

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Criminal Appeal No. 15-DB of 1999

Date of Decision : 31.01.2008

Alakh Singh @ Anokh Singh.

... Appellant

Versus

State of Punjab.

... Respondent

**CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL,
HON'BLE MR. JUSTICE S.D. ANAND.**

Present : Mr. Ashit Malik, Advocate,
for the appellant.

Mr. Rajesh Bhardwaj, Deputy Advocate General, Punjab,
for the respondent.

S.D. Anand, J.

Appellant – Alakh Singh @ Anokh Singh is in appeal against his conviction under Section 302 of the Indian Penal Code by the learned Trial Judge, on the proven charge that he had murdered his own sibling Tara Singh.

On retirement from the Army, Gulzar Singh (PW-6) resumed routine life in Village Todar Majra where he was joint in Mess and residence with Tara Singh. On the night intervening 5/6.7.1997, Gulzar Singh and Tara Singh were asleep in different rooms. The room, in which the latter was asleep, did not have any door or window affixed. Gulzar Singh woke up at about 11.30 p.m. on hearing the raula of “Mar Ditta Mar Ditta” raised by Tara Singh. On going over, Gulzar Singh found appellant –

Alakh Singh standing near the head of Tara Singh; while the former was carrying a kahi in his hand. Appellant did not respond on being quizzed by Gulzar Singh to indicate what exactly he was doing over there. The appellant gave a kahi blow on the left cheek of Tara Singh. Thereafter, the appellant left the kahi on the right side of where Tara Singh was lying and fled to safety. On going near him, Gulzar Singh found that the left jaw of Tara Singh had been cut on account of the kahi blow, that there was blood all over and Tara Singh died at the spot itself. Gulzar Singh brought along PW7 – Hari Singh (Ex. Sarpanch of the village) after intimating the incident to him (i.e. PW7 – Hari Singh). It was PW7 who telephoned the police which (police) came over there, recorded the FIR (Ex.PF/1) and completed the formalities at the spot. Ex.P1, the kahi with which the appellant had committed the crime, was also taken into possession and so also was blood stained earth, Dari (Ex.P2) and Pillow (Ex.D3) which too were blood stained.

In order to prove the charge, the prosecution examined Dr. Amrit Sood (PW1), Gian Chand, Draftsman (PW2), Dilbagh Singh (PW3), C. Avtar Singh (PW4), H.C. Sukhdev Singh (PW5), Gulzar Singh (PW6), Hari Singh (PW7), Const. Balbir Singh (PW8), Inspector Jasdev Singh (PW9) and Varinderjit Singh (PW10). Ex.PR is the report of the Chemical Examiner.

In support of the plea of innocence in the course of the statement of the appellant – Anokh singh, under Section 313 Cr.P.C., he pleaded as under:-

“My brother Baldev Singh was murdered by complainant and I was falsely implicated in that case. Gulzar Singh and Hari

Singh were the police witnesses against me and I was acquitted in that case. Deceased Tara Singh executed a will in favour of my sons. Gulzar Singh is not having any Male child. He wants to grab the property of Tara Singh. After committing his murder he implicated me in this false case. Tara Singh was residing with me and he was looked after by me and my sons. Earlier my wife was also murdered by Gulzar Singh and he implicated Baldev Singh in a false case, who was acquitted in the year 1970. I am innocent.”

Ex.D1 (certified copy of judgment dated 21.09.1987 in Sessions Case No. 7/21.8.1987, Sessions Trial No. 8/25.8.1987, in case FIR No. 38 dated 13.06.1987, under Section 302/201 of the Indian Penal Code) and also Ex.D2 and D3 (Certified copies of the statements of Gulzar Singh and Hari Singh respectively in the course of that trial) were tendered into defence evidence.

In support of the finding of conviction, the learned Trial Judge noticed that there was no reason why Gulzar Singh should depose falsely against the appellant who is his real brother.

