

Ajit Singh and ors. Vs. State

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Court : Allahabad

Decided On : Oct-14-1999

Reported in : 2000CriLJ4967

Judge : G.P. Mathur and ;U.S. Tripathi, JJ.

Acts : Evidence Act - Sections 24, 25, 26, 27, 32, 145 and 157; [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302; Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : Cri. Appeal No. 2008 of 1980

Appellant : Ajit Singh and ors.

Respondent : State

Advocate for Def. : D.G.A.

Advocate for Pet/Ap. : Dileep Kumar, Adv.

Disposition : Appeal allowed

Judgement :

G.P. Mathur, J.

1. This appeal has been preferred by Ajit Singh and Ashok Singh against their conviction under Sections 302/34, I.P.C. and sentence of imprisonment for life

recorded by the judgment and order dated 2-9-1980 of 1st Additional Sessions Judge, Etawah, in S.T. No. 210 of 1978. The C.J.M. Etawah, has given a report dated 16-8-1999 that appellant No. 2 Ashok Singh has died. The appeal preferred by him is therefore, abated.

2. The case of the prosecution, in brief, is that an alarm watch of P.W. 5 Hawaldar Singh was stolen on the Diwali day in the year 1976. The deceased-Than Singh who was resident of the same village had gone to the flour mill of Babu Ram in village Bhoglpura on the next day for the purpose of getting his wheat grinded. Babu Ram informed him that the accused-Ajit Singh and Ashok Singh had come to his place and had sold him an alarm watch for Rs. 18/-. He further informed him that he had not paid the money to the aforesaid persons but had promised to pay them after one day. Than Singh then informed Hawaldar Singh that the accused had given his watch to Babu Ram. Subsequently, Babu Ram sent back the watch to Hawaldar Singh through Than Singh. Three days thereafter, Hawaldar Singh along with Than Singh went to Babu Ram to enquire about the matter. When they were sitting at the flour mill, Ashok Singh accused came there to collect the price of the watch. However, seeing Hawaldar Singh and Than Singh he ran away from there but Than Singh caught hold of him and brought him to the village. There Ashok Singh confessed that he along with Ajit Singh had stolen the watch. The villagers then reprimanded him for his conduct. The water from 'parnala' of the house of Than Singh fell over the land of Ajit Singh accused where he had his 'Mandiaya' (hut). Due to this reason altercations had taken place between the two on several occasions wherein Ashok Singh accused used to take sides with Ajit Singh. At about 8.00 a.m. on 22-1-1978, a quarrel took place between Than Singh and Ajit Singh over the flow of water from the Parnala of the house and at that time Ashok Singh was also present there and was taken sides with Ajit Singh. Ajit Singh then gave a threat to Than Singh that he will have to face the consequences of his act.

3. The case of the prosecution further is that at about 12.00 a.m. on 22-1-1978 Than Singh was grazing his goats in the 'Sote' (a narrow stream through which water flows) in 'bihad' (ravines) towards south of his village Bhimrai. Meanwhile Ajit Singh accused armed with a banka and Ashok Singh accused armed with an

axe came there and surrounded Than Singh. Than Singh raised an alarm on which Jadunath Singh, Ganga Singh, Shivbans Singh and Ram Krishan ran towards that direction. Ajit Singh assaulted Than Singh with the banka but the latter started grappling with him. Ashok Singh wielded his axe upon Than Singh due to which Ajit Singh accused also received injury. Ajit Singh then snatched the axe from Ashok Singh and gave several blows to Than Singh due to which he fell down. The witnesses chased the assailants but they ran away in the ravines. When the witnesses returned they found that Than Singh had died. Thereafter, a written report of the incident was lodged by Jadunath Singh at 4.05 p.m. on 22-1-1978 at P. S. Jaswanthnagar, which is six miles from the place of occurrence.

4. P.W. 6 Ramesh Chand Dwivedi was Head Constable at P. S. Jaswanthnagar. On the basis of the report lodged by Jadunath Singh, he prepared a chik F.I.R. Exhibit Ka-3 and registered a case in the General Diary. P.W. 9 Jagat Dhari, who was the S.H.O. of P. S. Jaswanthnagar had gone for combing operations and was not present at the police station. Ramesh Chand Dwivedi then deputed Malkhan Singh, Constable to contact P.W. 9 Jagat Dhari and sent copy of the F.I.R. and other papers through him. He also deputed Kamlesh Kumar and Shyamlal, Constables to go to the spot and keep a watch over the body. Malkhan Singh, Constable met P.W. 9 Jagat Dhari, S.H.O. at about 5.30 p.m. in village Kalwari. P.W. 9 then proceeded for the spot in village Dhimrai. After reaching there, he held inquest on the body of the deceased and the inquest was prepared by Nagpal Singh, S.I. under his direction. Blood had fallen at the place where the body was lying. He collected samples of plain and blood stained earth from there and prepared their recovery memo. He also prepared letter to C.M.O. for conducting post-mortem examination and other documents like, Chalan Lash, Photo Lash, etc. The body was sealed and was sent for post-mortem examination through Constables Malkhan Singh and Suresh Chand. A search for the accused was made but they could not be found immediately. At about 3.00 a.m. in the night, he received information that the brother of the accused had returned to the village from the tube-well of Kripal Singh of village Rura. After receiving the aforesaid information he along with other police personnel went to the tube-well. On opening the door, both the accused were found present inside the room of the tube-well and they were taken into custody. On interrogation the accused said that they had

concealed the banka and the axe by which they had assaulted Than Singh in a pit near the room. The accused then guided the police party to the pit where the axe and the banka were found. The aforesaid articles were taken into possession and were sealed and its recovery memo Exhibit Ka-10 was prepared. P.W. 8 also prepared a site plan and recorded statement of the witnesses. The clothes of Ajit Singh were found to be blood stained which were taken into possession. A letter was written for the medical examination of Ajit Singh as he was found to have sustained injuries. He was sent to Jaswantnagar Hospital for medical examination. After completing investigation, he submitted charge-sheet against both the accused.

5. The committal proceedings were held in the Court of the learned Magistrate and the accused were committed to the Court of Sessions. The learned Sessions Judge framed charge under Sections 302/34, I.P.C. against both the accused who pleaded not guilty and claimed to be tried. The prosecution in support of its case examined nine witnesses including two eye-witnesses. Ajit Singh accused in his statement under Section 313, Cr. P.C. denied the case of the prosecution and stated that Than Singh had assaulted him by an axe at about 9-10.00 a.m. and there after he did not know what happened and that the police arrested him from his house at about 10.00 p.m. Ashok Singh accused completely denied the case of the prosecution. The accused examined the doctor of district hospital, Etawah, D.W. 1 Dr. S. Tripathi in their defence. The learned Sessions Judge believed the case of the prosecution and convicted and sentenced the appellants as stated earlier.

6. We have heard Sri Dilip Kumar for the appellants and Sri R. K. Singh, learned A.G.A. for the State and have examined the record.

7. Before considering the witnesses of fact, it is necessary to refer to the medical evidence on record as it has an important bearing on the fate of the case. P.W. 1 Dr. V. K. Gupta, Medical Officer In-charge, Jail Hospital, Etawah, conducted post-mortem examination on the body of the deceased-Than Singh at 3.00 p.m. on 23-1-1978 and found the following ante-mortem injuries on the same :-

