

**Babu and Etc. Vs. State of U.P.**

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**Court :** Allahabad

**Decided On :** Mar-09-2000

**Reported in :** 2001CriLJ664

**Judge :** J.C. Gupta and S.K. Agarwal, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 149, 302 and 324;  
Code of Criminal Procedure (CrPC) - Sections 161

**Appeal No. :** Cri. Appeal Nos. 1553 and 1563 of 1980

**Appellant :** Babu and Etc.

**Respondent :** State of U.P.

**Advocate for Def. :** A.G.A.

**Advocate for Pet/Ap. :** G.S. Chaturvedi, Vinai Singh and Prem Prakash, Advs.

**Disposition :** Appeal allowed

**Judgement :**

**J.C. Gupta, J.**

1. Both these appeals arise out of a judgment and order dated 15-7-80 passed by Additional Session Judge, Saharanpur in Sessions Trial No. 384 of 1979. All the appellants of these appeals have been convicted and sentenced to imprisonment

for life under Section 302 read with Section 149 I.P.C. They have further been convicted and sentenced to R.I. for one year each under Section 324 read with Section 149 I.P.C. Babu appellant has also been convicted and sentenced to one year R.I. under Section 147 I.P.C. while rest of the appellants have been convicted under Section 148 I.P.C. and sentenced to two years R.I. each. All the sentences have been ordered to run concurrently. By the same judgment accused Harish Chandra and Phool Singh have, however, been acquitted.

2. Bhag Singh and his all five sons namely Jarnail Singh, Laxman Singh, Karnail Singh, Amarjeet Singh and Sarjeet Singh are appellants before us. Prosecution also alleged that appellant Babu and acquitted accused Phool Singh and Harish Chandra belonged to the party of accused Bhag Singh and they had their fields near the field of Bhag Singh.

3. One Rajan was owner of land measuring 286 bighas. Much before the incident in question he sold half of it in favour of six sons of accused Bhag Singh whereas the remaining half share was sold to one Gur Bachan Singh and others. The land was however not partitioned by meets and bounds. About two years prior to the incident in question Gur Bachan Singh sold his half share to witness Jogendra Singh and deceased Mahendra Singh. It is alleged that the vendees themselves demarcated their share in the same land and perfected their possession accordingly. It is further alleged that both the parties constructed their residential houses in the said land. The residential portion of complainant was in South whereas that of Bhag Singh was in North. Both were separated by a wall in the middle. A tube well situated at a distance of about 6-7 paces from the residential accommodations was admittedly jointly used by the parties. This tube well had two water channels, one running from West to East while the other from North to South.

4. The prosecution case further is that since the electric motor of tube well was not working both the parties used to take water from that tube well with the help of tractors.

5. It is said that on 6-5-79 at about 4.30 p.m. complainant Jogendra Singh and deceased Mahendra Singh were drawing water from the tube well with the help of

their tractor. Accused Bhag Singh reached there and threatened that he would not permit them to take water with the help of tractor until the electric-motor was got repaired by them. Jogendra Singh told him that he could also take water in the same fashion by using his tractor. However an altercation ensued between them and abuses were exchanged. Accused Bhag Singh went back. After a short while all the accused persons named above assembled near the tube well. Bhag Singh was having a 'spade', Jarnail Singh a 'Gandasa', Laxman Singh, Karnail Singh. Amarjeet Singh and Sarjeet Singh were having 'swords' in their hands while the remaining accused Babu, Phool Singh and Harish Chandra possessed lathi. They all launched an attack on Jogendra Singh and his brother Mahendra Singh. Mahendra Singh fell down on the ground. Accused Laxman Singh then went to his house and brought a gun with him. Seeing this, Jogendra Singh also went to pick up his gun but before he could return accused Laxman fired a shot towards Mahendra Singh which however did not hit him. Jogendra Singh then fired from his gun in order to save himself and his brother which caused injuries to accused Laxman Singh and Sarjeet Singh. Laxman Singh fell on the ground and his gun was broken. Anup Singh Indrajeet Singh and Atiraj Singh also witnessed the incident. At that very moment one Head Constable and three Constables also reached there and arrested accused Karnail Singh, Amarjeet Singh and complainant Jogendra Singh, Ratan Singh also reached there and he scribed First Information Report Ex. Ka. 3. Mahendra Singh died on the spot. First Information Report was lodged on the same evening at 7.15 p.m. which was dictated by Jogendra Singh. Investigation was entrusted to S.I. Sri J.P. Sharma P.W. 6. Since Jogendra Singh had also received injuries, his medical examination was conducted by Dr. R. Goel P.W. 3 at 9.45 p.m. on the same evening and following injuries were found:

1. Incised wound 4 cm x 1/2 cm x scalp deep on left side head, 4 cm above the eye brow, bleeding present.
2. One incised wound 3 cm x 1/2 cm x scalp deep on right side of head, 8 cm above the ear, bleeding present.
3. Contusion 6 cm x 1 cm on the left superior region, upper part, reddish.

4. Contusion 4 cm x 1 cm on left superior region, lower part, reddish.
5. Abraded contusion 2 cm x 1 cm on back of left shoulder.
6. Contusion 5 cm x 2 cm on back of lower part of left, upper arm, reddish.
7. Contusion 3 cm x 1 cm on back of left forearm, reddish.
8. Contused swelling 3 cm x 2 cm on medial aspect of right wrist, reddish.

6. In the opinion of the doctor Injuries No. 1 and 2 were caused by sharp object and rest by blunt object. Injury No. 8 was kept under observation. X-ray was advised. Rest of the injuries were simple. All the injuries were fresh in duration. Injury report of Jogindra Singh is Ex. Ka-4.

7. Dr. N. K. Saxena P.W. 7 conducted autopsy on the dead body of Mahendra Singh on 7-5-79 at 2.45 p.m. Following ante mortem injuries were found :

1. Lacerated wound 8 cm x 2 cm x bone deep, fractured on right side of forehead, 2 cm above right eye brow, lying obliquely.
2. Lacerated wound 6 cm x 1.5 cm x bone deep, fracture on right side of head, 9 cm above right ear, lying horizontally.
3. Incised wound 1 cm x 1 cm x muscle deep on right side of nose, tapering at its lower end.
4. Incised wound 2 cm x 1/2 cm x bone deep, fracture on upper part of right eye brow, tapering at its upper end.
5. Incised wound 3/4 cm x 1/2 cm x muscle deep on right side of forehead, 3 cm above right eye brow tapering at its upper end.

8. In the internal examination fracture of right frontal, right parietal and right temporal bones were found under injuries Nos. 1, 2 and 4. In the opinion of the doctor cause of death was coma and shock as a result of head injuries. Post mortem report is Ex.Ka-13.

9. During investigation the investigating officer interrogated witnesses, made an inspection of the place of occurrence. Prepared site plan Ex. Ka. 8 collected sample of blood through Memo Ex. Ka. 9. Head Constable Satpal Singh handed over to him a DBBL gun having cartridges in it, in a broken condition and also a bandoleer having five live-cartridges in it. He also handed over to the I.O. two swords. These articles were sealed on the spot and memos were prepared. On personal search of accused. Jarnail Singh a 'Gandasa' was recovered from him. Accused Amarjeet Singh and Karnail Singh were arrested on the spot by Head Constable Satpal Singh and accused Bhag Singh was arrested on 6-5-79. On transfer of the investigating officer his successor S.O. Dharam Chand completed the investigation and submitted charge sheet Ex. Ka. 11.

10. In their statements before the trial Court accused Amarjeet Singh, Babu Ram, Phool Singh, Harish Chandra, Karnail Singh and Jarnail Singh denied their presence at the scene of occurrence. Accused Bhag Singh denied the prosecution allegations and stated that all the prosecution witnesses were of one family and false case has been concocted against them by the complainant's party in their defence. Laxman Singh stated that he and Bhag Singh were keeping a watch in their grove when Jogendra with 14 associates came there armed with guns and they fired upon them with an intention to kill. Accused persons defended themselves. He and Sarjeet Singh also received injuries. Cross F.I.R. of accused Bhag Singh Ex. Kha. 1 was lodged on 6-5-79 at 10.10 p.m. and its corresponding entry was made at GD No. 36 whose copy Ex. Kha 2 has been proved by Head Constable Laxman Singh P.W. 1 Dr. R.A. Goel P.W. 3 who had medically examined Jogendra Singh P.W. 2 also proved the injury reports of accused Sarjeet Singh and Laxman Singh as Ex. Kha 3 and Kha 4. Injuries of Sarjeet Singh were medically examined at 9 p.m. on 6-5-79 and following injuries were found :

1. Multiple gun shot wounds measuring  $1/6$  cm x  $1/8$  cm x  $1/10$  cm on the middle and left portion of abdomen, front of middle of right thigh back of lower part of left forearm and back of left hand, reddish in colour depth superficial.
2. One gun shot wound  $1/8$  cm x  $1/8$  cm on left side of neck upper part, superficial and reddish.

Both the injuries in the opinion of the doctor were of gun shot.

11. On the same evening at 8.30 p.m. Laxman Singh was medically examined and following injuries were found :

1. Multiple gun shot wounds measuring 1/4 cm x 1/4 cm to 1/5 cm x 1/6 cm on the front of forehead nose, both cheeks, both lips, skin loss at some wounds. Wounds were reddish in colour and bleeding was present. They were skin to muscle deep.

2. Both eye lids of eyes were swollen so eyes could not be examined and patient was referred to Eye Surgeon.

3. Central Incisor tooth of right lower jaw was missing. The socket was fresh and bleeding. Other teeth were healthy and present. Patient was referred to Dental Surgeon.

12. In the opinion of the doctor injury No. 1 was caused by gun shot. Injuries No. 2 and 3 were kept under observation. All the injuries were fresh in duration.

13. In support of its case prosecution produced Seven witnesses namely; P.W. 1 Head Constable Laxman Singh. He proved First Information Report of Jogendra Singh as Ex. Ka. 1 and stated that the same was lodged at 7.15 p.m. at the police station and its corresponding entry was made in General Diary whose copy has been proved as Ex. Ka. 2. This witness also proved F.I.R. lodged from the accused side as Ex. Kha. 1 and its corresponding G.D. entry as Ex. Kha. 2 P.W. 2 Jogendra Singh is a witness of fact and as per the prosecution case, he himself had received injuries in the course of incident. The witness narrated the entire case of prosecution and proved the FIR as Ex. Ka. 1. P.W. 3 Dr. R.A. Goel proved injury report of Jogendra Singh as Ex. Ka. 4. He stated that injuries No. 1 and 2 of Jogendra Singh were caused by some sharp edged weapon like 'Gandasa' and 'sword' etc. while rest of the injuries were caused by blunt object like lathi. All the injuries were simple in nature and could be caused on the same day at about 4 P.M. The same doctor also proved injury reports of accused Sarjeet Singh and Laxman Singh. He further stated that injuries of both these accused persons were fresh in duration and could be caused at about 4.30 P.M. on the same evening

and they were of fire arm. P.W. 4 Smt. Kasmir Kaur is the widow of the deceased. She claimed to have witnessed the incident. P.W. 5 is S.I. Ganga Prasad. He had completed inquest and sent the dead body for post mortem examination. P.W. 6 S.O.J.P. Sharma is the investigating officer and P.W. 7 Dr. N.K. Saxena proved the post mortem report of Mahendra Singh as Ex. Ka. 13. The prosecution also tendered affidavit of Constable Bhopal Singh who had escorted the dead body of Mahendra Singh to mortuary for post mortem examination. Accused persons did not produce any witness in defence.

14. The learned Sessions Judge has found that the incident occurred in the manner as alleged by the prosecution, accordingly he has convicted and sentenced the appellants under various counts. However accused Phool Singh and Harish Chandra who were resident of another village have been given benefit of doubt and accordingly acquitted.

15. We have heard learned counsel for the appellants and the learned A.G.A. appearing for the State. Record has also been perused by us.

