

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. D-1804-DB of 2014
Date of Decision : August 20, 2015

Gursewak Singh

.....Appellant

VERSUS

Sukhwinder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE GURMIT RAM

Present : Mr. Salil Bali, Advocate.

T.P.S. MANN, J.

The appellant, who incurred huge loss of his articles lying in his shop as well as currency notes lying in the drawer of the table which were damaged on being set on fire by respondents No.1 to 7, and, thus, a 'victim' as defined under Section 2(wa) of the Code of Criminal Procedure, has filed the present appeal against the judgment dated 14.8.2014 passed by the Additional Sessions Judge, Ferozepur whereby the accused/respondents No.1 to 7 stand acquitted of the charges under Sections 436/148/149 IPC.

In brief, the case of the prosecution is that the appellant and his brother Gurtej Singh, were having two shops; one was a grocery shop while the other a cattle feed shop. They had taken an amount of Rs.2,00,000/- from the commission agent for repaying the bank loan which cash amount was kept by them in the drawer of the table. On 5.5.2011 at about 7.00 p.m., the appellant learnt that his cousin Baljit Singh had received injuries. Accordingly, the appellant and his brother

Gurtej Singh closed the shop and went to village Baghele Wala, where Baljit Singh was lying injured. The Sarpanch removed Baljit Singh to Civil Hospital, Zira, while the appellant and one Sukhjinder Singh followed them to the hospital. Later on, the appellant and Sukhjinder Singh while returning towards village Baghele Wala and reached near village Shah Abu Bakkar where the shops of the appellant were situated and time was about 11.00 p.m., he noticed that tube-light was on. In the meantime, the accused, who were all residents of village Baghele Wala reached the spot on three motorcycles and stopped near the shops of the appellant. They used abusive language against the appellant. Out of fear, the appellant and his companion Sukhjinder Singh hid themselves by taking the cover of darkness. The accused were carrying a kapa and a kirpan. Accused Sukhwinder Singh poured petrol underneath the shutter of the shop, whereas Natha Singh lit the fire with the match stick. As a result, the shop was set on fire. The accused fled away on their motorcycles. Persons residing in the neighbourhood reached the spot. The fire was doused but it had already caused huge loss to the articles and the cash amount lying in the shop.

Having heard learned counsel for the appellant and on going through the impugned judgment as well as the trial Court record, this Court finds that though the occurrence was said to have taken place on 5.5.2011 at about 11.00 p.m. yet the FIR came to be lodged after a delay of about 21 hours, i.e. on 6.5.2011 at 8.15 p.m. No explanation, whatsoever, was given either by the appellant, who appeared before the trial Court as PW1 or by his companion Sukhjinder

Singh, who stepped into the witness box as PW3. Further, Jagir Singh and Swaran Singh, who were said to have been attracted to the spot on hearing the noise, were not examined by the prosecution. The weapons, said to have been carried by the accused and the container in which the petrol was brought to the spot for putting the shop on fire, were not taken into possession. Even otherwise, the presence of PW1 Gursewak Singh and PW3 Sukhjinder Singh at the spot, when the shop was set on fire, was doubtful as they did not make any attempt to douse the fire. In case they had made an attempt to do so, they ought to have received burn injuries at least on their hands but there is no material available on the file in that regard. In order to establish that the appellant had received cash amounting to Rs.2,00,000/- from the commission agent, the prosecution relied upon the pronote and receipt said to have been executed by the appellant. However, the scribe of the pronote has not been examined.

Upshot of the above discussion leads to one and the only irresistible conclusion that the prosecution has miserably failed to prove its case against the accused beyond reasonable doubt. Therefore, no case is made out for any interference in the impugned judgment.

The appeal is without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

August 20, 2015

satish