

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

**CRA-S-735-SB of 2004.
Date of Decision: 27.08.2016.**

SUNDER SINGH AND ANOTHERAPPELLANTS.

VERSUS

STATE OF HARYANARESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. N.C. Kinra, Advocate for the appellants.

Mr. Ashok Muthreja, Deputy Advocate General, Haryana.

SNEH PRASHAR, J.

This appeal was preferred by appellants Sunder Singh and Hawa Singh, assailing the judgment of conviction dated 18.03.2004 and order of sentence dated 19.03.2004 recorded by learned Additional Sessions Judge, Bhiwani, in Session Case No.63 dated 20.12.2001 based on First Information Report No.149 dated 28.05.2001 registered at Police Station Sadar, Dadri, by virtue of which they (appellants) were sentenced as under:-

Name of convict	Under Section	Sentence
Hawa Singh	186 IPC read with Section 34 of the Indian Penal Code (for short, "IPC").	Rigorous imprisonment for a period of two months.
	307 IPC read with Section 34 IPC	Rigorous imprisonment for a period of seven years and to pay a fine of Rs.2000/-. In default of payment of fine convict shall further undergo rigorous imprisonment for a period of six months.

	332 IPC read with Section 34 IPC	Rigorous imprisonment for a period of two years and to pay a fine of Rs.1000/-. In default of payment of fine convict shall further undergo rigorous imprisonment for a period of three months.
	342 IPC read with Section 34 IPC	Rigorous imprisonment for a period of six months.
	353 IPC read with Section 34 IPC	Rigorous imprisonment for a period of one year.
	452 IPC read with Section 34 IPC	Rigorous imprisonment for a period of three years and to pay a fine of Rs.1000/-. In default of payment of fine convict shall further undergo rigorous imprisonment for a period of three months.
Sunder Singh	186 IPC read with Section 34 and 114 IPC	Rigorous imprisonment for a period of two months.
	307 IPC read with Section 34 and 114 IPC	Rigorous imprisonment for a period of seven years and to pay a fine of Rs.2000/-. In default of payment of fine convict shall further undergo rigorous imprisonment for a period of six months.
	332 IPC read with Section 34 and 114 IPC	Rigorous imprisonment for a period of two years and to pay a fine of Rs.1000/-. In default of payment of fine convict shall further undergo rigorous imprisonment for a period of three months.
	342 IPC read with Section 34 and 114 IPC	Rigorous imprisonment for a period of six months.
	353 IPC read with Section 34 and 114 IPC	Rigorous imprisonment for a period of one year.
	452 IPC read with Section 34 and 114 IPC	Rigorous imprisonment for a period of three years and to pay a fine of Rs.1000/-. In default of payment of fine convict shall further undergo rigorous imprisonment for a period of three months.

It was ordered that all the sentences imprisonment shall run concurrently.

As extracted from the record, the prosecution case was that on 28.05.2001 Sub Inspector/ Additional S.H.O. Sheotaj Singh alongwith his official companions had gone to village Kanheti, by means of official jeep No.HR-16A-0458 of which Constable Raj Kumar was the driver, for investigation of case bearing F.I.R. No.125 dated 19.04.2001 under Sections 323 and 325 IPC read with Section 34 IPC at Police Station Sadar, Dadri and for enquiry into the contents of application No.229-5D dated 26.05.2001 (Ex.PC) given by Sunil and Krishna wife of Sajjan Singh, but both were not present in their house. In the meantime, Hawa Singh and Sunder Singh (appellants), who were standing on the roof of the house of Sajjan Singh, spoke in loud voice that unless Sajjan Singh and Sunil were arrested, they would not allow any other member of their family to enter in the house.

When Sub Inspector Sheotaj Singh advised them not to take law in their hands, Sunder Singh asked Hawa Singh to teach him a lesson for speaking too much and to hit on his head with a brick in order to kill him. Hawa Singh with an intention to kill S.I. Sheotaj Singh started pelting brickbats on him, one of which hit on his head and the other on his shoulder. Because of the injury suffered by S.I. Sheotaj Singh, he became unconscious and Hawa Singh and Sunder Singh fled away from the spot.

S.I. Sheotaj Singh was shifted to General Hospital, Charkhi Dadri where he was medico legally examined. His statement Ex.PA was recorded by S.I. Ajaib Singh, on the basis of which F.I.R. Ex.PH/1 was registered and investigations commenced. Appellants were arrested and on

completion of necessary formalities were challaned.

The appellants were charge-sheeted and subjected to face trial for commission of offence punishable under Sections 186, 307, 332, 342, 353 and 452 IPC read with Sections 34 and 114 IPC.

To substantiate the charge, the prosecution examined as many as nine witnesses namely PW1 S.I. Sheotaj Singh, PW2 Head Constable Surender Singh, PW3 Dr. H.L. Beniwal, PW4 Constable Balwant Singh, PW5 Ravinder Kumar, Draftsman, PW6 Head Constable Satyavir Singh, PW7 Head Constable Bhudev Parshad, PW8 Sub Inspector Narain Chand and PW9 Sub Inspector Ajaib Singh.

After closure of evidence of the prosecution, in their statement recorded under Section 313 of the Code of Criminal Procedure (for short, "Cr.P.C."), the appellants denied the case of the prosecution and pleaded that they have been falsely implicated in the present case. They further pleaded that S.I. Sheotaj Singh had illicit relations with Smt. Krishna and used to frequently visit her house to which they had been protesting. On the day of occurrence seeing them S.I. Sheotaj Singh was trying to run away through the Chaubara of Sajjan Singh, but he fell and received injuries and with an intention to silence them, he implicated them falsely.

No evidence was led by the appellants in their defence.

Analyzing the evidence available on record and the submissions made by learned Public Prosecutor and learned counsel representing the appellants-accused, learned trial Court convicted and sentenced the appellants, as indicated above.

Feeling aggrieved by the impugned judgment of conviction

trial Court, the appellants preferred the instant appeal.

The submissions made by Mr. N.C. Kinra, learned counsel representing the appellants and Mr. Ashok Muthreja, learned Deputy Advocate General for the State of Haryana have been heard and record perused.

The appellants were charge-sheeted for commission of an offence punishable under Section 307 IPC read with Section 34 and 114 IPC. Section 307 IPC postulates 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 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. When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.”

A bare perusal of Section 307 IPC would reveal that in order to attract the said section, the intention or the requisite knowledge to cause death are the essential ingredients. In other words, an act though sufficient in the ordinary course of nature to cause death, would not constitute an offence under this Section, if the necessary intention or knowledge on part of the accused is lacking. For the purpose of this offence, what is material, is the intention or knowledge and not the consequence of the actual act done for the purpose of carrying out that intention. 'Intent' essentially implies purpose and 'attempt' is an actual effort made in execution of the purpose.

Therefore, an attempt for purposes of Section 307 IPC should stem from a

specific intention to commit murder.

Learned counsel for the appellants contended that the evidence adduced by the prosecution neither discloses a motive from which an inference of the kind envisaged in clause First and Second of Section 300 IPC can be inferred nor the injury suffered by PW1 S.I. Sheotaj Singh was of the type from which necessary inference of the kind postulated in clause-3 of Section 300 IPC can be inferred. It being so, offence under Section 307 IPC was not established from the facts pleaded and the evidence led by the prosecution.

The allegation of the prosecution was that S.I. Sheotaj Singh had gone to village Kanheti in connection with investigation in a criminal case registered under F.I.R. No.125 dated 19.04.2001 and for enquiry into an application Ex.PC given by Krishna wife of Sajjan Singh. In her application, Smt. Krishna had mentioned that 'her brother-in-law Hawa Singh, who is unmarried has an illegal eye on her and had been calling bad names to her. Supported by Sunder son of Hisab, whose house is adjoining to her house, they had pelted stone in her house and seen her daughter with a bad intention and threatened her of dire consequences. Her shouts attracted people and she concealed herself alongwith her children inside the house.'

S.I. Sheotaj Singh stated that when he reached the village alongwith his official companions, he first conducted raid at the house of Sajjan Singh and Sunil, but both were not available in their house. He then saw Hawa Singh and Sunder Singh (appellants) standing on the roof of house of Sajjan Singh who spoke in loud voice that unless Sajjan Singh and Sunil were arrested, they would not allow any member of their family to

enter the house. When he (S.I. Sheotaj Singh) told them not to take law in their hands, they exhorted to teach him a lesson and threw stones towards him one of which hit his head and the other hit his shoulder.

On having suffered injuries, S.I. Sheotaj Singh was taken to General Hospital, Charkhi Dadri where he was medico legally examined by PW3 Dr. H.L. Beniwal. As per the medico legal report Ex.PD, the following two injuries were found on the person of S.I. Sheotaj Singh:-

- “1. Lacerated irregular wound of 6x1 c.m. x bone deep on right side of forehead. Profuse bleeding was present. Advised X-ray skull.*
- 2. Red bruise of 8x4 c.m. on right shoulder. Movements were painful.”*

The doctor stated that both the injuries were caused by blunt weapon and vide his opinion Ex.PF, given on application of the police, both the injuries were declared simple in nature.

Indeed, in his statement Ex.PA which formed the basis of First Information Report Ex.PH/1 and also during his deposition when he appeared in the witness box S.I. Sheotaj Singh stated that when he advised the appellants not to take law in their hands, Sunder Singh told Hawa Singh to teach him (S.I. Sheotaj Singh) a lesson and pelt stones on him to kill him, but on being cross examined he admitted that both the appellants were not known to him prior to the occurrence. He also admitted that when he searched the house of Sajjan Singh, both the appellants were present on the roof of the house. It is not his version that the appellants were armed with any weapon or they attempted to cause any harm to him or any other person when he was taking search of the house. It was not his case that the appellants had committed any offence for which he was to arrest them. As

they only said in loud voice that unless Sajjan Singh and Sunil were arrested they would not allow any other member of their family to enter the house. It is not even proved that the appellants had any knowledge about the application given by Smt. Krishna against them to S.I. Sheotaj Singh. One of the appellants, namely Hawa Singh, pelted stones one of which hit on the head of S.I. Sheotaj Singh and the other hit on his shoulder. Only two simple injuries were suffered by him during the occurrence. When the appellants had no intention or motive to cause injury to S.I. Sheotaj Singh and he also did not suffer any 'grievous injury' what to say of an injury 'dangerous to life' during the occurrence, it can be concluded without hesitation that the essential ingredients i.e. intention or requisite knowledge to cause death were missing. From that it follows that the provisions of Section 307 IPC were not attracted. Accordingly, the judgment of learned trial Court to the extent of conviction of the appellants under Section 307 IPC read with Section 34 and 114 IPC is set aside and the appellants are acquitted of the said charge.

The testimony of S.I. Sheotaj Singh was that the appellants were present on the roof of the house of Sajjan Singh when he entered the house. He further stated that when he asked the appellants not to take law in their hands Sunder Singh gave an alarm and asked Hawa Singh to kill him (thanedar) by hitting him with stones for speaking too much and for claiming himself to be a protector of law. PW2 HC Surender Singh, an eyewitness of the occurrence, stated that when S.I. Sheotaj Singh started climbing the stairs, Sunder Singh proclaimed that he be taught a lesson of new law on which Hawa Singh threw brickbat on him from the roof. He did

spoken by Sunder Singh. Apart from there being substantive inconsistency in the statement of PW1 S.I. Sheotaj Singh and PW2 HC Surender Singh, it is also proved from their statements that neither the appellants came down nor S.I. Sheotaj Singh climbed the roof through stairs. Though not mentioned by him in his first statement Ex.PA, but during his deposition S.I. Sheotaj Singh stated that he had started climbing the stairs when the appellants pelted brickbats on him. Meaning thereby, that there was no circumstance which could prove that the appellants in any manner wrongfully confined S.I. Sheotaj Singh. It being so, commission of offence under Section 342 IPC is also not made out.

On having acquitted the appellants under Sections 307 and 342 IPC, the fact remains that from the Daily Diary Report dated 28.05.2001 Ex.PJ proved by PW7 HC Bhudev Parshad, it stands established that on the relevant day i.e. 28.05.2001 S.I. Sheotaj Singh alongwith his official companions had gone to village Kanheti for enquiry into the contents of application No.229-5D dated 26.05.2001 of Krishna wife of Sajjan Singh, resident of village Kanheti and for investigation in case bearing F.I.R. No.125 dated 19.04.2001 under Sections 323 and 325 IPC read with Section 34 IPC. The occurrence that took place at village Kanheti during which S.I. Sheotaj Singh suffered injuries by the stones pelted by appellant Hawa Singh on exhortion by Sunder Singh from the roof of the house of Sajjan Singh. The occurrence was narrated by S.I. Sheotaj Singh in detail when he appeared in the witness box as PW1. His testimony was corroborated by PW2 HC Surender Singh who witnessed the occurrence. No doubt, as pointed out by learned counsel for the appellants, PW2 Head Constable

had already suffered injuries and was bleeding, but he categorically stated that when they were checking the house of Sajjan Singh, appellants Hawa Singh and Sunder Singh were present on the roof of that house and when S.I. Sheotaj Singh asked them to come down, they exhorted to teach him a lesson and Hawa Singh threw a brickbat from the roof which caused injuries to S.I. Sheotaj Singh. The testimony of PW1 Sheotaj Singh and PW2 HC Surender Singh stands corroborated by medical evidence adduced by PW3 Dr. H.L. Beniwal, S.M.O. Civil Hospital, Charkhi Dadri who had medico legally examined injured S.I. Sheotaj Singh on his arrival in the hospital. Complainant S.I. Sheotaj Singh was performing his duty of conducting investigation in a criminal case and in the complaint given by Krishna, sister-in-law of appellant Hawa Singh. The act of pelting stone on S.I. Sheotaj Singh deterred him from discharging his official duty. As such, commission of offence by the appellants under Sections 452, 332, 353 and 186 IPC read with Section 34 IPC stands duly proved. Accordingly, the judgment of learned trial Court to the extent of convicting the appellants for commission of offence under Sections 452, 332, 353 and 186 IPC read with Section 34 IPC is upheld.

Coming to the quantum of sentence, it is worthwhile to note that the case pertains to the year 2004. The appellants are facing protracted trial for the last more than 12 years. Appellant Sunder Singh is aged about 44 years and appellant Hawa Singh is aged about 51 years. Considering all facts and circumstances, the sentence of three years awarded to the appellants under Section 452 IPC read with Section 34 IPC is reduced to two years with payment of fine of Rs.1000/- and in case of non-payment of

three months. The sentence of rigorous imprisonment and of payment of fine awarded to the appellants under Sections 186, 332 and 353 IPC shall remain the same. All the sentences shall run concurrently.

Accordingly, the appeal is partly allowed.

The appellants are on bail in this case, their bail/ surety bonds shall stand cancelled. In case the appellants have not completed the sentence as per the modification made above, the concerned Chief Judicial Magistrate, shall get the convicts arrested and commit them to prison for serving the remaining period of sentence and shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The Registry shall keep track of the submission of compliance report and put up the papers, whether the reports are received or not within the time frame, immediately after the expiry thereof.

(SNEH PRASHAR)
JUDGE

27.08.2016.

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Whether speaking/ reasoned : **Yes**

Whether Reportable : **Yes**