

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

CRA-D-145-DB-2010

Date of decision: 21.07.2017

Puran @ Puran Chand and others

.....Appellants

Versus

State of Haryana

.....Respondent

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Dr. Amarpreet Kaur Sandhu, Advocate as Legal Aid Counsel
for the appellants.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

H.S. MADAAN, J.

This appeal has been filed by Puran @ Puran Chand, Khem
Chand and Balli alias Billu, all three of them being accused in FIR No.199
dated 13.07.2007 under Sections 323, 452, 449, 302, 34 IPC registered at
Police Station Sadar Palwal, who were tried, convicted and sentenced vide

judgment dated 21.05.2009 passed by the Court of learned Additional Sessions Judge, Faridabad as under:-

Name of Convict	Offence	Sentence Awarded
Puran	Under Section 449 IPC	Rigorous imprisonment for ten years and to pay a fine of ₹5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of one year.
	Under Sections 302 read with Section 34 IPC	Imprisonment for life and to pay a fine of ₹10,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two years.
	Under Section 323 read with Section 34 IPC	Rigorous imprisonment for one year and to pay a fine of ₹1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two months.
Khem Chand	Under Section 449 IPC	Rigorous imprisonment for ten years and to pay a fine of ₹5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of one year.

	Under Sections 302 read with Section 34 IPC Under Section 323 read with Section 34 IPC	Imprisonment for life and to pay a fine of ₹10,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two years. Rigorous imprisonment for one year and to pay a fine of ₹1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two months.
Billu	Under Section 449 IPC Under Sections 302 read with Section 34 IPC Under Sections 323 read with Section 34 IPC	Rigorous imprisonment for ten years and to pay a fine of ₹5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of one year. Imprisonment for life and to pay a fine of ₹10,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two years. Rigorous imprisonment for one year and to pay a fine of ₹1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two months.

All the substantive sentences were ordered to run concurrently.

The accused-convicts, who are appellants before this Court pray that the appeal filed by them be accepted, the impugned judgment of their conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the prosecution story is that on 12.07.2007 a written intimation was received from General Hospital, Palwal at Police Station Sadar Palwal as regards admission of one Yogwati in injured condition in that hospital. Accordingly, police party headed by ASI Jai Ram from said police station went to General Hospital, Palwal and moved a written application Ex.PK seeking opinion of attending doctor regarding fitness of injured Yogwati to make statement, on which doctor declared the injured unfit to do so and the police party reached near injured Yogwati who was lying unconscious due to injuries. The police party did not find any person near her. As such, police party returned to police station. On 13.07.2007 police party headed by ASI Jai Ram had again gone to General Hospital, Palwal, however, Yogwati was not found to be admitted there. The doctor informed the Investigating Officer that Yogwati had been referred to Om Hospital, Palwal, as such, the police party went there.

On the next day complainant Roop Chand son of Yad Ram, resident of Aurangabad and aged about 54 years was present at Om

Hospital, Palwal, where he got his statement recorded. In the statement he stated that he is a member of Gram Panchayat of his village and has been running a tent house business in the village itself; that on the previous night at about 9/9:30 p.m. he heard noise “save me-save me” coming from the house of Inder. He accordingly went there and saw that Puran and Billu alias Balli, sons of Khem Chand and Khem Chand who had been residing in the village for last 18/20 years were beating Gobind alias Pappu and his wife Yogwati alias Champa. The assailants were having spade (*Kassi*) and *Lathies*. On seeing him they ran away from the spot. All the residents of the colony had seen those persons running away from the place of incident. According to the complainant when he went inside the house, he saw Gobind alias Pappu lying in the *Varanda* of his house, and blood was oozing out from his head, neck, chest, ear, eye, thumb and elbow of his right hand. An injury was also inflicted on the head of Yogwati; that at night Puran son of Khem Chand was breaking the lock of house of Charan. Gobind and Charan had seen him and inquired from Puran as to what was the matter, who stated that he was answering the call of nature and then Gobind objected to that by giving 5/6 slaps to Puran and warning that such act should not happen in future. Puran had reported the matter at his house and for that reason accused had killed Gobind by inflicting injuries upon him with *Kassi* (spade) and *Lathies* and also inflicting injuries to Yogwati. Yogwati was taken to hospital. The statement of Roop Chand was signed by him and his signatures were attested by ASI Jai Ram (hereinafter referred to as the Investigating

Officer/I.O.).

The Investigating Officer put his endorsement Ex.PM below such statement sending ruqa to police station through C. Roshan Lal on the basis of which formal FIR was registered at Police Station Sadar, Pawal. Thereafter the police party accompanied by Roop Chand went to the spot, where dead body of Gobind was found to be lying there. There Investigating Officer carried out inquest proceeding with respect to dead body of Gobind preparing report Ex.PJ in that regard. Blood stained earth found from the spot was taken into possession vide a memo. Dead body of Gobind was brought to General Hospital for post-mortem examination. An application for conducting post-mortem examination Ex.PH was moved. After post-mortem examination the doctor handed over post-mortem report along with clothes of deceased in sealed parcel to the Investigating Officer, which were taken into possession vide a recovery memo. On return to the police station the Investigating Officer deposited case property with MHC.

On 14.07.2007 the investigation was taken over by SI Krishan Kumar. On that very day, identity card, ration card, driving licence etc. of the deceased were found to be there at the spot, those were taken into possession vide recovery memo Ex.PN, driving licence being Ex.P1, ration card Ex.P2, voter identity cards being Ex.P3 to Ex.P5.

All the accused were arrested from Malaut town, District Muktsar in Punjab by SI Krishan Kumar on 28.07.2007. Necessary

documents at that time were prepared. Accused was brought to Police Station Sadar, Palwal. They were subjected to interrogation on 29.07.2007 and all the three accused made separate disclosure statements admitting their involvement in the crime. In addition to that accused-Khemi had disclosed vide Ex.PP that *Dav* used by him in the incident had been concealed by him in the bushes in the area of village Pappal Khera, Rajasthan and he could get the same recovered. Whereas accused Billu disclosed vide Ex.PP/1 that *Danda* used by him in the incident had been concealed by him in the *Keekar* tree in village Andhop, which was within his knowledge and he could get the same recovered. Accused Puran stated vide Ex.PP/2 that *Kassi* (spade) used in the crime had been concealed by him in the bushes near his maternal uncle's village Kama and he could get the same recovered.

On 30.07.2007 all the three accused were again put to interrogation and the Police Officer conducting the interrogation was SI Krishan Kumar. All the three accused made disclosure statements admitting their involvement in the incident and stated that the earlier statements made by them regarding the place of concealment of weapons were false. As a matter of fact they had concealed their respective weapons in their house itself. Disclosure statements of accused in that regard were recorded i.e. Ex.PO, Ex.PO/1 and Ex.PO/2, respectively. Subsequently, such accused while in police custody in pursuance of their disclosure statements got the weapons recovered i.e.

Puran got recovered a *Kassi* (spade), its rough sketch Ex.PQ was

prepared and it was taken into possession vide Ex.PB by converting it into parcel and sealed with seal having inscription 'MI'. In the similar manner accused-Billu in pursuance of his disclosure statement got recovered a *Danda*, rough sketch of which was prepared as Ex.PQ/1 and then it was converted into parcel and taken into possession vide memo Ex.PC. Accused Khem Chand had got recovered *Dav* used in the incident, its sketch was prepared vide Ex.PQ/2, which was converted into sealed parcel and were taken into possession vide Ex.PD.

The Investigating Officer prepared rough site plan of place of recovery as Ex.PU. Then all the accused led the police party and identified the place of crime, regarding which spot identification memos were prepared as Ex.PR, Ex.PR/1 and Ex.PR/2. During further investigation, the Investigating Officer got prepared scaled site plan of place of incident Ex.PV. The recovered weapons, clothes of deceased and blood stained earth picked up from the spot were sent to FSL, Madhuban, Karnal, Haryana.

The investigation of the case was again taken over by ASI Jai Ram from SI Krishan Kumar on 02.10.2007, during the course of which he recorded statements of several witnesses.

After completion of investigation and other formalities file was handed over to Inspector Mam Chand for preparation of challan. Challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Palwal. Copies of documents relied therein were

supplied to the accused free of cost as provided under Section 207 Cr.P.C..

Then finding that offence under Section 302 IPC is exclusively triable by the Court of Sessions, the Judicial Magistrate Ist Class, Palwal committed the case to the Court of learned Sessions Judge, Faridabad vide his order dated 12.12.2007, from where it was entrusted to the Court of learned Additional Sessions Judge, Faridabad.

On receipt of the case, finding a prima facie case, charge for the offences under Sections 452, 449, 323/34 and 302/34 IPC was framed against the accused, to which they pleaded not guilty and claimed trial. Thereafter, the case was fixed for evidence of prosecution.

During the course of evidence of prosecution, it examined as many as fifteen witnesses as per details below:-

- | | | |
|-----|-----------------------------|--------------|
| 1. | <i>ASI Mukut Lal</i> | <i>PW-1</i> |
| 2. | <i>C. Roshan Lal</i> | <i>PW-2</i> |
| 3. | <i>C. Imroz Heder</i> | <i>PW-3</i> |
| 4. | <i>Roop Chand</i> | <i>PW-4</i> |
| 5. | <i>Yogwati</i> | <i>PW-5</i> |
| 6. | <i>Nawal Singh, Patwari</i> | <i>PW-6</i> |
| 7. | <i>Parveen Kumar</i> | <i>PW-7</i> |
| 8. | <i>Mam Chand, SHO</i> | <i>PW-8</i> |
| 9. | <i>HC Sultan Singh</i> | <i>PW-9</i> |
| 10. | <i>Dr. Sushil Kumar</i> | <i>PW-10</i> |

- | | |
|------------------------------------|-------------------------------------|
| <i>11. Girraj</i> | <i>PW-11 (number not mentioned)</i> |
| <i>12. ASI Jai Ram</i> | <i>PW-12</i> |
| <i>13. ASI Ram Chand</i> | <i>PW-13</i> |
| <i>14. Dr. J.P. Prasad</i> | <i>PW-14</i> |
| <i>15. Inspector Krishan Kumar</i> | <i>PW-15</i> |

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to them, but they denied the allegations contending that they are innocent and have been falsely involved in this case.

The accused did not lead any evidence in defence.

After hearing arguments, learned trial Court convicted and sentenced accused-appellants as mentioned above, which left them aggrieved and they have filed the present appeal.

We have heard learned counsel for the appellants and learned Assistant Advocate General, Haryana, besides, going through the record.

In this case the eye-witness account of the incident was provided by PW-4 Roop Chand, PW-5 Yogwati and PW-11 Girraj, all of them supported the prosecution story on material aspects. Although they were cross-examined at length on behalf of accused but they could not be shattered on any material point. No reason has been suggested or proved prompted by which they might have deposed falsely against

the accused. We find presence at the spot of all the three witnesses to be probable and natural. It was PW-4 Roop Chand who had set the criminal machinery in motion by reporting the matter to the police by making statement Ex.PA, which formed basis for registration of formal FIR. His statement provides details of the incident. Similarly PW-8 Yogwati having suffered injuries in the incident which had taken place in her house is a stamped witness and her presence at the spot cannot be doubted. As far as presence of PW-11 Girraj at the place of incident at the relevant time is concerned that also comes to be natural and probable since he had stated that on the fateful day at about 9/9:30 p.m. he was returning home after answering call of nature. He is resident of village Aurangabad where the place of incident is located. We find their depositions to be natural and inspiring confidence, as such, worthy of reliance.

The medical evidence in this case duly corroborates the ocular evidence. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly and then to challan them falsely.

It also stands proved that during the course of investigation, the accused while being interrogated had suffered disclosure statements which led to recovery of *Danda* at the instance of accused Balli @ Billu on 30.07.2007, *Dav* at the instance of Khem Chand on 30.07.2007 and spade at the instance of Puran @ Puran Chand on 30.07.2007. These

weapons had been sent to Forensic Science Laboratory, Madhuban, Karnal, Haryana. As per report Ex.PE received from there, those were found to be stained with blood which points out that those weapons had been used by the accused in the incident. That also lends support to the prosecution version.

The accused have failed to render any plausible explanation for their alleged false implication in this case. It is highly unlikely that the PWs would have involved the accused in this case without any rhyme or reason while trying to protect the actual culprits.

The motive for the incident was there, since as per prosecution case inasmuch as Puran @ Puran Chand was caught red handed while trying to break the lock of house of Charan and he had been given slaps by Gobind and matter had been reported to his family. Feeling aggrieved by the same, the accused sharing common intention had committed murder of Gobind, whereas causing multiple injuries to Yogwati.

Therefore, the trial Court was justified in convicting the accused for offences under Sections 323 & 302 read with Section 34 IPC and Section 449 IPC, and conviction of the accused is upheld.

During the course of trial accused-Puran @ Puran Chand, Balli @ Billu had claimed that they were juveniles at the relevant time, however, they could not prove this fact before the trial Court, as such, they were tried like ordinary criminals along with their father Khem Chand and all three of them were convicted and sentenced. An

application to decide juvenility of Balli alias Billu and Puran alias Puran Chand was sent to Juvenile Justice Board, Faridabad via speed post on 24.05.2011. Inter alia in the application Balli alias Billu has claimed that his date of birth was 08.07.1992 whereas according to Puran alias Puran Chand it was 08.08.1991, as such, on the date of commission of offence in question i.e. 13.07.2007 they were below the age of 18 years. To prove that contention they had submitted their school leaving certificates issued by Head Master, Government Primary School, Aurangabad (Palwal). Juvenile Justice Board issued notice of the application to SHO, Police Station Sadar, Palwal with a direction to submit his detailed report and to verify the genuineness of the documents attached with the application. SHO Police Station Sadar, Palwal submitted his report dated 13.07.2011 including copy of admission and withdrawal register of the school in question. Statement of HC Harpal Singh was recorded. The Juvenile Justice Board vide its detailed order dated 14.07.2011 concluded that Balli alias Billu and Puran @ Puran Chand, both sons of Khem Chand lodged in Borstal Jail, Hissar were juveniles, as such they could not be detained in jail beyond a period of three years in terms of Section 15 of Juvenile Justice (Care and Protection of Children) Act, 2000. They were ordered to be released from Borstal Jail, Hissar forthwith. In that way in the present appeal conviction of all the three accused is maintained and sentence of accused Khem Chand is also upheld and there is no scope for reduction for the same keeping in view the facts and circumstances of the case.

However, since the aspect of sentence has already been dealt with by Juvenile Justice Board, Faridabad, as regards accused Puran @ Puran Chand and Balli @ Billu the same is allowed to remain as such, in that way the appeal is disposed of.

Accused-Khem Chand, who is stated to be on bail in terms of order passed by this Court be taken into custody immediately so as to undergo the remaining sentence.

Necessary direction in that regard be issued to the quarter concerned.

21.07.2017
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(H.S. MADAAN)
JUDGE

- | | | |
|----|------------------------------|-----|
| 1. | Whether reportable? | No |
| 2. | Whether reasoned / speaking? | Yes |