

HIGH COURT OF ALLAHABAD**Bench: Justices Rajiv Gupta and Shiv Shanker Prasad****Date of Decision: 24th May 2024**

CRIMINAL APPELLATE JURISDICTION

GOVERNMENT APPEAL NO. 1974 OF 1983

STATE ...APPELLANT**VERSUS****NANDA AND OTHERS ...RESPONDENTS****Legislation:**

Sections 302, 304, 307, 323, 324, 120B of the Indian Penal Code (IPC)

Sections 96, 99, 100, 105, 313 of the Cr.P.C.

Subject: Appeal arising out of acquittal in a case involving allegations of murder and assault. The central issue revolves around whether the respondents acted in private defence and if they exceeded their right.

Headnotes:

Criminal Law – Right of Private Defence – Applicability and Excess – The accused-respondents were initially acquitted by the trial court for charges under Sections 302, 307, 324, 323, IPC, among others. The High Court analyzed the right of private defence under Sections 96 to 106 of the IPC, emphasizing that while individuals are entitled to defend themselves, the force used must not be disproportionate to the threat faced. The accused in this case exceeded their right of private defence. [Paras 84-90]

Private Defence – Ingredients and Burden of Proof – The Court elucidated that to claim the right of private defence, there must be a reasonable apprehension of danger, and the force used must not be greater than necessary. It is established that a person faced with an imminent threat is not expected to modulate their defence step by step with exact precision. The accused need to prove their right to private defence by a preponderance of probabilities. [Para 85-88]

Exception to Murder – Sudden Fight and Heat of Passion – The incident occurred suddenly without premeditation during a quarrel. The High Court found that the accused exceeded their right of private defence, but the act fell

under the fourth exception to Section 300 IPC, converting the charge from murder to culpable homicide not amounting to murder. [Para 90-91]

Decision – Conviction under Section 304 Part-I IPC – The High Court reversed the trial court's acquittal. The accused-respondents Ram Shiroman, Ram Lagan, and Ram Janak were convicted under Section 304 Part-I IPC and sentenced to six years rigorous imprisonment and a fine of Rs. 10,000 each. The appeal concerning the deceased accused Nanda was abated. [Para 96-97]

Referred Cases:

- Jai Deo v. State of Punjab (1963 Cr.L.J. 493)
- Darshan Singh v. State of Punjab & Another (2010) 2 SCC 333
- Genda Singh & Others v. State of Uttar Pradesh (2008) 11 SCC 791

Representing Advocates:

A.G.A.,B.P. Gupta,Bhagwat Prasad,Prakhar Srivastava,S.N.Mulla for the State

T. Rathore,Archit Mandhyan,Markanday Singh,Nikhil Kumar,Pramod Kumar Vishwakarma,Rishabh Kumar,S.S. Rathore for the Respondents

JUDGEMENT

(Delivered by Hon. Shiv Shanker Prasad, J.)

1. Heard Mr. J.P. Tripathi, learned A.G.A. for the State and Mr. Nikhil Kumar, learned counsel for surviving accused-respondents as well as perused the record.

2. The instant Government Appeal is directed against the judgment and order dated 16th May, 1983 passed in Sessions Trial No. 138 of 1981 (State Vs. Nanda & 3 Others) arising out of Case Crime No. 106/81 of 1981 (71 of 1981), under Sections 324, 307 and 302 of I.P.C., Police Station-Machhali Shahr, District-Jaunpur, whereby the accused Nanda, Ram Siromani, Ram Janak, Ram Lagan have been acquitted of the charges levelled against them as the prosecution has failed to prove its case against the accused beyond reasonable doubt.

3. During the pendency of the instant Government Appeal, one of the accused-respondent, namely, Nanda has already expired and the instant Government Appeal qua accused-respondent Nanda has been abated by this Court vide order dated 6th October, 2021.

4. The prosecution case as borne out from the records of the present government appeal is that on a written report given by the informant/P.W.-1 Ram Murat (Ram Murti Patel) dated 8th July, 1981 (Exhibit-ka/1), first information report (Exhibit-Ka/7) came to be registered on 8th July, 1981 at 1650 hrs. (04:50 p.m.) at Police Station-Machhali Shahr, District-Jaunpur against the accused Nanda, Ram Siromani, Ram Janak, Ram Lagan under Sections 324, 307 and 302 of I.P.C. In the written report, it has been alleged by the informant/P.W.-1 that he was a resident of Viillage- Madhupur, Police Station- Badshahpur, Ditriect-Jaunpur. He lived with his family at Nandlal house, who was his maternal grandfather situated in Village Bhatadih, Police Station-Machhili Shahr, District-Jaunpur. The house of his cousin maternal uncle, namely, Jagannath was adjacent to his house. The sump (Nabdan) of his house was on the east side of the house. The sump (Nabdan) used to flow in front of the house of accused Nanda and then turn towards north going towards the fields. On 8th July, 1981, at around 01:00 p.m., when the accused Nanda along with his sons, namely, Ram Janak, Ram Shiromani and Ram Lagan was blocking the drain (Nali) of their sump, Jagannath forbade them, on which the accused ran towards him to beat him then Jagarnath raised an alarm, on which the informant/P.W.-1, his father-in-law Nanda Lal, his mother Smt. Piyari, mother of Jagarnath, namely, Smt. Angani rushed to rescue him. In the meanwhile, the accused Ram Janak, Ram Shiromani and Ram Lagan, who had pushed maternal grandfather of the informant, namely, Nand Lal on the ground, also started assaulting him. The accused Ram Lagan with a stick, whereas the accused Ram Shiromani and Ram Janak assaulted the maternal grand-father of the informant with knives. The accused Nanda assaulted his mother with Lathi due to which she sustained injury on her back. The accused Ram Janak assaulted the mother of Jagarnath with knife due to which she sustained injuries on her hand. On hearing the alarm of informant's side, Ram Bahore and Babu Lal @ Kabu arrived and saw the occurrence and they scolded the accused. Due to the injuries caused by the accused, his maternal grand-father Nand Lal and his maternal uncle Jagarnath died on the spot. Their dead bodies were taken to the Police Station with the help of villagers through Eekka.

5. After lodging of the first information report, P.W.-9 Rajendra Singh Chauhan, who was the then Station House Officer of Police Station-Machhalishahr, prepared the inquest report of the dead bodies of the deceased Nand Lal and Jagarnath and other papers required for post-mortem. After keeping the dead bodies of both the deceased in sealed covers, the same was sent to the Mortuary for post-mortem through Constable Jata Shanker Mishra (P.W.-8) and Ram Shanker Singh. P.W.-9 the Investigating Officer, namely, Rajendra Singh Chauhan recorded the statement of informant/P.W.-1 at the Police Station. Thereafter P.W.9 reached the place of occurrence at 09:00 p.m. in the night for searching the accused. On the next day i.e. 9th July, 1981 in morning, P.W.-9 recorded the statement of Smt. Angana, Piyari, Ram Bahor and Babu Lal. He prepared the site plan. He also collected the blood stained earth and plain earth from the place of occurrence and prepared its recovery memo (Exhibit-ka/22) Blood was also found at the sitting place/room (Baithaka) of house of accused Nanda, which was collected by P.W.-9 and a recovery memo was prepared which was marked as Exhibit-ka/23. The accused Nanda was arrested on 9th July, 1981 whereas the other accused surrendered before the court concerned and they were sent to jail.

6. The injured Ram Murat had been sent to the Primary Health Centre, Machhalishahr for medical examination by P.W.-9, where he was medically examined by Dr. B.K. Singh (P.W.-6) on 8th July, 1981 at 05:00 p.m. who found following injuries on his person:

“1. Lacerated wound 4 cm x 1.2 cm x scalp deep, middle of head. Margin torn, jagged, irregular, swollen and bleeding present.

2- Lacerated wound 2.4 cm. x 04 cm x scalp deep, left side head 11 cm above the left ear. Margin torn jagged irregular and bleeding present.

3- Lacerated wound 1.5 cm x 0.4 cm x bone deep right side chin margin torn jagged irregular swollen and bleeding present.

4- Punctured wound rounded diameter 0.2 cm depth 2.4 cm right side back 2 cm below lower end of scalp 1.4 cm. deep upward and forward margin lacerated. Slit like opening bleeding present.

5- Abrasion 6 cm. x 1.5 cm back of left forearm. Lower part. Bleeding present.”

7. P.W.-6 has opined that the first three injuries were caused by blunt object like lathi. Injury no.4 was caused by pointed weapon. The last injury was opined to have been caused by friction.

8. Other injured, namely, Smt. Piyari and Smt. Angana have also been examined by the same doctor i.e. Dr. B.K. Singh (P.W.-6) on the next day of incident i.e. 9th July, 1981 at 11:30 a.m. and 12:00 noon respectively. P.W.-6 Dr. B.K. Singh found only one swelling 2 cm x 0.4 cm right side buttock region upper part on the person of Smt. Piyari and he has opined that the same has been caused by blunt object, which is simple in nature. On the person of Smt. Angana, P.W.-6 has found a punctured wound 0.3 cm x 0.1 cm right palm back lateral surface. He also found no bleeding and margin of wound was joint with lymph of blood and margin was clean cut. He opined that the said injuries are simple in nature and has been caused by some pointed weapon.

