

**HIGH COURT OF MADHYA PRADESH****BENCH AT GWALIOR****SINGLE BENCH****PRESENT:****HON'BLE MR. JUSTICE G.S. AHLUWALIA****Criminal Appeal No. 810 OF 2005****Bati @ Batia & Ors.****-Vs-****State of M. P.**

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Shri Vikrant Sharma, counsel for the appellants.

Shri Girdhari Singh Chauhan, Public Prosecutor for the respondent/State.

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**J U D G M E N T**  
**(23/03/2017)**

This appeal under Section 374 of CrPC has been filed against the judgment dated 18.11.2005 passed by IV Additional Sessions Judge, Morena, District Morena in S.T.No.311/1999 by which the appellants have been convicted under Section 307 r/w 34 of IPC and have been sentenced to undergo the rigorous imprisonment of five years and a fine of Rs.1,000/- with default imprisonment.

Before considering the facts of this case, it would be appropriate to mention here that the appellant No.2 Amar Singh is the father of appellant No.1 Bati @ Batiya @ Jagmohan and appellant No.3 Matru Singh, the appellant No.4 Chhoti @ Chhoti Bai Tomar is the sister of the appellant No.2 Amar Singh whereas the injured Bachu Singh is the brother of the appellant No.2 Amar Singh and appellant No.4 Chhoti @ Chhoti Bai.

Similarly, Deepu Singh (P.W.2) is the son of Bachu Singh (P.W.1) and Kamla Bai (P.W.6) is the wife of Bachu Singh (P.W.1). It also appears that a family dispute on the question

of property was going on.

The necessary facts for the disposal of the present appeal in short are that on 12.07.1999, Bachu Singh lodged a FIR that Amar Singh is his brother and a property dispute is going on. Today, he along with his son Deepu Singh and Nephew Vishwanath was going towards his old house, after leaving the building material on a tractor at a place where his new house was being constructed. On the way, the appellants were standing. The appellant No.2 Amar Singh and appellant No.3 Matru were having lathis whereas appellant No.1 Bati @ Batiya @ Jagmohan and appellant No.4 Chhoti @ Chhoti Bai were having ballams. All the four persons stopped them and scolded them that the complainant is obstructing in the partition of the property and at that time the appellant No.1 Bati @ Batiya @ Jagmohan caused various injuries by means of Ballam whereas the appellant no.4 Chhoti @ Chhoti Bai caused injury on his back by means of a ballam. The appellant no.2 Amar Singh caused injury on his right hand by means of lathi whereas the appellant No.3 Matru Singh caused a injury on his left thigh by means of a lathi. On the FIR, the police registered the offence and started the investigation.

The police after preparing the spot map seized the blood stained earth as well as plain earth, sent the injured for medical examination and seized one ballam from the possession of Bati @ Batiya. One lathi each from Amar Singh and Matru Singh were seized and after recording the statements, completed the investigation and filed the charge-sheet.

It is not out of place to mention here that another FIR was lodged by the appellant No.4 Chhoti @ Chhoti Bai on 27.07.1999 at about 3 in the morning that on 13.07.1999, at about 6:30 in the evening, Bachu Singh came and warned her brother Amar Singh and claimed that he too has a share in

survey No.295 and therefore he will cultivate the fields. On this, Amar Singh replied that a decision has already been passed in his favour by the Court of Tahsildar and therefore he will cultivate the field. On this issue, Bachu Singh started abusing Amar Singh and at that time Deepu, Vishawanath and Ram Naresh Tomar also came there. They also started abusing. When Chhoti @ Chhoti reached there to intervene in the matter at that time Bachu Singh caused injury on her left hand by means of lathi.

During investigation, it was found that Chhoti @ Chhoti Bai had suffered a fracture and, therefore, offence under Section 325 of IPC was added. Bachu Singh (P.W.1) had also admitted that he is facing a criminal trial for the said offence.

By order dated 13.12.1999 charges under Section 307 or in alternative Section 307/149 were framed against the appellants. The appellants abjured their guilt and pleaded not guilty.

