

(2006) 01 AHC CK 0076
In the Allahabad High Court
Case No : Criminal Appeal No. 524 of 1982

Badri Singh, Sultan Singh, Brij Bhushan Singh alias Nasil and Satya Narain (In Jail) APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 201, 302

Citation : (2006) 01 AHC CK 0076

Hon'ble Judges : Imtiyaz Murtaza, J; Amar Saran, J

Bench : Division Bench

Advocate : P.K. Singh, T. Rathor, R.P. Singh, S.S. Rathor and V.P. Srivastava, for the Appellant; R.K. Singh, A.G.A. and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Amar Saran, J.—This criminal appeal has been filed against the judgement and order dated 26.2.1982 passed by the XII Additional Sessions Judge, Kanpur Mahanagar in Sessions Trial No. 123 of 1981 whereby the learned Judge convicted the appellants Badri Singh and Sultan Singh to imprisonment for life u/s 302 read with Section 149 IPC, two years RI u/s 148 IPC, seven years RI u/s 307 IPC, three years RI u/s 324 IPC, two years RI u/s 324 read with Section 149 IPC and one year RI u/s 323 read with Section 149 IPC. The learned Judge also convicted appellants Brij Bhushan alias Nasail and Satya Narain to imprisonment for life u/s 302 read with Section 147 IPC, five years RI u/s 307 read with Section 149 IPC, two years RI u/s 324 read with Section 149 IPC and one year RI u/s 323 read with Section 149 IPC, All the sentences were to run concurrently.

2. The case of the prosecution as mentioned in the FIR was that on 7.7.1978 at about 8.30 P.M., the informant Daya Ram was taking his meal in his house. His brother Ram Prakash and his father Raja Ram were lying near their door, where a lantern was burning. At that time his co-villagers Panda alias Sheo Nararin and his brother Laxmi Narain came running towards his house and entered it. They

disclosed that persons from village Sahbasi had attacked. Thereafter Daya Ram came out of his house. He saw Badri Singh armed with spear, Sultan Singh armed with Pharsa, Gatai Singh, his son Brij Bhushan Singh alias Nasail, Satya Narain and three other persons armed with lathies present at his door. These persons started abusing him and asked him to produce Panda alias Sheo Narain from his house. When the informant Daya Ram, his father Raja Ram and brother Ram Prakash asked them to desist from abusing, then an exhortation was given by Gatai Singh to beat the informant and others who tried to act as great helpers. Thereupon the accused persons launched an attack with the weapons wielded by them. On the alarm, the mother of the informant Smt Durji and Kalloo's mother Smt. Sheo Rani, his co-villagers Baldoo and Tilloo also arrived there, and witnessed the incident. The assailants ran away after committing Marpeet. The informant and others also plied lathies in their self defence. Daya Ram's mother Smt. Durji, Kaloo's mother Smt She Rani, Daya Ram and his brother received injuries with lathies, spear and Pharsa. His father Raja Ram became unconscious as a result of the injuries received.

3. Thereafter the informant lodged an oral report at police station Maharajpur which was at a distance of nine miles on 8.7.1978 at 1.00 A.M. On the basis of the oral report, a case was registered against the appellants under Sections 147/148/324/308 IPC. After information was received that Raja Ram, who was being brought on a bullock cart along with the injured brother of Daya Ram, had died on the way, the case was converted to one u/s 304 IPC.

4. Inquest was conducted on the body of Raja Ram, by SI Hariharnath Awasthi, P.W. 4 on 8.7.1978 at 10.30 A.M at the police station. Thereafter the dead body was sent for post mortem, through Constable Dev Singh and Chaukidar Jhabbulal. Post mortem was conducted by Dr. S.P. Dubey, P.W. 6 on 9.7.1978 at 2.15 P.M. at UHM Hospital, Kanpur, He found the following ante-mortem injuries on the body of the deceased Raja Ram:

1. Lacerated wound 6 cm x 1 cm x brain cavity deep on right parietal region, 11 cm above right ear vertical. There was depressed commuted fracture of frontal and parietal bones under the injury.
2. Contusion 18 cm x 6 cm on the right parietal region with commuted fracture of parietal bone underneath,
3. There was blueness around the right eye.
4. Incised wound 1-1/4 cm x 1/2 cm x skull deep on right frontal region 9 cm above bridge of nose.
5. Contusion 14 cm x 7 cm on front of chest upper part and lower part of neck front.
6. Incised wound 1-1/4 cm x 1/2 cm x muscle deep on the right side, middle of back 5 cm right lateral to midline.

5. On internal examination the doctor found that there was depressed commuted fracture of right frontal and parietal bones under injury Nos. 1 and 2 and the membranes beneath them in the brain were lacerated. Middle cranial fossa at the base of the skull was also fractured.

6. In his opinion the death had been caused due to haemorrhage and shock as a result of the aforesaid Injuries, He further opined that the injuries of Raja Ram were sufficient in the ordinary course of nature to cause his death. According to him, either of the injuries Nos. 1 and 2 were sufficient for his death in the ordinary course of nature.

7. The injuries of Daya Ram were examined by Dr. G.K. Mishra, Medical Officer, Primary Health Centre Sarsaul on 8.7,1978 at 2.30 A.M. in the night and the injuries of the other injured namely Smt Sheo Rani, Smt. Durji, Ram Prakash and Ram Pratap were examined by him on the same day in the morning between 8.20 A.M. to 9.15 A.M. He found the following injuries on their persons.

Injuries of Daya Ram

1. Lacerated wound 3-1/2 cm x 1/2 cm x scalp deep on the middle of head. Clotted blood was present.
2. Reddish contusion 7 cm x 1 cm on the right side of back.
3. Traumatic swelling 8 cm x 7 cm on the dorsum of right hand. Its x-ray was advised.
4. Abrasion 1 cm x 1/2 cm on the right middle of right leg.

Injuries of Smt. Sheo Rani

1. Incised wound 6 cm x 1 cm x muscle deep on the left side of forearm. Clotted blood was present.

Injuries of Smt. Durjee

1. Incised wound 2 cm x .5 cm x scalp deep on the left side of head, 5 cm above from the left ear. Clotted blood was present.
2. Incised wound 1 cm x 1/2 cm x skin deep on the right chest 6 cm above from the right nipple. Margins were clean cut and even and clotted blood was present.
3. Incised wound 2 cm x 1/2 cm x muscle deep on the right hand between right thumb and index finger. Clotted blood was present.
4. Reddish contusion 2 cm x 1 1/2 cm on the left shoulder.
5. Reddish contusion 3 cm x 1 1/2 cm on left forearm 5 cm above from left wrist.
6. Traumatic swelling 8 cm x 5 cm on the left hand. It was kept under observation and its x-ray was advised,
7. Punctured wound .5 cm x 5 cm x bone deep on the left knee joint.

8. Punctured wound .5 cm x 5 cm x bone deep, 13 cm in front of the above injury.

9. Punctured wound .5 cm x .3 cm x muscle deep on the right inner aspect of thigh.

Injures of Ram Prakash

1. Punctured wound .5 cm x .5 cm x muscle deep on the left side of chest 7 cm inner from the left nipple. It was kept under observation and its x-ray was advised.

Injuries of Ram Pratap

1. Incised wound 2 cm x .3 cm x skin deep on the middle of head. Its margins were clean cut and even, Blood clots were present.

8. In the opinion of the doctor all the injuries of Daya Ram and injuries Nos. 4, 5 and 6 of Smt. Durji were possible by some blunt object like lathi and the incised Wound of Smt. Sheo Rani, injuries Nos. 1, 2 and 3 of Smt. Durji and the incised wound of Ram Pratap were possible by some sharp edged weapon like Pharsa and injuries Nos. 7, 8 and 9 of Smt. Durji and the punctured wound of Ram Prakash were possible by some sharp edged pointed weapon like spear. All the injuries of the injured persons could have been caused on 7.7.1978 at about 8.30 P.M. The doctor found that the incised wounds Nos. 1 and 2 of Smt. Durji were on vital parts of her body.

9. Initially the case was investigated by P.W. 8, SI Shyam Singh Parihar, who interrogated the informant Daya Ram at the police station at 1.35 A.M.. He thereafter left for the village of occurrence Jaushan Khera at 2.00 P.M. He interrogated P.W. 9 Panda alias Sheo Narain and Siya Dulari and prepared a site plan (Ext. Ka 15). He collected plain and blood stained earth from the spot and kept them in separate sealed bundles (Ext. Ka 16). He inspected the lanterns which were burning at the spot and gave the same in the custody of Siya Dulan. Thereafter the investigation of the case was taken up by SI Satish Chandra Mehta, P.W. 9, who interrogated the injured Ram Pratap and the accused persons and after completing the investigation, he submitted charge sheet against the accused (Ext. Ka 18).

10. It is noteworthy that a cross case at case crime No. 167-A of 1978 under Sections 147/148/364/302/201 IPC was also got registered on the basis of the FIR lodged by the appellant Badri Singh, 8.7.1978 at 6.15 A.M. at the same police station. This case was also investigated by the aforesaid police officer and charge sheet was also submitted in that case by P.W. 9, SI S.C. Mehta.

11. The appellants Badri Singh and Sultan Singh were charged under Sections 148 IPC, 302 read with Section 149 IPC, 307 IPC, 323 read with 149 IPC and 323 read with 149 IPC. The appellants Nasail alias Brij Bhushan Singh and Satya Narain were charged under Sections 147 IPC, 302 read with 149 IPC, 307 read

with 149 IPC, 324 read with 149 IPC and 323 read with 149 IPC. All the accused pleaded not guilty and claimed to be tried.

12. The version mentioned in the cross case by Badri Singh was that when he along with Brij Bhushan Singh alias Nasail were returning to their village from their field through village Jaushan Khera and when they reached near a small temple, they saw two persons in the darkness there. Brij Bhushan Singh alias Nasail Singh enquired as to who they were, whereupon Panda alias Sheo Narain, P.W. 7, who was one of the two persons, who was present there, answered abusing them that whether he should tell him who they were. Thereupon, Brij Bhushan Singh alias Nasail Singh asked him to desist from abusing them. Thereafter Panda and Laxmi Narain (the other person present there) charged at Badri and Nasail with lathies. The latter two ran towards their village raising an alarm. Thereupon Badri's uncle Gatai Singh, cousin brother Sultan Singh, and Satya Narain arrived there carrying lathies. Seeing these persons arriving, Panda and Laxmi Narain fled towards their house. When Badri and others reached their house for the purpose of remonstrating against the conduct of Panda, they learnt that Panda had gone with Laxmi Narain towards Daya Ram house. Thereafter when they reached Daya Ram's house at 8.30 P.M., for lodging their protest Daya Ram, Panda, Raja Ram, Badloo, Ram Pratap, Satti, Tilloo and Kalloo came out carrying lathies. Ram Pratap was armed with Pharsa and the others were carrying lathies. They started abusing Badri and others observing as to how they dared to come to their house. Thereupon, on the exhortation of Daya Ram, all the persons launched an attack with lathies and Pharsa at Badri Singh and his party. In the course of the fight Ram Singh, Ram Asray Singh, Vijay Bahadur, Jagat Pal, Raghunath Nai of village Sahbasi and some villagers of Jaushan Khera also arrived there, who tried to intervene, but they were also beaten by the villagers of Jaushan Khera. To save their lives, the party of Badri Singh and others plied lathies, but on seeing that they were outnumbered by the accused of the other side, they ran away from the village. However, Gatai Singh was caught hold of by the accused of the cross case and they dragged Gatai Singh announcing that they would cut him (Gatai Singh) and throw his body in the river.

13. The prosecution has produced Dr. G.K. Mishra, P.W. 1, who conducted the medical examination of Daya Ram, Smt. Sheo Rani, Smt. Durji and Ram Prakash from the side of the prosecution and Ram Ashish Singh, Ram Singh and Badri Singh, who were injured from the side of the accused. The injuries of Daya, Ram, Smt. Sheo Rani, Smt. Durji and Ram Prakash have already been described above.

14. The injured on the defence side Ram Ashish Singh, was medically examined by Dr. G.K. Mishra on 8.7.1978 at 9.45 A.M. He found the following injuries on the person of Ram Ashish Singh:

1. Lacerated wound 3 1/2 cm x 1/2 cm x scalp deep on the left side of head, 6 cm above the left ear. Clotted blood was present.
2. Abrasion 1 cm x 1/2 cm on the back at lower portion.

15. Dr. G.K. Mishra also medically examined Ram Singh on 8.7.1978 at 10.05 A.M. He found the following injuries on his person:

1. Abrasion 2 1/2 cm x 3 cm on the right knee joint.
2. Abrasion 1 cm x .2 cm, 6 cm below the above injury.
3. Traumatic swelling 6 cm x 7 cm on back of middle and index finger of right hand Its x-ray was advised.

16. Dr. G.K. Mishra also examined Badri Singh on 8.7.1978 at 9.30 A.M. and found the following injuries:

1. Lacerated wound 5 1/2 cm x 1/2 cm x scalp deep, 6 cm above the bridge of nose. Clotted blood was present.

17. P.W. 3, SI, the then Head Constable, R.S. Tripathi prepared the chik FIR (Ext Ka 6) on the basis of the oral report lodged by Daya Ram. He made necessary entries in the G.D. He also prepared Majroobi Chitthi of the injured (Ext. Ka 1 to Ka 5.) and also sent the injured for medical examination through Constable Zahid Husain. He admits lodging of the cross report against Daya Ram and others by Badri Singh (Ext Kha 1).

18. P.W. 4, SI Harihar Nath Awasthi, conducted inquest on the dead body of Raja Ram on 8.7.1978 at 10.30 A.M. (Ext. Ka 8). He also prepared photo lash (Ext. Ka 9), Challan lash (Ext Ka 10). Report RI and for civil surgeon (Ext. Ka 11 and 12). He sent the body of Raja Ram for post mortem through Constable Dev Singh and Chaukidar Jhabbu Lal to the district hospital. He converted the case from one (sic) Section 308 to Section 304 IPC.

19. P.W. 6, Dr. S.P. Dubey conducted the post mortem examination on the body of Raja Ram on 9.7.1978 at 2.15 P.M. as described above.

20. P.W. 8, SI Shyam Singh Parihar, started the initial investigation as described above before the case was handed over to SI S.C. Mehta, who completed the investigation and submitted charge sheet (Ext. Ka 18). He also investigated the cross case at case crime No. 167-A of 1978 as mentioned above. During the course of investigation, he found injuries on Ram Singh and Ram Ashish Singh, who were residents of Sahbasi and who were the witnesses of the cross case. He found blood between the houses of Ram Pratap and Rayal, which was shown in the site plan at point No. 2. He did not find blood anywhere else.

21. P.W. 9, SI S.C. Mehta, conducted the second investigation in respect of the cross case at case crime No. 167-A and submitted charge sheet against Daya Ram, Ram Pratap, Panda, Kalloo, Tilloo, Badloo and Satti. He also admitted that case crime No. 167-A related to the murder of Gatai Singh.

22. Apart from the aforesaid formal witnesses, the prosecution has examined P.W. 2 Badloo, P.W. 5, Daya Ram, the informant and P.W. 7 Panda alias Sheo Narain, who were the three eye witnesses and witnesses of fact.

23. P.W. 2, Badloo, who is a resident of Jausan Khera, deposed that on the date of incident, he and Tilloo were returning after making purchases from a shop and when they reached at the door of Daya Ram, he saw Gatai, Brij Bhushan, Satya Narain, armed with lathies, Sultan Singh carrying a Pharsa and Badri Singh armed with spear and three other persons, whom he did not know by name were also carrying lathies. They were abusing and shouting that Panda should be produced from the house. Daya Ram and his father checked them, then Gatai Singh shouted that these sales are acting as "Madadgirs" and they should be taught a lesson and then all the accused persons started beating Daya Ram, Raja Ram, Ram Prakash and Ram Pratap. At that time Daya Ram's mother Smt. Durji and Kalloo's mother Smt. Sheo Rani came (sic)ut and tried to intervene, but they were also beaten by the accused persons. The injured defended themselves by pulling the bamboos from the Chhappar. Lanterns were burning at the houses of Daya Ram and Ram Pratap and the accused were identified with the lanterns' light. Tiloo, Laxmi Narain and 2 to 4 other persons also witnessed the incident. The accused ran away to their village after the Marpeet. Raja Ram and Smt. Durji became unconscious as a result of injuries and Raja Ram succumbed to his injuries later.

24. P.W. 5, Daya Ram has deposed that on the fateful night at the time of incident, he was taking his meal. His brother Ram Prakash and father Raja Ram were lying under the Chhappar. At that moment Panda arrived there along with his brother Laxmi. They disclosed that people of Sahbasi had launched an attack. Daya Ram came out of his house and saw Gatai Singh, his son Nasail alias Brij Bhushan Singh, Sultan Singh, Badri Singh and Satya Narain Pandit of Alawal and three other persons, whom he did not know from before present outside the door. Badri Singh was armed with spear, Sultan Singh was carrying Pharsa and the other six accused were armed with lathies. They abused Daya Ram and asked him to produce Panda. Daya Ram asked them to refrain from abusing. By that time his father Raja Ram had also arrived there. He also asked them to refrain from abusing. Thereupon, Gatai Singh shouted "Maro Salo Ko Bahut Madadgar Bante Hai." By that time his brother Ram Pratap, who was lying on the Chhappar and the other brother, Ram Prakash, who was lying with their father, arrived there. Badri Singh, Sultan Singh, Gatai Singh, Satya Narain, Nasail and three other persons launched an attack with their weapons on Raja Ram, Ram Prakash, Ram Pratap and Daya Ram. On their alarm, his mother Smt. Durji and Kalloo's mother Smt. Sheo Rani also arrived there. When they tried to intervene, they were also beaten by the accused. Daya Ram, Raja Ram, Ram Pratap, Ram Prakash, Smt Durji and Smt. Sheo Rani received injuries. Badloo and Tilloo witnessed the incident. In self defence Daya Ram, Ram Prakash, Ram Pratap and Raja Ram also plied lathies. Lanterns were burning at the houses of Raja Ram and Ram Pratap in the light of which, the assailants were identified. The accused ran away to their village after assaulting the prosecution party. He knew accused Badri Singh, Nasail, Satya Narain and Sultan Singh from before. He also knew Gatai Singh. Because of the injuries, Raja Ram became unconscious. He had

lodged the report after the incident (Ext. Ka 6) on which he affixed his thumb-mark. He was medically examined. His father died on the way. Ram Pratap, Ram Prakash, Smt. Durji and Smt. Sheo Rani were also medically examined. The accused were responsible for all the injuries to the injured.

25. P.W. 7, Panda, has deposed that at the fateful time, he was present near madhai of Devi Ji. He and his brother Laxmi were sitting there. In the night, he saw two persons coming from the side of village Sahbasi. He stopped them and enquired as to who they were, thereupon one of them (Nasaii) started abusing Panda. When Panda checked him, then his companion Badri Singh said that he will teach them a lesson and started proceeding towards his village. When the two accused persons had hardly gone 10-15 paces they were surrounded by the Mallahs of village Jausan Khera, At that time he could see these two persons. Then he saw others also coming in the direction of his village from village Sahbasi. Suspecting that they were intending to launch a serious attack on them, Panda and Laxmi ran towards their doors. As the villagers of Sahbasi had reached his village by then and he saw them coming towards his house, they ran from his door to Daya Ram's door, At that time Daya Ram was taking his food. Panda told Daya Ram that villagers of Sahbasi has attacked. Daya Ram came out of his house. He kept on standing in the Dalan near the door of Daya Ram along with Laxmi Narain. At the door of Daya Ram he saw Gatai Singh, Badri Singh, Sultan Singh, Nasail Singh and Satya Narain and three others amongst whom one was Ram Ashis. Sultan Singh was armed with Pharsa, Badri Singh was armed with spear and the others including Ram Ashish were carrying lathies. He had seen Ram Ashish giving evidence in another case, therefore he was able to recognize him as being present along with Badri Singh etc. He could identify the two others who were present with Badri Singh, if they were produced before him. He heard Badri Singh and others telling Daya Ram that Panda (Sala) should be produced. Then Daya Ram asked him as to why they were quarreling. Thereupon Gatai Singh shouted beat the helpers. Then Badri Singh, Gatai Singh, Nasail Singh, Sultan Singh, Satya Narain and three others attacked Daya Ram, Raja Ram, Ram Prakash and Ram Pratap with their weapons. Tilloo and Badloo also arrived there. Daya Ram, Ram Prakash, Raja Ram, Ram Pratap, Smt. Sheo Rani and Smt. Durji had received injuries in the incident. The lanterns were burning at the doors of Raja Ram and Ram Pratap. The Incident took place at 8 to 8.30 P.M. Daya Ram, Raja Ram and Ram Pratap also plied lathies in their self defence.

26. The defence taken by the accused is contained in their cross FIR at case crime No. 167-A, which has already been described above. The accused also examined Vijay Bahadur Singh as a defence witness.

27. D.W.1, Vijay Bahadur Singh, stated that he was present at his door in village Sahbasi at the time of incident, i.e. 8.00 P.M. He heard a noise towards the Madhai of village Jaushan Khera Chacha save us we are being killed". On that alarm Gatai Singh, Sultan Singh, Satya Narain ran towards village Jaushan Khera. Thereafter Ram Ashish, Ram Singh, Raghunath Nai, Jagat Pal and Vijay

Bahadur Singh also proceeded there to see as to what had happened. When they reached near the Marhai, they could not see anything. Then they arrived at village Jaushan Khera and when they reached near the house of Rayal, they saw Gatai Singh, Badri Singh, Satya Narain and Nasail were being chased by Daya Ram, Raja Ram, Pratap, Satti, Badloo, Panda, Tilloo and Kalloo. Pratap was armed with Pharsa, whereas the others were armed with lathies. These persons started beating Gatai Singh, Badri Singh, Satya Narain, Nasail Singh and Sultan Singh. They also assaulted Vijay Bahadur Singh and others when they intervened. Gatai Singh and Badri Singh received Pharsa and lathi injuries respectively. Both of them fell down. In the intervention Ram Ashish and Ram Singh also received injuries. In the course of the fight, Pratap's Pharsa had come into the hand of Ram Ashish, who plied it in his self defence. Ram Singh plied spear in defence. Satya Narain, Raghunath Nai, and Vijay Bahadur Singh also plied lathies in their defence. He noticed that Ram Ashish had received a lathi blow on his head and he fell down. Ram Singh received fracture in his hand as a result of which the spear had fallen down. When they felt that they would not escape, they ran, but Daya Ram and others caught hold of Gatai Singh and shouted that they would cut and throw his body in the river. The third day, the body of Gatai Singh was recovered from the river.

28. At a late stage the accused filed certified copies of two documents of the cross case in ST. No. 75-M of 1981 State v. Daya Ram and Ors. Those documents are copies of charge sheet against Daya Ram, Ram Pratap, Panda alias Shiv Narain, Kalloo, Tilloo, Badloo and Sutti under Sections 147/148/364/302/201 IPC and post mortem report dated 11.7.1978, which is said to be of Gatai Singh. The second document shows that the dead body was decomposed at the time of examination and all the four fingers of its left hand had been amputated and Its eyes, ears and part of nose were absent. There was a wound (incised) 22 cm x 5 cm x depth up to cervical bone over front of neck between larynx and trachea, Its cut margins could not be seen due to maggots and decomposition. The accused did not get: this document formally proved and did not examine the doctor who could have said that the said injuries could have been caused before death or even thereafter.

29. We have heard Shri V.P. Srivastava, learned counsel for the appellants and Shri R.K. Singh, learned Additional Government Advocate.

30. It was argued by Shri Srivastava that there are Injuries on the side of the appellants and three persons Ram Ashish, Ram Singh and Badri Singh have been examined by P.W. 1, Dr. G.K. Mishra and one person Gatai Singh was even hacked to death and his body thrown in the river. There is no reasonable explanation for the injuries to these persons. The prosecution has not come out with the genesis and true version of the incident and the incident appears to have taken place in some other manner and hence the appellants deserve to be acquitted.

31. Shri Singh, learned A.G.A on the other hand contended that looking to the

preponderance of injuries on the side of the prosecution, the appellants were clearly the aggressors and the incident in question had also taken place at the door steps of the prosecution witnesses in village Jaushan Khera, whereas the appellants belong to village Sahbasi, thus, they have no reason to be present at village Jaushan Khera. Thus, no right of private defence could accrue to the accused in these circumstances. Another reason for preferring the prosecution version to the defence version was that the prosecution FIR was lodged on 8.7.1979 at 1.00 A.M., whereas the defence FIR at case crime No. 167-A of 1978 was lodged on 8.7.1978 at 6.15 A.M.

32. The rival submissions need to be examined in some depth. The prosecution case as narrated in the FIR lodged by Daya Ram was that Panda alias Shiv Narain had come running to his house at about 8.30 P.M. and Panda simply mentioned that he and his brother Laxmi were being chased by the Sahbasi Walas, who had attacked. Thereafter the appellants and others of village Sahbasi arrived there and asked for Panda and on the protest by Daya Ram and his father Raja Ram, the appellants launched an attack with various weapons ascribed to them. Significantly, this FIR gives absolutely no reason why the appellants should pursue Panda and Laxmi Narain and why they should take it into their heads to assault Daya Ram, Smt Sheo Ran, Smt. Durgi, Ram Pratap, Ram Prakash and Raja Ram, who are the residents of village Jaushan Khera for absolutely no rhyme or reason specially when the main target of attack Panda and Laxmi Narain escaped entirely unscathed.

33. On the other hand, the FIR lodged from the side of the appellants by appellant Badri Singh appears to give some better details as the FIR clearly states that at 8.00 P.M. in the night, on the fateful day when Badri and his cousin brother Nasail alias Brij Bhushan Singh were passing through village Jaushan Khera, they saw two persons in the darkness and on enquiry from these two persons about their identity, they were rebuffed and abused and in fact an assault was launched on them. Thereupon, Badri and Nasail started running towards their village Sahbasi raising a cry, which resulted in their fellow villagers arriving and that they had proceeded to village Jaushan Khera to register their protest against the act of Panda and Laxmi Narain, but this only enraged Oaya Ram and others whose protection was being sought by Panda and an attack was launched on the villagers of Sahbasi, In that assault Gatai Singh, uncle of Badri Singh, was beaten and abducted and thereafter murdered. The sequence of events become a little more understandable from the FIR lodged by the defence as compared to the FIR lodged by the prosecution because from the FIR lodged by the prosecution, it appears that the whole incident has taken place in a completely inexplicable manner. It is noteworthy that P.W. 7, Panda has himself mentioned in his evidence in Court that after the exchange of abuses took place between the parties on the enquiry about the identity of the accused, appellant Nasail hurled abuses, which was objected to by Panda, whereupon Badri and Nasail said to wait and they would teach a lesson to the Sala. Thereafter, Badri and Nasail started going towards their village, when they were surrounded by

Mallahs of Jausan Khera and they had cried out for help and thereafter the persons of village Sahbasi began arriving. In this background, it was not unlikely that the appellants had gone to village Jausan Khera to lodge their protest for the incident with Badri and Nasail and thereafter the quarrel between the parties became aggravated because egos were inflamed and the incident in question took place.

34. It is significant that the target of attack Panda and his companion Laxmi remained completely unhurt. It is, therefore, possible to conceive in such a situation that Daya Ram and other villagers of village Jaushan Khera may have felt quite insulted that some persons of village Sahbasi had dared to come to their residence for raising a protest and asking for Panda, they may themselves have decided to teach a lesson to the villagers of Sahbasi, whereupon a conflict took place between two sides. It can also not be said that there is a great preponderance of injuries from the side of the prosecution and in any case the number of injuries are not always determinative about the question as to which side was the aggressor as there can be no denial of the fact that a person was murdered from the side of the accused, after he was apprehended by the prosecution party, about which a cross FIR was lodged at case crime No. 167-A of 1978. If the accused side had overwhelmingly outnumbered the prosecution side, then there was no question of the prosecution side having succeeded in apprehending Gatai Singh and having murdered him thereafter. No doubt the post mortem report of Gatai Singh has not been brought on record, but the investigating officer of the cross case P.W. S.C. Mehta, admitted that he submitted charge sheet in the cross case against Daya Ram, Ram Pratap, Panda, Kalloo, Tilloo, Badloo and Satti in crime No. 167-A of 1978, under Sections 147/148/364/302/201 IPC and this crime number related to the murder of Gatai Singh. The fact that Gatai Singh was apprehended, was mentioned in the FIR lodged by Badri at 6.15 A.M. on 8.7.78 and it was also mentioned in that FIR that the accused of that FIR were saying that this Sala (Gatai Singh) would be hacked and his body thrown in the river and thereafter they caught hold of him and dragged him away.

35. The delay in lodging of the FIR from the side of the accused, which was lodged on 8.7.78 at 6.15 A.M. as compared to the prosecution report at Daya Ram, which was lodged at 1.00 A.M., is also not fatal for the defence as it can be explained by the fact that Gatai Singh had been apprehended and Badri and others may have been looking for him as is mentioned in the cross FIR itself. But when he became traceless, then the cross report was lodged at 6.15 A.M.

36. The mere fact that the incident took place near the homestead of the prosecution witnesses is also not determinative and conclusive about the question that the accused were the aggressors because as mentioned above, if the accused party of village Sahbasi had gone to lodge the protest for the action of Panda and his companions against Badri and Nasail and at that moment instead of reasoning with these persons, the villagers of village Jaushan Khera

became aggressors and launched the attack, which may have resulted in the aggravation of the conflict between the parties.

37. In these situation, it cannot unequivocally be held that the accused side were indubitably the aggressors. It may be noted that the blood, which had been found by the Investigating officer, has not been found inside the house of Daya Ram and others where the fight took place, but on the path way (at point No. 2 as indicated in the side plan) between the house of Rayal and injured Ram Pratap, which is consistent that the accused side even having been chased on the path way for having dared to come to village Jaushan Khera for lodging their protest.

38. At any rate, on these materials on record, this much is apparent that the prosecution side is not coming out with a wholly true version of the incident and the genesis does appear to be somewhat shrouded in mystery.

39. It is also not intelligible that as per the prosecution version, if the accused party of eight persons had come overwhelmingly armed with lathies, Pharsa and spear, how three persons Badri, Ram Ashish and Ram Singh, who have been examined by P.W. 1, Dr. G.K. Mishra, the same doctor at around the same time as the prosecution injured, would have sustained injuries and how Gatai Singh would have lost his life in the incident or thereafter because we even find lacerated wound on the head of Badri and Ram Ashish Singh and we think that the injuries of the injured and the deceased Gatai Singh on the accused side are not adequately explained in the prosecution FIR and in the evidence of the witnesses.

40. Significantly, to a pointed question that whether Gatai Singh had any injuries, P.W. 2 admitted that although Gatai was present amongst the assailants, but he did not receive any injury. He also denied that these persons had murdered Gatai Singh and thrown his body in the Ganges river and that in fact Gatai and his other companions had run away.

41. There could also be some confusion about the identity of the accused persons as the incident had taken place in the night time, on a dark night and only two lanterns were shown burning at the houses of Raja Ram and Ram Pratap. Also no specific role has been assigned to each of the accused in the evidence and the prosecution and the accused side appear to be running in different directions in the darkness when the quarrel took place. In these circumstances it may not be possible to determine in a very clinching manner as to the role played by each of the accused and about their identities as the initial prosecution case was that there were at least 8 persons who participated in the incident.

42. In this view of the matter, we are of the view that the prosecution has failed to prove its case beyond the reasonable doubt.

43. In the result the appeal is allowed.

44. The appellants are acquitted of the offence for which they have been

charged. They are on bail. Their bail bonds are cancelled and sureties are discharged.