

**Siddique and ors. Vs. State of U.P.**

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**Court :** Allahabad

**Decided On :** Dec-23-1997

**Reported in :** 1998CriLJ3829

**Judge :** S.K. Phaujdar and ;N.S. Gupta, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 149, 302, 307, 323 and 324; Code of Criminal Procedure (CrPC) , 1974 - Sections 313 and 464

**Appeal No. :** Criminal Appeal No. 1504 of 1980

**Appellant :** Siddique and ors.

**Respondent :** State of U.P.

**Advocate for Def. :** Tapan Ghosh, AGA

**Advocate for Pet/Ap. :** Virendra Saran and ;G.S. Hajela, Advs.

**Disposition :** Appeal dismissed

**Judgement :**

**N.S. Gupta, J.**

1. Accused appellants named above were convicted by Sri Onkar-eshwar Bhatt, the then VII Additional Sessions Judge, Farrukhabad vide his judgment and Order dated 12-6-1980 in S.T. No. 366 of 79 under Section 302/149, I.P.C. They were

sentenced to undergo life imprisonment and a fine of Rupees 1000/-each. The accused appellants Siddique, Chootey and Qamruddin were further convicted under Section 147, I.P.C. and Section 323/149, I.P.C. They were sentenced to undergo R.I. for one year under Sections 147, I.P.C. and six months' R. I. under Section 323/149, I.P.C. Further the accused appellants Majeed, Sattar and Ali Mohammad were convicted under Section 148, I.P.C. and Sections 324/149, I.P.C. and sentenced to undergo R.I. for two years under Section 148, I.P.C. and one year R.I. under Section 324/149, I.P.C. each. All the sentences were made to run concurrently. Aggrieved by the said judgment and Order of conviction and sentence, they have come up in appeal before this Court.

2. The prosecution story, briefly stated, is as follows :

The complainant Dulha Miyan P.W. 1, his brother Sayeed deceased, father injured Wahid Bux P.W. 4, were all residents of village Sheikhpur Rustampur P.S. Kamalganj, District Farrukhabad. The accused appellants Siddique, Majeed, Sattar and ali Mohammad, all sons of Lalla, were real brothers. Accused appellants Qamruddin and Chhotey were their close associates. They were also residents of village Sheikhpur Rustampur. The deceased, his family members and accused appellants used to purchase mango crops. They were also dealing in cattle business. They were having business rivalry on the point of purchase of mango crop etc. The prosecution claimed that in the year in question which was 1979, the deceased and his family members had taken mango crops of as many as 13-14 groves near about their village. In that year, the deceased Sayeed offered higher amount in the purchase of the said crop. He rather prevented the accused appellants from purchasing the mango crops. The accused appellants, therefore, bore enmity with the deceased and his family members on this score there was also business rivalry in between the parties regarding the trade of hide and skins of cattle.

3. The occurrence of this case took place at about 1 a.m. on 25-6-1979 in the grove of one Rameshwar Dayal situate in village Barua Bagat P.S. Kamalganj, district Farrukhabad. At that time, the deceased, his father Waheed Bux, injured (P.W. 4) servant Lala Ram (P.W. 2) and Shri Krishna were sleeping in the grove of

Rameshwar Dayal. The complainant Dulhey Miyan (P.W. 1), who was the brother of the deceased, was sleeping in the nearby grove of Brij Bahadur, which lay at a distance of about 300 yards from the grove of Rameshwar Dayal. They were sleeping there for looking after the mango crop, which was ripe at that time. Towards the east of the grove of Rameshwar Dayal, there was a drain of tube-well. Towards west, there were other groves belonging to Jeera Lai, Rain Charan and Hashmat Ali. The grove of Brij Bahadur lay towards north. Towards south, there was a grove of one Suresh Verma. The prosecution maintained that on the fateful night of the occurrence, all the six accused appellants formed an unlawful assembly with the common object of committing murder of Sayeed and further for causing hurt to his family members. The accused appellant Siddique was armed with lathi, Majeed with a knife, Sattar with a Kanta, Qamruddin with a lathi, Ali Mohd with Kanta and Chhotey with Lathi. They went into the grove of Rameshwar Dayal and assaulted the deceased Sayeed, his father Wahid Bux (P.W. 4) Servant Lala Ram (P.W. 2) by means of their respective weapons and caused injuries to them. Hearing the noise of his brother, Dulhey Miyan P.W. 1 rushed to the place of occurrence flashing his torch light. Waheed Bux P.W. 4 and Lala Ram P.W. 2 were also having their torches, which they had flashed at the time of the occurrence and in the light of those torches, they had seen and recognised the accused appellants. As a result of the injuries caused to Sayeed, who was youngman of 30 years of age, he died at the spot. Waheed Bux P.W. 4, father of the deceased, tried to save his son and in the bid of saving of his son, he sustained a number of injuries at the hands of the appellants. His servant Lala Ram also sustained injuries. After causing the injuries to the deceased, Waheed Bux and Lala Ram, the accused appellants made good their escape.

4. Hearing the news of the incident, a number of villagers including a Tange Wala arrived at the spot. The complainant Dulhey Miyan P.W. 1, his father Waheed Bux P.W. 4 and servant Lalaram went to the police station in said Tonga. On way to police station, Dulhey Miyan got a report Ex.Ka. 1 written by one Ramesh Chandra of Kamalganj. He lodged the same at P.S. Kamalganj at 3.10 p.m. on 25-6-79, the police station lay at a distance of two miles from the place of occurrence. On the basis of the said first information report, crime case No. 197 under Section 147, 148, 323, 324, 307, 302, I.P.C, was registered against the accused appellants and

investigation followed.

5. S.I. Arbind Misra, who was then working as Station Officer of P.S. Kamalganj immediately took up the investigation in his hand. He recorded the statements of the complainant right at the police station and thereafter he rushed to the scene of occurrence, where he found the dead body of the deceased Sayeed lying. He prepared inquest report Ex. Ka-7 in respect of the dead body of the deceased and after preparing necessary papers sent the same for post-mortem examination through constable Shanti Swamp. He thereafter inspected the scene of occurrence and prepared site plan Ex. Ka-12. He thereafter came to village Sheikhpur where he recorded the statements of Waheed Bux and Lala Ram injured. He also inspected the torches of the complainant Dulhey Miyan, Waheed Bux and Lalaram and prepared recovery memos Ex. Ka-13 and 14. He recovered blood-stained and simple earth from the place of occurrence. He also recovered blood stained bed-sheet of the deceased and prepared recovery memos Ex. Ka-15 and Ka-16 about the same. He searched out the accused persons but they were not available. The accused appellants surrendered before the Court. After needful investigation into the matter, the police submitted a charge-sheet against the accused appellants.

6. The accused appellants were committed to stand trial before the Court of Session by the concerned Magistrate. Thereafter the case came up for trial before the then VIIth Additional Sessions Judge, Farrukhabad.

7. At the trial, the accused appellants pleaded not guilty. They denied to have participated in the occurrence in question and maintained that they have all been falsely implicated into the case due to party-bandi and enmity. The accused appellants, however, did not adduce any evidence in defence.

8. The prosecution in support of its case examined 9 witnesses in all, out of whom Waheed Bux P.W. 4, was father of the deceased and had sustained a number of injuries in the incident in question, Lalaram P.W. 2 was servant of the deceased and was present at the time of the occurrence in, the grove in which the deceased was done to death and Dulhey Miyan P.W. 1 who was brother of the deceased arid had come running from the grove of Brij Bahadur, which lay at a distance of about 300 yards from the place of occurrence flashing torch upon the accused

appellants. All those witnesses gave eye-witness account of the incident.

9. P.W. 3 Dr. Arjun Kumar was the medical officer who medically examined the injuries of Lalaram and Waheed at the Primary Health Centre Kamalganj on 25-6-1979 at 8.00 a.m.-8.20 a.m. and found the following injuries of Lalaram on their persons.

#### Injuries of Lalaram

1. Contusion over dorsal aspect of lower part of left forearm just above wrist size 5 cm x 4 cm reddish colour.
2. Contusion over outer aspect of right knee size 8 cm x 2 cm reddish colour. Both the injuries were simple caused by blunt object and the duration was one day.

