SUPREME COURT OF INDIA

Ranjit Singh

Vs.

State of Madhya Pradesh

Crl.A.No.1072 of 2006

(P.Sathasivam and Dr. B.S.Chauhan JJ.)

27.10.2010

JUDGMENT

Dr.B.S.Chauhan, J.

1. This appeal has been preferred against the judgment and order dated 20.10.2005 passed by the High Court of Madhya Pradesh (Indore-Bench) in Criminal Appeal Nos.149 and 180 of 1995, by which the High Court has dismissed the appeals against the judgment and order dated 8.2.1995 passed by the Sessions Court convicting the appellants under sections 148, 365, 342, 323, 324 and 324/149 of the *Indian Penal Code, 1860* (hereinafter called the `IPC'), and awarded them life imprisonment along with other punishments.

2. Facts and circumstances giving rise to this appeal are: (A) That on 21.1.1988, the First Information Repovrt (hereinafter called as FIR) bearing No.18/88 was lodged at 9 A.M. under sections 148, 365, 342, 323, 324 and 324/149 IPC in the Police Station, Namli District, Ratlam by Nagu, informant/complainant, stating that on 19.1.1988 Nagu and Gangaram (PW.24) had gone to the District Court, Ratlam to attend a case and at about 3 P.M. the accused persons, namely, Ranjit (A.3), Kamal Das (A.12), Vikramsingh (both of whom died during the course of trial), Ramesh Patidar (A.4), Shantilal (A.6) and Pooran Das (A.2) reached the court compound and took Nagu and Gangaram (PW.24) on their bicycle to an iron factory on the pretext of reaching some compromise in the case and thereafter they had been taken in a truck loaded with sand to the outskirts of village Amleta. From there they had been taken to village Bhaisatiya. Nagu and Gangaram (PW.24) were assaulted by the accused persons with lathis and were asked the whereabouts of Shantilal, Shambhu and Mohan. Nagu disclosed that Shantilal was in village Bamankhedi and Shambhu, Kailash and Mohan were in village Budheda. The accused persons wrongly confined Nagu inside the house of Nandu and took away Gangaram (PW.24) with them. They brought Shantilal in a tractor in the night at 2 A.M. and put him inside the room with Nagu and locked the room from outside. On the next day, i.e., 20.1.1988 at about 8-9 A.M., they brought Kailash (PW.25), Shambhu and Gangaram (PW.24) and confined them also in the same room along with Nagu and Shantilal. After some time, they took all of them to the well of Gopal Maharaj

situated at village Panched and the accused persons assaulted Shantilal with lathis as a consequence of which Shantilal became unconscious. Kailash (PW.25) and Shambhu were also assaulted. Again they took Shantilal (in unconscious condition) in the field of one Dhula Chowkidar and they assaulted Shantilal, Kailash (PW.25) and Shambhu with lathis. Shantilal died on the spot. Shambhu also received grievous injuries on his person. The accused persons left the injured persons and moved to a distance watching for the consequences. After some time, the accused persons reached near Shantilal and checked whether he was dead or alive and once they were satisfied that Shantilal was no more, they fled. (B) The FIR lodged by the complainant, Nagu was recorded by SHO Govardhan Singh (PW.30) vide Ex.P-63. Shailendra Kumar Shrivastava (PW.29) and another Police Officer reached the spot and found Shantilal dead whereas Shambhu, Gangaram (PW.24) and Kailash (PW.25) were lying there in injured condition. Shailendra Kumar Shrivastava (PW.29) prepared the inquest (Ex.P-5) of the deceased Shantilal, seized blood-stained cloth, and collected earth and blood-stained earth. He sent the dead body of Shantilal for post- mortem examination. The injured persons, namely, Nagu, Shambhu, Kailash (PW.25) and Gangaram (PW.24) were sent for medical examination to Government Hospital, Ratlam. Kanhaiya Lal Dharia, Naib Tehsildar (PW.26) recorded the statement of the injured witness, Kailash (PW.25). On 21.1.1988, Dr. M.A. Qureshi (PW.1) performed the autopsy of the deceased Shantilal and prepared the report (Ex.P-3). He also examined on the same day the injured Kailash (PW.25) and Nagu. On the same day, i.e., 21.1.1988 Dr. Virendra Singh (PW.15) examined Shambhu and also took his X-ray and found fractures of the fifth metacarpal bone of left hand, right humerus and radius bones. On the same day, Dr. Jayant Mukund Subedar (PW.16) medically examined Shambhu. However, he died in the night at 11.25 P.M. in the hospital. Dr. Jayant Mukund also examined Gangaram (PW.24). Dr. Uday Yarde (PW.17) performed post mortem of the deceased Shambhu and prepared the post-mortem report. (C) The investigation proceeded, a large number of persons were apprehended and after completion of the investigation, a charge-sheet was filed against 34 persons out of which two, namely, Vikram Singh (A.33) and Ranjit, son of Rattan Lal Patidar (A.34) died during the trial and thus, the remaining 32 accused were put to trial. The prosecution examined in total 31 witnesses and got 79 documents proved. The trial court vide judgment and order dated 8.2.1995 acquitted 22 accused and convicted 10 including the present appellants. (D) All the said 10 convicts preferred Criminal Appeal Nos.149 and 180 of 1995. Both the said appeals were heard together and disposed of by common judgment and order dated 20.10.2005. The High Court acquitted two accused/appellants, namely, Pooran Das (A.2) and Mukesh (A.20). However, it dismissed the appeal of the remaining 8 appellants maintaining their conviction and sentences. Out of the said 8 accused, only 5 convicts approached this Court by filing this appeal and Bagadi Ram Das (A.1), Kamal Das (A.12) and Ratan (A.24) did not prefer any special leave petition against the confirmation of their conviction by the High Court. During the pendency of this appeal, Gopal Das (A.17) died. So, at present, we are concerned only with four appellants, namely, Ranjit Singh (A.3), Balaram (A.14), Ramchandra (A.18) and Shambhu (A.22).

3. Shri Sushil Kumar Jain, learned counsel appearing for the appellants, has submitted that the deceased persons/complainant party had been involved in a large number of criminal

cases and had created a menace as all of them were involved in cases of theft. Complaints had been filed against them and villagers had been afraid of the complainant party. The Police had been investigating theft cases against them. In fact, the complainant/deceased party had been absconding because of the pendency of cases of theft against them. One police Constable had been posted in the village to keep an eye on them. The name of Ramchandra (A.18) was not mentioned in the FIR. None of the other appellants had been named by more than one witness as being involved in the case and in respect of some of the accused the evidence of the witness had been disbelieved by the courts below, thus, it was not proper for the High Court to maintain the conviction of the appellants on the basis of the same evidence against the present appellants. All the witnesses were partisan and had falsely implicated the appellants because of enmity. Nagu, who lodged the FIR, could not be examined as died during the course of trial and therefore, the FIR lodged by him could not be relied upon. The FIR which could have been relied upon was by Dhula Chowkidar (PW.5). There was no intention on the part of the appellants to cause death, otherwise they could have eliminated the deceased persons on the very first day. According to the prosecution, some of the accused were armed with deadly weapons. The same had not been used as the deceased and other injured persons had allegedly been beaten with sticks and lathis. Injuries had been caused on non-vital parts of their bodies. Thus, their conviction cannot be maintained under section 302 IPC even with the aid of Section 149 IPC. The prosecution case is to be disregarded as a whole. Thus, appeal deserves to be allowed.

4. On the contrary, Shri C.D. Singh, learned counsel for the State of Madhya Pradesh, has vehemently opposed the appeal contending that no case was pending against the deceased/complainant party and none of them had been absconding. The appellants had caused injuries which were sufficient to cause death of two persons. The appellants also caused injuries to the other eye-witness. Statement of Kailash (PW.25) was recorded by a Magistrate under the apprehension of his death, so his statement is to be considered as a statement made under section 164 of *Code of Criminal Procedure, 1973* (hereinafter called Cr.P.C.). Deposition of the injured witnesses is to be given due weightage. The Court has a duty to separate the grain from the chaff and in case, some of the accused persons had been acquitted by the trial court and some by the High Court, that does not mean that the deposition of the witnesses cannot be relied upon for conviction of the appellants. The appeal lacks merit and is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel appearing for the parties and perused the record. Legal Issues:

Accused-not named in the FIR:

6. In *Rotash v. State of Rajasthan*[1], this Court while dealing with a similar issue held as under: "The first information report, as is well known, is not an encyclopaedia of the entire case. It need not contain all the details. We, however, although did not intend to ignore the importance of naming of an accused in the first information report, but herein we have seen that he had been named in the earliest possible opportunity. Even assuming that PW 1 did not

name him in the first information report, we do not find any reason to disbelieve the statement of Mooli Devi, PW 6. The question is as to whether a person was implicated by way of an afterthought or not must be judged having regard to the entire factual scenario obtaining in the case. PW 6 received as many as four injuries."

7. In *Rattan Singh v. State of H.P.*[2], this Court held as under:

> "Omission of the said detail is there in the First Information Statement, no doubt. But Criminal Courts should not be fastidious with mere omissions in First Information Statement, since such Statements cannot be expected to be a chronicle of every detail of what happened, nor to contain an exhaustive catalogue of the events which took place. The person who furnishes first information to authorities might be fresh with the facts but he need not necessarily have the skill or ability to reproduce details of the entire story without anything missing therefrom. Some may miss even important details in a narration. Quite often the Police Officer, who takes down the first information, would record what the informant conveys to him without resorting to any elicitatory exercise. It is the voluntary narrative of the informant without interrogation which usually goes into such statement. So any omission therein has to be considered along with the other evidence to determine whether the fact so omitted never happened at all." (See also *Podda Narayana v. State of Andhra Pradesh*[3], *Sone Lal v. State of U.P.*[4] *Gurnam Kaur v. Bakshish Singh & Ors.*[5], *and Kirender Sarkar & Ors. v. State of Assam*[6]).

8. While dealing with a similar issue in *Animireddy Venkata Ramana & Ors. v. Public Prosecutor, High Court of Andhra Pradesh*[7], this Court held as under:

> "While considering the effect of some omissions in the first information report on the part of the informant, a court cannot fail to take into consideration the probable physical and mental condition of the first informant. One of the important factors which may weigh with the court is as to whether there was a possibility of false implication of the appellants. Only with a view to test the veracity of the correctness of the contents of the report, the court applies certain well-known principles of caution."

9. Therefore, from the law referred to hereinabove, it is evident that in case the informant fails to name a particular accused in the FIR, and the said accused is named at the earliest opportunity, when the statements of witnesses are recorded, it cannot tilt the balance in favour of the accused.

Falsus in Uno, Falsus in Omnibus:

10. In *Balaka Singh v. State of Punjab*[8], this Court observed as under:-

> "It is true that, as laid down by this Court in *Zwinglee Ariel v. State of Madhya Pradesh*[9], and other cases which have followed that case, the Court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply."

11. In *Ugar Ahir & Ors. v. State of Bihar*[10], this Court held as under:-

> "The maxim falsus in uno, falsus in omnibus (false in one thing, false in every thing) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest."

12. A similar view was taken in *Nathu Singh Yadav v. State of Madhya Pradesh*[11].

13. The maxim has been explained by this Court in *Jakki @ Selvaraj & Anr. v. State represented by the IP, Coimbatore*[12] observing:-

> "The maxim falsus in uno, falsus in omnibus has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to is, that in such cases testimony may be disregarded, and not that it must be discarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called `a mandatory rule of evidence'."

14. It is well settled in law that the maxim falsus in uno, falsus in omnibus (false in one false in all) does not apply in criminal cases in India, as a witness may be partly truthful and partly false in the evidence he gives to the Court. (Vide: *Kulwinder Singh v. State of Punjab*[13], *Ganesh v. State of Karnataka*[14], *Jayaseelan v. State of Tamil Nadu*[15], *Mani @ Udattu Man & Ors. v. State represented by Inspector of Police*[16], *and Balraje @ Trimbak v. State of Maharashtra*[17]).

15. This position of law has been reiterated by this Court in *Prem Singh & Ors. v. State of Haryana*[18] wherein the Court clearly held as under:

> "It is now a well-settled principle of law that the doctrine "falsus in uno, falsus in omnibus" has no application in India."

16. In view of the above, the law can be summarised to the effect that the aforesaid legal maxim is not applicable in India and the court has to assess to what extent the deposition of a witness can be relied upon. The court has to separate the falsehood from the truth and it is only in exceptional circumstances when it is not possible to separate the grain from the chaff because they are inextricably mixed up, that the whole evidence of such a witness can be discarded. Number of witnesses required to prove the offence by members of a large unlawful assembly:

17. This question has been definitively dealt with by a Constitution Bench of this Court in *Masalti v. State of Uttar Pradesh*[19] wherein the Court observed as under: "... under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. That, no doubt is true; but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable."

(Emphasis added)

18. In *Muthu Naicker & Ors. v. State of Tamil Nadu*[20] this Court explained the aforesaid judgment by stating that in a situation where a witness has been attacked by the members of an unlawful assembly composed of a large number of persons, the court should carefully consider the question of the credibility of such a witness. Where the court is of the view that the testimony of such a witness is in the facts and circumstances of the case not reliable, it should insist that such testimony be corroborated by one or more other witness before it can be accepted by the court.

19. A similar view has also been taken by this Court in *Binay Kumar Singh v. State of Bihar*[21] wherein the Court has held:-

> "There is no rule of evidence that no conviction can be based unless a certain minimum number of witnesses have identified a particular accused as a member of the unlawful assembly. It is axiomatic that evidence is not to be counted but only weighed and it is not the quantity of evidence but the quality that matters. Even the testimony of one single witness, if wholly reliable, is sufficient to establish the identification of an accused as a member of an unlawful assembly. All the same, when the size of the unlawful assembly is quite large (as in this case) and many persons would have witnessed the incident, it would be a prudent exercise to insist on

at least two reliable witnesses to vouchsafe the identification of an accused as a participant in the rioting."

(Emphasis added)

20. Similarly, in *Kamaksha Rai & Ors. v. State of Uttar Pradesh*[22] this Court observed:

"Taking into consideration the nature of attack and the possibility or otherwise of the identification of these accused persons by the prosecution witnesses and bearing in mind the principles laid down by this Court in the above- cited judgments, we are of the opinion that it is not safe to rely on the evidence of witnesses who speak generally and in an omnibus way without specific reference to the identity of the individuals and their specific overt acts in regard to the incident ..."

(Emphasis added)

Consequently, the Court took the view that in the facts and circumstances of the case, as a lot of witnesses had referred to the accused in a vague and general manner rather than making specific reference to the identity of the individuals and their specific overt acts in the incident, prudence dictated that it was necessary to fix a minimum number of witnesses needed to accept the prosecution case to base a conviction."

21. A similar view has been reiterated by this Court in *Chandra Shekhar Bind & Ors. v. State of Bihar*[23].

22. Thus, from the above, the law on the issue remains that in a case involving an unlawful assembly with a very large number of persons, there is no rule of law that states that there cannot be any conviction on the testimony of a sole eye-witness, unless that the court is of the view that the testimony of such sole eye-witness is not reliable. Though, generally it is a rule of prudence followed by the courts that a conviction may not be sustained if it is not supported by two or more witnesses who give a consistent account of the incident in a fit case the court may believe a reliable sole eye-witness if in his testimony he makes specific reference to the identity of the individual and his specific overt acts in the incident. The rule of requirement of more than one witness applies only in a case where a witness deposes in a general and vague manner, or in the case of a riot. Statement under Section 32 recorded-Injured witness survives:

23. In *Sunil Kumar & Ors. v. State of M.P.*[24] this Court dealt with the issue and held:

".....that immediately after PW.1, injured witness was taken to the hospital and his statement was recorded as a dying declaration which, consequent upon his survival, is to be treated only as a statement recorded under Section 164 Cr.PC and can be used for corroboration or contradiction. This statement recorded by the Magistrate at the earliest available opportunity clearly discloses the substratum of the prosecution case

including the names of the appellants as assailants and there is not an iota of material on record to show that this was the upshot of his tutoring. On the contrary, this statement was made at a point of time when PW.1 was in a critical condition and it is difficult to believe that he would falsely implicate the appellants leaving aside the real culprits.....that there was only some minor inconsequential contradictions which did not at all impair his evidence. Then, again, as already noticed, the evidence of the doctors fully supports his version of the incident."

(Emphasis added)

24. In *Maqsoodan & Ors. v. State of U.P.*[25] this court dealt with a similar issue wherein a person who had made a statement in expectation of death did not die. The court held that it cannot be treated as a dying declaration as his statement was not admissible under Section 32 of the *Indian Evidence Act, 1872* (hereinafter called the Act 1872), but it was to be dealt with under Section 157 of the Act 1872, which provides that the former statement of a witness may be proved to corroborate later testimony as to the same fact.

"A similar view has been re-iterated by this court in *Ramprasad v. State of Maharashtra*[26] as the Court held: "Be that as it may, the question is whether the Court could treat it as an item of evidence for any purpose. Section 157 of the Evidence Act permits proof of any former statement made by a witness relating to the same fact before "any authority legally competent to investigate the fact" but its use is limited to corroboration of the testimony of such a witness. Though a police officer is legally competent to investigate, any statement made to him during such an investigation cannot be used to corroborate the testimony of a witness because of the clear interdict contained in Section 162 of the Code. But a statement made to a Magistrate is not affected by the prohibition contained in the said section. A Magistrate can record the statement of a person as provided in Section 164 of the Code and such a statement would either be elevated to the status of Section 32 if the maker of the statement subsequently dies or it would remain within the realm of what it was originally. A statement recorded by a Magistrate under Section 164 becomes usable to corroborate the witness as provided in Section 157 of the Evidence Act or to contradict him as provided in Section 155 thereof."

25. This has also been reiterated in *Gentela Vijayavardhan Rao & Anr. v. State of Andhra Pradesh*[27] *and State of U.P. v. Veer Singh Ors.*[28]. Thus, in view of the above, it can safely be held that in such an eventuality the statement so recorded has to be treated as of a superior quality/high degree than that of a statement recorded under Section 161 Cr.P.C. and can be used as provided under Section 157 of the Act 1872.

26. The instant case requires to be considered in the light of the aforesaid settled legal propositions.

27. In the instant case, two persons lost their lives and three were injured. Nagu, complainant/informant, died before the trial could commence and thus, the contents of the FIR could not be substantiated by him as he could not be examined. However, the two injured witnesses Gangaram (PW.24) and Kailash (PW.25) had deposed alongwith other eye-witnesses about the incident. Sohan Bai alias Soni Bai (PW.2), Shaku Bai (PW.3) and Rambha Bai (PW.8) were examined. Post mortem was conducted on the body of Shantilal (deceased) by Dr. M.A. Qureshi (PW.1). Dr. Udai Yarde (PW.17) conducted the post mortem on the body of Shambhu (deceased). Dr. Jayant Mukund Subedar (PW.16) had medically examined Gangaram (PW.24). Dr. M.A. Qureshi (PW.1) had medically examined Kailash (PW.25). The injuries on the persons of deceased, as well on the injured persons had been noted by the courts below.

28. Injuries:

> "(A) The following injuries were found on the body of Shantilal (deceased):
>
> 1. One lacerated wound =" = inch flesh deep full with blood on right forearm.
>
> 2. One incised injury - dimension 3x3 inches on left elbow.
>
> 3. Lacerated wound dimension 3x3 inches flesh deep on upper portion of right arm.
>
> 4. One lacerated would 3x2 inches muscle deep on left calf.
>
> 5. Lacerated would 4x3 inches skin deep on frontal region in which blood clot was present.
>
> (B) The following injuries were found on the body of Kailash (PW.25):
>
> 1. One lacerated wound on right elbow internal side 3x2 inches, blood was coming out on its pressing. Swelling in upper and lower portion of elbow. X-ray was advised for this injury.
>
> 2. Swelling on right hand - pain on pressing, x-ray was advised for this also.
>
> 3. One incised wound 4x1-1/2 inches present on left hand between index and middle finger. It was flesh deep.
>
> 4. Swelling on left hand and forearm - pain on pressing. X-ray was advised for it also.
>
> 5. Pain on pressing front and back of chest and right shoulder. Therefore, he was advised X-ray of chest and shoulder. (C) The following injuries were found on the body of Nagu:

1. Fracture of humerus bone of left hand and X-ray was advised.

2. Abrasion on left knee 3x3 inches.

3. One abrasion present on left side of face and on left ear.

4. One abrasion ="x1/2" on left hip joint was present. (D) The following injuries were found on the body of Shambhu:

1. Entire left hand, from right shoulder to the hand was swelled and was red due to swelling and much pain for which X-ray was advised for left shoulder, left humerus bone, left forearm and left hand front all the four portions.

2. Third upper bone in upper portion of the left hand was fractured.

3. Fracture seemed to be in the right hand radius. Ulna bone for which also X-ray was advised.

4. Swelling present in entire right hand and elbow. 2

5. (Contusion) in forearm of left hand several marks of abrasion were present.

6. Lacerated wound in middle front part of left leg 2x2 inches skin deep.

7. Lacerated wound 1.5x1 inch skin deep in front middle part of right leg.

(E) The following injuries were found on the body of Gangaram (PW.24):

1. Swelling 4x2 inches back of left knee, colour was red and black, pain on the injury.

2. Abrasion 3.5x1 inch on left elbow, colour was black-red.

3. He was mentioning pain on his knees but there was no mark of any other injury."

29. Prosecution examined Dr. M.A. Qureshi (PW.1), Dr. Jayant Mukund Subedar (PW.16) and Dr. Udai Yarde (PW.17) before the trial Court and they have all supported the case of the prosecution and proved the injury reports. So far as the eye-witnesses are concerned, Gangaram (PW.24), had named Ranjit but did not name either of the three other appellants before us. However, he had stated that Ranjit had beaten him and the complainant, Nagu. Kailash (PW.25), attributed serious roles to the appellant, Ranjit Singh, and other co-accused who did not prefer special leave petitions or had been acquitted by the trial Court. He also named Balaram, Ramchandra and Shambhu. These two injured witnesses had supported the prosecution case giving a complete narration of the incident from the beginning till the end. Gangaram (PW.24) also clarified that the appellant before us, Ranjit

Singh, had beaten them and not the other accused named Ranjit, who died during the trial. In addition thereto, there is evidence by Sohan Bai (PW.2), daughter-in-law of Nagu and sister of Shantilal (deceased) involving Ranjit Singh, Shambhu and Ramchandra, appellants. She also deposed that she knew Ramchandra and Shambhu before the occurrence of the incident. Shaku Bai (PW.3), sister of Shantilal (deceased) had also named Ranjit Singh and Shambhu, alongwith the other co-accused who either had been acquitted by the courts below or convicted but did not approach this court in appeal. Rambha Bai (PW.8), sister of Shantilal (deceased) named Shambhu, Ramchandra and Ranjit Singh, alleging that they had made forced entry into her house alongwith 4-5 other persons in the presence of Sohan Bai (PW.2) and Shaku Bai (PW.3). She identified them in the court also. All these witnesses had faced gruelling cross-examinations by the defence, but nothing could be elicited from either of them which may discredit their testimony. Out of these witnesses, Gangaram (PW.24) and Kailash (PW.25) are injured witnesses. The injuries found on the person of Kailash (PW.25) were of a grievous nature. Their evidence had to be given due weightage as they are the stamped witnesses. (Vide: *Sarwan Singh v. State of Punjab*[29], *State of U.P. v. Jagdeo Ors.*[30], *State of U.P. v. Kishan Chand Ors.*[31], *Krishan & Ors. v. State of Haryana*[32], *Anna Reddy Sambasiva Reddy & Ors. v. State of Andhra Pradesh*[33], *and Balraje @ Trimbak v. State of Maharashtra*[34]).

30. The statement of Kailash (PW.25) had been recorded by the Magistrate under the apprehension that he may die. Therefore, his evidence is to be given due weightage, as per the law referred to hereinbefore, and generally cannot be brushed aside on any ground.

31. The evidence on record and the manner in which the offence has been committed makes it crystal clear that the appellants intended to kill Shantilal and Shambhu (both deceased). The injuries caused to both the deceased had been grievous in nature and inflicted on vital parts of their bodies. These injuries were sufficient to cause the deaths of the deceased persons, as revealed by the medical evidence. Kailash (PW.25) in his statement has made it clear that in spite of the fact that Shantilal had died, the appellants twisted his body just to see whether he was dead or alive and after ascertaining the fact that he was dead he was given 2-3 lathi blows just to insult him and they made derogatory statements to Kailash (PW.25) and Shambhu (deceased) who was still alive at that time.

32. Undoubtedly, all the eye-witnesses including the injured witnesses are closely related to the deceased. Thus, in such a fact- situation, the law requires the court to examine their evidence with care and caution. Such close relatives and injured witnesses would definitely not shield the real culprits of the crime, and name somebody else because of enmity. The defence did not ask the injured witnesses as to how they received the injuries mentioned in the medical reports. (See: *Dinesh Kumar v. State of Rajasthan*[35], *Arjun Mahto v. State of Bihar*[36], *and Akhtar & Ors. v. State of Uttaranchal*[37]).

33. The courts below have already examined the evidence with care and caution and separated the grain from chaff and acquitted a large number of persons. More so, it may be pertinent to mention that the High Court had acquitted Puran Das (A.2) and Mukesh (A.8) as

they have not been named by the injured witnesses Gangaram (PW.24) and Kailash (PW.25). The trial Court had acquitted all those who had not been attributed any specific role in causing injuries to the deceased and/or the injured witnesses. Therefore, the persons involved in rioting had been acquitted as no specific role was assigned to any of them. The case of the present appellants is quite distinguishable from the cases of those who have been acquitted by the courts below. Merely, because some of the accused have been acquitted by the trial Court and some by the High Court, it does not mean that statements of these witnesses are liable to be disregarded as a whole.

34. There are claims and counter-claims regarding the character and involvement of the claimant party/deceased persons in criminal cases. However, Goverdhan Singh, Investigating Officer (PW.30) in his deposition had made it clear that no criminal case was pending against the claimant party/deceased persons. He also produced the crime register to substantiate his statement and he was not aware of whether any person of the claimant party/deceased persons had ever been sentenced for committing any offence prior to his joining the said police station. No complaint against the claimant party had come before him for investigation. Be that as it may, even if some of them had been involved in criminal cases that could not permit the appellants to become the law unto themselves and punish the said persons.

35. In view of the above, we do not find any cogent reasons to interfere with the impugned judgment and order of the High Court. The appeal lacks merit and, is accordingly, dismissed.

[1]*(2006) 12 SCC 64* [2]*AIR 1997 SC 768* [3]*AIR 1975 SC 1252* [4]*AIR 1978 SC 1142*
[5]*AIR 1981 SC 631* [6]*(2009) 12 SCC 342* [7]*(2008) 5 SCC 368* [8]*AIR 1975 SC 1962*
[9] *AIR 1954 SC 15* [10]*AIR 1965 SC 277* [11]*(2002) 10 SCC 366* [12]*(2007) 9 SCC 589*
[13]*(2007) 10 SCC 455* [14]*(2008) 17 SCC 152* [15]*(2009) 12 SCC 275* [16]*(2009) 12 SCC 288*
[17]*(2010) 6 SCC 673* [18]*(2009) 14 SCC 494* [19]*AIR 1965 SC 202* [20]*AIR 1978 SC 1647*
[21]*AIR 1997 SC 322* [22]*(1999) 8 SCC 701* [23]*(2001) 8 SCC 690* [24]*AIR 1997 SC 940*
[25]*AIR 1983 SC 126* [26]*AIR 1999 SC 1969* [27]*AIR 1996 SC 2791* [28]*AIR 2004 SC 4614*
[29]*AIR 2002 SC 3652* [30]*(2003) 1 SCC 456* [31]*(2004) 7 SCC 629* [32]*(2006) 12 SCC 459*
[33]*AIR 2009 SC 2661* [34]*(2010) 6 SCC 673* [35]*(2008) 8 SCC 270* [36]*(2008) 15 SCC 604*
[37]*(2009) 13 SCC 722*