

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.193 of 2015

Arising Out of PS.Case No. -16 Year- 2004 Thana -CIVIL LINE District- GAYA

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1. Md. Javed Son of Md. Muzib Resident of Karimganj, P.S. - Civil Line, District - Gaya.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rashid Izhar, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 07-04-2017

Sole appellant Md. Javed has been found guilty for an offence punishable under Section 3(a), 4(a) of the Explosive Substances Act and has been directed to undergo R.I. for ten years as well as to pay fine appertaining to Rs. 10,000/- in default thereof to undergo S.I. for one year additionally, independently under each heads with a further direction to run the sentences concurrently vide judgment of conviction dated 31.01.2015, order of sentence dated 02.02.2015 passed by Additional Sessions Judge IX, Gaya in Sessions Trial No. 172 of 2014/663 of 2014.

2. Janardan Prasad Singh (P.W 13) recorded his own fardbeyan on 23.01.2004 at about 8.35 P.M. disclosing therein that on the same day at about 5 P.M. he received confidential information



regarding assembling of anti social elements at Railway Cinema Hall Campus lying in Mohalla- Marufganj whereupon after Sanha entry, a raiding party was constituted as per direction of the Town Dy. S.P. and raid was conducted. The miscreants, seeing the Police, began to scatter hither and thither and during course thereof, two persons were apprehended who disclosed their identity as Md. Javed, the appellant as well as Mantu Mian @ Dokhiya (since absconded). Furthermore, they were searched and during course thereof, from a Jhola possessed by Mantu Mian four bombs were found for which seizure list was prepared in presence of Vijay Kumar (P.W.4) as well as Md. Mobin (not examined) however nothing was recovered from possession of Javed, appellant. Accordingly, two cases were independently registered so far present case is concerned. It happens to be Civil Lines P.S. Case No. 16 of 2004 under Section 3/4 of the Explosive Substances Act.

3. After registration of the case, investigation was taken up and after completing the same, chargesheet was submitted followed with taking of cognizance of an offence being exclusively triable by the Court of Session, facilitated the trial on commitment, which ultimately concluded in a manner, the subject matter of instant appeal.

4. Defence case as is evident from mode of cross-



examination as well as from the statement recorded under Section 313 of the Code of Criminal Procedure is that of complete denial of the occurrence. Furthermore, it has also been pleaded that he has been wrongly apprehended from the place of occurrence. However, nothing has been adduced/examined in their defence.

5. In order to substantiate its case prosecution had examined altogether 16 P.Ws. Out of whom P.W.1 is Mukesh Kumar, P.W. 2 is Arun Kumar Singh, P.W.3 Jivit Singh, P.W. 4 Vijay Kumar, P.W. 5 Sanjay Paswan, P.W.6 Yogendra Prasad, P.W.7 Ravindra Prasad, P.W.8 Anil Kumar Singh, P.W.9 Jai Chand Prasad, P.W.10 Dinesh Kumar, P.W.11 Ajay Kumar, P.W.12 Surajdeo Paswan, P.W.13 Janardan Prasad Singh, P.W.14 Jagbandhu Munda, P.W. 15, Libiya Singh Kuntta and P.W.16 Kanchan Kumar. Now coming to the status of the witnesses, P.W.7 and P.W.8 are formal in nature, P.W.4 is the seizure list witness who has been declared hostile, P.W.8 and P.W.9 happens to be the members of bomb defusing squad while remaining witnesses are the material witnesses. At present moment, it is prudent to note that P.W.10 Dinesh Kumar has not been cross-examined at the end of the accused persons.

6. It is further evident from the Lower Court Record that following exhibits have been made on behalf of prosecution. Exhibit 1 series signature of respective witnesses over formal F.I.R., seizure list



Exhibit 2- fardbeyan, Exhibit 3- seizure list, Exhibit 4- signature of the informant over fardbeyan, Exhibit 5- sanction order, Exhibit-6 F.S.L. report. As stated above, nothing has been adduced on behalf of defence.

7. After going through the evidences of the respective P.Ws., it is apparent that they have fully substantiated the prosecution case to the extent that after coming to know about presence of anti social elements at the Railway Cinema Hall Campus, raid was conducted and during course thereof, other miscreants managed to escape while two were apprehended. Out of whom, appellant happens to be one of them. Furthermore, it is also apparent that from the possession of the other co-accused namely Mantu Mian four bombs were recovered from a bag possessed by him, which as is evident from F.S.L. report, been duly substantiated. Furthermore, it is evident from the evidence of all the material witnesses that nothing has been recovered from the possession of the appellant. Therefore, one has to construe before identifying the appellant to be guilty for an offence whereunder he has been found guilty as well as sentenced therefor that he has got conscious knowledge with regard to the possession of bomb by Mantu Mian in a Jhola.

8. When the evidences of all the relevant material witnesses have been gone through, it is apparent that none had stated



that appellant Md. Javed had got conscious knowledge with regard to possession of a bag by Mantu Mian wherein four live bombs were kept.

9. Now coming to the charge, it is evident from the format of the charge that appellant along with Mantu Mian was charged under Section 3 as well as 4 of the Explosive Substances Act. Section 3 of the Explosive Substance Act is found applicable only after having an explosion. For better appreciation Section 3 is quoted below:-

“3. Punishment for causing explosion likely to endanger life or property.-

Any person who unlawfully and maliciously causes by-

- (a) any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with imprisonment for life, or with rigorous imprisonment of either description which shall not be less than ten years, and shall also be liable to fine;***
- (b) any special category explosive substance an explosion of a nature***



likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with death , or rigorous imprisonment for life, and shall also be liable to fine. ”

10. From the evidence of the material witnesses, it is apparent that none of them had stated that at the time of raid there was an explosion endangering the life of the raiding party or any body else. That being so, the ingredients of Section 3 is found not at all substantiated whereupon conviction of the appellant under the aforesaid Section is found non-maintainable in the eye of law.

11. With regard to Section 4 of the Explosive Substances Act, again it looks better to incorporate the same. Section 4 of the Explosive Substance Act is quoted below:-

“4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property. –Any person who unlawfully and maliciously-

(a) does any act with intent to cause by an explosive substance or special category explosive substance, or



conspires to cause by an explosive substance or special category explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance or special category explosive substance with intent by means thereof to endanger life, or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious inquiry to property in India, shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished, -

(i) in the case of any explosive substance, with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

(ii) in the case of any special category explosive substance, with rigorous



imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. ”

12. Section 4 (b) of the Explosive Substance Act deals with the situation wherein explosive substance is found under the possession of an accused with an intent to endanger the life or property. Because of the fact that witnesses have clearly stated that from a Jhola having possessed by Mantu Mian four live bombs were recovered and further, having absence of positive evidence at the end of the prosecution that at that very moment appellant was knowing since before with regard to possession of explosive substance by Mantu Mian, is found lacking. Unless and until there happens to be concrete, positive evidence at the end of the prosecution that appellant was knowing since before, no constructive liability would be fasten upon the appellant. In an alternative, the conscious possession was also to be substantiated one more shortcoming visualizing from the evidence of P.Ws. is that they have not spoken in clear tone that appellant along with Mantu Mian was apprehended at same place which could at least gave an impression of their conjoint activities. Because of the fact that none of the ingredients is found duly substantiated at the end of the prosecution, on account thereof, conviction and sentence recorded under Section 4 of the Explosive



Substances Act is also not found duly acknowledgeable in the eye of law.

13. Consequent thereupon, the judgment of conviction and sentence recorded by the learned trial court against the appellant for an offence punishable under Section 3(a) as well as 4(a) of the Explosive Substances Act is not at all found appreciable in the eye of law whereupon are set aside. Consequent thereupon, the appeal is allowed. Appellant is on bail, hence is directed to be discharged from its liability.

(Aditya Kumar Trivedi, J)

Vats/-

AFR/NAFR	NAFR
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