

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No 47 of 2004

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

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Mohd Wakil, son of late Mohd Biran, resident of Village – Emarat Sariya,
Sajjadnagar, PS – Lodipur (Sabour) District - Bhagalpur

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Ms Shailja (Amicus Curiae)

For the State : Mr Parmeshwar Mehta, APP

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

CAV JUDGMENT

Date: 26-04-2018

Heard learned amicus curiae for the appellant and the
learned APP for the State.

2 The appeal has been filed challenging the order of
conviction dated 24th November, 2003 passed by Shri Sushil Kumar,
Additional Sessions Judge, Fast Track Court, Bhagalpur in Sessions
Trial No 732 of 1992 whereby and whereunder the sole appellant has
been convicted for the offences punishable under Section 307 of
Indian Penal Code (for brevity, *IPC*) as also Section 4 of the
Explosive Substances Act. For offence under Section 307 of IPC, he
has been sentenced to undergo rigorous imprisonment for seven years
with fine of Rs 2,000/- and in default thereof to undergo further
simple imprisonment for a period of one year. He has further been



sentenced to undergo rigorous imprisonment for a period of seven years for the offence punishable under Section 4 of the Explosive Substances Act and fine of Rs 1,000/- and in default thereof to undergo simple imprisonment for six months. The trial Court has ordered the sentences to run concurrently. Charges under Sections 324 and 201 of IPC and Section 3 of the Explosive Substances Act have been disbelieved by the trial Court as they have not been proved.

3 The prosecution case is that the informant Md Eqbal (PW 1) gave his *Fardbayan* at the Lodipur Police Station (for brevity *PS*) in the district of Bhagalpur at 8 pm on 26.04.1991. The prosecution case, as stated by the said Md Eqbal (PW 1) is that while he was sitting at his house in village – Imarat Sharaia, Sajjad Nagar under Lodipur PS, *hulla* relating to activities of criminals were heard. Accompanied by his brother Md Firoz (PW 2), the informant rushed to the house of accused Md Wakil who happens to be a co-villager. The accused was at his house and was standing at his door when the informant asked him out of curiosity regarding the *hulla*. It is alleged by the informant (PW 1) that the accused Md Wakil moved inside the house and came back with a bomb in his hand. It is alleged that the accused hurled the bomb on the person of the informant hitting him below the left ear and left shoulder. It is alleged that informant sustained severe injuries and then the accused fled away towards the



north, the informant alleges that several other witnesses came to the place of occurrence. Prior to the said incident, it is alleged that there had been a quarrel between the informant and the accused.

4 Sub Inspector Mohan Prasad (PW 5), who was the then Officer-in-charge of Lodipur PS received the *Fardbayan* only two hours after the occurrence and formal first information report (for brevity, *FIR*) was lodged on 27.04.1991, i.e. the next morning at 8 am. As such, Sabour (Lodipur) PS Case No 94 (4) of 1991 dated 26.04.1991 was drawn. Investigation was taken up and on completion of the same, charge sheet was submitted against the instant appellant on 06.09.1991 whereafter cognizance was taken by the learned Chief Judicial Magistrate, Bhagalpur for the offence on 09.09.1991. The case was transferred to the Court of Shri P K Singh, Judicial Magistrate, 01st Class, Bhagalpur. After commitment to the Court of Session on 28.11.1992, it was transferred to the Court of learned Additional Sessions Judge VII, Bhagalpur and, thereafter, to the Court of learned Additional Sessions Judge VI, Bhagalpur by subsequent order dated 11.09.1995 of the learned Sessions Judge, Bhagalpur. On subsequent transfer of the case to the Court of Shri H M Hassan, the then learned Additional Sessions Judge, Fast Track Court, Bhagalpur under order dated 11.08.2002, the case came before the Court of learned Additional Sessions Judge, Fast Track Court, Bhagalpur



wherein charges were read over to the accused persons. The plea taken by the accused was of total denial of the allegation.

5 On behalf of the State, learned APP has submitted that the deposition of PWs 1 and 2 both support the prosecution case and that the same is also corroborated by the medical evidence of PW 6 Dr Manoj Kumar Jha. The procedure has also been followed as sanction has duly been obtained from the District Magistrate for the offences punishable under the Explosive Substances Act. Other than that, he has submitted that the evidence of informant (PW 1), being the injured witness, should be treated to be credible and reliable.

6 Altogether six witnesses have been examined on behalf of the prosecution. PW 1 Md Eqbal is the informant. PW 2 Md Firoz is his brother. PW 3 is one Md Israfil Khan. PW 4 is one Md Alijan. Both PWs 3 and 4 are residents of the locality. PW 5 is the Investigating Officer (for brevity *IO*) who has carried out the investigation and submitted the chargesheet. PW 6 Dr Manoj Kumar Jha was then posted as Resident Surgical Officer in the Department of Surgery at Jawaharlal Nehru Medical College and Hospital, Bhagalpur. He has examined the injured and prepared the injury report (Exhibit 6).

7 Exhibits 1 and 2 are signatures of the informant (PW 1) on the Fardbayan as well as *Fardbayan* respectively. Exhibit 3,



that is the injury slip, was prepared by Arvind Kumar, Officer-in-charge of Lodipur PS while forwarding the informant (PW 1) for medical examination after recording his *Fardbayan* at Lodipur. Exhibit 4 is the sanction order of the District Magistrate for proceeding in respect of the offence punishable under Section 4 of the Explosive Substances Act. Exhibit 5 is the signature of the Officer-in-charge of Sabour PS where the FIR was formally registered in the next morning that is on 27.04.1991 at 8 am.

8 At the trial, PW 1 has, in his examination-in-chief, more or less supported the case that he has narrated in the *Fardbayan*. He has proved Exhibits 1 and 2. He has reiterated the time of occurrence to be 6 pm on 26.04.1991. He has also deposed that the place of occurrence was at the house of the accused Md Wakil and that upon hearing some *hulla* from the south-west direction, while sitting at his home, he rushed to the house of accused Md Wakil along with his brother Md Firoz (PW 2). He has said that when he made enquiries from Md Wakil at the latter's house, then he was standing at his door, went in the house and came back with a bomb and hit him on the left temporal region and shoulder causing injuries at both these places. He has narrated the prosecution case, as stated in the *Fardbayan*, giving full support to the prosecution case. He has stated that the house of the accused was situated towards the west south side



of his house. He has also deposed that Md Firoz (PW 2) and the informant (PW 1) are full brothers and that they have been residing together. He has also named the other co-villagers including PW 3, who has come to the place of occurrence later that is after the occurrence had taken place. He has stated about there being other inmates in his house at that time. He has also stated regarding the presence of blood-stains on the soil at the place of occurrence in respect of which no seizure was effected by the IO (PW 5).

9 PW 2 Md Firoz has also reiterated the same place and time of occurrence. To a great extent, he has supported the manner in which the occurrence had taken place as stated by the informant (PW 1). However, one relevant discrepancy in the deposition of PW 2 Md Firoz is that his description as regards the place of occurrence is different/inconsistent with that of PW 5, the IO. Another discrepancy in the deposition made by PW 2 in the cross-examination is that he has stated that PW 3 Md Israfil Khan has come to the house of the accused at the time when PW 2 Md Firoz had arrived. On the contrary, PW 1, the informant has stated about PW 3 Md Israfil Khan coming at the place of occurrence being the house of the accused after the occurrence had taken place. In paragraph 12 of his cross examination, PW 2 Md Firoz has stated that the informant (PW1) had no conversation with the accused at the place of occurrence.



However, PW 1, the informant has specifically narrated the incident by saying that on reaching the door of the accused, he had enquired from him regarding the *hulla* taking place and it is, thereafter, that the accused went inside his house and came back with the bomb and lobbed the same upon the informant. PW 2 Md Firoz has also stated about there being blood-stained soil at the place of occurrence.

10 Scrutiny of the deposition of PW 3 Md Israfil Khan, however, brings about a stark and material inconsistency in the story propounded by PW 1, the informant as well as PW 2 Md Firoz. PW 2 Md Firoz has said that PW 3 Md Israfil Khan had arrived at the place of occurrence at the same time with PW 1, the informant. But PW 1, the informant has said that PW 3 Md Israfil Khan had arrived at the place of occurrence later. In his deposition, PW 3 Md Israfil Khan says that he had arrived at the place of occurrence only after he had heard the sound of the bomb. On his arrival at the place of occurrence, he saw Md Eqbal (informant) injured and on arriving there, he was informed by PW 1, the informant that the accused had hurled the bomb on him. PW 3 Md Israfil Khan has disclosed, in his deposition, that the informant Md Eqbal (PW 1) is his nephew and that for the first time, he had been called to depose in the trial by the said Md Eqbal (PW 1). His statement has not been recorded by the IO (PW 5). The inconsistencies are marked throughout the deposition.



