

PETITIONER:
STATE OF UTTAR PRADESH

Vs.

RESPONDENT:
MOTI RAM AND ANR. ETC. ETC.

DATE OF JUDGMENT 02/05/1990

BENCH:
PANDIAN, S.R. (J)
BENCH:
PANDIAN, S.R. (J)
REDDY, K. JAYACHANDRA (J)

CITATION:
1990 AIR 1709 1990 SCR (2) 939
1990 SCC (4) 389 JT 1990 (2) 358
1990 SCALE (1)152

ACT:

Constitution of India--Article 136--Appeal by special leave by State against acquittal by High Court--Held evidence ambulatory and vacillating--Suffering from insurmountable infirmities and probabilities--Suspicion however strong--Not sufficient to take place of legal proof and warrant finding of guilt against accused.

HEADNOTE:

This appeal has been preferred by the State against an order of acquittal recorded by the High Court in respect of the accused respondent. According to the prosecution there were two rival factions in village Deotaha (U.P.), one led by the accused-respondents and the other by the deceased victims. There existed bitter enmity between the two factions, one faction was out to take the blood of another and due to this deep-rooted animosity Accused 1, 2 and 27 hatched a conspiracy with some other associates to murder Prabhu Nath and his men on 14.1. 1974. on which date they were scheduled to cut the standing sugar cane in Plot Nos. 736 and 737. It is alleged by the prosecution that in pursuance of this conspiracy, Accused 3 deposited his licensed gun with the arms dealer on 12.1.1974 with a view to screen himself from any prospective accusation and Accused 1, 2 and 27 in order to set up a plea of alibi connived with Accused 40, Travelling Ticket Examiner in the Railways, traveled without ticket, got themselves checked and sentenced to imprisonment by the railway magistrate on 13.1.1974 and were incarcerated in the Gorakhpur jail till 18.1.1974. According to the prosecution on 14.1.1974, when the deceased 13 persons and others went for cutting the sugar cane crops raised by one of the deceased. At about 1 p.m. by which time the cut crop was being loaded in the tractor trolley brought by the deceased persons, Accused persons with their men 80 to 90 in number attacked them with spears, lathes and pharsas and started firing indiscriminately. The deceased persons and others ran with a view to save their lives; some hid themselves behind the tractor and trolley, and others ran towards north and south directions. As a result of the attack PWs 3 and 24 received injuries and 13 persons succumbed to their injuries instantaneously. It is alleged by

the prosecution that during the course of the occurrence, the deceased Prabhu

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Nath who had a gun rued at the accused party in self-defence and injured Accused 36, Rambali. Thereafter Accused 10 and 16 covered the dead bodies with sugar cane leaves and sprinkled diesel oil by taking it from the tractor and set fire to the bodies. Thereafter the accused left the scene of occurrence; accused 32 carried away the gun of the deceased Prabhu Nath. P.W. 1 thereupon lodged the F.I.R. and the police took up the investigation. After completing the investigation, P.W. 38 laid the chargesheet in 4 batches which gave rise to 4 different sessions trials which were disposed of by a common judgment by the Sessions Judge. All the accused pleaded not guilty and denied their complicity with the offence. Accused 36, Rambali admitted his presence and stated that the sugar-cane belonged to one Phunni and not to Tirjugi and his men and while Phunni and his men were cutting the crops, the deceased Prabhu Nath and other deceased persons attempted to forcibly take away the crops and during the course of such attempt, Phunni and his men attacked the deceased party and that he was shot by the deceased Prabhu Nath when he entreated that the sugar cane should not be taken away. Accused 1, 2 and 27 denied the charge of conspiracy contending that they were in prison on the date of occurrence consequent upon their conviction by the railway magistrate.

The learned Sessions Judge acquitted 25 accused persons out of the total of 41 accused, viz., 4-6, 11-14, 17-22, 24-26, 28-32, 35 and 39-41 finding them not guilty of any of the charges and convicted the remaining 16 accused for various offences and passed sentences of the prisonment in respect of each accused.

It may be mentioned that Accused Nos. 10 and 16 were convicted under Section 302 read with Section 149 I.P.C. and each of them was sentenced to death, besides their conviction under Section 307 I.P.C.

All the convicted accused filed Criminal appeals in the High Court. The reference made by the Trial Court for confirmation of the sentence of death imposed on A-10 and A-16 was heard as Referred Case No. 31 of 1976. The State preferred appeal under Section 378 Cr.P.C. against the acquittal of all the 24 acquitted persons. In the case of A-40, the High Court did not grant leave as required under Section 378(3), Cr.P.C. The High Court disposed of all the appeals inclusive of the State Appeal and the Referred Case by the common judgment whereby all the criminal appeals preferred by the convicted accused except the appeal preferred by Rambali (A-36) was allowed and their sentences were set aside. The State Appeal was dismissed and the referred case in view of the acquittal of the accused was rejected. Hence this

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appeal by the State. The contention of the State is that the acquittal of the accused is not proper and unwarranted on the basis of the evidence led in the case.

