

## PLEA OF ALIBI DIFFERENT FROM PLEA OF SELF DEFENCE

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**Suhani Gupta\***

### ABSTRACT

This article is a case comment on the landmark case named Lakhan Singh @ Pappu vs The State of NCT. This is a case on the issue plea of alibi mentioned under section 11 of the Indian Evidence Act 1872. This case's judgement implies the difference between the plea of alibi and plea of self-defence. How both are different in nature and are used at different stages of the proceedings. The plea of alibi cannot be explicit almost like the plea of self-defence. It's to be taken at the primary instance and not late at the stage of defence proof. The case relies on the plea of alibi as one of the aspects. It is held that the plea of alibi cannot be equated with the plea of self-defence. It has to be taken at the first instance.

### CASE ANALYSIS

The case analysis is based on Lakhan Singh @ Pappu vs The State of NCT on 16<sup>th</sup> September 2011 CrI Appeal No. 166/1999. This case is based on the plea of alibi and that it cannot be equated with self-defence and it should be taken at the first instance and not at any later stages of defence evidence.

### FACTS

- On August 1993 Smt. Chanda PW-18, wife of Shanti Prashad had come to her parental house on the occasion of Raksha Bandhan. Later, on 11-09-1993 Shanti Prashad came to his in-law's home to take his wife back.
- On a similar day, after serving dinner at 8:30 p.m. to her husband at Smt. Rajjo Devi PW-4, mausi of Smt. Chanda PW-18 had to go to the nearby house of another Madhu, PW-5.
- The accused was a known member of the family of Chanda Devi and used to address Shanti Prashad as Jija. After the dinner, the appellant invited Shanti Prashad to come and have tea. After that Shanti Prashad did not return.

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\*BA LLB, SECOND YEAR, UNIVERSITY OF PETROLEUM AND ENERGY STUDIES, DEHRADUN.

- Later, that night when Shanti Prashad was not found anywhere Naroti PW-7, the father of Chanda Devi enquired the appellant about the whereabouts of Shanti Prashad but did not get a satisfactory response. The appellant though expressed concerns to Smt. Rajjo PW-4. Later, Naroti PW-7 again asked the appellant about Shanti Prashad and then disclosed that Shanti Prashad was at the tea shop of Hari Chand PW-22. On being asked Hari Chand told that he had not come to his shop.
- The step-brother of the accused, Kalwa was sent to Agra to search for him. Later, the father and brother of Shanti Prashad had come to the house of Naroti PW-7.
- On 13-09-1993 at about 6:40 p.m. DD No. 58-B got registered at Police station Kotwali in Delhi regarding the disappearance of Shanti Prashad. On the same day later at 10 p.m., Bahadur PW-1 was out near the ganda nala and stopped a dead body and informed Naroti PW-7 and others about it. Later, when Naroti and the others went to ganda nala to identify the body it was found out that it was of Shanti Prashad. When the PW was being asked about the matter by the police the appellant slipped away and had absconded.
- On the statement of Smt. Rajjo Devi PW-4, suspecting appellant to be the culprit, FIR No.633/1993 under Section 302 of the Indian Penal Code was registered at Police Station Kotwali, Delhi.
- During the investigation, information was noted that the appellant was confined in Agra jail in a case under Arms Act.
- The appellant made a disclosure statement and in pursuance thereto, had got recovered the weapon of offense i.e. dagger/knife EX. P-1 from the bushes under a peepal tree at the Ganda Nala i.e. the locality in question.
- The accused was charge-sheeted and had chosen to contest the charges under section 302 of IPC and section 27 of the Arms Act.
- There were 33 witnesses disposed of at the trial.
- The evidence was as follows:
  - PW-18, Smt. Chanda, the wife of the deceased evidence led was the motive aspect.
  - Abdul Barik PW-3, Smt. Rajjo Devi PW-4, Smt. Madhu PW-5 and Smt. Chanda PW-18, evidence led to the circumstance of last seen.

- Smt.Rajjo Devi PW-4, Radhey Shyam PW-6, Datta Ram PW-21, and Hari Chand PW-22 evidence led to the fact that the appellant/accused absconded from the location in question.
  - Sri Krishna PW12's evidence was regarding the appellant/ accused making an extra-judicial confession to him of committing this crime.
  - SI Mahipal PW-26, Vinod Kumar Pandey PW-31, and ASI Avinash Tyagi PW-33 evidence were that appellant/ accused in pursuance to the disclosure statement EX.PW15/A had got recovered the weapon of offence i.e. the dagger/ knife EX.P-1.
- The appellant pleaded ignorance to the incriminating circumstance of recovery of weapon at his instance
  - The plea of alibi was not taken by the appellant/ accused in his statement under section 313 of Cr.P.C. He got examined by one property dealer Jai Prakash DW-1 from his native place to state that the appellant had left Delhi in July the year 1993 and thereafter had not come to Delhi.

## ISSUES

- Whether the reporters of native papers could also be allowed to examine the judgment?
- To be said newsman or not?
- Whether the judgment ought to be rumored within the Digest?

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## ARGUMENTS

- The Counsel for the appellant powerfully relied upon the plea of alibi and had drawn the eye of this Court to the proof of Jai Prakash to say that tho' the plea of alibi wasn't taken by the appellant in his statement below section 313 of atomic number 24. P.C. however still within the face of the proof, the appellant will urge this plea because it is associated with the plea taken by the appellant in his statement of his father merchandising away his jhuggi at Yamuna Pushta, Old Delhi, and going to the urban center.
- The Counsel relied upon the selections of 2011 (2) JCC 1357 - Ram Kishan vs. State and (2002) one SCC seventy-one - Kashi Ram and Ors vs. the State of M.P., to urge that such just like the plea of alibi or self-defense will forever be taken by the defendant even though it's not placed to the witnesses or isn't taken within

the statement below Section 313 of atomic number 24. P.C. the 2 choices pertained to the plea of self-defense. The plea of alibi can not be explicit almost like the plea of self-defense. it's to be taken at the primary instance and not late at the stage of defence proof.

- Whether there's any truth within the selfish statement created by the CrI.A.No.166/1999 Page eight of seventeen defence witnesses Jai Prakash (DW-1) of Appellant not visiting Old Delhi when Gregorian calendar month 1993 except on the criterion of 'probability' issue. The proof of the witness Jai Prakash DW-1 doesn't shoot for any confidence.
- The entire proof on record of the indirect evidence of motive, last seen, recovery of weapon of offence, extra-judicial confession, and conduct of appellant/accused satisfies and incriminates the appellant.
- Another piece of proof was of Naroti PW-7's male parent of the deceased that the appellant had even tried to divert the eye of this witness at the ganda nala after they were attempting to find the deceased. Also, when one and a half or 2 hours the appellant was last seen with the deceased and had seen the appellant returning from the facet of ganda nala and he had coated his face.
- The last circumstance was the recovery of the weapon, the appellant's Counsel urged that the recovered dagger/knife isn't found to possess any bloodstains thence this recovery is uncertain, and also the appellant is entitled to learn of the doubt.
- Public witness Vinod Kumar PW-31 tho' claimed that he had witnessed the recovery of the dagger/knife however was confused on whether or not it had been a similar dagger/knife. On a similar matter work officer, PW-26 knew before the court, that the dagger/knife was just like the one that the appellant had got recovered from the bushes beneath the peepal tree at ganda nala.
- The learned advisor counsel has relied upon a choice within the State of Rajasthan Vs. Naresh @ Ram Naresh (2009) nine SCC 368, wherever AN attractiveness against the final decision was discharged by holding that the discrepant proof concerning the circumstance of last seen and recovery of bijou and weapon of offence (not blood-stained) stone-broke the chain of indirect evidence. In Ravinder Parkash and Anr. Vs. State of Haryana (2002) eight SCC 426, the proof of identification of the body, of last seen and of recovery of motor-cycle and also the weapon of the offence while not bloodstains were found to be unreliable.

- The learned advisor counsel has relied upon a choice within the Hatti Singh vs. the State of Haryana (2008) three SCC (Cri.) 246, the circumstance of last seen was found to be not once and for all proven then it had been command that the link within the chain of indirect evidence was broken. In Ramreddy Rajesh Khanna Reddy Vs. State of A.P. (2006) three SCC (Cri.) 512, the indirect evidence of motive, last seen was found to be not inspiring confidence and so, the advantage of the doubt was extended by observant that the chain of indirect evidence isn't complete.

### **REASONING/OBSERVATION**

- The plea of alibi cannot be explicit almost like the plea of self-defense. it's to be taken at the primary instance and not late at the stage of defence proof.
- Only as a result of there having been no bloodstains found on the recovered dagger/knife, the evidentiary worth of the same recovery is lost. The circumstance of recovery of weapon of offence, i.e., dagger/knife (Ex.P-1) stands firmly established from the proof on record. The circumstance of recovery of weapon of offence i.e. dagger/knife stands firmly established from the proof on record.
- The chain of circumstances was broken. All the proof to prove the circumstances of motive, last seen, extra-judicial confession cause the conclusion that the defendant is the one guilty.
- The different 2 verificatory indirect evidence is of conduct of the appellant and also the recovery of the weapon of offence at his instance.

### **DECISION**

#### **TRAIL COURT:**

- Held that the five circumstances i.e. motive, last seen, recovery of weapon of offence, extra-judicial confession, and the conduct of appellant/accused, stood to prove and so vide impugned judgment and order was that the appellant/accused stand convicted.
- The appellant was sentenced and framed under section 302 of IPC and section 27 of the Arms Act.

#### **HIGH COURT:**

The following decisions were stated:

- As there is no substance in the appeal, the court dismissed it while upholding the impugned judgment.
- The bail bonds are canceled.
- The trial court is directed to ensure that the accused serves the sentence awarded to him.
- The plea of alibi cannot be equated with the plea of self-defence and it should be taken at the first instance and not at any later stages of defence evidence.

## COMMENTS

- The case relies on the plea of alibi as one of the aspects. It is held that the plea of alibi cannot to equated with the plea of self-defence. It has to be taken at the first instance.
- The cases with evidence that contain bloodstains are critical and need to be made into question immediately as the blood can have effects on it from bacteria, heat, and light. Also, only because the bloodstains are not present on the weapon (evidence) after being recovered does not make the evidence unreliable.

