

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

CRA-S-3930-SB-2017 (O&M)

Reserved on : September 11, 2019

Date of Decision: January 20, 2020

Nasim

...Appellant

Versus

State of Haryana

...Respondent

2.

CRA-S-4198-SB-2017 (O&M)

Saddiq and another

...Appellants

Versus

State of Haryana

...Respondent

3.

CRR-213-2018 (O&M)

Sahid

...Petitioner

Versus

State of Haryana and others

...Respondents

AND

4.

CRA-AD-346-2019 (O&M)

Sahid

...Appellant

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

**Present: Mr. Vinod Ghai, Senior Advocate with
Mr. Deepanshu Mehta, Advocate for appellants in
CRA-S-3930-SB-2017 and CRA-S-4198-SB-2017.**

**Mr. Sanjeev Kumar Bawa, Advocate for petitioner/appellant in
CRR-213-2018 and CRA-AD-346-2019.**

Mr. G.S.Wasu, Addl. AG, Haryana.

HARINDER SINGH SIDHU, J.

1. This order shall dispose of the afore mentioned four cases.
2. Criminal Appeal No.S-3930-SB of 2017 (filed by Nasim) and Criminal Appeal No.S-4198-SB of 2017 (filed by Saddiq and Javed) have been filed by the appellants against their conviction and sentence vide judgment and order dated 26/28.10.2017 of the learned Additional Sessions Judge, Mewat at Nuh in Sessions case No.756 of 2016 whereby they were charged with and tried for offences punishable under Sections 148, 149, 323, 325, 307 and 506 of the Indian Penal Code (in short 'IPC') along with Shakeel, Nayyer and Jahul. The appellants were convicted and sentenced as under :-

Name of Convict-Appellant	Under Sections	Sentence	In default of fine
<i>Nasim</i>	<i>307 IPC</i>	<i>RI for 07 years and to pay fine of Rs.10,000/-</i>	<i>To undergo SI for 06 months</i>
	<i>323 IPC</i>	<i>RI for 06 months</i>	
<i>Javed</i>	<i>325 IPC</i>	<i>RI for 01 year and to pay fine of Rs.1000/-</i>	<i>To undergo SI for 01 month</i>
	<i>323</i>	<i>RI for 06 months</i>	
<i>Saddiq</i>	<i>323 IPC</i>	<i>RI for 06 months and to pay fine of Rs.500/-</i>	<i>To undergo SI for 07 days</i>

The sentences were ordered to run concurrently. Shakeel, Nayyar and Jahul were acquitted.

3. Criminal Revision No.213 of 2018 has been filed by the

complainant- Sahid for enhancement of sentence of the convicts, while Criminal Appeal No.AD-346 of 2019 has been filed challenging the acquittal of Shakeel, Nayyar and Jahul.

4. The case of the prosecution in a nutshell is that Sahid son of Jumma Khan got his statement recorded before the police on 25.03.2015 wherein he stated that he is a resident of village Beewan, Police Station Ferozepur Jhirka and runs a 'tyre repair' shop. His sister Asmina is married with Shamim son of Nasruddin. There was matrimonial discord between her and her husband. About seven days prior to the present incident the accused had destroyed the wheat crop of the complainant with a tractor due to which some altercation had taken place between them. On 25.03.2015, all the accused came to his shop on a tractor and started assaulting him. Naseem hit the complainant on his head with an iron rod while Javed hit him with a lathi near the right ear. Jahul hit him with a stone on the waist as a result of which he fell down. Meanwhile, his father and brothers namely Mohamed Hasir, Khurshid Alam and Jumma Khan came there to save him but they too were assaulted by the accused. The complainant and others sustained injuries. The police was informed. Initially, case under Sections 148, 149, 323 and 506 IPC was registered. But on receipt of opinion regarding injuries of Khurshid Alam, offences under Sections 325 and 307 IPC were added. On completion of Investigation challan was presented.

5. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. They denied the allegations levelled against them and pleaded innocence. In defence they examined DW1 Hakku and DW2 Sahun.

6. Three of the accused were convicted and three were acquitted of the charges as referred to above.

7. We have heard learned counsel for the parties and have gone through the judgment and record.

8. PW-1 Shahid son of Jumma Khan deposed that on 25.03.2015 at about 9.30 am he was present at his tyre puncture shop. Naseem, Nayyar, Javed, Jahul sons of Nasrudeen, Saddiq son of Chaw Khan and Sakil son of Saddiq came to his shop armed with lathis, iron rod, *danda* etc. Naseem gave an iron rod blow on his head. Javed gave a lathi blow near his right ear. Jahul gave a stone blow on his back. He fell down on the ground. On hearing the noise his family members Jumma, Khurshid Allam and Hasir also reached at the spot. They were also given injuries by the accused. Naseem inflicted blow with an iron rod on the head of Khurshid Alam. Javed gave a lathi blow on the left hand of Khurshid. Nayyar gave a lathi blow on the head of Khurshid. Nayyer gave a lathi blow on the head of Hasir. Saddiq gave a lathi blow on the head of Jumma. Sakil gave a lathi blow on the hand of Jumma. Many persons from the village gathered at the spot on hearing the noise. Majlish son of Ismail & Hasan Khan son of Ashraf reached the spot and rescued them from the clutches of accused. While going away the accused threatened them, that today we had been saved but they would kill us in future whenever they got a chance. The motive behind the dispute was that his sister Asmina was married to Samim brother of accused Naseem. There was matrimonial dispute between Asmina and Samim. The accused were nursing a grudge due to said matrimonial dispute and had caused injuries to them. Information about the

incident was given to the police telephonically. The complainant and the other injured went to Govt. Hospital FP Jhirka. They were medico-legally examined there. Police reached Govt. Hospital FP Jhirka and recorded his statement Ex.P1. It bears his signatures at point-A. He identified the accused in Court.

9. In cross examination he stated that marriage of Asmina with Samim had taken place on 14.08.2013. Samim had not filed any case for restitution of conjugal rights against Asmina. Asmina had also not filed any case against Samim and his family members. However, Panchayats had been convened to sort out the disputes between them. One daughter was born from the wedlock of Asmina and Samim. Asmina had been residing with them for about 6/7 months prior to the incident. He stated that all the four injured on their side were empty handed. No injury had been caused by any member of the complainant party to Javed, Jahul and Nasima. He stated that Javed, Jahul and Nasima had reached CHC F.P.Jhirka prior to their arrival there. He did not know as to whether they were medico-legally examined. He denied that actually the complainant party was causing injuries to Javed, Jahul and Nasima, whereupon, a large crowd had gathered and shouted pelted stones on them and in that process, he, Khurshid and Mohd. Hasir sustained some injuries.

10. PW-2 Dr.M.S.Nehra, Medical Officer, CHC, FP Jhirka tendered his affidavit Ex.P2. He stated that on 25.03.20015 he examined Khurshid Alam s/o Jumma Khan and found the following :

*“Patient conscious orient and following commands pulse 88
P.M BP 100/60 mmhg – ENT bleeding positive.*

1. Lacerated wound approx. 3x1 cm over right sided frontal

region of skull – with fresh blood, nasal bleeding positive & bleeding from mouth positive.

Adv - X-ray Skull – A-P Lateral Surgeon's opinion.

2. Swelling over right eye positive, not able to open eye.

Adv. - Eye surgeon's opinion.

3. Injury over middle aspect of left arm, redness positive swelling positive.

Adv. X-ray left arm – AP lateral, ortho opinion.

Nature of injury : Injury (1) – Dangerous to life (2) Simple (3) grievous in nature.

Kind of weapon – Blunt

Duration within 24 hours.

Patient refer to G.H.Mandikhera for X-rays & surgeon's opinion & further management.”

On the same day he examined Saheed s/o Jumma Khan and found following injuries:-

“1. Lacerated wound approx. 3x1 cm over middle aspect of skull with fresh blood.

2. Complaining of pain right side scapula region redness positive.

Nature of injury – Simple

Kind of weapon – Blunt

Duration within 24 hours.

On the same day, Jumma Khan s/o Hamat Khan was also medico-legally examined and the following injuries were found :

“1. Abrasion approx. 1x0.5 cm over left wrist joint with blood – swelling below left wrist positive.

