

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**CRA-S-1784-SB of 2003
Date of decision : 01.09.2015**

Chittar Ram and others

..... Appellants

Versus

State of Haryana

..... Respondent

AND

**CRR No. 2209 of 2003
Date of decision :01.09.2015**

Ram Charan

..... Petitioner

Versus

Chhittar Ram and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Ashit Malik, Advocate
for the appellants (in CRA-S-1784-SB of 2003) &
for respondents no. 1 to 10
(in CRR No. 2209 of 2003).

Mr. Anil Mehta, DAG, Haryana.
(& for respondent no.11 in CRR No. 2209 of 2003)

Mr. Sanjeev Gupta and
Mr.R.K.Dhiman, Advocates
for complainant (in CRA-S-1784-SB of 2003) &
for petitioner (in CRR No. 2209 of 2003)

- 1. Whether Reporters of local papers may be allowed to see the judgement?Yes**
- 2. To be referred to the Reporters or not?Yes**
- 3. Whether the judgement should be reported in the Digest?Yes**

DARSHAN SINGH,J

1. This judgment shall dispose of CRA-S-1784-SB of 2003 and CRR No. 2209 of 2003, as both of these have

arisen out of the same judgment dated 29.08.2003.

2. Criminal appeal no. CRA-S-1784-SB of 2003 has been preferred by appellants Chittar Ram and others against the judgment of conviction dated 29.08.2003, vide which appellants Mohan Lal (appellant no. 6), Prem Chand (appellant no.7), Roshan (appellant no.8) have been held guilty and convicted for the offences punishable under Section 324, 326 and 307 read with Section 34 of Indian Penal Code (for short IPC), appellants Chhittar Ram (appellant no.1), Som Dutt (appellant no.2), Maya Ram (appellant no.3), Om Parkash (appellant no.4) and Dharam Pal (appellant no.10) have been held guilty and convicted for the offence punishable under Section 323 read with Section 34 of IPC, appellants Jethu Ram (appellant no.5) (since deceased) and Balbir Singh (appellant no.9) have been held guilty and convicted for the offences punishable under Sections 323, 325 read with Section 34 of IPC and have been sentenced as under:-

Name	Under Section	Sentence
Mohan Lal	324 read with Section 34 of IPC	Rigorous imprisonment for two years and to pay a fine of Rs. 500/-. In default of payment of fine, to further undergo rigorous imprisonment for three months.
	326 read with Section 34 IPC	Rigorous imprisonment for five years and to pay a fine of Rs. 500/-. In default of payment of fine, to further undergo rigorous imprisonment for six months
	307 read with Section 34 IPC	Rigorous imprisonment for seven years and to pay a fine of Rs. 500/-. In default of payment of fine, to further undergo rigorous imprisonment for six months.

Name	Under Section	Sentence
Prem Chand	324 read with Section 34 of IPC	Rigorous imprisonment for two years and to pay a fine of Rs. 500/-. In default of payment of fine, to further undergo rigorous imprisonment for three months.
	326 read with Section 34 IPC	Rigorous imprisonment for five years and to pay a fine of Rs. 500/-. In default of payment of fine, to further undergo rigorous imprisonment for six months
	307 read with Section 34 IPC	Rigorous imprisonment for seven years and to pay a fine of Rs. 500/-. In default of payment of fine, to further undergo rigorous imprisonment for six months.

Names	Under Section	Sentence
Roshan Lal	324 read with Section 34 of IPC	Rigorous imprisonment for two years and to pay a fine of Rs. 500/-. In default of payment of fine, to further undergo rigorous imprisonment for three months.
	326 read with Section 34 IPC	Rigorous imprisonment for five years and to pay a fine of Rs. 500/-. In default of payment of fine, to further undergo rigorous imprisonment for six months
	307 read with Section 34 IPC	Rigorous imprisonment for seven years and to pay a fine of Rs. 500/-. In default of payment of fine, to further undergo rigorous imprisonment for six months.

All the sentences shall run concurrently.

Names	Under Section	Sentence
Balbir Singh	323 read with Section 34 of IPC	Rigorous imprisonment for one year
	325 read with Section 34 IPC	Rigorous imprisonment for two years and to pay a fine of Rs. 500/-. In default of payment of fine, to further undergo rigorous imprisonment for one months
Jethu Ram	323 read with Section 34 of IPC	Rigorous imprisonment for one year
	325 read with Section 34 IPC	Rigorous imprisonment for two years and to pay a fine of Rs. 500/-. In default of payment of fine, to further undergo rigorous imprisonment for one months

Both the sentences shall run concurrently.

