

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.468 of 2013

Arising Out of PS. Case No.-92 Year-2000 Thana- BATHNAHA District- Sitamarhi

1. Shambhu Sharan Jha and Anr. S/O Late Ram Parichhan Jha Resident Of Village Pachgachhiya, Police Station Bathnaha, District Sitamarhi.
2. Sanjay Jha S/O Shambhu Sharan Jha Resident Of Village Pachgachhiya, Police Station Bathnaha, District Sitamarhi.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ramakant Sharma, Adv Mr. Prasoon Sinha, Adv
For the Respondent/s	:	Mrs. Anita Kumari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA
ORAL JUDGMENT**

Date : 13-11-2024

Heard Ramakant Sharma, learned Senior Advocate, and
Mrs. Anita Kumari Singh, learned APP for the State.

2. The appellants have preferred the present appeal filed against the Judgment of conviction dated 28.05.2013 and order of sentence dated 29.05.2013 passed by learned Ad-hoc Additional Sessions Judge-VI, Sitamarhi in Sessions Trial No.271 of 2001/64 of 2006, arising out of Bathnaha P.S. Case No. 92/2000 convicting both the appellants under Sections 148,



323,324,504 and 307 of the Indian Penal Code and sentencing them to undergo simple imprisonment for three months under Section 323 of the I.P.C., R.I. for two years under Section 324 of the Indian Penal Code, simple imprisonment for six months under Section 504 of the Indian Penal Code and rigorous imprisonment for seven years and in addition thereto, a fine of Rs.5000/- each and in default of payment of fine they have been directed to undergo imprisonment for six months. The appellant, namely Shambhu Sharan Jha has further been convicted and sentenced to undergo rigorous imprisonment for seven years and in addition thereto, he has been directed to pay fine of Rs.5000/- and in default thereof to undergo imprisonment for six months. Appellant, namely, Sanjay Jha has been convicted under Section 436 of the Indian Penal Code and has been sentenced to undergo imprisonment for six months. All the sentences awarded to both appellants have have been directed to run concurrently.

3. As per *fardbeyan* of the informant, the prosecution case is that, on 23.02.2000 at about 7.30 A.M., while the informant was enjoying tea at his Darwaja, Shambhu Sharan Jha, Sanjay Jha and Harihar Nath Singh, all co-villagers of the informant, along with other unknown accused persons came at the residence of the informant saying that the informant was the agent of Congress



Party who obstructed the accused persons in grabbing the Polling Booth and then directed to set the house of the informant on fire, upon which other co-accused person, Sanjay Jha set the house of the informant on fire, as a consequence thereof, one tiled room and one thatched room were burnt. Subsequently, Sanjay Jha hurled a bomb upon the informant, which hit on his left hand, as a result thereof, his left palm along with his fingers was blown and thereafter, other accused persons assaulted the informant on his head and body. Accused Shambhu Sharan Jha assaulted the informant with *Gadasa* on his head and when father of the informant intervened to rescue the informant from being assault, the accused persons also assaulted the father of the informant. The informant was assaulted on his both thighs. Thereafter, the informant became unconscious and later on brought to H.M.T. Hospital, Sitamarhi for treatment, where he was admitted and went under treatment, but subsequently he was brought to the private clinic of Dr. Ramakant Singh, situated at Dumra Road, Sitamarhi and admitted there for better treatment.

4. On the written report of informant, this instant case was registered and thereafter investigation was taken up. After the completion of investigation, charge sheet was laid against the accused person for the offence punishable under Section 376



Indian Penal Code.

5. On the basis of the *fardbeyan* of the informant, Bathnaha P.S. Case No. 12/2000 u/s 147, 148, 149, 447, 504, 324, 307/436 of I.P.C. and under Section 3/4 Explosive Substance Act was registered against accused namely, Shambhu Sharan Jha, Sanjay Jha and Harihar Nath Singh and other unknown person and after completion of the Investigation, charge-sheet has been submitted against four accused persons namely, Shambhu Sharan Jha, Sanjay Jha, Girish Nandan Singh and Sakaldeo Singh, keeping investigation pending against accused Harihar Nath Singh. Thereafter, a supplementary charge-sheet has been submitted against accused Harihar Nath Singh, and accordingly, cognizance has been taken and the case records were committed to the Court of Session. Girish Nandan Singh, Sakaldeo Singh and Harihar Nath Singh were acquitted of all charges but the other two accused persons (appellants in this present appeal) were convicted.

6. Learned Senior counsel submitted that the prosecution has not been able to prove its case beyond all reasonable doubts, and therefore the conviction of the appellant is bad and not sustainable in the eyes of law as the evidence of PW2 and PW3, namely Dinesh Chaudhary and Aditya Chaudhary @ Bijlee



Chaudhary is not trustworthy. The *fardbeyan* of the informant does not corroborates with the prosecution story. The informant has stated in his *fardbeyan* that all the accused persons assaulted his father and set his house on fire which was witnessed by people of the village of the informant. The informant did not disclose the name of PW2 and PW3 as witnesses of the occurrence in the *fardbeyan*.

7. Learned Counsel further submitted that with regard to the independent witnesses, the prosecution has not examined the independent witnesses and also the father of the informant who is said to have been injured or assaulted by the accused persons/applicant has also not been examined before the trial Court. The informant has stated that he was brought for treatment in the HMT Hospital at Sitamarhi, and subsequently, was referred to a private doctor, namely Ramakant Singh at Dumra Road in Sitamarhi. The Investigation Officer who was in charge of the investigation before 16.08.2000 was also not examined. The learned counsel for the appellant further stated that the statement of the doctor of the private clinic states that the father was also treated by him at his private clinic, but the witness PW4 has stated that his father who was injured during the altercation was treated by a local doctor of the village. The I.O. also stated that no



costly item was found to be burned at the place of occurrence and the house which was burned was only used for keeping husk. The investigating officer who had examine the place of occurrence did not find the fingers that was allegedly blown by the explosion nor the part of the palm that was chopped. The other accused persons who were acquitted has also had filed a case under Section 147, 148, 323 and 307 of the IPC and also under sections 3/4 of the Explosive Substances Act against the informant and his family members in which charge-sheet has been submitted during the trial. The accused persons were acquitted and PW4 in his deposition has specifically stated that settlement was done out of Court and compromise was made, and that is why no allegations specifically against the acquitted persons in this case was made. Therefore, the learned counsel submits that the conviction and sentence order should be set aside.

8. On the other hand, learned APP for the state has submitted that the witness has corroborated the occurrence of the mischief by fire by the accused persons/appearance and also the occurrence of assault on the victim/informant by Garasa is also proved. Further he has stated that the occurrence committed by the accused/appellant persons has also been supported by the manner of occurrence and the time of occurrence, therefore, the



accused person deserves conviction.

9. Before the Trial Court, prosecution examined 10 witnesses. P.W. 1, Kedar Singh (Declared Hostile), P.W. No. 2 (Dinesh Kumar Chaudhary (Brother of the informant), P.W. No. 3, Aditya Chuadhary @ Bijlee Chaudhary (Declared Hostile), and P.W. No. 4, Amresh Chaudhary (Informant), PW 5- Siya Sharan Chaudhary (IO), PW 6- Dr. Ramakant Singh (Examining Doctor). Altogether, 4 defence witnesses were also examined by the defence, DW 1 Bhikhari Jha, DW 2 Chhedi Mahto, DW 3 Ram Pukari Devi, DW 4 Batahu Mahto. Several documentary evidences were also submitted by the prosecution as well as defence in their support.

10. PW2 Dinesh Chaudhary has stated in his examination-in-chief that he is the brother of the informant and the charges levelled against the accused person is true. That on the date of occurrence, the PW2 was taking tea with his brother at his door, whereupon the appellants and other co-accused persons along with other unknown persons started quarreling with the informant for capturing booth and ordered to set the house of the informant on fire. Further he stated that 5 to 7 people started sprinkling liquid contained in jerking upon the House of the informant and Sanjay Jha set the house on fire through matchstick. Shambhu



Jha, thereafter, ordered to kill Amrish Chaudhary by Bomb, thereafter, he threw the bomb. He further stated that due to the explosion, the left palm of the informant was severely injured and the brother and the informant fell down. Thereafter, the Appellant No. 1 had assaulted the informant with *Grasa* on head. Due to the explosion and fire caused by the accused persons, the room of the informant's house was turned into ashes and articles worth about ₹25,000 were destroyed. He further stated that the informant was brought to HMT Hospital in Sitamarhi, and thereafter, he was shifted to Private clinic of Dr Ramakant Singh. He further stated that he does not identified the accused Sakal Dev Singh and stated that he was not present at the commission of the Offence.

