

(2006) 01 P&H CK 0225

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 289-DB of 1997

Sham Singh alias Bitu

APPELLANT

Vs

U.T. Chandigarh

RESPONDENT

Date of Decision: Jan. 11, 2006**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302, 34

Hon'ble Judges: Uma Nath Singh, J; Mehtab S. Gill, J**Bench:** Division Bench**Advocate:** S.C. Sibal, with Mr. V.S. Rana, for Surinder Kumar Mr. Himanshu Raj Munjal, as Amicus curiae for Sham Singh, for the Appellant; Rajiv Sharma, for the Respondent**Final Decision:** Dismissed

Judgement

Mehtab S. Gill, J.

Criminal Appeal Nos. 289-DB of 1997 and 394-DB of 1997 shall be decided by a common Judgment as they arise from the same order rendered by the Additional Sessions Judge, Chandigarh.

2. Additional Sessions Judge, Chandigarh convicted Sham Singh alias Bitu under Sub-section 302/34 IPC and sentenced him to undergo R.I. for life. He was further directed to pay a fine of Rs. 250/-. In default of payment of fine, to undergo RI for one month. Surinder Kumar s/o Dharam Chand was convicted u/s 302 IPC and sentenced to undergo imprisonment for life. He was directed to pay a fine of Rs. 1000/-. In default of payment of fine, to undergo RI for three months. We will be deciding both the criminal appeals i.e. CRA No 289-DB and CRA No. 394-DB of 1997 only as Bhupinder Singh alias Bhupi accused has not faced trial, because at the very outset, he fled away and was later declared a proclaimed offender.

3. Mohinder Singh son of Chattar Singh made statement (Ex. PL), to Ishwar Singh SI/Incharge of Police Post, Sector 22, Chandigarh at General Hospital Sector 16, Chandigarh at 6.10 A.M. on 8.12.1992 to the effect that he lives with his parents and

he is working in CITCO Yatri Niwas, Sector 24, Chandigarh as Salesman. On 7.12.1992, he had gone to attend a reception party of the marriage of his friend Ajay Kumar, who also lived in Sector 22, Chandigarh. When he reached the Pandal, which had been erected near the house of Virinder Pal alias Lovely, he met Roop Chand, Dimpel and Ajay Singh besides Surinder Pal alias Kala. At about 9.45 P.M. Surinder Kumar alias Tukka and Bhupinder Singh alias Bhupi also reached the Pandal and sat next to them. All of them had taken some drink Virinder Pal lit a cigarette and after smoking it, he threw the end of the cigarette Surinder Kumar alias Tukka did not like this and asked Virinder Pal as to since when had he become a Dada (Badmash). He further stated, that he (Surinder Kumar alias Tukka) was the Dada (Badmash) of the place. Tukka abused Virinder Pal and both started grappling with each other. Mohinder Singh along with the others separated them and both of them then went away. Tukka and Bhupi, while leaving the Pandal threateneed Virinder Pal that he would be taught a lesson, on some other occasion. Thereafter, Virinder Pal also went away to his house. At about 1.30 A.M., Surinder Kumar alias Tukka and Bhupinder alias Bhupi reached the Pandal with Virinder Kumar. Virinder Kumar told them in the Pandal that Tukka and Bhupi had brought him from his residence, forcibly. Surinder Kumar alias Tukka thereafter hit Virinder Pal with his left foot, on his face. Mohinder Singh and Surinder Pal alias Kala and Ajay Singh took ill of it. Surinder Pal alias Kala told Tukka and Bhupi that they were spoiling the reception party and they should leave the Pandal, or they would be thrown out. On this, Surinder alias Tukka and Bhupi left the Pandal. At about 2 AM. after all the guests in the Pandal had left, Mohinder Singh along with Surinder Pal alias Kala, Tilak Raj, Roop Lal and Ajay Singh were present in the Pandal, in the meantime, Surinder alias Tukka and Bhupinder Singh alias Bhupi came there, with hockey sticks and iron rods. On entering the Pandal, Bhupinder Singh alias Bhupi gave a blow with an iron rod hitting Mohinder Singh Mohinder Singh raised his left arm to ward off the blow. Sham Singh alias Bittu gave a hockey blow on the person of Tilak Raj. The blow did not hit Tilak Raj and he was saved. Surinder Pal alias Kala ran towards the side of Shishu Niketan School out of fear Surinder alias Tukka, Sham Singh alias Bittu and Bhupinder Singh alias Bhupi ran after Surinder Pal alias Kala and caught hold of him near the Rehri Market of Sector 22. Mohinder Singh along with others also went there to save Surinder Pal alias Kala. Surinder alias Tukka then pulled out a knife from the pocket of his pant and gave a blow on the right side of the neck of Surinder Pal alias Kala. Surinder Pal alias Kala fell down, after receiving the knife blow, blood started oozing out of the wound. All the assailants i.e. Surinder Pal alias Tukka, Bhupinder alias Bhupi and Sham Singh alias Bittu fled away with their respective weapons from the spot. Thereafter, Mohinder Singh with the help of Roop Lal brought Surinder Pal alias Kala to the General Hospital, on a scooter. He was declared dead by the doctor. The motive for the commission of the offence is that, Mohinder Singh and Surinder Pal alias Kala made Surinder alias Tukka and Bhupinder alias Bhupi to go away from the Pandal. They took ill of this. On the basis of the statement (Ex. PL), FIR (Ex. PL/1) was recorded on 8.12.1992 at 6.20 A.M.

