

State of Rajasthan Vs. Dalip Singh and ors.

State of Rajasthan Vs. Dalip Singh and ors.

SooperKanoon Citation : sooperkanoon.com/769862

Court : Rajasthan

Decided On : Feb-24-2000

Reported in : 2000(1)WLC150; 2000(2)WLN345

Judge : N.N. Mathur and; S.C. Mital, JJ.

Appeal No. : D.B. Criminal Appeal No. 170 of 1981

Appellant : State of Rajasthan

Respondent : Dalip Singh and ors.

Disposition : Appeal dismissed

Judgement :

N.N. Mathur, J.

1. This State appeal is directed against the judgment dated 10th September, 1980, passed by the learned Sessions Judge, Bikaner, in Sessions Case No. 42/1979, acquitting the accused respondents Dalip Singh Beniwal, Dalip Ram Kaler and Santosh Kumar Batad of the offence under Section 302, 325 read with 34 IPC.

2. The prosecution case as set out during the trial is that the deceased Jagdev Singh and injured P.W. 6 Jagtar Singh and all the three accused respondents were the students of the ninth Semester of Medical College, Bikaner. All of them lived in the Tagore Hostel of the College except second respondent Dalip Ram

Kaler, who was day scholar but he also used to visit and sometimes stay in the said hostel. P.W. 4 Balveer Singh was student of fifth Semester residing in another hostel. P.W. 5 Balvinder Singh, a resident student lived in Room No. 44 of the Tagore Hostel. About 6-7 months prior to the date of incident, there was an election of the post of General Secretary of the Medical College for which Shri Vinay Beniwal was the candidate, who was not supported by Sikh students. This created an estrangement between the Jat and Sikh students. On 25.3.1979, there was some wrangle between the accused and their group on one side and the Sikh students on the other side at village Kolayat, where the students had gone for outing. Again on 21st April, 1979, P.W. 4 Balveer Singh and P.W. 5 Balvinder Singh had gone to see cinema in Minerva Talkies in matinee show, where at about 3 P.M., Balveer Singh was assaulted by Harendra Daiya, Ganpat Ram Kaler and Rajendra Karwasra, students of Medical College of the Jat group. The Sikh student reported the matter to the Hostel Warden and also to his senior students Jagtar Singh, P.W. 6, and deceased Jagdev Singh.

3. It is alleged that at about 2 or 2.15 A.M. on the intervening night of 21st and 22nd April, 1979, the door of Room No. 51 of Tagore Hostel in which P.W. 6 Jagtar Singh resided, was knocked from outside. Jagtar Singh put on the light and opened the door and found Dalip Ram Kaler with a lathi, Santosh Bhatar with hockey stick and Dalip Singh Beniwal. They challenged him saying that if he wanted to talk to them with respect to the incident of cinema. On this, Jagtar Singh stated that he has reported the matter to warden, they may talk to him in the morning. Thereupon Santosh Batar gave a lathi blow which while warding off, was received on the right middle finger of the hand resulting into fracture. P.W. 6 Jagtar Singh rushed towards the outer gate of the hostel. On hearing the cries, deceased Jagdev Singh came out from Room No. 30 of the hostel. He rushed to save Jagtar Singh. Santosh Bhatar held Jagtar Singh outside the main gate and Dalip Singh Beniwal held Jagdev Singh. By then, P.W. 4 Balveer Singh and P.W. 5 Balvinder Singh also arrived. Accused Dalip Ram Kaler, while abusing, levelled a lathi blow at Jagdev Singh but it accidentally fell on the head of accused Dalip Singh Beniwal. On account of this, deceased Jagdev Singh got released from the grip of Dalip Singh Beniwal. It is alleged that accused Dalip Singh Beniwal plunged knife in the back of Jagdev Singh. He started bleeding and was falling down. However,

Balveer Singh and Balvinder Singh picked him up. P.W. 6 Jagtar Singh immediately rushed to the residence of P.W. 1 Dr. C.K. Joshi, the Warden of the Hostel. P.W. 5 Balvinder Singh tied the turban of P.W. 4 Balveer Singh on the wound of Jagdev Singh and tried to take him to the residence of Warden. Dr. C.K. Joshi, on hearing from Jagtar Singh, immediately tool out the jeep. At some distance from the gate of the Hostel, Jagdev Singh was gasping. He was put in the Jeep. Dr. Joshi drove the Jeep to hospital, at a distance of half a kilometer, Jagdev Singh was taken to the Casualty ward, where he was declared dead. P.W. 1 Dr. C.K. Joshi immediately informed the police of the incident, the entry of which was made in Rojnamcha vide Ex. P. 17. Accused Dalip Singh Beniwal also reached to the hospital. P.W. 6 Jagtar Singh seeing Dalip Beniwal, told P.W. 1 Dr. C.K. Joshi that Jagdev Singh was stabbed by him (Dalip Beniwal). The other eye witnesses viz; P.W. 4 Balveer Singh and P.W. 5 Balvinder Singh also stated that Jagdev Singh was stabbed by Dalip Beniwal. On receiving the telephonic message, the police arrived at the hospital and recorded the statement of P.W. 6 Jagtar Singh. On the basis of his statement (Ex. P. 13), the F.I.R. (Ex. P. 16) was prepared and registered at Police Station 'Police Sadar', Bikaner. Police prepared the inquest and proceeded with investigation. Accused Dalip Beniwal who got himself admitted in the Student Ward of the same hospital for his head injury, was arrested by the police at 3.30 AM vide Ex. P. 19. The police also recorded the statements of P.W. 4 Balveer Singh and P.W. 5 Balvinder Singh. The clothes of Balvinder Singh and Jagtar Singh were taken by the police as well as the turban of Balvinder Singh from the body of Jagdev Singh. The police also took the clothes of the deceased and accused Dalip Singh Beniwal. The autopsy of the dead body of deceased Jagdev Singh was conducted in the morning. which disclosed that his lung was punctured by the stab injury. The injuries of P.W. 6 Jagtar Singh and accused Dalip Singh Beniwal were also got medically examined and X-rayed. The clothes were sent for chemical examination. On serological examination, all the clothes were found stained with human blood. After usual investigation, the police laid chargesheet against the accused respondents for the offences under Sections 302, 302/34, 325 and 325/34 IPC.

