
(2006) 08 UK CK 0062

In the Uttarakhand High Court

Case No : Criminal Appeal No. 225 of 2001

Massa Singh and Others

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 08-08-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 299, 313, 374(2), 82, 83
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 302
Uttar Pradesh Reorganisation Act, 2000 — Section 35

Citation : (2007) NCC 1 : (2007) 1 UC 510

Hon'ble Judges : Rajeev Gupta, C.J.; Prafulla C. Pant, J

Bench : Division Bench

Advocate : S.K. Agrawal, assisted by, Gopal K. Verma, Sunder Singh Bhandari, M.S. Pal, assisted by, V.S. Pal and C.S. Bagadwal, for the Appellant; D.K. Sharma, Government Advocate, for the Respondent

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374(2) of Code of Criminal Procedure, 1973 (herein after referred as Cr.P.C.) is directed against the judgment and order dated 15-03-1985, passed in Sessions Trial No. 78 of 1980, by the then learned 1st Additional Sessions Judge, Nainital, whereby Appellants Kundan Singh, Dara Singh, Dalip Singh and Daljit Singh, have been convicted u/s 302/149, 324/149, 323/149 and u/s 148 I.P.C. and each one of them has been sentenced to undergo imprisonment for life u/s 302/149 I.P.C, rigorous imprisonment for two years u/s 324/149 I.P.C. rigorous imprisonment for six months u/s 323/149 I.P.C. and rigorous imprisonment for one year u/s 148 I.P.C. Appellant Massa Singh has been convicted and sentenced to imprisonment for life u/s 302/149 I.P.C, rigorous imprisonment for two years u/s 324/149 I.P.C, rigorous imprisonment for six months u/s 323/149 I.P.C. and rigorous imprisonment for further six months u/s 147 I.P.C. Appellant Daljit Singh is further convicted and sentenced to undergo rigorous imprisonment for five years u/s 394 I.P.C. and Appellant Jiwan Singh is convicted and sentenced to undergo rigorous imprisonment for three years u/s 411 of I.P.C.

2. We heard learned Counsel for the parties and perused the entire record.

3. Prosecution story, in brief, is that Smt. Lakhi Mandal R/o village Rambagh within the limits of police Out Post Dineshpur, PS. Rudrapur, was opposed to the proposal of her sister-in-law Smt. Jaimani to sell her land to Massa Singh (Appellant). On 26-12-1979, Jaimani, Krishna Pad and Bhudhar, took her husband Sudhir Mandal with them who did not return back. On 28-12-1979, Sudhir Mandal's wife Smt. Lakhi Mandal, made a report (Ext. A-2) of that incident at Police Out Post Dineshpur. On said report, Head Constable Gopal Datt (P.W.2) sent Constable Janardan Bhatt (P.W.3) and Constable Abbai Singh (P.W.8) to village Rambagh to enquire into the matter. On said date, i.e. 28-12-1979 at 6:30 P.M. when the said two constables reached the village, they could not find Krishna Pad who was accused in said matter, there. While the policemen were on their return from the village, Smt. Lakhi Mandal, informed that Krishna Pad has now reached in his house. On this, they went back again to village Rambagh and brought Krishna Pad to Out Post Dineshpur at about 9:00 P.M. for interrogation. But at 9:30 P.M. on the same day i.e. 28-12-1979, Smt. Lakhi Mandal along with one Kishore Kumar and Jagdeesh Lal (P.W. 4), again came to Police Out Post Dineshpur and reported that Appellant Massa Singh alongwith his five sons namely, Kundan Singh, Dalip Singh, Daljit Singh, Dara Singh (all Appellants) and Jagdish Singh (who died in encounter) along with other 4-5 bandits, armed with lethal weapons have reached in the village to kill her (Smt. Lakhi Mandal). On this complaint, Constable Janardan Bhatt (P.W. 3), armed with a fire arm Musket No. 97383 and 20 live cartridges, Constable Abbai Singh (P.W. 8) armed with Musket No. 99552 and 20 live cartridges, Constable Narendra Singh and Home Guard Anil Dhali (deceased), both armed with "LATHIES" (sticks), were sent to village Rambagh. At about 10:00 P.M. on 28-12-1979 when the police personnel along with Lakhi Mandal, Kishore Kumar and Jagdeesh Lal (P.W.4), reached near culvert, they saw Appellant Massa Singh along with his five sons and 4-5 other bandits coming towards them through the field. When the policemen flashed torches and asked the miscreants why they have come there, first, Appellants overpowered Constable Abbai Singh, who fell down. Appellant Daljit Singh snatched his Musket (No. 99552). Constable Anil Dhali (deceased) in an attempt to rescue Abbai Singh, was also assaulted by the Appellants who suffered injuries. Seeing, compelling circumstances, Constable Janardan Bhatt (P.W. 3) opened fire at the miscreants. Accused persons including Appellants, leaving the injured at the site, fled from the village along with the looted Musket. Hearing the noise of firing, villagers Ranjan, Mukund and Jitendra also reached at the place of occurrence. Constable Janardan Bhatt with the help of others, took injured Constable Abbai Singh and injured Home Guard Anil Dhali to hospital at Dineshpur. Anil Dhali succumbed to the injuries on way to hospital. Constable Janardan Bhatt (P.W. 3) thereafter went to Police Out Post Dineshpur and lodged First Information Report (Ext. A-5) against accused persons including the Appellants. Report was recorded by Head Constable Gopal Datt (P.W.2) who made necessary entry in the general diary (extract of which is Ext. A-6). Head

Constable Gopal Datt went thereafter to PS. Rudrapur by then it was 00.05 of 29-12-1979. Meanwhile, Dr. Pramod Kumar (P. W.1) medically examined injury of Constable Abbal Singh on 28-12-1979 at 11:20 P.M. at hospital Dineshpur and prepared injury report (Ext. A-1). After the inquest report (Ext. A-17) and other papers prepared, Constable Lallu Lal (P.W. 9) along with another Constable took the dead body of Home Guard Anil Dhali in a sealed cover to civil hospital, Haldwani for post mortem examination. On 30-12-1979, Dr. Mohan Singh Laspal (P.W. 7) conducted autopsy on the dead body of Constable Anil Dhali and prepared report (Ext. A-10). The Medical Officer opined that cause of death of the deceased (Anil Dhali) was shock and haemorrhage due to ante mortem injuries. In the incident, Jagdeesh Singh S/o Appellant Massa Singh also suffered injuries and died on 04-01-1980. His dead body was also taken into custody by the police and inquest report (Ext. A-11) was prepared. The same was sent for post mortem examination. The post mortem examination on the dead body of Jagdeesh Singh was conducted by Dr. S. Tandon (P.W. 10) on 05-01-1980. The said Medical Officer opined that deceased (Jagdeesh Singh) died of shock and peritonitis due to ante mortem injuries. The crime was investigated by Inspector Kishan Singh (P.W. 12), who inspected the place of incident on 29-12-1979, prepared site plan (Ext. A-16), took the simple soil and blood stained soil and prepared memo (Ext. A-7). The Investigating Officer on 05-01-1980, prepared site plan (Ext. A-23) and from the place of occurrence, swords used in the crime, were recovered and prepared memo (Ext. A-9). After recording the statements of the witnesses, the Investigating Officer submitted charge sheet (Ext. A-24) against seven accused persons namely, Massa Singh, Kundan Singh, Dalip Singh, Daljit Singh, Dara Singh, Jiwan Singh and Krishna Pad.

4. The Magistrate, on receipt of the charge sheet, it appears after giving necessary copies to the accused persons, committed the case to the Court of Sessions, for trial of the accused persons. Learned trial court, after hearing the prosecution and the defence, framed charge of two heads against Appellants Massa Singh, Kundan Singh, Dalip Singh, Daljit Singh and Dara Singh, for the offences allegedly committed by them, punishable u/s 302 read with 149 I.P.C. and that of one punishable u/s 307 read with Section 149 I.P.C. Appellants Kundan Singh, Dalip Singh, Daljit Singh and Dara Singh were further charged of offence punishable u/s 148 I.P.C. Appellant Daljit Singh was further charged u/s 394 I.P.C. Appellant Massa Singh was further charged u/s 147 I.P.C. Appellant Jiwan Singh was charged u/s 411 I.P.C. And charge of offence, punishable u/s 120B read with Section 302 I.P.C. and u/s 120B read with Section 307 I.P.C. was framed against accused Krishna Pad. All the accused persons, pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Dr. Pramod Kumar who recorded the injuries of injured Constable Abbal Singh (P.W. 8), P.W.2 Head Constable Gopai Datt, who made entries in the general diary of the report, received from Smt. Lakhi Mandal on 28-12-1979 and made necessary entry in the general diary regarding the report and movement of the constables from and to the Out Post Dineshpur, P.W.3 Constable Janardan Bhatt, an eye-witness of the

incident, P.W.4 Jagdeesh Lal, an eye-witness (declared hostile), P.W.5 Bhajan Lal, witness of taking simple soil and blood stained soil from the place of occurrence, P.W. 6 Makhan Sarkar, witness of the same fact (i.e. taking simple soil and blood stained soil), P.W. 7 Dr. Mohan Singh Laspal, conducted autopsy on the dead body of Anil Dhali, Home Guard, P.W.8 Constable Abbal Singh (injured eye-witness), P.W.10 Dr. S. Tandon, who recorded injuries on the person of Jagdeesh Singh, S/o Massa Singh, who later succumbed to the injuries and his post mortem examination was conducted by same Medical Officer, P.W. 11 Sub-Inspector Balvir Singh, a witness of recovery of Musket from Jiwan Singh (Appellant), P.W. 12 Inspector Kishan Singh, the Investigating Officer and P.W. 13 Sub-Inspector Dinesh Chandra Singh Rawat (witness of recovery of blood stained sword). Apart from this, affidavit of P.W.9 formal witness was taken on record, who took the dead body of Anil Dhali in sealed cover for post mortem examination. Cross-examination of this witness was dispensed with by the defence counsel. A chemical examiner's report of the blood stained articles sent to him was also obtained, which is Ext. A-25, Ext. A-26, Ext. A-27 and Ext. A-28 on the record. All the oral and documentary evidence was put to the accused persons u/s 313 of Code of Criminal Procedure, regarding which the accused/Appellants alleged the same to be false and it is alleged that they have been falsely implicated due to enmity with Lakhi Mandal, who has close links with the police. In defence, the copies of the extract of general diary (Ext. B-1, Ext. B-2 and Ext. B-3), were got placed on the record. On the conclusion of the trial, the trial court found Appellants Kundan Singh, Dara Singh, Dalip Singh and Daljit Singh, guilty of offences punishable u/s 302/149, 323/149, 324/149 I.P.C. and u/s 148 I.P.C. Appellant Massa Singh was found guilty of the offence punishable u/s 302/149, 323/149, 324/149 and u/s 147 I.P.C. Appellant Daljit Singh was further found guilty of offence punishable u/s 394 I.P.C. while Appellant Jiwan Singh was found guilty of offence punishable u/s 411 I.P.C. After hearing on sentence, the convicts were sentenced as mentioned in para 1 of this judgment. Aggrieved by which, the Appellants preferred an appeal before the Allahabad High Court in the year 1985, which was received by this Court by transfer u/s 35 of U.P. Reorganisation Act, 2000, for its disposal. (It is pertinent to mention here that the order sheet of the trial court shows that the accused Krishna Pad jumped his bail during trial and could not be arrested even after processes u/s 82 and 83 of Code of Criminal Procedure were issued, as such evidence was recorded against him in his absence, u/s 299 of Code of Criminal Procedure.

5. Before further discussion, it is pertinent to mention here the ante mortem injuries recorded on the person of deceased Anil Dhali (Home Guard) and that of Jagdeesh Singh S/o Massa Singh, who received injuries on the side of the accused persons. The post mortem examination report (Ext. A-10) read with statement of P.W. 7 Dr. Mohan Singh Laspal, shows following ante mortem injuries were found on the dead body of Anil Dhali (Home Guard) at the time of autopsy on 30-12-1979:

1. Incised wound 12cm ? ?cm, deep into brain cavity on the back of skull

horizontally towards right side with brain matter coming out from the wound with compound fracture of the back skull.

2. Incised wound 10cm ? 1/3cm, deep into brain cavity with compound fracture of the skull bone. Brain contents coming out from the wound. This injury is below injury No. 1.

3. Incised wound 10cm ? 1/3cm, deep into brain cavity, direction towards right side and below injury No. 2.

4. Incised wound 4cm ? 1/4cm, skull bone deep, vertically towards light side.

5. Traumatic amputation of left little finger.

6. Incised wound 1cm ? 1/4cm, skin deep on outer part of left elbow joint, 4cm above the joint.

7. Incised wound 3cm ? 1/4cm, skin deep on left side of the back, direction towards right side, 6cm down to shoulder left joint.

8. Incised wound 3cm ? 1/6cm bone deep left leg, 10cm below left knee joint

9. Incised wound 2?cm ? 1/6cm bone deep, on the left leg 4cm below injury No. 8, direction towards outer side.

10. Incised wound 5cm ? 1/6cm, on the left leg with bone fracture of the left leg, 1/2 cm below injury No. 9.

11. Incised wound 9cm ? 3cm bone deep with fracture of left tibia bone, 7cm below injury No. 10.

12. Incised wound 2cm ? 1/4cm skin deep into right side of the leg, 4cm above right medial malleoves bone.

According to the Medical Officer, the deceased (Anil Dhali) died of shock and haemorrhage due to ante mortem injuries recorded above.

6. Autopsy report (Ext. A-15) recorded by P.W.10 Dr. S. Tandon, shows following ante mortem injuries on the dead body of deceased Jagdeesh Singh (S/o Massa Singh), recorded on 05-01-1980:

1. Stitched wound 1cm in length, present in front of abdominal wall of the right side.

2. Stitched wound 1cm in length 1/2cm lateral on the right front abdominal wall.

3. Incised wound 1.5cm ? 1.4cm with rubber drain ? abdominal cavity deep on the right side of abdomen.

4. Stitched wound 1.5cm length on the medial front of left ankle joint. Medical Officer (P.W.10 Dr. S. Tandon) opined that deceased (Jagdeesh Singh S/o Massa Singh) died because of shock and haemorrhage due to ante mortem injuries. The injury recorded by the same doctor on 29-12-1979, who prepared injury report

(Ext. A-14), discloses that there was following one gun shot injury on the person of Jagdeesh Singh:

1. Gun shot wound of entry : 1cm ? 1/2 cm ? abdominal cavity deep on the right hypochondrium of the abdominal wall. No mark of any tattooing, charring and blackening present. The Medical Officer opined surgery.

7. P.W. 8 Constable Abbal Singh, is an injured and star eye witness of this case, who has deposed that it was 28th of December, 1979, when he was posted in Police Out Post Dineshpur, where Smt. Lakhi Mandal brought her complaint (Ext. A-2) and went to village Rambagh to make inquiries on said complaint and in search of Krishna Pad with Constable Janardan Bhatt (P.W.3). Same day, in the evening, when he was returning from Rambagh with Janardan Bhatt, Lakhi Mandal again met them and told that Krishna Pad has come back in his house. On this, at about 7:30 P.M. the policeman reached village Rambagh and at about 9:00 P.M. they took him (Krishna Pad) to Police Out Post Dineshpur. When the interrogation was going on with Krishna Pad, Lakhi Mandal again came to Police Out Post with Kishore and Jagdeesh Lal (P.W.4) and told that Appellant Massa Singh along with his five sons namely, Kundan Singh, Dalip Singh, Daljit Singh, Dara Singh (all Appellants) and Jagdish Singh (deceased) with few other persons, armed with deadly weapons, had come to the village with intention to kill her. On this information, again the witness (P.W.8 Abbal Singh) with Constable Janardan Bhatt (P.W.3), Constable Narendra Singh and Home Guard Anil Dhali (deceased from the side of police party) went with Lakhi Mandal, again went towards village Rambagh. P.W. 8 Constable Abba! Singh, further states that he was armed with one Musket and 20 cartridges while Constable Janardan Bhatt too was armed with one Musket and 20 cartridges. According to this witness, Constable Narendra Singh and Home Guard Anil Dhali, were armed with "LATHES" (Sticks). It was 10:00 P.M., when they reached near a culvert and saw that the Appellants and their associates were coming through village towards them. This witness further states that Constable Narendra Singh and Constable Janardan Bhatt, flashed their torches at the miscreants and asked them to show the license of the deadly weapons, they were armed with. Meanwhile, according to this witness, someone fired from amongst the miscreants and pellets hit on his (Abbal Singh's) right arm. Thereafter, Appellant Kundan Singh gave a lathi blow at him (Abbal Singh) and Jagdeesh Singh S/o Massa Singh, gave a blow of sword on his (Abbal Singh's) head. P.W. 8 Abbal Singh further states that Kundan Singh was armed with lathi as well as sword and Jagdeesh Singh was armed with sword only. The witness further states that on getting injured, he fell down. P.W.8 Abbal Singh further states that when he fell down, his Musket No. 99552, was robbed by Appellant Daljit Singh. On this, Home Guard Anil Dhali (deceased from the side of police party), came forward in a rescue of the witness (Abbal Singh) but he was attacked and assaulted by swords by both the Appellants Kundan Singh and Daljit Singh (in court he identified Dalip Singh as Daljit Singh). He too supported the injuries. This made Constable Narendra Singh and Constable Janardan Bhatt to retreat a bit. The shots were being fired from both the sides.

According to the witness, from the side of the police party, Constable Janardan Bhatt (P.W.3) was firing at the miscreants, where after the miscreants fled from the scene. The statement of this witness gets corroboration from the injuries suffered by him and recorded by P.W.1 Dr. Pramod Kumar on 28-12-1979 at 11:20 P.M. in Ext. A-1, which enumerates following injuries:

1. Wound of 5?cm ? 2/5cm ? 1cm on the mid of scalp situated anterior posterior on the scalp.
2. Wound of 3?cm ? 1cm ? 1/2cm on the right palmer side of the right hand, situated on the 5th meta carpal bone. This wound was totally ruptured.
3. Contusion of 14 1/2cm ? 3/4cm on the back situated left laterally.

All the injuries were found to be fresh. P.W. 1 Dr. Pramod Kumar stated that the injury No. 1 appeared to have been caused by sharp edged weapon like sword while the injury No. 2 appeared to have been caused by a fire arm.

8. Not only the statement of P.W.8 (Abbal Singh) is corroborated from the injuries received in the incident but also from the statement of another eye-witness P.W. 3 Constable Janardan Bhatt, who narrated and corroborated the prosecution story, as stated by P.W.8 (injured Abbal Singh). This witness (P.W. 3) has further made it clear that Appellant Kundan Singh and Dalip Singh gave blows with swords on the person of Anil Dhali (deceased) and the Appellant Daljit Singh robbed Musket of Constable Abbal Singh. This witness has also corroborated the fact that the Appellants fired shots, which hit on the right arm of Abbal Singh. P.W.3 Constable Janardan Bhatt further states that after the incident, he took injured Abbal Singh and Anil Dhali to the hospital at Dineshpur, where Anil Dhali was declared brought dead. The witness further states that on reaching back at the Out Post Dineshpur, he lodged First Information Report (Ext. A-5) against the accused persons, including Appellants. As to the death of Jagdeesh Singh S/o Massa Singh, this witness states that he (Constable Janardan Bhatt) fired on retaliation at the miscreants, which might have hit Jagdeesh Singh, who later succumbed to the injuries.

9. P.W. 4 Jagdeesh Lal was also examined by the prosecution, who supported the prosecution story in part that the miscreants robbed Musket of Abbal Singh. This witness has further corroborated that the police party had the torches with them and the police party had gone to Rambagh on information of Lakhi Mandal. P.W. 4 Jagdeesh Lal has also corroborated the fact that at about 10:00 P.M. when he was accompanying the police party and reached near culvert, he saw Appellants Kundan Singh, Dalip Singh, Dara Singh, Massa Singh along with Jagdeesh Singh, coming through fields. The witness further states that Kundan Singh gave a blow of sword on Constable Abbal Singh, which" made him fell down. As to the use of fire arm, this witness says that it was Appellant Dara Singh, who fired from a country made pistol. P.W. 4 Jagdeesh Lal has corroborated the statement of Janardan Bhatt (P.W. 3) that he fired shots in self defence, which hit Jagdeesh Singh, S/o Massa Singh. Since the witness did not corroborate the entire

prosecution story, as such he was declared hostile by the prosecution.

10. From the above discussion of evidence, we are of the view that charge of offence, punishable u/s 302 read with Section 34 of I.P.C. is proved beyond reasonable doubt, as against Appellant Kundan Singh and Appellant Dalip Singh, who had caused injuries with sword on the person of Anil Dhali, who succumbed to the injuries. It is also proved from the evidence on record that Appellant Kundan Singh who caused injuries on the person of Constable Abbai Singh with sword and Appellant Dalip Singh who used fire arm are also guilty of offence, punishable u/s 324 read with Section 34 of I.P.C. The conviction recorded by the trial court of the above two Appellants, deserves to be upheld, reading the substantive offence with Section 34 I.P.C. There is no prejudice caused to these Appellants on account of absence of charge u/s 302 read with Section 34 I.P.C., as they were fully aware of accusations against them in the charge u/s 302 read with Section 149 I.P.C. However, as to the conviction of other accused/Appellants namely Massa Singh, Dara Singh and Daljit Singh are concerned, we are of the opinion that the contention of Shri S.K. Agarwal, Senior counsel for the Appellants has a force that since the miscreants were not aware of encounter they faced, as such, there could not have been an unlawful assembly to commit a crime on the part of above three nor had they participated in commission of murder of Anil Dhali or in causing injuries on the person of Abbai Singh. That being so, the conviction of these three, cannot be upheld u/s 302 read with Section 149 I.P.C. But from the evidence of P.W. 3 Janardan Bhatt, read with statement of P.W. 8 Constable Abbai Singh, it is proved beyond reasonable doubt that Appellant Daljit Singh robbed Musket No. 99552 from the person of Constable Abbai Singh after he fell down on getting injured. The evidence adduced by the two witnesses on the point is also natural and trust worthy. As such, the trial court has rightly convicted Appellant Daljit Singh of the offence punishable u/s 394 I.P.C. As against Appellant Jiwan Singh, the charge of offence punishable u/s 411 I.P.C. is rightly found proved by the trial court, as the evidence of P.W. 11 Sub Inspector Balvir Singh read with the recovery memo, proves the same fact. Not only that, from the evidence on record, it is also clear that a criminal case was initiated against Appellant Jiwan Singh for possessing the unlicensed Musket (robbed in the above incident), resulted in his conviction and the appeal filed by him was also dismissed on 03-11-1981, as is clear from the copy of judgment (Ext. A-29).

11. Shri S.K. Agarwal, learned Counsel for the Appellants, argued that the Appellants had a right of self defence, as they were attacked by the police party. However, we are unable to accept the submission of the learned Counsel for the reason that it is nowhere suggested on behalf of the Appellants to the witnesses that it was the police party, who attacked them nor is it so pleaded in the statement u/s 313 Code of Criminal Procedure recorded by the trial court. Not only this, we have reservation if a person has a right of self defence against the lawful act on the part of a public servant. Otherwise also, in the circumstances, where the prosecution witnesses have proved that when Abbai Singh was injured

and his Musket was looted, Anii Dhali, who went in his rescue, was assaulted. At that stage, Constable Janardan Bhatt, shot fire, which caused injuries on the person of Jagdeesh Singh S/o Massa Singh. As such, the circumstances, which have come on the record on the basis of the prosecution evidence, clearly indicate that it was the police party who was first attacked by the miscreants.

12. It is also contended on behalf of the Appellants that Lakhi Mandal was not examined by the prosecution and as such, the prosecution story, as narrated by the police Constable should not be believed. Had there no injuries on the person of Constable Abbal Singh, we would have accepted the contention of the learned Counsel if there had been, as mentioned above, does not create any doubt, as to his presence at the place of occurrence and his deposition as such regarding the incident as narrated by him and corroborated by P.W. 3 Janardan Bhatt cannot be doubted.

13. For the reasons, as discussed above, the appeal deserves to be allowed partly. Conviction of Appellant Para Singh u/s 302/149, 323/149, 324/149 and u/s 148 I.P.C. and sentence awarded there under, is set aside. He is acquitted of all the charges. Conviction of Appellant Daljit Singh u/s 302/149, 323/149, 324/149 and u/s 148 I.P.C. and sentence awarded there under by the trial court is set aside. He is acquitted of said charges but his conviction and sentence u/s 394 I.P.C. is maintained. Conviction and sentence awarded by the trial court against Appellants Kundan Singh and Dalip Singh shall stand modified and passed u/s 302/34, 323/34, 324/34 (instead of u/s 302/149, 323/149 and 324/149 I.P.C). However, their conviction u/s 148 I.P.C. and sentence awarded against them by the trial court under said Section is set aside and they are acquitted of the charge u/s 148 I.P.C. only. Conviction u/s 411 of I.P.C. and sentence awarded there under against Appellant Jiwan Singh is maintained. Accordingly the appeal stands dismissed to the extent the conviction and sentences are maintained. (Appeal of Appellant Massa Singh, stands abated due to his death during the period of appeal).