

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

- (i) CRA-S-1418-SB-2004
Date of Decision: 05.09.2018
- Harbhajan Singh and anotherAppellants
- Versus
- State of PunjabRespondent
-
- (ii) CRA-S-1451-SB-2004
- Ankit KukrejaAppellant
- Versus
- State of PunjabRespondent

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

Present: Mr. K.B. Raheja, Advocate, for the appellants,
in CRA-S-1418-SB-2004.

Mr. Kulvir Narwal, Advocate, for the appellant,
in CRA-S-1451-SB-2004.

Mr. Sarabjit Singh Cheema, Asstt. A.G., Punjab.

Mr. J.S. Dhaliwal, Advocate, for
Mr. Harpreet Singh Brar, Advocate,
for the complainant.

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

The appellants, namely, Harbhajan Singh and Neetu, have filed CRA-S-1418-SB-2004, whereas Ankit Kukreja appellant has filed CRA-S-1451-SB-2004 for challenging the judgment and order dated 9.7.2004 passed by learned Additional Sessions Judge, Fast Track Court, Ferozepur, whereby they were convicted and sentenced as follows:-

- i) RI for a period of three years and to pay a fine of
Rs.3,000/- each under Section 307 IPC and in

default of payment of fine, to further undergo RI for six months;

- ii) RI for a period of six months each under Section 323 IPC;
- iii) RI for a period of six months each under Section 323/34 IPC.

In addition to the above, Harbhajan Singh appellant, was convicted under Section 506 IPC and sentenced to undergo RI for a period of 1-1/2 years and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo RI for three months. Out of the amount of fine, if deposited by the accused, a sum of Rs.2,000/- or the fine deposited by each of the three accused, was ordered to go to PW-Suman as compensation.

According to the prosecution, complainant Suman, daughter of Prem Parkash, resident of Ferozepur City, was married to Harbhajan Singh accused on 20.02.1999. After marriage, both of them started living as husband and wife in Gali No.4, Krishna Nagri, Moga. The complainant gave birth to a male child, namely, Sahil, from the loins of Harbhajan Singh accused. They lived in a joint family, which included, mother, father, brother and sister-in-law of Harbhajan Singh. Neetu was the younger sister of the complainant. She was married to Ankit accused. Both Neetu and Ankit started residing in a rented house at Moga. Harbhajan Singh developed illicit relations with his sister-in-law, Neetu. The complainant had been refraining Harbhajan Singh from carrying on with Neetu. Harbhajan Singh used to remain in the

house of Neetu and whenever, the complainant refrained him from carrying on illicit relations with Neetu, she would be beaten by him.

It is also the case of the prosecution that on 31.01.2003 at about 7 a.m., the complainant was all alone in her matrimonial home at Moga. Harbhajan Singh, Neetu and Ankit accused gave a knock at the door from outside. When the complainant opened the door, all three of them entered the house. Harbhajan Singh started giving fist blows to her. Ankit gave kick blows on her back. Neetu accused picked up a brick and gave injuries on the arm of the complainant. Harbhajan Singh accused went inside the kitchen and brought a can containing kerosene. Ankit and Neetu accused caught hold of the complainant from her arms and legs. Harbhajan Singh accused sprinkled kerosene upon the complainant. He lit a matchstick in order to set the complainant on fire. The complainant was successful in getting herself released from the clutches of the accused and extinguished the matchstick. After the incident, the complainant came out in the street, where her minor son was weeping. She took him alongwith her and went to Moga bus stand, from where, she boarded a bus and reached Ferozepur Cantt. After alighting from the bus, she called her father on telephone and disclosed the entire occurrence to him. Her father Prem Parkash got her admitted in Civil Hospital Ferozepur.

It is also the case of the prosecution that on 30.01.2003 at about 8.00 a.m., Harbhajan Singh accused had come to the in-laws' house of the complainant after spending the night in the house of Neetu and Ankit. When the complainant

enquired from him as to why he did not come to the house during the night, Harbhajan Singh, accused gave her injuries in the morning of 30.01.2003 and at time, she was rescued by her Jeth and Jethani.

Upon completion of the investigation and presentation of challan, the case was committed to the Court of Session, where all the accused were charged for committing the offences under Sections 307/323/498-A/34/506 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1- Dr. Mahesh Chander Markan, who had medico-legally examined the complainant on 31.01.2003 at about 5.30 p.m. and found her to be conscious and cooperative but not well oriented in time and place. She was smelling of kerosene from her person and clothes. Following injuries were noticed on her person:-

- “1. Diffused reddish black swelling around the left eye and patient complained of reduced vision from the left eye. Opinion of eye surgeon was advised.
2. Reddish contusion of 10 x 3 cm in size in the lower part of back of left chest and difficulty in breathing. X-ray was advised.
3. Reddish contusion 14 x 2.5 cm on the back of right side of chest and difficulty in breathing. X-ray was advised.

4. Abrasion 1.5 x 1 cm with scab formation on the back of right elbow.
5. Contusion 2 x 1.5 cm in size on the inner left side of mouth and bleeding from the teeth. Advised opinion of dental surgeon.
6. Diffused swelling of 3 x 2 cm in size on the nose. X-ray was advised.
7. Patient complained of pain in the head. X-ray was advised.”

PW2-Suman and her father PW3-Prem Parkash deposed about the manner, in which the occurrence had taken place. Investigation part of the case was brought on record by the prosecution by examining PW4 ASI Balkar Singh, PW5-SI Gurcharan Singh and PW6-Harjit Singh Pannu, Superintendent of Police (D) Moga.

When examined under Section 313 Cr.P.C., the accused denied the incriminating circumstances appearing against them and alleged their false implication. In support of their plea, they examined DW1-Ashok Kumar.

After hearing learned counsel for the parties and on going through the record, learned trial Court acquitted Harbhajan Singh accused under Section 498-A IPC. However, all the three accused were convicted and sentenced, as mentioned above.

During the pendency of the appeal, in order to restore peace in the family, complainant-Suman has amicably settled the matter with the accused, who are her close relatives. In support of

her stand, she has executed an affidavit dated 19.03.2018. Under the settlement, Harbhajan Singh accused has agreed to pay a sum of Rs.8.50 lacs to the complainant, as full and final settlement of her claims as well as that of her minor son. Out of the said amount, the complainant has already received a sum of Rs.5 lacs. The remaining amount of Rs.3.50 lacs has been paid today by Harbhajan Singh to complainant Suman, by way of Bank Draft No.036285 dated 01.09.2018 payable at HDFC Bank Ltd. Complainant Suman is present in the Court and has got recorded her statement confirming the factum of compromise. She has also stated that she has no objection if the accused are given any benefit on account of the settlement arrived at between the parties.

Offence under Section 307 IPC for which the three convicts stand convicted and sentenced, is non-compoundable. However, the factum of compromise can be taken into consideration as a mitigating circumstance while considering the quantum of sentence.

As per the custody certificates already produced on record by the learned State counsel, Harbhajan Singh accused has undergone an actual sentence of one month and twenty two days, Neetu accused has undergone two months and twenty five days whereas Ankit Kukreja accused has undergone twenty one days. None of them is shown to be either involved or convicted in any other case. They have been facing the agony of criminal prosecution for the last more than 15 years. There is no allegation

that after being granted the concession of suspension of their sentences of imprisonment by this Court, they have misused the same, in any manner.

Taking into consideration the totality of the circumstances this Court finds that no useful purpose will be served by sending the three convicts behind the bars for undergoing their remaining sentences of imprisonment. Ends of justice shall be suitably met if their substantive sentence of imprisonment is reduced to the one already undergone by them.

Resultantly, the conviction of Harbhajan Singh, Neetu and Ankit Kukreja, as recorded by the trial Court, is upheld. The substantive sentence of imprisonment of all the three convicts is reduced to the one already undergone by them. The sentence of fine alongwith its default clauses is maintained.

CRA-S-1418-SB-2004 filed by the appellants, namely, Harbhajan Singh and Neetu and CRA-S-1451-SB-2004 filed by appellant Ankit Kukreja, are accordingly, disposed of.

(T.P.S. MANN)
JUDGE

05.09.2018
ds

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No