

**Reserved on 8<sup>th</sup> August, 2019**

**Delivered on 18<sup>th</sup> September, 2019**

**A.F.R.**

**Court No. - 88**

**Case :- CRIMINAL APPEAL No. - 2434 of 2009**

**Appellant :- Subhash**

**Respondent :- State Of U.P.**

**Counsel for Appellant :- Sarvesh**

**Counsel for Respondent :- Govt. Advocate**

**Hon'ble Mrs. Manju Rani Chauhan,J.**

1. Heard Mr. Sarvesh, learned counsel for the appellant and Mr. Prashant Kumar, learned Additional Government Advocate for the State.

2. This criminal appeal has been filed by accused appellant Subhash S/o Shrinath, R/o village Basawanpur, police station Ghosi, District Mau against the judgment and order dated 30/31.03.2009, whereby appellant Subhash has been convicted under section 323/34 and 304 (II) Indian Penal Code and has been sentenced for one year rigorous imprisonment for offence under section 323/34 Indian Penal Code and for seven years rigorous imprisonment and a fine of Rs. 500 and in default of payment of fine two months further imprisonment for offence under section 304(II) Indian Penal Code. All the sentences are directed to run concurrently.

3. According to prosecution version as narrated by informant Ram Lakhan, on 25.04.2006 at about 12:00 in the day, accused Subhash, Gulab and Dayanand came to his house and started abusing him and thereafter assaulted him with lathi, danda. Upon hue and cry, the co-villagers gathered there and saved him. The record further reveals that P.W.1 Smt. Dhanmati took her husband-

informant to Community Health Centre, Ghosi, where his injuries were examined by Dr. D.N. Rai and thereafter he was referred to District Hospital, Mau where he was given treatment and after being relieved from the hospital, Smt. Dhanmati and Ram Lakhan came to their house in the village and remained in the house. On fourth day of incident, deceased Ram Lakhan went to the police station and on the oral dictation of first informant Ram Lakhan (deceased), one Non-Cognizable Report no. 86/2006 was registered on 28.04.2006 at about 12:30 P.M. in Police Station Ghosi, District Mau for offences under section 323/504,506 IPC against accused Subhash, Gulab and Dayanand. After eighteen days from the incident, Ram Lakhan died on account of injuries and the P.W.1 Smt. Dhanmati gave information to police station about death of her husband Ram Lakhan, whereupon section 304 IPC was added and being cognizable offence, the case was converted into case crime no. 429 of 2006 U/s 304 IPC. After investigation, the Investigating Officer submitted charge sheet against the named accused persons for offence under section 304 IPC and subsequent to the cognizance of offence, the learned Magistrate committed the case to the Court of Sessions and trial proceeded.

4. The learned Trial Court framed charge against the accused persons for offence under section 504, 506(II), 323/34 and 304/34 IPC vide order dated 02.03.2007. In order to prove its case, the prosecution also relied upon documentary evidence, which were duly proved and consequently marked as Exhibits. The same are cataloged herein below:-

i). Application made by the informant Dhanmati qua the death of the deceased during treatment to the Police Station Ghoshi was marked as Exhibit-Ka-1 and the same was proved by the informant (P.W.1);

