

**(1991) 01 MP CK 0012**

**Madhya Pradesh High Court**

**Case No:** Criminal Appeal No. 949 of 1990

Jagdish Gangaram Soni and  
Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

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**Date of Decision:** Jan. 28, 1991

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 154
- Evidence Act, 1872 - Section 3
- Penal Code, 1860 (IPC) - Section 149, 302

**Citation:** (1991) 36 MPLJ 890 : (1991) MPLJ 890

**Hon'ble Judges:** S.K. Chawla, J; P.C. Pathak, J

**Bench:** Division Bench

**Advocate:** Fakhruddin, for the Appellant; Dilip Naik, D.A.G., for the Respondent

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### **Judgement**

S.K. Chawla, J.

The Judgment in this appeal shall also dispose of Death reference in Criminal Reference No. 2 of 1990.

In an incident which took place on Shivratri day on 16-2-1988 in village Kachhwa, P. S. Mungwani, District Narsinghpur, 5 persons, were done to death by assaulting them with sharp edged weapons. Those persons were two brothers named Rewaram and Balkishan, their parents Harlal and Keshar bai and one of their relations named Tarchand.

The prosecution story briefly stated was that Puna Bai (P.W.6), widow of one of the brothers named Rewaram, was returning to her house after having morning ablutions in the village river called Bangana on the eve of Shivratri day. While she was passing along the house of appellant No. 1 Jagdish Soni of village Kachhwa i.e. of her village (another appellant Jagdish Soni who is appellant No. 3) would be

referred to as Jagdish of village Barhata, the latter cried that Mudiya had become too much conceited and proud. It may be mentioned here that Puna Bai and her people belong to aboriginal tribe of Mudiya. The time then was around 10.30 A.M. It is said that the brother of the said Jagdish named Dhannu alias Dhaniram (appellant No. 2 herein) started to drag her inside the Badi. Dhannu also assaulted her with the handle of an axe causing injuries to her vide injury report Ex. P-37-A. Her outcries attracted to the scene her husband Rewaram, her husband's younger brother Balkishan, her parents-in-law Harlal and Kesharai, all living in one house in village Kachhwa and her relation Tarachand who was also returning from the river.

It was further the prosecution case that as many as 19 persons, including the aforesaid two appellants, who were armed with motley weapons like axes, Farsas, Lathis and hand bones, first threw hand bombs on their victims and then assaulted them with their weapons, killing all the five of them at the spot. The dead bodies of victims lay "sprawled near about the house of appellant Jagdish of Kachhwa.

A telephonic information about the incident was conveyed to Reserve Inspector of Reserve Police Lines, Narsinghpur by one Shyamlal (court witness No. 1). Shyamlal is a retired Head Constable who lives in the village of the occurrence, just some distance away from the place of the occurrence. He conveyed the information on the request of Puna Bai, when she lent a cycle to him kept in her house. Shyamlal had to go on cycle to Barhatta Post Office for sending the telephonic information. The Reserve Inspector on his part telephoned to Narsinghpur Police Station and sent wireless message to Mungwani Police Station, because at the latter Police Station there is no phone. Chhagan Dave (P.W.17), Town Inspector of Narsinghpur on the receipt of telephonic message from Reserve Inspector rushed to the place of the occurrence and reached there at about 2.15 P.M. He then took down the report of Puna Bai, which was recorded as Dehati Nalishi, Ex. P-34. The assailants named in that report were only 8 persons who are the appellants in this appeal. On 20-2-1988 one P. N. Shrivastava (P.W.18), Circle Inspector, Narsinghpur, who was entrusted with the investigation of the case, again recorded police statements of Puna Bai (P.W.6) and other alleged eye-witnesses Mohan Bai (P.W.11), Hakku (P.W.7) and Ramji (P.W.12). It was then revealed that assailants were 19 persons, including 4 females.

