

(1996) 03 P&H CK 0009

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 362 of 1992

Balwinder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 1, 1996

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 313
- Penal Code, 1860 (IPC) - Section 302, 323, 326

Citation: (1997) CriLJ 390

Hon'ble Judges: V.K. Bali, J; K.S. Kumaran, J

Bench: Division Bench

Advocate: J.S. Mann, for the Appellant; Mehtab Singh, DAG, for the Respondent

Final Decision: Dismissed

Judgement

V.K. Bali, J.

Balwinder Singh appellant herein has been held guilty of murdering his real elder brother and besides one Piara Singh, father of the two brothers is an eye-witness, who, in the occurrence leading to death of Sukhvinder Singh, was also injured. The crucial question that needs adjudication in this case is as to whether despite somewhat strained relations between the appellant, on one side and his father and deceased brother on the other side, the testimony of father, namely, Karnail Singh, has stamp of truth or the appellant has been named on suspicion and actually Sukhvinder Singh was done to death by somebody else. Before, however, this significant question is determined one way or the other, it would be useful to give brief re"sume" of the facts of the case and the way and manner in which the prosecution sought to establish the crime against the appellant, who, after resultant trial, has been convicted u/s 302, IPC to undergo life imprisonment and to pay a fine of Rs. 400/- or in default thereof to further undergo RI for six months as also sentenced to undergo RI for two years and to pay a fine of Rs. 100/- or in default thereof to undergo RI for one month u/s 326, IPC as also to undergo RI for three

months u/s 323, IPC, vide judgment recorded by the learned Sessions Judge, Ferozepur, dated August 12, 1992.

2. Gurjant Singh, ASI, PW5 recorded the statement of Karnail Singh at 8 A. M. on April 6, 1991, in Civil Hospital, Jalalabad, on the basis of which FIR was recorded in the Police Station at 8.15 A. M. under Sections 302/326 and 323, IPC against appellant Balwinder Singh. Karnail Singh stated that he was resident of village Chak Budhoka and was doing cultivation. He had two sons, the elder was Sukhvinder Singh, aged about 26 years and the younger is Balwinder Singh, aged about 23 years. The younger son was residing at village Kot Kapura and about two months ago, his daughter-in-law, Malkiat Kaur, wife of Sukhvinder Singh had died. Yesterday evening i.e. April, 1991 Piara Singh son of Arur Singh, father-in-law of his son and his sister Mohinder Kaur residents of Chak Singhowala had come to see the children at his house. His son Balwinder Singh had come from Kot Kapura yesterday evening. He and his son Sukhvinder Singh were lying in the courtyard after taking their meals whereas Piara Singh and Mohinder Kaur were lying near the gate. Balwinder Singh was lying inside the room. Electric light was on in the courtyard. At about midnight, Balwinder Singh armed with an axe (KUHARA) entered the room and immediately on coming, gave a lalkara that he would teach a lesson to them that day for not giving him the share of land. After hearing lalkara, he, Sukhvinder Singh, Piara Singh and Mohinder Kaur woke up. Soon after his arrival, Balwinder Singh gave an axe blow to Sukhvinder Singh who raised his right hand in self-defence, which hit on this right arm. Thereafter, Balwinder Singh gave axe blows to Sukhvinder Singh continuously which hit him on his right shoulder, right side of chest and on the head towards the left side as a consequence of which he fell down. Balwinder Singh again gave an axe blow to Sukhvinder Singh while he was lying fallen which hit him on his back. He (Karnail Singh), Piara Singh and Mohinder Kaur raised an alarm of "Na Maro Na Maro" (do not kill, do not kill), whereupon Balwinder Singh gave an axe blow to him which hit him from the reverse side on his neck. Consequently, he also fell down. While he was lying down, Balwinder Singh gave an axe blow which hit him on his right shoulder. On raising of hue and cry by Piara Singh and Mohinder Kaur loudly, Balwinder Singh ran away with his axe after scaling over the wall. The whole incident was witnessed by Piara Singh and Mohinder Kaur, who thereafter removed both of them in a car to Civil Hospital, Jalalabad and got them admitted there. Sukhwinder Singh succumbed to his injuries. The cause of grudge was that he had four killas of land and Balwinder Singh, after taking his share of land, from him, wanted to sell it and he, therefore, refused to give him the land. Balwinder Singh had doubt that Sukhwinder Singh dissuaded him from giving him his share of land. From the facts, as have been brought on records of the case, it appears that whereas the occurrence had taken place on the night intervening 5/6-4-1991 at about midnight, the FIR came to be recorded at 8.15 A. M. on April 6, 1991 on the basis of statement of Karnail Singh which was recorded at 8 A. M. in Civil Hospital, Jalalabad. The special report with regard to the incident reached the Magistrate concerned at Ferozepur at

2.30 P. M. on the same day i.e. April 6, 1991. The appellant was arrested on April 11, 1991 and on April 13, 1991 he made disclosure statement, in pursuance whereof the weapon of offence i.e. an axe was recovered which, on the report of the Chemical Examiner, was found to be stained with human blood.

3. With a view to bring home the offence against the appellant, prosecution examined Dr. Vijay Khariwal as PW 1. He stated that on April 6, 1991 at 6 A.M., he medico legally examined Karnail Singh son of Sajjan Singh, aged 70 years and found following injuries on his person :-

1. An incised wound 5 cm x 2 cm x bone deep on the top of the right shoulder. The capsule of the shoulder joint was found cut. The head of the humerus was visible. Bone underlying it had also been cut. Fresh bleeding was present.

2. Pain in the back of neck. An abrasion red in colour on the back of neck 10 cm x 1 cm.

Injury No. 1 was grievous in nature while injury No. 2 was simple in nature. Whereas, injury No. 1 was caused by sharp-edged weapon, injury No. 2 was caused by a blunt weapon. Probable duration of injuries was within 12 hours. The doctor further stated that he had sent an information to the SHO, Police Station Sadar, Jalalabad that two injured persons, Karnail Singh and Sukhwinder Singh were brought to the Civil Hospital, Jalalabad at 4 A. M. on April 6, 1991 and that Sukhvinder Singh, who was very serious and was having a skull injury, had expired at 5.15 A. M. on April 6, 1991. The said information has been proved on records as Ex. PB. The witness further stated that the police came to record the statement of Karnail Singh and made query, Ex. PC regarding fitness of Karnail Singh to make a statement, whereupon he, vide endorsement, Ex. PC/1, replied in affirmative. The witness also stated that the axe Ex. P1 could cause injury No. 1 on the person of Karnail Singh whereas injury No. 2 could be caused from the reverse side of the axe. This witness was cross-examined wherein he stated that injury No. 1 was most likely caused to Karnail Singh when he was in a standing position and injury No. 2 on the person of Karnail Singh could be caused in both, lying and standing postures. Dr. Yash Pal was examined as PW2. He stated that on April 6, 1991 at 2.40 P.M. he had conducted post-mortem on the dead body of Sukhvinder Singh and had found following injuries:-

1. A stitched wound 14 cm. in length starting from 1 cm. below the lateral angle of left eye and extending over the left side of fore-head and passing the left hair line almost vertical in direction.

