

(1999) 02 AHC CK 0169**Allahabad High Court****Case No:** Criminal Appeal No. 868 of 1980

Lachhman alias Kalloo and
Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Feb. 4, 1999**Acts Referred:**

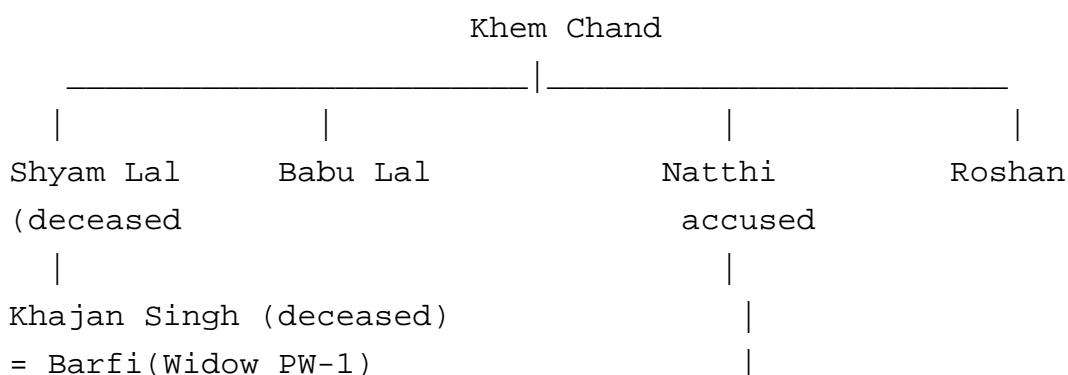
- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 313
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302

Citation: (1999) CriLJ 3391**Hon'ble Judges:** K.D. Shahi, J; G.P. Mathur, J**Bench:** Division Bench**Advocate:** G.S. Chaturvedi, M.C. Singh and P.K. Tiwari, for the Appellant; Dy. Govt. Advocate, for the Respondent**Judgement**

K.D. Shahi, J.

This appeal has been filed by Natthi and his four sons against their conviction and sentence under various sections in Sessions Trial No. 227 of 1979, State v. Lachhman and other passed by Sri. R. R. Agarwal, Ist Addl. Sessions Judge, Mathura on 19th of April, 1999.

2. The following pedigree is relevant to appropriate the facts of the case :.



Lakchman alias	Chhattar (Accused)	Munna (Accused)	Murari (Accused)
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3. Brief facts of the case are that Babu Lal was murdered. In his murder Khazan Singh (deceased) and Saggera were implicated. Both of them were acquitted on trial. It is said that the land of Babu Lal was always in cultivation of Natthi. However, Shyam Lal had given his own share to Dambar and Raghbir on Batai. Dambar and Raghbir were cousin brothers.

4. According to the F.I.R. lodged on 8-4-79 at 2.30 p.m. on the said date at about 11 a.m. Shyam Lal, Khazan Singh along with the SAJHIDAR Raghbir and Dambar were cutting JAU Crop. At about 10 a.m. it is the informant Barfi who had gone to the plot to serve food to Shyam Lal and Khazan Singh while Km. Kallo had gone to serve food to Dambar and Km. Mallo had gone to serve food to Raghbir. In the meantime, at about 10 a.m. Lachhman alias Kallo armed with SBI gun, Chattar armed with Ballam, Natthi armed with iron pipe and Munna and Murari armed with lathis came on the spot and told that you people have harassed very much. Today they will take revenge. At this Lachhman fired at Khazan Singh which hit at his chest. Thereafter all other assailants started to beat Khazan Singh and Shyam Lal by their lathi and pipe of iron and killed them. The occurrence is said to have been seen by Kallo (P.W. 2), Mallo, Raghbir (P.W. 3), and Dambar Singh (P.W. 4). On the basis of the verbal report a case was registered at the police station and Chik report, Ex. Ka-1, was prepared.

5. The I.O. took the investigation of the case in his hand - He took blood stained and simple earth and prepared Phard Ex. Ka. 12. The dead bodies of Khazan Singh and Shyam Lal were sent for post mortem examination. The doctor has found the following injuries on the person of Khazan Singh :

(1) Gun shot wound of entry 3 cm. x 2 cm. over right side chest well 5 cm. lateral to right nipple at 8 O'clock position from right nipple, blackening and tattooing with scorching of hairs present over skin.

(2) Incised wound 1 cm. x 5 cm. over forehead medial end of right eye-brow skull deep.

(3) Multiple abrasions 6 cm. x 4 cm. over both elbow joint.

(4) Wound of exit gun-shot 1.5 cm. x 5 cm. over right back middle part 2.5 cm. lateral to mid-line. on internal examination he found the pleura lacerated. Upper outer and lower part of right lung and middle part of lung was found lacerated. Abdomen contained 4 once undigested food material.

6. On the post mortem examination of Shyam Lal the doctor has found the following injuries on his person :

- (1) Abraded contusion 6" x 2" over middle part upper arm left.
- (2) Abraded contusion 4" x 2" over back of left elbow.
- (3) Lacerated wound 1" x 1/2 over back of left arm muscle deep.
- (4) Contusion 6" x 2 1/2 over middle of right side chest front.
- (5) Contusion 3" x 2" over middle of left side chest front.
- (6) Contusion 3" x 2" over middle of back or right upper arm.
- (7) Lacerated wound 3" x 1/2" over top of skull, scalp deep.
- (8) Contusion 4" x 2" over left scapular region back.
- (9) Contusion 3" x 1/2" over front of left forearm.

(10) Contusion 6" x 2" over right scapular region back. On internal examination he found fracture on 3rd, 4th, 5th, 6th, 7th, 8th and 9th ribs on both sides. Pleural cavity contained 10 ouns. Right lung was found lacerated at multiple places.

7. According to the doctor both the injured died due to shock and hemorrhage as a result of anti mortem injuries.

8. After the investigation was complete, the I.O. submitted the chargesheet against the accused persons in the Court and on committal of the case if the trial was taken up by Sri R.R. Agrawal, 1st Addl. Sessions Judge who charged accused Munna and Murari u/s 147 IPC. Accused Lachhman alias Kallo, Natthi and Chhatar were charged u/s 148 IPC. Accused Lachhman was further charged of the r Hence u/s 302 IPC simpliciter and a11 other accused persons, namely, Natthi, Chhafar Munna and Murari were charged of the offence under Sections 302 read with Section: 149 IPC separately for the murder of Shyam Lal and Khazan Singh.

9. All the charges were read over and explained to the accused persons in Hindi who pleaded not guilty and claimed to be tried.

10. In support of its cases the prosecution examined P.W. 1 Barfi. She has stated on oath that in village Naupur she has got 32 bighas of land in her share. The disputed plot belonged to her. Her husband and father-in-law had given their plot to Dambar on Batai. On the day of occurrence there was barley crop in the plot. She further stated that on the day of occurrence it was 11 a.m. when she had gone to the plot to serve bread to her father-in-law and husband. They took food. Kallu and Mallo also brought food for Dambar and Raghbir and after eating bread they again started to cut the crop. Complainant Kallu and Mallo started to collect the crop. In the meantime accused persons came. Kallu alias Lachhman was armed with gun, Natthi was armed with iron pipe, Chhatar was armed with Bhala, Murari and Munna were

armed with lathis. Shyam Lal exhorted to kill. Chhatar inflicted Ballam injury, Munna and Murari gave lathi blow. Natthi assaulted by iron pipe. Kallu fired at Khazan Singh. When Shyam Lal wanted to save Khazan Singh he was also killed. In the cross-examination she specifically narrated that Natthi had got double area of the land than her husband and father-in-law. She further stated that the place of occurrence is at a distance of one mile from her house; her husband and father-in-law had gone in the early morning to cut the crop. They had HASIA with them. She admitted that she got injured in this incident.

