

(1987) 11 MP CK 0049

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 261 of 1983

State of Madhya Pradesh

APPELLANT

Vs

Jahaval Sirati Sahu and others

RESPONDENT

Date of Decision : 28-11-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116

Citation : (1988) MPLJ 590

Hon'ble Judges : Y.B. Suryavanshi, J;K.N. Shukla, J

Bench : Division Bench

Advocate : M.V. Tamaskar, A.G, for the Appellant; B.N. Pandey and S.C. Dutt, for the Respondent

Judgement

K.N. Shukla, J.

This is a State appeal against acquittal.

A small village Kestara with a population of about 400 in district Durg was a scene of gruesome massacre in the evening of 24-1-1982. 14 persons, men, women, children and even infants of one Satnami family (a scheduled caste) were butchered. Their house was set on fire. The inmates trying to flee were caught, killed and thrown into the raging flames. Next morning when the police party arrived six charred bodies were recovered from the burnt house and seven partly burnt and brutally cut were lying scattered near the house. Later, charred skull and bones of one more body were recovered from the house. 44 persons, mostly belonging to the Rawat caste, and some Brahmins and a few Satnamies were prosecuted. Some of them were absconding. One namely Suklu died during the pendency of the trial. Thus 41 accused stood the trial before learned Additional Sessions Judge, Durg. Learned Additional Sessions Judge acquitted the accused persons and the State Government has filed the present appeal against the acquittal.

Leave for filing appeal was refused against ten respondents. During the pendency

of this appeal two respondents, namely Jhulu (R-2) and Ghanaram (R-3) expired and the appeal against them was abated.

There was a running feud between the family of the deceased and the Rawats and Brahmins of village Kestara Reports were made by one party against the other and criminal cases had been filed against the family of deceased Gangaprasad as well as the Rawats and Brahmins namely Jaitram, Jhulu and others. Copies of Sanha reports (Ex.P. 20, Ex.P-21, Ex.P-23, Ex.P-24, Ex.P-26, Ex.P-27, Ex.P-30, Ex.P-31, Ex.P- 33 and Ex.P-34) were filed and proved by the prosecution. Proceedings under Sections 107/116 Criminal Procedure Code were initiated against the adult male members of the deceased family and the Rawats of the village some of whom are accused- respondents in this appeal. Ex.P-28 and Ex.P-29 were produced and proved. This fact about enmity between these rival groups was not disputed and the Court below recorded a finding to that effect.

According to prosecution because of the previous enmity between the family of deceased Gangaprasad and the Rawats and Brahmins of the village, there had been a fight between Gangaprasad and his brothers on one hand and Ramdayal Shivprasad and Bijeram on the other. As soon as Rawats and Brahmins of the village learnt about this fight, they surrounde the house of deceased Gangaprasad. A hay-stack was kept outside the house. The house was set to fire by sprinkling kerosene and then throwing burning hay thereon. Inmates of the house who tried to run away were attacked one by one by the assailants with sharp weapons. Even women and children were not spared. Some children and women were trapped inside the house while some were killed and then thrown into the flames.

Kotwar Bisahuram (PW 2) who had gone to the neighbouring village Mutpuri to hear Ramayan was informed about the fight going on in the village. He rushed to Kestara. On his way he saw that Ramdayal, Bijeram and Shivprasad Rawats were being taken in bullock-carts. When he reached the village he found that Gangaprasad's house was in flames. He also saw the dead bodies of Mathura Prasad, Ranjit, their mother Pilabai, grandson Rukhmaj, Gangaprasad, Jamuna Prasad and Hemprasad. He immediately set out for reporting the matter at Police Station Nandghat. He reached Nandghat the same night at about 10.45 p.m. and lodged the report (Ex.P-1). Soon after i.e. at about 11 p.m. injured Ramdayal, Bijeram and Shivprasad also reached the Police Station arid lodged a report which was recorded in the Roznamcha Sanha (Ex.P-6). R.P. Guptam Station House Officer of Police Station Nandghat (PW 15), who was not present when the report by Bisahuram was lodged, came to the police station at about 11.30 p.m. and after being apprised of the incident dispatched constable Kamlaprasad (PW 27) with Kotwar Bisahuram to Kestara for keeping guard over the dead bodies. He himself left for Kestara in the morning at about 4 a.m. Due to heavy rains during the previous night he had to take a detour. While passing through the tahsil headquarter Bemetara, he sent intimation of the incident to his superior

