

(2016) 04 CHH CK 0021
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 977 of 2000

Lakhan

APPELLANT

Vs

State of Madhya Pradesh (Now Chhattisgarh)

RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 300

Citation : (2016) CriLJ 2743

Hon'ble Judges : Shri Navin Sinha, C.J. and Shri P. Sam Koshy, J.

Bench : Division Bench

Advocate : Shri Ajay Mishra, Advocate, for the Appellant; Smt. Smita Ghai, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

Shri Navin Sinha, C.J.—The Appellant stands convicted under Section 302 IPC to life imprisonment with fine of Rs. 1,000/-, in the event of failure to pay which he was required to undergo further rigorous imprisonment for six months as ordered by the First Additional Sessions Judge, Baloda Bazar, District Raipur on 2.3.2000, in Sessions Trial No. 349 of 1999.

2. The present appeal was filed in the year 2000 and the Appellant was granted bail on 2.11.2006 having been taken into custody on 26.5.1999.

3. At the time of grant of bail also, a Counsel had appeared on nomination by the High Court Legal Services Committee. Today, no one appeared on behalf of the Appellant in the pre-lunch session when the matter was called out. We therefore requested for assistance from a Counsel of the High Court Legal Services Committee. Shri Ajay Mishra has been nominated to assist the Court. We have taken up the matter in the post-lunch session after a copy of the paper-book was supplied to Shri Ajay Mishra during the lunch session.

4. We have gone through the judgment under appeal and the depositions of witnesses and exhibits assisted both by Shri Mishra through the High Court Legal

Services Committee and Learned State Counsel. In view of (2014) 14 SCC 222 (Surya Baksh Singh v. State of Uttar Pradesh), we do not consider it necessary to adjourn this case and issue fresh notice to the Appellant as his interest has been duly taken care of by nominating another Counsel from the High Court Legal Services Committee.

5. FIR (Exhibit P-13) was lodged by PW-1, Sunil Bai, wife of the deceased on 24.5.1999 with regard to an occurrence the previous night at about 11-12 PM. The Appellant is stated to be the nephew of the deceased with whom earlier also there was a dispute and the previous evening there had been an altercation between their children. The deceased was sleeping in his courtyard along with his wife, PW-1 Sunil Bai. The Appellant is stated to have come after 11:00 p.m. and poured kerosene on the deceased and set him on fire. The witness also suffered burn injuries and her clothes were partially burnt. The deceased was taken to the hospital for treatment but died on 28.5.1999.

6. Learned Counsel for the Appellant submitted that the deceased on way to the hospital never made any disclosure to anybody as to how he suffered the burn injuries and never named any third person much less the Appellant. The dying declaration alleged to have been made by the deceased before the Executive Magistrate is not reliable and acceptable evidence in view of the statement of the Executive Magistrate, PW8, Ashok Kumar Shrivastava, that he had obtained verbal information from the doctor with regard to the capacity of the deceased for making a statement while the dying declaration contains a written certification by the Doctor which obviously signifies that it was implanted later. In view of the pre3 existing enmity between the parties, false implication cannot be ruled out. The possibility that the deceased was not sharing a good relationship with his wife and therefore the occurrence may be either accidental or he may have committed suicide or PW-1, Sunita Bai set him on fire cannot be ruled out completely. There is no independent witness except the wife of the deceased and who therefore is a related and interested witness. It will not be safe to base conviction on her solitary testimony.

7. Learned Counsel for the State pointed out that the occurrence took place inside the house dead at dead of night. Naturally there will be no independent witness available but only that of the inmates of the house. The prosecution case is very natural that the husband and wife were sleeping on the same cot when the Appellant came and poured kerosene on him and set fire. PW-1, Sunil Bai has also suffered injuries in the process and therefore she is in the category of an injured witness whose credibility is always high. The relationship between the witness and the deceased, in the facts of the present case is a very crucial factor to accept her evidence as reliable and with weight because she would be the most interested witness to ensure that the real culprit is brought to book even if it was her own relation.

8. We have considered the submission on behalf of the parties.

9. PW-1, Sunil Bai, wife of the deceased deposed that she was sleeping with her husband on the same cot in the courtyard with their child in between. The Appellant came and set him on fire after pouring kerosene. She first moved the child aside for its safety. She also suffered burn injuries in the process. The burnt remains of her sari and petticoat were also seized. In the cross-examination no questions were asked questioning her presence, the injuries caused to her person or that occurrence had in fact taken place in some other manner. The only suggestion given was that if the door to the house had been left open, any third person may have entered and set him on fire. A bald suggestion was made for false implication due to previous enmity. PW-2, Budhwa went hostile, nonetheless he confirmed that the deceased was lying on the bed in a burnt condition when he came. PW-4, Jhumuk, elder brother of the deceased had deposed that the petticoat of PW-1, Sunil Bai had also got burnt and that he had doused the fire before attending to his brother. The earth seized from the place of occurrence, pieces of burnt saree of PW-1, Sunil Bai marked Exhibit P/3 clearly bore the smell of kerosene. The clock hanging on the wall in the room was also burnt. The remains of the petticoat of PW-1, Sunil Bai was marked Exhibit P/6 which has also been confirmed in the FSL report as burnt clothes with smell of kerosene on it. The remains of Lungi of the deceased were also recovered partially burnt with smell of kerosene on it.

10. PW-12, Sail Ram Choudhary, Assistant Civil Surgeon, Simga, who conducted the MLC (Exhibit P-15) of PW-1, Sunil Bai has confirmed that she had suffered injuries on her left leg to the extent of approximately 10% and also confirmed that the deceased had been brought to him on 24.5.1999 for his MLC in a burnt condition but he was in sense.

11. In view of the aforesaid evidence, the relationship between PW-1, Sunil Bai and the deceased that she was sleeping with him on the same bed, the remains of the burnt clothes seized from the spot, we are left with no other option but to hold that the prosecution has clearly proved its case beyond all reasonable doubt and the Trial Judge committed no error in convicting the Appellant to life imprisonment. The occurrence having taken place inside the house at dead of night, naturally no independent witness will be available. In such occurrence only related inmates will be available as witnesses. To hold as an abstract proposition that because she was the wife of the deceased and relations were enmical, her evidence must be viewed with suspicion would lead to gross miscarriage of justice.

12. We therefore find no reason to interfere with the same. There is no merit in the appeal. The bail bonds of the Appellant is cancelled. He is directed to surrender forthwith and/or taken into custody for serving out the remaining period of sentence.

13. The appeal is dismissed.