

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.23 of 2014

Arising Out of PS. Case No.-30 Year-2011 Thana- BANKA District- Banka

- =====
1. Zainul son of Md. Khilafat
 2. Sahabuddin @ Md. Sahabuddin son of Md. Khilafat
 3. Jahangir son of Md. Khilafat
- All are resident of Village- Masuria, Police Station and District- Banka

... .. Appellants

Versus

The State of Bihar

... .. Respondent

=====

with

CRIMINAL APPEAL (DB) No. 144 of 2014

Arising Out of PS. Case No.-30 Year-2011 Thana- BANKA District- Banka

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Md. Hasim @ Akla S/o Allauddin, Resident of village – Masuria, P.S. + District – Banka.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

=====

Appearance :

(In CRIMINAL APPEAL (DB) No. 23 of 2014)

For the Appellant/s : Mr. Praveen Kumar, Adv.
Mr. Krishna Mohan, Adv.

For the Respondent/s : Mr. Ajay Mishra, A.P.P.

(In CRIMINAL APPEAL (DB) No. 144 of 2014)

For the Appellant/s : Mr. S. K. Lal, Adv.
Mr. Pramod Kumar, Adv.

For the Respondent/s : Mr. Ajay Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 02-08-2019



Three appellants in Cr.Appeal (DB) No. 23 of 2014 and sole appellant in Cr.Appeal (DB) No. 144 of 2014 were tried together and convicted and sentenced by the common judgment of the trial court and as such, both the appeals were taken-up together under the heading "For Hearing" and are being disposed of by this common judgment. Appellants against the judgment of conviction and sentence have approached this Court by filing the aforesaid appeals under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.").

2. All the appellants in both the appeals by judgment dated 12-12-2013 have been convicted for commission of offence under Sections 302/34, 307/34, 326/34, 448 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.'), however; the sole appellant i.e. Md. Hasim @ Akla {in Cr.Appeal (DB) No. 144/14) by the same judgment was further convicted for offence under Sections 3 & 4 of the Explosive Substances Act, 1908 (hereinafter referred to as 'Explosive Substances Act'). By order dated 20-12-2013, all the appellants under Section 302/34 of the I.P.C. have been sentenced to undergo imprisonment till their last breath. Under Section 307/34 of the I.P.C., all were sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of



Rs. 10,000/- (ten thousand) each. In default of payment of fine, they were directed to further undergo rigorous imprisonment for one year. Under Section 326/34 of the I.P.C., no separate sentence was passed, however; under Section 448 of the I.P.C., all were sentenced to undergo rigorous imprisonment for one year. The appellant Md. Hasim @ Akla (in Cr.App.DB No. 144/14) by the said order i.e. order dated 20-12-2013 under Section 3 of the Explosive Substances Act was directed to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 10,000/- (ten thousand) and in default of payment of fine, he was directed to further undergo rigorous imprisonment for one year as well as under Section 4 of the Explosive Substances Act, he was sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs. 5,000/- (five thousand) and in case of default in payment of fine, he has been directed to further undergo rigorous imprisonment for six months. All the sentences were directed to run concurrently. The judgment of conviction and sentence was passed by Sri Jyotindra Kumar Sinha, learned 1st Addl. Sessions Judge, Banka (hereinafter referred to as 'Trial Judge') in Sessions Trial No. 481 of 2011/Trial No. 375 of 2013 (arising out of Banka P.S. Case No. 30 of 2011).



3. The case has been initiated on the basis of *fardebayan* of Md. Adil (P.W.5). The *fardebayan* was recorded by Sri Arun Kumar Roy, officer incharge-cum-S.H.O., Banka Police Station (P.W.11) on 26-01-2011 at about 00.20 hrs. The informant gave his *fardebayan* near the dead body of his brother Samser Alam in the courtyard of Shamse Alam. In the *fardebayan*, he disclosed that in the same night at about 11.45 PM, he awoke after hearing sound of blast of bomb and he came out of his house carrying a torch in his hand. Immediately, after coming out, he flashed torch-light and saw that his villagers namely:

- (1) Khilafat (acquitted),
- (2) Sahabuddin (A2 in Cr.App.DB No. 23/2014),
- (3) Jahangir (A3 in Cr.App.DB No. 23/2014),
- (4) Zainul (A1 in Cr.App.DB No. 23/2014),
- (5) Idris (acquitted),
- (6) Raju (acquitted),
- (7) Rashid (not sent-up for trial),
- (8) Ayub (acquitted),
- (9) Hashim @ Akla (app.in Cr.App.DB No.144/14), &
- (10) Manjur Ansari (acquitted)

all were running towards the house of Khilafat Miya carrying lethal weapons. He also heard sound of cry from the house of his brother Shamse Alam (deceased). He reached the house of Shamse Alam and then saw that main door was open. There was huge smoke and smell of explosion. He in the light of torch saw



that head of his brother Shamse Alam was blown due to bomb injury. His (deceased) wife and two children, who were there, were in injured condition. He stated that his *bhabhi* (Bibi Ruhi) was having injury on her head and she was bleeding. The informant further disclosed in his *fardbeyan* that with afore-named accused persons, there was animosity since long and his deceased brother Shamse Alam was ward commissioner and very popular and this was the reason that all the accused persons had committed the said crime, in which, his brother died at the place of occurrence itself and his wife Ruhi (P.W.3) and her children Sadiya and Farhat were injured. On hearing sound of bomb, number of persons had gathered there and with their help, his bhabhi and children were sent to hospital for treatment. The said *fardbeyan* was read over to him and after finding it correct, in presence of his another brother namely Md. Zulfikar Ansari (not examined), the informant put his signature.

4. On the basis of said *fardbeyan*, on the same date i.e. on 26-01-2011 at 3 hrs. (morning), a formal F.I.R., vide Banka P.S. Case No. 30 of 2011, was registered under Sections 302, 324, 307 r/w Section 34 of the I.P.C. and Sections 3 & 4 of the Explosive Substances Act against all the ten accused persons as



named in the *fardbeyan*. After registering the case, police investigated the case and prepared inquest report in respect of dead body of brother of the informant (deceased) and daughter of deceased namely Sadiya, who died on way to hospital. The inquest report in respect of dead body of brother of the informant was prepared at the place of occurrence i.e. courtyard of the deceased, whereas inquest report of Sadiya was prepared in the hospital. The police after recording *fardbeyan* and drawing formal F.I.R. recorded re-statement of the informant and statement of witnesses. The dead body was sent for *post-mortem* examination and after obtaining *post-mortem* report and finding the case true, on 23-04-2011 chargesheet was submitted against 9 accused persons, however; one of the F.I.R. named accused namely Rashid was not sent up for trial. After submission of chargesheet, on 23-04-2011 itself, learned Chief Judicial Magistrate, Banka took cognizance of the offence and thereafter, on 02-05-2011 the case of all the nine accused persons was committed to the court of sessions and it was numbered as Sessions Trial No. 481 of 2011. On 07-06-2011 charge under Sections 307/34, 302/34, 448, 326 of the I.P.C. and Sections 3 & 4 of the Explosive Substances Act



was framed against all the nine accused persons, which includes appellants.

5. To prove its case on behalf of the prosecution, altogether 11 witnesses were examined. Out of 11 witnesses, P.W.3 Bibi Ruhi (wife of deceased) is the only eye-witness to the entire occurrence, whereas, P.W.2 Md. Zaved Ansari (brother of the informant and deceased), P.W.4 Jalil Ansari (maternal uncle of deceased) and P.W.5 Md. Adil (informant and brother of deceased) in their evidence have claimed to identify all the accused persons including appellants after the occurrence, while they were fleeing away carrying weapons. P.W.8 Md. Daud Ansari immediately after the occurrence had rushed to the place of occurrence and he corroborated regarding the occurrence, however; in his evidence nothing has come regarding identification by him in respect of either of the accused persons. P.W.10 Md. Moosa Ansari is a formal witness and was examined only on the point of prosecution sanction of accused under the provisions of Explosive Substances Act. P.W.1 Md. Tazmul and P.W.7 Md. Naeem did not support the case and were declared hostile. P.W.6 Dr. Madan Kumar Pathak on 26-01-2011 was posted as Medical Officer, Sadar Hospital, Banka and on the same date, he



conducted *post-mortem* examination on dead body of deceased namely Sadiya (daughter of deceased Shamse Alam) and Shamse Alam (deceased). P.W.9 Dr. R.P. Jaiswal had examined Farhat (another daughter of deceased & P.W.3), while she was in injured condition in hospital and also examined injury of P.W.3 Bibi Ruhi (wife of deceased Shamse Alam). P.W.11 Arun Kumar Rai on 26-01-2011 was Sub-Inspector of Police-cum-Officer incharge of Banka Police Station, who recorded *fardbeyan*, investigated the case and submitted chargesheet.