11. P.W. 2 Kallu, daughter of Dambar Singh, has also proved the entire occurrence. Her age was 15 years. There was nothing for the prosecution to have introduced this girl, she had not gone to the place of occurrence to serve the food to her father. Her father himself was sufficient to give statement in the Court. P.W. 3 Raghbir is one of the BATAIDAR. He had proved the factum of Batai and the plot which he had taken on Batai, belonging to Shyam Lal and Khazan Singh. He further stated that Dambar was his cousin and the land in which he was cutting the crop was about 4 1/2 bighas. He further stated that there was mutual partition between the deceased and Natthi from before 15 to 16 years. The only suggestion is that he was not present on the spot and was giving evidence due to enmity. P.W. 4 Dambar Singh is also Bataidar and an eye-witness. He has corroborated the entire prosecution story. P.W. 5 Constable Onkar Singh took the dead bodies for post mortem examination and he has filed his affidavit. P.W. 6 D. C. Misra is the Investigating Officer. and he proved the investigation of the case and police papers. P.W. 7 Dr. K. C. Jain has conducted the post mortem of the dead bodies and has proved the injuries of the victims. P.W. 8 Suresh Chandra Agarwal took the material articles of the case and proved that it remained in sealed condition. P.W. 9 Jagdish Prasad Constable had taken the articles for chemical examination to Agra. There are also two other formal witnesses.

12. After close of the prosecution evidence, statements of the accused persons were recorded. The case of Lachhman is that on 8-4-79 at 11 a.m. he had gone towards the plot. Shyam Lal and Khazan Singh were cutting the crop in the plot, which was purchased by Natthi, Shyam Lal and Roshan. He asked them not to do so. At this Shyam Lal an Khazan Singh abused him and assaulted him by Darati. As a result of injuries he became unconscious and did not know what happened thereafter. The case of other accused persons was that of denial.

13. In defence accused Lachhman examined Dr. Gazendra Singh who had medically examined him and he had found the following injuries on the person of Lachhman.

1. Lacerated wound 2 cm. x 1/4 cm. x muscle deep on the left side of the hand, 4, 5 cm. above left eye-brow.
2. Incised wound 2.5 cm. x 1/2 cm. x muscle deep on the middle of the right scapula.

3. Incised wound 2.5 cm. x 1/2 cm. x muscle deep on the back of the chest at the left side edges were clear, margins were sharp.

4. Incised wound 4 cm. x 7.5 muscle deep on the back of the chest on the left scapula transversely 2 cm. below the shoulder.

5. Incised wound 3 cm. x 1/4 cm. x muscle deep on the posterior aspect of left shoulder joint.

14. The doctor has stated that he had specifically written in the injury report, as brought by himself. The accused could not have become unconscious due to that injury. He again stated that the injuries might have been caused at 11 a.m. on 8-4-79 as well. The Court also examined Sri Suresh Chandra Bhargav, Advocate as CW-1. He had filed the bail application of the accused persons and had taken certain pleas in the bail application. D.W. 2 Vijai Singh has been examined to prove that Natthi has grown crop in the plot. He has stated that at about 10 or 11 a.m. he heard the cry of Kallo alias Lachhman and saw that Khazan Singh and Shyam Lal were inflicting injuries to Lachhman. In the cross-examination he stated that he did not go near Lachhman injured and he instead went to the village. He, however, did not state how Khazan Singh and Shyam Lal died on the spot if he was there and did see when Lachhman was being assaulted by Shyam Lal and Khazan Singh.

15. D.W. 3 Kama has been examined to show that there was no barley crop in the plot. This tact was not stated either by Vijai Singh or by Lachhman in their statement u/s 313 Cr.P.C, rather Lachhman himself has stated, in his reply to Quest on No. 22, that Shyam Lal and Khazan Singh were cutting barley crop. Therefore, the statement of this witness that there was no barely crop in the plot is totally false and baseless.

16. After hearing learned counsel for the parties, the learned Sessions Judge, found that all the charges were proved against the accused persons. He, accordingly, convicted and sentenced accused Munna and Murari u/s 147 IPC to undergo rigorous imprisonment for one year and to Lachhman alias Kallo, Natthi and Chhattar to undergo rigorous imprisonment for two years u/s 148 IPC. He again sentenced all the accused persons under Sections 302 and 302/149 IPC for the murders of Shyam Lal and Khazan Singh separately to life imprisonment. All the sentences were directed to run concurrently.

17. Being aggrieved by the above conviction, sentence and imprisonment, the appellants have preferred this appeal.

18. We have heard learned counsel for the parties and have carefully examined the record. The case of all the accused persons is that of total denial; while the case of Lachhman appears to be a case of self defence; that too was taken half heartedly. He did not state that Shyam Lal and Khazan Singh were killed in his self defence or in defence of the property. We will take the case of the defence later on, but we have to appreciate the evidence on record first.

19. The factum of murder of Khazan Singh and Shyam Lal has not been denied. Their identity has not been challenged. Place of occurrence is admitted. All the witnesses have stated that it was the plot where the occurrence took place. The date and time of occurrence is also admitted. In his statement u/s 313, Cr.P.C. Lachhman has stated that it was 8-4-79 at 11 a.m. when Shyam Lal and Khazan Singh were cutting the barely crop which Natthi, Shyam Lal and Roshan Lal had purchased. Thus, he admitted the date, time and place of occurrence as also the existence of barley crop in the plot. He also admitted his presence as well as the presence of two deceased persons. The defence witnesses also stated that the time was about 10 or 11 a.m. Neither in the cross-examination nor in the statement of the defence witnesses it has been suggested that who inflicted injuries to Shyam Lal and Khazan Singh and how they died. We have seen the injuries of Lachhman as well. These are very superfluous injuries and he could not have become unconscious as a result of these injuries even if these are taken to have been caused during the course of this crime. The doctor has also stated that Lachhman could not have become unconscious as a result of these injuries. Thus, presence of Lachhman on the spot is admitted. It is totally false that he became unconscious. Therefore, he should have also stated how and when Shyam Lal and Khazan Singh were murdered in this plot.

20. At any rate, the prosecution has not to stand on the witness of the defence but it has to prove its case to the hilt. We have already referred the statements of the eye-witnesses and they have fully proved the case of the prosecution. There is nothing in the statements of all the four witnesses for which they can be disbelieved. In the cross-examination also the accused side could get nothing from them. Not only this, the so called defence version has also not even been suggested to the witnesses of the prosecution. In his statement Raghbir stated that no accused ever received any injury in this marpeet.

21. All other facts, having been admitted and proved from the statement of the witnesses, are also fully supported by the medical evidence. There is no ballam injury to both the victims. We will take up the case of Chhattar separately. But there are injuries which would have been caused by country made pistol, iron pipe as well as by lathi and the witnesses have stated that besides firearm injury to Khajan Singh all other injuries were caused and were given by the accused persons by lathi and iron pipe as well. The doctor has also found these injuries on the person of the victim and has stated that these injuries were possible to have been caused by the weapons as suggested by the prosecution.

22. Taking the defence case, Lachhman did not lodge any F.I.R. He did not move any application u/s 156(3), Cr.P.C. to the Magistrate till date. He did not state any cross-case to the Investigating Officer also, nor did he move any application to the Superintendent of Police of the District Magistrate. The occurrence took place on 8-4-1979 at 11 a.m. but he was medically examined by Dr. Gazendra Singh in the night of 9-4-1979 at 1.45 a.m. He was not produced, by any police constable, before

the doctor but he himself appeared before the doctor. All the injuries were only muscle deep. Injury No. 1 was at the eye-brow; injury No. 2 was on the scapula; injury No. 3 was on the Chest. Again injury No. 4 was on the scapula and injury No. 5 was on the shoulder. These injuries could have very well been self inflicted or manufactured. If the injuries were caused by HASIA, there should have been curve in these injuries but no curve has been reported by the doctor. As suggested above, the witnesses of the prosecution were also not suggested that Lachhman has got any HASIA or DARATI injury. The doctor, who examined Lachhman, has stated that these injuries would have been caused even at 4 p.m. It was very easy for Lachhman to have got certain injuries manufactured to make the defence case but he made this defence case half heartedly. This defence case is totally false and baseless. The prosecution witnesses have specifically stated that nobody was injured on the accused side in this occurrence.

Thereafter, it was not obligatory for the prosecution to have explained the false injuries of Lachhman either in the F.I.R. or in the statement of the witnesses.

23. It is thus fully established that these are the accused persons and the accused persons alone who have killed Shyam Lal and Khazan Singh and we fully agree with the findings of the learned Sessions Judge.

24. It was argued by the learned counsel for the appellants that Chhattar is entitled to benefit of doubt. It was argued that the branch of Roshan is not involved in this case and the entire branch of Natthi has been implicated in this case and that there is a chance of false implication. We do, not find any chance of false implication in the case but on the strength of evidence, although the case of the prosecution is established, we are inclined to give Chhattar benefit of doubt.

25. Chhattar is said to be armed with Ballam. Ballam causes penetrating wound. No penetrating wound has been caused to any of the two victims. Only Khazan Singh has got an incised wound No. 2 which is 1 cm. x .05 cm. on the forehead. Incised injury on the forehead may be caused even by fall on the ground and also by lathi or iron pipe. It cannot be said that this injury was definitely from the Ballam. No other injury has been caused to either of the victims by Ballam.

26. Now coming to the individual role of Chhattar Singh entitles him to benefit of doubt, we find that Smt. Barfi stated in para 1 of her statement that Chhattar gave Ballam blow to Khazan Singh. He did not repeat this ballam blow. Had he got any intention to kill he could have repeated ballam blow to Shyam Lal as well. In the last page of her statement, Smt. Barfi stated that the ballam was penetrated to Shyam Lal three or four times. This is an exaggeration of the case and can be separated as a chaff from the grain Shyam Lal has got absolutely no such penetrating wound. This statement has been given to make a case against Chhattar otherwise there is absolutely no allegation that Chhattar penetrated his ballam three or four times to Shyam Lal. P.W. 2 Kallo stated that Chhattar gave ballam blow on the forehead of

Khazan Singh. This is not in the F.I.R. In her cross-examination she stated that ballam was used once and again it was used as a lathi. This is not the prosecution case. P.W. 3 Raghbir did not specifically state about the use of ballam in his examination in chief. He was not cross-examined on this point. P.W. 4 Dambar stated that Chhattar used ballam blow on Khazan Singh as ballam and not as lathi whereas to the I.O. he is said to have stated the Chhattar used ballam over Shyam Lal as lathi. It was argued by the learned counsel for the appellants that all these developments show that in a bid to implicate the entire family a case against Chhattar has been manufactured which goes to show that Chhattai may not be there and could not have been an actual participant. In view of above, we find that the charges are not proved against Chhattar and we are inclined to give benefit of doubt to him. As regards the appeal of rests of the accused persons, it has got absolutely no merit.

27. Appeal of Chhattar is allowed. He is acquitted of the charges under Sections 148 302 and 302/149, IPC for being a member of unlawful assembly duly armed with ballam and also for the murder of Shyam Lal and Khazan Singh and also of the other charges of which he faced the trial. He is on bail. His bail bonds are cancelled and sureties are discharged.

28. As regards the appeal of Natthi, Lachhman alias Kallo, Munna and Murari, Their appeal is hereby dismissed. Their conviction and sentence for the offence, as narrated above, is fully proved. They are on bail. They shall be taken into custody forthwith to serve out the sentence. Their bail bonds shall stand cancelled and the sureties will stand discharged after they are taken into custody to serve out the sentences awarded to them.

29. Let a copy of this order be sent to the C.J.M., Mathura to take the abovesaid appellants into custody and send them to jail to serve out the sentence and report compliance to this Court within a period of three months from the date of communication of this order.