

Bhagwan Singh Alias Babu and ors. Vs. State

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Court : Uttaranchal

Decided On : Dec-16-2008

Reported in : 2009CriLJ1987

Judge : Dharam Veer, J.

Appellant : Bhagwan Singh Alias Babu and ors.

Respondent : State

Advocate for Pet/Ap. : Sri. R.S. Sammal

Disposition : Appeal dismissed

Judgement :

Dharam Veer, J.

1. This criminal appeal, preferred by the appellant Under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr. P. C), is directed against the judgment and order dated 27-6-1991 passed by IInd Additional Sessions Judge, Dehradun in Sessions Trial No. 69 of 1989, State v. Bhagwan Singh and three Ors., whereby the learned IInd Additional Sessions Judge has convicted the appellants/accused, namely, Bhagwan Singh alias Babu, Ram Chander, Laxman Singh and Ashok for the offence punishable under Section 304 Part I read with Section 34 of the Indian Penal Code, 1860 (hereinafter to be

referred as IPC) and were sentenced to undergo ten years' rigorous imprisonment. All the accused persons were further convicted Under Section 323 r/w Section 34 IPC and were sentenced to one year's R. I. It was also directed that both the sentences of the appellants/accused were run concurrently.

2. I have heard Sri R.S. Sammal, learned Counsel for the appellants as well as Sri M. A. Khan, learned brief holder for the State and perused the entire material available on record.

3. During the pendency of the appeal the accused/appellant Bhagwan Singh alias Babu was reported to be died. In this regard, Chief Judicial Magistrate, Dehradun submitted a report dated 19-8-2008 annexing therewith a Death Certificate of accused/appellant Bhagwan Singh alias Babu and has submitted that the accused/appellant has died on 28-8-2006. Hence, the appeal preferred by the accused/appellant Bhagwan Singh alias Babu stands abated.

4. In brief, the facts of the case are that P. W. 1 Manjeet Singh lodged the F. I. R. at Police Station, Rajpur, Dehradun with the averments that on the issue of labour some hot talks took place between his father Govind Singh and Bhagwan Singh alias Babu on 11-11-1988 at about 8 p. m. in the evening. Assuming it a minor incident, they forgot it and therefore they have not lodged the report of the said incident. It was further averted that on 12-11-1988 at about 8 p. m. he, his father and his brother Suresh were talking with each other inside the room of his residential house and his mother, sisters and other ladies of the house were also working in the house. Meanwhile, Bhagwan Singh alias Babu Ram Chander, Laxman Singh and Ashok armed with Lathi and Dandas came to his house and started abusing them. Then the complainant Manjeet Singh along with his family members came in the courtyard of their house and tried to persuade the appellants/accused but all was in vain. Then the appellants/accused started assaulting them due to which he, his father and his brother Suresh received injuries. In order to save their life, he and his father fled from the place of occurrence and his brother Suresh became unconscious and fell down. At the time of incident, witnesses-Vijay, Pitamber Singh and Digamber Singh, also reached at the place of occurrence who have seen the whole incident. After that when they

(Manjeet Singh and his father) reached at the hospital for medical treatment then his sister with the help of other people took his brother Suresh to the hospital. His brother was admitted in the hospital and his (Suresh) condition was very serious. With the same averments, F. I. R. was lodged by Manjeet Singh (PW1) at Police Station Rajpur, Dehradun on 13-11-1988 at 1:30 a. m. That F. I. R. is Ext. Ka-1. On the basis of this F. I. R., Chik F. I. R. was prepared by Constable Clerk Thana Singh and the case was registered as Case Crime No. 61/1988 Under Sections 308/323/504 IPC against the appellants/accused. That Chik F.I.R. is Ext. Ka-6. The necessary entry was also made in the G. D., carbon copy of which is Ext. Ka-7. After that the investigation of this case was entrusted to P. W. 11 Station Officer Vinod Kumar. Injured Suresh was medically examined by P. W. 6 Dr. D.S. Negi in Doon Hospital, Dehradun on 12-11-1988 at 9.50 P. M., and the injury report Ext. Ka-3 was prepared. Injured Govind Singh and Manjeet Singh were also medically examined by P. W. 6 Dr. D.S. Negi in Doon Hospital, Dehradun on 13-11-1988 at 12.25 A. M. and 12.45 A. M. respectively. The injury report of injured Govind Singh and Manjeet Singh were prepared which are Ext. Ka-4 and Ext. Ka-5, respectively. Later on, Suresh died in Doon Hospital, Dehradun on 13-11-1988 at 5A. M. After that the inquest report of the deceased Suresh was prepared on 13-11-1988, i.e., Ext. Ka-8. Specimen of seal Ext. Ka-9, Sketch of the dead body Ext. Ka-10 and Police Form No. 13 Ext. Ka-11 were also prepared. Thereafter, the postmortem of the dead body was conducted by P. W. 5 Dr. A. Nagayach on 13-11-1988 at 3.20 p. m. The post-mortem report is Ext. Ka-2. During the course of investigation, the Investigating Officer took the bloodstained shirt and sweater of the injured Manjeet Singh into his possession and the FARD was prepared, i.e., Ext. Ka-12. The I. O. has also taken the bloodstained Kurta of the injured Govind Singh into his possession and prepared the FARD, i.e., Ext. Ka-13. The I. O. also took the bloodstained . clay and the plain clay from the place of occurrence and sealed it on separate boxes at the spot and the FARD was prepared, i.e., Ext. Ka-14. During the course of investigation, the I. O. inspected the place of occurrence and prepared the site plan of the place of occurrence, i.e., Ext Ka-16. After the death of the injured Suresh, amendment in the section was made and the case was converted Under Sections 304/323/504 IPC from Section 308/323/504 IPC. An entry to this effect was also made in the G. D., carbon copy of which is Ext. Ka-17.

The articles-bloodstained clay, Kurta, sweater and shirt, recovered by the Investigating Officer were sent for chemical examination. During the course of investigation, the I. O. has also recorded the statement of the witnesses and after completing the investigation he filed the charge-sheet against the appellants/accused Under Sections 304/323/504 IPC. That charge sheet is Ext. Ka-18.

5. Learned Munsif L. C. C, Dehradun committed the case to Court of Session on 11-4-1989 after giving necessary copies to the appellants/accused as provided under Section 207 Cr.P.C.

6. It appears from record that learned Sessions Judge transferred the case to IInd Additional Sessions Judge, Dehradun for hearing and disposal according to law.

7. On 23-5-1989, learned IInd Additional Sessions Judge, Dehradun framed the charge of offence punishable Under Section 304 Part I r/w Section 34 IPC and Under Section 323 r/w Section 34 IPC. The charge was read over and explained to the appellants/accused who pleaded not guilty and claimed to be tried.

8. In order to prove its case, the prosecution has examined P. W. 1 Manjeet Singh-complainant and the injured eye-witness of the case, P. W. 2 Govind Singh injured eyewitness, P. W. 3 Pitamber Singh eye witness of the case, P. W. 4 Hari Singh, P. W. 5 Dr. A. Nagayach, who conducted the postmortem of the deceased Suresh, P. W. 6 Dr. D.S. Negi, who medically examined injured Suresh, Govind and Manjeet Singh, P. W. 7 Constable Clerk Thana Singh, who has prepared the Chik F. I. R. and also made entry in the G. D., P. W. 8 Sub Inspector Bhupal Singh, who has prepared the inquest report. P. W. 9 Shyam Singh witness of the recovery of the bloodstained clothes and the inquest report, P. W. 10 Ishwar Singh witness of the recovery of the bloodstained clay and plain clay, P. W. 11 Sub Inspector Vinod Kumar Investigating Officer of the case.

9. After that the statement of the appellants/accused were recorded Under Section 313 Cr.P.C. The oral and documentary evidence was put to each of them in question form, who has denied the allegations made against them. In defence, they have produced D. W. 1 Phool Chand, D. W. 2 Umrao Singh and D. W. 3

Mukesh Chandra Gupta as oral evidence and in documentary evidence, they have filed medical report of Ashok Singh Ext. Kha-1, medical report of Umrao Singh Ext. Kha-2, report sent to S.P., Dehradun by Umrao Singh Ex. Kha-4, envelope of the letter Ext. Kha-5, discharge slip of Umrao Singh Ext. Kha-6 and the Bed Head Ticket Ext. Kha-7.

10. After appreciating the entire evidence available on record and hearing learned Counsel for the parties, learned IInd Additional Sessions Judge, Dehradun convicted and sentenced the appellants/accused as above. Feeling aggrieved by the said judgment and order dated 27-6-1991, the appellants/accused has preferred the present appeal.

11. Before further discussion, it is pertinent to mention the injuries found on the body of the injured Suresh, who was medically examined by Dr. D.S. Negi (P. W. 6) on 12-11-1988 at 9.50 P. M. and has found the following injuries on his body, which are reproduced as under:

- (i) Traumatic swelling left temporal region 10 cm x 6 cm.
- (ii) Traumatic swelling 6 cm x 5 cm right side scalp 4.5 cm above right ear.
- (iii) Traumatic swelling left occipital region top 4 cm x 3 cm.

Opinion :- Injuries caused by blunt object, kept under observation, advised X-ray Skull-> AP, lat., fresh duration, detailed examination could not be done due to low general condition.

12. Injured Govind Singh (P.W. 2) was also medically examined by Dr. D. S. Negi (P.W.6) on 13-11-1988 at 12:25 a. m. and has found the following injuries on his body, which are reproduced as under:

- (i) Lacerated wound over forehead 6 cm x 1.5 cm x scalp deep 3 cm above right eyebrow.
- (ii) Lacerated wound over middle forehead 2 cm x 1 cm x scalp deep 1.5 cm above right eyebrow.

(iii) Lacerated wound 1 cm x 1/2 cm x skin deep over bridge of nose.

(iv) Lacerated wound 2 cm x 1 cm x skin deep left elbow region.

(v) Lacerated wound 3.5 cm x 1/2 cm x skin deep over left forearm dorsum 10 cm below left elbow.

Opinion :- Injuries fresh in duration, all are caused by blunt object, injury Nos. 1 and 2 are kept under observation. Advised X-ray Skull-AP, Lat. Injury Nos. 3, 4 and 5 are simple in nature.

13. Injured Manjeet Singh (P. W. 1) was also medically examined by Dr. D.S. Negi (P. W. 6) on 13-11-1988 at 12.45 a. m. and he found the following injuries on his body, which are reproduced as under:

(i) Lacerated wound 3 cm x 1 cm x skin deep with traumatic swelling over the base of left middle finger on ventral surface.

(ii) Lacerated wound 3.5 cm x 1 cm over the base of left right finger with traumatic swelling on ventral surface.

(iii) Lacerated wound 1/2 cm x 1/2 cm x skin deep on tip of index finger.

Opinion :- All injuries are fresh in duration, caused by blunt object. Injury Nos. 1 and 2 are kept under observation, advised X-ray left hand and injury No. 3 is simple.

14. To prove the above-noted injuries, the prosecution has examined P. W. 6 Dr. D.S. Negi, who has stated that on 12-11-1988 he was posted as surgeon at Doon Hospital. He has further stated that on that day at 9.50 p. m. Suresh was brought by Smt. Rajeshwari. He has done the medical examination of Suresh and he found the above noted injuries on the body of injured Suresh. At the time of medical examination, he has prepared the injury report i.e. Ext. Ka-3 of the injured Suresh. He further stated that all the injuries were fresh and were caused by blunt object. He further stated that on 13-11-1988 at 12.25 a.m. he has also done the medical examination of the injured Govind Singh (PW 2) and he has found the abovenoted injuries on his body. Injury report i.e. Ext. Ka-4 of the injured Govind Singh was

prepared by him at the time of medical examination. He further stated that all the injuries were fresh and were caused by blunt object. On the same date at 12.45 a.m. injured Manjeet Singh was also medically examined by him and he has found the abovenoted injuries on his body. He further stated that all the injuries were fresh and were caused by blunt object. He further stated that all the injuries could be caused by Lathi and Dandas. At the time of medical examination he has prepared the injury report i.e. Ext. Ka-5 of the injured Manjeet Singh (PW 1).

In the cross-examination he has stated that on 12-11-1988 at 10.25 p.m., he has done the medical examination of Ashok Singh and the injury report i.e. Ext. Kha-1 was prepared by him. He has found the following injuries on the body of the injured Ashok, which are reproduced as under:

(i) Lacerated wound left side scalp parietal region 6 c.m. x 0.5 c.m. x scalp deep 10 c. m. above left ear fresh bleeding present.

(ii) Smell of alcohol present from the breath, patient is talking normally.

Opinion : Injury No. 1 caused by blunt object, fresh in duration, kept under observation, advised X-ray Skull>AP, lat. Patient has taken alcohol but not intoxicated.

He has further stated that on the same day at 10 p.m. he has done the medical examination of Umrao Singh and the injury report i.e. Ext. Kha-2 was prepared by him. He found the following injuries on the body of Umrao Singh, which are reproduced as under:

(i) Lacerated wound 8 c.m. x 0.5 c.m. x scalp deep left side scalp 14 c.m. above left ear.

(ii) Smell of alcohol present from the breath, but the patient is talking normally.

Opinion :- Injury No. 1 is fresh, caused by blunt object, kept under observation, advised X-ray Skull AP, lat. Patient has taken some alcoholic preparation but not intoxicated.

15. After that the injured Suresh died at Doon Hospital, Dehradun on 13-11-1988 at 5 a.m. His post-mortem was conducted by Dr. A. Nagayach (P. W. 5) on 13-11-1988 at 3.20 p.m. and he prepared the post-mortem report of the deceased, i.e. Ext. Ka-2, Dr. A. Nagayach has found the following ante-mortem injuries on the body of deceased, which are reproduced as under:

- (i) Traumatic swelling 10 c.m. x 6 c.m. on left side of head (temporal region).
- (ii) Traumatic swelling 8 c.m. x 3 cm. over right temporal region.

On opening:

- (a) Ecchymosis present underneath the injuries mentioned above.
- (b) Haematoma 20 cm. x 30 cm. extending between both ears and from front up to back of skull.
- (c) Compressed fracture of left parietal bone. Linear fracture extending from left parietal bone to right parietal bone and involving occipital bone.
- (d) Brain membranes are congested and ruptured at places.
- (e) Haematoma involving nearly whole of the brain.
- (f) Base of skull is fractured.

16. To prove the above noted ante-mortem injuries, the prosecution has examined P. W. 5 Dr. A. Nagayach, who has stated that on 13-11-1988 at 3.20 p.m. he has conducted the autopsy of the dead body of Suresh. He further stated that in his opinion cause of death was head injuries.

17. Further to prove its case, the prosecution has examined P. W. 1 Manjeet Singh, who has stated that on 11-11-1988 at about 8 p.m. appellant/accused Bhagwan Singh of his village threatened the labour Ashok of his truck that why is not working in his (Bhagwan Singh) house, due to which Ashok scared. Then Ashok told the incident to his (Manjeet Singh) father. Then his father told Bhagwan Singh that he should not do like so. On this, hot talks took place between his father

and Bhagwan Singh. Assuming it a minor incident, he did not lodge the report anywhere. Next day at about 8 p.m. in the night, appellants/accused Bhagwan Singh, Ram Chander, Laxman and Ashok armed with Lathis and Dandas in their hands came to his house. Appellants/accused Bhagwan Singh, Ram Chander and Laxman armed with Lathis and Ashok armed with Danda came to the courtyard of his house and started abusing them. On this, he (Manjeet Singh), his brother Suresh and his father Govind Singh came out of their room and tried to persuade the appellants/accused but all was in vain. Then the appellants/accused started assaulting them with Lathis and Dandas. Due to the injuries caused by Lathis, his brother Suresh became unconscious and fell down on earth and his father received injuries on his forehead and hands. He also received the injuries on the fingers of left hand. Then they raised alarm. After hearing the noise, Pitamber, Digamber, Rajeshwari and Vijay reached at the place of occurrence and they tried to intervene but the appellants/accused terrified them. Then he and his father fled from the place of occurrence in order to save their life. Thereafter they (Manjeet Singh and Govind Singh) came on the main road and started waiting for some vehicle so that they may take his brother Suresh to the hospital, who was unconscious and has fallen down. After waiting for sometime when they could not get any vehicle then they went to the house of their relative Hari Singh, who was the resident of Kuthalgate, for the vehicle. They narrated the whole incident to Hari Singh. Then they came back to their house in the truck of Hari Singh. After coming to the house they came to know that his sister Rajeshwari with the help of other people has taken his brother Suresh to the hospital. Then they also went to Doon Hospital from there. There they went to see his brother Suresh in the emergency ward where the condition of his brother Suresh was serious. After that he and his father Govind Singh were also medically examined. Then he dictated the report of the said incident to Hari Singh in the veranda of Doon Hospital and then they lodged the same report at Police Station, Rajpur. That report is Ext. Ka-1. He further stated that his brother Suresh died in the hospital on 13-11-1988 at 5 a.m. This witness was cross-examined at length by the defence counsel but nothing has come out from his statement which may create any doubt in his statement. The statement of this witness is reliable, believable and inspires a confidence.

18. P. W. 2 is Govind Singh, who has stated that on 11th November at about 7 p.m., Ashok, labour of his truck, was threatened by the appellant/accused Bhagwan Singh, due to which he scared. Then at about 8 p.m. in the evening, Ashok came to him and told him that he (Ashok) will not work in his truck. After sometime the appellant/accused Bhagwan Singh met him then he (Govind Singh) told him that why he has scolded his labour Ashok. On this, hot talks took place between him and the appellant/accused Bhagwan Singh threatened him to see in future. Next day on 12-11-1988 at 8 p.m. he, his sons-Manjeet Singh (P. W. 1) and Suresh were talking with each other in their house at Senola and the ladies of the house were sitting in the courtyard. There was electric light in his house. Meanwhile, the appellants/accused Ram Chander, Laxman, Bhagwan Singh and Ashok came to his house. Appellants/accused Ram Chander, Laxman and Bhagwan Singh having Lathis in their hands and the appellant/accused Ashok having Danda with him, came in their courtyard and started abusing them. After hearing the noise, he and his sons Manjeet and Suresh came out of their room. They (Govind Singh, Manjeet Singh and Suresh) asked them not to use abusive language then the appellants/accused started beating them with Lathis and Dandas. He further stated that he received injuries on his head and left hand and his son Manjeet (PW 1) received injury on his hand. He had also seen the appellants/accused while beating his son Suresh with Lathis and Dandas. Then they raised the alarm. After hearing the noise, Pitamber, Digamber and Vijay reached at the place of occurrence. These three witnesses tried to intervene in between the fight but the appellants/accused terrified them. Condition of Suresh was serious. On seeing his condition he and his son Manjeet Singh ran away from the place of occurrence due to fear of the appellants/accused. Suresh has become unconscious and has fallen down. Then they went to the main road in search of vehicle but they could not get any vehicle. Then he and his son went to Kuthalgate where his nephews were living, who were having a truck. They narrated the whole incident to his nephews. Then after taking his nephew's truck they came back to his house. Then they came to know that his daughter Rajeshwari has taken his son Suresh to Doon Hospital and Pitamber and Digamber have also gone with her. Then he along with his son and two nephews went to the Doon Hospital where he and his son Manjeet Singh were medically examined. After his medical

