

Hari Chand and another

Vs

State of Delhi

Criminal Appeal No. 22 of 1979

(Dr. A. S. Anand, S. B. Majmudar JJ)

12.02.1996

JUDGEMENT

S. B. MAJMUDAR J.

1. This is an appeal by two appellants who were accused Nos. 4 and 5 respectively before the Court of Additional Sessions Judge, New Delhi in Sessions Case No. 55 of 1975. They have preferred this appeal under Section 379 of the Code of Criminal Procedure, 1973 (for short Cr. P.C.) read with Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 being aggrieved by the judgment and order dated 8th December 1978 passed in Criminal Appeal No. 257 of 1976 by the High Court of Delhi at New Delhi. By the said decision the High Court set aside the order of acquittal of the appellants rendered by the learned Additional Sessions Judge, New Delhi in the aforesaid Sessions Case and convicted both the appellants under Section 302 read with Section 34, Indian Penal Code (in brief I.P.C.) for having caused murders of Sohan Lal and Kanahiya and accordingly they were sentenced to imprisonment for life. The appellants were also convicted under Section 325 read with Section 34, I.P.C. for having caused grievous hurt to Ram Pal and were sentenced to rigorous imprisonment for one year each. They were also convicted under Section 323 read with Section 34, I.P.C. for having caused simple injuries to Smt. Attro and were sentenced to rigorous improvement for six months. All the sentences awarded to the appellants were ordered to run con-currently. Pending this appeal by an order of this Court dated 31st August 1979 the appellants were ordered to be released on bail on their furnishing security of Rs. 20,000/- with two sureties of like amount plus a personal recognizance bond of the same amount. The appellants were also directed to report to the Police Station, Kalkaji once in a fort-night and were not permitted to leave Delhi without the permission of the Sessions Judge, Delhi.

2. This appeal reached for final hearing before us. As it is a statutory appeal, learned senior counsel for the appellants Shri Jain and learned counsel for the respondent-State took us through the relevant evidence on record in support of their respective cases. We have carefully gone through the entire evidence on record. As will be shown hereinafter we have not been able to persuade ourselves to agree with the contentions canvassed by learned senior counsel for appellants and in our view the orders of conviction and sentence rendered by the High Court against both the appellants remain well sustained on record. Salient features of the Prosecution Case

3. At the outset we may briefly refer to the main features of the prosecution case against the appellants centering round the incident in question. On 18th December, 1974 at Village Tughlakabad situated in near vicinity of Delhi, at about 9.00 a.m. a criminal assault is said to have taken place in the 'baithak' or sitting room of injured witness Ram Pal. Eleven accused were alleged to have been involved in the said criminal assault. They were accused No. 1 Rishi, accused No. 2

Likhi Ram, accused No. 3 Chandgi, accused No. 4 Hari Chand (appellant No. 1 before us), accused No. 6 Baleshwar, accused No. 7 Milkha accused No. 8 Dineswar Kumar, accused No. 9 Hukam Singh, accused No. 10 Badle and accused No. 11 Khazan. It is the case of the prosecution that injured witness Smt. Attro is the real sister of injured witness Ram Pal. PW-8 Ram Pal had two step brothers, namely, Sohan Lal and Kanahiya. Both were done to death in the said criminal assault. Ram Pal, PW-8 has his residential house in Tughlakabad. Adjacent to his house is the house of his step-brother Kanahiya (deceased). The prosecution case further is that while Ram Pal had constructed his house, his house obstructed the house of accused Milkha and completely covered the ventilator of Milkha's house. This happened about two years before the incident in question. The further case of the prosecution is that accused Likhi Ram used to visit the house of his brother-in-law Milkha. One day near Diwali, in 1974 when Likhi Ram visited the house of Milkha, the wife of Milkha taunted Likhi Ram and complained to him that what was his use when he could not stop the closure of their ventilator. After the complaint and taunt from his sister-in-law, Likhi Ram went away.

4. It is further alleged that on Goverdhan day, i.e., 14th November, 1974, Likhi Ram went to the house of injured witness Ram Pal where the wife of Ram Pal was cooking meals and threw mud on their food and there ensued a quarrel. In this quarrel deceased-Kanahiya and Sohan Lal and their brother Ram Pal were on one side while accused Likhi Ram, Chandgi, Milkha and Dineshwar as well as Hukam Singh were on the other side. This resulted in the arrest of persons on both sides under Section 107, Cr. P.C. In these chapter proceedings 18th December, 1974 was the date fixed in the Court for their appearance.

5. On the aforesaid fateful day at about 9.00 a.m. Ram Pal, PW-8 was having tea with his brothers Kanahiya and Sohan Lal (both deceased) and their sister Attro who had come from Bulandshahar to the house of her brother Kanahiya as he had got a son a few days earlier. While they were sitting on cots in the 'baithak' of the house of Ram Pal and were taking tea, the accused Likhi Ram and Chandgi along with appellants Hari Chand and Sarup Singh entered the 'baithak'. The 'baithak' had two doors with a verandah and a courtyard in front of it. Likhi Ram and Chandgi entered from one door whereas Hari Chand and Sarup Singh entered from the other door. Likhi Ram was armed with a 'ballam' while Chandgi, Hari Chand and Sarup Singh were armed with 'lathis'. The other accused were also armed and were standing near a 'neem' tree in the courtyard of the adjacent house of Kanahiya.

6. Prosecution case further is that as soon as Likhi Ram, Chandgi, Hari Chand and Sarup Singh entered the 'baithak' of Ram Pal, accused Likhi Ram retorted 'AAJ TAREEKH PAR JANA HAI TUMHARA KALYAN KAR DENGE' Sohan Lal, who was sitting on a cot, got up whereupon accused Likhi Ram gave a 'ballam' blow in his abdomen. The other three accused, who entered in the 'baithak' along with Likhi Ram, also gave lathi blows to all the three brothers sitting in the 'baithak'. Likhi Ram accused also gave a 'ballam' blow to Kanahiya. The other three accused also gave Lathi blows to Kanahiya. Ram Pal also received lathi blows and he ran out to the verandah.