The prosecution in order to prove its case, examined Bachu Singh (P.W.1), Deepu Singh (P.W.2), Ram Singh (P.W.3), Ashish (P.W.4), Bhure Singh (P.W.5), Kamla Bai (P.W.6), Dr. S.K. Sharma (P.W.7), Vishwanath (P.W.8), Narottam Singh (P.W.9), Dr. Raman Man Chandra (P.W.10) and S.N. Pathak (P.W.11).

The appellant examined Laxmi Narayan in their defence.

Dr. S.K. Sharma (P.W.7) has stated that on 13.07.1999, he was working on the post of Assistant Surgeon in Civil Hospital, Ambah, District Morena. At about 12:20 in the night, he had examined Bachu Singh and found the following injuries on his body:-

- (i) Lacerated wound blood clot + piercing 2.5 x 1.5 x 3 over right umbilicus abdomen.
- (ii) Lacerated piercing 2 x 1 x 1.5 over left umbilicus abdomen.
- (iii) Stab wound lacerated 1.5 x 1.5 x 2.5 cm over

epigastrium abdomen

- (iv) Lacerated wound clot + 1 x 1 x .5cm over left lumber back.
- (v) Lacerated wound 1.5 x 1 cm over left forearm lateral midline.
- (vi) Contusion 3 x 1.5 cm over right scapular.
- (vii) Abrasion 2 x 1.5 cm over right dorsol medial

According to this witness, injury No.1, 2 & 3 were piercing injuries, whereas, injuries No.4, 5, 6 & 7 were caused by hard and blunt object. For the treatment of injuries No.1 to 3, he had referred the patient to the surgical specialist whereas injuries No.4, 5 & 6 were simple in nature. This witness has specifically stated that with the help of probe he had measured the depth of the injuries. He further admitted that incised wound is caused if a sharp edged weapon is used whereas lacerated wound is caused if hard and blunt object is used. Injuries No.1, 2 & 3 have been caused by sharp pointed weapon whereas injuries No.4,5,6 & 7 were not caused by any sharp edged weapon. Injuries No.4,5 , 6 & 7 could be caused due to fall on the ground. The MLC report prepared by this witness is Exhibit P-7.

Dr. Raman Man Chandra (P.W.10) has stated that he was working on the post of House Surgeon in Surgical department. The patient Bachu Singh was admitted in the hospital at about 3:15 in the morning on 13.07.1999 and the case sheet of the injured Bachu Singh is Exhibit P-18 and the following injuries were found on the body of the injured:-

- (i) One stab wound about ½ to 1 cm long in the epigastrium, ragged edges with small amount of oozing. Wound just below and lateral to xiphoid process.
- (ii) One penetrating wound ½ to 1 cm long, just below and right to the umbilicus. Slight oozing of blood present.
- (iii) One penetrating wound, ½ – 1 cm long, 6-7 cm, left of midline, below and lateral to umbilicus. Oozing present.

- (iv) A small about ½ cm wound, over the right lower back with small amount of oozing.
- (v) ½ – 1 cm long wound with ragged irregular edges over the ventero medial aspect of left forearm in upper ½ subcutaneous deep with slight oozing.
- (vi) ½ – 1 cm wound with ragged edges over dorsomedial aspect of left forearm in lower 1/3 slight oozing. Subcutaneous deep.”

This witness has further stated that the injuries sustained by Bachu Singh were grievous in nature and were dangerous to life. However, in cross-examination, this witness has admitted that the nature of the injuries has not been mentioned in the case sheet, Exhibit P-18. However, he specifically denied the suggestion given by the appellants that the injuries sustained by the injured Bachu Singh were not grievous and dangerous to life. Thus, it is clear that injured Bachu Singh had received several injuries out of them three could have been caused by sharp pointed object. The nature of those injuries were penetrating and according to Dr. Raman Man Chandra (P.W.10) the injuries were sufficient in the ordinary course of nature to cause death.

The next question for determination is that who is the author of these injuries and whether the appellants were sharing common intention or not?

As this Court had already referred to the interse relations between the appellants and the injured, therefore, it is a case where the property dispute was going on between the parties and because of a dispute over cultivation of the agricultural land, the incident took place.

Bachu Singh (P.W.1) has stated that on 02.07.1999 at about 7:45-7:00 PM, he was going on his feet towards his old house after unloading the building material at the place where his new house was being constructed and he was accompanied by his wife Kamla Devi, Nephew Vishwanath and son Deepu. In front of the house of Gultu Singh, all the four appellants

were standing and while he was passing by, all the four appellants started abusing him. When he objected to it, at that time, the appellant No.1 Batia as well as the appellant No.4 Chhoti Bai assaulted him by means of ballam whereas appellant No.2 and appellant No.3 Matru assaulted him by lathi, as a result of which, he fell down. Several injuries were caused by means of Ballam in his abdominal region. However, he could not specify that which injury was caused by appellant no.1 Bati @ Batiya and appellant no.4 Chhoti @ Chhoti Bai. It is further stated that he had also received injuries on his back which were caused by ballam, whereas on his right hand and thigh, he had received injuries caused by lathi. When his son Deepu and nephew Vishwanath started shouting, Ram Singh and others came there and thereafter all the accused persons ran away. This witness could not point out that apart from Ram Singh who others had come to intervene in the matter. Thereafter, he was taken to Police Station Mahua where he lodged the FIR which is Exhibit P-1. From police station, he was sent to Ambah Hospital where he was medically examined and thereafter he was sent to Morena Hospital from where he was referred to Gwalior Hospital. He further stated that at Gwalior, he was operated upon for the injuries sustained by him in the abdomen. In examination in chief itself, this witness admitted that a property dispute is going on between him and the appellant No.2 Amar Singh, as a result of which, the appellants have assaulted him. In cross-examination this witness denied the suggestion that earlier as he had restrained the appellant No.2 Amar Singh from cultivating the land bearing survey No.295, therefore, Amar Singh had approached the Court of Tahsildar where a judgment in his favour was passed. He further admitted that in respect of the same incident, he along with Vishwanath, Ram Naresh are facing criminal trial in Criminal Case No.104/2000. However, he

avoided in giving reply to the suggestion that the appellant No.4 Chhoti @ Chhoti Bai had also lodged a FIR against him. He further denied the suggestion for want of knowledge that Chhoti Bai had sustained fracture of her fingers. This witness further admitted that Chhoti Bai was working as a Nurse in the Government Hospital and this witness has retired from the police department. This witness was confronted with the statement which was initially recorded under Section 32 of Evidence Act and he could not explain that as to why he did not mention that Chhoti Bai and Bati had assaulted him by means of Ballam. Several other omissions in his initial statement Exhibit D-1 were pointed out but he could not explain as to why those were not mentioned by the police in his case diary statement. This witness could not explain as to why the fact of witnessing the incident by Vishwanath and Kamla Bai has not been mentioned in his FIR Exhibit P-1 and police case diary statement Exhibit D-2. However, this witness has stated that the first injury was caused by appellant No.4 Chhoti Bai on his back and had suffered a very light injury. However, he admitted this fact that the allegation that the first injury was caused by Chhoti Bai and thereafter he was assaulted by Bati @ Batia and others, is not mentioned in FIR Exhibit P-1 and police case diary statement Exhibit D-2. He further admitted that at the time of the incident, Kamla Bai, Deepu and Vishwanath did not intervene in the matter and were standing at a distance of 8-10 feet and according to this witness, the incident continued for about 15-20 minutes. He further denied that in order to forcibly grab the agricultural land belonging to Amar Singh, he has falsely implicated the appellants. He further denied that he wants to forcibly take the possession of the fields of the appellants. He further admitted that he has engaged one lawyer in the present case.

Deepu Singh (P.W.2) has stated that while they were

coming back along with the injured, they noticed that all the four persons were standing near the house of Gultu. Amar Singh and Matru Singh were having lathis whereas Batiya @ Jagmohan and Chhoti Bai were having Ballam. At that time, the accused Jagmohan scolded his father that why he is creating obstruction in his agricultural field and at that time, the injured objected that he is like his father and therefore why he is abusing him? In reaction, Batia assaulted his father by means of ballam and caused injuries in his abdomen. After sustaining injuries, the injured Bachu Singh ran towards the platform of Gultu and at that time appellant No.4 Chhoti @ Chhoti Bai caused an injury on his back and Amar Singh and Matru caused injury by means of lathis on his right hand and left thigh. On the shouts raised by these witnesses, several villagers came there and after noticing them, the accused persons ran away. The FIR was lodged by Bachu Singh. In cross-examination, this witness admitted that he along with his father Bachu Singh, Vishwanath and Ram Naresh are facing criminal trial for assaulting Chhoti Bai. He further denied that at about 6:30 in the evening, they had gone to the house of Amar Singh (appellant No.2) where they had abused Amar Singh and they had also cautioned him not to cultivate Survey No.295. He further denied that when the appellant No.4 Chhoti @ Chhoti Bai came there to intervene in the matter, at that time, the injured Bachu Singh caused an injury to her by means of a lathi. He further denied that he had seen the appellant no.4 Chhoti @ Chhoti Bai in an injured condition in the hospital. He admitted that the place where his new house is being constructed is situated at a distance of 20-25 hands from the house of the appellant No.2 Amar Singh and the distance between his old house and the new house is 80 feet. He further stated that the house of Gultu is situated in between the house of Amar Singh and the old house of this



witness. This witness was confronted with his police case diary statement which is Exhibit D-3. His attention was specifically drawn towards the omission that after Batiya @ Jagmohan caused injury to injured Bachu Singh, he ran towards the platform and then the appellant No.4 Chhoti Bai had caused injury on the back of injured Bachu Singh from behind but this witness could not explain the reason of non-mentioning of this allegation in his police case diary statement Exhibit D-3.

Ram Singh (P.W.3), Ashish (P.W.4) & Bhure Singh (P.W.5) have not supported the prosecution case and were declared hostile. They were cross-examined by the Public Prosecutor but nothing could be elicited from their cross-examination which may support the prosecution case.

Kamla Bai (P.W.6) has also stated about the incident. In cross-examination, she has stated that the first two injuries were caused by Batiya @ Jagmohan and after sustaining the injuries, the injured Bachu Singh fell unconscious and remained unconscious for about 1 hour and during that period he was lying on the spot itself. This witness has further claimed that after seeing the incident, she also went unconscious for about half an hour and after regaining consciousness, she dressed the injuries of injured Bachu Singh with the help of one cloth. She further stated that she alongwith Deepu tried to intervene in the matter but as they were empty handed, therefore, they could not help Bachu Singh. She further stated that she was standing at about 10 feet away from the place where the appellant Bachu Singh was being assaulted. This witness has further stated that Bachu Singh had regained consciousness in the hospital but immediately thereafter she stated that earlier also he was conscious and was asking for water. She further stated that she has not lodged the FIR but could not say that who lodged the FIR in the police station. She further stated that at the

time of incident she, Deepu and Viswanath were standing at a different place but she could not specify that at what place Deepu and Vishwanath were standing. She further stated that Matru Singh and Amar Singh were not only assaulting Bachu Singh but they were also stopping other persons to intervene in the matter. She has stated that Chhoti Bai had caused injuries to injured Bachu Singh whereas 5-6 injuries were caused by Batiya @ Jagmohan. However, she could not specify that on which part of the body of Bachu Singh, the injuries were caused by Batiya. However, she stated that Chhoti @ Chhoti Bai had caused injuries on the back of Bachu Singh. When she was confronted with her case diary statement to explain as to why the allegation that Chhoti bai was having ballam in her hand was not mentioned, then she could not give any reason. She further stated that the accused persons had not stopped them but had stopped only Bachu Singh. She further could not explain that as to why the fact of presence of the villagers on the spot was not mentioned in her case diary statement Exhibit D-4. She further denied that the appellants had not assaulted Bachu Singh. This witness denied for want of knowledge that a judgment in favour of Amar Singh was passed by the court of Tahsildar.

Vishwanath (P.W.8) had partially supported the prosecution case. He has merely stated that near the house of Gultu some hot talks of the appellants had taken place with Bachu Singh and thereafter he went to his house. He was declared hostile and was cross-examined by the Public Prosecutor but nothing could be elicited from his evidence to show that he had seen the incident of assault. This witness further stated that he had not informed the police that hot talk had taken place between the appellants and Bachu Singh.

