

Om Prakash and Others

Vs

State of Uttar Pradesh

Criminal Appeals Nos. 54 And 55 of 1974

(V.D. Tulzapurkar, A. Varadarajan JJ)

11.03.1983

JUDGMENT

VARADARAJAN, J. –

1. These appeals by special leave are directed against the dismissal of Criminal Appeals No. 1918 and 1923 of 1969 by a Division Bench of the Allahabad High Court. Those appeals in the High Court were filed against the conviction of nine accused persons, Om Prakash (A-1), Anoop Singh (A-2), Sheo Gopal (A-3), Raj Narain (A-4), Chandra Prakash (A-6), Mool Chand (A-12), Beni Singh (A-16), Ram Pal (A-17) and Lajjar Ram alias Raja Ram (A-18) under Section 396, IPC and the sentence of imprisonment for life awarded to them by the learned Sessions Judge, Kanpur-Etawah at Kanpur in Sessions Trial No. 172 of 1969, in which in all 18 accused persons were tried. The trial court acquitted the other nine accused, Bhoop Singh (A-5), Virendra (A-7), Ramadhin (A-8), Ranjit (A-9), Chhotay Lal (A-10), Chunni Lal (A-11), Bhanu Prakash (A-13), Dhani Ram (A-14) and Ram Gopal (A-15) in the alleged dacoity with murder at the house of Mauji Lal, Pradhan in Makhauli village, at about 1 a. m. in the night of February 16/17, 1968. In that incident Mauji Lal died and his wife Ram Shree (PW 2), Parasuram (PW 7) and PW 2's brother Ram Shankar (PW 8) are stated to have sustained injuries.

2. The case of the prosecution was this : There was enmity between the deceased Pradhan Mauji Lal and his brother Baij Nath (PW 1) on one hand and the appellants on the other ever since the deceased Mauji Lal, fought an election battle in 1955 with Mauji Lal [sic], the father of Om Prakash (A-1) and Bhagwati Prasad, the father of Raj Narain (A-4). There were several cases between the parties. About a month before this occurrence, Mauji Lal had reported by Ex. Ka-7 dated January 22, 1968 that accused persons Om Prakash (A-1) and Sheo Gopal (A-3) had committed theft of timber belonging to the village school managed by him. A few days later on January 26, 1968 Mauji Lal had complained before the Sub-Divisional Magistrate, Ghatampur that Mool Chand (A-12) forcibly occupied gaon sabha land. In 1967 there was rioting in the village, to which the prosecution party and accused belong. In that rioting one Ram Sanahi was murdered on one side and Kanwar Lal was murdered on the other side, and two cases were registered, and Om Prakash (A-1), Sheo Gopal (A-3), Raj Narain (A-4), Ranjit (A-9), Chhotay Lal (A-11), Mool Chand (A-12), Bhoop Singh (A-5), Rampal (A-17), Lajjar Ram (A-18) and others are accused in one case while in the other case the deceased Mauji Lal and 14 others including Mauji Lal's brother Baij Nath (PW 1) are accused and those cases were pending even on the date of the occurrence in this case. Om Prakash (A-1), Anoop Singh (A-2), and Sheo Gopal (A-3) are brothers. Raj Narain (A-4), Bhoop Singh (A-5) and Chandra Prakash (A-6) are brothers. Mool Chand (A-12) and Bhanu Prakash (A-13) are brothers, Beni Singh (A-16) is nephew of Dhani Ram (A-14) and Ram Gopal (A-15). Ram Pal (A-17) and Lajjar Ram alias Raja Ram (A-18) are cousins.

3. On the moonlit night of February 16/17, 1968 deceased Mauji Lal who was Pradhan of the village and his wife Ram Shree (PW 2) and their children were sleeping in their house in Makhauli village, Mauji Lal in the western kotha and PW 2 and her children in the eastern kotha, between which there is a baroatha. There was a lighted lantern hanging from a peg at a height of six feet from the floor on the eastern wall of the eastern kotha. Ram Shankar (PW 8) the brother of Ram Shree (PW 2) who was assisting his deceased brother-in-law Mauji Lal in the cultivation of his lands was sleeping in a tin-shed situate west of the western kotha. The deceased Mauji Lal and his wife Ram Shree (PW 2) woke up on hearing some commotion when the miscreants who entered the eastern kotha of the house were breaking open the northern door, PW 2 raised the wick of the lantern, material Ex. III, which had been lowered previously, and there was sufficient light in the kotha for recognising the miscreants. Mauji Lal had come into the eastern Kotha before its northern door was broken open by the miscreants. Om Prakash (A-1), Sheo Gopal (A-3), Anoop Singh (A-2), Raj Narain (A-4), Chandra Prakash (A-6), Mool Chand (A-12), Beni Singh (A-16), Ram Pal (A-17) and Lajjar Ram alias Raja Ram (A-18) entered the eastern kotha after breaking open the northern door with a kulhari, Om Prakash armed with a pistol and the others armed with kanta, ballams, kulhari, lathi and pistol. A pistol-shot was fired through the opening in the door before the miscreants entered the eastern kotha. Those nine accused persons, Om Prakash (A-1), Anoop Singh (A-2), Sheo Gopal (A-3), Raj Narain (A-4), Chandra Prakash (A-6), Mool Chand (A-12), Beni Singh (A-16), Ram Pal (A-17) and Lajjar Ram alias Raja Ram (A-18) severely assaulted Mauji Lal who died at the spot as a result of the injuries sustained by him. Sheo Gopal (A-3), Chandra Prakash (A-6), Beni Singh (A-16), Ram Pal (A-17) and Lajjar Ram alias Raja Ram (A-18) assaulted PW 2 severely and ransacked the house for about 15 or 20 minutes and took away from that eastern kotha and the adjacent box-room of the house ornaments, cash, clothes etc., valued Rs. 2700. Ram Shankar (PW 8) who was sleeping in the tin-shed, as stated above, woke up on hearing the shouts and sound of gun-fire and saw accused Virendra (A-7) and Ramadhin (a-8) standing near his cot armed with lathis and they inflicted lathi blows on him. When he got an opportunity, Ram Shankar (PW 8) entered the house and concealed himself by the side wall near the door connecting the eastern kotha and the baroatha and witnessed what was happening inside the eastern kotha. PWs 2 and 8 could see the miscreants in the light of the lantern material Ex. III. Baij Nath (PW 1), Parasuram (PW 7) and others of the village woke up on hearing sound of gunshot, and proceeded towards the house of the deceased Mauji Lal and stood under a neem tree in front of one Banwari Lal's house and concealed themselves in the chappra of one Motilal situate east of the deceased Mauji Lal house. They saw the miscreants when they were departing from the scene, with the moonlight. The miscreants standing on the roof of Sham Lal's house earlier shot at Parasuram (PW 7) while he was standing in front of that house and he sustained gunshot injuries.

4. About one and a half hours after the miscreants left the place, PW 1 who went inside the house and found Mauji Lal lying dead with injuries and PWs 2 and 8 having injuries, got the report, Ex. Ka-1 written by one Shankar Singh. He thereafter proceeded to the police station at Mooa Nagar situate six miles away from the village, and handed it over to the Head Constable Ram Kishore Panday (PW 9). On the basis of that report a formal FIR was registered at the police station at 6.05 a. m. on February 17, 1968. Tiwari, the Sub-Inspector of Police (PW 11) took up investigation and reached the Zvillage at 8 a. m. on February 17, 1968 when PW 2 handed over to him a list of properties which had been looted from her house. PW 11 found the dead body of Mauji Lal in the eastern kotha and the lantern material Ex. III hanging from a peg in the eastern wall of the kotha and boxes broken open and the locks thrown in the verandah.

