



**103-1 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRA-S-573-SB-2003 (O&M)  
Date of Decision: 07.04.2025**

Samey Singh and others ...Appellants

Versus

State of Haryana ...Respondent

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Ms. Supriya Garg, Advocate;  
Mr. Rohan Garg, Advocate and  
Mr. Deepak Jaglan, Advocate  
for the appellants.

Ms. Geeta Sharma, DAG, Haryana.

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**HARPREET SINGH BRAR, J.(ORAL)**

1. The present appeal is preferred against the judgment of conviction dated 10.03.2003 and order of sentence dated 11.03.2003 passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhari, in the case stemming from FIR No.114 dated 20.06.1998 registered under Sections 148,149,323,325, 307 and 506 of Indian Penal Code, 1860 (hereinafter 'IPC').

**FACTUAL BACKGROUND**

2. Succinctly, the facts, as alleged, are that on 20.06.1998, at about 11:00 AM, the appellants-accused were cultivating a piece of disputed property among the five brothers. Sher Singh-brother of appellant No.1(complainant), Ram Singh and Raj Kali found out about the same and arrived at the spot to register their protest. An argument ensued regarding



ownership of the disputed land. Agitated by the same, appellant No.3 gave a *gandasi* blow on the head of the complainant, while Adesh Kumar and Rajan gave *laathi* blows on his right arm, right leg and waist. Rajan also gave *danda* blows on the head, right arm and waist of Ram Singh. Moreover, Raj Kali, wife of the complainant, was hit by a tractor being driven by appellant No.1. The complainant party raised alarm causing 3-4 persons from the nearby brick kiln to arrive at the spot. The accused ran away and the complainant party was taken to the hospital.

3. After assessing all material on record, the learned trial Court convicted the appellants vide judgment dated 10.03.2003. Vide order of sentence dated 11.03.2003, they were sentenced as follows:

| Offence under                               | Sentence   |
|---|--|
| Section 323 read with Section 34 of the IPC | Rigorous imprisonment for <b>six months</b> and a fine of Rs.500/-, in default of which rigorous imprisonment of one month each.   |
| Section 325 read with Section 34 of the IPC | Rigorous imprisonment for <b>two years</b> and a fine of Rs.500/-, in default of which rigorous imprisonment of one month each.    |
| Section 307 read with Section 34 of the IPC | Rigorous imprisonment for <b>three years</b> and a fine of Rs.1000/-, in default of which rigorous imprisonment of two month each. |

It was further ordered that all sentences shall run concurrently.

### CONTENTIONS

4. Learned counsel for the appellants submits that the learned trial Court has erred in rendering a judgment of conviction against the appellants. In fact, it was the complainant party who were the aggressors as they were trying to stop the appellants from cultivating the land they were in cultivating possession of. As such, the appellants only acted in private defence as there



was a reasonable apprehension of harm at the hands of the complainant party. Further, the offence under Section 307 IPC has not been proved against the appellants since the doctor who examined Raj Kali was examined in the Court to prove the Medico-Legal Case Summary(MLC) (Ex. PT). Moreover, the MLC itself does not indicate any crush injuries and neither does it make a categorical endorsement that the injuries sustained by her were dangerous to life. There is nothing on the record to indicate that there was a meeting of mind amongst the appellants to harm Raj Kali, as such the learned trial Court has erred in convicting all of them under Section 307 read with Section 34 IPC. Further, the case of the prosecution is riddled with infirmities as sharp contradictions are apparent in the testimonies rendered by complainant Sher Singh as PW1 and his wife Raj Kali as PW4. The appellants were acting merely in self-defence and there was no intention to kill any members of the complainant party. As such, it is prayed that the sentence of the appellants may be reduced to the sentence already undergone by the appellants as appellant No.1 has already undergone a period of 02 years, 05 months and 29 days, appellant No.2 has undergone a period of 11 days and appellant No.3 has undergone a period of 02 months and 17 days.

5. *Per contra*, learned State counsel contends that the learned trial Court has passed the judgment on conviction on correct appreciation of the facts and the law. Appellant No.1 hit Raj Kali with a tractor that clearly establishes an intention to kill, justifying the invocation of Section 307 IPC. As such, no interference by this Court is warranted.

**OBSERVATIONS AND ANALYSIS**

6. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that a property dispute between real brothers triggered a quarrel between them on 20.06.1998. While the FIR(supra) has been registered against the appellants, a cross-case has also been filed by them by way of DDR No.21 dated 21.06.1998.

7. A perusal of the record indicates that initially in his statement (Ex. PA/1), the complainant-Sher Singh had stated that Raj Kali stood in front of the tractor and appellant No.1, driving the same, hit her with it. Subsequently, in his testimony as PW1, he states that the front wheel of the tractor ran over Raj Kali. Whereas, Raj Kali, who appeared as PW4, testified that appellant No.1 ran her over with the tractor twice causing a fracture in her spine.

8. In light of PW4-Raj Kali's specific assertion, it is curious that the record does not bear any mention of crush injuries that would be sustained in such an event. It is highly unlikely that being ran over by a tractor would only fracture the back bone, without affecting any other bone or tissue in the body. The inconsistency between the statements made by the complainant as PW1 and his wife as PW4, coupled with the lack of corroborating medical evidence, creates significant suspicion with respect to the veracity of the narrative put forth by the prosecution.

9. Further still, PW4-Raj Kali was taken to PGIMER, Chandigarh, and was examined by one Dr. Deepak Tyagi, as evidenced by the MLC (Ex. PT). A perusal of the same would illustrate that she was brought in for treatment of a spinal injury. However, the under the head of 'nature of injury'



merely 'dangerous' has been scribbled. Curiously, Dr. Deepak Tyagi was not examined to prove the MLC prepared by him. The prosecution did examine Dr. Sanjay Bansal, Senior Resident, Department of Neurosurgery, PGIMER, Chandigarh, as PW10 who categorically stated that Raj Kali was examined by Dr. Deepak Tyagi and that the MLC (Ex. PT) was not prepared in his presence. As such, in view of the fact that Dr. Deepak Tyagi was not examined and that the defence did not get an opportunity to cross-examine him on it, the MLC (Ex. PT) cannot be read into evidence. Reliance in this regard can be placed on the judgment rendered by this Court in *State of Punjab vs. Tara Singh 1987(1) R.C.R.(Criminal) 184*.

10. Moreover, all the appellants have been convicted and sentenced under Section 307 read with Section 34 IPC. A two Judge bench of the Hon'ble Supreme Court in *Ramaswamy Ayyangar vs. State of Tamil Nadu 1976 AIR SC 2027*, elaborated on the essentials to attract Section 34 IPC and speaking through Justice N.L. Untwalia, the following was held:

*"12. The contention is fallacious and cannot be accepted. Section 34 is to be read along with the preceding Section 33 which makes it clear that the "act" spoken of in Section 34 includes a series of acts as a single act. It follows that the words "when a criminal act is done by several persons" in Section 34, may be construed to mean "when criminal acts are done by several persons." The acts committed by different confederates in the criminal action may be different but all must in one way or the other participate and engage in the criminal enterprise, for instance, one may only stand guard to prevent any person coming to the relief of the victim or to otherwise facilitate the execution of the common design. Such a person also commits an "act" as much as his co-participants actually committing the planned crime. In the case of*



*an offence involving physical violence, however, it is essential for the application of Section 34 that the person who instigates or aids the commission of the crime must be physically present at the actual commission of the crime for the purpose of the facilitating or promoting the offence, the commission of which is the aim of the joint criminal venture. Such presence of those who in one way or the other facilitate the execution of the common, design, is itself tantamount to actual participation in the 'criminal act'. the essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result. Such consensus can be developed at the spot and thereby intended by all of them. ...*

(emphasis added)

In view of the discussion above, nothing has been brought to the fore to attribute any act or gesture on appellants No.2 and 3 that could even suggest that Raj Kali was hit by a tractor in furtherance of a common object. In fact, appellants No.2 and 3 were engaged in scuffle with other members of the complainant party as such, there was no occasion for a consensus to have developed. Therefore, it can be reasonably concluded that the prosecution has failed to justify its version of events in order to breach the threshold of beyond reasonable doubt. As such, neither Section 307 nor Section 34 of the IPC can be invoked against the appellants.

11. Furthermore, the present matter involves a cross case where the complainant party is portrayed as aggressors. As a matter of fact, vide judgment dated 10.03.2003, the learned Additional Sessions Judge, Yamuna Nagar at Jagadhari has convicted the complainant- Sher Singh as well as injured-Ram Singh under Sections 325, 323 read with 34 IPC. Therefore, it is evident that both parties participated in the quarrel and injured the other side.



The family has been facing the agony of trial for the last 27 years and a perusal of the respective custody certificates would indicate that appellant No.1 has undergone 2 years 5 months and 29 days, appellant No.2 has undergone 11 days and appellant No.3 has undergone 2 months and 17 days of custody. As such, this Court is of the considered opinion that ends of justice will be met if the sentence awarded to the appellants is reduced to the custody already undergone by them. Moreover, no minimum punishment has been prescribed under Sections 323/325/34 of IPC.

12. In *Deo Narain Mandal vs. State of UP (2004) 7 SCC 257*, a three Judge bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient.

13. Further, a two Judge Bench of the Hon'ble Supreme Court in *Ravada Sasikala vs. State of AP AIR 2017 SC 1166*, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by



evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

14. Consequently, the present appeal is disposed of in the following terms:

(i) The judgment dated 10.03.2003 passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhari is modified to the extent that the conviction of the appellants under Section 307 IPC read with Section is set aside. Needless to say the conviction of the appellants under Sections 323, 325 read with Section 34 IPC is maintained.

(ii) The order of sentence dated 11.03.2003 passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhari also stands modified as the sentence awarded to the appellants is reduced to the duration of custody already undergone by them.

15. Pending miscellaneous application(s), if any, shall also stand disposed of.

**(HARPREET SINGH BRAR)**  
**JUDGE**

**07.04.2025**

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No