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**(2004) 09 AHC CK 0052**

**In the Allahabad High Court**

**Case No :** Criminal Appeal No"s. 1682, 1683 and 1698 of 1992

Lauki and Munshi (In Jail)

APPELLANT

Vs

The State of U.P.

RESPONDENT

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**Date of Decision :** 23-09-2004

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 105

Penal Code, 1860 (IPC) — Section 141, 147, 148, 149, 302

**Citation :** (2004) 09 AHC CK 0052

**Hon'ble Judges :** M.C. Jain, J;K.K. Misra, J

**Bench :** Division Bench

**Advocate :** P.N. Misra, S. Trivedi, V.K. Chaturvedi, B.D. Sharma, R.L. Verma and Malik Salimuddin, for the Appellant; A.K. Dwivedi and A.G.A., for the Respondent

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## **Judgement**

M.C. Jain, J.—All the three appeals arise out of the judgment and order dated 4.9.1992 passed by Sri Kartar Singh, the then X Additional Sessions Judge, Agra in S.T. No. 16 of 1988 and as such they are being decided by this common judgment and order.

2. In Criminal Appeal No. 1682 of 1992, the appellants are Lauki and Munshi sons of Babu Lal. In Criminal Appeal No. 1683 of 1992, the appellants are Kishan Singh and Amar Singh alias Kunwar Singh sons of Khayali Kachhi. In Criminal Appeal No. 1698 of 1992, Nek Ram son of Chhotey Lal, Mohana alias Mohan Singh alias Mauna son of Thandi. Brijendra son of Thandi and Ninua son of Chiddha Lodha are the appellants. The eight accused appellant along with one Chhotey Lal were put to trial before the lower court. Chhotel Lal died after the framing of charges. So far as the appellants were concerned. Nek Ram, Lauki and Munshi wielded lathis in the commission of this offence whereas remaining five accused-appellants wielded spades (Phavras).

3. Accused-appellants Kishan Singh and Munshi died during the pendency of the appeals and the same abated respecting them. Presently, the Court is concerned

only with the remaining six surviving accused-appellants, namely, Lauki, Amar Singh alias Kunwar Singh, Nek Ram, Mohana alias Mohan Singh alias Mauna, Brijendra and Ninua. The accused appellants Mohana alias Mohan Singh alias Mauna, Brijendra, Kishan Singh, Amar Singh alias Kunwar Singh and Ninua have convicted u/s 148 I.P.C. and sentenced to two years" rigorous I.P.C. imprisonment. They have also been convicted u/s 302 I.P.C. read with Section 149 and sentenced to life imprisonment with a fine of Rs. 2000/- each. In default of payment of fine, each of them has been ordered to undergo further rigorous imprisonment for one year. They have also been convicted u/s 323 I.P.C. read with Section 149 I.P.C. and sentenced to one year's rigorous imprisonment. The remaining three accused-appellants, namely, Nek Ram, Lauki and Munshi have been convicted u/s 147 I.P.C. with the sentence of one year's rigorous imprisonment, u/s 302 I.P.C. read with Section 149 I.P.C. with the sentence of life imprisonment and a fine of Rs. 2000/- with the direction of further rigorous imprisonment for one in default of payment of fine as also u/s 323 I.P.C. read with Section 149 I.P.C. with the sentence of one year's rigorous imprisonment. Substantive sentences have been ordered to run concurrently.

4. The incident occurred on 21.10.1986 at about 6 p.m. in village Lal Darwaja, Police Station Fatehpur Sikri, District Agra and the report of the incident was lodged the same night at 8.15 P.M. by the injured Narain Singh P.W.1. One Mahadevi PW 2 also sustained injuries in the incident. Two persons, namely, Chhotey Lal and Heera Lal both sons of Kalua Ram were murdered in this incident. The accused appellants Lauki, Munshi and Chhotey Lal son of Yad Ram (who died during the trial), Lauki and Munshi also claimed to have received injuries in the incident on the side of accused.

5. The facts leading to the trial may be stated briefly for appreciation of the subsequent discussion Narain Singh and other (prosecution side) had allegedly purchased the agricultural field of the site of the incident long before the incident from one Nanhe resident of Nagar and had sown the crop of Laha therein. On the fateful day and time, the deceased accused Chhotey Lal and his son Nek Ram accused appellant reached there with tractor of the accused appellant Lauki and started ploughing the said plot, upturning the Laha crop sown by the prosecution side. The complainant Narain Singh PW 1 and his brothers Chhotey Lal and Heera Lal deceased of the incident as also Mahadevi PW 2 wife of Heera Lal asked them not to upturn their crop. Thereupon, all the accused-appellants started assaulting the complainant Narain Singh, his sister-in-law Mahadevi and his brothers with spades and lathis held by them as per the details given above. Lathis were plied from the prosecution side also in defence. Quarrel and shouts attracted Om Prakash Nathola and many others who witnessed the incident and intervened. After assaulting Chhotey Lal, Heera Lal, complainant Narain Singh and Mahadevi, the accused persons ran away.

6. With the help of Om Prakash, the injured reached Fatehpur Sikri hospital. As the injuries of Chhotey Lal and Heera Lal were serious, the Doctor referred them

to Agra for treatment. Initially, on the lodging of the F.I.R., a case u/s 147, 148, 149, 307 and 323 I.P.C., was registered. Later on, it was converted to Section 302 I.P.C. on the death of Heera Lal and Chhotey Lal. The investigation was initially done by S.I. Kunwar Pal Singh PW 10 whereafter it was taken over by S.O. Sardan Singh PW 4 who ultimately submitted chargesheet. The injuries of the injured were examined at P.H.C. Fatehpur Sikri Agra.

7. Following injury was found on the person of Mahadevi on 21.10.1986 at 9.05 P.M. on her examination by Dr. A.K. Saxena PW 7 in S.N. Hospital, Agra:

1. Lacerated wound over back of skull 2" x 1".

8. It was caused by blunt object and was fresh. Though kept under observation, but ultimately it turned out to be simple.

9. Following injuries were found on the person of Narain Singh on 21.10.1986 at 10.45 P.M. on his examination by Dr. J.P. Gupta PW 3 at P.H.C., Fatehpur Sikri, Agra.

1. Lacerated wound half moon shaped 1.7 cm x 0.4 cm x skin deep on the anterior upper part of left ear. Fresh bleeding present.

2. Complained of pain on right shoulder.

10. The injury was simple in nature caused by blunt object Duration fresh.

11. The post mortem over the dead body of Heera Lal had been conducted by Dr. M.L. Verma PW 6 on 23.10.1986 at 2.30 P.M. He was aged about 55 years. The death had occurred in S.N. Hospital, Agra on 22.10.1986 at 3.35 A.M. The following ante mortem injuries were found on his person:

1. Lacerated wound 1/4" x 1/4" scalp deep on left side of head, 3 1/2" above the left ear.

2. Contusion 2" x 1 1/2" around the left eye ball.

3. Contusion swelling 3" x 2 1/2" on the left side of head temporal region, close to the left ear.

4. Stitched wound (longitudinal) 1 1/2" on the front of neck just above the supra sternal margin.

5. Contusion 2" x 1/4" around the right eye.

6. Bleeding from both ears and nostrils.

12. On internal examination, both temporal, parietal, frontal and occipital bones of the skull were found fractured, Membranes and brain were lacerated and base of skull was fractured. There was large haematoma over the left surface of the brain. The death had occurred due to coma as a result of head injuries.

13. The post mortem over the dead body of Chhotey Lal had been conducted by

the same Doctor on 23.10.1986 at 3.00 P.M. He was aged about 38 years and about 1 3/4 day had passed since he died. The following ante-mortem injuries were found on his person:

1. Lacerated wound 2 1/2" x 1/2" x bone deep on the left side face adjacent to the left angle of mouth. Wound was oblique, bone underneath (mandible) was fractured.
2. Lacerated wound 2" x 1" x bone deep on the left side face just lateral to outer angle of eye.
3. Lacerated wound 2" x 1/2" x bone deep on the left side of head, 3" above the left eye brow.
4. Incised wound 1" x 1/4" x bone deep over the left side of head, 1 1/2" behind the injury No. (3). Margins were clean cut and smooth. Both angles were acute, obliquely verticle direction.
5. Incised wound 1 1/2" x 4/10" x scalp deep left side back of head, 2" above and behind the left ear. Margins were smooth and clean cut. Angles were acute.
6. Lacerated wound 1" x 1/4" x scalp deep left side back of head, 1" below the injury No. 5.
7. Traumatic swelling 4" x 3" on the left side of face and adjoining portion of temporal region.
8. Lacerated wound 1" x 1/2" x scalp deep right side of head, 4 1/2" above the right ear.
9. Lacerated wound 1/2" x 1/4" x scalp deep on the right side of head, just behind injury No. 8.
10. Contusion 3" x 2 1/2" on the front and outer part of left upper arm, 3" below the top of the shoulder.
11. Traumatic swelling 4" x 3" on the back of left wrist, lower ends of both ulna and radius were fractured.
14. On internal examination, occipital bone was found lacerated. Membranes and brain in the upper region were lacerated and base of skull was fractured. There was large haematoma over the upper surface of the brain hemispheres. The death had occurred due to coma as a result of head injuries.
15. It should also be related here that Dr. J.P. Gupta had also examined the injuries of the deceased accused Chhotey Lal and accused-appellants Munshi and Lauki at P.H.C. Fatehpur Sikri on 22.10.1986 at 1.00 P.M., 1.15 P.M. and 1.30 P.M. respectively. A lacerated wound 1.8 cm x 0.8 cm x muscle deep on right thigh, 8 cm above knee joint and traumatic swelling 9 cm x 5 cm on the right calf muscles were the injuries on the person of the Chhotey Lal deceased accused. A traumatic swelling on the whole of dorsum of left hand in an area of 7 cm x 5 cm

and lacerated wound 0.8 cm x 0.6 cm on the dorsum of left middle finger were the injuries on the person of the accused appellant. Munshi whereas the injury of the accused appellant Lauki was contusion 8 cm x 2.5 cm with swelling on the posterior aspect of left forearm, just below the elbow joint. All these injuries turned out to be simple and were about one day old.

16. The defence was of denial in this way Lauki stated u/s 313 Cr.P.C. that deceased accused Chhotey Lal had taken his tractor on hire. When he saw the two parties quarrelling, he ran away with his tractor. Mohana alias Mohan Singh alias Mauna claimed the possession of the accused over the disputed plot and that the prosecution side was the aggressor, assaulting Chhotey Lal and Munshi. Amar Singh alias Kunwar pleaded alibi. Kishan Singh pleaded false implication owing to enmity. Nek Ram also stated and claimed his possession over the plot and that when Munshi and his father Chhotey Lal were ploughing it, the prosecution side attacked them and caused injuries. Nenua accused stated that prosecution side wanted him to depose in its favour. He did not agree and so he was falsely implicated. Munshi (brother of Lauki accused) stated that Chhotey Lal was in possession of the plot and he was assaulted by the prosecution side when he had taken his tractor there on hire to plough it. Brijendra claimed false implication due to enmity. To be short, some of the accused claimed their possession over the disputed plot and blamed the prosecution side to be the aggressor. Injuries to the prosecution side were allegedly caused in exercise of right of private defence of person and property.

17. Since the evidence of the prosecution commanded itself to the trial judge, he recorded the impugned judgement. Before proceeding further, it should be stated that apart from medical and formal evidence, the star witnesses of the prosecution were Narain Singh PW 1 and Mahadevi PW 2 injured of the felony.

18. In Criminal Appeal No. 1682 of 1992 and Criminal Appeal No. 1683 of 1992, arguments of Sri B.D. Sharma, learned counsel for the appellants have been heard. In Criminal Appeal No. 1698 of 1992, the arguments have been advanced by Sri P.N. Misra, learned senior advocate assisted by Sri Malik Salimuddin. From the side of the State, Sri A.K. Dwivedi, learned A.G.A. countered the arguments of learned counsel for the appellants.

19. The argument from the side of the appellants is short and simple that the accused side was in possession of the disputed plot and that the prosecution side was the aggressor causing injuries to three persons on the side of the accused, namely, Chhotey Lal, deceased accused, Munshi, deceased accused appellant and Lauki, surviving accused-appellant. The injuries on the persons of the prosecution side, as argued by the learned counsel for the appellants, were caused in exercise of right of private defence of person and property.

20. On the other hand, learned A.G.A. has supported the impugned judgment holding the accused-appellants to be aggressors, committing murders of two persons and causing injuries to two others in prosecution of common object of

the unlawful assembly that they had formed.

21. Obviously, it is a case where the incident is admitted to both the parties. It is also not disputed that two persons, namely Chhotey Lal and Heera Lal, real brothers, died of the side of the prosecution and two other persons, Narain Singh PW 1 and Mahadevi PW 2 wife of the deceased Heera Lal sustained injuries. It is also not disputed that deceased accused Chhotey Lal deceased accused appellant Munshi and surviving accused appellant Lauki also sustained simple injuries. As a matter of fact, it is the prosecution case that lathis were wielded from their side too, though in defence of the attack which, as per the injured eye-witnesses, was launched by the accused interfering in their possession over the disputed plot, upturning the Laha crop sown by them. It is to be kept in mind that both the eye-witnesses of the prosecution, namely, Narain Singh PW 1 and Mahadevi PW 2 are injured and as such their presence at the spot is established beyond doubt. Indeed, their testimony is of great value.

22. To come to the point, the main contention from the side of the accused appellants is that as they acted in exercise of right of private defence of person and property to repel the assault launched by the prosecution side which reasonably caused apprehension that grievous hurt would otherwise be the consequence of such assault. So, their right of private defence could extend to causing of death and they did not commit any offence within the ambit of law. The right of private defence is comprised in Chapter IV (General Exceptions) of I.P.C. Reference should here be made to Section 105 of Indian Evidence Act which provides that the burden is on the accused to prove that his case comes within exceptions. It reads under:-

"When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exception in the Indian Penal Code or within any special exception of proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

23. Therefore, it would be for the accused to prove that they acted in exercise of right of private defence while causing death of two persons on prosecution side and injuries to two others viz. Narain Singh PW 1 and Mahadevi PW 2. The question of exercise of right of private defence by the accused could arise only if either they were in possession of the plot in question or at least it is shown by them that possession was disputed.

24. On careful scrutiny of the evidence, we are of the firm view that the prosecution proved by satisfactory evidence that actually the prosecution side was in possession of the plot where the incident occurred. The testimony of Narain Singh PW 1 and Mahadevi PW 2 wife of deceased Heera Lal consistently was that 5-6 years back they had purchased the plot in question from Nanhe and they were in possession thereof. It was under their cultivation. It is also there in their testimony that the crop of Laha had been sown by them and the deceased

on the said plot. Both these witnesses and the deceased Heera Lal and Chhotey Lal were at the plot at the time of incident when the accused came over there with tractor, lathis and spades and launched the attack. The tractor belonged to Lauki and Munshi which had been taken there by the other accused for forcibly ploughing the plot in question. The assault was launched by the accused when they and two deceased on their side objected to it. Narain Singh PW 1 injured (brother of the deceased) emphatically denied the suggestion that Chhotey Lal accused (now dead) son of Yad Ram was in possession of the disputed plot and was cultivation the same on behalf of his cousin sisters Sridevi and Kampuri Devi who were the daughters of Nanga. It was also denied by him that they (persons on the prosecution side) had gone there to forcibly possess the plot in question and that it led marpeet in which they sustained injuries. It is stated for the sake of clarity that Yad Ram was the brother of Nanga whose daughters were allegedly said to be Shiv Devi and Kampuri Devi.

25. The sustaining of injuries on the side of the accused has also plausibly been explained by Narain Singh PW 1 that he had also plied lathi in defence after snatching the same from Chhotey Lal accused. The injuries of three injured Chhotey, Lauki and Munshi on the side of the accused were of simple of blunt force (total injuries five) which could be caused by lathi wielded by Narain Singh PW 1. Therefore, it also cannot be said that the prosecution has not explained the injuries on the side of the accused. As a matter of fact, the injuries of the accused had been explained in the F.I.R. itself which was the first version of the prosecution in which it was clearly stated that lathi had been used from their side also in self-defence. On this aspect of the matter, the learned counsel for the appellants has criticized the testimony of Mahadevi PW 2 who stated that none from her side had assaulted Lauki, Munshi and Chhotey and further that her brother-in-law Narain Singh did not ply lathi at all. We do not think that her such statement can render any benefit to the accused. She being the injured, her presence at the spot can not at all be doubted. She happens to be the wife of the deceased Heera Lal. There is a natural tendency that every one avoids making statement inviting some blame on himself. May be for this reason that this illiterate lady denied the injuries on the side of the accused. But this cannot be made a ground of criticism against the prosecution case when, as we have pointed out, the simple injuries of the accused Lauki, Munshi and Chhotey deceased accused were well explained in the F.I.R. as also in the statement of Narain Singh injured.

26. The possession of the prosecution side on the plot in question No. 548 is further fortified by the certified copies of revenue records. It appears from Khatauni for the Fasli Year 1388 to 1392 that the names of Narain Singh PW 1, his deceased brother Chhotey with Ramesh and Bhimsen sons of deceased Heera Lal were mutated under order dated 1.8.1984 of appropriate revenue authority after deleting the name of Nanhe (vender of these persons). The copy of the Khasra for the Fasli Year 1392 has also been filed in which the names of Chhotey Lal, Narain Singh and Ramesh and Bhimsen (sons of Heera Lal-deceased) are

found recorded against plot No. 548 with Saheed and Haneef. It appears from Khatauni referred to above that Nanhe, Saheed and Haneef were sons of Rahimuddin. The names of these three persons were recorded on 20.1.1983. It would be recalled that it was from one of them Nanhe that Narain Singh PW 1, his brother Chhotey (deceased) and his deceased brother Heera Lal's sons Ramesh and Bhimsen had purchased the share of Nanhe. The copy of the sale deed has been relied upon by the prosecution, which is dated 18.1.1983, to support the purchase of land in question in which the names of the venders and the factum of possession being handed over are found recorded.

27. As against satisfactory oral evidence of two injured witnesses of the prosecution proving the possession of the plot in question of the prosecution side, there is no evidence from the side of the accused to show their possession thereon. There was simply an empty suggestion from their side to the prosecution witnesses that Chhotey Lal deceased accused was in cultivatory possession of the plot on behalf of his cousin sisters, Sri Devi and Kampuri Devi (daughters of Nanga). There is only negative evidence of Dhani Ram Sharma DW 1, Gram Panchayat Adhikari who stated that in the family register starting from the year 1972-73, there was no entry of Nanhe son of Rahimuddin. He was there since 2nd July 1990 and could say nothing about availability of family register earlier to the period 1972-73. It could not be known as to on what basis entries are made. In any view of the matter, the absence of any entry of the name of Nanhe (vendor of the prosecution side) could hardly be helpful to prove the possession of the accused over the plot in question. Neither Sri Devi nor Kampuri Devi could be produced by the accused to say that Chhotey accused and his son Nek Ram were in possession of the disputed plot in question on their behalf. Nor could they produce any independent witness of the village to support their plea of possession. We, therefore, come to the conclusion that the accused could neither show that they were in possession of the plot in question nor even this much that the possession thereof was disputed between them and the prosecution side. The evidence of the prosecution was firm and satisfactory as contained in the testimony of the injured witnesses Narain Singh PW 1 and Mahadevi PW 2 and supported by documentary evidence referred to above. This being so, there could be no evidence referred to above. This being so, there could be no question of the exercise of right of private defence of person or property by the accused. This claim of theirs is wholly displaced.

28. The truth of the matter was that the accused were the aggressors who had gone there with tractor to forcibly take possession of the plot from the prosecution side, upturning their sown crop of Laha. It was to achieve their goal of forcible dispossessing the prosecution side from the land in question that they (accused) had gone there armed with lathis and spades together with tractor meant to plough the field and to upturn the crop of Laha sown by the prosecution side. The learned trial judge has rightly found that the accused appellants were the aggressors and the incident took place on the land which was in possession of the prosecution side. The deceased Chhotey Lal and Heera Lal on the

prosecution side as also the injured witnesses Narain Singh PW 1 and Mahadevi PW 2 had the right of private defence of property and person. The attack was illegally launched by the accused to dispossess them from the land in question and injuries to three accused were caused by the prosecution side on exercise of its right of private defence of property and person to repel the attack launched by them (accused). It is well settled that the aggressors, even if they receive injuries from the side of the prosecution can not have the right of private defence as held by three Hon'ble Judges of the Supreme Court in the case of Sone Lal and Ors. v. State of U.P. 1983 SCCR 345.

29. Two persons were done to death on the prosecution side and two others namely. Narain Singh PW 1 and Mahadevi PW 2 sustained injuries. We have held above that the accused were the aggressors and that they had no right of private defence whatsoever.

30. The alternative argument of learned counsel for the appellants is that though two persons died on the prosecution side but there was no intention on the part of the accused to cause death. It has been urged that the offence could not travel beyond culpable homicide not amounting to murder. It has been submitted that the accused deserve to be treated with leniency in the matter of punishment which may be in the form of payment of reasonable amount of fine only which may be ordered to be paid to the family of the victims as compensation. We have given our anxious consideration to this aspect of the matter.

31. No doubt, in the present case the aggressors were accused who were 8 in number. They had gone to the plot in question to take its forcible possession from the prosecution side. This being so, the assembly formed by them fell in fourth clause of Section 141 I.P.C. and was an unlawful assembly. They had gone there with lathis, spades and also a tractor to plough the field forcibly. Two injured, namely, Narain Singh PW 1 and Mahadevi PW 2 on the prosecution side sustained lacerated wounds. Deceased Heera Lal also sustained single lacerated wound over his skull which turned out to be fatal. Chhotey Lal deceased in all sustained 11 injuries out of which 9 were of blunt force (capable of being caused by lathis) and two were incised wounds which could be caused by spades and he died due to coma as a result of head injuries. Five accused, namely, Mohana alias Mohan Singh alias Mauna, Brijendra, Ninua, Kishan Singh and Amar Singh alias Kunwar Singh wielded spades, whereas the rest wielded lathis. Heera Lal also died due to coma as a result of head injury. Spade is generally used in agricultural operations to knead or mend earth. it cannot be ascertained from the evidence of the prosecution as to who out of the eight accused gave fatal blows on the heads of the deceased resulting in their death. Three persons received blunt weapon injuries on the side of the accused also in right of private defence exercised by the prosecution.

32. As is well known every murder is culpable homicide, but not vice versa. The facts, circumstances and evidence of each case have to be individually examined to find as to in which category the offence falls.

33. On cumulative consideration of the all the facts and circumstances of the case, we are of the view that intention to kill was not there. However, it goes without saying that every body is supposed to know the natural and probable consequence of his act. On holistic consideration, intention of causing such injuries to the two deceased as were likely to cause death would be imputed to the accused-appellant who had formed unlawful assembly and committed the offence in prosecution of the common object of the same. The case is, therefore, covered under Part I of Section 304, I.P.C., so far as the death of deceased Chhotey Lal and Heera Lal is concerned.

34. We do not agree with the learned counsel for the appellants that merely the sentence of fine would meet the ends of justice. Though aggravating and mitigating factors and circumstances in which the crime was committed should logically be balanced, but the culprit is to be awarded just and appropriate sentence reflecting the conscience of the society.

35. We are in judgment that seven years rigorous imprisonment to each of the surviving accused appellants and imposition of a fine of Rs. 20, 000/- on each of them would be adequate punishment. In default of payment of fine, each of them shall be ordered to undergo further rigorous imprisonment for two years. It would also be just and proper to order that in case the fine is realised, half of the same should be paid to Mahadevi PW 2 wife is deceased Heera Lal and other half to the wife of the other deceased Chhotey Lal's wife and in her absence to his other immediate heir.

36. Sentence of two years rigorous imprisonment to accused appellants Mohana alias Mohan Singh alias Mauna, Brijendra, Amar Singh alias Kunwar Singh and Ninua u/s 148 I.P.C. and one year's rigorous imprisonment to accused Nek Ram and Lauki u/s 147 I.P.C. as also one year's rigorous imprisonment to each of them u/s 323 I.P.C. read with Section 149 I.P.C. for causing injuries to Narain Singh PW 1 and Mahadevi PW 2, as awarded by the trial court, do not call for any interference.

37. In conclusion, we finally order as under:

The three appeals are partly allowed in that the conviction of the surviving accused-appellants, namely, Mohana alias Mohan Singh alias Mauna, Brijendra, Amar Singh alias Kunwar Singh, Ninua, Nek Ram and Lauki u/s 302 I.P.C. read with Section 149 I.P.C. is converted to Part I of Section 304 I.P.C. and each of them shall undergo rigorous imprisonment for seven years and shall pay a fine of Rs. 20,000/-. In default of the payment of fine each of them shall suffer further rigorous imprisonment for two years.

38. Out of the amount of the fine, if realised, half shall be paid as compensation to Mahadevi PW 2 wife of Heera Lal and the other half to the wife of deceased Chhotey Lal and in her absence the compensation shall be paid to his other immediate heir.

39. The conviction of all the surviving accused appellants Mohana alias Mohan Singh alias Mauna, Brijendra, Amar Singh alias Kunwar Singh, Ninua, Nek Ram and Lauki u/s 323 I.P.C. read with Section 149 I.P.C. with the sentence of one year's rigorous imprisonment is maintained. The conviction of the surviving accused-appellants Mohana alias Mohan Singh alias Mauna, Brijendra, Amar Singh alias Kunwar Singh and Ninua u/s 148 I.P.C. with the sentence of two year's rigorous imprisonment and of the surviving accused appellants Nek Ram and Lauki u/s 147 I.P.C. with the sentence of one year's rigorous imprisonment are also maintained. The substantive sentences of imprisonment shall run concurrently, but one imposed in default of payment of fine shall be undergone separately. Six surviving accused appellants Mohana alias Mohan Singh alias Mauna, Brijendra, Amar Singh alias Kunwar Singh, Ninua, Nek Ram and Lauki are on bail. Chief Judicial Magistrate, Agra shall cause them to be arrested and lodged in jail to serve out the sentences as now imposed upon them.

40. The Criminal Appeal Nos. 1682 of 1992 and 1683 of 1992 already abated in respect of accused-appellants Munshi and Kishan Singh respectively who died during the pendency of the appeals.

41. Let a copy of this judgement along with record of the case be immediately sent to the court below for compliance under intimation to this Court within two months from the date of receipt.