

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.883 of 2015

Arising Out of PS.Case No. -93 Year- 2005 Thana -DARAUNDA District- SIWAN

=====

1. Ramashankar Yadav son of late Nagina Yadav R/o Village- Bagwara, P.s Duraunda, District Siwan.

.... Appellant/s

Versus

1. The State of Bihar.
2. Ashok Yadav Son of Hira lal Yadav R/o village- Bagwara,Purab tola, P.o. Bagwara, P.s Duraunda,Distt Siwan.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Yogendra Prasad Sinha, Advocate

For the Respondent/s : Mr. S.A. Ahmad, APP

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 03-11-2015

In the present appeal, preferred under the proviso to Section 372 of the Code of Criminal Procedure, 1973, challenge is to the judgment and order, dated 14.08.2015, passed by learned Sessions Judge, Siwan in S.Tr. No. 310 of 2009, whereby he has recorded acquittal of respondent No.2, who was charged at the said trial, with the commission of offences under Sections 307,285 and 286 of the Indian Penal Code. The said S.Tr. No. 301 of 2009 arose out of Daraunda P.S. Case No. 93 of 2005 registered on the basis of a written report of the informant, who is appellant herein, relating to the occurrence, which had allegedly taken place on 30.08.2005 at 8 P.M.



2. The prosecution's case, as narrated by the informant, is that on the alleged date and at the time of occurrence, he, along with one Parmhans Yadav (P.S.1), was walking towards their houses together. The moment they reached near the house of one Gautam Yadav at about 8.15 P.M., someone, suddenly, threw a bomb like substance from behind them. They ran away from the spot to escape injury. The bomb thereafter exploded. They did not receive any injury arising out of explosion of bomb. With the aid of torch, they saw the person, who had thrown the bomb, and the person, who hurled the bomb, was Ashok Yadav, i.e., respondent No.2 herein. The First Information Report was not instituted on the same day. On the next date, on the basis of a written complaint of the appellant, an FIR came to be instituted under Section 307 of the Indian Penal Code and under Sections 3 and 4 of the Explosive Substances Act, 1908. After investigation, police submitted *charge sheet* against respondent No.2 for the offences punishable under Sections 307, 285 and 286 of the Indian Penal Code, whereafter cognizance was taken of the said offences by learned Chief Judicial Magistrate, Siwan, who committed the case to the Court of Sessions for trial.

3. At the trial, charges were framed for commission of offences under Sections 307, 285 and 286 of the Indian Penal Code against respondent No.2 and he, having pleaded, non-guilty, was put

on trial.

4. In order to prove the charge, prosecution examined eight witnesses including the informant as P.W.4, his companion, Parmhans Yadav, as P.W.1 and Investigating Officer as P.W.6.

5. Upon marshalling and analyzing the oral as well as documentary evidence adduced at the trial, the learned Sessions Judge found material discrepancies and inconsistencies in the evidence of the prosecution witnesses as has been recorded in the impugned judgment. He also found that though the occurrence had taken place at 8.15 P.M. in the night and the Police Station was barely 5 Kilometers away from the alleged place of occurrence, there was no plausible explanation put forth for lodging the FIR belatedly on the next day of the occurrence. He considered it unbelievable that the informant or his companion (P.W.1) would not disclose the details of the occurrence to their co-villagers nor would they take any step on the same day of occurrence, more so, when the accused, respondent No.2, was his co-villager. Learned Sessions Judge further noticed that according to the informant, the explosion had taken place near the house of one Gautam Yadav and P.W.1, in his cross-examination, has stated that there were many houses near the place of occurrence, but neither the said Gautam Yadav nor his family members nor other persons, who were residents of the locality, had been examined by the

prosecution, who would have been the best witnesses to prove the fact that explosion had, in fact, taken place.

6. Mr. Yogendra Prasad Sinha, learned counsel appearing on behalf of the appellant, has submitted that the prosecution witnesses had identified respondent No.2, who had hurled bomb with the intention of killing the informant. He has further submitted that the prosecution witnesses were able to prove the means of identification of respondent No.2, who had thrown the bomb. According to him, there were sufficient evidence before the learned trial Court proving beyond all reasonable doubt that respondent No.2 had hurled the bomb with the intention of killing the informant, though out of sheer luck, the informant escaped the attempt. According to him, learned trial Court erred in recording acquittal of respondent No.2.

7. We have perused the impugned judgment and order passed by the learned Sessions Judge, Siwan, and have given our anxious consideration to the submissions advanced on behalf of the appellant. We find from the materials on record that in the First Information Report, the appellant stated that he had noticed someone throwing a bomb like substance from behind, while he was walking with P.W.1 and ran away from the place of occurrence, whereafter the bomb exploded. According to him, he identified respondent No.2 as

the person, who had thrown the bomb with the aid of the torch-light. Further, according to him, there were only two eye-witnesses to the occurrence, namely, the informant and P.W.1. It appears that P.W.1, in his cross-examination, deposed that the informant's hand was empty and P.W.1 was carrying in his hand 2 Kgs. of wheat. In such circumstances, learned trial Court appears to have rightly doubted the claim of the informant (P.W.4) that he was carrying a torch with him, with the help of which he identified the respondent No.2. This apart, there was no mention in the First Information Report that two bombs were thrown; but at the trial, the informant and his companion (P.W.1) asserted that two bombs were thrown upon them by respondent No.2. Further, P. W.1, in his cross-examination, deposed that after explosion of bomb, remains of the bombs were lying around at the place of occurrence, which were seized by the police in the presence of some other persons, namely, Jagdish, Nathuni, Lalaln Yadav (P.W.3), Harish, Sujit and himself. The informant, in his cross-examination, deposed that the bomb explosion had caused formation of 3 to 4 ditches at the place of occurrence. The Investigating Officer (P.W.6), on the other hand, did not support the evidence of P.W.1 and P.W.4 in his evidence. He has deposed, in his cross-examination, that no proof of explosion of bomb was found at the place of occurrence nor remains of the bomb were found there.

Even in the course of investigation, no any ditch nor any sign of explosion was found at the place of occurrence. Lalan Yadav (P.W.3) having not supported the prosecution's case, he was declared hostile to the prosecution.

8. In the light of the above, in our considered view, learned trial Court rightly arrived at the conclusion that the prosecution had failed to prove beyond all reasonable doubt that a bomb/bombs had, in fact, exploded at the place or time of occurrence. Learned trial Court has rightly taken into account that it would have been the normal conduct of a reasonable man of ordinary prudence to have informed the police or his co-villagers about the occurrence, particularly, when the offender was a co-villager.

9. We also find that there was no material before the learned trial Court to prove the intent of respondent No.2 to kill the appellant.

10. We find from the impugned judgment that it is based on due scrutiny and appraisal of evidence and other materials on record, which cannot be said to be perverse requiring interference by this Court exercising appellate power conferred under the proviso to Section 372 of the code of Criminal Procedure, 1973.

11. We cannot lose sight of well settled principle that the presumption of innocence in favour of an accused stands reinforced

and fortified with the passing of an order of acquittal, in his favour, by the trial Court and unless the findings of the trial Court, leading to acquittal of accused, are found to be perverse and highly unreasonable and unless the learned trial Court is found to have excluded from considering relevant and clinching materials, without any justification, appellate Court can not interfere with the judgment of acquittal of an accused.

12. We do not find any compelling circumstance, in the present case, to interfere with the impugned judgment of the trial Court; rather, we find the conclusion of the learned trial Court to be based on sound principles of appreciation of evidence in a criminal trial.

13. We do not find any merit in this appeal. This appeal, accordingly, stands dismissed.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

AFR/ ArunKumar

U			
---	--	--	--