Sone Lal and Others

Vs

The State of U.P.

Criminal Appeal No. 40 of 1972

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

06.04.1978

JUDGMENT

FAZAL ALI, J. :-

1. This is an appeal under the provisions of the Supreme Court (Enlargement of Criminal Jurisdiction) Act and Section 379 of the Code of Criminal Procedure, 1973. The appellants Sone Lal, Ram Swaroop Chamar, Ram Swarup Ahir, Sheo Ram and Dularey have been convicted under Section 302/149, Indian Code and sentenced to life imprisonment and to various terms of imprisonment under Sections 147, 148, 323/149, 324/149, 364/149 and 201, I.P.C. The conviction and sentences imposed on the appellants are detailed in the judgment of the High Court and need not be repeated here.

2. This unfortunate case in which two innocent persons have lost their lives and one was abducted for being murdered appears to be an outcome of a serious and long standing enmity between the appellants and the deceased and PW 9 Jeet. A detailed narrative of the prosecution case is contained in the judgment of the courts below and it is not necessary for us to repeat the same all over again.

3. Suffice it to say, that on the night between November 15/16, 1966 the appellants variously armed with Banka, Ballam, Gun and Lathi raided the house of PW 9 Jeet of Lachchi Khera, assaulted him and killed two of his sons, namely, Rampal and Babu. They also, abducted Debi Sahai and carried Debi Sahai along with the corpses of the deceased Babu and Rampal in a bullock cart with a view to dispose of the dead bodies and obliterate all traces of the murders. On an alarm being raised a number of persons from the neighbouring village arrived at the scene of occurrence but so desperate were the accused that they kept these persons at bay and did not allow them to interfere with the nefarious act perpetrated by the accused. It was only after the accused left with the corpses and Debi Sahai in a bullock cart that the villagers organized search parties in order to find out the place where the dead bodies had been kept or Debi Sahai was confined. It was also alleged by the prosecution that at the time of the occurrence a lantern was burning in the house of Jeet and the villagers also had electric torches which they were flashing off and on and it was in the light of these objects that the witnesses of the prosecution had identified the appellants. One of the accused Raj Kumar was absconding so his trial was segregated and is still pending.

4. The accused pleaded innocence and averred that they had been falsely implicated due to the previous enmity particularly because Jeet had attempted to get some of the accused involved in a murder case, but they had been acquitted. Not content with this the appellants decided to wreak vengeance by killing the deceased and injuring Jeet and others. The Sessions Judge after recording the evidence in the case and considering the same was of the opinion that the prosecution case was

extremely doubtful and was, therefore, not proved. He accordingly acquitted all the accused. Thereafter the State filed an appeal before the High Court which differed from the view taken by the Sessions Judge as it was of the opinion that the judgment of the Sessions Judge was perverse and unreasonable and the inferences drawn by the Sessions Judge were not legally sustainable. The High Court accordingly reversed the acquittal and convicted and sentenced the appellants as indicated above. Hence this appeal before this Court.

5. Mr. R. K. Garg appearing for the appellants has raised a number of points in support of his argument that this was not a case in which the High Court should have reversed the order of acquittal passed by the Sessions Judge. The learned Counsel has submitted that the Sessions Judge had given cogent reasons for holding that the F.I.R. was belated and fabricated long after the occurrence and was in fact dictated by the Investigating Officer B. P. Tewari. Learned Counsel has further argued that there was no clear motive for the accused to have committed the gruesome murders as alleged by the prosecution. On the other hand, the enmity alleged by the prosecution showed that there was every possible motive for Jeet and his companions to implicate the accused. Learned Counsel further argued that if the assailants of the deceased chose to raid the house of Jeet in a dark night they would have taken ample precaution to conceal their faces so that they were not identified by the witnesses.

6. Mr. Uniyal appearing for the State however submitted that there was a clear motive for the accused to have committed the offences and the learned Sessions Judge had not in fact given any clear finding on the question of motive. He further submitted that the learned Sessions Judge traveled in the domain of conjecture and speculation in rejecting the F.I.R. and in entertaining doubts regarding the truth of the prosecution case.

7. We have gone through the judgment of the High Court and also of the Session Judge very carefully and we feel that having regard to the evidence on record the view taken by the High Court is absolutely correct. The learned Sessions Judge appears to have rejected some of the important circumstances and evidence produced by the prosecution on purely speculative grounds and has approached the case from a purely artificial angle of vision. A perusal of the judgment of the High Court would show that it has clearly displaced the important reasons of the Sessions Judge and in our opinion rightly. The High Court has also found that on the evidence adduced by the prosecution a clear case against the appellants has been established and the Sessions Judge was wholly unjustified in acquitting the accused which resulted in a serious miscarriage of justice inasmuch as such gruesome offences went unpunished. Although the case has been argued at very great length we do not propose to deal with each and every argument put forward before us but we will confine ourselves to the main aspects on which there appears to be a serious controversy between the parties.

8. The starting point of the story resulting and culminating in this bloody drama was the murder of Angnoo Ahir which took place about two years before the date of occurrence. According to the prosecution, Angnoo Ahir was possessed of sufficient lands and had no male issue. Angnoo, therefore, brought Sone Lal who was the son of the daughter of Angnoo's sister to the village and kept him with him and made him in-charge of the properties. It appears that Angnoo did not like Sone Lal's association with Raj Kumar and he impressed on Sone Lal the desirability of disassociating himself from Raj Kumar but Sone Lal did not listen to him. Out of sheer disgust Angnoo deceased sold 8 bighas of land out of which 5 bighas were purchased by PW 9 Jeet and his two sons Babu and Rampal deceased. Angnoo also threatened that he would dispose of the remaining 5 bighas which were being cultivated by Sone Lal if Sone Lal did not mend his ways.

This naturally created bad feeling and animosity between Sone Lal and Angnoo on one hand, and Babu and Rampal who were the purchasers of the land which might have otherwise been swallowed by Sone Lal, on the other. Angnoo was murdered and a report regarding his murder was lodged by Debi Sahai on March 7, 1964 against Sone Lal, Ram Swaroop Chamar, Raj Kumar and others. These appellants were prosecuted for the murder of Angnoo Ahir in which Babu and Debi Sahai appeared as prosecution witnesses. The case however ultimately ended in the acquittal of the appellants, Sone Lal, Ram Swaroop Chamar and Raj Kumar. We might also mention the relationship of the accused inter se. Raj Kumar and Dularey are own brothers and Ram Swarup Ahir is the brother-in-law (wife's brother) of Dularey. The appellant Sheo Ram who was armed with a gun was the Bahnoi (sister's husband) of Sone Lal. Thus, by and large all the appellants are inter-connected. A few days after the acquittal of the aforementioned appellants in the murder case Raj Kumar was arrested in a dacoity case and convicted under Section 395 for 7 years' rigorous imprisonment. Raj Kumar naturally suspected the hand of the prosecution party in his involvement in the dacoity case. One and a half months before the occurrence Sone Lal was arrested under the Arms Act for being in possession of an unlicenced pistol but he was released on bail by the High Court along with Raj Kumar who was also granted bail while his appeal in the dacoity case was pending in the High Court.

9. According to the prosecution, some time in June 1966 Sone Lal and Ram Swaroop Chamar extended threats to the deceased Rampal and Babu. It may be mentioned here that Ram Swaroop Chamar was also involved in the dacoity case, but was acquitted. The threats administered by Sone Lal and Ram Swaroop Chamar soon after the murder in the dacoity case is, in our opinion, a very important circumstance to throw a flood of light on the real motive for the present occurrence - a fact which has not been considered in its true perspective by the learned Sessions Judge. Apart from the evidence of PW 2 Loknath who has proved these facts, the factum of giving of threats and the gherao of Rampal and Babu appears to have been admitted by one of the appellants Ram Swaroop Chamar in his statement under Section 313 of the Code of Criminal Procedure at page 116 of the Paper Book. The question put to this accused by the Court and the answer given may be extracted thus :

> Q. It is alleged by the prosecution that thereafter Raj Kumar and you Ram Swarup Chamar were challaned in connection with two dacoities out of which in one dacoity case Raj Kumar was sentenced to seven years' imprisonment and he had been let off on bail from the High Court and you people alleged that Babu and Rampal had implicated you in murder and dacoity and that they would see you and had also surrounded you. What have you to say ?
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> A. I was acquitted in both. The rest is correct.

The answer given by Ram Swarup Chamar to the second part of the question put to him by the Court clearly shows that he frankly admitted the threat given by him and the gherao. Mr. Garg tried to argue that the question put by the Court in the Paper Book was not correctly translated in English, but on a reference to the original we find that the translation is absolutely correct. In fact, the question was put in the following terms :

> To this part of the question the appellant Ram Swarup Chamar has clearly answered in the affirmative. This question, therefore, clearly shows in what manner the mind of the appellant was working and taken together with the previous criminal case between the parties the prosecution has undoubtedly established a very clear and

> strong motive on the part of the accused to wreak vengeance on the deceased and the prosecution party who according to the appellants were responsible for their implication in a murder and dacoity case.

10. As regards Debi Sahai it is said that it was in evidence that he was an old man and had no male issue except four daughters who had already been married, and Rampal and Babu were looking after the property of Debi Sahai which angered Sone Lal and Raj Kumar. The High Court while discussing the question of evidence of motive observed as follows :

> The learned Judge appears to have unnecessarily tried to find fault even with the prosecution with regard to the motive of the accused for committing the crime.

The learned Sessions Judge, as pointed out, completely overlooked certain important aspects of the previous enmity which was admitted even by the accused in their statements under Section 313, Cr.P.C. In fact, the Sessions Judge has at page 163 merely narrated the enmity alleged but has refused to draw any clear inference as to which way the enmity would cut in the facts and circumstances of the case. In these circumstance, we fully agree with the judgment of the High Court that the finding of the trial Court that there was no clear motive of the murder was absolutely wrong. The High Court was, therefore, justified in reversing this finding which in fact was the starting point of the whole trouble.

11. We shall now come to the criticism levelled against the F.I.R. by learned Counsel for the appellants which had found favour with the Sessions Judge. According to the prosecution, the F.I.R. was lodged at Police Station Safipur at 9.10 a.m. on the basis of a written report which was dictated by PW 9 Jeet to one Uttra Kumar and was treated as the F.I.R. in the case. A perusal of the F.I.R. would clearly show that it has a ring of truth. All the necessary facts have been stated therein including even the previous enmity between the parties. The F.I.R. further contains the names of the appellants and those of the witnesses. The exact manner in which the witnesses and the deceased were assaulted and Debi Sahai was abducted also finds place in the F.I.R. The Sessions Judge was of the opinion that there was sufficient delay in lodging the F.I.R. because the occurrence took place sometime after midnight of November 15/16, 1966 which had left sufficient time to the informant to rush to the Police Station instead of waiting until late in the morning. The reasons given by the learned Sessions Judge on this point are queer and the view taken by the learned Judge appears to us to be artificial. If the prosecution case is true then a gruesome murder of two persons had taken place. Jeet the informant had lost his two sons in the prime of their lives and he must have been shocked and stupefied, particularly when even the corpses of the two deceased persons were not spared but were taken away by the accused. A third person, namely, Debi Sahai, was also abducted. In these circumstances, therefore, the first anxiety on the part of Jeet would have been to recover at least the dead bodies and to save the life of Debi Sahai which was in serious danger. In these circumstances, therefore, we could not have expected Jeet to act like a computer so as to run to the Police Station leaving everybody behind him. Furthermore, the learned Sessions Judge completely overlooked the fact that all the accused persons were armed with deadly weapons and one of them, viz., Sheo Ram had a gun and if any attempt was made by the informant to go to the Police Station or to see somebody there he might not have returned alive particularly in the dark hours of the morning. If the accused were so desperate as to take away the bodies in order to obliterate all traces of their crime, would they have spared the life of any persons who may have been sent to the Police Station at that ghastly hour. In fact the common sense view of the matter would be that in these circumstances not even Jeet or his relations would have ventured to stir out of the village for going to the Police Station unless they were supplied adequate police help. It is true that some villagers

had arrived at the scene of occurrence with some arms but it is doubtful if they could have agreed to go to the Police Station knowing the defiant attitude of the accused. The only sensible course in these circumstances for Jeet would have been to persuade the villagers to go in the direction of the bullock cart so as to find out the dead bodies and Debi Sahai. For these reasons, therefore, we think that the Sessions Judge was not justified in holding that the F.I.R. was belated or that no reasonable explanation for the delay in lodging the F.I.R. was given by the prosecution. The High Court has rightly taken this view and pointed out that the view of the Sessions Judge on this point was wrong.

12. Another ground on which the learned Sessions Judge doubted the authenticity of the F.I.R. was that it appears to have been ante-timed because there was no evidence by the prosecution to show as to when the special report had actually reached the higher authorities and as the constable who had taken the F.I.R. to the Magistrate or to the S.P. returned at 8.00 p.m. the Sessions Judge inferred that the F.I.R. must have been sent sometime in the evening after being ante-timed to 9.00 a.m. This inference drawn by the Sessions Judge is not at all borne out by the record. The High Court has rightly pointed out that the injured persons, namely, Jeet PW 9, Sheo Devi (PW 8) and Kumari Prabha Devi were examined by Dr. Mittal at Safipur dispensary on November 16, 1966 at 10.30, 11.00 and 11.45 a.m. The injured persons could not have been sent by the Police Officer to the doctor unless the F.I.R. had already been lodged at the Police Station and contained a recital that these persons were injured. This was, therefore, the most important intrinsic evidence to prove the authenticity and the genuineness of the F.I.R. The High Court rightly repelled the reasoning of the Sessions Judge that the written report Ka-32 may have been dictated by the Station Officer by pointing out that this could not be so because the injured persons mentioned above had reached the dispensary between 10.30 to 11.00 a.m. which knocked the bottom out of the allegation that the F.I.R. was dictated by the Investigating Officer or that it was ante-timed. The High Court has further pointed out that PW 5, the Head Moharrir, has stated on oath that the first information report was prepared on the basis of a written report at 9.10 a.m. in order to register the crime. The statement of the witness is supported by the copy of the entry Exh. K-24. The witness had also stated that he had sent the special report of the case at 10.30 a.m. to the higher authorities after making entries in the general diary and that the constable Babu Ram who had taken the special report to the higher authorities returned at 8.05 p.m. as per entry in the general diary Exh. K-31. If the accused were really serious in showing that there was sufficient delay in sending the special report to the higher authorities they could have filed a petition before the Sessions Judge for summoning the records of the S.P. or of the Magistrate concerned which would have disclosed the exact time when the special report was received by them. Once the prosecution had shown that regular entries were made in public document, namely, the general diary regarding the registration of the case and the forwarding of the special report to the higher authorities and of the return of the person who had taken the special report to the Police Station the legal presumption would be that official acts must have been duly performed. Of course, it would have been better if the prosecution would have completed the link in the chain by examining Babu Ram and showing the exact time when the F.I.R. was received by the Magistrate or the S.P., but even if it did not do so that was not sufficient to put the prosecution out of court.

13. Another important criticism levelled against the F.I.R. by the Sessions Judge was that the informant was not aware of some of the contents of the F.I.R. itself. The Sessions Judge has relied on the testimony of Jeet to show that certain sentences contained in the F.I.R. were not dictated by the informant to Uttra Kumar at all. We have given this argument our anxious consideration but we find it wholly untenable. At the time when the F.I.R. was dictated to Uttra Kumar by Jeet he must have been in a state of great shock and Uttra Kumar himself was not an absolutely illiterate person but had read up to 6th standard. It is, therefore, clear that Uttra Kumar must have written what was

dictated to him in his own words and at some places he may not have put the exact words used by the informant, but there can be no doubt that the substantial gist of the contents was the same as mentioned by Jeet in his evidence. Moreover, Jeet had given his thumb impression on the F.I.R. and thereby endorsed the correctness of its contents. The learned Sessions Judge by an imaginary process of reasoning went to the extent of holding that Jeet was a person of week intellect and could not have been in a position to dictate the detailed F.I.R., The Sessions Judge relied for this inference on the fact that the informant appears to have fainted once or twice during his deposition in court. We have read the entire evidence of Jeet and we do not find anything to indicate that Jeet was either a person of weak intellect or a simpleton. What the Sessions Judge overlooked was that when Jeet was called upon to narrate the entire incident including the manner in which two of his sons were brutally murdered before his eyes the very memory of such a gruesome act may have resulted in his momentary fainting which is quite natural. In our opinion, to characterise such a person as Jeet, who may have been overwhelmed with grief while narrating the story of the murder of his sons, as a person of weak intellect is not only inhuman but amounts to overlooking natural human emotions. We, therefore, think that the reasons given by the learned Sessions Judge on this point were both unreasonable and untenable.

14. Another ground taken by the Session Judge was that Jeet PW 9 had categorically stated in his statement that the F.I.R. was written on a ruled piece of paper, whereas in fact the F.I.R. lodged before the Police Station was on a plain (unruled) paper. This omission may be due to the lapse of memory on the part of Jeet and does not appear to be such a defect so as to destroy the prosecution case regarding the lodging of the F.I.R. Apart from these reasons, Mr. Garg appearing for the appellants vehemently contended that the F.I.R. in the instant case runs into 2.5 pages in print which in writing would be about five pages and it was physically impossible for the Head Moharrir to have copied out this F.I.R. in the General Diary and other papers by 10.00 a.m. It was contended that if the F.I.R. was actually lodged at 9.10 a.m. the copying out would take at least one hour or more for one entry. This would mean that by the time the F.I.R. was copied out in the general diary it would be well over 11.00 a.m. but the evidence shows that the injured persons were produced before the Doctor at 10.30 a.m. that is before the F.I.R. could have been fully copied out in other papers. This argument although attractive is without any substance. For an expert like the Head Moharrir who had been doing this type of work and was accustomed to the same it will not take more than 10 to 15 minutes to copy out the contents of the F.I.R. and that would leave sufficient time to enable the Police to send the injured to the doctor after making the necessary entries in the general diary and other papers. If the accused had any reason to think otherwise it was permissible for him to cross-examine the witness concerned and to lay the foundation for his own version.

15. Lastly, it was suggested by the Sessions Judge that although the parentage of the accused Dularey was not mentioned in the F.I.R. yet it was mentioned in the general diary which shows that the F.I.R. was prepared subsequently. The High Court has clearly pointed out that it was fully explained that due to inadvertence the parentage of Dularey was not mentioned in the F.I.R. but after being ascertained from the informant it was mentioned in the general diary. In these circumstances, therefore, the omission if any, does not appear to be of any significance. These were the main reasons given by the Sessions judge for disbelieving the F.I.R. and, in our opinion, the High Court was right in pointing out that the reasons given by the Sessions Judge were both unsound and untenable.

16. Another circumstance relied upon by the Sessions Judge was that there was no reliable evidence to show the presence of light in the house which may have enabled the witnesses to identify the assailants. The learned Sessions Judge disbelieved the story of the prosecution that a lantern and a

chimney were burning in the house and the accused and also the witnesses who arrived at the scene had electric torches which they flashed off and on.On a careful consideration of the evidence led by the prosecution on this point we find ourselves in complete agreement with the High Court that the reasons given by the Sessions Judge are wholly unacceptable and are based on speculative and queer grounds. The Sessions Judge seems to have overlooked the fact that the F.I.R. which in the circumstances was lodged at the earliest possible opportunity clearly mentions the presence of the lantern which was hanging from the roof of the house. The accused persons were known to the witnesses from before and it was not difficult for the witnesses to have identified the accused in the light of the lantern. The Sessions Judge however pointed out that the Investigating Officer says that when he visited the spot he did not find the lantern there and that he did not mention the presence of the lantern anywhere in the sketch map prepared by him. Learned Counsel for the appellants while supporting the judgment of the learned Sessions Judge contended that there is a serious discrepancy between the seizure list and the lantern and the description of the lantern given by the witnesses. It was argued that whereas the seizure list shows that the lantern produced before the Investigating Officer was a new one the witnesses have said that the lantern was used for three or four years. A lantern does not become very old if used for three or four years, if kept in a proper condition. It may be that at the time when the seizure list was prepared the lantern was cleaned up by the members of the family and hence it appeared to be a new lantern and was so described in the seizure list. This by itself, therefore, cannot dislodge the case of the prosecution that the lantern was burning in the house at the time of the occurrence particularly when there is a clear mention of the same in the F.I.R. and even some of the eyewitnesses have deposed about its presence. There can be no doubt that the lantern was produced before the Investigating Officer as a result of which the seizure list was prepared. It is true that there is some discrepancy about the time when the lantern was produced before the Investigating officer. According to the ladies, it was produced on the day when the Investigating Officer reached the place of occurrence, that is on November 15, 1966 whereas according to Jeet it was produced on November 17, 1966. There does not appear to by any real inconsistency in any of these statements. It is the admitted case of the parties that Jeet was sent to the dispensary for treatment on November 16, 1966 and so he was not in a position to produce the lantern before the Investigating Officer during his visit to the scene of occurrence on that day. The ladies however were already present at the spot and there was nothing improbable in their producing the lantern before the Investigating Officer on November 16, 1966. Even the Investigating Officer has admitted in his evidence that he forgot to mention the presence of the lantern in the sketch map due to oversight. Lastly, there is an intrinsic evidence to show that the lantern must have been there. PW 8 Sheo Devi has stated in her evidence at page 52 of the paper book that her child was ill and medicine had to be given to the child. Exhibit Ka-54 is a recovery memo of the empty phial. In these circumstances, it cannot be possible that the medicine could have been administered to the child without making necessary arrangements for some light and it would be quite natural for the inmates of the house to keep the lantern burning so that they may be able to give medicine to the child. Similarly, the learned Sessions Judge has disbelieved the fact that the accused and other persons had electric torches merely because the said torches were not produced before the police. This was a matter of no significance and was not at all a ground for holding that no electric torches were held by the accused or the other persons. This would be particularly so in view of the fact that the entire occurrence must have taken a considerable length of time because it took place in four stages; (1) the arrival of the accused and the prosecution party, (2) the assault on Babu, (3) the climbing of the stairs and the and the assault on Rampal, (4) abduction of Debi Sahai and the removed of the corpses of Babu and Rampal and their being placed in a bullock cart to which were attached the bullocks of Dularey. All these things must have taken a considerable time and that is why some of the appellants had seen to it that the witnesses present did not venture to interfere with

the operation carried on by the accused, nor could such a variety of incidents have taken place in an absolutely dark night without the help of any light. These facts, therefore, clearly bespeak of the presence of light being there. In these circumstances, therefore, we are satisfied that the reasons given by the learned Sessions Judge for rejecting this part of the prosecution case was not borne out by the circumstances and was clearly against the weight of evidence on record. Once it is held that there was sufficient light there would be no difficulty for the witnesses in identifying the accused.

17. It was then suggested by counsel for the appellants that after the accused left and the villagers arrived on the scene of occurrence and before they divided themselves into various search parties for tracing the bullock cart they should have gone to the accused who belonged to the village in order to ascertain the cause of the occurrence. This argument fails to take into consideration the stark realities of the situation. The accused persons appear to have behaved in a most desperate fashion in killing two persons and in abduction the third and injuring others. How could the villagers have dared to enter the house of the accused even if they were there in order to remonstrate with them. Moreover, we have already indicated above the anxiety of the villagers to trace the bullock cart and to save the life of Debi Sahai as soon as possible and the search of the accused persons would in the circumstances be a matter of secondary importance.

18. The learned Sessions Judge appears to have made a capital out of a very insignificant circumstance. According to the prosecution, empty cartridges were found at the spot which means that the gun must have been fired either to assault or to scare. The gun belonging to the accused Sheo Ram was recovered from a factory in Kanpur where it appears to have been deposited by Sheo Ram who was a licensee of the gun recovered. The Ballistic Expert opined that the empties found at the spot and sent to him for examination could be fired from the gun belonging to Sheo Ram. These facts were proved beyond any reasonable doubt and in view of the proof these facts it was for the accused to explain how his gun reached the factory and when it was deposited there. It is true that there is no legal evidence to show the exact date when the gun was deposited but that fact is not very material as the High Court has rightly pointed out that once it was shown that Sheo Ram was armed with a gun on the night of the occurrence and that the empties found at the spot could be fired from his gun which was recovered from the factory, it was for the accused Sheo Ram to give an affirmative explanation as to when and under what circumstance was the gun deposited in the factory. The High Court has pointed out that Sheo Ram in his statement under Section 313 of the Code of Criminal Procedure despite a specific question put to him in this regard failed to give a satisfactory answer. These circumstance, therefore, may lead to confirm the presence of accused Sheo Ram during the night at the place of occurrence as proved by the eyewitnesses.

