2025:AHC:228192-DB

AFR
Judgment Reserved On:18.11.2025
Judgment Delivered On:18.12.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1071 of 1987

Lala and another

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	:	G.S. Tiwari
Counsel for Respondent(s)	:	A.G.A.

Connected with

CRIMINAL APPEAL No. - 1069 of 1987

Udai Narain And Others .....Appellant(s)

Versus

State .....Respondents(s)

Counsel for Appellant(s)	:	Bholeshwar, Harsh Kumar Sharma
Counsel for Respondent(s)	:	A.G.A.

Court No. - 44

HON'BLE J.J. MUNIR, J.
HON'BLE SANJIV KUMAR, J.

(Delivered by: Sanjiv Kumar J.)

1. Both these criminal appeals have arisen from a common judgment of conviction and sentence passed by the Court of the 5th Additional

Sessions Judge, Allahabad in Sessions Trial No. 540 of 1985 (State Vs. Udai Narain and others), under Sections 147, 302/149 Indian Penal Code, 1860 ('IPC', for short), Police Station Soraon, District Allahabad. As both these appeals have been filed against a common judgment and order, the same are being decided by a common judgment.

2. Criminal Appeal No. 1071 of 1987 has been filed by appellants Lala s/o Jhurai and Amrit Lal s/o Shyam Lal, both residents of Village Bhadri, P.S. Soraon, Allahabad, whereas Criminal Appeal No. 1069 of 1987 has been preferred by appellants Uadi Narain s/o Mahadev, Dayaram s/o Jagannath, Jai Ram s/o Mahadev, Ram Awadh s/o Baij Nath, Maharani Deen s/o Lala, Harish Chandra and Kallu both s/o Ram Sewak, Hari s/o Gurai, Ram Sunder @ Bhola Pradhan s/o Punni, all residents of Village Bhadri, P.S. Soraon Allahabad. By the judgment and order impugned passed by the learned Trial Court, all the appellants have been convicted for the offence punishable under Section 147 IPC and sentenced to undergo one year's rigorous imprisonment and imprisonment for life for offence punishable under Section 302 read with 149 IPC. It was further directed by the Trial Court that all the sentences shall run concurrently.

3. During the pendency of both these appeals, appellant no.1 Lala in Criminal Appeal No. 1071 of 1987 has died and the appeal against him, therefore, abated. The abatement was recorded *vide* order dated 03.11.2025. In Criminal Appeal No. 1069 of 1987, appellant no.1 Udai Narain, appellant no. 2, Dayaram, appellant no.3, Jai Ram, appellant no.4, Ram Awadh, appellant no.5, Maharani Deen, appellant no.8 Hari and appellant no.9, Ram Sunder @ Bhola Pradhan have died and the above appeal against them has been abated *vide* order dated 03.11.2025.

4. Now Criminal Appeal No. 1071 of 1987 survives to be heard on behalf of appellant no.2 Amrit Lal alone and Criminal Appeal No. 1069 of 1987 on behalf of appellant no. 6 Harish Chandra and appellant no.7 Kallu.

5. Brief facts of the prosecution case are that informant Ram Kishor s/o Bhagirathi, resident of Bhadri, Police Station Soraon, District Allahabad, filed a written information (*Tehrir*) (Ext. Ka-1) before the In-charge, Police Station Soraon on 08.07.1982, saying that he was a labourer. His brother Ram Dulare used to guard the crop of *bhata* (brinjal) sown near the south-west bank of the canal located in village Bhadri. Today also, he went there to guard the crop. At about 01:00 a.m. in the wee hours, the informant's uncle Pancham came over to him and told him that near the (railway) station, some people were beating Ram Dulare and threatening him to work for them, instead of working for the assailants' opponents. Thereupon, he along with, his uncle Pancham and Nanku (cousin) reached the vicinity of the railway station and heard some noise that was coming from the west of the railway line. They reached there and saw that Udai Narain s/o Mahadev, Dayaram s/o Jaggu, Jai Ram s/o Mahadev, Ram Awadh s/o Baij Nath, Lala Ram s/o Jhurai, Maharani Deen s/o Lala, Harish Chandra s/o Ram Awadh, Kallu s/o Ram Sewak, Hari s/o Gurai, Amrit Lal s/o Shyam Lal and Ram Sunder Pradhan @ Bhola s/o Punni were battering Ram Dulare, kicking and punching him, besides thrashing him with sticks (*danda)* in Ram Awadh's agricultural field. The informant and his uncle touched the assailants' feet and imploringly asked them why they were beating the poor man so much. Jairam said that since he works as a labourer for their opponents but not for them, they would insert *lathi* in his rectum. Then Amrit Lal pulled him down and Udal @ Udai Narain inserted a *lathi* in his rectum. The informant's brother died in agony at the spot. During the occurrence, a number of persons from the village reached there, who also requested the appellants not to beat Ram Dulare. The appellants left the scene of crime upon seeing the informant's brother dead and threatening him that if he lodged a first information with the Police, he too would be killed.

6. On the basis of the said written information, an FIR, giving rise to Case Crime No. 109 of 1982, under Section 302 IPC, was registered at Police Station Soraon on 08.07.1982 at 06:05 a.m. against all the eleven

accused and investigation commenced. The Investigating Officer reached the place of occurrence and collected blood stained *dhoti* from the deceased's body and prepared a recovery memo (Ext. Ka-11). The inquest report (Ext. Ka-2) relating to the deceased was prepared along with connected papers. Thereafter, the dead body was sent for autopsy. In the *post-mortem* report, ten *ante-mortem* injuries were found over the body of the deceased and in the doctor's opinion, the cause of death was coma, as a result of head injury.

7. The Investigating Officer recorded the statements of the informant and other witnesses, inspected the place of occurrence and prepared its site plan (Ext. Ka-12), and after concluding the investigation, filed charge-sheet (Ext. Ka-13) against all the eleven accused under Sections 147, 148 and 302 IPC before the Magistrate.

8. The learned Magistrate took cognizance of the offence and summoned all the accused. All the accused appeared before the learned Magistrate and were furnished copies of the relevant prosecution papers under Section 207 of the Criminal Procedure Code (for short 'Cr.P.C.') Thereafter, the case was committed for trial to the Court of Sessions by the learned Magistrate. In the Court of Sessions, all the accused appeared. The court framed charges under Sections 147, 302 read with Section 149 IPC against the accused, who denied the said charge, pleaded not guilty and claimed to be tried.

9. The prosecution has examined four witnesses to prove its case. They are P.W.1, Ram Kishor (the informant and eye-witness), P.W.2 Pancham (eye-witness), P.W.3 Dr. A.K. Nigam (Medical Officer, who conducted the *post-mortem* examiniation) and P.W.4 S.I. Arjun Singh (Investigating Officer). Their testimony, in brief, is enumerated hereunder.

10. P.W.1 Ram Kishor is the informant and an eye-witness of the incident. He, in his examination-in-chief, has stated that about four and a half years ago, he was at his home. At about 01:30 in the night, his uncle Pancham came to him and said that some men from the village are

beating Ram Dulare on the western side of the station. Ram Dulare was his real brother, so he, along with Pancham and Nanku, went to the station and heard some noise coming from the west. When they reached the spot, they saw that Ram Dulare was being beaten in Ram Awadh's field of bottle gourd by accused Udai Narain, Jai Ram, Daya Ram, Ram Sundar @ Bhola, Harish Chandra, Ram Awadh, Kallu Ram, Lala, Maharani Deen, Hari and Amrit Lal. All the accused were residents of his village. Therefore, he knows them from before. Udai Narain, Jai Ram, Bhola @ Ram Sunder and Daya Ram were beating Ram Dulare with *lathi,* whereas the rest of the accused were subjecting him to fisticuffs and kicks. It was moonlight. The accused Jai Ram said that Ram Dulare was working for his opponent (Bhayia Lal) and not for him and pushed him, abusing. Ram Dulare was pushed in a drain situate in the western direction. The informant and others beseeched Jai Ram to spare him, whereupon Jai Ram asked his associates to force a *lathi* into his anus and kill him. Thereupon, the assailants forced a stick (*danda)* into his rectum. He died there. Some residents of the village Kripa Shankar, Devki Nandan, Ram Dhan, Ram Sukh and others also arrived and asked the accused to desist, but they did not pay heed. After Ram Dulare died, they fled the spot, leaving the dead body and held out threats that if the informant went to the police station, he too would be killed. Thereafter, the informant carried Ram Dulare to the Police Station on a cot, purchased a piece of paper on the way and wrote out a report. He reached the police station with the dead body and lodged the report. He received a copy of the report and proved the written information (*tahrir*) as Ext. Ka-1. He has also said that the deceased was farming a crop sharing basis (*batai*) for Bhaiyalal @ Bhaiya Ram using his field, where brinjal (*bhanta*) crop was sown.

11. In his cross-examination, P.W.1 has said that about 20-25 persons accompanied him up to the road with the dead body. About 6-7 persons saw the incident. He received the information about the *maar-peet* at 01:00 a.m and reached the place of occurrence with others at 01:30 a.m. He reached there from the road along with Nanku, Pancham and Chinau.

The above route is long and there is another route up to the place of occurrence, which is short in distance and passes through *Chamrauti*. The other villagers went from the shortest route and reached there before him. P.W.1 reached there empty handed, though he knew that his brother was being beaten. The villagers themselves reached there and he did not ask them to accompany him. From the railway line, he saw four persons beating Ram Dulare with *lathis* and rest punching and kicking him. He reached there and requested them not to assault Ram Dulare, but they still continued beating him for about half an hour. Amrit Lal did not put the deceased down. About three inches *lathi* was thrust in his rectum. As a result, blood oozed out and dropped in the field. Blood was oozing out of Ram Dulare's nose. He put his thumb impression upon Ext. Ka-1 at the police station and at the same time the above application was written. He purchased the paper at the Soraon roundabout. He has also said that the application (*tahrir*) was written prior to reaching at the Police Station, as he was taking the dead body there. Therefore, he had written in the report that 'he has brought the dead body to the police station'. Chinau son of Ram Nath was not present at the place of occurrence. He did not tell the Investigating Officer that he runs a private canteen in IFFCO.

12. P.W.2 Pancham is said to be an eye-witness, who has stated that he is illiterate and on the date of incident, he was returning home after blocking the flow of water while irrigating his paddy crop. A person met him near the station and told him that Ram Dulare was being beaten by some people. He ran to the informant's home and told him that Ram Dulare was being beaten near the station. Then, Nanku and Chhinau were woken up and all of them reached Ram Awadh's field. They saw that all the eleven accused were beating Ram Dulare. Jai Ram, Udal @ Udai, Daya Ram and Bhola were armed with *lathi,* which they were employing to batter, Ram Dulare whereas rest of the accused were treating him to fisticuffs and kicks. They beseeched the assailants not to do so, but Jai Ram said that he (the victim) works for the opponents and exhorted others to beat him and drive a stick (*lathi*) up his anus. Ram

Dulare fainted. Then accused Udal @ Udai drove a *lathi* up his anus. As a result he died. The above incident occurred at about 01:00 or 01:30 in the night. The appellants fled the spot, threatening the witnesses with dire consequences, if they reported the incident to the police station etc. It was a moonlit night. They identified appellants, who belonged to their own village. Thereafter, they carried the cadaver to the police station on a cot and on way, near the Soraon intersection, purchased a piece of paper and wrote out the first information (*tahrir*) and gave it to the Police at the station where the FIR was lodged. He has also stated that the inquest report was prepared by the Sub-Inspector, which he has proved as Ext. Ka-2.

13. In his cross-examination, P.W.2 has stated that he does not know the person who gave him information that Ram Dulare was being beaten. The inquest report was read over to him by the Investigating Officer and then, he appended his signature to it. He did not tell the Investigating Officer that the deceased was brought to the station, where the application was written in the light and then came to the police station to lodge the FIR. There were 8 to 10 persons, who gathered at the spot. There were injuries over the entire body caused by the *lathi* blows and blood was oozing out from the rectum. About 8-10 fingers deep, the *lathi* was inserted in the deceased's rectum, in consequence whereof fecal matter came out and blood was already oozing out, which fell on the ground.

14. P.W.3, Dr. A.K. Nigam, has conducted autopsy on the deceased Ram Dulare on 09.07.1982. He has stated that on 09.07.1982, while posted as Medical Officer at the Moti Lal Nehru Hospital, Allahabad, the dead body of Ram Dulare was brought to him for *post-mortem* examination at 03:30 p.m. by Constables Raj Mangal and Buddhan Khan, both posted at Police Station Soraon. He has stated that the deceased had died about one and a half day ago. The deceased was of strongly built. *Rigor mortis* had passed through the upper limb of the body but present in lower limbs. He found following *ante-mortem* injuries on the corpse:

(i) Contusion of the size of 2 cm x 0.5 cm on the forehead at the left side 1 cm x 0.5 cm above the left eyebrow.

(ii) Traumatic swelling of the size of 4 cm x 3 cm on the left parieto occipital region, posterior part 3.50 cm from the top of the left ear with contusion 1 cm x 3/4 cm in the central of swelling.

(iii) Contusion 5 cm x 2.5 cm on the left side of chest 2 cm lateral to the nipple.

(iv) Contusion 10 cm x ¾ of the abdomen of the left side lower part extending from pubic region 1 cm above the anterior superior iliac spine.

(v) Contusion 6 cm x 1.5 cm on the right upper arm middle part back.

(vi) Lacerated wound 0.5 cm x 0.5 cm x muscle deep on the left leg middle pat inner side.

(vii) Multiple contusion on the back in an area of 15 cm x 12 cm.

(viii) Contusion on the back of the hip and posterior part of the right thigh.

(ix) Contusion on the back of the left thigh and hip.

(x) Contusion 1 cm x 0.5 cm on the inner part of the right hip.

15. It was found that the parietal bone was fractured and there was hematoma under the occipital bone. The brain was congested. The stomach had partially digested food material and was full. Small intestine was empty and large intestine was half full. The cause of death was coma due to head injury. He has proved the *post-mortem* report as Ext. Ka-3 and stated that the above injuries could have been caused by *lathi* and *danda*. The death could have occurred on 08.07.1982 at 01:00 in the night. Injury nos. 8, 9 and 10 could be or could not be caused due to something being inserted in the rectum. He handed over deceased's *dhoti* and underwear to the constable after *post-mortem*, which he proved as Exts. 1 and 2. He has stated that there may be a variation of six hours regarding the time of death on either side. Injury nos. 8, 9 and 10 are not on the rectum. Rectum was normal and there was no internal

injury to the stomach. There were no sign of escape of blood from the nose and rectum.

16. P.W.4 S.O. Arjun Singh, is the Investigating Officer of the case, who has stated that the FIR was lodged in his presence. The informant had brought the dead body along with him to the police station. Upon a written application of the informant, the Head Constable Ram Charan Singh scribed the check FIR. He further stated that he is familiar with his handwriting and signature and the witness has proved the check FIR as Ext. Ka-4. He has further stated that his signatures are on Ext. Ka-4. He has also stated that the Head *Moharrir* Ram Charan Singh entered gist of the FIR in G.D. No. 5 at 06.05 a.m., a copy whereof has been proved as Ext. Ka-5. The Investigating Officer has stated that on the basis of FIR, he commenced the investigation. The inquest report of the deceased was prepared along with connected papers. He has proved the inquest report as Ext. Ka-2. He has also stated that he collected blood stained *dhoti* of the deceased and prepared its recovery memo, which is proved as Ext. Ka-11. He has proved the *dhoti* as material Ext.-1. He inspected the place of occurrence and prepared its site-plan, which he has proved as Ext. Ka-12. Thereafter, he recorded the statements of the informant and other witnesses. After concluding the investigation, he filed a charge-sheet in the competent court, which is proved as Ext. Ka-15. He has also stated that it is written in the inquest report that villagers were committing *maar-peet* and shouting *chor-chor*, whereby the death had occurred.

17. The prosecution have produced the following documentary evidence in support of their case namely, Written application (Ext. Ka-1), Inquest Report (Ext. Ka-2), *Post-mortem* Report (Ext. Ka-3), First Information Report (Ext. Ka- 4), G.D. (Ext. Ka-5), Photo-nash (Ext. Ka-6), Challan-nash (Ext. Ka-7), Sample Seal (Ext. Ka.-8), Letter to C.M.O. (Ext. Ka-9), Letter to R.I. (Ext. Ka-10), Recovery Memo of blood stained *Dhoti* (Ext. Ka-11), Site Plan Index (Ext. Ka-12) and Charge-sheet (Ext. Ka-13).

18. After conclusion of the prosecution evidence, the statement of accused 313 Cr.P.C. was recorded, in which they denied the prosecution case and said that the witnesses have deposed against them due to enmity. Accused Amrit Lal, Kallu and Harish Chandra have stated that the deceased was killed by someone else while committing theft somewhere, but under the pressure of Ranjeet and Vijay Bahadur and in connivance with the Police, they have been falsely implicated in this case. The appellants have not produced evidence in their defence.

19. After hearing both the parties and examining the evidence on record, the learned trial court found that the prosecution has been able to prove its case beyond reasonable doubt and the appellants were held guilty, convicted and sentenced. The learned Trial Judge observed that the entries in the inquest report regarding information that the informant's brother Ram Dulare was killed by the villagers upon suspicion of being a thief is hearsay and inadmissible in evidence. The learned Trial Court also observed that the doctor, who carried out the autopsy and wrote the *post-mortem* examination report, has concealed injuries over the rectum and this negligence of the doctor would not give any benefit to the defence. It was also observed that if direct evidence is cogent and reliable, then hyper-technical medical evidence would have no bearing on the prosecution case. It was also observed that enmity is a double-edged weapon, which could cause an offence to be committed, and on the other hand, a person could be falsely implicated in a case. After so observing, the learned Trial Court convicted and sentenced the appellants.

20. Aggrieved by the judgment of the learned Trial Court, the appellants have preferred this appeal.

21. We have heard Mr. P.K. Singh along with Mr. Manoj Kumar Patel and Mr. Divyanshu Nandan Tripathi, learned Counsel appearing on behalf of appellant no.2 in Criminal Appeal No. 1071 of 1987 and on behalf of appellant nos. 6 and 7 in Criminal Appeal No. 1069 of 1987.

Mr. Ghan Shayam Kumar, learned AGA-I has been heard on behalf of the State in both the appeals.

22. It is submitted on behalf of the appellants that the alleged incident occurred at odd hours. It was a blind murder and nobody had seen the occurrence. It is also submitted that the presence of alleged eye-witnesses on the spot is highly doubtful. The witnesses examined in Court are relatives of the deceased and interested witnesses. Their testimony, therefore, is not trustworthy and reliable.

23. It is next submitted by learned counsel for the appellants that the FIR has been lodged belatedly after about six hours and there is no explanation for all the delay in lodging the FIR. It is further submitted that allegedly, the surviving appellants were present on the spot and there are general allegations against them. According to the prosecution, they were not carrying any weapons and thus, were not part of unlawful assembly. They had no common object to murder the deceased. The incident occurred far away from the outskirts of the village. There was no source of light.

24. It is also submitted that in rural areas, generally, people gather at a place where some dispute occurs, just to watch it, and merely by standing at the place of occurrence, they cannot be considered as member of the unlawful assembly.

25. Learned AGA appearing on behalf of the State has submitted that the appellants are named in the FIR. The FIR was prompt and there was no delay in lodging it. All the appellants formed an unlawful assembly. Some of the appellants were armed with *lathi* and all of them, in furtherance of their common object, battered the deceased, as a result whereof, he died on the spot.

26. It is also submitted that ocular testimony is supported by the medical evidence. Merely because witnesses are relatives does not *ipso facto* becomes a ground to reject their testimony. There are no major inconsistencies in evidence and other connected circumstances to raise doubt about the worth of their testimony. The prosecution has proved its

case beyond reasonable doubt and the Court has rightly convicted the appellants. Therefore, both these appeals have no force and are liable to be dismissed.

27. In a criminal trial, the burden of proof always lies upon the prosecution to prove its case beyond reasonable doubt. As per the prosecution story, the alleged incident occurred in the dark hours of night, away from *abadi* of the village and its populated area. There was no source of light, except for the moonlight. According to the post-mortem report, the deceased sustained ten ante-mortem injuries of the nature of contusions and lacerated wounds over different parts of the body, and there were fractures over the parietal and occipital bone; hematoma was present under the occipital bone. In the opinion of the doctor, the cause of death was coma as a result of head injury. The autopsy was done on 09.07.1982 at 3:30 p.m. In the opinion of the doctor, death had occurred about one and a half day ago. The above period shows that the death might have occurred some time in the night of 08.07.1982. Looking into the injuries of the deceased, it is clear that this is not a case of natural death, but murder. Now, we have to see whether it was the appellants, who committed the murder of the deceased as alleged by the prosecution.

28. The prosecution has examined two witnesses of fact to prove the incident. They are P.W.1 Ram Kishor and P.W.2 Pancham. P.W.1 Ram Kishor is the real brother of the deceased and P.W.2 Pancham, his uncle. Therefore, both these witnesses are relatives of the deceased and thus, they are interested witnesses. But, merely being relative witnesses does not render their testimony unreliable and what is required is that evidence of such witnesses be examined very carefully in the light of other evidence on record.

29. Upon a perusal of the testimony of both these witnesses as well as the manner in which they say the incident had happened, their presence at the spot, is highly doubtful. According to the prosecution, P.W.2 Pancham was in his field, irrigating the paddy crop and he was there till

after midnight, when a person met him near railway station and told him that the deceased Ram Dulare was being beaten by some men. The prosecution has not disclosed the identity of the person who gave this information to Pancham. P.W. 2 Pancham has also stated that he does not know the person, who gave him the information. It is very unlikely that some unknown person would pass on such information to a stranger like Pancham, expecting that it would reach the relevant person. If that unknown person knew that the informant was the deceased's brother then he would have passed on this information to the informant himself. Thus, the very first source of such information is highly doubtful.

30. Moreover, according to P.W.2 Pancham, after receiving the information, he came running to Kishor's house and passed on to him the information that Ram Dulare was being beaten on the west side of the railway station. Thereafter, Nanku and Chhinau were awakened. All of them reached Ram Awadh's field and saw all the appellants present there. P.W.1 Ram Kishore has stated that his uncle Pancham told him that Ram Dulare was being beaten by some men from the village towards the western side of the railway station, in the field of Ram Awadh, where a crop of bottlegourd was sown. Therefore, he along with Pancham, Chhinau, and Nanku went there and saw the appellants battering the deceased.

31. It has come in evidence of P.W. 1 that on that particular night at about 01:00, he received information that his brother was being beaten and at about 1:30 a.m., i.e. after half an hour he proceeded to the place of occurrence. He has stated that from railway line, he saw that four persons were beating him with sticks (*lathi)* and the rest were resorting to fisticuffs and kicks. He then reached the place of occurrence and saw the appellants still beating the deceased. He has also stated that he requested the appellants not to beat the deceased, but they kept on the violence for half an hour. Some villagers too were also present there. They also requested the appellants not to beat Ram Dulare. Therefore, as per P.W.1 Ram Kishor, the above episode of assault by the appellants continued for about an hour. In view of the testimony of P.W.1 and

P.W.2, it is made out that the deceased was being battered, which led a stranger to give this information to Pancham, who was returning from his paddy field, and he, in turn, apprised the informant about it. Upon receipt of this information, the informant and Pancham collected some persons from the village and, thereafter, reached the place of occurrence, which was away from the populated area of the village, in a field of Ram Awadh near the railway line. All this must have taken a considerable time.

32. In view of the above evidence, it is highly unnatural and improbable that it would take about an hour or so for the eleven assailants to beat the deceased Ram Dulare and cause only ten injuries. If the accused appellants had a common object to kill the deceased, they would not have taken about an hour to accomplish the evil deed. As per the *post-mortem* report, the deceased had received ten injuries, and according to prosecution, out of the eleven assailants, three were carrying sticks (*lathi).* Normally, it would not have taken more than five to ten mintues for the 11 assailants to commit this crime. It is highly unnatural that the appellants would keep on beating the deceased up to a considerable time so that people may reach the spot and identify them. Thus, the manner and duration, up to which the alleged incident is stated to have happened, is highly unlikely.

33. There is one more aspect which raises serious doubt about the presence of informant and Pancham, the two witnesses of fact, examined by the prosecution, at the place of occurrence. It has come in evidence of P.W.1 Ram Kishor and P.W.2 Pancham that after receiving the information, they left home for the place of occurrence empty handed. This conduct of the witnesses is very unnatural. After receipt of information that Ram Dulare was being beaten by a group of men, the normal conduct of the informant and his uncle Pancham would have been to pick up a *danda* or *lathi, or* any other kind of weapon in hand before leaving for the scene of crime to save the deceased. This conduct of both these witnesses going empty handed to the place of occurrence

raises serious doubt whether they, in fact, reached there, and latter part of the incident happened before their eyes.

34. It is also noteworthy to mention that according to the prosecution, the three appellants were carrying *lathi* and there was no other weapon with them. In such a situation, the conduct of P.W.1 and P.W.2 in not trying to save the deceased and let him be done to death before their eyes is also not reasonable and natural conduct. If the appellants had any dangerous weapon on them like firearms, it could have been understandable for them not to come forward to save the deceased but, *lathi* were not such a weapon as to deter a person from saving his close relative, like a real brother or nephew.

35. Further, P.W.1 stated that it was after receiving the news that the informant and his uncle Pancham along with Nanku and Chhinau left their house for the spot taking a longer route by road, whereas the other villagers reached there prior to them via the *Chamrauti* which is shortest route to the place of occurrence. This conduct of the informant is also unnatural. After receiving such startling news, a man of ordinary prudence (P.W.1) should have proceeded via the shortest route to save his brother, rather than take a longer route, and, also, go there empty handed. Therefore, going empty handed via a longer route, without any reasonable explanation, raises suspicion about the presence of the informant and his uncle Pancham at the spot, at the time of occurrence.

36. Besides this, there are major contradictions in ocular and medical evidence. According to P.W.1 Ram Kishor and P.W.2 Pancham, the deceased was beaten up by all the appellants, who treated him to fisticuss, *lathi* blows and kicks at the instigation of the appellants Jai Ram. The appellant Amrit Lal pulled the deceased down, whereas Udal @ Udai Narain thrusted his *lathi* in the deceased's anus, on account of which, he died on the spot. P.W.1 Ram Kishor has said that the appellant Jai Ram exhorted on to drive a *lathi* in the deceased's anus, and, thereafter, a *lathi* was drove into his rectum. P.W.2 Pancham has stated that it was Udal, who drove the *lathi* into the deceased's rectum. P.W.1

has stated that *lathi* was drove about three inches into the anus orifice, due to which blood oozed out and dropped onto the ground (the field). P.W.2 Pancham has stated that about 8 to 10 *angul lathi* was inserted, as a result whereof, fecal matter came out; he started bleeding and the blood dropped on to the ground.

37. Therefore, both the witnesses have stated that serious injuries were caused to the deceased by thrusting a *lathi* in deceased's anus and due to injuries sustained by the deceased, there was bleeding from his nose and rectum. But, according to P.W.3, Dr. A.K. Nigam, Medical Officer, who conducted the post-mortem examination of the deceased, there were no sign of bleeding from nose or rectum. He has also stated that the rectum was normal and there was no internal injury in the stomach also.

38. The above observation and the injuries found on the body of the deceased are contrary to the verbal account of P.W.1 and P.W.2. In the *post-mortem* examination, there were injury nos. 8, 9 and 10 of the nature of contusion on the back of hip and posterior part of right thigh, left thigh and hip and inner part of right hip. The doctor has stated that these injuries were not found on the rectum. There is no evidence that the doctor was partisan or negligent in conducting the *post-mortem* examination. The nature and number of injuries found on the person of deceased are material. These are not opinions of the doctor, which could be considered in the light of oral evidence, but material part of medical evidence, which show the nature of injuries and the part of body over where the injuries were found. In case of conflict between direct evidence of eye-witnesses and evidence of medical expert, the eye-witness version is to be accepted, unless the medical evidence completely belies the ocular version. In the present case, the medical evidence completely rules out the direct evidence of eye-witnesses. The injuries found on the dead body do not support the dock evidence, and thus, there are material contradictions in the ocular and medical evidence, which raise serious doubts about the prosecution case.

39. The burden was on the prosecution to prove that it were the appellants, who caused injuries and murdered Ram Dulare in the manner, alleged by the prosecution. The prosecution has utterly failed to prove it from the oral and medical evidence, read together.

40. It is argued on behalf of the appellants that it was a blind murder and the deceased was killed by someone else. There was a rumour that the deceased was beaten by the villagers over suspicion that Ram Dulare was a thief, and, in this regard, the appellants have drawn the attention of this Court to an entry in the inquest report where it is mentioned that the deceased was beaten by the villagers, after being suspected as a thief and died as a result thereof. P.W.2 Pancham is one of the *pancha* of the inquest report and has stated in Court that after reading out of the above inquest report to him, he put his thumb impression upon it. In this regard it may be noted that the purpose and nature of the inquest report is only to know the apparent cause of the death and other entries in the inquest report are not very material. The defence has not asked any question in this regard from the witness P.W. 4 , who prepared the inquest report, to clarify this point, so any argument in this regard can not be accepted.

41. In **Podda Narayana v. State of A.P**., **AIR 1975 SC 1252**, it was held by the Supreme Court that the proceedings under Section 174 Cr.P.C. have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death, and if so, what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted, is foreign to the ambit and scope of the proceedings under Section 174. Neither in practice nor in law was it necessary for the Police to mention those details in the inquest report. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report.

42. It is clear from the above discussion that it was a blind murder and the deceased was murdered by someone else, in the dark hours of night, away from the *abadi* of the village.

43. In view of above discussion, we find that P.W.1 Ram Kishor and P.W.2 Pancham had not seen the incident and their testimony is not reliable and trustworthy. There are major contradictions in ocular and medical evidence. The prosecution has not produced any other independent witness, who were allegedly present at the place of occurrence.

