

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.56 of 2002

1. Kaushal Kishore Rai son of Sri Shiv Ji Rai,
2. Shiv Ji Rai, son of late Ramphal Rai, both resident of village-
Jhitkahia, Police Station – Bathnaha, District- Sitamarhi

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Prasoon Sinha, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, APP.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 20-01-2018

This appeal arises out of a judgment of conviction and order of sentence dated 16.01.2002 passed by the 4th Additional District and Sessions Judge, Sitamarhi in sessions trial No. 267 of 1995/214 of 2000 whereby the appellants have been convicted for an offence under section 324 read with section 34 of the Indian Penal Code. Both the appellants were sentenced to undergo rigorous imprisonment for 3 years under section 324/34 IPC and the appellant No.1 Kaushal Kishore Rai has been further sentenced to undergo rigorous imprisonment of 10 years with fine of Rs.5 thousand under section 3 and 4 of the Explosive Substances Act, 1908 and incase of default of payment of fine he was further sentenced to undergo R.I. for 2 years. However all the sentences were to run concurrently.



2. The prosecution case in short is that on 10.11.1994 at about 8.30 p.m., while the informant along with Ram Lakhan Rai, his co-villager, was returning after easing themselves from an orchard, they saw all the named accused of the F.I.R. standing carrying lathi in their hands and identified them in the moon-light night. The informant thought that all the named accused had returned from the “Jhanda Mela” and had gone to the orchard for easing themselves. As the informant and his companion moved towards their house, the accused, Kaushal Kishore Rai and shiv Ji Rai ordered to catch hold and to kill the informant, on which the informant and his companion, Ram Lakhan Rai tried to flee away. The accused, Kaushal Kishore Rai hurled a bomb upon the informant with an intention to kill him, which caused injury upon the right leg and thumb of the left hand of the informant. Latkan Rai also received injury by bomb on his left leg just below the knee. The villagers arrived and saved the life of the informant and his companion. The motive behind the occurrence was the differences regarding the fair-price shop of the accused, Kaushal Kishore Rai, on account of which villagers were divided into two groups.

3. On the basis of the aforesaid fardbeyan Bathnaha P.S. Case No. 100 of 1994 was instituted for the offence under Sections 148 and 307 of the Indian Penal Code and Sections 3 and 4 of the



Explosive Substances Act against 11 accused persons. After investigation charge sheet was submitted charge sheet under Sections 147, 148, 323, 324, 307 of the Indian Penal Code as well as Sections 3 and 4 of the Explosive Substances Act. After cognizance the case was committed to the Court of session on 6.11.1995. On framing of charges the appellants pleaded not guilty and as such they were put on trial.

4. During trial altogether 8 witnesses were examined on behalf of the prosecution. P.Ws. 1 and 2 are hearsay witnesses. P.W. 3 is the formal witness as he is seizure list witness. P.W. 4 is the companion of the informant. P.W. 5 is the informant, P.W. 6 is the IO who submitted charge sheet, P.W. 7 is the IO who investigated the case, P.w. 8 is the doctor who examined the injured.

5. Mr. Prasoon Sinha, learned counsel appearing on behalf of the appellants submits that in the present case the police after investigation submitted charge sheet against 11 persons. Out of 11 persons 9 have been acquitted extending the benefit of doubt. The appellants herein have been convicted by the trial court. Referring to the injury report and the deposition of the doctor Mr. Sinha submitted that on scrutiny of the evidence of the P.W. 8 it appears that the appellants have been convicted only on suspicion. The materials available on record does not conclusively indicate that



the appellants are guilty for causing injury to the informant. He submits that the doctor in his opinion has not indicated the part of the body of the informant on which he has sustained explosive substance injury. Such vague opinion of the doctor cannot be relied upon for convicting the appellants for offence under the Explosive Substances Act.

6. Mr. Sinha next submitted with reference to the deposition of the IO of the case that the IO has admitted in his deposition before the court that he has not sent the so called explosive substances for scientific test and in the absence of any opinion of the expert that the substance was explosive one, it is not proper to convict the appellants under the Explosive Substances Act. Mr. Sinha next submitted that the prosecution case is very specific that apart from these two appellants others were equipped with lathi and the injury nos. 2 and 3, as per the opinion of the doctor, was caused by hard and blunt substance which are not in any manner relatable to the appellants and even assuming the prosecution case on its face value to be true then for inflicting injury nos. 2 and 3, the appellants herein cannot be fastened with criminal liability and those against whom allegation of causing this kind of injury, have been extended the benefit of doubt and acquitted in the present case.



7. Learned Additional Public Prosecutor appearing on behalf of the State has not disputed the fact that the doctor has opined that the injury No. 1 is caused by explosive substance but the doctor has not specifically mentioned that on which part of the body such injury was caused by explosive substance. The learned Additional Public Prosecutor has not been able to dispute the fact that the injury nos. 2 and 3 are not relatable to the appellants as these injuries were caused by hard and blunt substance and those against whom this type of allegation of causing injury has been leveled, have been acquitted by the trial court extending the benefit of doubt. In addition thereto he admits that the appellant No. 1 has remained in jail for 7 years and on the date of judgment of the trial the appellant no. 2 was 60 years old.

8. Having heard counsel for the appellant and counsel appearing on behalf of the State and on consideration of the entire materials available on record, this Court is of the considered view that the injury report and the deposition of the Doctor is not conclusive on the point that the victim has sustained explosive injury and the said injury was caused by the appellants. The Court is also of the view that the injury nos. 2 and 3 are not relatable to the appellants and that is the definite opinion of the doctor but the other than the appellants who were sent up for trial were extended



the benefit of doubt in this case, same yardstick ought to have been adopted for the purpose of deciding the case by the court below regarding culpability of the appellants.

9. Considering the fact that the alleged incident is of 1994, 8 years was consumed by the trial court in conducting the trial and the present appeal remained pending for approximately 16 years. Since the appellant No. 1 has served the sentence of 7 years out of 10 years and the appellant no. 2 by now has become 75 years old, in the totality of the fact situation when there are contradiction in the version of the prosecution witnesses, absence of expert opinion on the explosive substance whether the substance was explosive substance as defined under the Explosive Substance Act, 1884 and also considering the fact that the prosecution has failed to explain the injury Nos. 2 and 3 sustained by the informant as the injury nos. 2 and 3 in any manner cannot be attributed to the appellants.

10. In addition thereto on scrutiny of the documents on record, it appears that the trial court has only completed formality of examination of the accused under Section 313 of the Code of Criminal Procedure. The provision of Section 313 of the Code of Criminal Procedure is mandatory requirements to conduct fair trial and the court is required to confront all the accused persons with all the adverse circumstances and also considering the materials



which indicate false implication and innocence of the accused persons. Admittedly, the appellants were not confronted with the adverse materials including the use of the explosive substance and the evidence that has surfaced during the trial to bring home the charges. The trial court has not confronted the appellants with those materials on which the trial court has convicted the appellants. In this regard the Apex Court judgment in the case of **Sukhjit Singh Versus State Of Punjab (2014) 10 SCC 270**, paras 9 to 11, is clinching. Paras 9 to 11 of the judgment are quoted below:-

“9. To appreciate the submissions raised at the Bar, we have, apart from perusing the judgment of the trial Court as well as that of the High Court, also critically scrutinized the evidence on record. On a scanning of the evidence of the mother, Swaran Kaur, it is demonstrable that she had admitted in no uncertain terms that Kujit Kaur had remained in Central Jail Amritsar and she was not aware of the year when she remained in jail. The factum for her being in jail also gets support from the documents exhibits DA and DB. That apart, it is interesting to note that none of the witnesses have stated anything about the abduction. All the witnesses have deposed about the factum of marriage as if that was the singular fact needed to be established to bring home the charge. In addition, we find that the learned trial



Judge had also put all the questions to the accused-appellant pertaining to the marriage and visit of residence and office of the appellant by the mother.

10 On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions. Mr. Talwar, has submitted that the requirement as engrafted under Section 313 CrPC is not an empty formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in *Ranvir Yadav v. State of Bihar* [2009 (6) SCC 595]. Relying upon the same, he would contend that when the incriminating materials have not been put to the accused under Section 313 CrPC it tantamounts serious lapse on the part of the trial Court making the conviction vitiated in law.

11 In this context, we may profitably refer to a four-Judge Bench decision in *Tara Singh v. The State* [AIR 1951 SC 441] wherein, Bose, J. explaining the significance of the faithful and fair compliance of Section 342 of the Code as it stood then, opined thus:

"30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string



together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fail within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice."

11. In view of the law laid down by the Apex Court in the aforesaid case, the court is of the view that the cumulative effect of non-compliance of the mandatory requirement under Section 313 Cr.P.C. and absence of the expert opinion on the point



of explosive substance as well as material exhibits as the IO has conceded in the trial court that he has not sent material exhibit for scientific examination, the court is of the view that the prosecution has not been able to establish the guilt beyond all reasonable doubt. The attending facts and circumstances indicate serious lapse in the investigation and trial and as such extending the benefit of doubt the appeal is allowed and the judgment of conviction and order of sentence of the trial court is set aside. Since the appellants are on bail, they are discharged from the liability of the bail bonds.

(Anil Kumar Upadhyay, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.01.2018
Transmission Date	25.01.2018

