

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

Crl. Appeal No. S-1780-SB of 2003

Date of decision : 04.02.2015

Hari Singh

...Appellant

versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. B.S. Saroha, Advocate,
for the appellant.

Mr. C.S. Bakhshi, Addl. AG., Haryana.

RITU BAHRI, J.

This appeal has been filed against the judgment of conviction dated 09.09.2003 and order of sentence dated 10.09.2003 passed by the Sessions Judge, Bhiwani, whereby the accused-appellant, Hari Singh, has been convicted and sentenced to under rigorous imprisonment for a period of 3 years and to pay a fine of Rs.2000/- for commission of an offence punishable under Section 436 IPC. In default of payment of fine, he was further sentenced to undergo rigorous imprisonment for three months. Out of the total amount of fine, Rs.1000/- were ordered to be paid to the complainant as compensation.

Brief facts of the case are that on 31.01.2000, HC subhash Chander along with other police officials was present at bus-stand of village Mori. In the meantime, Balwant Singh-complainant met him and gave a written application/complaint, alleging that on 29.1.2000 at about 10.30

P.M., accused Bhim, Jagdish and Hari Singh-appellant came in front of his

house and abused his wife, Barji. They also threatened to take away his daughter and set his house on fire. Thereafter, Hari Singh-appellant set the *chhappar* on fire, which was constructed in front portion of the house of complainant. At that time two cows were tied in the said *chhappar*, out of which one cow got herself released and ran away. The other cow, which was tied with an iron *bale* (peg), was burnt. One Jagdish Singh son of Siri Ram took out the burnt cow from the *chhappar*. At the time of occurrence, Balwant Singh-complainant was not present at his house, as he had gone to his in-laws house at village Nandha. He returned to his house in the morning on 30.01.2000. Thereafter, he moved a complaint (Ex.PD) to the police, on the basis of which the present FIR was registered. After completion of necessary formalities, challan against Hari Singh-appellant was prepared and presented before the Court, whereas the other two accused were found innocent.

After presentation of the challan, charge under Section 436 IPC was framed against Hari Singh, accused-appellant, to which, he pleaded not guilty and claimed trial. Birji Devi, wife of the complainant was examined as PW-1, who specifically named all the three accused, who had burnt the *chhappar*. Thereafter, the prosecution moved an application under Section 319 Cr.P.C., which was allowed on 11.10.2001 and the remaining two accused namely Bhim and Jagdish were summoned to face trial.

Thereafter, all the three accused were charged sheeted under Section 436 IPC, to which, they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Dr. Jaipal (PW-1), Smt. Barji Devi (PW-2), Balwant-complainant (PW-3), HC Subhash Chander (PW-4), ASI Chhotu Ram (PW-5), SI Sheotaj Singh (PW-6),

Narender Singh, draftsman (PW-7), Surender Kumar, photographer (PW-8) and Paramjeet Singh, DSP (PW-9). Thereafter, the evidence of the prosecution was closed.

Statements of accused under Section 313 Cr.P.C., was recorded, wherein entire incriminating evidence was put to them, however, they denied the same and pleaded false implication. In defence, accused examined Jagdish (DW-1) and Dharampal (DW-2).

The trial Court after going through the entire evidence led by the prosecution, convicted and sentenced Hari Singh, accused-appellant in the aforesaid terms. However, by giving benefit of doubt, accused Jagdish and Bhim were acquitted of the charges framed against them.

Learned counsel for the appellant, at the outset, does not challenge the judgment of conviction on merits and restricts his prayer to the quantum of sentence.

The burning of the *chhappar* of the complainant was not disputed by the defence. It was not disputed that the said *chhappar* was located in front of the house of the complainant. The dispute was, as to whether the *chhappar* got fired accidentally or the accused persons had set the same on fire. As per the deposition of Smt. Barji Devi (PW-2), it was Jagdish who had taken out the cow from the *chhappar* and rescued it. This fact was admitted by Jagdish (DW-1) in his deposition. The prosecution had cited this witness, but he was given up on the allegation of having been won over by the accused. Thereafter, the accused had examined him as DW-1. In his deposition, Jagdish (DW-1) has stated that he had seen the *chhappar* when it was burning. This information was given to him by one Sunehra. They had knocked the door of the house of complainant, upon which, Barji Devi came

out and on her request, he took the cow out of the *chhappar*. Dharampal (DW-2) admitted that there was fire in the *chhappar*. There was civil litigation pending between the complainant and accused with regard to a piece of land. Hence, there was motive with Hari Singh, appellant-accused, to cause harm to the complainant. Complainant was not present at home at the time of occurrence. He came back on 30.01.2000 and saw that his *chhappar* had been burnt. Balwant Singh-complainant is the real brother of Hari Singh-appellant and due to pendency of litigation between the two brothers, strong motive to cause damage to the complainant was existing. It was Hari Singh, who had set the *chhappar* on fire and Jagdish had got one cow out of the said *chhappar* and rescued it. The other two accused were only accompanying him and they did not play any role in setting the *chhappar* on fire. The version of the prosecution against Hari Singh-appellant has been duly proved. Therefore, the judgment of conviction passed by the trial Court does not require any interference and the same is, accordingly, upheld. Resultantly, the appeal is dismissed. However, a lenient view can be taken on the quantum of sentence of the appellant.

As per custody certificate, Hari Singh-appellant has undergone 2 months and 25 days in custody out of 3 years and has not misused the concession of bail during the pendency of this appeal. The incident in the present case took place on 29.01.2000 and the appellant has faced the agony of protracted criminal trial for almost 14 years. Appellant-Hari Singh was 55 years of age when the FIR was registered against him. As on today, he is about 70 years of age.

Keeping in view that the appellant is not having any criminal background and the fact that he has been facing criminal trial for the last

about 14 years, the sentence of imprisonment awarded to appellant-Hari Singh is reduced to the period already undergone. However, since the complainant had lost one cow in the fire when the *chappar* was set on fire, the amount of compensation is being enhanced from Rs.1000/- to Rs.40,000/-. The appellant is directed to pay enhanced amount of compensation to the complainant.

With the above modification/direction, the present appeal stands disposed of.

04.02.2015
ajp

(RITU BAHRI)
JUDGE