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

1. **CRA-S- 3955-SB-2014**
Date of Decision : March 22, 2017

Ashu Gautam alias Bittu and another Appellants

Versus

State of Punjab Respondent

2. **CRA-S-4047-SB-2014**

Sham Appellant

Versus

State of Punjab Respondent

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

Present: Mr. K.D.S. Hooda, Advocate
for the appellant-Ashu Gautam alias Bittu.

Mr. A.G.S. Dhillon, Advocate
for the appellant-Lakhwinder Singh alias Rambo.

Mr. A.S. Sandhu, Advocate
for the appellant-Sham (in CRA-S-4047-SB of 2014).

Mr. Yogesh Kumar Gupta, AAG, Punjab.

SHEKHER DHAWAN, J.

The above mentioned two appeals are directed against the judgment of conviction and order of sentence dated 6.9.2014 passed by learned Additional Sessions Judge, Fatehgarh Sahib. Therefore, both these appeals are being disposed of by this common judgment.

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2. Facts relevant for the purpose of decision of both these appeals, as set up in the prosecution case; that on 17.01.2011, at about 1.45 AM [midnight], a police party headed by ASI Satpal Singh received a secret information that one TATA Sumo, bearing registration No. CH-04-C-5818 was coming from the side of Chandigarh and three persons, namely, Sham, Lakhwinder Singh alias Rambo and Ashu Gautam alias Bittu, appellants before this Court, were traveling therein and they were carrying huge quantity of illicit liquor for sale in Chandigarh. ASI Satpal Singh was accompanied by ASI Hakam Singh, HC Amar Singh and other police officials including driver Gurpreet Singh and they were present on a special *naka* duty at Madhupur Chowk. Ruqa [Ex. PA] was sent to the Police Station and formal FIR, [Ex.PA/1] was registered.

3. As per prosecution case, at about 2.35 AM, said TATA Sumo came from Chandigarh side. On seeing the police party, the driver of TATA Sumo returned the said vehicle towards Chandigarh side. The police official informed the officials of Police Station Badali Alla Singh to lay a *naka* on the road in order to stop the TATA Sumo and apprehend the persons traveling therein. At about 3.00 AM, when the said TATA Sumo reached at the *naka* of Badali Alla Singh, the same was signaled to stop by the police officials with the support of a torch. The driver of the TATA Sumo instead of stopping the vehicle, tried to run it over the police officials standing in uniform and also broke the barricades installed on the road. The driver of the TATA Sumo lost control and struck against the wall of Gurudwara Chunni Kalan. One of the occupants of the vehicle, whose name

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was later on disclosed to be Sham, fell on the road and the remaining two occupants of the TATA Sumo succeeded in running away. On search of TATA Sumo, 42 card boxes of Indian made liquor for sale in Chandigarh including 18 boxes of XXX rum, three boxes of King gold, 15 boxes of High Speed, 6 boxes of Mark everyday were recovered. The recovered bottles were poured into separate plastic cans and sample nips were sealed with seal 'SS' and taken into police custody.

4. During investigation, co-accused Ashu Gautam alias Bittu was arrested on 26.2.2011 and accused-appellant, Lakhwinder Singh alias Rambo was summoned for trial on an application filed under Section 319 Cr.P.C. Investigation formalities were completed and challan was presented in the Court for trial.

5. During trial, learned Court below completed various proceedings of trial and framed charge against the accused-appellants for commission of offence punishable under Sections 307, 427 and 34 IPC and Section 61(1)(a) of the Punjab Excise Act [for short, "the Act"], whereas charge under Section 279 IPC was also framed against accused Sham. To prove the prosecution case, as many as 8 witnesses were examined apart from leading documentary evidence including Chemical Examiner Report, Ex. PX. The accused-appellants were examined under Section 313 Cr.P.C. After considering the prosecution evidence and the defence version on record, learned trial Judge held the appellant guilty and convicted them for commission of offence and sentenced him on 6.9.2014 as under:-

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Name of the accused/ appellant	Under Section	Sentence	In default
Sham	Section 307 read with Section 34 of Indian Penal Code (for short, "I.P.C.")	to undergo Rigorous Imprisonment for a period of seven years and to pay fine of ₹5,000/-.	To further undergo rigorous imprisonment for six months.
	Section 427 read with Section 34 of I.P.C.	to undergo Rigorous Imprisonment for a period of two years.	--
	Section 279 of I.P.C.	to undergo Rigorous Imprisonment for a period of six months.	--
	Section 61(1)(a) of Punjab Excise Act.	to undergo Rigorous Imprisonment for a period of three years and to pay fine of ₹5,000/-.	To further undergo rigorous imprisonment for three months.
Ashu Gautam alias Bittu	Section 307 read with Section 34 of I.P.C.	to undergo Rigorous Imprisonment for a period of seven years and to pay fine of ₹5,000/-.	To further undergo rigorous imprisonment for six months.
	Section 427 read with Section 34 of I.P.C.	to undergo Rigorous Imprisonment for a period of two years.	
	Section 61(1)(a) of Punjab Excise Act.	to undergo Rigorous Imprisonment for a period of three years and to pay fine of ₹5,000/-.	To further undergo rigorous imprisonment for three months.
Lakhwinder Singh alias Rambo	Section 307 read with Section 34 of I.P.C.	to undergo Rigorous Imprisonment for a period of seven years and to pay fine of ₹5,000/-.	To further undergo rigorous imprisonment for six months.
	Section 427 read with Section 34 of I.P.C.	to undergo Rigorous Imprisonment for a period of two years.	

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	Section 61(1)(a) of Punjab Excise Act.	to undergo Rigorous Imprisonment for a period of three years and to pay fine of ₹5,000/-.	To further undergo rigorous imprisonment for three months.
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6. Aggrieved of passing of judgment of conviction and order of sentence dated 6.9.2014, the appellants are before this Court by way of above mentioned two separate appeals.
7. At the time of arguments, learned counsel for the appellants contended that the prosecution case is not believable at all. The appellants are facing charge under Section 307/34 and 279 IPC both whereas, the appellants cannot be tried for both the alleged offences simultaneously as these are contrary offences. Offence punishable under Section 307 IPC is an intentional act, whereas offence under Section 279 IPC is unintentional and covers rash or negligent act only.
8. Learned counsel for the appellants further contended that if the entire prosecution case is taken to be correct, as set up in the statements of PW-1, ASI Satpal Singh and PW-7, ASI Hakam Singh, no case is made out under Section 307 IPC against the appellants. As per learned counsel for the appellants, it is not the case of the prosecution that any injury was caused to either of the police officials at *naka* point of Madhupur Chowk or Badali Alla Singh *naka* point. At the most, it can be a case of rash and negligent driving if at all the entire testimony of PW-1, ASI Satpal Singh and PW-7, ASI Hakam Singh is taken to be correct.
9. Learned counsel for the appellants further contended that as per

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prosecution case, ASI Pal Singh was in the middle of the road and he was the main witness, but he was not examined during trial of the case, for the reasons best known to the prosecution. As per learned counsel for the appellants, at the best it was a case of accident and the same was converted into a case under Section 307 IPC.

10. Learned counsel for the appellants further contended that if the testimony of both the material witnesses, i.e., PW-1, ASI Satpal Singh and PW-7, ASI Hakam Singh is taken into consideration including the cross-examination conducted upon these two witnesses, the same establishes that the prosecution case is not believable at all. As per PW-1, ASI Satpal Singh, accused had turned the TATA Sumo about 100 yards in the midnight and no accused was apprehend on the spot, though a number of police officials were present on the spot. As per the prosecution case, only Sham fell on the ground after causing the accident and there is no material or evidence regarding identification of the remaining two appellants. If the cross-examination of PW-7, ASI Hakam Singh is taken into consideration, he has simply shown his ignorance about the main fact. Though, he was the main witness of the prosecution case, but he simply stated that he had not seen the vehicle of accused person hitting barricades. He was even not aware of the fact that how many barricades were installed on the road and he had not seen either of the accused persons, but the prosecution has come forward with the plea that the testimony of these two witnesses, i.e., PW-1, ASI Satpal Singh and PW-7, ASI Hakam Singh be believed, who had seen

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the occurrence. If these witnesses had seen the occurrence then they must be in a position to depose these basic facts.

11. Learned counsel for the appellants have lastly contended that the accused-appellants, namely, Ashu Gautam alias Bittu, Lakhwinder Singh alias Rambo and Sham have already undergone actual sentence of 2 years 8 months; 2 years 5 months and 2 years 9 months and 11 days as on 16.03.2017, while remaining in custody, whereas no case under Section 307 IPC is made out and while taking a lenient view on the point of sentence at least, they be released from custody in this case.

12. Learned State counsel while arguing on these points, contended that the appellants were involved in the trade of liquor and with that intention, they tried to make an escape from the police party and while doing so, they hit against the barricades of the police and damaged wall of Gurudwara and also tried to run over the police officials with the intention to kill them. To that extent, testimony of PW-1, ASI Satpal Singh and PW-7, ASI Hakam Singh are available on the file. Apart from that, the remaining prosecution witnesses, who were associated during investigation including arrest of the accused person and production of record relating to driving licence of Sham and registration of TATA Sumo, have fully proved the guilt of the accused-appellants. Valuable property of the State i.e., barricades were damaged by the accused appellants and the accused-appellants are facing trial for commission of offence punishable under Section 427 IPC as well. As regards to order of sentence, learned State

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counsel contended that there are no grounds to take a lenient view on the point of sentence. He prayed that the present appeals be dismissed.

13. Having considered the submissions made by learned counsel for both the parties and appraisal of record, this Court is of the view that the appellants were facing trial for commission of offences punishable under Sections Sections 307, 427 and 34 IPC and Section 61(1)(a) of the Act. The first legal point involved in this case is that charge was framed and the appellants were tried, convicted and sentenced for the offences punishable under Sections 307, 427 and 34 IPC and Section 61(1)(a) of the Act. However, these offences cannot be tried at the same time because the offence punishable under Section 307 IPC is intentional act and offence punishable under Sections 279 and 427 IPC are unintentional act. For ready reference, Section 307 IPC is extracted below:-

“307. **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.

Attempts by life convicts.—When any person offending under this section is under sentence of [imprisonment for life], he may, if hurt is caused, be punished with death].

14. Perusal of the above mentioned section makes it clear that there must be intention or knowledge to cause death or injury and if by that act, death has been caused, he would be guilty of murder. At the same time,

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offence under Section 279 IPC is rash or negligent act. For ready reference, Section 279 IPC is also extracted herein below:-

“279. Rash driving or riding on a public way.—Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

15. Section 427 IPC deals with punishment for causing mischief and mischief has been defined under Section 425 IPC. For ready reference, Sections 427 and 425 IPC are also extracted herein below:-

“427. Mischief causing damage to the amount of fifty rupees.—Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

“425. Mischief.—Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.

***Explanation* 1.**—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

***Explanation* 2.**—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.”

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16. A conjoint reading of above mentioned Sections makes it ample clear that the accused must be having intention or knowledge to cause loss or damage to the property and mischief is an unintentional act. Hence, offence under Section 307 and 279 IPC cannot go together, rather the charge should be clear on the point, whether the accused is to be tried for intentional act or for his unintentional act. In any case, after the trial the Court is to record finding that on the basis of evidence, whether the accused had committed intentional act or unintentional act and in the present case, learned trial Judge has fell in error while holding the accused-appellants guilty for commission of offence punishable under Sections 307, 279 and 427 IPC simultaneously. Such a view as taken by Hon`ble Jharkhand High Court in **Lalan Prasad Vs. State of Jharkhand**, 2002(3) JCR 14.

17. Now, first of all, coming to the offence punishable under Section 307 IPC. In the present case, the prosecution has relied upon the testimony of PW-1, ASI Satpal Singh and PW-7, ASI Hakam Singh. Both these witnesses referred to two separate incidents, first regarding rash and negligent driving of appellant Sham at *naka* point of Madhupur Chowk and the second regarding rash and negligent act at *naka* of Badali Alla Singh where ASI Pal Singh was standing on the barrier to stop the vehicle. If the testimony of PW-1, ASI Satpal Singh and PW-7, ASI Hakam Singh is considered minutely, accused persons, on seeing the police party at Madhupur Chowk turned their vehicle towards Chandigarh side. At that time, there was no intention of the appellants to cause death or bodily injury

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resulting into death of any police official. Thereafter, at *naka* point of Badali Alla Singh, the police party was present and TATA Sumo, which was being driven by the accused person, struck against the barricades put at the *naka* by the police party and thereafter struck against the wall of Gurudwara Chunni Kalan. In this process, appellant Sham fell down and the remaining accused persons fled away from the spot and they were apprehended during subsequent investigation proceedings. The most important point is that if number of police officials were present on the spot and the TATA Sumo was a speeding vehicle, still there was no injury to any police officials. Had there been any intentional act on the part of accused persons to commit the murder of police officials, in all probabilities, the appellants would have been in a position to do that act. But there is no such evidence available on the file. More so, the most important witness was ASI Pal Singh, who was standing in front of the police barrier at *naka* point of Badali Alla Singh, but he was not examined during the trial of the case. More so, the statement of material witnesses, namely, PW-1, ASI Satpal Singh and PW-7, ASI Hakam Singh is quite contradictory as regard to commission of offence under Section 307 IPC and the same is not believable. ASI Hakam Singh has simply shown his ignorance about the material aspect of the case. As per PW-1, ASI Satpal Singh, there was no identity of the accused persons on the spot as Sham only fell from the TATA Sumo and the remaining occupants of the vehicle could manage the escape. The Court cannot ignore the vital aspect that there was no injury to any

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police official nor there was any recovery of any weapon from accused-appellant Sham or any other accused as the recovery effected from TATA Sumo was of 42 card boxes of Indian made liquor for sale in Chandigarh including 18 boxes of XXX rum, three boxes of King gold, 15 boxes of High Speed. On the basis of such an evidence, conviction can certainly not be recorded at least for such an heinous crime under Section 307 IPC and the learned trial Judge has completely ignored this fact. Needless to mention that to commit an offence of attempt to murder under Section 307 IPC, the intention or the requisite knowledge to cause death are the essential ingredients. An attempt for purpose of Section 307 IPC should stem from a specific intention to commit murder. That means, the act, though sufficient in the ordinary course of nature to cause death, would not constitute an offence under Section 307 IPC, if the necessary intention or knowledge on the part of the accused is lacking. Such a view was also taken by this Court in **Pritam Singh and another Vs. State of Punjab**, 2010(3) RCR [Criminal] 395.

18. Accordingly, in the present case, the offence alleged against the appellants for commission of offence under Section 307 IPC cannot be said to have been proved and all the appellants are liable to be acquitted of the charge under Section 307 IPC in this case.

19. As regards to the offence punishable under Sections 279 IPC qua appellant - Shem, the testimony of PW-1, ASI Satpal Singh and PW-7, ASI Hakam Singh is consistent that appellant-Sham, while driving TATA Sumo

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in question in a rash and negligent manner, caused damage to police barricades at *naka* Badali Alla Singh and their testimony is supported and corroborated by other prosecution witnesses. Learned trial Judge has rightly recorded the finding that appellant – Sham was apprehended on the spot as he fell down from the vehicle and was tried for commission of offence punishable under Section 279 IPC alongwith other offences and was convicted and sentenced for the same. There is absolutely no illegality as regards to conviction of appellant, Sham for the offence under Section 279 IPC.

20. As regards to the offence punishable under Section 427 IPC, the testimony of PW-1, ASI Satpal Singh and PW-7, ASI Hakam Singh is consistent that appellants while travelling in TATA Sumo No.CH-04-C-5818 which was being driven in a rash and negligent manner, caused damage to police barricades at *naka* Badali Alla Singh and their testimony is supported and corroborated by other prosecution witnesses. Learned trial Judge has also recorded correct finding that identification of accused Ashu Gautam alias Bittu was established as he was the owner of TATA Sumo involved in the accident. Apart from that Ashu Gautam alias Bittu and Lakhwinder Singh alias Rambo were identified by PW-1 ASI Sat Pal, PW-3 ASI Pardeep Singh and PW-7 ASI Hakam Singh. Learned trial Judge has rightly convicted and sentenced all the accused-appellants under Section 427 IPC and the impugned judgment of conviction and order of sentence do not call for any interference to this effect.

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20. As regards to offence punishable under Section 61(1)(a) of the Excise Act, 18 boxes of XXX rum, three boxes of King gold, 15 boxes of High Speed, 6 boxes of Mark everyday were recovered on the spot from the TATA Sumo. During investigation proceedings, representative sample was taken, empty bottles were put in a gunny bag along with the boxes. The defence version is just a plea of denial. Learned trial Judge has rightly convicted and sentenced the accused-appellants under Section 61(1)(a) of the Excise Act.

21. In view of the above, the appeal bearing CRA-S-4047-SB-2014 filed by Sham qua judgment of conviction under Section 279 IPC and sentence thereunder is without any merit and stands dismissed.

22. Resultantly, both these appeals, bearing CRA-S- 3955-SB-2014 and CRA-S-4047-SB-2014 are partly allowed to the extent that the judgment of conviction and order of sentence passed by the Court below qua offence punishable under Section 307 IPC against all the appellants are set-aside. However, the appeals regarding judgment of conviction and order of sentence qua remaining offences, stand dismissed.

(SHEKHER DHAWAN)
JUDGE

March 22 , 2017
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes