

Ram Yadav and Others Vs State of Bihar

Court: Patna High Court

Date of Decision: April 17, 1987

Acts Referred: Constitution of India, 1950 " Article 21
Criminal Procedure Code, 1973 (CrPC) " Section 154, 389
Penal Code, 1860 (IPC) " Section 114, 141, 149, 19, 201

Citation: (1988) 36 BLJR 279 : (1988) PLJR 129

Hon'ble Judges: Prabha Shanker Mishra, J; Abhiram Singh, J

Bench: Division Bench

Judgement

Prabha Shanker Mishra and Abhiram Singh, JJ.

Appellant Kari Yadav has been convicted u/s 302 of the Indian Penal Code along with

other appellants, namely, Ram Yadav, Kripal Yadav, Dhyani Yadav and Chhote Yadav u/s 302/149 of the Indian Penal Code. Appellants, Kripal

Yadav, Dhyani Yadav and Chhote Yadav have been further convicted u/s 201 of the Indian Penal Code. For the former offence they have been

sentenced to Undergo rigorous imprisonment for life and for the latter offence the three appellants, namely, Kripal Yadav, Dhyani Yadav and

Chhote Yadav have been sentenced for seven years rigorous imprisonment.

2. According to the prosecution, P.W. 12 Lambodar Khan, resident of village Mashariya had possessed land at village Narkatiya which was

looked after by his Ziratis Tripati Choudhary. On 15.9.1973 at about 2 P.M. accompanied by Pitamber Choudhary (P.W. 3), he went to see his

field to village Bhandaria on a boat since, the land fell in the flood belt of the river Koshi. He saw the appellants with their she-buffaloes grazing his

"Talaba" paddy. Tripit Choudhary who was nearby protested against the grazing leading to exchange of hot words. Appellant Ram Yadav then

ordered to kill Tripit Choudhary and to throw him in the water. Following his command, appellant Kari Yadav gave a blow on the head of Tripit

Choudhary with a lathi and appellants, Kripal Yadav, Dhyani Yadav and Chhote Yadav lifted Tripit Choudhary bodily and threw him to Harba

Dhar a tributary of river Koshi and pressed his body under the water and thus pushed it into the deep running water. Lambodar Khan (P.W. 12)

who was on the boat at some distance raised alarm and rushed towards the field where the occurrence took place. Besides the informant

(P.W.13). Pitamber Choudhary (P.W.3) Kan Rai (P.W.4) and Dinesh Jha (P.W.4) also arrived at the spot. Seeing the informant and others

arriving at the spot the appellants drove their she-buffaloes in the current of the water and fled away. The informant and others searched the dead

body of the deceased Tripit Choudhary in the Narbs Dhar but could not trace it out and returned home. On the following day, that is to say, on

16.9.1976 they further made searching to trace out the dead body but could not find the informant, while he was still looking for the dead body

however, learnt that the police had arrived. He returned to his house and made statement to A.S.I. Ramesh Chandra Singh (P.W.15) of

Ghansyampur Police Station. After the fardbeyan the police also started searching the dead body and found it at a place South-West from the field

in which the occurrence had taken place at a distance of about 500 yards in the Bandh of village Jaipur. He thereafter sent the dead body of Tripit

Choudhary to Darbhanga Medical College Hospital for the post mortem examination.

3. In the inquest P.W. 15 found injuries on the head of the dead body and in the post mortem examination, held on 18.9.1973 at about 10 A. M.

at Darbhanga Medical College Hospital by P.W. 9 Dr. J. K. Lal, who Was the Professor and the Head of the Department of Forensic Medicine

of the Medical College, one lacerated wound 1 ""1 1/4"" upto bone en the left side of hand with fracture of left parital bone was found. After

investigation police submitted charge-sheet. In the eventual trial, the prosecution examined 15 witnesses. The defence also examined as many as

five witnesses and maintained that the appellants had been falsely implicated on account of the old enmity and Tripit Choudhary had been killed by

some unknown persons.

4. P. W. 1 Upendra Choudhary, P.W. 5 Shyara Nand Khan, P.W. 7 Ratneshwar Khan and P.W. 10 Udit Pathak are witnesses on the point of

recovery of the dead body of Tripit Choudhary P.W. 13 Ram Sewak Singh is the witness on despatch of the dead body of Tripit Choudhary to

the hospital for post mortem examination P. W. 8 Jagannath Tiwari and P.W. 15 Ramesh Chandra Singh are Investigating Officers. P.W.9 is the

doctor who had held autopsy. P.W 11 Nand Kishore Sah is the witness who was tendered for cross-examination. All the five defence witnesses

have jointly proved enmity between the parties and spoken jointly on other aspects but are not witnesses of the occurrence.

5. P. W. 12 the informant, P.W. 4 Dinesh Jha and P.W. 4 Hari Rai residents of village Kedware and P.W. 3 Pitamber Choudhary and P.W. 6

Kari Choudhary are eye-witnesses of the occurrence. P.W. 12 has deposed that he had gone to see his field at village Narkatiya near Narha Dhar

on a boat. P.W. 3 Pitamber Choudhary was with him. When he went at a distance of about 20 to 30 laggis south of the field he saw the appellants

who were engaged in getting "Tsictus paddy crop grazed by she-buffaloes. He saw and heard his Ziratis Tripit Choudhary protesting whereupon

exchange of hot words started and appellant Ram Yadav ordered to kill and to throw Tripit Choudhary in the water. He has deposed that at Ram

Yadav's command Kari Yadav hurled one lathi blow on the head of Tripit Choudhary and appellants Kripal Yadav, Dhyani Yadav and Chhote

Yadav drowned Tripit Choudhary in Narha Dhar. He then proceeded on the boat towards the field but before he reached there the appellants

made good their escape with their she-buffaloes, he has also deposed that P.W. Dinesh Jha and P.W. Kari Rai came from north on another boat

and saw the occurrence. Besides them Kari Choudhary (P.W.6) also arrived at the spot and saw the occurrence. One Kashmir Chamar (not

examined) who was planting paddy in a nearby field also saw the occurrence. His testimony has been corroborated by P.W.s 2, 3, and 6, P.W. 2

has said that at the relevant time he along with Kari Rai (P.W.4) was proceeding towards Etwari village on boat and when they reached near

Narna Dhar he saw the appellants who were getting the "Tichue" paddy of informant grazed. His sipahi (Tripit Choudhary) protested upon which

appellant Ram Yadav ordered to kill him and throw him in the water. Appellant Kari Yadav dealt one lathi blow on the head of Tripit Choudhary

whereby he fell down and thereafter, appellants Kripal Yadav, Dhyani Yadav and Chhote Yadav lifted Tripit Choudhary bodily and pressed him

physically under the water and then pushed him in the running current of Narha Dhar. Kari Rai (P.W. 4) has deposed that he was accompanied by

Dinesh Jha (P.W.2). When the occurrence took place, he has stated, as P.W.2 had said, that appellant Ram Yadav ordered, appellant Kari

Yadav dealt one lathi blow on the head of Tripit Choudhary whereby he fell down, and thereafter appellants Kripal Yadav, Dhyani Yadav and

Chhote Yadav pressed the body of Tripit Choudhary in the water and pushed the body in the current of Narha Dhar, P.W. 6 Kari Choudhary has

deposed that at the relevant time he was returning after watching his field and when he reached near Harkatis village in Nana Bandh, he saw the

appellants who were getting paddy crops of the informant grazed and heard Tripit Choudhary protesting, appellant Ram Yadav ordering to kill the

appellant, Kari Yadav giving a lathi blow on the head of Tripit Choudhary, Tripit Choudhary falling down, appellants Kripal Yadav, Dhyani Yadav

and Chhote Yadav lifting him bodily and then pressing him into the water and pushing the body into the running current of Narha Dhar. P.W. 15

who had recorded the fardbeyan of the informant has deposed that he was in village Bauran on 16.9.1973 in connection with the investigation in a

case where he received the information that the sipahi of the informant had been murdered and he along with S.I. Kesari Singh and Constable No.

341 Ram Sewak Singh (P.W.) came to village Maharia and met the informant. He got the statement of the informant recorded and proceeded to

inspect the place of the occurrence. He has described the place of the occurrence as a field in the Badh of village Narkatia adjacent west of Narh

Dhar. In that field "tsichan" paddy was standing which had been, in some parts, grazed. He found hoof marks of she-buffaloes in the field bearing

Plot Nos. 229 and 230. He has deposed that he went to village Bhandaris at about 4.30 P. M. but since he could not find any of the appellants,

returned from Bhandari at 5.30 P.M. and learnt that the dead body of Tripit Choudhary had been recovered from the water. He saw the dead

body of Tripit Choudhary just near the Nala which was a tributary of Sarha Dhar running towards west. The place from where the dead body was

recovered was at a distance of about 500 yards in the Bandh of Jamalpur south-west of the place of the occurrence. He held inquest and sent the

dead body of Tripit Choudhary to Darbhanga Medical College Hospital through constable No. 341 Ram Sewak Singh (P.W.13) and Chowkidar

Baban Paswan and Mukund Paswan.

6. Above discussed is the relevant evidence adduced on behalf of the prosecution. The Investigating Officer learnt about the occurrence at village

Baraun on 16.9.1973 and came to the house of the informant. The informant, who was in the field searching the dead body of Tripit Choudhary

along with other villagers, learnt about the arrival of the police in the village and came to get his fardbeyan recorded. His fardbeyan was recorded

on 16.9.1973 at 13 hours P.W. 12 (the informant) had deposed that after the occurrence he attempted with the help of those who had arrived at

the place of the occurrence to find out the dead body. When he returned in the evening of 15.9.1973 he sent Chowkidar Mukund Paswan to

inform the police. P.W.15 has said that he sent the dead body of Tripit Choudhary to Darbhanga Medical College Hospital through Constable No.

341 and Chowkidars Baban Paswan and Mukund Paswan but he could not remember the name of the person who had informed him about the

murder of Tripit Choudhary at Bansao. He has said that he did not record the statement of the person. There is some element of the certainty in

absence of the evidence of Mukund Paswan whether the informant had told him to inform the police about the occurrence and named the accused

persons before him or not. But it is evident that P.W.15 had not learnt from Mukund Paswan the particulars of the occurrence at Baraun. This also

is not definite that Mukund Paswan had met P.W.15 at Baraun. There is no cross-examination either of the informant or of the investigating officer

who had recorded the fardbeyan whether Mukund Paswan had learnt about the occurrence from the informant or not and whether Mukund

Paswan had informed the police of the occurrence or not. In absence of any suggestion to either of them it is not possible to doubt the testimony of

the investigating officer or that of the informant that the fardbeyan was recorded on 16.9.73 at 13 hours at the darwaza of P.W.12. Some vague

information about the occurrence and commission of a cognizable offence cannot be treated as the first information report as envisaged in Section

154 of the Code of Criminal Procedure. It appears from the deposition of P.W.15 that he had some vague information about the occurrence at the

village Bauran from some one and he got definite information with particulars from P.W.12 at his darwaza in village Musharis at 13 hours on

16.9.73. Time lag between the lodgement of the case with the police and occurrence in other circumstances could have been relevant and created

doubt as to veracity of the prosecution case. In the instant case, the cause of this delay has to be viewed in the background of the fact that the

area, in which the informant lived, was affected by flood and travelling was not easy from one place to another place. People were required either

to walk on foot or on boat or partly on foot or partly on boat depending upon the situation prevailing in one or the other part to be covered in

travelling. The defence it appears was also aware of this situation and directed no question either to the investigating officer or to the informant

about it.

7. Although it is not easy to appreciate the topography of the area, with which this case is concerned, with reference to the evidence of the

investigating officer or other witnesses, but the learned counsel for the parties have placed such materials with utmost clarity and it is ascertained

that Khasra Nos. 229 and 230 falling in village Narketia in which the occurrence took place was close-west towards Dhar a tributary of river

Koshi and the place from where the dead body was recovered was at some distance towards south in the Nala flowing from the said Dhar,

Western embankment of Koshi Bench was situated at a distance in the west from place of the occurrence and village Musharis was situated in the

immediate west of the Bandh but at a distance towards berth from village Musaharta was village Jamalpur and situated like Mushariya and

jamalpur were village Karkatiya, Bhabhanwal and Bhajha, at an interval of some distance in the immediate west in the Budh and still further north

from village Mushariya, village Kadwara Bhundariya Narkatiya (old), however, were located east of Narha Dhar.

8. Eye witnesses of the occurrence, who are consistent on almost all the material points have given an account which can have little scope for a

doubt. It has been suggested that P.W.s 2, 3, 4 and 6 are also either related to or friendly with the informant and in that sense they are partisan

witnesses. Enmity is not in doubt, a fact which has been admitted by the informant himself and for the said reason evidence on behalf of the

prosecution has to be viewed with care and caution. The information has acknowledged existence of such enmity and litigation, P.W.2 has denied

any knowledge of relationship. But P.W.12 (the informant has admitted the relationship with P.W.2. P.W.4 had been described by the defence as

an employee of the informant but he has denied this suggestion, P.W.1 has deposed that P.W.3 is an employee of the informant, his evidence

however, does not satisfy the requirement of Section 60 of the Evidence Act or Section 50 thereof. P.W.2 has nowhere said how he came to

know that P.W.3 Pitamber Choudhary was an employee of the informant. A similar suggestion was given to P.W.6 on behalf of the defence. He

has also denied the suggestion. Ocular evidence provided on behalf of the prosecution, therefore, is that P.Ws. 2 and 12, in a sense are partisan

and inimical witnesses, but their evidence has got independent corroboration from P.Ws. 3, 4 and 6.

9. Strenuous attempt was made to suggest that arrival at the scene of the occurrence of P.Ws.3 with the informant and P.Ws. 2 and 4 together in

another boat and that of P.W.6 was not possible and their testimonies as eye-witnesses should be rejected, having noticed, however, the

topography and the situation of the place the occurrence, the Court had no valid reason to reject their evidence merely on conjectures which have

got no basis.

10. Above stated facts and discussions clearly show that the occurrence took place in the field of the informant in which the appellants were found

getting "Taichan" paddy grazed by their cattle when Tripit Choudhary protested and was assaulted as alleged by the prosecution. In that appellant

Ram Choudhary ordered to kill him and to drown him and appellant Kari Yadav gave one blow on the head of Tripit Choudhary with lathi due to

which blow Tripit Choudhary fell down and thereafter appellants Kripal Yadav, Dhyani Yadav and Chhote Yadav bodily lifted him and pressed

him into the water and thereafter pushed his body into the dhar. Upon this, however, a question naturally arises whether the offence committed was

one u/s 302 of the Indian Penal Code or not and if it was one u/s 302 of the Indian Penal Code whether appellant Kari Yadav alone was

responsible for it and other appellants namely, Ram Yadav Kripal Yadav, Dhyani Yadav and Chhote Yadav did not or did share the common

subject and/or common intention to kill or not.

11. P.W.9 has deposed that he found one lacerated wound with fracture of left partial bone on the head of the victim. He has said :

No other injury could be detected. No water could be detected in the stomach.

He has, however, deposed that the injury noted on the head was grievous and dangerous to life in ordinary course of nature and was sufficient in

the ordinary course of nature to cause death It is indeed a situation in which the cause of the death of the victim was the injury caused by appellant

Kari Yadav and no sign of death by throwing him or any other injury caused by any other appellants available. Ocular evidence noticed above, no

doubt, is to the effect that when Ram Yadav ordered, Kari Yadav obeyed by giving one blow on the head of Tripit Choudhary with lathi and the

others by bodily lifting him after the lathi blow and pressing him into water and then pushing the body into the dhhar.

12. Section 141 of the Indian Penal Code has defined unlawful assembly. Assembly of five or more persons is designated an ""unlawful assembly"".

If the common object of the persons composing that assembly is-

First.-To overawe by criminal force, or show of criminal force the Central or any State Government or Parliament or the legislature of any State, or

any public servant in the exercise of the lawful power of such public servant ; or

Second.-To resist the execution of any law, or of any legal process ; or

Third.-To commit any mischief or criminal trespass or other offence ; or

Fourth.-By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any

person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce

any right or supposed right; or

Fifth.-By means of criminal force, or show of criminal force, he " compel any person to do what he is not legally bound to do, or to omit to do

what he is legally entitled to do...

13. In a case like one in hand thus assembly of five or more persons may be designated as an unlawful assembly if the common object was to

commit offence and assembly which was not unlawful when it assembled but may subsequently became an unlawful assembly, when several

persons together committed criminal act and a question arises whether they can be together charged for the offence or they shall be liable for their

individual acts. In that common intention, in furtherance of which, the act is done becomes relevant. In the case of AIR 1925 1 (Privy Council)

difference between the object and intention has been pointed out and it is said that Section 34 of the Penal Code deals with the doing of separate

acts similar or diverse by several persons : if acts are done in furtherance of a common intention, each person is liable for the result of them all as if

he had done these himself for ""that act"" and ""act"" in the latter part of the section must include the whole section covered by ""a criminal act"". It is

also said that Section 149 of the Indian Penal Code postulates an assembly of five or more persons having a common object and then the doing of

the criminal act by members of it in prosecution of that object. The Privy Council has said;

There is a difference between object and intention for though the object of an unlawful assembly is common the intentions of the several members

may differ and indeed may be similar only in the respect that they are all unlawful while the element of participation in action which is the leading

feature of Section 56, is replaced in Section 149 by membership of the assembly at the time of the committing of the offence Both sections deal

with combination of persons, who become punishable as sharers in an offence. Thus they have a certain resemblance and may to some extent

overlap, but Section 149 cannot at any rate relegate Section 34 to the position of dealing only with joint action by the commission of identically

similar criminal acts, a kind of case which is not itself deserving of separate treatment at all.

14. The above statement of law by Privy Council has been quoted with the approval in the judgment of the Supreme Court in the case of

Pandurang v. State of Hyderabad AIR 1955 SC 186, and in almost every case requiring appreciation of the question for acts done in furtherance

of common intention or to fulfil the common object, all concerned are liable for the criminal act or not although the words are different, meaning

given is the same. This view has remained intact although time has moved and situations have changed and new interpretations and meanings have

been given to many other provisions of law. Courts have stood as one holding the person who participates in a crime with the mens rea of that

crime alone is responsible and no one who is neither perpetrator nor a person acting with necessary actus rea. A person cannot be convicted, if he

is not the perpetrator as a secondary party unless he was aware of all the essential matters which made the act done a crime. He may not have

noted that his act amounted in law to a crime, but he must be aware of all the essential matters of the act done, which essential matters together

make act done a crime. It thus follows that if several persons bear a common unlawful object and one of them does a criminal act within the scope

of a common purpose, all are responsible for that act whether it was originally contemplated or not, where however one of them does an act which

was contemplated by the others and it is outside the common purpose, the others are not criminally liable in respect of that act, even though they

may all have been engaged in an unlawful enterprise. In such circumstances, those who claim secondary role may be liable for any other crime and

their individual acts may become relevant.

15. In the context of the facts one has to go closer to the mind of the members of the assembly who commit the offence to know whether they

acted with a common purpose or not. This, however, has many hurdles. What precisely operated in the mind of one or the other member, who

either played a major or minor role, can be gathered by no evidence other than the conduct of that person as a member of the assembly or the

group, whether it is to know his intention or to know the object. Before, however, some one is held liable collaterally with the perpetrator of the

offence, it is necessary that some conduct on his part is shown to contribute in the commission of that offence. Here, again a question arises

whether, with the intention taking birth at a point when the offence is yet to be committed, it can be said whether those, who acted and thus

participated in the offence collaterally shared the liability of the offence or not. While learned counsel for the appellant has submitted that since the

conduct of one or the other member of the assembly, has to be judged to fix their role, those who took hold of the body of the victim after lathi

blow was given on the head did nothing to fulfil the object to kill in furtherance of the common intention because the death was caused by no other

act but the act of giving a blow on the head with lathi and that ended with appellant Kali Yadav assaulting Tripit Choudhary learned counsel for the

respondents has submitted that they have all acted in concert and in response to the order to kill and thus by the act of one of them alone, Tripit

Choudhary was killed is not relevant. Killing was pursuant to command to kill and all of them acted to achieve that object of killing, He has

submitted that evidence of P. W. 9 no better than any other evidence for either party. Ordinarily medical evidence is only corroborative. The

defence can use the medical evidence to show that the injuries could not possibly be caused in the manner alleged and thereby discredit the eye-

witnesses. But unless it in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner as alleged

by the eye-witnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency with the medical evidence.

Accordingly; he has submitted that absence of any other injuries or any water in the stomach of the victim in the post mortem examination is no

circumstances to discredit the eye-witness account of the occurrence.

16. There can hardly be dispute to the use of the medical evidence for noticing the cause of the death. P. W. 6 had deposed that the death was

caused due to shock, hemuerhage and coma and that the injury found on the person of the deceased was sufficient in the ordinary course of nature

to cause death. Since there was only one ante mortem injury found on the person of the deceased and according to P.W. 9 the said injury was

sufficient in the ordinary course of nature to cause death, it can safely be said that Tripit Choudhary had died due to the head injury which was

caused by appellant Kari Yadav. In that sense appellant Kripal Yadav Dhyani Yadav and Chhpte Yadav acted after the fatal blow was given to

Tripit Choudhary. Their act, even if the prosecution evidence is believed cannot be said to have caused the death of Tripit Choudhary. In one

sense appellants Kripal Yadav, Dhyani Yadav and Chhote Yadav responded to the command of appellant Ram Yadav and thus acted in

furtherance of the common intention of all or acted in concert with Kari Yadav and Ram Yadav. This view, if taken shall view to the conclusion

that appellants Kripal Yadav Dhyani Yadav and Choote Yadav also shared the common object the common intention which constituted the

unlawful assembly and acted in furtherance of the common intention of each other. This view shall affirm the view that Section 149 and Section 34

of the Indian Penal Code overlaps each other and in a case where the accused acted in concert of all, if the number of those acting together was

more than five each individual could be charged for the offence of one of them with the aid of Section 149 of the Indian Penal Code. They could

also be charged for their contributions in furtherance of the common intention, wider Section 34 of the Indian Penal Code. The other view is also

not less important. If the participation in the offence is relevant for understanding whether one who was a member of an assembly shared the

common object or not or acted in furtherance of the common intention of actor, not, it is necessary to know the extent of the participation and the

end which the participation achieved. Murder was achieved in the instant case by the assault on the head and not by any other act. Appellants

Kripal Yadav, Dhyani Yadav and Chhote Yadav participated in the occurrence only after the said end had been achieved. Their contribution thus

in the occurrence was confined to dealing with the body of Tripit Choudhary. If Tripit Choudhary was alive before appellant Kripal Yadav Dhyani

Yadav and Chhote. Yadav allegedly drowned him, they contributed in the murder. Absence of any medical evidence showing death by drowning

may not in that, situation be a ground to hold that they did not share the common object of the unlawful assembly to kill or that they did not act in

furtherance of the common intention of all to kill. If the point at which the victim died is known, it is easy to know that by their act other appellants

contributed and thus acted in furtherance of the common intention or they acted to achieve the object of the assembly. If the point at which the

death took place is not known, the possibility of the victim dying before other appellant acted cannot be ruled out. In this context, evidence of

P.W. 9 is important who has pronounced that the injury on the person of the deceased was sufficient in ordinary course of nature to cause death

and that there was only one injury on the victim, which was caused, according to the prosecution by appellant Kripal Yadav. Thus it cannot be said

that appellants Kripal Yadav, Dhyani Yadav and Chhote Yadav acted before Tripit Choudhary died. It is difficult to accept the contention of the

learned counsel for the respondents that the point at which Tripit Choudhary died is not relevant. Act of the accused is relevant for applying

Sections 34 and 149 of the Indian Penal Code. If no one of other culprits acted on account of the act of one, if the victim is killed, they may not

together be responsible for, the murder. The same principle may be extended to the application of Section 149 of the Indian Penal Code: Except

the evidence that appellants Kripal Yadav, Dhyani Yadav and Chhote Yadav also responded to the command of appellant Ram Yadav there is

nothing done by them prior to appellant Kari Yadav inflicting lathi injury on the head of Tripit Yadav. Their participation in the occurrence,

therefore, came at a point when the fatal blow had already been inflicted to Tripit Choudhary. Although very narrowly, yet appellant Kripal

Yadav, Dhyani Yadav and Chhote Yadav for their role in the occurrence, in my view, escape the liability under Sections 34 and 149 of the Indian

Penal Code.

17. That Tripit Choudhary was hit on his head by appellant Kari Yadav is proved beyond any reasonable doubt and that the said injury was

sufficient in the ordinary course of nature to cause death is also not in doubt. Although one blow, but with sufficient force, was given by Kari

Yadav upon the head of Tripit Choudhary. It cannot, on these facts, be said that Kari Choudhary, did not know that the injury which he was

likely to inflict upon Tripit Choudhary with lathi could cause his death. The case of appellant Kari Choudhary satisfied all the tests of a culpable

homicide committed with the intention of causing bodily injury with the knowledge that the same could cause the victim's death. His act is one

punishable u/s 302 of the Indian Penal Code. We have difficulty in rejecting the prosecution case against appellant Ram Yadav for the witnesses

have deposed that it was he who ordered to kill and drowned Tripit Choudhary in water. Section 19 of the Indian Penal Code states:

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment; and so express provision is made by this Code

for the punishment of such abetment, be punished with the punishment provided for the offence.

Section 114 says:

Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be

punishable in consequence of the abetment is committed, he shall be deemed to have committed such act as offence.

Appellant Ram Yadav was present when appellant Kari Yadav inflicted the lathi blow. It was he who had abetted and at his command Kari Yadav

had acted. He cannot escape the liability of the act of Kari Yadav in terms of Section 114 of the Indian Penal Code.

18. The appellants have been charged for the offence u/s 301 of the Indian Penal Code which says:

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to

disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence

which he knows or believes to be false; if a capital offence shall, if the offence which he knows or believes to have been committed is punishable

with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine....

If the act of the accused is relevant for knowing his intention, from what Kripal Yadav, Dhyani Yadav and Chhote Yadav did, it is obvious that

they pushed the body of Tripit Choudhary in the dhars with the intention of causing the evidence of the commission of the offence to disappear and

thus they participated in the occurrence at that stage and by their act they committed all offence punishable u/s 201 of the Indian Penal Code.

19. It is at this stage that we are called upon to predicate in a new and somewhat unusual aspect of the case. A Division Bench of this Court in the

case of the State of Bihar v. Ram Dares Ahir 1984 B B C J 749 has stated that the fundamental right enshrined in Article 21 of the Constitution

includes right to speedy public trial. The same was approved by a Full Bench decision of this Court with a majority of two is to one in the case of

The State Vs. Maksudan Singh and Others, with a view to conclude the right to speedy public trial and fixed outer time limit for investigation and

trial fixed in a criminal case. Again in another Full Bench judgment in the case of Madheshwardhari Singh and Another Vs. State of Bihar, this

Court reported of the view that Article 21 of the Constitution of India is offended if the accused is denied a speedy public trial and affirmed the

outer time limit. In Maksudan Singh's case (supra) this court extended the application of the said need of a speedy trial lest it may not violate

Article 21 of the Constitution of India to appeals against acquittal and observed that the trial cannot be said to have been concluded until the appeal

was disposed of because appeal is a continuation of the trial"". Relying upon the said observation in Maksudan Singh's case (supra) the learned

counsel for the appellants has contended that the instant case is one in which the occurrence was committed more than two years before and since

the outer limit of time in the investigation and trial by reason of the Full Bench authorities of this Court, is ten years, the appeals should be allowed

on that ground.

20. Those significant issues which were decided by the successive Full Benches of this Court the last being Surnarain Singh and Others Vs. State

of Bihar, bear many things including the statement of law that the right to speedy public trial is a right enshrined in Article 21 of the Constitution and

that an outer time limit can be fixed for the investigation and the trial to conclude. But Maksudan Singh's case (supra) cannot be applied as an

authority in an appeal against an order of conviction. Pendency of the appeal against conviction does not obliterate the consequences of the

conviction. It is only by an order in exercise of the power u/s 389 of the Code of Criminal Procedure that pending any appeal by a convicted

person, the appellate court suspended the execution of the sentences. The same cannot be said about the appeal against an order of acquittal. It is

only when the order of acquittal is reversed that conviction can be made and consequently sentence can be imposed Appeal against acquittal.

therefore, cannot be put in the same equation as the appeal by a convicted person. The said distinction, apart, from the judgment in

Madheshwardhari Singh's case (supra) which in the words used in the judgment of the said case is a part of a trilogy beginning with the Division

Bench case of the State of Bihar v. Ramdaras Ahir (supra) and approved by the subsequent Full Bench in the State v. Maksudan Singh's case

(supra) has been suspended by the Supreme Court pending disposal of the appeal on behalf of the State of Bihar and it has been ordered :

If any person has been set at liberty pursuant to the judgment of the trial under appeal, such person shall be arrested and kept in judicial custody

until further orders.

If the three judgments constitute a trilogy and the last word in Madheshwardhari Singh's case (supra) about the law stated in these cases has been

responded by the Supreme Court, can it be said that the judgment in Maksudan Singh's case (supra) is operative and not that in Madheshwardhari

Singh's case (supra), and can a court take notice of observation in Maksudan Singh's case and act accordingly and not the observations in

Madheshwardhari Singh's case. I have no hesitation in holding that the law stated in Maksudan Singh's case cannot be applied to the facts of this

case,

21. Since we are of the view that the charge of murder with aid of either Sections 34 and or 149 of the Indian Penal Code has not been proved

beyond reasonable doubt against appellants Kripal Yadav, Dhyani Yadav and Chhote Yadav they are acquitted of the said offence. The charge

u/s 201 of the Indian Penal Code however is proved against them beyond any reasonable doubt. Their conviction for the said offence by the

learned Sessions Judge is affirmed. In our view ends of justice shall be satisfied by reducing sentence of seven years rigorous imprisonment

awarded by the learned Sessions Judge for the said offences to a period of three years rigorous imprisonment. The appeal on behalf of Kari

Yadav, however, is dismissed, subject to modification that he is convicted u/s 302 of the Indian Penal Code simplicitor and not with the aid of

Section 149 of the Indian Penal Code for which a separate conviction has been recorded by the learned Sessions Judge, his appeal is accordingly

dismissed. For the offence u/s 302 of the Indian Penal Code he is sentenced to undergo rigorous imprisonment for life. Appellant Ram Yadav, is

guilty for the offence u/s 302 of the Indian Penal Code read with Section 114 of the Indian Penal Code, his conviction is accordingly converted

from one u/s 302/149 of the Indian Penal Code in converted to one u/s 302/114 of the Indian Penal Code and he is accordingly sentenced to

undergo rigorous imprisonment for life. The appeal on behalf of the appellant Ram Yadav is accordingly, dismissed,

22. With the modification in the conviction and sentence, stated above, in the the cases of individual appellants the appeal is dismissed,