
(2005) 08 RAJ CK 0003
In the Rajasthan High Court
Case No : Criminal Appeal No. 359 of 1998

Vishnu and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 03-08-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 162, 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

Citation : (2005) 4 RLW 2608 : (2005) 4 WLC 700

Hon'ble Judges : V.K. Bali, J; Prem Shanker Asopa, J

Bench : Division Bench

Advocate : A.K. Gupta and Pooja Gupta, for the Appellant; M.L. Goyal, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Bali, J.—Six appellants namely Vishnu, Mahesh, Brahmanand, Kanta Prasad, Bhanwar Lal and Lata Bai, who were tried with their co-accused Kanhaiya Lal in connection with murder of Sukhlal and causing injuries to five others, under various offences, have filed the present appeal challenging order of conviction and sentence recorded against them by the learned Sessions Judge, Karauli who vide his order dated 17.4.1998 held them guilty u/s 302 read with Section 149 IPC and sentenced each of them to undergo life imprisonment as also to pay a fine of Rs. 200/- and in default of payment of fine, to further undergo S.I. for a period of two months. They were also held guilty and thus convicted u/s 325/149 IPC and sentenced to R.I. for one year and a fine of Rs. 200/- and in default of payment of fine, to further undergo SI for two months. They were also held guilty u/s 323/149 IPC and sentenced to three months" RI. Appellants Vishnu and Kanta have also been held guilty for offence u/s 148 IPC and sentenced to RI for one year, whereas other appellants have been held guilty u/s 147 IPC and sentenced to undergo RI for six months.

2. Whereas in the occurrence stated to have taken place at 7 p.m. on 28.8.1995,

Sukhlal died due to injuries suffered by him allegedly at the hands of the appellants and some others who were not sent for trial by the police, Babulal, Harmukh, Birma Bai, Sua Bai and Raj Bai were injured. FIR Ex.P.1 with regard to the incident was lodged on 29.8.1995 at 6.30 a.m. by Babulal PW-1. Formal FIR came to be recorded at 10.15 a.m. on the same very day. Special report reached the concerned Magistrate on 30.8.1995 at 11 a.m.

3. Babulal, the first informant, in the FIR lodged by him stated that on 28.8.1995 at about 3 or 4 he along with his father Harmukh, Roshan son of Cheta, Prahlad s/o Sualal and some other persons had gone to the place of Babu Maharaj Devta for some religious purposes. Besides some religious things, there was also programme of long jump. After some time, Kanhaiya Lal sent Lata daughter of Bhanwar Lal at the place of Babu Devta. Lata, while coming to that place, told her father Bhanwar Lal and brothers that at the place of fight, Jatavas were plying tractor whereupon Kanhaiya Lal loudly shouted "where all people had gone". After that, persons present at the place of Babu Devta, Mahesh, Brahmanand, Kanta, Vishnu, Deendayal, Kailash, Bhagwan Lal, Bhanwar Lal and Lata all residents of Village Golara along with Suresh, Rajendra and Guddu son of Babulal, residents of Village Masalpur, armed with sticks Lathi and axes, with a view to open attack, came towards the disputed place belonging to the complainant party. Kanta and Vishnu were armed with axes whereas rest were armed with lathis. Babulal PW-1 further stated in the report that he, out of fear, ran towards his house as his brother Ramkhiladi along with his relation Devi Charan was plying tractor in the fields. There was, however, no tractor being plied at the disputed place. All these people had collected at the disputed place. His brother Ram Khiladi, seeing these people coming, ran away. With a view to save Ram Khiladi, they all from the house including his father Harmukh, his mother Sua Bai, his wife Birma Bai, his brother Sukhlal and Raj Bai wife of Sukhlal were running towards the fields of Devi Charan but on the way, near the fields of Kanhaiya Gujar all these Pandits, whose names have been recorded above, came and the moment they arrived, they gave beatings to Babulal PW-1. Brahma gave a lathi blow on his left shoulder; thereafter Bhanwar Lal, Brahmanand, Vishnu, Kanta and Mahesh gave lathi blows to him as also beat him with fists and blows. Babulal fell down on receipt of injuries. While he was lying on the ground, all these people gave him beatings. His wife Birma Bai came to his rescue and fell upon him. Thereafter, he got up and ran. These people had given beatings to his wife as well. Thereafter, they gave beatings to his father at the same place. His brother Sukhlal and his wife came running to save themselves towards the house but these people followed them and Sukhlal was given beatings by Bhanwar Lal, Bhagwan Lal, Deendayal, Brahma, Vishnu, Mahesh, Kanta and others. He was given beatings with the intention to kill Sukhlal. Thereafter, these people chased Rajbai. She was also given beatings by lathis. Sua Bai, mother of Babulal was also given beatings by lathis. They left his mother who was lying unconscious thinking that she had died. He was saved by Bharosi, Bhairu Gujar, Ummed and Radhey Shyam, otherwise, they would have

killed him as well. His father folded hands before these people but they did not desist in beating them. The government had given them 5 Bighas of land but these people did not permit them to plough the same. They were inimical towards the complainant. This fight had taken place at 7 in the evening.

4. Prosecution proved death of Sukhlal on account of injuries received by him by proving on record his post mortem report Ex.P.38. He sustained following seven injuries, all by blunt weapon:

1. Lacerated wound 14 cm x 2 cm x 1 1/2 cm on the right parietal region of skull, 13 cm above from clotted blood present inside wound and around surface. Fracture of parietal bone seen with naked eye.

2. Lacerated wound 2 cm x 1/2 cm x 1/2 cm on the upper 3rd of right leg, 17 cms below from right knee joint.

3. Contusions-14 cm x 2cm on the left side of front of chest 6 cm below left nipple.

4. Contusions-14 cm x 2cm on the left side of front of chest 6 cm below left nipple.

5. Contusion 8 cm x 4 cm on the left lumbar region of abdominal wall.

5. Contusion 6 cm x 4 cm on the right lumbar region of abdominal wall.

6. Contusion 12 cm x 2 cm on the left side of back of chest on suprascapular region.

7. Contusion 10 cm x 2 1/2 cm on the right side of back of chest on Rt. suprascapular region.

5. Dr. Hari Mohan Meena, who was examined as PW-19, stated that on 29.8.1995 at 10 p.m. on police request, he had examined Babulal son of Harmukh and found following six injuries on his person vide Ex.P.8:

1. Contusion with swelling 8 cm x 6 cm on the left shoulder joint. Blunt.

2. Contusion with swelling 6 cm x 4 cm on the Lt. Scapular region on back of chest. Simple Blunt.

3. Contusion with swelling 6 cm x 4 cm on the Rt. scapular region on back of chest. Simple Blunt.

4. Abrasion 2 1/2 cm x 1/2 cm on the occipital region of skull 13 cm away from Lt. Ear. Simple Blunt.

5. Swelling 4 cm x 2 cm on the occipital region of skull 9 cm above from root of neck.

6. Contusion 1/2 cm x 1/2 cm on the tip of Rt. index finger. Simple Blunt.

He proved injury report Ex.P.8 of Babulal. He stated that duration of injuries in

the injury report had been shown as 12 hours whereas it was actually 24 hours.

6. He also stated that at 7.30 p.m. on the same very day, he had medico-legally examined Harmukh and found following five injuries on his person.

1. Lacerated wound 3 cm x 1/2 cm x 1/2 cm on the lower 3rd of lateral aspect of right upper arm, just above the right elbow joint. Blunt.

