NAIN SINGH AND ANR.

v.

STATE OF UTTAR PRADESH

FEBRUARY 22, 1991

[S. RATNAVEL PANDIAN AND M. FATHIMA BEEVI, JJ.]

Constitution of India, 1950—Article 136—Special Leave Petition —Criminal matters—Appeal arising from concurrent finding of fact—Scope of interference.

On 23.12.1976 at about 1 p.m. when Bali (deceased) along with PWs 1 and 5 was in his field, the four appellants each armed with a Lathi, along with Braham Singh armed with a 'Ballam', came there. On the exhortation of Chandroo, all other appellants and Braham Singh attacked Bali with their respective weapons and caused injuries to him. While PW-3 tried to save her husband, she too was injured. When PW-1 along with PWs 3 and 4 rushed to the scene of occurrence, the assailants took to their heels. Injured Bali was removed to the hospital. He succumbed to his injuries on the same day at about 7.45 p.m.

It seems that there was strained relationship between the appellants and the deceased for a considerable length of time over grazing of cattle, resulting in damage to the standing crops. On account of this, there was simmering feeling between the parties. Added to that, there were certain criminal prosecutions between the parties, pending for over a period of two years.

The four appellants along with Braham Singh (since acquitted by the Trial Court) took their trial. The Trial Court found the four appellants guilty of offences under section 302 read with section 34 and under section 323 read with section 34 IPC and sentenced them to undergo imprisonment for life and to six months' rigorous imprisonment respectively. The 5th accused, Braham Singh, was acquitted.

On appeal, the High Court held that the prosecution had not made out a case punishable under section 302 read with section 34 IPC but only under section 304, Part II, IPC read with section 34 IPC. The High Court sentence each of them to undergo rigorous imprisonment for a period of five years. The conviction of all the appellants under section 323 read with 149 IPC was altered into one under section 323 read with 34 IPC and the sentence of six months' rigorous imprisonment was retained.

A **Before this Court it was contended on behalf of the appellants that since both the courts below had overlooked the glaring infirmities and ignored the material evidence supporting the defence theory as well as the manifest errors appearing in the evidence, this Court would be justified in interfering with the concurrent findings of both the courts. According to the learned counsel, the prosecution had shifted the scene** B **of occurrence, changed the time of occurrence, unduly delayed the registration of the case and put forth a false explanation for its tardiness both in the matter of registration and investigation of the case.**

Allowing the appeals by setting aside the convictions and the sentence imposed by the High Court, this Court,

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HELD: (1) Under Article 136, Interference by the Supreme Court will be called for even with the findings of fact given by the High Court, if the High Court has acted perversely or otherwise improperly. [690F]

D **The State of Madras v. A. Vaidyanatha Iyer, [1958] S.C.R. 580; Himachal Pradesh Administration v. Shri Om Prakash, [1972] 1 S.C.C. 249; Balak Ram v. State of U.P., [1975] 3 S.C.C. 219; Arunachalam v. P.S.R. Sadhananthan, [1979] 3 S.C.R. 402; State of U.P. v. Hamit Singh & Ors., [1990] 3 S.C.C. 55; State of U.P. v. Pheru Singh & Ors., [1989] Suppl. 1 S.C.C. 288, referred to.**

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(2) The evidence adduced by the prosecution falls short of the test of reliability and acceptability and as such it is highly unsafe to act upon it. [697H]

(3) A thorough and scrupulous examination of the facts and the circumstances of the case leads to an irresistible and inescapable conclu- F **sion that the prosecution has miserably failed to establish the charges levelled against these appellants by producing cogent, reliable and trustworthy evidence. Both the Courts below instead of dealing with the intrinsic merits of the evidence of the witnesses, have acted perversely by summarily disposing of the case, pretermitting the manifest errors and glaring infirmities appearing in the case. [698A-B]**

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 251 & 307 of 1990.

From the Judgment and Order dated 11.8.1989 of the Allahabad H High Court in Crl. A. No. 1239 of 1978.

S.C. Maheshwari, Y.C. Maheshwari, Miss Sandhya Goswami and P.K. Chakraborty for the Appellants. A

Prithvi Raj, Prashant Chaudhary and Dalveer Bhandari for the Respondent.

The Judgment of the Court was delivered by B

S. RATNAVEL PANDIAN, J. The appellants in criminal appeal No. 251 of 1990 were accused Nos. 3 and 4 before the trial court, namely, the VIIth Additional Sessions Judge, Meerut, whereas the appellants in criminal appeal No. 307 of 1990 were accused Nos. 1 and 2 before the said court. These four appellants along with one Braham Singh (since acquitted) took their trial for offences under Sections 302 C read with section 149 IPC and 323 read with section 149 IPC. Besides, these four appellants were also charged for offence under section 147 IPC whilst Braham Singh under section 148 IPC. The trial court, on appreciation of the evidence adduced by the prosecution, found the 5th accused, Braham Singh, not guilty of any of the charges and acquit- D ted him. However, these four appellants were found guilty of offences under section 302 read with section 34 IPC and under section 323 read with section 34 IPC and sentenced to undergo imprisonment for life and to six months' rigorous imprisonment respectively. The High Court on appeal preferred by all the appellants, for the reasons mentioned in its judgment, held that the prosecution has not made out E a case punishable under section 302 read with section 34 IPC but only under section 304, Part II, IPC read with section 34 and consequently set aside the conviction and the sentence imposed for the offence under section 302 read with section 34 IPC and instead convicted them under section 304 Part II, read with section 34 IPC and sentenced each of them to undergo rigorous imprisonment for a period of five years. F The conviction of all the appellants under section 323 read with 149 IPC was altered into one under section 323 read with 34 IPC and the sentence of six months' rigorous imprisonment was retained. The facts of the case which have given rise to the present appeals as unfolded by the evidence, can be briefly stated thus:

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Appellants in criminal appeal No. 307/90 are brothers. Similarly, appellants in criminal appeal No. 251/90 and Braham Singh (who was arrayed as accused No. 5 before the trial court) are also brothers among themselves.

PWs 1 and 5 are the brother and wife respectively on one Bali H

(the deceased herein). PW-1 and the deceased Bali had a common 'Chak'. The appellants belonged to a village named Kaulbhandora, which is at a distance of about four furlongs from the Chak, situated just adjacent to the road and 'Rajbaha'. The appellants used to take the 'Rajbaha' Patri in auction for frazing their cattle. It seems that there was strained relationship between the appellants and the deceased for a considerable length of time. According to the prosecution the cattle belonging to the appellants, when allowed to enter the 'Patri' (grazing field) used to stray into the field of Bali and cause damage to the standing crops. Although Bali made a protest, it did not yield any result. On account of this, there was simmering feeling between the parties. Added to that, there were certain criminal prosecutions between the parties, pending for over a period of two years.

On 23.12.1976 at about 1 p.m. when Bali along with PWs-1 and 5 was in his field, these appellants each armed with a Lathi along with Braham Singh armed with a 'Ballam' came there. On the exhortation of Chandroo, all other appellants and Braham Singh attacked Bali with their respective weapons and caused injuries to him. While PW-3 tried to save her husband, she too was injured. When PW-1 along with PWs 3 and 4 rushed to the scene of occurrence, the assailants took to their heels. Injured Bali was removed to the Hastinapur hospital for treatment. PW-6, the medical officer attached to the said hospital examined Bali and found on his person as many as fifteen injuries of which injury No. 15 was a stab wound and most of the other injuries were contusions. PW-6 prepared a medical report, Exhibit Ka-6 and on the same day he examined PW-5 and found on her person 2 contusions in respect of which he prepared the injury report (Ex. Ka-7). However, Bali succumbed to his injuries on the same day at about 7.45 p.m. PW-1 lodged a written report (Ex. Ka-1) at about 8 p.m. before PW-2 a Head Constable attached to the Hastinapur Police Station. PW-2 prepared Exhibit Ka-2 on the basis of Ex. Ka-1 and made G.O. entry i.e. Ex. Ka-3. PW-9, the then sub-Inspector of Police attached to the Police Station took up the investigation and examined PW-1 and others. He held the inquest over the dead body of the deceased and prepared Ex. Ka-11, PW-5 could not make any statement as she was unconscious. Then PW-9 inspected the spot and prepared a site plan Ex. Ka-14 and seized certain material objects including a piece of wood and blood stain earth.

PW-7, yet another Medical Officer, conducted the post mortem examination on the dead body of the deceased Bali on 24.12.1976 and found a number of injuries, as noted in his post mortem report

Ex. Ka-8. According to PW-7, the death was due to shock and haemorrhage as a result of the injuries sustained by the deceased. PW-9, after completing the investigation, laid the chargesheet against all the five accused. Though the appellants admitted the earlier criminal prosecutions between the parties, totally denied their complicity with the offence of murder. Of the witnesses examined, PWs 4 and 5 corroborated the testimony of PW-1 but PW-3 was declared hostile as this witness mentioned only the name of the first appellant and denied participation of rest of the appellants and Braham Singh and also the presence of the ocular witnesses except PW-5. The trial court, however, found accused Nos. 1 to 4 (all the appellants herein) alone guilty of the offence, convicted and sentenced them as aforementioned and acquitted the 5th accused Braham Singh.

On appeal, the High Court accepted the testimony of PWs-1, 4 and 5 holding that they are giving a consistent version in regard to the participation of the appellants in attacking the deceased and agreed with the finding of the trial court that these appellants were responsible for inflicting the injuries on the deceased Bali and PW-5. But coming to the nature of the offence perpetrated on the deceased, the High Court held the offence as one punishable under section 304 Part II but not under section 302 IPC and consequently altered the conviction and the sentence as indicated above while retaining the conviction under section 323 against all the appellants for causing injuries to PW-5. Hence, the present appeals are directed by the appellants who were accused Nos. 1 to 4 before the trial court.

Mr. Maheshwari, Senior Counsel appearing on behalf of the appellants in both the appeals, forcibly contended that since both the courts below have overlooked the glaring infirmities and ignored the material evidence supporting the defence theory as well as the manifest errors appearing in the evidence, this Court would be justified in interfering with the concurrent findings of both the courts, otherwise substantial injustice would be caused to the appellants. According to the learned counsel, the prosecution has shifted the scene of occurrence, changed the time of occurrence, unduly delayed the registration of the case and put forth a false explanation for its tardiness both in the matter of registration and investigation of the case; that PW-9; the investigating officer, has deliberately feigned ignorance of the receipt of Ex. Kha-1 in order to shield his indolence and failure in immediately and promptly taking up the investigation; that PWS-1 and 4 in order to ventilate their grievance which they were bearing against the appellant's party on account of the previous

A animosity and simmering feelings that existed between them and to settle their personal scores; that the credibility of these two witnesses is impaired and their testimony is successfully impeached. The learned defence counsel further states that a thorough and strict scrutiny of the evidence furnished by PWs-1, 3 and 4 shows that the entire prosecu-
B tion story is concocted, fanciful and incredible and, as such, it deserves to be rejected with scorn and that both the courts below have completely pretermitted all the pitfalls in the prosecution and have summarily disposed of the case without subjecting the evidence under the usual test of scrutiny.

Before we analyse the above contentions with reference to the
C evidence adduced by the prosecution and see whether the prosecution case suffers from any illegality and the conclusion of the courts below from perversity, we shall deal with the scope of interference of this Court in an appeal arising from concurrent findings of fact. This Court in *The State of Madras* v. *A. Vaidyanatha Iyer,* [1958] SCR 580 at 588
D while interpreting the scope of Article 136 of the Constitution has ruled as follows:

> "In Art. 136 the use of the words "Supreme Court may in its direction grant special leave to appeal from any judgment, decree, determination, sentence or order in any
E cause or matter passed or made by any court or tribunal in the territory of India" shows that in criminal matters no distinction can be made as a matter of construction between a judgment of conviction or acquittal."

Having made the above rule, it has been said that the interfe-
F rence by the Supreme Court will be called for even with the findings of fact given by the High Court, if the High Court has acted perversely or otherwise improperly. Jaganmohan Reddy, J. agreeing with the view taken in *Vaidyanatha Iyer's* case has observed in *Himachal Pradesh Administration* v. *Shri Om Prakash,* [1972] 1 SCC 249 thus:

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> "In appeals against acquittal by special leave under Article 136, this Court has undoubted power to interfere with the findings of fact, no distinction being made between judgments of acquittal and conviction, though in the case of acquittals it will not ordinarily interfere with the appreciation of evidence or on findings of fact unless the High
H Court "acts perversely or otherwise improperly".

Again in *Balak Ram* v. *State of U.P.*, ([1975] 3 SCC 219 at page 227) this Court held as follows: A

> "The powers of the Supreme Court under Article 136 are wide but in criminal appeals this Court does not interfere with the concurrent findings of fact save in exceptional circumstances." B

In *Arunachalam* v. *P.S.R. Sadananthan,* [1979] 3 SCR 482 at page 487 this Court while reinstating the principles laid down in *Vaidyanatha Iyer & Om Prakash*, cases, has stated thus:

> "The power is plenary in the sense that there are no words in Article 136 itself qualifying that power. But the very nature of the power has led the Court to set limits to itself within which to exercise such power. It is now the well established practice of this Court to permit the invocation of the power under Article 136 only in very exceptional circumstances, as when a question of law of general public importance arises or a decision shocks the conscience of the Court. But within the restrictions imposed by itself, this Court has the undoubted power to interfere even with findings of fact making no distinction between judgment of acquittal and conviction, if the High Court, in arriving at those findings, has acted "perversely or otherwise improperly". C D E

See also *State of U.P.* v. *Hamik Singh & Ors.,* [1990] 3 SCC 55 and *State of U.P.* v. *Pheru Singh & Ors.,* [1989] Supp. 1 SCC 288 to which one of us (S. Ratnavel Pandian, J.) was a party.

Bearing the above proposition of law, we shall now examine the evidence and see whether the concurrent findings of fact call for an interference. F

With regard to the place of occurrence, learned counsel drew our attention to the first information report and to the evidence of the witnesses including that of PW-9, and pointed out that the prosecution had changed the scene of occurrence. In the first information report under column 'place of occurrence', it is mentioned as 'Jungle Village, Ganeshpur'. PW-1 in his cross-examination has admitted that the 'Chak' in which the murder took place is situated in the jungle of village Bhandora and not in the jungle of village Ganeshpur. A suggestion, though denied, has also been made by the defence to PW-1 that G H

A they have changed the place of occurrence from Ganeshpur to Bhandora. PW-2 who was then the Head Constable attached to Hastinapur Police Station, states that on submission of Ex. Ka-1 by PW-1 he prepared a chik report Ex. Ka-2 and that he mentioned the place of occurrence as jungle of village Ganeshpur only on the basis of B the written report.

It is the evidence of PW-9 that he reached village Bhandora and did the spot inspection thereby admitting that the place of occurrence was village Bhandora and not Ganeshpur. A scrutiny of Ex. KA-1 shows that PW-1 did not give the specific place of occurrence in that earliest document. It appears from the evidence of PWs 1 and 9 as well C as the entry under column No. 2 of the First Information Report that the prosecution was probing in darkness even in respect of the place of occurrence. Even in Ex. Ka-3 a memo prepared by PW-9 for seizure of the blood-stained earth, the place of occurrence is not mentioned. Hence, we hold that the submission made on behalf of the defence D even at the threshold that the place of occurrence is changed or at any rate not specifically fixed, cannot be said to be without force.

We shall then scrutinise the evidence with regard to the time of occurrence. According to the prosecution, the occurrence took place at about 1.00 p.m. on 23.12.1976. Immediately, after the occurrence, E the injured Bali & PW-5 were brought to the hospital which is at a distance of three miles from the scene of occurrence. Ex. Kha-1 was prepared by the Medical Officer i.e. PW-6 on examing Bali. Ex. Ka-7 is a report prepared by medical officer PW-6 relating to the injuries found on PW-5. This document Ex. Ka-7 reveals that PW-5 was examined at about 3.30 p.m. Therefore, the injured Bali could have F been examined by PW-6 earlier to 3.30 p.m. It may be mentioned here what PW-1 has stated that they reached the hospital approx, between 2 and 3 p.m. The medical officer has opined that the injuries found on the injured could have been caused within six hours. When a specific question had been addressed to this medical officer (PW-6) as to whether the injuries could have been caused at about 5/6 a.m. he G would say: "It could have been caused at 8'0 clock". We are not rejecting the case of the prosecution on this admission of the medical officer stating that the probable time of the causation of the injuries could be 8 a.m. But the question would be, even admitting that the occurrence took place at about 1 p.m., whether the prosecution convincingly and satisfactorily established the guilt of the appellants by H leading cogent and reliable evidence.

The next important point for determination is whether the case has been promptly registered and the investigation proceeded without causing undue delay thereby giving no room enabling the prosecution party to deliberately concoct a case against these four appellants. It transpires from the evidence of PW-6 that he sent the information under Ex. Kha-1 to the Police Station through his peon intimating the fact of Bali having been brought to the hospital with a number of bleeding injuries in a very serious condition and also of PW-5 having been admitted in the hospital for treatment of the injuries sustained by her and the said document Ex. Kha-1 was sent by 4.30 p.m. on 23.12.1976 itself and the hospital's peon had brought the Receipt evidencing the handing over of the intimation to the police. It is only thereafter that PW-1 prepared Ex. Ka-1 and handed it over to PW-2 at about 8 p.m. on 23.12.1976. According to PW-2, after registration of the case, a death memo was received at the Police Station at about 8.15 p.m. saying that Bali had expired in the hospital at about 7.40 p.m.

According to PW-1, the distance between the hospital and the police station is about 1 or 2 furlongs and that the police station is not situated near the hospital. Nonetheless PW-1 would admit when confronted further that the distance between the gates of the hosiptal and the police station would be about 50 steps. Be that as it may, the fact remains that both the hospital and the police station are situated within a very short distance. Admittedly, neither PW-1 nor any of PWs-3 and 4 went to the police station to inform about the occurrence though they reached the hospital even by 2 p.m. The only explanation given by PW-1 is that he was busy enquiring about the condition of his brother. This explanation of PW-1 is totally unacceptable because after both the injured persons, namely, Bali & PW-5 were brought to the hospital they were examined only by the medical officer, PW-6. There was nothing preventing either PW-1 or any of the other witnesses in going to the police station and informing the police, if really they were eye witnesses to the occurrence and were in the hospital from 2 p.m. onwards, leaving apart PW-5 who was undergoing treatment in the hospital. The delayed preparation of Ex. Ka-1 by PW-1 at the hospital after seven hours of the occurrence and that too after the death of his brother, leads to an indelible impression that PW-1 and other interested persons who were enimically disposed towards the appellants should have prepared Ex. Ka-1 after due deliberation and consultation. The abortive explanation for not going to the police station for six hours after reaching the hospital is unworthy of credence.

A The next and even more important point for consideration is the much delayed investigation. The conduct of PW-9 in not taking an immediate action even after Ex. Kha-1 was handed over at the police station by 4.30 p.m. or at any rate after receipt of Ka-1 and the death intimation creates a suspicion in the veracity of the prosecution case. Though PW-2 admits that he received the death intimation by about B 8.15 p.m., PW-9, the investigating officer, has feigned total ignorance about Ex. Kha-1 stating thus:

> "Before this F.I.R. no intimation was received at the police station about this occurrence that Bali was injured and admitted in the hospital and his condition was critical. It is wrong that any information was received at the Police C Station before this F.I.R. which I am concealing. I do not know whether Ex. Kha-1 was received in the police station or not. During the investigation Ex. Kha-1 never came to my knowledge. This paper came to my knowledge during the investigation and I made a copy of this in the case D Diary. I do not know whether this Letter was recorded in the General Diary or not. No copy of G.D. is recorded in my case diary in connection with Ex. Kha-1. No such note is there in my case diary that I had seen any G.D. which is related to Ex. Kha-1. I have not recorded any statement of the H.M. relating to Ex. Kha-1."

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We shall examine whether PW-9 took up the investigation at least after registration of the case without causing further delay. PW-2 states that the investigating officer took up the investigation at about 8 p.m. on 23.12.1976 and went to the hospital and returned to the police station only on the next day i.e. 24.12.1976 at 9.50 p.m. PW-9 has F deposed that on 23.12.1976 at about 8 p.m., the report (Ex. Ka-1) was lodged in his presence by PW-1 and that he immediately took up the investigation during the course of which he examined PW-1 and then come to the hospital where he examined the medical officer Dr. B.D. Goel (PW-6) and saw the dead body lying in the male ward. He continues to state that as PW-5 was in an unconscious condition, he could G not examine her and as the light went off, he could not prepare even the Panchnama. This piece of evidence of PW-9 that he took up the investigation even at 8 p.m. is not only contradicted but also falsified by the testimony of PW-1 according to whom after lodging the report he immediately came back to the hospital and remained there till next morning and that the Sub-Inspector (PW-9) came to the hospital for H the first time in the morning of 24.12.1976 and only thereafter he was

examined. PW-4 also states that the investigating officer came to the hospital only in the next morning. PW-6, the medical officer, does not speak of the Sub-Inspector having came to the hospital on the night of occurrence and has stated that he did not remember of the Sub-Inspector or any constable reaching the hospital after receipt of the death intimation or any one examining him on that date. The said pieces of evidence, namely, the total unawareness of PW-9 about the existence of Ex. Kha-1 as well as the entry in the general diary made thereon and the diametrically contradictory evidence of PW-9 on the one hand and that of PWs-1, 4 and 6 on the other, clearly indicate that either PW-9 did not have any knowledge about the incident till the next morning or even if he had such knowledge, he deliberately delayed the investigation; and his present version is nothing but a deliberate perjury and as such his evidence has to be thrown over-board as unworthy of credence.

In the cross-examination, it is admitted by PW-9 that he did not write the names of the appellants/accused in the Panchnama and that he did not try to know the kinds of weapons that had been used by the assailants. On the basis of this admission a suggestion had been addressed to him that the FIR relating to this incident, was prepared and lodged only after preparation of the Panchnama thereby indicating that the FIR was anti-dated.

We shall now scan the evidence of PWs-1, 3 and 4 and examine whether their evidence could be accepted and acted upon. Admittedly, there was deep rooted animosity between the prosecution party and the appellants over a period of some years and they have developed bad blood. It is the evidence of PW-1 that there were a number of criminal cases against deceased Bali along with one Birbal Kishore and Omi who were persons of notorious character in that village. Besides, there were some more cases and counter cases between the parties. A suggestion has been addressed to PW-1 that his brother Bali was having close connection with one Ramanand who was a known decoit belonging to their village but PW-1 has denied the relationship of Bali with Ramanand. PW-4 admits that there was a dispute between Bali and the appellants in which Bali had beaten them and in that case he was a co-accused along with PW-1 and deceased Bali. PW-3 who has been treated as a hostile witness since he did not implicate all the appellants by their names except Chandroo has admitted that there was a case against Bali and Birbal Kishore in which he was a witness on the side of Bali and that there was a double murder case in which he (PW-3) was an accused and convicted. In that murder case one Roop

A Ram, cousin of appellant Chandroo was a witness on the prosecution side. Thus it comes out of the evidence of these witnesses that all was not well between the parties and each one was having grudge against the other.

As pointed out by Mr. Maheshwari, learned counsel appearing B for the appellants, the conduct of PW-1 belies his presence at the scene of occurrence as he did not intervene when his brother (deceased) and sister-in-law (PW-5) were attacked by the appellants and another and if PW-1 had really been at the scene, he having been a co-accused along with his brother in previous cases, would not have been standing as a mute spectator without taking any part in the occurrence in which case he would also have received injuries. In Ex. Ka-1 he has C mentioned PWs-3 and 4 as eye witnesses who were enemically disposed of towards the appellants and who were interested in the prosecution. As seen from the evidence of these three witnesses, they all belong to one group either having been co-accused in one case or other along with Bali or taking up the cause of Bali when the latter was D involved in other criminal cases. In fact, one sentence in Ex. Ka-1 would indicate that PWs-1, 3 and 4 were not at the scene at the time of occurrence but came to the spot later on. The relevant version in Ex. Ka-1 reads: "On alarm, I and my uncle Chotte Lal and Shiv Charan of the village reached the spot and saved them" Of course, he at the next breath would claim to have witnessed the occurrence. We have also E noted that the place of occurrence is not satisfactory fixed; and that the evidence of PW-1 giving the reasons for the presence of his deceased brother with PW-5 in the field, is also falsified by the evidence of PW-9. According to PW-1, his deceased brother and PW-5 were harvesting sugarcane in the field at the time of occurrence. But PW-9 has deposed that at the time of spot inspection he did not find any F Bugi, Dokra, Phawra, Dranti or harvested sugarcane. This contradictory evidence when taken along with our finding with regard to the fixation of the scene of occurrence goes to show that PW-1 could not have been present at the scene of occurrence and only after a deliberation he has posed himself as one of the eye-witnesses and projected PWs 3 and 4 as other eye witnesses along with him. PW-4 during the G course of cross-examination has admitted that except himself, PWs 1 & 5, none reached the scene and people came to the scene of occurrence later on. After reaching the hospital along with injured, PW 4 states that all of them remained in the hospital near the dead body and that he went to the police station in the morning of the next day at about 7.00 a.m. As we have pointed out earlier, PW 3 has not implicated all the H appellants except Chandroo by name and as such, he has been treated

as a hostile witness. PW 3 is none other than the uncle of PW 1 and the deceased, therefore, in view of the inherent infirmities adversely affecting the testimony of these eye witnesses, it would not be safe to convict the appellants on the scanty evidence. The author of the earliest document Ex. Ka-1, namely, PW-1 seems to be a man of dubious character and his evidence is completely tarnished. A thorough scrutiny of the evidence shows that the testimony of the eye witness is ambulatory and vacillating and compels this Court not to place any safe reliance.

Lastly, we are left with the evidence of PW-2 who is an injured witness. The presence of PW-2 at the scene is fortified by the injuries found on her person. After scanning her evidence very carefully, we are unable to safely accept her evidence since it is not only tainted with highly interestedness but also a coloured version, falling in line with that of PW 1. She states that she was unconscious for 2 days and that it was she who told PWs 1 and 4 as to who were the assailants. Immediately in the next breath, PW 5 comes forward to say that on the next day she told all the facts to the investigating officer and again became unconscious after coming to know the death of her husband. To a Court question, she gives a prevaricating answer that she was conscious for some time and then became unconscious. Though at one time, she testifies that she was beaten with sticks, she suddenly changes her evidence giving a contradictory version that she did not know whether she was beaten or not. Though all the witnesses in a parrot-like manner deposed that these 4 appellants along with Braham Singh armed with ballam attacked the deceased, their evidence when subjected to strict examination becomes unworthy of credence. The Trial Court on entertaining a grave doubt about the participation of Braham Singh with a ballam, acquitted him despite the fact that PW 6 has noted a stab wound on the inner side of left thigh measuring 2 × 1 × 1.5 cms which injury in the opinion of the medical officer could have been caused by a sharp edged weapon like 'ballam!. The acquittal of Braham Singh was not challenged by the prosecution before the High Court, and therefore, we are not called upon to discuss on this aspect of the case. However, it is clear that the trial Court was not inclined to accept a part of the evidence of these 3 witnesses i.e. PWs 1, 4 & 5 relating to the participation of Braham Singh.

In our considered opinion, the evidence, adduced by the prosecution, falls short of the test of reliability and acceptability and as such it is highly unsafe to act upon it.

A thorough and scrupulous examination of the facts and the circumstances of the case leads to an irresistible and inescapable conclusion that the prosecution has miserably failed to establish the charges levelled against these appellants by producing cogent, reliable and trustworthy evidence. Both the Courts below instead of dealing with the intrinsic merits of the evidence of the witnesses, have acted perversely by summarily disposing of the case, pretermitting the manifest errors and glaring infirmities appearing in the case.

For all the aforementioned reasons, we allow the appeals by setting aside the convictions and the sentence, imposed by the High Court and acquit the appellants. The bail bonds, executed by the appellants, are discharged.

R.S.S. Appeals allowed.