Dismissing the appeals, this Court,

HELD: When viewed from any angle, the reasons assigned by the High Court for disbelieving the testimony of all the ocular witnesses are not unreasonable. The evidence is ambulatory and vasulating besides suffering from insurmountable infirmities and improbabilities. The totality of the evidence is unworthy of the credence when examined by the standard of yardsticks of credibility. [956G]

There is a deliberate false implication of the Accused

1, 2 and 27 to whom overtacts are attributed in Ex. Ka-1. In fact, the High Court has gone in great depth into the facts and circumstances of the case and rightly concluded that the prosecution has miserably failed in establishing the guilt of the accused except A-36. [956H: 957A]

Suspicion by itself however strong it may be is not sufficient to take the place of legal proof and warrant a finding of guilt of these three accused. [957C]

The entire evidence is nothing but a coloured version with concocted story and exaggerated account mixed with falsehood and that the prosecution has miserably failed to make out the charges against all or any of the accused beyond all reasonable doubt except Rambali (A-36) who himself admitted his presence at the scene. [957H; 958A]

No doubt it is true that this heinous offence is diabolical in conception and executed in gruesome and ghastly manner. It is shocking that 13 persons have been done away with in a broad day light in the course of the same transaction. Nonetheless the Court when satisfied that the evidence adduced by the prosecution is not only unworthy of credence, but also manifestly and inextricably mixed up with falsehood cannot be carried away merely on the fact of multiplicity of victims and on the bias of speculations and suppositions in the confused stream of facts. The High Court has apprised the evidence in the proper perspective and arrived at a correct conclusion which is neither perverse nor unreasonable. [958D-E]

Balaka Singh & Ors. v. State of Punjab, [1975] 4 SCC 511, referred to.
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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 5 17-523 of 1978.

From the Judgment and Order dated 17.2.1977 of the Allahabad High Court in Crl. A. Nos. 1143, Referred No. 31 of 1976 connected with Crl. A. Nos. 1132, 1133, 1156, 1158 of 1976 & Govt. Appeal No. 2129 of 1976.

Prithvi Raj, Dalveer Bhandari and Prashant Choudhary for the Appellant.

R.L. Kohli, H.K. Pun and C.P. Lal (NP) for the Respondents.

Yogeshwar Prasad, Ms. Rachna Gupta and P.K. Bajaj for the Complainant.

The Judgment of the Court was delivered by

S. RATNAVEL PANDIAN, J. It is a very tragic and pathetic case--tragic in the sense that 13 persons have been massacred in a gruesome and horrendous manner and pathetic in the sense that the culprits burnt the victims of this barbaric act by covering with sugarcane leaves and sprinkling with diesel oil. At the same time, we are deeply distressed and pained to note that three of the accused persons i.e. A-1, A-2 and A-27, who were in prison on the date of occurrence are falsely implicated as having taken part in the occurrence and the main witness, Nitya Nand (PW-1) has made a deliberate and suborn perjury by naming these three accused persons even in the earliest complaint (Ex. Ka-1) with an oblique motive of obtaining conviction of these accused also.

Even at the threshold, we would like to point out that as the appellant has not furnished the correct list of the array of the accused with reference to each of the four sessions trials in a chronological manner, we with great difficulty have culled out the names of the accused persons

and the sessions trial case numbers from the body of the judgment of the Trial Court and appended a list of the names of the accused as Annexure 'A' to this judgment so that we may not experience any difficulty in understanding and appreciating the prosecution case.

There were 41 accused in total who took their trial in sessions trial case Nos. A-119, A-160, A-265/74 and A-27/75 as indicated by us

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to the foot-note to Annexure 'A'. The Trial Court convicted 16 accused under various provisions of the Indian Penal Code and the Arms Act and acquitted the remaining 25 accused. In this judgment, we are referring to the accused persons in the order, as arrayed in Annexure 'A'.

Indisputably, 13 persons ranging between 22-25 years of age were done away with in the occurrence. Two other persons, namely, Jama (PW-3) and Balai (PW-24) escaped with injuries. Of the deceased persons, one by name Kedar belonged to a village called Baluahi, whereas the rest of the deceased persons belonged to a village called Deotaha, to which village the injured persons belong. The deceased persons are either the members of the family or associates of the complainant, Nitya Nand (PW- 1) whose father was one among the 13 deceased persons. Of the accused, some are inter-related and the rest are associates.

The scene of occurrence lies within the limits of Nebua Naurangia Police Station in the District of Deoria in the state of U 'PAT a distance of 10 miles to the west of this police station, there is a village known as Bali. A few furlongs to south of Bali, the village Deotaha is situated. The agricultural area of the village Bali extends up to some distance to the west of village Deotaha. About six furlongs to the west of village Deotaha, there are two contiguous plots bearing Nos. 736 and 737 without any dividing line. The occurrence in question took place in the very same plots.

There were two rival factions in the village Deotaha--in that the deceased persons, their relations and associates formed one faction and the accused formed the rival faction. There was deep rooted enmity and simmering feelings between the two groups due to the following incidents.

1. In a keenly contested Pradhanship election of the village-Deotaha, the first accused became successful.
2. One of the deceased Prabhu Nath filed a suit as against A-27 (Jangi) for recovery of a sum of Rs.20,000 and the suit was decreed on A-27's admission. At the time of the occurrence, the execution proceeding in pursuance of the decree was pending. In that suit, Kedar one of the deceased was a witness supporting the cause of Prabhu Nath.

3. On 15.5. 1973, the first accused and some others attacked one

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Rajeshwar Tiwari during the course of which one Saheb belonging to the accused party was murdered. The members of both the groups were arrested and sent to jail in connection with that occurrence.

4. After their release in the above case, they started damaging each other's crops. This led to the initiation of a security proceeding under Section 107 of the Code of Criminal Procedure. In that the party of the first accused was bound over.

5. In September 1973, another security proceeding was initiated under Section 107 of the Code of Criminal Procedure, wherein A-1, A-27 and 54 others belonging to A-1's party were bound over.

Due to the above consecutive incidents, these two rival factions were nursing and nurturing their ill feelings which was gaining momentum day by day, ultimately culminating into the occurrence in question. We shall now give a brief note of the prosecution case.

On account of the deep-rooted animosity between the parties, the first two accused and Accused No. 27 hatched a conspiracy with some of their associates to murder Prabhu Nath and his men on 14.1.1974 when they were expected to be engaged for cutting the standing sugar cane in plot Nos. 736, and 737. With an intention of screening himself from any prospective accusation the third accused deposited his licensed gun on 12.1.1974 with an arms dealer (PW-28) at Gorakhpur. On the same day, namely, on 12.1.1974 at about noon accused Nos. 1, 2 and 27 in order to create evidence of their alibi entered into an agreement with one S.D. Dubey, who was at that time working in the Railways as Travelling Ticket Examiner (T.T.E.) and who is shown as Accused No. 40 in Annexure 'A' to do an illegal act, to wit, to have the deceased persons murdered by their associates on 14.1. 1974. In pursuance of this conspiracy these three accused (1, 2 and 27) traveled without tickets by 2 Dn. Mail Train running between Khora Bhar and Gauri Bazar which stations lie on Gorakhpur-Bhatni line. As these three accused who traveled as ticketless passengers did not pay the charges due from them to the TTE (Accused No. 40), they as pre-planned, were apprehended and produced before the Railway Magistrate on 13.1.1974 who convicted them and sentenced them to imprisonment till 18.1.1974. Thus these 3 accused were incarcerated in the Gorakhpur jail till 18.1.1974.

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The occurrence in question took place in the afternoon of 14.1. 1974. On the day of occurrence at about 10.00 A.M. all the 13 deceased persons accompanied by two injured persons PWs 3 and 24 and few others went to plot Nos. 736 and 737 for cutting the sugar cane crops raised by one of the deceased--namely Trijugi and his family members. The deceased persons had also taken a tractor with the trolley attached to it for removing the sugar canes. By about 1.00 P.M. the entire cane crops had been cut. Some bundles of the sugar canes already cut had been loaded on the trolley. At this point of time, about 80-90 persons inclusive of these accused persons armed with lethal weapons such as fire-arms, spears, lathes and pharsas surrounded the spot from 3 directions, namely, north, east and west and after nearing the field started firing shots indiscriminately and also attacked the prosecution party with pharsas, spears and lathes. All those persons who were cutting the sugar cane crops got panicky and started running helter-skelter. These unfortunate 13 deceased persons ran towards north evidently to save their lives by taking positions behind the trolley and the tractor which were parked just north of the place of occurrence. PWs 3 and 24 and some others ran towards south. While so running PWs 3 and 24 received injuries. But the other witnesses, namely, Nitya Nand (PW. 1), Om Prakash (PW. 6), Smt. Mala (PW. 11) and Smt. Chandgudi (PW. 12) escaped unhurt. They all hid themselves in the fields of Hakim and Paras which lie to the south of the place of occurrence and witnessed the entire orgy of violence therefrom. The culprits chased these 13 deceased persons like hunters chasing the fleeing beasts and ruthlessly and indiscriminately attacked them. All the 13 persons instantaneously succumbed to their injuries. The dead bodies were found lying scattered around the tractor and trolley providing a gory sight. During the course of the occurrence, it is said that one of

the deceased Prabhu Nath who had a gun fired at the accused party in self-defence and injured Rambali (Accused No. 36). Accused Nos. 10 and 16 covered the dead bodies with sugar cane leaves and sprinkled diesel oil taken out from the tractor and set fire to. After committing this heinous crime, all the culprits left the scene of occurrence. While leaving the scene, Accused No. 32 carried away the gun of the deceased Prabhu Nath. The entire occurrence was over within an hour.

After the accused persons had left the scene, PW-1 went to the police station which is at a distance of 10 miles from the scene and presented a written complaint (Ex. Ka. 1) which was registered at about 2.45 P.M. The 'chik report' (The First Information Report) is Ex. Ka. 51 the copy of which is Ex. Ka. 52. The Station House Officer

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(PW-43) took up investigation and proceeded to the scene accompanied by his head constable and other constables, after giving instruction to PW-17 to proceed to the scene by arranging some vehicles. PW-43 reached the scene of occurrence at 4.00 P.M. and examined PWs 3, 24 and others and sent the injured witnesses for medical examination. Then PW-43 held inquest over the dead bodies and thereafter sent the dead bodies for post-mortem examination. After despatching the dead bodies PW-43 inspected the scene of occurrence and found marks of pellets on all sides of the trolley and ash of burnt leaves lying around the trolley. The wheels of the trolley were also found burnt. Two live cartridges and several used and fired cartridges of 12 bore gun together with the pellets and some burnt clothes were found by the investigating officer on the spot. Patches of blood were found at different places. PW-4, the Medical Officer examined the injured witnesses and found on their person punctured wounds besides abrasions. PW-3 had two gun shot wounds. The Doctor had noted the injuries. in Exhibits Ka-5 and Ka-6. The Medical Officers, namely PWs 2, 9, 10 and 46 conducted necropsy on the dead bodies and noted various kinds of injuries such as incised wounds, lacerated injuries, contusions and gun shot wounds etc. There was superficial burn on the dead bodies indicating that the dead bodies were set fire to. PW-43 searched for the accused mentioned in the F.I.R., but none was available. Then he took proceedings under Sections 87 and 88 of the Code of Criminal Procedure (old). He arrested Accused No. 39 on 16.1.1974 and seized his licensed gun. Accused Nos. 3 and 16 were arrested in the house of Accused No. 38. A rifle (Ex. 11) and a gun (Ex. 12) were seized by PW-43 from the house of Accused No. 38. On 16.1.1974, the sub Inspector, PW-43 was suspended. Thereafter the investigation was taken up by the Circle Inspector of Police on 17.1. 1974. Subsequently, on 21.1. 1974 the investigation was entrusted to the C.I.D. Branch. PW-38, an Inspector of that branch took up further investigation. During the investigation he came to know that Rambali (Accused No. 36) was admitted to Gorakhpur Hospital, but slipped away from the hospital. on 18.1.1974. PW-38 collected evidence about the arrest of Accused Nos. 1, 2 and 27 by the T.T.E. while the latter found these three accused travelling without tickets on 12.1.1974. He sent the two cartridges recovered from the place of occurrence to the ballistic expert, who opined that the same should have been fired by rifle (Ex. 11). Some of the accused surrendered before the court on different dates. After completing the investigation, PW-38 laid the chargesheet in 4 batches which gave rise to 4 different sessions trials which were disposed of by the learned Sessions Judge by this impugned common

