

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.208 of 2003

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

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1. Murlidhar Tiwary
2. Gangadhar Tiwary, both sons of Vishwanath Tiwary
3. Vishwanath Tiwary (since died), son of late Bhawan Tiwary, all residents of
village Daraili, Mathia Tola, Bahorwan, P.S.Darauli, District- Siwan
..... Appellants

Versus

The State of Bihar

..... Respondent

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Pandey with
Miss Rinki Kumari, Advocates

For the Respondent/s : Ms. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 25-04-2018

Appellants Nos. 1 and 2, namely, Murlidhar Tiwary and Gangadhar Tiwary, have been convicted under Sections 324/34 of the Indian Penal Code and Sections 3 and 4 of the Explosive Substance Act and sentenced to undergo rigorous imprisonment for three years under Sections 324/34 IPC and further sentenced to undergo R.I. for three years under Section 3 of Explosive Substance Act and again R.I. for three years under Section 4 of Explosive Substance Act, appellant No.3, namely, Vishwanath Tiwary has been convicted under Sections 324/109 IPC and sentenced to undergo R.I. for three years under Sections 324/109 IPC vide judgment dated 11.2.2003 and order dated 14.2.2003 passed by Sri Ashok Kumar Pathak, the then Additional District and Sessions Judge, F.T.C. No. IV, Siwan in Sessions Trial No. 518 of 1995/694 of 2002. It further appears that all the appellants



have been acquitted from the charge under Sections 307/34 IPC and other accused persons, four in numbers, have also been acquitted from the charges leveled against them.

2. In this case earlier a report was called for and from report it appears that appellant Vishwanath Tiwary has died during pendency of this appeal, as such, this appeal stands abated against him.

3. It appears that FIR has been registered on the basis of fardbeyan of informant Govind Pandey (PW 6) recorded by police on 22.6.1994 at 18 hours with respect to the occurrence of the same day at about 12 P.M. stating, inter alia, therein that informant has come to know that his Nad, Khunta have been removed by appellant Vishwanath Tiwary and his sons appellant Gangadhar Tiwary, accused Vidyadhar Tiwary, appellant Murlidhar Tiwary, accused Yamunadhar Tiwary, Awadh Tiwary and Madan Tiwary. It was also informed to him that accused persons have filled earth and have taken possession over the land and to confirm this incident, informant went in front of the house of appellant Vishwanath Tiwary and started enquiry upon which the accused persons, who were on the roof top of their house, threw bomb upon the informant and he was seriously injured and on hearing sound of bomb brother of informant Sheo Shankar Pandey (PW 4) came there whereupon accused threw bomb on him but he escaped unhurt and thereafter informant was taken to hospital for treatment.



4. On the basis of aforesaid fardbeyan, Darauli P.S.Case No. 48 of 1994 was registered. Post investigation cognizance has been taken and case has been committed to the court of sessions, which ultimately came to the file of the learned Trial Judge for trial and disposal.

5. During trial, altogether 15 witnesses have been examined on behalf of prosecution, they are PW 1 Birendra Pandey, PW 2 Nagendra Pandey, PW 3 Awadh Kishore Pandey, PW 4 Sheo Shankar Pandey, PW 5 Ramashankar Pandey, PW 6 Govind Pandey (informant), PW 7 Bishwanath Singh (seizure list witness), PW 8 Bishun Bihari Pandey (declared hostile), PW 9 Beyas Pandey (declared hostile), PW 10 Bachhan Pandey (declared hostile), PW 11 Radha Mohan Pandey, PW 12 Ramakant Pandey (declared hostile), PW 13 Dayanand Yadav (seizure list witness), PW 14 Dr. Ram Singh, who has treated the informant and PW 15 Muneshwar Prasad (I.O. of the case).

6. On behalf of prosecution the following documents have been brought on record as exhibits, they are Ext.1- Fardbeyan, Ext.2- seizure list, Ext.3- signature of Dayanand Yadav on seizure list, Ext.4- injury report, Ext.2/A- seizure list, Ext.5- formal FIR and Ext.6- sanction for prosecution.

7. On behalf of defence though no ocular evidence has been adduced but following documents have been brought on record as



exhibits, they are Exts. A to A/3- injury reports of Gangadhar Tiwary, Bidhyadhar Tiwary, Yamunadhar Tiwary and Madan Mohan Tiwary, Exts. B to B/3- police requisitions sent to Doctor for injury report, Exts. C and C/1- certified copies of order of Circle Officer, Darauli in respect of land settlement case No. 7/92-93 and certified copy of order of D.C.L.R. Siwan, Ext.D- certified copy of charge sheet in Darauli P.S.Case No. 48/94, Exts. E, E/1 and E/2- enquiry reports of Circle Inspector, Halka Karamchari and Anchal Amin. From the aforesaid documents it appears that there was dispute with respect to land and the same has been decided in favour of the appellants up to the DCLR on the basis of the report so submitted by Circle Officer, Halka Karamchari and Anchal Amin and with respect to the same occurrence defence has also lodged Darauli P.S.Case No. 48 of 1994 and in that case four persons have also received injuries on the side of defence and, as such, it appears that there is case and counter case between the parties.

8. On perusal of the evidence it further appears that PWs. 8,9,10 & 12 have been declared hostile by the prosecution and PWs. 7 and 13 are seizure list witnesses, out of which PW 13 has stated that nothing was seized in his presence and Darogaji had taken his signature on the seizure list. It further appears that PW 14 is Doctor who has treated the injured informant and PW 15 is the I.O. Apart from that PW 6 is the informant and PWs. 1,2,3,4,5 and 11 claims



themselves to be eye-witnesses to the occurrence. Learned trial court on conclusion of trial has not found the appellants guilty under Sections 307/34 IPC but convicted them under Section 324 IPC and Sections 3/4 of Explosive Substance Act. It further appears from perusal of the judgment that learned trial court in paragraph 31 of the judgment has found that the evidence of prosecution witnesses except Govind Pandey in respect of manner of occurrence and manner of assault is not acceptable on the evidence on record and his evidence has been corroborated by the evidence of Doctor and convicted the appellants.

9. Submission of learned counsel for the appellants is that in this case in the background of the fact that there was land dispute and further occurrence has taken place at the darwaja of the appellant Bidyadhar Tiwary and as such the prosecution case that they have gone at the darwaja of Baidyadhar Tiwari as they have uprooted Nad and Khunta and evidence shows that place of occurrence is Darwaja of Baidyadhar Tiwary and further appellant Gangadhar Tiwary as well as Baidyadhar Tiwary, Yamunadhar Tiwary and Madan Mohan Tiwary had sustained injuries and the evidence shows that the informant is the aggressor of the present case and whatever injuries have received by the informant that have been received during marpit between the parties. Further submission of learned counsel for the appellants is that in this case though appellants have been convicted



under Sections 3/4 of Explosive Substance Act but seized articles have not been brought on record. Furthermore, seized articles have not been sent for chemical examination by the FSL to come to a finding that those articles explosive substances and in such a situation the conviction of the appellants under Sections 3/4 of Explosive Substance Act is not sustainable in the eye of law which is only on the basis of sole evidence of PW 6 and evidence of Doctor. It has also been submitted that in such a situation the appellants are entitled for the right to private defence of the life and property, hence conviction of the appellants under Section 324 IPC is not sustainable in the eye of law.

10. Contrary to that, learned counsel for the State has defended the judgment on the ground that evidence of PW 6 clearly shows that he has received injuries of explosion of bomb by the appellants and his evidence further corroborated by the evidence of Doctor, who found four injuries on the person of PW 6 and some of the injuries are charred injuries. Further submission is that other witnesses have also seen the informant in injured condition, hence there is no infirmity in the impugned judgment and order, as such the same are sustainable in the eye of law.

11. In the background of the submission of the parties on perusal of the evidence of prosecution witnesses it appears that PW 6 is the informant who has supported the prosecution case, rather has



stated that when he went to make complaint about the same, bombs were exploded by Gangadhar Tiwary and Murlidhar Tiwary causing injuries to him. However, evidence of other witnesses shows that all the accused persons have exploded bomb on the informant and as such learned trial court has also disbelieved the evidence of other witnesses so far manner of occurrence is concerned. Evidence of PW 14 the Doctor, who has treated the informant, shows that he has found the following injuries on the person of informant :

“(i) One lacerated wound of 2” x 1” with muscle deep and tearing of underneath tissues on middle side of left elbow joint and interiorly. Two closely situated other lacerated wound are 1-1/4” x 1/4” skin deep size medially above left elbow joint with Hyperemia of the area around size 1-1/2” x 1/4”.

(ii) One small minute abrasion interiorly on left forearm with area of hyperemia and burn all over left forearm interiorly with blacking here and there.

(iii) One abrasion with blackening of margin on left upper arm interiorly.

(iv) One swelling 4” x 3” on left lateral part of abdomen interiorly with mark hyperemia with 3-4 small abrasion on it.

(v) 1” x 1/4” x 1/4” swelling with laceration on it on surface of left thigh.

(vi) One area of hyperemia 1-1/2” x 2” on thigh just above



would no.v.

(vi) Two abrasions with blacking on left side of chest anteriority.

And according to Doctor all the injuries were simple in nature caused by bomb explosion and the age of injuries were within 12 hours.”

12. On the other hand, from the documents produced by the defence it appears that there was counter case to this occurrence also and further place of occurrence is darwaja of the informant and injuries have been suffered on the appellants and other accused persons also and that suggests the different manner of occurrence and the same suggests that informant and others went to the darwaja of the appellant, committed marpit and accused appellants have also received injuries and in such a situation manner of occurrence has become doubtful and learned trial court has also found the evidence of other witnesses so far manner of occurrence is concerned unbelievable, rather he has relied upon the evidence of PW 6 and PW 6 has not explained the injuries caused on the persons of the appellants and accused persons and that creates serious doubt about manner of occurrence. However, in this case neither particles of bomb were sent for chemical examination to FSL nor there is any report of FSL and neither Doctor has found injuries to be caused by explosion of bomb and on the basis of blackening on the injuries he has come to



a finding that injuries are caused by explosion of bomb which does not relied on the evidence.

13. Considering the facts and circumstances, as discussed above, there are inconsistencies and infirmities in the impugned judgment and learned trial court only on the basis of evidence of PW 6 has convicted the appellants under Section 324 IPC and 3/4 of Explosive Substance Act and to my opinion the appellants ought to have given the benefit of doubt in view of such inconsistencies and infirmities in the impugned judgment.

14. Accordingly, the appeal is allowed. The impugned judgment and order are set aside. As the appellants are on bail, they are directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
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