

REPORTABLE/NON-REPORTABLE
IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
ON THE 29th DAY OF APRIL, 2022

BEFORE

HON'BLE MS. JUSTICE SABINA, JUDGE
&
HON'BLE MR. JUSTICE SATYEN VAIDYA, JUDGE

CRIMINAL APPEALS No. 240 and 281 of 2017

CRIMINAL APPEAL No. 240 of 2017

Between:

1.MUKESH ALIAS BITTU, SON OF SHRI RAM SWAROP, RESIDENT OF VILLAGE KASHMALI, P.O. SANAURA, TEHSIL AND P.S. RAJGARH DISTRICT SIRMOUR, H.P.

2.PARVEEN KUMAR ALIAS MITHUN, SON OF SHRI RAM SWAROP, RESIDENT OF VILLAGE KASHMALI, P.O. SANAURA, TEHSIL AND P.S. RAJGARH, DISTRICT SIRMOUR H.P.

(NAME AND ADDRESS HAS BEEN REPRODUCED FROM THE IMPUGNED JUDGMENT)

PRESENTLY UNDERGOING THEIR SENTENCES IN MODEL CENTRAL JAIL NAHAN, DISTRICT SIRMOUR, H.P.

.....APPELLANTS

(BY SMT. SHEETAL VYAS, ADVOCATE)

AND

**STATE OF HIMACHAL PRADESH,
 THROUGH ITS HOME SECRETARY.**

.....RESPONDENT

(BY SHRI. KAMAL KANT, DEPUTY
ADVOCATE GENERAL)

CRIMINAL APPEAL No. 281 of 2017

Between:

STATE OF HIMACHAL PRADESH

.....APPELLANT

(BY SHRI KAMAL KANT, DEPUTY
ADVOCATE GENERAL)

AND

RAM SWAROOP, S/O SHRI MAST RAM AND
OTHERS.

.....RESPONDENTS

(BY SMT. SHEETAL VYAS, ADVOCATE)

RESERVED ON: 21.04.2022

DECIDED ON : 29.4.2022

*These appeals coming on for pronouncement of judgment this
day, Hon'ble Mr. Justice Satyen Vaidya, delivered the following: -*

JUDGMENT

Both these appeals are being decided by a common judgment as these arise out of the same judgment and involve identical questions of facts and law.

2. Learned Sessions Judge (Special Judge), Sirmour at Nahan tried the following persons for offences under Sections 447, 147, 506, 323, 325, 452 & 302 read with Section 149 of Indian Penal Code and also Section 3 (1)(v)(x) of Scheduled Castes and Scheduled Tribes Act, 1989, in Sessions Trial No. 9-ST/7 of 2015.

1. Ram Swaroop, Son of Sh. Mast Ram, Resident of Village Kashmali, PO Sanaura, Tehsil and PS Rajgarh, District Sirmour, H.P.
2. Asha Devi, Wife of Sh. Ram Swaroop, Resident of Village Kashmali, PO Sanaura, Tehsil and PS Rajgarh, District Sirmour, H.P.
3. Mukesh@ Bittu, Son of Sh. Ram Swaroop, Resident of Village Kashmali, PO Sanaura, Tehsil and PS Rajgarh, District Sirmour, H.P.
4. Naveen Kumar @ Vipin, Son of Sh. Ram Swaroop, Resident of Village Kashmali, PO Sanaura, Tehsil and PS Rajgarh, District Sirmour, H.P.
5. Pravee Kumar @ Mithun, Son of Sh. Ram Swaroop, Resident of Village Kashmali, PO Sanaura, Tehsil and PS Rajgarh, District Sirmour, H.P.
6. Anju Kumari, Wife of Sh. Praveen Kumar @ Mithun, Resident of Village Kashmali, PO Sanaura, Tehsil and PS Rajgarh, District Sirmour, H.P.
7. Naveen Dhiman, Son of Sh. Ragwa Nand, Resident of Village Chandol, PO Drabla, Tehsil and PS Rajgarh, District Sirmour, H.P.

