

Dev Raj Vs State

Court: DELHI HIGH COURT

Date of Decision: Nov. 28, 2016

Acts Referred: Arms Act, 1959 - Section 27

Criminal Procedure Code, 1973 (CrPC) - Section 207, Section 315, Section 428, Section 82, Section 83

Penal Code, 1860 (IPC) - Section 302

Citation: (2016) 10 ADDelhi 537

Hon'ble Judges: Ms. Gita Mittal and Ms. Anu Malhotra, JJ.

Bench: Division Bench

Advocate: Mr. Varun Goswami, APP, for the State; Ms. Inderjeet Sidhu, Advocate, for the Appellant

Final Decision: Dismissed

Judgement

Gita Mittal, J. - The appellant before us assails the judgment dated 29th September, 1999 passed by the Sessions Judge finding the appellant

guilty of commission of the offence punishable under Section 302 IPC and Section 27 of the Arms Act, 1959 with which he was charged in

Sessions Case No. 121/98 arising out of FIR no. 384/98 registered by Police Station Seema Puri. The appellant also challenges the order of

sentence dated 30th September, 1999 passed by the learned trial judge sentencing the appellant to undergo imprisonment for life and to pay a fine

of Rs.5,000/- for commission of the offence punishable under Section 302 IPC and in default to undergo further simple imprisonment for six

months. For commission of the offence under Section 27 of the Arms Act, he was further sentenced to undergo rigorous imprisonment for two

years and to pay a fine of Rs.1,000/-, and in default to undergo simple imprisonment for three months. The sentences were directed to run

concurrently and the benefit under Section 428 of the CrPC was given to the appellant.

2. The appellant was arrested on 22nd June, 1998 at 3 p.m. day time and remained in custody during trial.

3. Upon his conviction, the appellant filed the present appeal assailing the judgment dated 29th September, 1999 and the order on sentence dated

30th September, 1999. The appeal was admitted for hearing. By an order dated 17th March, 2005, the sentence imposed on the appellant was

suspended.

4. In our order dated 17th November, 2016, we had noted as follows :

2. It is noteworthy that the present appeal came up for consideration on 15.12.2000 when it was admitted for "regular hearing" and the record of

the lower Court was called for. After filing of the present appeal, the appellant filed Criminal Appeal No.414/2001 impugning the same judgment

dated 29th September, 1999 through the Delhi High Court Legal Services Committee without disclosing the filing of the present appeal.

3. Along with the second appeal, i.e., Criminal Appeal No. 414/2001. After rejection of two similar applications, the appellant's third application

for suspension of sentence being Crl.M.(Bail) No. 1905/2005 was considered by the Court on 17th March, 2005, and the following order was

passed :-

Learned counsel for the appellant submits that appellant has already been in incarceration for a period of over 6 years and 8 months and has also

earned remission of 1 year and 3 months. The conduct of the appellant in the jail has been satisfactory. Appellant is of Nepalese origin and

accused of having murdered his own brother. Considering the age of the accused, which is about 25 years, and that there are younger siblings to

be supported, we consider it appropriate to direct suspension of sentence for a period of 4 months from today, subject to the appellant furnishing a

personal bond in the sum of Rs.15,000/- with two local sureties of the like amount to the satisfaction of the trial Court/Duty Magistrate.

Additionally, appellant would also report once in a week to the concerned Police Station. Appellant would also not leave the town without

permission of the Court. Application stands disposed of.

4. The appellant sought reduction of the surety amount by way of Crl.M (Bail) No. 3599/2005. By the order passed on 11th April, 2005 on this

application, the Court sought his willingness to undertake that he will not leave India and would remain here if his sentence for imprisonment was

suspended. On 2nd May, 2005, this Court modified the order dated 17th May, 2005 directing as follows :

This is an application for reduction in the surety amount and number of sureties. Having considered the matter, we modify the order dated 17th

May, 2005 and direct the suspension of sentence of appellant for a period of four months from the date of release. Upon his furnishing a personal

bond in the sum of Rs.5,000/- with one surety of the like amount to the satisfaction of the trial Court/duty Magistrate. Appellant shall surrender on

expiry of four months from the date of release. Appellant would also report once in a week to the concerned police station and would not leave the

jurisdiction of this Court without permission of the Court. Application stands disposed of. Dasti.

5. Crl. Appeal No.414/2001 was thereafter listed on 9th November, 2005 by the Registry upon intimation being received from the

Superintendent, Central Jail No.2, Tihar, that the appellant had not surrendered after expiry of the interim suspension of sentence granted by the

Court. The Non-bailable warrants issued by the Court were not executed.

