

DARSHAN SINGH

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v.

STATE OF PUNJAB

(Criminal Appeal No. 2099 of 2008)

JANUARY 06, 2016

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[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

Penal Code, 1860 – ss.302 and 324 – Prosecution of appellant-accused along with 6 accused for offences u/ss 148, 302/149, 307/149, 324/149, 218 and 201 IPC – Prosecution case that accused party and complainant party were facing proceedings u/s 107/151 Cr.P.C. and the incident took place when the parties had gone before the Court of the Magistrate for attending the proceedings – Trial court acquitted 3 of the accused including the appellant-accused – In State appeal, High Court set aside the acquittal of appellant-accused and convicted him u/ss.302 and 324 – On appeal, held: The evidence of three injured eye-witnesses is corroborated by the medical evidence – The appellant-accused has been assigned specific role in assault – Thus the prosecution has discharged its burden to prove the case – The plea of alibi by the accused has been rightly held to be false – Therefore, the appellant-accused has rightly been convicted by the High Court.

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Evidence – Plea of alibi – Nature of – Plea of alibi is not one of the exceptions contained in Chapter IV of IPC – It is rule of evidence recognized u/s. 11 of Evidence Act – Such plea is required to be proved only after prosecution has proved its case – Evidence Act, 1872 – s.11 – Penal Code, 1860 – Chapter IV.

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Words and Phrases – ‘Alibi’ – Meaning of.

Dismissing the appeal, the Court

HELD: 1. There are three injured eye witnesses in the present case. It is a case of day light incident. Injuries on the person of said eye witnesses have been corroborated by the doctors PW-4, PW-5 and PW-14. Ocular testimony of eye witnesses cannot be discarded lightly. Injured eye witnesses have assigned specific role as to how the appellant-accused assaulted

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A one of the deceased who suffered ante mortem injuries which gets corroborated from the autopsy report of the deceased. Once the prosecution has discharged its burden, the burden to prove that appellant-accused was not present with other accused at the place of incident and had gone elsewhere, lies on him. [para 12] [560-E-G]

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 2.1 The High Court has correctly held that the appellant-accused has taken false plea of *alibi*. It is proved on the record that in the proceedings under Section 107/151 of Cr.PC before Executive Magistrate, he was to be present in said case on 17.02.1995. His presence and role is narrated in detail by the injured eye witnesses. In view of his role in the incident narrated by the eye witnesses, it is hard to believe that after moving application on 16.02.1995 for casual leave for 17.02.1995, the appellant attended the school next day in the first half and sought half day leave thereafter. The attendance register was not seized immediately after the incident. His plea of *alibi* is vacillating. [para 16] [562-D-E]

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 2.2 The word *alibi* means “elsewhere”. The plea of *alibi* is not one of the General Exceptions contained in Chapter IV of IPC. It is a rule of evidence recognized under Section 11 of the Evidence Act. However, plea of *alibi* taken by the defence is required to be proved only after prosecution has proved its case against the accused. In the present case, said condition is fulfilled. [para 17] [562 -F-G]

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 CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2099 of 2008

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 From the Judgment and Order dated 02.09.2008 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal 568-DBA of 1998.

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 K. T. S. Tulsi, Kuber Boddh, Navandeep Matta, Niraj Gupta, Raj Kamal for the Appellant.

Saurabh Ajay Gupta, AAG, Nishant Bishnoi Kuldeep Singh for the Respondent.

The Judgment of the Court was delivered by

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PRAFULLA C. PANT, J. 1. This appeal is directed against judgment and order dated 02.09.2008, passed by High Court of Punjab and Haryana, Chandigarh, whereby the High Court has disposed of Criminal Appeals No. 209 D.B. and 568 DBA, both of 1998 and Criminal Revision No. 654 of 1998. The appeal filed by the State qua Darshan Singh (present appellant) against his acquittal by the trial court, was allowed and his acquittal was reversed. The present appellant has been convicted by the High Court under Section 302 of Indian Penal Code, 1860 (for short "IPC"), and sentenced to imprisonment for life and directed to pay a fine Rs. 5,000/- and in default of payment of fine he is directed to undergo rigorous imprisonment for a further period of six months. Appellant Darshan Singh has been further found guilty of the charge of offence punishable under Section 324 of IPC, and sentenced to undergo rigorous imprisonment for a period of one year and directed to pay fine of Rs. 1,000/- with default clause directing to undergo rigorous imprisonment for further period of two months.

2. We have heard learned counsel for the parties and perused the papers on record.

3. Prosecution story, in brief, is that there was dispute between complainant and his relatives on one side and accused persons on the other side regarding their turn of irrigating their fields. On account of this, earlier there had been incidents of assaulting each other. In the circumstances, both the parties were facing proceedings under Section 107/151 of Code of Criminal Procedure, 1973 (for short "Cr.PC") before Executive Magistrate, Faridkot. On 17.02.1995, complainant Amrik Singh (PW-1) along with Raj Singh (PW-3), Sukhchain Singh (PW-2), Harbans Singh (one of the deceased), and their father Mander Singh and cousin Gursewak Singh with maternal uncle Santa Singh (another deceased) and Boota Singh had gone to attend the proceedings of the court. From the side of accused Surain Singh, Jasmail Singh, Darshan Singh (present appellant), Jhanda Singh and Boota Singh had also come to the court on said date. At about 11.00 a.m. both the sides started quarrelling and had a heated exchange of words, as Surain Singh objected to presence of Bhajan Singh who was relative of complainant Amrik Singh and not a party to the proceedings. He (Surain Singh), a Amritdhari Sikh, took out his Siri Sahib (Small Kripan, a sharp edged weapon) and gave blow to Bhajan Singh. When complainant party attempted to separate them, Surain Singh gave Kripan blow on the person of Mander Singh. He assaulted

A also on the left shoulder of the complainant Amrik Singh, and gave two blows on the person of Sukhchain Singh. He did not stop there and also assaulted Harbans Singh (deceased) with Kripan. Accused Darshan Singh (appellant) also took out his Kripan and inflicted injuries on the person of Santa Singh (another deceased). Accused Darshan Singh (appellant) is said to have given blows also to Raj Singh. Pal Singh and B Jhanda Singh caught hold of Gursewak Singh, and Darshan Singh assaulted them also. Accused Boota Singh instigated other accused that no one should be escaped alive. The injured were taken to Guru Gobind Singh Medical Hospital, Faridkot, where Santa Singh and Harbans Singh succumbed to their injuries.

C 4. Report of the above incident was lodged by complainant Amrik Singh (PW-2). On the basis of it, FIR No. 14, dated 17.02.1995 was registered at Police Station, City Faridkot. The investigation was taken up by Sub-inspector Ranjit Singh (PW-17), who took the dead bodies in his possession, sealed it, prepared inquest report and got sent them for D post-mortem examination. Dr. Sarabjit Singh Sandhu (PW-4) conducted post-mortem examination on the dead bodies of Santa Singh and Harbans Singh on 17.02.1995, and prepared autopsy reports. The other injured were also medically examined by PW-4 Dr. Sarabjit Singh Sandhu and PW-5 Dr. Manjit Singh. There were injuries also on the side of the E accused, and from their side accused Pal Singh, accused Surain Singh and accused Jhanda Singh suffered injuries. After interrogating witnesses and on completion of investigation PW-16 Assistant Sub-inspector Ram Singh (who took over investigation from S.I Ranjit Singh) submitted charge-sheet against accused persons in the court.

F 5. It appears that after the committal of the case it was registered as Session Case No. 33 of 1995. On 7.7.1995, Additional Sessions Judge, Faridkot framed charge against all the accused, namely, Surain Singh, Darshan Singh (present appellant), Pal Singh, Jhanda Singh, Jasmal Singh, Boota Singh and Lachman Dass relating to offences punishable under Section 148, 302/149 (on separate counts of death of two persons), G 307/149, 324/149, 218 and 201 IPC to which accused pleaded not guilty and claimed to be tried.

H 6. Thereafter prosecution got examined PW-1 Amrik Singh (informant), PW-2 Sukhchain Singh, PW-3 Raj Singh (all the three injured eye witnesses), PW-4 Dr. Sarabjit Singh Sandhu who conducted post-mortem examination, PW-5 Dr. Manjit Singh, PW-6 Gurcharanjit Kaur,

Ahalmad, PW-7 Ujjagar Singh, Steno to A.D.C. Moga, PW-8 ASI Basant Singh, PW-9 Head Constable Shagan Singh, PW-10 Inspector Prithvi Singh, PW-11 Prithi Pal Singh, S.S. Teacher, PW-12 Dharam Singh, Draftsman, PW-13 MHC Baljit Singh, PW-14 Dr. S.P. Singla, PW-15 Sub Inspector Shivraj Bhushan, PW-16 Sub Inspector Ram Singh, PW-17 Inspector Ranjit Singh, PW-18 Constable Jagjit Singh and PW-19 Satish Kalia, Ahalmad. B

7. The evidence adduced by prosecution was put to the accused by the trial court under Section 313 of Cr.PC. In reply to which the accused persons alleged that evidence against them was incorrect. Appellant Darshan Singh took the specific plea of alibi stating that on 17.02.1995 he was attending his duty as a Laboratory Assistant in Senior Secondary School, Janerian. Other accused took pleas of self defence. On behalf of the defence DW-1 Satnam Kaur, DW-2 Rajinder Kumar, DW-3 Darshan Singh (Teacher in primary school, Pakhi Khurd), DW-4 Pawan Kumar, Ahalmad, DW-5 J.V. Tiwari, DW-6 Mukhtiar Singh, DW-7 Om Parkash and DW-8 ASI Harvinder Pal Singh were examined. D

8. The trial court after hearing the parties found that charge as against accused Boota Singh, Darshan Singh and Lachman Dass is not proved and, as such, they were acquitted. However, accused Surain Singh was convicted under Section 302 of IPC for committing murder of Harbans Singh and also under Section 307 of IPC for attempting to murder Sukhchain Singh. He (Surain Singh) was further convicted under Section 324 of IPC. Rest of the accused Jhanda Singh, Jasmail Singh and Pal Singh were convicted under Sections 302/34, 307/34 and 324/34 of IPC. After hearing the sentence, the trial court sentenced the convicts to various sentences. E

9. Convicts Surain Singh, Jhanda Singh, Jasmail Singh and Pal Singh challenged their conviction before the High Court, and by the impugned order the High Court allowed appeal of Jhanda Singh, Jasmail Singh and Pal Singh, but appeal of Surain Singh was dismissed. The connected appeal No. 568 DBA of 1998 filed by the State qua Darshan Singh against order of his acquittal was allowed, and he was convicted under Section 302 of IPC for committing murder of Santa Singh and sentenced to imprisonment for life and directed to pay fine of Rs. 5,000/- with default clause. He was further convicted under Section 324 of IPC for voluntarily causing hurt with a deadly weapon on person of Gursewak Singh and Raj Singh and sentenced to rigorous imprisonment F
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A for a period of one year and to pay fine of Rs. 1,000/- with default clause. Aggrieved by said judgment and order dated 02.09.2008, passed by the High Court, this appeal is filed by accused Darshan Singh who was acquitted by the trial court, but order of acquittal was reversed and was convicted by the High Court.

B 10. Mr. K.T.S. Tulsi, Senior Advocate, on behalf of the appellant, has argued before us that where two views are possible on the basis of evidence on record, the High Court should not have reversed the order of acquittal recorded by trial court. It is further contended that appellant Darshan Singh was discharging his duties in the school on 17.02.1995 and was not present at the place of incident when occurrence took place and as such, the acquittal recorded by the trial court was not liable to be interfered with. Our attention is drawn to the evidence adduced in defence in support of plea of alibi.

C 11. On the other hand, learned counsel for the State pointed out that in the incident in question, while Surain Singh committed murder of Harbans Singh, the appellant (Darshan Singh) committed murder of Santa Singh. It is further submitted that plea of alibi taken by the defence was correctly found false by the High Court after re-appreciation of evidence. Learned counsel for the State referred to the statements of injured eye witnesses.

D 12. We have considered rival submissions and perused the entire record of the case. There are three injured eye witnesses in the present case, namely, PW-1 Amrik Singh, PW-2 Sukhchain Singh and PW-3 Raj Singh. It is a case of day light incident. Injuries on the person of said eye witnesses have been corroborated by PW-4 Dr. Sarabjit Singh Sandhu, PW-5 Dr. Manjit Singh and PW-14 Dr. S.P. Singla. Ocular testimony of eye witnesses cannot be discarded lightly. Once the prosecution has discharged its burden, the burden to prove that appellant Darshan Singh was not present with other accused at the place of incident and had gone elsewhere, lies on him. Injured eye witnesses have assigned specific role as to how he assaulted Santa Singh who suffered ante mortem injuries which gets corroborated from the autopsy report of Santa Singh. There are as many as five stabbed wounds out of the six ante mortem injuries. The same are being reproduced below from autopsy report of Santa Singh:-

H "1. Transverse stab wound 3 x 0.5 cm was present on the anterior side of chest on the left side, 6 cms below and lateral to left nipple

at 4.00 O' clock position. C.B.P was present. On dissection, it is going in wards and medially through 6th inter costal space, piercing the pericardium and left vertical. Pericardial sac contains about 200 C.C of fluid blood. A

2. Transverse stab wound 3 x 0.5 cm on the lateral side of left side of chest 6 cms lateral to the injury no.1. It was bone deep C.B.P. B

3. Transverse stab wound 2 x 0.5 cm was present at the back of the left side of abdomen 3 cms lateral to midline and 15 cm above the posterior superior iliac spine of left side on dissection, the peritoneum large intestia was cut. Peritoneal cavity contained about 500 C.C. of fluid and clotted blood. C

4. Transverse stab wound 2.5 x 0.5 cm was present on the back of the left side of abdomen, 6 cms lateral to the injury no.3 C.B.P. It was skin deep.

5. An oblique stab wound 1.5 x 25 cm on the back of left side of chest, 2 cms from the midline and 20 cms below the nape of the neck, it was bone deep C.B.P. D

6. A transverse stab wound 4 x 0.5 cms on the back of left side of chest, 5 cms from the midline and 12 cms below the nape of the neck. C.B.P. It was bone deep.”

13. From the record, PW-1 Amrik Singh (eye witness) appears to have suffered following injuries at the time of the incident:- E

“2.4cm x 1cm incised wound-10.5 cms below and posterior to left shoulder joint. X-ray of left shoulder joint advised.

Injury was kept under observation and duration was within 6 hours weapon used was sharp weapon” F

Injuries were declared simple in nature as per x-ray report and was result of a sharp weapon.”

14. Another eye witness PW-2 Sukhchain Singh found to have suffered following injuries as per the injury report proved on the record:- G

“1. 1.0 cm x 0.25 cm incised wound on the middle of forehead. X-ray advised.

- A 2. 2 cm x 1 cm incised wound on right side of chest 17 cms from xiphisternum. Profuse bleeding was present. X-ray advised.
3. 3 x 2 cms incised wound on right lumber region-10 cms below injury no.2. Surgical opinion and X-ray advised.”
- B 15. Third eye witness PW-3 Raj Singh suffered following injuries on the date of incident, as proved on the record:-
- “1. 1.9 cm x 1 incised wound in right Gluteal region-6 ½ cms below the right. Anterior superior iliac spine. X-ray advised.
2. 2cms x 1 cm incised wound on right lower chest. Boned deep 22 cms below the right anterior, Axillary fold-17 cms below and slightly lateral to right memory gland. Surgical opinion was advised.”
- C 16. Now, we come to the defence plea of appellant Darshan Singh which was accepted by the trial court but rejected by the High Court. There is no cavil over the fact that appellant Darshan Singh was posted as Lab Assistant with the Senior Secondary School, Janerian. After carefully going through the statements of defence witnesses and other evidence on record, we agree with the High Court that accused Darshan Singh has taken false plea of alibi. It is proved on the record that in the proceedings under Section 107/151 of Cr.PC before Executive Magistrate, Faridkot, he was to be present in said case on 17.02.1995. His presence and role is narrated in detail by the injured eye witnesses.
- D In view of his role in the incident narrated by the eye witnesses, it is hard to believe that after moving application on 16.02.1995 for casual leave for 17.02.1995, Darshan Singh attended the school next day in the first half and sought half day leave thereafter. The attendance register was not seized immediately after the incident. His plea of alibi is vacillating.
- E 17. The word alibi means “elsewhere”. The plea of alibi is not one of the General Exceptions contained in Chapter IV of IPC. It is a rule of evidence recognized under Section 11 of the Evidence Act. However, plea of alibi taken by the defence is required to be proved only after prosecution has proved its case against the accused. In the present case said condition is fulfilled.
- F 18. After scrutinizing the entire evidence on record, we do not find any illegality in appreciation of evidence, or in arriving at the conclusion as to the guilt of the present appellant by the High Court.
- G 19. Therefore, for the reasons discussed above, we find no force in this appeal which liable to be dismissed.
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20. Accordingly, the appeal is dismissed. Appellant be taken into custody by the court concerned to make him serve out the remaining part of sentence, awarded by the High Court. A

Kalpana K. Tripathy

Appeal dismissed.

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