

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

CRR-2990-2012 (O&M)

Date of decision: May 24, 2019

Hoshiar Singh

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sunil Saharan, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

Mr. Mahender Singh, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the judgment of conviction dated 14.3.2011 and the order of sentence dated 16.3.2011 passed by the Sub Divisional Judicial Magistrate, Loharu vide which the petitioner was held guilty of the offence punishable under Section 435 IPC and was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.4,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of two months, as well as the judgment dated 11.9.2012 passed by the Additional Sessions Judge, Bhiwani vide which the appeal filed by the petitioner was dismissed.

Brief facts of the case are that complainant-Ram Niwas, on 7.4.2010, lodged an FIR No.34 under Section 435 IPC at Police Station Behal, District Bhiwani with the allegations that he is a resident of village

Mandholi Kalan and he had taken 42 Bighas of land from the Gram Panchayat on lease. He had cultivated mustard and wheat crops and after cutting certain portion of the crop, kept the same in the fields. At about 2.00 a.m., in the morning, when he came out of the house, he saw that the crop was burning. He called his brother Suresh and reached in his fields. He saw the petitioner-accused Hoshiar Singh, who has his adjacent land, with an iron pipe using as 'Mashal' putting the fire in his fields. It is further stated that he (the petitioner) has burnt the wheat crop of the complainant and had ran away. The complainant could identify his 8 bundles of mustard crop and one acre of standing wheat crop burning into ashes.

The police, on completion of the instigation, submitted the challan and the trial Court vide order dated 2.8.2010 framed the charges against the petitioner under Section 435 IPC.

The prosecution, in its evidence, examined PW1 Bunty, Photographer, who proved the photographs Exs.P1 to P12. He further stated that he had taken these photographs on 7.4.2010 by using a digital camera and, therefore, there is no negatives of these photographs.

PW2 SI Kirori Lal stated that on 7.4.2010 he has received an information, on the basis of which formal FIR Ex.PW2/A was recorded and an endorsement was made vide Ex.PW2/B.

PW3 Inspector Prahlad (Retd.) stated that he had completed the investigation and submitted the challan in the Court.

PW4 ASI Tarsem Lal, Investigating Officer stated that on receiving the complaint Ex.PW4/A from Ram Niwas, he made an

endorsement Ex.PW4/A. Thereafter, he visited the spot. This witness gave all the details of the investigation conducted at the spot regarding recovery of burnt crop, preparation of the site plan Ex.PW4/C. The accused was arrested on 16.4.2010.

The complainant PW5-Ram Niwas proved his complaint Ex.PW5/A and as per the version given in the FIR where he has stated that accused-Hoshiar Singh on 7.10.2010 at about 2.00 a.m., in the morning, with the help of an iron rod using it as a 'Mashal', had put his bundles of wheat crop on fire and when the complainant and Suresh stopped him, he ran away. In cross-examination, this witness stated that he has no receipt of taking the Panchayat land on lease and no such receipt is on Court file. This witness further stated that he could not give the details of khasra number of the land.

PW6 Suresh, brother of the complainant also deposed on the same line that when he, along with his brother, went to the spot, Hoshiar Singh has put the standing wheat crop and the bundle of mustard crop on fire and ran away. In cross-examination, this witness also stated that there is no receipt about the Panchayat land and cannot give the description of the same.

PW7 Bharat Singh, Sarpanch stated that the accused was in illegal possession of the Panchayat land which was vacated and, thereafter, the Panchayat gave it to Ram Niwas on lease for Rs.44,200/-. In cross-examination, this witness stated that he cannot give the details without going through the Panchayat record.

Thereafter, the prosecution closed its evidence. The statement under Section 313 Cr.P.C. was recorded and all the incriminating evidence

was put to accused, to which he denied the same and stated that he has been falsely implicated in the case. However, no defence evidence was led.

Counsel for the petitioner has firstly argued that there is no independent witness and both the Courts below have relied upon the version of the complainant and his brother, who are interested witness. He further stated that the prosecution has miserably failed to prove that the complainant was in legal possession of the Panchayat land, as no documentary evidence in that regard has been brought on record. Thus, the petitioner has been falsely implicated in this case. Counsel has next argued that the Courts below had not looked into the photographs Exs.PW1 to PW12 perusal of which show that a very small portion of the crop was burnt and the remaining portion of the crop was already harvested and, therefore, the prosecution has failed to prove that how much loss was allegedly caused to the complainant. Counsel has further argued that Courts below have only taken into consideration that the complainant had taken the 42 Bighas of Panchayat land for Rs.44,200/- but none of the Courts below have recorded a categorical finding about the area on which the wheat crop or the bundles of mustard crop were burnt.

Counsel for the petitioner has next argued that from a bare perusal of the FIR and the statement of the complainant PW5 and his brother PW6, it is apparent that only some portion of the crop was allegedly burnt and the petitioner is ready to pay the tentative costs, i.e. Rs.50,000/-.

Counsel for the petitioner has further argued that the police has not conducted any scientific investigation or sought an opinion from any expert from the Agriculture Department to find out whether the reminder of

the burnt crop was, in fact, mustard crop and in the absence of the same, the conviction of the petitioner is not sustainable.

Learned State counsel, on instructions from the Investigating Officer has stated that the approximate value of the crop can be Rs.50,000/- and the prosecution has proved the case beyond doubt as both, PW5 and PW6 have duly proved their outright version of the case.

Counsel appearing for the complainant has further argued that the petitioner has put the crop on fire on account of the fact that previously the petitioner was in possession of the Panchayat land which was got vacated as per the statement of PW7, Sarpanch of the village and, thereafter, since the complainant has taken the land on lease, the petitioner was having a grudge with the complainant and, therefore, the case is proved.

However, the complainant refused to accept the amount of Rs.50,000/- as compensation offered by the petitioner by saying that the same is inadequate.

After hearing counsel for the parties, I find no merit qua the challenge made by the petitioner regarding his conviction by both the Courts below. Since both, PW5 Ram Niwas and PW6 Suresh, have proved that the petitioner has burnt some of his wheat crop and some area where the bundles of mustard crop were lying and, therefore, I uphold the judgment of conviction.

However, considering the fact that the petitioner is the first offender, as per the custody certificate filed in the Court, he has undergone two months of sentence out of the total sentence of two years rigorous

imprisonment awarded by the trial Court and also considering the fact that he has made statement before the trial Court at the time of awarding the quantum of sentence that he has six daughters of marriageable age; he belongs to a very poor family and is facing the agony of criminal prosecution for the last about seven years, I deem it appropriate to reduce the sentence of the petitioner to the sentence already undergone by him, however, subject to the condition that the petitioner will deposit an amount of Rs.50,000/- as compensation uptill 30.8.2019 with the trial Court/Successor Court/Illaqua Magistrate. It will be open for the complainant to withdraw the said amount.

It is made clear that in case the petitioner fails to deposit the amount, this revision petition shall be dismissed on merits without any further order and the petitioner will have to undergo the remaining sentence as awarded by the trial Court.

The revision petition stands disposed of, accordingly.

May 24, 2019
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No