

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

CRA-S-4786-SB-2015 (O&M)

Date of decision : 18.11.2022

Bijender

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Ms. Puneeta Sethi, Advocate
for the appellant.

Mr. Shubham Kaushik, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Challenge laid in this appeal is to the judgment of conviction dated 17.04.2015 and order of sentence of the even date, passed by the trial Court, whereby the appellant was convicted for offence punishable under Section 436 of the Indian Penal Code (*for short 'IPC'*) and was sentenced to undergo rigorous imprisonment for a period of 03 years and to pay a fine of Rs. 1000/- with default clause.

Brief facts of the case are that on 11.04.2014, HC Bal Kishan along with other police officials was present at Rohtak Gate, Bhiwani in connection with a patrol duty, where complainant Savitri Devi submitted a complaint to him alleging that she was the resident of Bhiwani and have four daughters and a son. Her eldest daughter Priyanka was about 14 years old. On 09.04.2014 about 10.30/11.00 p.m., she along with her children was sleeping in a room. Her husband Bijender came to the house in inebriated condition and immediately after reaching home, he set all the beddings on fire. She along with her children ran out of the house and went to the house of their neighbor Suraj Bhan son of Maidhan.

Thereafter, she informed her brother Prem Kumar telephonically about the

incident, who came to her on the next morning. They found all the household articles reduced to ashes. On the aforesaid complaint, the FIR in question was registered against the accused/appellant under Section 436 IPC and after completion of formal investigation; the *Challan* was presented before the Court.

On presentation of *Challan*, the trial Court framed the charge under Section 436 of the IPC against the accused, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1 Dharmender Singh, Draftsman, PW-2 EHC Kapoor Singh, PW-3 Constable Surender Singh, PW-4 complainant/Savitri Devi, PW-5 SI Dharambir, PW-6 Kumari Priyanka, PW-7 ASI Anand Kumar, PW-8 SI Leela Ram and PW-9 HC Bal Kishan and PW Prem Kumar was given up. Thereafter, the prosecution evidence was closed.

Thereafter, the statement of the appellant/accused under Section 313 Cr.P.C. was recorded and all the incriminating evidence was put to him, however, he denied the same and pleaded false implication. He further stated that his house was set on fire by some miscreants but due to strained matrimonial relation, he has falsely been implicated, however, the accused/appellant did not examine any defence witness.

The trial Court, after hearing both the parties and appreciating the evidence and material brought on record, convicted and sentenced the appellant/accused as noticed above. Hence, the present appeal.

It is worth noticing that during the pendency of the present appeal, the sentence of the appellant was suspended by this Court on 20.01.2016 considering the fact that he has undergone substantive portion of his sentence.

Learned counsel for the appellant has further submitted that since out of the total sentence of 03 years, awarded by the trial Court, the appellant has already undergone a period of 01 year, 07 months and 07 days, she does not want

to address arguments on merits. It is further submitted that the appellant is a poor person and has his own family to support and he has faced the agony of protracted trial for a period of about 08 years, therefore, by taking a lenient view, the sentence awarded to the appellant be reduced to the period already undergone by him. It is further submitted that the FIR pertains to the year 2014 and the sentence of the appellant was suspended by this Court during the pendency of the present appeal and he has never misused the concession of suspension of sentence.

Learned State counsel, on the basis of the custody certificate filed today in Court, has not disputed the factual position and he has no serious objection to the prayer made by learned counsel for the appellant.

After hearing learned counsel for the parties, I uphold the impugned judgment of conviction passed by the trial Court as the same is based on appreciation of prosecution evidence, proving guilt of the appellant, however, considering the fact that the appellant has faced the agony of protracted trial; the appellant has already undergone about 01 years, 07 months and 07 days of total sentence of 03 years and also in view of the fact that he is a poor person and has his own family to support, the present appeal is ***partly allowed*** and the sentence awarded to the appellant is reduced to the period already undergone by him. However, the imposition of fine of Rs.1000/- is upheld. The petitioner is directed to deposit the fine, if not deposited so far, within a period of 02 months from today.

Bail/surety bonds of the appellant be discharged, accordingly.

18.11.2022
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>