

(2003) 08 PAT CK 0057

In the Patna High Court

Case No : Criminal Appeal (DB) No. 501 of 1987

Bachan Singh and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 14-08-2003

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 235

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2004) 1 PLJR 578

Hon'ble Judges : S.N. Jha, J;B.N.P. Singh, J

Bench : Division Bench

Advocate : Kanhaiya Prasad Singh, Mahesh Prasad, Rewati Kant Raman and Ram Sakal Singh, for the Appellant; Lala Kailash Bihari Prasad, for State, Baxi S.R.P. Sinha and Ashok Kumar Sharma for Informant, for the Respondent

Judgement

B.N.P. Singh, J.—In a bizarre incident that visited family of Ramdeo Singh husband of Bhagwani Devi (P.W. 5), the main(sic) of fardbeyan, while two family member suffered injuries on their persons, two son in-law, who in all probability, had come in their assistance to resist onslaught of the Appellants and their associates, met the Waterloo in village Moori in midday at about(sic) 10 a.m. on 3rd December, 1975. Bhagwani Devi (P.W. 5) having heard alarms, (sic) nating from Khalihan of Marua Singh, and(sic) Appellants and others having intercept(sic) Laxman Singh, Bachcha Singh. (sic) Nathuni Singh, rushed there in the come(sic) pany of Sachmucha Devi, Binda Devi, Indu Devi and Jay Prakash Singh, where she noticed that Appellants and others had intercepted Laxman Singh, Bachcha Singh and Nathuni Prasad Singh in the Khalihan of Mama Singh. The ball was set in motion by Chirkut Singh, who exhorted the Appellants and others for shoot out, pursuant to which Chirkut Singh fired shots on Bachcha Singh, who dropped there. Laxman Singh, allegedly to save his life, fired shots which (sic)hit Nand Kishore Singh, who too dropped injured. Jang Bahadur Singh took his arms and fired shots on Laxman Singh who too dropped on receipt of

injuries and this followed other shots fired by Bashistha Singh which hit Nathuni Prasad Singh. There were omnibus accusations against Appellants and others about assaulting injured with their weapons, and it was alleged that when Sachmucha Devi in order to save Nathuni Prasad Singh from further assault, covered him laying down on his body, Jang Bahadur Singh assaulted her. It was also alleged that after the incident was over, Appellants dragged Laxman Singh and Bachcha Singh towards south, making further assault on their persons. They also took dead body of Nand Kishore Singh with them. The fardbeyan of gruesome killing of Bachcha Singh and Laxman Singh, who had eventually succumbed to the injuries, and Sachmucha Devi and Nathuni Prasad Singh having suffered injuries on their persons, was rendered by Bhagwani Devi (P.W. 5), a female member of the house on the same day to set the criminal law in motion.

2. After prosecution was launched on behest of Bhagwani Devi, investigation commenced, in course of which the Police Officer recorded statement of witnesses, visited place of occurrence, took steps for apprehension of the miscreants, sent the dead bodies of Bachcha Singh and Laxman Singh to mortuary for post mortem examination, and on receipt of post mortem report, eventually laid charge sheet before the Court on conclusion of investigation. In the eventual trial that followed, prosecution examined altogether, ten witnesses who are family members of Bhagwani Devi, Ram Charitra Singh, an independent witness, the doctor who held autopsy over the dead bodies of Bachcha Singh and Laxman Singh, Ramji Singh, a Pharmacist, who brought on record, bed head ticket in respect of Nathuni Prasad Singh who was admitted in the hospital at Varanashi, and also other witnesses.

3. Defence of the Appellants had been the plea of innocence and their false implication due to criminal case registered against Ramdeo Singh and others for assaulting Shekhar Singh in an incident, which had preceded the occurrence. Their defence, contrary to assertions made by the prosecution version, was that Laxman Singh had been usually visiting village Moori with unlicensed arms, and a day preceding the incident, his services had been requisitioned by his father-in-law Ramdeo Singh to teach good lesson to the Appellants and the prosecution party had been aggressor to set the ball in motion.

