



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)

Case No. : CRL.A(J)/7/2022

Lalhmachhuana
S/o Challianchhunga, Central Jail, Aizawl

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Mr. Joseph Lalchhanhima Renthlei, Amicus Curiae
Advocate for the Respondent : P.P./Addl.PP, Mizoram

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGEMENT

Date : 27.01.2023

Heard Mr. Joseph L. Renthlei, learned Amicus Curiae and Mr. C. Zoramchhana, learned Public Prosecutor, Mizoram.

2. This appeal has been filed against the Judgment & Order dated 11.03.2021 passed by the Court of the Additional Sessions Judge, Aizawl in SC No. 112/2019, arising out of Criminal Trial No. 1822/2019, by which the appellant has been convicted under Section 429 r/w Section 511 IPC and Section 3(a) of the Explosive Substances Act, 1908. The appellant was thereafter sentenced vide Sentence Order dated 12.03.2021 to

undergo 1 year imprisonment with a fine of Rs. 5000/-, in default Simple Imprisonment for 2 (two) months under Section 429 r/w Section 511 IPC. He was also sentenced to undergo 10 years Rigorous Imprisonment with a fine of Rs. 5000/-, in default Simple Imprisonment for 2 (two) months under Section 3(a) of the Explosive Substances Act, 1908.

3. The facts of the case is that an FIR was lodged on 08.07.2019 by one Mr. Lalbiaknia with the Serchhip Police Station, stating that the appellant had blasted his fish pond on 08.07.2019, between 2-3 pm, with a gelatine stick. On reaching the pond he found 100 dead fingerlings (small fish) which costed around Rs.500/-. On the basis of the complaint made, SRCP P.S. Case No.35 of 2019 dated 8.7.2019 was registered under section 429/379/500 IPC, r/w Section 3(a) of the Explosive Substances Act, 1908.

4. After investigation of the case and filing of charge-sheet, 2 charges were framed against the appellant under section 429 r/w 511 IPC and under Section 3(a) of the Explosive Substances Act, 1908. The appellant pleaded guilty by stating that the fish pond was nearly dried up. He thus went to his jhum hut and took his gelatine stick, so as to catch tadpole and fish to eat along with his food. Thus he blasted/bombed the fish pond to catch the fish and tadpole. However, he did not catch any tadpole or fish.

5. After the evidence of the 5 (five) Prosecution witnesses was adduced/recorded by the learned Trial Court, the appellant was examined under section 313 Cr.P.C. The learned Trial court, vide Judgment & Order dated 11.03.2021 convicted the appellant under section 429 r/w section 511 IPC and Section 3(a) of the Explosive Substances Act,

1908.

6. Thereafter, vide Order dated 12.03.2021, the learned Trial Court sentenced the appellant to undergo 1 year imprisonment with a fine of Rs. 5000/-, in default Simple Imprisonment for 2 (two) months under Section 429 r/w Section 511 IPC. He was also sentenced to undergo 10 years Rigorous Imprisonment with a fine of Rs. 5000/-, in default Simple Imprisonment for 2 (two) months under Section 3(a) of the Explosive Substances Act, 1908.

7. The appellant being aggrieved by the impugned judgment and order and the sentence imposed upon him has filed the present appeal, on the ground that Section 3(a) of the Explosive Substances Act, 1908, hereinafter referred to as the "1908 Act" would come into play, only when the explosion of the bomb had been done maliciously and if serious injury was caused/would have been caused by the explosion. He submits that there was no malice in the act of exploding gelatin in a fish pond to catch fish and no serious injury was caused to anybody or property or could have been caused to anybody, as no one was near the fish pond. In support of his submission, the learned Amicus Curiae has relied upon the judgment of the Division Bench of the Calcutta High Court, 1964 SCC Online Cal 25, wherein in para 21, it has been held that under Section 3 (a) of the 1908 Act, it has to be established that the evidence clearly indicates that the explosions were of a nature likely to endanger life or to cause serious injury to property. The throwing of bombs and the causing of minor injuries would not indicate that the explosions were of a nature likely to endanger life or cause serious injury to

property.

8. Mr. C. Zoramchhana, learned Public Prosecutor, on the other hand submits that the provisions of Section 3(a) of the 1908 Act does not require that serious injury is actually caused to the property due to the explosion of an explosive substance. He submits that as the appellant had exploded a Gelatine stick in the fish pond of Mr. Lalnunmawia, thereby causing the death of some fish, the same amounted to causing serious injury to the property of Mr. Lalnunmawia and as such, the ingredients for convicting and sentencing the appellant under Section 3(a) of the 1908 Act was proved and established. He also submits that the absence of serious injury was due to the fact that no person was in the vicinity of the blast area at the relevant point of time. He submits that as the ingredients for convicting and sentencing the appellant under Section 3(a) of the 1908 Act was present, the impugned judgment & order and sentence order should not be interfered with.

9. We have heard the learned counsels for the parties.

10. The appellant's challenge to the impugned Judgment & Order dated 11.03.2021 and the sentence order dated 12.03.2021 is basically against the sentence imposed against him under Section 3(a) of the Explosive Substances Act, 1908. As such, the appeal is being confined only to whether the learned Trial Court was justified in sentencing the appellant to undergo 10 years Rigorous imprisonment with a fine of Rs.5,000/-, in default/ simple imprisonment for 2 (two) months under Section 3(a) of the Explosive Substances Act, 1908

11. Section 3(a) of the Explosive Substances Act, 1908 states as follows :

"3. Punishment for causing explosion likely to endanger life or property.-

Any person who unlawfully and maliciously causes by-

(a) any explosive substance an explosion of nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with imprisonment for life, or with rigorous imprisonment of either description which shall not be less than ten years, and shall also be liable to fine;"

12. As can be seen from the provisions of Section 3(a) of the 1908 Act, punishment for causing an explosion likely to endanger life or cause serious injury to property, has to have the following ingredients, i.e., the same was unlawful and malicious.

13. The record of the Trial Court show that 5 (five) prosecution witnesses were examined by the learned Trial Court. However, none of the witnesses have given any evidence to the effect that the explosion caused by the appellant, by using the Gelatine stick, had been done maliciously. Thus, though the appellant had acted unlawfully, the question to be decided is whether the act of the appellant, in causing an explosion can be said to be acting maliciously, thereby attracting Section 3(a) of the Explosive Substances Act.

14. In the case of *Gamdoor Singh Vs. State of Punjab*, reported in 1981 Cri LJ 1912 (P&H) it has been held that malice in the legal sense of the word is not confined to

personal spite against individuals, but consists in a conscious violation of the law to the prejudice of another. It is a wrongful act done intentionally without just cause or excuse. It also held that the expression "unlawfully" signifies "not for a lawful object" and the term "maliciously" means and implies an intention to do an act, which is wrongful, to the detriment of another person.

15. Thus, on considering the above judgment of the Punjab and Haryana High Court and keeping in view the context in which "maliciously" has been used in Section 3(a) of the 1908 Act, we are also of the view that the word "maliciously" has to be construed to do an unlawful act to the detriment of another person. As such, on this issue, we are of the view that the appellant acted maliciously while causing an explosion, as he tried to steal fish from a fish pond, which was not his.

16. The further question that has to be decided is whether the appellants act in exploding the Gelatine stick was likely to endanger life or to cause serious injury to property, leaving aside whether any serious injury had been actually caused.

17. The evidence of the Prosecution witnesses show that no person other than the appellant was around, when he exploded the Gelatine stick in the fish pond and as such, there was no endangerment to any persons life, nor could the same have caused any serious injury to any person.

18. The evidence shows that by exploding the Gelatine stick in a almost dry fish pond, some fingerlings had died, without any definite number of deadfingerlings being

ascertained. The evidence of the witness PW-2, is to the effect that he estimated that there was damage to around 100 fishes, due to blasting of the explosive substance in the fish pond. In his cross examination, he states that they had put 500 fingerlings one or two days earlier in the fish pond and that he extracted 4 – 5 dead fish from the fish pond. As there is nothing definite to show the number of fish that were killed by the explosion, except for the extraction of four or five fishes from the fish pond, as stated by PW-2 in his cross examination, it cannot be said that there was any serious injury caused to the fish pond.

19. In the case of *Nemai Adak Vs. State*, reported in *AIR (1965) Cal 89*, it has been held that *"Where the bombs thrown by the accused at the police party were proved to have caused only minor injuries to some of the police constables by splinters thrown out of the exploded bombs and where the evidence of the expert showed that although a chemical examination of remnants of a country-made bomb indicated existence of potash chlorate and arsenic sulphide therein, it was on the quantity and proportion of the said ingredients, about which there was no evidence, that the mischief - making power of a bomb depended, held, the bombs were not of such a nature as to cause explosions likely to endanger life, and hence the requirement of Section 3 was not satisfied."*

20. In the present case, the question whether the explosion of a Gelatine stick in a fish pond, which caused the death of a few fingerlings can be said to be an explosion of a nature likely to cause serious injury to property. On considering the fact that only

a few fingerlings had apparently perished and keeping the view the facts and circumstances of the case, we are of the view that the explosion was not of such a nature likely to cause serious injury to the property. Accordingly, we hold that the requirement of Section 3(a) of the 1908 Act was not satisfied. We are of the view that the impugned judgment and order of the learned Trial Court needs to be interfered with, only to the extent of interfering with the conviction of the appellant and subsequent sentencing in relation to Section 3(a) of the 1908 Act.

21. Accordingly, the conviction of the appellant under Section 3(a) of the 1908 Act by the learned Trial Court, vide the impugned Judgment & Order dated 11.03.2021 is hereby set aside. Consequently, the sentencing of the appellant for 10 years Rigorous Imprisonment with a fine of Rs. 5000/-, in default Simple Imprisonment for 2 (two) months, vide the Order dated 12.03.2021 is also set aside. The conviction and sentence of the appellant under Section 429 r/w Section 511 IPC is not interfered with.

22. The impugned Judgment & Order dated 11.03.2021 and Order dated 12.03.2021 passed by the learned Trial Court in SC No. 112/2019 is accordingly modified to the extent indicated above. Accordingly, the appellant should be released from jail, if he has undergone his sentence under Section 429 r/w Section 511 IPC.

23. The appeal is accordingly disposed of as partly allowed, as indicated above. Send back the LCR.

24. In appreciation of the assistance provided by the learned Amicus Curiae, the fee

of the learned Amicus Curiae is fixed at Rs. 8500/-, which is to be paid by the Mizoram State Legal Services Authority.

JUDGE

JUDGE

Comparing Assistant