and Mahesh Kumar Sharma. After perusing the post-mortem report of the deceased Shankar Dayal Sharma alias Puttan, he noted its details in the Case Diary. On 14.11.2018, he prepared Parcha No. 4, recording the arrest and the formal statements of the accused persons. On 19.11.2018, he prepared Parcha No. 5. After perusing the original copy of the post-mortem report, he recorded the statement of Dr. Imran Moid, the medical officer who conducted the post-mortem examination. He also visited village Jogiya and recorded the statements of the inquest witnesses Ram Kumar Mishra, Ashwini Kumar Verma, Pappu Singh, Bhagauti Prasad Sharma, and Baliram. Additionally, he recorded the statements of Sub-Inspector Ravindra Kumar Singh (the author of the inquest report), Constable Harikesh Singh, and Constable Ajay Kumar. On 13.01.2019, the witness prepared Parcha No. 12.

On the basis of the entire investigation conducted up to that point including the statements of witnesses, inspection of the scene, and perusal of both the inquest and post-mortem reports, he found the offence under Sections 323, 504, and 304 I.P.C. fully established against the accused persons Pawan Kumar, Arun Kumar, Saroj Kumar (sons of Umashankar), and Umashankar (son of Ramnaresh), all residents of village Jogiya, Police Station Malhipur, District Shravasti. Accordingly, charge-sheet No. 11/2019 against the accused persons was submitted in the Court. This witness has also proved and identified charge sheet paper No. A5/1 to A5/5 in his signature on which Ex. Ka-12 has been marked.

18. P.W.9 Dr. Satya Sharan, currently posted as Medical Officer, Community Health Centre, Bhangha, District Shrawasti, has stated on oath in his examination in chief that on 06.11.2018, he was posted as a Medical Officer at Community Health Centre, Malhipur. On that day, he conducted the medical examination of the injuries of the injured Shankar Dayal Sharma, aged about 35 years, son of Chediram Sharma, resident of Village Jogiya, Police Station Malhipur, District Shravasti, who was brought before him by dialing 100 Police of Police Station Malhipur. During the examination, injuries were found on the body of the injured.

1- A lacerated wound on the anterior aspect of the forehead, from which fresh bleeding was occurring. The size of the injury was 02 cm x 02 cm, and it was skin-deep.

2- A contused swelling on the mid-scalp/mid-head, measuring 8 cm x 3 cm in size.

3- Blackening was present all around the left eye.

Opinion- Injury No. 01 was of a simple nature. Injury No. 02 was referred for X-ray and expert opinion. Injury No. 03 was also referred for expert opinion. All injuries were fresh and appeared to have been caused by a hard and blunt object. The injuries found on the body of the injured person are possible to have been caused by sticks and lathis.

On the same day, he conducted the medical examination of the injuries of the injured Rohit Kumar Sharma, aged about 28 years, son of Bhagauti Prasad, resident of Village Jogiya, Police Station Malhipur, District Shravasti, who was also brought before him by dialing 100 Police of Police Station Malhipur. During the examination, injuries were found on the body

of the injured.

1- An incised/cut wound on the left side of the forehead, accompanied by swelling measuring 5 cm x 5 cm, from which fresh bleeding was occurring. The size of the wound itself was 2.5 cm x 1 cm and it was bone-deep.

2- A contused swelling with bluish discoloration on the left middle finger. The size of this injury was 2 cm x 2 cm.

3- A contused swelling measuring 3 cm x 2 cm on the joint of the left wrist.

Opinion- Injury No. 1 was referred for X-ray along with the advice of an expert for opinion. Injury Nos. 2 and 3 were of a simple nature. All injuries were fresh and appeared to have been caused by a hard and blunt object. The injuries found on the body of the injured person are possible to have been caused by sticks and lathis. After inspecting the medical report enclosed in the record as paper numbers A7/1 and A7/2, the witness stated that these medical reports were prepared by him, bearing his signatures thereon, which he certifies, and upon which Exhibits Ka-13 and Ka-14 were marked respectively.

19. P.W.10 Head Constable Rajnikant Singh, currently posted at Police Station Itiyathok, District-Gonda, has testified through video conferencing (V.C.) that on 07.11.2018, he was present on clerical duty at Police Station Malhipur. On that day, the complainant Bhagauti Prasad, son of Chhediram, resident of Village Jogiya, Police Station Malhipur, District Shravasti, came bearing a written application (tehrir) containing his signature to the effect that on 06.11.2018 at 06:00 PM, Pawan Kumar, Arun Kumar, Saroj Kumar, and Umashankar of his village, while hurling abuses, inflicted serious injuries on the head of his brother Shankar Dayal Sharma alias Puttan with sticks and lathis, due to which he became unconscious on the spot, and during treatment, due to the injuries sustained in the incident, on 07.11.2018, his brother Shankar Dayal passed away. This witness has identified and verified the application to R.I. as paper No. B14/5 which was marked as Exhibit Ka-15 and its entry in the General Diary was prepared by him, which he certified as paper number A8/4 enclosed in the record, upon which Exhibit Ka-16 was marked. The Investigating Officer had recorded his

statement.

20. Ld. Defence Counsel vehemently argued that the accused persons falsely implicated in this case. They have not committed mar-peat with the deceased. They have no motive to commit the offence. They have been falsely implicated in the present case due to enmity. There is no independent public witness of the said incident. He further submitted that complainant Bhagauti Prasad Sharma was not present on the spot at the time of incident. PW 3 is said to be eye-witness but he did not support the prosecution case and he turned hostile. He further submitted that Mahesh Kumar Sharma PW 4 has admitted in his cross-examination that he was not present on the spot when he reached in the village he heard about the incident. Meaning thereby he has given the evidence as hearsay witness. PW5 Ramsuhavan Mishra is the real brother in law of the deceased who is merely witness of inquest report. He did not see the incident. According to prosecution story/ one witness Rohit PW2 is witness but in the evidence of complainant PW1 as well as in the statement of so called eye-witness/ injured witness Rohit Kumar there are many major contradictions. He further submitted that according to Dr. Imran Mohid PW 6 no injury was found on the body of the deceased. Dr. Satya PW 9 who medically examine the deceased just after the incident no grievous injury was found on the body of the injured. The injuries which are mentioned in the injury report Ex. Ka-3 and injuries are mentioned in the postmortem report Ex. Ka-3 are quite different. It appears that injuries which are mentioned in the postmortem report were caused thereafter the incident. This fact also against the prosecution. He further submitted that prosecution fails to establish its case beyond reasonable doubt against the accused persons. He prayed to acquit the accused persons.

21. Per contra learned D.G.C.(Crl.) has submitted that prosecution has proved its case beyond reasonable doubt against the accused persons. Complainant PW1 as well as injured witness PW 2 Rohit has fully supported the prosecution case. No need to produce any other witness when injured witness is fully supported the case. He further submitted that Dr. Satya Sharan PW 9 had proved the injury reports of injured/ deceased as well as injured Rohit. PW 6 Dr. Imran Mohid also proved the postmortem report as Ex. Ka-3. All the prosecution papers also proved by other witnesses. Ld. DGC (Crl.) has submitted that prosecution is fully proved the case. He prayed to convict the accused persons.

22. I have heard learned for the defence at length as well as learned D.G.C. (Crl.) and perused the record carefully.

23. It is well settled doctrine of criminal jurisprudence that prosecution must prove its case beyond reasonable doubt. In the present case prosecution has produced as many as ten witnesses in support of its case.

24. Initially the case was registered u/s 323, 308, 504 IPC against the accused persons namely Pawan Kumar Sharma, Arun Kumar Sharma, Saroj Kumar Sharma and Umashankar. Thereafter, injured Shankar Dayal Sharma had died then the Section 304 IPC was added in place of Section 308 IPC. According to written report Ex. Ka-1 on 06.11.2018 at about 6:00 pm accused persons have committed mar-peat by lathi danda with deceased Shankar Dayal Sharma @ Puttan brother of complainant and they have also abused him. When witness Rohit reached at the spot they have also committed mar-peat with him. FIR lodged on the same day on 06.11.2018 at 20.17 hrs just after the incident which is prompt FIR. Accused persons named in the FIR and also they have committed mar-peat with deceased Shankar Dayal Sharma and injured witness Rohit.

25. In this regard PW1 complainant has stated in his examination-in-chief that a quarrel was commenced between his younger brother Shankar Dayal Sharma and accused persons Pawan Kumar Sharma, Arun Kumar Sharma, Saroj Kumar Sharma and Umashankar. They had beaten his brother and also abused him. They have also threatening to kill him. His brother sustained many injuries, thereafter, he had taken his younger brother to Malhipur Hospital, Bhinga Hospital and later on Bahraich Hospital. He has submitted a written report at Police Station Malhipur. He has proved the written report as Ex. Ka-1. He further stated that in this incident his son Rohit also injured who was also medically examined. Thereafter, his brother had died due to injuries which were sustained by him in the incident during the treatment. This witness has also proved the inquest report after identified his signature on inquest report Ex. Ka-2. In his cross-examination this witness has stated that when he reached at house his brother in the condition of injured reached at the Malhipur hospital. When he has reached at Malhipur hospital his brother was unconscious. He was unable to talk. Thereafter, his brother was sent to District Hospital Bahraich. He had gone on the same day at hospital Malhipur. He further stated in his cross-examination that they are two brother he is elder brother and one younger brother Shankar Dayal Sharma. In his

cross-examination he has admitted that written report was prepared by him on the statement of his son Rohit. Meaning thereby, he was not present on the spot at the time of incident he is hearsay witness. But this witness has proved the contents of the written report as well as the prosecution story.

26. Injured witness Rohit Sharma PW2 has supported the prosecution case in his examination-in-chief when he was cross-examined by the learned defence counsel he fully supported the prosecution case. Ld. Defence Counsel could not fetch out any adverse fact. He has stated in his cross-examination that he was present at the spot when accused persons had committed mar peet with his uncle. When he reached at the spot accused persons also committed mar peet with him. He sustained injuries, thereafter, his father has lodged the report at Police Station. He narrated the incident to his father. Thereafter, his father had lodged the report.

27. It is correct that prosecution witness PW3 Balram @ Baliram Vishwakarma did not support the prosecution story and he turned hostile. PW4 Mahesh Kumar has also stated in his cross-examination that he was not present in the village at the time of incident. He had gone to Malhipur for treatment when he reached the village in the evening then he heard about the incident. It is also correct that prosecution witness PW5 Ramsuhavan is also merely witness of inquest report and he did not see the incident.

28. According to prosecution case incident took place on 06.11.2018 at 6:00 pm and accused persons committed mar peet with deceased Shankar Dayal Sharma. When his son reached on the spot to save his father they have also committed mar peet with Rohit and he has also sustained injuries in the incident. Injured Shankar Dayal Sharma was medically examined on the same day just after the incident at 6:37 PM at CHC Malhipur. Doctor has found three injuries on his body and injury no. 2 and 3 kept under observation for expert opinion while injury no. 1 was simple in nature and all injuries were fresh and caused by hard and blunt object. Injured Rohit Kumar Sharma also examined on the same day at 6:15 PM. Doctor has found three injuries on his body and all injuries were caused by hard and blunt object. Advised X-Ray scalp for injury no. 1 and remained injuries no. 2 and 3 were found simple in nature. Dr. Satya Sharan P.W.9 has proved the injury reports of Shankar Dayal Sharma and Rohit as Ex. Ka-13 and Ex. Ka-14 Injured Shankar Dayal Sharma had died during treatment due to injuries which were sustained in the said incident. Dr. Imran Mohid P.W.6 had conducted the

postmortem report on the body of deceased Shankar Dayal Sharma @ Puttan. This witness has proved the postmortem as Ex. Ka-3. The injuries which were mentioned in the postmortem report were found on the head scalp and scalp and fracture also present in the size of 10 cm, linear starting from gabella towards top of the head in pacified in frontal bone and homo tone present beneath the fraction line. And according to opinion doctor cause of death was haemorrhage and shock due to ante mortem head injury.

29. Ld. Defence Counsel vehemently argued that only one witness PW2 Rohit Kumar is the witness of fact and he is interested witness because he is son of deceased. On the other hand Ld. D.G.C (Crl.) has argued that witness Rohit PW2 is injured witness and no need to examine other witnesses because injured witness is sufficient to prove the story of prosecution. It is important to note here that it is provided u/s 134 of Indian Evidence Act, 1872 that *“no particular number of witnesses shall in any case be required for the proof of any fact.”* Meaning thereby, the law emphasizes the quality of evidence over quantity. If an injured witness provides a clear, credible, and trustworthy account of an incident, his sole testimony can legally prove the case and pass a conviction order without needing extra witnesses.

30. In this regard the Hon’ble Supreme Court has laid down the following laws:-

1. Abdul Sayeed Vs. State of M.P.

(2010)10 SCC 259

26. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness".

27. While deciding this issue, a similar view was taken in, [Jarnail Singh v. State of Punjab](#), (2009) 9 SCC 719, where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under:-

"Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside

lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka, 1994 Supp (3) SCC 235, this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

In State of U.P. v. Kishan Chand, (2004) 7 SCC 629, a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana, (2006) 12 SCC 459). Thus, we are of the considered opinion that evidence of Darshan Singh (PW4) has rightly been relied upon by the courts below."

2. State of U.P Vs. Naresh & Ors.

(2011) 4 SCC 324

23. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence.

31. So far the interest or related witness is concerned Hon'ble Apex Court in case of State of Rajasthan Vs. Kalki (1981) 2 SCC 752 has explained the plea of "interested witness", "related witness" in para No. 7 as follows:-

"7. As mentioned above the High Court has declined to rely on the evidence of PW 1 on two grounds: (1) she was a 'high interested' witness because she 'is the wife of deceased', and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the

hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is, she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested".

In the present case injured witness Rohit Kumar Sharma PW2 has fully supported the prosecution story date, time and place and manner of incident proved by him in his evidence. At the time of incident he reached at the spot to save his father. He has also sustained injuries in the incident, therefore he is a natural witness and it is clear that he cannot be said interested witness. I do not find any merit in the contention of Ld. Defence Counsel that prosecution has not examined any other witness except the injured witness.

32. Ld. Defence Counsel further argued that accused persons have no motive to commit the culpable homicide not amounting the murder of deceased. The case in hand based on the direct evidence and in the case of direct evidence there is no need to establish the motive. However, in the present case accused persons have admitted in their statements which were recorded u/s 313 Cr.P.C. that the present case is initiated against them due to enmity. Meaning thereby the enmity was exist between the parties.

In this regard Hon'ble Apex Court in case of :-

(i). Dharbara Singh Vs. State of Punjab (2012) 10

SCC 476 in para No. 15 has held that:-

"15..... In a case where there is direct evidence of witnesses which can be relied upon, the absence of motive cannot be aground to reject the case. Under no circumstance, can motive take the place of direct evidence available as proof....."

(ii). State of Uttar Pradesh v. Kishan Pal and Ors.

(2008) 16 SCC 73 in para No. 39 has held that:-

"39. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitness is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot

be convicted if the evidence of eye-witness is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eye-witness is clear and reliable, the absence of in adequacy of motive cannot stand in the way of conviction.”

(iii). Bipin Kumar Mondal Vs. State of West Bengal 2010 AIR SCC 3638 in para No. 21 has held that:-

“21. The issue of motive becomes totally irrelevant when there is direct evidence of a trustworthy witness regarding the commission of the crime. In such a case, particularly when a son and other closely related persons depose against the appellant, the proof of motive by direct evidence loses its relevance. In the instant case, the ocular evidence is supported by the medical evidence. There is nothing on record to show that the appellant had received any grave or sudden provocation from the victims or that the appellant had lost his power of self-control from any action of either of the victims.”

Since matter related to direct evidence, therefore no need to establish the motive and I do not find any force in the contention of Ld. Defence Counsel.

33. Learned Defence Counsel further submitted that IO has not recovered any weapon either from the spot or from the possession of the accused persons. Moreover, IO did not collect the blood stained soil and simple soil from the spot. The place of incident could not establish from the evidence of prosecution. It is correct that during investigation IO did not collect the blood stained soil and simple soil from the spot and he did not recover the weapon from the possession of the accused persons. So far the place of incident is concerned Investigation Officer has proved the site plan Ex. Ka-5 in which the place of incident has been shown by letter “A”. If IO did not recover the weapon or did not collect the blood stained soil and simple soil from the spot, only the negligence of the Investigating Officer the prosecution case cannot be disbelieved. I do not find any merit in the contention of the Ld. Defence Counsel.

34. From the above discussion and analysis of the evidence, I come to the conclusion that prosecution fully proved the case against the all accused persons and prosecution succeed to prove and establish the charges framed against the accused persons u/s 323/34, 304/34 and 504 IPC. Therefore, accused persons are found guilty.

ORDER

Accused **Pawan Kumar Sharma, Arun Kumar Sharma, Saroj Kumar Sharma** and **Umashankar** are held guilty of charge under Section 323/34, 304/34 and 504 I.P.C. and they are convicted there under. Their bail bonds are hereby cancelled and sureties discharged. They be taken into custody. They shall be heard after lunch on the point of sentence.

Dated: 14.08.2026

**(Dinesh Chand)
Sessions Judge
Shravasti**

14.08.2026

File taken up after lunch on the point of sentence.

Heard the learned counsel for the accused persons as well as D.G.C. (Crl.) on quantum of sentence.

Learned counsel for the accused persons have submitted that accused persons are poor persons and members of one family. Accused persons are not previous convict. So lenient view may be taken in awarding sentence.

On the other hand, learned D.G.C. (Crl.) has submitted that all accused persons have committed the offence of culpable homicide and severe punishment be awarded to them.

Since accused persons are not previously convicted. Taking leniently the accused persons are sentence as under:-

All accused persons are sentenced under **Section 304/34 I.P.C.** to undergo **rigorous imprisonment** for **5 years** and to pay a fine of Rs. **5,000/-** each. In default of payment of fine, all accused persons shall undergo **2 months simple imprisonment**.

All accused persons are sentenced under **Section 323/34 I.P.C.** to undergo **simple imprisonment** for **6 months** and to pay a fine of Rs. **1,000/-** each. In default of payment of fine, all accused persons shall undergo **15 days simple imprisonment**.

All accused persons are sentenced under **Section 504 I.P.C.** to undergo **simple imprisonment** for **1 year** and to pay a fine of **Rs. 2,000/-** each. In default of payment of fine, all accused persons shall undergo **one month simple imprisonment**.

All the sentences shall run concurrently and period earlier spent in jail by the convict in this case shall be adjusted against his sentence. The accused

persons be sent to jail to serve out their sentences with their conviction warrant.

A copy of this judgment be supplied to accused persons forthwith free of costs.

Dated: 14.08.2026

**(Dinesh Chand)
Sessions Judge
Shravasti**

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

Dated: 14.08.2026

**(Dinesh Chand)
Sessions Judge
Shravasti**