2026 INSC 178

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 1837-38 OF 2011

SITARAM KUCHHBEDIA ....APPELLANT(S)

VERSUS

VIMAL RANA AND OTHERS ....RESPONDENT(S)

WITH

CRIMINAL APPEAL NO(S). 1835-36 OF 2011

J U D G M E N T

Mehta, J.

1. Heard.

2. These appeals arise out of the common judgment and order dated 19th July, 2010, rendered by the Division Bench of the High Court of Madhya Pradesh at Jabalpur[1] in Criminal Appeal Nos. 745 and 774 of 2006, whereby the High Court partly allowed the appeals preferred by the accused,

[1] Hereinafter, referred to as the "High Court".

namely, Roop Singh, Mukesh Gujar s/o Phool Singh, Pintu @ Jitendra Kumar, Ajju @ Ajay Singh, Baddu @ Badda, Vimal Rana, Dhanraj, Kehari Singh, Parath Singh, Meharban Singh, Phool Singh, Durjan Gujar, Paggal @ Bal Kishan, Bhagwan Gujar, Prakash Gujar, Mukesh Gujar s/o Rustom Gujar, Gudda @ Meharban, Malkhan Singh, Pappu @ Pushpendra Gujar.

3. The accused persons were put to trial before the learned Special Judge (Atrocities), Narsinghpur,[2] in Special Case No. 51 of 2004. Upon conclusion of the trial, *vide* judgment and order dated 7th April, 2006, the accused were convicted for the offences punishable under Section 148 of the Indian Penal Code[3] and Sections 323, 325, and 302 read with Section 149 IPC, and were sentenced in the terms set out below: -

Sections	**Sentence**	**Penalty/Fine**	**Sentence in default of payment fine**
Section 148 IPC	Two Years RI	Rs.1,000/-	Two months RI
Section 323 r/w 149 IPC	One Year RI	Rs.500/-	One month RI
Section 325 r/w 149 IPC	Two Years RI	Rs.1,000/-	Two months RI

[2] Hereinafter, referred to as the "trial Court".
[3] For short, 'IPC'.

Section 302 r/w 149 IPC	Rigorous Imprisonment for Life.	Rs.2,000/-	Four months RI

4. In appeal, the High Court, *vide* the impugned judgment, toned down the conviction recorded for the offence punishable under Section 302 read with Section 149 IPC and altered the same to that punishable under Section 304 Part II read with Section 149 IPC, holding that the case would fall within the ambit of culpable homicide not amounting to murder. The convictions and sentences recorded by the trial Court for the offences punishable under Sections 148, 323 read with 149 IPC, and 325 read with 149 IPC were, however, maintained.

5. Consequent upon the toning down of the offence from one punishable under Section 302 IPC, the sentence of life imprisonment imposed by the trial Court was set aside and the accused persons were sentenced to undergo rigorous imprisonment for a period of six years along with fine of Rs.5,000/- each, and in default whereof, to further undergo rigorous imprisonment for one year for the offence punishable under Section 304 Part II read with Section 149 IPC.

Factual Background

6. Succinctly stated, the facts germane for adjudication of the present appeals are set out hereinbelow.

7. A *Dehati Nalishi* (Exh.P/2) was lodged by the informant Late Shri Sitaram Kuchhbedia (PW-1)[4], on 11th July, 2003 at about 9:00 p.m. at the Government Hospital, Gadarwada, to Shri B.K. Pathak (PW-11), SHO, Police Station Paloha Bada.

8. It was *inter alia* alleged in the *Dehati Nalishi* (Exh.P/8), that at about 08:00 p.m. on the same day, while he was at Gadarwada, the informant-appellant received information that his brother Bhaggu @ Bhag Chand, who had gone to Bhatera Ghat for bathing in the river Narmada and was returning in a Jeep, had been assaulted by persons belonging to the Gujar community of village Khairi. Upon receiving this information, the informant-appellant immediately proceeded towards the place of occurrence in his Sumo vehicle along with Kanchan (driver), Sanju Chouksey, and Ganesh Yadav. On the way, near the

[4] Hereinafter, referred to as the "informant-appellant". The informant-appellant has since expired and stands substituted through his legal heir Shri Dhanraj Gangapri (*vide* Interlocutory Application No.185690 of 2025).

agricultural field of Ekant Jain, he noticed a mini bus belonging to Banti Dube, in which the Bhaggu @ Bhag Chand was being taken to Gadarwada. Gudda Maharaj and Guddu Patel, were also present in the vehicle and both were injured. The informant-appellant boarded the bus and accompanied his brother.

9. It is alleged that Bhaggu @ Bhag Chand was conscious at that time. On being asked about the occurrence, he stated that at about 7:15 p.m., while returning from Bhatera Ghat, he found that the road was obstructed by placing tube-well pipes across the passage. When he stopped the mini bus, he was surrounded and assaulted by numerous persons. Bhaggu @ Bhag Chand further stated that earlier in the day, at about 02:00 p.m., he had intervened when the sons of one of the accused, namely, Vimal Rana were beating Sharan Dubey, and on that account, the accused persons had assaulted him (Bhaggu) with *lathis*. Additionally, Purshottam Sahu (PW-4), Kulhad Baba (PW-2), Ashok Kori (PW-3), Guddu Patel, and Gudda Maharaj (PW-5) were also assaulted in the same incident and sustained injuries. The informant-appellant accompanied his injured brother Bhaggu @

Bhag Chand to the Government Hospital, Gadarwada. While Bhaggu @ Bhag Chand[5] was undergoing treatment, he succumbed to the injuries. The prosecution's case is that the deceased-Bhaggu died as a result of the injuries sustained in the assault.

10. On the basis of the aforesaid *Dehati Nalishi* (Exh.P/2), a formal First Information Report (Exh.P/34), being Crime No. 28 of 2003, came to be registered for the offences punishable under Sections 147, 148, 149, 307, 302 of IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act[6]. After conducting the inquest proceedings, the body of the deceased-Bhaggu was forwarded for post-mortem examination, and a *Merg* intimation (Exh.P/35) was also prepared. The injured persons were referred to the Government Hospital, Gadarwada, for medico-legal examination, radiological investigation and treatment.

11. As per the post-mortem report (Exh.P/8), the following *ante-mortem* injuries were found on the body of the deceased-Bhaggu: -

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[5] Hereinafter, referred to as the "deceased-Bhaggu".
[6] For short, 'SC/ST Act'

1. *Contusion 2.5 x 3 cm over the right subscapular region.*
2. *Multiple superficial abrasions 9 cm x 2 cm to 1/4 cm x 1/4 cm on the right shoulder and right side of the back.*
3. *Contusion 14 cm x· 3 cm over the right lumbar region.*
4. *Contusion 4 x 2 cm x 2 cm on right upper back.*
5. *Lacerated wound 1 x 1 cm x bone deep, left arm with fracture of the humerus bone lower end.*
6. *Contusion 11 x 4 cm over left thigh.*
7. *Contusion 6 x 4 cm over left thigh.*
8. *Contusion 8 x 4 cm on left thigh lower end, contusion 3 x 2 cm over left calf.*
9. *Contusion 23 x 4 cm left mid back.*
10. *Contusion 18 x 4 cm over the upper shoulder.*
11. *Contusion 11 x 3 cm over left shoulder.*
12. *Contusion 5 x 4 cm over left upper arm.*
13. *Sup. Friction abrasion 6 x 3 cm left upper back.*
14. *Sup. Friction abrasion 6 x 4 cm left elbow.*
15. *Sup. Friction abrasion 7 x 3 left forearm.*
16. *Lacerated wound 1 x 1/2 x 1/4 cm over left-hand dorsum.*
17. *Multiple Sup. Friction abrasion 4 x 1 cn-1 to 1/8 cm x 1/8 cm over the left abdomen and chest.*
18. *Sup. Friction abrasion 7 x 2 cm over the left shin.*
19. *Sup. Friction abrasion 4 x 2 cm over the left medial calf.*
20. *Lacerated 1 cm x 1/2 x 1/2 cm over shin.*
21. *Lacerated wound 8 x 1/2 x 1/2 cm over the right shin below injury no.20.*
22. *Contusion 12 x 3 cm over the right post calf.*

23. *Multiple Sup. Abrasion 4 cm x 1/2 cm x 1/8 cm x 1/8 cm over the right knee.*
24. *Lacerated wound 5 x 2 cm x bone deep over left parietal scalp.*
25. *Lacerated wound 4 cm x 2 cm x bone deep, left lower parietal scalp, lateral to injury no. 24.*
26. *Lacerated wound 3 cm x 1 cm x bone deep, left temporal region, obliquely placed.*
27. *Lacerated wound 2 cm x 1/2 cm x bone deep over left*
28. *Lacerated 1 x 1/2 cm x 1/4 cm over left eye brow.*
29. *Lacerated wound 1/2 x 1/2 cm over forehead.*

12. The medical jurist Dr. N.K. Bajpai noted his opinion for the cause of death as below:

> "A fresh linear fracture measuring 7 cm in length was found over the left parietal bone, obliquely placed, accompanied by extradural and subarachnoid haemorrhage. There was congestion of the underlying fronto-parietal region, corresponding to Injury No.24."

13. During the course of investigation, the Investigating Officer prepared the spot map and *panchnama* of the place of occurrence. A damaged grey-coloured Marshal Jeep bearing registration No. MP-49-D-0235 was seized from the spot, blood stains being noticed on its front portion. Blood-stained and control soil, broken glass pieces, blood-stained seat covers, and other articles were recovered from the vehicle and the surrounding area. Certain personal

and religious articles found inside the vehicle, along with a blood-stained stone, were also seized. Blood was scraped from the vehicle door, and a sealed packet containing the clothes of the deceased-Bhaggu @ Bhag Chand, was taken into possession. The seized articles were sent for forensic examination.

14. Further, documentary proof relating to the caste of Bhaggu @ Bhag Chand was collected. A list containing the names of the accused persons was also obtained from the informant-appellant (Exh.P/1).

15. Upon completion of the preliminary investigation, the accused persons were taken into custody. On the basis of the disclosures made by the accused persons, namely Bhalu @ Hari Shanker, Munnalal @ Devi Singh, Phool Singh, Prakash Gurjar, Ajju @ Ajay, Pintu @ Jitendra, Mukesh Gurjar, Roop Singh (Panda), Vimal Rana, Dhanraj Singh, Sultan @ Sulkhan, Gudda @ Meharban, Pappu @ Pushpendra and Kehar Singh, under Section 27 of the Indian Evidence Act, 1872[7], *lathis*

[7] Hereinafter, referred to as the "Evidence Act, 1872".

were recovered from the places disclosed by them. Pursuant to the disclosure statement given by accused Baddu @ Badda, a bent stick was recovered from the place disclosed by him. All the seized articles were forwarded to the Forensic Science Laboratory, Sagar, for examination through the Superintendent of Police. Thereafter, the statements of the witnesses were recorded. The previous criminal records of some of the accused, namely, Parath Singh @ Paras Singh, Gudda @ Meharban Gurjar, and Meharban, were also collected.

16. Upon completion of investigation, the police filed a report under Section 173(2) of the Criminal Procedure Code, 1973[8] before the competent court. The case was committed to the Sessions Court for trial which framed charges against the charge-sheeted accused, namely, Roop Singh, Bhalu @ Hari Shankar, Mukesh Gujar, Pintu @ Jitendra Kumar, Ajju @ Ajay Singh, Baddu @ Badda, Vimal Rana, Dhanraj, Munna Lal, Kehari Singh, Parath Singh, Meharban Singh, Phool Singh, Durjan Gujar, Paggal @ Bal Kishan, Bhagwan Gujar, Prakash Gujar,

[8] For short, 'CrPC'.

Mukesh Gujar, Gudda @ Meharban, Malkhan Singh, Pappu @ Pushpendra Gujar, Sulkhan @ Sultan, for the offences punishable under Sections 148, 294, and 506-B IPC, Sections 323 and 325 read with Section 149 IPC, Section 302 read with Section 149 IPC, and Section 3(2)(v) of the SC/ST Act.

17. The accused persons abjured their guilt and claimed trial.

18. In order to bring home the charges, the prosecution examined 13 witnesses and exhibited 97 documents.

19. In their statements under Section 313 CrPC, the accused denied the prosecution allegations *in toto* and asserted that they had been falsely implicated on account of political rivalry and caste factionalism. Accused Parath Singh, Malkhan Singh, Ajju @ Ajay Singh, Mukesh Gujar, Kehari Singh, and Durjan specifically set up a plea of *alibi*, contending that they were not present at the place of occurrence at the relevant time.

20. In defence, the accused examined Sarman (DW-1), Beni Ram (DW-2), Daya Shankar (DW-3), and M.A. Qureshi (DW-4). It is essential to note here that the Medical Officer, namely, Dr. N.K. Bajpai, who

conducted the post-mortem examination upon the body of the deceased (Bhaggu), was available before the trial Court for deposition on 5th February, 2005. On that day, the counsel representing the accused admitted the post-mortem report, which was accordingly marked as Exh.P/8. In view of such admission, the Public Prosecutor chose to give up the witness-Dr. N.K. Bajpai instead of examining him on oath. Accordingly, the trial Court discharged the medical jurist.

21. The trial Court, upon hearing the rival submissions and appreciation of the medical and ocular evidence, recorded a finding that the deceased-Bhaggu met a homicidal death, the post-mortem report (Exh.P/8) disclosing as many as 29 injuries, including a fatal head injury. The injuries sustained by Kulhad Baba @ Shahfaz Khan (PW-2), Purshottam Sahu (PW-4) and Deen Dayal (PW-9) were held to be grievous, whereas those suffered by Ashok Kori (PW-3), Guddu @ Arvind, and Gudda alias Sandeep (PW-5) were found to be simple in nature.

22. Placing implicit reliance on the testimony of the injured eye-witnesses, namely Kulhad Baba @ Shahfaz Khan (PW-2), Ashok Kori (PW-3), Dabbu @

Purshottam Sahu (PW-4), Gudda alias Sandeep (PW-5) and the independent witness Deen Dayal (PW-9), and finding their version to be duly corroborated by the medical evidence, the trial Court held their presence at the scene of occurrence to be natural and trustworthy.

23. The trial Court further discarded the objections regarding the delay in recording statements under Section 161 CrPC and non-examination of certain witnesses, holding that the testimony of the injured witnesses inspired confidence.

24. The *Dehati Nalishi* (Exh.P/2) and the list of accused persons (Exh.P/1) were approached with circumspection, the trial Court expressing doubt regarding their truthfulness and genuineness. Nevertheless, the Court found that the direct ocular testimony of the injured witnesses independently and convincingly established the participation of the accused in the assault. The defence of *alibi* taken by some of the accused was disbelieved as the documentary evidence produced in support thereof was found to be unreliable.

25. Consequently, the trial Court *vide* judgment dated 7th April, 2006 held that the accused persons[9], namely, Roop Singh, Mukesh Gujar s/o Phool Singh, Pintu @ Jitendra Kumar, Ajju @ Ajay Singh, Baddu @ Badda, Vimal Rana, Dhanraj, Kehari Singh, Parath Singh, Meharban Singh, Phool Singh, Durjan Gujar, Paggal @ Bal Kishan, Bhagwan Gujar, Prakash Gujar, Mukesh Gujar s/o Rustom Gujar, Gudda @ Meharban, Malkhan Singh, Pappu @ Pushpendra Gujar, had formed an unlawful assembly armed with *lathis*, and in prosecution of the common object, concertedly assaulted the deceased-Bhaggu and the injured persons by blunt weapons. The necessary ingredients of Sections 148, 323/149, 325/149, and 302/149 IPC were thus held proved against the convicted accused-respondents beyond all manner of doubt. However, the charges under the SC/ST Act and offences under Sections 294 and 506 IPC were not found proved.

26. The trial Court extended the benefit of doubt to some of the accused persons, namely, Bhalu @ Hari

[9] Hereinafter, referred to as the "accused-respondents".

Shankar, Sulkhan @ Sultan, and Munna Lal, and consequently acquitted them.

27. In appeal, preferred by the accused-respondents, the High Court, upon reappreciation of the evidence, observed that though the deceased-Bhaggu had sustained numerous injuries and several prosecution witnesses had also suffered injuries, the medical evidence indicated that the death of Bhag Chand was attributable to a single head injury. It was held that the death was not the cumulative result of all the injuries sustained by the deceased. Proceeding on this premise, the High Court held that the common object of the unlawful assembly could not be inferred to be the commission of murder.

28. The High Court further reasoned that the fatal injury appeared to be the individual act of one assailant, and since the prosecution had not led evidence to establish the identity of the accused who caused that injury, it would be unsafe to sustain the conviction of all the accused-respondents under Section 302 read with Section 149 IPC. The High Court thus opined that the requirements of a

common object to commit murder were not proved beyond a reasonable doubt.

29. The High Court found that though the intention to cause death could not be attributed to the accused-respondents, nonetheless, taking note of the fact that all the accused were armed with *lathis* and had participated in the assault, they could be attributed with the knowledge that their acts, committed in furtherance of the common object of the unlawful assembly, were likely to cause death. On this reasoning, the conviction was altered from Section 302 read with Section 149 IPC to Section 304 Part II read with Section 149 IPC, while the conviction and sentences for the remaining offences were maintained.

30. In view of the modification of the conviction, the punishment of rigorous imprisonment for life awarded by the trial Court was set aside, and instead, the accused-respondents were sentenced to undergo rigorous imprisonment for six years and to pay a fine of Rs.5,000/- each for the offence punishable under Section 304 Part II read with Section 149 IPC. In the event of default in payment of fine, they were further

required to undergo rigorous imprisonment for a period of one year.

31. The said judgment now forms the subject matter of challenge in the present appeals by special leave preferred by the *de facto* complainant and the State. The accused-respondents have, of course, accepted the findings of the High Court.

Submissions on behalf of the appellants

32. Learned counsel appearing for the appellants fervently and vehemently contended that the High Court committed serious error in interfering with the finding of conviction recorded by the trial Court, which, after a careful appreciation of the entire material on record and placing reliance on the testimony of five injured eye-witnesses along with the medical and other corroborative evidence, had rightly convicted the accused-respondents for the offence of murder punishable under Section 302 read with Section 149 IPC. It was submitted that the alteration and toning down of the conviction by the High Court from Section 302 r/w 149 IPC to one under Section 304 Part II r/w 149 IPC, coupled with the reduction of sentence to six years' rigorous imprisonment, is perverse and legally unsustainable.

33. It was urged that the assault was neither casual nor accidental, but deliberate and premeditated. Learned counsel drew the Court's attention to the statement attributed to the deceased-Bhaggu that earlier on the same day, at about 2:00 PM, he had intervened when the sons of Vimal Rana were assaulting Sharan Dubey. It was urged that this intervention furnished the immediate motive to the accused-respondents for the subsequent attack and lent support to the assertion that the assault was not a chance occurrence, but a retaliatory act carried out with deliberation. Further, attention was drawn to the medical evidence to show that a total of 63 injuries were caused to the victims, out of which 29 injuries were inflicted on the deceased alone, including five serious injuries on the skull area. Reliance was placed upon recent decisions of this Court in ***Chunni Bai v. State of Chhattisgarh***[10] and ***Mahadeo Sahni and Ors. v. State of Bihar***[11] to contend that where multiple grievous injuries are inflicted on the victim/s by members of an unlawful

[10] 2025 SCC OnLine SC 955
[11] (2002) 6 SCC 656.

assembly, the common object to cause death can legitimately be inferred.

34. It was submitted that the facts/evidence and corroborative material available on record unerringly indicate that the offence committed by the accused would fall within the ambit of Section 302 IPC, and not under Section 304 Part II IPC. Learned counsel urged that the manner of assault and the nature of injuries sustained demonstrate both the intention and the knowledge attributable to the accused that their acts were imminently dangerous and bound to cause death. It was contended that such deliberate conduct could not, in law, be ignored so as to tone down the offence to one of culpable homicide not amounting to murder, and that the alteration of the conviction to Section 304 Part II IPC resulted in an unwarranted dilution of criminal liability.

35. It was further contended that once vicarious liability under Section 149 IPC had been invoked, the question as to the individual act of the accused who inflicted the fatal blow to the deceased became inconsequential. Learned counsel submitted that Section 149 IPC fastens vicarious liability upon each member of the unlawful assembly for acts committed

in prosecution of the common object. It was urged that the post mortem report (Exh.P/8) was admitted by the accused-respondents and the same conclusively establishes the existence of multiple injuries all over the body of the deceased, with five on the vital part, i.e., head. Emphasis was laid on the fact that the deceased had sustained multiple injuries, and the ocular testimony disclosed the concerted participation of all the accused in the assault, a position which, according to counsel, found acceptance with the trial Court and was affirmed by the High Court. It was thus urged that the consequence of the fatal injury caused to deceased-Bhaggu would have to be fastened collectively to all the accused-respondents, irrespective of the identity of the individual who inflicted the fatal injury.

36. It was, thus, prayed that the appeal be allowed and the impugned judgment be set aside while restoring that of the trial Court.

Submissions on behalf of the accused-respondents

37. *Per contra*, learned counsel appearing on behalf of the accused-respondents supported the impugned judgment and urged that, as per the post-mortem report (Exh.P/8), the deceased-Bhaggu had sustained 29 injuries, of which 28 were simple in nature, and only one injury resulted in fracture of the parietal bone. The prosecution had failed to establish the identity of the accused who inflicted the said fatal injury.

38. Learned counsel further submitted that the weapons allegedly used in the incident were sticks (*lathis*), which were not, *per se*, deadly weapons. It was urged that the prosecution witnesses had made omnibus allegations and had not attributed any specific overt act to individual accused.

39. It was further submitted that there was no intention on the part of the accused-respondents to cause the death of Bhag Chand, and the common object of the assembly was merely to chastise him, a circumstance, it was submitted, manifested from the fact that most of the injuries were aimed on non-vital

parts of the body. Emphasis was laid on the fact that, save for the injury on head, the remaining injuries did not contribute to the death of Bhaggu @ Bhag Chand. On these premises, it was contended that, at the highest, the offence could not have travelled beyond Section 304 Part II, if not Section 325 read with Section 149 IPC, as was rightly held by the High Court.

40. Learned counsel further pointed out that the doctor who conducted the post-mortem examination was not examined during the trial. It was urged that in the absence of the author of the post-mortem report (Exh.P/8) entering the witness box, the prosecution version regarding the precise cause of death and the effect of the injuries lacked proper medical substantiation and corroboration.

41. Learned counsel, therefore, prayed that the appeal be dismissed, submitting that the High Court had rightly toned down the conviction of the accused-respondents to one under Section 304 Part II read with Section 149 IPC, which does not warrant any interference in these appeals.

Discussion and Analysis

42. We have given our anxious consideration to the submissions advanced at the Bar and have carefully perused the judgments passed by the High Court, as well as the trial Court, and the material available on record.

43. It is pertinent to note that the accused-respondents have not assailed the judgment of the High Court by filing any appeal thereagainst seeking further interference with the findings recorded therein holding them guilty for the offences. Thus, the applicability of Section 149 IPC so as to hold the accused-respondents to be members of the unlawful assembly is no longer in question as the said findings have attained finality.

44. In this backdrop, the controversy which survives for consideration before this Court lies within a narrow compass, that is, whether the case as set up by the prosecution would attract the offence of murder punishable under Section 302 IPC, or whether the same would fall within the ambit of culpable homicide not amounting to murder punishable under Section 304 Part II IPC. At this juncture, it becomes apposite to advert to the

distinction between culpable homicide amounting to murder and culpable homicide not amounting to murder. The question as to which acts would constitute murder and which would fall within the category of culpable homicide not amounting to murder has long posed a complex and nuanced challenge before the courts. The classification between the two offences, though subtle, is of considerable legal significance and often determinative of criminal liability. The discussion undertaken by this Court in ***Daya Nand v. State of Haryana***[12], would be instructive for the present purpose. The relevant extracts are reproduced below:-

> "**10.** The crucial question is as to which was the, appropriate provision to be applied. In the scheme of the I PC culpable homicide is genus and murder[1] its specie. All 'murder' is 'culpable homicide' but not vice- versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder is culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the gravest form of culpable homicide, which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'.

[12] (2008) 15 SCC 717: AIR 2008 SC 1823.

This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

11. The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the Courts. The confusion is caused, if Courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences:

Section 299	**Section 300**
A person commits culpable homicide if the act by which the death is caused is done -	Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done -
Intention	
(a) with the intention of causing death; or	(1) with the intention of causing death; or
(b) with the intention of causing such bodily injury.	(2) 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 (3) 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
Knowledge	
(c) with the knowledge that the act is likely to cause death.	4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.

12. Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300.The distinguishing feature of the *mens rea* requisite under Clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not

in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential] requirement of Clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of Clause (2) is borne out by illustration (b) appended to Section 300.

13. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under Clause (2) of Section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rapture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In Clause (3) of Section 300, instead of the words 'likely to cause death' occurring in the corresponding Clause (b) of Section 299, the words "sufficient in the ordinary course of nature to cause death" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between Clause (b) of Section 299 and Clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is

the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word 'likely' in Clause (b) of Section 299 conveys the sense of probable as distinguished from a mere possibility. The words "bodily injury…sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

14. For cases to fall within Clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. ***Rajwant* v. *State of Kerala***, AIR 1966 SC 1874 is an apt illustration of this point.

15. In ***Virsa Singh* v. *State of Punjab*,** 1958 SCR 1495 : 1958 CLJ 818, Vivian Bose, J. speaking for the Court, explained the meaning and scope of Clause (3). It was observed that the prosecution must prove the following facts before it can bring a case under Section 300, "thirdly". First, it must establish quite objectively, that a bodily injury is present; secondly the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

16. The ingredients of clause "Thirdly" of Section 300, IPC were brought out by the illustrious Judge in his terse language as follows:

To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300, "thirdly".

First, it must establish, quite objectively, that a bodily injury is present.

Secondly, the nature of the injury must be proved. These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say that it was not accidental or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further and

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

17. The learned Judge explained the third ingredient in the following words (at page 468):

The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness or intended serious consequences, is neither here or there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness but whether he intended to inflict

the injury in question and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion.

18. These observations of Vivian Bose, J. have become locus classicus. The test laid down by *Virsa Singh's case* (supra) for the applicability of clause "Thirdly" is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied : i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death, viz., that the injury found to be present was the injury that was intended to be inflicted.

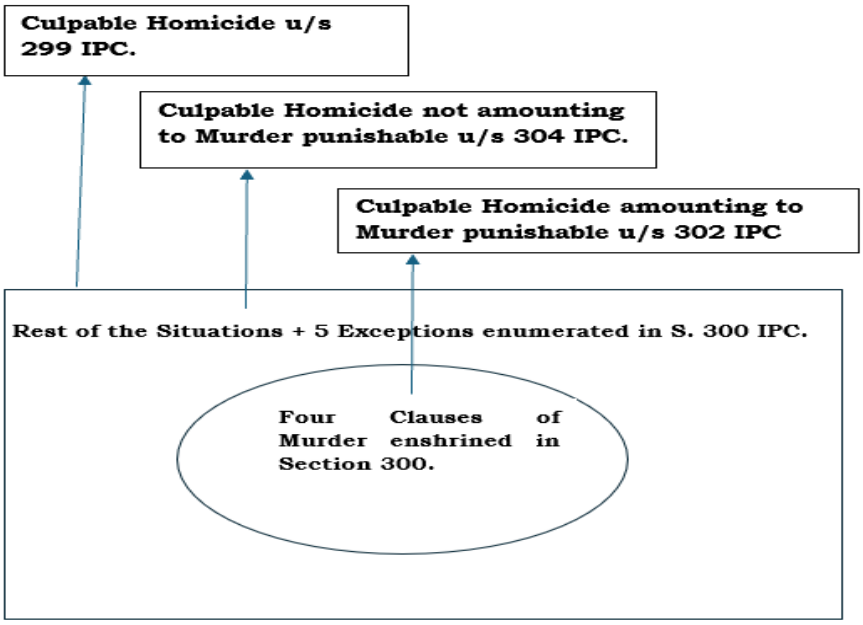
19. Thus, according to the rule laid down in *Virsa Singh's case*, even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would not be murder. Illustration (c) appended to Section 300 clearly brings out this point.

20. Clause (c) of Section 299 and Clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that Clause (4) of Section 300 would be applicable where the knowledge of the offender as to the

> probability of death of a person or persons in general as distinguished from a particular person or persons - being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability; the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.
>
> **21.** The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the Court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other that it may not be convenient to give a separate treatment to the matters involved in the second and third stages.
>
> **22.** The position was illuminatingly highlighted by this Court in State of *Andhra Pradesh* v. *Rayavarapu Punnayya*, (1976) 4 SCC 382 : 1977 CLJ 1 *Abdul Waheed Khan @ Waheed* v. *State of Andhra Pradesh*, 2002 SCC OnLine SC 792 : 2002 Supp (1) SCR 703; *Augustine Saldanha* v. *State of Karnataka*, 2003 SCC OnLine SC 9052003 CLJ 4458, *Thangiya* v. *State of T.N.*, (1977) 4 SCC 600 (2): 2005 CLJ 684 and in *Rajinder* v. *State of Haryana*, 2005 SCC OnLine SC 227:—2006 CLJ 2926."

45. To appreciate the conceptual as well as practical distinction between these two offences in a clearer perspective, it may be useful to bear in mind the overlapping yet distinct contours of Sections 299 and 300 IPC. The relationship between the two provisions, often described as one of genus and

species, may be illustratively understood in the manner indicated below: -



46. From the above conspectus, it emerges that when a Court is confronted with the question whether the offence disclosed by the proved facts is "murder" or "culpable homicide not amounting to murder," it would be appropriate to approach the issue in a structured manner comprising three stages.

47. At the first stage, the Court must determine whether the accused has committed an act which has caused the death of another, that is to say, whether the case involves a homicide. If such causal connection between the act of the accused and the

death is established, the enquiry then proceeds to the second stage, that is to say, whether the act so committed amounts to "culpable homicide" within the meaning of Section 299 IPC.

48. If the answer to this question is *prima facie* in the affirmative, the Court must then enter upon the third stage of enquiry, *viz.*, whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of Section 300 IPC, which define murder. If the case does not fall within any of the four clauses of Section 300, the offence would be culpable homicide not amounting to murder, punishable under either Part I or Part II of Section 304 IPC, depending upon whether the case attracts the second or the third clause of Section 299 IPC.

49. Even if the case falls within the four clauses of Section 300 IPC, the Court must further examine whether any of the Exceptions to Section 300 IPC are attracted. If the case is covered by any such Exception, the offence would fall back to Section 299, that is, culpable homicide not amounting to murder.

50. We shall now examine the present case in the light of the aforesaid principles.

51. Upon a comprehensive appraisal of the evidence on record, both the Courts below have concurrently recorded a finding that the death of Bhaggu @ Bhag Chand was homicidal in nature. The post-mortem report (Exh.P/8) revealed as many as 29 injuries on the body of the deceased-Bhaggu, including a significant injury on the head, i.e., injury No.24. The dimensions and impact of the injury are recorded in the post-mortem report (Exh.P/8) as below: -

> "A fresh linear fracture measuring 7 cm in length over the left parietal bone, obliquely placed, accompanied by extradural and subarachnoid haemorrhage, having congestion of the underlying fronto-parietal region, corresponding to Injury No.24."

52. At the cost of repetition, it may be noted that the post mortem report (Exh. P/8) was admitted by the accused-respondents and hence the observations and findings noted therein stand proved beyond the pale of doubt.

53. The medical opinion as expressed in the post mortem report (Exh. P/8) attributed the cause of death to coma resulting from the head injury which caused extensive damage to the skull bones and the brain tissue. The ocular testimony of the injured eye-

witnesses was found consistent and reliable, establishing that the deceased-Bhaggu was assaulted by the accused-respondents with *lathis*. The High Court, while differing with the trial Court on the nature of the offence, did not disturb the finding that there existed a direct causal connection between the injuries inflicted by the accused-respondents and the death of the deceased-Bhaggu. In view of these concurrent findings, the first and second stages of the enquiry stand satisfied, namely, that the accused-respondents committed an act which resulted in the death of the deceased-Bhaggu. The proved facts thus satisfy the ingredients of Section 299 IPC and bring the case within the ambit of culpable homicide. The enquiry, therefore, narrows down to whether the case would fall within the four corners of Section 300 IPC so as to constitute murder punishable under Section 302 IPC, or whether it would amount to culpable homicide not amounting to murder punishable under Section 304 IPC.

54. Learned counsel for the appellants submitted that the medical evidence discloses a total of 63 injuries caused to the victims, of which 29 injuries were inflicted upon the deceased-Bhaggu alone,

including five injuries on the skull/head region. It was urged that the multiplicity and nature of the injuries, with repetitive blows on the vital body part, i.e., head, clearly demonstrate a concerted and brutal assault, the cumulative effect of which unmistakably brings the case within the ambit of murder. It was further contended that the assault was neither casual nor sudden, but deliberate. Emphasis was laid on the circumstance that earlier on the same day, at about 2:00 p.m., the deceased-Bhaggu had intervened in an altercation involving the sons of Vimal Rana, which furnished the immediate motive for the subsequent attack. According to the appellants, the occurrence was thus retaliatory and premeditated, with blows of *lathis* being repeatedly landed on the head of the deceased. Without a doubt, the admitted facts of the case would not attract any of the Exceptions to Section 300 IPC. ***No such finding was, as a matter of fact, recorded by the High Court***.

55. As against this, learned counsel for the accused-respondents submitted that the common object of the assembly was merely to chastise the deceased. The injuries were predominantly inflicted

on non-vital parts of the body and, therefore, the requisite *mens rea* to attract Clause (3) of Section 300 IPC could not be attributed to the accused. Though the deceased sustained multiple injuries, only one injury, resulting in fracture of the parietal bone, proved fatal, and the prosecution had failed to establish which particular accused had inflicted the said injury. It was further urged that the doctor Shri N.K. Bajpai, who conducted the post-mortem examination was not examined, and the post-mortem opinion does not indicate that the death was the cumulative effect of all the injuries. According to the defence, the use of *lathis* and the placement of injuries predominantly on non-vital parts negates the existence of intention to cause death. Consequently, according to the accused-respondents, the offence would, at best, extend only to culpable homicide not amounting to murder, punishable under Part II of Section 304 IPC. On this reasoning, the accused-respondents sought to sustain the view taken by the High Court that the accused-respondents did not have the intention to cause death in furtherance of the common object.

56. Having considered the rival submissions advanced by the parties, the pivotal question which arises for determination is whether the accused-respondents possessed the intention to cause the death of Bhaggu @ Bhag Chand, or intended to inflict such bodily injury as was sufficient in the ordinary course of nature to cause death, thereby attracting Clause (3) of Section 300 IPC, an issue on which the High Court took a view adverse to the prosecution.

57. The Court is conscious of the fact that the determination of intention, being a state of mind, is seldom susceptible to a rigid or mechanical formula. It must necessarily be gathered from the cumulative effect of the circumstances proved on record, including the nature of the weapon used, the part of the body targeted, the manner of assault, the number of injuries, and the circumstances surrounding the occurrence. In this context, reference may profitably be made to the decision of this Court in ***Pulicherla Nagaraju v. State of A.P.***[13], wherein the factors relevant for discerning intention were elucidated. The relevant extract is reproduced hereinbelow:-

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[13] (2006) 11 SCC 444.

"29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality**. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (*i*) nature of the weapon used; (*ii*) whether the weapon was carried by the accused or was picked up from the spot; (*iii*) whether the blow is aimed at a vital part of the body; (*iv*) the amount of force employed in causing injury; (*v*) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (*vi*) whether the incident occurs by chance or whether there was any premeditation; (*vii*) whether there was any prior enmity or whether the deceased was a stranger; (*viii*) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (*ix*) whether it was in the heat of passion; (*x*) whether the person inflicting the injury has taken undue**

> **advantage or has acted in a cruel and unusual manner; (*xi*) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."**
>
> [Emphasis supplied]

58. Applying the principles laid down in the aforesaid decision to the facts of the present case, we are of the considered opinion that the High Court erred in interfering with the conviction recorded under Section 302 IPC by altering it to one under Section 304 Part II IPC. The evidence on record, particularly the consistent testimony of the injured eye-witnesses, establishes that the vehicle in which the deceased-Bhaggu, and the other injured witnesses were travelling was waylaid after the passage was deliberately obstructed by the accused-respondents by placing tube-well pipes across the road. The deceased-Bhaggu was thereafter subjected to a concerted assault by the accused-respondents, who were armed with *lathis*. There is nothing on record to suggest that the weapons were picked up casually at the spot; rather, the accused were lying in

wait, prepared to launch the assault on the unsuspecting victims.

59. The sequence of events assumes greater significance in view of the circumstance that earlier on the same day, the deceased-Bhaggu had intervened in an altercation involving one of the accused-respondents with one Sharan Dubey belonging to the Brahmin community, thereby furnishing an immediate motive for retaliation. The deliberate obstruction of the road by placing tube-well pipes, the prior presence of the accused-respondents in form of an unlawful assembly armed with *lathis*, and the repeated blows inflicted upon the deceased-Bhaggu, including multiple injuries on the head region and so also to the other injured persons, cumulatively demonstrate that the assault was neither sudden nor an isolated act aimed at chastisement, but was rather a concerted intentional attack. It is also on record that the deceased belonged to a Scheduled Caste community, whereas the accused-respondents belonged to the Gujar community. Significantly, in their statements recorded under Section 313 CrPC, the accused-respondents themselves adverted to the existence of

caste and political factions between the parties, asserting that they had been falsely implicated on account of such factionalism. Though the charge under the SC/ST Act was not ultimately sustained, the admitted background of *inter se* caste factionalism provides contextual motive for the occurrence and lends further support to the inference that the assault was retaliatory rather than erupting spontaneously or from a sudden quarrel. Equally, there is no material on record to indicate that the assault was the outcome of any grave and sudden provocation so as to attract any of the Exceptions to Section 300 IPC. These attendant circumstances, when viewed cumulatively, assume considerable importance in determining whether the proved facts bring the case within the ambit of Section 300 IPC while ruling out the exceptions.

60. Even though the weapons of offence were *lathis*, which in the abstract may not always be characterised as a deadly weapon, their lethality depends upon the manner of use, the part of the body targeted, and the force employed. The present case is not one of a solitary blow delivered in the heat of the moment. The accused-respondents, acting in concert

and in furtherance of their common object, inflicted as many as 63 injuries in total, of which 29 injuries were sustained by the deceased-Bhaggu alone, as reflected in the post-mortem report (Exh.P/8).

