A CHAND KHAN & ANR.

*v.*

STATE OF UTTAR PRADESH

JULY 11, 1995

B [DR. A.S. ANAND AND M.K. MUKHERJEE, JJ.]

*Indian Penal Code 1860—Ss. 452, 148, 302/149, 325/149, 324/149, 323/149—IPC— Murder—Unlawful assembly—Grievous hurts—Trial of 9 accused—Four eye witnesses disbelieved—Acquittal of all—Appeal to High* C *Court—Four eye witnesses—One of them causing hurt and injury to one of the accused—Hence High Court believed evidence of eye witnesses—Convicting 5 accused—Validity of.*

*Evidence Act 1872.*

D *S.114 (g) Failure to collect evidence—Failure to produce evidence—Presumption by Court.*

*Legal Maxims.*

*Falsus in uno, falsus in omnibus—Applicability of.*

E

**According to the prosecution P.W. 6 and the deceased were business partners and P.W. 7 joined them as a worker. Appellants along with another accused came to P.W. 6 on 26.5.1977 at about 1 p.m. and assaulted him when he refused to release P.W. 7 who was earlier working with them.** F **P.W. 6 filed a complaint with the police. On the same night the appellants with seven others came to the house of the deceased who was sitting with his friends and P.W.2. The accused were armed with knives and gandasa and at once assaulted the deceased and others. Hearing their cries P.W. 1 and P.W. 4 came to the site. Appellants entered the kitchen and assaulted P.W. 5 and received blow of a knife when tried to attack her mother. While** G **fleeing away one of the Appellants thrust the knife on the neck of the deceased. Deceased was admitted to and died in hospital. FIR was lodged immediately by P.W. 1 mentioning the injury received by one of the Appellants besides members of the complainant's family viz. P.W. 1 and P.W. 5, the neighbour P.W. 4 and P.W. 2, a friend of the deceased,** H **witnessed the incident.**

The police investigation culminated in the trial of all the 9 accused persons. A

The Trial Court acquitted all the accused persons disbelieving the four eye witnesses as unworthy of any credit.

The High Court in an appeal filed by the State found the appellants and three others guilty and convicted them for the offences under Ss.452, 148, 325/149, 324/149, 323/149. The High Court also convicted the appellants for the offence under section 302/149 and sentenced them to life imprisonment. B

The Appellants filed the present appeal under Section 379 of Cr. P.C. invoking their statutory right. C

It was contended on behalf of the appellants that :(1) the High Court was not justified in interfering with the evidence even if another reasonably possible view of the evidence in favour of the prosecution might be taken. The incident that took place in the afternoon in which p.w. 6 was assaulted by the Appellant might have been a motive for the former to assault the latter and not *vice-versa*. And the assault on P.W.5 and appellant inside the house was patently false because neither any blood was found nor any knife was recovered by the Investigation Officer. D

Dismissing the appeal, this Court E

HELD : 1. The High Court found the evidence of the four eye witnesses examined by the prosecution namely P.Ws. 1, 2,4, and 5 convincing and the reasons given by the trial Court for disbelieving them and discarding the case were perverse. The High Court committed no error or injustice in interfering with the order of acquittal for it has noticed all the salient features of the case in the judgment of the trial court, discussed them well and disapproved them for cogent and justified reasons. [855-A, C] F

2. Proof of motive is not essential for success of a prosecution case where the ocular testimony in support of it is convincing and reliable. G

[856-A]

3. It was imperative for the trial court to consider the case of the individual accused on their respective merits in the light of other evidence on record and not to outright reject the evidence of the witnesses in its entirety for the reason that *principle of Falsus in uno, falsus in omnibus* H

A does not apply to criminal trial and it is the duty of the court to disengage the truth and falsehood. [858-F-G]

4. P.W. 2 and two more friends of the deceased were present at the material time as testified by the four eye witnesses was admitted by the defence. It was also admitted that besides the deceased the above three B persons as well as lady members of the house sustained injuries. However, according to them, they had beaten the deceased and other male members in exercise of their right of private defence and the ladies sustained simple injuries as they had then come out of the house. The Trial Court therefore, was not at all justified in disbelieving even the presence of P.W. 2 and two C more friends of the deceased at the spot. Then again, keeping in view the fact that the injuries sustained by P.W. 5 could be caused by a sharp edged weapon only and it being not the case of the defence that they had with them any such weapon the finding of the trial court that P.W. 5 and sister-in-law of the deceased had accidentally sustained their injuries must be said to be based on conjecture only. [857-D-F]

D

5. The best corroborating piece of evidence is furnished by FIR which was lodged by P.W. 1 on the basis of what he heard from P.W. 5.In the FIR which was lodged within 2 hours of the incident, the subtraction of the entire prosecution case finds place including a statement that during the E incident P.W. 5 had in defending herself given a blow to one of the accused with a vegetable cutting knife. [861-C]

6. One of the essential requisites of a proper investigation is collection of evidence relating to the commission of offence and that necessarily includes, in a case of assault, seizure of the weapon of offence, but then F failure to collect evidence and failure to produce evidence collected during investigation at the trial carry two different connotations and consequences. While the former may entitle the court to hold the investigation to be perfunctory or tainted affecting the entire trial, in case of the latter the court may legitimately draw a presumption in accordance with Section 114 (g) of the Evidence Act. [861-E]

G

7. The trial court, instead of finding out which of the contending versions was correct and acceptable, gave out a version of its own relying solely on presumption, surmise and conjecture. The Trial Court would have been, on a proper discussion and appraisal of the evidence, fully justified to H hold that the prosecution case was unreliable and record an order of

**acquittal in favour of accused without going into the question as to whether the defence case was true, for burden of proof was upon the prosecution. Equally justified the trial court would have been in recording such an order if it found the defence case probable. But it was not at all justified to make out a third case entering into the domain of speculation. [859-G]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 716 of 1991.

From the Judgment and Order dated 15.7.91 of the Allahabad High Court in Government Appeal No. 2613 of 1978.

D.D. Thakur, Suman Kapoor and Pankaj Kalra for the Appellants.

Anis Ahmed Khan and A.S. Pundir for the Respondent.

The Judgment of the Court was delivered by

**M.K. MUKHERJEE, J.** Chand Khan and Shabhu, the two appellants before us, and seven others were placed on trial before an Additional Sessions Judge of Rampur to answer common charges under Sections 452, 302/149, 325/149, 324/149 and 323/149 of the Indian Penal Code ('IPC' for short). Against five of them, including the two appellants, a charge under Section 148 IPC and against the other four a charge under section 147 IPC were also framed. besides, a separate charge under Section 302 IPC was framed, against appellant Shabbu. The trial ended in an order of acquittal recorded in favour of all the persons araigned. Aggrieved thereby the State of Uttar Pradesh preferred an appeal which was partly allowed by the High Court setting aside the acquittal of the two appellants and three others. After setting aside their acquittal the High Court convicted the two appellants for the offence under section 302 IPC as also for the other offences for which they were charged and sentenced them to suffer imprisonment for life for the former conviction and for the period already undergone for the other convictions. The other three were convicted of all the charges levelled against them except the one under Section 302/149 IPC and sentenced to imprisonment for the period already undergone. Assailing the above order of conviction and sentence only the two appellants have filed this appeal invoking their statutory right under Section 379 Criminal Procedure Code.

Facts which are not in dispute are that Shah Alam (the deceased),

A his cousin Faheem Khan (P.W. 6) and appellant Chand Khan were carrying on business of *Karchobi* from two separate workshops in Mohalla Gher Pipalwala within the police station of Ganj. Aslam (P.W.7), a boy aged about 7/8 years, had been working for the appellant Chand Khan in his business but a few days before the incident out of which the present appeal
B arises he left his services and joined the set-up of Faheem Khan. On May 26, 1977 at or about 1 P.M. on the two appellants and accused Ishtiaq Khan went to the workshop of Faheem Khan and asked him to release Aslam so that he could work with Chand Khan again. When Faheem Khan refused to oblige they assaulted him. For that incident, he lodged a complaint with the police the same afternoon. However, according to the prosecution Shah
C Alam and Faheem Khan used to carry on their above business jointly but as adequate accommodation was not available at one and the same place they were maintaining two workshops, one in the house of one Allah Rakha Khan and the other in the terrace of Md. Jama Khan.

D The prosecution version of the incident is that one the same night (on May 26, 1977) the two appellants along with the other accused persons went to the house of Shah Alam to teach him a lesson for the report his business partner Faheem Khan had lodged against some of them earlier in the afternoon for assaulting him. For that purpose the two appellants went armed with knives and the rest with other weapon including *danda*. Shah
E Alam was then sitting on a cot in the open space in front of his house along with Irshad Khan, Babar Khan and Kaisher (P.W. 2). Immediately after entering the premises the accused persons started assaulting them. Chand Khan gave two knife blows to Shah Alam and some others hit Irshad Khan, Babar Khan and Kaisher Khan with *dandas*. When the victims cried aloud,
F Keramat Ali Khan (P.W. 1), father of the deceased Shah Alam, who was inside the house came out and some people from the mohalla including Kailan Mian @ Mardan Mian (P.W. 4) arrived there. In the meantime some of the miscreants including Chand Khan entered into the house of Keramat and assaulted his daughter Sm. Naeema Parveen (P.W. 5) and his
G sister-in-law Sm. Raees Begum. When Sm. Naeema Praveen found that Chand Khan was about to beat her mother she picked up a knife used for cutting vegetables which was lying nearby and assaulted him. While coming out of the house Shabbu thrust his knife on the neck of Shah Alam felling him down. All of them then fled away. Keramat Ali Khan arranged immediate hospitalisation of all the injured including Shah Alam, whose
H condition was precarious. Before, however, any treatment could be ad-

ministered Shah Alam died. While in the hospital Keramat Ali Khan got a complaint written by Asmat Ali Khan (P.W.9) as per his dictation and forwarded the same to the police station.

At the hospital, Dr. S.P. Pandey (P.W. 3) examined Sm. Naeema Parveen (P.W. 5), Irshad Khan, Babar Khan, Sm. Raees Begum and Kaisher Khan (P.W. 2) and found injuries on their persons. P.W. 5 had two incised wounds which, according to P.W. 3, could be caused by sharp edged weapon and the other four had sustained contusions, which could be caused by blunt weapons. Chand Khan, who was also brought under arrest to the hospital in that very night as he had injuries on his person, was also examined by P.W.3. He found three incised wounds on his person, all of which, recording to him, could be caused by a sharp edged weapon. besides, P.W. 3 examined Faheem Khan for injuries which, he alleged, were sustained by him in the incident that took place earlier in the afternoon. According to P.W. 3 the two stab injuries he found on his person were likely to have been caused by a pointed weapon.

The post-mortem examination on the body of Shah Alam was held by Dr. O.N. Gupta on the following day (27.5.1977). He found the following external injuries on his person :

1. Incised punctured wound wound 5 cm. x 3 cm. x chest cavity deep on the base of left side neck, 5 cm. from the left sterno clavicular joint with direction downwards.

2. Abrasion 4 cm. x 1 cm. on the right side forehead 3 cm. above right eye brows.

3. Abrasion 3 cm. x 2 cm. on right side forehead 3 cm. Lateral to injury No. 1.

4. Abrasion 2 cm. x 1 cm. on the left side scapular region back.

5. Incised wound 2 cm. x 1 cm. x skin deep on the left side back at inner angle of left scapula.

6. Incised punctured wound 3 cm. x 1 cm. chest cavity deep on left side back 4 cm. below injury No. 5.

On internal examination of the dead body he found that the sixth rib

A was cut under injury No. 6; the pleura was cut beneath the injuries No. 1 and 6, the left lung was cut through and through; upper lobe was cut both under injury No. 1 and 6 and the pericardium and the right side of the heart were cut by the injury No. 1. Dr. Gupta opined that the death was due to shock and haemorrhage as a result of the injuries to vital organs.

B Shri V.P. Singh (P.W. 16) Station House Officer of Ganj Police Station took up investigation of the case registered on the complaint of Keramat Ali Khan. Besides, interrogating by him and the injured persons in the hospital on that very night, he inspected the place of occurrence, prepared a site plan and seized some blood stained earth from near the C gate of the complainant's house. After completion of investigation he submitted charge-sheet against the nine accused persons.

The appellants and the other accused persons pleaded not guilty and asserted that they had been falsely implicated. In his statement recorded D under Section 313 Cr. P.C. Chand Khan, however, admitted that earlier P.W. 7 used to work at his workshop but P.W. 6 weaned him away. He also admitted that he had gone to the workshop of Faheem Khan with Shabbu and Ishtiaq and asked him to hand over Aslam to him and that he had assaulted him. He however denied to have assaulted him with a knife. As regards the incident in question, his version that on that night there was a E festivity in the house of his cousin Sajjan and Mahboob (since acquitted) to which he was an invitee. As Rafiduddin of their mohalla was also invited in that function he went to his house which was near the house of the complainant to accompany him. There, on hearing his voice, Shah Alam and Kaisher Khan came out with knives accompanied by Babar Khan and F Irshad Khan and started beating him. When he cried aloud Shabbu (appellant), Sharif and Salim who were standing nearby and talking among themselves arrived there. When Shah Alam and his companions attempted to assault Shabbu and others, they in their defence assaulted them. As the ladies of the house had come out then they also sustained minor injuries. Appellant Shabbu, in his statement under Section 313 Cr. P.C. admitted G the assault on Faheem Khan in that afternoon but denied his presence at the time of the incident in question.

To prove its case the prosecution examined sixteen witnesses but no witness was examined on behalf of the defence. On consideration of the H evidence adduced the trial Court held that the prosecution case was

unworthy of credit. On appeal the learned Judges of the High Court found that evidence of the four eye-witnesses examined by the prosecution, namely, P.Ws. 1, 2, 4 and 5 convincing and the reasons given by the trial Court for disbelieving them and, for that matter, discarding the case of the prosecution were perverse.

It was urged on behalf of the appellants that as the trial Court gave detailed reasons for disbelieving the evidence of the prosecution witnesses the High Court was not justified in interfering with the same even if another reasonably possible view of the evidence in favour of the prosecution might be taken. Having heard the learned counsel at length and seen the judgments of the learned Courts below in the light of the evidence on record, we find that the High Court committed no error or injustice in interfering with the order of acquittal for it has noticed all the salient features of the case in the judgment of the trial Court, discussed them well and disapproved them for cogent and justified reasons. We are in complete agreement with the High Court that the judgment of trial Court was perverse and deserved to be set aside.

In the context of the prospective cases of the parties, it could not be - nor was it disputed that an incident of assault took place in the night of May 26, 1977 in or around the residential premises of Keramat Ali Khan (P.W.1) in the backdrop of an earlier incident in the afternoon in which Faheem Khan (P.W.6) was injured. It was also not disputed that in the incident in question Shah Alam met with his death while some others including appellant Chand Khan sustained injuries. In that view of the matter the principal question that fell for determination before the learned Courts below was whether it took place within the residential premises of P.W. 1 and in the manner as alleged by the prosecution or in the lane outside his house as claimed by the defence. To prove its version of the incident, the prosecution relied, needless to say, upon the evidence of the four eye-witnesses referred to earlier while the defence relied upon the statement of the accused including the appellant Chand Khan made under Section 313 Cr. P.C. and the circumstances appearing on record.

In negativing the prosecution version the trial Court first held, for reasons given, that the assault on Faheem Khan in the afternoon by Chand Chand could not be a motive for committing the murder of Shah Alam and that no other motive was ascribed by the prosecution. Even if we proceed

on the basis that the prosecution failed to prove the genesis or motive and that the above finding of the trial Court in this regard is unexceptionable still then this appeal cannot succeed on that score for proof of motive is not essential for success of a prosecution case where - as in the instant case - the ocular testimony in support of it is convincing and reliable. Indeed, as our discussion to follow will show the findings recorded by the trial Court for discarding the evidence of the four eye witnesses are based either on presumption, surmise and conjecture or on undue and unjustified reliance upon minor and immaterial contradictions.

In dealing with the evidence of the four eye-witnesses the trial Court first observed that having regard to the incident that took place in that afternoon. Faheem Khan and Shah Alam could only be the targets of the attack of the accused persons and not others, namely, Kaisher Khan, Babar Khan and Irshad Khan as testified by them. It next observed that if their evidence that Shah Alam and the above three persons were sitting together in front of the complainant's house and were talking to each other when the accused arrived there was to be believed, the latter could have caught hold of Shah Alam from out of those persons and put him to death in no time and then gone back. After making the above observations the trial Court held :

> "It may be that the members of the complainant's house might have come-out at their door on hearing the noise and alarm of this incident and that they might be rebuking and even accusing these accused-persons on their assaulting Shah Alam etc.".

The trial Court also disbelieved the prosecution case as to the manner in which the accused persons entered into the house of the complainant and beat the female members and, in explaining away the injuries found on the persons of Sm. Naeema Parveen and Sm. Raees Begum, observed :

> "..... and truth of the matter appears to be that Sm. Naeema Parveen and Sm. Raees Begum had accidently sustained their injuries in this incident when they had entered in the arena of the fight for defending Shah Alam etc. from the assault of the accused."

The High Court brushed aside the first of the above quoted findings of the trial Court with the following comments:

"The observation of the Additional Sessions Judge that the accused were likely to single out Shah Alam and to assault him alone it Shah Alam. Irshad Khan, Babar Khan and Kaiser Khan had been found sitting on the cot is misconceived and devoid of sense for Babar Khan the Brother of Shah Alam and Kaisher Khan and Irshad Khan who were his close relatives could not have been silent spectators. It is for this reason that they had all sustained injuries around the cot."

As regards the other finding the High Court observed that in view of the nature of the injuries sustained by Sm. Naeema Parveen and Sm. Raees Begum and in the absence of any suggestion put forward by the defence that those injuries were caused accidentally the criticism of the trial Court was perverse.

On a close analysis of the materials on record we are of the opinion that the High Court was fully justified in making the above comments. That Kaisher Khan (P.W. 2), Babar Khan and Irshad Khan were present at the material time as testified by the four eye witnesses was admitted by the defence. It was also admitted that besides Shah Alam the above three persons as well as lady members of the house sustained injuries. However, according to them, they had beaten Shah Alam and other male members in exercise of their right of private defence and the ladies sustained simple injuries as they had then come out of the house. The trial Court therefore was at all justified in disbelieving even the presence of Irshad Khan, Babar Khan and Kaisher Khan at the spot. Then again, keeping in view the fact that the injuries sustained by Sm. Naeema Parveen could be caused by a sharp edged weapon only and it being not the case of the defence that they had with them any such weapon the finding of the trial Court that Sm. Naeema Parveen and Sm. Raees Begum had accidentally sustained their injuries must be said to be based on conjecture only.

Another reason which weighed with the trial Court in disbelieving the prosecution case was that there were discrepancies in evidence as to the details and manner of assault. While detailing those discrepancies the trial Court observed :

"According to the complainant Keramat Ali Khan that cot was lying just in front of the main door of his house at a distance of only 2 to 3 steps from the door and the entire beating outside his

A house had taken place near that cot and the last fatal blow of the chhuri was also inflicted by Shabbu accused on Shah Alam at only 2 or 3 steps in front of his main door. On the other hand, according to Sm. Naeema Parveen, that cot was lying at 6 to 7 steps front of the main door of the house. According to P.W. Kaisher Khan, to whom that cot belonged, the cot was lying by the side of his B chapper, i.e., towards the north-west of the complainant's door and, according to him it was lying at 6 or 7 steps from that door towards the ??. According to P.W. Mardan Mian and is Kailan Mian Also, that cot was lying at 7 or 8 steps towards the north-west from the complainant's door, P.W. Keramat Ali Khan, at first, C stated before me that the accused-persons had beaten Shah Alam etc. towards the east of the cot. Then he stated in the next breath that some of them were beating on one side. While the others were beating on the other side of the cot. Further on he stated that the victims were roaming around that cot, while being beaten, and the D samething has been stated by some other witnesses."