44. In **Hem Raj v. State of Haryana 2005 (10) SCC 614**, the Supreme Court has held that non-examination of independent witness, by itself, may not give rise to an adverse inference against the prosecution. However, when the evidence of eye-witnesses raises serious doubts about their presence at the time of occurrence, the unexplained omission to examine the independent witness would assume significance. The above authority applies to the present case. According to the prosecution, there were many eye-witnesses and villagers at the spot when the incident occurred. The presence of eye-witnesses, at the place of occurrence, is highly doubtful. The prosecution has not explained why other eye-witnesses were not examined. This aspect of the matter assumes significance and gives rise to an adverse inference against the prosecution.

45. In view of the above discussion, the presence of P.W.1 and P.W.2 at the spot is highly doubtful and it appears that they had not seen the incident. They reached the spot when the deceased had already died and after other villagers had already reached there. It is alleged on behalf of the appellants that there is party politics in the village and they are falsely implicated due to this party *bandi*. In this regard, P.W.1 Ram Kishor has admitted in his statement that there are two parties in the village, one belonging to Bhayia Lal (whom the informant supports) and the other party is of the appellants. Therefore, the argument of

appellants' in this regard has force and a false implication of theirs cannot be ruled out.

46. It is submitted on behalf of appellants that the FIR is ante-timed and dictated by the Police, after consultation and thus loses its significance. In this regard, it may be noted that it has come in evidence of P.W.1 that he had affixed his thumb impression upon Ext. Ka-1 at the police station. On the one hand, he has stated that it was written on way to the Police Station at Soraon, after purchasing a piece of paper there and P.W.2 has stated that it was scribed at the Soraon roundabout. They then proceeded to the Police Station. On the contrary, it has come in the evidence of P.W.1 that it was written ,when he signed it meaning thereby, at the police station. He has also said that the name of witness Chhinau was mentioned in the FIR, though he was not present at the spot. This statement is contrary to his previous statement as well as that of P.W.2, that after waking up Chhinau, they went to the place of occurrence, along with Chhinau. On the other hand, the I.O. has said that P.W.2 had given a statement to the Police, whereafter written information (*tehrir)* was written at the railway station in the electric light and not at the Soraon roundabout. Besides this, it is mentioned in the FIR that "लाश लेकर थाने आया हूँ" In this regard P.W.1 has stated that as he was taking the dead body to the Police Station, so he had written these words in advance. The above explanation is not satisfactory. These words would normally have been written after reaching the police station. In view of the above discussion, we come to the conclusion that the above contradictions have resulted in the F.I.R. losing its significance.

47. In view of the testimony of P.W.1 and P.W.2 that there was bleeding from the nose and blood oozed out from the deceased's rectum and some blood also dropped at the place of occurrence, the I.O. has said that he searched for the blood stained earth at the place of occurrence, but did not found it. It also raises serious doubt whether the incident actually took place at the alleged place of occurrence.

48. In view of the above, we come to the conclusion that the prosecution has utterly failed to prove its case beyond reasonable doubt and the learned Trial Judge has not appreciated the evidence on record in the right perspective and reached a wrong conclusion regarding the appellants' guilt upon conjectures and improper appreciation of evidence.

49. In view of the foregoing discussions, we are of opinion that both these appeals deserve to be allowed and the conviction and sentence of the appellants set aside. Thus, Criminal Appeal No. 1071 of 1987 and Criminal Appeal No. 1069 of 1987, both, are accordingly, **allowed.** The impugned judgment and order, dated 13.04.1987, passed by the learned Additional Sessions Judge in S.T. No. 540 of 1985 (State v Udai Narain and others) is **set aside.** Appellant no.2, Amrit Lal, in Criminal Appeal No. 1071 of 1987 and appellant nos. 6 and 7, Harish Chandra and Kallu respectively, in Criminal Appeal No. 1069 of 1987 are **acquitted** of all the charges. The appellants, to wit, **Amrit Lal, Harish Chandra** and **Kallu** are in custody and lodged in jail. They are directed to be released forthwith, if not wanted in any other case.

50. Before being realeased, the above appellants shall execute personal bonds in the sum of Rs.25,000/- each under Section 481 of the Bhariya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of Cr.P.C.) for their appearance, in the event of an appeal being preferred against their acquittal.

51. Let a copy of this judgment and order be sent to the Trial Court along with the Trial Court record for information and necessary compliance.

(Sanjiv Kumar, J.) (J.J. Munir, J.)

December 18, 2025
Subham