2. Laceration of skin 2 cm x 1 Vi cm on the right side of fronto-temporal region.

3. An incised wound 6 cm x 2 cm x 3 cm above the right nipple slightly oblique in direction and muscle deep.

4. An incised wound 7 cm x 2 cm on the left shoulder joint anteriorly, horizontal in direction and muscle deep.
 5. An incised wound 15 cm x 10 cm vertical in direction starting on the right upper arm anterior side extending up to elbow joint. Underlying muscle and blood vessels were found to be cut. Humerus bone was visible but it was intact.
 6. An incised wound 10 cm x 7 cm slightly oblique in direction on right fore-arm upper 1/3rd extending up to the elbow joint where it intermingled with the injury No. 5. The joint capsule was exposed. Radius and ulna head were found to be fractured. Muscle and blood vessels and nerves were found cut.
 7. An incised wound 5 cm x 3 cm on left scapula at the lower end oblique in direction.
 8. An incised wound 11 cm x 4 cm on either side of back of chest crossing at T10 & T11 vertebra obliquely.
 9. An incised wound vertical in direction 6 cm x 3 cm over L1 to L3 vertebrae L2 vertebrae were found exposed and fractured.
4. On dissection, on removal of stitches of injury No. 1, a haematoma was found present. On cleaning of the same, the frontal bone corresponding to the injury in frontal region was found to be fractured. The underlying membrane and brain matter was found to be injured. Blood clot was found to be present in the left side of cavity. Subcutaneous tissues underlying all the injuries were found to be congested. In the opinion of the doctor, death in this case occurred due to shock and haemorrhage as a result of injury No. 1 to brain which was sufficient to cause death in ordinary course of nature. The injuries were ante-mortem in nature. The doctor further opined that the time that elapsed between post-mortem and death was 9 hours 25 minutes, and that injuries 3 to 9 could be caused by sharp side of Kulhara, Ex. P1 while injury No. 2 could be caused by reverse side of Kulhara, Ex. P1. The witness was cross-examined wherein he stated that injury No. 4 was more likely to be received by the deceased while he might have been in lying position. Similar was his reply in regard to injury Nos. 3, 7 and 8. The witness further stated that possibility could not be ruled out that injury No. 2 could be received by an injured while rolling on bed after receiving other injuries on his body, and that injury No. 1 could be received while in lying or standing position.
5. The father of the appellant and deceased, Karnail Singh, was examined as PW3. He has out and out supported the prosecution version and deposed in tune with the FIR lodged by him. Piara Singh PW4, whose daughter was married to Sukhvinder Singh, too has supported the prosecution version in the way and manner it was done by PW3 Karnail Singh. ASI Gurjant Singh was examined as PW5. He stated that on April 6, 1991 he was posted as ASI at Police Station Sadar Jalalabad when he received ruqa Ex. PB from Civil Hospital, Jalalabad, that Karnail Singh son of Sajjan

Singh and Sukhvinder Singh son of Karnail Singh had been brought in an injured condition. It was also intimated that Sukhwinder Singh, who was very serious and had skull injury, had expired at 5.15 AM. On receipt of this information, he had gone to Civil Hospital, Jalalabad where Karnail Singh was admitted. He made query from the doctor as to whether Karnail Singh was in a fit condition to make the statement which was replied in affirmative. He recorded his statement Ex. PG. He also prepared inquest report Ex. PF in the presence of Ajaib Singh and Gurnek Singh and sent the dead body for post mortem through Constables Amarjit Singh and Slier Singh. He proceeded to the spot on April 6, 1991 at 11 AM and took Mohinder Kaur and Piara Singh with him to the place of occurrence. He inspected the place of occurrence in the present of witnesses and lifted blood stained earth from the place of occurrence. He also recorded the statements of the witnesses. When he returned to Police Station, Constable Amarjit Singh had produced the clothes of the deceased and post-mortem report which were taken into possession and deposited in the police station. The accused was produced before him on April 11, 1991 by Surinder Singh and on April 13, 1991 he was interrogated in the presence of constable Harjit Singh and Gurnek Singh PW. The accused suffered a disclosure statement that he had kept concealed an axe in the heap of cotton sticks of Jagir Singh of village Budhoke and that he could get the same recovered. He then took the accused, Harjit Singh and Gurnek Singh PWs to village Budhoke and the accused led to the recovery of an axe, which was blood stained, from a heap of cotton sticks of Jagir Singh. The axe was taken into possession. This witness also gave further details of the investigation done by him in the case culminating into report u/s 173 Cr. P.C. against the appellant. The prosecution also tendered into evidence affidavits of Surinder Singh, MHC and Constable Amarjit Singh which were formal in nature. Amrik Singh, Gurnek Singh and Harjit Singh PWs were given up as unnecessary. The prosecution also tendered in evidence reports of Serologist, Ex. PX and Ex. PT and closed its case.

6. When examined u/s 313 of the Code of Criminal Procedure, appellant Balwinder Singh stated that his father Karnail Singh had a hostile attitude towards him as he was demanding his share of land from him which he wanted to give to Sukhwinder Singh deceased. On the fateful night, some unidentified persons had given injuries to Sukhwinder Singh and Karnail Singh and he was falsely implicated. He was illegally detained by the police in the police station many days earlier to April 11, 1991 and his arrest was deliberately shown to have been effected on April 11, 1991. The appellant led evidence in defence. Mulakh Raj was examined as DW.-1. He stated that he knew Karnail Singh, father of Balwinder Singh. He was on visiting terms with Karnail Singh and had been attending all the functions taking place in the house of Karnail Singh. Balwinder Singh left the house of his father about eight years ago and started living at Kotkapura. His mother Amar Kaur and sister Manjit Kaur also started living with Balwinder Singh. Ever since Balwinder Singh left the house of his father, neither he nor his mother nor his sister ever visited the house of Karnail Singh nor they were seen by him in the village. This witness, at the relevant

time, was Sarpanch of village Budhoke. In his cross-examination this witness stated that Chak Budhoke was a small village and that he had no relations with the family of the accused. He also stated that Chak Bhudhoke consisted of 140 houses and that he never visited the house of Balwinder Singh accused at Kotkapura nor had he any relationship with him. Smt. Amar Kaur, mother of the appellant and deceased was examined as DW2. She stated that she was residing with her daughter Manjit Kaur and her husband in village Kauni, Police Station Sadiq. About 8/9 years back, herself, her son Balwinder Singh and her daughter Manjit Kaur had left the house of Karnail Singh and started living at Kotkapura. When they left the house of Karnail Singh, his daughter was eight years and Balwinder Singh was 15 years of age. They had to leave the house of Karnail Singh as Balwinder Singh used to pick up quarrel with his father Karnail Singh as sometimes Balwinder Singh used to take liquor and smoke but his father used to object to it. Karnail Singh used to tell him that he was Amritdhari Sikh and vegetarian (VAISHNO) and on that count relations between Balwinder Singh and Karnail Singh were strained. Karnail Singh sometimes used to sit on the chest of Balwinder Singh and attempted to throttle him. However, he never caused any injury to Balwinder Singh. She further stated that marriage of her daughter Manjit Kaur was solemnized by her son Balwinder Singh about 2¹/₂ years back which was attended by Sukhwinder Singh deceased and Karnail Singh did not come despite invitation. Sukhwinder Singh had no quarrel with Balwinder Singh. Before the marriage of Manjit Kaur, Sukhwinder Singh occasionally visited their house at Kotkapura and sometimes he used to stay with them for a night. Even after the marriage of Manjit Kaur, once Sukhwinder Singh had gone to their house at Katkapura. About 15/16 days prior to the occurrence also, Sukhwinder Singh had visited them at Kotkapura. She further stated that ever since they left Chak Budhoke, they never visited the house of Karnail Singh. She further stated that police had visited their house in the evening and Balwinder Singh was taken away in her presence about 6/7 days before the Baisakhi. In her cross-examination, she stated that she never made any complaint to the police that Karnail Singh used to sit on the chest of Balwinder Singh and tried to throttle him. She also never made any complaint to Mulakh Raj Sarpanch in writing. She further stated that she never appeared before the police to give the version which she had given that day and that she never gave any application to the higher authorities that her son Balwinder Singh was falsely implicated in this case. Mithu Singh was examined as DW3. He stated that Chak Budhoke was his native village and since his birth he was living there. His house was situated across the street and house of Karnail Singh. About eight years ago, wife of Karnail Singh, accused Balwinder Singh and his sister Manjit Kaur had left the house of Karnail Singh. He attended all the functions in the house of Karnail Singh and he never saw wife of Karnail Singh, accused and his sister Manjit Kaur visiting the house of Karnail Singh or in the village. On the night of occurrence, he was present in his house. On that night he had heard noise emanating from the house of Karnail Singh. However, he had not gone to the house of- Karnail Singh on account of fear. On the following day at 9 AM he met Karnail

Singh in Civil Hospital, Jalalabad. Some other persons of his village were also with him. He had asked Karnail Singh as to who had caused injuries to him and Sukhwinder Singh and he told that he did not know. In his cross-examination, he stated that on the following date, police had gone to their village but whatever he had deposed in the Court was not disclosed by him to any other person. He never made any application to any authority regarding the real occurrence. He never made any statement before the police as he never appeared before the police.

7. The first and the foremost contention of Mr. Mann, learned counsel appearing for the appellant is that even though it is a case of father deposing against his son, the circumstances of this case clearly go to show that the father was inimical to the appellant and, therefore, his evidence should not be believed at all. Not only that the appellant had either left the house of his father of his own volition or was so turned out but along with him the wife and daughter of Karnail Singh also left the house to make their permanent place of living elsewhere. The appellant alone thereafter exclusively looked after his mother and sister and the father never thereafter cared to bother for them for a period of over a decade. During these long years, neither the appellant nor his mother nor his sister visited the village of Karnail Singh and in turn Karnail Singh also never bothered to visit them. In the circumstances, therefore, the father was not only inimically disposed towards his son but he was worse than an enemy and, therefore, no reliance should be placed upon his statement. It is further being argued that PW4 Piara Singh, who happens to be father-in-law of Sukhwinder Singh deceased, has an axe to grind. It is only if the appellant is convicted that his grand children i.e. children of Sukhwinder Singh are likely to get the entire land which, otherwise, has to be distributed amongst the legal heirs of Karnail Singh including the appellant. There was no occasion for him also to be present at the scene of occurrence at the time when Sukhwinder Singh is stated to have been murdered. His evidence also, thus, has to be rejected. Learned counsel further contends that the story coined by the prosecution is highly improbable. There was no occasion for the appellant to have demanded the share of land all of a sudden after a period of ten years and if at all such a necessity was felt at the end of the appellant, demand should have been made on the occasion when he got his sister married. Further, as per the prosecution version, the appellant came at the place of occurrence at 4 PM and from that time till he actually killed his brother, he spoke to none for all this while i.e. for about eight hours which in itself speaks volumes of weakness in the prosecution version. Further, the appellant slept in a kotha whereas the others were sleeping elsewhere and all of a sudden he woke up and killed his brother. Further, the prosecution could not prove as to where from the appellant had made an axe available to himself. No body has stated that when he came in the house at 4 PM, he was armed with an axe and Karnail Singh has, in no uncertain terms, stated that he did not know from where the appellant had got an axe with which he killed his elder son. It is further being argued that if Karnail Singh was seriously injured and so was his elder son, who breathed his last at about

5.15 AM, there was no question for the injured to be taken to the hospital after a lapse of 3-4 hours, if Piara Singh was there, as is the prosecution case, he could have very easily taken the injured to the hospital. Further, it is not Piara Singh's presence which is recorded at the time when the injured were admitted in the hospital but it is Gurnek Singh, who is stated to have got admitted the injured in the hospital. It is further being argued that Karnail Singh lost his one eye about a decade ago whereas he had undergone an operation of cataract of the other eye a few years ago and could see very little. It is, thus, a case where some unknown persons had killed Sukhwinder Singh and father being highly suspicious of the appellant had named him. The learned counsel also contends that not only there is delay in lodging the FIR in this case but there is delay in sending the special report to the Magistrate as well.

8. Mr. Mehtab Singh, learned Deputy Advocate General, Punjab, has, however, joined issues with learned counsel for the appellant on all the contentions noted above and pleads for upholding the judgment of the learned Sessions Judge, who, it is being argued, came to correct conclusions after perusing the entire evidence brought on records.

9. We have heard learned counsel for the parties and with their assistance have also gone through the records of the case very minutely. The first contention of learned defence counsel that the father is inimically disposed towards the appellant and, therefore, his evidence should not be accepted at all deserves to be repelled. It is true that the appellant on one side and Karnail Singh and his deceased son, on the other side, did not have cordial relations. It is also true that when appellant was between 14 to 16 years, he had left the house of his father and made a permanent abode for himself in a different village as also that at the time when he left the house either of his own volition or was so turned out, his mother and sister also accompanied him. It is also true that the appellant alone looked after his mother and sister and so much so got his younger sister married and, in all probability, without any assistance from Karnail Singh. It is also true that for about a period of ten years, Karnail Singh hardly visited his wife, daughter and obviously the appellant as well. Whereas, there is some evidence on records of the case which suggests the reasons why appellant and Karnail Singh were not having cordial relations, there is nothing on records which might suggest the reasons as to why mother and sister of the appellant also left the village and as to why Karnail Singh did not bother even to look after his wife and daughter. Normally, when father deposes against his son and himself is also an injured witness, no further corroboration might be required but in the present case relations between the appellant and his father, being far from cordial, all that perhaps is required to be done is to scrutinize his evidence with great care and caution and in the same way and manner, the evidence of a partisan witness is appreciated. It is also a case where the testimony of Karnail Singh might require some corroboration before a finding of conviction is recorded and it is to that extent only that we can accept the contention of learned counsel for the

appellant and not that his evidence should be straightway rejected. We have scrutinized the evidence of Karnail Singh keeping this in view and still are of the opinion that the prosecution has established the case against the appellant. Statement of Karnail Singh, even though when examined with great care and caution, deserves to be accepted and there is sufficient corroboration to his testimony coming from medical evidence and other attendant facts and circumstances.

10. Insofar as the presence of Karnail Singh at the scene of occurrence is concerned, the same could not be doubted nor even it has been argued by learned defence counsel that he was not there when Sukhwinder Singh was done to death. Karnail Singh himself was also injured and one of the injuries sustained by him was grievous in nature. The question that now arises is as to whether Karnail Singh would be more inclined to bring to book the real culprit i.e. the person who actually killed his son Sukhwinder Singh, with whom he was residing all this while or would involve his another son on mere suspicion. This would further depend upon as to whether Karnail Singh was in a position to witness the occurrence. If it is established or a doubt creeps in on that count, then and then alone Karnail Singh might have an occasion to implicate his younger son on mere suspicion. From the facts of this case, we are, however, of the view that Karnail Singh must have identified the appellant, who killed his son and injured him despite the fact that he had already lost his one eye and could see very little from the other. As per the prosecution version, the light in the courtyard was on and it is in the court-yard only where Karnail Singh and his son Sukhwinder Singh were lying after taking their meals. The assailant, as per the prosecution version, attacked Sukhwinder Singh after raising LALKARA that he would teach him a lesson for not giving him his share of land. Karnail Singh had, thus, seen his son Sukhwinder Singh being given repeated axe blows from a very short distance. Not only that, when Karnail Singh intervened, he too was attacked by the assailant. The distance at that stage between the assailant and Karnail Singh could not have been more than 4-5 feet. Even though, therefore, Karnail Singh might have been able to see very little from his one eye, he must have identified the real assailant. He could have even identified him from his voice. As per the prosecution case, it may once again be mentioned, the assailant had raised a lalkara. Even though, it is the defence version that the assailant had never visited his father nor the father in turn had visited his son but statement of Karnail Singh that appellant used to ask him to give him land but he refused to do so has gone unchallenged. After narrating the way and manner in which the occurrence had taken place, at the fag end of his statement in examination in chief, Karnail Singh deposed that he owned 41A acres of land. Balwinder Singh accused used to ask him to give him land but he refused to do so because he intended to sell the land. The defence, even though has examined number of witnesses including his mother that he did not visit the village of his father, but this part of statement of Karnail Singh was not questioned in the cross-examination. If the appellate used to go to Karnail

Singh to demand the share of land, even though such visits might have been few, in our view, it would have not been difficult for Karnail Singh to have identified the voice of the assailant, his son. That apart, if it was a case of an un-known assailant, who might have killed Sukhwinder Singh and injured Karnail Singh, in all probability, Karnail Singh and those, who were present with him at that time, would have taken sometime in verifying and trying to know as to who was the actual assailant. In that case, the FIR disclosing the appellant as a culprit could not have come into existence with that promptitude as it came in the present case. It may be recalled that the occurrence leading to death of Sukhwinder Singh had taken place at midnight. The doctor had sent an intimation to the police station and on arrival of the police at about 8 AM in the morning, statement of Karnail Singh was recorded. Further, if the facts as sought to be established by defence are true that Karnail Singh had turned out his son when he was only 14-15 years of age and even the wife and daughter of Karnail Singh had left the village to permanently live with the appellant and that further Karnail Singh had never thereafter bothered to look after even his wife and daughter, then in that case, Karnail Singh would have perhaps hardly any grouse against the appellant. In that case, it is Karnail Singh who was more guilty in not only looking after the appellant but even neglecting his wife and minor daughter. The wronged party in this case was not Karnail Singh but it was his son i.e. appellant, his wife and daughter. With these basic features, if the statement of Karnail Singh is examined, it would appear that he has not named the appellant on mere suspicion and that some unknown assailant had not killed Sukhwinder Singh and injured Karnail Singh. As mentioned above, Karnail Singh has stood by his statement that he made before the police on the date of occurrence which formed the basis of FIR. He was thoroughly cross-examined but nothing at all could be brought out therefrom which might show that he was not telling the truth. Attention of the Court has, however, been drawn to his cross-examination wherein he stated that he was inclined to will away his land in favour of the person who would have served him in old age as also that he had lost his right eye about 40 years back and about 4 years back his left eye was operated upon for cataract as also that he had not seen any axe in his house before Balwinder Singh had come to them and he could not say from where he procured the same. We find nothing at all from the portions of the statement, reproduced above, which might detract from his sworn testimony before the Court. If he was inclined to will away his land in favour of a person who would have served him in his old age and admittedly it is the deceased Sukhwinder Singh who was serving him, the motive could be with the appellant to commit the crime and do away with the one who was likely to get the property from Karnail Singh. Insofar as eye sight is concerned, we have earlier mentioned that despite the fact that he could see less from one eye whereas the other eye was totally damaged, would not make any difference in the facts and circumstances of this case. Insofar as axe is concerned, availability of the same in the house in villages is not something very strange. Agriculturists normally have an axe and if Karnail Singh had not seen the same in his house, the same would not make any difference.

He was an old man and could not have been using the axe himself. It may be mentioned here that he was 70 years of age when his statement was recorded. Even if the axe was not available in the house, it was not difficult for the appellant to have brought the same with him when he came to the house of his father and hid it some where and picked it up only when he was to commit the crime.

11. Insofar as presence of Piara Singh, whose daughter was married to Sukhwinder Singh, is concerned, the same cannot be said to be unnatural. His daughter died leaving behind three children, two daughters and one son. They all were of tender age. They could not be looked after exclusively by an old man Karnail Singh and his son Sukhwinder Singh and it was natural in these circumstances that children were living sometimes with Karnail Singh and sometimes with Piara Singh. It is also quite natural for Piara Singh and his family members to go to the house of Karnail Singh to see the children. It may be recalled that Piara Singh had gone to the house of Karnail Singh on the date of occurrence along with his sister Mohinder Kaur. There is, thus, sufficient corroboration available to the statement of Karnail Singh. We do not agree with the contention of learned defence counsel that Piara Singh was an interested witness inasmuch as he desired that the entire property of Karnail Singh should go to his grand children and not the appellant. If Karnail Singh might execute a will and bequeath his entire property to his grand children, the matter may be different but on natural succession, his wife and daughter have to share the property in equal share with that of children of his pre-deceased son Sukhwinder Singh. We also do not agree with the contention of the learned defence counsel that there was no occasion for the appellant to have demanded the share of land all of a sudden after a period of ten years as, it may be reiterated, Karnail Singh in no uncertain terms stated that appellant used to demand his share of land. We find no improbability in the prosecution version from the fact that the appellant did not talk to anyone from 4 p.m. till such time he committed the crime and from the fact that he all of a sudden got up at midnight and killed Sukhwinder Singh. It is not possible to gauge the mind of a culprit as the plan that he has in his mind is best known to him. We also do not find in this case any delay in carrying the injured to the hospital and in lodging the F. I. R. To arrange a car or taxi in a village for carrying the injured to the hospital is not an easy job particularly when the occurrence had taken place at midnight when everyone around must have been in deep slumber. The only male member, who was available in the house to look after the injured was Piara Singh and he too was not from the same village where occurrence took place. There is no substance in the contention of learned defence counsel that there is delay in lodging the F. I. R. The injured were admitted in the hospital around 4 a.m. and the police had received the information through doctor concerned at 5.15 a.m. The police reached the hospital and first obtained the opinion of the doctor as to whether injured Karnail Singh was fit to make a statement. After obtaining the opinion of the doctor, which was in affirmative, statement of Karnail Singh was recorded at 8 a. m. In the very nature of things, arrival of police in the hospital and obtaining of opinion

of the doctor must have taken sometime and if the statement of Karnail Singh was recorded at 8 a.m. it cannot be said to be so belated so as to doubt the prosecution case. Further, the special report reached the Magistrate concerned at 2.30 p.m. on the same day and Ferozepur City is at a distance of 55 Kms. from Jalalabad.

12. Nothing much can also be made from the fact that it is the name of Gurnek Singh which is recorded and not that of Piara Singh when the injured were admitted in the hospital. It was not necessary for the doctor concerned to note down the names of all who had accompanied the injured and if name of one person out of those who had taken the injured to the hospital was mentioned in the records, it would not detract from the prosecution version. The defence version in this case is not credible nor any implicit faith can be placed upon the testimony of witnesses examined by the defence. Mulakh Raj D. M. 1, who was Sarpanch of village Budhoke, had stated that the appellant, his mother and sister did not visit the village ever since they had left the village about eight years ago. It was not possible for this witness to keep a watch every time when appellant was to visit the village. Further, it is not even the prosecution version that the appellant was often visiting the village and if earlier to the date of occurrence appellant had visited the village on few occasions, which did not come to the notice of D.W.1, it would not make any dent in the prosecution version. D. W. 2 Amar Kaur, mother of the appellant of course, has supported the defence version but her evidence is also to the same effect as is of D. W. 1. Further, this lady at no relevant stage had made any complaint anywhere that her son had been falsely implicated. Still further, D. W. 2 being mother of the appellant and totally dependent upon him was an interested witness. Evidence of Mithu Singh D. W. 3 is also not different. He has, however, further added that on the date following the date of occurrence he had gone to see Karnail Singh in the hospital and he had enquired from him as to who had caused him injuries and killed Sukhwinder Singh and that he was told that he (Karnail Singh) did not know. However, in the cross-examination, this witness stated that even though the police had come to their village, he never made any complaint to the police or any other authority about what was disclosed by Karnail Singh to him.

13. The prosecution, in our considered view, has proved the case against the appellant beyond shadow of reasonable doubt. It is, however, a case where we may not have any sympathy with the appellant but we certainly have sympathy for his mother, who, on account of conviction of the appellant, may not be looked after by anyone else. On that count, we might have thought of reducing the sentence but, as the facts of this case are, a case u/s 302 I.P.C. is fully proved against the appellant and minimum punishment for the same is life imprisonment.

14. In view of the discussion made above, were of the view that this appeal is devoid of any merit and, thus, deserves to be dismissed. So ordered.