

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA S-1567-SB of 2004
Date of Decision: 07.12.2016

Laxman Singh and anotherAppellants

Versus

State of HaryanaRespondent

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

Present: Mr.N.S. Shekhawat, Advocate, for the appellants.
Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

T.P.S. Mann, J.

The appellants were tried for committing offences punishable under Section 323 read with Section 34 IPC and Section 436 read with Section 34 IPC. Vide judgment and order dated 2.8.2004, learned Additional Sessions Judge, Narnaul, acquitted them of the charge under Section 436 IPC. Instead, they were convicted under Section 435 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for one year. They were also convicted under Section 323 read with Section 34

IPC and sentenced to undergo rigorous imprisonment for six months. Out of the amount of fine, a sum of Rs.8,000/- was ordered to be paid to complainant Kaushalya while the remaining amount of Rs.2,000/- to be treated as costs of proceedings. Both the sentences were ordered to run concurrently. The period of their detention during inquiry, investigation and trial, was ordered to be set off against the sentence awarded to them, in terms of the provisions of Section 428 Cr.P.C.

According to the prosecution, Mohan Lal, husband of complainant Smt. Kaushalya, had purchased a plot, measuring 7 marlas, from Norang Singh, father of Laxman Singh appellant. The remaining land owned by Norang Singh, adjoined the plot purchased by Mohan Lal, who raised a boundary wall around the said plot and also constructed a hut in the said plot, which was being used for storing fodder and preparing cow dung cakes. On 6.5.2002, Laxman Singh started raising construction in the plot owned by his father Norang Singh but over the boundary wall raised by Mohan Lal in his plot. The complainant objected to the same, but Laxman Singh did not pay any heed. He insisted in raising construction over the said wall. He also abused the complainant in filthy language. On 7.5.2002, the complainant went to Dwarka Parsad,

Sarpanch and Balbir Singh, Numberdar of the village, who came to the plot and tried to convince Laxman Singh and his wife Smt. Pushpa not to raise construction over the boundary wall of Mohan Lal, but the appellants insisted in doing so. Laxman Singh inflicted injuries with lathi to Kaushalya, whereas Pushpa pelted stones at Kaushalya. On receipt of injuries, Kaushalya fell on the ground. Thereafter, Laxman Singh took out a match box from his pocket and after igniting it, set the chhapper as well as heaps of cow dung cakes on fire.

It is also the case of the prosecution that on the basis of statement made by complainant Smt. Kaushalya, FIR No. 61 dated 7.5.2002 under Sections 436/323/34 IPC was registered against the appellants at Police Station Ateli. During the investigation of the case, the Investigation Officer, prepared rough site plan; recorded the statements of the witnesses under Section 161 Cr.P.C.; got complainant Kaushalya medico legally examined and after completing the investigation, presented the challan against the appellants, whereafter, they were charged for the offences punishable under Sections 323 and 436 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In support of ocular account of the occurrence, the prosecution examined complainant Kaushalya as PW5,

her sister Smt. Tulsi as PW7 and Balbir Singh, Numberdar as PW6. The medical evidence was brought on record by the prosecution by examining PW11-Dr. Ravi Sudan Sharma. PW4-Vinod Kumar, photographer testified about taking photographs of the burnt chhapper and brought on record their negatives as Exs. P1 to P5 and their enlarged prints as Exs. P6 to P10. The investigation part of the case was brought on record by the prosecution by examining PW1-Constable Satpal Singh, PW2-HC Malkhan Singh, PW3-Constable Mahesh Kumar, PW8-ASI Dariya Singh, PW9- SI Mohammad Hushan and PW10-ASI Siri Chand.

When examined under Section 313 Cr.P.C., both the appellants denied the allegations of the prosecution and claimed that they had been falsely implicated in the case. Appellant-Laxman Singh further took the stand that Kaushalya had encroached upon 4 marlas of the land belonging to him which abutted her nohra. When she was asked to vacate that land, she along with her family members started giving beatings to him. He suffered injuries on various parts of his body including his head. Blood started oozing from his injuries. Thereafter, the complainant set ablaze her old chhapper in order to falsely implicate him and his wife Pushpa in the present case.

In their defence, the appellants examined DW1- Dr. Arun Kalra, who testified that he had conducted medico legal examination of Laxman Singh on 9.5.2002 at 9.00 a.m. and found six injuries on his person.

After hearing learned counsel for the parties and going through the record, the trial Court convicted and sentenced the appellants, as mentioned above.

This Court has heard Mr. N.S. Shekhawat, learned counsel for the appellants and Mr. Ashok S. Chaudhary, learned Additional A.G., Haryana and scanned the evidence with their able assistance.

Learned counsel for the appellants has submitted that the prosecution has not been able to prove the genesis of the occurrence. The appellants were not the ones, who had initiated the occurrence, rather, it was the complainant party, which had opened the aggression and caused injuries to Laxman Singh. His injuries have not been explained by the prosecution. Therefore, the conviction of the appellants, stood vitiated.

It is true that when medico legally examined on 9.5.2002 at 9.00 a.m., Laxman Singh appellant was found to have six injuries on his person. Three of them were lacerated in nature, while other three were contusions.

Further, four of these injuries were on skull portion, one on the left upper arm and one on the left chest. However, according to the Doctor, all injuries were caused by blunt weapon within a probable duration of 72 hours. Two of the injuries, which were lacerated in nature and on the skull portion of Laxman Singh appellant, were described to be old wounds. The occurrence in question took place on 7.5.2012 at about 9.00 a.m. There is no explanation from the side of the appellants as to why Laxman Singh did not get himself medico legally examined soon after receiving the injuries at the hands of the complainant-party. Rather, he waited for about 48 hours from the time when the occurrence in question had taken place. The Court is also not sure as to whether Laxman Singh had received injuries on 7.5.2002 at 9.00 a.m. as the injuries on the person of Laxman Singh, which were noticed on 9.5.2002 at 9.00 a.m., were found to be of the duration of 72 hours, meaning thereby that he may have received injuries on 6.5.2002 at about 9.00 a.m. and not on 7.5.2002 at 9.00 a.m.

As regards the explanation of the injuries found on the person of Laxman Singh appellant, PW5-Smt. Kaushalya has deposed that she had not inflicted any injury on the person of Laxman Singh. She further stated that her children were at her house at the time of the occurrence.

She went to state that she did not see any injury on the person of Laxman Singh appellant.

PW6-Balbir Singh, Numberdar of the village has testified that at the time of occurrence Kaushlaya was having a stick, about 2-3 feet long in her hand and when the appellants abused her, she pointed the stick towards Laxman Singh saying as to why he was abusing her. At this, Laxman Singh snatched the stick from his wife and gave a blow thereof on her head in retaliation. He went on to add that Kaushalya, thereafter, gave a stick blow. However, he turned around to state that the stick blow was given by Kaushalya's son, which hit Laxman Singh on his head.

PW7-Smt. Tulsi, sister of complainant-Kaushalya has deposed that she did not see any injury on the person of Laxman Singh appellant. Thus, from the statements of the three eye witnesses of the prosecution, it stands established that Laxman Singh appellant had not received any injury during the occurrence.

Learned counsel for the appellants submitted that there are discrepancies and contradictions in the testimonies of the prosecution witnesses and for that reason, no implicit reliance can be placed on their respective depositions before the trial Court to sustain the conviction of the appellants. However, the discrepancies

and contradictions pointed out by the learned defence counsel are minor and trivial and do not go to the root of the case.

It has also been submitted that the prosecution has not been able to establish that appellant-Pushpa shared common intention with her husband Laxman Singh and thus, she deserves the benefit of doubt.

It has come in the evidence that Smt. Pushpa had caused injuries to Smt. Kaushalya and thus, she also shared common intention with her husband Laxman Singh in causing injuries to Smt. Kaushalya and also in committing mischief by fire with intent to cause damage to the property of the complainant.

Lastly, it has been submitted that the appellants are not previous convicts. They have been facing agony of the criminal prosecution for the last more than 14 years. The injuries caused by them were found to be simple in nature. The offence under Section 435 IPC is punishable with imprisonment upto 7 years. Prayer has accordingly been made for extending the benefit of probation to the appellants.

Learned State counsel has vehemently opposed the prayer by submitting that the appellants had been

raising construction over the wall already constructed by Mohan Lal, husband of the complainant in his plot. However, none of them paid any heed to the advice of Dwarka Parsad, Sarpanch and Balbir Singh, Numberdar of the village, who tried to convince the appellants not to raise construction over the boundary wall of Mohan Lal. The appellants then opened an assault and caused injuries to Smt. Kaushalya. It is, however, not disputed by the learned State counsel that the appellants are not previous convicts.

Having heard learned counsel for the parties and taking into consideration the totality of the circumstances, this Court is of the view that the appellants deserve to be granted the benefit of probation instead of being required to undergo sentence of imprisonment imposed upon them.

Resultantly, the conviction of the appellants for the offence under Section 435 read with Section 34 IPC and Section 323 read with Section 34 IPC is upheld. Their substantive sentences of imprisonment are set aside. Instead they are ordered to be released on probation on their furnishing bonds to the satisfaction of the Chief Judicial Magistrate, Mahendergarh at Narnaul, to keep peace and be of good behavior for a period of two years and to receive sentence as and when called upon to do so. In addition to the sum of Rs.8,000/-, which has been ordered

to be paid to complainant Kaushalya, as compensation, the appellants shall deposit another sum of Rs.5,000/- each, with the trial Court, which shall also be disbursed in favour of complainant –Smt. Kaushalya, as compensation. The order of the trial Court regarding treating amount of Rs.2,000/- as costs of proceedings, is maintained. Requisite bonds be furnished within three months from today.

The appeal stands disposed of accordingly.

(T.P.S. Mann)
Judge

07.12.2016
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No