

Satpal and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Apr-24-2000

Reported in : 2000CriLJ3355

Judge : R.R.K. Trivedi and ;M.C. Jain, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 323, 324, 325, 452 and 506; Code of Criminal Procedure (CrPC) , 1974 - Sections 161

Appeal No. : Cri. Appeal No. 2468 of 1980

Appellant : Satpal and ors.

Respondent : State of U.P.

Advocate for Def. : C.P. Upadhyaya, ;Kamal Krishna, Advs. and ;Amar Saran Lal Ji Sahai Srivastava, A.G.A.

Advocate for Pet/Ap. : R.K. Jain, ;K.N. Sharma, ;R.N. Rai, ;P.N. Mishra and ;A.A. Ansari, Advs.

Judgement :

M.C. Jain, J.

1. There are four appellants in this appeal, namely, Satpal, Janeshwar, Virendra Kumar alias Pappu and Madan Pal. They have preferred this appeal against the

judgment and order dated 31-10-80 passed by Sri Vishnu Chandra, the then V Additional Sessions Judge, Saharanpur in Sessions Trial No. 226 of 1980. Each of them has been convicted under Section 302 I.P.C. read with Section 34 I.P.C., 452 I.P.C. and 323 IPC read with Section 34 I.P.C. The sentence of life imprisonment has been awarded to each of them under Section 302 I.P.C. read with Section 34 I.P.C, two years' rigorous imprisonment under Section 452 I.P.C. and one year's rigorous imprisonment under Section 323 I.P.C. read with Section 34 I.P.C.

2. The incident took place on 6-3-80 at about 8.30 a.m. in the Gher of deceased Jai Prakash, situated in village Kuradi, Police Station Deoband, District Saharanpur. Jai Prakash was murdered in this incident and injuries were caused to the informant Santosh P.W. 1 - brother of the deceased. The report had been lodged by Santosh P.W. 1 by oral narration at Police Station Deoband on 6-3-80 at 5.37 p.m. The distance of the Police Station from the place of occurrence was about 5 miles. The prosecution case, as unfolded from the F.I.R. and evidence adduced in the Court, may be narrated thus: Jai Prakash deceased, Santosh P.W. 1 and the accused persons belonged to the same Khandan. In the evening of 5-3-80, Jai Prakash deceased and Santosh P.W. 1 were loading sugarcane in a trolley at their sugarcane field. Their wheat field was adjacent. He buffalo of Satya. Pal accused started causing damage to their wheat field. They asked Satya Pal to keep the he-buffalo properly tied to prevent damage to their crop. Satya Pal took out the he-buffalo but exchange of hot words took place between him on one hand and Jai Prakash and his brother on the other. Satya Pal also held out a threat that he would see them in the village. On the next day at about 8.30 a.m., Jai Prakash and Santosh were sitting and smoking Hukka in their Gher where all the four accused persons came. Out of them, Madan Pal was armed with Balkati (a sharp edged weapon) while others were armed with lathis. They started assaulting Jai Prakash and Santosh with their respective weapons. At the start, it was Madan Lal who had given a Balkati blow on the head of Jai Prakash. In self-defence, Jai Prakash picked up an axe which he wielded. Santosh also picked up a lathi which he wielded in self-defence. An alarm was raised by Santosh which attracted Babu Ram PW 2, Brahm Datt and Rajendra who witnessed the occurrence and intervened. The accused then ran away. Jai Prakash had become unconscious at

the spot itself. Santosh with the help of Babu Ram P.W. 2 took Jai Prakash to the hospital at Deoband. Both of them were medically examined by Dr. B. R. Kamal PW 3. The injuries of Jai Prakash were examined at 12 O'clock noon and those of Santosh at 12.30 p.m. As per injury report of Jai Prakash Ext. Ka-2 he had sustained the following injuries:

1. Incised wound 7.5 cm x 1/2 cm x bone deep on the right side of head 12 cm above from right ear, there was bleeding from wound. Margins were clean cut directed from upward to downward.
2. Lacerated wound 3 cm x 1 cm x scalp deep on front and left side of skull 6 cm above from left eyebrow. There was bleeding from wound.
3. Swelling 12 cm x 5 cm on right side of forehead and skull just above from right eyebrow, there was no mark of injury.
4. Abrasion 3 cm x 0.2 cm leaner shape on lower and outer part of right upper arm red in colour 2 cm above from right elbow joint.

3. He was unconscious. Injury No. 1 had been caused by sharp edged weapon and was kept under observation. He was referred for X-ray. Injuries Nos. 2 to 4 had been caused by blunt object and were simple.

4. As per injury report of Santosh, the following 20 injuries were found on his person:

1. Lacerated wound 6 cm x 5 cm x scalp deep shaped on left side head. 8 cm above from pinna of left ear, there was fresh bleeding from wound.
2. Lacerated wound 6.5 cm x 1.5 cm x scalp deep on back and left side of head 3 cm back to injury No. 1, there was bleeding from wound.
3. Lacerated wound 3 cm x 1/2 cm x scalp deep on back and left side of head, bleeding, 5 cm back to injury No. 2.
4. Lacerated wound 5.5 cm x 1/2 cm x scalp deep on back and right side of head 8.5 cm above from right ear, there was bleeding from wound.

5. Contusion 5 cm x 3 cm on top of left scapula, red in colour.
6. Contusion 11 cm x 2.5 cm on upper 1 /3rd left side of back of chest 1 cm away from midline of back, red in colour.
7. Contusion 5 cm x 2.5 cm on middle of left side of back 2 cm away from midline, red in colour.
8. Contusion 7 cm x 2.5 cm on lower 1/ 3rd of left side of back just away from midline, red in colour.
9. Abraded contusion 4 cm x 2 cm on midline of right scapula, red in colour.
10. Contusion 7 cm x 2.5 cm on lower part of right scapula, red in colour.
11. Contusion 4 cm x 2 cm on top of right shoulder joint, red in colour.
12. Contusion 8 cm x 2 cm on upper and outer part of right upper arm just below from right shoulder joint, red in colour.
13. Contusion 14 cm x 2 cm on front of upper arm up to elbow joint, red in colour.
14. Contusion 6 cm x 2.5 cm on upper and outer part of right forearm just below from elbow joint, red in colour.
15. Abrated contusion 5 cm x 3 cm on upper l/3rd and back of right forearm 6 cm below from elbow joint, red in colour.
16. Contusion 3.5 cm x 1.5 cm on right index finger, red in colour.
17. Contusion 2 cm x 1.5 cm on top of right middle finger, red in colour.
18. Contusion 3 cm x 2 cm back and lower part of left forearm just above from wrist joint, red in colour.
19. Abraded contusion 2.5 cm x 1 cm on back and base of left little finger, red in colour.
20. Abraded contusion back of whole of left little 1'inger, red in colour.

5. All his injuries had been caused by blunt object. Injuries Nos. 2 and 19 were kept under observation and he was also referred to District Hospital, Saharanpur for X-ray.

6. Injuries of both the injured were fresh.

7. Santosh then arranged a taxi and sent Jai Prakash to District Hospital, Saharanpur along with Babu Ram and he himself went to Police Station Deoband where he lodged the F.I.R. by oral narration. Initially, a case was taken down under Sections 452, 323, 324 and 506 I.P.C. Jai Prakash succumbed to his injuries in District Hospital, Saharanpur on 8-3-80 at 10.35 p.m. The case was then converted, inter alia, under Section 302 I.P.C.

8. Consequent upon the death of Jai Prakash the postmortem over his dead body was conducted by Dr. Ram Singh P.W. 7 on 9-3-80 at 4.40 p.m. He was about 45 years of age. The following ante-mortem injuries were found on his person.

1. Stitched wound 7.5 cm along with five stitches on the right side head 12 cm above the right ear in the same line, almost vertical, stitches removed, it was an incised wound of the size 7 1/2 cm x 1/2 cm x bone deep.

2. Stitched wound 7 cm along with two stitches on the left side of forehead and head 6 cm above the left eyebrow, 8 cm outer to middle lone, stitches removed. It was lacerated wound of the size 3 cm x 3/4 cm x bone deep.

3. Contusion 8 cm x 5 cm with traumatic swelling around of size 17 cm x 9 cm on the right side head, just above the right ear extending left to right eyebrow.

4. Abrasion 3 cm x 1/5 cm on the outer part of right arm lower end.

9. On internal examination, bones were found fractured under injury No. 3. The death had occurred due to intro-cranial haemorrhage as a result of head injury.

10. The defence of the accused persons was of denial. According to them, the prosecution side was the aggressor and they acted in self defence. Across F.I.R. had been lodged by accused Satya Pal on 6-3-80 at 17.45 hrs. against four persons, namely, Jai Prakash, Santosh PW 1, Mukesh (son of Santosh) and

Janardan. Their case was that on 6-3-80 at about 9 or 10 a.m. Satya Pal was taking die-sel on credit from Jasbir in his Deobari. At that time, Jai Prakash deceased case over there and deceased diesel from Jasbir on credit. Jasbir declined to oblige him whereupon Jai Prakash started abusing him and assaulting Jasbir and Satya Pal. Meanwhile Santosh, Mukesh and Janardan also reached there with lathis and Balkatis and they assaulted them. On the alarm raised by Satya Pal and Jasbir, Janeshwar and Virendra Kumar alias Pappu also reached there and tried to intervene but Jai Prakash and others assaulted them also. In defence, Satya Pal and others also caused injuries to Jai Prakash and Santosh.

11. The prosecution examined seven witnesses, besides relying on documentary evidence. Santosh (injured) PW 1 and Babu Ram PW 2 were examined as eye-witnesses whereas rest were of formal nature including Doctors, Investigating Officer etc. No oral evidence was adduced in defence. But the accused relied on the injury reports of Satya Pal, Jasbir, Virendra Kumar alias Pappu and Janeshwar Ext. Kha-1 and 4 respectively. They were medically examined on 6-3-80 at 1.15 p.m., 1.30 p.m., 2.10 p.m. and 2.30 p.m. respectively by Mr. B. R. Kamal PW 3 at P.H.C., Deoband who had examined injuries of Jai Prakash and Santosh PW 1 also. One abraded contusion and three contusions had been found on the person of Satya Pal. One abraded contusion and two contusions were found on the person of Jasbir one incised wound 1.5 cm. x 1/2 cm x bone deep on right side of skull and one abraded contusion on right knee were found on the person of Virendra Kumar out of which the incised wound was kept under observation and X-ray was advised; an incised wound 1.5 cm and 0.2 cm x muscle deep on base and back of right index finger was found on the person of Janeshwar. It was kept under observation and X-ray was advised. Excepting the injuries for which X-ray was advised, all other injuries were simple.

12. On appraisal of evidence on record, the learned Additional Sessions Judge believed the prosecution case and discarded the theory of self-defence put forth by the accused-appellants. He accordingly convicted and sentenced them as mentioned in the earlier part of the judgment. The matter is now in appeal before this Court.

13. We have heard Sri P. N. Mishra, learned counsel for the accused-appellants and learned A.G.A. from the side of State assisted by Sri V. C. Tiwari, learned counsel for the complainant, in opposition of the appeal. We have also carefully waded through the record. Learned counsel for the accused-appellants has assailed the impugned judgment arguing that the F.I.R. was a delayed one; that no independent witness was produced by the prosecution and that the learned trial Court unjustifiably rejected the self-defence theory. On the other hand, the argument from the other side is that the impugned judgment and order are perfectly justified and the guilt of the accused-appellants was proved to the hilt by satisfactory evidence and attending circumstances. To be short, the judgment in question is supported by other side.

14. We wish to deal with different aspects of the case having regard to the arguments advanced across the bar in the discussion that follows.

