

CRA-S-1493-SB of 2004
Date of Decision: 19.01.2016

Versus

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State of Punjab ... Respondent

CORAM:- HON'BLE MR.JUSTICE P. B. BAJANTHRI

Present:- Mr. Kanwal Goyal, Advocate for the appellant
(in CRA-S 1437-SB of 2004).

Mr. S. S. Gil, Advocate for the appellant
(in CRA-S-1493-SB of 2004).
Mr. Deepak Garg, AAG, Punjab.

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P. B. BAJANTHRI.J.

The appellants and one Nek Singh were subjected to criminal proceedings on the complaint of one Sh. Pal Singh s/o Channa and Sessions Court acquitted Nek Singh and convicted appellants herein. They were sentenced as under:-

Under Section 436 IPC: Accused is sentenced to undergo rigorous imprisonment for a period of four years for an offence under Section 436 IPC and to pay a fine of Rs.2500/-. In default of payment of fine he shall further undergo R. I. for a period of three months.

UNDER SECTION 427 IPC: Accused is sentenced to undergo rigorous imprisonment for a period of one year for an offence under Section 427 IPC and to pay a fine of Rs.500/-. In default of payment of fine he shall further undergo R. I for a period of one month.

As for as accused Gailo @ Malkit Kaur is concerned. She is a lady and lenient view is taken in awarding lesser sentence, which is as follow:-

UNDER SECTION 436 IPC: Accused is sentenced to undergo rigorous imprisonment for period of two years for an offence under Section 436 IPC and to pay a fine of Rs.2500/-. In default of payment of fine he shall further undergo R.I for a period of three months.

UNDER SECTION 427 IPC: Accused is sentenced to undergo rigorous imprisonment for a period of one year for an offence under Section 427 IPC and to pay a fine of Rs.500/-. In default of payment of fine he shall further undergo R.I. for a period of one month.

The appellants aggrieved by the order of sentence the present appeals have been filed.

Brief prosecution story is that on 01.12.2002 at about 1:00 PM Nek Singh along with his wife Gailo alias Gurmit Kaur and son Bhinder Singh (Bhinder Singh and Gailo alias Gurmit Kaur are the appellants in the present case) all of them approached complainant-PW-1(Sh. Pal Singh) while he was at his house and demanded alleged remaining amount from Pal Singh and his brother Dev Singh and mother Tej Kaur relating to transaction of purchase of 10 biswas land at focal point of village Lehal Kalan. It is a sum of Rs. 5,000/- which is stated to be outstanding. Complainant inform the appellants and Nek Singh transaction was over and nothing is outstanding. It was alleged that due to non-payment of

outstanding amount of Rs. 5,000/- by the complainant, Nek Singh and Gailo told his son to set the house on fire. Then Bhinder Singh ablazed dry grass lying in the courtyard of the house. The fire spread towards the house and portion of the house and roof was burnt including some house hold articles. Arising out of the aforesaid allegations, the complainant-Pal Singh informed police and gave complaint. Pursuant to the complaint FIR No.173 of the Cr. P. C was registered for the offences under Section 436, 427/34 IPC on 01.12.2002.

The trial Court after due consideration of the evidence adduced by the PW-1 Pal Singh, PW-2-Dev Singh, PW-3 Nazar Singh(H.C), PW-4 Dharminder Singh (Draftsman), PW-5 Rakesh Kumar(Photographer) on behalf of appellants DW-1 Sukhdev Singh, DW-2 Bhagwant Singh, DW-3 Ajaib Singh and DW-4 Kala Singh, DW-5 Jatti Singh, DW-6 Labh Singh and photographs Ex. PW-5/1 to PW 5/8 and negative Ex. PW-5/9 to PW-5/16 one document Ex.D-1 dated 28.02.2003 was also relied on. The appellants were given opportunity under Section 313 of Cr. P. C. The trial Court after considering the evidence like photographs, Ex. D-1 and statement of prosecution witnesses convicted the appellants herein while acquitting Nek Singh.

The learned counsel for the appellant Gailo contended that as alleged by the complainant-Pal Singh that there is a transaction between him and Nek Singh i.e complainant has purchased house from Nek Singh and the complainant had not paid a sum of Rs. 5000/- which is due to the Nek Singh all false since ownership has not been proved before the trial Court. Consequently, the allegations made by the complainant is false and frivolous. He further contended that site plan is evident to show that the

complainant was far away from the burnt house i.e. 4 killas therefore, the appellants were not at all involved. The photographer who has been examined as one of the witness has not proved the photographs. At the time of the complaint and visit of police personnel to the spot are contradictory as is evident from the evidence adduced by the PW-1, PW-2 and PW-3. Therefore, the prosecution failed to prove the involvement of the appellant-Gailo.

Learned counsel for the appellant contended that the alleged incident relates back to 01.12.2002 and the appellant was convicted on 17.07.2004 and the present appeal is being heard in the year 2016. Therefore, it is not appropriate to confirm the conviction order and penalty be reduced. In support of said contention and for reduction of sentence the appellant relied on a decision of this Court reported in 2008(2) R.C.R(Criminal) 937 Buta Ram and others versus State of Haryana.

Learned counsel for the appellant-Bhinder Singh contended that no independent witnesses were examined in support of prosecution case. Section 436 of IPC is not made out in the present case so also Section 427 IPC consequently, the conviction order is to be set aside. No other point was argued.

Learned counsel for the State vehemently contended that the trial Court considered and held that Section 436 IPC is proved. He has pointed out the discussion made by the trial Court at para 11 to 13. Para 11 to 13 reads as follows:-

“11. The first argument advanced by the defence counsel is that the complainant claims to have purchased 10 biswas of land from accused Nek Singh about 8/10 years ago for consideration of Rs.10,000/- and further claims to have

constructed a house in this land but there is no document on the file that they own any land. When Pal Singh PW-1 was subjected to cross examination, he stated that he was not in possession of any sale deed of the house. PW-1 Pal Singh had volunteered stated that the same was written on the Bahi (Account Book). The defence counsel argued that even bahi has not been produced on record to show that the property in question is owned by the complainant. The defence counsel further argued that since mischief by fire to the building used as human dwelling has not been proved to be of the complainant, therefore no offence is made out. Section 436 IPC is necessary to be reproduced to decide this controversy. "Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished." The defence counsel has argued that since in this case no document of ownership has been placed on the record that the building is owned by the complainant, no offence is made out. The provision of the Section 436 IPC, nowhere requires that the building of which, the mischief by fire caused shall necessarily be owned. So, no benefit can be derived by the accused out of this. This pertinent to mention here that the cross examination of Pal Singh PW-1 shows that the police did not take into custody the copy of Bahi (Account Book). The writing about the sale of house is allegedly written on the Bahi. Simply because the police did not take the Bahi (Account Book) in its custody, does not mean that the complainant is at fault. At the most, It may called defect investigation on the part of the police but the complainant is not to be blamed for this as he made it clear in his evidence that he showed it to the police but the police did not take it into custody. The record of the case shows that the investigating officer failed to take in custody the

relevant papers from the complainant. The prosecution could not be frustrated by the such methods and victim of crime cannot be left in lurch in the given situations. It is important to note here that the complainant belongs to Ramdasia (Scheduled Caste) whereas the accused are Jats. The document Ex. D-1 produced by the accused also goes to show that there is some dispute about the possession of land between the parties. Dev Singh PW-2 has also deposed on oath that he and his brothers namely Surjit Singh and Pal Singh have constructed the house on the said land and have been residing in the house and the accused were demanding Rs.5000/- for the said land. They had paid full consideration to the accused. He further proved that due to this reason, the accused have set their house on fire by putting dry bushes fire with match box. Dev Singh PW-2 also stated on oath that the fire destroyed the clothes, iron box containing clothes amounting to Rs.5000/- which was burnt, Charpai and bedding. PW-2 Dev Singh was put to lengthy cross examination and asked to narrate the camera type action of the situation having occurred at the place of occurrence. Dev Singh PW-2 gave a minute detail about the happening in his cross examination that the accused came from their house; remained at the spot for about 5/7 minutes; they had only match box, not kerosene oil; an altercation took place with the accused; people gathered; and the police did not record statement of any person assembled there. The testimony of PW-2 Dev Singh is convincing, natural and credible. As far as the question of setting the building on fire is concerned there is no evidence of Pal Singh complainant PW-1 and his statement is corroborated by Dev Singh PW-2 and photographs Ex. PW-5/1 to Ex. PW-5/8 and negatives Ex. PW-5/9 to Ex. PW-5/16. The defence counsel submits only dry bushes were set on fire which was lying near the court yard of his house and not the house, one thing is proved that mis-chief of setting the house on fire started from setting on fire the dry

bushes lying on the court yard, but it spread to the room and photographs Ex. PW-5/1 to Ex. PW-5/8 show that the fire spread over the parts of the building and it damaged the bedding, and clothes and roof of the room was also burnt. Accordingly, the ingredients of under Section 436 IPC stands proved. Dev Singh PW-2 has stated that accused Gailo and Nek Singh asked Bhinder Singh to put bushes on fire, but Pal Singh PW-1 has stated that it was Gailo, who asked Bhinder Singh accused to put dry bushes lying on the court yard of his house. But, the statement of Dev Singh PW-2 does not corroborate on the point of accused Nek Singh having also joined Gailo accused in asking Bhinder Singh to put dry bushes on fire. Moreover, when Nek Singh was present, there was no point in calling his son Bhinder Singh to put the dry bushes lying in the court yard on fire therefore, benefit of doubt is extended only to accused Nek Singh. Whereas the charge under Section 427 IPC is proved against the accused Gailo and Bhinder Singh. It is important to note here that the fact that occurrence took place at 1:00 PM on 01.12.2002 and the statement of complainant was recorded at 3:00 PM on the same day. The fact that FIR was recorded immediately, rejects any possibility of deliberations to falsely implicate any person.

13. *The defence counsel has argued that ash was not collected from the spot by the police. Memo Ex.PB shows that ash and other burnt articles were taken into possession by the police and case property Ex. P-1 and Ex. P-2 and half burnt piece of cot Ex. P-3 were produced in the Court. So, this argument is without any force. It is also proved from the evidence of complainant Pal Singh PW-1 and Dev Singh PW-2 that fire was caused by the accused Bhinder Singh and it had damaged and destroyed the clothes, iron box containing clothes worth Rs.5000/- and Charpai and building etc. Therefore, the mischief has been proved to have been committed and damage caused to the property of the*

complainant. This Court is satisfied that the prosecution has proved its case beyond reasonable doubts.

In the Court of Smt. Priya Sood, PCS, Civil Judge(Junior Division), Sunam.

Suit No.31 of 21.01.2003.

Order Dated..28.02.2003

Pending for... 23.05.2003.

Malkit Kaur wife of Nek Singh son of Dula Singh, resident of Lehal Kalan, Tehsil Moonak.

.... Plaintiff.

Versus.

Sita Singh son of Gurdial Singh, 2. Dev Singh, 3. Pal Singh sons of Chain Singh, residents of Lehal Kalan, Tehsil Moonak.

....Defendants

Application U/o 39 Rules 1, 2 CPC

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It is the categorical case of ld. counsel for the defendants that although plaintiff purchased 7 kanal area from Nek Singh, her husband, Nek Singh had earlier delivered the possession of some land, falling in his share to the defendants and that defendants are in possession of the said land and have raised their residential houses, in the same. Admittedly, Nek Singh co-sharer owns a considerable share in the suit property. Some of the khasra numbers in the said khata have been shown to be Gair Mumkan Houses. Undoubtedly, defendants have no title deed to rebut the entry in the revenue record, yet, copy of Bahi Khata, showing the delivery of possession by Nek Singh to the defendants is on the file. The said Nek Singh is not a party to the present suit, but he is a co-sharer in the suit land and happens to be the husband of plaintiff. Even criminal proceedings have been initiated by the police with respect to the suit property at the instance of present defendants and the possession of these defendants have been shown on an area, over which, plaintiff and her husband had staked their claim. Nek Singh co-sharer has not been

impleaded by the plaintiff nor the factum of delivery of possession of some land by Nek Singh to defendants has been denied. Therefore, in these circumstances at this stage, it is deemed fit to direct the parties to maintain status-quo qua possession of the suit property. Accordingly, application is disposed of and the parties are directed to maintain status qua, qua possession of suit land during the pendency of present suit.

However, nothing as has been expressed herein above shall have any bearing on the merits of the suit.

Announced. ”

It was contended by the learned counsel for the State that photographs Ex.PW5/1 to PW-5/8, negative Ex. PW-5/9 to PW-5/16 and Ex. D-1 are sufficient to hold that the appellants had grouse against the complainant viz., there was a civil dispute among the complainant and the appellants in order to overcome the civil dispute the appellants were harassing the complainant and his family members. No doubt no independent witness has been examined, however the evidence of PW-1, PW-2 and read with photographs, negatives and Ex. D-1 are sufficient to prove that the appellants have committed in firing dry grass which were lying in front of the complainants house which were spread over to the house. The intention of the accused may be to threaten the complainant by putting fire to dry grass which were lying in the court yard of the house however, beyond their control the fire was spread to the complainant's house and damaged the complainant's house and some house articles. For which independent witness is not a material having regard to the facts and circumstances, rightly the trial Court has convicted the appellants.

I have heard learned counsel for the parties.

Contention of learned counsel for the appellant that ownership

and possession was not proved by the complainant/prosecution. Having regard to the allegations ownership and possession of the building is not relevant with reference to Section 436 IPC, the ingredients of Section 436 IPC does not require that ownership and possession. Therefore, in not proving the ownership and possession of the house by the complainant is not at all material. The appellants and complainant were away from the complainants house as is evident from site plan. The complainant could not have identified the appellants as he was not at home and he was away from the site plan. It is undisputed that there was a civil dispute as is evident from Ex. D-1 between the members of the appellant family and the complainant and the presence of the appellants at the site plan is also not disputed. Therefore, the complainant was away by 4 killas from the site plan is not material. In so far as, discrepancy in visiting the spot by the police personnel is not material one for the reasons that PW-3 statement is sufficient to show that the police personnels have acted on the complaint and proceeded with the initiation of criminal proceedings.

It was noticed from the custody certificate that Bhinder Singh-appellant has undergone 7 months 7 days sentence.

The appellant counsel in order to reduce the sentence relied on ***2008(2) R.C.R (Criminal) 937*** and the same has been taken note of. Having regard to the decision read with ***2004 SCC(Criminal) 463, and 2007(1) RCR (Criminal) 801 (P&H)***. The present case alleged to the year 2002 and the present appellants have already undergone the agony of about 14 years during the pendency of the trial/appeal. Learned State counsel has referred to an FIR No.130 dated 28.08.2003 under Section 61 of Exercise Act Police Station Moonak (released on personal point) by JMIC, Sunam on

01.12.2004 and submitted that appellant-Bhinder Singh is involved in another criminal case. Having regard to the offence under Section 61 of the Exercise Act the appellant-Bhinder Singh is entitled for reduction of sentence.

Keeping in view the above discussion, the order of conviction of the appellants passed by the Courts below is modified. Sentence of Bhinder Singh is set aside under Section 436 IPC and sentence under section 427 IPC is upheld. Bhinder Singh-appellant is directed to surrender before CJM, Sangrur to serve the remaining sentence passed under Section 427 IPC within 30 days from today. In so far as, Gailo-appellant is concerned, her sentence is modified. She being a lady and her role in asking her son to set fire in fit of anger, it is sufficient to impose penalty of Rs. 75,000/- to be paid to the victim-complainant-Pal Singh through CJM, Sangrur. If he is not alive the amount shall be disbursed to the legal heirs of complainant Pal Singh. If the aforesaid amount is not deposited in CJM, Sangrur Court within 6 months the appellant-Gailo be taken into custody to serve the sentence under Section 427 I. P. C only.

Accordingly the appeal is disposed of.

19.01.2016
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(P. B. BAJANTHRI)
JUDGE