

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 651 of 2011

Against the judgment of conviction dated 28.04.2011 and order of sentence dated 05.05.2011 passed by Shri Phool Chand Choudhary, learned Additional District & Sessions Judge, Fast Track Court No. IV, Siwan in Sessions Trial No. 319 of 1982

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Ram Balak Kamkar, S/O Late Lal Bachan Kamkar, R/O Vill. - Dhanauli Math, P.S.
- Siwan Muffasil, Distt. - Siwan

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Prakash Chand Jha, Advocate
Mr. Bijay Prakash Singh, Advocate

For the Respondent : Mr. Sujit Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 21-09-2015

Heard learned counsel for the appellant and the learned counsel for the State.

2. The appellant has been convicted under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/-. He has further been convicted under Section 326 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six years and to pay a fine of Rs.2,000/-. He has further been convicted under Section 324 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years and in default of payment of fine he has further been directed to undergo rigorous imprisonment for a period of six months. However, all the sentences have been directed to run concurrently.

3. The prosecution case, as unfolded from the *fardbeyan* of the

informant Guru Prasad Goswami @ Garbhu Goswami, is that he is disciple (Chela) of Baccha Goswami. He is the Mahanth of Dhanauti Math. On 31.03.1982 at around 8:00 P.M. he was present in his room situated in Dhanauti Math and lying on the bed with face downward and taking rest. The opening of room was eastern side. In the meantime, accused Ram Balak Kamkar entered into the room and sought his blessing. In response informant attributed his blessing and simultaneously asked the reason for covering his body by *Chadar* (sheet) and folding his *lungi*. On this the appellant hurled a bomb which hit the shoulder. At the moment accused Dinbandhu Goswami disciple Muneshwar Goswami, Balchhari Goswami disciple Muneshwar Goswami of village Dhanauti Math and Sudama Rai all the three persons exploded one bomb each on him, as a result of which informant sustained severe injury. On his hue and cry Udho Singh, Bhuteli Singh, Bhupnath Singh and Dhanesh Kumhar came there and seen the occurrence. Kanhaiya Goswami was also present at the courtyard at the time of occurrence. All the witnesses boarded him on jeep and brought to Siwan Hospital where his statement was recorded by the police.

The further case is that the motive behind the occurrence is the litigation pending regarding property of the Math between him and his opponent Sri Ram Gosai. Sri Ram Gasai was in apprehension to loss the battle of litigation with respect to the property of Math which is the main

cause of the occurrence. On the same day at 3:00 P.M. Sri Ram Gosai along with Madan Singh came on the motorcycle in Dhanauti Math where they called Ram Balak Kamkar, Sudama Rai, Dinbandhu Goswami, Balchhari Goswami and have held secret meet and talk for an hour. They also furnished money to Ram Balak Kamkar for taking drink. Thereafter all disappeared from the Math. At about 7:00 P.M. Ram Balak Kamkar and Sudama Rai were found in suspicious condition roaming around the Math. At 7:00 P.M. Udho Singh, Jai Singh, Jainath Singh, Bhuteli Singh, Bhup Nath Singh and Dhaneshar Kohar were sitting in his room along with the informant. At 8:00 P.M. when they went out from the room, the occurrence took place.

4. On the basis of the fardbeyan of the informant First Information Report lodged, case proceeded and after investigation police submitted charge-sheet, cognizance taken and case committed to the Court of Sessions.

5. However, during trial, six witnesses were examined, on behalf of the prosecution. P.W. 1 Dhanesh Kumhar, P.W. 2 Guru Prasad Goswami @ Garbhu Goswami, the informant himself, P.W. 3 Bhup Nath Singh, P.W. 4 Dr. Shyam Balak Sinha who examined the informant/victim, P.W. 5 Lallan Dubey, P.W. 6 Birendra Singh Advocate Clerk. He is formal witness and identified the signatures of Ram Ashray Ram Sub-Inspector on the fardbeyan and informant, which have been