61. A close scrutiny of the post-mortem report (Exh.P/8) reveals multiple contusions and abrasions over various parts of the body, but more significantly, four bone-deep lacerated wounds over the left parietal and temporal regions, along with associated grievous injuries to the brain. Injury Nos. 24 to 27, to be specific, were bone-deep wounds on the head, a vital part of the body. The medical opinion attributes the cause of death to coma resulting from *ante-mortem* head injury. The situs, depth, and multiplicity of the head injuries clearly establish that multiple blows were directed at a vital region with considerable force. The finding recorded in the impugned judgment that only one scalp injury was caused to deceased-Bhaggu is perverse and recorded in ignorance of the medical evidence available on record.

62. When repeated blows are inflicted on the parietal and temporal regions with *lathis*, resulting in bone-deep lacerations causing fractures and brain

damage and culminating in coma, it cannot be said that the assailants lacked the intention to inflict such bodily injury as was sufficient in the ordinary course of nature to cause death. The nature, location, and magnitude of the injuries leave little scope for treating the death to be the result of a solitary blow.

63. Further, the absence of oral testimony of the doctor who conducted the post-mortem does not detract from the evidentiary value of the post-mortem report (Exh.P/8), particularly when the accused-respondents themselves have admitted the same. The injuries noted in the post-mortem report (Exh.P/8) are corroborated in material particulars by the consistent ocular evidence. Further, there is nothing to suggest that any supervening circumstance, such as infection, gangrene, or other factor, contributed to the fatal outcome. In these circumstances, the only reasonable inference that can be drawn is that the intention and common object of the unlawful assembly formed by the accused-respondents was to inflict such bodily injuries to deceased-Bhaggu as were sufficient in the ordinary course of nature to cause death. The case,

therefore, squarely falls within Clause (3) of Section 300 IPC.

64. As regards the submission advanced on behalf of the accused-respondents that the doctor who conducted the post-mortem examination was not examined and that, consequently, the post-mortem report (Exh.P/8) remained uncorroborated, thereby weakening the prosecution's case. As we have noted above, the medical jurist Dr. N.K. Bajpai was present before the trial Court on 5th February, 2005. However, the defence chose to admit the post-mortem report, which was accordingly marked as Exh.P/8, and consequently, the doctor was given up and not examined. In such circumstances, the absence of oral testimony of the doctor does not create any material infirmity in the prosecution's case. In this regard, we may gainfully refer to the judgment of this Court in ***Akhtar v. State of Uttaranchal***[14], wherein it was held as under:-

> **"21.** It has been argued that non-examination of the medical officers concerned is fatal for the prosecution. However, there is no denial of the fact that the defence admitted the genuineness of the injury reports and the post-mortem examination reports before the trial court. So the genuineness

[14] (2009) 13 SCC 722.

> and authenticity of the documents stands proved and shall be treated as valid evidence under Section 294 CrPC. It is settled position of law that if the genuineness of any document filed by a party is not disputed by the opposite party it can be read as substantive evidence under sub-section (3) of Section 294 CrPC. Accordingly, the post-mortem report, if its genuineness is not disputed by the opposite party, the said post-mortem report can be read as substantive evidence to prove the correctness of its contents without the doctor concerned being examined."

65. The finding regarding the existence of an unlawful assembly has been consistently recorded by both the trial Court and the High Court, and the same is not in dispute. The High Court itself observed that there was no probability of innocent bystanders being falsely implicated, as the mini-bus in which the deceased-Bhaggu along with other injured, was travelling, was stopped by placing pipes across the road, and the assailants emerged from the bushes. The injured witnesses, Guddu @ Arvind, Gudda @ Sandeep (PW-5), Deen Dayal (PW-9), Kulhad Baba @ Shahfaz Khan (PW-2), Dabbu @ Purshottam Sahu (PW-4) and Ashok Kori (PW-3), collectively suffered numerous injuries, bringing the total number of injuries in the occurrence to 63. All injuries were caused by hard and blunt objects. The concerted

nature of the attack and the prior preparation by obstructing the road, unmistakably establish that the accused-respondents had formed an unlawful assembly and acted in prosecution of the common object of such assembly, i.e., to assault the victims.

66. Once it is established that an unlawful assembly existed and the accused-respondents intended to commit murder of deceased-Bhaggu in furtherance of the common object of such assembly, the individual attribution of the fatal injury fades into insignificance. It is trite law that Section 149 IPC embodies the principle of vicarious liability and renders every member of an unlawful assembly guilty of the offence committed in prosecution of the common object.

67. The object of the provision is to ensure that criminal liability cannot be evaded on the plea that specific role of the particular accused could not be discerned from the evidence. Conduct of each person forming the unlawful assembly, coupled with participation in prosecution of the common object, is sufficient to fasten vicarious liability on every member of the assembly for the offence committed by any member of that assembly. In such

circumstances, it is immaterial as to which accused delivered the fatal injury, once the offence is shown to have been committed in furtherance of the common object of the unlawful assembly. For this purpose, reference may be made to the decision of this Court in ***Nitya Nand v. State of U.P.***[15]**,** wherein the scope and ambit of Section 149 IPC was elaborated in the following terms:-

> **"43. <u>This brings us to the pivotal section which is Section 149 IPC. Section 149 IPC says that every member of an unlawful assembly shall be guilty of the offence committed in prosecution of the common object. Section 149 IPC is quite categorical. It says that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of committing of that offence, is a member of the said assembly; is guilty of that offence. Thus, if it is a case of murder under Section 302 IPC, each member of the unlawful assembly would be guilty of committing the offence under Section 302IPC.</u>**
>
> **44.** In ***Krishnappa* v. *State of Karnataka*,** (2012) 11 SCC 237 : (2013) 1 SCC (Cri) 621] , this Court while examining Section 149IPC held as follows: (SCC p. 243, paras 20-21)
>
> > "*20.* It is now well-settled law that the provisions of Section 149IPC will be attracted whenever any offence

[15] (2024) 9 SCC 314.

committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or when the members of that assembly knew that offence is likely to be committed in prosecution of that object, so that every person, who, at the time of committing of that offence is a member, will be also vicariously held liable and guilty of that offence. Section 149 IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. This principle ropes in every member of the assembly to be guilty of an offence where that offence is committed by any member of that assembly in prosecution of common object of that assembly, or such members or assembly knew that offence is likely to be committed in prosecution of that object.

