

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

CRA-D-498-DB of 2016 (O&M)

Reserved on : 16.09.2019

Date of decision : 19.09.2019

Pawan Kumar

.... APPELLANT

Versus

State of Punjab

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. J.S. Dadwal, Advocate,
for the appellant.

Mr. H.S. Grewal, Addl. A.G., Punjab.

* * *

RAJIV SHARMA, J.

1. This appeal is instituted against judgment dated 08.04.2016 and order dated 11.04.2016, rendered by learned Sessions Judge, Ludhiana, in Sessions Case No. 50 dated 11.03.2014, whereby appellant Pawan Kumar, who was charged with and tried for the offences punishable under Sections 302 and 307 of the Indian Penal Code (hereinafter referred to as 'the IPC' for brevity sake), was convicted and sentenced to undergo life imprisonment

and to pay a fine of ₹ 10,000/-, and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months, under Section 302 IPC. He was also convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹ 5,000/-, in default of payment of fine, to further undergo rigorous imprisonment for a period of three months under Section 307 IPC. Both the sentences were ordered to run concurrently.

2. The case of the prosecution, in a nutshell, is that on 17.09.2013, the police received information that one woman was attacked with knife in the area of BRS Nagar. The police party headed by SI Manjit Singh reached the spot. A woman was found lying dead in a pool of blood. A large number of people had gathered on the spot. The dead body was of Krishna wife of Rakesh Kumar. The police came to know that owner of Paras Sweet Shop, namely Kanwaljit Singh, had also sustained injuries in the incident. He was admitted in DMC Hospital, Ludhiana. SI Manjit Singh went to DMC Hospital, Ludhiana. He sought opinion of the concerned doctor, who declared injured Kanwaljit Singh fit to make statement. He recorded the statement of Kanwaljit Singh. He stated that he was running a sweet shop in his house No. 28-E, BRS Nagar, Ludhiana. He engaged Krishna wife of Rakesh Kumar, resident of House No. 254-B, BRS Nagar, Ludhiana, as a maid in his house. She used to cook food and do the cleaning work. At 8.15 AM on 17.09.2013, she came to his shop after completing her work in his house. In the meantime, Pawan Kumar son of Pattri Kali Charan, who was related to Krishna, came to the shop of the complainant. He was armed with a sharp knife. He asked Krishna not to work with the complainant. Krishna

stated to Pawan Kumar that she had taken advance from her employer. She would not stop working. The complainant also advised Krishna that she should stop doing work at his place. In the meantime, Pawan Kumar took out red chilly powder from his trouser and threw it towards his eyes. Pawan Kumar caught Krishna and pulled her out of the shop. He gave knife blow which hit on the left side of her chest near the heart. She fell on the ground. In the meantime, the complainant raised hue and cry. Pawan Kumar entered the shop of the complainant and gave knife blow. It hit in the abdomen of the complainant. Another knife blow given by Pawan Kumar hit on the left flank near the heart of the complainant. Accused Pawan Kumar tried to give another knife blow. He saved himself. Krishna died on the spot. The accused ran away from the spot along with his knife. In the meantime, brother of Krishna, namely Sanjay, also came on the spot. The family of the complainant took him to DMC Hospital, Ludhiana for his treatment. The motive behind the occurrence was that accused Pawan Kumar objected Krishna from working in the house and shop of the complainant. FIR was registered. Post-mortem examination was got conducted. Accused was arrested on 17.09.2013 itself. He made disclosure statement, on the basis of which he got recovered the knife. The investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses in support of its case. The accused was also examined under Section 313 Cr.P.C. According to him, he was falsely implicated in the case.

4. The appellant was convicted and sentenced, as noticed above.

Hence, this appeal.

5. 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 against the appellant beyond reasonable doubt. He supported the judgment and order of the learned Court below.

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

7. PW.1 Dr. Gurmeet Singh deposed that he was posted as Medical Officer in Civil Hospital, Ludhiana, on 17.09.2013. An application Ex.PA was moved by SI Manjit Singh. A Board of Doctors was constituted to conduct the post mortem examination on the body of Krishna. The post mortem was conducted at 5.35 PM. The Board of Doctors found following injuries on the body of Krishna :-

1. Spindle shaped 2 inches x 2/3 inch incised wound with inverted margin in the 5th inter costal space in between mid clavicular and anterior axillary line below left breast. On exploration of wound it passed through 5th ICS with fracture of 6th rib at the corresponding place. On further exploration, it led to vent in anterior wall of the left ventricle of heart which was 2 cm x 2 cm in size. There was large amount of blood in pericardial cavity (about 500 ml). Scalp and skull was healthy, vertebrae was not explored. Meninges and brain was pale and healthy, spinal cord was not explored. Wall, ribs and cartilages were described. Pleural cavity, blood was present in left pleural cavity about 300 ml, lungs were pale and healthy. Peritoneum cavity was pale. Stomach and its contents were pale and contained gastric juices.

Small intestine and its contents were pale and contained chyme. Large intestine was pale and contained gases. Liver was healthy and pale, spleen was healthy and pale, kidneys were healthy and pale, bladder was empty. Organs of generation uterus was empty with bilateral tubal ligation was healthy.

The cause of death was opined to be haemorrhage and shock as a result of injury to vital organ i.e. heart, which was sufficient to cause death in ordinary course of nature. Injury was ante mortem in nature. The time interval between injury and death was immediate and time interval between death and post mortem was about 12-16 hours.

8. PW.2 Dr. Anju Bhagtana deposed that on 17.09.2013, she was on emergency duty in DMC and hospital, Ludhiana. Patient Kanwaljit Singh was medico legally examined by her. The history as narrated by the patient was assault, when he was in the shop. She noticed following injuries on his person :-

1. Incised wound 2 cm x 5 cm linear wound on the palmar aspect between index and base of thumb, 3 cm from the base of thumb. Advised X-ray of the part and orthopedics consult.
2. Incised wound 3 cm x 3 cm, 4 cm from xiphisternum and 10 cm from umbilicus in the mid line, 4 cm deep, active bleed was present, tailing was present, underlying muscles exposed. Advised X-ray of the part and surgical consult.
3. Stab wound 1 cm x 1 cm, 4 cm deep in the mid axillary left side at the level of nipple, 10 cm from the nipple. Advised X-rays of part and surgical consult.

All the injuries were with sharp edged weapon and were kept under observation. In her cross-examination, she deposed that the injured was brought in DMC & Hospital at 9.20 AM on 17.09.2013. He was examined at 11.20 AM. The information was sent to the police at 12.00 noon. The police had obtained the fitness certificate after about one hour of sending intimation Ex.PF. The police had immediately recorded statement of injured after obtaining the fitness certificate at 1.00 PM on 17.09.2013. The patient had not disclosed the name of the assailant in the bed head ticket.

9. PW.3 Dr. Sulabh Puri testified that he had conducted X-rays of patient Kanwaljit Singh on 17.09.2013. In his cross-examination, he deposed that there was no fracture or bone injury as per X-ray examination of patient Kanwaljit Singh.

10. PW.5 Dr. Jasneet Singh deposed that he was running a private clinic. On 18.09.2013, Pawan Kumar resident of village Sunet came to his clinic. He stitched the wounds of Pawan Kumar. He gave first aid. Pawan Kumar was having four injuries. In his cross-examination, he deposed that he had not maintained any record with regard to injuries on the person of Pawan Kumar. His statement in this case was recorded by the police after about one month from the day, he treated Pawan Kumar. The injuries on the person of Pawan Kumar were lacerated and sharp wounds being caused with blunt or sharp edged weapons or substance.

11. PW.4 Kuldip Singh prepared the scaled site plan Ex.PH. In his cross-examination, he categorically deposed that Kanwaljit Singh had not disclosed any spot, from where alleged chilly powder was found by the

police. Kanwaljit Singh had not disclosed the spot where the people had gathered and where they were standing.

12. PW.6 Kanwaljit Singh is the injured witness. According to him, he was running a Sweet shop at Bhai Randhir Singh Nagar, Ludhiana. Krishna wife of Rakesh Kumar was working as a housemaid at his house. On 17.09.2013, Krishna came to his house. After finishing the work in his house, she came downstairs at his store at about 8.00 AM. Pawan Kumar, relative of Krishna, came at his shop. He asked Krishna not to do work at his house and shop. Krishna stated that she had taken advance from her employer. He also advised Krishna that if Pawan Kumar was objecting her working at his house and shop, she could leave her work. In the meantime, Pawan Kumar took out red chilly powder from the pocket of his pant and threw towards him. He avoided the chilly powder. In the meantime, Pawan Kumar caught Krishna from her arms and dragged her towards the road. Pawan Kumar was carrying a knife in his right hand. He gave a knife blow on the left side chest of Krishna in his presence. In the meantime, he raised hue and cry. Pawan Kumar rushed towards him and gave a knife blow towards his abdomen. He was again given two blows. He defended himself, when Pawan Kumar tried to give third blow to him. Pawan Kumar also suffered injuries. Krishna died on the spot. His relatives took him to DMC & Hospital, Ludhiana. He identified his signatures on his statement Ex.PK. He did not know the name of the person who was standing in the court. He was not sure whether he was the same person who caused injuries to him. The person who caused injuries to him was the brother of the person who was standing in the court. Again said, accused Pawan Kumar was present in

the court, and said Pawan Kumar and his brother might have caused injuries to him. Again said, only Pawan Kumar accused caused injuries to him. In his cross-examination, he admitted that the fact about Pawan Kumar receiving injuries from him, while defending himself, was not mentioned by him in his statement Ex.PK. He was told by the police that there were injuries on the person of Pawan Kumar also. He had not disclosed the name of the assailant to the doctor while disclosing the history. He only disclosed to the doctor that he was attacked by a person, who was his known customer. He also admitted that as per his MLR Ex.PC, the time of examination was 11.20 AM on 17.09.2013. He had not handed over his blood stained clothes to the police. The accused was wearing pant and shirt. He denied the suggestion that accused Pawan Kumar did not commit the murder of Krishna. Volunteered stated that the actual accused be produced in the court.

13. PW.7 Sanjay is the brother of deceased Krishna. He deposed that he received a telephone call that his sister Krishna was killed inside the house of Kanwaljit Singh. He reached at the place of occurrence. The dead body of his sister was lying in front of the door of the house of Kanwaljit Singh. When he reached there, she was not dead. When he asked her who had attacked her, she said that Kanwaljit Singh had attacked her with his knife. She died later on. He identified the dead body of his sister Krishna. He was declared hostile and was cross-examined by the learned Additional Public Prosecutor. He deposed that accused Pawan Kumar was the brother-in-law of his brother Anil Kumar. In his cross-examination by the learned defence counsel, he deposed that he could not read and write Punjabi. He

had told the police that Kanwaljit Singh had killed his sister Krishna, but nobody had listened to him. He had brought the photographs Mark D1 and Mark D2 showing the police officials at the time of spot inspection. He also moved an application Mark D3 before the police against Kanwaljit Singh, but the police did not take any action. Kanwaljit Singh killed Krishna in his shop. CCTV camera was already installed in the shop. He requested the police officials to check the footage recorded by the said CCTV camera. However, the police failed to do so. Accused Pawan Kumar had not killed Krishna.

14. PW.8 Constable Gurtej led his evidence by filing affidavit Ex.PM. He admitted in his cross-examination that in his statement Ex.DE, it was not mentioned that the blood stained shirt belonged to accused Pawan Kumar.

15. PW.9 ASI Karanpal Singh testified that he accompanied the police party of SI Manjit Singh to the spot. One woman was lying dead. Blood was splashed around the dead body. Name of the woman was Krishna. SI Manjit Singh conducted the proceedings and prepared the inquest report. SI Manjit Singh lifted the blood stained earth from the place of occurrence. The body was sent to Civil Hospital, Ludhiana, for post mortem examination. Accused made disclosure statement Ex.PQ. He got recovered the knife with his own hands. SI Manjit Singh prepared rough sketch Ex.PR of the knife. The blood stained shirt of the accused was also taken into possession after converting the same into parcel vide memo Ex.PT.

16. PW.10 SI Manjit Singh deposed that he went to the spot on

17.09.2013. He recorded statement of Kanwaljit Singh vide Ex.PK in the hospital. FIR was registered. He collected blood stained earth from the place of occurrence. Body of Krishna was sent for post-mortem examination. Accused made a disclosure statement Ex. PQ. Thereafter, the accused led the police party to the disclosed place and got recovered the knife with his own hands. He prepared the rough sketch Ex.PR of the knife. He collected the blood stained clothes of complainant Kanwaljit Singh from DMC & Hospital, Ludhiana, on 11.11.2013. In his cross-examination, he deposed that it took about one/one and half hours to record the statement of Kanwaljit Singh. He started writing the statement of Kanwaljit Singh at 10.15 AM on 17.09.2013 and finished recording the statement at 11.30 AM on 17.09.2013. MLR Ex.PC was received by HC Gurpreet Singh who handed over it to him. He admitted categorically that as per the MLR Ex.PC, the date and time of examination of injured Kanwaljit Singh was at 11.20 AM on 17.09.2013. He also admitted that he had not got the place of occurrence photographed. On the day of occurrence, there was no CCTV camera installed at the place of occurrence. He had not taken the chilly powder in possession. The complainant had not disclosed about the causing of injury on the person of Pawan Kumar in his first statement Ex.PK. He had not prepared any site plan of the place from where the accused was arrested. The populated area was at a distance of about 200 meters from the place of arrest of the accused. He had also not joined any independent witness at the time of recording of statement Ex.PQ. There was no blood stained earth at the place, from where the knife was recovered. There were no marks of cutting by weapon on the T shirt of the accused. There were no

stains of blood on the grass of the bushes from where the knife was recovered. Dr. Jasmit Singh had not handed over any record with regard to treatment of accused Pawan Kumar, rather he stated in his statement before him that he would produce the same in the court at the time of evidence.

17. PW.11 HC Jatinderpal Singh deposed that on 08.10.2013, he sent the case property through Constable Gurtej Singh for depositing the same in the office of FSL, Mohali.

18. PW.12 HC Partap Singh deposed that he was present in the police party headed by SI Manjit Singh on 17.09.2013. He got conducted the post mortem examination from Civil Hospital, Ludhiana. In his cross-examination, he deposed that he did not know who picked the knife lying by the side of the deceased. He had not seen the knife in the court, which was picked by the Investigating Officer from the place of occurrence. The Investigating Officer had clicked the photographs of the place of occurrence with his own mobile phone.

19. PW.13 HC Amarjit Singh deposed that the accused had made disclosure statement Ex.PQ. He got recovered the knife from the disclosed place. Rough sketch of the knife Ex.PR was prepared. In his cross-examination, he deposed that he had not seen the case property in the court. The Investigating Officer had not recovered chilly powder from the place of occurrence in his presence. He had seen the photograph Ex.DG, whereby in the presence of the officers, videography was being undertaken. He did not know the persons who had undertaken the videography. The area councillor was not called by the Investigating Officer. The place from where the recovery was made was open and accessible to all and sundry.

20. PW.6 Kanwaljit Singh is the material witness. According to him, he had employed deceased Krishna as maid. The accused had come to his shop. He asked Krishna not to do work in his shop. He took out red chilly from the pocket of his trouser and threw towards him (Kanwaljit Singh). Thereafter, the accused gave knife blow on the left side of the chest of Krishna. He also gave him two knife blows. However, subsequently, in his examination-in-chief, he deposed that he did not know the name of the person who was standing in the court. He was not sure whether he was the same person who caused injuries to him. The person who caused injuries to him was the brother of the person who was standing in the court. Again said, accused Pawan Kumar was present in the court, and said Pawan Kumar and his brother might have caused injuries to him. Again said, only Pawan Kumar accused caused injuries to him. In his cross-examination, he admitted that he had not disclosed the name of the assailant to the doctor while disclosing the history. He only disclosed to the doctor that he was attacked by a person, who was his known customer. In his further cross-examination, he denied the suggestion that accused Pawan Kumar did not commit the murder of Krishna. Volunteered stated that the actual accused be produced in the court.

21. The police never recovered red chilly powder. The knife was got recovered from the place, which was open and accessible to all, as per the statement of PW.13 HC Amarjit Singh. The area councillor was not called by the Investigating Officer. The motive attributed to the appellant is that he did not want Krishna to work in the house of Kanwaljit Singh complainant. There is no reason why he would object to the working of

Krishna in the house of Kanwaljit Singh. PW.7 Sanjay, brother of deceased Krishna, has categorically deposed that it was Kanwaljit Singh, who had attacked his sister Krishna. He had also moved an application Mark D3 against Kanwaljit Singh. He also deposed that CCTV camera was installed in the shop of Kanwaljit Singh. Its footage was not taken into possession by the police.

22. PW.10 SI Manjit Singh, in his cross-examination, deposed that the statement of Kanwaljit Singh was recorded at 10.15 AM on 17.09.2013. He finished recording of the statement of Kanwaljit Singh at 11.30 AM on 17.09.2013. However, as per the MLR Ex.PC, the time of examination of injured Kanwaljit Singh was 11.20 AM on 17.09.2013. In case, he was being examined in the hospital at 11.20 AM, how his statement was simultaneously recorded by PW.10 SI Manjit Singh between 10.15 AM and 11.30 AM.

23. PW.10 SI Manjit Singh has categorically deposed in his cross-examination that he had not got the place of occurrence photographed on the day of occurrence. However, PW.12 HC Partap Singh in his cross-examination deposed that the Investigating Officer had clicked the photographs of the place of occurrence with his own mobile phone.

24. PW.12 HC Partap Singh also deposed in his cross-examination that the SHO, Police Station Sarabha Nagar, Ludhiana, had reached at the spot after five minutes of their arrival. He did not know if SHO had recorded the statement of any person at the spot. He did not know who picked the knife lying by the side of the deceased. He had not seen the knife in the court, which was picked by the Investigating Officer from the place of

occurrence.

25. The case of the prosecution is that the appellant had made disclosure statement Ex.PQ, on the basis of which he got recovered the knife with his own hands. However, PW.12 HC Partap Singh deposed that the Investigating Officer had picked the knife from the place of occurrence.

26. According to the FSL report Ex.PAB, the exhibits contained in parcels A, B, C and D were stained with human blood. The cause of death was haemorrhage and shock as a result of injury to vital organ i.e. heart, which was sufficient to cause death in ordinary course of nature. The time interval between injury and death was immediate and time interval between death and post mortem was about 12-16 hours.

27. PW.2 Dr. Anju Bhagtana also deposed that she examined PW.6 Kanwaljit Singh on 17.09.2013 at 11.20 AM. Information was sent to the police at 12.00 noon. Since information was sent to the police at 12.00 noon on 17.09.2013, there was no occasion for PW.10 SI Manjit Singh to record statement of injured Kanwaljit Singh between 10.15 AM and 11.30 AM on 17.09.2013. She also deposed that the police had obtained the fitness certificate after about one hour of sending intimation Ex.PF. She had declared patient fit to make statement vide her endorsement Ex.PE. We have gone through the contents of Ex.PE. Opinion was sought by SI Manjit Singh on 17.09.2013 at 11.00 AM and Dr. Anju Bhagtana made endorsement on Ex.PE itself that the patient was fit to make statement. Thus, there is variance in the time when statement of Kanwaljit Singh was recorded. We have also gone through the contents of Ex.PF. The information to the police was sent on 17.09.2013 at 12.00 PM.

28. It is evident from the statement of PW.6 Kanwaljit Singh in his examination-in-chief and cross-examination that he has failed to identify the appellant. Firstly, he stated that he did not know the name of the person who was present in the court. He was not sure whether he was the same person who caused injuries to him. Then he deposed that the person who caused injuries to him was the brother of the person who was standing in the court. Then, he deposed that appellant Pawan Kumar and his brother might have caused injuries to him. He again stated that only Pawan Kumar accused caused injuries to him. In his cross-examination, he categorically deposed that though appellant Pawan Kumar caused injuries to him, but the actual accused should be produced in the court. CCTV camera installed in the shop of PW.6 Kanwaljit Singh was not taken into possession. The brother of the deceased, namely PW.7 Sanjay, stated that it was PW.6 Kanwaljit Singh, who had killed Krishna. Recovery of knife has been made from the place, which was accessible to all. No independent witness was joined at the time of recovery of knife, though independent witnesses were available. PW.6 Kanwaljit Singh has not disclosed the name of the assailant while disclosing history to the doctor. According to the prosecution, the appellant had got recovered the knife from the disclosed place. However, one of the witnesses, namely PW.12 HC Partap Singh, deposed that he had not seen the knife which was picked by the Investigating Officer from the place of occurrence.

29. Thus, the prosecution has failed to prove its case against the appellant beyond reasonable doubt. Accordingly, the appeal is allowed. The judgment dated 08.04.2016 and order dated 11.04.2016 are set aside.

Appellant Pawan Kumar is acquitted of the charges framed against him, by giving him benefit of doubt. He be released forthwith, if not required in any other case. Release warrant be prepared.

(**RAJIV SHARMA**)
JUDGE

September 19, 2019
ndj

(**HARINDER SINGH SIDHU**)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes