
(1998) 01 AHC CK 0094
In the Allahabad High Court
Case No : Govt. Appeal No. 3202 of 1978

State of U.P.

APPELLANT

Vs

Hori Lal and Others

RESPONDENT

Date of Decision : 19-01-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 140, 147, 148, 149

Citation : (1999) CriLJ 1039

Hon'ble Judges : S.K. Phaujdar, J;N.S. Gupta, J

Bench : Division Bench

Advocate : Government Advocate, for the Appellant; P.N. Misra and Y.K. Shukla, for the Respondent

Final Decision : Allowed

Judgement

N.S. Gupta, J.—The eleven accused respondents named above along with one Pothi (who died before the commencement of the trial) were charged for offence punishable under Sections 120B/147/148/302/307/149, I.P.C. before Shri B.I.S. Sodhi, the then 1st Addl. District and Sessions Judge, Badaun, who vide his judgment and order dated 19-8-1978 found all these accused respondents "not guilty" and accordingly acquitted them. Feeling aggrieved by the said judgment of acquittal the State of U.P. has come up in appeal before this Court.

2. The prosecution story briefly stated is as follows :-

The complainant Bhawar Pal Singh, P.W. 1 was the son of deceased Mulaim Singh. He was resident of village Khiria Madhukar, police station Usehat, district Badaun. Munshi Singh another deceased was the uncle of this Bhawar Pal Singh. About a year before the occurrence of this case, one Budhpal Singh of his village was murdered. Accused respondent Yadunath and Shyam Pal hereinafter referred to as (A-8) and (A-9) were real brothers. The father of the complainant Mulaim Singh (deceased), his uncle Munshi Singh (deceased), Radhey and two others were prosecuted in the said murder case of Budhpal. The said case was going on

at the time of the occurrence of this case. About a year before the murder of Budhpal, there was an exchange of fire in between the father of the complainant viz. Mulaim Singh (deceased) and accused respondent Hori Lal, hereinafter referred to as (A-1), that was the day of Holi. About 10-12 days before the occurrence of this case one Janki Prasad of his village was assaulted by Ramnath, Atroo (A-6), Rameshwar (A-4) and Ram Swaroop (A-3). Deceased Munshi Singh had accompanied Lal Janki Prasad to Police station and with his consultation a report was lodged against these accused persons. They all were close associates of accused respondent Hori Lal (A-1). Hori Lal (A-1) had thereafter threatened to the complainants father to kill him. Budhpal was the resident of village Nagla Rashmi, which was situate at a distance of about one Kms from village Khiria Madhukar, the village of the complainant. Budhpal and Hori Lal were good friends. They used to dine, drink and gamble together. Since after the murder of Budhpal and threat meted out by Hori Lal, the complainant's father deceased Mulaim Singh became vigilant.

3. The occurrence of this case had taken place on 27-6-1977 at about 5.00 p.m. in village Khiria Madhukar, police station Usehat, district Badaun, which lay at a distance of about 15 kms. from the police station. On that they the complainant's younger brother Jhabboo's, father-in-law Ram Dayal injured (P.W. 5) had come to the complainant's house. The complainant's lather Mulaim Singh (Deceased) had gone to village Makrauli for purchasing Bel of Shakarkandi for being planted into his fields, which lay at a distance of about two furlong from the complainant's house some time during noon. Along with Mulaim Singh (deceased) his nephew Radhey had also gone. The deceased Mulaim Singh was a licence holder of a gun. He left his gun at his house. The complainant's uncle Munshi Singh and Ram Dayal, P.W. 5 remained at his residence. When the complainant, his father Mulaim Singh (deceased) and his cousin brother Radhey reached at village Makrauli, Pt. Ram Saran P.W. 4 expressed his inability to supply the Bel on the ground that he had since watered his fields and because of rain, it was not possible for him to take out the Bel of Shakarkandi from his fields. The deceased Mulaim Singh paid a sum of Rs. 20/- as earnest money for the purchase of the said Bel. One Ram Murti (deceased) who was a resident of village Pahenia, district Shahjahanpur was a distant relation of Pt. Ram Saran. He had gone to purchase some bullocks there. The complainant's father Mulaim Singh (deceased) offered to him that he had certain bullocks to sell. Thereupon Pt. Ram Saran, P.W. 4, along with Ram Murti (deceased), Latoori, P.W. 6 and Latoori's uncle Chokhey came back to the house of the complainant in village Khiria Madhukar at about 4.30 p.m. The house of accused respondents Rameshwar (A-4) and Ram Swamp (A-3) lay on the way to the house of the complainant. Accused Rameshwar and Ram Swamp saw the complainants, father Mulaim Singh (deceased), Pt. Ram Murti (deceased), Ramsaran, Latoori and Chokhey coming towards the house of the complainant. The house of Rameshwar (A-4) and Ram Swamp (A-3) lay at a distance of about 60-70 paces from the house of the complainant. When the complainant, his father deceased Mulaim

Singh, Ram Murti (deceased), Pt. Ram Saran, P.W. 4, Latoori and Chokehy were at a distance of about 30-35 paces from their house, Atroo (A-6), Kalyan (A-2), Mahabir (A-5), Jadunath (A-8), Shyam Pal (A-9), Brij Pal (A-10), Beer Sahai (A-11) Pothi (Accused since dead) and one unknown came out from the house of Ram Swarup (A-3) and Rameshwar (A-4). Atroo (A-6), Satkoo (A-7), Rameshwar (A-4), Ram Swarup (A-3), Kalyan (A-2) and Mahavir (A-5) were the residents of that very village Khiria Madhukar, whereas the others viz. Jadunath (A-8), Shyam Pal (A-9) were the residents of Rashmi Nagla, Beer Sahai (A-11) and Brij Pal (A-10) were the residents of village Vikrampur and Pothi (since dead) was the resident of village Behti. The other unknown accused who was wearing Khaki uniform was unknown to the complainant. All the accused respondents were known to the complainant since before. The prosecution maintained that accused Atroo, Ram Swarup, Shyam Pal and Jadunath were armed with guns; accused Satkoo, Rameshwar were armed with Kanta; Kalyan and Pothi (since dead) were armed with Ballam, Brij Pal, Beer Sahai, Mahabir as also the unknown person were armed with Lathies. Feeling frightened with these accused respondents, the complainant, his father Mulaim Singh (deceased) and other persons who were accompanying them entered into the house of the complainant and had closed the doors. The accused respondents surrounded the house of the complainant. They shouted to break open the doors and to enter into the house of the complainant to kill them. Then the complainant's father Mulaim Singh went over the roof along with his gun. The complainant's younger brother Itwari and Pt. Ram Saran along with his gun also went over the roof. On hearing the noise, complainant's uncle who used to reside after one house of the complainant's house also came over there from roof to roof. The complainant came into his courtyard and stood there. Ram Murti (deceased), Ram Dayal, P.W. 5, Chokhey, Latoori, P.W. 6 and Radhey also stood by his side in the courtyard. The prosecution claimed that the accused respondents came over the roof of the complainant's house over the roof of Bagi Singh and started assaulting the complainant's father Mulaim Singh (deceased), his uncle Munshi Singh (deceased) and his younger brother Itwari (deceased) by means of Lathies, Spear and Kantas. Pt. Ram Saran, P.W. 4 also sustained gun shot injury. He, along with the his gun had fallen down. Ram Murli (deceased) and Ram Dayal, P.W. 5 ran outside his house. The accused persons assaulted Ram Murti and Ram Dayal, P.W. 5, outside the complainant's house. The accused persons who were armed with guns opened fire in air. Ram Murti and Ram Dayal, P.W. 5 were assaulted by means of Lathi, Kanta and Ballam. Feeling frightened with the noise of the gunshots no villagers came out and all of them closed their houses. This incident had taken place at about 5.00 p.m. as a result of the injuries caused by the accused persons, the complainant's father Mulaim Singh died on spot over the roof of Durga. The complainant's younger brother Itwari died on the roof of his house. His uncle Munshi Singh was assaulted over the roof of Joginder Teli. He had fallen down over the chappar of Jogendar Teli and from there into the courtyard of the complainant. After assaulting the complainant's father, brother uncle, Ram Murti, Ram Saran, P.W. 4, and Ram Dayal, P.W. 5, the accused

respondents ran away from the spot, but while running away they took away the gun along with belt of cartridges belonging to the complainant's father Mulaim Singh (deceased). Accused persons also took away the gun and the belt of cartridges of Pt. Ram Saran (P.W. 4). Ram Murti (deceased) and Ram Dayal injured (P.W. 5) sustained a number of injuries. They were lying dead outside the house of the complainant, whereas the complainant's father Mulaim Singh, his untie, Munshi Singh and brother It was died on spot. Ram Murti succumbed to his injuries after about three days of this occurrence. A written report Exh. Ka. 1 about the occurrence of this case was lodged at police station Usehat by the complainant Bhanwar Pal Singh (PW 1) at about 1.30 p.m. on 27-7-1977, that is, after about five and half hours of the occurrence where he had gone on foot and which police station lay at a distance of about 15 kms. from his house.

4. S.I. Sukhveer Singh, P.W. 15, who was then working as S.O. at police Station Usehat immediately took up the investigation of the case in his hands. He recorded the statement of the complainant Bhanwar Pal Singh right at the police station and along with S.I.S.P. Tewari and other police force rushed up to the scene of occurrence and reached there at about 5.15 a.m. on 28-6-1977. There he found the dead bodies of Mulaim Singh lying on the roof of Durga; he found that the dead body of the deceased Munshi Singh lying in the courtyard of Shri Yogendra Teli and that the dead body of deceased Itwari was lying over the roof of the complainant. He inspected the body of all these three deceased persons. He recorded the statement of Ram Saran, P.W. 4 and Ram Dayal P.W. 5 and referred them for medical examination. Ram Murti was not in a position to give statement. He, therefore referred to him for medical examination to District Hospital Badaun where he died after 3 days. After preparing necessary papers, he sent the dead body of the deceased Mulaim Singh, Itwari and Munshi Singh for post-mortem examination. He collected blood where the dead bodies of the deceased persons were lying and the injured persons had fallen down and prepared site plan of the scene of occurrence which was Exh. Ka 26 and Ka.27. He recovered empty cartridges, Tikulies and Charras from the scene of occurrence and prepared separate recovery memo Exh. Ka. 34 about the same. He recorded the statement of Latoori, P.W. 6, Kalyan, P.W. 12 and other witnesses. He tried to search out the accused persons but they were not available. Accused Rameswar (A-4), Ram Swarup (A-3) Atroo (A-6), Mahabir (A-5), Shaym Pal (A-9) and Jadunath (A-8) were arrested by S.I. A.P. Tewari on 19-7-1977. Accused Hori Lal (A-1), Kalyan (A-2) and Saktoo (A-7) were arrested by H.C. Rajendra Prasad on 21-7-1977. S.I. Sukhveer Singh recorded the statement of all these accused persons inside the district jail Badaun and after completing his investigation he submitted charge sheet against these nine accused persons. He was thereafter transferred from this police station. Further investigation into the matter was done by S.I. Sharman Dutt Tyagi, P.W. 13 who submitted charge sheet against the rest of the accused persons viz. Veer Sahai (A-10), Brij Pal (A-11). Pothi since dead was challenged as an absconder.

5. After committal proceedings, the case came up for hearing before the then 1st

Addl. District and Sessions Judge, Badaun, who charged the accused respondents Hori Lal u/s 120B, I.P.C. He further charged all other accused respondents except Hori Lal under Sections 147/148/302/149, I.P.C. The accused respondents pleaded not guilty of the charge framed against them and claimed trial. They denied to have participated in the occurrence in question and maintained that they did not belong to one and the same gang or the party. The charge of criminal conspiracy was strongly refuted and it was maintained that accused Hori Lal was not the leader of the rest of the accused respondent. The accused respondents pleaded that Budhpal was of course murdered and Mulaim Singh (deceased) and Munshi Singh (deceased) were arrayed as accused persons in the said murder case. They denied that there was any Maarpeet in between Janki Prasad and themselves. The accused respondents maintained that the F.I.R. was made ante-time and pleaded that the occurrence did not take place at the time alleged by the prosecution. The accused persons pleaded that Pt. Ram Saran bore enmity with them. He was wielding influence over the police. The accused respondents maintained that Ram Saran, Latoori, Mulaim Singh had collusion with certain miscreants. They were members of the gang headed by Shivdan Singh. There was some dispute over the distribution of booty in between the said dacoits on one hand and Mulaim Singh and Ram Saran etc. on the other hand. The accused respondent pleaded that the occurrence in question had taken place at about 10.00 p.m. in the night in which Mulaim Singh and others were killed and injured. The accused respondent Brij Pal Singh stated that Roop Ram of his village and Munshi and Sheru of village Sidhpur were relations of Mulaim Singh. He had litigations with them. Hence he was falsely implicated in this case. He claimed his test identification during which no witness could identify him.

6. Accused respondent Beer Sahai pleaded that he was the prosecution witness in the murder case against Munshi and Sheru in which case he gave evidence and these persons were convicted. They were relations of Mulaim Singh (deceased), hence he was falsely implicated. He too claimed identification but no witness could identify him.

7. Accused Shyam Pal Singh stated that Ram Saran got him and his brother falsely implicated in this case, so that they may not do pairvi in murder case of his brother Budhpal.

8. The accused respondents examined two witnesses in their defence viz. Ashok Kumar Vaish, D.W. 1, who proved the application Exh. Kha-4 through which accused respondent Brij Pal and Beer Sahai had claimed identification and which application was allowed by Judicial Magistrate concerned as per his order dated 7-10-77, which order was Exh. Ka.7. Exh. Kha-3 was the identification memo of Beer Sahai and Brij Pal Singh, which shows that accused Beer Sahai was correctly identified by Bhanwar Pal and accused Brij Pal Singh was correctly identified by Jhabboo. The other witnesses of prosecution viz. Ram Dayal, P.W. 5, Latoori, P.W. 6 and Radhey could not lay hands upon Beer Sahai and Brij Pal during the course of identification proceedings.

9. D.W. 2 Chimman Lal was the resident of village Khiria Madhukar, the village of the complainant who stated that he very well knew Kalyan, Hori Lal etc. of his village. He stated that an incident had happened after sunset in the evening when he was present at his Chaupal which was towards the west of the house of the deceased Mulaim Singh. He stated that he heard the noise of gunshots etc. from over the roof of Mulaim Singh. He came out of his Chaupal, from the other side Babu, Durga, Jogender etc. cried. It was a moonlit night. Deceased Mulaim Singh fell on his roof, his son Itwari also fell there, Munshi ran over the roof and fell down in the house of a Teli. Some people entered into the courtyard of Mulaim Singh (deceased) from his roof and two persons ran over the door of Mulaim Singh. He stated that 5-6 persons assaulted by means of lathi, Bhala and Kanta, with the result that two persons were thrown in the Gali. One of those persons was Ram Dayal and the name of the other was not known to him. He stated that when he challenged the assailants, the assailants abused him and other villagers and asked as to what concern he had. He stated that after committing the incident, the assailants went over towards the village Makrauli. He stated that none of the accused persons who were facing trial before the court below were amongst the assailants. He stated that he saw two injured in the Gali and that they were unconscious and further that at the time of incident Bhanwar Pal was not present in the village or at the place of incident.

10. The prosecution in support of its case examined as many as 15 witnesses. Out of whom P.W. 1 Bhanwar Pal Singh complainant, P.W. 4 Ram Saran (injured) P.W. 5 Ram Dayal (Injured) and P.W. 6 Latoori were the witnesses of fact who had given eyewitness account of the prosecution version before the court below. P.W. 12 Kalyan was examined to prove the factum of conspiracy hatched by accused appellant Hori Lal. The remaining witnesses were of formal character, out of whom P.W. 15 S. I. Sukhbeer Singh and P.W. 13 Sarman Dutt Tyagi were the investigating officers. P.W. 3 S. I. Omkar Singh was the writer of chick report and G.D. report P.W. 8 Yogendra Pal and P.W. 9 Constable Guru Prasad took the dead body of deceased Ram Murti for postmortem examination along with the necessary papers. P.W. 10 constable Devendra Kumar was one of the constables who took the dead bodies of Mulaim Singh, Munshi Singh and Itwari (deceased persons) in sealed conditions for post-mortem examination to Badaum Mortuary. P.W. 14 S.I. K. P. Singh had served processes under Sections 82/83 relating to accused Brij Pal and Beer Sahai and Pothi (since dead).

11. P.W. 2 Dr. G. D. Bhasker had medically examined the injuries of Ram Saran P.W. 4 at P.H.C. Usehat on 28-6-78 at about 1.45 p.m. He found the following injuries on his person :-

Injuries of Ram Saran. P.W. 4 (Injured).

1. Gun shot wound 1 cm x 1 cm x unknown depth on left side of back at the level of 10th thoracic vertebra.

2. Gun shot wound . 5 cm. x .5 cm x depth unknown on back at the level of 10th

thoracic vertebra.

3. Contusion size 8 cm x 5 cm around right ankle joint suspected fracture or dislocation. The doctor was of the opinion the final report of Ankle joint can be given after X-ray.

12. P.W. 11 Dr. N. P. Singh conducted medical examination of Ram Murti on 28-6-77 at about 4.15 p.m. He found the following injuries on his person :-

Injuries of Ram Murti.

1. Lacerated wound 4 cm x 1 cm x bone deep over parietal bone 6 cm above left ear.

2. Incised wound 2 cm x 0.5 cm x cartilage over middle of left pinna.

3. Contusion 8 cm x 2 cm over left cheek, blue in colour.

4. Contusion 6 cm x 4 cm on both eyelids conjunctive congested. Blue in colour.

5. Punctured wound 0.5 cm x 0.5 cm x 0.25 cm over left side of face 1 cm away from nostril.

6. Contusion 2 cm x 1 cm over middle and inner .side of lower lip.

7. Abraded contusion 10 cm x 2 cm over back of left elbow and forearm, scab formed. Contusion 1 cm x 2 cm over outer and lower 1/ 3rd portion of left thigh.

9. Contusion 11 cm x 3 cm x 2 cm below injury No. 8.

10. Contusion 12 cm x 1 cm x 2 cm below left knee

11. Abraded contusion 6 cm x 2 cm x 1 cm above outer side of left ankle. Scab formed. Blue in colour.

13. The doctor was of the opinion that injury No. 2 was caused by some sharp edged weapon while injury No. 5 was caused by some sharp pointed weapon. The remaining injuries were caused by blunt weapon. Injury Nos. 1, 4 and 11 were kept under observation and X-ray was advised. The duration was one day.

14. At about 4.45 p.m. the same day he medically examined Ram Dayal, P.W. 5 and found the following injuries on his person :-

Injuries of Ram Dayal. P.W. 5 (injured)

1. Lacerated wound 6 cm x 1 cm x bone deep on the upper portion of the head.

2. Lacerated wound 3 cm x 0.5 cm x scalp in the middle of head, 10 cm above the nose.

3. Punctured wound 0.25 cm x 0.25 cm x 0.25 cm on outer and middle 1/3rd left forearm.

4. Punctured wound 0.25 cm. x 0.25 cm x 0.25 cm one cm above injury No. 3.

5. Punctured wound 1 cm x 0.25 cm x 0.25 cm on the right upper arm in the middle, 1/3rd portion outer side.
6. Lacerated wound 1 cm x 1 cm x skin deep on back of right forearm, 2 cm below the elbow.
7. Lacerated wound 1 cm x 0.5 cm x skin deep, 1 cm below injury No. 6.
8. Contusion 6 cm x 4 cm on the back left side, 3 cm below the left scapula.
9. Lacerated wound 1 cm x 0.5 cm x skin deep on the left leg front side, 8 cm below the knee.
10. Lacerated wound 4 cm x 1 cm x bone deep on left leg on front side 6 cm below injury No. 9.
11. Punctured wound 0.5 cm x 0.5 cm x 0.5 cm on right leg front side, 8 cm below the knee.
12. Lacerated wound 8 cm x 0.5 cm x muscle deep on right foot upper side, 2 cm below the thumb.
13. Lacerated wound 3 cm x 1 cm x muscle deep on the back of right heel.
15. Injury Nos. 1, 4 and 11 were kept under observation and X-ray of skull was advised.
16. P. W. 7, Dr. M. C. Sharma conducted postmortem examination on the dead bodies of three deceased persons on 29-6-77 from 1.00 p.m. onwards and found the position as under:- Deceased Munshi Singh.
17. The deceased was aged about 65 years. 13/4 days had passed to his death. His body was average built. Rigor Mortis passed off from the lower extremities. Decomposition had set in. There were blisters on the body. Abdomen was distended. Tongue and eyes were protruded.
18. On internal examination the doctor found left pleura and upper part of lung punctured. He found 8 oz. of blood in the left pleural cavity of the deceased. Trachea was punctured. Left lung was punctured. There was clotted blood therein. Pericardium was contused and bled. Deep vessels of neck on right side under injury No. 1 were found cut. Stomach contained Semi-digested food.

The doctor found following ante-mortem injuries :-

1. Punctured wound 1 1/2 cm x 1/2 cm outer side of right side of front of cavity deep neck punctured obliquely from right side of neck to left side of chest.
2. Contusion 3 cm x 2 cm on left eyebrow.
3. Contusion 4 cm x 2 cm on front of forehead in between eyebrows.
4. Abrasion two, 3 cm x 2 cm and 2 cm x 1 cm on left elbow back.

5. Contusion 3 cm x 1 cm on front of nose.

6. Contusion 3 cm x 1 cm on tip of left shoulder.

19. The doctor opined that the deceased had died due to shock and haemorrhage. Deceased Mulaim Singh.

20. The deceased was aged about 46 years. 1% days had passed to his death. His body was average built. Rigor Mortis passed off from the lower extremities. Decomposition had set in. There were blisters on the body.

The doctor found following ante-mortem injuries :-;

1. Lacerated wound 6 cm x 4 cm x mandible fractured on cavity deep.

2. Incised wounds 13 cm x 9 cm and 5 cm x 3 cm x rib fractured deep on front of chest.

3. Lacerated wound 9 cm x 9 cm x muscle deep on outer side of upper part of thigh left.

4. Lacerated wound 4 cm x 3 cm with multiple fracture on back of head of skull bone deep. On internal examination the doctor found multiple fractures on all skull bones. 3rd, 4th and 5th ribs were fractured. He found 8 oz. of blood in the pleura. Stomach contained semi-digested food.

21. The doctor opined that the deceased had died due to shock and Haemorrhage. Deceased Itwari.

22. The deceased was aged about 12 years. 1 3/4 days had passed to his death. His body was average built. Rigor Mortis passed off Decomposition had set in. Blisters were found on the body. Tongue protruded.

The doctor found following Ante-mortem injuries :-

1. Contusion 2 cm x 2 cm on front of chest left side, 3 cm below nipple. ,

2. Punctured wound 1 1/2 cm x 1 cm x cavity deep on front of left chest.

3. Stabbed wounds incised 1 cm x 1 cm and 1 cm x 1 cm, 7 cm apart outer side of left thigh.

4. Punctured wound 1 cm x 1 cm x cavity deep right axis region of chest.

5. Incised stabbed wound 1cm x 1 cm x muscle deep.

6. Abrasion and contusion 7 cm x 3 cm on outer side of left shoulder.

23. On internal examination the Doctor found the fracture of 6th rib and 4th rib. Pleura was punctured. Both pleural cavity contained 3 lb. of blood. Both the lungs were punctured. Abdomen was congested.

24. The doctor opined that the deceased had died due to shock and haemorrhage.

25. The prosecution tendered the inquest report Exh. Ka. 36 and Post-mortem report Exh. Ka. 37, in respect of Ram Murti (deceased) the genuineness of which was not disputed by the accused respondents.

26. The learned trial Judge after appreciating the facts and circumstances of the case as also the evidence on record found the accused respondent not guilty. He accordingly acquitted them as per his impugned judgment dated 19-8-78, the operative portion of which was earlier pronounced by the learned Judge three days earlier, that is, on 16-8-78. Feeling aggrieved by the impugned judgment and order of acquittal passed by the learned trial Judge, the State of U.P. has come up in appeal before this Court.

27. We have heard Sri V.B. Singh, learned A.G.A. for State and Shri P.N. Misra and Shri Vinod Prasad learned counsel for the accused respondents and have carefully gone through the fact and circumstances of the case as also record of the case. Findings :

28. It was contended on behalf of the State that the incident in question was a ghastly incident in which as many as four persons were murdered and two others had sustained injuries at the hands of the accused respondents. It was thus argued that the learned trial Judge grossly erred in discarding the eyewitness account of the witnesses who included. Ram Saran, P. W. 4 and Ram Dayal P. W. 5 injured witnesses. On the other hand Shri P. N. Misra, learned counsel for the accused respondents while supporting the judgment of the Court below contended there was no error much less perversity in the impugned judgment and as such no interference into the matter is called for. We now proceed to examine the respective contentions of the parties as against various accused respondents, separately as under:- Charge u/s 120B, I.P.C. as against Accused respondent Hori Lal (A-1), and all others.

29. The only charge framed against this accused respondent is that of criminal conspiracy punishable u/s 120B, I.P.C. The F. I. R. Exh. Ka. 1 which was lodged by Shri Bhanwar Pal, P. W. 1, the son of deceased Mulaim Singh just within five and half hours of the occurrence on 27-6-77, the occurrence having taken place at 5.00 p.m., the same day. It was averred that since 13-14, days before the occurrence after the beating of Janki Prasad and lodging of F. I. R. of that case, accused Hori Lal was defaming his father Mulaim Singh (deceased) because Mulaim Singh (deceased) got the said FIR filed. Hori Lal who was the leader of his party was on the look out to kill the complainant's father Mulaim Singh and his uncle Munshi Singh. Hori Lal and his associates were busy in making consultations in this connection. No other specific allegation about the time and place of the alleged conspiracy was mentioned in the F. I. R. It was, stated in the F. I. R. Ext. Ka 1 that as many as 12 accused persons, besides Hori Lal, came at the spot to commit the crime in question with the consultation of Hori Lal. During the course of evidence before the Court below, only Kalyan Singh (P. W. 12) was examined as witness of the alleged conspiracy. Kalyan Singh, P. W. 12 stated in his statement on oath before the Court below, which was recorded on 17-6-78,

that about a year back, he had gone to village Katra which was situate at a distance of about one kms from his village for purchasing some household goods. There he met Makhan. It was the time of noon. He, therefore, sat down near the shop of one Umendra. There Hori Lal Al Jadunath A8 and Shyam Pal A9 were also sitting and talking together. He stated that Hori Lal accused was saying to Jaddu and Shyam Pal to make arrangement for the weapons and to kill Mulaim Singh. He stated that hearing these things he and Makhan went away from there. He asked Makhan to inform Mulaim Singh (deceased) about this fact. When asked to identify the accused Hori A-1 and Jaddu A-8 this witness laid hands upon Shyam Pal A-9 saying that he was Jaddu. He however, correctly identified Hori A-1. During the course of his cross-examination this witness stated that he knew Shyam Pal A9, Jaddu A8 and Hori A1 since before. It was not a market day. Umendra the owner of the shop was not present there, but these three accused persons were sitting there inside the shop. He stated that sitting outside the shop he recognised the voice of Hori. He did not show the said place at which he had heard the talks of Hori etc. to the Investigating Officer nor he lodged any information with the police surprisingly enough he did not give this information to Mulaim Singh. He was unable to state as to whether Makhan had gone to Mulaim Singh or not. Makhan was very much alive but was not examined by the prosecution. Shri Kalyan Singh (P. W. 12) stated that he did not inform even the village Chaukidar or village Pradhan because of fear. He stated to have heard Hori Lal saying to arrange weapons for killing Mulaim Singh. He stated that Hori did not say as to when and how Mulaim Singh should be killed. He denied to have given statement to the Investigating Officer on the point that Hori had spoken that Mulaim Singh be killed tomorrow and that all others who would come to save him be also killed and further that if Mulaim Singh was not killed, he would get some of the accused persons killed. He also resiled from his statement recorded by the Investigating Officer on the point that Hori Lal said that they would sit in the house of Ram Swarup Ahir A3 and Rameshwar Kachi A4 and that Mulaim Singh used to go once or twice to village Makrauli and that as soon as he comes back into the village, he be finished and that he would fight out the case and would do pairvi of the same on behalf of his associates.

30. It may be stated here that criminal conspiracy is generally hatched in secrecy. It is not believable that accused Hori Lal should have hatched the said conspiracy regarding the murder of Mulaim Singh sitting in a shop and talking so loudly with his associates as to enable a stranger like Kalyan, P. W. 12 to overhear his designs. Then again, the conduct of this witness to have not informed this fact to the police or even to Mulaim Singh (deceased) and further he resiled from his statement which was recorded by the Investigating Officer, goes to show that he was a got up witness. If it was a fact that accused respondent - Hori Lal had hatched any such conspiracy, he would not keep himself away from the scene of occurrence and should have actively participated in the occurrence of this case. This excludes the possibility of his being responsible for hatching a criminal conspiracy of the kind stated by Kalyan, P. W.

12.

31. Thus the statement of Kalyan, P. W. 12 fails to inspire any confidence and was rightly disbelieved by the Court below. Hori Lal (A-1) and all others were therefore, rightly acquitted for the offence of criminal conspiracy punishable u/s 120B, I.P.C. and finding of fact recorded by the Court below as against these accused is accordingly sustained.

Accused respondent Beer Sahai (A-11) and Brij Lal (A-10).

32. Although both these accused persons were arrayed as culprits in the F. I. R. Exh. Ka. 1 and according to the averments of the F. I. R. as also the evidence of the eye-witnesses like P. W. 1 Bhanwar Pal, P. W. 4, Ram Saran, P. W. 5, Ram Dayal and P. W. 6 Latoori, they were named as culprits yet, the fact remains that both these accused respondents had claimed identification and the learned Judicial Magistrate as per his order dated 7-10-77 had ordered for their identification. They were accordingly put up for identification on 5-11-77, inside district jail, Badaun. Five witnesses viz. Bhanwar Pal, P. W. 1, Ram Dayal P. W. 5, Latoori P. W. 6, Radhey and Jhabboo were called for identification, Out of whom Bhawar Pal, P. W. 1 laid hands upon Beer Sahai and Jhabboo who was not examined before the Court below in this case laid hands upon Brij Pal. Ram Dayal, P. W. 4, Latoori, P. W. 6 and Radhey (not named) could not identify any of these two accused persons. Thus the net result of identification as against Beer Sahai was not correct and four wrong, similarly as against Brij Pal it was one correct and four wrong. It would thus be seen that the net result of identification as against these two accused respondents was only 20 per cent.

33. The circumstances that the injured eyewitness Ram Dayal, P. W. 5 also could not lay hands upon any of these two accused persons and further that the complainant Bhanwar Pal also could not lay hands upon both these accused persons and Jhabboo who alone laid hands upon Brij Pal was not examined before the Court below rules out the possibility of their active participation in the occurrence of this case, these two accused respondents, therefore deserve to be given the benefit of doubt and were rightly acquitted. Their acquittal is accordingly approved.

Charges u/s 148/302/307/149, I.P.C. as against accused respondents Kalyan (A-2), Ram Swarup (A-3) Rameshwar (A-4), Atroo (A-6), Saktoo (A-7), Jadunath (A-8) and Shyam Pal (A-9) and

Charges u/s 147/302/307/149, I.P.C. as against Mahabir A-5).

34. In order to prove the aforesaid charges framed against these eight accused persons, the prosecution relied upon direct evidence of four witnesses of fact viz. Bhawar Pal, P. W. 1, Ram Saran (injured), P. W. 4, Ram Dayal (injured), P. W. 5 and Latoori, P. W. 6.

35. It has come in the evidence of all these four witnesses of fact that the deceased Mulaim Singh along with his son Bhanwar Pal, P.W. 1, cousin brother

Radhey, had gone to Pt. Ram Saran, P.W. 4 in village Makraoli for purchasing the Bel of Shakerkandi and while they were returning from that village which lay at a distance of about two furlongs from the complainant's village at about 5.00 p.m. along with Ram Murti (deceased) who wanted to purchase some bullocks, and when they passed from in front of the house of accused Rameshwar (A-3), Ram Swarup (A-4) which lay at a distance of about 60-70 paces from the house of the complainant, as many as 13 persons including the accused respondents named above emerged out from the said house. Out of these persons Saktoo (A-7), Atroo (A-6) Rameshwar (A-3) Ram Swarup (A-4), Kalyan (A-2) and Mahabir (A-2) belonged to his village; Jadunath (A-5) and Shyama Pal (A-9) were the residents of a nearby village Rashmi Nagla; 04 other associates viz. Beer Sahai (A-11) and Brij Pal (A-10) were residents of Vikrampur and Pothi (accused since dead) was a resident of Bare Gaon and one was unknown, who was in Khaki Uniform. Out of these persons Atroo (A-6), Ram Swarup (A-3), Shyam pal (A-9) and Jadunath (A-8) were armed with guns, Saktoo (A-7) and Rameshwar (A-4) were armed with Kantas, Kalyan (A-2) and Pothi (accused since dead) were armed with Ballams, Beer Sahai (All), Brij Pal (A-10) and Mahabir (A-5) were armed with Lathies and the other unknown who was armed with Lathi. It has come in their evidence that feeling frightened from these accused persons, the complainant Bhanwar Pal, P.W. 1, his father Mulaim Singh and cousin brother Radhey, Ram Saran, Ram Murti and other persons accompanying them entered into the complainant's house and bolted the house from inside. The accused respondents and their associates surrounded the house of the complainant. They were shouting to break open the door of the complainant's house and to kill the complainant's father. These witnesses stated that Mulaim Singh (deceased), his son Itwari (deceased) and Pt. Ram Saran, PW-4 who was also having a gun went over the roof of the house. Hearing noise the complainant's uncle Munshi Singh also came over the roof. The accused respondents went over the roof of the complainant and assaulted Muliam Singh; his brother Munshi Singh and son Itwari by means of spears, Kanlas and Lathios. Pt. Ram Saran, P.W. 4 sustained gunshot injury. He jumped down. Ram Murti (deceased) and Ram Dayal, P.W. 5 ran outside the house. The accused respondents assaulted Ram Murti and Ram Dayal (P.W. 5) outside the house of the complainant. These witnesses averred that the accused respondents who were holding guns viz. Ram Swarup (A3), Atroo (A6), Jadunath (A-8) and Shyam Pal (A9) remained standing outside the house of the complainant opening fire by means of their guns in the air with a view to provide cover to the assailants who were there on the roof of the complainant's house and to create terror, with the result that the neighbouring inhabitants of the complainant's house closed their doors. None came out, feeling frightened from the gun shots. It is clear from the evidence of these four witnesses of fact that this occurrence had taken place at about 5.00 p.m. when there was sufficient light of the day. Mulaim Singh, Itwari and Munshi Singh died on the spot whereas Ram Murti Lal who sustained a number of injuries died three days later.

36. The ocular evidence of P.W. BhanwarPal finds full collaboration by the averment of the F.I.R., which was promptly scribed by him and which was taken to police station and lodged at 10.30 p.m. that is, within five and half hours of the occurrence, the police station being situate at a distance of about 15 kms, where the complainant had gone on foot.

37. it is clear from the ocular evidence of the witnesses of fact that the assailants had snatched away the gun belonging to Mulaim Singh (deceased) and Ram Saran, P.W. 4.

38. The ocular evidence of Ram Saran, P.W. 4 who had fully corroborated the prosecution version as stated by the complainant Bhanwar Pal, P.W. 1 and who too had sustained gun shot-injuries in the occurrence of this case finds full corroboration by the medical evidence of Dr. G.D. Bhasker, P.W. 2, who found two gun shot wounds and a contusion on the person of Ram Saran at the time of his medical examination at 1.45 p.m. on 28-6-77 at Unehath Dispensary. Dr. G.D. Bhasker, P.W. 2 clearly stated in his statement on oath before the court below that the contusion which was measuring 5 cm x 5 cm on front of Ankle joint and a fracture or dislocation was suspected could have been caused by means of fall on 27-6-77 at 5.00 p.m. the date and time of occurrence of this case.

39. Similarly the ocular evidence of. Ram Dayal, P.W. 5 who too had sustained injury in the occurrence in question and who has fully supported the prosecution story in all material points finds full corroboration by the medical evidence of Dr. N. P. Singh, P.W. 11 who had medically examined Ram Dayal at 4.45 P.M. on 28-5-77 and found as many as 8 lacerated wounds, four punctured wounds and one contusion, Dr. N.P. Singh, P.W. 11 clearly opined that injury Nos. 1,2, 10 and 12 which were lacerated wounds were kept by him under observation and for which he had advised X-ray. Injury Nos. 3, 4, 5 and 11, which were punctured wounds could have been caused by means of some sharp edged weapons like spear and the contusion could have been caused by means of blunt weapon like lathi. He specifically stated that at the time of his medical examination, the injuries of Ram Dayal, P.W. 5 were about one day old. He was very specific in his statement that these injuries could have been caused to him by means of Kanta, Ballam and Lathi on 27-6-77 at 5.00 p.m. that is, date and time of occurrence suggested by the prosecution.

40. P.W. 5, Latoori is the resident of village Makraoli, where the deceased Mulaim Singh had gone to purchase the Bel of Shakerkandi and from where he along with his son Bhanwar Pal and nephew Radhey as also Pt. Ram Saran and Ram Murti had come back to the village of occurrence because Ram Murti wanted to purchase certain bullocks. He had accompanied Ram Murti Lal who subsequently died after three days of the occurrence because of the injuries sustained by him in the occurrence of this case. This witness stated that he was considered as an expert for selecting bullocks which Ram Murti wanted to purchase. Since Ram Murti was a relation of Pt. Ram Saran (P.W. 4) and since he along with Ram Saran, P.W. 4 had accompanied the deceased Mulaim Singh for the purpose of

purchasing bullocks it was very natural for them, to take an expert man like P.W. 6 Latoori and to ask him to accompany them for recognising the bullocks as to whether they were of any worth or not. He has fully corroborated the prosecution version as against the aforesaid eight accused respondents named above. He had no enmity with the accused respondent and we find nothing against him to discard his testimony.

41. It is important to note here that according to the suggestion of the accused respondents as also the statement of their defence witness Chimman Lal, D.W. 2, an incident of the kind which was set up by the prosecution did happen. Chimman Lal, D.W. 2 only stated that the time of incident was of evening after meals it can thus be seen that the occurrence as such in which three valuable lives were lost at the spot and the fourth one died after three days of the occurrence because of injuries caused to him by Spear, Kanta Lathi and gun shots is not disputed. It was only suggested on behalf of the accused respondents that Bhanwar Pal, P.W. 1 was not present at his house at the time of occurrence. The suggestion put forward by the defence is devoid of any force for the reason that Bhanwar Pal, P.W. 1 was a young lad of 18 years of age at the time of occurrence. He failed in the High School examination and his presence at his own house was rather natural and probable. The presence of P.W. 4 Ram Saran, P.W. 5 Ram Dayal and Latoori P.W. 6 at the house of the complainant is fully established by the probabilities of the case that the deceased Mulaim Singh had gone to purchase the Bel of Shakerkandi to Pt. Ram Saran which was not available there and in turn Ram Saran along with his relation Ram Murti and Latoori came to the house of the complainant to see and purchase certain bullocks.

42. The circumstances that prior to the occurrence of this case, Budhpal who was the brother of the accused respondent Jadunath and Shyam Pal was murdered and in which case the deceased Mulaim Singh and his brother Munshi Singh were arrayed as accused persons afforded a well founded motive to these two accused respondents to take revenge of the death of their brother by killing Mulaim Singh and Munshi Singh. The circumstances that certain accused respondents viz. Jadunath, Shyam Pal, Atru and Ram Swarup were armed with guns; that they remained outside the house of the complainant with a view to provide cover to the assailant who were the rest of the accused respondent viz. Kalyan, Rameshwar and Saktoo who were armed with spear, Kantas respectively and Mahabir who was armed with Lathi fully go to show that all these eight accused respondents had formed an unlawful assembly with the common object of committing the murder of Mulaim Singh etc. and that in prosecution of the common object of the said unlawful assembly they and their associates "committed the gruesome murder of Mulaim Singh, Itwari and Munshi who died on the spot and Ram Murti Lal who died three days later on. It fully goes to prove that the accused respondents had assaulted these four deceased persons with an intention to kill. It further proves that the accused respondents caused injuries to Ram Saran, P.W. 4 and Ram Dayal, P.W. 5 with such intention and

under such circumstances that if by these injuries any of these two persons would have died, these accused respondents viz A2 to A-9 would have been guilty of murder.

43. The submission of (he learned counsel for the defence that the F.I.R. was made ante-time is devoid of any force for the obvious reasons that a young boy like Bhanwar Pal, P.W. 1 could not have cooked up a theory of murder of his father, brother, and a distant person like Ram Murti Lal without the happening of the incident of the kind of the present one. When as many as three persons had died on spot and three others had sustained injuries and that the police station lay at distance of 15 kms. from the village of the complainant where the complainant had gone by foot, the F.I.R. lodged at 10.30 p.m. at police station cannot be regarded as delayed one. It was rather a prompt F.I.R. and the lodging of which was well proved before the Court below by the formal witness P.W. 3 Head constable Omkar Singh. The medical evidence of Dr. M.C. Sharma, P.W. 7 who conducted the autopsy on the dead body of Mulaim Singh, Munshi Singh and Itwari and who clearly opined that the injuries caused by means of Lathi, Ballam and Kanta which should have been caused on 27-6-77 at about 5 -5.30 p.m. leaves no room for us to discredit the prosecution version in so far as it relates to the eight accused respondents named above.

44. Since the police station lay at a distance of about 15 kms. and since proper conveyance was not quickly available those days, naturally the Investigation Officer, S.I. Sukhveer Singh, P.W. 15 should have taken few hours to reach at the place of occurrence. Evidence of S.I. Sukhveer Singh, P.W. 15 is quite clear on the point that the F.I.R. about this case was lodged in his presence at the police station and that he immediately took up the investigation of the case in his hand and after recording the statement of the complainant Bhanwar Pal he reached at the spot at about 5.15 A.M. on 28-6-77.

45. The circumstances that on reaching to the spot this Investigating Officer found the dead body of deceased Mulaim Singh on the roof of Durga, that of Munshi Singh lying in the Court yard of Yogender Teli and that Itwari lying on the roof of the complainant lends credence to the theory of the prosecution and lead us to the conclusion that the approach of the trial Judge was not only unfair but it was certainly perverse and against the weight of the evidence on record. We, therefore, set aside the finding of fact recorded by the Court below in so far as it relates to the guilt of the these accused respondents named above viz. Kalyan, Ram Swarup, Rameshwar, Alroo Saksoo, Jadunath, Shyam Pal punishable under Sections 148/302/307 read with Section 149, I.P.C. We also set aside the findings of the trial Judge as against the accused respondent Mahabir for the offence punishable Under Sections 147/302/307/149, I.P.C. and hold these eight accused respondents guilty under the said Sections and convict them accordingly.

46. In so far as the conviction of these accused respondents Under Sections 120B, I.P.C. is concerned, the main conspirer viz. Hori Lal having been found not guilty and thus acquitted and the solitary witness of that fact viz. Kalyan, P.W. 22

having not named these accused respondents as co-conspirators, the finding of the innocence of these accused respondents u/s 120B, I.P.C. is sustained. They accordingly stand acquitted on this charge. ,

47. Thus in the result, we find, the accused respondent Kalyan (A2), Ram Swarup (A3), Rameshwar (A4), Atroo (A6) Saktoo (A-7), Jadunath (A-8), Shyam Pal (A-9) guilty under Sections 148/302/307/149, I.P.C. and convict them under the said sections. They are sentenced to undergo R. I. for a period of two years u/s 140, I.P.C. life imprisonment and a fine of Rs. 1000/- u/s 302/149, I.P.C. and R.I. for a period of five years u/s 307. IPC each.

48. We further hold accused respondent Mahabir (A-5) guilty for committing offences punishable Under Sections 147/302/307/149, IPC and convict him accordingly. We sentence him to undergo R.I. for one year u/s 147, IPC, life imprisonment and a fine of Rs. 1000/- u/s 302, IPC and five years R.I. u/s 307 read with Section 149, I.P.C. All the sentences shall run concurrently.

49. Thus the state appeal in so far as it relates to the aforesaid eight accused respondents stands allowed and they are convicted and sentenced as aforesaid. It is directed that these eight accused respondents shall surrender before the Court be-low forthwith who shall commit them to prison to serve out their sentences according to law. In case of their failure to do so within 15 days from the date of this order, the Court below shall issue all sorts of coercive processes against these accused respondents and shall commit them to prison. The Court below shall submit proper compliance report to this Court within a period of three months from the date of this order.

50. The appeal in so far it relates to accused respondent Hori Lal (A-I), Brij Pal, (A-10) and Beer Sahai (A-I1) is hereby dismissed and their acquittal is sustained. They need not surrender. If they are on bail their bail bonds shall stand discharged.

51. Let the record of the case along with a copy of this judgment be sent to the Court below for needful compliance and report as directed above.