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**(2007) 01 P&H CK 0158**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Appeal No. 943-DB of 2003

Dalbir Singh alias Beera

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** Jan. 22, 2007

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302

**Citation:** (2007) 20 CriminalCC 166

**Hon'ble Judges:** H.S. Bhalla, J; A.K. Goel, J

**Bench:** Division Bench

**Advocate:** S.P.S. Sidhu, Mr. L.S. Sidhu and Mr. R.K. Gupta, for the Appellant; Ramandeep Kaur @ Rani and Mr. M.S. Sidhu, D.A.G., Punjab, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

H.S. Bhalla, J.

February 8, 2000 was declared as a doomsday when the destiny played a cruel joke resulting in a tragic end of Jaspal Singh by none else than his better half with the help of his paramour.

2. By this common judgment, we shall be disposing of two appeals, being Criminal Appeal Nos.943-DB of 2003 and 549-DB of 2004, as they arise out of the same impugned judgment dated 21.11.2003 passed by learned Sessions Judge, Ferozepur, vide which he convicted and sentenced both the appellants, namely, Dalbir Singh alias Beera and Randeep Kaur alias Rani, widow of Jaspal Singh to life imprisonment each for an offence u/s 302 of the Indian Penal Code. They were ordered to pay a fine of Rs. 500/- each. In default thereof, they were directed to further undergo for a period of six months each. The period of detention already undergone was ordered to be set off from the sentence, awarded.

3. Adumbrated facts of the prosecution case are that on the statement, Ex. P6, made by Mangal Singh son of Karnail Singh, aged 60 years, on 08.02.2000 at 3.00 p.m.

before Chamkaur Singh, Assistant Sub-Inspector, Police Station Ghall Khurd, who along with his other police officials was present in connection with patrol duty on the turning point of village Ratta Khera a case was registered, wherein he had stated that he is the resident of village Ratta Khera Baja Kotwal. He does the work of cultivation and lives in a farm house (Dhani) outside the village abadi. His brother Baljinder Singh lives next to his house. Baljinder Singh has three sons. The house of Jaspal Singh alias Jassa, his nephew, is situated near his house. He got married about two years ago. He was residing with his wife namely, Randeep Kaur alias Ram separately from his other brothers. Today at about 5.30 a.m. Randeep Kaur @ Ram told him that Jassa Singh has died. At this, he along with his son Jugraj Singh went to the house of Jassa and saw that Jassa Singh was lying on the floor on one of his sides and an electric stabilizer was lying near him. He examined Jassa Singh by shaking his body, but his body was stiffened and he was lying dead. He told Ram, the wife of Jassa Singh that he had died since long and why she did not to disclose them about this incident earlier. At this, she replied that she did not know anything about the death of Jassa. Thereafter, he along with his son Jugraj Singh went to the respectable of the village and informed them. Gurcharan Singh son of Teja Singh, Majhabi, resident of Lohgarh, who was a mediator at the time of marriage of Jassa Singh, was sent to the parental house of Rani at village Wara Pohwind, Police Station Zira to inform them of the incident. As disclosed by Rani wife of Jassa Singh, his death had been caused on account of electrocution, but they have suspicion about this and are of the opinion that he died of some other reason.

4. On the statement being recorded by Assistant Sub-Inspector Chamkaur Singh, he visited the place of occurrence and prepared the inquest report Ex. P2. After making preliminary investigation. Assistant Sub-Inspector Chamkaur Singh submitted his report Ex. P6/l. On 11.02.2000 Assistant Sub-Inspector Chamkaur Singh produced postmortem report from Medical College, Faridkot in respect of deceased Jaspal Singh before Sub-Inspector Palwinder Singh, Sub-Inspector Palwinder Singh recorded the FIR, Ex. P6/2 on the basis of the statement, Ex. P6 sent by Assistant Sub-Inspector Chamkaur Singh with his endorsement, Ex. P6/l to the Police station for registration of a case.

5. Sub-Inspector Palwinder Singh along with other police officials including Assistant Sub-Inspector Sardul Singh went to the place of occurrence and recorded the statements of the witnesses. He also prepared the rough site plan, Ex. P10 of the place of occurrence with correct marginal notes. He also recorded the supplementary statement of Mangal Singh. On the basis of the investigation conducted by Sub-Inspector Palwinder Singh (PW10), Dalbir Singh and Randeep Kaur alias Ram were arrayed as accused. Sub-Inspector Palwinder Singh raided the house of Dalbir Singh accused, but he was not found available in his house. Thereafter, he returned to the Police Station along with other police officials. On 13.02.2000 Sub Inspector Palwinder Singh recorded the statement of Constable Iqbal Singh u/s 161 of the Code of Criminal Procedure. On 18.02.2000 Gursewak

Singh, resident of village Rupala, Police Station Makhu and Sham Singh produced Dalbir Singh alias Beera before Sub-Inspector Palwinder Singh. Surjit Kaur, the mother of accused Rani produced before Sub-Inspector Palwinder Singh and she was formally arrested by him. After completion of the investigation, the accused were challaned and sent up for trial before the Ulaqa Magistrate, Ferozepur.

6. Accused were charge-sheeted u/s 302 read with Section 34 of the Indian Penal Code, to which they pleaded not guilty and claimed trial.

7. Prosecution, in order to prove its case, examined as many as 10 witnesses, namely, Dr. K.K. Aggarwal (PW1), who conducted the post-mortem examination on the dead body of Jaspal Singh and prepared post-mortem report Ex. PI; Krishan Lai (PW2), who proved the scaled site plan Ex. P4; Head Constable Angrej Singh (PW3), Assistant Sub-Inspector Chamkaur Singh (PW4); Constable Iqbal Singh (PW5), Bohar Singh (PW6), Simarpal Singh (PW7), who deposed about the illicit relation of accused Dalbir Singh with Randeep Kaur and proved that deceased was last seen in the company of Dalbir Singh and others; Mohinder Singh (PW8) before whom extra-judicial confession was made by accused Randeep Kaur; Gursewak Singh (PW9) is also the witness before whom extra-judicial confession was made by Dalbir Singh. They both were declared as hostile witnesses. Sub-Inspector Palwinder Singh, who is the Investigating Officer of this case, was also examined as PW10.

8. In his statement recorded u/s 313 of the Code of Criminal Procedure, accused Dalbir Singh denied all the prosecution allegations levelled against him. He pleaded that he is innocent and has been falsely implicated on the basis of suspicion. He had no illicit relation or intimacy with Randeep Kaur. He never made any extra-judicial confession before Gursewak Singh as alleged by the police. The letters allegedly written by Randeep Kaur are not of her handwriting. She made a statement before the Ulaqa Magistrate that she is unable to write and she put her thumb impression on her statement Ex D-3. Therefore, the story of writing letters to him is concocted one just to implicate him in this case on the basis of intimacy/relation with Randeep Kaur, whereas accused Randeep Kaur alias Rani has pleaded that she is innocent. The complainant party wanted to grab the land of her husband and as such, she has been falsely implicated in this false case.

9. We have heard the Learned Counsel for the parties and have also gone through the record of the case minutely.

10. Learned Counsel appearing for the appellants has, at the very out-set, assailed the judgment dated 21.11.2003 passed by the learned Sessions Judge, Ferozepur on a number of grounds, namely, that the learned trial Court over-looked the important piece of evidence that Mangal Singh, the real uncle of the deceased, who was the informant and lodger of the First Information Report with the police, was not examined by the prosecution. Learned Counsel has further contended that since there is no direct evidence available on the record of the case, therefore, the learned

