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CNR No. HPHA02-009305-2020, Police Challan No.44-II-2020, CIS Regd No. 192 of 2020, State of H.P Vs. Vikas Thakur @ Mithoo etc.

**IN THE COURT OF SURYA PRAKASH, CHIEF JUDICIAL
MAGISTRATE, HAMIRPUR, DISTRICT HAMIRPUR, H.P.**

FORM-A

CNR No.	HPHA02-009305-2020
Police Challan No.	44-II-2020 (u/s 325 read with Section 34 of IPC in case FIR No.71 of 2020, dated 31.07.2020 of Police Station Sujanpur, District Hamirpur, (H.P)
Registration No.	192 of 2020
RBT No.	-do-
Complainant	State of Himachal Pradesh (by Avneet Thakur son of Sh. Udham Singh R/o village Bir Bagehra, Tehsil Sujanpur, District Hamirpur,H.P.)
Represented by	Sh. Subash Chand, Learned APP.
Accused	1. Vikas Thakur @ Mithoo son of Sh. Dhani Ram, resident of Village Chamardi, P.O. Patlandhar, Tehsil Sujanpur, District Hamirpur,H.P. 2. Rohit Thakur @ Peeti son of Sh. Pritam Singh, resident of Village Chamardi, P.O. Patlandhar, Tehsil Sujanpur, District Hamirpur,H.P.
Represented by	Sh. Kapil Bhardwaj, Advocate.

FORM-B

Date of offence	28.07.2020
Date of filing the police challan	15.10.2021
Date of framing of Charge	22.03.2023
Date of commencement of evidence	26.06.2023

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Date of which judgment is reserved	28.07.2026
Date of the judgment	29.07.2026

Accused Details.

Rank of the accused	Name of the accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed.	Period of detention undergone during the trial for purpose of Section 428 of Cr.P.C.
1.	Vikas Thakur @ Mithoo	8.8.2020	8.8.2020	U/s 325 r/w 34 IPC	Acquitted	---	---
2.	Rohit Thakur	8.8.2020	8.8.2020	U/s 325 r/w 34 IPC	Acquitted	-	-

JUDGMENT:

Accused persons namely Vikas Thakur @ Mithoo and Rohit Thakur @ Peeti have been sent up for facing trial for the commission of offence punishable under Section 325 read with Section 34 of Indian Penal Code, 1860 (hereinafter to be referred as “IPC”) in connection with case FIR No.71 of 2020, dated 31.07.2020 of Police Station Sujanpur, District Hamirpur, (H.P).

2. Briefly stated, the case of the prosecution is that complainant of this case Avneet Alohia son of Udham Singh is resident of Bir Bagehra, Tehsil Sujanpur, District Hamirpur, H.P. On 29.07.2020 complainant filed complaint ExtP1/PW7 to Incharge/SHO, Police Station Sujanpur, District Hamirpur, on the basis of which rapat No.5, dated 29.07.2020 ExtP1/PW3 was registered by PW3 Constable Rakesh Kumar No.336. As per complaint ExtP1/PW7, on 28.07.2020, at about 12:00 A.M., at place near college Sujanpur, the

accused persons in furtherance of their common intention, voluntarily caused grievous hurt to the complainant Avneet Aloha by hitting him with a bottle. The matter was investigated by PW9 Rakesh Kumar Investigating Officer Police Station Sujanpur. During investigation, Investigating Officer filed an application ExtP1/PW5 to MO CH Sujanpur for conducting medical examination of complainant and PW5 Dr. Priyanka conducted the medical examination of the complainant and issued MLC ExtP2/PW5. PW5 Dr. Priyanka advised X-Ray RT skull <AP/Lt and X-Ray form is ExtP3/PW5, issued final opinion ExtP5/PW5, on the basis of Radiologist report ExtP4/PW5 and as per final opinions Ext.P5/PW5 & Ext.P6/PW5 of PW5, injury No.1 was found grievous in nature and rapat ExtP2/PW3 was entered to this effect by PW3 constable Rakesh Kumar No.336. After obtaining the final opinion Ext.P5/PW5, FIR Ext.P3/PW3 was registered in the Police Station, on the basis of complaint Ext.P1/PW7 and an endorsement Ext.P1/PW9 was made on the complaint by duly signed by SI/SHO Subhash Shastri. During investigation, Investigating Officer visited the spot and prepared spot map ExtP1/PW1 and clicked the photographs ExtP2/PW1 to ExtP4/PW1 of the spot. During investigation, complainant produced to police two pieces of glass bottle Mark Soulmate Blue Ext.P7/PW1 & Ext.P8/PW1, which were put into a cloth parcel ExtP5/PW1 and the same was sealed with 04 numbers of seal impression D and the same was taken into possession by police vide seizure memo ExtP9/PW1 in the presence of witnesses Vinod Kumar and Ct. Sanjeev Kumar No.326 and separate seal impression 'D'

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was also taken on a piece of white cloth which is Ext.P2/PW7. During investigation, Investigating Officer deposited the case property with MHC PW6 SI Manoj Parmar, Police Station Sujampur who made entry of the case property in register No.19 at Sr.No.50 and abstract of malkhana register is Ext.P1/PW6. During investigation, police procured certificate Ext.P4/PW3 u/s 65-B of Indian Evidence Act from PW3 Rakesh Kumar No.336 regarding registration of FIR No.71/20 dated 31.7.2020. During investigation, police procured certificate Ext.PX u/s 65-B of Indian Evidence Act from PW3 Constable Rakesh Kumar No.336 qua rapat No.5, dated 29.07.2020 and rapat No.28, dated 31.07.2020. During investigation, I.O. recorded the statement ExtP2/PW9 of witness Avneet, statement Ext.P3/PW9 of Sahil, statement Ext.P4/PW9 of Vicky, statement Ext.P5/PW9 of Kaka Kumar, statement Ext.P6/PW5 of Vinod Kumar, statement Ext.P7/PW9 of Sanjeev Kumar and other witnesses as per their versions and after completion of the investigation, the challan was presented before the Court for trial.

3. On receipt of the challan, the accused persons were summoned and on their appearance before this court, copies of challan and other documents were supplied to them as per mandate of Section 207 of Code of Criminal Procedure (hereinafter to be referred as "**Cr.P.C**").

4. On finding a prima-facie case against the accused persons, charge for the commission of offence under Section 325 read with Section 34 of IPC was put to the

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accused persons to which they pleaded not guilty rather they claimed trial.

5. In support of its case against the accused persons, the prosecution has examined as many as 9 witnesses in all.

6. After the prosecution evidence got over, the statement of accused persons under section 313 of Cr.PC was recorded, wherein, they do not intend to lead evidence in their defence.

7. On the basis of evidence on record, the following points arise for determination :-

1. Whether the prosecution has proved beyond all reasonable doubts that on 28.7.2020, at about 12:00 in the night at Sujanpur, near college the accused persons in furtherance of their common intention, voluntarily caused grievous hurt to the complainant Avneet Thakur by hitting him with bottle and thereby committed an offence punishable under Section 325 read with Section 34 of IPC?

2. Final Order.

8. I have heard learned APP for State and learned defence counsel for the accused. Further, I have also gone through the case file carefully.

9. For the reasons to be recorded hereinafter, while discussing the aforesaid points, my findings on the same are as under :-

Point No. 1 : No.

Final Order : As per operative portion of this judgment, accused is **acquitted** for the commission of offence punishable under Section 323 read with 34 of IPC.

APPRECIATION OF EVIDENCE.

10. In order to prove its case, prosecution has examined Vinod Kumar as PW-1. He has stated that he remained associated with police during investigation on 1.8.2020. He stated that police had prepared spot map Ext.P1/PW1 on the demarcation of Avneet resident of Bir Bagehra and had clicked photographs Ext.P2/PW1 to Ext.P4/PW1. During investigation Avneet produced to police 2-3 broken pieces of glass bottle from the spot and had stated that this is the same bottle with which Vikas @ Mithoo had hit on the head of Avneet about 2-3 days ago. Police put the pieces of glass bottle in a cloth parcel and sealed the parcel with 04 numbers of seal impression D and seal impression was separately taken on piece of cloth. On opening the parcel Ext.P5/PW1, broken pieces of glass bottle Ext.P7/PW1 & Ext.P8/PW1 were extracted out from the blue coloured carry bag Ext.P6/PW1 which are identified by him to be the same produced by Avneet to police and to this effect seizure memo Ext.P9/PW1 was prepared and he signed the memo as a witness.

11. In his cross-examination, he admitted that neither any quarrel nor beatings took place in his presence. He admitted that he has not brought with him the sample seal

impression. He stated to have no knowledge as to who clicked photographs of the spot and prepared the spot map.

12. PW-2 Kaka Kumar stated that on 1.8.2020, he remained associated with police during investigation. He stated that he, Sahil, Avneet and one other boy whose name he does not remember were doing party near 'Naun Goofa'. At around 12:00 A.M., they were about to leave their homes and an altercation took place between Avneet and Sahil and Sahil hit a bottle on the head of Avneet. He stated that he has no knowledge as to what had happened apart from this. He was declared hostile on the request of learned APP.

13. In his cross-examination conducted by learned APP, he admitted that in the night around 12:00 A.M., they were about to leave their homes after closing the party, at the same time Vikas Thakur son of Dhani Ram and Rohit Thakur son of Pritam Singh, both residents of Chamardi, P.O. Patlandhar, Tehsil Sujampur, District Hamirpur, H.P. both the accused present in the court came there and started arguing with Avneet son of Udham Singh resident of Bir Bagehra and stated that '*Aap Badmash Bante Hain*'. He admitted that Avneet has stated that as to what he had done. He admitted that on saying of Avneet accused Vikas @ Mithoo lift empty liquor bottle mark '*Soulmate Blue*' lying on the spot and hit on the head of Avneet and bottle had broken on the head of Avneet. He admitted that due to this blood oozed out from the head of Avneet. He admitted that on seeing the blood, both the accused fled away from the spot. He admitted that on 1.8.2020, police visited the spot and prepared spot map Ext.P1/PW1 on the demarcation of

Avneet and had clicked photographs Ext.P2/PW1 to Ext.P4/PW1. He admitted that he had forgotten certain facts as about 5 years have been passed to this incident and he remembered the same on reminder.

14. In his cross-examination conducted by learned defence counsel, he stated that they had consumed liquor at 'Naun Goofa' Sujanpur and they had only purchased one bottle of liquor from Sujanpur. He stated that Avneet brought the liquor. He stated to have no knowledge as to where were the accused ; self stated that they came there where they were sitting. He denied that the quarrel did not take place in his presence ; self stated that an altercation took place and bottle was hit on the head of Avneet by accused. He stated that police visited the spot on the same night and someone might have made the phone call to the police. He stated that blood had fallen on the spot and police had not lifted the blood from the spot in his presence. He stated that his photograph was not clicked from the spot. He stated to have no knowledge as to when police had clicked the photographs. He stated to have no knowledge as to when the spot map was prepared. He denied that quarrel did not take place in his presence. He denied that complainant sustained injuries due to consumption of liquor.

15. PW-3 Constable Rakesh Kumar No.336 made the entry of rapat No.5 dated 29.7.2020 Ext.P1/PW3, rapat No.28 Ext.P2/PW3 and registered the FIR Ext.P3/PW3, developed the photographs and issued certificate Ext.P4/PW3 under Section 65-B of Indian Evidence Act.

16. PW-4 Sahil Alohia stated that he, his brother vicky and Avneet were doing their party near Degree College Sujampur and it was 12:00 A.M., and when they were about to leave their homes, Mithoo and Rohit also came there in order to join their party. He stated that an altercation took place between Avneet and Mithoo and by some other person and there was dark where quarrel took place. He stated to have no knowledge as to who hit and to whom he was declared hostile on the request of learned APP.

17. In his cross-examination conducted by learned APP, he totally denied the prosecution story.

18. In his cross-examination conducted by learned defence counsel, he admitted that he did not witness any person by hitting a bottle.

19. PW-5 Dr. Priyanka medically examined Avneet Thakur on the application Ext.P1/PW5 moved by police. She advised x-ray skull <AP/Lt. She stated that on examination there was fresh smell of liquor. On examination, face of the injured was flushed and he was talkative. She issued MLC Ext.P2/PW5. She stated that her recommendation for conducting x-ray is Ext.P3/PW5 which bears her signature. She stated that on the basis of radiologist Ext.P4/PW5, she issued final opinion on 21.8.2020 which is Ext.P5/PW5. As per her opinion, injury No.1 was grievous in nature. She stated that on 21.8.2020, I.O. had produced the weapon of offence and sought opinion whether the injury mentioned in the MLC can be sustained or not with the same. She opined that injury mentioned at serial No.1 in MLC Ext.P2/PW5 may be possible with glass produced by I.O. On opening the

sealed parcel Ext.P5/PW1 produced by learned APP, two broken pieces of glass Ext.P7/PW1 and Ext.P8/PW1 were extracted out from the blue coloured carry bag Ext.P6/PW1 and she stated that the pieces of glass were the same which were produced by I.O. to her on 21.8.2020 and her opinion is Ext.P6/PW5.

20. In her cross-examination, she admitted the suggestion to be correct that above mentioned injury can be caused if a person falls on hard surface. She stated that no blood and urine sample were taken for chemical examination.

21. PW-6 SI Manoj Parmar made the entry of case property of this case in the register No.19 at serial No.50. He stated that on 21.8.2020, he took out the case property from Malkhana and handed over it to HG Deepak Kishan No.10/2-49 for seeking opinion from M.O. He stated that Malkhana extract Ext.P1/PW6 is true and correct as per record.

22. Complainant Avneet Thakur appeared in the witness box as PW-7. He stated that on 28.7.2020, he, Vicky, Kaka and Sahil were doing their party near 'Naun Goofa' at Sujanpur and it was night time after 12:00 A.M. He stated that at the same time Mithoo @ Vikas, Peeti @ Rohit Thakur came there and he identified them from their photographs affixed on the saja slips. They started arguing with him and Vikas started saying that 'Tu Bara Badmash Hain', on this he stated as to what he had done and Vikas hit empty liquor bottle mark 'Soulmate blue' on his head, which had broken on his head and blood started oozing out from his head and accused fled away from the spot. Accused

Rohit tried to hold his hands. He visited police station where he filed complaint Ext.P1/PW7. Police took him to hospital and his medication Ext.P2/PW5 was conducted. Police prepared spot map Ext.P1/PW1 and clicked photographs Ext.P2/PW1 to Ext.P4/PW1. Police took the bottle into their possession vide seizure memo Ext.P9/PW1. On opening the cloth parcel Ext.P5/PW1, pieces of glass bottle Ext.P7/PW1 and Ext.P8/PW1 extracted out which were in the blue coloured carry bag Ext.P6/PW1 and identified them to be the same with which accused had attacked upon his head. He stated that nine stitches were put to the injuries on his head.

23. In his cross-examination, he admitted that they had consumed the liquor. He denied that he sustained injuries due to falling under the influence of liquor. He stated that their statements were not recorded on that night after filing the complaint. He stated that party continued uptill 12:00 A.M. He stated that police neither prepared spot map, clicked photographs nor memo was prepared on the same night. He denied that accused persons did not give beatings. Police neither took the blood nor clothes into their possession. He does not remember that police had recorded his statement and statements of witnesses in the police station.

24. PW-8 Vicky Alohia deposed on the lines of complainant PW-7 in his evidence-in-chief. In his cross-examination, he stated that party had continued uptill 12:00 A.M. He admitted that they had consumed the liquor. He stated that police neither clicked photographs nor prepared spot map in his presence. He admitted that police had

recorded his statement in the police station. He denied that Avneet sustained injuries due to falling under the influence of liquor. He denied that since Avneet has no terms with the accused persons, it is, therefore, a false case has been made. He admitted that there was no street light around the Goofa.

25. PW-9 Rakesh Kumar (retired) is the Investigating Officer of this case. He summed up the entire investigation conducted by him in his evidence-in-chief. In his cross-examination, he stated that Avneet had filed Ext.P1/PW1 in writing. He stated that complaint was not written in the police station. He stated that he does not remember that Avneet was under the influence of liquor when he visited the police station. He denied that Avneet sustained injuries due to falling under the influence of liquor. He stated that doctor did not take blood and urine sample of Avneet in his presence. He stated that he did not take clothes and blood fallen on the spot into his possession. He stated that Avneet visited the police station in the night time about 12:30 A.M. He stated that he was present in the police station. He does not remember as to whether there was blood on the clothes of Avneet or not. He stated that there are houses & shops near the spot and degree college to the above side. He admitted that he did not record the statements of habitants of the houses and of shop keepers.

26. Learned APP tendered in evidence certificate Ext.PX under Section 65-B of Indian Evidence Act as not objected by learned counsel for the accused and closed evidence on behalf of the prosecution.

**REASON FOR FINDINGS WITH THE HELP
OF APPRECIATION OF EVIDENCE.**

Point No.1

27. After going through the present case file with utmost care, it is extracted out that the prosecution has been failed to prove its case against the accused beyond the shadows of reasonable doubt as the case of the prosecution suffers for the want of reliable and convincing evidence on record as there are material contradictions in the statements of the witnesses examined before this court.

28. From the evidence on record, it stands duly established that complainant PW-7 Avneet Thakur had sustained grievous injuries and that such injuries were possible by broken glass bottle. However, the main point for determination is whether the prosecution has succeeded in proving beyond reasonable doubt that it was accused Vikas @ Mithoo who had inflicted those injuries on the person of the complainant PW-7.

