

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-D-113-DB of 2003
DATE OF DECISION : January 14, 2015**

Krishan Kumar and another

...Appellants

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MR. JUSTICE DARSHAN SINGH

Present:- Mr. N.S. Swaitch, Advocate for the appellants.

Ms. Tanisha Peshawaria, DAG, Haryana.

Mr. Sumeet Goel, Advocate
and Mr. Manav Bajaj, Advocate for the complainant.

M.JEYAPPAUL, J.

1. The appellants Krishan Kumar and Naresh Kumar have challenged the conviction and sentence recorded by the trial Court under Section 302 read with Section 34 of the Indian Penal Code. It is the case of the prosecution that accused Krishan Kumar

had a suspicion that Mohinder Singh (deceased) son of PW4 Babu Ram had an illicit relationship with his sister Krishna. On 22.8.2000, at about 7.30 P.M. accused Krishan on seeing Mohinder Singh raised Lalkara and gave two knife blows on his chest and stomach while accused Naresh had caught hold of Mohinder Singh and thus committed murder.

2. Sher Singh, the grand father of the deceased who was present at the time of occurrence set the law into motion by suffering a statement before the investigating official but he unfortunately died during the course of trial and, therefore, he could not be examined before the trial Court.

3. PW4 Babu Ram, the father of the deceased and PW5 Banarsi, the uncle of the deceased, were cited as eyewitnesses by the prosecution. They have spoken in one voice before the trial Court that accused Krishan Kumar had suspicion that Mohinder Singh had an illicit relationship with his sister Krishna. On 22.8.2000, at about 7.30 P.M. Sher Singh, Babu Ram and Banarsi accompanied Hansmukh, the brother in law of PW4, to the Bus stand to see him off. After Hansmukh boarded the bus, all of them were returning to their house. Mohinder Singh was just ahead of Sher Singh, PW4 Babu Ram and PW5 Banarsi. Mohinder Singh had just crossed the road. The other witnesses were just trailing behind him. Accused Krishan Kumar and accused Naresh Kumar came from Kherawali Gali. Both the accused raised lalkara that they would teach a lesson

to Mohinder Singh for abusing them. Accused Naresh Kumar caught hold of Mohinder Singh from behind. Accused Krishan Kumar inflicted two knife blows, one on the chest and another one on the stomach of Mohinder Singh. Thereafter, the accused ran away towards Kherawali Gali with his knife.

4. PW7 Dr. Abhinav examined Mohinder Singh on 22.8.2000 and found him restless though he was conscious. He found an incised wound measuring 1.5 c.m. X 1 c.m. on the anterior abdominal wall. Intestinal portion was found visible. There was another incised wound measuring 1.5 c.m. X .75 cm. on the left side of the nipple. Fresh blood was present in both the injuries.

5. Mohinder Singh died in the hospital on 23.8.2000 at about 00.10 A.M.

6. PW 8 Dr. R.M. Singh conducted post mortem examination on the dead body of Mohinder Singh on 23.8.2000. He found stitched wounds in the abdomen and another stitched wound over the left side of the nipple. The injury found in the abdomen penetrated through the liver and the other injury found over the left nipple penetrated the left lung and the vessels thereof. He has opined that the deceased died as a result of shock and haemorrhage due to the above injuries.

7. The investigating official arrested both the accused on 25.8.2000. Based on the disclosure statement suffered by Krishan Kumar, a blood stained knife was recovered and the same was sent

for forensic examination to the Forensic Science Laboratory. The FSL report would disclose that human blood was found on the knife recovered from Krishan Kumar.

8. The accused in their statements suffered under Section 313 Cr. P.C. have contended that a false case was foisted on them.

9. On the side of the defence, four witnesses were examined to demonstrate that PW4 Babu Ram and PW5 Banarsi had figured as witnesses in other cases also.

10. The trial Court having heavily relied upon the ocular testimony of PW4 and PW5 in the background of the medical evidence and the FSL report, came to the conclusion that accused/appellants in furtherance of their common intention committed the murder of Mohinder Singh.

11. The learned counsel appearing for the appellants would submit that the defence evidence would go to establish that PW4 and PW5 were not star witnesses. Therefore, the trial Court has wrongly convicted the accused based on the unreliable testimony of PW4 and PW5. Motive alleged as against the accused appellants may also be a reason for false implication. Therefore, it is his submission that the appellants are entitled to acquittal.

12. The learned State counsel would vehemently submit that the trial Court has rightly placed reliance upon the ocular testimony of PW4 and PW5 and come to a correct conclusion.

13. PW4 Babu Ram was the father of the deceased and PW5

Banarsi was the uncle of the deceased. PW4 Babu Ram had been to the bus stand along with the other family members including the deceased Mohinder Singh. After sending off his brother-in-law, PW4 along with his relatives were returning to their house. The occurrence had taken place at that moment.

14. The evidence of PW4 and PW5 is found to be quite natural and believable. PW4 and PW5 had every reason to be present at the scene of crime after sending off the brother in law of PW4 Babu Ram. Deceased Mohinder Singh being a young man, had also accompanied his brother and started returning to his house. Deceased Mohinder Singh being a young man of 19 years would have marched forward, trailing behind the other witnesses including his father and uncle. Under such circumstances, the presence of PW4 and PW5 at the scene of occurrence cannot at all be doubted.

15. Of course, the defence has led evidence through DW1 and DW2 which would show that PW4 and PW5 had been the witnesses in other criminal cases as well. It may be a case where PW4 and PW5 would have witnessed those occurrences as well and, therefore, they were cited as witnesses in those cases. Even otherwise, in the present case, deceased Mohinder Singh was none other than the son of PW4 Babu Ram. PW5 Banarsi was none other than the brother of PW4. Being the same family members, they would have been present at the scene of crime, as spoken to by them. Therefore, the testimony of PW4 and PW5 cannot be rejected

uncharitably classifying them as star witnesses.

16. Apart from the evidence of PW4 and PW5 who have come out with a graphic ocular testimony, the investigating official had recovered blood stained knife on the basis of the disclosure statement suffered by accused Krishan Kumar. The FSL report Ex. P5 establishes that human blood was found on the knife recovered from accused Krishan Kumar. There was no explanation from accused Krishan Kumar as to how the weapon recovered at his instance was found to contain human blood.

17. The medical evidence adduced through PW7 Dr. Abhinav and PW8 Dr. R.M. Singh would go to establish that accused Krishan Kumar had aimed at the left chest and the stomach of the deceased Mohinder Singh. Both the injuries caused by accused Krishan Kumar had proved fatal.

18. PW4 and PW5 have established that accused Krishan Kumar having doubted the relationship of Mohinder Singh with his sister, attacked Mohinder Singh with the able assistance of accused Naresh Kumar. Naresh Kumar had caught hold of Mohinder Singh from behind, facilitating accused Krishan Kumar to deliver two knife blows on the vital parts of the body of Mohinder Singh. The above facts and circumstances would go to show that both the accused had shared a common intention to cause the death of Mohinder Singh.

19. In view of the above, we find that the trial Court has rightly evaluated the evidence on record and come to a correct conclusion

that the accused/appellants having shared a common intention, committed the murder of Mohinder Singh. We do not find any merit in the appeal. Therefore, the appeal stands dismissed.

**(M. JEYAPPAUL)
JUDGE**

**(DARSHAN SINGH)
JUDGE**

January 14, 2015
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