4. It seems that altogether 13 persons were put on trial on various counts. The trial court, however, on consideration of evidences placed on the record, while acquitted Nirmal Singh, Brahma Singh, Durga Singh and Munni Singh for insufficiency of evidence about their complicity in the episode u/s 235 of the Code of Criminal Procedure, recorded finding of guilt against Chirkut Singh, and Jangbahadur Singh under Sections 302 and 148 of the Indian Penal Code (IPC) and while for the first count, they were to suffer imprisonment for life for the second count, they were sentenced to undergo imprisonment for two years. They suffered conviction also u/s 27 of the Arms Act, for which they were sentenced to suffer imprisonment for three years. Appellants Bachcha Singh, Badri Singh,

Sobhu Singh, Kailash Singh, Kumar Singh, Bashistha Singh and Briksn Singh suffered conviction u/s 302/149 IPC for which they were sentenced to suffer rigorous imprisonment for life. Badri Singh, Sobhu Singh, Kailash Singh, Kumar Singh, Bachcha Singh and Bashistha Singh suffered conviction also u/s 148 IPC for which they were sentenced to undergo rigorous imprisonment for two years. However, Briksha Singh alone suffered conviction u/s 147 IPC also for which he was sentenced to undergo rigorous imprisonment for a term of one year. In case of those convicts who suffered conviction and sentence on different counts, sentences were directed to run concurrently.

5. Since manifold contentions were raised at Bar to assail the findings re-corded by the Court below, lest we do not lose sight of them, we wish to critically analyse the testimony of witnesses on the anvil of reliability, credibility and probability of their being competent witnesses. Though narrations made by prosecution witnesses have been fairly spelt out in the judgment of the trial court, a brief resume of the narrations made by them could be discussed for proper appreciation of criticisms that have been made by the learned Counsel for the Appellants. We may begin our exercise with the testimony of Bhagwani Devi (P.W. 5) who was maker of fardbeyan and reiterating her earliest version which she rendered before the Police, she states that shortly after hearing alarms, when she visited Khalihan of Marua Singh in the company of Binda Devi, Indu Devi, Sachmucha Devi and Jai Prakash Singh, she noticed Laxman Singh, Bachcha Singh and Nathuni Prasad Singh, having been intercepted by the Appellants and others. The ball was set in motion by Chirkut Singh, who gave a call to the Appellants for assault and taking the lead, he fired shot which hit Bachcha Singh who dropped. Though Nand Kishore Singh fired shot on Laxman Singh, the aim was lost and in his defence, Laxman Singh too lifted his arms and fired shots when Nand Kishore Singh dropped dead. When Jang Bahadur Singh came for rescue, he too fired shots when Laxman Singh dropped injured, and this was followed by another shot fired by Bashishta Singh, when Nathuni Prasad Singh suffered injuries on person and dropped injured. The witness would further state that after Bachcha Singh, Laxman Singh and Nathuni Singh dropped on the ground, sustaining injuries on their persons they were further assaulted by the Appellants with lathi and butt of gun and when Sachmucha Devi covered body of Nathuni Prasad Singh to save him from further assault, Jang Bahadur Singh assaulted her with butt of gun on her back. Appellants and others thereafter dragged body of Laxman Singh and Bachcha Singh towards road and also took with them, injured Nand Kishore Singh. While Laxman Singh and Bachcha Singh were dead. Nathuni Prasad Singh was in precarious condition. Since husband of Bhagwani Devi at that time had been to village Patipur, she rushed to Chainpur Police Station to lodge information with the Police about the incident. However, she met her husband in the mid way and narrated him the entire, incident. She rendered her fardbeyan before the Police which followed commencement of investigation. Since narration almost in similar veins and terms had been rendered by Ram Charitar Singh (P.W. 3). Jay Prakash Singh (P.W. 4), Binda Devi

(P.W. 6), Sachmucha Devi (P.W. 7) and Nathuni Prasad Singh (P.W. 8) also, without burdening our judgment with reproduction of narrations made by these witnesses, suffice it would be to say that these witnesses too had saddled in their evidences, Chirkut Singh to be the shooter of Bachcha Singh and Jang Bahadur Singh to be the shooter of Laxman Singh for they having fired shots on their persons. They would saddle Bashishte Singh with accusation of firing shots on Nathuni Prasad Singh. Almost similar narrations were made by these witnesses about all the Appellants and others assaulting Laxman Singh, Bachcha Singh and Nathuni Prasad Singh, after they had dropped injured on receipt of Injuries sustained by them, and the Appellants having dragged them towards the (sic)road. This witness also states about Jang Bahadur Singh assaulting Sachmucha Devi with butt of gun on her back when she fell (sic)on the body of Nathuni Prasad Singh to cover him and to save him from further assault.

