

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.46 of 1993

Against the judgment dated 17.12.1992 passed by 4th Additional Sessions Judge, Nawadah in Sessions Trial No.2 of 1992 arising Out of P.S. Case No.27 Year- 1991 Thana -Pakribarawan District- Nawada.

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Arun Singh, son of Maheshwari Singh, resident of village Kurhetta, P.S. Pakribarawan, District-Nawadah.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 52 of 1993

Against the judgment dated 17.12.1992 passed by 4th Additional Sessions Judge, Nawadah in Sessions Trial No.2 of 1992 arising Out of P.S. Case No. 27 Year- 1991 Thana -Pakribarawan District- Nawada.

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Ishwari Singh @ Ishwari Mahto @ Pappu, son of late Bisheshwar Mahto, resident of village-Kurheta, Police Station-Pakribarawan, District-Nawadah.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

(In both the appeals)

For the Appellant/s : Mr. Sudarshan Sharma, Advocate
Mr. Awadhesh Kumar Singh, Advocate

For the Respondent/s : Dr. Mayanand Jha, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 23-01-2015

These two appeals are filed against the judgment dated 17th December, 1992 passed by 4th Additional Sessions Judge, Nawadah in Sessions Trial No.2 of 1992/4 of 1992. Accused Nos.1 and 2, are the appellants in the

respective appeals.

The proceedings against the appellants herein commenced with the submission of a complaint by one Sri Devendra Singh, P.W.12, in the Pakribarawan Police Station, Nawadah district, at 5.30A.M. on 20th April, 1991. He stated that on the intervening night of 19/20.04.1991, he was in a Bhajan at Thakurbari in Kurheta village, and on hearing the sound of a bomb, he went to the place, from where the sound emanated. He is said to have noticed the three persons, including the appellants herein, and one Bipin Singh with bags on their shoulders and accompanied by about 10-15 persons, they were coming in the opposite direction. On proceeding further, he is said to have noticed that Shrawan Kumar, P.W.5, received injuries to his left shoulder in a bomb attack, and in the meanwhile, villagers gathered and pelted stones on the assailants. He has also stated that Ishwari Mahto @ Pappu hurled bomb on one Pancha Devi, who died on the spot, and one Bipin Singh (absconding) hurled bomb on Ashok Singh, son of Trivedni Singh, and he died on the spot. A-1 Arun Singh is said to have hurled bomb upon Shrawan Kumar, P.W.5.

The Inspector of Police proceeded to the spot, caused inspection and recorded the statements of the concerned persons. The inquest and the postmortem on the

two dead persons were conducted, and P.W.5 was sent for treatment. In the course of investigation, A-1 and A-2 have been arrested and their statements under Section 161 of the Code of Criminal Procedure were recorded. After completion of the investigation, charge-sheet was filed alleging offence under Section 302 read with Section 34 of the Indian Penal Code against the accused. The accused were also alleged to have committed offence under Section 380 of the Indian Penal Code and Sections 3 and 5 of the Explosive Substances Act.

In the trial, P.Ws 1 to 15 were examined. The crucial witnesses are P.W.5, the alleged injured witness Shrawan Kumar, and his father Rajendra Singh, P.W.7 and Devendra Singh, P.W.12 from whom the statement was recorded.

The case was separated against A-1 and A-2 since A-3 was absconding. On the appreciation of oral and documentary evidence adduced before it, the trial Court convicted A-1 and A-2 for the offences punishable under Section 302 read with 34 of the Code. They were acquitted of the offence punishable under Section 380 of the Code and Sections 3 and 5 of the Explosive Substances Act. Hence, these two appeals by A-1 and A-2.

Sri Sudarshan Sharma, and Sri Awadhesh Kumar



Singh, learned counsel for the appellants submit that the evidence of P.W.5, the alleged eye witness-cum- injured witness, is totally untrustworthy. They submit that except stating that three accused and about 10 unknown persons had come, one of them hurled a bomb upon him, P.W.5 did not state anything further. He contends that P.W.5 was silent as to the presence of his father Rajendra Singh, P.W.7, on the roof of the building where the incident is said to have taken place, whereas P.W.7 stated that himself and his son P.W.5 were sleeping on the roof. Learned counsel further submit that once the trial Court has disbelieved the evidence of P.W.7, there was absolutely no basis to believe the evidence of P.W.5, much less to convict the accused.

Learned counsel for the appellants has also argued that the evidence of P.W.12 is not only wavering, but also is unbelievable. They contend that on the one hand, P.W.12 stated that by the time he went to the spot, all the three accused and 10 others were coming after completion of the incident, and on the next breath, he stated that he had seen the accused hurling bomb against Pancha Devi and Ashok Kumar. Other grounds were also urged.

Dr. Mayanand Jha, learned Additional Public Prosecutor, on the other hand, submits that P.W.12, who is an independent and disinterested witness, has consistently



spoken to the events. He submits that there is complete coherence between the complaint submitted by the P.W.12 and his evidence in the Court. Learned Additional Public Prosecutor submits that mere fact that the trial Court disbelieved the evidence of P.W.7 does not affect the trustworthiness of the evidence of P.W.5, in any manner. He submits that the prosecution was able to provide sufficient links in the form of oral, documentary and medical evidence, between the accused and the incident; and the well considered judgment of the trial Court does not warrant interference.

Relevant facts have been already stated, in the preceding paragraphs. Two persons died and one person is said to have suffered injury in the incident. If, in fact, P.W.5 is the person, who sustained injuries in the bomb attack, his evidence becomes crucial and important. It is fairly well settled that the evidence of an injured witness deserves more acceptance compared to other witnesses.

In this case it is rather curious to note that evidence of such an important witness is so cryptic and casual that except stating that he was on the roof, at about 2 A.M. he noticed three accused and 10 others on the roof of the house and he received some injuries on the right hand, when one of them hurled bomb, he did not state anything



thereafter. It is not a case where P.W.5 became unconscious on account of alleged injuries suffered by him. Further, it is not his case that he made any noise or had seen any other persons gathering around the scene of occurrence. He is totally silent as to the attack on the two deceased. It has come in the evidence that the house of deceased Ishwari Singh is 6 to 8 yards away from the house of the P.W.5.

Even if a bit of latitude is shown to the cryptic nature of the evidence of P.W.5 and absence of other details, his evidence suffers from a serious dent, on account of certain other facts. In his evidence, P.W.5 did not speak about the presence of any other person on the roof of the house. His evidence proceeds as though he was the only person on the roof of the house and the assailants attacked him. His father, Rajendra Singh, P.W.7 however, stated that himself and his son P.W.5 were on the roof of the building, when the incident took place and the assailants attacked his son. The trial Court has rightly disbelieved and discarded the evidence of P.W.7. Once the evidence of P.W.7 is discarded, the evidence of P.W.5 becomes untrustworthy, for the same reason.

Whatever may be circumstances under which the P.W.5 was not elaborate beyond, the statement as to the injuries suffered by him, the evidence of P.W.12 assumes



significance. He is the one, who submitted the complaint. In the first paragraph of his examination-in-chief, he stated that he did not hold any lighting equipments in his hand. He stated that at about 2 O' Clock, he was in the temple during Bhajan and on hearing the sound of a bomb, he came out. According to him, all the three accused and other 10 persons were coming in the opposite direction and he identified the appellants herein and other person named Bipin Singh. He has also stated that bags were on the shoulders of the three accused.

It is important to note that even according to P.W.5, the first bomb was hurled upon him and there was no sound earlier. The evidence of P.W.12 proceeds as though a bomb was hurled or exploded; before P.W.5 was attacked. Further, on the one hand, P.W.12 stated that he had seen the accused coming in the opposite direction leaving the place after the incident, and said on the other hand, that he had seen the appellants herein hurling the bomb at Pancha Devi and Ashok Kumar. It is just understandable as to how this can be reconciled.

We find many other inconsistencies in the entire case. The record discloses that the appellants are from the same village as that of deceased and the injured. The very genesis of the case was projected as though it is a case of

dacoity, and in the process, the murder had taken place. However, the charge was framed only under Section 302 of the Indian Penal Code. The important component as to theft was disbelieved by the trial Court and the charge under Section 380 of the Indian Penal Code was not proved. When so many important links are missing, it is difficult to sustain the conviction of the appellants herein.

We, therefore, allow these appeals and set aside the conviction and sentence awarded by the trial Court in Sessions Trial No.2 of 1992 through order dated 17th December, 1992. The appellants are on bail. Hence, they are discharged from the liabilities of their bond.

(L. Narasimha Reddy, CJ)

(Gopal Prasad, J)

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