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CNR No-UPKJ010017122021

**In The Court of Sessions Judge, Kannauj**

Presiding Officer- Shri Chandroday Kumar (HJS)-UP06553

Session Trial Number-379 of 2021

State of Uttar Pradesh ... Prosecution

Versus

1. Intazar, son of Istiyaq,  
2. Arshad, son of Sarfaraj,  
Both residents of Sheikhana, Police Station Kotwali Kannauj, District  
Kannauj ... Accused.

Crime Number-819/2019  
Under Sections 304, 452, 504, 506 IPC  
Police Station- Kannauj,  
Distt. Kannauj.

Prosecution Counsel: Shri Tarun Chandra, DGC (Criminal),  
Defence Counsel: Shri Ashok Chandra, Advocate.

**JUDGMENT**

**INTRODUCTION**

The accused, Intazar and Arshad, have been charged with and tried for offences punishable under sections 304, 452, 504, and 506 of the Indian Penal Code (IPC).

**FACTS**

2. According to the prosecution's story, the brief facts related to the case are as follows: On October 31, 2019, the complainant, Maimuna Begum, submitted a written *Tahrir* (Exhibit Ka-1) to the in-charge of the Kotwali Kannauj Police Station in Kannauj District. She reported that his real sister, Arshi, is married to Zulfikar Ali, and her marriage also took place in the same locality. On October 28, 2019, an argument occurred between the complainant's husband, Shahid, and his sister, Arshi. Due to this, Arshi's elder brother-in-law Intazar (son of Istiyaq), Arshad, Annu, Nanhe (sons of Sarfaraz), and Hasmat (son of Arshad), all residents of Mohalla Sheikhana, Kannauj, came to their

house. As soon as they arrived, they started abusing and assaulting Shahid. As a result, Shahid's right arm was fractured, and he sustained serious head injuries. Upon hearing the commotion, many neighbours came running and intervened. The individuals above then fled the scene after issuing death threats, leaving Shahid injured. The complainant admitted Shahid to the District Hospital in Kannauj, but due to the severity of his condition, he was referred to Hailet Hospital in Kanpur Nagar. During treatment, Shahid passed away on October 30, 2019. The complainant requested that the information be registered and that action be taken.

### **Injury Report**

3. On October 30, 2019, Dr. Ashish Srivastava, Emergency Medical Officer at L.L.R. Hospital, Kanpur Nagar, conducted a medical examination, Exhibit Ka-8, of the injured Shahid Husain, son of Wasid Husain, aged about 48 years, resident of Kasba Shekhana, Police Station and District Kannauj. The following injuries were found on his body:

**Injury No. 1:** Contused swelling measuring 4 x 3 cm present on the left side of the head in the temporal region. An X-ray was advised under observation.

**Injury No. 2:** Contused swelling measuring 3 x 2.5 cm on the right side of the head in the parieto-occipital region. This was also advised for an X-ray under observation.

**Injury No. 3:** A bluish-black contused swelling measuring 3 x 2 cm was present on the right side of the face.

**Injury No. 4:** A bluish-black contusion measuring 3 x 2 cm was present on the back side of the left arm.

In the doctor's opinion, injuries Nos. 3 and 4 were simple, approximately two to four days old, and appeared to have been caused by a blunt and hard object.

### **FIR**

4. Based on the Tahrir, a First Information Report (FIR) was registered at the Kotwali Police Station in Kannauj District, under Sections 147, 304, 452, 504, and 506 of the Indian Penal Code (IPC). This FIR, assigned Crime No. 819 of 2019, was filed against the accused individuals, Intazar, Arshad, Annu, Nanhe, and Hasmat, on October 31, 2019, at 6:50 p.m.

5. At the same time, the same extract was entered into General Diary (GD) No. 55, dated October 31, 2019. The inquest of this case was assigned to Inspector Rajesh Kumar, in-charge of L.L.R.H., Police Station, Swaroop Nagar, Kanpur Nagar.

### **INQUEST**

6. SI Rajesh Kumar visited the mortuary at L.L.R. Hospital, Kanpur Nagar, and conducted an inquest regarding the death of

Shahid Husain. After the inquest proceedings, the report (Panchayatnama Exhibit Ka-9) was prepared. The Panchayatnama mentioned the cause of death as injuries sustained. To determine the exact cause of death, a postmortem was suggested. Accordingly, a letter to the CMO (Exhibit Ka-10), a sample seal (Exhibit Ka-11), a photo of the corpse (Exhibit Ka-12), and a challan of the corpse (Exhibit Ka-13) were prepared.

### **POSTMORTEM EXAMINATION**

7. On the same day, i.e. October 31, 2019, Dr Ramesh Kumar conducted the post-mortem between 02:30 P.M. and 03:10 P.M. and prepared the post-mortem report, Exhibit Ka-7. The findings of the postmortem are as follows:

**General Examination** – Height: 173 cm; body build: average. *Rigour mortis* was present in all four limbs. Postmortem staining was present on the entire back, buttocks, and both legs, except for the areas directly in contact with the surface. The eyes and mouth were closed.

**Antemortem Injury** – A bluish mark with swelling measuring 4x3 cm was present on the left temporal region. On dissection, clotted blood was found in the skin and muscles.

**Internal Examination** – The brain and its membranes were congested. Approximately 200 ml of blood clots were present in the brain. The brain weighed 1300 grams. Teeth: 16/15. The right lung weighed 600 grams, and the left lung 550 grams – both were congested. The heart weighed 300 grams, with the right chamber full and the left chamber empty. The stomach weighed 180 grams and contained approximately 100 ml of watery fluid. The small intestine contained pasty material and gases, and the large intestine contained faecal matter and gases. The liver weighed 1500 grams. The liver, spleen, and both kidneys were congested. The gall bladder was partially filled and contained several small gallstones. The spleen weighed 200 grams. The right kidney weighed 170 grams, and the left kidney 160 grams. A stone was present in the left kidney. The urinary bladder was empty.

Doctor's opinion- The cause of death was coma resulting from the head injury sustained before death. Based on the memo, the deceased died due to the aforementioned injury on October 30, 2019, at 03:50 P.M.

### **INVESTIGATION**

8. The IO, Mohd. Tauqeer visited the scene, prepared the site map (Exhibit Ka-5), collected inquest and post-mortem reports, and recorded the witnesses' statements. Upon completing the investigation, the IO submitted a charge sheet against the accused, Intazar and Arshad, under sections 304, 452, 504 and 506 of the IPC in the Court of Chief Judicial Magistrate (CJM), Kannauj.

### **COGNISANCE AND COMMITAL**

9. The learned CJM, Kannauj, took cognisance of the matter and, upon determining the case to be triable by the Court of Sessions, committed the case to the Court of Sessions, following compliance with section 207 of the Code of Criminal Procedure (CrPC).

### **CHARGES**

10. This court registered the case as Session Trial Number 379 of 2021 and framed the charge against the accused, Intazar and Arshad, under sections 304, 452, 504 and 506 of the IPC. The accused pleaded innocence and claimed to be tried.

11. The prosecution examined the following witnesses to substantiate the charges against the accused:

#### **Witness of facts:**

PW1, Smt. Maimuna Begum, the first informant and wife of the deceased,

PW2, Washid Husain, brother of the deceased, and

PW3, Azmal Husain; Nephew (sister's son) of the deceased.

#### **Formal witnesses:**

PW4, Constable Surbhi Yadav; proved FIR and GD,

PW5, Inspector Mohd. Tauqeer prepared the site map and submitted the chargesheet.

PW6, Dr Ramesh Kumar, conducted the post-mortem of the deceased,

PW7, Dr Ashish Srivastava, treated the injured/deceased Shahid Husain, and

PW8, SI Rajesh Kumar, prepared Panchayatnama, Letter to CMO for postmortem, Sample Seal, Photo Corpse, and Challan Corpse.

