

CRA-D-134-DBA-2005 (O&M)
CRA-S-1057-SB-2004 (O&M)
CRR-1651-2004 (O&M)

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2024.PHHC.132772 DB



In the High Court of Punjab and Haryana at Chandigarh

1. CRA-D-134-DBA-2005 (O&M)
Reserved on: 24.9.2024
Date of Decision: 1.10.2024

State of Haryana Appellant

Versus

Narender Singh and others Respondents

2. CRA-S-1057-SB-2004 (O&M)

Harbans Singh Appellant

Versus

State of Haryana Respondent

3. CRR-1651-2004 (O&M)

Lakhbir Singh Petitioner

Versus

Narender Singh and others Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Pawan Girdhar, Addl. A.G., Haryana.

Mr. S.S.Sahu, Advocate
for the appellant (in CRA-S-1057-SB-2004).

Mr. Rajpal Singh, Advocate (Legal Aid Counsel)
for the petitioner (in CRR-1651-2004).

Ms. Bhavana Datta, Advocate (Legal Aide Counsel)
for the respondents-accused (in CRA-D-134-DBA-2005).



SURESHWAR THAKUR, J.

1. Since both the appeals (supra) as well as criminal revision (supra) arise from a common verdict, made by the learned trial Judge concerned, hence they are amenable for a common verdict being made thereons.

2. All the (supra) are directed against the verdict drawn on 7.5.2004, upon Sessions Case No. 13 of 2003, by the learned Additional Sessions Judge, Fatehabad, wherethrough in respect of a charge drawn for the offence punishable under Section 307/34 IPC, thus the learned trial Judge concerned, proceeded to make a verdict of acquittal against accused Romi, Kuldeep and Tajender. However, the learned trial Judge concerned, proceed to record a finding of conviction against the accused namely Narender Singh and appellant-Harbans Singh for an offence punishable under Section 324 read with Section 34 IPC.

3. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced both the accused-convicts (supra), to undergo rigorous imprisonment for a period of two years for an offence punishable under Section 324 read with Section 34 of the IPC, besides also imposed upon the convicts (supra) sentence of fine, comprised in the sum of Rs. 2,000/- each, besides in default of payment of fine amount, he sentenced both the convicts to undergo rigorous imprisonment for a period of six months.

4. However, the period of detention undergone by the accused-convicts, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above

imposed sentence(s) of imprisonment.



5. The accused-convict Harbans Singh becomes aggrieved from the above drawn verdict of conviction, besides also, becomes aggrieved from the consequent thereto sentences of imprisonment, and, of fine as became imposed, upon him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the criminal appeal bearing No. ***CRA-S-1057-SB-2004***.

6. The State of Haryana and the complainant Lakhbir Singh become aggrieved from the above drawn verdict of acquittal in respect of the accused concerned, and, are led to institute thereagainst respectively criminal appeal bearing No. ***CRA-D-134-DBA-2005*** and criminal revision petition bearing No. ***CRR-1651-2004*** with a further prayer therein that the impugned verdict (supra) be set aside, and, all the accused be convicted and sentenced for the commission of an offence punishable under Section 307/34 IPC.

Factual Background

7. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PL is assigned. As per the prosecution story, on 18.11.1999, on receiving an information from Siwach Hospital, Fatehabad, H.C. Ram Kumar of Police Station, Ratia went to the hospital but the doctor declared injured Lakhbir Singh unfit to make a statement. On 19.11.1999, again he visited the hospital and obtained the opinion of the doctor, who declared the injured fit to make the statement, and, he accordingly recorded the statement of the injured-complainant Lakhbir Singh, who in his statement alleged, that he is having a truck bearing registration No. PB-08-J-9795 and driving the same. On 18.11.1999, at about 2.30 P.M., when he



was coming back to his house, after getting repaired the truck from the workshop along with his brother Jasvir and father Bhajan Singh, and, when they reached near the shop of one Tej Singh, he signalled them to stop. On which, he stopped the truck and got down from the same. Tej Singh took him to the nearby shop wherein Narender Singh son of Tej Singh, Kuldeep Singh son of Banta Singh, Romi son of Dev Singh and Harbans Singh son of Sohan Singh were sitting in the shop. Kuldeep Singh and Romi came out from the shop and caught hold of him and accused Harbans exhorted to kill him for giving evidence against them. In the meantime, accused Narender came from the shop and gave a knife blow in his stomach. On this, his father and brother Jasvir Singh raised alarm and came to rescue him, whereupon all the above accused ran away on their motor-cycle. The complainant further alleged, that the motive behind the occurrence is that since on 17.11.1999, in a criminal case between him and accused Harbans Singh, he deposed against accused Harbans Singh, therefore, he has been assaulted by the accused. On the basis of the statement (supra), the appeal FIR became registered under Section 324 read with Section 34 of the IPC.

Investigation proceedings

8. During the course of investigations, the investigating officer concerned, visited the place of occurrence, and, prepared rough site plan. On 25.11.1999, the investigating officer concerned, obtained the opinion of the doctor as to the nature of the injury and after obtaining the same, offence under Section 307 IPC was added. On 26.11.1999 accused Narender and Romi were arrested and the knife used by them in the commission of crime



was recovered from the possession of accused Narender, which was taken in to possession vide recovery memo Ex. PN. On 25.12.1999, accused Kuldeep and Tejender Singh were also arrested. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C. against all the accused except accused Harbans Singh, before the learned committal Court concerned.

Committal Proceedings

9. Since the offence under Section 307 of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 1.3.2000, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

10. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against the accused concerned, for the offence punishable under Section 307/34 IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

11. During trial, an application under Section 319 Cr.P.C was moved by the prosecution for summoning Harbans Singh as an additional accused, which was allowed by the learned trial Court vide order dated 22.1.2002. Consequently, the said accused was summoned to face trial along with other four co-accused.

12. Subsequently, vide order dated 12.7.2002 charge sheet was



framed against all the accused qua commission of the offence punishable under Section 307/34 IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

13. In proof of its case, the prosecution examined 11 witnesses, and, tendered into evidence the report of the FSL (Ex. PS). Subsequently, the prosecution evidence was closed.

14. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. The accused chose to adduce defence evidence, and led one witness into the witness box.

**Submissions of the learned State counsel and of the learned counsel
for the petitioner**

15. The learned counsel for the appellant-State (in CRA-D-134-DBA-2005) as well as the learned counsel for the petitioner (in CRR-1651-2004), have made vehement submissions before this Court, that the learned trial Judge concerned, has made legally infirm reasons for making an order of acquittal, upon the accused concerned, vis-a-vis the charge drawn against them for an offence punishable under Section 307/34 IPC, besides the learned trial Judge concerned, has inaptly convicted and sentenced accused Narender Singh and Harbans Singh, vis-a-vis, an offence punishable under Section 324 read with Section 34 IPC. Therefore, they contend, that the impugned verdict of acquittal be quashed, and, set aside. Moreover, they have also argued, that the appeal, as preferred by the convict-appellant, thus be dismissed.



16. In addition, they also submit that all the accused be convicted and sentenced under Section 307/34 IPC. The said submission is rested on the ground that, the injured eye witness Lakhveer Singh (PW-4) and one Bhajan Singh (PW-6), who is another eye witness, rather do fully support the prosecution version. Resultantly therebys, it has also been proved that all the accused in furtherance of their common object, being members of an unlawful assembly intercepted the injured, and, made an assault upon with an intention to kill him. In sequel, it is argued, that after convicting the accused for an offence punishable under Section 307 read with Section 34 IPC, the jurisdictional SHO concerned, be directed to produce them for theirs being heard on quantum of sentence vis-a-vis the offence punishable under Section 307 read with Section 34 IPC.

Submissions of the learned counsel for the appellant-accused and of the learned counsel for the acquitted accused-respondents

17. The learned counsel for the aggrieved appellant/accused-respondents have argued before this Court, that both the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. He supports the above submission on the ground, that they are based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

18. The learned counsel for the acquitted accused-respondents No. 2 to 4 submits, that the verdict of acquittal as has been challenged before this Court, is well merited, thus it does not require any interference being made by this Court.



Reasons for partly allowing the criminal appeal and the criminal revision petition respectively filed by the State of Haryana and by the complainant

19. The learned Additional Sessions Judge, Fatehabad made a verdict of conviction in Sessions Case No. 52 of 2001 vis-a-vis accused Narender Singh and accused-appellant Harbans Singh, thus for an offence punishable under Section 324 read with Section 34 IPC, and, also imposed upon them the supra sentences of imprisonment, besides imposed upon the them the supra sentences of fine.

20. Be that as it may, convict Narender Singh reared thereagainst criminal appeal bearing No. CRA-1072-SB-2004 before this Court. This Court through a decision made on the said appeal, on 21.5.2004, but after making a studied perusal of the adduced evidence before the learned trial Court concerned, and, after declaring that the said made appraisal of the adduced evidence, thus by the learned trial Judge concerned, rather was a well made appraisal thereof, thus disposed of the appeal (supra), and, also made the hereinafter sentence of imprisonment upon accused Narender Singh.

“Having regard to the circumstances of the case and the fact that only one injury was caused by the appellant with a knife and the occurrence is more than four years old, sentence of RI for 15 months will meet the ends of justice. Substantive sentence is reduced accordingly.

With the above modification, the appeal stands disposed of accordingly.”

21. Therefore, since the decision made on the said appeal is not stated to be appealed before the Apex Court, thereby it has acquired



conclusivity. As such, there is no requirement to re-appreciate the evidence common to the convict-appellant Narender Singh, and, to the convict-accused in the instant case, nor also this Court is required to be making an adjudication upon the criminal appeal bearing No. *CRA-D-134-DBA-2005* filed by the State of Haryana and upon the criminal revision bearing No. *CRR-1651-2004* filed by the complainant, wherebys therein, thus respective espousals are made, rather for convicting the convict Harbans Singh qua the commission of an offence punishable under Section 307 read with Section 34 IPC, nor also this Court is required to be adjudicating upon criminal appeal bearing No. *CRA-S-1057-SB-2004*, preferred by convict-appellant Harbans Singh, wherebys he has challenged the making of a verdict of conviction qua him, thus only for an offence punishable under Section 324 read with Section 34 IPC, besides has also espoused qua after annulling the consequent thereto made order of sentence, to sentence the convict Harbans Singh for an offence punishable under Section 307 read with Section 34 IPC.

22. Be that as it may, in the criminal appeal (supra) reared by the State of Haryana, and, the criminal revision petition (supra) reared by the complainant, there are espousals vis-a-vis the verdict of acquittal pronounced vis-a-vis accused Romi @ Santokh Singh, Kuldeep Singh and Tajender Singh alias Teja Singh, being quashed and set aside, thus on the premise that they are not well premised rather on a worthy appreciation of the evidence adduced before the learned trial Court concerned.

23. The reasons recorded by the learned trial Judge concerned, for recording a verdict of acquittal in respect of the above are premised on the ground, that since the supra, did not cause any physical harm to the injured,



nor when they participated in any other manner in the relevant assault, therebys the learned trial Judge concerned was led to make the impugned verdict of acquittal vis-a-vis the supra.

24. However, for the reasons to be assigned hereinafter, the inference (supra) is not based upon a sound appreciation of the adduced evidence.

25. The reason for drawing the above conclusion becomes sparked from the factum, that a reading of the deposition of the complainant/injured, as occurs in his examination-in-chief discloses, that therein he had attributed vis-a-vis accused Teja Singh, thus an incriminatory role qua his exhorting the principal accused to deliver a stab wound on his person. In addition, therein he also attributed to co-accused Romi and Kuldeep, thus the incriminatory roles of theirs rather through clutching him hence respectively aiding the principal accused Narender Singh to deliver a stab wound on his abdomen.

26. The ascription (supra) of incriminatory participations of the supra in the crime event, rather by PW-4, and, who is also the injured victim, necessarily underscores, especially when the said made speakings by him against the acquitted accused rather remained omitted to become effectively repulsed rather through apposite suggestions being meted to the witness (supra), nor also when any elicitations became unearthed from him, wherebys, it may become concluded, that the ascriptions (supra) of incriminatory participation, vis-a-vis, the acquitted accused rather being a grossly made embellishment or improvement vis-a-vis his previously made statement in writing, qua the supra but acquiring evidentiary solemnity.



Resultantly evidentiary efficacy is to be assigned to the incriminatory speakings, as became made by PW-4, vis-a-vis the supra, thus in his examination-in-chief.

27. Moreover, when a reading of the cross-examination of the said witness rather discloses, that therein an affirmative suggestion became meted to him, with an overtone, that in his previously recorded statement (Ex. PH), he had assigned vis-a-vis accused Teja Singh the incriminatory role of his exhorting the principal accused Narender Singh, which led the latter to arrive at the crime site, and, subsequently also led him to deliver a stab blow on PW-4. Since even to the said affirmative suggestion, an affirmative answer emanated from PW-4. Resultantly, the inference therefrom, is that, thereby the defence conceding qua the acquitted accused Teja Singh, rather in the manner (supra) making an active participation in the crime event. In sequel, it was grossly inapt for the learned trial Judge concerned, to yet record a verdict of acquittal vis-a-vis accused Teja Singh, thus on the ground that with there occurring no evidence against the said accused rather relating to his making any incriminatory participation in the crime event, thereupon reiteratedly his becoming entitled to a verdict of acquittal becoming pronounced.

28. Conspicuously, vis-a-vis both the other acquitted accused, namely, Romi @ Santokh Singh, Kuldeep Singh, thus PW-4 in his examination-in-chief, also made an attribution qua both, to the extent, that they clutched him rather to facilitate the principal accused Narender Singh to deliver a knife blow in his stomach. Reiteratedly even the said suggestion remained unrebutted, through any efficacious cross-examination being made



upon the injured witness (supra). Consequently, since therebys the accused acquiesced to the incriminatory ascriptions made qua them, therebys there was no occasion for the learned trial Court concerned, to pronounce an order for acquittal upon the accused (supra).

Final order

29. Consequently, the impugned verdict of conviction, as becomes recorded upon the convict-appellant Harbans Singh, by the learned convicting Court, is maintained, and, affirmed. However, appellant Harbans Singh is directed to be produced in custody before this Court on 15.10.2024 for his being heard on the quantum of sentence. Resultantly, the appeal filed by appellant Harbans Singh bearing No. ***CRA-S-1057-SB-2004*** is dismissed.

30. However, the criminal appeal filed by the State of Haryana bearing No. ***CRA-D-134-DBA-2005*** and the criminal revision petition filed by the complainant bearing No. ***CRR-1651-2004***, are dismissed only qua accused-respondent Narender Singh, and, also for reasons (supra), the supra are also dismissed even qua accused-respondent Harbans Singh.

31. Moreover, criminal appeal bearing No. ***CRA-D-134-DBA-2005*** and the criminal revision petition bearing No. ***CRR-1651-2004***, are partly allowed only qua the acquitted accused-respondents concerned. The impugned verdict of acquittal, as made on 7.5.2004, upon Sessions Case No. 13 of 2003, by the learned Additional Sessions Judge, Fatehabad is quashed and set aside. In consequence, accused Romi @ Santokh Singh, Kuldeep Singh and Tajender Singh alias Teja Singh are held guilty for committing the offences punishable under Sections 324 read with Section 34 IPC, and, are convicted accordingly. The accused (supra) are directed to be produced



in custody before this Court on 15.10.2024 for theirs being heard on the quantum of sentence.

- 32. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.
- 33. Records be sent down forthwith.
- 34. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

October 1st, 2024
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No