

## Lalta and Others Vs State of U.P.

**Court:** Allahabad High Court

**Date of Decision:** Dec. 2, 1999

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 313  
Penal Code, 1860 (IPC) â€” Section 302, 304, 308, 323, 324

**Citation:** (2000) CriLJ 4526

**Hon'ble Judges:** R.R.K. Trivedi, J; M.C. Jain, J

**Bench:** Division Bench

**Advocate:** G.P. Mathura, Sanjiv Ratan, S.N. Yadav, S.K. Agrawal and Apul Misra, for the Appellant; D.G.A., G.S. Chaturvedi and P.K. Tiwari, for the Respondent

**Final Decision:** Disposed Of

### Judgement

M.C. Jain, J.

This Criminal Appeal has been preferred by four appellants, Lalta, Ram Bharose, Ram Bahadur and Chandra Bali against

the judgment and order dated 25th October, 1980 passed by Sri C. Mohan, the then Sessions Judge, Basti in Sessions Trial No. 180 of 1980.

The learned Sessions Judge has convicted all of them u/s 302 I.P.C. read with Section 34 I.P.C. and 323 I.P.C. read with Section 34 I.P.C. Each

of them has been sentenced to undergo life imprisonment u/s 302 I.P.C. read with Section 34 I.P.C. and six months rigorous imprisonment u/s 323

I.P.C. read with Section 34 I.P.C. Both the sentences have been ordered to run concurrently.

2. The salient features of the case, as emerging from the First Information Report and the evidence adduced in the Court, may be noted. The

incident took place on 18-3-1980 at about 9.30 A.M. in village Mishrauiia, Police Station Kotwali of District Basti. The First Information Report

was lodged the same day at 11.55 A.M. by P.W. 1 Ram Lala. The distance of the Police Station from the place of occurrence was 3 Kilometers.

A litigation was going on with regard to some land between P.W. 1 Ram Lala and his family members on the one hand and the accused-appellant

Ram Bahadur on the other. On this score, there was animosity between the two sides. On the date and time of occurrence P.W. 1 Ram Lala was

going to Court in connection with the said litigation. When he reached near the house of the accused-appellant Lalta he as well as other accused-

appellants Ram Bharose, Ram Bahadur and Chandra Bali were present there. They surrounded P.W. 1 Ram Lala and started causing injuries to

him with Lathis and Pharsa. Lalta was holding a Pharsa and the remaining three accused-appellants had Lathis. The alarm raised by P.W. 1 Ram

Lala attracted the attention of his brother Ramchet and prosecution witnesses P.W. 2 Jeet Bahadur and P.W.3 Ram Sagar to the place of

occurrence. The accused-appellants caused injuries to them also. The prosecution witnesses P.W.4 Shyam Giri, P.W. 5 Parmanand and other

persons of the village appeared there and then the accused made their escape good. After the incident the informant P.W. 1 Ram Lala took his

brother Ramchet and other injured persons to the District Hospital Basti where their injuries were examined by P.W.9 Dr. V.P. Shukla. he found

the following injuries on the person of Ramchet as per injury report Ex. Ka-12 at the time of his medical examination of 18th March, 1980 at

10.40 A.M. :

1. Incised wound on Skull 3 cm x 1 cm x muscle deep upto bone. Margins smooth clean cut everted 11 cm above right ear.

2. Traumatic swelling 8 cm x 6 cm on left side forehead 8 cm above left eyebrow.

3. Traumatic swelling on left eyebrow 3 cm x 2 cm.

3. In the opinion of the Doctor injury No. 1 had been caused by some sharp edged heavy cut weapon and injuries No. 2 and 3 had been caused

by some blunt weapon. The injured was unconscious. Injury No. 1 was kept under observation. X-ray of skull was advised. Thus, Ramchet was

admitted as indoor patient.

4. Ram Lala was also examined by the same Doctor the same day at 10.55 A.M. and the following injuries were found on his person as per Injury

report Ex. Ka-13 :

1. Lacerated wound with traumatic swelling all around on right forehead 4 cm x 3 cm.

2. Lacerated wound on forehead 2 cm x 0.2 cm x skin deep 3 cm above right eyebrow, no scar formation.

3. Lacerated wound on scalp 2 1/2 cm x 0.3 cm x muscle deep 11 cm above left ear, no scar formation.

4. Complaint of pain in whole body but no other visible injury seen.

5. In the opinion of the Doctor all the injuries of P.W. 1 Ram Lala were caused by some blunt object and were simple in nature.

6. The same Doctor examined P.W. 3 Ram Sagar the same day at 11.10 A.M. and found the following injuries on his person as per injury report

Ex. Ka-14 :

1. Lacerated wound on scalp 1 cm x 0.5 cm x muscle deep upto bone, 10 cm above left ear. No scar formation seen.

2. Contusion on left hand opposite palm, mid digit of left index finger 2 cm x 1 cm.

3. Contusion on left hand opposite palm on mid digit of middle finger opposite palm 1 1/2 cm x 1 cm.

7. In the opinion of the Doctor all the injuries were caused by some blunt object and were simple in nature.

8. The same doctor found following injuries on the person P.W. 2 Jeet Bahadur as per injury report Ex. Ka-15 at the time of his medical

examination on 18th March, 1980 at 11 A.M. :

1. Lacerated wound on scalp 2 cm x 0.3 cm x muscle deep 6 cm above right eyebrow.

2. Traumatic swelling on scalp 4 cm x 3 cm, 3 cm above right ear upper part.

3. Contusion 8 cm x 2 cm on right back, J 4 cm above lower angle of right scapula.

4. Abrasion on little finger third digit opposite palm 1 cm x 0.5 cm.

9. The Doctor opined that injuries No. 1, 2 and 3 had been caused by some blunt object and injury No. 4 by rubbing with some hard substance.

All the injuries were simple.

10. P.W. 1 Ram Lala then wrote out the First Information Report and took the same to the Police Station where he lodged it at 11.55 A.M. A

case u/s 323/324/308/506 I.P.C. was registered. Ramchet died in the hospital on 19-3-1980 at 1.05 A.M. and the case was converted inter alia

into one u/s 304 I.P.C.

11. Investigation was entered into and after necessary formalities the dead body of the deceased was subjected to post-mortem. It was P.W.8 Dr.

S.G. Tekriwal who conducted the autopsy on his dead body on IBS 1980 at 3 P.M. The deceased was aged about 25 years who had died in the

Civil Hospital, Basti on 19-3-1980 at 1,05 A.M. The following ante-mortem injuries were found on his person :

1. Incised wound 3 cm x 1 cm x muscle deep, scalp right side, just lateral to midline, 11 cm above eyebrow.

2. Traumatic swelling 10 cm x 8 cm on the scalp (temporal region) top of forehead left side, 3 cm lateral to midline.

3. Traumatic swelling 4 cm x 4 cm left side eyebrow and adjoining forehead.

12. The internal examination revealed subcutaneous ecchymosis in an area of 20 cm x 15 cm under injury No. 2 on the top and side of skull left

side and fishered fracture 15 cm long under injury No. 2. Brain membranes were congested on both the sides. One big clot was present in an area

of 5 cm x 8 cm (extra-dural) left side under injury No. 2 Subdural and extra dural haemorrhage was present on left side. Brain was congested on

both sides. There was haemorrhage inside brain also on left side. Right side of heart contained blood but left side was empty. The stomach

contained about 4 oz. of semi-digested food material. Small intestine contained pasty material and large intestine contained gas and faecal matter.

Bladder was empty. Rest of the organs were normal. In the opinion of the Doctor the death had occurred due to coma as a result of ante-mortem

head injuries. The Doctor stated that the ante-mortem injuries found on the dead body were sufficient to cause death and the incised wound could

have been caused by a Pharsa and rest of the injuries by Lathis.

13. The investigation started by PW10 S.I. Chhatradhari Singh was concluded by PW11 S.I. Jalshanker Rai.

14. At the trial, the prosecution examined eleven witnesses in all out of whom, the informant P.W.1 Ram lala, P.W.2 Jeet Bahadur and P.W.3 Ram

Sagar were injured witnesses. P.W.4 Shyam Giri and P.W.5 Parmanand were two other uninjured eye witnesses examined by the prosecution.

The rest, were formal witnesses including Doctors and Investigating Officers.

15. The defence was of denial and of false implication on account of enmity. In his statement u/s 313 Cr.P.C. the accused-appellant Ram Bahadur

also added that his brother Dev Dutta was beaten up by P.W. 1 Ram Lala and others and he had lodged a report also in this behalf and had got

his injuries examined by a Doctor. The accused examined Dr. Pradeep Kumar Mishra as D W. 1 who proved the injury report of Dev Dutta on

18-3-1980 of 1.45 P.M. according to which, the following injuries were found on his person :

1. Lacerated wound 8 cm x 1 cm x bone deep on the left side of head 9. 5 cm above the root of pinna of left ear, bleeding present.

2. Lacerated wound 2.5 cm x 0.3 cm on the left side of head with swelling 7 cm x 6 cm, 2 cm below injury No. 1, bleeding present muscle deep.

3. Contusion 10 cm x 2 cm on the left scapular region 2 cm below the top of shoulder, red in colour.

4. Complaint of pain on the whole body, no marks of any external injury seen.

16. In the opinion of the Doctor injuries No. 1 to 3 had been caused due to impact of hard and blunt object and they were simple in nature.

17. DW2 Ram Gopal Shukla was the record keeper of Police Office and DW3 Sita Ram was the Samdhi of the accused Ram Bahadur. He

deposed regarding an application having been moved by Dev Dutta with his help disclosing the names of his five assailants. The necessity had

allegedly arisen for making such an application as only the names of three of them had been taken down in the First Information Report lodged by

Dev Dutta in this behalf. This witness was clerk of Sri Ram Chandra Yadav, Advocate. The application (complaint) was allegedly written down by

him on the dictation of Dev Dutta. DW2 Ram Gopal Shukla, Record Keeper of Police Office stated that there was no reference in the record

room of the receipt of any such application/complaint from Dev Dutta, This witness (DW 3 Sita Ram) produced a copy thereof and proved the

same.

18. The trial Court believed the prosecution case and evidence, rejecting the defence theory and convicted and sentenced the accused-appellants

as stated earlier. Being aggrieved thereby, the appellants have preferred this appeal.

19. We have heard Sri P.N. Mishra, learned counsel for the appellants in support of appeal and learned A.G.A. on behalf of the State who

vehemently opposed the appeal and supported the judgment in question.

20. Learned counsel for the appellants has made wholesome criticism of the prosecution evidence and has contended that the learned trial Court

convicted and sentenced the appellants on insufficient evidence, wrongly discarding the defence theory. It has alternatively been argued that in any

case the offence did not travel beyond Section 325 I.P.C. and the appellants could not at all be imputed the common intention of committing an

offence beyond that.

21. On a thoughtful consideration and after carefully scrutinizing the evidence on record, we are of the firm view that so far as the defence theory is

concerned, it has rightly been jettisoned by the learned lower Court for valid reasons. It is significant to point out that Dev Dutta was not examined

in defence. Needless to say, he could be the best person to say that he received injuries during the course of the same incident and as to the hands

of whom. It is further significant to point out that Dev Dutta is not an accused of the present case. It does not stand to reason at all that the

informant P.W. 1 Ram Lala would have left him out in case he was one of the assailants in the present felony. Not only this, the accused named in

the report of Dev Dutta are Subhash Tiwari, Rani Lala and Subhawari Kurmi. Obviously, all the injured of the present case and/or witnesses are

not the accused in the First Information Report lodged by Dev Dutta. Only P.W. 1 Ram Lala is common. He has not even disclosed the place of

occurrence in his report which, according to him, took place at 8.30 A.M. on 18-3-1980 when he was going to call labourers from Chamartolia.

He also does not mention the names of the witnesses of such occurrence. It would be recalled that the occurrence of the present incident took

place at 9.30 A.M. The prosecution witnesses of the present case denied any such incident in which Dev Dutta might have sustained injuries. What

we mean to drive home is that the defence theory was wholly incredible which could not be taken note of. Therefore, the present prosecution case

could not be doubted on the basis of the baseless defence theory advanced by the accused-appellants. 21-A. We also find that the criticism of the

testimony of prosecution witnesses made by the learned counsel for accused-appellants is wholly unwarranted and unsustainable. As mentioned

earlier, three of them, namely, P.W. 1 Ram Lala, P.W.2 Jeet Bahadur and P.W. 3 Ram Sagar were themselves the injured and their presence at

the spot cannot at all be doubted. They as well as two other eye witnesses P.W. 4 Shyam Giri and P.W. 5 Parmanand supported the prosecution

case in material and substantial particulars as regards the time and place of occurrence as also regarding the names of the assailants (appellants)

with the weapons wielded by them. No meaningful contradictions could be elicited from the cross-examination of any of them. Nor could it be

shown that the uninjured witnesses P.W. 4 Shyam Giri or P.W. 5 Parmanand had any motive to depose falsely against appellants. Their names find

mention also in the promptly lodged First Information Report which had been lodged before any time gap could intervene for concoction or

deliberation. It is satisfactory and convincingly proved by the testimony of the eye witnesses that the assailants were the present appellants and

else. The ocular version finds corroboration from medical evidence too, the details whereof have been mentioned earlier. The incised wound found

on the skull of Ramchet could have been sustained by a sharp cutting such as Pharsa, which, according to the prosecution had been wielded by the

accused-appellant Lalta. Other injuries of Ramchet and of the injured, namely, P.W.1 Ram Lala, P.W.2 Jeet Bahadur and P.W. 3 Ram Sagar

could have been sustained by blunt objects such as Lathis which were wielded by the other three accused-appellants. So, to come to the point it is

beyond the pale of any doubt that the accused-appellants were the assailants who caused injuries to Ramchet (deceased), P.W.1 Ram Lala, P.W.2

Jeet Bahadur and P.W.3 Ram Sagar out of whom Ramchet died on 19-3-1980 at 1.05 A.M. The learned Session Judge was perfectly justified in

believing the prosecution witnesses who delivered eye witness account and out of whom three were themselves injured of the felony. We reject the

criticism of eye witnesses made by the learned counsel for the appellants.

22. It takes us to the third crucial question as to what offence or offences have been committed by the accused-appellants within the ambit of law.

True, one of the injured Ramchet happened to die. He had received three ante-mortem injuries. The statement of P.W.8 Doctor S.G. Tekriwal

who conducted autopsy on his dead body throws flood of light. The ante-mortem injury No. 1 of Ramchet was incised wound on the right side of

skull 10 cm above eye brow. It must have been caused by the accused-appellant Lalta who wielded a Pharsa. His injury No. 2 was a traumatic

swelling on top of the forehead left side (temporal region). His injury No. 3 was traumatic swelling on left side of eyebrow adjoining forehead. The

Doctor stated categorically that injuries No. 1 and 3 were not sufficient for death. He further stated that injury No. 2 alone was sufficient to cause

death. On internal examination also extensive damage had been found beneath injury No. 2. It was a blunt weapon injury and it would be recalled

that three accused-appellants namely, Ram Bahadur and Chandra Bali wielded Lathis. The prosecution evidence does not spell out as to who of

them had caused this fatal injury No. 2 by blunt weapon to Ramchet deceased. All other injured received simple injuries only of blunt weapons.

Having regard to these facts and circumstances it would be just and proper to hold that the common intention of all the four appellants was only to

cause grievous injuries punishable u/s 325 I.P.C. In this view of ours, we are fortified by a decision of the Apex Court in the case of Parusuraman

v. The State of Tamil Nadu 1991(28) A.C.C. (SC) 604 : Parusuraman alias Velladurai and others Vs. State of Tamil Nadu, . In that case, seven

persons were tried for the murder of one Jawahar. Participation of the appellants in the occurrence which resulted in the death of the deceased was

proved beyond doubt. In all 13 external injuries were found on his body out of which 11 were on lower legs and arms which had voluntarily been

caused by the appellants. It was found that they had no intention to kill and the offence was found to be covered within the parameters of Section

325 I.P.C. and not u/s 304 Part-I I.P.C. for which three of them had been convicted by the High Court reversing the acquittal recorded by the trial

Judge. The things may be a bit explained in the present case also. Four accused-appellants participated in the incident out of whom one used a

sharp edged weapon and the other three wielded Lathis. Out of them, the deceased alone sustained an incised wound and rest of his injuries as

well as of the remaining three eye witnesses were of blunt weapons. The injuries of three injured eye witnesses were simple also. It was one of the

blunt weapon injuries sustained by the deceased which proved to be fataly responsible for his death. Taking all these facts together, it appears that

the common intention of all the four appellants was only to cause grievous hurt, as otherwise, they could have inflicted many more injuries on vital

parts of the victim than those they did. The ruling referred to above handed down by the Supreme Court lends support to this view. Of course, the

appellants voluntarily caused simple hurt too to the three injured eye witnesses but the offence of Section 325 I.P.C. being graver, for practical

purposes it comprises in itself the offence of Section 323 I.P.C. Therefore, we are inclined to hold that the four accused-appellants committed

offence punishable u/s 325 read with Section 34 I.P.C. for which they should be convicted and sentenced. Having regard to the facts and

circumstances of the case, it would be just and proper to award three years" rigorous imprisonment to each of them and to pay a fine of Rs.

5000/- or in default to pay the fine to suffer additional rigorous imprisonment for six months. It would also be proper to direct that in case of

realization of the fine, Rs. 16.000/- be paid to P.W. 1 Ram Lala injured and brother of the deceased and Rs. 2000/- each to the other two injured,

namely, P.W.2 Jeet Bahadur and P.W.3 Ram Sagar.

23. In view of the above discussion, we partly allow the appeal and modify the conviction and sentence of the appellants as under :

Each of the appellants, namely, Lalta, Ram Bharose, Ram Bahadur and Chandra Bali is convicted u/s 325 I.P.C. read with Section 34 I.P.C. Each

of them is sentenced to rigorous imprisonment for three years and to pay a fine of Rs. 5000/-. In default of payment of fine, each of them would

undergo further rigorous imprisonment for six months. In case the fine is realized, Rs. 16.000/- would be paid to P.W. 1 Ram Lala (injured brother

of the deceased Ramchet) and Rs. 2000/- each to the two injured, namely, P.W.2 Jeet Bahadur and P.W.3 Ram Sagar. The appellants are on

bail. They shall surrender forthwith to serve out the sentences passed against them.

The appeal is disposed of in the above terms.