15. So far as the question of late lodging of the F.I.R. is concerned it should be kept in mind that the delay in lodging the F.I.R. is not universally fatal in each and every case. Regard has to be had to the facts and circumstances of the individual case. In the case at hand, the incident occurred at about 8.30 a.m. and the F.I.R. by oral narration was lodged by Santosh PW 1 at 5.37 p.m. The other victim Jai Prakash had not died at the spot. It was very natural that as the first priority, the informant Santosh PW 1 took his injured brother Jai Prakash to P.H.C. Deoband where he was medically examined at 12 O'clock noon. He was in unconscious condition at that time as mentioned in the injury report Ext. Ka-2. Santosh PW 1 himself was badly injured and as many as 20 injuries were found on his person, as per examination report Ext. Ka-3 prepared at PHC Deoband at 12.30 p.m. The condition of Jai Prakash being serious, he was taken to District Hospital, Saharanpur. The informant Santosh P.W. 1 has explained that he arranged vehicle for taking Jai Prakash to Saharanpur and he himself went to Police Station where he lodged the F.I.R. by oral narration at 5.37 p.m. Indeed, first priority had rightly been accorded to provide medical aid to Jai Prakash and to save his life, if possible. There was nothing unusual if the informant Santosh PW 1 first went to PHC Deoband along with his injured brother Jai Prakash and thereafter proceeded to the Police Station subsequent to making arrangement for taking Jai Prakash to

District Hospital, Saharanpur. As we observed earlier, he himself had sustained as many as 20 injuries on his person. The fact that the F.I.R. was lodged by oral narration also indicated that no concoction or deliberation had taken place before the lodging of the F.I.R. Considering related circumstances cumulatively, we do not think that the defence side gains any point by complaining delay in lodging the F.I.R.

16. Of course, there is single testimony of informant Santosh PW 1 in support of the prosecution case. But it is well known that it is the quality of evidence and, not the quantity that matters. The prosecution in the present case cannot be blamed if there is no other independent witness in support of its case. It did examine an eye-witness Babu Ram PW 2 who had accompanied Santosh PW 1 to PHC and with whom Jai Prakash had been sent from PHC to District Hospital, Saharanpur. However, it is noted that while delivering evidence in the Court, Babu Ram PW 2 softened his attitude in favour of accused-appellants. He seemingly did so with the purpose to weaken the prosecution case and to help the accused-appellants. The reason is not far to seek. It has come in his testimony that he is relative of accused-appellant Madan. The daughter of the Jath of the daughter of maternal uncle of this witness is married to the accused-appellant Madan and he admitted that he had got that marriage settled. The remaining three accused-appellants are closely related to Madan in that Virendra alias Pappu is the son of Bharat Singh. Bharat Singh was the son of Asha Ram and Asha Ram was the brother of Sugan Chandra and Tara Chandra. Satpal is the real brother of Madan Pal and accused Janeshwar is the son of Tara Chandra. It is, thus, apparent that they had common ancestor and are closely related. It appears that Babu Ram PW 2 crossed over to the side of accused-appellant with a view to help them and tried to disturb the prosecution case. Learned trial Judge rightly discarded his testimony.

17. However, even on ignoring the testimony of Babu Ram P.W. 2, the sole testimony of the injured witness-Santosh PW 1 proved to the hilt that the aggressors were the accused-appellants and that the incident occurred in his Gher as alleged by him. His testimony is fortified by medical evidence as well as by other attending circumstances. We are not impressed even a bit about the defence case that the incident took place in the Deobari of Jasbir over the insistence of Jai

Prakash to obtain diesel on credit from him. It may be observed that Jasbir is also the cousin of Satpal and Madan. It was stated by Santosh PW 1 that there had been criminal litigation between him and his brother Jai Prakash on the one hand and the accused persons on the other, in which latter had been convicted and sentenced. The bone of contention was Gher which was in his possession where the present incident took place. His such statement was not challenged by the accused-appellants in his cross-examination. Jasbir from whom diesel was allegedly demanded by Jai Prakash was the real cousin of Satpal and Madan. In view of the strained relations between the parties, it was highly improbable that Jai Prakash would go to demand diesel from Jasbir. Further there could hardly be any question of his getting annoyed if Jasbir preferred to give diesel to his own relation Satpal instead of him. It is not believable that Jai Prakash would have got provoked on this score and would have started abusing and assaulting Jasbir and others. No sign of any incident having taken place in Deobari of Jasbir was found. The Investigating Officer who visited the Gher of Santosh PW 1 on 9-3-80 collected bloodstained and plain earth from inside the Gher. He did not find any drop of blood on the Chabutra or Deobari of Jasbir which, according to the accused, was the place of occurrence.

