SUNIL KUMAR AND ORS. A

v.

STATE OF MADHYA PRADESH

JANUARY 28, 1997

[M.K. MUKHERJEE AND B.N. KIRPAL, JJ.] B

Indian Penal Code, 1860—Sections 147, 302/149, 307/149—Murder and attempt to murder—Nobody except injured victim present at the time of incident—Victim disclosed names of assailants to the informant in presence of another witness—Information reported to police over phone without disclosing names of assailants—Held : Non-disclosure of names of assailants to police over phone by the informant will not affect the statement of the victim that he did disclose the names at the first available opportunity to the informant, as the same was corroborated by the evidence of other witness present and statement of the victim recorded as dying declaration by the Magistrate and his statement recorded by the police during investigation. C D

Criminal Procedure Code, 1973—Sections 154, 161, 164—Telephonic information given by the informant disclosing a cognizable offence on the basis of which police started investigation—Must be treated as FIR under Section 154—Statement of the victim made to police during investigation has to be treated as one recorded under 161 Cr.P.C. E

Evidence Act, 1872—Sections 32, 114—Dying Declaration—Declarant surviving—Such declaration can be treated as statement recorded under Section 164 Cr.P.C.—Can be used for corroboration or contradiction. F

Due to enmity over a plot of land, the appellants armed with axes, hockey stick and lathies attacked the deceased and his brother P.W. 1 and brutally dismembered them as a result of which the deceased succumbed to his injuries instantly and P.W. 1 was seriously injured. At the time of the incident nobody else was present but hearing their cries some labourers reached the place of occurrence after the assailants had run away. Receiving the information, P.W. 2, the mother and P.W. 3, nephew of the victims rushed to the spot and P.W. 1 narrated the entire incident and disclosed the names of the appellants as assailants to them. P.W. 3 informed the police over phone about the incident but could not disclose G H

A the names of the assailants due to disturbance in the telephone line. The police recorded it in the daily diary and went to the place of occurrence. The police recorded the statement of P.W. 1 on the spot and forwarded it to the Police Station for registering a case. The dead body was sent for post mortem after inquest. P.W. 1 was sent to the hospital and as his B condition was critical, a dying declaration was recorded by the Magistrate. After the usual investigation, the appellants were chargesheeted under Sections 302/149,307/149 of the India Penal Code.

The Trial Court acquitted the appellants on the grounds that the first information report given by PW 3 did not disclose their names; no C other witnesses except the interested witnesses were examined and that evidence of PWs. 1, 2 and 3 was not reliable. On appeal, reversing the judgment of the trial court, the High Court held that the findings of the trial court were perverse and against the evidence on record; the trial court was wrong to drawn an adverse presumption for non-examination of D material witnesses; and the evidence of PW 1, as corroborated by P.Ws. 2 and 3 as well as the F.I.R. and the medical evidence clearly proved the case of the prosecution. The appellants filed the present appeal against the judgment of the High Court.

E Dismissing the appeal this Court

HELD : 1. The finding of the trial court that the evidence of PW 1 is wholly unreliable is patently perverse. Except the two victims there was nobody present at the time the assaults actually took place. P.W. 1 was the sole eye witness. His evidence was corroborated by the evidence of F P.W. 2, the mother and PW 3, the nephew, of the victims, who reached the place of occurrence soon after the incident and to whom P.W. 1 narrated the entire incident and also disclosed the names of the assailants. The evidence of PW 1 was also corroborated by his statement recorded by the police Inspector at the initiation of the investigation on G the spot, as well as his other statement recorded by the Magistrate as a dying declaration. Besides, the evidence of the doctors also fully supports the evidence of P.W. 1. [599-F]

2. The trial court erred in acquitting the appellants on account of H non-disclosure of their names by PW 3 to the police in his telephonic

information. Even if it is assumed that PW 3 did not disclose the names of the assailants to the police, it could not in any way affect the testimony of P.W. 1, or corroboration of such testimony by PW. 3, because not only P.W. 1 stated that he disclosed the names of the assailants to the informant PW 3, but PW 3 also asserted that PW 1 did disclose the names of the assailants to him at the earliest opportunity soon after the incident. PW 2 also corroborated the same. The trial court was wrong in forming an opinion that PW 3 did not know the names of the assailants on the basis of the wholly unreliable evidence of D.W. 1 whose credibility was proved to be highly doubtful. [598-E]

3. The evidence of PW 2 was disbelieved by the trial court on the ground that she was examined by the investigating officer after one and a half months. This fact by itself should not have been made ground for disbelieving her for it is expected of a mother who gets information about the assaults on her sons to immediately rush to their help and ascertain the details of the assault. Judged in that context, if the Investigating Officer did not examine P.W. 2 immediately after the incident, it can only be said that it was a dereliction of duty his part, but such delayed examination by itself would not make the evidence of P.W. 2 suspect, particularly when she was a natural and probable witness and was readily available for examination by the Investigating Officer. [601-C]

4. There was no evidence on record to indicate that at the time of the incident anybody was present so as to entitle the trial court to draw an adverse presumption against the prosecution under Section 114 of the Evidence Act for non-examination of material witnesses. The question of presumption under Section 114 of the Evidence Act could have been drawn only if the defence could have succeeded in proving that there were other persons present and had seen the incident and inspite thereof, the prosecution, without any justifiable reason, withheld such witnesses. [599-C-G]

5. The High Court erred in not treating the telephonic information that PW 3 gave to the police as the FIR. It is not disputed that P.W. 3 did give an information to the police station wherein he stated that one person had been killed and another person had been dismembered and it was recorded accordingly in the daily diary book-Exp. P/17. The same entry discloses, notwithstanding the absence of the names of the assailants

A therein, a cognizable offence and it is on that basis that the police initially started investigation. Exp. P/17 will therefore be the F.I.R. and the statement of P.W. 1 recorded by the Police during the course of investigation is to be treated as one recorded under section 161 of the Criminal Procedure Code. [601-D-E]

B

6. Immediately after P.W. 1 was taken to the hospital, his statement was recorded by a Magistrate as a dying declaration which, consequent upon his survival, is to be treated as a statement recorded under Section 164 Cr. P.C. and can be used for corroboration or contradiction. This statement recorded by the Magistrate at the earliest available opportunity C 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 was difficult to believe that he would falsely implicate the D appellants leaving aside the real culprits. There were only some minor inconsequential contradictions which did not at all impair his evidence; as such the finding of the trial court that his evidence was discrepant was wrong. [601-G-H, 602-A]

E 7. The trial court also failed to take into consideration another very important related aspect of the matter, the lodging of the complaint by P.W. 1 and his brother the deceased, a few days prior to the incident before the Superintendent of Police categorically expressing their apprehension that their lives were in jeopardy as the appellants had openly threatened F them that they would kill them and therefore they sought for police help. This fact clearly proves that the appellants practically translated the threat into action. [602-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 896 of 1985.

G

From the Judgment and Order dated 12.9.85 of the Madhya Pradesh High Court in Crl. A.No. 1217 of 1982.

K.T.S. Tulsi, R.C. Tambekar, Ms. Anu Molla and Ranjit Kumar for H the Appellants.

Sakesh Kumar for Uma Nath Singh for the Respondent. A

The Judgment of the Court was delivered by

M.K. MUKHERJEE : This appeal under Section 379 of the Code of Criminal Procedure is directed against the judgment and order dated September 12, 1985 of the Madhya Pradesh High Court in Criminal Appeal No. 1217 of 1982 whereby it set aside the acquittal of the five appellants of the offences under Sections 147, 302/149 and 307/149 of the Indian Penal Code recorded in their favour by the Additional Sessions Judge, Narsinghpur and convicted them thereunder. B

The appellants Sunil Kumar and his father Hargovind are residents of village Chichli within the Police Station of Gotetoriya in the District of Narsinghpur were they own a rolling mill and the other three appellants are their casual employees. The deceased Dayashankar and his brother Ramesh Chandra (P.W. 1) also hailed from the same village and the, earned their living from cultivation. C D

According to the prosecution case the appellant Hargovind was trying to forcibly take over the land of the deceased and P.W. 1 and threatening them that he would cut their hands and legs. Sometime before the incident with which we are concerned in this appeal the cattle of Sunil Kumar and Hargovind had damaged the standing crops of the deceased and P.W. 1. When P.W. 1 protested a quarrel ensued in course of which he was beaten up with shoes by Hargovind and appellant Rafu @ Rafiq. On January 15, 1981 Hargovind and Rafu made an attempt to kill the deceased and P.W. 1 but failed. Over that incident P.W. 1 lodged a complaint with the police station. Again on May 30, 1981 P.W. 1 found that Hargovind had brought the other three appellants, who were all residents of Uttar Pradesh, to their village and apprehending that Hargovind get them killed, the two brothers lodged a written report before the Superintendent of Police Narsinghpur on June 13, 1981 (Ext. P. 1) seeking police protection of their lives and properties. The police however turned a deaf ear to their complaints. E F G

The further prosecution case is that on July 30, 1981 at or about 9 A.M. the deceased and P.W. 1 went to their field for measuring the work done by their labourers as that was the day for payment to them. After the measurements, at or about 10.30 A.M. when they were returning home to H

A fetch money for payment to those labourers and on the way had reached the lane in between the fields of Chhotelal Sahu and Dalchand the five appellants came from behind. Of them, Sunil Kumar and Suresh were carrying *lathis*, Hargovind a hockey stick and Nazim and Rafiq axes, Hargovind first gave a lathi blow on the head of P.W. 1 and he fell down. Thereafter Rafu and Nazim Hacked him with their axes severing his left B arm and left foot. All of them then attacked the deceased with their respective weapons in a similar fashion severing his right hand and right foot. Then they fled away.

On hearing that cries of the victims, the labourers, who were working C in the field of P.W. 1 came to the spot and seeing their condition rushed to their house to inform Imratibai (P.W. 2), mother of P.W. 1 and the deceased. On getting the information P.W. 2 hurried to the spot an heard about the incident from P.W. 1 Dayashankar had, in the meantime, succumbed to his injuries. Yogendra Kumar (P.W. 3). a nephew of the deceased and P.W. 1, and some others of the village also reached there D and to them also P.W. 1 narrated the incident. P.W. 3 then rushed for medical held but the doctors expressed their unwillingness to attend to the victims on the plea that as it was a medico legal case they could not do so without requisition from the police. P.W. 3 then went to the village Post Office and reported the incident to the police over telephone.

E

On getting the information Inspector V.K. Saxena (P.W. 6) came to the site of the incident accompanied by Sub-Inspector Mithilesh Tiwari (PW 8) and other police personnel. Reaching there he recorded the complaint of P.W. 1 (Ext. P. 2) and after forwarding it to the police station for registering a case thereupon sent P.W. 1 to Gadarwara hospital for F treatment. He then held inquest upon the dead body of Dayashankar and despatched it for post-mortem examination. From the spot he seized the severed limbs of the two victims, some blood stained earth and the metal portion and the handle of an axe in presence of the witnesses.

G Dr. P.K. Budhisagar (P.W. 13), Asstt. Surgeon of Gadarwara Hospital, examined P.W. 1 and finding his condition critical sent an information to the police for recording his dying declaration. On receipt of such massage the police requisitioned the services of the local magistrate who came to the hospital and recorded his statement (Ext. D.2).

H S.I. A.K. Bhandari (P.W. 12), who took up the investigation of the

case from P.W. 6 arrested the appellants and pursuant to their respective statements seized a lathi and a bush shirt which were blood stained from Nazim, one blood stained axe from the house of Hargovind, a hockey stick and a *lungi*, both blood stained, from Suresh, blood stained *kurta* and *paijama* from Hargovind and blood stained trousers, bush-shirt and baniyan from Sunil, P.W. 12 prepared separate sealed packets in respect of those articles and sent them to Forensic Science Laboratory (F.S.L.) for chemical examination. After receipt of the reports of F.S.L. and of the autopsy held on the dead body of Dayashankar by Dr. Dhan Singh (P.W.4), and on completion of investigation he submitted charge-sheet against the five appellants.

The appellants pleaded not guilty to the charges and stated that they were falsely implicated. The appellant Rafiq took a plea of *alibi* also. In support of their respective cases the prosecution examined thirteen witnesses and defence one.

That Dayashankar (deceased) was brutally murdered and P.W. 1 was mercilessly beaten up, stand proved by overwhelming evidence on record. Inspector V.K. Saxena (P.W. 6) testified that when he reached the site of the incident he found the dead body of Dayashankar in a bullock-cart and Ramesh (P.W. 1) lying on the ground nearby, with both of them having one of their legs and hands amputated. Under his directions S.I. Mithilesh Tiwari (P.W. 8) seized those severed parts. besides other articles found there (P.W. 8) fully corroborated the above testimony of P.W. 6. Dr. Dhan Singh (P.W. 4), who held autopsy on the dead body of Dayashankar on July 31, 1981, stated that he found the following injuries on his person :

"1. Lacerated wound 1" x 1/2" bond deep in the right parieto occipital region;

2. Lacerated wound 3/4" x 1/3" x 1/3" on the parietal region;

3. Incised wound 3" x 1/2" x bone deep just left or the mid line;

4. Lacerated would 2" x 1/2" x bone deep on the frontal region just right of mid line;

5. Bruise 2-1/2" x 1/2" just lateral of right eye brow with swelling in right temple 4" x 3";

A 6. Abrasion 1-1/4" x 1/2" over the right shoulder;

7. Abrasion 1/2" x 1/2" on top of the right shoulder;

8. Bruise 4-1/2" x 1/2' on left forearm, close to elbow joint;

B 9. Incised wound cutting whole thickness of the right forearm separating the hand from rest of the body. Ulna and radius cut in one plane slightly oblique-just above the wrist joint;

10. Bruise 3" x 2"on the right thigh;

C 11. Incised wound involving the whole thickness of the right leg just above ankle joint skin flap cut in different directions suggesting more than one blows with sharp weighty object - chopping the right foot off from rest of the body. Tibia and fibula bones cut in two different planes; and

D 12. Incised would 1-3/4" 1" x bone deep on anterior aspect of left leg 3" above the ankle joint. Tibia Cut 1/3rd deep."

He opined that all the injuries were ante-mortem and injury Nos. 1, 2, 4, 5, 6, 7, 8 and 10 were caused by hard and blunt object while injuries
E No. 3, 9, 11 and 12 were caused by sharp and heavy object. According to P.W. 4 injuries No. 3, 4, 5, 9 and 11 were individually and collectively sufficient to cause death. He further opined that the incised wounds seen by him could be caused by a heavy sharp object like axe.

Dr. P.K. Budhisagar (P.W. 13) who examined P.W. 1 on July 30, 1981
F at or about 5 P.M. testified that he found the following injuries on his person :

"1. lacerated wound 3" x 1/2" x bone deep over sealp, 3" behind mastoid;

G 2. Lacerated wound 1" x 1/4" x bone deep, 1-1/2" above injury No. 1;

3. Lacerated wound 2" x 1/4" x bone deep on the left side of midline and 1" above injury No. 1;

H 4. Lacerated wound 3" x 1/4" x bone deep on mid line 1" above

injury No. 3;

5. Lacerated wound 2" x 1/4" x bone deep 1-1/2" above injury No. 4;

6. Lacerated wound 4" x 1/4" x bone deep over mid line joining both traqus of the ears;

7. Lacerated wound 4" x 1/4" x bone deep, 1-1/2" above injury No. 6;

8. Left arm fully cut, below elbow muscles, nerves bone cut in oblique line from lateral to medial side;

9. Left leg out at ankle joint, clean cut 13" below tibial tuberosity; oblique medial to tuberosity; oblique medial to lateral side. Tibial fibula and a tendons cut;

10. Incised wound 1-1/2" x 1/2" x 1/2" x 4" above right wrist on the antero lateral aspect;

11. Incised wound 2" x 1" x bone deep 1" above right wrist. Bone cut in the depth or wound. Gap is 3" deep including bone thickness;

12. Incised wound 3" x 2" x 2" 2" above injury No. 11 muscle tendons cut and bone fractured; and

13. Incised wound 2" x 1-1/2" x 2", 1-1/2" above injury No. 12; muscle cut and bone fractured."

He opined that the injuries found by him on the right arm, left leg and left arm were caused by a heavy and sharp instrument like axe and wounds on scalp were caused by hard and blunt object like hockey stick. He further opined that all the injuries collectively were sufficient to cause death if the patient was not treated in time.

Considering the nature, number and extent of injuries inflicted on Dayashankar (deceased) and Ramesh (P.W. 1) there cannot be any manner of doubt that whoever caused those injuries are guilty of the offences of committing murder and attempting to commit murder respectively. The next and crucial question that falls for our determination is whether the

A appellants are the authors of the above crimes as alleged by the prosecution.

The main stay of the prosecution to prove this part of its case is, needless to say, Ramesh (P.W.1), who detailed the incident as well as the events leading thereto. To corroborate his evidence the prosecution relied upon the fact that immediately after the assaults took place, he narrated incident to his mother (P.W. 2), and nephew (P.W. 3) who reached there. Besides, his statements, one made before Sh. V.K. Saxena, Inspector of Police (P.W. 6), which was treated as the F.I.R. (Ext. P. 2) and the other before the Magistrate, (Ext. D. 2), which was then recorded as a dying declaration were pressed into service as corroborative evidence. To prove that the ocular evidence of P.W. 1 fitted in with the injuries sustained by him and his brother the prosecution examined the two doctors referred to earlier.

From the judgment of the trial court we find that the principal reason which weighed with it for disbelieving the prosecution case altogether was the fact that in the message that Yogendra (P.W. 3) gave to the police regarding the incident, after having been apprised of the same by P.W. 1 and which was recorded by the police in the station diary book (Ex. P. 17), he did not disclose the names of the assailants. According to the trial court if really P.W. 1 had disclosed the names of the assailants to P.W. 3 it was expected, in the fitness of things, that he would disclose those names in his telephonic message to the police. Such non-disclosure of the names according to the trial court, completely belied the prosecution story that the appellants were the perpetrators of the crimes in question. The other related observation the trial court made was that since the telephonic massage disclosed to cognizable offence and pursuant thereto the police had come to the spot and started investigation, the statement that was made by P.W. 1 before the inspector of Police (P.W. 6) was hit by Section 162 Cr.P.C and consequently, the prosecution's claim that the evidence of P.W. 1 was corroborated by the said statement, being the FIR, could not be legally entertain, Another reason which weighed with the trial court in disbelieving the prosecution case was that it did not examine any labourers or any other person who were working in the field near the site of the incident to prove the incident and instead thereof, relied upon the evidence of only two interested witnesses, namely, P.W. 2 and P.W. 3, who, on their own showing, came after the incident was over. The trial court

lastly observed that even the evidence of the sole eye-witness, namely P.W. 1 was also discrepant. A

In reversing the judgment of the trial court, the High Court held that the findings of the trial court were perverse and against the evidence on record. According to the High Court the cryptic message that was give by P.W. 3 over telephone to the police could not be treated as F.I.R., more particularly, when he testified that owning to disturbance in the telephone line he could not disclose the details of the incident; and the statement given by P.W. 1 before P.W. 6 (Ext. P. 2) was the F.I.R. of the case. The High Court next observed that there was no evidence on record to indicate that at the time the incident actually took place anybody was present so as to entitle the trial court to draw an adverse presumption against the prosecution under Section 114 (illustration 'q') of the Evidence Act for non-examination of material witness. The High Court lastly observed that the evidence of P.W. 1, as corroborated by P.W. 2 and P.W. 3, who came immediately after the occurrence, the F.I.R. and the medical evidence clearly prove the case of the prosecution. In drawing the above conclusions the High Court also took note of the fact that only a few days prior to the incident the deceased and his brother had in their complaint before the police (Ex. P1) categorically expressed their apprehension that their lives and properties were in jeopardy as these accused persons had openly given out that they would kill them after cutting them to pieces. B C D E

This being a statutory appeal we have carefully gone through the entire evidence on record and the judgment of the learned Courts below. Our such exercise persuades us to unhesitatingly hold that the finding of the trial court that the evidence of P.W. 1 is wholly unreliable is patently perverse. Considering the fact that except the two victims (P.W. 1 and the deceased) there was nobody else present at the time the assaults actually took place-as the evidence on record clearly indicates there could not be any other witness to the incident. The question of presumption under Section 114 of the Evidence Act could have been drawn in the instant case only if the defence could have succeeded in proving that there were other persons present and had seen the incident and inspite thereof the prosecution, without any justifiable reason, withheld such witnesses. Coming now to the evidence led by the prosecution to corroborate P.W. 1, who detailed the entire prosecution case, Imarti Bai (P.W. 2) stated that on getting the news that Dayashankar was lying dead and Ramesh injured she rushed to F G H

A the place and gave him some water as he was asking for the same. When she asked Ramesh as to how he sustained those injuries and Dayashankar died, he (P.W. 1) detailed the entire incident including the names of the appellants as the assailants. The evidence of P.W. 2 was disbelieved by the trial court on the ground that she was examined by the investigating officer after one and a half months. This fact by itself should not, and could not; B have been made a ground for disbelieving her for it is expected of a mother who gets information about the assault on his sons to immediately rush to their help and ascertain the details of the assault. Judge in that context, if the Investigating Officer did not examine P.W. 2 immediately after the incident it can only be said that it was a dereliction of duty on his part; but C such delayed examination by itself would not make the evidence of P.W. 2 suspect, particularly when she was a natural and probable witness and was readily available for examination by the Investigating Agency.

Equally important in a instant case is the evidence of P.W. 3, who D testified that when he came to the spot and talked to Ramesh who was lying injured he told him about the incident as also the names of the assailants. As already noticed it was P.W. 3 who gave information to the police about the incident over telephone. In his testimony he said that when he contacted the police from the sub post office over telephone he get a reply that they could not hear properly, However he could succeed only in E communicating that there was a fight in which hands and legs of two persons were cut. In cross examination he admitted that he did not tell the names of the accused persons over phone; but explained that owing to some disturbance on the telephone line he could not properly communicate. To disprove the above explanation of P.W. 3 the defence examined F Harishankar Dubey (D.W. 1), the then Assistant Postmaster of the sub post office. He testified that on July 13, 1981 one Yogendra came to the post office and asked him to book a telephone call to Gotetoriya Police Station. He (D.W. 1) asked him as to why he wanted to book a phone and in reply to its query told that he wanted to give a message that a person was murdered and another seriously injured. When he asked him as to who G were the assailants Yogendra told him that he did not know their names. Relying upon the above evidence of D.W. 1 the trial court held that the prosecution version that the appellants were the assailants could not be accepted. In disbelieving D.W. 1 the High Court, however, pointed out that he figured as a witness for the prosecution and only when he was given up H as hostile to it, that the defence examined him. According to the High

Court even though in his examination in chief he stated that he could hear all that was being conveyed by Yogendra over telephone, in cross-examination he admitted that he could not hear anything. Besides the above grounds, the other reason which persuades us to hold that he was an unreliable witness is, that it being no part of his duty to ascertain why P.W. 3 wanted to book a call or what message he wanted to convey, his claim that he was present as the time P.W. 3 talked over the phone is not tenable. We hasten to add that even if we proceed on the assumption that Yogendra did not disclose the names of the assailants over the phone it would not in any way affect the testimony of P.W. 1, or corroboration of such testimony by P.W. 3, for P.W. 1 not only stated that he disclosed the names of the assailants to P.W. 3, but P.W. 3 also asserted that P.W. 1 did tell the names of the assailants to him. In other words, the evidence of P.W. 1 that at the earliest opportunity he disclosed the names of the appellants as his assailants to P.W. 3 was corroborated by P.W. 3.

While on this point we wish to mention however that the High Court erred in not treating the telephonic information that P.W. 3 gave to the police station as the F.I.R. It is not disputed that P.W. 3 did give an information to the police station wherein he stated that one person had been killed and another person had been dismembered and it was recorded accordingly in the daily diary book (Ex. P/17). The same entry discloses, notwithstanding the absence of the names of the assailants therein, a cognizable offence and indeed it is on the basis thereof that P.W. 6 initially started their investigation. Ext. P/17 will therefore be the F.I.R. and the statement of Ramesh (Ext. P.2) which was recorded by him in course of the investigation is to be treated as one recorded under Section 161 Cr.P.C. This conclusion of owns, however, does not in any way affect the merits of the prosecution case for we find that immediately after P.W. 1 was taken to the hospital his statement was recorded by a recorded as a dying declaration which, consequent upon has survival, is to be treated only as a statement recorded under Section 164 Cr.P.C. 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 the assailants and there is not an iota of materials on record to show that this was the upshot of his tutoning. On the contrary, this statement was made at a point of time when P.W. 1 was in a critical condition and it is difficult to believe

A that he would falsely implicate the appellants leaving aside the real culprits. In view of the observation of the trial court that his evidence was discrepant we carefully looked into the same and found that there was only some inconsequential contradictions which did not at all impair his evidence. Then again, as already noticed, the evidence of the doctors fully supports B his version of the incident. Another related aspect of the matter is the lodging of the complaint by P.W.1 and his brother before the Superintendent of Police (Ext. P-1) (which we have earlier referred to) wherein they sought for police action against the threat meted out by the appellants that they would cut them to pieces - a threat which was brutally (and literally) translated into action.

C

As from the evidence on record we are satisfied that the appellants committed rioting and in course thereof they killed Dayashankar and attempted to kill Ramesh we uphold the judgment of the High Court and dismiss the appeal. The appellants, who are no bail, shall now surrender D to their bail bonds to serve out the sentence imposed upon them by the High Court.

H.K. Appeal dismissed.