examination, he went to see Suresh whose condition was serious. Thereafter he sent his son Manjeet to lodge the report of the said incident. He further averred that the Police has taken his clothes after 15-20 days of the said incident. This witness was cross-examined at length by the defence counsel but nothing has come out from his statement which may create any doubt in his statement. The statement of this witness is reliable, believable and inspires a confidence.

19. P.W. 3 is Pitamber Singh, who has stated that the incident was said to be taken place on 12-11-1988 at about 8 p.m. in the night. He further stated that he and his brother Digamber were talking with each other in their house which is in the west side of Govind Singh's house. Then suddenly they heard the noise of abusive language coming from the house of Govind Singh. On this, he and his brother Digamber reached to the house of Govind Singh. Then they saw that the appellants/accused Ram Chander, Laxman, Bhagwan Singh and Ashok were abusing Govind Singh. Ram Chander, Laxman and Bhagwan Singh were having Lathis in their hands and the appellant/accused Ashok was having Danda in his hand. There was electric light. Govind, Manjeet and Suresh were trying to persuade the appellants/accused but the appellants/accused did not convince. Meanwhile, Ram Chander started beating Govind Singh with Danda. After that other appellants/accused also started beating Govind Singh, Manjeet and Suresh with Lathis and Dandas. At the time of incident Vijay also reached at the place of occurrence. Then all of them (Pitamber, Digamber and Vijay) tried to intervene in between the fight but the appellants/accused threatened them to keep aside. Due to injuries caused by the appellants/accused Suresh fell down. Suresh has received injuries on his head due to which he became unconscious. Govind Singh and Manjeet fled from the place of occurrence in order to save their life. All the ladies of the house of Govind Singh were inside the house only Rajeshwari was standing in the veranda. After seeing the serious condition of Suresh, the appellants/accused also ran away from the place of occurrence. After waiting for about 45 minutes for Manjeet Singh and Govind Singh, Digamber Singh went to take truck. After one hour he brought the truck. Then he (Pitamber Singh), Rajeshwari, Digamber and Vijay took Suresh to the hospital and admitted him (Suresh) in the emergency ward. He further stated that Suresh died in the hospital at about 5 a.m. in the morning. This witness was cross-examined at length by the

defence counsel but nothing has come out from his statement which may create any doubt in his statement. The statement of this witness is reliable, believable and inspires a confidence.

20. P. W. 4 is Hari Singh, who has stated that on 12-11-1988 he was in his house at Kuthalgate. He further stated that Manjeet Singh and Govind Singh came to his house at about 11-11.30 p.m. in the night. They narrated the whole incident to him. Then they reached at Senola Village where they came to know that Rajeshwari has taken Suresh to the hospital. Then they also reached hospital. Suresh was in the emergency ward. Manjeet and Govind Singh were also medically examined. Then Manjeet dictated the report of the said incident to him whatever Manjeet Singh dictated to him he wrote the same in the report. That report is Ext. Ka-1. That report was lodged at the police station at about 1.30 in the night. This witness was cross-examined at length by the defence counsel but nothing has come out from his statement which may create any doubt in his statement. The statement of this witness is reliable, believable and inspires a confidence.

21. P. W. 7 is Thana Singh, who has stated that on 13-11-1988 he was posted as Constable Clerk at Police Station, Rajpur. On that day, Manjeet Singh came to him with the report. On the basis of that report, he prepared the Chik F. I. R., i.e., Ext. Ka-6. The necessary entry was also made in the G. D. by him, carbon copy of which is Ext. Ka-7.

22. P. W. 8 is Sub-Inspector Bhupal Singh, who has stated that on 13-11-1988, he was posted at Police Station, Kotwali, Dehradun. The inquest report of the deceased Suresh was prepared by him at 10.15 a.m. at Doon Hospital. The inquest report is Ext. Ka-8, specimen of seal of the dead body is Ext. Ka-9 and the sketch of the dead body is Ext. Ka-10. Dead body of the deceased was sent for postmortem by Constable Pritam Singh and Rishipal and that Form was signed by him. That Form is Ext. Ka-11.

23. P. W. 9 is Shyam Singh, who has stated that on 1-12-1988 at about 7 p.m. he was in the house of Govind Singh. On that day at about 7.30 p.m., the Investigating Officer has taken the bloodstained clothes of Manjeet Singh i.e. Shirt and Sweater into his possession before him and prepared the FARD i.e. Ext. Ka-

12. Witness Sunder Singh was also there at that time. After that bloodstained clothes of Govind Singh i.e. Kurta was also taken into possession by the police and the FARD was prepared i.e. Ext. Ka-13. On 13-11-1988 the inquest report of the deceased Suresh was prepared and he has signed on it. That inquest report is Ext. Ka-8. He has also identified the sweater Ext. 1 and shirt Ext. 2 and the Kurta Ext. 3 of Govind Singh.

24. P.W. 10 is Ishwar Singh, who has stated that on 13-11-1988 he was in the house of Govind Singh at Senola. Witness Sunder Singh was also there. He has further stated that before him and Sunder Singh, bloodstained clay and plain clay were taken into possession by the police from the courtyard of Govind Singh and were sealed on separate boxes. FARD was prepared before them and he has also signed on it. That FARD is Ext. Ka-14. After that the police personnel made search in the house of the appellants/accused and the memo of the search was prepared i.e. Ext. Ka-15. He has identified the plain clay Ext. 7 and bloodstained clay Ext. 8.

25. P. W. 11 is Sub-Inspector Vinod Kumar, who has stated that on 13-11-1988 he was posted as Station Officer at Police Station, Rajpur. The investigation of this case was done by him. During the course of investigation he recorded the statement of the witnesses. Statement of Suresh could not be recorded due to his unconsciousness. He inspected the place of occurrence on the pointing out of Manjeet Singh (P. W. 1). He also took the bloodstained and plain clay from the place of occurrence and sealed them in separate boxes and prepared the FARD i.e. Ext. Ka-14. He also made search of the house of appellants/accused and the FARD was prepared i.e. Ext. Ka-15. Site plan of the place of occurrence was also prepared by him i.e. Ext. Ka-16. After the death of Suresh, the case was converted under Section 304, I.P.C. instead 308, I.P.C. An entry to this effect was also made in the G. D., copy of which is Ext. Ka-17. Bloodstained clothes of Manjeet Singh (P. W. 1) were taken into possession and the FARD was prepared at the spot i.e. Ext. Ka-12. Bloodstained clothes of Govind Singh (P. W. 2) i.e. Kurta was also taken into possession and the FARD was prepared i.e. Ext. Ka-13. He has identified the sweater Ext. 1 and Shirt Ex. 2 of Manjeet Singh and kurta Ext. 3 of Govind Singh. The clothes in which these above items were sealed are Ext. 5 and Ext. 6. After completing the investigation he filed the charge sheet against the

appellants/accused. That charge sheet is Ext. Ka-18. He further stated that the bloodstained clay and bloodstained clothes were sent for chemical examination.

26. After that the statement of the appellants/accused were recorded under Section 313, Cr.P.C. The oral and documentary evidence was put to each of them in question form, who has denied the allegations made against them. In reply to question No. 16, Laxman Singh has stated that the said incident took place in his house. He further stated that the Investigating Officer has not collected the true evidences and he has been falsely implicated in the case. In reply to question No. 16 Bhagwan Singh has stated that due to festival of Bhaiyadoo, Ashok, brother-in-law of his brother Ram Chander, had come to his house and they have stopped him for dinner. When they were eating food then Govind Singh and his sons Manjeet Singh and Suresh armed with Lathis and Dandas came to his house and challenged him to come outside. His father and Ashok came out from the house and forbade them by doing this. On this, the three (Govind Singh, Manjeet Singh and Suresh) started beating them. Then his brother Ram Chander and Laxman also came out. He has further stated that in this fight Govind Singh and Suresh also received injuries. He further stated that he has been falsely implicated in the case due to the death of Suresh. After getting discharged from the hospital, his father has given an application to Superintendent of Police related to the same incident. In reply to question No. 16, Ram Chander has stated that the incident took place in his house and due to death of Suresh, he has been falsely implicated in the case. In reply to question No. 16 Ashok Singh has stated that he has come in the house of his sister who was married with the appellant/accused Ram Chander. When they were eating food in the night Manjeet Singh, Govind Singh and Suresh came at the place of occurrence and started beating them. He further stated that he received the serious injuries on his head. In defence, they have produced D. W. 1 Phool Chand, D. W. 2 Umrao Singh and D. W. 3 Mukesh Chandra Gupta as oral evidence and in documentary evidence, they have filed medical report of Ashok Singh Ext. Kha-1, medical report of Umrao Singh Ext. Kha-2, letter written to S.P. Dehradun by Umrao Singh Ext. Ka-4, envelope of the letter Ext. Kha-5, discharge slip of Umrao Singh Ext. Kha-6 and the Bed Head Ticket Ext. Kha-7.

27. D.W. 1 is Phool Chandra, who has stated that in November 1988, he was posted as Clerk in the Court of J. M. IInd, Dehradun. F. I. R. of the Police Station, Rajpur in case Crime No. 61/88 under Sections 308/323/504, I.P.C. was received in the Court of J. M. IInd on 17-11-1988.

28. D. W. 2 is Umrao Singh, who has stated that appellants/accused Ram Chander, Bhagwan Singh and Laxman Singh are his sons and the appellant/accused Ashok is the brother-in-law of his son Ram Chander. He further stated that in the year 1988, next day of the Bhaiyadoo, quarrel took place at his house. They were taking food in his house and his son-in-law Sunil and Ashok were also taking food. At about 7.30-7.45 p.m. in the evening, Govind Singh and his sons Suresh and Manjeet came to his house by hurling abuses. After hearing the noise, he came out of the house and asked Govind Singh not to abuse them. The Govind Singh called Bhagwan Singh to come out. He (Umrao Singh) enquired from Govind Singh what is the matter and what Bhagwan Singh has done? Then Govind Singh told him that Bhagwan Singh has abused his conductor and has quarreled with him. Then he asked Govind Singh to go home and in the morning Bhagwan Singh will say sorry for the mistake. Govind Singh and Manjeet Singh were armed with Lathis and Suresh was armed with Danda. He further stated that he had a conversation with Govind Singh and others in the courtyard of his house. There was electric light in the courtyard. Meanwhile, Manjeet Singh has caused injuries on his head with Lathi. On hearing his shouts, Ram Chander and Ashok came there. Then Suresh gave a Danda blow on the head of Ashok. Then Ram Chander snatched Lathi from Govind Singh and used it in self-defence. Thereafter at about 4-5 minutes Govind Singh and others ran away from the place of occurrence. He further stated that he received the injuries on his head and Ashok also received injuries on his head. Blood was oozing out from their heads. After that he, Sunil and Laxman Singh went to hospital by motorcycle and Ashok was also taken to hospital with Ram Chander by scooter, where all of them were medically examined. Due to serious injuries, he admitted in the Doon Hospital. He further stated that Govind Singh's house is in the west side of his house after the road. He further stated that while going to hospital, truck was there in the courtyard of Govind Singh and the driver Vijay was also there. He further stated that he remained in hospital for 14 days. On the date of incident at about 11-11.30 p.m. in

the night, S. O. and other police personnel had come in the hospital. He narrated the whole incident to Station Officer. Then the S. O. assured him that he (S. O.) will do the investigation of the case. Then the S. O. took his three sons and Ashok to the police station by saying that after writing their report he will investigate the matter. He has filed the discharge slip of the hospital. After getting discharged from the hospital he went to the house of S. P. along with his wife but the S. P. was not in his house therefore he could not meet him. Then he sent the report of the said incident to the S. P. by post. He has filed the carbon copy of the said report. He filed the original receipt of the UPC through which he has sent the report to S. P. That receipt is Ext. Kha-5.

29. D.W. 3 is Mukesh Chandra Gupta, who has stated that he was posted as Senior Pharmacist at Doon Hospital since 1957. He has brought with him Bed Head Tickets of Umrao Singh, who was admitted in the hospital on 12-11-1988 as medical legal case in the night. An entry to this effect was made in the BHT by Dr. D.S. Negi, Surgeon on Emergency Duty. He further stated that on 25-11-1988, Umrao Singh was discharged from the hospital. Discharge slip of Umrao Singh is Paper No. 77k, i.e. Ext. Kha-6. He has filed the BHT No. 6903 in the Court, which was connected with this case. That BHT is Ext. Kha-7.

30. Learned Counsel for the appellants/accused submitted that no case under Section 304, Part I r/w. Section 34, I.P.C. and under Section 323 r/w. 34, I.P.C. is made out against the appellants/accused. I do not find substance in the argument raised by learned Counsel for the appellants/accused due to following reasons:

(i) As P. W. 1 Manjeet Singh has stated in his statement that some hot talks had taken place between his father Govind Singh and the appellant/accused Bhagwan Singh on the issue of labour and the appellant/accused Bhagwan Singh had given threat to his labour Ashok for dire consequences. Ashok has narrated this incident to his father Govind Singh. On 12-11-1988 at about 8 p.m. when Manjeet Singh, his father Govind Singh and his brother Suresh were talking inside the house, appellants/accused Bhagwan Singh, Ram Chander, Laxman and Ashok armed with Lathis and Dandas came to his house and started abusing them. On hearing the noise, Manjeet Singh, his brother Suresh and his father Govind Singh came

out of their room and tried to convince the appellants/accused but the appellants/accused did not convince. Thereafter, the appellants/accused started beating them with Lathis and Dandas due to which Suresh Became unconscious and fell down. His father received injuries on his forehead and hands and he also received injuries on the fingers of left hand. Then Manjeet Singh and his father fled from the place of occurrence to save their life. There after Manjeet Singh and Govind Singh came on the main road for some vehicle so that they may take his brother Suresh to the hospital, who was unconscious and has fallen down. When they could not get any vehicle then they went to the house of Hari Singh for vehicle. Then they came back to their house in the truck of Hari Singh. After coming to the house they came to know that his sister Rajeshwari with the help of other people has taken his brother Suresh to the hospital. Then they also went to hospital. They went to see his brother Suresh in the emergency ward where the condition of his brother Suresh was serious. After that Manjeet Singh and his father Govind Singh were also medically examined. Then Manjeet Singh dictated the report of the said incident to Hari Singh in the veranda of Doon Hospital and they lodged the same report at Police Station, Rajpur. After that Suresh died on 13-11-1988 at 5 a.m. at Doon Hospital, Dehradun and his post-mortem was conducted by P. W. 5 Dr. A Nagayach. The statement of P. W. 1 Manjeet Singh is corroborated from the statement of P. W. 2 Govind Singh and P. W. 3 Pitamber Singh and also from the injury reports of Suresh, Govind Singh and Manjeet Singh which are Ext. Ka-3, Ext. Ka-4 and Ext. Ka-5 respectively. The statement of P. W. 1 Manjeet Singh is also corroborated from the post-mortem report Ext. Ka-2 of Suresh and also from the statement of P. W. 5 Dr. A. Nagayach, who has conducted the autopsy of the Suresh (deceased).

(ii) The bloodstained clay and the bloodstained clothes of the injured Govind Singh and Manjeet Singh that were taken by the Investigating Officer were sent for chemical examination and the Assistant Director, Scientific Laboratory. Agra has submitted his report dated 10-4-1990 in which it was stated that in Kurta and Sweater human blood was found and in clay and shirt blood was found. This circumstantial evidence also supports the prosecution story.

31. Learned Counsel for the appellants/accused further submitted that the injuries were also found on the body of the appellants/accused Ashok and Umrao Singh but their injuries were not explained by the prosecution, which creates a doubt in the prosecution story. He further submitted that the appellants/accused are entitled for the right of private defence as they have caused injuries to Suresh, Manjeet Singh and Govind Singh in self defence. I do not find substance in the argument advanced by learned Counsel for the appellants/accused. As discussed above, the incident has taken place in the courtyard of Govind Singh (P. W. 2). Manjeet Singh and Suresh were sons of Govind Singh who were living in the same house. Prior to the incident they were talking with each other inside their house meanwhile the appellants/accused armed with Lathis and Dandas reached their house and started abusing them. Then the appellants/accused assaulted all the three, namely, Suresh, Manjeet Singh and Govind Singh due to which they received injuries. Thereafter Suresh died in the morning at 5 a.m. on 13-11-1988 due to the head injuries caused by the appellants/accused. In this manner, the appellants/accused were the aggressor since they have gone to the house of Govind Singh and there the appellants/accused have caused injuries to Govind Singh, Manjeet Singh and Suresh. Hence, the appellants/accused are not entitled for the right of private defence as argued by learned Counsel for the appellants/accused.

32. From the facts and circumstances discussed above, the prosecution has successfully proved the case against the appellants/accused. On the basis of the evidence discussed above, I do not find that the trial Court has committed any mistake while convicting and sentencing the appellants/accused for the charge levelled against them. The view taken by the trial Court is correct and justified.

33. For the reasons recorded above, the appeal is liable to be dismissed and the appeal is accordingly dismissed as such. The judgment and order dated 27-6-1991 passed by IInd Additional Sessions Judge, Dehradun in S.T. No. 69/1989, State v. Bhagwan Singh and three Ors., is hereby confirmed. The conviction and sentence as awarded against each of the appellants/accused as discussed above, is also affirmed.

34. Since the appellant/accused Bhagwan Singh alias Babu has reported to be died, hence the appeal filed by him stands abated.

35. Let the record of the case be sent back to the lower Court concerned for compliance of the order forthwith.

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