3. Vide Judgment dated 31.12.2016, Mukesh @ Bittu and Parveen Kumar@ Mithun, both sons of Ram Swaroop, were

convicted for offences under Sections 323, 325 and 302 of IPC and sentenced as under: -

Sr. No	Name of convict	Offence	Sentence		
			Substantive sentence	Fine	Default sentence
1.	Mukesh @ Bittu	302 IPC	Rigorous imprisonment for life.	Rs.10,000/-	Simple imprisonment for one year.
		323 IPC	Rigorous imprisonment for one year.	Rs. 1,000/-	Simple imprisonment for three months.
		325 IPC	Rigorous imprisonment for three years	Rs. 5,000/-	Simple imprisonment for six months
2.	Praveen Kumar @ Mithun	302 IPC	Rigorous imprisonment for life.	Rs.10,000/-	Simple imprisonment for one year.
		323 IPC	Rigorous imprisonment for one year.	Rs. 1,000/-	Simple imprisonment for three months.
		325 IPC	Rigorous imprisonment for three years	Rs. 5,000/-	Simple imprisonment for six months.

4. All other accused persons were acquitted of all the charges.

5. In Criminal Appeal No. 240 of 2017, convicts Mukesh @ Bittu and Praveen Kumar@ Mithun, have assailed their conviction ordered vide judgment dated 31.12.2016 and sentence order of the same date passed by the learned Special Judge, Sirmour at Nahan in Sessions Trial No. 9-ST/7 of 2015. In Criminal Appeal No. 281 of

2017, State has assailed the aforesaid judgment insofar as it recorded the acquittal of other accused persons.

6. The case as set up by the prosecution was that on 16.10.2014, a written complaint No.197/RGH, dated 16.10.2014 scribed by Mohan Singh (PW-1) was received at Police Station Rajgarh through Neeta Ram (PW-18). ASI Ram Swaroop accompanied by H.C. Ramesh Chand No. 501 and C. Ajay Kumar No. 403 and PW-18 Neeta Ram reached Ram Nagar in relation with aforesaid complaint, where PW-1, Mohan Singh got recorded his statement under Section 154 Cr.P.C (Ext. PW1/A) alleging *inter alia*;

6.1. That in the year 2012 he along with his younger brother Neeta Ram had purchased the land comprised in Khasra No. **859/737** measuring 5 bighas 2 Biswas (*Ghasni*) at village Kashmali Salogni from Vidya Sagar (PW-2) and other residents of Ram Nagar. Their ancestral land measuring 9 bighas 17 Biswas (*Ghasni*) was also adjacent to land purchased from Vidya Sagar. The land of Ram Swaroop, resident of village Kashmali was below their Ghasni. Since the time of purchase of land by PW-1 and PW-18 from PW-2, Vidya Sagar, Ram Swaroop and his family members were keeping grudge with them by proclaiming that land belonged to them.

6.2 On 15.10.2014, PW-1 along with his younger brother Neeta Ram (PW-18), wife Kamla Devi, Sumitra Devi (PW-17) wife of Neeta Ram and nephew Surinder Kumar (PW-3) were in their purchased land for cutting the grass and had already cut 60/70 bundles of grass. The accused persons named Ram Swaroop, his wife Asha Devi and son Mukesh came there and started altercation by saying that the land belonged to them, on which they left for their house out of fear.

6.3 On 16.10.2015, PW-1, Mohan Singh again visited their land for the purpose of cutting grass accompanied by his wife Kamla Devi, younger brother Neeta Ram, PW-18, Sumitra Devi PW-17 and nephew Surinder Kumar, PW-3 and found the grass cut by them on previous day missing which had been stolen by Mohan Singh, Asha Devi, Mukesh, Vipin and Mithun during the previous night. PW-1, Mohan Singh had sent a written complaint addressed to In-charge, Police Station Rajgarh through his younger brother Neeta Ram, PW-18.

6.4 PW-1 along with Sumitra Devi, PW-17 and nephew Surinder Kumar, PW-3 started cutting grass in their ancestral Ghasni. At about 4:45 pm, Ram Swaroop and his wife Asha Devi, sons Mukesh Kumar, Vipin and Mithun, Anju wife of Mithun and Naveen

Dhiman, son of Raghwa Nand, residents of village Chandol came together in the *Ghasni*, where PW-1 and others were cutting grass, with sticks in their hands and abruptly started abusing them. They were called by the name of their caste. All of them chased PW-1, his wife Sumitra Devi, PW-17 and Surinder Kumar, PW-3. Mukesh. Vipin and Mithun assaulted PW-1 with sticks. Kamla Devi was assaulted by Asha and Anju with sticks. Sumitra Devi was assaulted by Ram Swaroop and Naveen. Surinder Kumar. PW-3 tried to mediate but he was also assaulted with slaps and fists.

6.5 They could escape from the spot with difficulty and reached the house of Vidya Sagar, PW-2. All the accused persons chased them and reached house of Vidya Sagar. Father of PW-1 was sitting in the shop of Vidya Sagar. He was also named by caste by accused persons and was threatened of life. Mukesh and Vipin dragged the father of PW-1 out of shop, Mithun dragged Vidya Sagar out of shop and Asha Devi with Anju dragged wife of Vidya Sagar out of the room. The father of PW-1 was assaulted by Mukesh on his arm and he fell down on the ground. Thereafter, Vipin and Mithun along with Mukesh repeatedly hit Mastia (father of PW-1) all over his body with sticks. Whereas, Ram Swaroop, Asha Devi and Anju gave beatings to Vidya Sagar and his wife. Mastia was grievously injured.

All the accused persons left the spot with sticks in their hands. At that stage also, accused persons hurled abuses and life threats.

6.6 Narender, PW-5 and Rahul PW-6, who were standing near "Ration Depot" were also given beatings by accused persons and threatened that they would take care of residents of village Shaya.

6.7 Injuries were also received by PW-1, his wife Kamla Devi, Sumitra Devi, PW-17, Surinder Kumar PW-3, Vidya Sagar, PW-2 and his wife besides Mastia.

6.8 PW-1 telephonically requisitioned ambulance. Mastia was taken in the ambulance by PW-18 Neeta Ram for treatment but on the way he died.

6.9 During the altercation, golden earrings of PW-17, Sumitra, were also lost.

7. On the basis of aforesaid statement, FIR Ext. PW27/A was recorded. Initial investigation was carried by PW-27, ASI Ram Swaroop and later by PW-30, Dy. S.P. Bhopinder Singh as the offences under the provisions of Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989, were also attracted.

7.1 On 17.10.2014, spot was inspected, site plans were prepared. Dried blood was collected from the spot where deceased

Mastia had fallen on ground. Injured persons were got medically examined.

7.2 On 21.10.2014 accused persons suffered statements under Section 27 of Evidence Act and also got recovered hidden sticks, which were taken into possession by the police. Statements of witnesses were recorded. The disputed land was got demarcated. The challan was prepared and presented in the Court.

8. Learned Special Judge, Sirmour at Nahan after conclusion of trial convicted and sentenced Mukesh Kumar @ Bittu and Praveen Kumar @ Mithun and acquitted all other accused persons, as noticed above.

9. We have heard learned counsel for the appellants and also learned Deputy Advocate General for the respondent.

10. Prosecution has relied upon the version put forth by eye witnesses. The motive of offence ascribed to accused persons is existing enmity between the families of accused persons on one hand and family of complainant on the other. Additionally, the facts discovered in pursuance to statements under Section 27 of Evidence Act, suffered by accused persons have also been pressed into service.

11. The enmity is always a double-edged weapon. It can be the motive of offence or can be the means to falsely implicate the enemy.

12. We have minutely gone through the statements of witnesses as well as the documents relied upon by the prosecution and have come to the conclusion, for the reasons detailed hereinafter, that prosecution has failed to prove its case beyond all reasonable doubts.

13. The very genesis of prosecution story is rendered doubtful from the material available on record. In his statement under Section 154 Cr.P.C (Ext. PW-1/A) complainant mentioned the time of assault as 4.45 PM. Witnesses PW-3 and PW-17 have also been in unison in stating that the assailants had attacked them in '*Ghasni*' at about 4:30 PM on 16.10.2014. However, the contents of the complaint Ext. PW1/B, which was sent through Neeta Ram to police by the complainant on 16.10.2014 makes out a different case. It was explicitly mentioned in the said complaint that on 16.10.2014, accused persons had started cutting grass in the morning. On objection being raised by the complainant party, the accused persons had chased them with sticks and complainant party could save their

lives by running from the spot. In his examination-in-chief also the complainant as PW-1 stated as under:

“On the next day, on 16.10.2014, when I went to cut the grass in my Malkiati land around 10 A.M. along with my wife Kamla Devi, younger brother Neeta Ram, his wife Sumitra and cousin Surinder Kumar, then all the accused persons namely Ram Swaroop, Asha Devi, Mithun, Mukesh, Vipin, Vipin Dhiman and daughter in law Anju Devi came there and started assaulting us with dandas and abused us”

Thus, two different versions have emerged about the timing of assault. If the version given by complainant in complaint Ext PW-1/B coupled with his examination-in-chief is believed then the fact mentioning assault on deceased Mastia in the evening is falsified. On the other hand, in case the version with respect to assault at 4.30 P.M. is believed then the contents of complaint Ext. PW-1/B are falsified. Neeta Ram PW-18 in his deposition did not utter even a single word regarding the assault having been committed by the accused persons in *Ghasni*.

14. As per prosecution case, complaint Ext. PW-1/B was received at Police Station Rajgarh and was diarized at No.197/ RGH. It was for inquiring into the allegations of this complaint (Ext. PW1/B) that the police party headed by ASI Ram Swaroop (PW-27)

had left the Police Station Rajgarh at 4:15 PM on 16.10.2014 and DDR No.18, Ext. PW19/A, was recorded to this effect. That being so, the incident narrated in Ext. PW1/B definitely could not be the same incident as reported vide statement Ext. PW1/A, which allegedly took place at 4:30 pm.

15. It was also the case of complainant that on the previous day i.e. 15.10.2014, the accused party had deterred the complainant party from cutting the grass from their own land. The grass already cut by them had been stolen during the intervening night of 15/16.10.2014. Statement of PW-1 has been to this effect, whereas PW-17 Sumitra has given a different version and stated that the grass cut by them on 15.10.2014 had been brought home.

16. One of the police officials accompanying ASI Ram Swaroop to inquire into complaint Ext. PW1/B was C. Ajay Sharma No. 403 (PW-16). As per this witness police party had reached Ram Nagar at 7:30 pm and before their arrival, ambulance had already left the place with injured Mastia. According to this witness, they had crossed the ambulance about one kilometer short of Ram Nagar. In contrast to this version this witness, ASI Ram Swaroop (PW-27) has stated on oath that Mastia was still on spot, when the police party reached. As per this witness, ambulance reached later in time and

Mastia was removed in the ambulance and was accompanied by none else than the doctor and PW-18 Neeta Ram. He stated that the ambulance left the spot at about 6:15 pm. He further stated that at about 8:00 pm, PW-1 Mohan Singh received telephonic message from PW-18 Neeta Ram that Mastia had died. PW-27 Ram Swaroop categorically stated that he recorded the statement of PW-1 under Section 154 Cr.P.C between 8:30 pm to 9:20 pm and left the spot along with injured persons at 9:40 pm. Again a very sharp contrast is seen in narration of the factual position by PW-16 C. Ajay Kumar No. 403. According to him, he left the spot with “*Rukka*” to police station in some vehicle (not being official vehicle) and reached back at 4:00 am. He further stated that PW-27, ASI Ram Swaroop was continuing his investigation on spot even at the time when PW-16 reached spot at 4:00 am.

17. The time of recording of FIR Ext. PW7/A is 11:30 pm on 16.10.2014. The contents of FIR reveal that the same was recorded on the basis of “*Rukka*” received in the police station through PW-16 C. Ajay Kumar No. 403. The statement Ext. PW1/A carries an endorsement scribed by ASI Ram Swaroop, PW-27, according to which, the said statement was recorded at place Ram Nagar at 9:20 pm, on 16.10.2014, which was at a distance of 42 kilometers from the

Police Station. The statement of PW-1, however, disclosed a totally different version. According to this witness after the incident, he called ambulance. The police arrived the spot before the arrival of ambulance. He further stated that PW-27 Neeta Ram and PW-7 Narinder Kumar accompanied deceased Mastia in the ambulance. The information about death of Mastia on the way to Solan was received by him telephonically from PW-18 Neeta Ram. In the meantime, police had reached the spot and removed him, his wife, Rahul, Narinder Kumar and Sumitra Devi to Rajgarh. Thereafter, his statement Ext. PW1/A was recorded by SHO. This witness does not state about recording of the statement at Ram Nagar. In fact, according to him, his statement Ext. PW1/A was recorded after his medical examination.

18. The perusal of Medico Legal Certificates of injured persons including that of PW-1 reveal that the time of arrival of injured persons at Civil Hospital, Rajgarh, has been recorded as 1:30 am on 17.10.2014. Prosecution has also placed on record documents Ext. PW25/A, which was an application moved by the police to the Medical Officer for conducting medical examination of the injured persons. This application bears the signatures of PW-27 ASI Ram Swaroop and with date superscribed as 16.10.2014. It is decipherable

even by naked eye that the figure 6 has been superscribed on figure 7. This fact is being noticed in the background that PW-30 Dy. S.P. Bhopinder Singh has his own version to tender. According to this witness, he received the information about the incident on the evening of 16.10.2014 at about 9/9:30 PM, at Nahan. He left for Rajgarh on 17.10.2014 around 12:00 o'clock. The injured were medically examined after he reached Rajgarh. The application for conducting medical examination of the injured persons were written on his dictation. He specifically denied the suggestion that he had returned to Rajgarh during the intervening night between 16/17.10.2014. If the injured were present before the Medical Officer at 1:30 am, obviously, application Ext. PW25/A would precede such timing. In case, PW-30, had left Nahan for Rajgarh at 12:00 o'clock on 17.10.2014, it is beyond imagination, as to how, he could dictate application Ext. PW15/A and how the injured were examined thereafter.

19. In statement Ex.PW1/A, the complainant PW-1 has specifically stated that on 16.10.2014, he along with his wife, younger brother Neeta Ram PW-18, Sumitra Devi PW-17, nephew Surinder Kumar PW-3 had visited their ancestral *Ghasni* for the purposes of cutting of grass and found the grass cut by them on the

previous date missing from the spot, which had been stolen by accused persons. In his examination-in-chief also PW-1 has admitted the presence of Neeta Ram PW-18 in the *Ghasni* on 16.10.2014. He specifically mentioned that on 16.10.2014, when he along with others including Neeta Ram went to cut the grass in the land owned by them at around 10:00 am, then all the accused persons came there and started assaulting them with sticks and also abused them. However, in cross-examination on behalf of the defence, PW-1 stated that Neeta Ram was with them on 15.10.2014 and not on 16.10.2014. PW-18, Neeta Ram in his statement before the Court did not state that he was accompanying his brother, wife etc. to the *Ghasni* on 16.10.2014. There is no explanation on record to have reconciliation between the facts contrarily stated, as noticed above. On one hand, in the examination-in-chief of PW-1 and also as per contents of Ext.PW1/B, the complainant party was allegedly assaulted by the accused persons in the morning hours of 16.10.2014, whereas the time of incident as per Ext.PW1/A and the version coming from the statements of PW1, PW3 and PW17 is 4:30/4:35 pm on 16.10.2014.

20. In order to evaluate the veracity of version of the witnesses, who had seen the altercation in the *Ghasni*, reference can be made to the statements of witnesses PW-1, PW-3 and PW-17.

Witness PW-1 in his examination-in-chief makes a mention only of the fact that at 10:00 am, on 16.10.2014, he alongwith his wife Kamla Devi, brother Neeta Ram, Sumitra and Surinder Kumar reached their Ghasni to cut the grass or the accused persons came there and started assaulting them with sticks and abused. This made them to flee from the spot. In his cross-examination, PW-1 detailed that he was assaulted by Mukesh with sticks (Danda) and accused Mithun had caught hold of him from wrist and backside of the collar. He further stated that Sumitra Devi was assaulted by Ram Swaroop and his wife. PW3-Surinder Kumar stated that on 16.10.2014, at around 4:30 pm, all the accused persons came on spot in *Ghasni* and they cordoned them off. All the accused persons **were** in the possession of sticks. Accused persons assaulted them and they fled away from the scene. This witness does not provide the details as to which of the accused inflicted injuries on whom. PW-17 Sumitra Devi also stated that at about 4:30 pm, on 16.10.2014, when they were cutting grass in their *Ghasni*, all the accused persons came armed with sticks and "Kainths". As per her, accused Mithun dealt a blow of stick on her head and other parts of the body including all the other accused. She along with her sister-in-law Kamla Devi were assaulted and were

thrown in bushes. She further stated that she kept lying in bushes for half an hour.

21. The case of the prosecution is that after the complainant party was assaulted by the accused persons in *Ghasni*, all the persons forming complainant party had fled from the scene. As per PW-1 and PW-17, all the persons from complainant party had fled towards the house of PW-2 Vidya Sagar but PW-3 Surinder Kumar categorically stated that he did not run towards the house of Vidya Sagar but he ran towards another side i.e. towards Dhamla road.

22. Coming to the analysis of the evidence brought on record to prove the assault on deceased Mastia, the relevant witnesses are PW-1, PW-2, PW-3, PW-5, PW-6 and PW-17. According to PW-1, accused Mithun and Mukesh started assaulting Mastia with sticks. Asha, Anju, Vipin, Vipin Dhiman came there and they assaulted Mastia with kicks and sticks. As per PW-2, it was Mukesh and Mithun only who assaulted Mastia with sticks. Ram Swaroop, Asha Devi and Anju were standing in the courtyard with sticks in their hands. In cross-examination, this witness categorically stated that no other accused assaulted Mastia in his presence. PW-3, PW-5, PW-6 and PW-17, however, attributed the assault on Mastia to all the accused persons. At this stage, it will not be irrelevant to evaluate the

truthfulness of these witnesses. Undisputedly, PW-1, PW-3 and PW-17 are close relations. PW-5 and PW-6 are the persons who belong to the same village and same community to which complainant party belonged. PW-5 is son of PW-4. This witness had reached the spot immediately on receiving information about the scuffle. He remained associated in the investigation. The sticks were allegedly got recovered by the accused persons in his presence. It is noticeable that village Shaya, to which the complainant party as well as PW-4 were belonging, is at a distance of about 3 ½ kilometers from the village Ram Nagar, where Mastia was allegedly beaten. The immediate arrival of PW-4 from a distance on hearing about the scuffle and then to remain associated in investigation even a few days thereafter clearly shows that he was close to the complainant party. Similar would be the situation of PW-5, his son. PW-6 also belongs to the same village and same community. Both PW-5 and PW-6 have stated that though they had come to fetch ration and were standing on the road, the accused party had also assaulted them while crossing the road. It is not a case that Ram Nagar was a secluded place where none other than the persons belonging to village Shaya were available at the time of incidence. It has come in the statement of prosecution witnesses that the house of Banu Ram immediately adjoins the house

of PW-2 Vidya Sagar. PW-4 had also admitted that 2-3 families reside in village Ram Nagar, besides government offices located there. PW-6 has admitted that there were other persons at the ration depot but he could not name them. It being so, the question arises, as to why, only persons from a particular village and a particular community were made the witnesses and none other from the village Ram Nagar had come forward to narrate about the incident.

23. The incident had taken place in the verandah of house of PW-2, Vidya Sagar, who is stated to be an eye witness, but the version of PW-2 does not match the version of other witnesses who allegedly had watched the happening of incident. Insofar as PW-5 and PW-6 are concerned, they were standing on the road and it has come in the evidence that the courtyard/verandah of the house of Vidya Sagar was not visible from road due to higher elevation. In such event, how the said witnesses could see the actual happening is a question mark. Thus, it is clearly inferable from the records that the eye witnesses of the incident projected by prosecution were interested witnesses and their statements were to be seen with circumspection.

24. PW-2 Vidya Sagar is the person from whom the complainant party had purchased the disputed *Ghasni* and therefore, his interest with the side of complainant party cannot be ruled out.

The clear variance in the statements of Vidya Sagar on one hand and other witnesses makes the prosecution case highly doubtful. PW-1, PW-3 and PW-17 have stated that after having reached the house of Vidya Sagar or near to it, they all had hidden themselves and had seen such a serious assault on Mastia without intervening. This conduct of these witnesses is highly doubtful. The complainant party was armed with sickles and there could not be any reason to believe that a son and daughter-in-law kept watching their old age father being mercilessly beaten as stated by them. Similarly, PW-3 Surinder Kumar a young man, in view of his having close relation with the deceased, also did not intervene and allowed the old man to be beaten mercilessly.

25. Presence of PW-3 Surinder Kumar also becomes doubtful from the fact that according to him, PW-1 Mohan Singh and PW-18 Neeta Ram had accompanied Mastia in the ambulance, whereas it is nobody's case that Mohan Singh had accompanied Mastia in the ambulance. Even Mohan Singh does not say so. On the contrary, the prosecution case was that it was PW-7 Narender Kumar who had accompanied Mastia along with Neeta Ram. Even this witness i.e. PW-7 Narender Kumar appears to have made an incorrect statement in the Court, which shows his interestedness with the

complainant and success of the prosecution case. PW-7 categorically deposed that while on the way in the ambulance, Mastia had told him that Mastia was assaulted by family of Ram Swaroop and Naveen from village Chandol with sticks, fists and kick blows. This statement is clearly falsified by PW-8, Pushp Lata, who was Emergency Medical Technician deputed on the Ambulance. According to her, the patient remained unconscious when he was being taken in the ambulance to Solan. He was put on oxygen. Near place Sanaura, the patient had died at about 9:30 pm. She was very categorical in stating that the patient had not talked to any person during the journey from Noori to Sanaura before he died. No motive can be attributed to PW-8 to make incorrect statement. PW-27 who was the Investigating Officer of the case, had made a totally different version that no one was sent in the ambulance and only doctor was there. He further stated that Neeta Ram was in the ambulance. Thus, he also does not state that PW7-Narender Kumar was in the ambulance.

26. PW-1 in his statement clearly mentioned that when the accused persons confronted the complainant party with the intention to assault, the complainant party was sitting having tea in their Ghasni. PW-17 on the other hand, did not support PW-1 on this aspect and rather made a different version that they were cutting grass

at a distance of 3-4 feet from each other when the accused persons launched attack on them.

27. It is not understandable, in case Mastia died at about 9:30 pm as deposed by PW-8, Pushpa Lata, how the Investigating Officer could be believed when he says that he started writing statement of PW-1, under Section 154 Cr.P.C., at 9:00 pm and continued till 9:45 pm. The entire matter appears to be mopped up and padded. The suppression of true facts and also declaration of incorrect facts not only by the complainant party but also by the official witnesses casts a serious doubt on the entire prosecution story.

28. On the other hand, if the defence raised by the accused persons is juxtaposed against the prosecution case, it appears to have been probabelised. As per defence version, the complainant party was the aggressor and they were cutting the grass from *Ghasni* of accused persons and on being confronted, they ran from the spot. The topography of the area where *Ghasni* is situate is hilly terrain with slopes having *nullah* on one side. Strata is stated to be stony and the path leading to *Ghasni* is also said to have stony patches. These facts have been admitted by almost all the witnesses. PW-28 Dr. Piyush Kapila has categorically opined that the injuries found on the person

of Mastia were unlikely to be result of assault with sticks. He further stated that there was no specific pattern of injury as would be in the case of assault with sticks. On the other hand, such injuries can be result of fall as were found on one side of the body. Fractures were found on right humerous, right radius & ulna and right tibia. All these injuries had exposed contusions. In addition, some ribs of Mastia were fractured, which according to PW-28 could be caused by fist and kick blows. Neither PW-1 in his statement Ext.PW1/A had made mention about inflictions of kicks and fist blows nor PW-2 Vidya Sagar had said so. Thus, the entire hypothesis of the prosecution story becomes doubtful as none of the injures on the person of Mastia were found to have been inflicted with sticks. As far as the injuries on the persons of PW-1, PW-5, PW-6 and PW-17 are concerned, these injuries were simple in nature and there was no specific medical opinion that the injuries found on the persons of aforesaid witnesses could be caused only with the sticks. Rather, the Medical Officer PW-26 had deposed that such injuries could be caused due to fall.

29. The strained relations and enmity between both the groups i.e. complainant party and accused persons are established. It is proved on record that they had civil litigation with respect to disputed *Ghasni*. The suit filed by Ram Swaroop against Mastia and

his sons in respect of the disputed *Ghasni* was decreed. In 2013, a complaint was lodged against Mastia, PW-1 Mohan Singh and PW-18 Neeta Ram at the instance of accused persons regarding trespass into their *Ghasni* as a result of which all three were arrested and were bailed out after about three days. This fact has been admitted by PW-18 Neeta Ram. In view of the existing strained relations between the parties, the complainant party appears to have distorted the facts to take undue advantage of the situation and to implicate the accused persons in commission of serious offence.

30. The prosecution relied upon the discovery of sticks from the hidden places at the instance of accused persons in consonance of disclosure statements suffered by them under Section 27 of Evidence Act. PW-9 Ramesh Chand is one of the witnesses to have witnessed the making of disclosure statements by the accused persons. However, in his deposition before the Court, he has stated that Dy S.P. Bhopinder Singh had already disclosed to them that the accused persons were to make statements regarding recovery of sticks and they should wait. This witness was in the police station with PW-18 Neeta Ram, which again casts a doubt on his independence as also the statement under Section 27 of the Evidence Act. The witness PW-18 Neeta Ram had gone to the extent of saying that when they

reached police station Dy.S.P. had already recorded the statements of the accused persons. Though, he later qualified that statement of Ram Swaroop only had been recorded before their arrival and rest were recorded thereafter. This is sufficient to infer the mode and manner in which the investigation was carried and a big question mark is raised on its fairness. It has also come on record that after recovery of sticks from the bushes, the same were brought to the house of PW-2, Vidya Sagar and sealing procedure was undertaken. In any case, the recovery of sticks will not have any effect on merits of the case as the injuries on the person of deceased were not connected with the sticks and the injuries on other injured persons were not necessarily the result of beatings given by sticks.

31. From the above referred material, we are convinced that prosecution has failed to prove its case beyond reasonable doubt. The conviction of appellants in Criminal Appeal No. 240 of 2017, is unjustified. The learned Special Judge has failed to appreciate the evidence in right perspective and has erred by ignoring material aspects emerging from the facts of the case.

32. Criminal Appeal No.240 of 2017, is accordingly, allowed. The conviction and sentence imposed upon the appellants in Criminal Appeal No. 240 of 2017, vide judgment dated 31.12.2016

and sentence order of the same date passed by learned Special Judge, Sirmour at Nahan, in Sessions Trial No. 9-ST/7 of 2015, are set aside. The appellants are ordered to be released from custody forthwith, if not required in any other case.

33. In view of the provisions of Section 437 of Code of Criminal Procedure, 1973, appellants Mukesh alias Bittu and Parveen Kumar alias Mithun, both sons of Sh. Ram Swarop, are directed to furnish their respective personal bonds in the sum of Rs.25,000/- with one surety in the like amount each, before the learned Registrar (Judicial) of this Court, which shall be effective for the period of six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of leave, the appellants aforesaid, on receipt of notice thereof, shall appear before the Supreme Court.

34. Criminal Appeal No. 281 of 2017, is accordingly dismissed. All the accused persons are acquitted of all the charges framed against them.

Accordingly, both the appeals are disposed of, so also the pending miscellaneous application(s), if any.

**(Sabina)
Judge**

**29th April, 2022
(Sushma)**

**(Satyen Vaidya)
Judge**