2. Contusion 14 cm x 3 cm on the back on the chest on right scapular region. Simple. Blunt.

3. Contusion 12 cm x 3 cm on the back of chest on Rt. scapular region parallel to injury No. 2. Blunt.

4. Swelling 8 cm x 5 cm on the Lt. Scapular region on back of chest. Simple. Blunt.

5. Abrasion 1 cm x 1 cm on the frontal region of skull 10 cm above from root of nose. Simple. Blunt.

7. He proved injury report Ex.P.14 with regard to Harmukh.

8. Out of the five injuries sustained by him, one was found to be grievous.

9. He stated that he had mentioned duration of injuries sustained by Harmukh as seven hours but on the said date, he was alone, there was no light and he was tensed the whole day and therefore, could not correctly mention duration of injuries at that time and when he had prepared injury reports he was not feeling well also. He also stated that he had made correction and gave information with regard to the same to the CMHO. He admitted that no correction was made in the original register and that corrections were made in the office copy. He stated that he had mentioned duration of injuries sustained by Babulal as 12 hours. He was not feeling well at that time. On realising the mistake, he gave information with regard to the same next day, to the police.

10. PW-21 Dr. Hari Mohan Meena also proved injuries sustained by Smt. Sua Bai by proving injury report Ex.P.33. Following two injuries were found on her person:

1. Swelling 7 cm x 3cm on the upper 3rd of left buttock. Simple. Blunt.

2. Complaint of pain on the Rt. buttock lower 3rd. external injury seen.

11. Doctor also proved injuries sustained by Birma Bai vide injury report Ex.P.34. Following four injuries were found on her person:

1. Contusion with swelling 6 cm x 3 cm on the lower 3rd of front of left side of chest. Simple-Blunt.

2. Contusion with swelling 7 cm x 3 cm on the upper 3rd of lateral aspect of Lt. Thigh simple-blunt.

3. Contusion with swelling 4 cm x 2 cm on the upper 3rd of Rt. lower arm.

Simple-Blunt.

4. Swelling 3 cm x 2 cm on the Lt. Parietal region of skull, simple, blunt.

12. Doctor also proved injuries sustained by Rajbai vide Ex.P.35. Following four injuries were found on her person:

1. Contusion with swelling 10 cm x 6 cm on the lateral aspect of upper 3rd of left lower arm. Simple. Blunt.

2. Contusion with swelling 8 cm x 3 cm on the upper 3rd of lateral aspect of Rt. upper arm. Simple. Blunt.

3. Contusion with swelling 4 cm x 3 cm on the left knee joint. Simple. Blunt.

4. Contusion 5 cm x 3 cm on the left side of back of chest laterally. Simple. Blunt.

13. Doctor also stated that on 29.8.1995, he had conducted post mortem on the dead body of Sukhlal. After giving description of the injuries sustained by him, he stated that in his view, death was because of excessive bleeding and shock. Duration of injuries was stated to be 18 hours.

14. Dr. Nand Lal Sharma, Medical Jurist, who was examined as PW-20, stated that on 1.9.1995, he had examined injured Sua Bai, Birma Bai, Raj Bai and others. He was one of the members of the Medical Board which was constituted on the request of Dy. Supdt. of Police. The Board was constituted by the Chief Medical and Health Officer CMHO, Karauli. He was heading the Board so constituted whereas Dr. Makkhan Lal Kawat and Dr. Hukam Chand Garg were its Members. He stated that they had medico-legally examined Smt. Sua Bai at 12.30 p.m. Sua Bai had two injuries on her person. Board had advised x-ray for both the injuries which were caused by blunt weapon within duration of 3-4 days. X-ray report of Smt. Sua Bai was examined and she was found not to have sustained any fracture.

15. On the same very day at 12.10 p.m. the Board had medico-legally examined Smt. Birma Bai and found six injuries on her person. All these injuries were caused by blunt weapon within duration of 3-4 days.

16. On the same very day, x-ray of the patient was examined and she was not found to have sustained any grievous injury.

17. On the same very day, the Board had medico-legally examined Smt. Raj Bai at 11 a.m. She was found to have sustained six injuries which were caused by blunt weapon and were within duration of 3-4 days. On examination of her x-ray, she was not found to have sustained any grievous injury.

18. On the same day at 1.00 in the afternoon, the Board medico- legally examined Harmukh. He was found to have sustained five injuries. All the injuries were caused by blunt weapon and were caused within duration of 3-4 days. On examination of x-ray of Harmukh, it was found that 7th to 10th ribs on the right side of his body were fractured. He proved x-ray report of Harmukh vide Ex.P.32.

19. On the same very day, the Board medico-legally examined Babulal and found five injuries on his person. He was not found to have received any grievous injury. In the cross-examination, the doctor stated that as per Ex.P.9 Babulal could have received all the injuries on 28.8.1995. He also stated that there was no discussion between the Members of the Board as to whether injuries could have been caused on 28th or 29th August, 1995. The Board had not taken any definite decision with regard to the same. Injuries could have been caused within 3-4 days. He also stated that according to his knowledge, injured had since already been examined in Masalpur Hospital. Medical Board had not seen the medical examination reports of the injured. Injured had themselves told that they were medically examined. He stated that if the injuries had been caused within 24 hours, colour of the injuries would be red whereas after the said period, it becomes dark red and thereafter it becomes blue and still thereafter, it becomes brown.

20. Dr. S.L. Kawat, who was examined as PW-24 deposed almost in tune with the statement made by Dr. Nand Lal Sharma PW-18.

21. The first informant Babulal, who too was injured in the occurrence, was examined as PW-1. Harmukh, Birma Bai, Sua Bai and Raj Bai, other injured witnesses, were examined as PW-4, PW-7, PW-25 and PW-27 respectively. They all in unison supported the prosecution version. In as much as two fold contentions of the learned Counsel representing the appellants are based upon part of the statements made by witnesses aforesaid and some others, it would be necessary to refer to that part of the evidence.

22. Babulal PW-1 stated that he had made his report Ex.P.1 at the police station. Police had reached in the village at the place of occurrence and had made site plan Ex.P.2 which was signed by him. He also stated that report Ex.P. 1 was scribed by him but again stated that Deputy Sahib had first made a rough FIR which was made fair by Prahlad. Deputy Sahib, however, did not make any additions or omissions in the FIR Ex.P.1. He again stated that whatever he had told him, he had recorded some of it whereas some of it was not recorded. He admitted that he had not given report Ex.P.1 to Randhir Singh, ASI. Deputy Sahib had recorded his statement on 29.8.1995 at about 10-11 in the morning and it is thereafter, that Ex.P.1 was recorded. He stated that mention in the report that the same was lodged at "6" is incorrect as he had lodged the report at 10-11 in the morning. He also stated that people from the village had given information to the police already, upon which police had come to the village. The information was given by Roshan Lal and Shri Lal who belonged to his village. Both of them had not carried his written report. They had given information of their own. Roshan Lal had gone to the police station at 11-12 at night. Roshan is the same person who had seen the occurrence himself. The corrections were made in Ex.P.1 in column of date at the same time and after correction of the date as "29", he had appended his signatures. He admitted that earlier the date recorded was 28.8.1995 which was scored off and 29.8.1995 was mentioned and

it is therefore that beneath his name he had again mentioned the date as 29.8.1995. This correction was made by him in presence of Deputy Sahib. He also stated that Roshan who had gone to the police station at night was told by them as to who were the persons who had given beatings. Deputy Sahib had recorded statement which was on second or third day. He would, however, not remember the exact date. He admitted that he had given report in Police Station Masalpur which was signed by him and one report he had given to Deputy Sahib at the spot when he had reached there. He admitted that one report had also been given by his brother. He also admitted that his brother had lodged report against 17 persons but he had lodged report against 12 persons.

23. Harmukh PW-4 stated that people of village had gone to lodge the report at the police station and the police had come at the place of occurrence. He admitted that he had Glucoma in his eyes and his vision was weak. He could not see beyond a distance of 3-6 feet. He also stated, who out of his relations or sons, had gone to lodge report, he would not know. The S.H.O. had come in the morning immediately after the sunrise. He also stated that the S.H.O. had come to his house and he had given report to him there. He stated that he had named 12 persons as accused before the police. He also stated that before lodging report they had settled who were those 12 persons. He also stated that he had heard from the boys that report had been lodged against 17 persons. The said report was lodged by Ram Khiladi.

24. Birma Bai PW-7 stated that after cremation of Sukhlal deceased on the second day, they had got themselves admitted in the hospital. They had reached the hospital at about 5-6 p.m.

25. Ram Khiladi, examined as PW-9, stated that he had managed to reach his uncle's house at night at about 12. He told his uncle Kajodi the entire occurrence who scribed a report. He had told his uncle the names of all the persons who were involved in beating and it was on that basis that his uncle had prepared the report. He had given that report to the police at 10-12 in the morning. He had given that report to someone in the police station who was not in the uniform. What happened to that report he would however not know. The report, that he had lodged, was against 17 persons. He had taken his uncle to the police station. They had reached police station early in the morning.

26. Prahlad Sharma, examined as PW-13, the scribe of FIR Ex.P.1 stated that he had written the report on 28.8.1995 but Deputy Sahib made him to over-write "29" in place of "28" which was in his hand. He denied that he had changed the date from "28" to "29" on the asking of Babulal. Babulal after folding the report had put the same in his pocket and Deputy Sahib came in the morning on 29th at 8. He was called by the Deputy Sahib on 29th. Babulal had taken out the report from his pocket and handed over the same to Deputy Sahib. He admitted that there was no trace of any fold in the paper on which FIR Ex.P.1 was scribed. Babulal had first told him that they were beaten by relations of Brahmins. Babulal had then named the persons after asking the same from the people.

27. Mangti Ram, Constable, who was examined as PW-22, stated that on 29.8.1995 four persons had come to Police Station Masalpur and told the SHO that one person had been killed in Village Golara. On the information aforesaid, he along with S.H.O. and 3-4 persons reached the spot. Some proceedings were recorded on the spot. He was handed over report for its registration in the police station. Report Ex.P.1 was given to him which he had taken to the police station Masalpur. He handed over the said report to Randhir Singh, ASI who put number on the same. In cross-examination, he, however, could not given names of those 4-5 persons who had come to the police station. Village Golara was about 16 Kms. The dead body was lying in the courtyard of the house. Babulal had taken out the report from his pocket and handed over to the S.H.O.

28. Satya Narain, Dy. Supdt. of Police, who was examined as PW- 23, stated in his cross examination that he had reached the place of occurrence at 10.30 in the morning on 29.8.1995. He also stated that the doctor had wrongly recorded duration of injuries sustained by the injured persons and therefore, the injured were examined again in Karauli Hospital. He admitted that besides the FIR Ex.P.1, another report with regard to the same incident was received. He also admitted that there was difference between report Ex.P.1 and the other report that was received by the police. The report that was given by Ram Khilari, contained names of Lakkhi, Shrilal, Bhanwarlal, Brahma, Mahesh, Vishnu, Kanta, Kunta, Suresh, Rameshwar, Dwarika and Girraj as also Deena. There was some difference of names between the FIR Ex.P.1 and the report lodged by Ram Khilari. The report submitted by Ram Khilari was partly right and partly wrong. He denied that the report lodged by Ram Khilari was recorded first and the same was deliberately concealed and second report was got recorded.

29. Mst. Sua Bai, who was examined as PW-25, stated that Sukhlal knew persons who were involved in the crime. Roshan had gone to lodge the report that Brahmins had killed Sukhlal. She admitted that when the police received intimation, it came in the morning at 9-10. On arrival of the Deputy, they had told him names of the persons who were involved in the crime. In her presence, however, Babulal did not tell the Deputy as to who were all those who had killed Sukhlal. Babulal had given a written report to the Deputy. She admitted that the report was made in consultation with all.

30. Mahendra Singh, SHO, examined as PW-30, in his cross- examination stated that he had received the report with regard to the incident at the spot. He had not received any other report. When they received intimation with regard to the murder, they had reached on the spot. A person had come to give information and that fact " " was mentioned in the Roznamcha. At what time, they had received intimation, he would however not remember. On the spot, report was received at 6.30 a.m. There was no over-writing in Ex.P.1 from portion "A" to "B". Report Ex.P.1 was lodged by Babulal. He was not in a position to tell if there was any over- writing from portion "E" to "F" in numeric "9". He also did not know as to whether in portion "E" to "F" and "G" to "H" in numeric "9" there

was some difference.

