

(2015) 09 P&H CK 0049

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 1190-SB of 2000 and Criminal Revision No. 763 of 2001

Bijender and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 17-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 313
Penal Code, 1860 (IPC) — Section 148, 149, 299, 307, 308

Citation : (2015) 09 P&H CK 0049

Hon'ble Judges : Amol Rattan Singh, J

Bench : Single Bench

Advocate : Rajesh Lamba, for the Appellant; Tanisha Peshawaria, DAG, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Amol Rattan Singh, J—Criminal Appeal No. 1190-SB of 2000 was filed by 6 appellants, against the judgment/order dated 20.11.2000/23.11.2000 of the Additional Sessions Judge, Sonipat, holding them guilty of the commission of offences punishable under Sections 148, 308/149 and 323/149 of the IPC and thereafter, sentencing them to undergo rigorous imprisonment for a period of 3 years for the offence punishable under Sections 308/149 and for a period of 1 year for the offence punishable under Section 148 IPC. They were also imposed a fine of Rs. 12,000/- each and Rs. 1,000/- each, for the commission of the aforesaid two offences respectively. The appellants were also sentenced to undergo rigorous imprisonment for a period of three months and have further been imposed a fine of Rs. 1,000/- each, for the commission of the offence punishable under Sections 323/149 of the IPC. In default, the appellants are to undergo further rigorous imprisonment for 1 year. Rs. 70,000/- of the fine imposed, was ordered to be paid to the injured Budh Ram, by way of compensation. All the sentences of imprisonment, have been ordered to run concurrently.

Criminal Revision No. 763 of 2001 has been filed by Baru Ram and Budh Ram, both sons of Kanhaiya, seeking revision of the same judgment as has been appealed against in Criminal Appeal No. 1190-SB of 2000. (The conviction of the respondents in this petition (appellants in the appeal), for the commission of the offence punishable under Section 308IPC, is on account of the injuries caused to petitioner No. 2 in this petition, Budh Ram. Baru Ram, his brother, is petitioner No. 1, and appeared as PW7 before the trial Court.

The petitioners in their revision petition pray that as the respondents herein should have been charged for the commission of an offence punishable under Section 307 read with Section 149, rather than Section 308/149 and consequently, the prayer is that the sentence of three years imprisonment imposed upon them for the said offence, be enhanced.

2. At the outset, though it is not recorded, however, at the time when the arguments were addressed, Mr. Rajesh Lamba, learned counsel appearing for the appellants, submitted that appellant No. 4 in Criminal Appeal No. 1190-SB of 2000, i.e. Balbir son of Giani has died. Consequently, the appeal abates qua him.

3. The facts giving rise to the case, are that on 22.08.1997, HC Ram Kumar, of Police Station Kharkhoda, is said to have received a "ruqa" from the CHC Kharkhoda and went to the hospital and recorded the statement of Mehardin (PW-13) at 1:40 AM.

The complainant, injured Mehardin son of Baru Ram, Dhobi, stated that he is a labourer and resident of village Sehri, and that on 21.08.1997, at about 8 p.m. he, alongwith his sister, Anita, was present at home, when they heard a noise and came out. He saw that Bhola son of Kapoor, Sohan son of Chandgi and Giani son of Chandgi were having a fight with his uncle, Godhu Ram son of Kanhaiya and they were also saying that they will not allow them to take the water through the street. When they reached there, Kapoor is stated to have said that their supporters have arrived, so let us see them first and leave Godhu. Budh Ram son of Kanhaiya, uncle of Mehardin (P.W. 13), also reached there.

Bhola, as per the complainants' statement, inflicted a "lathi" blow on the left side of the complainants' head and Kapoor inflicted a "lathi" blow upon the left side of the forehead of his sister, Anita. Giani inflicted a "lathi" blow on his uncle, Budh Ram, on the left side of the forehead.

In the meanwhile, further as per the complaint, Pappu son of Kapoor, Sohan son of Chandgi and Balbir son of Gyani also reached there. (Sohan has obviously been named twice). Pappu inflicted a brick blow upon the head of Anita, Kapoor also inflicted a "lathi" blow on Anita and on the knee of his uncle Budh Ram. Bhola inflicted a "lathi" blow on the waist of Budh Ram and Balbir inflicted a brick blow to Budh Ram, which hit on the left side of his chest. Pappu inflicted a brick blow on the right side of the nose of his uncle, Budh Ram; Sohan inflicted a brick blow on the right eye of his uncle Budh Ram; Pappu inflicted a brick blow to his uncle, which hit his shoulder. On hearing the hue and cry, Amar Singh and Baru

Ram, father of Mehardin, reached the spot, after which all the accused ran away from the spot, alongwith their respective weapons.

Thereafter, Amar Singh, Jat by caste, took them to the Civil Hospital, Kharkhoda, where they were medico-legally examined and given first aid and thereafter admitted them to hospital

He, therefore, requested that action be taken against the accused.

4. A perusal of the police proceedings shows that, initially, upon the complaint, Ex. P10, having been made, no action was taken because as per the police report beneath the complaint, it is stated that as per the result of the medical examination, "no heinous offence appears to have been committed" and that action would be initiated according to the circumstances.

The police report further goes on to state that as per the doctors' advice, injury No. 1 (obviously in respect of Budh Ram, though not specifically stated in the report), was put to x-ray examination and kept under observation and thereafter, on receipt of the x-ray report, and the doctors' opinion, (though again not stated to that effect specifically in the police proceedings), on 25.08.1997, the SHO of Police Station Kharkhoda, SI Suresh Kumar, accompanied by a Constable, reached the spot of occurrence in village Sehri at 5:00 PM, "to verify the circumstances" of report No. 36 recorded on 22.07.1997 and, upon the statement of witnesses, the SHO reached the conclusion that offences punishable under Sections 148/149/323 IPC appeared to have been committed and, consequently, a communication was sent through Constable Dharamvir to the Police Station for registration of an FIR, which was thereafter registered on 25.08.1997 bearing No. 319, at 8:00 PM, at Police Station Kharkhoda, by ASI Mukesh Kumar.

5. In the meanwhile, as would be obvious from the subsequent testimony of the doctor (P.W. 1) who examined the injured, that Budh Ram was referred to, or was taken to the PGIMS, Rohtak on 22.08.1997 itself, (as also subsequently testified to by P.W. 11, Dr. Neerja Gupta of the Radiology Department of the Institute at Rohtak), that a fracture was found, in the skull of Budh Ram.

Thereafter, as per the deposition of Dr. Col. S.C. Chaudhary, Budh Ram, who is a retired Havaladar from the Army, was admitted to the Military Hospital, Jalandhar on 07.09.1997, i.e. about 15 days after the incident and discharged from there after approximately one and half months, on 25.10.1997.

6. Upon investigation, after registration of the FIR, the accused were arrested and eventually the police submitted its report under Section 173 Cr.P.C. to the Court of the competent Magistrate on 19.02.1999, making out therein, offences punishable under Sections 148/149/323/308 IPC.

The offence under Section 308 IPC being exclusively triable before a Court of Sessions, the case was committed to that Court, by the learned Judicial Magistrate Ist Class, Sonipat, vide order dated 19.02.1999 and eventually, the

Court of the Additional Sessions Judge, charged the appellants with having committed the offences punishable under the aforementioned provisions, i.e. Section 148, Section 308 read with Section 149 and Section 323 also read with Section 149, of the IPC.

7. The prosecution, in order to prove its case, exhibited the following documents:--

The prosecution examined 13 witnesses and though all the accused stated that they wished to lead evidence in their defence, no defence witness was produced before the trial Court. However, the defence, relied upon the following documents:--

8. P.W. 1, Dr. Deepa Sandhu, Medical Officer, CHC Kharkhoda, testified that on 21.08.1997, at 11:00 PM, she had medico-legally examined Budh Ram and recorded the following seven injuries on his person:--

"1. Laceration 1.5 cm x.2 cm on forehead parallel to lateral end of right eye brow. Advised x-ray skull lateral view.

2. Abrasion 1 cm x 1 cm just lateral to lateral edge of right eye.

3. Abrasion 1 cm x.5 cm on the bridge of nose in the middle.

4. Abrasion on the top of reddish contusion 4 inches in length (Horizontal) 3 inches below nape of neck.

5. Abrasion (irregular) on the edge of left shoulder.

6. Abrasion 1 cm x 1 cm just above left iliac crest exactly in middle left lateral position.

7. Abrasion on right knee 0.5 x 0.5 cm."

She gave her report, Ex. P1, by declaring injuries No. 2 to 7 as simple in nature, whereas injury No. 1 was kept under observation.

PW1 also testified to her opinion, Ex. P5/1, that injury No. 1 on the person of Budh Ram, was declared grievous and that it could be dangerous to life, if the patient was not operated upon, on time. She also deposed that the patient was opined to be unfit to make a statement, on an application made for that purpose (Ex. P6 and Ex. P6/A).

However, she also testified that the patient was responding to verbal command and to painful stimuli but was drowsy.

On the same date, at 11:15 PM, P.W. 1 also medico-legally examined Mehardin son of Baru, resident of village Sehri, 18 years old, and recorded the following one injury on his person:--

"1. Laceration 1.5 cm x.5 cm on the scalp just to the left of midline near the vortex. Slight bleeding was present."

The injury was declared simple in nature as per MLR, Ex. P2, caused by a blunt weapon, within 24 hours.

She also medico-legally examined Anita, wife of Partap Singh, aged 26 years, at about 11:40 PM and recorded the following three injuries on her person:--

- "1. Abrasion on forehead 1 cm above the left eye brow 1.5 cm from midline.
2. Diffused swelling on the scalp in the middle one inch above the occiput.
3. Complaining hit on front of chest. No external injury mark present. Tenderness present."

These injuries were also declared to be simple in nature and caused by a blunt weapon, as per the MLR, Ex. P3.

PW1 also proved her opinion, Ex. P7/A and Ex. P7, to the effect that Mehardin and Anita were fit to make statements.

Like in the case of Budh Ram and Mehardin, the injuries were stated to have been caused within 24 hours.

The doctor further testified that she had sent a "ruqa", Ex. P4, informing the SHO of P.S. Kharkhoda, with regard to the injuries on the aforesaid three persons.

In her cross-examination, PW-1 admitted as correct the report of the Medical Officer of the Medical College Hospital, Rohtak, dated 21.10.1997, which was Mark A. She further admitted as correct that other than the single injury described on the person of Mehardin, the remaining injuries were superficial. (Possibly, the name has been wrongly recorded as Mehardin at this point, because he having only one injury, the reference with regard to other injuries, could be only qua Budh Ram).

She further admitted that she had not shown the depth of injury No. 1 (not specified as to on the person of which injured); but stated that it was a laceration and as such, she had only given the length and breadth. She further admitted as correct that this injury could have been caused by dragging a person on a hard surface. Further, while admitting that the injuries shown on Anita were an abrasion, a swelling and a complaint of pain, she denied the suggestion that injury No. 2 could have been self suffered.

PW-1 further admitted that she had not mentioned the time of sending the "ruqa", EX. P-4.

Lastly, she stated that the injuries could have been caused by a blunt weapon.

9. PW2, Ram Dhan, was a formal witness, who brought the record of treatment of Budh Ram at PGIMS Rohtak, stating that he was discharged on 6.9.1997. The X-ray films were identified by him.

10. PW3, Om Parkash, MHC of Police Station Kharkhoda, was also a formal

witness and proved the report Ex. P8, as a true copy of report No. 36 dated 22.08.1997, recorded by Ram Kumar. He also brought to Court the "Roznamcha" of the Police Station, of the year 1997.

11. PW4, ASI Ram Kumar, also proved DDR No. 36, Ex. P8, recorded by him on 22.08.1997. He also stated that Budh Ram was declared unfit to make a statement, as per report Mark-A, on an application, Ex. P9, moved by him before the Medical Officer, PGIMS, seeking opinion regarding fitness of Budh Ram for making a statement.

On cross-examination, he testified that he received the "ruqa" at 12:05 AM (on 22.08.1997) and that he found injured Budh Ram, Mehardin and Anita in the Civil Hospital, where he remained till 1:30 AM. He gave the distance between the Civil Hospital and the Police Station to be about two furlongs.

He further stated that he had not recorded the statement of Anita on that date and that no relative of the injured had met him in the hospital. Further, he stated that he had recorded the statement of Mehardin, without any addition or omission.

12. PW5, ASI Satbir Singh, stated that on 04.09.1997 he was posted at Police Station Kharkhoda and that he arrested Kapoor, Balbir, Bijender, Bhola, Giani and Sohan. He stated that he received the X-ray report from PGIMS, Rohtak, on 21.10.1997 and that on 29.10.1997, he obtained the opinion of the doctor (of CHC Kharkhoda), regarding the nature of the injuries on the person of Budh Ram, which document he testified to as Ex. P5/1.

Thereafter, on the opinion of the doctor that the injury was dangerous to life, he again arrested all the aforementioned accused, on 25.12.1997, for having committed an offence punishable under Section 308 IPC.

In the cross-examination, this witness admitted that the doctor had opined vide report Ex. P5/1, that injury No. 1 was declared as grievous but that it would be dangerous to life only if timely surgical treatment was not done.

He next stated that he arrested the accused from village Sehri and that he rearrested them also from Sehri, without obtaining any warrant of arrest from the Court.

PW-5 further stated in cross-examination, that nothing had been recovered at the time of arrest of the accused.

He admitted that at the time of first arrest, he did not know their identities. He next stated that he had recorded the statement of Budh Ram but he could not recollect the date when he had done so, but denied that he had deliberately concealed this fact during his examination-in-chief. He admitted that at that time the police file was with him and that the statements of Mehardin and Anita were already in the said police file.

However, he further stated that he had recorded Budh Ram's statement without

any addition or omission and that it was done when Budh Ram was admitted in a hospital in Jalandhar. PW-5 next stated that though he had never revisited the said hospital, however, he knew that Budh Ram was there on 25.10.1997, as per information given by Budh Ram's son-in-law. However, he again admitted that he had not recorded the son-in-law's statement.

13. PW6 was Amar Singh, an eye witness, who stated that on 21.08.1997 he heard a noise outside and went to the street and found that Giani, Sohan, Kapoor and his two sons were present in the "Gali". He also stated that he intervened and separated them and saved Budh Ram from the clutches of the other persons. He further stated that all the accused persons from whom he saved Budh Ram, were present in Court. This witness also stated that he took Budh Ram and daughter of Baru and son of Baru, to the hospital for treatment. He stated that the accused were not carrying any weapons at the time of occurrence.

On cross-examination, this witness stated that he knew the names of only some of the accused, i.e. Balbir, Kala and Pappu. Thereafter, he stated that since they belong to different castes, he did not know their names, except Kapoor and Giani.

(In other words, while stating that he knew the names of only some of the accused, he named 5 of them. However, as to whose nick-name was Kala, is not clarified in the testimony).

He also stated that he had not seen who caused which injury to whom in the darkness. He stated that injuries were caused by "brick batting". He also stated that his statement was recorded by the police on 21.08.1997 and thereafter, the police visited his village once and his statement was not recorded.

14. PW7 was Baru Ram son of Kanhaiya, Labourer, aged 60 to 70 years, an eye witness to the occurrence, who stated that about two years and two months earlier at 5:30 P.M., when he reached the spot, a quarrel was taking place and that all the accused were quarreling in front of the house of Godhu and giving "lathi" blows to the opposite party. He then stated that all the accused Sohan, Bhola and Kapoor inflicted "lathi" blows to Godhu, Mehadin and Anita, which he corrected to say was Budhu @ Budh Ram, not Godhu. He also stated that Bhola accused gave a "lathi", blow on the head of Anita and then pushed her with a "lathi" on her breast.

He then stated that Sohan gave a "lathi" blow to Budh Ram and inflicted 2 "lathi" blows to Mehadin. He also testified that Kapoor inflicted a "lathi" blow on Mehadin and Anita. He deposed that upon Amar Singh reaching the spot, all the accused ran away. He next stated that they all (including this witness) took Anita, Mehadin and Budh Ram to the Civil Hospital at Kharkhoda in a tractor-trolley and that his statement was recorded by the police.

In cross-examination, PW-7 stated that village Sehri is situated at a distance of about 10-12 kilometers from P.S. Kharkhoda and that after the occurrence, they

took the injured to the Civil Hospital after half an hour and reached there within twenty minutes.

He next stated that police reached the Civil Hospital within two minutes thereafter, as they (the complainant party) had first gone to Police Station Kharkhoda and the police had directed them to go to the hospital.

He then stated that his statement was recorded on the same date in the Civil Hospital, but thereafter, he stated that his statement was recorded on 23.08.1997, two days after the occurrence.

This witness in his cross-examination next stated that he had not told the police that Kapoor had given a "lathi" blow to Mehardin and Anita but that Bhola had given a "lathi" blow to Anita. At this point, he was confronted with his statement, Ex. D-1, where it was shown to be not so recorded.

PW-7 further stated that he also told the police that Sohan, Kapoor and Bhola were armed with "lathis" but he was again confronted with his statement, Ex. D-1, where it was not so recorded.