Narottam Singh (P.W.9) has not supported the prosecution case and he had turned hostile. Although, this

witness has admitted his signatures on the arrest memo of appellants No.1 to 3 which are Exhibit P-9 to Exhibit P-11 and their statement under Section 27 of Evidence Act which are Exhibits P-12 to P-14 and the seizure memos which are Exhibits P-15 to P-17 but he has specifically denied that the appellants no.1 to 3 were arrested in his presence. He further denied that any statements under Section 27 of Evidence Act of the appellants No.1 to 3 were recorded in his presence and lathis and ballam were seized from the appellants No.1 to 3. Thus, this seizure witness has not supported the prosecution case.

S.N. Pathak (P.W.11) had investigated the case. He stated that on 12.07.1999 he had registered Crime No.34/99 for offence under Sections 341, 294, 307, 34 of IPC and the FIR is Exhibit P-1. The injured Bachu Singh was sent for medical examination vide requisition Exhibit P-7. Spot map Exhibit P-2 was prepared. Plain earth and the blood stained earth were seized from the spot on 13.07.1999 vide seizure memo Exhibit P-3. On 13.07.1999, he had recorded the statements of Kamla, Vishwanath, Ram Singh and Ashish. The statements of Ashish, Bachu Singh and Indrajeet Singh were recorded on 14.07.1999 whereas the statement of Bhure Singh was recorded on 18.07.1999 and the statement of Deepu Singh was recorded on 29.07.1999. The appellants No.1 to 3 were arrested on 16.07.1999 vide arrest memo Exhibit P-9 to 11 whereas the appellant No.4 was arrested on 19.07.1999 vide arrest memo Exhibit P-9. The statements of appellant No.1 to 3 under Section 27 of Evidence Act were recorded on 16.07.1999 which are Exhibit P-12 to Exhibit P-15. On 16.07.1999 itself, on the production of lathi by appellant No.2 Amar Singh, the same was seized vide Exhibit P-16 whereas the lathi was seized from appellant No.3 Matru Singh vide seizure memo Exhibit P-17 and Ballam was seized

from the possession of appellant No.1 Bati @ Batiya on 16.07.1999 vide seizure memo Exhibit P-15. On 19.07.1999, the appellant No.4 Chhoti @ Chhoti Bai did not give any information with regard to the weapon used by her and therefore her house was searched but no weapon was found. The search memo is Exhibit P-20. On 20.07.1999, the blood stained clothes of Bachu Singh were seized vide seizure memo Exhibit P-21 and the seized articles were sent to FSL Sagar vide draft Exhibit P-22 and as per the instructions of FSL Gwalior, the articles were sent to FSL Sagar on 30.09.1999. (The Trial Court had appended note that this witness is giving his statement by looking at police case diary). The report received from the FSL Sagar is Exhibit P-23 and thereafter the charge-sheet was filed. In cross-examination, this witness has denied the suggestion that Bachu Singh had worked in the police department under him and he had helped him in revocation of his suspension. This witness further admitted that on the report of Chhoti @ Chhoti Bai offence under Sections 325, 323, 504, 34 of IPC was registered against Bachu Singh, Vishwanath, Ram Naresh and Deepu and had prepared a spot map also. He further admitted that he did not seize any documents pertaining to the ownership of the land and he further denied for want of knowledge that Amar Singh has won civil case against Bachu Singh. He further stated that he had not seen that whether any house of the injured was under construction or not. He further stated that as no independent witness were not coming forward, therefore, he did not record the statements of independent witnesses. He admitted that the FIR lodged by Chhoti Bai is Exhibit D-5 and the spot map prepared by him is Exhibit D-6. She was sent for medical examination vide requisition Exhibit D-7 and the charge sheet filed against Bachu Singh is Exhibit D-8.

Thus, from the plain reading of the evidence of the

witnesses, it is clear that except Bachu Singh (P.W.1), Deepu Singh (P.W.2) and Kamla Bai (P.W.6) all other witnesses have turned hostile and have not supported the prosecution case.

Vishwanath (P.W.8) has only stated that a hot talk had taken place between the appellants and Bachu Singh but fairly admitted that he had informed the police in this regard in his police case diary statement Exhibit P-8.

Thus, it is clear that except the related witnesses there is no other witness to support the prosecution case. It is well established principle of law that the evidence of witnesses could not be rejected merely on the ground that they are related or interested witness. Under these circumstances, minute scrutiny of evidence of these witnesses become necessary.

FIR Exhibit P-1 was lodged by injured Bachu Singh. In the said FIR, he had not stated that Deepu Singh (P.W.2) and Kamla Bai (P.W.6) and Vishwanath (P.W.8) were along with him at the time of incident. Even Bachu Singh had not stated that the incident was witnessed by Deepu Singh (P.W.2), Kamla Bai (P.W.6) and Vishwanath (P.W.8). In the FIR, the names of Ram Singh, Ashish and Bhura Singh have been specifically mentioned as the persons who have witnessed the incident and who have intervened in the matter but the presence of Deepu Singh (P.W.2), Kamla Bai (P.W.6) and Vishwanath (P.W.8) is not mentioned in the FIR. Further Deepu Singh (P.W.2), Kamla Bai (P.W.6) have specifically admitted that they did not intervene in the matter and they kept standing at a distance of 8-10 feet from the place where Bachu Singh was being assaulted by the appellants. Even Kamla Bai could not state that who lodged the FIR. If the evidence of Kamla Bai (P.W.6) is considered then according to her the injured Bachu Singh fell unconscious and remained unconscious for a period of about 1 hour and during this

period he remained lying on the spot and Kamla Bai (P.W.6) also lost her consciousness for about half an hour and only after regaining consciousness, she tied cloth around the wounds sustained by Bachu Singh. Thus, on the close scrutiny of the evidence of Deepu Singh and Kamla Bai coupled with the fact that their names are not mentioned in the FIR as well as no attempt was made by Deepu Singh (P.W.2) and Kamla Bai (P.W.6) to intervene in the matter clearly shows that Deepu Singh (P.W.2) and Kamla Bai (P.W.6) had not seen the incident and therefore their evidence does not inspire confidence and hence their evidence is rejected.

So far as the evidence of Vishwanath (P.W.6) is concerned, he has stated that he was coming back along with the injured Bachu Singh, Deepu Singh and Kamla Bai and at that time hot talk took place between Bachu Singh and the appellants and thereafter he went back. However, when he was confronted with his police case diary statement Exhibit P-8, he admitted that the fact of hot talks between the appellants and Bachu Singh is not mentioned in the police case diary. As this witness has not supported the prosecution case with regard to the actual assault on Bachu Singh (P.W.1) and the allegation of hot talks between the appellants and Bachu Singh is not mentioned in his police case diary statement coupled with the fact that this witness is nephew of injured Bachu Singh, therefore, this Court is of the view that the evidence of this witness is also not of worth reliance. Accordingly, it is rejected. Now the entire prosecution case rest on the evidence of Bachu Singh (P.W.1).

Bachu Singh has stated that while he was coming back from the construction site of his new house and he was going towards his old house and at that time the appellants stopped him and the appellant No.1 Bati @ Batiya and appellant No.4 Chhoti @ Chhoti Bai caused injuries with the help of ballam on

his body but he could not clarify that which injury was caused by these two persons.

However, if the FIR lodged by Bachu Singh (P.W.1) is considered, then it would be clear that he had specifically alleged that Bati @ Batiya had assaulted in his abdominal region by means of ballam. The FIR Exhibit P-1 is supported by the medical evidence of Dr. S.K. Sharma (P.W.7) and Dr. Raman Man Chandra (P.W.10) who have found three penetrating wounds in the abdominal region of the injured Bachhu Singh (P.W.1).

Thus, in the considered opinion of this Court, it is clear that the prosecution has succeeded in establishing the fact that the appellant no.1 Bati @ Batiya had caused injuries in the abdomen of the injured Bachu Singh by means of ballam causing penetrating wounds which according to Dr. Raman Man Chandra (P.W.10) were grievous in nature and were dangerous to life.