4. The accused respondents pleaded not guilty to the charges levelled against them and claimed trial. The prosecution in support of the case examined ten

witnesses. P.W. 4 Balveer Singh P.W. 5 Balvinder Singh and P.W. 6 Jagtar Singh were examined as eye witnesses. P.W. 1 Dr. C.K. Joshi, the Warden of the Hostel, stated that on receiving the information of the incident from P.W. 6 Jagtar Singh, had taken the deceased Jagdev Singh to the hospital immediately. P.W. 2 Dr. S.K. Acharya conducted the post mortem on the body of the deceased Jagdev Singh. He also examined the accused Dalip Beniwal. P.W. 3 Dr. R.L. Vaidh radiologically examined the injuries of P.W. 6 Jagtar Singh and the accused Dalip Singh Beniwal. P.W. 9 Dharam Singh is the Investigating Officer. P.W. 7 Shankerlal, A.S.I., P.W. 8 Ranjeet Singh and P.W. 10 Rameshwar Lal are the formal witnesses. In his statement under Section 313 of the Code of Criminal Procedure, first accused respondent Dalip Singh Beniwal stated that he had gone to the Cinema in the night show and returned to the hostel gate at about 2 A.M. in a rickshaw. At that time, some students rushed towards him and one of them gave hockey blow on his head and he got admitted in the hospital. Accused Dalip Ram Kaler stated that he was a day scholar and at the time of the incident, he was at the house of his elder brother Shravan Ram in the locality known as 'Rajmata Ka Nohra'. The third accused respondent Santosh Kumar Batar also raised a plea of alibi saying that at the time of the incident, he was in the village Batranau in Sikar district far away from Bikaner. The learned trial Judge disbelieved the eye witnesses P.W. 4 Balveer Singh, P.W. 5 Balvinder Singh and P.W. 6 Jagtar Singh and acquitted all the accused respondents of the charges levelled against them for offences under Sections 302 and 325/34 IPC by impugned judgment dated 10.9.1980. The principal reasons for such disbelief, which can be gathered from the impugned order, are stated as under:

- i. The statement of P.W. 6 Jagtar Singh to the extent that he had alone gone to inform the Hostel Warden about the incident, is falsified when P.W. 1 Dr. C.K. Joshi, the Warden of the Hostel, stated that about twenty boys came to his residence to inform about the incident, which included Balveer Singh and Balvinder Singh.
- ii. The statements of all the three eye witnesses are falsified by the statement of P.W. 1 Dr. C.K. Joshi that there was none else except the three witnesses in the jeep. According to Dr. Joshi, there were about five to six students in the jeep.

iii. From the Hostel of 22 rooms, no independent witness has been produced by the prosecution. The prosecution has examined only three Sikh eye witnesses inspite of the fact that there were large number of other non-sikh students. In view of the enmity between the two groups, it would have been proper to produce students of the community other than Sikh community. Prosecution is also guilty of not producing other students, who had gone to the house of Warden Dr. Joshi and some of them were in the Jeep, taking Jagdev Singh to Casualty Ward.

iv. It is improbable that none of the occupants of Jeep would not have disclosed, the names of the assailants, while the deceased was taken in the jeep to the Hostel. It is also not probable that when he was taken from the stretcher to the Casualty Ward, the names of the assailants would not have been disclosed to the doctor and other staff, who attended the deceased. The omission to disclose the name of the assailant at the earliest suggests that the alleged eye witnesses were not aware as to who was the real assailant.

v. P.W. 6 Jagtar Singh has stated that after Jagdev Singh was declared dead, he disclosed the names of the assailants. Thereafter, Dr. Joshi informed the police on telephone. If it was so, the names of the assailants would have found place in the telephonic message recorded by the police vide Ex. P. 17. Thus, Jagtar Singh has deliberately given false statement.

vi. If the accused Dilip Singh Beniwal was the real assailant, it is contrary to the human conduct that instead of running away, he would have reached to the hospital immediately.