6. After conclusion of the prosecution evidence on 31-10-2013 evidences and circumstances collected against the accused persons were explained to them and their statement under Section 313 of the Cr.P.C. was recorded, in which, they claimed to be innocent. The learned Trial Judge on examination of evidence brought on record while convicting aforesaid four appellants passed judgment of acquittal in respect of five accused persons. The appellants, after being convicted and sentenced, have assailed the impugned judgment in the aforesaid appeals.

7. Sri S.K.Lal, learned counsel assisted by Sri Pramod Kumar, learned counsel for the appellant (Md. Hasim @ Akla) in Cr.Appeal (DB) No. 144/14, after placing entire evidence, has



argued that despite the fact that prosecution has not established its case beyond all reasonable doubt, the learned Trial Judge has incorrectly passed the judgment of conviction and sentence. He, at the very outset, has argued that medical evidence does not support the prosecution case. He highlights that it is the case of prosecution that while deceased/Shamse Alam was sleeping, his head was blown by throwing bomb by the accused persons, whereas at the time of examination of Dr. Madan Kumar Pathak (P.W.6), who conducted *post-mortem* on the dead body, it has been noticed that bomb hit the deceased on his back side of his head. Accordingly, it has been argued that oral evidence is exactly contrary to the medical evidence and as such, the appellant was required to be given benefit of doubt.

8. Sri Lal has specifically referred to the statement made in paragraph 1 of examination-in-chief of P.W.3 Bibi Ruhi (wife of deceased) and stated that Bibi Ruhi in clear term had stated that while her husband was sleeping, the accused persons surrounded him and the accused persons flashed torch-light on his face. He further submits that though during evidence, P.W.3 has come out with a case that the accused persons entering into the room surrounded the deceased and thereafter, flashed torchlight



on his face, but her attention was drawn to her previous statement recorded under Section 161 of the Cr.P.C. and contradiction was taken at the time of examination of P.W.11 Arun Kumar Rai, the investigating officer, it has come that during evidences, P.W.3 had exaggerated the fact regarding use of torch and throwing of bomb and also exaggerated the fact that she, while was trying to sleep, awoke after hearing sound of movement of accused persons, who had scaled the courtyard wall, whereas, no specific statement was made by this witness during investigation before the investigating officer.

9. Sri Lal, learned counsel for the appellant has further emphasized that it is case of the prosecution that witnesses had identified the appellants in the torch-light and also it was stated that in the room where occurrence had taken place one लालटेन (lantern) was burning, however; during investigation neither any torch nor lantern was produced by the prosecution side. Accordingly, it has been argued that in absence of producing source of identification, the identification of accused persons in night was questionable. He has further argued that during the trial, save and except relatives of the deceased and informant, no independent witness has come forward to support the case and



since the case is based on evidence of relatives, who were interested witnesses, no such reliance was required to be placed on such evidence by the learned Trial Judge.

10. Sri Praveen Kumar, learned counsel appearing on behalf of three appellants in Cr.Appeal (DB) No. 23 of 2014, adopting the argument advanced by Sri S.K.Lal, learned counsel for the appellant, has further argued that false implication of the appellants is evident from the fact that despite the fact that in the F.I.R., 10 persons were arrayed as accused, during initial investigation, one of the F.I.R. named accused was found innocent by the police and he was not forwarded in the chargesheet. In respect of remaining nine accused persons, the learned Trial Judge on the same set of evidence has passed the judgment of acquittal in favour of five accused persons and as such, it has been argued that the evidence of the prosecution is questionable and the learned Trial Judge has incorrectly passed the judgment in question. He has further argued that prosecution has suppressed the initial version of the case. He highlights that during evidence, it has come that while injured were being carried to the hospital, near Tara Temple on way in between the house of the deceased and hospital, they met the police officials, who were informed by



the witnesses regarding the occurrence, but the prosecution has suppressed those facts. Accordingly, it has been argued that the learned Trial Judge has incorrectly passed the judgment of conviction and sentence.

11. Sri Ajay Mishra, learned Addl. Public Prosecutor, supporting the impugned judgment of conviction and sentence, submits that the learned Trial Judge, on the basis of reliable and admissible evidence, has passed the judgment of conviction and sentence, which requires interference. He submits that in the case, P.W.3/wife of the deceased was injured and natural witness. In her evidence, she has categorically stated as to how the appellants had surrounded her husband while she was sleeping with her two children and her husband in the room and in her presence, bomb was thrown on the head of her husband, in which, the head of her husband was blown. In the said occurrence, the P.W.3 had also received injury and she lost sight in one eye and also lost hearing capacity from one of her ear. In her presence, her one of the daughter Sadiya, due to bomb injury, died. He submits that it is true that some inconsistency has occurred in between her evidence in court and in her previous statement recorded during investigation, but such minor inconsistencies are immaterial and



on those inconsistencies, her entire evidence cannot be overlooked.

12. Besides this, by way of referring to evidence of P.W.5 Md. Adil (informant and brother of the deceased), it has been argued by learned Addl. Public Prosecutor that immediately after hearing sound of explosion of bomb, he came out from his house and he saw appellants with others fleeing away. This has also been corroborated by P.W.2 Md. Zaved Ansari (own brother of deceased), whose house was just opposite the house of deceased. He too had identified the accused persons while they were fleeing away. All those witnesses immediately after the occurrence had rushed to the place of occurrence and everything was described in categorical manner by this witness.

13. Sri Mishra, learned Addl. Public Prosecutor, by way of referring to evidence of Dr. R.P. Jaiswal, submits that immediately after the occurrence in the same night at about 12.25 AM and 1.30 AM, this doctor had examined the injury of P.W.3 Bibi Ruhi and examined the injury of Farhat. He has also relied on evidence of P.W.6 Dr. Madan Kumar Pathak, who conducted *post-mortem* examination on the dead body of deceased and by way of referring to evidence and *post-mortem* report, he submits that



injuries found on the person of deceased were evidently caused by explosion, which corroborates the oral evidence. Besides this, he has argued that the investigating officer/P.W.11 has also inspected the place of occurrence where inquest report was prepared in respect of dead body of Shamse Alam. He found splinters at the place of occurrence. He further submits that during evidence, it has come that one of the appellants in the present case namely Zainul (A1 in Cr.App.DB No. 23/2014) had fought election for the post of ward commission and in the said election, the deceased was elected and this was the main reason for commission of such offence.

14. Besides hearing learned counsel for the parties, we have examined entire evidence, both oral and documentary, which are on record and after examining the same, *prima facie*, we are of the opinion that the learned Trial Judge has committed no error in passing the impugned judgment of conviction and sentence, however; before proceeding, it is necessary to examine the evidences, which have been brought on record.

15. In the case, it would be necessary to first examine the injured and eye-witness to the occurrence namely Bibi Ruhi (P.W.3), who is none else but wife of the deceased Shamse Alam



and mother of Sadiya (deceased minor daughter). In the said occurrence, in her presence, her husband and minor daughter were done to death by explosion of bomb, which was thrown by the accused persons. P.W.3 Bibi Ruhi in her evidence has stated that occurrence had taken place in the night of 25th January, 2011 in between 11 and 12 (night). At that very time, she with her husband and two children Sadiya (aged about 3 ½ years) and Farhat (aged about 5 years) were sleeping in a room. Her children and husband had already slept and she was trying to sleep, in the meanwhile, she heard the sound of opening of the door and noticed that Zainul (A1 in Cr.App.DB No. 23/2014) had entered into the courtyard by scaling wall and thereafter from inside, he opened the door, whereupon the accused persons, who were standing in lane, entered inside the house. She stated that in the room, she identified Sahabuddin (A2 in Cr.App.DB No. 23/2014), Jahangir (A3 in Cr.App.DB No. 23/2014), Akla (sole app. in Cr.App.DB No. 144/2014), Imran (not accused) and Iqbal (not accused). She stated that all the accused persons surrounded her husband while he was sleeping on bed. Thereafter, Zainul (A1 in Cr.App.DB No. 23/2014) exhorted to kill and thereafter on his order, Akla (sole app. in Cr.App.DB No. 144/2014) firstly flashed



torch-light on the face of her husband and threw bomb, whereupon head of her husband blew. She also received injury in her right eye and left ear and lost hearing capacity from her left ear. The learned Trial Judge, while recording her evidence, has noticed the injury on the right eye of P.W.3 and also noticed mark of injury on her face and recorded that this witness had lost hearing capacity from her left ear. This witness further deposed that in the said occurrence, her both children i.e. Sadiya and Farhat were injured and while her daughter Sadiya was carried to Sadar Hospital, she was declared dead by the doctor. She claimed that even in injured condition, she was conscious. She and Farhat were treated in J.L.N.M.C.H., Bhagalpur. The reason for the occurrence was explained by her that it was political rivalry. Her husband had won the election of ward commissioner and Zainul (A1 in Cr.App.DB No. 23/2014) had lost the said election. She also identified Zainul (A1 in Cr.App.DB No. 23/2014), Akla (sole app. in Cr.App.DB No. 144/2014), Ayub (acquitted), Khilafat (acquitted), Shahabuddin (A2 in Cr.App.DB No. 23/2014), Manjur (acquitted), Jahangir (A3 in Cr.App.DB No. 23/2014), Raju (acquitted) and Idris (acquitted), who were present in court. The learned Trial Judge had recorded that this witness by pointing out



fingers towards Akla (sole appellant in Cr.App.DB No. 144/2014) and Zainul (A1 in Cr.App.DB No. 23/2014) had said that on the order of Zainul, Akla had thrown bomb on her husband in the night on the date of occurrence in her presence. This witness was cross-examined at length. In paragraph 3 of her cross-examination she clarified that near the house of this witness, there were houses of other including house of P.W.5 Md. Adil (informant). In paragraph 13 of her cross-examination, she reiterated that Zainul (A1 in Cr.App.DB No. 23/2014) was having political rivalry since he had lost the election. In paragraph 16 of her cross-examination, she further clarified that she had awoken even prior to sound of bomb explosion. In paragraph 18, she stated that in between her and her husband, her daughter Sadiya was sleeping, who also died due to bomb injury. She in paragraph 19 reiterated that though she received injury, she was conscious. In paragraph 23 of her cross-examination, she disclosed that from her house, Banka police station was about $\frac{1}{2}$ km. and after the occurrence, they were carried to Banka Hospital. While they were moving to Banka Hospital and they reached near Tara temple, police party was moving and inquired from some of the witnesses, however; name of none of the accused was explained to the



police. In paragraph 25, 26, 27, 28, 31, 32, 33 and 34, her attention to her previous statement was drawn and contradictions were taken at the time of examination of the investigating officer i.e. P.W.11 and in paragraph 43 of the evidence of P.W.11, it has come that some facts, which were disclosed by P.W.3 during trial, were not disclosed in her statement before the police during investigation, however; we have examined those facts and it appears that there were some minor contradictions and those minor contradictions are not sufficient to consider the evidence of this witness as untruthful, rather on examination of her entire evidence, it is evident that this witness is credible and she had explained entire episode during the trial.

16. P.W.5 Md. Adil is the informant of the case and own brother of the deceased (Shamse Alam). His house was in the same lane and immediately after hearing the sound of bomb blast, he awoke and came out in the lane and he saw altogether 10 accused persons were fleeing away towards the house of one of the F.I.R. named accused namely Md. Khilafat (acquitted) and he also heard sound of cry, which was coming from the house of deceased and he rushed to the place of occurrence. He deposed that the house was filled with smoke and he also noticed smell of



explosion. He noticed that her bhabhi (P.W.3) was in injured condition and besides her bhabhi, other two children were also injured, who were immediately sent with the help of villagers to hospital. Thereafter, immediately police arrived and recorded his *fardbeyan*. This witness identified his signature on the *fardbeyan*, which was marked as Ext. 1/(a). He also identified his signature on the inquest report regarding the dead body of the deceased brother and his signature was marked as Ext.1/(b). In paragraph 1 of his evidence, he stated that occurrence had taken place in the night of 25th January, 2011 in between 11 and 12. At that very time, he was at his house. When he heard the sound of bomb explosion and came out from his house carrying torch, he saw that Khilafat (acquitted) was fleeing away. He was followed by Zainul (A1 in Cr.App.DB No. 23/2014), Sahabuddin (A2 in Cr.App.DB No. 23/2014), Jahangir (A3 in Cr.App.DB No. 23/2014), Idrish (acquitted), Ayub (acquitted), Hasim @ Akla (sole appellant in Cr.App.DB No. 144/2014), Raju (acquitted), Monajur (acquitted) and Rashid (not sent up for trial). He further stated that he saw that Zainul (A1 in Cr.App.DB No. 23/2014) was carrying revolver in his hand and others were also carrying other weapons. Thereafter, he went towards house of his brother, from where,



