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

CRA-S-462-SB-2003

Date of Decision : February 06, 2017

Anil Kumar and others Appellants

Versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE [Dr.] SHEKHER DHAWAN

Present Mr. T.S.Sangha, Senior Advocate,
with Mr. Narinder Singh, Advocate,
for the appellants.

Mr. Munish Dev Sharma, AAG, Haryana
for the respondent-State.

SHEKHER DHAWAN, J.

Present appeal is directed against the judgment of conviction dated 13.2.2003 and order of sentence dated 15.2.2003 passed by learned Additional Sessions Judge, Faridabad whereby the appellants were convicted under Sections 307, 323, 324 read with Section 34 and 506 IPC and were sentenced as under:-

Under Section	Sentence	In default
U/S 307 read with Section 34 IPC	to undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of Rs.3000/- each.	To further undergo RI for 1-3/4 years.

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Under Section	Sentence	In default
U/S 324 read with Section 34 IPC	to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.1000/- each.	To further undergo RI for 6 months.
U/S 323 read with Section 34 IPC	to undergo Rigorous Imprisonment for a period of 6 months and to pay a fine of Rs.500/- each.	To further undergo RI for 45 days.
U/S 506 IPC	to undergo Rigorous Imprisonment for a period of 1 year and to pay a fine of Rs.500/- each.	To further undergo RI for 3 months.

2. Relevant facts for the purpose of decision of the appeal; Complainant Chet Ram is having fields adjacent to the fields of Ram Singh [injured]. On 26.07.1997, complainant Chet Ram was present in his fields. Ram Singh, who is related to him, was working in the adjacent garden alongwith his wife Premwati, another injured of this case. Veerwati wife of Tek Chand was also present there. At that time, Pappi son of Dalla was grazing his buffalo and his buffalo entered the fields of Ram Singh. The said buffalo was turned out of the fields by Premwati. On this, there was exchange of hot words between Pappi and Premwati. On the same day, at about 4.30 PM, Anil Kumar, Pappi alias Ram Singh, Raju alias Rajesh and Sudhir armed with swords and a *lathi* reached there. Anil Kumar opened the attack and gave two sword blows to Ram Singh. Sudhir gave a sword blow on the head of Ram Singh from back side. Another blow was given by him on his head. Accused Raju gave a sword blow on the left hand of Ram Singh and another blow on back side of his left hand. Accused Pappi also gave a

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lathi blow to Ram Singh and another blow on his right elbow. Accused Anil also gave a sword blow on the head of Veerwati wife of Tek Chand. Injured persons raised hue and cry and accused persons fled away from the spot while advancing the threat to kill them at an appropriate time.

3. The version of complainant Chet Ram was recorded vide FIR Ex. PA/1. Police started the investigation. Accused persons were arrested. The injured were medico legally examined. Weapons used for commission of offence were recovered. After receipt of FSL report, Ex. PG and after completion of investigation proceedings, challan was presented in the Court for trial.

4. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused under Sections 307, 323, 324 read with Section 34 and 506 IPC, recording of evidence of the witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution evidence and the defence version on record, learned trial Judge held the appellants guilty and convicted them for commission of offence punishable under Sections 307, 323, 324 read with Section 34 and 506 IPC and sentenced them on 5.2.2003.

5. Aggrieved of passing of judgment of conviction and order of sentence, the appellants are before this Court by way of present appeal.

6. At the time of arguments, Mr. T.S.Sangha, Senior Advocate, learned counsel for the appellants contended that the prosecution case has not been proved against the appellants as per law. The first contention of learned senior counsel for the appellants is that the charge has been framed

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against the accused persons for commission of offence punishable under Section 307 IPC for causing injury to Veerwati wife of Tek Chand which was dangerous to life. The second charge is for commission of offence punishable under Section 324 IPC for having caused injury to Ram Singh. Learned trial Judge has held all the appellants guilty for commission of offence under Section 307 IPC with the aid of Section 34 IPC and sentenced them to undergo Rigorous Imprisonment for 7 years, whereas there is absolutely no evidence to the effect that injuries caused to Veerwati were dangerous to life. There is no corresponding medical evidence available on the file in support of that. It had come in the statement of PW-1, Dr. Ramesh Leekha that the injuries were caused to Ram Singh and Veerwati. There was one injury on the scalp of Veerwati i.e. 3-1/2 " x 1/4 ", but that was upto muscle deep only. It had come in the statement of PW-1 that injuries were referred for radiological examination, but in fact, no radiological examination was done and at least there is no medical evidence on the file to show that there was any radiological examination of injured Veerwati or Ram Singh even. There is no opinion of the treating doctor or any other medical evidence suggesting that injury on the body of Veerwati or going a step further, injury on the body of Ram Singh was declared dangerous to file. Still, learned trial Judge held the accused guilty for commission of offence punishable under Section 307 IPC as well. If the entire case of the prosecution is taken to be correct and that goes un-rebutted, at the most it is a case for commission of offence punishable under Section 324 IPC and not even Section 326 IPC because there is no evidence

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of grievous injury on the body of Veerwati or Ram Singh and there being no medical evidence in support of that.

7. Learned senior counsel for the appellants has placed reliance upon a Division Bench judgment of this Court in **State of Haryana Vs. Prem Singh** 2007(2) RCR [Criminal] 537 and Single Bench judgment in **Shahbeg Singh and others Vs. State of Punjab**, 2008(1) R.C.R. [Criminal] 517. In Prem Singh's case [supra], this Court has taken the view that in the absence of the proof of any intention to commit murder and attempt made pursuant thereto, medical evidence and opinion of doctor on the file, offence under Section 307 IPC cannot be said to have been proved. In that case, there was an incised wound of 4 cms x 12 cms. over right infrascapular region and injury was referred to Surgeon for expert opinion, but the Radiologist, who radiologically examined the said injury was not examined and the treating doctor had not declared the injury to be dangerous to life. The view taken by Division Bench of this Court was that irrespective of the fact that the nature of injury is not necessarily to be examined while holding the accused guilty under Section 307 IPC, but the same requires that the act must be done with such an intention or knowledge or under such circumstances that if the death be caused by that act, the offence of murder will emerge. Quite similar are the facts of the present case as there is no Radiological report to declare the injury on the body of Veerwati to be dangerous to life. It was a case of single blow and not a case of repeated blows because Veerwati had suffered one incised wound only. As such, offence under Section 307 IPC cannot be said to have been

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proved against either of the accused as they were facing trial and charge was specific that injury covered under Section 307 IPC was qua Veerwati.

8. Learned senior counsel for the appellants further contended that there was no motive on the part of the appellants to commit the offence. Rather, it was a case of sudden fight. Both the parties were having fields adjacent to each other and a minor scuffle had taken place as a buffalo had entered the adjacent field and the said buffalo was sent back. There was no premeditated fight. The occurrence had taken place long back i.e. about 17 years back. All the injuries on the body of Veerwati as well as Ram Singh are muscle deep injuries, but the Court below has completely ignored all these facts and the present appeal be accepted and the appellants be acquitted of the charge, who have suffered much agony of law by facing an inordinate trial.

9. While arguing these points, learned State counsel contended that the accused persons had committed the offence after making due preparation as they were duly armed with swords and lathis. They had a motive to commit the offence because there was exchange of hot words immediately prior to the occurrence. The nature of injuries and the weapons used for commission of offence suggest and establish that the intention of accused persons was to cause death of Veerwati and Ram Singh and it was because of their good-luck that they could save themselves, but sustained number of lacerated wounds. The matter was immediately reported to the police and the injured persons were medico-legally examined on the same day. All the injured and eye-witnesses have supported the prosecution case and there is

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nothing to disbelieve them. The ocular testimony is duly supported by medical evidence. The defence version is just a plea of denial and the Court below has rightly discarded the same. Resultantly, the present appeal is without any merit and the same deserves to be dismissed.

10. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that the appellants are facing trial for commission of offence punishable under Sections 307, 324, 325 read with Section 34 IPC and 506 IPC. The main controversy is whether the offence alleged against the appellants under Section 307 IPC was proved during trial or not. To be precise, charge for commission of offence punishable under Section 307 IPC was for causing injury to PW-Veerwati with sharp edged weapon and with the intention to kill her. For ready reference, the relevant portion of charge under Section 307 IPC is extracted hereinbelow:-

“That on 26.7.97 in the area of Police Station City Palwal with common intention caused injuries to PW Veerwati by sharp edge weapon and under such circumstances that if by that act you had caused the death of Veerwati you would have been guilty of murder and thereby committed an offence punishable u/s 307 read with Section 34 of Indian Penal Code and within the cognizance of this court.”

The allegation of causing injury punishable under Section 307 IPC had come forward during trial on the basis of ocular testimony i.e. by way of statement of the complainant and the eye-witnesses present on the spot and expert evidence by way of medical evidence. However, in the present case,

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ocular testimony and medical evidence are at quite contrast. As per eye-witnesses, including the injured, injuries were caused with share edged weapon i.e. Sword blow was given on the head of Ram Singh and one sword blow on the head of Veervati. PW-4, Chet Ram has stated in so many words that Anil gave two sword blows on the head of Ram Singh. Sudhir gave two sword blows on the head of Ram Singh from behind. Raju also gave one sword blow on the palm of Ram Singh and Pappi gave two lathi blows on the back of Ram Singh and one lathi blow on his left arm. Sudhir gave another sword blow on the right elbow of Ram Singh. Anil also gave one sword blow to Veervati on her head. PW-5, Ram Singh injured also made similar deposition. PW-7, Premwati also made similar deposition that Anil had given sword blow on the head of Veervati when she came to the rescue of her husband. Veervati, injured appeared as PW-8 and also made similar deposition that Anil gave a blow of Talwar on her head.

11. The medical evidence qua injuries is in the statement of PW-1 Dr. Ramesh Leekha, who had observed following injuries on the person of Veervati:-

- “1. A lacerated wound 3-1/2 " x 1/4 " x muscle deep on the middle of scalp, fresh bleeding was present, x-ray was advised.
2. Patient complained of pain in left hand, no visible injury could be seen.”

12. On the same day, he had also medico-legally examined Ram Singh and observed the following injuries on his body:-

- “1. Incised wound 3 " 1/4 "x muscle deep of frontal bone in

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middle, fresh bleeding was present, x-ray was advised.

2. Incised wound 2 x 1/4 "x muscle deep on the occipital bone. Fresh bleeding was present, x-ray was advised.

3. Incised wound 2 1/2" x 1/4 " x muscle deep 1 " lateral to injury No.2, fresh bleeding was present, x-ray was advised.

4. Incised wound 2 " x 1/4 " x muscle deep in the middle of scalp. Fresh bleeding was present, x-ray was advised.

5. Incised wound 1 " x 1/4 "x muscle deep on the medial side of right elbow, fresh bleeding was present, x-ray was advised.”

13. However, the doctor had given a specific report [Ex. PB] that both the injuries caused to Veerwati were with blunt weapon. Injury No. 2 was simple whereas Injury No.1 was kept under observation. The witness had deposed in his cross-examination that the injuries caused to Ram Singh were with sharp edged weapon whereas, the injury caused on the body of Veerwati were with blunt weapon only. Veerwati was referred for radiological examination, but she had never undergone any radiological examination. There is no medical opinion that injury on the person of Veerwati was declared as dangerous to life.

14. In view of these facts, the ocular testimony and medical evidence are quite contradictory to each other and therebeing no medical evidence or opinion available on the file that the injury on the person of Veerwati was dangerous to life, the charge under Section 307 IPC against the appellants for causing injury to Veerwati cannot be said to be proved in any way. Otherwise also, the nature of injury on the scalp of Veerwati suggests that

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the same could not be caused with sword or sharp edged weapon. The size of lacerated wound is 3-1/2" x 1/4" muscle deep. The medical opinion appears to be given on the basis of correct factual position and there was no reason for the Court below to hold the appellants guilty for commission of offence punishable under Section 307 IPC or Section 326 IPC even. Such a view was taken by this Court in **Prem Singh's case [supra]**.

15. As regards to injuries caused to Ram Singh, the ocular testimony is that the injuries were caused with sword and lathi and the medical evidence is on the same lines and the Court below has rightly held the appellants guilty for commission of offence punishable under Section 324 read with Section 34 IPC.

16. Apart from facing trial by the appellants under Sections 307 and 324 IPC, they were tried and held guilty for commission of offence punishable under Sections 323 and 506 IPC which have been duly proved on the file on the basis of ocular testimony as discussed above. The defence version has been rightly negated by learned trial Court.

17. In view of the above, the appeal is partly accepted to the extent that the charge for commission of offence punishable under Section 307 IPC against the appellants has not been proved whereas the offence alleged against the appellants for commission of offence punishable under Sections 324, 323 read with Section 34 IPC and Section 506 IPC has been duly proved on the file. Appeal stands partly accepted accordingly. The appellants shall undergo sentence as awarded by learned trial Court under Sections 324, 323 read with Section 34 IPC and Section 506 IPC.

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18. However, learned trial Court has not awarded adequate compensation to the injured. During the course of hearing, the appellants were present in the Court and taking into consideration the totality of circumstances, this Court orders that all the appellants shall jointly make payment of Rs.1.00 lakh each to both the injured as compensation and the amount shall be deposited within a period of one month from today in the trial Court and the Court below shall release the said amount in favour of the injured.

19. The appeal stands partly allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

February 06, 2017
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes