

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

CRA-777-DB-2004 (O&M)

Reserved on : February 03, 2020

Date of Decision: August 14, 2020

Satyavir Singh and others

...Appellants

Versus

State of Haryana

...Respondent

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

Present: Mr. Vinod Ghai, Senior Advocate with
Ms. Kanika Ahuja, Advocate for the appellants.

Mr. Vivek Saini, DAG, Haryana.

HARINDER SINGH SIDHU, J.

1. This appeal is instituted against the judgment and order dated 08.07.2004 of the Sessions Judge, Narnaul in Sessions Case No.19 of 2003, whereby, the appellants, were charged with and tried for offences punishable under Sections 302, 201 read with Section 34 of the Indian Penal code (short short 'the IPC'). They have been convicted and awarded life imprisonment and to pay fine of Rs.1,000/- each, in default to undergo further RI for two months, each, for the offence under Section 302 IPC. They have also been sentenced to undergo RI for a period of two years and to pay fine of Rs.500/- each, in default to undergo RI for one month, each, under Section 201 IPC.

Nand Ram of Village Sagarpur recorded on 13.05.2003. He stated that he was an agriculturist. They were three brothers. He was the eldest. Next to him was Bhup Singh and youngest was Charan Singh. They were all married and were living separately. The previous day i.e. on 12.05.2003 his brother Charan Singh had come for taking bath at the well of Meer Singh son of Richhpal of the same village. At about 10.00 PM his brother Bhoop Singh alias Ved Parkash informed him at his residence that Charan Singh had been tied down and was being beaten by Satbir son of Maman Ram and his wife Omkaur. Suspecting that his brother Charan Singh has been murdered and thrown in the well of Pawan Kumar, he informed the police through his brother Bhup Singh and Anil Kumar son of Balbir Singh resident of Sagarpur. Distance of the tube-well of Pawan Kumar from the tube-well of Meer Singh was 1200 feet.

3. The police arrived. On search, the dead-body of his brother Charan Singh was found in the well of Pawan Kumar resident of Khatripur. The dead-body was brought out by joot rope (Lav) and gunny cloth (Palli) with the help of Anil Kumar and Mahender Singh son of Richhpal. The dead-body was riddled with injuries. The hands of the deceased had been tied with a rope.

4. On the statement of Nihal Singh case u/s 302, 201 read with Section 34 IPC was registered. The case was investigated and after completing the necessary formalities, report under Section 173 of the Code of Criminal Procedure was submitted to the Court.

5. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded.

Satyavir Singh – accused denied the allegations levelled against him. He stated that he was not present at the spot and had been falsely implicated.

6. Omkaur -accused also pleaded false implication. She stated that she heard the noise of her sister-in-law Kavita. Thereupon, she went to her tube-well. They both apprehended Charan Singh and tied his hands. They were trying to tie him with a wooden peg, but he managed to free himself and ran away from there. At that time he was smelling of alcohol. She stated that she did not know what happened thereafter. She and Kavita had not caused any injury to Charan Singh.

7. Kavita -accused also pleaded false implication. She stated that in the evening of 12.05.2003 she was milking the buffalo at their tube-well. After putting the milk in a container on the water-tank, she went inside to bring some cloth. In the meantime, Charan Singh came from behind and caught hold of her and tried to commit some immoral act. She raised noise. Her sister-in-law Omkaur wife of Satyavir Singh was present at her tube-well which is about 200 feet from there. Omkaur came there. They both apprehended Charan Singh and tied his hands. When they were trying to tie him to a wooden peg he managed to free himself. He ran away from there. At that time he was smelling of alcohol. She did not know what happened thereafter. She or Omkaur did not cause any injury to Charan Singh.

8. However, except for tendering copies of FIRs Ex.DC and Ex.DE and bail order Ex. DD in defence, the accused did not lead any evidence.

9. The appellants were convicted and sentenced as referred to above. Hence, this appeal.

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

11. PW1 Data Ram Patwari deposed that he went to the spot and prepared the site plan Ex. PA on the pointing of the place by Nihal Singh.

12. PW2 Dhana Ram Constable took the sealed parcel of viscera from MHC P.S. Ateli to Forensic Science Laboratory, Madhuban on 02.06.2003

13. PW3 Ram Chander MHC deposed that he recorded formal FIR in this case. He further deposed that on the complaint in writing received from Kavita wife of Surender case FIR No. 53 was registered on 13.05.2003. In this case untraced report has been submitted. In cross examination he stated that in case FIR No. 53 he had recorded the statement of Omkaur as witness. After the death of the accused investigation of the case FIR No. 53 has been dropped.

14. PW4 HC Ajesh Kumar deposed that on 13.05.2003 he was associated in investigation of the case by SI Luxminarain. After the inquest proceedings he went with SI Luxminarain to the place of occurrence where there were allegations of assaulting the deceased. At that place there was a well. Near the well there was a khail (water reservior). At a distance of 5 steps there was a peg driven into the earth for tethering cattle. Pieces of broken bangle were lying scattered there. Dry branches of keekar and Janti trees were lying at a distance of 4 steps from the said peg towards the north. One hawai chappal was found lying there. Further to the north of the aforesaid branches another chappal was found. It was lying upside down. SI Luxminarain collected those broken pieces of bangle, put them into an

empty match box and took them into possession. The chappals were also taken into possession. They were identified as belonging to Charan Singh. He proved the same Ex. P 1. He also proved the broken pieces of bangles taken out from the match box Ex. P 2.

15. In cross examination he stated that the well in which the dead body of Charan Singh was found was in the agricultural fields. There were other wells in the vicinity of this well. The well by the side of which the chappals and broken bangles were recovered was 2700 feet away from the well where the dead body was recovered. No footprints were detected near the well of Pawan. Between the well of Pawan and the well of Mir Singh from where the chappals and broken bangles were recovered there were foot prints. He however could not recall if those footprints were of one person or of many persons. He also could not say if the gap between the footprints was long suggestive of the fact that they were of a person who was running. There was a field between the two wells having crop of tobacco the bed of which was wet. The SHO did not lift the footprints by preparing the moulds. Though the photographer had reached the spot by that time the footprints were not got photographed.

16. PW5 Bhoop Singh deposed that on 12.05.2003 he had gone to the fields to see his fodder crop. There was danger of neelgai damaging that crop. It was 8.00 or 8.30 pm at that time. When he reached his fields he heard some commotion from the side of well of Mir Singh. He went there. He saw his brother Charan Singh whose hands had been tied with a rope. He had been tied to a peg used for tethering cattle. He saw Satbir, Omkaur and Kavita present there. Satbir was armed with a lathi. Omkaur was

armed with pharsa and Kavita was armed with lathi. All the three were assaulting his brother Charan Singh with their respective weapons. He went a little closer and questioned them about the reason for beating his brother. Satbir threatened that he would also be dealt in the same manner if he came closer. He however went ahead. On this, Satbir charge at him with his weapon. He got scared and started running away. He came across one or two persons on his way. He told them about the incident. They advised him to reach the village, collect 5 to 10 persons from the village and bring them to the spot. He went home. He wanted to inform his brother Nihal Singh in this regard but he was not there. Then he contacted his neighbours and collected them. Meanwhile his brother Nihal Singh also arrived there. Together they went to the well of Mir Singh but found no one there. Then they went to the well of Satbir. There also they did not find anyone. Then they came to old house of Satbir in the abadi of the village. There they found Satbir. He was asked about Charan Singh. He however expressed his ignorance about Charan Singh. Then they returned home and collected at the house of Randhir master. From there they made a telephone call to police. However the police did not arrive. Thereafter five or seven of them started for P.S. Ateli in a tractor. They reached there at about 3.00 am. There they met the MHC who advised them to wait for the SHO. The SHO came there at about 5.30 AM. He asked that that only one or 2 persons should stay and the rest should go back. He and Anil stayed there and the rest went back. At about quarter to 6 am the SHO started with them for the village. They went straight to the well of Mir Singh. Satbir was not found there. Then they went to the well of Satbir. There also no one was found.

Search was also made at the wells of Balbir and Kashi Ram but none was found there even. Then they checked at the well of Pawan Kumar of Khatripur. They found the dead body of Charan Singh in that well. The dead body was brought out after the arrival of DSP. Thereafter the SP also came there. Anil and Mahender brought out the dead body. The dead body bore injuries. Both the hands were tied. Photographer was called who took the photographs.

17. He further deposed that Satbir accused had contested in the election for Sarpanch. He was opposed by Gordhan son of his (PW 5's) mausi (mother's sister). Before that they had visiting relations with Satbir. Satbir asked them to vote for him. As Gordhan son of his mausi was also contesting the elections they did not vote for Satbir. For this reason Satbir was bearing grudge against them. He identified the pair of chappals Ex.P1 as being of his brother Charan Singh. They were recovered by the police from the well of Mir Singh.

18. In cross examination he admitted that Sunita wife of Bhoop Singh (not PW 5) had got a case registered at P.S. Ateli against his brother Charan Singh for an offence under Section 354 IPC. His brother had been arrested by the police in that case. That case had been registered in 2002. There was a hearing in the Narnaul Courts regarding that case on 13.05.2003. He stated that his brother Charan Singh was not a habitual drinker. He only drank on occasions like marriage etc. He had not taken liquor in the evening of 12.05.2003. The distance of the well of Mir Singh from the abadi of the village was about 1 ½ kms by a passage. But if one went through the fields it was shorter. His field where fodder was grown

and where he had gone was about two killas from the well of Mir Singh. The DSP did not make a search for foot prints in between the well of Mir Singh and Pawan Kumar. He (PW 5) also did not notice the foot prints there. The well of Pawan Kumar may be about 150 feet deep. Its diameter was about five and quarter feet. Both the wrists of Charan Singh had been tied with rope separately. The hands were also not tied together with one knot.

19. He stated that he had told the police about the presence of Kavita armed with a lathi and that she was giving blows to Charan Singh. He was confronted with his statement Ex. DB where it was not mentioned. He was also confronted with his statement Ex. DB where it was not mentioned that his brother had been tied with a peg. He was also confronted with his statement Ex. DB where it was not mentioned that he questioned the assailants about the reason for assaulting his brother and their threatening to deal with him in like manner if he came close. He was also confronted with his statement Ex. DB where it was not mentioned that he went to his house and collected people. He had seen the accused beating his brother from a distance of 20 to 25 feet. The three accused were continuously giving blows. He could not tell how many blows were given by Omkaur and on which part of the body. He had joint khewat with his brothers. It has not been partitioned so far. By mutual arrangement they were cultivating separate parcels of land.

20. PW6 Nihal Singh deposed that Bhoop Singh his brother had gone in adoption to Harnand. On 12.05.2003 he had gone to village Tobra to attend a marriage. He returned from the marriage at 10 pm. About 10

to 15 persons were present at his house. There Bhoop Singh told him that he had gone to his tubewell to watch for the neelgai. He heard some noise from the tubewell of Mir Singh. He went there. He saw that Charan Singh had been tied to a khunta (peg) by his hands with a rope. Satbir, Omkaur and Kawita were assaulting him. He also told him that when he tried to rescue his brother, Satbir assaulted him. Then they all went to the tubewell of Mir Singh. They found no one from among Satbir, Omkaur, Kawita and Charan Singh there. Then they went to the tubewell of Satbir accused. There also they found none. Satbir has his residence at that tubewell. His children were also not found there. Thereafter they went to the house of Satbir accused situated in the abadi of the village. Satbir was found there by them. When asked about Charan Singh he expressed his ignorance. Then they went to the house of Randhir master. From there they made a telephone call to the police at about 11 or 11.30 pm. Police told them to wait for its arrival. They waited for the police upto 3 am. Then they went to police station, Ateli. SHO was not there. They were asked to wait for the SHO. SHO came there about 5 am. The SHO told them to return by their tractor and that only 1 or 2 persons should stay back. Anil and Bhoop Singh stayed there. Police reached straight at the tubewell of Mir Singh at about 6 am. Dead body was not found at that tubewell. Dead body was not found at the tubewell of Satbir and Balbir Singh also. Then they went to tube well of Pawan Kumar. DSP and SP also arrived there. The dead body was brought out from that well. The dead body was riddled with injury marks. Both its hands were tied with a rope. Photographs were taken. Police recorded his statement which is Ex.PC. It was not correctly

recorded. He accompanied the dead body to General Hospital, Narnaul. It was referred for post mortem to PGIMS Rohtak. Post mortem was conducted at PGIMS Rohtak on 14.05.2003. He and Jagat Singh identified the dead body before the doctors. Police had not read over his statement to him. He however got opportunity to go through the same on the date fixed for evidence in this case. The police had converted the case into one under section 306 IPC. At this he gave application Ex.PJ to the police. He appeared before the I.G. also. Thereafter police filed supplementary challan under section 302 IPC.

21. In the election for the office of sarpanch they did not vote for Satbir accused and this was the reason for his assaulting Charan Singh and causing his murder.

22. In cross examination he stated that on 12.05.2003 Satbir was Sarpanch of the village. His statement was recorded by SI Luxminarain at about 9.30 a.m. He had told SI Luxminarain about the presence and role of Kavita in the occurrence. He admitted that in Ex. PC it is not written. He had told SI Luxminarain that when he came back from Tobra he found 10-15 persons at his house. However this also was not written by SI Luxminarain. He had also told SI Luxminarain that his brother Charan Singh was tied to a Khunta. He was confronted with his statement Ex. PC where this also was not written. He had also told SI Luxminarain about visiting the tubewells of Satbir and Balbir before going to the tubewell of Pawan. This also was not recorded in the said statement. He had gone through his statement on the date of recording of prosecution evidence.

After going through the statement he did not make any complaint against SI

Luxminarain. Both the hands of Charan Singh were tied separately. The rope tied to both the wrists had been connected in between. There were footprints of Satbir and Charan Singh from the tubewell of Mir Singh to a distance of 40 or 50 feet. These footprints were not there towards the tubewell of Pawan. The parapet of the well of Pawan Kumar was 5 feet above the level of the land. The inside of the well had a radius of about 3 or quarter to four hands. The tubewell has got submersible pump. There were two spots in the well which were made of wood. The well was 150 feet deep. There were clamps in the well to hold the pipe in position. The pipe was about 9" away from the wall of the well. Distance between the well of Pawan Kumar and Mir Singh was 7 or 8 killas.

23. PW7 HC Hawa Singh tendered affidavit Ex. PK regarding deposit of sealed parcels with him and his handing over the same to Constable Dhanna Ram for deposit in the Forensic Science Laboratory, Madhuban.

24. PW8 Dr.Sanjeev Malhotra Demonstrator Department of Forensic Medicines, PGIMS, Rohtak deposed that on 14.05.2003 he conducted post mortem examination on the dead body of Charan Singh son of Nand Ram 19 years old. The body was received at 10.00 a.m. Post Mortem was started at 10.30 a.m. and finished at 11.30 a.m. The length of the body was 172 cm. The body was emitting foul smell. The body was naked. There were scalp hair of size 5-6 cm. which were black in colour. Eye balls were softened. Nose was decomposed and blood tinged fluid was oozing out. Mouth was opened. Tongue was protruding out. Face was swollen. Blood tinged fluid was coming out from both ears. Post mortem

hupotasis was present on the dependent parts of the body. Rigor mortis was in passing off phase. Post mortem blobs were present on the body. Chest wall and abdominal wall were tensed due to gases of purification. The penis and scrotum were swollen. Walls, ribs and cartilages softened. Pleura softened. Larynx and trachea were softened. Hyoid intact. Both lungs were softened. On dis-sectioning blood tinged fluid was coming out. Heart was soft, flabby & empty. Peritoneum softened. Stomach was containing semi-digested food with alcoholic smell. Mucosa congested. Small intestine were containing semi- digested food and gases. Large intestine was containing faecal matter and gases. Liver softened and purified. Kidneys were also softened and purified Bladder was empty. Organ of generation external describe internal softened. He found the following injuries on the dead body.

- “1. There was a contusion of size 10x5 cm in the midline on the top of the skull underlying skull sutures and bone were showing infiltration of blood in it. There was collection of blood under the meninges. The brain matter was pinkish. The base of brain was also showing pinkish colour.*
- 2. There was a sharp cut wound of size 6x2 cm on the left side of the angle of the left eye. It was 4 cm away and vertically placed. The underlying tissues were economized and clotted blood was there.*
- 3. There was a sharp cut present on the left arm placed laterally. It was 4 cm above the elbow joint. It was 21x 4cm long and infiltration of blood was missing.*
- 4. There was a bruise of size 3x2cm on the left elbow joint. It was placed laterally.*
- 5. There was a contusion of size 2cm present on the left wrist in the circular manner.*

6. *There was a contusion of size 4x3cm on the left knee joint present anteriorly.*
7. *There was a contusion of size 5x4cm present on the right thigh 15 cm below the right knee joint.*
8. *There was a bruise of size 3x2 cm present on the anteriorly on the right big toe.*
9. *There was a bruise of size 2x1cm present on the left foot dorsally at the root of the top.*
10. *There was a bruise of size 4x3 cm on the right ankle posteriorly.”*

25. In his opinion, the cause of death in this case were the injuries described which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. Viscera was preserved for chemical analysis. Time between death and post mortem examination was between 1 to 4 days and time between injuries and death was instantaneous. The following were handed over to the Police:

- *“The dead body of the deceased.*
- *Copy of post mortem report. No.PMR/2003/5/9 dated 14.5.2003.*
- *Police papers 12 in number duly signed.*
- *A sealed packet with 10 seals containing viscera for chemical examination.*
- *A forwarding letter to Director, FSL, with five seals.*
- *Sample seals.”*

26. He proved Ex.PL the correct carbon copy of the post mortem report which bears his signatures and the inquest papers Ex.PM.(12 pages), which were initialed by him.

27. The police submitted application Ex.PO dated 21.05.2003

seeking his opinion regarding the cause of death. He opined that the cause of death in this case was the injuries Nos. 1,2,3,4,5,6,7,8,9 and 10 which were ante-mortem in nature. Only injury No. 3 was post mortem injury. He proved his opinion in this regard Ex.PO/1. He stated that by way of mistake he had changed the places of injuries No. 2 & 3.

28. On 01.06.2003 police again approached him with application Ex.PP that iron angles were fitted in the well for the support of steps which were 1 ½ ' to 1 ½ ' from the wall of the well. If at the time of fall into the well the deceased received injuries by those iron angles whether it would be sharp or not. On which he opined that injuries No. 2 & 3 could be caused by sharp corners of rod if any. He proved his opinion Ex.PP/1. He had seen the report of FSL Ex.PQ which shows that the contents of stomach, loops of small and large intestine, liver, spleen and kidneys tested positive for the presence of ethyl alcohol. However, no common poison was detected in saline preservative.

29. In cross-examination, he agreed with the suggestion that if a dead body of human male is thrown inside a well having a diameter of 5' and depth of 150' a number of post- mortem injuries would appear on the dead body. Wound caused on the dead body by an angle iron fixed in the well while the body travels downward would be irregular. The wound, if any, caused while bringing up the dead body would depend on the skill of the person bringing it out. Injury No.1 alone was sufficient to cause death. To the death contribution was given by other injuries also. Possibility of suffering injury No.1 is more in a fall than by being hit by a blunt object. He did not prepare diagrams showing the seat of the injuries on the dead body.

Except for injury No.10 which is at the back of ankle all other injuries found on the deceased were on the front. There was no injury on the right hand corresponding to injury No.5 which was on the left hand. Quantity of alcohol was not disclosed by the Forensic Science Laboratory in its report Ex.PQ. Disorientation occurs in a person when he consumes liquor beyond his capacity. The capacity depends on person to person.

30. PW9 Dr.Rakesh Sharma, Medical Officer, General Hospital, Narnaul stated that on 13.05.2003 police requested for post mortem examination on the dead body of Charan Singh. On this request SMO constituted a Board consisting of him and Dr.B.P.Gupta and Alok Jain. They examined the dead body. They referred the dead body for post mortem examination to forensic expert PGIMS, Rohtak. They had also handed over to the police the clothes of the deceased and jute rope in sealed parcel with sample seal.

31. PW10 Luxminarain SI/SHO P.S. Ateli stated that on 13.5.2003 he was posted as SHO at P.S. Ateli. During patrolling he was at Kania turning in the area of Ateli where he met Anil and Ved Parkash. They expressed their suspicion about Charan Singh having been killed by throwing him inside a well. Along with them he reached the well of Pawan Kumar resident of village Khatripur. That well was situated in the area of village Sagarpur. He made Anil Kumar to go down into the well. He told that dead body was lying in the well. The dead body was thereafter brought out of the well. Thereafter, Nihal Singh got recorded his statement Ex.PC. He made endst. Ex.PC/2 thereon and sent the same to the police station for registration of the case. Photographer was called who took

photographs. Inquest proceedings were conducted. He proved the inquest papers Ex.PM. Rough site plan Ex.PR of that well and the surrounding was prepared. The dead body was then sent to General Hospital, Narnaul for post mortem examination. The same day he went to the tubewell of Mir Singh and recovered a pair of chappals of deceased Charan Singh and pieces of bangles. Chappals and the pieces of bangles were taken into possession vide recovery memo Ex.PG. Then he came to General Hospital, Narnaul. The doctors referred the matter to forensic expert PGIMS Rohtak. The doctors gave him a sealed parcel containing the clothes of deceased and a piece of rope which he took into possession vide recovery memo Ex.PH. This rope had been tied round the hands of the deceased. He proved the rope and the clothing found on the dead body as Ex.P3 to Ex.P5. On 14.05.2003 Satyanarain after the post mortem examination brought the viscera of deceased in a sealed parcel which he took into possession by way of recovery memo Ex.PD. On 18.05.2003 the accused Satbir Singh, Omkaur and Kavita were arrested. On 19.05.2003 during interrogation accused Satbir Singh made disclosure statement Ex.PU that he had kept a stick concealed in the chhapar used for storing wheat husk. He got the same recovered and it was taken into possession by recovery memo Ex.PW. He proved the same Ex.P6. During verification of the investigation, the DSP substituted section 306 IPC for 302 IPC. Thereafter, on 08.06.2003 challan was prepared against the accused. Then Nihal Singh complainant submitted application to IG Gurgaon Range. On that application, ASP Faridabad made enquiry and section 302 IPC was restored. Then supplementary challan was filed against the accused.

32. During cross examination he stated that he did not send the clothing of the deceased, the rope and the stick to the forensic expert of PGIMS Rohtak who had conducted the post mortem examination of the dead body of Charan Singh. Both the hands of the deceased had been tied together. There was one knot of the rope around the two wrists of the deceased. On 13.05.2003 before reaching the well of Pawan he had gone to the abadi of village Sagarpur. At the abadi of the village some villagers also suspected the presence of dead body in the well of Pawan. Between the tubewell of Pawan and that of Mir Singh there was a field having tobacco crop. The said field was moist. There were footprints in that field of some person running. There were no other footprints except of that running person.

33. As per FSL report, *“Ethylalcohol was detected in exhibits-1a. (stomach and its contents), 1b (loops of small and large intestine), and 1c (pieces from liver, spleen and kidney). No common poison could be detected in exhibit-1d (saline preservative approx. 500ml.)”*

34. The case was registered on the statement of Nihal Singh recorded on 13.05.2003. He stated that he was an agriculturist. They were three brothers. He was the eldest. Next to him was Bhup Singh and youngest was Charan Singh. They were all married and were living separately. The previous day i.e. on 12.05.2003 his brother Charan Singh had come for taking bath at the well of Meer Singh of the same village. At about 10.00 PM his brother Bhoop Singh informed him at his residence that Charan Singh had been tied down and was being beaten by Satbir and his wife Omkaur. Suspecting that his brother Charan Singh has been

murdered and thrown in the well of Pawan Kumar, he informed the police through his brother Bhup Singh and Anil Kumar. Distance of the tube-well of Pawan Kumar from the tube-well of Meer Singh was 1200 feet.

35. On arrival of the Police, search was made and the dead-body of his brother Charan Singh was found in the well of Pawan Kumar resident of Khatripur. The dead-body was brought out by joot rope (Lav) and gunny cloth (Palli) with the help of Anil Kumar and Mahender Singh son of Richhpal. The dead-body was riddled with injuries. The hands of the deceased had been tied with a rope.

36. PW5 Bhoop Singh who allegedly witnessed his brother Charan Singh being beaten by the accused deposed that on 12.5.2003 he had gone to the fields at about 8.00 or 8.30 pm to see his fodder crop as there was danger of neelgai damaging that crop. When he reached his fields he heard some commotion from the side of well of Mir Singh. He went there and saw his brother Charan Singh whose hands had been tied with a rope. He had been tied to a peg used for tethering cattle. He saw Satbir, Omkaur and Kavita present there. Satbir was armed with a lathi. Omkaur was armed with pharsa and Kavita was armed with lathi. All the three were assaulting his brother Charan Singh with their respective weapons. He went a little closer and questioned them about the reason for beating his brother. Satbir threatened that he would also be dealt in the same manner if he came closer. Nevertheless he went ahead. On this, Satbir charged at him with his weapon. He got scared and ran away. He came across one or two persons on his way. He told them about the incident. They advised him to reach the village, collect 5 to 10 persons

from the village and bring them to the spot. He went home. He wanted to inform his brother Nihal Singh in this regard but he was not there. Then he contacted his neighbours and asked them to come. Meanwhile his brother Nihal Singh also arrived there. Together they went to the well of Mir Singh but found no one there. Then they went to the well of Satbir. There also they did not find anyone. Then they came to old house of Satbir in the abadi of the village. There they found Satbir. He was asked about Charan Singh. Satbir expressed his ignorance about Charan Singh. Then they returned home and collected at the house of Randhir master. From there they made a telephone call to police. However the police did not arrive. Thereafter five or seven of them went to P.S. Ateli in a tractor. They reached there at about 3.00 am. There they met the MHC who advised them to wait for the SHO. The SHO came there at about 5.30 AM. He and Anil stayed there and the rest went back. At about quarter to 6 am the SHO started with them for the village. They went straight to the well of Mir Singh. Satbir was not found there. Then they went to the well of Satbir. There also no one was found. Search was also made at the wells of Balbir and Kashi Ram but none was found there even. Then they checked at the well of Pawan Kumar of Khatipur. There found the dead body of Charan Singh in that well. The dead body was brought out after the arrival of DSP. Thereafter the SP also came there. The dead body bore injuries. Both its hands were tied. Photographer was called who took the photographs.

37. PW6 Nihal Singh the elder brother of PW 5 Bhup Singh to whom the incident was narrated by PW 5 Bhoop Singh broadly deposed on similar lines.

38. While the case of the prosecution is that Charan Singh was beaten to death by the accused, the defence version as disclosed in the statements under 313 Cr. P. C. of Kavita and Omkaur is that on the evening of 12.05.2003 Kavita was milking the buffalo at their tube-well. After putting the milk in a container on the water-tank, she went inside to bring some cloth. In the meantime, Charan Singh came from behind and caught hold of her and tried to commit some immoral act. She raised noise. Her sister-in-law Omkaur wife of Satyavir Singh was present at her tube-well which is about 200 feet from there. Omkaur came there. They both apprehended Charan Singh and tied his hands. When they were trying to tie him to a wooden peg he managed to free himself and ran away from there. They did not know what happened thereafter. At that time he was smelling of alcohol. They (Kavita or Omkaur) did not cause any injury to Charan Singh. In defence they produced copy of FIR No. 53 dated 13.05.2003 u/s 452, 354 IPC registered on a complaint/application submitted by Kavita regarding the alleged incident. In the complaint while narrating the incident as in her statement under Section 313 Cr.P. C. she mentioned that while they were holding him he escaped by biting on the finger of Omkaur -her elder sister-in-law. The application was submitted to HC Ram Chander at 3.20 AM on 13.05.2003 at Kanina Chowk, Ateli and the FIR was registered at 3.40 AM.

39. As the body of Charan Singh was recovered from the well of Pawan Kumar the question for determination is whether Charan Singh was first done to death by the accused and then thrown into the well of Pawan Kumar as is sought to be projected by the prosecution or that after

managing to free himself from the Kavita and Omkaur, Charan Singh jumped into the well of Pawan Kumar and died as a result of the injuries sustained in the process.

40. As per the deposition of PW 5 Bhoop Singh he saw Charan Singh tied to peg being beaten by the accused who were armed with lathis and pharsa. He tried to intervene to save his brother but was chased away by Satbir. He then went home, contacted his neighbours and also informed his brother PW 6 Nihal who had meanwhile returned home. Together they went to the well of Mir Singh but found no one there. Then they went to the well of Satbir. There also they did not find anyone. Then they came to old house of Satbir in the abadi of the village. There they found Satbir. He was asked about Charan Singh. Satbir expressed his ignorance about Charan Singh. Then they returned home and collected at the house of Randhir master. PW 6 Nihal Singh has also given a similar version.

41. What is strange about this version and casts doubt about it is that when they found Satbir at his old house in the abadi and he expressed his ignorance about the whereabouts of Charan Singh, they meekly accepted that and returned. This behaviour is unnatural considering that as per the deposition of PW 5 Bhoop Singh himself, earlier when he saw the accused beating his younger brother Charan Singh at the well of Mir Singh, he had gone ahead to save Charan Singh despite being warned by the accused not to step forward and only returned after accused Satbir charged at him with his lathi. Later when PW 5 Bhoop Singh accompanied by his elder brother PW 6 Nihal Singh and some neighbours go in search of Charan Singh and find Satbir at his house in the old abadi and the latter expresses ignorance

about the whereabouts of Charan Singh they quietly come back. Surely in such circumstances the tempers of PW 5 and PW 6 would be running high, they would confront Satbir that he along with Kavita and Omkaur had been beating Charan Singh and it was for him to explain where Charan Singh was, especially since they had a suspicion that he may have been murdered by the accused. They would also ask him about the whereabouts of the other accused Kavita and Omkaur. Significantly none of the persons/ neighbours who were contacted by PW 5 Bhoop Singh, who had collected at his house and accompanied PW 5 and PW 6 to the tubewell of Mir Singh, Satbir and the residence of Satbir in the old abadi have been cited as witnesses. Moreover if Satbir had indeed been seen by PW 5 Bhoop Singh as assaulting his brother, it is inconceivable that instead of hiding/absconding he would be sitting unconcerned in his house in the abadi and run the risk of being apprehended/ injured / harmed by the aggrieved party.

42. It was stated by PW4 HC Ajesh Kumar, who was associated in investigation of the case along with SI Luxminarain, in his cross examination that the distance between the well of Mir Singh where the incident allegedly took place and the well of Pawan Kumar from where the dead body of Charan Singh was recovered was about 2700 feet. As per PW 6 Nihal Singh distance between the well of Pawan Kumar and Mir Singh was 7 or 8 killas. Even if the lower estimate of PW 6 Nihal Singh is believed the distance is not inconsiderable. It is inconceivable that the accused would be able to carry the body of a young man of 19 years for this distance especially knowing full well that PW5 Bhoop Singh the brother of

the deceased had seen the accused beating Charan Singh, he had tried to intervene to save him but was chased away and that he would return soon may be with a number of persons to save Charan Singh. As per PW5 the distance of the well of Mir Singh from the abadi of the village was about 1½ kms by a passage. But if one went through the fields it was shorter. Hence the time within which he could return would not be long. In carrying the dead body for this distance they would also run the risk of being noticed by some person. The prosecution version does not seem credible.

43. PW 4 HC Ajesh Kumar has stated that near the well of Mir Singh there was a khail (water reservior). At a distance of 5 steps there was a peg driven into the earth for tethering cattle. Pieces of broken bangle were lying scattered there. Dry branches of keekar and Janti trees were lying at a distance of 4 steps from the said peg towards the north. One hawai chappal was found lying there. Further to the north of the aforesaid branches another chappal was found. It was lying upside down. The chappals were identified as belonging to Charan Singh.

44. PW4 has stated in his cross examination that the well in which the dead body of Charan Singh was found was in the agricultural fields. There were other wells in the vicinity of this well. No footprints were detected near the well of Pawan. Between the well of Pawan and the well of Mir Singh from where the chappals of deceased Charan Singh and broken bangles were recovered there were foot prints. He however could not recall if those footprints were of one person or of many persons. He also could not say if the gap between the footprints was long suggestive of the fact that they were of a person who was running. There was a field between the two

wells having crop of tobacco the bed of which was wet. The SHO did not lift the footprints by preparing the moulds. Though the photographer had reached the spot by that time the footprints were not got photographed.

45. PW10 Luxminarain SI/SHO P.S. Ateli in cross examination also stated that between the tubewell of Pawan and that of Mir Singh there was a field having tobacco crop which was moist.

46. As per PW5 Bhoop Singh his field where fodder was grown and where he had gone was about two killas from the well of Mir Singh. He also stated that the DSP did not make a search for foot prints in between the well of Mir Singh and Pawan Kumar. He (PW 5) also did not notice the foot prints there.

47. As per PW6 Nihal Singh there were footprints of Satbir and Charan Singh from the tubewell of Mir Singh to a distance of 40 or 50 feet. These footprints were not there towards the tubewell of Pawan.

48. Thus though the soil between the well of Mir Singh and Pawan Kumar was wet and the footprints, if any, could easily be lifted to ascertain as to whether the accused had gone from the well of Mir Singh to the well of Pawan Kumar but the same was not done. If the footprints of the accused had been found that would have been an important circumstance against them. To the contrary PW 6 Nihal Singh has stated that there were footprints of Satbir and Charan Singh from the tubewell of Mir Singh to a distance of 40 or 50 feet. These footprints were not there towards the tubewell of Pawan. PW 5 Bhoop Singh deposed that he did not notice the footprints between the well of Mir Singh and Pawan Kumar.

49. Thus the prosecution has not been able to establish that the

accused carried the dead body of Charan Singh to the well of Pawan Kumar and then threw it into the well.

50. PW10 Luxminarain SI/SHO P.S. Ateli in cross examination stated that in the field between the tubewell of Pawan and that of Mir Singh there was tobacco crop. The said field was moist. There were footprints in that field of some person running. There were no other footprints except of that running person. This lends credence to the defence version of the deceased going running towards the tubewell of Pawan Kumar after escaping from the grip of accused Kavita and Omkaur.

51. It has come in evidence of PW 5 that the well of Pawan Kumar was 150 feet deep. It had a parapet of 5 feet above the level of the land. The inside of the well had a radius of about 3 or quarter to four hands. The tubewell has got submersible pump. There were two spots in the well which were made of wood. The well was 150 feet deep. There were clamps in the well to hold the pipe in position. The pipe was about 9" away from the wall of the well.

52. As per PW8 Dr.Sanjeev Malhotra who conducted post mortem examination on the dead body of Charan Singh there were nine injuries on the dead body.

“1. There was a contusion of size 10x5 cm in the midline on the top of the skull underlying skull sutures and bone were showing infiltration of blood in it. There was collection of blood under the meninges. The brain matter was pinkish. The base of brain was also showing pinkish colour.

2. There was a sharp cut wound of size 6x2 cm on the left side of the angle of the left eye. It was 4 cm away and vertically placed. The underlying tissues were ecchymosed and

clotted blood was there.

3. *There was a sharp cut present on the left arm placed laterally. It was 4 cm above the elbow joint. It was 21x 4cm long and infiltration of blood was missing.*

4. *There was a bruise of size 3x2cm on the left elbow joint. It was placed laterally.*

5. *There was a contusion of size 2cm present on the left wrist in the circular manner.*

6. *There was a contusion of size 4x3cm on the left knee joint present anteriorly.*

7. *There was a contusion of size 5x4cm present on the right thigh 15 cm below the right knee joint.*

8. *There was a bruise of size 3x2 cm present on the anteriorly on the right big toe.*

9. *There was a bruise of size 2x1cm present on the left foot dorsally at the root of the top.*

10. *There was a bruise of size 4x3 cm on the right ankle posteriorly.”*

53. On an application submitted by the police seeking his opinion regarding the cause of cause of death he opined that the cause of death was injuries Nos. 1,2,3,4,5,6,7,8,9 and 10 which were ante-mortem in nature. Only injury No. 3 was post mortem injury.

54. In response to another application Ex.PP as to whether the injuries received by the deceased at the time of fall into the well from the iron angles fitted in the well for the support of steps which were 1 ½ ' to 1 ½ ' from the wall of the well would be sharp or not, he opined that injuries No. 2 & 3 could be caused by sharp corners of rod if any.

55. In cross-examination, he agreed with the suggestion that if a dead body of human male is thrown inside a well having a diameter of 5'

and depth of 150' a number of post- mortem injuries would appear on the dead body. Wound caused on the dead body by an angle iron fixed in the well while the body travels downward would be irregular. The wound, if any, caused while bringing up the dead body would depend on the skill of the person bringing it out. Injury No.1 alone was sufficient to cause death. Possibility of suffering injury No. 1 is more in a fall than by being hit by a blunt object.

56. Thus the nature of injuries on the body of deceased does not support the prosecution version that the deceased had been thrown into the well after he had been done to death.

57. Though PW5 and PW6 had maintained that the deceased was not a habitual drinker and that he did not have liquor on 12.05.2003, yet as per report of FSL Ex.PQ the contents of stomach, loops of small and large intestine, liver, spleen and kidneys indicated the presence of ethyl alcohol. This again is consistent with the defence version where both Kavita and Omkaur in their statements under Section 313 Cr. P.C. have stated that the deceased was smelling of alcohol.

58. The alleged motive for the crime as deposed to by PW 5 and PW 6 that they had supported Gordhan (the son of their mother's sister) against Satbir for the election of Sarpanch and he thereby bore a grudge against them also does not appear to be very convincing. It has not been stated as to when the election for the post of Sarpanch were held, whether Satbir had earlier threatened them with consequences for not voting for him.

59. Thus it is held that the prosecution has not been able to prove

the case against the accused beyond reasonable doubt.

60. Accordingly this appeal is allowed. The accused are acquitted of all the charges framed against them. Their sentence has already been suspended during the pendency of the appeal. Their bail bonds and surety bonds stand discharged.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

August 14, 2020
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No