
(1964) 02 MP CK 0013
In the Madhya Pradesh High Court
Case No : Criminal A. No. 299 of 1962

State of Madhya Pradesh

APPELLANT

Vs

Nabi Bux Jan Mohammed and Others

RESPONDENT

Date of Decision : 13-02-1964

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 148, 149, 323, 324

Citation : (1966) JLJ 750 : (1966) MPLJ 1068

Hon'ble Judges : T.P. Naik, J; N.M. Golwalker, J

Bench : Division Bench

Advocate : S.P. Bhargava and Rajendra Singh, for the Appellant; R.J. Bhawe, Govt. Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

T.P. Naik, J.

The accused-respondents Nos. 1 to 15, namely, Nabi Bux, Ramzan, Habibullah, Bismillah, Abdul Salam, Mohammad Shag, Peer Bux, Papa Ramzan, Kadar, Ramzan s/o. Razzak, Sheikh Mohammad, Haji Amir Badshah, Gafoor, Usman and Jamaluddin, were prosecuted in the Court of the 3rd Additional Sessions Judge, Jabalpur, for offences under sections 120-B, 148, 436, 450, 452, 323, 324 and 397 read with section 149 of the Indian Penal Code. The trial Court acquitted them all of all the offences. The State Government has, therefore, filed this appeal against their acquittals.

The case for the prosecution, in brief, was as follows:-

On the night of 7-2-1961, at about 9-15 p.m., an assembly consisting of about 300-400 persons came to the house of the complainant Ramchandra (P. W. 1), that the assembly was shouting communal slogans, inciting the people to kill and loot the Hindus, and that the members of that assembly were armed with axes, spears, lathis, daggers and flaming torches. The complainant Ramchandra (P. W. 1) was in his house at that time, along with his Son, Shambhu Dayal (P. W. 2)

and widowed sister Mst. Gomti Bai (P. W. 6). In order to ascertain as to what the commotion was about, the complainant Ramchandra (P. W. 1) opened the front door of his house when he saw the accused-respondent Ramzan Papa, whom he asked as to what the matter was. Ramzan Papa assured him that no harm would come to them. Even thereafter, suspecting that something was wrong, the three of them (viz. P. Ws. 1, 2 and 6) went up to the first floor of their house. From the balcony of their house, they then saw a large mob of about 300-400 strong converging on the Nalband Mohalla and their house. The rioters thereupon broke open the door of the parchhi of the house of the complainant Ramchandra (P. W. 1) and set fire to it. Some of the rioters climbed a ladder on to the balcony of his house and threw acid on Ramchandra (P. W. 1) and Shambhu Dayal (P. W. 2) which caused acid burns to them. Meanwhile, a stone hurled by one of the members of the assembly struck Mst. Gomti Bai (P. W. 6) injuring her. Some of the members of the assembly also took away a cash-box containing Rs. 1,500 from the ground-floor of the house of the complainant Ramchandra (P. W. 1). Shortly afterwards, the police arrived on the scene and had to open fire on the mob before peace could be restored. It is further alleged that all the aforesaid attack as well as the attack on the other houses of the locality was in pursuance of a criminal conspiracy entered into between the accused-respondents Hafiz Nabi Bux, Habibullah, Ramzan Papa and Haji Amir Badshah, along with other Muslims of Garha, Baidra Mohalla, Kanchghar, Ghamapur, Naya Mohalla, Gohalpur and Nalband Mohalla in general. It is further alleged that in the police firing, which had taken place, the accused respondent Hafiz Nabi Bux was wounded in his leg.

The first information report (Ex. P.1) of the incident was made by the complainant Ramchandra (P. W. 1) at the Victoria Hospital on the 8th of February 1961, at 12 noon. During investigation, the doors of the house of the complainant Ramchandra (P. W. 1) were seized by the police.

All the accused-respondents abjured their guilt and pleaded that they had been falsely implicated due to communal feelings.

To explain the injury caused to his leg, by a gun-shot, the accused-respondent Hafiz Nabi Bux stated that on the night of the 7th February 1961, one Kunjbihari was blowing conches and ringing bells and that when he (the accused) had remonstrated with him not to do so, the said Kunjbihari had fired at him which had resulted in a wound in his leg.

