CASE NO.:
Appeal (crl.) 1390 of 2007

PETITIONER:
Bishan Singh & Anr

RESPONDENT:
The State

DATE OF JUDGMENT: 09/10/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T
[Arising out of S.L.P. (Crl.) No. 2273 of 2007]

S.B. SINHA, J :

1. Leave granted.

2. Bishan Singh son of Bachchi Singh and Govind Ballabh son of Krishnanand, the two surviving accused, who were tried and convicted for commission of an offence under Sections 147 and 308/149 of the Indian Penal Code (IPC) are before us; the other four accused, namely, Arjun Singh, Shivraj, Govind Singh and Bhairav Dutt having expired.

3. One Harish Bhatt was the complainant. On 30.09.1984 at about 06.30 p.m. when he was going towards his village, the accused persons allegedly assaulted him with lathis and took out a sum of Rs.400/- from his pocket. His brother Ghanshyam Dutt Bhatt intervened. It was alleged that the accused persons were inimically disposed of towards the injured and had attacked him with an intention to cause his death. The injuries suffered by Harish Bhatt as per the injury report prepared by Dr. J.S. Pangti (PW-6) are as under :

\0231. Lacerated wound 3 cm x 1 cm on scalp at right parietal region, 14 cm above the right eye-brow. Scalp deep. Fresh bleeding present.

2. Lacerated wound 5 cm x = cm x scalp deep on scalp, at right parietal area, 19 cm above the right eye-brow.

3. Lacerated wound 3 cm x < cm x skin deep, 4 cm above the right eye-brow at right forehead, 6 cm x 7 cm swelling around the wound.

4. Abrasion 1 cm x = cm, at upper lip, 3 cm from the right angle of the mouth.

4/1 Abrasion 1 cm x = cm at lower lip right angle of mouth.

5. Contusion mark 10 cm x 5 cm above right shoulder reddish in colour. Swelling 2 cm around the wound.

6. Contusion mark 6 cm x 6.5 cm on above and front and middle of left arm, 13 cm below

the shoulder joint 1 cm swelling around the injury.

7. Contusion 12 cm x 10 cm at fore-arm, 8 cm from the left wrist joint = cm swelling around the injury.

8. Complain of pain in both lower legs and thigh, but no injury seen.\024

4. Admittedly, all the injuries except injury no.7 were simple ones. Injury No. 7 being a fracture with dislocation of wrist joint was found to be grievous one. The injured witness examined himself as PW-5. In his deposition, he alleged :

\023\005I used to stop the accused from fighting with the poor people and I was witness against the accused persons in the litigation between Shanti Joshi and accused persons. That is why the accused beat me. My head was wounded. My kurta was full of blood and seizure report of kurta had been made in the hospital\005\024

5. The learned Trial Judge relying on or on the basis of the testimonies of the said witness as also his brother, convicted the appellants for commission of an offence under Sections 147 and 308/149 IPC and sentenced them to undergo rigorous imprisonment for one year for the offence punishable under Section 147 IPC and rigorous imprisonment for four years for the offence punishable under Section 308/149 IPC.

6. Although in the First Information Report, the informant had alleged that all the six accused had earlier threatened to kill him as also burn his hut and the said attack was with an intention to kill him, but the offence recorded therein was under Sections 147 and 323 IPC. The charge-sheet was, however, submitted, inter alia, under Section 308 IPC.

7. We have noticed hereinbefore that in his deposition PW-5 stated about the existing enmity between the parties. It does not appear from his deposition that he had made any statement to the effect that the accused had attacked him with an intention to kill. The learned Trial Judge in his judgment solely relying upon the allegations made in the First Information Report opined that a case under Section 308 IPC was made out.

8. Interestingly, the learned Trial Judge observed that the charge under Section 308 IPC read with Section 149 thereof was proved, because the eye-witnesses had clearly sated that they were armed with lathis.

9. The learned Trial Judge did not notice the ingredients of Section 308 IPC which provides for existence of an intention or knowledge.

10. The High Court also dismissed the appeal, opining :

\02333. From perusal of record it has been established that the intention of the accused persons was to commit culpable homicide. They had enmity with the injured Harish Bhatt. Threats were also given to him by the accused persons to ruin his life. PW-4, Ghanshyam Dutt has clearly stated that when he reached at the spot he saw that the accused persons were beating the injured recklessly with Lathis-Dantas. Injuries were also caused on scalp. Looking to the seat of injuries and the fact and circumstances of the case the prosecution has been able to prove the offence u/s 308/149 IPC against the accused persons. The finding of the trial court is just and proper

and need no inference by the appellate court.\024

11. Before an accused can be held to be guilty under Section 308 IPC, it was necessary to arrive at a finding that the ingredients thereof, namely, requisite intention or knowledge\022 was existing. There cannot be any doubt whatsoever that such an intention or knowledge on the part of the accused to cause culpable homicide is required to be proved. Six persons allegedly accosted the injured. They had previous enmity. Although overt-act had been attributed against each of the accused who were having lahtis, only seven injuries had been caused and out of them only one of them was grievous, being a fracture on the arm, which was not the vital part of the body.

12. The accused, therefore, in our opinion, could not be said to have committed any offence under Section 308 IPC. The same would fall under Sections 323 and 325 thereof.

13. The question now is what punishment should be awarded.

14. While imposing punishment in a case of this nature, the court is required to take into consideration the factors which may weigh with the court for taking a lenient view in the matter. The incident is of 1984. 23 years have elapsed. Appellants had all along remained on bail. It is not stated that they had ever misused the privilege of bail. The incident does not reflect any cruelty on their part or any mental depravity. They had been in custody for more than five months. In a situation of this nature, we are of the opinion that it may not be proper for this Court to send the accused persons back to prison. However, the injured had suffered pains at the hands of the appellants. We are, therefore, of the opinion that while their substantive sentence may be reduced to the period undergone, they should pay a fine of Rs. 15,000/- (Rupees fifteen thousand) each; failing which they should undergo simple imprisonment for a period of one year each. If the aforementioned amount is realized, a sum of Rs. 25,000/- (Rupees twenty five thousand) out of the sum, may be paid to the informant.

15. Appellants who are in custody shall be released forthwith, if not required in connection with any other case, subject to the aforementioned conditions.

16. The appeal is allowed to the aforementioned extent.