

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.412 of 2002

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

1. Balmeeki Singh.

2. Bhagirathi Singh.

Both sons of Late Parshuram Singh, both residents of village Bhith, Police Station Bhagwanpur, District Begusarai.

.... Appellants.

Versus

The State of Bihar.

.... Respondent.

Appearance :

For the Appellant/s : Mr. Arun Kumar Arun, Advocate.
Mr. Atul Anand, Advocate.

For the Respondent/s : Mr. Parmeshwar Mehta, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 10-05-2018

Heard learned counsel for the appellants as well as learned APP for the State.

2. This appeal has been preferred against the judgment and order of conviction dated 22.07.2002 and order of sentence dated 25.07.2002 passed by the 4th Additional Sessions Judge, Begusarai in Sessions Trial No. 238 of 1998, arising out of Bhagwanpur P.S. Case No. 46 of 1998, whereby the learned trial court convicted accused Bhagirathi Singh and Balmeeki Singh for the offence punishable under Section 307/34 of the Indian Penal Code and further convicted accused Bhagirathi Singh under Section 3/4 of the Explosive Substances Act and Balmeeki Singh under Section 27 of the Arms Act and sentenced accused Bhagirathi Singh and Balmeeki Singh to undergo rigorous imprisonment for 7 years under



Section 307/34 I.P.C. and further sentenced Bhagirathi Singh to undergo R.I. for 3 years under Section 34 Explosive Substance Act and also sentenced Balmeeki Singh to undergo R.I. for three years under Section 27 of the Arms Act. The aforesaid convicts were also slapped with a fine of Rs.5000/- each.

3. The factual matrix of the case is that Bhagwanpur P.S. Case No.46 of 1998 was instituted under Section 447/323/324/307/34 I.P.C., Section 34 of the Explosive Substance Act and Section 27 of the Arms Act against Bhagirathi Singh and Balmeeki Singh on the basis of fardbeyan of Smt. Sushila Devi wife of Sri Lal Bahadur Singh recorded by S.I. S.K. Jha Officer-in-Charge of P.S. Bhagwanpur on 14.02.1998 at 10:45 PM in the clinic of Dr. Ramashrya Singh with the case in succinct that on 14.02.1998 at about 3PM while she was taking meal in the verandah of her house in the meantime her neighbour Bhagirathi Singh and his elder brother Balmeeki Singh intruded into her courtyard. Balmeeki Singh hurled bomb upon her taking it out from bag. Witnessing the aforesaid hurling of bomb she escaped to save her life but sustained several injury due to explosion of the bomb, while Balmeeki Singh resorted firing upon her but she left unhurt. Her son who was with her in the courtyard escaped scarringly. Bhagirathi Singh hurled 4-5 bombs in her courtyard. Responding the explosion sound Shiv Kumar Singh, Anil



Singh, Ramshresth Singh and others rushed in her courtyard and witnessed the occurrence. She was rushed to the clinic of Dr. Ramashray Singh to accord her medical aid where she is undergoing treatment. The bone of contention is old land dispute between the parties.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the accused Bhagirathi Singh and Balmeeki Singh under Section 307/34, 323, 324, 447 of the Indian Penal Code, Section 3/4 of Explosive Substance Act and Section 27 of the Arms Act.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the accused persons and committed the case to the court of sessions and on transfer finally the case came in seisin of the 4th Additional Sessions Judge, Begusarai for trial.

6. Charge against accused Bhagirathi Singh was framed under Section 307/34, 324 & 447 of the Indian Penal Code and Section 3/4 of the Explosive Substance Act while charge against accused Balmeekin Singh was framed under Section 307/34, 324 & 447 I.P.C. and Section 27 of the Arms Act. Charge was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.



7. To substantiate its case, in ocular evidence, the prosecution has examined altogether 11 prosecution witnesses namely, Deo Narayan Mahto as PW-1, Md. Kalam Ahmad as PW-2, Malik Singh @ Anil Singh as PW-3, Ramshresth Singh as PW-4, Shiv Kumar Singh as PW-5, Shyam Narayna Singh as PW-6, Sushila Devi (informant) as PW-7, Lal Bahadur Singh as PW-8, Dr. Ramasharay Singh as PW-9, I.O. Jaggarnath Rai as P.W.10 and Shyam Kishore Prasad as PW-11. Out of the aforesaid witnesses PW-1 & PW-11 happens to be formal witnesses while PW-6 is a seizure list witness. In documentary evidence, the prosecution has filed and proved some documents.

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. The defence has neither adduced any ocular nor documentary evidence in buttress of its case.

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 charge levelled against the appellants beyond all reasonable doubts or not.

12. It is submitted by the learned counsel for the appellants that PW-3 Malik Singh @ Anil Singh and PW-5, happen to be Devar of the informant, while PW-4 Ramshresth Singh her Bhaisru and PW-8 Lal Bahadur Singh is her husband, the aforesaid witnesses do not happens to be eye witnesses of the occurrence and moreover they are the family members and highly interested witnesses of the case. No independent witness has been examined by the prosecution in substantiation of its case. It is further submitted that as per the prosecution case son of the informant, namely, Sanjeet Kumar was present with her in the courtyard at the time of occurrence but the said witness who happens to be eye witness of the occurrence has not been examined by the prosecution and no plausible reason has been assigned by the prosecution for his non-examination. It is further submitted that as per the prosecution case and account of the informant (PW-7) Bhagirathi Singh assaulted her by means of bomb and she had sustained bomb injury but the doctor has not found any bomb injury on the person of the informant rather the injury found on the person of the victim are lacerated and abrasion, which are simple and superficial in nature. It is further submitted that though the I.O. in



his statement has stated that he has seized paper, cloth, threads (sutlai) and stone etc. from the place of occurrence but the aforesaid material has not been produced before the Court as material exhibit. Moreover, I.O. has stated in his cross-examination that the aforesaid paper and cloth were not found burnt. He has also not found any ditch caused by explosion of the bomb. The aforesaid aspect of the case also rules out the prosecution case. It is further submitted that there is animosity between the parties and the informant has falsely implicated the appellants in this case due to aforesaid animosity. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case by adducing consistent, trustworthy, reliable ocular and documentary evidence. Hence, the appellants are entitled to be acquitted.

13. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence, submitted that informant and PWs-3, 4 & 5 have supported the occurrence and doctor has also found several injury on the person of the victim. Thus the ocular evidence also stands corroborated by medical evidence. I.O. has also seized pieces of cloth, threads and stone etc. from the place of occurrence and the learned lower Court correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of



conviction and sentence and the same is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

14. To substantiate its case in ocular evidence, the prosecution has examined five material witness of the case out of whom PW-3 Malik Singh @ Anil Singh & PW-5 Shiv Kumar Singh happen to be her Devar while PW-4 Ramshresth Singh happens to be Bhaisur of the informant. PW-8 Lal Bahadur Singh is her husband while PW-7 Sushila Devi is informant herself. From perusal of testimony of PWs-3 & 5 it appears that the aforesaid witnesses in their respective examination-in-chief have made abortive bid to support the prosecution case by stating in consonance with the prosecution case. But, from perusal of the testimony of Malik Singh @ Anil Singh (PW-3) it appears that in para-22 of his cross-examination he has stated that while he was at his door he listened the sound of explosion of four bombs and listening the explosion sound he rushed in the courtyard and found dense smoke there. None from his mohalla had arrived there by that time rather they arrived there ten minutes later. In para-28 & 29 of his cross-examination he has stated that when he arrived in his courtyard he found his sister-in-law Sushila Devi (informant) lying senseless on the verandah located towards west of the courtyard. The aforesaid statement of PW-3 eloquently indicates that at the time of hurling of bomb by the appellant-Bhagirathi Singh



PW-3 was at his door and had listened the explosion sound at his door and responding the same he had rushed to the courtyard and found the informant lying in the verandah of her courtyard senseless, which means that he had arrived at the place of occurrence after sustaining injury by the informant and falling senseless i.e. after culmination of the occurrence and he has not witnessed the occurrence of assault by the appellants. The aforesaid statement of PW-3 also rules out witnessing of the occurrence by PW-4 and PW-5. As as per his aforesaid statement none had arrived at the place of occurrence by the time of his arrival rather 10 minutes later and on his arrival at P.O. he had found informant dying senseless in the verandah of her courtyard. Moreover the attention of the said witness has been drawn by the defence in paras-43 & 44 of his cross-examination regarding contradiction in the statement given before the Court and that before the I.O. under Section 161 Cr.P.C. in respect of assaulting Sushila Devi by means of bomb by Bhagirathi Singh with intention to do away with her life and assaulting her by means of pistol by Balmeeki Singh. The I.O. in paras-30 & 31 of his cross-examination has also corroborated the aforesaid contradiction. Thus, the said witness appears to have taken altogether different stand regarding the aforesaid material aspect of the case and he does not appear to be trustworthy, reliable and credible witness.



15. As per the prosecution case and the account of the informant the informant had sustained injury by explosion of first bomb hurled by the appellant-Bhagirathi Singh and thereafter Bhagirathi Singh again hurled 4-5 bombs in her courtyard, which means that the informant had sustained injury by the first bomb attack but PW-4 has stated in para-13 of his cross-examination that he heard the sound of explosion on the way to the house of Sushila Devi which means that the said witness had not witnessed the appellant-Bhagirathi Singh hurling bomb upon Sushila Devi and sustaining the injury by Sushila Devi in the said assault as he was on way to the house of the informant by that time. The said witness also appears to be on inimical terms with the informant as he has stated in para-7 of his cross-examination that there is dispute about mangoes between him and the accused persons since preceding to the occurrence.

16. PW-8, namely, Lal Bahadur Singh, who happens to be husband of the informant is a hearsay witness of the occurrence as in para-1, 2 & 3 of his examination-in-chief he has stated that he was in the district headquarter Begusarai at the time of occurrence in connection with midterm poll of the Parliament. He got information of the occurrence at 4 PM. On the said information, he rushed to the house and his family member divulged him about the occurrence. In para-19 of his cross-examination, he has stated that his



son, Dharmendra Kumar had given him information in Begusarai but neither the aforesaid Dharmendra Kumar has been examined nor any family member of PW-8 has corroborated the factum of divulgence of occurrence to him. Thus, the aforesaid statement of PW-8 for want of corroboration is not admissible in evidence even as hearsay evidence.

17. Though PW-7 Sushila Devi, who happens to be informant of the case, appears to have supported the prosecution case by stating in her examination-in-chief in consonance with the prosecution case as adumbrated in the F.I.R. But testimony of aforesaid witness does not stand corroborated by any other witness of the case. The most important aspect of the case is that as per the prosecution case and as per the account of the informant her son, namely, Sanjeet Kumar was present at the courtyard at the time of occurrence but the said Sanjeet Kumar has not been examined by the prosecution and no convincing and plausible reason has been assigned by the prosecution for his non-examination, hence adverse inference is drawn against the prosecution. Though as per the prosecution case and as per the account of the witnesses independent witnesses were present in the vicinity of the occurrence at the time of occurrence but none has come forward in corroboration of the occurrence.

18. The another important aspect of the case is that as per the prosecution case and the statement of the witnesses, the



informant had sustained bomb injury in the occurrence but from perusal of the injury report marked as Ext.5 and the evidence of the doctor examined as PW-9 it appears that the doctor had found three lacerated wounds and two abrasion mark on the person of the victim. In para-3 of his examination-in-chief and in para-13 of his cross-examination the doctor has stated that the injury was simple and superficial in nature. The doctor in para-11 & 12 of his cross-examination has stated that in case of injury by explosive substance there must be burn injuries but none of the injuries found by him were burn injury. Thus, the aforesaid medical evidence candidly indicates that the informant had not sustained any burn injury as claimed by her rather lacerated injury and abrasion. Thus, the aforesaid uncorroborated testimony of the informant also does not stand corroborated by the medical evidence. Moreover the said medical evidence goes to rule out sustaining of any burn injuries caused by the explosive substance by the informant in the occurrence and it also goes to rule out the prosecution case.

19. Though I.O. has seized some pieces of cloth, paper, thread (sutli) and stone from the place of occurrence but the said material exhibit has not been produced before the Court. Moreover, the I.O. (PW-10) in para-16 of his cross-examination has stated that he did not found the pieces of stone, sutali (thread) and



news paper burnt. In para-19 of his cross-examination he has further stated that he had not sealed the aforesaid articles. Though the five bombs were hurled in the courtyard of the informant but in para-33 of his cross-examination the I.O. has stated that he had not found any ditch at the place of occurrence. Hence, the aforesaid evidence of I.O. also goes to rule out the prosecution case of hurling bomb by the appellant-Bhagirathi Singh at the place of occurrence. Informant in para-32 of her cross-examination has stated that some blood had fallen on the place of occurrence and also on her saree from the bomb injuries but the doctor PW-9 in para-8 of his cross-examination has stated that at the time of examination, injuries were not bleeding and I.O. in para-29 of his cross-examination has stated that he did not found any blood at the place of occurrence. The aforesaid aspect of the case also creates serious doubt about the prosecution case.

20. Moreover, admittedly there is animosity between the parties as the informant in her fardbeyan and in para-16 of her cross-examination has stated that there is land dispute between them and other witnesses examined by the prosecution have also unanimously divulged the existence of animosity between the parties. Animosity cuts both the edges. But in view of non corroboration of the statement of the informant, non-examination of any independent witnesses of the occurrence, non-examination of the eye witness,



namely, Sanjeet Kumar, son of the informant, non corroboration of the injury allegedly sustained by the informant in the occurrence by the medical evidence, not finding any burnt piece of thread, paper and stone and any ditch at the place of occurrence and not producing material exhibit before the Court, false implication of the appellants in this case due to aforesaid animosity cannot be ruled out.

21. In the facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case beyond all reasonable doubts by adducing consistent, trustworthy and reliable ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned trial Court is set aside and the appellants are acquitted from the charges levelled against them giving them benefit of doubt. As the appellants are on bail, they are discharged from the liability of their bail bonds. Accordingly, this appeal is allowed.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.05..2018
Transmission Date	21.05.2018

