

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.119 of 2016

Arising Out of PS.Case No. -117 Year- 2006 Thana -GHANSHYAMPUR District- DARBHANGA

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Sripati Thakur, son of Late Pramjeev Thakur, resident of Village- Lagma, P.S- Ghanshyampur, District- Darbhanga.

.... Appellant

Versus

1. The State of Bihar
2. Dinesh Maharaj, son of Late Mahendra Maharaj,
3. Gopal Maharaj, son of Late Mahendra Maharaj,
4. Indra Kant Maharaj, son of Late Mahendra Maharaj
All Nos. 2 to 4 are residents of Village- Lagma, P.S.- Ghanshyampur, District- Darbhanga.

.... Respondents

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Appearance :

For the Appellant : Mr. Manish Kumar, Advocate

For the Respondent-State : Mr. Ajay Mishra, A.P.P.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE HEMANT GUPTA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 11-02-2016

The present appeal against acquittal is directed against an order passed by 2nd Additional Sessions Judge, Darbhanga, on 27th November, 2015, in Sessions Case No.228 of 2008, granting benefit of doubt for the offences punishable under Sections 307 and 120B of the Indian Penal Code read with Sections 3, 4 and 5 of the Explosive Substances Act, 1908.

The appellant set the prosecution in motion when he made a statement on 08.09.2006 that when he was sleeping in his house, there was sound at his door and his mosquito net started burning due to which his chest, abdomen and neck got burn injuries.

The wall of his house also caught fire. There was smell of petrol and the glass panes got scattered. He stated that family members and neighbours came who told that one boy in *Lungi* alone with naked body fled away towards the street of Balmukund Maharaj. He apprehended that these people have tried to kill him as there is dispute with one Indrakant Maharaj.

Though the incident is of 7th September 2006 at 9:45 P.M., but the First Information Report was lodged on 08.09.2006. On completion of investigation, a report was filed to make the accused to stand trial for the offences under Sections 307 and 120 of the Indian Penal Code and Sections 3, 4 and 5 of the Explosive Substances Act, 1908.

The prosecution examined ten witnesses named P.W. 1 Sripati Thakur, P.W. 2 Sheela Devi, P.W. 3 Uday Kant Thakur, P.W. 4 Laleshwar Mukhiya, P.W. 5 Arjun Jha, P.W. 6 Bahori Jha, P.W. 7 Jatashankar Jha, P.W. 8 Amar Nath Jha, P.W. 9 Bal Mukund Maharaj and P.W. 10 Dr. V.S. Prasad. The defence also examined D.W. 1 Ganga Sah in defence.

The learned trial court found that only three witnesses have supported the prosecution story i.e. the appellant (P.W. 1), his wife (P.W. 2) and the Medical Officer (P.W. 10). The other witnesses have turned hostile.



The learned trial court found that the appellant has admitted that there was dispute regarding Khesra No. 1755, Khata No. 343 and in respect of which proceedings under Sections 107, 144 and 188 of the Code of Criminal Procedure were initiated. The trial court found that there are material discrepancies in the statements given by the appellant and his wife. The appellant has stated that his wife was sleeping in a room on the western side whereas his wife as P.W. 2 has stated that she was sleeping on the side of the bed of her husband. She, in her statement, under Section 161 Cr.P.C., has stated that she was sleeping in a room and came out only after hearing cries of her husband. Further, the appellant has stated that he told his wife and son after 5-7 minutes of throwing of the bomb whereas wife of the appellant deposed that she had seen the person throwing the bomb. As per P.W. 1 and P.W. 2, many persons came to the site, but none has been examined. The villagers, who came to the court to support the prosecution case, have not supported the prosecution story inasmuch as the next door neighbour Bal Mukund Maharaj has also not supported the prosecution story.

P.W. 10 has medically examined P.W. 1, the appellant, after three days but he deposed that injury is two week's old. Thus, the time of occurrence deposed by the appellant contradicts the medical evidence. The Medical Officer (P.W. 10) has also not



deposed the cause of injury. Still further, the prosecution has not taken in possession the remnants of bomb and not got them chemically examined. In absence of direct evidence and the contradictory evidence produced by the prosecution, no case is made out, especially when there is land dispute between the parties. Since the remnants of the alleged bomb has not been taken possession of, nor any bomb was recovered, nor there was any scientific test of the remnants, therefore, no offence under Sections 3, 4 and 5 of the Explosive Substances Act is made out.

We have heard learned counsel for the appellant and find no merit in the present appeal.

The incident is said to have taken place on 7th September, 2006 at about 9:45 P.M. As per the appellant he has not seen the person who has thrown the alleged bomb. His information is based on the information given by the other persons, but none has supported the prosecution story. None of the prosecution witnesses could identify the person who has thrown the alleged bomb. In the absence of any evidence of the fact that it was the accused, who was running away from the scene of occurrence, therefore, the prosecution has miserably failed to prove the allegations against the respondents-accused.

The learned trial court has discussed the entire

evidence in minute detail finding out the discrepancies in the statement of P.Ws. 1 and 2, the husband and wife, and the fact that injuries were much prior to the date of alleged occurrence; there is land dispute between the parties as well. Therefore, the possibility of false implication cannot be ruled out. The learned trial court has discussed the entire evidence in correct perspective. It could not be argued that any evidence has been misread or has not been taken into consideration. As such, finding recorded by the learned trial court cannot be said to be perverse which may warrant interference in the present appeal against the acquittal.

The Appeal thus stands dismissed.

(I. A. Ansari, ACJ)

(Hemant Gupta, J)

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