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

1. CRA-D-123- DB-2005
Date of Decision : April 18, 2017

Gullu alias Gulshan Appellant

Versus

State of Haryana Respondent

2. CRA-S-101-SB-2005

Sunil Appellant

Versus

State of Haryana Respondent

3. CRA-S-158-SB-2005

Satbir Appellant

Versus

State of Haryana Respondent

4. CRA-S-159-SB-2005

Harish alias Insha Appellant

Versus

State of Haryana Respondent

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CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present Ms. Anju Arora, Advocate,
for appellant – Gulshan alias Gullu.
and as Legal Aid counsel for the appellants
in remaining three appeals.

Mr. G.S.Wasu, Addl. A.G. Haryana,
for the respondent-State.

SHEKHER DHAWAN, J.

The above mentioned four appeals are directed against the common judgment of conviction and order of sentence dated 11.12.2004 passed by learned Additional Sessions Judge, Rohtak, whereby the appellants were convicted under Sections 307, 324 read with Section 34 and Section 25 of the Arms Act and were sentenced as under:-

Under Section	Sentence	In default
<u>Appellant – Gulshan alias Gullu</u>		
U/S 307 IPC	Rigorous Imprisonment for Life and to pay a fine of ₹10,000/-.	to further undergo RI for three years.
U/S 25 of Arms Act.	Rigorous Imprisonment for Three years and to pay a fine of ₹2,000/-.	to further undergo RI for nine months.
U/s 324 IPC read with Section 34	Rigorous Imprisonment for One year and to pay a fine of ₹1,000/-.	to further undergo RI for three months.
<u>Appellant - Satbir</u>		
U/S 307 read with Section 34 IPC	Rigorous Imprisonment for a period of Ten years and to pay a fine of ₹5,000/-.	to further undergo RI for 15 months.

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Under Section	Sentence	In default
U/s 324 IPC read with Section 34	Rigorous Imprisonment for One year and to pay a fine of ₹1,000/-.	to further undergo RI for three months.
<u>Appellants – Harish and Sunil</u>		
U/S 307 read with Section 34 IPC	Rigorous Imprisonment for a period of Five years and to pay a fine of ₹3,000/- each.	to further undergo RI for 09 months.
U/s 324 read with Section 34 IPC	Rigorous Imprisonment for One year and to pay a fine of ₹1,000/-.	to further undergo RI for three months.

Both the sentences were ordered to run concurrently.

Therefore, all these four appeals are being disposed of by this common judgment.

2. Relevant facts for the purpose of decision of these appeals are that on 21.04.2004 at about 10 p.m., accused named above visited the 'Dhaba' of Deepak, who was well known to them as they had been visiting the said 'Dhaba' quite often, but seldom used to make the payment of the meals. Accused - Satbir picked up a jug of water and started drinking water by putting his mouth on it. Another customer objected to that and on this, all the accused persons became furious. Deepak intervened and asked the accused persons to behave properly. He provided them a glass for drinking water, but the accused persons became more furious. Accused Satbir, who was having a '*chhuri*' in his hands, gave its blow on the right thigh of Deepak. Accused Gulshan alias Gullu fired a shot upon him from the pistol, but the same had not hit anybody. Other two accused persons, namely, Harish alias Insha and Sunil gave fist and slap blows to Deepak. An alarm

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was raised by Deepak, which attracted PW6, Sagar and Gaurav and on their arrival, all the accused persons fled away from the spot. Deepak was shifted to PGIMS, Rohtak in injured condition where he was medically treated and examined.

3. During investigation, accused persons were arrested. Statements of witnesses were recorded. Weapons used in the commission of offence were recovered. After completion of investigation proceedings, challan was presented in the Court for trial.

4. During the process of trial, learned trial Judge framed charges against the appellants. After recording of statement of the prosecution witnesses and examination of the appellant under Section 313 Cr.P.C. and after considering the prosecution evidence and defence version, learned trial Court held the appellants guilty and convicted and sentenced them under Sections 307, 307 read with Section 34 and Section 324 read with Section 34 vide impugned judgment of conviction and order of sentence dated 11.12.2004.

5. Aggrieved of passing of impugned judgment of conviction and order of sentence, the appellants are before this Court by way of separate appeals.

6. At the time of arguments, learned counsel for the appellants contended that the prosecution case is not believable at its face value as the prosecution has come forward mainly with the plea that accused Gulshan alias Gullu was armed with a pistol and he opened fire, but the said pistol

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shot had not caused injury to anybody. More so, no empty was recovered from the place of occurrence. The involvement of accused - Harish alias Insha and Sunil is to the extent that they had given fist and slaps blows. The injury attributed to accused Satbir is with '*chhuri*' on the right thigh of Deepak. The dispute had taken place on a petty matter and there is no history of previous enmity between the parties, rather, it was a case of sudden fight. The way, investigation had taken place for implication of accused Gulshan alias Gullu and allegations and use of fire arm as also implication of accused Harish alias Insha and Sunil shows that prosecution case is not believable at all, rather, the defence version of false implication is nearer to truth.

7. Learned State counsel contended that in view of the statement of injured-victim, supported by testimony of eye witness and corroborated by medical evidence, there is no ground to disbelieve the prosecution case especially when the defence version is merely a plea of denial. Deepak [PW-5] was admitted to PGIMS, Rohtak in an injured condition where he was medically treated. Deepak has made a statement accordingly and there was no reason for false implication of the accused persons so as to allow the real culprits to go scot-free. Learned trial Judge has already considered all these facts while recording the impugned judgment of conviction of order of sentence and the present appeals deserve dismissal.

8. Having considered the submissions made by learned counsel for the parties and appraisal of the record, we are of the view that there are two

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different aspects of this case. Firstly, whether the alleged occurrence had taken place and secondly, if so, whether it had taken place in the same manner as given out by the prosecution or some innocent persons have been roped in.

9. As regards the involvement of appellant – Gulshan alias Gullu; Harish alias Insha and Sunil in the incident, the prosecution version is not convincing. The prosecution had come with the plea that appellant - Gulshan alias Gullu was armed with pistol [Ex.P4] which he had used. First of all, if the weapon was actually used, there were chances of it hitting someone as it was used from a close distance. Secondly, if at all the weapon was actually used, there would have been recovery of empty, but there being none casts a doubt regarding the prosecution version in this regard. There is no FSL report to suggest that pistol [Ex. P4] was used in the alleged commission of offence. More so, there is no material or evidence by way of opinion of the doctor that injury caused to Deepak was declared as dangerous to life, rather, the same was simple injury with sharp edged weapon. Hence, the offence alleged against all the appellants under Section 307 IPC cannot be said to have been proved and learned trial Judge has misread the evidence to that extent.

10. Now, coming to the offence under Section 324 IPC, the prosecution has been able to prove that Deepak [PW-5] sustained injuries with sharp edged weapon and the said injuries were caused by Satbir with *chhuri*. To that extent, there is statement of Deepak, injured while

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appearing as PW-5. He has proved his report Ex. P5. He has well stood the test of cross-examination also. His version is duly supported and corroborated by PW-6, Sagar, who is an eye-witness to the alleged occurrence. Recovery of *churri* from Satbir was in fact, in the presence of PW-7, Ramesh Kumar and the ocular testimony is fully supported by the statement of PW-9 Dr. Ravinder Sahu who proved MLR [Ex.P17] and observed following injury on the person of injured Deepak :-

“There was a stab wound of size 3.8x1.5 cm situated over the right thigh, anterior aspect placed transversely/obliquely, wound was muscle deep with track going posterior laterally with fresh bleeding, with clean cut margins.”

11. The doctor had opined that injury was caused with sharp edged weapon and the duration of the injury tallied with the time of occurrence. The nature of injury was declared to be simple. Learned trial Judge has rightly held appellant Satbir to be guilty for commission of offence punishable under Section 324 IPC for causing injury to Deepak with sharp edged weapon.

12. As regards the allegation of giving slap and fist blows against appellants – Harish alias Insha and Sunil, the medical evidence available on the file by way of MLR [Ex. P17] suggests that there was only one injury on the person of Deepak and that was stab wound, which was caused with *churri* by Satbir. Morso, Deepak had given his statement Ex. P5 in the hospital and at that time, he had given the name of three accused persons,

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but not of Sunil whose name was added in the supplementary statement. All these factors establish that even the names of Sunil and Harish alias Insha were added without therebeing any active role on the part of these two appellants so as to connect them with alleged commission of offence and the trial Judge has completely ignored these facts.

13. In view of the above, appeals filed by appellants, Gulshan alias Gullu; Harish alias Insha and Sunil are accepted as the alleged offence punishable under Sections 307 and 324 read with Section 34 IPC and Section 25 of Arms Act [in case of Gulshan alias Gullu only] is not proved. The impugned judgment of conviction and order of sentence dated 11.12.2004 are set-aside qua these appellants and they are acquitted of the charge in this case.

14. Now, coming to the case of appellant, Satbir; as no offence punishable under Section 307 IPC has been made out against accused-appellant, Satbir, his conviction under Section 307 IPC is set-aside and he is acquitted of the charge under Section 307 IPC. However, his conviction under Section 324 read with Section 34 IPC is maintained and the judgment of conviction is modified accordingly qua accused-appellant Satbir. Accordingly, no interference is warranted in the order of sentence qua appellant, Satbir as he has been awarded sentence to undergo RI for one year under Section 324 read with Section 34 IPC. Consequently, the appeal filed by Satbir is partly allowed in the above terms.

15. Accused-appellant Satbir is on bail. His bail/surety bonds are

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cancelled. He be arrested and sent to jail to undergo the remaining part of sentence in this case. Learned trial Judge is directed to comply with this order forthwith under intimation to this Court.

16. Resultantly, CRA-D-123-DB-2005, CRA-S-101-SB-2005 and CRA-S-159-SB-2005, filed by Gullu alias Gulshan, Sunil and Harish alias Insha respectively are allowed and while setting-aside the impugned judgment of conviction and order of sentence dated 11.12.2004 qua them, they are acquitted of the charge. The appeal filed by Satbir [CRA-S-158-SB-2005] stands partly allowed in the above terms.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

April 18, 2017

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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes