

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

CRA-S-581-2020 (O&M)
Date of decision:04.02.2022

Varun

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Vinod Bhardwaj, Advocate
for the appellant.

Mr. Pradeep Prakash Chahar, DAG, Haryana.

Mr. Nikhil Chopra, Advocate
for the complainant.

(Through Video Conferencing)

SURESHWAR THAKUR, J. (ORAL)

1. Accused Varun faced trial for commission of offences punishable under Sections 323, 436, 450 IPC read with Section 34 IPC. However, the learned Sessions Judge concerned, opened trial viz-a-viz the afore drawn charges, only against co-accused Varun, as, co-accused Hakikat Rai became declared a proclaimed offender.
2. After conclusion of trial into the afore drawn charges against co-accused Varun, the learned trial Judge concerned, convicted accused Varun qua commission of the charged offences (supra). Through a separate sentencing order drawn on 27.01.2020, the learned Convicting Court, imposed upon convict Varun, the hereinafter extracted sentences.

Under section 323 IPC read with section 34 IPC	To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-. In default of payment of fine, he shall further undergo rigorous imprisonment for a period of one month.
Under section 450 IPC read with section 34 IPC	To undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.25,000/-. In default of payment of fine, he shall further undergo rigorous imprisonment for a period of six months.
Under section 436 IPC read with section 34 IPC	To undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.25,000/-. In default of payment of fine, he shall further undergo rigorous imprisonment for a period of six months.
	All the substantive sentences shall run concurrently.

3. The convict is aggrieved from the verdict of conviction (supra), and, also is aggrieved from the consequent therewith sentence, as became imposed, upon him. Through his instituting the instant appeal before this Court, he seeks annulment of the afore drawn verdict.

4. The genesis of the prosecution is that on 3.5.2018, the complainant Mahinder Pal moved complaint before the police, to the effect, that he is resident of village Bherian, District Kurukshetra. On 03.05.2018, at about 3.55 P.M., his younger brother Hakikat Rai, nephew Varun, Aman, Durga Dutt, Rekha Rani entered his house and inflicted injuries to all the members of his family, and, after sprinkling oil set his house on fire. They left his mother Devki Devi, who was aged and unable to see, in the room put on fire. His daughter-in-law Rajni, who was feeding her child by sitting with Devki Devi, was also given beatings by them. As a result of fire, the factory of the complainant installed by him in his house for manufacturing cardboard boxes, raw material, koop (heap of fodder), cow dung cakes, domestic articles, sofa, bed, important documents

and Rs.1,00,000/- were also burnt in the fire. The accused also gave beatings to children also.

5. After completion of investigations into the offences (supra), the investigating officer filed report under Section 173 Cr.P.C., before the committal Court, and, the latter committed accused Varun for trial by the learned Sessions Judge, Kurukshetra.

6. For proving the prosecution case, the prosecution has relied, upon the statements of 13 prosecution witnesses. After conclusion of the recording of the prosecution evidence, the accused in his statement drawn under Sections 313 Cr.P.C. claimed innocence, besides false implication, and, also asked for adduction of defence evidence. The accused in his defence produced two defence witnesses.

7. The learned counsel appearing for the aggrieved convict, has contended, that the prosecution evidence, as becomes relied, upon by the Convicting Court, is infirm and weak, and, could not form the basis of a verdict of conviction being pronounced upon the aggrieved convict. The learned State counsel has argued, that the impugned verdict of conviction is well merited, and, is based on a wholesome, and, fair appraisal of the entire evidence on record, and, that it deserves its being upheld by this Court.

8. The genesis of the prosecution case rests, upon the deposition of PW-3 one Rajni. In her statement as comprised in her examination-in-chief, she has narrated, that on 03.05.2018 at about 3.30/4.00 P.M., when she was feeding a child, at her home in village Bherian, and, when on the afore date, and time, her grandmother-in-law also was present alongwith her, then accused Varun, and, Hakikat Rai arrived at her home. She communicates therein, that accused Hakikat Rai was holding a kerosene can, and, that both accused started giving

beatings to her. Varun is alleged to deliver danda blows on her person, whereas, accused Hakikat Rai is alleged to slap her. She has proven her signatures on MLR Ex. P-4, which became drawn by the medical practitioner concerned. She also narrates in her statement, that accused Hakikat Rai sprinkled kerosene in the rooms, and, set them on fire, and, owing to the raging ablaze, the furniture, heap of fodder, heap of dung cake, almirah in which currency notes worth Rs. 1 lac were kept, rather were all burnt. She continues to narrate that, in the meantime Durga Dutt and Aman also reached, and, made lalkara to kill us. Furthermore, she details therein that at the relevant time her father-in-law Mohinder Pal, brothers-in-law Vijesh and Rinku were also present, and, they tried to extinguish the fire, and, also summoned the fire brigade.

9. The above statement of PW-3 as embodied in her examination-in-chief may not be sufficient to sustain the impugned verdict of conviction, unless she, evidently successfully withstood the test of a thorough cross-examination, as become conducted upon her. During the course of her cross-examination, the learned defence counsel succeeded in establishing, that the narration in her examination-in-chief qua the presence at the relevant site, of her father-in-law Mohinder Pal, and, brothers-in-law Vijesh and, Rinku, being both false and pretextual, inasmuch, she omitted to in her previous statement recorded in writing, rather disclose that the persons (supra) were at the relevant time hence available at the site of occurrence. However, hers becoming falsified on the above score would not *per-se* garner any firm conclusion, rather qua in its entirety her testification comprised in her examination-in-chief, wherein, she attributes an incriminatory role to the accused, rather becoming completely falsified. The reason for making the above conclusion, arises from PW-7 one Mahender Pal, the father-in-law of PW-3, during the course of his examination-

in-chief, meteing the fullest corroboration to the testification (supra), as carried in the examination-in-chief of PW-3 one Rajni. The learned defence counsel while conducting cross-examination upon PW-7, though has made a a fervent effort to, through putting an apposite suggestion(s) to him, ensure an elicitation from him, that he was not an ocular witness to the occurrence, yet his effort became futile, as, the afore suggestion, became denied by PW-7, and, nor any firm rebuttal thereto emanated from the defence. Consequently, there exists the completest *inter-se* corroboration *inter-se* the testification of PW-3, and, PW-7. Therefore, the mere fact qua that in her previous statement recorded in writing, hence PW-3 not mentioning, that PW-7 was available at the relevant site of occurrence, would not, beget any further inference, that PW-7 was not an ocular witness to the occurrence nor can the prosecution case, as becomes rested, upon, the testifications of PW-3, and, PW-7, can become construed to be either disingenuous or contrived.

10. Furthermore, medical evidence supporting the testifications of PW-3, and, PW-7 and, as comprised in the testifications of PW-13, also exists on record. In her deposition in her examination-in-chief, she has proven MLR as became drawn by her qua injured Rajni, and, to which Ex. P-4 is assigned. She in her examination-in-chief, has proven that the injuries enumerated in Ex. P-4, and, as become extracted hereinafter, become noticed by her to be occurring on the person of one Rajni. She has also testified that Rajni in her presence put her signatures, at point A on the MLR, apposite factum whereof is also supported by PW-3 Rajni, in her statement as carried in her examination-in-chief.

“Stated that on 03.05.2018, I was posted as Medical Officer in CHC, Pehowa. On that day, patient Ranjni wife of Vikas Sharma; aged 29 years, resident of village Bherian, Police Station Pehowa, Kurukshetra was brought by Rinku Kumar, resident of VPO

Gondhar, District Karnal with the alleged history of physical assault at about 4.00 p.m. on 03.05.2018 at village Bherian. On examination, the patient was found to be conscious, well oriented to TPP and all vitals were stable. The following injuries were observed during her medico legal examination:

- 1. Reddish contusion of size 7cm x 1 cm put on upper half of left buttock. X-ray was advised.*
- 2. Patient was complaining of pain in right buttock. On examination, no external fresh injury mark was seen. X-ray was advised.*
- 3. Patient was also complaining of pain in abdomen. On examination, no external fresh injury mark was seen. USG was advised.*
- 4. Multiple linear reddish abrasions found on anterior aspect of right forearm. X-ray was advised.*
- 5. Multiple linear reddish abrasions put on anterior aspect of left forearm. X-ray was advised.*

All injuries were blunt in nature and probable duration of causing the injuries was within 6 hours. I have brought the original record regarding MLR of the patient and carbon copy of the same is Ex.P4, which bears my signatures. The patient put her signature at Point A on the MLR. I also sent ruqqa Ex.P38 along with carbon copy of the MLR to SHO police station Pehowa for information.”

11. The afore made deposition of PW-13, does corroborate, the testifications of PW-3, and, PW-7 qua co-accused Varun inflicting injuries, on the person of victim one Rajni. Therefore, the genesis of the prosecution case, does become cogently proven. The prosecution was also required, to prove the incriminatory role, as attributed to the accused hence both by PW-3, and, PW-7 inasmuch as, both with a common *mens-rea* proceeding to set flame, the furniture, heap of fodder, heap of dung cake, residential rooms, and, the almirah in which currency notes worth Rs. 1 lac rather were kept. In the afore endeavour, the prosecution relied, upon, the testification of PW-9, who has in his

examination-in-chief, testified that on 03.05.2018 when he was posted as Fire Officer, at PS Pehowa, he received information about the incriminatory incident of a raging fire occurring at village Bherian. He has deposed that subsequently, he deployed fire tender bearing registration No.65-A-7232 to village Bherian, and, that hence the raging fire became doused. He has proven his report to which Ex. P-5 is assigned. Though, he become subjected to the ordeal of a rigorous examination, however, the above factum as narrated by him, in his examination-in-chief, has remained unshed of its efficacy, and, nor any suggestion became meted to him nor became obviously admitted by him, that his report to which Ex. P-15 is assigned, is false or falsely prepared. Therefore, through the testification of PW-9, the prosecution has succeeded in proving the testification of PW-3, and, PW-7 qua the incriminatory incident of fire occurring at village Bherian.

12. PW-10 has proven the factum of his inspecting the place of occurrence, and, from the site of occurrence, his collecting one piece of burnt gunny bag, one burnt piece of woods, one broken lighter, burnt wires, burnt cotton swabs, burnt clothes, and, of his putting them into separate parcels, and, sealing them with seal SK. He has testified that in respect of afore parcels he prepared memo Ex. P-5. He has also proven the making of a disclosure statement comprised in Ex. P-6 hence by co-accused Hakikat Rai, wherein, the above confessed to his committing the offence (supra), and, also disclosed that he had fled from the crime site, on a scooty, and, that further that he can ensure recovery, at his instance to PW-10, of matchbox, and, of scooty. In consequence to the afore disclosure statement, PW-10 testifies that he had recovered, and, put the match box into a parcel, and, had sealed it with seal BS, and, had prepared recovery memo to which Ex. P-7 was assigned. Furthermore, PW-10 has also

deposed that co-accused made a disclosure statement to him, as embodied in Ex. P-36, wherein, he confessed to his incriminatory participation in the offence (supra). Furthermore, PW-10 testifies that Varun in Ex. P-36 had disclosed, that he had fled from the crime site on a scooty, and, that the matchbox used in the commission of offence was taken away by co-accused Hakikat Rai. Moreover, it discloses, that he can get the site of occurrence demarcated. In pursuance to the disclosure statement, as respectively made by Hakikat Rai, and, co-accused Varun, and, as respectively embodied in Ex. P-6, and, P-36, both led the investigating officer to the site crime, and, enabled the preparation at their respective instances by the investigating officer, of site memo, as, comprised in Ex. P-8. PW-10 has also in his examination-in-chief proceeded to make the hereinafter extracted incriminatory narration(s).

“xxx 5. On 10.05.2018, I along with ASI Sudeep Kumar, Draftsman visited the spot and on the demarcation of complainant Mahender Pal, he prepared scaled site plan and handed over the same to me. I recorded the statements of the witnesses under section 161 Cr.P.C. Accused Varun is present in the court today.

6. At this stage, burnt piece of gunny sack MO1, one burnt triangular wooden piece MO2, broken lighter MO3 are produced and is shown to the witness.

7. At this stage, a bunch of burnt wire along with residue MO4 is produced and is shown to the witness.

8. At this stage, cotton swab MO5 is produced and is shown to the witness.

9. At this stage, half burnt clothes MO6 are produced and are shown to the witness.

10. At this stage, two cotton swabs MO7 and MO8 are produced and are shown to the witness.

11. At this stage, burnt wooden coal pieces, some pieces of clothes along with ash, some burnt pieces of woolen hand gloves, MO9 to MO11 are produced and shown to the witness.

12. At this stage, a bunch of burnt wires, MO12 is produced and is shown to the witness.

13. At this stage, two burnt cotton swabs MO13 and MO14 are produced and shown to the witness.

14. At this stage, one blue plastic cane MO15 is produced and and shown to the witness.

15. At this stage, one burnt piece of bed sheet MO16 is produced and is shown to the witness.

16. At this stage, pieces of dung cake and half burnt fodder MO17 and MO18 are produced and and is shown to the witness.

17. At this stage, one matchbox MO19 is produced and shown to the witness. Scooty is present outside the court and same is MO20.”

13. PW-10 was subjected to the ordeal of a rigorous cross-examination by the learned defence counsel. However, during the entire course thereof, the learned defence counsel, was unable to elicit from PW-10, any affirmative answer to any suggestion, with respect to falsity of preparation of memos (supra), and/or with respect to falsity of his taking into his possession, from the site crime, the above extracted incriminatory items or incriminatory pieces of evidence. The sequel of the above, when becomes combined with the factum, that the accused concerned, did not deny the existence of his/their valid signatures, on the memos concerned, and, on the disclosure statements concerned, nor when the accused concerned, espouses that the crime site map, as become prepared in pursuance to the disclosure statement concerned, rather was prepared fictitiously, and/or, that it was prepared after duress, and, compulsion becoming exerted upon him. Therefore, the inability of the learned defence counsel to falsify a) the drawing of disclosure statement concerned; b) the drawing of memos concerned, c) the collections through respective memos, of incriminatory items hence from the site crime, enables this Court to draw an

inference, that PW-10 has proven the genesis of the prosecution case, and, also that through his testification the charge against the accused, has become formidably proven.

14. The forensic evidence as comprised in the report of the FSL concerned, is embodied in Ex. P-9. Ex. P-9 records the observations, as, made by the investigating officer. The incriminatory observations carried in Ex. P-9 are extracted hereinafter.

*“8. **Observations:-** A visit was made in c/w the said case to the house of Mahinder Pal Sharma S/o Bharthu Ram, R/o village Bherian. The affected house was observed for detection of any physical evidence related to the crime. Following observations were made from the spot*

1) The house was having about nine rooms, parking sheds, cattle yard and one tower fixed in one of the corner, all opening in the katcha open front yard of the house. The rooms are labeled as R1 to R9 as shown in the sketch.

2) The room no. 8 was having Piles of cardboard cartoons meant for packing of sweets. Number of cartoons was seen burnt and partially burnt inside and outside the room. The clothing of the single bed lying inside the room was also found partially burnt. The POP of the ceiling was seen fallen on the floor. The black sooth of smoke seen deposited on the walls. The room was having open electricity fitting and the PVC of the wiring was found burnt. Some of the burnt wires were seen lying on outer side of the room. One sewing machine and wooden chair were also found lying on outer side of the room. I.O was advised to take into possession the burnt debris, wires and cotton swab prepared from the walls inside the room.

3) The room No. 9 was temple room and one double bed was found kept on the floor of this room. The red color bed sheet was found partially burnt. I.O was advised to take into possession the cutting of the bed sheet.

4) The room no. 6 was stated to be occupied by the staff of electricity deptt. and was the complaint center for electricity deptt. This room contained electricity meters, safety belts, and wires, cables kept on the cemented slabs and on the floor. These items were seen partially burnt. I.O was advised to take into possession the burnt debris and swab prepared from inside the room.

5) The room no. 4 was having two cartoon making machines found in burnt condition. One green colored lighter was found in the partially burnt lying in the room on the floor along with the burnt debris. Few of the wooden kadies of the ceiling were seen burnt and fallen on the floor. I.O was advised to take into possession the burnt debris, wires and cotton swab prepared from the walls inside the room.

6) One koop of fooder and dung cake were also found burnt in one of the corner of the house. I.O was advised to take into possession, the burnt debris from this site.

7) One IPOL SYNCRO labeled blue coloured cane of capacity about 5L without lid having (Illegible) Litre of diesel like smelling liquid remnants was found lying outside the room no.8.”

The above incriminatory observations completely support the testifications of PW-3, and, PW-7, and, besides lend support to the testification of PW-10.

15. Furthermore, a perusal of the opinion as made by the FSL concerned, on the items sent to it for analysis, opinion whereof stands extracted hereinafter, does candidly pronounce the guilt of the accused,

“ RESULT OF EXAMINATION

1. Petrol, kerosene, diesel or their residues could not be detected in exhibit 1, 3, 4, 6 & 8.

2. Diesel was detected in exhibit 9.

3. Residues of diesel were detected in exhibit-5, 10&11.

16. And also does vividly detail therein, qua petrol, diesel, kerosene or their residue material becoming detected in the exhibits concerned.

Consequently, the sprinkling of kerosene oil as testified by PW-3, and, PW-7 on the premises/items concerned, by the accused, does become cogently proven.

17. Moreover, with an opinion existing in Ex. P-12, opinion whereof stands extracted hereinafter.

“ Laboratory Examination

Completely insulation burnt copper wires marked exhibit-2a, 2b, 2d₁ fuse grip marked exhibit-2(c), 2d₂, 2d₃ burnt socket marked exhibit 2d₄ and partially insulation burnt copper wires alongwith ash marked exhibit-7 were examined physically and under optical microscope. No indication of short circuiting could be observed in the above mentioned exhibits.”

and, its detailing that no evidence of short circuiting could be observed in the item(s) sent to it for examination. In consequence the defence raised by the accused, that the incriminatory incident of fire, which occurred at the relevant site was a sequel of short circuiting, becomes completely belied.

18. In view of the above, it is clearly inferable that the charge against the accused has become cogently proven. The appraisal of evidence, by the learned trial Judge, does not, suffer from any illegality or perversity or any misappreciation or non-appreciation of the evidence on record.

19. In consequence the impugned verdict of conviction, and, consequent therewith sentence, as imposed, upon the accused-convict by the learned trial Judge concerned, is affirmed, and, maintained.

20. Appeal dismissed. The records be sent down forthwith.

21. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

04.02.2022

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Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No