A charge sheet was accordingly put up against all the 19 persons. One of them named Dharmaraj Singh was discharged by Sessions Judge, Narsinghpur on 20-1-1989. After trial, the learned Sessions Judge acquitted 10 persons making up 11 persons as those who were released. They were all those who were subsequently implicated during investigation. The learned Judge however convicted all the originally named 8 persons mentioned in Dehati Nalishi Ex. P-34, i.e. the appellants. The appellants have all been convicted of the five murders in prosecution of their common object i.e. for offences u/s 302 read with Section 149, Indian Penal Code. All have been sentenced to death for the said offences and for confirmation of their

sentences, a reference has been made, which is Cr. Ref. No. 2/90. All the appellants have been additionally convicted u/s 147, Indian Penal Code. All but one named appellant Jagdish of village Barhatta have also been convicted u/s 148, Indian Penal Code. The sentences imposed are 6 months R.I. for the offences Under Sections 147 and 148, Indian Penal Code. Appellants 1 and 2, Jagdish of village Kachhwa and Dhannu, have also been convicted of the offence u/s 323, Indian Penal Code for causing hurt to Puna Bai (P.W.6). But no sentence has been passed on them for this offence on the ground that they are already sentenced to death. Aggrieved by their convictions and sentences, all the eight accused persons have filed the present appeal.

The prosecution case rested on the eye-witness account given by 4 alleged eye-witnesses; namely, Puna Bai (P.W.6) and Mohan Bai (P.W.11), widows of the two brothers Rewaram and Balkishan respectively, killed in the incident, Hakku (P.W.7) of village Barbatta and Ramji (P.W.12) of village Bedu. If Dehati Nalishi Ex. P-34, said to have been made by Puna Bai (P.W.6), is taken to be F.I.R., it expressly named Puna Bai's another mother-in-law Khitti Bai, Mohan Bai (P.W.11), Patiram Shrivastava and Shyamlal as the eye-witnesses. The names of Hakku (P.W.7) and Ramji (P.W.12) were significantly absent among the names of eye-witnesses. Shyamlal was proposed to be examined as an eye-witness by the prosecution but was given up at the stage of evidence on the ground that he had turned hostile. The defence then sought to examine him as their own witness but subsequently got his name deleted from the list of defence witnesses. As a result, Shyamlal was not examined as a witness on behalf of either party in the Sessions Court. This Court, after hearing the entire arguments in this appeal, by an order dated 27-11-1990 directed the Sessions Court to record the evidence of the said Shyamlal as a Court witness. It was in these circumstances that Shyamlal came to be examined as Court witness No. 1.

This brings us to the question of what can truly be said to be F.I.R. in the present case, because the importance of F.I.R. in a criminal case cannot be gainsaid. There is first the evidence of Reserve Inspector Arjun Singh (P.W.16). He gave evidence on the basis of his memory as to what information was given to him over phone by retired Head Constable Shyamlal (C.W.1). He deposed that Shyamlal had told him that Mudiya people had been murdered in village Kachhwa. He added that the voice over telephone was not properly audible. The phone had also got disconnected in the midst of the message. We think that so far as what was told orally over telephone by retired Head Constable Shyamlal (C.W.1), the better evidence would be the evidence of Shyamlal himself, which will be referred to in the sequel. For the present purpose, it is sufficient to observe that information over telephone received by the Reserve Inspector could not be F.I.R. for the simple reason that the Reserve Inspector was not an officer in charge of a police station empowered to investigate an offence. Reserve Inspector Arjun Singh (P.W.16) expressly admitted in his evidence that informations about crimes are not got recorded by him in

Rojnamacha of his Lines. It is only matters pertaining to office administration etc. which are recorded in the Rojnamacha of the lines.

It is however an admitted circumstance that Reserve Inspector Arjun Singh (P.W.16) on receiving phone from retired Head Constable Shyamlal (C.W.1) had sent phone message to Narsinghpur Police Station, which was recorded in the Rojnamacha of that Police Station vide entry Ex.D-6. Arjun Singh (P.W.16) had also sent wireless message to Mungwani Police Station because there is no phone at that Police Station. The wireless message was recorded in Rojnamacha entry Ex. D-11.

The Rojnamcha entry Ex. D-6 of Narsinghpur Police Station is as follows : -

^^jkstukepk rkUgk Fkkuk ujflagiqj fnukad 16&2&1988-

le;	C;ksjk
13-40 cts	lwpuk gS fd tfj;s
	VsfyQksu ls iqfyl
	ykbv ujflagiqj ls
	vkj- vkbZ- lkgc us
	Vh- vkbZ- Nxu
	nos dks lwpuk nh
	gS fd vkt izkr%
	dNok cjbB esa
	eMZj gks x, gSa fd
	fn, ,oa lh- vkbZ-
	lkgc dks rqjar
	tcyiqj ls okfil
	cqykus crk, gSa
	fjiksVZ ntZ dj
	ekSds ij LVkQ
	Hkstt tkrk gSA**

The Rojnamcha entry Ex.D-11 of Mungwai Police Station is as follows : -

^^jkstukepk rkUgk Fkkuk eqaxokuh 14&15 cts lwpuk iz/kku vkj{kd jktdqekj ♦ekad 56  
ls gS fd bl oDr tfj;s ok;jysl ds Jheku jf{kr fujh{kd} ujflagiqj us lwpuk nh gS fd xzke  
dNok esa txnh" k rFkk /kUuw lksuh us ckyfd"ku ♦viBuh;♦] gjyky] jsokjke] eqfM;k dk  
dRy dj fn;k gSA ,slk ";keyky ;kno us Qksu ls xzke cjbB ls crk;k gS] tks vknsf"kr fd, x, fd  
,l- vks- lkgc dks rRdky ekSds ij Hkstks fd bl vkns" k ij vkj{kd 351 v"kkds dqekj dks xzke  
jksfg;k iVvh jokuk dj fgnk;r nh xbZ fd jksfg;k iVvh igq♦pdj ,l- vks- lkgc dks rRdky xzke  
dNok igq♦pus dh lwpuk ns ckn Fkkuk okil vk,A\*\*

It will be seen that while in the message recorded in Ex.D-6, name of none of the accused was stated, in the message recorded in Ex.D-11, names of only two accused

were mentioned. In both the messages, it was conveyed that cognizable offence of murder had been committed. In the wireless message Ex.D-11, names of some of the victims were also mentioned. Limiting ourselves to the requirement of the present case, we are of the opinion that where messages are transmitted between Police Officers inter se, the object and purpose in transmitting the message must be ascertained before any message is labelled as F.I.R. It is only if the object was to narrate the circumstances of a crime, with a view that the receiving Police Officer might proceed to investigate thereon, that the message would be F.I.R. But if the message sent was cryptic because the object was merely to seek instructions from higher Police Officers or because the object was to send direction for the police force to reach the place of occurrence immediately or to merely give information to superior Police Officer about the situation of law and order, the message would not be F.I.R. The principle deducible from the Supreme Court decision in [Soma Bhai Vs. State of Gujarat](#), is quite apposite here. In that case, the complainant orally informed about the occurrence to Police Officer of Police Station Olpad. The Police Officer instead of immediately reducing the information into writing made a telephone call to the main Police Station (Surat Police Station) with a view to seek further instructions. Immediately thereafter the Police Officer of Olpad Police Station reduced into writing the information given to him by the complainant. The Supreme Court held that the information reduced into writing at the Police Station Olpad, though later in point of time to the telephonic message recorded at Surat Police Station, was the real F.I.R. The telephonic message recorded at Surat Police Station conveyed the information that one Somabhai (the appellant in that case) had killed two persons by firing at them. The Supreme Court held that the telephonic information although conveying the commission of a cognizable offence was too cryptic and was meant only for the purpose of seeking further instructions. It had not been made to the Police Officer of Surat Police Station for taking any action thereon and was therefore not F.I.R.

In the present case, the purpose of sending the message Ex. D-6 was only to see that C.I. was immediately fetched from Jabalpur and to see that the Police force was immediately rushed to the spot of the occurrence. The Reserve Inspector who gave the message could not naturally be interested at that time in telling in great detail about the circumstances of the crime with a view that accurate record of the information could be prepared. His purpose at that time could be, without wasting any words, to give directions to see that Police Officer out of Headquarter (C.I. Police) was brought back immediately and meanwhile the police force was sent to the place of the occurrence. The purpose of sending wireless message in Ex.D-11 was also somewhat similar. The object of sending that message was that S.O. of the concerned Police Station was immediately informed and reached the place of the occurrence. Considering the purpose for which the messages in Ex.D-6 and Ex.D-11 were sent and because of the fact that for that reason the messages were bound to be, and were in fact, cryptic, neither of them could constitute F.I.R. In those

circumstances, the information which was recorded by C.I. Police Shri Chhagan Dave (P.W.17) of Narsinghpur Police Station on reaching the place of occurrence from oral account given by Puna Bai (P.W.6), i.e. Dehati Nalishi Ex.P-34, was the real F.I.R.

Arguing in support of the appeal, it was contended by learned counsel for the appellants that none of the alleged eyewitnesses deserve to be given any reliance, and like the eleven acquitted accused persons, the appellants also deserve to be acquitted. Two of the alleged eye-witnesses namely Hakku (P.W.7) and Ramji (P.W.12) were disbelieved by the learned Sessions Judge himself. With regard to remaining two eye-witnesses; namely, Puna Bai (P.W.6) and Mohan Bai (P.W. 11) it was argued that these witnesses had implicated eleven innocent persons and the appellants equally, making no distinction between one and the other. The case against the appellants was not severable or distinguishable. The evidence of these two witnesses was tainted and it would be wrong to affirm the conviction of appellants on such evidence. Moreover, these witnesses had given omnibus statements about the participation of the appellants in the alleged incident. On that ground also, it would be improper to place reliance on their evidence. Reliance was placed in this regard on the ruling. *Lalaram and Ors. v. State of Uttar Pradesh*, 1990 (1) Crimes 547, [Ram Manorath and Others Vs. State of Uttar Pradesh](#), State of Uttar Pradesh v. G. N. Gupta, AIR 1974 SC 753, [Balaka Singh and Others Vs. The State of Punjab](#), and [Prem Singh Vs. State of Punjab](#),

We find that Hakku (P.W.7) and Ramji (P.W.12) were disbelieved by the learned Sessions Judge for cogent and good reasons. These witnesses are not residents of the village of the occurrence. Hakku belongs to village Barhatta while Ramji to village Bedu. Their version as to how they happened to come to the place of the incident does not inspire belief. On their own admission, they disclosed to none having seen the incident. It was after 4 days of the date of the incident that their statements were recorded by the police. Even then they did not come forward to the police to say that they had witnessed the incident. The police had to reach them through one Gajraj Singh, who is the Jeth of the widows Puna Bai (P.W.6) and Mohan Bai (P.W.11). It has appeared in the evidence that Gajraj Singh played a leading part in placing witnesses during investigation. Hakku described about the assault only on Balkishan and Rewaram while Ramji described about the assault only on Tarachand, when admittedly five persons were assaulted and killed. The names of eye-witnesses were expressly mentioned in Dehati Nalishi Ex.P-34 but the names of Hakku and Ramji were conspicuously absent. These witnesses were not strangers to Puna Bai (P.W.6) to give a ground to think that Pun Bai (P.W.6) who made the F.I.R. i.e. Dehati Nalishi, might have for that reason omitted to mention their names. We hold that Hakku and Ramji were rightly disbelieved.

So far as Puna Bai (P.W.6) and Mohan Bai (P.W.11) are concerned, they were natural witnesses of the occurrence. They were widows of the two of the five persons killed. They lived in a house close to the place of the incident. One of them named Puna Bai

(P.W.6) also happened to get injured, thereby demonstrating her presence. The injury report is Ex.P-37-A which was proved by Dr. Chaturvedi (P.W.14). On the basis of this injury report, Puna Bai had sustained a lacerated wound 3 cm X 1 cm X 1 cm on her head on occipital region. It is Puna Bai's evidence that the incident started when she was passing along the house of appellants 1 and 2, when appellant No. 1 Jagdish of Kachhwa cried at her that Mudiya had become conceited and proud and appellant No. 2 Dhannu alias Dhaniram began to drag her inside their Badi and also assaulted her on her head with the handle of an axe. She raised outcries attracting to the scene her husband and four others who were killed.

Puna Bai (P.W.6) and Mohan Bai (P.W.11) being widows of the two of the five persons killed in the incident were in that sense themselves victims. Such persons would not ordinarily allow the real culprits to escape. At the same time the possibility of their implicating others with the real offenders has to be kept in mind, particularly in this case where Puna Bai (P.W.6) and Mohan Bai (P.W.11) are found to have definitely improved their story during the course of investigation to implicate additionally eleven persons. Their story at the time of their first police statement recorded on the date of incident was that the assailants were only eight persons who are the appellants in this appeal. After four days when their statements were again recorded, they came up with the story that the assailants were nineteen persons. Their explanation in the witness-box that out of fright they had forgotten to mention the names of eleven persons at the time of giving their first police statement or in the case of Puna Bai (P.W.-6) at the time of getting Dehati Nalishi recorded, does not absolutely wash. If they were really frightened how could they at all give even the names of eight persons. Moreover it has appeared in the evidence of these witnesses that when their first statements were recorded, their Jeth Gajraj Singh had come to them and had met and talked to them. If despite that, they gave out only certain names to the police as the assailants, it is difficult to believe that they had forgotten to mention the names of as many as eleven others.

It is evident that evidence of Puna Bai (P.W.6) and Mohan Bai (P.W.11) does not stand on the same footing as of Hakku and Ramji, whose evidence was without much difficulty rejected. Their evidence as eye-witnesses cannot be rejected outright. At the same time their evidence has to be scrutinised with greater care and caution to exclude the possibility of false implication of any of the accused persons. True enough, their evidence is omnibus in character. They have deposed generally that all the assailants with their weapons assaulted the victims and killed them on the spot. They did not particularise the acts of the assailants to say which of the assailants had caused injury to which victim and on what part of the body. But we cannot be oblivious of the fact that as many as 28 incised injuries were caused to five victims by a number of assailants. We have worked out the number of injuries from the five post mortem reports. When in a melee a number of assailants with their weapons cause 28 injuries on five of their victims, it is too much to expect that eye-witnesses should particularise the assault seen by them on each and every

victim. If the witnesses do come forward with such particulars, their evidence would then be branded as artificial and tutored.

We find that the evidence of Puna Bai (P.W.6) and Mohan Bai (P.W.11) at least qua appellants Nos. 1 and 2 i.e. Jagdish of Kachhwa and Dhannu alias Dhaniram has received ample corroboration by other evidence. We proceed to notice such corroborating evidence at once.

In the first place, there is the evidence of Shyamlal (C.W.1). His house is just 150 steps away from the house of appellants 1 and 2, who are brothers. He admitted that he was present in his house at the time of the incident. His evidence is that he was surprised how he did not hear about the incident. Puna Bai, on his evidence, came rushing to him at his house and told him "Mama, five persons have been killed", she also said "Jagdish and Dhannu have killed them". It is the evidence of Shyamlal that Puna Bai treats him by village relation her Mama (i.e. "maternal uncle"). It is further the evidence of Shyamlal that he was very much surprised to hear the horrible news because just half an hour back, appellants Jagdish and Dhannu had come to his house and had kept a water pump. He asked Puna Bai why Jagdish and Dhannu had killed so many persons. Puna Bai was so much non-plussed that she could utter no more words. It is the evidence of Shyamlal that he then took Puna Bai along and went near the house of appellants 1 and 2. There was eerie silence all around. He saw the dead bodies of Harlal, Kesarbai, Balkishan and Tarachand and Rewaram, all sprawled nearabout the house of appellants 1 and 2. Puna Bai requested him to immediately phone the police otherwise there might be more casualties. Shyamlal then took cycle kept in the house of Puna Bai and went to Barhatta Post Office. It is the evidence of Shyamlal that he was successful in contacting the Reserve Inspector of Narsinghpur Police-lines over phone from Barhatta Post-Office. It is his evidence that he told the R.I. over phone that Jagdish and Dhannu had killed five persons in village Kachhwa. He also told the names of five persons killed. He also requested the R.I. over phone to send wireless message to Mungwani Police Station so that the police might reach the spot immediately. It is pertinent to mention here that Shyamlal is a retired Head Constable quite familiar with police procedure. It is, therefore, not surprising if he made a suggestion of sending wireless message to the R.I. Shyamlal also stated in the evidence that he knew that there is no phone at Mungwani Police Station and had, therefore, requested the R. I. to send wireless message.

It is a bit surprising that Shyamlal (C.W.1) did not witness the actual occurrence. May be, he is suppressing that part of the story. At the same time, it is also possible that being inside the house he might not have really heard about the incident. The fact remains that Puna Bai regards him as her Mama. Appellants 1 and 2 have also nothing against him. In fact, he appeared to be favouring the appellants as much as he could. He went to the length of admitting in his cross-examination that Puna Bai, while recording Dehati Nalishi, had disclosed only the names of appellants 1 and 2

Jagdish and Dhannu as the assailants. When such a witness makes an admission against the interest of the accused persons, his evidence to the extent it goes against the interest of any accused can be safely accepted. His evidence about the words spoken to by Puna Bai implicating appellants 1 and 2, being words spoken soon after the incident, are relevant as former statement of Puna Bai admissible u/s 157 of the Evidence Act. At that time Puna Bai had no opportunity or time for reflection to have any scope for afterthought. The words spoken by her were sort of exclamatory words conveying her immediate sentiment. The words might not have been *res gestae* but were closely akin to them. It is remarkable that Shyamlal's evidence about the kind of statement made to him by Puna Bai accords with what was conveyed through wireless message, Ex.D-11, by R.I. Narsinghpur, who had been told about the incident over phone by Shyamlal.

It does not matter that Puna Bai (P.W.6) on her part denied that she had told the names of only appellants 1 and 2 as the assailants to Shyamlal, although she admitted that she did tell him about the incident. Puna Bai was interested in implicating as many persons as possible and hence her denial that she had told only two names, is quite understandable. We feel no hesitation in accepting the evidence of Shyamlal (C. W.-I), adverted to above, that soon after the incident Puna Bai gave out the names of appellants 1 and 2 only as the assailants.

We are inclined to place greater reliance on the above former statement of Puna Bai proved by Shyamlal (C. W.-I) than on the contents of Dehati Nalishi Ex. P-34, in which the names of seven appellants and description of the eighth appellant as Pritam Ka Jija was given. If Dehati Nalishi had been faithfully and promptly recorded as appears on its face, there would have been no difficulty in seeking corroboration even from the F.I.R. The role of Chhagan Dave (P. W.-17) who recorded Dehati Nalishi, as exhibited from record, was however, not satisfactory. He did the initial investigation. Further investigation was done by P. N. Shrivastava, Circle Inspector of Police (P.W.18). It is the evidence of P. N. Shrivastava that when he got the case diary of the present case from Chhagan Dave on 18-2-1988, there were no police statements of witnesses attached in the diary, even though Chhagan Dave claimed to have recorded the statements of witnesses on the very date of the incident i.e. on 16-2-1988. It is also the evidence of P. N. Shrivastava that for 16 to 17 days, during which time the case diary remained with him, he did not get the statements of witnesses from Shri Chhagan Dave. P. N. Shrivastava re-recorded the statements of certain witnesses with the result that whereas formerly eight persons were said to be assailants, on taking second statements as many as nineteen persons came to be named as assailants. It is also worth noticing that regular F.I.R. Ex.P-34-A drawn up at Mungwani Police Station itself says that Dehati Nalishi was received by Constable Suresh Kumar at 4.00 P.M. at Kachhwa for carrying it to Mungwani Police Station, a distance of just 13 km. Why should it have taken seven hours and fifteen minutes for the Constable to reach Mungwani Police Station, because the regular F.I.R. was registered at 11.15 P.M. Had the Dehati Nalishi been ante timed ? Or there was

nothing fishy. The evidence of Patwari Lekhram (P.W.8) also becomes pertinent. His evidence is that on 17-2-1988 i.e. just one day after the incident, he had prepared the spot map (Ex. P-35) on the basis of information given by Puna Bai. It is his evidence that Puna Bai while showing the spot wherefrom she had seen the incident had told him that she had seen Jagdish and Dhannu only (appellants 1 and 2) dealing axe and Farsa blows from that point. Patwari's evidence is corroborated by the explanatory note prepared by him as part of the spot map, Ex. P-35. If even one day after the date of the incident, that was the version of Puna Bai, that throws doubt on the authenticity of Dehati Nalishi said to have been prepared a day prior to that day stating as many as eight appellants. For this reason by way of abundant caution, we do not think it proper to seek corroboration to the testimony of Puna Bai from her statement in Dehati Nalishi.

After the above discussion, coming back to evidence in corroboration, the second corroborating circumstance is that a broken handle was recovered from appellant No. 1 Jagdish; vide seizure memo Ex.P-20 proved by Jiwanlal (P.W.3) and Chhagan Dave (P.W.17) T.I. of Police on 17-2-1988. A Ballam with a broken handle was recovered a day earlier i.e. on the date of the incident, lying near the dead body of Kesar Bai at the spot; vide seizure memo Ex. P-8 proved by Nanha (P.W.2) and Chhagan Dave (P.W.17). Both the Ballam with broken handle recovered from the spot and broken handle recovered from appellant No. 1 Jagdish were sent to F.S.L., Sagar for comparison and there is the report Ex.P-65 from F.S.L., Sagar that both parts tallied and were parts of one stick. This circumstance points to the participation of appellant No. 1 Jagdish in the assault. It may be mentioned here that the prosecution was negligent in not filing the report of Chemical Examiner about the blood-stains. In the absence of that report, the report of the Serologist, Ex.P-66, stating that certain articles and weapons were stained with human blood, becomes unintelligible.

Thirdly, evidence was led on behalf of appellant No. 2 Dhannu that he had sustained injuries. In this regard Dr. Kumar (D.W.1) was examined to prove injury report Ex.D-9 to show that appellant Dhannu had an incised wound 1 cm. X 1/2 cm. X 1/2 cm. over his left arm and further had a broken tooth. The duration of the injuries was given by the doctor to be more than 24 hours to indicate that appellant Dhannu had received those injuries at the time of occurrence. It was suggested to Puna Bai (P.W.6) in para 47 of her evidence that Dhannu had received injury at the time of incident. It was further suggested to her in para 48 that Dhannu was first assaulted by three persons namely deceased Rewaram, Balkishan and Harlal and thereupon appellant No. 1 Jagdish had snatched Farsa from the hands of deceased Balkishan and then had acted in defence of himself and his brother Dhannu. Puna Bai on her part failed to explain the minor insignificant injury of the length of 1 cm on the left arm of Dhannu. It is quite possible that such an insignificant injury might have escaped her notice. At the worst, it can be thought that she had suppressed the true genesis of the incident. Even if it is assumed that Dhannu had received the kind of

insignificant injury proved on his behalf, that could not have justified letting loose of orgy of violence in reprisal in which five persons were done to death on the spot with as many as 28 incised injuries inflicted on them. The macabre incident also showed that the defence suggestion that deceased persons had and arms was imaginary. Appellants 1 and 2 took up an absolutely untenable and ludicrous plea of right of private defence. There is no difficulty in rejecting it but on their own plea they get connected with the incident in question.