officers and reached Kestara at about 1 p.m. He found seven dead bodies of Pilabai, Gangaprasad, Jamuna Prasad, Hemprasad, Mathuraprasad, Ranjit and Rukhmaj scattered at different places near the burnt house. He drew up inquest reports of these bodies (Ex.P-66 to Ex.P-72). On entering the house he found six dead bodies which were completely charred. Inquest reports of these bodies were also prepared. Photographs were taken at his instance by photographer Gupta. The Sub-Inspector collected the charred skulls and bones and sealed them in separate containers. The dead bodies including the charred ones were sent for post mortem examination.

On 26-1-1982 investigation was entrusted to Circle Inspector Ahirwar (PW 44). On 27-1-1982 Ahirwar went to the spot and while inspecting the site of the incident found one more burnt skull. The same was seized, sealed and sent for medical examination.

Dr. V.C. Jain (PW 18) of Medical College, Raipur gave his opinion that out of five burnt dead bodies two were of females, two of male children and one of a female child. The charred skull sent by Ahirwar was of a female aged 14 to 15 years as found by Dr. Verma (PW 13). The reports of Dr. Jain and Dr. Verma are Ex.P-15, Ex.P-110 to Ex.P-114.

During investigation accused-respondent Panchu gave a statement (Ex.P-131) to Sub-Inspector Shukla (PW 26) and at his instance a bundle of lathis and Tabbals was recovered from the bed of a Nala vide Ex.P-132.

As already mentioned above Ramdayal, Shivprasad and Bijeram had received some injuries and had reported the matter at Police Station Nandghat. Dr. Baghela (PW 14) noted six incised wounds on the person of Bijeram, seven incised and one contused wounds on the person of Ramdayal and three incised wounds on Shivprasad. The injuries were described by him as simple.

It is not necessary to refer in detail to the post mortem reports of the seven persons whose mutilated bodies were found outside the burnt house except to one significant fact that superficial burns were found on the bodies of deceased Mathuraprasad, Jamuna Prasad, Pilabai, Hemprasad and Ranjit (see statements of Dr. A.K. Dave (PW 3), K.K. Pande (PW 4), Dr. Thakur (PW 10) and Dr. Kawdo (PW 11)). This finding about burns on the dead bodies of the victims lying outside the house proved that when the house was surrounded and set to fire these persons tried to escape and received burn injuries before they were caught and hacked to death.

The defence case was that they were falsely implicated due to enmity. Evidence was led to show that the accused persons were not in village Kestara when the incident occurred.

We will now proceed to discuss the testimony of two eye-witnesses Bhawanibai (PW 7) and Bhagabai (PW 8), because the case entirely hinges on their testimony. Bhawanibai, a young woman aged about 21 years, is the widow of

deceased Mathuraprasad who was killed in this incident. She was married about three years before the date of Incident and had a small child Sita aged about one and a half years. This Sita was also snatched from the arms of Pilabai and thrown into the burning house. Bhawanibai stated that at about noon on the date of the incident she and her Jethani Budharabai had gone to the field for cutting "Tewra crop". Other members of the family including her infant daughter Sita were in the house. Before sun set she and Budharabai returned towards their house. When they reached the neighbouring badi of Nandlal they saw a big crowd surrounding their house. She and Budharabai hid themselves behind the boundary wall of the badi and saw the entire incident from there. Bhawanibai stated that accused Dindayal was throwing down Paira (dry stalks of paddy) from the heap kept in her courtyard. Accused Nandlal, Motiram, Makhan, Pandit and Khilawan Pandit were putting this paira into their house. Accused Govind and Ambika (also called Amrika) were pouring kerosene from a container on the paira. Accused Janak and Thulu were also sprinkling kerosene on paira. Accused Ramchandra and one person named Puran were setting fire to the kerosene sprinkled pairs. There was one Shyamratan also assisting them: Puran and Shyamratan are not accused in this case.

Bhawanibai further stated that when the house started burning her Jeth Hemprasad jumped out from the house into the badi As soon as he jumped out accused Kanhaiya, Milan and one Hirau (not an accused) attacked him with Farsi. Kanhaiya continued to inflict blows till Hemprasad died Soon after her husband Mathuraprasad also jumped from the burning house into the badi Accused Feku, Sadru and Sarwan (Sadru had died during pendency of the trial and Sarwan was not tried being one of the several persons who were absconding) hit him with Farsis. After giving few blows Feku asked Sadru to kill him completely and Sadru finished the job. The witness taking cover of the boundary wall moved towards the village Path. From there she saw that deceased Rukhmaj son of deceased Gangaprasad was running and accused Mantram, Janak, Tanwar and Ramchandra were chasing him. Mantram had a sword and others had Farsis. Rukhmaj was a disabled boy. He was overtaken and attacked. He died on the spot Witness Bhawanibai stated that Rukhmaj was pleading for mercy but Tanwar inflicted a powerful blow with the Farsi and killed him. Bhawanibai then saw that her mother-in-law Pilabai was standing near a Munaga tree holding Sita the infant child of this witness. She with folded hands was pleading for mercy but accused Govind snatched the little child from her arms and gave her to accused Shivprasad alias Prasad who threw her into the burning house. Then accused Sukul, Bisauba alias Bhanu tied Pilabai with her Sari to the Munaga tree and then killed her by Farsa blows.

The witness further stated that she heard Lutu and Jhulu Brahmins shouting that Kedar's family has been finished but his daughter Bhagabai is alive and she too must be finished. Saying this the crowd went towards the direction of Bhagabai's house which was about two houses away from her own house. After the coast was clear this witness Bhawanibai and her Jethani Budharabai both ran towards

village Mutpuri which was the mother's place of her mother-in-law. It had started raining heavily at that time and taking cover in the fields they reached Mutpuri. They stayed at Mutpuri for the night and then boarded a bus at village Komra and came to Bhilai. At Bhilai she went to the house of Pilau her Mama Sasur i.e. brother of her mother-in-law and told him about the massacre. They stayed for the night at Pilau's house in Bhilai and then came to village Mutpuri with her Mama Sasur Pilau. Thereafter she, Budharabai and Pilau were taken by the police from Mutpuri to Bemetara.

This witness, whose examination-in-chief was over in 14 short paragraphs was subjected to gruelling cross-examination by three advocates. Her cross-examination runs into about 57 paragraphs.

Her presence near the scene of occurrence cannot be disputed. Her statement that she and her Jethani Budharabai had gone out for cutting Tewra crop has to be believed. Had she been in the house she too would have been murdered either by burning or by sword. When small infants were being killed by the frenzied Crowd of assailants surely she would not have been spared. She could not have gone to any other village as faintly suggested during cross-examination because she would not have left a suckling child in the house for a long period and secondly she would not have gone alone if she were to go to Mutpuri for hearing Ramayan. Bisahuram Kotwar (PW 2) who appeared to be inclined towards the accused persons, was questioned by defence counsel whether he had seen Bhawanibai, Budhara Bai and Bhagabai also at Mutpuri in the Ramayan congregation (para 35). The counsel hoped a favourable answer but the witness categorically denied their presence at Mutpuri. Since she had gone to the field to cut crops, she must have returned before sun-set because crops are never cut after sun-set. Her statement, that she and Budharabai came near the badi of Nandlal and seeing a violent crowd surrounding their house Tried to hid themselves behind the boundary wall; appears to be absolutely natural. The fact that she and Budharabai were not killed shows that they were not seen by the assailants and this could only be possible because they had taken cover and tried to hide themselves.

Statement of Patwari Tikaram (PW 24) who prepared this spot map and the inspection note (Ex.C-1) prepared by the learned trial Judge showed that a person hiding behind the boundary wall of Nandlal (height about three feet) could very well see the incident taking place in and around the house of the deceased persons. Thus there could be no doubt that Bhawanibai had seen the occurrence from the badi of Nandlal while concealing her presence behind the boundary wall.

