

State Vs. Manohar Lal and Others

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Court : Delhi

Decided On : Oct-16-1998

Reported in : 1998VIAD(Delhi)549; 76(1998)DLT135; ILR1998Delhi815

Judge : Devinder Gupta and; N.G. Nandi, JJ.

Acts : [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 366; [Indian Penal Code \(IPC\), 1860](#) - Sections 149 and 302

Appeal No. : Murder Reference No. 1/98, Criminal Appeal No. 12/98, Criminal Appeal No. 34/98

Appellant : State ;jagdish @ Jaggi ;manohar Lal @ Munna

Respondent : Manohar Lal and Others; State ; State

Advocate for Pet/Ap. : Mr. M.S. Butalia,; Mr. K.B. Andley and; Ms. Neelam Grover

Judgement :

ORDER

N.G. Nandi, J.

1. Award of death sentence by the learned Additional Sessions Judge, Karkardooma Courts, Delhi for the offences under Section 148/302, read with Section 149 and Section 396 IPC required this criminal reference under Section

366 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') for confirmation of the said death sentence imposed on both the convicts and the aforesaid two appeals by the said convicts/appellants under Section 374(2) of the Code challenging the conviction and sentence.

2. The incident occurring on 2.11.1984 in Trilok Puri area relates to the breaking out of the riots consequent to the assassination of late Prime Minister Smt. Indira Gandhi. According to the prosecution in the incident of 2.11.1984 in the area of Block No.30,31 and 32 in front of House No.91 and 92 in Trilok Puri during anti-sikh riots, besides other persons, four persons, namely Darshan Singh aged 35 years, Laxman Singh aged 30 years, two young boys Shamen Singh aged 18 years and Hoshiair Singh aged 15 years, all sons of one Honda Singh were brutally burnt to death by the violent mob of rioters who were on rampage. The surviving members of the family, namely, father, mother and widow of deceased Laxman Singh were sheltered in the relief camp; that the statement of Harbai, the mother of the deceased sons and the statement of Nanki Bai widow of, one of the deceased son of Harbai, Laxman Singh were recorded on 17.11.1984, only indicating the commission of cognizable offence but very brief and vague and truncated also, pursuant to which a general F.I.R. No. 426/84 was recorded at P.S. Kalyan Puri; that no separate cases were registered nor any investigation accordingly carried out; that none was booked for any offence; that later on a Committee comprising of Justice Jain-Aggarwal was constituted on the recommendation of Justice Mishra Commission to identify the specific instance of murder whereupon Smt.Harbai, the mother of four deceased sons sworn the affidavit regarding the incident dated 2.11.1984 wherein her four sons died brutal premature deaths at the hands of miscreants, on the basis whereof F.I.R. No.508/91 dated 4.9.1991 came to be registered at P.S. Trilok Puri for the offences under Sections 147/148/149/302/427/436 IPC. In course of the investigation statements of Harbai widow of Honda Singh and Smt. Nankibai came to be recorded besides other investigation. On completion of investigation charge-sheet came to be filed. The Additional Sessions Judge, appreciating the evidence on record, found two out of four persons shown in the charge-sheet, guilty for the offences charged and convicted awarding capital punishment. The finding of guilt and the sentence imposed have been challenged by both the convicts (appellants)

by these separate appeals besides present reference by the Additional Sessions Judge, Karkardooma Courts, Delhi under Section 366 of the Code for the confirmation of capital punishment.

3. The undisputed facts revealed are that on 1.11.1984 and thereafter anti-sikh riots had broken out in Trilok Puri area, Delhi following the assassination of late Prime Minister. Houses were ransacked, looted and set ablaze. Hundreds of innocent persons, young and old, lost their lives at the hands of rioters. Many persons had to abandon their dwellings and take shelter in relief camps. Families scattered and the after effects of the incident of 2.11.1984 and there around left many families in the state of misery.