Names	Sentence
Chhittar Ram, Som Dutt, Maya Ram, Om Parkash and Dharam Pal	All the convicts were ordered to be released on probation on their filing of personal bond and bail bond in the sum of Rs. 5000/- with one surety in the like amount.

3. Criminal Revision No. 2209 of 2003 has been

preferred by complainant-injured Ram Charan with a prayer for setting aside/modifying the order releasing accused Chhittar Ram, Som Dutt, Maya Ram, Om Parkash and Dharampal on probation (respondents no.1 to 4 and 10) and awarding them the sentence to undergo life imprisonment and also to award imprisonment for life to accused Jethu Ram, Mohan Lal, Prem Chand, Roshan and Balbir Singh. Petitioner has also claimed compensation to the tune of Rs. 8 lacs.

4. The brief facts giving rise to this prosecution are that on 01.10.1999, complainant Ram Charan (PW-6) was sitting on the flour mill of Kehar Singh (PW-8). Accused-appellant Roshan came there. Kehar Singh demanded charges for grinding the wheat. Roshan left the flour mill stating that he was bringing the money. But, he did not turn up. He again came at the flour mill at night in drunkard condition and started calling bad names. He was sent back by the villagers. On the next day i.e. 02.10.1999 at about 6.00 a.m., accused Roshan, Prem Chand and Mohan Lal armed with '*Gandassis*' came to the flour mill. Complainant Ram Charan and his cousin Kehar Singh were sitting in the verandah. All of them raised *lalkara* and stated that they had come to settle the accounts of flour mill and thereafter, they opened assault. Prem Chand and Mohan Lal gave the

gandassi blows on the head of Ram Charan. Roshan Lal gave a *gandassi* blow on the head of Kehar Singh. They raised alarm. On hearing the same Ran Singh son of Gian, Karambir son of Sham Lal, Mohan Lal son of Narata Ram etc came there to rescue them. In the meanwhile, accused Maya Ram, Chhittar Ram, Dharam Pal, Som Dutt armed with *lathi* came there and started giving beating to Ram Charan etc. The ladies belonging to the family of complainant also came to rescue them. Then, accused Balbir, Om Parkash, Jethu and Duni armed with *lathi* came at the spot and they also started giving beating to them. Ram Charan, Kehar Singh, Sevi Devi, Karambir, Ranvir and Mohan Lal suffered injuries. They also caused injuries in their defence to the accused. Thereafter, the injured were moved to the hospital. ASI Surender Singh, the Investigating Officer of the case recorded the statement of Ram Charan after obtaining opinion of the doctor, vide which he was declared fit to make the statement. On the basis of his statement Ex.PU, the FIR Ex.PS/1 was registered. On receiving dental surgeon's report with respect to injured Sevi Devi and X-ray report with respect to Ram Charan, the offences punishable under Section 325 and 326 read with Section 34 of IPC were added. Later on, injuries no. 1 and 2 on the person of Ram Charan were declared as dangerous to

life. So, Section 307 read with Section 34 of IPC was added. On completion of the formalities of the investigation, the report under Section 173 of Code of Criminal Procedure, 1973 (for short Cr.P.C) was presented in the Court.

5. Accused-appellants Mohan Lal, Prem Chand and Roshan were charge sheeted for the offence punishable under Sections 324, 326, 307 read with Section 34 of IPC. Accused-appellants Chhittar Ram, Som Dutt, Maya Ram and Dharam Pal were charge sheeted for the offence punishable under Sections 323 read with Section 34 of IPC. Appellants Om Parkash, Jethu Ram and Balbir Singh were charge sheeted for the offence punishable under Section 323 read with Section 34 of IPC. Accused Balbir Singh and Jethu Ram were also charge sheeted for the offence punishable under Section 325 read with Section 34 of IPC, to which all the accused-appellants pleaded not guilty and claimed trial.

6. In order to substantiate its case, prosecution examined as many as fourteen witnesses in all.

7. When examined under Section 313 Cr.P.C, all the accused-appellants pleaded that accused-appellants Mohan Lal, Roshan were standing in the courtyard of Mohan Lal. in the meanwhile, Karambir, Ram Rattan, Babu Ram, Ram

Charan, Mehar Chand, Jarnail Singh, Ramji Lal, Shyam Lal, Narata and one Mohinder Singh armed with 'gandasis' and 'lathis' came there and caused injuries to them. They also acted in their self defence when they found that there was no other way to save themselves. There was verbal altercation between both the sides, a day earlier. They further pleaded that no grinding charges were due against them.

8. In the cross-examination of PW-3 Dr. Narinder Pal Singh, Medical Officer, L.N.J.P Hospital, Kurukshetra, the accused have brought on record the photocopies of the medico legal reports of Roshan Lal, Gurdeepo, Maya Ram, Mohan Lal, Jaswanti and Chhittar Pal Ex.DA to Ex.DF respectively. They have also brought on record photocopies of X-ray reports of Roshan Lal Ex.DG and x-ray report of Chhittar Pal Ex.DH in the cross examination of PW-13 Dr. C.R.Khatri, Medical Officer, LNJP Hospital, Kurukshetra.

9. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, accused-appellants were convicted and sentenced as mentioned in the upper part of the judgment.

10. It is pertinent to mention that during the pendency of the present appeal, appellant Jethu Ram (appellant no. 5) died on 29.10.2011 and the appeal qua

him stands abated.

11. I have heard Mr. Ashit Malik, Advocate, learned Counsel for the accused-appellants, Mr. Sanjeev Gupta and Mr. R.K.Dhiman, Advocate, learned counsel for complainant-revisionist, Mr. Anil Mehta, Advocate, learned Deputy Advocate General, Haryana and have meticulously examined the record of the case.

12. Initiating the arguments, Mr. Ashit Malik, learned counsel for the accused-appellants contended that from the medico legal reports Ex.DA to Ex.DF, it is established that number of injuries were caused to the members of the accused party. He contended that Roshan Lal has suffered nine injuries. Injuries no.1 and 5 were with sharp weapon. Gurdeepo has suffered three injuries. Maya Ram has suffered three injuries. Mohan Lal has suffered two injuries, Jaswanti has suffered two injuries. Chhittar Pal has also suffered two injuries, out of which injury no.1 was found grievous. Thus, he contended that members of the accused party have suffered total twenty one injuries, which have not been explained from the side of prosecution. PW-6 Ram Charan and PW-8 Kehar Singh have stated that no injury was caused by them to the accused party, which shows that the genesis and origin of the occurrence has been suppressed by the prosecution.

13. He further contended that the occurrence is alleged to have taken place in the village. It is also alleged that some villagers have removed the injured to the hospital. No independent witness has been examined by the prosecution. All the witnesses examined by the prosecution were closely related to each other.

14. He further contended that no blood stained earth was lifted from the spot. In fact, the complainant party had went in front of the house of accused and caused injuries to them.

15. The motive was also on the part of the complainant party to cause the injuries as Roshan was not paying the grinding charges and has also abused complainant Ram Charan and Kehar Singh. There was no motive for the accused to cause injuries to the members of the complainant party.

16. He further contended that no offence punishable under Section 307 IPC is made out. To support his contentions, he relied upon cases **Satpal Singh Vs. State of Punjab 2011(3) R.C.R (Criminal) 410, Nand Singh Vs. State of Punjab 2007(1) R.C.R (Criminal) 801, Pishora Singh Vs. State of Punjab 1993(1) R.C.R (Criminal) 188 and Maha Singh and another Vs. State of Haryana 2007(3) R.C.R (Criminal) 423.** There was no intention to

kill Ram Charan. Even, as per the prosecution story there was no dispute with Ram Charan. Kehar Singh has suffered only a simple injury. PW-3 Dr. Narinder Pal Singh has not given any specific opinion that injuries suffered by Ram Charan were dangerous to life. He has only given a general opinion that all head injuries are dangerous to life. There is no evidence on file to show that Ram Charan had undergone any surgery. No treatment record of Ram Charan has been produced nor the doctor who has treated Ram Charan has been examined to show the severity of the injury. He contended that the injuries suffered by Ram Charan were declared as grievous vide opinion Ex.PO. Later opinion Ex.PR/1 is opinion of general nature and can not be taken into consideration. He further contended that infact the complainant party was aggressor and had come to the house of the accused party to assault Roshan etc. at the most it can be stated that accused have exceeded the right of private defence.

17. He further contended that the sentence awarded to appellants is also highly disproportionate and excessive.

18. On the other hand, learned State counsel contended that it is established from the evidence on record that accused persons armed with deadly weapons had gone to the flour mill of injured Kehar Singh and opened the

assault. They caused number of injuries to Ram Charan, Kehar Singh, Sevi Devi, Karamvir, Ranvir and Mohan Lal. So, they were the aggressors. The injuries on their person have been duly explained by the prosecution as PW-9 Karamvir and PW-10 Ranvir have categorically stated that they also caused injuries to the accused persons in their defence. He contended that the accused-appellants being aggressors can not claim the right of private defence. To support his contentions he relied upon cases **Tarloki Nath and others Vs. State of U.P (2005) 13 Supreme Court Cases 323 and Abid Vs. State of U.P 2009(4) R.C.R (Criminal) 985**. He further contended that accused-appellants Mohan Lal, Prem Chand and Roshan have caused injuries on the head of Ram Charan and Kehar Singh. Injuries No. 1 and 2 suffered by Ram Charan have been declared as dangerous to life. So, Section 307 of IPC is clearly attracted. He further contended that the prosecution has examined five injured witnesses. Their statements are corroborated from the medical evidence. It was not necessary to examine each and every person who had come present at the spot. He further contended that the sentence awarded by the learned trial Court is also just and appropriate.

19. Learned counsel for the revisionist have also

supported the contentions raised by learned State counsel. They further contended that the sentence awarded to the appellants is inadequate. Learned trial Court has also not awarded any compensation to revisionist Ram Charan, who has suffered the serious head injury which was declared as dangerous to life.

20. I have duly considered the aforesaid contentions.

21. PW-14, Head Constable Zile Singh, the Investigating Officer of the case categorically stated in the cross-examination that there is a cross case against both the parties. One case is State Vs. Chittar Ram etc. i.e. the present case and other case was titled as State Vs. Ram Charan etc. i.e. case registered against the complainant party. Learned counsel for the revisionist has pleaded that in the cross-case, the complainant party has been acquitted by the learned trial Court and this fact has not been disputed at bar by learned counsel for the appellants. So, the fact remains that out of this very occurrence, a cross-case was also registered against the complainant party for the injuries found on the person of the members of the accused party. Thus, it cannot be stated that injuries on the person of accused were not explained. Moreover, PW-9 Karamvir has categorically stated that they also caused injuries to accused in their defence. PW-10 Ranvir has also

stated that they also caused injuries to the accused persons in self defence. So, injuries on the person of accused party are well explained.

22. I also do not find any substance in the plea raised by learned counsel for the appellants that accused had exercised the right of their private defence. Ex.PQ/1 is the site plan of place of occurrence prepared by PW-14, HC Zile Singh, the Investigating Officer of the case. Ex.PT is the scaled site plan of the place of occurrence prepared by PW-5 Constable Sudeep Kumar. These site plans have not been challenged in the cross-examination of the aforesaid witnesses by the accused party. No suggestion has been put to these witnesses that those site plans were not correct as per spot and have been fabricated to favour the complainant party. Both these site plans depicts that initial place of occurrence is situated just in front of the flour mill of PW-8 Kehar Singh. These site plans depicts that the accused-appellants while armed with the weapons came to the flour mill of injured Kehar Singh to cause them injuries. Mere this fact that the Investigating Officer has not lifted the blood stained earth from the place of occurrence is no ground to disbelieve the prosecution version. The site plans show that the place of occurrence is a thoroughfare. The occurrence has taken place on 02.10.1999 in the morning and the spot

has been inspected by the Investigating Officer for the first time on 09.10.1999 i.e. after seven days. It is not possible that after the lapse seven days, the blood stained earth will be available to the Investigating Officer at the spot which is a thoroughfare. The accused have not led any evidence in their defence to establish their defence plea that members of the complainant party had come to the courtyard of Mohan Lal and caused injuries to the members of accused party. In these circumstances, there is no escape from conclusion that all the accused armed with weapons came in front of the flour mill of injured Kehar Singh and open the assault. The plea raised by the accused that members of the complainant party had come to the courtyard of Mohan Lal and caused injuries to them is not established.

23. Even, the injuries suffered by the parties shows that appellants were aggressors. Ex.PC is the medico legal report of complainant Ram Charan. He had suffered six injuries. Injuries no. 1 and 2 are on his head with sharp weapons. Both these injuries have been declared as grievous vide opinion Ex.PO.As per the C.T-Scan report Ex.PA, he suffered Extra Dural Haemotoma in Left Temporo-Parietal Region with Pneumocephalous with fracture of left temporal bone. Same findings have been given by PW-13 Dr. C.R.Khatri, who had radiologically examined Ram Charan at

LNJP Hospital, Kurukshetra. PW-8 Kehar Singh has suffered four injuries including a head injury, though simple in nature. PW-7 Sevi Devi has suffered three injuries. She lost one teeth and injury no.1 was declared as grievous. PW-9 Karamvir has suffered four injuries. PW-10 Ranvir has suffered two injuries and Mohan Lal has suffered four injuries. From the side of accused Roshan has suffered nine injuries. Out of those, injuries no. 1 and 5 were with sharp weapon and remaining with blunt weapon. He has not suffered any grievous injury. Gurdeepo has also suffered three simple injuries recorded in MLR Ex.DB. Accused-appellant Maya Ram has suffered three simple injuries with blunt weapon as per MLR Ex.DC. Accused-appellant Mohan Lal has suffered two simple injuries with blunt weapon as per MLR Ex.DD. Jaswanti has suffered two simple injuries with blunt weapon as per MLR Ex.DE and accused-appellant Chhittar Pal has suffered two injuries with blunt weapon as per MLR Ex.DF and fracture of proximal phalanges of little and ring finger of the left hand were found. So, no grievous injury has been suffered by any of the injured belonging to the accused party except Chhittar Ram. Even Chhittar Ram has not suffered the grievous injury on the vital part of his body. Whereas from the side of accused, injured complainant Ram Charan has suffered two

grievous injuries on the head. Kehar Singh also suffered a head injury. Sevi Devi also suffered a grievous injury and lost her tooth. Even, the nature and pattern of the injury shows that members of the complainant party were attacked and they had acted in their self defence.

24. Thus, the accused-appellants are proved to be the aggressors and they can not claim the right of the private defence. Reliance can be placed on case **Abid Vs. State of U.P (Supra)**, wherein the Hon'ble Apex Court has categorically laid down that accused who are aggressor had no right of private defence.

25. The prosecution in order to prove its case has examined five injured witnesses namely PW-6 Ram Charan, PW-7 Sevi Devi, PW-8 Kehar Singh, PW-9 Karamvir and PW-10 Ranvir. They have consistently deposed about the manner of the occurrence and injuries caused to them. Learned counsel for the appellants has not been able to point out any material contradiction in their statements. This ocular evidence is fully corroborated from the medical evidence. The testimonies of the injured witnesses carries great evidentiary value. It is a case where two groups of inhabitants of the village were involved. In such type of cases, the inhabitants of the village generally do not come forward to depose. Obviously, due to the reason that they do

not want to earn the wreath of the accused. The Hon'ble Supreme Court in cases **Nagarjit Ahir Vs. State of Bihar 2005(2) RCR (Criminal) 26** and **Raj Narain Singh Vs. State of U.P and others 2009(4) RCR (Criminal) 347** has laid down that it is not necessary that each and every person who was present at the spot must be examined. So, the non-examination of the other persons who had assembled at the spot is no ground to create any dent in the cogent, consistent and reliable testimonies of the injured witnesses.

26. Now, the question arises as to whether Section 307 of IPC is attracted or not. Section 307 of IPC reads as under:-

“Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned”.

The aforesaid provisions of law envisages that Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused

death, he would be guilty of murder, shall be punished therein. To attract Section 307 of IPC, the intention or requisite knowledge to cause death are the essential ingredients. Thus, for the purpose of this section what is material in the intention or knowledge and not the consequences of the actual act done for the purpose of executing the said intention. Intention and knowledge being a man's state of mind can not possibly be proved by direct evidence thereof and can be inferred and proved by surrounding circumstances. In order to justify the conviction under Section 307 of IPC, it is not essential that injury, capable of causing death should have been caused. Although, the nature of injury actually caused may be of great assistance in coming to conclusion as to the intention of the accused.

27. In para no. 30 of the impugned judgment, learned trial Court has mentioned that injury no.1 on the head of Ram Charan attracts Section 307 of IPC, because the said injury was fracture of head with further complications. So, learned trial Court has recorded the conviction of appellants Mohan Lal, Prem Chand and Roshan under Section 307 read with Section 34 of IPC on account of injury no.1 suffered by Ram Charan. But, on appraisal of the evidence, this conclusion of the learned trial Court is not sustainable.

There is no definite opinion that injuries no. 1 and 2 suffered by complainant Ram Charan on his head were dangerous to life. He has been medico legally examined by PW-3 Dr. Narinder Pal Singh, Medical Officer LNJP Hospital, Kurukshetra. Injuries no. 1 and 2 on the person of Ram Charan reads as under:-

1. There was an incised wound 6 cm x 2 cm bone deep over the frontal region of head obliqually placed crossing on the midline 4 cm behind the hair-line of fore-head. The injury was advised for x-ray.
2. Incised wound 3 cm x 1 cm x bone deep over the frontal region of head 3 cm left from injury no.1 and 2 cm behind the hair line. x-ray was advised.

28. Dr. Narinder Pal Singh has declared both these injuries as grievous with sharp weapon on the basis of X-ray report vide his opinion Ex.PO dated 04.10.1999. The Investigating Officer again moved an application on 04.11.1999 Ex.PR specifically mentioning therein that opinion may be given as to whether injuries no.1 and 2 suffered by Ram Charan could cause death. On this application, PW-3 Dr. Narinder Pal Singh has given the opinion Ex.PR/1 that every head injury is dangerous to life. Thus, he has not given any specific opinion that injuries no.1 and 2 suffered by Ram Charan is dangerous to life or

could cause death, if not given timely and proper medical aid. It is also not known on what basis he has given this opinion. In the cross-examination, he mentioned that he does not remember as to whether he has seen the bed head ticket of Ram Charan when he had given the opinion Ex.PR/1. He further stated that he had never examined patient Ram Charan after 02.10.1999, again said that he does not remember. The prosecution has not placed on record the bed head ticket of Ram Charan to show as to whether he had undergone any surgical procedure for the head injuries suffered by him. The treating doctor/surgeon has also not been examined to establish the severity of the head injuries suffered by Ram Charan. PW-3 Dr. Narinder Pal Singh has simply medico legally examined him. PW-1 Dr. Pawan Kumar Gupta and PW-13 Dr.C.R.Khatri have simply radiologically examined him. The opinion given by PW-3 Dr. Narinder Pal Singh is absolutely indefinite, vague and general and not specifically with respect to injuries no.1 and 2 suffered by complainant Ram Charan. So, no reliance can be placed on such medical opinion to conclude that Ram Charan has suffered any injury which was dangerous to life or could prove fatal if proper and timely medical aid was not given.

29. There could also be no intention on the part of the

accused to kill Ram Charan. Even, as per the admitted case of the prosecution, the dispute with respect to the payment of grinding charges of the wheat flour was between accused Roshan and PW-8 Kehar Singh. The accused had no dispute with Ram Charan. So, they could have no intention to kill Ram Charan. Injuries no.1 and 2 on his person have been attributed to accused-appellants Mohan Lal and Prem Chand, who were not directly concerned with the dispute of grinding charges. The injury attributed to Roshan Lal on the head of Kehar Singh with a *gandassi* is simple in nature. In case **State of Punjab Vs. Bant Singh 1996 (2) R.C.R (Criminal) 135**, injury was caused on the head with sharp edged weapon. A Division Bench of this Court held that that was not enough to bring the case under Section 307 of IPC. It shall have to be shown as to what was the actual intention of the assailant as also as to what was the nature of the injury i.e. extent of damage caused to body or any organ thereof. In case **Bawa Singh and others Vs. State of Punjab 2013(3) R.C.R (Criminal) 1027**, though there was opinion of the doctor that the injury caused to the victim was dangerous to life, but no definite and specific medical opinion was brought on record that if the indicated injuries were not timely treated or but for timely medical aid, the injuries were sufficient in ordinary course of nature to cause

the death and as well as dangerous to life. This Court held that such injury would fall within the domain of Clause Eighthly of Section 320 of IPC and will be punishable under Section 326 of IPC and the conviction under Section 307 of IPC was set aside. The ratio of law laid down in this authority is fully applicable to the facts of the case as in this case also there is no specific opinion that injuries suffered by Ram Charan were dangerous to life. PW-3 Dr. Narinder Pal Singh has only given a vague and general opinion. There is also no opinion of the treating doctor/ surgeon about the severity of the injuries suffered by him and that if he would not has been provided timely medical aid, those could have proved fatal. However, in view of the CT-scan report Ex.PA and X-ray report prepared by PW-13 Dr. C.R.Khatri, injuries no.1 and 2 suffered by complainant Ram Charan on his head were found grievous in nature vide opinion Ex.PO, which will attract Section 326 of IPC. Consequently, the conviction of appellants Mohan Lal, Prem Chand and Roshan under Section 307 read with Section 34 of IPC is not sustainable in the eye of law. However, their action will clearly attract Section 324 and Section 326 read with Section 34 of IPC for causing injuries to Kehar Singh and grievous injuries to complainant Ram Charan.

30. Accused-appellants Mohan Lal, Prem Chand and

Roshan Lal have been sentenced to undergo rigorous imprisonment for a period of five years for the offence punishable under Section 326 read with Section 34 of IPC along with fine of Rs. 500/- each and in default to further undergo rigorous imprisonment for six months each. This fact is not disputed that members of the accused party including appellants Mohan Lal and Roshan have also suffered injuries. There is no material on record to establish that accused-appellants Mohan Lal, Prem Chand and Roshan had any criminal record or they were the previous convicts. Both the parties are residents of the same village. This occurrence has taken place on 02.10.1999 i.e. 16 years back. Thus, they have faced the protected trial. All the three appellants namely Mohan Lal, Prem Chand and Roshan are the real brothers. So, the interest of justice requires some reduction in the quantum of sentence for the offence punishable under Section 326 read with Section 34 of IPC. In my opinion, the rigorous imprisonment for a period of four years will suffice the ends of justice instead of rigorous imprisonment of five years as awarded by the learned trial Court. The sentences awarded for the other offences do not call for any interference.

31. Complainant-injured Ram Charan has suffered the grievous head injuries. In the revision petition he has

sought the compensation of Rs. 8 lacs. But, no criteria has been mentioned in the revision petition as to on what ground this amount has been fixed by him. Revisionist Ram Charan has also not placed on record his treatment record to show as to what type of medical treatment he has received and how much expenditure he has incurred. But, in view of the fact that he has suffered the head injury, he might have incurred expenses to have the treatment. So, certainly, he will be entitled for the compensation under Section 357(1) of Cr.P.C as the fine is the part of the sentence, which has to be enhanced and out of that the suitable compensation can be paid to injured-complainant Ram Charan. Reliance can be placed on case **Puttaswamy Vs. State of Karnataka 2009(1) RCR (Criminal) 501 (SC)**.

32. Thus, keeping in view my aforesaid discussion, criminal appeal no.CRA-S-1784-SB of 2003 is hereby partly allowed. The conviction and sentence of appellants Mohan Lal, Prem Chand and Roshan for the offence punishable under Section 307 read with Section 34 of IPC are hereby set aside. However, their conviction under Section 324, 326 read with Section 34 of IPC is hereby upheld and maintained. The sentence awarded to appellants Mohan Lal, Prem Chand and Roshan for the offence punishable under Section 326 read with Section 34 of IPC is also hereby

reduced to rigorous imprisonment for four years instead of rigorous imprisonment for a period of five years as awarded by the learned trial Court. However, the fine imposed upon them is enhanced to Rs. 17,500/- each for the offence punishable under Section 326 read with Section 34 of IPC, in default of payment of fine they will undergo rigorous imprisonment for a period of six months each. Out of the fine so realized Rs.17,000/- each total Rs. 51,000/- shall be paid to complainant-injured Ram Charan as compensation under Section 357 (1) Cr.P.C. The enhanced amount of fine be deposited with the learned trial Court. However, the conviction and sentence of the remaining appellants as recorded by the learned trial Court calls for no interference and stands affirmed.

33. Consequently, the revision petition filed by injured-complainant Ram Charan also stands partly allowed as mentioned above. Accused-appellants Mohan Lal, Prem Chand, Roshan and Balbir Singh are on bail. Their bail stand cancelled. They shall surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Kurukshetra, who shall send them to jail to undergo the remaining part of their sentences. If, they fail to surrender, the learned Chief Judicial Magistrate, Kurukshetra, shall take coercive steps to secure their

presence and send them to jail to undergo the remaining part of the sentence.

September 01, 2015

s.khan

**(DARSHAN SINGH)
JUDGE**