Adv – X-ray left wrist with arm – A.P.lateral – Ortho opinion.

2. Complaining of pain over back. Bruise approx. 4x1cm below left side of scapula region redness positive.

Nature of injury for 1 K.U.O. - Weapon blunt. Duration within

24 hours.

Nature of injury for 2 Simple – Weapon blunt. Duration within 24 hours.

Patient refer to G.H.Mandikhera for X-rays & Surgeon's opinion & further management.”

On examination of Mohd. Hasir s/o Jumma Khan, the following injuries were found:

“1. Lacerated wound approx. 3x1 cm over middle aspect of skull with fresh blood.

Nature of injury Simple – Weapon blunt - Duration within 24 hours.”

He proved carbon copy of MLRs of Khurshid Alam Ex.P3, of Shahid Ex.P4, of Jumma Khan Ex.P5 and of Mohd. Hasir Ex.P6. He also brought the original MLR register. He deposed that he sent ruqa Ex.P7 to SHO FP Jhirka. On 28.4.2015 Investigating Officer moved application seeking opinion in respect of injuries sustained by Khurshid Alam and he gave opinion to the effect that:

“accordingly to the discharge slip from RML Hospital, New Delhi, CR No.16009 and CR No.15715 dated 26.3.2015, injury No.1 as per NCCT report from RML Hospital extra axial hyper dense (blood density) collection with multiple small air pocket seen along the fronter inversity of maximum depth 6.8 mm communitied fracture of the frontal bone on right side involving the roof of orbit with associated over line soft tissues swelling.

Nature of injury-dangerous to life as per report, injury No.2 simple in nature as per record of RML, Injury No.3 grievous in nature all of injuries as per report of the RML Hospital (discharge slip CR no.15715 dated 26.3.2015 and CR No.16009 dated 28.3.2015).”

11. In cross-examination by counsel for the accused, he admitted that injured Khurshid was admitted on 26.03.2015 and discharged on the same day from RML Hospital. He also admitted that at the time of admission there was no history of loss of consciousness, vomiting, ENT Bleed and seizures as per discharge summary of RML Hospital.

12. He deposed that on the same day at 12.30 pm he had medico-legally examined Jahul Haq s/o Nasrudeen, Nasima d/o Nasrudeen and Javed Khan s/o Nasrudeen vide MLRs Ex.D1 to D3. In the MLR of Jahul two lacerated wounds were found on his head and one complaint of pain on his right shoulder. All the injuries were caused by blunt weapon within duration of 24 hours and x-rays were advised for the said injury. In the MLR of Nasima two bruises were found on her thigh and shoulder caused by blunt weapon within duration of 24 hours and were simple in nature. In the MLR of Javed Khan two abrasions over nose and chest were found, one lacerated wound was on the head and two bruises were found on his right and left scapular region, caused by blunt weapon within duration of 24 hours. X-rays and ENT opinion was advised.

13. On re-examination by the learned PP he stated that in the absence of X-ray report all the injuries on the person of Jahul, Nasima and Javed are simple in nature. He deposed that no opinion was sought from him during investigation in regard to nature of injuries to these three persons. He further deposed that injury No.3 on the person of Jahul was only a complaint of pain which clinically is no injury. The possibility of the injuries which are described as abrasions being suffered by friendly hands or being self inflicted cannot be ruled out. The possibility of the other injuries

on the three persons being caused by fall on hard and uneven surface cannot be ruled out.

