

CRA-S-1064-SB-2004;
CRA-S-1355-SB-2004; and
CRA-S-1615-SB-2004

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

Date of Decision: 06.12.2016.

CRA-S-1064-SB-2004

Ashwani alias Shindey

....Appellant.

VERSUS

State of Punjab

....Respondent.

WITH

CRA-S-1355-SB-2004

Jaswinder alias Sodhi

....Appellant.

VERSUS

State of Punjab

....Respondent.

AND

CRA-S-1615-SB-2004

Harwinder Singh alias Sonu

....Appellant.

VERSUS

State of Punjab

....Respondent.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Aman Dhir, Legal Aid Counsel for the appellants.

Mr. Neeraj Sharma, Assistant Advocate General, Punjab.

SNEH PRASHAR, J.

This judgment shall dispose of three appeals: CRA-S-1064-SB-
2004 filed by appellant Ashwani alias Shindey, CRA-S-1355-SB-2004 filed
by appellant Jaswinder alias Sodhi and CRA-S-1615-SB-2004 filed by

appellant Harwinder Singh alias Sonu, as all the three appellants had been held guilty, convicted and sentenced by a common judgment of conviction and order of sentence dated 10.04.2004 recorded by learned Additional Sessions Judge, Patiala, in Session Case No.4/ 14.02.2003 based on First Information Report No.305 dated 07.08.2002 registered at Police Station Kotwali, Patiala.

Appellants-accused were held guilty and were convicted for commission of offence under Section 307 read with Section 34, 341 and 506 of the Indian Penal Code (for short “IPC”) and were sentenced as under:-

Sr. No.	Name of convict(s)	Under Section	Sentence imposed
1.	Jaswinder alias Sodhi	307 IPC	4 years rigorous imprisonment and fine of Rs.500/-. In default of payment of fine to further undergo RI for one month.
2.	Ashwani @ Shindey & Harwinder Singh @ Sonu	307/34 IPC	4 years rigorous imprisonment and fine of Rs.500/- each. In default of payment of fine to further undergo RI for one month.
3.	Ashwani alias Shindey, Harwinder Singh @ Sonu and Jaswinder @ Sodhi	341 IPC	RI for one month
4.	Ashwani alias Shindey, Harwinder Singh @ Sonu and Jaswinder @ Sodhi	506 IPC	2 years rigorous imprisonment and fine of Rs.250/- each. In default of payment of fine to further undergo RI for 15 days.

It was ordered that all the sentences shall run concurrently.

Precisely, the story of the prosecution was that on 06.08.2002

at about 8:30 p.m., Raju Sharma (complainant), who was working as a

Coach in the 'Body Temple Gym', was going back home when he saw Shindey son of Kaka Singh, Sodhi son of Balbir, Sonu, whose father's name was not known, and another boy having injury mark on his nose, standing near the Kiryana shop, which was at some distance from his house. When he tried to cross them, they encircled him and Shindey exhorted to catch hold of him and to not leave him alive. Sonu and the person, having an injury mark on his nose, caught hold of him and Sodhi gave a *Kirpan* blow into the left side of his belly. His shouts attracted Harish son of Naresh Pal and Tony, who rushed to the spot and rescued him and all the assailants fled away from the spot.

Injured-complainant Raju Sharma was taken to Rajindra Hospital, Patiala by Harish on his motorcycle. On receipt of information, Head Constable Darshan Singh alongwith Constable Balkar Singh No.115 reached the hospital and after obtaining opinion of the concerned doctor regarding physical state of injured Raju Sharma to make statement, recorded his statement. The motive for the occurrence stated by the complainant was that he was visiting the colony of the appellants to persuade youngsters to join the gym and to prevent him from doing so the accused had caused injuries to him. On the basis of the said statement, First Information Report No.305 dated 07.08.2002 under Sections 307/ 323/ 324/ 341/ 506/34 IPC was registered at Police Station Kotwali, Patiala. Appellants-accused were arrested and on completion of investigation and other formalities, the final report as envisaged under Section 173 of the Code of Criminal Procedure (for short, "Cr.P.C.") was submitted by the prosecution for trial of the case.

The appellants were charge-sheeted under Section 307 read

with Section 34, 341 and 506 IPC, to which they pleaded not guilty and claimed trial.

To substantiate the charge, the prosecution examined as many as ten witnesses namely PW1 Raju Sharma (complainant), PW2 Harish Kumar, PW3 Dr. S.S. Chauhan, PW4 Dr. Harshvardhan, PW5 Head Constable Malkiat Singh, PW6 Head Constable Darshan Singh, PW7 Dr. Gian Singh, PW8 Chanan Singh, PW9 PHG Ram Gopal and PW10 ASI Rajesh Kumar.

After closure of evidence of the prosecution, statements of appellants under Section 313 Cr.P.C. were recorded by putting to them the incriminating evidence available on record. They pleaded innocence and contended that they have been falsely implicated in this case.

In their defence, the appellants examined DW1 Surjit Singh, DW2 Pardeep Kumar, DW3 Vicky and DW4 Kajal.

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

Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 10.04.2004 passed by learned trial Court, the appellants preferred these three appeals.

The submissions made by Mr. Aman Dhir, learned counsel representing the appellants and Mr. Neeraj Sharma, learned Assistant Advocate General for the State of Punjab have been heard and record perused.

At the very outset, learned counsel for the appellants argued that no substantive evidence could be led by the prosecution to prove that the injury suffered by complainant Raju Sharma was dangerous to life. The X-ray report, on the basis of which PW7 Dr. Gian Singh gave his opinion with regard to gravity of the injury, was neither produced by him nor the concerned radiologist was examined to tender the same in evidence. In absence of the X-rays and the relevant report, the mere oral opinion of the doctor PW7 that the injury was dangerous to life, was insufficient to attract the provisions of Section 307 IPC.

Learned counsel further contended that in the First Information Report the complainant stated that hearing his shouts for help Harish son of Naresh Pal and Tony came and rescued him from the clutches of the assailants. Though Harish Kumar stepped into the witness box as PW2, Tony, the other eyewitness, was not examined. Complainant Raju Sharma was working in the gym owned by brother of Harish Kumar. According to the complainant himself, he was caused injuries by the appellants because they wanted to stop him from persuading the youngsters of their locality from joining his gym. In the back drop of the motive alleged, Harish Kumar, brother of the owner of the gym, was naturally an interested witness. Only Tony was an independent public witness and non examination of such material witness renders the statement of the interested witnesses unreliable.

Elaborating further, learned counsel for the appellants submitted that in fact from the statement of PW1 injured Raju Sharma, it is evident that neither Harish nor Tony had eye witnessed the occurrence.

PW1 stated that before they both reached the spot, the accused had run

away. Introduction of persons of his choice as eyewitnesses shows that the story presented by injured Raju Sharma is nothing but a manipulation and concoction.

Learned counsel also asserted that no person from the colony of the appellants was examined by the prosecution to support the testimony of the complainant that he used to visit the colony of the appellants to persuade the boys to join the gym and the appellants were opposed to the same. Since the motive alleged remained unproved, the deposition of the complainant-injured that the appellants inflicted injuries to him in pursuance of a common intention could not be believed. The weapon i.e. *Kirpan* allegedly used during commission of crime though was alleged to have been recovered in pursuance of disclosure statement Ex.PJ made by appellant Jaswinder alias Sodhi, but was not produced in the Court during trial. For all the said reasons, the story/evidence of the prosecution is not trustworthy.

It is not the case where the assailants were not known to the complainant-injured. Both the parties were living in nearby localities and were not only acquainted to each other prior to the occurrence, but as stated by PW1 injured-complainant Raju Sharma earlier on 2-3 occasions the appellants being opposed to his persuading young boys to join the health club, had restrained him from entering their locality (Mohalla). In such circumstances, statement of complainant-injured was sufficient to prove identity of the assailants-appellants. As far as the eyewitnesses of the occurrence are concerned, the complainant-injured stated that hearing his cries Harish and Tony were attracted to the spot and seeing them coming the appellants had run away. No doubt, in his cross-examination, he stated that

before Harish and Tony reached the spot, the appellants had already fled away but in his very next breadth, he clarified that the witnesses had reached the spot within two minutes of the appellants fleeing from the spot. Also, in his examination in chief, he mentioned that the witnesses were standing at a distance of hardly 25 Karams from the spot of occurrence. Meaning thereby that from the place where the witnesses were present and on being attracted by the cries of the injured-complainant had rushed to the spot, they were able to witness the occurrence and also identify the appellants, who after causing injury to complainant Raju Sharma had run away.

Harish was not the owner of the gym where injured Raju Sharma was working. There is nothing on the record to indicate that Harish had any reason to be hostile against the appellants. Otherwise also, even though the complainant had suffered only one injury, he could not have falsely implicated the appellants and let the actual culprits go scotfree. Indeed, Tony was another eyewitness of the occurrence but he was given up by the prosecution on the pretext of having been won over by the appellants.

Be that as it may, there is no ground to suspect the credibility and deposition of complainant-injured Raju Sharma. The statement of complainant Raju Sharma stands corroborated by PW7 Dr. Gian Singh, who medico legally examined him on his arrival in the hospital. The nature of the injury suffered by complainant-injured Raju Sharma was described by the doctor as under:-

*“3x1 cm spindle shaped penetrating wound with clear margins
on right abdomen. Probing not done. Fresh bleeding. Advised*

x-ray and surgical opinion.”

PW7 Dr. Gian Singh proved the opinion given by him on 26.09.2002 Ex.PM/1 on application of the police and deposed that after going through the X-rays, the MLR and surgical treatment, he had given the opinion that the injury suffered by complainant Raju Sharma was dangerous to life. In the light of the opinion given by Dr. PW7 Gian Singh, the X-ray report or the X-ray films did not carry much weight. Moreover, the opinion that the injury was dangerous to life was also based on the surgical operations undergone by the complainant. In order to attract the provision of Section 307 IPC, the predominant factor is the intention or knowledge that can be gathered from various circumstances. Even a simple injury in given circumstances can attract the provision of Section 307 IPC. It is sufficient in law if there is proof of content coupled with some overt act in execution thereof.

PW1 Raju Sharma deposed that on the relevant date and time when he was going home and was near Mittal Kiryana shop and was taking the turn, he was surrounded by the appellants. Ashwani alias Shindey exhorted to catch hold of him and to not spare his life. Harvinder Singh alias Sonu and the boy, who was having injury mark on his nose, then caught hold of him and Jaswinder alias Sodhi, who was having a *Kirpan*, gave a blow with the *Kirpan* in his right flank in the abdomen. As he cried out, Harish and Tony, who were standing at a distance of 25 Karams from the place of occurrence, were attracted to the spot and the appellants ran away.

The facts and circumstances clearly indicate that the common intention of the appellants was to kill the complainant and to execute the same an injury

was inflicted on the most vital part of the body i.e. abdomen with a sharp edged weapon. There is sufficient medical evidence to prove that the injury was grave and dangerous to life.

Non production of the weapon i.e. *Kirpan* in the Court during trial was a lapse on part of the prosecution. PW6 Head Constable Darshan Singh, the Investigation Officer testified that in pursuance of disclosure statement suffered by appellant Jaswinder alias Sodhi during interrogation, he had got the *Kirpan* used during commission of crime recovered from his house. PW7 Dr. Gian Singh stated that the injury suffered by the complainant was possible only with a sharp edged weapon. The statement of the complainant that being a coach in a health club, he used to persuade youngsters to join the gym and the appellants were opposed to the same and further that on 2-3 occasions the appellants had restrained him from entering their locality (Mohalla) and because of that grievance they had caused the grave injury to him, is competent enough to prove the motive. The complainant explained the reason for the violent attack on him by the appellants in clear words and there is nothing on the record to prove that the complainant had any reason to falsely implicate the appellants.

As a sequel to the above discussion, the conclusion inevitable is that the appellants in furtherance of their common intention had caused grievous injury to complainant Raju Sharma. The injury caused was proved to be dangerous to life. Accordingly, the judgment of conviction of the appellants under Section 307 read with Section 34, 341 and 506 IPC is maintained.

Coming to the matter on sentence, learned counsel for the

appellants-convicts submitted that only one injury was suffered by the complainant and the appellants are facing protracted trial for the last 14 years. The appellants were young boys in the age group of 22-24 at the time of occurrence. The occurrence took place in 2002 and with the passing of 14 long years the appellants are now middle aged having small children and parents dependant on them.

In **Baj Singh vs. State of Punjab, 1996(11) SCC 373 and Harbans Singh vs. The State of Punjab, 2001(1) SCC 234** in a case of commission of offence under Section 307 IPC where the accused had been convicted and sentenced to undergo three years rigorous imprisonment, Hon'ble Supreme Court had reduced the sentence from three years to two years.

The appellants are said to be the only bread earners of their respective family. Following the ratio of Baj Singh's case supra, the sentence of rigorous imprisonment for four years awarded to the appellants under Section 307/34 IPC is reduced to two years rigorous imprisonment. The sentence awarded to the appellants under Sections 341 and 506 IPC shall remain the same. All the sentences shall run concurrently. The period of imprisonment already undergone by the appellants shall be set of against the sentence of rigorous imprisonment awarded to them today.

With the above modification in the order of sentence, all the three appeals are dismissed.

The appellants are on bail in this case, their bail/ surety bonds shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convicts arrested and commit them to prison for serving the remaining

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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

06.12.2016.
jitender sharma

Whether speaking/ reasoned : Yes

Whether Reportable : Yes