The discrepancies jointed out by the trial Court are patently of minor character and cannot detract from the evidentiary value of the eye-witnesses. The High Court was, therefore, fully justified ignoring those discrepancies while dealing with the evidence of the four eye-witnesses.

E

The next reason canvassed by the trial Court for disbelieving the prosecution case was that the evidence of P.Ws. Kaisher Khan (P.W. 2) and Mardan Mian (P.W. 4) only established that some of the accused persons had assaulted Shah Alam and not all. Having recorded the above F finding it was imperative for the trial Court to consider the case of the individual accused on their respective merits in the light of other evidence on record and not to outright reject the evidence of the two witnesses in its entirety for it is trite that the principle "*Falsus in uno, Falsus in omnibus*" does not apply to criminal trials and it is the duty of the Court to disengage the truth from falsehood.

G

The judgment of the trial Court is replete with similar such findings which the High Court has rightly not accepted as correct. However, to avoid prolixity we refrain from detailing or discussing all of them and refer only to the concluding one to highlight the absurd and perverse approach H of the trial Court in dispensing criminal justice. It reads :

"It is quite probable that Shah Alam etc. *might be* bearing grudge and ill-will against Chand Khan etc. on account of the noon incident of that day, in which the accused Chand Khan, Ishtiaq Khan and Shabbu had an altercation with P.W. Raheem Khan and had then beaten him; and *it may be* that Shah Alam etc. *might have* caught-hold of Chand Khan accused when he had gone to the house of Rafiquddin for calling him and that they *might have* taken him from there in front of the complainant's house and *might have* assaulted him with chhuris. Then, it is also quite probable that the accused Sharif Khan, Salim Khan and Shabbu *might have* arrived on the spot on hearing the alarm raised by Chand Khan accused and that Shah Alam etc. *might have* tried to assault them also and thereupon they *might have* assaulted Shah Alam etc. with dandas and chhuri in defence of Chand Khan accused, as also in their own self defence. It has come in evidence that the house of Shabbu accused is situated quite near to the road crossing and that the house of Salim Khan accused is also situated in the same locality. So, it is quite possible that the accused Shabbu, Salim Khan and Salim Khan *might be* standing at the road crossing near the house of Shabbu accused and *might be* talking to each-other at that time and that they *might have* reached the spot on hearing the alarm raised by Chand Khan accused."

(emphasis supplied)

By frequent recourse to and reliance upon the words "might be" and "might have" in the above quoted passage the trial Court, instead of finding out which of the contending versions was correct and acceptable, gave out a version of its own relying solely on presumption, surmise and conjecture. The trial Court would have been, on a proper discussion and appraisal of the evidence, fully justified to hold that the prosecution case was unreliable and record an order of acquittal in favour of accused without going into the question as to whether the defence case was true, for burden of proof was upon the prosecution. Equally justified the trial Court would have been in recording such an order if it found the defence case probable. But it was not at all justified to make out a third case entering into the domain of speculation. The High Court was, therefore, right in basing its decision on

A a fresh and proper appraisal of the evidence leaving aside the obstinate findings of the trial Court. Having gone through the record we do not find any reason to differ from the decision so arrived at by the High Court.

Mr. Thakur, learned counsel for the appellants, however submitted that even if at was held that the reasons which weighed with the trial Court B in recording the order of acquittal were faulty and unsustainable still then the order of acquittal was liable to be upheld for the evidence on record did not justify the impugned judgment rendered by the High Court. To bring home his contention Mr. Thakur urged that the incident that took place in the afternoon in which Faheem Khan was assaulted by Chand C Khan might have been a motive for the former to assault the latter and not vice-versa. In that context, Mr. Thakur urged, the defence version of the incident in question was more probable than that of the prosecution. This contention of Mr. Thakur need not be gone into for we have earlier observed, and at the risk of repetition may again point out, that as the D evidence on record clearly proves that the incident took place in the manner alleged by the prosecution absence or insufficency of motive is immaterial. Mr. Thakur next submitted that the evidence of the prosecution witnesses so far as it related to the assault on Sm. Naeema Praveen and Chand Khan inside the house was patently false; firstly. because on blood E was found inside the house and secondly because on knife was produced by Sm. Naeema Praveen much less seized by the Investigation Officer. In support of his contention he drew our attention to the evidence of the Investigation Officer (PW 16) where in he stated that neither he had seen nor shown the vegetable cutting knife used by Sm. Naeema Praveen and F that he had found blood at the place which was about 8 steps from the northern main door outside the house of Keramat Ali and nowhere else. We are not impressed by any of the above contentions.

There is no evidence on record to show that there was profuse bleeding from the injuries sustained by the two ladies and Chand Khan for G blood to trickle down to the floor. On the contrary, the find of blood near the threshold of P.W. 1's house fits in with the evidence of the eye-witnesses and the nature of injuries sustained by Shah Alam. From the evidence of Sm. Naeema Praveen (PW 5) we get that when the accused persons started beating the members of their family inside their premises, she, her mother H and aunt (Raees Begum) stated shouting and cursing them. Then, when

they found Chand Khan was approaching them they went inside. There Ishtiaq Khan gave two chhuri blows on the left side of her face and Sharik Khan gave two *danda* blows to her aunt Raees Begum. When she found Chand Khan was about to beat her mother, she struck him with a vegetable cutting knife. The above evidence of P.W. 5 stands substantially corroborated by the other three eye witnesses referred to earlier. Then again the nature of injuries as found by the doctor upon her, Sm. Raees Begum and Chand Khan fits in with her testimony. In our opinion the best corroborative piece of evidence is furnished by the F.I.R. which was lodged by Keramat Ali (P.W. 1) on the basis of what he heard from P.W. 5. In the F.I.R. which was lodged within two hours of the incident, the substratum of the entire prosecution case finds place including a statement that during the incident Sm. Naeema Praveen had, in defending herself, given a blow to one of the accused with a vegetable cutting knife. In view of the above statement recorded in the F.I.R., the Investigation Officer (P.W. 16) ought to have taken steps to seize the knife even if P.W. 5 had not produced it for, one of the essential requisites of a proper investigation is collection of evidence relating to the commission of the offence and that necessarily includes. In a case of assault seizure of the weapon of offence, but then failure to collect evidence had failure to produce evidence collected during investigation at the trial carry two different connotations and consequences. While, the former may entitle the Court to hold the investigation to be perfunctory or tainted affecting the entire trial in case of the latter the Court may legitimately draw a presumption in accordance with Section 114 (g) of the Evidence Act. As the case presented before us comes under the first category of failures we have to find out whether we will be justified in discarding the prosecution case solely for the remissness of the Investigating Officer in seizing the knife. The consistent and reliable evidence of the eye witnesses coupled with the nature of injuries sustained by some of them and Chand Khan and the fact that in the F.I.R. it has clearly been stated that one of the miscreants had been assaulted by a vegetable cutting knife do not persuage us to answer the question in the affirmative. Mr. Thakur Lastly submitted that the entire prosecution story was improbable for if really the incident had happened in the manner alleged by it, the persons present in P.W.1's house would have sustained more serious injuries. We do not find any substance in this contention for it is evident that Shah Alam the main target and the assault on others was carried out

A to thwart any resistance from those present in the courtyard.

As all the pointed raised by Mr. Thakur fail and as on a conspectus of the entire evidence we are fully satisfied that the conclusions drawn by the High Court, particularly regarding the roles played by the two appellants in the riot and the murder of Shah Alam are unexceptionable, we B dismiss the appeal. The appellants, who are on bail, shall now surrender to their bail bonds to serve but the sentences.

M.K. Appeal dismissed.