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STATE OF U.P.

v.

PARAS NATH SINGH & ORS.

January 15, 1973

[A. ALAGIRISWAMI, I. D. DUA AND C. A. VAIDIALINGAM, JJ.]

B *Criminal law—Practice and procedure—Eye witnesses relatives of deceased—No intrinsic infirmity in their evidence—If corroboration necessary for sustaining conviction—Sentence of life imprisonment instead of death—Circumstances justifying.*

The six respondents (accused) were convicted by the trial Court for offences under s. 302/149, I.P.C. Four of them were sentenced C to death and two to imprisonment for life on the grounds that one was a 'budding lawyer' and the other was 15 years old. The son and daughter of the deceased were examined as eye witnesses to the occurrence. Four persons, who were cited as eye-witnesses by the prosecution, were given up, because, the counsel for prosecution represented that he had reason to believe that they would not speak the truth. They were neither examined by the trial court under s. 540, Cr.P.C., nor as defence witnesses. The trial court scrutinised carefully and D properly evaluated the evidence of the son and daughter, and as the son was 12 or 13 years old, applied the correct principles governing the appreciation of the evidence of a child witness and accepted their evidence as true. The High Court on appeal, examined the 4 witnesses given up by the prosecution, as court witnesses. It devoted a major part of its judgment to the consideration of the additional evidence recorded by it. Feeling wholly unimpressed by that evidence, the High Court endorsed the view of the prosecution that these witnesses were E given up as they were not prepared to speak the truth and even issued notice under s. 479A, Cr. P. C. to one of them to show cause why he should not be prosecuted for perjury. The High Court disagreed with the main arguments urged on behalf of the accused for discrediting the testimony of the son and daughter. But, the High Court acquitted the accused on the view that the son and daughter, being closely related to the deceased and being in a sense, chance witnesses, their evidence F without corroboration did not prove the guilt of the accused beyond reasonable doubt.

Allowing the appeal to this Court,

HELD : (1) The judgment of the High Court reversing the judgment of the trial court and acquitting the accused caused grave miscarriage of justice. [325B-C]

G Once the two eye witnesses were held to be trustworthy witnesses there was no cogent reason for not acting upon their evidence. The fact that the other persons who were present at the spot and had witnessed the occurrence have, without any good reason and, perhaps with oblique motive, chosen not to state the truth in court and thereby obstructed the course of justice, is a sound reason for accepting the testimony of the son and daughter. To decline to act upon their testi- H mony merely because of the absence of other witnesses to corroborate them in court, is to defeat the cause of justice in this case. It was wholly unreasonable for the High Court to dub them as chance witnesses, as there is no material on record to support such an observation, and the observation runs counter to the High Court's own line of

reasoning earlier. There is thus absolutely no justification for the view that their testimony leaves any scope for reasonable doubt about the guilt of the accused. It could not be considered that because of their relationship to the deceased, they would spare the real assailants and falsely implicate the accused, and in the circumstances of the case, there is no scope for such a hypothesis. There is no general rule that the evidence of the relations of the deceased must be corroborated for securing the conviction of the offender. Each case is to be considered on its own facts. [325F-326C]

In the present case, there is an instrinsic ring of truth in the evidence of the two eye witnesses. The straight forward nature of their deposition and the fact that they were undoubtedly in a position to identify the assailants coupled with the recovery of blood-stained earth from the place of occurrence leave no reasonable doubt about the guilt of the accused. [326C-D]

(2) No leniency should have been shown to the 'budding lawyer', because, he, as a result of his education and profession should have exercised a restraining influence on his associates rather than allowed himself to be misled by them into being a party to a gruesome murder. However, in view of the facts that: (a) the murder was committed as far back as 1968; (b) on conviction by the trial court in September 1969, the accused were under the shadow of death; (c) the accused were acquitted by the High Court in May 1970; and (d) it is not possible to assign with certainty the fatal blows to any particular accused person, the ends of justice would be served by sentencing all the accused to imprisonment for life. [326G-H; 327A-C]

ORIGINAL APPELLATE JURISDICTION : Criminal Appeal No. 49 of 1971.

Appeal by special leave from the judgment and order May 18, 1970 of the Allahabad High Court at Allahabad in Criminal Appeal No. 1947 of 1969.

O. P. Rana for the appellant.

Nuruddin Ahmad and *U. P. Singh* for the respondents.

The Judgment of the Court was delivered by

DUA, J.—The State of U. P., the appellant in this appeal by special leave, assails the judgment of the Allahabad High Court dated May 18, 1970 acquitting on appeal the six respondents in this Court who were convicted by the Court of the first Temporary Civil & Sessions Judge, Pratapgarh on September 1, 1969, of various offences under the Indian Penal Code. The accused Paras Nath Singh, Ramendra Pratap Singh, Hari Saran Singh and Lal Pratap Singh were sentenced to death under s. 302 read with s. 149, I.P.C. The accused Surendra Pratap Singh and Shiva Pratap Singh were also convicted under the said sections but sentenced to life imprisonment. Leniency was shown to them by the trial court because Surendra Pratap Singh was stated to be a budding lawyer and Shiv Pratap Singh, being of tender age (15 or 16 years old),

A was considered to have apparently been misled by his relations. Excepting Surendra Pratap Singh and Hari Saran Singh, the remaining accused were also sentenced to rigorous imprisonment for one year each under s. 147, I.P.C. They were further convicted under s. 148, I.P.C. and sentenced to rigorous imprisonment for two years each. Accused Paras Nath Singh was in addition, sen-
B tenced to rigorous imprisonment for six months under s. 397, I.P.C.

The relevant facts necessary for our purpose may now be stated. The six respondents (hereinafter called the accused) were charged with the murder of Suresh Singh on July 9, 1968 and with
C the theft of his gun and cartridges along with the container. The deceased and the accused are all Thakurs by caste residing in village Isanpur. Accused Surendra Pratap Singh and Ramendra Pratap Singh are brothers residing in a house adjoining that of the deceased, being thus his next door neighbours. Shiva Pratap Singh and Lal Pratap Singh are cousins and the other accused persons
D are said to be their associates. There was long standing enmity between the deceased on the one hand and Ramendra Pratap Singh and his family members on the other. About six or seven months prior to the present occurrence, Ramendra Pratap is said to have tried to fire at the deceased on Dewali day and a case under s. 307, I.P.C. arising out of the said incident was pending at the time of the murder of the deceased. About five
E or six days prior to the murder Ramendra Pratap Singh, Surendra Pratap Singh and one Vijai Bahadur Singh are stated to have beaten the deceased inside his house giving rise to another case under s. 107/117, Cr. P. C. which was also pending at the time of the murder in question. This enmity is stated to be the motive for the murder of the deceased. Now turning to the occurrence
F in question on July 9, 1968, Suresh Singh deceased had gone to Pratapgarh on cycle for some work carrying with him his gun and cartridges. On his way back from Pratapgarh the same evening at about sunset when he reached Rakhaha Bazar and was on the Rakhaha Bazar-Kandhai *kachha* road, all the accused persons emerged from the nearby *Nala.* They surrounded their victim
G Suresh Singh, shouting that he should be killed because he posed to be a great leader. The accused who were armed with *lathis,* spears and *farsha,* assaulted the deceased with their respective weapons. Smt. Sheela Devi, P.W. 1, daughter of the deceased and Sachendra Pratap Singh, (P.W. 2) son of the deceased also happened to be returning to their village from Rakhaha Bazar where they had gone to purchase *parwal* (a vegetable) for their mother
H who was not well. On hearing the alarm they went towards the *nala* where they saw the accused assaulting their father with *lathis,* spears and *farsha.* Several other persons, including Shiva Pratap

Singh, Mahabir Singh, Ranmast Singh and Jagdish Bahadur Singh were also attracted by the alarm to the place of occurrence. The deceased fell down on receipt of injuries and the accused ran away carrying with them the gun and container of cartridges along with its contents belonging to the deceased. The cycle and a *jhola* belonging to the deceased and lying on the spot was sent home by Sheela Devi (P.W. 1) through one Mahabir. Sheela Devi also sent for her mother (Smt. Sundari Devi) through the same man. The mother arrived soon thereafter and Suresh Singh was taken on an *ekka* to Diwan Mau from where he was taken in a taxi to the District Hospital, Pratapgarh. Suresh Singh appears to have expired on his way to the hospital near village Pipari. The doctor on examining Suresh Singh informed Sheela Devi that her father had already died and advised her to lodge a report at the Police Station, Kotwali. She wrote out a report of the occurrence (Ex. Ka-1) at the hospital and along with the dead body, went to Kotwali police station where she handed over the written report the same night at about 11.30 p.m. on the basis of which Ka-18, the formal F.I.R. was prepared. A case under ss. 302/147/148/149, I.P.C. was thereupon registered and all the relevant papers sent to the police station Kandhai. As a result of the investigation, it was considered necessary also to frame a charge against the accused persons under s. 379 read with s. 149, I.P.C. for the theft of the gun and the cartridges along with their containers belonging to the deceased. The foregoing is the prosecution version.

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At the trial the only eye-witnesses deposing to the actual occurrence were Smt. Sheela Devi, (P.W. 1) the daughter and Sachendra Pratap Singh (P.W. 2), the son of the deceased. P.W. 1 was about 19 years old when she gave evidence at the trial in July, 1969 and P.W. 2 about 13 or 14 years old. The other persons mentioned in the F.I.R. by P.W. 1 were not produced as witnesses on the ground that they were not prepared to depose in favour of the prosecution at the trial. P.W. 1 and P.W. 2 have unfolded the prosecution case deposing to the incident as witnessed by them. According to P.W. 1, she and her younger brother who had gone to Rakhaha Bazar in the afternoon for buying *Parwal*, while returning to their home, heard the alarm as they reached the *kachcha* road. They went towards the side from which the noise came and saw that their father was being beaten by Lalji, Chotey Lal, Sadhy and Nankoo with *lathis*, Hari Saran Singh with *ballam* and Munna who is also called Sheo Pratap Singh, with *farsha*. They took her father down into the *Nala* shouting, "kill the *sala*, he was playing the part of *Netagiri* very much". After the accused had run away, P.W. 1 went near her father who, though badly injured, was still in a position to speak. He told her and the other persons who had assembled there that the accused persons had been hiding

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A inside the *Nala* and that they had forcibly taken him away from the road into the *Nala* and beaten him. She sent her father's cycle and *jhola* home through Mahabir Singh also requesting him to send her mother to the place of occurrence. Her mother came there and after arranging for an *ekka,* Suresh Singh was taken to Diwan Mau from where Suresh Singh was taken to the hospital
B in a taxi. On the way Suresh Singh expired near Pipari. After the doctor had certified death of Suresh Singh, P.W. 1 was advised by the doctor to make a report in the Sadar Police Station. She wrote out a report in the hospital and along with the dead body of the deceased, she went to the police station and lodged the report in the Kotwali. Paras Nath, accused, according to P.W. 1, had
C taken away with him the gun and the cartridge belt belonging to the deceased. She had herself to go to the Kotwali to lodge the report because there was no other adult male member left in their house. According to her, Sarvashri Ram Pratap Singh, Krishnapal Singh, Ramesh Prasad Singh and Ruddar Pratap Singh, Vakils, live in the neighbourhood of her village. These persons being
D under the influence of the lawyers, she could not say if they would be willing to give evidence in support of the prosecution. She was cross-examined at great length by four different lawyers defending the accused persons. Sachendra Pratap Singh, (P.W. 2), a boy who did not appear to the court to be more than 12 or 13 years of age, was first questioned by the trial court by asking him un-
E expected but intelligent questions to which he gave rational and sensible answers which impressed the court and the court came to the conclusion that the boy understood the importance of justice and of taking oath and was fully conscious of the desirability of speaking the truth when on oath. P.W. 2 fully corroborated P.W. 1 on all material points. He too was cross-examined at great length by all the defence counsel.

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It appears that after the examination of P.W. 1 and 2 the prosecuting counsel applied to the trial court stating that Mahabir Singh, Shiva Pratap Singh, Ranmast Singh and Jagdish Bahadur Singh were present in court but as the prosecuting counsel had reason to believe that they would not speak the truth, they were
G not being produced as witnesses by the prosecution. It was suggested that they could be examined by the court under s. 540, Cr. P.C. if considered proper or the accused persons could examine them in their defence, if they so liked. On this application the counsel for the accused persons recorded a note opposing the suggestion and describing the allegation against the witnesses as
H baseless. Section 540, Cr. P.C., according to the defence counsel was inapplicable and he also declined to examine these witnesses in defence. The said witnesses were in these circumstances discharged by the trial court on July 9, 1969.

The trial court in a very detailed and exhaustive judgment dealing with every aspect in a very lucid manner, came to the conclusion that P.W. 1 and P.W. 2 were both truthful witnesses and their sincerity and honesty in speaking the truth could not be doubted. After stating the principle governing the evidentiary value of the testimony of a child witness, the trial court made the following observations about the quality and value of the evidence of P.W. 2 :

> "He has been cross-examined at a very great length and that too by four sets of defence lawyers repute. It is amazing to find that despite their lengthy and cumbersome cross-examination the witness has not been impaired. Had he not been an eye-witness of the occurrence and had he been examined after tutoring he could not have remained firm even for a single moment. The said witness was tried to be beguiled, tempted and also brow-beaten but to my utter surprise he maintained his mental composure throughout and did not yield anywhere during the cross-examination. Even on the most minute details the witness did not confuse and gave convincing replies to them. From the beginning to the end of the incident he has successfully acquitted himself and not a single thing could be pointed out in his statement which could be used as a weapon against him. The manner and the method which the P.Ws. have exhibited in the witness box have left an everlasting impression in my mind about their sincerity and truthfulness. As a Judge of fact I am definitely of the opinion that unless truthful and honest the P.Ws. 1 and 2 would have collapsed under the weight of this trying and tiring cross-examination".

The testimony of P.W. 2 according to the trial court was fully supported and corroborated by his sister, P.W. 1, who has unfolded the prosecution version about the occurrence in question. The trial court also upheld the jurisdiction for not producing the other witnesses in court. This is what the trial court has said in this connection :—

> "The nature and number of injuries found on the person of the deceased and that too in a broad day light goes to show that the deceased was beaten mercilessly. The site of the scene of the occurrence and the injured must have been awe striking and appalling. To all those who might have seen the occurrence it must have left an indelible impression that the accused meant business and there was nothing which could deter them from accomplishing their target. This psychoanalysis of the

A situation too has to be kept in mind before giving a finding about the respective versions of the parties. Several documents have been filed in the case by the prosecution to show that cases under sections 307, 323/452, I.P.C. and under sections 107/117, Cr. P.C. were pending at the time of occurrence between the deceased B on the one hand and the accused Ramendra and his family on the other. In these circumstances there was nothing surprising if even on-lookers did not dare to come forward. Further I am constrained to observe that had the accused been on bail even the offsprings of the deceased *i.e.*, P.Ws 1 and 2 could not have come in the C witness box to depose about facts relating to the murder ot their father and in that case the fact of even the death of the deceased would have been enveloped in darkness.

Whatever reason may be there to it there is no denying the fact that witnesses in the case have kept back and have avoided coming forward. In this connection D I may recall the statements of P.Ws 1, 2 and 4. Out of so many public witnesses named in the charge-sheet only P.Ws 1 and 2 could figure as eye-witnesses of the occurrence. Had they not been the family members of the deceased even they would not have come. P.W. Inder Singh has stated that the witnesses have been pres-E surised not to come. I am very much impressed by the statements of P.Ws 1, 2 and 4 on this score. Thus in the case of the present nature no one could like to invite trouble for him by coming in the witness box. There is not the least doubt that either because of fear or because of other influences witnesses have not liked to F involve themselves in the matter. Thus considering the evidence and the circumstances of the case I feel that the explanation offered by the prosecution regarding the absence of other P.Ws in the witness box has got to be accepted. Exhibits Ka-14 and Ka-16 also lend assurance to this finding".

G Exhibit Ka-14, it may be pointed out, is the F.I.R. dated November 1, 1967 made by Suresh Singh (deceased) against Ramendra Pratap Singh and others lodged at 10.30 p.m. with respect to the attempted assault on him and firing of shots the same day at about 6 p.m. Exhibit Ka-16 is an application by Suresh Singh, deceased, dated November 6, 1967 made to the H Superintendent of Police, Pratapgarh, in which, after referring to the incident of November 1, 1967 when Ramendra Pratap Singh was alleged to have fired from the upper portion of his house about 8 or 10 shots at Suresh Singh from a double barrelled gun

of his grandfather, Raghav Pratap Singh, it was complained that there was a constant danger to Suresh Singh and the members of his family at the hands of Ramendra Pratap Singh, Krishna Pratap Singh and others mentioned therein. At this stage we consider it proper to reproduce the nature and number of injuries inflicted on the deceased because according to the trial court all those persons who might have witnessed this occurrence must have been impressed by the fact that the accused meant business and nothing could deter them from accomplishing their objective. The following ante-mortem injuries were found on the person of the deceased :—

1. Lacerated wound 2″ x ½″ bone deep on the fore-head 1½″ above the right eye-brow.
2. Lacerated wound 1″ x ¼″ x scalp, deep just behind injury no. 1.
3. Abrasion ½″ x ½″ on the forehead 2″ above the left eye-brow.
4. Incised wound 2½″ x ½″ bone deep 1″ behind the left ear directed downwards and outwards.
5. Incised wound 3″ x ½″ muscle deep on the left side of the face directed downwards and outwards.
6. Incised wound 1″ x ½″ muscle deep just below the left eye directed downwards and outwards.
7. Punctured wound ½″ x ½″ x 1½″ over the bridge of the nose directed upwards and inwards.
8. Incised wound 1½″ x ½″ x muscle deep on the lower part of the face below the chin.
9. Contusion 1″ x 1″ on the top of the right shoulder.
10. Contusion 3″ x 1½″ on the medical surface of the right arm upper 1/3.
11. Contusion 3″ x 2″ on the back of the right arm lower 1/3.
12. Contusion 3″ x 1″ on the back of the right forearm middle 1/3.
13. Contusion 1″ x 1″ on the back of the right wrist.
14. Contusion 3″ x 2″ on the back of the right hand.
15. Lacerated wound 1″ x ½″ skin deep on the web between the right thumb and index finger.
16. Contusion 3″ x 2″ on the front of the chest near the root of the neck.

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17. Contusion 2″ x ¼″ on the front of the right thigh middle 1/3.

18. Contusion 2½″ x ¼″ on the front of the right thigh ½″ below injury no. 17.

19. Contusion 3″ x ¼″ on the right thigh just below injury
B no. 18.

20. Contusion 3″ x ¼″ on the right thigh ½″ below injury no. 19.

21. Contusion 3″ x ¼″ on the front of the right thigh just above the knee joint.

C 22. Contusion 2″ x 1″ on the top of the left shoulder.

23. Contusion 2″ x ¼″ on the lateral surface of the left arm upper 1/3.

24. Contusion 3″ x 1″ on the back of the left forearm upper 1/3.

D 25. Contusion 3″ x 1½″ on the right forearm lower 1/3.

26. Contusion 1½″ x ¾″ on the back of the left wrist.

27. Contusion 1″ x ¾″ on the back of the left hand.

28. Contusion 3″ x 1″ on the front of the left thigh middle 1/3.

E 29. Contusion 3½″ x 1″ on the front of the left thigh lower 1/3.

30. Abrasion 1″ x ½″ on the front of the left knee.

31. Multiple abrasion in an area of 2″ x 1½″ on the front
F of the left leg upper 1/3.

32. Abrasion 1″ x ¼″ on the front of the left leg upper 1/3 x 1″ below injury no. 31.

33. Abrasion 1″ x ½″ on the front of the left leg lower 1/3.

34. Contusion 6″ x 1″ on the right side of the back upper 1/3.

G 35. Contusion 1″ x ½″ on the right side of the back middle 1/3.

36. Punctured wound ½″ x ¼″ on the left side of the back middle 1/3 close to the mid line of the back directed downwards and outwards.

37. Punctured wound ¼″ x ¼″ on the left side of the back
H lower 1/3 directed downwards and outwards.

Relying on the evidence of P.Ws 1, 2 and 4, the trial court convicted the accused persons, as already noticed.

