

Ballam and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-15-2001

Reported in : 2001CriLJ3354

Judge : J.C. Gupta and ;Bhanwar Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 149, 302, 304, 323, 352, 452, 504 and 506; Code of Criminal Procedure (CrPC) - Sections 107, 117 and 161

Appeal No. : Cri. Appeal No. 2231 of 1980

Appellant : Ballam and ors.

Respondent : State of U.P.

Advocate for Def. : K. Kapoor, A.G.A.

Advocate for Pet/Ap. : Amar Saran, ;N.P. Midha and ;Apul Mishra, Advs.

Disposition : Appeal allowed

Judgement :

J.C. Gupta, J.

452

323

149

302

149

2. Before adverting to the prosecution story it may be relevant to mention here the following pedigree for showing that the deceased, first informant and accused persons are related to each other.

(See table on next page)

Accused Madan Singh and Dharam Singh are nephews of accused ManphoolSingh.

Jamintay

/

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Deewan Singh Har Dayal

//

Jiwan / / /

Ram Sarup Bhagirath Kanpur

Ikhraj Singh

///

/////

Ajab Chandrashan Pahal Singh Udai Raj Birbal Atar Singh

Singh (deceased)

P.W. 1

///

Ballam Manphool

(accused) (accused)

////

Tikey Charan Hakey Mohan Singh

(accused)

3. The prosecution case in brief is that there was a long standing enmity and dispute between complainant party and accused persons in respect of plot Nos. 42 and 45 which were kept outside the chak carvation during consolidation proceedings. According to prosecution case the complainant party had half share in the above two plots and the other half share belonged to the accused party. However, accused persons were occupying more area than their share. Ajab Singh P.W. 1 and his brother Chandrabhan, deceased in this case had been requesting the accused persons to get demarcation of their respective shares done, but accused persons always avoided it. It is alleged that the accused persons were annoyed on account of repeated requests made by the deceased for

demarcation.

4. The occurrence in question is said to have occurred on 29-8-1978 at about 7.30 p.m. At that time Ajab Singh, P.W. 1 was in his 'Gher' along with his brother Abhay Singh. This 'Gher' was placed at a distance of about 125 paces from the house of Chandrabhan deceased. Both Ajab Singh and Abhay Singh rushed to the house of Chandrabhan on hearing cries. Virendra Singh, P.W. 2 also followed them and when all of them reached in front of main door of the house of Chandrabhan deceased they noticed that the five appellants named above were assaulting Chandrabhan in his courtyard with lathi. In order to save life of their brother, Ajab Singh and Abhay Singh both rushed into the house of Chandrabhan as a result of which they were also assaulted by the appellants. On their shrieks P.W. 2 Virendra Singh s/o. Chauhan Singh, Raghuvir s/o Jai Pal Singh and Sukhvir s/o Abhan Singh, Dhoop Singh s/o Devi Singh and others also arrived at the scene of occurrence and witnessed the incident. As the pressure mounted accused person went out of Chandrabhan's house through a window. Chandrabhan became unconscious on the spot due to injuries sustained by him. It is further alleged that in the next morning complainant Ajab Singh carried Chandrabhan to the nearest hospital of Galibpur Dispensary, but he could not be given any medical aid there as the doctor was not available. Thereafter they proceeded to Muzaffar Nagar, but in the way they decided to go to Khatauli hospital. But before they could reach there, Chandrabhan expired near the Mill Gate. Ajab Singh dictated first information report (Ext. Ka. 1) to his brother Bhim Singh and produced the same at police station Khatauli on 30-8-1978 at 11.45 a.m. The dead body of Chandrabhan was also brought at P.S. Khatauli.

5. Injuries of Ajab Singh and Abhey Singh were examined at Khatauli hospital by Dr. Kailash Chand, P.W. 3 at 3.15 p.m. and 2.50 p.m. respectively. Ajab Singh had following injuries:-

1. Abrasion on the left side of skull anterior to earline, measuring 1-1/2 cm x 1/2 cm.

2. Bruise on the left side of back on the upper half measuring 7-1/2 cm x 1/2 cm.

Bluish red in colour.

Probable duration of injuries- one day

Probable weapon - Blunt

Probable nature of injuries - Simple

Injuries report of Ajab Singh is Ext. Ka.5.

Following injuries were found on the person of Abhay Singh :-

1. Abrasion on anterior aspect of left pinna measuring 1-1/2 cm x 1 cm.
2. Contusion on the left shoulder measuring 6 cm x 4 cm. Bluish red in colour.
3. Swelling around the left elbow with 23 cm. of circumference and 18 cm in length. Contusion mark on the swelling measuring 7 cm. x 2 cm. Bluish red in colour.

Adv. X-ray left elbow.

4. Abrasion on the lateral aspect of right chest extending to posterior side (Back) measuring 15 cm x 2 cm.
5. Abrasion on the anterior aspect of little finger of left hand measuring 3/4 cm. x 3/4cm.
6. Swelling around the middle finger of left hand. Movement restricted, Circumstance 2 cm. x 2 cm. long. Adv. X-ray.
7. Swelling around the right thumb. Movement restricted.

Application of medicine present on the injury Nos. 1, 2, 3, & 4.

Injury report of Abhay Singh is Ext. Ka.4.

Autopsy on the dead body of Chandrabhan was conducted on 31-8-1978 by Dr. P. Sharma, PW 4 and following ante mortem injuries were noticed :-

1. Contusion left temporal region 3' x 2-1/2'.
2. Contusion occipital region in an area 3'x3'.
3. Multiple contusions blended together in an area of 12' x 7' in right scapular and shoulder region,
4. Contusion 3' x 1/2' on upper part of lateral aspect of right arm.
5. Contusion 8' x 1-1/4' on outer aspect of right arm lower half region.
6. Contusion 2 1/2' x 1' on ulna side of left forearm and palm(left).
7. Abrasion 1 1/2 x 3/4' on outer aspect of right knee.
8. Contusion on left shoulder region 3' x 2' on top left shoulder region.

In the internal examination, parietal bone was found fractured from occipital to temporal region. In the opinion of medical officer death was due to shock and haemorrhage as a result of ante mortem injuries.

Investigation of the case was conducted by S.I.R.C. Gupta PW 8.

6. Appellant Dharam Singh, Ilakey Singh and Madan Singh denied their presence at the scene of occurrence. Appellant Ballam came with a cross version. He stated that they were not in possession of more than half area of the joint land. According to him also incident occurred at about 7.30 p.m. on the same day, but at a different place and in different manner. He stated that Chandrabhan deceased, Ajab Singh, Bheem Singh, Abhay Singh and Ramesh assaulted Manphool on the Kachcha road in front of his house. On hearing their alarm he and Amar Singh rushed to the spot, but they were also assaulted by Ajab Singh and others. Ballam, Amar Singh and Manphool wielded lathi in self defence. The statement of Manphool accused was also to the same effect.

7. Before the trial Court prosecution examined eight witnesses of whom PW 1, Ajab Singh and PW 2 Virendra Singh were the only witnesses of fact.

8. In defence accused persons examined Dr. T.N. Mathur, Medical Officer, as D.W. 1, Dr. S.K. Gupta, as D.W. 2 and Amar Singh as D.W 3.

9. T.N. Mathur, Medical Officer, District Hospital, Muzaffarnagar stated that he had examined accused Manphool on 30-7-1978 at 2.20 p.m and found following injuries on his person :

1. Lacerated wound $1\frac{1}{4}' \times 1\frac{1}{8}'$ x scalp deep on the right side head $3\frac{1}{2}$ above right ear fresh bleeding not present with traumatic swelling $4\frac{1}{2}' \times 4'$ around the wound.

2. Lacerated wound $\frac{3}{4}' \times 1\frac{1}{8}'$ x scalp deep on the left side occipital region on head, $3\frac{1}{2}$ behind left ear.

3. Traumatic swelling $5' \times 3'$ on the left side mandible.

4. Contusion $1\frac{1}{2}' \times 1'$ on the front of right shoulder, C/o pain in front of chest side and pain in back lower part.

10. The same doctor also examined Amar Singh on the same day at 2.40 p.m. and found following injuries.

1. Contusion $5' \times 1'$ on the outer side of left forearm upper part with traumatic swelling $8' \times$ all around the upper part of left forearm.

2. Abrasion $\frac{1}{4}' \times 1\frac{1}{8}'$ on the left forearm (back) just above the left wrist joint outer of scab. C/o Pain in back lower part.

11. Injuries reports of Manphool Singh and Amar Singh have been proved as Ex. Kha-3 and Ex. Kha 4 respectively. Dr. S.K. Gupta D.W 2 who took X-ray of left forearm of accused Amar Singh has stated that the X-ray examination revealed fracture of left radius bone. X-ray report is Ext. Kha-6.

12. D.W. 3 Amar Singh gave statement in support of the defence version of incident.

13. On an evaluation of the evidence on record the learned Sessions Judge has found the appellants guilty of the offences for which they have been convicted and sentenced by the judgment under appeal.

14. Learned counsel for the appellants Sri P.N. Misra and learned A.G.A. appearing for the State were heard at length.

15. Learned counsel for the appellants submitted before us that the complainant party was more aggrieved because as per the own case of the prosecution, accused persons were in possession of more land than their half share and were not agreeing to get the joint land demarcated; that two witnesses produced from prosecution side were highly interested and inimical; that no witness of the locality was produced though many of them are said to have arrived at the scene of occurrence; that it was highly doubtful that incident occurred inside the house of Chandrabhan, that two persons on accused side also sustained injuries which have not been explained by the prosecution and that the prosecution was guilty of not presenting true facts before the Court and of concealing the origin of incident.

16. It was also submitted by the learned counsel for the appellant that the learned Sessions Judge has committed a grave error in holding that the burden of proof has been fully discharged in the present case and while recording this finding he has taken into consideration weaknesses of the defence evidence and it was argued that prosecution cannot succeed on the weaknesses of defence case and the burden which lies on the prosecution in criminal trial of proving its case beyond doubt has not been satisfactorily discharged. On the other hand learned A.G.A. made submissions in support of the judgment of the trial Court.

17. There is no dispute with regard to factum of death of Chandrabhan. It is also not assailed before us that the two Contusions in the shape of ante mortem injuries No. 1 and 2 were sustained by deceased on his head and had caused heavy internal damage and ultimately proved fatal. From the statements of PW 1 Ajab Singh, PW 2 Virendra Singh and PW 3 Dr. Kailash Chand, no doubt is also left that Abhay Singh and Ajab Singh also sustained blunt object injuries on their person and those injuries though were simple in nature were caused in the same course of incident wherein deceased Chandrabhan was assaulted. According to

the prosecution case all the appellants forming an unlawful assembly entered into the house of Chandrabhan and assaulted him with lathi in prosecution of their common object and when PW 1 Ajab Singh and PW 2 Abhay Singh entered into the house of Chandrabhan to save him from further beating, they too were assaulted by the appellants, while as per the defence version assault on the persons on prosecution side was made in exercise of right of self-defence and the incident did not occur in the house of Chandrabhan, but in the rasta. When Chandrabhan deceased, Ajab Singh and Abhay Singh assaulted Manphool and also Amar Singh and Ballam when they intervened to save Manphool, then the accused Ballam, Abhay Singh and Manphool wielded lathi in self defence

18. It is well settled principle that even where plea of self defence is raised, the onus of proving all the ingredients of an offence is always upon the the prosecution and at no stage it shifts to the accused. It is only when this burden is discharged, that it will be for the accused to explain or controvert the essential elements in the prosecution case. It is not for the accused at the initial stage to prove something which has to be eliminated by the proscution to establish the ingrediants of the offence with which he is charged. It is also well settled that even where the onus shifts upon the accused to establish his plea of self defence, the standard of proof is not the same as that which rests upon the prosecution. The defence plea on an accused is to be examined only on the test of preponderance of probabilities and if the evidence on record probablises his plea, accused will be entitled to get the benefit of doubt. It is also well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weaknesses of the defence. Therefore, even though there is a counter version and defence theory may be having some weaknesses but that will have no effect upon the prosecution case and the burden will remain on the prosecution to prove its case satisfactorily and beyond doubt.

19. In the present case the moot question for consideration is whether the prosecution has succeeded in establishing beyond doubt that the, incident occurred inside the house of Chandrabhan and in the manner as alleged by the prosecution ?

20. It may not be out of place to mention here that defence seriously disputed the place of occurrence and as per the cross version of accused persons incident had occurred on the kachcha rasta and not inside the house of Chandrabhan. Once the place of occurrence was seriously disputed by accused persons, a heavy burden laid upon the prosecution to establish beyond doubt that the incident occurred inside the house of Chandrabhan and not on the kachcha rasta as suggested by the defence. In order to discharge its burden of fixing the place of occurrence, the prosecution has relied upon the testimony of two witnesses examined at the trial namely PW 1 Ajab Singh and PW 2 Virendra Singh. Ajab Singh is admittedly real brother of deceased Chandrabhan. Abhay Singh the other injured is also his real brother. Accused Ballam, Manphool and Ilakey Singh are co-laterals of PW 1 Ajab Singh. It is admitted by PW 1 Ajab Singh that there was a long standing enmity between him and accused Manphool, Udai Raj, Pahal Singh and Ballam. There was also a dispute with regard to plots No. 42 and 45. Though they also had half share in those plots but accused party was in occupation of more land than their half share. Being aggrieved, he and deceased Chandrabhan had been persuading accused party to get demarcation of those plots done but the accused persons did not pay any heed and said that they could do so through Court. He further stated that In the year 1970 he had lodged a report (Ex. Ka. 2) against some of the accused persons. A perusal of Ex. Ka. 2 would show that on 18-7-1970 an F.I.R. was made by Abhay Singh under Sections 352/504/506, I.P.C. against Gyan Singh, Sheo Pal, Kunwar Pal, Amar Singh, Ghamandi, brother of appellant Madan Singh, Kharag Singh, Wazir Singh and two unknown persons. Proceedings under Sections 107/117, Cr.P.C. were Initiated between the parties in which Bhim Singh, deceased Chandrabhan, Ajab Singh and Abhay Singh were on one side and Dharam Singh accused and others were on the other side. He further admitted that deceased Chandrabhan Singh and prosecution witness Sukhbir Singh were prosecuted together in a murder case of Pandit Uma Charan. He also admitted that before the present occurrence Chandrabhan deceased had instituted a case of assault on appellant Ilakey Singh, his father and uncle. It was suggested to this witness that Virendra Singh PW 2 was a witness of Chandrabhan in the said case but instead of giving any positive reply he avoided the same by pleading ignorance. It is also admitted by this witness that in respect of the incident in

question a cross F.I.R. had been lodged by Katar Singh son of appellant Manphool against him, his brothers Abhay Singh, Bhim deceased Chandrabhan and Ramesh Singh and on the basis of the same they were also challenged and a cross case was pending against them in the Court. He further admitted that in the cross case, appellant Madan, Dharmendra Singh and Ilakey Singh were prosecution witnesses against them. PW 2 Virendra Singh admitted that in the year 1970 his father and brother were murdered and his uncle Shahzad Singh sustained injuries. In that case Pooran was an accused. It was suggested to him that Pooran was a relative of Manphool accused. Instead of denying the same the witness pleaded ignorance.

21. It would thus appear that both the prosecution witnesses were interested and inimical. PW 2 Virendra Singh further appears to be a chance witness. PW 1 Ajab Singh admitted in his statement before the trial Court that the house of Virendra Singh PW 2 was situated at a distance of 270 paces from the house of Chandrabhan. PW 2 Virendra Singh in his statement before the trial Court deposed that at the time of incident he was coming back home from his tubewell and when he was in front of the Gher of Ajab Singh he saw Ajab Singh and Abhay Singh running towards the door of Chandrabhan's house. According to him he had told this fact to the investigating officer, but could not give any reason why such a fact was not mentioned by the investigating officer in his statement. PW 8 S.I. Sri R.C. Gupta, Investigating officer however, stated that witness Virendra Singh had not told him that at the time of incident he was going to his house from his tubewell and that when he reached near the Gher of Ajab Singh he saw Ajab Singh and Abhay Singh running towards the house of Chandrabhan. On the other hand he had told him that he along with Ajab Singh and Abhay Singh had rushed to the house of Chandrabhan on his cries. It would thus appear that this witness made this improvement in order to justify his presence near about the place of occurrence because his house was situated at a long distance from the house of Chandrabhan. As both the witnesses are highly inimical and interested and Virendra Singh was also a chance witness their testimony requires scrutiny with care and caution.