The trial Court acquitted all the accused-respondents, inter alia, holding that though there was an unlawful assembly at Nalband Mohalla square on the night of the 7th of February 1961, the complicity of the accused-respondents therein had not been conclusively established, because the prosecution witnesses, who spoke of the presence of the accused-respondents in that unlawful assembly, were not reliable.

In this appeal, it is not seriously disputed that there was an unlawful assembly

on the night of the incident. The only question, therefore, that arises for consideration is whether the trial Court was in error in holding that from the evidence on record the complicity of the accused-respondents in the offences charged had not been established beyond all reasonable doubt.

The case for the prosecution mainly rests on the oral evidence of the complainant Ramchandra (P. W. 1), his son Shambhu Dayal (P. W. 2), Indra kumar (P. W. 5), Mst. Gomti Bai (P. W. 6), Dhani Ram (P. W. 10) and the four S. A. F. constables on duty at the time, viz. Baijnath Singh (P. W. 19), Radhelal (P. W. 20), Baijnath Prasad (P. W. 24) and Keshri Prasad (P. W. 25).

As this is a case arising out of communal riots and as the complicity of the accused respondents in the offences charged depends mainly on the oral testimony of the prosecution witnesses, we shall have to bear certain facts in mind which will have a bearing in appreciating their evidence. They are-

(a) The witnesses all belong to one community in a case which had assumed communal colour. We shall, therefore, have to guard against their communal prejudices having the better of their regard for truth.

(b) The main prosecution witnesses, viz., the complainant Ramchandra (P. W. 1), his son Shambhu Dayal (P. W. 2) and his sister Mst Gomti Bai (P. W. 6) are all closely related. Though the fact of relationship is not, by itself, any reason for rejecting their testimony, it furnishes a strong motive for overstating one's case, for exaggerating it and for falsely implicating persons. Consequently greater care shall have to be taken in scrutinizing their evidence.

(c) The prosecution witnesses had not impressed the learned Additional Sessions Judge as truthful or reliable witnesses. The learned Judge had had an opportunity of seeing them depose before him and consequently, his appreciation of their reliability would have to be given due weight.

(d) The incident had occurred on the night of the 7th of February 1961 of which a report (Ex. P-1) was made by the complainant Ramchandra (P. W. 1) on the noon of the next day. There is no convincing explanation as to why no report had been made earlier even though the complainant Ramchandra (P. W. 1) was in the company of the police for quite some time in the evening of the incident and especially when he was in the City Kotwali for about an hour.

(e) It is significant that of the prosecution witnesses, Shambhu Dayal (P. W. 2), Mat. Gomti Bai (P. W. 6), Indrakumar (P. W. 5) and Dhani Ram (P. W. 10) were not examined by the police till about five weeks after the date of the incident. They were examined on or about the 13th of March 1961.

The four constables on duty at that time viz., Baijnath Singh (P. W. 19), Radhelal (P. W. 20), Baijnath Prasad (P. W. 24) and Keshri Prasad (P. W. 25) were examined on or about 19-4-1961, while Ram Prasad (P. W. 37) and Shadu (P. W. 38) were not examined at all.

(f) Even the complainant Ramchandra (P. W. 1), who had given his earliest version on the noon of the 8th of February 1961, has added to the list of the accused in his later statements.

(g) The prosecution witnesses had thus ample scope and opportunity for improving their story, and the accused were thereby deprived of the witnesses' earliest versions of the incident to enable them to effectively cross-examine them. This late examination of the prosecution witnesses and in some cases their non-examination furnished ample opportunity to the prosecution witnesses to connect their stories or embellish them.

(h) It is true that the police was, during this interval, otherwise busy in maintaining law and order and had thus no time to investigate into the crime; but as held by us so very often in similar cases, it is not that the police is not to blame, nor that the witnesses are not to blame for their late examination or non-examination, but the fact that the accused had been deprived of the prosecution witnesses' earliest versions of the incident before they could have had any opportunity for concoction or embellishment; so that, they could more effectively cross-examine them with reference to their earliest versions.

(i) The circumstances under which the witnesses had had to identify the miscreants were such when easy identification was not possible and mistaken identification could not absolutely be ruled out. It was night time, about 9-30 p.m. There was very uncertain light of lighted torches and of a Municipal street lamp which also had gone out when the disturbance was on. The crowd was admittedly hostile and bent on doing mischief when the first thought of the witnesses would be for their personal safety and not for picking out the miscreants for an eventual report to the police. Then, again, Ramchandra (P. W. 1). Shambhu Dayal (P. W. 2) and Mst. Gomti Bai (P. W. 6) claim to have seen the persons whom they claim to identify as members of the unlawful assembly for about a minute or two from the balcony of their house when they were busy extinguishing the fire and when acid was thrown on Ramchandra (P. W. 1) and Shambhu Dayal (P. W. 2) injuring the former in one of his eyes, while Indrakumar (P. W. 5) and Dhani Ram (P. W. 10) saw them from a distance of about 82 yards from their own houses in a different lane. Thus, uncertain light, distance, uproar, tumult and disorder or a riotous crowd and a feeling of personal insecurity were all in favour of a nightmarish picture of the incident wherein certain identification by the witnesses was very difficult, if not possible.

(j) The witnesses have lied on various important particulars. They have improved their stories from time to time in important details and added to the list of persons whom they claim to have identified on the night of the incident as being members of the unlawful assembly. They thus fall into the category of witnesses who are not wholly reliable and on whose testimony no implicit reliance could be placed. We are, therefore, of opinion that their testimony ought not be accepted to convict an accused-respondent unless it was adequately corroborated by independent reliable evidence implicating the accused.

In this connection, it is further important to remember that even Ramchandra (P. W. 1), whose earliest version (Ex. P-1) we have on record, has so materially changed his version that it is difficult to place any implicit reliance on his testimony.

(i) Thus, while Ramchandra's (P. W. 1) first version in the first information report (Ex. P-1) was that he first saw the accused-respondent Ramzan Papa and the rioters from the balcony of his house, where he had gone on being informed of the commotion by his son Sambhu Dayal (P. W. 2), his story in the Court of Session was that he had seen the incident from the ground floor by opening the front door. He admits that where Ramzan Papa was standing was not visible from the balcony of his house and that he could not have seen him from there. He further admits that his statement in Ex. P-1 that he was lying down and reading "Gita" after taking his meals, that his son Shambhu Dayal (P. W. 2) was upstairs and that he had gone up on being informed by him of the commotion and that he saw the accused-respondent Ramzan Papa by leaning over the balcony were also false.

(ii) There was no mention in Ex. P-1 that the accused respondent Ramzan Papa was armed; but in the versions given in the committal Court and the Court of Session he is stated to carry a lathi and his companions are also stated to carry weapons. When asked to explain this improvement, he (P. W. 1) explained in the committal Court by saying that he had forgotten to mention it, while in the Court of Session he attributed the omission to his physical pain and mental strain at the time of making the report.

(iii) In the first information report (Ex. P-1) the fact that the rioters had climbed to the balcony of the house of Ramchandra (P. W. 1) by means of a ladder is not mentioned, nor the fact that the accused-respondent Habibulla was the person who had done so. No ladder has been seized and, in the opinion of the trial Court, the "ladder story" was very improbable and appeared to be false and concocted.

(iv) The names of the accused respondents Nabibux, Jamaluddin, Ramzan Manager, Gafoor, Usman, Bismillah, Amir Badshah and Sheikh Mohammad do not find place in the first information report (Ex. P-1), and yet they have now been implicated and two different reasons are given at two different places for this omission. In the committal Court the omission is put down to loss of memory, while in the Court of Session it is put down to physical pain in the eyes. Remembering that he (P. W. 1) had only suffered a first degree acid burn in one of his eyes and that he was quite out of danger on the noon of the 8th of February 1961, when his statement Ex. P-1 was recorded in the Victoria Hospital, The omission of names assumes importance and the later inclusion of their names further shows that the complainant (P. W. 1) was quite capable of mixing falsehoods with truth.

(v) The omission to mention the loss of the cash-box with cash worth about Rs.

1,500 in the first information report (Ex. P-1) is not adequately explained; and even if it be accepted that its loss was not known at that time, the omission to report the loss when discovered has not been explained and throws a considerable doubt on the story of the loss of the cash-box, and the reasons given by the learned Judge for not accepting his story on the point in paragraph 24 et seq. of his judgment assumes great importance.

(k) Similarly, Shambhu Dayal (P. W. 2) had not disclosed the names of the miscreants till 13-3-1961 when he was examined by the police for the first time. It is significant that he did not disclose their names even to his relative Narayan Das (P. W. 7) who had come to his house immediately after the incident that very night. The next day, i.e. on 8-2-1961 he had gone to the hospital to visit his father; but before going there, he had met Dhani Ram (P. W. 10) to whom he now states that he had not disclosed the names, though in the committal Court he had stated that he had disclosed to Dhani Ram (P. W. 10) the whole of the incident

. This witness was not at all seriously injured by the alleged throwing of the acid and, consequently, nothing prevented him from making a report to the police. In any case, his meeting his father Ramchandra (P. W. 1) and Dhani Ram (P. W. 10) the day after the incident shows that he had ample opportunity to compare notes with them and to think out a story in conformity with theirs. Then, again, he has further improved his story from the one he had given to the police on or about 13-3-1961. In his statement to the police, he did not say that Ramzan Papa and his companions were armed. It would be remembered that this was in keeping with the first information report (Ex. P-1) made by Ramchandra (P. W. 1); but later they have all changed their versions in this regard. When asked to explain the reason for this improvement, he pleaded forgetfulness which appears suspicious. Similarly, even though his statement to the police was that he had not identified the persons who had climbed the balcony of his house and thrown acid at him and his father, he now says that the accused-respondent Habibulla was one of them and that he had omitted to name him earlier due to forgetfulness. We cannot say that this witness is any better than his father Ramchandra (P. W. 1) and his evidence shows that he had told the same tale as his father.

(1) Mst. Gomitibai (P. W. 6), the sister of the complainant Ramchandra (P. W. 1), admits to have disclosed the names of the miscreants to hundreds of persons till her examination by the police about five weeks after the incident; but, then, she says that though she was in the Kotwali for about an hour some time after the incident on the night of the 7th of February 1961, she did not disclose the names there. She further admits having disclosed the names to Ramchandra (P. W. 1) and Shambhu Dayal (P. W. 2) much before she was examined by the police and in so far as she admits having done so to them as well as to others, it cannot be denied that her version of the incident must have been considerably influenced by this discussion which is amply reflected in her deposition in the Court of

Session. She implicates practically the same set of persons in the same incident as have been implicated by Ramchandra (P. W. 1) and Shambhu Dayal (P. W. 2) and practically makes the same kind of departures from her police-diary statement as have been made by the other two. She had also omitted to mention in her police-diary statement that the accused-respondent Ramzan Papa and his companions were armed; but in her statement in the Court of Session, she says that they were armed. And that it was wrongly not recorded in the police-diary statement. In her Court statement, she further mentions the presence of Ramzan Kunjda whom she had failed to name in the police diary statement. Her claim to recognise the miscreants in what we have termed uncertain light is based on the fact that she recognised them in the light of the torches

which the miscreants carried at the time, which appears rather improbable.

As regards the loss of the cash-box, she says that she had mentioned the loss to the police and could not, therefore, explain why it was not mentioned in Ex. D-6. She claims to be the first to discover the loss of the cash-box, but, then, she says that she did not report it to the complainant (P. W. 1) in the hospital lest it may shock him; and so far as the police was concerned, no occasion arose for her to report about it to them. It is further significant that she does not ascribe any particular role to the persons she names as present in the unlawful assembly.

Her (P. W. 6's) evidence, therefore, was rightly not accepted by the trial Court at its face value.

(m) Indrakumar (P. W. 5) and Dhani Ram (P. W. 10) are the residents of Dhalgar Mohalla which is at some distance away from the Nalband Mohalla where the incident occurred. They claim to have seen the incident from their own houses which are at a distance at about 82 yards from the house of the complainant Ramchandta (P. W. 1) and as they have claimed to recognise the accused-respondents in the light of the torches

and of the electric poles, it cannot be said that it was absolutely free from doubt, especially as it was done at about 9.30 p.m. in the night and when there would have been considerable uproar and tumult to permit easy identification.

