

Daulat Ram

Vs

State of Punjab

Criminal Appeal No. 489 of 1989

(K. S. Paripoornan, M. M. Punchhi JJ)

29.04.1997

JUDGMENT

PUNCHHI, J. –

1. This appeal has arisen from an appellate judgment and order of the Punjab and Haryana High Court passed on 19-10-1987 in Criminal Appeal No. 427/DB of 1986.
2. 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, the 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, Guruam Singh, PW, lived at Sunam, at a distance of about 55 miles from Rajpura. Both the towns were in different directions.
3. The case of the prosecution is that Gurnam Singh, PW, the deceased's father's brother had visited Rajpura on a number of occasions and had developed a feeling that the deceased was carrying on with Pushpa, PW. Gurnam Singh, PW, wanted to disrupt the relationship. Thus on 23-7-1985, sometime after 1.00 p.m. 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 p.m., 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, the 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, eyewitnesses went near the deceased and found him dead.
4. The prosecution case further is that Gurnam Singh leaving behind 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 p.m. He was also required to examine the injuries of Pushpa, PW, at 7.00 p.m. the same day. He found on her three injuries, two of which 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 bloodstained clothes of the deceased which were a T-shirt and pyjamas, were removed and given to the police as case property.

5. After completion of investigation, the appellant was tried by the Sessions Judge, Patiala under Section 302 of the 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.

6. 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 gave the following statement under Section 313 CrPC :

"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. the deceased intruded into my house and tried to criminally assault my wife and she resisted. In the process she received injuries on 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 police then sent information to Malerkotla and Sunam and Gurbachan Singh, SI, father of the deceased arrived, who arranged Gurmam 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."

PW 6, Pushpa, in her statement admitted having killed the deceased with 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.

7. 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 SI 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.

8. 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't derive no advantage from the weakness of the defence. Keeping that in view, we proceed further.

9. The time of the occurrence is seriously in dispute. According to the prosecution the occurrence took place at 2.00 p.m. 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 up to eight hours. Thus according to the medical opinion the crime could have been committed eight hours earlier to 5.30 p.m., putting it around 9.00 a.m. 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 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 2.00 p.m., 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 p.m., they had not taken tea etc. at the house of the deceased and further that the 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.

10. It is worthy of recall that the deceased was an educated young man 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 Sunam 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 did 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 and 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 the morning hours he was casually dressed and had gone to the house of the accused with designs which were far from honourable.

11. The two supposed eyewitnesses 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 to 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, PW, and brought him along to Rajpura. It 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 PWs had come to know of the crime because the matter had been reported at the police station in the first instance by PW 6 followed by the appellant.

12. 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.

13. Thus on the totality of circumstances we have come to entertain the doubt that neither of the two supposed eyewitnesses 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 p.m., the time positively asserted by the prosecution.

14. 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.