

(2005) 03 P&H CK 0197

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 141-DB of 2001

Mohammad Azam

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 30, 2005

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302

Citation: (2005) 13 CriminalCC 795

Hon'ble Judges: Baldev Singh, J; Amar Dutt, J

Bench: Division Bench

Advocate: A.S. Virk, Add. Advocate General, Punjab, for the Respondent

Final Decision: Allowed

Judgement

Baldev Singh, J.

Mohd. Azam son of Hasirudin resident of Plasmani, Police Station Bahadurganj, District Kishangarh (Bihar State) has filed this appeal against the impugned judgment of conviction and sentence order, both dated 15.2.2001 passed by Sh.A.K.Sharma, the then Additional Sessions Judge, Ludhiana. He was convicted u/s 302 IPC and was sentenced to undergo rigorous imprisonment for life and to pay Rs.2,000/- as fine and in default of payment of fine to further undergo RI for one year.

2. The facts of the prosecution case are that on 14.12.1997, there was marriage of the son of PW Bachan Singh, elder brother of PW Amarjit Singh, father of deceased boy Gurjit Singh (aged about 14 years). Said Gurjit Singh used to study in VIIth standard. Marriage party come back in village Binjal at about 6 P.M. The family members of PW Amarjit Singh were to take meals at night time in the house of PW Bachan Singh. PW Amarjit Singh and his other family members came back to their house at about 8 P.M. after taking meals. Gurjit Singh (deceased) remained in the house of PW Bachan Singh as he was serving meals to the guests. He did not come

to the house of PW Amarjit Singh at night time. PW Amarjit Singh was under the impression that Gurjit Singh would have slept in the house of his brother Bachan Singh after taking dinner. In the morning, PW Bachan Singh came to the house of PW Amarjit Singh and told him that the dead body of Gurjit Singh was lying in the Shamlat land towards the southern side of the village PW Amarjit Singh, father of the deceased boy, contacted Bikramjit Singh, Sarpanch and other respectables of the village and reached the place where the dead body was seen lying. There were marks of injuries on the neck and hands of Gurjit Singh. PW Bachan Singh was left to guard the dead body. PW Amarjit Singh accompanied by Bikramjit Singh Sarpanch and Gurdev Singh Panch went to Police Post Bassian. Amarjit Singh made statement there, which is Exh.PD. It was read over to him after it was reduced into writing and he signed it. Kashmira Singh, ASI made his endorsement Exh.PH/D and got this case registered. Exh.PD/2 is the copy of the FIR. The police party then proceeded to the place of occurrence. Inquest Report on the dead body of Gurjit Singh was prepared, which is Exh.PW12/A. Dead body was identified by PWs Bachan Singh and Gurdev Singh, who also attested the Inquest Proceeding. Blood-stained earth was picked up from the spot and was sealed into a parcel. Site-plan was prepared showing the place of occurrence, which is Exh.PW12/D. Dead body was despatched through C-1 Balwinder Singh vide police request Exh.PB for post-mortem examination.

1 Dr.Hari Krishan Singla conducted post-mortem examination on the dead body of Gurjit Singh. He found the following injuries:-

"1. incised wound 15cm x 7.5cm. bone deep on upper part of neck extending from below the right angle of mandible and going across of the neck in upper part just above level of larynx and going to left side below the left ear lobule. The underlying muscles of neck, blood vessels and other tissues were cut. Clotted blood was present. Upper part of the larynx and vocal cords were visible in the lower part of wound and pharynx was visible in upper part of wound. Oesophagus was also cut near its beginning. All tissues upto cervical vertebra underneath had been cut. There was partial cut on body of cervical vertebra, underneath on the left side. Wound margins was in W shape at left end.

2. Incised wound 4cm x .5cm x 0.5cm on the occipital region of the scalp in mid-line. On dissection underlying bone was intact.

3. Incised wound 3cm x 5 x .5cm on upper and inner part of right scapular region on back of chest. On dissection, blood was present and underlying bone was intact.

4. Incised wound 2.75cm x .5cm x .5cm on upper and inner part of left scapular region on back of chest. On dissection, blood was present and underlying bone was intact.

5. Oblique incised wound 3.5cm x 0.5cm x bone deep on back of proximal phalanx of middle finger of left hand. On dissection, underlying bone was intact.

6. Abraded bruise 5cm x 3cm on front of left knee. On dissection clotted blood was present in subcutaneous tissues.

7. Incised wound 3cm x .5cm x bone deep on inner side of lower part of right forearm. On dissection underlying bones, ulna was found fractured.

Other organs were found healthy."

4. Death, in the opinion of the doctor, was due to shock and haemorrhage as a result of injuries described which were sufficient to cause death in the ordinary course of nature. All the injuries were ante mortem in nature. The probable time that elapsed between injuries and death was immediate and between death and post-mortem was between 5 to 24 hours. After post-mortem examination, the doctor handed over to the police stitched dead body.

Exh.PA/1 is the copy of the post-mortem report. Exh.PA/2 is the pictorial diagram showing the seats of the injuries.

5. Further investigation was taken over by Mohd.Zamil, ASI.

6. In his statement, on the basis of which FIR was registered, PW Amarjit Singh had stated that his son Gurjit Singh had been killed by some unidentified person/persons after taking him from house of his brother Bachan Singh and his dead body was lying at the spot. Then during investigation, statement of PW Bachan Singh was recorded u/s 161 Cr.P.C. He gave this version to Kashmira Singh, ASI that on 14.12.1997 at about 9.45 P.M. he came in the street out of his house. He saw appellant Mohd.Azam with his nephew Gurjit Singh. They were going towards the fields. On his asking as to where they were going, the appellant told that they were going to answer the call of nature. At that time, the appellant was holding a "gandasa" in his hand. Further that he thought that Gurjit Singh might have gone to his house and he, therefore, slept in his house. In the next morning, dead body of Gurjit Singh was found lying in the Shamlat Land. He had a cut on his neck and had other injuries with sharp edged weapon. PW Bachan Singh disclosed the motive to the police that earlier the appellant was servant with one Charanjit Singh. Thereafter, he was employed by Gulzar Singh. Said Gulzar Singh died about two years prior to this occurrence. The appellant had developed illicit relations with the wife of said Gulzar Singh. PW Amarjit Singh, father of deceased boy Gurjit Singh, used to object to it and desisted the appellant from such nefarious activities. The appellant had, therefore, grudge against PW Amarjit Singh and, therefore, he killed his son Gurjit Singh.

7. The police during investigation also recorded the statement of PW-4 Jarnail Singh, u/s 161 Cr.P.C. He gave this version to the police that on 14.12.1997 at about 10.30 P.M. he had gone to the fields to ease himself. He had a torch with him. He flashed it and saw the appellant coming from the side of the village pond and going towards the bus stand. The appellant was carrying a blood-stained "toka" with him. He tried

to stop him, but the appellant remarked that he would give him a "toka" blow if he attempted to stop him. The appellant then proceeded towards the bus stand and he came to his house and slept. In the next morning, he came to know that Gurjit Singh son of Amarjit Singh had been killed and his dead body was lying near the village pond.

8. On completion of the investigation, the police put in the challan against the appellant for the offence punishable u/s 302 IPC.

9. The case was committed to the Court of Session for trial for the offence punishable u/s 302 IPC. Charge was framed against the appellant u/s 402 IPC. He did not plead guilty to the charge and claimed trial.

10. The prosecution at the trial had examined 13 witnesses, namely : PW-1 Dr.Hari Krishan Singla, PW-2 Amarjit Singh, PW-3 Bachan Singh, PW-4 Jarnail Singh, PW-5 ASI Mohammad Zamil, PW-6 Avtar Singh, PW-7 Sukhwinder Singh, draftsman, PW-8 HC Jagroop Singh, PW-9 HC Sukhwinder Singh, PW-10 Bagh Singh, Photographer, PW-11 Balwinder Singh, PW-12 SI Kashmira Singh and PW-13 Constable Gulab Singh.

11. The appellant was examined on the conclusion of the prosecution evidence and his statement was recorded u/s 313 Cr.P.C. He denied the prosecution allegations and complained of his false implicity in the case. He, however, adduced no evidence in his defence.

12. Arguments of Sh. A.S. Virk, Additional Advocate General, Punjab-respondent were heard and record of the case was perused. None appeared for the appellant to argue this appeal.

13. Statement of PW-2 Amarjit Singh, father of the deceased by Gurjit Singh has been scrutinized. The FIR was registered on its basis. He simply stated that on 14.12.1997 at about 9 P.M. he, his wife Satinderpal Kaur and his sons Kuldip Singh and Mandeep Singh came to their house after taking dinner at his brother Bachan Singh's house. Gurjit Singh stayed there as he was to serve the meals to the guests. He did not return back at night. He was under the impression that he might have stayed at the house of Bachan Singh. On the next morning, Bachan Singh came there and told him that dead body of Gurjit Singh was lying the land of Shamlat Deh. They went there and saw injury marks on the dead body of Gurjit Singh. Kashmira Singh stated that his son Gurjit Singh had been killed by some unidentified person/persons. He even did not lay suspicion on the appellant to be a killer on his son Gurjit Singh. No motive was attributed for the commission of his murder. It was later on that statement of PW-3 Bachan Singh was recorded during investigation u/s 161 Cr.P.C. and the motive was fabricated that the appellant had joined the employment under Gulzar Singh, who had died about two years prior to this occurrence. The appellant had then developed illicit relations with the wife of said Gulzar Singh. PW Amarjit Singh, father of the deceased boy, objected to it. The appellant nursed grudge against him on this account and he murdered his son

Gurjit Singh. So this motive which was initially not in the statement of PW Amarjit Singh was fabricated for the false implicity of the appellant in this case. No report was ever made by PW Amarjit Singh or by anybody else either with the police or with the Gram Panchayat for the alleged illicit relations between the appellant and the wife of Gulzar Singh. The appellant had, in fact, no grudge against PW Amarjit Singh or his family members and he had no motive to kill Gurjit Singh.

14. Now the question arises whether the appellant could be safely convicted on the basis of statements of PW-3 Bachan Singh and PW-4 Jarnail Singh. The both are real brothers of PW Amarjit Singh, father of the deceased boy Gurjit Singh. According to PW-3 Bachan Singh on J 4.12.1997 at about 10.00 P.M. at night he had seen the appellant and Gurjit Singh going towards the fields. At that time, the appellant was holding a "gandasa" in his hands. On his enquiry, they had told him that they were going to the fields to answer the call of nature. On the next morning, dead body of Gurjit Singh was found lying near the village pond. So according to P W-3 Bachan Singh, he saw lastly the appellant and the deceased together. The prosecution PW-3 Bachan Singh, he saw lastly the appellant and the deceased together. The prosecution examined PW-4 Jarnail Singh. He deposed that at about 10.30 P.M. on 14.12.1997 he saw in torch light the appellant going from the side of the village pond towards the bus stand, armed with a "toka", which was blood-stained. He tried to stop the appellant, but he passed on saying that he would give "toka" blow to him if he attempted to stop him. In the next morning, dead body of Gurjit Singh was found lying near the village pond. Both, PW-3 Bachan Singh and PW-4 Jarnail Singh are the real uncles of deceased boy Gurjit Singh. Their evidence being of close relations of the deceased required a deep probe and scrutiny and it was found that they are not reliable witnesses. PW Bachan Singh allegedly saw the appellant armed with a "gandasa". PW Jarnail Singh allegedly saw the appellant armed with a blood-stained "toka". There is vital difference between two weapons i.e. "gandasa" and "toka". They do not reconcile with each other. Moreover, when PW-4 Jarnail Singh had seen the appellant going with a blood-stained "toka" under suspicious circumstances, he could have immediately reported the matter either to the police or to the village Panchayat. No such effort was made. They both are created witnesses. The trial Court has not properly appreciated their evidence, which led to the conviction of the appellant. It is highly improbable that one real uncle of the deceased sees the appellant going with the deceased and another real uncle of the deceased with a gap of half an hour sees the appellant carrying a blood-stained "toka". No "toka" was recovered from the appellant during the investigation. There is no other circumstance against the appellant.

15. A few cases can be referred here in which such a circumstance was not found sufficient to infer that the accused had committed the murder of the deceased. In the case of Bharat v. State of M.P., 2003(1) Apex Court Judgments 562 (S.C.): 2003(1) RCR(Criminal) 637 (SC), the case of robbery and murder under Sections 302 IPC was based on circumstantial evidence. Conviction was based on evidence that the

deceased was last seen with the accused and the accused failed to explain in his statement u/s 313 Cr.P.C. The conviction was set aside. It was observed that mere non-explanation cannot lead to proof of guilt. The prosecution has to prove its case beyond reasonable doubt. In the case of *State of Rajasthan v. Rajaram*, 2003(2) Apex Court Judgments 398 (S.C.): 2003(4) RCR(Criminal) 238 (SC), it was observed that for a crime to be proved, it is not necessary that it must be seen to have been committed and must, in all circumstances, be proved by direct ocular evidence. Where a case rests squarely on circumstantial evidence, the onus of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. It was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:-

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established.
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused.
- (3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

In the case of *Dev Parkash v. State of M.P.*, 2004(3) RCR(Criminal) 443, the murder case was based on circumstantial evidence. There was no eye-witness. The accused was convicted on the basis of last seen evidence. The conviction was set aside. It was observed that the accused had no motive to commit the murder. Evidence of last seen is inherently a weak kind of evidence and the same requires strong corroboration by independent material particulars. Blood-stained clothes of the accused were of no consequence because there was no report that the clothes were containing human blood tallying with the blood group of the deceased. In the case of *State of Rajasthan v. Khuma*, 2004(4) Criminal Court Cases 449 (S.C.): 2004(4) RCR(Criminal) 998 (SC), the case of murder was based on circumstantial evidence. Last seen theory was not proved beyond doubt. The accused was acquitted. It was observed that the circumstances should be of such conclusive nature as to exclude every other possibility except the accused being guilty of the charged offence.

16. In view of the above discussed facts, the appellant could not be convicted u/s 302 IPC on the sole circumstance that he was seen last with deceased Gurjit Singh. There was no other incriminating circumstance against him. We, therefore, accept this appeal and set aside the judgment of conviction and sentence order both dated

15.2.2001 and acquit him of the charge framed against him u/s 302 IPC.