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IN THE COURT OF THE SESSIONS JUDGE, AMBEDKAR NAGAR

Present: Chandroday Kumar, H.J.S., JO Code: UP06553
Sessions Trial No. 29 of 2018
State of Uttar Pradesh vs. Deepak alias Shashikant Upadhyay and Praveen Upadhyay

Case Crime Number (FIR) 83 of 2017
Under Sections 302 & 504 of the Indian Penal Code, 1860
P.S. Bewana, District Ambedkar Nagar
Prosecution Counsel: Shri Govind Srivastava, DGC (Criminal)
Defence Counsel: Shri Krishna Kawal and Sri Prakash Singh, Advocates

JUDGMENT

1. Introduction

1.1. FIR and Incident: This case arises from the brutal killing of one Mohd. Aslam on 23.09.2017 at about 5:00 PM in village Siswan, P.S. Bewana, District Ambedkar Nagar. The deceased’s wife, Smt. Shamun Nisha lodged the First Information Report (FIR No. 83/2017). Shamun Nisha (PW-1), at 5:30 PM on the same day. In her written complaint (Ext. Ka-1), she reported that while she and her husband were returning home from their fields on a motorcycle, they were accosted just outside the village by accused Praveen Upadhyay (armed with a kulhadi – axe), accompanied by another man holding an axe. Praveen allegedly hurled abuses (“saale gunda banate ho,” meaning “you *saaley*, you think you are a goon”) and immediately struck Mohd. Aslam on the head with the axe. The second assailant also attacked Aslam with his axe almost simultaneously. As a result of the multiple axe blows inflicted by the two assailants, Mohd. Aslam collapsed from the motorcycle, bleeding profusely, and died on the spot. On hearing the commotion, the deceased’s father, Mohd. Mustafa (PW-3) arrived at the scene, and with the help of the deceased’s elder brother, Mohd. Salim (PW-4) arranged a vehicle and rushed the victim to the District Hospital, Akbarpur, where he was declared dead on arrival. The FIR was initially registered against Praveen Upadhyay and one unidentified associate under Sections 302 (murder) and 504 (intentional insult with intent to provoke breach of peace) of the IPC.

1.2. Investigation: The investigation was taken up by Inspector Jitendra Pratap Singh (PW-7), Station House Officer (SHO) of P.S. Bewana. The

Investigating Officer (IO) visited the scene the same day, prepared a site sketch map (Ext. Ka-11) and seized blood-stained soil and plain soil from the spot as evidence (seizure memo Ext. Ka-2). During the inquiry, the identity of the “unknown” associate was revealed to be accused Deepak Upadhyay @ Shashikant, a resident of the same village and a relative of Praveen. Accused Praveen Upadhyay was apprehended by the police in late October 2017 (his arrest and remand were secured by 27.10.2017), whereas accused Deepak went into hiding and ultimately surrendered before the Court on 09.11.2017. Upon Deepak’s surrender, the IO obtained a police custody remand on 15.11.2017 to recover weapons.

1.3. Recoveries: Pursuant to disclosure statements made by the accused, the police recovered two axes believed to be the murder weapons. On 14.10.2017, an axe was recovered at the instance of accused Praveen Upadhyay, seized and sealed (recovery memo Ext. Ka-16). Subsequently, on 18.11.2017, another axe was recovered on the pointing out of the accused Deepak Upadhyay (recovery memo Ext. Ka-15). Both axes were produced before the Court during the trial, marked as material exhibits. The IO also collected other evidence: an inquest on the deceased’s body was conducted (Panchnama Ext. Ka-3) in the presence of PW-3, and the corpse was sent for autopsy. The recovered articles (weapons and soil samples) were forwarded to the Forensic Science Laboratory for analysis during the investigation (though the FSL report’s results were not prominently exhibited during the trial). On completion of the investigation, the IO filed a charge-sheet (Ext. Ka-14) against both accused under Sections 302/34 IPC (murder with common intention) and 504 IPC on 18.12.2017.

1.4. Committal and Charges: The case being exclusively triable by the Court of Session, the learned Additional Chief Judicial Magistrate, Ambedkar Nagar, took cognisance on 01.01.2018 and committed the case to the Sessions Court by order dated 15.01.2018. Thereafter, on receipt of the case record, formal charges were framed by this Court on 15.01.2018 itself against (1) Deepak Upadhyay @ Shashikant and (2) Praveen Upadhyay for offences punishable under Section 302 read with Section 34 IPC (for committing murder in furtherance of common intention) and Section 504 IPC. The accused persons pleaded not guilty to the charges and claimed a trial.

1.5. Trial Proceedings: In support of its case, the prosecution examined 11 witnesses in total. The oral evidence includes the eyewitnesses – PW-1 Smt. Shamun Nisha (informant and wife of the deceased) and PW-2 Mohd. Kaleem (nephew of the deceased), who claims to have witnessed the assault; the relatives who arrived immediately after the incident – PW-3 Mohd. Mustafa (father of the deceased) and PW-4 Mohd. Salim (elder brother of the deceased); the police and formal witnesses – PW-5 SI Shiv Singh Pal (who conducted the inquest), PW-6 Dr. Ravi Prakash Rajbhar (who conducted the post-mortem examination), PW-7 Inspector Jitendra Pratap Singh (Investigating Officer), and PW-8 Mohd. Salim (a witness to the recovery of the weapon), PW-9 Mohd. Sharif, PW-10 Jaleel, and PW-11 Ahmed Ali (panch

witnesses of recovery and other formal witnesses). The recording of evidence spanned a considerable period; for instance, PW-1 was examined on 07.09.2018, PW-2 on 18.01.2019, PW-3 on 30.05.2019, PW-6 (Dr. Rajbhar) on 04.12.2021, and PW-7 (IO) on 06.07.2022, among others. The defence duly cross-examined all prosecution witnesses.

1.6. Statement of Accused: The statements of both accused were recorded under Section 313 of the Code of Criminal Procedure, wherein they denied all incriminating evidence and reiterated their innocence. Accused Praveen Upadhyay admitted being related to co-accused Deepak but denied any involvement in the crime, alleging that the police and complainant had falsely implicated them. Accused Deepak Upadhyay also pleaded false implication and further stated that the deceased Mohd. Aslam was a person with a criminal history who had multiple enemies; he suggested that some unknown enemies might have killed Aslam and that he and Praveen had been framed due to local rivalries. No defence evidence was led on behalf of the accused.

1.7. Arguments: Learned District Government Counsel (Criminal) argued that the prosecution has proven its case beyond a reasonable doubt through the cogent testimony of the eyewitnesses, corroborated by medical evidence and recoveries. It was contended that both accused shared a common intention to murder the deceased over prior enmity, and thus both are liable for the fatal assault. In contrast, learned defence counsels assailed the credibility of the prosecution witnesses, characterising them as interested relatives, and pointed out discrepancies in their versions. It was emphasised that PW-1 did not name the accused Deepak in the FIR, no Test Identification Parade was conducted for the second assailant, and that the deceased had other enemies, all of which create reasonable doubt about the accused Deepak's involvement. The defence submitted that there is no crime number on the panchnama, despite a prior FIR; that witnesses are not injured; that there are only two injuries in the panchnama, whereas the postmortem report lists seven, of which two are incised, that no one will go home leaving her husband dead on the spot, as per PMR death may occur at 5 of morning, that there is no mention in sketch map from where blood stained soil was collected, that the name of Deepak emerged in the statement of the coaccused in police custody, that certified copy FSL report of one axe having disintegrated blood has been produced which is not admissible in evidence, that there was no field belong to the deceased, that if father was present why the PW-2 was going to meet him and if compromise was arrived at on the point of motive there was no motive at all to kill the deceased. Finally, he argued that at best the evidence might implicate accused Praveen (who was named from the start), but it falls short of proving the guilt of accused Deepak beyond a reasonable doubt. The Court has carefully considered the evidence on record and the submissions of both sides. Now, the points for determination before this Court are framed as follows.

2. Points for Determination

Based on the charge and material on record, the following key points arise for determination:

Homicide of Mohd. Aslam: Whether the death of Mohd. Aslam on 23.09.2017 was caused by homicidal violence, and if so, what was the nature of the injuries and the cause of death?

Culpability of Accused Praveen Upadhyay: Whether the prosecution proves beyond a reasonable doubt that the accused Praveen Upadhyay assaulted and caused the death of Mohd. Aslam, and if so, whether such an act amounts to murder within the meaning of Section 300 IPC, punishable under Section 302 IPC?

Culpability of Accused Deepak @ Shashikant Upadhyay: Whether it is proven beyond a reasonable doubt that the accused Deepak alias Shashikant Upadhyay was the second participant in the assault on Mohd. Aslam and the accused Praveen shared a common intention (Section 34 IPC) in committing the murder, thereby making him liable for the offence of murder under Section 302/34 IPC, or whether he is entitled to the benefit of doubt?

Offence under Section 504 IPC: Whether the accused, or any of them, intentionally insulted or provoked the deceased (or his relatives) during the incident, with intent to provoke a breach of the peace, so as to constitute an offence under Section 504 IPC?

Each of these points is addressed in the following discussion.

3. Appreciation of Evidence

Point 1: Homicidal Death of Mohd. Aslam

3.1. Medical Evidence of Homicide: The fact that Mohd. Aslam died a violent death on 23.09.2017, which is incontrovertible. Dr. Ravi Prakash Rajbhar (PW-6), who conducted the post-mortem examination on the night of 23.09.2017 (at around 11:45 PM), testified that the deceased's body bore multiple injuries consistent with an attack by sharp-edged weapons. The Post-Mortem Report (Ext. Ka-10) revealed as many as five incised wounds: two deep chopping wounds on the head (one 7 cm x 2 cm on the back of skull and another 8 cm x 2 cm on the right side of the head) with underlying skull bone fractures, two incised wounds on the back of the chest (one on the left side causing a ruptured left lung, and another on the right side of the back), and one incised wound on the right shoulder. Additionally, there were two linear abrasions on the back. The doctor opined that the cause of death was haemorrhage and shock resulting from the ante-mortem injuries inflicted by a sharp cutting weapon (such as an axe). These injuries are clearly homicidal in nature; the severity (including skull fractures and a punctured lung) indicates they were intentionally inflicted with significant force. There is no suggestion of any accidental cause or self-infliction. Indeed, the defence did not dispute that Mohd. Aslam's death was a homicide. Thus, Point No.1 is answered in the

affirmative – Mohd. Aslam’s death was caused by homicidal violence, not by natural or accidental means.

Point 2: Involvement of Accused Praveen Upadhyay in the Murder

3.2. Eyewitness Account of PW-1 (Shamun Nisha): The most crucial evidence against the accused Praveen is the direct eyewitness testimony of the deceased’s wife, Smt. Shamun Nisha (PW-1). She was an eyewitness present at the scene of the attack, riding pillion on the motorcycle with her husband when the attack took place. In her deposition before the Court (recorded on 07.09.2018), PW-1 vividly recounted the incident, which largely mirrors the account in her FIR. She stated that as they were returning from their paddy field, accused Praveen Upadhyay, whom she recognised as a fellow villager, suddenly emerged (along with another man) and stopped their motorcycle. Praveen was armed with a kulhadi (axe). He confronted her husband by shouting abuses – specifically the slur “saale gunda banate ho” – and immediately struck her husband Mohd. Aslam on the head with the axe. PW-1 testified that her husband was hit on the head and, as a result, he fell from the motorcycle, bleeding. Almost instantaneously, the second assailant, who accompanied Praveen (whom she describes at that time as an unknown person also wielding an axe), delivered another axe blow to her husband. Both assailants continued to assault Aslam with axes, causing grievous injuries, and Aslam died on the spot. PW-1’s description of Praveen’s actions is clear and unequivocal – she personally saw and identified Praveen as the person who initiated the attack by striking the fatal blow on her husband’s head.

3.3. Identification of Assailants: Significantly, PW-1 had prior familiarity with the accused Praveen Upadhyay. In her testimony, she refers to him by name and parentage, indicating she knew him as a co-villager. There is no uncertainty in her identification of Praveen as the principal assailant who wielded the axe first. The defence cross-examined her on this aspect, but nothing could be elicited to shake her testimony regarding Praveen’s identity or role. Her presence at the scene as the deceased’s wife is natural, and her detailed account of Praveen’s words and actions has a ring of truth. The defence suggested to her that no such incident occurred or that she was not present, which she vehemently denied. The Court finds that PW-1 is a wholly credible eyewitness with respect to the accused Praveen. Being the wife of the deceased, she is undoubtedly an interested witness, but the law is well-settled that the testimony of a related or interested witness is not to be discarded merely due to relationship; it only calls for careful scrutiny, as held by the Hon’ble Supreme Court in the case of [BABAN SHANKAR DAPHAL & ORS. VERSUS THE STATE OF MAHARASHTRA: 2025 INSC 97](#). Here, PW-1’s testimony is consistent, straightforward, and corroborated by other evidence, and no motive is suggested as to why she would falsely implicate Praveen (who is distantly related to co-accused Deepak, but not related or previously acquainted with the deceased’s family as anything more than a co-villager). In fact, as the Supreme Court has observed, a close relative of a murder victim is often the last person to want to let the real culprit escape or to falsely

implicate an innocent, since they have a natural interest in ensuring that the actual perpetrator is punished. The Court, having scrutinised PW-1's deposition with due caution, finds her to be a reliable witness on the material particulars. Minor omissions (such as not mentioning certain details in her earlier statement) do not dent her core testimony about the attack on her husband by Praveen. Indeed, no major contradiction was elicited on that point. The medical evidence amply supports her account: being struck on the head with an axe corresponds to the grave head injuries noted in the post-mortem (two incised wounds fracturing the skull). Thus, PW-1's eyewitness account, insofar as it implicates accused Praveen Upadhyay, inspires confidence in the Court.

3.4. Eyewitness Account of PW-2 (Mohd. Kaleem): PW-2 Mohd. Kaleem is another eyewitness whose testimony further incriminates the accused Praveen. PW-2 is the 18-year-old nephew (Bhateeja) of PW-1 and the deceased (his paternal uncle). On the day of the incident, PW-2 was passing by the area on a bicycle at around 5 PM, heading towards Siswan village (to visit a friend). By a stroke of circumstance, he reached near the scene of the occurrence just as the attack was underway. In his examination-in-chief (recorded on 18.01.2019), PW-2 stated that he encountered his aunt (PW-1) on the village road, who was frantically crying. She told him that "Praveen Upadhyay and Deepak @ Shashikant, both armed with axes, are attacking your uncle Mohd. Aslam". PW-2 then saw from a short distance that his uncle Aslam was lying fallen, and both the accused were indeed present there with axes. He testified that upon his arrival and raising an alarm, the two accused struck his uncle a couple more times with the axes in his presence, hurled abuses and even threatened to kill those present, and then fled towards their house brandishing the weapons. He specifically mentions hearing the accused threatening him and PW-1 as they departed. PW-2 then immediately helped his aunt (PW-1) onto his bicycle and took her back home (about 1 km away) to inform the family. At home, they informed PW-3 (Mustafa) and PW-4 (Salim) about the incident, naming Praveen and Deepak as the assailants. PW-2 then returned with others to the scene and assisted in transporting the victim's body to the hospital. He is also the one who actually wrote down the FIR at the dictation of PW-1, as PW-1 herself is illiterate – PW-2's written report (Ext. Ka-1) was read out to PW-1. After confirming its contents, PW-1 affixed her signature before it was submitted at the police station. PW-2 has identified both accused by name in his testimony. Notably, PW-2 knew both Praveen and Deepak from earlier, since they all hail from the same locality and – as will be discussed – there was a prior incident involving them. The identification of Praveen by PW-2 is unequivocal; he even participated in the events post-incident (guiding police, witnessing seizure of bloodstained earth, etc., as reflected in Ext. Ka-2). His account of seeing Praveen at the scene actively assaulting the victim dovetails with PW-1's account.

3.5. Motive and Prior Incidents: The prosecution suggested a motive arising from a prior altercation. PW-1, in her testimony, mentioned that about 1.5 months before the murder, the accused persons (Praveen and Deepak) had

quarrelled with and beaten her nephew, PW-2 (Kaleem), over some issue, and that her husband (the deceased Aslam) had intervened at that time and beaten up the accused in retaliation. This resulted in resentment – ranjish – on the part of the accused, giving them a grudge against Aslam. PW-1 asserted that it was due to this prior enmity that the accused murdered her husband. However, PW-2 Kaleem, when questioned in cross-examination, appeared uncertain about any formal complaint or serious enmity stemming from that incident – he stated that he was not aware of any prior cases or enmity between his family and the accused and that if any quarrel had occurred earlier, “it was compromised”. This discrepancy between PW-1 and PW-2 regarding the extent of prior enmity is noted. It suggests that while an altercation did occur previously (which PW-1 vividly recalls, perhaps as a concerned wife/aunt), PW-2 did not consider it significant or was not fully aware of its outcome. In either scenario, the existence of some past bad blood between the parties is plausible. Nonetheless, even if the motive is not proved with certainty, that does not undermine the direct evidence of the crime. It is a trite law that motive is not an explicit sine qua non for conviction when there is direct eyewitness evidence of the offence – motive primarily helps to explain why a crime may have occurred, but the lack of a proved motive is not fatal if the evidence of guilt is otherwise reliable (especially in a case of direct witnesses). Here, the direct evidence against Praveen is strong; the presence or absence of a concrete motive does not alter the fact that two witnesses saw him committing the act. In any event, the prior incident narrated by PW-1 does lend some context that Praveen (and Deepak) had reason to hold a grudge against the deceased – the deceased had allegedly beaten them up a few weeks earlier in defence of Kaleem, which could well have sparked a retaliatory anger.

3.6. Corroboration by PW-3 and PW-4: Although PW-3 (Mustafa, father of the deceased) and PW-4 (Salim, brother of the deceased) did not witness the attack firsthand, their testimonies provide *res gestae* corroboration. PW-3 deposed that around 5:15 PM on 23.09.2017, his grandson Kaleem (PW-2) and daughter-in-law Shamun Nisha (PW-1) came running to the house in a panicked state, crying that “Praveen Upadhyay and Deepak @ Shashikant have hacked Mohd. Aslam to death with axes”. Upon hearing this, PW-3 and PW-4 immediately rushed to the scene on a motorcycle. They found Aslam lying in a pool of blood with multiple wounds, already motionless. PW-3 further testified that at the spot, there was a crowd of villagers, and people were spontaneously uttering that “Praveen and Deepak have brutally murdered Aslam in broad daylight”. This hearsay chorus at the scene, contemporaneous with the incident, reinforces that the names of both accused were being consistently mentioned as the perpetrators right from the earliest moments after the murder. PW-4 generally confirmed the same sequence. The defence had tried to suggest that PW-1 and PW-2 might have named the accused out of prior enmity or that villagers simply assumed their involvement. However, the consistency in the immediate naming of Praveen by PW-1 (who knew him) and the repetition of that name by others lends

credibility to the allegation against Praveen. The presence of accused Praveen at the crime scene is further corroborated by the fact that he was arrested soon after (within a few days) – indicating he likely did not have a strong alibi and was absconding until apprehended (the IO's testimony shows Praveen was in police custody by 27.10.2017, about a month after the incident, which suggests he was evading arrest for a while). Moreover, accused Praveen's conduct in fleeing the scene and remaining at large for some time can be taken as a conduct-admission under Section 8 of the Evidence Act, strengthening the case that he was conscious of guilt.

3.7. Recovery of Weapon (Axe) from Praveen: Another piece of incriminating evidence against Praveen is the recovery of a bloodstained axe pursuant to his disclosure. PW-7 (IO) and PW-5 (the inquest officer) both referred to the recovery of an axe on 14.10.2017 on Praveen's instance (Ext. Ka-16). As per PW-7, after Praveen's arrest, he was interrogated, and he disclosed the place where he had hidden the axe used in the assault. A recovery memo (Ext. Ka-16) was prepared when an axe was recovered from a concealed location identified by Praveen. The axe was sealed and taken into evidence. This recovery is admissible under Section 27 of the Indian Evidence Act to the extent it confirms a relevant fact discovered in consequence of information from the accused. The Privy Council in [Pulukuri Kotayya v. Emperor: AIR 1947 PC 67](#) famously observed that when a fact is actually discovered in consequence of information given by an accused, that provides a guarantee of truth of the information, and so much of the information as relates distinctly to the fact discovered is admissible. Here, the fact discovered is the hidden murder weapon (axe) and accused Praveen's knowledge of its location, which tends to connect him with the offence. The recovered axe was identified in court. While the forensic analysis (to confirm if human blood matching the deceased's was present on the axe) was not explicitly produced, the very recovery lends corroborative support to PW-1 and PW-2's account that Praveen used an axe in the crime. The certified copy of the FSL report of one axe has been produced, which is not admissible as evidence unless there are grounds for secondary evidence. Prosecution did not invoke any ground for secondary evidence. It is also not clear which of the two axes this certified copy belongs to. The absence of an FSL report does not negate the recovery; it merely means an additional scientific link is missing. However, given the strong direct evidence, the lack of forensic confirmation of human blood on the axe does not introduce reasonable doubt about Praveen's guilt – it is well settled that when credible direct evidence (eyewitness testimony) clearly establishes the guilt of an accused, it can suffice for conviction, with medical or forensic evidence serving a corroborative role. In this case, the medical evidence and recovery evidence both align with and support the direct testimony against Praveen.

3.8. Credibility of PW-1 & PW-2 (Related Witnesses): The defence argued that PW-1 and PW-2, being close relatives of the deceased (wife and nephew, respectively), are "interested" witnesses and thus their testimony should be viewed with suspicion. They are indeed related to the victim, but the law

distinguishes a “related” witness and an improperly “interested” witness. A related witness is closely connected to the victim by blood or marriage and was naturally present at the scene. Such a witness’s evidence is not to be summarily rejected merely due to the relationship; rather, the Court must scrutinise it with caution for any indication of embellishment or false implication. The Hon’ble Supreme Court has observed that a relative of the victim is, if anything, less likely to let the actual culprits go free and implicate innocent persons, unless there are overriding personal motives. Here, no animosity between PW-1’s family and any third party (to falsely implicate Praveen) was suggested – in fact, the only past enmity referred to involves the accused themselves. PW-1 and PW-2 stood the test of cross-examination on material points. There were a few minor inconsistencies highlighted: for example, PW-1 did not mention in her written FIR or initial statement that PW-2, Kaleem, arrived at the scene during the incident, whereas in court she stated that he did arrive and witnessed part of the attack. She explained in cross-exam that in the panic of writing the FIR, she omitted to mention Kaleem’s presence and certain other details, but affirmed that what she stated in court about Kaleem’s arrival was true. The omission of Kaleem’s presence in the FIR is understandable – the FIR is not an encyclopedic statement of all details but a prompt report of the crime. Such omissions or minor contradictions are not unusual when eyewitnesses recount a traumatic event; the Hon’ble Supreme Court has repeatedly held that minor discrepancies and laches in investigation, which do not touch the core of the prosecution’s case, do not render the evidence unacceptable, especially when the main occurrence is consistently described. Mere not mentioning the place of blood-stained soil does not shift the place of occurrence. Panchnama is not proof of injuries. The injuries recorded in the panchnama and PMR may vary. The core facts – that Praveen attacked Aslam with an axe, causing fatal injuries – remain consistent across PW-1’s FIR, PW-1’s testimony, and PW-2’s testimony. Both witnesses were cross-examined at length, and the Court found no material reason to disbelieve them on these core facts. Their evidence is further bolstered by alignment with the medical evidence (nature of wounds) and by the immediate reporting of the incident with Praveen’s name. Therefore, the Court finds that the eyewitness testimony of PW-1 and PW-2 against accused Praveen Upadhyay is trustworthy and carries sufficient weight to form the basis of a conviction, especially as it is consistent with the surrounding circumstances and corroborative material.

3.9. Conclusion on Point 2 (Praveen’s Guilt): Taking the evidence as a whole, the prosecution has established beyond a reasonable doubt that the accused, Praveen Upadhyay, assaulted Mohd. Aslam with an axe with the intention of causing his death, thereby committing the offence of murder. The nature of the weapon used (sharp-edged axe) and the body parts targeted (head and torso) manifest an intent to inflict deadly injuries. Even if one were to consider that there was an altercation or sudden provocation, the brutality and persistence of the attack (multiple blows even after the victim fell) goes far beyond any lawful excuse or lesser offence – it clearly falls under Section 300

“murder” (at the very least Clause Thirdly: intention to cause bodily injury sufficient in the ordinary course of nature to cause death). There is no evidence of grave and sudden provocation from the side of the deceased; on the contrary, the attack was initiated by Praveen, suggesting premeditation or at least a deliberate intent to kill (quite possibly rooted in a prior revenge motive). Thus, all ingredients of Section 302 IPC are satisfied in respect of the accused Praveen. Accordingly, the Court is convinced of Praveen Upadhyay’s culpability for murder. Additionally, as will be discussed under Point 4, his act of hurling abuse just before attacking also attracts Section 504 IPC.

(Having found accused Praveen liable as a principal offender for murder, the Court will now address the role of accused Deepak Upadhyay and whether the evidence is sufficient to hold him jointly liable for the crime or not.)

Point 3: Involvement of Accused Deepak @ Shashikant Upadhyay - Common Intention or Benefit of Doubt?

3.10. Evidence Against Accused Deepak - Overview: Accused Deepak Upadhyay alias Shashikant is the person who was initially unnamed in the FIR but later charge-sheeted as the second assailant. The prosecution’s case is that Deepak was Praveen’s accomplice who participated in the assault on Aslam, and that both shared a common intention to kill the deceased. The evidence against Deepak can be summarized as follows: (a) the testimony of PW-1, who saw an “unknown” accomplice with Praveen at the time of attack and later identified that accomplice as Deepak; (b) the testimony of PW-2, who claims to have been informed by PW-1 at the scene that Deepak was the second attacker and who himself saw two persons (allegedly Praveen and Deepak) fleeing after assaulting Aslam; (c) the fact that PW-3, PW-4 and others heard Deepak’s name mentioned immediately after, implying he was recognized as the second culprit; (d) the recovery of a bloodstained axe at Deepak’s instance on 18.11.2017 (Ext. Ka-15); and (e) the alleged motive (common with Praveen) due to the prior quarrel with PW-2 and beating by the deceased. The question is whether this evidence proves beyond a reasonable doubt that Deepak was indeed the “unknown” accomplice who shared the intention to murder and actively took part in the killing.

3.11. Identification and Initial Omission: A crucial aspect is that Deepak’s name was not mentioned in the FIR. PW-1 candidly wrote in her FIR that the second assailant was “an unknown associate” of Praveen. In her court testimony, PW-1 asserted that the second person was none other than Deepak Upadhyay, but she also explained that she did not know Deepak’s name at the time of lodging the FIR. She could not name Deepak in the FIR due to distress. If she were in distress, how could she remember the name of Praveen? PW-1 and PW-2 previously knew the accused Deepak. PW-2 claims to be an eyewitness and is the writer of the FIR. It is a million-dollar question why he did not include Deepak’s name in the FIR, given that he knew Deepak by name before the occurrence. The explanation is not acceptable. PW-1 stated that she had described Praveen’s companion by appearance, and it was only

later during the investigation that the police informed her of his identity as Deepak alias Shashikant (who turned out to be a relative of Praveen). It appears that PW-1 did not have prior acquaintance with Deepak, unlike with Praveen. Given the suddenness of the attack and the focus on Praveen (who confronted and abused the deceased directly), it is plausible that PW-1 did not recognise or firmly register the identity of the second assailant in that moment. She nevertheless consistently maintained that a second man was present and struck her husband.

3.12. PW-2's Identification of Deepak: PW-2's testimony is more assertive regarding Deepak's identity – but notably, PW-2's knowledge of Deepak seems to derive from prior familiarity and from PW-1's immediate report to him. When PW-2 arrived, PW-1 told him, "Praveen and Deepak are attacking your uncle". How did PW-1 know the name "Deepak" at that instant to tell PW-2? This question is troubling. It suggests one of two possibilities: (a) either PW-1 actually recognised the second assailant's face and either knew him by appearance or name (directly or through others shouting his name), or (b) PW-2 himself, upon seeing the second person from a distance, recognised him and supplied the name "Deepak" which PW-1 then affirmed. The evidence leans towards the scenario that PW-2 and perhaps other villagers recognised Deepak (since he is from the same village), and that is how his name surfaced shortly after the incident. PW-2 had previously been beaten by "Praveen and Deepak" as per PW-1, which implies PW-2 knew both of them by name and appearance. Therefore, even though PW-1 did not name Deepak in the FIR, PW-2's testimony effectively links Deepak to the scene, as he claims to have seen both accused at the end of the incident. PW-2 described that both men (Praveen and Deepak) were present, delivering final blows and threatening him as they left. There were also villagers arriving by the time the accused fled, and PW-3's testimony indicates local people recognised both Praveen and Deepak as the culprits at the scene ("people were saying it's unbearable how Praveen and Deepak hacked him in broad daylight").

3.13. Common Intention (Section 34 IPC): To hold Deepak guilty of murder with the aid of Section 34 IPC, the Court must be convinced that he shared a common intention with Praveen to commit the murder and actively participated in it. Common intention implies a pre-arranged plan or meeting of minds – it can be formed on the spur of the moment, but it requires the co-accused to consciously participate in the criminal act in furtherance of that shared intent. Mere presence at the scene is not sufficient; the prosecution must show that the co-accused did some act in furtherance of the common plan to accomplish the crime (Please see [CONSTABLE 907 SURENDRA SINGH v. STATE OF UTTARAKHAND: 2025 INSC 114](#)). In this case, the prosecution alleges that Deepak not only accompanied Praveen but also struck the deceased with an axe, thus clearly taking part in the act of murder. Suppose PW-1 and PW-2's testimony in this regard is accepted. In that case, Deepak's role is that of a joint assailant, virtually a co-perpetrator, which would satisfy Section 34 IPC, provided there was a meeting of minds with

Praveen to attack Aslam. The very coordinated nature of the assault – two men armed with axes lying in wait (PW-1 mentioned the assailants were hiding and suddenly emerged) and both striking the victim – strongly indicates a common intention to kill. It was effectively a two-on-one ambush. In such facts, if identity is proved, common intention can reasonably be inferred: as held in **Barendra Kumar Ghosh v. King Emperor: AIR 1925 PC 1** and a line of cases thereafter, when an attack is carried out by several persons together, each doing a part, it is often a clear indication of a pre-concert to accomplish the crime jointly, unless the co-accused's act was entirely unintended or unrelated. Here, Deepak's alleged act of also hitting the victim with an axe is certainly in tandem with Praveen's act – demonstrating unity of purpose.

3.14. Scrutiny of Evidence for Deepak's Identification: However, the linchpin question is whether the evidence firmly establishes that the unidentified second assailant was, in fact, Deepak Upadhyay. Unlike Praveen, whose identity as an assailant is directly attested by an eyewitness who knew him (PW-1), Deepak's identification is somewhat derivative and potentially prone to error. Key observations in this regard:

Even if it is supposed that PW-1 did not know Deepak previously and thus could not name or identify him on her own at the time of FIR. Her later identification of Deepak in court, more than a year after the incident, is of limited value because by then she knew he was the co-accused (having seen him in court or in custody). The evidentiary value of an in-court identification without a prior Test Identification Parade (TIP) is diminished if the witness had no prior acquaintance and had the opportunity to see the accused after the incident under suggestive circumstances. Here, no TIP was conducted for PW-1 to confirm that the person arrested (Deepak) was indeed the "unknown" second attacker she had seen briefly. This is an investigative lapse. While failure to hold a TIP is not always fatal (especially if the witness identifies the accused in court and there is other corroboration), it does deprive the Court of an extra assurance of reliability in the identification of an accused not previously known to the witness.

PW-2 did know Deepak from before (being a co-villager and one of those who allegedly assaulted him in the past). PW-2's testimony places Deepak at the scene, participating in the assault. If PW-2 is truthful, then that by itself would be sufficient to implicate Deepak (since PW-2 is an eyewitness who recognised him). But we must examine PW-2's opportunity to observe and the consistency of his account. PW-2 arrived when the attack was either concluding or just over. He said he saw the accused delivering "one or two" more blows to Aslam even as he arrived and raised an alarm. It was around sunset time (5 PM in late September, daylight but waning). He was at some distance (he met PW-1 about 15-20 meters before the actual spot, per his cross-exam). In those moments, he may have only glimpsed the attackers from behind or side as they fled. PW-2 did not describe any distinguishing features

of Deepak or actions specific to Deepak versus Praveen. The possibility cannot be entirely ruled out that PW-2 relied on what PW-1 told him or what he inferred (seeing two men run, knowing one is Praveen, and assuming the other is Deepak, who often accompanied Praveen). We note that PW-2, in cross, admitted that he did not pay attention to which other villagers were present and that he had little prior interaction in that area of the village. There is a subtle concern that PW-2's identification of Deepak might have been influenced by PW-1's words or by later knowledge, rather than independent observation. It is also noteworthy that PW-2 knew Deepak by name earlier, and he wrote the FIR on the dictation of PW-1; why Deepak's name was not added to the FIR remains unanswered. This makes Deepak's involvement highly doubtful.

No independent eyewitness (other than family members) was produced who actually saw Deepak at the scene during the murder. The prosecution did list PW-9 (Mohd. Sharif), PW-10 (Jaleel), and PW-11 (Ahmed Ali) – these appear to be witnesses to the recoveries or perhaps inhabitants of the vicinity – but they did not testify to having seen the assault. They were formal witnesses, not occurrence witnesses. The IO mentioned taking statements of two villagers, Birjesh Upadhyay and Dinesh Upadhyay, during the investigation, who were “present at the spot”, but neither of them was examined in court. It's possible they did not support the prosecution's version or were not actually eyewitnesses to the attack (arriving after, perhaps). Therefore, the case against Deepak essentially rests on the same two related eyewitnesses (PW-1 and PW-2) and the circumstantial evidence of his conduct and recovery.

3.15. Recovery of Axe from Deepak: The recovery of the second axe (Ext. Ka-15) from the accused Deepak's alleged hiding place is a piece of corroborative evidence, but its reliability has been attacked by the defence. Deepak surrendered on 09.11.2017, and the recovery was made on 18.11.2017 after obtaining his police custody. The recovery memo (Ext. Ka-15) was proved by PW-7 (IO), who stated that Deepak gave information and led the police party to recover an axe hidden in a spot, which was then seized and sealed. The legal admissibility of this is similar to Praveen's recovery (discussed above) – it is admissible under Section 27 Evidence Act to the extent it shows discovery of the axe in consequence of information given by Deepak. However, unlike Praveen's recovery (which happened within 3 weeks of the incident), Deepak's recovery occurred almost 8 weeks after the incident. The delay itself is not fatal, but it does mean that by the time of recovery, the axe was not freshly stained (it had presumably been lying hidden for a while). If a chemical examination was done, its results have not been presented; we do not have scientific proof that the axe recovered from Deepak had the deceased's blood or was actually used in the crime. The defence argument is that the recovery is a planted piece – that once Deepak surrendered, the police fabricated it to strengthen the case. While there is no direct proof of fabrication, the Court must be cautious. The recovery was witnessed by

independent panchas (PW-9, 10, 11), but typically, such witnesses often turn hostile or simply attest to the formal act. Here, the panch witnesses of recovery did not testify to any irregularity. The IO's testimony on the recovery went unshaken. So on balance, the recovery stands proved as a fact – an axe was found where Deepak said it would be. Yet, what does this prove? It does add an incriminating circumstance: if indeed Deepak knew where an axe used in the murder was hidden, that indicates his involvement. But if one remains uncertain whether Deepak was the assailant, the recovery alone might not conclusively establish it (since theoretically, one could imagine scenarios of planted evidence or that he came to know of the weapon's location after the fact, etc., albeit such speculation alone cannot override positive evidence).

3.16. Assessment of Credibility & Doubts: In evaluating the accused Deepak's guilt, the Court is mindful that the prosecution must prove the charge beyond a reasonable doubt. If there is any reasonable doubt regarding Deepak's identification or participation, he must be given the benefit of that doubt. After careful scrutiny, the Court finds that some doubts persist regarding Deepak's exact role. These may be summarised:

Initial Non-identification: The failure of the prime eyewitness (PW-1) to identify Deepak at the earliest instance (FIR) is a significant gap. It indicates that at the time of the crime, she could not, on her own, name or perhaps even recognise the second assailant. This opens up the possibility, however slight, that she could have been mistaken about who that person was, especially if the attack was sudden and chaotic.

Lack of TIP: The absence of a Test Identification Parade to independently verify PW-1's and even PW-2's ability to identify Deepak is a lacuna. Given that Deepak was not an obvious or well-known figure to PW-1, a TIP would have provided greater assurance that the later identification was not the result of suggestion. The courts have held that identification for the first time in court can be unreliable if the witness had the opportunity to see the accused after the arrest (for example, in the police station or in court hearings) or was told about him. Here, by the time PW-1 testified, she was undoubtedly aware that Deepak (sitting in the dock) was the man police believed to be the second attacker. Thus, her in-court identification carries less weight without prior test identification.

Reliance on Same Interested Witnesses: The main evidence against Deepak comes from the same two related witnesses (PW-1 and PW-2). While the Court has found them credible regarding Praveen (whom they both clearly knew and saw committing the act), their evidence regarding Deepak is not entirely independent – it overlaps and could have cross-informed each other. **There is a risk of confirmation bias:** once Praveen was identified, there might have been an assumption or local suspicion that his close relative/friend (Deepak), who had a prior run-in with the deceased's family, must be the other culprit. No neutral eyewitness or other direct evidence (like CCTV, etc.,

which anyway is not applicable here) is available to bolster the identification of the second assailant.

Contradictions in Motive Narrative: As noted, PW-1 insists both accused had beaten PW-2 earlier and thus bore a grudge, whereas PW-2 downplays prior enmity. If the prior incident indeed involved both Praveen and Deepak, one would expect PW-2 to acknowledge it (since he was the victim of that beating). His reluctance or forgetfulness about it could be innocent, or it could suggest that the story of both accused being involved in the prior incident was perhaps embellished by PW-1. If PW-1 exaggerated the role of Deepak in the prior quarrel, it raises the concern of possible exaggeration in implicating him in the murder as well. This is speculative, but it contributes to caution in assessing her testimony against Deepak.

