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HARI & ANR.

v.

THE STATE OF UTTAR PRADESH

(Criminal Appeal No. 186 of 2018)

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NOVEMBER 26, 2021

**[L. NAGESWARA RAO, SANJIV KHANNA
AND B. R. GAVAI, JJ]**

Penal Code, 1860:

- C *ss. 147, 302/149, 323/149, 324/149 and 201/149 – Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 – s. 3(3)(10) – Matter pertaining to honour killing – Jat girl wanted to marry Jatav boy which infuriated the Jat community – Jat girl and Jatav boy along with another Jatav boy who accompanied them, physically assaulted for 12 hours and killed by accused for violating caste-ridden societal norms – 54 persons charged – Trial court convicted 35 persons for the commission of offences u/s. 147, 302/149, 323/149, 324/149 and 201/149 and s. 3(3)(10) of the SC/ST Act and imposed death sentence on eight of them – However, the High Court commuted the death sentence to life imprisonment – On appeal, held: From the evidence of four eye-witnesses, the medical and scientific evidence, and documentary evidence it is proved that the youngsters were tortured, then killed by hanging and thereafter, their bodies were cremated – Testimonies of the four eye-witnesses are credible – Inconsistencies and contradictions in their evidence are trivial – Eye-witnesses' account stating about the involvement of the accused and ascribed specific overt acts to some of them, believed by the courts below – As regards those, not assigned any active role or overt act, there is no doubt that they shared the common object to punish the victims and kill them – Their presence in the Panchayat continuously for nearly 12 hours without any protest lends support to the prosecution version – Relevant portion of the testimony of the hostile witness rightly relied upon by the High Court – Informant not able to mention all the names of those involved due to the trauma of witnessing an egregious crime, is accepted – Recovery of clothes of deceased, recovery of half burnt body remains support the prosecution's version about the burning of the bodies of the victim – Thus, the murder established beyond doubt – Courts*
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*below committed no error in convicting the accused u/s. 302 with A
the aid of s. 149 – Entire incident squarely falls under the head of
anti-social and abhorrent nature of the crime – Thus, order passed
by the High Court is upheld, except for three who are acquitted in
view of the ambiguity in their identity – Evidence – Witnesses.*

*s. 149 – Unlawful assembly – Vicarious liability u/s. 149 – B
Held: s. 149 is declaratory of the vicarious liability of the members
of an unlawful assembly for acts done in prosecution of the common
object of that assembly or for such offences which the members
knew would be committed in prosecution of that object – Prosecution
need not prove each of the members' involvement especially C
regarding which or what act – While overt act and active
participation may indicate common intention of the person
perpetrating the crime, the mere presence in the unlawful assembly
may fasten vicariously criminal liability u/s. 149.*

*s. 149 – Unlawful assembly – Common object of an assembly D
– Held: Common object is different from common intention as it
does not require a prior concert and a common meeting of minds
before the attack – It is enough if each has the same object in view
and their number is five or more and that they act as an assembly to
achieve that object – Common object of an assembly is to be E
ascertained from the acts and language of the members composing
it, from the surrounding circumstances and the course of conduct
adopted by the members.*

Witnesses:

*Hostile witness – Evidentiary value – Held: Part of the F
evidence of the hostile witness which is creditworthy, can be acted
upon – Criminal trial.*

*Protection of – Implementation of Witness Protection Scheme
– Need to formulate scheme/guidelines/programmes to safeguard
rights of the witnesses.*

Constitution of India:

*Art. 136 – Interference by this Court in a criminal appeal by
a Special Leave – Governing principles – Stated.*

*Art. 19(1)(a) and Art. 21 – Right to life – Right to life
guaranteed to the people also includes in its fold the right to live in H*

- A *a society which is free from crime and fear, and the right of witnesses to testify in courts in free and fair manner without fear or pressure – If one is unable to testify in courts due to threats or other pressures, it is a clear violation of Art. 19(1)(a) and Art. 21 – One of the main reasons for witnesses to turn hostile is that they are not accorded appropriate protection by the State – State to ensure the safety of the witnesses irrespective of case, creed, religion, such that they could safely depose the truth in the court at least in sensitive cases involving those in power, political patronage.*

Honour killings: Preventive steps, remedial and punitive

- C *measures to combat honour crimes – Suggestion of, in Shakti Vahini's case – Stated.*

Casteism: Commission of atrocities in the name of castes – Ghastly murders of three youngsters, by physically assaulting them for nearly 12 hours for violating caste-ridden societal norms – Held:

- D *Episodes of honour killing demonstrate that the casteism has not been annihilated even after 75 years of independence – Bigotry perpetuated by such caste-based practices impedes the objective of the Constitution of equality for all its citizens – High time for the civil society to react and respond with strong disapproval about the ghastly crimes committed in the name of caste.*

- E *Administration of justice: Administration of criminal justice – Racial and religiously motivated crimes, if to be treated as aggravating factors for enhanced punishment – Foreign laws-United Kingdom, Canada, United States vis-a-vis Indian laws – Discussed.*

Disposing of the appeals, the Court

- F **HELD: 1.1 Right to testify in courts in a free and fair manner without any pressure and threat whatsoever is under serious attack today. If one is unable to testify in courts due to threats or other pressures, then it is a clear violation of Art. 19 (1) (a) and Art. 21 of the Constitution. Right to life guaranteed to the people of this country also includes in its fold the right to live in a society which is free from crime and fear and the right of witnesses to testify in courts without fear or pressure. It needs to be emphasised that one of the main reasons for witnesses to turn hostile is that they are not accorded appropriate protection by the State. It is a harsh reality, particularly, in those cases where**
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the accused persons/criminals are tried for heinous offences, or where the accused persons are influential persons or in a dominating position that they make attempts to terrorise or intimidate the witnesses because of which these witnesses either avoid coming to courts or refrain from deposing truthfully. This unfortunate situation prevails because of the reason that the State has not undertaken any protective measures to ensure the safety of these witnesses, commonly known as “witness protection”. [Para 28][1046-B-E]

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1.2 The State has a definite role to play in protecting the witnesses, to start with, at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens, it has to ensure that during a trial in the court the witness could safely depose the truth without any fear of being haunted by those against whom the witness had deposed. Every State has a constitutional obligation and duty to protect the life and liberty of its citizens. That is the fundamental requirement for observance of the rule of law. There cannot be any deviation from this requirement because of any extraneous factors like caste, creed, religion, political belief or ideology. [Para 29][1046-F-H]

1.3 The instant case squarely falls under the situations contemplated by this Court while necessitating the formulation of scheme/guidelines/programmes for protection of witnesses. Implementation of the Witness Protection Scheme at the time when the witnesses were deposing in the present case, would have prevented the prosecution witnesses from turning hostile. If the material witnesses were relocated from the village and escorted to the courtroom, they would have deposed freely in court. [Para 31][1047-C]

Mahender Chawla & Ors. v. Union of India & Ors.
(2019) 14 SCC 615 : [2018] 14 SCR 627; *Zahira*
Habibullah Sheikh and Anr. v. State of Gujarat & Ors.
(2006) 3 SCC 374 : [2006] 2 SCR 1081; *Ashwin Kumar*
Upadhyay v. Union of India and Anr. (2020) SCC
OnLine SC 1228 – referred to.

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- A **2.1 Section 149 IPC is declaratory of the vicarious liability of the members of an unlawful assembly for acts done in prosecution of the common object of that assembly or for such offences as the members of the unlawful assembly knew would be committed in prosecution of that object. If an unlawful assembly is formed with the common object of committing an offence, and if that offence is committed in prosecution of the object by any member of the unlawful assembly, all the members of the assembly will be vicariously liable for that offence even if one or more, but not all committed the offence. Again, if an offence is committed by a member of an unlawful assembly and that offence is one which the members of the unlawful assembly knew to be likely to be committed in prosecution of the common object, every member who had that knowledge will be guilty of the offence so committed. It is not necessary for the prosecution to prove each of the members' involvement especially regarding which or what act.**
- B **While overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section 149. [Para 35][1048-C-F]**
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Masaltı v. State of UP [1964] 8 SCR 133; *Shambhu Nath Singh v. State of Bihar* AIR 1960 SC 725; *Lalji v. State of U.P.* (1989) 1 SCC 437 : [1989] 1 SCR 130 – referred to.

- F **2.2 Common object is different from common intention as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The common object of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly.**
- G **[Para 36][1048-G; 1049-A]**

Charan Singh v. State of U.P. (2004) 4 SCC 205 : [2004] 2 SCR 925; *Kattukulangara Madhavan (dead) through LRs. v. Majeed and Ors.* (2017) 5 SCC 568 : [2017] 4 SCR 658 – referred to.

