

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

CRA-D-286-DB-2013 (O&M)
Reserved on : April 12, 2019
Date of Decision: May 14, 2019

Sanjay ...Appellant
Versus
State of Haryana ...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Manjeet Singh, Advocate for the appellant.

Mr. Vishal Garg, Additional Advocate General, Haryana.

HARINDER SINGH SIDHU, J.

This appeal is instituted against the judgment and order dated 18/20.2.2013 rendered by the Sessions Judge, Bhiwani in Sessions Case No.36 of 2011 whereby the appellant, who was charged with and tried for offences punishable under Sections 302 and 436 of the Indian Penal Code (in short 'IPC'), have been convicted and sentenced as under:-

<i>U/Section</i>	<i>Imprisonment & fine</i>	<i>In case of default of fine</i>
302 IPC	Life Imprisonment and fine of ₹20,000/-	Further RI for one year
436 IPC	Rigorous Imprisonment for ten years and fine of ₹10,000/-	Further RI for six months

2. The case of the prosecution in a nutshell is that on 28.3.2011 a telephonic message was received in Police Station Bhawani Khera that a ruqa was received from General Hospital Hansi regarding admission of Suresh s/o Wazir Singh, Vanshika d/o Suresh and Pinki w/o Suresh residents of Bhaini Jatan in a burnt condition in General Hospital, Hansi. Suresh and

Vanshika had already expired. Pinki was referred to PGIMS Rohtak. On

this Inspector Sanjay Kumar after obtaining ruqa and MLR from Police Station reached General Hospital, Hansi where Sunny Kumar s/o Wazir Singh got recorded his statement. He stated that they are three brothers. Suresh, Sanjay and he himself. They also have one sister Sudesh who was married about 20 years ago. Sunny and Suresh were living together. Sanjay was residing separately on *chaubara* for the last one year. Yesterday i.e. on 27.3.2011 at about 10/11 pm, he and his wife Geeta were sleeping in one room. Suresh, his wife Pinki and minor daughter Vanshika were sleeping in a separate room. His mother Nanhi Devi and aunt Khajani Devi were sleeping in a separate room. At about 1.00 am he woke up due to suffocation and saw that the house was burning. His room was locked from outside but he forcibly opened it. The whole of the house was burning. Their neighbors had reached there and were extinguishing the fire. The room in which Suresh, his wife and child were sleeping was also locked. He along with some other persons broke the lock from outside. They took out Suresh, Pinki wife of Suresh and daughter Vanshika from the room. They were unconscious. They were shifted to General Hospital Hansi in a vehicle. Suresh and Vanshika had died. Pinki was referred to PGIMS Rohtak where she also died. He suspected that his brother Sanjay who was residing in the upper Chaubara had set the house on fire by removing gas cylinder pipe from the chulha and leaving the same in his room by making a hole in the electric fitting and turning on the regulator. Sanjay was missing at that time. He had set the house on fire because of a dispute regarding the money transactions between the three brothers during the last one year.

3. The prosecution examined number of witnesses in its support.

The statement of the accused under Section 313 Cr.P.C. was recorded. He

denied that he had committed the crime. He pleaded that some unknown person had set the house on fire. He also joined in extinguishing the fire due to which his hands and face were burnt. However, he did not lead any evidence in his defence.

4. The appellant was convicted and sentenced as referred to above. Hence, this appeal.

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

6. PW1 Dharmender Singh, draftsman prepared the scaled site plan Ex.PA on the demarcation of Sunny Kumar son of Wazir Singh on 10.4.2011.

7. PW2 Head Constable Satish Kumar deposed that on 28.3.2011 he was posted as MHC at Police Station, Bawani Khera. On receipt of ruqa Ex.PB brought by Constable Amit Kumar, he recorded formal FIR Ex.PC vide endorsement Ex.PC/1.

8. PW2 Head Constable Satish in his affidavit Ex.PD stated that on 28.3.2011, SHO Sanjay Kumar deposited with him the case property of this case. On 13.4.2011 he handed over the case property to Constable Amit Kumar for depositing the same with FSL, Madhuban.

9. PW3 Dr.Pawan Kumar Mittal, Resident, Department of Forensic Medicine, PGIMS, Rohtak filed affidavit Ex.PW3/A to the effect that on 28.3.2011 at 4.45 pm, he along with Dr.Luv Sharma, Professor, Department of Forensic Medicine, conducted autopsy on the body of Pinki wife of Suresh resident of village Bhaini Jatan. The following were observed :

“Length of the body was 169 cm.

No ligature mark was seen over the neck.

The dead body was of a female individual found to be wrapped in a white sheet of cloth. The body was wearing: (1) a purplish blue burnt piece of cloth around pelvic region along with a creamy yellow piece of cloth adhered to it; (2) three black-yellow glass bangles in each wrist. Eyes were closed. Mouth was open. Superficial to deep burns present all over the body relatively sparing the lower 1/3rd of both forearms anteriorly, the anterior perineogenital area and medial portion of thighs. The scalp hair were singed over the front aspect bilaterally and at places over the parietal and occipital areas. The back of the body was showing superficial to deep burns all over. The eyelashes and eyebrows were singed. Line of redness was noted at the junction of burnt and spared areas anteriorly.

The following findings were noticed on systemic examination of the body:

The skull and vertebrae were healthy. Menings were intact and congested. Brain was congested grossly. Ribs and cartilages were healthy. Pleurae were congested. The entire laryngo-tracheal tract was found to be filled with carbonaceous soot particles. Hyoid was intact. Both the lungs were congested grossly and on cut section. Pericardium was intact. Right side of heart contained dark red clotted blood while left side was empty. Large vessels were empty. Peritoneum was intact. Pharynx and Oesophagus were congested. Stomach contained small amount of semi-digested food material. Mucosa was unremarkable. Small intestine contained chime. Large intestine contained faecal matter and gases. Liver, spleen and kidneys were congested on cut section. Urinary bladder was empty. Uterus was healthy.

After completing the autopsy, they opined that the body is of a young adult female individual. The cause of death in this case was ante mortem burns. The probable time that elapsed between burns and death was opined to be immediate while between death and autopsy was opined to be within 24 hours.”

He proved the copy of post mortem report Ex.PE and inquest report Ex.PF.

10. PW4 Sunny – complainant did not support the case of the prosecution. He deposed that they were three brothers namely Suresh who was elder, Sanjay and he himself. On 27.3.2011 at about 11.00/12.00 a.m, they all were sleeping. His elder brother Suresh along with his wife and minor daughter was sleeping on the ground floor. In a separate room the complainant and his wife was sleeping. Sanjay was sleeping alone in a room situated on the first floor. His wife and his daughter had gone to his in-laws. At 1.00 a.m. he woke up and saw that room in which Suresh along with his family was sleeping was on fire. He then woke up his brother Sanjay and they both tried to put off the fire. Meanwhile some neighbours also came there. In this process of putting off the fire both the hands and feet of Sanjay were burnt. Then they took out Suresh, his wife Pinki and his daughter Vanshika aged about 13 months from that room. They took them to General Hospital, Hansi for treatment. The complainant remained at home. Due to burn injuries, his brother Suresh and his niece Vanshika died on the way to General Hospital, Hansi, whereas, his brother's wife Pinki was referred to PGIMS Rohtak. She also died on the way. He denied having moved any application to the police. Police obtained his signatures on blank papers. He denied that his brother Sanjay was responsible for setting the house on fire. He was declared hostile and was cross-examined by the Public Prosecutor.

11. PW5 Dr.Vedpal Singh, Medical Officer, General Hospital, Hansi along with Dr.N.K.Verma, Medical Officer, General Hospital, Hansi conducted postmortem examination on the body of Suresh son of Wazir Singh resident of Bhaini Jatan and found the following:

“The length of the body was 5'7” inch. A ligature mark was nil. It was a well developed dead body of a male wearing half burnt sky colour lining shirt, white baniyan, blackish brown pajama, blue underwear. Eyes were closed. Mouth was closed. Smell of kerosene oil was present in the clothes. Left lower limb post polio deformity (thin as compared to right limb). Rigor mortis present all over the body. Post mortem staining was present on the dependent part of the body.

Superficial to deep burns present all over the body except upper part of both thighs, pubic area, genital area and bilateral inguinal area. There was peeling of skin at many sites. There was line of demarcation and zone of inflammation present. There was singeing of hairs present. There was presence of carbon (short particle) present in the nostrils. All other organs and viscera's were healthy and congested.

In their opinion the cause of death in this case was due to shock as a result of extensive burns which was ante mortem in nature and sufficient to cause death in ordinary course of nature. The probable time that elapsed between injury and death was variable and between death and post mortem was within 24 hours.”

He proved the copy of post mortem report of Suresh as Ex.PL, Inquest Report Ex.PL/1 and police report Ex.PL/2. He further stated that he sent ruqa Ex.PL/3 to the police regarding the death of Suresh and Vanshika.

12. Dr.Vedpal Singh (PW5) along with Dr.N.K.Verma, Medical Officer, General Hospital, Hansi conducted post mortem examination on the dead body of Vanshika daughter of Suresh Kumar and found the following:-

“The length of the body was 2 feet. A ligature mark was nil. It was a moderately built and nourished dead body of a female child which was bare (wearing nothing). Eyes were closed. Mouth was closed. Rigor mortis present all over the body. Post mortem staining was present on the dependent part of the body. Pugilistic attitude present.

Superficial to deep burns present all over the body. There was peeling of skin at many sites. There was line of demarcation and zone of inflammation present. The scalp hair singed. The shoot particles present in the nostrils. All other organs and viscera's were healthy and congested.

In their opinion, the cause of death in this case was due to shock as a result of extensive burns which was ante mortem in nature and sufficient to cause death in ordinary course of nature. The probable time that elapsed between injury and death was variable and between death and post mortem examination was within 24 hours.”

He proved the post mortem report of deceased Vanshika Ex.PM and inquest report Ex.PM/1.

13. PW6 Dr.Inderjeet, Medical Officer, CHC, Baund Kalan in his affidavit Ex.PW6/A deposed that on 4.4.2011 when he was posted at General Hospital, Bawani Khera, he medico-legally examined Sanjay Kumar son of Wazir Singh and found the following injuries on his person:-

- “1. Superficial burn over the face including forehead and front of upper neck and back of neck. Approximate age of burn was 5%.*
- 2. Superficial burn over the front of chest involving half of lower area. Approximate age of burn was 4%.*
- 3. Superficial burn over the half of lower abdomen. Approximate age of burn was 5%.*
- 4. Superficial burn over the upper and lower back. Approximate age of burn was 14%.*
- 5. Superficial burn over the front and back of right forearm from mid forearm to fingers. Approximate age of burn was 4%.*
- 6. Superficial burn over the front and back of left forearm from mid forearm to fingers. Approximate age of burn was 4%.*
- 7. Superficial burn over the front and back of right leg start from mid of thigh up to finer of foot. Approximate age of burn*

was 14%.

8. *Superficial burn over the front and back of left leg start from mid of thigh upto finger of foot. Approximate age of burn was 14%.*

Kind of weapon for all the injuries was flame burn and for all the above mentioned injuries, surgical opinion was required. Total percentage of burn was 64%. Duration of all the injuries was within one week.”

He proved the copy of MLR of Sanjay as Ex.PQ. He stated that he had referred the patient to General Hospital, Bhiwani vide reference slip Ex.PQ/1. He proved the police request for medical examination as Ex.PQ/2.

14. PW7 Shamsher deposed that on the intervening night of 27/28.3.2011, he was sleeping in his house. He heard some noise at about 1.00 am (night) that the house of Suresh had caught fire. He went to the spot. Sunny and Sanjay were trying to extinguish the fire. He also tried to extinguish the fire. He stated that Sanjay was not responsible for the fire. His statement was not recorded by the Police. He was declared hostile and cross-examined by the Public Prosecutor for the State. In cross-examination by the defence counsel, he admitted that accused Sanjay did not set the house of Suresh on fire.

15. PW8 Smt.Nanhi Devi deposed that deceased Suresh and Sanjay were her sons. She did not see anything and did not know about this case. She was declared hostile and cross-examined by the learned Public Prosecutor for the State. In cross-examination by defence counsel, she admitted that accused Sanjay did not set the house of Suresh on fire.

16. PW9 ASI Ganpat Ram deposed that on 28.3.2011 he got conducted post mortem examination of deceased Suresh Kumar and Vanshika. After post mortem examination, doctor handed over the sealed

parcels which were taken into possession by Inspector Sanjay Kumar in his presence vide recovery memo Ex.PT.

17. PW10 Sub Inspector Jagbir Singh deposed that on 28.3.2011 he got conducted post mortem examination of deceased Pinki wife of Suresh from PGIMS, Rohtak vide application Ex.PU. He collected the death ruqa Ex.PV of deceased Pinki from Police Post PGIMS Rohtak. After post mortem examination, doctor handed over the sealed parcels of deceased Pinki, which were taken into possession by Inspector Sanjay Kumar in his presence vide recovery memo Ex.PX.

18. PW11 Constable Deepak Kumar deposed that on 27.5.2011 Inspector Sanjay Kumar moved application Ex.PY for providing I.D. of Mobile No.9034945632 and No.9992103527. He provided the I.D. of above said mobile numbers Ex.PY/1 which were in the name of Sanjay son of Wazir Singh.

19. PW12 Inspector Sanjay Kumar (investigating officer) deposed that on 28.03.2011 he was posted as SHO, Police Station, Bawani Khera. A telephonic message was received from MHC, Police Station, Sadar Hansi regarding admission of injured Suresh, Pinki and Vanshika in General Hospital, Hansi as a burn case. On this, he along with other police officials went to Police Station, Sadar Hansi and collected ruqa Ex.PL/1 vide which Pinki was referred to PGIMS, Rohtak and Suresh and Vanshika were stated to be brought dead. Thereafter, he reached General Hospital, Hansi and recorded the statement of Sunny Kumar complainant as Ex.PB, who was brother of Suresh Kumar. He made his endorsement Ex.PB/1 and sent the same to the Police Station, Bawani Khera for registration of the case through Constable Amit Kumar. Thereafter, he conducted inquest proceedings on the

body of Suresh and Vanshika. He proved the inquest report of Suresh Ex.PL/1 and that of Vanshika Ex.PM/1. He recorded the statements of witnesses under Section 175 Cr.P.C. Thereafter, he deputed ASI Jagbir Singh to PGIMS, Rohtak for recording the statement of injured Pinki. He got the autopsy on the dead bodies of Suresh and Vanshika done by board of doctors from General Hospital, Hansi vide police request Ex.PL/2. He inspected the spot and prepared rough site plan Ex.PZ. The place of occurrence was got photographed by official camera by constable Amit Kumar. He lifted from the spot i.e. from two rooms on the ground floor one cylinder of Bharat Gas and one empty cane of kerosene oil of capacity of 5 litres having smell of kerosene, another empty cane of kerosene oil, one mobile of double sims, one gas pipe of black colour and a broken lock of Harrison. Thereafter, he also lifted one cylinder of Indane company with regulator and pipe, one lock with key from the room of Sanjay on the first floor of the house from where a pipe was fixed after removing from the gas stove in the electricity fitting pipe. All these articles were sealed and after converting them into parcels were taken into possession vide recovery memo Ex.PG. Dr. Ravinder Pal, Incharge, Scene of Crime team also visited the spot. DSP Dalbir Singh also visited the spot. Thereafter, he made enquiries from the persons present at the spot. He also recorded statement of mother of Sanjay, Sunny and Suresh under Section 161 Cr.P.C. From the water course in their fields he took into possession one pair of slippers no.9, one match box no.22 and one burnt safa/parna after converting them into sealed parcels vide recovery memo Ex.PH. He proved the burnt plastic cane Ex.P1, another burnt plastic cane Ex.P2, pair of slippers Ex.P3, match box Ex.P4 and piece of safa/parna Ex.P5. He also prepared the rough site plan Ex.PAA

of place of recovery in the fields. On 4.4.2011, he apprehended Sanjay from bus stand of Bawani Khera. His hands, legs and face were in burnt condition. He suffered disclosure statement Ex.PBB regarding concealment of clothes worn by him at the time of occurrence. He got recovered his burnt clothes and a key which were converted into sealed parcels and taken into possession vide recovery memo Ex.PJ. He also prepared rough site plan of the place of recovery of clothes and key as Ex.PCC. Sanjay was got medically examined from General Hospital, Bhawani Khera vide application Ex.PQ/2, from where he was referred to General Hospital Bhiwani for further treatment of burn injuries vide slip Ex.PQ/1. On reaching the police station, case property was deposited with the MHC. On 5.4.2011 Sanjay was referred to PGIMS Rohtak for treatment. As he was by then in judicial custody he was taken to PGI Rohtak by the jail authorities. On 10.4.2011, Constable Amit Kumar handed over to him 17 photographs of the spot Ex.P6 to Ex.P21. He also got prepared the scaled site plan Ex.PA of the place of occurrence from Dharmender draftsman. On 27.5.2011, he moved application Ex.PY in the Cyber Cell, Bhiwani for obtaining details of I.D. of the mobile numbers of accused Sanjay and obtained the Ids as Ex.PY/1. He proved the gas pipe along with regulator Ex.P22, mobile along with its cover Ex.P23, gas cylinder of Bharat gas Ex.P24, gas cylinder of Indane gas Ex.P25, gas pipe along with regulator Ex.P26, lock along with key Ex.P27, broken lock Ex.P28 and stated that these articles were taken into possession vide recovery memo Ex.PG. He further proved the half burnt shirt of accused Ex.P29, key Ex.P30 and stated that these were taken into possession vide recovery memo Ex.PJ.