So far as the role assigned to the appellant No.4 Chhoti @ Chhoti Bai is concerned, although Bachu Singh has not clarified in the court evidence that which injury was caused by appellant No.1 Bati @ Batiya and appellant No.4 Chhoti @ Chhoti Bai but in the FIR, which is Exhibit P-1 he has specifically stated that Chhoti Bai had caused injury on his back by means of a ballam. In cross-examination, this witness has admitted that the injury which was sustained by him on his back was a very minor one. In paragraph 19 of his cross-examination, he has stated as under:-

“19. .... मुझे सबसे पहले चोट छोटी बाई ने पहुंचायी थी, यह पीठ मे लगी थी जो हल्की सी लगी थी।”

Thus, according to this witness, a very light injury was caused by Chhoti Bai on his back. Under these circumstances, if the defence evidence of the appellants is considered then it would be clear that the FIR was lodged by Chhoti Bai against

Bachu Singh and others alleging that on 12.07.1999 at about 6:30 in the evening a hot talk was going on in between Amar Singh and her brother Bachu Singh. Bachu Singh was insisting that he would not allow Amar Singh to cultivate land bearing survey No.295, therefore, when she went to intervene she was assaulted by Bachu Singh by means of lathi and subsequently it was found that she had suffered a fracture of her fingers. The FIR lodged by Chhoti Bai is Exhibit D-5 whereas her MLC report is Exhibit D-7 and the charge-sheet is Exhibit D-8. In the FIR Exhibit D-5, it is specifically mentioned that in the x-ray report of the injured Chhoti Bai since fracture was found, therefore, offence under Section 325 of IPC has been added. Bachu Singh has also admitted in his cross-examination that he is facing trial for assaulting Chhoti Bai. Thus, if the evidence of Bachu Singh (P.W.1) is considered in the light of the evidence given by the injured appellant No.4 Chhoti Bai, it is clear that some family dispute between the family on the question of property was going on and Chhoti Bai too was assaulted by Bachu Singh (P.W.1) as a result of which she had suffered fracture of her fingers. After appellant No.4 Chhoti Bai was arrested she could not give any information with regard to the ballam which was allegedly used by her and accordingly her house was searched but no weapon could be found by the police. Although, the non-recovery of weapon of crime by itself cannot be a ground to dislodge the evidence of the witnesses but under the facts and circumstances where the allegations are that Chhoti Bai caused a very light injury on the back of Bachu Singh by means of ballam and the fact that the parties are closely related to each other, the independent witnesses have not supported the prosecution case, property dispute is going on between the complainant as well the accused party and there is an order by the Revenue Authority in favour of appellant No.2 Amar Singh, therefore, the cumulative effect of



the circumstances would lead to only one conclusion that the appellant No.4 Chhoti Bai has been falsely implicated in the matter as she too has suffered fracture of her fingers. Accordingly, it is held that the prosecution has failed to prove beyond reasonable doubt that the appellant no.4 Chhoti Bai had participated in the commission of offence as alleged by Bachu Singh (P.W.1) in which he had sustained three grievous injuries.

So far as the role played by appellants No.2 & 3 are concerned, it is alleged by Bachu Singh (P.W.1) that they had assaulted him by means of lathi on his hand and leg. There is no allegation that they had repeated the assault, although, according to Bachu Singh (P.W.1) the assault continued for 15-20 minutes and the assailants ran away from the spot only when the villagers came there to intervene in the matter. If the facts and circumstances of the case are considered then it would be clear that a property dispute is going on with regard to cultivation of survey No.295 and there is an order in favour of appellant No.2 Amar Singh from the Court of Tahsildar and in spite of that Bachu Singh (P.W.1) was insisting that he would cultivate survey No.295.

Whether appellant no.2 Amar Singh and appellant no.3 Matru Singh were sharing common intention with the appellant no.1 Bati @ Batiya is a moot question involved in the present case.

It appears that the incident took place all of a sudden because of the property dispute and there is nothing on record to indicate that the appellant No.2 Amar Singh & appellant No.3 Matru Singh were sharing common intention with appellant no.1 Bati @ Batiya. As the parties are agriculturist therefore the availability of ballam in every house is not unnatural because ballam can be used for digging earth and for carrying on certain agricultural activities.

