

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.496 of 1994

(Against the Judgment of conviction and order of sentence dated 20.09.1994 & 22.09.1994, respectively, passed by 1st Additional Sessions Judge, Patna in Sessions Trial No. 44 of 1985)

- 1. Shio Chandra Rai, son of Ram Babu Rai,
- 2. Shambhu Rai, son of Ram Babu Rai,
- 3. Sabab Rai, son of Ram Rup Rai,
- 4. Ram Bahal Rai, son of Thana Rai,
- 5. Uma Rai, son of Ram Babu Rai,

All are residents of village -Habaspur, P.S. Sahpur, District-Patna.

... .. Appellants

Versus

The State of Bihar.

... .. Respondent

with
Criminal Appeal (DB) No. 551 of 1994

- 1. Deni Rai, son of Sabab Rai,
- 2. Lal Kishun Rai, son of Sabab Rai,
- 3. Harihar Rai, son of Ram Bahal Rai,
- 4. Jaleshwar Rai, son of Ram Rup Rai,
- 5. Ramashray Rai, son of Ram Dahin Rai,
- 6. Amarnath Rai, son of Rameshwar Rai,
- 7. Ashok Rai, son of Rameshwar Rai,

All are residents of village -Habaspur, P.S. Sahpur, District-Patna.

... .. Appellants

Versus

The State of Bihar.

... .. Respondent

Appearance :
(In Criminal Appeal (DB) No. 496 of 1994)
For the Appellant/s : Mr. Shravan Kumar, Sr. Adv.
Mr.Nand Gopal Mishra, Adv.
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

(In Criminal Appeal (DB) No. 551 of 1994)
For the Appellant/s : Mr. Shravan Kumar, Sr. Adv.
Mr. Nand Gopal Mishra, Adv.
For the Respondent/s : Mr. Shivesh Chandra Mishra, APP



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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

And

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 15-03-2018

Both the above stated Criminal Appeals have arisen out of common Judgment of conviction and sentence order dated 20.09.1994 & 22.09.1994, respectively, passed by 1st Additional Sessions Judge, Patna in Sessions Trial No. 44 of 1985 and, accordingly, both the above stated Criminal Appeals are being disposed of by this common Judgment.

2. All the appellants have been convicted for the offences punishable under Sections 302, read with Section 149 I.P.C., 307 read with Section 149 and 449 of the Indian Penal Code and furthermore, except appellant Shio Chandra Rai, the remaining appellants were convicted for the offence punishable under Section 3/5 of the Explosive Substance Act and appellant Shio Chandra Rai convicted for the offence punishable under Section 307 of the Indian Penal Code and Section 27 of the Arms Act. All the appellants were sentenced to undergo Rigorous Imprisonment for life under Section 302 of I.P.C. read with Section 149 of the I.P.C. and to undergo Rigorous Imprisonment for five years under Section 449 of the I.P.C. and



furthermore, except appellant Shio Chandra Rai, all the remaining appellants were sentenced to undergo Rigorous Imprisonment for 10 years under Section 307 of I.P.C. read with Section 149 of the I.P.C. and to undergo Rigorous Imprisonment for three years for the offence punishable under Section 3/5 of the Explosive Substance Act, whereas the appellant Shio Chandra Rai was sentenced to undergo Rigorous Imprisonment for 10 years under Section 307 of the I.P.C. and to undergo Rigorous Imprisonment for three years under Section 27 of the Arms Act. All the sentences were ordered to run concurrently.

3. At the very outset, one Ram Babu Rai, who happens to be the uncle of appellant No.1 Dani Rai in Criminal Appeal (DB) No. 551 of 1994, filed an affidavit mentioning therein that the appellant No.1 Dani Rai and appellant No.4 Jaleshwar Rai died during the pendency of the above stated criminal appeals. Similarly, the above stated Ram Babu Rai filed a separate affidavit in Criminal Appeal (DB) No. 496 of 1994 mentioning therein that during the pendency of above stated Criminal Appeal (DB) No. 496 of 1994, the appellant No.2 Shambhu Rai, appellant No.3 Sabab Rai, and appellant No.4 Ram Bahal Rai in Criminal Appeal (DB) No. 496 of 1994 died during the pendency of the aforesaid criminal appeal.



