

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: November 01, 2017*  
*Judgment Delivered on: November 08, 2017*

+ **CRL.A. 542/2017**

SUMIT @ PREM CHOUDHARY & ORS ..... Appellants

Through: Mr.C.Mohan Rao & Mr.Lokesh  
Kumar Sharma, Advocates

versus

STATE ..... Respondent

Through: Mr.Kewal Singh Ahuja, APP  
for the State with SI Ashish  
Kumar, PS Bhajan Pura

**CORAM:**  
**HON'BLE MS. JUSTICE PRATIBHA RANI**

**JUDGMENT**

1. By way of this appeal filed under Section 374 Cr.P.C., the appellants assail the judgment dated 1<sup>st</sup> April, 2017 and order on sentence dated 17<sup>th</sup> April, 2017 whereby they have been convicted for committing the offence punishable under Section 307/34 of IPC and sentenced to undergo R.I. for a period of 5 years each with fine of ₹ 25,000/- each and in default, to undergo SI for six months.

2. In brief the prosecution case is that on the night intervening 5<sup>th</sup>/6<sup>th</sup> June, 2015 at about 12.25 a.m. DD No.3A Ex.PW-2/A was recorded at PS Bhajanpura about the information to PCR in respect of a stabbing incident near Pappu Chakki, Main Market, Bhajanpura and

that the injured was being taken to the St.Stephens Hospital. The mobile number of informant (PW-17 Amar Singh) was recorded as 9718665144. The DD was assigned to Head Constable Jai Singh (PW-13) who left with Ct.Vikas (PW-12). On reaching the spot and finding no eye witness, Head constable Jai Singh left Ct.Vikas to guard the spot and reached St.Stephens Hospital and found injured Bijlesh @ Popal admitted there but was opined to be 'unfit for statement'. As no eye witness was present at the spot or in the hospital, the DD entry was kept pending. Head Constable Jai Singh again visited the hospital at about 10.30 AM. The injured was still unfit and the injury was opined to be grievous caused by blunt object. At that time Sh.Amar Singh, PW-17, father of the injured ( who also informed the PCR) got his statement Ex.PW-3/A recorded on the basis of which FIR Ex.PW-1/B was recorded.

3. During investigation appellant No.1, Sumit was arrested and his father and brother, namely, Mahipal and Ankit, appellant Nos.2 and 3 herein, surrendered before the Court. The injured remained admitted in the hospital till 18<sup>th</sup> June, 2015 and after his discharge his statement was recorded on 21<sup>st</sup> June, 2015. During investigation, CCTV footage from ATM booth installed near the incident was also seized. After completion of investigation, all the appellants were sent to face trial for committing the offence punishable under Sections 307/34 IPC.

4. In order to substantiate its case, the prosecution examined 23 witnesses. All the appellants/accused during their examination under Section 313 Cr.P.C. denied the prosecution case. DW-1, Inder

(maternal Uncle of appellant No.1 Sumit) was examined to prove the plea of alibi taken by the appellant No.1, Sumit.

5. After appreciating the testimony of the prosecution witnesses and the defence witness, learned Trial Court was of the view that the plea of alibi taken by the Appellant No.1, Sumit by examining his maternal uncle Sh.Inder (DW-1) did not stand proved in the absence of any documentary evidence that DW-1 was running a gym workshop which was attended to by the appellant No.1, Sumit during that night. While relying on the testimony of PW-16 Sh.Bijlesh – the injured and PW-17 Sh.Amar Singh – the complainant/father of injured, the learned Trial Court held them guilty under Section 307/34 IPC and sentenced to undergo RI for a period of 5 years each with fine of ₹ 20,000/- each in default to undergo SI for six months.

6. Learned counsel for the appellants, Mr.C.Mohan Rao has questioned the credibility and trustworthiness of the testimony of material public witnesses specially the injured and his father. Failure of the prosecution to play the CCTV footage which was collected during investigation was also taken to be a ground to seek the benefit of doubt to the appellants.

7. Learned counsel for the appellants has also submitted that it is admitted case that the parties are well known to each other being neighbours. PW-1, the complainant claimed having heard the instigation by appellant No.2 Mahipal to his two sons. But while calling the PCR, he informed it to be an incident of stabbing whereas as per the opinion on the MLC, the injuries were caused by blunt object. It has further been contended that as per the statement of the

PW-17 he was at a distance when he heard appellant No. 2, Mahipal exhorting his son, Sumit and Ankitto kill the injured. It has also been contended that the statement of the injured under Section 161 Cr.P.C. has been recorded after inordinate delay i.e. on 21<sup>st</sup> June, 2015. The father of the injured was also not found present in the hospital as is proved from the statement of PW-3, Head Constable Jai Singh. Learned counsel for the appellants has also referred to the MLC wherein alleged history given is that unknown persons were involved in the incident and if father of the injured had seen and heard the appellants exhorting and causing injuries to his son why in the MLC it is mentioned that his son was assaulted by the unknown persons. The entire prosecution story is nothing but an afterthought to implicate the appellants in this false case. Hence delay in registration of FIR in this case is sufficient to show that it is a case of false implication. Thus, all the appellants are entitled to be given benefit of doubt and they may be acquitted.

8. On behalf of the State, learned APP while supporting the judgment of the learned Trial Court contended that the informant PW-17 is father of the injured. He had informed the PCR from his mobile number and after informing the police he had taken his son to the St.Stephens Hospital. Head Constable Jai Singh found the injured in the hospital and the injured was 'unfit for statement'. Merely because the PW-17 - the father of the injured could not meet with the Head Constable Jai Singh in itself is not a ground to discard his otherwise creditworthy testimony. Learned APP has also contended that the treatment record of the St.Stephens Hospital shows that

injured remained unfit for statement for many days as due to the injuries suffered by him, he was unable to speak. Thus, it was not possible to record his statement soon after the incident. It could be done only after he was in a position to speak and make the statement. Learned APP for the State has also submitted that CCTV footage was seized and placed on record but due to technical fault it could not be played. Thus, failure of the prosecution to play the CCTV footage was not a ground to give benefit of doubt to the case of the appellants which is fully corroborated by the medical record of the injured i.e. from the date of hospitalization till his discharge from St. Stephens Hospital.

9. I have considered the rival contentions and carefully gone through the entire record.

10. To justify a conviction under Section 307 IPC the prosecution has to prove that the act was done with the intention to commit murder. Though the nature of injuries may be of assistance in ascertaining the intention of the accused, such intention may also be gathered from the circumstances like nature of weapon used, part of the body where injuries were caused, severity of the blow and motive etc.

11. In the case Badam Singh vs. State of Madhya Pradesh AIR 2004 SC 26, the Apex Court has observed as under:-

*'16.....The mere fact that the witnesses are consistent in what they say is not a sure guarantee of their truthfulness. The witnesses are subjected to cross-examination to bring out facts though consistent, their evidence is not acceptable for any other reason. If the*

*Court comes to the conclusion that the conduct of the witnesses is such that it renders the case of the prosecution doubtful or incredible, or that their presence at the place of occurrence as eye witnesses is suspect, the Court may reject their evidence.....'*

12. The case of the prosecution is mainly based on the statement of PW-17 Sh.Amar Singh – father of the injured, PW-4 Sh.Rajesh – brother of the injured and PW-16 Sh.Bijlesh @ Popal – the injured.

13. PW-17 Sh.Amar Singh - the complainant and the father of the injured, whose name is also mentioned in the column 'Brought By' in the MLC to be the person who brought the injured to St.Stephens Hospital, has deposed as under:

(i) On the night intervening 5<sup>th</sup> & 6<sup>th</sup> June, 2015, at about 12:00 mid night when he was present outside his house, he heard the voice of appellant No.2 Mahipal saying to his son '*is sale ko aaj jaan se maar do*' which was coming from the side of Shyam Singh market, near bank and temple at Bhajanpura main market road.

(ii) He reached the spot and saw the accused Mahipal, Sumit and Ankit running from there.

(iii) He found his son Bijlesh lying there in the pool of blood and dog of the accused was licking the blood from the face of the injured.

(iv) In the meantime his son Rajesh Kumar and some other person also came at the spot.

(v) He removed his son to the hospital in his car make i-10. He made a call to the Police Control Room (PCR) at 12:20 AM from near the spot when they started going to the hospital.

(vi) His statement Ex.PW-3/A was recorded by the police on 6<sup>th</sup> June, 2015 as his son was not able to speak.

14. PW-17 Sh.Amar Singh – the complainant, in his cross-examination, has stated that he visited the police station at 6:00 PM and put his signature on the complaint at that time. He further stated that he left the hospital at 5:00 PM for police station and from the hospital he directly went to the police station at 6:00 PM. He did not meet the police on 6<sup>th</sup> June, 2015 except during his visit to the police station. He also stated that Mobile No.9718665144 belong to him and he made the call to the PCR from his mobile. He reached the hospital along with the injured at 12:15 AM after leaving the spot at 12:07 AM. Statement of his son Bijlesh – the injured (PW-16) was recorded on 21<sup>st</sup> June, 2015 in his presence at his house.

15. PW-4 Rajesh Kumar, brother of the injured Bijlesh who accompanied him to St.Stephens Hospital stated that on the night intervening 5<sup>th</sup> 6<sup>th</sup> June, 2015, at 12:10 AM he heard the noise outside his house. He came on the street and saw his father standing and Bijlesh, injured (PW-16) was lying in a pool of blood. He removed his brother with the help of his father to St.Stephens Hospital and before going to the hospital his father made PCR call. Police recorded his statement on 6<sup>th</sup> June, 2015 at about 8-8:30 AM.

16. PW-16 Sh.Bijlesh – the injured has stated that on the intervening night of 5<sup>th</sup>/6<sup>th</sup> June, 2015 at about 11.30 p.m. he was returning from Nithora, Loni, Ghaziabad, U.P. in his Duster car bearing registration No. DL-1CS-7505. When he reached main Bhajanpura Market road in his car, all the above three accused

persons, namely, Mahipal, Ankit @ Chhotu and Sumit @ Prem Chaudhary signaled to stop. Since he knew them, being resident of his colony, he stopped his car near Shyam Singh Market, Bhajanpura. Accused Sumit dragged him from driving seat and Mahipal was saying that 'Ankit and Sumit, aaj ise jaan se marna hai'. Immediately Ankit and Mahipal caught hold him by his hand and Sumit Chaudhary gave beating by fist, kick and elbows with an intention to kill him. He ran to save himself and reached near ATM booth of Bank of Baroda, Shyam Singh Market but appellant No.1 Sumit chased him and caught him. Sumit threw him on the ground and gave beatings by fist, kick and elbows. He sustained injury on face, eyes, head and nose and became unconscious. Thereafter, he was hit by some object which he could feel. He remained in hospital from 6<sup>th</sup> June, 2015 to 18<sup>th</sup> June, 2015. His statement was recorded at his house on 21<sup>st</sup> June, 2015. In cross-examination PW-16 has stated that the distance between his house and place of incident is 120/125 paces and it is a populated area. The distance between his house and house of the accused is 50/60 paces. He is 10<sup>th</sup> pass and can read and write Hindi and English but he did not make any statement in writing before the police.

17. PW-3 HC Jai Singh to whom DD No.3A was marked was first to visit the spot and hospital. He has stated as under:-

(i) DD No.3A Ex.PW-2/A was assigned to him at 12.30 a.m. but when he visited the spot at 12.45 a.m. no one was present there and leaving Constable Vikas to guard the spot, he reached at St.Stephens Hospital.

(ii) At 1.00 or 1.15 a.m. he reached the hospital and checked the MLC. He found Bijlesh Kumar@Popal under treatment but unfit to make statement.

(iii) No eye witness met him either at the spot or at the hospital.

(iv) In his cross-examination he admitted that none of the family members/eye witness met him in the hospital and the MLC recorded assault by unknown people and patient was found lying near his house by his family members.

(v) He left the hospital at about 1.45 a.m. and returned to Police Station but no arrival entry was made by him and DD No.3A was kept pending. Next day he left the police station at 10.00 a.m. and reached St.Stephens Hospita at 10.30 a.m. Amar Singh met him there and he recorded his statement between **10.30 a.m. to 11.00 a.m.** but presented rukka at **8.00 p.m.** Constable Vikas guarded the spot from 12.40 a.m. to 7.30 p.m. He had not seen CCTV footage of ATM booth at any point of time.

18. PW-12 Ct.Vikas who accompanied HC Jai Singh stated that he remained at the spot from 12:30 AM till 2.00 - 2:30 AM which is at variance to the version of PW-3 HC Jai Singh that he guarded the spot till 7.30 PM.

19. PW-5 Dr.Namita Toppo attended the injured Bijlesh when he was brought to the hospital and prepared his MLC Ex.PW-5/A at 12.31 AM. During her cross-examination she stated that the alleged history was given by Sh.Amar Singh, PW-17 who accompanied the injured. Patient was conscious when she attended him and prepared his MLC. He did not have any head injury.

20. In answer to Court question, PW-5 Dr. Namita Toppo stated that patient was conscious but not in a position to speak. She stated that the patient was in movable condition when examined by her and had no other injury except those mentioned in the MLC.

21. The MLC Ex.PW5/A of the injured records as under:-

***'Alleged H/o assault with unknown people followed by nasal bleeding. Pt was found by family member lying near his house. Pt not able to open mouth, bleeding from mouth.***

*O/E  
Pulse 92  
BP 150/100  
Chest B/L UBS+  
Cus S<sub>1</sub> S<sub>2</sub>  
P/A Soft  
Nasal bleeging +  
Facial ..... +*

*Swelling L Black eye  
R Black eye  
Left Cheek .....  
+ active bleeds +'*

22. PW-11 is Dr.Bharat Rattan Jindal, St.Stephens Hospital who prepared the discharge summary of the injured Bijlesh when he was discharged on 18<sup>th</sup> June, 2015. He stated that the nature of the injury on the face were grievous in nature. In his cross-examination he admitted that the injuries were not dangerous for life of the injured.

23. The Discharge summary Ex.PW11/E records as under:-

Doctor Incharge: Bharat Rattan Jindal

Patient Name	BIJLESH KUMAR POPAL
Admission Date, time	06/06/2015
Discharge Date	16/6/15 (some overwriting on the date to make it look as 18/6/15)
Complaint & History:	<b>Alleged history of road traffic accident.</b>  History of nasal and oral bleeding present.  No history of loss of consciousness, convulsions.

24. The first question that arises for consideration is that whether PW-17 Amar Singh father of the injured and PW-4 Rajesh who named the appellants to be the assailants, can be termed as witnesses to the occurrence. After examining their testimony before the Court, it is ample clear that they are not witnesses to the occurrence and at the most can be the informant and the persons who removed the injured to the hospital. PW-17, father of the injured heard Mahipal Singh instigating his sons and found his son in a pool of blood and called PCR while removing his son to hospital at 12.25 a.m. PW-4 Rajesh - brother of the injured also reached the spot and removed his brother to St.Stephens Hospital in his i-10 Car.

25. Apart from this there is one more fact which cuts the roots of the prosecution case and that is the PCR Form, Ex.PW-7/A. The first DD/information was given by PW-17 Amar Singh, the father of the injured wherein he informed it to be a case of stabbing. The PCR Form Ex.PW7/A It records all the information right from the stage the incident was reported by PW-17 Amar Singh from his mobile No.9718665144 and the report received by the PCR van that visited

the spot and the St.Stephen's Hospital. The details filled in the PCR Form Ex.PW-7/A are extracted hereunder:

*Informant:* Manju Devi  
*Mobile:* 9718665144  
*Address:* C-407, Gali No.17, C-Block, Bhajanpura, Delhi  
*Complaint:* Quarrel  
*Priority:* High  
*Incident Address:* Bhajan Pura, Main Market, Papu Chaki ke pass.  
*Incident Information:* Quarrel chaku mar diya hai INJ (injured) ko St.Stephen Hospital le ja rahe hai.  
*PS Name:* Bhajanpura  
*District:* North East  
*Transmitted to VAN by:* HC/SANDEEP/876/COMM/28960115  
*Report received from MPV (Mobile Police Van):* 190 = 06/06/2015 00:47:55 Main Market Bhajan Pura Allahabad Bank ke samne ek aadmi jiske quarrel mein chaku maar rakkha tha jisko koi U/K (unknown) Army Hospital le gaya hai = 06/06/2015 00:53:00 caller ka phone mila rahe hain jo utha nahi raha hai. C/R (Control Room) inform 06/06/2015 01:28:29 mauke par ek ladka Rahul aaya hai jo keh raha hai jaankaro se quarrel jis mein INJ (injured) ko chaku lage hai jisko jaankar St. Stephen Hospital le gaya hai. Call Tx to North for further detail = 06/06/2015 02:06:22 ladka Bulesh @ Popal S/o Amar Singh aged 30 years R/o C-407 M, Bhajan Pura jo uske father ko Shyam Singh Market mein behosh mila tha, jisko wo St.Stephen Hospital laye hain ko check karne ke baad doctor Lalit ne

*bataya ki chaku ke ghaav nahi hai, kisi dande ya rod se mara hua hai, ladka abhi unconscious hai, jhagde ka karan or kisse hua, ladke ke father ko pata nahi hai pata nahi hai 06/06/2015 02:07:38 C/R (Control Room) informed 06/06/2015 02:08:23 HC Jay Singh 460/NE.*

Apparently, the complainant did not describe the names of the assailants, either while informing the PCR or to PW-5 Dr.Namita Toppo, who prepared the MLC and the alleged history recorded therein of assault by unknown person has been given by none else but the complainant-Amar Singh himself.

26. The statement of the injured proved that it is a case of beating with fist and blows and no injury by any blunt or sharp weapon was received by him. PW-16 Sh.Bijlesh – the injured stated that on the night intervening 5/6<sup>th</sup> June, 2015 at about 11.30 pm he was returning from his relative's house in Duster Car. When he reached main Bhajanpura Market road, all the above three accused persons, namely, Mahipal, Ankit @ Chhotu and Sumit @ Prem Chaudhary gave him signal to stop. Since he knew them being resident of his colony, he stopped his car near Shyam Singh Market, Bhajanpura. Accused Sumit dragged him from driving seat and Mahipal was saying that 'Ankit and Sumit, aaj ise jaan se marna hai'. Immediately Ankit and Mahipal caught him by his hand and Sumit Chaudhary gave beating by fist, kick and elbows with an intention to kill him. He ran to save himself and reached near ATM booth of Bank of Baroda, Shyam Singh Market but appellant No.1 Sumit chased him and caught him.

Sumit threw him on the ground and gave beatings by fist, kick and elbows. He sustained injury on face, eyes, head and nose and become unconscious. Thereafter, he was hit by some object which he could feel. He did not state about any instigation by Mahipal to his two sons Sumit and Ankit to kill him which could be heard by his father from a distance.

27. PW-17 Sh.Amar Singh – father of the injured has stated that he heard Mahipal instigating his children to kill Bijlesh and also saw them running from the spot. If it was so, then while giving alleged history of assault as given at Ex.PW-5/A why he would mention the incident to be that of ‘assault by unknown people’ and the injured being found bleeding by the family members. The history given by the complainant Amar Singh recorded by PW-5 Dr.Namita Toppo clearly proved that the PW-17 Sh.Amat Singh – the father and PW-4 Sh.Rajesh – the brother are not witnesses to the occurrence and till the time of preparation of MLC they were not knowing the identity of the assailants.

28. PW-3 HC Jai Singh to whom the DD was marked stated that again on 6<sup>th</sup> June, 2015 he left the police station at 10:00 AM for going to the hospital and there he recorded the statement of Amar Singh. But Amar Singh stated that he visited the police station on 6<sup>th</sup> June, 2015 and it was the first meeting with the police officer when he also signed his complaint. There is inordinate delay in sending the rukka to the police station. As per HC Jai Singh, he recorded the statement of Amar Singh on 6<sup>th</sup> June, 2015 between 10:30 to 11:00 AM at St.Stephen Hospital and then sent the rukka. It does not take

nine hours from St.Stephen Hospital to Police Station Bhajan Pura to send rukka for registration of FIR.

29. PW-1 SI Dhanattar Singh, Duty Officer has deposed that he was working as Duty Officer on 6<sup>th</sup> June, 2015 from 4:00 PM to 12:00 midnight. He received rukka Ex.PW1/A sent by HC Jai Singh which was presented before him at 8:10 PM, on the basis of which FIR was registered. He also recorded DD No.39A Ex.PW-1/D regarding registration of FIR.

30. MLC Ex.PW5/A prepared at 12.31 a.m. in the column 'brought by' record the name of Sh.Amar Singh, PW-1, father and the alleged history given is that of 'assault by unknown persons'. PW-4 Rajesh – brother of the injured states that history was given jointly by him and his father. PW-5 Dr.Namita Toppo states that when the injured was brought to the hospital, he was conscious but unable to speak.

31. PW-3 HC Jai Singh who, on receipt of DD No.3A, visited the spot alongwith Ct.Vikas on the night intervening 5/6<sup>th</sup> June, 2015 and thereafter to St.Stephen Hospital, has stated that he did not find any witness or father or brother of the injured at the spot or hospital and thus returned to the police station. He did not make any arrival entry informing the reasons for keeping the DD No.3A pending and why no effort was made to look for the complainant (who is father) in the hospital by calling him on his mobile when on the MLC itself it was mentioned that injured (PW-16) was brought by father, Amar Singh. Though the injured (PW-16) was not in a position to speak because of the injuries but he is an educated person. He could have been questioned about the identity of the assailants by making him answer

in writing but no such effort was made. Thus, the identity of assailants was revealed after an inordinate delay by PW-17 Sh.Amar Singh – father of the injured, without being an eye witness.

32. There are material contradictions in the testimony of the father and brother as to when and where their statement was recorded. As per PW-17 Sh.Amar Singh - the father of the injured, in the evening he went to the police station and made the statement. PW-4 Sh.Rajesh – brother of the injured stated that his statement was recorded orally in the morning at 6.00 A.M. PW-3 HC Jai Singh has stated that on the next day, he left the police station at 10.00 am and reached St.Stephen Hospital at 10.30 AM where Sh.Amar Singh – father of the injured met and he recorded the statement of Sh.Amar Singh between 10.30 AM to 11.00 AM.

33. As per PW-17 Sh.Amar Singh - father of the injured, stated that he heard appellant No.2 Mahipal instigating his sons but did not see any of the assailants causing any injury to Bijlesh either with hand or with any weapon. Despite that he informed the PCR that '*chaku maar diya hai injured ko St.Stephen hospital le ja rahe hain*'. The MLC recorded that the nature of injury was grievous but caused by blunt object. The Duster car in which the injured was travelling was nearby and he could have been removed by the father and brother in that very car instead of bringing in another car though the car of the injured was not touched by any of the assailants. The distance from the place of incident upto St.Stephens Hospital could not have been covered within six minutes as the time of call made by the father as per the PCR Form

Ex.PW7/A is 12.25 AM and the time of preparation of MLC Ex.PW5/A at St.Stephens Hospital is 12.31 AM.

34. It is injured's own version that on the night intervening 5<sup>th</sup> & 6<sup>th</sup> June, 2015 at about 11.30 pm he was returning in Duster car from his relatives house from Nithora, Lone, Ghaziabad, U.P. The accused/appellants could not have any advance notice about the movement of the injured or approximate time by which he was likely to reach near his house. There was no reason for them to be present on the road at midnight as they were not even aware of the movements or location of the injured so as to be present to assault/kill him at midnight. The three appellants who are father and sons could not have gathered at one place close to their house to stop the moving car of the injured especially when their respective houses are so close to the spot that even their voice could be heard by the father and brother of the injured.

35. None of the appellants was armed with any weapon. As per the injured he was hit on his face with fist blows and elbows. PW-17 Amar Singh, father of the injured stated that place of occurrence is at a distance of 100-120 paces from his house and if he could hear Mahipal instigating his sons to kill PW-16 Sh.Bijlesh and also saw them running away, he could have also witnessed the injuries being caused to his son. Admittedly neither PW-17 Amar Singh nor PW-4 Rajesh had seen any of the appellants causing any injury to PW-16. The Duster car in which injured was returning was not used by PW-17 Amar Singh and PW-4 Rajesh for taking him to the hospital. The DD entry at 12:25 AM was recorded on the call being made from the spot

by PW-17 Amar Singh. It is just not possible to cover the distance from Bhajanpura to St.Stephen's Hospital within 6 minutes as MLC has been prepared at 12:31 AM. Statement of PW-5 Dr.Namita Toppo is to the effect that injured was not able to speak because of injuries on the face but was able to move other limbs. In that situation he could have been questioned about the identity of assailants by just getting his answers in writing on a sheet of paper before registration of FIR. It is a case where without ascertaining the identity of the assailants from the injured, the three appellants were named by PW-17 Sh.Amar Singh and PW-4 Sh.Rajesh who were not even witnesses to the occurrence. Though PW-17 Sh.Amar Singh stated that all the three assailants ran away but PW-4 Sh.Rajesh stated that appellant Mahipal was present at the spot when injured was being taken to hospital.

36. It is again relevant to mention here that the injured did not remain unfit upto the date of his discharge. Till he remained in hospital his statement was not recorded. After three days of his discharge his statement was recorded at home and he towed the line of his father and brother who were not witnesses to the occurrence and had not seen any of the assailants causing the injuries to him.

37. Neither the appellants nor the injured had come out with any motive behind this false implication or assault. It is admitted position of the parties that they are residing at a distance of 50-60 paces from each other and well known to each other. When information was conveyed to PCR by the complainant i.e PW-17 Sh.Amar Singh that '*chaku maar diya hai injured ko St.Stephen hospital le ja rahe hain*', he did not even mention the words 'by neighbours' or 'by Mahipal

and his sons'. Even when history was recorded by PW-5 Dr.Namita Toppo while preparing the MLC of the injured, he did not name them. It was for the first time when FIR was registered that the three appellants were named to be the assailants without ascertaining their identity from the injured.

38. The complainant has not given any reason as to why the name of the appellants were not disclosed either to PCR or while giving alleged history and recorded by PW-5 on MLC Ex.PW-5/A.

39. Thus, it is a case where for the undisclosed reasons the three appellants were named to be the assailants by the father of the injured whose role was limited to remove the injured to the hospital and who even did not know the nature of the injury, the weapon of offence or who were involved in this assault.

40. In view of the above discussion, the impugned judgment and the order on sentence are set aside. All the three appellants are acquitted of the charges.

41. The appeal is allowed. All the appellants be set at liberty forthwith, if not wanted in any other case.

42. LCR be sent back alongwith copy of this order.

43. Copy of this order be sent to the concerned Jail Superintendent for information and compliance.

44. As prayed, copy of the order be given dasti to learned counsel for the parties.

**PRATIBHA RANI**  
**(JUDGE)**

**NOVEMBER 08, 2017/ 'pg'**