

**CRA-D-29-DB-2005 (O&M)****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of Decision : 17.01.2025****(1) CRA-D-29-DB-2005 (O & M)**

KAPIL @ KALA

.... Appellant

V/s

THE STATE OF HARYANA

...Respondent

(2) CRR-641-2005

JASVIR SINGH

.... Petitioner

V/s

SANJAY & OTHERS.

...Respondents

(3) CRA-D-135-DBA-2006

STATE OF HARYANA

V/s

SANJAY

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL**HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Anmol Partap Singh Mann, Advocate with
Mr. Navjot Singh Sidhu, Advocate
for the appellant in CRA-D-29-DB-2005 and
Amicus Curiae for respondent in CRA-D-135-DBA-2006.

Mr. Pawan Girdhar, Addl. Advocate General, Haryana
for respondent/State in
CRA-D-29-DB-2005; CRR-641-2005 and
for the appellant in CRA-D-135-DBA-2006.

Mr. Ashwani Talwar, Advocate with
Mr. Deepak Goyat, Advocate
for the petitioner in CRR-641-2005.

JASJIT SINGH BEDI, J.

This order shall dispose of two criminal appeals and one



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namely, Kapil @ Kala against the judgment of conviction and order of sentence dated 19.11.2004 passed by the District & Sessions Judge (Ad Hoc) Jhajjar, **CRR-641-2005** preferred by Jasvir Singh (complainant) challenging the acquittal of Sanjay, Nand Ram and Prem and **CRA-D-135-DBA-2006** preferred by the State challenging the acquittal of Sanjay only.

2. The FIR in the present case (CRA-D-29-2005) came to be registered on 24.11.2002. The judgment of conviction and order of sentence was passed on 19.11.2004 by the District & Sessions Judge (Ad Hoc) Jhajjar. The Appeal dated 04.01.2005 preferred against the aforesaid judgment of conviction and order of sentence has come up for final hearing now i.e. after a period of 22 years from the date of registration of the FIR.

3. For the sake of convenience, the facts being are taken from CRA-D-29-DB-2005.

4. Briefly stated the facts of the case are that on the night intervening 23/24 November 2002 at about 11.00 p.m. a telephone call was received in the Police Station, Jhajjar from Ajit Singh Sarpanch of village Khudan that Hari Singh had been shot dead in village Khudan. On receipt of that message Rajender Singh, S. I. accompanied by Mahipal, ASI, Om Parkash, ASI, Jaikishan, HC, Abhay Singh, Balwan Singh, Manmohan and Sheo Ram constables went to village Khudan in Govt. jeep bearing No.HR14A-8923 driven by Ajmal Khan constable. They reached at the house of Hari Singh son of Sobha Chand resident of Khudan where they met Jasbir-complainant son of Ram Chander and he reported the matter to him.

Jasbir stated that his father was having three brothers Hari Singh, Bhoop

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Singh and Zile Singh. Hari Singh and Bhoop Singh were residing together and his (complainant's) father and Zile Singh were residing inside the village. On the night intervening 8/9th November 2002 Kapil @ Kala had entered into the house of Bhoop Singh during the night and had tried to outrage the modesty of his daughter Renu. Regarding that occurrence Hari Singh (deceased) had lodged a report in the Police Station despite the threats from the accused that in case anybody lodged a report with the police he would be eliminated. Kapil @ Kala absconded from his house and the police could not search and arrest him in that case despite all efforts. On 23.11.2002 at about 7.30 or 8.00 p.m. he (complainant-Jasbir) and his uncle Hari Singh had gone to sleep in the courtyard of their house while Bhoop Singh, his wife Sushila and his daughters Renu and Anu had gone to sleep inside the room. Then at about 10.00 p.m. the accused Kapil @ Kala entered their house with a pistol in his hand accompanied by two more young boys and one of them was having a sword in his hand while the other was having a knife. Then the accused Kapil @ Kala pulled his (complainant's) quilt and when he saw that he (complainant) was sleeping on that cot he gave him threats to remain lying silently on the cot or else he would be shot dead. Then the boy who was having the sword in his hand pulled the quilt of Hari Singh and seeing him lying on that cot he gave a sword blow thrust wise in his belly from the left side and the boy who was having the knife also gave knife blows at his belly. Hari Singh left the cot and stood up and raised an alarm to warn Bhoop Singh for not opening the door of the room. Then the accused Kapil @ Kala placed his pistol at the right ear of Hari Singh and

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fired a shot. He fired another shot on the right side of his nose. Then the boy having a sword gave him two blows one at his neck and the other at his right ear and his right ear was cut and fell down. He aimed another sword blow at the shoulder of Hari Singh. Hari Singh fell down on the ground. On the alarm of Hari Singh, Bhoop Singh and his wife Sushila and Renu woke up and saw the occurrence through the window of the room. He (complainant) remained lying on his cot and saw the entire occurrence. After giving the aforesaid blow to Hari Singh the boys ran away with their respective weapons. Hari Singh died at the spot.

5. The statement of Jasbir complainant was recorded by Rajender Singh S.I. vide memo Ex.PA. Then he made his endst. Ex.PA/2 and sent the same to the Police Station for the registration of the case on which formal FIR [Ex.PA/1](#) was recorded by Laxmi Narian, ASI. Then he prepared the inquest report Ex.PL over the dead body and picked up bloodstained earth from the spot. The cut portion of the ear was also seen lying at the spot and the same was picked up and sealed with seal RS. The bloodstained earth was also sealed into a parcel. The broken handle of a sword and a patti of a handle were found lying at the spot and were sealed separately into a parcel. A fired bullet found at the spot was also picked up and sealed into a separate sealed parcel and all the sealed parcels were taken into possession vide recovery memo. Ex. PM attested by Chand Singh and Hawa Singh, PWs. He then sent the dead body for Post Mortem examination to Civil Hospital, Jhajjar through Balwan Singh, constable but the doctor at Civil Hospital, Jhajjar referred the dead body to PGIMS, Rohtak for Post Mortem

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examination. Rajender Singh, S. I. then prepared the rough site plan Ex.PN of the place of occurrence with marginal notes in his hand. On return to the Police station he deposited the case property with MHC for safe custody. Before returning to the police station he had recorded the statements of Bhoop Singh, Sushila, Renu and Anu under section 161 Cr.P.C. and also the supplementary statement of Jasbir complainant. In those statements they all stated that on the night of occurrence Kapil @ Kala armed with a pistol and his elder brother armed with a pistol and sword came to their verhandra and Sanjay removed the quilt of Hari Singh and gave a sword blow thrust wise at his belly. He gave another such blow at his belly. Hari Singh then left his cot. Then Kapil @ Kala fired a pistol shot at the right cheek near nose and Sanjay gave him two further sword blows one at his cheek and other at his ear. So Rajender Singh, S. I. made search for Kapil @ Kala and Sanjay but they were not found available. On the next day he again set out in search of the accused but still they were not available. However, Jasbir complainant informed him that both of them were being provided shelter by their maternal uncle Nand Ram and his son Prem resident of village Dhasan. So he added the offence falling under section 216 IPC against Nand Ram and Prem and they both were arrested in this case. Sanjay was also arrested the same day i.e .on 25th while Kapil @ Kala was arrested on 26th. On 29th Balwan Singh constable produced before him the Post Mortem report, inquest papers duly signed by the doctor, 5 X-ray films and a sealed parcel of the clothes of the deceased with an envelope containing the seal

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impression of the seal used by the doctor and the sealed parcels were taken into possession vide recovery memo. Ex.PF.

6. On 29th Sanjay and Kapil @ Kala were interrogated in the presence of Jagdish and Chand PW on which Sanjay made the disclosure statement Ex.PQ that the sword used by him in the occurrence had been kept concealed by him in the pulleys lying in his gitwar and that he had kept concealed his pistol with one empty cartridge in the chappar situated in his gitwar and that he could get the sword as well as the pistol recovered from there. Then in pursuant of that disclosure statement the accused Sanjay got recovered the sword from the pullies lying in his gitwar, it was sealed after preparing its rough sketch Ex.PQ/1. Then he got recovered the pistol with one empty cartridge from the chappar situated in his gitwar and it was sealed with the cartridge after preparing its rough sketch Ex.PQ/2. Both the sealed parcels were taken into possession vide recovery memo Ex.PQ/3. The rough site plan Ex.PQ/4 of that place was also prepared. Then Kapil @ Kala was interrogated in the presence of same witnesses on which he made the disclosure statement Ex.PR that the pistol-revolver used by him in the occurrence had been kept concealed by him in his field known as Khetu Wala and could get the same recovered. Then in pursuant of that disclosure statement he got recovered the revolver with one empty cartridge from the stated place and the same were sealed and taken into possession vide recovery memo. [EX.PR/1](#) after preparing its rough sketch Ex.PR/2. The rough site plan Ex.PR/3 of that place was also prepared. On 30.11.02 again the accused Kapil @ Kala was again interrogated by Rajender Singh, S.I. in

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the presence of Jaikishan, ASI and Hoshiar Singh, HC on which he made the disclosure statement Ex. PH that some 1 ½ months earlier he purchased a revolver of .32 bore and a pistol of .315 bore from U.P. and that he had kept concealed the same on the road side leading from Khudan to Rewari near the building of Indian oil and could get the same recovered. Then in pursuant of that disclosure statement he got recovered the revolver and the pistol from the stated place and so the rough sketch Ex. PG/1 of the revolver and Ex PG/2 of the pistol were prepared and the same were sealed with his seal RS and were taken into possession vide recovery memo. Ex.PJ. The rough site plan Ex.PG/3 of the place of recovery was also prepared. On the next day the pistol and revolver were then produced before Rattan Singh Armourer for their mechanical test and vide his report Ex.PC and Ex. PD the weapons were found in working order. After sending the case property to FSL Madhuban and completion of the investigation the accused were challaned.

7. The prosecution examined 18 witnesses namely, Sat Narian (PW1), Rattan Singh, Armourer (PW2), Virender Singh (PW3), Jai Chand, Constable, Draftsman (PW4), Balwan Singh, Constable (PW5), Ved Parkash, H.C. (PW6), Hoshiar Singh, H.C., (PW7), Jasbir Singh, Complainant (PW8), Renu (PW9), Bhoop Singh (PW10), Ajit Singh (PW11), Surinder Singh, Photographer (PW12), Vijay Singh, H.C. (PW13), Rajender Singh, S.I. (PW14), Ram Chander (PW15), Chand Singh (PW16), Ranbir Singh (PW17) and Dr. Sanjiv Malhotra (PW18).

8. In his examination under Section 313 Cr.P.C. the accused Sanjay stated that he was falsely implicated in this case as the complainant party

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nursed a grudge against his brother Kapil @ Kala. Kapil @ Kala raised the plea that allegation of outraging the modesty of the girl were levelled against him. He further stated that Hari Singh died in his field on the evening of 23.11.2002 and his dead body was brought to the house after thorough deliberations he had been falsely implicated in this case. As no evidence could come against the accused Nand Ram and Prem who were arrested under Section 216 IPC, their statements U/s 313 Cr.P.C. were not recorded.

9. Based on the evidence lead, Kapil @ Kala was convicted whereas Sanjay, Nand Ram and Prem were acquitted of the charges framed against them.

10. Kapil @ Kala preferred CRA-D-29-DB-2005 challenging his conviction. The State filed CRA-D-135-DB-2006 challenging the acquittal of Sanjay S/o Rohtas whereas complainant-Jasbir Singh filed revision bearing CRR-641-2005 challenging the acquittal of three accused namely, Sanjay, Nand Ram and Prem.

11. The learned counsel for the convicted accused Kapil @ Kala contends that the alleged incident had taken place on 23.11.2002 at about 10 PM, yet the information was conveyed to the police after a lapse of more than two hours. As per the findings recorded by the Trial Court, the statement of eye-witnesses and the supplementary statement of the complainant were recorded after 4.00 AM. To begin with, only Kapil @ Kala was named as an accused who was said to have been accompanied by two other unidentified boys. Later on, the name of Sanjay, brother of Kapil @ Kala was also introduced as an accused. Sanjay belongs to the same very

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village as the complainant party. The conduct of the complainant party, in roping in many persons of the accused side who were related to each other clearly showed that the accused were falsely implicated, although, they had played no role in the alleged incident. As per the medical evidence, the injury on the right ear was an exit wound which communicated with injury on the right side of the nose, the latter injury being the entry wound. The medical evidence was clearly in conflict with the ocular account. In fact, the presence of PW8-Jasbir Singh/complainant at the spot was highly doubtful and similarly the presence of PW9-Renu and PW10-Bhoop Singh had also not been established.

As regards the acquitted accused Sanjay, it is his contention that Sanjay was the real brother of Kapil @ Kala resident of the same village. Had he been present at the time of the occurrence the question of the complainant not naming him at the first instance did not arise. Apparently, he had been introduced as an accused being the real brother of Kapil @ Kala so as to knit a wider net. With respect to Nand Ram and Prem, he contends that there was no evidence to establish that they had harboured the other accused.

12. Mr. Ashwani Talwar, Advocate appearing for the complainant-Jasbir Singh in CRR-641-2005 contends that the offence stood established against the acquitted accused beyond reasonable doubt for which they were liable to be proceeded with in accordance with law.

13. The learned counsel for the State, on the other hand, contends that not only was the case established beyond reasonable doubt against Kapil

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@ Kala but the offence stood established against Sanjay as well inasmuch as he came to be named soon after the registration of the FIR in the statements of other witnesses recorded during the course of investigation and the injuries attributed to him with a sharp edged weapon were found on the person of the deceased showing that the medical evidence was totally in consonance with ocular account. He, therefore, contends that Sanjay was also liable to be convicted along with Kapil @ Kala.

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

15. The occurrence took place at 10.00 p.m. and soon thereafter the police was informed on telephone and it arrived within 2 hours i.e. around mid night. The recording of the statement of the complainant was finished by 1.00 a.m. and then it was sent to the Police station for registration of the FIR. Thus, about 2 hours time had elapsed between the time of occurrence and the time of reporting the matter to the police. By then, only one person i.e. Kapil @ Kala armed with a pistol was named in the FIR stating that he was accompanied by two young men one having a sword and the other a knife. They could not be identified and in the statement Ex. PA the basis of FIR, it was mentioned that in case those two persons are brought before the complainant he could identify them. Thus, till the report was lodged with the police the other two persons had not been identified. The complainant and all other eyewitnesses were present at the spot when the police arrived there and the statement of the complainant was recorded in the presence of other eye-witnesses. This shows that no eye-witness could identify the other two

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persons. Sanjay accused is the elder brother of Kapil @ Kala and are resident of the village of the complainant. As admitted by the witnesses they were seeing them since their childhood. When Kapil @ Kala could be identified Sanjay could also have been identified. Four-five persons witnessed the occurrence from a very close range in the bulb light but none could recognize the other two persons. The complainant was sleeping in the same Veranda where the assault was made upon the deceased. Kapil @ Kala removed his quilt first and seeing that he was not the person in whose search he had gone there, threatened the complainant at the point of a pistol for not raising any alarm. So he remained lying at the cot till the assailant left the spot. The other witness saw the occurrence through the window as they were inside the room of that Veranda. Still, they could not identify who those two persons were. It is not the prosecution case that any of them had muffled faces. All the eye-witnesses were present at the spot when the police arrived at mid night but the statement of no other eye-witness was recorded with the statement of the complainant. According to the Investigating officer he recorded the statement of other eye-witnesses after lifting the dead body for Post Mortem examination i.e. after 4.00 a.m. The DSP had also visited the spot by that time. The investigating officer could not tell the time when the supplementary statement of the complainant was recorded but admittedly he did so after the inquest report had been prepared. This shows that the statement of the eye-witnesses and the supplementary statement of the complainant was recorded after 4.00 a.m. It is at that time that they mentioned the name of the person having the sword to be Sanjay. At that

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time there occurred some change in the prosecution version as they all stated that the assailants were two persons Kapil @ Kala and his elder brother Sanjay and that Kapil was having a pistol while Sanjay was having a sword and a pistol. They also stated that Kapil @ Kala had fired one shot when in the statement Ex.PA two shots were mentioned.

16. As in the statements of eye-witnesses Renu, Bhoop Singh etc. and the supplementary statement of the complainant the name of the third person stood eliminated, no effort was made by the police to make any probe about that third person nor any such person was arrested and only Kapil and Sanjay were arrested besides the other two persons who were arrested under section 216 IPC. A fired bullet was recovered from the spot. A pistol was purposely shown in the hand of Sanjay besides the sword when in the FIR only a sword was shown with one person. The complainant Jasbir saw the occurrence from a nearby cot but he had not seen any pistol with the person having the sword. Renu in the witness box deposed that Sanjay was not having any pistol and he was having the sword only. She also stated that she made no statement before the police that Sanjay was having a pistol as well as a sword with him. Such addition thus could be made after spot investigation and recovery of a fired bullet from the spot. A pistol was also shown recovered from Sanjay and it was sent to FSL Madhuban with the idea that the bullet picked up from the spot may turn out to have been fired from that pistol though the witnesses stated that he used his sword only and pistol was not used and that the only one fire was made and it was made by Kapil @ Kala. Some efforts were thus made after spot investigation for

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impleading the only brother of Kapil @ Kala. On Laboratory examination the bullet found at the spot was not found to have been fired from pistol allegedly recovered from Sanjay. However, it was fired from the pistol got recovered by Kapil @ Kala who was inimical towards the deceased as he got the case registered against him under Section 354 IPC a fortnight ago. He was absconding in that case. Therefore, the false implication of Sanjay brother of Kapil @ Kala cannot be ruled out because of which he has rightly been acquitted.

17. On the night of 8th November i.e. some 15 days prior to the present occurrence Kapil @ Kala had entered the house of Bhoop Singh at about 10.30 p.m. and went to the cot of Renu. Hari Singh deceased was also residing jointly with his brother Bhoop Singh and was sleeping near the cot of Renu. On the alarm of Renu he woke up and saw the accused on her cot. He then ran away scaling the boundary wall. When the deceased and Bhoop Singh went to the house of the accused for lodging protest he threatened them wielding pistol at them. The matter remained pending in the Biradari but ultimately on the 12th Hari Singh lodged the report with the police vide FIR copy of which is Ex.PK. Accused remained absconded from the village and on 23rd the present occurrence took place. Thus, he had a strong motive against the deceased. He was seen committing the murder with two more persons by all the witnesses. He fired a shot at the face of the deceased near the nose and the bullet came out from near the ear on the other side. The other two persons who could not be identified caused injuries with sword and knife. The firearm injury was enough to cause the death. The defence

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version that the death of Hari Singh took place in his field as a blind murder and that his dead body was brought to his house for naming and showing some persons as eye-witnesses of the occurrence, has no substance. In that situation the death must have occurred much prior to 10.00 p.m. and it was not possible to bring the dead body secretly in the village. No person could be produced from the village to support that version. It was sowing season and there was no crop in the fields and as such there was no question of Hari Singh going to the fields at 9.00 or 10.00 p.m. Simply because there was no blood on the cot or bedding, it cannot be concluded that the occurrence had taken place at some other place. The Investigating officer picked up the bloodstained earth and a portion of an ear from the spot i.e. Veranda of the house. The eye-witnesses have deposed that the deceased stood up from his cot when the sword blow was given to him thrust wise at his belly. The assailant removed his quilt and then gave the blow. The removal of the quilt woke him up and he left the cot as the blow was given. So no blood could fall on the bedding or cot. It fell on the ground.

18. As already mentioned, the bullet picked up from the spot was found to have been fired from the pistol got recovered by Kapil @ Kala in pursuance to his disclosure statement. Thus, there is adequate scientific /ballistic evidence in addition to the eye version account.

19. No evidence could come against Nand Ram and Prem. Rajender Singh, S.I.. PW 14 deposed that Jasbir had told him that Kapil @ Kala and Sanjay were being provided shelter by their maternal uncle Nand



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Ram and his son Prem and so he arrested them. But in the statement of Jasbir there is nothing in support of that contention.

20. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon’ble Supreme Court in Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427 has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

21. In view of the aforementioned discussion and keeping in view the law laid down in Kallu @ Masih & Ors. Case (supra), we find no reason to interfere with the well reasoned judgment of the Trial Court and Lower Appellate Court. Therefore, CRA-D-29-DB-2005, CRR-641-2005 and CRA-D-135-DBA-2006 stand dismissed.

(JASJIT SINGH BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

17.01.2025
Jitesh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No