

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.686 OF 2002

State of U.P. .. Appellant

Versus

Ram Sajivan & Others .. Respondents

J U D G M E N T

Dalveer Bhandari, J.

1. Unfortunately, the centuries old Indian Caste System still takes its toll from time to time. This case unfolds the worst kind of atrocities committed by the so called upper-caste (Kshatriya or Thakur) against the so called lower-caste -Harijan caste in a civilized country. It is absolutely imperative to abolish the caste system as expeditiously as possible for the smooth functioning of Rule of Law and Democracy in our country.

2. In the instant case, the accused persons belonging to Thakur caste literally butchered seven totally innocent persons belonging to the Harijan caste and to wipe out the entire evidence of their atrocities, after shooting they were thrown in the river Ganges where currents were very strong. Out of seven, even the bodies of five persons could not be recovered.

3. This appeal emanates from the judgment and order dated 10.01.2001 delivered by the High Court of judicature at Allahabad in Criminal Appeal No. 1715 of 1982. By this impugned judgment, all the 18 accused who were convicted and sentenced to life imprisonment by the trial court have been subsequently acquitted by the High Court.

4. The learned Additional Sessions Judge, Fatehpur, in an elaborate, exhaustive and well considered judgment, sentenced the 18 accused persons under section 302 read with section 149 IPC for committing the murder of Jasodiya, Ganga, Tulsi, Deo Nath alias Madan, Din Dayal, Sukhlal and Shripal. Accused persons were further sentenced to undergo seven years rigorous imprisonment on each counts for

committing the dacoities. The accused persons were also sentenced to undergo five years of rigorous imprisonment under section 364 IPC for abduction of Kallu, Jasodiya, Ganga, Tulsi, Deo Nath, Din Dayal, Sukhpal and Shripal. All the accused persons were also sentenced to undergo four years rigorous imprisonment under section 201 IPC for elimination of evidence of murder by throwing the dead bodies of the seven persons in the river Ganga. All the sentences awarded to the accused persons on all counts were directed to run concurrently.

5. In appeal, the High Court acquitted all the eighteen accused. The appellant, State of U.P. has preferred this appeal against the impugned judgment of the High Court acquitting all the accused persons.

6. Brief facts necessary to dispose of this appeal are recapitulated as under:-

On the intervening night of 9/10.9.1979 in the village Lohari, Police station Hussainganj, U.P. 20-22 accused persons committed dacoities in the Harijan locality by breaking open the doors of the main gate of the house of

Jasodiya and Kallu P.W.14. They looted the house. Thereafter, Kallu, Jasodiya, Din Dayal, Sukhlal, Shripal, Tulsi, Ganga Ram, Deo Nath alias Madan were tied with rope and were taken to the bank of the river Ganges, pushed in the boats and brutally murdered and thereafter all of them were thrown in the river Ganges, at a point where there were strong currents. Out of seven, five dead bodies could not be retrieved. Kallu P.W.14 jumped into the stream of the river Ganges and saved his life. Jasodiya, wife of Kallu was recovered from the river Ganges in an injured and unconscious state and after she regained consciousness, she got a written report Ex. KA.1 scribed by the witness Shyam Lal P.W.4 and the report was lodged at the police station Hathgaon of the District, U.P.. The statement of Jasodiya recorded under section 161 Cr.P.C. was recorded by the Investigating Officer, the extract of which is Ex. KA.25. The dying declaration Ex. KA.6 of Jasodiya was recorded by Dr. C. M. Mittal, Medical Officer at midnight on 10.9.1979. She narrated that on the previous night i.e. 09.09.1979 at about 11 p.m. about 20-22 persons came to her house. They forced their entry inside the house by cutting open the door shutters

of the house and looted the property. The accused persons caught hold of her and her husband Kallu, Tulsi, Madan, Ganga Ram, Din Dayal, Sukhlal and Shripal sons of Din Dayal were also tied by a rope. The accused had pretended to be the Police officials of the District Rai Bareilly who had come to arrest persons in connection with some dacoity which took place in Rai Bareilly.

7. The accused persons had taken eight persons after tying them by a rope to the village Maheva on the bank of river Ganges. These abducted persons from that point were taken by two boats towards the east. These two boats were being rowed by two boys belonging to the village Mahewa. Jasodiya did not mention their names. After they covered some distance on boats towards the east they were forced to disembark from the boats. Jasodiya started weeping and crying and her husband Kallu, who was also terribly frightened managed to jump into the stream of the river Ganges and swam to safety. Jasodiya, who continued to cry and weep, was attacked by the accused with knives and she was shot at by firing from gun and she was thrown in the river Ganges. Jasodiya was taken by the swift current of the river

Ganges to village Jafrabad where she was spotted by two persons who took her out of the river Ganges. She expressed her apprehension about the killing of the remaining abducted persons by the said accused who were pretending to be the police personnel. This report Ex. KA.1 was sent to the Station Officer of the Police Station Hussainganj for investigation and necessary action. Similar story was narrated by Jasodiya to the Investigating Officer Devi Dayal Dixit, as would appear from the extract Ex. KA 25 and also in the dying declaration Ex. KA.6.