22. PW 1 Ajab Singh stated before the trial Court that at the time of incident he was in his Gher along with Abhay. When they heard cries coming from the house of Chandrabhan, both of them ran towards Chandrabhan's house with lathi in their hands. From outside the door of Chandrabhan he saw that the present appellants were assaulting Chandrabhan with lathi inside his house in the courtyard. Chandrabhan had fallen on the ground. He and Abhay Singh also entered into the house and tried to intervene whereupon they were also assaulted with lathi by all the appellants. He further deposed that he and Abhay Singh used lathi in defence. This witness further stated that Chandrabhan on account of injuries sustained by him had become unconscious but on account of fear of accused persons they did not take Chandrabhan to any hospital for medical aid. In the morning they first went to Ghalibpur hospital but as doctor was not there, the compounder told them to take Chandrabhan to Muzaffarnagar. After waiting for one and half hour for the arrival of doctor, they proceeded to Khatauli, but before they could reach the Khatauli hospital, Chandrabhan died on the way. He got First Information Report scribed by his brother Bhim Singh. PW 1 Ajab Singh admitted in unequivocal terms that he did not mention in his report the fact that accused persons assaulted Chandrabhan inside his house. It was also admitted by him that he also did not disclose in the said report that he and Abhay Singh also entered into the house of Chandrabhan and there they were assaulted by the appellants. We have closely examined the First Information Report and find that there is not even a whisper regarding the incident occurring inside the house of Chandrabhan. Even by implication the report does not give any indication of the incident occurring inside the house of Chandrabhan. We may further mention here that in the check report there is a column wherein place of occurrence is to be mentioned. It is note-worthy that in this column also it was not mentioned that the place of occurrence was house of Chandrabhan. It may also not be out of place to point out here that on the basis of F.I.R. of Ajab Singh case at the police station was registered only under Sections 147, 323 and 304, I.P.C. and not under Section 452, I.P.C. In the inquest report and in all other papers prepared during the inquest proceedings also there was no mention of Section 452, I.P.C. Virendra Singh PW 2 in his cross-examination admitted that blood had come out from injuries of Chandrabhan. The investigating officer PW 8, S.I. Sri R.C. Gupta admitted in his statement that he

could find no blood at the place of occurrence. He also did not find any signs or marks of struggle or violence inside the house of Chandrabhan. If as a matter of fact as many as five persons had assaulted the deceased and two other persons inside the house of Chandrabhan some signs of violence or struggle should have been there in the courtyard of Chandrabhan. In view of the fact that in the first information report and in the other relevant papers there was no disclosure even by implication of the occurrence occurring inside the house of deceased Chandrabhan and the complete absence of any signs or marks of violence in the courtyard of Chandrabhan a reasonable doubt is created in our mind that the Incident occurred inside the house of Chandrabhan when no Independent witness of locality came forward to depose in support of the said allegation.

23. The above infirmity in the prosecution case has assumed much greater importance and significance on account of the evidence being of partisan character. The evidence of prosecution witness is further rendered vulnerable on account of belated and unsatisfactory explanation of injuries suffered on defence side. In defence accused persons examined Dr. T.N. Mathur, D.W 1, Medical Officer, District Hospital, Muzaffar Nagar. He stated that he had examined accused Manphool on 30-8-1970 at 2.20 p.m. and found five blunt object injuries on his person; two of them being on his skull. Dr. Mathur also proved injury report of Amar Singh which indicates that Amar Singh sustained two blunt object injuries. The X-ray examination of left forearm of Amar Singh further revealed fracture of left radius bone vide X-ray report Ex. Kha 6 proved by Dr. S.K. Gupta, DW 2. Injury Report of accused Ballam Ex. Kha. 5 proved by Dr. Mathur, DW 1 reveals that Ballam Singh sustained three blunt object injuries. Dr. Mathur categorically stated that injuries on the aforesaid persons could be caused on 29-8-1978 at about 7.30 p.m.

24. It has next to be seen whether injuries on defence side have been satisfactorily explained. It is pertinent to note that though First Information Report from prosecution side was lodged with a great delay on the next day at 11.45 a.m. absolutely no mention was made with regard to injuries sustained by the aforesaid three persons on defence side. Even the investigation, in their statements recorded under Section 161, Cr.P.C. no explanation whatsoever was given by the

witnesses regarding injuries on defence side. It was for the first time in the trial Court that PW 1 Ajab Singh and PW 2 Virendra Singh came with the case that Ajab Singh and Abhay Singh wielded lathi in defence. No such case was set up either in the first information report or at the stage of investigation. Though Ajab Singh PW 1 developed the case at the trial by stating that he and Abhay Singh defended themselves with lathi but further stated that he was not aware if their lathi struck on any person on accused side. He categorically stated that he did not see any injury on any accused persons. He even denied the presence of Amar Singh and was unable to explain how and where Amar Singh sustained injuries.

25. Similarly PW 2 Virendra Singh stated that he could not say if any accused also sustained injuries during the course of incident nor could he explain how Amar Singh sustained injuries on defence side. Even the belated explanation given at trial is only to the effect that Ajab Singh and Abhay Singh defended themselves with lathi and none of the witnesses stated that any of the accused was assaulted by Abhay Singh or Ajab Singh or that any accused on defence side also sustained injury when lathi were used in self-defence. Both the prosecution witnesses have stated that they did not see any injury on the person of any accused. It would thus appear that both the prosecution witnesses are lying on a most crucial and important factor. In any view of the matter no explanation whatsoever has been given with regard to injuries of Amar Singh.

26. Dr. Mathur, D.W. 1 has clearly stated in his statement that injuries of accused Manphool, accused Ballam and Amar Singh were possibly caused at 7.30 p.m. on 29-8-1978 by blunt object like lathi. From the defence side also a cross F.I.R. was lodged on 30-8-1978 at 4.40 p.m. The First Information Report from prosecution side was also lodged on 30-8-1978 at 11.45 a.m. Merely for the reason that the cross F.I.R came into existence later than the F.I.R. of the prosecution it would not necessarily mean that the defence was a cooked up version. It is not easy to visualize that Amar Singh would get his injuries manufactured on his person which included fracture of his left radius bone. The trial Court while assessing defence evidence has derived strength to the prosecution case by pointing out some weaknesses in the defence evidence. This approach of the learned Sessions Judge was highly erroneous. The prosecution was to stand on its own legs. It

cannot derive any advantage of the weaknesses in defence case. We have already pointed out above that from the evidence produced from prosecution side it is highly doubtful that the incident had occurred inside the house of Chandrabhan and that the injuries on defence side have not been satisfactorily explained. Both these factors have made serious and big holes in the case which could not be covered by the prosecution, thereby making its case doubtful.

27. There is yet another circumstance which creates a reasonable doubt in the correctness of the prosecution story. Though the Incident is said to have occurred at 7.30 p.m. and as per the statement of witnesses all the accused persons had fled from the scene of occurrence with their respective weapons and the witnesses had found Chandrabhan lying unconscious at the scene of occurrence, yet no attempt was made to remove him to some hospital or clinic for immediate medical aid though all his three brothers namely; Ajab Singh, Abhay Singh and Bheem Singh are said to have arrived at the scene of occurrence. Chandrabhan was detained in the village for whole of the night. This conduct of the witnesses was wholly inconsistent to the normal human behaviour. The police station was situated only at a distance of one mile from the village of occurrence as is apparent from check F.I.R., yet the First Information Report was lodged with a great delay at 11.45 on the next day. P.W. 1 Ajab Singh at the trial tried to explain this delay by stating that in the night accused persons had blocked his way and so he could not go to police station due to fear. He however admitted that he forgot to mention this fact in his report. He claimed that he had told this fact to the investigating officer but could not explain as to why the same was not mentioned in his statement recorded under Section 161, Cr.P.C. The investigating officer however admitted that no such statement was given to him by Ajab Singh when he was interrogated. From these circumstances, it appears that the complainant was in the process of consultation and manipulation and that is why no attempt could be made to carry Chandrabhan for immediate medical aid or to lodge the First Information Report in the evening itself though the police station was placed only at a distance of one mile. The mere fact that the F.I. R. of the defence side was also lodged with a great delay in the evening on next day would not lead to an inference that the First Information Report of the present case was lodged with all promptness and there was no possibility of any consultation or manipulation. It

was for the prosecution to have led convincing evidence to show that there was no undue delay in lodging the F.I.R. which in the present case is lacking. After examining the record, we find that the explanation given by the first informant regarding delay in lodging the F.I.R. apart from being a development at the trial, is not at all 2001 Cri. L.J./211 IX convincing.

28. For the reasons stated above, our conclusions are that it is not established beyond reasonable doubt that the incident occurred inside the house of Chandrabhan as claimed by the prosecution, that the two prosecution witnesses PW 1, Ajab Singh and P.W. 2 Virendra Singh were inimical and partisan and PW 2 was also a chance witness; that their evidence does not inspire confidence; that accused Manphool Singh, accused Ballam and Amar Singh sustained injuries during the course of the incident; that their injuries have not been satisfactorily explained and that the First Information Report of the present case was lodged with undue delay and that the prosecution is guilty of suppressing genesis and origin of occurrence and in presenting a distorted version.

29. The resultant effect of the above conclusions is that conviction and sentence of appellants, cannot be sustained. Appeal, is therefore, allowed. Order of the learned Sessions Judge dated 30-9-1980 convicting and sentencing the appellants under various charges is set aside and the appellants are acquitted of the offences charged for. They are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged.