

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

(1) **CRA-D-200-DB of 2003**
Sushil @ Sheela and another
...Appellants

Versus

The State of Haryana
...Respondent

(2) **CRA-D-221-DB of 2003**
Naresh @ Nesha
...Appellant

Versus

The State of Haryana
...Respondent

(3) **CRA-S-135-SB-2003**
K.C. Sharma
...Appellant

Versus

State of Haryana
...Respondent

Date of decision:13.11.2019

**CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr. Vinod Ghai, Senior Advocate with
Ms.Kanika Ahuja, Advocate for the appellant(s) in
CRA-D-200-DB of 2003 and CRA-D-221-DB of 2003.

Mr.Ashwani Bhardwaj, Advocate as
Amicus Curiae for the appellant in CRA-S-135-SB-2003.

Mr.Vikrant Pamboo, DAG, Haryana.

H.S. MADAAN, J.

Vide this judgment, we propose to dispose of three appeals i.e. CRA-D-200-DB of 2003 filed by appellants Sushil @ Sheela and Smt.Nanhi, CRA-D-221-DB of 2003 filed by appellant Naresh @ Nesha and CRA-S-135-SB of 2003 filed by appellant K.C. Sharma.

Briefly stated, facts of the case as per the prosecution version are that on 28.1.2001 SI Prahlad Singh, SHO of Police Station Sadar, Jind (hereinafter referred to as the Investigating Officer/I.O.) while heading a police party was present at Amarheri barrier having laid a picket there to check crime, where the complainant Smt.Birmati wife of Kitab Singh came and got her statement recorded with him *inter alia* stating that on that very day, at about 11:00 a.m., she had gone to her fields to cut and bring *BARSEEM* fodder, thereafter at about 12:00 noon or 1:00 p.m. while she was returning home along with *BARSEEM* fodder and had reached near the Brahmanowali Johri(pond), she observed that their tractor being driven by Lila son of Jagdish, who was son of her husband's paternal aunt was intercepted by Naresh alias Nesha having a lathi; Sheela having a jelli, Nanhi armed with a lathi and Lilu son of Sukh Chand, Brahman, resident of village Girawar, who was empty handed standing nearby. According to the complainant, she rushed towards her tractor, in the meanwhile, Naresh @ Nesha and Sushil @ Sheela took out her husband Kitab Singh, who was lying in the small

trolley attached with the tractor and started causing injuries to him; Naresh @ Nesha gave lathi blows to Kitab Singh hitting him on left hand, left leg and back, whereas Sushil @ Sheela gave three blows with jelli on the back of the head and two blows therewith on lower portion of knee of right leg of Kitab Singh; Nanhi gave lathi blows on the back, right leg, right hand and chest of Kitab Singh; Lilu exhorted the assailants that Kitaba should be killed by putting lathi in his throat and then he be thrown in the pond; Lila, who was driving the tractor ran away; the complainant raised alarm, hearing which, her mother-in-law Phulli also reached the spot; the complainant and her mother-in-law tried to rescue Kitab Singh, then Nanhi gave lathi blows on legs of Phulli and on hand of the complainant; on account of assault by Naresh @ Nesha, Sushil @ Sheela and Nanhi, Kitab Singh had died and his dead body was thrown in the pond. According to the complainant, the motive for the incident was that about four months earlier, dead body of Raja son of Kailash was found in the pond of Shrirag Khera and Naresh @ Nesha and Sushil @ Sheela had a suspicion that Kitab Singh had killed Raja and had thrown his dead body in the pond of Shrirag Khera. In her statement, the complainant further stated that after the incident, the accused left the spot along with their respective weapons and while going towards their fields they stated that they had taken revenge for the murder.

The complainant left her mother-in-law Phulli and Pirthi, Chowkidar to look after the dead body of Kitab Singh lying in the pond and was herself proceeding to police station to lodge report with the police and on the way near barrier of Amarheri, she came across the

police party led by SI/SHO Prahlad Singh and got her statement recorded.

SI/SHO Prahlad Singh appended his endorsement below such statement of complainant Smt.Birmati and sent ruqa to police station for registration of formal FIR. The police party accompanied by the complainant proceeded towards the spot. The dead body was taken out from the pond. The Investigating Officer carried out the inquest proceedings, preparing report in that regard. He deputed the police officials to get the postmortem examination conducted on the dead body of Kitab Singh, who got the needful done. During the course of investigation, the accused were arrested in this case. Weapons of offence recovered at the instance of accused were taken into police possession. Rough site-plan of the place of incident was got prepared, later on scaled site plan thereof was also got prepared. The spot was got photographed.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Chief Judicial Magistrate, Jind.

On presentation of challan in the Court of Chief Judicial Magistrate, Jind, he supplied copies of documents relied upon in the challan to all the accused free of costs as provided under Section 207 Cr.P.C. Then finding that offence under Section 302 IPC is exclusively triable by the Court of Sessions, learned Chief Judicial Magistrate, Jind vide his order dated 23.4.2001 committed the case to the Court of learned Sessions Judge, Jind.

On receipt of case in the Court of learned Sessions Judge, Jind, observing that charge for offences under Sections 302 and 201 IPC

was disclosed against all the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

During the course of its evidence, the prosecution examined as many as sixteen witnesses as per details below:

PW1 Dr.Rajesh Gandhi, who had medically examined injured Phulli wife of Ram Kishan on 28.1.2001 at 5:20 p.m. observing five injuries on her person vide MLR copy Ex.PA deposed in that regard.

PW2 Dr.Brij Pal Gupta, who had conducted postmortem examination on the dead body of Kitab Singh proved the postmortem report as Ex.PB.

PW3 Constable Raghbir Singh deposed that on 28.1.2001, special reports of this case were handed over to him by MHC of the police station, which were delivered by him to higher authorities without any delay.

PW4 HC Jaipal Singh deposed that on 29.1.2001 after postmortem examination of the dead body of Kitab Singh, the doctor had given to him a parcel containing the clothes of the deceased, which he handed over to the Investigating Officer.

PW5 MHC Siri Niwas and PW6 Constable Zile Singh both formal witnesses tendered their affidavits Ex.PG and Ex.PH, respectively in their statements.

PW7 SI Bansi Lal happened to be a formal witness, who had recorded the formal FIR Ex.PJ.

PW8 Birmati, wife of deceased Kitab Singh provided the

eye-witness account of the incident. PW9 Phulli, injured also gave the ocular account of the occurrence. Both of them supported the prosecution story on material aspects. PW10 Lila also provided the eye-witness account of the incident.

PW11 SI Ram Mehar deposed that on 25.3.2001, after completion of investigation he had prepared and filed the challan in the Court.

PW12 Pirthi, Chowkidar deposed regarding taking out of dead body of Kitab Singh from the pond at the instance of the police.

PW13 Harish Kumar, Photographer stated that on 28.1.2001, he had gone to the place of occurrence and took photographs Ex.P1 to Ex.P10. He also proved the negatives thereof as Ex.P11 to Ex.P20.

PW14 SI Prahlad Singh, who had carried out investigation in this case initially and to a major extent deposed in that regard proving various documents.

PW15 Balwan Singh, Halqa Patwari proved the scaled site plan as Ex.PN.

PW16 Inspector Chander Bhan, who had carried out investigation in this case partly testified about the same.

On the applications moved, Jagdish was summoned as PW and PW8 Birmati and PW9 Phulli were summoned for further cross-examination. However, PW8 Birmati and PW9 Phulli had appeared, whereas Jagdish was not examined and the evidence of the prosecution was closed.

Statements of accused were recorded under Section 313

Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case.

During their defence evidence, the accused examined seven witnesses i.e. Sh.vikram Singh, Clerk, DC Office Jind as DW1, Sh.Krishan Lal, Deputy Record Keeper, Judicial Record Room, Jind as DW2, Sh.Sumar Kumar, Addl. Ahlmad as DW3, Smt.Dayawanti as DW4, Sat Narain as DW5, Sh.Narain Swaroop as DW6, Sh.O.P. Bansal, Advocate as DW7.

With that the defence evidence got concluded.

After hearing arguments, learned trial Court convicted accused Sushil alias Sheela, Naresh alias Nesha and Nanhi under Sections 302/201 IPC read with Section 34 IPC, whereas acquitted accused Tek Ram alias Lilu. Accused Sushil alias Sheela, Naresh alias Nesha and Nanhi were sentenced as under:

Offence under Section	Sentence Awarded
Section 302 read with Section 34 IPC.	Rigorous imprisonment for life and to pay a fine of Rs.5,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of two years.
Section 201 read with Section 34 IPC.	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of six months.

Both the sentences were ordered to run concurrently.

The judgment of conviction and order of sentence left accused/convicts Naresh @ Nesha, Sushil @ Sheela and Nanhi

aggrieved and accused/convicts Sushil @ Sheela and Nanhi have filed CRA-D-200-DB-2003 and accused/convict Naresh @ Nesha has filed CRA-D-221-DB-2003 before this Court praying that the same be accepted, the impugned judgment of their conviction and sentence be set aside and they be acquitted of the charge framed against them.

We have heard learned counsel for the appellants-accused-convicts and learned Deputy Advocate General for the State of Haryana besides going through the record.

As far as accused/convicts Naresh @ Nesha, Sushil @ Sheela are concerned, we find that their involvement in the incident is duly established from the evidence brought on file by the prosecution and no doubt remains in the mind that on the fateful day at about 12:00 noon/1:00 p.m. both of them had taken out Kitab Singh from the small trolley attached with the tractor and caused injuries to him with their respective weapons i.e. Naresh @ Nesha having a lathi and Sushil @ Sheela armed with a jelli and thereafter his dead body was thrown in the pond. However, as far involvement of accused Nanhi is concerned, we find that the prosecution has been unable to prove it convincingly and a doubt arises in the mind as to whether in fact she had taken part in the occurrence or shared a common intention with Sushil @ Sheela and Naresh @ Nesha in committing murder of Kitab Singh. Nanhi happened to be an aged woman of around 50 years at the time of incident. With two young sons being there i.e. Sushil @ Sheela aged about 26 years having a jelli and Naresh @ Nesha aged about 24 years having a lathi, there was little occasion for an aged woman Nanhi to pick up a lathi and start giving injuries to Kitab Singh. The portion of prosecution story as

regards Sushil Kumar @ Sheela and Naresh @ Nesha taking out Kitab Singh from the trolley where he was lying on account of suffering fracture in the spinal cord and causing injuries to him is quite convincing and plausible but under the circumstances, it is unlikely that Nanhi would have joined her two young sons in giving blows to the deceased. The trial Court has found involvement of co-accused Lilu to whom lalkara(exhortation) is attributed to be doubtful. Similarly, we are not convinced that Nanhi was one of the assailants, who had joined her young sons in giving blows to deceased Kitab Singh while armed with a lathi. A tendency does exist amongst people of this region to throw a net wide so as to rope in as many persons as possible of the opposite party in an incident of this nature. The maxim *falsus in uno falsus in omnibus* i.e. false in part, false in whole is not made applicable by the Courts in India, rather the Courts are required to separate grain from the chaff i.e. truth from the falsehood.

It may be mentioned here that PW8 Birmati and PW9 Phulli, who during the trial while getting their statements recorded had provided the ocular version of the incident supporting the prosecution story in material aspects but when they were summoned again for further cross-examination, they had made a complete somersault stating that they had not seen the incident and had furnished their affidavits in that regard. The trial Court was fully justified in rejecting such contentions of PW8 Birmati and PW9 Phulli in that regard. It seems that after their statements were recorded during the trial, in which they had supported the prosecution story, they had compromised the matter with the accused party and in order to help them in earning acquittal had

furnished affidavits and when were summoned in the Court again for further cross-examination denied having seen the occurrence. The replies given by them in their cross-examinations were obviously wrong and they had furnished wrong affidavits in that regard. The Court cannot sit as a silent spectator and allow a fraud to be played upon it in such a manner. The Courts are required to do substantial justice in as much as while ensuring that no innocent person gets punished, at the same time it is to be seen that no guilty person goes scot free by manipulating the witnesses and taking advantage of technicalities of law. The trial Court rightly relied upon the eye-witnesses account provided by the eye-witnesses during the trial rejecting the replies given by them when they were summoned again for further cross-examinations and affidavits given by them in that regard. The medical evidence duly corroborates the ocular evidence. We do not find the investigation to be tainted or partisan.

Therefore, as far conviction and sentence of accused Naresh @ Nesha, Sushil @ Sheela is concerned, there is certainly no reason to upset the judgment and order passed by the trial Court and the appeal filed by such accused is found to be without any merit and is dismissed accordingly. Whereas appeal filed on behalf of accused Nanhi has got element of merit since the prosecution has been unable to prove its charge against accused Nanhi beyond a shadow of reasonable doubt. Therefore, accused Nanhi deserves to be given benefit of doubt. Doing the same, the appeal filed on behalf of accused Nanhi is accepted. The judgment of conviction and order of sentence recorded against her is set aside and she is acquitted of the charge framed against her.

Thus, CRA-D-200-DB of 2003 is partly allowed and CRA-D-221-DB of 2003 filed by appellant/accused Naresh @ Nesha stands dismissed.

Appellants/accused Sushil @ Sheela and Naresh @ Nesha are stated to be on bail granted to them by this Court. Their bonds are cancelled. Chief Judicial Magistrate, Jind is directed to issue arrest warrant to get them arrested immediately so as to make them undergo the remaining sentence.

As far as CRA-S-135-SB-2003 is concerned, the same has been preferred against the order dated 24.10.2002 passed by learned Sessions Judge, Jind. The appellant - K.C. Sharma, Advocate, who was representing the accused in Sessions Case No.29 of 2001 was found to have behaved in a very aggressive and undignified manner with the Presiding Officer using insulting and degrading language for him. He was served with notice under Section 228 IPC read with Section 345 Cr.P.C. for committing contempt of Court for insulting the Court intentionally and causing obstruction in the judicial proceedings. K.C. Sharma (appellant) responded to that notice. Thereafter, vide detailed order dated 24.10.2002, he was held to be guilty of the offence under Section 228 IPC and a fine of Rs.200/- was imposed upon him, which he had deposited. Now he has challenged that order by way of filing the appeal.

Notice of the appeal was given to the State.

After hearing learned counsel for the parties in this appeal, we find that there is absolutely no merit in the appeal. As it comes out from the record, the attitude and conduct of the appellant towards the

Presiding Officer was disrespectful, aggressive, insulting and unbecoming of a lawyer. Maintaining of decorum is paramount for effectively conducting of Court proceedings and upholding majesty of law. No person can be allowed to browbeat the Judge so as to get a favourable verdict. To maintain the independence of judiciary, the nefarious efforts by unruly litigants, threatening the Court has to be firmly curbed, otherwise a wrong message will go around in the society that one can misbehave with the Presiding Officer and get away with that, resultantly people may start losing faith in the judicial system. Not only in the impugned order but in the interim orders recorded in the Sessions case and the tone and tenor of the assertions in the grounds of appeal reflect the appellant to be an arrogant, discourteous person and lacks the nobility, the most precious ornament of a counsel. If persons like the appellant are left unchecked, it will be very difficult for the Courts to maintain their dignity and keep the fountain of justice unskilled.

There is no illegality and infirmity in the impugned order. Therefore, CRA-S-135-SB-2003 filed on behalf of appellant K.C. Sharma is without any merit and the same stands dismissed.

	(JITENDRA CHAUHAN)	(H.S.MADAAN)
	JUDGE	JUDGE
13.11.2019		
Brij		

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