1. Incised wound 2 1/2 cm. x 1/2 cm. x brain deep on the right side of head 4' above right ear, direction oblique margin clean cut.
2. Punctured wound 1/2' x 3/4' x bone deep (fractured) on the side of head 3' above right ear, margins clean cut, 3/4' anterior and lateral to in). No. 1.
3. Incised wound 2 1/2' x Ms' x brain deep on the right side of head 3' above right ear. Margins clean cut direction oblique.
4. Punctured wound Ms' x 1/3' x muscle deep on the right side of forehead 1' above outer end of right eyebrow.
5. Incised wound 3 1/2' x 1/2' muscle deep on the right side of neck behind ear, direction oblique, margin clean cut.
6. Incised punctured wound 1 1/2' x 1/2' x muscle deep on the right side of neck 2 1/2' above clavicle, margin.
7. Two abrasions 1/2' x 1/4' and 1/4' x 1/8' on the front of nose.
8. Incised wound 4' x 3/4' x bone cut on the left side of head 1 1/2' behind left ear, direction oblique, margin clean cut.
9. Two incised wounds 2' x Ms' x bone cut and 1 1/2' x 1/2' bone cut on left side of face just in front of left ear. Margin clean cut and direction oblique.
8. The internal examination showed that the temporal, parietal and occipital bones had fractured. The membranes had been cut and were congested. The brain was also lacerated and was congested. There was faecal matter in the small and big intestines. The stomach contained 400 gms. of semi-digested food. In the opinion of the doctor, the death had occurred due to coma as a result of head injuries. The doctor has proved the post-mortem report, which is Exhibit Ka-1 on the record.
9. P.W. 7 Dr. R. K. Mittal, E.M.O., Jail Hospital, Etawah, examined Ajit Singh at 11.00 a.m. on 24-1-1978 and found the following injury on his person :-

Incised wound 10 cm. x 2 cm. x 3 cm. vertical over right side scalp starting just above right ear. The underlying right temporal bone cut through and through and underlying brain matter visible. Clotted blood present in this wound. From the sides of wound profuse bleeding fresh present. (Adv. X-ray and hospitalisation at district hospital as condition serious). Injury is serious. Weapon sharp edged duration about two days.

10. The doctor has stated that brain was visible underneath the cut injury on the head and fresh blood was flowing from there. The injured was sent to the district hospital as his condition was serious. In his opinion the injury was serious and had been caused by sharp cutting weapon and was two days old. He filed a copy of the injury report, which is Exhibit Ka-7 on the record. The doctor further stated that the injury could have been caused by an axe at 12.00 a.m. on 22-1-1978.

11. D.W. 1 Dr. S. Tripathi, Surgeon in the district hospital, Etawah, stated that Ajit Singh was admitted in the hospital on 24-1-1978. He was referred to Medical College, Kanpur on 30-1-1978 and was sent there on 31-1-1978. He returned from the Medical College on 26-2-1978 and was again admitted in the district hospital. On 6-3-1978 he was sent to Jail Hospital. He has filed copies of the bed head tickets, which are Exhibit Ka-1 and Exhibit Kha-2. He further stated that normally such cases are referred to Medical College which are serious and which cannot be treated in the district hospital.

12. The motive set up by the prosecution has not at all been mentioned in the FIR .which was lodged by Jadunath Singh. The only fact mentioned therein is that the accused bore enmity with the deceased Than Singh but the reasons for having enmity or any other details have not been stated. The two eye-witnesses namely, P.W. 2 Shivbans Singh and P.W. 3 Ganga Singh have only stated about the assault made by the accused and have not said even a single word regarding motive. The evidence on the point of motive has been given by P.W. 5 Havaladar Singh who has stated about the theft of his alarm watch, the information given by Babu Ram, owner of the flour mill, to Than Singh, the catching hold of Ashok Singh accused by Than Singh deceased when the former is alleged to have gone to Babu Ram to collect the price of the watch and also about altercations which

had taken place between Ajit Singh accused and Than Singh regarding flow of water from the parnala. It is important to note that Babu Ram to whom the accused are alleged to have sold the stolen watch has not been examined as a witness. The prosecution has tried to bring on record the evidence regarding the talks which Babu Ram had with Than Singh through the testimony of P.W. 5 Havaladar Singh. Whatever the witness has stated about the talks is based upon the information given to him by Than Singh and is thus a hearsay evidence which is not admissible. It is not the case of the prosecution that Babu Ram has died or is not available. It was Babu Ram alone who could depose that the accused had come to him and had sold the watch for Rs. 18/- to him. Therefore, this part of the prosecution case that the accused had stolen the watch of Havaladar Singh and had sold it to Babu Ram for Rs. 18/- cannot be taken into consideration as there is no admissible evidence on the record on this point. That apart, if really Babu Ram had purchased an alarm watch for a paltry sum of Rs. 18/- he must have come to know that it was a stolen property and as such there was no question of his disclosing to Than Singh that he had purchased the watch from the accused. The statement of P.W. 5 that subsequently Babu Ram sent back the watch to him through Than Singh also does not appear to be believable. If Babu Ram had agreed to purchase the watch for a small amount of Rs. 18/- he must have thought it to be a good deal and there was no question of his sending back the watch to Havaladar Singh. The witness has stated that Ashok Singh accused was caught by Than Singh when he had come to the place of Babu Ram to collect money and thereafter he was brought to the village where he confessed to his guilt before large number of villagers who also reprimanded him and due to the aforesaid reason the accused bare enmity with the deceased. If such an incident had really taken place it must be in the knowledge of the first informant Jadunath Singh and the eye-witnesses namely, P.W. 2 Shivbans Singh and P.W. 3 Ganga Singh. However, as stated earlier there is not the slightest whisper about this incident either in the FIR or in the testimony of the aforesaid two eyewitnesses. P.W. 5 has admitted in his cross-examination that both he and the deceased-Than Singh come down from a common ancestor but they were living separately for the last several generations. He is, therefore, collateral of the deceased. He has admitted that the flour mill of Babu Ram is only at a distance of 1 1/2 miles from his house

and he was personally not present when the talks regarding watch had taken place between Babu Ram and Than Singh. He has further admitted that even after the accused had confessed to have stolen the watch he did not lodge any FIR. Towards the end of his cross-examination, he has stated that his statement under Section 161, Cr. P.C. was recorded after 2-3 days. In view of the fact that Babu Ram was not examined as a witness and there is no reference to the incident relating to theft of watch either in the FIR or in the testimony of the eye-witnesses coupled with the manner in which P.W. 5 Havaladar Singh has tried to depose about the said fact, we are not inclined to believe the prosecution case that the accused had stolen the watch of Havaladar Singh or that they had sold it to Babu Ram or that Ashok Singh was caught by the deceased-Than Singh when he went to collect the price of the same or that the accused were reprimanded by the villagers for having committed the theft of the watch and that in view of the aforesaid reasons they bore enmity with Than Singh. Regarding the flow of water, P.W. 5 has admitted in the cross-examination that the same was falling over the land of Ajit Singh for the least 10-15 years but the dispute started when the theft committed by him came to light. If the water was flowing for the last 15 years, it does not appear probable that the parties started fighting over that issue just before the occurrence in which Than Singh was killed. Having given our careful consideration to the testimony of P.W. 5, we are of the opinion that the same does not inspire confidence and the motive as suggested by the prosecution is not established.

13. Now reverting to the ocular testimony it may be mentioned here that the author of the FIR namely, Jadunath Singh could not be examined as a witness as he died before the commencement of the trial. P.W. 2 Shivbans Singh has stated that he was collecting wood in the be had (ravines) at about 12.00 a.m. on the day of incident and Jadunath Singh was cutting long grass nearby. P.W. 3 Ganga Singh was coming in that direction from the side of the village and Than Singh was grazing his goats. On the alarm raised by Than Singh, he looked in that direction and saw that Ajit Singh was assaulting Than Singh with a banka then Than Singh started grappling with Ajit Singh. Meanwhile, Ashok Singh gave blows by axe to Than Singh but accidentally Ajit Singh was also injured. Thereafter, Ajit Singh snatched the axe from Ashok Singh and gave several blows from the same to

Than Singh. Thereafter both of them ran away. The witness along with others chased the assailants but they could not catch hold of them. Then they returned to the spot and found that Than Singh was lying dead. P.W. 3 Ganga Singh has stated that he was a cattle-guard and his duty was to protect the forest from cattle. At about 12.00 a.m. he was proceeding towards the forest when he heard an alarm. He rushed towards the 'sote' and saw Ajit Singh assaulting Than Singh with a banka. Thereafter Than Singh started grappling with Ajit Singh. Thereafter Ashok Singh wielded the axe several times due to which both Than Singh and Ajit Singh received injuries. Ajit Singh then took the axe in his hand and assaulted Than Singh with the same several times. Thereafter both the accused ran away. He along with other persons chased the accused but they could not be apprehended. After returning to the spot he found that Than Singh was lying dead.

14. P.W. 2 Shivbans Singh has admitted in the very first sentence of his cross-examination that his mother and the mother of Than Singh were real sisters. Thus, he is a first cousin of the deceased. He has further admitted that the place where he was collecting the wood was at a distance of 40 paces from 'Sote.' Later on he stated that he along with Jadunath Singh, Ganga Singh and Ram Krishan chased the accused for a distance of about 50-60 paces but they could not apprehend them. The statement of this witness was recorded on 23-4-1979 when he gave his age as 26 years which means that at the time of the incident he was about 25 years of age. P.W. 3 Ganga Singh has admitted in his cross-examination that the accused were not running at a very fast speed but were running at a medium speed. All the persons present there had chased them but they could not be arrested. The testimony of P.W. 7 Dr. R. K. Mittal shows that Ajit Singh accused sustained an incised wound of the size 10 cm. x 2 cm. x 2 cm. on the right side of the scalp. The underlying right temporal bone had cut through and through and underlying brain matter was visible. He was medically examined at 11.00 a.m. on 24-1-1978 i.e. after about 2 days of the occurrence. At that time also fresh blood was coming out of the injury. The doctor has admitted in his cross-examination that normally after receiving such an injury the person is likely to fall down and become unconscious. The fact that Ajit Singh had sustained a very serious injury is also established from the testimony of D.W. 1 Dr. S. Tripathi. He has stated that Ajit Singh was referred to Medical College, Kanpur on 31-1-1978. After he

returned from the Medical College, Kanpur, he was admitted in the district hospital on 26-2-1978 and thereafter sent to Jail Hospital on 6-3-1978. The witness has admitted that only such cases, which are serious in nature, are referred to Medical College. The evidence of D.W. 1 Dr. S. Tripathi also shows that Ajit Singh sustained a very serious injury on his head. In his cross-examination the witness has stated that a fracture of the bone of head also results in an injury to the brain and the patient can become unconscious due to cerebral concussion. He further stated that the period of unconsciousness would vary from person to person as it depends upon the magnitude of the injury and also upon the strength of the heart.

15. In Medical Jurisprudence and Toxicology by Modi, (Sixteenth Edition 1967), while dealing with the topic of injuries to head, the learned author has expressed the following opinion :-

The symptoms depend upon the nature of the injury. Thus, the patient may become dazed and giddy with or without falling, if there is slight injury, and recovers in about ten minutes, but he may remain mentally confused for some time and may automatically do things about which later on he remembers nothing- this is known as post-traumatic amnesia.

With severe injury the patient falls down and becomes unconscious, though he can often be partially roused by shouting. The muscles are relaxed and flaccid, but there is no paralysis, reflexes may be lost. The sphincters are relaxed with involuntary passage of urine and faeces. The face is pale, and the pupils are equal and usually contracted reacting to light but, in more severe cases, are dilated and insensible to light. The skin is cold and clammy with subnormal temperature. The pulse is rapid, weak, small and hardly perceptible. The respirations are a low, irregular and sighing. Death occurs rapidly from syncope, or recovery follows, with the setting in of nausea or vomiting. The skin becomes hot and dry, the pulse is full and strong, and the respirations are increased in rate. After apparent recovery in some cases death may result after some days from inflammation or compression of the brain..In addition to loss of memory, concentration and confidence in himself, throbbing headache, giddiness, or transient blackout, weakness, mental irritability, neurasthenia, vertigo and loss of hearing, vision or

speech persist for weeks and months after recovery. Occasionally the patient develops severe dementia and sometimes epilepsy. The existence of post traumatic cerebellar ataxia or Parkinsons syndrome is not recognised.

16. In Medical Jurisprudence and Toxicology by Cox (Eighth Reprint 1997), while dealing with the same topic, the learned author has expressed the following opinion :-

Concussion is the disorder of cerebral function which follows immediately upon the impact of a force to the head. The original definition by Trotter was an essentially transient state due to head injury which is of instantaneous onset, manifests widespread symptoms of a purely paralytic kind, does not as such comprise any evidence of structural cerebral injury and is always followed by amnesia from the actual moment of the accident.'...After concussion, the patient may develop features of cerebral irritation' with a flexed posture, photophobia and resentment to any interference. When alcohol has been taken, there is always the danger of confusing head injury with intoxication, but this will be considered elsewhere. Where concussion fails to pass off within a few hours, the possibility of a subdural or extradural haemorrhage or some other more profound brain damage must be considered. These may supervene after concussion passes off if the latter is transient, and the period of consciousness between the two is then called 'the lucid interval.'

17. The testimony of D.W. 7 Dr. R. K. Mittal and D.W. 1 Dr. S. Tripathi, and the opinion expressed by renowned authors show that in all probability Ajit Singh would have become unconscious after receiving the injury on his head which is a long and deep incised wound resulting in fracture of temporal bone. Both the eye-witnesses have stated that Ajit Singh assaulted Than Singh by a banka but he started grappling with him and thereafter Ashok Singh wielded his axe several times which also accidentally caused injury to Ajit Singh. Thereafter, Ajit Singh snatched the axe from the hands of Ashok Singh and gave several blows from it to the deceased. Thereafter, both the accused ran away and in spite of a chase given by four persons, they could not be apprehended. In view of the injury sustained by Ajit Singh, it is difficult to believe this part of the prosecution case.

After receiving injury Ajit Singh is likely to have fallen down and is likely to have become unconscious. It is not at all believable that he snatched the axe from Ashok Singh and gave several blows from it to the deceased and thereafter he ran from the place with such a speed that in spite of a chase given by four persons he could not be apprehended. In view of the testimony of the medical experts, the running of Ajit Singh from the place of occurrence appears to be highly unnatural and cannot be believed. It is important to note that P.W. 2 Shivbans Singh gave his age as 26 years on 23-1-1979 when his statement was recorded. Therefore, he was about 25 years of age at the time of the incident and being a young man he was in a position to run fast. If the witnesses were present on the spot Ajit Singh would certainly have been apprehended then and there or when he was in the process of running away. This shows that the witnesses were not present near the scene of commission of crime at the time of incident.

18. The prosecution has led evidence which has also been believed by the learned Sessions Judge, that P.W. 9 Jagat Dhari, I.O. of the case had arrested the accused from inside the room of the tube-well and had interrogated them. Both the accused are alleged to have said that the banka and axe by which they had assaulted Than Singh had been concealed by them in a pit near the tube-well and thereafter they led the police personnel to that place from there the aforesaid weapons were recovered. The information given by the accused relating to recovery of the weapons has sought to be proved as being admissible under Section 27 of the Evidence Act. P.W. 9 in his statement said that the accused told him that the banka and the axe by which they had assaulted Than Singh had been concealed in a pit near the tube-well and they could give it to him. P.W. 8 Ajar Singh, who has been examined as a public witness of the recovery, has also given an exactly similar statement. This witness is not a resident of the village where the incident took place but is a resident of a different village Rura, which is situate within the jurisdiction of a different police station namely, P.S. Kotwali. Section 27 of the Evidence Act provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, or so much of information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. In the present case, what precise information was given by Ajit Singh and

Ashok Singh accused individually has not been stated by the witnesses. Both P.W. 8 and P.W. 9 have stated in Court that the accused gave information that they had concealed the weapon in a pit. Section 27 is an exception to Sections 24, 25 and 26 of Evidence Act and it makes statement of a person in the custody of a police officer admissible even if it amounts to a confession. It is, therefore, absolutely essential to know what precise words were spoken by a particular accused. In absence of clear evidence as to what words were spoken by each of the appellants, it is not possible to place any reliance on the testimony of P.W. 8 and P.W. 9 on this point. In Mohd. Abdul Hafeez v. State of Andhra Pradesh 1983 SCC (Cri) 139 : AIR 1983 SC 367, the Apex Court made the following observation, where joint statement leading to discovery of a fact made by several accused, was sought to be proved (at p. 369 of AIR) :-He says that accused 1 to 4 sold him the ring. He does not say who had the ring and to whom he paid the money. Similarly, he stated that accused 1 to 3 asked him to produce the ring. It is impossible to believe that all spoke simultaneously. This way of recording evidence is most unsatisfactory and we record our disapproval of the same. If evidence otherwise confessional in character is admissible under Section 27 of the Indian Evidence Act, it is obligatory upon the Investigating Officer to state and record who gave the information; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against that person...

19. Therefore, this part of the prosecution evidence cannot be utilised to fasten the liability upon the accused.

20. Learned counsel for the appellants has also urged that the investigation of the case has not been fair and, therefore, it will not be safe to rely upon the evidence of recovery of the weapons at the pointing out of the accused. He also drew attention of the Court to certain other features of the prosecution case. Learned counsel has pointed out that P.W. 9 Jagat Dhari has admitted that he reached the spot at 6.00 p.m. on 22-1-1978 where he held inquest on the body of the deceased. His statement further shows that he recorded the statement of several witnesses under Section 161, Cr. P.C. at 12.30 in the night. The body was

despatched for post-mortem examination at 10.00 p.m. and the accused had been arrested at 3.00 a.m. in the night itself. However, P.W. 6 Ramesh Chand Dwivedi, Constable has stated that P.W. 9 Jagat Dhari and other police personnel brought the accused and sealed bundles of the recovered articles to the police station at 12.40 hours on 23-1-1978. According to learned counsel there has been unusual delay in the return of the Investigating Officer to the police station which shows that the sequence of events and the time thereof given by him is not correct. The evidence on record does show that unusually long time was taken by the Investigating Officer in the village of occurrence and it is quite likely that things specially the arrest of the accused and recovery of weapons did not take place at the time and place narrated by him.

21. Learned State Counsel has strenuously urged that if the first informant Jadunath Singh had not seen the occurrence, he could not have made any mention of the injury sustained by Ajit Singh accused in the FIR. He has also contended that the fact that Ajit Singh did not lodge any FIR and that he did not go for medical examination of his injury shows that he was the assailant who had committed the crime. The FIR was lodged by Jadunath Singh and as he died before the commencement of the trial he was not examined as a witness in the case. The accused, therefore, could not get any opportunity to cross-examine him. The FIR is not a substantive piece of evidence but can only be used either to corroborate or to contradict the maker thereof. In *Nissar Ali v. State of U.P.* AIR 1957 SC 366, it has been held as follows (para 2) :-

A First Information Report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 157, Evidence Act, or to contradict it under Section 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused, nor to corroborate or contradict other witnesses.

22. P.W. 6 Ramesh Chand Dwivedi, Constable has only stated that Jadunath Singh gave him a written report at 16.04 hours on 22-1-1978 on the basis of which he prepared a chik report and registered a case in the General Diary. This witness cannot prove the contentions of the FIR as he is not the author of the same.

Though Jadunath Singh has died but at the same time the F.I.R. lodged by him cannot be held as admissible under Section 32 of Evidence Act. Ajit Singh accused in his statement under Section 313, Cr. P.C. stated that at about 9-10 a.m. Than Singh (deceased) assaulted him with an axe and thereafter he did not know what further happened. He has further stated that the police arrested him from his house at about 10-11 p.m. in the night. There is no evidence to show that there was any one else in the family of Ajit Singh who could take him to hospital for providing him medical aid or could lodge an FIR on his behalf. It is extremely doubtful whether Ajit Singh was himself capable of going to a hospital or to the police station. He has not denied the existence of the injury on his head but has attributed it to a blow given by the deceased himself. Therefore not much importance can be given to the fact that he did not get himself medically examined or did not lodge an FIR.

23. Having given our careful consideration to the evidence on record, we are of the opinion that the case of the prosecution has not been established against the accused beyond a reasonable doubt. We are, therefore, of the considered opinion that Ajit Singh accused deserves benefit of doubt.

24. The appeal preferred by Ashok Singh, appellant No. 2 is abated as he has died. The appeal preferred by Ajit Singh, appellant is allowed. His conviction under Sections 302/34, I.P.C. and sentence of imprisonment for life imposed upon him by the learned Sessions Judge is set aside. He is acquitted of the charge levelled against him. The bail granted to the appellant was cancelled by this Court's order dated 9-7-1999. If the appellant-Ajit Singh has been taken into custody, he shall be released forthwith unless wanted in some other case.