



2026:UHC:4469-DB

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HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.527 of 2023

Sudarshan Gupta & AnotherAppellants

Versus

State of UttarakhandRespondent

Present:-

Mr. R. S. Sammal with Ms. Sarita Bisht, learned counsel for the appellants.

Mr. B. N. Maulekhi, learned D.A.G. for the State.

Coram:Hon'ble Ravindra Maithani, J.

Hon'ble Siddhartha Sah, J.

(Per: Hon'ble Siddhartha Sah, J.)

The present Criminal Appeal has been preferred on behalf of the appellants against the impugned judgment and order dated 07.08.2023 passed by the learned Special Sessions Judge, District Udham Singh Nagar in Sessions Trial No.40 of 2016 under Sections 302, 323, 34, 452 of IPC and 3(2) 5 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the SC/ST Act"), 'State of Uttarakhand vs. Sudarshan Gupta & Another', whereby the appellants have been sentenced as under:-

Sl. No.	Conviction	Sentence	Fine	Sentence in lieu of fine
1.	323/34 IPC	3 months R.I.	₹ 1,000/-	Additional 15 days' simple imprisonment
2.	452 IPC	1 year R.I.	₹ 1,000/-	Additional one month simple imprisonment
3.	302/34 IPC	Life imprisonment	₹ 10,000/-	Additional Six Months simple imprisonment

Aforesaid sentences were directed to run concurrently.

2. The relevant facts of the case as stated in this appeal are as follows:

- (i) FIR was registered at Police Station Sitarganj, District Udham Singh Nagar by the PW 1 Chandan Kumar S/o Shri Janardan Prasad, R/o Village Nakha, Indra Nagar, Police Station Sitarganj, District Udham Singh Nagar with the allegations that on 11.11.2015, the informant along with his elder brother Dinesh Kumar and his father Shri Janardan Prasad S/o Shri Koleshwar Prasad, was celebrating Deepawali at home. At about 9:00 p.m., Ajay Kumar and Sanjay Kumar were bursting crackers on the rooftop of their house. When the informant's father stopped them from bursting crackers, an altercation ensued between them. Thereafter, Ajay Kumar and Sanjay Kumar called their father, the appellant Sudarshan Gupta and the appellant Vijay Gupta both to the spot.
- (ii) It was alleged that the appellants Sudarshan Gupta and Vijay Kumar came to the rooftop with a Kapa. The appellant Sudarshan Gupta hit the informant's father's head with Kapa, causing injuries, and pushed him from the rooftop. When the informant and his brother tried to save their father, the appellants Sudarshan Gupta, Vijay Kumar, and Ajay Kumar and Sanjay Kumar with common intention, assaulted the informant and his brother with kapa, iron bar and danda and when they got down from the rooftop and went into their house then four of them - father and sons entered their house and again attacked them with sharp-edged weapon, as a result of which the

informant sustained a deep injury on his head and his brother sustained grievous injuries on his hand. The neighbours saved them and with the help of the villagers, took the injured father to the Government Hospital, where the doctors declared him dead.

- (iii) The said report was registered as FIR No. 238 of 2015 under Sections 302/323 read with Section 34 of the IPC on 12.11.2015 at 01:10 hours, and the same was entered in the General Diary vide GD Entry No.2 dated 12.11.2015 at Police Station Sitarganj, District Udham Singh Nagar.
- (iv) The inquest/panchnama of the deceased was prepared on 11.11.2015 at CHC Sitarganj, wherein, in the opinion of the panch witnesses, the death of deceased Janardan Prasad appeared to have occurred due to injuries sustained on the head. The post-mortem examination of the body of Janardan Prasad was conducted at the post-mortem house, Khatima, District Udham Singh Nagar, on 12.11.2015 at 12:30 p.m. In the said post-mortem report, a lacerated wound measuring 12 cm × 3 cm was found extending from the parietal region to the occipital region over the parietal and occipital bones. The time since death was stated to be about half to one day. The cause of death was stated to be ante-mortem head injury leading to shock and coma.
- (v) The injured informant PW 1 Chandan Kumar S/o Janardan Prasad, also underwent medical examination and, as per the medical examination report dated 11.11.2015, the following injuries were found on his

person- (i) Lacerated bleeding wound measuring 4×1 cm, deep, on the occipital region; (ii) Punctured wound measuring $\frac{1}{2} \times \frac{1}{2}$ cm on the cheek pierce over inner surface of cheek; (iii) Abrasion size 2×1 cm over the side back.

- (vi) As per the opinion of the Medical Officer, all the injuries were simple in nature, caused by hard and blunt object, and fresh.
- (vii) The other injured PW 5 Umesh Kumar, S/o Janardan Prasad, was also medically examined on 11.11.2015, and the following injuries were found on his person: (i) Lacerated wound measuring 3×1 cm over left forearm posterior aspect, bleeding present, margins are irregular; (ii) Lacerated wound of size 2×1 cm on the left forearm, 5 cm below left elbow joint, bleeding present, margins are irregular.
- (viii) In the opinion of the Medical Officer, the injuries were simple in nature, caused by hard and blunt object and fresh.
- (ix) At the pointing out of the appellant Sudarshan Gupta, the alleged murder weapon (Kapa), was recovered from his cowshed in the presence of witnesses, and recovery memo thereof was prepared on 12.11.2015. The police also took into possession blood-stained cement pieces from near the place of occurrence, close to the water tap and possession memo dated 12.11.2015 was prepared.

- (x) A disclosure statement dated 12.11.2015 was allegedly made by the appellant Sudarshan Prasad, wherein he disclosed the incident in which he confessed of having attacked Janardan Prasad on the head with kapa, due to which he fell down. During the course of investigation, the Investigating Officer prepared the Naksha Nazari/site plan dated 12.11.2015. The appellants were arrested on 12.11.2015 and the arrest memos were prepared. Thereafter, the case material, i.e. kapa and cement pieces, was sent to FSL Dehradun for DNA examination.
- (xi) After completion of the investigation, the Investigating Officer submitted charge-sheet dated 04.02.2016 before the court under Sections 302/323/34/452 of the IPC and Section 3(2) 5 of the SC/ST Act against the appellants - Sudarshan Gupta and Vijay Kumar. The case was registered as Sessions Trial No.40 of 2016, '*State vs. Sudarshan Gupta and Another*'. Vide order dated 22.04.2016, the learned 3rd Additional Sessions Judge, Rudrapur, District Udham Singh Nagar, framed charges under Sections 452, 323 read with Section 34 IPC; Section 302 read with Section 34 IPC; and Section 3(2)5 of the SC/ST Act. The appellants denied the charges and claimed trial.

Thereafter, trial commenced & statements of witnesses were recorded.

3. In the trial, the prosecution examined 14 witnesses. The informant, Chandan Kumar, was examined as PW1. He deposed that on 11.11.2015 at about 9:00 p.m., his father Janardan Prasad objected

to neighbours Ajay Kumar and Sanjay Kumar bursting crackers on the rooftop, on which they got angry and started hurling abuses. Thereafter, both of them called their father the appellants Sudarshan Gupta and Vijay Kumar to the spot. According to the witness, the appellant Sudarshan Gupta was carrying kapa, the appellant Vijay Kumar was armed with an iron rod, and Ajay Kumar and Sanjay Kumar were holding dandas.

4. PW1 Chandan Kumar further deposed that all the accused persons assaulted him, his father and his brother with kapa, iron bar and danda. The appellant Sudarshan Gupta inflicted a blow with the kapa on the head of his father Janardan Prasad, and thereafter all the accused persons pushed him from the rooftop. The witness and his brother ran down to save their father, but the accused persons also came down, entered their house and assaulted them badly. The witness sustained injuries on his head, while his brother PW 5 Umesh Kumar sustained grievous injuries on his hand. He further stated that a lot of blood came out from the head injury sustained by his father.

5. According to the witness, several villagers gathered at the place of occurrence and intervened. Thereafter, with the help of the villagers, the injured Janardan Prasad was taken to the Government Hospital, Sitarganj, where the doctors declared him dead. The witness further stated that a report was got written by a neighbour and, after he signed on it, it was submitted at the Police Station. He identified his signatures on the report, which was marked as Exhibit A-1.

6. PW1 Chandan Kumar also deposed that he and his family members belonged to the Scheduled Caste community. He alleged that the accused persons not only assaulted them but also abused and

insulted them by hurling caste-related words. He further stated that the inquest/panchnama of his deceased father was prepared in his presence along with four other panch witnesses. He identified his signatures on the panchnama, which was marked as Exhibit A-2.

7. PW1 Chandan Kumar further deposed that later on the police inspected the place of occurrence and he had shown the place of incident to the police. The police personnel had recorded his statement regarding the place of occurrence. He also stated that he had undergone medical examination for the injuries sustained by him.

8. PW1 Chandan Kumar was cross-examined at length, wherein he admitted that his father had sustained only one blow of kapa. The remaining part of his cross-examination is not of much significance.

9. PW2, Pradeep Kumar was examined as the scribe of the FIR, and he proved and identified the First Information Report.

10. PW3, Sunil Kumar was examined as a panch witness of the panchnama/inquest report and he identified his signatures thereon.

11. PW4, Girvardhari, a neighbour, deposed that on hearing cries and shouts, he rushed towards the place of occurrence and from the rooftop of his house he saw the deceased fallen on the ground with blood oozing from his head, while members of both families were quarrelling. He stated that he tried to intervene in the matter. He further deposed that he, along with others, took Janardan Prasad to the hospital in Sitarganj where the doctor declared him dead. He also identified and proved his signatures on the possession memo relating

to the recovery of the kapa, marked as Exhibit A-3, and also proved the memo of taking possession of the blood-stained cement pieces and plain cement pieces, which were marked as Exhibits A-4 and A-5 respectively. The witness, however, denied the alleged recovery of the kapa in his presence. Although he admitted his signatures on the recovery memo marked as Exhibit A-3 but stated that he was not read over the contents thereof. Consequently, the witness was declared hostile later on.

12. PW5, Umesh Kumar, another son of the deceased Janardan Prasad, was examined and he substantially reiterated the version of PW1 Chandan Kumar. He was also cross-examined, but nothing material could be elicited from his testimony so as to discredit his version.

13. PW6, Constable Yogesh Dutt deposed that on 12.11.2015 he was posted at Police Station Sitarganj and had registered FIR No.238 of 2015 under Sections 302/323 read with Section 34 IPC, on which he identified his signatures, which was marked as Exhibit A-6.

14. PW7, Dr. Pradeep Singh, who conducted the post-mortem examination, deposed that on 12.11.2015 he was posted as Medical Officer at CHC Khatima. He *inter alia* stated that during post-mortem examination, a lacerated wound measuring 12 cm × 3 cm was found extending from the left side of the head towards the back of the head, and the left side and the back side bones were found fractured. In his cross-examination, the witness categorically stated that there was only one injury found on the body of the deceased and no other injury was present on any part of the body at the time of examination.

15. PW8, Dr. Harsh Singh Airee deposed that on 11.11.2015 he was posted at CHC Sitarganj and had medically examined the injured PW 1 Chandan Kumar and injured PW 5 Umesh Kumar. The injuries as noted by PW 8 Dr. Harsh Singh Airee have already been quoted in the preceding paragraphs. The witness proved the medical examination reports and identified his signatures thereon, which were marked as Exhibit A-9 in respect of PW 1 Chandan Kumar and Exhibit A-10 in respect of PW 5 Umesh Kumar.

16. PW9, S.I. Yogesh Dutt deposed that on 11.11.2015 he was posted at Police Station Sitarganj and he was the scribe of the panchnama/inquest report. He identified his signatures thereon and the same was marked as Exhibit A-11. He further deposed that at the spot he prepared the photo lash, sample seal and related police papers, and identified his signatures thereon, which were marked as Exhibits A-12, A-13, A-14 and A-15 respectively.

17. PW10, S.I. Praveen Singh deposed that on 12.11.2015 he was posted at Police Station Sitarganj and he received the investigation of FIR No.238 of 2015 under Sections 302/323/34 of IPC. He entered the case in the case diary and recorded the statements of the informant and other witnesses. On 12.11.2015, he visited the place of occurrence and at the pointing out of the informant, prepared the site plan/naksha nazri, which was in his handwriting. He identified the same, which was marked as Exhibit A-16. This witness further deposed that from the place of occurrence, he took into possession blood-stained cement pieces as well as plain cement pieces, sealed the same, prepared the sample seal and memos at the spot, and identified his signatures thereon. He further stated that on 12.11.2015, he arrested the appellants Vijay Kumar and Sudarshan Gupta and Ajay

Kumar, and prepared the arrest/information memos, which were signed by him. He identified the same, which were marked as Exhibits A-17 to A-19 respectively.

18. PW10 also proved the addition of Section 452 of IPC and Section 3(2)5 of the SC/ST Act during investigation. He proved General Diary Entry No.25, which was identified by him and marked as Exhibit A-20. He further proved GD Entry No. 28 dated 12.11.2015 relating to the interrogation of the accused persons and stated that the interrogation memo was in his handwriting and signed by him, which was marked as Exhibit A-21. He also proved the GD entry of the inquiry memo, which was marked as Exhibit A-22. The witness further deposed that appellant Sudarshan Gupta got the murder weapon i.e. kapa recovered, which was sealed at the spot. He also prepared the site plan relating to the recovery of the kapa, which was in his handwriting and signed by him. He identified the same, which was marked as Exhibit A-23.

19. He further proved GD Entry Report No.31, through which the case material and memos were deposited at the police station. He identified the same, which was marked as Exhibit A-24. He also proved the arrest information memo of accused Sanjay Kumar, which was marked as Exhibit A-25. During investigation, accused Ajay Kumar and Sanjay Kumar were found to be juveniles and were accordingly produced before the Juvenile Justice Board.

20. In the court, sealed bundles containing the case material were opened. From one sealed bundle, one kapa was taken out, which the witness identified as the alleged murder weapon recovered at the pointing out of the appellant Sudarshan Gupta. The kapa was marked

as Material Exhibit-1 and the sealed bundle was marked as Material Exhibit-2. Two other sealed bundles were also opened in the court, from which two plastic jars were taken out on which the witness stated that the said jars contained the blood-stained cement pieces and plain cement pieces collected from the place of occurrence on 12.11.2015 and sealed by him. The plastic jars were marked as Material Exhibit-3 and sealed bundle was marked as Material Exhibit-4 and the other jar was marked as Material Exhibit-5 and sealed bundle was marked as Material Exhibit-6.

21. Thereafter, since provisions of the SC/ST Act were added in the case, therefore, investigation was handed over to the Circle Officer, Sitarganj.

22. PW11, Pratap Singh Pangti, who was posted as Circle Officer, Sitarganj, deposed that on 13.11.2015 he took over the investigation of the case. He stated that he collected the case diary and other relevant documents, recorded the statements of witnesses, and thereafter, on the basis of the evidence available on record, submitted charge-sheet against the appellants Sudarshan Gupta and Vijay Kumar. The charge-sheet was in his handwriting and was marked as Exhibit A-26. The witness also proved the forwarding memo/letter for sending the articles to FSL and the receipt of FSL, which were marked as Exhibits A-27 and A-28 respectively. He also verified the FSL report, which was marked as Exhibit A-29.

23. PW12, Radheram deposed that the caste certificate of deceased Janardan Prasad had been issued on 28.07.2020 by the Tehsildar Sitarganj. He proved the same on the basis of entries in the register, and the said caste certificate was marked as Exhibit A-30.

24. PW13 Smt. Shashi Prabha Tomar, Deputy Director, FSL Dehradun, deposed that upon examination of the kapa and blood-stained cement pieces, blood was present, which was marked as Material Exhibits 1 & 2. She further stated that human blood was found on the kapa, whereas the blood found on the cement pieces had disintegrated.

25. PW14, S.I. Dineshnath Mahant deposed that blood-stained and plain cement pieces were collected from the place of occurrence, placed in separate jars, sealed and memos were prepared, in which he identified his signatures. He further deposed that the alleged murder weapon was recovered at the instance of the accused and he identified his signatures on the recovery memo of the kapa.

26. Thereafter, the statements of the appellant Vijay Kumar under Section 313 Cr.P.C. were recorded. He largely denied all material put up against him and contended that he is innocent and has been falsely implicated. He further stated that he was not present at his house on the date of the incident.

27. Similarly, the appellant Sudarshan Gupta denied the allegations and evidence led against him and claimed innocence. He stated that on the date of the incident his leg was fractured. According to him, the deceased had earlier hit his leg with a motorcycle and, when he demanded money for his treatment, the deceased developed animosity against him and was falsely implicated in the present case.

28. In defence, the appellants examined DW1 Chandrapal, who deposed that on the day of Deepawali, i.e., 11.11.2015, the sons of Janardan Prasad, namely PW 5 Umesh Kumar and PW 1 Chandan Kumar, were consuming liquor on the rooftop and, during the course of

drinking, a quarrel ensued between them. According to the witness, when Janardan Prasad intervened, both of them were in an intoxicated condition. He further stated that PW 1 Chandan Kumar was carrying a kapa and during the altercation, blows were exchanged amongst themselves, as a result of which Janardan Prasad lost balance and fell from the rooftop onto the water tap below.

29. DW1, Chandrapal further deposed that PW 1 Chandan Kumar had earlier hit the leg of the appellant Sudarshan Gupta with his motorcycle, and when the appellant Sudarshan Gupta demanded money for treatment expenses, PW 5 Umesh Kumar and PW 1 Chandan Kumar falsely implicated the appellants Sudarshan Gupta and Vijay Kumar in the present case. The witness further stated that the appellant Sudarshan Gupta used to work as a chowkidar at the Begul Dam, where PW 1 Chandan Kumar had allegedly stolen fish. According to the witness, the appellant Sudarshan Gupta had caught PW 1 Chandan Kumar and brought him before one Prem Prakash, who thereafter had beaten and punished PW 1 Chandan Kumar, due to which they had enmity against the accused persons.

30. Thereafter, the learned trial court heard the learned counsel for the parties and, vide the impugned judgment and order dated 07.08.2023, convicted the appellants under Sections 302/34, 323/34 & 452 of IPC and sentenced them accordingly.

31. Heard Mr. R.S. Sammal, learned counsel for the appellants, as well as the learned State Counsel, and perused the entire record.

32. Learned counsel for the appellants would submit that the present case is one where the deceased sustained only a single injury

that too a lacerated wound & not incised wound, which clearly demonstrates that there was no repeated assault or repeated attempt to cause the death of the deceased. It was further submitted that the injured witnesses sustained only simple injuries.

33. Learned counsel also argued that there were no contusions or multiple lacerated injuries found on the injured persons and, therefore, the medical evidence is at variance with the prosecution case.

34. The learned counsel for the appellants would further submit that the prosecution case is absolutely false and fabricated and the appellants are innocent. According to the defence, the evidence on record clearly suggests that the deceased, Janardan Prasad, had accidentally fallen from the rooftop and sustained a fatal head injury from the tap below.

35. It was further argued that PW4, Girvaradhari, who was the witness of the recovery of the alleged murder weapon, did not support the prosecution case during trial. Consequently, the alleged recovery itself becomes doubtful and unreliable. Pointing out to the deposition of PW4, learned counsel for the appellants would submit that the witness was declared hostile after about one and a half year from his earlier deposition, thereby casting serious doubts on the prosecution case.

36. Learned counsel for the appellants would further submit that apart from the aforesaid doubtful recovery, there is no reliable evidence connecting the appellants with the alleged offence. It was also submitted that the appellants have already undergone long incarceration of more than four years.

37. Learned counsel for the appellants would further submit that there are material inconsistencies between the version narrated in the FIR and the testimonies of PW1 Chandan Kumar & PW5 Umesh Kumar.

