

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.579 of 2002

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

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Gangeshwar Dubey S/O Munar Dubey Resident of village- Babhnali, P.S. Asano
Distt. Siwan.

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Umashankar Prasad, Sr. Adv.
Mr. Lal Babu Keshri, Adv.
Mr. Kamala Kant Tiwary, Adv.
Mr. Bhuneshwar Pandey, Adv.

For the Respondent : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 04-01-2018

The sole appellant stands convicted under Section 324 of the Indian Penal Code (hereinafter to be referred as 'the I.P.C.') and sentenced to undergo R.I. for a period of two years and a fine of Rs.1,000/- and in default, R.I. for a period of two months and further been directed that the period of sentence already undergone in custody shall be set off in Sessions Trial No.27 of 1983/17 of 2001. It further appears that the appellant along with two other accused persons have been charged under Section 307/34 of the I.P.C. as well as under Section 3/5 of the Explosive Substance Act, however, the other accused person have been acquitted from the charges levelled against them and this appellant has also been acquitted from the charges



under Section 34 of the Explosive Substance Act and has been convicted under Section 324 of the I.P.C. and the case was committed to the court of Sessions, which ultimately came to the file of Sri Anant Prasad Shrivastava, Ist Addl. Fast Track Court at Siwan for trial and disposal.

2. The prosecution story in short is that while P.W.5 was cutting vegetables in her '*Aangan*', the accused persons along with the appellant came and started calling her husband by taking words '*sala*', which was protested by the informant thereafter, the accused/appellant thrown bomb at her causing injury to her and thereafter she was taken to the hospital. Further FIR discloses that thereafter her husband, Bashistha Dubey, Salik Ram Dubey, Chandra Deo Dueby, Muskim and Habib came and they had seen the accused persons including the appellant fleeing away from the place of occurrence.

3. In this case the charges were framed against the accused/appellant under Section 307/34 of the I.P.C. and 34 of the Explosive Substance Act.

4. During the trial, altogether six witnesses have been examined and they are P.W.1 Salik Ram Dubey relative of the informant, P.W.2, Bashistha Dubey, husband of the informant, P.W.3 Chandra Deo Dubey, P.W. 4 Kamla Dube, P.W. 5 Lalita Devi, who is



informant as well as injured and P.W. 6 Harendra Singh. It further appears that on behalf of the appellants neither the I.O. nor the Doctor have been examined in this case. Apart from the above, ocular investigation and fardbeyan have been brought on the record as Ext.1 and formal FIR has been brought on the record as Ext.2.

5. The defence of the appellant is that the appellant has been implicated falsely due to land dispute from before and he is innocence.

6. The learned trial court considering the fact that no sanction has been granted under Section 34 of the Explosive Substance Act acquitted the appellant from the charges under Section 34 of the Explosive Substance Act and also considering the fact that the Doctor has not been examined in this case and he has not convicted the appellant under Section 307 IPC and convicted the appellant under Section 324 of the IPC finding the injuries on the person of the injured, Lalita Devi P.W.5, which is caused by the explosive substance.

7. Being aggrieved by the aforesaid impugned judgment, the appellant has filed the present appeal on various grounds and contention of the learned counsel for the appellant is that the learned trial court has failed to consider that the land dispute is from before and there is no eye witness in the case except P.W.5 who is informant



and injured and there are several contradiction in her evidence and further submission is that in this case, the Doctor and the I.O. have not been examined and as the Doctor has not been examined and in absence of examination of the Doctor, conviction of the appellant under Section 324 of the IPC does not appear to be just and proper and the defence has also got no opportunity to cross examine the Doctor on the point of the nature of the injuries, hence, conviction of the appellant under Section 324 of the IPC is full of infirmities and not sustainable in the eye of law.

8. Heard learned counsel for the State also. He has supported the judgment on the ground that the learned trial court has convicted the appellant under Section 324 of the IPC finding the injuries by the explosive substance, hence, this judgment does not require any interference by this Court.

9. P.W.5 is the informant in this case and she has supported the prosecution case and sated that while she was cutting vegetables, the appellant and the other accused persons came inside her house and used offensive languages against her husband and when she protested the same, they thrown a bomb causing injury to her. This witness has been cross examined at length but there is nothing in her cross examination to doubt about her credibility. No doubt evidence of P.W.5 shows that after the occurrence, the other witnesses



came. Evidence of P.W.5 also shows that there was land dispute between the parties. In the FIR itself the motive of the occurrence is specified as there was dispute between the parties with respect to the land. Other witnesses P.W.1 to 3 have supported the occurrence but their evidence discloses that they had not seen the occurrence but they reached at the place of occurrence after the explosion of the bomb and they had seen the accused persons fleeing and they found P.W.5 in injured condition.

10. In this case no sanction has been granted for prosecution of the appellant and other accused under the Explosive Substance Act. Further the Doctor has also not been examined as such the learned trial court has rightly not held the appellant guilty under Section 307 of the I.P.C. or under Section 34 of the Explosive Substance Act, however, he has convicted under Section 32 of the IPC.

11. Submissions of the learned counsel for the appellant is that even his conviction under Section 324 of the IPC is not sustainable in the eye of law as the Doctor has not been examined and there is nothing available on the record to show that the injury report has legally been brought on record and in absence of that conviction under Section 324 of the IPC is not sustainable in the eye of law.

12. On consideration of the evidence, it appears that the



evidence of P.W.5 is consistent and free from any blemish and that clearly shows that she received injuries and the other witnesses have stated that they had seen the informant in injured condition. No doubt in this case the Doctor has not been examined and had the Doctor been examined in this case, the prosecution would have got a chance to cross examine him on the nature of injury as the trial court based his finding on the basis of injuries caused by explosive substance, hence serious prejudice has been caused to the defence by non-examination of the Doctor and in such a situation, the conviction of appellant under Section 324 of the IPC also appears to be suffered from infirmities.

13. Considering the discussions made above, the conviction of the appellant under Section 324 of the IPC is modified to the conviction under Section 323 of the IPC and so far sentence is concerned, it is reduced to the period undergone in the custody as the petitioner is aged about 80 years and he is in custody for about 1 ½ months.

14. Accordingly, this appeal is disposed of with modification in conviction and sentence.

(Vinod Kumar Sinha, J)



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AFR/NAFR	NAFR
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