

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

CRA-D-1084-DB of 2015
Reserved on : 12.09.2019
Date of decision : 20.09.2019

Lakhmi Chand

.... APPELLANT

Versus

State of Haryana

..... RESPONDENT

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

Present: Mr. Ishan Gupta, Advocate, for the appellant.
Mr. Vivek Saini, DAG, Haryana.

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RAJIV SHARMA, J.

1. This appeal is instituted against the judgment dated 05.06.2015 and order dated 06.06.2015, rendered by learned Additional Sessions Judge, Gurgaon, in Sessions Case No. 154 dated 03.07.2013/24.12.2013, whereby appellant Lakhmi Chand, who was charged with and tried for the offences punishable under Sections 302 and 201 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 ₹ 2,000/-, and in default of payment of fine, to undergo rigorous imprisonment for one year, 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 ₹ 1,000/-, and in default of payment of fine, to further undergo rigorous imprisonment for six months under Section 201 IPC. Both the sentences

were ordered to run concurrently.

2. The case of the prosecution, in a nutshell, is that on 22.03.2002, SI Jogender Singh along with other police officials was present at village Lokhra in connection with patrolling. Hari Singh met the police party and made the statement to the effect that he was a resident of village Lokhra, Police Station Pataudi. They were three brothers. He was the elder one. Shish Ram was the younger and Hoshiar Singh was the youngest. Hoshiar Singh along with his wife Sheela was residing separately. He was having two daughters. One of them was married and other was 6-7 years of age. Sheela wife of Hoshiar Singh was having illicit relations with Manohar Lal son of Kalu. She got mutated the land measuring 2.75 acres in her name from Hoshiar Singh. Thereafter, she alienated the land and spent the amount for her luxury. Hoshiar Singh was worried about alienation of the land and about the illicit relations of his wife Sheela with Manohar Lal. Hoshiar Singh used to quarrel with Sheela, Manohar Lal and Lakhmi Chand. Since Hoshiar Singh was causing hurdle in the relations of Sheela and Manohar Lal, therefore, Sheela, Manohar Lal and Lakhmi Chand murdered him on 21.03.2002 by putting him on fire. Hari Singh further stated that he came to know about the incident in the evening. He called his brother Shish Ram, resident of Harchandpur. FIR was registered.

3. During investigation, the appellant was declared proclaimed offender. Accused Sheela and Manohar Lal were arrested. They were challaned by the police. They were convicted and sentenced under Sections 302 and 201 IPC vide judgment dated 14.05.2004. The appellant was arrested on 10.04.2013. Challan was put up against him on 14.05.2013.

4. The prosecution examined as many as nine witnesses in support of its case. The appellant was also examined under Section 313 Cr.P.C. He denied the case of the prosecution. He 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. R.N. Yadav led his evidence by filing affidavit Ex.PW.1/A. He along with Dr. R.K. Sharma conducted post mortem examination on the body of Hoshiar Singh. In their opinion, the cause of death was burns. The burns were ante mortem in nature, which were sufficient to cause death in ordinary course of nature. Probable time that elapsed between injury and death was few hours. Time between death and post mortem examination was between 24 to 48 hours. He proved the post mortem report Ex.PG.

8. PW.2 Rajesh deposed that his father Hari Singh was having two brothers, namely Shish Ram and Hoshiar Singh. Hoshiar Singh was a simple person. He was married to Sheela. Sheela was having illicit relations with Manohar Lal. Manohar Lal used to visit Sheela for the last 2-3 years. Sheela, Manohar Lal and Lakhmi Chand in conspiracy with each other got the land of Hoshiar Singh measuring 2.75 acres transferred in favour of

Sheela. They sold it at a very low rate. Hoshiar Singh then started having altercation with Sheela, Manohar Lal and Lakhmi Chand on account of sale of his land. On 21.03.2002, the accused set Hoshiar Singh on fire and killed him. On 22.03.2002, police party visited the house of Hoshiar Singh, from where one red coloured half burnt quilt and one empty quarter were recovered. There was smell of kerosene oil coming from the quarter. These articles were taken into possession. Accused Manohar Lal made a disclosure statement Ex.PB. Manohar Lal got recovered some burnt pieces of clothes and also demarcated the place of occurrence. Memo Ex.PC was prepared. The accused tried to take away the body of Hoshiar Singh on the pretext of treatment. They objected to it. The accused left the body and ran away from the spot. In his cross-examination, he deposed that the police recorded his statement on 22.03.2002. He told the police that Sheela was having illicit relations with Manohar Lal and he used to visit Sheela prior to the death of Hoshiar Singh. He was confronted with his statements Ex.D1 and Ex. D2, recorded under Section 161 Cr.P.C., wherein it was not so recorded. He told the police in his statement that Sheela, Manohar Lal and Lakhmi Chand in conspiracy with each other got the land of Hoshiar Singh measuring 2.75 acres transferred in favour of Sheela. Later on, as a part of the conspiracy, they sold the land at very low rate. He was confronted with his statements Ex.D1 and Ex. D2, wherein it was not so recorded. He stated to the police in his statement that Hoshiar Singh started having altercation with Sheela, Manohar Lal and Lakhmi Chand on account of sale of his land and subsequently, on 21.03.2002, the accused set Hoshiar Singh on fire. He was confronted with his statements Ex.D1 and Ex. D2, recorded under Section

161 Cr.P.C., wherein it was not so recorded. He admitted that he was not an eye witness to the occurrence. He also admitted that Lakhmi Chand was real brother of Sheela. Lakhmi Chand was resident of village Jakhopur, Tehsil Kot Kasim, District Alwar.

9. PW.3 Birhma Devi testified that Manohar Lal had illicit relations with Sheela wife of Hoshiar Singh. There was a dispute between Hoshiar Singh and Manohar Lal. Sheela got transferred 2.75 killas of land in her name from her husband Hoshiar Singh. Thereafter, Manohar Lal, Sheela and Lakhmi Chand sold away the land. Manohar Lal, Sheela and Lakhmi Chand poured kerosene oil on Hoshiar Singh and set him on fire about 10-11 years back. Hoshiar Singh was set on fire in a Chobara by the accused at 9.00 PM. On the next morning, she went to Nohar and found burnt clothes lying there. When she returned from Nohar, she found that Manohar, Sheela and Lakhmi Chand were taking out the burnt dead body of Hoshiar Singh from a car. They threw the dead body at the threshold of the house and shut the door. Thereafter, she went to field to inform her husband. In her cross-examination, she deposed that the police had recorded her statement at her house. She told the police that Manohar Lal, Sheela and Lakhmi Chand poured kerosene oil on Hoshiar Singh and set him on fire about 10-11 years back. She was confronted with her statement Ex.D3, recorded under Section 161 Cr.P.C., wherein it was not so recorded.

10. PW.5 EHC Rajesh Kumar had deposited the case property with FSL, Madhuban, on 11.04.2002. He obtained the receipt.

11. PW.7 EHC Dev Kumar testified that appellant Lakhmi Chand made disclosure statement Ex.PF and admitted his involvement in the

murder of Hoshiar Singh.

12. PW.9 Attar Singh deposed that on 21.03.2002, he went to Police Station Pataudi to find out the whereabouts of his uncle Hoshiar Singh. He found that his aunt Sheela Devi was present in the police station and was being interrogated by the police. She disclosed that she along with Manohar Lal and Lakhmi Chand had killed his uncle Hoshiar Singh and had burnt him. The burnt clothes were concealed in her house. She could get the same recovered. She made disclosure statement Ex.PW.9/A. She got recovered pieces of burnt clothes which were taken into possession vide recovery memo Ex.PW.9/B.

13. The FSL report is Ex.PX, according to which kerosene or its residues could not be detected in exhibits-2 and 3.

14. The case of the prosecution is that appellant Lakhmi Chand along with co-accused Manohar Lal and Sheela had poured kerosene oil on Hoshiar Singh and thereafter, he was put on fire. The body was thrown at the threshold of his house.

15. PW.2 Rajesh deposed that on 22.03.2002, police party visited the house of Hoshiar Singh, from where one red coloured half burnt quilt and one empty quarter were recovered. There was smell of kerosene oil coming from the quarter. These articles were recovered in his presence. However, according to the FSL report Ex.PX, no kerosene or its residues could be detected in exhibits-2 and 3, i.e. small pieces of partially burnt clothes, one sealed cloth parcel enclosing exhibit-3 as well as an empty glass quarter having lid pierced through a small red coloured cloth used as wick stated to be "Diya".

16. According to PW.3 Birhma Devi, she went to Nohar and found burnt clothes lying there. When she returned from Nohar, she found that Manohar, Sheela and Lakhmi Chand were taking out the burnt dead body of Hoshiar Singh from a car. They threw the dead body at the threshold of the house and shut the door. The police never recovered the car allegedly carrying the body of Hoshiar Singh. In her examination-in-chief, PW.3 Birhma Devi deposed that Sheela got transferred 2.75 killas of land in her name from her husband Hoshiar Singh. Thereafter, Manohar, Sheela and Lakhmi Chand sold away the land. They poured kerosene oil on Hoshiar Singh and set him on fire about 10-11 years back. Her statement under Section 161 Cr.P.C. was recorded vide Ex.D3 on 22.03.2002. She was confronted with her statement Ex.D3. In her statement, she had deposed that on 21.03.2002, after killing Hoshiar Singh by burning some where else, Manohar Lal, Sheela and Lakhmi Chand threw the body at the threshold of his house at about 10/10.30 AM. She was going from her house in the street for taking water, when Sheela, Manohar Lal and Lakhmi Chand took her brother-in-law Hoshiar Singh and entered the house of Hoshiar Singh. She informed her husband Hari Singh about the incident. In her examination-in-chief, she deposed that she saw the accused throwing the body at the threshold of the house. Thereafter, she informed her husband. In the statement Ex.PH, Hari Singh had stated that he came to know about the incident only in the evening, though as per PW.3 Birhma Devi, she immediately informed her husband Hari Singh at about 10/10.30 AM.

17. The prosecution has not placed on record any copy of mutation regarding transfer of 2.75 acres of land of Hoshiar Singh in favour of his

wife Sheela. According to PW.2 Rajesh, on 21.03.2002, accused had set Hoshiar Singh on fire and killed him. He also deposed that Manohar Lal had developed illicit relations with Sheela. Sheela, Manohar Lal and Lakhmi Chand got the land of Hoshiar Singh transferred in the name of Sheela and thereafter, Sheela sold it at low rate by hatching a conspiracy with Manohar Lal and Lakhmi Chand. However, in his statements Ex.D1 and Ex.D2, recorded on 22.03.2002, there is no murmur about the illicit relations of Sheela with Manohar Lal. In his cross-examination, PW.2 Rajesh deposed that conspiracy was hatched by Sheela, Manohar Lal and Lakhmi Chand, to get the land of Hoshiar Singh transferred in favour of Sheela, which was later on sold at a very low rate. However, in his statements Ex.D1 and Ex.D2, it was not so recorded. In his cross-examination, he further deposed that Hoshiar Singh had started having altercation with Sheela, Manohar Lal and Lakhmi Chand. However, it was not so recorded in his statements recorded on 22.03.2002 vide Ex.D1 and Ex.D2. He also admitted that he was not an eye witness to the occurrence. He also admitted that appellant Lakhmi Chand was none other than the real brother of Sheela. The appellant was resident of village Jakhopur Tehsil Kot Kasim, District Alwar.

18. Though the prosecution case is that the accused had put Hoshiar Singh on fire by pouring kerosene oil on him, but as per the FSL report Ex.PX, no kerosene was found on small pieces of partially burnt clothes, one sealed cloth parcel enclosing exhibit-3. No residue of kerosene was detected in empty glass quarter having lid pierced through a small red coloured cloth used as wick i.e. "Diya". According to PW.3 Birhma Devi, she had informed her husband Hari Singh immediately, when she saw the

accused throwing the body of Hoshiar Singh at about 10/10.30 AM. However, Hari Singh, who had lodged the report, stated before the police that he was informed only in the evening. PW.2 Rajesh and PW.3 Birhma Devi have made improvements from their previous statements, as noticed above. According to PW.3 Birhma Devi, Hoshiar Singh was put on fire in the Chobara at about 9.00 PM on 21.03.2002. She had not seen the incident. She came to know about the incident only in the next morning, when she allegedly saw the accused taking out the burnt dead body of Hoshiar Singh from a car. If she knew that the accused had killed Hoshiar Singh at about 9.00 PM on 21.03.2002, it was expected from her to immediately bring it to the notice of her husband Hari Singh and other family members.

19. Accordingly, the prosecution has failed to prove its case against the appellant beyond reasonable doubt. Consequently, the appeal is allowed. The judgment dated 05.06.2015 and order dated 06.06.2015 are set aside. Appellant Lakhmi Chand is acquitted of the charges framed against him, by giving him benefit of doubt. He is in custody. He be released forthwith, if not required in any other case. Release warrant be prepared.

(RAJIV SHARMA)
JUDGE

September 20, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes