

CRA-D-445-DB-2004 (O & M)

2025:PHHC:048249-DB



::1::

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(106)

CRA-D-445-DB-2004 (O & M)

Reserved on: 04.04.2025

Date of Pronouncement:08.04.2025

Suraj Bhan and ors.

... Appellants

V/s

State of Haryana and ors.

...Respondents

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

Present: Mr. Ashwani Bhardwaj, Advocate and
Mr. Dhiraj Chawla, Advocate,
for the appellants.

Mr. Ranvir Singh Arya, Addl.A.G., Haryana.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 13/16.04.2004 passed by the Additional Sessions Judge, Fast Track Court, Gurgaon.

2. The instant FIR came to be registered on 25.12.2001. The accused-appellants came to be convicted vide judgment of conviction and order of sentence dated 13/16.04.2004. The present appeal against the judgment of conviction and order of sentence was filed on 11.05.2004. The

CRA-D-445-DB-2004 (O & M)

2025:PHHC:048249-DB



::2::

matter has come up for final hearing now after 24 years of the registration of the FIR.

3. Briefly, the case of the prosecution is that on 24.12.2001, ASI Sukan Singh, received a V.T. message from Police Station City Gurgaon, that in an occurrence, Satish had received injuries and another person, namely, Rajbir alias Bittu had died and they had been referred to General Hospital, Gurgaon. Therefore, ASI Sukan Singh alongwith other police officials went to Police Station City Gurgaon, from where he collected copy of the MLR of Satish and then proceeded to General Hospital, Gurgaon. He came to know from the hospital that Satish and Rajbir alias Bittu had been referred to Safdarjang Hospital, Delhi, but ultimately they were found at Batra Hospital, Delhi. ASI Sukan Singh moved an application for seeking an opinion of the doctor regarding the fitness of Satish-injured. Since Satish was unfit to make statement, the IO recorded the statement of Sanjay, brother of Satish injured. Sanjay stated before the police that about 8/9 months ago, he had given Rs.20,000/- to Chanda Ram alias Kallu son of Hirdey by way of a loan. 2/3 months prior to the occurrence, he had demanded this amount from him, but at that time also some dispute had taken place. However, on 24.12.2001, he had gone to Chanda Ram alias Kallu again and had demanded the amount given to him by way of a loan. He was abused by Chanda Ram alias Kallu and others and so he came back to his house. At about 7.00 P.M., Narender alias Nirender, Chanda Ram alias Kallu, Suraj Lajja, Sukki alias Shakuntala and Jija of Kallu (Het Ram) came

CRA-D-445-DB-2004 (O & M)

2025:PHHC:048249-DB



::3::

together. Narender alias Nirender was armed with a knife, Chanda Ram alias Kallu with scissors, Lajja was armed with a *chhuri*, Jija (Het Ram) was armed with a *saria* and Suraj Bhan was armed with a *danda*. Narender alias Nirender gave a knife blow to Rajbir alias Bittu in the abdomen and the second blow was given on his lips, Chanda Ram alias Kallu gave a scissors blow to Rajbir alias Bittu on his right armpit, whereas Lajja gave two *chhuri* blows on the elbow of Rajbir alias Bittu. The Jija of Chanda Ram alias Kallu and Suraj Bhan gave fist and kick blows. Satish was also given injuries by the accused persons. Satish and Rajbir alias Bittu who suffered injuries were taken to hospital. Baljeet and Vicky had also come to the spot on hearing the noise and they witnessed the occurrence. On the basis of this statement, the formal FIR was recorded by SI Shakuntala. ASI Sughan Singh got the post mortem examination conducted on the dead body of Rajbir alias Bittu. He prepared the inquest proceedings. The dead body was handed over to the relations after post mortem examination. ASI Sughan Singh prepared rough site plan after reaching the spot and collected blood stained earth, which was converted into a separate parcel duly sealed with seal 'SS'. The investigating officer also collected blood stained earth from another place viz. on the road side and same too was kept in a sealed parcel, which was taken into possession by preparing a separate memo. Statements of the witnesses were recorded by ASI Sughan Singh. On 26.12.2001, ASI Sughan Singh received the parcel containing clothes of Satish from Sanjay, brother of Rajbir alias Bittu deceased, which were taken into possession by



preparing a memo. The clothes were converted into a sealed parcel before those were taken into possession. Satish-injured was got medico-legally examined. Scaled site plan was got prepared from Naresh Kumar draftsman. The accused were arrested. Their disclosure statements were recorded after interrogation and then weapons of offence were recovered accordingly by the police. The report of FSL was obtained. After completion of necessary investigation and other usual formalities, the challan was prepared by Inspector Ramesh Pal on 20.02.2002. It was then submitted to the Court for trial of the accused. Het Ram son of Khem Chand and Lajja daughter of Hirdey Ram were placed in Column No.2.

4. On the basis of the Police report and other material on record the accused were charge sheeted under Sections 148, 302/149, 307/149 of Indian Penal Code and under Sections 25 of the Arms Act. The accused pleaded not guilty to the charges and claimed trial.

5. In order to substantiate it's allegations against the accused, the prosecution examined as many as 13 witnesses in the case. The gist of the statements of certain relevant prosecution witnesses is as under:-

Dr. Neeraj Kumar (PW1) on 25.12.2001 conducted the post mortem examination on the dead body of Rajbir alias Bittu and reported the following injuries on his persons:-

1. *Contusion mark over left malar prominence 3 cm x 2 cm with sub cutaneous echymosis.*
2. *Superficial incised wound over left side of upper lip 2 cm in length.*



3. *There was incised wound stab on left side of abdomen 2.5 cm in length near left costal margin, deep wound obliquely placed with both angle acute.*
4. *There was an incised wound over left side of Palvis near iliac crest 2cm from iliac crest and 6 cm from mid-line, measuring 2.5 cm in length. It was superficial in nature.*
5. *There was a stab wound with clear acute margin on right chest wall 22 cm from mid-line and 3cm from right nipple.*
6. *There were two incised wounds communicating to each other on right elbow, vertical and both margins were acute. It was about 2 cm in length.*
- 7, 8 & 9. *Abrasions over left knee, left leg and medial aspect of left ankle. Superficial with clotted blood.*

According to this doctor death was due to shock and hemorrhage due to injuries on vital organs. He proved the copy of post mortem report Ex.PA/1 and inquest report Ex.PA/2 alongwith police application Ex.PA.

Dr. S.K. Jain (PW2) had examined Satish on the intervening night of 24/25.12.2001. According to this witness there was a lot of bleeding from the tube and the patient was taken for emergency operation. All the injuries were repaired and the patient was discharged on 01.01.2002. This witness proved the discharge summary Ex.PB.

On the intervening night of 24/25.12.2001, Dr. Mohit (PW3) had examined Satish at 11.40 PM and stated that the patient was admitted directly on operation theatre recovery. He informed the police vide memo Ex.PC.

CRA-D-445-DB-2004 (O & M)

2025:PHHC:048249-DB



::6::

On 24.12.2001, Dr. Krishan Kumar (PW4) had medico-legally examined Satish and reported the following injuries:-

"Incised wound over left side of chest below and lateral to left nipple obliquely placed with both angles acute ? Deep 3 cms in length. Advised surgeon's opinion. X-ray chest PA and kept under observation. The nature of injury was kept under observation. The weapon used was sharp. The duration was fresh."

He proved the copy of MLR Ex.PD.

Constable Naresh Kumar (PW5) proved scaled site plan Ex.PE. Head Constable Mohammed Usman (PW6) tendered into evidence affidavit Ex.PF. Head Constable Inder Parshad (PW7) tendered into evidence affidavit Ex.PG. Inspector Ramesh Pal (PW12) prepared the challan after completion of investigation on 20.02.2002. SI Shakuntala (PW13) recorded the formal FIR Ex.PH/2.

Satish Kumar (PW8) brother of Sanjay complainant stated that on 24.12.2001, he alongwith his brother Rajbir alias Bittu and Sanjay was sitting at the shop about 7.00 PM when Lajja, Sukki alias Shakuntala, Kallu (also known at as Chanda Ram), Suraj Bhan, Narender alias Nirender and Het Ram came there. All the persons were duly armed. Lajja was having a *chhurri*, Narender alias Nirender a knife, Chanda Ram alias Kallu a scissors, Suraj Bhan a *danda* and Het Ram a *saria*. Immediately on their arrival, Narender alias Nirender gave a knife blow on the person of Rajbir alias Bittu in his abdomen who fell down. Another blow of the knife was given by

CRA-D-445-DB-2004 (O & M)

2025:PHHC:048249-DB



::7::

Narender alias Nirender on the lips of Rajbir alias Bittu. Suraj Bhan gave a *danda* blow on the nose of Rajbir alias Bittu and Chanda Ram alias Kallu gave a scissors blow on the right armpit. Lajja accused had given two *chhuri* blows on the left elbow of his brother and when he intervened to save him, Sukki alias Shakuntala caught hold of him from his hands and Narender alias Nirender gave a knife blow upon his chest (chest of Satish PW8). The occurrence had taken place because of giving a loan amount by Sanjay to Chanda Ram alias Kallu about 8-9 months ago, Sanjay had given a sum of Rs.20,000/- to Chanda Ram alias Kallu by way of loan and when the amount was demanded 2-3 months prior to occurrence, Narender alias Nirender and Chanda Ram alias Kallu had refused to make the payment and had abused Sanjay. On the date of occurrence i.e. 24.12.2001, his brother Sanjay had gone to Chanda Ram alias Kallu and had again made a demand of the payment of Rs.20,000/- in the morning time and as no payment was made Sanjay came back to the house and later the occurrence had taken place.

Complainant-Sanjay PW9 stated that as he had demanded Rs.20,000/- which was loaned by him to Chanda Ram alias Kallu. Because of this, Narender alias Nirender gave a stab injury with knife to his younger brother Rajbir alias Bittu in the abdomen and a second blow was given on his lips. Chanda Ram alias Kallu gave a scissor blow to his brother near the right arm-pit. Lajja gave two *churri* blows on the left fore arm of Rajbir alias Bittu whereas Suraj Bhan gave a *danda* blow on the nose of Rajbir alias

CRA-D-445-DB-2004 (O & M)

2025:PHHC:048249-DB



::8::

Bittu. Het Ram had given fist blows and slaps. When Satish intervened to save Rajbir alias Bittu, he was caught hold of by Sukki alias Shakuntala and Narender alias Nirender then gave a stab injury. Baljeet and Vicky PWs had also come to the spot.

SI Ram Dutt (PW 10) arrested Suraj Bhan and Sukki alias Shakuntala on 28.12.2001, interrogated them and then effected the recovery of a *danda* from Suraj Bhan. He also arrested Narender alias Nirender and Chanda Ram (Kallu) on 31.12.2001. He interrogated them and effected recoveries of a knife and scissors respectively from them.

ASI Sukan Singh (PW11) on receipt of a VT message went to hospitals and recorded the statement of Sanjay Ex.PH, got the case registered, prepared inquest proceedings regarding dead body of Rajbir alias Bittu, got the post mortem examination conducted from the doctor, prepared rough site plan, collected blood stained earth from two places completed certain formalities as well as documents.

6. When the accused were examined under Section 313 of the Code of Criminal Procedure, the evidence on record was put to them. They denied the same.

7. Based on the evidence led, while the co-accused, namely, Lajja daughter of Hirdey Ram and Het Ram son of Khem Chand who had been summoned as additional accused under Section 319 Cr.P.C. were acquitted, the accused-appellants, namely, Suraj Bhan, Sukki alias Shakuntala, Narender @ Nirender and Chanda Ram @ Kallu came to be convicted and

CRA-D-445-DB-2004 (O & M)

2025:PHHC:048249-DB



::9::

sentenced by the Court of the Additional Sessions Judge, Fast Track Court, Gurgaon, vide judgment of conviction and order of sentence dated 13/16.04.2004 as under:-

| Name of the Accused | Offence U/S | Sentence | Fine | In default of payment of fine |
|---|--------------------|----------------------|-----------------|-------------------------------|
| Suraj Bhan, Narender alias Nirender and Chanda Ram alias Kallu | 302/34 IPC | RI Life Imprisonment | Rs.1,000/- each | RI 06 months each |
| Suraj Bhan, Sukki alias Shakuntala , Narender alias Nirender and Chanda (Kallu) | 307/34 IPC | RI 03 years | Rs.500/- each | RI 03 months each |
| Narender and Chanda Ram Kallu | 25 of the Arms Act | RI 03 years | Rs.500/- each | RI 03 months each |

All the sentences were ordered to run concurrently except in the case of Sukki alias Shakuntala who had been held guilty and convicted under Section 307/34 IPC only.

8. The aforementioned judgment of conviction and order of sentence dated 13/16.04.2004 passed by the Additional Sessions Judge, Fast Track Court, Gurgaon is under challenge before this Court.

9. During the pendency of this appeal, the sentences of the accused-appellants, namely, Suraj Bhan, Sukki alias Shakuntala, Narender alias Nirender and Chanda Ram alias Kallu were suspended by this Court



vide orders dated 15.07.2005, 13.05.2004, 21.09.2007 and 23.08.2007 respectively.

10. The learned counsel for the accused-appellants contends that the prosecution witnesses have made various improvements in their statements from stage to stage of the proceedings regarding the place of occurrence and the manner in which the occurrence took place. A scissor has been shown to have been recovered from Chanda Ram @ Kallu, a knife from Narender @ Nirender and a *danda* from Suraj Bhan. No blood was detected on any of these weapons. None of these weapons were shown to the doctor so as to obtain his opinion as to whether the injuries on the deceased and the injured could have been caused by the said weapons. As regards the scissor Ex.P1, PW-8/Satish Kumar in his cross-examination stated that the scissor shown to him was smaller in size than the one in the hands of Chanda Ram @ Kallu, though, he subsequently in the very next line of his cross-examination stated that Chanda Ram alias Kallu was, in fact, carrying the scissor Ex.P1. Similarly, PW-1/Dr. Neeraj Kumar who conducted the post-mortem examination of the deceased stated in his cross-examination that the scissor Ex.P1 would not have caused an incised wound with both angles acute. It is his contention that the medical evidence was, therefore, in conflict with the ocular account and so the presence of PW8-Satish Kumar and PW9-Sanjay is doubtful at the spot. As regards, accused Sukki alias Shakuntala wife of Hirdey Ram, he contends that she was a lady and had only been attributed the role of having been caught hold of Satish.



Therefore, her false implication cannot be ruled out. He, thus, contends that the impugned judgment was liable to be set aside and the accused-appellants ought to be acquitted of the charges framed against them.

11. The learned counsel for the State, on the other hand, contends that PW-8/Satish Kumar is an injured witness where as PW-9/Sanjay is the complainant in the case. Both these witnesses are real brothers of the deceased. Their statements on Oath cannot be doubted. The medical evidence is in consonance with the ocular account inasmuch as the injuries on the deceased have been caused by sharp edged weapons as also a blunt weapon which is stated to be a *danda* in the hands of Suraj Bhan. Though, there is some discrepancy regarding the scissor purportedly used in the occurrence, the same would not cast a doubt on the prosecution case as the eye-version account is clear and categoric to the effect that the injuries were caused as narrated by these prosecution witnesses. Even otherwise, where the statements of witnesses were clear, cogent and categoric regarding the manner in which the occurrence had taken place, minor contradictions in the medical evidence would not substantially effect the prosecution case. He, thus, contends that as the offence stands established beyond doubt, the present appeal was liable to be dismissed.

12. We have heard the learned counsel for the parties.

13. From the statements of Satish Kumar (PW8) and of Sanjay (PW9), it is apparent that knife blows were given by Narender alias Nirender and a scissor blow was given by Chanda Ram alias Kallu on the person of



Rajbir alias Bittu. These injuries when read with the medical evidence can be said to be fatal. Suraj Bhan gave a *danda* blow on the person of Rajbir alias Bittu which hit his nose. As per the allegations, Narender alias Nirender, Chanda Ram alias Kallu and Suraj Bhan, all of whom are real brothers being sons of Hirdey Ram came together, duly armed and caused injuries to the deceased-Rajbir alias Bittu. Narender alias Nirender caused an injury on the injured Satish Kumar (PW8). The common intention to commit a murder is, thus, apparent on the part of these accused including Suraj Bhan, though, the injury attributed to him is not fatal. For the applicability of Section 34 IPC, there is no requirement that each accused must cause an injury. All that is required is that each accused must show a common intention to commit the offence. The motive to commit the offence was also common to all the accused inasmuch as Sanjay was demanding the loaned amount of Rs.20,000/- from Chanda Ram alias Kallu. Therefore, the *danda* blow, even if it had hit Rajbir alias Bittu on his nose only, does not mean that Suraj Bhan was not having the common intention to kill Rajbir alias Bittu alongwith Narender alias and Chanda Ram alias Kallu. All these persons with a common intention to kill, came together, opened an attack and inflicted injuries on the person of Rajbir alias Bittu and killed him. Narender alias Nirende, Chanda Ram alias Kallu and Suraj Bhan are therefore, liable for offence under section 302/34 of IPC.

14. Though, there is some discrepancy regarding the scissor which was used in the occurrence and whether the same could cause the injuries on



the person of the deceased, the same would not materially effect the prosecution case as the injuries on the person of the deceased and the injured are by sharp edged weapons and a blunt weapon as opined by the doctor and as narrated by the prosecution witnesses. Further, the recovery of weapons even if not blood-stained would not cast any doubt in the prosecution case in view of the categoric statements of the prosecution witnesses as to the manner of the occurrence. Even otherwise, recoveries of weapons are only corroborative pieces of evidence and the substantial evidence is that of complainant-Sanjay (PW9) and injured-Satish Kumar (PW8).

15. As regards variance between the medical and the ocular account, the Hon'ble Supreme Court in '***Shyam versus State of M.P. through P.S. Bercha 2009(16) SCC 531***' has held as under:-

10. So far as the alleged variance between medical evidence and ocular evidence is concerned it is trite law that oral evidence has to get primacy and medical evidence is basically opinionative. It is only when the medical evidence specifically rules out the injury as claimed to have been inflicted as per the oral testimony, then only in a given case the Court has to draw adverse inference.

XXXX

XXXX

XXXX

12. Over dependence on such opinion evidence, even if the witness is an expert in the field, to checkmate the direct testimony given by an eyewitness is not a safe modus adoptable in criminal cases. It has now become axiomatic that medical evidence can be used to repel the testimony of eyewitness only if it is so conclusive as to rule out even the possibility of the eyewitness's version to be true. A doctor



usually confronted with such questions regarding different possibilities or probabilities of causing those injuries or post-mortem features which he noticed in the medical report may express his views one way or the other depending upon the manner the question was asked. But the answers given by the witness to such questions need not become the last word on such possibilities. After all he gives only his opinion regarding such questions. But to discard the testimony of an eyewitness simply on the strength of such opinion expressed by the medical witness is not conducive to the administration of criminal justice. (See, State of U.P. v. Krishna Gopal and Anr. (AIR 1988 Supreme Court 2154) and Ramanand Yadav v. Prabhu Nath Jha & Ors., 2004(1) RCR (Criminal) 469 : 2004(2) Apex Criminal 307 (SC) : [2003(12) SCC 606].

16. Thus apparently, the ocular evidence would prevail over the medical evidence unless the latter completely improbablizes the ocular account which is not so in the instant case where PW8-Satish Kumar and PW9-Sanjay are clear and categoric as to how the murder took place and PW8-Satish Kumar himself is an injured prosecution witness.

17. The evidence on record goes to show that Sanjay/PW9 had advanced a loan to Chanda Ram alias Kallu accused in the sum of Rs.20,000/- about 8/9 months prior to the occurrence. When that amount was demanded about 2/3 months prior to the occurrence, the three accused had abused him. When, he went again to demand his money on the date of the occurrence, the accused refused to make the payment and the complainant party was attacked. Therefore, the motive for the occurrence also stands established.



18. As far as the offence under Section 307/34 IPC is concerned, Sukki alias Shakuntala caught hold of Satish when he intervened to save Rajbir alias Bittu and at that time, Narender alias Nirender gave a knife blow upon the chest of Satish (PW8). Even if Suraj Bhan and Chanda Ram alias Kallu did not cause any injury on the person of Satish it does not mean that they were not having the common intention to inflict injuries to Satish, which would prove to be dangerous to life. Further, Dr. S.K. Jain (PW2) who examined Satish on 24/25.12.2001 at about 1.30 A.M. found massive bleeding from the injury on the left side of the chest. PW4-Dr. Krishan Kumar has categorically opined after seeing the report of Batra Hospital that the injury was dangerous to life. Therefore, the culpability of Narender alias Nirender, Suraj Bhan and Chanda Ram alias Kallu under Section 307/34 IPS stands duly established.

19. However, the role ascribed to Sukki alias Shakuntala wife of Hirdey Ram of having caught hold of Satish Kumar (PW8) while Narender gave the knife blow appears to be doubtful given the fact that she is a lady and there is little likelihood of her taking part in the occurrence alongwith her sons. Therefore, while three accused, namely, Suraj Bhan, Narender alias Nirender and Chanda Ram alias Kallu are liable to be convicted for the offence punishable under Section 307/34 IPC, Sukki alias Shakuntala is acquitted for the offence in question.

20. The recovery of weapons after the accused suffered disclosure statements is sufficient to establish the guilt of Narender alias Nirender and

CRA-D-445-DB-2004 (O & M)

2025:PHHC:048249-DB



::16::

Chanda Ram alias Kallu u/s 25 of Arms Act. Narender alias Nirender got recovered a knife Ex.P4 and Chanda Ram alias Kallu got recovered scissors Ex.P3. Statement of SI Ram Dutt (PW10) fully proves the case of prosecution qua recoveries. Therefore, Narender alias Nirender and Chanda Ram alias Kallu are also guilty for the commission of an offence under section 25 of Arms Act.

21. In view of the aforementioned discussion, we find that the allegations against the accused-appellants No.1, 3 and 4, namely, Suraj Bhan, Narender @ Nirender and Chanda Ram @ Kallu sons of Hirdey Ram stand duly established from the evidence led and therefore, finding no merit in the present appeal, the same stands dismissed. They are directed to surrender before the Jail Authorities concerned forthwith to serve out their remaining sentences.

20. The pending applications, if any, stand disposed of accordingly.

(GURVINDER SINGH GILL)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

08.04.2025
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No