
(2000) 05 AHC CK 0001
In the Allahabad High Court
Case No : Criminal Appeal No. 611 of 1978

State of U.P.

APPELLANT

Vs

Gaya Prasad and Others

RESPONDENT

Date of Decision : 10-05-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 117
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2001) CriLJ 1751

Hon'ble Judges : Khem Karan, J; Bhanwar Singh, J

Bench : Division Bench

Advocate : Government Advocate, for the Appellant; Nagendra Mohan, D.N. Vali, N.S. Srivastav, S.S. Sharma and J.B. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Bhanwar Singh, J.—This is a State Appeal filed against the verdict of acquittal dated 23-3-1978 passed by Sri S.N. Saxena, the then III Additional District and Sessions Judge, Barabanki, thereby acquitting the accused respondents of the charges Under Sections 147, 148, 302, 307 and 149 IPC.

2. The facts giving rise to this appeal may be recapitulated as below :-

Head Constable Sheo Kumar Lal posted at P.S. Tikat Nagar, District Barabanki, received an information on 16-3-1972 to the effect that a strong group of more than a dozen of villagers, some of them being armed with lethal weapons, had formed an unlawful assembly near the house of Sharda (deceased) and Govind Prasad, both brothers living in the same house, in village Tasipur. The purpose of the villagers having formed the said unlawful assembly was to eliminate both the above named brothers and it was with that motive in mind that their house had been surrounded by members of the unlawful assembly. Sheo Kumar Lal, on receipt of this information through village chaukidar Hardwar, set out for village Tasipur and alongwith him were several members of the police force, namely, constables Bindheshwari Singh, Ram Lochan and Munnu Singh. Two more

constables, namely, Mohammad Nasim and Mehmood Khan joined the police party headed by Head Constable Sheo Kumar Lal on way to the village. Sharda also met. them on their way and since he was the target of the unlawful assembly, he preferred to walk behind the police personnel. It was at about 3-30 p.m. when the police party arrived in the village. Sheo Kumar Lal noticed that the information given by the village Chaukidar was accurate. He found that about sixteen or seventeen persons had assembled in a field near the house of Jamuna. All the miscreants were armed with dangerous weapons like spear, kanta, bows and arrows, guns and country-made pistols. Sheo Kumar Lai conversed with the members of the assembly and enquired about the purpose for which they had assembled there, All of them felt enraged and asked the informant to get away as they were determined to eliminate Govind and his brother Sharda. The informant made his sincere efforts to persuade them to desist from taking the law into their hands but it all fell on their deaf ears. As the miscreants were in ferocious mood, the police personnel retreated a while and resultantly their view with that position was little obstructed on account of there being a ditch and pig-enclosure of Hussaini Pasi. A constable accompanied with Sharda Prasad proceeded towards the latter's house but they were intercepted by the accused person who immediately attacked Sharda Prasad with arrows and hand-grenades. When the police party tried to intervene, they were also attacked by the members of the unlawful assembly with the help of country-made pistols, hand grenades and arrows. By this time, Sharda Prasad had been killed in the presence of the complainant and other police constables present there. Sensing thus a real threat to the life of the police personnel, Head Constable Sheo Kumar Lal asked his fellow constables to take position behind a wall. One of the accused, namely, Maya Ram hurled hand grenades towards the police party. Provoked by this dare devil act, one of the constables opened fire, as a result of which Maya Ram died on the spot. In the meantime, the other police personnel also fired some shots to scare away the miscreants, particularly Jamuna Prasad, Gaya Prasad and Shiv Kumar who had attacked them with country made pistols, hand grenades and arrow. Some of the accused made a futile endeavour to take away the dead body of Maya Ram. This occurrence was witnessed by several villagers including Keshav Ram, Ram Sumiran, Hardwar and many others. A witness, namely, Ram Naresh of Jewal was also present at the scene of occurrence. Soon after the occurrence was over, members of the police force came out from their hide out and saw the dead bodies of Maya Ram and Sharda Prasad lying there. Head Constable Sheo Kumar Lal then enquired from the villagers particularly the village Chaukidar Hardwar, the names of the miscreants. It was on the basis of the identity disclosed by the witnesses that the Head Constable drafted the first information report, Ext. Ka. 5 and narrated the entire episode and got it sent through constable Mohammad Nasim. The head Constable also sent for the additional police force so as to avert any further incident. The Station officer of Tikait Nagar police station arrived at the village at 7.30 p.m. and he started investigation. Jamuna Prasad in the meantime, succumbed to his injuries which he had suffered during the time of occurrence,

the Investigating Officer took all the three dead bodies in his custody, got their inquest reports prepared, interrogated the witness and tried to secure the accused persons. A few incriminating articles like diary, Danda, lathis, a country-made pistol, a Tarkash containing thirteen arrows, bows, one blade of Ballam, pieces of hand grenades were collected from the site of occurrence. The Investigating Officer prepared their recovery memos and packed and sealed them in separate bundles. Some of the accused surrendered in the Court while others were arrested by the Investigating Officer. After completing all the formalities of the investigation, the Investigating Officer submitted charge-sheet against the accused respondents namely Gaya Prasad, Shiv Kumar, Binda Prasad, RamAdhar, Jagannath, Shiv Nath, Ram Kumar, Satya Narain, Bharosey, Harnam, Awadhesh, Jagdish Ram Jus and Gokaran.

3. All the accused at trial pleaded not guilty and their defence version was that about a year before this occurrence, Shiv Kurnar, Ram Kumar, Ram Jus, Satya Narain and Gaya Prasad were prosecuted u/s 307 IPC on the charge of having made an attempt on the life of Govind, the brother of the deceased Sharda Prasad and it was on account of this enmity and ill will between the aforesaid person on one side and Govind and his brother Sharda Prasad on the other that they had been falsely prosecuted alongwith others in this case. Accused Gaya Prasad, however, stated that on the date of occurrence, he heard some hue and cry, attracted by which he went near the site of occurrence and found that Head Constable Sheo Kumar Lal and Constable Mehmood Khan were firing shots from their rifles upon Jamuna Prasad and Maya Ram. He immediately rushed back to protect himself from any injury in the said brawl. He added further that constable Mehmood Khan had a glance of him and, therefore, he had exhorted his fellow constables to kill him also as he (Gaya Prasad) had once assaulted a police constable, namely, Toofani. He however, made good his escape.

4. The accused Shiv Kumar admitted the factum of occurrence in which the police had fired at the villagers but he denied his involvement in any such occurrence. According to him soon after he saw the bullets being fired at the villagers, he ran away. The accused Binda Prasad, Ram Adhar, Jagannath, Shiv Nath, Satya Narain and Ram Kumar also pleaded not guilty and denied their participation. According to them, they were falsely implicated in this case on account of enmity. Accused Ram Jus who was also an accused in the attempt to murder case of Govind, broke the news of his alongwith others, having been acquitted. The other accused Bharosey, Jagannath, Jagdish and Gokaran did not come along with any defence version. However, all of them denied their participation in the commission of offences.

5. In the trial Court, fifteen witnesses were examined on behalf of the prosecution. Of them, three namely, Sheo Kumar Lal P.W. 2, Mehmood Khan P.W. 3 and Mohammad Nasim P.W. 10 were the eyewitnesses of occurrence. P.W. 4 Hardwar who was the village Chaukidar and who had informed the area police about the formation of unlawful assembly well in advance before the occurrence

did not support the main part of the prosecution story. As a consequence, he was declared hostile. P.W. 1 Dr. K.P. Verma conducted the autopsy on three dead bodies of Sharda Prasad, Jamuna and Maya Ram and prepared post-mortem reports. As many as fourteen ante-mortem injuries including lacerated and incised wounds were found on the dead body of Sharda Prasad. Dr. Verma testified that these injuries were sufficient in the ordinary course of nature to cause death. He proved the post-mortem report Ext. Ka. 1. On examination of the dead body of Maya Ram, Dr. Verma found only two injuries. Injury No. 1 was the entry and injury No. 2 was the exit wound. After examination of the dead body of Maya Ram, he prepared postmortem report Ext. Ka. 2. The third body was of Jamuna and on examination, Dr. Verma found four injuries on his corpse. The doctor also proved post-mortem report Ext. Ka3.

6. P.W. 2. Sheo Kumar Lal, the complainant gave his testimony in terms of his report and proved it as Ext. Ka. 5. According to his evidence, Sharda Prasad was attacked by the accused on trial with Lathis, guns and country-made pistols. In order to save the life of Sharda Prasad he and his other companion constables fired several shots in the air, but the miscreants having remained undeterred, continued to inflict injuries upon Sharda Prasad. He then opened fire. Other constables also fired some shots and in this police firing, one of the accused, namely, Maya Ram died at the spot. Some other miscreants namely, Jamuna, Gaya Prasad and Sheo Kumar also suffered injuries and later Jamuna succumbed to the injuries sustained by him.

7. P.W. 3 constable Mehmood Khan being a member of the police party gave the ocular account of the occurrence and supported the prosecution case that Sharda was killed by the miscreants. The police party was attacked by the members of the unlawful assembly and sensing danger to their lives, the police personnel also fired some shots and during this police firing Maya Ram died instantaneously, while Jamuna who suffered injuries, expired later on. A few others got injured. P.W. 10 Mohammad Nasim who was also present at the site while lending assurance to the aforesaid two eye-witnesses testified that when Sharda Prasad had been killed by the miscreants, the police opened fire upon the unlawful assembly, as a result of which many suffered injuries and Maya Ram died on the spot while Jamuna succumbed later to the injuries sustained by him. As stated by this witness, none of the police constables suffered any injury in the entire brawl.

8. The prosecution, however, suffered a set-back when the village Chaukidar P.W. 4, who had gone to the police station on an errand about the unlawful assembly having been formed, turned hostile. Turning turtle to what he had conveyed to the police, he stated that he had not seen any occurrence in village Tasipur in which Sharda and others fell prey to the violence. P.W. 5 Constable Vidya Dhar Tewari was a formal witness. He had carried the sealed bundles of this case to Sadar Malkhana. P.W. 6 Head Constable Harmangal Singh proved the chik report Ext. Ka 6 and G.D. report Ext. Ka 7. P.W. 7 Sub Inspector Kedar Nath Tewari is

the Investigating Officer who had taken over investigation of this case from Sub-Inspector Ramashankar Singh. He completed investigation of this case and submitted charge-sheet against the accused. P.W. 8 Ram Bahadur Singh was also a formal witness. He had carried the sealed bundles of this case from Malkhana to the office of civil Surgeon Barabanki and got them sent to the chemical examiner. P.W. 9 Govind Prasad was the real brother of the deceased. He stated that on the date of occurrence, his house was surrounded by the accused Ram Jus. Shiv Kumar and Ram Kumar. The said miscreants had abused him and left the site with a warning to teach him a lesson. Later, at 3.30 p.m. on the same day he came to know while he was inside his house that his brother Sharda Prasad had been murdered. On receipt of this information, he went to the roof top of his house and saw the accused Gaya Prasad injured being carried away by his colleagues. P.W. 11 Dr. K.N. Awasthi proved the injury report Ext. Ka 10 of Shiv Kumar. P.W. 12 Dr. Irfan Qureshi proved the injury reports Exts. Kail and Ka 12 of Ram Aclhar and Gaya Prasad who were on trial. P.W. 13 Ramashankar Singh was the first Investigating Officer of this case. He inspected the site on the date of occurrence but since it was dark all around by the time he had arrived at the village, he could not prepare necessary documents. However, he endeavoured to round up the miscreants who were hiding themselves in the village but none could be arrested. On the next morning, the accused Jamuna, Binda Prasad, Gaya Prasad and Ram Adhar were taken by him into custody and when efforts to send them to the hospital were on, Jamuna succumbed to injuries suffered by him. He then prepared inquest report Ext. Ka 13 of the deceased Sharda Prasad. All the three dead bodies were then got despatched for postmortem. Thereafter, statements of the witnesses were examined by him. A country-made pistol alongwith ten cartridges were recovered from the body of deceased Maya Ram. Some other incriminating articles-like a Ballam, a diary, one Tarkash, a Lathi, a Danda, some wads and used cartidges were also recovered from the site of occurrence. The Investigating Officer proved recovery memos and the site-plan Ext. Ka 28 P.W. 14 R.C. Nagar, City Magistrate proved inquest reports Exts. Ka 19 and Ka 30 of Maya Ram and Jamuna Prasad deceased respectively. P.W. 15 Moti Chand Clerk posted in the office of Chief Medical Officer. Barabanki asserted before the trial Court that on 13-7-1972 constable Ram Bahadur brought the sealed bundles of this case and after getting them stamped with medico-legal seal, sent them to Chemical Examiner, Agra.

9. All the accused on trial pleaded not guilty and denied the allegations levelled against them by the prosecution. According to their defence version, they were wrongly impleaded in this case on account of enmity with the police and Govind Prasad.

10. On having scrutinised oral as well as documentary evidence of the prosecution, the learned Sessions Judge recorded a finding that the three police eye-witnesses, namely P.W. 2 constable Sheo Kumar Lal P.W. 3 constable Mehmood Khan and P.W. 10 constable Mohammad Nasim Khan were not reliable witnesses as their evidence suf-fered from serious discrepancies. A doubt upon

the genuineness of the prosecution story had arisen during the course of trial when the chief prosecution witness Sheo Kumar Lal could not satisfactorily explain as to how he learnt about the names of the miscreants and for the same reason P.W. 3 Mehmood Khan and P.W. 10 Mohammad Nasim were also held not to be trust worthy. All the three witnesses were disbelieved on the point of their having known the miscreants from before the occurrence and since the accused on trial were not put up for test identification, their evidence as was held by the trial Court did not inspire confidence. The learned Sessions Judge also disbelieved the prosecution story that in the first instance Sharda Prasad was killed by the miscreants and when the latter hurled arrows and hand grenades at the police party some of the constables had opened fire. It was observed by the learned Court below that from a careful scrutiny of the evidence of the witnesses, it transpired that the attack on Sharda Prasad and the miscreants was simultaneous. The learned trial court also viewed it seriously that the prosecution had not examined even a single witness from the village although it was testified by the police personnel that at the time of occurrence, several villagers had gathered around the site of occurrence. On having analysed the entire evidence on record, the learned trial Court recorded a finding to the effect that the prosecution had miserably failed to establish the guilt of the accused. On the basis of this finding the learned trial Court while giving benefit of doubt regarding participation of the accused in the commission of the crime, acquitted all the accused on trial on all the counts.

11. Feeling aggrieved of the judgment and order of acquittal, the State of U.P. has preferred this appeal.

12. It is to be seen and adjudged now as to whether the prosecution, as pleaded by the State, succeeded in proving its case or it failed to prove beyond doubt the guilt of the accused as adjudged by the learned trial Court.

13. The case of the prosecution starts with a story that the village Chaukidar arrived at Tikaitpur police Station at about 2.20 p.m. on 16-3-1972 and informed that an unlawful assembly comprising 16-17 miscreants had surrounded the house of Govind Prasad and Sharda Prasad with a view to eliminate the said two brothers on account of enmity. A note of this information was recorded in the G.D. and in order to avert any untoward incident, a police party headed by Sheo Kumar Lal was deputed to rush to the village. A copy of the G.D. report is Ext. Ka 4 on record. There are two reasons to doubt the genuineness of this document the first being that the information as contained in this document has no reference at all in the F.I.R. Ext. Ka 5 lodged by Head Constable Sheo Kumar Lal Had there been some substance in the information recorded in the G.D. report Ext. Ka 4. there was no reason for Sheo Kumar Lal to have omitted it from being recited in his own report. When confronted with this omission. P.W. 2 Sheo Kumar Lai simply stated in para 26 of his evidence that he had not considered it necessary to refer to the said information in his report Ext. Ka. 5. The explanation given by him does not appear to be convincing as recital of the said

communication was not only relevant but also essential. A reference to the information conveyed to the police by the village Chaukidar would have been in sequence of the events. Secondly the veracity of the information was belied by the village Chaukidar himself. From a bare look at his evidence, it seems that he felt like disowning what was contained in G.D. Ext. Ka. 4. Whereas G.D. report appears to indicate that he had himself witnessed the members of the unlawful assembly surrounding the house of Govind Prasad, P.W. 4 Hardwar testified that he had not seen any accused on trial as member of the unlawful assembly near the house of Govind Prasad. As a matter of fact, he conveyed to the police on the basis of what he had heard. In para 10 of his evidence, P.W. 4 Hardwar categorically disowned everything as recited in G.D. report Ext. Ka. 4 except that he simply conveyed to the Station Officer that there was a likelihood of some unpleasant controversy between Govind and Jamuma who were inimical to each other. In a specific statement, he reiterated that except this, he had not informed any thing else. This categorical averment of the village Chaukidar, on the information of which the police had activated themselves, goes deep to the root of the prosecution story and demolishes the genuineness thereof. The said statement would be interpreted to mean that the village Chaukidar had not informed the police the name of any accused who was the member of unlawful assembly nor he communicated that there was any unlawful assembly and also that they had surrounded the house of Govind Prasad. According to the version as described in the F.I.R. Ext. Ka. 5, Hardwar had accompanied the police party and he was present at the site of occurrence at the relevant time of Sharda Prasad being killed and the police firing in which Maya Ram was done to death. Obviously thus the village Chaukidar has not supported the important features of the G.D. report.

14. Moreover, if the fact regarding the village Chaukidar having communicated to the police about constitution of an unlawful assembly surrounding the house of Govind Prasad and Sharda Prasad was true there was no reason for Hardwar having not disclosed the names, muchless the Majority names of the miscreants who had formed the unlawful assembly. P.W. 2 Sheo Kumar Lal made an endeavour to explain that only three persons Ram Kumar Shiv Kumar and Ram Jus armed with weapons were hurling abuses at Govind Prasad. It shows that it was a small assembly of only of three persons, as named above. The gravity of any unforeseen event was not even anticipated by the Chaukidar who had, in addition, disowned disclosing of even a single name of the miscreants. Further the description of the weapons with which the miscreants were armed had not been disclosed in the G.D. report, although as admitted by P.W. 2 Sheo Kumar Lal, Hardwar gave a specific statement that the members, of the unlawful assembly were armed with deadly weapons like Ballam, Kanta, guns and country-made pistol. Sheo Kumar Lal, however admitted that no apprehension was expressed for anyone being eliminated nor a reference to any such eventuality was made in the G.D. report.

15. Having regard to the above discussed discrepancies in the very edifice of the

prosecution case as laid in the G.D. report Ext. Ka 4, we are of the view that the prosecution story really collapsed soon after it failed to inspire confidence in the circumstances under which the police party headed by Sheo Kumar Lal left the police station Tikaitpur.

16. It is significant to note that the prosecution story could not be lent any assurance by a public witness. The entire incident in which three persons had died was sought to be proved merely by the testimony of three police personnel, namely, P.W. 22 Sheo Kumar Lal, P.W. 3 Mehmood Khan and P.W. 10 Mohammad Nasim Khan. The only witnesses of public, namely, Hardwar and Govind Prasad (who was none else than the real brother Sharda Prasad) have not extended any support to Sheo Kumar Lal's version that the accused on trial had killed Sharda Prasad. As mentioned earlier, Hardwar arrived in the village at about 5 p.m. i.e. one and a half hours after the occurrence and obviously that, he had no occasion or opportunity to have witnessed the occurrence. Govind Prasad went to the roof top of his house only after his brother Sharda Prasad had been killed. He has not disclosed in his evidence that he saw anyone causing or inflicting injuries to his brother. He had also not seen the police firing at the miscreants, no doubt he testified that when he was hiding himself inside, he had heard reports of gun fire but who fired at whom was not known to him. His statement that he saw from the roof top of his house injured Gaya Prasad being carried away by his accomplices Ram Jus, Bharose, Harnam, Shiv Nath and Jagannath is not worthy of any credit as he failed to disclose this important fact to the Investigating Officer. This omission clearly proves that he had developed this version with a view to implicate the aforesaid persons in the occurrence. It was admitted by him that he had a serious defect in one of his legs and he could not have walked without the help of a stick and probably it was for this handicap of his, that he had hidden himself inside the house. From this angle of his physical incapacity also it does not appear to be acceptable that he would have mustered courage to go to the roof top of his house, particularly when the miscreants were armed with guns and country made pistol besides arrows as on the roof top of his house, he would have been an easy prey of the assailants.

17. Except these two public witnesses, none was examined before the trial Court. It would be clear from the evidence of police personnel that there were a number of villagers present at the site. In this context, it would be useful to make a reference to the recitals of F.I.R. Ext.Ka 5 which clearly depicts that the occurrence was seen not only by the villagers of Tasipur village but also the villagers of other villages in the vicinity. It is mentioned in the F.I.R. Ext. Ka 5 that numerous witnesses of closeby villages Bibiapur and Jeeval besides many others including Chaukidar Hardwar of village Tasipur had gathered at the site of occurrence and seen the entire incident. The prosecution has not come with clean hands while stating that all other witnesses of the villages had turned hostile and for this reason such witnesses were not thought worthy of examination before the trial Court. This was a lame excuse and not acceptable. It is relevant to note that the names of four witnesses, namely, Maiku Teli, Ram

Sumiran, Keshav Ram and Ram Naresh were clearly depicted in the F.I.R. to be as the eye-witnesses of the occurrence. It does not sound convincing that Ram Sumiran who was the real brother of deceased Sharda Prasad would have turned hostile. Similarly Ram Naresh was the Saala (brother-in-law) of Govind Prasad and, therefore, he too would have been examined in support of the prosecution story. As a matter of fact Govind Prasad sent for the Chaukidar of the village through his brother-in-law Ram Naresh and it was the same Ram Naresh who had a conversation with Hardwar about Govind Prasad's house being surrounded by the miscreants. No reason worth the name has been disclosed as to why these two very close relatives of the deceased Sharda Prasad were withheld by the prosecution. A reasonable inference in these circumstances can be drawn that the aforesaid witnesses, if examined before the trial Court, would have stated the real facts of the case, contrary to the prosecution story.

18. In the absence of there being no public witness to lend support to the prosecution case, the trial Court rightly observed that the evidence of the police personnel which suffered from serious discrepancies including the identity of the accused on trial had to be scrutinised with great deal of care and caution and as the discussion hereinafter would follow, the learned trial Court rightly held that unless there was a test identification of the accused by the three eyewitnesses, their evidence could not be deemed to be convincing and credible. As stated earlier, from amongst the seven members of police personnel, only three, namely, P.W. 2 Sheo Kumar Lal, P.W. 3 Mehmood Khan and P.W. 10 Mohammad Nasim appeared in the witness box. Admittedly Head Constable Sheo Kumar Lal did not know, until the occurrence in question occurred, the names of the accused persons. Even in the F.I.R. Ext.Ka 5 it was indicated that the names of accused were disclosed to Sheo Kumar Lal by the witnesses. In his evidence before the trial Court also Sheo Kumar Lal conceded that he did not know the name of a single villager of village Tasipur not even Sharda Prasad and Govind Prasad. He admitted further that when he started drafting report Ext.Ka 5, the village Chaukidar besides other villagers and his associate constables had disclosed to him the names of the accused persons. He added further that Mehmood Khan and Mohammad Nasim were amongst the police constables, who conveyed to him the names of the miscreants. However, he was unable to disclose categorically as to how many names were disclosed by Mehmood Khan and who were those named by the other constable Mohammad Nasim. In this context, it is relevant to have a look at the first information report which appears to indicate that none of the police constables gave out the names of the miscreants. From the evidence of Mehmood Khan and Mohammad Nasim also it becomes vividly clear that neither they had known the accused persons until occurrence nor they conveyed their names to Head Constable Sheo Kumar Lal at the time of the first information report being drafted.

19. P.W. 3 Mehmood Khan during the enquiry proceedings before the Magistrate, under the old Cr. P.C., wrongly identified the accused Awdhesh, Satya Narain and Harnam. When he was asked to identify accused Awdhesh he had put his hand

upon Binda Prasad and when asked to identify Shiv Nath, he placed his hand on Satya Narain. On being asked to recognise Harnam, he wrongly identified the accused Awdhesh. These were the glaring mistakes committed by Mehmood Khan in identifying the accused persons. Not only this, he brought into picture in the enquiry proceedings two hames i.e. Keshav Ram and Debi Prasad as the members of unlawful assemble causing the death of Sharda Prasad. A persual of the list of accused persons as recited in the F.I.R. would disclose that neither Keshav Ram nor Debi Prasad figured in the said list. His statement was recorded in the enquiry proceedings merely ten months after the occurrence and even then he made the mistake and this had so happened despite his version that he had known the accused from before. What is further significant to note is that P.W. 3 Mehmood Khan and other constable eye-witnesses remained posted in Tikaitpur police station upto the time of their being examined before the trial Court but even they failed to disclose the identity of the accused to the satisfaction of the trial Court. Further more P.W. 3 Mehmood Khan had no opportunity to have come into close contacts with the accused on trial. His statement that he had gone to execute summons upon some of the accused persons was rightly held to be unreliable by the trial Court when he failed to disclose the names of such accused. Further in the enquiry proceedings also he clearly admitted that he had never gone to the house of the accused in any connection before the occurrence. Thus he was not able to establish beyond doubt that he had an occasion to go to the house of the accused so as to familiarise himself with their faces or the names. He had also expressed his ignorance about the persons who were involved in a case u/s 307 IPC. According to the presecution, in that case u/s 307 IPC some of the accused were alleged to have assaulted Govind Prasad. However, all those assailants including Shiv Kumar were acquitted of the charge levelled against them. It is thus abundantly clear that P.W. 3 Mehmood Khan did not know the accused by names or by faces upto the time of the occurrence and with this situation, therefore, he could not have been expected, as was stated by P.W. 2 Sheo Kumar Lal, to have conveyed the names of the accused persons at the time of F.I.R. being prepared. The learned trial judge on having scrutinised the evidence of Mehmood Khan observed that his performance as a witness of the occurrence before the trial Court was hopeless and the blunder he had committed in the Court of the committing magistrate about the identity of the miscreants would conclusively prove that his evidence was totally unworthy of credit. In these circumstances it was necessary for the Investigating Officer to have put all the accused to test identification by Mehmood Khan and other police constables. In the absence of the test identification, the evidence of Mehmood Khan was really not worth the name credit.

20. The testimony of the other eye-witness, namely, constable Mohammad Nasim (P.W. 10) was in no way better than that of P.W. 3 Mehmood Khan. The statement of Mohammad Nasim was recorded by the trial Court more than five years after the occurrence and during this period, he would have been in a

comfortable position to have known by faces as well as by names all the accused persons. But the omission he had committed while making his statement to the Investigating Officer would lead to infer that neither he knew the accused persons nor he conveyed their names to Head Constable Sheo Kumal Lal who prepared the F.I.R. Had he really identified the accused to be as the participants in the commission of the crime in which Sharda Prasad was assassinated, he would have disclosed to the Investigating Officer the names of all the accused but he failed to do so. He conceded in para 9 of his evidence that while making a statement to the Investigation Officer, he was acquainted with most of the miscreants but he was not categorical as to whom he had known and whose names he was not aware of nor he could disclose before the trial Court as to whose names he had given out before the Investigating Officer and whose names he could not mention. When cornered with such situation, he probably tried to take shelter of disclosures alleged to have been made to Head Constable Sheo Kumar Lal by village Chaukidar but as has already been discussed above, Chaukidar denied before the trial Court that he was either present at the site of occurrence at the relevant time or had seen anyone of the accused on trial. In these circumstances, the evidence of Mohammad Nasim is also of no avail and the same was rightly discredited by the trial Court.

21. Now the evidence of the author of F.I.R. namely, Head Constable Sheo Kumar Lal has to be scrutinised in the light of the errors and omissions of the prosecution story committed by the prosecution in conducting the trial of the accused.

22. P.W. 2 Head Constable Sheo Kumar Lal admitted in para 12 of his evidence that he was not acquainted with any one of the accused persons who had assaulted Sharda Prasad. He then added that the names of the participants were conveyed to him by village chaukidar and other constables in his party besides villagers. It is note-worthy that village chaukidar Hardwar P.W. 4 denied that he had any conversation with the Head Constable regarding identity of the accused persons. No other villager who was an eye-witness of the occurrence has been examined before the trial Court and from amongst the police force, only two constables, namely, Mehmood Khan and Mohammad Nasim were produced for their examination and for the reasons disclosed above, their evidence was not held to be trust-worthy. In these circumstances, the test identification of the accused during the course of investigation was absolutely necessary and in the absence of such test identification, indeed it would have been totally unsafe to rely upon the evidence of Head Constable Sheo Kumar Lal and even his asseverations if scrutinised with good deal of care belie his testimony. It has come in his evidence that when the police arrived in the village, Sharda was walking in front of the police party. There were sixteen ante-mortem injuries noticed by P.W. 1 Dr. K.P. Verma. As testified by Dr. Verrna the injuries might have possibly been caused by blunt weapons like spear, arrows and explosion of hand-grenades. Even Lathis would have been used and from the description of the injuries it can be inferred that the assault would have continued quite for

some time. Still the police, as justified by Sheo Kumar Lal, did not open fire. As a matter of fact the police party if members thereof had gone to protect Sharda Prasad and his brother Govind Prasad, would have opened fire immediately after the miscreants looked in a mood to commit violence. The disclosures of the witnesses are conflicting on the point. It appears that the police did not wait for Sharda Prasad to be killed and resorted to firing simultaneously when Sharda Prasad was being assaulted. The contrary version that the police party attacked only after Sharda Prasad had been killed, does not appear to be acceptable. It also remained shrouded in the mystery that no police personnel received even a scratch although the miscreants attacked the police party with all the weapons they had with them and it is surprising to take note of the fact that no member of the police party received any injury at the time when Sharda Prasad who was moving in front of the police party was attacked with arrows and hand-grenades. Sheo Kumar Lal stated that Sharda Prasad was 8-10 paces behind Mehmood Khan. The evidence of P.W. 2 Sheo Kumar Lal does not give an indication that he or any other police constable endeavoured to protect the life of Sharda Prasad by taking any step. Firing shots in the air after Sharda Prasad had been killed, simply shows that the police had resorted to firing to scare away the mob. Sheo Kumar Lai's statement that the police party fired at the miscreants when the latter had attacked the members of the police force, is not worthy of inspiring confidence as the miscreants were alleged to have attacked the police party with hand-grenades, arrows and country-made pistols. In this kind of attack, some of the police personnel were certainly bound to have suffered some injuries but it is surprising that every constable escaped unhurt. The conflicting statements of Sheo Kumar Lai on the one side and Mehmood Khan and Mohammad Nasim on the other on the point of resorting to police firing also go a long way to demolish the F.I.R. version. Whereas Sheo Kumar Lal deposed that the police fired only after Sharda Prasad had been killed and the police was attacked, contrary to this P.W. 3 Mehmood Khan and P.W. 10 Mohammad Nasim stated that attacks on Sharda Prasad and police party and the firing resorted to by the police were simultaneous.

