

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-AD-107-2017 (O/M)

Reserved on : 28.2.2019

Date of decision : 5.3.2019

Swami Swatantranand

..... Appellant

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Complainant-appellant in person.

Mr. S.P.S. Tinna, Additional A.G. Punjab.

Mr. Arnuv Sood, Advocate,
for respondents No. 2 and 3.

:-

:-

KULDIP SINGH, J.

Complainant-appellant has filed this appeal against judgment dated 7.3.2017, passed by learned Additional Sessions Judge, Hoshiarpur, vide which complaint filed by appellant under Sections 307, 506 read with Section 34 IPC, was dismissed.

The facts of case are that complainant-appellant, who has chosen to argue the case himself, is running a Ashram in the name of Virakat Kuti Ashram, Hardokhanpur, District Hoshiarpur. Accused-respondent No. 2 Rajinder Kumar Jain has constructed a factory under the name and style of Kings Food Corporation. According to complainant-appellant, the factory was constructed after grabbing several kanals of land belonging to Ashram, regarding which civil litigation between the parties is pending. According to complainant-appellant,

on 7.3.2009, accused-respondents No. 2 and 3, namely, Rajinder Kumar Jain and Sunil Kumar alias Kala, threw petrol bombs towards him with intention to kill him. Again on 7.9.2009, when complainant-appellant was going towards bath room in the Ashram, he was again attacked with petrol bomb by both accused-respondents with intention to kill him, but he was saved by devotees, present in Ashram. He made a complaint to the higher officers, but without any effect. Hence, he filed a criminal complaint alongwith an application under Section 156 (3) Cr.P.C. before the learned Chief Judicial Magistrate, Hoshiarpur, on 29.9.2014, i.e. more than 5 years after the alleged occurrence.

After recording the preliminary evidence, accused respondents No. 2 and 3, were summoned by learned Additional Chief Judicial Magistrate, Hoshiarpur, to face trial under Sections 307, 506 read with Section 34 IPC. After appearance and compliance of Section 208 Cr.P.C., the case was committed to Court of Sessions. Before the Sessions Court, accused were chargesheeted under Sections 307, 506 read with Section 34 IPC, to which accused-respondents No. 2 and 3 pleaded not guilty.

In support of its case, complainant-appellant examined himself as PW1, Ram Vinod Khosla as PW2, Surinder Singh as PW3 and MHC Paramjit Singh as PW4 and thereafter, closed the evidence.

In the statement recorded under Section 313 Cr.P.C., accused respondents No. 2 and 3 denied incorrect the evidence led against them and claimed that they are innocent. They did not commit the alleged offence. The complaint has been filed due to civil litigation pending between the parties. Accused-respondents No. 2 and 3 did not lead any evidence in defence.

After hearing both parties and going through the evidence, the learned Additional Sessions Judge, Hoshiarpur, acquitted accused respondents No. 2 and 3 of charges framed against them. Against said judgment of acquittal, present appeal has been filed by complainant-appellant with the leave of the Court.

We have heard the complainant-appellant in person, learned State counsel, learned counsel for accused-respondents No. 2 and 3 and have also carefully gone through case file.

In this case, admittedly, complainant-appellant did not receive any injury in the alleged occurrence. According to complainant-appellant, two occurrences took place, first on 7.3.2009 and other on 7.9.2009. The petrol bomb was thrown on him with intention to kill him. However, neither complainant-appellant nor any other devotee present in the Ashram received any injury. The present complaint was filed after more than five years of commission of crime. No explanation is coming as to why there was so much delay in filing the complaint. Even if, it is assumed that complainant-appellant was pursuing his complaint before the police, such delay of more than five years in filing the complaint cannot be justified. Mark 'A' is complaint made to SHO, Model Town, Hoshiarpur, on 8.3.2009, wherein he stated that suddenly a burning article came from choe side and fell near Swami ji. From the fire, smell of petrol was coming. The followers of complainant-appellant extinguished fire by putting sand on same. It is nowhere stated that present accused had thrown said burning article. The complaint was made immediately after first incident on the next day of first occurrence. Now, after more than five years, complainant appellant had come up with a complaint that both accused had thrown

burning article, which according to him was petrol bomb. In the statement of complainant-appellant, who is principal witness, it is stated that he noticed that a burning bottle fell before him. From the 'inner conscious', he realized that it is handy work of accused Rajinder Kumar Jain and Sunil Kumar alias Kala. He further stated that he realized from 'inner conscious' that except present accused, there is no other enemy. Complainant-appellant does not say that he saw accused throwing said burning bottle. Therefore, 'inner conscious' of complainant-appellant to name accused is not sufficient to hold that said burning bottle was thrown by accused.

Ram Vinod Khosla stated that on 7.3.2009 at about 11.00 PM, after the Satsang, he alongwith other devotees was in the process of leaving the Ashram. Then, Swami Swatantra Nand moved inside the bath room. Suddenly, a burning product fell near Swami Swatantra Nand. He ran towards Swami Swatantra Nand and he alongwith some other devotees extinguished that burning article with sand. It was a burning bottle that was having petrol. He stated that said attempt was made by accused to kill Swami Swatantra Nand. He further stated that some policemen were on duty outside Ashram. However, the witness does not state that he saw the accused throwing burning article which is bottle filled with petrol. Surinder Singh (PW3) just came to know about the incident from complainant. He is not witness of crime. There is no mention either by complainant-appellant or by witness Ram Vinod Khosla regarding second incident of 7.9.2009. Even though as per FSL report, the said burning article was found to be petroleum produce in a pint and a cloth of piece, however, there is no cogent and convincing evidence that accused had thrown said burning pint,

filled with petrol.

Admittedly, a civil litigation is pending between the parties. This Court has been informed that civil litigation has been finally decided in favour of present complainant-appellant. This could be a double edged weapon. Accused had already lodged FIR against complainant-appellant. Civil litigation was pending between parties. Therefore, either complainant-appellant was having a suspicion or it could be a counter blast to case lodged by accused. It being so, there is no illegality or infirmity in the findings recorded by learned Additional Sessions Judge, Hoshiarpur. Consequently, present appeal is dismissed.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

5.3.2019
sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No