Learned trial Judge in para 23 of the judgment disbelieved the testimony of Bhawanibai on absolutely untenable and frivolous grounds. In a very slipshod manner and without referring to the alleged omissions or contradictions in the statements of Bhawanibai in court and during investigation made a sweeping remark that she did not give details of the incident in her case diary statement

and also in her statement u/s 164, Criminal Procedure code and therefore, she could not be believed. In paragraphs 28 and 29 of the judgment the learned Judge referred to two minor discrepancies and then came to the conclusion that Bhawanibai could not be believed. The learned Judge, in fact, started with a presumption that Bhawanibai and Bhagabai being the relatives of the deceased were highly interested persons and their testimony had to be very carefully scrutinized. He also observed that independent witnesses were not examined. It is impossible to subscribe to the view of the learned trial Judge. He forgot that the Hindus of the entire village had a grudge against the family of Gangaprasad Satnami and had in broad-day-light massacred 14 persons. Who in these circumstances could dare to come forward and give statement against the accused persons particularly when some of them were still absconding and could take revenge ? A trial Judge must appreciate the evidence taking into consideration the probable conduct of persons in a given situation. He should with his experience be able to analyse the natural conduct of persons in cases like this where in a small village such a massacre had taken place in broad day light. The yard-stick applied by the Court below in appreciating the testimony of Bhawanibai indicated that the learned Judge was oblivious of the fears and apprehensions which a person living in a small village would entertain in such circumstances. As already noted Bhawanibai's presence was a proved fact and, therefore, her testimony ought not to have been thrown out completely only because she had either omitted some names or attributed a particular act to one accused in her case diary statement while there was some change in her version in Court. In Masalti Vs. State of U.P., it was observed --

Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault...

.....

Appreciation of evidence in such a complex case is no doubt a difficult task, but criminal Courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not.

The trial Court in a mechanical way rejected the evidence of Bhawanibai merely because there were some discrepancies about the names of persons present in the menacing crowd and the part attributed to some of them. The learned Judge did not visualise the mental condition of a young woman before whose eyes her husband and infant daughter and all other members of the family were being butchered and thrown into a raging fire. It could not be expected that Bhawanibai should have observed the incident and narrated it before the police and before the Court as if she was a stranger and a detached person. We

perused Ex.D-2 and Ex.D-3 which are statements of Bhawanibai under Sections 161 and 164, Criminal Procedure Code. Bhawanibai had named Ramdayal and Bijeram also among the persons who took part in the crime. In her statement in Court however she stated that she did not name Ramdayal and Bijeram. The trial Court could have taken this fact into consideration only for giving benefit of doubt to Ramdayal and Bijeram (who were not in the array of the accused persons) but ought not to have thrown out her testimony wholesale as unreliable because of this contradiction.

Great emphasis was laid by the trial Court as well as the learned counsel for the respondents on the fact that Bhawanibai had named some of the accused persons in her statement during investigation but in Court she stated that she knew them by face but not by names. Learned counsel went to the extent of arguing that a test identification parade ought to have been held because the witness did not know some of the accused persons by names. Obviously there is some misconception about the necessity of a test identification parade. Such a parade becomes necessary only when the accused is totally unknown, by face or name, to the witness and the witness had only a fleeting glance at him at the time of the incident. Bhawanibai may not have known all the accused persons by names because after all she had come to village Kestara only about three years back on her marriage to deceased Mathura Prasad. But she must have known nearly all the persons of the village by face because Kestara is a small village and the women folk must be going out for agricultural work and even for their daily needs. It is unfortunate that generally case diary statements are not recorded with great care or meticulousness. There is also a possibility of the Investigating Officer recording statements of other witnesses at the same time and then there can be some confusion about names particularly in a case of this nature. But the Judge has to use his sense of discrimination based on his experience, about human nature and conduct to find out the truth and not to take an easy course of throwing out the entire testimony of a witness on such tenuous grounds.

Learned counsel for the respondents referred to some decisions to buttress the trial Court's view that Bhawanibai could not have been relied upon because her statement u/s 164, Criminal Procedure code, had been recorded during investigation. It is impossible to fathom the reasons which prompted the Investigating Officer or his superiors to get statements of Bhawanibai and Bhagabai recorded u/s 164, Criminal Procedure code. They were the unfortunate victims of this carnage and there could never be any possibility of their resiling from their earlier version. We can only attribute this step on the part of the Investigating Officer to his ineptitude and lack of elementary common sense. Merely because Bhawanibai's statement was got recorded u/s 164, Criminal Procedure code, she could not be labelled as a false or an unreliable witness. We are clear that Bhawanibai was a truthful person and she witnessed the incident from Nandlal's badi.

Next witness of the incident was Bhagabai (PW 8). Bhagabai is the daughter of

Kedar and sister of deceased Gangaprasad and others. She is married in the same village and her house is located in Satnamipara at a distance of two houses from the house of the deceased. She was born in Kestara and knew all the accused persons by faces as well as by names. In paragraph 6 of her deposition she identified all the accused persons and gave out their names or their aliases. She stated that on the date of the incident just before sun set she was returning to her house from her mother's house. On the way in front of neighbour Nandlal's house she saw Bijeram, Ramdayal and Shivprasad. They were proceeding towards her father's house. They were carrying Farsis. When she reached her house she heard abuses and altercations between Bijeram, Ramdayal and Shivprasad on one hand and Jamunaprasad, Ranjit and Gangaprasad on the other. A fight ensued between them with Farsis. There was a hue and cry and all the accused persons came to the spot from Hindupara. Sukul and Bhanu were carrying kerosene containers and others were carrying Farsis. Then she narrated the entire incident about some of the accused persons collecting paira and after saturating it with kerosene setting fire to the house and killing the inmates who tried to run away. The story was the same as narrated by Bhawanibai as to how men, women and children who wanted to escape from the burning house were killed and how some of them were thrown into the fire. It is a hair-raising description of human brutality.

Strangely enough learned Judge observed in para 32 of the judgment that the Public Prosecutor conceded during the course of argument that Bhagabai should not be believed as regards her version about the earlier fight between Ramdayal, Bijeram and Shivprasad on the one hand and Jamuna Prasad and Gangaprasad on the other in the courtyard of Gangaprasad. It is difficult to appreciate such a concession by the Public Prosecutor. It is true that the incident preceding the massive assault by the crowd was not recorded in her police statement Ex.D-4. But this omission should not have been used for discrediting the testimony of Bhagabai, who was examined on 26-1-1982 by the Investigating Officer i.e. just a day after this incident occurred. During this interval Bhagabai had to run for her life to Bhilai where she met her father Kedar and informed him about the massacre of the entire family. Statement Ex.D-4 was brief and the emphasis was only on the main event which was narrated by Bhagabai. Sometimes in cases of such magnitude where there are communal overtones also, the Investigating Officer may not visualise the importance of antecedent factors. But the fact remains that Ramdayal, Bijeram and Shivprasad had a fight with Gangaprasad and his brothers on the same date and about the same time when this incident took place. Therefore, the statement of Bhagabai about the fight between her brothers and Ramdayal, Bijeram and Shivprasad with sharp weapons was not all that false as observed by the Court below. This was actually an admitted position. The incident which followed this fight was thus a case of vendetta by the caste fellows (Rawats) of the injured persons and other caste Hindus i.e. Brahmins etc. residing in Hindupara.

Learned trial Judge unblinkingly accepted the argument of the defence counsel

that these two women namely Bhawanibai and Bhagabai while running" for their lives from Kestara to Bhilai ought to have got down from the bus at Nandghat Police Station for reporting the incident. The learned Judge ought to have realised that these two young women who had seen the annihilation of the entire family with their own eyes must have been stiff with fright and their first anxiety would have been to save their lives and inform their elders i.e. Kedar (PW 9) and Pilau. It was inconceivable that they would have broken their journey at Nandghat for lodging a report. Learned Judge was oblivious of the natural human behaviour in such cases.

Learned counsel for the respondents submitted that when Kedar and Bhagabai went to the Superintendent of Police and Collector of Durg for informing them about this incident, a report ought to have been recorded at Police Station Durg. This argument has no merit. The first reaction of the district authorities in charge of law and order was naturally to rush to the spot with police force to prevent any backlash of communal frenzy. It was not a case of isolated murder where normal investigating process could have been visualized. We cannot give any importance to this line of argument.

It was argued for the respondents that Bhawanibai did not mention the names of the assailants to Biptinbai in whose house she took shelter at Mutpuri nor to her Mama Sasur Pilau at Bhilai and therefore, it must be inferred that she was tutored later by the police. This argument ignores the natural and normal pattern of human behaviour. Bhawanibai is an illiterate, inexperienced young woman belonging to a backward caste. She had seen the ghastly act and had somehow been able to save her life. She could not sit down and coolly describe the tragic event when the only impulse would have been to inform the elder persons about the brutal murders. Could it be imagined that Pilau and Kedar would have patiently listened to the entire incident when they learnt that everyone of their children had been cut and thrown into fire? Bhagabai stated that Kedar fainted when she told him about the tragedy. That was natural. So Bhawanibai's statement that she or Budharabai did not tell the names of the assailants to Biptinbai or Pilau, did not discredit her testimony.

Budharabai wife of deceased Gangaprasad who was present along with Bhawanibai in the badi of Nandlal and had seen the entire incident was cited as a witness but given up by the Public Prosecutor. It is difficult to fathom the reasons which prompted the Public Prosecutor to give up such an important witness. The record does not show, at least learned Advocate General was unable to show me, any application on behalf of prosecution setting out the reasons for giving up Budharabai. It is unfortunate that in a case of such importance, the Public Prosecutor was not as careful and vigilant as he should have been. These two instances i.e. one of concession about Bhagabai's reliability and the other of giving up Budharabai without placing before the Court the reason therefor, showed this ineptness. However, non-examination of Budharabai will not help the respondents. It was not suggested that had Budharabai been examined she

would have exonerated the respondents. There is no hard and fast rule that non-examination of an important witness must necessarily result in rejecting the testimony of other witnesses or casting a serious doubt in the prosecution case.

It is noteworthy that the learned trial Judge has not made any observation about non-examination of Budharabai nor has taken this fact into consideration while appreciating the testimony of Bhawanibai and Bhagabai.

In such cases of mass violence, as observed in Masalti's case, some mechanical formula for fixing criminal liability on persons who are members of a large unlawful assembly is inevitable.

Bhawanibai (PW 7) identified by names and faces accused Jhulu, Makhanlal, Ramkhilawan, Govind, Thulu alias Jaitram, Kanhaiya, Moti, Tanwar, Deendayal, Prasad alias Shivprasad, Dongarha, Mantram, Ramchandra, Milan, Janak, Nandlal, Suklu, Bhanu alias Bisauha and Feku. She identified in Court accused Mohit, Maniram, Dhvajaram, Ramkumar, Bhagwati, Nandkumar and others. Ramkumar, Bharatlal, Shivkumar, Jageshwar, Shivdayal, Siyaram, Sukhiram, Shatrughan, Panchu, Laxman, Derba, Ghanaram, Jahaval, Birendra Kumar and Ghana. She stated that she did not know the names of these persons though she knew them by faces and all these persons were present at the time of the incident and took part in the massacre.

In her case diary statement she had named Shivdayal, Ramdayal, Shivprasad, Thulu alias Jaitram, Janak, Ramchandra, Ghana, Jahaval, Mantram, Amrika alias Ambika, Nandu, Govind Jhulu, Ramkumar, Milan, Bhuri, Ramkhilawan, Makhanlal, Mohit Suklu, Nandlal, Kanhaiya, Dongarha, Derba, Motilal, Bhanu alias Bisauha, Tanwar and other persons also of the village. In her 164, Criminal Procedure code statement Ex. D-3 she, narrated the incident in greater detail and included the names of Deendayal and Bijaram also.

Bhagabai (PW 8) daughter of Kedar and sister of deceased Gangaprasad, Jamunaprasad etc. knew all assailants by names and faces, She gave a detailed account of the incident right from the beginning. She stated that she saw Bijaram, Deendayal, Shivdayal, Mantram and Milan attacking her brother Gangaprasad with Farsis. Thereafter Deendayal, Nandlal and Motilal threw paira over and inside the house and Jhulu, Govind, Bijaram, Thulu alias Jaitram, Janak and Tanwar sprinkled kerosene oil on the paira which was thrown on the house. Accused Ramchandra and Bhuri then set fire to the house. She further named Shivkumar, Bharatlal, Shatru alias Shatrughan, Lutu alias Ramkumar, Thulu alias Jaitram and Govind chasing and assaulting Mathuraprasad and Ranjit with Farsis. Accused Ramchandra, Mantram, Janak and Tanwar attacked and killed Rukhmaj. Shivprasad son of deceased Hem Prasad was hit with a Farsa by accused Shiv Kumar. Accused Laxman killed Chandrasen son of Jamunaprasad and threw him in the flames. Shivdayal threw deceased Shivkumar in the fire. Accused Ambika alias Amrika hit Sonabai by Farsi and when she fell down, Bharatlal, Suklu and Amrika alias Ambika threw her in flames. Accused Nandu hit Rewantibai with

Farsi and then Bhuri and Guddi alias Birendrakumar inflicted more Farsi blows and threw her in the fire. Reshambai wife of Mathuraprasad came out with her infant child Shanti when accused Mantram hit her with a sword. The child Shanti was snatched by Mantram and thrown in fire. Ramkumar hit Reshambai with a Tabbal and she fell down. Then Ramkhilawan Rawat (absconding) cut her stomach with a Farsi. Reshambai was pregnant, her foetus was pulled out and thrown by Ramsingh in the fire. Accused Govind snatched infant child Sita, daughter of Bhawanibai (PW 7) from the arms of Pilabai, mother of deceased Gangaprasad and Shivprasad threw the infant in the fire. Accused Suklu, Bhanu and Dongarha tied Pilabai with a tree and then killed her with Farsi blows.

Though we have not the least hesitation in saying that Bhawanibai and Bhagabai were truthful witnesses, yet we will choose to err on the safer side in convicting only such of the accused respondents who have been identified by both the witnesses. As already noted leave was refused against some of the respondents. From among the remaining respondents, common names found in the statements of Bhawanibai and Bhagabai are Jhulu, Ramkhilawan, Govind, Thulu alias Jaitram, Moti, Tanwar, Deendayal, Lutu Ramkumar, Shivprasad, Dongarha, Mantram, Ramchandra, Milan, Janak, Nandlal, Bisauha alias Bhanu, Ramkumar, Bharat, Shivkumar, Shivdayal, Shatrughan and Laxman. This is not to say that statements of these two witnesses as regards involvements of the other respondents are rejected as false. We are only taking a safe course in order to convict such of them whose names are common in the statements of both the witnesses.

The State appeal against acquittal is partly allowed. Acquittal of respondents Jhulu, Ramkhilawan, Govind, Thulu alias Jaitram, Moti, Tanwar, Deendayal, Lutu Ramkumar, Shivprasad, Dongarha, Mantram, Ramchandra, Milan, Janak, Nandlal, Bisauha alias Bhanu, Ramkumar, Bharat, Shivkumar, Shivdayal, Shatrughan and Laxman is set aside and they are convicted under Sections 148, 302/149 and 436/149, Indian Penal Code.

We heard learned counsel on the question of sentence also because we felt that the savagery and brutality of the crime warranted death sentences. In State of U.P. Vs. Mahendra Singh and Others, , the Supreme Court had reversed the judgment of acquittal recorded by the High Court and restored the death penalties awarded by the Sessions Judge in more or less in a similar case of brutal and mass murder. However, in the instant case the Court below had acquitted the respondents and therefore, we think it will not be advisable to award death sentences to the convicted respondents after the lapse of nearly six years.

We sentence respondents Jhulu, Ramkhilawan, Govind, Thulu alias Jaitram, Moti, Tanwar, Deendayal, Lutu Ramkumar, Shivprasad, Dongarha, Mantram, Ramchandra, Milan, Janak, Nandlal, Bisauha alias Bhanu, Ramkumar, Bharat, Shivkumar, Shivdayal, Shatrughan and Laxman to two years" rigorous imprisonment u/s 148, Indian Penal Code, imprisonment for life under Sections

302/149, Indian Penal Code and ten years" rigorous imprisonment under Sections 436/149, Indian Penal Code. Sentences shall run concurrently.

The convicted respondents are also sentenced to pay a fine of Rs. 2,000/- (Rupees Two Thousand only) each for the aforesaid offence under Sections 302/149, Indian Penal Code. Out of the amount of fine so recovered Rs. 15,000/- (Rupees Fifteen Thousand only) will be paid to Bhawanibai and Rs. 15,000/- (Rupees Fifteen Thousand only) to Budharabai whose husbands and-children were killed in this incident respondents are on bail Their bail bonds are cancelled, and they are directed to surrender forthwith before CJM, Durg. CJM, Durg to take necessary action for compliance of this order.