

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.617 of 2015**

Arising Out of PS.Case No. -29 Year- 2012 Thana -SALAIYA District- AURANGABAD

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1. **Jimedar Thakur @ Jamindar Thakur @ Jamadar Thakur**, S/o Raghuvir Thakur, R/o Village Parsa, P.S.- Saliya, District- Aurangabad.
 2. **Gopi Mistri**, S/o Late Ramu Mistri, R/o Village- Sadosarai, P.S.- Salaiya, District- Aurangabad.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ashok Kumar Singh-Advocate
Mr. Abhishek Kumar Singh- Advocate
For the Respondent/s : Mr. Z. Hoda-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 10-07-2018

Appellants Jimedar Thakur @ Jamindar Thakur @

Jamadar Thakur and Gopi Mistri have been found guilty for an offence punishable under Section 431/ 511 of the I.P.C. and each one has been sentenced to undergo R.I. for two years and six months, under Section 4 of the Explosive Substances Act and sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.2,000/- and in default thereof, to undergo S.I. for 15 days, under Section 17 of the Criminal Law Amendment Act and sentenced to undergo S.I. for six months with a further direction to run the sentences concurrently, with a further direction to set off of a period having undergone during course of trial vide judgment of conviction dated 08.09.2015 and order of sentence dated 10.09.2015 passed by



the 4th Additional Sessions Judge, Aurangabad in Sessions Trial No.438 of 2012/ 01 of 2013.

2. Officer-in-Charge of Salaiya P. S. (PW-6) recorded his own fard-bayan on 26.08.2012, on the context that he along with other police officials as well as sepoy gone in conducting raid to apprehend the absconders and during course thereof, visited so many places and when they reached near a culvert lying South to village-Ramraj Bibha, they found one person over road, who seeing the jeep unsuccessfully tried to flee, but was apprehended. He was searched out. Nothing incriminating has been recovered from his possession, but had disclosed that one person is under the culvert affixing cane bomb on an order of their highers, as they belonged to extremists group. Accordingly, culvert was cordoned and in the torch light, one person was found inside the culvert, who was apprehended and on interrogation, he disclosed his name as Jimedar Thakur @ Jamindar Thakur @ Jamadar Thakur, cane bomb along with other items as per seizure list were recovered and for that, seizure list was prepared. Accordingly, he recorded his self-statement on the basis of which, Salaiya P. S. Case No.29 of 2012 was registered and investigation was entrusted to PW-11 Ram Ratan Paswan, who accordingly proceeded with the investigation and submitted chargesheet after completing the same, facilitating the trial meeting with the ultimate result, subject matter of instant appeal.



3. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, it has been pleaded that they have fallen victim of highhandedness of police. However, nothing has been adduced in defence.

4. In order to substantiate its case, prosecution had examined altogether thirteen PWs, who are PW-1, Rajendra Bhuiyan, PW-2, Dinesh Bhuiyan, PW-3, Jamuna Bhuiyan, PW-4, Kashinath Singh, PW-5, Deep Chand Ram, PW-6, Sahud Akhtar Ansari, PW-7, Amrendra Kumar Singh, PW-8, Shankar Rai, PW-9, Ranjeet Kumar Singh, PW-10, Ramjas Yadav, PW-11, Ram Ratan Paswan, PW-12, Santosh Kumar Singh and PW-13, Ramashish Ram. Side by side, had also exhibited as Exhibit-1, seizure list, Exhibit-2 series, self-statement as well as signature over the formal F.I.R., Exhibit-3 series, inculpatory extra-judicial confessional statement of both the appellants.

5. From perusal of the record, it is evident that PW-1 to PW-3 have not supported the case of the prosecution, whereupon they all were declared hostile. Even thereafter, prosecution could not be able to gather any substantial substance from them. PW-12 is the Chaukidar, who had not identified the accused/ appellant in dock. PW-13 is the formal in nature, therefore, the prosecution case rests upon PW-4, PW-5, PW-6, PW-7, PW-8, PW-9, PW-10 and PW-11.



6. Before coming to their evidences, it is apparent that material exhibit has not been produced in Court nor there happens to be examination of Ballistic Expert, who could have, in case examined, would have properly identified the alleged seized article whether was an explosive substance or not. At the present moment, the evidence of I.O. (PW-11) is to be seen, who during his examination-in-chief itself, had not disclosed that seized articles were ever placed before the ballistic expert for proper examination. He, during course of examination-in-chief, had not stated that seized articles were kept in Malkhana nor where it was kept after investigation having been entrusted to him and for that, under Para-10 of his cross-examination, he was questioned, whereupon he had stated that seized articles were entrusted to him by the Bara Babu as he was also incharge of Malkhana, but he had not mentioned the aforesaid event in the case diary. He had not made entry in the Malkhana register with regard to deposit of the seized articles in the Malkhana. Then had stated that he had not mentioned in the case diary whether seized articles were kept in Malkhana. He had further stated that it was sealed, there was no signature of accused persons over the same.

7. In its continuity, further conduct of the police officials are also to be seen. Exhibit-1 series, happens to be seizure list. In Column-3 thereof, there happens to be specific disclosure that the seized articles were recovered from the culvert, 300 meters South



to village-Ramraj Bibha. PW-6 is the informant, who had deposed that seizure list was prepared on the spot itself and had exhibited the same under Para-2 of his examination-in-chief. PW-7, another police official, a member of the raiding party having its signature over the seizure list. During course of cross-examination at Para-4, had stated that both the apprehended persons were arrested at the spot. They have not been able to find independent seizure list witnesses. They have given their searched. All the activity were performed at the police station. PW-4 at Para-6 had stated that jeep was parked 10-15 meter behind a culvert. Seizure list was prepared at that very place. PW-5 at Para-5 had stated that seizure list was prepared near jeep, who happens to be seizure list witness, he is unable to say. PW-8 had stated that one person was apprehended from a village near hilly area. He had seen one cane bomb in the vehicle. PW-9, the home-guard constable, though was not at all cross-examined, but in Para-2 had stated that the person, who was apprehended below the culvert was searched out and from his physical possession, cane bomb and other items, as disclosed, etc. were seized. PW-10 was also not cross-examined, though had stated the prosecution case as claiming himself to be one of the member of the raiding party.

8. Considering the evidence in its entirety suggest that there happens to be severe laches having on the part of the prosecution during course of conduction of trial and those are the seized articles



on account of negligency at the end of the I.O. was never produced before the ballistic expert for examination and that being so, remained unresolved whether happens to be explosive substance or not. Non-production thereof in the Court, and further, when the evidence of PW-11 is gone through, it is apparent that it casts doubt over genuineness of the prosecution version regarding recovery, seizure as where the seized articles were kept, remained under mystery. Non-production thereof, in Court is an additional circumstance, which caused severe jolt to the prosecution case. Mere apprehension of a person at lonely place in a night will not attract any kind of criminal prosecution and that being so, the judgment of conviction and sentence recorded by the learned lower Court is hereby set aside. Appeal is allowed. Appellants are on bail, hence are discharged from its liability.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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