marked Ext. 3 and Ext. 3/1. Seizure list has been marked Ext. 2 and 2/I, injury report has been marked Ext. 1. Initially there were four accused persons, namely, Ram Balak Kamkar, Din Bandhu Goswami, Sudama Rai and Madan Singh, charged under Sections 120B, 307, 326 of the Indian Penal Code and Sections 3/5 of the Explosive Substance Act but only two accused persons, namely, Sudama Rai and Ram Balak Kamkar faced trial. The record of rest two accused, namely, Din Bandhu Goswami and Madan Singh has been separated from the original trial. Madan Singh has died while Dinbandhu persistently remained absent from the trial as a result of which the trial of Dinbandhu separated.

6. However, taking into consideration the oral and documentary evidence, the trial Court acquitted Sudama Rai but convicted the appellant Ram Balak Kamkar and sentenced him as mentioned above. The said judgment of conviction and order of sentence have been challenged by the appellant.

7. Learned counsel for the appellant, however, contended that there are several witnesses mentioned in the fardbeyan as eye-witnesses but they have not been examined in the case. P.W. 1 Dhanesh Kumhar and P.W. 3 Bhup Nath Singh are the eye-witnesses as per the case of the prosecution and from their evidence, it is apparent that they reached the place of occurrence after explosion of bomb and hence, their evidence is not reliable, trustworthy or worthy of confidence for being eye-witness to

the occurrence.

8. Learned counsel for the State, however, contended that merely because the witnesses are inimical or interested, their evidences cannot be rejected out-rightly and just because some of the witnesses mentioned in the fardbeyan or some persons though were present at the place of occurrence as per evidence of witnesses at the time of occurrence but have not been examined, the evidence of such witnesses examined stood test of cross-examination and the same cannot be rejected.

9. However, taking into consideration the evidence of the witnesses in the light of the submissions made on behalf of the prosecution, I proceed to consider the evidence of the witnesses.

10. P.W. 2 Guru Prasad Goswami @ Garbhu Goswami is the informant of the case and has supported the prosecution case that while he was lying in the room at Dhanauti Math then the appellant and Sudama Rai came, appellant entered into the room and sought his blessing, in response informant attributed his blessing. Thereafter appellant hurled a bomb over him which hit on his shoulder. The co-accused Dinbandhu Goswami, Balchhari Goswami and Sudama Rai each exploded bomb on him as a result of which informant sustained serious injury. On his hue and cry Udho Singh, Bhuteli Singh, Bhupnath Singh, Dhanesh Kumhar came there and saw the occurrence. Kanhaiya

Goswami was also present in the courtyard at the time of occurrence. All the witnesses brought him to Siwan Hospital where his statement was recorded by the police about one and half months after the occurrence and hence, there is delay in recording of the First Information Report, but the same has been explained and there is nothing substantial in his evidence to reject the evidence of the witness.

11. P.W. 1 Dhaneshar Kumhar stated in his evidence that at the time of occurrence the informant was present under the room of Math. He saw the appellant and Madan going towards the room of the informant. They had bags in their hands. The appellant hurled one bomb on the informant. Madan Singh handed over his bag to the appellant. The appellant again hurled a bomb on the informant. He saw the occurrence in the light of electric bulb. After exploding the bomb both escaped.

12. P.W. 3 Bhup Nath Singh has stated in his evidence that the occurrence took place at 8:00 P.M. He was present in Danauti Math. At that time the appellant hurled bomb on the informant. He threw 4 to 5 bombs on the informant and he received injuries on his arms, mouth, stomach and chest. Police came there and brought him to hospital. He identified the appellant in the Court at the time of his evidence. He further stated that 3 to 4 persons were also in the company of the appellant who also threw bomb but he could not identify others except the appellant. In his cross-examination he has stated that he belongs to

Dhanauti village. His house is situated in the east-north side of the village. Other houses of Rajendra Singh, Kanahai Teli and Buti Singh are situated in the surrounding. He went to take the extract of edible oil from the mill situated in Mathia. He further stated that the room of the informant situated in western side of Math and the oil mill situated in the eastern side of Math but he could not state the distance between the mill and the room of the informant. He also not stated about the measurement of the room in which the mill was situated at paragraph 8. He has stated his age in between 40 to 50 years. At that time he rushed towards the room of the informant hearing the sound of bomb. He heard 3 to 4 sounds of explosion. When he reached the room of the informant he found the informant injured and lying on the floor and saw the appellant running after throwing the bomb. He also raised alarm. The villagers also came there.

13. P.W. 4 Shyam Balak Sinha was posted in Sadar Hospital, Siwan on 31.03.1982. On that day at 8:45 P.M. he examined Guru Prasad Goswami @ Garbhu Goswami and re-examined the same person on 02.04.1982 at 8:00 A.M. and found the following injuries on his person :

- (1) Extensive lacerated wound involving left shoulder joint and left arm skin soft tissues and muscles were badly lacerated and there was fracture of bone around left shoulder joint. Splinter were found embeded in the wound tissues were burnt by bombs.*
- (2) Lacerated wound 3"x2" on the left chick and chin skin, soft tissues were burnt.*

- (3) *Fracture and dislocation lower to incise teeth.*
- (4) *Superficial burn at many places on the right side of the chest.*
- (5) *Burnt injury on the lower part of the right forearms.*
- (6) *Burn injuries around the neck and left side of chick.*

In the opinion of the Doctor all the injuries were caused by explosive substance, i.e., bomb. However, injury No. 1 was dangerous to life. Injury Nos. 1 and 2 were grievous. Rest of the injuries were simple.

14. P.Ws. 5 and 6 are only formal witnesses, who proved the seizure list.

15. Though the Investigating Officer has not been examined, but nothing has been shown by the appellant that non-examination of the Investigating Officer has caused any prejudice to the defence. The place of occurrence has been established by the evidence of the witnesses and the allegation made has been corroborated by the medical evidence. The submission made by the learned counsel for the appellant is that though 4-5 witnesses have been mentioned in the *fardbeyan* and further from the evidence of the witnesses it transpired that several witnesses were present at the time of occurrence who reached the place of occurrence just after the occurrence, but all the witnesses have not been examined and only few witnesses, namely, P.W. 1 Dhanesh Kumhar, P.W. 2 Guru Prasad Goswami @ Garbhu Goswami and P.W. 3 Bhup Nath Singh have been examined. However, non-examination of some of the witnesses, who came to the place of occurrence but did not depose itself cannot be a

ground to reject the evidence of the witnesses, who had come to depose unless any infirmity is shown by the appellant in their evidence to disbelieve their testimony.

16. It has further been stated that there is enmity between the parties which is apparent from the evidence. However, if the witnesses are interested and inimical, the law provides that such evidence requires to be examined strictly but is not required to be out-rightly rejected. However, on strict examination of the evidence, nothing has been pointed out or found to reject the evidence of the witnesses. However, the medical evidence itself corroborates the oral evidence as the injury caused by explosive substance has been found on the person of the injured.

17. However, from perusal of the record, it appears that the appellant remained in jail from 15.04.1982 to 11.12.1982 i.e. for about eight months and further remained in jail from 05.01.2008 to 17.06.2009 i.e. for about one and half year and again after his conviction from 05.05.2011 till date, i.e., for a period of four years and four months and hence, his total custody is about 6½ years. It has further been pointed out that when the statement of the appellant was recorded in 2010 under Section 313 Cr.P.C., his age was 44 years, hence at the time of occurrence he was 16 years old. However, the appellant was harassed from 1982.

18. Hence, taking into consideration the fact that though the injury no. 1 has been shown to be dangerous to life but the injury was on the arms which is not the vital part of the body and the fact that the appellant has remained in jail for about 6½ years, the ends of justice shall meet by sentencing the appellant for the period already undergone by him and hence, it is hereby ordered that the appellant be released forthwith if not required to be detained in any other case. The appeal is dismissed with modification in the sentence as aforementioned.

(Gopal Prasad, J)

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