

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-278-SB-2000
Decided on: 03.12.2018

Sagar
State of Punjab

Versus

.... Appellant
..... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. S.S. Siao, Advocate
for the appellant.

Mr. Pankaj Gupta, Addl. A.G., Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

The instant criminal appeal has been filed by the accused-appellant against the judgment and order of sentence dated 21.12.1999 passed by the learned Additional Sessions Judge, Rupnagar for offences under Sections 323, 436 and 452 of Indian Penal Code (in short 'IPC') in case FIR No.37 dated 18.06.1998, registered as Police Station Nangal. The details of which are as follows:-

U/s 323 IPC :	To undergo rigorous imprisonment for a period of one year and to pay a fine of ₹500/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of one month.
U/s 436 IPC :	To undergo rigorous imprisonment for a period of five years and to pay a fine of ₹3000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of six months.
U/s 452 IPC :	To undergo rigorous imprisonment for a period of three years and to pay a fine of ₹3000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of three months.

All the sentences were ordered to run concurrently.

2. The facts leading to the filing of the instant appeal are that on 16.06.1998, when PW-1 Tirath Ram, after closing his Dhaba was going to

purchase bidis from a khokha at about 11.45 p.m., he saw accused-appellant Sagar, going towards the house of PW-2 Surjito. The accused-appellant allegedly was carrying a lighted torch in his hand and was under the influence of liquor. He was setting ablaze the house of PW-2 Surjito. The complainant PW-1 Tirath Ram restrained the accused-appellant from doing so, which led to the accused-appellant abusing the complainant. He also tried to assault PW-1 Tirath Ram. The complainant Tirath Ram, in order to save himself from the accused-appellant, ran towards his house, which was in the same vicinity. The accused-appellant chased the complainant PW-1 Tirath Ram by pushing open the door of his house. The accused-appellant then picked up a brick and inflicted an injury on the head of the complainant, as a result of which his head started bleeding. On hearing the commotion, the mother of the complainant PW-1 Tirath Ram, who was sleeping in the house rushed to his rescue. The accused-appellant then allegedly slapped and assaulted the mother of the complainant as well. PW-5 Rajiv son of the complainant-Tirath Ram too was attracted to the spot. On seeing the son of the complainant, the accused-appellant fled from the spot. The complainant and his mother were soon thereafter taken to BBMB Hospital, Nangal by PW-5 Rajiv.

3. The statement of complainant PW-1 Tirath Ram was recorded on 18.06.1998 by PW-6 ASI Abdul Rashid, leading to the registration of above said FIR.

4. After completion of investigation, challan was presented against accused-appellant and the chargesheet was filed. The accused-appellant was chargesheeted under Sections 323, 436 and 453 of IPC. The accused-appellant pleaded not guilty and claim to be tried.

5. The prosecution in order to prove its case, examined as many as six witnesses. After the close of prosecution evidence, the incriminating evidence

was put to the accused-appellant under Section 313 Cr.P.C., wherein he pleaded that he had been falsely implicated as the witnesses were inimical towards him. The accused-appellant, however, did not lead any evidence in his defence.

6. Learned State counsel has placed on record the custody certificate of the appellant, dated 26.11.2018 which reveals that the appellant has since served out his sentence of imprisonment in terms of the impugned judgment and order of sentence. As per the custody certificate, the appellant was released from jail on 25.06.2002.

7. I have heard learned counsel for the appellant as well as learned State counsel.

8. I have given my anxious consideration to the facts of the case and perused the evidence on record.

9. Firstly, the learned counsel for the appellant has drawn my attention to the abnormal delay of two days in lodging of the FIR.

10. A perusal of the deposition of PW-3 Dr. Baldev Kumar reveals that the complainant Tirath Ram was admitted in the hospital on the night of 16.06.1998 at about 11.45 p.m., i.e. soon after the occurrence. The doctor vide Ex. PG/1 had declared the complainant unfit to make a statement and it was only on the 18.06.1998 vide Ex.PF/2 that the attending doctor declared the complainant fit to make a statement. It was thereafter that his statement was recorded leading to the registration of a formal FIR. Hence, in these circumstances, the delay of two days is inconsequential.

11. Learned counsel for the appellant has relied upon the judgment passed in "*Kesha Ram vs. State of Haryana 2005(3) RCR Criminal 971*", but in the instant case, delay of two days does not create any dent in the prosecution case and is well explained as already discussed above. Moreover, it would be

relevant to mention that the complainant Tirath Ram supported the case of the prosecution on all material aspects of the case, when he stepped into the witness box as PW-1.

12. Learned counsel for the appellant has also relied upon judgment passed in *“Purshottam and another vs. State of M.P. 1980 AIR (SC) 1873”*, but the same is not applicable to the facts and circumstances of the present case since testimony of the complainant is well corroborated by the medical evidence as well.

13. Learned counsel for the appellant has further urged that since PW-2 Surjito did not lodge any complaint with the police and hence charge under Section 436 IPC could not have been proved against the appellant. This submission too is devoid of any merit. Firstly, PW-2 Surjito was not the author of the FIR, but in fact it was PW-1 Tirath Ram, who had lodged the complaint and secondly and most importantly PW-2 Surjito supported the case of the prosecution. In fact, no material infirmity could be pointed out in her deposition, which can by any stretch of imagination be said to be fatal to the case of the prosecution.

14. Learned counsel for the appellant has pointed to the casual and improper investigation, which was carried out by the Investigating Agency by not promptly recording the statement of PW-2 Surjito. I do agree with the learned counsel for the appellant that the Investigating Agency should have been more responsible while carrying out the investigation, but this casual approach of the Investigating Agency cannot be said to adversely effect the case of the prosecution in the wake of the consistent testimony of PW-1 Tirath Ram, who received injuries at the hands of the appellant.

15. Learned counsel for the appellant has tried to highlight a major contradiction appearing in the deposition of the complainant PW-1 Tirath Ram and PW-2 Surjito in as much as he has drawn my attention to the testimony of PW-1 Tirath Ram that, at the time of occurrence, the accused-appellant was accompanied by two others in the street when the house of Surjito was being set ablaze by him. PW-2 Surjito, on the other hand, has deposed that it was the accused alone, who entered and set her house ablaze. This discrepancy is of no consequence as a perusal of the testimony of complainant PW-1 Tirath Ram reveals that he has deposed about what he witnessed in the street. On the other hand, PW-2 Surjito has deposed about what happened inside her house since she was inside the house and not outside. In any case, this discrepancy by itself cannot be a ground to hold the prosecution case false. The recovery of half burnt articles from the house of PW-2 Surjito which were recovered vide Ex.PB further goes to nail the appellant in the commission of crime and corroborates the prosecution story.

16. In the circumstances as discussed above, I do not find any infirmity in the approach of the learned trial Court in recording a finding of conviction.

17. Accordingly, the present appeal is dismissed and the impugned judgment and order of sentence passed by the trial Court is maintained.

03.12.2018

Dinesh

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No