He denied to be incorrect that he had not witnessed the occurrence and that he was deposing falsely because he was a member of the same clan/family as that of the complainant party.

Lastly, PW-7, in his cross-examination, stated that the occurrence took place in front of Godhu's house.

15. PW8 was Anita daughter of Baru, resident of village Sehri. She testified that about 2 1/4 years back she was present in her house. She stated that "they" heard a noise and came out alongwith her brother, Mehardin. Her Uncle, Budh Ram, also went outside the house and then to "in front of the house of Godhu". She testified that she knew the accused present in Court and that accused Kapoor declared, by abusing, that three supporters of Godhu had come forward, so "let us see them first", after which Kapoor inflicted a "lathi" blow on the left side of her forehead. Bhola accused gave a ""lathi" blow to her brother, Mehardin. She testified that Bijender @ Kapoor accused gave a brick blow upon her head and accused Kapoor also gave a "lathi" push on her breast. She stated that the accused were six in number, who caused injuries to her uncle, Budh Ram. Thereafter her father came there, followed by Amar Singh and they intervened and saved her brother and her.

(There is obviously a confusion of identity in the case of Bijender, in the testimony of this witness, because she has referred to him as Bijender @ Kapoor, who gave a brick blow upon her head and thereafter immediately further stated that Kapoor also gave a "lathi" push on her breast.

In the memo of parties before the trial Court as also before this Court, the alter ego of Bijender is given as Pappu and he is described as Bijender @ Pappu son of Kapoor. Thus, Bijender and Kapoor are son and father respectively and not the

same person).

PW8 further testified that Amar Singh took all of them (the three injured) to the Civil Hospital, Kharkhoda, in a "tractor-trolley" where she was medically examined and her statement was also recorded by the police.

In cross-examination, PW8 stated that she had studied up to the 5th standard and knows about the calendar years and about time. She stated to be correct that the occurrence took place in the month of August at 8:00 PM and that it was dark.

She next stated that all the six accused were armed with lathies and that she had told the police about this. However, she was confronted with her statement, Ex. D2, where it was recorded that Pappu, Balbir and Sohan were empty handed.

She denied the suggestion that she had not received any injury or that they were all simple abrasions.

She next stated in cross-examination, that her statement was recorded by the police on the same day in Civil Hospital, Kharkhoda and that thereafter, the police visited their village after a ten day gap. She denied the suggestion that the accused had not caused any injury to her, her brother or her uncle, Budh Ram, or that due to darkness she could not recognise any of the accused and had simply named them on suspicion.

16. PW9, ASI Mukesh Kumar, was a formal witness. He had recorded the FIR, Ex. P10, on 25.08.1997, on the basis of DDR No. 36, Ex. P8, with an endorsement by SI Suresh Kumar. He proved the FIR, Ex. P10, and identified his signatures thereon.

17. P.W. 10, SI Suresh Kumar, stated that he received a "ruqa" from the hospital on 22.08.1997, when he posted at Police Station Kharkhoda. He sent HC Ram Kumar to the Civil Hospital for recording the statement of the injured and accordingly, the statement of Mehardin was recorded.

He further testified that on 25.08.1997, he went to the place of occurrence and prepared a rough site plan, Ex. P11, and recorded the statements of the witnesses and on completion of the investigation, he prepared the report under Section 173 Cr.P.C.

In cross-examination, this witness stated that he had not mentioned on the site plan, Ex. P11, as to on whose instance it was prepared. He admitted to be correct that in the said site plan, he had shown point-"A", to be in front of the house of Giani Ram, as the place of occurrence. He also admitted that he had not shown the street light in Ex. P11.

18. P.W. 11, Dr. Neerja Gupta, testified that on 22.08.1997 she, as a post graduate student at the PGIMS, Rohtak, took X-rays of the skull of Budh Ram and found a fracture, vide report Ex. P12, on which she identified her signatures. She also proved that the x-ray films are Ex. P13 to Ex. P15.

In her cross-examination, this witness admitted to the possibility of an accidental fall on a hard surface being the cause of such injury.

19. P.W. 12 Dr. Col. S.C. Chaudhary (Retd.), stated that in the month of October 1997, he was posted as officiating Senior Registrar, Military Hospital, Jalandar Cantt. He testified that as per discharge slip, Ex. P16, Budh Ram (Ex. Havaladar) was admitted to the Military Hospital on 07.09.1997 and was discharged on 25.10.1997. He was diagnosed with a head injury, with intra-carneal haematoma. He further testified that he was operated upon during the course of his treatment. He identified his signatures on Ex. 16.

In cross-examination, he stated that he had not operated upon Budh Ram.

20. P.W. 13 was Mehardin son of Baru Ram, aged 21 years, who at the time of his testimony was employed as a Constable in the Police but testified that on the date of occurrence, he was a Labourer. He further testified that on hearing the sound of a quarrel, he and his sister, Anita, went to the street and found some persons were manhandling his uncle, Godhu Ram. He identified Bhola, Sohan and Giani present in Court, as those persons. He, further, corroborated the prosecution version with regard to the incident, including the injuries suffered by him, Anita and Budh Ram at the hands of the accused. He specifically named all the accused and the injuries inflicted by them. He is also an injured eye witness of the occurrence.

Corroborating the version that Kapoor thereafter left Godhu Ram and turned his attention to him and his sister, saying that they have come to help their uncle, Godhu Ram, and therefore, should be taught a lesson. P.W. 13 further testified that his uncle, Budh Ram, also reached there.

As per this witness, Bhola inflicted a "lathi" blow on his head, Kapoor inflicted a "lathi" blow on the left side of forehead of his sister, Giani inflicted a "lathi" blow on the right side of the forehead of his uncle, Budh Ram.

Thereafter, Pappu, Balbir and Sohan also reached the spot and Pappu inflicted a brick blow upon his sister. Balbir also inflicted a brick bat upon the lower chest of his uncle, Budh Ram, and Kapoor inflicted a "lathi" blow upon the breast of his sister. Bhola inflicted a "lathi" blow upon his uncle, Budh Rams" back and Kapoor inflicted a "lathi" blow upon Budh Rams" knee.

Meanwhile, according to P.W. 13, Pappu inflicted a brick bat blow upon Budh Rams" nose, and Sohan, a brick bat on Budh Rams" eye. Thereafter, all the accused, as per this witness, inflicted "lathi" and brick bats blows together.

The last part of his examination-in-chief is with regard to his father Baru Ram and Amar Singh reaching the spot and the accused all running away and, thereafter, the injured being shifted in the "tractor-trolley" of Amar Singh, to the Civil Hospital, Kharkhoda, after which they were (as per this witness) shifted to the Medical College at Rohtak, where his statement, Ex. PA was recorded. However, he corrected himself to say that it was recorded at Kharkhoda and

identified his signatures on the statement.

In cross-examination, he stated that village Sehri is at a distance of 7 kms from Kharkhoda, but he did not give the time when they reached the hospital at Kharkhoda, en route to which was the Police Station, Kharkhoda. He too admitted, that before going to the hospital, they went to the Police Station, where they were told by the police officer to go to the hospital.

Further, this witness stated that the occurrence took place in front of Gianis" house. He denied the suggestion that Godhu Rams" house was located behind Gianis" house. He further stated that the site plan, Ex. P11, was not prepared in his presence though the police had enquired about the site from him.

According to this witness, it was not "so dark at the time of occurrence".

He admitted to be correct, the suggestion that the houses of Sube Singh etc. are located in front of Gianis" house as shown in the site plan and further admitted that when the police reached the village, a number of persons were present there and that he was summoned by the police, as he had gone out of the village.

Further, he stated that the police had enquired about the occurrence from him, in the presence of a number of persons, including one Ajit Singh.

PW13 next stated in cross-examination, that he was medically examined by the doctor and denied the suggestion that no such occurrence had taken place in the manner alleged. He also denied that the accused who were present in the Court had not inflicted any injury on him and the other two injured.

According to this witness, Pappu and Balbir were already present at the place of occurrence from the beginning but were not armed. He then volunteered to state that they lifted bricks lying on the spot. He was confronted with his statement, Ex. PA, wherein he had not stated that Pappu, Balbir and Sohan were already present at the spot.

It is further recorded in Mehardins" cross-examination that there is street light on a pole, located between the houses of Giani Ram and Kapoor.

He next stated that his statement was recorded by the police at 10:00 PM on the date of occurrence, as also the next day, in the morning, at 8:00 AM.

PW13 further stated in his cross-examination, that his uncle, who was seriously injured, was referred to the Medical College, Rohtak on 22.08.1997, after 10:00 AM.

Lastly, P.W. 13 said that he could not say when the police met him in the village after the occurrence but then stated that they had met him 2-3 days after the occurrence, in the village also.

21. As per the trial Court record, the Public Prosecutor gave up Godhu Ram as witness, on the ground that it was not necessary to examine him and had to give up Budh Ram as he was medically unfit to testify.

22. In their individual statements under Section 313 Cr.P.C., all the appellants, while denying everything else, had stated that they were innocent and had been falsely implicated due to "party factions" in the village.

23. All the accused stated that they wished to lead evidence in defence and though they did not produce any witnesses in such defence, they relied upon the statements originally shown to have been made under Section 161 Cr.P.C. to the police, by PW7 Baru Ram and PW8 Anita.

24. Mr. Lamba, learned counsel appearing for the appellants in the appeal, first submitted that no offence under Section 308 of the IPC was made out because other than the first injury shown on the forehead of Budh Ram, i.e. appellant No. 5, all the other six injuries are on non-vital parts of his body and consequently, no attempt at all to commit culpable homicide can be made out.

Secondly, he submitted that even as per the doctors' opinion, the injury on the head would only be dangerous to life, if not treated by surgical intervention immediately. Thus, with the appellants first having gone to the Police Station and obviously having spent two to two and half hours there, between 8/8:30 PM and 10:30 PM, which is admitted by the prosecution witnesses themselves, no intention, or even knowledge, can be attributed to any of the appellants, that such injury could have, in the normal course of events, been dangerous to life. Thus, as per learned counsel, no attempt to commit culpable homicide is discernible at all, from the action of the appellants, even if the testimonies of the prosecution witnesses are accepted at face value, though they are not admitted, being contradictory in material aspects.

25. Further, Mr. Lamba submitted that again admittedly, injured Budh Ram was first treated at the Civil Hospital at Kharkhoda on 21.08.1997 itself, from where he was referred, on the next day, to the PGIMS/Medical College and Hospital, Rohtak, where he is shown to have been admitted but not operated upon.

Though Mr. Lamba tried to submit that, as a matter of fact, even his date of discharge from the said hospital on 06.09.1997 was not proved anywhere, as the medical record is only referred to as Mark-A, however, this argument would not carry weight, in the opinion of this Court, expressed at this stage itself, in view of the fact that the medical record is actually shown to have been brought from the PGIMS, Rohtak, by PW2 Ram Dhan, who is shown to have been posted as an "OTA" at the said Institute.

Be that as it may, Mr. Lamba further submitted that even as per the testimony of Dr. Col. S.C. Chaudhary (P.W. 12), Budh Ram was actually operated upon only in the Military Hospital at Jalandhar, where he was admitted on 07.09.1997 and discharged on 25.10.1997.

Thus, learned counsel for the appellants submitted, that the injured and his companions having been lax themselves, or the medical authorities at Rohtak not having been careful, no attribution of an offence punishable under Section 308

IPC, is made out against any of the appellants.

26. He next submitted that though Budh Ram is a petitioner in the Criminal Revision petition listed for hearing alongwith the appeal, i.e. CRR No. 762 of 2001, he was not produced as a witness before the trial Court.

As regards the discrepancies in the statements of the witnesses, Mr. Lamba pointed out that whereas PW7, Baru Ram, gave the timing of the occurrence to be 5:30 PM, PW8 Anita, and PW6 Amar Singh, gave the time to be 8:00 PM.

Further, P.W. 13, Mehardin, stated that it was not fully dark and that there was some light, which obviously shows that towards the end of the month of August, the time of occurrence could not have been 8:00 PM, which further shows the delay in lodging the FIR and even in taking the injured to the hospital, thereby compounding the injury.

27. In regard to the discrepancies in the statements of the witnesses, Mr. Lamba further pointed out, that whereas P.W. 13, i.e. complainant Mehardin, stated that appellants Bhola, Sohan and Giani were present at the spot, he thereafter stated that Pappu, Balbir and Sohan also reached the spot, thus naming Sohan twice, first as a person who was already present and then as a person who came subsequently. He submitted that this discrepancy is not only in the testimony of P.W. 13 but also in the complaint made by him to the police, Ex. P10, on the basis of which the FIR was registered. Hence, the whole story of the prosecution is highly flawed, as is discernible from the fact that PW8, Anita, who is also shown to be an injured witness, did not specifically state as to which of the appellants was already present at the spot, and who came later, as was testified to by her brother, P.W. 13 Mehardin.

Still further, learned counsel submitted that PW7, Baru Ram, father of PWs8 and 13 and brother of the injured Budh Ram, is not a believable eye witness because, firstly, while testifying in Court, he gave the time of the occurrence to be 5:30 PM, which was wholly in contradiction to all the other eye witnesses and secondly, whereas, as per the testimonies of both PWs8 and 13, it is seen that Baru Ram is shown to have come to the spot after each blow to all the injured was already inflicted by one appellant or the other. Baru Ram himself, however, while testifying as PW7, again described all the injuries, specifically attributing each injury to a specific accused. This was obviously not possible, as per Mr. Lamba, because though he may possibly have seen all the accused together after he came there, if his testimony is to be believed at all, yet, he could not have seen the occurrence which had already taken place before he came there. Actually, Mr. Lamba submitted, that he was only a planted witness who had never actually seen the occurrence at all. This would also be discernible from the fact that PW6, Amar Singh, who is not related to either party, has not made any mention of Baru Ram being present alongwith him when they reached there, as was testified to by PWs8 and 13. Moreover, Baru Ram is not shown to be the person who brought Budh Ram, Anita and Mehardin to the hospital, even in the

MLRs of CHC Kharkhoda, in respect of each of the three injured. It is, in fact, Amar Singh who shown as a relative/friend, who brought the three injured there.

The contention, therefore, is that the person who should, naturally have been shown to be present, would have been the father/brother of the three injured, i.e. PW7 Baru Ram, even if it was in Amar Singhs' "tractor-trolley" that they were actually taken there. Hence, according to learned counsel, Baru Ram actually was not present on 21.08.1997 at the spot at all, when the occurrence took place and as such, his testimony has to be discarded.

28. Mr. Lamba next submitted that though Giani is the person who is specifically attributed the injury on the head of Budh Ram, by P.W. 13 Mehardin, neither PW7 (even if in his testimony is not to be discarded), nor PW8, Anita, have even named Giani at all in their testimonies, other than stating that all the accused present in Court were giving "lathi"/brick bat blows to Budh Ram. Hence, as per counsel, it is obvious that Mehardin has specifically attributed an injury to Giani on the head of Budh Ram, only to rope Giani in. Therefore, he contended, that Giani in any case, has to be treated differently to the other appellants.

In fact, learned counsel further submitted, that as there was only a single injury on the person of Mehardin, even his presence at the spot cannot be confirmed, with the injury possibly having been self-inflicted, as was the implication in the cross-examination of P.W. 13, where it was specifically put to him that he had not actually received any injury.

29. Mr. Lambas' next contention was that even the independent witness, PW6 Amar Singh, testified that there was no weapon, i.e. either "lathis" or bricks, in the hands of the appellants and as such, it was obvious that there was no prior intention of causing injuries to those injured and the fight actually took place at the spur of the moment. Hence, in any case, no intention relatable to culpable homicide, is attributable to any of the appellants.

30. Learned counsel for the appellants next argued that though all other witnesses, i.e. PWs6, 7 and 8 had stated that the fight took place in front of the house of Godhu Ram, and in fact, as per PWs8 and 13, was initially with Godhu Ram only, P.W. 13, in his cross-examination, specifically stated that the fight, though initially with Godhu Ram, took place in front of the house of Giani Ram, as can even be seen from the testimony of the Investigating Officer, SI Suresh Kumar, P.W. 10, also, who prepared the rough site plan, Ex. P11, three days after the occurrence on 25.08.1997 and specifically stated even in his cross-examination, that he has shown the place of occurrence, in the site plan, to be in front of the house of Giani Ram, which is supported by P.W. 13 in his cross-examination.

Thus, Mr. Lambas' contention was that none of the witnesses was to be believed, in view of the discrepancies in the testimonies.

31. Mr. Lamba also submitted that in any case, the main injured Budh Ram had

been awarded a sum of Rs. 70,000/- as compensation by the learned trial Court, which could be enhanced by this Court, instead of upholding the sentence of imprisonment imposed upon the appellants, who are first time offenders and further, Section 308 of the IPC also provides that a person convicted for the commission of a crime under this provision, can either be sentenced to imprisonment, or may also be imposed only a fine (or both). Hence, he submitted that there would be no cause to uphold the sentence of three years imprisonment, even if this Court concluded that the conviction was not unwarranted.

Alternatively, learned counsel submitted that being first time offenders, the appellants, in addition to enhancement of compensation, could also be put on probation for the period of the sentence of imprisonment.

32. Lastly, Mr. Lamba submitted that almost 20 years having gone by since the date of occurrence in 1997, other than two of the appellants, i.e. Bijender @ Pappu and Bholu @ Baljeet, who are now middle aged, of the other three surviving appellants, Kapoor Singh is above 80 years of age, Giani is above 85 years of age and Sohan is above 75 years of age. Hence, with the fate of the appeal having been hanging over their heads for 15 years, they may be shown clemency, even if this Court was to find any or all of them guilty. Therefore, he contended that the question of putting them on probation for the remaining part of their sentence, needs to be seriously considered.

On the issue of no offence being made out under Section 308, when an injury is only dangerous to life if not treated on time, Mr. Lamba cited the following judgment of a co-ordinate Bench:--

"Mohinder Singh v. State of Punjab [2012(4) RCR (Criminal) 214].

33. Addressing arguments in the revision petition, Mr. Naveen Singh Panwar, learned counsel appearing for the petitioners, submitted that Section 308 of the IPC provides that if hurt is caused by any person who attempts to commit culpable homicide, he shall be punished for a term which may extend to even seven years, as opposed to a situation where, though an attempt to commit culpable homicide is made, no hurt is caused. It is only in such a case that the maximum punishment prescribed is three years. Thus, Mr. Panwar submitted, that since actually a serious injury was caused on a vital part of the body, i.e. the head of Budh Ram, the charge framed against the respondents (appellants in the appeal), should have been under Section 307 of the Code, rather than Section 308 thereof.

He pointed to the "zimni" orders of the trial Court, to show that Budh Ram had been served through bailable warrants many occasions to appear as a witness, applications were moved for exempting his appearance on different dates, on the ground that he was being treated for mental retardation in the PGIMS, Rohtak; subsequently he came present but was unable to testify and therefore, was given up as a witness by the prosecution.

Thus, Mr. Panwar submitted, that the gravity of the injury on Budh Ram was such that it was actually a case for enhancing the conviction for an offence punishable under Section 307 of the IPC and suitably enhancing the sentence of the appellants also.

34. On the arguments raised by Mr. Lamba, as regards the delay in admitting Budh Ram in the hospital, learned counsel submitted that there was no delay except for the two hours or so that the complainant party spent at the Police Station to show the injuries to the police, who did not initially register the FIR at all. Thereafter, the complainants, including Budh Ram, went straight to the hospital where again the doctor did not immediately refer him to a larger facility hospital. He was only referred there on the next day, i.e. on 22.08.1997 and was immediately taken there. Thereafter, upon a fracture of a skull having been found in the x-ray examination and subsequently on the doctors' opinion, the offence in the FIR was enhanced to one punishable under Section 308. Thus, any delay in treatment to Budh Ram, as per learned counsel for the complainant-petitioners, was not attributable to the injured persons or the complainant party, in any manner.

35. As regards the age of the respondents in the revision petition, Mr. Panwar submitted that even as per the custody certificate on record of this case, they have only undergone one month of actual sentence, of which ten days was during under trial period and 20 days after conviction, before their sentences were suspended by this Court on 05.12.2000, leading to their release on 12.12.2000. Therefore, simply because during pendency of the appeal and the revision, they have aged, does not detract from the fact that they actually nearly caused the death of Budh Ram and have in any case, reduced him to an almost a vegetative state. Therefore, he submitted that they deserve no sympathy, whatsoever.

36. Lastly, Mr. Panwar submitted that it was, in fact, seeing the condition of Budh Ram in Court that the trial Court awarded a sum of Rs. 70,000/- to him. In fact, he submitted that now Budh Ram is completely blind and paralysed and wholly crippled.

As such, he prayed that the appeal be dismissed and the petition be allowed, by enhancing the sentence of the appellants.

37. Ms. Tanisha Peshawaria, learned Deputy Advocate General, while reiterating all that was submitted by learned counsel for the complainant-revision petitioners, further submitted that it was not just Budh Ram who was injured but also PWs Anita and Mehadin, for which the appellants have been sentenced for the commission of an offence punishable under Section 323 of the IPC. As such, they having mercilessly beaten three people and nearly causing the death of one of them, deserve no sympathy and as such, the appeal filed by the appellants should be dismissed and even though the State had not filed any appeal for enhancement of the sentence or the charge and for conviction of the appellants

under Section 307 IPC, the revision petition also deserves to be allowed.

38. Having heard learned counsel for the parties and having gone through the evidence led before the trial Court in detail, I find that though some of the argument raised by Mr. Lamba with regard to the discrepancies in the statements of the witnesses and the possibility of introduction of Baru Ram as an eye witness, may not be a possibility that can be entirely ruled out, however, on the other hand, his non-presence also cannot be ruled out. But despite that, the fact that two injured eye witnesses, one of whom received three injuries, albeit simple injuries, have testified to the occurrence, in my opinion, the culpability of the appellants, in having committed the offences, is not in doubt.

Anita is undoubtedly an injured witness who was present at the spot and even though it was argued that Mehardin was also actually not present there but was only introduced, the injury on his head, caused by a blunt weapon, would not seem to be self-inflicted or by a friendly hand, even though it is only a simple injury. That apart, Anita's testimony, read with that of Amar Singh, PW6, duly supported by medical evidence with regard to the seven injuries on Budh Ram, three on Anita and one on Mehardin, all attributed to the accused, do not leave room for doubt, with regard to such injuries having been caused by them.

39. As regards the discrepancy with regard to whether the occurrence took place in front of Godhu Rams' house, as stated by PWs 6, 7 and 8, or whether it took place in front of Gianis' house, as stated by P.W. 13, it is very possible that P.W. 13 did not want his testimony to run counter to site plan which was prepared by the police, though not on his instructions, and as such, he deposed in line with P.W. 10, i.e. the Investigating Officer. However, that does not alter the fact that other than this witness, three witnesses as have testified to the fight taking place in front of Godhu Rams' house. One of them is a witness not related to either side, i.e. PW6, Amar Singh. Hence, the factum of the attack on the complainant party and the injuries inflicted on them, duly supported by medico-legal reports and the testimony of P.W. 1, Dr. Deepa Sandhu, is not in doubt. Further, other than P.W. 13, PW6 testified to all 6 accused being present at the spot. PW8 is an undeniably injured witness, who testified materially in line with the complaint, Ex. P10.

40. The only two questions to be considered are, firstly, whether an offence under Section 308 IPC is made out, together with the offence punishable under Section 323 thereof, or whether an offence under Section 325 is made out against the appellants. Secondly, whether appellant Giani Ram, is to be extended the benefit of doubt or not.

41. Section 308 of the Indian Penal Code provides as follows:--

"308. Attempt to commit culpable homicide.--Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may

extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amount to murder. A has committed the offence defined in this section."

Thus, first, it is to be seen as to what constitutes the offence of culpable homicide in order to determine whether an attempt to commit such an offence is made out against the appellants, so as to make them culpable under Section 308.

Section 299 of the aforesaid Code defines culpable homicide as follows:--

"299. Culpable homicide.--Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge, that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed, the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1.--A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.--Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skillful treatment the death might have been prevented.

Explanation 3.--The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not

have breathed or been completely born."

42. Looking at the above definition, it is obvious that death caused by an act, with knowledge that death is likely to be caused on account of such act, is an act amounting to culpable homicide.

Learned counsel for the appellants would submit that the appellants having caused all injuries on non-vital parts, other than injury No. 1 on the head of Budh Ram, they cannot be attributed knowledge or intention that such injuries were likely to cause his death.

The question therefore is, that whether a single injury being likely to cause the death of a person, can be said to be to the knowledge of those attacking him. One way of looking at it would be that when there are so many people attacking the person, with lathis and brick bats, the result of such an attack, with a blow likely to hit on a vital part of the body and thereby causing his death, would be necessarily to the knowledge of the persons attacking him. The counter argument is, as given immediately above, on behalf of the appellants, by Mr. Lamba.

43. It is not denied that Budh Ram actually also went to the Police Station and obviously sat there for about two hours before going to the hospital. Thus, the nature of the injury, at least at that stage, would not seem to be one which could have led to death. However, subsequently the haematoma caused by the blow on his forehead, proved to be near fatal. Therefore, it would seem that despite Budh Rams' own actions, any person hitting another with either a brick or a "lathi" on his head, would necessarily carry knowledge that such an act can easily lead to the death of the person so attacked. Yet, there being only one injury on the forehead of injured Budh Ram, only one person can be attributed that possible knowledge, since all other injuries on him, were declared to be simple injuries, all on non-vital parts of his body and are all abrasions.

The question then is, as to who caused that single injury. As per P.W. 13, it was, unequivocally, appellant Gaini. On the other hand, PWs 7 and 8 have not attributed any specific role to Giani at all and in fact, on that basis, counsel for the appellants had submitted that he actually deserves the benefit of doubt.

44. In the opinion of this Court, the benefit of doubt is not available to him as regards the entire occurrence because whether or not he has been attributed a specific role by the other eye witnesses, including injured Anita, the fact is that all the eye witnesses have attributed beatings upon Budh Ram, to him also. PW6, Amar Singh, also found him present alongwith the other appellants at the spot, at the time of the occurrence. However, as regards the offence punishable under Section 308 IPC, without reading Section 149 with it, in view of what has been observed hereinabove, that only the person who gave the blow on the head can be attributed such possible knowledge, seen together with the nature of other injuries, all the accused or even any one of them, cannot be held culpable for the commission of such an offence.

45. That, however, cannot imply that all of them are not together guilty of having committed an offence punishable under Section 325 IPC, read with Section 149 thereof, the injury on Budh Ram being a grievous one, and all the accused having attacked him with lathis and brick-bats, obviously knowing that serious injuries could be caused. In fact, such a serious injury having been caused, with a "lathi", and all the accused having attacked with "lathis" and brick bats, they cannot escape culpability of having committed that offence.

Consequently, all the five surviving appellants are held guilty of having committed an offence punishable under Section 325 IPC read with Section 149 of that Code. Keeping in mind the fact that Budh Ram suffered long hospitalisation and even counsel for the appellants, on query, could not deny that the effect of the injury has marred his entire life uptill now, the said appellants are sentenced to rigorous imprisonment for a period of five years and are also imposed a fine of Rs. 20,000/- each. In default of the fine of Rs. 20,000/- now imposed, the defaulter would further undergo imprisonment for a period of one year. The sentences imposed upon them by the trial Court for the commission of offences punishable under Section 148 and Section 323 read with Section 149 of the IPC, the latter in respect of the simple injuries caused on the persons of Budh Ram, Anita and Mehadin, are maintained as such. The sentences of imprisonment would all run concurrently. However, in view of the fact that Giani Ram is stated to be more than 85 years of age, Kapoor also about 80 years of age with Sohan being more than 75 years, and all of them are first time offenders, as per record submitted in the form of their custody certificate, they are ordered to be released on probation of good conduct, for their terms of imprisonment, immediately upon arrest. This order, putting them on probation, is essentially in view of their very advanced age, 18 years after the occurrence. Appellants Bijender @ Pappu and Bhola @ Baljeet, both sons of Kapoor, however, are ordered to be taken into custody immediately, to serve out their sentences.

Of the fine imposed, Rs. 1,00,000/- shall be paid to petitioner No. 2 of Criminal Revision No. 763 of 2001, i.e. injured Budh Ram son of Kanhaiya.

46. Criminal Appeal No. 1190-SB of 2000 is dismissed, but with the conviction and sentence of the surviving appellants modified, as held hereinabove.

Criminal Revision No. 763 of 2001 is allowed, as above.