

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

CRA-D-1062-DB-2016 (O&M)

Reserved on : May 27, 2019

Date of Decision: July 03, 2019

Satnam Singh @ Pamma and another

...Appellants

Versus

State of Punjab

...Respondent

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

Present: Mr. Amit Kumar Advocate - Legal Aid Counsel
for appellant No.1 -Satnam Singh @ Pamma.

None for appellant No.2 – Pardeep Kumar.

Mr. SPS Tinna, Additional Advocate General, Haryana.

HARINDER SINGH SIDHU, J.

This appeal is instituted against the judgment and order dated 2.7.2016 rendered by the Additional Sessions Judge, Ludhiana in Sessions Case No.84 dated 22.7.2013 whereby the appellants, who were charged with and tried for offence punishable under Section 302/34 of the Indian Penal Code (in short 'IPC'), have been convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.20,000/-, each, and in default to further undergo rigorous imprisonment for a period of three months.

2. The case of the prosecution in a nutshell is that on 24.12.2011 ruqa was received from Civil Hospital Samrala regarding the death of Shri Lal whereupon ASI Sham Lal reached the hospital where he recorded the

statement Ex PA/1 of Bansilal to the effect that he belongs to Village Atolia, District Partapgarh (U.P.). He is presently a resident of MAM School, Near Kapila Colony, Chandigarh Road Samrala for the past about 20-22 years. He along with his brother Shrilal were running a tea shop near Kapila Colony, Samrala. On 23.12.2011 he was at his tea shop along with his brother Shrilal since morning. At about 9.00 PM he left his brother Shrilal at the shop and went to Samrala to purchase some items for the shop. At that time Jaspal Singh and Kamal Kishore were sitting at the shop. When he came back from the market and reached near the shop he saw two young men aged about 25-30 years who were dressed in pant and shirt quarrelling with his brother. One of them caught hold of the arms of his brother. The other gave *kirch* blows including one on the left side underneath the arm of his brother whereupon he started bleeding. Both the assailants fled away from the spot on a motorcycle. Complainant called his brother Sukhlal to the spot. Several other persons also gathered there. They took the injured Shrilal to Civil Hospital, Samrala in an ambulance. From there he was referred to Ludhiana. The doctors at CMC Hospital declared his brother dead whereupon they got his body back to Samrala and kept it in the dead house at CH Samrala. Based on the above statement FIR Ex.P12/A was registered. Postmortem of the dead body was conducted. Blood stained earth was lifted from the place of occurrence. The matter was investigated and the charge sheet was filed after completion of all codal formalities.

3. 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. They stated they had

been falsely implicated in the case. They were arrested on 22.03.2013 by the police in a false case FIR No.53 dated 22.03.2013 registered at P.S Samrala and thereafter falsely nominated in this blind case by the police. They tendered in evidence photocopy of FIR No.53 dated 22.03.2013 registered against them and copies of their personal search memos mark X to Z.

4. The appellants have been convicted and sentenced as referred to above. Hence, this appeal.

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

6. PW1 Bansilal stated that for the past 20-22 years he along with his brother Shrilal was running Tea shop on Chandigarh Road, near Kapila Colony, Samrala. There is a Petrol pump near their shop. On 23.12.2011 since morning he was at the Tea shop along with his brother Shrilal. At about 9.00 PM he left Shrilal at the shop and went to Samrala to purchase some items for the shop. When he left the shop at that time Jaspal Singh and Kamal Kishore were sitting at the shop. When he returned from the market to the shop the accused present in the court threw chilli powder in the eyes of his brother. Satnam Singh caught hold of the arms of his brother and Pardeep Singh @ Deepi gave kirch blow on the left side underneath the arm of Shrilal. He also gave some more blows of kirch to his brother. Shrilal started bleeding. Thereafter the assailants fled away from the spot on motorcycle. He called his brother Sukhlal to the spot. Meanwhile Chhote Lal and Ashok Kumar had also reached there. Number of persons assembled there. They took the injured to hospital at Samrala in an ambulance from where he was referred to Ludhiana. On the way to

Ludhiana he died. Police recorded his statement Ex.PA, which was duly signed by him at Ex.PA/1. The police party reached the spot, picked up blood stained earth from the spot and put it into plastic box and sealed it. He identified his signatures on recovery memo Ex.PB. After postmortem the dead body of Shri Lal was handed over to him vide receipt Ex.PC. Police also recorded his supplementary statement in this case. He had informed the police that he had seen the accused roaming in Samrala on motorcycle and also mentioned their names. He identified the accused in court.