3.1 The High Court found that the contradictions and inconsistencies indicated in the statements of the four eye-witnesses were trivial in nature. The High Court ignored the contradictions and inconsistencies which did not affect the substratum of the prosecution's case. The High Court disapproved the approach of the Trial Court in discarding the formula of at least two witnesses deposing the presence/overt act of the accused in case where large numbers of accused are involved. The High Court gave benefit of doubt to two persons whose presence/involvement was spoken by only one witness. Concurrent findings of fact pertaining to the commission of the crime and involvement of the appellant cannot be subjected to further scrutiny by this Court, according to the well-established law laid down by this Court. It is not necessary to undertake fresh appraisal of the evidence as there is no inclination to take a view different from the concurrent findings since the appreciation of evidence by the Courts below is not erroneous. [Para 20][1041-G-H; 1042-A-D]

State of MP v. Ramesh (2011) 4 SCC 786 : [2011] 5 SCR 1; Masaltı v. State of UP [1964] 8 SCR 133; Kaur Sain v. State of Punjab (1974) 3 SCC 649 : [1974] 2 SCR 393 – referred to.

3.2 From the evidence of PW-1, PW-13, PW-14 and PW-15 who are eye-witnesses, the medical and scientific evidence, and documentary evidence it is proved that RK, V and R were tortured and then were killed by hanging. Thereafter, their bodies were cremated. The testimonies of the eye-witnesses are credible and have been rightly accepted by the courts below. The recovery of clothes of deceased RK, recovery of clothes of V, recovery of half burnt pieces of bones, ribs, spinal cord, parts of intestine and burnt pieces of flesh support the prosecution's version about the burning of the bodies of the deceased. The murder of R, V and RK is established beyond doubt. The eye-witnesses' account of PW-1, PW-13, PW-14 and PW-15 was believed by the courts below. They have stated about the involvement of the appellants and ascribed specific overt acts to some of them. The role assigned to each of the appellants by the witnesses is stated in the chart. [Para 22][1044-E-G]

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- A 3.3 The High Court was of the opinion that the evidence of PW1 cannot be eschewed from consideration only on the ground that they turned hostile. The relevant portion of their testimony was rightly relied upon by the High Court after recording the compelling reasons prompting the 12 prosecution witnesses, including PW1, to turn hostile. [Para 23][1045-A-B]
- B 3.4 The evidence of prosecution witnesses cannot be rejected in toto merely because the prosecution chose to treat them as hostile and cross- examined them. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. It is for the judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of testimony which he finds to be creditworthy and act upon it. Even if the witnesses have turned hostile, their evidence can be accepted, if they are natural and independent witnesses and have no reason to falsely implicate the accused. [Paras 25, 26][1045-D-G]

Radha Mohan Singh v. State of UP (2006) 2 SCC 450 : [2006] 1 SCR 519; Syad Akbar v. State of Karnataka

AIR 1979 SC 1848 : [1980] 1 SCR 95; Mrinal Das and Others v. State of Tripura (2011) 9 SCC 479 : [2011] 14 SCR 411 – referred to.

- G 3.5 In the instant case, the evidence of PW1 finds complete corroboration from the evidence of PW13, PW14, and PW15 who are also the reliable eye-witnesses of the incident. The testimony of PW1 is unshaken and it was only after a long period of stay of trial for 6 years, that she turned hostile. The courts below were right in placing reliance on the testimony of PW 1, who is also a reliable witness, for the conviction of the accused persons even after she was declared hostile. [Para 27][1046-A-B]

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4.1 The explanation given by the informant that he was not in a proper frame of mind when he gave the complaint and that he was in the hospital for the next ten days, attending to his family members who were physically assaulted and only after that he could give the names of the rest of the accused, was rightly accepted by the courts below. PW-15-informant managed to escape the well-guarded boundaries of the village after witnessing a prolonged torture of the deceased persons for nearly 12 hours throughout the night and reached the police station to lodge the complaint. He would not have been able to mention all the names of those involved due to the trauma of witnessing an egregious crime which resulted in the murder of his nephew and two other persons. [Para 32][1047-E-G]

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4.2 On examination of the evidence of PW-1, PW-13, PW-14 and PW-15 the holding by the Courts below that the all four witnesses are reliable and the inconsistencies and contradictions in their evidence are trivial is accepted. The ghastly crime was committed at four different places for a prolonged period of more than 12 hours. Inconsistencies in the version of the witnesses are natural, especially when a large number of persons are involved. [Para 33][1047-G-H; 1048-A-B]

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4.3 The harrowing torture of the three deceased which commenced at 9 pm at night and continued till 9 am on the next day with the participation of the appellant in the Panchayat, was proved by the testimony of the eye-witnesses. Specific overt acts have been ascribed to some of the appellants - B, G, CS, P, M, J, BC, K, RS, R for dragging the deceased from their houses to the panchayat of M; appellants KS, RS for physically assaulting the deceased and their family members; appellants BC, K, R, M for forcing the parents of the deceased to hang them; appellants N, G, P, M, N, BT, J, BC, K, RS, SC for being involved in the hanging of the deceased; appellants BT, J, for dragging the bodies of the deceased to the cremation ground and appellants BT, J, BC, KS, S for lighting the fire to the bodies of the deceased at the cremation ground. The courts below committed no error in convicting the appellants under Section 302 with the aid of Section 149 IPC. Even in respect of those who are not assigned any active role or overt act, there is no doubt that they shared the common object

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- A to punish the deceased and kill them. Their presence in the Panchayat continuously for nearly 12 hours without any protest or any attempt made by them to stop the violence would lend support to the prosecution version that all the appellants shared the common object of murdering the deceased. [Para 38] [1050-A-E]
- B 5.1 Two young men and a woman were physically assaulted for nearly 12 hours and killed by the accused for violating caste-ridden societal norms. These episodes of caste-motivated violence in the country demonstrate the fact that casteism has not been annihilated even after 75 years of independence.
- C According to Dr. B. R. Ambedkar, inter-caste marriage is one remedy to get rid of casteism in order to achieve equality. His vision for ensuring justice and equality to all sections of the society, especially to the repressed segments, is well enshrined in the preamble of the Constitution. The bigotry perpetuated by
- D such caste-based practices which are prevalent even today, impedes this objective of the Constitution of equality for all its citizens. Proposal of marriage by R who belongs to Jat community, with V who is a Jatav, has resulted in their deaths. Though the number is a tad less, honour killings have not stopped in this country and it is high time that the civil society reacts and responds with strong disapproval about the ghastly crimes committed in the name of caste. This Court issued several directions to the administrative authorities and police officials to take strong measures to prevent honour killings. Honour killings pursuant to the decree of Khap Panchayats have been strongly
- E criticized by this Court. Harsh punishment was recommended to those brutal and feudal minded persons who commit atrocities in the name of castes. The Law Commission of India in its 242nd Report suggested the legal framework on Prevention of Interference with the Freedom of Matrimonial Alliances in the name of Honour and Tradition. The Law Commission was of the
- F G opinion that there must be a threshold bar against congregation or assembly for the purpose of objecting to and condemning the conduct of young persons of marriageable age marrying according to their choice, the ground of objection being that they belong to the same gotra or to different castes or communities. The
- H Panchayatdars or caste elders have no right to interfere with the

life and liberty of such young couples whose marriages are permitted by law and they cannot create a situation whereby such couples are placed in a hostile environment in the village/locality concerned and exposed to the risk of safety. The Law Commission further recommended that the very assembly for an unlawful purpose viz. disapproving the marriage which is otherwise within the bounds of law and taking consequential action should be treated as an offence as it has the potential to endanger the lives and liberties of individuals concerned. [Para 39][1050-F-H; 1051-A-E]

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Shakti Vahini v. Union of India and Ors. (2018) 7 SCC 192 : [2018] 3 SCR 770 - relied on.

Arumugam Servai v. State of Tamil Nadu (2011) 6 SCC 405 : [2011] 5 SCR 488; – referred to.

5.2 The ghastly murders of three youngsters which are honour killings squarely falls under the head of anti-social and abhorrent nature of the crime. [Para 46][1059-B]

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Machhi Singh v. State of Punjab (1983) 3 SCC 470 : [1983] 3 SCR 413 – referred to.

6.1 Appellants TS, K, S, BC, RS, R and K were sentenced to death by the trial court for committing the gruesome murders of three youngsters in a barbaric manner. However, the High Court converted the death sentence of the appellants to that of life imprisonment till their last breath. The reasons given by the High Court for converting the death sentence of the appellants to life imprisonment are the advance age of some of the appellants, the passage of long time after the commission of crime and mental sufferings that they have undergone. Keeping in view the facts and circumstances of this case, the judgment of the High Court insofar as the conversion of death sentence to life imprisonment in respect of accused is upheld. [Para 47][1059-C-E]

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6.2 The judgment of the High Court is upheld and affirm the conviction and sentence imposed on the accused namely DH, NT, SR, TJ, BC, KM, RM, RN, SR, MH, CH, PT, BT, JV, KR, MN, GN, DH, BL, DR, MN, KS, DM. Accused namely H, LS and G are acquitted in view of the ambiguity in their identity. [Para 50][1060-D-F]

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- A *Dalbir Kaur v. State of Punjab* (1976) 4 SCC 158:[1977] 1 SCR 280; *Ramaniklal Gokaldas v. State of Gujarat* (1976) 1 SCC 6; *Duli Chand v. Delhi Admn.* (1975) 4 SCC 649; *Bachan Singh v. State of Punjab* (1980) 2 SCC 684; *Masalti v. State of UP* 1964 (8) SCR 133 – referred to.
- B *Wisconsin v. Mitchell* [508 US 476 (1993)] – referred to.

Case Law Reference

C	[1977] 1 SCR 280 (1976) 1 SCC 6 (1975) 4 SCC 649 [2011] 5 SCR 1	referred to referred to referred to referred to	Para 18 Para 19 Para 19 Para 20
D	[1964] 8 SCR 133 [1974] 2 SCR 393 [2006] 1 SCR 519 [1980] 1 SCR 95	referred to referred to referred to referred to	Para 20, 35, 48 Para 20 Para 25 Para 25
E	[2011] 14 SCR 411 [2018] 14 SCR 627 [2006] 2 SCR 1081 AIR 1960 SC 725	referred to referred to referred to referred to	Para 26 Para 28, 30 Para 29 Para 35
F	[1989] 1 SCR 130 [2004] 2 SCR 925 [2017] 4 SCR 658 [2011] 5 SCR 488	referred to referred to referred to referred to	Para 35 Para 36 Para 37 Para 39
G	[2018] 3 SCR 770 (1980) 2 SCC 684 [1983] 3 SCR 413	relied on. referred to referred to	Para 40, 41 Para 44 Para 45, 46

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A
No.186 of 2018.

From the Judgment and Order dated 31.05.2016 of the High Court of Judicature at Allahabad in Criminal Case No.7039 of 2011.

With

Criminal Appeal Nos.190-192, 188, 1553-1556, 189, 187 of 2018
And Criminal Appeal Nos. 1503 and 420 of 2021.

Mrs. Amita Gupta, Sanjay Kumar Tyagi, P. V. Yugeswaran, Ashish Kumar Upadhyay, Vivek Tripathi, Y. Lokesh, Ms. V. Keerthana, Pankaj Agarwal, C. S. N. Mohan Rao, Advs. for the Appellants.

Ms. Garima Prashad, AAG, Vishnu Shankar Jain, Ms. Marbiang N. Khongwir, Parth Yadav, Advs. for the Respondent.

The Judgment of the Court was delivered by

L. NAGESWARA RAO, J.

1. Leave granted.

2. By a judgment dated 14.11.2011, the Trial Court held the following persons guilty of the offences under Sections 147, 302 read with 149, 323 read with 149, 324 read with Section 149 and 201 read with Section 149 of Indian Penal Code (“IPC”) and Section 3(3)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (“SC/ST Act”): -

Dhanni son of Ratan Singh, Tej Singh son of Kerori, Dharamveer son of Kanhayalal, Shivcharan son of Maniram, Singh Ram son of Mani Ram, Mahender son of Mangtu, Balli son of Kishanlal, Dharam son of Kallu, Nirto son of Bhavar Singh, Bacchu son of Nabli, Gopi son of Hariom, Tulsi Ram son of Bhanwar Singh, Kamal son of Kanhaya, Ram Singh son of Dayaram, Jeevan son of Bhaggo, Girraj son of Kamar, Kashi son of Bhavar Singh, Chattar Singh son of Lal Singh, Karan son of Dayaram, Naval Singh son of Narayan, Daya Ram son of Inder, Harchand son of Leela, Mangtu son of Sunder Lal, Dayaram son of Bhavar Singh, Dharam son of Harchandi, Sirro son of Manni, Baato son of Bhaggo, Pritam son of Naval, Shrichand son of Deepchand, Deepi alias Deepchand son of Nathi, Harchandi son of Maharaj Singh, Hariram son of Yadram, Gangaram son of Hiralal, Hari son of Govinda, and Lalsingh son of Khushiram.

- A 3. Appellants-Accused namely Dhanni son of Ratan Singh, Dharamveer son of Kanhaya, Shivcharan son of Maniram, Singham son of Maniram, Balli son of Kishanlal, Mahendra son of Mangtu, Dharam son of Kallu, Nirto son of Bhavarsingh, Gopi son of Hariom, Girraj son of Govinda, Manni son of Natthi, Girraj son of Kamar, Kashi son of Bhavar Singh, Chattar Singh son of Leele, Harchand son of Leele, Dharam son of Harchandi, Pritam son of Naval, Gangaram son of Hiralal, Hari son of Govinda, Lalsinghson of Khushiram, Mangtu son of Sunderlal, Naval son of Narayan, Dayaram son of Bhavarsingh, Baato son of Bhaggo, Shrichand son of Deepchand, Deepi alias Deepchand son of Nathi, Jeevan son of Bhaggo were sentenced to life imprisonment under
- B Section 302/149 of IPC, rigorous imprisonment for one year under Section 323/149 of IPC, 3 years under Section 324/149 of IPC, 7 years under Section 201/149 of IPC and 3 years under Section 3 (3) 10 of the SC/ST Act.
- C 4. Appellants-accused namely Tej Singh son of Kirori, Bacchu son of Nabali, Tulsi Ram son of Bhavar Singh, Kamal son of Kanhaya, Ram Singh son of Dayaram, Raman son of Roopi, Karan son of Dayaram, Sirro son of Bhajni were sentenced to death under Section 302/149 of IPC.
- D 5. Criminal appeals were filed by the above-named convicted persons in which the conviction was upheld by the High Court. However, the death sentence imposed on Tej Singh and 7 others was altered to imprisonment for life. Aggrieved by their conviction and sentence, the appellants have approached this Court by filing the above criminal appeals.
- E 6. Criminal Appeal Nos. 1553-1556 of 2018 have been filed by the State of Uttar Pradesh against the commutation of death sentence of Tej Singh son of Kirori, Bacchu son of Nabali, Tulsi ram son of Bhavar Singh, Kamal son of Kanhaya, Ram Singh son of Dayaram, Raman son of Roopi, Karan son of Dayaram, Sirro son of Bhajni to life imprisonment. During the pendency of the appeals, Tulsi Ram son of Bhavar Singh passed away.
- F 7. At 11.40 am on 27.03.1991, FIR was registered on the statement made by Amichand (PW-15) at Police Station, Barsana. It was stated in the complaint that Roshni daughter of Ganga Ram eloped with Vijendra son of Shyama Jatav on 21.03.1991 and they were accompanied by
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Ram Kishan son of Maharam. They returned back to the village on 24.03.1991. At 9.00 pm on 26.03.1991, Mangtu S/o Sunder Lal, Pritam S/o Nawal Singh, Chatar S/o Lal Singh, Girraj S/o Kanwar Singh Bagera forcibly took Ram Kishan and Vijendra along with their family members to attend the Panchayat. Roshni was a Jat and Vijendra and Ram Kishan were Jatavs. Roshni stated that she wanted to marry Vijendra and live with him, which infuriated persons belonging to the Jat community.

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- A of the complaint, PW-20, SI Kripal Singh Rathi, Police Station Barsana, rushed to the place of occurrence and doused the pyre at the cremation ground. He collected the remaining pieces of flesh and bones and recovered a Loongi and watch of deceased Vijendra from the place of cremation. On the basis of statement of PW 14 Hukam Singh, 15 accused
- B including Daya Ram and others were arrested and the injured family members of the deceased Vijendra and Ram Kishan were sent for medical examination.
 - 9. 54 accused persons were charged under Sections 302/149 of IPC. During the course of the trial, applications were filed for consolidation of the cases in which the High Court stayed the trial in 1992 which subsisted till 1998. 20 witnesses were examined by the prosecution and 4 witnesses were produced by the defence. When the trial resumed in 1998, 12 out of the 20 prosecution witnesses turned hostile.
- D 10. PW-1 Shanti, mother of Ram Kishan, was initially examined on 09.04.1992. She stated that at 9 pm on 26.03.1991 Naval Singh, Pritam, Girraj, Bhagantu, Dayaram, Ram Singh, Raman, Bacchu, Hari Ram, Gutiya, Batesh, Lal, Ram Singh son of Handu, Daya Ram S/o Susse, Billi, Chatar, Harchand, Rajendra, Harchandi, Bagle, Kamal came to her house and forcibly took Ram Kishan. Her husband Maharam and
- E her son Vijay Singh followed them. She also rushed to the room of Mangtu where Daya Ram gave her a lathi blow due to which two of her teeth broke. She deposed that Ram Kishan was hung upside down in the room. Vijay Singh was also given two/three lathi blows due to which he tried to run away but was caught and confined in the room of Mangtu. Unable to see the torture of her children, PW-1 went back to her house.
- F Next day morning, the son of her sister informed that the accused persons were hanging Ram Kishan. She reached the Banyan tree where she saw Pritam, Naval Singh, Mangtu, Daya Ram, Deep Chand, Amar Singh, Ram Singh, Raman, Kamal, Dhani, Hari Ram, Gutiya, Bacchu, Jeevan, Deepi, Ram Singh, S/o Handu, Daya Ram, Billi Chattar, Harchand,
- G Dharam Chand, Parbhi. Mangtu and Naval Singh tightened a rope around the neck of Ram Kishan which was pulled by Bato, Raman, Nirto, Bacchu, Kamal and Amar. Vijendra and Roshni were also hanged to death. Thereafter, Ram Kishan, Vijendra and Roshni were cremated. She identified Mangtu, Deep Chand, Daya Ram S/o Amar Singh, Ram Singh, Gudda, Bacchu, Nirto, Raman, Tulsi Ram, Hari Ram, Pappu, Ganga
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Ram, Naval Singh, Pritam and Harchandi. After the interim order of stay granted by the High Court was vacated, her evidence was recorded on 21.02.1998 during which she turned hostile.

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11. PW-13, Vishram is the brother of Vijendra. He corroborated the statement made by PW-1 Shanti relating to Ram Kishan and Vijendra being taken to the Panchayat forcibly. He deposed that Roshni was also summoned to the Panchayat. He also mentioned the names of persons and the active role played by Naval Singh, Poorna, Deep Chand, Mangtu, Daya Ram, Kamal, Raman, Amar Singh, Ram Singh, Nathi, Gothari, Harkishan, Deepu, Bairam, Bacchu, Ganga Ram, Pappu, Batu, Jeevan, Ram Ji Lal, Ram Singh, Dharamveer, Duli, Daya Ram, Harchand, Pritam, Girraj, Harchandi, Tulsi, Chatar, Bhanwar Singh, Neto, Gutiya, Shayam, Dharam, Kashi, S/o Manni, Hari S/o Kallu, Kanni S/o Nathi, Bharti, Shreechand, Mahesh, Gopi, Balli, Lal Singh during the Panchayat. He stated that Ram Kishan, Vijendra and Roshni were hung to death and they were cremated later. He further stated that Vijendra did not die due to hanging and was burnt alive. He deposed in the Court that he was also beaten up and categorically mentioned the names of Naval Singh, Mangtu, Daya Ram, Harchandi, Baato, Gutiya, Ram Singh, Karan, Deepi, Shreechand etc. who executed the hanging and Gutiya, Baato, Tej Singh, Bacchu, Karan, Jeevan and Sirro for their active role in cremating the bodies of Ram Kishan, Vijendra and Roshni. He stated that he was made to sit through the incident for 12 hours and was not allowed to move even a single inch. During the course of recording of his evidence PW-13 turned hostile. However, on being cross-examined again by the defence, he deposed against the accused persons.

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12. PW-14, Hukum is the son of Shyama and brother of deceased Vijendra. He described the incident from 9 pm on 26.03.1991 till the next day morning and stated in detail about the hanging and cremation of Ram Kishan, Vijendra and Roshni. He corroborated the evidence of PW-1. He deposed before the Court about him being beaten up at his home and at the panchayat and about the boundaries of the village being guarded by the people belonging to the Jat caste who did not allow anybody to leave the village during the course of the incident.

13. PW-15, Amichand is the uncle of Ram Kishan and was the first informant who gave a vivid description of the crime. He stated that he came to village Mahrana to attend the Theravi Bhoj of Mangtu's mother. He gave the names of 35 persons in his complaint on 27.03.1991

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- A and later, names of 19 other persons were furnished by him on 04.04.1991. In his evidence, PW 15 corroborated the evidence of PW-1 as well.
14. 54 persons were charged for offence under Sections 147, 302/149, 323/149, 324/149 and 201/149 of IPC and Section 3(3)(10) of SC/ST Act. Some of them died and some accused were juveniles. 39
- B accused were tried by the Trial Court. Out of the 39 accused, three of them namely, Dayaram son of Inder, Harchandi son of Maharaj Singh and Hari son of Yadram died after their statements were recorded under Section 313 Cr.P.C. Except Balkishan son of Mansingh, and the 3 accused who died, remaining 35 accused were convicted by the Trial Court.
- C 15. Appeals were filed by these 35 convicts before the High Court. Out of the 35 convicts, the High Court acquitted two – namely Shivcharan son of Maniram and Singhram son of Maniram. The conviction of the remaining convicts was upheld by the High Court. However, the death sentence awarded to the 8 accused was commuted to life imprisonment till the end of natural life.
- D 16. Against this judgement of the High Court, the following persons have filed Criminal Appeals before this Court:

In Criminal Appeal No. 186 of 2018

- E 1. Hari son of Govinda
2. Lal Singh son of Khushi Singh

In Criminal Appeal No. 187 of 2018

3. Karan Singh son of Daya Ram

In Criminal Appeal No. 188 of 2018

- F 4. Chattar Singh son of Lal Singh
5. Daya Ram son of Bhanwar Singh
6. Pritam son of Naval
G 7. Baato son of Bhambhu
8. Jeewan son of Bhaggo
9. Deepi alias Deep Chand son of Natthi

In Criminal Appeal No. 189 of 2018

- H 10. Dharmvir son of Kanhaiya

- 11. Balli son of Kishan
- 12. Dharm son of Kallu
- 13. Gopi son of Hair
- 14. Girraj son of Govinda
- 15. Manni son of Natthi
- 16. Kashi son of Bhanwar Singh
- 17. Dharm son of Harchand

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In Criminal Appeal Nos. 190-192 of 2018

- 18. Dhanni son of Ratan Singh
- 19. Nirto son of Bhanwar Singh
- 20. Girraj son of Kamar
- 21. Shrichand son of Deepchand
- 22. Tej Singh son of Karodi
- 23. Bachchu son of Nabali
- 24. Kamal son of Kanhaiya
- 25. Ram Singh son of Dayaram
- 26. Raman son of Roopi
- 27. Sirro son of Bhajini
- 28. Mahender son of Mantu

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In SLP (Crl.) No. 1975 of 2018

- 29. Mangtu son of Sunder Lal

In Criminal Appeal No. 420 of 2021

- 30. Ganga Ram son of Heera Lal

In addition to the above Criminal Appeals, Criminal Appeal Nos.1553-1556 of 2018 have been filed by the State against the commutation of death sentence awarded to eight accused to life imprisonment.

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17. We are informed by the learned counsel for the Appellant that during the pendency of these appeals, 4 Appellants namely, Dayaram

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- A son of Bhanwar Singh (Appellant 2 in Crl. A. 188 of 2018), Deepi alias Deep Chand son of Natthi (Appellant 6 in Crl. A. 188 of 2018), Gopi son of Hari Om (Appellant 4 in Crl. A. 189 of 2018) and Girraj son of Kamar (Appellant 3 in Crl. A. 190-192 of 2018) died. At present, we are concerned with 26 Appellants.
- B 18. The principles governing the interference by this Court in a criminal appeal by a special leave have been laid down by this Court in *Dalbir Kaur v. State of Punjab*¹ which are as follows: -
- 8. Thus the principles governing interference by this Court in a criminal appeal by special leave may be summarized as follows:*
- C “(1) that this Court would not interfere with the concurrent finding of fact based on pure appreciation of evidence even if it were to take a different view on the evidence;
- D (2) that the Court will not normally enter into a reappraisement or review of the evidence, unless the assessment of the High Court is vitiated by an error of law or procedure or is based on error of record, misreading of evidence or is inconsistent with the evidence, for instance, where the ocular evidence is totally inconsistent with the medical evidence and so on;
- E (3) that the Court would not enter into credibility of the evidence with a view to substitute its own opinion for that of the High Court;
- F (4) that the Court would interfere where the High Court has arrived at a finding of fact in disregard of a judicial process, principles of natural justice or a fair hearing or has acted in violation of a mandatory provision of law or procedure resulting in serious prejudice or injustice to the accused;
- G (5) this Court might also interfere where on the proved facts wrong inferences of law have been drawn or where the conclusions of the High Court are manifestly perverse and based on no evidence.”
- It is very difficult to lay down a rule of universal application, but the principles mentioned above and those adumbrated in the authorities of this Court cited supra provide sufficient
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- H ¹(1976) 4 SCC 158

guidelines for this Court to decide criminal appeals by special leave. Thus, in a criminal appeal by special leave, this Court at the hearing examines the evidence and the judgment of the High Court with the limited purpose of determining whether or not the High Court has followed the principles enunciated above. Where the Court finds that the High Court has committed no violation of the various principles laid down by this Court and has made a correct approach and has not ignored or overlooked striking features in the evidence which demolish the prosecution case, the findings of fact arrived at by the High Court on an appreciation of the evidence in the circumstances of the case would not be disturbed.

19. In the said judgment, this Court observed that the evidence and the judgment of the High Court is examined for the limited purpose for determining whether or not the High Court has followed the aforementioned principles. If the High Court has committed no error or violation of the said principles and has not ignored or overlooked striking features of the evidence which demolish the prosecution case, the findings of fact arrived at by the High Court on an appreciation of the evidence in the circumstances of the case would not be disturbed. Article 136 of the Constitution of India is an extraordinary jurisdiction which this Court exercises when it entertains an appeal by special leave and this jurisdiction, by its very nature, is exercisable only when this Court is satisfied that it is necessary to interfere in order to prevent grave or serious miscarriage of justice. Mere errors in appreciation of the evidence are not enough to attract this invigilatory jurisdiction². It is not the practice of this Court to reappreciate the evidence for the purpose of examining whether the finding of fact concurrently arrived at by the High Court and the subordinate courts is correct or not. It is only in rare and exceptional cases where there is some manifest illegality or grave and serious miscarriage of justice that this Court would interfere with such finding of fact³.

20. Regarding the argument on behalf of the accused persons with respect the contradictions and inconsistencies in the evidence of the eye-witnesses, the High Court found that the contradictions and inconsistencies indicated in the statements of the four eye-witnesses

² Ramaniklal Gokaldas v. State of Gujarat, (1976) 1 SCC 6

³ Duli Chand v. Delhi Admn., (1975) 4 SCC 649

- A were trivial in nature. Following the law laid down by this Court in *State of MP v. Ramesh*⁴, the High Court ignored the contradictions and inconsistencies which did not affect the substratum of the prosecution's case. The High Court disapproved the approach of the Trial Court in discarding the formula of at least two witnesses deposing the presence/overt act of the accused in case where large numbers of accused are involved. The High Court followed the rule laid down by this Court in *Masaltı v. State of UP*⁵, that in cases of mob violence, it would be safe to examine that at least two persons depose about the presence of an accused. The High Court gave benefit of doubt to Shiv Charan and Singh Ram whose presence/involvement was spoken by only one witness.
- B Concurrent findings of fact pertaining to the commission of the crime and involvement of the appellant cannot be subjected to further scrutiny by this Court, according to the well-established law laid down by this Court. It is not necessary to undertake fresh appraisal of the evidence as we are not inclined to take a view different from the concurrent findings since the appreciation of evidence by the Courts below is not erroneous⁶.
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21. The evidence of the four eye-witnesses was summarised by the High Court by a chart which forms part of its judgment and is reproduced as follows:-

- E *"...Before giving the chart we would like to clarify that we have compartmentalized the events comprising the occurrence into five parts, these read as under:*
- F 1. *Calling of the deceased Ram Kishan and Vijender from their houses, briefly referred as 'to call' in the table.*
- F 2. *Participation in the Panchayat briefly referred to as panchayat*
- F 3. *Hanging by the tree, briefly indicated as place of execution and supplement by their specific acts.*
- F 4. *Dragging the dead bodies to the mire than and briefly indicated by word 'dragged'.*
- G 5. *Burning the dead bodies after putting them on pyre, briefly-referred by word 'fire'.*

⁴(2011) 4 SCC 786

⁵ 1964 (8) SCR 133

⁶Kaur Sain v. State of Punjab, (1974) 3 SCC 649

Sr. No.	Name	PW 1 Shanti	PW 13 Vishram	PW 14 Hukum	PW 15 Ami Chand
1	Dhanni s/o Ratan	Place of execution			Present.
2	Dharamvir s/o Kanhaiya		Present.		Present.
3	Shiv Charan s/o Mani Ram		Present.		
4	Singhram s/o Mani Ram		Present.		
5	Balli s/o Kishan Lal	To call. Place of execution.	Present.		Present.
6	Mahendra s/o Mangtu		Present.		Present.
7	Dharam s/o Kallu		Present.	Present.	Present.
8	Nirto s/o Bhanwar Singh	Place of execution. Pulled Down.	Present.	Present.	Present.
9	Gopi s/o Hari Om		Present.		Present.
10	Girraj s/o Govinda	Place of execution.	Present.		
11	Manni s/o Natthi		Present.		Present
12	Girraj s/o Kunwar Singh	To call.	To Present	call.	Present.
13	Kashi s/o Bhanwar Singh		Present.		Present.
14	Chatar Singh s/o Lal Singh	To call. Place of execution.	To Present.	call.	Present.
15	Har Chand s/o Lille (Lal Singh)	To call. Place of execution.	Present. Noose.	Present. Assault. Judgment.	To call. Present. Judgment. Noose
16	Dharam s/o Harchandi			Present.	Present.
17	Preetam s/o Naval	To call. Place of execution.	To Present.	call. Present.	To Present Noose. call.
18	Ganga Ram s/o Hira Lal		Present	Present	
19	Hari s/o Govinda	Place of execution.			Present.
20	Lal Singh s/o Khushi Ram		Present.		
21	Mangtu s/o Sunder Lal	To call. Place of execution. Noose.	To Present. Noose.	call. To call. Present Assault. Judgment.	To call. Present. Judgment. Noose.
22	Naval s/o Narain	To call. Place of execution. Noose	Present. Noose.	Present. Judgment	To call. Present. Judgment. Noose
23	Daya Ram s/o Bhanwar Singh	To call. Place of execution.	Present. Noose.	Present.	Present.
24	Bato s/o Bhaggu	To call. Pulled Down.	Present. Noose. To call.	Fire. Present. Fire. Dragged	Present. Noose
25	Sri Chand s/o Deep Chand		Present. Noose.	Present.	Present.
26	Dipi @ Deep Chand s/o Natthi	To call. Place of execution	Present. Noose.	Present.	Present.

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A	27	Jeevan s/o Bhaggu	To call. Place of execution. Pulled. Down.	Present. Fire. To call.	Present. Fire. Dragged.	Present. Noose.
	28	Tej Singh s/o Kirodi		Present. Fire.		Present.
	29	Bachchu s/o Nabli	To call. Place of execution. Down.	Present. Fire.		Present. Noose.
B	30	Tulsi Ram s/o Bhanwar Singh	Place of execution.	Present.		Present. Judgment. Noose.
	31	Komal s/o Kanhaiya	To call. Place of execution. Pulled.	Present. To call.	To call. Present. Assault.	Present. Noose.
C	32	Ram Singh s/o Daya Ram	To call. Place of execution.	Present. Noose. call.	To call. Present.	Present. Rope.
	33	Raman s/o Gopi	To call. Place of execution. Pulled.	Present.	Present.	Present. Noose.
D	34	Karan s/o Daya Ram	Hit with Lathi	Present. Noose. To call.	Fire.	Present.
	35	Sirr s/o Munni		Present. Fire.		Present.

22. From the evidence of PW-1, PW-13, PW-14 and PW-15 who are eye-witnesses, the medical and scientific evidence, and documentary evidence it is proved that Ram Kishan, Vijendra and Roshni were tortured and then were killed by hanging. Thereafter, their bodies were cremated. We are of the opinion that the testimonies of the eye-witnesses are credible and have been rightly accepted by the Courts below. The recovery of white Tahmad and clothes of deceased Ram Kishan, recovery of clothes of Vijendra, recovery of half burnt pieces of bones, ribs, spinal cord, parts of intestine and burnt pieces of flesh support the prosecution's version about the burning of the bodies of the deceased. The murder of Roshni, Vijendra and Ram Kishan is established beyond doubt. The question that falls for our consideration is the culpability of the Appellants. The eye-witnesses' account of PW-1 Shanti, PW-13, PW-14 and PW-15 was believed by the Courts below. They have stated about the involvement of the appellants and ascribed specific overt acts to some of them. The role assigned to each of the appellants by the witnesses is found in the chart referred to above.

23. No reliance can be placed on the evidence of the eye-witness PW-1 Shanti who has turned hostile, according to the Appellants.

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Rejecting this contention, the High Court was of the opinion that the evidence of PW1 cannot be eschewed from consideration only on the ground that they turned hostile. The relevant portion of their testimony was rightly relied upon by the High Court after recording the compelling reasons prompting the 12 prosecution witnesses, including PW1, to turn hostile.

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24. The evidence of PW-1 was initially recorded on 09.04.1992. She has narrated the sequence of events and the involvement of the accused in the crime. Thereafter, due to an interim order passed by the High Court, the trial was stayed for a period of six years. When she was recalled to depose in Court on 21.02.1998, she turned hostile. The reasons for PW-1 turning hostile are understandable as she comes from a lower-strata of the society, living in a village dominated by the caste to which the accused persons belong. She deposed about the incident and the involvement of the Appellants in detail and was later declared hostile along with 11 other prosecution witnesses.

