

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

CRA-D-396-DB of 2005

Reserved on : 11.02.2020

Date of decision : 19.02.2020

Kala Singh and another

.... Appellants

Versus

State of Haryana

..... Respondent

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

Present: Mr. P.S. Brar, Advocate,
for the appellants.

Mr. Vivek Saini, DAG, Haryana.

* * *

RAJIV SHARMA, J.

1. This appeal is instituted against the judgment dated 15.01.2005 and order dated 19.01.2005, rendered by learned Sessions Judge, Sirsa, in Sessions Case No. 62 dated 04.12.2003, whereby appellants Kala Singh alias Kala and Smt. Golo alias Smt. Gurdev Kaur, who were charged with and tried for the offence punishable under Section 302 read with Section 34 IPC, were convicted and sentenced thereunder to undergo imprisonment for life and to pay a fine of ₹ 15,000/- (Rupees Fifteen Thousand) each, and in default of payment of fine to further undergo rigorous imprisonment for a period of two years.

2. The case of the prosecution, in a nutshell, is that PW.7 Karnail Singh had lodged the report Ex.PE on 27.07.2003 to the effect that he was

labourer by profession. They were six brothers. He and his younger brother Mala Singh were residing together. His brother Mala Singh was frequently visiting the house of Kala Singh son of Maghar Singh. His brother had intimate relations with Golo alias Gurdev Kaur, mother of Kala Singh. She was widow. Kala Singh came to know about the same. Kala Singh and his mother called his brother Mala Singh to their house on 26.07.2003. He was administered beatings by them. His brother went to the 'Chopal' for playing cards. Next day, at about 11.00 AM, Golo alias Gurdev Kaur called his brother by giving signal by her hand to come to her house. His elder brother Teja Singh was also playing cards there. He went to the 'Chopal' to invite Mala Singh to take meals. He heard noise coming from the house of Kala Singh. He and his brother Teja Singh immediately rushed to the house of Kala Singh. Mala Singh was lying on the ground in a pool of blood. He was having a stab wound on his head. Kala Singh was carrying a sword. His mother Golo was also standing nearby. Kala Singh gave a sword blow from sharp side on the front side of neck of Mala Singh. Golo instigated her son Kala Singh that he should not be spared and be taught a lesson. The mother and son ran away from the house. His brother Mala Singh died. FIR was registered. Body was sent for post-mortem examination. The investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses in support of its case. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were falsely implicated. They were convicted and sentenced, as noticed here-in-above.

Hence, this appeal.

4. Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove its case against his clients. Learned counsel appearing for the State has supported the judgment and order of the learned Court below.

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

6. PW.1 Dr. Gaurav Bishnoi along with Dr. A.K. Gupta conducted the post-mortem examination on 28.07.2003. They noticed the following injuries on the body of the deceased :-

- “1) A curved incised wound measuring 6 cms x 1 cm on left fronto temporal region of scalp. It was bone deep. On dissection, sub-cutaneous infiltration of blood was present.
- 2) Incised wound 4 cms x 1 cm on parieto occipital region of scalp. It was bone deep. On dissection, sub-cutaneous infiltration of blood was present.
- 3) Incised wound horizontally placed, across front of neck, 2 cms below the cricoid cartilage, measuring 8 cms x 2 cms. Clotted blood and pieces of food material lying inside the wound. On dissection, carotid vessels on both sides were cut along with trachea and oesophagus, muscles, nerves in the direction of the wound. Sub-cutaneous infiltration of blood was present with localised haematoma at the wound site.
- 4) Incised wound on the left hand palmar area 5 cms x 1 cm running across middle and hypothenar area, bone deep. On dissection, sub-cutaneous infiltration of blood was present.”

The cause of death, in their opinion, was shock and haemorrhage, as a result

of injuries, which were ante-mortem in nature and sufficient to cause death in the ordinary course of nature. The probable time that elapsed between injuries and death was variable and between death and post-mortem was within 24 hours.

7. PW.2 Radhey Sham Constable prepared the scaled site plan Ex.PC of the place of occurrence.

8. PW.5 Tittar Singh deposed that the police had interrogated accused Kala Singh. He made disclosure statement that he had kept concealed a sword after washing it in a heap of wheat chaff. He could get it recovered. The disclosure statement is Ex.PF. He had attested the same. The accused led the police party and got recovered sword Ex.P1.

9. PW.6 Mangu Singh deposed that the police had lifted the blood stained earth from the house of the accused persons at village Desu Malkhana.

10. PW.7 Karnail Singh is the material witness. He deposed that they were six brothers. Deceased Mala Singh was the youngest. He was unmarried. Deceased Mala Singh was on visiting terms at the house of the accused persons, as he had developed illicit relations with accused Golo. She was widow. One day prior to the occurrence, accused Kala Singh had given beatings to Mala Singh at their house. About 8 ½ months back, at about 11.00 AM, his brother Mala Singh was playing cards at the village 'Chopal'. He had gone to the said 'Chopal' to summon Mala Singh to take meals. When he reached near the gate of the 'Chopal', he heard noise from the house of the accused persons. His brother Teja Singh had also reached there in the meantime. He and his brother Teja Singh went to the house of

accused Kala Singh and Golo. They saw their brother Mala Singh lying on the ground in the courtyard. He was having a head injury. He was bleeding. Accused Kala Singh was standing there holding a naked sword in his hand. Accused Golo was also standing there. She proclaimed that Mala Singh had outraged her modesty, therefore, she asked Kala Singh not to spare him. Accused Kala Singh then inflicted a sword blow on the neck of Mala Singh. Accused ran away from the spot. Many people assembled on the spot. He lodged report Ex.PE. Thereafter, the police visited the spot. Post-mortem examination was conducted. He identified sword Ex.P1. In his cross-examination, he deposed that house of the accused was at a distance of 100 meters from his house. There were about 10-12 persons in the verandah of the 'Chopal' when he reached there. Four were playing cards and others were watching. His brother Teja Singh was also present in the 'Chopal'. They did not try to apprehend the accused. Accused Kala Singh did not try to cause injuries to him and his brother Teja Singh. The accused persons had run away from the spot after scaling over the wall of the house. The height of the wall was about 2½ feet.

11. PW.8 Teja Singh testified that about 8 ½ months back, he and others were playing cards in their village 'Chopal'. He had not gone for labour work. His brother Mala Singh was also present in the 'Chopal'. But he was not playing cards. At about 11.00 AM, accused Golo gave a signal with her hand and summoned Mala Singh to her house. His brother Mala Singh went to her house. In the meantime, his brother Karnail Singh also reached near the gate of 'Chopal'. They heard the noise from the house of the accused persons. He and his brother rushed towards the house of the

accused. They saw their brother Mala Singh lying on the ground with head injury. Accused Golo exhorted that Mala Singh should not be spared. Kala Singh was armed with a naked sword. Kala Singh inflicted a sword blow on the neck of Mala Singh. Mala Singh died on the spot. The accused ran away from the spot. In his cross-examination, he deposed that he had reached village 'Chopal' for playing cards at about 10.00 AM. Mala Singh was already present there. He heard noise from the house of the accused persons after ten minutes, when his brother Mala Singh went there. He had seen his brother Mala Singh going to the house of the accused. He did not prevent Mala Singh from going to the house of the accused. They did not try to apprehend the accused persons on account of fear. The other persons, who had also assembled, also did not try to apprehend the accused.

12. PW.9 ASI Kamal Singh deposed that Karnail Singh made statement Ex.PE on 27.07.2003, on the basis of which FIR was recorded. He prepared inquest report and inspected the place of occurrence. He prepared the rough site plan. He lifted blood stained earth from two places. On 30.07.2003, he arrested the accused from their house and interrogated them. Kala Singh made disclosure statement Ex.PF, on the basis of which sword Ex.P1 was got recovered. He prepared rough sketch of the sword vide Ex.PF/1. In his cross-examination, he deposed that he did not prepare rough site plan of the place of recovery of the sword.

13. We have gone through the disclosure statement made by accused Kala Singh vide Ex.PF. He had disclosed that he had kept concealed the sword after washing it under wheat chaff in a room. The seizure memo of the sword is Ex.PF/2. According to it, accused Kala Singh

led the police party to the spot and got recovered one sword of iron, which seemed to be washed with water, from the room meant for wheat chaff.

14. The FSL report is Ex.PI. According to it, blood was detected in exhibit-1 (blood stained earth) and exhibit-2 (kirpan). It has come in the statement of PW.5 Tittar Singh that accused Kala Singh had made disclosure statement Ex.PF before him to the effect that he had kept concealed a sword after washing it. In the seizure memo Ex.PF/2 also, it is mentioned that one sword of iron, which seemed to be washed with water, was got recovered by accused Kala Singh. Since the sword (kirpan) was already washed, blood stains could not be found on the same.

15. The case of the prosecution is that deceased Mala Singh had developed illicit relations with accused Golo. Mala Singh was playing cards at the 'Chopal' of the village with his brother PW.8 Teja Singh. Accused Golo summoned him to her house and thereafter, he was killed by accused Kala Singh by inflicting sword blow on his neck. According to the prosecution, accused Golo exhorted accused Kala Singh not to spare Mala Singh, since he had outraged her modesty. According to PW.8 Teja Singh, his brother Mala Singh was summoned by Golo from the 'Chopal'. He heard noise after ten minutes, when his brother Mala Singh went there. However, he had not prevented Mala Singh from going to the house of the accused. PW.7 Karnail Singh testified that he heard noise from the house of the accused. His brother PW.8 Teja Singh also came to the spot. They went inside the house of the accused. Accused Golo was exhorting accused Kala Singh to kill Mala Singh. It has come in the statements of PW.7 Karnail Singh and PW.8 Teja Singh that they did not try to apprehend the accused.

The persons who had assembled outside the house of the accused also did not try to apprehend the accused. PW.7 Karnail Singh has deposed in his cross-examination that accused Kala Singh had not tried to inflict injuries to him or to his brother Teja Singh. According to PW.7 Karnail Singh and PW.8 Teja Singh, accused Golo was proclaiming that Mala Singh had outraged her modesty, therefore, he should be killed. PW.7 Karnail Singh deposed that his brother Mala Singh was administered beatings by Kala Singh on the previous night also. However, no FIR was registered against him in this regard. According to PW.7 Karnail Singh, one Kala Singh son of Jagir Singh had told him that accused Kala Singh had given beatings to his brother Mala Singh one day prior to the occurrence at about 12.00 noon. Some injuries were visible on the left arm of his brother. He also noticed some blood oozing out from the injury of his brother. PW.8 Teja Singh also deposed that one day prior to the occurrence, accused Kala Singh had given beatings to his brother Mala Singh at his house. He was rescued by Kala Singh son of Jagir Singh, who had narrated this incident to them. He himself had asked his brother Mala Singh as to who had caused injuries on his arm. He told him that accused Kala Singh had administered these injuries to him. His brother had one injury on his head and one on left arm. There was swelling on his arm. The deceased had come to his house in the evening one day prior to the occurrence. At that time, he had disclosed him about this fact. They did not report the matter to the police. In case, deceased Mala Singh had been given beatings by Kala Singh, one day prior to the occurrence, there was no occasion for him to visit again to the house of Kala Singh. PW.8 Teja Singh also admitted that he had not stopped his brother

Mala Singh from going to the house of Kala Singh. When Teja Singh knew that his brother had been given beatings one day prior to the occurrence, he should have definitely stopped him from visiting the house of Kala Singh. According to PW.7 Karnail Singh, he and his brother Teja Singh were at a distance of about 3 karams i.e. about 15 feet from the deceased, when accused Kala Singh inflicted sword blow on the neck of the deceased. PW.8 Teja Singh testified that they were at a distance of about 5-6 feet, when accused Kala Singh gave a sword blow on the neck of Mala Singh. PW.7 Karnail Singh and PW.8 Teja Singh should have tried to save their brother. According to PW.7 Karnail Singh, accused ran away by scaling over the wall, which was of the height of about 2 ½ feet. However, PW.8 Teja Singh deposed that the accused ran away through the gate of the house. According to him, the height of the four-wall of the house of the accused was about 8 ½ feet on the gate side. Thus, it was not possible for them to scale over this wall.

16. The case of the prosecution is also that deceased Mala Singh had developed illicit relations with accused Golo. It is not believable that she would give signal to Mala Singh to come to her house, when her son was also present in the house. It is also the case of the prosecution that accused Golo exhorted her son to kill Mala Singh. No mother would exhort her young son to kill a person, knowing fully well the consequences. According to the prosecution, deceased Mala Singh was playing cards at 'Chopal' of the village and many persons had gathered there. However, the prosecution has not cited any of them as an independent witness. The witnesses are the real brothers of the deceased.

17. The prosecution has failed to prove its case against appellants beyond reasonable doubt.
18. Accordingly, the appeal is allowed. The impugned judgment dated 15.01.2005 and order dated 19.01.2005 rendered by the learned trial court are set aside. The appellants are acquitted of the charge framed against them by giving them benefit of doubt. They are on bail. Their bail bonds and surety bonds are discharged.

(**RAJIV SHARMA**)
JUDGE

February 19, 2020
ndj

(**HARINDER SINGH SIDHU**)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes