

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

CRA-D-739-DB-2014 (O&M)

Date of decision: 17.08.2015.

Amritpal Singh

.... Appellant.

Versus

State of Punjab and others

... Respondents.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Veneet Sharma, Advocate for the appellant.

S.S. Saron, J.

The complainant Amritpal Singh @ Bunty (appellant) has filed the present appeal against the judgment and order dated 08.11.2013 passed by the learned Additional Sessions Judge, Amritsar whereby respondents No.2 to 4 have been acquitted of the offences punishable under Sections 436, 427 and 506 of the Indian Penal Code ('IPC' - for short).

We have heard learned counsel for the appellant and also perused the records of the trial Court that were requisitioned.

Case FIR No.78 dated 02.07.2011 was registered at Police Station E. Division Amritsar for the offences punishable under Sections 436, 427, 506 and 34 IPC on the basis of typed applications (Ex.P2 to Ex.P4) submitted by Amritpal Singh (appellant) to the DIG, Border Range, Amritsar; Deputy Commissioner, Amritsar and the Police Commissioner, Amritsar, respectively, regarding his godown being set on fire. According to the complainant Amritpal Singh @ Bunty (appellant), he was a resident of 45, Kot Karnail Singh, Sultanwind Road, Amritsar and was doing the work

of supplying rubber soles and boxes for the last three-four years in Sharif Building, Near Mata Da Mandir, Pakki Gali, Mahan Singh Gate, Amritsar. About three-four months earlier to the registration of the FIR, which was registered on 02.07.2011, a neighbour of his godown namely Rachna (respondent No.2) and her son Ravi (respondent No.3) had put an electric wire due to which there were skirmishes between them on three-four occasions. She had stated a number of times that she would either get his godown uprooted or burnt. The complainant (appellant) at that time was going to lodge a report in this regard at the police station, however, the President of the locality and residents of the locality intervened and said that in case she (respondent No.2) did this in future, then they would stand by him and also give evidence wherever he wanted in his favour.

It is alleged that on the intervening night of 11/12.02.2011 fire broke out in his godown. Someone from the locality called the fire brigade and it started extinguishing the fire. Two persons came to his house for calling him. He came and saw that his godown was on fire and the fire brigade was extinguishing the fire. People from the locality except for one-two houses helped quite a lot to put off the fire. A report was lodged by the complainant at Police Station Kotwali and an inquiry was going on.

It is further stated by the complainant (appellant) that whenever he took any person with him for showing him the godown, the said lady (i.e. Rachna - respondent No.2) used filthy language and openly proclaimed that he had to be driven out from there and he had been driven out. In case he came to the locality, then he would be got implicated in some false case. One day, the entire 'panchayat', which included residents of the locality, had

gathered at Police Station Kotwali. Amongst them she (Rachna) by hitting her hand on her chest openly proclaimed that she had put the fire. She said that she had thrown him out and whatever they wanted to do they may do. Amongst the gathering Taria (Sitar Mohd. Taria - respondent No.4), the owner of the shop and his wife were also present. Persons from both the parties were ready for giving their evidence. It is stated by the complainant (appellant) that he was a gentle person and he had already suffered substantial losses due to his godown being burnt in the fire and above that she was openly saying that she had put his godown on fire.

The earlier inquiry officer was Sukhdev Singh and after him the inquiry was with Jaimal Masih. He was neither hearing what they had to say nor had he conducted any proceedings till that date. They had on many occasions gone with the 'panchayat' to them. It was submitted that justice be given to them. This officer, however, remained unperturbed and despite Rachna (respondent No.2) repeatedly proclaiming as to what she had done, he was not taking any action against her for which she was liable. From this, it was clear that this inquiry officer was mixed up with the other party. The complainant was fearing that on the one hand he was not getting justice and on the other he may be got involved in some false case and got implicated in a conspiracy. Therefore, he was requesting that his inquiry be assigned to a higher officer and he be given justice. Besides, in future a restraint be put for getting him involved in a false case in conspiracy. He was associated with a respectable household and an inquiry be got conducted in a proper manner regarding his godown and the accused be arrested and they be proceeded against for what they were liable. He would be grateful for this act.

An inquiry with respect to the complaint was conducted by ASI Sukhdev Singh (PW4). He recorded statements of witnesses and after inquiry came to the conclusion that Rachna Devi, Ravi Kumar and Sitar Mohd. Taria (respondents No.2 to 4) committed the offences as alleged by the complainant. SHO Prithvi Raj endorsed the inquiry conducted by ASI Sukhdev Singh. During inquiry, it was observed by him that it had come as a fact that in the rooms of the godown of the applicant (complainant) that were burnt, there was no electricity connection of any kind in them and neither was there any other kind of material from which due to short circuit or in any other manner, there could be a fire. Apart from this, when the applicant on the night of occurrence had left the godown, he had closed the outer gate of the godown by putting a lock on it. During the night, when residents of the locality had gathered on there being a fire, then that lock was broken. From this, it was clear that this fire did not break out on its own but someone had put it. The applicant Amritpal Singh (appellant) had full suspicion that this fire had been put by Rachna (respondent No.2) and her son Ravi (respondent No.3) on the instigation of Taria (respondent No.4) in connivance and conspiracy with each other and during the night with the intention of driving him out from there. On account of this, the applicant (appellant) had suffered a loss of about Rs.2,00,000/-. During the inquiry, this fact had been established by Rajpal Singh (PW5) son of Gurdial Singh, Charanjit Kumar (PW3) son of Ram Sarup, Attar Singh son of Jawahar Singh, Girdhari Lal son of Budh Ram, Prem Kumar son of Ram Sarup, Lakha Singh son of Amar Singh, residents of Sharif Lal Building, Mahan Singh Gate and other residents of the locality in their statements that Rachna (respondent No.2)

often openly used to say in the locality that she was to drive out Amritpal Singh from his house in some manner and she had driven him out.

SHO Prithvi Raj, Police Station Kotwali Amritsar, therefore, had expressed his agreement with the inquiry conducted by ASI Sukhdev Singh. He himself had also gone to the spot and verified the position. The circumstances were found to be the same which ASI Sukhdev Singh had found during his inquiry. Therefore, he reached the conclusion that the godown of Amritpal Singh @ Buntty (appellant) on the intervening night of 11/12.02.2011 at about 01:00 a.m. with the intention of getting the godown vacated, Rachna (respondent No.2) and her son Ravi (respondent No.3) on the instigation of Taria (respondent No.4), owner of the house, in collusion and conspiracy with each other had put the godown on fire on account of which the complainant (appellant) had suffered a loss of Rs.2,00,000/-. Accordingly, it was recommended that a case be registered for the offences 436, 427, 506 and 34 IPC against Rachna (respondent No.2), Ravi (respondent No.3), residents of Sharif Lal Building, Mahan Singh Gate, Amritsar and Sitar Mohd. Taria (respondent No.4) resident of Ludhiana and investigation be conducted.

The report was submitted by SHO Prithvi Raj Singh, Police Station Kotwali Amritsar on 25.05.2011 and Dr. Rahul-S IPS, the Assistant Commissioner of Police (Central), Amritsar City expressed his agreement with the said report of the SHO, Police Station Kotwali Amritsar and recorded that the allegations made by the complainant in his application against Rachna (respondent No.2), her son Ravi (respondent No.3) and the godown owner Sitar Mohd. Taria (respondent No.4) during inquiry were

found to be correct. A case for the offences under Sections 436, 427 and 506/34 IPC against them were found to be made out and after registration of FIR, investigation was liable to be conducted.

Accordingly, FIR was registered and the investigation was entrusted to ASI Sukhdev Singh, Police Station Kotwali Amritsar (PW4). The control-room and concerned officers were asked to be informed through telephone.

Investigation of the case was conducted by ASI Sukhdev Singh (PW4). He along with other police officials reached the place of occurrence on 03.07.2011. The complainant Amritpal Singh (appellant) handed over a broken lock to him which was taken in possession vide memo Ex.P1. The place of occurrence was inspected and rough site plan Ex.P14 with correct marginal notes was prepared. Rachna Devi (respondent No.2) was arrested on 12.07.2011 vide arrest memo Ex.P6. Sitar Mohd. Taria (respondent No.4) was arrested on 14.09.2011. He was released on bail as per Court orders. Ravi Kumar (respondent No.3) was arrested on 17.09.2011. He was also released on bail.

After completion of investigation in the case, police report ('challan') was filed in the Court of learned Judicial Magistrate 1st Class, Amritsar on 20.03.2012. The learned Magistrate, in view of the offence under Section 436 IPC being alleged, which was exclusively triable by the Court of Session, vide order dated 27.09.2012, committed the case to the said Court for trial.

The learned Additional Sessions Judge, Amritsar, on 27.11.2012 charge-sheeted respondents No.2 to 4 on the allegations that on the

intervening night of 11/12.02.2011 in the area of Sharif Building, Near Mata Mandir, Pakki Gali, Mahan Singh Gate, they all in furtherance of common intention of each other committed mischief by fire intending thereby to cause damage to the rubber sole and boxes belonging to Amritpal Singh @ Bunty and thereby committed an offence punishable under Section 436 IPC. Further, during the aforesaid night in the said area in furtherance of common intention of each other committed mischief by causing wrongful loss or damage to the property of Amritpal Singh @ Bunty of the value of more than Rs.50/- and thereby committed an offence punishable under Section 427 IPC. Thirdly, on the same date, time and place they all in furtherance of common intention caused criminal intimidation by threatening Amritpal Singh to kill him and thereby committed an offence punishable under Section 506 IPC. All the accused were directed to be tried by the Court of learned Additional Sessions Judge, Amritsar. The contents of the charges were read over and explained to the accused in simple language which they fully understood and they did not plead guilty to the charge and claimed trial.

The prosecution, in order to establish its case, examined Amritpal Singh (PW1), HC Hardeep Singh (PW2), Charanjit Kumar (PW3), SI Sukhdev Singh (PW4), Rajpal Singh (PW5) and Swaraj Singh (PW6). The learned trial Court, in its order passed on 21.10.2013, observed that Swaraj Singh (PW6) was present and examined. The witnesses mentioned in the list of witnesses produced on record by the prosecution had already been exhausted. The learned Additional Public Prosecutor for the State, however, for the reasons best known to her did not want to close the prosecution evidence. Therefore, the evidence of the prosecution was closed by order.

The statements of the accused (respondents No.2 to 4) in terms of Section 313 Cr.P.C. were recorded in which they stated that they were innocent and had been falsely implicated in the case. They stated that they would lead evidence in defence. However, no defence evidence was led.

The learned Additional Sessions Judge, Amritsar, after hearing arguments for the parties, acquitted respondents No. 2 to 4. The appellant aggrieved against the said acquittal has filed the present appeal.

Learned counsel for the appellant during course of hearing has primarily accepted that there is no eye witness to the case who it can be said had seen the actual occurrence of the fire being put by any of the accused. However, he has laid stress on the deposition of Amritpal Singh (PW1) wherein he states that he went to the Police Station along with respectable then accused Rachna (respondent No.2) openly stated that she had done whatever she wanted to do. According to learned counsel for the appellant, the said admission on the part of Rachna (respondent No.2) clearly establishes the prosecution case.

We have given a thoughtful consideration to the matter. Amritpal Singh (PW1), in his deposition in Court, has *inter alia* stated that he was doing the work of commission agent. Earlier, he was doing the work of supplying rubber tools and boxes. He took two rooms in the Sharif Building situated at Mahan Singh Gate which were used by him as a godown. The accused Rachna Devi (respondent No.2), Ravi (respondent No.3) and Sitar Mohd. Taria (respondent No.4), it is stated, had a house adjacent to his godown. The two rooms were taken by him on rent from Sitar Mohd. Taria (respondent No.4). Out of the two rooms, he handed over one

room to Sitar Mohd. Taria (respondent No.4). After about six months, the accused (respondents No.2 to 4) started humiliating and harassing him for vacating the rooms. They said that he should vacate his godown. About a week earlier to the incident, it is stated, the accused (respondents No. 2 to 4) had quarrelled with him in the street of the locality. The incident was seen by people of the locality including Charanjit Singh Lala (PW3), Rajpal (PW5) and others. The accused Rachna (respondent No.2) along with her co-accused, it is stated, had threatened him that if he did not vacate the said godown, then they would damage his godown by putting it on fire as the owner of the said rooms with her. He wanted to move an application to the police station on 05.02.2011, but with the intervention of the members of the locality, he did not move an application against the accused.

In the intervening night of 11/12.02.2011, it is stated, all the accused put on fire his godown and he got information regarding this through Charanjit Lal (PW3), a resident of the area. He went to the spot and saw that people along with fire brigade officials were trying to extinguish the fire. He saw that the entire articles including rubber sole, furniture of his office, boxes were destroyed due to the said fire. The rooftop of the godown was also damaged and his godown was put on fire by the accused (respondents No.2 to 4). They caused damage to the tune of Rs.2.00/3.00 lacs. Then he went to the police station along with respectables and there Rachna (respondent No.2) openly stated that she had done whatever she wanted to do. Thereafter, all the accused (respondents No.2 to 4) forcibly and illegally possessed the room by putting a gate in the common street. It is stated that ASI Zail Masih did not take any action against the accused though the

accused hurled abuses at him by bringing 15/20 ladies. Then he moved an application (Ex.P2) to the DIG, Police, Border Range which bears his signature. An application (Ex.P3) was moved to the Deputy Commissioner, Amritsar; besides, an application (Ex.P4) was moved to the Commissioner of Police. Then he produced a lock before the police which was taken in possession by the police vide memo Ex.P1. He along with Head Constable Hardeep Singh (PW2) attested Ex.P1. The photographs, which were taken at the time of incident, were Mark A and Mark B and the news cutting regarding the incident was Ex.P5. His statement was recorded by the police.

In cross-examination, it is *inter alia* stated that he had not produced any document from which it may be established that the property in question was in his possession as a tenant. It is also stated that no electric connection was ever installed in the property in question in his name. He voluntarily stated that till the date of his deposition, i.e. 20.03.2013, there was no electricity connection installed by the department. He had not handed over any document showing his possession in the property in question to the police during the investigation. He had not brought any bill of 'challan' in the Court on the date he was deposing on which the address of his godown was mentioned as the property in dispute nor had he handed over the same to the police during the entire investigation. It is stated as correct that he could not establish till the date of his deposition whether the property in question ever remained in his possession. He voluntarily stated that the entire articles/documents/proof were destroyed due to fire. He stated that the fire did not take place in his presence as he was sleeping at that time in his house at Sultanwind road. No such witness ever came till the date he was deposing

who had seen the accused setting fire to the property in question. The accused were permanent residents of the locality adjoining the property in question and had separate access. It is stated as correct that his entire complaints were silent against Ravi Kumar (respondent No.3) and his name was not mentioned in any complaint. He had not moved any complaint against the accused to any police official prior to Ex.P2. The accused, it is stated, were living in their own house till the date of his deposition.

Charanjit Kumar (PW3) *inter alia* stated that four days prior to the incident a quarrel had taken place between the complainant and Rachna. She had abused the complainant and had given him a shoe blow; besides, held out threats that she would dispossess him from the area and would set his godown on fire. It is stated that two days after the occurrence, Rachna (respondent No.2) came to his shop and stated that she had set the godown of the complainant on fire and had dispossessed him and achieved her goal. After a week of the fire incident, he along with complainant, accused Rachna were present at Police Station Kotwali Amritsar where she again said that she had set the godown of the complainant on fire and had dispossessed him. In cross-examination, Charanjit Kumar (PW3) stated that he had never complained to the PSEB (Punjab State Electricity Board) regarding disconnection of his electricity wire. He never moved any complaint in this regard to the police station against Rachna (respondent No.2). It is stated that in his statement which he got recorded with the police he stated that Rachna (respondent No.2) used to say that she would put the godown of the complainant on fire. His attention was drawn to his statement (Ex.DA) with the portion D1 to D2, where the said fact was not recorded.

Rajpal Singh (PW5) stated that about one day earlier to the occurrence he visited Amritpal Singh @ Bunty (appellant) at his godown and he was sitting there. Rachna Devi (respondent No.2) had called him and he visited her house after five-seven minutes. She told him that she would not allow Amritpal to remain in the godown. On this, he replied that she was not the owner of the godown and how could she get the godown vacated from Amritpal Singh. He also told her that the owner of the godown was Taria (respondent No.4). Rachna (respondent No.2), however, told him that she would get the godown vacated at any cost. After two to five days, the godown of Amritpal Singh @ Bunty, it is stated, was set on fire. He and other respectables besides Amritpal, Rachna (respondent No.2), Taria (respondent No.4) and the son of Rachna were present at Police Station Kotwali with regard to the occurrence where Rachna (respondent No.2) openly stated that she and her co-accused had set the godown of Amritpal Singh on fire as she wanted to get the godown vacated. In cross-examination, it is stated by Rajpal Singh (PW5) that he had not seen any one causing fire. He was a friend of Amritpal Singh and was a property dealer. It is stated that the fact regarding the fire being caused was not told to him by any one. It is then voluntarily stated that Rachna (respondent No.2) herself explained this fact in the police station. It is stated as correct that the property in question was situated in a crowded area in a street. No neighbour explained regarding the cause of fire by the accused. It is stated as correct that his place of business and residence was situated about 2-2½ Kms from the place of occurrence. Swaraj Singh (PW6) on 12.02.2011 clicked photographs of the incident i.e. the godown which was set on fire at Sharif Lal, Pakki Gali,

Amritsar. He had seen the photographs on the judicial file clicked by him i.e. Ex.PW6/1 and Ex.PW6/2. These were objected to. He had not brought the negatives of the pictures because he had already delivered the same to the party that had engaged him. He did not remember the name of the party that had engaged him. A request was made at the said stage by the Additional Public Prosecutor that the examination-in-chief of the witness may be deferred for want of case record and he may be directed to bring the record. The request was declined. In cross-examination, the exhibited documents were objected to on the ground of mode of proof and non-production of original documents. He stated that he did not know when the occurrence took place. He did not remember whether he gave any receipt against the payment of the above said photographs. He had not brought the receipt book on the date he was deposing, i.e. on 21.10.2013.

As already noticed, the learned Additional Sessions Judge, Amritsar, on 21.10.2013, observed that the witnesses mentioned in the list of witnesses produced on record by the prosecution had already been exhausted. The learned Additional Public Prosecutor for the State, however, for the reasons best known to her did not want to close the prosecution evidence. Therefore, the evidence of the prosecution was closed by order.

A perusal of the evidence on record does not establish that it is the accused (respondents No.2 to 4) who had set the godown which was stated to be in the occupation of the complainant on fire. None of the witnesses had actually seen the fire being put on the godown by any of the accused (respondents No. 2 to 4). The case of the prosecution is sought to be made out only on the basis of the fact that at the police station Rachna

(respondent No.2) had stated that she had done whatever she wanted to by putting the godown in occupation of the complainant on fire and they could do whatever they wanted to. The said statement of Rachna (respondent No.2) at the police station would by itself not be sufficient to establish the prosecution case. In criminal prosecution, the guilt of an accused is to be established beyond shadow of reasonable doubt and it cannot be established by mere preponderances of probabilities and circumstances. There is, in fact, no evidence whatsoever on record to connect respondents No.2 to 4 with the alleged crime.

A perusal of the statement and cross-examination of Amritpal Singh (PW1) shows that he had not brought any material on record relating to the tenancy of the property in question in his favour. He voluntarily stated that it was an oral tenancy and each and every payment of rent was recorded in a copy by the landlord as a token of receipt of payment per month. Admittedly, no such copy was produced or brought on record. Rather Amritpal Singh stated that he had not produced any document from which it may be established that the property in question was under his possession as a tenant. It is also stated that the statement of Sitar Mohd. Taria (respondent No.4), who was owner of property, was also recorded at the police station by the police. The same was recorded in the presence of the appellant by ASI Sukhbir Singh, again said Hardev Singh and Sukhdev Singh and lastly by SI Prithvi Raj. He had seen the judicial file and there was no such statement.

Therefore, evidently the appellant was not clear as to who recorded the statement of the owner of the property namely Sitar Mohd. Taria (respondent No.4) and, in fact, there was no such statement. It is also stated

by him that no electric connection was ever installed in the property in question in his name. He voluntarily stated that there was no electric connection installed by the department. He further stated that he had not handed over any document showing his possession in the property in question to the police during investigation. He had not brought any bill or 'challan' in the Court on which the address of his godown had been mentioned as property in dispute nor had he handed over the same to the police during the entire investigation. It is stated by the appellant that he could not establish till the date he was deposing as to whether the property in question ever remained in his possession. He further stated that the fire did not take place in his presence as he was sleeping in his house at that time. He further stated that no witness ever came present who had seen the accused causing the fire to the property in question.

From the above noticed evidence, it is quite evident that the prosecution has not been able to establish occupation of the appellant in respect of the godown that is stated to have been set on fire. Even otherwise, it is also not shown as to whether any one had seen the accused (respondents No.2 to 4) setting the godown in question on fire.

It is to be noticed that the incident of the godown being set on fire had occurred on the intervening night of 11/12.02.2011 and, thereafter, the FIR was registered on 02.07.2011, i.e. after more than 4½ months of the incident. The applications (Ex.P2 to Ex.P4) that were submitted to the DIG, Border Range, Amritsar; Deputy Commissioner, Amritsar and the Police Commissioner, Amritsar bear the endorsement of receiving the application on 11.03.2011, 08.03.2011 and 07.03.2011, respectively, which are also

almost a month after the fire incident. In the said applications though it is mentioned by the complainant that he had got a report lodged with Police Station Kotwal which was under inquiry; however, no such report has been brought on record. Even during his deposition in Court he did not state that he had earlier got a report lodged with Police Station Kotwali which was under investigation. Therefore, the FIR was lodged at a belated stage and Rachna Devi (respondent No.2) even if she is said to have made a statement at the police station that she had set the godown in question on fire must have been after registration of the FIR on 02.07.2011, i.e. after almost five months of the incident, on which much reliance cannot be placed. Even if it is taken that she made such a statement at the police station, the same may have been said during the investigation in a heat of passion. The said statement cannot be taken as an admission on the part of Rachna Devi (respondent No.2) as sought to be contended by learned counsel for the appellant.

In the circumstances, it would be unsafe and rather difficult to record a finding of guilt on the mere allegation that Rachna (respondent No.2) was heard at the police station stating that she had set the godown on fire and they could do whatever they liked.

Swaraj Singh (PW6) states that he had taken photographs Ex.PW6/1 and Ex.PW6/2 on 12.02.2011, however, the admission of said photographs in evidence was objected to as the negatives were not produced. He (PW6) stated that he had not brought the negatives of the pictures because he had already delivered them to the party that had engaged him but he stated that he did not remember the name of the party who had engaged him. Therefore, the documents even though marked as exhibits would not be

admissible in evidence as mere marking of documents as exhibit does not dispense with the proof of the documents.

The learned trial Court after considering the entire evidence on record has acquitted respondents No.2 to 4. In the facts and circumstances, no ground is made out to dislodge or interfere in the order passed by the learned Additional Sessions Judge, Amritsar.

Consequently, there is no merit in the appeal and the same is accordingly dismissed.

(S.S. SARON)
JUDGE

(REKHA MITTAL)
JUDGE

August 17, 2015.
Davinder Kumar/A.Kaundal