

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.2599 of 2017

Arising Out of PS.Case No. -11 Year- 2014 Thana -PAROO District- MUZAFFARPUR

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MANTU MIAN, SON OF LATE RASUL MIAN, RESIDENT OF VILLAGE-
PAROO, KASWA, TOLA, P.S.- PAROO, DISTRICT- MUZAFFARPUR.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Arun Kumar, Adv.

For the State : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 22-12-2017

While learned counsel for the appellant has pressed prayer for bail, at that very moment the judgment impugned has been gone through whereupon, it has been directed for early hearing instead of considering and disposing of prayer for bail. Accordingly, instant appeal has been listed.

2. Against the judgment of conviction dated 16.06.2017 and order of sentence dated 19.06.2017 passed by Additional Sessions Judge, Xth, Muzaffapur in Sessions Trial No.824 of 2014 whereby and whereunder appellant Mantu Mian has been found guilty for an offence punishable under Section 4 of the Explosive Substance Act and has been sentenced to undergo R.I. for five years as well as to pay fine of rupees five thousand in default thereof, to undergo R.I. for one year, additionally, under Section 25(1-B)a of the Arms Act and sentenced to undergo R.I. for one year as well as to pay fine appertaining to rupees one thousand and in default thereof,



to undergo R.I. for three months additionally with a further direction to run the sentences concurrently.

3. PW.1/Informant, Sujit Kumar, ASI of Paroo P.S. had recorded his own fardbeyan on 14.01.2014 disclosing therein that on the same day at about 05:30 AM he, after receiving confidential information regarding preparation of bomb by the appellant, conducted raid at the house of appellant Mantu Mian in presence of two witnesses Md. Shabir Husain (PW.2) and Md. Sahbuddin (PW.3) and, during course of search had recovered two polythene wherein Explosive Substance was, five empty containers, one live cartridge of twelve bore. It had also been disclosed that seized explosive substance appears to be Ammonium Nitrate as well as red oxide. It had also been disclosed that seeing the police, Mantu Mian managed to escape. His children had disclosed that their father used to prepare bomb.

4. On the basis of the aforesaid self-statement of the informant, Paroo P.S. Case No.11/2014 was registered whereupon, investigation commenced and concluded by way of submission of charge sheet which happens to be the basis of trial which concluded in a manner, the subject matter of instant appeal.

5. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 is that



of complete denial.

6. In order to substantiate its case prosecution had examined altogether three PWs, PW.1-Sujit Kumar, informant, PW.2-Shabir Husain and PW.3-Md. Shahbuddin. Side by side had also exhibited Ext.1 Series-Signature of the respective witnesses over seizure list, Ext.2-Written Report, Ext.3-Formal FIR, Ext.4-FSL Report, Ext.5-Sanction order.

7. Neither ocular nor documentary evidence has been adduced on behalf of defence.

8. Now coming to the evidence, it is apparent that PW.2 and PW.3 are seizure list witness who have not supported the case of the prosecution so far search and seizure is concerned though admitted their presence over seizure list. Now remains the sole testimony of PW.1, the informant who during his examination-in-chief had deposed that on getting confidential information on 14.01.2014 he conducted raid at the house of Mantu Mian in presence of Shabir and Sahbuddin and during course thereof, 400 gm of Ammonium Nitrate, red oxide was seized along with Sutli as well as five small containers along with 12 bore cartridge for which seizure list was prepared. (Exhibited the same) accused managed to escape. On query his children have disclosed that Mantu Mian used to prepare bomb. Then thereafter, case was registered and investigation



was entrusted to ASI, Madan Mahto. He had further disclosed that he was identifying the accused since before. During cross-examination he had stated that as his wife had complained against him with regard to torture and further during course thereof, there was presence of Mantu Mian on account thereof, he was knowing since before. In para-9, he had stated that he had not handed over seized article to the Investigating Officer. It was along with Incharge, Malkhana but, shown to the Investigating Officer. He had not demanded.

9. From the seizure list Ext.1, it is evident that a copy thereof has not been served upon inmates of the house more particularly when from own evidence of PW.1 presence of wife was there. Furthermore, from the judgment impugned, age of appellant is visualizing as 72 years that being so, there should have been presence of major children including that of wife as, presence of wife had already been shown by the PW.1. Apart from this, from the evidence of the PW.1, it is evident that recovery has been shown from the house while from the seizure list column no.2; it is evident that it was not from the house of the appellant as, the same has been incorporated “*Gram Paroo Kasba Tola Isthit Mantu Mian Pita Swargiya Rasul Mian Ke Int Ebam Karkat Se Bana Aawasiya Ghar Ke Samne Wale Kamre Se*”. That means to say, that place happens to be away from the main residential house and in the aforesaid background, the prosecution was under obligation to satisfy the



ownership of the aforesaid room which, on account of non-examination of the Investigating Officer is found unexplained nor the PW.1 during course of evidence explained. Apart from this, though there happens to be conjoint sanction order Ext.5 as well as FSL report Ext.4 but, during course of evidence, seized material have not been produced.

10. In the aforesaid facts and circumstances of the case, it looks hazardous to rely upon the evidence of PW.1, informant when the same suffers from ambiguity as referred hereinabove. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed. Appellant is under custody, hence is directed to be released forthwith if not wanted in any other case.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
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