7. The further case of the prosecution is that Kanahiya died immediately whereas Sohan Lal fell in the 'baithak' and Smt. Attro tried to raise alarm by shouting 'bachao bachao mar diya mar diya'. In order to save Sohan Lal she bent over his body when accused Chandgi hit her with lathi. As soon as Ram Pal came out in the verandah, he received knife injuries from Dineshwar and further Lathi blows from Khazan. Ram Pal also felt down unconscious.

8. It is the case of the prosecution that this occurrence was witnessed by Indraj, PW-9 and Balraj,

PW-10, sons of Ram Pal, One Harish Chander, PW-19 who is resident of the village, rang up the police control room at about 9.45 a.m. The control room sent a van to the spot and in the meantime, Surjit Singh from police control room rang up Police Station, Kalkaji. Rattan Singh of Police Station, Kalkaji in turn flashed a message to Police Post Madangir at about 10.15 a.m. A.S.I. Dhan Singh PW-27 from Police Post Madangir along with Pratap Singh Head Constable and some other constables went to the village for making inquiries. Dhan Singh found Kanahiya, Sohan Lal, Ram Pal and Smt. Attro in precarious condition. In the meanwhile the police control room van had also reached there. Dhan Singh immediately sent all the four injured persons to the All India Institute of Medical Sciences in the van of the control room and deputed Head Constable Pratap Singh, PW-21 and other constables to guard the site. Dhan Singh also left for the hospital, separately.

9. However, on enquiry by Dhan Singh from the doctor, Kanahiya was found dead and soon thereafter Sohan Lal died. Ram Pal was declared unfit to make a statement. Smt. Attro was found by doctors to have suffered three injuries but was declared fit to make a statement. A.S.I. Dhan Singh. PW-27 recorded the statement of Smt. Attro in the hospital itself. Her statement is as under :

"I am the real sister of Ram Pal, Kanahiya and Sohan Lal r/o Tughlakabad. About 10/12 years ago I was married to Sh. Dunger of village Khtera U.P. It has been a matter of 8 days when I came to see my brother Kanahiya because of the birth of a son to him. My brothers have an old enmity with Likhi, Chandgi, Hari Chand etc. who are the residents of Tughlakabad. They had also raised a quarrel with my brothers on the day of Goverdhan festival. Both of the parties had been arrested by the police, and today they had to attend the Court in that connection. Today at about 9 A.M. when I was taking tea while sitting with my brothers Ram Pal, Kanahiya and Sohan Lal in my baithak, Likhi and Chandgi who are the sons of Lakhpat and Sarupa and Hari Chand who is known as Khotey as well, who are the sons of Nihal Chand and are the residents of Tughlakabad itself and are quite known to me, entered the baithak and Hukam Singh who is known by the name of 'Kaley' as well, Baleshwar, Milkhey and 2/3 other persons who are the residents of Tughlakabad itself, were standing outside on the road, Likhi was holding ballam in his hand and the others were holding lathis in their hands. Likhi said that no doubt, they had to go the Court but let them be done away with and saying as such Likhi gave a ballam blow in the abdomen of my brother. Sohan Lal and Chandgi, Sarupa and Khotey gave lathi blows to all of my three brothers Ram Pal, Kanahiya and Sohan. I raised an alarm to the effect 'bachao bachao' 'mar diya mar diya.' In order to save Sohan Lal when I bent down over him Chandgi's lathi hit me also on my left shoulder. My brother Kanahiya could not withstand the blows of their lathis and fell down on the spot and became unconscious. Sohan Lal and Ram Pal also got injured and became unconscious and fell down. Police van brought us to hospital. In hospital the doctor told about my brother Kanahiya that he had died. This incident has been witnessed by Balraj and Inder the sons of my brother Ram Pal who were present over there at that time. I have heard the statement and it is correct."

A.S.I. Dhan Singh made his endorsement on the statement of Smt. Attro and sent the ruqqa along with his endorsement at about 12.50 p.m. to Police Station Kalkaji where upon formal First Information Report was recorded at about 1.05 p.m. by A.S.I. Rattan Singh.

10. On recording the aforesaid report of Smt. Attro a case under Section 302/307/425/34, I.P.C. was

registered against all the 11 accused and investigation started.

11. As noted earlier Sohan Lal also died on the same day in the hospital. The doctors at the All India Institute of Medical Sciences (AIIMS) also examined injured witnesses Ram Pal and Attro.

12. After sending the ruqqa, A.S.I. Dhan Singh returned to the spot. Soon after the injured had been removed to the hospital. Inspector Jugraj Chand, PW-26, who was Station House Officer of Police Station, Kalkaji, also reached the spot and also went to the hospital. In the hospital he noticed that apart from Smt. Attro the other three persons were not in a position to make statement. He came back to the spot and made enquiries. He got site plan prepared and also recorded the statement of Indraj, PW-9 and Balraj, PW-10 at about 1.00 p.m. We shall refer to the injuries noted by Dr. B.B. Aggrawal, PW-2 who conducted post-mortem examination of deceased Sohan Lal and Kanahiya and also the injuries noted by the doctor who examined Smt. Attro and Ram Pal in the latter part of this judgment. During investigation accused Chandgi and Likhi Ram were arrested on 19th December, 1974 while the appellants were arrested on 31st December, 1974. Remaining accused were arrested between 2-1-1975 and 19-2-1975 on different dates.

13. A.S.I. Dhan Singh made an application to the Chief Medical Officer of AIIMS hospital for recording the statement of Ram Pal. The C.M.O. declared him unfit for making a statement. Dhan Singh, again tried for recording his statement and again he was declared unfit 'for minimum of two days'. The police again applied on 23rd December 1974 and the doctor again declared him unfit for making a statement for 'seven days minimum' Ram Pal was discharged from the hospital on 30th December, 1974 but his statement could be recorded on 29th January, 1975 after the S.H.O. produced him before the Medical Officer-in-charge for their opinion as to whether he was mentally and physically fit to make a statement. Dr. R. Bhatia, Lecturer in Neuro Surgery, AIIMS examined him and found him fully conscious and fit to make statement to the police. The doctor, however, made an endorsement that Ram Pal still had a speech defect in the form of slow and slurred speech.

14. The Investigating Officer, Jugraj Chand, also noticed that earlier Ram Pal was speechless and, therefore, his statement could not be recorded and, for the first time, after Dr. Bhatia had examined him on 29th January, 1975 the police recorded the statement of Ram Pal on 29th January 1975.

15. After completion of investigation the police prepared charge-sheet against all the 11 accused for offences under Sections 148,302 read with Section 149, I.P.C., Section 307 read with Section 149, I.P.C. and Section 452 read with Section 149, I.P.C. The case was duly committed to the Court of Additional Sessions Judge. All the 11 accused stood trial for the offences with which they were charged. The Additional Sessions Judge, New Delhi who tried the Sessions Case No. 55 of 1975 against all the 11 accused came to the conclusion that out of the 11 accused only accused No. 2 Likhi Ram and accused No. 3 Chandgi were guilty of offences under Section 302 read with Section 34, I.P.C. and consequently each of them was sentenced to life imprisonment. They were also convicted under Section 452, I.P.C. and each of them was sentenced to undergo rigorous imprisonment for one year. They were also convicted under Section 325 read with Section 34, I.P.C. for causing grievous hurt to Ram Pal with blunt object and each of them was sentenced to undergo rigorous imprisonment for one year under the said Section, Both of them were also convicted under Section 323 read with Section 34, I.P.C. for causing simple injuries to Smt. Attro and each of them was sentenced to undergo rigorous imprisonment for six months on this count. All these sentences were ordered to run concurrently. The remaining nine accused including the present two appellants were, however, acquitted by the learned Sessions Judge.

16. The convicted accused Likhi Ram and Chandgi preferred criminal appeals before the High Court of Delhi at New Delhi while the State filed appeal against acquittal of all the nine remaining accused including the present two appellants. The two conviction appeals of accused Likhi Ram and Chandgi and the acquittal appeal by the State were heard together by a Division Bench of the Delhi High Court. After hearing the parties through their respective counsel the High Court took the view that accused Likhi Ram and Chandgi were rightly convicted by the learned Session Judge. So far as the appeal against acquittal moved by the State was concerned, it was partly allowed against the present two appellants who were ordered to be sentenced as noted earlier, while the said appeal of State against acquittal of remaining seven accused, namely, Rishi, Baleshwar, Milkha, Dineswar, Hukam Singh alias Kaley, Badley and Khazan was dismissed. The State has not preferred any further appeal against acquittal of these aforesaid seven accused. Accused Likhi Ram and Chandgi in their turn filed criminal appeals by special leave in this Court. But their appeals have abated on account of their death pending their respective appeals. Consequently in the present appeals we are only concerned with the orders of conviction and sentence as passed by the High Court against the present two appellants in the appeal of the State against acquittal of these two accused by the learned Sessions Judge.

Rival Contentions.

17. Shri Jain, learned senior counsel for the appellants vehemently submitted that the High Court was in error in interfering with the order of acquittal of the appellants as rendered by the learned Sessions Judge as the reasoning adopted by the learned Sessions Judge for acquitting these accused cannot be said to be perverse or unreasonable and the view of the learned Sessions Judge on evidence was well sustained and called for no interference against acquittal. Learned senior counsel Shri. Jain in support of the appeal took us through the evidence of prosecution witnesses Smt. Attro, PW-7 and Ram Pal, PW-8 and submitted that the evidence of these two injured eye-witness suffered from inter se contradictions and could not have been relied upon by the High Court. It was also contended that the High Court was in error in placing reliance on the alleged eye-witness account of Indraj, PW-9 and Balraj, PW-10 who had in fact not witnessed the incident and they were not present on the scene of offence at the relevant time. Learned senior counsel Shri Jain also placed reliance on the evidence of Badley, PW-12, Ajit Ram, PW-18 and Harish Chander, PW-19 for supporting the case of the appellants-accused that witness Indraj, PW-9 and Balraj, PW-10 were not present at the relevant time and on the contrary their evidence showed that appellant Hari Chand was not party to the crime and was at his place of business at the relevant time. The learned senior counsel also placed strong reliance on the evidence of alibi as deposed to by Defence Witnesses Ram Saran Bhati, DW-1 Chandan Singh, DW-2, Iswar Chand Gupta, DW-3 and S. S. Goswami, DW-4. It was further contended that the evidence of PW-7 Smt. Attro stood contradicted by her statement recorded by the police by way of FIR and that at the stage of trial she had tried to falsely rope in as many accused as possible and that no reliance ought to have been placed on her deposition. Learned senior counsel Shri Jain also relied upon various circumstances as emerging from the record of the case for submitting that the present appellants were wrongly roped in and were entitled to be acquitted of the charges levelled against them.

18. Learned counsel for the respondent-State on the other than submitted that prosecution had led very cogent and reliable evidence against the appellants, and the learned Sessions Judge had in a very perfunctory manner examined the case of the prosecution against the appellants-accused, that the order of acquittal rendered by the learned Sessions Judge was against the weight of evidence led by the prosecution and was rightly set aside by the High Court in appeal of the State against their acquittal. He submitted that the said order of the High Court called for no interference in this

appeal. In view of the aforesaid rival contentions the following points arise for our determination:

1. Whether the orders of conviction and sentence as rendered by the High Court against the appellants were justified on the record of the case.
2. Whether the High Court was justified in interfering with the order of acquittal rendered by the learned Session Judge in favour of the present appellants.
3. Other incidental aspect also falls for our determination, namely, whether the appellants were able to establish their case of alibi.

We shall deal with this aspect while considering the aforesaid two main points for determination.

Considerations of Points Nos. 1 and 3 for determination.

19. As both these points are interwoven we will consider respective arguments of learned senior counsel for the appellants and learned counsel for the respondent-State conjointly for deciding these two points.

20. At the outset it will be apposite to consider the main thrust of the prosecution case as revealed from the evidence on record for deciding the capability of the present appellants in the incident in question. It cannot be disputed that there was a criminal assault on PW-7 Smt. Attro and PW-8 Ram Pal, the injured eye-witness and also on deceased-Sohan Lal and Kanahiya who lost their lives pursuant to the said assault. The moot question is whether accused Likhi Ram and Chandgi, whose convictions by both the Courts below have stood abated, were accompanied on that fateful morning by the present appellants in mounting the criminal assault on the aforesaid victims. For that purpose a close look at the relevant prosecution evidence against the appellants becomes necessary. As noted earlier Smt. Attro, PW-7 had clearly stated in her First Information Report about the involvement of the present appellants along with the convicted accused Likhi Ram and Chandgi amongst others. In her statement recorded by PW-27 Dhan Singh at the earliest opportunity at the hospital she had stated that along with other accused-appellants Sarup Singh and Hari Chand, who are the sons of Nihal Singh and were residents of Tughlakabad itself had come to the 'baithak.' Accused Likhi Ram was holding a 'ballam' in his hand and others were holding 'lathis' in their hands and they had mounted an attack on her brothers Sohan Lal and Kanahiya and had also injured her brother Ram Pal and in the process of saving her brother she also got injured. As the prosecution evidence reveals, injured Kanahiya, Sohan Lal and Ram Pal as well as Smt. Attro were removed by Police witness Dhan Singh to AIIMS in the van of the control room. When Dhan Singh enquired from the doctor Kanahiya was found dead and soon thereafter Sohan Lal also died in the hospital. Ram Pal was declared unfit to make a statement. It is also clear from the medical reports that all the four injured had been removed to AIIMS and were with the doctors by 11.45 a.m. The ruqqa itself was dispatched by 12.50 p.m. Smt. Attro was first examined by doctors and thereafter her statement was recorded by A.S.I. Dan Singh and the FIR was registered at 1.15 p.m. Thus at the earliest opportunity without any undue delay the FIR was registered at the police station. As the incident had taken place at about 9.00 a.m. in the morning of 18th December, 1974 and when the message about the incident was flashed to the police control room at about 9.45 a.m. as deposed to by Harish Chander PW-19, it is obvious that it took sometime before the A.S.I. Dhan Singh could reach the spot. He reached there by about 10.30 a.m. and simultaneously police control room van also reached. It was thereafter that all four injured were taken to AIIMS where the doctors examined

them by 11.45 a.m. It is to be noted that when Smt. Attro herself was an injured victim and when the doctors had to examine Kanahiya, Ram Pal and Sohan Lal who were very seriously injured and out of whom Kanahiya was declared dead and Sohan Lal died a little later and when Ram Pal was in a seriously injured condition having lost consciousness it would naturally take sometime before Smt. Attro could be questioned by the police. Her statement could be recorded at the earliest opportunity possible at the hospital when she was fit to make a statement and give information regarding the incident. Consequently the High Court was perfectly justified in taking the view that there was no undue delay in recording the FIR and it was a true and correct recording of the earliest version about the incident given by injured witness Smt. Attro. An attempt was made by learned senior counsel Shri Jain to indicate that Smt. Attro had sufficient time to be brainwashed as she was accompanied to the hospital by prosecution witness Badley Ram, PW-12 who had stated that along with him Dalip, Dalpat and Prabhu had also gone to the hospital and that Dalpat and Badley belonged to the party of Prabhu who was inimical to the accused. It is difficult to appreciate this contention for the simple reason that if Badley who was inimical to the accused would have persuaded Smt. Attro to falsely rope in the appellants in the crime, how is it that the very same witness Badley in the Trial Court tried to exonerate the accused? Even otherwise when Smt. Attro who had herself suffered injuries was being accompanied by her three brothers who were almost in a dying condition and were travelling in a police van it would be too much to expect that she would be briefed for falsely roping in the accused on her way to the hospital in such a situation. It is also pertinent to note that in his cross-examination nothing was even suggested to Badley, PW-12 that he was instrumental in briefing Smt. Attro to falsely rope in the accused. It is in the light of the aforesaid First Information Report promptly recorded at the hospital that the evidence of Smt. Attro before the Trial Court has to be appreciated. It is true that in her deposition before the Trial Court she tried to rope in apart from the appellants. It is true that in her deposition before the Trial Court she tried to rope in apart from the appellants and convicted caused Likhi Ram and Chandgi, other accused who have been acquitted by the Trial Court and whose acquittal has been confirmed by the High Court. But only because she tried to exaggerate her case at the stage of trial it cannot be said that her evidence otherwise reliable against the present appellants also should be disbelieved. The High Court, therefore, was justified in sifting her evidence and in trying to see whether after discarding the unbelievable part of her evidence, the rest of her evidence against the present appellants which had stood the test of cross-examination could be relied upon. In our view the evidence of Smt. Attro in so far as she consistently deposed in connection with the role of the appellants and which had run parallel to her FIR was rightly accepted by the High Court. It is true that in the FIR as well as in her evidence before the Trial Court she had not ascribed any positive act on the part of the appellants in giving lathi blows to her brothers but she had clearly stated about their presence on spot and being party to the criminal assault on all the four of them in the 'baithak' of Ram Pal which resulted in the death of her two brothers Sohan Lal and Kanahiya and in grievous injuries to her brother Ram Pal as well as to herself. It is also true that she had not stated in her evidence that the appellants were armed with 'lathis' when they entered the 'baithak' along with Chandgi and Likhi Ram to attack them and in the FIR she had also stated that they were armed with 'lathis'. Consequently prosecution has clearly brought out the involvement of present appellants in the incident wherein they shared common intention with accused Likhi and Chandgi in giving fatal injuries to the two deceased as well as injuries to the two injured witnesses Ram Pal and Smt. Attro.

21. So far as Attro is concerned the medical evidence shows that she had suffered three injuries-(1) contusion on the upper part of the shoulder, (2) abrasion on the fore-arm, and (3) haematoma left side of the back of the skull. This evidence supported her version that she had suffered injuries on spot at the time of incident when she tried to save her brother Sohan Lal. Her evidence was fully

corroborated by her brother Ram Pal who was another injured eye-witness. Ram Pal, PW-8 had deposed on the same lines as Smt. Attro and had clearly stated that on 18th December, 1974 at about 9.00 a.m., he was sitting with his sister Attro and his brothers Kanahiya and Sohan Lal and were taking tea at the 'baithak' and at that time accused Likhi, Chandgi and the present appellants Hari Chand and Sarup Singh came in their 'baitkak'. Chandgi, Sarup and Hari Chand were armed with lathis while Likhi was armed with 'ballam'. Likhi threatened to kill them and when his brother Sohan got up Likhi gave a 'ballam' blow on his person. It injured his abdomen. Other three accused armed with 'lathis' gave lathis blows. The butts of lathi had injured his head. Likhi-accused also gave a 'ballam' blow to Kanahiya. Kanahiya died at the spot and Sohan Lal died in the hospital. He became unconscious on receipt of the head injuries. Ram Pal did not know if Attro received any injury as he had become unconscious. This part of his evidence has well stood the test of cross-examination and fully supports the eye-witness account of Smt. Attro so far as the involvement of the present appellants in the incident is concerned. Once it is found that appellants entered the 'baithak' of witness Ram Pal armed with lathis in company of accused Chandgi and Likhi and facilitated the attack by Likhi and Chandgi on the witness and the two deceased, it cannot be urged that they did not share the common intention of murdering the concerned victims of their assault. Section 302 read with Section 34, I.P.C. would squarely get attracted against the present appellants along with accused Likhi and Chandgi who actually mounted the assault on these victims in company of the present appellants. Having given our anxious consideration to the eye-witness account deposed to by prosecution witness Attro, PW-7 and Ram Pal, PW-8 in the light of the FIR we find that the High Court was perfectly justified in placing implicit reliance on the eye witness account of PWs-7 and 8 for convicting the appellants of the offences with which they were charged.

22. However, learned senior counsel Shri Jain for the appellants was justified in criticising the evidence of PW-9 Indraj and PW-10 Balraj, sons of Ram Pal whose evidence is also accepted by the High Court. These two witness are the sons of Ram Pal who are alleged to have been present at the time of the incident. But their conduct, as revealed from their evidence, shows that they could not have been eye-witness to the incident. If they were present on spot and had seen the assault on their father Ram Pal and uncle Kanahiya they would have accompanied them in the police van to the hospital. That would have been natural conduct on their part. But curiously enough they did not accompany them to the hospital. Secondly, even though they stated in their evidence that the police had inquired of them about the nature of the incident in the morning, that version of theirs has stood contradicted by the evidence of police witness Jugraj Chand, PW-26 who had stated that he had met Balraj for the first time at 1.00 p.m. and Indraj was also there at that time. Accordingly to him on meeting Indraj for the first time at 1.00 p.m. his statement was recorded by him. Consequently no reliance could be placed on the alleged eye-witness account deposed to by prosecution witnesses Balraj and Indraj. As we are not inclined to place reliance on the evidence of Indraj, PW-9 and Balraj, PW-10 it is not necessary for us to dilate on the contention urged on behalf of the defence that the former was at the relevant time attending his school while the latter had gone to supply milk at Sunder Nagar. But even leaving aside their evidence, as noted earlier, the prosecution has been able to establish through the eye-witness account of Smt. Attro and Ram Pal that present two appellants had accompanied accused Likhi and Chandgi being armed with lathis to mount assault on the victims on the date of the incident and had shared a common intention with Likhi Ram and Chandgi for belabouring these witnesses and liquidating deceased-Kanahiya and Sohan Lal.

23. We may now proceed to consider the main submissions of learned senior counsel Shri Jain for the appellants, for not accepting the prosecution case against the appellants. Shri Jain firstly contended that eleven accused were alleged to be involved in the incident. That out of these eleven accused, leaving aside the two appellants, the remaining nine accused were closely related to each

other. That so far as the present two accused-appellants are concerned they had no relation with remaining accused. It was further contended that so far as accused No. 7 Milkha was concerned he might have a grievance against protection witness Ram Pal in connection with closing of his ventilator and that may make other accused interested in him against PW-8 Ram Pal and his brothers. But nothing has been alleged by the prosecution against the present appellants and there was no earthly reason for them to be involved in the incident. It is difficult to appreciate this contention. It may be that the present appellants may not be related to Milkha and other accused but that does not mean that they may not extend their helping hand to accused Likhi Ram and Chandgi only on that ground. When the eye-witness account of PW-7 Attro and PW-8 Ram Pal has clearly established the presence of the two appellants in company with convicted accused Chandgi and Likhi Ram, and when all the four of them are said to have entered the 'baithak' of PW-8 Ram Pal has clearly established the presence of the two appellants in company with convicted accused Chandgi and Likhi Ram, and when all the four of them are said to have entered the 'baithak' of PW-8 Ram Pal armed with lathis, whether they were related to the remaining accused or not, would not be a circumstance which can have any bearing on their involvement in the incident. It is also pertinent to note that it is the consistent case of Smt. Attro both in her FIR and in her evidence that appellant No. 1 was inimical to them. It is also not disputed that appellant No. 2 is the brother of appellant No. 1. Hence it is not unnatural that they would share the common intention of accused Likhi and Chandgi for be labouring the victims.

24. It was next submitted by learned senior counsel Shri Jennifer for the appellants, that Smt. Attro, PW-7 had not assigned any specific role to the appellants. It is true that in her evidence she has not stated that the appellants also mounted attack with lathis and only the other two accused Likhi Ram and Chandgi were involved in the actual assault. However, PW-8 Ram Pal has clearly stated that the present appellants were also wielding lathis and had taken part in the assault on Kanahiya. That part of the evidence has well stood the test of cross-examination. Thus, their presence being armed with lathis in company with the other two accused and their participation in the assault is established on record. It is easy to visualise that they would have come together sharing common intention to liquidate the victims and would not have come just for the sake of socialising. It was next submitted by Shri Jain that there was undue delay in recording the statement of Smt. Attro regarding the incident. We have already considered this aspect earlier. As seen earlier Smt. Attro's statement was recorded in the hospital at the earliest opportunity and it could not be said that there was any undue delay in recording her statement. In this connection Shri Jain very strongly relied upon the defence case put forward by DW-2 Chandan Singh who stated that he was on inimical terms with Prabhu and many cases were pending between him and Prabhu and that appellants were openly helping against Prabhu while PW-8 Ram Pal belonged to Prabhu's party and so also Dalpat and as Badley and Dalpat had accompanied Smt. Attro in the police van to the hospital they would have brainwashed Smt. Attro and would have persuaded her to falsely involve the appellants in the incident. It is difficult to appreciate this far-fetched suggestion on behalf of the defence. As we have already discussed earlier no time was left for such an exercise when Smt. Attro herself was injured and she was being carried in the police van accompanied by her three brothers one of whom was brought dead in the hospital. We have also seen earlier how the said suggestion could not be accepted for the simple reason that if Badley and Prabhu were out to falsely involve the appellants and would have prevailed upon Smt. Attro to falsely involve them, Badley while being examined in Sessions Case as PW-12 would not have gone out of his way in supporting the appellants. Consequently, the submission of the learned senior counsel Shri Jain for discrediting the eye-witness account of Smt. Attro as recorded in her statement at the earliest at the hospital cannot be accepted. It was next contended by Shri Jain that both PW-7 Attro and PW-8 Ram Pal even though they were

injured witnesses has tried to over pitch their case and had attempted to falsely involve even the remaining seven accused who were ultimately acquitted by the Trial Court and whose acquittal was not interfered with by the High Court. In this connection it was submitted that prosecution witness Ram Pal had stated that after receiving one blow on the head from accused Chandgi the witness had become unconscious and, therefore, he would not have seen anything further and hence his version about involvement of other accused could not be believed. It was also submitted that Smt. Attro had tried to falsely involve accused Dineshwar and others who ultimately were acquitted and whose acquittal has not been interfered with by the High Court. Shri Jain, therefore, submitted that the evidence of Ram Pal and Attro should be taken with a pinch of salt and should not be believed even against the present two appellants. Shri Jain in this connection also contended that in case these witnesses are to be relied upon even partially so far as present appellants are concerned their evidence requires corroboration so far as they tried to rope in the appellants and as the prosecution has not been able to lead any cogent evidence for corroborating their version against the appellants the appellants are at least entitled to benefit of doubt. So far as this contention is concerned it must be kept in view that while appreciating the evidence of witnesses in a criminal trial especially in a case of eye-witnesses the maxim falsus in uno, falsus in omnibus cannot apply and the Court has to make efforts to sift the grain from the chaff. It is of course true that when a witness is said to have exaggerated in his evidence at the stage of trial and has tried to involve many more accused and if that part of the evidence is not found acceptable the remaining part of evidence has to be scrutinised with care and the Court must try to see whether the acceptable part of the evidence gets corroborated from other evidence on record so that the acceptable part can be safely relied upon. So far as the aspect of corroboration to the evidence regarding the eye-witness account of witnesses Ram Pal and Attro about the involvement of appellants is concerned, the said corroboration is found from the earliest recorded statement of Smt. Attro at the hospital. We have already extracted in extensor what she stated at the hospital at the earliest opportunity regarding the incident which resulted in death of her two brothers and serious injuries to her surviving brother Ram Pal and injuries to herself. Her statement as recorded by A.S.I. Dhan Singh PW-27 clearly shows that her brothers had an old enmity with accused Likhi Ram, Chandgi and Hari Chand and others who were residents of Tughlakabad. Hari Chand is one of the appellants before us. She had also clearly stated in the said statement that on that fateful morning when she was sitting in the company of her brothers in their 'baithak' accused Chandgi and Likhi Ram along with present appellants entered the 'baithak' and that the appellants were armed with lathis and thereafter the actual assault began on the victims. This statement recorded at the earliest fully corroborates the eye-witness account of Smt. Attro at the stage of trial and also the eye-witness account of injured witness is further corroborated by the medical evidence. The medical evidence of Dr. B. B. Aggarwal, PW-2 who conducted the post-mortem examination on the body of Sohan Lal and Kanahiya shows that Sohan Lal had suffered three incised wounds besides lacerated injuries and abrasions while Kanahiya's post mortem disclosed two incised wounds besides numerous lacerated wounds and multiple abrasions. As noted earlier the Medico-legal report in respect of Smt. Attro. Ex. PW-22/B, showed that she had suffered three injuries - (1) contusion on the upper part of the shoulder. (2) abrasion on the fore-arm, and (3) haematoma left side of the back of the skull. While the medico-legal report of prosecution witness Ram Pal showed that he was drowsy and he was found having- (1) lacerated wound placed transversely across anterior auxiliary line in 7th Lt. ICS. which was bleeding, (2) swelling and tenderness over the middle of left arm, and (3) lacerated wound over dorsum of the left hand. He was advised X-ray of the skull, left hand and fore-arm, left hand. The X-Ray of left elbow showed fracture. In relation to X-Ray of the skull, the X-Ray film got spoiled and fresh X-Ray was advised. The fresh X-Ray was performed on 21st December 1974 which showed serious internal injuries in the skull and the head.

25. In view of the aforesaid injuries suffered by the victims of the assault on that fateful morning, it would become obvious that the eye-witness account of these witnesses in so far as it was deposed by them that accused Likhi was holding a 'ballam' in his hand while the others were holding lathis in their hands, gets amply supported by this medical evidence. The multiple injuries suffered by the witnesses as well as the deceased by way of incised wounds would connect accused Likhi who was armed with 'ballam' a sharp edged weapon, while the other multiple injuries by way of abrasions and lacerated wounds suffered by these witnesses and also the deceased would clearly show that it would not be the hand work of only the remaining accused Chandgi, but there would be more accused than only Likhi and Chandgi who could have caused so many multiple injuries on four persons, that is, two deceased as well as the two injured witnesses. These multiple injuries suffered by them clearly corroborated the eye-witness account of these witnesses that present two appellants were also involved in the incident. May be that the appellants may not have ascribed author ship of actual blows by lathis on the victims by Smt. Attro, but PW-8 Ram Pal does ascribe lathis blows to them. Even that apart, their very presence on the spot armed with lathis could clearly indicate that they shared common intention with the remaining accused Likhi and Chandgi who in their company mounted the assault on the victims. Even the cross-examination of these eye-witness has also proceeded on the basis that they were present on the scene of offence and had suffered from injuries in the assault. In this connection Shri Jain submitted that so far as Smt. Attro is concerned in her evidence she did not state that the present appellants were armed with lathis. It is of course true that in her evidence she only stated that appellants Hari Chand and Sarup had come to their 'baithak' in company of Likhi and Chandgi and that Likhi was armed with 'ballam' and Chandgi was armed with lathi. However, she further stated that they were all eleven accused who had come to their 'baithak' to attack them. In her statement recorded by the police at the hospital and which had become the First Information Report she had clearly stated that appellants were armed with lathis. Consequently no capital can be made out by the defence on her evidence as aforesaid especially when injured witness Ram Pal had clearly stated that Chandgi, Sarup and Hari Chand accused were armed with lathis while Likhi accused was armed with 'ballam' and all of them had mounted the attack. Shri Jain submitted that PW-8 Ram Pal became unconscious after receiving head injury and hence he could not have seen the assault on others. This submission cannot be accepted as it is clearly deposed by him that before receiving head injury, he had received other injuries from the assailants and had seen the assault on Kanahiya. It is true, as stated by him, that he could not see the assault on Smt. Attro but evidence regarding assault on her is supplied by the cogent version deposed to by injured eye-witness Smt. Attro herself. The eye-witness account of injured witness Ram Pal, PW-8 and Smt. Attro, PW-7 has well stood the test of cross-examination. Consequently the submission of learned senior counsel Shri Jain for not accepting the eye-witness account of these two witnesses so far as the present appellants are concerned, cannot be accepted.

26. It was next submitted by Shri Jain for the appellants, that prosecution witness Ram Pal was discharged from hospital on 31st December 1974 and still his statement was not recorded by the police till 29th January 1975 and because of this undue delay in recording his statement it could be said that he had tried to falsely rope in the present appellants because of enmity. It is not possible to accept this contention for the simple reason that there is over whelming evidence on record to show that the witness had suffered grievous injuries in the assault and had become unconscious and in that State was brought to the hospital. PW-27 Jugraj Chand, Police Inspector had clearly stated that prior to 29th January 1975 the witness was speechless and so his statement could not be recorded. Witness Ram Pal had also stated that even after returning from the hospital he was speechless and the police used to come to his house at an interval of 2-3 days but he was not in a position to walk and he could give the narration of the incident for the first time on 29th January 1975 when he was

able to speak. Nothing substantial could be brought out in his cross-examination for discrediting this version. Consequently it cannot be said that statement of this witness was recorded by the police after undue delay. It was next contended by Shri Jain that when the Trial Court thought it unsafe to convict remaining seven accused on the basis of the prosecution evidence the same yardstick should be applied while considering that very evidence against the present appellants. So far as this submission is concerned it has to be kept in view that the remaining seven accused were acquitted by the Trial Court and which acquittal was accepted by the High Court on the ground that there was no clear evidence regarding their involvement in the incident and that the injured eye-witnesses Ram Pal and Attro had specifically deposed about the involvement of only four accused, namely, Likhi, Chandgi and the present two appellants who were stated to have entered the 'baithak' and mounted attack and when in the FIR it was mentioned that other seven accused were standing outside the house on the road. Hence they were given benefit of doubt. Only because such benefit of doubt was given to the remaining seven accused it cannot be said that clinching evidence against the remaining four accused should also be discarded. Otherwise it would amount to throwing the baby out with the bath water. It was lastly contended by Shri Jain, learned senior counsel for the appellants that Trial Court had seen the demean-our of the prosecution witnesses and disbelieved them so far as the involvement of appellants is concerned and that view of the Trial Court cannot be said to be unreasonable or an impossible view. Consequently it ought not to have been reversed by the High Court in appeal against acquittal. We shall consider this aspect a little later while we will deal with point No. 2. Suffice it to say at this stage that in the light of very clear and cogent evidence of injured eye-witnesses Ram Pal and Attro against the present two appellants the Trial Court's order of acquittal rendered in favour of the appellants was clearly demonstrated to be against the weight of evidence and had to be interfered with in appeal against acquittal as has been done by the High Court.

27. That takes us to the consideration of defence version about alibi. So far as appellant Hari Chand is concerned DW-3 Iswar Chand Gupta had stated that he was present at their 'Bhatta' from 7.30 a.m. to 10.30 a.m. on 18th December 1974 and accused Hari Chand was present there. The witness had come back from the 'Bhatta' after 10.30 a.m. He had deposed that in November and December it was a peak season for the brick kiln and accused Hari Chand used to remain at the 'Bhatta' for 24 hours on account of rush of work and would go to his village after 10/12 days. The witness proved certain challans having been issued on 18th December 1974 out of the challan book and stated that they were issued by accused Hari Chand. However the cross-examination of the witness clearly exploded the version deposed to by him in his examination-in-chief. It was found that there was no mention of time in the challan book as to when they were issued and he had never taken these challans or register to the police or any higher authority. He also admitted that he came to know of the arrest of accused Hari Chand on 2-1-1995 and did not make any representation to the higher authorities although he had met him. It was also established that he was a partner with accused Hari Chand in the brick business. He had thus come forward to support the plea of alibi of accused Hari Chand. The High Court was therefore, justified in not accepting the evidence of alibi deposed to by this witness so far as Hari Chand is concerned. So far as accused Sarup Singh is concerned great reliance was placed by learned senior counsel for the appellants on the evidence of DW-1 Ram Saran Bhatti who stated that accused Sarup Singh who was appearing in his law examination had shifted to his residence from 11-12-1974 to 31-12-1974. DW-4, S. S. Goswami had stated that accused Sarup Singh appeared in the 5th term examination held in December 1974. He also proved the admission tickets Exhibits DW-4/ and DW 4/B as well as date sheet for the said examination Ex. DW 4/C. So far as the evidence of Ram Saran Bhatti DW-1 is concerned it was revealed in his cross examination that he had made no representation regarding the plea of alibi of accused Sarup Singh

though he had stated that he had met Superintendent of Police along with other persons and also met Shri Om Mehta, Minister of State for Home Affairs and also made representation to the Minister. Even though the witness was an Assistant Director of Horticulture his conduct in not making any representation regarding the plea of alibi of accused Sarup Singh to these authorities clearly belies his version that accused Sarup Singh was not present on the scene of offence on the morning of that fateful day, namely, 18th December 1974. It is, of course, true that the High Court had committed an error in holding from the date sheet produced on record that accused Sarup Singh had no papers on 17th, 18th and 19th December 1974. The defence evidence clearly indicated that accused Sarup Singh had examination papers also on 17th and 19th December 1974. The date sheet issued by University of Delhi as per Ex. DW 4/C clearly showed that there was an examination of the 3rd semester on 17th December 1974 the High Court seems to have assumed that accused Sarup Singh was appearing only in 5th semester but the statement of marks Ex. DW 4/D issued to the accused Sarup Singh clearly showed that he had also appeared in 3rd semester, paper XIII A/I which was the paper of Business Association-I. It is, therefore well established on record that accused Sarup Singh had appeared in L.L.B. 3rd Semester examination also on 17th and had also appeared on 19th December. But that does not improve the case of alibi put forward on behalf of this accused. The reason is obvious. The incident is dated 18th December 1974. It is in evidence that the place of offence in Village Tughlakabad is not at a long distance from Delhi where the accused was appearing in his L.L.B. examination. It is not in dispute that examination was being held in the morning from 9.00 a.m. for three hours. Therefore, after finishing the examination on 17th by 12.00 noon. and when the next examination was on 19th December there was ample opportunity of the accused to go to his own village. Consequently it is not improbable that the accused could be present on the scene of offence on 18th which was an off day for him so far as his examination was concerned. Consequently the aforesaid evidence does not probabilise the theory of alibi and absence of the accused from the scene of offence on that fateful morning of 18th December 1974. It is well established that it is for the accused to prove the case of alibi to the hilt. The aforesaid evidence of the alibi led on behalf of both the appellants does not meet this test. It must, therefore, be held that the defence has failed to establish the plea of alibi concerning the present appellants. The High Court, therefore, was justified in not accepting this version of the accused. Points Nos. 1 and 3, therefore, will have to be answered against the appellants. It must be held that the prosecution has been able to establish beyond shadow of reasonable doubt that both the accused had shared the common intention with convicted accused Chandgi and Likhi in liquidating the victims Sohan and Kanahiya and in belabouring prosecution witnesses Attro and Ram Pal. Consequently their conviction and sentence as imposed by the High Court under Section 302 read with section 34 I.P.C. for causing the death of Sohan and Kanahiya and their conviction and sentence under Section 325 read with Section 34 for causing grievous hurt to prosecution witness Ram Pal and their conviction and sentence under Section 323 read with Section 34 for causing simple injuries to Smt. Attro cannot be found fault with. Point No. 1 is, therefore, answered in the affirmative while point No. 3 is answered in the negative.

Point No. 2.

28. It is now well stated that in appeal against acquittal the High Court is entitled to reappraise the evidence if it is found that the view taken by acquitting court was not a possible view or that it has a perverse or infirm or palpably erroneous view. In the case of *Uppari Venkataswamy v. Public Prosecutor*. High Court of Andhra Pradesh, 1995 (7) SCALE 147 : (1996 AIR SCW 98) a Division Bench of this Court consisting of M. K. Mukherjee, J. and one of us, S. B. Majumdar, J., has made the following observations on this aspect in para 28 (of SCALE) (Para 27 of AIR) of the Report :

"It is now well settled by a catena of decisions of this Court that in an appeal against acquittal the appellate court can interfere with the findings of fact recorded by the Trial Court and can upset the acquittal by re-appreciating evidence if it is found that the view taken by the acquitting court was not a possible view on the evidence on record. In this connection, we may refer to the decision of this Court in the case of State of Punjab v. Ajaib Singh, (1995) 2 SCC 486 : (1995 AIR SCW 950) ; R. M. Sahai, J. speaking for this Court made the following pertinent observations in this connection in para 7 of the Report :

'...We agree that this Court is not precluded or the court hearing the appeal against acquittal is not prevented from examining and reappreciating the evidence on record. But the duty of a court hearing the appeal against acquittal in the first instance is to satisfy itself if the view taken by acquitting court... was possible view or not. And if the court comes to conclusion that it was not, it can on reappreciation of evidence reverse the order.."

It was also observed in the said decision that the appellate court would not be entitled to interfere unless the view of the acquitting court is found to be perverse or infirm or palpably erroneous. We have, therefore, to see whether on the facts of the present case the Trial Court was justified in acquitting the present accused of the offences with which they were charged by brushing aside the eye-witness account of injured P. Ws. 1 and 4 to 7."

So far as the facts of the present case are concerned it emerges on record that the eye-witness account of prosecution witnesses Smt. Attro and Ram Pal who were injured eye-witnesses was acceptable to the Trial Court so far as their version about involvement of convicted accused Likhi and Chandgi is concerned. But the very same evidence of injured eye-witness against the appellants was not relied upon by the Trial Court by adopting a view which was clearly against the weight of evidence and not a reasonable one. In paragraph 44 of the judgment of the Trial Court it has been observed that the involvement of these accused was not free from doubt. The learned Trial Judge observed that they were not armed with any weapon. The assertion of Ram Pal that they were armed with lathis and they had joined others in inflicting lathi blows on him and other victims is totally belied by Attro's conspicuous silence about the fact. So far as this observation of the learned Trial Judge is concerned it was clearly against evidence for the simple reason that Attro's statement recorded at the hospital clearly showed that these witnesses were armed with lathis. As seen earlier even before the Trial Court she deposed that all the eleven accused had come to their 'baithak' to attack them. Consequently the view of the Trial Court giving benefit of doubt to the accused was clearly against the weight of evidence and patently a perverse and unreasonable view. In this connection the High Court was justified in observing that witness. Badley, P.W. 12 was examined only for proving identification of dead bodies of Sohan Lal and Kanahiya while witness Ajit Ram P.W. 18 was examined for proving the recovery of 'ballam' and 'lathis'. But during their cross-examination they tried to support the accused and had gone out of their way in deposing that the accused were not present on the scene of offence at the relevant time. The evidence of witness Badley in his cross-examination was clearly unreliable and was rightly rejected by the Trial Court. Consequently the evidence of these two witnesses could not have been relied upon by the Trial Court for

exonerating the accused and in holding that the accused would not be present on the scene of offence on the date of incident. We have already seen earlier how the defence had failed to establish the theory of alibi still the Trial Court has accepted the theory of alibi as put forward on behalf of the defence and that is how benefit of doubt was extended to the appellants. The said reasoning of the Trial Court was clearly perverse, unreasonable and against the weight of evidence. Under these circumstances the High Court was perfectly justified in interfering in appeal against acquittal and in coming to its own conclusion by appreciating the evidence led by the prosecution. The second point for determination also, therefore, has to be held against the appellants by answering it in the affirmative.

29. In the result this appeal fails and is dismissed. The orders of conviction and sentence as passed by the High Court against the appellants are confirmed. The appellants were enlarged on bail pending this appeal. As the appeal fails the appellants are directed to surrender to the bail and to serve out the remaining part of their sentence. Their bail bonds are ordered to be cancelled. Appeal dismissed.