

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

**CRA-S-1342-SB of 2003
Date of decision : 18.1.2017**

Devender Singh @ Dhela and another **.....Appellants**

v.

State of Haryana **.....Respondent**

CORAM : HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present : Mr. Akash Singla, Advocate, for appellant No. 1

Mr. Vijay Chaudhary, Advocate, for appellant No.2

Mr. Munish Dev Sharma, AAG, Haryana

Shekher Dhawan, J.

Present appeal is directed against the judgment of conviction dated 4.7.2003 and order of sentence dated 5.7.2003 passed by the learned trial Judge.

Facts relevant for the purpose of decision of the appeal; that on 20.7.1998, Inder Singh, Driver of Bus No. HR-26-PA-0112 of Haryana Roadways, Gurgaon, reported the matter to the police that when he was going from Delhi to Jaipur and had reached a little ahead of village Sikhopur turning, he saw furious mob of 'kawarias' (devotees of Lord Shiva having bucket full of holly water of River Ganga). He also observed that a 'trolla' loaded with maruti cars was set on fire. One 'kawaria' was also found lying dead on the spot. The 'kawarias', who were on rampage, put the bus on fire. Meanwhile, a police gypsy reached there and the 'kawarias' put the same on fire. 'Kawarias' pelted stones on the police and police officials got injured. On this statement, case was registered and matter was investigated. The appellants were arrested.

After completion of investigation proceedings, challan was presented in the Court for trial.

During the process of trial, learned trial Judge completed various proceedings of the trial including framing of charges against the accused/appellants, recording of evidence of prosecution witnesses and examination of the accused under Section 313 Cr.P.C. After considering the prosecution evidence and defence version on record, learned trial Judge held both the appellants guilty under Sections 186, 332, 353 and 436 IPC and sentenced them as under :

Under Section	Sentence	In Default
186 IPC	RI for two months each	RI for two months each
332 IPC	RI for two years each	
353 IPC	RI for one year each	
436 IPC	RI for seven years and fine of ₹ 2000/- each	

The appellants are in appeal against the said judgment of conviction and order of sentence.

Learned counsel representing the appellants contended that if the entire prosecution case is taken at its face value and on the basis of statement of complainant Inder Singh, who was examined by the trial Judge as PW2, even basic ingredients of Section 436 IPC are not met with in this case. The prosecution case is to the extent that one 'trolla' and a police gypsy were set on fire, though the appellants were not involved for commission of said offence. No dwelling unit was set on fire and in absence of that there is no ground for conviction under Section 436 IPC.

While arguing further, learned counsel for the appellants contended that the alleged occurrence had taken place on 20.7.1998, whereas the appellants

were arrested after lapse of more than one and a half years and that too, without any basis. It had come on record that there was no Test Identification Parade carried out to connect the appellants with the alleged crime. Even, the eye witnesses, who were examined as PW2-Inder Singh, PW3-Kirori Mal and PW4-Yudhvir Singh, stated that the appellants were not involved. That way appellants were not identified on the spot and the offences alleged under Sections 186, 332 and 353 IPC also not proved against the appellants. He prays that the present appeal be allowed and the appellants be acquitted.

Learned State counsel contended that undisputedly one bus of Haryana Roadways and one police gypsy were set on fire by the appellants. They had caused injuries to the police officials and to that extent, complainant PW2-Inder Singh and PW3-Kirori Mal, who were the driver and conductor respectively of Haryana Roadways bus, had made statements before the trial Judge. The defence version is just a plea of denial without any basis and the learned trial Judge has rightly held the appellants guilty and convicted and sentenced them accordingly.

Having considered the rival contentions of learned counsel for the parties and appraisal of record, this Court is of the considered view that both the appellants have been convicted and sentenced for the offence under Section 436 IPC as well. Section 436 IPC is reproduced as under :-

“436. Mischief by fire or explosive substance with intent to destroy house, etc. - 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 with imprisonment for life, or with imprisonment of either description

for a term which may extend to ten years, and shall also be liable to fine.”

The above provision of law makes it ample clear that for an offence falling under Section 436 IPC, the property set on fire must be 'dwelling unit' or 'place of worship'. If the prosecution case as it is, is taken as correct, as per the statements of PW2-Inder Singh and PW3-Kirori Mal, a bus of Haryana Roadways and police gypsy were set on fire. But by any stretch of imagination, these properties cannot be considered to be 'dwelling unit' or 'place of worship', so as to cover the act alleged against the appellants to be an offence under Section 436 IPC, for which they have been held guilty. Such a view was taken by a Co-ordinate Bench of this Court in **“Raj Singh v. State of Haryana, 2003 (2) RCR (Criminal) 697 P & H”** and identical view was taken by Rajasthan High Court in **“Harchand Ram and others v. State of Rajasthan, 2015(3) WLN 36 (Raj.)”**. Apart from that, there is no other material evidence available on record that offence under Section 436 IPC is proved before the trial Judge.

As regards to the remaining offences under Sections 186, 332 and 353 IPC are concerned, the prosecution witnesses PW2-Inder Singh, driver and PW3-Kirori Mal, conductor, who are on duty on the bus at the time of incident, have said in so many words that the offences of causing injuries and causing obstruction to public servants while discharging their duties, were committed by the appellants. As per PW3, Kirori Mal, both the appellants set the bus on fire in his presence, though he was not knowing their names. Similar is the statement of PW2 Inder Singh. It is not essential in any way that the complainant or eye witnesses must be knowing the names of the accused and its purpose, if witnesses deposed before the Court that they were the same persons, who had committed the offence in their presence.

As regards to the plea taken by learned counsel for the appellants that there was no Test Identification Parade so as to connect the appellants/ accused with the commission of alleged crime, the complainant and eye witnesses had initially deposed before the police, by way of a written complaint and statements under Section 161 Cr.P.C. that the offence was caused by the appellants and at that time, both the witnesses namely; Inder Singh and Kirori Mal had ample time to see and interact with the appellants at the place of occurrence and thereafter, they had identified the appellants at the trial stage. That means, there is no doubt so as to connect the appellants with the alleged crime.

Apart from that, the prosecution has placed reliance upon the statements of PW4 Yudhvair Singh, PW5 Ram Kumar Saini, PW6 HC Sat Narain, PW7 SI Ramesh Kumar, PW9 HC Raj Roop, PW10 DSP Ramphal, PW11 Dr. R.K. Sachdeva, PW12 Dr. R.N. Yadav and PW14 Dharampal, Duty clerk, Haryana Roadways, who fully supported and corroborated the prosecution case and the learned trial Judge has rightly placed reliance upon the testimony of all those witnesses.

To the contrary, the story as put forwarded in the statement of the appellants/ accused is a mere plea of denial, which has been rightly discarded by the Court below.

This Court is of the considered view that the offences alleged against the appellants under Sections 186, 332 and 353 IPC stands duly proved and the learned trial Judge has rightly held the accused/appellants guilty and convicted and sentenced as above.

Learned counsel representing the appellants further contended that

the substantive sentence awarded under Section 332 IPC is two years, whereas sentence awarded under Section 186 IPC is two months and under Section 353 IPC is one year. The appellants have already undergone an actual sentence of about one year and five months and they may be ordered to undergo sentence for the period for which they have already remained in custody, in this case.

As the offence under Section 436 IPC has not been proved against the appellants and the maximum sentence awarded to them under Section 332 IPC is two years, out of which both the appellants have already undergone an actual sentence of about one year and five months, it will meet the ends of justice, if the sentence awarded to the appellants is reduced to the period, already undergone by them while in custody.

Ordered accordingly.

The appeal stands accepted partly in the above terms.

(SHEKHER DHAWAN)
JUDGE

18.1.2017
Ashwani

Speaking/Reasoned	Yes/No
Reportable	Yes/No