Deepak's Conduct: Unlike Praveen, who was absconding immediately and had to be arrested after some time, Deepak surrendered voluntarily about six weeks later. One might argue that an innocent person fearing false implication might also surrender to contest the charges. On the other hand, an accused's surrender does not prove innocence; it could simply be a tactical decision. Nonetheless, his surrender (rather than being caught hiding) is a neutral fact that doesn't point strongly either way.

3.17. Legal Standards - Suspicion vs Proof: The chain of evidence against Deepak, when viewed holistically, is not as tight as that against Praveen. There is certainly a strong suspicion that Deepak was involved – the circumstances make it likely that Praveen did not act alone and that his close associate (with whom he allegedly had joint quarrels before) would be the one assisting him. But our criminal jurisprudence demands proof beyond a reasonable doubt. It has been reiterated by the Supreme Court that “suspicion, however strong, cannot take the place of proof.” An accused is presumed innocent until proven guilty beyond a reasonable doubt. In a case based largely on eyewitness testimony, if the primary witnesses themselves leave some room for doubt in identifying a particular accused, the Court cannot supply that missing certainty by conjecture. This is especially so when convicting on circumstantial or inferential evidence – the law requires that all circumstances must form a complete, unbroken chain pointing only to the guilt of the accused and inconsistent with any hypothesis of innocence. In Deepak's case, the chain of evidence is not fully complete or incapable of an innocent explanation: it is not impossible that someone else (perhaps another associate of Praveen) could have accompanied him, and that, in the aftermath, people assumed it was Deepak due to prior events. The prosecution did not eliminate all reasonable possibilities of mistaken identity regarding Deepak. For instance, no forensic evidence links Deepak personally to the crime (the FSL result, if any, was not shown to tie him via fingerprints, DNA, etc.), and no unequivocal independent testimony places him there beyond the circle of interested witnesses.

3.18. Case Law on Common Intention: Furthermore, the Hon'ble Supreme Court in a very recent judgment (Constable Surendra Singh & Anr. v. State of Uttarakhand, 2025, supra) emphasised that to convict under Section 34 IPC, the prosecution must show more than the accused's mere presence; it must show active participation and a prior meeting of minds to commit the crime. If evidence against a co-accused is doubtful as to whether he indeed participated or shared the intent, he cannot be vicariously held liable for the act of the principal accused. Our scenario has two people alleged to have done the act; it is not a case of a bystander being roped in, but the principle remains that each must be proved to have intended the result and contributed to it. Here, because we harbour doubt whether Deepak was even the person at the scene, it becomes clear that one cannot solidly infer the existence of a shared plan on his part. In other words, the prosecution has failed to prove beyond a reasonable doubt that the accused Deepak Upadhyay was a participant with a common intention in the murder. Therefore, giving him the benefit of the doubt is the lawful course. As the oft-quoted maxim in criminal law goes, "it is better that ten guilty persons escape than one innocent suffer." If the evidence is in two minds about Deepak's culpability – which it is – this Court must lean in favour of innocence (or rather, non-proof of guilt).

3.19. Conclusion on Point 3 (Deepak's Guilt or Lack Thereof): In view of the above analysis, the Court concludes that the prosecution has not been able to prove the charge under Section 302/34 IPC against the accused Deepak alias Shashikant Upadhyay beyond a reasonable doubt. There are material doubts regarding Deepak's identification and involvement in the actual attack. He may very well have been present, but "may have been" is not enough – the law requires that we reach a firm conclusion that he "must have been" the culprit ([Sharad Birdhichand Sarda v. State of Maharashtra: \(1984\) 4 SCC 116](#)). That level of certainty is missing here. The evidence raises a strong suspicion of his guilt, but as noted, suspicion, however strong, cannot replace the strict proof required for conviction. Therefore, the accused Deepak Upadhyay is entitled to an acquittal on the benefit of doubt.

(It must be clarified that this finding does not detract from the finding of guilt against Praveen. Even if Deepak is acquitted, the accused Praveen's conviction for murder can safely rest on his own acts. The offence by Praveen does not require that another be convicted alongside; the prosecution invoked Section 34 IPC (common intention), but with Deepak's role not proved, Praveen's liability simply devolves to that of an individual perpetrator under Section 302 IPC simpliciter. The evidence clearly shows Praveen's individual act meets the definition of murder, regardless of the participation of a second person.)

Point 4: Offence under Section 504 IPC (Intentional Insult to Provoke Breach of Peace)

3.20. Evidence of Abuse/Insult: Section 504 IPC penalises "intentional insult with intent to provoke a breach of the peace or with knowledge that such

provocation will cause the other person to break the public peace or commit an offence.” In the present case, the FIR and the testimony of PW-1 explicitly mention that the accused Praveen Upadhyay abused the deceased with the words “saale gunda banate ho” just before launching the attack. This abuse was clearly an intentional insult delivered in a confrontational manner. Moreover, according to PW-2, as the assailants left, they shouted threats like “we will kill you” to the bystanders (including PW-2). Such conduct goes beyond mere verbal taunt – it was part of the sequence of aggression. However, focusing strictly on Section 504’s ingredients, Praveen’s utterance was an intentional insult directed at the deceased, calculated to provoke him (“you act like a goon”). The context suggests it was meant to intimidate or anger the victim right before attacking, which indeed provoked a violent confrontation (initiated by the accused). This satisfies the requirement of an insult likely to induce a breach of the peace. Even if the deceased had no time to react with violence (since he was attacked immediately), the intent of the accused in hurling that abuse was obviously malicious and aimed at provoking and terrorising.

3.21. Liability of Praveen vs Deepak under Section 504: The evidence primarily attributes the verbal insult to the accused Praveen. There is no specific evidence that Deepak said those words or any other insulting words. PW-1’s FIR quotes only Praveen as speaking. PW-2 said “the accused” threatened as they left, but did not particularise who spoke. In the absence of clear proof that Deepak uttered any insulting or provocative language, it would not be safe to hold him guilty under Section 504 IPC (especially since we are giving him the benefit of doubt even for presence). For Praveen, however, the offence under Section 504 is clearly made out. His act of abuse was intentional and, in fact, led to the commission of a grave offence (he himself proceeded to attack, causing a breach of public peace of the highest order). Even though the greater offence of murder overshadows the misdemeanour under Section 504, it is appropriate to record a finding on this charge for completeness.

3.22. Conclusion on Point 4: The prosecution has proved that the accused Praveen Upadhyay committed an offence under Section 504 IPC by intentionally insulting the deceased in filthy language with the intention to provoke a breach of the peace or other offence. As for the accused Deepak Upadhyay, in the absence of evidence of any specific insult by him (and given that he is being acquitted of the main act), he is not found guilty under Section 504 IPC.

4. Findings

In light of the above discussion, the Court records its findings on the points for determination as follows:

Point 1 (Homicidal death): Proved. Mohd. Aslam's death on 23.09.2017 was homicidal, caused by multiple axe injuries, as established by the medical evidence (Post-mortem report and PW-6's testimony).

Point 2 (Accused Praveen Upadhyay's culpability under Section 302 IPC): Proved beyond a reasonable doubt. Accused Praveen Upadhyay did intentionally cause the death of Mohd. Aslam by assaulting him with an axe, and his act amounts to murder, punishable under Section 302 IPC. He is thus found guilty of the offence of murder. He is also found guilty of the connected charge under Section 504 IPC for the intentional insult uttered during the incident.

Point 3 (Accused Deepak @ Shashikant Upadhyay's culpability under Section 302/34 IPC): Not proved beyond a reasonable doubt. The evidence is insufficient to conclusively establish that the accused Deepak participated in the attack or shared the common intention to kill. Therefore, giving the benefit of doubt, the accused Deepak Upadhyay is found not guilty on the charge of murder (Section 302 IPC, read with Section 34 IPC).

Point 4 (Offence under Section 504 IPC): Proved in part. Accused Praveen Upadhyay is found guilty under Section 504 IPC (intentional insult with intent to provoke breach of peace). Accused Deepak Upadhyay is found not guilty under this count, there being no specific evidence of any insulting or provoking act by him.

Accordingly, accused Praveen Upadhyay is convicted, and accused Deepak alias Shashikant Upadhyay is acquitted of all charges.

5. Order

5.1. Conviction of Praveen Upadhyay: In view of the foregoing findings, this Court hereby convicts accused Praveen Upadhyay (son of Sanjay Upadhyay, resident of Siswan, P.S. Bewana, Ambedkar Nagar) of the offences punishable under Section 302 of the Indian Penal Code, 1860 (Murder) and Section 504 of the IPC (Intentional insult with intent to provoke breach of peace).

5.2. Acquittal of Deepak @ Shashikant Upadhyay: Accused Deepak Upadhyay alias Shashikant Upadhyay (son of Satish Chandra Upadhyay, resident of Siswan, P.S. Bewana, Ambedkar Nagar) is hereby found not guilty and acquitted of the charges under Sections 302/34 and 504 IPC.

Both the accused are on bail. Accused **Praveen Upadhyay** is to be taken into custody and sent to jail. Their bail bonds are discharged.

Compliance of Section 437-A CrPC: The acquitted person Deepak Upadhyay alias Shashikant Upadhyay (son of Satish Chandra Upadhyay, resident of Siswan, P.S. Bewana, Ambedkar Nagar) is hereby directed to furnish personal bonds of ₹20,000/- each with one surety each in the like amount, under Section 437-A CrPC, binding them to appear before the High Court in the

event the State files an appeal against this judgment, such bonds to remain in force for six months.

Put up on 03.11.2025 for a hearing on the quantum of sentence.

(Chandroday Kumar)
Sessions Judge, Ambedkar Nagar
31.10.2025

03.11.2025

5.3. Heard on Sentence (for Praveen Upadhyay): - The offence of murder under Section 302 IPC is punishable with death or imprisonment for life, and also fine. The offence under Section 504 of the IPC is punishable with imprisonment for up to two years or a fine or both. The Court has heard the learned DGC (Criminal) and learned defence counsels on the question of sentence for the convicted Praveen Upadhyay. The prosecution submits that the offence was a heinous, cold-blooded murder of an unarmed man returning from his fields, and thus, the maximum punishment is warranted. The defence, on the other hand, pleads for leniency, arguing that Praveen is a young man with no previous conviction, and that this was an act arising out of a spur-of-the-moment village quarrel. The Court has considered the aggravating and mitigating circumstances. The manner of the attack - a planned armed assault in broad daylight - is indeed gravely aggravating. However, this case does not fall in the "rarest of rare" category where the death penalty would be justified, as it appears to stem from personal enmity, and there is no exceptional depravity beyond the unfortunate fact of taking a life. Imprisonment for life is the rule for murder, the death penalty being an exception reserved for extremely heinous cases. Here, a sentence of life imprisonment will adequately meet the ends of justice. The convict's young age and possibility of reform are also noted. Consequently, the Court decides to impose the lesser sentence of life imprisonment.

5.4. Sentence: Therefore, accused Praveen Upadhyay is sentenced as follows:

For his conviction under Section 302 IPC (Murder): to Imprisonment for Life (Rigorous) and to pay a fine of ₹1,00,000/- (One Lac). In default of payment of the fine, he shall undergo additional simple imprisonment for a period of six months.

For his conviction under Section 504 IPC: to Rigorous Imprisonment for 1 (One) year and to pay a fine of ₹1,000/- (one thousand). In default of payment of the fine, he shall undergo simple imprisonment for one month.

Both substantive sentences shall run concurrently. The period of detention already undergone by Praveen Upadhyay during the investigation and trial (from the date of his arrest on or about 27.10.2017 till date) shall be set off against the term of imprisonment as per Section 428 of the Code of Criminal Procedure, 1973. **The victim, Smt. Shamun Nisha shall receive 90% of the**

fine as compensation. The case is referred to the District Legal Services Authority for consideration under the Victim Compensation Scheme.

5.5. Disposition of Case Property: The seized case property (axes, etc.) shall be disposed of in accordance with law: the weapons (Material Exhibits – the two axes) used in the commission of the offence are forfeited to the State and shall be destroyed after the expiry of the appeal period, unless directed otherwise by a superior court. Blood-stained earth samples may also be destroyed.

5.6. Informing Convict of Right to Appeal: The convict Praveen Upadhyay is informed that he has a right to appeal this judgment and sentence in the Hon'ble High Court of Judicature at Allahabad (Lucknow Bench) within the period prescribed by law. Let a copy of this judgment be furnished to him free of cost forthwith as required under Section 363(1) Cr.P.C.

5.7. Compliance and Records: A copy of the judgment along with the conviction warrant shall be sent to the Superintendent of the Jail where Praveen Upadhyay is lodged, for compliance with the sentence. The record of this case shall be consigned to the record room.

Judgment dictated and pronounced in open court on this 24th day of October, 2025.

(Chandroday Kumar)

Sessions Judge, Ambedkar Nagar

03.11.2025