

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

CRA-S-1058-SB-2004

Date of Decision : 12.05.2017

Gurdev Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HONBLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. D.S. Virk, Advocate
for the appellant.

Mr. Jasjeet S. Dhaliwal, DAG, Punjab.

SUDIP AHLUWALIA J.

1. This appeal is directed against the judgment dated 17.04.2004 passed by the Ld. Additional Sessions Judge, Ludhiana in Sessions Case No.49 of 20.09.2002. The appellant was tried for the offences under Sections 307/120-B/34/454 of the IPC alongwith another accused, namely, Paramjit Kaur. Charges against the two accused were that in the night of 01.06.2002 at about 10 p.m., in pursuance of their internal connivance and conspiracy, the appellant had trespassed into the complainant's house from the rooftop of Paramjit Kaur's house located nearby. He thereafter strangled the complainant Smt. Sheela Devi with a dupatta around her neck and set her on fire with the intention to kill her. The background behind the incident as explained by the complainant in her deposition as PW-1 was that co-accused Paramjit Kaur was her neighbour. Her house is located next to that of the complainant. She had some tenants in her house

months prior to the incident. Nevertheless, he maintained illicit relations with the co-accused Paramjit Kaur. The complainant claimed that she had seen both of them in compromising position, after which they started to threaten and harass her, which thus culminated into the alleged occurrence in the night of 01.06.2002 for which both the accused persons were charged and tried.

2. It may be mentioned at this juncture that the Ld. Trial Court had acquitted co-accused Paramjit Kaur of all the charges and had also come to the conclusion that the theory of her having illicit relations with the appellant was also not established from the evidence on record. The relevant observations of the Ld. Trial Court in this regard are set down below:-

“I am of the opinion that the prosecution has failed to bring on record any evidence against Paramjit Kaur accused for having fetched any conspiracy against the complainant Sheela Devi or has any common intention to commit the lurking house trespass and to cause injuries on the person of Sheela Devi complainant. Complainant Sheela Devi and her daughter Jyoti have only stepped into the witnesses box. No other independent person of the locality has come to support the contention of complainant Sheela Devi including Raj Kumari and Pawan Kumar as they came at the spot and they are sister-in-law and brother. It is settled principle of law that in the absence of independent corroboration, the testimony of the witnesses have to be scrutinized very carefully. Sheela Devi complainant in her cross examination deposed that in her statement Ex.PA, she had stated that after she had observed the accused in compromising position, they started harassing her. Ex.PA was read over to the witness but it was not so

recorded there. She further deposed that she cannot tell the exact date or month when she has seen both the accused in compromising position. Her children told her that she had been called by Paramjit Kaur and she went to Chobara. The doors were closed but not bolted. She stood there for a while and then came back. Gurdev Singh had come and threatened her for that reason. She had not reported to the police or any other person. PW Jyoti herself has not seen any illicit relations between the accused Gurdev Singh and Paramjit Kaur and her mother had observed them having such relations. In her cross examination she deposed that the accused had not given any threat to her mother in her presence. Her mother had talked with her regarding the incident but she had not talked with her father.

Thus, from the above discussion, it is clear that the complainant and her daughter have failed to prove that Paramjit Kaur accused had any illicit relations nor they have seen it. Therefore, the possibility of any conspiracy or common intention shared by the accused is ruled out. There is no material from which it could be established that there is conspiracy and act done in pursuance of the said conspiracy. In case Vijayan alias Rajan Vs. State of Kerala (supra) the Hon'ble Supreme Court has held so."

3. Furthermore, the Ld. Trial Court also found that there was no credible evidence on record to prove the charge under Section 307 of the IPC on account of which the present appellant was acquitted in respect of that particular offence. He was, however, found guilty of lesser offence punishable under Section 323 of the IPC, of having cause simple hurt to the complainant. In addition, the charge under Section 454 of the IPC, i.e., of the offence of lurking house trespass at night was also proved. He was, therefore, convicted of these two offences. The punishment awarded to him

for the offence under Section 454 IPC was RI for 2 years alongwith fine of ₹1,000/-, while that in respect of the offence under Section 323 was RI for 6 months.

4. Ld. counsel for the appellant has submitted before this Court that although the conviction itself may not be tenable considering that the co-accused, who allegedly was in a criminal conspiracy with the appellant has been altogether acquitted by the Ld. Trial Court, yet at this belated stage, instead of seeking to challenge the factual decision, he prefers that while sustaining the conviction, the sentence awarded to the appellant may be reduced to that already undergone.

5. In support of the above contention, two earlier decisions of this Court have been cited on behalf of the appellant. In **Vijay Pal Singh and others vs. State of Haryana 2004(3) RCR (Criminal) 600**, a Coordinate Bench of this Court had while sustaining the conviction of the appellants for the offences under Section 148, 323/149 and 453 of the IPC, for which they had been awarded punishments of RI for 2 years, 1 year with fine of ₹1,000/- and 3 years with fine of ₹1,000/- each respectively, directed that the sentence against them be reduced to that already undergone by the appellants, i.e. for a period of one month only. On the other hand, the sentence of fine was maintained and further enhanced to ₹14,000/- over and above the fine already imposed by the Court, to be paid equally by all the appellants.

6. In coming to its above decision, the concurrent bench of this Court had placed its reliance on the previous case law in **Tarak Nath Singh and another v. State of West Bengal, 1998(1) Supreme Court Cases (Criminal) 587, State of Punjab v. Gurmail Singh, 2002(2) RCR**

(Criminal) 600 (P&H), Chhota Singh v. State of Punjab, 1998(1) RCR (Criminal) 467 (P&H) & Mohammad alias Biliya v. State of Rajasthan, (2000) 10 Supreme Courts Cases 486. It may be mentioned that in all these cases, while sustaining the conviction of the appellants, they were either ordered to be released on probation or their sentences reduced to the period already undergone, basically in view of the fact that in each case, the occurrence had taken place long ago and the convicts had to undergo the travails of long trials and pendency of appeals for similarly long durations.

7. In State of Punjab vs. Harinder Singh @ Raju 2008 (2) RCR (Criminal) 294, a Division Bench of this Court had similarly in sustaining conviction of the accused under Section 324 of the IPC for which punishment by way of RI for a period of 2 years alongwith fine of ₹3,000/- had been awarded, had instead extended the benefit of Section 4 of the Probation of Offenders Act, while at the same time directing them to pay compensation of ₹25,000/- each to the victim.

8. The facts and circumstances of the present case also appear to be well covered by the aforesaid two judgments, particularly, in “**Vijay Pal Singh & ors.**” (supra). In that case, the convict(s) was similarly found guilty of the offence of house trespass having made preparation for causing hurt, assault etc. punishable under Sections 452 and 323 of the IPC, apart from an additional offence of rioting armed with deadly weapon punishable under Section 148 of the IPC. The sentence awarded in that case is virtually identical with that of the present complainant. However, the period of detention undergone by the appellant in the present case, according to the affidavit of custody filed on behalf of the State, is marginally more than that undergone by the convict(s) in “**Vijay Pal Singh & ors.**” (supra).

Likewise, the occurrence in the present case is also 15 years old. For this reason, this Court is inclined to follow the ratio laid down in the aforesaid cited cases.

9. The appeal is, therefore, disposed of with a direction that while sustaining conviction of the appellant, his sentence so far as it relates to imprisonment, is reduced to that already undergone, but the fine is further enhanced by an amount of ₹10,000/- over and above the fine already imposed by the Trial Court. He is directed to deposit the same in the Trial Court within two months from the date of receipt of copy of this order, failing which, his appeal shall be deemed to have been dismissed. On deposit so being made, the Trial Court is directed to issue notice to the injured, namely, Sheela Devi/her legal representatives and disburse that amount to them thereafter.

(SUDIP AHLUWALIA)
JUDGE

12.05.2017

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