

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.544 of 2002

Arising Out of PS.Case No. -48 Year- 1992 Thana -Chandi District- BHOJPUR

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1. Chandra Bhushan Prasad.
 2. Shashi Bhushan Prasad.
 3. Sheo Shankar Prasad
All sons of Girija Prasad and
 4. Girija Prasad S/o Late Ram Govind Prasad
All R/o village & P.S. Chandi, District-Bhojpur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Prasad
For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date: 02-11-2017

Heard learned counsel for the appellants as well as learned APP for the State on this criminal appeal and perused the record.

2. This criminal appeal has been preferred against the Judgment and order of conviction and sentence dated 09.09.2002 passed by the learned Additional Sessions Judge-cum-P.O., Fast Track Court no. 4, Ara, Bhojpur in Session Trial no. 33 of 1993 arising out of Chandi P.S. Case No. 48 of 1992, whereby the learned trial court acquitted the accused Chandra Bhushan Prasad, Sashi Bhushan Prasad, Sheo Shankar Prasad and Girija Prasad from the offence punishable under Section 307 of the I.P.C. while convicted them for the offence punishable under Section 324/34 of the Indian Penal Code and sentenced them to undergo R.I. for two years each.



3. The factual matrix of the case is that Chandi P.S. Case No. 48 of 1992 was instituted under Section 323, 324 and 307 of the Indian Penal Code and under Section 3/4 of Explosive Substance Act against the appellants Chandra Bhushan Prasad, Sashi Bhushan Prasad, Sheo Shankar Prasad and Girija Prasad on the basis of written report of Virendra Kumar Prasad S/o Late Mangal Charan Prasad R/o Village-Chandi P.S. Chandi District-Bhojpur at Ara recorded by S.I. of P.S. Chandi with the allegation, in succinct that, on 18.06.1992 at around 12:00 O'clock, abruptly Chandra Bhushan Prasad, Sheo Shankar Prasad, Sashi Bhushan Prasad and Girija Prasad arrived at his house and dismantled his brick wall. On quizzing them about the reason of dismantling the wall, they started rapping expletives and on the order of Girija Prasad to eliminate them, Sashi Bhushan Prasad took out acid from his house and hurled the same on them with intention to do away with their lives. In the meantime, Chandra Bhushan Prasad and Sheo Shankar Prasad hurled two bombs out of them one exploded on his tiles roof and another on his sahan land resultantly, he sustained injuries on his leg, shoulder and both hands while Bijendra Singh on his right hand finger, Vinod Kumar on his face and both the hands, Yogendra Singh on his both legs and his two daughters also sustained injuries from acid and bomb. Bakelal, Rameshwar Prasad and others witnessed the occurrence.

4. The aforesaid case was investigated by the police



and on conclusion of the investigation, I.O. submitted chargesheet under Sections 324, 307 of the Indian Penal Code and under Section 3/4 of Explosive Substance Act against the aforesaid accused persons.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against aforesaid accused persons and committed the case to the court of sessions and on transfer finally the case came in *seisin* of the learned Additional Sessions Judge-cum-P.O., Fast Track Court no. 4, Ara, Bhojpur for trial.

6. Charge against the accused Girija Prasad, Chandra Bhushan Prasad, Shashi Bhushan Prasad and Sheo Shankar Prasad was framed under Section 307/34 of the Indian Penal Code and charge against Chandra Bhushan Prasad and Sheo Shankar Prasad was framed under Section 3 of the Explosive Substance Act. Charges were read over and explained to them to which they pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether eight prosecution witnesses namely, informant Virendra Kumar as PW-1, Yogendra Prasad as PW-2, Bijendra Kumar as PW-3, Bake Lal as PW-4, Rameshwar Prasad as PW-5, Vinod Kumar Singh as PW-6, doctor Vijaendra Prasad as PW-7 and Sheovachan Singh as PW-8. Out of the aforesaid witnesses, PW-8 happens to be formal witness who has



proved the formal FIR marked as Ext-3, two seizure lists marked as Ext-4 and 4/1 and paragraph nos. 1 to 54 of the case diary marked as Ext-5.

8. The statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence. In buttress of their case, they have neither adduced any ocular nor documentary evidence.

9. After hearing the parties and perusing the record, the learned trial court passed the impugned Judgment and Order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid Judgment and Order of conviction and sentence, the convicts have preferred the present Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellants beyond all reasonable doubts or not.

12. It is submitted by the learned counsel for the appellants that the occurrence took place amid the hot exchange of argument and there was no intention to cause any injury to the prosecution party by the appellants. The injuries sustained by the appellants are superficial and simple in nature. Moreover, the occurrence is of the year 1992 and considerable period of 25 years has passed away and the appellants have faced rigours of trial for



such a long span of time, hence, the appellants may be acquitted, taking lenient view.

13. On the other hand, learned APP advocating the correctness and validity of the impugned Judgment and Order of conviction and sentence, submitted that it is a case of acid burn injury and all the injured have supported the prosecution case and after correctly appreciating the facts and evidence on record, the learned lower court has passed the impugned Judgment and Order of conviction and sentence which is liable to be upheld and this appeal has no substance in it and is liable to be dismissed.

14. From perusal of record, it appears that there are six materials witnesses of the case. Out of them, four witnesses are injured of the case and two are independent witnesses. From perusal of the testimony of the independent witnesses namely, Bakelal PW-4 and Rameshwar Prasad PW-5, it appears that the aforesaid two witnesses do not happen to be eye witness of the occurrence rather hearsay witnesses. As PW-4 has stated in his examination-in-chief that when he arrived at the place of occurrence, he found the accused persons indulged in altercation with the family of Virendra Kumar. He also witnessed Virendra, Yogendra and Vinod sustained acid burn injury. The aforesaid statement of the PW-4 indicates that he had not witnessed the occurrence of dismantling the brick wall and hurling of bomb and acid by the appellants rather had simply witnessed the acid burn



injury on the person of the victims. Though, in his examination-in-chief, he has stated that on quizzing Virendra Kumar divulged him that on forbidding them to dismantle the brick wall, the accused persons had hurled acid on them, but said Virendra Kumar PW-1, has not corroborated the factum of divulgence of the aforesaid occurrence to Bakelal PW-4. Hence, for want of corroboration the said statement of said hearsay witness is not admissible in evidence. Rameshwar Prasad PW-5 has stated in paragraph 1 of his examination-in-chief that at the time of occurrence, when he regressed from his field, he learnt from his family that the wall of Virendra Kumar had been demolished and acid had been flung by the accused persons and made the victim injured by flinging bomb and acid, then he rushed at the door of Virendra Kumar and witnessed Virendra, Bijendra, Yogendra, Vinod, Kavita and Ravita injured. On quizzing them, they divulged him that Sashi Bhushan Prasad had hurled acid on them and Sheo Shankar Prasad and Chandra Bhushan Prasad had hurled bomb, but the said witnesses have not corroborated the factum of divulgence of the aforesaid occurrence to PW-5. Hence, due to non corroboration of the aforesaid statement of PW-5 said statement of said hearsay witness is not admissible in evidence. The aforesaid statement of PW-5 also indicates that he has not seen the appellants dismantling the wall of informant and hurling acid and bomb on the informant and his family members and on his house. Thus, the prosecution case does



not stand corroborated by the independent witnesses of the occurrence.

15. PW-1 (Virendra Kumar) happens to be informant of the case. PW-2 (Yogendra Prasad), PW-3 (Bijendra Kumar) and PW-6 (Vinod Kumar Singh) happens to be injured of the case. From perusal of testimonies of the aforesaid witnesses, it appears that the said witnesses have explicitly stated that at the time of occurrence, the appellants arrived at the house of informant and dismantled his brick wall. On quizzing them about reason of dismantling it, they started rapping expletives and on the order of Girija Prasad to eliminate them, Sashi Bhushan Prasad took out acid from his house and hurled upon them, resultantly, they and Kavita and Ravita sustained acid burn injury. Chandra Bhushan Prasad and Sheo Shanker Prasad hurled bomb upon the tiles roof and on the land in front of the door of the informant. The aforesaid witnesses were subjected to lengthy cross-examination by the defence, but nothing convincing and cogent has been elicited in their cross-examination, having potential to rule out their testimony. Moreover, the said witnesses happen to be injured of the case and their presence at the place of occurrence and witnessing occurrence by them, for want of any contradictions etc. creating doubt about their presence at the place of occurrence and sustaining injury by them in the occurrence, cannot be ruled out.

16. Though, PWs-1, 2 and 3 happen to be informant



and their brother, but it is the settled principle of law that the testimony of the interested witness should not be discarded outrightly rather should be scanned and scrutinized cautiously and carefully. On careful and cautious scanning and scrutiny of the testimony of the aforesaid witnesses, I do not find any material contradictions between the prosecution case and testimony of the aforesaid witnesses and their testimony inter se. Thus, the prosecution appears to have substantiated the case regarding sustaining of the acid burn injury by the aforesaid injured in the occurrence caused by the appellants.

17. From perusal of the injury report and the evidence of doctor Vijaendra Prasad PW-7, it appears that the doctor have proved the injury report and also injuries sustained by the victims. Though, the aforesaid acid burn injury is superficial and simple in nature. Thus, the ocular evidence of the prosecution also stand corroborated by the medical evidence

18. As the injury sustained by the victims caused by acid are very trivial in nature as it is skin deep and of mole size and not on vital part of the person of the victims rather on shoulder, thigh, hand and finger and the said injury is not sufficient to cause death of the injured persons in ordinary course of nature, hence, learned trial court appears to have rightly acquitted the accused persons under Section 307 of the Indian Penal Code and convicted them under Section 324/34 of the Indian Penal Code. Hence, the



impugned Judgment and Order of conviction does not warrant any intervention and accordingly, it is upheld.

19. However, from perusal of record, it appears that the occurrence is long back of 25 years and the appellants have suffered the rigours of trial for fairly long period of time. Out of the aforesaid appellants, Girija Prasad appears to be 85 years old and they also appear to have remained in the custody for three months hence, considering the facts and circumstances of the case, the period of sentence is reduced to the period of custody already undergone by the appellants. Accordingly, this appeal stand dismissed with the aforesaid modification in the order of sentence passed by the learned lower court.

(Prakash Chandra Jaiswal, J)

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