

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

CRA-D-93-DB-2003

Date of Decision: 22.01.2018

Pardeep Kumar @ Kalwa

.. Appellant

Vs.

State of Haryana

..Respondent

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Ms. Isha Goyal, Advocate for the appellant.

Mr. Vivek Saini, DAG, Haryana
for the respondent-State.

...

Inderjit Singh, J.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 05.08.2002, passed by learned Sessions Judge, Karnal, whereby he was convicted and sentenced to undergo rigorous imprisonment for life and also to pay a fine of Rs.20, 000/- under Section 302 IPC and in default of payment of fine, to further undergo rigorous imprisonment for a period of 2 years.

The brief facts of the case are that the FIR in the present case has been registered on the statement of Rakam Singh Ex-Sarpanch, who got recorded his statement to Inspector/SHO Hari Kailash. Complainant-Rakam Singh stated that they are six brothers, eldest is Thath Singh and next to him was Ram Singh, who had expired and he was the youngest to Ram Singh. He and his brothers Thath Singh and Raj Singh are living separately in their respective houses at the same place. His brother Raj Singh has three sons and one daughter. Eldest son Pardeep @ Kalwa was unemployed and a notorious

person. He used to quarrel with his father Raj Singh and waste all the money unnecessary. Pardeep @ Kalwa was married about eight months back with Sangeeta so that he might improve. One day earlier during day time, an altercation had taken place between his brother Raj Singh and his son Pardeep @ Kalwa when they were working in the field. Raj Singh brother of the complainant gave slap to Pardeep @ Kalwa, whereupon an altercation took place between them. On 15.10.2000 when he came from the brick-kiln, he came to know about the altercation and he along with his brother Thath Singh went to the house of Raj Singh and got the matter compromised between father and son. He and his brother Thath Singh slept in the varandah after taking meal and Raj Singh slept in one room and his wife Rajwati, younger son and daughter slept in one room. The complainant further stated that in the morning on 16.10.2000 at about 3:00 A.M., they heard the cries of his brother, whereupon he and his brother Thath Singh woke up and saw that Pardeep @ Kalwa inflicted injuries with knife to his father. Pardeep @ Kalwa inflicted a knife blow which struck in the chest of Raj Singh, thereafter he inflicted another knife blow in front side of the neck and when Raj Singh tried to turn, Pardeep inflicted another knife blow on the back side of his neck. He and his brother raised alarm on which accused Pardeep fled away by scaling over the wall of the house along with knife by threatening that he would kill them also if they came near him. On the basis of this statement, FIR No.271 dated 16.10.2000 was registered. The special report was sent to the Illaqa Magistrate and other officers. Thereafter, the dead body was sent for post mortem examination.

Then the Investigating Officer Hari Kailash prepared inquest report and conducted the investigation. A rough site plan was prepared. The statements of the witnesses were also recorded.

After necessary investigation, challan was presented against the accused-appellant. Finding prima facie case, the appellant was charge sheeted under Section 302 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW1 HC Baldev Singh, who mainly tendered his affidavit Ex. PA. PW2 Constable Suresh Kumar also tendered his affidavit Ex. PB. PW3 Constable Veer Shakti Singh mainly deposed regarding site plan Ex. PC. PW4 Dr. Rakesh Girdhar deposed regarding conducting the post mortem examination on the dead body of deceased Raj Singh and found the following injuries:

1. *2 cm x 5 mm into muscle deep incised wound on posterior lateral aspect of left wrist. Margins were well defined and edges were clean and ends were sharp.*
2. *1 cm x 5 mm muscle deep incised wound on the lateral aspect of left arm, 8 cm distal to acromiam process.*
3. *15 cm x 1 cm incised wound on the right arm lateral aspect, 8 cm distal to the acromiam process, with fracture right arm bone.*
4. *2 cm x 5 mm incised wound on anterior aspect of left shoulder, deltopectoral groove, wound was muscle deep.*
5. *2cm x 5 mm incised wound on the posteror aspect of the neck. Wound was bone deep with fracture of spinouo process of 6th survical vertebra.*
6. *4 cm x 1 cm x bone deep incised wound at the angle of sternum. On exploration of wound, sternal bone and second rib were cut. Lung was cut and pulomony artery was cut with left plural cavity full of blood.*
7. *2 cm x 1 cm incised wound in the first intercostal space on right side 7 cm lateral to midline. Wound was muscle deep.*
8. *1 cm x 5 mm incised wound, 3 cm lateral to midline on right side, wound was chest cavity deep with cut second rib and lung. Right plaural cavity contained blood.*
9. *2 cm x 5 mm incised wound on anterior aspect of neck, 5 cm above the upper end of sternum, trachea was cut and was full of blood.*

In the opinion of doctor, the cause of death in this case was due to shock and haemorrhage as a result of multiple stab wounds. The injuries were antemortem in nature and were sufficient to cause death in normal course of life.

PW5 SI Bhup Singh deposed that on receipt of ruqa, FIR Ex. PE/1 was recorded by him. PW6 Constable Ashok Kumar mainly deposed that on 16.10.2000, he was posted as Constable in the Police Station. He took the special report (FIR) Ex. PE/1 and delivered to the Illaqa Magistrate and other higher authorities of the District Karnal. PW7 Rakam Singh deposed consistently as per the version given in the FIR. PW8 Thath Singh, who was with the complainant Rakam Singh and also real brother of deceased Raj Singh, constantly deposed as per prosecution version and supported the statement of the complainant. The Public Prosecutor had given up Pws Hakam Singh, Sanjay and Khem Singh being unnecessary. PW-9 Inspector Hari Kailash proved the statement of complainant Rakam Singh Ex. PE. He also proved medical rukka received from Civil Hosptial, Nissing Ex. PH, also prepared inquest report Ex. PJ and rough site plan of the place of occurrence Ex. PK. He also deposed regarding the investigation conducted in the present case. He further deposed regarding taking of blood stained clothes into police possession. He has also deposed that on 17.10.2000, he was present at village Gonder, PWs Kuldip Singh and one other person whose name was Suraj Pal were present with him. On receipt of secret information, he arrested the accused Pardeep @ Kalwa. The accused made a disclosure statement Ex.PM to the effect that he had kept concealed a knife in the ashes, lying near eastern side of wall of his house and he could get the same recovered. Then as per the disclosure statement,

he got recovered a knife from the ashes and a rough site plan Ex. PM/1 of that place was prepared. He also deposed that knife and blood stained shirt of the accused were also taken into police possession.

After completion of the investigation, he presented a report under Section 173 Cr.P.C. against the accused.

At the close of the prosecution evidence, accused-appellant was examined under Section 313 Cr.P.C. He denied the allegations of the prosecution and pleaded himself as innocent. He further took the following plea:-

“On 15.10.2000, in the morning, I went to my father-in-law Ranjit Singh at Village Rankhandi (U.P.) in connection with domestic work. On 17.10.2000, when I returned back to my village then PW Rakam Singh and Thath Singh in collusion with Inspector Hari Kailash got me implicated in the present false case and thereby, they have succeeded in illegally possessing out 25 acres of land situated at village Gonder. My widow mother and my two younger brothers and one younger sister, all minors are not in a position to resist the attempt of Rakam Singh and Thath Singh. I was having cordial relations with my father. I have not committed the murder of my father. My mother had told me that four dacoits on the intervening night of 15/16.10.2000, armed with knife with intention to commit dacoity in our house entered our house and committed murder of my father and at that time my mother only was present. Pws Rakam Singh and Thath Singh were not present. We are not on speaking terms with said Rakam Singh and Thath Singh for the last 25 years and they are residing separately and are enemical towards us. Nothing was recovered from me or at my instance. Due to sheer greed of misappropriating our agricultural land, I have been made a scape goat in the present case by Pws Rakam Singh and Thath Singh.”.

In defence, the accused examined his mother Smt. Rajwati w/o deceased Raj Singh as DW1. She mainly deposed that on the intervening night of 15/16.10.2000 at about 3:00 A.M., she and her minor son Monu aged about 10-12 years and minor daughter Moni aged about 8-9 years were sleeping in their house at village Gonder in one room whereas her husband was sleeping in another room alone. Sangita wife of the accused was sleeping alone in another room of the house as the accused was away to the house of his father-in-law at village Rankhandi, District Saharanpur (UP). At about 3:00 A.M., she (Rajwati) woke up on hearing noise and went inside the room where her husband was sleeping and saw that four persons were present, three persons out of them had caught hold of her husband Raj Singh whereas the fourth was stabbing her husband Raj Singh with a knife and had given many knife blows, those persons were with muffled faces and she could not recognize them. She also deposed that those 4 persons entered their house and committed dacoity. She also deposed that accused Pardeep @ Kalwa had gone in the morning of 15.10.2000 to attend engagement ceremony of brother-in-law and returned back to village Gonder on 17.10.2000. She further deposed that PW Thath Singh was not present at the house and had been residing separately for the last 20 years. He falsely implicated the accused in the present case.

DW2 Ranjit Singh is father-in-law of the accused, who mainly deposed that he had come to their house at Village Rankhandi District Saharanpur (U.P.) on 15.10.2000 as the engagement ceremony was to take place on 16.10.2000. The accused stayed at their house for 2 days and went to his village on 17.10.2000. On the intervening night of 15/16.10.2000, the accused was at his house.

DW3 Surjit Singh Sarpanch of village Gonder also deposed that accused Pardeep @ Kalwa and his father Raj Singh had cordial relations. Rakam Singh and Thath Singh are real brothers of the deceased. He had gone to the house of the deceased for condolence and that PWs Thath Singh and Rakam Singh have illegally occupied the land of the deceased after getting the accused falsely implicated in this case.

Thereafter, accused closed his defence evidence.

The learned trial Court, after appreciation of the evidence convicted and sentenced the accused-appellant as stated above.

Aggrieved from the above-said judgment of conviction and order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellant took the plea of alibi and stated that the accused has been falsely implicated by Rakam Singh and Thath Singh brothers of the deceased-Raj Singh. He further argued that the mother of the accused has supported the defence version. Further Sarpanch of village Gonder also supported the defence version. The prosecution has failed to prove the guilt of accused beyond doubt and the judgment passed by learned trial Court is liable to be set aside and the accused is entitled to acquittal.

On the other hand, learned State counsel argued that the case of the prosecution has been duly proved. The eye-witnesses to the occurrence have consistently deposed regarding the occurrence. The ocular statements of the PWs are duly supported by medical evidence and further during investigation of the case, weapon of offence i.e. knife and blood stained shirt were recovered from the accused. Learned State counsel further argued that if the accused was falsely implicated by Rakam Singh and the

occurrence has not taken place as per the prosecution version then there should be any representation to the Senior Officers, but no such stand has been taken by the Dws at that time. He further argued that now Sarpanch of Village Gonder is coming as defence witness, but no resolution has been passed by the Gram Panchayat for falsely implicating the accused. He argued that the defence is afterthought to save the accused. He also argued that Rajwati wife of the deceased has given the version for the first time when she appeared as DW1. Earlier to this, she had never given any statement to the police or to anybody else, nor any application/complaint or representation was filed by her. Learned State counsel further argued that the plea of alibi is not supported by any cogent evidence.

After hearing learned counsel for the appellant as well as learned State counsel and after going through the record, we find that complainant Rakam Singh brother of the deceased and PW Thath Singh have consistently deposed regarding the prosecution version. Their presence on the spot cannot be doubted as they were residing at the same place though in separate houses. No material contradictions which may go to the root of the case nor any material improvements by these PWs, have been pointed out by the learned counsel for the appellant. We have also gone through the cross-examination of these PWs. There is nothing in their cross-examination which may make their statements unreliable. The ocular evidence has been duly supported by the medical evidence. Moreover, recovery of blood stained shirt as well as weapon i.e. knife from the accused, as per the disclosure statement, further supports the prosecution version. The plea of alibi taken by the accused is not supported and corroborated by any cogent evidence. The statement given by the mother

Rajwati as DW1 has come on the record first time. She had not made any statement to the same effect before the Police Authority. Even she had not sent any representation that her son had been falsely implicated. She said that 4 persons had come to the house for committing dacoity, but there is no evidence that they had taken away anything from the house and caused any injury to anybody else. The version of Rajwati is afterthought and cannot be believed. Similarly, the statement of father-in-law is also not believable. Firstly, it is not supported and corroborated by any cogent documentary evidence. Otherwise also, if there was an engagement ceremony of the brother-in-law of the accused, then sister should have also accompanied the accused to Saharanpur U.P. Her presence was more necessary than the accused at the function. Furthermore, the statement of Sarpanch of village Gonder is also not believable. He would have made a representation to the higher police authorities or must have passed resolution in the Gram Panchayat regarding false implication of the accused. He is appearing first time as a defence witness to depose that accused was not there or he has been falsely implicated. The defence version is not believable. We find that the findings given by the trial Court are correct as per evidence and law and do not require any interference from this Court. These findings have been given after appreciating the evidence in right perspective.

In view of above discussion, the judgment of conviction and order of sentence passed by the trial Court are upheld. Resultantly, appeal filed by accused is dismissed.

As appellant-Pardeep Kumar @ Kalwa is on bail, his bail bonds stands cancelled and he is directed to surrender himself before the concerned jail authorities immediately to complete remainder of sentence,

failing which the concerned authority shall proceed against him in
accordance with law.

(A.B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

22.01.2018
Jasmine Kaur

Whether speaking/reasoned	Yes
Whether reportable	No