9. An autopsy of the deceased Jagarnath has been conducted by Dr. A.K. Sarin (P.W.-7) on 9th July, 1981 at 11:30 p.m. and in the autopsy report (Exhibit-ka/2), the cause of death of the deceased Jagarnath has been reported to be shock and haemorrhage as a result of following ante-mortem injuries:

“1- Lacerated wound 2.5 cm x 0.5 cm x scalp deep on top of head. 13 cm. on above the root of nose.

2- Penetrating wound with sharp margins 2.5 cm x 1 cm x cavity deep on the left back of chest just medial to medial border of scapula 17 cm. below the left shoulder joint.”

On internal examination of body of the deceased Jagarnath, P.W. 7 found six ounce of blood in the left side of chest. The left pleura and lung was lacerated. He also found that there was a punctured wound 1.5 cm. x 1 cm in the heart.

10. Dr. A.K. Sarin (P.W.-7) has also conducted the autopsy of the deceased Nand Lal on 9th July, 1981 at 12:30 p.m. and in the autopsy report (Exhibit-ka/3), the cause of death of the deceased Nand Lal has been reported to be shock and haemorrhage as a result of following ante-mortem injuries:

“1-Lacerated wound 1 cm x 0.3 cm x bone deep on right side of scalp 4.5 cm above the right ear.

2- Abrasion 1 cm x 0.4 cm over the left side neck 1.5 cm behind the left ear.

3- Penetrating wound 3 cm x 0.5 cm x cavity deep on left side chest 1 cm left mid line. 18 cm above the posterioriliac crest.”

On internal examination of the body of deceased Nand Lal, P.W.-7 found 1 litre of blood in the left side of chest. He also found that the left pleura and lung was lacerated.

11. After conclusions of the statutory investigation under Chapter XII Cr.P.C. Rajendra Singh Chauhan (P.W.-9) has submitted the charge-sheet (Exhibit-Ka/24) against all the accused persons, namely, Nanda, Ram Janak, Ram Lagan and Ram Siromani.

12. On submission of charge-sheet, the concerned Magistrate took cognizance in the matter and committed the case to the Court of Sessions by whom the case was to be tried. On 7th November, 1981, the concerned Court framed charges against the accused-persons under Sections 323, 324/34, 323/34, 302/34.

13. The charges were read out and explained in Hindi to the accused, who pleaded not guilty and claimed to be tried.

14.. The trial started and the prosecution has examined as many as 14 witnesses, who are as follows:-

1

Ram Murat (complainant) (cousin nephew and grand-son of the deceased Jagarnath and Nand Lal respectively)/eye witness as per the prosecution

P.W.-1

2

Ram Bahor (resident of village of both the deceased)/another independent eye witness as per the prosecution

P.W.-2

3

Piyari Devi, daughter and cousin sister of both the deceased Nand Lal and Jagarnath respectively, injured eye-witness of the incident as per the prosecution

P.W.-3

4

Smt. Angana, mother of the deceased Jagarnath/another injured eye-witness of the incident as per the prosecution

P.W.-4

5

Babu Lal, resident of village of both the deceased/independent eye-witness of the incident, as per the prosecution

P.W.-5

6

Dr. B.K. Singh, Medical Officer, P.H.C., Macchalishahr, Jaunpur, who medically examined the injured Smt. Ram Piyari, Angana Devi and Raj Murat/Ram Murat, Smt. Indrani Devi

P.W.-6

7

Dr. A.K. Sarin, Orthopaedic Surgeon, District Hospital, Jaunpur, who conducted the post-mortem of the bodies of both the deceased Jagar Nath and Nand Lal

P.W.-7

8

Constable Jata Shanker Mishra, who took the dead bodies of both the deceased to the Mortuary along with Constable Ram Shanker Singh

P.W.-8

9

Sub-Inspector Rajendra Singh Chauhan, who investigated the case

P.W.-9

10

Devi Prasad, Clerk in the office of Chief Medical Officer, Jaunpur

P.W.-10

11

Constable Jagarnath Tiwari

P.W.-11

12

Moti Ram, who was one of the witness of recovery memos prepared by the Investigating Officer

P.W.-12

13

Constable Udhaybhan Pandey, the then incharge of Maalkhana Moharir, Sadar Jaunpur

P.W.-13

14

Sub-Inspector Amarjeet Singh Chauhan

P.W.-14

15. The defence has also adduced two witnesses in support of their case:

1

Dr. R.P. Singh, Medical Officer, District-Jail, who medically examined the accused Nanda, Ram Shiromani, Ram Lagan

D.W.-1

2

Jokhai Singh, the then Village Pradhan, Village Bhattadeeh, Police Station-Machhalisharh, District-Jaunpur

D.W.-2

16. The prosecution in order to establish the charges levelled against the accused-appellant has relied upon following documentary evidence, which were duly proved and consequently marked as Exhibits:

1

Written report dated 8th July, 1981

Ex.Ka./1

2

First Information Report dated 8th July, 1981

Ex.Ka./7

3

Recovery memo of "Gamchha"

Ex. Ka./31

4

Recovery memo of "Gamchha"

Ex. Ka/32

5

Recovery memo of blood stained earth and plain earth dated 9th July, 1981

Ex.Ka./22

6

Recovery memo of blood stained earth and plain earth dated 9th July, 1981

Ex.Ka./23

7

Post-mortem report of deceased Jagarnath dated 9th July, 1981

Ex.Ka./2

8

Post-mortem report of deceased Nand Lal dated 9th July, 1981

Ex.Ka./3

9

Site Plan with index dated 8th July, 1981

Ex.Ka./21

10

Report of chemical examiner dated 26th October, 1981

Ex.Ka./33

17. The defence in order to discard the prosecution case and also to establish to be a cross case has produce following documentary evidence, which have been marked as exhibits:

1

Medical examination report of accused Nanda dated 11th July, 1981

Ex.Kha./2

2

Medical examination report of accused Ram Siromani dated 14th July, 1981

Ex.Kha./3

3

Medical examination report of accused Ram Lagan dated 14th July, 1981

Ex. Kha./4

18. After completion of the prosecution evidence, statements of the accused-respondents Nanda, Ram Janak, Ram Lagan and Ram Siromani were recorded under Section 313 Cr.P.C. The accused-respondent Nanda, while giving their statements in the Court, denied the prosecution evidence. In counter, it has been stated by the accused that sitting place (Baithaka) of his house is situated towards north east of the house of deceased Nand Lal and Jagarnath. There was a charani (manger) (fodder eating pot) towards south west. When the deceased Jagarnath tried to demolish the said charani (manger), wife of accused Nanda, namely, Smt. Indrani objected on which the deceased Jagarnath started abusing her. Wife of accused Nanda, namely, Indrani also abused him. Consequently, the deceased Nand Lal, Jagarnath and the informant/PW..-1 Ram/Raj Murat came to the house of accused Nanda with lathi. They assaulted Indrani with lathi on her head. When the accused Nanda tried to rescue his wife, they assaulted him. When the accused Ram Lagan and Ram Siromani started rescuing the accused Nanda and his wife Indrani, the deceased Nand Lal, Jagarnath and Ram/Raj Murat

(first informant) also assaulted them by lathi then the accused Ram Lagan and Ram Siromani wielded lathi and ballam in defence, on account of which the deceased Nand Lal, Jagarnath and Ram/Raj Murat (first informant) sustained injuries. During the above scuffle (marpeet), the injured Agana and Smt. Ram Piyari also came nearby and sustained injuries. When the accused Nanda was going to the police station with a written report to lodge the first information report, the Investigating Officer apprehended him on the way and his report was snatched and thrown by him on the way. His report was not written by the Police. He also sustained injuries in the alleged scuffle (marpeet). His medical examination was conducted in the jail. His wife Indrani has been paralysed. The accused Ram Lagan and Ram Siromani reiterated the same version as stated by the accused Nanda. Fourth accused Ram Janak denied his involvement in the alleged crime by stating that at the time of occurrence, he was not present.

19. The medical examination of wife of the accused Nanda, namely, Indrani was conducted by same doctor, who has medically examined the injured Ram/Raj Murat (first informant), injured Smt. Angana and Smt. Ram Piyari i.e. Dr. B.K. Singh (P.W.-6) on 10th July, 1981 at 03:00 p.m. He found following injuries on the person of Indrani:

“1. Lacerated wound 1.3 cm x 0.3 cm x scalp deep on right side of head 10 cm. above right ear. Margin torn jagged irregular, swollen pus was present with swelling 3.8 cm x 2.4 cm. around the injury. P.W.-6 advised X-ray. According to him, the injury found on the person of Indrani was about 48 hours old and caused by blunt object.”

20. The accused Nanda was medically examined in jail by D.W.-1 Dr. R.P. Singh, Medical Officer District Jail, Jaunpur on 11th July, 1981 at 11:00 a.m., who found following injuries on his person:

“1- Abraded contusion obliquely on the right side of back extending downwards medially by from the inferior angle of scapular towards back bone.

2- Lacerated wound dressing done on the back of left forearm 3 ½ “ x 1/4” x muscle deep one inch above wrist joint.

3- Traumatic swelling 2" x 1/2" on the back of left thumb."

D.W.-1 opined that all injuries are simple in nature and the same have been caused by blunt object.

21. D.W.-1 also medically examined the accused Ram Siromani in jail on 14th July, 1981 at 10:30 a.m. and he found following injuries on his person:

"1. Contusion 5" x 1/2" obliquely on the left side of back over scapular region.

2. Contusion 2"x1/2" transversely on the left side of back 2" below inferior angle of scapula.

3. Contusion of black colour 3" x 1" transversely on the right side of back 7" below inferior angle of right scapula.

4- Contusion 2" x 1" on the right side of back transversely 1/2" above injury no.3.

5- Abrasion 2" x 1/2" scabbed obliquely on the outer part of left arm 6" below shoulder joint."

Qua injuries found on the body of accused Ram Siromani, D.W.-1 opined that all injuries simple, which have been caused by blunt object about 5-6 days back.

22. The accused Ram Lagan has also been examined by D.W.-1 on 14th July, 1981 at 10:45 a.m. in District Jail Janpur and following injuries were found on his person:

"1- Multiple scabbed abrasion in the area of 3" x 1" on the right shoulder.

2- Multiple scabbed abrasion (in some scabbing shred off) in the area of 3" x 2" on the right side of back 2" below nape of neck.

3- Scabbed abrasion in the area of 1" x 1" on the left side of back 1" below nape of neck 1/2" lateral to vertebral column.

4- Scabbed abrasion in the area of 3" x 2" on the left arm on inner aspect 3" below axilla with scabbing shredding off.

5- Abrasion scabbed 1/2" x 1/4" on the inner part of right leg just above medial malleolus."

Doctor i.e. D.W.-1 found that injuries on the body of accused Ram Lagan were simple and caused by friction against hard substance and blunt weapon and the same has been caused about 5 to 6 days back.

23. On the basis of above evidence oral as well as documentary adduced during the course of trial, while accepting the argument of the learned counsel for the accused that the murder of both the deceased has been committed in private defence, the trial court has recorded its finding that all the eye witnesses stated that Maarpeet (quarrel) took place for more than two minutes. They also stated that several blows were given to the person of the deceased Jagarnath and Nand Lal and because of that both the deceased would have received aforesaid meager number of injuries. The circumstance of the case read with the injuries on the bodies of both the deceased Nand Lal and Jagarnath will go to show that there could not be any intention of the accused to commit murder of both the deceased. On the basis of such finding, the trial court while accepting the plea of the learned counsel for the accused that the murder of both the deceased has been committed in private defence by the accused, has opined that during the maarpeet, the wife of the accused Nanda, namely, Indrani had sustained injuries on the top of her head. Therefore, seeing the injuries on her/his vital part of the body on any person, the relatives of such person like husband, brother son and sister etc. could

have an apprehension in their mind that in case they did not exercise their right of private defence, a grievous injury or death would be the ultimate result. In such circumstances, any person exercising the right of private defence of body has got a right to voluntary cause death.

24. The trial court has further recorded that the nature of injuries on the person of both the deceased Jagarnath and Nand Lal indicated that the accused had not exceeded his right more than what was actually required. Throughout it was not the case of the prosecution during the course of trial that the medical examination report qua the injury on the person of Smt. Indrani, which has been prepared by the same doctor i.e. P.W.-6 Dr. B.K. Singh, who also medically examined the prosecution witnesses i.e. first informant/P.W.-1 Ram/Raj Murat, Smt. Piyari and Smt. Angana, was fabricated. As such, the injury report of Smt. Indrani cannot be doubted. In view of those circumstances, the trial court has expressed its opinion that the accused had every right to exercise their right of private defence of body and they had not exceeded it. The injuries inflicted by the accused were sufficient and not in excess of the right of defence.

25. Then, the trial court has recorded that the defence has satisfactorily explained qua the injuries found on the person of Smt. Piryari and Smt. Agana. Both of them had one injury each. The trial court considering the statements of the accused Nanda, Ram Siromani and Ram Lagan given under Section 313 Cr.P.C. and relying upon their injuries found on their bodies by D.W.-1 in Jail, has opined that the possibility as stated by the accused that the injuries sustained by both the deceased during the course of Maarpeet resulting in their death, have been caused accidentally and not intentionally in private defence, cannot be ruled out.

26. So far as the injuries sustained by the first informant/P.W.-1 Ram/Raj Murat is concerned, the trial court has recorded that it was stated that he was the aggressor, hence he could have suffered injuries found on his person during the Maarpeet. Such circumstance also support the defence theory of private defence. The trial court has disbelieved testimony of first informant/P.W.-1 Raj/Ram Murat while observing that he has made improvement in the prosecution story. The first information report was not lodged by him as the same appears to have been dictated by the Investigating Officer. Even though P.W.-1 tried to support the prosecution story but he has not explained the injuries on the person of the accused and their family member, namely, Smt. Indrani. Similarly, the trial court has also discarded the

testimonies of other prosecution witnesses i.e. P.W.-2, P.W.-3, P.W.-4, P.W.-5, who are alleged to be eye-witnesses of the incident.

27. Relying upon the judgment in the case of State of U.P. VS. Ghanshyam, the trial court has opined that it is clear that the accused did not inflict more injury than what was necessary. Babu Lal (P.W.-5) is simply exaggerating his version are trying to give a colour of atrocity to the accused.

28. On the basis of such finding and observation, the trial court has come to the conclusion that the prosecution version was not at all reliable. The accused had exercised the right of private defence of their bodies and their family member. They were within their rights. They had not exceeded. Therefore, the trial court had found that prosecution has failed to prove its case. The accused therefore, deserve acquittal. Consequently, the trial court has acquitted the accused Nanda, Ram Siromani, Ram Lagan and Ram Janak of the charges levelled against them.

29. Being aggrieved with the impugned judgment and order of conviction passed by the trial court, the State has preferred the present Government Appeal against the impugned judgment of acquittal of accused-respondents, namely, Nanda, Ram Siromani, Ram Lagan and Ram Janak by the trial court.

30. Assailing the impugned judgment and order of acquittal, , the learned A.G.A. for the State in the present government appeal, has advanced following submissions:

(i). The first information report (Exhibit-ka/7) lodged on 8th July, 1981 at 04:50 p.m. on the basis of written report given by the first informant/P.W.-1 Ram/Raj Murat on 8th July, 1981 is prompt first information report.

(ii) There is clinching and direct evidence against the accused by way of testimonies of ocular-cum-injured witnesses i.e. P.W.-1 Raj/Ram Murat, P.W.-3 Smt. Piyari Devi and P.W.-4 Smt. Angana Devi, independent eye witnesses i.e. P.W.2 Ram Bahor and P.W.-5 Babu Lal and the same has also been supported by the medical and other material evidence as available on trial court record.

(iii) Since the incident took in broad day light i.e. at 01:00 p.m., all the prosecution witnesses have fully identified the accused persons while commissioning of the alleged offence and also assigned their role in such offence successfully.

(iv) There is strong motive for the accused-respondents to commit the alleged offence including the heinous murder of both the deceased Nand Lal and

Jagarnath, as the accused annoyed with the sump (Nabdan) of the deceased Nand Lal, which used to flow in front of the house of accused Nanda and then turning north heading towards the fields and also there were village parti bandi between both the families.

(iv) Except the minor inconsistencies/contradictions, the testimonies of all the prosecution witnesses i.e. P.W.-1 to P.W.-5 are throughout consistent either in their-examination-in-chief and also in their cross-examinations, which have also been supported by the other prosecution witnesses like Investigating Officer, who conducted the investigation of the case and the Doctor who conducted the post-mortem examinations of the bodies of both the deceased and the Doctor who conducted the medical examinations of the three injured prosecution witnesses.

(v) The site plan and the recovery memos of blood stained earth and plain earth and Gamchha have also supported the prosecution case.

(vi) The defence has failed to establish its theory of private defence. It is not a cross case in which it is alleged by the defence that they have committed the offence in private defence. It has not been established by the accused-respondent that the injuries on the person of the accused and Smt. Indrani have been inflicted by the members of prosecution side in the same incident as alleged by prosecution. It is also pertinent to mention here that with regard to the incident in which such injuries have been sustained by accused, no complaint or first information report was lodged by the accused at the police station concerned.

vii. The medical examinations of accused have not been been conducted through Majroobi Chiththi of police station concerned. Even otherwise, the medical examination reports of accused have been prepared in private capacity after two days of the actual incident.

31. On the basis of the aforesaid submissions, learned A.G.A. submits that as this is a case of direct and clinching evidence, the testimonies of eye witnesses, namely, P.W.-1 to P.W.-5 who are consistent throughout in their examination-in-chief and the cross-examinations inspire confidence in the facts and circumstances of the case and they have disclosed about the commissioning of the offence of murder of the deceased Jagarnath and Nand Lal and the same has also been supported by the medical evidence in all material particulars, therefore, trial court has committed gross error in acquitting the accused-respondents. Despite the defence having been failed to establish its case of self-defence and the trial court has recorded its finding

that the accused have rightly exercise their right of private defence, the trial court while ignoring the entire evidence produced by the prosecution, has passed the impugned judgment, which suffers from illegality and perversity. As such the same is liable to be set aside and the accused-respondents are liable to be convicted for the offence punishable under Section 302 I.P.C. Hence, the instant Government Appeal filed by the State is liable to be allowed.

32. On the other-hand, learned counsel for the accused-respondents have advanced following counter submissions:

(i). The first information report lodged on 8th July, 1981 at 04:50 p.m. on the basis of written report of the first informant/P.W.-1 dated 8th July, 1981 is ante time.

(ii) Since the Investigating Officer/P.W.-9 has not indicated the sump (Naabdan) of the deceased Nand Lal in the site plan (exhibit-ka/21), which was being demolished by the accused persons including accused Nanda due to which the alleged incident took place, the genesis of the crime is doubtful.

(iii) Non recovery of crime weapon i.e. knife/lathi/ballam or any other weapon makes the prosecution case doubtful.

(iv). The manner in which the injuries of the accused Nanda, Ram Siromani and Ram Lagan as also the injury of wife of accused Nanda, namely, Indrani have been caused, has not been explained by the prosecution.

(iv). As per the statement of P.W.-6 Dr. B.K. Singh, who medically examined the first informant/P.W.-1 Raj/Ram Murat, P.W.-3 Smt. Ram Piyari and P.W.-4 Smt. Agana as also the wife of accused Nanda, Smt. Indrani, in his cross-examination has stated that the first informant/P.W.-1 has sustained four injuries, whereas P.W.-3 Ram Piyari and P.W.-4 Smt. Angana have sustained one injury each. Such injuries on the person of P.W.-1, P.W.-3 and P.W.-4 have been caused at about 11:00 a.m. on 8th July, 1981. On the other-hand as per the prosecution case, the incident occurred on 8th July, 1981 at about 1:00 p.m. On the basis of aforesaid testimony of P.W.-6, it is urged that the time of incident has been changed by the prosecution and has reported that the incident occurred at 01:00 p.m.

(v). The sitting place (Baithaka) of the house of accused Nanda is situated towards north east of the house of deceased Nand Lal and Jagarnath. There was a charani (manger) (fodder eating pot) towards south west. When the deceased Jagarnath tried to demolish the said charani (manger), wife of

accused Nanda, namely, Smt. Indrani objected on which the deceased Jagarnath started abusing her. Wife of accused Nanda, namely, Indrani also abused him, as a result whereof the deceased Nand Lal, Jagarnath and the informant/PW..-1 Ram/Raj Murat came with lathi and assaulted Indrani with lathi on her head. When the accused Nanda tried to rescue his wife, they assaulted him also. Similarly, when the accused Ram Lagan and Ram Siromani started rescuing the accused Nanda and his wife Indrani, the deceased Nand Lal, Jagarnath and Ram/Raj Murat (first informant) also assaulted them by lathi. Then the accused Ram Lagan and Ram Siromani wielded lathi and ballam (bhala) in defence, on account of which the deceased Nand Lal, Jagarnath and Ram/Raj Murat (first informant) sustained injuries. During the aforesaid Maarpeet, P.W.-3 Ram Pryari and P.W.-4 Smt. Angana also arrived and sustained injuries. The above maarpeet took place suddenly without any intention to commit any crime in which members of both sides sustained injuries. The injuries on the persons of both the deceased and three injured of prosecution side have been caused by the accused in their private defence without any motive and intention to commit the same. The death of the deceased occurred incidentally in the aforesaid Maarpeet. The accused have not exceeded their right of private defence. It is, therefore, clear that accused had inflicted the injuries on the person of the members of the prosecution side in exercise of the right of self-defence.

On the cumulative strength of the aforesaid submissions, learned counsel for the accused-respondents submits that as this is a case of weak evidence, the impugned judgment and order of acquittal does not suffer from any illegality and infirmity so as to warrant any interference by this Court. As such the present Government Appeal filed by the State is liable to be dismissed.

33. We have examined the respective contentions urged by the learned counsel for the parties and have perused the records of the present appeal including the trial court records.

34. It is in the context of above submissions and materials placed on record before the Court that this Court is required to consider as to whether the prosecution has established the guilt of accused-appellants on the basis of evidence on record beyond reasonable doubt?

35. Before entering into the merits of the case set up by the learned counsel for the accused-appellant in criminal appeal, learned counsel for the accused-respondent in government appeal and the learned A.G.A. as also the learned counsel for the first informant in both the appeals qua impugned judgment

and order of conviction passed by the trial court, it is desirable for us to briefly refer to the statements of the prosecution witnesses as well as the defence witnesses.

36. First Informant/P.W.-1 Raj/Ram Murat stated in his examination-in-chief that his father worked in a coal mine in West Bengal for 18 to 19 years. His mother name was Smt. Piyari (P.W.-3) and the deceased Nand Lal was his maternal father-in-law, who had four daughters including P.W.-3, Piyari, Chamelia, Bela and Harsu. On the asking of the deceased Nand Lal, P.W.-1 and his mother P.W.-3 stayed at the place of the deceased Nand Lal for taking care of him and also his fields for the last 17-18 years. The deceased Nand Lal executed a will deed of three bighas' land in his favour and his younger brother Rajnath. The deceased Jagarnath seemed to be the nephew of the deceased Nand Lal and lived with him.

37. This witness further stated that name of father of accused Nanda was Shiv Nath and other accused, namely, Ram Janak, Ram Shiroman and Ram Lagan were his sons. The house of accused Nanda was 7-8 steps east of his house. Nanda's sitting place(Baithaka) was three to four steps north of his house. The sump of house of the deceased Nand Lal was on the east side. The water from his house turned east leaving two hands west of Nanda's sitting place (Baithaka) and fell into Jagarnath's field through a drain. The said sump had been there ever since house of the deceased Nand Lal was built.

38. This witness further stated that it was after 1 o'clock in the day and he was in his house. Hearing the alarm of the deceased Jagarnath and his maternal father-in-law Nand Lal, he, his mother Piyari and his maternal mother-in-law Angani/Angana, who was mother of the deceased Jagarnath also came out from their house. They saw that the accused Nanda, Ram Siromani, Ram Janak and Ram Lagan were blocking his drain and the deceased Jagarnath were objecting on which the accused pounced to beat him. The accused Ram Janak and Ram Shiromani were having knives in their hands, whereas the accused Nanda and Ram Lagan were armed with lathi. The deceased Jagarnath had been assaulted by accused Ram Janak with knife and Ram Lagan with lathi. The deceased Jagarnath ran away after suffering injuries and fell in the courtyard of his house and died there. Thereafter the accused Nanda, Ram Shiromani, Ramjanak and Ramlagan picked up his maternal grandfather Nand Lal and threw him down. The accused Ram Shiromani attacked him with a knife and Ram Lagan and Nanda attacked him with sticks. Ram Janak later attacked him with a knife

due to which the deceased Nandlal sustained injuries and fell near a Neem tree and died there.

39. This witness again stated that his mother Piyari and Angani ran to rescue the deceased Nandlal, then all the accused started beating them too. The accused Ram Shiromani hit P.W. 1 with a knife and accused Ram Lagan and Nanda hit him with sticks. The accused Nanda hit his mother on the back with a stick and Angani was hit by the accused Ram Janak with a knife. After the incident, P.W.-2 Rambahor and P.W.-5 Babu Lal reached there and saw the entire incident. Blood was spilled on the places where Jagannath and Nandlal fell. After the incident the accused ran towards their house. P.W.-1 was feeling slightly in a fainting state, therefore, it was not possible for him to write a report in that regard in his handwriting. Due to this, a report was written by Swaminath on his dictation. The dead bodies of Jagannath and Nand Lal were brought to the road with the help of the villagers and after crossing the road, he came to Machhilishahar police station, where his statement was recorded by the Investigating Officer.

40. This witness again stated that since his mother Piyari and Angani were crying a lot and were in grief that is why their medical examinations were conducted on the next date of incident i.e. 9th July, 1981 at Primary Health Centre, Machhalishahr.

41. In his cross-examination, P.W.1 stated that the drain is on the land of deceased Jagarnath' and the accused Nanda and his son had no connection with that land. The door of Nanda's house was towards the north and his window was in the west while his sitting place was on the empty land in the east. This witness stated that there had been a drain ever since the house was built. This witness denied that there was neither a drain from the west of Baithaka (sitting place) of accused Nanda nor water ever flowed from there. He stated that in his statement recorded by the Investigating Officer, he categorically stated as to who killed Jagarnath and with what weapon. He also stated that Jagarnath ran away after getting injured and went into the house and died. All four accused had thrown Nandlal on the side of his face.

42. This witness has again denied that they had caused injuries to the wife of the accused Nanda, namely, Indrani, accused Nanda, Ram Siromani. He denied that Indrani sustained injuries on her head. They had no weapon in their hands. He further denied that the deceased Jagarnath and Nandlal went to the doorstep of accused Nanda with sticks and started beating Indrani, when accused Nanda tried to rescue her, they started beating him too. Again

this witness denied that when the accused Ram Lagan and Ram Shiromani started rescuing their parents, they were also beaten by them. This witness denied that when the accused Nanda was going to the Police Station to lodge the first information report, the Investigating Officer apprehended him near Jamuhar and after tearing his report, he was sent in the police lock up.

