State Of Uttar Pradesh vs Sahai And Ors. on 14 April, 1981

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Bench: A. Varadarajan, Baharul Islam, S. Murtaza Fazal Ali

JUDGMENT

S. Murtaza Fazal Ali, J.

1. This appeal by special leave is directed against a judgment dated November 4, 1974 of the Allahabad High Court by which respondents 1 to 4 were acquitted of the charges under Section 302/149 as also under Section 148 of the Indian Penal Code, of which they were convicted by the trial court of the Sessions Judge, Hardoi. The grotesque details of the various aspects of the prosecution case are to be found in the judgments of the trial court and the High Court and it is, therefore, not necessary for us to dwell or dilate on the comprehensive facts of the case and the circumstances which led to the conviction of the respondents by the Sessions Judge and their acquittal by the High Court.

2. In order however to appreciate the judgment of the High Court it may be necessary to give a bare and concise summary of the circumstances under which the occurrence had taken place. The occurrence as a result of which four persons died was undoubtedly a very unfortunate and ghastly one which arose out of a petty land dispute as a consequence of which the tempers of the parties ran so high that members of the prosecution party as also those constituting the party of the accused received injuries. Unfortunately, however, the prosecution party was the worst sufferer because on their side four persons died and one, namely, Sheo Narain (P.W. 2) was seriously injured.

3. It appears that there was some litigation between Brijraj Singh of the prosecution party and Shyam Behari of the accused party for the last eight or ten years before the occurrence. One of the deceased persons, Maheshwar, had lodged a report under Section 452 of the Indian Penal Code against Shyam Behari about six years before the occurrence. It was further alleged by the prosecution that P.W. 1, Chhotey Munna and Sarnara Singh (deceased) used to look after the field which belonged to their aunts, viz., Vidya Devi and Vimla Devi. The respondents alleged that a portion of the fields belonging to the ladies was encroached upon by Chhotey Munna and others who were looking after the land which was however denied by P.W. 1, Chhotey Munna, who pleaded with the accused to get proper measurements done and if any surplus area was found, to get the same back. It may also be mentioned here that the two fields belonging to the two widows

(mentioned above) were towards the north of the fields of the respondents. It was alleged that on December 4, 1972 at about 4.00 a. m. P.W. 1, Chhotey Munna and Sarnam Singh (deceased) learnt that Shyam Behari, Ambika and Prag were trying to extend their field towards the north by encroaching on the field of the aunts of P.W. 1 and were actually constructing a new mend to cordon off the encroached portion from the land belonging to the widows. Oh hearing this news, P.W. 1, Chhotey Munna, Sarnam Singh (deceased) and Chhutkau Singh (deceased) went to the field of their aunts empty handed. On the way to the field they were joined by Kamla and Maheshwar (both deceased) who were armed with lathis. All the five persons went to the field and found Shyam Behari standing there armed with a spear, supervising the construction of the new mend with spades by Ambika and Prag who had encroached on the field belonging to the widows. The lathis of the accused as also a rope were lying there. On finding a portion of the land in question being encroached upon by the party of the accused, Sarnam Singh (deceased) protested to Shyam Behari who was bent on continuing the act of encroachment. This led to an altercation between the accused and the party of the prosecution but in the meantime Sahai armed with a licensed gun of Ambika, and Barakkey alias Krishan Kumar, armed with a spear, arrived at the scene of the occurrence from the village, and an altercation followed between the two parties in the course of which, according to the prosecution, Shyam Behari gave a spear blow to Sarnam Singh who caught hold of the spear while Kamla and Maheshwar wielded lathis in their self-defence and also to protect Sarnam Singh. P.W. 2, Sheo Narain, who was working in an adjacent field requested Sahai alias Debi Sahai not to proceed to the spot and start a quarrel but Sahai paid no heed to his request and instead went to the spot with a gun. Sheo Narain followed Sahai and Barrakkey and when he entered the field of the widows, Sahai turned towards him and fired at him causing gunshot injuries to him (P.W. 2) as a result of which he fell down in the field but he soon got up and in order to protect himself moved forward but ultimately fell down in a sugarcane field. Sahai then proceeded ahead towards the four deceased persons and Chhotey Munna (P.W. 1). Shyam Behari, Ambika and Parag exhorted Sahai to kill the persons and not to spare any one of them. Chhotey Munna and the four deceased persons started moving towards south-east. At this juncture, Sahai started firing from his gun as a result of which Maheshwar received a gunshot injury and fell down in Maha-bir's field. Another shot was fired by Sahai which hit Kamla who fell down near the mend of Mahabir's field. Sahai then fired yet another shot at Chhotku Singh who fell down in the field of Puttu. Not content with killing as many as three' persons, Sahai fired for the last time and the shot hit Sarnam Singh who fell in the field of Hari Pasi. It was further alleged that Sahai fired two shots at Chhutkau Singh. On alarm being raised by P.W. 1, Chhotey Munna, several persons including P.Ws. 6 and 9 arrived at the spot and the accused left the place of the occurrence. Further details are not necessary for the purpose of deciding this case.

4. The first information report (FIR) was lodged by P.W. 1 at 10.15 a. m. on the next day, i. e., 5-12-72, at Qasimpur police station, District Hardoi. The Investigation Officer visited the spot and after completing the investigation submitted a charge-sheet against the four respondents and Shyam Behari as a result of which all the five accused persons were convicted by the Sessions Judge and sentenced, as indicated in his judgment. The accused persons pleaded innocence and averred that in fact the prosecution party had entered into their paddy field and tried to remove the paddy and when they protested they were mercilessly assaulted by the deceased persons as a result of which they were forced to fire at the deceased persons and assault P.W. 2 in the exercise of the right of

private defence of person and property. The story of encroachment as alleged by the prosecution was denied by the defence. On appeal, the High Court acquitted the respondents.

5. We have carefully perused the judgment of the High Court and it appears to us that the High Court has not disbelieved the substratum of the prosecution case but seems to have laboured under the impression that the occurrence did hot take place in the field of the widows, as alleged by the prosecution, but that the prosecution party entered into the field of the accused and an altercation ensued in the course of which the prosecution party tried to remove the paddy and some members of their party assaulted the respondents who, in turn, fired at the prosecution party in selfdefence. The High Court thus found that the respondents had acted in the exercise of the right of private defence and were, therefore, justified in killing the four persons. With due respect, in coming to this finding the High Court seems to have overlooked some important facts which speak volumes against the defence case set-up by the respondents.

6. The High Court did not doubt the state of affairs as found by the Investigation Officer at the spot which conclusively went to show that the prosecution case as alleged was true and there could be no question of the altercation having taken place in the field of the respondents-accused. The definite case made out by P.Ws. 1 and 2 who are the only eye-witnesses and who had been believed by the trial court was that the entire altercation had taken place in the field of the widows where P.W. 2, along with the four deceased persons, was assaulted by the respondents and that the occurrence took place because the accused had succeeded in trespassing and encroaching on the land of the widows and were trying to make a new mend which was resisted by the witnesses and the deceased.

7. Another important fact which may be noticed here is that according to the evidence the altercation was spread out over a particularly long area extending up to 50 to 60 steps covering the field of the widows and perhaps a part of the field of other persons also where the deceased fell down on being shot by the respondents. These facts would be extremely pertinent in order to judge the truth or falsehood of the defence put forward by the respondents.

8. Coming now to the origin of the occurrence, the High Court has not doubted the facts proved by the unimpeachable evidence led by the prosecution consisting of the Investigating Officer and other witnesses that at the place of occurrence, namely, the field of the widows, bullets, pellets, empty cartridges, blood stains on the earth and other articles were found. The High Court also seems to have overlooked the actual state of affairs found by the Investigating Officer at the spot, for instance, the trial court clearly found at page 102 of the Paper Book that the Investigating Officer found a rope and spades at the spot. This fully corroborates the version of P.W. 1 that the accused persons had brought the rope and spades for the purpose of making a new mend. The only ground on which the recovery of those articles by the Investigating Officer was challenged was that it was not mentioned in the F.I. R. The trial court rightly explained that these being matters of detail, need not have been mentioned in the F.I. R. and a mere omission to mention this fact would not put the prosecution case out of Court. At page 77 of the Paper Book, the trial court found blood stained earth in fields other than Shyam Behari's field as also a newly constructed mend, two spades and a rope. The findings of the Investigating Officer at the spot further corroborate ocular evidence in the case which shows that the accused were bent on and in fact had succeeded in making a new mend which was

found at the spot by the Investigating Officer.

9. Another important fact which went unnoticed by the High Court was that no thing appears to have happened in the field of the accused persons because, ac cording to the finding of the Sessions Judge, the Investigating Officer found the paddy crop systematically kept in the field of Shyam Behari and not litter ed. If such a serious altercation, as alleg ed by the defence, had taken place in the field of the accused then one should have expected to find the paddy crop littered all round and the field disturbed through out. In this connection, the trial court observed as follows:

> Investigation of the case led to many physical proofs before the court. They are spears, gun and belt of cartridges, recovered from the house of the accused, fired and misfired cartridges found at different places, dead bodies and blood stained earth found in fields other than Shyam Bihari's field, existence of a newly constructed mend two spades, a rope, observations of the Investigating Officer that the paddy crop was systematically kept in the field of Shyam Behari and was not littered which could show that it was being haphazardly lifted.

10. This part of the finding of the trial court was neither considered nor displaced by the High Court while easily accepting the case of the defence that they had acted in the exercise of the right of private defence. It is true that the trial court had not believed the evidence of P.W. 9 and had relied only on the evi dence of P.Ws. 1 and 2. The High Court, however, disbelieved P.Ws. 1 and 2 on the basis of disjointed statements made by them in the court, completely torn from the context. In disbelieving P.W. 1,the High Court was influenced by two facts. In the first place, the High Court found that as P.W. 1 had not received any injuries, the probabilities were that he was not present at the time of the occurrence. This reasoning of the High Court is based purely on speculation. A very serious altercation had taken place and the target of the accused were the deceased persons who had tried to resist the construction of the mend and the encroachment and two of them had even tried to wield lathis in self-defence. In these circumstances, therefore, if P.W. 1 was lucky enough to escape any injury he could not be disbelieved for that purpose. In fact, it seems to us that it was extremely uncharitable and unkind, illogical and indecorous on the part of the High Court in disbelieving P.W. 1 on the ground that he was not injured and thus the High Court seems to have found fault with his providential escape. We find ourselves unable to agree with' this somewhat peculiar line of reasoning adopted by the High Court. Moreover, the High Court completely overlooked the reasons given by P.W. 1 himself who had said that he escaped injuries as he was running ahead of all. At another place he had said that he kept running towards east-south and when he had covered sufficient distance he stopped there.

11. It is manifest that in such a gruesome occurrence as the present one, when P.W. 1 saw his own relations being killed one after the other he would naturally make every desperate effort to protect himself and that is why he was trying to run away from one part of the field to the other and that may be the reason why he was fortunate enough to have escaped. Another ground given by the High Court for rejecting the testimony of P.W. 1 was that this witness appears to have arrived at the scene after the occurrence was over and therefore could not be an eye-witness. In coming to this finding, the High Court relied on a part of the evidence given by P.Ws. 2 and 9. P.W. 2 in the course of his

evidence stated that after being injured when he was lying in the field for half-an-hour, P.W. 1 passed by his side and enquired from him as to where he was injured and whether his injuries were serious. From this, the High Court inferred that P.W. l must have reached the spot after the assault was over. In the first place, the High Court relied only on a part of the statement torn from the context. In the earlier part of his statement, the witness categorically stated that Sar-nam Singh, Chhutkau, Munna, Kamla and Maheshwar came from the village side and there was some exchange of hot words between Sarnam Singh and Shyam Behari which he could not hear because he was at some distance. The witness further stated in another part of his statement thus:

