

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.649 of 2015**

Arising Out of PS.Case No. -116 Year- 2002 Thana -EKMA District- SARAN

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1. Kanhaiya Mahto Son of Late Bhukhal Mahto Resident of Village - Parsagarh,
Police Station - Ekma, District - Saran (Chapra)

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Bindhyachal Singh, Adv.

: Mr. Ram Binod Singh, Adv.

: Mr. Vipin Kumar Singh, Adv.

For the Respondent/s : Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 17-07-2018**

Appellant Kanhaiya Mahto has been found guilty for an offence punishable under Section 4(B) (1) of the Explosive Substance Act and sentenced to undergo R.I for 10 years as well as to pay fine appertaining to Rs. 10,000/ and in default thereof, to undergo S.I for one year additionally, under Section 5 of Explosive Substance Act and sentenced to undergo R.I for 10 years as well as to pay fine appertaining to Rs. 10,000/- and in default thereof to undergo S.I for one year with a further direction to run the sentences concurrently, vide judgment of conviction dated 18.09.2015 and order of sentence dated 22.09.2015 passed by 9th Additional Sessions Judge, Saran at Chapra in connection with Sessions Trial No. 277/2003/3334/2014.

2. Priya Ranjan Kumar Mehta (PW-1), O.C. of Ekma P.S. recorded his own statement on 29.12.2002 divulging the fact that



during course of night patrolling on 28.12.2002, when they came at Parsaghar Bazar, they got confidential information with regard to presence of renowned criminal Kanhaiya Mahto who, was in a way to commit a crime whereupon, they proceeded, came at post office road and as soon as they reached near the house of Mahendra Sah, they found one person standing having a *Jhola* in his hand who, seeing the police unsuccessfully tried to escape, apprehended and having been searched in presence of two seizure list witnesses namely, Arun Kumar as well as Imamuddin, six live bomb were recovered from the *Jhola* and for that, search and seizure list was prepared. It has also been disclosed that aforesaid Kanhaiya Mahto happens to be notorious criminal being an accused of a murder as well as he also happens to be wanted in connection with Daudpur P.S. Case No.111 of 2002 registered under Section 399/402 of the IPC and 25 (1-B), 26, 35 of the Arms Act.

3. After registration of Ekma P.S. Case No. 116/2002, investigation commenced and after concluding the same, charge-sheet was submitted facilitating the trial meeting with the ultimate result, subject matter of instant appeal.

4. 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. However, nothing has been adduced



in defence.

5. Altogether 10 PWs have been examined on behalf of prosecution in order to substantiate its case who are PW-1, informant, Priya Ranjan Kumar Mehta, PW-2, Angadh Kumar Pd., PW-3, Parmanand Prasad, PW-4, Md. Qaisar Imam Mallick, PW-5, Arun Kumar, PW-6, Kailash Prasad, PW-7, Motilal, PW-8, Imamuddin, PW-9, Nagendra Rai and PW-10, Mukund Mohan Srivastava as well as had also exhibited Ext.1, Seizure list, Ext.2, self statement of the informant, Ext.3, formal F.I.R, Ext.4, inculpatory extra judicial confessional statement of appellant/accused, Kanhaiya Mahto, Ext.5, series signature of seizure list witnesses, Ext.6, sanction order, Ext.7, FSL Report. Nothing has been adduced on behalf of defence.

6. From the L.C record, it is apparent that PW-5 and PW-8, both the seizure list witnesses have admitted their presence over the seizure list though, they have declined to support the prosecution case so far recovery seizure of explosive substance (bomb). PW-6, PW-7, an independent witnesses have not supported the case of prosecution whereupon they were declared hostile. PW-10 is formal in nature who had exhibited the sanction order granted by the District Magistrate, Saran so, the prosecution rest over the shoulder of PW-1, PW-2, PW-3, PW-4 and PW-9, who are non else



than the members of the raiding party. PW-9 was entrusted with additional job by way of recognizing as an investigating officer. Because of the fact that the aforesaid witnesses tried to show their consistency with regard to their movement from the police station by way of patrolling and further, collection of confidential information by the informant PW-1 over presence of Kanhaiya Mahto for the purpose of commission of offence, apprehension of Kanhaiya Mahto, search and seizure relating to six bombs allegedly recovered from a *jhola* possessed by him, but one has to see whether there happens to be reliability amongst them and for that, the evidence of PW-9, I.O as well as one of member of raiding party is taken at first instance. During examination-in-chief at Para-3, he had stated that he sent the bomb to F.S.L for examination and report. During cross-examination at Para-6, he had stated that bomb was kept in a bucket full of water at the P.O. to deactivate while at Para-8, he had stated that on 30.01.2003, Sergeant Major came at the police station and then, deactivated the bomb. During midst thereof, bomb was kept at police station. None of the bomb had exploded.

7. From his evidence, it is apparent that while transmitting the so alleged bombs to F.S.L, no order of Magistrate was taken. That has got relevancy in the background of the fact that when Ext.7 (FSL) has been gone through, it is evident that the same



was transmitted on 08.02.2003 through special messenger Hawaldar Sri Singh (not examined) which was handed over on 15.03.2003. Furthermore, the article happens to be in one sealed glass jar. The aforesaid report also contains the fact “ the above described sample was collected after deactivation of six jute string wrapped tin objects by Sri Jay Prakash Nag, Sergeant of Police, Saran on 30.01.2003” which speaks a lot, more particularly, was not at all needed to be noted down under the law, along with the fact that aforesaid Jay Prakash Nag has not been examined and so, there happens to be no connecting link on that very count, at least to identify the deactivated live bombs were subject matter of Ekma P.S. Case No. 116 of 2002 and further, kept the deactivated particles of all the bombs in one glass jar. None examination of the Sergeant Major gives falliness in the prosecution version.

8. Furthermore, from the evidence of PW-1, informant, it is evident that though at Para-6 of his examination-in-chief had stated that he had entrusted investigation to Nagendra Rai (PW-9) but, he had not disclosed that seized bombs were handed over to him. In likewise manner, apart from deficiency at the end of the other witnesses to disclose that seized bombs were handed over to the Investigating Officer, PW-9 had also none been able to disclose that after being entrusted with the investigation, the seized bombs were



handed over to him. During cross-examination at Para-8, PW-9 had stated that during the intermediary period, the bombs were kept at the police station but, there happens to be no disclosure at the end of the prosecution supported by any kind of documentary evidence with regard to keeping of bomb at the police station.

9. Considering the aforesaid deficiency persisting on the record, the recovery and in likewise manner, on authentication of the report (Ext.7) become doubtful whereupon, the judgment of conviction and sentence would not survive. Accordingly, is set aside.

10. Appeal is allowed. Since appellant is on bail, hence is discharged from the liability of bail bond.

(Aditya Kumar Trivedi, J)

Ranjeet

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