43. This witness stated that it was possible that the accused Nanda may have fallen in the Maarpeet also due to which he sustained injuries. This witness again denied that while they were fighting at the doorstep of accused Nanda, P.W.-3 Piyari and P.W.-4 Angana intervened in the fight and got injured. He also stated that he did not know whether P.W.-5 Babulal had initiated any case against Ram Nath before the incident of murder or not. He also did not know whether the deceased Nandlal or his predecessors were witnesses in any case.

44. P.W.-2 Ram Bahor, who is a star independent witness stated in his examination-in-chief that 13 months back the incident occurred. It was 1 o'clock in the day. Since a man from his community had died, he was going to his house, which was in his village. The house of his community man was west of the house of P.W.-1 Ram Murat. He heard a noise at the door of Jagarnath near the mango tree and went there and saw that Jagarnath was speaking and the accused Ram Lagan, Nanda, Ram Janak and Ram Shiromani were blocking the drain. The drain was flowing over two hands of Nanda's sitting place (Baithaka). The deceased Jagannath was objecting not to do the same on which the accused rushed to hit Jagarnath. The accused Ram Janak hit Jagarnath with a knife and Ram Lagan hit him with a stick. After sustaining injuries, the deceased Jagarnath ran away in his house and he fell in the courtyard and died there. Ram Lagan hit Nandlal with a stick and Ram Shiromani with a knife. When P.W.-1 Raj Murat ran to rescue the deceased Nandlal, he was hit by the accused Nanda with lathi, accused Ram Siromani hit him with lathi (after some time in his statement, this witness stated that Ram Siromani hit him by knife). This witness further stated that when P.W.-3 Piyari ran to rescue his son, the accused Nanda hit her with a stick. Angana was hit by accused Ram Janak with knife. After sustaining injuries, the deceased fell and died near a Neem tree. There was blood spilled over where Nandlal and Jagannath fell and died. Apart from this witness, P.W.5 Babu Lal was also present at the spot.

45. In his cross-examination, this witness stated that Indrani, Ram Shiromani, Nanda and Ram Lagan were not hit by anyone nor they were caused any

injuries. He reached the police station at four in the evening. He disclosed to the Investigating Officer the manner in which the deceased Jagarnath and Nandlal died.

46. This witness again stated that the deceased Nandlal had fallen due to injury at the spot. The accused Nanda, his wife and sons were not injured. The exit of the sitting place was on the south side. He further stated that the deceased Jagarnath was hit by the accused for 2-3 minutes due to which he sustained injuries. The deceased Nandlal was also assaulted by the assailants for 2- 3 minutes. P.W.-1 Raj Murat was given 10-15 blows by stick.

47. P.W.-3 Smt. Ram Piyari stated that the deceased Nandlal was her father. She was staying at her father's house for the last twenty years prior to the incident. It was 01:00 o'clock in the afternoon, when she was in her house at the relevant time. On the alarm of Jagarnath, she came out from her house. Her aunt Angani, her father Nandlal and her son Rajmurat also came out and they saw that accused Nanda, Ram Shiromani and Ram Lagan were blocking the drain (Nali). When the deceased Jagarnath objected, all the accused rushed to hit him. The accused Ram Janak and Ram Shiromani were having knives and accused Nanda and Ram Lagan armed with lathi. The accused Ram Janak hit Jagarnath with a knife and accused Nanda with a stick. The deceased Jagarnath ran away after sustaining injuries and fell in the courtyard, where he died. After hitting Jagarnath, the accused thrashed father of P.W.-3. The accused Ram Shiromani attacked him with a knife, Ram Lagan with a stick and Ram Janak with a knife due to which the deceased Nand Lal fell near the Neem tree and died.

48. This witness further stated that all the four accused set out to hit her son P.W.-1 Raj Murat. Raj Murat was hit by accused Ram Janak and Ram Shiromani with knives and accused Nanda and Ram Lagan with sticks. When P.W.-3 went to rescue her son, the accused hit her on her back with a stick. The accused Ram Janak hit her aunt with a knife. P.W.-5 Babulal and P.W.-2 Rambahor had reached the spot and saw the incident. After fighting, the accused entered their house.

49. In her cross-examination also P.W.-3 supports the prosecution version and she is consistent with the version as stated in her examination-in-chief. She also denied that the deceased Nandlal, Jagarnath and first informant/P.W.-1 Raj Murat went at the doorstep of accused Nanda with lathi and hit Indrani and Nanda on the issue of removing of manger of accused Nanda and when accused Ram Lagan ran to rescue the other accused Ram

Shiromani, he was also hit. In their defense they also hit them. This witness also denied that she was not hit by the accused and she and Angana (P.W.-4) had sustained injuries when they were intervened in the Maarpeet to rescue.

50. P.W.-4 Angana, mother of the deceased Jagarnath reiterated the same version in her examination-in-chief as stated by P.W.-1, P.W.-2 and P.W.-3. In her cross-examination, she stated that she disclosed to the Investigating Officer that the accused hit her with knife. She also disclosed that the accused Ram Janak attacked the deceased Nand Lal with knife.

51. P.W.-5 Babu Lal, second star independent eye witness of the prosecution stated in his examination-in-chief that he knew the deceased Nand Lal and Jagarnath. The incident took place 13 months back. At 01:00 o'clock in the day, hearing the alarm of the deceased Jagannath from his house, he reached the spot. He saw that accused Nanda, Ram Janak, Ram Lagan, Ram Shiromani were blocking the drain. When Jagarnath was objecting loudly, P.W.-3 Piyari, P.W.-4 Angana and P.W.-1 Raj Murat also came out of the house and they also objected. Accused Ram Janak hit Jagarnath with knife and Ram Lagan hit him with stick. Jagarnath sustained injuries and ran away towards his house and fell and died there. When the deceased Nandlal bent down to rescue Jagarnath, all four accused caught him and the accused Ram Lagan hit him with lathi, Ram Shiromani with knife. The accused Ram Janak also hit Nand Lal with knife. After hitting Nand Lal, the accused Ram Janak hit P.W.-4 Angana with knife. P.W.-1 Ram/Raj Murat was also chased by the accused and he was hit by accused Ram Shiroman by knife and accused Ram Lagan and Nanda by lathi. When P.W.-3 Piyari ran to rescue, she was also beaten by the accused Nanda by lathi. Beside him, P.W.-2 Ram Bahor also reached at the spot. The deceased Nand Lal fell near the Neem tree.

52. In the cross-examination this witness is consistent with the version as stated in examination-in-chief. He fully supports the prosecution case.

53. Dr. B.K. Singh, Medical Officer has been examined as P.W.-6. He medically examined the injured/ P.W.-3 Ram Piyari on 9th July, 1981 at 11:30 a.m. she was taken by the Constable Kashi Pal. He found one injury on her body. He opined that the injury was simple and was caused by a blunt object such as a lathi.

54. This witness has also examined the injured/P.W.-4 Angana Devi at 12:00 noon on the same day i.e. 9th July, 1981. She was also taken by Constable Kashi Pal. He found one injury on her body. In his opinion, the injury found on

the body of Angana was simple and caused by some sharp weapon. It can come from the tip of a knife.

55. This witness also examined the injured/P.W.-1/first informant Raj/Ram Murat, who was taken by Constable Kripa Shanker. He found as many as five injuries on the body of P.W.-1. This witness opined that apart from injury no. 4 of P.W.-1, other injuries were caused by some blunt weapon like a lathi. Injury No. 4 was caused by a sharp edge weapon, which could not come with a knife.

56. This witness stated in his examination in chief that the injuries of the above three injured might have occurred at 1 o'clock on 8th July, 1981.

57. On 10th July, 1981 at 03:00 p.m. this witness also examined wife of the accused Nanda, namely, Smt. Indrani and found following injuries on her person:

“Cracked wound 1.3 cm X 3 cm x on the right side of the head from the right ear. There is swelling along with it, which is 3.8 cm scalp deep till the bone and upwards 2.4 cm around the injury. Pus was present in the injury.”

58. Seeing the said injury, P.W.6 advised for its X-ray and the same was kept under observation. P.W.6 opined that the said injury was caused by some blunt object like a lathi. The duration of the said injury was within 2 days.

59. Dr. A.K. Sarin, Orthopaedic Surgeon, who has conducted the post-mortem examinations of both the deceased, namely, Jagarnath and Nand Lal, has been examined as P.W.-7. P.W.-7 found two injuries on the person of the deceased Jagarnath. He opined that the death of the deceased was due to shock and bleeding resulting from injury No. 2. On the person of the deceased Nand Lal, this witness found three injuries and in his opinion, his death was due to shock and excessive bleeding resulting from injury no.3.

60. This witness has further opined that both the deceased might have died on 8th July, 1981 at 01:00 o'clock on the day. Injury no.2 found on the person of the deceased Jagarnath could have been caused by spear, whereas injury no.3 found on the body of the deceased Nand Lal could also have been caused by a spear. Nandlal's injury no. 2 could have been caused by friction with a pebble etc. after falling.

61. Constable Jata Shanker Mishra has been examined as P.W.-8. He stated that he had taken both the corpse of the deceased to the Government Hospital at Jaunpur for post-mortem examinations.