Mr. Ashit Malik, the learned counsel for the appellant, opens the arguments by arguing that the entire prosecution version is a made up affair in order to implicate the appellant. The plea raised in the context is that even on an earlier occasion, an effort had been made by his brother Gulzar Singh and also Hari Singh to implicate him in a false case pertaining to the murder of his wife, though he earned a verdict of acquittal in the case aforementioned.

We do not buy the argument. As would be evident from the

perusal of Ex. D1, appellant – Alakh Singh was indeed prosecuted in case FIR No.38 dated 13.06.1987 registered at Police Station Kharar but he was exonerated from liability as Gulzar Singh did not support the prosecution plea. It is not the plea that Gulzar Singh supported the prosecution version and that the appellant was acquitted on merits after discarding his testimony. If Gulzar Singh had not ditched the prosecution plea in that case and appellant – Alakh Singh had been acquitted, it could perhaps lie in his mouth to hear his grievance. However, it is not presently so because Gulzar Singh did not support the prosecution plea in that case and the appellant came to be acquitted therein on the basis thereof.

The eye witness account in the statement of PW6 – Gulzar Singh and PW7 – Hari Singh is fully supportive of the findings recorded by the medical evidence. It would be relevant to quote here that the following injuries were found on the person of the deceased by PW1 – Dr. Amrit Sood:-

- “1. Incised wound 12cm x 7cm, bone deep. Muscles and great vessels were cut. Brain matter was protruding out on the left side of the face behind the ear extending to the neck behind the angle of mandible.

On dissection of the skull, fracture of mastoid occipital bone were present. Underlying brain matter, meninges were incised and pale.

2. Incised wound on the left side of face extending from near the outer angle of the eye upto lateral angle of mouth 10 x 3 x 2cm underlying muscle zygomatic bone maxilla were fractured.
3. On right side of face incised wound of 7 x 3 x 1.5cm was

present with the fracture of body of mandible was present.

Bone was protruding out from the wound.

4. On the left arm incised wound was present in the middle 1/3rd, 5x1cm underlying bone was fractured.”

Apart therefrom, the Medical Officer had categorically indicated that “in my opinion the cause of death was due to multiple injuries to the vital organs leading to haemorrhage shock and death. All the injuries were ante-mortem in nature and injuries No.1 to 3 were sufficient to cause death in the ordinary course of nature.” Dr. Amrit Sood (PW1) further indicated that it was a case of immediate death following the sustaining of injuries by the deceased.

The impugned occurrence had been notified to the police without any delay. The impugned occurrence had taken place at 11.30 p.m. and the police had been notified at 12.05 a.m. The fact of prompt lodging of the First Information Report itself is indicative of bona fides on the part of the complainant party. Though it is true that mere unexplained delay in lodging of the First Information Report is not fatal to an otherwise validly proved prosecution plea, at the same time, if FIR in a particular case had been lodged without any unexplained delay, it enhances the credibility to be attached to the averments made in the course thereof because the possibility of the first informant having consultation with any legal brain or some such like quarters is completely ruled out.

No other point was argued.

The present is, thus, a case in which the murder of a brother by another brother had been witnessed by a third brother who would certainly not like the real culprit to escape. The ocular presentation is fully supportive

of the medical finding which stand quoted in an earlier part of this judgment.

Going by the natural human conduct all the world over, it would be unnatural to accept that a brother would depose falsely against another with an allegation that the latter had murdered a real brother. This aspect has to be appreciated in the light of the fact that the first informant / eye witness is not proved to have had any inimical inclination against the appellant. In fact, it stands proved on the file that the only eye witness is favourably inclined towards the appellant because if that were not so, he would not have turned hostile in the previous prosecution which the appellant faced for the murder of his own brother.

We conclude by holding that there is no force in the appeal which shall stand dismissed.

(S.D. ANAND)
JUDGE

January 31, 2008
vkd

(ADARSH KUMAR GOEL)
JUDGE

Note : Whether to be referred to reporter : Yes/No