> Jahan mere phayar laga vahan Chhote Munna, Kamla, Maheshwar Aur Sarnam Mujh se 50-60 Kadam ke phasle par the. Ve Log mujh se Dakshin Pas-chim Kone per the Aur Vahan Par Lathi Chal Rahi Thi.
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> (Emphasis supplied)

12. This statement therefore shows that Chhotey Munna, P.W. 1 was undoubtedly present at the place where the assault took place but he was at a distance of 50-60 steps from the place where the witness (P.W. 2) was lying. It is obvious, therefore, that what he meant by saying that P.W. 1 came to him to enquire about the injuries he referred to the point of time after the incident was over when after crossing the distance of 50-60 steps or more P.W. 1 came to him and enquired details about the in juries received by him (P.W. 2). This is fully corroborated by the evidence of P.W. 1, Chhotey Munna, who stated thus:

> Mulziman Ke Chale Janeke Bad Leshoon Ke Pass Laut Aaya Aur Dekha Ki Shiv Narayan Chothil The Aur Baki Chaar Seray Fare The. Un Logon Ke Sabke Khoon Bah Rahe The Aur Kap-roon Par Bhi Khoon Laga Tha. Ghar Ki Aurten Bhi Aa Gayen Thin.

13. Reading, therefore, the evidence of P.Ws. 1 and 2 together the conclusion is inescapable that what had happened was that P.W. 1 was at a fair distance from the place where P.W. 2 was work ing in the field and while he may have seen from a distance P.W. 2 being assault ed, he could not have noticed the injuries in the melee that followed but as P.W. 1 was in the thick of the fight which resulted in the killing of the four persons (deceased) before his eyes he was competent to depose about the details of the assault and the manner in which the deceased persons were killed by the respondents. After the accused had left only then he could have gone to P.W. 2 to find out the details of his injuries as he had to go to the police station to lodge the FIR. It is not disputed that in the F.I. R. it was clearly mentioned that P.W. 1 had seen the occurrence and that P.W. 2 also received several injuries and was an eye-witness, The High Court, however, seems to have relied on the evidence of P.W. 9 and particularly that portion of his statement where he says that the witness had stayed at the place of occurrence till 11.00 a.m. and P.W. 1 had come along with the widows after the occurrence. Reliance was placed on the following statement made by this witness (P.W. 9) before the trial court:

> After that I stayed at the place of occurrence till 11 A.M. Ghatna Ke Baad Mritakon Ke Ghar Ki Aurten Ghatna-sthal Per Aaien. Chhote Munna Bhi Aurton Ke Sath Hi Sath

> Aaye The. Then Natha, Babu, Hori Lal, Ram Prasad came. Chhote Munna saw the dead bodies and went to the police station.
>
> Here also, the High Court relied on this statement torn from the context. In his earlier statement this witness clearly proved that at the time of the occurrence he saw the accused persons constructing a mend in the field of the aunts of P.W. 1, and along with other persons P.W. 1 came there. Relevant portion of the statement of P.W. 9 may be extracted thus:
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> I saw that the accused persons in the Court. Shyam Behari, Ambika, Prag were constructing a mend in the fields of aunts of Chhote Munna. Shyam Behari was standing and Prag and Ambika were constructing a mend with the help of a Phaura. Shyam Behari had a spear. Sar-nam Singh, Maheshwar, Kamla, Chhut-kau and Chhote Munna came there. (Emphasis supplied)

14. Thus, the evidence of this witness also shows that P.W. 1 was undoubtedly an eye-witness and that he had reached the field again after the occurrence with the ladies just before proceeding to the police station to lodge the F.I. R. Moreover, P.W. 9 was disbelieved by the trial court as he was declared hostile, and it was not open to the High Court to have distrusted the testimony of P.Ws. 1 and 2 merely on the basis of some stray statements made by P.W. 9 whose evidence also, if properly appreciated, did not dis-prove the presence of P.W. 1 at the spot where the occurrence took place.

15. Another important consideration which swayed with the High Court in rejecting the prosecution case and believing the defence case was that there were several injuries on the persons of the accused also which had not been properly explained by the prosecution which went to show that the prosecution had suppressed the origin or the genesis of the murderous assault. Here also, the High Court has gone wrong on facts. Before proceeding further we would like to extract the injuries received by the accused persons, viz. Parag, Debi Sahai, Shyam Behari and Ambika:

> PARAG:
>
> 1. Lacerated wound 6 cms. in length on right parietal bone area of skull, Wound is lacerated and margin are lacerated and contused. Wound base is irregular. Fresh bleeding present. Depth of wound is 5 cm. cutting all layers of scalp. Wound is situated 8 cms. above the superior margin of eye-ball.
>
> 2. Abrasion on back in an area of right shoulder joint 2 cms. away to auxiliary border. Abrasion is of 2 cms. x 1 cm. size colour of abrasion is red.
>
> 3. Abrasion of 3 cms. x 1.5 cms., size is sacral region. Abrasion of red colour and scab covered.
>
> 4. Abrasion with scab covering of an terror aspect and beneath right knee joint at fibial prominence. Abrasion is of 5 cms. x 2 cms. size, shape of abrasion is given in

diagram,

5. Person examined complained of pain in:

(a) both shoulder joints,

(b) both calf muscles,

(c) right ankle joint, and

(d) left thumb.

DEBI SAHAI:

1. Lacerated wound with lacerated and contused margins on right parietal bone 9.5 cms. away to eye ball upper margin wound is of 4 cms. in length and scalp deep. Fresh bleeding present.

2. Lacerated wound in palm of left hand starting from lateral/aspect and running towards medial aspect. Wound margins are lacerated and contused and base of wound is irregular. Wound is of 6 cms. x 1 cm. size. 5 cm. deep.

3. Pain in thumb of left hand with tenderness present, no external sign of any injury.

4. Persons examined complained of pain in left shoulder. No external injury.

SHYAM BEHARI:

1. Lacerated wound on anterior part of skull starting from medial line and running towards right side. It is of 5 cms. x 1 cm. size. Wound margins are irregular, contused base of wound is also irregular. Fresh bleeding present, wound is scalp deep,

2. Lacerated wound of 2 cms. x .5. cms. on dorsum of right hand at base of little finger. Wound is of 1 cm. depth.

3. Another small wound at the base of ring finger.

4. Abrasion of 1 cm. x 1 cm. size at base of middle finger of red colour.

5. Wound in middle of index finger of 1 cm. x 1 cm. size and superficial lacerated and contused.

6. Whole of right hand is swollen.

7. Abrasion on posterior aspect of right forearm of 2.5 cms. x 2.5 cms. x 1 cm. size of red colour 13 cms. away to wrist joint.

8. Person examined complained of pain in:

(a) right shoulder,

(b) back,

(c) left calf muscles.

AMBIKA:

1. Lacerated and contused wound on back of skull on right to medial line. Wound is running from up to down obliquely and is of 4 cms. x 1 cm. size. Margins are contused and lacerated and wound base is irregular. Fresh bleeding present.

2. Abrasion on back in area of vertebral column lumber region of 6 cms. x 2 cms. size, of red colour and scab covered.

3. Abrasion inferior to right knee joint on lateral aspect of 2 cms. x 1.5 cms size scab covered and of red colour.

4. Abrasion in group of two of 2.5 cms. x l cm. and of 4 cms. x 1 cm. size, situated at a distance of 1 cm. to each other and on posterior aspect of left elbow joint and laterally to joint. Abrasion is of red colour.

5. Person examined complained of pain in:

(a) left shoulder.

(b) right elbow joint.

(c) both thighs lower aspect (no external sign of injury).

In the opinion of the doctor, injuries of all the four appellants were simple, were caused by blunt weapon like lathi and at the time of medical examination their duration was less than half day. Dr. Sharma prepared injury reports Exts. Ka 35 to Ka 38.

16. It may also be conceded for the purpose of this case that these injuries were received by the accused persons during the course of the occurrence. To begin with, except a lacerated wound 6 cms. in length on the right parietal bone area of the skull received by Parag, the other injuries were extremely superficial being only abrasions. Similarly, so far as Debi Sahai is concerned he had only one lacerated wound on the right parietal bone and another on the left hand. Shyam Behari had two

lacerated wounds, others being abrasions and superficial injuries. Ambika had lacerated and contused wound on the back of his skull and all other injuries were superficial. The prosecution has given a very clear and cogent explanation for the injuries received by the accused persons mentioned above.

17. P.W. 1 has clearly stated in his evidence that the deceased Kamla and Maheshwar Singh in order to save them selves as also Sarnam Singh wielded lathis on accused Parag. Ambika and Shyam Behari which hit them. In this connection, the statement of P.W. 1 may be extracted thus:

> Sarnam Singh held the spear. Kamla and Maheshwar Singh in order to save himself, Maheshwar and Sarnam started lathis on accused Parag, Ambika and Shyam Behari which hit them.
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> Similarly, P.W. 2 had categorically stated that Kamla and Maheshwar were carrying lathis and at a subsequent part of his statement the witness deposed that at the place of occurrence lathis were being wielded between the accused and the deceased Kamla and Maheshwar. The witness further stated that Shyam Behari, Ambika and Parag were present when lathis were being exchanged. Even P.W. 9, who had been declared hostile by the trial court, had stated thus:
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> Kamla and Maheshwar had lathis, the remaining appeared to be empty hand ed Kamla and Maheshwar also wield ed lathis to save Sarnam, Sarnam got the spear of Shyam Behari.

18. Thus, all the three witnesses re ferred to by the High Court had made no secret of the fact that the two deceased persons had wielded lathis in self-defence. In these circumstances, therefore, it can not be said that this was a case where the prosecution did not at all give any reasonable explanation for the injuries on the person of the accused. Indeed if the prosecution case is to be believed, as it must be, in view of the evidence of P.Ws. 1 and 2 then the two deceased Kamla and Maheshwar were fully justified in assaulting the accused persons in order to protect their person and the most unfortunate part of the whole drama is that despite assaulting the accused, these two persons lost their lives. Such was the gruesome nature of the attack made by the respondents on the deceased persons and others.

19. The High Court has not cared to examine the details of the intrinsic merits of the evidence of P.Ws. 1 and 2 and has rejected their evidence on the general grounds as indicated above. On the other hand, the trial court had very closely considered the evidence of P.Ws. 1 and 2 and held that they were worthy of credence,

20. We have also gone through the entire evidence of these two witnesses which were placed before us and we find ourselves in complete agreement with the view taken by the trial court. In a judgment of reversal, the High Court ought not to have rejected the evidence of important eye-witness such as P.Ws.1 and 2 on general grounds or broad probabilities in such a serious case which resulted in four murders and serious injuries to one. P.W. 2 is not an interested witness but an independent witness

and he fully corroborates the evidence of P.W. 1. Even if P.W. 1 is an interested witness that by itself is no ground to distrust his evidence. Moreover, having regard to the circumstances in which the occurrence took place, both P.Ws. 1 and 2 are very natural witnesses whose presence on the scene of occurrence was extremely probable. Even assuming that P.Ws. l and 2 are interested witnesses, applying the rule of caution we are satisfied that their evidence is creditworthy. Shorn of a few discrepancies or contradictions which are not of a vital nature, their evidence is by and large consistent and congruent, straightforward and poignant. A careful perusal of their evidence reveals to us that their evidence has a ring of truth from start to finish. We, therefore, fully endorse the finding of the trial court that these witnesses are reliable and truthful.

