

Lakshmi Singh and Others

Vs

State of Bihar

Criminal Appeal Nos. 284 and 285 of 1971

(P.N. Bhagwati, Syed M. Fazal Ali JJ)

10.09.1976

JUDGMENT

FAZAL ALI, J. -

1. In these criminal appeals 284 and 285 of 1971 by special leave, seven persons, namely, Lakshmi Singh, Jagdhari Singh, Jagdish Singh, Chhathu Singh, Dasrath Singh, Ramprasad Singh alias Ramprasad Sah and Ramsagar Singh had been put on trial for the murder of two persons, namely, Chulhai and Brahmdeo and were tried by the Sessions Judge, Muzaffarpur, who by his order dated November 30, 1968 convicted the appellant Lakshmi Singh under Section 302 I.P.C. to imprisonment for life. All the other accused were convicted under Section 302/149 I.P.C. and sentenced to imprisonment for life. Accused Jagdhari Singh was convicted under Section 325 I.P.C. and sentenced to six months' rigorous imprisonment, while the accused Ramsagar Singh, Lakshmi Singh and Dasrath Singh were convicted under Section 148 I.P.C. and sentenced to one year's rigorous imprisonment. Ramprasad Sah, Jagdhari Singh, Jagdish Singh and Chhathu Singh were further convicted under Section 147 I.P.C. and sentenced to six months' rigorous imprisonment. The learned Sessions Judge ordered all the sentences to run concurrently. The appellants filed two separate appeals before the High Court of Patna which dismissed the appeals and affirmed the convictions as also the sentences passed against the appellants. Appellants Lakshmi Singh, Jagdhari Singh, Jagdish Singh, Ramsagar Singh and Dasrath Singh have filed Criminal Appeal 284 while Chhathu Singh and Ramprasad Singh alias Ramprasad Sah have filed Appeal 285. As however both the appeals arise out of the same judgment, we propose to decide these appeals by one judgment.

2. This is an unfortunate case in which two persons appear to have lost their lives over a very petty and trivial dispute. On a perusal of the evidence and the circumstances of the case, we feel that the prosecution has not come out with the true version and the result is that the murder of the two persons has to go unpunished, and this is yet another misfortune of the case, but if the prosecution does not choose to put forward the true version it is to be itself squarely blamed for the failure of the case.

3. Briefly put, the facts may be summarised as follows.

4. Appellant Ramsagar Singh and his brother Dasrath Singh were full brothers being sons of Maharaj Singh. They were residents of village Alipur Hatha, police station Mahnar. The deceased Chulhai and one Ramasray were the first cousins of these two persons and the deceased Brahmdeo was a nephew of Chulhai. It appears from the prosecution case that the two families were living together in the same house in different portions having a common courtyard. There was some sort of partition between the two cousins and their children in which portions of the house were allotted to

each branch. Jaiwanti daughter of Ramdayal Singh one of the sons of Chulhai Singh was married on April 18, 1966 and Dasain Singh and others had fixed a marwa (marriage platform) in their common courtyard. The marriage passed off peacefully and the appellants Ramsagar Singh and Dasrath Singh never objected either to the marriage being held in the courtyard or to the construction of the marwa. Three days later i.e. On April 21, 1966, which according to the prosecution happened to be the day when the chauthari ceremony had been performed at about 4 p.m. When Dasain Singh, his father Chulhai Singh and others were sitting in the house the appellants Ramsagar Singh and Dasrath Singh armed with bhala and bana respectively appeared on the scene and asked Chulhai Singh and Dasain Singh to demolish the marwa. Chulhai Singh, however, protested and refused to demolish the marwa because it was customary in the family not to demolish the marwa until 1 1/4 months from the date of the marriage had elapsed. This led to an exchange of hot words and an altercation in the course of which other five appellants, namely, Lakshmi Singh, Ramprasad Singh, Jagdhari Singh, and Chhathu Singh joined the two appellants Ramsagar Singh and Dasrath Singh and made a common cause with them in assaulting the two deceased persons Chulhai Singh and Brahmdeo. According to the prosecution, Jagdhari Singh gave orders for assaulting the prosecution party and thereupon Ramsagar Singh assaulted Brahmdeo Singh with a bhala on his head, Dasrath Singh struck him with the lathi portion of his bana while Jagdish Singh and Jagdhari Singh assaulted him with lathis. Lakshmi Singh is said to have assaulted Chulhai Singh with a bhala in his abdomen and when he fell down he was assaulted with lathis by Chhathu Singh and Ramprasad Sah. Dasain Singh was also assaulted by Jagdhari Singh when he tried to intervene. Thereafter all the accused persons fled away. Dasain Singh and his brother Dangroo Singh carried the two deceased persons to Mahnar Hospital on rickshaw, where they were admitted. The A.S.I. attached at the Mahnar police station reached the hospital at 7.57 p. m. on receiving a slip from the doctor in charge of the Mahnar Hospital and found Brahmdeo Singh and Chulhai Singh unconscious. The A.S.I. recorded the further statement of Dasain Singh which was treated as the first information report. Brahmdeo Singh however succumbed to his injuries at Mahnar Hospital, while Chulhai Singh was advised to be taken to a bigger hospital at Hajipur and there he died the next day. After the usual investigation, the police submitted chargesheet against the seven accused who were put on trial and were convicted as indicated above.

5. The defence was that none of the appellants had participated in the assault at all and the accused had been falsely implicated due to enmity. It was also suggested that so far as the accused, other than Ramsagar Singh and Dasrath Singh, were concerned they had absolutely no animus against the two deceased persons, nor had they any connection with the construction or demolition of the marwa and had been especially selected for false implication at the instance of their sworn enemies PWs 1 to 4. The defence of Dasrath Singh and Ramsagar Singh was that the two deceased persons and Dasain Singh had trespassed into their plantain orchard and were cutting away a number of plants and leaves and when Dasrath Singh protested he was assaulted by Dasain Singh and others and thereafter in the mutual fight the two deceased were assaulted in exercise of the right of private defence by the accused and others who had assembled nearby. Thus a very significant factor which we find in this case is that there are two groups of accused who are totally unrelated to one another. Jagdhari Singh is the father of Jagdish Singh and Lakshmi Singh. Ramprasad Sah and Chhathu Singh, though not relations, appear to have been the supporters of these three accused. None of these accused, however, appear to have any concern or connection with the deceased or the members of their family, but they have been on inimical terms with PWs 1 to 4. In fact the evidence shows that there were two warring factions in the village - one headed by accused, and the other headed by PWs 1 to 4 - and various types of cases were fought between these two groups.

6. Both the High Court and the learned Sessions Judge have clearly found that there was serious

enmity between the accused Jagdhari Singh, Jagdish Singh, Lakshmi Singh, Ramprasad Singh and Chhathu Singh on the one hand and PWs 1 to 4 on the other. This finding has been confirmed by the High Court which, while dwelling on this aspect of the matter, observed as follows :

It is sufficient to mention that, on the admissions made by these witnesses, it has been proved that there have been litigations between these witnesses (PWs 1, 2, 3 and 4) on the one hand, and the appellants of Criminal Appeal 479 of 1968 (Lakshmi Singh, Jagdhari Singh, Jagdish Singh, Chhathu Singh, Ramprasad Singh or Sah), on the other. This fact cannot be disputed. It is also clear that there are two factions in the village, both antagonistic to each other. PWs 1, 2, 3 and 4 belong to one faction and the appellants to the other.

In view of the peculiar feature of this case, we have to approach the evidence of the eyewitnesses with very great caution, because they would undoubtedly be interested in implicating the group of the accused headed by Jagdhari Singh. We would, therefore, like to indicate the nature of enmity between this group of accused and PWs 1 to 4. We have it from the evidence of PW 1 that PW 1, PW 2 Sitaram Singh and PW 4 Naga Singh were involved in a murder case under Section 302 I.P.C. in which Jagdhari Singh accused was a witness against them. Apart from this, PW 1 has further admitted that there was a title suit 231 of 1961 in the court of Second Munsif, Hajipur between the appellant Ramprasad Sah and PW 3 Parmeshwar Singh in which the witness had deposed for Parmeshwar Singh. The witness sought to deny the allegation that Ramprasad Sah had brought a criminal case against him. But this fact is proved by Ext. E at p. 151 of the paper book which is a complaint dated June 30, 1962 filed by the appellant Ramprasad Sah against PW 1, PW 3, and others. PW 1 candidly admits that Ramprasad Sah and Jagdhari Singh and his sons and Chhathu Singh had absolutely no concern with the marwa.

7. Similarly PW 2 Sitaram Singh admitted that PW 4 Naga Singh was his cousin. He, however, admitted that he along with PW 1 Ramji Singh and PW 4 Naga Singh were accused in criminal case under Section 302 I.P.C. in which the appellant Jagdhari Singh had deposed against him.

8. Similarly PW 3 Parmeshwar Singh has also admitted enmity with the group of accused headed by Jagdhari Singh. He admits in clear terms that the appellant Ramprasad Sah had instituted a title suit 231 of 1961 against him which is still pending and in which Jagdhari Singh had deposed against him, PW 1 Ramji Singh and PW 4 Naga Singh had deposed for against him. He tries to deny the knowledge of the title suit filed by Ramprasad Sah against the witness and PW Sri. Mangal in which Lakshmi Singh was a witness to the service of summons of the suit on him. But this fact is conclusively proved by Ext. G appearing at p. 155 of the paper book which clearly shows that Ramprasad Sah was one of the witnesses who had signed in token of the fact that the summons had been served on Parmeshwar Singh. The witness further admits that during the pendency of Title Suit 231 of 1961 the Munsif had filed a complaint for the prosecution of this witness in which he was acquitted by the appellate Court. He denies knowledge of the fact that Ramprasad Sah had deposed against him in that case but this is proved by the judgment dated September 17, 1964 Ext. I appearing at p. 159 of the paper book and the deposition of Ramprasad Sah in that case which is Ext. J and appears at p. 163 of the paper book. The witness further admits that the appellant Chhathu Singh had deposed against him in the year 1968 in Title Suit 231 of 1961. Apart from this PW 6 Dasain Singh admits that this witness was his gotia (near relation).

9. PW 4 Naga Singh has admitted that he had deposed against Ramprasad Sah in Title Suit 231 of 1961. He also admits that he was an accused in a murder case in which Jagdhari Singh had deposed

against him.

10. PW 6 is Dasain Singh one of the sons of the deceased Chulhai Singh and the brother of the deceased Brahmdeo Singh. This witness admits that PW 3 Parmeshwar Singh is his gotia and that he had taken the mortgage bond from PW 1 Ramji Singh.

11. These are the only witnesses who have proved the participation of the five appellants in the assault. No independent witness has been examined by the prosecution to support the assault. In fact PW 1 Ramji Singh has admitted that when he reached the place of occurrence he found 6 to 7 person of the village and yet none of them have been examined to corroborate the evidence of the interested or inimical witnesses examined by the prosecution. Moreover the evidence of PWs 1 to 4 clearly shows that they gave graphic description of the assault with regard to the order, the manner and the parts of the body with absolute consistency which gives an impression that they have given a parrot-like version acting under a conspiracy to depose to one set of facts and one set of facts only. It was strongly contended by counsel for the appellants that PWs 1 to 4 who are sworn enemies of the appellants headed by Jagdhari Singh have combined in a conspiracy to implicate the appellants falsely because of the longstanding litigation between them and the witnesses. It seems to us that taking the entire picture of the narrative given by the witnesses, in the peculiar facts of this case, the contention cannot be said to be without substance. The most important fact which reinforces this conclusion is that the accused headed by Jagdhari Singh had absolutely no motive, no reason and no concern with the deceased or their relations and there was absolutely no earthly reason why they should have made a common cause with Ramsagar Singh and Dasrath Singh over what was a purely domestic matter between Dasrath Singh and his cousins. It seems to us that having regard to the serious enmity which PWs 1 to 4 had against the appellants headed by Jagdhari Singh, they must have made it a condition precedent to depose in favour of the prosecution or support the case only if Dasain Singh PW 6 would agree to implicate the appellants Jagdhari Singh and others and to assign them vital roles in the drama staged so that the witnesses could get the best possible opportunity to wreak vengeance on their enemies. In fact the prosecution evidence itself shows that to begin with a dispute started only between Dasrath Singh and Ramsagar Singh on the one hand and Chulhai Singh and Brahmdeo on the other and the other accused persons appeared on the scene later on. This dramatic appearance of the other accused persons seems to have been introduced as an embellishment in the case at the instance of PWs 1 to 4. There are other infirmities in the prosecution case also which throw a serious doubt on the prosecution case.

12. PW 8 Dr. S. P. Jaiswal who had examined Brahmdeo deceased and had conducted the post-mortem of the deceased had also examined the accused Dasrath Singh, whom he identified in the court, on April 22, 1966 and found the following injuries on his person :

1. Bruise 3 x 1/2 on the dorsal part of the right forearm about in the middle and there was compound fracture of the fibula bone about in the middle.
2. Incised wound 1 x 2 mm x skin subcutaneous deep on the lateral part of the left upper arm, near the shoulder joint.
3. Punctured wound 1/2 x 2 mm x 4 mm on the lateral side of the left thigh about 5 inches below the hip joint.

According to the doctor injury 1 was grievous in nature as it resulted in compound fracture of the fibula bone. The other two injuries were also serious injuries which had been inflicted by a

sharpcutting weapon. Having regard to the circumstances of the case there can be no doubt that Dasrath Singh must have received these injuries in the course of the assault, because it has not been suggested or contended that the injuries could be self-inflicted nor is it believable. In these circumstances, therefore, it was the bounden duty of the prosecution to give a reasonable explanation for the injuries sustained by the accused Dasrath Singh in the course of the occurrence. Not only the prosecution has given no explanation, but some of the witness have made a clear statement that they did not see any injuries on the person of the accused. Indeed if the eyewitnesses could have given such graphic details regarding the assault on the two deceased and Dasain Singh and yet they deliberately suppressed the injuries on the person of the accused, this is a most important circumstances to discredit the entire prosecution case. It is well settled that fouler the crime, higher the proof, and hence in a murder case where one of the accused is proved to have sustained injuries in the course of the same occurrence, the non-explanation of such injuries by the prosecution is a manifest defect in the prosecution case and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence. This matter was argued before the High Court and we are constrained to observe that the learned Judge without appreciating the ratio of this Court in Mohar Rai v. State of Bihar ((1968) 3 SCR 525 : AIR 1968 SC 1281 : 1968 Cri LJ 1479) tried to brush it aside on most untenable grounds. The question whether the Investigating Officer was informed about the injuries is wholly irrelevant to the issue, particularly when the very doctor who examined one of the deceased and the prosecution witnesses is the person who examined the appellant Dasrath Singh also. In the case referred to above, this Court clearly observed as follows :

The trial Court as well as the High Court wholly ignored the significance of the injuries found on the appellants. Mohar Rai had sustained as many as 13 injuries and Bharath Rai 14. We get it from the evidence of PW 15 that he noticed injuries on the person of Mohar Rai when he was produced before him immediately after the occurrence. Therefore the version of the appellants that they sustained injuries at the time of the occurrence is highly probabilised. Under these circumstances the prosecution had a duty to explain those injuries In our judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relation to the incident is not true or at any rate not wholly true. Further those injuries probabilise the plea taken by the appellants.

This court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow : (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabilise the plea taken by the appellants. The High Court in the present case has not correctly applied the principles laid down by this Court in the decision referred to above. In some of the recent cases, the same principle was laid down. In Puran Singh v. State of Punjab ((1975) 4 SCC 518 : 1975 SCC (Cri) 608), which was also a murder case, this Court, while following an earlier case, observed as follows : [SCC p. 53] : SCC (CRI) p. 621, para 20]

In State of Gujarat v. Bai Fatima ((1975) 2 SCC 7 : 1975 SCC (Cri) 384) one of us (Untwalia, J.) speaking for the Court, observed as follows : [SCC p. 13 : SCC (Cri) p. 390, para 17]

In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow :

- (1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self-defence.
- (2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.
- (3) It does not affect the prosecution case at all.

The facts of the present case clearly fall within the four corners of either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case.

It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstances from which the court can draw the following inferences :

- (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
- (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
- (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in *State of Gujarat v. Bai Fatima* (supra) there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises.

13. On the other hand it is the definite case of Dasrath Singh that the prosecution party had entered the plantain orchards of Ramsagar Singh and Dasrath Singh and were trying to pluck plantain leaves and plants on which he protested and was assaulted and consequently the deceased too were assaulted in self-defence. As the appellant Dasrath Singh had a grievous injury, it cannot be said that

the accused had no right of private defence. The fact that the Investigating Officer PW 10 found 100 plantain trees in the orchard of Dasrath Singh and further found that leaves of the plantain plants had been cut of the 6 plants of the western side and 4 plants of the eastern side probabalises the defence version. Even the prosecution witnesses have not disputed that the appellants had their orchard of plantains, because PW 1 Ramji Singh had tacitly admitted that the northern plantain groves belonged to Dasrath Singh and Ramsagar Singh.

14. To add to this another important circumstance is the omission on the part of the prosecution to send the bloodstained earth found at the place of occurrence for chemical examination which could have fixed the situs of the assault. In almost all criminal cases, the bloodstained earth found from the place of occurrence is invariably sent to the Chemical Examiner and his report along with the earth is produced in the court, and yet this is one exceptional case where this procedure was departed from for reasons best known to the prosecution. This also, therefore, shows that the defence version may be true. It is well settled that it is not necessary for the defence to prove its case with the same rigour as the prosecution is required to prove its case, and it is sufficient if the defence succeeds in throwing a reasonable doubt on the prosecution case which is sufficient to enable the court to reject the prosecution version.

15. There is yet another important circumstance which completely falsifies the evidence of the eyewitnesses. All the eyewitnesses have consistently deposed that after the deceased Chulhai Singh was assaulted by Lakshmi Singh and fell down, the appellants Chhathu Singh and Ramprasad Sah assaulted him with lathis. Yet the medical evidence of Dr. Ramadhar Singh shows that there was only one solitary injury on the person of the deceased Chulhai Singh and that was on the abdomen. No other injury of any kind was found by the doctor on any part of the body of Chulhai Singh. The absence of lathi injuries on the person of Chulhai Singh completely falsifies the evidence of the eyewitnesses on a most material point. Mr. U.P. Singh appearing for the State tried to explain away this important lacuna on the ground that the inquest report shows that there were some sort of injuries on the back of the body of the deceased Chulhai Singh which may have disappeared by the time the doctor examined the deceased Chulhai Singh. We are, however, unable to agree with this somewhat farfetched explanation. It was for the prosecution to corroborate the evidence of the eyewitnesses through expert evidence of the doctor, and if no lathi injuries were found it was affirmatively for the prosecution to give reasons for the same. No question was, however, put to the doctor in re-examination that if the deceased had received lathi blows the injuries could have disappeared, by the time the doctor examined the deceased. Moreover, the inquest report also does not show any particular physical injury on the person of Chulhai Singh but merely mentions a swollen injury on the back which may be due to the fact that the deceased Chulhai Singh fell down after receiving the bhala blow. The Sub-Inspector was not an expert on the subject and his observation in the inquest report is absolutely valueless. Thus in short, so far as the deceased Chulhai Singh is concerned, the ocular evidence is totally inconsistent with the medical evidence with respect to the assault by Chhathu Singh and Ramprasad Sah. If this matter is false, there is no guarantee that the other assault deposed to by the eyewitnesses was also not false.

16. Similarly so far as deceased Brahmdeo is concerned, the evidence of the witnesses shows that he had received 4 to 5 lathi blows at the hands of his assailants, but the medical evidence of Dr. Jaiswal shows that he had one lacerated wound on the scalp, a swelling and three scratches. In view of the ocular evidence we should have expected many more lathi injuries on the person of the deceased Brahmdeo rather than just one swelling and a few scratches, apart from the lacerated wound. Thus this is also a very important suspicious circumstance which negatives the truth of the prosecution case.