5. Autopsy on the body of Mauji Lal was conducted by Dr. Sharma (PW 3), Civil Surgeon, Kanpur at 2 p. m. on February 18, 1968. He found six incised wounds, two lacerated wounds and three

abrasions on the body of the deceased. The left eye was found black. The sculp bones were found cut through and through under three incised wounds. The doctor (PW 3) was of the opinion that the incised wound might have been caused by some sharp-edged weapons like kanta and axe, that the lacerated wounds could have been caused with lathi, that the abrasions might have been caused by coming into contact with some rough object, that the blackening of the eye might be due to clotting of blood due to the head injury and that all the injuries together were sufficient in the ordinary course of nature to cause instantaneous death. Ex. Ka-2 is the post-mortem certificate issued by PW 3.

6. The injured witnesses PWs 2,7 and 8 were examined between 6 p. m. and 7.30 p. m. on February 17, 1968 by Dr. Mukherjee of Chattarpur Dispensary, who could not be examined as a prosecution witness on account of difficulty due to his non-availability. The wound certificates, Ex. Ka-18-20, issued by that Doctor in respect of PWs 2, 7 and 8 have been proved by the Compounder Vishamber Nath (PW 13). PW 2 had sustained 19 injuries consisting of one lacerated wound on the left side of the head and a number of contusions and abrasions on various parts of her body, all caused by blunt weapons. PW 7 had sustained six gunshot injuries. PW 8 had sustained a contusion on the top of his shoulder joint and an abrasion on the lower aspect of the right clavicular region, all caused by blunt weapons such as lathis.

7. The fact that there was enmity between the two parties and that Mauji Lal was murdered and property worth about Rs. 2700 from his house was looted in the night of February 16/17, 1968 and that in that incident Mauji Lal's wife (PW 2) and brother-in-law (PW 8) were injured and PW 7 who came near the scene of occurrence had received six gunshot injuries, was not doubted or disputed before the learned Sessions Judge by the learned counsel for the defence. But all the accused denied in their statement their presence and participation in the occurrence. The suggestion made on behalf of the accused was that an armed gang of dacoits, not known to the prosecution witnesses, committed the crime and that the accused have been falsely implicated on account of enmity. No defence witnesses were examined.

8. The prosecution examined PWs 1,2,7 and 8 as eye-witnesses to speak about the participation of the accused in the occurrence. PW 1 implicated all the 18 accused persons as having been present at the time of the occurrence. PW 2 implicated only the nine appellants, namely A-1 to A-4, A-6, A-12 and A-16 to A-18 as those who entered the house and attacked her and her husband and committed dacoity. PW 7 implicated 14 accused, namely Anoop Singh (A-2), Raj Narain (A-4), Bhoop Narain (A-5), Chandra Prakash (A-6), Virendra (A-7), Ramdhin (A-8), Ranjeet (A-9), Chhotay alias Ram Swarup (A-10), Chunni Lal (A-11), Mool Chand (A-12), Bhanu Prakash (A-13), Dhani Ram (A-14), Ram Gopal (A-15), and Rampal (A-17) as some of the miscreants who were present at the house of PW 2. PW 8 also implicated these nine appellants besides Virendra (A-7) and Ranjit (A-8).

9. The learned Sessions Judge found that the FIR (Ex. Ka-1) had been lodged at the police station without any inordinate delay and that there was nothing on the record to show that there was any oblique motive for concocting a false story of the occurrence. But he was of the opinion that the evidence of PWs 1 and 7 does not inspire confidence, that it could not be believed beyond all reasonable doubt that those two witnesses had seen the occurrence, that PW 1 would have been fired at if he had been present at the chappar as claimed by him and that the probability is that as soon as PW 7 received the six gunshot injuries in front of Narbada's house, he would have either fallen down there or returned to his house. He was further of the opinion that in any case PWs 1 and 7 could not have had sufficient "glimpse of miscreants" so as to be able to identify them. He rejected the evidence of PW 8 about the participation of Virendra (A-7) and Ramadhin (A-8) in the

occurrence as not inspired sufficient confidence and was of the opinion that the evidence of PWs 1,7 and 8 about the participation of the acquitted accused 5,7 to 11 and 13 to 15 in the crime was not acceptable. As regards the participation of the appellants in the crime he accepted the evidence of PWs 2 and 8. The evidence of PW 2 is that she saw the appellants in the light of the lantern that was hanging in the eastern wall of the eastern kotha as soon as they entered her kotha and also while they were attacking her husband and causing injuries to her and carrying away the properties from the house. The evidence of PW 8 is that he saw Om Prakash (A-1) when he was escaping from the tin-shed where he was sleeping earlier to the western kotha and that he saw the other appellants from behind the door of the western kotha when they were attacking deceased and PW 2 and looting the properties from the house. The learned Sessions Judge accepted the evidence of PWs 2 and 8 about their presence in the house at the time of the occurrence, and also the fact that they received the injuries at the hands of the miscreants and could see what had taken place in the light of the lantern as well as of the moon. Accordingly, he acquitted accused 5,7 to 11 and 13 to 15 and convicted the appellants and sentenced them as mentioned above.

10. The learned Judges of the High Court agreed with the trial court in not relying upon the evidence of PWs 1 and 7. They were not prepared to doubt the presence of PW 8 in the tin-shed of the house of the deceased Mauji Lal and PW 2 in view of the fact that he has received injuries at the hands of the miscreants. But they found it difficult to believe that on finding an opportunity to move away from the tin-shed, he would have entered the house and taken shelter there when the miscreants were in the house and beating the deceased and PW 2. They were of the opinion that PW 8 could have been of more help to his sister PW 2 by running to the village Abadi for help so that on the arrival of the villagers the offenders may run away and not cause undue havoc in the house. PW 2 had not mentioned PW 8 as one of the persons who came into the kotha after the miscreants left the place though, he had mentioned the names of many other persons who came into the kotha. According to the learned Judges, PW 8 could have seen only some of the offenders but he has intentionally made improvements in his version. For these reasons the learned Judges of the High Court thought it not safe to rely on any part of the evidence of PW 8. But they were of the opinion that the incident could have been witnessed only by PW 2 and her children and that there is no substance in the criticism that independent witnesses have not been called to depose about the occurrence as eye-witnesses. They were of the opinion that PW 2 has given straightforward evidence without any attempt at making any improvement to fit in with the testimony of the other prosecution witnesses. They accepted the evidence of PW 2 as wholly reliable and confirmed the convictions of the appellants and the sentence awarded to them and dismissed the appeals.

11. The learned counsel for the appellants submitted that the FIR Ex. Ka-1 is antedated. He drew our attention to Section 157 of the Code of Criminal Procedure and submitted that the time of despatch of Ex. Ka-1 is not entered thereon. Section 157 only states that the first information report should be despatched forthwith and does not say that the time of despatch must be noted thereon. The learned Sessions Judge has observed in his judgment that Ex. Ka-1 seems to have been lodged at the police station without any inordinate delay and that there is nothing on record to show that there was any oblique motive for concocting a false story of the occurrence itself in that first information report. The learned counsel for the appellants invited our attention to the evidence of Shiv Poojan Tiwari, Sub-Inspector of Moosa Nagar Police Station who had been examined as CW 1. The evidence of CW 1 is that while he was raiding Numain Purwa village in a murder case of his police station at about 2 a. m. in the night of February 16/17, 1968 he heard noise coming from the side of Makhauli village situate three miles north of Numain Purwa village and went there along with some armed police guard at about 4 a. m. and was informed that Mauji Lal had been murdered in his house and property had been looted from his house by dacoits and that his brother and certain

other persons had gone to the police station for lodging a report. He has also stated that he went to the house of Mauji Lal and found his dead body lying inside the house and that he stayed in the village until the Sub-Inspector of the Police Station concerned (PW 11) arrived at the spot and started investigation. The learned counsel for the appellants commented on the basis of the evidence of CW 1 that he had not noted the names of the assailants in the general diary entry made by him in his police station that the names of the 18 accused including those of the appellants have been mentioned in the first information report Ex. Ka-1 only as an afterthought. The relevant portion of Ex. Ka-1 may be extracted in order to appreciate the contention of the learned counsel for the appellants. PW 1 the author of Ex. Ka-1 who does not claim to have seen the incident which took place in the eastern kotha of the house of the deceased has stated in that report thus :

Today my brother Mauji Lal was sleeping inside his house in the night a usual. A lantern was burning in the house. Smt. Ram Shree (PW 2) was also inside the house. Shri Ram Shankar s/o Manni Lal (PW 8) was sleeping under the tin-shed. In the night intervening between February 16 and 17, 1968, at about 1.00 o'clock, the accused persons, having armed themselves with kantas, ballams, lathis, axes, guns and pistols came and surrounded the house of my brother Mauji Lal. They cut open the door and entered the house. They inflicted injuries upon my brother Mauji Lal and caused his instantaneous death. They also caused injuries to my bhabhi. My bhabhi raised alarm. Ram Shankar was also assaulted with lathis. He too, raised alarm. On hearing the shouts and the sounds of guns and pistols I and Parasu Ram s/o Hira Lal (PW 7), Ram Adhar, Ram Kumar, Ram Prasad Sachan, Banwari Lal s/o Ram Lal, residents of my village, Beta Lal Sachan of Damodarpur, and several other persons, reached the spot, saw the occurrence, and challenged the accused persons. They recognised them in the light of the moon. My bhabhiji and Ram Shankar have also recognised the accused persons in the light of the moon and the lantern. Parasu Ram has also received injuries from the shots of the gun. There are several injuries on the person of my brother. After committing the assault, the accused persons looted away the articles kept in the boxes in the house, ornaments, clothes and cash etc. The accused persons kept coming and going outside, inside and on the roof. Out of the accused persons, Anup Singh was armed with an axe, Dr. Om Prakash with a pistol, Raj Narain and Mool Chand with kantas, Ram Gopal and Dhani Ram with guns and Bhoop Narain and Ranjeet with ballams. The remaining persons were armed with lathis.

12. The actual part played by either any of the appellants or any of the acquitted accused has not been mentioned in this report. It must be remembered in this connection that while PW 1 has named all the 18 accused mentioned in Ex. Ka-1, PW 2 has named only the nine appellants, PW 7 has named the nine appellants as also accused 7 and 8, and PW 8 has named 14 accused persons. If Ex. Ka-1 was antetimed as submitted by the learned counsel for the appellants it is not probable that the police would have obtained that report from PW 1 who was not one of the residents of the house of Mauji Lal where the occurrence had taken place but was admittedly living in his own house situate at some distance from the house of the deceased and was admittedly attracted to the scene of occurrence only by shouts and the sounds of guns and pistols. If the police had intended to obtain a concocted first information report it is not probable that instead of obtaining it from PW 8 who was indisputably one of the residents of the house in which the occurrence had taken place they would have obtained it from PW 1. The evidence shows that on the basis of this first information report a formal FIR was recorded in the police station situate six miles away from the scene of occurrence at 6.05 a. m. on February 17, 1968. The evidence of PW 1 is that he left for the police station about 1

or 1.5 hours after the culprits left the place and gave the report which he had got written by one Shankar Singh. The Sub-Inspector of Police, PW 11 has stated that he thereafter took up investigations of the case and reached the village at 8 a. m. and found the dead body of Mauji Lal in the eastern kotha and obtained a list of the looted properties from PW 2. In these circumstances we are of the opinion that the submission of the learned counsel for the appellants that the first information report Ex. Ka-1 is antedated is not well founded.

13. The learned counsel for the appellants next submitted that having regard to the size of the eastern kotha of the house of the deceased it is not probable that these nine appellants with arms such as guns, pistols, axe and lathis could have been in the kotha together at the same time at the time of the occurrence. The evidence of the PW 2 is that the kotha is 19 or 20 cubits north-south, 4.5 cubits east-west and 10 feet in height. The evidence of PW 11 shows that the eastern kotha is 7.5 feet in height. It is stated in the first information report Ex. Ka-1 that the culprits were moving in and out of the house of the deceased at the time of the occurrence. Therefore, it is quite not (sic) unlikely that all the nine appellants were in the eastern kotha of the house at the same time and it is not improbable that these appellants were seen by PW 2 at different times during the occurrence which must have gone on for some length of time during which PW 2 has received as many as 19 injuries. The deceased and PW 8 also received injuries, and PW 7 who was nearabout the house of the deceased at the time of the occurrence has also received a many as six gunshot injuries. In these circumstances we are of the opinion that the submission of the learned counsel for the appellants that having regard to the size of the eastern kotha it is not probable that the appellants armed with various weapons could not have been present in that kotha is not acceptable.

14. The learned counsel for the appellants next submitted that Dr. Mukherjee who was Incharge of the Primary Health Centre, Ghatampur on February 17, 1968 and had examined PWs 2, 7 and 8 on that day and issued the wound certificates Exs. Ka-18 to Ka-20, has not been examined and that only the Compounder of that Primary Health Centre, PW 13 has been called to prove those certificates. The reason given by the prosecution for the non-examination of Dr. Mukherjee is that he was not available and could not be examined without difficulty. The explanation for the non-examination of Dr. Mukherjee is no doubt not quite satisfactory. The learned Public Prosecutor should have taken steps to procure the attendance of Dr. Mukherjee for giving evidence about the injuries noted by him as per Exs. Ka-18 to Ka-20 on the persons of PWs 2, 7 and 8. But the fact that these three witnesses had sustained injuries during the occurrence in this case was not and could not be disputed. Those witnesses have stated in their evidence that they sustained injuries during the occurrence. Therefore, the non-examination of Dr. Mukherjee for proving the injuries noticed by him on the bodies of PWs 2, 7 and 8 as per the wound certificates Exs. Ka-18 to Ka-20 is not fatal to the prosecution.

15. The learned counsel for the appellants submitted that no property out of the properties looted from the house of the deceased and PW 2 has been recovered from any of the appellants and that it is, therefore, not probable that any of these appellants was responsible for the occurrence in this case. But, as stated earlier, the fact that Mauji Lal was murdered and property from his house was looted on the night of February 16/17, 1968 and in that occurrence Mauji Lal's wife PW 2 and his brother-in-law PW 8 were injured in the house and PW 7 sustained six gunshot injuries when he was standing near the scene of occurrence had not been disputed before the learned Sessions Judge by the learned counsel for the defendants. The suggestion made on behalf of the accused was that an unknown armed gang of dacoits committed the crime and that the accused have been falsely implicated in this case on account of enmity. Having regard to the availability of other incriminating evidence against the appellants, it is not possible to agree with the learned counsel for the appellants

that from the mere fact that none of the looted properties has been recovered from any of the appellants it could be held that the appellants are not the culprits in this case.

16. The learned counsel for the appellants next submitted that the lantern material Ex. III has not been put to or identified by PW 2 as the one which was burning in the eastern kotha at the time of the occurrence. Here again it is unfortunate that the learned Public Prosecutor has not got the lantern identified by PW 2. But the Sub-Inspector of Police PW 11 who had seized that lantern has stated in his evidence that it was found hanging on a peg on the eastern wall of the eastern kotha of the house of the deceased and PW 2 and that it was in working condition. The presence of the lantern in the eastern kotha at the time of the occurrence as well as of moonlight at the time of the occurrence has been mentioned in the first information report Ex. Ka-1 by PW 1 who is a brother of the deceased Mauji Lal and a resident of the same village and could be naturally expected to have gone into the house of the deceased soon after the culprits left the place. PW 2 has stated in her evidence that it was moonlit night and the lantern was burning in the eastern kotha where it had been hung on a peg fixed at a height of six feet from the ground on the eastern wall and that when she heard the sound of some persons in the courtyard she got up immediately and raised the wick of the lantern which was until then giving dim light. She has stated in her cross-examination that the lantern used to be hung daily on the same peg, that there was no blackness on the wall near the peg and that she had scratched it off about eight days prior to the date of her examination in the court. It is significant to note that it has not been suggested to PW 2 that there was not lantern at all in the room in which she was sleeping with her children and that her husband Mauji Lal whose dead body was found by the Sub-Inspector PW 11 in that kotha had not come to that kotha at all. It is seen from the almanac that the night of February 16/17, 1968 was the that night after the full moon and that the moon arose at Delhi at 8.43 p. m. on that day. It has not been suggested as PW 2 or PW 7 or any other witness examined by the prosecution that the night was cloudy and visibility was poor for that or any other reason. It is not improbable that the lantern was burning in the eastern kotha where PW 2 and her children were sleeping during the night and that PW 2 had raised the wick of the lantern when she heard some commotion in the courtyard of her house before the culprits broke open the eastern door of her kotha and entered the same. Therefore, there must have been sufficient light in the eastern kotha for PW 2 to note the presence of the appellants who belong to the same village and were not strangers and for PW 8 also to note the presence of the culprits. There was sufficient moonlight for PW 1 and PW 7 to see the culprits who are stated to have been moving in and out of the house of the deceased and PW 2 during the occurrence. Therefore, it could not be stated that PWs 1,2, 7 and 8 could not have been in a position to identify any of the culprits.

17. The learned counsel for the appellants invited our attention to the fact that the learned Sessions Judge has disbelieved the evidence of PWs 1 and 7 and the learned Judges of the High Court have not relied on the evidence of PW 8 and submitted that PW 2 has modulated her evidence to fit in with the case of prosecution and that the evidence of PW 2 should not, therefore, be relied upon for basing the conviction of the appellants in this case. We were taken through the evidence of PW 2 by the learned counsel for the appellants, and we are of the opinion that the submission that PW 2 has modulated her evidence to fit in with the case of the prosecution is not well founded. PW 2 has stated thus in her evidence :

Raj Narain (A-4), Om Prakash (A-1), Mool Chand (A-6), Anoop Singh (A-3), Ram Pal (A-7), Beni Singh (A-9), Raja Ram (A-8), Shiv Gopal (A-2) and Chandra Prakash (A-5) cut the northern door of my kotha with small hatchets and immediately came in my kotha. I saw and identified them in the light of lantern. I know them from before. All of them were armed with kanta and spears etc. Out of

them Rampal (A-7), Beni Singh (A-9), Lajjar Ram (A-8), Shiv Gopal (A-2) and Chandra Prakash (A-5) assaulted me with lathis as a result of which I received several injuries. My husband Mauji Lal had come in my kotha before the entry of the accused persons. The aforesaid accused persons carried out brutal assault on Mauji Lal with lathis, small hatchets and kanta so much so that he expired. My brother Ram Shankar (PW 8) was sleeping in a verandah having the tin-shed. Some persons had reached there as well. They were assaulting him. His voice was audible at my kotha. The nine accused persons who entered my kotha had started looting my articles and they looted several ornaments and clothes belonging to me. After having stayed for about 15-20 minutes inside the house all the accused persons went away outside through the northern door of my kotha. During the murder and loot I did not hear any alarm from the maidan outside from the atari on the upper storey. Some accused person fired a gunshot also inside my kotha from a hole of the door before cutting the same. The pellet of that shot hit the wall but it did not hit me or my husband. Om Prakash (A-1) had a pistol in his hand.

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A sufficiently loud noise came out as a result of firing shots with a gun and a pistol..... 2 or 3 minutes after the accused persons went away, my Dewar (husband's brother) Baijnath (PW 1) came in my kotha first of all and along with him Ramadhar, Ram Kumar, Banwari and Parasuram (PW 7) also came.

18. PW 2 has denied the suggestion that unknown persons came to commit dacoity inside the house and that she has falsely implicated the appellants because she could not recognise the real culprits. We do not see any reason whatsoever for not accepting the evidence of PW 2 who undoubtedly was in the eastern kotha where the main part of the occurrence has taken place and must have had sufficient opportunity to identify, with the help of the lantern which was burning, the appellants who were previously known to her and not strangers as she has received as many as 19 injuries during the course of the occurrence which had gone on for about 15-20 minutes.

19. The noise created during the occurrence had attracted the attention of the Sub-Inspector of Police CW 1 who belonged to some other police station and was in another village situate a couple of miles away from the one in which the scene of occurrence is situate. It is, therefore, not improbable that PWs 1, 7 and others had got up on hearing the noise and that PW 1 had moved nearabout the house of his brother Mauji Lal where the occurrence was taking place. PW 1 has named all the 18 accused in his evidence as well as in the first information report Ex. Ka-1 given by him at the police station at about 6.05 a. m. on February 17, 1968. The suggestion made to PW 1 in cross-examination is that as soon as Parasuram (PW 7) received injuries they became afraid and did not see the occurrence with his own eyes. He had emphatically denied that suggestion. The learned Sessions Judge has rejected the evidence of PW 1 mainly because he had not mentioned the name of any of the accused to any of the villagers who entered the house of the deceased soon after the miscreants left the place and also because he has not sustained any injury and he would not have been left unharmed by the accused if he was anywhere near the scene of occurrence. Merely because PW 1 had not sustained any injury during the occurrence and had not mentioned the name of any of the accused to the other villagers who entered the house of the deceased soon after the culprits left the place it is not possible to reject the evidence of PW 1 altogether.

20. The learned Sessions Judge disbelieved the evidence of PW 7 having regard to the fact that it is

admitted by PW 1 that PW 7 belonged to the party of the deceased and that it was "doubtful" whether PW 7 could have had a sufficient "glimpse" of the miscreants so as to be in a position to identify them. The learned Sessions Judge has further observed that as soon as PW 7 received the six gunshot injuries in front of Narbada's house he would have either fallen down there or returned to his house. There was sufficient moonlight at the time of the occurrence and it is not improbable that PW 7 who had undoubtedly come near the scene of occurrence would have seen any of the culprits and could not identify them. Therefore, it is not possible to agree with the learned Sessions Judge that no reliance could be placed on the evidence of PWs 1 and 7. The learned Judges of the High Court have observed in their judgment that PW 8 who was undoubtedly present in the house in the tin-shed at the time of the occurrence could have seen some of the offenders and that his evidence could not be relied upon because he has intentionally made improvements in his version about the occurrence. They have also observed that PW 8 would have helped his sister PW 2 better if he had run into the badi and informed other villagers. We are of the opinion that the reasons given by the learned Judges of the High Court for rejecting the evidence of PW 8 altogether are not convincing. We are further of the opinion that there is no reason whatsoever for rejecting the evidence of PWs 1, 7 and 8 of whom PWs 7 and 8 are injured witnesses to the extent that their evidence is corroborated by the evidence of PW 2 who has been believed by not only the learned Sessions Judge but also by the learned Judges of the High Court. The evidence of PWs 1, 7 and 8 insofar as it goes to prove the presence of the appellants lends assurance to the evidence of PW 2 that the appellants entered the house and assaulted her husband fatally and that some of them caused injuries to her and committed dacoity by looting properties worth about Rs. 2700 from her house.

21. Thus on consideration of the evidence of PW 2 and of PWs 1, 7 and 8 to the extent that it is corroborated by evidence of PW 2 and the other circumstances of the case, namely that the door of the eastern kotha of the house of the deceased was found broken open, that the dead body of Mauji Lal was found lying in the eastern kotha of the house and that the boxes had been found broken open and the locks were found lying nearby in the verandah of the house, we are of the opinion that prosecution has proved the case against the appellants satisfactorily and beyond all reasonable doubt and that the conviction of the appellants for the offence under Section 396, IPC and the sentence awarded to them by the learned Sessions Judge and confirmed by the learned Judges of the High Court are correct. We accordingly confirm the conviction and sentence and dismiss the appeals.

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