21. Thus, on a consideration of the facts, circumstances and evidence in the case we are satisfied that the findings of the High Court are clearly wrong and manifestly perverse. The High Court has overlooked important facts which prove the prosecution case to the hilt. It has accepted the defence of the accused with out sufficient material and justified the act of the accused in killing as many as four persons on a supposed exercise of the right of private defence which in law was not available to them and has thus committed a serious error of law. We have already pointed out that not only the ocular but the circumstantial evi dence in the case, as found by the Investigating Officer and which has not been disbelieved by the High Court, clearly went to show that the respondents had encroached on the field of the widows which was looked after by the prosecution party and tried to create a new mend whose clear signs and symptoms were found by the Investigating Officer. Conversely, the claim of the accused that the occurrence took place in their field was completely falsified by the evidence of the Investigating Officer who did not find the paddy scattered or littered away in the field but systematically placed. The High Court had merely stated that as dhan was found in the field of the accused, the prosecution party may have attempted to take it away but this was also a pure conjecture which was not based on any evidence.

22. We are, therefore, satisfied from the evidence and circumstances in this case that the respondents had a clear common object to commit encroachment on the land and to cause death of any person who tried to resist their attempt to stop the encroachment and in prosecution of this common object they did, in,' fact, cause the death of four persons and serious injuries to P.W. 2, Sheo Narain. As the accused persons were armed with deadly weapons and actually used guns and spears, the charge under Section 302/149 of the Indian Penal Code has been clearly established against them. Shyam Behari, and Barrakey who were armed with deadly weapons committed the offence under Section 148 of the Indian Penal Code and as Parag and Ambika were armed with lathis they will also be liable for the offence under Section 147 of the Indian Penal Code.

23. Normally, this Court is extremely reluctant to interfere with an order of acquittal and that too when passed by the High Court. But this case appears to us to be rarest of the rare cases where the High Court has on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case and ignoring some of the most vital facts, has acquitted the respondents who had been proved to be guilty of committing as many as four murders. We are, therefore, clearly of the opinion that in view of the illegal, speculative and erroneous approach made by the High Court to the evidence and circumstances of this case, the order of acquittal passed by the High Court has resulted in a grave and substantial miscarriage of justice so as to invoke our

extraordinary jurisdiction under Article 136 of the Constitution of India. In these circumstances we are satisfied that there are substantial and compelling reasons for us to interfere with the order of acquittal of the respondents.

24. The next question that remains is as to the sentences to be imposed on the respondents. Although the Sessions Judge had given all the respondents, excepting Sahai, sentences of life imprisonment under Section 302 read with Section 149 of the Indian Penal Code, he had passed the sentence of death on Sahai because he alone had shot dead three of the deceased persons. The occurrence took place sometime in December, 1972 and more than 8 years have elapsed since. The accused had been convicted by the Sessions Court but acquitted by the High Court. The present appeal has been pending for five years. Having regard to the reasons given above, therefore, we feel that although the murders committed by Sahai were extremely gruesome, brutal and dastardly, yet the extreme penalty of death is not called for in the circumstances of this particular case.

25. For these reasons, therefore, we allow the appeal, set aside the judgment of the High Court acquitting the respondents and convict all the respondents under Section 302 read with Section 149 of the Indian Penal Code and sentence them to imprisonment for life. We also convict Barrakkey alias Krishan Kumar under Section 148 of the Indian Penal Code and sentence him to rigorous imprisonment for two years. We further convict Parag and Ambika under Section 147 of the Indian Penal Code and sentence them to rigorous imprisonment for one year each. Sentences are ordered to run concurrently. The bail of the respondents is hereby cancelled and the Sessions Judge shall issue warrants and take the respondents under custody and send them to jail to serve out the sentences imposed.