11 Another dimension is brought into the case of PW 4 in his deposition. PW 4 has stated that upon hearing the sound of the explosion, he rushed to the house of the informant and not of the accused as is the case of PWs 1, 2 and 3. PW 4 Md Alijan has stated that on arriving at the house of the informant, he saw that the informant was wounded and he informed that Md Wakil (accused) has lobbed a bomb and fled away. Not only the manner of occurrence is suggested to be different but even the place of occurrence, as per the deposition of PW 4 Md Alijan stands shifted from the house of the accused to the house of the informant (PW 1). PW 4 Md Alijan has denied to have any relations with the informant, Md Eqbal (PW 1). PW 5 Mohan Prasad, the Officer-in-charge of Lodipur PS has conducted the investigation in the case and submitted the chargesheet. He has proved Exhibits 1 and 2 as also the injury slip (Exhibit 3). He has given a description of the place of occurrence to be at the house of the accused. He has not found any blood-stains at the place of occurrence. As per his deposition, the place of occurrence was clean. The description as regards the area between the house of the informant and the accused is also inconsistent. Although PW 1 has said that there were many houses in between but the IO (PW 5), in his deposition, has said that there was no house in between. The same is the description of the area between the two houses given by PW 2 Md



Firoz. He has also proved the sanction order (Exhibit 4) of the District Magistrate. The deposition of IO (PW 5) is specific to the extent that the accused Md Wakil had no prior criminal antecedent. It is also his deposition that neither PW 1 (informant) nor PW 2 Md Firoz (his brother), in their statements, specifically said that the injury was sustained on the left temporal region. They have only given a vague statement as regards the bomb injuries being sustained.

12 The deposition of PW 6 Dr Manoj Kumar Jha, though points out that there were some injuries on the person of the informant (PW 1) which have been detailed as follows:

- (i) Lacerated injury 2"x1/2" skin deep – left intraclavicular region.
- (ii) Lacerated wound on left ear low 1/2"x1/2".
- (iii) Shining of hair on left temporal region.
- (iv) Lacerated wound on left shoulder, left half of cheek and upper part of neck with foreign body.

He has opined that the injuries have been caused by explosive substance but has gone on to add that the injuries were simple in nature.

13 The learned amicus curiae appearing on behalf of the appellant has highlighted the aforesaid discrepancies/inconsistencies in the evidence on record. She has also



pointed out that PW 5 has, in his deposition, clearly stated that neither there was any blood-stain nor the remains of bomb were found at the place of occurrence. Even though PW 1, the informant says that there were many house between his house and the house of the accused but none has come forward to give statement.

14 Thorough scrutiny of the deposition of the prosecution witnesses reveals stark and relevant inconsistency. The evidence of PWs 1, 2 and 3, as noticed above, is inconsistent with respect to the place of occurrence. Their own presence at the time and place of occurrence is also inconsistent. Though PWs 1 and 2 say that PW 3 had arrived at the place of occurrence at the same time with PW 1, the informant but PW 1, the informant has said that PW 3 had arrived at the place of occurrence later and PW 3 Md Israfil Khan himself has said that he reached the place of occurrence only after he heard the sound of bomb. As noticed above, PW 4 has also introduced a doubt in relation to the place of occurrence by deposing that upon hearing of the explosion, he had gone to the house of the informant (PW 1) and saw that the informant (PW 1) was wounded. He has stated that the informant (PW 1) told him that Md Wakil (accused) lobbed the bomb and fled away. The presence of blood-stains at the place of occurrence stated by PWs 1, 2 and 3 is contradicted by the deposition of PW 5, the IO. He has not found any



blood-stain at the place of occurrence. In fact, he has found the place of occurrence to be clean.

15 As regards the injury also, there is material inconsistency which casts serious shadow of doubt. The deposition of the IO (PW 5) is specific that neither PW 1 (informant) nor PW 2 (his brother) has specifically stated, in their statements, that injury was sustained on left temporal region. In the statements recorded before the police, they have given vague statements as regards the bomb injuries. Such statements have been improved during course of deposition in Court so as to make the same look grievous. Medical evidence, on the contrary, is that the injuries, though caused by some explosive substance, but were simple in nature.

16 This Court would observe that the prosecution has miserably failed in establishing its case beyond reasonable doubt. The conviction of the appellant on the basis of such inconsistency and unreliable evidence cannot be sustained.

17 Therefore, the judgment of conviction and order of sentence dated 24.11.2003 passed by the learned Additional Sessions Judge, Fast Track Court, Bhagalpur in Sessions Trial No 732 of 1992 for the offence under Section 307 of the Indian Penal Code as also Section 4 of the Explosive Substances Act, is not in accordance with law. The prosecution has failed to substantiate the charge against the



accused person beyond all reasonable doubts.

18 Accordingly, the impugned judgment of conviction and sentence is hereby set aside.

19 The appeal, therefore, is allowed.

20 The accused person (appellant) is acquitted of the charges leveled against him. He is discharged from the liability of his bail bonds.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
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