4. It is submitted by Mr.K.B.Andley, learned counsel for the appellants that there is no whisper about the killing of the sons of Harbai till 2.11.1991; that why the accused are not named in the previous statement under Section 161 of the Code when the accused were known to P.W.1; that material facts have been omitted to be stated in the previous statement dated 17.11.1984 and also the affidavit Ex.PW-1/A; that the Court Questions to P.W.1 on 27.11.1997 have materially prejudiced the accused, especially the recalling of P.W.1 by the Court was after recording of even defense evidence and also after the recording of the statement of the accused respectively under Section 313 of the Code; that the prosecution evidence suffers from serious infirmities and full of contradictions and improvements; that the benefit of the improper investigation must necessarily go to the accused and not to the prosecution; that affidavit Ex.PW-1/A is not a part of investigation; that it is the basis of registration of F.I.R. No.508/91; that there is no supplementary affidavit implicating the accused persons for the murder of the sons of P.W.1; that the state of evidence can not justify recording of conclusive findings of guilt against any of the accused persons. Ms.Neelam Grover, learned counsel appearing for the appellant in Crl.A.34/98 adopted the arguments advanced by Mr.Andley.

5. It can not be gainsaid that in the incident dated 2.11.1984 P.W.1 lost her four sons two in their thirties and two in their teenage and tragedy also befallen on P.W.2 losing her husband leaving in a state of misery. Nevertheless the

accusations have to be proved by the prosecution beyond all reasonable doubts in the manner which can legally entail conviction and the consequent sentence.

6. P.W.1 Harbai in substance stated in her evidence that in November 1984 she was residing in H.No.32/92, Trilok Puri along with her husband Hooda Singh, her sons Chaman Singh, Hoshiar Singh, Laxman Singh and his wife Nankibai; that in the adjoining house No.32/91, her elder son Darshan Singh was residing with his wife Shanti; that on 2.11.1984 in the early morning a big mob of rioters came to her house; that they were armed with iron rods, tyres, petrol containers; that out of that mob Jagga, Mannu and Dropti wife of Mannu entered her house; that they looted her house and removed all the household goods and other valuables; that accused Jagga and Mannu attacked her sons Darshan Singh, Laxman Singh, Chaman Singh @ Sheman Singh and Hoshiar Singh with iron rods; that they dragged her sons outside the house, poured petrol on them and burnt them alive; that on the next day i.e. 3.11.1984 they were taken by the police to Farsh Bazar. The witness then identified the accused persons as Jagga and Mannu, present in Court. It is further stated that both the accused persons were residing in the same Mohalla and the witness knew them well before the incident. She states to have sworn affidavit Ex.PW-1/A; that she is illiterate. This part of evidence was recorded on 23.5.1997. In the cross-examination, she has been confronted with her statement Ex.PW-1/DA recorded on 17.11.1984 under Section 161 of the Code to bring contradiction/omissions on record. The gist thereof is that the names of the assailants and the victims were stated before the police; that affidavit Ex.PW-1/A does not refer to four sons; that two were only dragged out; that the accused did not enter the house. After the recording of the evidence of other prosecution witnesses, two defense witnesses and the further statements of the accused under Section 313 of the Code, P.W.1 was recalled under Section 311 of the Code and the Court on 27.11.1997 put certain questions to her. The defense cross-examined P.W.1.

The relevant questions and answers from the evidence recorded on 27.11.1997 are :-

Q Whether the affidavit was typed on what you stated to be the typist or on what your companion stated?

A. The affidavit was typed on what I had told the typist.

Q. Can you offer any Explanationn for the discrepancies in your affidavit and your statement to the court?

A. In those days I was not in a fit state of mind. It may be that the typist misunderstood what I told him briefly and hurriedly otherwise such glaring omissions would not have taken place. I had told him about the killing of my sons including Darshan Singh. I never told him that Darshan Singh's wife Shanti Bai was killed. I cannot explain as to how the typist omitted to mention about the death of my sons and how he wrote about the death of Shanti Bai who is still alive.

Q What was the necessity of filing the affidavit?

A. Some people in the area had advised me to file the affidavit so that my grievances will be heard.

Q. Whether the affidavit was read over to you before you thumb marked the same?

A. No. The typist had told me that he had typed what I told him.

7. P.W.2 Nankibai in substance stated in her evidence that she along with her husband Laxman Singh because of the riots went to reside with Harbai, P.W.1 at 32/92, Trilok Puri on 1.11.1984; that on 2.11.1984 in the morning the mob killed her husband. The rioters were armed with different weapons like lathis, iron rods, petrol containers etc. Out of the rioters, three of them namely Mannu, Jagga and Dropti entered the house; that they looted the house; that Dropti w/o Mannu took away the household goods and the other two accused persons assaulted her husband; that they dragged her husband out of the house; that accused Jagga then poured petrol on him and set him on fire; that beside her husband his three brothers Darshan Singh, Hoshiar Singh, Sheman Singh were also assaulted and set on fire after pouring petrol on them; that she was again on family way at that

time; that she along with her two children kept on looking for shelter here and there and somehow saved themselves. Next day the police took them to Farsh Bazar camp; that she knew assailants Mannu and Jagga since before as they were residing in the same locality; that she can identify them and they are the accused persons present in court; that she narrated the facts to the police and police recorded her statement but the same was not read over to her; that she had given the names of all the four persons who were killed in her presence and also the names of two accused present in Court.

In the cross-examination, she has been confronted with her statement dated 17.11.1984 recorded under Section 161 of the Code to bring on record certain omissions and contradictions. The gist of it is that she only gave the name of Laxman Singh; that she did not state the names of the accused persons as the rioters; that the four persons named in the examination-in-chief were assaulted by the mob and were not set on fire after pouring petrol on them; that in her previous statement she did not tell that Mannu, Jaggu and Dropti had entered her house and took away the household articles and valuables which fact is admitted by her; that she also did not tell the police that other two accused persons dragged out her husband from the house, poured petrol on him and set him on fire, which fact is also admitted by her; that she also did not tell the police that besides her husband his brothers Darshan Singh, Hoshiar Singh and Sheman Singh were dragged out and were set on fire by the accused persons, which fact is also admitted. In the cross-examination she also stated that she did not know the rioters who were in the mob. She has volunteered that she had given the names of the accused persons. She has denied the suggestion that she named the accused persons for the first time on 2.11.1991 in her statement; that she had not given the names and addresses of the accused persons to the police till 1991 as she did not know.

8. It will be seen from the above that the incident of rioting, looting, arson and damaging the properties started from 1.11.1984. The testimony of P.W.1 and 2 suggests that in the morning of 2.11.1984 rioters armed with iron rods, tyres, petrol containers, Lathis, came to their house No.32/92. Both these witnesses have stated that they identified Mannu, Jagga and Dropti wife of Mannu in the mob which looted the houses, removed all the household goods and other valuables

and killed the persons of Sikh Community. Both these witnesses have stated in their testimony that accused Jagga and Mannu attacked all the sons of P.W.1 one of whom happened to be the husband of P.W.2 and dragged them out of the house, poured petrol on them and burnt them alive.

P.W.1 and 2 both have been confronted with their previous statements dated 17.11.1984, to suggest omissions/contradictions as pointed out above.

9. One of the arguments advanced by Mr.M.S.Butalia, learned counsel for the respondent-State is that the previous statements should not be viewed seriously considering the situation prevalent at that time when the mob was indulging in ransacking, looting, setting ablaze the houses and killing of the persons of one particular community and law and order situation having totally broken down with police absolutely inactive.