17. Finally we might stress, even at the risk of repetition, that the genesis and the origin of the present occurrence appears to be shrouded in deep mystery. The dramatic manner in which the assault is said to have started and the appearance of the accused led by Jagdhari Singh without any rhyme or reason and their assault on persons against whom they had neither any concern or animus introduces an element of inherent improbability in the case. According to the prosecution the main cause of the assault was the refusal of the deceased Chulhai Singh to demolish the marwa which was constructed on the occasion of the marriage of Jaiwanti a daughter of the son of Chulhai Singh. There is no evidence to show that there was had blood between Ramsagar Singh and Dasrath Singh on the one hand and their cousins Chulhai Singh and Ram Asrey on the other. On the other hand the evidence shows that even after the partition both the groups of the family were living in different portions of the same house, the courtyard being common. PW 6 Dasain Singh clearly admits that at the time of fixing the marwa he had no quarrel with Dasrath Singh or Ramsagar Singh, i.e. about 3 days before the occurrence. If the relations between the parties were so cordial only 3 days before the occurrence, we fail to see how Dasrath Singh and Ramsagar Singh made a complete somersault and picked up a quarrel over the demolishing of a marwa when they knew full well, as PW 1 would have us believe, that it was customary that the marwa remained in its original position until a period of 1 1/4 months had elapsed. After all Dasrath Singh and Ramsagar Singh also belonged to the same family and were bound to respect the family custom. It is difficult to believe that even if Dasrath Singh and Ramsagar Singh would raise any objection, they would do so on the day on which chauthari ceremony of the marriage of Jaiwanti was held. It also surpasses our comprehension that even if a petty objection was raised, it would culminate in the murder of two close relations by the accused Dasrath Singh and Ramsagar Singh with the aid of the other appellants. So far as the five appellants, namely, Jagdhari Singh, Jagdish Singh, Lakshmi Singh, Ramprasad Sah and Chhathu Singh are concerned, they had neither any animus against the prosecution party nor any friendship with the accused Dasrath Singh and Ramsagar Singh and it is impossible to believe that these five persons would join hands with Darshan Singh and Ramsagar Singh in the nefarious plan to kill two persons sons without any provocation, without any earthly reason and without any pertinent occasions. On the other hand the preponderance of probabilities seems to indicate that these five appellant had been falsely implicated by PWs 1 to 4 who were their sworn enemies and who must have made it a condition precedent for supporting the evidence of PW 6, if the five appellants are also brought in. In this view of the matter, the prosecution case itself becomes wholly improbable. Furthermore, if PWs 1 to 4 and 6 could go to the extent of falsely implicating the five appellants headed by Jagdhari Singh without their having participated in the occurrence, then the entire fabric of the prosecution case would collapse, and the fundamental part of the prosecution case would have to be disbelieved. It was however, contended by the State that there was no reason to disbelieve the evidence with respect to Dasrath Singh and Ramsagar Singh, even if the other five appellants be acquitted. Where all the witnesses enter into a conspiracy to implicate five innocent persons in a murder case, then the backbone of the prosecution is broken, and it would be difficult for the court to rely on such evidence to convict a single accused, particularly when the prosecution does not give any explanation for grievous and other serious injuries on the person of Dasrath Singh. This is a case whether it is not possible to disengage the truth from falsehood, to sift the grain from the chaff. The truth and falsehood are so inextricably mixed together that it is difficult to separate them. Indeed if one tries to do so, it will amount to reconstructing a new case for the prosecution which cannot be done in a criminal case.

18. Thus in view of the inherent improbabilities, the serious omissions and infirmities, the interested or inimical nature of the evidence and other circumstances pointed out by us, we are clearly of the opinion that the prosecution has miserably failed to prove the case against the appellants beyond

reasonable doubt. Normally this Court does not interfere in an appeal by special leave with concurrent finding of fact, but this is one of those cases where the judgment of the High Court is manifestly perverse and where the High Court has not considered important circumstances which completely demolish the prosecution case. In fact the High Court has hardly made any real attempt to analyse or discuss the evidence and has merely affirmed the finding of the Sessions Judge by narrating the evidence relied upon by it. We have already pointed out that on one of the most important points arising in a criminal trial, namely, the non-explanation of the injuries on the person of the accused by the prosecution, the High Court has not only committed an error of fact but an error of law by showing a lack of proper appreciation of the principles decided by this Court. For these reasons, therefore, we think there are special circumstances in the present case which have compelled us to interfere in this appeal by special leave.

19. The appeals are accordingly allowed, the convictions and sentences passed on the appellants are set aside and all the appellants are acquitted of the charges framed against them. The appellants are directed to be set at liberty forthwith.

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