

...

Under Section	Sentence	In default
U/s 325/34 IPC	to undergo Rigorous Imprisonment for a period of two year and to pay a fine of Rs.500/- each.	to further undergo Rigorous Imprisonment for a period of Three months
<u>Appellant – Mahipal</u> (Since deceased)		
U/S 307/34 IPC	to undergo Rigorous Imprisonment for a period of Five years and to pay a fine of Rs.2000/-.	to further undergo Rigorous Imprisonment for a period of Nine months
U/s 325/34 IPC	to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.500/-.	to further undergo Rigorous Imprisonment for a period of three months

The sentences were ordered to run concurrently.

2. Facts relevant for the purpose of decision of the present appeal; that on 22.3.2000, complainant, Bijender Singh (PW-1) had gone to the place of his parental uncle's son, namely, Om Pal. At that time, accused Mahipal and Gajender Singh alias Pintu also reached there. On 23.03.2000, the complainant had gone to the house of Om Pal for asking him (Om Pal) to accompany him for Roka ceremony of his daughter, when accused Mahipal and Dharampal reached there and caught hold of him outside the house of Ompal Singh in the passage. Mahipal was armed with a *kulhari* and Dharampal was armed with a *lathi*. Mahipal gave *kulhari* blow on the head of the complainant and Dharampal gave a *lathi* blow on his right hand. Gajender Singh alias Pintu also came there who was armed with *lathi* and gave lathi blow on the right hand of the complainant. On this, Smt. Ombai also reached there, who was armed with a *danda* and she gave *danda* blow on his right thigh and then on his left hand's

...

thumb. Complainant fell on the ground and was shifted to General Hospital, Rewari.

3. During investigation, injured was medico-legally examined. Accused persons were arrested. Weapons used for commission of offence were recovered. Initially, FIR under Sections 325 and 323 read with Section 34 IPC was registered but subsequently, on the basis of medical report, Section 307 IPC was added. After completion of investigation proceedings, challan was presented in the Court for trial.

4. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused-persons under Sections 323, 325 and 307 read with Section 34 IPC, recording of evidence of the witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution evidence and the defence version on record, learned trial Judge held the appellants guilty and convicted them for commission of offence punishable under Sections 307 and 325 read with Section 34 IPC and sentenced them on 23.12.2004, whereas Smt. Ombai was acquitted of the charge.

5. Aggrieved of passing of judgment of conviction and order of sentence, the appellants are before this Court by way of present appeal.

6. During the pendency of the appeal, appellant – Mahipal died on 10.1.2005 and vide orders dated 26.07.2017 passed by this Court, appeal qua him was abated.

7. Learned counsel representing the appellants, namely, Dharampal and Gajender while arguing on the point of innocence of the accused persons, contended that the prosecution case is not believable at

...

all. If at all, the prosecution case is taken into consideration, Bijender Singh had sustained three injuries, one was with a sharp-edged weapon and that injury was attributed to Mahipal. The remaining two injuries were simple in nature and those are attributed to the present appellants, namely, Dharampal and Gajender.

8. Learned counsel for the appellants further contended that the Court below has not considered the fact that as per Medico-Legal report, injury No.1 which has been declared to be dangerous to life, was with a blunt weapon, whereas the ocular version is contrary to that. Injured, Bijender Singh while appearing a PW-1 had deposed that Mahipal had given him *kulhari* blow. It was not the version of the injured that injury No.1 was from the reverse side of the kulhari. PW-2 Chiranji Lal has also supported this fact. PW-3 Smt. Santosh deposed contrary version that Mahipal gave *kulhari* blow on the head of her husband from reverse side. That way, the ocular testimony of PW-1 and PW-2 is contradictory to the testimony of PW-3 and if the entire ocular testimony is taken into consideration, that is contrary to the medical opinion on the basis of which Section 307 IPC was added.

9. Learned counsel for the appellants further submitted that the main injury is attributed to Mahipal who has, unfortunately, died during the pendency of this appeal and appeal qua him stands abated. The remaining injuries attributed to the remaining appellants, namely, Dharampal and Gajender are with *lathi* blow and those are simple in nature. Otherwise, both the appellants have suffered much agony of protracted litigation for over 17 years as the occurrence in the present case, took place in the year

...

2000. So, their sentence may be reduced to the period already undergone by them. In support of his arguments, learned counsel placed reliance on the judgments of this Court in **Maha Singh and another Vs. State of Haryana, 2007(3) R.C.R. (Criminal) 423** and **Swinder Singh and another Vs. State of Punjab, 2007 (3) R.C.R. (Criminal) 581**.

10. While arguing on these points, learned State counsel as well as learned counsel for the complainant contended that as per medical opinion, injury No.1 was declared to be dangerous to life. PW-6 Dr. Chander Shekhar, Medical Officer, General Hospital, Rewari, who had found the following injuries on the person of Bijender Singh:-

- “1. There was a lacerated wound of size 6 x .75 upto bone deep was present over fronto-parietal region of scalp. Fresh bleeding was present. X-ray was advised.
2. There was a reddish bruise of 5x5 cm over posterior aspect of upper forearm, swelling and tenderness was present. Movement was painful and restricted. X-ray was advised.
3. There is reddish bruise of size 4x2 cm over anterior aspect of left lower thigh, swelling and tenderness was present. Movement was free.”

11. He has given his opinion on application, Ex. PB/3 that injury No. 1 was dangerous of life.

12. PW-7, Dr. Ashok Saini, Medical Officer, General Hospital, Rewari had medico-legally examined injured Bijender Singh and as per him, injury No. 1 revealed fracture of parietal bone. The weapon used for commission of offence were recovered from the accused-persons and learned trial Judge has rightly held the appellants guilty and convicted and sentenced

...

them. As such, the accused-appellants do not deserve any leniency on the point of quantum of sentence even and the present appeal be dismissed.

13. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that injured Bijender Singh was examined as PW-1 and he had given detailed count of the occurrence. As per him, Mahipal had given *kulhari* blow on his head whereas, Dharampal and Gajender had given lathi blows on his on his right hand and right thigh and then he was medico-legally treated. PW-2, Chiranji Lal supported his version that on the same day, Mahipal had given *kulhari* blow on the head of Bijender Singh, complainant and Dharampal and Gajender gave lathi blows and he had seen the occurrence. PW-3, Smt. Santosh wife of Bijender Singh also supported the prosecution version, but she had different explanation regarding the injuries caused by Mahipal as she deposed that Mahipal had given *kulhari* blow on the head of her husband from reverse side, which is contrary to the version of PW-1 and PW-2.

14. As per medical evidence available on the file by way of statement of PW-6, Dr. Chander Shekher, injured had sustained three injuries and injury No.1 was declared to be dangerous to life, but the said injury was a lacerated wound, whereas, prosecution version is that Mahipal was armed with *kulhari*. It is not the ocular version by way of statements of PW-1, Bijender Singh or PW-2 Chiranji Lal that *kulhari* was used from reverse side. That way, the prosecution case is not believable on that count.

15. Taking the case from another angle that main injury No.1 is attributed to accused Mahipal, who has already died during the pendency

...

of the appeal, appellants, Dharampal and Gajender had allegedly caused one injury each on the person of complainant, Bijender Singh with lathi and that too, on the right hand and thigh. It has also come in the statement of PW-6, Dr. Chander Shekher himself that on the same day, he had also medico legally examined Mahipal who was having three injuries including two lacerated wounds and Dharampal was having one injury of lacerated wound. That way, both the accused persons had also sustained injuries in the occurrence.

16. In view of the above, the conviction recorded by learned trial Judge under Section 307 IPC does not stand proved in view of the contradictory ocular and medical evidence. Therefore, this Court is left with offence under Section 325 IPC against two appellants, namely, Dharampal and Gajender. They have already suffered protracted litigation of 17 years and Dharampal himself was injured in the occurrence.

17. In view of the above, the judgment of conviction passed by learned Additional Sessions Judge, Rewari dated 22.12.2004 is modified to the extent that the conviction of accused-appellants, Dharampal and Gajender shall be under Section 325 IPC **only** and they are acquitted of the charge under Section 307 IPC.

18. As regards order of sentence, certainly there are grounds to take a lenient view and no purpose would be served by sending the accused-appellants behind the bar at this stage. Thus, the sentence awarded to appellants, namely, Dharampal and Gajender under Section 325 read with Section 34 IPC is reduced to the one already undergone by them as per law laid down by this Court in **Swinder Singh's case and Maha Singh's**

...

case (supra). Both the appellants, namely, Dharampal and Gajender shall pay a sum of Rs.50,000/- each to complainant-injured, Bijender Singh as compensation. Learned trial Judge is directed to comply with this order forthwith under intimation to this Court.

19 Resultantly, the present appeal stands partly allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

October 04, 2017
som

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No