RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Appeal (DB) No. 224/2018
CNR: RJHC020411612018 | URN: CRLAD / 407U / 2018

Rajasthan High Court
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1. Ramjilal S/o Bhanwar Lal, age 28 years
2. Laxman Saini S/o Mohan Lal, age 30 years
3. Kalyan Saini S/o Kanaram, age 61 years
4. Bhonri Lal S/o Kanaram, age 61 years **(appeal abated qua him vide order dated 28.04.2026)**
5. Gopal Lal S/o Mohan Lal, age 35 years
6. Ganesh Narayan S/o Bhonri Lal, age 31 years
7. Budhi Prakash S/o Bhonri Lal @ Bhanwar Lal, age 28 years
8. Prahlad S/o Bhonri Lal @ Bhanwar Lal, aged 28 years
9. Smt. Radha Devi W/o Bhonri Lal @ Bhanwar Lal, age 50 years
10. Smt. Gomti Devi W/o Kalyan Saini, age 40 years
11. Smt. Seema W/o Ramjilal, age 24 years
12. Smt. Parvati Devi W/o Budhiprakash, age 26 years
13. Smt. Kanta Devi W/o Prahlad, age 24 years

All resident of 231, Arjun Nagar, Police Station Jawahar Circle, District Jaipur.
(Accused-Appellants are confined in Central Jail, Jaipur).

----Accused-Appellants

Versus

The State of Rajasthan through Public Prosecutor

Respondent

Connected With

D.B. Criminal Appeal (DB) No. 209/2018
CNR: RJHC020551242018 | URN: CRLAD / 378U / 2018

Omprakash S/o Anandilal aged 27 years, R/o 226, Arjun Nagar, Durgapura, Police Station Jawahar Circle, Jaipur.
(Accused-appellant is confined in Central Jail, Jaipur).

----Accused-Appellant

Versus

The State of Rajasthan through Public Prosecutor

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----Respondent

For Appellant(s) in DB CRLAD No. 224/2018	:	Mr. Vishal Joshi assisted by Mr. Ram Singh Gurjar
For Appellant(s) in DB CRLAD No. 209/2018	:	Mr. Vinod Kumar Sharma
For Respondent(s)	:	Mr. Rhishi Raj Singh Rathore, P.P.

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HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE BHUWAN GOYAL

Date of Conclusion of Arguments : : 16.11.2026

Judgment Reserved On : : 16.11.2026

Whether the full judgment or only the operative part is pronounced : : Full Judgment

Judgment Pronounced On : : 28.11.2026

Per Hon'ble Mahendar Kumar Goyal, J.

Both these criminal appeals arise out of the common judgment dated 17.05.2018 passed by the learned Special Judge (C.B.I.) No.4, Jaipur (Raj.) (for brevity, "the learned trial Court") in Sessions Case No. 09/2017 (03/2014) whereby the accused-appellants (for short, "the appellants") have been convicted and sentenced as under:-

> **1. Section 148 IPC:** Three years' rigorous imprisonment and fine of ₹5,000/- each; in default whereof, one month's additional imprisonment.
>
> **2. Section 149 IPC:** One year's rigorous imprisonment and fine of ₹10,000/- each; in default whereof, four months' additional imprisonment.

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3. Section 302 read with Section 149 IPC: Life imprisonment and fine of ₹50,000/- each; in default whereof, one year's additional imprisonment.

4. Section 323 read with Section 149 IPC: One year’s rigorous imprisonment and fine of ₹1,000/- each; in default whereof, ten days’ additional imprisonment.

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5. Section 336 read with Section 149 IPC: Three months’ rigorous imprisonment and fine of ₹250/- each; in default whereof, two days’ additional imprisonment.

6. Section 341 read with Section 149 IPC: One month’s simple imprisonment and fine of ₹500/- each; in default whereof, four days’ additional imprisonment.

7. Section 427 read with Section 149 IPC: Two years’ rigorous imprisonment and fine of ₹5,000/- each; in default whereof, two months’ additional imprisonment.

All the sentences were directed to run concurrently.

Initially, the D.B. Criminal Appeal No. 224/2018 was preferred by as many as 13 appellants, but during its pendency, the appellant No. 4-Bhonri Lal S/o Kanaram expired and vide order dated 28.04.2026, the appeal was held to have abated qua him. Therefore, we will confine our consideration to the remaining appellants. It may also be pertinent to mention here that initially, the investigation was kept pending under Section 173(8) CrPC against the co-accused Mohan Lal, who was later convicted by the learned trial Court vide judgment dated 30.06.2023. However, on

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his death on 16.10.2026, the criminal appeal No. 250/2023 preferred by him against the judgment of conviction stood abated.

Succinctly stated, the relevant facts are that Shri Pawan Katta (PW-4) submitted a written report (Exhibit P.9) on 11.12.2013 at 3:00 AM to Police Station Jawahar Circle at Camp Fortis Hospital, Jaipur, stating therein that at about 10:00 PM on 10.12.2013, an information was received that the boundary wall of the plot of Raj Bihari Gupta was demolished whereupon he, alongwith his father, other persons and the police personnel reached the place of the incident where they found the appellants alongwith co-accused persons armed with *lathis, sariyas* (iron rods), stones and sharp edged weapons who attacked them, looted their watches, golden chain and the cash in their pockets. It was alleged that their cars were also damaged. It was further alleged that his father Kamal Prakash Katta and brother Shyam Sundar were hit on the head and all of them received grievous injuries and were taken to Fortis Hospital for treatment where Kamal Prakash Katta was declared dead. Based thereon, FIR No. 943 dated 11.12.2013 was registered for the offences under Sections 147, 148, 149, 341, 323, 427, 336 and 302 IPC. After, investigation, the appellants were charge sheeted for the offences under Sections 147, 148, 149, 323, 341, 336, 427 and 302 IPC, whereunder charges were also framed against them. The appellants pleaded not guilty and claimed trial. After trial, they have been convicted and sentenced, as stated hereinabove.