21. The factum of causing injury or not causing injury would not be relevant, where the accused is sought to be roped in with the aid of Section 149 IPC. The relevant question to be examined by the court is whether the accused was a member of an unlawful assembly and not whether he actually took active part in the crime or not."

45. Thus, this Court in *Krishnappa case* [*Krishnappa* v. *State of Karnataka*, (2012) 11 SCC 237 : (2013) 1 SCC (Cri) 621] held that Section 149IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by

any other member of that assembly. By application of this principle, every member of an unlawful assembly is roped in to be held guilty of the offence committed by any member of that assembly in prosecution of the common object of that assembly. The factum of causing injury or not causing injury would not be relevant when an accused is roped in with the aid of Section 149 IPC. The question which is relevant and which is required to be answered by the court is whether the accused was a member of an unlawful assembly and not whether he actually took part in the crime or not.

46. As a matter of fact, this Court in *Vinubhai Ranchhodbhai Patel* v. *Rajivbhai Dudabhai Patel* [*Vinubhai Ranchhodbhai Patel* v. *Rajivbhai Dudabhai Patel*, (2018) 7 SCC 743 : (2018) 3 SCC (Cri) 340] has reiterated the position that Section 149IPC does not create a separate offence but only declares vicarious liability of all members of the unlawful assembly for acts done in common object. This Court has held: (SCC pp. 752-53 & 756, paras 20, 22 & 34)

> "*20*. In cases where a large number of accused constituting an "unlawful assembly" are alleged to have attacked and killed one or more persons, it is not necessary that each of the accused should inflict fatal injuries or any injury at all. Invocation of Section 149 is essential in such cases for punishing the members of such unlawful assemblies on the ground of vicarious liability even though they are not accused of having inflicted fatal injuries in appropriate cases if the evidence on record justifies. The mere presence of an accused in such an "unlawful assembly" is sufficient to

render him vicariously liable under Section 149IPC for causing the death of the victim of the attack provided that the accused are told that they have to face a charge rendering them vicariously liable under Section 149IPC for the offence punishable under Section 302IPC. Failure to appropriately invoke and apply Section 149 enables large number of offenders to get away with the crime.

***

22. When a large number of people gather together (assemble) and commit an offence, it is possible that only some of the members of the assembly commit the crucial act which renders the transaction an offence and the remaining members do not take part in that "crucial act" - for example in a case of murder, the infliction of the fatal injury. It is in those situations, the legislature thought it fit as a matter of legislative policy to press into service the concept of vicarious liability for the crime. [*Ramu Gope* v. *State of Bihar*, 1968 SCC OnLine SC 74, para 5 : AIR 1969 SC 689, p. 692, para 5:"*5*. … When a concerted attack is made on the victim by a large number of persons it is often difficult to determine the actual part played by each offender. But on that account for an offence committed by a member of the unlawful assembly in the prosecution of the common object or for an offence which was known to be likely to be committed in prosecution of the common object, persons proved to be members cannot escape the consequences arising from the doing of that act which amounts to an offence."] Section 149IPC is one such provision. It is a provision conceived in the larger

> public interest to maintain the tranquillity of the society and prevent wrongdoers (who actively collaborate or assist the commission of offences) claiming impunity on the ground that their activity as members of the unlawful assembly is limited.
>
> ***
>
> *34*. For mulcting liability on the members of an unlawful assembly under Section 149, it is not necessary that every member of the unlawful assembly should commit the offence in prosecution of the common object of the assembly. Mere knowledge of the likelihood of commission of such an offence *by the members of the assembly* is sufficient. For example, if five or more members carrying AK 47 rifles collectively attack a victim and cause his death by gunshot injuries, the fact that one or two of the members of the assembly did not in fact fire their weapons does not mean that they did not have the knowledge of the fact that the offence of murder is likely to be committed."
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> [Emphasis supplied]

68. The reasoning assigned by the High Court for toning down the offence from that punishable under Section 302 IPC read with Section 149 IPC to Section 304 Part II IPC read with Section 149 IPC is extracted below: -

> "30. We have carefully considered the evidence adduced by the prosecution witnesses and the defence witnesses. It is true that the deceased suffered number of injuries and prosecution

> witnesses also suffered injuries; some of which were grievous in nature also, but it has to be noted that it was only one injury on the head of deceased, which resulted into his death. The death of deceased was not the result of the cumulative effect of all the injuries. Therefore, in our opinion, the common object of the unlawful assembly could not be held to be of committing murder of the deceased. It must be held to be the individual act of one assailant, which resulted into death of deceased. Since there is nothing on record to indicate that who caused the fatal injury to deceased, it would be unsafe to convict all the appellants under Section 302/149 of the Indian Penal Code, but since all the appellants were armed with Lathies, they were liable to be convicted under Section 304-II of the Indian Penal Code.
>
> 31. For the foregoing reasons, we acquit appellants for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code and instead convict them for the offence punishable under Section 304-II read with Section 149 of the Indian Penal Code. The conviction and sentence of the appellants under Sections 148, 323/149 and 325/149 of the Indian Penal Code are affirmed. For the offence under Section 304-II read with Section 149 of the Indian Penal Code, the appellants are sentenced to undergo rigorous imprisonment for a period of six years with a fine of Rs.5000/- each and in default, they shall suffer sentence of one year rigorous imprisonment."

69. A bare perusal of the aforesaid findings makes it evident that the reasoning of the High Court is self-contradictory. While affirming the invocation of Section 149 IPC, it went on to record that the prosecution could not prove the identity of the

assailant who caused the fatal injury to the deceased-Bhaggu. This approach runs contrary to the very principle of vicarious liability embodied in Section 149 IPC. The conclusion so drawn by the High Court is perverse without any justifiable foundation, and hence, the same cannot be sustained.

70. As an upshot of the above discussion, we are of the considered opinion that the High Court committed an error apparent in facts and in law in altering the conviction of the accused-respondents from Section 302 read with 149 IPC to one under Section 304 Part II read with 149 IPC. The impugned judgment to that extent suffers from perversity and illegality and hence cannot be sustained.

71. Accordingly, the appeals are allowed. The judgment and order dated 19th July, 2010, passed by the High Court is set aside, and the conviction of the accused-respondents and sentence of life imprisonment as awarded by the trial Court are restored.

72. The accused-respondents shall surrender within a period of eight weeks, failing which the concerned trial Court shall take necessary steps to secure their custody and commit them to prison for

serving the remaining sentence in terms of the judgment of the trial Court.

73. Pending application(s), if any, shall stand disposed of.

.....J.
(SANJAY KAROL)

.....J.
(SANDEEP MEHTA)

NEW DELHI;
FEBRUARY 23, 2026.