

Court No. - 75

Case :- CRIMINAL APPEAL No. - 1450 of 1984

Appellant :- Bhagwan Singh and others

Respondent :- State of U.P.

Counsel for Appellant :- Ajay Dubey, G.C. Saxena, G.Chandras, Kiran Tiwari, Mahesh Chandra Tiwari, Raghubir Singh

Counsel for Respondent :- A.G.A.

Hon'ble Vikas Budhwar,J.

Order on Recall Application

1. In Re: Criminal Misc. Recall Application No. 6 of 2025

2. By means of the present recall application, the appellant seeks recall of the order dated 09.07.2025, insofar it issues non-bailable warrants against the appellant no. 3, Bachchu Singh. Counsel for the appellant submits that the appellant could not appear on 09.07.2025 due to certain reasons that the counsel for the appellant was not in contact with the appellant, he submits that liberty so accorded has not been misused by the appellant.

3. Recall application is allowed.

4. In view of the same, the order dated 09.07.2025 insofar as it issues non-bailable warrants is recalled.

Order on Appeal

5. Heard Sri Mahesh Chandra Tiwari, learned counsel for the appellants and learned AGA for the State.

6. Challenge in this appeal under Section 374(2) of the Cr.P.C. is the judgment and order dated 16.05.1984 passed by 11th Additional Session Judge, Agra in Session Trial No. 572 of 1983 whereby the appellant herein, Bachchu Singh has been convicted under Section 325 read with Section 34 IPC and sentence with rigorous imprisonment of 3 years.

7. Though, the present appeal came to be preferred by 3 appellants Bhagwan Singh (first appellant), Doongar Singh (second

appellant) and Bachchu Singh (third appellant) but there happens to be an order dated 23.07.2018 that the first appellant, Bhagwan Singh expired and the appeal stood abated against him with respect to the second appellant, Doongar Singh, the appeal stood abated against him on 05.08.2022.

8. The case of the prosecution in brief is that on 26.08.1983 at about 12:00 noon, Smt. Urmila Singh who happens to be the wife of Radhunath Singh P.W. 4, first informant had gone to the Mal Godam at 12:00 Noon in order to provide food packet to her husband Raghunath Singh where he used to work as Thekedar for transporting through bullock cart, when she was near the Mal Godam, she saw the accused herein causing hurt to her husband Raghunath Singh. The second appellant Doongar Singh attacked the husband of the first informant, Raghunath with Kharua of the bullock cart while the second appellant, co-accused Bhagwan Singh attacked with Saria and the appellant Bachchu Singh attacked with brick bats. It is alleged that the said incident was witnessed by PW 1, Hira Singh and P.W. 2 Shiv Lal and others, the injured Raghunath Singh (since deceased) was taken to S.N. Hospital where he was hospitalized on the same day and when the condition of the injured Raghunath Singh became serious then PW 4, Urmila Singh lodged report before the police on 31.08.1983. The case was registered under Section 308 IPC but, post death of Raghunath Singh, the case was converted into Section 304 IPC. The post mortem examination of the body of the deceased Raghunath Singh was conducted by doctor O.P. Gupta who found as many as 5 injuries which read as under.-

"1. One stitched wound 2.5" long along with 7 stitches on the chest on the right side of the shoulder 1" below.

2. One abrasion 1/2" x 1/2" in the middle of the nose.

3. For artificial breathing.

4. One Abrasion 1/2" x 1/2" on the right side of the waist.

5. One stitched wound 1.5" long with 4 stitches on the left hand side upper portion."

9. In the internal examination, a fracture of right temporal bone of skull was found. The doctor found the brain of the deceased in a non-functioning state. As per the doctor the non-function of the brain was on account of head injury. Thereafter, the death took place on 02.09.1983 at 6:15 a.m.

10. The Sub-Inspector, Taj Mohammad PW 7 was entrusted with the investigation, he prepared the Panchanama Exhibit A7 seen the dead body of the deceased, prepared photo Nash, challan Nash, letter and report exhibits Ka 8 to Ka 12 and thereafter submitted charge sheet. The charge sheet was submitted under Section 304 IPC and Section 120B Railway Act. The appellant along with two other co-accused pleaded not guilty and claimed to be tried.