23. As a matter of fact, neither of the two versions appeared to be worthy to be credible. If Sharda Prasad was killed by the assailants when he was behind the police personnel, certainly the police persons would have suffered serious injuries and if attack on police and miscreants was simultaneous, it would have resulted in numerous deaths on the assailants side as all the police personnel were armed with rifles and one can well visualise that each shot of every police constable would have caused heavy casualties amongst the miscreants who were in the mob. Sheo Kumar Lal denied that the accused had hurled hand-grenades and arrows towards him and his colleagues. This part of his testimony was, however, in conflict with the recitals of F.I.R. Ext. Ka 5 wherein he had mentioned that Sharda Prasad and constables were attacked by the miscreants with the help of arrows and hand-grenades. All these discrepancies strike with strong reasons to raise a suspicion on the evidence of P.W. 2 Kumar Lal

24. Sheo Kumar Lal's version regarding the manner in which Sharda was killed also does not seem to be free from doubt. He said that the miscreants were armed with guns and country-made pistols yet he was killed with Lathis and the assault by Lathis lasted for quite some time until Sharda Prasad had fallen on the ground and died within 3-4 minutes. Firstly it is not convincing that the miscreants would adopt a lengthy process of killing their victim by hurling only Lathi blows as compared to the gun shots. Secondly the police did not take an active step to protect the life of Sharda Prasad. A few assaults of Lathis if intercepted by the police would have certainly saved the life of Sharda Prasad. A simple statement of Sheo Kumar Lal that he fired shots in the air from his musket during the assault is incredible. In is under these circumstances that the defence contention of there being police connivance in the elimination of Sharda Prasad seems to have some force, otherwise why Sheo Kumar Lal and his colleagues waited for 3-4 minutes i.e. until Sharda was killed, to fire shots at the miscreants. Sheo Kumar Lal admitted that Sharda Prasad and Govind Prasad were both history-sheeters, may be that the police had in mind to get rid of both these history-sheeters. That is why a suggestion from the defence counsel had come that the police had killed two birds with one stone; they got Sharda Prasad eliminated and also got two miscreants from the other side killed. In any case it was difficult to rely upon the statement of Sheo Kumar Lai.

25. As regards place of occurrence also, different versions came from different witnesses. The house of Govind Prasad was located on the western side of the Abadi of the village while the police had a confrontation with the miscreants on the eastern side of the Abadi. When the police witnesses were confronted with the situation, they evolved a third story that leaving their bicycles in Rani Katra they had proceeded on foot towards the house of Govind Prasad and since it was a shorter root, they passed by the side of the house of accused Ram Jus and all the miscreants at that time were found near the house of accused Ram Jus instead of the house of Govind Prasad who was the target of the accused persons. Therefore, it appeared to be improbable that the accused would have assembled near the house of Ram Jus. In these circumstances, a defence suggestion was made that the police personnel had accompanied Sharda Prasad towards the house of accused persons with a motive to kill Ram Jus and his family members. In any view of the matter, the prosecution miserably failed to come out with a convincing explanation on the point as to how the entire occurrence had taken place on the eastern side of the village Abadi while the prosecution story was that the miscreants had surrounded the house of Govind Prasad which was situated on the western side of the Abadi.

26. Another important circumstance which would render the prosecution story doubtful was that the information given by Chaukidar about Govind Prasad's house being surrounded by the assailants does not find any mention in the first information report Ext. Ka 4. It appears that the message based on the Chaukidar's report was got planted in the G.D. after Sheo Kumar Lal's report had reached the police station. It was in this background that the defence

counsel suggested that Sharda Prasad met Sheo Kumar Lal and Mehmood Khan somewhere in the surroundings of his village while the police personnel might have gone for their routine duty either for patrolling or serving summons and he managed to persuade them to extend their help in wreaking vengeance on their rivals. This defence contention could not be ignored. It is mentioned in the F.I.R. that Sheo Kumar Lal with other constables left for routine duty for village Tasipur but certainly it is not there in the F.I.R. that he left on receipt of the information from village Chaukidar Hardwar, as is mentioned in the report Ext Ka-4 and reached the police station at 2-20 p.m. P.W. 9 Govind Prasad disclosed that he sent his brother-in-law Ram Naresh to village Chaukidar at 3 p.m. with the information of his life being in danger and till then the miscreants had not gathered near his house. By that time some 3-4 miscreants only came and went back after hurling abuses at Govind Prasad. The distance between the village and the police station was about four miles and if Govind Prasad was believed, the village Chaukidar would have arrived at the police station sometime between 3-30 and 4 p.m. As the timings were accurately disclosed, the fact that Govind Prasad was not a well-educated person will not make any difference. Therefore, the variations in timings do not reconcile with the probability of the prosecution story.

27. From the material inconsistencies, as discussed above, it becomes doubtful if the three important witnesses, namely, Sheo Kumar Lal, Mehmood Khan and Mohammad Nasim knew the miscreants from before the occurrence. In this context, it is significant to note that the accused Bharosey, though charge-sheeted was not named by any one of the aforesaid three witnesses. The prosecution has not been able to offer any explanation as to why these three, rather only these three witnesses, who had eyed the occurrence, were unable to name Bharosey as one of the members of the unlawful assembly. In the absence of an explanation on the point, it may safely be presumed that either Bharosey had been falsely implicated or the above witnesses were not present at the place of occurrence. In either of the two probabilities, the prosecution story becomes doubtful. Further the fact that Sheo Kumar Lal was able to identify accused persons at the trial Court was meaningless as he being posted at Tikait Nagar police station throughout the duration of investigation had ample opportunity to familiarise himself with the accused. Since he admittedly did not know any one of the accused persons from before the occurrence, identification of the accused by him before the trial Court was a futile exercise. The principle of identification is that a witness not knowing the accused from before the occurrence must be asked to identify the accused in a test identification parade to be held within a reasonable time from the date of occurrence and if he succeeds in identifying the participants of an occurrence, he should corroborate the same before the trial Court. However, no sanctity can be attached to the identification in reverse order because under the said eventuality there may be a long lapse of time during which the witness may not retain in his memory the features identification marks of the accused and moreover, in that duration he may also have an opportunity

to see the accused. In either case, the significance of the identification is lost. In the case in hand, as said earlier, the Investigating Officer did not arrange for the test identification, nor any convincing reason was disclosed for not doing so. Mere disclosure that Sheo Kumar Lal and other two constables knew the accused from before is a lame excuse as it has been established above that none of the three constable eye-witnesses had any occasion to see any one of the accused persons before the occurrence. In these circumstances, the identification of the accused by Sheo Kumar Lal before the trial Court was nothing but a farce. The trial Court rightly rejected the mechanical test based on inconsistent evidence of the three constable eye-witnesses as their evidence was neither qualitative nor credible. As observed by the learned Sessions Judge in his judgment in appeal, all the three constables named the accused persons before the trial Court as members of the unlawful assembly on the basis of the recitals in the F.I.R. In the absence of a public witness, the evidence of the three constables comprising serious discrepancies was of no avail.

28. Learned Additional Government Advocate appearing on behalf of the State submitted, with reference to the injuries suffered by two accused persons namely, Gaya Prasad and Shiv Kumar that their participation in the commission of crime was well established from the very fact of their being injured. The contention is devoid of merit as both these accused have offered convincing and plausible explanation of their having suffered injuries. Both of them disclosed that on hearing the hue and cry they were attracted towards the scene of occurrence and when they arrived there, the police party was firing at the mob and it was in that firing that some splinters caused injuries to them. Having regard to all the facts and circumstances of this case particularly the fact that no public witness came forward to support the police constables evidence, the contention of the learned counsel for the respondents that these two accused might have been the mere spectators cannot be ruled out. It is unusual for the innocent passers by or the spectators to suffer injuries in an incident of indiscriminate firing. Above all, the prosecution has to succeed in establishing its story on the strength of its own evidence. Meaning thereby that the prosecution cannot derive any advantage of the weakness of the defence version or the admissions of some of the accused on some points which are not prima facie and ipso facto proof of their participation in the occurrence and more so when denying their participation in the commission of any crime, they have pleaded not guilty. .

29. The recovery of material exhibits from the dead bodies of the deceased cannot be said to be an incriminating circumstance against the accused. As regards the diary belonging to accused Ram Jus alleged "to have been recovered from the site of crime, it was stated by the said accused that the Investigating Officer took the said diary from his possession when he was at home.

30. The Investigating Officer Ramashankar Singh P.W. 13 committed a few mistakes which would prove fatal and go against the prosecution version. As

stated by him, he had seen blood trail from the place of occurrence towards the houses of the injured persons but he had not shown the same in the site-plan. Further he testified that he found some blood lying at those places also where the accused persons had concealed themselves but that place was also not shown in the site-plan nor blood-soaked earth was collected therefrom. The folly of not holding the test identification parade committed by the Investigating Officer has already been highlighted above.

31. Admittedly there was an enmity between the accused persons and P.W. 9 Govind Prasad. The police challaned both the parties u/s 107/117 Cr.P.C. A few of the accused persons were prosecuted u/s 307 IPC for having assaulted P.W. 9 Govind Prasad but they were acquitted by the trial Court as is evident from Ext. Ka 7 on record. It is just possible that Govind Prasad got these accused persons rounded up in this case with a view to wreak his vengeance. Moreover, it is significant to note that the police party had come for the rescue of Govind Prasad but they did not bother to ask about his welfare until the Investigating Officer arrived at the village. In this context, it may be recalled that the village Chaukidar Hardwar was instructed by Govind Prasad through Ram Naresh at 3 p.m. to go to the police station and inform the police that his house had been surrounded by the accused. Hardwar would have taken some time to go to the police station and come back. This duration would have been enough for the accused to have assaulted Govind Prasad particularly when there was an easy access to his house as one of the walls of his house had fallen. Obviously the accused would not have waited for three-four hours so as to enable the police force to come and check their activity. P.W. 3 Mehmood Khan clearly stated in his evidence that he or any other member of the police force had not approached Govind Prasad to find out his welfare before the police Inspector came to the place of occurrence. This indifferent attitude of the police force including P.W. 4 Sheo Kumar Lal exposes the hollowness of the prosecution story to the effect that on receipt of the information from Hardwar about Govind Prasad's house being surrounded by the miscreants, they left for the village and arrived there with Govind Prasad's brother Sharda Prasad. The omission in the chik eport about the information received from village Chaukidar has already been disussed above and it can again be observed at the cost of repetition that the bona fides of the police in extending any protection to ovind Prasad was nothing but a cock and bull story. The falsity of the prosecution version is further proved from the fact that the first three Parchas of the Case Diary were not submitted by the Investigating Officer to the Circle Officer until expiry of three days and a reasonable presumption in the abence of submission of the requisite Parchas can be drawn to the effect that during these three days after the occurrence, the Officer devoted his time in manufacturing the prosecution story so as to make it probable but he could not succeed with his sinister motive on account of the follies he had committed in the investigation of this case.

32. The crux of the discussion held above is that the learned trial Court has rightly recorded a verdict of acquittal as the prosecution miserably failed to

establish its charges against the respondents/accused.

33. The net result is that this appeal fails and is accordingly dismissed.