14. PW-3 Khurshid Alam son of Jumma Khan deposed that on 25.03.2015 at about 9.30 am he was present at his house. He heard noise emanating from the shop of his brother Shahid. He along with Jumma Khan and Hasir went to his brother's shop. Nasir, Nayyar, Javed, Jahul son of Nasrudeen, Saddiq son of Chao Khan and Shakil son of Saddiq were there. They had came on a tractor. They were armed with lathi, danda and iron rod. Nasim gave an iron rod blow on the head of his brother Shahid. Javed gave a lathi blow near the right ear of his brother Shahid. Jahul gave a stone blow on Shahid's back. Shahid fell down on the ground. Nasim gave an iron rod blow on the right side of his head. Nayyar gave a lathi blow above his right eye. Javed gave a lathi blow on his left hand. Saddiq gave a lathi blow on the head of his brother Mohd. Hasir. Saddiq gave a lathi blow on the left hand of his father Jumma Khan. Shakil gave a lathi blow on the back of his father. Many respectable of the village as well as Majlish son of Ismail and Hasan Khan reached there. They rescued them from the clutches of accused. The accused while going away threatened us though we had been saved today but they would kill us whenever an opportunity arose. He deposed that the motive behind the occurrence is that his sister Asmina was married to Samim son of Nasrudeen, brother of accused Naseem. There was matrimonial dispute between Asmina and Samim. His sister was thrown out of her matrimonial house and she had been residing with them from the last two and half years. About 5/7 days prior to the present occurrence the accused had brought a tractor to their fields and damaged their crops. There

was wordy duel between them and the accused. Complaint had also been made to the Sarpanch of the village. The injured were taken to CHC FP Jhirka. From CHC FP Jhirka they were referred to GH Mandikhera. As he (PW3) was bleeding from mouth and nose and on account of his serious condition he was referred to Medical Hospital Nallar. From there he was referred to RML Hospital Delhi. He was treated there and remained admitted in the hospital for about 2/3 days. He identified the accused in Court.

15. In cross-examination, he stated that members of the complainant party were empty handed and did not cause any injury to Javed, Jahul and Nasima. He did not see Javed, Jahul and Nasima in C.H.C., F.P.Jhirka.

16. PW-4 Dharampal, Draftsman stated that on 04.12.2015 on the request of SI Shish Ram PS F.P. Jhirka, he visited the spot and prepared scale site plan Ex.P9.

17. PW-5 ASI Rajender deposed that on 25.03.2015, he was posted at PS F.P. Jhirka. On that day, he alongwith Ct. Mehar Chand and driver EHC Dalbir were present at Ambedkar Chowk F.P. Jhirka. A telephonic message was received from PS F.P. Jhirka to the effect that a scuffle had taken place at village Biwan and the injured were admitted at CHC F.P. Jhirka. He reached CHC F.P. Jhirka and collected ruqa alongwith MLR. Injured Saheed met him. He recorded his statement Ex.P1. He made endorsement Ex.P10 and sent the tehrir through Ct. Mehar Chand to police station for registration of the case. He visited the spot along with complainant and prepared the rough site plan Ex.P11. He recorded the

statement of witnesses. On 28.04.2015, he moved an application Ex.P12 for seeking the opinion regarding injuries of Khurshid. On 11.07.2015 accused Nair and Shakil were joined in the investigation vide arrest memo Ex.P13 and P14 as they were on anticipatory bail. On 20.07.2015 accused Jahul was joined in the investigation vide arrest memo Ex.P15. On 13.10.2015 accused Saddiq was arrested from village Biwan vide arrest memo Ex.P16. During arrest accused Saddiq produced a lathi, which was taken into police possession vide recovery memo Ex.P17. Thereafter, investigation was entrusted to another Investigating Officer. He identified accused Nair, Shakil, Saddiq and Javed in Court.

18. PW-6 Dr.Mukesh Kalra, Professor of Orthopedics, Lady Hardinge Medical College, New Delhi, deposed that on 28.03.2015 he was posted in Dr.Ram Manohar Lohia Hospital, New Delhi, as Unit Incharge. On that day, Khurshid Aalam was admitted in the hospital and was discharged on 01.04.2015. He proved the Discharge report Ex.PW6/A.

19. PW-7 SI Shish Ram deposed that on 21.07.2016, he was posted at Police Station Ferozepur Jhirka as Sub-Inspector. On that day, he arrested accused Javed. During interrogation, accused suffered disclosure statement Ex.PW7/A in pursuance whereof he got demarcated the place of occurrence vide demarcation memo Ex.PW7/B. He also got recovered one stick from his house located at village Biwan which was taken into police possession vide recovery memo Ex.PW7/C. He identified the stick Ex.P1. He identified the accused in the Court.

