Malhu Yadav & Ors. Appellants vs State Of Bihar Respondent on 1 May, 2002

Equivalent citations: AIR 2002 SUPREME COURT 2137, 2002 (5) SCC 724, 2002 AIR SCW 2218, 2002 AIR - JHAR. H. C. R. 709, 2002 (6) SRJ 285, 2002 CRILR(SC&MP) 484, 2002 (4) SCALE 285, 2002 (2) LRI 482, 2002 SCC(CRI) 1190, 2002 (2) BLJR 1399, 2002 (3) SLT 657, 2002 CRILR(SC MAH GUJ) 484, (2002) 2 CRIMES 417, (2002) 3 RAJ CRI C 616, (2002) 2 RECCRIR 769, (2002) 3 SCJ 599, (2002) 2 CURCRIR 236, (2002) 4 SUPREME 330, (2002) 4 SCALE 285, (2002) 2 UC 396, (2002) 2 EASTCRIC 227, 2002 (2) ANDHLT(CRI) 65 SC

Bench: R.P. Sethi, Doraiswamy Raju

CASE NO.:
Appeal (crl.) 1289 of 1999

PETITIONER:
MALHU YADAV & ORS. APPELLANTS

Vs.

RESPONDENT:
STATE OF BIHAR RESPONDENT

DATE OF JUDGMENT: 01/05/2002

BENCH:
R.P. Sethi & Doraiswamy Raju

JUDGMENT:

RAJU, J.

The above appeal has been filed against the judgment dated 30.7.1999 of a Division Bench of the Patna High Court in Criminal Appeal No.17 of 1987 confirming the judgment dated 18.12.1986 of the learned 2nd Additional Sessions Judge, Darbhanga, convicting and sentencing the appellants for various offences in Sessions Trial No.30 of 1983. Of the seven accused, who were charged and stood trial before the Sessions Court, the fifth accused, by name Ram Prasad Yadav, died on 2.7.1994 and during the pendency of the appeal in this Court, the second accused Malhu Yadav died on 5.6.2001.

The case of the prosecution is that on 1.2.1981 at about 7.30 a.m., Rajendra Yadav, the informant, (PW-10), who is the brother of the deceased Sotilal Yadav, had gone to see the standing Kerao crop on his land and noticed the first accused Lal Bachan Yadav (A-1), son of Shibu Yadav (A-3), stealthily uprooting the crops, resulting in a scuffle between them when he caught hold of A-1. On hearing the hullas raised at that time both by PW-10 and A-1, the deceased, his father Laxmi Yadav (since deceased) and Ram Kishore Yadav (PW-5) as also the accused and some others, arrived at the spot. In the process of exchanging abuses and hot words, when a demand was made by other accused to release A-1, the deceased refused to do so without having a Panchayati in the Village for the incident. The accused were said to have got enraged on this and Ram Prasad Yadav (A-5) was said to have exhorted the other accused stating "Shela badmash hai, use jan se mar do". On this, Jagdish Yadav (A-4), the son of A-5, standing on the bandh was said to have assaulted the deceased with Bhala on the right side of the neck, which caused a punctured wound 1"x1/4" X 1" piercing through the sub interior tissues upto upper hole of right lung. When the deceased fell down, A-3 also assaulted him with a Bhala on his back causing an incised wound 1"x1/2" X 1/4" on left lower part of the back. Malhu Yadav (A-2) was also said to have assaulted him on his head with lathi portion of Bhala causing a lacerated wound 1"x1" upto one on right side of head. Brij Kishore Yadav (A-7) was stated to have assaulted him with lathi on his head causing one lacerated wound 1 " x " upto bone over middle of head and A-5 gave a blow with lathi on back causing bruise 4" x 1" on lower part of the back. Sotilal Yadav was said to have died on the spot due to the above injuries. Laxmi Yadav, father of the deceased, and Ram Kishan Yadav (PW-5), father-in- law of the deceased, when tried to lend support by lifting the deceased, Raj Kumar Yadav (A-6) was said to have assaulted Laxmi Yadav with Farsa on his head as well as on his both hands causing incised wound and A-2 also was said to have assaulted him with Bhala on his right eye brow. A-5 was said to have assaulted PW-5 with lathi on his left hand fingers and right fore arm causing laceration, bruise and fracture injuries. A-7 was also said to have assaulted him with lathi on his back causing bruise. A-6 was attributed with an act of assaulting PW-10 which made him let loose A-1 held by him and go and stand at a distance of ten laggas from the place of occurrence. In the course of occurrence as well as hullas raised, one Kailu Yadav (since dead), Sukhdev Yadav (said to be gained over) Uttim Yadav (PW-6) and others were said to have arrived on the spot and saw the occurrence. A-1, in spite of all this, was alleged to have taken away the uprooted 'kerao'.

PW-6 and his mother (wife of Ram Kishan Yadav) were said to have taken Laxmi Yadav and Ram Kishan Yadav to Hospital for the treatment on Tonga and PW-10 along with Awadh Yadav (PW-6) and Kailu Yadav were said to have brought the dead body of Sotilal Yadav to Kilaghat Police Station (Sadar P.S.) at about 3.30 p.m. when PW-12, Shri Bharat Kant Jha, then Station Officer, was present. Fard byan (Ex.1) of the informant was said to have been recorded and the case registered as Sadar P.S. Case No.23 dated 1.2.1981 under Sections 147, 148, 149, 324 and 302, IPC, against all the seven accused. On taking up further investigation, PW-12 was said to have examined the dead body and prepared an inquest report (Ex.2) and recorded the statement of Kailu Yadav and Awadh Yadav at the Police Station. The dead body was said to have been sent to the Hospital for post mortem through two Constables and received at the Hospital at about 4.30 p.m. on the same day. The post mortem was said to have been conducted by the Doctor (PW-11) at about 1.30 p.m. on 2.2.1981, who submitted the post mortem report (Ex.3) received in the Police Station on 5.2.1981. During the course of investigation, on 1.2.1981 PW-12, who visited at 5.20 p.m. the Hospital to record the

statements from Laxmi Yadav and Ram Kishan Yadav, could not do so for the reason that they were not in a fit condition but at the same time their bodies were said to have been examined and Injury Reports (Ex.4 and 4/1) were said to have been prepared. On the same night when PW-12 went to the place of occurrence, he could not make an inspection for want of light and, therefore, on 2.2.1981 at 6.30 p.m. he made a spot inspection of the place of occurrence and found uprooting of some of the standing crops in the field and marks of trampling, besides blood stains in the trampled area, but not in that proper condition to be collected. After recording the Statements of PWs-4 and 8, the house of A-5 was said to have been searched and two lathis recovered from which `Bhala' portion had been removed and one blood stained in all three articles under Seizure List (Ex.5). Thereupon, he was said to have gone to Hospital and recorded statement from the two injured persons, noticed above. On 4.2.1981, the Superintendent of Police also supervised the investigation and A-5 and A-7 were said to have been arrested on 11.2.1981. The investigation was thereafter handed over to another person, who submitted the charge sheet before the Chief Judicial Magistrate, who later committed the case to the District and Sessions Judge, which thereafter stood transferred to the Court of 2nd Additional Sessions Judge.

In all, on the prosecution side, 12 witnesses were examined, of which PWs-1 to 3, 7 and 9 were formal witnesses, PW-10 being the informant, PW- 11being the Doctor, PW-12 being the Investigation Officer and PWs-4, 5, 6 and 8 were stated to be eye witnesses to the occurrence. The relevant documents, as noticed earlier, were also marked. On the whole, sixteen witnesses were said to have been examined in support of the defence, in addition to marking some documents to substantiate a plea of alleged land dispute to falsely implicate them and the plea of alibi. On behalf of the accused, apart from disputing the very occurrence, a plea of alibi, so far as A-4 and A-3, was made, in addition to the plea that they were falsely implicated not only due to certain land dispute, but also on account of the fact that A-2 had lodged an information petition before S.D.O., Darbhanga, on 30.1.1981 regarding the alleged threats said to have been made by the deceased and PW-10 and others. That apart, the further plea raised in defence was that on 1.2.1981 at about 7.30 a.m. when A-2 and his son were engaged in uprooting "Alluah" in their purchased land, the deceased and some others armed with Bhala, Farsa and Arrow came and looted one mound of uprooted Alluah worth Rs.50/- and when A-2 protested, the deceased assaulted him with Bhala and his father assaulted him with lathi. On hulla raised, A-5 came at the spot and, in turn, was also assaulted by PW-5 with lathi. Other villagers were also said to have assembled at the spot and saved A-2, resulting, in the process, in several injuries, for which A-2 also seems to have lodged an FIR before the Police on the same day at 11 a.m., Ex.K being the formal FIR and Ex.O being the written report and the Police thereupon registered Sadar P.S. Case No.24/81 and after investigation, a charge sheet was also said to have been submitted in Ex.M and Ex.N and N/1 are said to be Injury Reports in respect of A-2 and A-5.

After an exhaustive analysis and careful consideration of the evidence on record, the learned Trial Judge held A-1 to be guilty of an offence under Section 379, IPC, and acquitted him of offences under other sections of the IPC. So far as A-2 to A-7 are concerned, they were convicted for offence under Section 302 read with Section 149 and in addition under Section 109, IPC, as far as A-5 is concerned, and for which imposed rigorous imprisonment for life. In addition thereto, A-2 to A-7 were convicted under Section 225, IPC, with a sentence of one year R.I. A-2 and A-6 were convicted

for offences under Section 324, IPC, and sentenced to three years R.I. So far as A-5 and A-7 are concerned, they have been also convicted under Section 323, IPC, with a sentence of one year R.I. and under Section 147 with two years R.I. As far as A-2 to A-4 and A-6, they were all convicted under Section 148, IPC, with a sentence of three years R.I. Aggrieved, as noticed earlier, an appeal had been filed by all the accused before the High Court and the learned Judges of the High Court, on a consideration of the materials on record and overruling the challenge made to the judgment of the Trial Court, confirmed the conviction and sentence imposed against all the appellants observing that the manner of consideration undertaken by the learned Trial Judge and the analysis and assessment of the evidence were on proper lines and in correct perspective and inasmuch as the findings recorded were based on proper and sufficient evidence, no interference was called for at their hands.

Mr. Sushil Kumar, learned senior counsel for the appellants, contended that not only the genesis or origin of the incident has not been properly presented, but the prosecution miserably failed to substantiate the offence of murder punishable under Section 302, IPC, even read with Section 149, though on the facts of this case, Section 149 had no applicability at all. According to the learned counsel, the version of PWs with reference to the occurrence, the place and the manner of assault and inflicting of injuries, not only belies their claim but casts serious doubts on the veracity and credibility of the materials, and taken together with the serious omissions on the part of the Investigating Officer to secure the alleged blood stained earth seen by him at the place of occurrence or the recovery of the crops said to have been removed, the prosecution case stood shattered and seriously undermined. The learned counsel also invited our attention to the materials on record as well as the findings recorded by the courts below to substantiate the claim on behalf of the 1st appellant that the essential ingredients of an offence under Section 379 cannot be said to have been proved against the first accused. So far as the other accused are concerned, according to the learned counsel, the ingredients necessary to attract Section 302/149, IPC, also could not be considered to have been substantiated for the prosecution to justify a conviction under Section 302/149. Similar grievance has also been ventilated in respect of the other offences for which the various accused have otherwise been convicted and sentenced. Per contra, Mr. B.B. Singh, learned counsel appearing for the respondent-State, contended that concurrent findings recorded by both the courts below on a proper appreciation of the materials on record do not call for interference and the grievance now sought to be made out is not well merited and the appeal has no substance whatsoever. Both the learned counsel took us through the relevant findings, the evidence in support thereof and the governing principles of law.

On carefully going through the findings recorded in the light of the materials on record, we find that though the claim for total acquittal of the accused and complete exoneration from any liability is not well-merited, the grievance, to some extent, cannot be said to be entirely devoid of merit. Having regard to the overlapping nature of conviction of the accused under different provisions, we would consider it appropriate to deal with the claims initially about the occurrence and thereafter vis--vis the offence under different provisions of the Penal Code. So far as the occurrence, which itself has been seriously disputed only by trying to pick loopholes in the case of the prosecution, but by projecting the events and occurrence, subject-matter of the counter complaint lodged with the Police, we find no merit whatsoever in the challenge made on behalf of the appellants and it has been rightly rejected by the courts below. PWs.4,5,6,8 and 10 have spoken to about the occurrence

from its inception and they have been found to be not only consistent, truthful and reliable and despite certain minor discrepancies or variations on certain insignificant matters and that too not on relevant and vital aspects of the case, but inspired complete confidence with the courts below to accept the same. Neither the analysis nor sifting of evidence and assessment made thereof by the courts below in this regard to draw the necessary inference and record findings could be held to suffer from any serious infirmities nor patent illegalities to oblige this Court to have any re-appreciation of the same. There is nothing in law, which mandates for discarding the case of the prosecution, though the lapse may deserve deprecation, despite the existence of reliable evidence to connect the accused or substantiate the place of occurrence, for non-lifting the blood stained earth on the spot. In the teeth of the ocular evidence of those who actually witnessed the occurrence, the so-called lapse, which has also been properly explained by the Investigating Officer (PW-12), cannot cast any doubts about the manner of occurrence or its place of occurrence. The omission to recover the crops removed, also, in our view, cannot be considered to falsify the case of the prosecution when it stood otherwise sufficiently established by cogent and convincing oral evidence concurrently found acceptable to by the learned Trial Judge as well as the Judges in the High Court.

The plea of alibi set up by A-3 and A-4 has been rightly rejected in the teeth of the evidence attempted to be produced for the defence which could neither be shown to be genuine or credible, but also rightly held not to be of the quality to inspire any confidence with the courts below. So far as the counter complaint filed is concerned, the version in this regard could not be substantiated on behalf of the accused and the so-called injuries found on some of the accused were considered to be capable of being created for the purpose of the case and not believed, in our view, rightly by the courts below. The fact that some of the witnesses were relatives of the victim's family is no ground to reject their evidence as untrustworthy. In law, what is expected is to analyse and scrutinize the same with due care and caution before accepting or acting upon the same and this exercise has been meticulously undertaken by the courts below and no dent could be made on the prosecution case, in this regard from the stand taken on behalf of the accused. Being also an appeal entertained under Article 136 of the Constitution of India and for the reason that the concurrent findings regarding the manner of occurrence, place of occurrence and the method of inflicting injuries, found substantiated against the accused by accepting the prosecution case does not call for our interference, within the normal permissible limits. No perversity in the approach or the ultimate findings recorded could be made out and the factual findings recorded remain unassailable, though as we would consider hereinafter the inferences drawn with reference to the actual offences said to have been committed by the accused may require some alteration, modification and interference.

So far as the offence under Section 379, IPC, for which the first accused has been convicted, is concerned, the grievance of the learned counsel for the appellants does not merit our acceptance. Though, it has been contended with some force that there is no proof of actual uprooting and removal of the standing crops as alleged, we are of the view that mere non-recovery alone is no sufficient ground to sustain such a claim on behalf of this appellant. As noticed earlier, the oral evidence tendered by PWs, who witnessed the occurrence, firmly established the uprooting of some of the crops and removal of the same. The evidence of PW-12, who visited the place of occurrence during the course of investigation, lends corroboration to the same. The first accused was not convicted under Section 302, IPC, or under any other provisions, except Section 379, IPC, because

even according to the PWs., he was held physically by PW-10 till the end of the occurrence. Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moving the property in a manner to facilitate such taking will be committing theft as defined under Section 378, IPC. A thing attached to the earth as soon as it is severed from the earth will sufficiently constitute the ingredient necessary to make the act fall under the said provision. Illustration (a) to Section 378 would further clarify the position beyond doubt that as soon as the severance is effected in order to take dishonestly such commodity out of the possession of any person without his consent, the commission of the offence of theft stood completed. Consequently, we see no reason to differ from the conviction recorded under Section 379 as against A-1, but, at the same time, we are of the view that in the absence of any substantive proof of the value of the same and the lapse of time, the maximum sentence envisaged under Section 379 need not be imposed and the interest of justice would be met if the sentence is reduced to one year R.I. As for the conviction of the accused, A-2 to A-7 under Section 302, IPC, read with Section 149 and, in addition, Section 109, IPC, also, as far as A-5 is concerned, we are of the view that even the facts noticed and specifically found by the courts below do not warrant such a conviction. Even as per the version of the prosecution witnesses, there is no basis for an offence under Section 149, IPC. The genesis of the incident commenced with the first accused entering the field of the deceased and uprooting stealthily some of the standing crops and only when he was caught and a tussle ensued and `hullas' were raised they brought the other accused suddenly into the scene. The accused were initially asking PW-10, the deceased and other members of his family, who were present, to release A-1 and it is only when the deceased refused to release him stating that he will be put before the Panchayati in the village and till then he will not be released, the situation became aggravated and on the alleged exhortation by A-5, the assault on the victim took place, all on the spur of the moment. There is absolutely no evidence whatsoever to attribute any common object or such a thing having activated all of them to join in furtherance of the object either before arrival or during the course of occurrence as such. Hence, the charge under Section 149, IPC, has to fail and the conviction thereunder is liable to be and shall stand set aside. Consequently, it becomes necessary to consider and adjudge the guilt of the accused with reference to the death of the victim on their own individual actions.

The evidence of witnesses for the prosecution, who are said to be eye witnesses to the occurrence, itself shows that it is only when A-5 gave the exhortation on which A-4 commenced the assault on the deceased with Bhala on the right side of the neck, identified to be the Injury No.1 by the Doctor (PW-11). This was followed by A-2 with a blow on the head of the deceased with lathi portion of Bhala, identified by medical evidence as Injury No.3. A-3 also gave a blow with Bhala on the back of the deceased causing an incised wound Injury No.2 as per the medical evidence. Injury No.4 was said to have been caused by A-5 by using lathi on the back of the victim. The abrasion with bruise marks in the lower part of the back side of the victim, identified as Injury No.5 was not ascribed to anyone. PW-11, the Doctor who conducted the post mortem on the dead body, categorically stated that Injury No.1 was caused by some pointed weapon like Bhala and Injury No.2 by some sharp cutting weapon and even by the cutting edge of Bhala. While Injury Nos. 3 to 5 might have been caused by any hard blunt weapon or even by a lathi, in his opinion, Injury Nos. 1 and 2 were grievous and Injury No.3 dangerous to life in ordinary course of nature, though 4 and 5 were simple in nature. It is only by way of exaggeration some of the PWs stated in their anxiety, attributing each

one of the accused with one or more injuries but the same did not tally, except to the extent indicated above, with those actually found on the dead body as per the post mortem certificate and of PW-11, the Doctor. A-6 and A-7 were not proved to have inflicted any injury of the nature found on the body, particularly contributing to the death of the victim. Therefore, the accused, A-2, A-3, A-4 and A-5 alone should be held liable for the homicidal death of Sotilal Yadav. Now that A-2 and A-5 are dead, we have to confine our consideration in this regard with reference to A-3 and A-4. The further question that requires to be considered is as to whether on the evidence let in the offence of murder punishable under Section 302 has been proved or that the action of these accused has to be dealt with under any other provisions of the Penal Code.

The learned Trial Judge, in addition to the facts noticed by us with reference to the genesis of the occurrence, its aggravation stage by stage on the spot, has found specifically that there is no case of any pre-meditated murder. As the accused gathered on the spot on hearing the commotion or hullas raised by A-1 and PW-10 and others, it was only to secure the release of A-1 and when a demand in this regard was made and rejected outright by the deceased stating that till a Panchayati was held in the village, A-1 will not be released, the assault commenced, all of a sudden, in a fit of passion.

As per exception 4 to Section 300, 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 taking undue advantage or acting in a cruel or unusual manner. Further, before a charge of murder punishable under Section 302 could be held to have been proved by the prosecution, it is not merely enough to claim that none of the five exceptions to Section 300, have been prima facie established by evidence on record but it is inevitably necessary for the prosecution to bring the case under any of the four clauses of Section 300, IPC, to get a verdict of murder punishable under Section 302, IPC. In this case, it has been held even by the Trial Court that there was no premeditation to commit the offending act and as a matter of fact from the genesis or origin of the occurrence, it could be seen that A-1, while uprooting some of the standing crop, was caught by PW-10 and the during the course of tussle and `hullas' raised only the other members of the family of the deceased and villagers as well as the accused arrived on the scene and the attempt as well as the aim of the accused were merely to release A-1 from the clutches of PW-10 and the victim and only when their request to allow A-1 to go, was rejected with a retort that A-1 will be subjected to Village Panchayat and till then will not be released, the situation got flared up suddenly and worsened, resulting in the assault of the victim. The learned Trial Judge, though has considered at length the question of liability of A- 1 to be punished under Section 302/149, 147, IPC, has chosen to jump to the conclusion in this regard against the other accused on the assumption that those others formed an unlawful assembly with a common object and proceeded to convict them therefor as also under Section 302, IPC. The charge under Section 149, IPC, on the evidence on record and facts proved, could not be said to have been made out beyond reasonable doubt. Consequently, the charge under Section 147 or 148, as found against some of the accused, also cannot be sustained and is liable to be set aside. Even the High Court does not seem to have properly considered these aspects, except affixing its approval to the manner of consideration undertaken and affirming the conclusion of guilt, as arrived at by the Trial Court without applying its mind to the question as to the lawful inferences that really flows from the primary facts found proved. The evidence on record relating to the occurrence cannot be taken to provide any safe basis for coming to a conclusion that the accused

formed themselves into an unlawful assembly with a common object, as envisaged in section 141. However, from the evidence on record it appears that when accused No.1 was not released by the complainant party, the accused Nos. 2, 3, 4 & 5 formed a common intention to commit an offence, in furtherance of which they used weapons like spears and lathis and inflicted injuries on the vital parts of the body of Sotilal, deceased. The prosecution has established that the aforesaid four accused persons joined in the actual doing of the act which resulted in the death of Sotilal and the common intention though not initially in existence, was formed during the transaction on the spot. The existence of the common intention amongst the aforesaid accused persons has been established from the surrounding circumstances and from their conduct on the spot. The absence of the charge under Section 34 against the aforesaid accused persons would not make any difference because on the proved facts and the evidence available on record, their intention to commit an offence has been established. Failure to charge the accused under Section 34, who stood charged under Section 149 IPC would not result in any prejudice to them. [Dalip Singh vs State of Punjab (1954 SCR 145)]. The aforesaid accused persons can, therefore, be convicted for the major offence read with Section 34 of the Indian Penal Code.

To the case on hand and facts found established, Section 304 Part-I only could be held to be attracted, since at best the case can be one where the accused might be said to have caused a bodily injury as is likely to cause death, with an intention to cause death. Therefore, there is every justification and necessity to alter the conviction recorded under Section 302/149, IPC, into one under Section 304 Part-I, read with Section 34 IPC, and that too so far as Accused Nos.2, 3, 4 and 5 of whom A-2 and A-5 are already dead. In the absence of Section 149 there is no evidence to show that accused Nos. 6 and 7 shared any common intention to commit the offence of culpable homicide alongwith accused Nos. 2, 3, 4 and 5. To rope them in the commission of the offence, the prosecution attributed some overt acts to accused Nos. 6 and 7 which stand belied by the medical evidence. All the injuries found on the person of the deceased are attributable to accused Nos. 2, 3, 4 and 5 only. Accused Nos. 6 and 7 cannot be convicted even for the offence punishable under Section 304 Part I, IPC. So far as A-3 and A-4 are concerned, we are satisfied, on the facts and circumstances of the case, that the imposition of 10 years R.I. would sufficiently meet the requirements of justice and to this extent, the judgments of the courts below shall stand altered and modified.

The offence under Section 225, IPC, held proved against A-2 to A-7, cannot at all be said to have been substantiated. Though A-1 was found uprooting the crops in the land of the victim's family and caught in the action, the intention and resolve of those who detained him and the victim was not to release him till subjected to a Village Panchayat and it was not as though they were bent upon handing A-1 over to Police for further lawful custody or action. In the light of such evidence coming to light even from the prosecution case, a conviction under Section 225, merely because there was a demand to release him, is rendered impossible, all the more so when except a demand so made, nothing further was done in this direction to get him released. The conviction and sentence imposed under Section 225, IPC, therefore, shall stand set aside.

The conviction under Section 324, IPC, of the A-2 and A-6 and of A-6 and A-7 under Section 323, IPC, alone remains to be considered. The conviction of A-2 under Section 324, IPC, was for the

assault said to have been made by this accused on Laxmi Yadav, the father of the deceased, with Bhala on his right eye brow. Likewise, A-6 was also said to have attacked Laxmi Yadav with Farsa on his head as well as on both hands causing incised wounds. The conviction of A-5 and A-7 under Section 323 was for having assaulted Ram Kishan Yadav (PW-5), the father-in-law of the deceased, with lathi on his back. So far as this part of the conviction and sentence of one year R.I. under Section 323 is concerned, no interference is called for. A-5 also is no longer alive. Similarly, no infirmity in the conviction of A-2 and A-6 under Section 324, IPC, and the sentence of three years R.I. imposed therefor, could be substantiated before us, to call for our interference in this appeal. As noticed earlier, A-2 is not alive any longer. Consequently, the conviction of A-6 under Section 324 and A-7 under Section 323 and the sentence imposed therefor shall stand confirmed.

The appeal shall stand partly allowed, with the resultant position as follows:

> (a) The conviction and sentence under Section 379 I.P.C. upon A-1 shall stand confirmed.
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> (b) The conviction and sentence under Section 302 read with allied provisions stand modified into one under Section 304 Part-I, read with Section 34 IPC, with ten years R.I. in respect of A-3 and A-4, and they shall undergo the remaining part of the sentence, if any.
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> (c) The conviction and sentence upon A-3, A-4, A-6 and A-7 under Section 147 or 148, as the case may be, shall stand set aside.

(d) The conviction and sentence of three years R.I. imposed upon A-6 under Section 324, IPC, and of one year R.I. under Section 323, IPC, imposed upon A-7 shall stand confirmed.

(e) The conviction and sentence under Section 225, IPC, of all the accused shall stand set aside.

(f) If any of the accused have already undergone the period of sentence, as modified under this judgment, they shall be immediately released unless required in any other case. The bail bond of A-3 (Shibu Yadav) shall stand cancelled and he be taken into custody for undergoing the rest of the sentence, if any.

J. (R.P. Sethi) J. (Doraiswamy Raju) May 1, 2002.