

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

CRA-D No. 606-DB of 2018 (O&M)

Reserved on : 10.4.2019

Date of decision : 12.4.2019

Bir Singh alias Beera

.... Appellant

versus

The State of Punjab

... Respondent

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

Present Mr. T. N. Gupta, Advocate, for the appellant.
Mr. S. P. S. Tinna, Additional Advocate General, Punjab.
Mr. Inderjit Sharma, Advocate, for the complainant.

Rajiv Sharma, J.

1. The present appeal is instituted against the judgment and order dated 4.6.2018, rendered by learned Sessions Judge, Pathankot, in Sessions Case No. 04 dated 12.8.2016, by appellant Bir Singh @ Beera. He was charged with and tried for the offence punishable under Sections 302 IPC. He was convicted and sentenced under Section 302 IPC to undergo life imprisonment and to pay fine of ₹ 10,000/- and in default of payment of fine, to undergo further imprisonment for a period of three months.

2. The case of the prosecution in a nutshell is that on 5.4.2016, the police party was present at CIA Chowk, Pathankot, in connection with patrolling, where it received information regarding murder in Mohalla Bajri Company Pathankot. Inspector/ SHO Bharat Bhushan along with other

police officials reached the spot. Suresh Kumar son of Om Parkash got recorded his statement. According to him, he was having two sons. Elder son Vineet Kumar was aged about 29 years. Younger son Varun Kumar was about 28 years of age. At about 2.30 P.M., his son Vaneet Kumar told him that he has some altercation with appellant Bir Singh alias Beera. President Vijay Passi had invited him for a compromise with the appellant. He received information after some time that some dispute has arisen. He went to the house of the appellant. At about 6.15 P.M., when Suresh Kumar complainant entered into the house of appellant Bir Singh, he saw that Bir Singh armed with knife attacking his son Vaneet Kumar in a very brutal way. The clothes of President Vijay Passi were also smeared with blood. After giving injuries with knife, accused Bir Singh along with the handle of knife escaped from the spot. Due to the grievous injuries, Vaneet died on the spot. The dead-body was sent for post-mortem examination. 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 the case. The statement of the accused was also recorded under Section 313 Cr.P.C. He cited one witness in his defence. He was convicted and sentenced, as noticed hereinabove. 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 and the complainant vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned trial Court below.

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

6. PW4 Dr. Sunil Chand has conducted the post-mortem examination on the body of deceased Vaneet Kumar. He led his evidence by filing affidavit, Ex. PW4/A. He noticed following nine injuries on the body of the deceased:-

1. A stab wound 2 cm x 1 cm on right side of neck. On dissection underlying muscles are cut.
2. A stab wound 2.5 cm x 5 cm on right upper anterior side of chest just below clavicle. On dissection pleura is punctured. Pleural cavity contains blood. Lung tissue is lacerated and collapsed.
3. A stab wound 3 cm x 1 cm on anterior aspect of left shoulder joint. On dissection underlying subcutaneous tissue and muscles are cut.
4. A stab wound 2.5 cm x 2 cm on left anterior chest in 4th intercostal space. On dissection subcutaneous tissue and muscles are cut. Pleural cavity is full of blood. Lung is lacerated and collapsed. Heart is punctured on its lateral surface in left ventricle.
5. A stab wound 2cm x 1 cm on right lateral aspect of chest. On dissection underlying subcutaneous tissue and muscles are cut. Pleural cavity contains blood. Lung tissue is lacerated and collapsed.
6. A stab wound 1 cm x 1 cm, 3 cm medial to right nipple.
7. A incised wound 3 cm x 1 cm on lateral aspect of left arm.
8. Incised wound 2 cm x 1 cm on left forearm, 5 cm below elbow joint.

9. A stab wound 3 cm x 3 cm on right scapular region on dissection underlying muscles are cut.”

According to the opinion of the doctor, the cause of death was injury to vital organs i.e. lung and heart, resulting in shock and heamorrhage, which is sufficient to cause death in normal course of nature. The injuries were ante-mortem in nature.

7. PW5 Suresh Kumar Sharma is the father of the deceased. According to him, on 5.4.2016 at about 2.00 P.M., his son Vaneet Kumar told him that he had some altercation with Bir Singh alias Beera. He told him that Vijay Passi had invited him for a compromise with Bir Singh at his house. Vijay Passi had taken him in the house of accused Bir Singh. He also went to the house of Bir Singh at about 6/6.15 P.M. When he entered the gate of the house of Bir Singh, he saw that Vijay Passi and Raman Kumar resident of Jugial Colony, Shahpurkandi, holding the arms of his son Vaneet Kumar and accused Bir Singh was attacking on his son in a very brutal way. His son was crying for help. The clothes of Vijay Passi and Raman Kumar were smeared with blood. Accused Bir Singh and Raman Kumar fled away from the spot. At that time, accused Bir Singh was holding a knife and sharp edged portion of knife fell on the ground, whereas, handle of the knife remained in his hand. He nabbed Vijay Passi. His son Varun Kumar also reached on the spot. Vaneet Kumar died on the spot. Intimation regarding the occurrence was given to the police. His statement (Ex.PW5/A) was recorded. In his cross-examination, he deposed that on the day of occurrence, he went to his shop at about 1.00 P.M.

8. PW6 Gaurav Sharma deposed that on 5.4.2016, he received the information that accused Bir Singh had caused the death of Vaneet Sharma in his house by inflicting injuries with knife. He reached the spot.

9. PW7 Varun Sharma is the brother of deceased Vaneet Kumar. He deposed that Vaneet Kumar had some dispute with accused Bir Singh @ Beera. He had a telephonic call with his father and he reached the house of accused Bir Singh @ Beera. He parked his bike in front of the house of Bir Singh @ Beera. He along with his father entered in the house of Bir Singh. They saw that Bir Singh was repeatedly inflicting knife blows to his brother Vaneet Kumar. His father called his brother by his name Vaneet, who also responded. His brother collapsed on the ground. Bir Singh ran away from the spot. His brother died on the spot. The motive behind the murder was that there was money dispute between his brother Vaneet Kumar and accused Bir Singh.

10. PW10 Inspector Bharat Bhushan deposed that on 5.4.2016, he was posted as SHO, Police Station, Division No. 2, Pathankot. He along with other police officials was present on patrolling duty. He reached the spot after receiving the information. He prepared the ruqa and sent the same to the police station. He lifted the blood stained earth from three different places from the place of occurrence. The same were put into three plastic containers. One broken blade of the knife, which was lying near the dead-body was lifted. It was taken into possession. Recovery memo was prepared. Post-mortem examination was conducted. On 14.4.2016, during interrogation, accused Bir Singh @ Beera made disclosure statement

(Ex.PW10/J) that he had kept concealed the handle of knife in a pipe of drainage relating to the house of Gopal Mahajan. Rough sketch of the handle was prepared. On 17.4.2016, he made another disclosure statement. He got recovered passport, the mobile phone of his wife having sim no. 99884-29982 and call details from the bed-box of his residential house. His disclosure statement is Ex.PW10/M.

11. PW11 PHC Dilawar Singh deposed that on 5.4.2016, he along with SHO and other police officials reached on the spot. The Investigating Officer prepared the inquest report, Ex.PW10/E. Dead-body of Vaneet Kumar was handed over to him for post-mortem examination. Clothes of Vaneet Kumar were taken into possession. The blood stained earth was lifted from three different places i.e. from the courtyard, from the verandah and from the outer gate.

12. PW12 ASI Satbir Singh deposed that photographs were clicked on the spot and videography was also undertaken. Blood-stained earth was lifted from different places.

13. PW13 Surjit Singh Nodal Officer had produced the relevant record relating to cell phone no. 98147-90887. According to the information, the cell phone was issued in the name of Vijay Kumar Passi son of Raunaq Ram. He also brought the relevant form submitted by the subscriber along with photograph. Customer application form is Ex.PW13/A. He produced the certificate under Section 65-B of the Indian Evidence Act.

14. PW14 Amit Dabra Nodal Officer had brought the relevant record pertaining to cell phone no. 78377-33053. As per record, this number was issued in the name of Daljit Kaur. It was activated on 12.2.2016. He had brought the relevant record submitted by the subscriber along with photograph along with I.D. Proof. I.D. Proof is Ex.PW14/B. Copy of the photograph is Ex.PW14/C. He had also brought the call detail record of this number from 5.3.2016 to 5.4.2016 regarding incoming and out going. It was retrieved from the original hard disc. The call detail is Ex.PW14/D. He also brought the relevant record of cell phone no. 99888-80864 in the name of Vaneet Sharma son of Suresh Kumar. He also brought the relevant record of cell phone no. 99888-90990 in the name of Company Sri Ram Communication, which was activated on 24.10.2013.

15. PW15 Inspector Sukhjinder Singh has recorded the supplementary statement of Suresh Kumar.

16. PW16 Harvinder Singh had brought the relevant record pertaining to cell phone no. 99888-80874. It was issued in the name of Vaneet Sharma son of Suresh Sharma. He proved the customer application form vide Ex.PW16/A and call detail vide Ex.PW16/D.

17. The appellant examined DW1 Daljit Kaur in defence. She is the wife of the appellant. She testified that she was resident of Bajri Company, Pathankot. She was married with Bir Singh in the year 2008 and since then she was residing in the said house. On 5.4.2016, she was present at her house. She was alone at her house. Vaneet Sharma (since deceased) came to her house. He came to her bedroom and had started to outrage her modesty.

She resisted. He tried to forcibly rape her but he saved herself by raising *raula*. All of sudden her husband Bir Singh came there. Due to provocation, he took the knife from the kitchen and caused injury to Vaneet Sharma. He tried to run away and fell down in the courtyard. His father and brother were not present at the spot. Police remained at her house till 9.00 P.M. She had not seen Suresh Kumar and Varun Kumar at the spot so long she remained there till 8.00 P.M. In her cross-examination, she admitted that her statement was recorded in the present case on 6.10.2017. She has not made any complaint against the police regarding the fact recorded in her examination-in-chief. She also admitted that she was using mobile bearing connection no. 78377-33053. She did not have any talk with deceased Vaneet Sharma on 5.4.2016. She did not know as to whether her husband Bir Singh had a talk with Vaneet Sharma on cell phone no. 99888-90990. She also admitted that she had moved an application to SSP, Pathankot, against her husband. The application is Ex.PX. The police has also called her husband. Her husband has stated before the police that it was their family matter and they would resolve the same in the family. On 4.4.2016, the police has recorded the statement of her husband. Again said statement of her husband was not recorded. She denied the suggestion that since 20.3.2016 to 5.4.2016, she was not residing with her husband. She denied the suggestion that she had illicit relations with the deceased.

18. According to the prosecution case, Vaneet Sharma and appellant had altercation. President Vijay Passi had tried to patch up the matter. Vaneet Sharma went to the house of the appellant. Thereafter, PW5

Suresh Kumar had also reached there. He had seen appellant Bir Singh giving knife blows on the body of his son Vaneet. The clothes of President Vijay Passi were also smeared with blood. After giving injuries, accused Bir Singh along with the handle of knife ran away from the spot. Vaneet Kumar died on the spot.

19. PW7 Varun Sharma testified that when he and his father were entering the house of Bir Singh, they saw that Bir Singh was giving knife blows to his brother Vaneet Kumar. His brother died on the spot. The cause of death was injury to vital organs i.e. lung and heart, resulting in shock and heamorrhage, which is sufficient to cause death in normal course of nature. The injuries were ante-mortem in nature.

20. FSL report is Ex.PZ. The exhibits contained in parcels 'A' to 'E' were stained with human blood of 'B' Group, including *kameez*, jean pant, underwear, pair of socks, banyan, pair of shoes and broken knife.

21. Learned counsel appearing for the appellant has vehemently argued that the deceased has entered the house of the appellant to outrage the modesty of his wife. He tried to rape her. The appellant came there all of a sudden. In a great provocation, he caused injuries with knife to the deceased.

22. Learned counsel for the appellant further argued that the appellant was duty bound to protect the body of his wife. However, the fact of the matter is that the relation between the appellant and his wife were strained. She was using mobile no. 78377-33053. It was activated on 12.2.2016. PW14 Amit Dabra Nodal Officer had produced the relevant

record pertaining to cell phone no. 78377-33053, which was issued in the name of Daljit Kaur. He had also brought the call detail record of this number from 5.3.2016 to 5.4.2016 regarding incoming and out going. I.D. Proof is Ex.PW14/B. Copy of the photograph is Ex.PW14/C. The cell phone no. 78377-33053 was active in Ludhiana only.

23. DW1 Daljit Kaur had moved an application to the SSP, Pathankot, against her husband. The application is Ex.PX. In her application dated 4.4.2016, she has categorically stated that her husband told her that he did not want to keep her with him. He had no relation with her. When she came from her parental home to her matrimonial home, her husband closed the door and did not let her enter the house. She requested for compromise. In her cross-examination, she admitted that on 4.4.2016, the police has recorded the statement of her husband. Again said statement of her husband was not recorded. Since her cell phone no. 78377-33053 was operating from Ludhiana on 5.4.2016, thus, it belies the defence taken by the appellant that his wife was in the house.

24. What has come in the record is that on the day of occurrence, DW1 Daljit Kaur was in Ludhiana. The plea taken by the appellant was that she was present in the house. It was for the appellant to explain, how the deceased received nine injuries. The defence taken by him that he has inflicted injuries on the body of deceased while protecting his wife, is false. The fact of the matter is that there was an altercation took place between the deceased and the appellant. The matter was being patched up by President Vijay Passi. The deceased came to his house and was killed by the appellant.

This incident has been seen by PW5 Suresh Kumar Sharma. The statement of DW1 Daljit Kaur was also recorded on 2.5.2016. She has specifically stated that on 19.3.2016 her husband gave beating to her due to which on 20.3.2016, she went to her parental home Ludhiana. In case DW1 Daljit Kaur was present on the day of occurrence, her statement was required to be recorded by the police. The handle of the knife was got recovered by appellant on the basis of his disclosure statement (Ex.PW10/J)

25. The prosecution has proved the case against the appellant beyond reasonable doubt. There is no occasion for us to interfere with the well reasoned judgment and order recorded by the learned trial Court. Accordingly, the appeal is dismissed.

(Rajiv Sharma)
Judge

12.4.2019
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No