vii. The prosecution has not unfolded as to how, weapon of offence viz knife came in the hand of accused and how disappeared. Knife has neither been recovered from accused, nor from the scene of occurrence or any other place.

viii. There was no motive for the accused persons to kill Jagdev Singh as in the day at Minerva, the quarrel had taken place with Balveer Singh and Balvinder Singh.

ix. There is no evidence to show presence of blood of deceased on the clothes of accused Dalip Beniwal. According to the prosecution, he plunged knife in the back of the deceased and then took out. In such event he must have carried the knife with him. If it is so, the Kurta must have come in contact with blood stained knife, leaving blood stains on the Kurta. The blood stains on Kurta is of 'A' group which is of the accused himself. He himself has sustained injury on the head. There is no evidence of blood of deceased on the clothes of accused Dalip Beniwal. This clearly exonerates the accused Dalip Beniwal of the charge of murder of Jagdev Singh by stabbing knife in his back.

x. There was no enmity of the accused persons with Jagdev Singh. As per the prosecution case, they had gone to the room of P.W. 6 Jagtar Singh. Even if they wanted to kill Jagtar Singh, they had sufficient opportunity but they did not do so. This clearly shows that the accused persons did not go to the Tagore Hostel with an intention to commit murder.

5. In view of the aforesaid findings, the learned Judge by impugned judgment acquitted all the accused respondents of the charges levelled against them.

6. Mr. Panney Singh, learned Public Prosecutor, submitted that a perusal of the record would clearly reveal that the impugned order of the acquittal is based on misreading of evidence relying on minor contradictions and indigenous reasons. Elaborating the contention, it is submitted that the learned Judge committed an error in rejecting the entire prosecution case only on the ground that the alleged eye witnesses P.W. 6 Jagtar Singh, P.W. 4 Balveer Singh and P.W. 5 Balvinder Singh did not disclose the names of the assailants at the earliest occasion. It is further submitted that the learned Judge committed error in not considering the explanation given by the witnesses in right perspective to the effect that the events took place in such a quick succession that there was no time to disclose the names of the assailants as the paramount consideration that weighed with them was to remove Jagdev Singh immediately to the hospital and just after the death of Jagdev Singh, the name was disclosed to P.W. 1 Dr. Joshi as well as to the police. It is submitted that simply because the knife has not been produced, the entire prosecution case cannot be rejected. With respect to non-production of certain

independent witnesses, it is submitted that no adverse inference can be drawn on that account because in the facts of the case particularly the environment prevailed, the other students were not prepared to come forward to depose against the accused respondents.

7. On the other hand, Mr. Doongar Singh, learned Counsel appearing for the accused respondents, submitted that each of the reason canvassed by the learned trial court for recording the order of acquittal are based on proper appreciation of evidence and, therefore, this court would not be justified in disturbing the same. It is submitted that even if it is assumed that for one or more reasons when considered in isolation, could not be sustained, still then the impugned order was not liable to be set aside as collectively, they justify the order of the acquittal. It is further contended that the view taken by the trial court cannot be said to be unreasonable one. The impugned order cannot be interfered merely because different view of the evidence can be taken. Learned counsel while supporting the reasonings given by the trial court for recording the order of acquittal, has also submitted certain additional grounds. He has dealt with the evidence at great length and given the minute details of the sequence of the events to show that the incident has not taken place in the manner as alleged by the prosecution. The prosecution has concealed certain material facts. He has also criticised the manner in which the investigation has been conducted by the police.

9. To ascertain whether the judgment of the trial court can be sustained or not, we have thoroughly scanned the evidence on record. Before we deal with the evidence, it would be convenient to acquaint with the site of occurrence and sequence of events.

SITE PLAN:

10. P.W. 9 Dharam Singh, Investigating Officer, has stated that he inspected the place of incident on the same day and prepared the site plan Ex. P. 8. He also stated that he prepared the site memo Ex. P. 22. The main gate of the hostel has been shown at Mark 'A'. The incident is alleged to have taken place at Mark 'B'. The distance between the point 'A' and 'B' is 42 ft. The electric lamp is shown at a distance of 22 ft. from the point 'B'. At point 'C' also, there is pool of blood. The

distance between the point 'B' and 'C' is 120 ft. There is a trail of blood from point 'C' to 'D'. There is also blood upto the point 'D'. The distance between 'C' and 'D' is 35 ft. The points 'B' & point 'C' are across the road. Again points 'C' & 'D' are across the road. The site plan does not show the distance between the room No. 51 and the main gate of the hostel. It also does not indicate the location of the bungalow of the Warden. Though the site plan has been prepared with the assistance of Jagtar Singh and Balveer Singh but it does not give further details of the place of incident. It does not even show that at which point, the actual incident took place and from which place, deceased Jagdev Singh was put in the jeep. Of-course, P.W. 1 Dr. Joshi has stated that the distance between his bungalow and the main gate of the hostel is 200 to 300 ft. He also stated that the distance from his bungalow to the casualty ward is about half a kilometer.

11. Keeping in view the site plan, we proceed to examine the prosecution evidence. P.W. 1 Dr. C.K. Joshi, Warden of the Hostel of the Medical College stated that in the intervening night of 21st and 22nd April, 1979, at about 1.30 or 1.45 AM, some students awaked him up, which included Balveer Singh and Balvinder Singh. They disclosed that Jagdev Singh has been wounded by a 'Chhura. On this, he took out the jeep. As soon as they came out of the house, some of the students had brought deceased Jagdev Singh to his house. He was in injured condition. He immediately asked them to put him in the jeep. He drove the jeep to the casualty ward of the P.B.M. Hospital. There, the doctors examined him and declared dead. He immediately informed the Superintendent, Hospital on telephone. He also informed the Superintendent of Police and the Flying Squad on telephone. He also stated that at that time, he had no time to enquire from Balveer Singh and Balvinder Singh as to how Jagdev Singh sustained injuries. He also stated that when he reached to the hospital, at about 2 or 2.15 A.M., accused Dalip Beniwal also reached to the casualty ward of the hospital. The blood was oozing out from his head. At that time, Jagtar Singh stated that Dalip Beniwal had inflicted a knife blow to deceased Jagdev Singh. In the cross-examination, he admitted that about twenty students had come to his official residence but none of them disclosed that the accused Dalip Beniwal stabbed knife to Jagdev Singh. He also stated that students bringing deceased Jagdev Singh met him at a distance of 8-10 ft. from his bungalow. He also admitted that 5-6 students also boarded the

jeep alongwith deceased Jagdev Singh. He also admitted that Jagdev Singh, Balveer Singh and Balvinder Singh were in the jeep but on the way, they did not disclose the name of the real assailant. He admitted that till the time he informed the police, no student disclosed the names of the assailant and his associates.

12. P.W. 4 Balveer Singh stated that in the intervening night of-21st and 22nd April, 1979, at about 2.15 A.M., while he was studying alongwith Sardar Balvinder Singh in the Room No. 44 of the Tagore Hostel, they heard the cries of Jagtar Singh. They immediately rushed. When they reached the porch of the hostel, the accused Dalip Beniwal Dalip Kaler and Santosh Kumar Batad were saying 'today, they will not spare them without killing.' Outside the hostel in a corner, there is an electric lamp. The light was on. Dalip Beniwal and Jagdev Singh were grappling. At a distance of 5-10 ft., accused Santosh Batad and Jagtar Singh were grappling. Santosh Batad was armed with a hockey. There was no weapon in the hand of Jagtar Singh. At a distance of 5-7 ft. from Dalip Beniwal and Jagdev, Dalip Kaler was carrying a lathi in his hand. At that time, he alongwith Balvinder Singh were at a distance of about 35-40 ft. While they had just proceeded to 2-3 steps, Dalip Kaler levelled a lathi blow at Jagdev Singh, which accidentally fell on Dalip Beniwal. On account of this, Jagdev Singh was released from the grip of accused Dalip Beniwal. Dalip Beniwal immediately stabbed knife in the back of Jagdev Singh. It is also stated that they had seen the knife in the hand of Dalip Beniwal. They reached near Jagdev Singh and caught hold of him. Jagtar Singh got released from the grip of Santosh Batad and ran towards the house of the warden of the hostel saying 'maar diya maar diya'. All the three accused persons ran outside the hostel towards the polytechnic. Balvinder Singh tied the wound of Jagdev Singh by Pagri (turban). They proceeded towards the bungalow of Dr. Joshi lifting Jagdev Singh. When they reached near the bungalow Dr. Joshi had come out driving the jeep. They put Jagdev Singh in the jeep. He also stated that in the jeep, he was alongwith Balvinder Singh and Jagtar Singh. In the hospital, the doctor declared Jagdev Singh dead. He admitted that after the incident, neither he nor Balvinder Singh had entered in the bungalow of the warden. He also stated that it was Jagtar Singh, who alone had entered in the bungalow of the warden. He also stated that he did not disclose the names of the assailants to the warden or anybody else till Jagdev Singh was declared dead. However, he stated that before

Dr. Joshi phoned to the police, he had disclosed that Dalip Beniwal had stabbed knife to Jagdev Singh. He also stated that ten to twenty students came out of the rooms at the time when they were putting Jagdev Singh in the jeep. He admitted that prior to that, no student had come out of their rooms. He admitted that in the police statement Ex. D. 2, the fact of disclosing the name of assailant to Dr. Joshi prior to his telephone to the police is not recorded. He stated that this fact was disclosed by him but he did not know why the same has not been recorded by the police. He also admitted that in the police statement Ex. D. 2, the fact of Dalip Singh's grappling with Jagdev Singh and Santosh Batad with Jagtar Singh has not been written. The Ex. D. 2 also does not disclose at which place, the incident took place, whether inside or outside the hostel. He admitted that he was not aware as to from where the accused Dalip Beniwal took out the knife. He disclosed that the length of the blade was about 8' to 10' and breadth about 1' to 2'. He also admitted that he had seen Dalip Beniwal in the hospital after the incident. He also stated that Dalip Beniwal came to the hospital on foot.

13. P.W. 5 Balvinder Singh stated that in the intervening night of 21st and 22nd April, 1979, at about 2.30 AM, he was in the room No. 44 of the Tagore Hostel alongwith Balveer Singh. On hearing the cries of Jagtar Singh, they immediately came out and went down. They heard the voice of Dalip Beniwal and Dalip Kaler. As soon as they reached at the main gate of the hostel, they saw that Dalip Beniwal had caught hold of Jagdev Singh from the back side and they were grappling. On the eastern side, Santosh Batad had caught hold of Jagtar Singh and they were grappling. A hockey stick was in the hand of Santosh Batad. On the western side of Jagdev Singh, accused Dalip Kaler was standing. A lathi was in his hand. He levelled a lathi blow on Jagdev Singh but accidentally it fell on the head of Dalip Beniwal. On account of this, Jagdev Singh was released from the grip of Dalip Beniwal. He saw a long knife in the hand of Dalip Beniwal. He stabbed the knife at the back of Jagdev Singh. He was profusely bleeding. He alongwith Balveer Singh reached near to Jagdev Singh. On account of injury, he was falling but they caught hold of him. Accused Dalip Beniwal, Dalip Kaler and Santosh ran towards the polytechnic. Jagtar Singh saying 'maar diya marr diya' ran towards the house of warden Dr. C.K. Joshi. Balvinder Singh tied the turban on the wounds of Jagdev Singh. As soon as they reached at the gate of the house

of the warden, Dr. Joshi came out in the jeep. They put, Jagtar Singh in the jeep. They took him to the P.B.M. hospital. They put Jagdev Singh on the stretcher and took him to the casualty ward. One House Surgeon and the Registrar after seeing Jagdev Singh declared him dead. He admitted that there were two groups in the College. The accused persons belonged to the group of Jat, whereas they were from Sikh group. He admitted that at the time when Jagdev Singh sustained injury, Santosh Batad and Jagtar Singh were grappling. He also admitted that outside the house of the Warden, when they put Jagdev Singh in the jeep alongwith him, none was there except Balveer Singh. Jagtar Singh came out alongwith the Warden from the house. He admitted that there was none with them. He denied the suggestion that he disclosed the name of Dalip Beniwal to the warden at that time. He stated that in the casualty ward. Jagtar Singh and Balveer Singh disclosed that Dalip Beniwal stabbed knife to Jagdev Singh. Prior to that, this fact was not disclosed to the warden.

14. P.W. 6 Jagtar Singh stated that in the intervening night of 21st and 22nd April, 1979 at about 2.15 AM, Jagdev Singh came to his room for collecting the book of Surgery at about 12.30 A.M. He again came at about 1.45 A.M. After his departure, he put off the light and went to sleep. At about 2.15 A.M., somebody knocked the door of the room. He put on the light and opened the door. He found accused Dalip Kaler with 'lathi in hand. A hockey was in the hand of Santosh Batad. At some distance, Dalip Beniwal was standing. Dalip Kaler asked him, if he wanted to talk to them in respect of the incident which took place at Minerva Cinema. He stated that the matter has been reported to the warden and he will talk to him in the morning. Santosh Batad abused him. Dalip Kaler caught hold of him from collar and brought out of the room. Dalip Kaler levelled a lathi blow which he warden-off by raising the hand but it fell on his finger. He ran out raising a cry. He ran towards the main gate, of the hostel. All the three accused persons chased him. When he ran towards the gate, Jagdev Singh came from behind. Santosh Batad caught hold of him at a distance of about 40ft. from the main gate of the hostel. At about 5-4 ft., Jagdev Singh was caught hold by Dalip Beniwal. At that time, all the three accused persons were exhorting saying that they will be killed today. At that time, hearing their cries, Balveer Singh and Balvinder Singh also arrived. He and Jagdev Singh were trying to get released from the grip of accused

persons. Dalip Kaler abused and levelled a lathi blow at Jagdev Singh but it accidentally fell on the head of Dalip Beniwal. The grip of Dalip Beniwal become loose because of injury on his head. Dalip Beniwal stabbed a knife blow in the back of Jagdev Singh. Jagdev Singh was falling on the ground but Balveer Singh and Balvinder Singh could pick him up. The accused persons ran away towards the side of the polytechnic college. He ran towards the house of the warden Dr. Joshi. He knocked the door. The warden came out of the room. He told him that Jagdev Singh has been wounded by knife and he had to be taken to the hospital immediately. He also stated that he did not say that the accused Dalip Beniwal stabbed knife as he was in a hurry. He also stated that no enquiry was made by the warden. The warden immediately ignitioned the jeep. When they reached at the gate of the bungalow, Balvinder and Balveer had brought Jagdev Singh. They put Jagdev in the jeep. In the casualty ward, the doctor declared Jagdev dead. Thereafter, Dr. Joshi came out from the casualty ward. Dalip Beniwal also reached to the hospital after five to ten minutes. He was seen outside the minor operation theatre. At this time, the warden enquired from him as to who stabbed knife to Jagdev Singh on which he stated that the knife was stabbed by Dalip Beniwal. Pointing towards Dalip Beniwal, he stated that the person present was Dalip Beniwal. Mr. Joshi thereafter left the place and did not make further enquiry. He also stated that he remained in the hospital upto 5 A.M., and narrated the entire incident disclosing the names of the assailants. In the cross examination, he admitted that when he opened the door, he did not see knife in the hand of Dalip Beniwal. He also stated that his both the hands were behind as such, he did not know whether knife was in his hand or not. He stated that when Dalip Beniwal stabbed knife on the back of Jagdev Singh, he was at a distance of 5ft. He pleaded ignorance as to from where the knife was taken out by Dalip Beniwal. With respect to the size of the knife, he stated that the length of the blade was 8' to 10' and breadth 1' to 2'. He also admitted that after the incident, he alone had gone to the house of warden of the hostel Dr. Joshi. Till he came out alongwith Dr. Joshi, there was no student. He did not narrate the incident to Dr. Joshi. He simply stated that Jagdev Singh has been wounded on account of knife injury. When he was confronted with his police statement Ex. P. 13 to the effect that he rushed to the house of the warden and narrated the entire incident, he simply stated that he

does not remember if such a statement was given by him to the police. He also stated that their priority was to save Jagdev Singh. He asked the warden to drive the jeep fast. The warden told him that they should not worry, everything will be alright. He denied the suggestion that he was not on the spot and he did not see Dalip Beniwal stabbing the knife to Jagdev Singh. He also denied the suggestion that he was not aware as to who inflicted knife injury to Jagdev Singh and, therefore, they did not disclose his name to Dr. Joshi.

15. P.W. 9 Dharam Singh stated that on 22.4.1979, he was S.H.O. at Police Station, Sadar Bikaner. At about 3.05 A.M. a telephonic message was received from the P.B.M. Hospital that a medical student in injured condition on account of knife injury has been brought in the casualty ward and his condition is serious. On receiving this information, the said information was recorded vide Ex. P. 17 in the Rojnamcha. He also stated that the telephonic call was attended by him. He has stated that on receiving this information, he went to the hospital. He recorded the statement of Jagtar Singh vide Ex. P. 30, on the basis of which, a F.I.R. Ex. P. 17 was recorded. He gave all the details of investigation.

16. P.W. 2 Dr. S.K. Acharya stated that a medical board was constituted to perform the post mortem of the dead body of Jagdev Singh. The Board in addition to him consisted of Dr. B.L. Saiwal and Dr. M.M. Bagari. He proved post mortem report Ex. P. 1 The Board found the following external injuries on the dead body:

1. An abrasion $1/2'$ x $1/3'$ on the lateral malleolus of left ankle;
2. An elliptical stab wound slightly oblique measuring about $1-1/2'$ x $1/3'$ x thoracic cavity deep, going upward, forward and medially situated on left side posterior lateral upper in thoracic cavity between seventh and eighth rib. The margins of the wound were sharp. On dissection, extravasation of blood in the muscles of chest wall left side were seen. There was no fracture of ribs. This wound was communicating with the injuries of left lung. This wound as well as injury No. 1 were ante mortem in nature.

On opening the body, the Board noted as under:

On the left side the posterio lateral upper part in the thoracic cavity between 7th & 8th rib a wound was present, which was in continuity with external injury No. 2. Right lung was healthy. There was an oblique stab wound on the posterio lateral aspect of left lung lower lobe about 1.1'x 1/4' upto the hilum of left lung directing forward, medially and upward.

2. There was contusion on the left hilum. Heart was healthy & both chambers were empty. Rest of the viscera were healthy.

17. In the unanimous opinion of the Board, the deceased Jagdev Singh died due to haemorrhage as a result of the aforesaid injury to left lung and thoracic wall, which was the direct result of external injury No. 2. He also stated that injury No. 2 alongwith its internal injury was sufficient to have caused death in the ordinary course of nature. He also stated injury No. 2 was caused by sharp edged weapon and it could have been caused by a knife.

18. P.W. 2 Dr. S.K. Acharya also examined P.W. 6 Jagtar Singh on the same day. He found the following injuries on his person:

One lacerated wound on the tip of right middle finger 1/2' x 1/2'x skin deep with swelling around it.

19. He proved the injury report Ex. P. 3. He also stated that on radiological examination, the injury was found to be grievous. This fact has been proved by the statement of P.W. 3 Dr. Ratan Lal Vaidya. From the evidence of Dr. Acharya, it is proved that deceased Jagdev Singh died of homicidal death.

20. Accused Dalip Beniwal was also examined on 22.4.1979 and injury report Ex. P. 5 was prepared at 3.30 A.M. On his person, the following injuries were found:

Lacerated wound 3.5'x 0.5'x scalp deep extending from hairline forehead 3' from the bridge of nose in the sagittal plane.

21. The injuries were radiologically examined. The Radiologist opined vide Ex. D. 6 that there was no bony injury.

22. Thus, On face, there is evidence of three eye witnesses P.W. 4 Balveer Singh, P.W. 5 Balvinder Singh and P.W. 6 Jagtar Singh, who alleged to have witnessed the incident. They have categorically stated that it was the accused Dalip Beniwal, who stabbed knife in the back of deceased Jagdev Singh. There is evidence to show that all the three accused persons shared a common intention; However, the crucial question, which falls for consideration is as to whether all the three alleged eye witnesses had actually seen Dalip Beniwal stabbing the knife on the back of deceased Jagdev Singh? If it is so, why they did not immediately disclosed the name of the assailant before P.W. 1 Dr. Joshi and the other students, who had arrived at the house of the warden or to the doctor and other attending staff in the casualty ward of the hospital, where the deceased was taken for immediate medical care. In this context, the link question falls for serious consideration is as to whether the explanation given by the three witnesses that the sequence of events had taken place in quick succession and their paramount consideration was to save Jagdev Singh, there was no time to disclose the name of the real assailant, is plausible or the omission was due to the fact that these witnesses were not aware as to the real assailant, who stabbed the deceased and subsequently after due deliberation, the name of the assailant has been introduced or the prosecution story has been constructed during investigation.

23. Before dwelling upon the question posed, it may well be remembered that this court in appeal against acquittal enjoys unfettered powers to re-appreciate the evidence and it can come to its own independent conclusion. If need be, the finding of acquittal can be converted into finding of conviction. However, it is subject to the following limitations:

- (a) Due weight is to be given to the finding of the trial court particularly the appreciation of evidence as trial court has advantage of seeing the demeanours of the witnesses;
- (b) If two views are possible, one favourable to the accused should be adopted;
- (c) The appellate court should be slow in disturbing the finding of acquittal recorded by the trial court unless the view taken by the trial court is found to be not reasonable or plausible or the finding suffers from manifest illegality or perversity.

24. It is not in dispute that the names of the assailants were not disclosed by any of the eye witnesses till deceased Jagdev Singh was taken to the hospital. According to the prosecution, the events took place in such a quick succession and paramount consideration being to save the life of Jagdev Singh, it was not possible to give the gist of the incident including the names of the main assailants. It is, thus, necessary to look into the prosecution evidence as to how much time was taken from the 'point of time of incident taking place to till Jagdev Singh was declared dead.'

25. P.W. 1 Dr. C.K. Joshi has stated that in the mid night at about 1.30 to 2.00, some students of the hostel came to his house, which included Balveer Singh and Balvinder Singh and they informed that Jagdev Singh has been wounded by stabbing of Chhura. P.W. 4 Balveer Singh stated that in the intervening night of 21st and 22nd April, 1979 at about 2.15 or 2.30, while he was in the room, he heard the cries of Jagtar Singh. He alongwith Balvinder Singh came out and rushed towards the main gate of the hostel. He saw the accused Santosh Batad grappling with Jagtar Singh and Dalip Beniwal with Jagdev Singh. He has also stated that he had seen the accused Dalip Beniwal stabbing the knife at the back of the deceased. P.W. 5 Balvinder Singh has stated that they heard the cries of Jagtar Singh at about 2.30 A.M. and he rushed alongwith P.W. 4 Balveer Singh to the place of incident and witnessed Dalip Beniwal stabbing Jagdev Singh by Knife. On this point, the statement of P.W. 6 Jagtar Singh is also almost the same. Thus, according to these three eye witnesses, the incident had taken place between 2.30 to 2.35 A.M. P.W. 1 has of-course stated that the students came to his house at about 1.30 A.M. P.W. I has not been able to give the correct time. He is however certain on the point that Jagdev Singh was taken to the hospital. He was examined by the doctor. After he was declared dead, he informed the police on telephone.

26. The Investigating Officer, Dharam Singh (P.W. 9) has stated that on 22.4.1979 at 3.05 A.M., he received a telephonic call from the P.B.M. Hospital, Bikaner that Jagdev Singh, a student of the medical college, has been brought in the injured condition. He also stated that information was entered in the Rojnamcha vide Ex. P. 17. A reading of Ex. P. 17 shows that information was received at 3.05 A.M. Thus, it can be safely concluded that the time gap between the actual incident and

telephonic information to the police was about half an hour. Having fixed the duration of omission, in order to appreciate the explanation given by the prosecution for omission to give name Of the assailant, the evidence of the three eye witnesses and P.W. 1 Dr. Joshi is required to be scrutinised more carefully. According to P.W.1 Dr. Joshi, some students of the hostel came to his house and got him waked up. He also stated that the students included Balveer Singh and Balvinder Singh. He also stated that he was not definite, if Jagtar Singh was among those students. He categorically stated that about 20 students came to his house. He also stated that at the main gate, there were about 8 to 10 students. He has further stated that in the jeep, there were 5-6 students, which included Balveer Singh, Balvinder Singh and Jagtar Singh. On the contrary, the specific case of all the three eye witnesses is that it is P.W. 6 Jagtar Singh alone, who had rushed towards the house of P.W. 1 Dr. Joshi. It is he, who knocked the door the house of the warden. It is only Dr. Joshi and Jagtar Singh, who came out in the jeep. Deceased Jagdev Singh was put in the jeep and taken to the hospital. In the jeep, there was none else except the three eye witnesses viz; Jagtar Singh, Balveer Singh and Balvinder Singh, P.W. 4 Balveer Singh has categorically stated that Jagtar Singh alone had gone to the bungalow of the warden. In the cross-examination, he has admitted that till Jagdev Singh was put in the jeep, no student had arrived there. Similar is the statement of P.W. 5 Balvinder Singh. P.W. 6 Jagtar Singh has categorically stated that after the incident, he alone rushed to the house of Dr. Joshi. He knocked the door of the house of Dr. Joshi. He admitted in the cross examination that till they came out of the bungalow, no student had arrived there. When this witness was confronted with his earlier statement Ex. P. 13 to the effect that he had given the narration of the entire incident to the warden, he did not deny the said statement. He only gave an evasive reply stating that he does not remember if such a statement was given by him to the police. P.W. 4 Balveer Singh has admitted in the cross-examination that before Dr. Joshi telephoned, he had told him that it was accused Dalip Beniwal who stabbed knife to Jagdev Singh. It is thus, evident that the prosecution witnesses have contradicted each other on material particulars. There is no unanimity if it was Jagtar Singh, who alone had gone to the bungalow of the warden or there were 20 students. There is no unanimity if there were three eye witnesses in the jeep or 5-6

students. Thus, it is not possible to accept the version given by them as wholly true. It is possible that the eye witnesses may not be able to give full gist of the incident in a given case where the injured has sustained serious injuries and the paramount consideration may be to remove him to a hospital to save his life but it is difficult to comprehend' that not one but all the witnesses for substantial period will keep name of the real assailants close to their heart. The rule of ordinary prudence suggests that if a person has actually seen the assailant harming a person close to him, even without interrogation, out of anguish], he will blur out the name of the assailant, unless he is under some fear. In the instant case, at the first instance when Jagtar Singh knocked the door of the room of the warden, ordinarily it was expected that he will atleast say a few words i.e. Jagdev Singh has been wounded by stabbing by Dalip Beniwal. Assuming that he omitted to say so all the three eye witnesses had travelled with Mr. Joshi in the jeep for half a kilometer, that must have taken minimum 3 to 5 minutes. It is stated by the eye witnesses that they asked Dr. Joshi to drive the jeep fast and to take Jagdev Singh to the hospital. At that stage also, it was expected that one of the witnesses will disclose the name of the assailant. The deceased was thereafter taken on a stretcher to the casualty ward. The name of the assailant has not been disclosed even at that stage. In the casualty ward. Jagdev Singh was attended by doctors and other staff. At that stage also, the names of the assailants have not been disclosed. This omission, in our view, points towards the conclusion drawn by the trial court. There is ground to suspect that the story of Dalip Beniwal being the real culprit might have been introduced or re-constructed later-on from imagination. After Jagdev Singh was declared dead, there was no more race against the time. P.W. 4 Balveer Singh has stated that before P.W.I Dr. Joshi informed the police on telephone, he had given the name of the assailant after the death of Jagdev Singh. Before informing the police, there was sufficient occasion for Dr. Joshi to enquire about the names of the assailants.

27. It is the prosecution case that within ten minutes of the incident accused Dalip Beniwal also reached the hospital. He was admitted in the student ward as he had sustained injury on the head. Ordinarily, the rule of prudence is that an accused will run away from the place of incident after committing a murder and will not go to a place where he has chances of being arrested. The presence of Dalip Beniwal

in the hospital immediately after the alleged incident is one. factor, which indicates towards his innocence.

28. It is still mysterious as to how the knife came in the hand of accused Dalip Beniwal and where it was lost. Admittedly, the knife has not been recovered from the possession of the accused Dalip Beniwal or any other accused. It has also not been recovered from the place of the incident. No witness had seen the accused Dalip Beniwal with a knife, prior to the actual attack by knife on Jagdev Singh. The trousers and Kurta have been recovered by the police, which accused Dalip Beniwal was wearing at the time of the incident. There is nothing to show that there was pocket in the trousers. The blade of the knife is said to be of length of about 10' to 12'. A knife just having the length of 10' to 12' i.e. about a feet, must be having a handle of atleast 6'. It is difficult to comprehend that the accused could have concealed such a long knife of Chhura in any part of his body, which could not be visible.

29. The manner in which the incident is alleged to have taken place, particularly the stabbing of knife taking out and then carrying the same, there must be blood stains on the Kurta of the accused Dalip Beniwal. No efforts have been made by the investigating agency to obtain the blood group of the deceased and to show the presence of blood stains on the Kurta of accused Dalip Beniwal. That is also a factor, which goes against the prosecution.

30. In the light of what we have said above, it is clear that the trial court's conclusion that the prosecution has not established beyond doubt that the knife was stabbed in the back of deceased Jagdev Singh by appellant Dalip Beniwal, can not be said to be manifestly unreasonable or grossly erroneous as would warrant interference by this court in an appeal against acquittal.

31. In view of the aforesaid, we find no merit in this State Appeal and the same is dismissed.