

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-2354-2019 (O&M)
Date of Decision:04.12.2019

Arshdeep Singh @ Ashu

...Appellant

Versus

State of Punjab

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.P.S.Sekhon, Advocate and
Mr.Jashanpreet Singh, Advocate for the appellant.
Mr.SPS Tinna, Addl. Advocate General, Punjab.

ANIL KSHETARPAL, J.

The appellant has filed appeal against the judgment of conviction dated 29.07.2017 and order of sentence passed by the learned Additional Sessions Judge, Sangrur under Sections 326, 325, 324, 323 and 458 read with Section 34 IPC. Order of sentence qua appellant reads as under:-

Under Section	Sentence
326 read with Section 34 IPC	To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/- (Rupees Five Thousand) and in default of payment of fine to further undergo rigorous imprisonment for a period of six months.
325 read with Section 34 IPC	To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/- (Rupees Two Thousand) and in default of payment of fine to further undergo rigorous imprisonment for a period of one month.

458 read with Section 34 IPC	To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.3,000/- (Rupees Three Thousand) and in default of payment of fine to further undergo rigorous imprisonment for a period of one month.
324 read with Section 34 IPC	To undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/- (Rupees one thousand) and in default of payment of fine to further undergo rigorous imprisonment for a period of one month.
323 read with Section 34 IPC	To undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.1,000/- (Rupees One Thousand) and in default of payment of fine to further undergo rigorous imprisonment for a period of one month.

In nutshell, the case of prosecution is that on 30.05.2016 on receipt of information regarding admission of Shonky Khan, Amrik Singh and Harpreet Singh in Civil Hospital, Sunam, after having suffered injuries in a scuffle, Assistant Sub-Inspector Nirmal Singh went to the Civil Hospital, Sunam and came to know from the concerned doctor that the injured have been referred to Rajindra Hospital, Patiala. Thereafter, Assistant Sub-Inspector Nirmal Singh went to Rajindra Hospital, Patiala and recorded the statement of injured Shonky Khan. He along with his brother are running a mobile repair shop in the village. At 8:30 PM on 29.05.2016, when he along with his brother were proceeding towards the grocery shop of Kuldeep Singh and reached near the house of Balkar Singh, then their path was obstructed by three youths and when brother of the first informant switched on the light from his mobile phone, he saw Gurpiar Singh s/o Darshan Singh armed with sword, appellant-Ashu s/o Shivji Ram empty handed and Kaka Singh s/o Billu Singh armed with danda. Ashu

exhorted, not to spare Shonky Khan in order to teach him a lesson for demanding money for repair of the mobile phone. Thereupon, Kaka Singh gave blow with wooden baton on the left arm of the first informant, whereas Gurpiar Singh in order to kill him gave a sword blow on the head of first informant. Gurpiar Singh thereafter gave 3-4 more blows of sword towards his head but in order to save him, he raised his hands and suffered blows on his hands. When brother of Shonky Khan came forward in order to rescue him, Ashu (appellant) caught hold of him and thereafter, first informant raised noise and started running from the spot whereupon all the three assailants chased them and first informant in order to save him entered into the house of Amrik Singh where Amrik Singh along with his nephew Harpreet Singh were present. Once again first informant raised alarm, upon which, Gurpiar Singh and Kaka Singh caused injuries to Amrik Singh and Harpreet Singh. Thereafter, in order to kill first informant, Gurpiar Singh again gave a sword blow towards his head which landed on his left arm and on the upper side of the right hand. Kaka Singh gave a blow with wooden baton which landed on his left wrist, right side of his back, right calf, right knee and left thigh. Gurpiar Singh also gave a sword blow on the back of his neck. Since claimant, his brother Amrik Singh and Harpreet Singh started making noise, assailants ran away from the scene of occurrence with their respective weapons. Thereafter, the injured were admitted in the Hospital.

On the basis of the aforesaid statement of the first informant, case was registered against the accused and Gurpiar Singh was arrested and the alleged weapon of offence was recovered. The police during investigation found appellant Ashu and Kaka Singh innocent.

On completion of the investigation, challan was presented against Gurpiar Singh. Learned Judicial Magistrate, finding the case to be exclusively triable by the Court of Sessions, committed the case to the Court of Sessions. Charges were framed against Gurpiar Singh. Thereafter, learned Additional Sessions Judge also summoned the appellant as also Kaka Singh @ Chamkaur Singh while exercising power under Section 319 Cr.PC to face trial under Sections 307, 458, 326, 325, 324 and 34 IPC. Charges already framed were amended to Sections 307, 458, 326, 325, 324, 323 read with Section 34 IPC.

Prosecution in order to establish its case has examined Shonky Khan as PW-1, who has deposed in line with the case of the prosecution. Salama Khan, brother of the first informant, was examined as PW-2, who has also supported the case of the prosecution. He has deposed that he with the help of Amrik Singh and Harpreet Singh got his brother Shonky Khan admitted in the Civil Hospital, Sunam, from where, he was referred to Rajindra Hospital. The police recorded the statement of his brother Shonky Khan in Rajindra Hospital, Patiala on the next day of occurrence. He further deposed that blood stained cloths of his brother Shonky Khan were also handed over to the police. He also led the police party to place of occurrence and his statement was also recorded by the police. The prosecution also examined Harpreet Singh as PW-3, who has stated that on 29.05.2016 at about 8:30 PM, he was present in the house of his uncle Amrik Singh. When they were taking meal, they heard noise outside the house of Amrik Singh and when he went there, he saw Gurpiar Singh was beating Shonky Khan. He and his uncle came forward to save Shonky Khan but Gurpiar Singh pushed him and his uncle and they fell down and

received injuries and Gurpiar Singh fled away from the spot. Accused Arshdeep Singh and Kaka Singh @ Chamkaur, present in the Court, did not cause any injuries to him, Shonky Khan or his uncle. He also claimed that his statement was never recorded by the Investigating Officer. Thereafter, he was declared hostile at the request of government pleader.

ASI Nirmal Singh (Investigating Officer) was examined as PW-4, who has also deposed in line with the case of the prosecution. He has stated that he went to Rajindra Hospital, Patiala and moved an application and after getting permission, recorded the statement of Shonky Khan. He narrated about the various steps taken for completing the investigations. Thereafter, PW-4 deposed about extra judicial confession suffered by Gurpiar Singh on 06.06.2016. Head Constable Krishan Kumar was examined as PW-5. ASI Surjan Singh was examined as PW-6 and has stated that he had conducted further investigation. He deposed that doctor opined that injuries Nos.2, 3, 4 and 5 were grievous in nature. Head Constable Gurmeet Singh was examined as PW-7 and proved disclosure statement regarding hiding of the weapon by Gurpiar Singh under the grass, near the minor canal, which was got recovered on the aforesaid disclosure made by Gurpiar Singh where Salama Khan also accompanied them. Dr. Noble Bhatia, Medical Officer, was examined as PW-8. Dr. Deepak Garg was examined as PW-9, whereas Dr. Balwinder Singh Bhatti was examined as PW-10.

On the closure of the evidence, recorded by the prosecution, all the incriminating evidence adduced by the prosecution was put to them but the convicts denied and pleaded false implication. Gurpiar Singh has taken the pleas that he has not committed any offence, the alleged recovery

was not from him and he was wrongly and falsely implicated in the case by the first informant in connivance with the doctors and police officials. He further stated that he never got repaired any mobile phone from Shonky Khan and, therefore, he does not owe any amount from Shonky Khan.

Appellant was also examined under Section 313 Cr.P.C., wherein he has stated that he has not committed any offence and no recovery has been made from him. He has been wrongly and falsely implicated. He never got repaired mobile phone from Shonky Khan and consequently, he does owe any money. He had not caused any injury to Shonky Khan.

In defence, convicts examined DW-1 Anil Thapa, who has brought the screening test pertaining to Chamkaur Singh s/o Niranjana Singh for recruitment as a soldier, whereupon he joined military. Defence counsel examined Head Constable Major Singh as DW-2, who has proved the application moved by father of the appellant contending that appellant is innocent and inquiry report conducted by Deputy Superintendent of Police, Sub Division, Dirba, which was approved by the Senior Superintendent of Police, Sangrur. Constable Lakhwinder Singh was examined as DW-3, whereas Balkar Singh, Ex-Member Panchayat, was examined as DW-4.

Learned counsel appearing for the appellant has submitted that the police after investigation had declared the appellant innocent. He has further submitted that the appellant was unarmed and he has been wrongly convicted with the aid of Section 34 IPC. Hence, he has submitted that there was no common intention and in fact appellant was not present.

On the other hand, learned counsel appearing for the State has defended the judgment passed by learned Additional Sessions Judge.

This Court has considered the arguments and with the able assistance of learned counsels gone through the records and the judgment passed by learned Additional Sessions Judge.

No doubt, the investigating agency, after concluding the investigation, found that sufficient material against the appellant is not available, however, the Court of Sessions summoned the appellant under Section 319 Cr.P.C. The investigating agency is only to form an opinion. Ultimate decision is to be taken by the Court. Merely because the investigating agency could not find sufficient material would not *ipso facto* absolve the appellant. The power of adjudication is with the court and not with the police/investigating agency.

Next argument of learned counsel for the appellant is that the appellant has been wrongly convicted with the aid of Section 34 IPC particularly when he was unarmed, also does not have substance. Because it is the appellant who had exhorted the other co-convicts to launch attack on Shonky Khan. Thereafter, when brother of Shonky Khan tried to rescue his brother, it is the appellant who had caught hold of him and did not allow Salama Khan to save his brother. Thereafter, Shonky Khan in order to save him ran away from the initial place of occurrence and entered into the house of Amrik Singh. Appellant along with other co-accused followed them. In the house of Amrik Singh, co-accused of the appellant caused injuries not only to Shonky Khan, Salama Khan, Amrik Singh and his nephew Harpreet Singh. Gurpair Singh was armed with a sword, whereas Kaka Singh @ Chamkaur Singh armed with a wooden baton. All the three convicts had stopped Shonky Khan and his brother with a common intention and as noted above, it is the appellant, who had exhorted the other accused to attack the

first informant-injured.

The common intention, as defined in Section 34 IPC, is to be gathered from the facts and circumstances of each case. In this case, common intention can also be gathered particularly when appellant had instigated his co-convicts for committing the offence and rather prompted them to attack.

In the facts of this case, this court is of the considered view that prosecution has successfully proved common intention and, therefore, appellant has been correctly convicted for the offence with the aid of Section 34 IPC.

Last argument of learned counsel is that this Court may consider granting benefit of probation particularly when the appellant is a first time offender.

On careful perusal of the custody certificate, it is apparent that the appellant is recently involved in another case under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Keeping in view the facts of the case, this Court is not inclined to interfere in the detailed, well reasoned judgment passed by learned Additional Sessions Judge, Sangrur. Hence, the present appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

04.12.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No