29. Complainant PW-7 has specifically named accused Vikas @ Mithoo, however, PW-2 Kaka Kumar eye witness of this occurrence initially attributed the assault to Sahil and only during cross-examination by learned APP changed his version by deposing that accused Vikas @ Mithoo had assaulted the complainant. Another eye witness PW-4 Sahil Alohia has completely failed to support the prosecution case and has stated that there was dark at the spot and he does not know who had assaulted whom. The other eye witness PW-8 Vicky Alohia though supported the

prosecution case in his evidence-in-chief has also admitted in his cross-examination that there was no street light at the place of occurrence. Admittedly, all the persons present there had consumed liquor before the occurrence and complainant Avneet Thakur was having fresh smell of alcohol when he was medically examined by PW-5 Dr. Priyanka. Thus, the evidence regarding the identity of assailant is not free from doubt. The contradiction made by PW-2 Kaka Kumar on the most material aspect, coupled with the testimony of PW-4 Sahil Alohia and the admission regarding darkness on the spot by PW-4 and there being no street light on the spot of occurrence by PW-8, creates a reasonable doubt regarding the correctness of identification of accused Vikas @ Mithoo. Though medical evidence corroborates the nature of injuries, it cannot by itself establish the identity of the persons who caused such injuries.

30. It is a cardinal principal of criminal jurisprudence that suspicion, however, grave cannot take the place of proof meaning thereby that if the circumstances create a very strong suspicion against an accused persons, the court cannot convict unless the prosecution proves the guilt beyond reasonable doubt by legally admissible evidence. Further, the prosecution has to prove its case against the accused persons beyond all the shadows of reasonable doubt and this burden never shifts upon the accused. In ***Kali Ram Versus State of H.P., 1973(2) SCC 808***, it is held that, “another golden thread which runs through the web of administration of justice in criminal cases is that if two views

are possible, the one favourable to accused should be adopted". In this case, prosecution has failed to prove this case against the accused beyond all the shadows of reasonable doubt. Hence, benefit of doubt is extended in favour of the accused persons. Accordingly, point No.1 is answered in negative and are decided against the prosecution.

FINAL ORDER

31. In view of my findings on the aforesaid point, both accused persons are acquitted for the commission of offences punishable under Section 325 read with Section 34 of Indian Penal Code. The personal bonds of the accused persons are cancelled and their sureties stand discharged accordingly. The case property, if any, be dealt with as per rule after expiry of the period of limitation for filing appeal or in case of appeal, same be dealt with as per the directions of learned Appellate Court. The file after due completion be consigned to the record room.

Announced in the open Court today on 29th day of July, 2026.

(Surya Prakash)
Chief Judicial Magistrate,
Hamirpur, H.P.

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LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Vinod Kumar	Prosecution's witness
PW-2	Kaka Kumar	-do-
PW-3	Ct. Rakesh Kumar	-do-
PW-4	Sahil Alohia	-do-
PW-5	Dr. Priyanka	-do-
PW-6	SI Manoj Kumar	-do-
PW-7	Avneet Thakur	-do-
PW-8	Vicky Alohia	-do-
PW-9	Rakesh Kumar	-do-
PW-10	Rakesh Kumar	-do-

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

Sr. No.	Exhibit Number	Description
1.	P1/PW1	Spot map
2.	P2/PW1 to P4/PW1	Photographs
3.	P5/PW1	Parcel
4.	P6/PW1	Carry bag
5.	P7/PW1 & P8/PW1	Broken pieces of bottle
6.	P9/PW1	Seizure memo

17.

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7.	P1/PW3	Rapat
8.	P2/PW3	Rapat
9.	P3/PW3	FIR
10.	P4/PW3	Certificate u/s 65-B of I.E.Act
11.	P6/PW3	Carry bag
12.	P1/PW5	Application to M.O.
13.	P2/PW5	MLC Avneet
14.	P3/PW5	X-ray form
15.	P4/PW5	Opinion
16.	P5/PW5	Opinion
17.	P6/PW5	Opinion
18.	P1/PW6	Copy of extract Malkhana register
19.	P1/PW7	Complaint
20.	P2/PW7	Seal impression
21.	P1/PW9	Endorsement
22.	P2/PW9	Statement of Avneet
23.	P3/PW9	Statement of Sahil
24.	P4/PW9	Statement of Vicky
25.	P5/PW9	Statement of Kaka Kumar
26.	P6/PW9	Statement of Vinod Kumar
27.	P7/PW9	Statement of Sanjeev Kumar
28.	PX	Certificate u/s 65-B of I.E.Act

(Surya Prakash)
Chief Judicial Magistrate,
Hamirpur, H.P.