



2026:AHC:139707-DB

A.F.R.
RESERVED

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 3672 of 2013

Narendra Singh Alias Kate Singh Baba

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Arun Kumar Bhatt, Arvendra Singh, Chetan Chatterjee
Counsel for Respondent(s)	: Govt. Advocate, Prashant Verma

In Chamber

HON'BLE SALIL KUMAR RAI, J.
HON'BLE DR. AJAY KUMAR-II, J.

(PER : DR. AJAY KUMAR-II, J.)

1. Present Criminal Appeal has been preferred against the judgment and order dated 23.05.2013 passed by the Additional Sessions Judge, Court No.1, Mainpuri in Sessions Trial No.320 of 2011 State Vs. Narendra Singh alias Kate Singh (Baba) arising out of Case Crime No.435 of 2011, under Sections 304, 323, 504, 506 of Indian Penal Code (hereinafter referred to as 'IPC'), Police Station - Kishni, District Mainpuri, whereby the accused-

2. Brief facts of the prosecution's case are as under:

On 29.04.2011, a written report (Ex.Ka.-1) was given by the informant Mahendra Singh son of Phool Singh at the police station concerned with the averments that on 29.04.2011, the younger brother of the informant namely, Narendra Singh alias Kate Singh, who has become *baba* (ascetic) and is mentally weak, made an assault on the head of his father with a *Takora* (a sharp-edged agricultural tool) when his father picked up brick upon being abused by Narendra Singh over harvesting the crop in exchange of chaff. At that time, son of the informant Aadesh Kumar and wife of the informant Kamlesh Kumari were present there, who tried to stop him, upon which Narendra hurled abuses, threatened the duo to kill, beat them with kicks and fists and tried to assault them with *Takora*. Blood started oozing from the head of his father Phool Singh and he became unconscious. When his brother Harendra Singh, his son Aadesh and his wife Kamlesh Kumari tried to catch him, then in yellow clothes, he fled away towards the east, through the field having *Takora* in his hand. The brother of the informant Harendra Singh and other villagers have taken his father in unconscious state directly to the Government Hospital, Mainpuri. **Narendra Singh alias Kante Singh, the younger brother of the informant, was given medical treatment at the Mental Hospital, Agra five years back.** At present, he was completely fine. Request was made to register the case and initiate legal proceedings.

3. On the basis of the written report (Ex.Ka.1), while First

4. Investigation started and during investigation, information was received regarding the death of Phool Singh while he was undergoing treatment at the district hospital. Thereafter, the Investigating Officer conducted the inquest in the presence of witnesses (*panchas*), prepared the inquest report and sent the dead body of the deceased for post mortem at the mortuary.

5. On 30.04.2011 at 4:30 P.M., the autopsy of the deceased Phool Singh was performed at District Hospital, Mainpuri by Dr. R.K. Sharma (P.W.6), who found following antemortem injuries on his person :

(i) A 5 cm long stitched wound was located 5 cm above the left ear. A pool of blood was found beneath it.

(ii) A 4 cm long stitched wound was located 6 cm above the right ear. The bone beneath the wound was fractured and depressed.

(iii) A 3 cm long stitched wound is located on the back of the skull.

(iv) A 3 cm long stitched wound is located on the back of the skull, 2 cm below Injury No. 3.

(v) A 3 cm long stitched wound is located on the back of the skull, 2 cm below Injury No. 3, and is removed from one side.

The eyes were found closed, blood was found to be pooled in the ears, and the left temporal and parietal bones were fractured and were also found to be pressed inside. The brain membranes were found to be red and blood clots were

surgeon, all the above injuries on the deceased's body could have been caused by an axe at 5:15 pm on 29.04.2011 and the cause of death of the deceased was due to Coma, as a result of ante-mortem injuries. The deceased's condition was normal, with stiffness throughout. The deceased's probable time of death was approximately one day old.

6. Although it was the bounden duty of the Investigating Officer to collect medical papers regarding admission and treatment of the deceased which could have established the date and time of his admission in District Hospital, Mainpuri and treatment provided to him after admission. A perusal of the post-mortem report reveals that some treatment was provided to the deceased on his admission, that is why his all ante-mortem injuries were found to be stitched. There is a possibility that even some medico legal injury report might have been prepared by the doctor at the time of his admission. Such medical records including medico legal report i.e. MLR could have shown the exact nature of injuries sustained by the deceased. There seems to be a gross negligence on the part of the Investigating Officer, as the same were not collected and there is also a gross negligence of supervisory duty of the concerned Circle Officer also, while supervising the investigation. However, the prosecution has brought on record the post-mortem report of the deceased and has also proved it through ocular testimony of the autopsy surgeon. Therefore, the prosecution has established the ante-mortem injuries of the deceased as well as cause of death of the deceased.

injured Phool Singh was received and the case was amended to Section 304 I.P.C. Inquest of the body of the deceased was conducted and inquest report was prepared thereafter. Postmortem of the body of the deceased was conducted and after completing all the formalities, charge sheet was submitted against the accused under Sections 304, 323, 504, 506 IPC.

8. After submission of charge sheet, cognizance was taken upon the same by the learned Magistrate, who committed the case to Court of Sessions, as prima facie charges were for the Sessions triable offence.

9. Accused appeared before the Court of Session and after hearing both the parties, charges were framed against him under Sections 304, 323, 504, 506 IPC. The accused denied the charges levelled against him, pleaded not guilty and claimed to be tried.

10. To bring home the charges against the accused, the prosecution adduced P.W.1 Mahendra Singh (informant, who is son of the deceased and real brother of the accused Narendra Singh), P.W.2 Aadesh Kumar (son of the informant / grandson of the deceased), P.W.3 Kamlesh (wife of the informant), P.W.4 Arvind Kumar (Head Moharrir, P.S. Kishni), P.W.5 S.I. Bahadur Singh (Investigating Officer, who inspected the spot, prepared site plan, recorded the statements of the witness, conducted the inquest proceedings, prepared the inquest report & other papers and sent the body of the deceased for postmortem in a sealed cloth) and P.W.6 Dr. R.K. Sharma (who conducted the post-mortem of the deceased)

No.33 time 21:15 hours (Ex.Ka.-4), site plan (Ex.Ka.-5), inquest report (Ex.Ka.-6), Carbon copy of chik F.I.R. (Ex.Ka.-7), copy of written report / Tehir (Ex.Ka.-8), Carbon copy of G.D. No.26 time 18.15 hours (Ex.Ka.-9), Photo Nash (Ex.Ka.-10), Letter to Incharge Inspector, Kotwali (Ex.Ka.-11), Challan Nash (Ex.Ka.-12), Letter to Reserve Inspector (Ex.Ka.-13), Letter to C.M.O. (Ex.Ka.-14), G.D. No.48 (Ex.Ka.-15), Charge-sheet (Ex.Ka.-16) and Postmortem-report (Ex.Ka.-17).

12. After the prosecution evidence was over, all adverse/incriminating circumstances relied upon by the prosecution were disclosed to accused in question answer form for his version of occurrence as per mandate of Section 313 Cr.P.C. Accused denied all those adverse/incriminating facts put to him and said that the prosecution case is false, he is innocent and falsely implicated. Investigation was not done in fair and impartial manner. Accused also pleaded that the informant wanted to usurp his land and house, therefore, he has been falsely roped in this case.

13. The defence has examined DW-1 Harendra (son of the deceased).

14. Trial Court, having heard learned counsel for parties and going through entire record, vide impugned judgment and order, convicted and sentenced the accused-appellant as above. Hence, feeling aggrieved with said judgment and order, present accused-appellant has filed this appeal.

16. Learned Amicus Curiae appearing for the appellant argued that the appellant has falsely been implicated in the crime and he is innocent. There was no motive to commit the crime. The evidence of witnesses of facts is not trustworthy as there are contradictions in their evidence. Verbal abuses took place from both the sides and the incident occurred in a heat of passion. The prosecution case is totally baseless and from the evidence available on record, no case is made out as against the convict / appellant. It was further argued that in the F.I.R., date of incident has been mentioned as 29.04.2011, however at what time the alleged incident took place, has not been described in the F.I.R. Moreover, the F.I.R. was lodged at a belated stage, for which no explanation was offered by the prosecution. Therefore, the prosecution story is not believable and the appellant is liable to be acquitted. It was further argued that the learned trial Court has misinterpreted the evidence available on record. No ingredient to bring home the guilt of the accused under Section 304 IPC was proved by the prosecution. On the basis of analysis of prosecution evidence, no guilt against the accused appellant is established and proved. Learned trial Court misread the evidence and wrongly convicted and sentenced the appellant. It was further argued that this appeal pertains to the year 2013 and the appellant is languishing in jail for a considerable period of time. The sentence for life imprisonment awarded to the appellant by the trial Court is very harsh and excessive.

17. Contrary to it, learned A.G.A. vehemently opposed the

deceased and P.W.-3, the daughter-in-law of the deceased have supported the prosecution case in their testimony. Other witnesses of fact have also corroborated the prosecution version. Five stitched wounds with and an underlying bone fracture was found on the head of the deceased. The witnesses of fact have proved the incident and their presence at the spot cannot be doubted. No major contradiction in the statements of witnesses of facts has been found. The learned trial court has considered and analyzed the evidence of witnesses in a right perspective and punished the accused appellant accordingly. The prosecution has proved its case beyond all reasonable doubt. Hence, while going through the evidence on record, it cannot be said that the offence under Section 304 IPC is not made out against the appellant. The learned trial Court has not committed any error in convicting and sentencing the accused- appellant under Section 304 IPC. Hence, there is no merit in the appeal and the same is liable to be dismissed.

18. We have considered the arguments of both the sides and perused the original record of trial court as well as the record of appeal.

Analysis

19. In the light of arguments of both the sides, following questions arise for consideration in present appeal :

(i) Whether the prosecution could be said to have proved its case against the appellant - convict beyond reasonable doubt ?

(ii) Whether the sentence awarded to the appellant is excessive or

Question No.1 : Whether the prosecution could be said to have proved it's case against the appellant - convict beyond reasonable doubt ?

Oral Evidence on Record.

20. In the present case, the prosecution has examined informant Mahendra Singh as P.W.1, informant's son Aadesh Kumar as P.W.2 and informant's wife Kamlesh as P.W.3. On the strength of depositions of these three witnesses, the trial Court has convicted the appellant. Therefore, in the present criminal appeal against conviction, we need to appreciate the oral evidence of these three witnesses.

21. On the point of appreciation of oral evidence of a witness the Apex Court in **Balu Sudam Khalde v. State of Maharashtra, (2023) 13 SCC 365** held the law in the following words :

"Appreciation of oral evidence

25. *The appreciation of ocular evidence is a hard task. There is no fixed or strait jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:*

"I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty

IV. *Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.*

V. *Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.*

VI. *By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.*

VII. *Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.*

VIII. *The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.*

IX. *By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.*

X. *In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.*

XI. *Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.*

XII. *A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.*

XIII. *A former statement though seemingly inconsistent with the evidence*

AIR 1983 SC 753] , Leela Ram v. State of Haryana [Leela Ram v. State of Haryana, (1999) 9 SCC 525 : 2000 SCC (Cri) 222 : AIR 1999 SC 3717] and Tahsildar Singh v. State of U.P. [Tahsildar Singh v. State of U.P., 1959 SCC OnLine SC 17 : AIR 1959 SC 1012]

26. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

26.2. Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

26.6. The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

27. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence.

prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.”

22. The Hon’ble Supreme Court in the case of **Bhagwan Jagannath Markad v. State of Maharashtra, (2016) 10 SCC 537** explained that :

“ 19. While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent statement. Section 145 of the Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the previous statement which is to be used for contradiction. The former statement should have the effect of discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not every discrepancy which affects the creditworthiness and the trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting the credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted [Leela Ram v. State of Haryana, (1999) 9 SCC 525, pp. 532-35, paras 9-13 : 2000 SCC (Cri) 222] . Want of independent witnesses or unusual behaviour of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinised to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a “partisan” or “interested” witness may lead to failure of justice. It is well known that principle “falsus in uno, falsus in omnibus” has no general acceptability [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381, pp. 392-93, para 15 : 2003 SCC (Cri) 32] . On the same evidence, some accused persons may be acquitted while others may be convicted, depending upon the nature of the offence. The court can differentiate the accused who

20. Exaggerated to the rule of benefit of doubt can result in miscarriage of justice. Letting the guilty escape is not doing justice. A Judge presides over the trial not only to ensure that no innocent is punished but also to see that guilty does not escape. [Gangadhar Behera case, (2002) 8 SCC 381, p. 394, para 17]

31. As already observed, the discrepancies of trivial nature could not be the basis of rejecting the evidence of injured eyewitnesses nor non-examination of some of the witnesses be a ground to reject the prosecution case when injured eyewitnesses were examined.

32. We may also refer to the judgment of this Court in Masalti v. State of U.P. [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] to the effect that the evidence of interested partisan witnesses though required to be carefully weighed, the same could not be discredited mechanically. When a crowd of unlawful assembly commits an offence, it is often not possible to accurately describe the part played by each of the assailants. Though the appreciation of evidence in such cases may be a difficult task, the court has to perform its duty of sifting the evidence carefully.

23. The Hon'ble Apex Court in **State of M.P. v. Balveer Singh, (2025) 8 SCC 545** has held that when eyewitness are examined at length, it is quite possible for them to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. The role of courts in such circumstances assumes greater importance and it is expected of the courts to deal with cases like one in hand, in a more realistic manner and not allow the criminals to go scot-free on account of procedural technicalities, perfunctory investigation or insignificant lacunas in the evidence as otherwise serious crimes would go unpunished.

24. In the light of above well settled legal position regarding

25. Informant Mahendra Singh, who is the son of the deceased Phool Singh, has been examined by the prosecution as P.W.1. In his deposition, he has stated that the incident is of 29.04.2011 at about 5:15 P.M. At that moment, he was sitting at his doorstep, where his younger brother Narendra, his father and his son Aadesh Kumar were sitting together. His brother Narendra and his father had a dispute regarding chaff wherein his brother Narendra hurled abuses on his father. When his father stopped him from abusing, his brother Narendra assaulted his father with a *takora* (axe). He (informant), his wife Kamlesh Kumari and his son Aadesh tried to stop and save, but his brother Narendra, with the intention to kill, gave several blows of takora on his father, due to which he was badly injured. On raising noise and shrieks, people of the vicinity reached there who witnessed the incident. His father became unconscious. His brother Harendra and several villagers took his father to District Hospital, Mainpuri where during treatment, his father succumbed to his injuries. On the date of incident, this witness got the written report scribed by his son Aadesh Kumar and gave the same at Police Station Kishni. Whatever he wrote was exactly the same which he had spoken. Aforesaid written report / Tehrir was read out to him and thereafter he signed the same. This witness has proved the written report / Tehrir as Ex.Ka.-1. **This witness (P.W.1) has also stated that prior to this incident, his brother Narendra had committed the murder of his mother by hitting her with a pestle (moosal), the case of which was tried in the Court and in that case by putting**

length on 18.04.2013. In his cross-examination, he has stated that he is the eldest one out of five brothers. He resides in Katra Chitayan. His house is in Katra. One of his brothers resides in Delhi and remaining four are the resident of Katra. His father used to live with him in the house. The house at Chitayan is locked and no one lives there. All the five brothers are the co-sharer of that house. **At the time of incident, the son and wife of this witness were present on spot and all the brothers were working in the field.** They came home within 15 - 20 minutes. His father was brought in an injured condition by his brother Harendra and his wife Kamlesh Kumari. He had gone to the police station. This witness came alongwith the Sub-Inspector to the village and from there they had come to the hospital. He got the written report scribed by Aadesh Kumar and gave the same at the police station. When he went to the police station, the Sub-Inspector took his statement as well as statement of his son. The statement of his wife Kamlesh Kumari was not taken, as she had gone to hospital. This witness (P.W-1) has stated that his son had not pelted any brick or stone. **At the time of incident, he was standing nearby. The incident took place at the main door, which is at eastern side.** He and all his brothers live in the same house. At the time of incident, his younger brother Harendra Singh had arrived while other brothers came later on. His father executed a sale deed of ½ Bigha land in favour of his wife Kamlesh Kumari. It is wrong to say that his son Aadesh assaulted his father with axe on his head. It is wrong to say that at the time of incident, he

standing at a distance of 20 – 25 steps at the time of incident. P.W.1 also stated that accused Narendra is his real brother, who sometimes becomes a baba and sometimes he shaves his beard. It is wrong to say that accused Narendra was not in the village at the time of incident. **We have carefully perused the whole deposition of this witness and it is clear that this witness (P.W.1) was present on spot at the time of incident and had seen the incident. This witness has clearly stated that the incident is of 29.04.2011 at about 5:15 P.M. and on account of dispute regarding chaff, his brother appellant Narendra assaulted his father with a *takora*, his father sustained injuries and later on succumbed to his injuries. The deposition of this witness as far as date, time, place and manner of incident is concerned, seems to be reliable.**

27. Aadesh Kumar, who is the son of the informant and grandson of the deceased, has been examined by the prosecution as P.W.2, who deposed that the incident is of 29.04.2011 at about 5:00 P.M. He was standing in front of his house while his mother, father, grandfather Phool Singh and uncle Narendra Singh were sitting on a chabootra. A dispute regarding chaff had occurred between his grandfather Phool Singh and uncle Narendra. In this dispute, Narendra Singh hurled abuses at his grandfather Phool Singh. When his grandfather stopped him from abusing, his uncle picked up a takora and gave several blows upon his grandfather Phool Singh, who sustained injuries from the blows of takora and in an injured condition, he fell down there. His uncle Narendra

it down. Whatever his father told, he wrote exactly the same. Thereafter, he read out the report to his father, got his signature on it and gave it at the police station. **This witness also stated that accused Narendra alias Kante, who is his uncle, had also committed the murder of his grandmother four years back by making assault upon her with a pestle (moosal).**

28. P.W.2 was cross-examined on behalf of the accused and in his cross-examination, he stated that his father has five brothers, whose names are Mahendra Singh, Ravindra Singh, Harendra Singh, Surendra Singh and the youngest one is Narendra Singh alias Kante. Except his uncle Ravindra Singh, all others live in the village. They have their separate divided agricultural land and they all live separately. At present, the brothers have divided the share of land belonging to the accused Narendra alias Kanti after he returned from jail. Nobody cultivates Narendra Singh's share of land and outsiders cultivate his land on sharing basis. **At the time of incident, no person from the village was present. Only Mahendra Singh, the brother of accused Narendra alias Kante, was present on the spot.** (Mahendra Singh is informant and father of this witness). At the time of writing the F.I.R., his father told him the time of incident, however, he did not write the time of incident in the F.I.R. There is a possibility that his father did not tell the time of incident while writing down the F.I.R. and due to this reason, he might not have written it. When Paper No.11A Ex.Ka.-1 was read out to this witness, he stated that the time and place of incident are not marked on it. His father Mahendra

father and one Rajesh Kumar of his village were present. They had not taken his grandfather with them to the police station. His grandfather sustained 5 – 6 injuries on his head from the takora. Injuries were sustained by him only on his head.

29. **This witness (P.W.2) was further cross-examined on behalf of the accused on 20.04.2013 wherein he again affirmed that on the day of incident, his uncle Narendra Singh, his grandfather Phool Singh, his father Mahendra Singh and his mother Kamlesh Kumari were sitting. His other uncles Surendra Singh and Harendra Singh were working in the field.** On the day of incident i.e. 29.04.2011 at 5:15 O'clock, it was a summer season and the month of April, no abuses were exchanged between them. Talks in regard to chaff were going on. One field was harvested by Narendra Singh and another one was harvested by his father. Narendra Singh wanted to take the chaff of both the fields. Wheat harvesting was done, however, threshing had not taken place. He and his father went to police station and Harendra Singh and his (P.W.2) mother took his grandfather of the hospital. It is wrong to say that they, at that time, threw bricks and stones. He and his father gave the written report at the police station. It is wrong to say that he is giving a false statement. It is wrong to say that the deceased sustained injuries due to bricks and stones thrown by him. **This witness has been cross-examined at length and as per Tehrir Ex.Ka.-1, this witness was present on spot. In spite of lengthy cross-examination, there is nothing in his evidence raising any doubt over his presence on spot at the time of**

P.W.3, who deposed that incident is of 29.04.2001 at about 5:15 P.M. At that moment, her father-in-law, husband Mahendra Singh and son Aadesh were present at home. The wheat crop was harvested by accused Narendra Singh in exchange of chaff, as decided. Accused Narendra Singh, after harvesting the crop, was trying to take the chaff of another field also. When her father-in-law objected and asked him that he should take the chaff of that field only, as agreed upon, and not to take the chaff of other field, on this issue the accused caught hold the neck of her father-in-law and with the takora carrying in other hand, made an assault upon his head. Three blows of takora struck on his (father-in-law's) head, to which her father-in-law fell down and became unconscious. People took her father-in-law to the Mainpuri Hospital. Apart from her family, no one else was present there. She and her husband witnessed the incident. Narendra alias Kante fled away from there hurling abuses to her and her husband. **Four years back, Narendra Singh alias Kante had also committed the murder of her mother-in-law Santosh Kumari.**

31. P.W.3 was cross-examined on behalf of the defence and in her cross-examination, she deposed that to the west of her house is Prakash's house. To the north of her house there is vacant land. To the south of her house is Virendra's house. We have carefully perused the site plan Ex.Ka.-5 and a perusal of it reveals that to the north of house of this witness is a vacant land whereas to the south of her house is Virendra's house. Therefore, this witness has proved the site plan and the site plan also corroborates the

the fields. Her father-in-law had distributed all his agricultural land among the family members. He kept two fields for himself. I do not know their survey numbers. One of those fields was called the "Dhala field" and the other was near the mango grove. Together they measured about 55 decimals. A field known as "Silanhar" had been given to Harendra. Mahendra and Ravindra were each given half shares in the field near the pond (Tal). She do not know the exact area of that field. Each of them received about $5\frac{1}{2}$ bighas. The "Kulhoar" field had been given to Harendra, measuring about $4\frac{1}{2}$ bighas. Surendra had received the field known as "Andh". The accused Narendra had received the mango-grove land, the "Nidar" land. Her father-in-law had left about $1\frac{1}{2}$ bighas of his own land to the accused Narendra Singh. Phool singh had given the Mangroove land to accused Narendra Singh on chaff (Bhusa). Out of that field, $1\frac{1}{2}$ bighas were given to Narendra Singh and the remaining $3\frac{1}{2}$ bighas were given on chaff (Bhusa). She had informed the investigating officer that the mango-grove field was being harvested on chaff (Bhusa). Total field owned by her father-in-law Phool Singh, is about 100 steps from my house. Threshing was not done of the crops / stacks.

32. She further stated that the incident occurred at the house not at the field. Her husband, her son Aadesh and she did not take the injured Phool Singh to Mainpuri Hospital because the investigating officer had taken Mahendra and Aadesh to the police station at about 5:30 PM. The officer saw Phool Singh, however, he could not arrive by that time. Harendra and some

and stated that the time was 12:23. **She saw the injuries on deceased Phool Singh. There were five injuries on his head, but she do not know on which side they were.** Narendra Singh pressed Phool Singh's neck with his left hand and struck him with takora in his right hand. With one hand he held the neck from the side, and with the other hand he kept hitting him. She along with her husband and son Aadesh was watching the incident from a distance of about three to four steps. It is incorrect to say that because of fear she made no effort to catch the accused. At the time of the incident, her father-in-law was wearing a vest and a lungi. Because of fear of Kante Singh, Phool Singh did not eat meals at her house. He lived in a separate house which is located in front of her house. The investigating officer had been visiting their area earlier and therefore was already familiar with the houses. The houses of all four brothers are within the same boundary compound and have a common exit. Narendra alias Kante lived separately outside the house. On the day of the incident, Phool Singh had taken his meal at about 2:30 PM. He had brought his own food and ate it at her doorway. It is incorrect to say that the incident occurred at night. It is also incorrect to say that her husband, her son, and she were not present at the place of occurrence and did not witness the incident. Narendra alias Kante cultivates his own fields himself. It is incorrect to say that Aadesh Kumar made any statement that the land in Narendra's share had been ploughed by his father and his father's brothers. It is incorrect to say that her husband Mahendra Singh and her son

present on spot, who had seen the incident and had narrated the same. This witness not only corroborated the contents of site plan, but has specifically stated that deceased Phool Singh suffered five injuries on his head. Therefore, the deposition of this witness as far as manner of incident is concerned, also finds corroboration from post-mortem report of the deceased. We also find that the deposition of this witness is also reliable one.

33. P.W.1, P.W.2 and P.W.3 have been cross-examined at length. However, inspite of the extensive cross-examination, the defence could not bring out any material contradiction in their deposition. P.W.1 and P.W.2 in their depositions have stated that P.W.3 went to the hospital with the deceased alongwith Harendra Singh. However, P.W.3 has clearly denied the same. The presence of P.W.1, P.W.2 and P.W.3 is established on spot at the time of incident and it has been categorically brought on record that after the incident, P.W.1 and P.W.2 went to the police station for registration of the F.I.R. and at their back, the deceased was taken to hospital, meaning thereby that P.W.1 and P.W.2 could not state correctly that who were the persons who took the deceased to the hospital. Moreover, this contradiction is a minor contradiction and does not effect the credibility of the basic prosecution story regarding the incident in question. P.W.2 in his examination-in-chief has stated the time of incident as 5:00 P.M., however, in his cross-examination, he has stated the time of incident to be 5:15 P.M. The timings, as narrated by P.W.2, are approximate timings, therefore, this is also not a material contradiction. We have

are minor contradictions, which do not affect either the credibility of these witnesses or of prosecution story.

34. Witness Head Constable Arvind Kumar (PW-4) stated in his statement that on 24-04-2011, he was posted as Head Clerk at Kishani Police Station. On that day, based on the written complaint of the informant Mahendra Singh, he prepared FIR No. 60 under sections 308, 323, 504, and 506 of the Indian Penal Code against Narendra Singh alias Kate, son of Phool Singh, in his own handwriting, which is proved as Ex.Ka.-2. This was disclosed in Police Station Report No.26, dated 29 April 2011, at 18:15 PM, copy of which is proved as Ex.Ka.-3. Information about the death of injured Phool Singh was given by RT Set DCR Kotwali Mainpuri, its disclosure was made in the GD on 29-04-11 in report number 33 time 21:15, carbon copy of which is proved as Ex.Ka-4. He is a formal witness.

35. The autopsy surgeon Dr. R.K. Sharma P.W.6 conducted the post-mortem examination of the deceased and prepared his Postmortem Report Ex.Ka.-17. This autopsy surgeon found five ante-mortem injuries on the person of the deceased, which have already been mentioned in paragraph 5 of this judgment. This autopsy surgeon also found that the left temporal and parietal bones of the deceased were fractured and pressed inside. Even the brain membranes were found to be red with blood clotting in several places of the brain. In his opinion, the deceased could have been assaulted with an axe at at 5:15 pm on 29.04.2011 and he (deceased) died due to Cause as a result of ante-mortem

29.04.2011 is there and he could have died during the course of his treatment within a few hours after the incident.

In his cross-examination, this witness (P.W.6) stated that it takes about 3 minutes to 20 minutes to form clotting of blood. He further stated that the injury no.2 could have been caused by a heavy sharp-edged weapon. The lungs of living human being are having light pink colour. He further stated that he cannot tell that in how much time lungs of dead person turn yellowish / pale. This witness is the autopsy surgeon, who has conducted the post-mortem examination of the deceased, and he found a total of five ante-mortem injuries on the body of the deceased and in his considered opinion, those injuries could have been caused by an axe at 5:00 / 5:15 P.M. on 29.04.2011. The axe merely resembles the weapon of offence Takora allegedly used in the present incident.

36. Witness Sub-Inspector Bahadur Singh (PW-5) stated in his deposition that on 29.04.2011, he was posted as Sub-Inspector at Kishani Police Station. On that day, he received the investigation and then inspected the copy of the FIR. He recorded the statement of the informant and chik writer and inspected the scene of the incident at the informant's direction and prepared Site Plan Ex.Ka.-5. At the same time, he prepared a recovery memo of blood-soaked and plain soil obtained from the scene. On 29.04.2011, at the police station he received information regarding the death of injured Phool Singh, son of Janak Singh, at

They came to the District Hospital with all the documents of the case to prepare the Panchayatnama (Inquest Report) of the dead body of deceased Phool Singh. The signatures of the witnesses were taken on the Panchayatnama (Ex.Ka.-6) and all the documents of postmortem of the dead body of deceased Phool Singh were handed over to Constable Pratap Singh and Home Guard. He proved the inquest report alongwith carbon copy of chik F.I.R., copy of written report / Tehir, Carbon copy of G.D. No.26 time 18.15 hours, Photo Nash, Letter to Incharge Inspector, Kotwali, Challan Nash, Letter to Reserve Inspector, Letter to C.M.O., G.D. No.48 as Ex.Ka.-6 to Ex.Ka-15. After this, copy of inquest report and statement of witnesses of inquest and other eyewitnesses were recorded in the case diary on 30.04.2011 itself. On 04.05.2011, statement of eyewitness Kamlesh Kumari and copy of postmortem report were recorded. On 13-05-11, Narendra was arrested by the then SHO R.P. Singh, his statement was recorded and after completing all the formalities, charge sheet Ex.Ka.-16 was submitted to the Court on 30.05.2011. This witness has admitted in his cross-examination that the incident took place on 29.04.2011 at around 5:15 pm. On 29.04.2011 itself, he left the police station at 7:15 P.M. and reached the spot of incident on a motorcycle at 7:30 P.M. The informant and his son were found present at the spot of incident.

37. Defense witness Harendra Singh, DW-1, stated in his statement that the incident occurred a year ago. They are five

of the incident, his sister-in-law (*Bhabhi*) Kamlesh, nephew Adesh, niece Mahapuri and he himself were present at the scene. Ramavatar of the village was also sitting on the platform. A dispute arose over the agricultural land. His father had sold the land to Kamlesh Kumari. Narendra Singh stated that the land has been registered and now you can't register any other land. His father also arrived at the disputed site. His father replied, "It's his land, he can give it to whoever he wants. Who are you?" After this, a verbal exchange broke out between accused and Kamlesh Kumari, Adesh, and his father. **At that very moment, his father picked up a brick to hit Narendra. Narendra also picked up a brick. His sister-in-law, nephew, and niece also picked up bricks. His father kicked Narendra, knocking him down. Narendra also tried to intervene. Narendra Singh then shouted, which was audible but not visible. Narendra, who was in front of him, was not holding an axe. He had brought a water container from the tap for lunch. After that, he went inside the house. Narendra Singh's voice could be heard from inside the house. Ten minutes later, his father had fainted.** Mahendra Singh was not present on spot. By the time Mahendra Singh arrived, he, Surendra, his sisters Janaki and Shyamlal had taken Father to the Mainpuri District Hospital. At the Mainpuri hospital, an injection was administered after which his father died.

38. **D.W.1 in his cross-examination has stated that prior to the incident, his mother had been murdered and the case was being tried against his brother, Narendra Singh alias Kote Singh. The**

stated that this was a Panchayatnama, and he had signed it. It is true that neither Aadesh or Aadesh's mother Kamlesh Kumari nor Mahendra Singh possessed a *Takora*. It is also true that Narendra Singh had previously been discharged because Mahendra Singh (P.W.1) had testified in his (Narendra Singh) favour. It is also true that he had not previously submitted any application or affidavit to any Court stating that Narendra Singh had not murdered Phool Singh.

39. In this regard, informant Mahendra Singh, P.W.-1, is a witness. An examination of the statements of Aadesh Kumar (P.W.-2) and Mrs. Kamlesh Kumari (P.W.-3) clearly shows that defense witness Harendra DW-1 was not present at the scene of the incident. Witness P.W.-1 clearly stated in his statement that his brother Harendra Singh and several villagers took his father, who was unconscious, to the Mainpuri District Hospital. P.W.1 clearly stated that at the time of the incident, his son Aadesh, his wife Kamlesh Kumari, and he himself were present. Furthermore, all the brothers were working in the fields and arrived 15-20 minutes later. Harendra Singh was not present at the scene at the time of the incident; he arrived after the incident. Witnesses Aadesh Kumar (PW-2) and Kamlesh Kumar (PW-3) also denied Harendra Kumar's presence at the scene at the time of the incident.

40. Thus, from the statements of the prosecution witnesses and D.W.-1, it is clear that D.W.-1 Harendra Singh was not present at the spot at the time of the actual assault rather, he arrived some

present at the time of actual assault, therefore, the prosecution's story cannot be treated as suspicious and unreliable based on the defence witness Harendra Singh's statement.

41. A careful evaluation of the deposition of this D.W.-1 reveals that at the time of actual incident i.e. assault on his father, he (D.W.-1) was inside his house and his deposition as far as actual assault is concerned, is based on hearing of voices from inside of his house. Meaning thereby that at the time of actual assault, this witness was not present. Therefore, this witness cannot depose about actual manner of incident. From his deposition, it is clear that an incident had happened with his father, in which his father was injured and he took his father to District Hospital, Mainpuri, where his father after being administered an injection succumbed to his injuries. From the deposition of this witness, date, time and place of incident is established. It is also established that on the date, time and place of incident, his father sustained injuries, who finally succumbed to his injuries. It is also evident from his deposition that there was a quarrel between persons present on spot regarding some piece of land, and during which his father picked up a brick to hit the appellant -convict Narendra, on which appellant-convict Narendra also picked up a brick. Therefore, from the deposition of this witness another fact is established that both his father (the deceased) and his brother (appellant-convict) picked up bricks in their hands to hit each other. When this witness entered in his house, the remaining incident had happened, in which his father

42. Admittedly, there is no mention of time of assault in written report / Tehrir Ex.Ka.-1. However, the depositions of P.W.1, P.W.2 and P.W.3 are consistent that the incident had happened at about 5:15 P.M. on 29.04.2011. The first Investigating Officer (P.W.5) in his deposition has also stated that the witnesses to the incident have stated during the course of investigation in their statements recorded under Section 161 Cr.P.C. that the incident took place around 5:15 P.M. on 29.04.2011. It is well settled proposition of law that the first information report is not an encyclopedia. Therefore, in view of consistent and reliable depositions of aforesaid witnesses, it is crystal clear that the incident had happened at about 5:15 P.M. on 29.04.2011 and FIR has been promptly registered at 6:15 P.M. Therefore, non-mentioning of the time of incident in the written report / Tehrir Ex.Ka.-1 does not make the prosecution story unbelievable.

43. In the present case, the prosecution has been successfully able to prove the date, time, place and manner of incident through consistent and reliable depositions of P.W.1, P.W.2 and P.W.3. Even the defence witness Harendra Singh (D.W.1) has proved the date, time and place of incident, however, he (D.W.1) was not present at the time of actual assault, but his deposition does not belie the basis prosecution story put forth with by the prosecution witnesses. The prosecution has successfully proved that the appellant inflicted several blows with *Takora* on the head of his father (deceased Phool Singh). The deceased suffered five ante-mortem injuries as a result of aforesaid assault on his head. The

had died as a result of ante-mortem injuries so suffered by him in the assault made by the appellant on his head. Resultantly, the prosecution has successfully proved its case against the appellant-convict beyond reasonable doubt and Question no.1 is answered in affirmative.

Question No.2 : Whether the sentence awarded to the appellant is excessive or not ?

44. Admittedly, the deceased Phool Singh was the father of the appellant-convict. The first information report has been promptly lodged at 6:15 P.M. on 29.04.2011 regarding the present incident, which had occurred at 5:15 P.M. on 29.04.2011. In the written report / Tehrir Ex.Ka.-1, it is clearly stated that the appellant is mentally weak and he committed the incident when his father (the deceased) picked up a brick upon being abused by Narendra Singh. However, P.W.1, P.W.2 and P.W.3, who are the eyewitnesses of the incident, have not stated anything regarding picking up a brick by the deceased in the incident. D.W.1 Harendra Singh, who was not present at the time of actual assault made by the appellant with *Takora* on the deceased, has deposed that before the actual assault, his father picked up a brick to hit Narendra Singh, which corroborates the prosecution story, as narrated in the written report / Tehrir Ex.Ka.-1 regarding this specific fact of deceased's picking up a brick at the time of incident. It is in this background, the allegedly mentally weak appellant-convict committed this offence, but there is nothing on record to demonstrate that the aforesaid assault was premeditated

he was acquitted of the charges, as the informant (P.W.1) of this case turned hostile in the said case and deposed in favour of the present appellant-convict. It is also specifically stated in the written report / Tehrir that the appellant was given medical treatment at the Mental Hospital, Agra five years back. Meaning thereby, the appellant was suffering from some form of mental illness and after his recovery, he committed the present incident in a fit of anger arising out a dispute regarding chaff after harvesting of the crops. Initially the deceased picked up a brick, whereupon the appellant-convict struck the deceased with a *takora*. The details of land-holding, as stated by P.W.3 in her trustworthy deposition, reveal the poor socioeconomic background of the family of the deceased. There was no premeditation on the part of the appellant in the commission of the crime. There was no apparent motive or intention behind this crime. The appellant-convict is the son of the deceased. The appellant was around 38 years of age at the time of incident. In light of the alleged history of mental illness of the appellant-convict coupled with the fact that he was treated for his mental illness at the Mental Hospital, Agra, we are of the opinion that the sentence of life imprisonment imposed upon the appellant-convict by the trial Court seems to be on a higher side, therefore, the sentence awarded to the appellant is excessive. The Question No.2 is answered in the affirmative.

45. The Hon'ble Supreme Court in the case of **Munna Mevuddin Sheikh v. State of Gujarat (Criminal Appeal No 2686**

"16. The underlying ratio of the above quoted judgments is that when a sentence of life imprisonment is imposed, Section 53 with Section 45 the IPC would convey the meaning that it is till the natural life subject to the right of claiming remission. Hence, modifying a sentence of life imprisonment and imposing a fixed sentence is permissible under the interpretation placed in Sriharan (supra) and followed in Shiva Kumar (supra), as long as the period imposed is more than fourteen years of imprisonment."

46. We have perused the custody certificate of the appellant-convict submitted by the jail authorities which shows that the appellant-convict had undergone actual period of 14 years 9 months and 14 days of incarceration as on 26.02.2026 and has served out a total sentence of 17 years 10 months and 29 days as on 26.02.2026 with remission. Therefore, the appellant-convict has already completed more than 15 years of actual incarceration as on today with more than 18 years of sentence including remission.

47. Therefore, considering the totality of circumstances, we are of the considered view that the ends of justice would be adequately met by commuting the sentence of imprisonment for life to a fixed term sentence of 15 years without remission, while maintaining the fine and default sentence.

48. Therefore, while affirming the conviction of the appellant-convict under Section 304 IPC, we modify the sentence of imprisonment for life of the appellant to a fixed term sentence of 15 years without remission. However, we maintain the fine and default sentence. **The present appeal stands partly allowed,**

50. Let a copy of the judgment be provided immediately to the appellant through Superintendent Jail, free of cost.

51. The record of the 'Trial Court' be sent back immediately with a copy of this judgment for necessary information and compliance and a copy of this judgment be also sent immediately to the concerned Superintendent Jail for compliance.

52. Lastly, the Court records its word of appreciation for the able assistance rendered by Ms. Vishakha Pande, Amicus Curiae for the appellant, who assisted the Court in reaching to its logical conclusion. Ms. Vishakha Pande, learned Amicus Curiae for the appellant shall be paid Rs.20,000/- by the High Court Legal Services Committee as fee, if not already paid in this case and if any amount has already been paid to her the same shall be adjusted.

July 13, 2026

ss

(Dr. Ajay Kumar-II,J.) (Salil Kumar Rai,J.)