



2026:AHC:79213-DB

AFR

Judgement reserved on 19.03.2026
Judgement delivered on 10.04.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 1441 of 1987

Rammu and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Amar Chandra, Chandra Bhushan
Verma, P.N. Mishra, Rajesh Kumar
Verma, Ran Jeet Singh, Sunil Kumar
Counsel for Respondent(s) : A.G.A.

Court No. - 45

HON'BLE CHANDRA DHARI SINGH, J.
HON'BLE DEVENDRA SINGH-I, J.

Per Hon'ble Chandra Dhari Singh, J

1. This Criminal Appeal has been filed against a judgement and order dated 29.4.1987 passed by the learned Sessions Judge, Shahjahanpur in Sessions Trial No. 403 of 1986 whereby the learned Judge convicted and sentenced the appellants to life imprisonment under Sections 302/34 IPC and six months' rigorous imprisonment under Section 323/34 IPC.

2. However, both the sentences were directed to run concurrently.

3. Pursuant to the order of this Court dated 08.09.2025, appeal filed on behalf of appellant Nos. 1 and 4 namely Rammu and Misri has been disposed of as abated. We are only concerned with the appeal filed on behalf of appellant Nos. 2 and 3 namely Chet Ram and Rameshwar.

Facts of the case

4. The facts that formed the bedrock of the present criminal appeal are that a written report was given by Bhikhari Lal (hereinafter referred to as the first informant) at the police station Khudaganj, district Shahjahanpur on 19.08.1986 with the allegations inter alia that Rajpal and Babu Ram lived in village Kapsenda, but started living in village Baraura for the last five or six years. They had constructed a house in this village. Rajpal had advanced a sum of Rs. 220/- (rupees two hundred twenty only) as loan to Rameshwar and Rameshwar had given his one and a half bigha of land to Rajpal in lieu of interest. It was agreed between the parties that whenever Rameshwar pays the amount, Rajpal would free the field. The first information report further recounts that Rameshwar took possession of the land, but did not return the money. A day before the occurrence Rajpal went to Rameshwar to demand the money, whereupon Rameshwar had said that he will give it. On the date of occurrence, at about 05:00 PM, Rameshwar, Chet Ram, Rammu and Misri armed with lathis went to the door of Rajpal and started beating him with lathis. At that time, Babu Ram and his wife Somwati

were inside the house. The first informant was also inside the house of Rajpal. He and Babu Ram tried to save Rajpal, whereupon they also assaulted Babu Ram with lathis. Babu Ram and the first informant also plied lathis in self defence, due to which accused persons have also received injuries. Thinking Rajpal dead, they left him and fled. While the first informant was taking Rajpal (hereinafter referred to as the deceased) and Babu Ram (hereinafter referred to as the injured) to the police station on bullock-cart for lodging the report, on the way near village Sara at about 12:00 in the night, Rajpal succumbed to the injuries. Thereafter, the first informant returned to the village. Due to excessive rain, the first informant could not go to the police station to lodge the report. At the home, he got the report scribed (Ext. Kha-1) by Jaivir Singh and put his thumb impression after hearing it and handed over at the police station in the morning.

5. On the basis of the aforesaid report, a case was registered at case crime No. 84 of 1986, under Sections 302/323 IPC, police station Khudaganj, district Shahjahanpur at 08:15 AM on 19.08.2026.

6. After the registration of the case, the investigation of the case was entrusted to PW-4, SI Girish Kumar, who recorded the statement of the first informant Bhikhari and the Head Muharrir at the police station and then went to the spot with necessary papers. On the way there were two rivers, which were flooded at that time and there was excessive rain. He reached the spot, prepared inquest report, photo lash, challan lash, sample seal, letter to the

Chief Medical Officer, Ext. Ka 5 to Ka-9. He recorded the statement of PW-2, Babu Ram, the injured and other witnesses . On the pointing out of the first informant and the witnesses, he prepared site plan Ext. Ka-10. He further deposed that on his return, he arrested accused Misri, Chet Ram and Rameshwar. However, accused Rammu surrendered in Court. After culmination of investigation and completing necessary formalities, the investigating officer submitted charge sheet against the accused Misri, Chet Ram and Rameshwar on 06.9.1986, Ext. Ka-12 and against accused Rammu on 22.09.1986, Ext. Ka-13.

7. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions, where case was registered as Sessions Trial No. 403 of 1986 and learned Sessions Judge, Shahjahanpur vide order dated 05.12.1986 framed the charges against the appellants Rammu, Chet Ram, Rameshwar and Misri under Sections 302/34 and 323/34, which were read over and explained to the accused in Hindi. The accused pleaded not guilty and claimed to be tried.

8. To bring home guilt of the appellant beyond the hilt, the prosecution has examined as many as five witnesses, out of which PW-1, Bhikhari Lal and PW-2, Baburam were the witnesses of facts and remaining are formal witnesses.

9. PW-1, Bhikhari Lal is the first informant of the case. In his examination-in-chief, he stated that he knows the

accused Rameshwar, Chet Ram, Rammu and Misri. They are the resident of his village. Accused Rajeshwar had taken a sum of Rs. 220/- as loan from his brother Rajpal (deceased) a year before the occurrence. It was agreed that so long as he did not pay back the amount, deceased will cultivate the land and when the amount is paid, he will leave the land. A month before the occurrence, Rameshwar forcibly cultivated the land without repaying the amount, whereupon deceased made a demand of his money. Thereupon Rameshwar said that he would pay the money after roping the paddy. The talk took place in the morning of date of occurrence. The occurrence took place in the evening at about 05:00 PM. At that time, Rameshwar, Chet Ram, Rammu and Misri armed with lathis went to the door of Rajpal and started beating him with lathis, thereupon Rajpal fell down. At that time, he also reached there armed with lathi and plied lathi due to which accused persons have also received injuries. First of all the accused persons have assaulted Rajpal and thereafter Baburam. He also deposed that when the accused were assaulting the deceased, they were witnessing the same from inside the house. After the occurrence, accused fled.

10. PW-2, Babu Ram in his examination-in-chief has stated that at about 05:00 PM, on the date of occurrence, he was present at his house. He along with Raj Pal (deceased) lives in the same house. He along with his wife and maternal uncle-Bhikhari Lal were inside the house. Everything of outside was visible from the place where he was sitting inside the house. Rameshwar, Misri,

Chet Ram and Rammu armed with lathis reached there and started beating the deceased. He further stated that he along with Bhikhari came out of the house and also plied lathis. He also received injuries. The accused persons went towards north after beating. Accused Rajeshwar had taken a sum of Rs. 220/- as loan from his brother Rajpal (deceased) a year before the occurrence. It was agreed that so long as he did not pay back the amount, deceased will cultivate the land and when the amount be paid, he will leave the land. A month before the occurrence, Rameshwar forcibly cultivated the land without repaying the amount, whereupon deceased made a demand of his money. Thereupon Rameshwar said that he would pay the money. The talk took place in the morning of date of occurrence and in the evening the incident in question took place.

11. PW-3, Dr. Santosh Kumar Medical Officer examined the injured Santosh Kumar at the District Hospital, Shahjahanpur at 10:00 AM on 20.3.1986 and found the following injuries:

1. Lacerated wound on scalp 2.5 cm x 0.5 cm muscle deep, 7 cm from left eyebrow and 11 cm from left ear with moderate infection. Thin yellowish pus coming out.

1. Abraded contusion red, 3 cm x 1 cm over outer aspect of left arm, 4 cm above left elbow covered by dry scab.

3. Lacerated wound 3 cm x 4 cm muscle deep over dorsum of proximal inter phalangeal joint of 2nd toe with mild infection.

4. Tenderness over the right knee outer side. X-ray advised.

12. In the opinion of the doctor the injuries were two days old and were caused by blunt object. Injury No. 1 to 3 were simple in nature and for injury No. 4, x-ray was advised.

13. In his evidence, which was recorded on 03.2.1987, PW-3, Dr. Santosh Kumar opined that till date x-ray report has not been produced before him. In his cross-examination, doctor further opined that injuries received by the injured could have been received at 08:00 PM on 18.8.1986.

14. Evidence of PW-4, SI Girish Kumar Sharma has already been discussed above.

15. PW-5, Dr. P.K. Gupta, who conducted the autopsy on the cadaver of the deceased, found the following ante-mortem injuries:

"1. Contusion 8 cm x 4.5 cm on the left side 6 cm above the ear.

2. Contusion 9.5 cm x 4 cm on the left side of skull and temple 2 cm upward and above the left ear.

3. *Contusion 4.5 cm x 3.5 cm on the left eyebrow.*

4. *Contusion 8.5 cm x 4 cm on the right shoulder posteriorly.*

5. *Contusion 7.5 cm x 3.5 cm on the right upper arm posteriorly 6 cm below the right shoulder joint.*

(6) *Contusion 5.5 cm x 4 cm on the neck posteriorly middle part.*

7. *Contusion 5.5 cm c 3 cm on the uppermost part of right side neck."*

16. In the opinion of the doctor, the cause of death was due to coma as a result of ante-mortem injuries.

17. In addition to the aforesaid prosecution witnesses, Constable Sushil Chandra Tripathi and Constable Girija Shankar Dixit have filed their affidavit stating therein that they took the dead body and got the post mortem conducted

18. After the closure of the prosecution evidence, the statement of the accused-appellants were recorded under Section 313 Cr.P.C., in which they denied the charges.

19. Appellant-Rammu further stated that he was not present at the time of occurrence.

20. Appellant-Rameshwar in his statement under Section 313 Cr.P.C. further stated that at about 08:00 PM he had gone to attend the call of nature and when he returned,

he found Rajpal at his house. On being challenged, Babu Ram and Bhikhari also arrived. This happened at the north of Chaupal of Chet Ram, outside the room of Shri Ram. Thereafter, Rajpal, Babu Ram and Bhikhari assaulted him. On his cries, his brother Chet Ram and father Misri Lal also arrived.

21. Appellant-Chet Ram in his statement under Section 313 Cr.P.C. further stated that on the date of occurrence at about 08:00 PM, Rajpal, Babu Ram and Bhikhari were abusing Rameshwar outside his house. Raj Pal, Babu and Bhikhari were assaulting Rameshwar. On the shrieks of Rameshwar, he also reached there and enquired as to why they were making noise, then Rameshwar told him that Rajpal had entered his house. Thereafter, they started plying lathi. He also plied lathi in self defence. He also received injury. Thereafter, he along with Misri and Rameshwar went to police station Khudaganj to get the report lodged. At 12:00 in the night, he got the report lodged. Thereafter, they went to the doctor to get himself treated. They stayed in the hospital throughout the night and in the morning at about 8-9 AM, police arrested them.

22. Appellant-Misri in his statement under Section 313 Cr.P.C. stated that on the date of occurrence Rameshwar was not at home and when he returned, he found Rajpal in his house. Rameshwar tried to apprehend Rajpal, but in vain. Thereafter, Babu, Bhikhari and Rajpal came and started assaulting Rameshwar. On hearing the noise, he along with Chet Ram also reached there. All the three Babu, Bhikhari and Rajpal plied lathis. He also plied lathi

in self defence. Thereafter, he went to police station Khudaganj at 10:00 PM to get the report lodged at 11:00 PM, he lodged the report. Thereafter, they went to hospital and stayed in the hospital throughout the night and in the morning, Daroga Ji arrested them.

23. Dr. S.C. Shukla has been produced as DW-1. He stated that on 18.8.1986, he was posted as Medical Officer as Primary Health Centre. In the night intervening 18/19.08.1986 at 1:00 AM, he examined Chet Ram, son of Ram Lal, resident of village Barora, police station Khudaganj, district Shahjahanpur and found the following injuries:

1. Lacerated wound 6 cm x 4 cm x muscle deep on the back of neck on the left side of mid posterior line, fresh blood clot present in the wound, Direction of the wound is oblique with its anterior and lying left lateral.

