

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2217-SB-2003
Date of Decision : 11.04.2019

ParveenAppellant

VERSUS

State of Haryana..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. Sanjiv Kumar Aggarwal, Advocate
for the appellant.

Mr. Ayuwan Singh, AAG, Haryana.

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MANJARI NEHRU KAUL, J.

1. The instant appeal has been preferred against the impugned judgment of conviction dated 07.11.2003 and order of sentence dated 12.11.2003 passed by the Sessions Judge, Sonipat vide which the accused/appellant was convicted under Sections 429 and 435 IPC and sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>
429 IPC	Rigorous imprisonment for two years.
435 IPC	Rigorous imprisonment for three years and fine ₹ 3000/-, in default of payment of fine, to further undergo rigorous imprisonment for one year.

Both the sentences were ordered to run concurrently.

2. The prosecution case in brief is that on 11.02.2001 at about 9:40 P.M. complainant Zile Singh (PW4) made a statement Ex.PB to the effect that the appellant/ accused Parveen had been causing harassment to the complainant party as he wanted to construct a passage after breaking a wall towards their side of the house. A compromise had been effected between the parties repeatedly with the

intervention of the village respectables. As per the complainant, on the intervening

night of 9th and 10th February 2001 at about 2:00 A.M. when the complainant was fast asleep in his house he was awakened by the shouts of PW5 Kaptan son of Ramdhari and PW6 Rajinder son of Mahender asking the complainant to wake up as the appellant had set his cattle shed on fire where his cattle including a male calf had been tethered. The complainant rushed to the spot and unfastened the cattle but due to the intense blaze, one calf was burnt alive. The complainant immediately reported the matter to the Panchayat wherein the accused was summoned and asked to tender an apology. The appellant refused to beg pardon and rather threatened that he would continue causing more harm till the passage was allowed to him. As the talks of the compromise between the parties failed, the complainant made a statement Ex.PB leading to the lodging of FIR No.31 dated 11.02.2001 under Sections 429, 427, 436 IPC(Ex.PB/1) at Police Station Sadar, Sonipat.

3. The investigation thereafter was set in motion, accused was arrested and finally he was charged under Sections 429, 436 IPC to which he pleaded not guilty and claimed trial.

4. In support of their case, the prosecution examined as many as 09 witnesses and tendered all the relevant documentary evidence.

5. The accused when examined under Section 313 Cr.P.C. denied the charges against him and stated that a Panchayat was convened on 11.02.2001 at about 4/5:00 P.M. in village Fazilpur. Complainant before the Panchayat had submitted that he had only suspicion that the accused had put his hut on fire and committed a mischief by killing a calf but when he told him that he was not guilty of any offence, the complainant asked the Panchayat to get a written apology of the appellant. Since, he refused to do so on the ground as he was innocent, he was implicated in this case.

In defence, the accused/appellants examined 07 witnesses.

7. The learned counsel for the appellant has vehemently urged that the learned trial Court failed to appreciate that the FIR in the instant case was highly belated and the same was used by the complainant party to falsely implicate the appellant in view of the past history of strained relations between them. He further submitted that the purpose behind the convening of the Panchayat subsequent to the alleged occurrence was itself in doubt as the complainant had only raised a suspicion qua the involvement of the appellant in the occurrence in hand. Still further, it was contended that the presence of the two PWs Kaptan (PW5) and Rajinder (PW6) at that late hour in the night was most unnatural and doubtful for which the benefit should go to the appellant. Lastly, he submitted that in case the Court was not inclined to find merit in his submissions, a lenient view be taken and he be extended the benefit of probation.

8. The learned State counsel on the contrary argued that the prosecution had been able to prove its case beyond shadow of reasonable doubt as all the ingredients constituting the offences under Sections 429/435 IPC stood duly proved.

9. I have given my anxious consideration to the submissions made by both the parties.

10. I do not find any perversity or infirmity in the findings of the learned trial Judge in the impugned judgment. The complainant as well as PW5 Kaptan and PW6 Rajinder have corroborated each other on every material fact of the case. The argument of the learned counsel for the appellant qua the delay in lodging of the FIR is totally bereft of any merit. It is not even disputed by the appellant himself in his statement under Section 313 Cr.P.C. that a Panchayat was indeed convened to effect a compromise a day after the alleged occurrence though as per the appellant the complainant just had a mere suspicion qua his involvement

the village Panchayat to get a compromise effected. Hence, in this background the delay in the lodging of the FIR by the complainant cannot be said to be fatal to the prosecution case.

11. Coming to the prayer of the learned counsel for the appellant to take a lenient view and consider release of the appellant on probation, the appellant though has not undergone any part of his substantive sentence, yet he has faced the agony of a protracted trial for the past 18 years. As per the Custody Certificate dated 04.04.2019 placed on record he is not a previous convict nor has he been shown to be involved in any other criminal case. Thus, no useful purpose would be served by sending the appellant behind bars.

12. Section 360 Cr.P.C. which reads as under mandates a court to release an accused on probation:-

“360. Order to release on probation of good conduct or after admonition:-

(1) When any person not under twenty one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour:

Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub- section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860) punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law:

Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub-section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing

for sentence and such Court may, after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.”

13. In view of the facts and circumstances of the case and after going through the evidence as well as other material on record, in my considered opinion it is a fit case wherein the benefit of probation can be extended to the appellant while upholding his conviction.

14. Resultantly, while upholding the conviction of the appellant under Sections 429/435 of the Indian Penal Code, his substantive sentence of imprisonment is set aside. Instead, he is ordered to be released on probation for a period of one year subject to his executing bonds to the satisfaction of the Chief Judicial Magistrate concerned. He would undertake to maintain peace and good behaviour for the said period. He would appear and receive the sentence as and when he may be called upon to do so, in case he violates any of the conditions of the bonds.

15. Further, keeping in view the facts and circumstances of the case, the appellant is directed to pay an amount of Rs.10,000/- as compensation to the complainant within one month of receipt of a certified copy of this order. In case he fails to do so, the benefit of probation granted to him, shall stand withdrawn forthwith and he shall undergo the remaining part of his sentence.

16. The appeal stands disposed of in the above terms.

(MANJARI NEHRU KAUL)
JUDGE

11.04.2019
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Note: Whether speaking/reasoned
Whether Reportable:

Yes / No
Yes / No