10. It is suggested from the evidence that with regard to the incidents of 1.11.1984 to 3.11.1984 a common FIR No.426/84, P.S. Kalyan Puri was filed and statements of the witnesses recorded in a slipshod manner. Various Commissions of Inquiries were constituted by the Government which obliged the police to undertake some investigation, and as far as the present case is concerned, led to the filing of the F.I.R. No.508/91, P.S. Trilok Puri.

In this regard, reliance has been placed on the decision in the case of Duli Chand & Anr. Etc. Vs . State : 1997VIAD(Delhi)706 by the Division Bench of this Court wherein it has been observed that 'the absence of mention of the name of the accused in the F.I.R. or that of even victims on the facts and circumstances of the case is not fatal. The accused can not be permitted to take benefit of tardy investigation'.

11. The defense has examined D.W.1 S.I. Ran Singh. It has been deposed by him that on 17.11.1984 he was posted at P.S. Kalyan Puri; that during the investigation of case FIR No.426/84 P.s. Kalyan Puri, the witness recorded the statement of Harbai Ex.PW-1/DA and Nankibai Ex.PW-2/DA. In the cross-examination, it has been deposed that he did not record any detailed statement of these prosecution witnesses because they were so nervous that they could hardly speak out about

the incident. So the witness simply recorded 2/3 lines whatever written in the statements. It may be appreciated that even after the fortnight of the incident in the statements dated 17.11.1984 Ex.PW-1/DA and Ex.PW-2/DA the necessary details regarding the assailants, victims is not to be found. Howsoever, nervous a witness may be, as sought to be suggested by D.W.1, the bare minimum facts, namely, the killing of one's sons/husband and the names of the assailants would not be missed to be stated when the assailants are of the same area and known to the witnesses much prior to the incident. The very fact that the investigation of the case was required to be reopened by the police at the behest of the various Commissions of Inquiries, constituted by the Government sufficiently indicates the total apathy and inaction on the part of the police during the riots when hundreds of young and old people, bread earners and teenagers, were brutally murdered either by, assault with deadly weapons or setting them on fire. Houses were ransacked, looted and set ablaze. In the atmosphere of absolute panic the surviving persons had to leave their dwellings, separated from their near and dear ones and had to take shelter in the relief camps. There was no safety of person and property. Coupled with police apathy the statements dated 17.11.1984 can not be regarded as statement at all so as to discard the evidence which has a ring of truth, although the witness is none else but the mother whose four sons have been brutally done to death by the mob. Let us appreciate what could be the state of mind of the witnesses on 17.11.1984 when the statements were recorded regarding the incident wherein four sons of P.W.1 and one of whom also happened to be the husband of P.W.2 died brutal death. It is in the background of these facts and the situation prevalent on 2.11.1984 and thereafter coupled with police apathy and inaction that the omissions/contradictions in the evidence have to be appreciated. P.W.1 has stated in her evidence that she had given complete statement but police did not record the same fully and correctly. The faulty investigation can not be an impediment in the course of justice, by giving benefit of the same to the accused. In the case of Ram Bihari Yadav v. State of Bihar and Others (1998) 11 CCR 234 it has been observed in para 13 that 'though the prosecution has to prove the case against the accused in the manner stated by it and that any act or omission on the part of the prosecution giving rise to any reasonable doubt would go in favor of the accused. Yet in a case like the present

one the interest of justice demands that such acts or omissions of the officers of the prosecution should not be taken in favor of the accused, for that would amount to giving premium for the wrongs of the prosecution designedly committed in favor of the appellants'.

12. Another argument advanced by Mr.Andley, learned counsel for the appellants/convicts is that affidavit Ex.PW-1/A dated 9.9.1985 does not suggest the four sons of P.W.1 having been dragged out of the house by the mob of rioters, pouring petrol on them and setting them on fire whereas all other possible details are given in the said affidavit; that the affidavit only speaks of only dragging out of two sons and nothing further and the said affidavit is factually incorrect inasmuch as Darshan Singh's wife Shanti Bai is testified to have been killed in front of the house of deponent but Shanti Bai is alive and is not killed in the incident as disclosed from the testimony of P.W.1.

The affidavit Ex.PW-1/A reads as follows :-

A F F I D A V I T

I, Har Bai wife of S. Honda Singh aged 60 resident of 32/91, Trilok Puri, Delhi-91, do hereby solemnly affirm and state on oath as under:-

1. On 1st of November 1984, at 10 A.M., the crowd burnt the Gurdwara on 36 Block. They then came to Block-32. Sheman Singh, my son and Hoshiar Singh my second son were with me. On the 2nd of November 1984, at 7 A.M., they (the mob) came to my house. Leading them was Attro's son Omi, who are chamar's. They live in Block 32. The other people I recognized in the mob were Mannu (a Belkuti) who sells liquor, Gopi (a belkuti) and sells liquor, and shows video movies to others on payment, Jagga and his wife Dropti were also there killing people amongst Sikhs. They dragged my sons out. Darshan's wife Shanti Bai was killed in front of my house. There were no police in sight and they shouted 'Kill the Sardas.'

2. On the 3rd of November 1984 we were brought to the camp by the army.

Thumb impression

DEPONENT

VERIFICATION:-

Verified that the statement made in the above affidavit are true to my personal knowledge.

Verified at New Delhi on this 9th day of Sept. 1985.

Thumb impression

DEPONENT'

The above reproduced affidavit suggests that the riots started from 10 A.M. on 1.11.1984; that the mob of rioters came to Block 32; that Sheman Singh and Hoshiair Singh, two sons of the deponent Harbai were with her; that on 2.11.1984 at 7 A.M. they (the mob) came to the house of deponent. The mob was led by Attro's son Omi who are Chamars. They live in Block 32. The other people, the deponent recognized in the mob were Mannu (a belkuti) who sells liquor, his wife Dropti, Gopi (a belkuti) who sells liquor and shows video movies to others on payment and Jagga were also there killing people amongst Sikhs. It is also testified that they dragged the sons of the deponent out; that there were no police in sight and they shouted 'Kill the Sardars'.

13. P.W.1 in her evidence stated that the affidavit was typed on her dictation. It is admitted that the contents of the affidavit were read out and explained to her before she thumb marked the affidavit; that in the affidavit she had given the names of the accused persons but did not give their parentage and addresses; that Attro's son was leading the mob; that in the affidavit she had given the names of her four sons who died in this mob. Confronted with affidavit Ex.PW-1/A, where the names of the four sons are not recorded; that in the affidavit she had given the names of two accused persons whom she could identify out of that mob.

14. It is stated by P.W.1 that she gave names of two accused persons whom she could identify out of the rioters' mob. She has been confronted with affidavit Ex.PW-1/A to suggest that she did not testify therein that Jagga, Mannu, Dropti

wife of Mannu had entered her house. The affidavit Ex.PW-1/A, reproduced above, suggests that on 1.11.1984 Sheman Singh and Hoshiar Singh, the two sons of the deponent (P.W.1) were with her. The deponent then testified about what happened on 2.11.1984. There she is stated to have testified that at 7 A.M. the mob led by Attro's son Omi came to her house; that they were Chamars living in Block No.32; that the people she could recognize in the mob were Mannu, Gopi, Jagga and Dropti wife of Mannu who were killing people amongst Sikhs. It is testified that they dragged her sons out. The reference to 'they' is obviously to mob which included Jagga, Mannu and others killing people of Sikh Community and reference to word 'out' would obviously be to 'out from the house' of the deponent. It is true that in the affidavit there is no specific reference to number of sons but it has been stated that the sons (in plural) of the deponent were dragged out. In the affidavit Ex.PW-1/A there is no reference to four sons either by figure/word or their names. It may be recalled that even in the previous statement dated 17.11.1984 Ex.PW-1/DA ('A to A' and 'B to B') it is stated that on 2.11.1984 her two sons Laxman Singh and Hoshiar Singh were set on fire by the mob.

