

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGAH**

CRA-D No.779-DB of 2015 (O&M)

Date of decision: 05.08.2016.

Ranvir

..... Appellant.

Versus

State of Haryana and others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MS. JUSTICE LISA GILL

Present: Mr. B.S. Tewatia, Advocate, for the appellant.

S.S. Saron, J.

This criminal appeal has been filed by Ranvir (appellant) assailing the judgment and order dated 20.02.2015 passed by the learned Additional Sessions Judge, Palwal to the extent Ravinder, Khajan and Raghbar @ Raghubir (respondents No.2 to 4) have been acquitted of the offence punishable under Section 307 of the Indian Penal Code ('IPC' - for short). The said respondents No. 2 to 4, however, have been convicted for the offences under Sections 323, 324, 341, 326 read with Section 34 IPC and Section 506 IPC. In terms of order dated 24.02.2015, they have been sentenced to undergo rigorous imprisonment for seven years; besides, pay a fine of Rs.15,000/- each and in default of payment thereof, undergo simple imprisonment for one month for the offence punishable under Section 326 IPC. They have also been sentenced to undergo rigorous imprisonment for three years; besides, pay a fine of Rs.5,000/- each and in default of payment thereof, undergo simple imprisonment for one month for the offence punishable under Section 324 IPC. Further, they have been sentenced to

undergo rigorous imprisonment for two years and pay a fine of Rs.5,000/- each and in default of payment thereof, undergo simple imprisonment for one month for the offence punishable under Section 506 IPC. They have also been sentenced to undergo rigorous imprisonment for six months for the offence punishable under Section 323 IPC and undergo rigorous imprisonment for one month for the offence punishable under Section 341 IPC. Ravinder (respondent No.2) has also been sentenced to undergo rigorous imprisonment for five years; besides, pay a fine of Rs.15,000/- and in default of payment thereof, undergo simple imprisonment for one month for the offence punishable under Section 25 of the Arms Act. Out of the total fine of Rs.90,000/-, Rs.30,000/- is to be considered as fine and deposited in favour of the State and Rs.30,000/- each is to be given as compensation to injured Dharmender and Narsi.

We have heard learned counsel for the appellant and with his assistance perused the record of the learned trial Court which was requisitioned.

FIR (Ex.P1) in the case has been registered on the statement (Ex.P8) of Ranvir (complainant - appellant) son of Ram Prashad, resident of village Bhiduki, Hassanpur, District Palwal, aged about 23 years. He stated that he was resident of the above address and worked with the Vodafone Company tower in his village. A day earlier to his statement being recorded i.e. on 14.03.2013 he, his younger brother Dharmender (injured) as also Narsi (injured) son of Govind Ram and Harender son of Tulsi were travelling to village Bhiduki in 'Accent' car No.HR-50-7878 of his friend Rohit son of Gian Singh. The time would be 09:30 p.m. when their car reached near the Beda 'chowk' (crossing), Hassanpur road. Then from the rear a 'Swift' car

and 8-10 boys riding three motorcycles in consultation with each other at once parked their 'Swift' car and motorcycles in front of their car. Raghbar @ Raghbir (respondent No.4) son of Satti Ram and Ravinder (respondent No.2) son of Satti Ram, residents of Beda Patti and Khajan (respondent No.3) son of Hukam, resident of Khirwi after getting down from the 'Swift' car, came out. Raghbar @ Raghbir (respondent No.4) was armed with a knife in his hand and Ravinder (respondent No.2) was carrying a 'katta' (country made pistol) and Khajan (respondent No.3) was carrying a sword in his hand. The other seven-eight persons were carrying 'lathi', 'danda', 'kulhari' and sword in their hands. They on reaching there, at once attacked their car. The complainant (appellant) after opening the car door ran towards the jungle and Rohit as also Harender after jumping out of the car ran behind the complainant Ranvir (appellant).

All these persons, i.e. the assailants, made Dharmender and Narsi to fall on the ground and they left both of them lying half-dead on the road and went away. Then after some time, the complainant (Ranvir), Harender and Rohit lifted both of them from the spot and took them and got them admitted in Om Spero Hospital, Palwal. At the time the complainant was making his statement, they were in the ICU in a semi-conscious state. As the complainant (appellant) was attending to them in the hospital that he was found present there by the police that had come. He had then got his statement recorded. This skirmish, it is stated, had occurred due to an old grudge. The assailants by deceiving and encircling them had beaten them. When the complainant (appellant) was running away, then one person was forcefully saying that he had run away on that day but in future he would be killed. The complainant (appellant) got his statement recorded which he heard and

accepted it as correct. The statement was signed by Ranvir (appellant) and attested by ASI Jogender Singh (PW15), Police Station Hodal on 15.03.2013.

Police proceedings (Ex.P2) were recorded by ASI Jogender Singh (PW15) on 15.03.2013 at about 05:00 p.m. to the effect that a telephone was received on that day at the police station from the control room regarding Dharmender and Narsi being injured in a skirmish. For conducting proceedings, ASI Jogender Singh along with ASI Akhtar Hussain reached Om Spero Hospital, Palwal. A written application was submitted before the doctor regarding condition of the injured Dharmender son of Ram Prashad, resident of Bhiduki and Narsi son of Govind Ram for recording their statements. The doctor on the application that was submitted recorded that both the injured were unfit for statement. In the hospital near the injured, only Ranvir (complainant-appellant) son of Ram Prashad was met by the police. He got his above statement recorded. The statement was recorded verbatim and after it was recorded, it was read over and explained to him. He after accepting his statement as correct signed below it in Hindi, which was attested by ASI Jogender Singh (PW15). According to MLR No.4199 dated 14.03.2013 (Ex.PW4/C) relating to Dharmender, he had suffered one injury; besides, as per MLR No.4198 dated 14.03.2013 (Ex.PW4/D) relating to Narsi, he had suffered four injuries. Both the injured were admitted in the ICU. From the statement of the complainant (appellant) and the MLR, a case for commission of offences under Section 147, 148, 149, 323, 506, 341/324 IPC and Section 25 of the Arms Act was found to be made out. Therefore, for registration of a case ASI Akhtar Hussain was being sent back to the police station. The case number was asked to be informed. ASI Jogender Singh (PW15) along with complainant (appellant) was proceeding to the place

where the incident had occurred. The police proceedings were recorded at Om Spero Hospital, Palwal.

At the police station, case FIR No.70 dated 15.03.2013 was registered for the offences punishable under Sections 147, 148, 149, 323, 324 and 341 IPC; besides, Section 25 of the Arms Act.

The investigation in the case was conducted by ASI Jogender Singh (PW15). He visited the spot and took car No.HR-50-7878 make 'Accent' in his possession vide memo Ex.PN. He prepared site plan Ex.P12 on the demarcation of Ranvir (complainant - appellant). The statements of the witnesses were recorded. Satti Ram, the father of Ravinder and Raghbar @ Raghubir (respondents No.2 and 4), it was alleged, had been preventing his sons from being arrested. Therefore, he was proceeded against in terms of Section 216 IPC. He was arrested by ASI Jogender Singh (PW15) on 12.05.2013. He made a disclosure statement Ex.P3. Khajan (respondent No.3) was arrested on 15.05.2013. He made a disclosure statement Ex.P5. Ravinder (respondent No.2) was arrested on 02.07.2013. He made a disclosure statement Ex.P13. He made his second disclosure statement Ex.P14 on 03.07.2013. On the basis of said disclosure statements, Ravinder (respondent No.2) got recovered a .315 bore pistol (Ex.MO/1) from an abandoned 'kotha' (room) on the Hassanpur road vide recovery memo Ex.P6. A sketch Ex.P7 of the recovered pistol was prepared. Raghbar @ Raghubir (respondent No.4) was arrested on 19.09.2013. He made a disclosure statement Ex.P14 (sic. - wrongly numbered twice) and then second disclosure statement Ex.P15 on 20.09.2013. Accused Raghbar @ Raghubir (respondent No.4) got recovered a 'chaku' (knife) (Ex.MO/2) from the rear portion of his house at Hassanpur road vide Ex.P16. A sketch of the knife Ex.P17 was

prepared. The site plan Ex.P18 of the place from where the knife had been recovered was prepared. Ravinder (respondent No.2) identified the place from where 'katta' (country made pistol) was recovered from him. Site plan Ex.P20 of the place of recovery was prepared. Khajan (respondent No.3) identified the place of occurrence and on his demarcation on 16.05.2013 memo of demarcation of the place of occurrence (Ex.P21) was prepared. Similarly, Ravinder (respondent No.2) got demarcated the place of occurrence vide memo Ex.P22 on 03.07.2013. Khajan (respondent No.3) identified the place of occurrence vide memo Ex.P23. An application (Ex.P24) was moved by ASI Jogender Singh (PW15) to the Chief Medical Officer, General Hospital, Palwal on 02.04.2013 seeking his opinion regarding injured Dharmender. Another application (Ex.P25) was also moved on the same day to seek opinion regarding Narsi. On the applications (Ex.P24 and Ex.P25), a Board comprising of Dr. Naveen Chaudhary, Surgeon; Dr. J.P. Prasad (PW10) and Dr. Dewakar Sharma was constituted for giving opinion. The Medical Board in respect of Dharmender gave its opinion Ex.PW10/B. The same was to the effect that injury No.1 mentioned in the MLR (Ex.PW4/C) was caused by sharp weapon and was 'dangerous to life'. In respect of Narsi, an opinion Ex.PW10/C was given that injuries No.1 to 4 in the MLR (Ex.PW4/D) had been caused with a sharp weapon. Injuries No.1 and 2, it was opined, were 'dangerous to life' and injuries No.3 and 4 were simple in nature as per the documents provided by the police. Dr. Parminder Singh (PW4) gave an opinion Ex.P26 with respect to Dharmender that injury No.1 mentioned in MLR (Ex.PW4/C) was caused by a sharp weapon and was 'dangerous to life'. Similarly, opinion Ex.P27 was give by Dr. Parminder Singh (PW4) regarding Narsi that injuries No.1 to 4 in MLR (Ex.PW4/D)

were caused by sharp weapon and injury No.1 was dangerous to life and injury No.2 was simple. Therefore, though the Medical Board had declared injuries No.1 and 2 on the person of Narsi to be 'dangerous to life' vide opinion Ex.PW10/D but Dr. Parminder Singh (PW4) vide opinion Ex.P27 declared injury No.1 only on the person of Narsi as 'dangerous to life' while injury No.2 was declared as simple.

After completion of investigation, the police report ('challan') was filed in the Court of learned Sub Divisional Judicial Magistrate, Hodal on 12.07.2013. The learned Magistrate observed that during investigation the prosecution collected sufficient evidence and presented 'challan' against the accused for committing the offences punishable under Sections 323, 324, 341, 307, 506, 34, 201 and 216 IPC; besides, Section 25 of the Arms Act. From the documents placed on record, it was apparently found that the accused had been sent for trial for committing the offence punishable under Section 307 IPC, which was exclusively triable by the Court of Session. Accordingly, the case was committed to the Court of learned Sessions Judge, Palwal on 18.07.2013.

The learned Additional Sessions Judge to whom the case was assigned on 23.09.2013 framed charges against respondents No.2 to 4 as also Satti Ram. They were charged for committing offence under Section 323 read with Section 34 IPC; Section 324 read with Section 34 IPC; Section 341 read with Section 34 IPC; Section 307 read with Section 34 IPC; Section 201 read with Section 34 IPC; Section 506 read with Section 34 IPC and for the offence 216 IPC against Satti Ram, who harboured accused Ravinder and Raghbar @ Raghubir (respondents No.2 and 4); besides, Ravinder (respondent No.2) was charged for the commission of offence punishable

under Section 25 of the Arms Act. Respondents No.2 to 4 as also Satti Ram pleaded not guilty to the charges and claimed trial.

The charge-sheet was then amended on 21.11.2013 which was to the effect that on 14.03.2013 at about 09:30 p.m. in the area of Hassanpur 'chowk' road falling within the jurisdiction of Police Station Hodal, Raghbar @ Raghbir (respondent No.4) along with his co-accused in furtherance of their common intention voluntarily caused simple hurt to Dharmender and Narsi with blunt weapon and thereby committed an offence punishable under Section 323 read with Section 34 IPC; secondly, on the same date, time and place Raghbar @ Raghbir (respondent No.4) along with his co-accused caused simple hurt to Dharmender and Narsi with sharp edged weapon and thereby committed an offence punishable under Section 324 read with Section 34 IPC; thirdly, on the same date, time and place Raghbar @ Raghbir (respondent No.4) along with his co-accused in furtherance of their common intention voluntarily wrongfully restrained Ranbir, Dharmender and Narsi and thereby committed an offence punishable under Section 341 read with Section 34 IPC; fourthly, on the same date, time and place Raghbar @ Raghbir (respondent No.4) along with his co-accused in furtherance of their common intention voluntarily caused injuries to Dharmender with such intention and under such circumstances that if by that act they had caused death of Dharmender, they would have been guilty of murder and thereby committed an offence punishable under Section 307 read with Section 34 IPC; fifthly, on the same date, time and place Raghbar @ Raghbir (respondent No.4) along with his co-accused in furtherance of their common intention voluntarily caused disappearance of evidence of sword used in the crime by throwing it in the Ujina Drain with intent to screen themselves from legal punishment and

thereby committed an offence punishable under Section 201 read with Section 34 IPC; and lastly, on the same date, time and place Raghbar @ Raghubir (respondent No.4) along with his co-accused in furtherance of their common intention voluntarily threatened the complainant party with dire consequences and thereby committed an offence punishable under Section 506 read with Section 34 IPC.

The present appeal is to be considered only for the purpose as to whether the offence punishable under Section 307 IPC is made out against respondents No.2 to 4. In terms of the charge-sheet dated 21.11.2013, charge No.4 is to the effect that Raghbar @ Raghubir (respondent No.4) along with his co-accused in furtherance of their common intention voluntarily caused injuries to Dharmender with such intention and under such circumstances that if by that act they had caused death of Dharmender, they would have been guilty of murder and thereby committed an offence punishable under Section 307 read with Section 34 IPC. There is no charge for the offence punishable under Section 307 IPC insofar as injury suffered by Narsi is concerned.

In any case, the deposition of Dr. J.P. Prasad, Medical Officer, General Hospital, Palwal (PW10) and Dr. Parminder Singh, Medical Officer, Omspero Hospital, Palwal (PW4) may be noticed so as to see the nature of injuries and whether these can be said to make out an offence under Section 307 IPC.

Dr. J.P. Prasad (PW10) tendered in evidence his affidavit (Ex.PW10/A) and the opinion given by the Medical Board of which he was a member as Ex.PW10/B on the application Ex.P24 submitted by ASI Jogender Singh with respect to MLR No.4199 (Ex.PW4/C) of Dharmender as also opinion on the application Ex.P25 also submitted by ASI Jogender Singh with

respect to MLR No.4198 (Ex.PW4/D) of Narshi. Dr. J.P. Prasad (PW10), who was the Medical Officer, General Hospital, Palwal in his affidavit (Ex.PW10/A), stated that after going through all the relevant records of Narshi @ Surajpal vide MLR No.4198 (Ex.PW4/D) dated 14.03.2013 at Om Spero Hospital, Palwal, in the opinion of the Board, injuries No.1 to 4 were caused by sharp weapon and injuries No.1 and 2 were 'dangerous to life'; besides, injuries No.3 and 4 were simple in nature based on documents provided by the police. All the three doctors constituting the Board had signed the opinion which he (PW10) recognized. On the same day, the same Board gave opinion for Dharmender son of Ram Parshad with respect to MLR No.4199 (Ex.PW4/C) dated 14.03.2013 at Om Spero Hospital, it was statehood that injury No.1 mentioned in the MLR was caused by sharp edged weapon and was 'dangerous to life'. All the doctors signed the said documents.

In cross-examination, it is stated by Dr. J.P. Prasad (PW10) that he did not examine the injured Narsi and Dharmender personally. No medico legal examination of Narsi and Dharmender was conducted at General Hospital, Palwal and no treatment was given in their hospital. It is stated as correct that opinion was based on the relevant record produced by the police. It is stated as incorrect that the opinion regarding dangerous to life was for the simple reason that injuries were caused by sharp weapon. It is stated as correct that all the injuries that are caused by sharp weapon are not dangerous to life. It is stated as incorrect to suggest that the opinion of the Board had been given on the asking of the police officers. The weapon used for causing injury on the person of Narsi and Dharmender was not shown to them by the police at the time when the opinion was sought.

It is to be noticed that Dr. Naveen Kumar and Dr. Dewakar Sharma, who were the members of the Medical Board that had been consisted, were given up; besides, Dr. Akhlesh and Dr. Ashish were also given up being unnecessary.

The other doctor examined in the case is Dr. Parminder Singh (PW4), who was working with Om Spero Hospital, Palwal and had treated the injured Dharmender and Narshi. He appeared in Court on two dates, i.e. on 07.02.2014 and then on 21.01.2015. On the first date, i.e. 07.02.2014, he tendered in evidence his affidavit Ex.PW4/A relating to examination of Narsi and affidavit Ex.PW4/B relating to examination of Dharmender; besides, he also tendered in evidence Ex.PW4/C regarding MLR conducted by him with respect to Dharmender and Ex.PW4/D regarding MLR conducted by him with respect to Narsi. The discharge summary of Dharmender was tendered in evidence as Ex.PW4/E and the discharge summary of Narsi @ Surajpal was tendered in evidence as Ex.PW4/F. According to affidavit (Ex.PW4/A) in respect of Narsi, it is stated by Dr. Parminder Singh (PW4) as follows:-

- “1. That I have examined the patient Mr. Narshi/Surajpal, S/o Sh. Govind Ram Resident of Village-Khirbi, Hassanpur, Palwal on 14.03.2013 at about 09:30 PM Vide his MLR No.4198 Dated 14.03.2013.
2. Patient brought to casualty by his friend Mr. Rohit S/o Sh. Gyan Singh, Mob. No.09991822622, as the history given by his friend.
3. Patient presented to casualty with alleged history physical assault at around 9:30 PM on 14.03.2013 at

between Village-Hodal and Bedha Patti - Hodal, Palwal. C/o Severe pain in abdomen/tenderness since then.

4. That on examination, the patient was conscious, oriented time place at present, responding to verbal commands, Pupil - Bilateral NSRL, GCS - E4V4M4, afebrile at present, B.P. - 100/60mmHg, Pulse - 88/min, CVS - S12 +, R/S - Bilateral chest clear, Air entry adequate, P/A - diffusely tender, guarding+, rigidity+ around 2 feet of small intestine with multiple perforation lying outside, SPO2 - 98%.
5. Stab 2 x 1 cm. 4 cm. left laterally to umbilical with intestine coming out through it bluish discoloration+.
6. Stab 2 x 1 cm. 5 cm. superiorly and left laterally to umbilical region.
7. Stab 1 x 3 cm. laterally and left gluteal region.
8. Stab 1 x 3 cm. over upper outer quadrant of left gluteal region.”

As regards Dharmender, according to affidavit (Ex.PW4/B), it is submitted by Dr. Parminder Singh (PW4) as follows:-

- “1. That I have examined the patient Mr. Dharmender, S/o Sh. Ram Prasad Resident of Village - Bhiduki, Hodal, Palwal on 14.03.2013 at about 09:30 PM Vide his MLR No.4199 dated 14.03.2013.

2. Patient brought to casualty by his friend Mr. Rohit S/o Sh. Gyan Singh, Mob. No.09991822622 as the history given by his friend.
3. Patient presented to casualty with alleged history physical assault at around 9:30 PM on 14.03.2013 at between Village - Hodal and Bedha Patti - Hodal, Palwal. C/o Severe pain in abdomen/tenderness since then.
4. That on examination, the patient was conscious, oriented time place at present, responding to verbal commands, Pupil - Bilateral NSRL, GCS - E4V4M5, afebrile at present, B.P. - 60systolic, Pulse - 110/min, CVS - S12 +, R/S - Bilateral chest clear, Air entry adequate, P/A - diffusely tender, guarding+, rigidity+ around 2 feet of small intestine with multiple perforation lying outside, SPO2 - 98%.
5. 8 x 4 cm. wound in right iliac fossa with small intestine lying outside with multiple perforation with faecal matter with glass pieces.”

In cross-examination, it is *inter alia* stated by Dr. Parminder Singh (PW4) that probability of causing injuries of patient Dharmender and Narsi by fall on sharp object could not be ruled out.

Dr. Parminder Singh (PW4) was then examined on 21.01.2015. He stated that the police moved an application on 02.04.2013 seeking his opinion regarding injury suffered by Dharmender. He gave his opinion

Ex.P26, which is to the effect that injury No.1 mentioned in MLR No.4199 (Ex.PW4/C) was caused by sharp weapon and was 'dangerous to life'. On the same date, the police moved another application seeking his opinion regarding the injuries suffered by Narsi. He gave his opinion Ex.P27. The said opinion is to the effect that injuries No.1, 2, 3, 4 were caused by sharp weapon. Injury No.1 was 'dangerous to life'. Injury No.2 was simple. It is mentioned that 'ruqa" (short note) Ex.P28 was sent from the hospital by Dr. Ashish on 14.03.2013. It is further submitted that Dr. Akhlesh had given his opinion Ex.P29 on 15.03.2013. The opinion is regarding Dharmender and Narsi being unfit for making a statement. Dr. Ashish gave his opinion Ex.P30 on 20.03.2013 which is regarding Dharmender being fit for making a statement. In cross-examination, it is *inter alia* stated by Dr. Parminder Singh (PW4) that the medical opinion was given by him alone and not by a Board. He further stated that he alone conducted medico-legal examination on the persons of Dharmender and Narsi and he alone performed the surgery.

Therefore, it is quite evident that injury No.1 in respect of Dharmender in the MLR No.4199 (Ex.PW4/C) has been opined to be 'dangerous to life'. The said injury is mentioned in para No.5 of the affidavit (Ex.PW4/B) as follows:-

"8 x 4 cm. wound in right iliac fossa with small intestine lying outside with multiple perforation with faecal matter with glass pieces."

Besides, injury No.1 in the MLR No.4198 (Ex.PW4/D) in respect of Narsi, which is mentioned in para No.5 of the affidavit (Ex.PW4/A) is stated to be 'dangerous to life'. The said injury is as follows:-

“Stab 2 x 1 cm. 4 cm. left laterally to umbilical with intestine coming out through it bluish discoloration+.”

According to the deposition of Ranvir (appellant), who appeared as PW9, Raghbar @ Raghbir (respondent No.4) was armed with a knife, Ravinder (respondent No.2) was armed with a country made pistol and Khajan (respondent No.3) was armed with a sword. They attacked the complainant side and he, i.e. Ranvir PW9, ran away from the car along with Rohit and Harender. Respondents No. 2 to 4 rounded Dharmender and Narsi and inflicted injuries to them. Dharmender and Narsi became unconscious.

Dharmender appeared as PW6. He stated that Ravinder (respondent No.2) was armed with a pistol, Raghbar @ Raghbir (respondent No.4) was armed with a knife and Khajan (respondent No.3) was armed with a sword. It is stated that Raghbar @ Raghbir (respondent No.4) gave a knife blow on his abdomen. Khajan (respondent No.3) gave a sword blow on his back followed by Ravinder (respondent No.2), who gave a blow with a broken beer bottle in his abdomen. Ravinder (respondent No.2) stated that if they tried to flee, he would fire upon them. Raghbar @ Raghbir (respondent No.4) gave another knife blow on the abdomen of Narsi. Khajan (respondent No.3) gave a sword blow on the abdomen of Narsi. After the incident, they became unconscious.

Narsi @ Surajpal (PW12) deposed that Khajan (respondent No.3) gave a sword blow on his abdomen. Raghbar @ Raghbir (respondent No.4) gave a knife blow on his stomach. Ravinder (respondent No.2) had a country made pistol and other persons had 'lathi', 'danda' and axe.

Therefore, according to Dharmender (PW6), in the incident that occurred Raghbar @ Raghbir (respondent No.4) gave a knife blow in his

abdomen. Raghbar @ Raghubir (respondent No.4) gave a knife blow on his abdomen. Khajan (respondent No.3) gave a sword blow on his back followed by Ravinder (respondent No.2), who gave a blow with a broken beer bottle in his abdomen. However, in the MLR No.4199 (Ex.PW4/C), there is only one injury in the region of right Iliac fossa with small intestine lying outside. The said injury suffered by Dharmender in his abdomen is attributed to Ravinder (respondent No.2) as he was carrying a broken beer bottle and glass pieces were found in the injury. Besides, Narsi @ Surajpal (PW12) suffered injury No.1 left laterally to umbilical with intestine coming out. This injury is attributed to Khajan (respondent No.3) and Raghbar @ Raghubir (respondent No.4) as Narsi @ Surajpal (PW12) stated that Khajan (respondent No.3) gave a sword blow on his abdomen and Raghbar @ Raghubir (respondent No.4) gave a knife blow on his stomach. Injuries No.1 and 2 on the person of Narsi as mentioned in MLR (Ex.PW4/D), according to Dr. J.P. Prasad (PW10), were 'dangerous to life'. However, according to Dr. Parminder Singh (PW4), only injury No.1 was 'dangerous to life'. Dr. J.P. Prasad (PW10), it may be noticed, did not personally examine the patients and it is only on the basis of the MLR (Ex.PW4/C) of Dharmender and MLR (Ex.PW4/D) of Narsi that he gave his opinion. Therefore, the same cannot be said to be a clear and definite opinion as to the nature of injuries. The opinion given by Dr. Parminder Singh (PW4) was given by him alone and he merely mentions injury No.1 on the person of Dharmender and injury No.1 on the person of Narsi in terms of his opinion Ex.P26 and Ex.P27 respectively to be 'dangerous to life'. The said injuries by merely mentioning that these were dangerous to life would not *per se* constitute an offence punishable under Section 307 IPC. The learned

trial Court has referred to the case law to hold that the offence under Section 307 IPC was not made out.

A Division Bench of this Court in Atma Singh v. State of Punjab, 1982 (2) Chandigarh Law Reporter 496, held that when the doctor is required to carry out medico-legal examination of the injury suffered in criminal assault, he is required to examine the injury from two standpoints i.e. (1) for the purpose of opining the kind of weapon used to inflict the injury in question and secondly to form an opinion regarding the degree of seriousness of the injury in question. The Indian Penal Code, it was said, recognizes from stand point of seriousness only four types of injuries, (1) simple injuries; (2) grievous; (3) injuries of the kind inflicted with intent to commit murder described in clause Firstly and secondly of Section 300 IPC; (4) injury sufficient to cause death in the ordinary course of nature envisaged by clause Thirdly of Section 300 IPC. It was observed that there was no provision in the Indian Penal Code which envisages or refers to an injury described as 'dangerous to life'. The medico-legal examination of an injured person is intended to enable the Investigating Agency and the Court to find out the nature of the offence and, therefore, the doctor examining an injured person has to opine that the injury in question is one or the other of the type recognized in the Indian Penal Code for the purposes of a given offence. When a doctor describes an injury as 'dangerous to life', one has to see what had the doctor intended to convey thereby. Is one to hold that since injury has not been described by the doctor as one which 'endangered life', so the concerned injury cannot be held to be grievous on the specious ground that an injury described as 'dangerous to life' is not as serious an injury, which

‘endangers life’. The following observations of the Division Bench are apposite:-

“11. It appears that the doctors who had been conducting the medico-legal examination have been using the term ‘dangerous to life’ as synonymous with an injury which ‘endangers life’. Even the Courts at times have considered an injury described as dangerous to life as an injury envisaged in clause Eighthly of Section 320 of the Indian Penal Code. In this regard reference can be made to Muhammad Rafi v. Emperor, A.I.R. 1930 Lahore 305. In that case the injury was on the right side of the neck about 2-1/2” × 3/4" in dimension inflicted with a sharp edged weapon. The doctor had, in fact, in that case deposed that there was every possibility of the deceased surviving but for the wound becoming septic apparently as a result of it being pressed with hands and bandaged with dirty cloth in the initial stages before the deceased was taken to the hospital. The Court held that though a finding that the appellant knew that his act was likely to cause death, was not justified but at the same time, a wound on the neck, must at least be considered to be ‘dangerous to life’ within the meaning of Cl. 8 Section 320 Indian Penal Code, and therefore, ‘grievous’.

12. Palekar, J, too in *Jai Narain Mishra & Others v. State of Bihar*, 1972 C.A.R. 19 (S.C.) held, a penetrating wound $1\frac{1}{2}$ " $\times$ $\frac{1}{2}$ " $\times$ chest wall deep on the right side of the chest caused with a bhala and described as 'dangerous to life' as grievous injury and in the later part of paragraph 11 called this injury as one endangering life.
13. The expression 'dangerous' is an adjective and the expression 'endanger' is verb. An injury which can put life in immediate danger of death would be an injury which can be termed as 'dangerous to life' and, therefore, when a doctor describes an injury as 'dangerous to life', he means an injury which endangers life in terms of clause 8 of Section 320, Indian Penal Code, for, it describes the injury 'dangerous to life' only for the purpose of the said clause. He instead of using the expression that this was an injury which 'endangered life', described it that the injury was 'dangerous to life', meaning both the time the same thing."

A perusal of the above shows that an injury which is merely described as 'dangerous to life' would not *per se* mean that an offence under Section 307 IPC was made out. The injury has to be seen within the meaning of clause (8) of Section 320 IPC, which describes 'grievous hurt' as follows:-

"Grievous hurt. - The following kinds of hurt only are designed as "grievous":-

First to Seventhly. - xxxxx

Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

In terms of the above any injury which ‘endangers life’ or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits is a ‘grievous injury’. In the above circumstances, it is to be seen whether offence under Section 307 IPC is made out on the mere report of Dr. Parminder Singh (PW4) who opined the injury No.1 on the person of Dharmender and also injury No.1 on the person of Narsi @ Surajpal to be ‘dangerous to life’. In terms of clause Eighthly of Section 320 IPC merely because it is mentioned that the injury on the person of Dharmender and Narsi @ Surajpal were ‘dangerous to life’ would not *per se* constitute the offence under Section 307 IPC as the same may be only a hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits. Dharmender and Narsi @ Surajpal were admitted in Om Spero Hospital, Palwal after the incident on 14.03.2013. Dharmender was discharged on 25.03.2013 as per discharge slip (Ex.PW4/E) while Narshi @ Surajpal was discharged on 23.03.2013 as per discharge slip (Ex.PW4/F) which works out to less than twenty days. Besides, the intention of the accused inflicting the injuries is also to be seen as to whether they had the intention or the knowledge to commit the offence under Section 307 IPC. In order to appreciate these circumstances, the provisions of Section 307 IPC may be adverted to, which read as under:-

“Attempt to murder - 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 important thing to be borne in mind in determining the question whether an offence under Section 307 IPC is made out or not, is the intention or knowledge. Besides, the intention or knowledge of the accused must be such as is necessary to constitute murder. Section 307 IPC is in two parts. The first part envisages such intention or knowledge and such circumstances that the act done by the offender would cause death and he would be guilty of murder. This would constitute an offence of attempt to murder and is punishable for a term which may extend to ten years and also fine. The second part relates to causing of hurt by such act i.e. having intention or knowledge and under such circumstances that by such an act death would be caused and the offender would be guilty of murder. This also constitutes an offence of attempt to murder. In this case, however, the punishment is upto imprisonment for life or to such extent as mentioned earlier. The substance of the offence is the intention or knowledge that the act done is such that death would be caused and the offender would be guilty of murder but death actually is not caused. This would amount to an offence of attempt to murder under Section 307 of the IPC.

Hon'ble the Supreme Court in Sarju Prasad v. State of Bihar, AIR 1965 SC 843, held that to attract the provisions of Section 307 I.P.C, it is necessary for the prosecution to establish that intention of the accused in causing the injury was of any of the three kinds referred to in Section 300 IPC and unless the prosecution discharges the burden, the offence under Section 307 IPC cannot possibly be brought home. In the said case, the accused had caused an injury with the knife in a vital region but no vital organ of the injured was cut as a result of injury. However, he was convicted by the Court below for an offence under Section 307 IPC. Hon'ble the Supreme Court held that the state of mind has to be deduced from the surrounding circumstances. Besides, the existence of a motive to cause death would be a relevant consideration. Taking the totality of the circumstances, it was held that there was no intention of murder or to cause any injury which may result in death could be inferred. It was held that the prosecution had not established that the offence committed fell squarely under Section 307 IPC and that in its opinion; it amounted to an offence under Section 324 of the IPC.

In Kundan Singh v. State of Punjab, AIR 1982 SC 62, the victim received simple injuries from gun shots fired by the accused. The injured were in the courtyard of their house, when the accused fired the gun shots. It was held that the accused could not have intended to injure them. The conviction of the appellant for the offence under section 307 IPC was held to be not justified and it was altered to that of an offence under Section 324 of the IPC since the victim received simple injuries.

In Parsuram Pandey v. State of Bihar, (2004) 13 SCC 189, it was held that to constitute an offence under Section 307 two ingredients of the offence must be present: “(a) an intention of or knowledge relating to

commission of murder; and (b) the doing of an act towards it.” For the purpose of Section 307 IPC, it was said that what was material was the intention or the knowledge and not the consequence of the actual act done for the purpose of carrying out the intention. The section clearly contemplated an act which was done with intention of causing death but which failed to bring about the intended consequence on account of intervening circumstances. The intention or knowledge of the accused must be such as was necessary to constitute murder. In the absence of intention or knowledge which was the necessary ingredient of Section 307, there could be no offence “of attempt to murder”. Intent which was a state of mind could not be proved by precise direct evidence, as a fact it could only be detected or inferred from other factors. Some of the relevant considerations may be the nature of the weapon used, the place where injuries were inflicted, the nature of the injuries and the circumstances in which the incident took place.

In the present case, the injuries on the person of Dharmender and Narsi have been simply mentioned to be ‘dangerous to life’. No intention has been shown by the prosecution that the accused intended to cause the death of Dharmender and Narsi @ Surajpal. Besides, the motive has also not been clearly shown. It is merely mentioned in the statement (Ex.P8) of complainant Ranvir (appellant) that the incident had occurred due to old enmity. The nature, seriousness and the gravity of the enmity is not mentioned. In the circumstances, the learned trial Court has taken a reasonable view in acquitting respondents No.2 to 4 for the offence punishable under Section 307 IPC. In a case of acquittal merely because another view may be possible would not be a ground to interfere with the acquittal.

In view of the above, the appeal of Ranvir (appellant) is dismissed insofar as the offence under Section 307 IPC is concerned. However, nothing stated herein shall be taken as an expression of opinion in the appeal filed by respondents No.2 to 4 against their conviction and sentence which is to be decided on the basis of evidence and material on record uninfluenced by any observations made herein.

(S.S. Saron)
Judge

(Lisa Gill)
Judge

05.08.2016
Ramesh/A.Kaundal