judgment.

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All the accused pleaded not guilty and denied their complicity with the offence in question. Rambali (Accused No. 36) admitted his presence and stated that the sugar cane crops belonged to one Phunni and not to Tirjugi and his relations and that while Phunni and his men were cutting the sugar cane crops, the deceased Prabhu Nath and the other deceased persons attempted to forcibly taking away the crops and during the course of such attempt, Phunni and his men attacked the deceased party and that he was shot by the deceased Prabhu Nath when he entreated that the sugar cane crops of Phunni should not be taken away. Accused nos. 1, 2 and 27 denied the charge of conspiracy and stated that they were in prison on the date of occurrence consequent upon their conviction recorded by the Railway Magistrate for their ticketless travelling.

The prosecution in all examined 53 witnesses and filed number of documents. The accused examined DWs 1-7. Of the witnesses examined by the prosecution, PWs 1, 3, 6, 11, 12, 20 and 24 are ocular witnesses. It may be mentioned here that PW-20 has been treated as hostile as he has not supported the prosecution case. Of these witnesses, PWs 3 and 24 were injured witnesses. One Ganga Prasad Pande mentioned as an eye witness in the F.I.R. was examined as a court witness (C.W. 1) and he did not support the prosecution version. The learned Trial Judge believing the plea of accused Nagendra alias Tara (A.4) on the basis of the evidence of DW. 1 (Dr. Krishna Swarup) found this accused as having not participated in the occurrence. However, he spurned the plea of defence put forth by rest of the accused.

The learned Sessions Judge for the discussions made in his judgment acquitted 25 accused persons out of the total of 41 accused, namely, 4-6, 11-14, 17-22, 24-26, 28-32, 35, 39-41 finding them not guilty of any of the charges and convicted the rest of the 16 accused under various charges and sentenced them as hereunder:

Accused Nos. 1, 2 and 27 were sentenced to life imprisonment under Section 302 read with Sections 109 and 120 (B) IPC and Accused Nos. 3, 7, 8, 15, 23, 33, 34, 36 and 37 were convicted under Section 302 read with Section 149 IPC and sentenced to imprisonment for life and in addition to that, these 9 accused were convicted under Section 307 read with Section 149 IPC and each of them was sentenced to undergo rigorous imprisonment for a period of 4 years. Accused No. 9 was convicted under Section 302 (simpliciter) and sentenced to life imprisonment and convicted under Section 307 (simpliciter) and sentenced to 5 years rigorous imprisonment. In addition to that, A. 9 was con-

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victed under Section 27 of the Arms Act and sentenced to rigorous imprisonment for a period of two years and also under Section 147 for a period of one year.

Accused Nos. 10 and 16 were convicted under Section 302 read with Section 149 IPC and each of them was sentenced to the extreme penalty of law, namely, death. These two accused A. 10 and A. 16 were also convicted under Section 307 read with Section 149 IPC and each of them was sentenced to rigorous imprisonment for a period of 5 years.

Accused Nos. 3, 7, 8, 10, 15, 16, 23, 33, 34, 36 and 37 were convicted under Section 148 IPC and each of them was sentenced to undergo rigorous imprisonment for a period of one and half years. Apart from this, all the convicted accused persons except Accused Nos. 1, 2, 27 and 38 were

convicted under Section 201 read with Section 149 IPC and each of them was sentenced to rigorous imprisonment for a period of 4 years. Added to that, all these accused excepting the above four were convicted under Sections 435 and 427, IPC and sentenced each one of the accused to undergo rigorous imprisonment for one year under each of these two charges. Accused No. 37 was also convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for a period of two years.

All the convicted accused filed Criminal Appeal Nos. 1132, 1133, 1143, 1156, 1157 and 1158 of 1976. The reference made by the Trial Court for confirmation of the sentence of death imposed on A. 10 and A. 16 was heard as a Referred case No. 31 of 1976. The State preferred an appeal under Section 378 of Cr.P.C. against the acquittal of all the 24 acquitted persons. It may be mentioned at this juncture that the High Court did not grant leave as required under Section 378(3) of the Code of Criminal Procedure to entertain an appeal against the acquittal of S.D. Dubey (A. 40). The High Court disposed of these appeals inclusive of the State appeal and the Referred case by the common impugned judgment dated 17.2.1977, allowing all the criminal appeals preferred by all the convicted accused except the appeal preferred by Rambali (A. 36) and setting aside the convictions and the sentences of those whose appeals were allowed. The State appeal was dismissed. The referred case was rejected consequent upon the acquittal of A. 10 and A. 16.

The State on being dissatisfied with the impugned judgment of the High Court, has preferred as many as seven criminal appeals as

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detailed in the table given below:

S1. No.	Criminal Appeal No.	The Accused concerned.
1.	517/78	A. 10 and A. 16
2.	518/78	A.38
3.	519/78	A. 1, A.2 & A.27
4.	520/78	A.3, A.7, A.8, A.9, A. 15, A.23 & A.33.
5.	521/78	A. 37
6.	522/78	A.34 & A.36
7.	523/78	A. 4-6, A. 11 - 14, A. 17-22, A.24-26, A.28-32, A.35 A.39 & A.41

After the grant of special leave, S.D. Dubey, Respondent No. 25 in Criminal Appeal No. 523/78 (Accused No. 40 in the Annexure 'A' to this judgment) filed a petition for rectification in Miscellaneous Petition No. 210/79 praying to recall the leave granted and the nonbailable warrant issued against him on the ground that the High Court did not grant leave to the State for preferring an appeal against his order of acquittal. This Court by order dated 23.1.1979 deleted the name of S.D. Dubey from the array of the respondents in Criminal Appeal No. 523/78 and revoked the special leave granted so far as he was concerned and also discharged the unbailable warrant issued against him. The result is that there is no appeal against A. 40.

It seems that the complainant in all these appeals has filed Criminal Miscellaneous Petition Nos. 3621-3627 of 1989 for impleading him as a party. Natarajan, J. (as he then was) by an order dated 14.9.1989 passed an order, "The counsel for the complainant may be heard at the time of hearing of the appeal." Mr. Prithvi Raj, Sr. Advocate assisted by Mr. Dalveer Bhandari and another appeared on behalf of the appellant/state. Mr. R.L. Kohli, Sr. Advocate assisted by Mr. H.K. Puri and another appeared on behalf of

the respondents. Mr. Yogeshwar Prasad, Sr. Advocate assisted by two advocates appeared on behalf of the complainant. Mr. Prithvi Raj after taking us very meticulously through the judgment of the Trial Court as well as of the High Court and the evidence of some of the witnesses presented a very

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comprehensive and detailed analysis of the case with the circumstances, surrounding it and made the following submissions:

1. The High Court has erroneously set aside the convictions recorded by the Trial Court without advertting to the intrinsic value of the evidence of the eye witnesses who speaks about the motive as well the actual occurrence in question, which took place in the broad day light of 14.1. 1974.

2. There is abundant and overwhelming evidence both oral and documentary conclusively establishing the long standing and deep rooted animosity for the accused persons to brutally attack the prosecution party.

3. The High Court is not justified in rejecting the testimony of the ocular witnesses especially of PWs 3 and 24, who were injured and whose presence at the scene of occurrence cannot be doubted, merely on the ground that they were all partisan witnesses.

4. The nature of the injuries sustained by the deceased persons as well by PWs 3 and 24 unmistakably corroborate the evidence of the eye witnesses that all the victims have been indiscriminately and ruthlessly attacked with deadly weapons such as fire-arms, spears, pharsas, lathes etc.

5. Both the Trial Court and the High Court without appreciating the evidence adduced as against the accused persons concerned in Criminal Appeal No. 523/78 has wrongly recorded the order of acquittal which is liable to be set aside.

Before entering into a detailed discussion of the oral and documentary evidence, we may point out certain incontrovertible facts. The time of occurrence, the place of occurrence and the manner of attack are all not in dispute. It seems that the learned Trial Judge himself had made a local inspection and visited the place of occurrence on 11.4.76 and he was satisfied with the evidence regarding the topography of the scene.

So far as the motive is concerned, we have clearly stated in the narrative portion of the judgment that the prosecution party and the accused party were on war path on account of a series of incidents over a considerable length of time. The evidence--both oral and docu-

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mentary--demonstrably establish that each one was out for the blood of another. The very fact that 13 persons have been done away with by an inhuman, archaic and drastic mode of execution indicates that the culprits whoever they might have been should have been fomenting their hatred and pre-planned to perpetuate this heinous crime on that particular day. According to the prosecution, the perpetrators of the crime were numbering between 80 to 90. When the victims and the witnesses started running away apprehending imminent danger to their lives, they were chased by the perpetrators of the crime and attacked ruthlessly by deadly weapons including fire-arms. The prosecution case is that except the father of PW-1, Prabhu Nath who was armed with a gun others were armless. PW-1 speaks about the entire motive for the occurrence. On a careful analysis of the evidence, we have no reservation in holding that there was bitter animosity between the prosecution and accused parties and as such there was sufficient motive on the part of the accused party to attack the prosecution party. But at the same time, one

should not lose sight of the fact that the prosecution party which was also entertaining the same amount of animosity against the accused party had sufficient motive to implicate all the leading persons of the accused party with the offence in question. As repeatedly said, motive is a double edged weapon and that it could be made use of by either party to wield that weapon of motive against each other. Therefore, the key question for consideration is whether the prosecution has convincingly and satisfactorily established guilt of all or any of the accused beyond all reasonable doubt by letting in reliable and cogent evidence.

Regarding the conspiracy that is said to have been hatched on 12.1.74 among A. 1, A.2 and A.27 with three others--A.28, A.29 and A.34 we have to scrutinise the evidence of PWs 5, 8, 15 and DW 5. The Trial Court in its judgment has found A. 1, A.2 and A.27 guilty under Sections 302 read with 109 and read with 120(B) and sentenced them for life, though has not placed much reliance on the evidence of PWs 8 and 15. In this connection, we may state that DW-5, the Assistant Station Master was examined only to discredit the testimony of PW-8.

PW-5 was the Railway Magistrate during the relevant period. PW-29 was a Travelling Ticket Inspector and PW-39 was a constable. According to them, A. 1, A.2 and A.27 were caught as ticketless travellers by S.D. Dubey (A.40) and produced before PW-29, who in turn handed over them to PW-39. These three accused were detained at the waiting room of Bhatini Railway Station on the night of 12.1.1974 and produced before PW-5 on 13.1.1974 who convicted and

sentenced them to imprisonment till 18.1.1974. These three accused themselves admit their conviction and imprisonment. But would this piece of evidence coupled with the animosity that existed between the two groups be sufficient to conclude that the three accused have conspired to commit this offence? No doubt, this impelling circumstance creates a strong suspicion against A. 1, A.2 and A.27 as to whether they had voluntarily got themselves arrested by creating a circumstance presumably due to some pre-arrangement so that this circumstance might serve as a plea of alibi. It is well said that suspicion, however strong it may be, it cannot take the place of legal proof. Therefore, from this circumstance the Court cannot be justified in drawing an inference that these three accused had hatched a conspiracy to commit this offence. There is absolutely no evidence that these three accused had any conversation among themselves to commit this offence or they pre-planned to involve themselves in the offence of ticketless travelling so that they might escape their involvement with the offence. One more circumstance, relied upon by the prosecution in attempting to prove the conspiracy, is the deposit of the gun by A.2 on 12.1. 1974 with PW 28, an arms dealer of Gorakhpur. But the prosecution miserably fails in this attempt also because it is in evidence that the gun licence of A.2 had already been suspended. Evidently A.2 had thought it appropriate to deposit his gun with an arms dealer for the sake of safety. Therefore, that conduct of A.2 in depositing the gun could not be taken as a circumstance proving the conspiracy to any extent. The High Court has rightly rejected the case of the prosecution on this aspect and dismissed the case of conspiracy and consequently set aside the conviction of these three accused under Section 302 read with Sections 109 and 120(B), IPC.

We shall now deal with the evidence relating to the actual occurrence. The prosecution examined PWs 1, 3, 6, 11,

12, 20 and 24 as eye witnesses to the occurrence. Of the above witnesses, PW-20, who is the son of one of the deceased has resiled from his earlier statement and as such he was treated as a hostile witness. As has been repeatedly stated in the earlier part of the judgment, PWs 3 and 24 were injured during the occurrence. We shall examine the evidence of these eyewitnesses one by one subjecting their testimony to strict scrutiny.

PW-I is none other than the son of deceased Prabhu Nath Tiwari, who is said to have been armed with a gun and fired at Rambali (A.36). He claims to have been present at the spot of occurrence from beginning to end and to have witnessed the entire occurrence and also identified all these accused persons as active participants along with

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some others. It is his evidence that he along with the other witnesses ran towards south and took shelter in the nearby field where from he witnessed the occurrence. After all the miscreants had left the scene he was the person who went to the police station with a written complaint (Ex. Ka-1) and set the law in motion. In Ex. Ka-1, PW-1 has implicated accused Nos. 1, 2 and 27 along with others assigning specific overtact to accused Nos. 1 and 2 stating that they were armed with a pistol and a gun respectively and fired at the prosecution party though has not attributed any specific overtact to A.27 against whom PW-1 was not entertaining so much of animosity as in the case of A. 1 and A.2. Besides attributing the above overtacts, he has averred in the earliest document Ex. Ka-1, that accused Nos. 1 and 2 exhorted and incited his associates to bounce upon the prosecution party and to attack. On a very close examination of the testimony of PW-1, we are disinclined to place any reliance much less safe reliance on his testimony for more than one reason.

Firstly, PW-1 who is the son of deceased Prabhu Nath Tiwan and grand-son of the deceased Tirjugi and nephew of deceased Damodar is not only much interested in the prosecution case, but is anemically disposed towards accused party. The sugar cane crops which was the subject matter for this occurrence was owned by his grand-father Tirjugi and his family members. Secondly, the absence of any injury on his person creates a grave doubt about his presence in the scene of occurrence. Thirdly, PW-1 has not only given an exaggerated version in Ex. Ka-1 but also deliberately and falsely implicated A. 1, A.2 and A.27 as having actively participated and shot at the deceased. Fourthly, his explanation now offered by him that he gave the names of these three accused persons since he overheard during the occurrence the other accused shouting "Paras Avo, Sharda Avo, Jangi Babu Avo" which explanation is summarily rejected both by the Trial as well the High Court. Fifthly, in Ex. Ka-1, PW-I has not given the names of the fathers of any one of the accused persons. Sixthly, even assuming, but not conceding that PW-I was present at the scene of occurrence, he when fleeing towards south for his life on seeing the accused party with the strength of nearly 80-90 persons armed with deadly weapons could not have witnessed any part of the occurrence especially when all the accused were moving towards north. Seventhly, it would not have been possible for PW-1 to prepare Ka-1 on his own, but this document should have been brought into existence on account of some deliberations and consultations with some of the people belonging to his faction. Eighthly, there is no guarantee to believe even a part of his evidence when he goes to the extent of making

deliberate false implication of accused persons who are proved to have been in prison at the time of occurrence. Ninthly, the entry in the General Diary dated 17.1.1974 marked as Ex. C-1 reveals that the investigating officer recorded the statement of the witnesses only on 15.1. 1974. It may be recalled that the first investigating officer, PW-43 was suspended on 16.1.1974.

It is surprising that though Ex. Ka-1 does not contain the names of the fathers of any one of the accused Ex. Ka-51 (First Information Report) prepared on the basis of Ex. Ka-1 contains the names of the fathers of all the accused persons. The only explanation given by the head constable Ram Hausila Pandey is that he incorporated the fathers' names on an enquiry from others is totally unacceptable. Some doubt is created about the veracity of Ex. Ka-1 on the basis of certain corrections made thereon. Though the Trial Court was inclined to rely upon the evidence of PW-1 despite the patent infirmities, the High Court has rejected his evidence in toto for just reasons.

PW-6 is the son of Rajeshwar Tiwari, who was one of the counter petitioners on the side of the prosecution party in the security proceedings. This Rajeshwar Tiwari is the real brother of Tirjugi, the deceased. PW-6 was interrogated for the first time by the investigating officer only on 17.1.1974. The High Court has observed that this witness was thrust into service only at a later stage to serve as an ocular witness. The accused in their defence has attempted to show on the basis of the evidence of CW. 1 that PWs 1 and 6 were residing far away from the scene of the occurrence and that they were not present at the scene. But as CW. 1 has not supported the prosecution version, much weight was not attached to this evidence. However, the conduct of PW-6 in not going to the police station and not being available for examination till 17.1.1974 leads to an inference that he would have been made as an eye-witness to the occurrence at a belated stage. This witness too as PW-1 ran towards south and did not sustain any injury. Hence we are in total agreement with the High Court that PW-6 is pressed into service to serve as an eye-witness. PW-11 has admitted that her parents used to take loans from Prabhu Nath Tiwari and that she was residing in the house of Rajeshwar Tiwari as his servant. The evidence of PW-11 is contradictory to that of PWs 3 and 24, in that PW-11 has deposed that PWs 3 and 24 were found going towards east on the road which is not the prosecution case. Though this contradiction seems to be very trivial, in the context of the case it assumes some significance in examining the presence of the witnesses at the scene. PW- 12 is the mother of deceased Ram Vilas. She has admitted that her

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husband's sister had taken loan from Rajeshwar Tiwari in lieu of which her husband had given 12 bighas of land to Rajeshwar Tiwari. According to these two witnesses (PWs 11 and 12), the accused persons after firing certain shots did not use their gun, but attacked the victims only with spears, pharsas and lathis. The High Court has given cogent and

convincing reasons to discard the testimony of these two witnesses also.

Now we are left with the testimony of the injured witnesses PWs 3 and 24 on whose evidence Mr. Prithvi Raj, learned counsel appearing for the State placed much reliance.

PW-4, the Medical Officer has testified to the fact that he examined PW-3 at 9.15 A.M. on 15.1.1974 and noted

a punctured wound on the left scapula, an incised wound on the left buttock, two gun shot wounds one on the left knee--another on outer side and middle of the left shoulder and an abrasion on the left thigh. According to the Medical Officer, the injuries were of a day-old. He issued the Wound Certificate Ex. Ka-5. The same Medical Officer examined PW-24 at about 9.30 A.M. on 15.1.1974 and found on his person two abrasions, one contusion, a swelling and three gun shot wounds--one on the right scapula region, the other below iliac crest and the third one near the right elbow. Ex. Ka-6 is the Wound Certificate.

The very fact that these two witnesses have sustained certain gun shot wounds probabilities the presence of these two witnesses at or about the time of occurrence at the scene. Therefore, their evidence might command acceptance provided their evidence inspires confidence in the minds of the Court and that the said evidence is free from any infirmity.

PW-3 was a servant of Rajeshwar Tiwari. According to the prosecution, these two witnesses were standing almost at the centre of the eastern side of the scene field at which point they received injuries and thereafter took shelter in the field of one Hakim. PW-3 mentions the names of accused Nos. 3, 5-11, 15, 16, 18, 22, 23, 25, 26, 28, 30, 33-37 and 41, the total number of which is 23 of whom 11 have been acquitted by the Trial Court itself. PW-24 had named six accused persons of whom Jhullar (A. 17) is said to have assaulted him. A. 17 is acquitted by the Trial Court. It shows that the Trial Court had not placed complete reliance on the testimony of these two witnesses. According to him, he and PW-24 were examined by the Sub-Inspector, PW-43 and sent for medical examination. But it is surprising to note that both these

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witnesses were medically examined after a delay of 21 hours on 15.1. 1974 at about 9.30 A.M. No explanation is forthcoming as to why there was such a delay of medical examination of these two witnesses who are said to have been sent to the hospital immediately after examination by PW-43. The entry Ex. C. 1 in the General Diary of 17.1.1974 evidently made after suspension of PW-43 shows that the statements of witnesses were recorded on 15.1.1974. This entry is diametrically in opposition to the evidence of not only of these two witnesses but also of PW-43 who is said to have examined the witnesses at the spot on the evening of 14.1.1974 itself.

PW-24 has admitted that he was suffering from total blindness in his right eye and poor sight in his left eye and he was suffering from eye blindness since 4-5 years. He admitted that he could not see as to who assaulted whom. Later on he stated that he had not seen any accused by their face and even the accused named by him were recognised only by their voice. It is found in the judgment of the High Court that PW-24 was cross-examined by the public prosecutor himself which circumstance indicates that PW-24 has not supported the prosecution version. It is the evidence of the investigating officer that he did not find any blood at the place where these two witnesses were allegedly lying. It is under these circumstances the High Court was disinclined to place any reliance on the evidence of these two witnesses who are indisputably partisan witnesses. It is pointed out by the High Court that the entry in Ex. C- 1 giving the details of the investigation carried on by PW-43 on 14.1.1974 does not indicate that the investigating officer contacted and interrogated these two witnesses on 14.1.1974

itself. The only inference that would follow is that these two witnesses even admitting that they had received injuries at the scene field as pointed out by the High Court--rightly too in our view--might have run away to the village and were contacted by the police only on the next day. So on safe reliance can be placed on the testimony of these two witnesses.

When viewed from any angle, we are of the firm view that the reasons assigned by the High Court for disbelieving the testimony of all the ocular witnesses are unreasonable. The evidence is ambulatory and vasulating besides suffering from insurmountable infirmities and improbabilities. The totality of the evidence is unworthy of any credence when examined by the standard of yardsticks of credibility.

As we have repeatedly pointed out earlier, there is a deliberate false implication of the accused Nos. 1, 2 and 27 to whom overtacts are

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attributed in Ex. Ka- 1. In fact, the High Court has gone in great depth into the facts and circumstances of the case and rightly concluded that the prosecution has miserably failed in establishing the guilt of the accused except A.36. In spite of best efforts and great deal of pondering over the matter, we are unable to disagree with the conclusion arrived at by the High Court in rejecting the testimony of these witnesses whose evidence lacks the guarantee to inspire the confidence especially when the major portion of the evidence is manifestly false and patently incredible. No doubt, the circumstances attending the case, namely, the conduct of A. 1, A.2 and A.27 voluntarily getting themselves arrested by A.40 creates suspicion against them. But that suspicion by itself howsoever strong it may be is not sufficient to take the place of legal proof and warrant a finding of guilt of these three accused.

It is pertinent to note that even the charge framed by the Trial Court reads as if all the accused inclusive of A. 1, A.2 and A.27 formed themselves into an unlawful assembly on 14.1.1974 in the village Bali in prosecution of the common object of committing murder of 13 deceased persons and disposing of the dead bodies. In such a situation, can it be said that there is justification for convicting the rest of the accused barring accused Nos. 1, 2 and 27 for the specific acts attributed to them by the witnesses whose evidence is tainted with patent falsehood. The observation of the High Court reading "All this indicates that Nitya Nand (PW-1) had not seen the occurrence, that the first information report was not lodged when it purports to have been lodged, and, that it came into existence later on and was ante-timed" cannot be said to be perverse. Similarly yet another observation reading "Once it is established that some of the accused persons named by these witnesses had not participated in the occurrence and have been falsely implicated by them, it will not be safe to place reliance upon their testimony regarding the complicity of the other accused nominated by them without corroboration in material particulars by other reliable evidence, direct or substantial" also does not call for interference.

We went through the available records placed before us and examined them scrupulously and meticulously with all seriousness and onerous responsibility cast upon us in getting at the truth, but we regret to say that the entire evidence is nothing but a coloured version with concocted story and exaggerated account mixed with falsehood and that the prosecution has miserably failed to make out the charges against all or any of the accused beyond all reasonable

doubt except

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Rambali (A.36) who himself admitted his presence at the scene. In this connection, we would like to cite a decision of this Court in Balaka Singh & Ors. v. State of Punjab, [1975] 4 SCC 511 wherein the following observation is made.

"..... the Court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and chaff are so inextricably mixed up that in the process of separation the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply."

No doubt, it is true that this heinous offence is diabolical in conception and executed in gruesome and ghastly manner. It is shocking that 13 persons have been done away with in a broad day light in the course of the same transaction. Nonetheless the Court when satisfied that the evidence adduced by the prosecution is not only unworthy of credence, but also manifestly and inextricably mixed up with falsehood cannot be carried away merely on the fact of multiplicity of victims and on the basis of speculations and suppositions in the confused stream of facts. In our considered view, the High Court has apprised the evidence in the proper perspective and arrived at a correct conclusion which is neither perverse nor unreasonable.

For all the reasons stated above, we see no reason to interfere with the findings of the High Court and dislodge the same. In the result the judgment of the High Court is confirmed and all the appeals preferred by the State are dismissed.

Y. Lal
dismissed.

Appeals

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Annexure 'A'

LIST OF THE ACCUSED PERSONS

1. Parasnath Tiwari
2. Sharda Prasad
3. Hausila Tiwari
4. Nagendra alias Tara
5. Bishwanath
6. Mahendra Tiwari
7. Anirudha Tiwari
8. Shukhal
9. Pramhans
10. Prahlad
11. Sudama
12. Jumarati
13. Shahid
14. Birjhan
15. Suryaman Koiri
16. Moti Ram
17. Jhullar
18. Suryabali
19. Kumar Kewat
20. Shanker
21. Ram Asrey
22. Jamuna Pasi
23. Harilal
24. Banwari
25. Bindsari
26. Lachman

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27. Jangi
28. Jhinu
29. Samsher
30. Jetan
31. Bramhdoo
32. Jagdish Tiwari
33. Durga Pandey
34. Jagat Narain Misra
35. Sunder
36. Rambali
37. Babu Singh alias Bandhoo Singh
38. Parasnath Pandey
39. Ram Naresh Pandey
40. S.D. Dubey
41. Kailash

Note:

1. Accused Nos. 1 to 33 were tried in Sessions Trial No. A-119/74.
2. Accused Nos. 34-36 were tried in Sessions Trial No. A-160/74.
3. Accused Nos. 37-40 were tried in Sessions Trial No. A-265/74.
4. Accused No. 41 was tried in Sessions Trial No. A-27/75.

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