An appeal was preferred to the High Court by the six accused persons against their conviction and sentence and in the memorandum of appeal the only grounds taken were : (1) that the conviction was bad in law; (2) that the conviction was against the weight of evidence; and (3) that the sentence was too severe. Death sentence on four of them was also before that court for confirmation.

The High Court after noticing the circumstances in which the four witnesses mentioned earlier had been discharged by the trial court, considered it necessary to examine them itself as court witnesses. They were examined in the High Court in May, 1970. All of them denied having been present at the place of the occurrence. When cross-examined, they seem to us to have cut a very sorry figure and we consider it impossible to place any reliance on their testimony. Indeed, even the High Court, after a close scrutiny of their evidence, came to the conclusion that the four witnesses did not want to speak the truth and that they had not been withheld by the prosecution for any oblique motive as suggested on behalf of the accused persons.

The High Court accepted the evidence of P.Ws 1 and 2 with respect to the place where Suresh Singh had been murdered but according to it (to quote its own words) : "The question that remains to be decided is whether the testimony of P.W. 1 Smt. Sheela Devi and P.W. 2, Sachendra Pratap Singh, who are the daughter and son of Suresh Singh, can be believed". After holding the four witnesses examined by the High Court on appeal to be untruthful, the High Court proceeded to scrutinise the evidence of P.Ws 1 and 2. After a thorough and detailed consideration of the criticism levelled against their testimony by the counsel for the accused persons, the High Court observed :

> "We have therefore come to the conclusion that there is nothing inherently improbable in the statements of P.W. 1 Smt. Shila Devi, and P.W. 2, Sachendra Pratap Singh. We cannot, however, ignore the fact that they are after all the daughter and the son respectively of the deceased Suresh Singh and are in a sense chance witnesses. It is true that under the law there is nothing which prevents us from acting upon the testimony of these two eye-witneses and unholding the conviction of the appellants, but rules of prudence and safety have to be taken into consideration. Therefore, having given the matter our anxious thought even though we hold that we find nothing improbable in the statements of these two eye-witnesses, we think it proper not to act on the uncorroborated testimony of these witnesses. We, there-

A fore, by the way of abundant caution give the appellants the benefit of the doubt".

With these concluding observations the High Court allowed the appeal of the accused persons and set aside their conviction. The High Court, however, also considered it proper to issue notice under s. 497A, Cr. P.C. to Sheo Pratap Singh son of Birju Singh B who had been examined by the High Court on May 11, 1970, calling upon him to show cause why he should not be prosecuted for perjury for having falsely stated that he did not live in village Isanpur and that he did not know the accused persons.

On appeal in this Court Mr. Rana appearing on behalf of the C State of Uttar Pradesh has submitted that the High Court has gone seriously wrong in acquitting the accused persons merely on the ground of absence of corroboration of the evidence of P.Ws 1 and 2 when it had itself held that there was nothing improbable in the statements of these witnesses. The High Court has, according to the appellant's submission, seriously erred in ignoring its own earlier conclusion that the other witnesses dropped by the D prosecution who were expected to corroborate P.Ws 1 and 2, were not prepared to speak the truth. This was a sufficiently cogent reason for not producing them and for placing complete reliance on the sole testimony of P.Ws 1 and 2. The observation of the High Court that P.Ws 1 and 2 were "in a sense chance witnesses". was wholly unjustified and is indeed contrary to the High Court's E own earlier view accepting the testimony of P.Ws 1 and 2. On the circumstances of this case, according to the appellant's counsel the evidence of P.Ws 1 and 2 had been rightly accepted by the trial court and the high Court erroneously required further corroboration for acting upon their evidence. The decision of the High Court, it has been emphasised, erroneous as it is, has resulted in F gross failure of justice.

In reply, Mr. Nuruddin Ahmad has with his usual persuasive eloquence criticised the evidence of the two eye-witnesses, P.Ws 1 and 2. While paying to these witnesses a high tribute for their intelligence, and presence of mind and also while endorsing the impression of the trial court that even on the matter of minute G details P.W. 2 did not get confused by his cross-examination but gave convincing replies to the questions, the learned counsel has argued that the high order of intelligence of these two witnesses only serves to explain their cleverness in putting forth a *prima facie* plausible story which is far from true. According to the learned counsel these two witnesses have maue up a story about H the manner in which their father met with his death with the sole object of falsely implicating the accused persons who are their enemies. The submission proceeds that neither was the deceased killed at the time stated by these witnesses nor were they present

at the spot to witness their father's murder. The deceased, it is suggested, had also several other enemies and his murder was in all probability committed by some other person or persons who had their own scores to settle with him. The children of the deceased who are extremely intelligent, have very shrewdly thought of utilising this opportunity for getting their enemies hanged. In this connection, the absence of any mention about the presence of *parwal* at the place of occurrence or with P.Ws 1 and/or P.W. 2, in the F.I.R. or in the statements of either of the two eye-witnesses has been very strongly emphasised by the counsel in support of his suggestion that the whole story about the visit of these two children of the deceased to Rakhaha Bazar on the evening of the day of occurrence for buying *parwal* is false and so must, therefore, be the story of their presence at the time and the place of the murder. The counsel has also laid stress on the fact that there was no point in their going so far away from their village to buy *parwal* when the same could easily have been secured from closer quarters. It has also been suggested that a young girl was normally not expected to be sent for purchasing *parwal* late in the evening. A passing observation was also made to the fact that *parwal* were not a medicine which could urgently be required and that the story of the witnesses' visit to Rakhaha Bazar for this purpose should be discarded as concocted and unconvincing. The other criticism very strongly pressed relates to the F.I.R. This report which is detailed has been drafted in a form which, according to the counsel, suggests that its author has at least some knowledge of legal phraseology and of some sections of the Indian Penal Code as also of the Criminal Procedure Code. From this it is sought to be inferred that P.W. 1 who claims to be its author, must have secured the assistance of someone conversant with the drafting of such report and she must, therefore, be assumed to have both time and opportunity of concocting a story for falsely implicating the accused persons who were the enemies of the family. A suggestion was put to P.W. 2, the son of the deceased, and to Head Constable Tripathi, P.W. 10, that the report had been lodged by P.W. 1 after consulting Bhagwati Prasad but this suggestion was denied by them. Still another point has been forcefully urged by the counsel that according to P.Ws 1 and 2 a large number of people had gone for shopping to the Rakhaha Bazar on that day and, therefore, many people would have noticed the occurrence, if it had actually taken place as deposed by P.Ws 1 and 2. The fact that no other independent witness is forthcoming is, according to the counsel, proof positive that the occurrence did not take place at the time and the spot and in the manner deposed by these witnesses.

Almost all these arguments were urged in the trial court and repelled for cogent reasons with which we are in full agreement

A and it is, therefore, not necessary to repeat them. It is note-worthy that the High Court also did not take a different view on the credibility of P.Ws 1 and 2. The absence of other witnesses from the witness box is satisfactorily explained by the prosecution and after recording the evidence of these witnesses as court witnesses, the High Court also endorsed the opinion of the prosecuting B counsel that these other witnesses were not willing to speak the truth.

In our view, the High Court has gravely erred in acquitting the accused persons and indeed its judgment has resulted in grave failure of justice. The trial court had taken great pains in fully C scrutinising and properly evaluating the evidence of P.Ws 1 and 2 and after applying the correct principles governing the appreciation of the evidence of a child witness it has accepted the evidence of these two witnesses as true. All the arguments urged on behalf of the accused were duly considered and repelled. The High Court on appeal devoted a major part of its judgment to the considera- D tion of the additional evidence recorded by it. Feeling wholly unimpressed by this evidence, it endorsed the view of the prosecuting agency that these witnesses were not produced in court because they were not prepared to speak the truth and indeed felt constrained to issue notice under section 479A, Cr. P. C. to one of them to show cause as to why he should not be prosecuted for E perjury. It disagreed with all the main arguments urged on behalf of the accused persons for discrediting the testimony of P.Ws 1 and 2, but curiously enough, acquitted the accused persons on the view—which we must confess is not easy to appreciate—that P.Ws 1 and 2 being closely related to the deceased and being in a sense chance witnesses, their evidence without corroboration did not prove the guilt of the accused beyond reasonable doubt. We F are not able to endorse this view which seems to us to be both unreasonable and not supportable on the material on record. Once P.Ws 1 and 2 are held to be trustworthy witnesses then there does not seem to be any cogent reason for not acting upon their evidence. The fact that the other persons who were present at the spot and had witnessed the occurrence have, without any good G reason and, perhaps with oblique motive, chosen not to state the truth in court and thereby to obstruct the course of justice would, in our opinion, provide a sound reason for accepting the testimony of P.Ws 1 and 2 for sustaining the conviction of the accused persons. To decline to act upon the testimony of these witnesses merely because of the absence of other witnesses to corroborate H them in court, is to defeat the cause of justice in this case. It is wholly unreasonable for the High Court to dub P.Ws 1 and 2 as chance witnesses : we find no cogent material on the record to support this observation. Indeed this observation ignores and to

an extent runs counter to the High Court's own earlier line of reasoning. There is, we think, absolutely no justification for the view that their testimony leaves any scope for reasonable doubt about the complicity of the accused persons. Because of their relationship with the deceased they cannot be considered to be inclined to spare the real assailants for falsely involving the accused persons and indeed in the circumstances of this case there is hardly any scope for such a hypothesis. To us there appears an intrinsic ring of truth in the statements of the two eye-witnesses which disclose no infirmity. There is no general rule that the evidence of the relations of the deceased must be corroborated for securing the conviction of the offender. Each case depends on its own facts and circumstances. In the present case the straightforward nature of the deposition of these two witnesses and the fact that they were undoubtedly in a position to identify the assailants of their father coupled with the recovery of blood-stained earth from the place of occurrence leave no reasonable doubt about the guilt of the accused persons. The High Court has clearly taken an unreasonable and erroneous view which is not warranted by the material on the record and has reversed the judgment of the trial court on grounds which are manifestly fallacious and untenable. Relying on P.Ws 1 and 2 and the attending circumstances of the case we are constrained to allow the appeal and setting aside the judgment of the High Court, convict the six respondents in this Court for the offences they were charged with and convicted by the trial court.

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The next question which arises relates to that of sentence. This is a matter which requires the exercise of sound judicial discretion. After the amendment of sec. 367, Cr. P.C. in 1955, it is no longer necessary to assign reasons for awarding the lesser penalty in the case of conviction for the offence of murder. The Court is now free in its discretion to award any one of the two sentences prescribed by s. 302, I.P.C. The trial court had of course imposed capital sentence on four accused persons and life imprisonment on two. Of these two, one was shown leniency because he was a budding lawyer and the other because of being young. We consider it proper to record our inability to appreciate the leniency shown in the case of a budding lawyer who, because of his education and profession was, in our opinion, expected to exercise restraining influence on his associates rather than allow himself to be misled into being a party to such gruesome murder. Those who live by the law are expected to abide by the law and not violate it by voluntarily participating in violent crimes like murder motivated by personal animosity. His participation in the present crime should, in our opinion, have been considered as an aggravating rather than an extenuating circumstance. It is indeed incon-

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A gruous to contend that success in legal profession by itself mitigates the culpability of the guilty lawyer. However, since now this Court has to determine the proper sentence to be imposed after converting the acquittal into conviction, in our opinion, in view of the facts that (i) the murder was committed as far back as 1968; (ii) on conviction by the trial court on September 1, 1969, B the accused were sentenced to death with the result that till their acquittal by the High Court the shadow of death because of the capital sentence must have haunted them; (iii) they were acquitted (though wrongly) by the High Court as far back as May, 1970; and (iv) it is not possible to assign with certainty the fatal blows on the vulnerable parts of the body of the deceased to any parti- C cular accused person or persons, it would meet the ends of justice if we sentence them all to imprisonment for life. We are not unmindful of the facts that the murder was really gruesome and cowardly and the accused being highly influential persons, had also apparently successfully influenced and dissuaded a number of eye-witnesses from stating the truth in court, but keeping in view all the considerations already mentioned, we feel that the more appro- D priate sentence in this case would be that of life imprisonment on all the six respondents. The conviction and sentence for the theft of the gun as imposed by the trial court is also restored. The sentences on Paras Nath Singh are to be concurrent. The appeal is accordingly allowed in the terms just stated.

V.P.S. *Appeal allowed.*