

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Appeal No. S-1705-SB of 2004
Date of Decision: May 31, 2019

Hardip Singh
.....Appellant

versus

State of Punjab
.....Respondent

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Roopak Bansal, Advocate
for the appellant

Mr. H.S. Sullar, DAG Punjab

Sudhir Mittal, J.

The appellant Hardip Singh son of Bachan Singh has been convicted and sentenced as under:-

U/s 452 IPC	Rigorous imprisonment for two years and to pay fine of Rs. 500/- or in default of making payment of fine, he shall further undergo RI for one month
U/s 323 IPC	Rigorous imprisonment for six months
U/s 506 IPC	Rigorous imprisonment for one year

All the sentences were ordered to run concurrently.

2. The case of the prosecution was that Karnail Singh, husband of the complainant Harjinder Kaur was serving in the Army. He had five brothers and their father Bachan Singh had effected an oral partition of his property amongst them resulting in a house measuring 50 sq. yards situated in Aman Nagar, Ludhiana, falling to the share of Karnail Singh. The family used to spend their summer vacations in this house. On 12.06.2003, the complainant and her family members had come to stay in this house and on 13.06.2003 Karnail Singh had gone

to the market to buy vegetables. Appellant-Hardip Singh (brother of Karnail Singh) came inside the house, at about 12 noon, armed with a Danda and gave a blow on the head of the complainant. He also kicked her in her stomach and dragged her by the hair. An alarm was raised by her which attracted Swaran Kaur to the spot. Said Swaran Kaur and children of the complainant rescued her and appellant Hardip Singh escaped. A written complaint Ex. PA was submitted at about 1.00 p.m. resulting in registration of FIR No. 180 dated 14.06.2003 at Police Station Division No. 7, Ludhiana under Sections 308, 354, 452, 506 IPC. The complainant was medico legally examined at 4.05. p.m. on 13.06.2003 and her MLR is Ex. PB. The appellant was arrested on 18.06.2003 and he got the weapon of attack namely Danda recovered on 20.06.2003 on the basis of his disclosure statement Ex. PF.

3. The defence taken by the appellant is that he has been falsely implicated to pressurize their father Bachan Singh to transfer the house situated in Aman Nagar, Ludhiana in favour of Karnail Singh – husband of the complainant. An oral partition had been effected many years back and Karnail Singh had taken his share in cash as he did not want to reside in Ludhiana. Thereafter, Bachan Singh disinherited him. The house in dispute had been rented out to one Renu Bala prior to the occurrence and Karnail Singh was pressurizing Bachan Singh to sell the same to her. Infact, a day before the incident i.e. on 12.06.2003, Karnail Singh had taken Bachan Singh to Patwarkhana for getting sale deed registered in the name of Renu Bala but he had refused and this led to an altercation. Karnail Singh had been demanding Rs. 1 lac to settle the matter.

4. As has been stated earlier, the appellant has been convicted under Sections 452, 323 and 506 IPC and sentenced thereunder.

5. Learned counsel for the appellant submits that from the evidence on record, it has been established that the house in dispute was not in possession of

the complainant Harjinder Kaur and her family members. It had been rented out to Renu Bala by the father namely Bachan Singh in October 2002. Thus, it has been established that the place of the incident was not in possession of the complainant and her family members and, thus, conviction under Section 452 IPC is illegal. Moreover, PW-4 Dr. Daljit Singh has stated that injury No. 1 could be self suffered and that injury No. 2 is of uncertain duration. Thus, the offence under Section 323 IPC is also not made out. The complainant appearing as PW-1 has admitted in her cross-examination that the house allegedly in her possession had been rented out by Bachan Singh and that a day prior to the incident, her husband Karnail Singh had taken Bachan Singh to Patwarkhana to get the sale deed registered in the name of the tenant. Thus, the defence version is more probable and should have been given primacy by holding that the prosecution had not been able to prove its case beyond reasonable doubt. The appellant, thus, deserves to be acquitted.

6. Learned State counsel supports the impugned judgment. He states that the trial Court has passed a well reasoned judgment and it does not call for any interference.

7. In the prosecution evidence, the complainant, her daughter and her sister-in-law have been examined in support of the case of the prosecution. PW-4 Dr. Daljit Singh has proved the MLR and has opined that injury No. 1 is simple in nature and could be self suffered. Injury No. 2 has not been confirmed as the same has been mentioned to be of uncertain duration. PW-6 ASI Sham Lal, the Investigating Officer has admitted that Bachan Singh had approached the High Court by way of petition of Habeas Corpus on account of appellant Hardip Singh having gone missing. A suggestion has been put to him in cross-examination that the Warrant Officer appointed by the High Court had made a statement that entry regarding the arrest of appellant Hardip Singh was made in his presence. This

shows that the Investigating Officer was biased towards the complainant. On the other side Bachan Singh appeared as DW-1 and has deposed in accordance with the case of the defence. The tenant Renu Bala has appeared as DW-2 and has stated that the house in dispute had been rented out to her by Bachan Singh in October 2002 and on 12.06.2003 Karnail Singh had taken Bachan Singh alongwith him to Patwarkhana to execute a sale deed. In her cross-examination, PW-1 Harjinder Kaur (complainant) has admitted that her husband Karnail Singh had agreed to sell the house to tenant residing therein and that on 12.06.2003 he had taken Bachan Singh to Patwarkhana to get a sale deed executed.

8. The point at issue, thus, is whether the appellant trespassed into the house of the complainant on 13.06.2003 and assaulted her? The complainant appearing as PW-1, her daughter appearing as PW-2 and her sister-in-law appearing as PW-3 have deposed that the incident as stated in the complaint Ex. PA and recorded in the FIR took place. The defence has claimed false implication and Bachan Singh – father has appeared as DW-1 and the tenant Renu Bala had appeared as DW-2 to assert that the defence version is correct. Thus, it is the word of one party against that of the other and there is no corroborative evidence either way. However, the complainant has admitted in her cross-examination that the house had been rented out and that her husband had taken Bachan Singh to the Patwarkhana on 12.06.2003 to get a sale deed registered in respect thereof. There is, thus, an admission of the complainant that the property in dispute had been rented out and that her husband was pressurizing her father-in-law to sell the same to the tenant. The defence version is thus rendered more probable and the natural corollary if this is that the prosecution has failed to prove its case beyond reasonable doubt, entitling the appellant to acquittal.

9. The appeal is, accordingly, allowed; the impugned judgment of

conviction and order of sentence is set aside and appellant-Hardip Singh son of Bachan Singh, is acquitted of the charges, framed against him.

10. Copy of this judgment be sent to the Court/Successor Court of the trial Court concerned for compliance.

May 31, 2019

reena

[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No