

**Sanjay @ Panji Vs. State**

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**Court :** Delhi

**Decided On :** May-01-2013

**Judge :** Sanjiv Khanna

**Appellant :** Sanjay @ Panji

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL APPEAL  
No.857/2009 Reserved on :

23. d January, 2013 Date of Decision:

01. t May, 2013 % SANJAY @ PANJI ....Appellant Through Mr. S.P. Kaushal and Mr. Varun Rai Sharma, Advocates. Versus STATE Through Respondent Ms. Richa Kapoor, APP for the State. + CRIMINAL APPEAL No. 858/2009 KESU @ PAWAN ....Appellant Through Mr. S.P. Kaushal and Mr. Varun Rai Sharma, Advocates. Versus STATE Through Respondent Ms. Richa Kapoor, APP for the State. + CRIMINAL APPEAL No. 860/2009 GUDDI ....Appellant Through Mr. S.P. Kaushal and Mr. Varun Rai Sharma, Advocates. Versus STATE Through CrI.A.Nos. 857/2009, 858/2009 & 860/2009 Respondent CORAM: HONBLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE SIDDHARTH MRIDUL SANJIV KHANNA, J.:

1. These three appeals by Pawan @ Kesu, Sanjay @ Panji and Guddi Devi impugn common judgment dated 17th September, 2009 and order on sentence dated 24th September, 2009 arising out of FIR No.857/2006, Police Station Najafgarh. The three appellants have been convicted under Section 302 read with Section 34 of the Indian Penal Code, 1860 (IPC) for murder of Suman on 5th September, 2006 at about 5.00 p.m. and under Section 323 read with Section 34 IPC for causing simple injuries in furtherance of common intention to Sunita, Dilbagh and Zile Singh between 3.30 pm. to 5.00 p.m., on the same day. The appellants have been sentenced to life imprisonment and fine of Rs.5,000/- each for the offence under Section 302 read with Section 34 IPC and Rigorous Imprisonment of one year each for the offence punishable under Section 323 read with Section 34 IPC. In default of payment of fine of Rs.5,000/-, they have to undergo Simple Imprisonment for six months.

2. Guddi Devi is the mother of Pawan and Sanjay is cousin brother of Pawan (son of Guddis Jeth).

3. As per the prosecution version, there were two incidents which occurred on 5th September, 2005 at the shop of Sunita, located at Gali Masjidwali, New Roshanpura, Najafgarh. In the first occurrence, at about 3.30 p.m., the three appellants had caused injuries to Sunita and her husband Dilbagh, who were then taken to Rao Tula Ram Memorial Hospital, Jafarpur, Delhi. The second occurrence happened at about 5.00 p.m. Suman suffered injuries. She was declared brought dead by the same hospital. Zila Singh also sustained injuries in the second occurrence.

4. As far as the first occurrence is concerned, appellant Pawan in his statement under Section 313, Code of Criminal Procedure, 1973 (Cr.P.C.) has accepted that he was present along with appellant Sanjay, but has stated that it was injured Dilbagh who had first beaten him and he was saved by Sanjay. Sanjay had snatched danda from the hands of Dilbagh and had given blow to Dilbagh. This averment was not a one off remark but was repeated several times, in response to various questions. Pawan has claimed that the appellant Guddi was not present at that time as she had gone to market. Pawan has further stated that he was taken

to the police station at about 3.00-3.15 p.m., after the first occurrence, and he did not know about the second occurrence. He has given a detailed response regarding motive and reason, which we shall refer to subsequently. Appellant Sanjay in his statement, under Section 313 Cr.P.C, has stated that quarrel had taken place on 5 th September, 2006, when both sides gave beatings to each other. Dilbagh and Sunita had caused injuries to them. At that time, Guddi was not present there. He has denied as incorrect his involvement in the second occurrence. Guddi in her Section 313 Cr.P.C. statement has denied her involvement whatsoever in the two incidents.

5. We have adopted this unusual manner of first referring to the statements of the appellants, under Section 313 Cr.P.C., to curtail prolixity and to focus on the core disputed facts. About the first occurrence at about 3.30 P.M. there is controversy and doubt viz. involvement of Guddi. Appellant Pawan and Sanjay accept their presence and admit that a quarrel had taken place with Sunita and Dilbagh, on 5th September, 2006 at 3.30 P.M. The second occurrence has been vehemently questioned and contested by the appellants on various grounds. The First Occurrence 6. With regard to the first occurrence, appellants Pawan and Sanjay have submitted that Dilbagh and Sunita were the culprits and Sanjay had caused injuries in retaliation, after they were attacked.

7. On the first occurrence, we have statements of Dilbagh Singh and Sunita, who appeared as PW-2 and PW-3, respectively. PW-2 has stated that he came to the shop, at about 3.00 p.m., from the Masjid where he was working after being informed that some persons had gathered and an altercation was going on at the shop. CrI.A.Nos. 857/2009, 858/2009 & 860/2009 When he Page 4 of 29 reached, he found his wife Sunita lying on the ground. He named the three appellants and stated that they had encircled him. He has claimed that he was hit by Pawan and Sanjay, and Guddi slapped him. His daughter Suman reached the spot and saw him bleeding. She made a call to police at number 100. Police came there and removed PW-2 and PW-3 to the hospital at Jafarpur. After about one or one and a half hour, dead body of Suman was brought to the hospital. Police recorded statement of his father-in-law Zile Singh (PW-1) and others. In the cross-examination he has deposed that after the first altercation the appellants ran away

from the spot he and his wife reached the hospital at 4.00 p.m. He has further stated that Zile Singh was not present at the time of the first occurrence and had reached the spot later on. In the cross-examination, on behalf of the appellant Pawan, PW-2 has stated that in his presence no money was snatched and brother of Sanjay was taken in the PCR Van, but was dropped at the police station. Brother of Sanjay was not taken to the hospital. In the subsequent portion of the cross-examination, the name of the brother of Sanjay was given as Kulber. This is an important clarification as it was wrongly suggested during the course of arguments that reference to brother of Sanjay would be Pawan. Pawan himself was facing prosecution and there was no need for PW-2 to refer to Pawan as brother of Sanjay and not by name.

8. Sunita (PW-3) has deposed on the similar lines and averred that Guddi, Pawan and Sanjay had come to the shop. Pawan and Sanjay were having Lathis in their hand. Guddi caught hold of her hair. No one was present in the shop at that time, but somebody had called her husband. The three appellants gave beatings to her and her husband. Her daughter Suman had called police at 100 number. PW-3 and her husband were taken to the hospital in a PCR Van, but the appellants fled from the spot before arrival of the PCR. In the cross-examination she was confronted with her statement (Ex.PW3/D1) under Section 161 Cr.P.C. where it was not recorded that Guddi was present with Pawan and Sanjay. Thus, PW-3 in her Section 161 statement had not named or implicated Guddi. Neither had she stated that Guddi was present during the first occurrence, at about 3.00-3.30 p.m.

9. Presence of Guddi at the time of first occurrence is not mentioned in the complaint (Ex.PW1/A) made by Zile Singh, which formed the basis of rukka. Zile Singh in Ex.PW1/A had claimed that he was present at the spot when the first occurrence had taken place in which his daughter Sunita (PW-3) and son-in-law Dilbagh (PW-2) were given beatings by the duo i.e. the appellants Pawan and Sanjay. It would be sufficient to state here that presence of Zile Singh, who had appeared as PW-1, at the first occurrence has to be disbelieved in view of his statement in the Court wherein he did not aver that he was present at the shop during the first occurrence. However, Ex.PW1/A was recorded at about 9.50 p.m. on 5th September, 2006. By that time Zile Singh had sufficient opportunity and

occasion to interact with PW-2 and PW-3 in the hospital and, in his statement, he has mentioned about the presence of only Pawan and Sanjay at the time of the first occurrence at about 3.00-3.30 p.m and had not implicated and stated that Guddi was present. This position is corroborated from the recordings made in the PCR Form (Ex.PW13/A) on 5th September, 2006 at 15.41 hours. It is recorded therein that Suman had made a call from telephone number 6513822 to the effect that boys from neighbourhood had stolen money from her shop and injured her father. She knew those boys. There was no reference to the presence of a woman in the said statement. In these circumstances, benefit of doubt has to be given to Guddi Devi, with regards to her presence at the time of first occurrence.

10. Constable Kashi Nath (PW-13) on 5th September, 2006 was posted in police control room and at about 3.41 p.m. he had received information given by Suman from telephone number 65138522 that neighbourhood boys had looted money from her shop and her father was beaten up. She knew the boys from before. He proved the police control room form 52(X) as Ex.PW13/A.

11. There is ample evidence regarding presence of Pawan and Sanjay and we are inclined to accept the statement of PW-2 and PW-3 to this extent. It transpires that the two appellants had come to the shop of Sunita (PW-2) and this fact has been established beyond doubt. Appellant Pawan in his statement, under Section 313 Cr.P.C, has accepted that they went to the shop of Sunita, at the time of the first occurrence. The motive behind this incidence shall be examined later.

12. We notice that during the first incident injuries suffered by Dilbagh (PW-2) and Sunita (PW-3), as recorded in the MLCs Ex.PW10/A and Ex.PW-10/ B, were simple in nature. There were two bruises on PW-2. One each on the two legs and lacerated wound over the scalp of 13 cm. In the case of PW-2 generalized tenderness was seen. There was no history of convulsion, vomiting and ENT (Ear, nose and throat) bleeding, in either case. The motive 13. Before we examine the second occurrence, it will be appropriate to consider and know the motive or the cause behind the first occurrence. This is necessary as it would throw light on the second occurrence.

14. PW-3 has deposed that on 4th September, 2006, Suman was cleaning utensils when Pawan and Sanjay came to their house and threw pebbles on her and indulged in eve teasing. At that time PW-3 was present at the shop. Thereafter, PW-3 went and spoke to the mother of Pawan i.e. Guddi and had asked her to make the two boys, i.e. Pawan and Sanjay, understand that they should behave. Appellant Guddi had purportedly used abusive language. On 5th September, 2006, PW-3 had spoken to the villagers about the said incident. The villagers asked her not to escalate the matter as Suman was a girl. They assured that they would take care. Dilbagh (PW-2) has deposed that PW-3 had informed him about the occurrence of 4th September, 2006 and, thereafter, PW-2 had spoken to Guddi at her residence. PW-3 in her cross-examination was confronted with her statement (Ex.PW3/D1) wherein she had mentioned that she had abused Guddi. She deposed that Guddi had told her that she would scold her sons.

15. Appellant Pawan in his statement, under Section 313 Cr.P.C., has stated that deceased Suman used to like him and wanted to elope and get married to him. They used to study in the same school and earlier he used to visit Sumans house, but later objections were raised. His statement under Section 313 Cr.P.C. to this effect is rather expatiated, but it would be suffice to note that Pawan had stated that one day before the occurrence his mother i.e. Guddi Devi had confronted him and stated that she would take him to Sunita and Dilbagh. She had even cursed him. Next day he along with Sunny, his uncles son, had gone to the shop of PW-3. PW-3 was having a saria in her hand and she started abusing him. PW-2, who was playing cards, caught hold of his neck and was carrying a danda. At that time, Sunny, uncles son, gave a danda blow to Dilbagh (PW-2) but no hurt was caused to Sunita. Police came and took Dilbagh to the hospital.

16. There is no evidence or material that Suman liked Pawan except for the averment made by the appellant Pawan in his statement under Section 313 Cr.P.C. Pawan, in his statement, had mentioned about the hand written notes or letters, but none were placed on record. On the contrary, as per ExPW13/A i.e. the Police Control Room Form information regarding the first occurrence was given by Suman. This is specifically recorded in the said form. The appellants had produced defence witnesses but they have not averred or stated a single word about any

relationship between Pawan and Suman.

17. Deceased Sunita was a girl aged about 16 years, as per her MLC (Ex. PW-10/C) and the post mortem report (Ex.PW7/A). She belonged to a conservative family. Without discounting the fact that girls from conservative families can fall in love, we do not think that there is any material to suggest that Suman liked appellant Pawan. Factum that Suman had made a telephone call to the police soon after the occurrence, in which her father and mother suffered injuries, is a clear indicator to the contrary. In fact, Suman stated to the effect that Pawan and Sanjay had robbed and stolen money from the shop. In these circumstances, it is difficult to give credence to the appellant Pawans averments regarding his over friendly relations with Suman.

18. The motive proved and established by the prosecution has, however, come to the rescue and endeared the appellant Guddi. She has been implicated because she is the mother of Pawan. The Second Occurrence 19. This brings us to the second incident in which Suman had lost her life. At the time of the second occurrence, PW-2 and PW-3 were in the hospital and were not present at the shop i.e. the place of occurrence. Zile Singh (PW-1) has claimed that he was present at the spot. He has averred that at about 5 p.m. he was present at the shop when the three appellants came there and dragged Suman out from the shop. Suman managed to free herself and ran about ten steps towards her house. Appellant Guddi apprehended Suman and threw her on the ground and the two boys thrashed Suman with lathi with which they were armed. PW1 tried to intervene, but was beaten up. He fell down on the ground and became unconscious. He was removed to the hospital in a PCR Van and his statement (Ex.PW1/A) was recorded. Suman was taken to the hospital, but he did not know who had taken her. In the cross-examination, however, he has stated that in the PCR Van, his wife, his son Rahees and Suman were there. This discrepancy in the statement of PW-1, who was about 70 years of age at that time, does not impel us to disbelieve PW1s substantive statement. PW-1, when cross-examined, has accepted as correct that he had a weak memory and could not remember details like house numbers. We have examined PW1s statement with great care keeping in mind his age, the fact that he is deceaseds relative, the motive and the cause of

occurrence, in order to exclude the possibility of a false statement and/or wrong/innocent person being implicated.

20. Before us it was vociferously argued that PW-1 was not present at the spot at the time of the second occurrence. It was highlighted that PW-1 is the maternal grandfather of Suman i.e. father of Sunita and, therefore, his presence at the shop should be doubted and disbelieved. We are not inclined to accept the said contention. Presence of PW-1 at the shop at the time of the second occurrence has been explained. PW1 has stated that on 5th September, 2006 he went to collect his pension and he was apprised of the first occurrence later. Thereafter, he came to the shop where Suman was present. He has deposed that Suman was moved to the hospital in a PCR Van and he had become unconscious for about 2-3 minutes. He has deposed that Sunita and Dilbagh had already been taken to the hospital before he reached the spot and at the time of occurrence he was the only person present and no one else was present. As noted above, rukka was recorded on the basis of his statement (Ex.PW1/A).

21. Counsel for the appellants has tried to highlight minor discrepancies in the statement of PW-1 to the effect that he had stated that the three appellants simultaneously came from the roof through stair case and that his statement (Ex.PW-1/A) was recorded at 5.00 p.m.-5.30 p.m. These minor discrepancies, in the statement of an aged rustic villager 70 years old, do not affect the credibility and truthfulness of his statement as to the actual occurrence.

22. Dr. A.S. Yadav (PW-21) had examined Zile Singh (PW-1) on 5th September, 2009 at 8.00 p.m. vide MLC Ex.PW21/A. No swelling or deformity was seen, but there was tenderness in the right palm and right calf muscle. PW-21 advised medicines and injections. The crime team report (Ex.PW5/A) records that they had inspected the spot between 7.45 p.m. to 9.00 p.m. on 5 th September, 2006. The name of the complainant was mentioned therein is Zile Singh (PW-1).

23. At this stage, it would be important and relevant to note the complete change in the defence of the appellants in the present appeals viz. the defence taken by the appellants at the Trial Court. In the appellate proceedings it is submitted that PW-1 was not present at the spot and had not seen the occurrence, whereas

before the Trial Court the appellants had accepted the position that PW-1 was present at the time of the second occurrence. It was suggested and PW-1 was crossexamined to the effect that the appellant Sanjay had come to the spot to enquire about his brother and PW-1 chased him and tried to hit him with danda. Suman tried to intervene and save Sanjay. In this process, PW-1s danda blow meant for Sanjay had hit Suman on her head. This suggestion was not only given to PW-1 in the cross-examination on behalf of Pawan, but was reiterated by Pawan in his statement under Section 313 Cr.P.C. He has averred that Sanjay had told him that someone tried to intervene and save him and for this reason danda blow given by Zile Singh (PW-1) fell on Suman, as a result of which she fell on the ground. Zile Singh had caused the said injuries and had falsely implicated Sanjay. Interestingly, Sanjay in his Section 313 Cr.P.C statement is quiet on the said aspect.

24. Appellants Pawan and Guddi Devi also led defence evidence. Parsu Ram (DW-1), Umrao Singh (DW-2), Rohtash (DW-3) and Chanda (DW-4) villagers residing in Roshanpura, Najafgarh have deposed that Zile Singh (PW-1) had given lath blow to Sanjay which fell on Suman. We have disbelieved the statements of DW-1 to DW-4 because they have tried to help and save the appellants for reasons stated below. We have presently referred to the said statements and depositions to record and conclude that the appellants never doubted or questioned that PW-1 was not present at the crime spot at the time of the second occurrence. The case set out by the appellants was that only Sanjay had gone to the spot and when Zile Singh had tried to hit Sanjay with a danda, Suman came to save and intervene, but the blow landed on Suman. Suman ultimately died because of the said blow. The plea now taken by the appellants that Zile Singh (PW1) was not present is an after-thought. Presence of PW1 at the spot and that he was an eye-witness should be accepted. We reject the contention of the appellants that PW-1 was not present at the time of the second occurrence.

25. Regarding the contention that Zile Singh had tried to hit Sanjay and the blow had fallen on Suman, we record that the appellants have not once raised the said contention before us and even otherwise we do not think that the said contention merits acceptance. Parsu Ram (DW1) has stated that Zile Singh hit Suman by lath

(danda) and thereafter ran away. He and others picked up Suman and put her on a cot. Police was informed. DW-1 has stated that Zile Singh came to the Chowk i.e. near the shop at about 5.00 p.m. If we are to believe the appellants version we still would fail to comprehend why and for what reason the appellant Sanjay would come alone, after the earlier occurrence. DW-1 has deposed that he never met and made representation to police that Sanjay was wrongly arrested. In the cross-examination he has deposed that he did not know whether Pawan was arrested and charged with the murder in this case. He has claimed that he did not know that Pawan was in jail and he had not met Pawan after the said date. He had come to depose as a defence witness on behalf of Pawan on the request of his sister.

26. Umrao Singh (DW-2) has stated that he was a neighbour of Dilbagh and had seen Zile Singh (PW-1) trying to hit Sanjay and in that process the lath (danda) hit Suman, who fell down. Thereafter police came, but he was busy in his own work. He has deposed that he had been called by Pawans sister to make the said statement in the Court. For substantially the same reasons as given while dealing with statement of DW1, we do not accept DW 2 statement that the blow was given by Zile Singh (PW1).

27. Rohtas (DW-3), interestingly, had also appeared as a prosecution witness PW-9. As defence witness he has stated that he had seen the two occurrences at 3.00 p.m. or 3.15 p.m. and then at 5.15 p.m. At 3.00 p.m. or 3.15 p.m. altercation had taken place between Dilbagh (PW-2) and appellant Pawan and at that time police came and took Pawan and Dilbagh (PW-2) with them. At the time of the second occurrence at 5.15 p.m., Zile Singh (PW-1) was sitting outside the shop. PW-1 chased Sanjay with lath (danda) in his hand and was trying to hurt him. Deceased Suman tried to intervene and the blow, which was meant for Sanjay, fell on Suman who fell down. She was lifted by a neighbour, Sayyad and his wife. Police reached the spot at about 6.00 or 6.30 p.m. In the cross-examination he has deposed that police did not carry out investigation in his presence and nobody had told him about the case. He was not aware whether Pawan was charged with murder, though he knew that the appellant Guddi was facing murder trial. As PW-9, Rohtas had deposed that on 5th September, 2006 at about 2.30 p.m. or 3.00 p.m.

altercation had taken place between Sunita (PW-3) and appellant Pawan, but he did not know the reason. Thereafter, he had gone to the fields. At that time, Suman was not present at the shop. He has further stated that he had no knowledge whether Dilbagh (PW-2), Sunita (PW-3) and Sanjay were taken from the spot. He did not know whether a PCR van had reached the spot and removed the injured to the hospital. He has further deposed that he had not apprised the police that people were not willing to come forward and give statements as most villagers belonged to the Mula Jaat community.

28. Chanda (DW-4) has stated that he was residing in the village for last 40-45 years and his house is located at a distance of 250 meters from the house of Dilbagh (PW-2). Quarrel had taken place on two occasions. One at 3.00 p.m. and another at 5.00 p.m. He had deposed that Pawan and his mother Guddi were present and they quarreled with Zile Singh (PW-1). Appellants Guddi and Pawan were taken by the police at 3.00 p.m. The second quarrel had taken place at 5 p.m. law. He had deposed that in the second quarrel at 5.00 p.m. Sanjay was present and granddaughter of Zile Singh was also present. In the cross-examination, he has deposed that Sunita, daughter of Zile Singh and his son-in-law Dilbagh were taken away by the police. Appellant Guddi was also taken away by the police at 3.00 p.m. House of Guddi was located at a distance of 100 meters from the place where they were playing cards. DW-4 along with several others had gone to the police station at about 7.00-8.00 p.m. and had remained there for about half an hour or 45 minutes. He had come to depose in the Court at the request made by Mausli of Pawan and sister of Sanjay. Contradictions and inconsistencies in testimony of DW-4 are apparent and substantial. Persons with reference to the first and second occurrence have been wrongly stated.

29. At this stage, it would be relevant to refer Ex.PW4/A i.e. the records maintained by the Police Control Room and the recordings made by the police officers, who had reached the spot. At about 17.17 i.e. 5.17 p.m. a call was received from telephone number 65138522 i.e. from the telephone at the shop that violence and quarrel was taking place. Thereupon, the police reached the spot at about 5.28 p.m. and at 5.36 p.m. the following report was sent: Two boys of the village ran away after hitting daughter of Dilbagh. The girl is injured. She is being

taken to hospital along with his maternal uncle (mama). About 150/200 people of the village had gathered there.

30. The said report at 5.36 p.m. makes reference to the two boys of the village, who had hit daughter of Dilbagh (PW-2) i.e. Suman, who was taken to the hospital. The next report states that Suman was declared brought dead and her head had ruptured from behind. Further report in Column 747A/1833-293 records that maternal grandfather of the girl i.e. Zile Singh had disclosed that injury was caused by hitting leg of the bed/cot. This incident had occurred after the quarrel a day before, when Suman was washing utensils and a boy, named Sanjay had thrown pebbles at her. This was informed by Suman to her mother. Mother of Suman had gone to the house of Sanjay and had protested. Next afternoon the boys came and had indulged in violence. It is an accepted position and appellant Pawan has stated that Sunita (PW3) mother of deceased Suman had on 4th Sept.,2009 protested and spoken to Guddi mother of Pawan. Thus reference to Sanjay and his mother in the said report Ex.Pw4/A is incorrect and in fact reference is to the appellants Pawan and his mother Guddi.

31. The prosecution relies upon statement of Rahees Ahmad (PW-6) mama of Suman i.e brother of Sunita. In his examination-in-chief he has stated that at about 5.00 p.m. on 5 th September, 2006 when he reached the shop of his sister at Masjidwali Gali, New Roshan Pura, he saw appellants Pawan, Sanjay and Guddi Devi running away. He saw his father Zile Singh (PW-1) and niece Suman in an injured condition. He made a call at 100 number. A PCR Van reached there and removed his father and niece to the hospital. He went with them. He has stated that he had informed the name of the perpetrators to the police. He found his sister Sunita (PW-3) and brother-in-law Dilbagh (PW-2), admitted in the hospital. In the examination-in-chief he has not stated that he had seen the actual occurrence. However, he was extensively cross-examined by the counsel for the appellants, in which he elaborated that he had seen the actual occurrence wherein violence took place i.e. he saw the appellants Pawan, Sanjay and Guddi. Pawan and Sanjay were having lathi in their hand. Guddi had caught hold of Suman and Sanjay gave a lathi blow to Suman. Thereafter, Guddi caught hold of his father and Pawan hit his father with lathi. We are not inclined to accept the statement made by PW-6 in

the crossexamination. PW-6s examination-in-chief is more credible and trustworthy. PW-6 had certainly reached the spot but immediately after the occurrence and had made a telephone call to the police. However, he may not have actually seen the occurrence itself. PW-6 was working as a labourer and in the cross-examination accepted that he had reached his home at about 4.00 p.m. and thereafter left for the police station when he came to know that his sister and brother-in-law had sustained injuries and had been taken to the hospital. He remained there for about 35-40 minutes and then came back to the shop. In case PW-6 would have seen the actual occurrence, he would have been made the complainant and his deposition in examination-in-chief would have been more elaborated and detailed. On the other hand, his father Zile Singh (PW-1), who was aged about 70 years, was the complainant as he claimed that he had seen the actual occurrence. We also note that PW-1 in his deposition in the Court had not stated that PW-6 had seen the actual violence i.e. use of lathis. In the crossexamination he has stated that no one was present except Suman and him when accused persons had come. He has stated that Rahees, his son and the PCR Van almost reached there simultaneously and the police had reached the spot within 4-5 minutes.

32. Learned Additional Public Prosecutor has relied upon Ex.PW1/A i.e. the statement made by Zile Singh (PW-1), which formed basis of rukka. It is mentioned that on the second occasion the three appellants had come and were hurling abuses. According to the rukka, Zile Singh (PW-1) along with his son ran behind the three appellants to save Suman. Ex.PW1/A was recorded on 5th September, 2006 at about 9.50 p.m. i.e. after a gap of nearly 5 hours. Zile Singh was taken to the hospital and examined at about 8.00 p.m.. MLC (Ex.PW10/C) of the deceased Suman was recorded at 6 p.m. and mentions that the patient was declared brought dead. There is thus a gap of about 5 hours between the second incident and when Ex.PW1/A was recorded. We have mentioned about the motive or the cause which led to the said occurrence on 5 th September, 2006 when son of Guddi and his nephew had eve teased and troubled Suman. Sunita (PW-3) had gone to the house of Guddi and had protested against the conduct of Pawan and Sanjay.

33. Keeping in view the aforesaid facts, we feel that there is no credible evidence to show that Guddi was present at the time of the second occurrence or had indulged in any violence. In this connection, we also rely upon the PCR Form (Ex.PW4/A) details which mentions that two boys of the village had caused injuries to Suman. This was the first statement forwarded by the PCR officials, who had visited the spot, to the control room. We also note that Guddi, as per the police version, was arrested on 6th September, 2006 at 6.30 a.m. vide arrest memo Ex.PW16/A. Appellant Guddi has stated that she was arrested from her house on 5th September, 2006 in the evening. She has accepted that on 4th September, 2006, Sunita (PW-3) had come to her house and told her that her son Pawan had given a letter to PW-3s daughter Suman. Sunita had allegedly shouted to make Pawan understand that he should maintain distance from Suman, otherwise she would kill him. Appellant Guddi, at that time, had suggested she would talk to her son and PW-3 should also talk to her daughter. On this suggestion, PW-2 had abused her.

34. This brings us to the question of presence of the appellants Sanjay and Pawan and whether they had caused injuries to Suman at 5.00 p.m. on the second occasion. As noted above, Police Control Room Form (Ex.PW4/A) supports the version that two boys had caused injuries to Suman. Zile Singh (PW-1) has averred that Pawan and Sanjay had caused injuries to Suman. Pawan and Sanjay accept their presence at the spot on the first occasion. Pawan claims that he was arrested and detained in the police station on the first occasion and thus could not have been miraculously present later on. There is, however, no material or evidence to support the said contention. In response to the question that his mother was arrested on 6th September, 2006 at 6.00 a.m., Pawan has stated that he came to know about the arrest of his mother while he was in Tihar Jail. As per the prosecution case and arrest memo Ex.PW22/B, Pawan was arrested on 6 th September. 2006 at 4.30 p.m. Pawan claims that he was taken to the hospital after the first occurrence on 5th September, 2006, but again there is not material or evidence to support this proposition. Pawan further claims that Sanjay had gone to the spot or the place of occurrence at 5.00 p.m. Presence of Sanjay at the spot is supported by the statement of Zile Singh (PW-1). Sanjay was arrested vide arrest memo Ex.PW22/A on 6th September, 2006 at 4.00 p.m. from the same location

from where appellant Pawan was arrested. As stated after the first occurrence, violence and police complainant, it is difficult to accept that the appellant Sanjay would have gone to the shop once again after 2 hours all alone.

35. Even if we disregard the recovery of the weapons of the offence, we do not think that any benefit could accrue to the appellants Pawan and Sanjay. It was pointed out to us that there is discrepancy with regard to place of recovery, in the statement of PW-6 and the police witnesses, and there is discrepancy in the description as FSL report ( Ex. P4 and P2) has mentioned one of the Lathi as wooden stick. FSL report in any case does not show presence of blood on the two bamboos/sticks.

36. The PCR Form (Ex.PW4/A) was recorded by Constable Mahesh (PW-4), who was on duty in the Police Control Room, Police Headquarters. He has stated that on 5th September, 2006 at 5.17 p.m. he had received telephonic information about a quarrel at RZ-43, Masjid Wali Gali, New Roshan Pura. The said information had been received from telephone number 65138522 and he had flashed the said information. SI Udham Singh (PW-5) was posted as Incharge, Mobile Crime Team, which had inspected the spot at about 7.15 p.m. after receiving information from the control room. CrI.A.Nos. 857/2009, 858/2009 & 860/2009 He had proved the Page 24 of 29 Mobile Crime Team Report as Ex.PW5/A. Scene of the crime was also photographed by Constable Prabhu Dutt. Dr. Shankar Narayan (PW-10) had examined Dilbagh (PW-2), Sunita (PW-3) and Suman and has proved their MLCs as Ex.PW10/A, B and C, respectively. He had opined that the injuries suffered by PW-2 and PW-3 were simple blunt injuries, whereas Suman was brought dead in the hospital through PCR, Zebra 93 by ASI Hawa Singh (PW-24).

37. The site plan of the occurrence was proved by Constable Hardeep Singh (PW-19), who had visited the spot on 9th November, 2006 and had prepared the scaled site plan marked Ex.PW19/A on 11 th November, 2006. The photographs Ex.PW20/1 to Ex.PW20/14 were proved by Constable Brahm Dutt (PW-20). SI Anand Prakash (PW22), SI Amarpal Singh (PW-25) were involved in the investigation of the present case with Inspector Kailash Chander (PW-26), the Investigating Officer. SI Amarpal Singh (PW-25) had prepared the site plan

marked Ex.PW25/A.

38. ASI Hawa Singh was examined as PW-24. He has deposed that he had visited the location twice on 5th September, 2006. On the first occasion visit was made at about 15.42 hours when PCR call was made regarding a quarrel. Daughter of Dilbagh had disclosed to him that 2 or 3 persons had caused injuries to them. Injured were removed to the hospital in a PCR Van. Thereafter, at 17.18 hours another call was received from the same place. On this occasion, Suman was found in injured condition. She was taken to the hospital. Her maternal uncle accompanied them and on reaching the hospital Suman was declared brought dead.

39. In view of the aforesaid position, we accept the prosecution version that appellants Pawan and Sanjay were the perpetrators, who had hit and injured Suman at 5.00 p.m. PW-1s statement to this extent is corroborated and fully supported by the PCR Form (Ex.PW4/A) and statement of PW-2, PW-3 on the question of motive. Cross-examination of the witness on behalf of the appellants Pawan and Sanjay also fortifies the prosecution version, at least to the effect that Sanjay was present at the time of the second occurrence. We have referred to the MLC (Ex.PW10/C) of Suman that she was brought dead to the hospital at about 6.00 p.m. The said MLC was proved by Dr. Shankar Narayan (PW-10), who had examined Dilbagh (PW-2) and Sunita (PW-3) vide MLC (Ex.PW10/A and Ex. PW10/B). He has stated that Suman was brought dead to the hospital through PCR, Zebra 93 by ASI Hawa Singh (PW-24). She was having lacerated wound over left temporo parietal region measuring 15 cm bone deep. PW-10 was not cross-examined on whether Pawan was brought to the same hospital for examination but was cross-examined whether Kulber, brother of Sanjay, was produced before him by the police on 5th September, 2006 along with Dilbagh and Sunita.

40. Now, we will examine some of the other contentions raised by the appellants in the oral arguments and written submissions. It is submitted that PW-1, 2, 3 and 6 are related witness and, therefore, their testimonies should be disbelieved. It is further submitted that PW-1 is the only eye witness, whose presence itself is

doubtful, and therefore Court should not convict the appellants on the basis of the alleged single eye witness. It is also submitted that there was delay in recording of FIR. Common intention under Section 34 IPC should be disbelieved as this is a case of single blow. PW-1, 2, 3 and 6 no doubt are related to the deceased, but their testimonies cannot be disbelieved and rejected out rightly because they are related to Suman. Their testimonies have to be examined with great caution and care to ensure that no person is falsely implicated and no innocent person is punished. Normally relatives would not like the real culprits to escape. We have, therefore, examined the statements of PW-1, 2, 3 and 6 with great caution and care. We have thus given benefit of doubt to Guddi Devi. However, as far as involvement of appellants Pawan and Sanjay is concerned, there is ample evidence to show their presence on the two occasion/incidents. The contention that names of the appellants is not mentioned in the PCR Form (Ex.PW4/A) does not help the appellants. PCR Forms were recorded on the basis of the information given by the caller, who was in a hurry to inform the police. PCR Form normally contains brief information and not elaborated details. We have referred to the PCR Forms and do not find any reason to acquit the appellants by giving them benefit of doubt solely because their names do not find mention in the PCR Forms. Appellant Pawan has accepted his presence and presence of Sanjay at the time of the first occurrence. He also claims that Sanjay was present at the time of the second occurrence, but he was detained and with the police at the time of the second occurrence. Common intention is apparent when we accept that Pawan and Sanjay had together come to the shop after the first round of violence. The five hour gap in recording of FIR has been examined earlier. Another contention raised is that HC Ramesh, who had visited the hospital, as per the statement of Constable Rishi Pal (PW-23), was not examined. It is stated that HC Ramesh was not cited as a witness in the charge sheet. This is incorrect. HC Ramesh was cited as a witness, but statement was made by the Additional Public Prosecutor as recorded in the order dated 28th January, 2009. His name was dropped since SI Anand Prakash (PW-22) had deposed on the relevant facts.

41. In view of the aforesaid discussion, we allow the appeal filed by Guddi giving her benefit of doubt. She is acquitted and her conviction is set aside. However, we dismiss the appeals filed by Pawan and Sanjay. Their conviction and sentence

under Section 302 read with Section 34 and 323 read with Section 34 IPC are maintained. The appeals are accordingly disposed of. (SANJIV KHANNA) JUDGE (SIDDHARTH MRIDUL) JUDGE MAY 1st , 2013 NAVKR

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