8. Two persons spotted Jasodiya when she reached near the bank of the river in village Jafrabad. They reached at the bank of the river, took her out and put her on a small cot and she was warmed by fire under a Mahuwa tree. Thereafter, she was taken for medical examination of her injuries at the Public Health Centre (for short, PHC) Hathgaon, where Dr. C. M. Mittal examined the injuries of Jasodiya. She was taken there by Chet Ram 149 C.P. and Rais Ahmad 454 C.P. of the Police Station Hathgaon who had identified Jasodiya before Dr. C. M. Mittal. The examination took place at 10.30 pm on 10.9.1979. Dr. Mittal assessed the age of Jasodiya around 50

years and he found the following injuries on the person of Jasodiya:

“1. Two incised wounds of $\frac{1}{2}$ ” x $\frac{1}{8}$ ”, depth not measured, other wound $\frac{1}{2}$ ” x $\frac{1}{8}$ ” x depth not measured, which are on the left side neck 2” below from the left mastoid process. The wounds are paralleled and one inch distance between two wounds. Bleeding not there. Margins were clear cut and well defined.

2. A gun shot wound entry of $\frac{1}{2}$ ” x $\frac{1}{2}$ ” x muscle deep size on the lower abdomen 3 $\frac{1}{2}$ ” below the umbilicus.

3. Gun shot wound of entry $\frac{1}{2}$ ” x $\frac{1}{2}$ ” x muscle deep size on the outer aspect of right thigh 3 $\frac{1}{2}$ ” from the right anterior superior iliac spine. No bleeding.

Injury No. (1) kept under observation caused by some sharp weapon. Rest injuries caused by fire arm weapon. Referred to District Hospital, Fatehpur for treatment and advised X-ray of all the affected parts. Duration about one day old.”

Dr. Mittal prepared injury report Ex KA.5 and according to his statement these injuries could be caused in the night between 9/10.9.1979 at any time after 11 PM. Dr. Mittal also recorded the dying declaration of Smt. Jasodiya in the same night at about mid night. The dying declaration is Ex. KA.6.”

9. Jasodiya succumbed to the injuries and died on 11.9.1979. Bhim Singh conducted inquest proceedings in respect of the dead body of Jasodiya. He prepared inquest

report Ex. KA.17, Photo Nash Ex. KA.18, Challan Nash Ex. KA.19, Report for post-mortem examination Ex. KA.20 and report for sending clothes etc. removed from the dead body of Jasodiya Ex. KA.21.

10. The post-mortem of Jasodiya was conducted by Dr. S.K. Tandon, P.W.6, Medical Officer working at the District Hospital, Fatehpur on 12.9.1979 at 2 p.m. Dr. Tandon found the following ante-mortem injuries on the dead body:

“1. One gun shot wound of entry $\frac{1}{2}$ " x $\frac{1}{2}$ " x bone deep on the anterior lateral surface of upper third of right thigh. Margins lacerated. Blackening and tattooing present.

2. One gun shot wound of exit $\frac{1}{2}$ " x $\frac{1}{2}$ " x muscle deep on the leluic region 4" below umbilicus. Margins everted and lacerated. No blackening present.

Injury No. (1) and (2) are interconnected with each other. There is laceration of right femual vessel under injury No. 1. No Gun shot recovered from the body after extensive search. Direction right to left and upward.

3. Contusion 4" x 1" right side back.

4. Abrasion $\frac{1}{2}$ " x $\frac{1}{2}$ " x on ankle region.

5. Incised wound 1" x $\frac{1}{2}$ " muscle deep on left side neck 1 $\frac{1}{2}$ " below the left ear. Margins everted and clean out.

6. Incised wound 1" x ½" x muscle deep, left side of neck.

In internal examination heart was found empty and the stomach was also found empty.

The death was caused due to shock and haemorrhage due to ante-mortem injuries. The ante-mortem injuries were quite sufficient in the ordinary course of nature to cause the death. He had taken off a Dhoti, One keel of nose, ring, 17 Chooriyan (bangles), 6 Bachchey, two ear-rings and sealed them and gave them to Constable Rais Ahmad for being taken to the police station."

11. The dead body of Shripal, S/o Din Dayal was recovered from the river Ganges and its inquest was conducted by Bhim Singh, Sub-Inspector posted at the Police Station Hathgaon. After appointing Panchas, Sub-Inspector Bhim Singh inspected the dead body of Shripal and prepared the inquest report. Dr. P. Joshi, P.W.7 who was working as the Medical Officer, District Hospital, Fatehpur, conducted the post-mortem on the dead body of Shripal and found the following injuries:

"1. One gun shot wound of entrance 1" x 1" x abdominal cavity deep at 11 O' clock position 1 ½" apart from umbilicus loop of bowes protruding out of the wound. Margins lacerated and inverted. Blackening and tattooing present.

2. One gun shot wound of entrance 1" x 1" x chest cavity deep on the left side of chest 3 O'clock

position, 1 ½" apart from left nipple. Margins lacerated, inverted. Blackening and tattooing present.

3. One gun shot wound of entrance 1" x 1" x chest cavity deep on right side back upper third part scapular region. Margins lacerated. Blackening and tattooing present.

4. Multiple gun shot wound of entrance on the left side of chest and abdomen 1/8" x 1.8" x muscle cavity deep in an area of 5" x 7" x 10" downwards from left anterior axillary fold. Margins lacerated and everted. Blackening and tattooing absent."

On internal examination, Dr. Joshi found fracture of 4th rib from side and 11th and 12th ribs on side. Fracture of scapula right side. Right and left lungs were found lacerated and perforated at places. Clotted blood was found in the lungs in substance. Both pleural cavity contained 1 LB and 10Z. blood. Peritoneal cavity contains blood mixed with digested food one pound ounce clotted blood present. Stomach was found normal and its contents were digested food measuring 4 Oz. with gasses. Small and large intestines were perforated throughout at places along with mesenteric vessels. The liver was found lacerated in left lobe. Gall bladder was found normal. Spleen was found perforated and left kidney was found lacerated and perforated.

The death was caused due to shock and haemorrhage as a result of ante-mortem injuries."

12. The dead bodies of the remaining abducted persons viz. Madan, Tulsi, Ganga, Sukhlal and Din Dayal could not be traced.

13. On 15.9.1979, the Investigating Officer recorded the statements of Dashrath and other witnesses. The Investigating Officer arrested the accused Udai Bhan Singh alias Lallan Singh on 22.9.1979. On 23.9.1979, the Investigating Officer raided the houses of the other accused persons but they were not traceable. On that very day, he recorded the statements of witnesses Suraj Prasad, Lalta Prasad, Budhuwa, Tejram Prem Shankar and Uma Shanker.

14. On 24.9.1979, the Investigating Officer arrested the accused Virendra Singh and recorded his statement. On 28.9.1979, the Investigating Officer recorded the statements of witnesses Jagat Narain, Bhagwat and Sumer. On 1.10.1979 accused Lavkush was arrested. On 3.10.1979 accused Man Singh and Chaturbhuj Singh were arrested. On 7.10.1979 accused Faiyaz was arrested. Accused Dhirendra Singh, Ganga Din, Banwari and Cheddu alias Virendra Singh surrendered in court on 7.10.1979 and they were sent to jail.

15. On 11.10.1979, the Investigating Officer recorded the statement of witness Rai Dutt. On that very day, accused Suraj Bali Singh surrendered himself in court and was sent to

jail. On the next day, i.e. 12.10.1979 accused Ram Niwas Singh alias Chhaila Singh and Mathura Singh alias Vijai Bahadur Singh surrendered themselves in court and were sent to jail. On 13.10.1979 accused Vijai Karan Singh surrendered himself in court and was sent to jail. The Investigating Officer recorded the statements of witnesses Barati Lal and Nanku on 20.10.1979. Accused Subhash Singh surrendered himself in court on 29.10.1979 and he was also sent to jail. Accused Chunna surrendered himself in court on 12.11.1979.

16. On 25.11.1979, the Investigating Officer filed a charge-sheet against 15 persons, namely Mathura Singh, Ram Sajiwan, Udai Bhan Singh, Ram Niwas Singh, Suraj Pal Singh, Banwari, Lavkush, Man Singh, Virendra Singh, Dhirendra Singh, Tejpal Singh, Faiyaz, Munna, Vijai Karan Singh and Chandra Bhan Singh. Thereafter on 7.12.1979, a second charge-sheet was filed by the Investigating Officer against three accused, namely Cheddu Singh, Subhash Singh and Ganga Din.

17. The Investigating Officer recorded the statement of the witness Kallu P.W.14, s/o Sukkha on 7.12.1979. The evidence of this witness is extremely significant in the entire case. Kallu P.W.14 is the only surviving injured eye-witness who has given graphic description of the entire incident. He narrated that he and his wife were in their house. Out of about 25 to 30 people, about seven people were in the police uniform and others in plain clothes. He named 18 accused persons along with their villages. He stated that the accused persons entered their house by breaking open the door. They caught hold of him and his wife and also Ganga, Tulsi, Deo Nath, Din Dayal, Sukhlal and Shripal. According to him, the accused were holding rifles, guns, revolvers, axes etc. The accused had large sized lights and they were keeping the lights on. They forcibly took them to the side of the river Ganges. They were made to sit in two boats. The accused also sat on the boat and took them between Surajpur and Naroli. There was a dense forest on the side of the river. They got descended there. According to Kallu P.W.14, the accused first killed his brother Deo Nath and then Shripal. Thereafter, they killed Sukhlal, Ganga Ram and Tulsi. According to his

statement, they were standing on the said bank of the river. According to him, when his turn came, he took a somersault and jumped into the river Ganges. Thereafter, according to him, his wife was also killed. He further stated that he made a deep dip in the water and came out at some distance. At that point the accused were showing lights at him. Then, he again made a dip and thereafter he reached floating the sand in middle of the river Ganges in the forest and continued lying there.

18. Kallu stated that thereafter, he went to the police station of Dalmau where he was not heard and his statement was not recorded. Then he went to the forest of Munna and spent the night lying there. Next day, he went towards Lalganj and reached Rai Bareilly and from there, he went to Bijnore and stayed there for some days. Thereafter, he went to Lucknow. He also mentioned in his statement that he had no enmity with Mathura Singh. He further stated that before this incident, a dacoity was committed at the place of Mathura Singh in which brother of Mathura Singh, Raj Bahadur was killed.

19. In his cross-examination, he stated that he was brought by the police from Punjab. He came to the village in police escort. In his statement, he has stated that the accused persons used to come to the place of Mathura Singh frequently and therefore, he knew and recognized them. He stated that he had also sent a complaint of 50 typed papers to Smt. Indira Gandhi and Shri Jagjivan Ram. Perhaps at the intervention of some senior leader, the police investigated this matter. In his cross-examination, he has stated that in Lucknow he met one M.L.A. at Darulshafa (M.L.A's Hostel). He also met Shri Chhotey Lal, M.L.A. of District Hardoi. He also stated that Shri Chhotey Lal advised him to hide in the forests to save his life and that when it would be needed, they would locate him. He further stated that his statement was recorded before the Magistrate. According to him, the night of the incident was bright because it was a moonlit night. He also denied that he gave the statement to the Magistrate under pressure.

20. The prosecution, apart from Kallu P.W.14, also examined the other 32 witnesses and a large number of documents to prove its case. We would not like to burden the judgment by

naming all the prosecution witnesses. We will deal with their statements as and when it becomes imperative. The statements of the accused persons were recorded under section 313 of the Code of Criminal Procedure. The accused denied their participation and suggested that they have been falsely implicated because of enmity.

21. Most of the prosecution witnesses have turned hostile. Kallu P.W.14 who was one of the victims of dacoity and abduction and whose death was attempted by the accused persons, has fully supported the prosecution case. Head Constable Kashi Prasad Tiwari P.W.27 has also supported the prosecution case. He had seen accused Lallan Singh, Munna, Mathura Singh, Vijai Karan, Chhaila Singh and Dhirendra Singh on 9.9.1979 at 6 p.m. at the road running towards east of the police out-post Chheolaha. According to him accused Mathura Singh and Vijai Karan Singh had rifles. He stated that he enquired from Lallan Singh alias Udai Bhan Singh as to where they were going or whether they were going to do some big job and then in reply accused Lallan Singh told him that they were going to village Lohari.

22. Maharajiya P.W.3 had been treated as a hostile witness, though she had corroborated the prosecution story to some extent. She is the wife of Din Dayal who had been abducted and murdered in this occurrence. Her two sons Shripal and Sukhlal have also been abducted and murdered. P.W.3 has supported the prosecution case only to the extent that her husband Din Dayal and sons Sukhlal and Shripal were taken away by the accused persons.

23. The other witness who has partly corroborated the prosecution story, though he has also been treated as a hostile witness by the prosecution and subject to cross-examination is Dashrath PW.28. He stated that about 1 ½ years ago he was going to his village within police station Hussainganj from Fatehpur and when he reached mile no. 7 at 6.30 p.m. he saw 5-6 persons sitting on the bridge. Out of these 5-6 persons he recognized accused Mathura Singh, resident of Lohari, Chandra, resident of Gaura, but he could not identify the remaining persons. He stated that he heard these persons talking that they would go to Lohari and kill the residents of Lohari and to throw away their dead bodies in the river Ganges. He also stated that the father of Ram Prasad of

Lohari be killed and his body be thrown in the Ganges. He has named Dhirendra Singh Thakur, Man Singh Thakur and Vijai Karan Singh Thakur who were armed with rifles.

24. In this case, the statement made by Jasodiya, another victim in this occurrence, was treated as a dying declaration. She stated that on 09.09.1979 at 11 p.m. 20-22 persons armed with guns and rifles forced their entry inside her house and caught hold of her and her husband Kallu. They also caught hold of Ganga, Tulsi, Madan, Din Dayal and his two sons Shripal and Sukhlal and all of them were tied with ropes and were made to go to jungle and thereafter they were taken to the bank of the river Ganges. They crossed the river on two boats and across the river those persons fired guns and rifles. She further narrated that immediately after her husband was untied, he jumped into the river Ganges. She was also attacked and injured with knife and gun shots and was thrown in the river Ganges. She apprehended that the other persons namely Ganga, Tulsi, Madan Din Dayal and his two sons Shripal and Sukhlal would have been killed and thrown in the river Ganges. She further stated that she floated in the river and reached by the side of Jafrabad and she succeeded

in coming out of the river Ganges, when two persons saw her and took her on a cot and brought under a Mahua tree and there she was warmed by the fire.

25. Dr. H.K. Tandon conducted the post-mortem examination on the dead body of Jasodiya. According to him, her omission to mention the names of the accused Mathura Singh and Ram Sajiwan in the dying declaration could be attributed to the state of deep shock in which she was when she made the statement.

26. The trial court has carefully examined the witnesses and also appreciated the defence version as to why the testimony of Kallu P.W.14 should not be believed. It was contended that his testimony could not be believed because he was brought from Punjab in police escort. The trial court observed that the evidence of Kallu P.W.14 was the only surviving witness of the occurrence. The possibility of his being attacked and killed could not be ruled out and it was imperative for the District Police Administration to provide police escort to him so he could safely reach the court and back. It cannot be inferred that P.W.14 had been tutored by the police to support

the prosecution case because they provided police escort. According to the trial court, Kallu is the eye-witness to the occurrence and the only surviving persons out of 8 persons who were abducted from village Lohari. The trial court observed that there was absolutely no material elicited by the defence in his cross-examination which may render his statement unbelievable. Kallu P.W.14 clearly stated that he had no animus against the accused persons and he could not say as to why the accused persons committed dacoities and abducted and killed the persons named above in the occurrence. He had recognized 18 accused persons. He stated that he knew Ram Sajiwan and Mathura Singh because they belong to his village Lahori and also other accused persons because they used to visit the house of Mathura Singh frequently. P.W.14 had stated that it was a moonlit night and they were all having big lights with them and all the accused had open faces and none of them had concealed or covered their faces. In the instant case, accused persons were with Kallu PW14 for quite sometime. Accused persons had tied Kallu and other seven persons with rope and took them to the bank of river Ganga and put them in two boats and they

were thrown in the river where currents were strong. There was enough time to recognize the accused persons properly.

27. According to the trial court, the statement of Kallu P.W.14 regarding the occurrence appears to be a true version of the occurrence. The relevant observation of the trial court is set out as under:

“47. Kallu after escaping death went to Dalmau Police Station but he was not heard and believed. Then he went to Rae Bareilly and from there to Bijnore, Lucknow etc. During this period he sent some applications to the various leaders of the country. The fact remains that Kallu was quite shocked and frightened and he could not dare to come to Fetehpur all alone. It cannot be said that Kallu had been tutored there to implicate the accused persons in this occurrence.”

The trial court further observed that:

“.....Once abduction of these persons is established it is for the accused to show as to what happened to them and that they were alive and not dead. In the instant case there is evidence of Kallu that these persons were murdered by the accused and their companions and there is no evidence of these persons being alive. Under these circumstances it is proved that these five persons were also killed and thus murdered in this incident.”

28. The trial court further observed that in view of the testimony of Kallu, who is an independent and reliable witness and his statement contains the true version of the

occurrence. The accused persons and their companions committed multiple murders of the seven innocent persons of Harijan caste in cold blood. It was a ghastly crime committed by them which can shock the conscience of any person of a civilized society. According to the trial court, it may be a case of a caste war in which the accused and their companions wanted to teach a lesson to the persons of the lower caste (Harijan and Chamars in this case). The trial court found that the prosecution had succeeded in establishing the charge of abduction of Kallu, his wife Jasodiya, Ganga, Tulsi, Deo Nath, Din Dayal, Shripal and Sukhlal with the intention of committing their murder. The trial court observed that the prosecution has also succeeded in establishing beyond any shadow of reasonable doubt of the charge of dacoity punishable under section 395 IPC against the accused. The trial court further observed that the accused persons were further liable to be held guilty of the charge punishable under section 201 IPC for destroying the evidence of murder by throwing the dead bodies of the said victims in the river Ganges, except Jasodiya who at that time had not died but was seriously wounded and later on succumbed to her

injuries. The trial court convicted 18 accused persons named by Kallu P.W.14 in his testimony and sentenced them to life imprisonment.