6. Now adverting to the positive findings recorded by Dr. N.K.R Saha (P.W. 10), the said doctor who held autopsy over the dead body of Bachcha Singh, found as many as five lacerated wounds and abrasions with echymosis on his person. He also noticed one lacerated wound with charred margin 1/4" round on the outer part of left side of chest, one lacerated wound with charred margin measuring about 1/4" x 1/4" x skin deep on the epigastrium, and that apart, lacerated wound with charred margin 1/2" x 1/4" x (sic)kin deep, was visible on right side of (sic)abdomen also, and on the posterior side of (sic)right forearm, there was another lacerated wound with charred margin measuring 1/ (sic)"x 1/4" x skin deep. These injuries in the (sic)si"mation of the doctor were ante mortem nature, and while injury Nos. 1 to 6 were caused by hard and blunt substance, injury Nos. 7 to 8 in opinion of the doctor were caused by gun shots. The doctor on dissection, noticed that there was extravasation of the blood in the neck muscles, and trachea was crushed into pieces. There was extravasation of blood in temporal region of the left side. There was also fracture of left temporal bone and left side of brain was lacerated. In opinion of the doctor, death was due to shock and haemorrhage and injury Nos. 1 and 2 were sufficient in ordinary course of nature to cause death.

7. The doctor who held autopsy over the dead body of Laxman Singh, noticed as many as 12 injuries which were lacerated wounds and bruises, and on dissection of chest cavity, he noticed lacerated perforating wound measuring about 1/2" x 1/4". Lung substance was found thicker in the lower part of the right lung. There were two lacerated perforating wounds measuring 3-1/4" x 1" x lung substance thick and 2-1/2" x 1" x lungs substance found thick in the lower part of left lung. The doctor on dissection of abdomjnal cavity, found that there were three lacerated wounds in the anterior surface and the upper part of right lobe of liver 3-1/4" x 1" x 1-1/4", and one pellet too was recovered from the wound. There was another lacerated wound measuring 1-1/2" x 1" x 1" on lower margin of right lobe of liver and yet another lacerated wound measuring about 2-1/4" x 1-1/4" x 1" was found on anterior surface and up-per part of the right kidney, and on removing cover of the scalp, the doctor found extravasation of blood in

the temporal parietal muscles, and on opening the skull, he noticed that frontal parietal and temporal bones were separated on the left side. In the opinion of the doctor, while injury Nos. 1, 9, 10, 11 and 12 were caused by hard and blunt substance, injury Nos. 2 and 3 to 8 were caused by gun shots, and death in the opinion of the doctor was due to shock and haemorrhage. Injury Nos. 13, 14, 15 and 17 were considered to be sufficient to cause death in ordinary course of nature. The doctor stated to have held autopsy over the dead body of Nand kishore Singh also, but finding of the doctor on this score was not decisive to judge complicity of the Appellants.

8. While marshalling evidence of the witnesses, who claimed to be ocular to the kitling of Laxman Singh and Bachcha Singh and assault on Sachmucha Devi and Nathuni Prasad Singh, we find that about overtact attributed to Chirkut Singh, for firing shots on Bachcha Singh, there has been good evidence of Ram Chariter Singh (P.W. 3), Jai Prakash Singh (P.W. 4), Bhagwani Devi (P.W. 5), Binda Devi (P.W. 6), Sachmucha Devi (P.W. 7) and Nathuni Prasad Singh (P.W. 8). No variation in their statements as for complicity of Chirkut Singh was brought to our notice. As for complicity of Jangbahadur, who was suggested to be author of fire arm injuries on the person of Laxman Singh, we have the evidences of Ram Charitar Singh (P.W. 3), Jai Prakash Singh (P.W. 4), Bhagwani Devi (P.W. 5), Binda Devi (P.W. 6), Sachmucha Devi (R.W. 7) and Nathuni Prasad Singh (P.W. 8) with only discordant note, that in the earliest version, Bhagwani Devi (P.W. 5) saddled him with accusation of holding ballam, though at trial, the witness says about Jang Bahadur, having fired shots on Laxman Singh with firearms. As for complicity of Bashisht Singh, who was suggested to be the author of injuries on Nathuni Prasad Singh, we have evidences of Ram Charitar Singh (P.W. 3), Jai Prakash Singh (P.W. 4), Bhagwani Devi (P.W. 5), Binda Devi (P.W. 6), Sachmucha Devi (P.W. 7) and Nathuni Prasad Singh (P.W. 8). Attention of Ram Charitar Singh (P.W. 3), Jai Prakash Singh (P.W. 4), Binda Devi (P.W. 6), Sachmucha Devi (P.W. 7), and Nathuni Prasad Singh, (P.W. 8) was, how-ever, drawn by the defence for having not made parallel statements before the Police, about Bashisht Singh having fired shots on Nathuni Prasad Singh, and if evidence of these witnesses are excluded from zone of consideration, assertions made by them having been impeached, as for complicity of Bashishta Singh, we have evidence of Bhagwani Devi (P.W. 5) only This is not without significance that Nathuni Prasad Singh (P.W. 8) happens to be none else but the injured for which Bashisht Singh was suggested to be the assailant. Though Bashisht Singh has been acquitted of the charge by the trial court u/s 307 IPC, in view of there being no evidence of the doctor about Bashisht Singh to be the author of injuries said to have been caused on person of Nathuni Prasad Singh, in view of infirmity that has crept in evidence of Ram Charitar Singh (P.W. 3), Jai Prakash Singh (P.W. 4), Binda Devi (P.W. 6), Sachmucha Devi (P.W. 7). and Nathuni Prasad Singh (P.W. 8) about complicity of Bashisht Singh, his complicity altogether has been rendered extremely doubtful. Even about his presence at the place of occurrence, attention of Jai Prakash Singh (P.W. 4), and Binda Devi (P.W. 6), had been drawn by the

defence to impeach credibility of these witnesses, they having not made such parallel statement before the Police. True it is that there has been evidence of Ram Chariter Singh (P.W.(sic)) 3), Sachmuchia Devi (P.W. 7) and Nathuni Prasad Singh (P.W. 8) about his presence at the place of occurrence, but since these witnesses, who claimed to be before the incident, with solitary exception (sic) Bhagwani Devi (P.W. 5), are shown to have not made parallel statement before the police about the role assigned to Bashis Singh, for he being assailant of Nath Prasad Singh, and to crown all, (sic) Nathuni Singh, the injured too has made such attribution about assault on him by Bashishta Singh before the police. Evidence of these witnesses, in our view, must be taken with a pinch of salt, makes complicity of this Appellant extremely doubtful. Chirkut Singh had been assigned two roles, as apart from he being assailant of Bachcha Singh, he was also suggested to have exhorted other Appellants, but neither there has been such charge framed against him for exhorting other Appellants nor has there been such finding recorded by the court below, and rightly so, as good evidence on this score had been wanting on the record.

9. As for complicity of Bechan Singh, who allegedly held fire arms, we have evidences of Ram Charitar Singh (P.W. 3), Jai Prakash Singh (P.W.4), Bhagwani Devi P.W. 5), Binda Devi (P.W. 6), Sachmucha Devi (P.W. 7) and Nathuni Prasad Singh P.W. 8). As for complicity of Sobhu Singh, have evidences of Jai Prakash Singh P.W. 4), Bhagwani Devi (P.W. 5), Binda Devi (P.W. 6), Sachmucha Devi (P.W. 7) and Nathuni Prasad Singh (P.W. 8), though attention of P.W. 6 had been drawn by the defence about he having not made such parallel statement about complicity of this Appellant before the Police, and as for complicity of Kailash Singh, other Appellant, we have good evidence of Ram Charitra Singh (P.W. 3), Jai Prakash Singh P.W. 4), Bhagwani Devi (P.W. 5), Binda Devi (P.W. 6), Sachmucha Devi (P.W. 7) and Nathuni Prasad Singh (P.W. 8) without there being any infirmity in their evidence as for his complicity, and as for Kumar Singh too, we have evidence of Ram Charitar Singh (P.W. 3), Jai Prakash Singh (P.W. 4), Bhagwani Devi (P.W. 5), Binda Devi (P.W. 6), Sachmucha Devi (P.W. 7) and Nathuni Prasad Singh (P.W. 8) about he being armed with Ballam.

10. As for complicity of Briksh Singh, we have evidences of Ram Charitra Singh (P.W. 3), Jai Prakash Singh (P.W. 4), Bhagwani Devi (P.W. 5), Binda Devi (P.W. 6) and Nathuni Prasad Singh (P.W. 8). However, attention of Jai Prakash Singh (P.W. 4) and Binda Devi (P.W. 6) had been drawn by the defence about these two witnesses having not made parallel statement before the Police even about presence of this Appellant, and even if evidence of Jai Prakash Singh (P.W. 4) and Binda Devi (P.W. 6) was kept out of consideration, there has been good evidence of Ram Charitra (P.W. 3), Bhagwani Devi (P.W. 5) and Nathuni Prasad Singh (P.W. 8) about presence of this Appellant at the place of occurrence and also his complicity with omnibus accusation, about assaulting both the deceased and Nathuni Singh. His case was not at par with Bashishta Singh, as in the case of latter, we have suspected his complicity, in view of there being no good evidence

about explicit accusation having been assigned to him for assaulting Nathuni Prasad Singh.

11. Now we are left with the case of Badri Singh, for whose complicity, there has been evidence of Ram Charitra Singh (P.W. 3), Jai Prakash Singh (P.W. 4), Bhagwani Devi (P.W. 5) and Nathuni Prasad Singh (P.W. 8) about the Appellant holding ballam with him and there being omnibus accusations against all these Appellants for assaulting two deceased.

12. Though manifold contentions were raised on behalf of the Appellants, we may notice some of them for which much stress has been laid by the learned Counsel for the Appellants. Scathing comments have been made that credibility of the witnesses who claimed to be ocular was open to question, as those who were examined at trial by the State, happened to be only relation of the deceased, entirely to the exclusion of those who could have been independent witnesses and against whom possibly no finger could have been raised about their impartiality.

13. Taking these criticisms to the logical end on this score alone, testimony of prosecution witnesses cannot be thrown overboard, as the safeguard that has to be applied is that in case truth is found mingled with falsehood, the Court is to venture its exercise to separate grains from the chaff, and for application of the safeguard, greater care and caution is to be taken by the Court. The credibility of witnesses examined by the State at trial, though majority of them, who claimed to be ocular witnesses, happen to be family members/relation of the two deceased and also two injured persons, as we shall see hereafter, appears to be free from blemishes, hence they deserve credence and that apart, Ram Chariter Singh (P.W. 3) was not a family member of the deceased or the injured. His presence at the place of occurrence has been testified also by Jai Prakash Singh (P.W. 4) and also Bhagwani Devi (P.W. 5). Though majority of ocular witnesses undoubtedly happen to be kith and kin of the deceased, we have taken all precautions and applied all safeguards to separate grains from chaff and found these witnesses to be truthful.

14. Other plank of argument pressed into service with all stress was that evidence of so called eye witnesses unerringly did suggest that paddy bundles from all sides, of more than man's height, except in east, hand been stacked in the Khalian of Marua Singh and hence visibility of the incident either about victims or the assailants, for the persons standing in the west direction would be rather extremely remote, and the learned Counsel would take us to the evidence of Ram Charter Singh (P.W. 3) who stated that he witnessed the incident from western side of Khalian of Marua Singh. However, isolated statement of the witness would not judge. Visibility of the incident by him, as shortly thereafter in the second breath the witness states that he witnessed the incident from the field of Damodar Singh which was south of Khalian of Marua Singh and that apart, P.W. 3 claims to have witnessed, the incident while standing on the road. We do not have evidence as to the height of road from the khalian of Marua

Singh and in all probability as such, it cannot be legitimately argued that P.W. 3 was not in a position to witness the incident. Now let us delve upon the evidence of other witnesses. The evidence of Jai Prakash Singh (P.W. 4) was that he along with his family members witnessed the incident, which happened in the Khalian of Marua Singh, from a place, adjacent east to the said Khalian, and similar had been the evidence of Bhagwani Devi (P.W. 5) too about witnessing the incident from east, adjacent to Khalian of Marua Singh. As for Bindu Devi (P.W. 6), she too states that she came along with family members and went towards east, adjacent to the Khalian of (sic) Marua Singh. Taking into consideration the narrations made by these witnesses about they witnessing the incident from east(sic) adjacent to Khalian of Marua Singh, where(sic) paddy bundles had not been stacked, visibility of the incident which happened in the Khalian, in all probability appears to(sic) be most natural and hence argument on(sic) his score too was devoid of merit.

15. Yet it is submitted that thought(sic) Chirkut Singh and Jangbahadur Singh have been convicted u/s 302 (sic) simpliciter, and were sentenced to a term(sic) of life imprisonment, if positive findings recorded by the doctor was to be given(sic) due consideration, that did not suggest these two Appellants to be the author the fatal injuries sustained either by Laxman Singh or Bachcha Singh. Needless to re(sic)peat that in case of Bachcha Singh, the doctor, had opined that while injury Nos. (sic) 1 to 6 were caused by hard and blunt substance, injury Nos. 7 to 10 were caused (sic) gun shots, and that apart, it was injury(sic) Nos. 1 and 2 alone which were sufficient in ordinary course of nature to cause death. In case of Laxman Singh too, though the doctor noticed more than 12 injuries, which were in the nature of laceration or bruises, while injury Nos. 1 and 9 to 12, were caused by hard and blunt substance, injury Nos. 2 to 8 were caused by gun shots. However, injury Nos. 13 to 15 and 17 only were sufficient to cause death in ordinary course of nature, and viewed in the back-drop of positive findings recorded by the doctor, Chirkut Singh and Jangbahadur Singh cannot be said to be the sole authors of the killing of the two deceased to make them answerable u/s 302 IPC simpliciter.

16. Since four accused persons, who had been saddled with accusation of holding lathi have been acquitted by the trial court, learned Counsel on the said analogy would endeavour to argue that other Appellants too, against who there has been omnibus accusation about assaulting the deceased with blunt object, should have been treated at par by the trial court. Though the argument appears to be quite alluring and attractive, but did not merit consideration, for the reason that four persons were acquitted of the charges by the trial court not on account of they facing accusation of assaulting the deceased with hard and blunt object only, but since their complicity had been suspected by the trial court in view of there being insufficiency of evidence for their participating, they had been exonerated of the charges. Similar is not the case with other Appellants who faced accusation of assaulting the deceased and injured with hard blunt object, and we have discussed in great details in the preceding pages about consistent narrations

made by the witnesses about complicity of the Appellants who held only lathi with them and omnibus accusations about assaulting the deceased. The doctor too had found numbers of injuries caused by hard and blunt substance both on the person of Bachcha Singh and Laxman Singh. When 13 or 14 number of persons are assaulting the deceased, it would be a futile exercise to count the injuries on their persons to consider as to whether the injuries were in conformity to the number of assailants, and we are of the view that corroboration of evidence of ocular witnesses with mathematical precision cannot be expected in the criminal cases. Firing of one shot or two shots is immaterial in the matter of assessing culpability of assailants and counting of number of injuries with the shots/ blows attributed to the assailants, would in our opinion be a mere hair-splitting exercise and rather it would be totality of the situation which has to be viewed by the Court, and reliance on this score can be placed on a decision of the Apex Court of the land reported in 2000 (1) PLJR 19 (SC) (Leela Ram v. State of Haryana and Ors.) and on the said analogy we may say that number of injuries noticed on the person of the deceased ought not to be correlated with the number of assailants, as it is not unlikely that the blows dealt by some assailants might have missed the target.

17. We do not consider it unusual for a female member of the family who ventured to take recourse to public authority, to the exclusion of male member, and we may take notice of the situation in which Bhagwani Devi had to register the Police case. No male member was in the house as Laxman Singh, Bachcha Singh and Nathuni Prasad Singh had gone to Khalihan of Marua Singh where they sustained injuries. No course was left open to Bhagwani Devi than to take recourse of public authority. When she was going to the Police Station, she happened to meet her husband in the midway who too followed her to the Police Station.

18. Now let us critically examine reliability of the witnesses and also probability of their witnessing the incident for which there has been evidence of Nathuni Prasad Singh (P.W. 8) and also other witnesses, that he had gone to Khalihan of Marua Singh in the company of Laxman Singh and Bachcha Singh, pursuant to which Bhagwani Devi (P.W. 5) on hearing alarm rushed there in the company of Jai Prakash Singh (P.W. 4), Binda Devi (P.W. 6) and Sachmucha Devi (P.W. 7). Jai Prakash Singh (P.W. 4) happens to be none else but son of Bhagwani Devi. He was at his house preceding the incident, and only on hearing alarms he rushed to khalihan of Marua Singh in the company of family members. Though he was a school going child, but he did not attend school on that day. Binda Devi (P.W. 6) who happens to be daughter of Bhagwani Devi was in her house and shortly after Sunrise, she went to Khalihan of Marua in the company of her mother and other family members. Sachmucha Devi (P.W. 7) was sister of Ramdeo Singh. She had come to her brother's house, and she too rushed to Khalihan of Marua Singh in the company of the family members. Nathuni Prasad Singh was injure and he happens to be son of Bhagwani Devi (P.W. 5) who had gone to khalihan in the company of both the deceased. Ram Charitra Singh (P.W. 3) claimed to have

rushed to the place of occurrence where he witnessed the incident. Referring to his evidence, the learned Counsel would submit that since this witness had poor vision and was about 85 years of age, likelihood of this witness witnessing the incident and identifying the Appellants was most improbable. However, we see no good reason to discard the testimony of Ramcharitra Singh (P.W. 3). He stated his age to be 75 years when he was examined by the Court in the year 1982. Occurrence took place in the year 1975. The witness had poor vision only since last two years of his examination in Court and hence there appears to be no good reason to extinguish the value of visibility of this witness. Our attention had been drawn also to those part of evidence of the witnesses, to which their attentions had been drawn by the defence for there being no such parallel statement made before the Police. As for complicity of Chirkut Singh and Jang Bahadur Singh attention of Ramcharitra Singh (P.W. 3) had been drawn by the defence about he having not made parallel statement at Bashishta assaulting Nathuni Singh with butt of gun and also Appellants assaulting Bachcha Singh and Laxman after they dropped injured. Similar attention of witness had been drawn to show that did not make similar statement before the Police, about the Appellants dragging Bachcha Singh and Laxman Singh towards(sic) road. Attention of Jai Prakash Singh had(sic) been drawn by the defence to show that he did not make parallel statement before(sic) the Police about all the Appellants assault(sic) ing Laxman" Singh, Bachcha Singh and Nathuni Prasad Singh, after they dropped injured, and Jang Bahadur Singh assaulting Sachmucha Devi when she covered body of Nathuni Prasad Singh to save (sic) from further assault. Attention of (sic) Devi (P.W. 6) too had been drawn by the defence to show that she did not state before the Police that the shots fired am Bashishta Singh had hit Nathuni Prasad Singh and also that Jangbahadur Singh assaulting Sachmucha Devi with butt of gun, when she covered his person to saw(sic) him from further assault and also that the Appellants dragged injured Laxman Singh and Bachcha Singh towards road. Sin(sic) larly attention of Sachmucha Devi (P.W. 7)(sic) too had been drawn by the defence show that she did not state before the Police that Bashishta Singh fired shots Nathuni Prasad Singh, and Jang Bahadur Singh assaulted Sachmucha Devi, when she had covered body of Nathuni Prasad Singh to save him from further assault. Admittedly Investigating Officer, who re-corded statement of the witnesses whose attention has been drawn by the defence had not been examined at trial and from, the judgment of the Court below it seems that Shri M. Mallik Investigating Officer had left country after his retirement for Pakistan, where he died. Since attention of he witnesses has not been drawn on the material particulars of the case which can extinguish probative value of testimony of these witnesses, for they having not made such parallel statement before the Police, though there has been some variations in the evidence of Nathuni Prasad Singh (P.W. 8), these are only about sequence of events. We are not oblivious to the principles of law which is now well settled that testimony of eye witnesses cannot be rejected on account of discrepancy alone, if they did not materially affect the edifice of the prosecution case and only when discrepancies are incompatible, that would affect credibility of a witness. Prosecution witnesses

cannot be discredited for such (sic) omission on their part in making parallel statement before the Police.

19. Much stress was laid by the learned Counsel for the Appellants with all persuasiveness that there has been no good evidence about the Appellants to be the author of a particular injury and mere fact that they had come together was not sufficient to conclude that they had come having shared common object to commit murder either of Bachcha Singh or of Laxman Singh. We are, however, of the view that it is easy to visualize that they would have come together sharing common intention to liquidate the victims, since some of them held lethal weapon and some had blunt object with them. They could not have come there just for sake of socialization. The number of injuries noticed on the person of both the deceased shows indiscriminate blows dealt on them. As such, in our view against the Appellants, since there had been good evidence about their participation in the incident, they were vicariously liable by virtue of legal fiction, as enjoined u/s 149 IPC. Almost in similar circumstances as that of the instant case, even those who had been saddled with accusation of dealing blows with lathi on the deceased, their conviction u/s 302 with the aid of Section 149 IPC had been upheld even by the Apex Court of the land in case reported in the case of (Umesh Singh and Anr. v. State of Bihar) 2000 SCC 1026. Observations were made by the Apex Court that where the accused had assembled together, armed with guns and lathis, and were parties to the assault on the deceased and others, the prosecution is not obliged to prove which specific overt act was done by which of the accused. Indeed, the provisions of Section 149 IPC, if properly analysed, will make it clear that it takes an accused out of the region of abetment and makes him responsible as a principal for the acts of each and all merely because he is a member of an unlawful assembly, and the accused cannot put forward a defence that he did not, with his own hand commit the offence, committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed prosecution of that object. Everyone must be taken to have intended the probable and natural result of the combination of the acts in which he had joined. It is not even necessary in all cases that all the persons forming unlawful assembly must do some overt act. Principle of law on this issue has been well crystallized in case of Union of India (UOI) and Others Vs. Binod Bihari Behera, in which case too, observations were made by the Apex Court that proof of specific overt act was not necessary and it was sufficient if it is proved that the accused shared common object of the un-lawful assembly and in furtherance of those common objects some members of that unlawful assembly committed offence attributed to them.

20. Another aspect that merits consideration is about motive. Though we would reiterate that in a case where there is direct evidence, motive pells into insignificance and remains only a matter of academic interest, yet we have found from the evidences that the parties were at loggers head preceding the incident, for which we can refer to the evidences of Bhagwani Devi (P.W. 5) and Nathuni

Prasad Singh (P.W. 8). Tracing sequence of events, Nathuni Prasad Singh (P.W. 8) states that Gati Kuwar, his aunt had executed deed of relinquishment in respect of share of her landed property in favour of his father in the year 1974 and the Appellants, some of whom are agnates, had cultivated that piece of land, three years preceding the incident. There had been successive litigations between the parties. Though other witnesses have turned volte face about their knowledge of the criminal cases instituted by Chirkut Singh, for assault on Shekhar Singh, few hours preceding the incident in question, Nathuni Prasad Singh (P.W. 8) would acknowledge about institution of a case for assault allegedly made on Shekhar Singh by this witness, Ramdeo Singh, Bachcha Singh and Laxman Singh, preceding the incident. Bhagwani Devi (P.W. 5) too would state about long animosity between the parties. She states that 5/6 days, preceding the incident, a case for committing mischief of arson had been registered by Chirkut Singh against Bachcha Singh, Laxman Singh, Nathuni Prasad Singh and Ramdeo Singh, and Chirkut Singh had been threatening her sons-in-law that whenever they would visit the village, they would be assaulted. Institution of a police case by Chirkut Singh for killing of Nand Kishore Singh in the same transaction had been acknowledged also by Ram Chariter Singh (P.W. 3). Though some incident may be stale matters, but it was difficult to predict the human nature as to what mobilized a person to commit an offence and as for motive too, we may say that it was not invisible so as to gouge as to what animated the Appellants to commit offence. Deceased! Laxman Singh and Bachcha Singh were son-in-laws of Bhagwani Devi who had visited village, a day preceding the incident. The Court below has found that some of the Appellants too did not hail from village Moori and they too might have come for assistance of Chirkut Singh,

21. Having critically analysed the evidences placed on the record and also attending circumstances of the case and due regard being had to the contentions raised at Bar, while we set aside the conviction and sentence awarded by the trial court against Appellant Bashisht Singh for the reasons stated in the preceding pages and acquit him of the charges, we reverse conviction of Appellants Chirkut Singh and Jang Bahadur Singh from Section 302 IPC simpliciter to Section 302/149 IPC, which in circumstances would not prejudice these two Appellants. For the rest of the findings recorded by the Court below, we do find even little scope for interference and without disturbing, them we affirm them.

22. In the result, while Cr. Appeal No. 501 of 1987 is allowed in part, Cr. Appeal No. 523 of 1987 is dismissed. Those who are on bail, their bail bonds are cancelled(sic) and it is directed that the trial court shall(sic) take all coercive steps for their apprehension(sic) to consign them to custody to serve out the remainder of sentence. Appellant Bashisht Singh is discharged from the liability of the bail bonds.

S.N. Jha, J.

23. I agree.