

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.377 of 2015

Arising Out of PS.Case No. -19 Year- 2014 Thana -BHAGALPUR KOTWALI District-
BHAGALPUR

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1. Sunil Kumar @ Subhash Rajak, son of Shankar Rajak, resident of Village-
Mohanpur, Madhuban, P.S.- Pirpanti, Distt.- Bhagalpur.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjan Kr. Jha,
Mr. Subhash Kr. Jha, Advocates

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 07-11-2017

Appellant, Sunil Kumar @ Subhash Rajak has been found guilty for an offence punishable under Section 427 IPC and sentenced to undergo RI for 2 years, under Section 307 IPC and sentence to undergo RI for 7 years as well as to pay fine of Rs. 2000/- in default thereof, to undergo SI for 2 months with a further direction to run the sentences concurrently vide judgment of conviction dated 01.05.2015 and order of sentence dated 05.05.2015 passed by Adhoc Additional Sessions Judge, 1, Bhagalpur in Sessions Trial No. 619/2014/630/2014.

2. PW-11 had filed written report disclosing therein that while he was at Begusarai on previous night, he received call from his wife that unknown criminals had hurled bomb as a result of which, there happened to be damage of the building as well as his two sons, namely, Sandeep Kumar and Dr. Amit Kumar have sustained bomb injury and on account thereof, have been taken to the hospital. It has



also been disclosed that at an earlier occasion Rangdari to a tune of Rs. 10 Lacs was demanded through mobile no. 8051897766 and so, he apprehends that on account of non providing of Rangdari, this occurrence has been committed by the same group. It has also been disclosed that a case was instituted. The caller had also threatened that in case of non compromising the case, then in that event, he will be given a lesson.

3. On the basis of the aforesaid written report, Kotwali PS Case No. 19/2014 was registered wherein after investigation charge-sheet was submitted against the appellant, keeping the investigation pending against others whereupon cognizance of an offence was taken by the learned lower court facilitating the trial which concluded in a manner, subject matter of the instant appeal.

4. The defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 of the CrPC is that of complete denial. However, neither oral nor documentary evidence has been adduced on behalf of appellant.

5. In order to substantiate its case, prosecution had examined altogether eleven PWs out of whom, PW-1, Paltan @ Paltu Sah, PW-2, Brajesh Sah, PW-3, Shankar Ram, PW-4, Dr. Amit Kumar, one of the injured, PW-5, Md. Ajmal, PW-6, Subodh Pandit, PW-7, Vijoy Chandra Sharma, Investigating Officer, PW-8, Sandeep Kumar, another injured, PW-9, Subodh Narayan Singh, Investigating



Officer, PW-10, Dr. Pradeep Kumar Bajaj and PW-11 Dinesh Kumar Sharma, Informant. Side by side had also exhibited Ext-1, Signature of PW-5 over seizure list, Ext-1/1, Signature of PW-6 over seizure list, Ext-1/2, Seizure list, Ext-2, endorsement over written report, Ext-3 series, signature of concerned police officials over formal FIR, Ext-4, Charge-sheet, Ext-5 series, injury report of Subodh and Amit, Ext-6, written report.

6. As stated above neither oral nor documentary evidence has been adduced on behalf of appellant.

7. From perusal of the lower court record, it is evident that PWs-1, 2 and 3 have not supported the case of the prosecution, on account thereof, they have been declared hostile. PW-4, Dr. Amit Kumar, one of the injured though supported the case of the prosecution did not claim identification against the appellant. PW-5 is Md. Ajmal who during course of evidence apart from affirming his status as seizure list witness had also stated that during course of fleeing the miscreants, he had identified one of them who happens to be the appellant. PW-6 is formal. PW-7 happens to be part Investigating Officer not at all connected with the appellant. PW-8 is Sandeep Kumar, another injured who had claimed that from window he had seen the miscreants fleeing away and during course thereof, he identified the appellant. PW-9 is the Investigating Officer. PW-10 is the doctor who had examined both the injured, namely, Dr. Amit



Kumar and Sandeep Kumar who had sustained injuries cause by explosive substance. PW-11 is Dinesh Kumar Sharma. Admittedly, he was not present during course of occurrence.

8. Now coming to the evidence of PWs-5 and 8, it is apparent that they have developed their testimony so far identification is concerned, and the same happens to be corroborated with the evidence of PW-9, the Investigating Officer. Apart from this, there happens to be no source of light nor these witnesses had stated that they had an occasion to see the appellant since before. Apart from this, identification by Sandeep (PW 8) was not at all possible in the aforesaid background coupled with the fact that he had seen the miscreants fleeing on the road from behind and so, unless and until the appellant would have been known to him since before, he would not be in a position to identify by gait, appearance that too from behind. Furthermore, there happens to be complete absence at the end of the prosecution that there was source of light available over the road nor PW-9, Investigating Officer during course of inspection had noted the same. Therefore, the source of identification has become doubtful.

9. Now coming to the evidence of informant PW-11, admittedly he was not present at the place of occurrence and so, though he had identified the appellant by guessing him to be Sunil which, the criminal jurisprudence forbids. Now coming to the



evidence of PW-9, the Investigating Officer it is apparent that he had procured the text (CDR) and other information relating to the appellant which, on account of non presence of duly attested copy of the necessary information by the person who had issued through computerized process in terms of Section 65B of the Evidence Act, makes the oral evidence inadmissible coupled with the fact that the aforesaid evidence were, even accepting the prosecution case, would be relevant for the purpose of another case whereunder ransom was demanded and not with regard to present case whereunder bomb was hurled and exploded.

10. That being so, the judgment impugned happens to be based upon no evidence. Consequent thereupon, the same is set aside. Appeal is allowed.

11. Since appellant is on bail, he is discharged from the liability of bail bond.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	10.11.2017
Transmission Date	10.11.2017