31. Appellants when examined u/s 313 Cr.P.C. besides denying the incriminating material put to them, further stated that they have been falsely implicated in this case. They, however led no evidence in defence.

32. Mr. A.K. Gupta, learned Counsel representing the appellants, vehemently contends that as many as five persons, out of which three were ladies, as per the prosecution version, had sustained injuries at 7 p.m. on 28.8.1995. Even though Sukhlal, who succumbed to the injuries sustained by him, was taken to the hospital and his post mortem examination was conducted on 29.8.1995 in the afternoon at 12.45 so far as four other injured persons are concerned, they were admitted in hospital in the evening of 29.8.1995. There was no question that none of the five injured witnesses would be taken to hospital for treatment immediately or in short duration when they actually received injuries. He contends that the occurrence had not taken place at 7 p.m. on 28.8.1995, as alleged by the prosecution. The very examination of injuries sustained by the injured witnesses, almost after 24 hours, which is clearly against human conduct, would show that as a matter of fact, the occurrence had taken place somewhere at 8 or 9 in the morning of 29.8.1995. It is for that precise reason that the doctor who initially examined the injured witnesses, stated duration of the injuries sustained by them to be between 7-17 hours. Even though, normally presence of injured witnesses cannot be disputed, but in the facts and circumstances of the present case, the said witnesses were certainly not injured in the occurrence in which Sukhlal sustained fatal injuries and therefore, statements made by them should be totally discarded. He further contends that the prosecution made a very crude attempt in covering up such a major inconsistency in the prosecution case by arranging a medical board for re-examining the injured witnesses and obtained a false opinion from the Board so as to synchronise the time of injuries sustained by these witnesses with the prosecution version of the incident having taken place at 7 p.m. on 28.8.1995.

33. The next contention of the learned Counsel is that the present case is of numerous FIRs lodged at different time and places by different persons giving different version of the occurrence. No implicit faith can be had on the version recorded by the first informant Babulal PW-1 particularly when it stands admitted that the date of FIR was changed from 28.8.1995 to 29.8.1995; and further that there was contradictory evidence with regard to the place where it was lodged i.e. either police station or at the spot.

34. We have given our thoughtful considerations to the contentions raised by the learned Counsel, as noted above. On the first blush, there appears to be considerable merit therein but when examined in its all important and minute details, the same would pale into insignificance.

35. The post mortem report Ex.P.38 of Sukhlal would show that he had died on 28.8.1995 itself. Post mortem on his dead body was conducted on 29.8.1995 at

12.45 p.m. His death had occurred on 28.8.1995, as per the post mortem report, within 18 hours. From the medical evidence brought on record, it is thus proved that Sukhlal sustained injuries at about the same time as mentioned in the FIR Ex.P.1. It may be recalled that as per the prosecution version the occurrence had taken place at 7 p.m. on 28.8.1995. In fact, medical evidence is absolutely in tune with the prosecution version in so far as time and date of occurrence is concerned. There is no dispute that Sukhlal was not taken to the hospital immediately on receipt of injuries by him nor there can be in fact, any dispute with regard to the same as even post mortem on the dead body of Sukhlal was conducted at 12.45 in the afternoon on 29.8.1995. In so far as admission of injured witnesses in hospital in the evening of 29.8.1995 is concerned, it may be noticed that the defence did not gather courage to ask even a single question to any of the injured witnesses as to why they did not go for medical treatment immediately or shortly after receipt of injuries by them. Birma Bai PW-7 alone, however, while stating that they had gone to hospital in a Jeep, further stated in her cross-examination that they had gone to the hospital next day after cremating Sukhlal. It may be true that when so many people were injured and one of them had received a grievous injury as well, it would be not only in tune with human conduct but also the need of hour to rush them to the hospital for treatment but the explanation furnished by one of the witnesses who alone was questioned on the point does not appear to be improbable. In so far as the doctor who first examined the injured eye witnesses and stated duration of injuries which does not appear to be synchronizing with the date and time of occurrence is concerned, the doctor clearly admitted this mistake and gave variety of reasons which led him to make the mistake. The concerned doctor, immediately on realising the mistake, made necessary corrections by correcting the duration of injuries in the office copies of the reports maintained by him and intimated the same to higher police authorities. In our considered view, the prosecution proceeded in right direction in yet verifying the correctness of the opinion given by the doctor with regard to the duration of injuries. If on verification, the opinion given by the doctor with regard to duration of injuries, was to be reiterated by the Medical Board, it appears investigation would have taken different course. Verification of the opinion of doctor with regard to duration of injuries appears to be a step taken by the prosecution in right direction.

36. In the present case, however, Medical Board of three doctors so constituted, on re-examination of the injuries of the witnesses, unanimously gave opinion which is not even disputed. The said witnesses had received injuries at about the same time when Sukhlal was given fatal blow. It is interesting to note that not a single question was put to the two doctors from out of the panel of medical board constituted and who appeared in the witness box that the duration of injuries was not as stated by them. No question with regard to the colour of injuries that might have gone to determine the duration of the injuries was put to the doctors. There is nothing at all to disbelieve the statements made by the two doctors who

were members of the Medical Board, whereas there is ample evidence to show that the doctor who first examined the injured witnesses had incorrectly mentioned duration of injuries sustained by them. There is also plausible explanation forthcoming from the records as to why the injured witnesses chose not to rush for their medical treatment immediately on receipt of injuries by them. We may further add here that, but for one, all injured witnesses had received simple injuries and in these circumstances, if they got themselves admitted in the hospital for treatment after cremation of Sukhlal on 29.8.1995, nothing improbable could be found in the same. That apart, there does not appear to be any reason whatsoever for the injured eye witnesses to screen the offenders who might have attacked them. The fact that as many as five persons were injured is not in dispute. All that is being urged, is that they were injured at different time and place and by someone else. It is in these circumstances as mentioned above that we have observed that if five persons had been subjected to attack by different persons at different time and place, there was no question for those witnesses to state so. That apart, it is too well settled that when eye witness account which is reliable with regard to the time and date of occurrence is available, medical evidence could hardly be relied upon to falsify the evidence of such eye witnesses. Medical evidence is always guided by various factors based on guess and certain calculations. Unless such evidence may be in sharp contrast to the ocular evidence, precedence has to be given to the ocular evidence which of course may be worthy of credence. Reference in this connection may be made to a judgment of the Supreme Court in *Mange Vs. State of Haryana*,

37. Contention of Mr. A.K. Gupta based upon number of FIRs and there being conflicting evidence with regard to time and place where FIR Ex.P.1 was lodged and manipulation in date from "28.8.1995" to "29.8.1995", is also devoid of any merit. There could be no second or third FIR in respect of the same cognizable offence and with regard to the same incident or occurrence. Section 154 Cr.P.C. deals with the first information report which has to be with regard to the cognizable offence. Once FIR with regard to a cognizable offence is recorded by the police, all further reports that may be received in regard to the same incident, would be statements falling u/s 162 Cr.P.C. This is what precisely we have held in a recent judgment in *Narendra Kumar @ Nagin v. The State of Rajasthan* 20054 RLW 2580D.B. Criminal Appeal No. 507/2001, decided on 6.7.2005. Supreme Court in *T.T. Antony Vs. State of Kerala and Others*, has held that the information first entered in the station house diary kept for this purpose, by a police officer in charge of a police station is the first Information report. All other information made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the FIR and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling u/s 162 Cr.P.C. and that no such information or statement can properly be treated as FIR and entered in the station house diary again as it

would in effect be a second FIR and the same cannot be in conformity with the scheme of the Cr.P.C.

38. It is no doubt true that in the present case, evidence would certainly reveal that whereas Babulal lodged FIR Ex.P.1, Ram Khiladi who managed to escape from the village and reached house of his uncle, scribed yet another FIR and endeavoured to lodge the same at the Police Station as also that some villagers had also informed police with regard to the same incident. Involving various persons in the same incident alone, in our view, would not make the least difference either in law or on facts in rejecting the prosecution case. From the totality of evidence that has come on record what appears to us is that Babulal had got the FIR scribed from Prahlad PW-13 on 28.8.1995 but the same was lodged on 29.8.1995. Prahlad in fact is admitted to have scribed the report Ex.P.1 on 28.8.1995, whereas Ram Khiladi who could manage to escape from the village, reached his uncle and tried to lodge FIR in the morning. Babulal, it appears, did not gather courage and out of fear of the accused did not lodge the FIR on 28th August, 1995 itself. It would be wholly immaterial if the FIR was lodged at the police station when Babulal is stated to have gone there or the report already written on 28.8.1995 was handed over to the police on its arrival at the village. Prosecution, no doubt, it appears, has tried to make it look like as if the report was lodged by Babulal when he came to the police station on 29.8.1995 whereas from the statements made by Prahlad PW-13 and Mangti PW-22 it appears that written report was handed over to the police on its arrival in the village but as mentioned above, the prosecution story on that count cannot be rejected. It also appears to be true that the police asked Babulal to change the date from "28" to "29" and he in fact did so but that again would be of no significance in the context of the facts and circumstances of the present case. If perhaps the date "28" was not changed to "29", the prosecution might have pressed its case more vigorously by stating that it was a case of prompt lodging of the FIR. As mentioned above, it appears that the FIR was scribed by Prahlad PW-13 on 28.8.1995 and the said date was also mentioned but when actually the report was lodged on 29.8.1995, the police asked Babulal to make a change of the date from "28.8.1995" to "29.8.1995". We find no wrong whatsoever, in the police asking Babulal to change the date from "28" to "29" as in fact and in reality, the FIR was lodged on 29.8.1995, even though scribed on 28.8.1995. At all relevant places in the FIR date is mentioned as 29.8.1995 itself. On the right hand side of signatures of Babulal, the date mentioned is 29.8.1995. Even though it appears to us that even this date was inserted for the first time on 29.8.1995, but that too would make no dent in the prosecution case. The report was actually and as per the prosecution case itself was lodged on 29.8.1995 and that is proved from the various endorsements made by the police on the FIR itself.

39. In so far as contention of Mr. A.K. Gupta that the FIR was lodged in consultation with each other is concerned, suffice is to say that facts of this case are such that consultation with injured persons was perhaps necessary. Narration

of events given in the FIR would show that the witnesses were beaten at different places by different persons. Some of the witnesses were chased and given beatings. In these circumstances, it was natural for the injured witnesses to consult with each other before lodging the FIR.

40. Present is a case where one person died and five were injured. Statements made by all the injured witnesses are consistent. It is a case where independent witnesses who were not injured, have also supported the prosecution case.

41. Statements made by even independent witnesses are consistent and in tune with the statements made by injured witnesses.

42. The only contention that needs acceptance, in the present case, is that while lodging the FIR, the complainant party tried to involve as many people from the side of accused as could be possible. It may be recalled that whereas Ramkhiladi had named 17 persons, Babulal had named 12 persons as accused. The police which had investigated the case, did not challan five persons regarding which it does not appear that any protest was lodged by the complainant party at any time. One of the persons arrayed as accused with the appellants has since been acquitted. There is no appeal or revision filed against his acquittal. From a reading of the FIR, we find that Lata Bai has not been ascribed any role. She has not been attributed any injury to the deceased or the injured witnesses. She, in our view, deserves to be given benefit of doubt as a matter of abundant caution.

43. In view of the discussion made above, whereas we find no merit in the appeal preferred by appellants Vishnu, Mahesh, Brahmanand, Kanta Prasad and Bhanwar Lal and dismiss the same, thus upholding the order of conviction and sentence recorded against them by the Sessions Judge, Karauli dated 17.4.1998, Appeal filed by Lata Bai only deserves to succeed by giving her benefit of doubt. The order of conviction and sentence recorded by the Sessions Judge, Karauli dated 17.4.1998, in so far as conviction and sentence of Lata Bai is concerned, is set aside. Lata Bai is already on bail. She need not surrender.