trial Court has committed a grave error in convicting the appellants on the basis of circumstantial evidence, connecting the appellants with the commission of crime. Learned Counsel has further laid much stress on the point that there is no motive to connect the appellants with the commission of offence. Lastly, Learned Counsel appearing for the appellants have contended that love letters, Ex. P13/1 to Ex. P13/7 alleged to have been recovered in pursuance of the disclosure statement, Ex. P 11, made by appellant Dalbir Singh in police custody were not of the hand- writing of appellant Randeep Kaur @ Rani since her right hand is not functional, as contended by the Learned Counsel Shri R.K. Gupta, appearing for appellant Randeep Kaur @ Ram. The contentions, as noted above, raised by the Learned Counsel appearing for the appellants and the observations made by the learned Sessions Judge, Ferozepur are to be examined in the light of evidence available on the record.

11. Before we deal with each of the contentions raised by the Learned Counsel appearing for the appellants, we would like, first of all, to discuss the circumstances on the basis of oral as well as documentary evidence available on the record of the case in order to arrive at a right conclusion.

12. It is, ipso facto, clear from the prosecution version, as disclosed above, that the case against the appellants rested entirely on circumstantial evidence. The learned Sessions Judge disbelieved the version put forward by the defence and accepted the circumstantial evidence alleged on behalf of the prosecution as correct and sufficient to establish the guilt of the appellants.

13. The question for our consideration is whether the court below is right in its view that the circumstantial evidence in the case is sufficient to establish the guilt of the appellants ? Learned Counsel appearing for the appellants have contended before us that even if the circumstantial evidence against the appellants is accepted as correct, it does, not complete a chain of evidence and in fact, links in the chain of circumstances against the appellants are missing and the prosecution case is bound to fail.

14. Before we lay our hands on the circumstantial evidence available on the record, we would like to observe that it is well established that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established, and the circumstances so established, should be consistent only when the hypothesis of the guilt of the accused person: that is, the circumstances should be of such a nature as to reasonably exclude every hypothesis but the one proposed to be proved. It is common ground that there is no direct evidence implicating the appellants. Prosecution case rests on circumstantial evidence. As the case depends on circumstantial evidence, at the outset, the well established principles governing the appreciation of evidence in a case dependent upon circumstantial evidence is to be borne in mind; that the circumstance relied upon must be such as cannot be explained on any hypothesis except the guilt of the accused. In other words, the

circumstances must be of an incriminating character. All the proved circumstances must provide a complete chain no link of which must be missing and they must unequivocally point to the guilt of the accused and exclude any hypothesis consistent with his innocence. Keeping in view the parameter as laid down above, the entire case of the prosecution and the defence has to be minutely scanned on the basis of oral as well as documentary evidence available on the record of the case.

15. Let us first analyse the prosecution case based on letters, which as per them, were written by appellant Randeep Kaur to his paramour Dalbir Singh alias Beera addressing hiring code word "B" and "G". Both these special code words find mention in each of the letters. Here, we make it\* pertinent that code word "B" stands for Beera, i.e., Dalbir Singh @ Beera and likewise, the code word "G" stands for Jaspal Singh (a), Jassa. the husband of appellant Randeep Kaur @ Rani as per the circumstances, including wording, indication and the language of the letters contained therein. We would further like to discuss the mode of recovery of the letters from the possession of appellant Dalbir Singh (a), Beera.

16. It is the case of the prosecution that love Letters, Ex. P 13/1 to Ex. PI 3/7 were recovered pursuant to the disclosure statement, Ex. P 11, made by appellant Dalbir Singh (a), Beera in the presence of Assistant Sub-Inspector Sardul Singh stating therein that he had kept concealed the letters written to him by Randeep Kaur wife of Jaspal Singh in the room of tubewell of Harnam Singh under the brick wrapped in the polythene bag and he could get the same recovered according to which, he led the police party in custody to the disclosed place and got recovered the letters underneath the brick in the room of tubewell, consisting of 15 pages, which were taken into police possession vide recovery Memo Ex. PI 2. The site plan of the place from where the letters were recovered is Ex. PI 5. Record further spells out that on 21.02.2000 an application Ex. P 15 was submitted by the prosecution in the Court of Judicial Magistrate, 1st Class, Ferozepur asking appellant Randeep Kaur to give her specimen handwriting, but she stated that she was not able to sign, nor she knew how to append the signatures. Consequently, application moved by the prosecution was dismissed; observing that accused-appellant could not be compelled to give her specimen signatures for using the same against her. The statement of accused Randeep Kaur is Ex. D3 and order of the Court is Ex. PI 7 on the record. Faced with this situation and in order to find out truth whether appellant Randeep Kaur was able to read and write or not, the prosecution, in support of its case, got examined PW6 Bohar Singh, a teacher, who deposed that he is a B.A. B.Ed and was engaged in a private tuition work and had opened a Nursery School in the year 1989 in village Kamalgarh under the name and style of Guru Teg Bahadur Model School. He deposed that Randeep Kaur daughter of Jagtar Singh had been studying in his school since 1989 to 1992, i.e., for three years. She had again approached for seeking admission for fifth class in the year 1994, but she could not pass the test. From the testimony of this witness, it is clearly established on the record that

appellant Randeep Kaur was in a position to write much less alphabets of her mother tongue language even if she had studied upto fourth class in which a child generally connect the formation of the words and sentence independently.

17. A cursory glance of the letters, Ex. PI 3/1 to Ex. P13/7 do not appear to have been prepared within one or two days with the sole motive to involve the appellants in the case. The letters. Ex. P13/1 to Ex. PI3/7 are written on the pages of different sizes. Most of the pages are torn from lined note-book whereas letter Ex. .P13/3 is on thick brown paper showing affection to accused Dalbir Singh. Letter, Ex. P 13/1 is a paper taken out of the note book on which Randeep Kaur has been written in Punjabi in a decorative manner. Letter, Ex. P 13/3 seems to be written by Randeep Kaur in context to some guests, who had come to see Dalbir Singh for marriage purpose. Each and every contents of all these letters have been reproduced by the learned Sessions Judge while passing his judgment and we, at this stage, do not consider it necessary to produce them.

18. Having gone through the letters, Ex. P 13/1 to PI 3/7 and the language contained therein and the tenor of the writer of these letters addressing them in the code words, as pointed out above, we find that the conclusion drawn by the learned Sessions Judge is definitely correct observing that the letters written are lengthy and their fabrication by the complainant party or the police agency cannot even be presumed. In case any document had to be fabricated, it could run into one or two pages but the language, wording and writing of the letters indicate that they have been written over a passage of few months and they have not been fabricated to involve the appellants-accused. It has also been established on the record beyond reasonable doubt that the word "B" stands for Beera Dalbir Singh alias Beera and "G" stands for her husband Jaspal Singh. In such like circumstances, it can be inferred that there was illicit relations of accused Dalbir Singh and Randeep Kaur, which fact has been established from the letters, which were recovered from accused Dalbir Singh pursuant to his disclosure statement made by him, as discussed above, in detail and in our considered view, recovery of these letters is admissible u/s 27 of the Indian Evidence Act and moreover, the fact of illicit relations between the two accused is further established from the testimony of PW7 Simerpal Singh, who disclosed that the present accused Randeep Kaur came to his house at 5.30 a.m. and told him that his brother Jaspal Singh had died. He along with his uncle Mangal Singh went to their house and found Jaspal Singh lying dead on the floor. He has further disclosed that both the accused are known to him and they had illicit relations with each other. He has further disclosed that accused Dalbir Singh and Randeep Kaur were doing Chohal Mahal (objectionable immoral gesture) in his presence. He used to object to them on which the accused Randeep Kaur alias Ram used to abuse us. We are of the considered view that all these proved circumstances discussed above, clearly establish the involvement of both the appellants in the commission of crime.

19. Dealing with the contention raised by the Learned Counsel appearing for the appellants with regard to motive part, we would like to observe that in cases of circumstantial evidence motive bears important significance. Motive always locks up in the mind of the accused and some time it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its nonexistence. The failure to prove motive is not fatal as a matter of law. Proof of motive is never an indispensable for conviction. When facts are clear, it is immaterial that no motive has been proved. Therefore, absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the prosecution case. Moreover, in the instant case, a strong motive is provided by the prosecution through the letters, Exs.P 13/1 to P13/7 recovered pursuant to the disclosure statement made by accused Dalbir Singh in the presence of the police official witnesses, whereby appellant Randeep Kaur wanted to finish her husband Jaspal Singh in order to have contiguity with his paramour, as is apparent from the wording used by her in lover letters sent to her paramour Dalbir Singh @ Beera appellant.

20. Dealing with the contention raised by the Learned Counsel appearing for the appellants that the author of the First Information Report has not stepped into the witness box and was given up by the prosecution as having been won over by the accused, is of no help to the appellants. We would also like to observe that even if First Information Report is not proved, it would not be a ground of acquittal since the case would depend upon the evidence led by the prosecution and non-examination of the informant cannot, in any manner, affect the prosecution case when the evidence put forward by the prosecution is natural and corroborating with medical evidence. It appears that Mangal Singh, who is closely related to deceased Jaspal Singh, joined hands later on with accused Randeep Kaur @ Rani in order to save her and that is why, he was given up by the prosecution as having been won over. The fact remains that it was on his statement, Ex. P6 that the case was registered against the appellants.

21. The evidence of the doctor in the instant case would play a significant role not only in order to ascertain the cause of death but also in falsifying the plea of consumption of liquor by the deceased which, in our considered view, would make a chain of circumstances so complete on the basis of evidence discussed above, that one would easily be able to separate the grain from the chaff. As per the testimony of Dr. K.K. Aggarwal, Assistant Professor, Forensic Medicines, Jaspal Singh alias Jassa died of asphyxia as a result of strangulation. This doctor has categorically deposed that " at the time of post-mortem examination, rigor mortis was present in lower legs slightly.

Post-mortem staining was present on the back. Clotted blood was present in both nostrils more on right side. Fingers, nails showed cyanosis. The following injuries were found on the dead body of Jaspal Singh by Dr. K.K. Aggarwal :-

1. Reddish abrasion 7.5 cm x 1.5 cm present on front and right side of neck in middle.
2. Reddish abrasion 2.5 cm x 2 cm present on left side of chin. Infiltration blood was present underneath.
3. Lacerated wound 1 cmx0.2 cm present on medial aspect of right little finger in middle.
4. Reddish abrasion 1 cm x .5 cm present on right side of chest 10 cm above right nipple. Infiltration blood was present.

On dissection of neck, there was 1.5 cm wide infiltration of blood on front and both sides of neck in middle corresponding to injury No. 1 on front and right side of neck. The underlying sterno mastoid and platysma were bruised within infiltration blood on both sides of the neck.

Clotted blood was present on both sides of the neck more on the right side. There was fracture of thyroid cartilage. Clotted blood was present at the site of fracture.

22. All the injuries were ante-mortem in nature. The cause of death as opined by Dr. K.K. Aggarwal (PW1) was due to asphyxia as a result of injury No. 1, which was sufficient to cause death in the ordinary course of nature. The time that elapsed between the death and the injury was within a few minutes and that elapsed between the death and post-mortem was within 24 to 48 hours. The viscera, which was sent to the Chemical Examiner, no poison was detected in the contents as per report of the Chemical Examiner and this witness has further deposed that injuries Nos. 2, 3 and 4 were possible if with the substance like wire is given beating but these injuries were not possible by touching of live electric wires. From the medical evidence produced by the prosecution, it is crystal clear that death of Jaspal Singh had taken place on the time as alleged in the prosecution version, i.e. during the night of 07/08.02.2000. The deceased, in an attempt to resist throttling by the assailants, injuries Nos. 2, 3 and 4 are not possible by touching of live electric wire, as opined by the doctor.

23. It is true that Mohinder Singh (PW8) and Gursewak Singh (PW9) resiled from their original statements given before the police while stepping into the witness box before the trial Court, but the medical evidence establishes beyond shadow of doubt that Jaspal Singh died in his own house, where he resided along with his wife Randeep Kaur, who had tried to fabricate a story regarding the death of Jaspal Singh by electrocution. No explanation on the part of Randeep Kaur was put forth as to how her husband died, while they both were sleeping in the house, which clearly spells out that she (Randeep Kaur) with the aid of her paramour appellant Dalbir Singh @ Beera committed the murder of her husband by strangulation and the story regarding death of deceased Jaspal Singh by electrocution stands ruled out by Dr. K.K. Aggarwal (PW 1) giving a clear indication that the death in this case was on



account of strangulation. Appellant Randeep Kaur alias Ram was the best person to disclose and prove her innocence as to how Jaspal Singh had died during that night in her presence and remaining tight lipped over the matter for a considerable time also gives an indication that she in connivance with her paramour cut short the life of her husband by strangulation and this act could not be completed by her alone without the aid of appellant Dalbir Singh alias Beera whose involvement in the instant case is writ at large on account of love letters Ex. P 13/1 to P13/ 7, which were recovered in pursuance of the disclosure Statement made by him.

24. Throwing light on each and every aspect of the matter in detail, we would like to observe the proved circumstances, as established above, on the strength of the testimony of the statements of the prosecution witnesses and the documentary evidence available on the record of the case, which in our opinion, give a clear indication in the manner in which deceased Jaspal Singh @ Jassa, husband of Randeep Kaur @ Rani has died which are confined within narrow compass :-

- (i) the presence of Randeep Kaur @ Ram, wife of deceased Jaspal Singh @ Jassa is proved on the fateful intervening night of 07/08.2.2000;
- (ii) the dead body of deceased Jaspal Singh (a), Jassa was recovered in the presence of Mangal Singh, the real uncle of the deceased and his son Jugraj Singh, who after getting the information from Randeep Kaur went to their house and found the dead body lying there on the floor and nearby a stabilizer was lying;
- (iii) The matter was reported belatedly by appellant Randeep Kaur, wife of the deceased, at 5.30 a.m. on 08.02.2000, to said Mangal Singh, whereas the death had occurred much earlier;
- (iv) A false plea, having no evidence at all, was taken with regard to electrocution by placing the same near the dead body as if he had been electrocuted with the touching of a live wire, which possibility has been ruled out by the medical evidence;
- (v) Illicit relations of Dalbir Singh @ Beera with Randeep Kaur has been established on the strength of love letters written by Randeep Kaur to her paramour Dalbir Singh, which were recovered on his disclosure statement made by him before the police;
- (vi) There is no explanation on the part of Randeep Kaur as to how and in what manner the death of her husband had occurred on the intervening night 07/08.02.2000 in her presence; and
- (vii) Story of consumption of liquor by deceased Jaspal Singh (a) Jassa before death was proved to be falsified from the medical evidence after examining the viscera of the deceased wherein it was declared that no liquor was found in the stomach.

25. All the questions, as emerged out from the record of the case, have been fully established from the material available on the record, which have been discussed in

an elaborate manner, which form chain so complete that there is no escape from the conclusion that within all human probability, the murder was committed by both the appellants, namely, Dalbir Singh @ Beera and Randeep Kaur @ Rani collectively and none else. The established circumstances do not admit of explanation on any other hypothesis than that of the guilt of the appellants.

26. In view of the above discussion, we see no good ground for interference either with the judgment of conviction or order of sentence dated 21.11.2003 passed by the learned Sessions Judge, Ferozepur. The result thereof is that, both the appeals being Criminal Appeal No. 943-DB of 2003 filed by appellant Dalbir Singh @ Beera and Criminal Appeal No. 549-DB of 2004 filed by appellant Randeep Kaur Rani fail and are dismissed.