

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

CRA-D No. 1178-DB of 2015 (O&M)

Reserved on : 14.05.2019

Date of decision : 16.5.2019

Shankar @ Juddi

.... Appellant

versus

State of U. T. Chandigarh

... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present Mr. Mohit Garg, Advocate, for the appellant.
Mr. Y. S. Rathore, APP for U. T. Chandigarh.

Rajiv Sharma, J.

1. The present appeal is instituted against judgment dated 3.9.2014 and order dated 5.9.2014, rendered by learned Additional Sessions Judge, Chandigarh, in Sessions Case No. 0000864 of 2014. Appellant Shankar @ Juddi was charged with and tried for the offence punishable under Sections 354-A and 302 IPC. He was convicted and sentenced under Section 302 IPC to undergo life imprisonment and to pay fine of ₹ 20,000/- and in default of payment of fine, to further undergo rigorous imprisonment for two years. He was also convicted and sentenced under Section 354-A (2) IPC to undergo rigorous imprisonment for one year. Both the sentences were ordered to run concurrently.

2. The case of the prosecution in a nutshell is that on 15.12.2013, when SI Balwinder Singh along with other police officials was on patrol duty in the area of Bapu Dham Colony, a wireless information regarding stabbing incident near Jhuggi No. 2690, Madrasi Colony, Bapu Dham Colony, was received. SI Balwinder Singh reached the spot. The injured was removed to PGI. The police party reached the hospital where complainant Bhanwati recorded her statement. According to her, she was residing in House No. 2690, Madrasi Colony, Bapu Dham Colony, Sector-26, Chandigarh, with her family members. She used to sell vegetables in Grain Market, Sector-26, Chandigarh. On 15.12.2013 at about 4.15 A.M., when she came out of her jhuggi to answer call of nature and had covered some distance, a youth came from the front side on the *kacha rasta* towards Sukhna bridge. He came near her and embraced her. When she protested, he picked up a stone and caused injuries on her arm and shoulder. When she raised alarm, her brother-in-law Pappu, who was sleeping in the jhuggi came to the spot. He tried to overpower the accused, who gave him knife blows towards the left side of his chest with the intention to kill him. Her brother-in-law fell down due to the injuries received. The police was informed. The injured was removed to the hospital. Pappu died. The dead-body was sent for post-mortem examination to General Hospital, Sector-16, Chandigarh. Investigation was initiated and challan was put up after completion of all the codal formalities.

3. The prosecution examined a number of witnesses in support of the case. The statement of the accused was also recorded under Section 313 Cr.P.C. He denied the case of the prosecution. He was convicted and sentenced, as noticed above. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellant vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below.

5. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

6. PW1 Dr. Ajay Kumar conducted the post-mortem examination. He had noticed the following injuries on the dead-body of Pappu:-

“1. Stab wound of size 3x0.3 cm present over the front of the chest and is placed 4 cm below and outer to the Lt nipple. The wound is placed obliquely with the inner acute angle placed above the level of outer OBT use angle. The stab wound is going backwards upwards and medially into the chest cavity through the 6th intercostal space into the pleural cavity.

2. Stab wound of size 3x0.3 cm present over the front of the chest over the nipple and areola on the upper half. The wound is placed obliquely with the inner acute angle placed lower than the outer obtuse angle. The lower inner angle is merging with upper angle of injury no.3. The stab wound is going backwards upwards and medially into the chest cavity through the 2nd intercostal space adjacent to the body of the sternum, cutting the pericardium and entering the Lt ventricle of the heart where the dimension of the stab wound is 4 cm x 0.3 cm about 300 ml. Clotted blood present in the pericardial cavity.

3. Stab wound of size 3 x 0.3 cm present over the front of the chest over the nipple and areola on the lower half. The wound is placed obliquely with the inner

acute angle placed lower than the outer obtuse angle which is merging with lower angle of injury no.2. The stab wound is going backwards upwards and medially into the chest cavity entering through the 2nd intercostal space, cutting the pericardium and entering the Lt. Ventricle of the heart where the dimension of the stab wound is 4 cm x 0.3 cm about 300 ml clotted blood present in the pericardial cavity.”

The cause of death was cardiac temponade as a result of stab injury to the chest. Injury nos. 2 and 3 were sufficient to cause death in ordinary course of nature individually as well as collectively. All the injuries were ante mortem in nature and the nature of probable weapon was single and sharp edged weapon. The probable time between injury and death was recent and between death and post-mortem was about 12 hours. He produced the post-mortem report, Ex.P16. In his cross-examination, he deposed that all the three injuries had entered in the chest cavity.

7. PW1 Smt. Bhanwati testified that on 15.12.2013 at about 4.15 A.M., she came out of her jhuggi and went for nature call. When she was returning and reached near the jhuggi, accused came from the front side and caught hold of her and embraced her. She raised alarm. Accused gave a brick blow on her shoulder. On hearing cries, her brother-in-law Pappu came out of the jhuggi. Accused left her and gave a knife blow to her brother-in-law, which hit him near his heart. He fell down and accused ran away from the spot. Someone called the police. The injured was removed to the hospital. The doctors declared him brought dead. In her cross-examination, she admitted that when the incident occurred, it was dark. She had gone to answer call of nature alone. Other ladies were also present at

the site. When the incident occurred, there was sufficient light. She was at a distance of 10 paces from the jhuggi.

8. Statement of PW1 Bhanwati was duly corroborated by her son PW2 Ram Kishore. He testified that he was sleeping in the jhuggi. He heard cries of his mother and came out. He saw that his uncle was going towards his mother. He identified the accused in the Court. He saw the accused giving knife blow to his uncle. Accused ran away. Somebody called the police. The injured was removed to the hospital. The doctors declared his uncle brought dead. He identified the dead-body. In his cross-examination, he deposed that he saw the accused grappling with his uncle. Accused took out a knife and gave blow with knife to his uncle after which he ran away. He could not intervene in the fight as the accused had already inflicted knife blow before he could reach.

9. PW3 SI Balwinder Singh has recorded the statement, Ex.P1, of Smt. Bhanwati (PW1). FIR, Ex.P5, was recorded. CFSL team was also called at the spot. Accused was arrested. Accused was identified by PW2 Ram Kishore. Accused made disclosure statement, on the basis of which he got recovered the blood stained jacket and knife from the bushes in the jungle area of Sector-26, Chandigarh. His disclosure statement is Ex.P8. Inspector Ankoh Singh prepared the sketch of knife, Ex.P9. In his cross-examination, he denied the suggestion that accused Shankar had been falsely implicated.

10. PW4 HC Surjit Singh deposed that Inspector Anokh Singh deposited two parcels containing knife and blood stained jacket with him.

11. PW6 HC Hawa Singh deposed that the accused made disclosure statement, Ex.P8, on the basis of which the weapon of offence

knife and blood-stained jacket were recovered from the bushes near jungle area of Sector-26, Chandigarh.

12. PW8 Inspector Anokh Singh deposed that he had moved the application, Ex.P20, for conducting post-mortem examination. He had got clicked the photographs of the spot. The dead-body was handed over to PW2 Ram Kishore. The accused was arrested. The accused made disclosure statement, Ex.P8, on the basis of which knife and blood-stained jacket were recovered from the bushes.

13. PW11 Sunita, Senior Scientific Officer, examined the three parcels containing knife, brown colour jacket and dried blood sample stated to be lifted from the spot. Human blood of group-A was detected from Ex.2, 3 and 4 i.e. brown colour jacket, dry blood sample on gauze stated to be lifted from the spot and dry blood sample of deceased on gauze piece. FSL report is Ex.P33. According to FSL report, human blood was detected from Ex.1 (double blade knife), however, blood group was not detected from, Ex.1, double blade knife.

14. The incident has been witnessed by PW1 Smt. Bhanwati and PW2 Ram Kishore. PW1 Smt. Bhanwati had seen the accused giving knife blow to her brother-in-law Pappu. PW2 Ram Kishore has duly corroborated the testimony of her mother PW1 Smt. Bhanwati and the manner in which knife blow was given to the deceased. The cause of death was cardiac temponade as a result of stab injury to the chest. Injury nos. 2 and 3 were sufficient to cause death in ordinary course of nature individually as well as collectively. The injuries were ante mortem in nature and the nature of probable weapon was single and sharp edged weapon. The blood stained jacket and knife were recovered on the basis of disclosure statement, Ex.P8,

made by the accused from the bushes of the jungle area of Sector-26, Chandigarh.

15. It was not a premeditated act. According to the prosecution, PW1 Smt. Bhanwati raised alarm and on hearing cries, her brother-in-law Pappu reached the spot. PW1 Smt. Bhanwati and PW2 Ram Kishore have only seen the accused giving one knife blow on the body of deceased Pappu. It has also come in the statement of PW2 Ram Kishore that he had seen the deceased and the accused grappling. He could not intervene in the fight, though he was on the spot. It has also come in the statement of PW1 Smt. Bhanwati that other ladies were also present at the spot, however, no independent witness was produced by the prosecution. According to PW1 Smt. Bhanwati, she was also inflicted injuries by the accused with a brick on her shoulder, however, no medical examination was produced to prove it. She was not medico-legally examined as per her own statement as stated by her in her cross-examination.

16. Learned counsel for the appellant has vehemently argued that the present case is not covered under Section 302 IPC, rather and it would be covered under Section 304 Part-II IPC.

17. We do not agree with the argument of learned counsel for the appellant that the case is covered under Section 304 Part-II IPC, however, fact of the matter is that it is not a premeditated act. The appellant definitely had intention to cause death since as per post-mortem examination report, three injuries were found on the person of the deceased. Accordingly, the appeal is partly allowed. The conviction of the appellant is converted from Section 302 IPC to Section 304, Part-I IPC. The conviction and sentence under other section imposed by the trial Court is upheld.

18. In view of our aforesaid discussion, the appellant is directed to be produced in Court on 21.5.2019 to be heard on the quantum of sentence.

(Rajiv Sharma)
Judge

16.5.2019
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No