

DAULAT RAM

A

v.

STATE OF PUNJAB

APRIL 29, 1997

[M.M. PUNCHHI AND K.S. PARIPOORNAN, JJ.]

B

Criminal Trial :

Non-appreciation/ignorance of vital defence witnesses by the Trial Court as well as by the High Court—Appreciation of defence evidence by the Supreme Court called for if ignored by the Courts below.

C

No neighbour coming forward to support the case of the prosecution—Whether fatal—Held 'Yes'.

Dress of the deceased at the time of death—Relevance of—Held, the manner of his dress was least suggestive of the fact that he was set for travel to another destination—Conviction can be set aside if the timing of death proves to be materially different than the one alleged by the prosecution.

D

Medical Jurisprudence

Timing of death—To be ascertained by properly interpreting the post-mortem report and evidence of the doctor (conducting the post-mortem) and not by the prosecution story.

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Criminal Procedure Code, 1973 :

Section 313—Whether statement made by the accused relevant if the version came as suggestions in the cross-examination of the witnesses as well as deposition by a prosecution witness (wife of accused), whom the prosecution got declared hostile at the very initiation of her statement.

F

Indian Penal Code, 1860 :

Section 302 read with Section 27 of the Arms Act—Murder of educated unmarried young man of 25 years—Murder in the presence of alleged eye witnesses—Accused a police constable—Murder by his service revolver—Conviction cannot be upheld if the defence version is different and the timing of

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A *death is proved to be different than the one alleged by the prosecution.*

The Appellant was employed as a Constable in the Police and PW 6 was his wife. The couple had a single room house to live in locality R. Deceased, a man of 25 years having done his M.A., had constructed a house close to the house of the Appellant, and was staying alone. His father, Sub-Inspector GS had at one time been posted at R, but at the relevant time was posted at M, a town about 53 miles away from R. Deceased's father's brother, G, a PW, lived at S, at a distance of about 55 miles from R. Both the towns were in different directions.

The case of the prosecution was that G, father's brother of the deceased had visited the place R on a number of occasions and had developed a feeling that the deceased was carrying on with PW6 and he wanted to disrupt the relationship. Thus on the date of occurrence, sometime after 1.00: PM, he came to the place R accompanied by H, in order to take the deceased with him to his native place. Half an hour later, at about 1.45 pm. G, H and the deceased set out from the latter's house for going to their native place. While doing so, the deceased told G and H that he had a message to deliver at the house of the Appellant. Saying so he went and entered the house of Appellant followed by G and H. They saw him talking to PW6. In the meantime Appellant arrived. Appellant shouted that he was going to teach a lesson to the deceased for having entered his house and saying so he fired five shots in quick succession towards the deceased from the service revolver. On receipt of injuries the deceased fell on a cot, which lay in the sole room. The Appellant then further assaulted the deceased with a knife on his face. Then PW6 intervened. She too got some injuries inflicted by the Appellant. The Appellant thereafter left the place of occurrence carrying his revolver with him. G and H, the eyewitnesses went near the deceased and found him dead.

The prosecution case further was that G leaving behind H near the dead body went to the Local Police Station and lodged the FIR at 2:45 PM. The police came to the spot and prepared the inquest report and the dead body was sent for post-mortem which was conducted by Doctor PW 1, at 5:35 PM.

The post-mortem report (Ex PA) of the deceased revealed that the death was instantaneous and that the time between death and post-mortem was within six hours. At the trial, however, PW 1 amended his statement

to say that the probable duration between death and post mortem could also be eight hours. The blood stained clothes of the deceased which were a T-shirt and pyjamas, were removed and given to the police.

However, the Appellant had a counter version and this came as suggestions in the cross-examination of the witnesses as well as deposition by PW 6, whom the prosecution got declared hostile at the very initiation of the statement. Under Section 313 Cr.P.C, the Appellant gave a statement that on the day of occurrence in the morning when he was away from his house to the market for making purchase of vegetables etc. deceased intruded into his house and tried to criminally assault his wife. In the process she received injuries and she caused injuries to the deceased which he died. On his return, he found his wife absent from the house while the dead body of the deceased was there. He then went to the Police Station where his wife was sitting and she narrated the occurrence. He also requested the Police to record her statement, but they refused. The local Police then sent information to the places M and S and then, father of the deceased arrived, who arranged G and H as PWs. This false case was then concocted. The revolver with live cartridges had been taken to the Police Station by his wife.

PW6 in her statement admitted having killed the deceased by the service revolver of the Appellant which she said lay under the pillow on the cot on which deceased was found lying dead.

The Appellant in his defence examined 13 official witnesses of the Punjab Police to suggest that since the occurrence had taken place at about 8:00 AM in the morning, there had been frantic telephonic and wireless messages by Police to contact GS, father of the deceased. This effort was to dislodge the time of occurrence as projected by the prosecution.

On these facts Trial Court convicted the Appellant under Section 302 of the Indian Penal Code read with Section 27 of the Arms Act, and the same was affirmed in appeal before the High Court. Hence this appeal.

Allowing the Appeal, this Court

HELD : 1. If holes can be picked in the defence that doesn't lead to the prosecution story being automatically proved. The prosecution has to stand on its own legs and can derive no advantage from the weakness of

A the defence. [1068-E]

B 2. The time of the occurrence is seriously in dispute. According to the prosecution the occurrence took place at 2.00 PM and according to the defence it took place at about 8.00 AM in the morning. The situs of the crime is not disputed. According to PW1 the time between death and post mortem could be upto eight hours. Thus according to the medical opinion the crime could have been committed eight hours earlier to 5.30 PM, putting it around 9.00 AM. However that cannot be viewed as a certainty. [1068-F-G]

C 3. As per the post mortem report, the abdomen of the deceased when dissected showed that the small intestines and their contents were described as healthy and containing small amount of semi-digested food. Large intestine and their contents were shown to be healthy and empty. The bladder was shown to be healthy and containing small amount of urine. Thus from the post mortem report, it is conclusively established
D that before his death the deceased had not taken full meals for hours. The prosecution would have the Court believe that until 2.00 PM when deceased was about to leave for his native place in the company of his uncle G, he was not expected to have taken regular breakfast or the noontime meal. According to G when he and H had reached R at about 1.00 PM, they had
E not taken tea etc. at the house of deceased and further that the deceased also had not taken any food etc. in the presence of these two. The condition of the stomach and that of the intestines and the bladder does indicate that the occurrence perhaps took place much earlier to the expected time for breakfast and lunch, possibly in the morning hours. The courts below have totally ignored this aspect of the case. [1068-G-H; 1069-A-C]

F 4. The manner of his dress was least suggestive of the fact that he was set for travel to another destination 55 miles away in the company of his uncle. The dress of the deceased is therefore somewhat intriguing. It is more close to the theory that in morning hours he was casually dressed and had gone to the house of the accused with designs which were far from
G honourable. [1069-E-F]

H 5. The two supposed eye witnesses G and H are from S and according to their own version they seem to have come there to take away the deceased. Their coming to the house of the deceased is a strange coincidence orchestrated so as to witness him being killed. It is rather strange

that G on his own would be caring for his nephew to desist from his amorous relationship with PW6 without taking into confidence the deceased's father. [1069-G-H] A

6. The prosecution has not advanced any cogent reason as to why the presence of these witnesses be not doubted, especially when the time of occurrence is shrouded in doubt. In addition thereto is the defence evidence suggesting that both police stations i.e. at M and S where the father and the uncle of the deceased lived respectively were frantically being attempted to be contacted on police station to police station connection. All these facts lend credence to the defence version that the PWs had come to know of the crime because the matter had been reported at the police station in the first instance by PW6 followed by the Appellant. [1070-A-C] B C

7. No one from the neighbourhood has come forward to support the prosecution even though the investigating officer says that he had questioned some people in the neighbourhood. [1070-C] D

8. On the totality of circumstances this Court entertains the doubt that neither of the two supposed eyewitnesses were present at the scene of the occurrence, nor have they witnessed the same. [1070-D] E

9. The dress of the deceased and the contents of his abdomen suggest that he was murdered much before 2.00 PM, the time asserted by the prosecution. [1070-E] E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 489 of 1989.

From the Judgment and Order dated 19.10.87 of the Punjab & Haryana High Court in Crl. A. No. 227 of 1986. F

Pankaj Kalra and Vijay Kumar for the Appellant.

R.S. Sodhi for the Respondent. G

The Judgment of the Court was delivered by

PUNCHHI, J. This appeal has arisen from an appellate Judgment and Order of the Punjab and Haryana High Court passed on October 19, 1987 in Criminal Appeal No. 427/DB of 1986. H

A The appellant was employed as a Constable in the Punjab Police and at the relevant time was assigned duty as the Personal Guard of one Brij Lal Goel, Ex-MLA, Rajpura, District Patiala. Smt. Pushpa, PW was his wife. The couple had a handful of children. They had a single room house to live in a locality at Rajpura. In the neighbourhood, Narinder Singh deceased was living having constructed a house, quite close to the house of Daulat Ram. Narinder Singh was an educated unmarried young man of 25 having done his MA. He was contemplating to start some business at Rajpura. He was staying alone in his house. His father, Sub- Inspector Gurbachan Singh had at one time been posted at Rajpura, but at the relevant time was posted in the C.I.A. Staff at Malerkotla, a town about 53 miles away from Rajpura. His father's brother, Gurnam Singh, PW lived at Sunam, at a distance of about 55 miles from Rajpura. Both the towns were in different directions.

The case of the prosecution is that Gurnam Singh, PW, father's brother of the deceased had visited Rajpura on a number of occasions and had developed a feeling that the deceased was carrying on with Pushpa, P.W. Gurnam Singh, PW wanted to disrupt the relationship. Thus on July 23, 1985, sometime after 1.00 PM, he came to Rajpura accompanied by Hardial Singh, PW in order to take the deceased with him to his native place Sunam. Half an hour later, at about 1.45 PM, Gurnam Singh, Hardial Singh, PWs and the deceased set out from the latter's house for going to Sunam. While so, the deceased told Gurnam Singh and Hardial Singh, PWs that he had a message to deliver at the house of Daulat Ram. Saying so he went and entered the house of Daulat Ram followed by Gurnam Singh and Hardial Singh PWs. They saw him talking to Pushpa PW. In the meantime, Daulat Ram, appellant arrived. Daulat Ram shouted that he was going to teach a lesson to the deceased for having entered his house and saying so, he fired five shots in quick succession towards the deceased from his service revolver. On receipt of injuries the deceased fell on a cot, which lay in the sole room. The appellant then further assaulted the deceased with a knife on his face. Then Pushpa PW intervened. She too was given some injuries by the appellant. The appellant thereafter left the place of occurrence carrying his revolver with him. Gurnam Singh and Hardial Singh eye-witnesses went near the deceased and found him dead.

The prosecution case further is that Gurnam Singh leaving behind Hardial Singh near the dead body went to the local Police Station, Rajpura and lodged the FIR at 2.45 P.M. The investigative machinery was set in

motion. SI, Harsajjan Singh PW 12 came to the spot and prepared the inquest report. He has shown therein the dead body lying on the cot in position. The dead body was sent for post-mortem examination which was conducted by Dr. Vinod Kumar PW.1 at 5.35 PM. He was also required to examine the injuries of Pushpa PW at 7.00 PM the same day. He found on her three injuries, two of whom were as a result of a blunt weapon assault and one by a sharp-edged weapon. The post-mortem report of the deceased revealed that the death was instantaneous and that the time between death and post mortem was within six hours. At the trial however he amended his statement to say that the probable duration between death and post mortem could also be eight hours. The blood-stained clothes of the deceased which were a T-shirt and pyjamas, were removed and given to the police as case property.

After completion of investigation, the appellant was tried by the Sessions Judge, Patiala under Section 302 of Indian Penal Code as also under Section 27 of the Arms Act. He was convicted for both the offences and sentenced to life imprisonment and payment of fine of Rs. 1000; in default further rigorous imprisonment for one year for the former offence and sentenced to undergo rigorous imprisonment for one year for the latter offence; sentences to be running concurrently. They were affirmed in appeal before the High Court.

The appellant had a counter-version. That version came as suggestions in the cross-examination of the witnesses as well as deposition by PW. 6 Pushpa, whom the prosecution got declared hostile at the very initiation of her statement. The appellant have the following statement under Section 313 Cr.P.C.

"I am innocent. I have been falsely implicated. On the day of occurrence in the morning when I was away from my house to the market for making purchase of vegetables etc. deceased intruded into my house and tried to criminally assault my wife and she resisted. In the process she received injuries at her hands and she caused injuries to the deceased with which he died. On my return I found my wife absent from the house while the dead-body of the deceased was there. I then went to the Police Station where my wife was sitting and she narrated the occurrence. I also requested the police to record her statement, but they refused. The local

A police then sent information to Malerkotla and Sunam and Gurbachan Singh S.I. father of the deceased arrived, who arranged Gurnam Singh and Hardial Singh as PWs. This false case was then concocted. The revolver with live cartridges had been taken to the Police Station by my wife."

B P.W. 6 Pushpa in her statement admitted having killed the deceased by the service revolver of the appellant which she said lay under the pillow on the cot on which the deceased was found lying dead in position.

C The appellant in his defence examined 13 official witnesses of the Punjab Police of the Wireless Department to suggest that since the occurrence had taken place at about 8.00 A.M. in the morning, there had been frantic telephonic and wireless messages by Rajpura Police to contact S.I. Gurbachan Singh, father of the deceased who was then posted at Malerkotla. This effort was to dislodge the time of occurrence as projected by the prosecution and hence the story by itself.

D The learned Sessions Judge devoted more than half of his judgment in critically examining the defence version as if it required the standard of proof as that of a prosecution case. The High Court however avoided pursuing that course and confined itself to the prosecution case. If holes can be picked in the defence that doesn't lead to the prosecution story being automatically proved. The prosecution has to stand on its own legs and can derive no advantage from the weakness of the defence. Keeping that in view, we proceed further.

F The time of the occurrence is seriously in dispute. According to the prosecution the occurrence took place at 2.00 PM and according to the defence it took place at about 8.00 A.M. in the morning. The situs of the crime is not disputed. According to Dr. Vinod Kumar PW.1 the time between death and post-mortem could be upto eight hours. Thus according to the medical opinion the crime could have been committed eight hours earlier to 5.30 PM, putting it around 9.00 am. However that cannot be viewed as a certainty. Coming to the post-mortem report Ex. PA, the abdomen of the deceased when dissected showed that the stomach and its contents were healthy and empty. The small intestines and their contents were described as healthy and containing small amount of semi-digested food. Large intestines and their contents were shown to be healthy and empty. The bladder was shown to be healthy and containing small amount

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of urine. Thus from the post-mortem report, it is conclusively established that before his death the deceased had not taken full meals for hours. The prosecution would have us believe that upto 2 PM, when he was about to leave Rajpura for Sunam in the company of his Uncle Gurnam Singh PW, he was not expected to have taken regular breakfast or the noon-time meal. According to Gurnam Singh PW when he and Hardial Singh had reached Rajpura at about 1.00 PM, they had not taken tea etc. at the house of the deceased and further that deceased also had not taken any food etc. in the presence of those two. The condition of the stomach and that of the intestines and the bladder does indicate that the occurrence perhaps took place much earlier to the expected time for breakfast and lunch, possibly in the morning hours. The courts below have totally ignored this aspect of the case.

It is worthy of recall that the deceased was an educated youngman of 25 wanting to set up a business at Rajpura. He seemingly had done well in building a house of his own. He had good parentage. Supposedly accompanying his uncle in order to go to Suman he is said to have been wearing a T-shirt and pyjamas, a dress uncommon to be worn for going to places. The top dress does not match with the bottom one. Having regard to the normal pattern of life, the deceased was expected when wearing a T-shirt to match it with a pair of trousers or Jeans and not with pyjamas. Likewise if he was to be wearing pyjamas he would be matching it with a shirt or a kurta not a T-shirt. The manner of his dress was least suggestive of the fact that he was set for travel to another destination 55 miles away in the company of his uncle. The dress of the deceased is therefore somewhat intriguing. It is more close to the theory that in morning hours he was casually dressed and had gone to the house of the accused with designs which were far from honourable.

The two supposed eye-witnesses Gurnam Singh and Hardial Singh PWs are from Sunam and according to their own version seem to have come there to take away the deceased. Their coming to the house of the deceased is a strange coincidence orchestrated so as witness him being killed. It is rather strange that Gurnam Singh PW on his own would be caring for his nephew to desist from his amorous relationship with Pushpa, PW without taking into confidence the deceased's father. According to his statement he had kept the affair to himself. Strangely he took into confidence rather Hardial Singh, P.W. and brought him along to Rajpura. It

A is difficult to understand what purpose had Hardial Singh to serve in accompanying Gurnam Singh to Rajpura to fetch the deceased. The prosecution has not advanced any cogent reason as to why the presence of these witnesses be not doubted, especially when the time of occurrence is shrouded in doubt. In addition thereto is the defence evidence suggesting that both police stations i.e. at Malerkotla and Sunam where the father and uncle of the deceased lived respectively were frantically being attempted to be contacted on police station to police station connection. All these facts lend credence to the defence version that the P.Ws had come to know of the crime because the matter had been reported at the police station in the first instance by P.w. 6 followed by the appellant.

C Lastly no one from the neighbourhood has come forward to support the prosecution even though the investigating officer says that he questioned some people in the neighbourhood. It was for him to say as to whom he had questioned and not for the defence to elicit those names so as to call those persons in defence, as expected by the learned Sessions Judge.

D Thus on the totality of circumstances we have come to entertain the doubt that neither of the two supposed eye-witnesses were present at the scene of the occurrence, nor have they witnessed the same. We have also entertained the doubt about the time of the occurrence and the manner in which the prosecution would have us believe that it took place. It could well be that it had taken place as suggested by the defence. The dress of the deceased and the contents of his abdomen suggest that he was murdered much before 2.00 PM, the time positively asserted by the prosecution.

F For the foregoing reasons, we allow this appeal, set aside the impugned judgment and order of the High Court as also that of the Court of Session and acquit the appellant of all charges. The appellant is on bail. His bail bonds are discharged. Fine, if paid by him be refunded to him.

R.K.S.

Appeal allowed.