12. The prosecution produced the following papers under documentary evidence:

Exhibit Ka-1, Tahrir; proved by PW1,

Exhibit Ka-2, Affidavit; proved by PW2,

Exhibit Ka-3, FIR; proved by PW4,

Exhibit Ka-4, GD; proved by PW4,

Exhibit Ka-5, Site Map; proved by PW5,

Exhibit Ka-6, Chargesheet; proved by PW5.

Exhibit Ka-7, Postmortem report; proved by PW6,

Exhibit Ka-8, Medical report of deceased Shihid Husain; proved by PW7,

Exhibit Ka-9, Panchayatnama; proved by PW8,

Exhibit Ka-10, Letter to CMO for postmortem; proved by PW8,

Exhibit Ka-11, Sample Seal; proved by PW8,

Exhibit Ka-12, Photo Corpse; proved by PW8, and

Exhibit Ka-13, Challan Corpse; proved by PW8.

### **DEFENCE VERSION**

13. During the examination conducted under Section 313 of the Criminal Procedure Code, the accused individuals stated that due to enmity, a false case was registered based on a fabricated complaint. They claimed to be innocent and falsely implicated.

14. No oral evidence has been produced in defence

### ARGUMENTS

15. I heard the arguments of the learned District Government Counsel (DGC) (Criminal) and learned counsel for the defence. I went through the evidence and materials available on the record with great care.

### EVIDENCE

16. Prosecution witness **PW-1, Maimuna Begum**, testified that on October 28, 2019, between 6 and 7 AM, Intezaar, Arshad, Annu, Nanhe, and Hasrat, all from her neighbourhood, came to her house and verbally abused and assaulted her husband, Shahid Hussain. As a result of the assault, he sustained severe injuries to his head and hands. At the time of the incident, her nephew Ajmal and her brother-in-law, Wasid Hussain, were present and witnessed what happened.

17. Maimuna was in Mumbai with her son when the incident occurred. She received a phone call informing her of the situation and then travelled to Kannauj the following day, arriving at 9 PM. At that point, her husband was receiving treatment at the medical college. Seeing his critical condition, the doctor referred him to Hallet Hospital. Unfortunately, her husband passed away on October 30, 2019.

18. An inquest and postmortem examination of her husband's body were conducted on October 31, 2019, in Kanpur. After bringing her husband's body back to Kannauj, she filed a report regarding the incident at the Kannauj police station. The original written complaint is included in the case file, which she confirmed by signing, and it was marked as **Exhibit Ka-1**. Daroga Ji investigated the case and recorded statements. She showed him the location where it took place. Her nephew, Ajmal, and brother-in-law, Wasid, were also present during this investigation, and Daroga Ji created a site map of the incident location.

19. During cross-examination, the witness stated that she completed her education up to class ten. Her husband, Shahid Ali, had three brothers named Shahid, Sajid, and Wasid. Sajid passed away two years before the incident, while Wasid is a witness in her case. Her mother's name is Kamar Jahan, and she is the eldest of three daughters. The younger sisters are Aamna and **Arshi**. Their maternal grandmother gifted them land from her home, along with a house, which all three sisters co-own. This house is located in Mohalla Shikhana, with each sister having a separate living area within it.



20. Both Arshi and Aamna are married. Arshi's husband is named Zulfiqar, and Aamna's husband is Zakir, who lives in Kanpur. Zakir has three sons, all of whom reside in the same house. Arshi has two children, one son and one daughter, who live with her, her husband, and their children in the same household. The **accused, Intezaar, is Arshi's elder brother-in-law**, while **Arshad is Intezaar's brother-in-law**. Annu, Nanhe, and Arshad are also brothers-in-law. Hasmat is Arshad's son, and Arshad's house is about a five-minute walk from hers. She does not know the names of the houses situated between Arshad's house and hers. Intezaar's house is just one lane away, and the houses of Firoz and Sajid are located near Intezaar's.

21. At the time of the incident, her husband, Shahid, was at home. She is unsure of Arshi's whereabouts that day, and one of her sisters was in Mumbai. She does not know if Arshi's husband and children were also home at that time. She confirmed that her husband, Shahid, was home, but she does not remember who else was with him. He did not suffer from heart disease and had never been treated for it or had a pacemaker.

22. She has been living in Mumbai for ten years. Her husband also lived in Mumbai, but since his brother died two years before her husband's death, he has been living at their current location. She would visit regularly during those two years. Her nephew, Afzal, lives five to six houses away from her, and she is unaware of the names of the houses in between. Her brother-in-law, Wasid, also lives five to six houses away, and she does not know whose houses are located between his and hers.

23. She does not have information on whether Arshi was at home at the time of the incident, October 28, 2019. That day, **there was an argument between her sister Arshi and her husband regarding the payment of the electricity bill**. She does not know if their mother was present at that time, but she learned that Arshi had cursed her husband concerning the bill. She is not sure if a physical fight occurred. Indeed, she did not witness any incident personally.

24. Her brother-in-law, Wasid, called her around 8 AM on the day of the incident to inform her. Although she does not know Wasid's mobile number, she received the information on her phone at 8551069152. Wasid told her that Shahid had been admitted to the Medical College in Tirwa and connected her with her husband, who informed her about the situation. Her husband expressed, **"My condition is bad. I have been beaten up. I will not survive."**

25. She cannot recall if she included in her report the part where her brother-in-law, Wasid, connected her with her husband, who updated her on the incident. She is uncertain if she documented whether her husband said, "My condition is bad. I have been beaten up. I will not survive."

26. When the written report was read to the witness, she noted that it did not include that information. She does not remember how many days passed after Daroga Ji took her statement or whether she communicated these details to Daroga Ji. If she did not include these points in her report to Daroga Ji, she cannot explain why.

27. In her written complaint, she stated, "I received the information about the incident via phone, and I was told that Intezaar, Arshad, Annu, Nanhe, and Hasmat assaulted Shahid badly." Written complaint lacked details about the motive for the incident, and therefore, she could not provide that information.

28. She is unsure whether she provided this statement to Daroga Ji, mentioning that she was informed by phone about the incident and that Sajid was also brutally beaten by the accused. If this detail is not included in her statement, she cannot explain why it is not included. In her report, she stated that when she arrived at the medical college, her husband was receiving treatment. He informed her that Arshad, Annu, Nanhe, and Hasmat had assaulted him. If this is not documented in the Tahrir, she cannot provide a reason for its absence. She read and signed the Tahrir after understanding its contents.

29. It is incorrect to say that the applicant was admitted to the district hospital. She noted the time of the incident in the report as 6-7 PM, but she cannot explain why the time is not mentioned in her report. Her report indicates that Wasid and Asmat were present during the incident, yet their names do not appear in the report. If she failed to document this, she cannot account for it. She mentioned in her report that her husband was admitted to a medical college; if this is not written in the Tahrir, she cannot clarify the reason.

30. On October 28, 2019, around 4:25 p.m., she and her son, Sahil, left for Kannauj. Their train arrived at 6:00 AM on October 29, 2019, and the bus from Kanpur to Kannauj arrived around 9:15 PM. From the station, she went directly to the Medical College in Tirwa, arriving around 10:00 PM. Her husband was admitted to an upper ward, but she does not recall which one. There were other patients in that ward, and her sister-in-law, Rihanna, was with her. Many people from the neighbourhood were present, but she did not know their names. Her husband's condition was critical, and at that time, the nurses and doctors were not present. She informed the doctor of her husband's critical condition, requesting that he receive medication. The doctor provided her with medicine, and her husband told her to lie down. His condition did not improve; he was conscious but inconsistent, never losing consciousness completely.

31. After 6:00 AM, her husband was referred to Kanpur, where he remained conscious at the time of transfer. However, he fainted before they left for Kanpur. He was alive until 3:00 PM on October 30, 2019, when he complained of a severe headache. After receiving medication, he fell asleep. **She was not present during her husband's**

**panchayatnama in Kanpur**, nor does she know who in her family was present at that time.

32. Her husband's post-mortem was conducted in Kanpur, and no one was present during that either. The train left Kanpur for Kannauj at 2:00 PM. After returning around 2:00 PM, she went straight to write her report, staying at the police station for half an hour. However, her report was not written at that time; the officer said he would write it later. She went to Kanpur again and later returned with the body, arriving around 6:30-7:00 PM. They went directly to the police station with the corpse, where she alone wrote the report, without anyone else accompanying her. She informed Darogaji about the incident, but does not recall to whom the complaint was addressed.

33. She came home with the body from the police station and buried her husband **that same night**. She had seen her husband in the medical college; he was experiencing severe head pain, and **his hand was bandaged**. It is incorrect to claim that there was an altercation with her husband on the morning of the incident. When Arsi refused, Shahid attacked her. It is also false to say that her mother arrived on the scene and **that Shahid fell and injured his head in the process**. She asserts that she did not write a false report and is not giving false testimony today.

34. Prosecution Witness **PW-2, Wasid Hussain**, testified that the **deceased, Shahid Hussain, was his brother**. The incident occurred on October 28, 2019, between 6:00 and 7:00 a.m. Hearing a commotion coming from his brother's house, he rushed over and witnessed Shahid being beaten with sticks by Arshad, Annu, Nanhe, and Hasmat, who were also verbally abusing him. Alongside him were Mohammad Ajmal and Sahid, who were present during the incident. They tried to save Shahid, but the assailants fled, leaving Shahid injured and threatening him. Wasid then took him to the district hospital in Kannauj, but due to his brother's serious condition, he was referred to the Medical College in Tirwa.

35. The following day, Wasid's sister-in-law, Maimoona, and his nephew, Shahil, arrived after receiving information about the incident. **During their conversation, Shahid, in front of Wasid, told Maimoona and Shahil that Intezar, Arshad, Annu, Hasmat, and Nanhe had entered the house and beaten him**, which caused his condition to deteriorate. Seeing the severity of the situation, Shahid was referred to Kanpur, where he ultimately died while undergoing treatment at Hallet Hospital.

36. A panchayatnama and post-mortem examination were conducted in Kanpur. Maimoona Begum reported the incident at the police station in Kannauj. Witness Wasid also provided an **affidavit** to the Superintendent of Police (SP), which can be found in the record as paper numbers 9A/5 and 9A/7, along with her signature. **Exhibit Ka-2** is attached to these papers. Daroga Ji took her statement regarding the incident.



37. During cross-examination, the witness stated that he is uneducated and can only write his name. The deceased, Sahid, was his real brother, and he had another elder brother who had died. His wife, Maimoona Begum, has been living in Bombay for approximately 15 to 16 years. They have five children, all of whom are adults and reside with Maimoona Begum in Bombay.

38. Sahid had two sisters-in-law: **Amna and Arshi. Arshi, Amna, and his deceased brother Sahid lived in different rooms within the same house, which has only one entrance.** Maimoona Begum's mother, Amar Jahan, also lived in this house. On the morning of the incident, Sahid fought with Arshi, although the witness was not present at that time.

39. Sahid informed him about the altercation, stating that he had not been injured during the fight, which had occurred around 10 or 11 a.m. Ajmal Khan, his nephew, resides in Vajria Shekhana. Mohalla Shekhana and Vajria Shekhana are separate localities, with Ajmal Khan's house located to the east of Sahid's house, approximately 15 to 16 houses away. The witness does not know the names of all the people who own these houses, but he does recognise a couple of them, named Nasir and Afzal.

40. His own house is also situated to the east of Sahid's house, with 4 to 5 houses in between, owned by individuals named Umardaraz, Mehraj, and Hasim. To the east of Sahid's house are numerous other residences. To the north and south of Sahid's house are populated areas, but he does not know the owners of all the houses in those directions.

41. The witness has lived in his own house for 4 to 5 years and works as a vendor with a cart (thela). The door to Sahid's house faces east, and upon entering, one finds a latrine, bathroom, and kitchen. The latrine is located in an open space. Inside the house, there are two rooms: Sahid occupies one room, and it has been said that he occupies both. Amna and Arshi also live in the house but in separate rooms, with Sahid's room adjacent to Arshi's. Amar Jahan lived in the same house as everyone else.

42. Intezar's house is three houses away from Sahid's, which Umardaraz, Nasir, and Mehraj occupy. Arshad's house is located about 60 to 70 meters away from Sahid's house, and Hasmat's house is also 60 to 70 meters away. The witness is not familiar with the houses within this distance.

43. He has seen injuries on Sahid; **there was an injury to his hand, a head injury, and a back injury.** However, he did not see any blood at the scene, either on Sahid's clothes or on the ground. When he arrived, there were six to seven people present, but Arshi and Amna were not among them.

44. Sahid's sister-in-law and mother-in-law were not present at the scene, and they had not yet arrived at his house. Sahid was at the scene for approximately 30 to 40 minutes before he was taken to the district hospital. Ajmal accompanied him, and they admitted Sahid to the hospital, where he stayed for about half an hour. Afterwards, he was transferred to the medical college, where he was admitted until 9 a.m. the following day. When Maimuna arrived from Bombay, Sahid was sent to Kanpur, and he accompanied Sahid there. He stayed with Sahid until he passed away at **around 6:00 or 6:30 in the evening.**

45. The panchayatnama was not filled out in his presence; however, he was present for the post-mortem. After the post-mortem, he brought Sahid's body. He did not go home with the corpse; instead, the body was taken directly to the police station. This **occurred around 3:00 p.m.** The incident was reported by Maimuna Begum, who was alone at that time. He remained with the corpse while Maimuna was inside the police station for about half an hour, during which the report was not written. He waited outside with the body until the report was completed.

46. He knows that Maimuna Begum wrote the report, but he did not see what she wrote because he was with the corpse. The report named five individuals, but he cannot recall the details. He does not remember how long the corpse stayed at the police station before it was taken away. When the police lathi-charged, he left; he cannot provide the exact timing, but recalls that there were 20 to 25 people from the neighbourhood outside the police station, although he does not know their names. After the lathi charge, the body was taken home, and he arrived between 4:00 and 5:00 p.m. **The body was then buried the next morning.**

47. **Maimuna Begum was informed about the incident by people from the neighbourhood,** but he does not know whether they communicated this information to her via telephone or any other means. He is also uncertain about who from the neighbourhood provided the information to Maimuna. He doesn't know when she arrived or if she came from Bombay to Kanpur or from Kanpur to Kannauj, but he was present when she arrived at the medical college. He does not recall the specific time of her arrival. When Maimuna came, he and his nephew, Ajmal, were present, and she stayed for about one to one and a half hours.

48. He does not remember which ward Sahid was admitted to or whether there were more people present at that time. When Maimoona Begum arrived at the medical college, both he and Ajmal were in the ward, and there were no other visitors. No one from the family was there. Maimoona Begum stayed at the medical college for two hours. Sahil had provided all the information to her before Sahid was referred. He does not recall when this information was given. When Maimoona Begum arrived, Sahid was lying on the cot, and there was no infusion at that moment. He cannot remember if a doctor or a nurse was present at the time. He does not know if the doctor administered

any medication while he was there. He saw that Sahid's hand was bandaged, but noticed no other bandages; only a cloth was tied around his head. He did not inquire about the reason for the cloth. During his visit, Sahid was in pain, and the doctors had provided him with medication. Sahid was conscious and did not lose consciousness at any point. It is incorrect to state that Sahid was sometimes conscious and sometimes fainted.

49. Regarding the quarrel, he did not witness any altercation involving Sahid. He arrived at the scene during a commotion. At that time, he had been at home and woke up. He did not report the commotion to anyone nearby but went to see for himself. When he left home, he knew a quarrel had occurred at Sahid's door. **Upon his arrival, he saw a fight occurring near the entrance of the house, with people from nearby homes present.** The fight had started before he arrived. He observed five people engaged in the altercation but did not count the number of sticks inflicted. He saw sticks being used, but he could not specify who hit whom. **The fighting lasted about thirty to forty minutes.** He saw Sahid lying on the ground, but did not remember what clothes Sahid was wearing at that time.