#### Injuries of Waheed Bux

1. Lacerated wound over left parietal region of scalp 11 cm above left ear size 5 cm x .2 cm x subcut tissue deep, edges irregular. Direction forward and backward.
2. Lacerated wound over left parietal occipital Region of Scalp 14 cm above left ear size 7 cm. 3 cm subcut tissue deep, edges irregular, clotted blood present in wound.
3. Abrasion over ventral aspect of left ear having size 1 cm x 1 cm reddish colour.
4. Incised wound over dorsal aspect of left forearm 11 cm above wrist size 8.5 cm x 2 cm x muscle deep, edges clean cut, wound was gaping, direction vertical, clotted blood present in the wound.
5. Incised wound over back of right arm 12 cm above elbow, size 8 cm x .5 cm x subcut tissue deep, edges clean cut, direction oblique.
6. Contusion over dorsal aspect of right wrist size 5 cm x 2 cm x reddish colour.
7. Contusion over outer aspect of upper part of right leg just below size 8 cm x 2 cm, reddish colour.

8. Abrasion over left side of lumbar region 10 cm x .5 cm subcut 14 cm above left leg, reddish colour.
9. Incised wound over upper part of left scapula region of back of chest size 3.5 x .5 x muscle deep, edges clean cut.
10. Abrasion over upper left interior scapular region of back of chest size 12 cm x .5 cm, reddish colour crossing over to dorsal.
11. Contusion over dorsal aspect left wrist size 3 cm x 2 cm, reddish colour.

In the opinion of the doctor, injuries Nos. 4, 5 and 9 were caused by sharp-edged weapon and rest were caused by some blunt object and the duration was one day.

10. P.W. 5 Dr. S.C. Goyal, conducted autopsy on the dead body of the deceased and found the position as under :

The deceased was average built, rigor mortis was present on all over the body.

1. Lacerated wound of 3' x 1/2' x bone deep on right side head 3' above the right ear.
2. Incised wound of 3 1/2' x 3/4' x bone deep on right shoulder.
3. Incised wound 3 1/2' x 3' x bone deep on right shoulder.
4. Two contusions 3' x 1' each on right forearm back side upper part.
5. Incised wound 2 1/2' x .5 cm x bone deep on inner side of right arm.
6. Incised wound 2 1/2' x 1/2' x bone deep on left ear.
7. Incised wound 1/2' x 1/2' x bone deep on outer angle of mouth.
8. Incised wound 2 1/2' x 1' x bone deep on left wrist joint.
9. Punctured wounds - two in number each 2' away from each other, '1/2.' x 1/2' x abdomen deep on lumbar region.

10. Punctured wound 1/2' x 1/2' x chest deep on left side back of right middle part.

11. Contusion 3' x 2' on back side of body middle part.

12. Incised wound 2' x .4' skin deep on back of neck.

In the opinion of the doctor, the death was caused due to shock and haemorrhage as a result of ante-mortem injuries.

11. P.W. 6 Bhudeo Singh was the formal witness who proved the Chik report and G.D. report. P.W. 7 constable Ayodhya Prasad was also a formal witness who look away case property to chemical examiner. P.W. 9 constable Shanti Swarup was also a formal witness who had taken the dead body of the deceased for post-mortem examination and P.W. 8 S.I. Arbind Misra was the Investigating Officer who investigated into the matter and submitted charge-sheet against the accused appellants. The learned trial Judge placing reliance upon the eye-witnesses account of the aforesaid three witnesses of fact convicted and sentenced the accused appellants as aforesaid and hence this appeal.

12. We have heard Sri Tapan Ghosh, learned counsel for the appellants and Sri S.P. Tiwari, learned A.G.A. for the State.

13. It was vehemently argued by Sri Tapan Ghosh that the entire case of the prosecution was a cooked up one. It was argued that Dulhey Miyan P.W. 1 who claimed himself to be the complainant of the case and has given an eye-witness account was, in fact, not present in the grove of Brij Bahadur at the time of the occurrence. He was present in the grove of Fateh Bahadur which lay at a distance of about one mile from the place of occurrence. He, therefore, could not have rushed to the place of occurrence so as to witness the occurrence and to see the accused appellants assaulting the deceased. He though claimed of having torch in his hand but when his very presence on the spot was doubtful, the torch goes away with him and therefore, the entire source of light goes away. It was further argued that the deceased was assaulted by some unidentified persons and the accused appellants have been falsely implicated in this case. Sri Ghosh further argued that the charges in the case were not properly framed because of which a

great prejudice was caused to the accused appellants, and, therefore, the entire trial was vitiated and the accused appellants deserve to be acquitted. We are unable to agree.

14. Let us take first the point regarding the defect in the charge as pointed out by the learned Counsel for the accused appellants. It is clear from the record of the case that the Court below had framed charges under Section 147/323/302, I.P.C. read with Section 149, I.P.C. as against the accused appellants Siddique, Chhotey and Qamruddin. The Court below framed further charge under Section 148/324 and 302, I.P.C. read with Section 149, I.P.C. against the accused appellants Majeed, Sattar and Ali Mohammad. The charge No. 2 against all these accused appellants was further amended by the Court below and thereafter Siddique Chhotey and Qamruddin were charged under Section 323 read with Section 149, I.P.C. and Majeed, Sattar and Ali Mohammad were charged under Section 324 read with Section 149, I.P.C. It is thus clear that the charges under Section 147/323, I.P.C. read with Section 149, I.P.C. and Section 302 read with Section 149, I.P.C. were duly framed as against accused Siddique, Chhotey and Qamruddin and charge under Section 148/324, I.P.C. read with Section 149, I.P.C. and Section 302, I.P.C. read with Section 149, I.P.C. were duly framed as against Majeed, Sattar and Ali Mohammad. True it is that in all these charges the names of only three persons respectively have been mentioned and the words 'along with three others' are missing, but the pertinent point which arises for our consideration is to see as to whether that omission has occasioned any failure of justice. The provisions of Section 464, Cr.P.C. read as under :

464. Effect of omission to frame, or absence of, or error in, charge (1) No finding, sentence or Order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may-

(a) in the case of an omission to frame a charge Order that a charge be framed and that the trial be recommended from the point immediately after the framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in what ever manner it thinks fit.

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

15. According to the eye-witness account given by three witnesses of fact, namely, Dulhey Miyan P.W. 1, Lalaram P.W. 2, Waheed Bux P.W. 4, the accused appellants Majeed was armed with a knife, Sattar was armed with a Kanta and Ali Mohammad was armed with a Kanta, which were deadly weapons. All these three accused persons were duly charged with an offence punishable under Sections 148/324, I.P.C. read with Section 149, I.P.C. and Section 302, I.P.C. read with Section 149, I.P.C. The accused appellants Siddique, Qamruddin and Chhotey were armed with lathis and accordingly they were charged under Sections 147/323, I.P.C. read with Section 149, I.P.C. Thus there is no ambiguity in the charges framed by the Court below, on the point that the learned trial Court intended to convey to the accused appellants that three of them, namely Siddique, Chhotey and Qamruddin were armed with lathis and that they had assaulted Lalaram and Waheed Bux by means of Lathis in prosecution of their common object of unlawful assembly, of which they were members and the common object of which was to commit murder. They were also duly conveyed by means of these charges that they were armed with lathis and had assaulted Lala Ram P.W. 2 and Waheed Bux P.W. 4 by means of their lathis and caused hurt to them which offence is punishable under Section 323, I.P.C. and further that they as members of the said unlawful assembly intentionally caused injuries by means of lathis to the deceased Sayeed and were responsible for an offence punishable under Sections 302/149, I.P.C. Similarly the accused appellants Majeed, Sattar and Ali Mohammad were clearly told by the Court below in the charges framed against them that they were members of the unlawful assembly on the intervening night of

24/25th June, 1979 at about 1 a.m. in the grove of Rameshwar Dayal within the police station Kamalganj District Farrukhabad and that at that time Majeed accused appellant was armed with a knife and Ali Mohammad and Sattar both were armed with Kanta each. They were further informed that the common object of their unlawful assembly was to cause injuries and they did cause the injuries to Waheed Bux and Sayeed and further that they were responsible for intentionally causing death of Sayeed by means of their respective weapons on the aforesaid date, time and place in prosecution of the said common object of their unlawful assembly. It would thus be seen that the learned trial Court had very clearly indicated its intention to the accused appellants about the charges on which they had to face trial and for which they were ultimately found guilty and convicted. The mere omission in these charges along with three other accused persons was not fatal to the accused persons, for they were separately charged for the offences for which they were, ultimately convicted. That apart, prior to their committal to the Court of Sessions, proper copies of the First Information Report, statements of witnesses charge-sheet, post-mortem report, site plan and the recovery memos etc. of the documents on which the prosecution had relied were furnished to the accused appellants. At the trial, the accused appellants were duly represented by the competent criminal lawyers before the trial Court. At the end of the trial, specific questions under Section 313, Cr.P.C. were put to the accused appellants that they were members of unlawful assembly and the common object of which was to cause hurt and death of Sayeed and that in prosecution of common object of said unlawful assembly they did cause hurt to Waheed Bux P.W. 4, father of the deceased by means of their respective weapons and the death of Sayeed by intentionally causing injuries to them by means of their respective weapons, with which they were armed at the time of the occurrence. In reply to all those questions, the accused appellants had only shown their ignorance. Not only this, after conclusion of the trial the accused appellants were called upon to adduce evidence in their defence. They were further informed about their conviction before passing the sentence in question and were duly given an opportunity of being heard on the point of sentence as well. When at no stage before the trial Court the accused appellants or their learned Counsel raised any objection before the Court below that certain words were omitted in the array of charges which were framed

against them, when all the accused persons were present in the Court during the course of their trial, the statements of various witnesses were recorded by the trial Court in the presence of the accused persons or their learned Counsel and never a finger was raised about any omission in the charge. Thus when the accused appellants knew it very well from very inception of the trial that the specific case of the prosecution against them was that they had formed an unlawful assembly on the intervening night of 24/25th June, 1979 at about 1 a.m. in village Baruabagat P.S. Kamalganj District Farrukhabad and that in prosecution of the common object of the said unlawful assembly, they were responsible for causing hurt to as many as two persons namely Lalaram and Waheed Bux and intentionally causing the death of Sayeed, it cannot be said that omission in the charges in question has caused any prejudice muchless failure of justice to them. When the legislature in its wisdom thought it proper to lay down specifically in the provisions of Section 464, Cr.RC. that no finding, sentence or Order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby, we are unable to concede to the able argument built up by the learned Counsel for the appellants and accordingly over Rule the same.

16. Now coming on the merits of the case, we find that P.W. 4 Waheed Bux is an unfortunate father of the deceased Sayeed who was a youngman of 30 years at the time of the occurrence. He while giving ocular evidence of the incident in question before the Court below has specifically stated that it was at about 1 a.m. in the night he along with his son Sayeed, his servant Lalaram and Shri Krishna was looking after the mango crop of the grove of Rameshwar Dayal, which they had taken. He stated that about 1 O'clock in the night, he heard the noise of his son Sayeed, who was crying Bachao-Bachao Mar Dalte Hain. He stated that Sayeed deceased was lying at a distance of about 8-10 paces on another Charpai. Near Sayeed, Sri Krishna was lying on the earth. Lalaram P.W. 2 was lying near his cot. He stated that that he and his servant Lalaram had torches. Hearing the noise of Sayeed, he flashed his torch and saw that the accused appellants Siddique, Sattar Ali Mohammad, Majeed, Qamruddin and Chhotey were running

after Sayeed deceased came running towards him requesting his father to save him. He stated that at that time Majeed was armed with a knife, Ali Mohammad and Sattar were armed with Kantas, Saddique, Qamruddin and Chhotey were armed with Lathis. All these accused appellants surrounded the deceased, assaulted him by means of their respective weapons. He tried to save his son but the accused appellants also assaulted him. When His servant Lalaram rushed to save him, his son, the accused appellants also assaulted him and caused injuries. He cited and hearing his cries, his another son Dulhey Miyan P.W. 1 came flashing torch in his hand. Sayeed after sustaining the injuries fell down on the earth. Dulhey Miyan P.W. 1, people from neighbouring groves also came on the spot and then the accused persons ran away. He stated that all the accused appellants except Chhotey were related to each other. He stated that the deceased Sayeed had taken something at about 4-5 p.m. and some food was taken by him at about 9 p.m. He further stated that Fateh Bahadur and Brij Bahadur of Bhojpur were real brothers. They owned one grove near the grove of Rameshwar Dayal, which lay after leaving one grove of Rameshwar. He stated that accused Majeed bore enmity with him regarding the business of hides and skins of cattle and regarding taking mango crops. It is clear from the evidence of Dr. Arjun Kumar P.W. 3 that as many as two lacerated wounds, two abrasions, three incised wounds and four contusions of various dimensions as noted above in the body of this judgment were found on medical examination on the person of this witness at about 8.20 a.m. on 25-6-79 at Primary Health Centre Kamalganj and two contusions were found on the person of P.W. 2 Lalaram. The statement of Dr. Arjun Kumar is quite clear on the point that the injuries numbers 4, 5 and 9 which were incised wounds on the person of Waheed Bux should have been caused by sharp edged weapon like knife and Kanta. The remaining injuries could have been caused by blunt object like lathi. He was clearly of the opinion that the injuries of both these injured could have been caused on 25-6-1979 at about 1 a.m. It would thus be seen that the statement of Waheed Bux P.W. 4 who was an unfortunate father of the deceased and Lalaram P.W. 2 who was his loyal servant finds full corroboration by the medical evidence on record.

17. We should state here that the date of occurrence was 25-6-1979, the month of June when the mango trees are full of fruits. Waheed Bux P.W. 4 and the

members of his family having taken a number of groves for plucking the fruits thereof, it is probable for us to believe that in the grove in question, the deceased Sayeed along with his father injured Waheed Bux, servants Lalaram and Sri Krishna were sleeping and in the another grove his brother Dulhey Miyan P.W. 1 was sleeping on the fateful night of the occurrence. When Waheed Bux was sleeping by the side of the deceased, it was natural for him to get up on hearing the cries of the deceased and to try to save him and in the bid of saving, his son he too should have naturally fallen prey at the hands of the accused appellants, who were armed with deadly weapons knife, Kantas and Lathis. The number and nature of the injuries found on the person of Waheed Bux by Dr. Arjun Kumar P.W. 3 fully prove that Waheed Bux should have sustained these injuries at the time of the occurrence in bid to save his young son who took enmity with the accused appellants regarding purchase of mango fruits of the various groves in the locality. Thus by no stretch of imagination presence of Waheed Bux injured P.W. 4 and Lalaram P.W. 2 can be doubted. Waheed Bux having gone to sleep and to look after the mango crop which was then ripe should have naturally taken torch with him and his servant too can well be expected to have torches for saving the crop of mango from unscrupulous villagers or to prevent astray cattle from entering into the grove which could be checked up only by means of flashing of torch light and not otherwise. Thus the presence of Waheed Bux by the side of the deceased, his servant Lalaram P.W. 2 who too sustained injuries in the occurrence in question along with the torches was a very natural and probable conduct of these two witnesses.

18. It was argued by the learned Counsel for the accused appellants before us that Waheed Bux P.W. 4 did not take his torch to the police station at the time of lodging the first information report. According to the statement of the investigating officer, he had seen the torches when he came in the village of occurrence after lodging of the report. The learned Counsel for the appellants seeks to argue that if Sri Waheed Bux was really having a torch, he should have taken the same to the police station and should have lodged the first information report himself.

19. We can very well imagine the agony of an unfortunate father, whose young son who was aged about 30 years was done to death right in his presence. In

such an hour of sorrow and sufferings, it cannot be expected that he should have taken so much care as to take away his torch to the police station to show the same to the police as a material evidence of the light in which he had seen the occurrence. The fact remains that the investigating officer had seen his torch as also the torch of his servant Lalarn when he came into the village and when he prepared Superdagi memos Ex.Ka-13 and Ka-14 about the same. According to the averments of these recovery memos, these torches were in working condition when they were seen by him. The circumstance that Waheed Bux sustained as many as 11 wounds on his person and the circumstance that his servant Lalaram P. W. 2 sustained two contusions caused by means of Lathis abundantly prove their existence at the scene of occurrence at the time of the fateful incident.

20. It was next argued by the learned counsel for the appellants that if Waheed Bux had really seen the occurrence, he should have lodged the first information report. As stated above, it cannot be expected from a father who has seen his son being killed right in his presence to be so much careful and conscious as to dictate a first information report particularly when his another son namely Dulhey Miyan was present by his side to help him for lodging the F.I.R. We thus believe that Waheed Bux P.W. 4 and Lalaram P.W. 2 were very much present at the spot at the time of the occurrence and had full opportunity to witness the occurrence in question.

21. Thus to us the evidence of Waheed Bux P.W. 4 and Lalarn P.W. 2 appears to be wholly reliable and we accordingly trust and believe the same.

22. Coming on the ocular evidence of Dulhey Miyan P.W. 1 we find that he too has given meticulous details about the occurrence in his statement on oath before the Court below by stating that he was sleeping at the time of the occurrence in a nearby grove of Brij Bahadur, which lay at a distance of about 300 yards from the grove of Rameshwar in which the deceased and the injured were sleeping. According to his statement, hearing the cries of the brother deceased, he rushed to the scene of occurrence flashing torch light. The evidence of Dulhey Miyan was sought to be discredited on the point that at the time of the occurrence, Dulhey Miyan was not sleeping in the grove of Brij Bahadur. He was sleeping in the grove

of Fateh Bahadur which lay at a distance of about one mile from the grove of Brij Bahadur. It has come in the evidence of investigating officer S.I. Arbind Singh P.W. 8 that soon after the occurrence when he visited the spot, it was pointed out to him that Dulhey Miyan P.W1 was present in the grove of Vijai Bahadur which lay towards south of the grove of Rameshwar where the deceased was sleeping. It was elicited by the Court below by putting a court question to this witness that Brij Bahadur was having 3-4 brothers - one was Channe, Fateh Bahadur and third was Brij Bahadur. This witness had specifically denied the suggestion of the defence on the point that Fateh Bahadur and Brij Bahadur were not the real brothers. It was not a point in dispute before the Court below as to whom the grove from which he came on the spot belonged. The question before the Court below was as to wherefrom Dulhey Miyan came on the spot. When Dulhey Miyan in his statement on oath before the Court below has stated that at the time of the occurrence he came running from the grove of Vijay Bahadur, the fact remains that he came running from the said grove whether it belonged to Brij Bahadur or Vijay Bahadur was not very material. It was stated by Waheed Bux P.W. 4 during the course of his cross-examination before the Court below that mango crop of Vijay Bahadur was also taken by his Son. He stated that he and his son had purchased the crop of two groves belonging to Fateh Bahadur and Brij Bahadur. He stated that the other grove was in the Abadi of Bhojpur, which was situated at a distance of 1/2 a mile from the place of occurrence. He specifically stated during the course of his cross-examination that the mango crop of the other grove which was situate in the Abadi of Bhojpur was plucked by him two days before the occurrence of this case. That being so, there was no question of his son having gone to sleep in the other grove of Fateh Bahadur or Vijai Bahadur which was there is the village Bhojpur. Thus the argument built up by the learned counsel for the accused appellants that the admission of Dulhey Miyan that he had also taken the grove of Fateh Bahadur of village Bhojpur is of no avail so far as the arrival of Dulhey Miyan to the scene of occurrence is concerned. When the statement of Dulhey Miyan was quite clear and specific on the point that he had also taken the grove of Brij Bahadur which lay at a distance of 300 yards from the scene of occurrence it appears to us quite natural and probable that when the incident of the kind of the present one had happened, in which brother of Dulhey Miyan was

done to death and his father had sustained as many as 11 wounds including incised wounds and lacerated wounds, Dulhey Miyan P.W. 1 too should have naturally come on the spot running from a nearby grove. When according to the cross-examination of Waheed Bux P.W. 4 fruits of other grove of Fateh Bahadur were already plucked there was no question of Dulhey Miyan having slept in the said grove on the night of the occurrence. Thus the statement of Dulhey Miyan P.W. 1 was also quite natural and probable one and was rightly believed by the Court below.

23. The circumstance that Dulhey Miyan had taken his injured father and servant right in the night in a Tonga to police station Kamalganj which was situate at a distance of two miles from the place of occurrence and lodged a written report at 3.10 a.m. shows that the first information report was quite promptly lodged. The suggestion of the defence on the point that the scribe of the first information report Ramesh who used to reside in qasba Kamalganj was a broker of the police is of no help because the material point for our consideration is as to whether or not the report Ex. Ka. 1 was written and lodged at the police station Kamalganj at 3.10 a.m. on 25-6-1979 or not, as is the case of the prosecution. When the said fact has been properly established and proved before the Court below by direct evidence of head constable Bhudeo Singh P.W. 6 and S.I. Arbind Kumar P.W. 8, the argument built up by the learned counsel for the defence remains of academic importance only and carried no weight. We, are therefore, unable to accept the same.

24. It is important to note here that the ocular evidence of the prosecution witnesses also finds full corroboration by the medical evidence of P.W. 5 Dr. S.G. Goyal who conducted post mortem examination on the dead body of the deceased on 25-6-1979, that is, right on the date of the occurrence at about 4 p.m. and found a number of lacerated wounds, incised wounds, contusions and punctured wounds which could have been caused by means of deadly weapons like knife, Kantas and Lathis. The statement of Dr. S.C. Goyal P.W. 5 is quite clear on the point that the injuries were sufficient in the ordinary course of nature to cause death and that because of these injuries, the deceased should have immediately died on the date and time of the occurrence suggested by the prosecution. Dr.

S.G. Goyal stated during the course of his cross-examination that the deceased might have taken food about 2/3 hours before the occurrence of 'this case. The statement of Waheed Bux P.W. 4, father of the deceased is quite clear on the point that the deceased had taken something at about 4-5 p.m. and further he and the deceased had taken full meals at about 9 p.m. in the night right in the grove itself. That being so, the medical evidence that the deceased should have taken food 2-3 hours earlier to his death is quite consistent with the ocular evidence of Waheed Bux P.W. 4.

25. That being so we find that the ocular evidence of witness of fact finds full corroboration by the medical evidence on record.

26. It is fully established from the report of the chemical examiner Ex.Ka-18 which was tendered in evidence before the Court below that the mud which was recovered from the place of occurrence by the investigating officer, was stained with blood. That being so, the place of occurrence is also established. The date, time and place of occurrence having been established by means of ocular evidence and the medical evidence, the finding of fact recorded by the Court below regarding guilt of the accused appellants punishable under Sections 147, 148, 302, 323 and 324, I.P.C. read with Section 149, I.P.C. was quite correct and is accordingly sustained.

27. Thus to sum up, we find that the business rivalry of the deceased and the accused appellants on the point of taking grove and also regarding their business of hides and skins of the cattle afforded a well founded motive to the accused appellants to do away with an enterprising man like the deceased. We, therefore, do not find any thing wrong on the part of the Court below and find that all the three witnesses of fact, namely Dulhey Miyan P.W. 1, Lalaram P.W. 2 and Waheed Bux P.W. 4 were wholly reliable. Their evidence was rightly believed by the Court below.

28. On the point of sentence, we find that a young man of 30 years of age was done to death and his old father was brutally assaulted by the accused appellants, we, therefore, find no good ground to interfere with the finding of guilt and of sentence recorded by the Court below.

29. In the result, we find no force in the appeal. It is accordingly dismissed. The conviction and sentence recorded by the Court below are accordingly sustained.

30. Let a copy of this judgment along with the record be sent to the Court below with the direction that the bail of the accused appellants stands cancelled and that they be taken into custody forthwith and committed to the prison if in jail, they shall serve out the sentence according to law.

31. The Court below is directed to send compliance report within six months from today.

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