In view of the above stated facts, the Criminal Appeal (DB) No. 551 of 1994 in respect of appellant No.1, namely, Dani Rai, appellant No.4 Jaleshwar Rai of Criminal Appeal (DB) No. 551 of 1994 stands abated and similarly, the Criminal Appeal (DB) No. 496 of 1994 filed on behalf of appellant No.2 Shambhu Rai, appellant No.3 Sabab Rai and appellant No.4 Ram Bahal Rai stands abated. However, the Judgment in the above noted appeals is heard for remaining appellants.

4. P.W.7 Hiralal Rai gave his fardbeyan to P.W.9 Venktesh Sharma, the then Officer-in-Charge of Shahpur Police Station, on 09.05.1984 at 3.00 A.M. at village Habaspur to this effect that he along with his brother, namely, Raja Ram Rai (not examined) and co-villagers, namely, Supan Rai (P.W.3) and Kaushal Rai (P.W.2) were sitting on cot at his door and at that time, a *Barat* had come at the door of his co-villager, namely, Rajendra Rai. In the aforesaid *Barat*, the firing was being made. There was moon light at the relevant time. He further claimed that the *Barat* passed through his door. In the meantime, at about 8.30 P.M. while the above stated *Barat* was returning to *Janbasa*, all of a sudden, 15 to 20 persons started proceeding towards his house, whereupon he flashed torch at the aforesaid persons and identified the appellants Shio Chandra Rai being



armed with rifle, Kalika Rai, Shambhu Rai, Uma Rai, Jaleshwar Rai, Ramashray Ram, Raj Nath Rai, Sabab Rai, Deni Rai, Lalkishun Rai, Amarnath Rai and Ashok Rai all of his village. Seeing the aforesaid persons, out of fear, he started fleeing towards his house, but appellant Shio Chandra Rai fired from his rifle, but the aforesaid firing did not hit him and, thereafter, appellant Shio Chandra Rai ordered other F.I.R. named accused Kalika Rai to kill him by lobbing the bomb and, thereafter, F.I.R. named accused Kalika Rai exhorted the others not to live him alive and, thereafter, all the aforesaid persons started hurling bombs. He further stated that he along with his brother and co-villagers went running into the courtyard of his house, but the aforesaid persons followed them hurling bombs and they, too, entered in the courtyard of his house and on seeing them, he started fleeing towards southern side of his house, but Kalika Rai lobbed a bomb, which hit the southern room of his house and due to explosion of bomb, his niece, namely, Renu Kumari, aged about 10 years, sustained bomb injury and died. He further stated that he having picked up his gun went running towards his village and raised alarm. He also made firing of his gun, which attracted his co-villagers and seeing the villagers, the above stated appellants and other accused left his house



making firing. He came to his house and found his another niece, namely, Ramwati Kumari and Chandmuni Devi (P.W.5) in injured condition. He claimed that the alleged occurrence took place on account of long standing enmity and litigation.

5. On the basis of the aforesaid fardbeyan, the Officer-in-Charge of Danapur Police Station registered, Danapur P.S. Case No. 175 of 1984 for the offences under Sections 147, 148, 149, 307 and 302 of the Indian Penal Code and Section 3, 4 and 5 of the Explosive Substance Act as well as Section 27 of the Arms Act on 09.05.1984. The formal F.I.R. was drawn up on the same day at 2.00 P.M. The formal F.I.R. and the fardbeyan of P.W.7 Hiralal Rai was sent to the concerned Magistrate through special messenger, but the date on which the formal F.I.R. and fardbeyan of the informant was dispatched to the concerned Magistrate has not been mentioned in formal F.I.R. Moreover, the fardbeyan and formal F.I.R. were put up before learned S.D.J.M. Danapur on 12.05.1984.

6. P.W.9 Venktesh Sharma, the then Officer-in-Charge of Sahpur Police Station, took the charge of investigation. He inspected the place of occurrence, recorded the statements of prosecution witnesses, sent the dead body of Renu Kumari for Postmortem examination and after completion of all the



formalities submitted Chargesheet against the appellants. The cognizance of the offence was taken and the case was committed to the Court of Session, in usual manner.

7. The appellants were put on trial before the learned Addl. Sessions Judge and they stood charged for the offences punishable under Sections 302, 149, 307, 149 and 449 of the I.P.C., Section 3/4 of the Explosive Substance Act and Section 27 of the Arms Act. The charges were read over and explained to them to which they pleaded not guilty and claimed to be tried.

8. In course of trial, prosecution examined, altogether, 11 witnesses and got exhibited some documents, including the Postmortem report. The statements of appellants were recorded under Section 313 of Cr.P.C. in which they reiterated their innocence and claimed their false implication on account of previous enmity and litigation.

9. The defence also examined one witness as D.W. 1, namely, Devendra Jha, who proved the supervision note of D.S.P. as Ext.A. However, it would appear from perusal of trends of cross-examination of prosecution witnesses as well as statements recorded under Section 313 Cr.P.C. that the specific stands of the appellants before the trial Court was that the bomb was exploded in the house of P.W.7 Hiralal Rai, when he was



engaged in manufacturing of bomb, but taking the advantage of the aforesaid incidence, P.W.7 Hiralal Rai implicated the appellants in a false case due to previous enmity and litigation.

10. The learned Trial Court, after scrutinizing the evidences available on the record, convicted and sentenced the appellants in the manner as we have already stated above.

11. Learned counsel appearing for the appellants challenged the impugned Judgment of conviction and sentence order arguing that the learned trial Court failed to appreciate the evidences available on the record in its right prospective as the learned trial Court failed to notice that no remains of bombs were found at the door of P.W.7 Hiralal Rai, which negates the prosecution story, because it was specific case of the prosecution that 15 to 20 persons came at the door of P.W.7 and started lobbing bombs, indiscriminately, but it is surprising enough that no sign of lobbing bomb was found by P.W.10 at the door of P.W.7 Hiralal Rai. He further submits that the learned trial Court failed to take note of improbabilities of the prosecution case, because P.W.7 claimed that he along with P.W.2 Kaushal Rai and P.W.3 Supan Rai as well as his brother Raja Ram Rai were sitting at the door and in the meantime, appellants being armed with bombs and rifle came there and



started throwing bombs, indiscriminately, upon them and P.W.7 along with his other companions started fleeing towards his house, but it is surprising enough that neither P.W.7 nor P.W.2 and P.W.3 sustained any injury in such a situation. He submits that the aforesaid facts goes to show that the prosecution has not come with correct and real story.

12. Learned counsel for appellants further submits that P.W.7 , P.W.2 and P.W.3 claimed that they having entered into courtyard of the house of P.W.7 got hidden themselves behind the *Osara* of the aforesaid courtyard, but it is surprising enough that the appellants left P.W.7, P.W.2 and P.W.3 to go unhurt and, therefore, the aforesaid fact also creates doubt about prosecution story. He further submits that P.W.2, P.W.3, P.W.7 and other material witnesses changed their statements in course of trial, because, in fardbeyan P.W.7 claimed that firing and lobbing of bombs started at his door and, thereafter, he as well as others started to flee and entered into the courtyard of his house, but when he as well as other witnesses were examined in course of trial, they changed the prosecution story stating that having seen the appellants, they started fleeing from the door and entered the courtyard and, thereafter, the appellants also came there and lobbed bomb and made firing.



13. Learned counsel for the appellants further submits that the prosecution witnesses changed the prosecution story in course of trial when they noticed that the I.O did not find any sign of lobbing of bomb and firing at the door of P.W.7. He further submits that apart from the aforesaid fact P.W.7 in his evidence claimed that the appellant Shio Chandra Rai was carrying rifle in his hand at the time of alleged occurrence and he shot fire of his rifle, but in course of trial P.W.7 stated that the appellant Shio Chandra Rai was carrying gun in his hand and shot fire by the gun. Further in course of recording the statement under Section 313 Cr.P.C. the trial Court put a question before the appellants Shio Chandra Rai that at the time of alleged occurrence, he was carrying rifle in his hand, therefore, aforesaid contradictions in the prosecution case also creates doubt about the genuineness of the prosecution story and no reliance can, safely, be placed upon the deposition of prosecution witnesses.

14. Learned counsel for the appellants further submits that it is prosecution case that fardbeyan of P.W.7 was recorded at 3.00 A.M. on 09.05.1984 and on the same day the fardbeyan was sent to Danapur Police Station for registration of the case and Danapur P.S. Case No. 175 of 1984 was registered at



Danapur Police Station on the same day and, subsequently, formal F.I.R. was drawn up. He further submits that the formal F.I.R. reflects that the formal F.I.R. and fardbeyan were sent to concerned Magistrate through special messenger, but, intentionally, the date of sending the formal F.I.R. and fardbeyan was left to be mentioned in the formal F.I.R. He further submits that formal F.I.R. goes to show that the F.I.R. and fardbeyan were put up before the learned Magistrate on 12.05.1984 i.e. after three days of registration of the F.I.R., but no explanation regarding the aforesaid delay was given by the prosecution. He further submits that the aforesaid delay creates doubt about the prosecution case, particularly, in view of the specific stand of the appellants that the deceased of the present case died because a bomb was exploded in her house, when P.W.7 was manufacturing the bomb or put the bomb in his house. He further submits that the aforesaid delay goes to show that the prosecution prepared the F.I.R. after due consultation and deliberation or replaced the original information given by the Chowkidar, because P.W.9 Venktesh Sharma, specifically, admitted in his deposition that Chowkidar Deonath Paswan had given information of the alleged occurrence and having got the information from aforesaid Chowkidar Deonath Paswan, he



came to the place of occurrence. He further submits that the aforesaid information of Chowkidar Deonath Paswan has not been brought on record by the prosecution. He further submits that according to Police Manual, the Officer-in-Charge of the Police Station makes entry in the station diary when he leaves the Police Station and in the present case also it would be presumed that P.W.9 had made entry in station diary before leaving the Police Station, but P.W.9 has admitted in his deposition that the aforesaid station diary has not been brought before him at the time of his deposition.

15. Learned counsel for the appellants further submits that all the above stated circumstances create a serious doubt about the prosecution story. Learned counsel for the appellants relied upon the decision of *Ishwar Singh v. The State of Uttar Pradesh* reported in AIR 1976 Supreme Court 2423 in which their Lordships held at para 5 of the aforesaid Judgment as follows:-

“The extraordinary delay in sending the F.I.R. is a circumstance which provides a legitimate basis for suspecting that the first information report was recorded much later than the stated date and hour



affording sufficient time to the prosecution to introduce improvements and embellishments and set up a distorted version of the occurrence. In this case the suspicion hardens into a definite possibility when the case made in court differs at least in two very important particulars from that narrated in the F.I.R. In such a case, the evidence of the eye-witnesses “cannot be accepted at its face value”.

He also relied upon the Judgment of *State of Punjab v. Tarlok Singh* reported in 1972 (3) SCC 869 in which the Apex Court of this country held at para 5 of the aforesaid Judgment as follows:-

“5. First, the High Court noticed the suspicion created by the circumstance that the copy of the First Information Report purported to have been lodged at 3.45 p.m. did not reach the Magistrate at Dasuya till 8 a.m. the next day, even though it was sent through a special



messenger. The distance between the scene of occurrence and Dasuya was only 15 or 16 miles. The inference sought to be drawn is that, in fact, the report was not lodged at 3.45 p.m., but at a much later hour, after the police had arrived at the scene of occurrence and there were consultations to decide what version should be put forward and who should be implicated for the murder. The prosecution, in fact, made no attempt to explain this delay. Such delay, thus, casts doubt on the prosecution version that the report was lodged at 3.45 p.m. without lapse of unnecessary time.”

16. Learned counsel for the appellants further challenged the impugned Judgment of conviction and sentence order on the ground of defective recording of statements of appellants under Section 313 of Cr.P.C. Elaborating his argument, he submits that all the circumstances and evidences, which came in course of trial were not put up before the appellants at the time of recording their statements under



Section 313 of Cr.P.C. To fortify his contention, he drew our attention towards the statement of appellant Shio Chandra Rai and submits that the appellant Shio Chandra Rai has been convicted for the offences punishable under Sections 302, 149 of the Indian Penal Code, but no question regarding lobbing of bomb and killing of Renu Kumari was put also before him and, therefore, the aforesaid omission on the part of the trial Court caused a serious prejudice to the appellant Shio Chandra Rai. He further submits that likewise the statement of Shio Chandra Rai the important and relevant questions were not put up before the remaining appellants and, therefore, the appellants could not get an opportunity to explain the circumstances which had come against them in course of trial. He further submits that in the Judgment of ***Sukhjit Singh v. State of Punjab*** reported in 2014 (1) SCC 270, the Hon'ble Apex Court of this court has held that the recording of statements under Section 313 of the Cr.P.C. is not an empty formality and if improved circumstance and incriminating materials are not brought to the notice of the accused at the time of recording the statement under Section 313 of Cr.P.C., the conviction of the accused cannot be sustained. He also referred some unreported Judgments of Division Bench of this Court passed in Criminal Appeal (DB) No. 29 of 1995 and



Criminal Appeal (DB) No. 371 of 1994 in which the above stated principle of law has been reiterated by the Division Bench of this Court.

17. Learned counsel for the appellants further submits that in the present case, the appellants could not get fair trial due to non mentioning of incriminating materials and relevant circumstances before them in the statement recorded under Section 313 Cr.P.C. and, therefore, the conviction and sentence order of the appellants cannot sustain in the eye of law.

18. On the other hand, learned Addl. Public Prosecutor Sri Dilip Kumar Sinha supported the impugned Judgment of conviction and sentence order arguing that all most all the material prosecution witnesses supported the prosecution case in one voice and apart from this P.W.9, the Investigating Officer of this case, proved the place of occurrence from where the remains of bombs were recovered. He further submits that the I.O of this case found blood from a room also and other materials from the courtyard of the P.W.7 and all the above stated circumstances coupled with testimonies of prosecution witnesses go to show that it were appellants, who committed the alleged crime.

19. Learned Addl. Public Prosecutor further submits



that even if, there is some omission in recording the statement under Section 313 Cr.P.C., then also the aforesaid omission can not render the entire prosecution case demolish unless it is proved that the aforesaid omission has caused prejudiced to the accused. He further submits that in the present case, there is nothing on the record to show that any so called omission while recording the statements of appellants under Section 313 Cr.P.C. has caused any prejudice to the appellants and, therefore, the conviction of the appellants cannot be set aside only on the above stated ground.

20. He further submits that the formal F.I.R. reflects that the distance between Police Station and place of occurrence was about 11 km and P.W.9 remained at the place of occurrence for the whole day of 09.05.1984 and, therefore, even if, the formal F.I.R. and fardbeyan was put up before the concerned Magistrate after three days, then also the aforesaid delay has properly been explained by the prosecution. He further submits that there is no scope before this Court to interfere into the impugned Judgment of conviction and sentence order, because the learned trial Court has discussed each and every aspect of the case and came to definite finding of conviction.

21. As we have already stated that to prove its case



prosecution examined, altogether, 11 witnesses, out of them P.W.2 Kaushal Rai, P.W.3 Supan Rai, P.W.4 Lal Babu Rai, P.W.5 Chandmuni Devi and P.W.7 Hiralal Rai claimed themselves to eye-witnesses of the alleged occurrence.

22. P.W.2 Kaushal Rai claimed that on the alleged date of occurrence, he along with P.W.3 Supan Rai, P.W.7 Hiralal Rai and one Rajaram Ram were sitting at the door of P.W.7 Hiralal Rai and in the meantime, 15 to 20 persons came there and out of the aforesaid persons, he identified the appellants. This witness, specifically, disclosed the name of the appellants and also the weapons, which were being carried by the appellants at the time of alleged occurrence. He further stated that he could not identify four persons and he claimed that he identified the appellants in moon light as well as in the light of torch. He further stated that when appellant Shio Chandra Rai ordered Kalika Rai to lob bomb upon P.W.7 Hiralal Rai, he along with others ran towards the house of P.W.7 Hiralal Rai and as soon as they reached in village street, appellant Shio Chandra Rai fired upon them, but fortunately bullet did not hit to anyone. However, P.W.7 Hiralal Rai went running in his courtyard followed by this witness and others, including the appellants. He further stated that the appellants were throwing bombs. He



claimed that he along with P.W.3 Supan Rai and Raja Ram got hidden themselves behind the Osara, whereas P.W.7 Hiralal Rai went inside the southern room of his house and came out with licensee gun, but Kalika lobbed bomb on the above stated room, which exploded. He further stated that deceased Renu Kumari was sleeping in the aforesaid room and she got injury on her abdomen and died then and there. He further stated that appellant Dharmdeo Rai hurled bomb towards eastern room of the house in which Ramawati Kumari was sleeping and she sustained injuries on her legs. This witness further claimed that Shio Chandra Rai shot fire causing fire arm injury on the chest and abdomen of P.W.5 Chandmuni Devi. This witness has been cross-examined by the defence at length. This witness disclosed the topography of the house and door of P.W.7 Hiralal Rai in para 2 of his cross-examination. This witness admits that the *Baithika* of P.W.7 Hiralal Rai is adjacent east to the house of P.W.7 Hiralal Rai and the exit of the aforesaid door is towards north-west side. He admits that to reach at the exit door of the house of P.W.7 Hiralal Rai from his *Baithika* one has to take turn towards western side. It is admitted case of the prosecution that the appellants first came at *Baithika* of P.W.7 Hiralal Rai and at that time P.W.2 Kaushal Rai, P.W.3 Supan Rai, P.W.7



Hiralal Rai and others were sitting on the *Baithika* and P.W.2 admitted that the appellants encircled them at the *Baithika* of P.W.7 Hiralal Rai and, therefore, the topography of *Baithika* and house of P.W.7 Hiralal Rai as well as the above stated assertion of the prosecution creates doubt about the genuineness of the prosecution story, because the persons who were sitting at the *Baithika* of P.W.7 Hiralal Rai had no exit to the house of P.W.7 through *Baithika* and they had to proceed towards western side for entering into the house of P.W.7 Hiralal Rai and in our view, it was not possible because according to the prosecution case, the appellants were carrying bombs, rifle and guns in their hands and they were making indiscriminate firing upon P.W.7 Hiralal Rai and others and, therefore, the prosecution case, as propounded, does not appear to be probable. This witness further states that the appellants were continuously hurled bombs in the courtyard of house of P.W.7 Hiralal Rai, but he could heard the sound of explosion of only two bombs. Here, it is pertinent to mention that P.W.9 Venktesh Sharma, the Investigating Officer of this case, states at para 2 of his examination-in-chief that he found some remains of bomb in the courtyard, but he could not find any live bomb lying in the courtyard of P.W.7 Hiralal Rai. This witness further states that



one constable found one life bomb at the door of P.W.7 Hiralal Rai. P.W.9 contradicts the claim of prosecution witnesses that no bomb was lobbed at the door of P.W.7. P.W.2 admits that he is cousin brother of P.W.7 Hiralal Rai. The attention of this witness was drawn towards this fact that he had not stated before Police that all the appellants were carrying bomb at the time of occurrence. The attention of this witness was further drawn towards this fact that he had not named appellant Deni Rai, Amarnath Rai, Lal Kishun Rai and Rajnath Rai before the Police nor had stated that at the time of alleged occurrence P.W.7 Hiralal Rai had flashed torch. The attention of this witness was also drawn towards this fact that he had not disclosed before the Police that he got hidden himself behind the wall of Osara. The attention of this witness has been drawn towards this fact that he had not stated before the Police that it was Dharmbir, who hurled bomb causing injury to Ramawati Devi and it was appellant Shio Chandra Rai, who fired upon injured Chandmuni Devi.

23. At this juncture, we would like to refer para-11 of P.W.9 Venktesh Sharma, who stated that P.W.2 had not named appellant Deni Rai, Amarnath Rai, Lal Kishun Rai, Premdhar and Rajnath before him and had also not stated that P.W.7



Hiralal Rai had flashed torch and this witness had also not disclosed about the fact of hiding himself behind the wall. The above stated fact clearly goes to show that this witness improved his statement in course of trial and, therefore, it would be difficult for us to place reliance upon the testimony of this witness.

24. P.W. 3 Supan Rai also claimed himself to be an eye-witness and he stated that he was sitting at the door of P.W.7 Hiralal Rai and when appellants came there, P.W.7 Hiralal Rai flashed torch upon them and he identified the appellants in the light of torch. He repeated the similar story as stated by P.W.2. This witness claimed that the Inquest Report of deceased Renu Kumari was prepared in his presence and his statement was recorded in Court under Section 164 of the Cr.P.C. This witness was confronted in his cross-examination that he had not named Uma Rai, Sabab Rai, Deni Rai, Lal Kishun Rai and Amarnath Rai before the Police nor had stated before the Police that P.W.7 Hiralal Rai had flashed the torch. This witness was further confronted by the defence that he had not stated before the Police that he got hidden himself behind the wall. Further the attention of this witness was drawn towards this fact that he had not made statement regarding throwing of bomb by Dharmdeo



as a result thereof Ramawati sustained injury nor had disclosed regarding firing by Shio Chandra Rai causing injury to injured Chandmuni Devi. This witness admitted in his cross-examination that the Police had found remains of bomb at the door of P.W.7 Hiralal Rai. This witness further stated that appellant Shio Chandra Rai was carrying double barrel gun at the time of occurrence. This witness further admitted that appellants reached at the place of occurrence at 3.00 A.M. on the same day.

25. P.W.9 Venktesh Sharma stated that P.W.3 had not named Uma Rai, Deni Rai, Sabab Rai, Lal Kishun Rai and Amarnath Rai before him and further P.W.3 had not disclosed before him that P.W.7 Hiralal Rai had flashed torch at the time of alleged occurrence. P.W.9 further stated that P.W.3 had not disclosed the fact of hiding himself behind the wall. Therefore, it is apparent that this witness too improved his statement in course of trial.

26. P.W.4 Lal Babu Rai claimed before the trial Court that at the time of alleged occurrence, he was taking meal in his courtyard and in the meantime, P.W.2, P.W.3, P.W.7 and Rajaram came running in the courtyard followed by appellants and others. The appellants were carrying bombs and fire arms.



This witness stated that appellant Shio Chandra Rai was carrying rifle and shot fire of his rifle causing injury to injured Chandmuni Devi (P.W.5). It is pertinent to note that P.W.3 claimed that appellant Shio Chandra Rai was carrying double barrel gun and shot fire of the said gun. Moreover, P.W.4 stated at para-2 of his cross-examination that no bomb was lobbed in the courtyard, rather, only two bombs were hurled on two separate rooms. He further stated that when the appellants and their associates left the place of occurrence, he could not find any remains of bombs lying in his courtyard. The attention of this witness was drawn towards his previous statement recorded under Section 161 of the Cr.P.C., which is evident from perusal of para-3 of his deposition and from perusal of para-13 of the deposition of P.W.9, we find that this witness too improved his statement in course of trial and he had not made relevant and important facts before the Police when his statement was recorded just after the alleged occurrence. P.W.4 further claimed that at the time of alleged occurrence, a lantern was burning in the courtyard and he had identified the appellants in the light of lantern as well as in the moon light, but admittedly, P.W.9 did not seize any lantern nor any lantern was produced by the inmates of the house before the Investigating Officer at the time



of investigation.

27. P.W.5 Chandmuni Devi is injured and claimed to be eye-witness of the alleged occurrence. She repeated the prosecution case adding that appellant Shio Chandra Rai fired on her causing fire arm injury at her chest and abdomen. She also stated that the Police had seen her injuries and recorded her statement and, thereafter, she was sent to hospital for treatment. This witness also claimed to have identified the appellants and others at the time of alleged occurrence, but para 14 of deposition of P.W.9 goes to show that P.W.5 had not named any person before the Police and, therefore, it is obvious that for the first time, she disclosed the name of appellants and others before the Court, when her statement was recorded in course of trial. The para-2 of cross-examination of P.W.5 goes to show that the attention of this witness was drawn towards her previous statement and from conjoint reading of para-2 of deposition of P.W.5 and para 14 of deposition of P.W.9, we find that P.W.5 made several improvements and embellishment in course of trial.

28. P.W.6 Sanchit Rai has been tendered by the prosecution. This witness is cousin brother of P.W.7 Hiralal Rai as well as father of deceased Renu Kumar. This witness has



stated nothing about the occurrence.

29. P.W.7 Hiralal Rai is the informant of this case. This witness reiterated the contents of his fardbeyan, but before the Court he stated that at time of alleged occurrence, appellant Shio Chandra Rai was carrying gun, whereas in his fardbeyan this witness stated that appellant Shio Chandra Rai was carrying rifle at time time of alleged occurrence. This witness further stated that when he tried to pick up gun from his southern room, Kalika hurled bomb as a result thereof Renu Kumari sustained injury as she was sleeping in the said room and, thereafter, this witness came out from his house through western room. This witness, at para-7 of his cross-examination, stated that he had seen the injuries of injured Ramawati and Chandmuni and noticed that only Ramawati had sustained injury by bomb, but in his fardbeyan this witness stated that injured Ramawati and Chandmuni Devi had sustained injuries by bomb. This witness denied this fact that he had sent the local Chowkidar to the concerned Police Station for giving information of the alleged occurrence. The attention of this witness was drawn towards his previous statement recorded under Section 161 of the Cr.P.C. and this witness denied this fact that he had made statement before the Police regarding indiscriminate lobbing of bombs by



the appellants and other at his door. He stated that he had made statement before the Police that the appellants and others had entered in his courtyard and at that time they were hurling bombs. This witness also admitted that the Police had seized the remains of bombs from two rooms as well as from the door. The above stated statements of this witness goes to show that the bombs were exploded at his door also and this witness as well as other prosecution witnesses, subsequently, improved this fact that no bomb had been hurled by the appellants and other at the door of P.W.7 Hiralal Rai. Moreover, the deposition of P.W.9 goes to show that this witness developed his statement in course of trial which creates doubt about the testimony of this witness.

30. It is admitted case of the prosecution that the alleged occurrence took place at 8.00 P.M. on 08.05.1984 and at 3.00 A.M. of 09.05.1984, the P.W.9 had reached to the place of occurrence and recorded the statement of P.W.7. Furthermore, P.W.9 admitted that the Police reached to the place of occurrence on the information given by the local Chowkidar. It is also admitted case of the prosecution that P.W.9 after reaching the place of occurrence recorded the statement of P.W.7 and sent the aforesaid statement to Danapur Police Station for registration of the F.I.R. The formal F.I.R goes to show that the



Police case was registered in Danapur Police Station between 2 to 3 P.M. on 09.05.1984 and the formal F.I.R as well as fardbeyan of P.W.7 Hiralal Rai were sent to Court through special messenger, but it is surprising enough that the formal F.I.R and fardbeyan were put up before the concerned Magistrate on 12.05.84 i.e. after 3 days of registration of the F.I.R. The prosecution failed to explained the aforesaid delay. It is specific case of the appellants that the bombs were exploded in the house of P.W.7 Hiralal Rai and having got the aforesaid information Police reached, but P.W.7 Hiralal Rai, in collusion with local Police, got implicated the appellants and others on account of previous enmity and litigation.

31. The defence has brought Ext.A, the supervision note of Dy.S.P, on record to prove the aforesaid fact. Although, the aforesaid Ext.A is not admissible in the evidence being opinion of the supervisory authority, but in the backdrop of the above stated facts as well as contradictions made by the prosecution witnesses on the relevant points, the delay in sending the First Information Report and Fardbeyan to the concerned Court creates a serious doubt about the genuineness of the prosecution story and in our view, the aforesaid doubt is fatal to the prosecution case.



32. The statement of appellants has been recorded under Section 313 of the Cr.P.C. and from perusal of the statements recorded under Section 313 of the Cr.P.C., we find that certain relevant and proper questions were left to be asked from the appellants and the appellants could not get proper opportunity to explain the circumstances, which had come in course of trial against them and, therefore, on the above stated ground also we are of the opinion that the prosecution case cannot sustain in the eye of law.

33. Furthermore, we find that the story, as propounded by the prosecution, appears to be improbable, as we have already stated that it was not possible for P.W.7 Hiralal Rai, P.W.2 Kaushal Rai and P.W.3 Supan Rai as well as Raja Ram to escape unhurt from the door of P.W.7 Hiralal Rai, particularly, in the circumstance, when the appellants and others being armed with bombs and fire arm came there and made indiscriminate firing and lobbing of bombs there. The aforesaid circumstance makes the prosecution case improbable and in our view, the appellants deserve the benefit of doubt.

34. On the basis of the aforesaid discussions, we have no option except to set aside the impugned Judgment of conviction and sentence order giving benefit of doubt to the



appellants. Accordingly, the impugned Judgment of conviction and sentence order dated 20.09.1994 and 22.09.1994, respectively, passed by the 1st Addl. Sessions Judge, Patna in Sessions Trial No. 44 of 1985 are, hereby, set aside. The appellants are on bail, therefore, they are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Manish/-

AFR/NAFR	A.F.R.
CAV DATE	N.A
Uploading Date	09.04.2018
Transmission Date	09.04.2018