29. The accused respondents herein filed an appeal before the High Court of Allahabad against the judgment of the trial court. The appeal before the High Court was in the nature of first appeal and the High Court in a case of this nature was expected to carefully analyze the entire evidence and documents on record but unfortunately the High Court without analyzing the entire evidence set aside the judgment of the trial court on the following grounds:

- Smt. Jasodiya in her first information report which was construed as the dying declaration did not name the appellant.
- The statement of Kallu PW14 was recorded after three months and because of his silence for three months his statement is not worth relying.
- The High Court has drawn adverse inference because the copy of the complaint sent to Mrs. Indira Gandhi and Shri Jagjivan Ram was not produced by Kallu PW14.

30. The High Court termed the testimony of Kallu PW14 as untrustworthy. The findings of the High Court are not based on proper analysis and marshalling of the entire evidence on

record. As a matter of fact, the High Court in the impugned judgment did not discuss the evidence on record.

31. A careful examination of the case in a proper perspective leads us to an entirely different conclusion. The High Court ought to have appreciated the mental frame of Jasodiya wherein she gave a statement which was construed as a dying declaration. The eight persons who were abducted and tied with rope and brought to river Ganges in the midstream and after their murder were thrown in the river one by one except Kallu PW14 who escaped because he jumped into the river. In that fear psyche, naming the appellants would have meant risking her life and in that state of mind, the omission of mentioning the names of the appellants is not unnatural and her testimony cannot be discarded on that count.

32. Similarly, the High Court has failed to appreciate the circumstances in which Kallu PW14 has survived by jumping into the river and hiding at certain places. In a genocide and massacre which was witnessed by him, wherein all his seven close relatives including his wife were killed one after other in his presence and were thrown in the river Ganga, his escaping

the death was a miracle. Hiding and saving his life from a mighty cruel upper caste group was a normal human instinct. Any reasonable or prudent person would have behaved in the same manner. Immediately after his escape, he tried to make a complaint but he did not succeed. Ultimately when he wrote to Smt. Indira Gandhi and Shri Jagjivan Ram, perhaps at the intervention of someone, the police seriously investigated the matter and he was brought to his village Lohari under police protection. The delay in giving his statement is fully explained and in the facts and circumstances of the case delay was quite natural. In a case of this nature, the witnesses turning hostile is not unusual particularly in a scenario where upper caste people have created such a great fear psyche. The instinct of survival is paramount and the witnesses cannot be faulted for not supporting the prosecution version. Even the evidence which is on record particularly of Jasodiya and Kallu PW14 supported by the evidence of Head Constable Kashi Prasad Tiwari PW27 is sufficient to bring home the guilt of the accused. The evidence of PW14 and PW27 lead to the only conclusion that the accused were squarely responsible for committing such a ghastly crime.

33. We are quite conscious of the fact that this court is interfering with a case where there was a conviction by the trial court which ended up in acquittal by the High Court. This Court is usually very slow in interfering with the acquittals. In the instant case, the findings of the High Court are palpably erroneous and unsustainable.

34. This court would not have interfered if the view which has been taken by the High Court is a possible or plausible view. In our considered view, on proper scrutiny of the entire evidence and documents on record, no other view is possible except the guilt of some of the accused. The High Court without analyzing the evidence and assigning any cogent reason set aside the well reasoned judgment of the Additional Sessions Judge and acquitted all the respondents.

35. We are equally conscious of the fact that reversal of the judgment of the High Court would mean sentence of life imprisonment for some of the accused. We have given patient hearing to the learned counsel for the parties and have examined and re-examined the entire evidence and documents on record to ensure that no innocent person is punished. On

a careful scrutiny of the statement of Kallu PW14, only one aspect creates slight doubt in our minds about his remembering the names of the 18 accused persons along with the names of their villages after a lapse of three months. Some people with sharp memory may perhaps be able to recount and recall all the names and villages correctly. But when we take the case of ordinary rustic illiterate villager, the possibility of over implications cannot be fully ruled out. Kallu PW14 has named all the 18 accused but the independent witness Head Constable Kashi Prasad Tiwari PW27 has named Lallan, Munna, Mathura Singh, Vijai Karan Singh, Chhaila Singh and Dhirendra Singh. So as far as these names are concerned, we find corroboration from the testimony of Head Constable Kashi Prasad Tiwari PW27 and there cannot be slightest doubt regarding their participation in this ghastly crime. We have strong suspicion about participation of Ram Sajivan but we are giving him benefit of doubt because he has not been named by PW27.

36. Before we part with this judgment, we deem it appropriate to deal with judicial parameters to deal with the cases in which this court would be justified in reversing the

judgment of acquittal. This court would ordinarily be slow in interfering in order of acquittal. The scope of the powers of the appellate court in an appeal is well settled. The powers of the appellate court in an appeal against acquittal are no less than in an appeal against conviction.

37. In ***Tulsiram Kanu v. The State***, AIR 1954 SC 1, this Court explicated that the appellate court would be justified in reversing the acquittal only when very substantial question and compelling reasons are present. In this case, the Court used a different phrase to describe the approach of an appellate court against an order of acquittal. There, the Sessions Court expressed that there was clearly reasonable doubt in respect of the guilt of the accused on the evidence put before it. Kania, C.J., observed that it required good and sufficiently cogent reasons to overcome such reasonable doubt before the appellate court came to a different conclusion.

38. In ***Lekha Yadav v. State of Bihar*** (1973) 2 SCC 424, the Court following the case of ***Sheo Swarup*** (*supra*) again reiterated the legal position as under:

“The different phraseology used in the judgments of this Court such as-

- (a) substantial and compelling reasons:
- (b) good and sufficiently cogent reasons;
- (c) strong reasons.

are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion, but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal but should express the reasons in its judgment which led it to hold that the acquittal was not justified.”

39. In ***Bishan Singh & Others v. The State of Punjab*** (1974) 3 SCC 288, Justice Khanna speaking for the Court provided the legal position:

“22. It is well settled that the High Court in appeal under Section 417 of the CrPC has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it is expressly stated in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; & (4) the slowness of an appellate court in

disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses.”

40. In ***Umedbhai Jadavbhai v. The State of Gujarat*** (1978)

1 SCC 228, the Court observed thus:

“In an appeal against acquittal, the High Court would not ordinarily interfere with the Trial Court’s conclusion unless there are compelling reasons to do so *inter alia* on account of manifest errors of law or of fact resulting in miscarriage of justice.”

41. In ***B.N. Mutto & Another v. Dr. T.K. Nandi*** (1979) 1

SCC 361, the Court observed thus:

“It stems out of the fundamental principle of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable. “A reasonable doubt”, it has been remarked, “does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other, it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded

upon reasons. [Salmond J. in his charge to the jury in *R. v. Fantle* reported in 1959 Criminal Law Review 584.]"

{emphasis supplied}

42. In ***Tota Singh & Another v. State of Punjab*** (1987) 2 SCC 529, the Court reiterated the same principle in the following words:

"This Court has repeatedly pointed out that the mere fact that the appellate court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous."

(emphasis supplied)

43. In ***Harijana Thirupala & Others v. Public Prosecutor, High Court of A.P., Hyderabad*** (2002) 6 SCC 470, this Court

again had an occasion to deal with the settled principles of law restated by several decisions of this Court. Despite a number of judgments, High Courts continue to fail to keep them in mind before reaching a conclusion. The Court observed thus:

“10. The principles to be kept in mind in our system of administration of criminal justice are stated and restated in several decisions of this Court. Yet, sometimes High Courts fail to keep them in mind before reaching a conclusion as to the guilt or otherwise of the accused in a given case. The case on hand is one such case. Hence it is felt necessary to remind about the well-settled principles again. It is desirable and useful to remind and keep in mind these principles in deciding a case.

11. In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which he is charged. Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the

accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be added that ultimately and finally the decision in every case depends upon the facts of each case.

12. Doubtless the High Court in appeal either against an order of acquittal or conviction as a court of first appeal has full power to review the evidence to reach its own independent conclusion. However, it will not interfere with an order of acquittal lightly or merely because one other view is possible, because with the passing of an order of acquittal presumption of innocence in favour of the accused gets reinforced and strengthened. The High Court would not be justified to interfere with the order of acquittal merely because it feels that sitting as a trial court it would have proceeded to record a conviction; a duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity.”

44. In ***Chandrappa & Others v. State of Karnataka*** (2007)

4 SCC 415, this Court held:

“(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

45. In the case of ***Raj Narain v. State of U.P. & Others*** [Criminal Appeal Nos. 891-892 of 2002 decided on 18.09.2009], this Court reiterated the aforesaid view and held that even if two views are reasonably possible, one indicating conviction and other acquittal, this Court will not interfere with the order of acquittal. However, this Court will not

hesitate to interfere with such order if the acquittal is perverse in the sense that no reasonable person would have come to that conclusion, or if the acquittal is manifestly illegal or grossly unjust [See also **Chikkarangaiah & Others v. State of Karnataka** Criminal Appeals No. 634-635 of 2002 decided on 02.09.2009]

46. In **Sambasivan & Others v. State of Kerala** (1998) 5 SCC 412, while relying on the case of **Ramesh Babulal Doshi v. State of Gujarat** ((1996) 9 SCC 225, the Court observed thus:

“7. The principles with regard to the scope of the powers of the appellate court in an appeal against acquittal, are well settled. The powers of the appellate court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate court cannot substitute its view in the place of that of the trial court. It is only when the approach of the trial court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate court can interfere with the order of acquittal.”

47. In **Ghurey Lal v. State of UP** (2008) 10 SCC 450, one of us (Bhandari J.) summarized the legal position as follows in paras 69 and 70:

“69. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

- 2 The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.

70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

- (i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in grave miscarriage of justice";

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached--one that leads to acquittal, the other to conviction--the High Courts/appellate courts must rule in favour of the accused."

48. In a recently delivered judgment of this court in ***State of U.P. v. Banne alias Baijnath & Others*** (2009)4 SCC 271, one of us (Bhandari, J.) summarized the entire legal position and observed that this court would be justified in interfering in the judgment of the High Court in the following circumstances which are illustrative and not exhaustive:

- (i) The High court's decision is based on totally erroneous view of law by ignoring the settled legal position;
- (ii) The High court's conclusions are contrary to evidence and documents on record.
- (iii) The entire approach of the High court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;
- (iv) The High court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;
- (v) This Court must always give proper weight and consideration to the findings of the High Court.
- (vi) This court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.

49. The following principles emerge from the aforementioned cases.

1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappraise the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.
2. The accused is presumed to be innocent until proved guilty. The accused possessed this presumption when he was before the trial court. The High court's acquittal bolsters the presumption that he is innocent.

3. There must also be substantial and compelling reasons for reversing an order of acquittal.

This court would be justified in interfering with the judgment of acquittal of the High Court only when there are very substantial and compelling reasons to discard the High Court decision.

50. When we apply the test laid down by this court repeatedly in large number of cases, the irresistible conclusion is that the High Court in the impugned judgment has not correctly followed the legal position. In the instant case, the trial court exhaustively dealt with the entire evidence and documents on record and the findings of the High Court is based on proper marshalling and analyzing the evidence and documents on record. The trial court has given graphic description of the entire case of the prosecution and the detailed circumstances in which the evidence of Kallu PW14 was recorded. To satisfy our conscience and to ensure that even the miscarriage of justice should not take place, we reexamined the entire evidence and documents on record. The trial court's view is the only possible view in the facts and

circumstances of the case. Though the trial court convicted 18 accused but to ensure that even the slightest miscarriage of justice should not take place, we have modified the order of the trial court and given benefit of doubt to 12 accused but as far as other six accused are concerned, there is no iota of doubt about their participation in this ghastly crime where seven innocent persons of lower caste were literally butchered and were thrown in the river Ganges at a point where there were strong currents to wipe out the entire evidence in this case. The High Court has neither analyzed the evidence nor the documents on record and without any cogent evidence, the High Court by the impugned judgment has set aside a very well reasoned judgment of the trial court.

51. On consideration of the totality of the facts and circumstances of the case, we partly allow the appeal filed by the State and the acquittal of six accused namely (1) Mathura Singh @ Vijay Bahadur Singh R/o Vill. Lohari, District Fatehpur, (2) Udai Bhan Singh @ Lallan Singh R/o Kasraon District. Fatehpur, (3) Dhirendra Singh R/o Mawaiya, District Fatehpur, (4) Munna son of Ram Lal R/o District Banda, (5) Ram Niwas Singh alias Challa Singh R/o Siyari, District

Fatehpur, and (6) Vijay Karan Singh R/o Bhainsahi, District Fatehpur recorded by the High Court is set aside and their conviction as recorded by the trial court is restored. However, during the pendency of this appeal, Ram Niwas Singh alias Challa Singh died and consequently his appeal abates.

52. The bail bonds of the convicted accused are cancelled and they are directed to surrender forthwith. In case they do not surrender within a period of four weeks from today, the State of UP is directed to arrest and lodge them in the prison to suffer the life imprisonment. Other accused who were convicted by the trial court are given benefit of doubt. They were acquitted by the High Court in the impugned judgment. Their acquittal is maintained.

53. The appeal is accordingly disposed of.

.....J.
(Dalveer Bhandari)

.....J.
(A.K. Patnaik)

New Delhi;
December 4, 2009