

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.591 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- NAWADA

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1. Kishori Rajbanshi son of Late Madho Ram
2. Munni Mistri son of Khublal Mistri
3. Rajendra Mistri son of Khub Lal Mistri
4. Khublal Mistri son of Late Dharam Mistri
All resident of village Parto Karhari, P.S. Akbarpur, District- Nawadah
..... Appellants

Versus

State of Bihar
..... Respondent

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Appearance :

For the Appellants : Mr. Ranbir Singh (Amicus Curiae)

For the Respondent : A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT
Date: 10-01-2018

Appellant Kishori Rajbanshi, Rajendra Mistri and Khublal Mistri were convicted under Section 307/149 of the Indian Penal Code (hereinafter to be referred as “the IPC”) and appellant Kishori Rajbanshi was sentenced to undergo R.I. for four years whereas Rajendra Mistri was sentenced to undergo R.I. for three years and appellant Khublal Mistri was sentenced to undergo R.I. for one year. Similarly, Munni Mistri stands convicted under Section 307 of the IPC and sentenced to R.I. for seven years and also convicted under Sections 3/5 of the Explosive Substance Act and sentenced to undergo R.I. for five years. Both the sentences were directed to run



concurrently, vide judgment and order dated 10.10.2002 passed by Sri Kamla Prasad Sinha, Presiding Officer Ist Additional court of Sessions Fast Track, Nawada.

2. The prosecution case as stated by P.W.3 in short is that while he was returning after easing himself at about 7 to 8 P.M. on 13.11.1992, near his *Darwaza*, he saw Kishori Rajbanshi having gun in his hand and he caught hold him, on which Kishori Rajbasnshi ordered Munni Mistri and Munni Mistri threw a bomb causing injury to him as well as Kishori Rajbanshi. He has also stated that at that time appellant Rajendra Mistri was carrying Pistol and appellant Khublal Mistri with having '*Khanti*' in his hand. The FIR further disclose that on the sound of bomb, Anik Paswan and several other persons assembled there and the motive of the occurrence is said to be dispute between him and Munni Mistri with respect to land and for that Kishori Rajbanshi used to threat him on behalf of Munni Mistri. Further prosecution case is that all the above accused persons caused injury to him by gun, bomb and entered inside his house and taken away a box containing clothes.

3. The aforesaid fardbeyan was recorded on 14.11.1992 at 11.00 A.M. at Sadar Hospital, Nawada. On the basis of above fardbeyan, the case was registered and after investigation, the charge-



sheet was submitted, the cognizance taken and the case was committed to the court of session, which ultimately came to the file of Sri Kamla Pd. Sinha, Presiding Officer Ist Addl. Court of Sessions, Fast Track Court, Nawada.

4. Altogether four witnesses have been examined by prosecution including the informant P.W.3 and P.W.2 is the Doctor, who has examined the informant in injured condition. P.W.1 is the brother of the injured and P.W.4 is the I.O.

5. P.W.3 in his evidence in court has supported the prosecution case and stated that while he was coming after easing himself and reached near his house, he saw the appellant Kishori Rajbanshi having gun in his hand and he caught him; on which Kishori Rajbanshi assaulted by the '*But*' portion of the gun and on his order, Munni Mistri threw a bomb on him causing injury to him and appellant Kishori Rajbanshi. His evidence also discloses that Rajendra Mistri was carrying Pistol in his hand and Khublal Mistri was having '*Khanti*' and further stated that there were 3 to 4 outsiders also with them. His evidence in chief also discloses that the motive was land dispute with him and Munni Mistri. In his cross examination he has stated that while he was returning, he met the appellants but he did not enquire from them. His evidence also



discloses that in the west of his house, there is house of Jamal Mian, in the south, the house of Mohan Mistri, in the north there is house of one Muslim but he could not say whether they had reached the place of occurrence or not and also could not say as to whether there was any ditch from the explosion of the bomb. A suggestion has been given to this witnesses that he entered into the house of appellant Kishori Rajbanshi and demolished the wall, for which a separate case is going on. Further suggestion has been given that the accused persons have lodged a case with respect to explosion of bomb and a suggestion has also been given that while they were preparing bomb, the bomb exploded. Aforesaid suggestions have been denied these suggestions.

6. P.W.2 Sumiti Kumar is the Doctor who has examined the informant, Umesh Mistri and his evidence also shows that he has also examined Munni Mistri, while he was posted at Sadar Hospital, Nawada and he found :

- a. Blackening and tattooing all over face scalp, both upper limbs, front of chest and abdomen and both lower limb up to knee.*
- b. Multiple lacerated wound over forehead, both eye lids of right eye face, front of chest and abdomen, both upper limb and both lower limb. The wounds were of varying sizes from 3" X 1" to 1/2" to 1/4" with varying depth from subcutaneous to bone deep. These injuries were caused by Bomb blast.*
- c. Fracture of the left arm and fore arm bones*



X ray was recommended.

7. His evidence also discloses that all the injuries were caused by bomb blast and injury no. (i) and (ii) are dangerous to life and was grievous in nature.

8. This witness has admitted that X-ray report is not being present in court. His evidence further shows that time of examination is not mentioned in the injury report and further admitted that such type of injuries can be caused from a blast at a distance from 1 to 2 feet and also if the bomb is handled or intermeddled, then from its blast, such injuries may be caused.

9. The injury report, which has been prepared by him has been marked as Ext. 1 but what transpires on perusal of the injury report is that the same was prepared on 13.11.1992 and the injury slip was also issued by police on 13.11.1992, whereas as per the record, the fardbeyan was recorded on 14.11.1992 by Raghuvver, A.S.I.

10. P.W.1 is the brother of the informant as well as injured and his evidence also discloses that on the day of occurrence, there was *Chhatti* of the son of Umesh Mistri (informant) and he had gone to invite the villagers for *Bhoj* and his evidence further discloses that when he reached near the house of Jabbar Mian, the accused



appellants surrounded and started assaulting him. His evidence also discloses that on the order of Kishori Rajbanshi, Munni Mistri threw a bomb on Umesh Mistri causing injury to Umesh Mistri and Kishori Rajbanshi both. His evidence also discloses that on the sound of explosion of bomb, Manik Paswan, Binith Rajbanshi and Ajay Prasad came there and the accused was taken to Nawada Hospital. In his cross examination in Para 3 he has stated that his brother had proceeded just two minutes earlier and when he reached there he was surrounded.

11. P.W.4 is the I.O. in this case and his evidence discloses that on 14.11.1992, he has taken over investigation of the case and recorded statement of the informant and on 15.11.1992 he proceeded to the place of occurrence i.e. *Gali* (Lane), which is adjacent to the house of Jabbar Mian having 5 ft. width. He has also given a detailed evidence about the place of occurrence. This witness has admitted that he has not found any remaining of the bomb at the place of occurrence and it was found to be cleared by some one. This witness has also been cross examined and in his cross examination, he has stated in para 5 that he could not know about who has cleared the place of occurrence. He has also admitted in his cross examination that except the informant and his brother, none else have supported



the occurrence. No independent witness has been examined in this case and moreover the evidence of P.W.4 and the I.O. shows that except P.W.3 injured and his brother, P.W. 1, none has supported the case.

12. The learned trial court considering the aforesaid evidence available on the record has convicted the appellant Munni Mistri under Section 307 of the IPC and also under Sections 3 & 5 of the Explosive Substance Act and other appellants have been convicted under Section 307/149 of the I.P.C. as stated above.

13. The learned Amicus Curie has assailed the judgment on the ground that in this case except the injured and his brother, the prosecution has not examined any other witnesses though the evidence of P.W.2 clearly shows that the other persons had come on *hulla*. It has further been submitted that the enmity is admitted between the parties and in such a situation when the enmity is admitted, the evidence of related and interested witnesses has to be scrutinized with full care and caution. It has also been submitted that the evidence of P.Ws. 1 and 3 are contradictory to each other so far manner of occurrence is concerned and the injury report also shows that the same has been issued on 13.11.1992 whereas the fardbeyan has been recorded on 14.11.1992 and this also creates serious doubt



about prosecution evidence. It has further been submitted that a suggestion has been given to the witnesses that while they were preparing bomb, it exploded, causing bomb injury to the informant and the evidence of Doctor (P.W.2) in his cross examination also discloses that such type of injury may be possible while intermeddling or handling with the bombs and the evidence of I.O. (P.W.4) also discloses that none except both brothers (P.Ws. 1 & 3) had supported the prosecution case, apart from that enmity is admitted, hence, considering the above circumstances in totality, creates a serious doubt about prosecution story and the prosecution case does not appear to be believable but in spite of that the appellants have been convicted in this case by the learned Trial Court, which appears to be not sustainable in the eye of law.

14. On the other hand the learned counsel for the State has supported the judgment and stated that there is no infirmity in the judgment rather P.W.3, who is the injured, has stated about the manner of assault, which has been supported by the evidence of P.W.2 and their evidence has been found corroboration from the evidence of P.W.1, hence the judgment of conviction does not require any interference by this Court.

15. Having heard both sides and on close scrutiny of the



evidence as discussed above, it appears that except P.W.3 informant and his brother, no other witness has been examined on behalf of the prosecution though the evidence of P.W.2 as well as F.I.R. shows that the other persons reached to the place of occurrence on explosion of the bomb and it further appears from the evidence of P.W.1 and P.W.3 that on that day there was *chhatiary* in the house of the informant injured in the night, in such a situation, presence of other persons can not be ruled out but still no witnesses other than P.Ws.1 & 3 (both brothers) had been examined in the case. No doubt it is settled principle of the law that it is not quantity rather quality, which matters in the criminal trial however, it is not a case where the other independent witnesses were examined by prosecution rather the evidence of I.O. in para 5 discloses that except informant and his brother, no other witnesses have supported the occurrence. His evidence (I.O's.) also discloses that he did not find any remaining of the bomb at the place of occurrence and further stated that it appears that the place of occurrence has been cleaned prior to his inspection of the place of occurrence and in cross examination, he has admitted that he had not investigated the case and did not know as to who had cleaned the place of occurrence. The place of occurrence is just beside the house of the informant (P.W.3) and in such a situation,



if someone cleaned the place of occurrence, that can not go unnoticed from the family members, hence that fact also creates doubt about the manner of occurrence.

16. It also appears that there is contradiction between the evidence of P.W.1 and 3, so far manner of occurrence is concerned, as P.W.3 claims that while he was returning after easing himself and when he reached his house he found Kishori Rajbanshi with gun and other accused persons, he overpowered Kishori Rajbanshi, who asked to kill him and thereafter Munni Mistri threw a bomb causing injury to him, on the other hand, the evidence of P.W.1 discloses that while he was coming after giving *newta* for *chhatti* of the son of the informant, he saw his brother surrounded by accused appellants and they assaulted him. Further this Court also fails to understand as to what was the occasion for informant (Umesh Mistri) to overpower Kishori Rajbanshi when there was no provocation on the side of the accused persons and that also suggests that there may be a different manner of occurrence, especially in the background that a suggestion has been given by the defence that the informant received injuries while preparing bomb. The defence has also claimed that Kishori Rajbanshi has also received injuries in the occurrence but there is absolutely nothing available on the record to show that Kishori



Rajbanshi has received injury in the same occurrence and the Doctor (P.W.2) in his evidence in cross examination had also admitted that such type of injuries may also be caused as a result of intermeddling and handling the bomb. No doubt in support of the aforesaid suggestion or the defence story, no document or ocular evidence has been adduced, however, it is well established that so far decree of proof is concerned, prosecution has to prove its case beyond all the reasonable doubts but defence has only to probablize only a defence story, which appears to be believable on the preponderance of the probability. The defence is not required to prove the defence case beyond all reasonable doubts. No remaining of the bomb was recovered from the place of occurrence though there are such injuries over the person of the injured P.W.3 but no mark of explosion of bomb was found at the place of occurrence whereas the I.O. has stated that it appears that somebody has cleared the place of occurrence and as the place of occurrence is admittedly near the house of the informant it can not be expected that the appellant had cleaned the place of occurrence. Evidence of the I.O. also shows that there is no person who has supported the occurrence except P.W.1 and 3 whereas the evidences are available on the record that other witnesses have also appeared at the place of occurrence.



17. Considering discussions made above in totality, it appears that prosecution case is full of infirmities and inconsistencies and prosecution has not been able to establish its case against appellants beyond all reasonable doubts and they are entitled for benefits of doubts. However, the learned trial court has not considered the aforesaid inconsistencies and infirmities in the prosecution evidence and convicted the appellants.

18. Accordingly, this appeal is allowed and the impugned judgment and order of sentence is set aside. As all the appellants are on bail, as such they are directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

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