6. Accordingly, the Court called for the trial court record with regard to issuance of NBWs of arrest as well as notice was issued to the surety for

forfeiting the surety amount and the report was called for from the trial court in this regard.

7. Our attention is drawn to the report dated 9th November, 2005 received in Criminal Appeal No.414/2001 from the learned Additional

Sessions Judge reporting that the NBWs remained unexecuted and that the surety had already deposited the amount of fine imposed upon him vide

order dated 15th April, 2005.

8. The record shows that the copy of order dated 3rd July, 2006 from Mr. Rakesh Tiwari, learned Additional Sessions Judge, Karkardooma

Courts, Delhi, sent to this Court contains a report to the effect that the appellant was declared Proclaimed Offender after issuance of the process

under Section 82 & 83 Cr.P.C. and recording the statement of witnesses.

9. On 2nd May, 2006, the directions were issued to the SHO to make efforts to arrest the appellant following the process under Section 82/83

Cr.P.C. Finally, the order dated 2nd August, 2006 noted that the appellant had been declared Proclaimed Offender. It was further directed by the

Court that Crl. Appeal No. 414/2001 being subsequent to Criminal Appeal No.783/2000 would be deemed to have been withdrawn.

10. In these circumstances, this Court appointed Ms. Ritu Guaba, Advocate as an amicus curiae to represent the appellant in this appeal. As she

was not appearing on 10th November, 2016 this Court appointed Ms. Inderjit Sidhu, Advocate, who is present in Court, as an amicus curiae on

behalf of the appellant.

11. The nominal roll of the appellant has been called for from the Jail which shows that the appellant has undergone a total imprisonment of six

years eleven months and fifteen days as on 7th June, 2005 when he was released on interim suspension of sentence which liberty he has misused.

12. In view of the pronouncement of this Court reported in *Mukesh v. State*; Crl. Appeal No.186/1992 and the pronouncement of the Apex

Court in *Surya Baksh Singh v. State of Uttar Pradesh*, (2014) 14 SCC 222, there is no prohibition to us hearing the present appeal. Having

appointed a competent amicus curiae in the above facts the rights of the appellant would be protected. There is no prohibition to our hearing the

present appeal.

5. In this background, we proceeded to hear arguments on 17th November, 2016 in the appeal and reserved the judgment. We have been

carefully taken through the record of the case by Ms. Inderjeet Sidhu, Advocate and Varun Goswami, learned APP for the State.

6. The case of the prosecution rests on eye witness account of three witnesses namely Mukesh Gupta (PW1); Doodh Nath Mishra (PW5) and

Jalaluddin @ Salim (PW6).

Factual Matrix

7. The unfolding of events on the fateful night which led to the implication of the appellant, his conviction and sentence is within a narrow compass

and is disclosed in the testimony of Mukesh Gupta (PW1), we summarise the same hereafter.

8. A sweet shop in the name and style of Krishna Sweets Corner was being run on the ground floor of House No. 1/422, Gali No. 6, Friends

Colony, Delhi-95 by Shri Mukesh Gupta (PW1). As is disclosed in the testimony of witnesses, on 22nd June, 1998 at about 8.30-8.45 a.m.,

Doodh Nath Mishra (PW5) and his friend Jalaluddin @ Salim (PW6) were sitting in front of the Krishna Sweets Corner and taking tea. At that

time, other workers in the factory of Moni Wear were drinking tea sitting outside the Krishna Sweets Corner. It is in the testimony of both these

witnesses that they were workers at M/s Moni Wear which was situated near the sweets shop where boxes are manufactured. One Bhanu

Parshad purchased two samosas and tea from Mukesh Gupta (PW1) also sat down on the bench and starting consuming the same. Mukesh Gupta

(PW1) was placed at the counter in his shop.

9. At that time, Devraj, appellant herein who was earlier working in the factory arrived at the Krishna Sweets Corner from the side of the railway

line and gave a knife blow to Bhanu Parshad who had by then eaten the samosas. After giving the knife blow, Devraj started running towards the

railway line. The knife which he had used for attacking Bhanu Parshad who started bleeding fell on the spot. PW 1, 5 and 6 have testified that after

being stabbed, Bhanu Parshad also fell on the ground. Doodh Nath Mishra (PW5) and Jalaluddin (PW6) gave a chase to the appellant Devraj.

PW 1 Mukesh Gupta also ran after them. These three witnesses apprehended the appellant after some distance. When questioned as to why he

had attacked Bhanu Parshad, the appellant informed that Bhanu Parshad had not returned an amount of Rs.6,300/- which he had borrowed from

the appellant for a long time and therefore, he had given the knife blow. The witnesses have disclosed that they learnt about the name of the

assailant after they had apprehended him. The appellant also disclosed that Bhanu Parshad was his own brother. After having been attacked,

Bhanu Parshad fell on the ground and was bleeding from his injuries.

10. Having apprehended the appellant, Mukesh Gupta telephonically informed the police.

Investigation conducted and evidence led

11. So far as the police intervention in the case is concerned, the factum of the call by Mukesh Gupta having been made to the police is

corroborated in the testimony of Doodh Nath Mishra (PW5) and Jalaluddin (PW6). We also find that in his evidence, Ct. Ilkfat Ali Khan who

appeared as PW9 refers to telephonic information received by a public call, logged as DD no. 12A at the PS Seema Puri with regard to the

murder of a person in front of Sansar Sewing Machine Factory in gali no. 6. Copy of this DD was handed over to SI Khemenderpal Singh

(PW12) for further action who along with Ct. Ilkfat Ali Khan proceeded to the spot which was about two kilometers from the police station. At

the spot, these police officials found the dead body of Bhanu Parshad as well as the three eye witnesses, Mukesh Gupta, Doodh Nath Mishra and

Jalaluddin who produced Devraj before them. The dead body was lying in a pool of blood with blood on the clothes of the deceased as well as on

the ground. The police also found a bloodstained knife and a bloodstained diary lying at the spot.

12. In the meantime, Inspector Narender Mohan (PW13) along with Ct. Satender Rath (PW11) also reached the spot.

13. It is in the evidence of Inspector Narender Mohan (PW13), which is duly corroborated by the testimony of SI Khemenderpal Singh (PW12)

and Ct. Satender Rath (PW11), that Mukesh Kumar Gupta gave the statement (Exh. PW1/A) with regard to the incident on which Insp.

Narender Mohan (PW13) made an endorsement Exh. PW13/A. Insp. Narender Mohan (PW13) handed over this rukka to Ct. Satender Rath for

registration of the case. The statement of Mukesh Gupta was scribed by SI Khemenderpal Singh Ex. PW1/A which was signed by Mukesh Gupta

at point "A" and also endorsed by Inspector Narender Mohan (PW13) at point "C" (Exh. PW13/A). It is duly established on record in the

testimony of Ct. Satender Rath (PW11) that he had taken the rukka to the police station Seema Puri and as a result through FIR No. 384/98 was

registered by the Police Station Seema Puri. Ct. Satender Rath (PW11) returned to the spot along with the rukka and copy of the FIR was

handed over to the IO Insp. Narender Mohan (PW13), Addl. SHO, PS Seema Puri.

14. SI Mukesh Jain (PW7) who was a draftsman was called at the spot by Insp. Narender Mohan who had taken rough notes and measurements

and prepared the scaled site plan Ex. PW7/A.

15. At the spot, IO Inspector Narender Mohan also got the site plan prepared from SI Khemenderpal Singh with correct marginal notes Exh.

PW13/B. The crime team was called to the spot by Insp. Narender Mohan (PW13). The spot was photographed which photographs were

proved on record as Exh. P1-P7.

16. The bloodstained diary found at the spot was taken into possession after converting it into a pullanda and sealed with the seal of NM vide

seizure memo Exh. PW1/D. This diary was produced and proved as Ex. P2 before the trial court.

17. The investigating officer also took into possession the bloodstained knife (Ex. P3) from the spot and converted it into a pullanda and sealed the

same with the seal of NM vide Ex. PW1/C.

18. A rough sketch of the knife was got prepared by SI Khemenderpal Singh (PW 12) (Exh. PW1/B), measurement of the knife were taken by SI

Khemenderpal Singh (PW12) and noted on Exh. PW1/B.

19. The three eye witnesses Mukesh Gupta, Doodh Nath Mishra and Jalaluddin confirmed these recoveries and signed the memos in witness

thereof.

20. A blood sample from the body of the deceased was taken from his body with the help of a piece of cotton gauze which was kept in a small

plastic phial and made into a pullanda with the help of piece of cloth and marked as serial no."A". A sample was also taken of a bloodstained

piece of cotton from the shirt of the deceased which was also converted into a pullanda and marked as serial no."B".

Bloodstained earth control from the ground was converted into a pullanda and marked as serial no."C".

The three pullandas mark A, B and C were sealed with the seal of NM and taken into possession vide Exh.PW1/H also prepared by SI

Khemenderpal Singh and signed by the three eye witnesses.

21. The bloodstained shirt (Exh. P4) of the appellant Devraj @ Shyam was also seized and sealed with the seal of NM and taken into possession

vide Exh.PW1/G which was scribed by SI Khemenderpal Singh.

22. The dead body of the deceased was sent to the GTB Hospital with Ct. Ilkfat Ali Khan (PW9). Before sending the dead body to the hospital,

the IO Insp. Narender Mohan (PW13) had effected a personal search of the dead body and from the pocket of the deceased recovered

Rs.30.50, one pen, one bunch of keys, one saving bank account passbook with cheque book, one comb, one wrist watch, which articles were

converted into a pullanda and sealed with the seal of NM and taken into possession vide memo Exh. PW1/J.

23. So far as the appellant was concerned, he was arrested vide Exh. PW1/F and his personal search effected vide memo Exh. PW1/E.

24. It is in the testimony of Insp. Narender Mohan (PW13) that he was suffering from pain in the finger of his right hand and consequently all the

aforenoticed documentation was got scribed by SI Khemenderpal Singh (PW 12) under his instructions.

25. The Investigating Officer got filled the inquest report through SI Khemenderpal Singh (Exh.PW13/C) which was signed by him at point A.

26. The dead body of the deceased was identified by Mukund Kumar (Exh.PW13/D) and Bhoj Raj (Exh.PW13/E).

27. A request for post mortem was made by Insp. Narender Mohan who also sent the recovered knife (Exh. P3) for opinion of the doctor vide

Exh. PW13/F.

28. So far as the post mortem on the body of the deceased is concerned, the same was performed by Dr. A.K. Tyagi (PW10) in the Department

of Forensic Medicine of the UCMS and the GTB hospital on 24th June, 1998 commencing from 10.30 a.m. The post mortem was conducted by

Dr. A.K. Tyagi who submitted the post mortem report (Exh.PW10/A) noting that the autopsy commenced at 10.35 a.m. The doctor had

observed that the clothes of the deceased were stained and soaked with blood at places on the body. So far as the details of the injuries were

concerned, the doctor has noted the following ante mortem injuries on the body of the deceased :

Details of Injuries - Antemortem

1. Abrasion of 1.5 x 1.2 cm present over right side.....(not legible) just above the outer margin of right eye with bruise bluish around in an area of 2

x 2cm around.

2. Abrasion of 1.5 x 0.8 cm was present over upper inner of right side face.

3. Abrasion of 2.0 x 1.8 is present over lower outer aspect of right side face. With bruise bluish around in 2.5 x 2.00 cm area.

4. Abrasion of 2.5 x 2 cm present over back of left elbow.

5. Incised Stab wound of 1.6 x 0.8 cms into cavity deep was present; obliquely over upper inner front of left side chest. The upper outer angle is

6.5 cms below the inner end of clavicle and was 2.5 cm outer to left to midline. The lower inner angle is more outer than the upper outer angle and

the lower inner angle was 1.5 cm out into midline. The lower inner angle was more acute than the upper outer angle and also shows fanning of about

1 cm. The injury after cutting the body was going obliquely inwards backward from left to right & slightly down ward made a cut through &

through over the inner margin of left lung upper lobe. & then further made a cut in the ascending arch of aorta.

The total depth of the injuries was 8 cm.

29. The post mortem report also notes that the left side pleural cavity contains a lot of blood while the heart and lungs had an injury corresponding

with the external injuries.

30. It is in the testimony of Dr. A.K. Tyagi and also noted on the post mortem Exh. PW10/A that the clothes of the deceased and the blood

sample in the gauze as well as a knife were duly preserved by the doctor.

31. So far as the cause of death is concerned, PW10 had opined that ""Death in this case was due to shock as a result of haemorrhage caused by

injury to chest. Injury nos. 1 to 4 caused by blunt force object and inj no. 5 is caused by sharp single edged cutting/stabbing weapon & the no. 5 is

sufficient cause death in ordinary cause of nature.

32. The seized articles were received by Ct. Ilkfat Ali Khan. It is in the testimony of Dr. A.K. Tyagi (PW10) and Ct. Ilkfat Ali Khan (PW9) that

two sealed parcels, one sealed envelope containing the blood sample of the deceased on a gauze sealed with the seal of AK and two sample seals

of AK and the second sealed parcel containing the clothes of the deceased which included one shirt, pant, belt, half pant, pair of socks, pair of

shoes were taken into possession vide Exh. PW9/A my the IO, PW13 (which bears the signatures of Insp. Narender Mohan (PW13) at point "A"

from the GTB mortuary after the post mortem of Bhanu Parshad.

33. The prosecution has examined HC Rajeshwer (PW14) who stated that on 26th June, 1998, he was posted as the MHC(M) at the police

station Seema Puri when Inspector Narender Mohan had deposited with him seven sealed parcels sealed with the seal of NM. These articles were

duly deposited in the malkhana as per the contents of the recovery memo and entries to this effect were made in the register no. 19 at serial no.

3102, photocopies whereof was proved on record as Exh. PW14/A and Exh. PW14/B.

34. It is in the evidence of Ct. Jitender Singh (PW8) that the seized articles were deposited in the malkhana of the police station. PW8 has

deposed that on 10th July, 1998, on the instructions of the investigating officer, he had taken seven sealed parcels sealed with the seal of NM from

HC Rajeshwar, the MHC(M) vide RC No. 82/21 along with the FSL form for depositing the same in the office of the Forensic Science

Laboratory, Malviya Nagar for testing. The witness has proved that he had duly deposited the seized articles with the Forensic Science

Laboratory. Result of the Forensic Science Examination was tendered in evidence as Ex. PW13/G and Exh. PW13/H.

35. The investigating officer has also caused the sealed parcel containing the seized knife to be produced before the doctor for examination and his

opinion. The same was also subjected to an examination on 24th June, 1998 itself. After examination, Dr. A.K. Tyagi carefully noted the marks of

identification of the knife which had a plastic handle on one side on which the word "ARISTOCRAT" was scribed. The blade of the knife was

made of white metal with one sharp edge while the other side was non-cutting. The blade had blood like stains on it. The doctor noted the

following dimensions of the knife and carefully drew the sketch of the knife as well :

Maximum length of knife 20.8cms"" Maximum length of the blade 10.5 cms on the non-cutting edge 9.11 cm on cutting edge. Maximum breadth of

blade is 1.7 cm about 8cm from top.

36. After conducting a careful examination, the doctor opined that injury no. 5 present on the body of Bhanu Parshad as noted in the post mortem

report no. 419/98 dated 24th June, 1998 could be caused by this weapon.

37. After examination, the weapon was sealed with the seal of AKT, sample seal and inquest report was handed over to the SHO, Seema Puri

along with the post mortem report as well as weapon report (Exh.PW10/B) and inquest papers in original.

38. We find that the request for the post mortem was made by Inspector Narender Mohan on 22nd June, 1998 (Exh. PW13/F). PW13 has

effected a complete submission of the facts of the case in the summary of the case on the prescribed format. It is mentioned therein that it was

learnt that Devraj @ Shyam, brother of the deceased Bhanu Parshad inflicted injury to deceased over the payment of Rs.6,300/-.

39. Our attention has been drawn to the FSL report of the Biology division of the Forensic Science Medicine dated 26th February, 1999 Exh.

PW13/G which has reported existence of human blood of the B group on the bloodstained gauze containing a sample of blood of deceased Bhanu

Parshad. The report has also identified human blood of the B group on the recovered knife as well. On all other articles i.e. the clothes or the shirt,

pair of shoes, jeans pant with belt, jeans pant, diary, bloodstained earth as well as the bloodstained cotton, it is reported that some blood was

identified thereon. These exhibits were duly sealed with the seal of DSC - FSL which were deposited in the malkhana of the police station.

40. It is in the evidence of Insp. Narender Mohan (PW13) that he had interrogated the appellant on 22nd June, 1998 who had voluntarily made a

disclosure statement which was scribed by SI Khemenderpal Singh (PW12). However, we find that no recovery was effected by the police

pursuant to the disclosure statement. In view of the statement having been made while the appellant was in police custody, the same is hit by the

prohibition under Sections 24 to 30 of the Indian Evidence Act, 1872.

41. After completion of investigation, the police filed a charge sheet on 18th August, 1998 before the Metropolitan Magistrate. After compliance

with the provisions under Section 207 of the CrPC, 1973, the Metropolitan Magistrate committed the case to the Sessions Court. By an order

dated 16th November, 1998, the trial court framed a charge under Section 302 of the IPC, 1860 and a separate charge under Section 27 of the

Arms Act, 1959 against the appellant. The appellant pleaded not guilty and claimed trial.

42. During trial, the prosecution examined 14 witnesses in support of its case. The appellant was given an opportunity to explain the incriminating

circumstances as stood established by the prosecution through the evidence led by it.

43. The appellant set up bare denial to the circumstances put to him. He claimed that he was innocent and had been falsely implicated in the case.

Defence version

44. In his defence, the appellant examined himself as a witness under Section 315 of the CrPC stating that he was working as a chowkidar in the

Ajit Jain Veer Industry situated in Jhilmill area of Delhi for the last 7½ years while his brother Bhanu Parshad was living with him in Delhi for

about 14 years. The brothers were living in one room and jointly sharing a joint kitchen. It was also claimed that they were having a joint income

and that his brother was mukhiya of their house in Delhi. The appellant took up the plea of alibi and submitted that his duty began from 8 p.m. to

10 a.m. daily. He has contended that on the day of the incident, he had left the factory only at 10.15 a.m. for his house. When he reached the spot,

he saw several persons of the public standing there and that police had caught the tea shop owner namely Mukesh Gupta who was sitting in the

gypsy while his brother Bhanu Parshad was lying on the ground. When he began to weep, the police asked him his relationship with the person on

the ground. He had told the police about the fact that his brother had left service at Cannaught Place about two months ago. It was claimed that he

was thereafter beaten and apprehended. After about one hour, relatives of Gupta came and talked to the police where after he was let off and the

appellant was falsely implicated. In his cross examination, the appellant admitted that he had not made any complaint to any higher official or the

court about the above facts and that he had not informed the same to any person.

45. The appellant admitted that he used to come to the Krishna Sweets Corner for taking tea and eating food and that the Veer Industry was

situated near the railway line. The appellant denied the suggestion with regard to the offence or the facts established in the evidence of the eye

witnesses.

46. After a detailed consideration of the entirety of the case, by the impugned judgment dated 29th September, 1999, the trial court has concluded

that the prosecution had succeeded in establishing the commission of the offences with which he was charged and consequently held him guilty for

the same. The same also resulted in the passing of the order of sentence on 30th September, 1999.

47. We have heard Ms. Inderjit Sidhu, learned amicus curiae as well as Mr. Varun Goswami, learned Addl. PP for the State who have carefully

taken us through the record of the case.

Conclusion

48. We have extracted the record above and find that so far as the commission of the offence is concerned, Mukesh Gupta (PW1), Doodh Nath

Mishra (PW5) and Jalaluddin (PW6) have carefully described the manner in which the appellant came to the spot and stabbed his brother who

was having snacks at the Krishna Sweets Corner owned by Mukesh Kumar Gupta (PW1). The motive for the offence was disclosed by the

appellant himself which was to the effect that the deceased had not returned the sum of Rs.6,300/- which had been borrowed by him for a long

time.

49. This case is an unfortunate case in which a real brother has stabbed to death his elder brother for an amount of Rs.6,300/-. Given the fact that

the commission of the offence has been established beyond any doubt by the testimony of three eye witnesses, the question of motive becomes

irrelevant. The photographs Exh.P1/1-7 corroborate the ocular evidence of the crime.

50. The forensic evidence has found blood of the same group as that of the deceased on the knife which was recovered on the spot. Human blood

was identified on the other seized articles including the clothing of the deceased.

51. In the instant case, the trial court has held that the eye witnesses were natural witnesses who had no motive at all for false implication of the

appellant. The plea of alibi set up by the defence was not put to any of the prosecution witnesses. Even in the evidence lead by the appellant under

Section 315 of the CrPC, the appellant put forth a case which was not put to any of the witnesses. No such plea as was taken in his defence was

suggested to the investigating officer or to any of the other prosecution witnesses. The plea of false implication was never made by the appellant by

way of any complaint to any person or authority.

52. In view of the above briefing facts, we find that the appellant has been unable to assail the finding of guilt by the trial court on any legally tenable

grounds.

53. For all these reasons, we find no merit in this appeal which is hereby dismissed.

54. It is essential to observe that the appellant has been declared a proclaimed offender on 2nd August, 2006. The State shall thus endeavour to

make all efforts to apprehend and arrest the appellant so that he undergoes the remaining sentence in terms of the order on sentence dated 30th

September, 1999.