(n) In the case of some of the accused-respondents, reliance has also been placed on the testimony of the four S.A F. constables, e.g., Baijnath Singh (P. W. 19), Radhelal (P. W. 20), Baijnath Prasad (P. W. 24) and Keshri Prasad (P. W. 25), whose evidence did not commend itself to the learned Additional Sessions Judge for the reasons given by him in paragraphs 44 to 50 of his judgment. No adequate reasons are forthcoming why his appreciations of their evidence should be disturbed and a different view be taken of their evidence. In our opinion, the fact that they were not examined by the police during investigation for over two months and were, for the first time, made to give their versions of the incident on or about 19-4-1961 substantially detracts from their testimony which is further weakened by their prevarications on several material points.

Bearing the aforesaid circumstances in mind, we shall now carefully examine the oral evidence of the prosecution witnesses to ascertain for ourselves if they could be believed to convict any of the accused-respondents, and if so, how far.

The evidence was read over to us in extenso and we have again carefully read it for ourselves, and the impression left in our minds is that the prosecution witnesses were not speaking the truth on a number of material points and that they had improved their story from time to time, so that the learned Judge of the trial Court was not far wrong when he held that their testimony did not inspire any confidence in him. Under the circumstances, the only prudent course would be to accept the testimony of the prosecution witnesses to the extent to which it was adequately corroborated by some unimpeachable independent evidence on record. We are further clear that as one unsatisfactory witness could not be used to corroborate another, we would have to seek for some independent reliable evidence implicating the accused-respondents in the offences charged before basing their convictions on such evidence by setting aside their acquittals in an appeal against their acquittals.

We shall now examine the cases of the accused-respondents seriatim:

Nabi Bux: His presence in the unlawful assembly at the relevant time is deposed to by the complainant Ramchandra (P. W. 1), his son Shambhu Dayal (P. W. 2), his sister Mst. Gomtibai (P. W. 6), Indrakumar (P. W. 5) and Dhani Ram (P. W. 10). There is no adequate reliable evidence to corroborate their testimony with regard to this accused-respondent.

Ramchandra (P. W. 1) says that he had seen this accused-respondent, along with the accused-respondents Habibullah, Amir Badshah and Jamaluddin inciting the unlawful assembly to commit arson, loot and murder of the Hindus. It is, however, significant that not only the aforesaid facts do not find place in his first information report (Ex. P-1) but that he has also omitted to name him as one of the rioters in that report. Therefore, not only is there no independent reliable corroboration of the testimony of the eye-witnesses to implicate this accused-respondent but that even the first information report (Ex. P-1) does not contain his name.

It is, however, said that this accused respondent had a bullet-injury on one of his legs which fact establishes his presence in the unlawful assembly on the night of the incident and thus corroborates the testimony of the prosecution witnesses as against him. But even here, the evidence does not appear to be conclusive to establish that the bullet-injury found on his person was received by him in the police firing when he was a member of the unlawful assembly in question.

According to the Senior Superintendent of Police Deshmukh (P. W. 40) 303 bullets were used in the police firing on that night; and there is no evidence to establish that the injury caused to this accused respondent was by a bullet of the aforesaid kind.

Again, according to the out-door ticket of the accused-respondent Nabi Bux, he had three wounds on his left leg when he was admitted to the hospital and examined by Dr. Mishra (P. W. 15) on the mid-night of the 7th February 1961. The three wounds were as under (vide Ex. P-12):

(i) punctured wound, left leg, medial aspect, 2 1/2" x 3/4" x 1/2".

(ii) Punctured wound, 2 1/2 x" above wound No. (i), 5" x 3" on the opposite side of above wound.

(iii) Punctured wound, 1/2" x oval, opposite to wound No. (ii) and on side of wound No. (i).

Of the above wounds, wounds Nos. (ii) and (iii) were found, on probing, to be connected and communicating. However, in the injury report given by the said doctor on 21-2-1961 only two injuries are mentioned which probably correspond to injury Nos. (i) and (ii), while the punctured wound, 1/2" x oval, opposite to wound No. (ii) and on the side of wound No (i), appears to be omitted. No explanation is forthcoming for this omission, and yet in his reply to the query of the C. I. D. Inspector (Exs. P-11 and P-11-A) he gave the shape of the wound to be oval which is the description of the third wound which he had omitted to mention in his injury report (Ex. P-10). In his examination in Court, the witness, Dr. Mishra (P. W. 15), has further admitted that his replies were given from memory which makes it highly unsatisfactory to rely on his testimony on the point, especially as he agrees with the observations of Modi in his Medical Jurisprudence (Thirteenth Edition, p. 222) that now-a-days Army bullets leave marks of entry and exit which are almost circular and similar in appearance. So that, the oval shape of the wound recorded by him (P. W. 15) in Exs. P-11-A and P-12 could not have been correct. Again, it is not explained how wounds Nos. (i) and (ii) became exit and entrance wounds when, according to Ex. P-12, wounds Nos. (i) and (ii) were connected and communicating, while the wound No. (i) was only 1/2" deep. Then, again, from the Bears seen on the person of the accused-respondent Nabi Bux at the time of his cross-examination, the doctor (P. W. 15) opined that-

"Of the eleven scars shown to me, all the scars except two referred to above have been caused by boils (these two scars were on the left leg on the same side forming an angle of 45 degrees from the surface of the earth). Barring two marks shown to me today by the cross-examining counsel, I do not think if any other mark would conform to the report (Ex. P-10). Of both the scars which are on the same side, only one could conform to my report. I do not find any scar on the opposite side of the leg to conform to my report."

Thus, the scars do not bear out the report or the testimony of the doctor (P. W. 15) and his suggestion that there need not be a scar to every gun-shot wound does not appear very unconvincing when there were so many discrepancies in his evidence and the reports written by him. The prosecution evidence also does not explain how two gun-shot injuries could be found on the medial aspect of the left

leg on the same side forming an angle of 45 degrees if the firing was with rifles held level, especially when there was no suggestion that the bullet had ricocheted. Under these circumstances, the finding of the learned Additional Sessions Judge that it had not been established that the alleged gun-shot injuries to the accused-respondent Nabi Bux was caused when he was a member of the unlawful assembly in question cannot be assailed. With this piece of corroborative evidence not being available to the prosecution, we are left with highly unsatisfactory oral evidence on which to base his conviction; and as we have already stated that it would be highly dangerous to do so, unless it were corroborated in material particulars by adequate independent evidence, we are of opinion that the acquittal of this accused-respondent was proper and no interference with his acquittal in this appeal is permissible.

At this stage, we may also briefly consider the charge of criminal conspiracy levelled against the accused. The circumstances alleged on the basis of which the prosecution desires that an inference of criminal conspiracy be drawn are that the accused respondents Nabi Bux, Ramzan Papa, Habibulla and Amir Badshah were seen talking in low tones at the doors of the Masjid on the afternoon of 7-2-1961, that they were also seen visiting the houses of the Muslims and moving about in the Nalband Mohalla that afternoon. It is further alleged that on the 5th of February 1961 the accused-respondent Nabi Bux had used the Corporation Ambulance Car for inciting the Muslims of several Mohallas.

Now, it is correctly pointed out by the learned Additional Sessions Judge that, in order to permit a reasonable inference of criminal conspiracy, there must be proof not only of association but also of something suspicious in such association, and of this there is no evidence in this case. Consequently, mere evidence of association could not very much help the prosecution.

It is also significant to note that even this circumstance of association is based on the evidence of Ramchandra (P. W. 1) and Shambhu Dayal (P. W. 2), whose evidence has been found to be thoroughly unreliable, and on the evidence of Ram Prasad Dube (P. W. 37) and R. S. Shastri (P. W. 38), who were never examined by the police during investigation, so that there was nothing with reference to which their statements could be tested. We quite agree that, under the circumstances, the evidence to prove association was worthless and could not be relied on.

The only circumstance where incitement is alleged is when the accused respondent Nabi Bux was moving about in the Corporation Ambulance Car. The accused-respondent has denied the insinuation of incitement of Muslims for revenge and violence against the Hindus. According to Dulichand (P. W. 27), the driver of the ambulance car, the accused respondent Nabi Bux, when he was in Baidar Mohalla, had abused the Muslims and had said in great excitement that they (the Muslims) should come and live in huts in "Motinala" and then he would see the Hindus whom he then filthily abused. He is supported in this by Binod Kumar (P. W. 28). Their evidence suggests that this was more a soliloquy than

any incitement to Muslims to do violence against the Hindus; but this apart, the accused-respondent Nabi Bux had denied taking the ambulance car to Baidar Mohalla, and he is supported in this by the Log Book (Ex. P-21-B). The log book further mentions that the accused-respondent Nabi Bux was moving about in the ambulance car in search of the missing persons which fact is also corroborated by the evidence of Dulichand (P. W. 27) and Binod Kumar (P. W. 28). We, therefore, agree that the evidence of Dulichand (P. W. 27) and Binod Kumar (P. W. 28) on the point cannot be believed, as there is no adequate explanation for the omission to mention Baidar Mohalla in the Log Book (Ex. P-21-B). These witnesses were also not examined by the police till 10-4-1961 and for the reasons already mentioned their evidence has to be accepted with a great deal of caution.

We, thus, further hold that there was no substance in the charge of criminal conspiracy and the acquittal of the accused of an offence u/s 120-B of the Indian Penal Code could not be considered erroneous.

Ramzan s/o Taj Mohammad alias Ramzan Manager: The complainant Ramchandra (P. W. 1), Shambhu Dayal (P. W. 2) and Mst. Gomtibai (P. W. 6) claim to recognise him as being present in the unlawful assembly on the night of the incident; but Ramchandra (P. W. 1) had omitted to mention his name in his first information report (Ex. P-1). Indrakumar (P. W. 5) and Dhani Ram (P. W. 10) have also omitted to name him in their depositions. Baijnath Singh (P. W. 19), Radhelal (P. W. 20), Baijnath Prasad (P. W. 24) and Keshri Prasad (P. W. 25), the S. A. F. constables, no doubt, speak of his presence in the said unlawful assembly. According to them, he was inciting the mob to commit acts of violence; but the trial Court has given good and sufficient reasons why these witnesses ought not be believed, and we have also held that it would be too dangerous to act on their uncorroborated testimony.

Reliance is placed on the fact that this accused respondent was identified by Baijnath Singh (P. W. 19), Radhelal (P. W. 20), Baijnath Prasad (P. W. 24) and Keshri Prasad (P. W. 25) in a test identification parade; but the fact that he was the only person present in that parade with optical glasses on robs the parade of its importance. The trial Court has also pointed out how the parade was otherwise unreliable and, in our opinion, under the circumstances of the case, his identification by the aforesaid witnesses in a test identification parade cannot and does not advance the case of the prosecution.

It is then contended that the injuries found on his person may be accepted as a piece of independent corroboration implicating this accused-respondent in the offences; but in the absence of evidence to show that he had received those injuries in the riot, no use can be made of those injuries. Consequently, as there is no evidence to corroborate the oral evidence of the aforesaid witnesses implicating him in the offences, we are of opinion that his acquittal cannot be interfered with.

The appeal against the acquittal of this accused-respondent thus fails.

Usman: His presence in that unlawful assembly is sought to be established on the uncorroborated testimony of Ramchandra (P. W. 1), Shambhu Dayal (P. W. 2) and Mst. Gomtibai (P. W. 6). Indrakumar (P. W. 5) and Dhani Ram (P. W. 10) do not name him as one of the rioters whom they had seen in the unlawful assembly, and even Ramchandra (P. W. 1) had failed to name him in the first information report (Ex. P-1).

Under the circumstances, there is no merit in an appeal against his acquittal which is accordingly dismissed.

Ramazan Papa and Abdul Salam: Ramchandra (P. W. 1), Shambhu Dayal (P. W. 2), Indrakumar (P. W. 5) and Mst. Gomtibai (P. W. 6) speak of the presence of these accused-respondents in the unlawful assembly on that night. As for the accused-respondent Ramzan Papa, Ramchandra (P. W. 1) claims to have seen him at the door of his house; but he had substantially changed his story in this regard from that given by him in his first information report (Ex. P.1). Shambhu Dayal (P. W. 2) and Mst. Gomtibai (P. W. 6) have towed his line. Their evidence is that they had seen the two accused-respondents, along with others, in the unlawful assembly when they had a glimpse of it in the light of the mashale and in the light from the municipal electric street lamps from the balcony of their house for about a couple of minutes which could hardly be regarded as a very satisfactory method for recognising them in the tumultuous crowd. As for Indrakumar (P. W. 5), he had the additional disadvantage of seeing them from a distance of about 82 yards. We have already held that in the absence of adequate independent corroboration, their oral testimony alone was insufficient for convicting the accused. The prosecution is unable to point out any corroborative evidence implicating these accused-respondents in the offences charged.

Consequently, the acquittal of these accused-respondents was well merited and needs no interference in this appeal.

Jamaluddin, Peer Bux and Bismilla: They are implicated in the offences by Ramchandra (P. W. 1), Shambhu Dayal (P. W. 2), Mst. Gomtibai (P. W. 6) and Dhani Ram (P. W. 10). As regards the accused respondent Jamaluddin, Ramchandra (P. W. 1) had further stated that he along with the accused-respondents Nabi Bux, Habibullah and Amir Badshah, was shouting anti-Hindu slogans and urging the Muslims to do violence against them. This fact, however, he had omitted to mention in his first information report (Ex. P-1) for reasons on which he is not very consistent as already discussed above. The names of these accused-respondents are not mentioned by Indrakumar (P. W. 5). But all this apart, for the reasons already given by us, we consider it extremely unsafe to base the convictions of these accused-respondents on the uncorroborated oral testimony of the aforesaid witnesses; and as there is no corroborative evidence, their acquittals must be upheld.

Habibulla, Mohammad Shafi, Gafoor, Haji Amir Badshah, Sheikh Mohammad, Kadar and Ramzan s/o Razzak: They are implicated in the offences by Ramchandra (P. W. 1), Shambhu Dayal (P. W. 2), Indrakumar (P. W. 5), Mst. Gomtibai (P. W. 6) and Dhani Bam (P. W. 10); and as their evidence requires corroboration before it can be accepted and as there is no such corroboration, these accused-respondents must be given the benefit of doubt.

It is significant that Shambhu Dayal (P. W. 2) had improved his story by seeking to falsely incriminate the accused respondent Habibulla by alleging that he was one of those who had climbed to the balcony of his house with the help of a ladder which story we have already held not worthy of belief. It is further significant that five of the aforesaid accused respondents, e.g., Gafoor, Haji Amir Badshah, Sheikh Mohammad, Kadar and Ramzan s/o Razzak, were never arrested, while the accused-respondent Gafoor was not named in the first information report (Ex. P-1) by Ramchandra (P. W. 1).

Under the circumstances, we cannot say that the presence of these accused-respondents in the unlawful assembly on the night of the incident is established beyond all reasonable doubt. We, therefore, hold that their acquittal was proper and no interference with it in this appeal is called for.

For the reasons given in paragraphs 11 and 12 above, we also hold that the charge of criminal conspiracy against the accused-respondents also fails. We are further of opinion that as regards the offence of robbery, we agree with the trial Court that the allegation regarding the loss of the Gash-box containing Rs. 1,500 extremely suspicious and cannot be believed; and even if believed, the complicity of any of the accused respondents in it cannot be supported on the uncorroborated testimony of the prosecution witnesses examined to establish it. In the result, though we are of opinion that one or the other of the accused-respondents may have been present in the unlawful assembly, we cannot, with certainty, say who it was, because the prosecution witnesses have so mixed truth with falsehood that it is difficult to ascertain who the accused are with respect to whom they could be believed. Under the circumstances, we found that the only course, which prudence dictated and which alone could save innocent persons from being wrongly convicted, was to look for corroboration, in material particulars, of the testimony of the prosecution witnesses and to refuse to believe them unless independent adequate corroboration, in material particulars, was available. As observed by a Division Bench of this Court in *Dulichand alias Bhaiyaial and others v. The State of M. P.* Criminal Appeal No. 688 of 1951 decided on the 1st May 1962. to which one of us (Naik J.) was a party:

"We are not unmindful of the paramount social importance of convicting the guilty; but when certain rules of adjudication have been prescribed, it is not for us to doubt their wisdom and to substitute for them a different set of rules more calculated to uphold the conviction in our problematical efforts to reach the crimes."

The result, therefore, is that the appeal against the acquittals of the fifteen accused-respondents fails and is hereby dismissed.