2. Contusion 4 cm x 2 cm on the right side of right calf muscle, colour red.

The injuries were simple, fresh and caused by blunt object.

24. On the same day at 01:30 AM, DW-1, Dr. S.C. Shukla also examined Misri, aged about 55 years, son of Shri Shobhi, resident of village Barora, police station Khudaganj, district Shahjahanpur and found the following injuries:

1. *Lacerated wound 0.5 cm x 0.5 cm skin deep on the front of upper fifth of left leg at the level of left tibial tubersity. Fresh blood clot present in the wound.*

2. *Contusion 3 cm x 2 cm on the outer aspect of upper end of right FA, colour red."*

The injuries were simple, fresh and caused by blunt object.

25. On the same day (18/19.8.1986) at 01:45 AM, DW-1, Dr. S.C. Shukla also examined Rameshwar, aged about 25 years, son of Shri Misra Lal, resident of village Barora, police station Khudaganj, district Shahjahanpur and found the following injuries:

1. *Lacerated wound 1 cm x 0.5 cm x skin deep on the left side of forehead above the left eyebrow, fresh blood clot.*

2. *Contusion 3 cm x 2 cm, on the outer aspect of lower end of right forearm, colour red."*

The injuries were simple, fresh and caused by blunt object.

26. Accused-Rameshwar has examined himself as DW-2. He stated that on the date of occurrence at about 08:00 PM he had gone to attend the call of nature and when he returned, he found Rajpal at his house. On enquiry by Rameshwar about his (Rajpal) presence in his house, Rajpal left the house. Thereafter, Rajpal started abusing him. At that time Bhikhari and Babu Ram also arrived

there armed with lathis. He also reached there and asked Rajpal as to why he is abusing. Bhikhari and Raj Pal took side of Rajpal. At that time, his brother Chet Ram, father Misri, Raj Kumar and Shanker also arrived. They were having lathis. Thereafter Bhikhari, Babu and Raj Pal started assaulting him with lathis due to which he along with Chet Ram, Misri received injuries. They assaulted in self defence. He also plied lathi in self defence. It is further stated that assault was made by Bhikhari, Babu and Raj Pal first and thereafter in self defence he along with Chet Ram and Misri assaulted them in self defence. After the incident, Rameshwar, Chet Ram and Misri went to police station and got the report lodged, which he proved as Ext. Kha-1. From the police station, they went to the hospital where they were medically examined. In the morning at about 08:00 police arrested them from the gate of the hospital.

27. Learned Sessions Judge, Shahjahanpur after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellants as indicated herein above.

28. Hence this appeal.

Submission on behalf of the appellants

29. Shri Amar Chandra, learned counsel for the appellants submits that it was a cross case and the accused-appellants have plied lathis in self defence and that the investigation has been carried out one sided.

30. Learned counsel for the appellants further submits that the learned Trial Court committed a manifest error of law by failing to consider the accused's defence, ignoring material evidence and skipping mandatory procedures, which violates principles of fair trial.

Submission on behalf of the State

31. On the other hand Shri S.K. Ojha, learned Additional Government Advocate-I supported the findings of the learned trial court by stating that the learned trial court has correctly martialled the evidence and considered each and every aspect of the case while convicting the appellants.

Analysis and conclusion

32. Admittedly, there are two versions of the case. Report from the side of the accused was lodged at 00:15 AM on 18/19.08.1986 at the police station Khudaganj, district Shahjahanpur under Section 323/504 IPC by the appellant Rameshwar. In the report the time of incident has been shown as 08:00 PM on 18.08.1986 in which Raj Pal (deceased), Babu (injured) and Bhikhari (PW-1) have been nominated as accused. The report is reproduced as under:

"वादी ने बयान किया कि मैं टट्टी करने गया था राजपाल जो मेरे गांव का है मेरे घर आ गया जब मैं वापस आया तो मैंने पूछा कि रात में मेरे घर क्यू घुस आए तभी अभियुक्त घर से उठकर गांव में पश्चिम में पड़ी आबादी के पास खड़ा हो गया और मुझे गालियां देने लगा की साले मालदार बहुत बनता है मैंने कहा कि गालियां क्यू देता हैं इसी वक्त

बाबू और भिखारी भी आ गए या मुझे लाठियों से मारने लगे मैंने शोर मचाया तो मेरे पिता मिश्री और मेरे भाई चेताराम आ गया उसे भी लाठियों से मारा इसी बीच शोर सुनकर गावाहन आ गई और ललकारने पर अभियुक्त भाग गए मैं अपने पिताजी और भाई के साथ रिपोर्ट लिखवाने आया हूँ"

33. The aforesaid report has been marked as Ext. Kha-1.

34. From the side of the first informant the report has been lodged 08:15 AM on 19.08.1986 at police station Khudaganj, district Shahjahanpur under Section 302/323 IPC by Bhikhari Lal. In the report the time has been shown at about 05:00 PM on 18.08.1986 in which appellants Rameshwar, Chet Ram, Rammu and Misri have been nominated as accused. The report is reproduced as under:

"सेवा मे श्रीमान दरोगा जी थाना खुदागंज श्रीमान जी निवेदन है कि मेरे भान्जे राजपाल और बाबूराम मेरे गांव मे ही 6 साल से रह रहे है और यहीं मकान भी बना लिया है। मेरे भान्जे ने पिछले साल जेठ के महीना मे 220 रु रामेश्वर को उधार दिये थे और रामेश्वर ने ब्याज के बदले में अपनी डेढ बीघा जमीन राजपाल को दे दी थी और यह तय हुआ कि जब रामेश्वर पैसा दे देगा तभी राजपाल जमीन छोड़ देगा परन्तु अब रामेश्वर ने जमीन पर कब्जा कर लिया और राजपाल के पैसा भी नही दिये। कल राजपाल ने रामेश्वर से पैसे मांगे कि अभी तुझे पैसे देते है। कल समय करीब 5 बजे शाम लाठड्यां लेकर रामेश्वर पुत्र मिश्री, चेताराम पुत्र रम्मू, रम्मू पुत्र शोभी, मिश्री पुत्र शोभी जाटव हमारे गांव के राजपाल के दरवाजे पर आये और वही राजपाल को लाठियों से मारने लगे उस समय राजपाल के घर पर मैं मेरा भान्जा बाबूराम और बाबूराम की घरवाली सोमवती मौजूद थे। मैं और बाबूराम

राजपाल को बचाने लगे तो वह लोग बाबूराम को भी लाठियों से मारने लगे बाबूराम और मैंने अपने बचाव में लाठी चलाई जिसमें उनके भी मामूली चोटें आई हैं। तब वह राजपाल को मरा समझ कर छोड़ कर भाग गये। मैं बैलगाड़ी से अपने दोनों भान्जों को लेकर निगोही थाना रपट को जा रहा था तभी रास्ते में संडा गांव के पास रात को 12 बजे करीब राजपाल ने दम तोड़ दिया। तब मैं वापस गांव आ गया। नदियों में ज्यादा पानी होने के कारण रात में मैं रपट लिखाना थाना नहीं आ सका। तथा चुटैल भान्जे बाबूराम और मरे हुए राजपाल को गांव में ही छोड़कर आया हूँ। यह घटना गांव के लोगों ने भी देखी। मेरी रपट लिखकर कार्यवाही की जाये। प्रार्थी भिखारी लाल पुत्र कोमिल राम जाटव थाना खुदागंज निवासी वरौरा निशानी अंगूठा भिखारी लाल लेखक जयवीर सिंह s/o श्री सुन्दर सिंह नि० वरौरा थाना खुदागंज जि० शाहजहांपुर 19.8.86 ई०"

35. PW-4, SI Girish Kumar Sharma, who is the investigating officer of the case, in his evidence has stated that accused-Rameshwar had lodged the report, which was NCR, which was entered vide report No. 2 at 00:15 AM on 19.08.1986 by Constable Clerk Shri Krishna, which was marked as Ext. Ka-11. He, however, admitted that the aforesaid report (NCR) lodged by the accused-appellant Rameshwar has not been investigated by him. In his cross-examination, PW-4, SI Girish Kumar Sharma was confronted with the report lodged of appellant-Rameshwar. The relevant part of cross-examination of PW-4, SI Girish Kumar Sharma is reproduced herein under for ready reference:

"गवाह को रपट N.C.R. दिखाई थी तो गवाह के कहा कि यह रपट मुल्जिम रामेश्वर ने लिखी थी। नकल रपट दाखिल की गई जिसपर Ext ख-1 डाला गया। जब मुल्जिम ने रपट लिखाई थी तो मैं थाने पर मौजूद था। जब तफतीश शुरू की तो मैंने मुल्जिम वाली रिपोर्ट नहीं देखी थी। और न ही तफतीश के दौरान उसे देखी थी। मुझे यह बात पता नहीं लगी थी रपट मुल्जिम ने इसी घटना के बारे में लिखाई थी। मुझे आज पता चला कि यह रपट इसी घटना से संबंधित थी। शंकर व राम कुमार के मैंने बयान नहीं लिये थे। ग्रीश सिंह व साधू सिंह पड़ोसियों के बयान लिये थे। यह गलत है कि उनके मकान चार पांच सौ कदम की दूरी पर हों। मुझे बाबूराम ने बताया था कि यह घटना गांव के और लोगो ने भी देखी। वादी के दरवाजे के सामने बाहर की तरफ एक छोटा सा छप्पर पड़ा है। इस छप्पर के नीचे मुझे कोई खून नहीं मिला। लाश मुझे इस छप्पर से दो तीन कदम बाहर मिली थी। नकशे में 'A' स्थान के पास पश्चिम में C लिखा मालूम होता है लेकिन मैंने लिखा नहीं है डाट पैन लीख करने के कारण बन गया हो। यह कहना गलत है कि मैंने मुकदमे को तरतीब देने के लिये ऐसा कह रहा हूँ। बाहर वाले C के पास लाइन बनाकर चार कदम मैंने लिखा है। यह गलत है कि जगाह तबदील करने के लिये ऐसी बात कह रहा हूँ। लाश जो कपड़े पहने हुए था वह भीगे हुये थे। लाश के ऊपर मोमजामा पड़ा हुआ था। उस मोमजामा को कबजे में नहीं लिया। मैंने यह नहीं नोट किया कि कपड़े भीगे हुये थे। यह कहना गलत है कि मुल्जिमानो को अस्पताल भेजा गया हो तथा डाक्टरी मुआयना हुआ हो। मुल्जिमान जाटव है। जब मुल्जिमानो को गिरफ्तार किया तब इनके पट्टी बंधी थी। चोटे पुरानी थी इसलिये डाक्टरी जांच नहीं कराई। मैंने पट्टी खोलकर चोटे नहीं देखी। चूंकि पट्टी बंधी थी इसलिये मैंने समझा चोटे पुरानी है। यह कहना गलत है कि मैंने जान बूझकर मुल्जिमान की चोटो का डाक्टरी मुआयना नहीं कराया और उनकी रिपोर्ट की तफतीश नहीं की।"

36. From the perusal of the evidence of PW-4, SI Girish Kumar Sharma, it is clear that no investigation was conducted by him on the report lodged by appellant-Rameshwar. It is also clear that he has not taken any steps to get the medical examination of the accused done after the arrest of the accused. In sum and substance, the

investigation in this case is tainted and one sided. The investigating officer has not taken care to investigate the report lodged from the side of the appellant, which was on earlier point of time than the report lodged by the first informant of the case

37. Learned Trial Court while discussing the cross case set up from the side of the appellants has recorded the following finding:

“No specific enmity has been alleged by the accused persons in their statements under Section 313 Cr.P.C.. They have simply said that they have been implicated due to enmity. The defence has claimed that Rajpal had gone to the house of Rameshwar at about 08:00 PM when he had gone to ease himself and when he returned, he enquired as to why he had gone at that hour whereupon he went away and started abusing. If we peruse the statement under Section 313 Cr.P.C. of the accused Rameshwar, we find that Bhikhari and Babu Ram reached there. This means that they reached at his house. He immediately stated that this took place in the northern corner of Chet Ram’s Chaupal. The statement appears to be confused. When he appeared as a witness, he deposed on oath that Rajpal went away. Rajpal started abusing in the north-west corner of Chet Ram’s Chaupal where Gram Samaj land was lying. At that place Bhikhari and Babu Ram reached there with lathis. They too reached there and said as to why he was abusing.

Chet Ram, his father Misri, Ram Kumar and Shankar reached there. All had lathis. When he forbade Rajpal from abusing, Bhikhari was siding with Rajpal. Thereafter, Bhikhari, Babu and Rajpal plied lathis at him. He, Rameshwar, Chet Ram and Misri received injuries. He further deposed "in logon ne bachao men choten mari thin" This means that he had admitted in a sense the prosecution case that the injury to the accused was caused in self-defence. Soon after he deposed that he caused injuries in defence. First they plied lathi and then, he plied lathi in defence. It is significant to note here that the case taken up by the defence in the statement of Rameshwar on oath was not taken at the earliest opportunity. It is not disputed that an FIR was also lodged from the side of the accused persons which is Ext. Kha1. If it was a fact that the accused persons had plied lathis in self defence, it was the earliest opportunity when they could have said so but it was not said. It appears to me as argued by the learned counsel for the State that this case has been developed later on when legal opinion was available. In this view of the matter, I am of the opinion that it cannot be said that the case taken up by the defence is even probable."

38. Before analysing the finding recorded by the learned Trial Court, it would be apposite to refer the relevant portion of statement of the accused-appellants under Section 313 Cr.P.C.

39. Appellant-Rameshwar in his statement under Section 313 Cr.P.C. stated that at about 08:00 PM he had gone to attend the call of nature and when he returned, he found Rajpal at his house. On being challenged, Babu Ram and Bhikhari also arrived there. At that time, Rajpal, Babu Ram and Bhikhari started assaulting him. On his cries, his brother Chet Ram and father Misri Lal also arrived.

40. Appellant-Chet Ram in his statement under Section 313 Cr.P.C. further stated that on the date of occurrence at about 08:00 PM, Rajpal, Babu Ram and Bhikhari were abusing Rameshwar out side his house. Raj Pal, Babu and Bhikhari were assaulting Rameshwar. On the shrieks of Rameshwar, he also reached there and enquired as to why they were making noise, then Rameshwar told him that Rajpal had entered his house. Thereafter, they started plying lathis. He also plied lathis in self defence.

41. Appellant-Misri in his statement under Section 313 Cr.P.C. further stated that on the date of occurrence Rameshwar was not at home and when he returned, he found Rajpal in his house. Rameshwar tried to apprehend Rajpal, but in vain. Thereafter, Babu, Bhikhari and Rajpal came and started assaulting Rameshwar. On hearing the noise, he along with Chet Ram also reached there. All the three Babu, Bhikhari and Rajpal plied lathis. He also plied lathi in self defence.

42. From the perusal of statements of accused-appellants Rameshwar, Chet Ram and Misri, it is crystal clear that it was Babu, Bhikhari and Rajpal, who assaulted accused-appellant-Rameshwar and in self defence lathis

were plied by the appellants Rameshwar, Chet Ram and Misri. It appears that the learned Trial Court while discussing the cross-case has misread the statement of the accused-appellants under Section 313 Cr.P.C. to hold the appellants aggressor and that the first informant and others have plied lathis in self defence.

43. Learned Trial Court at paragraph No. 10 of the impugned judgement has held that "the accused persons have also entered upon their defence and have examined DW-1, Dr. S.C. Shukla who had medically examined one of the accused persons."

44. It appears that the learned Trial Court has incorporated a wrong facts in the impugned judgement inasmuch as DW-1, Dr. S.C. Shukla has medically examined three accused persons (instead of one as held by the learned Trial Court), whose injuries have already been discussed above and at the cost of repetition, the same are reproduced below:

45. Injuries of accused-Chet Ram examined at 01:00 AM on 19.08.1986 examined by DW-1 Dr. S.C. Shukla:

1. Lacerated wound 6 cm x 4 cm x muscle deep on the back of neck on the left side of mid posterior line, fresh blood clot present in the wound, Direction of the wound is oblique with its anterior and lying left lateral.

2. Contusion 4 cm x 2 cm on the right side of right calf muscle, colour red."

The injuries are simple, fresh and caused by blunt object.

46. Injuries of accused-Misri examined at 01:30 AM on 19.08.1986 examined by DW-1 Dr. S.C. Shukla

1. *Lacerated wound 0.5 cm x 0.5 cm skin deep on the front of upper fifth of left leg at the level of left tibial tubersity. Fresh blood clot present in the wound.*

2. *Contusion 3 cm x 2 cm on the outer aspect of upper end of right FA, colour red.*

The injuries are simple, fresh and caused by blunt object.

47. Injuries of accused-Rameshwar examined at 01:45 AM on 19.08.1986 examined by DW-1 Dr. S.C. Shukla

1. *Lacerated wound 1 cm x 0.5 cm x skin deep on the left side of forehead above the left eyebrow, fresh blood clot.*

2. *Contusion 3 cm x 2 cm, on the outer aspect of lower end of right forearm, colour red.*

The injuries are simple, fresh and caused by blunt object.

48. From the above, it is apparent that the learned Trial Court has also not considered the injuries of the accused-appellants namely Rameshwar, Chet Ram and Misri.

49. We also find that report from the side of the appellants was lodged at 00:15 AM in the night

intervening 18/19.08.1986 in which the incident was alleged to have taken place at 08:00 PM, whereas from the side of the first informant, the report was lodged at 08:15 AM on 19.08.1986, in which the incident was alleged to have taken place at 05:00 PM on 18.08.1986. The first information is delayed by more than 15 hours. Explanation tendered by the prosecution for the delay in lodging the first information report is that after the incident the first informant while going to the police station along with injured Raj Pal and Babu Ram to lodge the first information and when he reached near village Sanda at about 12:00 in the night, injured-Raj Pal (deceased) succumbed to the injuries. Thereafter, he returned back to village and could not go to the police station to lodge the first information report on account of flood in the river. The distance between the police station Khudaganj and the place of occurrence is 07 Kms. As per evidence of PW-1, Bhikhari, after the occurrence at 05:00 PM, he along with Raj Pal and Babu Ram left for the police station, which was about 07 Kms. and when he reached near village Sanda at about 12:00 in the night, injured-Raj Pal died and thereafter he returned to village. The explanation tendered by the prosecution is too hard to swallow inasmuch as the first informant could not cover the distance of 7 kms. in seven hours. Whereas as per version of the accused-appellants, the incident in question took place at 08:00 PM and their report has been lodged at 00:15 AM, i.e. in four hours and fifteen minutes.

50. Further the injury of the injured Babu Ram was examined at 10:00 AM on 20.3.1986, which was allegedly

sustained at 05:00 PM on 18.03.1986, whereas the injuries of the accused-appellants were examined at 01:00 AM on 18/19.3.1986.

51. In view of the above, we are of the view that the learned Trial Court has failed to examine the case of the accused-appellants in respect of cross case in corrective perspective.

52. Accordingly, the order dated 29.4.1987 passed by the learned Sessions Judge, Shahjahanpur in Sessions Trial No. 403 of 1986 is set aside.

53. Consequently, the appeal is allowed.

54. Appellants Chet Ram and Rameshwar are on bail. Their bail bonds are cancelled and sureties are discharged.

55. Office is directed to send a copy of this order to the court concerned along with necessary documents for compliance and compliance report be submitted to this Court within two months.

(Devendra Singh-I,J.) (Chandra Dhari Singh,J.)

April 10, 2026
Ishrat