19. It was further argued by counsel for the appellants that it appears that some dacoits may have entered the house of the deceased and committed the murder in the course of the commission of the dacoity. The High Court rejected this argument as not being borne out by the evidence on record and in our opinion rightly. There was no trace at all of the commission of any dacoity. There was no evidence to show that any article was removed from the house or any inmates were assaulted when they protested against the looting of the properties. Finally, there was no reason for the dacoits to have removed the two corpses in a bullock cart and abducted Debi Sahai. The nature and the pattern of the occurrence clearly suggests that the accused persons had entered the house to wreak vengeance on the deceased for the role they played in the previous litigation in involving some of the accused in murder and dacoity cases so as to teach them a lesson which may be remembered for all times to come. We, therefore, overrule the argument of Mr. Garg on this point. According to the evidence of the eyewitnesses, Ram Swarup Ahir and Raj Kumar and others assaulted Babu with Ballam and banka on a cot where he was sleeping with the witness Jeet. This is deposed to by PW 2

and PW 9. Similarly, is has been proved that Sone Lal and Ram Swarup Chamar scaled over the wall and climbed to the place where Rampal was sleeping and assaulted him with banka and ballam. Ram Swaroop Chamar further assaulted PW 8 with a ballam on the chest. This circumstance is proved by PWs 8 and 9. Sone Lal assaulted PW 9 with kicks and fists and Ram Swarup Chamar inflicted blows with a ballam on him. This is proved by PWs 2, 3 and 9. Sheo Ram pushed Prabhawati as a result of which she fell down and sustained injuries which have been proved by the doctor. This circumstance is proved by PWs 2 and 3. Thereafter Sone Lal and Raj Kumar brought Debi Sahai and put him in the bullock cart as deposed to by PWs 2 and 3. We have gone through the evidence of these witnesses very carefully and we see no reason to distrust their evidence. The learned Sessions Judge appears to have brushed aside their evidence on sweeping grounds without considering the intrinsic merits of their evidence.

20. The assault committed by the accused and the injuries inflicted by them on the deceased and the other persons are clearly corroborated by the medical evidence of the doctor examined by the prosecution. PW 1, Dr. Mittal found two punctured wounds and two contusions and one abrasion on the person of the informant Jeet. The doctor had deposed that injuries 2 and 3, namely, the punctured wound could be caused by a sharp edged weapon. These injuries were caused by Sone Lal who was armed with a ballam which was undoubtedly a sharp edged weapon. Similarly, Sheo Devi has one punctured wound which could be caused by a sharp edged weapon and was naturally caused by one of the accused who were armed with sharp pointed weapon. Dr. Srivastava who performed the post-mortem examination on Rampal found as many as 8 incised wounds on various parts of the body of the deceased Rampal and according to the doctor these injuries could be caused by sharp edged weapons with which the accused were undoubtedly armed. It was however argued by Mr. Garg that if the deceased would have been assaulted by the banka or the ballam then we should have expected punctured rather than incised wounds. Normally a sharp pointed weapon would cause a punctured wound but the weapon like banka or ballam can cause incised wounds provided instead of the pointed end the surface of the weapon is used. In the melee that followed it would have been difficult for the witnesses to say with exactitude that injuries were caused by the surface or by the pointed end. The injuries founds on the deceased persons would, therefore, be sufficient evidence of the nature of the assault. In these circumstances, we are unable to find any real inconsistency between the medical and the ocular evidence and the learned Sessions Judge was not at all justified in rejecting the prosecution case on this ground.

21. On a careful consideration therefore of the circumstances and the evidence on record we are satisfied that the judgment of the Sessions Judge contained gross errors of record and was against the weight of the evidence adduced by the prosecution. The reasons given by the learned Sessions Judge were speculative, perverse and totally unsound.

22. Lastly, it was argued by Mr. Garg that the High Court was not justified in reversing the order of acquittal merely because it took a different view of the matter on a reappraisement of the evidence. We are satisfied that this is not a case of that kind.

23. In fact, the High Court was fully justified in reversing the order of acquittal when it found that the judgment of the Sessions Judge was perverse and unreasonable and was based on conclusions and inferences which could not legitimately be drawn from the proved facts. The High Court was not therefore in error in reversing the order of acquittal. Sufficient evidence was led by the prosecution to prove that this was a case of a pre-planned cold-blooded murder of two persons and an abduction of third person for the purpose of murder and in all probabilities the third person must have been done away with. In view of the brutal murder of two innocent persons by the accused

persons who shared a common intention the convictions of the appellants under Sections 302/149, I.P.C. are upheld. Having regard to the individual assaults and the common object of the unlawful assembly to cause the injuries the other convictions are also sound and are sustained.

24. The result is that the appeal fails and is accordingly dismissed.

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