16. Learned counsel for the appellants argued before us that there was not even a whisper in the First Information Report that when Laxman Singh had brought gun from his house, Jogendra Singh P.W. 2 also went to his house and brought gun and used the same causing injuries to Laxman and Sarjeet accused. There was also no mention in the report that any of the accused was arrested on the spot. Name of Smt. Kasmir Kaur P.W. 4 was also not mentioned in the report though she happened to be the wife of deceased Mahendra Singh hence her presence at the scene of occurrence was highly doubtful. It was further submitted that no independent witness from neighbouring fields were produced in support of the prosecution case though they were cited as eye witnesses in the First Information Report; that the place of occurrence was highly doubtful because the investigating officer found blood near the dead body which was lying inside the mango grove of the accused persons and the same was described as the place of incident in the memo of blood prepared by the investigating officer; and that the prosecution has not presented true version of the incident. It was also argued that the prosecution could not be given any advantage of the weaknesses or infirmities of defence

case.

17. The factum of death of Mahendra Singh as a result of ante mortem injuries found on his dead body in the post mortem examination has neither been disputed nor challenged on behalf of the appellants. Even otherwise also it is fully established that Mahendra Singh sustained four incised wounds and a lacerated wound and fracture of right frontal, right parietal and right temporal bones were noticed under injuries No. 1,2 and 4 as noted in the post mortem report Ex. Ka. 13 by Dr. N.K. Saxena P.W. 7. Dr. Saxena further stated that death of Mahendra Singh was possible in the evening of 6-5-79 at about 4.30 P.M. and the ante mortem injuries could be caused by spade, gandasa, sword and lathi. Dead Body of Mahendra Singh was also found by the investigating officer when he visited the scene of occurrence in the evening of 6-5-79 it-self. Similarly it could not be disputed or challenged by appellants counsel that Jogendra Singh P.W. 2 also sustained injuries during the course of incident. Injuries of Jogendra Singh were examined on 6-5- 79 at 9.45 p.m. by Dr. R.A. Goel P.W. 3. Injury report is Ex. Ka. 4 Dr. Goel further stated that injuries No. 1 and 2 could be caused by a sharp edged weapon like 'gandasa' and sword while rest of the injuries were possibly caused by blunt object like lathi and they were fresh in duration. It is also not in dispute that in the same incident appellants Sarjeet Singh and Laxman Singh sustained fire arm injuries and their injuries were also examined by Dr. R.A. Goel P.W. 3 at 9.15 and 8.30 p.m. respectively. Their injury reports have been proved as Ex. Kha. 3 and Kha 4 and those injuries have already been mentioned in earlier portion of the judgment. Dr. Goel also stated that injuries of both the accused persons could be caused at about 4.30 p.m. on 6-5-79 and they were of fire arm like country made pistol or gun. He further stated that injuries of both the injured accused were on vital parts. No cross examination was made on behalf of prosecution regarding the opinion expressed by Dr. Goel.

18. In a case where both the sides received injuries, we have to carefully examine as to whether the prosecution has presented true version of the incident and has established its case beyond all reasonable doubts, bearing in mind that the prosecution has to stand on its own legs and no weakness or infirmity in defence case can come to the rescue of prosecution in proving its case. Even where there

is a counter version which may not be found to be wholly truthful and acceptable yet for that reason alone accused cannot be held guilty as failure of the defence to prove its version affirmatively could not have any beneficial effect on the prosecution case and the burden still remains on the prosecution to prove its case satisfactorily and beyond any shadow of reasonable doubt.

19. In the present case only two witnesses of fact have been examined by the prosecution. They are P.W. 2 Jogendra Singh, first informant and P.W. 4 Smt. Kasmir Kaur, wife of deceased Mahendra Singh. P.W. 2 Jogendra Singh is the brother of deceased Mahendra Singh. Undoubtedly he also received injuries in the course of incident and therefore, his presence at the scene of occurrence cannot be disputed or doubted. It is still, however, to be examined whether he has presented an honest and truthful version of the incident. He stated that one Rajan was owner of land measuring 286 bighas. Half of the land was sold by him to six sons of accused appellant Bhag Singh while the remaining half was sold to Gur Bachan Singh and others about five years before the date of incident. The land was however not divided by meets and bounds. This witness and Mahendra Singh purchased the share of Gur Bachan Singh about two years prior to the incident in question. Though there had been no partition in writing but by an oral agreement both the parties were in separate and exclusive possession of their respective shares and they had constructed their 'Deras' (residential house) thereon, with a partition wall raised in between. A tube-well was situated in the east about 6-7 paces away from these Deras. The said tubewell was in joint use of the parties. This tubewell had two channels, one going towards east and other running towards south.

20. The witness further stated that on 6-5-79 at about 4.30 p.m. he and Mahendra Singh were taking water from the said tube well with the help of their tractor as the electric motor of the tube well was not in working order. Accused Bhag Singh arrived there and said that he would not permit them to take water with the help of tractor until electric motor of tube well was get repaired by them. On this Jogendra Singh said, 'you also take water with the help of tractor and I am also taking in the same way.' This led to an altercation between Bhag Singh, Jogendra Singh P.W. 2 and the deceased Mahendra Singh and abuses were exchanged. Accused Bhag

Singh then went back to his 'dera' and after sometime Bhag Singh reappeared at the scene of occurrence along with Jarnail Singh, Karnail Singh, Amarjeet Singh, Sarjeet Singh, Laxman Singh, Babu Ram, Harish Chandra and Phool Singh. Bhag Singh was having a 'spade', Jarnail Singh a 'Gandasa', Laxman Singh, Karnail Singh, Amarjeet Singh and Sarjeet Singh had 'Swords', while Babu, Harish Chandra and Phool Singh possessed lathis. Immediately after their arrival they launched an attack on Jogendra Singh and Mahendra Singh with their respective weapons. In the course of the same Mahendra Singh fell down. Accused Laxman Singh when brought a gun from his dera. Seeing this Jogendra Singh also rushed to pick up his gun but before he could return, accused Laxman Singh fired a shot upon Mahendra Singh from his gun but the shot did not hit him. Jogendra Singh further stated that in order to save himself and his brother Mahendra Singh, he opened fire from his gun which caused injuries to accused Laxman Singh and Sarjeet Singh. In the meantime Anoop Singh, Indrajeet Singh and Atiraj Singh also arrived there. One Head Constable and three police constables also reached there and they arrested Karnail Singh, Amarjeet Singh and P.W. 2 Jogendra Singh. The witness further stated that when Ratan Singh arrived there, he wrote down report Ex. Ka. 3 on his dictation which he sent through Ratan Singh and report was registered at police station at 7.15 a.m. In cross examination he admitted that in respect of the same incident a cross case was pending against him, Ratan Singh, Anoop Singh, Ranjeet Singh, Yadvendra Singh alias Kaka, Palvendra Singh, Dhananttar, Man Singh, Duduya, Bhopal, Jasbir, Indrajeet and Baljeet. He further admitted that there was a mango grove to the south of tube well. This grove in the site plan prepared by I.O. is shown to be of Bhag Singh. Attention of Jogendra Singh was invited to the site plan but he failed to give any reason as to how this grove has been shown entirely belonging to Bhag Singh. In the First Information Report it was not mentioned that abuses were exchanged between Bhag Singh, Jogendra Singh and Mahendra Singh and then Bhag Singh went back and came along with other accused persons fully armed with weapons. It was also not stated in the report that when Jogendra saw Laxman bringing his gun he rushed to his house and brought his gun nor it was mentioned that Laxman accused fired upon Mahendra. It was also not stated in the F.I.R. that Jogendra Singh fired from his gun in self defence which caused injuries to Laxman and Sarjeet Singh. Attention

of this witness was invited to these material omissions which amounted to contradictions but he failed to offer any explanation. All these facts were also not stated by this witness in his statement under Section 161 Cr.P.C. The attention of the witness was invited to it also but he could not explain as to why the investigating officer did not make a mention of these facts in his statement recorded during investigation. The investigating officer, however, clearly stated that Jogendra Singh did not make a mention of these facts when he was interrogated by him during investigation. The witness was also asked if he and the deceased had gone to the 'kothas' of Bhag Singh and had fired there but the witness denied. However the investigating officer found pellet marks on the wall of one kotha. It has also come in the statement of the investigating officer that along with Jogendra Singh, Ranjeet Singh, Kaka and Dhananttar were also arrested on the spot by the police. Jogendra Singh further denied the defence suggestion that the incident had occurred in the mango grove of Bhag Singh. According to this witness Mahendra Singh after receiving injuries fell down near the tube well. He further denied the defence suggestion that at the time of occurrence Bhag Singh, Laxman Singh and Sarjeet Singh were present in their mango grove and he (Jogendra Singh). Mahendra Singh and others fired upon them from their guns and the accused persons defended themselves whereupon they then took shelter in their rooms but there also they were fired upon and when Laxman picked up his gun to defend, the same was broken by Jogendra Singh and others.

21. P.W. 4 Kasmir Kaur is the only other eye-witness produced from the prosecution side. She supported the prosecution case and corroborated statement of P.W. 2 Jogendra Singh. According to her also the entire marpit occurred at the tube well and her husband Mahendra Singh fell down at the tube well after he was assaulted by the accused persons. She stated that she witnessed the incident from a distance of 1-2 paces but she did not make any attempt to save her husband. She further stated that Jogendra Singh fired only one shot from his gun. She also admitted that when her Jeth Jogendra Singh dictated the report she was present by his side. She claimed that she had told the investigating officer that her Jeth Jogendra Singh had brought gun from his house and had fired one shot upon the accused persons and that accused Laxman Singh had fired upon Mahendra Singh, but when confronted with she could not explain why these facts were not

mentioned by I.O. in her statement recorded under Section 161, Cr.P.C. She could not explain also as to how the investigating officer has recorded in her statement that accused Laxman Singh had also fired from his house and that her husband Mahendra Singh also defended himself.

22. Learned counsel for the appellants vehemently argued before the Court that presence of P.W. 4 Smt. Kashmir Kaur at the time of occurrence is highly doubtful in as much as her presence is not stated in the First Information Report which was dictated in her presence by her Jeth Joginder Singh. Even by implication from the facts stated in the FIR her presence at the scene of occurrence cannot be inferred. Significantly even in his statement given at the trial. P.W. 2 Jogendra Singh has not stated of her presence at the time of occurrence. According to her she had come to the place of occurrence and had witnessed the incident from a close quarter i.e. from a distance of 1-2 paces. It is difficult to digest that she would not have made any attempt to save her husband from further beating. Had she been there she must have intervened and in the process she was likely to have suffered some injuries. This unnatural conduct of her coupled with the fact that her name does not find mention in the First Information Report even by implication and her presence has not been stated by P.W. 2 Jogendra Singh in his statement recorded at the trial, leads to an inference that in all probability she was not present at the time of incident. In any view of the matter she has presented a tutored and improved version at the trial in an attempt to explain the injuries on defence side and to meet the defence version but her attempt for the reasons attributed above proved futile.

23. So far as Jogendra Singh P.W. 2 is concerned, his presence at the time of occurrence and his participation in the assault cannot be doubted. Even the defence admits his presence. However on a careful scrutiny of his evidence and the circumstances appearing in the case, we find that his evidence is not trustworthy since he has tried to taint the facts every now and then. According to him as well as P.W. 4 Smt. Kashmir Kaur the entire incident occurred at the tube well. They both further admitted that Mahendra Singh fell on the ground at the same place near the tube well. However it has come in the statement of P.W. 6 J.P. Sharma. Investigating Officer, that inspection of the scene of occurrence was

got made by Jogendra Singh and on his instruction he had shown the mango grove to be of Bhag Singh accused. This mango grove was in the South of the tube well. He further admitted that the place of occurrence was shown by him to be in the mango grove under a tree. From the same place he had collected blood stained and plain earth. Dead body was also found at the same place which was removed by about 15 paces from the tube well. He further admitted that he did not find any blood near the tubewell and the same was found only at one place near the dead body which was lying in the mango grove. He further admitted that he collected pellets from the wall of one of the rooms of Bhag Singh and blood was also found there. He also admitted that Jogendra Singh, Ranjeet Singh, Yadvendra Singh alias Kaka, Dhananttar were arrested on the spot by police. Jogendra Singh and Ranjeet Singh were having guns while Kaka had a rifle. These fire arms were recently used. As per the prosecution case the incident had occurred at the joint tubewell of the parties and Mahendra Singh fell down on the ground at the same place where he assaulted i.e. near the tube well. According to the defence case the complainant party was the aggressor and they launched an attack on the accused persons when they were present in their mango grove, and injuries on prosecution side were suffered as accused persons also made an assault on them in exercise of their right of private defence. Dead body of Mahendra Singh was found in mango grove under a mango tree at a distance of 15 paces from the tube well. Neither P.W. 2 Jogendra Singh nor P.W. 4 Smt. Kasmir Kaur stated that during the course of incident, the deceased ran inside the mango grove of Bhag Singh or that he was assaulted there. If in fact entire assault on the deceased was made at or near the tube well, how the dead body was found in mango grove of accused Bhag Singh remained a mystery. It is not the case of the prosecution that after the incident the dead body of Mahendra Singh was shifted and put inside the mango grove of Bhag Singh. It is also significant to note that no blood was found at any place near the tube well. It is thus highly doubtful if incident had occurred near the tube well as alleged by prosecution. On the other hand the circumstances appearing in the case indicate that most likely the incident had occurred inside the mango grove of Bhag Singh.

24. There is no dispute from the prosecution side that accused Sarjeet Singh and accused Laxman Singh received gun shot injuries during the course of incident. In

what manner and at what point of time and by whom those injuries were caused, the First Information Report is totally silent. Though Jogendra Singh P.W. 2 first informant stated before the Court that he did dictate all these facts to the scribe of the FIR but was unable to explain as to why these facts were not so mentioned in the FIR by its writer. The scribe Ratan Singh was not produced at the trial. In the trial Court P.W. 2 Jogendra Singh tried to explain the injuries of accused persons by saying that when Mahendra Singh fell down on the ground after attack was mounted on him by accused persons, accused Laxman Singh brought a gun from his 'dera' and seeing this, he (Jogendra Singh P.W. 2) rushed to his dera and brought his gun. Before his arrival Laxman Singh had made a fire upon Mahendra Singh but the shot did not hit Mahendra Singh. Jogendra Singh then fired one shot from his gun which caused injuries to accused Laxman and Sarjeet Singh. This explanation has been developed for the first time at the trial as the same was neither disclosed in the FIR nor was stated by this witness in his statement made under Section 161, Cr.P.C. as was admitted by the investigating officer. The witness also could not give any reason why that explanation was not disclosed by him to the investigating officer. The investigating officer admitted in his cross-examination that when Jogendra Singh, Ranjeet and Kaka were arrested on the spot by police with guns and rifle, the examination of the fire arms disclosed that they were recently used. The investigating officer had further collected pellets from the wall of one of the kotha (room) of accused Bhag Singh. Blood was also found near the kotha. All these facts and circumstances indicate that perhaps the defence version was nearer the truth. It is true that in the present case no witness was examined by the accused persons to prove their defence plea and the defence version as pleaded also suffers from some weaknesses but prosecution cannot derive any advantage of their weakness. It is well settled that where the version given by the prosecution and defence are unreliable and both of them of them are guilty of suppressing the truth from the Court and the facts are so intermingled that, it is not possible to separate chaff from the grain and to reach to a definite conclusion either way, the inescapable result will be to give benefit of doubt to the accused. In the present case also we find that either the prosecution nor the defence came out with the whole truth and were unable to show in a convincing manner as to how, at what place and in what exact manner the incident

occurred and the Court has been left with guess and conjectures. In this situation no option is left for us but to acquit the appellants particularly when persons on both the sides had received injuries in the incident, the evidence on prosecution side consisted of only two interested and partisan witnesses, independent persons present at the scene of occurrence were withheld and the place of occurrence is also not established free from doubt.

25. To sum up in short, the prosecution has smudged the truth and mixed it with so much falsehood that it has made any emergence of true scenario impossible. Things have become so blurred and hazy that no amount of light can bring about any improvement therein. The resultant effect of the aforesaid discussion is that the appellants are entitled to the benefit of doubt.

26. Both the appeals accordingly are allowed. The order of conviction and sentence dated 15-7-80 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.

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