

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

**CRA-D No. 648-DB of 2004 (O&M)**

Reserved on : 27.1.2020

Date of decision : 31.1.2020

Mohinder Singh alias Bittoo

.... Appellant

versus

State of Haryana

... Respondent

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

Present Mr. D. N. Ganeriwala, Advocate, for the appellant.  
Ms. Shubhra Singh, Additional Advocate General, Haryana.

**Rajiv Sharma, J.**

1. This appeal is instituted against the judgment dated 8.6.2004 and order dated 10.6.2004, rendered by learned Additional Sessions Judge, Fast Track Court, Gurgaon, in Sessions case No. 89 of 2002/2003. Appellant Mohinder Singh @ Bittoo was charged with and tried for the offence punishable under Section 302 IPC. He was convicted and sentenced under Section 302 IPC to undergo rigorous imprisonment for life and to pay fine of ₹ 2,000/- and in default of payment of fine to further undergo rigorous imprisonment for one year.

2. The case of the prosecution in a nutshell is that Parkash Chand, complainant, has lodged a complaint that he was employed as a Mali in the office of S. C. E. R. T. , Gurgaon. He reported that about 1½ years ago his daughter Laxmi was married with Mohinder accused. On 24.12.2001 his daughter came to his house on the death of her grand-father. The complainant wanted that Laxmi should stay till *tehravi*, however, accused

Mohinder was angry as he did not want that Laxmi should stay for thirteen days at her parental house. Mohinder accused used to visit the house of the complainant after every 1-2 days and used to put pressure to take her back with him. On 22.1.2002, after *tehravi rasam*, the complainant's son Naveen had taken Laxmi to her matrimonial home but Mohinder accused in the presence of Naveen threatened Laxmi and stated as to why she had come now. Naveen narrated this incident to his father. Thereafter, on 24.1.2002 at about 11.30/12.00 noon, the complainant and his nephew Mithun went to the matrimonial home of Laxmi to know about her welfare. She told them that accused used to maltreat her. She was harassed. The complainant tried to convince Mohinder. He became angry. He brought a sword and gave blows on the neck and hands of Laxmi. She fell down on the ground after sustaining injuries on her neck and other parts of the body. Her body was drenched in the pool of blood. The complainant raised alarm. The matter was reported to the police. SI Ram Dutt visited the spot. Photographer took the photographs. The dead-body was sent for post-mortem examination. The accused was interrogated. The investigation was completed 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 recorded under Section 313 Cr.P.C. He denied the case of the prosecution. The accused also examined witnesses in his defence. 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 Naresh Kumar has prepared the site plan, Ex.PA.

PW5 Dr. Naval Kishore has conducted the post-mortem examination. He noticed the following injuries on the person of deceased:-

- “1) Incised wound was present which was bone deep, muscle cut over base of left thumb 3 cm in size transverse in position and was present on palmer aspect.
- 2) Incised wound with muscle cut 3 cm in length, starting from base of index finger to middle fingers on left hand was present. Margins were not clear cut sharp edged.
- 3) Incised wound over base of left wrist flexor aspect 7 cm in length, transverse in position with muscle cut and bone cut.
- 4) Incised wound over flexor aspect of left hand was present.
- 5) Scratch nail mark was present over left arm 7 cm in length, irregular, vertical with clotted blood. These were seven in numbers.
- 6) Incised wound on the left side of neck, deep, angles were not acute, bone deep, muscle and vessels were cut. It was 7 cm in length and 2 cm in width. Clotted blood was present.
- 7) Another incised wound 2 cm about injury no. 6 starting from left pinna to back ward, bone deep was present. It was 6 cm in size. Clotted blood was present.

- 8) Incised wound with mildly irregular margin, bone deep with Markedly cut muscles and blood vessels on the right side of neck. Pinna was also cut on right side. 10 cm in length and 3 cm in breadth. Clotted blood was present.
- 9) Incised wound, bone deep on right forearm with muscles and tendons cut, bone cut and also fractured. Clotted blood was present.
- 10) Incised wound over right wrist, obliquely placed, 6 cm in length, bone deep, muscle cut.
- 11) Incised wound over dorsum of right hand, 3 cm in length with tendon cut. Clotted blood was present.
- 12) Incised wound obliquely placed over upper part of right forearm. It was 5 cm in length and 1 cm in breadth.”

The cause of death was due to injuries to blood vessels of neck, causing haemorrhage and shock due to heavy cutting weapon. All the injuries were ante mortem in nature and were sufficient to cause death in ordinary course of nature. The duration between injury and death was immediate while the duration between death and post-mortem was within 24 hours.

7. PW6 Ram Phal deposed that on 25.1.2002 he was posted as Head Constable. Mohinder accused was interrogated. He made disclosure statement. He confessed that he has kept concealed the sword behind the shop of Manoj under the heap of wood. His statement is Ex.PG. The accused got recovered the sword. Recovery memo was prepared. One pant and one shirt, belonging to accused Mohinder, were taken into possession, which he was wearing at the time of alleged commission of offence.

8. PW7 Parkash Chand deposed that Laxmi was his daughter. She was married to the accused. On the death of his father, she and her in-laws had come. He kept Laxmi at his house for performing *kirya* after consulting

her father-in-law. Mohinder was annoyed upon this. Mohinder started coming to his house after one or two days. He was insisting that he should send back Laxmi with him. Mohinder maltreated her. However, he used to pacify accused Mohinder that after *kirya* ceremony, Laxmi would be sent back. On 22.1.2002, his son Naveen had taken Laxmi to her matrimonial home in village Gurgaon. His daughter was threatened by Mohinder in the presence of Naveen. On 24.1.2002, he and his nephew Mithun went to the matrimonial home of Laxmi to enquire about her welfare. They reached at 11.30 a.m. or 12.00. His daughter told him that accused Mohinder had been continuously taunting her. He tried to pacify Mohinder but he became annoyed. He brought sword meant for cutting grass. He inflicted a large number of injuries on the person of his daughter. His daughter collapsed due to the injuries. He and his nephew tried to save, however, they were attacked by Mohinder. They saved themselves. They raised alarm. Accused Mohinder ran away from the spot while living his sword. He made statement, Ex.PH. In his cross-examination, he deposed that accused after bringing sword immediately attacked his daughter. Accused caused injuries on the person of his daughter for about two minutes. His son-in-law was not engaged in job. He was idle. He had no knowledge whether accused was under tension or depression.

9. PW8 Mithun deposed that he was residing with his uncle Parkash Chand. Daughter of his uncle was married with Mohinder in Gurgaon. On 24.12.2001, his maternal grand-father died. His sister Laxmi came on his death. Laxmi remained her parental house upto 13<sup>th</sup> day. Mohinder was annoyed. On 22.1.2002 Naveen brother of Laxmi went to the house of accused and left her there. On 24.1.2002, he along with his

maternal uncle Parkash Chand went to see Laxmi at her house. Laxmi met them at her house. Mohinder was present in the house. His maternal uncle tried to pacify Mohinder but he became annoyed. He went towards *Chappar* and brought sword and attacked his sister Laxmi. She was killed at the spot in his presence and in the presence of his maternal uncle. Mohinder ran away from the spot. Police came to the spot after about one hour. In his cross-examination, he deposed that they stayed only for 10-15 minutes at the house of Laxmi when accused attacked his sister Laxmi. He was at a distance of 4-5 paces from Laxmi at the time accused started causing injuries on her person. He stood up when Mohinder attacked Laxmi. They could not save Laxmi. Police arrived at the spot within 40-45 minutes. They had not misbehaved with Mohinder.

10. PW9 Naveen deposed that Mohinder was married with his sister. His sister Laxmi came to his house on 24.12.2001 on the death of their grand-father.

11. PW11 SI Ram Dutt deposed that on 24.1.2002 he went to the spot. Photographs were taken. He prepared inquest report. He recorded the statements of the witnesses. He sent the dead-body for post-mortem examination. He took into possession blood stained earth. He arrested accused Mohinder Singh on 25.1.2002. Mohinder Singh made disclosure statement, Ex.PG, on the basis of which the sword was recovered. In his cross-examination, he deposed that he reached at the spot within 30 minutes. The distance between two places was about five kilometers. The dead-body was lying on the floor. He recorded the statement of Parkash Chand complainant. He prepared rough site plan. He denied the suggestion that he got signatures of accused on the blank papers. He has not noticed

any plaster on any hand of the accused at the time of his arrest. He got medico-legally examined the accused after arrest at General Hospital, Gurgaon. He was medico-legally examined on 25.1.2002.

12. PW13 Balwant Rai had taken the photographs.

13. DW1 Neki Ram deposed that on 24.1.2002 he was going to the house of accused Mohinder. He heard some noise in the room of Mohinder accused. He noticed police. He came to know that murder had taken place of the wife of the accused. He did not know the name of the wife of accused Mohinder. He saw Mohinder with an injured hand. On his saying father-in-law of Mohinder was called. Police arrested Bittoo alias Mohinder. He saw from the window of the house of the accused that one person was inside the room but he was not resident of the village. Mohinder was not present there at that time. The person present in the house of Mohinder was stating that the matter had been leaked out. In his cross-examination, he admitted that he was the uncle of Mohinder. Police did not record his statement. He did not lodge any complaint before any authority including police that Mohinder was not present on the date and time of occurrence. He did not file any application before the Ilaqa Magistrate.

14. DW3 Devender deposed that on 24.1.2002 at about 9.30 A.M. he had gone to the house to bring the keys of the shop. He found many persons gathered at the house of Mohinder alias Bittoo. Many women were also there. He saw wife of Mohinder in an injured conditions and dead. Mohinder was not present at that time. He noticed Mohinder with a fracture on one of his arm. In his cross-examination, he admitted that he did not file any application before any Magistrate or any authority regarding the occurrence.

15. DW4 Dr. Gopal Bhagat had proved OPD slip dated 20.12.2001, Ex.D1. It was prepared by him. The patient was suffering from depression and anxiety neurosis. When a person is in depression, he cannot be annoyed or feel angry. He had prescribed the medicines to the patient. He advised X-ray. OPD slip, Ex.D2, is dated 23.1.2002. In his cross-examination, he deposed that there was OPD register in the hospital. He had not brought the OPD register.

16. DW5 Dr. Amarjit Singh deposed that the patient was firstly visited on 7.4.2001 and lastly visited on 26.5.2001. Dr. Rajiv Gupta treated the patient.

17. DW6 Dr. B. B. Aggarwal deposed that he had brought the summoned record. Person was brought to the hospital in police custody as an outdoor patient. The MLR of the same was prepared on 25.1.2002. He found fracture. He handed over the concerned X-ray films and report to pharmacist of District Jail, Gurgaon, on 5.2.2002.

18. DW7 Keshav Ram deposed that Parkash Chand was in the office at 9 A.M. and left the office immediately after applying leave for 24.1.2002. He later on applied extension of leave upto 6.2.2002 on account of death of his daughter. On the application dated 24.1.2002, it was not mentioned that the same was sanctioned but it was marked by Superintendent to AD-1. In his cross-examination, he admitted that the attendance in the register was always made by the Superintendent of all the officials, class IV.

19. According to FSL Report, blood was detected on exhibit-1 (blood stained earth), exhibit-2a (sari), exhibit-2b (petticoat), exhibit-2c (underwear), exhibit-2d (Brassier) and exhibit-2e (blouse). Exhibit-3

(*talwar*) was stained with blood. Exhibit-4a (shirt) and exhibit-4b (pants) were stained with blood.

20. There are two eye-witnesses namely PW7 Parkash Chand and PW8 Mithun to the occurrence. They have seen accused Mohinder inflicting sword blows on the person of Laxmi. She collapsed on the spot. Dead-body was sent for post-mortem examination. The cause of death was due to injuries to blood vessels of neck, causing haemorrhage and shock due to heavy cutting weapon. All the injuries were ante mortem in nature and were sufficient to cause death in ordinary course of nature. The duration between injury and death was immediate while the duration between death and post-mortem was within 24 hours.

21. There was no occasion for PW7 Parkash Chand and PW8 Mithun to falsely implicate accused Mohinder. They had gone to the matrimonial home of Laxmi to know about her welfare. The accused had inflicted injuries in their presence. The dead-body was recovered from the house of the accused. The defence taken by the accused was that the murder was committed by the brother-in-law of Laxmi, however, except this bald statement under Section 313 Cr.P.C., no other evidence has been led by the accused. Since the death has taken place in his house, he was to explain the circumstances as per Section 106 of the Evidence Act.

22. Learned counsel for the appellant vehemently argued that the accused was suffering from depression, however, no cogent medical evidence has been placed on record to substantiate this plea. DW4 Dr. Gopal Bhagat had proved OPD slip dated 20.12.2001, Ex.D1. According to him, the patient was suffering from depression and anxiety neurosis. When a person is in depression, he cannot be annoyed or feel angry. In his cross-

examination, he deposed that there was OPD register in the hospital, however, he had not brought the OPD register.

23. The statement of DW1 Neki Ram does not inspire confidence. He was uncle of accused Mohinder. He has not lodged any report before any authority including police that Mohinder had not committed the murder or that Mohinder was not present in the house on the date and time when the occurrence had taken place.

24. The prosecution has proved the case against the appellant beyond reasonable doubt. No interference is called for in the well reasoned judgment of the learned trial Court. The appeal is dismissed. His sentence was suspended vide order dated 26.7.2007. His bail bonds are cancelled. He be committed to jail to undergo his remaining part of sentence.

(Rajiv Sharma)  
Judge

31.1.2020  
vs

(Harinder Singh Sidhu)  
Judge

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |