

## State of U.P. Vs Daler Singh and Others

**Court:** Allahabad High Court

**Date of Decision:** April 9, 1991

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 161, 162  
Penal Code, 1860 (IPC) â€” Section 147, 148, 149, 19, 201

**Citation:** (1991) 15 ACR 457

**Hon'ble Judges:** K. Narayan, J; H.C. Mital, J

**Bench:** Division Bench

**Advocate:** D.N. Wali, for the Respondent

**Final Decision:** Disposed Of

### Judgement

H.C. Mital, J.

The State Government has preferred this appeal against the judgment and order of acquittal dated 11-2-78 passed by Sri

L.R. Kohli, the then 1st Additional Session Judge, Nainital at Kashipur, acquitting the Appellants under Sections 147, 148, 302/19, 307/149, 201

and 394 IPC.

2. The prosecution case, in brief, is that on 2nd October, 1975 at about 5 P.M. on account of enmity these Respondents of whom Daler Singh and

Lakhbir Singh were armed with Kantas, Charan Singh with a Barchhi and remaining Respondents with lathis. Finding Inder Singh alone they

attacked him and thereafter on hearing his cries his father Sardar Singh, Kartar Singh and Yogendra Singh also reached. They were also attacked

and as a result of the injuries Sardar Singh and Kartar Singh died on the spot, while Inder Singh and Jogender Singh received injuries. A written

report of the occurrence was submitted on the following day, i.e. 3rd October, 1975 at 7.15 A.M. at police station Sitar Ganj at a distance of 8

1/2 miles from the place of occurrence on the basis of which a case was registered. The Investigating Officer arrived at the scene of occurrence.

After preparing the inquest report he sent the dead bodies for postmortem and the injured for medical examination.

3. Dr. Raghubir Singh on 3-10-75 examined and noted the following injuries on the person of the injured.

Injuries of Inder Singh vide injury report Ext. Ka 3 (at 10.20 A.M.):

1. Lacerated wound 6 cm x 8 cm x bone deep on left side of forehead.

2. Incised wound 1 cm x 5 cm x muscle deep on the dorssal aspect of right hand with swelling and pain Ad. X-ray.
3. Incised wound 2 cm x 5 cm x bone deep on the front of right leg lower third.
4. Contusion 6 cm x 4 cm x blushed colour on the outer aspect of left by lower third. Ad. X-ray.
5. Contusion 7 cm x 3 cm x bluish red on the left leg upper third outer side.
6. Multiple contusion bluish red colour on the whole back.

Injuries of Jogender Singh vide injury report Ext. Ka 4 at 11.00 A.M.

1. Incised wound 8 cm x 5 cm x muscle deep on the outer aspect of left upper arm Adv. X-ray with traumatic swelling 5 cm x 4 cm on left elbow.
2. Incised wound 3 cm x 8 cm x muscle deep on right index finger palmar side.
3. Contusion 6 cm x 2.5 cm x bluish red on the front of left leg middle third.
4. Lacerated wound 6 cm x 5 cm x bone deep on left parietal bone of head 10 cm from the pinna of left ear.
5. Contusion 8 cm x 2.5 cm x bluish red on scapular region.
6. Contusion 7 cm x 2.5 cm x bluish red on right scapular region.
7. Contusion 8 cm x 2 cm x bluish red colour on the back left lumber region. Adv. X-ray.

Dr. P.C. Joshi had done the autopsy on the dead bodies and noted as follows:

Sardar Singh vide postmortem examination report Ext. Ka 1 had received the following injuries:

Ante-mortem injuries

1. Gaping wound 6 cm x 2 cm x bone deep over the left temporal region with a fixed fracture 7 cm long, longitudinal, over the temporal bone.
2. Contusion 12 cm x 4 cm on the left infra scapular region on the neck with underneath fracture of the 8th rib.

Internal injuries

Left temporal and parietal bones were fractured. Membranes were lacerated and brain was liquified. Death was caused as a result of ante-mortem

injuries due to shock and haemorrhage.

Kartar Singh vide postmortem examination report Ext. Ka 2 had received the following injuries:

Ante-mortem injuries

1. A wound of 8 cm x 5 cm x skull deep on the crown of the head with depressed fracture of the left parietal bone measuring 3 cm x 3.5 cm with the sutures having become loose.
2. Contusion 6 cm x 3 cm on the left side scapular region with fractures of 7th and 8th ribs.
3. Contusion 5 cm x 3 cm on the right scapular region with the fracture of 5th and 6th ribs.
4. Contusion 6 cm x 3 cm over right buttock.
5. Contusion 3 cm x 2 cm on the back of the right leg, and
6. Contusion 4 cm x 3 cm on the front of the left leg 5 cm below patalla.

Internal injuries

Skull bones were depressed. Parietal bone was fractured. Membranes were lacerated. Brain was liquified and in the opinion of the Doctor the

death was due to shock and haemorrhage.

4. After completion of the investigation the Respondents were tried and at the trial the prosecution in all examined 13 witnesses of whom PW 1

Inder Singh, PW 6 Gurbachan Singh, PW 7 Jogender Singh and PW 8 Bachan Singh are the eye witnesses of the occurrence. PW 9 Dayal Singh

and PW 10 Mal Singh are the witnesses regarding recovery of the dead bodies at the pointing out of Balwant Singh. PW 2 Dr. P.C. Joshi had

done the autopsy and had proved the two postmortem examination reports. PW 5 Dr. Raghubir Singh had examined the injured and had proved

their injury reports and the injuries noted above. PW 12 is Sheodan Singh who had registered the case after receipt of the written report at the

police station Sitar Ganj. PW 13 Inspector Jagbir Singh is the Investigating Officer, who has stated about the various steps taken by him during the

investigation. The remaining are the formal witnesses. That apart, the court also examined 3 persons as Court Witnesses, namely Gurdeep Singh

C.W. 1, one of the witnesses of the occurrence. C.W. 2 Kashmir Singh is the person in whose presence accused Respondent Surjan Singh was

apprehended and C.W. 3 Sri Moti Lal is the Hand Writing Expert who proved the report regarding specimen thumb impressions.

5. The version of the accused-Respondent was that they have been falsely implicated due to enmity. They examined only one witness in defence,

namely DW 1 Dharam Singh who proved the application Ext. Ka 7 bearing the signature of Balwant Singh accused also. After considering the

entire evidence on record the learned Sessions Judge found that the prosecution failed to bring home guilt to the accused-Respondent, hence he

acquitted all of them of the charges framed against them. On being aggrieved, the State has preferred this appeal.

6. The law is well settled that appeals from acquittal are allowed only in exceptional circumstances. It is an extra-ordinary remedy. The appeal by

Government should be made judiciously and only in cases where the judgment is so clearly wrong that its maintenance would amount to a serious

miscarriage of justice or when a principle is involved or the question is one of great importance or of great public importance. The burden is on the

Government to show that the acquittal is wrong and strong and urgent grounds must be made out to justify interference. When there is reasonable

doubt as to the guilt of the accused, the High Court will not interfere nor will it interfere merely because upon evidence the lower court might have

come to the conclusion of guilt, unless it is quite clear that the acquittal is wrong. The High Court will not also interfere merely because it might

itself, as an original court, have arrived at a different conclusion. Where an appeal against acquittal turns on the facts it would only succeed if the

judgment of acquittal is clearly wrong and involves a miscarriage of justice or when the trial Judge has erred in failing to draw the clear, indubitable

and irresistible inference from the facts or when the trial courts appreciation of evidence is vitiated by failure to take note of a very important fact or

where finding of fact is based on an erroneous rejection of evidence. Hence this Court will only interfere if it is proved without any doubt not only

that the accused is guilty, but that he has been acquitted on unreasonable grounds.

7. On behalf of the State it was, however, urged that the judgment of acquittal is clearly wrong and involves a miscarriage of justice as the learned

Sessions Judge has failed to draw the clear, inevitable and irresistible inferences from the testimony of the two injured whose presence at the scene

of occurrence could not be doubted that the present Respondents were assailants and on account of their attack Sardar Singh and Kartar Singh

had died while Inder Singh and Jogendra Singh had received injuries. To appreciate the submission of the learned Counsel for the State it is

necessary to go through the evidence on record of the prosecution witnesses. According to the prosecution, the motive for the attack was a

morning incident when Respondent Lakhvir Singh had strayed his cattle in the sugar-cane field of Inder Singh and had damaged his sugar cane

crop which led to an exchange of abuses in between Lakhvir Singh and PW 1 Inder Singh and PW 7 Jogendra Singh and thereafter Lakhvir Singh

had left threatening to teach a lesson. To that effect there is evidence of PW 1 Inder Singh that a day prior to the occurrence Lakhvir Singh had

strayed his cattle in the sugar-cane field and his sugar cane crop was damaged. Thereafter he and his brother Jogendra Singh and other family

members reached there and exchange of abuses had taken place and they turned out the cattle. Thereafter Lakhvir Singh while leaving their field

had threatened them to teach a lesson. He subsequently stated that this morning incident had taken place on the same day on which the occurrence

had taken place PW 7 Jogendra Singh has, However, not stated a single word about it nor there is any other evidence to corroborate the

statement of PW 1 Inder Singh regarding the morning incident.

8. PW 6 Gurbachan Singh who had lodged the FIR has also not stated anything about the morning incident. In the FIR also there was no mention

about it. PW 1 Inder Singh has also stated that no FIR was lodged about it. Under the circumstances the bald statement of Inder Singh PW 1

regarding the morning incident imputing the motive on the part of the Respondents to attack has not at all been substantiated.

9. Now coming to the incident itself, the FIR was lodged by PW 6 Gurbachan Singh, who admittedly is not an eye witness. He has specifically

stated that he had inquired facts about the incident from PW 7 Jogendra Singh. In the FIR weapon which each of the accused carried has not been

specified. It is not specified that gun of Sardar Singh had been snatched by Balwant Singh. Even in the statements u/s 161 Code of Criminal

Procedure of these eye witnesses, namely PW 1 Inder Singh and PW 7 Jogendra Singh the weapons which each of the accused were carrying and

that the gun of Sardar Singh was snatched by Balwant Singh were not stated. Thus the evidence of these witnesses regarding the various weapons

which each of the assailants had and the fact of snatching the gun of Sardar Singh is beyond the evidence on record u/s 161 Code of Criminal

Procedure and, therefore, is hit by Section 162 Code of Criminal Procedure.

10. It is indeed surprising that though the occurrence had taken place at 5 P.M. but the FIR was lodged next day at 7.30 A.M. Still the facts

narrated above were not specified in the FIR. The explanation which has been given on behalf of the prosecution for the delay in lodging the FIR is

that due to apprehension PW 6 Gurbachan Singh did not leave for the police station in the night, however, he has admitted that he had left to the

Police Station in the night at 3-4 A.M. Hence the explanation for the delay also is prima-facie false. The distance of the police station is 8 1/2 miles

which could easily be covered within three hours and the report of the occurrence could have been easily lodged by 8.30 P.M. the same day under

normal circumstances. That apart, the late lodging of the FIR itself is not very material but what is material is that inspite of so much time available

to the eye witnesses the FIR did not contain the necessary facts. It is true that an FIR need not contain all the details of the incident but when an

FIR is lodged after sufficient time at least weapons which the assailants were carrying individually should be mentioned.

11. In the FIR besides the presence of two injured, presence of Gurdeep Singh and Niranjaa Singh was also mentioned but the prosecution for the

best reasons known to it examined neither of them as an eye witness. The Court, however, subsequently examined Gurdeep Singh as C.W. 1 and

then he supported the version of the prosecution regarding the incident. He also stated that from the scene of occurrence he had gone to call

Gurbachan Singh C.W. 1 Gurdeep Singh, however, has not received any injury at the time of occurrence. He has, however, admitted that the

Respondents were having litigation with his father over the land of Gurdwara. Thus he is also an interested witness and, therefore, his testimony has

got to be treated with suspicion.

12. No doubt presence of Inder Singh PW 1 and Jogendra Singh PW 7 cannot be doubted at the time of incident. However, the absence of any

independent evidence to corroborate the time of occurrence the same is not free from doubt particularly when the FIR was lodged in the morning

at 7.30 next day and it also does not appear to have been written after 7 hours of the occurrence as in that event it would have contained more

details. That apart, PW 5 Dr. Raghubir Singh who had examined the injured admits that the injuries could have been caused between 8 to 11 P.M.

as well on that day. Under the circumstances, therefore, the defence contention that the occurrence had taken place in the night when there was no

visibility and the assailants could not be identified cannot be lightly brushed aside more so when PW 7 Jogendra Singh could not even say as to

who had picked up the two deeds from there even though he was not unconscious. The reason of his not being able to tell the names of the

persons who had picked up the deeds from the scene could only be that it was sufficiently dark hence he even could not see the persons who had

picked up the two dead persons from there.

13. That apart, even the testimony of these witnesses as to where both injured and deceased were attacked is also inconsistent. According to PW

1 he was in the Jungle, i.e. at the place shown by letter "A" in the site plan Ex. Ka 17. He was attacked at that place and blood was also

recovered by the Investigating Officer from place "B" near place "A". He does not say that he had run for safety and had fallen down in the field of

Bachau Singh. He has also not stated that subsequently also after the assailants had left he had gone to the field of Bachan Singh where other

injured were lying. However, PW 6 Gurbachan Singh has stated that he brought Inder Singh and Jogendra Singh both from the field of Bachan

Singh. According to Jogendra Singh PW 7 he alongwith his father and Kartar Singh was working in his field and at about 5 P.M. when he heard

cries, they ran where Inder Singh was attacked in the vacant land of Malkhan Singh where near the road (at place "A" as shown in the site plan)

these Respondents were attacking Inder Singh. That he had inquired why they were attacking him, thereupon the Respondents also attacked them

and then to save themselves he himself, his father Sardar Singh and Kartar Singh ran towards the field of Bachan Singh. His father was carrying a

double barrel gun which was snatched by Balwant Singh. They were beaten in the field of Bachan Singh. In his cross-examination he admitted that

he did not tell the Investigating Officer that Balwant Singh had snatched his father's gun but stated that he had told it to his brother Gurbachan

Singh. However, still that fact is not mentioned in the FIR.

14. According to the prosecution, three persons, namely Jogendra Singh PW 7, Sardar Singh and Kartar Singh, two deceased, having received

several injuries had fallen in the field of Bachan Singh. In spite of that no blood was found by the Investigating Officer at that place. The explanation

is that the field of Bachan Singh was wet, hence the blood was not seen. In his own words "Bachan Singh ka khet Geela tha. Usme koi khoon nahi

dikhai diya." Simply because the field was wet could be no reason for the absence of blood while profuse blood must have fallen down there, even

though two of the injured (the deceased) might have been removed from there by the assailants when they had left. Sufficient blood must have

fallen even at the place where PW 7 Jogendra Singh had remained lying after receipt of as many as seven injuries of which two were incised and

one lacerated wounds, particularly injury No. 1, a lacerated wound 6 cm x 5 cm x bone deep on left parietal bone of head, must have let out

sufficient blood. Besides the two incised wounds one on the left upper arm and the other on the right index finger, particularly when sufficient blood

was recovered from the place where Inder Singh was said to be lying. He had also received only one lacerated wound 6 cm x 8 cm x bone deep

on the left side of forehead and 3 incised wounds one on the hand, two on the forearm and one on the right lower thigh.

15. That apart, PW 8 Bachan Singh in whose field three persons had received injuries was also examined and he stated that on hearing the cries he

had also reached there and saw the Respondents attacking the injured and that the gun of Sardar Singh was snatched by Balwant Singh. That as a

result of injuries Sardar Singh and Kartar Singh died and they were taken away by the Respondents. He was, however, not mentioned as one of

the eye witnesses in the FIR. Only Gurdeep Singh and Niranjana Singh were named. In his cross-examination he has admitted that at the time of

incident he was 80 paces away when he saw the occurrence. Hence his testimony has also been rightly rejected by the trial Judge.

16. On behalf of the prosecution there is also evidence of recovery of dead bodies at the pointing out of Respondent Balwant Singh. The learned

Sessions Judge has also not believed it and found it to be highly suspicious, particularly when it is not supported by any independent evidence even

though the Investigating Officer had admitted that he had earlier got information that Balwant Singh was lying in jungle and thereafter he had gone

to apprehend him after taking the witnesses with him. In spite of this information he had carried with him only PW 9 Dayal Singh and PW 10 Mal

Singh. PW 9 Dayal Singh is father of C.W. 1 Gurdeep Singh. This Dayal Singh has also admitted that against him two cases u/s 307 IPC were

launched by the accused and that his cases were also pending against the accused. He has also admitted that Respondent Surjan Singh had fired at

him and in that case u/s 307 IPC he had given evidence against him. The other witness PW 10 Mal Singh has also admitted that he was a witness

for Dayal Singh in a case u/s 307 IPC. He also admitted that Bachan Singh and Fauza Singh were real brothers and Nattha Singh was son of

Fauza Singh and that Nattha Singh was a witness for Dayal Singh in that case. That Bachan Singh, Nattha Singh and Fauza Singh were also

accused in the case u/s 307 IPC launched by the accused He also stated that in the case against Surjan Singh in which he had also alleged that

Surjan Singh had fired with a pistol and he was caught on the spot with the pistol. Surjan Singh has been acquitted in that case. Thus both these

witnesses were highly interested witnesses and on that account alone their testimony regarding recovery of the dead bodies of the two deceased at

the pointing out of Balwant Singh, as alleged, is not free from suspicion and, therefore, has not been rightly acted upon by the learned court below

to base the conviction of the Respondents.

17. Lastly but not in the least conduct of the Investigating Officer has also not been above board. He had with-held the various papers of the

investigation and sent them late. He has admitted in his cross-examination that the Parchas of 3rd, 4th and 5th October remained with him and he

did not forward them in time and could not say whether Circle Officer received them. Thus the investigation has also not been free from suspicion.

18. On a conspectus of the above facts and circumstances of the case, it is clear that it cannot be said that the judgment of acquittal is clearly

wrong and involves a miscarriage of justice, even though there is evidence of two injured witnesses. The appeal against acquittal, therefore, has no

force and the same is dismissed. The Respondents are already on bail. They need not surrender and their bail bonds are discharged.