



HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Judgment reserved on 01.04.2026

Judgment delivered on 23.04.2026

Criminal Appeal No. 1880 of 2019

Mahesh Singh and 3Appellants (s)
others

Versus

State of U.P.Respondents(s)

Counsel for Petitioners(s) : Ritesh Singh
Counsel for Respondent(s) : G.A. Ravindra Sharma

With

Criminal Appeal No. 7611 of 2025

Amit SinghAppellants (s)

Versus

State of U.P.Respondents(s)

Counsel for Petitioners(s) : Ritesh Singh
Counsel for Respondent(s) : G.A. Ravindra Sharma

Court No. - 42

HON'BLE SIDDHARTHA VARMA, J.
HON'BLE JAI KRISHNA UPADHYAY, J.

(Per : Jai Krishna Upadhyay, J.)

1. Since these criminal appeals arise out of same case crime number, they have been heard together and are being decided by a common judgment and order. Criminal Appeal No. 1880 of 2019 is being treated as a leading case.

2. Heard Shri R.N. Nigam, Advocate assisted by Shri Ritesh Singh, learned counsel for the appellants, Shri Ravindra Sharma, learned counsel for the informant and Shri Alok Kumar Singh and Shri Muniraj Mehrotra, learned AGA for the State-respondent.

3. The validity and sustainability of the judgment and order dated 11.1.2019 passed by the 9th Additional Sessions Judge, Shahjahanpur in Sessions Trial No.391 of 2019 (State Vs. Ram Singh and others) arising out of Case Crime No. 913 of 2016 under Sections 147, 148, 302/149 IPC, Police Station Roza, District Shahjahanpur and judgment and order dated 1.5.2025 passed by Additional Sessions Judge, Court No.43, Shahjahanpur in Sessions Trial No. 247 of 2018 (State Vs. Amit Singh) arising out of Case Crime No. 913 of 2016 under Sections 147, 148, 302/149 IPC, Police Station Roza, District Shahjahanpur have been challenged by way of instant criminal appeals. Vide judgment and order dated 11.1.2019 the appellants **Mahesh Singh, Aarti Singh, Vitana Devi and Shivam Singh @ Sumit Kumar Singh** were convicted and sentenced to undergo imprisonment for life under Section 302/149 IPC with a fine of Rs.1,00,000/- each, to undergo two years rigorous imprisonment under Section 147 IPC with a fine of Rs. 3,000/- each, to undergo three years rigorous imprisonment under Section 148 IPC with a fine of Rs. 5,000/-. The accused appellant **Mahesh Singh** was also convicted in Session Trial No. 392 of 2016, case crime no. 953 of 2016, under Section 3/25/27 of Arms Act and was sentenced to undergo three years rigorous imprisonment with a fine of Rs. 5,000/-.

4. Since the accused appellant **Amit Singh** was absconding, his trial was separated and vide judgment and order dated 1.5.2025 he had been convicted in Session Trial No. 247 of 2013, case crime no. 913 of 2013 and sentenced to undergo imprisonment for life under Section 302/149 IPC with a fine of Rs.1,00,000/- each, to undergo two years rigorous imprisonment under Section 147 IPC with a fine of Rs. 2,000/- each, to undergo two years rigorous imprisonment under Section 148 IPC with a fine of Rs. 2,000/-.

5. All sentences were directed to run concurrently with default clause.
6. Accused Vedpal had expired during trial, therefore, trial against him was abated.
7. The prosecution story, in brief, as unfolded by the informant Kuldeep Kaur wife of Mangal Singh, resident of Handa Colony, Village Ahmadpur Nyazpur, police station Roza, District Shahjahanpur in the First Information Report (in short 'FIR') is that in the Panchayat Election of 2015, Vitana Devi, wife of Mahesh Singh, was a candidate for the post of Gram Pradhan. Vishal Singh, son of the informant, was supporting her. During the elections, Vishal Singh started visiting Mahesh Singh's house, where he became acquainted with Mahesh Singh's daughter, and the two fell in love. Upon their request, Vishal Singh lent Mahesh Singh and his family Rs. 1,50,000/-. About fifteen days prior to the incident, Vishal asked them to return the said money. Due to this, Mahesh Singh and his family were having grudge with him. On 08.07.2016 at around 09:00 p.m., Shivam Singh, son of Mahesh Singh, called Vishal on his mobile number and stated that some money had been arranged and he should come to collect it. Believing this, Vishal went to the house of Mahesh Singh on his motorcycle. As soon as he reached the premises, an argument ensued between Vishal and Mahesh Singh. In the meantime, Mahesh Singh fired a shot from his pistol with intention to kill Vishal. Aarti Singh and her mother, Vitana Devi, caught hold of him in the veranda of their house, while Amit Singh and Shivam Singh (sons of Mahesh Singh), along with Mahesh Singh's friend Vedpal Singh, son of Nanhak, assaulted him several times with 'banka' in their hands. The son of the informant fell on the road beneath the veranda. Mangal Singh, husband of the informant and her daughter Sarvjeet Kaur, had followed Vishal and witnessed the entire incident with the help of a torchlight. When they challenged the assailants, several people from the neighborhood gathered on the spot. At this, all six accused persons abused and threatened the witnesses before fleeing the scene. Upon receiving the information, the informant along with her daughter

Rajvinder Kaur, took Vishal to the District Hospital where the doctors declared him dead. The dead body of the deceased was kept in the mortuary. On 8.7.2016 at 11.45 p.m FIR as case crime no. 913 of 2016 under Sections 147, 148, 149, 302 IPC was registered and investigation started.

8. Inspector Narendra Deo Pathak started the proceedings of investigation and during course of investigation, statements of relevant witnesses were recorded by him. He proceeded to place of occurrence. Prepared inquest report. He also prepared other police papers, namely, photo lash, challan nash, letter to CMO. He took bloodstained earth and plain earth from the place of occurrence. He also prepared site plan. Inspector Virjaram arrested accused Shivam @ Sumit Kumar and recovered weapon 'banka' used in commission of the alleged crime from him. The country country made pistol was recovered on the pointing out of the accused Mahesh Singh and a case as case crime no. 953 of 2016 under Section 3/25/27 was lodged against him. Motorcycle and punjabi show of deceased were also recovered from the place of occurrence. Subsequently, the investigation was taken over by Inspector Yatendra Babu Bhardwaj.

9. The autopsy of the dead body of the deceased was performed by Dr. O.P. Gautam, who after performing the postmortem of the deceased prepared autopsy report Ext. Ka-2 The following injuries were found over the body of the deceased :

(1) *Firearm wound of entry 3 cm x 2 cm x cavity deep over bridge of nose margin inverted blackening present around the wound.*

(2) *Firearm wound of exit 1.5 cm x 1 cm x through and through connected injury no.1 on lateral contour of left eye, direction right to left margin everted.*

(3) *Firearm wound of entry 0.8 cm x 0.5 cm on right side of chest 4 cm radial to right nipple and 12 cm below right elliptical wound margin everted blackening and tattooing with area of 8 cm x 6 cm around the wound.*

(4). *Incised wound 6 cm x 1.5 cm x wound deep left side of forehead 3 cm above left eye.*

- (5). *Incised wound 22 cm x 2 cm x bone deep on frontal region of skull 11 cm above left ear.*
- (6) *Incised wound 4.5 cm x 1 cm on the right side forehead just above right eyebrow.*
- (7) *Incised wound 2.5 cm x 0.5 cm bone deep on left side face 1.5 cm below left eye.*
- (8) *Incised wound 3 cm x 1 cm bone deep on left side face 2 cm below injury no.1.*
- (9) *Incised wound 4 cm x 1 cm bone deep on left side chin 3 cm below right angle of mouth.*
- (10) *Incised wound 5 cm x 1 cm bone deep on right side chin 4 cm below right angle of mouth.*
- (11). *Incised wound 6 cm x 1.5 cm bone deep on right side of upper lip.*
- (12). *Abraded contusion 16 cm x 10 cm on right side neck 1 cm below right ear.*
- (13). *Abraded contusion 3 cm x 2 cm on dorsum of left hand underneath middle ring and middle finger bone fractured.*
- (14). *Abraded contusion posterior aspect of right forearm 5 cm above right wrist.*

As per opinion of Doctor, cause of death was due to shock and haemorrhage, as a result of ante-mortem firearm injuries.

10. After completion of the investigation, charge-sheet Ex. ka.-22 was filed in the Court against accused Mahesh Singh, Aarti Singh, Vitana Devi, Shivam Singh @ Sumit Kumar Singh and Ved Pal under Sections 147, 148, 149, 302 IPC and charge sheet Ext. ka-24 was also filed against accused Mahesh Singh under Section 3/25/27 Arms Act. Both the matters were committed to the Court of Sessions for trial.

11. Since accused Amit Singh was absconding, charge sheet Ext. ka-8 was submitted against him subsequently.

12. Accused appeared and charges under Sections 147, 148 and 302/149 IPC in S.T. No. 391 of 2016 were framed against accused Mahesh Singh, Aarti Singh, Vitana Devi, Shivam Singh @ Sumit Kumar Singh and Ved Pal, whereas against accused Mahesh Singh charge was

also framed under section 3/25/27 of Arms Act in S.T. No. 392 of 2016. The accused persons pleaded not guilty and claimed to be tried.

13. To bring home the charges against the accused Mahesh Singh, Aarti Singh, Vittana Devi and Shivam Singh @ Sumit Kumar Singh, the prosecution produced in all nine witnesses in oral evidence. They are (P.W.1) Smt. Kuldeep Kaur, informant, (P.W.2) Sarvajeet Kaur, (P.W.3) Mangal Singh, (P.W.4) Dr. O.P. Gautam, (P.W.5) Inspector Narendra Deo Pathak, (P.W.6) Constable Ram Kishore, (P.W.7) Inspector Virjaram, (P.W.8) Yatendra Babu Bhardwaj and (P.W.9) Ravi Kant Shukla whereas against the accused Amit Singh, who was absconding and whose trial was conducted later on, PW-1 – Smt. Kuldeep Kaur – informant, PW-4 Dr. O.P. Gautam, PW-5 – Inspector Narendra Deo Pathak, PW-6 Inspector Iftikhar Ahmad in S.T. No. 247 of 2013 and PW-7 H.C. Ram Kishore were examined.

14. In documentary evidence, written report Ex. Ka-1, Postmortem Report Ex. Ka-2, site plan Ext. ka-3, memo regarding bloodstained and plain earth Ext. ka-4, memo motorcycle Ext. ka-5, memo punjabi show Ext. ka-6, inquest report Ext. ka-7, letter to CMO Ext. ka-8, photo nash Ext. ka-9, challan nash Ext. ka-10 memo recovery country made pistol and cartridge Ext. ka-11, memo of arrest of accused Vedpal Ext. ka-12, G.D. of case crime no. 913/2016 Ext. ka-13, chik FIR Ext. ka-14, G.D. rapat no.20 Ext. ka-15, G.D. rapat no.22 Ext. ka-16, G.D. rapat no.44 Ext. ka-17, G.D. rapat no.10 Ext. ka-18, G.D. rapat no.20 Ext. ka-19, chck FIR at case crime no. 953/2016 Ext. ka-20, memo of arrest of accused Shivam @ Sumit Kumar Ext. ka-21, charge sheet Ext. ka-22 in case crime no. 953 of 2016, site plan Ext. ka-23, charge sheet Ext. ka-24, prosecution sanction Ext. ka-25 and recovery of 'banka' material ext.1, firearm material ext. 2 and cartridge material ext. 3 were proved. In session trial no. 247 of 2018 against the accused appellant Amit Singh written report Ext. ka-1, post mortem report Ext. ka-2, site plan Ext. ka-3, FSL report Nos. N-61433, N-69972, N-70363 Ext. ka- 4, 5 and 6, memo

kurki Ext. ka-7, charge sheet Ext. ka-8 and chik FIR Ext. ka-9 were examined.

15. The incriminating evidence and circumstances were put to the accused persons under Section 313 Cr.P.C. wherein they claimed the entire prosecution evidence as false and fabricated and stated that the witnesses had deposed falsely. Accused Mahesh Singh stated that Vishal attempted to kill him with a pistol, however, in the struggle to defend himself, the shot from his weapon struck him. Accused Shivam and Amit stated that they were not present on the spot. Accused Aarti stated that on 8.7.2016, at 6:00 PM, while she was standing at the doorway of the room situate in the south, adjacent to the main entrance of her house, the door was open and Vishaal suddenly entered into the house. He forcibly grabbed her and dragged inside the room and slammed on the floor. Her mother was cooking in the veranda in the same house. When she raised an alarm, her mother Vitana @ Usha rushed into the room and began pulling Vishaal in an attempt to separate him from her. They screamed and cried out in distress. Hearing the scream, her father, who was at the shop located on the southern side of the house, near the main road, arrived at the scene and people of neighborhood also reached the site. Her father and mother pulled Vishal away from her. At that very moment, Vishal attempted to shoot her father, the weapon was loaded with a live cartridge. During the scuffle, the pistol discharged, and the bullet struck Vishal. Vishal ran and fell outside her house. The pistol also fell there. The accused Vitana has stated that she had been falsely implicated in this case. After Vishal fell at the doorstep, everyone in the neighborhood, with whatever they could find, namely, tongs, blowpipes, and ladles beat him up. She fled the scene, and someone made off with Vishal's pistol. In defence evidence, D.W.-1 accused Mahesh Singh, DW-2 accused Vitana, DW-3 accused Aarti, DW-4 Bihari and DW-5 Girand Singh were produced.

16. P.W. 1 Smt. Kuldeep Kaur - informant is the mother of the deceased. She is not an eye witness of the occurrence. She has supported

the prosecution story, as narrated in the FIR. In her statement she has elaborately explained the occurrence. She has further stated that in the Panchayat Elections of 2015, Vitana Devi, wife of Mahesh Singh, was a candidate for the post of Gram Pradhan. Vishal Singh, son of the informant, was supporting her. During the elections, Vishal Singh started visiting Mahesh Singh's house, where he became acquainted with Mahesh Singh's daughter, and the two fell in love. On the request of Mahesh Singh, Vishal Singh lent him Rs. 1,50,000/-. About fifteen days prior to the incident, Vishal asked Mahesh Singh to return the said money. Due to this, Mahesh Singh and his family were having grudge with Vishal. On 08.07.2016 a call came from Mahesh Singh's house saying that some money had been arranged and he could come and collect the same. Believing thereon, he went to the house of Mahesh Singh on his motorcycle. As soon as he reached the premises, an argument ensued between Vishal and Mahesh Singh. In the meantime, Mahesh Singh fired a shot from his 315 bore pistol with an intention to kill Vishal. Aarti Singh and her mother, Vitana Devi, had held him. Vedpal Singh, Shivam Singh, Amit Singh assaulted him several times with their weapons, namely, the 'banka'. The son of the informant fell on the road beneath the veranda. Mangal Singh, husband of the informant and her daughter Sarvjeet Kaur witnessed the entire incident with the help of a torchlight. Having received the information, the informant also reached the place of occurrence.

17. P.W. 2 - Sarvjeet Kaur is the sister of the deceased. She claims herself to be an eye witness of the incident. She has stated that the incident occurred on July 8, 2016, at about 9:00 p.m. His brother Vishal had been active in politics for four to five years. In the year 2015, when the Gram Pradhan election was held, his brother supported Vitana Devi. Meanwhile, her brother Vishal Singh started to visit the house of Mahesh Singh. He became acquainted with Mahesh Singh's daughter, Aarti and the two fell in love. Vishal Singh lent Rs. 1,50,000/- to Mahesh Singh and when he demanded the money, Mahesh Singh and his entire family started having grudge with him. On July 8, 2016, Vishal Singh received

a call around 9:00 p.m. telling him for taking his money back. PW-2 had also heard the conversation. Thereafter, her brother left on his motorcycle for Shivam Singh's house. PW-2 and her father followed him on scooter, as Shivam Singh and his family members had a grudge with him (Vishal). When they reached the house of Mahesh Singh, the father of PW-2 saw, in the light of an electric torch, that Mahesh Singh fired at Vishal with intent to kill him. Meanwhile, Vitana Devi and Aarti Devi caught both hands of her brother when he was standing at the platform of Mahesh Singh's door, and Amit Singh and Shivam Singh, the sons of Mahesh Singh, and Vedpal Singh, friend of Mahesh Singh launched the attack with their respective weapons 'banka' due to which her brother fell down. They shouted, which attracted a few people. Mahesh Singh and his associates fled away abusing and threatening to kill. PW-2 and her father Mangal Singh witnessed this incident clearly in the electric light and torchlight and recognized the accused. Thereafter, she returned home alone and her father was there.

18. P.W. 3 - Mangal Singh is the father of the deceased. He claims himself to be an eye witness of the incident. He has stated that he knew the accused persons. He supported the prosecution case as stated by PW-2 in same tone. He has further stated that as soon as he alongwith PW-2 reached the house of Mahesh Singh, he saw Mahesh Singh holding pistol in both hands. He opened fire on his son Vishal Singh with intention to kill him. Aarti Devi and Vitana Devi were holding his hands tightly and Vedpal Singh, Amit Singh, Shivam Singh were having 'banka' in their hands. They attacked indiscriminately with intention to kill him. They started brutally cutting Vishal Singh, causing severe injuries to his head and face. As soon as PW-2 and PW-3 shouted and challenged them and moved forward, the accused pointed their guns on them and ran away abusing. They took Vishal Singh to the district hospital where doctor declared him dead. The written report was got written by Rajwinder Kaur, daughter of the informant. He has admitted the fact that there was love affair between the deceased and Arti.

19. P.W.4 - Dr. O.P. Gautam has stated that he performed the autopsy of the dead body of the deceased on 9.7.2016. He proved the autopsy report as Ext. ka-2.
20. P.W. 5 - Inspector Narendra Deo Pathik is the first I.O. of the case. He proved the site plan Ext. ka-3, memo regarding bloodstained and sample earth Ext. ka-4, memo regarding motorcycle Ext. 5, memo of the shoes of the deceased Ext. ka-6, inquest report Ext. ka-7, letter to CMO Ext. ka-8, photo nash Ext. ka-9, challan nash Ext. ka-10, memo regarding recovery of country made pistol 315 bore Ext. ka-11, arrest memo Vedpal Ext. ka-12.
21. P.W. 6 - Constable Ram Kishore proved the chick report and G.D. report.
22. P.W. 7 - Inspector Virjaram recovered the weapon 'banka' from the accused Shivam @ Sumit kumar. And proved the material exhibit in this regard. He also proved the arrest memo of Shivam.
23. P.W. 8 - Inspector Yatendra Babu Bhardwaj was the second I.O. of the case who investigated the matter and after completing necessary formalities submitted charge sheet.
24. P.W.9 - H.C.P. Ravikant Shukla (retired) proved the recovery memo Ext. ka-11 about recovery of murder weapon 'country made pistol' on the pointing of accused Mahesh Singh and lodged a case. He also proved site plan Ext. ka-23 and charge sheet Ext. ka-24.
25. Inspector Iftikhar Ahmad – PW-6 in S.T. No. 247 of 2013 is the I.O. who investigated the matter in respect of accused **Amit Singh**, who was absconding. In compliance of the order of the concerned Court, proceedings under Section 83 CrPC, were initiated and the movable property at the residence of the accused, Amit Singh, were attached in the presence of his mother, Vitana Devi and a seizure memo was prepared

on the spot, and the signatures of the witnesses were obtained thereon. He proved the proceeding of investigation and relevant papers.

26. As mentioned here-in-above, in defence evidence, D.W.-1 accused Mahesh Singh, D.W.-2 accused Vitana, D.W.-3 accused Aarti, D.W.-4 Bihari and D.W.-5 Girand Singh have been produced.

27. D.W. 1 - Mahesh Singh has stated that about two and a half days before the incident, it was rainy season. There is a shop on the south side of his house. There is a highway on the south side of that shop. He had gone to the shop to collect the rent a minute or two before the incident. After hearing Aarti's scream he came running. Vishal was on top of Aarti and was trying to rape her and Usha was holding Vishal's leg and was restraining. Both of them were screaming. When he grabbed Vishal and pulled him, he drew a pistol and attempted to fire upon him. Immediately, he seized the hand holding the weapon with both of his hands and tried to push the barrel away from his body. All the while, Vishal's hand remained on the trigger and amidst this scuffle, the pistol discharged, and the bullet struck him in the right side of his chest. After receiving injury, Vishal ran towards the exit and staggering just two steps he fell down. About 8 to 10 people from the neighborhood arrived and his wife and daughter explained that he was attempting to rape with her and at that moment, the neighbors attacked him using sticks, blowpipes, bricks, tongs, ladles, and similar objects. A pistol was lying there and amidst the commotion of the crowd, a shot was fired towards Vishal, but he was unable to see who actually fired it. No pistol was recovered from him or on his pointing out. His wife, daughter, and both sons have been falsely implicated in this case. He did not borrow Rs. 1,00,000/- or any other money from Vishal.

28. D.W. 2 - Vitana Devi has stated that about two and a half years ago, it was a rainy season in the evening and she was cooking in the kitchen. Aarti was in the western verandah of the kitchen. Suddenly Vishal entered the house but she could not see him. He dragged Aarti into the room and slammed her on the floor. He sat on Aarti with intention to

commit rape with her. Aarti lay down on the cot and screamed loudly. She further stated that her husband had gone to her shop just two-four minutes ago to collect the rent from the tenant. When Aarti and she shouted for help, her husband immediately came within a minute. She caught hold of Vishal's leg and pulled him, then her husband and she pulled him. Vishal, in anger, left Aarti and took out a pistol from his waist and tried to fire at her husband with intention to kill him. Then her husband held the pistol with both his hands and moved the barrel away from his body. Meanwhile, the pistol went off and hit Vishal on his right chest. The pistol and two live cartridges fell. Vishal ran 2-3 steps and fell in front of the main door. His black motorcycle was parked there. On hearing her screams, her husband, daughter and the sound of the gunshot, about fifty people from the neighborhood came over there and they attacked Vishal with ladles, tongs, a blowpipe, rods, sticks, and bricks. In the crowd, one man fired a live cartridge from the same pistol into his face. She alongwith all family members fled away leaving the house unlocked. Her husband had not borrowed any money. Her sons as well as Vedpal were not at home at the time of occurrence.

29. D.W. 3 - Aarti stated that the incident occurred at about 6-7 p.m. Her father had gone to collect the rent at the shop. Her main door faces west. They were standing in the veranda. Suddenly, Vishal came and caught her hand. He pulled her into the room and threw on the floor. When he slammed her, she fell flat on her back and started screaming. Vishal sat on top of her and tried to force her for doing something wrong. The kitchen was located four feet away from the room. As soon as she screamed, her mother arrived within a minute or two and she grabbed Vishal and pulled him, then her father came there and also pulled Vishal away and took him to the veranda and then Vishal pulled out his pistol. The father of DW-3 pulled the pistol away from his body and the bullet hit Vishal in the right chest. Vishal ran outside. He fell three steps from the gate. People from the neighborhood came and her mother told them about the act done by Vishal. When they heard this, they started beating Vishal with scissors, tongs, and knives. She and her family members then

ran away and stayed for two or three days at a house owned by her father's acquaintance.

30. D.W. 4 - Bihari has stated that he was sitting on the shop of Mahesh Singh which was taken on rent by Vimal. He was not feeling well that day. Vishal fell wounded in front of the door. He saw the pistol in Vishal's hand. Before Mahesh could remove the pistol from his body, Vishal fired it, hitting Vishal in his right side. After the shot, two live cartridges and the pistol fell there. He further stated that he had come at the screams of Vitana and Aarti. When Vishal fell at the door, Mahesh, Aarti, and Bitna were there. Amit, Shivam, and Vedpal were not there. From the neighborhood, Munshi, Sakte and their six or seven daughters-in-law had reached the scene. They had sticks, tongs, ladles, blowpipes, stones, and rolling pins. When Aarti and Vitana shouted that Vishal had tried to rape with her daughter Aarti, everyone beat him. He also hit Vishal with his hands. There was no light at the place of occurrence and it was dark.

31. D.W. 5 - Girand Singh has stated that the incident occurred about two and a half years ago. It was around 6:00 p.m. He was at home, located two houses away from Vitana's house. He heard a women screaming and then a gunshot. Hearing the noise and the gunshot, he rushed to Vitana's door. Before this incident, Vishal had contested the BDC election. He came to him for votes. He already knew him. He saw Vishal lying down. When he reached, only Vitna and her daughter Bittu were present. No one else was in the house. There were Sakte, Sakte's daughter-in-law, and women from Rampal's house. There were ten to twenty or fifty other people. Vitana, her daughter Bittu, and Mahesh were saying that Vishal entered in their house.

32. The learned trial court upon scrutiny of the evidence on record concluded that the case of prosecution was proved beyond reasonable doubt against the accused Mahesh Singh, Aarti Singh, Vitana Devi,

Shivam @ Sumit and Amit Singh and recorded conviction and sentenced them, as mentioned here-in-above.

33. Assailing the impugned judgment on various grounds, learned counsel appearing for the appellants submitted that the prosecution has not proved its case beyond reasonable doubt. It has been submitted that the impugned judgment and orders are not sustainable under law. There was no motive for the appellants to do away with the deceased. It was stated that deceased had given Rs. 1,50,000/- to the accused appellant Mahesh Singh and his family members and when he demanded the money, he was called on phone and was murdered by them but the prosecution has neither produced any evidence of call details with the appellants and the deceased nor any proof in respect of payment of the alleged amount. P.W. 2 and P.W. 3 are not the eye witnesses. They were not present on the spot at the time of the occurrence. There are major contradictions in the statements of prosecution witnesses which shake the root of the prosecution case. The F.I.R. has also been recorded belatedly and no plausible explanation has been offered by the prosecution in respect thereof. PW-1, PW-2 and PW-3 are interested witnesses. The investigation of the case is also faulty, which affects the prosecution case in material aspects. Recovery of murder weapon 'country made pistol' from the accused Mahesh Singh is false and planted. The incident occurred suddenly and in the heat of passion without premeditation. When deceased was trying to commit rape with the daughter of appellants Mahesh Singh and Vitana Devi and was on the top of her, he was pulled by appellants Mahesh Singh and Vitana Devi and he (deceased) drew a pistol and attempted to fire upon appellant Mahesh Singh then Mahesh Singh seized the hand holding the weapon with both of his hands and tried to push the barrel away from his body. All that while, Vishal's hand remained on the trigger and amidst this scuffle, the pistol discharged, and the bullet struck him in the right side of his chest. The conclusion arrived at by the trial court is not based on credible evidence. It has been additionally submitted that if, for the sake of argument, it is assumed that appellants had committed the offence, in that

case also no offence under Section 302 IPC was made out against the appellants. At the most the case could travel up to the limits of offence under Section 304 IPC. It has further been submitted that Mahesh Singh – appellant no.1 had served out 9 years and 8 months sentence, Aarti - vappellant no.2 had served out 6 years and 10 months sentence, Vitana Devi - appellant no.3 had served out 4 years sentence, Shivam - appellant no. 4 had served out 9 years and 6 months sentence and appellant Amit had served out 8 years sentence. The findings recorded by trial court in the impugned judgments and orders are also not based on correct appreciation of evidence and impugned judgments and orders suffer from infirmity and illegality warranting interference by this Court.

34. Per contra, learned counsel for the informant and the learned A.G.A. have vehemently opposed the submissions made by the learned counsel appearing for the appellants. He submitted that P.W.1, mother of the deceased, PW-2, sister of the deceased and PW-3, father of the deceased, had no reason to depose falsely before the court intending false implication of the appellants. Appellants had strong motive to commit the crime. They had called the deceased to take his money back and when he reached the house of the appellants, all the appellants in furtherance of common object forming an unlawful assembly murdered him. There is no material fault or discrepancy in the investigation. The prosecution case is also corroborated by the medical evidence. F.I.R. is not a delayed one. The prosecution story is proved by cogent and reliable oral and documentary evidence. There is nothing on record to suggest that the appellants have been falsely implicated by the informant or police. Findings recorded by trial court in the impugned judgments and orders are based on correct appreciation of facts and evidence and do not suffer from any infirmity or illegality warranting interference by this Court. Hence, the appeals are liable to be dismissed.

35. We have considered rival submissions made by learned counsel for parties and have gone through the entire record carefully.

36. The accused appellants Mahesh Singh, Aarti Singh, Vitana Devi, Shivam Singh @ Sumit Kumar Singh and Amit Singh all are family members. As per F.I.R., in the Panchayat Election of 2015, Vitana Devi, wife of Mahesh Singh, was a candidate for the post of Gram Pradhan. Vishal Singh, son of the informant, was supporting her. During the elections, Vishal Singh started visiting Mahesh Singh's house, where he became acquainted with Mahesh Singh's daughter, and the two fell in love. Upon their request, Vishal Singh lent Mahesh Singh and his family Rs. 1,50,000/-. About fifteen days prior to the incident, Vishal asked them to return the said money. Due to this, Mahesh Singh and his family were having grudge with him. On 08.07.2016 at around 09:00 p.m., Shivam Singh, son of Mahesh Singh, called Vishal on his mobile number and stated that some money had been arranged and he should come to collect it. Believing this, Vishal went to the house of Mahesh Singh on his motorcycle. As soon as he reached the premises, an argument ensued between Vishal and Mahesh Singh. In the meantime, Mahesh Singh fired a shot from his pistol with intention to kill Vishal. Aarti Singh and her mother, Vitana Devi, caught hold him in the veranda of their house, while Amit Singh and Shivam Singh (sons of Mahesh Singh), along with Mahesh Singh's friend Vedpal Singh, son of Nanhak, assaulted him several times with 'banka' in their hands. The son of the informant fell on the road beneath the veranda. Mangal Singh, husband of the informant and her daughter Sarvjeet Kaur, had followed Vishal and witnessed the entire incident with the help of a torchlight. When they challenged the assailants, several people from the neighborhood gathered on the spot. At this, all six accused persons abused and threatened the witnesses before fleeing the scene. Upon receiving the information, the informant along with her daughter Rajvinder Kaur, took Vishal to the District Hospital where the doctors declared him dead. In her evidence, the informant PW-1 has proved the first information report. PW-2 and PW-3 – eye witnesses in their evidence have proved the manner in which the accused appellants have caused injuries upon the deceased resulting into his death. They have offered a natural picture of the incident. The evidence

of the informant PW-1 and the eyewitnesses PW-2 and PW-3 are totally consistent and also corroborate with the first information report as to the date, time and place of the incident. The presence of PW-2 and PW-3 at the place of incident is quite natural as when call was made on the phone of the deceased, PW-2 had also heard the conversation between them. The ocular evidence of eyewitness PW-2 and PW-3 as to the injuries caused by the accused appellants is also totally consistent with the first information report and medical evidences i.e. the postmortem report and the evidence of PW-4, the doctor who conducted the autopsy. The Chik FIR has been proved by the PW-6 Constable Ram Kishore. The injuries found on the body of the deceased, as mentioned in the postmortem report, have been proved by PW-4 Dr. O.P. Gautam, who conducted autopsy on the body of the deceased. The injuries, as mentioned in the postmortem report and proved by the PW-4 in his ocular evidence, corroborate with the first information report and the evidence of eyewitnesses PW-2 and PW-3 as well as the inquest report. PW-4 has also opined that the cause of death was due to shock and haemorrhage as a result of ante mortem firearm injuries. Injury nos. 1 and 2 were connected to each other. Injury nos. 1 and 3 are on different places. He has also opined that injury nos. 13 and 14 have been caused with hard and blunt object they could not be caused with sharp edged weapon. Injury Nos. 1 and 3 have not been caused by one firearm. Thus, the date, time and place of incident, the presence of the accused appellants at the place of incident and the injuries caused by them to the deceased resulting into his death have been successfully proved by the prosecution beyond a reasonable doubt.

37. Now the Court proceeds to deal with the submission made by the learned counsel for the appellants that offence under Section 302 IPC is not made out and this case cannot travel beyond the purview of offence under Section 304 (Part-I) or 304 (Part-II) IPC.

38. In this matter, it is undisputed fact that in the Panchayat Election of 2015, Vitana Devi, wife of Mahesh Singh, was a candidate for the post of Gram Pradhan. Vishal Singh - deceased, was supporting her and during

the elections, he started visiting Mahesh Singh's house, where he became acquainted with Mahesh Singh's daughter, and the two fell in love. He often used to visit her. On the date and time Vishal – deceased was present over the place of occurrence. The case of the defence is that Vishal - deceased forcibly grabbed the daughter of accused Mahesh Singh and dragged inside the room and slammed on the floor and tried to commit rape with her and when she raised an alarm, her mother reached and began pulling Vishal in an attempt to separate him from her and when she failed both they made noise and hearing the scream, her father and people of neighborhood arrived at the scene and in the spur of moment the incident occurred. The people of neighborhood were having sticks, tongs, ladles, blowpipes, stones, knives, and rolling pins in their hands. This was the basis of the incident. Incident occurred without any premeditation and in the heat of passion when the deceased was making an attempt to rape with the daughter of accused Mahesh Singh. In **Munshi Prasad vs. State of Bihar, (2002) 1 SCC 351** it has been held by the Hon'ble Apex Court that the evidence adduced by the defence also gets the same weight as the prosecution evidence. The fact that it was a homicidal death takes this Court to most vexed question whether it would fall within the four-corners of murder or culpable homicide not amounting to murder. Therefore, we are considering the question whether it would be a murder or culpable homicide not amounting to murder and punishable under Section 304 IPC.

39. The counsel for the appellants has argued that the present case is squarely covered under Exception 4 of Section 300 IPC, which reads as under:

"300. Murder :-

*Exception 1. - Exception 2. - Exception 3. -
Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.*

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

40. It will be useful to refer to the decision rendered by the Apex Court in the case of **Chacko @ Aniyam Kunju and others Vs. State of Kerala, (2004) 12 SCC 269**, wherein it was held as under :

"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, 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". This is punishable under the first part of Section 304. Then, there is "culpable homicide of the third degree". This is the lowest type.

10. The academic 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. 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 Section 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences :

1. 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.

2. 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 rupture 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" 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 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 probability 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."

41. In another case of **Pulicherla Nagaraju @ Nagaraju @ Nagaraja Reddy Vs. State of Andhra Pradesh, (2006) 11 SCC 444**, the Hon'ble Supreme Court enumerated some of the circumstances relevant to find out whether there was any intention to cause death on the part of the accused. The Court observed as under :

".....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 pre-meditation; (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....."

42. Further, in the case of **State of Rajasthan Vs Dhool Singh, (2004) 12 SCC 546**, the Hon'ble Supreme Court has observed that in order to determine whether there was intention to kill or not is to be determined while keeping in mind whether the injury was caused on vital body part and the nature of the weapon used. The number of injuries inflicted shall be irrelevant. The relevant part of the judgment is reproduced as under :-

"13. In regard to the finding of the High Court that the prosecution has not even established that the respondent herein had acted with an intention of causing death of the deceased we must note that the same is based on the fact that the respondent had dealt a single blow which according to the High Court took the act of the respondent totally outside the scope of Exception I to Section 300 IPC. Here again we cannot agree with the finding of the High Court. The number of injuries is irrelevant. It is not always the determining factor in ascertaining the intention. It is the nature of injury, the part of body where it is caused, the weapon used in causing such injury which are the indicators of the fact whether the respondent caused the death of the deceased with an

intention of causing death or not. In the instant case it is true that the respondent had dealt one single blow with a sword which is a sharp-edged weapon measuring about 3 ft. in length on a vital part of body namely the neck. This act of the respondent though solitary in number had severed sternocleidomastoid muscle, external jugular vein, internal jugular vein and common carotid artery completely leading to almost instantaneous death. Any reasonable person with any stretch of imagination can come to the conclusion that such injury on such a vital part of the body with a sharp-edged weapon would cause death. Such an injury in our opinion not only exhibits the intention of the attacker in causing the death of the victim but also the knowledge of the attacker as to the likely consequence of such attack which could be none other than causing the death of the victim. The reasoning of the High Court as to the intention and knowledge of the respondent in attacking and causing death of the victim, therefore, is wholly erroneous and cannot be sustained."

43. Similar view was taken by the Hon'ble Supreme Court in **Arun Raj Vs Union of India & others, JT 2010 (5) SC 1**, wherein the Court observed as under :

"9. We now turn to second point urged on behalf of the appellant. It is contended by learned counsel that there was no intention on the part of the appellant to cause the death of the deceased and, hence, Section 304 Part II of the IPC which deals with culpable homicide not amounting to murder, will be attracted. Alternatively, it is contended that the appellant dealt one single blow on the deceased, and hence, intention to cause death cannot be attributed to the appellant and, hence, the act of the appellant will not fall under Section 302 of IPC but under Section 304 Part II.....

10) Essentially the ingredients for bringing an act under Part II of the Section are:-

(i) act is done with the knowledge that it is likely to cause death,

(ii) there is no intention to cause death, or to cause such bodily injury as is likely to cause death.

11) In the present case, there has been no sudden altercation which ensued between the appellant and the deceased in the present case. The deceased called the appellant 'gandu' following which there was a heated exchange of words between the two, the day before the murder. The next day, however, the appellant concealed a kitchen knife in his lungi and went towards the cot of the deceased and struck the deceased a blow on the right side of the chest, while the deceased was sleeping. The fact that the appellant waited till the next day, went on to procure a deadly weapon like a kitchen knife and then proceeded to strike a blow on the chest of the appellant when he was sleeping, points unerringly towards due deliberation on the part of the appellant to avenge his humiliation at the hands of the appellant. The nature of weapon used and the part of the body where the blow was struck, which was a vital part of the body helps in proving beyond reasonable doubt, the intention of the appellant to cause the death of the deceased. Once these ingredients are proved, it is irrelevant whether there was a single blow struck or multiple blows....."

44. In Surinder Kumar v. Union Territory, Chandigarh, (1989) 2 SCC 217, Apex Court on the same issue held that if on a sudden quarrel a person in the heat of the moment picks up a weapon which is handy and causes injuries out of which only one proves fatal, he would be entitled to the benefit of the Exception provided he has not acted cruelly. This Court held that the number of wounds caused during the occurrence in such a situation was not the decisive factor. What was important was that the occurrence had taken place on account of a sudden and unpremeditated fight and the offender must have acted in a fit of anger. Dealing with the provision of Exception 4 to Section 300, the Apex Court observed as under:-

“To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done

in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly.”

(emphasis supplied).

45. In Ghapoo Yadav and Ors. v. State of M.P., (2003) 3 SCC 528, the Apex Court held that in a heat of passion there must be no time for the passion to cool down and that the parties had in that case before the Court worked themselves into a fury on account of the verbal altercation in the beginning. Apart from the incident being the result of a sudden quarrel without premeditation, the law requires that the offender should not have taken undue advantage or acted in a cruel or unusual manner to be able to claim the benefit of Exception 4 to Section 300 IPC. Whether or not the fight was sudden, was declared by the Court to be decided in the facts and circumstances of each case. The following passage from the decision is apposite :

"10. The help of Exception 4 can be invoked if death is caused:

(a) without premeditation;

(b) in a sudden fight;

(c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and

(d) the fight must have been with the person killed.

To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the

"fight" occurring in Exception 4 to Section 300 IPC is not defined in the Indian Penal Code. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".

(Emphasis supplied)

"11..... After the injuries were inflicted the injured had fallen down, but there is no material to show that thereafter any injury was inflicted when he was in a helpless condition. The assaults were made at random. Even the previous altercations were verbal and not physical. It is not the case of the prosecution that the accused-appellants had come prepared and armed for attacking the deceased. This goes to show that in the heat of passion upon a sudden quarrel followed by a fight the accused persons had caused injuries on the deceased, but had not acted in a cruel or unusual manner. That being so, Exception 4 to Section 300 IPC is clearly applicable....."

(Emphasis supplied)

46. In **Sukbhir Singh v. State of Haryana, (2002) 3 SCC 327**, the appellant caused two Bhala blows on the vital part of the body of the deceased that was sufficient in the ordinary course of nature to cause death. The High Court held that the appellant had acted in a cruel and

unusual manner. Reversing the view taken by the High Court, Hon'ble Apex Court held that all fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of Exception 4 to Section 300 IPC. In cases where after the injured had fallen down, the appellant-accused did not inflict any further injury when he was in a helpless position, it may indicate that he had not acted in a cruel or unusual manner. The Court observed as under :-

"19.....All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 IPC. After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with bhala caused injuries at random and thus did not act in a cruel or unusual manner."

(Emphasis supplied)

47. In **Mahesh v. State of M.P., (1996) 10 SCC 668**, where the appellant had assaulted the deceased in a sudden fight and after giving him one blow he had not caused any further injury to the deceased which fact situation was held by this Court to be sufficient to bring the case under Exception 4 to Section 300 of IPC. This Court held:

"4.Thus, placed as the appellant and the deceased were at the time of the occurrence, it appears to us that the appellant assaulted the deceased in that sudden fight and after giving him one blow took to his heels. He did not cause any other injury to the deceased and therefore it cannot be said that he acted in any cruel or unusual manner. Admittedly, he did not assault PW 2 or PW 6 who were also present along with the deceased and who had also requested the appellant not to allow his cattle to graze in the field of PW 1. This fortifies our belief that the assault on the deceased was made during a sudden quarrel without any premeditation. In this fact situation, we are of the opinion that Exception 4 to Section 300 IPC is clearly attracted to the case of the appellant

and the offence of which the appellant can be said to be guilty would squarely fall under Section 304 (Part I) IPC....."

(Emphasis supplied)

48. Coming back to facts of the present case, from the evidence led by both sides, it is clear that there was sudden altercation between the parties which resulted in the fatal mishap. As per the FIR version when Vishal reached the premises of Mahesh Singh, an argument ensued between Vishal and Mahesh Singh and he (Mahesh Singh) fired a shot from his pistol with intention to kill him. Aarti Singh and her mother, Vitana Devi, caught hold him while Amit Singh and Shivam Singh (sons of Mahesh Singh), along with Mahesh Singh's friend Vedpal Singh, son of Nanhak, assaulted him several times with 'banka' in their hands whereas as per DW-3 (Aarti) when Vishal – deceased tried to commit rape with her forcefully, her father came there and pulled Vishal away and took him to the veranda and then Vishal pulled out his pistol. Mahesh Singh, father of DW-3, pulled the pistol away from his body and the bullet hit Vishal in his right chest. People from the neighborhood had also reached there and they had caused injuries to Vishal with scissors, tongs, and knives etc. Thus, as per DW-3 (Aarti) when Mahesh Singh, father of DW-3 (Aarti) saw Vishal - deceased attempting to commit rape with her daughter it led to a scuffle between them. Evidence also discloses that there was no pre-meditation. Appellants Vitana Devi and Aarti had been assigned role of catching hold and the appellants Shivam Singh and Amit Singh are said to had been assaulted the deceased with 'banka'. The offence has been committed by the accused appellants as the deceased was attempting to commit rape with the daughter / sister of the appellants but this goes to show that in the heat of passion upon a sudden quarrel followed by a scuffle the accused persons had caused injuries on the deceased. Thus, in our view, in the present case it cannot be said that the appellants had pre-meditation to commit murder of the deceased. If the intent was to murder the deceased, they would not have done so at their own house. In this case, the evidence sans the element of intent to murder the deceased. The appellants did not take any undue advantage nor acted in a cruel or

unusual manner. We have bestowed our best of consideration to the facts of the present case.

49. In the aforesaid circumstances, we are of the considered view that it is a case of culpable homicide not amounting to murder within the ambit of **Exception 4 of Section 300 IPC**. On overall scrutiny of the facts and circumstances of the present case coupled with the evidence as have come on record and the principles laid down by the Hon'ble Supreme Court in the aforesaid cases, we are of the considered opinion that the offence would be one punishable under Section 304 (Part-I)/149 of the IPC in view of the fact that the injuries were found to be sufficient in the ordinary course of nature to cause his death but same were caused in a sudden fight in the heat of passion upon a sudden quarrel, hence the instant case falls under the Exception 4 to Section 300 of IPC.

50. In the result, the criminal appeals are **partly allowed** only to the extent that instead of Section 302/149 IPC, the appellants shall stand convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 (Part-I)/149 IPC and sentenced to undergo rigorous imprisonment for a period already undergone by them. The fine imposed upon the appellants and the default sentence awarded to them shall remain unaltered.

51. Copy of this order be placed on the record of criminal appeal no. 7611 of 2025.

52. Copy of the order be sent to the concerned trial court within a fortnight for compliance.

(Jai Krishna Upadhyay, J.) (Siddhartha Varma, J.)

April 23, 2026

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