Lastly the circumstance that Puna Bai (P.W.6) was injured vide injury report Ex. P-37-A and her evidence that appellant No. 2 Dhannu was the person who had caused injury to her, serve to connect appellant No. 2 to the incident in question, which followed closely on its heels.

Summing up the entire discussion, the evidence of Puna Bai (P.W.6) and Mohan Bai (P.W.11), after careful and cautious scrutiny, deserves to be accepted at least to the extent that appellants 1 and 2 had participated in the assault in which five persons were murdered, in view of confirmatory evidence in the first place consisting of former statement of Puna Bai to Shyamlal (C.W.1) soon after the incident, secondly, by reason of recovery of broken handle of Ballam found to be lying at the spot from appellant No. 1 Jagdish, thirdly by reason of injury sustained by appellant No. 2 Dhannu at the time of the incident, fourthly, by reason of plea of self-defence, ludicrous and untenable though it is, raised by appellant No. 1 Jagdish and lastly, because of injury sustained by Puna Bai (P.W.6) at the commencement of the incident, which was caused to her, on her evidence, by appellant No. 2 Dhannu. The other appellants deserve to be given benefit of doubt.

This is a case of macabre and gory killing of four of a family and one of their relations in a sudden frenzy. Hell appears to have been let loose all of a sudden. It is difficult to believe that the incident took place just because 2-3 months back illicit felled timber was seized from the possession of appellant No. 1 Jagdish of village Kachhwa and the latter entertained a suspicion that deceased persons had supplied the information leading to seizure. The exact cause which sparked off the orgy of killings is not known. The prosecution witnesses, particularly Puna Bai (P.W.6) and Mohan Bai (P.W.11), have not disclosed the whole truth. Where there was no proper evidence as to the origin of the quarrel, the Supreme Court held that it was proper ground not to award the extreme penalty of death sentence. See *Kaloo v. State of Uttar Pradesh*, (1969) 3 SCC 888. Where the witnesses on whose evidence the life of an accused hung in the balance, did not choose to reveal the whole truth, the Supreme Court observed that the Court while dealing with the question of sentence had to step in interstitially and may refuse to award the extreme penalty. See [Dudh Nath Pandey Vs. State of Uttar Pradesh](#), Coming to the present case, the perpetrators of the carnage were two, i.e. appellants 1 and 2, if not more. The individual acts done by each is not known. It was observed in [Darshan Singh alias Bhasuri and Others Vs. State of Punjab](#), "Besides, in a case like this when a large

group of persons took part in the murders and untrue evidence has been mixed up with the true evidence, it becomes difficult to hold any particular accused guilty of any particular act". On that ground also, the Supreme Court set aside the death sentence imposed on the accused persons. Taking an overall view, we are not inclined to confirm death sentences on appellants 1 and 2.

In view of the foregoing discussion, the appeal is partly allowed. The convictions of appellants 1 and 2 i.e. Jagdish of village Kachhwa and Dhannu alias Dhaniram, under 5 heads for offences u/s 302 read with Section 149, Indian Penal Code are altered to offences u/s 302 read with Section 34, Indian Penal Code. Appellant No. 2 Dhannu's conviction u/s 323, Indian Penal Code for causing hurt to Puna Bai (P. W.-6) is also maintained. The convictions of appellants 1 and 2 for offences Under Sections 147 and 148, Indian Penal Code and conviction of appellant No. 1 additionally for an offence u/s 323, Indian Penal Code are set aside. The convictions and sentences of the rest of the appellants, i.e. of appellants 3 to 8, are set aside. They are acquitted of the said offences. They shall be set at liberty forthwith, if not required in any other case.

So far as sentences on appellants 1 and 2 are concerned, these appellants are sentenced to imprisonment for life for each of the five offences u/s 302/34, Indian Penal Code, in place of death sentence. The death reference is rejected.