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25. It is well settled that the evidence of prosecution witnesses cannot be rejected in toto merely because the prosecution chose to treat them as hostile and cross-examined them. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof⁷. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of testimony which he finds to be creditworthy and act upon it⁸.

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26. Even if the witnesses have turned hostile, their evidence can be accepted, if they are natural and independent witnesses and have no reason to falsely implicate the accused. In *Mrinal Das and Others v. State of Tripura*⁹ this Court observed that credible evidence even of a hostile witnesses can form the basis for conviction in a criminal trial.

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⁷ Radha Mohan Singh v. State of UP, (2006) 2 SCC 450

⁸ Syad Akbar v. State of Karnataka, AIR 1979 SC 1848

⁹(2011) 9 SCC 479

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- A 27. In the present case, the evidence of PW1 finds complete corroboration from the evidence of PW13, PW14, and PW15 who are also the reliable eye-witnesses of the incident. The testimony of PW1 is unshaken and it was only after a long period of stay of trial for 6 years, that she turned hostile. The Courts below were right in placing reliance on the testimony of PW 1, who is also a reliable witness, for the conviction of the accused persons even after she was declared hostile.
- B 28. Right to testify in Courts in a free and fair manner without any pressure and threat whatsoever is under serious attack today. If one is unable to testify in Courts due to threats or other pressures, then it is a clear violation of Article 19 (1) (a) and Article 21 of the Constitution.
- C Right to life guaranteed to the people of this country also includes in its fold the right to live in a society which is free from crime and fear and the right of witnesses to testify in Courts without fear or pressure. It needs to be emphasised that one of the main reasons for witnesses to turn hostile is that they are not accorded appropriate protection by the
- D State. It is a harsh reality, particularly, in those cases where the accused persons/criminals are tried for heinous offences, or where the accused persons are influential persons or in a dominating position that they make attempts to terrorise or intimidate the witnesses because of which these witnesses either avoid coming to Courts or refrain from deposing truthfully. This unfortunate situation prevails because of the reason that the State has not undertaken any protective measures to ensure the safety of these witnesses, commonly known as “witness protection”¹⁰.
- E 29. The State has a definite role to play in protecting the witnesses, to start with, at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens, it has to ensure that during a trial in the court the witness could safely depose the truth without any fear of being haunted by those against whom the witness had deposed. Every State has a constitutional obligation and duty to protect the life and liberty of its
- F citizens. That is the fundamental requirement for observance of the rule of law. There cannot be any deviation from this requirement because of any extraneous factors like caste, creed, religion, political belief or ideology.¹¹
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- G ¹⁰ Mahender Chawla & Ors. v. Union of India & Ors. (2019) 14 SCC 615
- H ¹¹ Zahira Habibullah Sheikh and Anr. v. State of Gujarat & Ors. (2006) 3 SCC 374

30. While taking note of these exigencies with respect to safeguarding the rights of the witnesses deposing before a court, the Witness Protection Scheme, 2018 which was drafted by the Ministry of Home Affairs was approved by this Court in *Mahender Chawla & Ors. v. Union of India & Ors.* (supra). Thereafter, in *Ashwin Kumar Upadhyay v. Union of India and Anr.*,¹² a direction was given by this Court to the Union of India and the State Governments to strictly enforce the Witness Protection Scheme, 2018.

31. The present case squarely falls under the situations contemplated by this Court while necessitating the formulation of scheme/guidelines/programmes for protection of witnesses. Implementation of the Witness Protection Scheme at the time when the witnesses were deposing in the present case, would have prevented the prosecution witnesses from turning hostile. If the material witnesses were relocated from the village and escorted to the courtroom, they would have deposed freely in court.

32. The next contention on behalf of the appellants is that the informant Amichand initially mentioned the names of only 35 persons on 29.03.1991. 10 days thereafter, he implicated 19 other persons. The Appellants contended that 19 persons who were made accused 10 days after the registration of the FIR are falsely implicated after deliberations. The explanation given by the informant Amichand that he was not in a proper frame of mind when he gave the complaint on 27.03.1991 and that he was in the hospital for the next ten days, attending to his family members who were physically assaulted and only after that he could give the names of the rest of the accused on 04.04.1992, was rightly accepted by the Courts below. PW-15 Amichand managed to escape the well-guarded boundaries of the village after witnessing a prolonged torture of the deceased persons for nearly 12 hours throughout the night and reached the police station to lodge the complaint. He would not have been able to mention all the names of those involved due to the trauma of witnessing an egregious crime which resulted in the murder of his nephew and two other persons.

33. The Appellants submitted that the testimonies of the eye-witnesses suffer from contradictions and inconsistencies and deserve to be rejected. We have carefully examined the evidence of PW-1, PW-13, PW-14 and PW-15 and we are in agreement with the Courts below

¹²(2020) SCC OnLine SC 1228

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- A that the all four witnesses are reliable and the inconsistencies and contradictions in their evidence are trivial. The ghastly crime was committed at four different places for a prolonged period of more than 12 hours. Inconsistencies in the version of the witnesses are natural, especially when a large number of persons are involved.
- B 34. Ms. Amita Gupta, learned counsel for the Appellants argued that some of the Appellants have not been assigned any active role in the commission of the offence and their conviction for being members of the unlawful assembly is unsustainable. She stated that they are mere onlookers or by standers and they cannot be stated to be members of an unlawful assembly.
- C 35. Section 149 of the Indian Penal Code is declaratory of the vicarious liability of the members of an unlawful assembly for acts done in prosecution of the common object of that assembly or for such offences as the members of the unlawful assembly knew would be committed in prosecution of that object. If an unlawful assembly is formed with the common object of committing an offence, and if that offence is committed in prosecution of the object by any member of the unlawful assembly, all the members of the assembly will be vicariously liable for that offence even if one or more, but not all committed the offence. Again, if an offence is committed by a member of an unlawful assembly and that offence is one which the members of the unlawful assembly knew to be likely to be committed in prosecution of the common object, every member who had that knowledge will be guilty of the offence so committed¹³. It is not necessary for the prosecution to prove each of the members' involvement especially regarding which or what act (*Masaltı* supra). While overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section 149¹⁴.
- D 36. Common object is different from common intention as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The common object of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of

¹³ Shambhu Nath Singh v. State of Bihar, AIR 1960 SC 725

H ¹⁴ Lalji v. State of U.P. (1989) 1 SCC 437

all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly¹⁵. A

37. In *Kattukulangara Madhavan (dead) through LRs. v. Majeed and Ors.*¹⁶, this Court held as follows: -

"23. In the first place, the presence of an accused as part of an unlawful assembly, when not as a curious onlooker or a bystander, suggests his participation in the object of the assembly. When the prosecution establishes such presence, then it is the conduct of the accused that would determine whether he continued to participate in the unlawful assembly with the intention to fulfil the object of the assembly, or not. It could well be that an accused had no intention to participate in the object of the assembly. For example, if the object of the assembly is to murder someone, it is possible that the accused as a particular member of the assembly had no knowledge of the intention of the other members whose object was to murder, unless of course the evidence to the contrary shows such knowledge. But having participated and gone along with the others, an inference whether inculpatory or exculpatory can be drawn from the conduct of such an accused. The following questions arise with regard to the conduct of such an accused:

1. What was the point of time at which he discovered that the assembly intended to kill the victim? E

2. Having discovered that, did he make any attempt to stop the assembly from pursuing the object?

3. If he did, and failed, did he dissociate himself from the assembly by getting away? F

The answer to these questions would determine whether an accused shared the common object in the assembly. Without evidence that the accused had no knowledge of the unlawful object of the assembly or without evidence that after having gained knowledge, he attempted to prevent the assembly from accomplishing the unlawful object, and without evidence that after having failed to do so, the accused disassociated himself from the assembly, the mere participation of an accused in such an assembly would be inculpatory. G

¹⁵ Charan Singh v. State of U.P., (2004) 4 SCC 205

¹⁶ (2017) 5 SCC 568

- A 38. The harrowing torture of the three deceased which commenced at 9 pm on 26.03.1991 and continued till 9 am on the next day i.e., 27.03.1991 with the participation of the Appellants in the Panchayat, was proved by the testimony of the eye-witnesses. Specific overt acts have been ascribed to some of the appellants - Balli, Girraj, Chatar Singh, Preetam, Mangtu, Jeevan, Bachchu, Kamal, Ram Singh, Raman for dragging the deceased from their houses to the panchayat of Mangtu; appellants Karan Singh, Ram Singh for physically assaulting the deceased and their family members; appellants Bacchu, Kamal, Raman, Mangtu for forcing the parents of the deceased to hang them; appellants Nirto, Girraj, Preetam, Mangtu, Naval, Baato, Jeevan, Bachchu, Kamal, Ram Singh, Srichand for being involved in the hanging of the deceased; appellants Baato, Jeevan, for dragging the bodies of the deceased to the cremation ground and appellants Baato, Jeevan, Bachchu, Karan Singh, Sirro for lighting the fire to the bodies of the deceased at the cremation ground. Following the well settled principles laid down by this Court, we are satisfied that the Courts below committed no error in convicting the appellants under Section 302 with the aid of Section 149 IPC. Even in respect of those who are not assigned any active role or overt act, there is no doubt that they shared the common object to punish the deceased and kill them. Their presence in the Panchayat continuously for nearly 12 hours without any protest or any attempt made by them to stop the violence would lend support to the prosecution version that all the appellants shared the common object of murdering the deceased.

- B 39. Two young men and a woman were physically assaulted for nearly 12 hours and killed by the accused for violating caste-ridden societal norms. These episodes of caste-motivated violence in the country demonstrate the fact that casteism has not been annihilated even after 75 years of independence. According to Dr. B. R. Ambedkar, inter-caste marriage is one remedy to get rid of casteism in order to achieve equality. His vision for ensuring justice and equality to all sections of the society, especially to the repressed segments, is well enshrined in the preamble of the Constitution. The bigotry perpetuated by such caste-based practices which are prevalent even today, impedes this objective of the Constitution of equality for all its citizens. Proposal of marriage by Roshni who belongs to Jat community, with Vijendra who is a Jatav, has resulted in their deaths. Though the number is a tad less, honour killings have not stopped in this country and it is high time that the civil society reacts and responds with strong disapproval about the ghastly crimes

committed in the name of caste. This Court issued several directions to the administrative authorities and police officials to take strong measures to prevent honour killings. Honour killings pursuant to the decree of Khap Panchayats have been strongly criticized by this Court in *Arumugam Servai v. State of Tamil Nadu*¹⁷. Harsh punishment was recommended to those brutal and feudal minded persons who commit atrocities in the name of castes. The Law Commission of India in its 242nd Report suggested the legal framework on Prevention of Interference with the Freedom of Matrimonial Alliances in the name of Honour and Tradition. The Law Commission was of the opinion that there must be a threshold bar against congregation or assembly for the purpose of objecting to and condemning the conduct of young persons of marriageable age marrying according to their choice, the ground of objection being that they belong to the same gotra or to different castes or communities. The Panchayatdars or caste elders have no right to interfere with the life and liberty of such young couples whose marriages are permitted by law and they cannot create a situation whereby such couples are placed in a hostile environment in the village/locality concerned and exposed to the risk of safety. The Law Commission further recommended that the very assembly for an unlawful purpose viz. disapproving the marriage which is otherwise within the bounds of law and taking consequential action should be treated as an offence as it has the potential to endanger the lives and liberties of individuals concerned.

40. In *Shakti Vahini v. Union of India and Ors.*¹⁸, this Court directed the Union of India and the State Governments to take preventive steps to combat honour crimes, to submit a National Plan of Action and State Plan of Action to curb crimes of the said nature. The State Governments were directed to constitute special cells in each district which could be approached by the couples for their safety and well-being. This Court suggested preventive steps, remedial measures and punitive measures as follows: -

“55.1. Preventive steps”

55.1.1. The State Governments should forthwith identify districts, sub-divisions and/or villages where instances of honour killing or assembly of khap panchayats have been reported in the recent past, e.g., in the last five years.

¹⁷ (2011) 6 SCC 405

¹⁸ (2018) 7 SCC 192

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- A *55.1.2. The Secretary, Home Department of the States concerned shall issue directives/advisories to the Superintendent of Police of the districts concerned for ensuring that the officer in charge of the police stations of the identified areas are extra cautious if any instance of inter-caste or inter-religious marriage within their jurisdiction comes to their notice.*
- B *55.1.3. If information about any proposed gathering of a khap panchayat comes to the knowledge of any police officer or any officer of the District Administration, he shall forthwith inform his immediate superior officer and also simultaneously intimate the jurisdictional Deputy Superintendent of Police and Superintendent of Police.*
- C *55.2 Remedial measures*
- D *55.2.1. Despite the preventive measures taken by the State Police, if it comes to the notice of the local police that the khap panchayat has taken place and it has passed any diktat to take action against a couple/family of an inter-caste or inter-religious marriage (or any other marriage which does not meet their acceptance), the jurisdictional police official shall cause to immediately lodge an FIR under the appropriate provisions of the Penal Code including Sections 141, 143, 503 read with Section 506 IPC.*
- E *55.2.2. Upon registration of FIR, intimation shall be simultaneously given to the Superintendent of Police/Deputy Superintendent of Police who, in turn, shall ensure that effective investigation of the crime is done and taken to its logical end with promptitude.*
- F *55.2.3. Additionally, immediate steps should be taken to provide security to the couple/family and, if necessary, to remove them to a safe house within the same district or elsewhere keeping in mind their safety and threat perception. The State Government may consider of establishing a safe house at each District Headquarter for that purpose. Such safe houses can cater to accommodate:*
- H *(i) young bachelor-bachelorette couples whose relationship is being opposed by their families/local community/khaps, and*

(ii) young married couples (of an inter-caste or inter-religious or any other marriage being opposed by their families/local community/khaps). A

Such safe houses may be placed under the supervision of the jurisdictional District Magistrate and Superintendent of Police. B

55.2.4. The District Magistrate/Superintendent of Police must deal with the complaint regarding threat administered to such couple/family with utmost sensitivity. It should be first ascertained whether the bachelor-bachelorette are capable adults. Thereafter, if necessary, they may be provided logistical support for solemnising their marriage and/or for being duly registered under police protection, if they so desire. After the marriage, if the couple so desire, they can be provided accommodation on payment of nominal charges in the safe house initially for a period of one month to be extended on monthly basis but not exceeding one year in aggregate, depending on their threat assessment on case-to-case basis. C D

55.2.5. The initial inquiry regarding the complaint received from the couple (bachelor-bachelorette or a young married couple) or upon receiving information from an independent source that the relationship/marriage of such couple is opposed by their family members/local community/khaps shall be entrusted by the District Magistrate/Superintendent of Police to an officer of the rank of Additional Superintendent of Police. He shall conduct a preliminary inquiry and ascertain the authenticity, nature and gravity of threat perception. On being satisfied as to the authenticity of such threats, he shall immediately submit a report to the Superintendent of Police in not later than one week. E F

55.2.6. The District Superintendent of Police, upon receipt of such report, shall direct the Deputy Superintendent of Police in charge of the sub-division concerned to cause to register an FIR against the persons threatening the couple(s) and, if necessary, invoke Section 151 CrPC Additionally, the Deputy Superintendent of Police shall personally supervise the progress of investigation and ensure that the same is G H

- A *completed and taken to its logical end with promptitude. In the course of investigation, the persons concerned shall be booked without any exception including the members who have participated in the assembly. If the involvement of the members of khap panchayat comes to the fore, they shall also be charged for the offence of conspiracy or abetment, as the case may be.*
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55.3 Punitive measures

- C *55.3.1. Any failure by either the police or district officer/officials to comply with the aforesaid directions shall be considered as an act of deliberate negligence and/or misconduct for which departmental action must be taken under the service rules. The departmental action shall be initiated and taken to its logical end, preferably not exceeding six months, by the authority of the first instance.*
- D *55.3.2. In terms of the ruling of this Court in Arumugam Servai [Arumugam Servai v. State of T.N., (2011) 6 SCC 405 : (2011) 2 SCC (Cri) 993], the States are directed to take disciplinary action against the officials concerned if it is found that:*
- E *(i) such official(s) did not prevent the incident, despite having prior knowledge of it, or*
(ii) where the incident had already occurred, such official(s) did not promptly apprehend and institute criminal proceedings against the culprits.
- F *55.3.3. The State Governments shall create Special Cells in every district comprising of the Superintendent of Police, the District Social Welfare Officer and District Adi-Dravidar Welfare Officer to receive petitions/complaints of harassment of and threat to couples of inter-caste marriage.*
- G *55.3.4. These Special Cells shall create a 24-hour helpline to receive and register such complaints and to provide necessary assistance/advice and protection to the couple.*
- H *55.3.5. The criminal cases pertaining to honour killing or violence to the couple(s) shall be tried before the designated court/fast track court earmarked for that purpose. The trial*

must proceed on day-to-day basis to be concluded preferably within six months from the date of taking cognizance of the offence. We may hasten to add that this direction shall apply even to pending cases. The District Judge concerned shall assign those cases, as far as possible, to one jurisdictional court so as to ensure expeditious disposal thereof.”

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41. In order to implement the recommendations of the Law Commission in its 242nd Report, the State of Rajasthan has enacted the Rajasthan Prohibition of Interference with the Freedom of Matrimonial Alliances in the Name of Honour and Tradition Act, 2019 on the same lines. In the interest of liberty and dignity of young men and women in choosing their life partners and in the interest of peace, tranquillity and equality in the society, it is imminently necessary that the directions issued by this Court in *Shakti Vahini v. Union of India and Ors.* (supra) should also be carried out by the State Governments without any further delay.

42. In United Kingdom and Canada, racial and religiously motivated crimes are treated as aggravating factors for enhanced punishment. Section 145 of the Criminal Justice Act, 2003 (UK) provides that the Court must treat an offence which was racial or religiously incensed as an aggravating factor. In Canada, Courts are guided by the following principles while imposing the sentence: -

“Other sentencing principles

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religious, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor;

(ii).....(vi)

Shall be deemed to be aggravating circumstances;”

- A 43. Though racial/religiously motivated actions are not codified to be an aggravating circumstance for enhancement of penalties for a crime, the principle is well recognized by the Supreme Court of US as held in *Wisconsin v. Mitchell*¹⁹. In that case, Mitchell was convicted for aggravated battery by the Circuit Court of Kenosha County, Wisconsin and sentenced to imprisonment for a period of four years when the maximum sentence for the offense was two years. The enhanced sentence was based on the Hate Crimes Statues of Wisconsin which provided for a longer maximum sentence. The enhanced sentence was upheld by Wisconsin Court of Appeals which was reversed by the Wisconsin Supreme Court. The Supreme Court of US set aside the findings of the Wisconsin Supreme Court and held that Mitchell's First Amendment freedom of speech and association rights were not violated by the application of the penalty-enhancement sentencing provision. The Supreme Court referred to Blackstone who said, "it is but reasonable that among crimes of different natures those should be most severely punished, which are the most destructive of the public safety and happiness."
- B 44. In India, imposition of death sentence can be only after special reasons are recorded as per Section 354 (3) of the Code of Criminal Procedure, 1973. In *Bachan Singh v. State of Punjab*²⁰, this Court held that while ascertaining the existence or absence of the special reasons, the Court must pay due regard both to the crime and criminal. Relative weightage has to be given to the aggravating and mitigating factors depending upon the facts and circumstances of each case. Accepting the suggestions of Dr. Chitale, this Court held the following factors as indicators of aggravating circumstances: -
- C "202. Drawing upon the penal statutes of the States in U.S.A. framed after *Furman v. Georgia* [33 L Ed 2d 346 : 408 US 238 (1972)] , in general, and clauses 2 (a), (b), (c) and (d) of the Penal Code, 1860 (Amendment) Bill passed in 1978 by the Rajya Sabha, in particular, Dr. Chitale has suggested these "aggravating circumstances":
- D "Aggravating circumstances: A court may, however, in the following cases impose the penalty of death in its discretion:

H ¹⁹[508 US 476 (1993)]

H ²⁰(1980) 2 SCC 684

(a) if the murder has been committed after previous planning A
and involves extreme brutality; or

(b) if the murder involves exceptional depravity; or

(c) if the murder is of a member of any of the armed forces of
the Union or of a member of any police force or of any public
servant and was committed— B

(i) while such member or public servant was on duty; or

(ii) in consequence of anything done or attempted to be done
by such member or public servant in the lawful discharge of
his duty as such member or public servant whether at the time
of murder he was such member or public servant, as the case
may be, or had ceased to be such member or public servant;
or C

(d) if the murder is of a person who had acted in the lawful
discharge of his duty under Section 43 of the Code of Criminal
Procedure, 1973, or who had rendered assistance to a
Magistrate or a police officer demanding his aid or requiring
his assistance under Section 37 and Section 129 of the said
Code.” D

45. This Court made it clear that judicial discretion was not being E
fettered by making an attempt to have an exhaustive enumeration. In
*Machhi Singh v. State of Punjab*²¹ this Court summed up the factors
that may be taken into account by the Court for imposition of death
sentence: -

I. Manner of commission of murder F

33. When the murder is committed in an extremely brutal,
grotesque, diabolical, revolting or dastardly manner so as to
arouse intense and extreme indignation of the community. For
instance,

(i) when the house of the victim is set aflame with the end in G
view to roast him alive in the house.

(ii) when the victim is subjected to inhuman acts of torture or
cruelty in order to bring about his or her death.

²¹ (1983) 3 SCC 470

- A *(iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.*

II. Motive for commission of murder

- B *34. When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in C a position of trust, or (c) a murder is committed in the course for betrayal of the motherland.*

III. Anti-social or socially abhorrent nature of the crime

- D *35. (a) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.*

- E *(b) In cases of “bride burning” and what are known as “dowry deaths” or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.*

F *IV. Magnitude of crime*

- G *36. When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.*

H *V. Personality of victim of murder*

- I *37. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the*

victim is a person vis-a-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons. A

46. The ghastly murders of three youngsters which are honour killings squarely falls under the head of anti-social and abhorrent nature of the crime as mentioned in *Machhi Singh v. State of Punjab* (supra). B

47. Appellants Tej Singh s/o Karodi, Kamal s/o Kanyaiya, Sirro s/o Bhanji, Bachchu s/o Nawali, Ram Singh s/o Dayaram, Raman s/o Roopi and Karan s/o Dayaram were sentenced to death by the Trial Court for committing the gruesome murders of three youngsters in a barbaric manner. However, the High Court converted the death sentence of the above Appellants to that of life imprisonment till their last breath. The reasons given by the High Court for converting the death sentence of the above Appellants to life imprisonment are the advance age of some of the Appellants, the passage of long time after the commission of crime and mental sufferings that they have undergone. Keeping in view the facts and circumstances of this case, we uphold the judgment of the High Court insofar as the conversion of death sentence to life imprisonment in respect of accused Tej Singh s/o Karodi, Kamal s/o Kanyaiya, Sirro s/o Bhanji, Bachchu s/o Nawali, Ram Singh s/o Dayaram, Raman s/o Roopi and Karan s/o Dayaram. The Criminal Appeal Nos. 1553-1556 of 2018 filed by the State of Uttar Pradesh are, therefore, dismissed. C D E

48. Insofar as the Appellant Hari son of Govinda is concerned, his name was mentioned by PW-13 who deposed that he was present at the Panchayat. PW-1 and PW-15 referred to the name of Hari Ram, who also happens to be one of the accused with the name Hariram son of Yadram. The High Court followed the suggestion given by this Court in *Masaltı's* case and held that conviction with the aid of Section 149 IPC can be only in case where at least two witnesses speak about the involvement of person. Regarding the presence of Hari son of Govinda which was mentioned only by PW-13, we are of the considered view that he is entitled for acquittal. PW-13 also deposed that Lal Singh son of Khushi was also present at the Panchayat. PW-1 testified in the Court that one Lal arrived at her door with a lathi. PW-15 also mentioned the presence of Lala in the Panchayat. In addition to Lal Singh, one Lala F G H

A son of Ramji Lal was also one of the accused. As only one witness spoke about the presence of Lal Singh son of Khushi, he is also entitled for acquittal.

49. There are two persons with the same name. One is the Appellant before this Court who is Girraj son of Govinda and the other is Girraj son of Kamar who passed away during the pendency of the proceedings in this Court. The eye-witnesses mentioned the name of Girraj without giving the name of his father. In such circumstances, it is not clear whether Girraj son of Kamar or Girraj son of Govinda was involved. In such circumstances, Appellant Girraj son of Govinda is entitled for the benefit of doubt in view of the confusion in his identity and presence during the crime. For the aforesaid reasons, Hari son of Govinda (Appellant No. 1 in Crl. A. No. 186 of 2018), Lal Singh son of Khushi Singh (Appellant No. 2 in Crl. A. No. 186 of 2018) and Girraj son of Govinda (Appellant No. 5 in Crl. A. No. 189 of 2018) are acquitted.

50. For the aforementioned reasons, we uphold the judgment of the High Court and affirm the conviction and sentence imposed on the accused namely Dhanni s/o Ratan Singh, Nitro s/o Bhanwar Singh, Srichand s/o Deep Chand, Tej Singh s/o Karodi, Bachchu s/o Nabali, Kamal s/o Kanhaiya, Ram Singh s/o Dayaram, Raman s/o Roopi, Sirro s/o Bhajni, Mahender s/o Mangtu, Chattar Singh s/o Leelay, Pitam s/o Naval, Bato s/o Bhaggo, Jivan s/o Bhaggo, Karan Singh s/o Dayaram, Mangtu s/o Sunder Lal, Ganga Ram s/o Heeralal, Dharamvir s/o Kanhaiya, Balli s/o Kishan Lal, Dharam s/o Kallu, Manni s/o Natthi, Kashi s/o Bhanwar Singh and Dharam s/o Harchand. Accused namely Hari s/o Govinda, Lal Singh s/o Khushi Ram and Giriraj s/o Govinda are acquitted in view of the ambiguity in their identity.

F 51. In view of the above, the Criminal Appeals are disposed of.