Bava Hajee Hamsa And Ors. vs State Of Kerala on 21 February, 1974

Equivalent citations: AIR1974SC902, 1974CRILJ755, (1974)4SCC479, AIR 1974 SUPREME COURT 902, 1974 4 SCC 479, 1974 SCC(CRI) 515, 1974 SCD 449

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Bench: M.H. Beg, R.S. Sarkaria, Y.V. Chandrachud

JUDGMENT

R.S. Sarkaria, J.

1. These Criminal appeals arise out of the same Judgment of the High Court of Kerala and will be disposed of by a single Judgment.

2. The four appellants, Hussanali Alikunju alias Ali, Hassanali, Adbu, Bava Hajee Mohamedali alias Mammu and Bava Hajee Hamsa (hereinafter referred to as A-1, A-2, A-3 and A-4 respectively) and 7 others were tried on various charges under Sections 143, 148, 302, 307, 326, 324 read with Section 140, Penal Code for causing the death of Kochunni and Kunjeen and injuries to others in an incident on March 14, 1969 in village Veliyathunad.

3. There are two factions of Muslims in village Veliyathunad, one of the descendants of Nadiattil and Allapat families and the other of the lower middle class. Appellants and other co-accused belong to the former faction, the prosecution witnesses and the deceased to the latter. These factions had their own kalaries (gymnasiums wherein youngsters were given training in physical culture). A-2 was the Ustad (Master) of the Kalari of the accused, while the kalari of the prosecution faction was run by the brother of P.W. 1 in the latter's compound. Rivalries existed between the two factions. On March 13, 1969, Abdu (P.W. 12) and Ali son of Kunjeen deceased, both belonging to P.W. 1's kalari, were resting in a tea shop after attending a marriage festival. Abdul Rahim (alias) Rahiman (P.W. 13) of the kalari of the accused invited them for a game of Adi Pidi (a sort of kabadi or playful fight). Finding Ali and Abdu unwilling to play, Rahman bullied, taunted and harassed them in various ways. When all these taunts had no effect, he brought a bamboo and poked them with it. Abdu and Ali remained intransigent. After a while, they went to their kalari and reported about this incident to their Ustad, (Kasu). The latter advised them that they should not meekly submit to such harassment, and that if they were attacked again by anybody, they should retaliate adequately. Reassured by the Ustad's advice, they returned from the kalari. Rahiman again armed with a stick and dagger confronted them. This time they commanded Rahiman in a confident tone to drop the

stick and the dagger.' Rahiman immediately obeyed. Abdu and Ali picked up the weapons and gave a beating to Rahiman. At the moment, Rahiman's brother, Seethi, came there and took away the former saying that the matter could be settled on the following day. Seethi then reported the matter to the faction of the accused. On the following morning, Abdu and Ali were, called to the house of A-2, where they were scolded, insulted and humiliated and then directed to meet A-5 (Hassanali Hamsa) presumably to receive further chastisement; but on the advice of Kunjeen deceased, they did not do so.

4. A-2 sent for P.W. 18, V.C. Ahmmeddunny, Ex-M. P. and consulted him with regard to the future course of action. P.W. 18 suggested that A-2 should seek Police aid. A-2 did not agree.

5. The following day, the 14th March 1969, was a Friday, on which all the Muslims of the village were to assemble, as usual, at the Jummaath Mosque for prayers.

6. A-5 sent for three daggers-through Adima (P.W. 15). Thereafter, A-1 to A-5 took positions at a distance of 50' to 60' from the main gate of the mosque on the road. This gate opens on the main road on the northern side of the mosque. Kochunni deceased was also among those who had on that fateful-day prayed at the mosque. After the prayers at about 1.45 p.m., when he came out of the main gate, A-1 charged at him and stabbed him twice on the back with a dagger. Kunju Mohd. (P.W. 1), the first cousin of the deceased, rushed to the aid of the victim when A-1 stabbed him on the back of the shoulder. Immediately thereafter, A-5 stabbed P.W. 1 causing an injury on his left palm. P.W. 1 receded to the place where Kochunni was sitting, after receiving the injuries. A-2 then, gave a dagger blow to Kochunni on the nose. Kochunni fell flat on the ground, P.W. 1 and others removed him into the adjacent verandah of the Gram Sevak's office. Kochunni succumbed to his injuries shortly thereafter. Almost at the same time when Kochunni was stabbed, Kunjeen was stabbed by A-3 and A-4. On receiving these stabs, be slumped to the ground. He was soon removed to the verandah of his house, nearby, by his son Abdurahiman (P.W. 8), daughter and others. It was found that life was extinct in him. The other accused pelted stones on persons coming out of the mosque. P.Ws. 1 and 8 were also hit by those stones.

7. A-2 immediately after the incident went to village Adeevathunathu, met ex-M.P. V.C. Ahmmeddunny, P.W. 18, and, in the latter's company, went to the Deputy Superintendent of Police, Always and gave some information about the incident. On being directed by the Deputy Superintendent of Police, Gopinath (P.W. 25), Sub-Inspector of Police Station Always proceeded to the spot at 2.50 p.m. He found the dead bodies of Kochunni and Kunjeen, and P.W. 1 in a serious condition near the scene of the incident. He sent P.W. 1 to the Government Hospital, Always, for medical examination and aid. After detailing some police-men to guard the dead bodies and the spot, the Sub-Inspector returned to the Police Station, and, on receiving a message from the Hospital, went there and recorded the statement Ex. P-1 (a) of the injured, P.W. 1, at 3-30 p.m. He then sent it to the Police Station where, on its basis, the case was registered at 3.55 p.m. Accompanied by the Deputy Superintendent of Police, the Sub-Inspector returned to the scene of occurrence at 4-30 p.m. and assisted the D.S.P. in the investigation of the case. The D.S.P. (P.W. 26) held the inquests and completed the inquest reports P-14 and P-15, by 10-30 p.m. He also took into possession the stones lying at the scene. On March 30, 1969, the investigation was taken over by

Deputy Superintendent of Police, Crime Branch, Ernakulam (P.W. 27) under the orders of Superintendent of Police. A-5 was arrested on March 15, 1969, and A-2 on March 25, 1969 from Ernakulam Hospital. The other accused were also arrested some days after the occurrence.

8. Eleven persons, namely A-1 to A-11, were committed for trial which was held by the Additional Sessions Judge, Parur. The plea of all the accused was one of denial of the prosecution case. A-1 said that for the past two years, he was laid up as a T. B. patient. A-2, stated:

> While I was remaining in the mosque after the prayers I heard shouting from the road on the front side. Immediately, I went there. I saw there a free fight and shouting. Somebody said that the police have to be informed. Immediately, I went to the D.S.P. along with the witness, V.C. Ahameddunni in his car. He said he would do what was needed, and phoned to the Police Station. I returned. I am the President of the Mosque. I am a heart-patient since October, 1968 Doctor had advised me not to move.
>
> A-3 said:
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> I had gone to the Mosque on Friday. When I came out of the Mosque I heard a clamour on the eastern side. Somebody said that pelting of stones" etc. were going on there. We went home by the south gate.
>
> A-4 also admitted that he had gone to the mosque on the day of occurrence and he saw commotion at the eastern gate. He saw a free fight and went home through the southern gate.

9. Eye-witness account of the incident was given by P.Ws. 1, 2, 8, 9, 10, 11 and 16.

10. The learned Trial Judge adopted a three-stage approach to the evidence involving three rounds of discussion. In the first round, his attempt, in his own words, was "to deal with the testimony of these witnesses and in that context observe the inherent qualities of that testimony". In, the second round he made "a comparative study of the oral evidence" to ascertain what circumstances could be taken as proved by the evidence tendered by the prosecution." In the final round he took up "the question of the various acts proved and the arguments addressed to him by the learned Counsel."

11. At the first stage, he found that there was "nothing inherently incredible" in the evidence of P.Ws. 1, 8 and 9. After covering the second stage, he summed up his assessment in these terms:

> So far as the incident witnesses are concerned, I have already dealt with their testimony separately and when I sum up that discussion it will show which of witnesses could be prima facie believed and who will have to be disbelieved. Dealing with P.Ws. 1 and 8, I have observed that both of them have given rather consistent versions P.W. 2 has shifted ground as often as possible and there are material contradictions in his evidence. From the evidence of P.W. 7 also it will be found that

he has suppressed material information from his medical attendant. Besides, he has contradicted himself in material respects. P.W. 9 is very much interested in the deceased and he has admitted though not in so many words that his 'Kalari' people had attacked Rahim on 13-6-69. Coming to P.W. 10 I have mentioned then and there itself that he is unreliable. Next comes P.W. 11. whose testimony as observed earlier, contains, contradictions galore. P.W. 12 is the individual who speaks about the entire drama from the beginning to the end. A reading of his deposition will show that he has returned his stand at every stage, has contradicted himself and has come out with a cock and bull story. P.W. 16 is an individual who has an important part in the local activities. His evidence reveals that he wriggles out of inconvenient situation by not giving a direct answer to straight questions. He has come out with a series of 'I do not know' and according to me he talks with his tongue in his cheek. What is left is P.Ws. 17 and 19. According to me, both happen to be chance witnesses and they have made inconvenient to be present at the place at the desired time so that they could speak about the incident. It will be proverbially rash to rely on the evidence of such individuals. I may have something more to say about the evidence of the witnesses so far dealt with when I come to the general discussion based on the proved facts and the probabilities. In the discussion I have not mentioned anything about the testimony of PWs. 13 to 15 and 18 for the simple reason that they have turned hostile in this Court. From what I have stated so far, the apparently credible testimony is that of P.Ws. 8 and 9 in So far as it is prima facie acceptable. If subject to further analysis it is found acceptable in substance then it will prove that the deceased were done to death by A-1 to A-4 in conjunction with A-5, A-6 and A-8 to A-11. This will also prove that A-1 and A-5 had inflicted stab wounds on P.W. 1 and that the other accused had aided and abetted the commission of these offences.

Thus the net conclusion reached after the second round of discussion, was that, "the evidence of P.Ws. 1, 8 and 9 was prima facie acceptable.

12. Entering on the third round, the learned Additional Sessions Judge said:

the next thing to be dealt with is about the incident proper. This drama consists of two acts - pelting of stones and stabbing. I will first deal with the pelting of stones.

He then said:

The prosecution witnesses are not agreed as to where the stones were pelted. Almost all the eye-witnesses in this case excepting P.Ws. 1, 2 and 12 say that they stood near the eastern gate of the mosque and watched the pelting of stones. If it be so, I for one cannot understand how no stone ever hit any individual who was standing at the gate. As against that if stones were pelted at the gate and not at the place where stabbing was going on one cannot understand how the tiles on the roof of the Gramsevak office and the adjacent buildings got broken.

13. After dilating on this stone-pelting affair, he concluded:

> I am not prepared to believe any one of the prosecution witnesses when he says that he saw any of the accused pelting stones.

14. He then jointly dealt with the evidence of P.Ws. 1, 8 and 9 and observed:

> It was argued before me that these three witnesses are pitched against the accused and they are partisan witnesses. It was also urged that the evidence of partisan witnesses can never be believed. I cannot subscribe to that broad proposition.

15. After referring to some rulings of this Court, he said that "if there is corroboration, evidence of these witnesses could be accepted".

Then, he took up P.Ws. 1, 8 and 9, individually.

16. Discussing the evidence of P.W. 1, he said:

> P.W. 1 is one of those who got injured by stabbing. In the statement before the Doctor he has not implicated A-2 to A-5 by name. He has not mentioned in Ex. P-1 about his injury to the little finger. The lacerated wound on his head cannot ordinarily be caused by a sharp-edged weapon like a dagger. This improbabilises his story of A-5 stabbing him on the head. More than all these things he has not tendered any explanation as to how his jubba happened to get torn in more places than one. Such tear is more in conformity with a free fight More than that when he says that it was the stone pelted by A-6 Salim that hit him, one is inclined to think that he wants to rope in people whom he possibly could not see doing overt acts....What are minor discrepancies become major discrepancies when the witness is a partisan....

17. Coming to the evidence of P.W. 8, he observed:

> Be that as it may, P.W. 8 stated that he saw his father running north wards....From, this it could be inferred that at least Kunjeen thought that he was being stabbed by Kocchunni and not by A-1 to A-5. P.W. 8 has stated to the Police that when he along with others laid the body of their lather in their verandah it was objected to by P.W. 1. Why he should do it unless it be that he had a part in injuring Kunjeen? I cannot understand. Both P.W. 1 and P.W. 8 pretended ignorance about it when examined in this Court. This indicates deliberation before stepping into the box.

18. Referring to P.W. 9, he said:

> ...for the first time it was he who stated that after stabbing, A-1 remarked that they have done away with two lives and that it will be sufficient.... This shows that attempt to develop the evidence was continued even after the trial of the case was started....

19. After noticing some discrepancies and circumstances appearing in their evidence, he summed up the assessment of their evidence, thus:

> P.Ws. 1, 8 and 9 it will be found... contradict each other in material respects. Judging by the standard laid down in judicial precedents it will not be safe to rely on the evidence of such partisan witnesses.

20. As regards P.W. 2, the trial Judge said:

> A scrutiny of the evidence of this witness will go to show that apart from asserting that he saw A-1 and A-2 stabbing Kochunny, he has not given any other consistent version. He was not very sure about the various answers given by him in examination-in-chief or in cross-examination.

21. He concluded:

> At best, the prosecution witnesses will lead to the conclusion that the accused might have committed the crime. Suspicion, however, strong, is no substitute for proof.

22. He noted that the witnesses examined at the inquest had given an account which was in conflict with the partisan eye-witnesses examined at the trial. Non-examination of those witnesses was a circumstance in favour of the accused. In the result, the trial Judge accorded the benefit of doubt to all the accused and acquitted them.

23. The State filed appeals against this acquittal. The High Court accepted the appeals, reversed the orders of the trial court and convicted A-1 under Section 302, P.C. for the murder of Kochunni, and A-3 and A-4 for the murder of Kunjeen and sentenced each of the three accused to imprisonment for life. A-2 was convicted under Section 324. Penal Code and sentenced to two years of rigorous imprisonment for causing the hurt to Kochunni. A-1 was further convicted under Section 324 for causing hurt to P.W. 1 and sentenced to one year's rigorous imprisonment. The sentences were directed to run concurrently.

24. Aggrieved by the judgment of the High Court, A-1, A-3 and A-4 have preferred these appeals as of right and A-2 by special leave.

25. Mr. Nuruddin Ahmed, Learned Counsel for the appellants contends that in reversing the well-considered judgment of acquittal recorded by the trial court, the learned Judges of the High Court have strayed from the guidelines laid down by this Court inasmuch as there were no substantial and compelling reasons for converting the acquittal into conviction. It is argued that the learned Judges were unnecessarily irked by the three-stage scheme of discussion adopted by the Additional Sessions Judge and that was why they concentrated their attention more on condemning the reasoning and conclusions of the trial judge, rather than in dispelling them. It is urged that due weight has not been given by the High Court to the weighty reasons given by the trial court. The points canvassed are:

(i) While the accused had 'no grudge against the deceased, the latter and P.Ws. 1, 2, 8 and 9 had a motive to avenge the chastisement of Ali and Abdu by A-2, on the preceding day;

(ii) P.Ws. 1, 2, 8 and 8 relied upon by the High Court, were not only partisan witnesses highly interested in the prosecution, but were also inimically disposed towards the appellants;

(iii) Their evidence was discrepant and contradictory on material points and had not been corroborated from any independent source.

(iv) The F.I.R. had not been promptly recorded at 3-30 p.m., but after investigation on the following morning. This is indicated by the fast that copy of the F.I.R. reached the Magistrate at 11-20 A.M. next day. The belated F.I.R. thus had no corroborative value;

(v) Independent witnesses who were examined during the inquest, were intentionally not examined at the trial:

(vi) P.Ws. 1, 8 and 9 could not have an unobstructed view of the stabbing of Kochunni and Kunjeen because in between these P.Ws. and the deceased persons was a crowd which had gathered round the assailants and the victims;

(vii) An attempt has been made by these interested P.Ws. to falsely implicate innocent persons and to suppress the origin of the fight;

(viii) A-2 had gone away before the fatal assault to inform the police and he has been falsely implicated because he was the President of the Mosque and a prominent person of the kalari of the accused;

(ix) The prosecution story that A-2 had sent for daggers through P.W. 15 had been shown to be false;

(x) There was melee and confusion. So much, so that Kunjeen was giving out the name of his assailant as Kochunni. P.W. 1 had objected to the body of Kunjeen being placed in his verandah which shows that he had a hand in the stabbing.

(xi) Even the High Court found that the evidence of these P.Ws. was not reliable qua A-5. and for that reason acquitted A-5. It was wrong to convict the appellants on the basis of the same infirm evidence.

26. The ambit of the High Court's powers in an appeal against an order of acquittal, has been the subject of several decisions of this Court. Recently in Bhim Singh v. State of Maharashtra a Bench of this Court, to which one of us (Beg J.) was a party, summed up the law on the point thus:

> The age-old controversy with regard to the width and scope of the powers of the appellate Court in an appeal against an order of acquittal must be taken as settled by the decision of this Court in Sanwant Singh v. State of Rajasthan . It was held therein that the appellate Court has full powers to review the evidence upon which the order of acquittal is founded and that the different phrases; used in some of the judgments of this Court like "substantial and compelling reasons", "good and sufficiently cogent' reasons", "strong reasons", were not intended to curtail the undoubted power of the appellate Court to review the entire evidence and to come to its own conclusion in an appeal against acquittal. It was. however, emphasised that in exercising this power the appellate Court, while dealing with an order of acquittal, should not only consider every matter on record having a bearing on the question of fact and the reasons given by the Court below in support of its order of acquittal, but it must express its reasons in its judgment which led it to hold that the acquittal is not justified. Following this decision this Court in Ramabhupala Reddy v. State of Andhra Pradesh held that to the tests laid down in Sanwant's case may be added another that the appellate Court must bear in mind the fact that the trial Court had the benefit of seeing the witnesses in the witness-box and the presumption of innocence is not weakened by the order of acquittal. Therefore "if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate Court should not disturb the findings of the trial Court.

27. In applying the above tests, therefore, two questions fall to be determined: (1) Has the High Court in addition to considering every matter on record having a bearing on the questions of fact, and dispelling the reasons given by the Court below, expressed its reasons in holding that the acquittal! was not justified? (2) Could two alternative conclusions be reached on the; basis of the evidence on record? If so was the one arrived at by the trial Court, reasonably possible?

28. The judgment of the High Court, in the instant case, satisfies both these tests. The High Court has duly considered all the material facts on record. It found that, the "scheme of approach" adopted by the Sessions Judge. "no doubt sounds novel, but we are unable to see any sense or logic in it" and the inferences drawn from generalisations, his own notions and personal knowledge of men and things "have precluded him from believing the wit messes, whose evidence is otherwise natural and quite acceptable." In the circumstances," added the High Court, "we are compelled to leave aside the judgment as unhelpful, and even misleading, and proceed in our own way to analyse the evidence.

29. We agree with the High Court that the very "scheme of approach" adopted by the trial judge was faulty and misleading. It led to aberration and misdirection in appraising evidence, and vitiated his conclusions. The learned trial Judge started correctly when on a broad look of the evidence, he found the evidence of P.Ws. 1, 8 and 9 prima facie acceptable. But after the second lap of discussion, he became sceptical; and reversed his mind at the end of the third round of circumgyratory discussion. In such cases where a large number of persons are involved and in the commotion some persons cause injuries to others and the evidence is of a partisan character, it is often safer for the Judge of fact to be guided by the compass of probabilities along the rock-ribbed contours of the case converging on the heart of the matter. Once the Court goes astray from the basic features of the case,

it is apt to lose itself in the labyrinths of immaterial details desultory discussion and vacillation arising from unfounded suspicions. This is exactly what has happened in the instant case. Despite the pains taken and the conscientious effort put in to write an elaborate judgment, the trial Judge had, as it were, missed the wood for the trees. The learned Judges of the High Court were, therefore, right in discarding altogether the basically wrong "scheme of approach" adopted by the trial Court, and in analysing the evidence in their own way.

30. The High Court dealt with all the reasons given by the trial Court in finally rejecting the evidence of P.Ws. 1, 2, 8 and 9 and found that those reasons were not tenable. It further gave reasons of its own as to why the evidence of those witnesses could be safely acted upon to convict the appellants. We do not propose to overburden this judgment by extracting in extenso the observations of the High Court relating to discussion of this evidence. We will give only a 'bare outline, in our own words, of the reasons why the evidence of P.Ws. 1, 2, 8 and 9 could be relied upon for convicting the appellants.

31. The occurrence took place in broad day-light at about 1.45 p.m. just after the prayers in front of the Mosque. The assailants and P.Ws. were fully known to each other. There could be no question of mistake in identification of the assailants. The deceased and the assailants had along with many others said their Friday prayers in the Mosque (It is to be noted that this fact about the presence at the mosque was admitted by A-2, A-3 and A-4 in their examination under Section 342, Cr.P.C). The incident happened when all these persons had just come out of the Mosque. The stabbing was preceded and accompanied by stone throwing. (A-2, A-3 and A-4 admitted that as they came out they saw and heard stone-throwing, shouting, clamour and "commotion"). The ocular account of P.Ws. 1, 8 and 9, which, even according to the trial Court was prima facie acceptable, had been fully corroborated on material points by the other independent evidence, direct and circumstantial. The case was registered in the Police Station at 3.55 p.m. on the basis of the first information statement of P.W. 1 recorded by the Sub-Inspector at 3.30 p.m. in the Hospital. The F.I.R. was thus made with due promptitude in less than two hours after the occurrence. It furnished valuable corroboration of the testimony of P.W. 1 given in court. P.Ws. 1, 2 and 8 had impriots of injuries which according to them had been received by them at the time of occurrence. Their evidence with regard to the nature of the inflicting weapons and the manner of inflicting the injuries on the deceased and these witnesses was confirmed by the medical evidence given by Dr. Titus Veliyath P.W. 5 and P.Ws. 3, 4 and 6. P.W. 1 was no doubt a cousin of Kochunni, deceased. But a relation would ordinarily be the last person to substitute the real culprit by another. P.W. 2 was almost an independent witness. He was a remote relation. He had no animus whatever against the accused. He deposed to the stabbing of Kochunni by A-1 and A-2. He did not see the stabbing of Kunjeen, because immediately before that, he was boxed on the left temple by one Moideenkutty and had consequently run away. Regarding this injury on his jaw, Dr. Veliyath P.W. 5 opined that it could have been caused by fisting on the jaw.

32. P.W. 8 was son of Kunjeen deceased. He testified that his father was stabbed in the chest by A-3 and A-4, and Kochunni by A-2. Witness rushed to the help of his father, when he was hit by a stone. Medical evidence confirmed that this injury could be caused by stone-pelting. Trial Court rejected his evidence on the transparently untenable ground that his father immediately before being

stabbed was shouting "Kochunni don't stab me". No capital could be made out of this fact which might have been either wrongly recorded or the result of some slip of tongue on the part of the witness. Wit ness was clear and definite that his father was stabbed by A-3 and A-4.

33. Another reason given by the Judge for doubting the veracity of P.Ws. 1 and 8 was that before the police, P.W. 8 had said that when Kunjeen was laid in the verandah of P.W. 1, the latter objected. This version was put to P.Ws. 1 and 8. They denied it. In any case, even if there was any such objection from P.W. 1, that could hardly be a ground to sup pose that P.W. 1 was concerned in the stabbing of Kunjeen.

34. P.W. 9 vouched that he saw A-1 and A-2 stabbing Kochunni and A-3 and A-4 stabbing Kunjeen. The trial Court discarded his testimony simply on the ground that for the first time at the trial, this witness stated that after the stabbing, A-1 had remarked that they had put an end to two lives, and that was enough. By no stretch of imagination this could justify the rejection of his entire testimony.

35, Further, assurance of the evidence of P.Ws. 1, 2, 8 and 9 was furnished by the circumstance that shortly before this incident, Rahiman P.W. 13, a member of the Kalari of the appellants, on one side and Kunjeen deceased, his son Ali and Abdu P.W. 12 on the other were engaged in a quarrel, in the course of which, Ali and Abdu fisted Rahiman and punched him with a stick and intimidated him with a dagger. Kunjeen rebuked Rahiman in castigating terms and the latter frightened the deceased with a dagger. This quarrel then developed into the fight in the course of which the deceased persons were stabbed. It may be noted that these facts about the immediate cause of the assault on the deceased were wrenched out from the unwilling lips of Rahiman P.W. 13, who was a partyman of the appellants and had turned hostile to the prosecution.

36. The discrepancies in the evidence of P.Ws. 1, 2, 8 and 9 were of trivial nature relating to minor matters of detail. Their evidence, as rightly held by the High Court, with regard to the part played by each of accused 1 to 4 in the occurrence was "clear and specific and absolutely free from any confusion". We need not recount the other reasons given by the trial Judge for ultimate rejection of the evidence of these P.Ws. as a bare reading of the same (which have been copiously quoted in the foregoing part of this Judgment) would reveal their manifestly untenable character.

37. Nor could the evidence of these witnesses be thrown out on the general ground that the prosecution had given up some of the witnesses of the incident, who were originally cited in the calendar. This occurrence was witnessed by a large number of per sons. The prosecution had examined many of those persons. Those eye-wit nesses who had received injuries or were otherwise necessary for unfolding the narrative were examined. The wit nesses who have not been examined were given up by the Public Prosecutor, with the allegation that they had been won over by the side of the accused. In the circumstances of this case, this allegation of the Public Prosecutor could not be said to be frivolous. It is undisputed that A-2 went in a car with the Ex M.P. (P.W. 18) and contacted D.S.P. Always (about two miles from the spot) at about 2.40 p.m., and the D.S.P. at 2.50 p.m. directed the Sub-Inspector of Police on phone to go to the spot. Though A-2's contention was that he had run away to inform the police immediately after the commencement of the stone-throwing and before the stabbing, yet all circumstances including the interval of one hour and 15 minutes, suggest

that he went away after the stabbing presumably to side-track the police or to give a shape to the case which would be favourable to the accused persons. In any case, an attempt to influence the police and the course of investigation, was apparent from this conduct of A-2.

38. In this perspective, it cannot be said that the witnesses in question were withheld by the prosecution with any oblique motive. We need say no more on this point. We will close the discussion by extracting here what this Court, speaking through Gajendragadkar C.J. in Masalti v. State of U.P. said while repelling a similar argument of the defence:

> ...It is not unknown that where serious offences like the present are committed and a large number of accused persons are tried, attempts are made either to terrorise or win over prosecution witnesses, and if the pro sector honestly and bona fide believes that some of his witnesses have been won over, it would be unreasonable to insist that he must tender such wit nesses before the Court It is undoub tedly the duty of the prosecution to lay before the Court all material evidence available to it which is necessary for unfolding its case; but it would be un sound to lay down as a general rule that every witness must be examined even though his evidence may not be very material or even if it is known that he has been won over or terrorized.

39. The above observations are a complete answer to this contention of Mr. Nuruddin.

40. Moreover, if there was an alternative version which could explain the murderous attack in broad day-light, before so many persons, it is unthinkable that the accused would not have produced any witness to support it.

41. The only contention of the learned Counsel for the appellants that remains to be considered is that if the evidence of P.Ws. 1, 2, 8 and 9 was not reliable enough for convicting A-5 - whose case according to the Counsel was almost identical with that of the appellants - it could not be deemed safe and sufficient for convicting the appellants.

42. We do not find any merit in this contention, either. Times out of number, this Court has pointed out that the maxim falsus in uno falsus in omnibus should not be mechanically applied in this country. The mere fact that the evidence of these witnesses was unsafe for convicting A-5 was no ground for rejecting the whole body of their testimony. The High Court acquitted A-5, only as a matter of abundant caution. It did not find that the evidence of these witnesses regarding the implication of A-5, was necessarily false.

43. For all the reasons aforesaid, we would negative the contentions canvassed on behalf of the appellants, maintain the convictions and the sentences of the appellants and dismiss their appeals.