- ii). Medical examination report of the deceased before his death was marked as Exhibit-2 and the same was proved by Dr. D.N. Rai, Primary Health Centre, Ghosi, Mau (P.W.-4);
- iii). Post-mortem report of the deceased was marked as Exhibit-3 and the same was proved by Dr. A.K. Srivastava (P.W.-5);
- iv). Entry made in G.D. regarding registration of Case Crime No. 429 of 2006 under Section 304 I.P.C. after the death of the deceased was marked as Exhibit-Ka-4 and the same was proved by the Constable Dhanoday Pandey (P.W.-6);
- v). Entry made in G.D. regarding death of the deceased given by the informant was marked as Exhibit-Ka-5 and the same was also proved by the Constable Dhanoday Pandey (P.W.-6);
- vi). Site plan was marked as Exhibit-Ka-6 and the same was proved by Sub-Inspector Sheetala Prasad Upadhaya (P.W.-7);
- vii). The charge-sheet was marked as Exhibit Ka-7 and the same was proved by Sub-Inspector Sheetala Prasad Upadhaya (P.W.-7);
- viii). Non-Cognizable Report (N.C.R.), which was registered on oral information given by the Informant regarding the incident, was marked as Exhibit Ka-8 and the same was proved by Constable Radhey Shyam Yadav (P.W. 8);
- ix). Entry made in G.D. regarding the N.C.R. was marked as Exhibit-Ka-9 and the same was also proved by Constable Radhey Shyam Yadav (P.W. 8);
- x). Inquest report of the deceased was marked as Exhibit-Ka-10 and the same was proved by Sub-Inspector Mithlesh Kumar Mishra (P.W.-9);
- xi). Chalan lash was marked as Exhibit-Ka-11 and the same was proved by Sub-Inspector Mithlesh Kumar Mishra (P.W.-9);

xii). Photo lash was marked as Exhibit-Ka-12 and the same was proved by Sub-Inspector Mithlesh Kumar Mishra (P.W.-9);

xiii). Letter written to the Reserved Inspector, Police Line, Mau was marked as Exhibit-Ka-13 and the same was proved by Sub-Inspector Mithlesh Kumar Mishra (P.W.-9); and

xiv). Letter written to the Chief Medical Officer, Mau regarding post-mortem of the deceased was marked as Exhibit-Ka-14 and the same was proved by Sub-Inspector Mithlesh Kumar Mishra (P.W.-9).

5. The prosecution also examined total nine witnesses in the following manner:-

P.W.1 Smt. Dhanmati wife of deceased Ram Lakhan is an eye witness of the incident. P.W.2 Manraj is neighbor of the deceased and is another eye witness of the incident. P.W.3 Smt. Gyanti @ Gyanmati wife of Rama Shanker is daughter-in-law of the deceased and she was also present in the house at the time of the incident and is an eye witness. P.W.4 Dr. D.N. Rai was posted at CHC, Ghosi, who examined the injuries of Ram Lakhan on 25.04.2006 at about 06:00 P.M. and has proved the same. P.W.5 Dr. A.K. Srivastava had conducted post mortem examination of the cadaver of Ram Lakhan and has proved the post mortem examination report. P.W.6 Constable Dhanoday Pandey was posted as Constable Clerk in the police station Ghosi, who proved the registration of non-cognizable report and its subsequent conversion into cognizable report. P.W.7 Sub-Inspector Sheetla Prasad Upadhaya had conducted investigation and had submitted charge sheet and has proved the same. The P.W.8 Constable Radhe Shyam Yadav has proved the non-cognizable report lodged by Ram Lakhan (deceased). The P.W.9 Sub-Inspector Mithilesh Kumar Singh had conducted inquest and has proved the same along with other police papers.

6. The defense has challenged the prosecution case by submitting that:-

- (a) There is delay in registration of the non-cognizable report in as much as the incident alleged to have taken place on 25.04.2006 at about 12:00 in the afternoon, while the non-cognizable report is said to have been lodged on 28.04.2006 at about 12:30 P.M. with delay of about three days, which fact gives an obvious inference that the prosecution case is concocted.
- (b) Looking into the injuries of the deceased, it is highly improbable that the deceased had himself dictated the non-cognizable report at police station after three days of receiving the injuries and hence, this circumstance creates serious doubt about prosecution version. The prosecution case has been materially improved from stage to stage with the passage of time in as much as the first information report does not disclose any specific role and contains allegations about assault by lathi, danda only but in the statement of witnesses before the court, the allegation with regard to the exhortation and assault by fist has also been introduced and role of lathi injury has been specified against the appellant Subhash. All these improvements make the prosecution case wholly unreliable.
- (c) The alleged eye witnesses are not reliable and their presence at the scene of occurrence is highly improbable as they did not receive any injury and they did not try to save the deceased, which is quite unnatural.
- (d) The alleged non-cognizable report cannot be treated as dying declaration of the deceased.

- (e) The appellant had no intention or knowledge to commit the offence, even according to the prosecution's own case and the accused persons were not armed with any weapon at initial stage and admittedly the accused appellant merely used lathi against the deceased.
- (f) In any view of the matter, the sentence of seven years rigorous imprisonment is too severe and is liable to be reduced.

7. On the other hand learned Additional Government Advocate has contended that the prosecution has proved its case beyond reasonable doubt. The deceased had himself given the information to police station and the non-cognizable report was registered on his dictation and has been duly proved by the prosecution witnesses and thus the prosecution evidence is wholly reliable and intact and as such, the accused appellant has been rightly convicted and the quantum of sentence is proportionate to the guilt of accused appellant.

8. In order to appreciate rival submissions mentioned above, the court proceeds to examine the evidence on record.

9. P.W.1 Smt. Dhanmati wife of deceased Ram Lakhan has stated in her examination in chief that on the day of the alleged incident at about 12:00 O'clock in the afternoon, her husband was sitting on a cot under the shed in front of his house and she was also present sitting on earth. Suddenly the accused persons namely Subhash, Gulab and Dayanand arrived there crossing the boundary of her house and started abusing her husband with filthy language and asked her husband as to how he was talking to Raj Kumar. At this juncture, her husband as well as she protested and asked the accused persons not to abuse like this. Thereafter the accused Dayanand exhorted to kill her husband and all of them dragged her

husband from the shed. The appellant Subhash picked up the lathi, which was kept near the cot of her husband and assaulted upon him with lathi and accused Gulab assaulted with kick and fist causing injuries. She took her husband to Amila Police Outpost and informed the police but the police personals had stated that first of all medical treatment may be given to the victim and thereafter she may register the case. She took her husband to Govt. Hospital Ghosi where her husband was medically examined and he was referred to District Hospital, Mau. In District Hospital Mau, her husband was treated and thereafter on fourth day of the incident her husband himself went to the police outpost and lodged the report. However on 18th day of the incident, her husband died on account of injuries. She sent written information regarding death of her husband to police station, which has been proved by her as exhibit Ka-1. Thereafter the police arrived and prepared inquest and site plan etc. and also recorded her statement. Two **days** prior to the incident, a quarrel had taken place with Raj Kumar and the aforesaid Raj Kumar belongs to the gang of the accused persons.

10. She has also stated in her cross examination that two **months** prior to this incident, a quarrel had taken with Raj Kumar and in that quarrel Raj Kumar had beaten her daughter-in-law by fist and kick and it was reported by her husband to the police and the medical examination of her daughter-in-law was also conducted. She has also stated in her cross examination that after treatment of her husband in District Hospital, she took him to the village on the same day and since then, her husband remained at home till his death.

11. The P.W.2 Manraj son of Jallu, whose house is situated at about 25 steps ahead from the house of the deceased, has stated in his testimony that he was present in front of his house at the time of the incident and after hearing hue and cry, he reached at the

place of incident and saw the accused Subhash, Gulab and Dayanand abusing and assaulting Ram Lakhan. When Ram Lakhan protested, appellant with the danda and accused Gulab and Dayanand with fists and kicks, assaulted Ram Lakhan. Thereafter he and many persons intervened and saved Ram Lakhan. He has also stated in his testimony that Ram Lakhan was taken to the hospital by his wife and other persons and he died after 17-18 days of the incident. He has further stated that deceased Ram Lakhan had received injuries in his head and chest region. He also identified accused Gulab and Subhash in the court and has stated that accused Dayanand is not present in the court. He corroborated the statement of P.W.1 in all material aspects. He was cross examined at great length but nothing substantial could be elicited in his cross examination.

12. P.W. 3 Smt. Gyanti @ Gyanmati is daughter-in-law of deceased Ram Lakhan. She was there in the house when the incident occurred. She corroborated the statement of P.W.1 and P.W.2 in all material aspects with regard to the abuse and the manner of assault by accused persons and also other relevant facts. She has been cross examined and in her cross examination she states that during quarrel with Raj Kumar, she was not assaulted and beaten. She has denied the suggestion made to her in cross examination that on the alleged date of incident, she was in her Maika.

13. P.W.4 Dr. D.N. Rai who firstly examined the victim on 25.04.2006 at 06:00 P.M. at C.H.C., Ghosi has stated that at about 06:00 P.M., Ram Lakhan was brought before him by his wife Smt. Dhanmati and was examined by him, whereupon the injuries mentioned in the medical examination report were found on the person of Ram Lakhan and thereafter, the victim was referred to District Hospital, Mau. This prosecution witness has proved the



medical examination report and has stated that all the injuries had possibly occurred on 25.04.2006 at about 12:00 O'clock in the afternoon and were caused by hard, blunt object and were fresh and the injuries no. 1 & 5 were on vital part of the body. He did not give any opinion regarding nature of injuries and had referred the victim to District Hospital, Mau for further management.

14. P.W.5 Dr. A.K. Srivastava had conducted the post mortem and has proved the post mortem examination report, in which he found five ante mortem injuries on the person of deceased and has stated that the cause of death was subdural hematoma on account of head injuries. He found the fracture of left parietal bone and also found fracture of 10th, 11th & 12th ribs of left side back. Membranes, brain, pleura were found congested and peritonea and spleen was found contused. He has stated that injuries of head and chest were sufficient in the ordinary course of nature to cause death and it could have been caused by lathi. He has also stated that if the proper medical treatment would have been given to the deceased, his life would have been saved.

15. P.W.6 Constable Dhanoday Pandey has stated in his examination-in-chief that on 17.05.2006, he was posted as Constable Clerk in police station Ghosi. The then In-charge Inspector Sri Bachha Paswan submitted post-mortem examination report no.106/2006 at police station and directed him to alter the offences and in pursuance thereof, he altered the non-cognizable report no.86/2006 U/s 323, 504, 506 IPC to Case Crime No.429/2006 U/s 304 IPC. He was also present at police station on 13.05.2006, when Smt. Dhanmati informed in writing about the death of Ram Lakhan. This prosecution witness has proved the relevant G.D. entry in this regard.

16. P.W.7 Sub-inspector Sheetla Prasad Upadhyay has stated that on 18.05.2006, he was posted in police station Ghosi as Sub-

inspector (Civil Police) and the investigation of Case Crime NO.429 of 2006 was entrusted to him. He investigated the same and had submitted a charge-sheet.

17. P.W.8 Constable Radhe Shyam Yadav has stated in his examination-in-chief that on 28.04.2006, he was posted as Constable Clerk at police station Ghosi. On 28.04.2006, at about 12.30 P.M. Ram Lakhan came to police station and gave oral information about the incident and in pursuance thereof, a non-cognizable report no.86/2006 u/s 323, 504, 506 IPC was registered. This prosecution witness has proved the non-cognizable report to the incident of Ram Lakhan.

18. P.W.9 Constable Mithilesh Kumar has stated that on 13.5.2006, he was posted as In-charge police outpost Amila of police station Ghosi and he had conducted inquest of deceased Ram Lakhan. This prosecution witness has proved the inquest report and other police papers prepared by him.

19. In their examination U/s 313 Cr.P.C., the accused persons have denied their involvement in the offence and have stated that they have been falsely implicated on account of enmity and the evidence adduced against them is false. An application 63Kha was moved by accused Dayanand showing his date of birth as 07.05.1991 and claiming to be juvenile on the date of incident. He produced the entries of Kutumb register mentioning his date of birth, voter list and his medical examination showing his age on the date of medical examination in between 20-21 years. The learned Trial Court conducted enquiry and came to the conclusion vide order dated 15.01.2009 that the accused Dayanand was juvenile at the time of incident and his case was separated and the trial continued for accused appellant Subhash and co-accused Gulab.

20. From a careful scrutiny of the evidence available on record, it is undoubtedly apparent that the witnesses of fact i.e. P.W.1 Smt. Dhanmati and P.W.3 Smt. Gyanti @ Gyanmati are most natural witnesses as P.W.1 Smt. Dhanmati is wife of deceased and her presence with her husband Ram Lakhan in daytime at her house cannot be doubted. Similarly, Smt. Gyanti @ Gyanmati is daughter-in-law of the deceased and according to the normal course of daily life, she is also supposed to be there in the house, as she is also a housewife. The presence of both these witnesses has not been seriously challenged by the defense. Even a suggestion has not been given to P.W.1 Smt. Dhanmati that on the alleged date and time of occurrence, she was not there in the house with Ram Lakhan. A half hearted suggestion has been given to P.W.3 Smt. Gyanti @ Gyanmati that she was at her Maika on the date of the incident but she has denied the same. Similarly no suggestion has been given to P.W.2 that he was not there in his house when the incident took place. A lengthy cross examination has been made from all the three witnesses, but nothing could be achieved to raise slightest doubt regarding the veracity of their deposition, which is otherwise natural and truthful and is corroborated by medical evidence. The statement of P.W. 1 Smt. Dhanmati corroborates other independent circumstances and evidence available on record. In the medical examination report of deceased Ram Lakhan prepared in Community Health Center, Ghosi, the injured was shown to be brought by Smt. Dhanmati and this fact has also been proved by P.W.4 Dr. D.N. Rai in his deposition.

21. Learned defense counsel has tried to argue that the investigation of the case is not proper and there appears cutting and over-writing in police papers and in addition to this circumstance, the registration of non-cognizable report by Ram Lakhan after third day of the incident is also doubtful in as much as after receiving such injuries, he would have been in a state of coma on account of

subdural hematoma as suggested by the doctor and it is highly improbable for him to reach to the police station and lodge the non-cognizable report at his own instance.

22. This submission made by the learned Counsel for the accused appellant *prima facie* appears to be attractive but a conspicuous view over evidence available on record reveals its weakness. The P.W. 1 has categorically stated in her statement that after medical examination in District Hospital, the deceased Ram Lakhan was taken back to his home and he remained at his home continuously till his death. Not a single question has been put by the prosecution, while cross-examining P.W.1 about the condition of the victim Ram Lakhan when he was at home since 25.04.2006 to 13.05.2006. There is not even a suggestion to this effect that after coming from the hospital, the victim regained his health and was capable of speaking something or not or whether he was bed-ridden or was in a state of coma. On the other hand, there is specific averment made by P.W.1 that the deceased went to police station and lodged the non-cognizable report. This fact has been corroborated by Constable Clerk P.W. 6 Dhanoday Pandey and P.W. 8 Constable Radhey Shyam Yadav, who have proved the registration of non-cognizable report by deceased Ram Lakhan and have also proved thumb impression of the deceased on that report. The defense has tried to challenge aforesaid facts by pointing out some cuttings and over writing in the police papers and General Diary entries but such shortcomings has been duly explained by the witness P.W. 8 Constable Radhey Shyam Yadav. Hence, there is no such circumstance available on record, which may raise doubt about the registration of the non-cognizable report by the deceased himself. Rather it makes out an additional factor in support of eye-witness account of the incident.

23. Thus, from the evidence available on record, this Court comes to the definite conclusion that the prosecution evidence and the

alleged eye-witnesses are natural and truthful and the prosecution has succeeded beyond reasonable doubt in proving the participation of the accused in commission of the offence.

24. With respect to the submission on behalf of appellant regarding absence of intention or knowledge about inflicting deadly injuries to the deceased, it born out from the statement of P.W.4 Dr. D.N. Rai and from the medical examination report of deceased dated 25.04.2006 proved by him and from the post mortem examination report proved by P.W.5 Dr. A.K. Srivastava and from his other part of statement, it is established that multiple blows were inflicted to the deceased by blunt weapon on the vital parts of the body and this role has been specifically assigned to accused appellant Subhash. The injury no. 5 shows multiple abraded contusions in an area of 28 cm and 10 cm over left side of abdomen and chest and underlying the seat of injuries, three ribs were found fractured and many internal organs were found contused. In the head region, the parietal bone was found fractured. The P.W.5 Dr. A.K. Srivastava has specifically stated that the injuries received by the deceased in his head and chest were sufficient in the ordinary course of nature to cause death.

25. To ascertain element of knowledge regarding any criminal act, whenever any person with conscious state of mind about his act causes injury to another without any reasonable excuse, it is required to be inferred that he was knowing about the outcome of injuries so caused by him and like-wise, repeated blow of Lathi as a weapon to an old age person on his vital parts like head, chest, abdomen, etc. would certainly give inference that he was having complete knowledge about its result. The term "intention" and "knowledge" have been discussed and explained in catena of judgments of Hon'ble Supreme Court and this court. While intention requires guilty state of mind or what we say ill will, the law provides

punishment for those acts too, which doesn't have element of "intention" but the awareness of the consequences of the act. Without burdening the judgment with bunch case-laws, one celebrated judgment of Hon'ble Supreme Court may be referred in this regard. In the case of ***Jai Prakash reported in (1991) 2 SCC 32***, the Hon'ble Supreme Court while referring to ***Virsa Singh's case, AIR 1958 SC 465*** and ***Jagrup Singh's case, AIR 1981 SC 1552*** made observations about element of "knowledge", which are worth quoting and are recapitulated as follows: -

*"In both these cases it is clearly laid down that the prosecution must prove (1) - that the body injury is present, (2) - that the injury is sufficient in the ordinary course of nature to cause death, (3) - that the accused intended to inflict that particular injury that is to say it was not accidental or unintentional or that some other kind of injury was intended. In other words Clause Thirdly consists of two parts. The first part is that there was an intention to inflict the injury that is found to be present and the second part that the said injury is sufficient to cause death in the ordinary course of nature. Under the first part the prosecution has to prove from the given facts and circumstances that the intention of the accused was to cause that particular injury. Whereas the second part whether it was sufficient to cause death is an objective enquiry and it is a matter of inference or deduction from the particulars of the injury. The language of Clause Thirdly of S. 300 speaks of intention at two places and in each the sequence is to be established by the prosecution before the case can fall in that clause. The 'intention' and 'knowledge' of the accused are subjective and invisible states of mind and their existence, has to be gathered from the circumstances, such as the weapon used, the ferocity of attack, multiplicity of injuries and all other surrounding circumstances. The framers of the Code designedly used the words 'intention' and 'knowledge' and it is accepted that the knowledge of the consequences which may*

*result in doing an act is not the same thing as the intention that such consequences should ensue. Firstly, when an act is done by person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue. As compared to 'knowledge', 'intention' requires something more than the mere foresight of the consequences, namely the purposeful doing of a thing to achieve a particular end."*

26. The Hon'ble Supreme Court further elaborated the discussion by referring to Russell on Crime (12th edn. at page 41) and observed as follows:

*".....*

*.....*

*"In the present analysis of the mental element in crime the word 'intention' is used to denote the mental attitude of a man who has resolved to bring about a certain result if he can possibly do so. He shapes his line of conduct so as to achieve a particular end at which he aims."*

*It can thus be seen that the 'knowledge' as contrasted with 'intention' signify a state of mental realization with the bare state of conscious awareness of certain facts in which human mind remains supine or inactive. On the other hand, 'intention' is a conscious state in which mental faculties are aroused into activity and summoned into action for the purpose of achieving a conceived end. It means shaping of one's conduct so as to bring about a certain event. Therefore in the case of 'intention' mental faculties are projected in a set direction. Intention need not necessarily involve premeditation. Whether there is such an intention or not is a question of fact. In Clause Thirdly the words "intended to be inflicted" are significant. As noted already, when a person commits an act, he is presumed to expect the natural consequences. But from the mere fact that the injury caused is sufficient in the ordinary course of nature to*

*cause death it does not necessarily follow that the offender intended to cause the injury of that nature. However, the presumption arises that he intended to cause that particular injury. In such a situation the court has to ascertain whether the facts and circumstances in the case are such as to rebut the presumption and such facts and circumstances cannot be laid down in an abstract rule and they will vary from case to case. However, as pointed out in Virsa Singh case the weapon used, the degree of force released in wielding it, the antecedent relations of the parties, the manner in which the attack was made that is to say sudden or premeditated, whether the injury was inflicted during a struggle or grappling, the number of injuries inflicted and their nature and the part of the body where the injury was inflicted are some of the relevant factors. These and other factors which may arise in a case have to be considered and if on a totality of these circumstances a doubt arises as to the nature of the offence, the benefit has to go to the accused. In some cases, an explanation may be there by the accused like exercise of right of private defence or the circumstances also may indicate the same. Likewise there may be circumstances in some cases which attract the first exception. In such cases different considerations arise and the court has to decide whether the accused is entitled to the benefit of the exception, though the prosecution established that one or the other clauses of S. 300 Indian Penal Code is attracted. In the present enquiry we need not advert to that aspect since we are concerned only with scope of Clause Thirdly of S. 300 IPC."*

27. In view of above discussed position of law, it is established beyond doubt that accused appellant Subhash had inflicted repeated blows on the vital parts of the body of deceased Ram Lakhan and the only inference, which can safely be drawn is that he was knowing fully well the consequences of his act that it may cause death of deceased Ram Lakhan and thus, he is guilty of the offence U/s 304(II) Indian Penal Code.



28. Lastly, the learned counsel for the defense has submitted that in view of the facts and circumstances of the case, the sentence is too severe and it may be reduced as may deem fit.

29. In this regard, the position of law as held by Hon'ble Supreme Court in ***Sadha Singh And Anr. vs State of Punjab, (1985) 3 SCC 225*** is as follows: -

*"5. The next question is what should be the adequate sentence. We must confess that what ought to be the proper sentence in a given case is left to the discretion of the trial court, which discretion has to be exercised on sound judicial principles. Various relevant circumstances which have a bearing on the question of sentence have to be kept in view. Before deciding the quantum of sentence the learned Sessions Judge has to hear both the sides as required by the relevant provision of the Cr.P.C.*

*6. In an appeal against the conviction, it is open to the High Court to alter or modify or reduce the sentence after confirming conviction. If the High Court is of the opinion that the sentence is heavy or unduly harsh or requires to be modified, the same must be done on well recognised judicial dicta. Therefore, we may first notice the reasons which appealed to the learned Judge to reduce the substantive sentence awarded to the appellants to sentences undergone."*

30. This Court has considered submission in this regard in the light of the evidence, facts and circumstances of the case and finds in the present case that the deceased who is an old man, aged about 60 years, has been assaulted without any provocation. He was beaten mercilessly by repeated blows of lathi. The accused appellant Subhash is a healthy men aged about 40 years. The accused chose vital parts of the body to inflict injuries. In these circumstances the sentence of seven years rigorous imprisonment appears to be appropriate and does not call for any interference.

31. The appeal fails and is, accordingly, dismissed.

32. Since the appellant is already on bail, the Chief Judicial Magistrate, Mau is directed to ensure that the appellant is taken into custody and sent in jail for serving out of his sentence awarded by the trial court. The bail bond of the appellant is cancelled and his sureties are also discharged.

33. A copy of this order be sent to the Chief Judicial Magistrate, Mau immediately for necessary compliance of this judgment and order.

(Manju Rani Chauhan, J.)

**Order Date :-** 18.9.2019

Sushil/-