

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-2084-SB of 2003

Date of Decision : July 3, 2015

Jai Bhagwan and another Appellants

Vs.

The State of Haryana Respondent

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Sudhir Sharma, Advocate
for the appellants.
Mr. Munish Dev Sharma, Assistant Advocate General
Haryana.

RAJ RAHUL GARG, J.

Jai Bhagwan and Surender Singh sons of Surat Singh have assailed the judgment of conviction dated 09.09.2003 and order on sentence dated 11.09.2003 recorded by Sh. B.L.Singal, the then Ld. Sessions Judge, Sonapat, whereby, both the appellants were convicted for committing offences punishable under Sections 436/429/323 and 506 read with Section 34 of Indian Penal Code (for short 'IPC') and each of the appellants were sentenced to undergo 7 years of rigorous imprisonment and to pay a fine of ₹5,000/- with default clause for committing offence punishable under Section 436/34 IPC; to undergo rigorous imprisonment for 3 years for committing offence punishable under Section 429/34 IPC; for committing offence punishable under section 323/34 IPC to undergo rigorous imprisonment for one year and for committing offence punishable under Section 506/34 IPC to

undergo rigorous imprisonment for 2 years. However, all the substantive sentences were ordered to run concurrently and benefit of Section 428 Cr.P.C. was also given to the appellants.

Brief facts of the case are like this; that during the intervening night of 24/25-11-2000, Sandeep (complainant) son of Inder Singh was sleeping in his house. At about 1:00 a.m. somebody set on fire '*PURAAL*' and '*JAWAR*' lying in his plot. On hearing the shouts of the villagers, he got up and ran towards his plot. He then spotted Jai Bhagwan and Surender Singh (appellants) near his house in the street who had thrown burning cow dung cakes on the '*CHHAN*' whereupon his house caught fire. While running away, Surender Singh also removed the electric wire of the electric motor of the complainant which was meant for running the water tank. As per complainant, he came running to the house and started letting loose the cattle, but two buffaloes, one she-calf and one offspring of the buffalo got burnt. However, offspring of the buffalo had died at the spot. Complainant also received burn injuries. As per complainant, Jai Bhagwan and Surender Singh were accompanied with 3-4 persons, who could not be identified by him. As per complainant, after sometime Jai Bhagwan and Surender Singh came to him and gave a threat to his life in case he discloses their names. Complainant further stated that Jai Bhagwan had given a threat to his life at the point of country-made pistol that he will be done to death in case he lodges the report with the police. Complainant along with his father lodged the report with the police on

27.11.2000 which is Ex. PD. On this report, case was registered and investigations were conducted. Medico-legal report of Sandeep Ex.PE and medical reports of buffaloes belonging to complainant party Ex.PG and that of buffalo heifer belonging to complainant party Ex.PG/1 were obtained. Site plan of the spot Ex.PH was prepared. Treatment reports of the cattle as well photographs of the cattle were taken into police possession vide memo. Ex.PJ. Scaled site plan of the spot was also got prepared by the police.

Accused were arrested and after completion of investigations, challan was put in the Court against the accused-appellants.

Appellants were charge-sheeted for committing offence punishable under Sections 436/429/323/506/34 of IPC to which they did not plead guilty but claimed trial.

After taking prosecution evidence, statement of accused under Section 313 Cr.P.C. were recorded, wherein they denied each prosecution allegation and pleaded their innocence. The defence taken by the appellants is this that they have been falsely implicated in this case. In defence, the appellants examined Dalbir as DW-1.

After hearing both the sides and appraising the entire evidence and material coming on record, the learned Sessions Judge, Sonapat, recorded the judgment of conviction and held appellants guilty for committing offence punishable under Sections 436/429/323/506/34 IPC and sentenced them as mentioned in the

earlier part of this judgment.

I have heard learned counsel for the appellants and learned State counsel, besides appraising the entire material coming on record.

First and foremost point of argument of learned counsel for the appellants is this; that there is a delay in lodging the FIR. The occurrence took place during the intervening night of 24/25-11-2000 and the FIR Ex.PD was recorded by the police on 27.11.2000. Even the complainant Sandeep as PW-4 stated so. Now the question arises as to if the prosecution could give the explanation of this delay in lodging the FIR or not. It is the settled proposition of law that FIR in respect of cognizable offence should be lodged as soon as possible. Where lodging of the report is delayed, it not only gets bereft of its spontaneity, danger also creeps in of the introduction of coloured versions, thoughtout stories and twisting of facts. Thus, some innocent person can be roped in and named as culprits, as a result of much thought, consultation and discussion.

In this case, the complainant is the one who was a student of class-XI. On the day of occurrence, he was all alone in the house. On the next day i.e. 25.11.2000, his father came home. Complainant as PW-4 deposed that his father was working at Delhi at that time. His brother Sanjay was also working in Delhi. Inder Singh (PW-5) deposed that on the intervening night i.e. 24/25-11-2000, he had gone to village Sandhal Kalan alongwith one of his friends. He returned to his house at about 9:00 a.m. on 25.11.2000. He found that his son Sandeep had

sustained some burn injuries besides two buffaloes, one buffalo-calf and one she-calf and further that Sandeep was suffering with high fever. Sandeep then narrated the whole story and, thereafter, he (Inder Singh) visited the police station for lodging the report on 25.11.2000. However, the police did not take any action on that day. Thus on 26.11.2000, he visited the office of S.P and D.C., Sonapat and made representations. On this, the police came into action and visited their village on 27.11.2000. Under these circumstance, it cannot be said that the complainant party did not try to lodge a report about the incident in question with the police rather the complainant party had to exert a lot in getting the FIR registered. Sandeep was also under threat. He waited for his father and then they tried to get the FIR lodged. It was very hard for Sandeep to bear this shock. Their cattle got burn injuries and even one she-calf had died at the spot. Under these circumstance, it cannot be said that the delay in FIR could not be explained by the prosecution. Even otherwise, the occurrence stands established on the file. There is no evidence on the file to show that the fire was accidental in any way. Even, it is not the case of the accused. Accused have taken the defence that they have been falsely implicated in this case and by putting questions during the course of cross-examination of complainant, Inder Singh (PW-5) and Investigating Officer, ASI Rameshwar Dayal (PW-9) they had tried to make out a case that on account of enmity with the accused, they have been falsely implicated in this case but they have failed to prove the same rather enmity is the double edged weapon. At

least no one would put his own house on fire in which there was a great destruction and loss of cattle. Sandeep (PW-4) received burn injuries which were five in number. The MLR of Sandeep Ex.PE was proved by doctor Mrs. P.L.Bansal (PW-6). Dr. Satyapal Dalal (PW-8), Vty. Surgeon, at Civil Vety. Hospital, Ganaur, physically examined one buffalo, one buffalo heifer and one cow female calf and reported about the burn injuries on their persons. This doctor proved the reports in this regard as Ex.PG, Ex.PG/1 and Ex.PG/2, respectively. Thus with this medical evidence as well, the occurrence is of setting on fire of the house of complainant, stands established. Not only this, even with the statement of Dalbir (DW-1), the occurrence stands established. He deposed that during the intervening night of 24/25-11-2000, fire had broken out in the hut of the complainant in village Rajlu Garhi. He further deposed that the fire had also broken out in the '*GHER*' of Inder Singh and further that he helped in extinguishing the fire. With this evidence on the file, it stands established that the incident of fire in question did take place. Now the question arises as to who are the culprits; who are the persons who actually set on fire the '*GHER*' and house of the complainant. Both the accused are known to the complainant. Complainant admitted that about 1 ½ months prior to the occurrence, accused Jai Bhagwan and Surender Singh had dug out a *khal* in their fields. Thus, when the appellants were known to the complainant and the complainant had seen them standing in the street near his house and throwing burning cow dung cakes into his house,

there remains no doubt regarding identity of the accused.

Of course, there is solitary testimony of Sandeep (PW-4) on record regarding the present occurrence. In fact, complainant was alone in the house when the incident in question had taken place. Of course, villagers turned up to the spot and they even helped in extinguishing the fire but none came forward to stand as witness as they did not want to earn enmity of the accused. ASI Rameshwar Dayal (PW-9) categorically stated so during the course of his cross-examination that even at the time of his visit to the place of occurrence, many inhabitants of the village gathered there. However, he did not record the statement of any of the inhabitants because none came forward, to avoid the enmity. Simply, because there is no corroboration, the statement of PW-4 complainant and eye witness which inspire confidence in the mind of the Court regarding guilt of the accused, cannot be discarded. It is the case which is based on eye witness account, which is corroborated by the medical evidence. As such, even if, there is no independent corroboration, it is of no avail.

Learned counsel for the appellants further contended that Sandeep (PW-4) deposed that he had narrated the incident to his father at about 4/5:00 a.m. on 25.11.2000 whereas Inder Singh (PW-5), father of the complainant, deposed that he came home at about 9:00 a.m. on 25.11.2000. As such, the statement of Sandeep (PW-4) is not believable and at least not free from doubt. Of course, there is exaggeration here at this point in the statement of PW-4 yet only on

account of that, his statement cannot be discarded at all. PW-5 categorically stated that he came back at about 9:00 a.m. on 25.11.2000, even otherwise, it hardly makes any difference if Inder Singh had come back home at about 4/5:00 a.m. or 9:00 a.m. The fact remains that Inder Singh had gone to the police station for lodging of the report but the police did not take any action on 25.11.2000.

It was next argued by learned counsel for the appellants that it is the case in which Sandeep got himself medico-legally examined at about 5:25 p.m on 25.11.2000. Doctor did not send ruqa to the police. He did not disclose the incident to the doctor. This all goes to show that the incident in question in fact did not take place and the appellants have been falsely implicated in this case only on account of enmity with the complainant party.

To counter the arguments of learned counsel for the appellants, it was argued by learned State counsel that doctor sends ruqa only in those cases in which the patient, who was medico-legally examined, is admitted in the hospital. In this case, since Sandeep was not admitted in the hospital, therefore, ruqa was not sent to the police station by the doctor.

This argument of learned State counsel is sustainable besides this it is not a case in which complainant party did not try to get the FIR lodged on 25.11.2000 or that they had gone to the police for the first time only on 27.11.2000 rather it is the case in which the complainant party had gone to the police for lodging the report on

25.11.2000 itself i.e. when Inder Singh, father of the complainant, came home and the incident was narrated to him.

It was also argued by learned counsel for the appellants that the complainant deposed that 3-4 persons were also with the appellants at the time of incident in question but their identity was not given nor their names were disclosed and even during the course of investigations, they could not be identified nor arrested nor challenged. As such, the statement of Sandeep (PW-4) is not believable.

The above arguments of learned counsel for the appellants is not sustainable as even if the position was like that as argued by counsel for the appellants yet it cannot be said that for this reason alone the statement of Sandeep (PW-4) is not believable. In fact, the incident of fire stands established on record. It is also proved on the file that Sandeep (PW-4) received burn injuries on his person which have been duly proved by doctor Mrs. P.L.Bansal (PW-6). Sandeep (PW-4) received these injuries while he was saving his cattle from burning. Cattle also received burn injuries. Burnt quilt, mattress from the room of the complainant were also taken into police possession as per Investigating Officer, ASI Rameshwar Dayal (PW-9) and HC Ram Kishore (PW-3). The statement of Sandeep (PW-4) that he was sleeping in his house at the time of incident and on hearing shouts about fire in his '*GHER*', he ran out of his house and then saw both the appellants standing near his house and further that within his sight they threw burning cow dung cakes in the '*CHHAN*' lying in his house

whereupon his house caught fire. This statement of Sandeep (PW-4) is inconsonance with the medical evidence and inspires confidence in the mind of the Court regarding truthfulness of the prosecution version.

It was next argued by learned counsel for the appellants that in fact '*CHHAN*' is a *kutch*a structure which has roof made of straws or other such like material. It is not a building within the meaning of Section 436 IPC. As such in fact no offence under Section 436 IPC is said to be made out against the appellants. In support of his contention, he has placed reliance on the judgments i.e. *Jasmero Vs. State of Haryana, 1979, PLR, 420; Hardial Singh and others Vs. State of Punjab and another, 2008 (4) R.C.R (criminal), 220 and Raj Singh Vs. State of Haryana, 2003 (2), R.C.R. (criminal), 697.*

The afore-cited judgments are not applicable to the facts of the present case. In the case in hand, the fire broke out in the house of the complainant. The appellants set on fire the house of the complainant by throwing the burning cow dung cakes on the '*CHHAN*' lying in the house of the complainant which immediately caught fire and even burnt the house of the complainant. The room in which cattle were tethered also caught fire. Cattle also received burn injuries. There is no evidence to show that the room in which cattle were tethered, was having a thatched roof or that the room in which complainant was sleeping was not a room. As such, it is the case in which the house of the complainant was set on fire besides the '*PURAAL*' and '*JAWAR*' lying in his '*GHER*' which was at a distance of about 70 or 75 steps

away from his house. Ex.PH site plan prepared by the Investigating Officer, ASI Rameshwar Dayal (PW-9), proves the same. As such, the contention of learned counsel for the appellants that the '*GHER*' of the complainant was situated at a far away place from his house, is not sustainable. There is also nothing on record to show that the house of the complainant was not burnt. As the house of the complainant was burnt, in which, of course, the cattle were also tethered, who was also received burn injuries, therefore, the case under Section 436 IPC is certainly made out against the appellants.

Lastly, it was argued by counsel for the appellants that the case is of the year 2000 and now it is 2015. The appellants have undergone criminal trial for about 15 years. As such, their sentence may be reduced to the one already undergone. From the custody certificate on the file, it was brought out that they have undergone sentence including remissions; for one year, nine months and 28 days and for one year, eleven months and nine days respectively. In support of his contention, he has cited judgment i.e. ***Buta Ram and others Vs. State of Haryana, 2008 (2) R.C.R. (criminal) 937.*** The facts and circumstances of the present case, in fact, do not warrant the reduction of sentence. The appellants belong to the same village. They had a dispute with the complainant party, as they had dug out a *khal* through the land of the complainant. The case of the appellants is ghastly. They had set on fire the dwelling unit of the complainant as well their '*GHER*', where they had stored '*PURAAL*' and '*JAWAR*' .

Thus, keeping in view the conduct of the appellants that they had set on fire the house and '*GHER*' of complainant at the dead of night i.e. at about 1:00 a.m., I find no ground to reduce the sentence of the appellants to the one already undergone. As such, the prayer of counsel for the appellants in this regard is declined.

No other point was urged before me.

For the aforesaid reasons, finding no merit in this appeal, it is ordered to be dismissed. If the appellants are on bail, their bail bonds, shall stand cancelled and they be taken in custody for serving the remaining period of sentence. The concerned Chief Judicial Magistrate, shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Criminal Procedure Code, and submit compliance report within a period of two months, from the date of receipt of a copy thereof.

The District & Sessions Judge, Sonapat, shall ensure that the directions are complied with, within the time frame, and the compliance report is submitted immediately thereafter.

The Registry shall keep track of the submission of compliance reports, and put up the papers whether the reports are received or not, within the time frame, immediately after the expiry thereof.

(RAJ RAHUL GARG)

JUDGE

July 3, 2015

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