



2026:AHC:18462-DB

Order Reserved On:-14.01.2026

Order Delivered On:-28.01.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2460 of 1984

Bindoo And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Raghuvansh Misra, Rahul Misra, Y.K.Shukla
Counsel for Respondent(s)	:	D.G.A.

Court No.46

HON'BLE SIDDHARTH, J.

HON'BLE JAI KRISHNA UPADHYAY, J.

(Delivered by Hon'ble Siddharth, J.)

1. Heard Shri Rahul Mishra and Shri Raghuvansh Misra, Learned counsel for the appellants, Shri G.N. Kanaujiya, learned A.G.A-I and perused the record.

2. The present criminal appeal has been preferred against the judgment and order dated 25.08.1984 passed by Sessions Judge, Lalitpur, in S.T. No. 15/1984, (State Vs. Bindoo and others) convicting the appellants under section 302/34 of IPC and sentencing each of them to life imprisonment.

3. The deceased Bhagwan Singh was a resident of village -Avni and the accused belonged to village Bhuchera. Both the villages are adjoining. According to the prosecution, about 14 months before the present occurrence, Bhagwan Singh, the deceased kidnapped, Ram Pyari, the sister of the accused. He was tried for the offence of her kidnapping but was ultimately acquitted on 04.04.1983 and on account of which, the accused began to bear ill will against Bhagwan Singh who apprehending danger to his life from the accused, left his village and began to live in the city of Lalitpur. About 3-4 days before the present occurrence, he came to his village Avni. On 15.09.1983, he went to Mojhiri Nala, which is about 2 to 2-1/2 Kms. from the Abadi of village Avni, for bathing. After washing his clothes, he waited there for his clothes to dry up. At about 4:00 P.M., accused, Bindoo, Ram Prasad and Rajjoo of whom Bindoo was, armed with Luhangi (Luhangi is a lathi having an iron ring on one of its end) and the two others with *lathies* came up there. Accused, Bindoo, assaulted Bhagwan Singh with *Luhangi*. Bhagwan Singh then picked up *Farsa* and tried to use it in self defence but before he could do so, the accused, Ram Prasad and Rajjoo, assaulted him with *lathies*, with the result the *Farsa* fell down. Bhagwan Singh then ran for his life towards the other side of the Nala, after crossing it, followed by the accused. The accused assaulted him again with *Luhangi* and *lathies* at a distance of about 15-20 steps from the other side of the bank. On receiving the injuries, he fell down and died on the spot.

4. The occurrence was witnessed by Gilla (P.W.1), Pancham Singh (P.M.3) and Pahar

Singh (P.W.4) who were grazing their cattle, near a hillock at a short distance from the Mojhiri Nala. Gilla and Pancham Singh went to the Avni to inform Bhagwan Singh's father Ramaraja P.W.4 of the incident leaving Pahar Singh on the spot to take care of the body of Bhagwan Singh. On being apprised of the incident, Ramaraja came on the spot to find his son lying dead at a distance of about 20-25 paces from the other side of the bank of Mojhiri Nala within the limits of village Bhuchera. He then came to his village leaving the body in charge of Nathoo Ram of village Bhuchera and others and got the report, Ex-Ka-5, written by Jayant Singh. He took the report to the police station Talbehat and delivered the same at 10.05 P.M., the police station situated 12 miles away. On its basis, the Head Constable Clerk, Kishori Lal(P.W.8), prepared the chick report Ex-Ka-17 and registered the case against the accused u/s 302 I.P.C. Sub-Inspector, Sri Ram Kumar, (P.W.-7) investigated into the offence. He received the papers at about 04:00 a.m. on 16.09.1983 through Constable Jagdish Prasad in village Hingora where he had gone in connection with investigation of some other case Ramaraja had also accompanied the constable. The I.O., immediately started for the spot. On reaching there, he found the body of Bhagwan Singh lying near Mojhiri Nala in village Phuchera. He held the inquest and prepared the *Panchayatnama* Ex-Ka-6, diagram of the body Ex-Ka-7 and forwarded the body for post-mortem examination. He found the blood near the body. He took sample of blood stained and simple earth Exs. VII and VIII from there and sealed the same separately and prepared memo Ex. Ka-12. The sample of blood stained earth was sent to the Chemical Examiner who found the blood on it but its origin could not be ascertained as the blood sample was disintegrated. The I.O., also found the T-shirt and Bell-bottom of Bhagwan Singh on the other side of the bank and prepared the memo Ex. Ka-13 in respect of the same. He interrogated Ramaraja, inspected the spot and prepared the site plan Ex-Ka-11. He then went to village Avni where he interrogated Pancham Singh and Pahar Singh. On 17.09.1983, the investigation of this case was taken up by Nand Kishor. He arrested the accused, Bindoo and Rajjoo, on 18.9.83. Before he could complete the investigation, he was transferred on. 20.9.83. The investigation was then taken up by S.I. Ram Kumar. He interrogated Pyarelal on 25.9.83 and accused, Ram Prasad on 27.9.83 in jail. After completion of the investigation, he submitted the chargesheet against the accused the same day.

5. The Medical Officer, District Hospital, Lalitpur, Dr. S.N.Saxena P.W.2 held the autopsy on the body of Bhagwan Singh on 17.9.83 at about 11.30 A.M. The body was stout. The duration of death was about two days. The rigor mortis had passed off from both upper and lower limbs'. He noticed the following ante-mortem injuries:

1. *Multiple contusions on all over the body except front part of groin.*

2. *Lacerated wound 3 cm x 0.9 cm x muscle deep on forehead, 7 cm. from the root of nose.*

3. *Fracture of right humerus middle part, Fracture of right forearms of lower part of both radius and ulna, fracture of right femur middle part.*

4. *Fracture of right tibia and fibula lower part, Fracture of left shoulder upper part of the neck, Fracture of the left fore-arm, of radius and was ulna lower part, Fracture of left leg tibia and fibula lower-part, fracture of ribs right side 4th, 5th and 6th fracture of ribs 9th, 10th, 11th and 12th left side.*

6. On internal examination, he found pleura congested. Left and right lungs were also congested. The stomach and small intestines were empty. The big intestines were full. According to the doctor, the death was caused due to shock and hemorrhage as result of the ante-mortem injuries.

7. The accused pleaded not guilty. According to them, Bhagwan Sirigli deceased had kidnapped their sister Smt. Ram Pyari about 8-10 days before the present occurrence and on the day in question, accused, Bindoo and Rajjoo, had gone to the jungle in her search Smt. Ram Pyari and Bhagwan Singh were both near Mojhiri Nala at about 04:00 P.M. and on seeing them, Ram Pyari called her brothers and ran towards them. Bhagwan Singh also ran after her and attacked Bindoo with *Farsa* abusing him and then he and Rajjoo both plied *lathies* in self defence.

8. In support of its case, the prosecution examined eight witnesses. Gilla, P.W.1, Pancham Singh (P.W.3) and Pahar Singh (P.W.5) are witnesses of fact. Ramraja, P.W.4 is the father of the deceased the lodged the report on being apprised of the incident. Dr. S.N.Saxena, (P.W.-2), S.O. Nand Kishor (P.M.6). Ram Kumar Tewari (P.W.7) and H.C. Clerk Girdhari Lal P.W.8 are formal witnesses whose evidence I have already referred to.

9. The direct evidence of crime as already stated above consists of the evidence of Gilla P.W.1, Pancham Singh P.W.3 and Pahar Singh P.W.5. P.W.1 narrated the prosecution case as stated above and deposed to the assault on Bhagwan Singh by the accused first at a place on one side of the Nala where Bhagwan Singh was sitting after washing his clothes and waiting there to dry up his clothes and then on the other side of the Nala when he ran for his life. Pancham Singh P.W.3 and Pahar Singh P.W.5 gave evidence in similar terms as P.W.1.

10. According to P.W.1, he was as usual grazing his cattle near a hillock known as Baithawan Toria at a distance of about 40,50 steps from Mojhiri Nals when he witnessed the occurrence and also the accused along with Pancham Singh and Pahar Singh who were also grazing their cattle and went to the other side of the Nals through a circuitous route as the Nala was having water chest deep. He is a resident of village Avni which is about 2-4 Kms. from the place of occurrence. He is a natural witness of the occurrence. He has no animosity or grudge with the accused and there 10 apparently no reason as to why he would come forward to depose falsely against the accused if he had not witnessed the occurrence.

11. The post-mortem report and medical evidence of Dr. S.N. Saxena, P.W.2, who held the autopsy shows that Bhagwan Singh had multiple contusion all over the body except front part of groin and a lacerated wound on the forehead and the fractures of right humgoue, radius and ulna, right fore-arm, right femer middle part, right tibia and fibula lover part, left shoulder upper part of the neck, radius and ulna of left fore-arm, left tibia and fibula, 4th, 5th and 6th ribs of right side and 9th to 12th ribs of left side. According to the doctor, the death was caused due to shock and hemorrhage as a result of the above injuries. There can, therefore, be no doubt that Bhagwan is whether the incident occurred in the manner as alleged by the prosecution and whether the accused or some of them were responsible for the same.

12. Pancham Singh, P.W.3, stated that he used to graze the cattle near Baithawan Toria and or the day in question too., he was grazing his cattle when he witnessed the occurrence. There can no doubt that he was there. He is the maternal uncle of the deceased and his evidence was assailed on the ground that he being the close relation

of the deceased, no great value can be attached to his evidence. Mere relationship or interest of a witness is not sufficient to discredit him if his presence on the spot cannot be denied. In a murder case where the witnesses produced are relations or friend of the deceased unless it is further proved that witnesses are either partisan of the complainant or even in any way inimical to the accused, then their evidence should not be discarded on the mere relationship or friendship. Therefore, merely because P.W.3 happens to be close relation of deceased, is no ground to reject his testimony. His evidence was also criticized on the ground that during cross-examination, he admitted that he saw Bhagwan Singh dead for the first time from Baithawan Toria which is indicative of the fact that he did not see the occurrence and Bav Bhagwan Singh only dead after the incident. He has clearly stated that he was grazing the cattle from 10 A.M. and witnessed the entire incident right from Bhagwan Singh coming to the Nala at about 3 P.M. and then of the accused opening the assault on him on the one side of the walls and then attacking him on the other side when he ran after crossing it. To court question, he stated that it was not correct that he saw Bhagwan Singh dead for the first time from Toria but the accused were still assaulting when he went to the other side of the Nala through a circuitous route. He seems to have made the statement about having seen Bhagwan Singh dead for the first time from Baithawan Toria under some confusion and pressure of cross-examination.

13. Pahar Singh, P.W.5, who is also a resident of village Avni, has deposed that he too was as usual grazing his cattle near Baithawan Toria when he witnessed the occurrence. He too is a natural witness of the incident. He is not an enemy of the accused and I cannot see any reason as to why he would falsely depose against the accused.

14. Learned counsel for the appellants has stated that it is a matter of cross version where both the parties had different version about the incident. Prosecution version is described in F.I.R. as well as in statement of P.W.-1, P.W.-3 and P.W.-5 while defence version is described in statements of appellants recorded under section 313 Cr.P.C., and statement of D.W.-1, Ram Pyari, and statements of D.W.-2 and D.W.-3 and defence version is more reliable and probable due to following reasons:

(a.) The F.I.R. of appellant (defence) side Ext Kha-1, is prior in time, i.e., at 08:30 on 15.09.1983 and medical examination of appellant, Bindu, in Government Hospital on the police recommendation proved by D.W.-2 Radiologist at District Hospital as well as D.W.-3, i.e., Medical Officer of P.H.C., Taalbehat clearly shows that defence version is true. While prosecution concocted a false story as afterthought to falsely implicate the appellants so the prosecution F.I.R. lodged after 10:00 p.m. and its Case Crime Number is 53-A while the Case Crime No. of defence F.I.R. is 53.

(b.) Injuries on the person of accused, Bindoo, was not explained by prosecution. In F.I.R. there is no whisper of this fact that deceased, Bhagwan Singh, had a battle axe (*farsa*) and tried to make some blows on appellants but in later stage when the prosecution saw that there was a cross version, supported by Doctor and Radiologist report then P.W.-1, P.W.-3 and P.W.-5 (all the eyewitnesses) tried to say in their statement before the court that Bhagwan Singh had battle axe with him and he tried to make some blows by his *farsa* on appellants but there was no injury caused by his *farsa* blow but the doctors' report and statements of D.W.-2 and D.W.-3 and statement of D.W.-1, the F.I.R. of defence side and statement of Bindoo under section 313 of Cr.P.C., clearly show that deceased, Bhagwan Singh, kidnapped D.W.-1 against her will from her *sasural* and when the appellants (her brothers) went to save her from his

captivity then he attacked them by battle axe and injured appellant, Bindoo, who received injuries from his battle axe. Appellants used their *lathis* to save themselves in self defense and rescued their sister from captivity of deceased. It is a settled in criminal law that prosecution has bounden duty to explain the injuries of accused persons and when prosecution failed to properly discharge this duty then it will be fatal for the prosecution case.

15. The medical evidence (PM Report) was not corroborated with the prosecution story due to following reasons:

(i) All three eye witness stated in their statements that the first blow by *luhingi/lathi* was caused by accused on the deceased's head from his back side, but P.W.-2, Dr. S.N., Saxena, did not found any injury on the back side of his head. There is only one injury on front side of his forehead and doctor stated that this injury could have been caused from in front to the deceased.

(ii) The deceased suffered serious injuries. There are multiple fractures on his person caused in assault of about 20-25 minutes (as described by the P.Ws.) and this time the deceased was changing his position but according to the doctor there is no possibility of change of his position during this period because his injuries were of very serious nature and after receiving these injuries he was not in position to move.

16. All the three prosecution witnesses are not reliable due to following reasons:

(i). According to the prosecution story all the three prosecution witnesses went to jungle, which is about 10 kilometres from their residence, for grazing their cattle where they saw this incident but it was not possible because P.W.-2 and P.W.-3 belong to the high caste family of the village and hence they went for grazing their cattle from 10:00 a.m. to 06:00 p.m. is not probable.

(ii). All the three eyewitnesses are the fast friends. P.W.-3 is the real maternal uncle (mama) of the deceased but no prosecution witness tried to save the deceased. Surprisingly they saw the incident like a mute spectator while the accused had only *lathi* and no deadly weapon at all with them so the presence of all the three eyewitnesses at the scene of crime at the time of incident is highly improbable, because of their conduct.

(iii). P.W-3 is a real maternal uncle of the deceased, Bhagwan Singh, but he had not tried to inform anything about the incident to his brother-in-law (*behnoi*) first informant Ram Raja and father of deceased. It also shows that he was not present at scene of crime.

17. The statements of the accused, Bindoo (injured accused) recorded under section 313 Cr.P.C., and D.W.-1, Ram Pyari, clearly described the whole incident and after that there is no doubt about the fact that the appellants used their *lathis* in self defence to save themselves and save their sister from the deceased.

18. Appellant no. 3, Rajjoo, described his age in his statement recorded under section 313 Cr.P.C., as 16 years and learned Trial Court also recorded that he appears to be

about 18 years. The date of statement is 17.04.1984 while the incident took place on 15.09.1983, so at the time of the incident he was less than 18 years of age. Though, he had no proof regarding that because he is not an educated person but the note by the learned trial court also mentioned that he was less than 18 years and according to Rule 50 of the General Rules (Criminal) had an advantage of being a juvenile.

19. There are many places of taking bath, including the well, near the house of the deceased as described by P. W.-4 in his statement, then what was the reason for the deceased to go to take bath away from his house to the place of incident, especially with a battle axe. It clearly shows the improbability of the prosecution story.

20. Hence the evidence available on record clearly shows that the deceased kidnapped D.W.-1, Ram Pyari, against her will from her *sasural* and when the appellants (her brothers) went to rescue her from his custody then he attacked them from battle axe and injured appellant, Bindoo, caused him injuries and after that appellants use their lathis to save themselves in self defense and save their sister from clutches of the deceased.

21. Learned AGA-I has opposed the submissions made by learned counsel for appellant and he has submitted that it is a case of gruesome murder of a young man by three accused by assaulting him by wooden logs (lathis). The motive of the crime has been established before the trial court and there is eye witness account of the incident which proves the prosecution case beyond reasonable doubt. He has submitted that the cross version of the incident was created only to make out a defence case on the basis of the minor injuries suffered by one of the accused-appellant, Bindoo, on his non-vital part. The appellant side was the aggressor and the informant side was not the aggressor as clear from the material on record. Only because the F.I.R. of the appellant side was registered earlier in time, it cannot be said that the appellants were not the aggressors. He has further submitted that the ante-mortem injuries suffered by the deceased proved that he was the brutally assaulted by *lathis* by the appellants when they found him alone. It has been submitted by learned AGA-I appearing on behalf of the State that findings of the trial court may be confirmed and the appeal may be dismissed.

22. After hearing the rival submissions, we find that as per the F.I.R. the deceased, Bhagwan Singh, had kidnapped D.W.-1, Ram Pyari, but he succeeded in getting an order of acquittal in his favour on 04.04.1983. Thereafter apprehending danger to his life from the family members of Ram Pyari, he began to live in city of Lalitpur after leaving his village, Avni. It appears that he had come to the village and on 15.09.1983 he went to Mojhiri Nala, which is about 2 to 2-1/2 kilometers (two to two and a half kilometers) away, from the abadi of the village, Avni, for bathing. There he washed his clothes and waited there for his clothes to dry when at about 04:00 p.m., the accused-appellants came armed with *luhangi* and *lathis* and assaulted Bhagwan Singh. Bhagwan Singh picked up the *farsa* (battle axe) and used it in self defence and caused injuries to appellant, Bindoo, but the appellants, Ram Prasad and Rajjoo assaulted him by *lathis* as a result of which *farsa* (battle axe) and fell down from his hand and he ran for his life towards the other side of the *nala*. The accused-appellants also followed him and assaulted him with *luhangi* and *lathis* as a result of which he suffered fatal injuries and died.

23. Against the prosecution case the defence case is that after the deceased, Bhagwan Singh, was acquitted in the case of kidnapping of the sister of appellants, Ram Pyari,

(D.W.-1) on 04.04.1983, he again abducted her from the house of her in-laws' and kept her confined in a Tapariya (hut) in the jungle. D.W.-1, claimed that she was confined in the hut by the deceased for 8 to 10 days. The appellants, her brothers, came in search of her in jungle. At that time she was near the lake and nala in the jungle along with Bhagwan Singh. Bhagwan Singh and D.W.-1 were on one side of the nala while her brothers of D.W.-1, Rajjoo and Bindoo, were on the other side of the same. She ran towards the other side of the *nala* seeing her brothers and Bhagwan Singh came running from behind and asked her brothers where they are taking Ram Pyari. Bhagwan Singh, was armed with *farsa* and he assaulted appellant, Bindoo, by *farsa* on his hand and caused injury on the fingers of his right hand. Her brothers, Rajjoo and Bindoo, defended themselves from the *lathis* in their hands and Bhagwan Singh kept on making attempt on them by *farsa* in his hand. D.W.-1 raised alarm and Sumankachi, Babu and Chattua came on the spot. When Bhagwan Singh fell down Bindoo went to police station- Talbehat. In her cross-examination D.W.-1 admitted that earlier she was abducted by Bhagwan Singh but he was acquitted in that case registered against him. She and her brothers did not liked his acquittal. After acquittal Bhagwan Singh has left the village and started living in Lalitpur. She denied that appellant, Bindoo, was armed with *luhangi* rather Bindoo and Rajjoo both were having lathis in their hands. She denied the presence of appellant, Ram Prasad, on the scene of incident. She also denied that *farsa* in the hands of Bhagwan Singh fell down after her brothers caused *lathi* blows to him. She stated that he was holding the *farsa* and her brothers were defending them.

24. D.W.-2, Dr. N.K. Basantani, (radiologist) proved that he conducted the x-ray of the right hand of appellant, Bindoo, and found fracture of his meta carpal bone.

25. D.W.-3, also proved that the appellant, Bindoo, suffered two incised wounds. One incised wound on his middle finger and one incised wound bone deep on right index finger. He stated that the aforesaid injuries could have been caused at 04:00 p.m., on 15.09.1983 i.e., date of incident.

26. We find that while the deceased, Bhagwan Singh, suffered multiple contusions all over his body, except on front part of groin; lacerated wound 3 c.m. x 9 c.m. x muscle deep on forehead; fractures of hands and legs and fracture of ribs, the appellant, Bindoo, suffered only fracture on one of his finger of right hand and one incised wound on another finger. Therefore, if we go by the gravity of the injuries sustained by both the parties, the injuries suffered by the defense side is quite mild viz-a-viz the injuries suffered by the deceased. But in the F.I.R. as well the statements of the prosecution witnesses, namely, Gilla, (P.W.-1), Pancham Singh (P.W.3), Ramraja (P.W.-4) and Pahad Singh (P.W.-5) there is no explanation given as to how the appellant, Bindoo, suffered two incised wounds on his right hand. P.W.-1, P.W.-3 and P.W.-5 claimed that they are eye witness of the incident, but they did not explained how the appellant, Bindoo, suffered two incised injuries on his hand.

27. They also did not stated whether the deceased left his house with battle axe or was in possession of the same when he took bath in the *nala* and was drying his clothes. The statement of D.W.-1 that the deceased, Bhagwan Singh, has confined her for last 8-10 days in a hut in the jungle of village, Avni and when her brothers came in her search the deceased chased them armed with *farsa* is more convincing since the deceased had abducted D.W.-1 and might be kidnapping the battle axe (*farsa*) in the hut to protect himself and D.W.-1 from any attempt of freeing D.W.-1 from his custody. When he saw the appellants finding D.W.-1 near the nala and D.W.-1

running towards them, he may have brought his *farsa* from his hut near by and made attempt on them with the same. The defence version that the appellants used *lathis* against Bhagwan Singh in their defence does not appears to be improbable.

28. Exception 2 to Section 300 appears to be attracted to this case since the appellants had gone in search of their missing sister to the jungle where they found her and when she was with them the deceased is alleged to have attacked them by a deadly incised weapon of battle axe (*farsa*). Two incised wounds on the right hand of the appellant, Bindoo, proved that initially he tried to defend himself by hand and suffered incised wounds which can definitely be caused by battle axe and, thereafter, the appellants must have realized that if they do not defend themselves from the axe blows being attempted on them, they may suffer fatal injuries by axe. Therefore, it seems probable under the facts and circumstances of the case that they exercised their right of private defence and exceeded the power given to them by law and caused death of Bhagwan Singh. Had Bhagwan Singh not intervened when the appellants found their sister after 8-10 days of her abduction by deceased, Bhagwan Singh, the death of the Bhagwan Singh could have been avoided.

29. The non explanation of the injuries caused to appellant, Bindoo, proves that the prosecution suppressed the genesis and origin of the occurrence and did not presented the true version of the incident. The defence version explains the injuries suffered by appellant, Bindoo, and it does not seems improbable. None of the prosecution witnesses stated anything about the injuries suffered by Bindoo and how and from where the deceased, Bhagwan Singh, came in possession of *farsa*. The Apex Court in the case of **Laxmi Singh and Others Vs. State of Bihar, AIR, 1976 (SC) 2263** can be referred to in this connection.

30. The Apex Court in the case of **State of Punjab Vs. Gurubaksh Singh and Another 1995 Supplement (3) SCC 734** held that it is well settled that when the accused set up a plea of self defence, they need not prove their case beyond all reasonable doubt and within the parameters under section 103 IPC if by preponderance probabilities, the plea taken by them becomes plausible then the same should be accepted or at least a benefit of doubt arises.

31. We find that in the statement of appellant, Bindoo, recorded under section 313 Cr.P.C., in response to question no.20 put to him he has clearly stated that his sister was kidnapped by deceased, Bhagwan Singh, and he and his brothers were searching her and on seeing them, she ran towards them. Then Bhagwan Singh also came running and after opposing them said that keep standing and then he made attempt on him by *farsa*. He ran towards his house to save himself and his brother also ran but Bhagwan Singh was not relenting and hence, both of them used *lathies* to protect themselves. They took their sister, D.W.-1, to their house and thereafter, appellant, Bindoo, lodged F.I.R. He suffered fracture in his finger of right hand. The accused, Ram Prasad, denied that he was involved in the incident and claimed that he was falsely implicated in this case because of the enmity with the deceased. The appellant, Rajjoo, stated that he tried to save his brother (Bindoo) who was being assaulted by *farsa*. Therefore, from the statements of the appellant recorded under section 313 Cr.P.C. the prosecution case does not appears to be credible. The finding of the trial court that the story of abduction of Ram Pyari set up by the defence is not credible because she could not have been abducted forcibly from her husband's house single handedly by Bhagwan Singh in the presence of her mother-in-law is perverse and not based on proper appreciation of material on record.

32. The trial court has not considered the statements of the appellants recorded under section 313 Cr.P.C., nor the statements of D.W.- 2 -and D.W.-3. The statement of D.W.-1 has also not been considered by the trial court with regard to her abduction and detention by deceased in a hut in jungle near the village, Avni. The object of statement under section 313 Cr.P.C., of the accused is meant to provide mandatory, fair and personal opportunity to the accused to explain incriminating circumstances against them ensuring fair trial on the principles of nature justice. It is not an empty formality but a mandatory and substantive requirement for the trial court. Its purpose is to allow the accused to personally explain the circumstances raised against them. The object of section 313 Cr.P.C. as in consonance with Articles 14 and 21 of the Constitution of India providing for the right of fair trial. In a recent judgment, the Apex Court in the case of **Chandan Pasi and others Vs. State of Bihar, 2025 LiveLaw (SC) 1157** has held that the court has solemn duty to act in the interest of justice by ensuring that proper examination of the accused under section 313 Cr.P.C., has been permitted.

"7. This Court, in many judgments, delineated the scope and object of Section 313 CrPC. The position is no longer up for debate. Even so, we may refer to certain pronouncements for the sake of completeness.

7.1. In Sanatan Naskar v. State of W.B.4, this Court as follows, regarding the scope of the examination under Section 313 CrPC:

"21. The answers by an accused under Section 313 CrPC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 CrPC is wide and is not a mere formality.

22. As already noticed, the object of recording the statement of the accused under Section 313 CrPC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the court and, besides ensuring the compliance therewith, the court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simpliciter denial or, in the alternative, to explain his version and reasons for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders as may be called for in accordance with law. The primary purpose is to establish a direct dialogue between the court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain."

33. Before concluding we also find that the conduct of prosecution witness of fact viz., P.W.-1, P.W.-3 and P.W.-5, do not inspire confidence of this Court. They claimed that they saw the entire incident when they were grazing their cattle, but their conduct of not even raising a single cry or alarm for help is not a normal conduct of an eye witness more so when P.W.-3 is real maternal uncle (*mama*) of the deceased. He didn't even bothered to inform P.W.-2 about the incident and admitted that he went to his house after the incident. Their statements can further be disbelieved on the ground that they have not stated anything about the deceased causing any injury to the appellant,

Bindoo. They have also not stated anything about the presence of D.W.-1 on the scene of occurrence.

34. Before parting we further find that the presence of Ram Prasad, appellant no.2, was denied by the D.W.-2 and he also stated that he was not involved in this case and has been implicated on account of enmity. The appellant no.3, Rajjoo, who was aged about 16 years and the trial court has noted that on the date of recording of his statement under section 313 Cr.P.C., on 17.07.1984 he appeared to be aged about 18 years and, therefore, at the time of incident dated 15.09.1983 he must have been aged about 17 years and therefore as per the law in force now [**Juvenile Justice (Care and Protection of Children) Act, 2015**] he cannot be convicted and sentenced for life. If appeal is continuation of trial the law in force shall apply and not the law in force at the time of trial.

35. After considering the total facts and circumstances of this case we are of the view that the appellants exercised their right of private defence against the deceased, Bhagwan Singh, who attacked them by battle axe(*farsa*) and, therefore, they cannot be convicted for committing the offence of murder of deceased, Bhagwan Singh, with common intention. The appellant nos. 2 and 3 are extended benefit of doubt and acquitted of all charges. The judgment of the trial court is **set aside** qua appellant nos. 2 and 3, namely, Ram Prasad and Rajjoo.

36. Appellant nos. 2 and 3 are on bail. Their bail bonds are cancelled and sureties are discharged. They need not to surrender.

37. The criminal appeal is **allowed** qua appellant nos. 2 and 3.

38. Let the trial court record along with a copy of this judgment be sent to trial court within two weeks.

January 28, 2026
Abhishek

(Jai Krishna Upadhyay,J.) (Siddharth,J.)