15. Ex.PW-8/A is the photocopy of the letter dated 6.6.1991 by the Delhi Administration - Committee to examine cases relating to riots in Delhi during October-November 1984. The said letter is to the Administrator, Union Territory of Delhi, Raj Niwas, Delhi. With this covering letter, affidavit in original dated 9.9.1985 filed before Justice Ranganath Mishra Commission of Inquiry by Mrs.Harbai wife of Honda Singh resident of 32/91, Trilok Puri, Delhi was enclosed. In the covering letter there is a reference to FIR No.426/84 and also the statement of P.W.1 that her two sons Laxman Singh and Hoshiar Singh were killed by a violent mob; that the Committee was of the view that the murder of Shri Laxman Singh, Hoshiar Singh and Darshan Singh was not properly investigated by the police and the Committee recommended that a fresh case be got registered and investigated by an independent agency other than local police. This, in our opinion, would suggest that the affidavit Ex.PW-1/A sworn by P.W.1 can not be regarded as for the purpose of claiming compensation for the loss suffered in the riots. Even the affidavit Ex.PW-1/A does not even remotely suggest the same being for claiming compensation. There is no reference whatsoever in the affidavit Ex.PW-1/A to the loss/damage, if any, to the property of the deponent. therefore,

it clearly appears that affidavit Ex.PW-1/A was in connection with the death of the persons in the family of the deponent and it was on the basis of the affidavit Ex.PW-1/A that FIR no.508/91 P.S. Trilok Puri came to be registered and case investigated.

16. The affidavit Ex.PW-1/A suggests that the names of Jagga, Mannu the convicts, with which we are concerned in these appeals and the reference under Section 366 of the Code, were disclosed in the affidavit Ex.PW-1/A on 9.9.1985 which was filed before Justice Ranganath Mishra Commission. It is true that in affidavit Ex.PW-1/A it is not testified that after the mob dragged the sons of the deponent out, the mob of rioters poured petrol on them and set them on fire. The affidavit stops with the mob dragging out her sons. P.W.1 has been confronted with the affidavit Ex.PW-1/A to suggest that she did not give the names of all her four sons in the affidavit having died at the hands of the mob of rioters in the incident. In the affidavit Ex.PW-1/A what has been stated is that mob of rioters was led by Attro's son Omi living in Block No.32 and the present appellants are stated to have been recognized in the mob which was indulging in the killing of persons of Sikh community and that the members of the mob are stated to have dragged the sons of the deponent out. Thus, the present appellants are testified to be the members of the unlawful assembly which had the common object of killing persons of Sikh Community and the said mob/unlawful assembly in order to achieve its common object dragged the sons of P.W.1 out and as pointed out earlier, even in the statement Ex.PW-1/DA it has been stated that the two sons of the deponent were set ablaze by the violent mob. P.W. 1 in her testimony has stated to the effect that in the incident of 2.11.1984 the mob of rioters came to her house No.32/91, Trilok Puri and four sons of P.W.1 one of whom Laxman Singh happened to be the husband of P.W.2, were dragged out of the house, petrol was sprinkled on them and set on fire. The omission to state in the affidavit Ex.PW-1/A that Mannu, Jagga and Dropti entered the house, in our opinion, is insignificant for the reasons aforestated.

As far as P.W.2 is concerned, she has been confronted with her previous statement Ex.PW-2/DA to suggest that Mannu, Jagga, Dropti did not enter her house and/or took away household articles and valuables and also to suggest that

the other two accused persons dragged out her husband from the house, poured petrol on him and set him on fire. She has also been confronted with her previous statement to suggest that she did not tell there-in that besides her husband his three brothers, Darshan Singh, Hoshiar Singh and Sheman Singh were dragged out and were set on fire by the accused persons. In the cross-examination it has been stated by her that she had not given the names and addresses of the accused persons to the police till 1991 as she did not know. Thus, the evidence of P.W.2 suggests that till 1991 she did not give the names and addresses of accused persons to the police as she did not know. As seen above the testimony of P.W.1 does suggest the complicity of the two appellants as the members of the unlawful assembly and also attributing to the unlawful assembly the attack on the two sons of P.W.1, dragging them out of the house, pouring petrol on them and setting them ablaze. The evidence of P.W.1 also suggests that both the accused persons were residing in the same Mohalla and, therefore, known to the witness well before the occurrence. It needs consideration that there is no cross-examination of P.W.1 on this aspect.

Looking to the state of circumstances and the situation prevalent including the total apathy and inaction of the police during the days of riots and thereafter recording only 2/3 lines in the statement of P.W.1 as deposed by D.W.1, we are of the view that the contradictions/omissions in the statement dated 17.11.1984 can not discredit the evidence of P.W.1 and the omissions and contradictions do not deserve to be given undue weight when she also testified affidavit Ex.PW-1/A dated 9.9.1985.

17. As far as the evidence of P.W.2 is concerned, we are not prepared to put much reliance on her evidence since she has not filed any affidavit implicating any of the accused persons. In view of the omission to state the vital aspect, namely the names of any of the accused persons in her previous statement no reliance could be placed on her evidence.

18. One of the submissions by the counsel for the appellants is that in the affidavit Ex.PW-1/A all what has been testified is that the mob dragged out her sons and that it is not stated that the appellants entered her house or that they dragged out

her sons and poured petrol and set them on fire. We would not repeat what has been observed earlier as far as what has been stated in affidavit Ex.PW-1/A read in the context of the previous statement Ex.PW-1/DA but we would observe that no specific role is required to be assigned to a member of an unlawful assembly sharing common object. It is sufficient, if it is shown from the evidence that the appellants were the members of the unlawful assembly having a common object of killing members of a particular community and the appellants are on evidence established to be the members of the unlawful assembly which had the common object of killing members of a particular community and when the mob was indulging in the acts of achieving the common object afore stated, the appellants were very much part and parcel of the said unlawful assembly and not mere by-standers or the spectators. It may be appreciated that the appellants have been charged with the aid of Section 149 I.P.C. It is proved beyond reasonable doubt that both the appellants were the members of unlawful assembly which shared the common object of committing murder, looting and burning and in furtherance of the said common object of the unlawful assembly committed the aforesaid offences as the members of the unlawful assembly. In such a situation no evidence would be required to prove any specific overt-act on the part of the appellants.

19. We are conscious that P.W.1 is none else but the mother of the victims who were burnt alive in the incident by the mob of rioters but it need hardly be said that there is no legal prohibition in basing finding of guilt on the strength of the sole testimony of a witness, who is related to the deceased and who would obviously be interested in securing the conviction of wrong doers. Related witnesses would not be interested in falsely implicating innocent persons but they would always be interested in seeing that a real culprit does not escape. All what law requires as far as the appreciation of evidence of such witness is concerned, is that the testimony of such witnesses shall be scrutinized with utmost caution by the Court. If the testimony of the witness is found to be reliable and trust worthy, then no corroboration would be necessary and the finding of guilt could be based solely thereon.

20. It may also be appreciated that the incident took place on 2.11.1984, P.W.1 removed to relief camp on 2.11.1984, statements under Section 161 of the Code recorded on 17.11.1984 in the relief camp, affidavit Ex.PW-1/A and the recording of the deposition in the Court on 23.5.1997 and thereafter. It is in this background her evidence needs to be considered, making allowances for lapses in memory and the facts emerging as above. It may also be appreciated that some improvements, exaggerations are bound to be there, by the near relations of the victims and make a full proof case in order to see that the culprits do not escape, allowances must be made for the discrepancies in the evidence and the statement made more than a decade before. The human mind can not reproduce everything with all minute details as the memory gets fade by passage of time. The omission/contradiction brought on record can not be regarded as vital so as to discredit the evidence of P.W.1. Taking the evidence of P.W.1 in the light of her previous statement Ex.PW-1/DA at points 'A to A' and 'B to B' and the affidavit Ex.PW-1/A the complicity of the present appellants is sufficiently suggest-ed since it has been established beyond reasonable doubt from her evidence that the appellants were the members of the mob of rioters which had a common object of killing the members of a particular community, namely the Sikh Community and while indulging in the killings of the persons of the Sikh Community the said mob dragged out two sons of P.W.1 Laxman Singh and Hoshiar Singh, and sprinkled petrol on them and set them ablaze.

21. As seen above, during the early days of November 1984, the Delhi witnessed worst of the carnage, following the assassination of Mrs. Indira Gandhi, preceded by large scale riots which had broken out, then resulting into the killings of innocent persons irrespective of their age, middle aged or teenager of a particular community. The acts can not be regarded but barbarism. For no fault of theirs innocent persons were done to death in a most cruel manner, namely pouring petrol and burning them alive. This can not be regarded as an ordinary routine case of murder, looting or burning. Members of one particular community were targeted, their properties looted and burnt and people done to death. The law and order machinery had completely broken down. Unprecedented lawlessness prevailed during those days and the miscreants had absolute free hand for indulging in criminal acts. The situation created by the anti-communal forces can

not be viewed lightly and needs to be dealt with sternly. The after effects of the incidents would be felt by the people left behind for years. Though the time is the best healer certain situation can not be retrieved or healed when a young lady of 27 years (P.W.2) and an old lady (P.W.1) loosing their husband and four sons respectively and depriving the small children of P.W.2 of their father and a child to be born posthumously to P.W.2. Let's think of the agony and the sufferings of the family members who are left behind. The mob caused nothing short of havoc. There can be no place for leniency, mercy or sympathy in such cases.

22. In the case of Dhanajoy Chatterjee alias Dhana Vs . State of West Bengal : [1994]1SCR37 it has been observed that 'shockingly large number of criminals go unpunished thereby encouraging the criminals and in the ultimate making justice suffer by weakening the system's credibility. The imposition of appropriate punishment is the manner in which the Court respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence for the heinous crime committed by the accused. The courts must not only keep in view the rights of the criminal but also the rights of the victims of the crime and the society at large while considering imposition of appropriate punishment.'

In the case of Jashubha Bharatsinh Gohil and others Vs . State of Gujarat : [1994]3SCR471 it has been held that 'in the matter of death sentence the courts are required to answer new challenges and mould the sentencing system to meet these challenges. The object should be to protect the society and to deter the criminals in achieving avowed object of law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system as to impose such sentence which reflects the conscious of the society and the sentencing process has to be stern where it should be.'

In the case of Ravji @ Ram Chandra Vs . State of Rajasthan : AIR 1996 SC787 it has been held that 'it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also

against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated,

the enormity of the crime warranting public abhorrence and it should respond to the society's cry for justice against the criminal. If for extremely heinous crime of murder perpetrated in a very brutal manner without any provocation most deterrent punishment is not given the deterrent punishment will lose its relevance.'

23. In our considered view, the crime in the present case falls in the category of rarest of rare cases and the sentence has to be commensurate with the degree/gravity of the offence so that a required message is sent since there can be no place in the civilised society for the people like appellants/ convicts.

In the above view of the matter, having regard to the facts and circumstances, in our view the death sentence imposed by the trial Court deserves to be confirmed under Section 366 of the Code.

24. In the result Criminal Appeal No.12/98 and Criminal Appeal No.34/98 are dismissed. Murder Reference No.1/98 is accepted. Answered accordingly.