18. It is true that the number of injuries sustained by the two sides cannot be the sole criterion in determining as to who was the aggressor, but it is an important factor which has to be judged in the light of other attending circumstances. In the present case, Santosh PW 1 alone sustained twenty injuries on his person out of which four were lacerated wounds on head. He suffered a fracture also of base of proximal phalanx of left little finger as per supplementary injury report Ext. Ka-4. On the other hand, the accused side received only ten injuries, out of which one was on the head of Virendra. All of them were simple in nature. Many of the injuries on the side of accused were superficial. Had the prosecution side been the aggressor, the injuries sustained on their side would not have been much more and graver. It is not so that the accused-appellants are held to be aggressor simply on account of number of injuries of two sides. Rather, the truth of the matter is that number and nature of injuries sustained by the prosecution side is also a factor providing support to the testimony of Santosh PW 1 and other circumstances emerging from the record that the accused-appellants were actually

aggressors and the incident took place in the Gher of Santosh PW 1 and Jai Prakash.

19. Learned counsel for the accused-appellants has painstakingly argued that the prosecution did not make any mention of the injuries on the side of accused in the F.I.R. and failed to satisfactorily explain the same in evidence. It has to be kept in mind that the F.I.R. was lodged by Santosh by oral narration at a time when he was in great mental and physical agony. He himself had sustained as many as twenty injuries. His injured brother Jai Prakash was unconscious and in precarious condition whom he had sent to District Hospital, Saharanpur through Babu Ram PW 2. Natural human conduct is also to be taken note of. The maker of the report is really concerned with what he feels aggrieved by. In giving an account of a fight, a person ordinarily feels a reluctance or hesitation in disclosing at the stage of making a report that he or others on his side also caused injuries to the other side, even though he might have been justified by reason of having been done in exercise of right of private defence.

20. Moreover, it has been held by the Hon'ble Supreme Court in the case of Ayodhya Ram alias Ayodhya Prasad Singh v. State of Bihar 1999 SCC (Cri) 564 : (1999 AIR SCW 4733) that the prosecution is not bound to explain each and every injury of the accused persons irrespective of the nature of the injury and in respect of some minor injury of the accused, if no explanation is offered by the prosecution, the prosecution would not fail on that score. We may also refer with profit the law laid down by the Supreme Court in (sic) Hare Krishna Singh v. State 1988 (UP) CLR45 : (AIR 1988 SC 863) to the following effect at Page 868; of AIR:

The obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. In other words it is not an invariable rule that the prosecution has to explain the injuries sustained by the accused in the same occurrence. The burden of proving the guilt of the accused is undoubtedly on the prosecution. The accused is not bound to say anything in defence. The prosecution has to prove the guilt of the accused beyond all reasonable doubts. If the witnesses examined on behalf of the prosecution are believed by the Court in proof of the guilt of the accused beyond reasonable doubt,

the question of the obligation of the prosecution to explain the injuries sustained by the accused will not arise. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and in what circumstances injuries have been inflicted on the person of the accused.

21. Each case presents its own features and has to be examined on its facts. In the present case, the contention does not at all hold good that the prosecution did not explain the injuries on the side of the accused in the evidence also. The injuries on the side of the accused were explained by Santosh PW 1 in his statement under Section 161, Cr. P. C. as well as in his testimony delivered before the Court. We believe that Jasbir was actually not there amongst the accused who committed this offence. The injuries sustained by Jasbir were three in number viz. abraded contusion 8 cm x 2 cm on upper and right side of scapula, contusion 3 cm x 2.5 cm on upper 1/3rd part of right upper arm and contusion 3 cm x 2 cm on middle and back of right leg, red in colour. All of them were simple. Had he been there amongst the assailants, there is no reason as to why the informant Santosh PW 1 would have omitted his name from the F.I.R. and subsequently in his testimony before the Court. Obviously, his injuries were of superficial nature and the prosecution was not likely to be adversely affected on naming him as one of the assailants, if he was actually there. To say in other words, he would have definitely been named as one of the assailants by Santosh PW 1 if he was actually there. It appears that with the intention to create a dent in the prosecution case, the defence side projected a distorted story showing Jasbir also as one of the injured and the incident having taken place in his Deobari on Jai Prakash's having demanded diesel from him on credit and he having refused to oblige him. We note that the injuries of Satpal accused were also of superficial nature being an abraded contusion and three contusions. The law is well settled that the prosecution is not obliged to explain the superficial injuries of the accused. So far as the injuries of Virendra and Janeshwar accused are concerned, the same are very well explained by Santosh PW 1 that at the start of the incident it was Madan accused who had inflicted a Balkati blow on the head of Jai Prakash. Jai Prakash then got up and picked up an axe lying nearby and wielded the same in self-

defence. He himself also wielded a lathi in self-defence. It is, thus, explained as to how Janeshwar accused sustained an incised wound. It was simply of the size of 1.5 cm x 0.2 cm x muscle deep on base and back of right index finger. It was the only injury sustained by him. The injuries on the person of Virendra Kumar alias Pappu were an incised wound 5.5 cm x 1/2 cm x bone deep on right side of skull 10 cm above from right ear and abraded contusion 3 cm x 2 cm on outer part of right knee joint. We wish to say that Janeshwar and Virendra Kumar accused could have sustained such injuries as a result of axe wielded by Jai Prakash on receiving first Balkati blow on his head by Madan and as a result of wielding of lathi by Santosh PW 1 in self-defence. They having been attacked by as many as four accused-appellants, they had every right to defend their persons and to inflict such injuries on the accused. We are, therefore, of the clear view on analyzing the evidence on record in a judicial manner that the prosecution has explained the injuries on the side of accused and has not concealed anything. The learned trial Judge was perfectly justified in rejecting the theory of self-defence put forth by the accused persons. The truth of the matter was that actually the injuries on the accused came to be inflicted by Jai Prakash and Santosh PW 1 while defending themselves from the assault of the accused person in the Gher of the former.

22. We now address ourselves to the question as to what offence was committed by the accused-appellants within the ambit of law. They had trespassed into the Gher of Jai Prakash and Santosh PW 1 and had assaulted them there. Their conviction under Section 452 I.P.C. is perfectly justified. The injuries of Santosh PW 1 were of simple nature excepting that he suffered a fracture also on the base of proximal phalanx of left little finger. Jai Prakash, another victim happened to die. But it is worthwhile to note that as per his post-mortem report he had suffered fracture of his right parietal and temporal bones under Injury No. 3 and the same was responsible for his death. Injury No. 3 had been caused by blunt object. Out of the four accused-appellants, only Madan was armed with Balkati (sharp edged weapon) while the remaining three had lathis. Only one incised wound on right side of head had been sustained by the deceased Jai Prakash which was the first injury caused on his person by sharp edged weapon (Balkati) by Madan at the start of the incident. But it did not prove to be fatal. The fatal injury was of a lathi which was ante-mortem injury No. 3 beneath which right parietal and temporal

bones were found fractured. All the injuries of Santosh PW 1 were also of blunt object-lathi. Thus, it emerges out that despite the fact that one of the accused-appellants was armed with a sharp edged weapon, only one sharp edged weapon injury was inflicted on the person of Jai Prakash. The remaining three accused-appellants, namely, Satpal, Janeshwar and Virendra Kumar rained lathi blows on Santosh PW 1 and Jai Prakash. It has also not been specified as to who had struck the fatal lathi blow on the head of Jai Prakash (injury No. 3 beneath which right parietal and temporal bones were found fractured). However, all the accused-appellants were acting in concert with the previous meeting of minds. To say in legal words, all the four assaulted Jai Prakash and Santosh PW 1 in furtherance of their common intention. Taking all these facts and circumstances together, it appears that the common intention of all the four accused-appellants was only to cause grievous hurt, as otherwise they could have inflicted much more injuries on vital parts of Jai Prakash deceased and Santosh PW 1 including by sharp edged weapon. Under the facts and circumstances of the case, it would be just and proper to hold that common intention of four accused-appellants was only to cause grievous hurt punishable under Section 325, I.P.C. As they committed this offence in furtherance of their common intention all of them are liable to be punished under Section 325, I.P.C. read with Section 34, I.P.C. (in addition of offence under Section 452, I.P.C. The view we have taken is supported by a decision of Supreme Court in the case of Parusuraman v. State of Tamil Nadu 1991 (28) ACC (SC) 604 : (AIR 1993 SC 141). In that case, seven persons were tried for the murder. Their participation in the occurrence was proved beyond doubt. The deceased had sustained 13 external injuries out of which 11 were on lower legs and arms. It was found that they had no intention to kill and the offence was found to be covered under Section 325, I.P.C. The analogy of the said case applies in full force to the facts and circumstances of the present case, where the deceased died of a fatal lathi injury inflicted on head by one of the three lathi wielding accused appellants without specifying as to who had inflicted that blow. The injured Santosh PW 1 sustained twenty injuries of lathis including one fracture. So, to come to the point, we shall alter the conviction of the accused-appellants to that of Section 325 I.P.C. read with Section 34, I.P.C. and 452, I.P.C.

23. On giving our thoughtful consideration to the aspect of punishment to be awarded to the accused appellant, we think that the ends of justice would be met by awarding three years' rigorous imprisonment and a fine of Rs. 10,000/- to each of the four accused appellants under Section 325, I.P..C. read with Section 34, I.P.C. and directing each of them to undergo further rigorous imprisonment for 1 1/2 years in default of payment of fine with additional rigorous imprisonment of two years to each of them under Section 452, I.P.C, directing both the substantive offence to run concurrently. We also think it proper to direct that in case of realization of fine of total amount of Rs. 40,000/ -, a sum of R. 25,000/- should be paid to the widow of the deceased Jai Prakash if she is alive. In her absence, the said amount of Rs. 25,000/- should be paid to his sons in equal proportion. If none of the sons of the deceased Jai Praksh is there, the said amount of Rs. 25,000/- should be paid to complainant Santosh PW 1. The remaining amount of fine of Rs. 15,000/- should go to the State exchequer.

24. In conclusion, we partly allow this appeal and modify the conviction and sentences to the accused-appellants as under :

25. Each of the accused appellant Satpal, Janeshwar, Virendra Kumar alias Pappu and Madan Pal is convicted under Section 325, I.P.C. read with Section 34, I.P.C. and Section 452, I.P.C. Each of them is sentenced to rigorous imprisonment for three years and to pay a fine of Rs. 10,000/- under Section 325, I.P.C. read with Section 34, I.P.C. and to undergo rigorous imprisonment of two years under Section 452, I.P.C. In default of payment of fine awarded for the offence punishable under Section 325, I.P.C. read with Section 34, I.P.C, each of them would undergo further rigorous imprisonment for 1 1/2 years. Both the substantive sentences of rigorous imprisonment awarded under Section 325, I.P.C. read with Section 34, I.P.C. and under Section 452, I.P.C. shall run concurrently. In case the fine is realised, Rs. 25,000/- would be paid to the widow of deceased Jai Prakash if she is alive. In her absence, the said amount of Rs. 25,000/-shall be paid to the sons of deceased Jai Prakash in equal proportion. If the sons of deceased Jai Prakash are also not there, the said amount of Rs. 25,000/- shall be paid to complainant Santosh PW 1, Remaining amount of fine of Rs. 15,000/- shall go to the State exchequer. Appellant Janeswar is already in jail since 28-9-1999. The

other three accused appellants, namely, Satpal, Virendra Kumar alise Pappu and Madan Pal are on bail. Their bail, is cancelled. The Chief Judicial Magistrate, Saharanpur is directed to get the accused appellants arrested and to commit them to prison to serve out the sentences.

26. Let a copy of the ludgetment along with the record of the case be immediately sent to the Court below for needful compliance under into,atopm to this Court within two months possitively.

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