20. In cross-examination, PW12 Inspector Sanjay Kumar deposed

that it had not come in his investigation about the amount regarding which there was a dispute between the accused and the complainant party. He stated that he had verified about it from the complainant. He further admitted in cross-examination that as per his investigation and statements of witnesses recorded by him, nobody had seen accused Sanjay setting the house on fire.

21. The case was registered on the statement of PW4 Sunny who stated that they were three brothers. On 27.3.2011 his elder brother Suresh along with wife Pinki and minor daughter Vanshika was sleeping in one room on the ground floor. The complainant along with his wife Geeta was sleeping in a separate room on the ground floor. The accused Sanjay was sleeping alone in a room on the first floor. Their mother Nanhi Devi and aunt Khajani Devi were sleeping in a separate room. At about 1.00 AM the complainant woke up due to suffocation and saw that the house was burning. He found that his door was locked from outside but he opened it by using force. He found that the whole of the house was burning. On seeing the fire the neighbors had also come there and were extinguishing the fire. The room in which his brother Suresh and his wife and daughter were sleeping was also locked. Complainant along with other persons broke open the lock and took out Suresh, his wife Pinki and daughter Vanshika from the room. They were all unconscious. They were taken to General Hospital Hansi for treatment but they died. He suspected that his brother Sanjay who was residing in the upper Chaubara had set the house on fire by removing gas cylinder pipe from the chulha and leaving the same in his room by making a hole in the electric fitting and turning on the regulator. Sanjay was missing at that time. He had set the house on fire because of a dispute

regarding the money transactions between the three brothers during the last one year.

22. Clearly it was only the suspicion of the complainant that the appellant had set the house on fire because of a dispute regarding the money transactions between the three brothers during the last one year. No evidence had come on record regarding the nature of the dispute between the brothers. In cross-examination, PW12 Inspector Sanjay Kumar deposed that it had not come in his investigation about the amount regarding which there was a dispute between the accused and the complainant party. It was only the complainant who had said so. He further admitted in cross-examination that as per his investigation and statements of witnesses recorded by him, nobody had seen accused Sanjay setting the house on fire.

23. The prosecution case has not been supported by the complainant -Sunny who appearing as PW4 denied having made any statement to the police. He stated that at 1.00 a.m. he woke up and saw that room in which Suresh along with his family was sleeping was on fire. He then woke up his brother Sanjay (appellant) and they both tried to put off the fire. Meanwhile some neighbours also came there. In this process of putting off the fire both the hands and feet of Sanjay were burnt.

24. PW7 Shamsher deposed that on the intervening night of 27/28.3.2011, he was sleeping in his house. He heard some noise at about 1.00 am (night) that the house of Suresh had caught fire. He went to the spot. Sunny and Sanjay (appellant) were trying to extinguish the fire. He also tried to extinguish the fire. He stated that Sanjay was not responsible for the fire.

25. PW8 Smt.Nanhi Devi deposed that deceased Suresh and Sanjay

were her sons. She did not see anything and did not know about this case. In cross-examination by learned defence counsel, she admitted that accused Sanjay did not set the house of Suresh on fire.

26. Thus it is that the case had been registered only on the basis of suspicion that Sanjay had set the house on fire. No one had seen Sanjay setting the house on fire. The motive alleged was a monetary dispute between the brothers. No evidence had been collected regarding this dispute. The complainant and the other prosecution witnesses have not supported the case of the prosecution. In fact PW4 the complainant in his deposition in Court had stated that the appellant had joined him and others in trying to put off the fire and in the process sustained injuries. The factum of the injuries has been proved by PW6 Dr.Inderjeet, Medical Officer, CHC, Baund Kalan who stated that on 4.4.2011 when he was posted at General Hospital, Bawani Khera, he medico-legally examined Sanjay Kumar. As per the doctor all these injuries were of flame burn. Total percentage of burn was 64%. Duration of all the injuries was within one week. This corroborates that the injuries may have been sustained on 27.3.2011.

27. The prosecution has failed to prove the case against the appellant beyond reasonable doubt. Accordingly, the appeal is allowed. The appellant is acquitted of all the charges framed against him by giving him benefit of doubt. The appellant be released forthwith, if not required in any other case.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 14, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No

