

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

**Criminal Appeal S-942-SB of 2004
Date of Decision: October 26, 2017**

Jai Bhagwan	Versus	Appellant
State of Haryana		 Respondent

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

Present : Mr. H.S. Jaswal, Advocate
for the appellant.

Mr. Praveen Bhadu, Asstt. A.G., Haryana

T.P.S.MANN, J. (Oral)

The appellant, namely, Jai Bhagwan son of Babu Ram was tried for committing the offence punishable under Section 436 IPC. Vide judgment and order dated 7/8.4.2004, learned Sessions Judge, Kurukshetra, while holding that the case fell under Section 435 IPC and not under Section 436 IPC, convicted him under Section 435 IPC and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for four months.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which was admitted on 3.5.2004. Subsequently, vide order dated 5.7.2004, this Court suspended his sentence of imprisonment and ordered his release on bail during the pendency of the appeal.

According to the prosecution, the complainant, namely, Sunita and her husband Randhir Singh used to reside as tenant in the house of Devinder Singh Dhillon in Gobind Dham Colony, Chanarthal Road, Kurukshetra. Her husband used to ply a mule cart. The appellant also resided in the same house as a tenant. He was a drunkard and used to take liquor every day. He would also abuse the complainant and her husband. On 19.4.2003, he scuffled with the complainant and also abused her. On 20.4.2003 at about 10.30 p.m., the complainant went to the house of her mother-in-law in village Kheri Brahmanan to stay there for night as she feared the appellant whereas her husband took his cart to the Mandi. The appellant took liquor alongwith 3/4 persons at that time and abused the complainant. On 21.4.2003 at about 7.00 a.m., she returned home and found that the lock of her house had been broken and clothes, cots, beddings etc. were on fire. She raised an alarm, which attracted Sat Pal Mittal and complainant's husband to the spot. The fire was extinguished by

pouring water. Sat Pal Mittal and the complainant's husband asked the appellant as to why he had set her house on fire. He admitted having set the house on fire and dared them to do whatever they liked. After he fled away from the spot, the complainant found missing a sum of Rs.7,000/-, ear-rings of gold, paijeb and chain of silver. During the investigation of the case, various burnt articles were taken into possession. The ornaments were also found lying in the house.

After hearing learned counsel for the parties and on going through the evidence, learned trial Court believed the prosecution case and, accordingly, convicted and sentenced the appellant, as mentioned above.

Learned counsel for the appellant has not challenged the impugned judgment of conviction passed by the learned trial Court. However, he has submitted that the appellant is facing the agony of criminal prosecution for the last more than fourteen years. He is not a previous convict. When he was heard by the learned trial Court on the quantum of sentence, he had stated that he had three small children and was sole bread winner of the family. It is also submitted that out of the sentence of three years imposed upon him, he has already undergone a period of more than six months. Prayer has, accordingly, been made for taking a

lenient view in the matter of sentence of his imprisonment.

Learned State counsel has vehemently opposed the prayer by submitting that it was the appellant, who had set the house of the complainant on fire as a result of which, her belongings were destroyed. Learned State counsel has, however, produced the custody certificate, as per which, the appellant has undergone an actual sentence of six months and four days. He is not shown to be either involved or convicted in any other case.

Taking into consideration the totality of the circumstances, this Court is of the view that the appellant, who is on bail for the last about thirteen years need not be sent behind the bars, once again, for undergoing his remaining sentence of imprisonment. Ends of justice shall be suitably met, if his substantive sentence of imprisonment is reduced to the one already undergone by him.

Resultantly, the conviction of the appellant under Section 435 IPC is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him. The fine of Rs.2,000/- is, however, enhanced to Rs.7.500/-. The entire amount of fine shall be deposited by the appellant in the Court of learned Chief Judicial Magistrate, Kurukshetra, within a period of three months from today, failing which, he shall be

required to undergo rigorous imprisonment for six months. The entire amount of fine when deposited by or recovered from him be disbursed in favour of complainant Sunita as compensation.

The appeal is, accordingly, disposed of.

October 26, 2017

amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No