20. PW-8 Constable Mehar Chand deposed that on 21.07.2016, he was posted at Police Station Ferozepur Jhirka. On that day, he joined the

investigation with SI Shish Ram. He deposed regarding the arrest of Javed and the disclosure statement made by Javed pursuant where to he got recovered one stick from his house located at village Biwan which was taken into police possession vide recovery memo Ex.PW7/C. He identified the stick Ex.P1. He identified the accused present in the Court.

21. PW-9 Constable Jagat Singh deposed regarding the arrest of accused Saddiq on 13.10.2015 and the recovery of one stick from his shop located at village Biwan on his disclosure statement. He identified the Stick Ex. P17.

22. PW-10 Constable Bharat Pal deposed that on 30.11.2015, he was posted at Police Station Ferozepur Jhirka, as Constable. On that day, he joined the investigation with ASI Mahesh Pal. He deposed regarding arrest of accused Nasim and the recovery of one iron rod from his house at village Biwan on his disclosure statement Ex.PW10/A. He identified the accused present in the Court and the iron rod Ex. P 2.

23. PWs Mohd. Hasid and Jumma were given up unnecessary. PW Majlish and Hassan Khan were given up being won over by the accused.

24. DW-1 Hakku son of Isab Khan deposed that he is running a hotel at Biwa Adda. On 25.03.2015, at about 9.00 a.m., he was present at his hotel. He heard the noise of quarrel, which was coming towards the side of shop of son of Saddiq. He went there and saw Sahid, Khurshid Aalam, Jumma and Hasir were causing injuries to Javed, Jahul and Nasima with lathies and stones. Shakil, Nayyar, Nasim and Saddiq were not present there. A large crowd had gathered and in order to save Javed and others they pelted stones as a result of which Sahid and others sustained some minor injuries.

He had appeared before ASI Rajender and made a statement to this effect.

25. In cross examination by Ld. Counsel for the complainant he stated that he is running a hotel at bus stop in village Biwa. He knows the accused and the complainant party being their co-villager. He had made the statement before ASI Rajender on 03.08.2015 at about 1.00/1.30 p.m. He did not have a copy of the said statement. He stated that he had not made any statement before the S.P., or higher police official. He did not make any representation to any authority that the accused had been falsely implicated in the case. He stated that he did not receive any injury in the occurrence. He had tried to intervene but could not do so as stone pelting was going on.

26. DW-2 Sahun son Batul deposed that his house is situated near the shop of son of Saddiq. On 25.03.2015, at about 9.00 a.m., he was present in his house. He heard the noise of quarrel, which was coming from the side of shop of son of Saddiq. He went there and saw Sahid, Khurshid Aalam, Jumma and Hasir were causing injuries to Javed, Jahul and Nasima with lathies and stones. Shakil, Nayyar, Nasim and Saddiq were not present there. A large crowd had gathered and in order to save Javed etc. they pelted stones as a result of which Sahid etc. sustained some minor injuries. He had appeared before ASI Rajender and made a statement to this effect.

27. In cross examination by Ld. Counsel for the complainant he stated that he is a labourer. He knows the accused and the complainant party being their co-villagers. He had made the statement before ASI Rajender on 03.08.2015 at about 1.00/1.30 p.m. He did not have a copy of the said statement. He had not made any statement before the S.P. or higher police official. He did not make any representation to any authority that the

accused had been falsely implicated in the case. He did not receive any injury in the occurrence. He had tried to intervene but could not do so as stone pelting was going on.

28. Mr. Vinod Ghai Sr. Counsel for the appellant- Naseem raised the following contentions:

- (i) The story of the prosecution cannot be believed. Apart from the four persons injured on the side of the complainant party three of the accused have also suffered injuries as is clear from their MLRs Ex.D1, Ex.D2 and Ex.D3. The positive case of the prosecution in the deposition of PW1-Shahid and PW3-Khurshid is that they were empty handed and had not caused any injury to the accused. There is no explanation by the prosecution as to how three of the accused suffered injuries. The inevitable conclusion is that the PWs have deliberately suppressed the genesis of the dispute and their version is not credible.
- (ii) PW1 and PW3 have deposed that about 7/8 days before the occurrence the accused party had come on a tractor and damaged the wheat crop of the complainant party. But there was no evidence of this. No complaint was lodged by them about this incident.
- (iii) Offence under Section 307 IPC is not made out. At the most it can be an offence under Section 308 IPC.

29. It is not possible to accept the contention of the Ld. Counsel for the appellant on the basis of non-explanation of injuries on the accused.

30. Hon'ble Supreme Court has held it is not as a matter of law or

invariably that whenever the accused sustained an injury in the same occurrence the prosecution is obliged to explain the injury and on such failure the prosecution case should be disbelieved. Such a burden can be placed on the prosecution only if the injuries sustained by the accused are serious.

31. In **Gurwinder Singh v. State of Punjab, (2018) 16 SCC 525**

Hon'ble Supreme Court observed as under:

“10. The contention of the appellants is that the prosecution has not explained the injuries on the person of the accused and only the complainant party attacked the accused and the complainant party are the aggressors. In his statement, Sukhwinder Singh has stated that he attacked on the head of Satnam Singh and caused injury to him. Arguments advanced on behalf of the appellants are that the complainant party were the aggressors and that the prosecution failed to explain the injuries on the persons of the accused and therefore, the case of the prosecution should be disbelieved.

11. It cannot be held as an invariable proposition that as soon as the accused received the injuries in the same transaction, the complainant party were the aggressors—it cannot be held as a rule that the prosecution is obliged to explain the injuries and on failure of the same, the prosecution case should be disbelieved. It is well settled that before placing the burden on the prosecution to explain the injuries on the person of the accused, two conditions are to be satisfied:

(i) the injuries were sustained by the accused in the same transaction; and

(ii) the injuries sustained by the accused are serious in nature.

12. This Court considered the effect of non-explanation of injuries sustained by the accused person in Takhaji Hiraji v.

Kubersing Chamansing and held as under: (SCC p. 154, para 17)

“17. The first question which arises for consideration is what is the effect of non-explanation of injuries sustained by the accused persons. In Rajender Singh v. State of Bihar, Ram Sunder Yadav v. State of Bihar and Vijayee Singh v. State of U.P., all three-Judge Bench decisions, the view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case.”

(emphasis supplied)

13. In the present case, the incident had taken place near the tubewell where both the parties assembled to settle the land

dispute. When there was exchange of words, there was a scuffle between both the parties. In the same transaction where Harbhajan Singh was attacked, the accused party also sustained injuries. Apart from the stray statement made by the complainant Sukhwinder Singh in the FIR, the prosecution has not offered any explanation for the injuries sustained by the accused. Since both the accused sustained injuries in the incident, non-explanation of injuries sustained by the accused assumes significance. Having regard to the injuries sustained by the accused, the trial court and the High Court ought to have made an effort in searching out the genesis of the occurrence.”

To the same effect are the observations in **Dashrath v. State of Chhattisgarh, (2018) 4 SCC 428 :**

“8. The next contention urged by the learned counsel is that the prosecution has not chosen to explain the injuries on the person of the appellants and this is fatal to the case of the prosecution. It cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so, the prosecution case should be disbelieved. Before holding that non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions:

(i) that the injury on the person of the accused was of a serious nature; and

(ii) that such injuries must have been caused at the time of the occurrence in question. (Vide Takhaji Hiraji v. Thakore Kubersing Chamansing, SCC p. 154, para 17.)

9. *By going through the judgment of the trial court as well as the High Court, it is seen that the injuries sustained by the*

appellants were simple in nature and while so it was not incumbent upon the prosecution to explain those injuries. It is also relevant to note the answers elicited from the doctors that those injuries found on the accused could be self-inflicted.”

32. In the present case, PW2 Dr. M.S. Nehra had medico-legally examined Jahul Haq s/o Nasrudeen, Nasima d/o Nasrudeen and Javed Khan s/o Nasrudeen on the day of the incident at 12.30 pm vide MLRs Ex.D1 to Ex.D3. In the MLR of Jahul two lacerated wounds were found on his head. There was also complaint of pain on his right shoulder. The injuries were caused by blunt weapon. X-ray was advised for the said injury. In the MLR of Nasima two bruises were found on her thigh and shoulder caused by blunt weapon and were simple in nature. In the MLR of Javed Khan two abrasions over nose and chest were found. There was one lacerated wound on the head and two bruises were found on his right and left scapular region, caused by blunt weapon. X-rays and ENT opinion was advised. PW 2 stated that in the absence of X-ray report all the injuries on the person of Jahul, Nasima and Javed are simple in nature. Injury No.3 on the person of Jahul was only a complaint of pain which clinically is no injury. PW2 stated that the possibility of the injuries which are described as abrasions being suffered by friendly hands or being self inflicted could not be ruled out. The possibility of the other injuries on the three persons being caused by fall on hard and uneven surface could not be ruled out. Thus not much can be made of the fact that the prosecution has not explained the injuries to the accused.

33. The argument of Mr. Ghai that as there is no evidence of the

altercation that had allegedly taken place 5/7 days before this occurrence when the accused had damaged their wheat crop of the complainant hence the prosecution version is false also cannot be accepted. Firstly, it has not been alleged by the prosecution that any formal complaint was filed against that incident. PW3 only stated that they had complained to the Sarpanch about it. Also that was not the only reason why the accused nurtured a grudge against the complainant. The grudge was on account of the matrimonial dispute between Asmina- sister of the PW1 and PW3 with Samim brother of accused Naseem. Asmina had been staying in her parental house for about 5-7 months before the incident. That grudge led to the earlier incident and then to the present occurrence.

34. As far as the incident in question in the present case is concerned the evidence of PW1 Shahid and PW3 Khurshid Alam regarding the injuries caused by accused Naseem, Sadiq and Javed is clear and unambiguous. The medical evidence has corroborated the same. The grievous injury on the head of PW 3 Khurshid Aalam has been attributed to Naseem. The injury on his left arm which resulted in a fracture and was attributed to accused Javed. One lathi blow on the skull of Mohd. Hasir which as per MLR Ex. P 7 resulted in a lacerated wound and was simple in nature is attributed to accused Sadiq.

35. Thus, accused Javed and Sadiq have been rightly convicted for offences under Section 325 IPC and Section 323 IPC respectively.

36. Regarding accused Naseem, the third submission of Mr. Ghai that offence under Section 307 IPC is not made out merits acceptance. As per the deposition of PW-1 Shahid son of Jumma Khan on 25.03.2015 at

about 9.30 am he was present at his tyre puncture shop. Naseem, Nayyar, Javed, Jahul sons of Nasrudeen, Saddiq son of Chaw Khan and Sakil son of Saddi came to his shop armed with lathis, iron rod, danda etc. Naseem gave an iron rod blow on his head. Javed gave a lathi blow near his right ear. Jahul gave a stone blow on his back. He fell down. On hearing the noise his family members Jumma, Khurshid Alam and Hasir also reached at the spot. They were also given injuries by the accused. Naseem inflicted blow with an iron rod on the head of Khurshid Alam. Javed gave a lathi blow on the left hand of Khurshid. Nayyar gave a lathi blow on the head of Khurshid. Nayyer gave a lathi blow on the head of Hasir. Saddiq gave a lathi blow on the head of Jumma. Sakil gave a lathi blow on the hand of Jumma. Many persons from the village gathered at the spot on hearing noise. Majlish son of Ismail & Hasan Khan son of Ashraf rescued them from the clutches of accused.

37. Thus, two blows with iron rod were inflicted by accused Naseem. One was on the head of PW1 Shahid which was simple in nature. The other was on the head of PW3 Khurshid Alam which as per PW2 Dr.M.S.Nehra, Medical Officer, CHC, FP Jhirka was :

“Lacerated wound approx. 3x1 cm over right sided frontal region of skull – with fresh blood nasal bleeding positive & bleeding from mouth positive.

Adv. - X-ray Skull – A-P Lateral Surgeon's opinion.”

It was this injury that was opined as being dangerous to life by PW 2.

“According to the discharge slip from RML Hospital, New Delhi, CR No.16009 and CR No.15715 dated 26.3.2015, injury No.1 as per NCCT report from RML Hospital extra axial hyper dense (blood density) collection with multiple small air

pocket seen along the frontier inversity of maximum depth 6.8 mm communitated fracture of the frontal bone on right side involving the roof of orbit with associated over line soft tissues swelling.

Nature of injury-dangerous to life as per report, injury No.2 simple in nature as per record of RML, Injury No.3 grievous in nature all of injuries as per report of the RML Hospital (discharge slip CR no.15715 dated 26.3.2015 and CR No.16009 dated 28.3.2015)."

38. It is significant that this injury was inflicted when after hearing the noise, family members of PW1 namely Jumma, Khurshid Alam and Hasir reached the spot. The injuries inflicted on PW 1 when he was alone in his tyre repair shop and the accused arrived at the shop and attacked him with lathies and iron rod were simple in nature. Once the family of the complainant also reached the spot the accused inflicted injuries on them. Two of them were opined to be grievous. Both of them were suffered by Khurshid Alam. One of which has been referred to above. The other injury was on his left arm which resulted in a fracture and was attributed to accused Javed. The four family members of the Complainant who had come on hearing the noise could not be expected to remain silent spectators. Even unarmed, they would certainly grapple with the accused. What ensued thereafter can certainly be assumed to be free fight in which the injury which has been opined to be dangerous to life was inflicted on PW3 Khurshid Alam by accused Naseem. Simple injuries have been suffered by the accused.

39. From the circumstances considering that the first blow with the iron rod inflicted by accused Naseem caused only a simple injury to PW1,

there was no attempt to repeatedly hit him, the act of the appellant Nassem after the arrival of four family members of PW 1 in inflicting and causing injury to PW3 Khurshid Alam which the doctor has opined as being dangerous to life does not come within the ambit of Section 307 IPC, but can be said to be one which would be an attempt to commit culpable homicide within the meaning of Section 308 I.P.C.

40. Criminal Appeal filed by Nasim (CRA-S-3930-SB-2017) is partly allowed. The conviction of appellant Nasim is altered from Section 307 IPC to one under Section 308 IPC. The sentence of appellant Nasim is reduced from rigorous imprisonment of seven years with fine of Rs.10,000/-, in default of payment of fine to undergo simple imprisonment for 06 months to rigorous imprisonment for Four Years with no change in fine and its default clause.

42. The criminal appeal filed by Saddiq and Javed (CRA-S-4198-SB-2017) and Criminal Revision filed by Sahid – complainant (CRR-213 of 2018) are dismissed.

43. Injury No.2 on the person of injured Khurshid Alam is a swelling on the right eye which has been attributed to accused Nayyer. PW2 Dr.M.S.Nehra admitted in his cross-examination that injury No.2 could be the result of injury No.1 as there was no wound or physical mark at the receipt of injury No.2. No other injury is attributed to accused Nayyer on any member of the complainant party. As per PW1, accused Jahul had hit complainant Sahid with a stone on his waist. MLR Ex.P4 of Jahul does not show any corresponding injury on the waist. No other injury is attributed to accused Jahul. As per PW1 Shahid and PW3 Khurshid Alam accused Sakil

is alleged to have given a lathi blow on the back and shoulder of Mohd. Hasir. As per Ex.P7 the MLR of Mohd. Hasir, he has suffered only one lacerated wound on the skull which is simple in nature. No corresponding injury with lathi on his back and shoulder is revealed in the MLR.

44. The Ld. Trial Court has also rightly held that considering the close relationship between the accused and the complainant party, Asmina the daughter of the complainant party was married to the brother of the main accused Naseem; she had been living separately with her parents for the last 6-7 months and the other attending circumstances, it cannot be held that all the members of the accused party shared a common intention. The injury inflicted on PW3 Khurshid Alam was not premeditated. Each of the accused persons would be responsible only for the specific role attributed to them. Thus, there is no infirmity in the impugned judgment acquitting Shakeel, Nayyar and Jahul. Accordingly, the appeal filed by Sahid – complainant (CRA-AD-346-2019) is dismissed.

(RAJIV SHARMA)

JUDGE

(HARINDER SINGH SIDHU)

JUDGE

January 20, 2020

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No