7. In cross examination he stated that he had known accused Satnam Singh and Pardeep Singh earlier. Satnam Singh was running the shop of barber. Pardeep was a sweeper in police station Samrala. He stated that the accused were arrested 5/7 days after the occurrence from the Octroi Post situated near village Bondli. He stated that he had met the police many times after the occurrence. He used to meet the police every month during the year 2012. The police did not conduct the test identification parade of any person before the arrest of the accused. He stated that he had told the police that the accused had thrown chilli powder in the eyes of his brother. He was confronted with his statement Ex PA where he had not so stated. He stated that he had not mentioned in his statement to the police that the accused had inflicted several *kirch* blows on the person of the deceased. He stated that he had got recorded the names of the accused at the time of the registration of the FIR.

8. PW2 Sukhlal stated that his brother Shri Lal along with his other brother Bansi Lal used to run Tea shop in Kapila Colony, near Petrol

Pump. On 23.12.2011 Bilas informed him that Shri Lal had been killed upon which he reached on the spot and found his brother bleeding. He was taken to CH, Samrala from where he was referred to Ludhiana. He died on the way. He had identified the body of Shri Lal. He identified his signatures on the statement Ex.PB. In his cross examination he stated that he had no knowledge about the circumstances of the death of Shri Lal.

9. PW3 Ram Bilas stated that he worked at Petrol Pump at Kapila Colony, Samrala. In front of Petrol Pump Bansi Lal and Shri Lal were running a Tea shop. On 23.12.2011 accused (identified by him in court) caused injuries to Shri Lal and committed his murder. He however stated that he was not present when murder was committed and had reached the spot later. On the request of the prosecution he was declared hostile. He denied having made any statement to the police.

10. PW4 ASI Gurdev Singh stated that on 24.12.2011 he was posted at P.S. Samrala. On that day ASI Sham Lal took blood stained earth from the place of occurrence Opp. Kapila Petrol Pump, Samrala and the same was taken into possession vide recovery memo Ex.PB and sealed with the impression "SL". He identified his signatures on the said recovery memo.

11. PW5 Dr. Harbhajan Singh Naghi stated that on dated 24.12.2011, he was posted as Emergency Medical Officer, Civil Hospital Samrala. That day post mortem examination of Shri Lal son of Shiv Sunder Maurya r/o District Partapgarh (U.P.) was conducted at 02.15 PM by Board of Medical Doctors including him, Dr. Tarakjot and Dr. Sukhwinder Kaur.

The following injuries were noticed on the body:-

“1. 8 x 3 cm incised wound on left axilla deep downward medically upto 6 inches (with probe). On opening the wound, underlying muscular layer incised and wound extending upto aorta and upper area of heart. Thoracic cage full of blood. Left lung punctured.

2. Superficial abrasion on face lateral to both eyes.”

12. Left side second and third rib were fractured. The Board was of the opinion that the cause of death was hemorrhagic shock due to stab wound injury in lung and heart. All the injuries were ante-mortem in nature. The duration between injuries and death was within 2 to 4 hours and between death and postmortem was within 12 to 24 hours. He proved the postmortem report Ex.PW5/A and pictorial diagram showing seat of injuries Ex.PW5/B. He also identified the signatures of Dr. Tarakjot and Dr. Sukhwinder Kaur.

13. PW6 ASI Labh Singh stated that on 23.03.2013 he was posted at Police Station Samrala. On that day he joined in the investigation of the case with SI Harjinder Singh and HC Mukhtiar Singh. During investigation accused Pardeep made a disclosure statement Ex.PW6/A that the kirch which he had used to commit the crime was kept concealed underneath the cushion/ mattress of his double bed and only he knew about it. He got recovered kirch. It was taken into possession vide memo Ex.PW6/C. Investigating Officer prepared sketch of Chhuri Ex.PW6/B on which he appended his signatures. Investigating Officer prepared parcel and affixed his seal 'HS' on the parcels. He identified the accused in court.

14. PW8 SI Harjinder Singh stated that on 24.10.2012 he was posted at P.S. Samrala as SHO and he had investigated the case. On the

basis of suspicion he conducted raid on the house of accused Satnam Singh and Pardeep. On 10.03.2013 M.C. Councillor Khajan Singh came to him and got recorded a statement that accused Satnam Singh and Pardeep Kumar suffered extra judicial confession before him with regard to murder of Shri Lal. On 12.03.2013 complainant Bansi Lal got recorded supplementary statement that accused came to the shop of Khajan Singh MC. He also stated that Satnam Singh and Pardeep Kumar had murdered his brother and he had seen them committing the murder. Accused were arrested in theft case at P.S. Samrala. During investigation both the accused confessed to committing murder of Shri Lal. Hence they were arrested in this case. He prepared their arrest memo EX.PW8/B. On 23.03.2013 during investigation of theft case accused Pardeep Kumar made a disclosure statement Ex.PW6/A that he along with Satnam Singh committed murder of Shri Lal and kirch which he used to commit the murder, had been concealed at his house underneath the cushion of his bed. Pursuant thereto the kirch was recovered. Its sketch Ex.PW6/B was prepared. He also prepared site plan EX.PW8/C of the place of the recovery. He recorded the statement of the witness. The accused and the case property were identified by him in the court.

15. In cross examination he stated that the accused were arrested in case FIR No. 53 dated 23.3.2013 P.S. Samrala u/s 379, 411 IPC. He had not obtained police remand of the accused in this case. He denied that he had conducted identification parade of the accused in this case before the complainant. He admitted that the FIR in this case was a blind FIR in which the accused were not named. He stated that he had not sent any parcel for examination to the FSL.

16. PW10 Khajan Singh stated that he is Ex.MC of Samrala. He knew few persons of Samrala. He did not know Satnam Singh and the other accused present in the Court. They had never come to him. Nor did they make any statement before him. He knew the deceased who was a migrant labourer and was running a tea shop on Chandigarh Road at a distance of 400 yards from his shop. He stated that he had a scrap shop at Ludhiana-Chandigarh Road. He did not know who had committed the murder of deceased Shri Lal. As he was an MC police used to visit him and also obtained his signatures on some papers. On the request of the prosecution, he was declared hostile. He denied having made any statement to the police.

17. PW11 HC Gurmit Singh stated that on 23.03.2013 he was posted at P.S. Samrala. On that day he joined the investigation in this case with SI Harjinder Singh. Accused Satnam Singh and accused Pardeep Kumar had already been taken in custody. On the basis of their oral confession they were nominated as accused and arrested in this case. Investigating Officer prepared their personal search memo Ex.PW11/A and PW11/B. Gurmit Singh identified his signatures on intimation cum arrest memo Ex.PW11/C and PW11/D. He and ASI Nachhattar Singh had signed the arrest memos. He also identified the accused in the court.

18. PW12 ASI Sham Lal stated that on 24.12.2011 he was posted at Police Station Samrala. On that day MHC of the Police Station received ruqa regarding the death of Shri Lal from Civil Hospital Samrala. He along with ASI Gurdev Singh, ASI Surjit Singh and other police officials reached Civil Hospital Samrala and recorded the statement of Bansi Lal Ex.PA. Then he sent ruqa to Police Station through HC Baljit Singh for the

registration of FIR, on the basis of which FIR Ex.PW12/A was recorded by ASI Major Singh whose signatures he identified. Thereafter ASI Sham Lal prepared inquest report Ex.PW12/B. He along with complainant and police party reached at the spot. Thereafter he inspected the spot and prepared rough site plan Ex.PW12/C. He lifted blood stained earth from the spot and prepared the parcel.

19. In his cross examination he asserted that the complainant Bansi Lal had not mentioned the name of the accused in his statement Ex.PA recorded by him. He stated that he had not conducted the investigation in case FIR No.53 dated 22.03.2013 u/s 379/411 registered at Police Station Samrala. He stated that he had no knowledge as to how the accused present in court had been nominated in this case.

20. The case of the prosecution is that on 24.12.2011 on receipt of ruqa from Civil Hospital Samrala regarding the death of Shri Lal, ASI Sham Lal reached the hospital and recorded the statement Ex PA/1 of PW1 Bansi Lal. Therein Bansi Lal stated that he along with his brother Shri Lal were running a tea shop near Kapila Colony, Samrala. On 23.12.2011 he was at his tea shop along with his brother Shri Lal since morning. At about 9.00 PM he left his brother Shri Lal at the shop and went to Samrala to purchase some items for the shop. At that time Jaspal Singh and Kamal Kishore were sitting at the shop. When he came back from the market and reached near the shop he saw two young men aged about 25- 30 years who were dressed in pant and shirt quarrelling with his brother. One of them caught hold of the arms of his brother. The other gave *kirch* blows including one on the left side underneath the arm of his brother whereupon he started

bleeding. Both the assailants fled away from the spot on a motorcycle. Complainant called his brother Sukhlal to the spot. Several other persons also gathered there. They took the injured Shri Lal to Civil Hospital, Samrala in an ambulance. From there he was referred to Ludhiana but died on the way.

21. In his deposition in Court Complainant Bansi Lal appearing as PW1 incorporated some improvements by stating that when he returned from the market to the shop the accused present in court threw chilli powder in the eyes of his brother. He stated that accused Satnam Singh had caught hold of the arms of his brother and Pardeep Singh @ Deepi gave *kirch* blow on the left side underneath the arm of Shri Lal. He also gave some more blows of *kirch* to his brother. Shri Lal started bleeding. Thereafter the assailants fled away from the spot on motorcycle. He called his brother Sukhlal to the spot. A number of people gathered at the spot. They took his brother to Civil Hospital Samrala from where he was referred to Ludhiana but died on the way.

22. PW8 SI Harjinder Singh Investigating Officer stated that on the basis of suspicion he conducted raid on the house of accused Satnam Singh and Pardeep Kumar. On 10.03.2013 M.C. Councillor Khajan Singh came to him and got recorded a statement that accused Satnam Singh and Pardeep Kumar suffered extra judicial confession before him with regard to murder of Shri Lal. On 12.03.2013 complainant Bansi Lal got recorded supplementary statement that accused came to the shop of Khajan Singh MC. He also stated that Satnam Singh and Pardeep Kumar had murdered his brother and he had seen them committing the murder. Accused were

arrested in theft case at P.S. Samrala. During investigation both the accused confessed to committing murder of Shri Lal. Hence they were arrested in this case.

23. Both in his initial statement Ex PA and in his deposition in Court PW1 Bansi Lal has stated that after the accused had fled away on motorcycle after causing injuries to his brother Shri Lal he called his brother Sukhlal. Thereafter they took the deceased to hospital in an ambulance. PW2 Sukhlal in his deposition has stated that on 23.12.2011 Bilas informed him that Shri Lal had been killed upon which he reached the spot and found his brother bleeding. He was taken to CH, Samrala from where he was referred to Ludhiana. He died on the way. In his cross examination he stated that he had no knowledge about the circumstances of the death of Shri Lal. It is significant that PW2 Sukhlal does not even state that either his brother PW1 Bansi Lal or PW3 Ram Bilas who works at Petrol Pump at Kapila Colony, Samrala in front of which Bansi Lal and Shri Lal were running Tea shop mentioned to him that the accused were the assailants of his brother.

24. PW3 Ram Bilas stated that he was not present when murder was committed and had reached the spot later. He was declared hostile. He denied having made any statement to the police.

25. PW10 Khajan Singh Ex MC of Samrala before whom the accused were stated to have made an extra-judicial confession admitting their guilt denied that he even knew the accused. He stated that they had never come to him. Nor did they make any statement before him. He was declared hostile.

26. Thus we are left with the sole testimony of PW1 Bansi Lal. In

his initial statement to the police he had stated that when he came back from the market and reached near the shop he saw two young men aged about 25-30 years who were dressed in pant and shirt quarrelling with his brother. One of them caught hold of the arms of his brother. The other gave *kirch* blows including one on the left side underneath the arm of his brother whereupon he started bleeding. The assailants fled away on a motorcycle. In his deposition in Court he stated that when he returned from the market to the shop the accused present in court threw chilli powder in the eyes of his brother. He also named the accused by stating that Satnam Singh caught hold of the arms of his brother and Pardeep Singh @ Deepi gave *kirch* blow on the left side underneath the arm of Shri Lal. He then gave some more *kirch* blows to his brother. He stated that he had informed the police that he had seen the accused roaming in Samrala on motorcycle and also mentioned their names. PW12 ASI Sham Lal who recorded the statement Ex PA however denied that the complainant had mentioned the names of the accused. In his cross examination PW1 stated that he had known accused Satnam Singh and Pardeep Singh earlier. Satnam Singh was running the shop of barber. Pardeep was a sweeper in police station Samrala. He stated that he had met the police many times after the occurrence. He used to meet the police every month during the year 2012. Even if the names were not recorded in the initial statement despite the complainant having mentioned them, it is inexplicable that when the complainant, even as per his own assertion used to regularly meet the police every month he did not press for action against the accused or lodge any complaint when the investigation was not proceeding in a fair manner. The version of PW1 Bansi Lal in this

regard does not inspire confidence. Apart from the aforesaid even the medical evidence does not corroborate with his version. As per the post mortem report there was only one injury of *8 x 3 cm incised wound on left axilla deep downward medically upto 6 inches (with probe) on the deceased* whereas the PW1 stated that many kirch blows were inflicted by the assailants on his brother.

27. It would be unsafe to convict the accused in the face of this weak evidence. Thus it has to be held that the prosecution has not been able to prove the case against the accused beyond reasonable doubt.

28. Accordingly, the appeal is allowed. The appellants are acquitted of all the charges framed against them by giving them benefit of doubt. The appellants be released forthwith, if not required in any other case.

(RAJIV SHARMA)

JUDGE

(HARINDER SINGH SIDHU)

JUDGE

July 03, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No