Thus, if the appellant No.1 Bati @ Batiya was carrying ballam with him, then, it cannot be inferred that the appellant No.2 Amar Singh & appellant No.3 Matru Singh were sharing common intention to make attempt to kill the injured Bachu Singh. On the contrary as there was an order in favour of appellant No.2 Amar Singh from the Court of Tahsildar and inspite of that the injured Bachu Singh was insisting upon that he would cultivate the survey No.295, therefore, it is clear that Amar Singh had statutory right over survey No.295. Under these circumstances, this Court is of the view that the incident took place without any common intention amongst the appellants No.1, 2 & 3, therefore, the appellants No.2 & 3 would be responsible for their own act. Further, it is not the case of the appellants No.2 & 3 that the fight occurred when the injured Bachu Singh (P.W.1) was trying to dispossess them. The fight has taken place on a public way, therefore, it cannot be said that the appellants No.2 & 3 had acted in right of their private defence. However, as the only allegation against them are that they had caused injuries on the hand and thigh of the injured and since they had sufficient time to repeat the assault but even then they did not repeat the assault clearly shows that they did not have any intention to make an attempt to kill Bachu Singh, thus, it cannot be said that appellants No.2 & 3 had shared common intention with the appellant No.1. As this Court has come to the conclusion that the appellants No.2 & 3 were not sharing common intention with the appellant no.1, therefore, appellants No.2 & 3 would be responsible for their own individual act. As the injuries caused by the appellants No.2 & 3 were simple in nature and were caused on non-vital part of the body of the injured Bachu Singh, accordingly, they are held responsible for causing simple injury to Bachu Singh (P.W.1).

As this Court had already come to the conclusion that the injuries caused by appellant No.1 Bati @ Batiya were grievous in nature and were dangerous to life, therefore, his conviction under Section 307 of IPC is upheld. As the appellants No.2 & 3 have been held responsible for causing simple injuries to the injured Bachu Singh, therefore, they are held guilty for committing offence under Section 323 of IPC. The appellant No.4 is acquitted of the charge under Section 307/34 of IPC. Accordingly, the judgment passed by the trial court is modified to the extent mentioned above.

So far as the question of sentence is concerned, from the record, it is clear that appellant no.1 Bati @ Batiya had remained in jail for a period of 4 ½ month during trial and after conviction, he was released on bail on 21.07.2006. Thus, it appears that the appellant no.1 Bati @ Batiya has remained in jail custody for a period of 13 months. If the entire incident is considered in its true perspective then it would be clear that the parties are closely related to each other and property dispute was going on between them. As Bachu Singh (P.W.1) was obstructing the appellant No.2 Amar Singh in cultivating the survey No.295, therefore, as an obedient citizen of the country, he approached the Court of Tahsildar for redressal of his grievances and an order was passed in his favour by the Tahsildar which was affirmed by the SDO in the appeal filed by Bachu Singh (P.W.1). This clearly show that at the beginning, the father of appellant No.1 took shelter of court of law for redressal of his grievances. In spite of the fact that an order was passed by the revenue authority against Bachu Singh, he still persisted with his attitude of cultivating the agricultural land bearing survey no.295 and under these circumstances, the incident took place.

Although, the piercing injuries were caused by appellant No.1 in the abdomen of injured Bachu Singh but if the role

played by Bati @ Batiya is considered in the light of the genesis of the incident then this court is of the considered opinion that a lenient view should be adopted while imposing the sentence.

Under these circumstances, this court is of the view that the jail sentence already undergone by the appellant No.1 Bati @ Batia would be sufficient to meet the sentencing policy. However, it would be appropriate to enhance the fine amount. Accordingly, it is directed that the jail sentence which has already been undergone by Bati @ Batiya is sufficient but the fine amount is enhanced to Rs.10,000/- which shall be payable within a period of two months from today otherwise appellant Bati @ Batiya shall undergo remaining jail sentence imposed by the Trial Court. The appellant No.2 Amar Singh was in jail from 16.07.1999 to 27.08.1999 during the trial whereas appellant No.3 Matru Singh was in jail from 16.07.1999 till 28.9.1999 during the trial. They were granted bail by this Court by order dated 18.01.2006, therefore, it is clear that they have already undergone a jail sentence of more than 3 months, therefore, it is held that the period of jail sentence which they have already undergone is sufficient. Since the maximum fine amount for offence under Section 323 of IPC is Rs.1000/- and since they have already deposited the said amount, therefore, the fine amount is not enhanced. The appellant No.4 is acquitted of all the charges. The appellants are on bail. Their bail bonds and personal bonds stand discharged.

The appeal is accordingly **partially allowed** to the extent mentioned above.

**(G.S. AHLUWALIA)**  
**Judge**

(ra)