Assailing the impugned judgment, Shri Vishal Joshi, learned counsel for the appellants in D.B. Criminal Appeal No. 224/2018, contended that they have falsely been implicated in this case.

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Inviting the attention of this Court to the evidence available on record, he contended that it was a case of free fight and the complainant party was the aggressor inasmuch as they were in possession of the subject land. He submitted that the allegation of beating the deceased and the injured persons was against as many as 15 accused persons, but the medical reports did not reflect corresponding injuries. Learned counsel argued that none of the prosecution witnesses has levelled any specific allegation against any of the appellants of causing any specific injury either to the deceased or to the injured persons. Shri Vishal Joshi canvassed that recovery of the alleged weapons of offence on the basis of their disclosure statement did not inspire confidence as they were arrested under Section 151 CrPC from the place of occurrence at the time of the commission of the alleged offence, whereas the recoveries were effected four days thereafter. Learned counsel submitted that even otherwise, both the motbir witnesses to the seizure memos, i.e., S/Shri Ravindra Meena (PW13) and Rakesh Verma (PW14) turned hostile and did not support the prosecution case. In the backdrop of the aforesaid submissions, learned counsel Shri Vishal Joshi prayed that the appeal be allowed, the impugned judgment dated 17.05.2018 be quashed and set aside and the appellants be acquitted of the charges framed against them.

Shri Vinod Kumar Sharma, learned counsel for the appellant in DB Criminal Appeal No. 209/2018, contended that the appellant acted in exercise of his right of private defence inasmuch as the complainant party wanted to forcibly dispossess the accused party from the subject property in their ownership and possession.

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Inviting the attention of this Court to the cross-examination of Rakesh Katta (PW1), learned counsel submitted that he was suggested, during his cross-examination, that the appellant-Omprakash was not present at the scene of the crime, inasmuch as, on that day, he had gone to Chomu to attend a marriage function. Referring to his plea recorded under Section 313 CrPC, learned counsel argued that the appellant had stated therein that he was not present at the scene of the crime at the relevant time as he had gone to Village Morija, Chomu in marriage of Hemraj Chouhan and when he reached home at midnight, some women folk informed him of the incident whereupon he reached the police station at about 2:00 AM alongwith others. Shri Vinod Kumar Sharma also canvassed that there is absence of allegation of inflicting any injury by him to the deceased. He further contended that as per the postmortem report of the body of the deceased (Exhibit P.41), the deceased did not receive any grievous injury rather, all the injuries were simple in nature. He, therefore, prayed that the appeal be allowed, the impugned judgment dated 17.05.2018 be quashed and set aside and the appellant be acquitted of the charges framed against him.

Per contra, learned Public Prosecutor Shri Rhishi Raj Singh Rathore, controverting the submissions made by the learned counsel for the appellants, contended that the impugned judgment is well-reasoned, is based on sound legal principles and proper appreciation of cogent evidence available on record and, therefore, warrants no interference by this Court in its appellate jurisdiction. He, therefore, prayed for dismissal of the appeals.

Heard. Considered.

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A perusal of the impugned judgment dated 17.05.2018 reflects that the learned trial Court has recorded a categorical finding, based on evidence available on record, including the explanation offered by the appellants in their plea recorded under Section 313 CrPC and the statements of the defence witnesses, that the appellants had admitted, directly and indirectly, the scuffle between them and the complainant party on the given date and at the scene of the crime on account of a dispute over plot. After scanning the evidence available on record, this Court concurs with the aforesaid findings.

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Shri Rakesh Katta (PW1), son of the deceased Kamal Prakash Katta and an injured eye-witness, was suggested during his cross-examination that "It was true that when he reached the place of incident, the wall was already demolished and the scuffle started after they and the police personnel had reached the scene of crime".

Shri Shyam Sundar Katta (PW3), another son of the deceased and himself an injured eye-witness, was suggested during his cross-examination that "It was wrong that he was saved by Rakesh Katta and it was correct to say that the police personnel saved them. It was wrong that the incident had already happened when the police arrived. It was right that he suffered an injury on his head before the police reached."

Further, Shri Pawan Katta (PW4), son of the deceased and himself as an injured eye-witness, was suggested during his cross-examination that "When the police team present at the site could not control the situation, additional police personnel were

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summoned." He was further suggested that when the scuffle took place, his father fell down upon whom the witness fell down.

Moreover, almost all the appellants have stated, in their plea recorded under Section 313 CrPC, that the complainant party, alongwith the police personnel, forcibly entered the subject land at night to take its possession and when they protested, the accused party had beaten them and at that time, Kamal Prakash Katta suffered a heart attack. Furthermore, S/Shri Ganesh Narain (DW1), Vijaypal (DW2) and Gopal Lal Saini (DW3) categorically stated that at midnight on 10.12.2013, the complainant party visited the scene of the crime alongwith the police personnel and a scuffle took place in between them and the members of the accused party.

Thus, on the basis of the aforesaid evidence, we find no reason to disagree with the findings recorded by the learned trial Court. Even otherwise, both the learned counsel for the appellants have claimed it to be a case of free fight and of private defence, respectively. Thus, it is found to be an admitted case that both the parties faced each other at the given time at the scene of crime.

In the aforesaid factual backdrop, the question arises as to who was in possession of the subject property. It is the prosecution case that the scene of crime was the land of plots No. 234 and 235 belonging to the complainant party. The scene of crime was the aforesaid land which is well-established from the site plan (Ex. P1) duly proved by its motbir witnesses, namely, S/Shri Rakesh Katta (PW1) and Amitab Gupta (PW2). PW1, PW2, PW3, PW4 have claimed the plots No. 234 and 235 to be in their possession and ownership. PW4 has also proved the original

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pattas/allotment letters/site plans of the aforesaid plots as Exhibit P.12 to Exhibit P.15. Although they were suggested during cross-examination that a civil dispute was pending between the parties with regard to the aforesaid land, but except for a stray suggestion that on plot No. 235, some of the articles of the accused party were lying, they were not suggested that the subject land was in the possession of the accused party. In the site plan (Exhibit P1), two rooms are shown on the plot No. 234 with a tin shed *kotdi* on the plot No. 235. Further, Shri Shyam Sundar Katta (PW3) was suggested during his cross-examination that the boundary wall of plot No. 234 of Kamal Prakash Katta was not demolished by the Mali family. Moreover, the defence witness Shri Vijay Pal (DW2) candidly admitted in his cross-examination that there was a room constructed in the plot of Kamal Prakash Katta occupied by a *chowkidar.* He further stated that Kamal Prakash Katta and his family members used to visit the subject plot. A similar admission was made by another defence witness, namely, Shri Gopal Lal Saini (DW3). In view thereof, we are of the considered opinion that the place of incident was under the exclusive possession of the complainant party.

As already observed, indisputably, a scuffle took place between the parties at the given time on the place of incident. Although, it was the defence case that the complainant party was the aggressor and the members of the accused party were beaten; however, this plea could not be substantiated by them inasmuch as no injury report of any of the members of the accused party was produced during the course of evidence. Moreover, no FIR of the incident was lodged at their instance.

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Therefore, we are not able to persuade ourselves to accept the defence plea that they were also beaten by the members of the complainant party during the scuffle.

The learned trial Court has recorded a finding that the appellants constituted an unlawful assembly which, in furtherance of their common object, assaulted the members of the complainant party, committed murder of Kamal Prakash Katta and caused injuries to S/Shri Rakesh Katta (PW1), Shyam Sundar Katta (PW3) and Pawan Katta (PW4). Indisputably, the appellants were present at the scene of the crime at the relevant time. We have already held that the land of the plots No. 234 and 235 was in possession of the complainant party. PW1, PW2, PW3, PW4 and PW21 categorically stated that when they reached the scene of crime on the night of 10.12.2013, they noticed that the boundary wall surrounding the subject property was freshly demolished, the appellants, alongwith co-accused persons, were present there armed with *lathis* and *sariyas* (an iron rods), they pelted stones and had beaten the members of the complainant party. Their testimony could not be shaken during cross-examination rather, some of them were suggested that when they reached the scene of crime, the boundary wall was already demolished and the scuffle started thereafter in presence of the police team. The prosecution witnesses were also suggested during their cross-examination that the scuffle started after the complainant party and the police personnel had reached the scene of crime. Presence of the members of the accused party in large numbers armed with *lathis* and iron rods even after demolishing the boundary wall surrounding the plots of the complainant party, is indicative of the

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fact that they wanted to forcibly resist the members of the complainant party and to assault them. In view of the aforesaid analysis, this Court is of the considered view that the appellants constituted an unlawful assembly which, in furtherance of its common object, demolished the boundary wall and assaulted the members of the complainant party.

In the incident, Kamal Prakash Katta died and his sons, namely, S/Shri Rakesh Katta (PW1), Shyam Sundar Katta (PW3) and Pawan Katta (PW4) received injuries. Their injury reports; Exhibit P.6, Exhibit P.7/P7A and Exhibit P.11, respectively were proved by Dr. R S Meena (PW16) who had examined them. The injuries to all three persons were found to be simple in nature. They, during the course of their deposition, attributed these injuries specifically to the appellants and their testimony could not be shattered during the course of their cross-examination. Therefore, we find no reason to disagree with the findings recorded by the learned trial Court of their conviction under Section 323/149 IPC.

The question now arises as to whether the appellants were guilty of the murder of Kamal Prakash Katta and their conviction under Section 302 read with Section 149 IPC is sustainable.

As per the postmortem report of the body of the deceased (Exhibit P.41), the deceased had received the following injuries:-

1. Abrasion of size 5cm X 1/2cm U-shaped over left side cheek with dry clotted blood.

2. Abrasion measuring 2cm X 1cm with dry clotted blood present over right cheek, upper half of the neck and the left eye wall.

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3. Abrasion of size 2cmX½cm over the right shoulder joint.

4. Abrasion measuring 3cmX1½cm with dry clotted blood present over back of the right ear.

5. Abrasion of size 3cmX2cm with dry clotted blood over the left leg.

6. The bruise of size 6cmX2cm red in colour present over right side temporo parietal region with sub scalp hematoma underneath the bruises with no fracture of vault (skull), membrane was found tense; both sides show sub arachnoid haemorrhage over left side temporo parietal region and intraventricular bleeding small contusion over brain stem and cranial cavity contained about 150 cc blood.

The cause of death was suggested as 'shock' brought about as a result of ante mortem injuries. However, final opinion was kept reserved until receipt of Histo Pathological Report and FSL Report. Dr. D.S. Rathore (PW15) and Dr. R.S. Meena (PW16), the members of the Medical Board who conducted the autopsy, opined that the injuries No. 1 to 5, i.e., abrasions were simple in nature.

With regard to cause of death, while Dr. D. S. Rathore (PW15) stated that it was shock **and** ante mortem injuries and final opinion was to be given after receipt of FSL Report, Dr. R. S. Meena (PW16), taking a contrary stand, stated that the death was due to shock **on account of** injuries. He, however, reiterated that the final opinion was possible only after receipt of Histo Pathological and FSL Report. Indisputably, Histo Pathological Report was never received and as per the FSL Report (Exhibit P.66), the viscera gave negative test for any kind of poison, alcohol or other incriminating substance.

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Upon cross-examination, PW15 stated that there was no corresponding fracture to the injury No. 1 (head injury) which was a non-bleeding injury. He admitted a suggestion that shock could be on account of cardiac injury and the cardiac shock could be on account of blood pressure, fright or fear. He also accepted a suggestion that death could have been caused by a reason other than the injury No. 1, i.e., the head injury. PW16, the other member of the Medical Board, while admitting that there was no skull bone fracture corresponding to the head injury, further admitted that there was no injury on the brain and its all four lobes were healthy. He also admitted a suggestion that if any incident suddenly happens to a person, on account of fear or apprehension, he could go into vagal shock and further admitted a suggestion that in the incident, a possibility could not be ruled out that death of Kamal Prakash Katta occurred due to vasovagal shock.

Thus, we find that while one of the members of the Medical Board had stated that the death was on account of shock and the ante mortem injury, the other member, taking a conflicting stand, deposed that the death was due to shock on account of ante mortem injuries. Further, both the members of the Board admitted during their cross-examination that final opinion regarding the cause of death could have been furnished only after receipt of the Histo Pathological and FSL report. While, Histo Pathological Report was never received, the FSL Report, as already noted, did not advance the prosecution case any further. Further, except the head injury, all other injuries were opined to be simple in nature. The head injury did not involve any corresponding fracture and,

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therefore, it did not amount to grievous injury, as is defined under Section 320 IPC unless it endangered the life of Kamal Prakash Katta. Upon meticulous examination of the cross-examination of the members of the Medical Board, viz., PW15 and PW16, we are not convinced that the prosecution was able to prove beyond reasonable doubt that the head injury was the cause of death. As already observed, PW15 had categorically admitted a suggestion by the defence that death could have been due to any reason other than the head injury. He also stated that the shock could be on account of cardiac injury. Similarly, PW16, admitting that not only that there was no corresponding fracture to the injury No. 1, also admitted that there was no injury on the brain of the deceased and its all four lobes were healthy. He also admitted that there was no countercoup corresponding to this injury, meaning thereby that the deceased was not hit on the head with force. He further admitted that a possibility could not be ruled out that the death occurred on account of cardiac shock due to vasovagal shock which could have been precipitated on account of fear or fright due to the sudden incident. Shri Shyam Sundar Katta (PW3), son of the deceased, categorically admitted in his cross-examination that his father had previously suffered a heart attack and was a heart patient.

In **Rupinder Singh Sandhu Vs. State of Punjab and Ors.: (2018) 16 SCC 475**, while dealing with a similar situation, their Lordships were pleased to hold as under:-

> "**55.** PW1 is also the author of a textbook on Forensic Medicine and Toxicology. In the Sixth Edition of his book he stated as follows:

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> On most occasions, bleeding is slight but fatal compression of the brain by a large subdural haemorrhage can occur within a few hours. It has been suggested that about 100-150 ml is usually the minimum associated with fatalities. Fatality is frequently associated with some concomitant brain injury. If there is no primary brain damage, the mortality from the subdural haemorrhage is usually related to the victim's age, neurological status and delay from the time of trauma to the surgical evacuation of the haematoma.

It can be noticed from the above statement – (i) subdural haemorrhage by itself does not cause death but it is the compression of brain caused by a large subdural haemorrhage which causes the death; and (ii) about 100-150 ml of haemorrhage is usually the minimum associated with fatalities.

56. We shall assess the evidence on record in the instant case in light of the above analysis. The statements made in (Ex PA) and the evidence of PW1 that the head injury itself could be sufficient to cause the death in the ordinary course of nature are mere *ipse dixit*. Neither any specific details regarding the volume of the subdural haemorrhage are available on record, nor any medical opinion that the subdural haemorrhage caused the compression of the brain that caused the death of Gurnam Singh. There is no evidence of any concomitant brain injury. The post-mortem report and the evidence of PW2 are silent in this regard. The pathologist's report is clear about the absence of any pathology in brain. Such being the evidence on record, the conclusion of the High Court that Gurnam Singh's death is caused by subdural haemorrhage but not cardiac arrest, in our opinion, is not based on any evidence on record and is a pure conjecture. We, therefore, find it difficult to sustain the conviction of the first accused and set-aside the same. Because to find a man guilty of culpable homicide, the basic fact required to be established is that the accused caused the death. But, as noticed above, the medical evidence is absolutely uncertain regarding the cause of death of Gurnam Singh."

In the backdrop of the aforesaid precedential law and the analysis of the evidence, as aforesaid, we are of the considered view that the prosecution could not establish, beyond reasonable

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doubt, that the death of Kamal Prakash Katta could be attributed only to the head injury.

On that premise, we do not approve of the findings recorded by the learned trial Court that the death of Shri Kamal Prakash Katta was on account of the sudden attack or grave injuries on the body, a kick by Bhonri Lal on the vital part of the body, shock and haemorrhage. It may be pertinent to note here that so far as the allegation of Bhonri Lal kicking the deceased in the testicles is concerned, no corresponding injury was noted in the autopsy report which casts a doubt on the veracity of the allegation.

Now we are confronted with the question as to whether the head injury to the deceased was on account of assault by the appellants with *lathis* and/or iron rods or on account of his fall on the hard ground.

Shri Rakesh Katta (PW1) deposed that Bhonri Lal, Budhi Prakash, Ramjilal and Prahlad knocked down his father and got on top of him. He further alleged that their wives dragged his father by the hand and Bhonri Lal kicked him in the testicles. In his cross-examination, he stated that his father was thrown on the ground on his back, and the bricks and stones were lying on the other side of the place where his father was knocked down. He did not allege at all that any of the appellants assaulted his father with sticks or iron rods. Shri Amitab Gupta (PW2) specifically alleged that Kamal Prakash Katta was beaten by the appellants and the co-accused persons with iron rods and *lathis*. In his cross-examination, he admitted that the stones were lying where the deceased fell down and that place was hard and rocky. He further admitted that to save the deceased, first his son Shri Shyam

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Sundar Katta fell over him and thereafter, on top of both of them, Pawan Katta fell down. Although, he denied the suggestion that the deceased received injuries on account of these two falling down on top of him. Shri Shyam Sundar Katta (PW3) stated that his father was knocked down by Bhonri Lal, Ramjilal, Budhi Prakash, Mohan Lal, Ganesh Narain and Prahlad and was thereafter, mercilessly beaten with *lathis*, iron rods, *dandas* and was kicked and punched. He alleged that Bhonri Lal @ Bhanwar Lal kicked his father in the testicles and dragged the deceased. In his cross-examination, he professed ignorance when suggested that construction material was lying at the scene of the crime. He further denied the suggestion that his father fell down on account of anxiety and stated that, rather, it was on account of the injuries inflicted. Shri Pawan Katta (PW4) alleged that Ramjilal, Ganesh, Prahlad, Budhi Prakash, Omprakash and Mohan Lal, all of them gravely assaulted his father who was knocked down to the ground by Bhonri Lal, Ganesh and Ramjilal. He also reiterated the allegation that Bhonri Lal kicked his father in the testicles and five women dragged him. Shri Pawan Kumar (PW12), a Constable and a member of police team present at the place of incident, stated that members of the accused party attacked the deceased with *lathis* causing injuries and rendering him unconscious. Though, Smt. Supyari (PW19), a domestic help at the plot No. 234, alleged that somebody from the accused party hit the deceased and Pawan Katta with *danda* but in her cross-examination, stated that there was darkness and she could not see as she was standing far off. Shri Rohitash Lal Devanda (PW21), the Investigating Officer stated that the members of the accused party started a scuffle

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with the police as also with the members of the complainant party and during this episode, Kamal Prakash Katta fell down on the ground.

Thus, from the conspectus of the aforesaid evidence, it is evident that while, PW1 made no allegation against any of the appellants of inflicting any injury to the body of the deceased with *lathis* or iron rods, the other prosecution witnesses levelled allegation against at least six to eight appellants of severely beating the deceased with *lathis*, iron rods and stones. Some of them have also alleged that the deceased was kicked and punched by some of the appellants and that Bhonri Lal @ Bhanwar Lal kicked the deceased in the testicles and that the womenfolk dragged the deceased. However, as already noted, corresponding injuries were not found on the body of the deceased inasmuch as his autopsy report (Exhibit P.41) demonstrated five abrasions on the body which were found to be simple in nature and a bruise with swelling on the temporo parietal region with no corresponding fracture of the skull bone or injury to the brain lobes. Further, in view of the aforesaid evidence, it cannot be ruled out that the abrasions on the body could be on account of its dragging on hard ground. This raises grave doubt about the prosecution story that the deceased was severely beaten by at least six to eight accused with *lathis* and iron rods. Further, Shri Rakesh Katta (PW1) specifically alleged that some of the appellants knocked down his father and got on top of him with no allegation that he was inflicted with injuries with the *lathis* and/or iron rods. He stated in his cross-examination that his father was thrown to the ground on his back. Shri Amitab Gupta (PW2) stated

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that where the deceased fell down, the surface was hard and rocky with stones lying there. He accepted a suggestion that when the deceased fell down, to save him, his son Shri Shyam Sundar Katta fell down upon him and on top of them, Shri Pawan Katta also fell down. Shri Shyam Sundar (PW3) stated that some of the appellants first knocked his father down to the ground and thereafter, had beaten him severely. Almost in similar terms is the deposition of Shri Pawan Katta (PW4). In the site plan (Exhibit P.1) also, a pile of stones is shown at a place marked "K" on the plot No. 234, in front of the demolished wall. In view thereof, a possibility cannot be ruled out that the deceased, having been knocked down by the appellants or having fallen down on account of shock, received the head injury on hitting the hard surface and/or the stones lying there.

It is worth noticing here that although as many as 15 persons were convicted for the offence under Section 302/149 IPC, we are not convinced that the unlawful assembly shared a common object to commit the murder of the deceased. As is apparent, the autopsy report shows only six injuries on the body of the deceased; five abrasions, simple in nature and one bruise on right temporo parital region with sub scalp hematoma but no fracture of skull bone or injury to the brain lobes. Though, we have already held that the prosecution could not establish beyond reasonable doubt that the head injury could be attributed only to an assault by the appellants however, even assuming so, if at least six to eight persons armed with *lathis* and iron rods had attacked the deceased either with the intention or even with the guilty knowledge of causing such bodily injury as was likely to cause his

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death, in all probability, the deceased would have received for more serious injuries other than those reflected in the autopsy report. In **State of A.P. Vs. Naragudem Papireddy and Ors.: (2004) 9 SCC 14**, while dismissing the appeal against a judgment of the High Court whereby, while acquitting the accused respondents under Section 302 IPC, they were held guilty under Sections 324 and 325 IPC, it was held as under:-

> "15. Herein it should be noted that the family of the deceased and that of the accused are closely related descending from a common ancestor. The victim's father and some of the assailants are direct brothers. Between them, there was some dispute with regard to their ancestral property which was pending in a civil court. That is stated to be the motive. **PWs.2 and 3 stated in their evidence that in the morning of 8.4.1989 at about 4.45 a.m. all the accused persons came and beat them mercilessly all over the body with sticks, iron rods and knives, but a perusal of their injury does not support their case at all because all that is suffered by these witnesses are minor injuries which are mostly in the nature of abrasions There are no incised injuries corresponding to the use of a sharp-edged weapon. If really the intention of the assailants was to murder these victims, it will be very difficult to comprehend that they would come armed only with *lathis* and assault the victims only on non-vital parts of body that too in case of PWs.2 and 3 causing minor injuries. In regard to the assault on the victim it is to be seen that the very same group moved thereafter to the house of mother of PWs.2 and 3 where the deceased was residing, called him out and assaulted him, causing the above noted 4 grievous injuries. It is to be noted herein also that if really the intention was to cause the death of this victim we fail to understand why at least one of the assailants did not wield his weapon so as to attack the victim on a vital part of the body. The nature of injuries and the manner of attack as stated by the victims themselves indicates that the respondents did not have either the intention to cause the death of**

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> **Narsimha Reddy, or to cause injuries which they knew to be so imminently dangerous as would cause his death in all probability.**"
>
> (Emphasis supplied)

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Similarly, while dealing with an appeal preferred by the informant against the judgment of the High Court overturning the conviction of the accused-respondents, their Lordships were pleased to hold, in **Nirmala Bai Devidas Chavhan Vs. State of Maharashtra and Ors. etc.: 2026 LiveLaw (SC) 779**, as under:-

> "**30.** We now turn to the conflict between the ocular account and the medical evidence, which we regard as the weightier of the two grounds carrying the acquittal. Upon the evidence of all 6 witnesses, 4 persons, namely A-1, A-2, A-18 and A-22, each armed with an iron pipe, beat the deceased continuously upon the head. The postmortem report disclosed only a single laceration measuring 2 x 4 cm over the scalp with a fracture of the frontal bone beneath it. PW-21, Dr. Gote, who conducted the postmortem examination, stated in his cross examination as follows:
>
> > "If a person is beaten continuously for 2 to 3 minutes by 4 persons by 4 different pipes there is possibility that there would be several injuries on the head and it is also possible that there would be one injury. It is correct that a single injury is possible if all the blows by the pipe falls on the same place. If the blows falls on different place on the head several injuries would be there. According to me, if a person is beaten continuously for 2 to 3 minutes by 4 persons by 4 iron pipes and the blows falls on the same place then the head may be crushed, depending upon the force of the blows."
>
> The High Court held it to be impossible that four persons, continuously giving repeated blows upon the head with different weapons, would land every blow upon the same site, and that upon this aspect the testimony of the eyewitnesses could not

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be believed. This conclusion drawn by the High Court is not the product of conjecture but it is an inference drawn from the medical evidence, flowing from the mouth of the prosecution's own witness, who deposed that had four persons so beaten the head, it may, depending upon the force of the blows, have been crushed. It was not in the present case.

31. The trial court sought to meet this difficulty by treating the account as an instance of the exaggeration to which witnesses speaking of their own suffering are prone. As a general proposition that could be so, and the High Court said as much. However, exaggeration explains an overstatement of the force or the ferocity of an assault. It does not explain how an assault deposed to as having been delivered by four named assailants with four separate weapons registered upon the body of the deceased as a single point of impact. The trial court did not give due weight to that distinction, which, in a case where the conviction of twenty persons rested upon the attribution of separate acts to separate accused, required to be addressed.

32. The same discord runs through the evidence relating to the injured PW-10 Devidas. PW-2 and PW-10 both deposed that an eyeball of Devidas had come out of its socket and that his teeth had been dislodged. The medical record dated 19.03.2014 showed his eyeball movement to be normal, and the spot panchanama recorded no teeth at the place of the assault. PW-21 admitted that he had found no lacerated wound upon the chin, no injury upon the lower lip and no lacerated wound upon the right eyebrow of Devidas, and that his notings were not consistent with a claim that the eyeball had come out of the socket. The High Court treated these as vital discrepancies which could not be lightly brushed aside, and in a case resting wholly upon ocular testimony we are unable to say that it was in error in doing so.

33. The approach of the High Court is in accord with the recent decision of this Court in Sanjay Kumar v. State of Bihar and Another17 of which one

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of us was a member (Sanjay Karol, J.), where an acquittal was sustained in the face of a like mismatch, the Court observed as follows:

> "44. This assumes significance because the present case is not one where there is a single eyewitness speaking to a single injury. The prosecution has built its case on a detailed attribution of separate shots by separate assailants. Where such detailed attribution is not fully supported by medical evidence, and where independent witnesses do not support the prosecution, the court must be slow in overturning an acquittal.
>
> 45. The High Court, therefore, cannot be said to have acted perversely in treating the mismatch between the FIR/ocular version and the post-mortem report as a relevant circumstance. It is not necessary for the accused to demonstrate that the prosecution case is false in every respect. It is sufficient if the evidence creates a reasonable doubt as to whether the prosecution has proved the charge beyond reasonable doubt."

It was further held that a criminal court cannot select one apparently corroborated portion of the evidence while ignoring other material inconsistencies, and that the question is whether the evidence as a whole crosses the threshold of proof beyond reasonable doubt. The submission that the injuries proved by the medical witnesses corroborate the ocular account is answered by that principle; the injuries establish that the four victims were assaulted, which was never in doubt, but do not establish the manner of the assault as deposed to."

Thus, in the aforesaid cases, it was held that if there is a great disparity between the prosecution evidence regarding the number of assailants inflicting a large number of injuries on the victim, on the one hand and the corresponding injuries actually found, on the other hand, the conviction under Section 302 IPC may not be sustainable.

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In view of the aforesaid analysis and the evidence available on record, we are not convinced at all that the common object of the unlawful assembly comprising the appellants was to commit murder of Kamal Prakash Katta or, for that matter, of any of the members of the complainant party. Further, we are also of the considered view that from the evidence available on record, it is not safe to draw an inference that the common object of the unlawful assembly was to cause such bodily injuries to the deceased either with the intention of causing his death or likely to cause death or with such guilty knowledge that such injuries were likely to cause death. In **Anbazhagan vs. The State Represented by the Inspector of Police: 23 INSC 632**, the Hon'ble Supreme Court of India, after considering a large number of judgments on this aspect, was pleased to lay down the distinction between Section 304 Part I and Part II IPC succinctly as under:-

> "60. Few important principles of law discernible from the aforesaid discussion may be summed up thus:-
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>
> (5) Section 304 of the IPC will apply to the following classes of cases: (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

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To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the

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nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary cause of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

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

However, as noted hereinabove, we are of the considered view that the prosecution has failed to establish that the appellants, the members of the unlawful assembly, shared a

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common object of causing the death of Kamal Prakash Katta or of causing such bodily injuries as were likely cause his death or of causing such injuries with the knowledge that they were likely to cause death. Thus, their conviction cannot be recorded under Part I and Part II of Section 304 IPC as well.

Nevertheless, the autospy report of the body of the deceased (Exhibit P.41) reflects five injuries on various body parts other than the head injury, which were noted to be simple in nature. Therefore, we are of the considered view that the appellants deserve to be convicted for such simple injuries under Section 323/149 IPC. In view thereof, we deem it just and proper to alter the conviction of the appellants from the offence under Section 302/149 IPC to that under Section 323/149 IPC.

It is worth noticing here that while the appellants were sentenced under Section 302/149 IPC, their conviction was recorded simpliciter under Section 302 and not read with Section 149 IPC. As a matter of fact, a perusal of the order dated 18.06.2014 reflects that a charge simpliciter under Section 302 IPC was framed against all the appellants and not one read with Section 149 IPC. However, it was never the prosecution case that each of the appellants was liable for the murder of Kamal Prakash Katta on account of his individual act. Thus, we find the charge so framed to be defective. But, it was not argued before us by the learned counsel for the appellants that it caused any prejudice to their defence. Further, upon meticulous examination of the record, we also find that even in the absence of the charge framed under Section 302/149 IPC, the entire evidence was led on the premise that the appellants constituted an unlawful assembly which, in

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furtherance of its common object, committed the murder of Kamal Prakash Katta and therefore, the defective charge neither prejudiced their defence nor occasioned into failure of justice. Moreover, since, we have not found the appellants guilty of the offence under Section 302/149 IPC, no alteration of the charge is required at this stage.

The impugned judgment also reveals that upon recording their conviction under Section 149 IPC, the appellants have been sentenced to one year rigorous imprisonment and ₹10,000/- fine; in default whereof, four months' additional imprisonment. It is trite law that unlike Section 34 IPC, Section 149 IPC does not constitute a substantive offence in itself rather, it is a declaratory provision that imposes vicarious liability (constructive criminal liability) on every member of an unlawful assembly for specific substantive offence committed by it in furtherance of its common object. Therefore, conviction of the appellants under Section 149 IPC is not sustainable.

As already observed, the appellants constituted an unlawful assembly which shared a common object to assault the members of the complainant party and, as a matter of fact, assaulted them with *lathis*/iron rods and caused simple injuries. Not only that, they also damaged the four wheelers belonging to the members of the complainant party. In the written report (Exhibit P.9), it was specifically alleged that the appellants caused damage to the Swift Dzire car bearing No. RJ14 CH 4545, Swift car bearing No. RJ14 CH 7956 and Alto 800 car bearing registration No. RJ45 CA 2508. The allegations stood corroborated by the deposition of S/Shri Rakesh Katta (PW1), Amitab Gupta (PW2), Pawan Katta (PW4)

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and Rohitash Lal Devanda (PW21). PW4 was even suggested by the defence that the members of the complainant party themselves had broken the glasses of the cars. Shri Pawan Katta also proved the inspection reports of the car, i.e., Exhibit P.2. P.3 and P.4 showing extensive damage to them. It is further proved that the appellants also demolished a part of the boundary wall constructed by the complainant party around the subject plot. On that premise, we find no error in the impugned judgment of the learned trial Court to the extent of recording their conviction under Sections 148, 336/149, 341/149 and 427/149 IPC.

Insofar as the contentions raised by the learned counsels for the appellants in their respective appeals are concerned, we find no merit in the same. We are not convinced that it was a case of free fight or of right of private defence. We have not found the complainant party to be aggressor, rather, it was found to be in possession of the subject land. Similarly, contention of the learned counsel in D.B. Criminal Appeal No. 209/2018 is wholly misconceived inasmuch as the right of private defence and the plea of alibi cannot go together hand in hand. Further, we find the submission about the absence of the appellant-Omprakash from the scene of the crime based only on a suggestion made to PW1 and the plea of the appellant recorded under Section 313 CrPC to be fallacious.

In the conspectus of the aforesaid analysis, while we do not approve of the judgment of the learned trial Court to the extent of recording the conviction of the appellants under Sections 149 and

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302 IPC, we maintain their conviction under Sections 323, 341, 336 and 427 read with Section 149 IPC and Section 148 IPC.

As per the custody certificates made available by the learned Public Prosecutor, the appellants have served the sentence, till 16.11.2026, as under:-

S.No.	Accused-Appellant	Period of custody		
		Years	Months	Days
1.	Ramjilal	15	9	23
2.	Laxman Saini	0	8	5
3.	Kalyan Saini	0	7	28
4.	Gopal Lal	0	8	2
5.	Ganesh Narayan	15	9	25
6.	Budhi Prakash	14	7	12
7.	Prahlad Saini	15	9	1
8.	Radha Devi	0	7	27
9.	Gomti Devi	0	7	21
10.	Seema Devi	0	7	21
11.	Parvati Devi	0	7	15
12.	Kanta Devi	0	7	15
13.	Omprakash	0	7	23

From the aforesaid, it is evident that while the appellants, namely, Ramjilal, Ganesh Narayan, Budhi Prakash and Prahlad Saini have served the sentence for a period of more than 14 years, the appellants, namely, Laxman Saini, Kalyan Saini, Gopal Lal, Radha Devi, Gomti Devi, Seema Devi, Parvati Devi, Kanta Devi and Omprakash have served the sentence for a period of seven and a half months or more till date. The incident is almost 13 years old. Taking into consideration the totality of circumstances, we think that the ends of justice would be served if the substantive sentence awarded to the appellants under

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Sections 148, 323/149, 341/149, 336/149 and 427/149 IPC is modified and reduced as under.

Resultantly, the criminal appeals are partly allowed. The conviction of the appellants under Section 302/149 IPC and Section 149 IPC is quashed and set aside. The appellants are acquitted of the charges framed against them under Section 302/149 IPC and 149 IPC. They are convicted and sentenced instead under Section 323/149 IPC. Their conviction under Sections 148, 323/149, 341/149, 336/149 and 427/149 IPC is maintained. While maintaining the fine part under the aforesaid offences, the substantive sentence is reduced as under:-

Conviction under Sections	**Punishment**
Section 148 IPC	Seven months' and fifteen days' rigorous imprisonment and fine of ₹5,000/- each; in default whereof, one month’s additional imprisonment
Section 323 read with Section 149 IPC	Seven months' and fifteen days' rigorous imprisonment and fine of ₹1,000/- each; in default whereof, ten days’ additional imprisonment.
Section 336 read with Section 149 IPC	Three months’ rigorous imprisonment and fine of ₹250/- each; in default whereof, two days’ additional imprisonment.
Section 341 read with Section 149 IPC	One month's simple imprisonment and fine of ₹500/- each; in default whereof, four days’ additional imprisonment.
Section 427 read with Section 149 IPC	Seven months' and fifteen days' rigorous imprisonment and fine of

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	₹5,000/- each; in default whereof, two months' additional imprisonment.

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All the appellants have either served the sentence awarded or more than that. Since the appellants-Laxman Saini, Kalyan Saini, Gopal Lal, Smt. Radha Devi, Smt. Gomti Devi, Smt. Seema, Smt. Parvati Devi, Smt. Kanta Devi and Omprakash are already on bail, their bail bonds stand discharged. The appellants Ramjilal, Ganesh Narayan, Budhi Prakash and Prahlad are in Jail. They be set at liberty forthwith if not required to be detained in any other case.

In view of the provisions of Section 437-A CrPC (Section 481 Bharatiya Nagarik Suraksha Sanhita, 2023), the appellants, namely, **Ramjilal, Ganesh Narayan, Budhi Prakash, Prahlad, Laxman Saini, Kalyan Saini, Gopal Lal, Smt. Radha Devi, Smt. Gomti Devi, Smt. Seema, Smt. Parvati Devi, Smt. Kanta Devi and Omprakash** are directed to furnish a personal bond in the sum of Rs.25,000/- each and a surety in the like amount within four weeks before the Registrar (Judl.) of this Court which shall be effective for a period of six months with the stipulation that in the event of a Special Leave Petition being filed against the judgement or on grant of leave, the appellants aforesaid, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

(BHUWAN GOYAL),J (MAHENDAR KUMAR GOYAL),J

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