62. P.W.-9 Sub-Inspector Rajendra Singh Chauhan was the investigating officer. He stated in his examination-in-chief that dead bodies of the deceased Jagarnath and Nandlal were brought to the police station. He appointed Panch witnesses and prepared their inquest report. He also prepared photo lash, challan lash, letter to the Chief Medical Officer for post mortem examination. He stated that he has recorded the statements of first informant (P.W.-1), other witnesses, namely, Ram Chandra, Sahdeo and panch witnesses of inquest. On the next day of incident, this witness also recorded the statements of P.W.-4 Angana, P.W.-3 Ram Pyaari, PW.-2 Ram Bahor and P.W.-5 Babu Lal. He also prepared the site plan.

63. This witness further stated that after preparing the site plan, he collected the blood stained earth and plain earth from the courtyard of Jagarnath's house and prepared their recovery memos in front of the witnesses. This witness further stated that he collected the blood stained earth and plain earth from the west side of sitting place (Baithaka) of the accused Nanda and also prepared its recovery memos. He further stated that he arrested the accused Nanda on 9th July, 1981. On 19th July, 1981, after completing the statutory investigation, he submitted the charge-sheet against the accused persons. On the same day i.e. 19th July, 1981, he also prepared the report for sending the clothes taken from the bodies of the deceased, blood stained earth and plain earth for chemical examination to Agra.

64. In his cross-examination, this witness stated that when he arrested the accused Nanda near Jamuhar, there were injuries on his body. He denied that he had arrested Nanda on 8th July, 1981 at 2-3 o'clock on the day and kept him under arrest. He also denied the factum that at the time of his arrest, accused Nanda had any written report in his hand. He again denied that he tore the written report of accused Nanda and did not lodge the same.

65. This witness further stated that he did not know whether there was any manger (charani) near the house of accused Nanda or not. He denied that there were two mangers (charani) there and he deliberately did not show them in the site plan. He also did not know if any of the two mangers had demolished.

66. This witness again stated that P.W.-5 Babu Lal disclosed him that the accused Nanda and others wanted to block the drain. He also disclosed him that when he reached there, he saw that the accused named in the first information report, namely, Nanda, Ram Janak, Ram Shiromani, Ram Lagan and both the deceased Jagarnath, Nandlal, injured Raj Murat, Mrs. Piyari and

Angana were present there. He denied that he had set up a false case and prepared a fabricated map and deliberately concealed the truth and submitted a false charge sheet.

67. P.W.-10 Devi Prasad was the clerk in the office of Chief Medical Officer, Jaunpur. Constable Jagarnath Tiwari has been examined as P.W.-11 and he stated that he deposited the recovered materials like blood stained earth and plain earth, seal mohar in the Sadar Malkhana Jaunpur. Moti Ram, who has been examined as P.W.-12 being the witness of recovery memos prepared qua blood stained earth and plain earth collected by the Investigating Officer. P.W.-13 Head Constable Udai Bhan Pandey was the Moharir of Sadar Malkhana and produced the register before the trial court. Sub-Inspector Amarjeet Singh Chauhan has been examined as P.W.-14. He was the second investigating officer along with first investigating officer P.W.-9.

68. Dr. R.P. Singh, Medical Officer, District Jail, Jaunpur has been examined as D.W.-1. He stated that he medically examined the three accused, namely, Nanda, Ram Lagan and Ram Shiroman in jail. He stated that he found three injuries on the person of accused Nanda. In his opinion, all injuries were simple and were inflicted by some blunt object such as a lathi and such injuries were three days old. This witness found as many as five injuries on the person of Ram Shiroman. D.W.-1 opined that all injuries of accused Ram Shiroman were simple in nature and could have been caused by some blunt object like lathi. He also opined that at the time of examination, the injuries of accused Ram Shiroman were 5 to 6 days old.

69 This witness also found five injuries on the person of accused Ram Lagan. Similarly, in his opinion, all injuries of Ram Lagan were simple and could have been caused by blunt object such as lathi, which was 5 to 6 days old. He also opined that the injuries found on the bodies of three accused Nanda, Ram Lagan and Ram Shiroman were inflicted on 8th July, 1981 at 11:00 am.

70. Jokhai Singh, village pradhan of village-Bhattadeeh, Police Station-Machhalishahar has been examined as D.W.-2. He stated that P.W.-2 Ram Bahor lived in his village Bhattadeeh. Sant Lal being son-in-law of Ram Bahor also lived with him.

71. From bare reading of the aforesaid facts and circumstances, it is clear that there are two incidents, which are alleged to have taken place on 8th July, 1981 at two different places. The first set up by the prosecution which is alleged to have taken place i.e. at the sump (Nabdan), which used to flow in

front of the house of accused Nanda and the second which is set up by the defence i.e. at the manger (charni) of the accused Nanda.

72. The incident which is alleged to have occurred on 8th July, 1981, as per the prosecution/first informant is extracted hereunder:

"घटना घटे लगभग 13 माह हुआ। 1 बजे दिन का समय था। मैं अपने घर में था। जगरनाथ की शोर सुनकर बाहर आया। मेरे नाना नन्दलाल मेरी माँ प्यारी, मेरी नानी अंगनी जो जगन्नाथ की माँ है, भी बाहर सहन के आये। हम लोगों ने देखा कि नन्दा, राम शिरोमणि राम जनक व राम लगन मेरी नाली पाट रहे थे। जगरनाथ मनाकर रहे थे। मुलजिमान इस पर मरने को लपके। राम जनक, राम शिरोमणि चाकू लिये थे। नन्दा व राम लगन लाठी लिये थे। जगन्नाथ को रामजनक ने चाकू व राम लगन ने लाठी से मारा। जगन्नाथ चोट खाते हुए भागे ये अन्दर अपने घर में आँगन में जाकर गिर गये। जगरनाथ की वहीं मृत्यु हो गयी। नन्दा, राम शिरोमणि, रामजनक व रामलगन ने तब मेरे नाना को उठाकर पटक दिया। रामशिरोमणि ने चाकू से व राम लगन व नन्दा ने लाठी से मारा। राम जनक ने बाद में चाकू से वार किया। नन्दलाल नीम के पेड़ के पास चोट खाकर गिरे व वही मर गये।

नन्दलाल को बचाने मैं, मेरी माँ, प्यारी व अंगनी दौड़ी तो हम लोगों को भी मारने लपके। मुझे रामशिरोमणि ने चाकू व राम लगन व नन्दा लाठी से मारा। मेरी माँ को नन्दा ने पीठ पर लाठी से मारा। अंगना को राम जनक ने चाकू से मारा।

घटना के बाद रामबहोर व बाबू लाल पहुंच गये थे जिन्होंने पूरी घटना देखा। जहाँ जगन्नाथ व नन्दलाल गिरे वहाँ खून गिरा था। घटना के बाद मुलजिमान अपने घर की ओर भाग गये। मुझे हल्की सी बेहोशी आ रही थी। इससे रपट हाथ से नहीं लिख सकता था। इससे स्वामीनाथ को बोलकर रपट लिखाया। जो बोला था वही उन्होंने लिखा सुनकर मैंने दस्तखत किया था। रपट देखकर कहा कि यही रपट है। इस पर इक्ज क-1 डाला गया। जगन्नाथ व नन्दा की लाशों को गाँव वालों की मदद से सड़क पर लाया। सड़क पर इक्का करके थाना मछलीशहर आया। वहाँ दारोगा जी मौजूद थे।"

73. The incident occurred on the same day i.e. 8th July, 1981 as per the defence is as follows:

"10-11 बजे दिन मेरे बैठका के पश्चिम दक्षिण मेरे मैस की चरनी को जगरनाथ तोड़ रहे हैं। औरत ने मना किया। जगरनाथ गाली देने लगे। मेरी औरत ने गाली दिया। नन्दलाल, जगरनाथ, राज मूरत लाठी लिये मेरे दरवाजे पर चढ़ आये। मेरे औरत के सर में लाठी से मारा। मैं बचाने लगा तो मुझे भी मारा। राम लगन, रामशिरोमणि बचाने लगे तो उन्हें भी मारा। राम लगन व राम शिरोमणि लाठी व बल्लम से बचाव किया जिससे उनको चोटे आयी। इसी बीच अंगना व प्यारी घुस गयी तो उन्हें चोटे आ गई। रपट लिखाकर थाना जा रहा था तो दारोगा ने मुझे रास्ते में

पकड़ लिया मेरी रपट फाड़ कर फेक दिया। मेरी रपट लिखी नहीं गयी। मुझे चोट लगा था। मेरा डाक्टर मुआयना जेल में हुआ, मेरी औरत को लकवा मार दिया है।"

74. On deeper scrutiny of trial court records including the oral as well as documentary evidence led during the course of trial, it is apparent that the incident set up by the prosecution has been supported by all the prosecution witnesses i.e. P.W.-1, P.W.-2, P.W.-3, P.W.-4, P.W.-5, P.W.-6, P.W.-7 and P.W.-9 (as per the prosecution, P.W.-1 to P.W.-5 are said to be the eye-witnesses of the incident). The medical examination reports of the injured, namely, P.W.-1, P.W.-3 and P.W.4, the post mortem examination reports of the deceased Jagarnath and Nand Lal, the site plan prepared by the Investigating Officer (P.W.-9) and the recovery memos prepared by him qua blood stained earth and plain earth also support the prosecution case about the said incident.

75. On the other-hand, the incident set up by the defence has been supported by the accused-Nanda, Ram Lagan and Ram Shiroman only. The fourth accused Ram Janak has stated under Section 313 Cr.P.C. that he was not present at the time of incident. Wife of accused Smt. Indrani, who is alleged to have sustained injuries in the said incident has not been produced as defence witness. Except the statements of accused-Nanda, Ram Lagan and Ram Shiroman, no other evidence has been produced by the defence to support the said incident. Even otherwise, all the prosecution witnesses i.e.P.W.-1, P.W.-2, P.W.-3, P.W.-4, P.W.5 and P.W.-9 have specifically stated in their testimonies that no such incident took place in which the members of prosecution were aggressor.

76. However, in the testimonies of P.W.-6 and D.W.-1, seeing the injuries found on the person of Smt. Indrani and accused accused-Nanda, Ram Lagan and Ram Shiroman, it has been stated that the same could have been caused on 8th July, 1981 at 11:00 a.m.

77. In the cross-examination, P.W.-6 Dr. B. K. Singh, who conducted the medical examination of Smt. Indrani on 10th July, 1981 at 03:00 p.m., qua the injury found on her person, has opined as follows:

"यह चोट 8.7.81 के 11 बजे दिन की हो सकती है।"

78. Similarly, in the examination-in-chief D.W.-1 Dr. R.P. Singh on the basis of injuries found on the bodies of accused-Nanda, Ram Lagan and Ram Shiroman, has opined as follows:

"तीनों मजरूबान की चोटे 8-7-81 को 11 बजे दिन की हो सकती है।"

79. P.W.-9, Sub-Inspector Rajendra Singh Chauhan, who has conducted the investigation in his cross-examination, has qua injury sustained by accused Nanda, has stated as under:

"नन्दा मुलजिम को मैं जमुहर के पास गिरपतार किया था। जब मैंने गिरपतार किया तो उसके शरीर पर चोटे भी थी।"

80. In his cross-examination, P.W.-1/first informant also stated that there was no injury on the body of the accused Nanda. This witness then stated that it was possible that the accused Nanda might have fallen on the ground during the fight (maarpeet) due to which he sustained injury. The relevant extract is reproduced hereunder:

" नन्दा के शरीर पर कोई चोट नहीं थी। हो सकता है पटकी पटका मैं नन्दा गिर पड़े हो जिससे उनको चोट लग गई हो"

81. It is also pertinent to mention here that the prosecution has also not explained as to how and in what manner, such injury found by P.W.6 on the body of wife of accused Nanda namely, Smt Indrani and further the injuries found on the persons of accused Nanda, Ram Shiroman and Ram Lagan by D.W.-1 have been caused, has not at all been explained by the prosecution. In the first information report as well as in the testimonies of all the prosecution witnesses particularly P.W.-1, P.W.-2, P.W.-3, P.W.-4 and P.W.-5, the presence or involvement of wife of accused Nanda, namely, Smt. Indrani, who is also mother of other accused, namely, Ram Shiroman, Ram Lagan and Ram Janak has neither been mentioned nor has been explained but when as a matter of fact she sustained injury on her vital part of her body and has been medically examined by P.W.-6 also.

82. Even though, the prosecution as well as the defence have set up their two different incidents, which are alleged to have occurred, as quoted above, but it is also true that the members of both sides have sustained injuries, which have been supported by the medical examination reports, post-mortem examination reports prepared by P.W. 6, P.W.-7 and D.W.-1. It is also not disputed that the injuries found on the bodies of accused-Nanda, Ram Lagan and Ram Shiroman are simple in nature except the injury sustained by wife of accused Nanda, namely, Smt. Indrani, which is said to be grievous and the same could have been caused by blunt object like lathi as is evident from the testimony of P.W.-6. Meaning thereby the weapon used for causing injuries on the persons of accused-Nanda, Ram Lagan and Ram Shiroman and Smt. Indrani was lathi.

83. On the other-hand, the injuries sustained by the deceased Jagarnath and Nand Lal, could have been caused by lathi and knives. The weapon used for causing injuries on the person of first informant/P.W.-1 could be lathi. Similarly, the injury found on the body of Angana (PW.-4) could have been caused by spear. Meaning thereby, that not only the lathi but also the knives have been used in causing injuries on the persons of both the deceased Jagarnath and Nand Lal and both the injured, namely, P.W.-1 Raj Murat and P.W.-4 Smt. Angana.

84. From the perusal of all the evidence oral as well as documentary led during the course of trial and the same have been discussed herein above, it is evident that admittedly, an incident took place on 8th July, 1981 either because of blocking of drain of the deceased Nand Lal by the accused persons or because of destroying of charni (manger) of accused Nanda by the deceased Jagarnath and Nand Lal and before this incident, there was no enmity between the members of prosecution and the defence, therefore, they had no motive or intention to cause such injuries to each other. When both the versions of setting up of their own incidents by the prosecution and the defence have not been fully established, we are of the opinion that there was a fight (Maarpeet) between the members of prosecution and the defence and who was aggressor has not been cropped from the above evidence. We also find that either because of blocking of drain of the deceased Nand Lal or because of destroying of charni (manger) of accused Nanda, Maarpeet (fight) took place in which members of both sides have caused injuries to each other in their private defence.

85. There can be no doubt that in judging the conduct of a person who proves that he had a right of private defence, allowance has necessarily to be made for his feelings at the relevant time. He is faced with an assault which causes a reasonable apprehension of death or grievous hurt and that inevitably creates in his mind some excitement and confusion. At such a moment, the uppermost feeling in his mind would betoward off the danger and to save himself or his property, and so, he would naturally be anxious to strike a decisive blow in exercise of his right. It is no doubt true that in striking a decisive blow, he must not use more force than appears to be reasonably necessary. But in dealing with the question as to whether more force is used than what is necessary or was justified under the prevailing circumstances, it would be inappropriate to adopt tests of detached objectivity which would be so natural in a court room, for instance, long after the incident has taken place. That is why, in some judicial decisions it has been observed that the means

which a threatened person adopts, of the force which he uses, should not be weighed in golden scales. To begin with, the person exercising a right of private defence must consider whether the threat to his person or his property is real and immediate. If he reaches the conclusion reasonably that the threat is immediate and real, he is entitled to exercise his right. In the exercise of his right, he must use force necessary for the purpose and he must stop using the force as soon as the threat has disappeared.

86. The Hon'ble Supreme Court of India in the case of *Jai Deo Vs. State of Punjab* reported in 1963 Cr.L.J. 493 has observed that in exercising the right of private defence, the force which a person defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is to be averted or which is reasonably apprehended and should not exceed its legitimate purpose. The use of the force must be stopped as soon as the threat has disappeared. The exercise of the right of private defence must never be vindictive or malicious.

87. The Hon'ble Supreme Court of India in the case of *Darshan Singh Vs. State of Punjab & Another* reported in (2010) 2 SCC 333, has laid down following principles in order to scrutinize the case in respect of the right of private defence:

“(i) Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.

(ii). The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the right of self defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Indian Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.”

88. Considering the above principle of law laid down by the Hon'ble Apex Court, seeing the injury reports and medical examination reports of the two injured persons and two deceased persons of prosecution side, we find that the accused persons, namely, Nanda, Ram Shiroman, Ram Lagan and Ram Janak have exceeded their right of private defence by causing two injuries to the deceased Jagarnath by lathi and knives as well as by causing three injuries to the other deceased Nand Lal by knives and lathi. They have also exceeded their right of private defence by causing as many as five injuries to the first informant/P.W.-1 Raj Murat/Ram Murat by lathi and knives as also causing one injury of spear to P.W.-4 Smt. Angana.

89. On the other-hand both the deceased Jagarnath and Nand Lal and P.W.-1 Raj Murat/Ram Murat had not exceeded their rights of private defence in causing injuries to the accused persons, namely, Nanda, Ram Lagan and Ram Shiroman, which are simple in nature (as per their medical examination reports) as also to the wife of accused Nanda, namely, Smt. Indrani, by lathi only. It is no doubt true that the injury found on the person of Smt. Indrani was grievous in nature and on her vital part but no complaint or report has been lodged by the defence side. It is also relevant to mention here that from the oral as well as documentary evidence, it is fully established that accused Ram Janak, who denied his presence at the crime scene at the time of incident under Section 313 Cr.P.C., was actively involved in the commission of alleged offence.

90. Since the incident in question occurred on a spur of moment and in the heat of passion upon sudden quarrel as also both the parties have exercised their rights of private defence, even though the defence has exceeded the same, the same would be covered under the 4th Exception to Section 300 I.P.C., which reads as under:

“Exception 4. —Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

91. On going through the entire evidence on record, we find that the necessary ingredients to attract 4th Exception to section 300 IPC are clearly present in the facts of the present case inasmuch as death is caused; there existed no pre-meditation; it was a sudden fight; the offender has not taken undue advantage or acted in a cruel or unusual manner, therefore, the case in hand clearly falls under fourth exception to section 300 IPC.

92. The issue relating to quantum of sentence under Section 304 I.P.C. depends on background facts of the case, antecedents of the accused, whether the assault was premeditated and pre-planned or not, etc. There are no straight jacket formulae for the determination of the same in law.

93. In the case of Genda Singh & Others Vs. State of Uttar Pradesh reported in (2008) 11 SCC 791, the Hon'ble Apex Court has held that though the appellants claimed to be exercising of right of private defence, it was exceeded, therefore, the protection for exercising the right of private defence cannot be extended to them. However, appropriate conviction would be under Section 304 Part-I I.P.C. and custodial sentence of 10 years would meet the ends of justice.

94. It would be worthwhile to reproduce paragraph nos. 10 and 11 of the said judgment, which read as under:

“10. “11. The only question which needs to be considered is the alleged exercise of right of private defence. Section 96 IPC provides that nothing is an offence which is done in the exercise of the right of private defence. The section does not define the expression ‘right of private defence’. It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular set of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the

abstract for determining such a question can be laid down. In determining this question of fact, the court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the court to consider such a plea. In a given case the court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record. Under Section 105 of the Indian Evidence Act, 1872 (in short 'the Evidence Act'), the burden of proof is on the accused, who sets up the plea of self-defence, and, in the absence of proof, it is not possible for the court to presume the truth of the plea of self-defence. The court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not necessarily required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. (See *Munshi Ram v. Delhi Admn.* [AIR 1968 SC 702], *State of Gujarat v. Bai Fatima* [(1975) 2 SCC 7 : 1975 SCC (Cri) 384 : AIR 1975 SC 1478], *State of U.P. v. Mohd. Musheer Khan* [(1977) 3 SCC 562 : 1977 SCC (Cri) 565 : AIR 1977 SC 2226] and *Mohinder Pal Jolly v. State of Punjab* [(1979) 3 SCC 30 : 1979 SCC (Cri) 635 : AIR 1979 SC 577] .) Sections 100 to 101 define the extent of the right of private defence of body. If a person has a right of private defence of body under Section 97, that right extends under Section 100 to causing death if there is reasonable apprehension that death or grievous hurt would be the consequence of the assault. The of quoted observation of this Court in *Salim Zia v. State of U.P.* [(1979) 2 SCC 648 : 1979 SCC (Cri) 568 : AIR 1979 SC 391] runs as follows : (SCC p. 654, para 9)

‘9. ... It is true that the burden on an accused person to establish the plea of self-defence is not as onerous as the one which lies on the prosecution and that while the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea to the hilt and may discharge his onus by establishing a mere preponderance of probabilities either by laying basis for that plea in the cross-examination of prosecution witnesses or by adducing defence evidence.’

The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea.

12. ... A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting. Section 97 deals with the subject-matter of right of private defence. The plea of right comprises the body or property (i) of the person exercising the right; or (ii) of any other person; and the right may be exercised in the case of any offence against the body, and in the case of offences of theft, robbery, mischief or criminal trespass, and attempts at such offences in relation to property. Section 99 lays down the limits of the right of private defence. Sections 96 and 98 give a right of private defence against certain offences and acts. The right given under Sections 96 to 98 and 100 to 106 is controlled by Section 99. To claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him. The burden is on the accused to show that he had a right of private defence which extended to causing of death. Sections 100 and 101 IPC define the limit and extent of right of private defence.

13. Sections 102 and 105 IPC deal with commencement and continuance of the right of private defence of body and property respectively. The right commences as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat, to commit the offence, although the offence may not have been committed but not until there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of danger to the body continues. In *Jai Devv. State of Punjab* [AIR 1963 SC 612]

it was observed that as soon as the cause for reasonable apprehension disappears and the threat has either been destroyed or has been put to rout, there can be no occasion to exercise the right of private defence.

14. In order to find whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered. Similar view was expressed by this Court in *Biran Singh v. State of Bihar* [(1975) 4 SCC 161 : 1975 SCC (Cri) 454 : AIR 1975 SC 87] . (See also *Wassan Singh v. State of Punjab* [(1996) 1 SCC 458 : 1996 SCC (Cri) 119] and *Sekar v. State* [(2002) 8 SCC 354 : 2003 SCC (Cri) 16] .)

15. As noted in *Buta Singh v. State of Punjab* [(1991) 2 SCC 612 : 1991 SCC (Cri) 494 : AIR 1991 SC 1316] a person who is apprehending death or bodily injury cannot weigh in golden scales on the spur of the moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. In moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him. Where assault is imminent by use of force, it would be lawful to repel the force in self-defence and the right of private defence commences as soon as the threat becomes so imminent. Such situations have to be pragmatically viewed and not with high-powered spectacles or microscopes to detect slight or even marginal overstepping. Due weightage has to be given to, and hyper technical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in view normal human reaction and conduct, where self-preservation is the paramount consideration. But, if the fact situation shows that in the guise of self-preservation, what really has been done is to assault the original aggressor, even after the cause of reasonable apprehension has disappeared, the plea of right of private defence can legitimately be negated. The court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is essentially, as noted above, a finding of fact.

16. The right of self-defence is a very valuable right, serving a social purpose and should not be construed narrowly. (See *Vidhya Singh v. State of M.P.* [(1971) 3 SCC 244 : 1971 SCC (Cri) 469 : AIR 1971 SC 1857]) Situations have to be judged from the subjective point of view of the accused concerned

in the surrounding excitement and confusion of the moment, confronted with a situation of peril and not by any microscopic and pedantic scrutiny. In adjudging the question as to whether more force than was necessary was used in the prevailing circumstances on the spot it would be inappropriate, as held by this Court, to adopt tests by detached objectivity which would be so natural in a courtroom, or that which would seem absolutely necessary to a perfectly cool bystander. The person facing a reasonable apprehension of threat to himself cannot be expected to modulate his defence step by step with any arithmetical exactitude of only that much which is required in the thinking of a man in ordinary times or under normal circumstances.

17. In the illuminating words of Russell (Russell on Crime, 11th Edn., Vol. I at p. 49):

‘... a man is justified in resisting by force anyone who manifestly intends and endeavours by violence or surprise to commit a known felony against either his person, habitation or property. In these cases, he is not obliged to retreat, and may not merely resist the attack where he stands but may indeed pursue his adversary until the danger is ended and if in a conflict between them he happens to kill his attacker, such killing is justifiable.’

18. The right of private defence is essentially a defensive right circumscribed by the governing statute i.e. IPC, available only when the circumstances clearly justify it. It should not be allowed to be pleaded or availed as a pretext for a vindictive, aggressive or retributive purpose of offence. It is a right of defence, not of retribution, expected to repel unlawful aggression and not as a retaliatory measure. While providing for exercise of the right, care has been taken in IPC not to provide and has not devised a mechanism whereby an attack may be a pretence for killing. A right to defend does not include a right to launch an offensive, particularly when the need to defend no longer survived.”

The above position was highlighted in V. Subramani v.State of T.N.[(2005) 10 SCC 358 : 2005 SCC (Cri) 1521] , SCC at pp. 364-68, paras 11-18.

11. Factual scenario as noted above clearly goes to show that though the appellants claimed to be exercising the right of private defence, it was exceeded. That being so, the protection for exercising the right of private defence cannot be extended to the appellants. But the appropriate conviction would be under Section 304 Part I IPC and custodial sentence of 10 years in

case of each appellant and fine imposed by the trial court would meet the ends of justice.”

95. In view of the discussions and deliberations held above on the evidence led during the course of trial, the laws laid down by the Hon'ble Apex Court as well as the findings recorded by the trial court in acquittal of accused-respondents Nanda, Ram Shiroman, Ram Lagan and Ram Janak, we are of the view that the trial court has not examined the evidence led by the prosecution in correct perspective and the finding returned by it that the prosecution has not succeeded in proving its case beyond reasonable doubt against the accused-respondents, cannot be sustained. The prosecution has fully established the guilt of the accused-respondents on the basis of evidence led at the stage of trial by the prosecution. The acquittal of the accused-respondents, namely, Nanda, Ram Shiroman, Ram Lagan and Ram Janak, is consequently, reversed.

96. We are of the opinion that the accused-respondents Nanda, Ram Shiroman, Ram Lagan and Ram Janak could be convicted for the offence punishable under Section 302 and 307 I.P.C. However seeing entire evidence led during the course of trial, we are of the view that the accused had no intention or motive to cause death and the incident in question occurred on the spur of moment in their private defence, even though they have exceeded their rights of private defence, they are liable to be convicted under Part-1 of Section 304 I.P.C.

97. Consequently, the accused-respondents Ram Shiroman, Ram Lagan and Ram Janak are convicted for the offence under Part-1 of Section 304 of I.P.C. and sentenced them to undergo six years rigorous imprisonment with fine of Rs. 10,000/- each. Since the accused-respondent Nanda has already expired and the Government Appeal at his behest has already been abated, no further order is required to be passed against him.

98. The Government Appeal filed on behalf of the State is, hereby, partly allowed.

99. There shall be no order as to costs.

100. The Chief Judicial Magistrate, Jaunpur shall ensure that the accused-respondents, namely, Ram Shiroman, Ram Lagan and Ram Janak are arrested and sent to jail for serving their sentences awarded herein above.

101. Let a copy of this judgment be sent to the Chief Judicial Magistrate, Jaunpur, henceforth, for necessary compliance.

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