

Mahesh Chandra And Others vs State Of U.P. on 8 October, 2026

Author: [Siddharth](#)

Bench: [Siddharth](#)

HIGH COURT OF JUDICATURE AT ALLAHABAD

Judgment reserved on 30.07.2026

Judgment delivered on 08.10.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. – 2496 of 2001

Mahesh Chandra and others

..Appellant(s)

Versus

State of U.P.

..Respondent(s)

Counsel for Appellant(s)

:

Vikram Singh Shrivastava, Ashwini Kumar Awasthi, Avanish Pratap Singh, Manish Tiwary, Sarvjeet Kumar, Sharda

Counsel for Respondent(s)

:

Govt. Advocate

Court No. – 43

HON'BLE SIDDHARTH, J.

HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Honble Vinai Kumar Dwivedi, J.)

1. Heard Sri Prateek Sinha, Advocate, holding brief of Sri Vikram Singh Shrivastava, learned counsel for the appellants; Sri G.N. Kanaujia, learned AGA-Ist for State-respondent and perused the trial court record and judgment and order passed by the Trial Court.
2. The present criminal appeal has been preferred by convict appellants against the judgment and order of conviction and sentence dated 25.07.2001 passed by the Additional Sessions Judge, Court No.8, Fatehpur, in S.T. No. 157 of 1998 (arising out of Case Crime No. 192 of 1996) under Sections 147, 302, read with Section 149, 323 read with [Section 149](#) IPC, Police Station Thariaon, District Fatehpur. By the judgment and order dated 25.07.2001, the appellants have been held guilty and convicted by the learned Trial Judge under [Sections 323/149, 302/149, 147](#) IPC.
3. The fact of the case as is revealed from Exhibit Ka-1 is that informant Shukhdeo PW-1 has got ascribed written report Exhibit Ka-1 from Naresh Kumar and has lodged it at Police Station Thariaon, District Fatehpur, stating therein that, my name is Shukhdeo, my fathers name is Ghurva, a resident of village Behrampur, P.S. Thariaon, District Fatehpur. I have total nine bighas of land, out of which half land that are near the tube-well, I have transferred it in the name of my grandson Ram Prakash, Ramesh Kumar, Naresh Kumar sons of Shyam Lal before three months from today and the other half part of the land which is not situated at the tube-well, I left it in the name of sons of my second son Ram Sewak, who has died, in which, they have sowed crop. Since I have executed sale deed of the land in the name of sons of Shyam Lal, due to this reason, sons of Ram Sewak have regarded enmity. Due to this enmity, today, at 02:00 p.m. in day Mahesh Chandra and Dinesh Chandra and sons of Ram Sewak and Radhey Lal son of Faguna and Ranjeet son of Radhey Lal, Ram Saran son of Prabhu Dayal, maternal uncle of Mahesh and Dinesh and Prabhu Dayal son of Nanku, resident of Village Kura, Police Station Khaga, district Fatehpur with common object armed with laathi and danda called my son Shyam Lal on the door, on the pretext of talking and began to beat. To save him, sons of Shyam Lal, his wife and daughters who were present on the door tried to save him. They have also been beaten by laathi and danda and have also received injuries. Shyam Lal became unconscious and was carried to Fatehpur for treatment.
4. On the basis of the above written report (Tehreer) Exhibit Ka-1, Constable Clerk Shiv Badan Tiwari, PW-9 has registered an FIR Exhibit Ka-19 on 26.08.1996 at 15:20 P.M. against named accused Mahesh Chand, Dinesh Chand sons of Ram Sewak, Radhey Lal son of

Faguna, Ranjeet son of Radhey Lal, Ram Saran son of Prabhu Dayal, Prabhu Dayal son of Nanku at Crime No. 192/96 under [Sections 147, 323, and 308](#) IPC.

5. The case was handed over to S.I. B.M. Sharma, PW-7 for investigation, who was posted at Police Station Thariaon, at that time as Station Officer. The I.O. B.M. Sharma PW-7 reached at the place of occurrence on the pointing out of informant Sukhdeo PW-1, prepared site plan Exhibit Ka-8 of the place of occurrence. From the record of the case, it is revealed that during treatment at L.L.R. Hospital, Kanpur, injured Shyam Lal had died on 26.08.1996 at 10.00 pm. Due to this reason, case was converted from [Section 308](#) IPC to [Section 304](#) IPC. Panchayatnama of the deceased Shyam Lal Exhibit Ka-12 was also prepared. The I.O. B.M.Sharma PW-7 has also prepared other police papers, relating to panchayatnama. He recorded the statements of the witnesses under [Section 161](#) Cr.P.C. After completing all other formalities of the investigation, the I.O. B.M. Sharma PW-7, has submitted a charge-sheet Exhibit Ka-10 against accused under [Sections 147, 323, 304](#) IPC.

6. At L.L.R. Hospital, Kanpur, Dr. R.L. Madin PW-8, prepared injury report Exhibit Ka-11 of Shyam Lal and he found following injuries on the body of injured Shyam Lal:

1. Lacerated wound on the back part of the left side of the head measuring 5.6 cm x 3.5 cm x internal bone was fractured and impacted. Blood was flowing from the wound. X-ray was advised.
2. Lacerated wound at the base of the left thumb measuring 2 cm x 0.5 cm x bone deep. Blood was flowing. X-ray was advised.

During the medical examination of the injured, his general condition was serious and was kept under observation. Pulse rate was 64 per minute. Respiration rate was 36 per minute. Blood pressure was 130/90. On continuous examination with a stethoscope on the chest, there was a rattling (crepitation) sound. The condition of the abdomen was normal. Both pupils of the eyes were dilated, having no reaction to light. The injured was in an unconscious state.

In my opinion, the patient was admitted under head injury. The injuries were possible to be caused by some blunt and hard weapon/object. The identification mark of the injured was a raised black mole on the left face.

On the examination report, I took the thumb impression of the injured and certified it with my signature. At the time of examination, I prepared this report in my own handwriting and signature. Exhibit Ka-11 was marked on this.

These injuries are possible to be caused by a lathi or stick. The injuries found on the body of the injured were fatal.

7. After death of Shyam Lal on 26.08.1996 at 10:00 am at L.L.R. Kanpur, Dr. S.C. Shukla, PW-6 has conducted postmortem examination of dead body of deceased Shyam Lal on 27.08.1996 and he prepared postmortem report Exhibit Ka-7. Dr. S.C. Shukla, PW-6 has found following antemortem injuries on the dead body of deceased Shyam Lal:-

Lacerated wound 4 cm long, located on the back of the head 6 cm above the left ear, with 4 stitches applied to it. Underneath the wound, there was a fracture in the skull bone named left parietal.

Internal Examination of the Body:-

On opening and examining the skull of the deceased, the brain membranes were found lacerated, and 3 ounces of blood was present inside the cranial cavity between the brain and the skull as internal hemorrhage. The brain was also lacerated. Both lungs congested.

Both lungs, liver, spleen, and both kidneys were congested. Chambers of the heart were full and the left was empty. In my opinion, the death of the deceased was caused due to shock and hemorrhage resulting from the ante-mortem head injury.

Injury No.1 on the body of the deceased was sufficient in the ordinary course of nature to cause death. The said injury is possible to be caused by any blunt object/weapon such as a lathi or stick.

8. Since in this incident Sunita and Mithlesh, daughters of Shyam Lal and Phool Kumari, wife of Shyam Lal and informant Shukhdeo PW-1 have also received injuries. Police sent all injured persons with a chitthi Mazroobi at district Hospital, Fatehpur for medical examination. At district Hospital, Fatehpur, Dr. Narendra Kumar Saxena, PW-5 examined injured Sunita, daughter of Shyam Lal and prepared injury report Exhibit Ka-2 and found following injuries on her body:

A. A lacerated wound on the right forearm measuring 1 cm x 0.2 cm x muscle deep, edges were swollen, there was no pus. The direction of the injury was oblique.

B. Complaint of pain in the lower part of the back and in the right leg. There was no visible injury.

In my opinion, injury number 1 was simple, caused by some blunt object, and was about one day old. No opinion could be given regarding injury No. 2 because this injury was not visible.

9. On the same date, i.e. 27.08.1996, Dr. Narendra Kumar Saxena PW-5, examined Mithlesh daughter of Shyam Lal and prepared injury report Exhibit Ka-3. He found following injuries on her body:

A. She was complaining of pain on the right side of the waist and in the left leg. There was no visible injury. In my opinion, no opinion can be given regarding these injuries.

10. On the same date, i.e. 27.08.1996, Dr. Narendra Kumar Saxena PW-5, examined Phool Kumari, wife of Shyam Lal and prepared injury report Exhibit Ka-4. He found no visible injury on the body of the injured. The injured complained of pain in the left leg.

11. Dr. Narendra Kumar Saxena PW-5, has also examined informant Shukhdeo PW-1 on 27.08.1996, and prepared injury report Exhibit Ka-5. He found following injuries on the body of informant Sukhdeo PW-1.

Contusion mark on the back side of the right forearm measuring 4 cm x 2 cm. The color of the injury was reddish-blue. The direction of the injury was oblique. The injured complained of pain in the upper part of the right hand towards the upper side. There was no visible injury. In my opinion, injury No. 1 was simple and was caused by some blunt object. Injury No. 1 was approximately 1 day old.

12. After the submission of the charge-sheet in concerned Court having jurisdiction, the learned Magistrate has committed the case to the Sessions Court for trial.

13. The Trial Court has framed charge against accused persons on 13.08.1998 under [Sections 147, 302](#) read with [Section 149](#) IPC and also [Section 323](#) read with [Section 149](#) IPC. The accused have denied from the charge and claimed for trial.

14. In the Trial Court, the prosecution in support of its case, examined informant Sukhdev PW-1, Mithilesh PW-2, Naresh PW-3, Sunita Devi PW-4, as witnesses of fact and Dr. Narendra Kumar Saxena PW-5, Dr. S.C. Shukla PW-6, B.M. Sharma PW-7, Dr. R.L. Madin PW-8 and Shiv Badan Tiwari PW-9 have been adduced as formal witnesses. Apart from the above oral evidence, prosecution has also relied upon documentary evidence from Exhibit Ka-1 to Exhibit Ka-19.

15. Evidence of prosecution witnesses were recorded by the Trial Court and after completion of the recording of the evidence of the prosecution, statements of accused have been recorded under [Section 313](#) Cr.P.C. The accused in their statement under [Section 313](#) Cr.P.C. in response to question from 1 to 3 put to them, they have answered in affirmative; in response to question No.4 to 10, they have stated in that these are wrong and false. They have also stated that they were falsely implicated in this case due to enmity. The appellant Mahesh Chand has stated that he will submit written statement separately under [Section 313](#) Cr.P.C. He submitted the written statement under [Section 313](#) Cr.P.C., in which he has stated that on the day of incident Shyam Lal slapped Prabhu Dayal and both began to fight among them and wife of Shyam Lal and his daughter began to beat up with danda. Master Shiv Prasad snatched the danda from the hand of Sunita Devi daughter of Shyam Lal. Thereupon she climbed on the roof and from there Sunita Devi had thrown part of broken bricks aiming at Prabhu Dayal, but that broken bricks did not hit Prabhu Dayal and that broken bricks hits Shyam Lal, due to which he got injured. All other accused have also given their written statements under [Section 313](#) Cr.P.C., and in this they have also stated the same things and fact, as has been stated by accused appellant Mahesh. Appellants have adduced Shiv Prasad as DW-1 in their defence.

16. After hearing the arguments of prosecution and defence, the learned Trial Court has found guilty to appellants Mahesh Chand, Dinesh Chand, Radhey Lal, Ranjit, Ram Saran and Prabhu Dayal under [Section 147](#) IPC and each of them were sentenced to one year of rigorous imprisonment. The appellants were also found guilty under [Section 323](#) read with [Section 149](#) IPC, and each of them were also sentenced to six months of rigorous imprisonment. All appellants were also found guilty under [Section 302/149](#) IPC and each of them were sentenced for life imprisonment. All sentences of the appellants have been directed to run concurrently. Aggrieved by the above impugned judgment and order of conviction and sentence dated 25.07.2001, the appellants have preferred this criminal appeal before this Court.

17. At the outset, it is noteworthy to mention here that during the pendency of this criminal appeal in this Court, appellant No.3 Radhey Lal and appellant No.6 Prabhu Dayal have died. Due to this, criminal appeal in respect to appellant No.3 Radhey Lal and appellant No.6 Prabhu Dayal has been abated vide order dated 24th July, 2026. Since, at present only appellant No.1 Mahesh Chand, appellant No.2 Dinesh Chand, appellant No.4 Ranjeet, appellant No.5 Ram Saran are surviving appellants, hence we are only adjudicating this criminal appeal in respect of surviving appellant No.1 Mahesh Chand, appellant No.2 Dinesh Chand, appellant No.4 Ranjeet, appellant No.5 Ram Saran.

18. Learned counsel for the surviving appellants has submitted that medical evidence totally contradict and belie the ocular evidence of the prosecution witnesses such as informant Sukhdev PW-1, Mithilesh PW-2, Sunita Devi PW-4 have given an exaggerated account about the happening of the incident and roles of the appellants in the commission of the crime. Prosecution witnesses are consistent in their deposition that all accused assaulted with laathi and danda to deceased Shyam Lal. If according to the prosecution version, all six accused would have assault continuously on deceased Shyam Lal, then many injuries about dozen in number would be present on the body of the deceased Shyam Lal. However, in spite of the so called attacking and assault by all the six appellants, (deceased and surviving appellants) only one head injury on the back side of head of the deceased and on left thumb of the deceased Shyam Lal has been found. This fact revealed that all the witnesses of the prosecution have given false exaggerated statement against all the appellants, thereby falsely implicating six persons in this case, which is highly doubtful in the light of one head injury found on the body of the deceased Shyam Lal. It is also submitted that learned Trial Court has not given weight to the fact that the deceased suffered only one fatal injury, whereas according to consistent statement given by the prosecution witnesses in their deposition in the Trial Court that all accused persons have continuously assaulted on the deceased Shyam Lal. It is also submitted on behalf of surviving appellants that Trial Court has not considered the contradiction in the deposition of the prosecution witnesses. There are major and material contradictions in the deposition of informant Sukhdev PW-1, Mithilesh PW-2, Naresh Kumar PW-3 and Sunita Devi PW-4. The evidence of each witnesses of facts contradicts and belie the deposition of other prosecution witnesses of fact. This fact also makes prosecution story very doubtful. All witnesses of fact narrated the happening of the incident in a very false and exaggerated manner, which could not be believed as true and reliable for the conviction of the appellants with the aid of [Section 149](#) IPC. The injuries on the bodies of the other injured persons are of very simple nature. Most of them are injuries in the nature of complain of pain. However, in respect of that fact, the Trial Court, without any cogent and reliable evidence has wrongly held guilty and convicted to appellants for the commission of the above crime. The prosecution itself concealed true origin of the incident and the witness of the prosecution have not given true origin of

the incident, but they have only in their evidence exaggerated the role of the appellants in a very mechanical way to falsely implicate them for the commission of the heinous crime like murder. It is also submitted that the Trial Court has not appreciated the evidence in a proper prospective and recorded a finding which is not based on cogent evidence and on sound reasoning. The finding and reasoning of the Trial Court is also against the settled legal principles of law, therefore, in view of the above, appeal of the surviving appellants deserves to be allowed and conviction and sentence of the appellants dated 25.07.2001 is liable to be set aside.

19. Per contra, learned AGA-I for the State-respondent has vehemently opposed the above submissions advanced by learned counsel for the appellants and has submitted that present case is based on strong evidence of the eye-witnesses. The incident happened on 26.08.1996 at 02:00 p.m. in the day. Informant Sukhdev PW-1, Mithilesh PW-2, Sunita Devi PW-4 are eye-witnesses of the incident and they have also received injuries in that incident. Therefore, in the light of the above fact, their evidence could not be doubted and rejected, as unbelievable and unreliable. It is natural that some exaggeration and embellishment and inconsistencies would naturally crept in the evidence and deposition of the prosecution witnesses. However, on the basis of the above facts, evidence of injured prosecution witnesses could not be doubted and rejected. It is also submitted by the learned AGA-I for the State that appellants have attacked simultaneously by laathi and danda on deceased Shyam Lal thereby inflicting head injuries on Shyam Lal, due to which Shyam Lal died on 26.08.1996 during his treatment at Kanpur. There is no material and major contradiction in the evidence of the eye-witnesses of the case, if there are some contradictions and omission, that are of trivial nature, which could not affect the truthfulness and veracity of the prosecution story as a whole. Learned AGA-I for State-respondents has also submitted that the Trial Court has appreciated the evidence in proper prospective and recorded its finding, which is based on cogent evidence of the eye-witnesses. There is no perversity and illegality in the judgment and order of conviction and sentence dated 25.07.2001, as passed by the Trial Court. The criminal appeal of the surviving appellants is devoid of merits and liable to be dismissed and in view of this, the judgment and order of conviction and sentence of the Trial Court dated 25.07.2001 is liable to be affirmed.

20. In the light of the above submissions advanced by learned counsel for the surviving appellants and the learned AGA-I for the State respondents, we have gone through all the evidence as available on record. From the perusal of the written report Exhibit Ka-1, which has been lodged by informant Sukhdev PW-1, it is revealed that six named persons are implicated for the commission of the alleged crime on 26.08.1996 at 02:00 p.m. in day, the incident happened and without any delay, on the same date, i.e. 26.08.1996 at 15:20 p.m. FIR has been registered against six accused persons.

21. From the perusal of the written report Exhibit Ka-1 and deposition of informant Sukhdev PW-1, we find that cause of the incident in this case was with regard to share of the agricultural land among deceased Shyam Lal and his brothers sons, appellants Mahesh Chand, Dinesh Chand. From the records it is revealed that informant Sukhdev PW-1 had three sons, deceased Shyam Lal in the present case, Ram Sewak, father of the appellant Nos. 1 and 2 and Chhote Lal. Out of these three sons, Chhote Lal died early due to stomach pain. Thereafter Shyam Lal elder son and Ram Sewak, younger son of the informant Sukhdev PW-1 remained with him. After sometime, Ram Sewak second son of informant Sukhdev PW-1, has also died due to some ailment. At that time, appellant No.2 Mahesh Chand and Dinesh Chand were children of tender age. Shyam Lal PW-1 was a government teacher in a primary school. From the records, it is also revealed that after death of Ram Sewak, his children Mahesh Chand and Dinesh Chand with their mother, had gone to her maternal home where they were nourished and looked after by their maternal father and maternal uncle. After lapse of time, Mahesh Chand and Dinesh Chand became young and major. In the meantime, according to the evidence of informant Sukhdev PW-1, itself, Sukhdev had two plots of agricultural land, one was situated near his tube-well at the side of the road and other plot of land was situated on the boundary of the village Behrampur, adjacent to a pond. According to the written report Exhibit Ka-1 and deposition of informant Sukhdev PW-1, before three months, from the date of present incident, informant Sukhdev PW-1, has transferred his agricultural land, which was situated near the tube-well to Ram Prakash, Ramesh Kumar, Naresh Kumar sons of his deceased son Shyam Lal by executing a sale deed and according to PW-1, he left his second plot of agricultural land situated adjacent to the pond for his grand sons Mahesh Chand and Dinesh Chand, sons of deceased son Ram Sewak. On the date of the incident, both sides were agreed to talk about the partition and distribution of the agricultural land in favour of Mahesh Chand and Dinesh Chand, sons of deceased Ram Sewak. During altercation at 02:00 p.m. afternoon, when deceased Shyam Lal has arrived from his school, an altercation took place and incident happened, in which Shyam Lal got injured and later died and Sukhdev, Mithilesh, Sunita Devi also got injured. On being a demand for their shares raised by the appellants Mahesh Chand and Dinesh Chand, sons of deceased Ram Sewak, during negotiation, an altercation took place and this incident happened. From the perusal of the evidence of informant Sukhdev PW-1, who is the father of the deceased Shyam Lal and grandfather of appellant No.1 Mahesh Chand and appellant No.2 Dinesh Chand, we find that Sukhdev PW-1 has stated the same statement in his evidence, as was written by him in his written report Exhibit Ka-1.

22. From the perusal of the cross-examination of informant Shukhdev PW-1, it is revealed that in his cross-examination PW-1 Shukhdev has stated that on the day of incident, Prabhu Dayal, Ram Saran had come. Mahesh Chand, Dinesh, Radhey Lal and Ranjeet had also come. Total four men had come. Prabhu Dayal, Mahesh and Dinesh had taken laathi. Prabhu Dayal had taken a danda in his hands. Mahesh Chand and Radhey Lal also had danda in their hands. Three men had danda in their hands, rests of others had laathi in their hands. Shyam Lal had received these laathi blow on his head. I could not say how many laathi blow were given on the body of Shyam Lal because I was also himself injured. Thus, from the perusal of the cross-examination of informant Shukhdev PW-1, it is revealed that according to this witness, he was also injured in the incident. According to this witness, deceased Shyam Lal had received six laathi blows on his head. According to this witness, all appellants have assaulted continuously upon the body of the deceased Shyam Lal, due to which, Shyam Lal received injuries and fell on the ground.

23. From the perusal of the deposition of Mithilesh @ Anita PW-2, it is revealed that this witness has stated that I know accused person in the Court. Prabhu Dayal, Mahesh Chand, Ram Saran and Radhey Lal are present in the Court. Ranjeet and Dinesh are not present in

Court. Deceased Shyam Lal is my father. Now he is not alive. Shukhdev PW-1, is my grandfather. This witness has further stated very important fact, which was the cause of the incident; that before the incident my grandfather Shukhdev has executed a sale deed and transferred half of his land in favour of my brothers. Accused Mahesh Chand and Dinesh Chand are sons of my uncle. Due to this sale deed, Mahesh Chand and Dinesh Chand had regarded enmity with my father. My father Shyam Lal was head of family and he was fully responsible to look after the family. This witness Mithlesh @ Anita PW-2 has also stated that with me, my sister, Phool Kumari, Sunita and my mother Phoolmati were also present. My grandfather Shukhdev was sitting on the side. My father Shyam Lal was inside the house. Prabhu Dayal, Ram Saran, Mahesh, Dinesh, Radhey Lal and Ranjeet have come. They called my father Shyam Lal from inside the house. My father came out of the house and started talking with accused, then Mahesh, Ranjeet and Ram Saran had started beating my father with laathi. Rest of the three Prabhu Dayal, Radhey Lal and Dinesh have caught hold of my father Shyam Lal. I, my sister and my mother ran to save my father. My grandfather Shukhdev and my brother have also come to save my father. These accused have also beaten us. In this process of intervention to save from the accused, I, Phool Kumari, Sunita, Shukhdev and my mother Phoolmati have also received injuries. My father Shyam Lal has also received injuries. After this incident, accused persons have ran away towards the house of Radhey Lal. My father became unconscious. My mother, my elder sister and Ramesh had taken my father to Fatehpur Hospital and thereafter to Kanpur. In Kanpur, my father has died. The injury report of my sister Mithilesh, Phool Kumari and Sunita Devi and also of mine, have been prepared. In her cross-examination, Mithilesh PW-2, has stated that before me, three men for four to five minutes beaten my father. Three persons had beaten to my father by laathi. My father was beaten by laathi and not by danda. All of us were beaten by danda. When my father was beaten by laathi at that time, Prabhu Dayal, caught hold of waist, Radhey Lal caught the legs and Dinesh caught both hands of my father. My father has tried to escape from their grip, however, he was unsuccessful to be free from their grip. When three men catch hold of my father, then three were beating my father by laathi. At the time of being beaten by laathi my father was standing, after that he became unconscious and fell down on the ground. When my father was in a standing position, he has received injuries on his head. He has also received injuries on back side of his neck. There is also an injury on his hand. Mahesh has bitten my father by teeth.

24. In the same way, next injured witness Sunita Devi PW-4 has also stated that, Mahesh, Ranjeet and Ram Saran had taken laathi in their hands and rest of the three had taken danda. These people called my father Shyam Lal for negotiation. Shyam Lal came out of the house, then, Prabhu Dayal, Dinesh, Radhey Lal caught hold of my father Shyam Lal. Mahesh, Dinesh, Ram Saran began to beat my father by laathi. We ran to save him, then we have also received injuries. I, Mithilesh, Phool Kumari and my grandfather have received injuries, during this process. My father became unconscious and fell on the ground. He has received many injuries on his head. This witness has further stated that three people have beaten on the head of my father by laathi. My father has received assault of laathi for two to three minutes. I could not tell how many laathi blows have been assaulted on the head of my father, approximately ten to fifteen laathi blows have been assaulted on the head of my father. My father has received two laathi blows on the back side of his head. This witness Sunita Devi PW-3 further stated that they have not assaulted my father after he fell on the ground.

25. Thus, from the perusal of the deposition of Shukhdev PW-1, Mithilesh PW-2, Sunita Devi PW-4, it is revealed that all above three persons are injured witnesses in this case. The above three injured witnesses, have received injuries in this incident. From the perusal of the deposition of informant Shukhdev PW-1, it is revealed that all the three witnesses informant Shukhdev PW-1, Mithilesh PW-2, Sunita Devi PW-4, have stated in the same manner and style about the happening of the incident. According to the above three witnesses, three persons caught hold to deceased Shyam Lal and rest of the three began to assault upon the head of the deceased Shyam Lal. The above prosecution witnesses have also stated that accused persons assaulted Shyam Lal by laathi and danda continuously and when they tried to intervene to save Shyam Lal, all the three prosecution witnesses have also sustained injuries. According to Mithilesh @ Anita PW-2, three accused have assaulted four to five minutes to deceased Shyam Lal. Mithilesh @ Anita PW-2 has also stated that Mahesh had bitten the thumb of my father. From the above statement of Mithilesh @ Anita PW-2, this fact reveals that injuries that were found on the left thumb of the deceased Shyam Lal are injuries caused by teeth by accused Mahesh. On the same point, Sunita Devi PW-4, has stated that my father was beaten for two to three minutes and about ten to fifteen laathi blows were given on the head of my father. However, when we perused the injury report Exhibit Ka-11, of the deceased Shyam Lal, which was prepared by Dr. R.L. Madin PW-8. According to Dr. R.L. Madin PW-8, injury No.1 was lacerated wound on the back part of the left side of head, measuring 5.6 cm x 3.5 cm. Internal bone was fractured and impacted. Blood was flowing from the wound. X-ray was advised. According to Dr. R.L. Madin, PW-8, injury No.2 was lacerated wound at the base of the left thumb measuring 2 cm x 0.5 cm x bone deep. Blood was flowing. X-ray was advised. According to Dr. R.L. Madin, PW-8, injuries were supposed to be caused by some blunt and hard weapon/object. Thus, only one head injury on the back side of the head of the deceased Shyam Lal was found in the injury report Exhibit Ka-11, as was prepared by Dr. R.L. Madin PW-8. Although, informant Shukhdev PW-1, Mithilesh @ Anita PW-2, Sunita Devi PW-4 have deposed that accused have beaten for two to three minutes continuously on the head of deceased Shyam Lal. Sunita Devi PW-4 has stated that ten to fifteen laathi blows were given on the head of my father Shyam Lal, but from the evidence of Dr. R.L. Madin PW-8, who prepared injury report Exhibit Ka-11 of deceased Shyam Lal, only one head injury on the back side of the head of deceased Shyam Lal was found. The other injury which was on the left thumb of the arms of deceased Shyam Lal was biting injury and according to prosecution witness, it was caused by accused Mahesh. From this, it is revealed that appellant Mahesh has bitten the left thumb of the deceased Shyam Lal. Due to this reason, there is injury in left thumb of the deceased Shyam Lal. This fact is revealed that only one laathi or danda blow has been assaulted on the back side of the head of the deceased Shyam Lal. Although, prosecution witnesses Shukhdev PW-1, Mithilesh PW-2, Sunita Devi PW-4, have stated that three persons, Mahesh, Ranjeet and Ram Saran have continuously beaten Shyam Lal by laathi on his head. From this fact, it is also revealed that prosecution witnesses informant Shukhdev PW-1, Mithilesh PW-2, Sunita Devi PW-4, have given an exaggerated version in their deposition that three accused persons continuously for two to three minutes have beaten by laathi and danda on the head of the deceased Shyam Lal. However, only one injury on the back side of the head of the deceased Shyam

Lal was found. Injury report, as has been prepared by Dr. R.L. Madin PW-8, this fact also finds corroboration from the postmortem report Exhibit Ka-7 of the deceased Shyam Lal, which has been prepared by Dr. S.C. Shukla PW-6. According to Dr. S.C. Shukla, PW-6, who prepared the postmortem report Exhibit Ka-7 of deceased Shyam Lal, he has found only one injury on the head of the deceased, that is lacerated wound 4 cm long, located on the back of the head 6 cm above the left ear, with 4 stitches applied to it. Underneath the wound, there was a fracture in the skull bone named left parietal.

26. Therefore, from the injury report Exhibit Ka-11, as prepared by Dr. R.L. Madin, PW-8, and postmortem report Exhibit Ka-7, of deceased Shyam Lal, as prepared by Dr. S.C. Shukla PW-6, corroborated and supported to each other. From the injury report Exhibit Ka-11 and postmortem report Exhibit Ka-7, this fact is clearly established that one head injury on the back side of the head of the deceased Shyam Lal was found, which was fatal, since there was a fracture on the left parietal bone of the skull of the deceased Shyam Lal. Although, prosecution witnesses Shukhdev PW-1, Mithilesh PW-2, Sunita Devi PW-4 are consistent in their deposition that three persons continuously beaten on the head of the deceased Shyam Lal with laathis. From this fact and discussion, it is clearly revealed that prosecution witnesses have given and deposed an exaggerated story about the blow and persons in causing the said injuries and thereby they tried to implicate all accused for the commission of the crime.

27. From the evidence of Sunita Devi PW-4, it is clear that when after the assault on the head of Shyam Lal, he fell on the ground, thereafter appellants have not assaulted any single blow on the body of deceased Shyam Lal. From the above deposition of injured eye-witness Sunita Devi PW-4, it is clear that one appellant out of six have only assaulted single laathi blow on the back side of the head of the deceased Shyam Lal. When Shyam Lal fell on the ground on receiving that blow, thereafter none of the appellants have assaulted any blow on the body of the deceased Shyam Lal. This fact clearly shows that appellants have no intention to kill Shyam Lal in this incident. If appellants have intention to kill and finish forever Shyam Lal, then, in this condition they have not stopped their laathi blow when Shyam Lal fell on the ground after receiving single laathi blow. The appellants, in this condition, if they wanted to kill Shyam Lal, they would have continuously assaulted and beaten with laathi on the body of the deceased Shyam Lal. From the injury report Exhibit Ka-11 and postmortem report Exhibit Ka-7 and deposition of injured witness Sunita Devi PW-4, it is clearly emerged and proved that appellants have no intention to kill deceased Shyam Lal. Hence, we could not impute intention upon the appellants for the murder of Shyam Lal. However, head of any person is a very sensitive and vital part of the body. Any common man of sound mind has this knowledge that assaulting a single blow on the sensitive and vital part of the head may also cause death of that person. In the light of the above facts and evidence, the appellants could be only imputed with the knowledge that their act is likely to cause death of deceased Shyam Lal. In any circumstances, the appellants could not be imputed by the intention that they wanted to kill and finish the deceased Shyam Lal. However, the learned Trial Court has not considered this factual and legal aspect in its finding and reasoning and has, wrongly held guilty to appellants under [Section 302](#) IPC and convicted them for life imprisonment. In the above facts and circumstances, the case of the appellants came and covered by [Section 304](#) Part II [IPC](#).

28. [Section 304](#) IPC defines that whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

29. Thus, from the above perusal and analysis of the whole prosecution evidence including the ocular and medical, we are of the view that the present case at hand is covered under [Section 304](#) Part II [IPC](#) and is not covered under [Section 302](#) IPC. The appellants have no intention to cause death of deceased Shyam Lal. If they would have any intention to cause death of Shyam Lal, they have not stopped themselves when Shyam Lal fell on the ground after receiving one single laathi blow on the back side of his head, but appellants would have continuously to beated and assaulted upon the deceased Shyam Lal. However, in the present case, prosecution witness Sunita Devi PW-4 has clearly deposed that when his father Shyam Lal fell on the ground after receiving laathi blow on his head, thereafter the appellants have not assaulted any single blow on the body of the deceased Shyam Lal. In the light of the above facts and circumstances, we are of the view that case of the appellants comes under the purview of [Section 304](#) Part II [IPC](#) and not under [Section 302](#) IPC.

30. The Honble Supreme Court in the case of [Virsa Singh Vs. State of Punjab](#) AIR 1958 SC 465 has held thus:

"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".

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 nor 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.

31. Again the Honble Supreme Court in [Chamru Budhwa Vs. State of Madhya Pradesh](#) AIR 1954 SC 652 has held as follows:

where there was exchange of abuses between the two parties both of whom were armed with lathis, they came to blows and in the course of the fight that ensued, the accused struck a lathi blow on the head of the deceased which caused a fracture of the skull resulting in the death. In view of the fact the accused had given only one blow in the heat of the moment, it was held that all that can be said was that he had given the blow with the knowledge that it was likely to cause death and, therefore, the offence fell under [s. 304](#), Part II of the Code.

32. Again Honble Supreme Court in [Jagrup Singh Vs. State of Haryana](#) (1981) 3 SCC 616 held that :

Culpable homicide amounts to murder under clause Thirdly of [Section 300](#) IPC if (1) a bodily injury is present (2) the nature of the injury is proved (3) there was an intention to inflict that particular injury and (4) that injury is sufficient to cause death in the ordinary course of nature. The injury found to be present must be the injury that was intended to be inflicted. There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting in death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under [Section 304](#), Part II of the Code. If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must, in the absence of any circumstances negating the presumption, be deemed to have intended to cause the death or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either clause Firstly or clause Thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death.

In the present case the genesis of the quarrel resulting in the head injury to the deceased could not be clearly shown by the prosecution. On the finding of the High Court that the appellant when he struck the deceased with the blunt side of the gandhala in the heat of the moment, without premeditation and in a sudden fight, the case was covered by Exception 4 to [Section 300](#). It is not suggested that the appellant had taken undue advantage of the situation or had acted in a cruel or unusual manner. Thus, all the requirements of Exception 4 are clearly met. Therefore the conviction of the appellant under [Section 302](#) must be altered to one under [Section 304](#) Part II, [IPC](#).

33. In the light of [the above case](#) law of Honble Supreme Court and the law enunciated by the Honble Supreme Court on [Section 304](#) IPC, from the perusal of the whole evidence and also the facts and circumstances of the present case at hand, we find that, although deceased Shyam Lal has died by a single head injury, which was on his back side of the head and not being assaulted after above injury, prosecution had given the role on six appellant in inflicting that injuries, three of them assigned the act of catching hold of the body of the deceased Shyam Lal and rest of the three had assaulted laathi blow on the body of the deceased Shyam Lal. However, from the perusal of the injury report Exhibit Ka-11, as prepared by Dr. R.L. Madin PW-8, and postmortem report Exhibit Ka-7, as prepared by Dr. S.C. Shukla PW-6, we find that only one head injury on the back side of the head of deceased Shyam Lal has been found and by that injury, left parietal bone of the skull of the deceased Shyam Lal was fractured. This injury proved fatal to deceased Shyam Lal and thereby Shyam Lal died due to that injury. Thus, it is clearly a fact that according to the injured prosecution witness Sunita Devi PW-4, when Shyam Lal fell on the ground, after receiving laathi blow on the back side of his head, thereafter, appellants have not given or assaulted any blow on the body of the deceased Shyam Lal. That fact shows that appellants have no intention to kill Shyam Lal. If they have any intention to kill Shyam Lal, then in this condition appellants have not stopped themselves and they continued giving laathi blow on the body of the deceased Shyam Lal. However, injured prosecution witness Sunita Devi PW-4 confirmed this fact that when deceased Shyam Lal fell on the ground after receiving one laathi blow on his head, thereafter the appellants have not assaulted any single blow from laathi or danda on the body of the deceased. This fact also revealed that appellants have not taken undue advantage of the situation or had not acted in a cruel or unusual manner. This fact clearly proved that appellants have no intention to kill deceased Shyam Lal and finish him forever. However, appellants would be imputed only with a knowledge that this type of laathi blow on the vital and sensitive part of the body, like head may likely to cause death. Therefore, in the light of the law as [laid down by](#) the Honble Supreme Court in [Virsu Singh, Chamru Budhwa and Jagrup Singh](#) (supra) and also in the light of the evidence as deposed by prosecution witnesses Shukhdev PW-1, Mithilesh PW-2, Sunita Devi PW-4 and medical evidence of Dr. R.L. Madin PW-6 and Dr. S.C. Shukla PW-8, we find that in this case, all requirements of Exception 4 of [Section 300](#) IPC are clearly present. Due to this reason, conviction and sentence under [Section 302](#) IPC may be altered to one under [Section 304](#) Part II [IPC](#).

34. From the evidence of prosecution itself, this fact is revealed that informant Sukhdev PW-1 has executed and transferred all his land, which was situated near the tube-well in favour of his grandson Ram Prakash, Ramesh Kumar sons of Shyam Lal before three months of this incident. Informant Sukhdev PW-1 has other plot of agricultural land, which was adjoining to a pond. The appellants Mahesh and Dinesh sons of Ram Sewak, who was second son of informant Sukhdev PW-1, has been demanding their share, as they were also grand child of informant Sukhdev PW-1 and they have all legal rights to claim their share in ancestral agricultural land from their grandfather Sukhdev PW- 1. On the day of incident, appellants Mahesh and Dinesh had come with their relative at the place of occurrence at their grandfathers home in village. During altercation and negotiation, suddenly this incident happened. Hence, there was no pre-planning or premeditation for this incident on behalf of the appellants. It appears from the evidence as available on the record, that this incident

happened upon a sudden quarrel and sudden fight in the heat of the passion. Therefore, Exception 4 is clearly applicable in the present case.

Exception 4 to [Section 300](#) of IPC states that culpable homicide is not murder, if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Explanation of Exception 4 of [Section 300](#) IPC also provides that it is immaterial in such cases party offers the provocation or commits the first assault. Thus, in the light of the above discussion, we are of the view that case of the appellants is not covered under [Section 302](#) IPC and it is covered under [Section 304](#) Part II [IPC](#), therefore, case of the appellants must be converted and altered from [Section 302](#) to [Section 304](#) Part II [IPC](#).

35. From the perusal of the injury report Exhibit Ka-2 of Km. Sunita Devi PW-4, injury report of injured Mithilesh Exhibit Ka-3 and injury report of injured Phool Kumari Exhibit Ka-4 and injury report of Sukhdev Exhibit Ka-5, which have been prepared by Dr. Narendra Kumar Saxena PW-5, we find that on the body of the injured Sunita Devi, one lacerated wound on the right forearms and pain on the back side of the lower arm and in the right leg was found. According to opinion of Dr. Narendra Kumar Saxena PW-5, injury of Sunita Devi was simple in nature and caused by any hard and blunt object. In the same way, Dr. Narendra Kumar Saxena PW-5 found only complain of pain in the injury report of Mithilesh Exhibit Ka-3, complain of pain in right waist and in left leg. He was unable to give any opinion about these injuries. About injured Phool Kumari, Dr. Narendra Kumar Saxena PW-5 has stated that on examination of body of injured Phool Kumari, he has not found any injury on her body. Injured is complaining pain in her left leg. Dr. Narendra Kumar Saxena PW-5 found only one contusion injury on the back of the right forearms of the injured Sukhdev and next injury was complain of pain in his right hand. In the opinion of Dr. Narendra Kumar Saxena PW-5, injury no.1 was simple in nature and caused by any hard and blunt object. Therefore, from the perusal of the above injury report of injured Sunita Exhibit Ka-2, injury report of Mithilesh Exhibit Ka-3, injury report of Phool Kumari Exhibit Ka-4 and injury report of Sukhdev Exhibit Ka-5, we find that all the above injured persons have very simple injuries on their body. There was no serious injury found on their body and the injuries that were found are very simple in nature and caused by any hard and blunt object and other were complaint of pain in other part of body. Due to above facts and circumstances, it is also proved that appellants have not taken undue advantage and they have also not acted in a cruel and unusual manner in the commission of the alleged crime.

36. We have also gone through and examined the judgment and order of conviction and sentence dated 25.07.2001, as passed by the learned Trial Court and find that the Trial Court has not appreciated the prosecution evidence in a proper prospective and in legal manner. The Trial Court has not considered about the ingredients and exceptions of [Section 300](#) IPC and has not also considered the prosecution evidence in the light of the above facts. The Trial Court only, without analysing the prosecution evidence in the light of the ingredients of [Section 302](#) IPC and their exception and without considering the provision of exception 4 of [Section 300](#) IPC, without applying judicial mind and legal principles in this regard, has wrongly held the appellants guilty under [Section 302](#) IPC and convicted them for life imprisonment. Therefore, in the light of the above facts, we are not inclined to affirm the judgment and order of conviction and sentence of the Trial Court dated 25.07.2001.

37. In the light of the above discussion, we are, therefore, inclined to change the finding of the Trial Court in this regard. We also change the sentence, as passed by the Trial Court against the appellants. Thus, we change the finding and sentencing, as passed by the Trial Court dated 25.07.2001, hence due to this reason, as discussed by us in the above paragraphs, we are inclined to convert the conviction of the surviving appellants from [Section 302](#) IPC to [Section 304](#), Part II [IPC](#), because case of the appellants is covered with exception 4 of [Section 300](#) IPC. In the light of the above facts, we are changing the sentence of the Trial Court under [Section 302](#) IPC read with [Section 149](#) IPC from life imprisonment to three years rigorous imprisonment under [Section 304](#) Part II [IPC](#).

38. In the light of the above, we, therefore, by modifying the findings and sentences awarded by the Trial Court, partly allow the criminal appeal of the surviving appellants, accordingly, in the terms and conditions as discussed above by us. In our view, the purpose of justice would be achieved by convicting surviving appellants under [Section 304](#), Part II [IPC](#) with only three years rigorous imprisonment. We upheld the sentence of surviving appellants under [Section 147](#) IPC by 1-1 years of rigorous imprisonment and under [Section 323/149](#) IPC by six-six months of rigorous imprisonment, but we modify the sentences of surviving appellants for life imprisonment under [Section 302/149](#) IPC to [Section 304](#), Part II [IPC](#) for three years rigorous imprisonment, only.

39. Therefore, in the light of the above discussion and fact and circumstances of the case, we modify and partly allow the criminal appeal of the surviving appellants, accordingly. We, therefore, only set aside the sentences of surviving appellants under [Section 302/149](#) IPC for life imprisonment and instead of life imprisonment under [Section 302/149](#) IPC, we sentence the surviving appellants only to three years rigorous imprisonment under [Section 304](#), Part II [IPC](#).

40. Thus, the appeal of the surviving appellants is partly allowed in the above terms and conditions, as discussed above by us. The surviving appellants are on bail by order of this Court dated 08.08.2001. Their personal bonds are cancelled and sureties are discharged. The surviving appellants are directed to surrender before the Chief Judicial Magistrate, Fatehpur within fifteen days from the date of this judgment and are ordered to serve out the sentences, as modified and directed by this Court. It is made clear at this stage that all the sentences of the surviving appellants shall run concurrently. In case of failure of accused-appellants to surrender in the Court of Chief Judicial Magistrate, Fatehpur, the Chief Judicial Magistrate, Fatehpur shall issue a non-bailable warrant and arrest them and sent them to jail for serving their remaining sentence as passed by this Court.

41. Let a copy of the judgment and order of this Court be communicated to the Chief Judicial Magistrate, Fatehpur by the Registrar (Compliance) forthwith.