sound of bomb explosion had come and he noticed that there were huge smoke and he also heard sound of cry. He alongwith 2-3 persons entered inside the house and a lantern was burning and he saw that head of his brother Shamse was blown. He also noticed that his bhabhi Bibi Ruhi (P.W.3) was seriously injured and while raising *hulla*, she was saying that all the aforesaid accused had surrounded her husband and on the order of Zainul (A1 in Cr.App.DB No. 23/2014), Akla (sole appellant in Cr.App.DB No. 144/2014) had thrown bomb on the head of her husband. The injured were thereafter carried to hospital. He also clarified that due to political animosity, occurrence had taken place. He stated that there was political rivalry of his deceased brother with Zainul (A1 in Cr.App.DB No. 23/2014). Ofcourse, in his evidence, he stated that P.W.3 had disclosed name of some of the accused persons, but P.W.5 in her evidence had not stated such fact nor this fact was reflected in the *fardebayan* of this witness. However, to the extent that he saw the accused persons including appellants, his evidence is to be relied upon. This witness was cross-examined at length, however on examining the same, we do not find any sufficient material to discredit the evidence of this witness. In paragraph 39 of his cross-examination, he stated that



in election against his brother, only Zainul (A1 in Cr.App.DB No. 23/2014) was fighting. In paragraph 49 of his cross-examination, he has further stated that while he reached the place of occurrence immediately thereafter Noor Mohamad (not examined), Javed (P.W.2) and Jalil (P.W.4) had arrived where alongwith him 50-60 other persons. On examination of his evidence, in paragraph 61, 62 and 63 as well as in paragraph 45 of evidence of P.W.11/investigating officer, it is evident that neither in his *fardbeyan* nor in his statement before the police, he had disclosed that his *bhabhi* immediately after the occurrence had disclosed the name of either of the accused persons. Moreover, his evidence is mainly on the point of identification of accused persons, who were seen fleeing away immediately after the occurrence.

17. P.W.2 Md. Javed Ansari is another brother of informant and deceased. During his evidence, he identified his signature on the inquest report in relation to dead body of Sadiya and his signature was marked as Ext.1. In his evidence, he too has stated that after hearing sound of bomb explosion, he came out from his house and he saw aforesaid appellants and others fleeing away. In his evidence, he has corroborated that while he entered the house of deceased, his house was full of smoke and



he noticed that his bhabhi P.W.3 was in injured condition and squirming and also noticed the dead body of his brother and other injured. He was one of amongst them, who had carried the injured and others to hospital and he further stated in paragraph 9 that while they were moving towards hospital, they met the police near Tara temple and he informed the police regarding the occurrence, however; in paragraph 11 of his cross-examination, it has come that at that very time he has not given full description of the occurrence nor he disclosed the name of either of the accused persons before the police. He in paragraph 18 of his cross-examination disclosed that his house was just opposite to the house of deceased and in between both the houses, there was lane. In paragraph 24, again he reiterated that he had seen accused persons while they were fleeing away.

18. Ofcourse a plea has been taken by Sri Praveen Kumar, learned counsel for the appellants {in Cr.App.DB No. 23 of 2014} that the prosecution had suppressed the first version taking clue from the evidence of P.W.2 that near Tara temple they met the police and on examination of evidence of P.W.2, it is evident that in clear term, he has stated that he has not disclosed regarding detail of the case nor given the name of accused



persons. Obviously, while this witness from the place of occurrence was moving towards the hospital carrying injured, in that situation, his prime objection was to get the injured immediately medically treated and in that situation, it was not expected that he would explain all the facts before the police and as such, submission made by learned counsel for the appellants that prosecution has suppressed the initial version appears to be not tenable. This witness has stated that inquest report on the dead body of Sadiya was prepared in his presence and he identified his signature, which was marked as Ext.1.

19. P.W.4 Jalil Ansari, maternal uncle of the informant, who had claimed to identify accused persons after the occurrence, but on deep examination of his evidence, there is some doubt regarding reliability of his evidence.

20. P.W.8 Md. Daud Ansari, who was also resident of nearby area and rushed to the place of occurrence immediately after the occurrence, has supported regarding the occurrence, but he had not indicated anything regarding identification or involvement of either of the accused persons, however this witness has corroborated the occurrence.



21. P.W.10 Md. Moosa Ansari had only identified signature on prosecution sanction accorded against the appellant Md. Hasim @ Akla (in Cr.App.DB No. 144/14) for his prosecution under the provision of Explosive Substances Act.

22. P.W.9 Dr. R.P. Jaiswal on 26-01-2011 was posted as Medical Officer in Sadar Hospital, Banka and on the same date at about 12.15 PM, he examined the injuries of Ruhi Khatoon (P.W.3) and noticed following facts:

"(i) Lacerated wound on right side of forehead of approx. 1"x ¼"x Skin deep with surrounding swelling and oedema of approx. 2 ½"x2"

(ii) Swelling of Rt. eye.

(iii) Lacerated wound all over Rt. cheek with swelling and tatooing.

(iv) Lacerated wound on neck of approx. ¼" x ¼" x Skin deep.

(v) Lacerated wound on upper lip Rt. side of approx. ¾" x ½" x Skin deep.

(vi) Lacerated wound on Rt. side of upper neck of approx. ½" x ¼" x Skin deep.

(vii) Laceration and Abrasion over Rt. Shoulder.

Injuries are caused by blast of bomb and Age of injury with two hours."

23. In the same night at 1:30 AM, P.W.9 Dr. R.P. Jaiswal also examined the injuries of Farhat (daughter of Shamse Alam, deceased) and he noticed following facts:-

"(i) Lacerated wound on Rt. elbow of approx ½" x ¼" x Skin deep with tatooing and abrasion over Rt. Arm and upper part of forearm.

(ii) Swelling of forehead of approx 1¼" x 1".



Injuries are caused by blast of bomb. Nature simple."

24. This witness identified the writing and his signature on the injury reports, and both reports were marked as Ext.3 and 3/1 respectively. On examination of the evidence of P.W.9 and its report, it is evident that both injured had received injury due to explosion of bomb.

25. P.W.6 Dr. Madan Kumar Pathak on 26-01-2011 was medical officer, Sadar Hospital, Banka and on the same date at 1:15 PM in day time he conducted *post-mortem* examination on the dead body of Sadiya daughter of Shamshe Alam (deceased) as well as P.W.3. He also conducted *post-mortem* examination on the dead body of Shamshe Alam and he identified *post-mortem* reports in respect of deceased Sadiya and deceased Shamshe, which were marked as Ext.2 and 2/1 respectively. On the dead body of deceased Sadiya, he had noticed following ante-mortem injuries:

"External:

(i) Both eyes opened, Cornea-hazy, Bleeding from right nostril – present.

(ii) Burning spot with blackish discolouration found on left cheek.

(iii) Lacerated wound $\frac{1}{2}$ " x $\frac{1}{2}$ " on right shoulder with blackish foreign body present.

(iv) Lacerated wound 2" x 1" on left hypochondrium of abdominal surface with blackish margin



was present. Through this particular wound, internal and abdominal content comes out.

Internal:

Lungs – Hemorrhagic spot present.

Trachea – presence of blackish constaneous matter. Other NAD.

Age of death– 12 hours since death.

Cause of death – Asphyxia due to inhalation of product of combustion and hemorrhagic shock, due to blast injury.”

26. On the same date, P.W.6 Dr. Madan Kumar Pathak conducted *post-mortem* examination on the dead body of Shamsher Alam @ Shamshi and noticed follwing ante-mortem injuries:-

External:

(i) Face including scalp, above neck completely damaged, leaving lacerated wound.

(ii) presence of blackish colour foreign body and some pieces of stone in the damaged wound.

(iii) Blackish discoloured burning spot found in left hand and left fore arm with some blasters formation.

(iv) Some scattered burning spot on chest region are found

Internal

(i) hemorrhagic spot were found in lungs and liver.

(ii) Heart – Rt. chamber empty. Left chamber empty.

Age of death – 12 to 16 hours since death.

Cause of death – Respiratory failure and hemorrhagic shock due to blast injury.

Blast injuries may be by explosion of bombs.”

27. Ofcourse, in his evidence, he has incorrectly mentioned Shamshe Alam as Iliyas Ansari, but in his cross-



examination, he corrected the fact and he stated that it was mistake, which was inadvertent and not intentional.

28. On examination of evidence of P.W.6 as well as both post-mortem reports i.e. Ext. 2 and 2/1, it is evident that both the deceased had received injury due to bomb explosion. The fact that deceased had received injury due to bomb explosion has also been corroborated while the place of occurrence was inspected by P.W.11 Sri Arun Kumar Rai, investigating officer of the case. From the place of occurrence, he had seized splinters regarding which he had prepared a seizure list, which was marked as Ext.8. it is consistent case of prosecution witnesses that while they entered into the room where bomb was exploded they had noticed smoke as well as smell of explosion. All those facts corroborate that it was a murder by exploding bomb.

29. Sri Arun Kumar Rai P.W.11 on 26-01-2011 was Sub-Inspector of Police cum officer incharge of Banka Police Station. In his evidence, he identified the *fardebayan*, which was marked as Ext.5, formal F.I.R. marked as Ext.6, he prepared inquest report at the place of occurrence on dead body of Shamshi Alam and same was marked as Ext.7. Inquest report in respect of dead body of Sadiya was prepared in hospital and it was identified



and marked as Ext.7/1. Regarding splinters, he prepared the seizure list at the place of occurrence, which was marked as Ext.8. In his evidence, in paragraph 1, he stated that in the night of occurrence at 12.20 hrs. he got telephonic information that occurrence had taken place in village Moharia. Thereafter, he with other police official and armed forces rushed to the place of occurrence and after visiting place of occurrence, he recorded *fardbeyan* and inspected the place of occurrence. In paragraph 6 of his evidence, he has elaborately stated regarding the place of occurrence, which was the room of the deceased. The deceased alongwith his family members were sleeping and occurrence had taken place. He also deposed regarding recording statement of other witnesses and regarding the fact of preparation of inquest report, sending dead body for *post-mortem* and for obtaining *post-mortem* report. He after investigation and finding the case true submitted chargesheet. In paragraph 16 of his cross-examination, he clarified that while he met with some of the witnesses near Tara temple, none had disclosed the name of assailants. In his evidence, contradictions were taken in respect of previous statement of some of the witnesses, which we have already discussed hereinabove.



30. On examination of entire evidence on record, we are of the opinion that the prosecution has successfully established its case showing involvement of the appellants. The submission made by learned counsel for the appellants that despite the fact that F.I.R. was lodged against 10 accused persons, one was exonerated by the police and five were acquitted by the trial court, the Court is of the opinion that the fact that some of the accused persons have been acquitted cannot be treated as a ground for passing favourable order. It is true that the informant/P.W.5 and other witnesses had claimed that they identified about 10 accused persons while they were fleeing away from the place of occurrence, but it appears that since those facts were not exactly in consonance with the evidence of P.W.3, who was the eye-witness, it appears that benefit of doubt has been given to other accused persons, otherwise P.W.3, who was injured and eye-witness to the occurrence, had categorically deposed in her evidence regarding involvement of the appellants. So far as submission advanced by Sri Lal, learned counsel for the appellant that no source of identification has been brought on record, the Court is of the opinion that it is true that if in a case, prosecution claims to identify accused persons in a torch-light or lantern light,



non-production of source of identification may be treated adverse to the prosecution case, but if it is a case, in which, all the accused persons were known to the witnesses, then in that circumstance, only due to non-production of source of identification, entire case, if otherwise is credible, may not be ignored.

31. Ofcourse, it has been argued that the sentence, which has been imposed by the learned Trial Judge i.e. under Section 302/34 of the I.P.C. "imprisonment till last breath", is excessive, but the Court is of the opinion that considering the nature of evidence i.e. in an occurrence, in which in presence of P.W.3, her husband and her minor daughter were done to death by explosion of bomb, we are of the opinion that such sentence may not be considered, as excessive, and the same requires no interference.

32. On examination of entire evidence, which we have discussed here-in-above, we do not find any error in the impugned judgment of conviction and sentence and as such, there is no reason to interfere with the same.

33. Accordingly, the judgment of conviction dated 12-12-2013 and order of sentence dated 20-12-2013 passed by



Sri Jyotindra Kumar Sinha, learned 1st Addl. Sessions Judge, Banka in Sessions Trial No. 481 of 2011/Trial No. 375 of 2013 (arising out of Banka P.S. Case No. 30 of 2011) is, hereby, approved and both the appeals are dismissed.

34. Appellant Md. Hasim @ Akla {in Cr.Appeal (DB) No. 144 of 2014} is on bail and since the judgment of conviction and sentence has been approved, his bail-bond stands cancelled and he is directed to surrender before the court below for serving remaining sentence forthwith, otherwise, the learned court below may take appropriate step for securing his presence.

(Rakesh Kumar, J.)

(Anjani Kumar Sharan, J.)

Anay

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08.08.2019
Transmission Date	08.08.2019

