

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

CRA-D-494-DB of 2004

Reserved on : 23.01.2020

Date of decision : 27.01.2020

Chunni Lal and another

.... Appellants

Versus

State of Haryana

..... Respondent

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. V.K. Sachdeva, Advocate (Legal Aid Counsel) with
Ms. Savi Nagpal, Advocate,
for the appellants.

Ms. Shubhra Singh, Additional Advocate General, Haryana.

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RAJIV SHARMA, J.

1. This appeal is instituted against the judgment dated 01.05.2004 and the order dated 04.05.2004, rendered by learned Sessions Judge, Kurukshetra, in Sessions Case No. 28 of 2003.

2. Appellants Chunni Lal and Ram Murti along with co-accused Lakho alias Lakhwinder Kaur were charged with and tried for the offences punishable under Sections 302/201 IPC. Appellant Chunni Lal was convicted and sentenced to undergo imprisonment for life and to pay a fine of ₹ 5,000/-, and in default of payment of fine, to undergo further rigorous imprisonment for one year under Section 302 IPC. He along with appellant

Ram Murti was also convicted and sentenced to undergo rigorous imprisonment for four years and to pay a fine of ₹ 5,000/- each, and in default of payment of fine, to undergo further rigorous imprisonment for one year under Section 201 IPC. Both the substantive sentences of appellant Chunni Lal were ordered to run concurrently. Co-accused Lakho alias Lakhwinder Kaur was acquitted of the charge framed against her.

3. The case of the prosecution, in a nutshell, is that Ram Chander son of complainant Joginder Singh went to his sister Surekha's house in village Dayalpur on 27.06.2003 in the morning. When he did not come back, complainant Joginder Singh on 28.06.2003 enquired from Surekha. She told him that Ram Chander had left her place on 27.06.2003 itself at 3.00 PM on his scooter. Thereupon, complainant Joginder Singh made enquiries in the village about his son Ram Chander. Complainant's nephew Barkha Ram told that he had seen Ram Chander on 27.06.2003 at about 5.00/6.00 PM along with Chunni Lal accused at Bus Stand Dhantori. Lakhwinder Kaur alias Lakho accused, daughter of complainant's brother Karnail Singh, was married with Chunni Lal. However, Chunni Lal and his brother Ram Murti used to beat Lakho. About one and half months before the present incident, the complainant had taken Panchayat of respectable persons of village of the accused i.e. village Chanarthal. He counseled both Chunni Lal and Ram Murti. However, they both threatened the complainant and his family members. The marriage of Lakho was performed by the complainant. On 28.06.2003, the complainant and his nephew Barkha Ram went to village Chanarthal to find the whereabouts of Ram Chander. Dead body of Ram Chander was recovered. It was sent for post mortem

examination. The cause of death was shock and haemorrhage due to injuries to vital organs i.e. brain and lungs. The investigation was completed and challan was put up after completing all the codal formalities.

4. The prosecution examined a number of witnesses in support of its case. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. They also examined four witnesses in their defence.

5. The appellants were convicted and sentenced, as noticed herein-above. However, co-accused Lakho alias Lakhwinder Kaur was acquitted. Hence, this appeal.

6. Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State has supported the judgment and order of the trial court.

7. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

8. PW.1 Dr. Surender Kumar along with Dr. C.R. Khatri conducted post mortem examination on the body of Ram Chander. They noticed following injuries on the body of the deceased :-

- “(1) Bluish contusion over the right temporo parietal region of scalp. On dissection, sub-cutaneous, haematoma was present. Underlying bone was fractured. On dissection of brain sub-dural haemotoma was present on the right side.
- (2) Reddish blue contusion with deformity over the right side of chest covering antero-posteriorly.
- (3) Reddish blue contusion over the lateral aspect of left arm with two punctured wounds measuring 0.5 x 0.2 cm

each, 3 cms apart from each other.

- (4) Multiple reddish contusions with deformity over the anterior aspect of right lower chest.
- (5) Reddish blue contusion over the lateral aspect of left thigh starting from just near the iliac crest going upto seven cm. about the left side above knee. Four punctured wounds measuring .5 cm to 1.5 cm placed at various distances.
- (6) Reddish blue contusion over the antero lateral aspect of whole of right thigh having abrasions of various sizes and different directions.
- (7) Reddish blue contusion over the antero medial aspect of right leg starting from 5 cm above the medial malleolus going upto 7 cm below knee. He had four punctured wounds measuring 0.5 to 1.5 cm placed at various distances. There was clotted blood present in and around the wounds.

The cause of death was shock and haemorrhage due to injuries to the vital organs i.e. brain and lungs. The injuries were ante-mortem in nature and sufficient to cause death in ordinary course of events. Probable duration between injuries and death was within minutes to hours, and between death and post-mortem examination was within 24 to 48 hours. In his cross-examination, he deposed that the punctured wounds are caused by pointed weapons. He could not say if punctured wounds mentioned in injuries No.3, 5 and 7 could have been caused with one weapon only. These punctured wounds were possible with the wooden peg, which was fractured. The splinters of the wooden peg had irregular surface.

9. PW.6 Joginder Singh is the complainant. He deposed that his two daughters were married in village Dayalpur. On 27.06.2003, his son

Ram Chander went to leave children in village Dayalpur with his sister. He did not return home in the evening. Next day, at about 10.00/11.00 AM, he contacted his daughter on telephone. She told him that Ram Chander had left their place previous day at about 3.00 PM. His nephew Barkha Ram, who had gone to village Kanipla on 27.06.2003 at about 5.00 PM, told him that he had seen Ram Chander with Chunni Lal accused at Bus Stop Dhantori at about 4.00/5.00 PM on 27.06.2003. Then Barkha Ram and he went to the house of Chunni Lal accused at village Chanarthal. They found Chunni Lal, his brother Ram Murti and wife Lakhwinder Kaur in the house. Lakhwinder Kaur alias Lakho Devi was his niece. Her marriage was performed by him. After some period of he marriage, Ram Murti started harassing and beating her. About 1 ½ months before the present occurrence, he had taken Panchayat to village Chanarthal. On 28.06.2003, when Barkha Ram and he reached the house of the accused, they told that they had taken revenge of his taking the Panchayat 1 ½ months ago. They had killed his lion i.e. Ram Chander and thrown his dead body a little ahead of Sarai Sukhi. They could find the dead body there. They went to the said place. The dead body of Ram Chander was lying there. He lodged the FIR Ex.PG. In his cross-examination, he deposed that he had stated in the FIR that the accused had told them that they had taken revenge of taking the Panchayat; they had killed his lion i.e. Ram Chander; thrown the dead body a little ahead of Sarai Sukhi and they could find the dead body there. (Confronted with Ex.PG wherein it was not so recorded).

10. PW.7 Barkha Ram deposed that Joginder Singh was his uncle.

On 27.06.2003, he had gone to his in-laws in village Kanipla. He was going

in bus. He saw Chunni Lal accused and Ram Chander standing at Bus Stop Dhantori. He wished them. Then he went to village Kanipla. He came back to his village next day i.e. on 28.06.2003. His uncle Joginder Singh was upset. His uncle enquired from him if he had seen Ram Chander. He told Joginder Singh that the previous evening i.e. on 27.06.2003 at about 5.00/6.00 PM, he had seen Ram Chander and Chunni Lal at Bus Stop Dhantori. Then they went to village Chanarthal. Chunni Lal, his brother Ram Murti and wife Lakhwinder Kaur were standing outside their house. They bragged that they had taken revenge of taking of Panchayat by them 1 ½ months ago. They had killed their lion Ram Chander. The dead body was thrown ahead of Sarai Sukhi. They went to the said place and found the dead body. Police came to the spot. On 30.06.2003, Raghunath produced the accused before the police. Police interrogated them. Chunni Lal accused, on interrogation, confessed his guilt. He also disclosed that he had concealed the wooden peg, used in the killing of Ram Chander, in the heap of wood in his courtyard. He could get the same recovered. The statement of Chunni Lal is Ex.PJ. Lakhwinder Kaur alias Lakho made disclosure statement Ex.PK that she had concealed the wind blower (short metaled pipe used to blow air to ignite fire). Chunni Lal and Lakhwinder Kaur got recovered wooden peg and wind blower. These were sealed. In his cross-examination, he deposed that on 27.06.2003, he had started from his village at about 3.00/4.00 PM. He went from his village upto Shahabad in tractor-trolley. Thereafter, he took bus from Shahabad for Kanipla. He reached Shahabad at about 4.00/4.15 PM. He got the bus for Kanipla at about 4.15/4.30 PM. Village Kanipla was not on GT Road. He told the police that he had seen

Ram Chander and Chunni Lal standing at Bus Stop Dhantori. (Confronted with his statement Ex.DA wherein it was not so recorded, but it was recorded that the witness had seen them at the turning of village Chanarthal). He had not stated before the police that when on 28.06.2003, they went to the house of Chunni Lal, his house was found locked and on enquiries in the neighbourhood, it was learnt that all the three accused had gone some where since morning that day. (Confronted with portion A to A of Ex.DA, wherein it was so recorded). He also did not state before the police that they enquired about Ram Chander in village Chanarthal and learnt that dead body of a young man was lying along with a scooter at a distance of 3-4 killas of village Sarai Sukhi and thereupon, they went there and found the dead body. (Confronted with portion B to B of Ex.DA wherein it was so recorded).

11. PW.8 Jai Bhagwan testified that at about 10.30 PM on 27.06.2003, he had gone to village Surpur Kher for repairing a starter. He did not remember the name of the person whose starter was to be repaired. He started back at about 12.30 AM. At about 1.30 AM, he reached near railway crossing of village Sarai Sukhi. He saw that Chunni Lal was plying a cart on which a person was lying covered with some clothes and Ram Murti accused was accompanying on a scooter. He enquired from them what they were doing. They told that the person was sick and was being taken to Kurukshetra. He went to his relative in village Khanpur Kolia. He admitted in his cross-examination that Chanarthal to Kurukshetra via Sarai Sukhi is a longer route. He did not state before the police that Chunni Lal and Ram Murti told that their woman was ill and was being taken to Kurukshetra.

(Confronted with portion A to A of his statement Ex.DC, wherein it was so recorded). He did not enquire from them why they were taking a longer route for Kurukshetra. He did not tell the police that dead body of Ram Chander was being carried in the cart. (Confronted with portion B to B of his statement Ex.DC, wherein it was so recorded).

12. PW.10 Paras Kumar deposed that complainant Joginder Singh came to Police Station Shahabad on 28.06.2003. He lodged FIR Ex.PG. He went to the spot. He prepared rough site plan. The body was sent for post-mortem examination. The accused were arrested. Accused made disclosure statements, on the basis of which Chunni Lal got recovered cart and wooden peg; and Lakhwinder Kaur alias Lakho got recovered wind blower. Statement of Jai Bhagwan was recorded on 29.06.2003.

13. DW.2 Avtar Singh deposed that on 04.03.2004, Jai Bhagwan had moved an application before him. He enquired into the same. No cognizable offence was found to have been committed.

14. DW.3 Harvinder Singh deposed that he was State General Secretary of Indian National Lok Dal. He was President of Modern Co-operative Society, Partapgarh. The Society plies a bus. It has only one bus. No bus plies from Khanpur Kolian to Kanipla, although there was a road there. His bus is 32 seater. On both sides, there are seats for two persons each in the bus.

15. According to the contents of FIR Ex.PG, which was lodged on 28.06.2003, in the morning on 27.06.2003, Ram Chander had gone to see his sister in village Dayalpur. He did not come back. On the next day, enquiries were made by the complainant from his daughter. His daughter

told him that Ram Chander had gone back yesterday at 3.00 PM on his scooter. His nephew Barkha Ram told him that yesterday evening at about 5.00/6.00 PM, he had seen Ram Chander accompanied by Chunni Lal, standing on Bus Stand of village Dhantori. He became suspicious. Lakho daughter of his brother Karnail Singh was married with Chunni Lal at village Chanarthal. Chunni Lal and his brother Ram Murti used to beat his niece Lakho. Due to this reason, he had taken Panchayat of respectable persons about one and half months ago to village Chanarthal. Accused Chunni Lal and Ram Murti had threatened him. He and his nephew Barkha Ram reached village Chanarthal to enquire about the whereabouts of his son Ram Chander. On enquiries, they came to know that during night, his niece Lakho, her husband Chunni Lal and elder brother of her husband Ram Murti in connivance with each other after committing murder of his son Ram Chander had thrown the dead body of Ram Chander near the road near village Sarai Sukhi.

16. According to the statement of PW.6 Joginder Singh, he along with Barkha Ram reached the house of the accused on 28.06.2003. The accused told them that they had taken revenge of taking of Panchayat 1 ½ months back by him. They had killed his son i.e. Ram Chander and thrown his dead body a little ahead of Sarai Sukhi. Then they went to the spot and found the body.

17. As far as FIR Ex.PG is concerned, it is not mentioned therein that when complainant Joginder Singh along with his nephew Barkha Ram reached the house of the accused on 28.06.2003, they had told him that they had taken the revenge, killed Ram Chander and thrown the dead body. But

it is mentioned in the FIR that on enquiries, they came to know that during night, the accused in connivance with each other had murdered Ram Chander and had thrown the dead body near the road near village Sarai Sukhi.

18. PW.7 Barkha Ram deposed that he and his uncle Joginder Singh went to village Chanarthal. All the three accused were present outside their house. They bragged that they had taken revenge of taking of Panchayat by them 1 ½ months ago. They had killed their lion Ram Chander and thrown the dead body ahead of Sarai Sukhi. They could see dead body there. However, when the statement of PW.7 Barkha Ram was recorded by the police vide Ex.DA on 28.06.2003, he specifically stated that the house of Chunni Lal was found locked. From the neighbours, it was revealed that since morning of that day, Chunni Lal, his brother Ram Murti and his wife Lakho had gone to their relations. It is further stated that on further enquiry, they came to know that dead body of young person was lying near the side of road at a distance of about three killas from village Sarai Sukhi. In case, the house of the accused was locked and they were not present there, there was no occasion for the accused to brag that they had killed Ram Chander.

19. PW.8 Jai Bhagwan deposed that he had seen Chunni Lal plying a cart on which a person was lying covered with some clothes and Ram Murti accused was accompanying on a scooter. He made enquiry. They told that sick person was being taken to Kurukshetra. In his examination-in-chief, he had not deposed that it was the dead body of Ram Chander, which was being taken in cart. However, in his statement Ex.DC, he had stated

before the police that Chunni Lal was plying he-buffalo cart and Ram Murti was on scooter. They told him that their woman was sick. Thereafter, he went to village Khanpur Kolian. Next day, he came to know that Chunni Lal and Ram Murti were taking the dead body of Ram Chander son of Joginder Singh.

20. The presence of PW.8 Jai Bhagwan is doubtful. According to him, he had gone to village Surpur Kher to repair a starter on 27.06.2003 at about 10.30 PM. However, he did not remember the name of the person whose starter was to be repaired. It is unusual. His statement was recorded by the police on 29.06.2003 vide Ex.DC and his statement in the court was recorded on 08.03.2004. Thus, it is not a case where his memory could fade. He also did not enquire from the accused why they were taking longer route.

21. According to the post mortem report Ex.PA, punctured injuries were noticed on the body of Ram Chander. PW.1 Dr. Surender Kumar deposed that the punctured wounds are caused by pointed weapons. But no evidence to this effect has been led by the prosecution. The wooden peg and wind blower could not be termed as pointed weapons. We have gone through the rough sketch of wooden peg Ex.PJ/1. It was smooth. Length of its blade was 16 inches and its width was 2 $\frac{3}{4}$ inches. We have also seen Ex.PK/1, i.e. rough sketch of wind blower. Its length was 1 foot 4 inches and circumference was 1 inch. We have not noticed any splinter on Ex.PJ/1 as well as Ex.PK/1.

22. The motive attributed is that the deceased had molested Lakhwinder Kaur alias Lakho twice. It is not believable that a person would molest his cousin, that too in the presence of his brother-in-law. The

evidence of 'last seen' is weak evidence. It is not corroborated by independent witness. There are contradictions in the initial version given in the statement recorded before the police, including FIR, as well as statements made by the witnesses in the court. The case is based on circumstantial evidence. In order to prove the charge based on circumstantial evidence, chain must be complete. All the circumstances must point towards the guilt of the accused.

23. Accordingly, the prosecution has failed to prove its case against the appellants beyond reasonable doubt. The appeal is allowed. The judgment dated 01.05.2004 and order dated 04.05.2004 are set aside. Appellants Chunni Lal and Ram Murti are acquitted of the charges framed against them. They are already on bail. Their bail bonds and surety bonds are discharged.

(**RAJIV SHARMA**)
JUDGE

January 27, 2020
ndj

(**HARINDER SINGH SIDHU**)
JUDGE

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