

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.502 of 2013

(Against the judgment of conviction dated 2nd April, 2013 and order of sentence dated 11.4.2013 passed by Sri Shailesh Sharan Srivastava, 1st Addl. Sessions Judge, Bhojpur, Ara in Sessions Trial No. 128 of 2010 (arising out of Ara Town P.S. Case No. 224 of 2009)).

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Lambu Sharma, @ Munna Sharma, son of Samhut Sharma, resident of village Piro, P.S.- Piro, District-Bhojpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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with

Criminal Appeal (DB) No. 481 of 2013

Arising Out of PS. Case No.-224 Year-2009 Thana- ARA NAGAR District- Bhojpur

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Samhut Sharma S/O Late Saheb Sharma R/O Village - Piro, P.S. Piro, District - Bhojpur, Ara

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

(In Criminal Appeal (DB) No. 502 of 2013)

For the Appellant/s : Mr. Vikram Deo Singh
Mr. Rajiva Ranjan

For the Respondent/s : Mr. S.N. Prasad (APP)

(In Criminal Appeal (DB) No. 481 of 2013)

For the Appellant/s : Mr. Rajiva Ranjan

For the Respondent/s : Mr. S.C.MISHRA (APP)

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

and

HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA)

Date : 11-12-2017



Both the appellants stand convicted vide judgment of conviction dated 2nd April, 2013 and order of sentence dated 11.4.2013 passed by Sri Shailesh Sharan Srivastava, 1st Addl. Sessions Judge, Bhojpur, Ara in Sessions Trial No. 128 of 2010 under Section 302/34 IPC read with Section 120B IPC and sentenced to undergo R.I. for life till death and further fine of Rs. 25,000/- each and in default of payment of fine, further awarded R.I. for 5 years.

2. Prosecution case, in short, as per the F.I.R. is that P.W. 1 has made his statement before the police stating that on the day of occurrence i.e. on 10.07.2009 at 11.45-11.50 hrs, he was in his chamber at Table No. 19 along with Umesh Singh (P.W.2), Indramani Singh (P.W. 3) and Jitendra Singh (P.W.4) and at that time, an unknown boy aged about 20-22 years came near the chamber and tried to extract something from his waist, in the meantime, it exploded causing injury to Vinay Tiwary as well as to the accused also. Some other persons also received injuries including the informant (P.W.1) and P.Ws. 2 to 4. Prosecution case further is that prior to that, on the same day, while he was crossing on the verandah of the *Ijlas* of A.D.J.-I, accused Lambu Sharma, Shambhu Sharma, Samhut Sharma and Munna Mian (accuseds of Sessions Trial No. 659 of 2008) were seen standing on the



verandah. They were accused in a murder case of his cousin brother Dilip Singh. Further case is that they earlier threatened him to compromise the case and also offered Rs. 1.5 lakhs. On the basis of aforesaid statement of the informant (P.W.1), Ara (Town) P.S. Case No. 224 of 2009 dated 11.10.2009 was instituted against the appellants and three other accused persons under various sections of IPC including Section 302 and 120B IPC.

3. The Police after investigation submitted charge-sheet against the appellants and other accused persons under Section 302 and other sections of Penal Code. However, it appears, Munna Mian was not sent up for trial. After cognizance, the case was committed to the Court of Sessions which travelled to the file of Sri Sailesh Saran Srivastava, Additional District and Sessions Judge-I, Bhojpur.

4. During trial, eight P.Ws. were examined on behalf of the prosecution. P.W. 1 Jitendra Singh, Advocate (informant), P.W. 2 Umesh Singh (Advocate, injured) , P.W. 3 Indramani Singh (Advocate, injured), P.W. 4 Jitendra Singh (Advocate, injured), P.W. 5 Dr. J.K. Singh (who conducted autopsy on the dead body of the unknown accused persons), P.W. 6 Dr. Arun Kumar Singh (who has conducted autopsy on the dead body of Vinay Kumar Tiwary) P.W. 7 Sunil Kumar (I.O. of the case) and P.W. 8



Sarvanand Yadav, who submitted the forensic report, were examined in this case. On conclusion of the trial, the learned Trial Court has convicted the appellants under Section 302/34 IPC read with Section 120B of the IPC and acquitted one other accused Raju Paswan from the charges levelled against him. It further appears that the Trial Court has based his judgment solely on the evidence of P.W. 1 and on that basis, the Trial Court found the appellants guilty under Section 302/34 IPC read with Section 120B IPC.

5. Learned counsel for the appellants has argued that so far P.Ws. 2 to 4 are concerned, their evidence is on the point of occurrence and they have not stated anything about the involvement of the appellants or the circumstances to prove the conspiracy of the appellant(s). As such, so far involvement of appellants are concerned, there remains only the evidence of P.W.1 (the informant, an injured in this case), on which the learned Trial Court has also relied. P.W.1 has stated in paragraph 6 that a few minutes earlier to the occurrence, he was crossing through the veranda of the Court of 1st Additional District Judge where he had seen the accused(s) of Sessions Case No. 659 of 2008 i.e. appellant Lambu Sharma, Shambhu Sharma, and the appellant Shambhut Sharma and Munna Mian talking with the deceased



(accused) and all the four persons were getting him identified and they followed him till the downstairs. However, learned Trial Court has failed to consider that attention about his previous statement before the Police has been drawn in paragraph 26 of his cross-examination and the evidence of I.O. (paragraph 33) shows that P.W. 1 had not stated before him (I.O.) or in fardbeyan or re-statement that the accused persons of Sessions Trial No. 659 of 2008 Lambu Sharma, Shambhu Sharma, Shambhut Sharma and Munna Mian were seen by him, talking with the deceased (accused). He has simply stated that he had seen them standing along with the deceased (accused) and he has also not stated that they were getting him identified by deceased (accused). He has also not stated that they have followed him, as such, this is a development made in the evidence of P.W.1 just to make out a case against the appellants.

6. Learned counsel has also drawn attention of the Court towards the evidence of P.W. 2 to 4 who were also sitting along with the P.W. 1 at the time of occurrence but there is nothing in their evidence to show that P.W.1 had informed about the above fact of deceased standing with the other accused persons including appellants in front of the Court of 1st Additional Sessions Judge and getting him identified and followed him. Though, the natural



conduct of P.W.1 would have been that he after coming in the chamber ought to have informed this to the other witnesses as according to him, he felt apprehensive. It is also submitted that P.W.1 has also stated that the accused Shambhu Sharma, Shambhut Sharma, Vijay Sharma, Munna Mian, along with father in law of Vijay Sharma who is working in Bettiah Civil Court had come to his chamber in Vakalatkhana and offered him Rs. 1.5 lakhs for not deposing in Sessions Trial No. 659 of 2008 and on his refusal, they threatened to kill him about which he has informed the 1st Additional Sessions Judge, Bhojpur as well as S.P., Bhojpur at Ara but he has been cross-examined on that point and paragraph 15 of his cross-examination depicts that he had not stated about the offer of Rs. 1.5 lakhs in the application given to the 1st Additional Sessions Judge though he has stated about the threatening by the appellants. In paragraph 16 of his cross-examination, he has stated that at his table, he was threatened by them but in paragraph 17, he has stated that in his application, he has stated that the accused persons along with 3-4 persons were standing outside the Court and he was threatened while coming out from the Court. As such, the aforesaid evidence of P.W. 1 about the threatening given to the informant or offer of Rs. 1.5 lakh is also not consistent and the same cannot be relied upon.



7. Further contention of learned counsel for the appellants is that even if the aforesaid circumstance is taken into consideration, the only circumstance which has come against the appellants is that the deceased (accused) was seen standing along with the appellants and others and secondly, earlier he was threatened by appellants and others, offer of Rs. 1.5 lakh was made, he was threatened and further that deceased (accused) came to his chamber and while taking out something from his pocket, the bomb exploded causing injury to deceased-accused and death of Advocate Vinay Tiwary and injury to P.Ws. 1 to 4. However, for the above circumstances are concerned, the only evidence available on record is of P.W. 1 and his evidence is also not consistent. As such, according to the appellants, those circumstances are not established by cogent, reliable and consistent evidence and conviction under Section 302/34 read with Section 120B IPC, on those evidence does not appear to be sustainable. As per appellants, Section 120B IPC is separate offence and it has to be proved by the circumstances which is complete in chain and any missing link of chain or evidence of circumstance, not being convincing shall entitle the appellants to the benefit of doubt. In this connection, learned counsel for the appellants has referred judgment in a case of *Param Hans Yadav*



& Another Versus State of Bihar reported in ***AIR 1987 SC 955***.

On the above submission, contention of learned counsel for the appellants is that conviction of the appellants is fit to be set aside.

8. On the other hand, learned counsel for the State has submitted that the evidence is consistent so far as occurrence of explosion and causing injury to the informant and others in which one person died. So far the conspiracy is concerned, the evidence of P.W. 1 in paragraph 6 clearly shows that the appellants were found with deceased-accused, enmity is between appellants and informant from before and appellants had threatened the witness. As per learned counsel for the State, the above circumstances clearly point out towards involvement of appellants and in conspiracy with deceased-accused has caused the occurrence and as such conviction of appellants under Section 302/34 IPC read with Section 120B IPC is just and proper and does not require any interference.

9. From the argument advance by both the rival parties, it appears that conviction of the appellants is based on the evidence of P.W. 1. The evidence of P.W. 1, in paragraph 6, shows that appellants were seen talking with the deceased-accused who died in course of occurrence and further evidence which has come against them is that earlier to occurrence, the appellants were also



accuseds in murder of cousin brother of the informant (P.W.1) and in that case, they were pressurizing for compromising the case and had also offered Rs. 1.5 lakhs to him and on his refusal, threatening was given.

10. On close scrutiny of the entire prosecution evidence, it appears, except the evidence of P.W. 1, there is no evidence so far the conspiracy is concerned. There is not an iota of evidence available on record in the evidence of P.Ws. 2 to 4 to show the conspiracy angle in this case. So far the evidence of P.W. 1 is concerned, the evidence which are discussed above has come against him. However, on comparison of the evidence of P.W. 1 with the evidence of I.O., it shows that he has not stated before the Police which is the earliest statement of the informant that the accused was talking with the appellants and they got the informant identified to the deceased-accused and followed the informant. It further appears from perusal of the record that though it is alleged that they were pressurizing the informant (P.W.1) for compromising the case and threatened him in his chamber and in that connection, P.W.1 has given an application to the Court of Additional District and Sessions Judge who in his evidence in cross-examination itself stated that he has filed an application before the A.D.J. with regard to threatening being given by



appellants and others to P.W.1. outside the Court. Discussions made above clearly show that the evidence of P.W.1 is not free from embellishments.

11. We are mindful that the appellants who are father and son have been convicted with the aid of Section 120B of the IPC. So far the incident that occurred in the Vakalatkhana of the Civil Court is concerned, neither serious submissions have been advanced nor we entertain any doubt in view of the evidence of P.Ws. 1, 2, 3 and 4. They all have sustained injuries. In order to bring home the charges of conspiracy within the ambit of Section 120B IPC, it would be necessary to establish that there was an agreement between the parties for doing an unlawful act. There is seldom any direct evidence on the point. However, if it is established from the circumstances proved at the trial then the Court accepts it but such circumstance proved at the trial must be cogent and reliable. On the point of conspiracy, we are left with the solitary evidence of P.W.1. In the fardbeyan, which was recorded at least seven hours after the incident when the I.O. visited his house, the informant has stated that on the date of occurrence, he could notice the appellants in the veranda of the 'Ijlas' of learned A.D.J.-I. He has further alleged that the appellants were accused in a murder case of the maternal brother



of the informant in which there was pressure by the accused on him to compromise. The accused (deceased) Yogendra Choudhary is not an accused of the said trial. In his evidence at the trial, P.W.1 has further added that the appellants were seen with the deceased (accused) and he was being identified inasmuch as they followed him to the ground floor. As noticed, this statement was not made by P.W.1 before the I.O.. Relevant contradictions on this point has already been noticed above, What is further surprising that P.Ws. 2, 3 and 4 are also the advocates practising in the same Bar. None of them has said anything about such fact disclosed to them either in relation to the date of occurrence or the previous incident when allegedly threatening was given by the appellants. Pertinently, it may be noticed that the prosecution case consistent is that co-accused (deceased) reached the room in the Vakalatkhana and was attempting to take out something from his waist when the bomb exploded. It has been shown to us that the hand of co-accused (deceased) did not get any injury caused by explosive substance. Taking into account the aforesaid facts clearly evidencing from the record, we have no doubt in our mind that the angle of conspiracy of the appellants in the commission of crime has not been established beyond pale of doubt.



12. The Hon'ble Apex Court in a case of *Param Hans Yadav & Another (supra)* has held in paragraph 16 of the judgment as under:-

“16. It is true as argued by Mr. Jai Narain for the State that it is difficult to support the charge of conspiracy with direct evidence in every case but if the prosecution relies upon circumstantial evidence, a clear line has to be established and the chain has to be completed, otherwise it would indeed be hazardous to accept a part of the link as a complete one and on the basis of such incomplete evidence, the allegation of conspiracy cannot be accepted. Keeping the nature of the offence in view and the conclusions drawn by the High Court, we have not been able to agree with the High Court that the prosecution has established by circumstantial evidence the complicity of Sadanand in the conspiracy to kill the Collector through Yadav. In these circumstances, Sadanand has become entitled to the benefit of our doubts and his conviction is not sustainable. His appeal has to be allowed. He is acquitted and is directed to be set at liberty forthwith.”

The ratio of the above judgment also shows that the circumstance on which the prosecution is relying, that must have a clear link with the object and the chain has to be completed, otherwise, it would be indeed difficult to convict the appellants.

13. In the circumstances, the Court is unable to uphold the conviction of the appellants who are stated to be in custody. Their conviction recorded under Section 302/34 IPC read with Section 120B by the learned Trial Court in Sessions Trial No. 128 of 2010



is set aside. They are directed to be released forthwith from the jail custody if not required in any other case.

14. Accordingly, both appeals are allowed.

(Kishore Kumar Mandal, J)

(Vinod Kumar Sinha, J)

Pankaj/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.12.2017
Transmission Date	15.12.2017