50. It is incorrect to say that 100 to 150 people gathered at the scene for 30 to 40 minutes; instead, only 15 to 20 people were already present. He does not remember the names of any of these neighbours today. **There was no slab where Sahid fell;** he was lying directly on the ground. During the 30- to 40-minute period he was there, no family members arrived except for Ajmal and himself.

51. It is wrong to claim that on the morning of the incident, his brother, Sahid, molested his sister-in-law, Arshi, after which Arshi protested and raised an alarm, prompting her mother, Qamar Jahan, to come. The subsequent quarrel between Sahid, Arshi, and Qamar Jahan is also misrepresented. It is incorrect to suggest that Sahid fell to the ground during that scuffle and sustained injuries. Furthermore, it is untrue to say he was not present at the scene during the incident and did not witness it. It is also wrong to claim that he is providing false testimony today.

52. Prosecution Witness **PW3, Ajmal Hussain**, stated in his testimony that the **informant in this case is his maternal aunt, Maimoona Begum.** He is well-versed in the events surrounding this case and was an eyewitness to the incident.

53. The incident occurred between 6:00 and 7:00 AM on October 28, 2019. He was **out for a walk** when he heard the sound of "Maro-Maró" coming from Shahid Hussain's house, which is located a short distance from his own home. Shahid Hussain is Ajmal's maternal uncle. Upon hearing the commotion, he ran to Shahid's house. He witnessed his uncle being assaulted by several individuals from the locality: **Intezar, Arshad**, Annu, Nanhe, and Hasmat, who were beating him with sticks. Ajmal challenged them, and at that moment, his uncle Wasid also arrived, along with other residents from the neighbourhood. The

attackers fled, leaving Shahid in a seriously injured state while threatening to kill him. Ajmal confirmed that, in his presence, the named individuals had assaulted his uncle Shahid.

54. After the assailants escaped, Ajmal took his uncle Shahid to the District Hospital in Kannauj for treatment, accompanied by Wasid. The doctors at the hospital assessed Shahid's condition as critical and referred him to Tirwa Medical College. Maimoona Begum, Shahid's wife, and his son Rahil were also present at the hospital. At that time, Shahid was conscious and spoke to Ajmal, telling him, Maimoona, and Rahil about the assault he had suffered at the hands of the aforementioned attackers.

55. Later, the medical staff at Tirwa Medical College referred Shahid to Hallet Hospital in Kanpur, due to his serious condition. On the way to Kanpur, Shahid fainted and fell into a coma, ultimately passing away on October 30, 2019, while receiving treatment. The post-mortem of his body was conducted on October 31, 2019. Afterwards, Ajmal and his family brought Shahid's body back to Kannauj for the last rites.

56. A case was subsequently filed at the Kotwali police station by Maimoona Begum in connection with the incident. Ajmal provided an affidavit to the police regarding the statement he is presenting today, and the police also took his statement.

57. During cross-examination, Ajmal clarified that Shahid was his maternal uncle and that Maimoona Begum is Shahid's wife. He stated that Maimoona has been living with her children in Mumbai for nearly five years. She has three sisters: Arshi and Sona, both of whom are married. Ajmal does not know how many children Arshi has, but he knows that Sona has three sons, one of whom lives in Mumbai while the other two reside with her.

58. Shahid, Arshi, and Sona live in the same household in Mohalla Saikhane, while Sona's husband's name is unknown to Ajmal. Sona's husband resides in Kanpur. On the morning of the incident, Arshi and Shahid quarrelled over an electricity bill. Arshi's mother also lives in the same house as Arshi, Shahid, and Sona. The timing of the argument is not known, but during the dispute, Shahid sustained injuries to his head and hand.

59. Ajmal's house is in Bajaria Shaykhana, and there are approximately 10-12 other houses situated between his home and Shahid's house. Ajmal provided an affidavit to the police regarding the statement he is giving today, and they also recorded his statement.

60. He does not know the names of the people living in the houses of the 10-12 individuals surrounding Shahid's house. On the day of the incident, he left his home around 6:00-7:00 a.m. His mother and father were at home that day. Early in the morning, He went out for a walk in my neighbourhood.



61. As he walked, he was two or three houses away from Shahid's house when he heard a commotion. Although people in the vicinity were aware of the noise, few followed him. When he arrived at Shahid's house, he found him lying on the outer verandah with injuries to his head and hand. He did not see any other injuries, and there was no visible bleeding—just swelling on his head.

62. There were women and some men around, but he did not know their names. His uncle, Vashid, was with him at that time. The door of Shahid's house faces west, and upon entering, there is a verandah and an adjoining courtyard leading to the rooms. He is unsure of the exact number of rooms. At that time, Arshi was present at Shahid's house along with her mother, Qamar Jahan.

63. Neither Vashit nor he were injured. The courtyard was unpaved during the incident, and a latrine bathroom is located near the door, although he is unsure if there is a septic tank. Shahid was conscious when he arrived. After about 15-20 minutes, when a car came, Vashid and he took Shahid to the district hospital in Kannauj.

64. Arshi and Shahid had previously argued over an electricity bill, which is why she did not accompany us to the hospital. We arrived at the district hospital with Shahid around 9-10 am. After a doctor examined him in the emergency room, Shahid was referred to the Medical College of Tirwa. Vashit and he took him there, and he was admitted for about one day before being referred to Hallet Kanpur.

65. During his stay at the medical college, his aunt Rehana Begum visited Shahid and stayed until the evening. At that time, Shahid's wife, Maimoona Begum, was in Mumbai. He informed her about the incident and that Shahid had been admitted to the Medical College, Tirwa. She arrived at the medical college with her son, Rahil, around 11 pm on the night of October 29, 2019.

66. At that point, he had gone to get something to eat, but he had a conversation with Shahid before he left for dinner. Afterwards, he returned home to eat and did not go back to the medical college. He is unsure when Shahid was referred from the medical college to Hallet Kanpur. When Maimoona Begum reached the medical college, his aunt, Rehana Begum, was there, but no other relatives or acquaintances were present.

67. Shahid was initially admitted to the ground floor of the medical college, but he does not know the ward number. At that time, there were three or four other patients in the emergency ward. When he reached the medical college with Maimoona Begum, Shahid was undergoing treatment and was connected to an IV.

68. There were no bandages on Shahid's injuries. He occasionally fainted, losing consciousness for periods of time, and there was no money available for treatment. Meanwhile, he remained conscious. Shahid groaned in pain. Maimuna and he spent about 10 minutes

together at the medical college, where he gave her a bottle of water before heading home.

69. He learned of Shahid's death on the night of October 30-31, 2019, around 1:30 AM, while he was awake and using his phone. Rahil informed him about Shahid's passing away on the phone. He did not go to Kanpur after his death. Shahid's body arrived in Kannauj on October 31, 2019, between 4:00 and 6:00 PM, brought home by his wife, Memoona Begum, and their son, Rahil. His body was cremated on the same day, around 9:00 to 10:00 PM.

70. Memoona Begum filed a report at the police station, but he did not accompany her. He does not know the exact date and time when Memoona Begum filed her report at the police station. He can read and write Hindi, but he had not read the report that she had submitted. Later, he learned that Memoona Begum had written a report against Intezar and Arshad regarding this matter.

71. A day after she filed the report, he was called to the police station by Daroga Ji to give a statement. Rahil and he went together; no one else accompanied us. Rahil was not questioned in his presence, and no one else's statements were taken in his presence. Only his statement was recorded.

72. Intezar is Arshad's brother-in-law, and Arshad is Intezar's brother-in-law. They both live in Saikhana, with their homes situated 100-200 meters away from Shahid's. He stayed at the scene for about 15-20 minutes before taking him to the district hospital.

73. It is incorrect to say that Shahid lived alone and that Arshi stayed at his house, and he harassed her. It is also false to claim that on the morning of the incident, Shahid molested Arshi, leading to a confrontation with Arshi and her mother, Karmar Jahan, when Arshi resisted. Furthermore, it is wrong to state that Shahid sustained injuries during this altercation.

74. Contrary to assertions, he was present at the site of the incident, and he did witness what happened. Additionally, it is inaccurate to suggest that he is providing false testimony at the behest of his maternal aunt, Mamoona Begum.

75. **Assault on Deceased:** The prosecution alleges that Intazar and Arshad, along with three others, assaulted Shahid with sticks and batons. PW-2, a neighbour and brother of the deceased, deposed that upon hearing shouting and commotion from the deceased's house, he rushed. In the daylight, PW-2 witnessed Intazar and Arshad swinging a stick and a baton at the deceased and saw the deceased collapse. Mhd. Azmal Sahid rescued the victim. Intazar, Arshad and other assailants then fled the scene, but not before threatening the fallen victim and those around.

76. **Oral Dying Declaration:** The prosecution's case is partly based on an oral dying declaration made by the deceased. PW-1, the

deceased's wife, testified that she rushed to her husband at the Medical College in Tirwa, Kannauj, on October 29, 2019. During cross-examination, she confirmed that while her husband was receiving treatment and in great pain, he gasped, "Intezar, Arshad, Annu, Nanhe, and Hasmat hit me." This brief statement, though not found in the FIR, is claimed to identify his attackers. A magistrate was not summoned to record a formal dying declaration; the statement remained informal, oral, and relayed only to PW-1. PW2 and PW3 also stated in examination-in-chief that the dying declaration involving Intezar, Arshad, Annu, Nanhe and Hasmat was done before them at Tirwa Medical College. The deceased was then transported to the Medical College, Kanpur.

77. **Medical Evidence of Death:** The deceased succumbed to his injuries within three days of the incident while undergoing treatment, i.e. on 30.10.2019 at 3:50 pm. PW-6 Dr. Ramesh Kumar conducted the post-mortem examination the following day and prepared the post-mortem report (Ex. Ka-7). The medical findings revealed a contused swelling measuring 4 x 3 cm in the left temporal region. On dissection, clotted blood was found in the skin and muscles. PW-6 deposed that the cause of death was coma resulting from the head injury sustained before death. The head injury was sufficient in the ordinary course of nature to cause death. All injuries were ante-mortem, tallying with the time of the incident.

78. **Investigation:** The incident was reported to police by PW-1 four days after the incident. Her written complaint was registered as FIR No. 819 of 2019 (Ex. Ka-1) at 6:50 p.m. on October 31, 2019, at the Kannauj police station. The FIR broadly narrated the assault by the five accused and mentioned the abusive language and threats, though notably it did not expressly mention any dying declaration by the deceased (a point which will be examined later). PW-5 Mohd. Tauqeer, the Investigating Officer, testified that he visited the scene of the crime and prepared a site plan (Ex. Ka-5). Both accused were arrested on November 10, 2019, and after completion of the investigation, PW-5 submitted the charge-sheet under Sections 304, 452, 504, 506 IPC.

79. **Motive:** As for motive, the prosecution suggested that on the day of the incident, the deceased had a heated argument with the accused's brother's wife, Arshi, over the electricity bill. The accused, Arshad, is the brother-in-law of Intazar. Aggrieved by the deceased's conduct, the accused assaulted the deceased. Although no independent witness was examined regarding this quarrel, PW-2 and PW-3 alluded to an existing enmity and a buildup of tension. The prosecution contends that this provided the motive for the accused to seek out the deceased at his home and assault him in retaliation. While motive is not a sine qua non for conviction when direct evidence is available, establishing motive bolsters the prosecution's case in a purely circumstantial scenario. Here, the alleged motive is consistent with the sequence of events, although weak and with out first hand proof (neither Arshi, Kamar Jaha nor disputed electricity bill is produced), but remains a

background piece, since the identity of the assailants is chiefly sought to be proved by eyewitness and dying declaration evidence.

80. **Defence Version:** Plea of Innocence and False Implication: In their statements under Section 313 Cr.P.C., the accused denied all the allegations. Their defence is one of complete innocence and false implication. It is suggested to witnesses that the deceased had in fact been injured in a scuffle with Arshi and her mother, Kamar Jahan, due to the eve-teasing of Arshi by the deceased and possibly in an accidental fall, and that due to previous enmity, they have been framed for his death. The learned counsel for the accused pointed out that no independent eyewitness from the neighbourhood or Arshi and Kamar Jahan (other than PW-2 and PW-3, who are known to the victim's family) was examined, arguing that the case rests on interested testimony.

81. **Challenge to Prosecution Evidence:** The learned defence counsel attacked the credibility of PW-2 and PW-3, labelling them as interested witnesses (being the victim's brother and sister's son, respectively). It was argued that PW-1's silence about the so-called dying declaration in her initial FIR statement indicates that this aspect was a later embellishment concocted to strengthen a weak case. The defence highlighted contradictions between PW-1's FIR (Ex. Ka-1) and her deposition: while in court, she claimed the deceased named the accused before dying, the FIR is entirely silent on any such last words. According to the defence, this material omission speaks volumes about the unreliability of the alleged oral dying declaration, suggesting that it was made as an afterthought during the trial. (Please see- State Of Madhya Pradesh Home Secretary vs Ramjan Khan on 25 October, 2024 (Criminal Appeal No. 2129 of 2014: 2024 INSC 823 – Apex Court).

82. The defence further contended that PW-2 and PW-3's testimonies are suspect because they are relatives of the deceased's family. They note that PW-2 and PW-3 did not intervene during the assault and only emerged after the fact, which the defence insinuates could mean they did not truly witness the incident, thereby calling into question the veracity of this evidence. The defence also argued that the injuries described could have resulted from a sudden fall or a push by Arshi and Kamar Jahan, and that the chain of circumstances is incomplete to conclusively point to the accused. In summary, the defence plea is that the prosecution has failed to prove its case beyond a reasonable doubt, and the accused individuals are entitled to an acquittal, or at the very least, the benefit of doubt due to inconsistencies in evidence.

### 83. **Points for Determination**

From the charge and the rival contentions, the following Points for Determination arise for decision:

84. **Death of the Victim:** Whether Shahid died as a result of homicidal violence on the morning of 28.10.2019, and the nature of the injuries and cause of death.



85. **House-Trespass (Section 452 IPC):** Whether the accused Intazar and Arshad, on that day, committed house-trespass by entering the dwelling house of the deceased (situated at Mohalla Shekhana) after preparing to cause hurt, assault, or wrongful restraint to the deceased.

86. **Intentional Insult (Section 504 IPC):** Whether the accused intentionally insulted or provoked the deceased by abusive language, with the intention or knowledge that such provocation would cause the deceased to break the public peace or commit an offence.

87. **Criminal Intimidation (Section 506 IPC):** Whether the accused criminally intimidated the deceased (and/or witnesses like PW-2 and PW-3) by threatening to cause death or grievous hurt, with the intent to cause alarm.

88. **Culpable Homicide and Identification of Accused:** Whether the accused persons, in furtherance of their common intention, inflicted the injuries on the deceased which caused his death, and if so, whether the act of the accused amounts to murder or culpable homicide not amounting to murder. This involves determining the authorship of the fatal injuries (identifying the accused as perpetrators) and assessing the degree of culpability under the law (Section 302 IPC vs. Section 304 IPC). Additionally, the admissibility and evidentiary value of the deceased's oral dying declaration (allegedly naming the accused) will be a crucial sub-issue in this determination.

The Court will address each of these points with reference to the evidence on record before arriving at its findings.

### **Analysis of Evidence**

89. **Point 1: Homicidal Nature of Death:** It is undisputed that the deceased Shahid died on 30.10.2019 as a result of injuries sustained in the incident. PW-6 Dr. Ramesh Kumar, who conducted the autopsy, gave a categorical opinion that the death was homicidal. The post-mortem report (Ex. Ka-7) details the following key injuries: A contused swelling measuring 4 x 3 cm was present on the left temporal region. Internally, clotted blood was found in the skin and muscles. PW-6 stated that this injury was ante-mortem and could have been caused by a blunt object. Notably, a wooden stick or baton is a blunt and hard object. In my view, keeping the location of injury in the parietal region, there is less possibility of such injury falling. During the medical examination, three additional injuries (totalling four) were found, which contradict the falling theory. It is possible that these three injuries would have healed over time and could not be detected at the postmortem. In cross-examination, PW-6 denied any possibility of haemorrhage due to high blood pressure. The fatal injury was to the head, causing coma. An accidental fall onto a hard surface could not ordinarily produce the patterned injuries observed (especially the combination of head and other injuries found at the time of medical examination). There is no suggestion or evidence of any intervening factor like an accident or self-infliction. Therefore, the death of the

deceased was clearly homicidal in nature. Point No.1 is answered in the affirmative.

**Point 2: House-Trespass After Preparation for Hurt (Section 452 IPC)**

90. **Evidence of Trespass:** The scene of occurrence is the deceased's own house – a dwelling used as a residence by the deceased and his mother-in-law and sisters-in-law. For an offense under Section 452 IPC, the prosecution must establish that the accused committed "house-trespass," which is defined as criminal trespass into a building used as a human dwelling (Section 442 IPC), and that they did so after making preparation for causing hurt, assault, or putting any person in fear of hurt (Please see- Sonu Choudhary vs State of NCT Delhi: 2024 INSC 864 – Apex Court: CRIMINAL APPEAL No.3111 OF 2024). PW-3 in cross-examination has admitted that he witnessed an assault at the door. Meaning thereby that the incident occurred at the doorstep, and there is doubt that it happened inside the house. Arguendo, if it is presumed that the occurrence took place inside the house, there is no evidence to show that the accused entered the house without permission. There is no contrary evidence to suggest the accused were not invitees or had not any legitimate purpose inside the house.

91. **Preparation for Hurt:** PW-2 and PW-3 did not state that the accused were armed upon entry. The Supreme Court in Sonu Choudhary case (Supra) has clarified that to secure a conviction under Section 452 IPC, the prosecution must prove beyond a reasonable doubt that the accused committed house-trespass as defined in Section 442 IPC and that he had made preparation for causing hurt, assault, etc., at the time of such trespass. In the case at hand, the ingredients are not satisfied.

92. **Defence Arguments & Conclusion on Trespass:** The defence did seriously dispute that the incident occurred inside the deceased's house. However, given the credible testimony of PW-1 (the house-owner's perspective) and PW-2 (an independent neighbour who arrived at the scene), the presence of the accused inside the house is not established beyond a reasonable doubt. Thus, the prosecution could not be able to prove successfully that Intazar and Arshad committed house trespass. The added element of preparation (being armed with a stick) is also unproven, not fulfilling the requirements of Section 452 IPC. Point No.2 is accordingly answered in the negative, against both accused.

**Point 3: Intentional Insult to Provoke Breach of Peace (Section 504 IPC)**

93. **Abusive Provocation:** Section 504 IPC deals with intentional insult with intent to provoke a breach of the peace. The prosecution must show: (a) the accused insulted the victim by words, gestures, or otherwise, and (b) they intended or knew it was likely that such insult would provoke the victim to break the public peace or commit an offence. In the present case, PW-2 and PW-3 did not testify to the

specific abuses hurled by the accused. Without a description of abuses, it could not be inferred that they were insulting and provocative. The offence under Section 504 is not made out. Therefore, Point No.3 is decided against the prosecution. The accused are not found to have committed the offence under Section 504 IPC.

#### **Point 4: Criminal Intimidation (Section 506 IPC)**

94. **Threatening Conduct:** The charge under Section 506 of the IPC is alleged to have been issued by the accused while they were leaving the scene. PW-2 and PW-3 have though stated that accused fled giving life threat, but Section 506 IPC requires proof that the accused threatened to cause injury (to person, reputation or property) to someone, with the intention of causing alarm to that person or to cause them to do or not do something (which they are legally bound to do or not do). In the present case, the threats were not explicit. Under law, “mere abusive language without an intention to cause alarm does not amount to criminal intimidation” – however, in this case the accused did not abuse intentionally, which could cross the threshold into Section 506’s domain (the Delhi High Court has observed in, Tanu Sharma v. State (NCT of Delhi), 2013 SCC OnLine Del 3867, that mere threats without intent to alarm do not suffice. Now a days threat to life in criminal cases have become ornamental in nature only. (See also some Apex Court cases as follows: Ramesh Chandra Arora v. State of Uttar Pradesh, S.R. Raju v. State of Karnataka, Manik Taneja v. State of Karnataka, Narendra Kumar v. State of Haryana).

95. **Conclusion on Section 506:** The defence counsel argued that any words spoken in the heat of the moment should not be taken seriously as “threats,” especially since the accused did not follow up on them. This argument is valid under the law. The offence of criminal intimidation is complete if a threat is given with requisite intent – it is not necessary that the accused later carry out the threat. What matters is the purpose and effect of the threat at the time. Here, the accused did not intend to deter PW-2 and PW-3 from pursuing them or informing the police, and the witnesses did not feel a sense of fear. Therefore, the ingredients of Section 506 IPC are not satisfied. The evidence on record does not prove beyond a reasonable doubt that both accused persons committed criminal intimidation by threatening death or grievous harm to the witnesses. Point No.4 is answered in the negative.

#### **Point 5: Culpable Homicide, Identification of Assailants & Degree of Guilt**

##### **96. (A) Identification of the Accused as Perpetrators**

The most crucial question is whether the prosecution has established that it was Intazar and Arshad who inflicted the injuries on the deceased and thereby caused his death, amounting to culpable homicide. This involves appraisal of both direct evidence and circumstantial evidence (if any), including the contested oral dying declaration attributed to the deceased. The prosecution’s case on

identification rests on the following pillars: (i) the testimony of PW-2 and PW-3 who partially witnessed the assault and saw the accused at the scene; (ii) the oral dying declaration allegedly made by the deceased to PW-1 naming Intazar and Arshad; (iii) the overall sequence of events including motive and the conduct of the accused.

97. **Eyewitness Account (PW-2 and PW-3):** Although no witness claims to have seen the entire incident from start to finish (apart from the accused and the deceased themselves), PW-2 and PW-3 provide a vital eyewitness account of the critical moments. PW-2 and PW-3 were immediate neighbours who, upon hearing the altercation, rushed towards the deceased's house. He testified that from the doorway, he saw Intazar and Arshad assaulting the deceased with a stick and a baton. On seeing the approaching PW-2 and PW-3, both accused ran out.

98. These testimonies of PW-2 and PW-3 are vital as direct evidence placing the accused at the scene and engaging in the assault. The defence tried to impeach the witnesses' credibility by suggesting they were interested. Notably, witnesses are related to both the accused and the complainant party. There is no evidence to suggest that the witnesses harboured enmity towards the accused or had any interest in convicting them. Nothing significant was elicited in cross-examination to discredit his account. PW-2 and PW-3's presence is natural – the neighbours responding to commotion – and their further actions (carrying the deceased to the hospital) are consistent with honest witnesses. They had no apparent reason to falsely implicate the accused apart from being outraged by the crime. Their deposition of Intazar and Arshad and the weapon and the act of striking the deceased align with the medical evidence (the head wound corresponds to a lathi blow). Minor discrepancies, such as exact words or the sequence of events in a fast-unfolding brawl, are expected and do not corrode their core testimony.

99. **Oral Dying Declaration (PW-1 and PW3's testimonies):** PW-1's testimony introduces the element of a verbal dying declaration by the deceased. PW-2 supports it. The deceased was in critical condition, and those were possibly his final spoken words; shortly thereafter, he lost consciousness and never regained consciousness. This statement, if true and reliable, is of great significance as the direct accusation of the assailants by the victim himself.

100. **Admissibility:** As a matter of law, a statement made by a person as to the cause of his death or the circumstances of the transaction resulting in his death is admissible in evidence if the person dies, by virtue of Section 32(1) of the Indian Evidence Act, 1872. Such statements, commonly called dying declarations, form an exception to the general rule against hearsay, under the belief that a person on the verge of death is unlikely to falsely implicate someone and will speak truth (the maxim "Nemo moriturus praesumitur mentiri" – a man will not meet his maker with a lie in his mouth – underpins this provision). An oral dying declaration (as opposed to a written or recorded one) is



not excluded from this principle; it can be proved through the testimony of the witness who heard it. Therefore, PW-1's testimony about what her son told her is admissible in evidence. The defence's objection is not to admissibility per se, but to reliability and weight of this piece of evidence, given the circumstances.

**101. Reliability and Weight:** The Court must approach oral dying declarations with circumspection, especially when the statement is testified to by an interested witness such as a close relative. The Supreme Court has observed that a dying declaration, while admissible, is "a weak kind of evidence", and when it is an oral declaration made to a close relative, courts should exercise caution in relying on it. Unlike a statement recorded by a magistrate or doctor, an oral declaration is unrecorded and its contents depend on the truthful recollection of the witness. In the present case, certain factors raise concerns about the credibility of the alleged dying declaration:

**102. Omission in Early Statements:** PW-1 (the mother and informant) made no mention of any dying words of her son when she first reported the incident. The FIR (Ex. Ka1) lodged by PW-1 describes the accused attacking and fleeing, but conspicuously omits that the deceased named the attackers afterwards. Additionally, PW-1's statement to police under Section 161 Cr.P.C. also did not contain this detail. It is only in her deposition before the Court that this dramatic detail emerges. The Supreme Court in *State of M.P. vs. Ramjan Khan & Ors* (2024): 2024 INSC 823 faced a similar situation where the mother (informant) did not mention a claimed oral dying declaration in the FIR or police statement but brought it up at trial; the Court treated such omission as a material discrepancy undermining the trustworthiness of the oral declaration. Following that rationale, PW-1's late introduction of the dying declaration here casts doubt on whether the deceased really uttered those words, or whether emotion and hindsight may have influenced PW-1's recollection. An omission of this magnitude (naming one's killers) in the earliest version is not a trivial omission – it strikes at the believability of the later account.

**103. Fitness of the Deceased to Speak:** Another consideration is whether the deceased was in a condition to make a coherent statement. The deceased was grievously injured in the temporal region and lapsing in and out of consciousness eventually slipped into a coma. No medical evidence is available as to his state of consciousness at that precise moment. PW-1 herself is not medically trained; while she believed he spoke intelligibly, I have only her word for it. There is no certification or testimony from any doctor or neutral witness that the victim was mentally and physically fit to state at that time. The Supreme Court has emphasised that it should be established that the victim was in a fit state if a dying declaration is to inspire confidence. Here, that assurance is missing.

**104. Possibility of Tutoring or Influence:** The declaration was heard by PW-1 alone (although PW-2 and PW-3 may have been present, they did not testify to having listened to it in clear words; notably, PW-2 did

not mention that the deceased had said anything). PW-1, being the wife, had the strongest motive to see the culprits brought to justice. This is not to say she would lie, but it does mean the Court should rule out any possibility of misinterpretation or assumption on her part. The Supreme Court has cautioned that courts should verify that an oral dying declaration was not a result of “tutoring by interested parties” or imagination. In the agony and chaos of the moment, it is conceivable that PW-1 inferred what her husband was trying to say or perhaps assumed the attackers’ identity. These are speculative concerns, but they underscore why corroboration is sought as a matter of prudence for oral dying declarations.

**105. Corroboration and Judicial Approach:** It is settled law since *Khushal Rao v. State of Bombay* (1958) that there is no absolute rule requiring corroboration of a dying declaration; if the Court is satisfied that a dying declaration (written or oral) is true and voluntary, a conviction can be based solely on it. However, that does not mean all dying declarations are automatically reliable. Each must be assessed on its own merits. Here, given the concerns noted, this Court finds it unsafe to base a conviction solely on the oral dying declaration attributed to the deceased. As the Supreme Court observed in the *Ramjan Khan* case, an oral dying declaration to a close relative must “inspire full confidence of the court in its correctness” before it is acted upon. In the present contextual situation – the significant omission in PW-1’s prior statements and lack of proof of the deceased’s fitness – the oral statement does not inspire that level of confidence. In fact, it would be hazardous to rely on it without independent support. Consequently, while I do not reject the dying declaration as inadmissible, I accord it little weight standing on its own. If at all, it serves a corroborative role to the other evidence, rather than primary proof.

**106. Other Circumstantial Evidence:** Apart from PW-2 and PW-3’s eyewitness accounts and the dying declaration, the prosecution relies on circumstantial evidence:

**107. Motive:** As discussed, there was a prior quarrel regarding the electricity bill. While not a primary proof, motive gives context and renders the prosecution's story more probable (the accused had a reason to target the deceased).

**108. Completeness of the Chain:** The law relating to circumstantial evidence mandates that each incriminating fact must be firmly established and the chain of circumstances, taken together, must lead to only one conclusion – that the accused is guilty, ruling out any reasonable alternative hypothesis- *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116. In this case, even if we put aside the oral dying declaration, the remaining evidence forms a consistent and cohesive chain:

1. The accused were seen assaulting the victim (proven by PW-2 and PW-3).

2. They fled immediately after the assault (proven by PW-2 and PW-3).
3. The victim was found grievously injured right after the accused's departure (fact established).
4. No evidence suggests intervention by any third party or any plausible cause of injury other than the accused's assault. The accused had motive and opportunity.
5. There was a delay of approximately 85 hours in filing the First Information Report (FIR). In this context, the informant, who is the deceased's wife, was living in Bombay and travelled to the location upon receiving information about the incident. The matter involved a scuffle between her sister and her husband. No one else initially attempted to file an FIR. Later, she attempted to report the incident but was unsuccessful. Ultimately, the FIR was filed only after the body was presented at the police station. Given these circumstances, the delay is self-explanatory and acceptable.

These circumstances are not explainable on any other hypothesis except that the accused are the perpetrators. The defence's theory that perhaps someone else attacked the deceased or he fell on his own is wholly untenable in light of the eyewitness evidence. There is a continuous thread of facts: starting from the altercation on the bill, assault, the injury, and the accused's flight. It may be the fault of the investigating officer that he did not attempt to recover the weapons, but the benefit of which does not go in favour of the accused. There is no missing link. Thus, even treating the dying declaration with scepticism, the other evidence is sufficient to conclude, beyond a reasonable doubt, that it was the accused Intazar and Arshad who assaulted the deceased and caused his death.

**109. Standard of Proof & Benefit of Doubt:** In reaching this conclusion, the Court is mindful that the burden is entirely on the prosecution to establish guilt beyond a reasonable doubt. The law is clear that suspicion, however strong, cannot replace proof in a criminal trial- *Rajbir Singh v. State of Punjab*, (2022) 20 SCC 670: 2022 INSC 856. Here, the prosecution's evidence rises well above mere suspicion; it paints a compelling picture of guilt. The defence pointed to certain inconsistencies (like the omission of the dying declaration in initial reports), but those, as discussed, do not create a reasonable doubt about the core allegation of the accused persons' involvement. At best, they advise caution (which has been heeded by not relying solely on the oral declaration). When the evidence is considered in totality, there is no reasonable doubt that remains. If indeed there had been any major gap or uncertainty, this Court would be bound to extend the benefit of doubt to the accused. However, in this case, the evidence, especially PW-2 and PW3's direct accounts, leaves no room for an alternative view consistent with innocence. The accused persons'

complicity in the assault on the deceased is therefore proved to the satisfaction of this Court.

**(B) Nature of Offence – Murder vs. Culpable Homicide (Section 302 vs Section 304 IPC)**

110. Having concluded that it was Intazar and Arshad who violently attacked the deceased and inflicted the fatal injuries, the next aspect to determine is the nature of the homicide – specifically, whether the facts make out the offense of murder (punishable under Section 302 IPC) or the lesser offense of culpable homicide not amounting to murder (punishable under Section 304 IPC). The accused are charged under Section 304 IPC, which implies the prosecution itself proceeded on the basis that this was not a case of murder. Nonetheless, it is the Court's duty to examine the evidence in light of the legal distinctions, because if the ingredients of murder (Section 300 IPC) are present, a conviction under Section 302 IPC could be recorded (subject to the accused having notice of such charge; here the charge is specifically under 304, so the Court will remain within that ambit unless the evidence unequivocally showed murder, which would then require other procedural safeguards).

111. **Legal Distinction – Intent & Knowledge:** The thin line separating murder and culpable homicide not amounting to murder has been the subject of much judicial exposition. In essence, all murders are culpable homicides, but not all culpable homicides are murders. Section 300 IPC defines murder – it requires, inter alia, an intention to cause death or an intention to cause such bodily injury which the offender knows is likely to cause death or is sufficient in the ordinary course of nature to cause death, or knowledge that the act is so imminently dangerous that it must in all probability cause death. However, Section 300 is subject to certain Exceptions (such as grave and sudden provocation, sudden fight, etc.), which, if applicable, reduce the offence to culpable homicide not amounting to murder (Section 304 IPC). Thus, where the act is done with the specific intent to kill (or with an intent to cause fatal injury without justification), it is murder; conversely, where the act is done without premeditation, or in a sudden fight, or the offender only had knowledge of the likelihood of death but no intent to kill, the law treats it as the lesser offense.

112. In the present case, there is no evidence of a premeditated plan to kill the deceased. The confrontation appears to have germinated from a quarrel that the accused themselves provoked at that moment. The weapons used – a wooden stick and baton – are certainly capable of causing death (as death did result here), but they are not inherently deadly like firearms or knives. The manner of assault, as per evidence, was a few blows struck in quick succession during a heated incident, rather than a prolonged or repeated attack. The witnesses belong to a rural background. Some minor contradictions and exaggerations, such as the period of assault and the number of accused, are common due to the passage of time and the rural background of the witnesses. The accused did not inflict repeated blows. These facts suggest that the



accused intended to cause harm, and likely knew that beating someone on the head with a lathi could result in death, but it stops short of demonstrating an unwavering intention to murder.

**113. Sudden Fight in Heat of Passion (Exception 4 to Section 300):**

One of the Exceptions to Section 300 is when a death is caused “without premeditation, in a sudden fight, in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.” Although the accused here initiated the aggression (somewhat complicating the “sudden fight” narrative), the actual fatal encounter was short-lived and provoked on the spot by their confrontation. The fight was “sudden” in the sense that it erupted spontaneously when the accused confronted the deceased – it was not an elaborate scheme to execute him. There was a heat of passion during the scuffle. Importantly, once the deceased was down, the accused left; they did not take undue advantage of his defenceless state to inflict more harm than necessary for their escape. They also did not use excessively cruel methods (such as multiple blows to the head or using fatal weapons like an axe, etc.). In view of these observations, Exception 4 to Section 300 IPC can reasonably be invoked. This would mean the offence is culpable homicide not amounting to murder.

114. Furthermore, the Supreme Court’s jurisprudence supports classifying one-blow or single-fatal-injury cases as culpable homicide rather than murder in appropriate circumstances. For instance, the Supreme Court has noted that where a single blow is struck without premeditated intent to kill, it may be inappropriate to convict for murder. In *Sarup Singh v. State of Haryana*, 16 SCC 479 (2009), the Court dealt with the implication of a single stab wound causing death and observed that simply because death occurred, one should not invariably label it murder if the requisite intent was not established. In this case, the primary fatal injury was one lathi blow to the head. While the head is a vital part, and any reasonable person knows that a forceful blow to the head can be lethal, the surrounding circumstances (sudden altercation, lack of planning, no follow-up attack) indicate the absence of a calculated intent to ensure death. Thus, the act falls into the category of culpable homicide not amounting to murder.

**115. Section 304 Part I or Part II:** Section 304 IPC has two parts – Part I applies when the act by which death is caused is done intending to cause death, or intending to cause such bodily injury as is sufficient to cause death; Part II applies when there is knowledge that the act is likely to cause death but no intent to cause death or such bodily injury which are sufficient to cause death. The line between these can be fine, but essentially, Part I involves a higher degree of intent. In the present case, even if the accused did not intend to kill the deceased, it can be inferred that Intazar and Arshad at least intended to cause bodily injury likely to cause death – because swinging a heavy stick at someone’s head is an act done with the intention of causing at least grievous hurt, and it is an act most likely to cause death (as it tragically

did). Thus, the accused individuals' acts fall under Section 304 Part II IPC. Both accused shared the common intention (they jointly confronted and assaulted the victim). Under Section 34 IPC (which was read with the charges, implicitly if not expressly), they are vicariously liable for the act done by each. Therefore, both accused are liable under Section 304 Part II IPC rather than Part I.

116. It is worth noting that the prosecution did not press a charge of murder under Section 302 IPC, likely appreciating these nuances from the investigation stage. Even otherwise, on the evidence, this Court is convinced that the offence made out is culpable homicide not amounting to murder. Had the facts indicated a more heinous state of mind or cruelty, a conviction for murder could have been justified, but that is not the scenario here. To summarise, Intazar and Arshad, in furtherance of their common intention, committed culpable homicide not amounting to murder, punishable under Section 304 Part II IPC. Point No.5 is answered accordingly.

Date: June 02, 2025,

(Chandroday Kumar)  
Sessions Judge,  
Kannauj

**June 04, 2025,**

Intazar and Arshad, the convicts, along with their legal counsel, appeared in court. I have reviewed the quantum of punishment.

The convicts have stated that this is their first offense and that they have no prior or subsequent criminal history. They are the earning members of their family and bear responsibilities toward their relatives.

The learned District Government Counsel (Criminal) submitted that the convicts were responsible for an offence culpable homicide not amounting to murder of the complainant's husband, Shahid, should receive the maximum punishment to convey a stern message to society.

After considering all mitigating and aggravating factors, along with the facts and circumstances of the case, I believe that this is not a "rarest of the rare" case. I am of the view that upon conviction under Section 304(II) of the Indian Penal Code (IPC), the appropriate punishment for Intazar and Arshad is sentenced to five years of simple imprisonment, with a fine of Rs. 50 thousands each. which would serve the ends of justice.

### **ORDER**

Upon conviction under Section 304(II) of the IPC in Case Crime No. 819 of 2019, Police Station Kannauj, District Kannauj, both convicts, Intazar and Arshad, are sentenced to five years of simple imprisonment, with a fine of Rs. 50,000/- (Fifty thousands) each. If they default on payment of the fine, both convicts shall face an additional six months of imprisonment.

The period spent in jail shall be set off against the sentences. A conviction warrant shall be prepared, and the convicts will be sent to prison to serve their sentences. The dependents of the deceased will receive eighty percent of the fines as compensation.

A copy of this judgment will be provided to the convicts free of charge. The case is referred to the District Legal Services Authority (DLSA) for consideration under the Victim Compensation Scheme. The records will be stored in the record room as per legal requirements.

Date: June 04, 2025,

(Chandroday Kumar)  
Sessions Judge,  
Kannauj

I signed, dated, and pronounced this judgment in open court today.

Date: June 04, 2025,

(Chandroday Kumar)  
Sessions Judge,  
Kannauj