

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-603-DB of 2016 (O&M)

Reserved on : 26.02.2019

Date of decision : 28.02.2019

Chhinda Ram and another

.... APPELLANTS

Versus

State of Haryana

..... RESPONDENT

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

Present: Mr. Yogesh Goyal, Legal Aid Counsel,
for the appellants.

Mr. Vishal Garg, Addl. A.G., Haryana.

Mr. Sunil Kumar Nehra, Advocate,
for the complainant.

* * *

RAJIV SHARMA, J.

1. This appeal is instituted against the judgment dated 13.05.2016 and order dated 16.05.2016, rendered by learned Additional Sessions Judge-I, Fatehabad, in Sessions Case No. 26-SC dated 01.04.2015, whereby appellants Chhinda Ram and Raja Ram alias Raju alias Laliya, who were charged with and tried for the offences punishable under Sections 460 and 411 of the Indian Penal Code, were convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 50,000/- each under Section 460 of the Indian Penal Code. In default of payment of fine, they

were sentenced to undergo rigorous imprisonment for a period of two years. They were further convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 5,000/- each under Section 411 of the Indian Penal Code. In default of payment of fine, they were sentenced to undergo rigorous imprisonment for a period of six months.

2. The case of the prosecution, in a nutshell, is that on 18.02.2015, ASI Om Parkash (PW.8) was present at Police Post Nagpur. He received a telephonic message from General Hospital, Fatehabad that one Kaushalya Devi wife of Lahori Ram was brought dead in General Hospital, Fatehabad. He along with other police officials reached the mortuary at General Hospital, Fatehabad. He recorded the statement of Shyam Lal (PW.4). Shyam Lal deposed that his mother Kaushalya Devi, aged about 76 years, used to live alone in the house in village Nagpur. One Ravinder son of Jagdish Kumar with his children was living on rent in the outer room of the said house. He visited his mother on 17.02.2015. On 18.02.2015 at about 5.00 AM, he got information from his neighbourer Radhey Sham that his mother was not responding. He along with Tarsem Kumar, the son of his maternal uncle, went to village Nagpur. His mother was lying on bed. Her gold ear-rings, a gold ring, artificial bangles and her mobile phone were missing. He took his mother to General Hospital, Fatehabad, where she was declared 'brought dead'. Body was sent for post-mortem examination. The investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution examined as many as ten witnesses in support

of its case. Statements of the accused were also recorded under Section 313 Cr.P.C. According to them, they were falsely implicated. They examined one witness.

4. The appellants were convicted and sentenced, as noticed above. Hence, this appeal.

5. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case against the appellants. Learned counsel appearing for the State and learned counsel appearing on behalf of the complainant vehemently argued that the prosecution has proved its case against the appellants beyond reasonable doubt. They 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.9 Dr. Sumit Kamboj along with Dr. Varun Munjhal conducted the post-mortem examination on the body of Kaushalya Devi. He proved the post-mortem report Ex.P46. According to their opinion, the cause of death was asphyxia and its complications due to throttling, which was ante-mortem in nature and sufficient to cause death in ordinary course of life.

8. PW.4 Shyam Lal testified that his mother was residing alone in village Nagpur. He visited village Nagpur on 17.02.2015. He received telephonic message at about 5.00/5.30 AM on 18.02.2015 from Radhey Sham that his mother was not responding. He along with Tarsem Kumar reached village Nagpur. His mother was lying on the bed. There were injury marks on her mouth and neck. She was unconscious. Her gold ear-rings,

gold ring, artificial bangles and one artificial ring were missing. Her mobile was also missing. He took his mother to Civil Hospital, Fatehabad. His statement was recorded vide Ex.P2. He had shown the place of occurrence to the police on 18.02.2015. He had seen accused Chhinda Ram and Raja Ram alias Raju alias Laliya roaming around his house in village Nagpur. His neighbourers Radhey Sham and Meenu also confirmed that they had witnessed both the accused roaming around his house. Accused Chhinda Ram was arrested on 24.02.2015. The police recovered two mobiles and one SIM from the house of accused Chhinda Ram. One of the mobiles was Karbonn make. It belonged to his mother. Site plan of the place of recovery was prepared. Accused Raja Ram was also arrested. On 26.02.2015, he got recovered one artificial *kada* (bangle), one artificial ring and one gold ear-ring from underpile of wood lying in the courtyard of his aunt's house. Site plan of the place of recovery was prepared. Accused Chhinda also got recovered one gold ring, one ear-ring and one artificial *kada* (bangle) on 27.02.2015 from underneath a tree. In his cross-examination, he deposed that he knew the accused. He visited his village on 17.02.2015 and came back at 5.00 PM.

9. PW.5 Ravinder Kumar deposed that on 17.02.2015, he was sleeping in the house of Kaushalya Devi. On 18.02.2015 at about 4.00 AM, he woke up. He saw that room of Kaushalya Devi was open. Light was on. He called Kaushalya Devi and told his wife that she was not responding. He along with his wife went in the room of Kaushalya Devi. He called his neighbourer Radhey Sham. He also shouted but there was no response. He saw injury marks on the mouth and neck of Kaushalya Devi. Her two ear-

rings, ring and other ornaments were missing. In his cross-examination, he admitted that the courtyard intervenes between his room and that of Kaushalya Devi. He did not know whether Shyam Lal had visited the house or not on 17.02.2015. He did not hear any noise in the night. He woke up at 4.00 AM. He saw Kaushalya Devi unconscious. Many people from the neighbourhood had gathered.

10. PW.7 Tarsem Kumar deposed that he received a telephonic call from Shyam Lal on 18.02.2015. Shyam Lal reached his village. He accompanied Shyam Lal to Nagpur. His aunt Kaushalya Devi was sleeping. Her gold ear-rings, gold ring and artificial bangles were missing along with Karbonn make mobile.

11. PW.8 ASI Om Parkash deposed that he reached mortuary of General Hospital, Fatehabad, on 18.02.2015. Shyam Lal's statement was recorded vide Ex.P2. He took photographs of the dead body. He inspected the dead body and prepared inquest report Ex.P35. The post-mortem examination was got conducted. On 24.02.2015, Inspector/SHO Bijender Singh arrested accused Chhinda Ram and Raja Ram. Accused Chhinda Ram made disclosure statement Ex.P40 that one mobile make Karbonn along with SIM was stolen from the house of Kaushalya Devi. One ear-ring, one ring and one *kada* (bangle) were kept concealed in the house of his aunt. Accused Raja Ram also made a disclosure statement Ex.P41, on the basis of which one gold ear-ring, one *kada* (bangle) and one artificial ring were recovered on 26.02.2015. Accused Chhinda Ram made another disclosure statement Ex.P42 on 27.02.2015, on the basis of which one ear-ring, one ring and one artificial *Kada* (bangle) were recovered from the field of

Joginder Singh Kamboj.

12. PW.10 Inspector Bijender Singh deposed that he reached the place of occurrence on 18.02.2015. He recorded statements of the witnesses under Section 161 Cr.P.C. He arrested accused Chhinda Ram and Raja Ram on 24.02.2015. Accused Raja Ram made disclosure statement Ex.P41, on the basis of which recoveries were effected. Accused Chhinda Ram also made disclosure statement Ex.P42, on the basis of which recoveries were effected.

13. DW.1 Nirmala Devi alias Sunder deposed that the police had never visited her house. No recovery was effected from her house. However, in the cross-examination, she admitted that accused Raja Ram was her nephew.

14. The motive attributed to the accused by the prosecution is that they were drug addicts. Learned counsel appearing on behalf of the appellants vehemently argued that there is no evidence that his clients were drug addicts. However, the appellants have not taken the defence that they were not drug addicts even in their statements recorded under Section 313 Cr.P.C.

15. According to the doctors, the cause of death was asphyxia and its complications due to throttling. PW.4 Shyam Lal has deposed that his mother was living all alone in the house at village Nagpur. He received telephonic message on 18.02.2015 that his mother was not responding. He along with Tarsem Kumar went to village Nagpur. He had noticed injury marks on the mouth and neck of his mother. She was taken to General Hospital, Fatehabad. She was declared 'brought dead'. The appellants made

disclosure statements Ex.P41 and Ex.P42. They got recovered the stolen articles. PW.5 Ravinder Kumar also corroborated the statement of PW.4 Shyam Lal. According to him, he woke up at about 4.00 AM on 18.02.2015 and noticed that door of Kaushalya Devi was open. She was not responding. Her ornaments were missing. PW.7 Tarsem Kumar accompanied PW.4 Shyam Lal to village Nagpur. He had also seen injury marks on the mouth and neck of his aunt Kaushalya Devi. The police did not join any independent witness at the time when recoveries were made. However, statements of the official witnesses inspire confidence.

16. Accordingly, the appeal is dismissed. The judgment dated 13.05.2016 and the order dated 16.05.2016 are upheld.

(RAJIV SHARMA)
JUDGE

February 28, 2019
ndj

(KULDIP SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No