
Before K.S. Garewal and R.S. Madan, JJ.

STATE OF PUNJAB,—*Appellant*

versus

SATPAL AND OTHERS,—*Respondents*

CrI. A No. 586/DBA of 2003

26th April, 2006

Code of Criminal Procedure, 1973-Ss. 313 (1)(a) & 386(a)—Charges framed against four accused for committing murder—On an application under section 319 Cr. P.C. two more accused summoned to face trial—Fresh charges framed against all six accused—Statements of accused pleading not guilty and claimed to be tried recorded—Prosecution evidence of two witnesses recorded—Trial Court accepting confession made by four accused—Trial Court convicting the four u/s 304 Part II IPC and acquitting the remaining two accused—Whether after framing of charges, recording plea of not guilty and fixing case for recording prosecution evidence, the trial Court can proceed to examine the accused—Held, no—Once the stage for recording prosecution evidence reached the same shall have to be recorded until it is concluded—Trial before the Court of Sessions proceeds step by step and once a particular step has been taken or a particular stage has been crossed, the steps taken cannot be retraced—Appeal allowed, order passed by trial Court set aside.

Held, that a trial before the Court of Sessions is conducted under the provisions of Chapter XVIII (Sections 225 to 237) of the Code of Criminal Procedure. Every trial before the Court of Sessions commences with the Public Prosecutor opening the case by describing the charge brought against the accused and the evidence with which he proposes to prove the guilt of the accused. After consideration of the record of the case, the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, if the judge considers that there are no sufficient grounds for proceeding against the accused, the accused is discharged and reasons are recorded. If the judge is of the opinion that there is ground for presuming that the accused has committed an offence and, the offence is exclusively triable by him, he frames in writing a chargesheet

against the accused and the accused is asked whether he pleads guilty to the charge framed or claims to be tried. Therefore, if the accused does not plead guilty to the charge and claims to be tried, the judge fixes a date for the examination of the witnesses but if the accused pleads guilty the Judge records the plea and may convict him thereon.

(Paras 12 & 13)

Further held, that the accused had not pleaded guilty to the charge and as a matter of fact claimed to be tried. The trial had been listed for recording prosecution evidence. Therefore, it is obvious that after the charge was framed plea of not guilty had been recorded. Thereafter the stage for recording the statements of the accused or their fresh plea had passed. The case was scheduled for recording prosecution evidence. Whatever may be the reason for which the learned trial Judge re-recorded the plea of the four of the accused, it cannot be over-looked that the stage for recording the pleas had actually been crossed. The court was now required to record the evidence produced by the prosecution. There was no choice with the Court except to conclude the recording of the prosecution evidence and then proceed to examining the accused. After hearing the accused he could record an order of acquittal if he considered that there was no evidence that the accused had committed an offence. We do not think that the statements of the accused recorded on 18th October, 2002 were covered by the provisions of Section 313 (1) (a) of the Code of Criminal Procedure which entitled the court to put such questions to the accused as considered necessary, at any stage and without previously warning accused.

(Para 14 & 15)

Further held, that it is extremely doubtful if the course adopted by the learned trial Judge was legal because the trial before the Court of Sessions proceeds step by step and once a particular step has been taken or a particular stage has been crossed, the steps taken cannot be retraced. This means that once the stage for recording prosecution evidence had been reached the evidence of the prosecution shall have to be recorded until it is concluded. This was not the stage to go back to the stage of charge and record pleas of some of the accused as the learned trial Judge has done.

(Para 17)

A.S. Virk, Additional A.G. Punjab, *for the appellant.*

T.S. Sangha, Advocate, *for the respondents.*

A.S. Jattana, Advocate, *for the revision-petitioner.*

JUDGMENT

K.S. GAREWAL, J.

(1) State of Punjab has filed Criminal Appeal No. 586 DBA of 2003 to challenge the judgment of the learned Additional Sessions Judge (*Ad hoc*), Patiala, dated 18th October, 2002 whereby Sat Pal and five others were acquitted of the murder of Thakur Dass Batra. Ashwani Kumar and Manohar Lal were acquitted outright but Sat Pal, Chaman Lal *alias* Surinder Kumar, Bhim Sain and Darshan Kumar were convicted under Sections 304 Part II I.P.C. Sat Pal and Bhim Sain were sentenced to the period already undergone by them. Darshan Kumar and Chaman Lal *alias* Surinder Kumar were sentenced to undergo rigorous imprisonment for a period of four years under Section 304 Part II read with Section 34 of the Indian Penal Code.

(2) Chaman Lal *alias* Surinder Kumar and Darshan Kumar have filed Criminal Appeal No. 1778 SB of 2002 against their conviction and sentence. Kulbushan Kumar, son of Thakur Dass Batra, deceased, has filed Criminal Revision No. 467 of 2003 to challenge the acquittal of the six accused.

(3) All the three above-mentioned cases have been heard and are being disposed of by this common judgment.

(4) On 4th August, 2000 at 10.00 P.M. there occurred a quarrel between two neighbouring shopkeepers at Patran, District Patiala. This led to exchange of abuses and hot words. When Kulbushan, son of Thakur Dass Batra, deceased, alongwith his brother Subhash Chand and his deceased father were going to close their shop as usual, the owner of the adjoining shop "Goel Sweets" Chaman Lal *alias* Surinder Kumar remarked that Kulbushan had abused them. In the meantime Chaman Lal's brother Darshan Kumar punched Kulbushan on the face. Chaman Lal's other brother Bhim Sain *alias* Bhola, Sat Pal and nephews Ashwani and Manohar Lal were also present there. When Thakur Dass Batra and Subhash

Chand stepped forward to save Kulbhushan the above-mentioned persons attacked them. Sat Pal gave a *dang* blow on Thakur Dass Batra's forehead. Darshan Kumar picked up a *Khurchana* (scraper) from his shop and with it hit Thakur Dass Batra on the left leg. Bhim Sain and Manohar Lal kept punching Subhash Chand. Sat Pal and Manohar Lal caught hold Thakur Das Batra from his arms and felled him down. Thereafter Chaman Lal *alias* Surinder Kumar and Darshan Kumar punched and kicked Thakur Dass Batra on his testicles and in the abdomen. Alarm was raised which attracted Om Parkash, Lekh Raj and Shammi Kumar to the spot. Thakur Dass Batra was released from the clutches of the attackers who managed to escape from the spot with their respective weapons. Thakur Dass was taken to Durga Dass Hospital for treatment where he was declared dead.

(5) Kulbhushan Kumar's statement was recorded on 5th August, 2000 at 2.30 A.M. and on its basis the case was registered at 3.30 A.M. at Police Station, Patran, Special report was received by Judicial Magistrate, Samana at 10.30 A.M. on 5th August, 2000.

(6) Investigation was commenced by carrying out the inquest proceedings on the dead body of Thakur Dass Batra whereafter the dead body was sent for post mortem examination which was conducted by Dr. Satish Arora, Medical Officer, Civil Hospital, Samana. The Medical Officer found the following injuries :—

- “1. Swelling 17 cm × 10 cm on the right inguno-scrotal region.
2. Abrasion 1 cm × 1 cm on the left side of forehead.
3. Reddish contusion 10 cm × 3 cm on the front of right shoulder region.
4. Abrasion 15 cm × 2 cm on the lateral side of left upper limb.
5. Abrasion on front of left knee 1 cm × 1 cm.”

On dissection the Medical Officer found extravasation of blood in the underlying tissues of scrotum and inguinal region on the right side. Haematoma was present in the right scrotal region. Right testicle was ecchymosed. Left scrotal region was healthy. In the opinion of

the Medical Officer death was due to right testicular injury resulting in shock which was sufficient to cause death in the ordinary course of nature.

(7) Kulbhushan was medico legally examined at 2.00 P.M. on 5th August and found to have the following injuries on his person :—

- “1. Reddish contusion 3 cm × 3 cm on the lateral side of right iliac region.
2. Raddish contusion 3.5 cm × 2.5 cm on the right xyomatic region of face.
3. Abrasion 2 cm × 3 cm on the left lower lip.
4. Abrasion 2 cm × .05 cm on the front of left leg in the middle.
5. Tender swelling left middle finger. Advised X-ray.
6. Complained of pain on the right thigh”.

(8) Om Parkash was medico-legally examined at 2-30 P.M. on 5 August and he had the following injury :—

“Reddish contusion 8 cm × 3 cm on the right gluteal region.”

(9) In the first instance only four accused/respondents, Sat Pal, Chaman Lal *alias* Surinder Kumar, Bhim Sain also Bhola and Darshan Kumar were set up for trial. Charge was framed against them under Section 302/323/34 I.P.C. on 18th January, 2001 but after the statement of Kulbhushan Kumar was recorded on 22nd November, 2001 an application was moved under Section 319 Cr. P.C. which was accepted and Ashwani Kumar and Manohar Lal were summoned to face trial. Charge was again framed on 22nd March, 2002 under Section 302/148/149/323/34 I.P.C. against all six accused/respondents to which they pleaded not guilty and claimed to be tried.

(10) The fact that the accused had pleaded not guilty and claimed trial is probably the key to the decision of these cases. The plea of the accused was recorded by the learned Additional Sessions Judge on 22nd March, 2002, the case was adjourned to 23rd May,

2002 for prosecution evidence. It was again adjourned to 26th August, 2002 but in the meanwhile the trial was transferred from the court of Additional Sessions Judge, Patiala to the court of learned Additional Sessions Judge (*Ad hoc*) Fast Track Court, Patiala and the accused appeared before the transferee court on 26th August, 2002. On this day statement of Dr. Mamta Sharma (PW-1) and Dr. Satish Arora (PW-2) were recorded.

(11) The learned Trial Judge did not record any further evidence but decided the case on the basis of “confessions” made by Sat Pal, Chaman Lal *alias* Surinder Kumar, Bhim Sain and Darshan Kumar on 18th October, 2002. These statements of the accused were accepted and led to the conviction of four of them under Section 304 Part II I.P.C. Ashwani Kumar and Manohar Lal were acquitted. Out of the four convicted accused Chaman Lala *alias* Surinder Kumar and Darshan Kumar were sentenced to rigorous imprisonment for 4 years and other two Sat Pal and Bhim Sain *alias* Bhola were sentenced to the period already undergone. It may be appropriate to reproduce here the statement of Chaman Lal *alias* Surinder Kumar accused recorded without oath on 18th August, 2002. The other accused also made similar statement. Statement made by Chaman Lal *alias* Surinder Kumar was as follows :—

“On 4th August, 2000 at about 10.00 P.M. I Surinder Kumar *alias* Chaman Lal alongwith Darshan Kumar, Sat Pal and Bhim Sain *alias* Bhola were present at my shop. The incident started from abuses and it developed into altercation at the spur of the moment. However, injuries received by Thakur Dass, Kulbhushan and Om Parkash at our hands. The occurrence was at the spur of the moment. Manohar Lal and Ashwani Kumar did not cause any injury. I confess my guilt with a prayer that leniency be shown at the point of sentence.”

(12) A trial before the Court of Sessions is conducted under the provisions of Chapter XVIII (Sections 225 to 237) of the Code of Criminal Procedure. Every trial before the Court of Sessions commences with the Public Prosecutor opening the case by describing the charge brought against the accused and the evidence with which he proposes to prove the guilt of the accused. After consideration of the record of

the case, the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, if the Judge considers that there are no sufficient grounds for proceeding against the accused, the accused is discharged and reasons are recorded. If the Judge is of the opinion that there is ground for presuming that the accused has committed an offence and, the offence is exclusively triable by him, he frames in writing a charge-sheet against the accused and the accused is asked whether he pleads guilty to the charge framed or claims to be tried.

(13) Therefore, if the accused does not plead guilty to the charge and claims to be tried, the Judge fixes a date for the examination of the witnesses but if the accused pleads guilty the Judge records the plea and may convict him thereon.

(14) In the present case the accused had not pleaded guilty to the charge and had as a matter of fact claimed to be tried. The trial had been listed for recording prosecution evidence. Therefore, it is obvious that after the charge was framed plea of not guilty had been recorded. Thereafter the stage for recording the statement of the accused or their fresh plea had passed. The case was scheduled for recording prosecution evidence.

(15) Whatever may be the reason for which the learned trial Judge re-recorded the plea of the four of the accused, it cannot be overlooked that the stage for recording the pleas had actually been crossed. The court was now required to record the evidence produced by the prosecution. There was no choice with the court, except to conclude the recording of the prosecution evidence and then proceed to examining the accused. After hearing the accused he could record an order of acquittal if he considered that there was no evidence that the accused had committed an offence. We do not think that the statement of the accused recorded on 18th October, 2002 were covered by the provisions of Section 313(1)(a) of the Code of Criminal Procedure which entitled the court to put such questions to the accused as considered necessary, at any stage and without previously warning accused.

(16) The learned Judge neither concluded the recording of the statement of the prosecution nor did he record an order of acquittal. The learned Judge did not even record the statement of the accused

under Section 313 Cr. P.C. because he thought it to be a case in which recording of the statement ought to be dispensed with. In a surprising turnaround of events the learned Judge cut short the trial by recording the statements of four of the accused admitting their guilt and proceeded to convict them under Section 304 Part II IPC. The two remaining accused were acquitted.

(17) It is extremely doubtful if the course adopted by the learned Trial Judge was legal because the trial before the Court of Sessions proceeds step by step and once a particular step has been taken or a particular stage has been crossed, the steps taken cannot be retraced. This means that once the stage for recording prosecution evidence had been reached the evidence of the prosecution shall have to be recorded until it is concluded. This was not the stage to go back to the stage of charge and record pleas of some of the accused as the learned Trial Judge has done.

(18) Resultantly, Criminal Appeal No. 586 DBA of 2002 titled as State of Punjab *versus* Sat Pal and others is allowed. The judgment of the learned Additional Sessions Judge (Adhoc) Patiala dated 18th October, 2002 is hereby set aside and accused are directed to be retried as provided by Section 386(a) of the Code of Criminal Procedure on the basis of the charge framed against them on 22nd March, 2002 and the pleas recorded by them on 22nd March, 2002.

(19) The accused/respondents shall surrender before the learned Sessions Judge, Patiala on or before 15th May, 2006 and shall be admitted to bail by the learned Sessions Judge after they furnish adequate surety to his satisfaction. The trial against the accused/respondents shall continue from the stage the case had reached on 18th October, 2002. The learned Sessions Judge shall try the case himself and conclude the trial as expeditiously as possible, preferably by 31st August, 2006. Records of the trial court be sent back immediately.

(20) Criminal Appeal No. 1778 SB of 2002 titled as Chaman Lal and another *versus* State of Punjab and Criminal Revision No. 467 of 2003 titled as Kulbhushan Kumar *versus* Sat Pal and others are dismissed.