11. The prosecution in order to prove the case examine PW 1, Hira Lal, PW 2, Shiv Lal, PW 3, Beni Krishna, PW 4, Urmila Devi (first informant), PW 5, Dr. O.P. Gupta, PW 6, Jogeshwar Dayal and PW 7, Taj Mohammad. The appellants-accused did not produce any defence. Thereafter, the Court of Sixth Additional Session Judge, Agra in Session Trial No. 572 of 1983 proceeded to convict the appellants herein under Section 325/34 of the IPC while sentencing them for rigorous imprisonment of 3 years.

12. Learned counsel for the appellants has submitted that the appellants have been falsely implicated in the case particularly when they have not committed any offence. Submission is that as

per the case of the prosecution the incident took place on 26.08.1983, however, the first information report came to be lodged on 31.08.1983. Submission is that there is a delay in lodging of the first information report and a cooked up story was planted just in order to falsely implicate the applicants. Contention is that once the PW 4, Urmila Devi had seen that the appellants were the assailants who had extended injuries to her husband then what prevented her in not lodging the first information report with promptness. Thus, it is submitted that it is an anti-timed FIR. Further submission is that the entire basis which became a motive for lodging of the false and incorrect case is referable to the fact that it was the appellants-accused who are basically related to the deceased Raghunath Singh and they had complained about the indecent involvement of the first informant, P.W. 4, Urmila Devi with Ram Babu and on the complaint made by the first appellant, Bhagwan Singh to Raghunath Singh about the involvement of Smt. Urmila Devi, there was a quarrel and a scuffle between Raghunath Singh and Ram Babu and some other workers and Raghunath Singh had received injuries in the said assault. Submission is that the appellants herein at no point of time extended any injury in that regard and further as per the case of the prosecution as set out in the first information report, the incident is stated to have been witnessed by PW 1, Hira Lal and PW 2, Shiv Lal but they have become hostile meaning thereby that it is only PW 4 Urmila Devi, the first informant whose testimony can be said to be the basis who inflicted criminality. The submission is that in view of the fact that the allegation is that Urmila Devi had developed objectionable intimacy with one Ram Babu and the same was complained of by the appellants then Ram Babu inflicted injuries and, thus, credibility cannot be flagged to the

testimony of PW 4. It is also contended that when the deceased was sent to the hospital post happening of the incident on 26.08.1983 then the deceased Raghunath Singh did not receive external injuries on his head and whatever injuries were there were of simple in nature. Submission is that once there were no external injuries found and the role assigned to the appellant herein is with relation to hitting by using brick bats then obviously injuries would have been there. It is also contended that even otherwise there is no evidence to show as to how the incident of marpeet took place and, thus, it cannot be said that the appellant is guilty of commission of the said offence particularly when there is no motive attributed in commission of the said crime. Learned counsel for the appellants, additionally, submits that the incident is of 26.08.1983 more than 42 years have passed and the appellants do not possess any criminal history and the appellants were in jail from 19.01.2018 to for a period of about when he was granted bail on 06.12.2018, thus, the conviction under Section 325 read with Section 34 be upheld but the sentence be modified and altered to the period already undergone in jail with fine.

13. Learned AGA, on the other hand, submits that the judgment and order passed by Trial Court under challenge needs no interference particularly when the court below has marshaled the law on this subject. Submission is that mere delay in lodging of the first information report cannot attribute to innocence of the appellants particularly what is to be seen in the rural background at the time when such incident took place in the year 1983 where awareness about the rights were minimal. Submission is that since the husband of the first informant sustained injuries and she was an anticipation that her husband would be well, thus, it took time to lodge first information report particular when the medical situation

of the deceased became worst. He further submits that the testimony of PW 4 Urmila Devi cannot be doubted particularly when she had witnessed the incident from her own eyes and merely because PW 1, Hira Lal and PW 2, Shiv Lal had become hostile, it would not completely erode the prosecution theory. Further submission is that the injuries itself suggest that the same could not have been extended without there being attacked by the appellants particularly in view of the fact that the co-accused Doongar Singh was having Kharua of the bullock cart, Bhagwan Singh, Saria and the appellants herein brick bats. Learned AGA, however, submits that the incident is of the year 1983 and more than 42 years have passed and there is nothing on record to suggest that the appellants possessed any criminal history, thus, the conviction under Section 325/34 of the IPC be upheld but the sentence be altered and modified from rigorous imprisonment of 3 years to fine.

14. I have heard the submission so made across the bar and perused the record carefully.

15. Apparently, a first information report stood lodged by the first informant PW 4 on 31.08.2023 against the appellant and the two other co-accused Bhagwan Singh and Bachchu Singh with an allegation that on 26.08.1983, PW 4 first informant had gone to the Mal Godam of the Railways to provide food packet to her husband Raghunath Singh and at that point of time, she witnessed that the appellant was attacking with brick bats the co-accused Bhagwan Singh and Doongar Singh with Saria and Kharua of the bullock cart pursuant where to injuries were sustained. The injured (deceased) was admitted to S.N. Hospital and as per the internal examination of fracture on right temporal bone of the skull was

found. Thereafter, the injured expired on 02.09.1983 at 6:50 investigation was entrusted to the Investigating Officer who submitted charge sheet under Section 304 IPC read with Section 120B of the Railway Act. Though, the learned counsel for the appellants has sought to argue that the incident took place on 26.08.1983, however, FIR came to be lodged on 31.08.1983, thus, the delay in lodging of the first information report would be fatal and it will completely erode the substantrum of the prosecution case is concerned, the same is not acceptable particularly when there happens to be a statement of the first informant, PW 4 Urmila Devi that as her husband was taken for medical treatment in hospital and she was quite sure that he would be well as she knew the accused would be their relative and as soon as the health of the deceased became bad to worst then the FIR has been lodged.

16. In any view of the matter, the explanation so set forth cannot be said to be unbelievable and the court below has meticulously recorded a finding in this regard. With respect to the argument of learned counsel for the applicants that the injuries could not have been sustained while being extended by the appellants concerned, the same is also not liable to be accepted particularly when the first information report pin points the involvement of the appellant as the first informant in the first information report and through out the proceedings had maintained the constant stand that the appellants herein was having brick bats along with Bhagwan Singh and Doongar Singh, Saria and Kharua of the bullock cart, even the nature of injuries itself suggest that the same on the chest and temporal region. Insofar as the argument so raised that no injuries was sustained on the temporal region, thus, there is no question of extension of injuries by the appellants herein is concerned, the same is not conceivable particularly when the injuries report stands

proved by the medical practitioners and further the accused have not produced anything in defence of themselves. Moreover, the court below had also opined that there was no intention to murder the deceased Raghunath Singh that is why the appellants herein have been acquitted under Section 304 of IPC read with Section 120B of the Railway Act. However, looking into the fact that the incident is dated 26.08.1983 more than 42 years have passed, the appellants do not possess any criminal history and further the appellants were confined in jail from 19.01.2018 till the passing of the bail order on 06.12.2018 for a period of approximately 11 months, thus, the present case necessitate in the interest of justice for upholding the conviction under Section 325/34 IPC while altering and modifying the sentence from rigorous imprisonment of 3 years to the period already undergone and fine.

17. Accordingly, the appeal is **allowed in part**. The conviction of the appellant Bachchu Singh under Section 325 IPC read with Section 34 of the IPC is upheld, however, the sentence for the offences under Section 324 read with Section 34 IPC is altered and modified to the period already undergone and fine of Rs. 5,000/-.

18. The fine amount imposed upon the accused-appellant for the aforesaid offence shall be deposited by the appellant within three months from today. In case of default in payment of fine amount within the aforesaid period, the appellant shall serve out the entire sentence awarded to him by the trial court vide impugned judgment and order.

19. Let a copy of the judgment along with trial court record be sent to the Sessions Court, Agra for compliance.

20. A compliance report be sent to this Court.

21. A copy of the order be provided to the counsel for the appellants as well as learned AGA as per rule.