

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

CRA-S-901-SB-2004

Date of Pronouncement: 29.07.2015

1. Birpal Singh alias Birbal s/o Mukandi Lal

2. Satinder alias Bitta s/o Pritam Singh

...Appellants

vs.

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

Argued By: Mr. Ashok Giri, Advocate for the appellants.

Mr. Surjeet Singh Chaudhary, DAG, Punjab.

Raj Rahul Garg, J.

Birpal Singh son of Mukandi Lal and Satinder Singh alias Bitta son of Pritam Singh have assailed the judgment of conviction dated 08.04.2004 and order of sentence of even date recorded by Sh. Vijay Singh, the then Ld. Additional Sessions Judge (Adhoc), Ludhiana whereby both the appellants were convicted as under:

Birpal Singh U/s 307 IPC

To undergo RI for seven years and to pay a fine of Rs. 2000/-, or in default to suffer further RI for one month;

	<i>U/s 307/34 IPC</i>	<i>To undergo RI for seven years and to pay a fine of Rs. 2000/-, or in default to suffer further RI for one month;</i>
	<i>U/s 326 IPC</i>	<i>To undergo RI for two years and to pay a fine of Rs. 1000/- or in default to suffer further RI for one month.</i>
	<i>U/s 324 IPC</i>	<i>To undergo RI for one year and to pay a fine of Rs. 500/-, or in default to suffer further RI for 15 days.</i>
<i>Satinder@ Bitta</i>	<i>U/s 307 IPC</i>	<i>To undergo RI for seven years and to pay a fine of Rs. 2000/-, or in default thereof to suffer further RI for one month;</i>
	<i>U/s 307/34 IPC</i>	<i>To undergo RI for seven years and to pay a fine of Rs. 2000/-, or in default thereof to suffer further RI for one month;</i>
	<i>U/s 326/34 IPC</i>	<i>To undergo RI for two years and to pay a fine of Rs. 1000/-, or in default to suffer further RI for one month;</i>
	<i>U/s 324/34 IPC</i>	<i>To undergo RI for one year and to pay a fine of Rs. 500/-, or in default to suffer further RI for 15 days.</i>

All the sentences were ordered to run concurrently.

2. Brief facts of the case are like this; that on 20.05.2001 Amarjit Kaur, her mother Dwarka Devi, her brother Manjit Singh and father Attar Singh, after taking their meals, went to sleep in their house situated in village Kotla, PS-Samrala. Amarjit Kaur and her mother were sleeping on the cot lying on the right side whereas Manjit Singh on the cot lying nearby and Attar Singh slept on the *Peti* (Box). On account of week old illness, Amarjit Kaur could not sleep. At about 2.00 AM, she got up to take medicine. While she was sitting close to the door, three persons armed with Kirches scaled the wall of the house and entered into their room. One of them was muffled face; the second one with curly hair and good physique resembling Satinder @ Bitta of their village and the third one with beard and Parna tied around his head resembling Birpal. The

person who was having curly hair removed blanket from the face of Manjit Singh and then he along with the person, resembling Birpal, gave Kirch blows on the neck, left arm and left hand of Manjit Singh. When her mother had tried to get up, the person who was resembling Birbal, gave a Kirch blow in her abdomen. When Attar Singh had tried to get up, the person with curly hair resembling Bitta, gave Kirch blow in his abdomen. Then, Amarjit Kaur picked up a Kulhadi (Axe) lying nearby and raised alarm. The person with muffled face, who had not participated in the assault, asked them to move, on which all of them along with their respective weapons fled away from the site by scaling the wall. On receipt of the injuries, her mother became unconscious. Complainant along with her father and brother had called the neighbours Major Singh and Jograj Singh. Jograj Singh took her to the house of Sarpanch Surjit Singh. On his direction, his son took the injured to Civil Hospital, Samrala by his car. After giving first aid, the injured were referred to CMC, Ludhiana. Amarjit Kaur and Major Singh brought the injured to CMC, Ludhiana. On receiving the message, ASI Devinder Pal Singh reached CMC, Ludhiana and recorded the statement of complainant Amarjit Kaur. As per Amarjit Kaur, motive behind the occurrence was the illicit relationship of her brother Nain Kumar with the wife of accused Birpal. She also reported that aforesaid matter was however patched up by way of compromise. The statement Ex. PA was sent to PS-Samrala through Constable Amarjit Singh. On the basis of which formal FIR, Ex. PW9/4, was recorded. Thereafter, an application, to seek opinion of the doctor as to if injured Dwarka Devi, Attar Singh and Manjit Singh were fit to give statements, was moved before the doctor which are Ex. PW9/5, PW9/6 and PW9/7, respectively. Doctor reported that injured Dwarka Devi and Attar Singh were unfit to give statement, vide report Ex. PW9/8 and Ex. PW9/9.

However, injured Manjit Singh was opined as fit to give statement, vide Ex. PW9/10. Statement of Manjit Singh was recorded by the police. Thereafter, ASI Devinder Pal Singh visited the site and prepared rough site plan Ex. PW9/11 with the correct marginal notes. On 23.05.2001, applications were moved seeking opinion of doctor regarding injured Dwarka Devi and Attar Singh whereupon doctor opined, vide Ex. PW9/14 and PW9/15, that they were fit to give statements. Thereafter, their statements were recorded by the police. On 28.05.2001, injury reports of Dwarka Devi, Attar Singh and Manjit Singh were obtained. Injury on the persons of Dwarka Devi and Attar Singh were declared as dangerous to life whereas injury of Manjit Singh was declared grievous in nature. As such offences punishable u/s 307, 326 IPC were added. Thereafter, since ASI Devinder Pal Singh was transferred, further investigation of the case was conducted by ASI Amarjit Singh. He arrested accused Birpal. Arrest memo was prepared; grounds of arrest were disclosed to him, vide memo Ex. PW8/2. Intimation regarding his arrest was given to his family through Ujagar Singh son of Bachan Singh, vide memo Ex. PW8/3. During the course of investigation, accused Satinder @ Bitta was found innocent whereas accused Birpal was arrested on 07.11.2001. On interrogation, Birpal confessed that he alone had inflicted injuries to take revenge of his wife. After completion of investigation, Challan was presented in the court against accused Birpal. Ld. Additional Sessions Judge, Ludhiana charge-sheeted him, vide order dated 24.08.2002 to which he did not plead guilty but claimed trial.

3. During the course of trial, an application u/s 319 Cr.P.C. for summoning Satinder @ Bitta as additional accused was moved whereupon he was summoned as additional accused and thereafter finding a prima-facie case against him for committing offence punishable u/s 452/34, 307, 326, 324 IPC

he along with accused-Birpal were charge-sheeted accordingly, vide order dated 05.03.2003 to which they did not plead guilty but claimed trial.

4. After taking entire prosecution evidence, statements of accused u/s 313 Cr.P.C. were recorded wherein they denied each prosecution allegation and pleaded their innocence. Their defence is only to the effect that they are innocent and have been falsely implicated in this case.

5. After hearing both the counsel for the parties and appraising the entire evidence and material coming on record Sh. Vijay Singh, the then Ld. Additional Sessions Judge (Adhoc), Ludhiana recorded the impugned judgment of conviction dated 08.04.2004 and order of sentence of even date as mentioned in the earlier part of this judgment.

6. During the pendency of this appeal, the factum of death of Birpal appellant-accused was brought to the notice of this court. Death certificate of Birpal was also placed on record. Learned state counsel also verified the factum of death of Birpal. As such proceedings against him were ordered to be dropped.

7. I have heard Mr. Ashok Giri, Advocate for Satinder @ Bitta appellant-accused; and Mr. Surjeet Singh Chaudhary, Deputy Advocate General, Punjab for the state of Punjab besides appraising the entire material coming on record.

8. It was argued by learned counsel for the appellant that appellant Satinder @ Bitta has been falsely implicated in this case. He was having no motive to inflict injuries on the person of complainant party. Even otherwise, during the course of investigations of the police, this point also finds mention in report u/s 173 Cr.P.C. submitted in the court that Birpal alone had committed this crime. He was having a motive behind this crime. He had taken revenge

from the complainant party as Nain Kumar son of Attar Singh was having illicit relations with his wife. Birpal-accused has also admitted before the police, during the course of investigations, that he alone inflicted injuries on the persons of Manjit Singh and his parents. Police also found Satinder @ Bitta-appellant innocent and that's why they did not submit challan against him. Only on the basis of statements of prosecution witnesses he has been summoned as additional accused. The statements of prosecution witnesses are discrepant as well. There is discrepancy in the statements of PW-2 Manjit Singh, PW-3 Attar Singh and PW-4 Dwarka Devi as to who gave injury to Attar Singh. Attar Singh PW-3 says that Birpal-accused gave injury to him and even Dwarka Devi PW-4 also stated so. Whereas per Amarjit Kaur, Satinder @ Bitta gave Kirch blow in the abdomen of Attar Singh.

9. It was further contended by learned counsel for the appellant-accused that even the identity of accused is not established. From the statements of Manjit Singh, Attar Singh and Dwarka Devi recorded u/s 161 Cr.P.C., it is evident that they did not see the assailants. Under these circumstances, their statements in court whereby they attributed injuries to the accused-appellant is of no meaning. They have made improvements in their statements before the court. Even Amarjit Kaur at the time of recording of her statement Ex. PA on 21.05.2001 was not sure about the identity of the assailants as she had mentioned in her statement that one of the assailants resembled to Bitta of their village whereas the other to Birpal. No identification parade was got conducted in this case. In the absence of the same; only on the basis of suspicion; identification of accused from the first time in the court, is of no meaning and the accused-appellant is entitled to benefit of doubt.

10. So far as the motive of committing the crime is concerned, it was

there as it is stated by Amarjit Kaur in her statement Ex. PA before the police on which formal FIR was got recorded. Even Amarjit Kaur as PW-1 has stated so clearly in the court. Dwarka Devi PW-4, mother of Amarjit Kaur, deposed in so many words that motive behind the occurrence was that wife of Birpal had fled away with her son Nain Kumar. In report u/s 173 Cr.P.C. it finds mention that Birpal-accused admitted that he alone had given injuries to the complainant party as he had taken revenge of his wife. Learned counsel for the accused-appellant also contended that motive was with Birpal to commit the crime not with Satinder @ Bitta. Under these circumstances, when there is evidence regarding motive to commit the crime, available on record, and when there is no material on the file to say that there was any motive with complainant party to falsely implicate the accused in this case. Thus, argument regarding false implication of the accused-appellant in this case, is not sustainable.

11. Accused-appellant as well Birpal belong to the village of complainant party. They were acquainted to each other. As such there cannot be any doubt regarding identity of accused.

12. Of course in the FIR, Ex. PA, it finds mention that two assailants one of which resembled Birpal of their village and the other Bitta of their village; yet, this fact stands sufficiently explained by Amarjit Kaur PW-1 and other prosecution witnesses. Amarjit Kaur when appeared as PW-1 did not state that the assailants Birpal and Bitta who caused injuries to Manjit Singh, Attar Singh and Dwarka Devi were resembling to Birpal or Bitta of their village. She mentioned them as assailants of this case with certainty rather she categorically and voluntarily mentioned that her brother and Birpal-accused were earlier friends and thereafter some dispute had arisen between them. Due to that reason accused inflicted injuries on them. She further deposed that accused were near

to her in the room at the time of occurrence so she identified them. She also categorically stated the names of the accused to the police but the police did not record their names in her statement Ex. PA. When specific questions were put to her as to if whatever she stated in the court was told by her to the police she categorically answered the question by stating that the police was not listening to her. She further deposed that accused were known to her and they were friends of her brother. She also deposed that she was aware of the names of the accused at the time of making statement Ex. PA. Manjit Singh PW-2 also deposed that he had identified the accused present in the court. He also deposed voluntarily, at the time of recording of his statement in the court, that he had stated before the police about the involvement of Birpal but they did not record the said portion on his statement saying that Birpal was already dead. Statement of PW-3 Attar Singh was to the same effect. Even aforesaid prosecution witnesses stated that they have informed Major Singh and Sarpanch Surjit Singh that Birpal and Bitta have caused injuries to them. This portion of their statement was not challenged. It is the settled proposition of law that statement if not correctly recorded by the police even then it can be got recorded before the court at the time of trial and in such eventuality the statement before the police would have no meaning at all. There is a judgment on this point ***Naunihal Singh vs. State of Punjab 2003 (1) Criminal Court Cases 12.***

13. Of course Attar Singh PW-3 deposed that Birpal gave a Kirch blow in his abdomen. Dwarka Devi PW-4 also stated so whereas per Amarjit Kaur PW-1, according to prosecution story, Bitta gave Kirch blow in the abdomen of Attar Singh besides giving Kirch blow on the person of Manjit Singh. But with this discrepancy alone it cannot be said that identity of accused-appellant Bitta is not established. In fact, there is not even a slightest doubt regarding his

identity. Amarjit Kaur PW-1, Manjit Singh PW-2, Attar Singh PW-3 and Dwarka Devi PW-4 categorically stated that accused-appellant Bitta belongs to their village and he was known to them. Amarjit Kaur PW-1 categorically stated that accused-appellant as well Birpal inflicted injuries with Kirch on the neck, fingers and left arm of Manjit Singh. She further deposed that accused kept on inflicting injuries with Kirch and then she picked up small axe which was lying in the room and raised hue and cry. She also deposed that Bitta gave a Kirch blow in the abdomen of his father Attar Singh. Manjit Singh PW-2 deposed that on the day of occurrence, on receipt of injury on his neck he woke up and he identified the accused present in court. The injury on his neck was given by Birpal and when he was about to get up Bitta gave Kirch blow on his arm. Another injury was also inflicted by the third accused which landed on his fingers. They had also caused injuries on the person of his parents in the abdomen. Thus, with this evidence available on record, it stands established beyond reasonable doubt that accused-appellant Bitta was present at the spot and participated in the commission of crime by giving Kirch blows to Manjit Singh PW-2 and also gave Kirch blow in the abdomen of Attar Singh PW-3. By entering into the house of complainant party at the dead of night, he caused injuries to Dwarka Devi and Attar Singh which were dangerous to their life and caused grievous hurt to Manjit Singh. Thus, the prosecution has succeeded in proving its case against the accused.

14. As prosecution witnesses categorically stated that the police was not listening to them and was not writing whatever was stated by them, at the time of recording of their statements by the police and had been telling them that Birpal accused was dead; therefore the alleged improvements which have been confronted at the time of recording of their statements in the court, are of

no meaning. Statement of Amarjit Kaur who is the eye-witness of the case and that of Manjit Singh PW-2 one of the injureds are consistent with prosecution story and inspire confidence in the mind of the court regarding genuineness of the prosecution case. When complainant Amarjit Kaur has mentioned accused-appellant as one of the assailants of this case it is not understandable as to how and on what basis he was declared as innocent by the police and as to why the challan was not put in the court against him. Simply because co-accused allegedly stated that he alone has inflicted injuries on the persons of complainant party; is not a sufficient cause for declaring accused-appellant Bitta as innocent by the police. There is no material or evidence, available on record, forming basis on which, the police concluded that accused-appellant Bitta was innocent. Rather this fact gives credence to the statements of prosecution witnesses that the police was not listening to them and had been telling that Birpal was dead. Such a misrepresentation on the part of the police, if any, is not warranted at all and could be only for the reason so that the complainant party feels satisfied and do not mention Birpal as assailant. The case law cited as “*Satnam Singh vs. State of Rajasthan, 2000 (1) RCR (Criminal) 211*” and “*L.L. Kale vs. State of Maharashtra, 2000 (1) RCR (Criminal) 299*” by learned counsel for the accused-appellant is not applicable to the facts of the present case as in the case in hand there is sufficient explanation on the file, as discussed above, given by the prosecution witnesses regarding improvements in their statements. The present case is not the one to which the witnesses made any material omission from their earlier statements. Rather the statements of prosecution witnesses are in conformity with the prosecution case so far as causing of injuries by accused-appellant on their person is concerned and so far as identity of the accused-appellant is concerned.

15. No other point was urged before me.

16. For the reasons recorded above, I find no merit in this appeal and maintaining the judgment of conviction dated 08.04.2004 and order of sentence of even date against Satinder @ Bitta, accused-appellant, this appeal is dismissed against him. If the accused-appellant is on bail, it stands cancelled and he be taken in custody for serving the remaining period of sentence. This order be sent to the Chief Judicial Magistrate concerned for compliance and report.

(Raj Rahul Garg)
Judge

29.07.2015

Waseem