Special report reached the C.J.M. Chandigarh on 8.12.1992 at 9 A.M.

4. The prosecution to prove its case brought into the witness box Dr. A.P. Singh as PW1, Dr. S.K. Sharma as PW2, Draftsman Jaswant Singh as PW3, H.C. Nafe Singh as PW4, C. Om Parkash as PW5, S.I. Mewa Singh as PW6, H.C. Sukhdyal as PW7, H.C. Jagmal Singh as PW8, C. Gurdev Singh as PW9, Joginder Singh as PW10, Mohinder Singh complainant as PW11, Tilak Raj as PW 12, Varinder Pal as PW 13, Sahi Ram as PW 14 and SI Ishwar Singh as PW 15.

5. Learned counsel for the appellants has argued, that the case of the prosecution is that complainant Mohinder Singh (PW 11) along with Ajay Kumar, Virinder Pal alias Lovely, Roop Chand, Dimpel and Surender Pal alias Kala deceased were sitting together. All of them were drinking liquor. Appellant Surinder Kumar alias Tukka accompanied by Bhupinder Singh alias Bhupi also came there and they had also a peg of whisky each. Virinder Pal (PW 13), who was smoking a cigarette, threw the butt of the cigarette on the ground. Surinder Kumar alias Tukka took offence to this and stated, that since when had Virinder Pal (PW 13) become a Badmash (bad character), to throw the cigarette in the manner he has done so. Thereafter, appellant Surinder Kumar alias Tukka abused Virinder Pal (PW 13) and both started grappling with each other. They were separated. While going away, appellant Surinder Kumar alias Tukka threatened Virinder Pal (PW 13) that he would teach him a lesson. It is thereafter at 1.30 A.M. that Surinder alias Tukka along with Bhupinder Singh alias Bhupi reached the Pandal along with Virinder Pal (PW 13). Virinder Pal (PW 13) told the others sitting in the Pandal that Tukka and Bhupi had forcibly brought him from his house. Tukka then gave a blow of his left foot on the face of Virinder Pal (PW 13). Surinder alias Kala deceased told Tukka not to behave in such a manner. He further told him that he is polluting the atmosphere. Tukka appellant got annoyed of this and he along with Bhupi left the Pandal and threatened that he would come back. At 2.45 A.M appellant Surinder Kumar alias Tukka allegedly armed with knife (Ex. P33). Sham Singh alias Bittu armed with hockey stick and accused Bhupinder alias Bhupi armed with iron rod reached the Pandal, that Bittu gave a hockey blow on the person of Mohinder Singh (PW 11), which hit him on his left hand. Bhupi gave a blow with an iron rod on the person of Titak Raj (PW 12), which missed. Surinder alias Kala started running towards Shishu Niketan School. The three accused then followed Surinder alias Kala. Mohinder Singh (PW 11) and Tilak Raj (PW 12) along with the others ran after them, so that the accused did not harm. Surinder alias Kala. Near the Rehri Market of Sector 22, Chandigarh, Bhupinder Singh alias Bhupi caught Surinder Pal alias Kala and Tukka, who had a knife in his hand, gave a blow on the neck of Surender alias Kala deceased. Learned counsel for the appellants has argued that going by the sequence of events and spelt out above it is a case of a sudden quarrel. There was no premeditation on the part of the appellants, nor had they hatched a conspiracy to attack the deceased. A trivial dispute of throwing a cigarette butt by Varinder Pal (PW 13) started the fight. Dr. Hardeep Singh (DW3) has opined that a person having 86.25 mg. of alcohol per

hundred milligram of blood will have a different pattern of behaviour than a normal person As per the FSL report (Ex. PZJ), alcohol detected in the contents of the stomach, kidney and small intestine of the deceased was 86.25 mg. per 100 ml of blood. It is clear from the opinion of Dr. Hardeep Singh (DW3) and the F.S.L. report (Ex. PZJ) that the deceased and the accused party were under the influence of liquor. Suddenly a quarrel erupted which resulted in this unfortunate incident taking place. The prosecution has failed to prove as to who were the aggressors the appellants or the complainant party. Further, he has argued that it is strange that though the motive and grudge of appellant Tukka and accused Bhupinder Singh alias Bhupi was against Virinder Pal (PW 13), who had thrown the cigarette butt, in a particular manner, which was not liked by the appellants and they had threatened Virinder Pal (PW 13) to teach him a lesson but Surinder alias Kala was attacked. The prosecution has built up a false story that the appellants attacked Surinder alias Kala deceased. As per the prosecution version, Virinder Pal (PW 13) was woken up from his house and brought to the Pandal. On the way, when he was being brought by appellant Tukka and accused Bhupinder Singh alias Bhupi, he was strangely not harmed. The grudge/motive being against Virinder Pal (PW 13). Appellant Tukka and accused Bhupinder Singh alias Bhupi could have easily eliminated Virinder Pal (PW 13), or caused grievous injuries to him, while he was being brought to the Pandal.

6. As per the prosecution version, the complainant party and the appellants had collected for the reception of their common friend Ajay Kumar. Many people had gathered at the reception party, apart from the guests and hosts. There were other people also like cooks and waiters present at the party, who strangely did not intervene either. In the first instance, which had taken place at 9.45 P.M. and the second instance which had taken place at 1.30 A.M. no one intervened from the public guests. In fact Surinder alias Kala was murdered by some unknown persons and the appellants have been falsely implicated Mohinder Singh (PW11) has, in his testimony stated that his brother is in the police. In fact, the police was influenced by the brother of Mohinder Singh (PW11). Learned counsel has further argued that at the most, an offence u/s 304 Part II, IPC is made out against the appellants and not u/s 302 IPC.

7. Learned counsel for the Union Territory Chandigarh, has argued, that the appellants came to the Pandal after due deliberations and the murder of Surinder alias Kala was premeditated. It was after the first two instances, first at 9.45 P.M. and the second at 1.30 AM that appellant Tukka and accused Bhupi brought appellant Sham Singh alias Bittu was armed a hockey stick and Surinder alias Tukka was armed with knife (Ex. P33), which was hidden in his pant. Bhupinder Singh alias Bhupi was armed with an iron rod, that they attacked Surinder alias Kala deceased, as he had tried to intervene between them and Virinder Pal and had admonished the appellants and accused Bhupinder alias Bhupi. First Information Report (Ex. PL/1) goes a long way in proving the case of the prosecution. There is no delay in the lodging of the FIR was recorded on the same day at 6.20 AM. And the special report

reached the Chief Judicial Magistrate, Chandigarh by 9 AM Complainant party and appellants Bittu and Tukka belonged to the same locality. The appellants could not have been mistaken to identity of the appellants. Virinder Pal (PW13) though was the main target of the accused but since Surinder alias Kala deceased intervened, appellant Tukka and accused Bhupi took ill of it, as to why he was intervening. Dr. M.P. Singh (PW1) examined Mohinder Singh (PW13) and Virinder Pal (PW13) and found injuries on their person. Injuries on the person of Virinder Pal (PW13) corroborate the ocular account given by the eye witnesses.

8. We have heard the learned counsel for the parties and perused the record with their assistance.

9. Appellants Bittu and Tukka along with accused Bhupi were living in the same locality Reception party of Ajay Kumar was taking place Mohinder Singh (PW11) along with Ajay Kumar, Virinder Pal (PW13), Roop Lal, Dimple and Surinder Pal alias Kala deceased were sitting together and were drinking liquor. At about 9.45 P.M. on 7.12.1992 appellant Tukka and accused Bhupi came there and also had a peg of whisky each along with the others. Virinder Pal (PW13) who was smoking a cigarette, threw the butt of the cigarette in a manner which was not liked by appellant Tukka. Tukka abused him in filthy language and started grappling with him. They were separated while going away, appellant Tukka threatened Virinder Pal (PW13) that he would be taught a lesson Virinder Pal (PW13) has stated that at about 1.30 A.M. on 8.12.1992 Tukka and Bhupi reached his house. They rang they bell and his father Sahi Ram (PW14) opened the door. They asked fro Virinder Pal (PW13) and stated that they had some urgent work with him. Appellant Tukka called Virinder Pal (PW13) outside the house. Then both of them i.e. Tukka and Bhupi took Virinder Pal (PW13) forcibly to the Pandal where the reception party of Ajay Kumar was going on. On reaching the Pandal, Virinder Pal (PW13) Surinder alias Kala reprimanded appellant Tukka and asked him not to create a nuisance there the mouth of Virinder Pal (PW13) started bleeding. Thereafter, appellant Tukka and accused Bhupi left the Pandal and threatened him that he would be taught a lesson. It is thereafter at about 2.45 A.M. on 8.12.1992 the appellants Tukka, Bittu and accused Bhupi came to the Pandal, armed with knife (Ex. P33), hockey stick and iron rod respectively Surinder Pal alias Kala sensing danger started running towards Shishu Niketan School, but he was followed by appellants Bittu and Tukka and accused Bhupi and was assaulted by knife (Ex. P33) in the right side of his neck by appellant Surinder alias Tukka. Before the attack on Surinder alias Kala had commenced, appellant Bittu gave a hockey blow on the person of Mohinder Singh (PW11), which hit him on his left arm. Accused Bhupi tried to give a blow with his iron rod on the person of Tilak Raj (PW12), but it missed him.

10. From the sequence of events as stated above, it is clear that the murder of Surinder alias Kala was pre-meditated. It was at 2.45 AM after due deliberations that appellant Bittu armed with a hockey stick, appellant Tukka armed with knife (Ex.

P33) and accused Bhupi armed with an iron rod came and assaulted the complainant party. The blow of knife (Ex. P33) given by Tukka on the person of the deceased was so severe that it punctured the lung of the deceased Dr. S.K. Sharma (PW2) has opined in his opinion (Ex. P2EO/1) that knife (Ex. P33) could cause injury No. 1 on the person of deceased Surinder Pal alias Kala.

11. The lodging of the FIR is prompt. Occurrence had taken place on 8.12.1992 at 2.45 A.M. in the Rehri Market of Sector 22, Chandigarh. FIR (Ex. PL/1) was recorded on the same day at 6.20 A.M. and the special report reached the Chief Judicial Magistrate, Chandigarh by 9 P.M. This itself goes a long way in proving the case of the prosecution.

12. It could not be a case of mistaken identity as the first two instances i.e. first at 9.45 P.M. on 7.12.1992 and the second at 1.30 A.M. on 8.12.1992 had taken place in the light of the Pandal and the third at 2.45 A.M. on 8.12.1992 having taken place in the electric light in the Rehri Market, Sector 22, Chandigarh. The Rehri Market was not a deserted place where the witnesses could not see the assailants. Markets at night in Chandigarh are lit by electric lights, but by also the lights on the shops left on by the shop-keepers. Statements of Mohinder Singh (PW11), Tilak Raj (PW12) and Virinder Pal (PW13) are cogent, convincing and truthful. Mohinder Singh (PW11) and Virinder Pal (PW13) are stamped witnesses. Both received injuries during the transaction of the crime.

13. Learned counsel for appellants Tukka and Bittu have laid much stress that both the parties were highly drunk. Some sort of incident took place and the appellants along with accused Bhupi were falsely implicated as the brother of Mohinder Singh (PW11) was serving in the police. This argument of learned counsel for the appellants does not cut much ice. Mohinder Singh (PW11), Tilak Raj (PW12) and Virinder Pal (PW13) have all stated that they had only one peg of whisky. One peg of whisky would not be such a large quantity that would affect the complainant party from not thinking in a proper manner. Though Virinder Pal (PW12) was the person, who appellants Bittu and Tukka were angry with but they attacked Surinder Pal alias Kala for intervening and trying to save Virinder Pal (PW13) by admonishing them and telling them not to create a nuisance there.

14. We do not find any infirmity in the Judgment of the Additional Sessions Judge, Chandigarh. Appeals are dismissed.