38. An alternate argument was advanced by the learned counsel for the appellants by relying upon a judgment of the Hon'ble Supreme Court in the case of "Anbazhagan v. State of T.N.", (2024) 20 SCC 500 and particularly referred to paragraph nos.24, 27, 28, 34 and 66.13 thereof, and it is argued that the present case is one of a single blow resulting in death and, therefore, the conviction would not fall under Section 302 IPC. At best, according to the learned counsel for the appellants, the offence would fall within the ambit of Section 304 Part II IPC. Paragraphs 24, 27, 28, 34 and 66.13 thereof is being extracted hereunder for ready reference:-

"24. Bearing in mind the test suggested in the aforesaid decision and also bearing in mind that our legislature has used two different terminologies "intent" and "knowledge" and separate punishments are provided for an act committed with an intent to cause bodily injury which is likely to cause death and for an act committed with a knowledge that his act is likely to cause death without intent to cause such bodily injury as is likely to cause death, it would be proper to hold that "intent" and "knowledge" cannot be equated with each other. They connote different things. Sometimes, if the consequence is so apparent, it may happen that from the knowledge, intent may be presumed. But it will not mean that "intent" and "knowledge" are the same. "Knowledge" will be only one of the circumstances to be taken into consideration while determining or inferring the requisite intent.

27. Thus, while defining the offence of culpable homicide and murder, the framers of IPC laid down that the requisite intention or knowledge must be imputed to the accused when he committed the act which caused the death in order to hold him guilty for the offence of culpable homicide or murder as the case may be. The framers of IPC designedly used the two words "intention" and "knowledge", and it must be taken that the framers intended to draw a distinction between these two expressions. The knowledge of the consequences which may result in the doing of an act is not the same thing as the intention that such

consequences should ensue. Except in cases where mens rea is not required in order to prove that a person had certain knowledge, he “must have been aware that certain specified harmful consequences would or could follow.” (Russell on Crime, Twelfth Edn., Vol. 1 at p. 40.)

28. This awareness is termed as knowledge. But the knowledge that specified consequences would result or could result by doing an act is not the same thing as the intention that such consequences should ensue. If an act is done by a man with the knowledge that certain consequences may follow or will follow, it does not necessarily mean that he intended such consequences and acted with such intention. Intention requires something more than a mere foresight of the consequences. It requires a purposeful doing of a thing to achieve a particular end. This we may make it clear by referring to two passages from leading textbooks on the subject.

34. Sections 299 and 300IPC deal with the definition of “culpable homicide” and “murder”, respectively. In terms of Section 299, “culpable homicide” is described as an act of causing death: (i) with the intention of causing death, or (ii) with the intention of causing such bodily injury as is likely to cause death, or (iii) with the knowledge that such an act is likely to cause death. As is clear from a reading of this provision, the former part of it emphasises on the expression “intention” while the latter upon “knowledge”. Both these are positive mental attitudes, however, of different degrees. The mental element in “culpable homicide”, that is, the mental attitude towards the consequences of conduct is one of intention and knowledge. Once an offence is caused in any of the three stated manners noted above, it would be “culpable homicide”. Section 300IPC, however, deals with “murder”, although there is no clear definition of “murder” in Section 300IPC. As has been repeatedly held by this Court, “culpable homicide” is the genus and “murder” is its species and all “murders” are “culpable homicides” but all “culpable homicides” are not “murders”. (See Rampal Singh v. State of U.P. [Rampal Singh v. State of U.P., (2012) 8 SCC 289 : (2012) 3 SCC (Cri) 860])

66.13. In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II IPC.”

39. Thus, on the basis of the aforesaid, the learned counsel for the appellants would submit that there is single injury which would

lead to the inference of guilty knowledge and that the prosecution has not been able to prove its case beyond reasonable doubt and thus contended that the impugned judgment and order cannot be sustained and deserves to be set aside, and in the alternative submitted that the conviction be altered from one under Section 302/34 to Section 304 Part II/34 of IPC in the peculiar facts and circumstances of the case.

40. *Per contra*, learned counsel for the State would submit that in the medical examination report of PW 1 Chandan Kumar, there is injury on the occipital region of the said injured, there is punctured wound on cheek measuring 1/1cm x 1/1 cm. The testimony of the injured witnesses cannot be ignored. The statements of both the injured persons are consistent with the prosecution case. The presence of the accused persons is established at the place of occurrence.

He would also submit that there is not only one blow to the deceased, but he was also thrown down from the rooftop. He would further submit that the testimony of the hostile witness PW4 is to be seen till it corroborates the prosecution case.

He would also submit that the intention to kill was clearly present. However, in reply to the alternative arguments of the learned counsel for the appellants, he could not deny that the act was committed in a sudden fight without having taken undue advantage by the appellants as per Exception 4 to Section 300 of IPC, and he also could not deny that the from the record that there is nothing to suggest that there was any enmity to cause such a grave offence. He would further submit that the FIR is prompt.

41. Having heard the rival submissions advanced by the learned counsel for the parties and upon perusal of the record, it is evident that the injured eyewitnesses have clearly deposed regarding

the manner in which the appellant Sudarshan Gupta, inflicted the fatal blow upon the deceased, Janardan Prasad. The testimonies of these witnesses, who are not only eyewitnesses to the occurrence but are themselves injured witnesses, stand duly corroborated by the medical evidence available on record. The injuries sustained by PW1 Chandan Kumar and PW5 Umesh Kumar are fully supported by their respective medical examination reports. Thus, the prosecution has successfully established the commission of the offence insofar as the fatal blow inflicted by the appellant Sudarshan Gupta is concerned. The prosecution has also established the injuries caused by the appellant Vijay Kumar.

42. However, the only aspect requiring consideration is whether the alternative plea raised on behalf of the appellants, so far as the single blow upon the deceased Janardan Prasad would not amount to murder punishable under Section 302 IPC, but would instead fall within the ambit of Section 304 Part II IPC, deserves acceptance.

43. A perusal of the record as well as the medical evidence reveals that PW-7, the doctor who conducted the post-mortem examination, has categorically stated that there was only one injury on the head of the deceased and no other external injury was found on the body of Janardan Prasad at the time of post-mortem examination.

44. The law on this aspect has been elaborately considered by the Hon'ble Supreme Court in the judgment *Anbazhagan (supra)*, wherein the distinction between an offence punishable under Section 302 IPC and one falling under Section 304 Part II IPC has been clearly

explained. The relevant paragraphs thereof have already been extracted hereinabove.

45. From the evidence on record, it is clear that on the night of 11.11.2015, there appears to be a sudden fight, which led to the aforesaid blow to be inflicted on the head of the deceased Janardan Prasad by the appellant Sudarshan Gupta. It is apparent that though the appellant had the knowledge that such a blow could prove fatal, the intention to cause death cannot be conclusively gathered from the facts and circumstances of the case.

46. Moreover, the case appears to fall within Exception 4 to Section 300 IPC, as the occurrence arose out of a sudden fight and there is nothing on record to indicate that the appellant acted in a cruel or unusual manner or took undue advantage.

47. In view of the aforesaid discussion, this Court is of the view that the conviction and sentence of the appellants under Sections 452, 323 read with 34 IPC does not warrant any interference and accordingly, the conviction and sentence of the appellants under Sections 452, 323 read with 34 IPC is upheld.

48. In so far as the conviction and sentence under Section 302 read with 34 IPC is concerned, this conviction deserves to be altered to 304 Part II IPC. According to the prosecution, the appellant Sudarshan Gupta had inflicted the fatal blow with the Kapa, therefore, the appellant Sudarshan Gupta is liable to be convicted under Section 304 Part II IPC and the appellant Vijay Kumar is liable to be convicted under Section 304 Part II read with 34 IPC.

49. The appellant Sudarshan Gupta is convicted under Section 304 Part II IPC. The appellant Vijay Kumar is convicted under Section 304 Part II read with 34 IPC.

50. Having considered the nature of offence, its origin and other attending factors, we are of the view that the sentence of 7 years rigorous imprisonment under Section 304 Part II IPC would serve the interest of justice. Consequently, the appellant Sudarshan Gupta is sentenced to rigorous imprisonment for a period of 7 years under Section 304 Part II IPC. The appellant Vijay Kumar is sentenced to rigorous imprisonment for a period of 7 years under Section 304 Part II read with 34 IPC.

51. The appeal is partly allowed.

52. The impugned judgment and order dated 07.08.2023 is modified to the extent as aforesaid.

53. It has been brought on record that the appellants have already undergone approximately four years of incarceration. They shall serve the remaining part of the modified sentence in accordance with law.

54. Let a copy of this judgment along with the original records be sent to the trial court concerned.

(Siddhartha Sah, J.)
03.06.2026

(Ravindra Maithani, J.)
03.06.2026