11. In his cross-examination, he has stated that the grains, cloth utensils, Chowky, etc was destroyed due to fire and also stated that the injury was caused on the right side of the head of the informant.

12. PW4, who is the informant in this case, has dictated in his examination-in-chief, similar facts as of PW2 and also stated that he after getting injured by accused persons by *lathi Danda*, etc, on his left thigh, left arm and left right hand, he became unconscious, and thereafter, he was brought to HMT Hospital and then he was referred to Dr Ramakant Singh and at the clinic of



Ramakant Singh, the police came and took his statement in his cross-examination. He has stated that he had not seen Harihar Singh committing the offence and people told him that Harihar Singh was present there at the place of occurrence. Further he has stated that he has also not seen Shakal Singh and Girish Nandan Singh committing the offence. He further stated in his cross-examination that his father was treated by a local village doctor.

13. PW5, who is the Investigating Officer in this case has stated in his examination-in-chief that he became the in-charge of investigation of the case on 24.2.2000 and the witnesses as stated in the FIR is in the signature of Indrajit Baitha and then it is in the writing of ASI Dhirendra Kumar Sinha of Mehsaul OP. He has also inspected the place of occurrence which is east and west double faced brick tilted house of the informant situated in the village. He also found burnt bamboo, wooden pillars and he did not find any costly items destroyed or burnt by fire or bomb explosion. The premises which was destroyed by fire was used to keep husk and it was vacant at the time of incident. The Investigating Officer also found light blood stains on the northern Gate and also the walls. He further stated that he did not find any remains of the bomb explosion at the place of occurrence. In his cross-examination, he stated similar facts as to the deposition in



the examination-in-chief.

14. PW6 is Dr. Ramakant Singh, who alleged to have examined the informant Amresh Choudhary on 23.2.2000 xm (on the same day of occurrence) at about 7.30 A.M. and found the following injuries on his person :-

(1) Lacerated injury with rage margine and multiple small carbon articles and few metalic particles present in the wound on left forehand. Muscle tendon and bones blood were totally torned and lacerated. There was bleeding of wound due to damage to blood vessels. Left hand was absent with few rants. Bones of fore-arm was exposed.

(ii) Incised wound 1/2" X/2" on scalp with bleeding on the wound.

(iii) Bruise on left thigh 1" X72".

Nature of injury: Injury No. (i) and (ii) are grievous in nature with injury no. (1) almost fatal to life. Injury no, (iii) is simple in nature.

Cause of injury In jury No. (i) due to explosive material.

Injury No. (ii) caused by sharp cut instrument.

Injury no. (iii) caused by hard and blunt.

Age of injury:- Within 6 hours.

This witness further stated that injury report is in his pen and bears signature and proved it as Ext. 4.

He further stated that on the same day, he examined Ram Shankar Choudhary (father of the informant) at about 3 B. M. and found the following injuries on his person :-

(1) Multiple patical haemorrhage spot with roughing of skin of face and upper limb.

(ii) Incised wound 1 x1/4" x.on left upper limb.

Nature of injuries: All are simple in nature. Cause of in jury:- Injury No. (1) caused by explosive material.

Injury no, (ii) due to sharp cut object.

Age of injury: Within 12 hours.



15. DW1, who is an advocate clerk is a formal witness.

16. DW2 has stated in his examination-in-chief that when he reached near the door of Shankar Chaudhary, he saw Amrish Chaudhary, setting fire in his house. Upon shouting, Amrish Chaudhary through bomb which was kept in his right hand upon Harihar Nath and Krishna Nandan who sustained injuries. Amrish Chaudhary also fell down, but the bomb which was kept in his left hand had exploded, and Amrish Chaudhary sustained injuries in his left hand.

17. In his cross-examination, he has stated that he does not know whether any case was filed by Harihar Nath regarding his injuries or not. The witness has denied that his son was also accused in the case filed by Krishna Nandan Singh, in which his son was acquitted. He further denied that he does not know whether Shambhu Sharan Jha has deposed in his favour in case of kidnapping levelled against his son or not ?

18. DW-3 Ram Pukari Devi has also stated similar facts stating that the bomb had exploded in the hands of Amrish Chaudhary, and his brother also heard bomb, which caused injury in the right leg of Amresh Chaudhary.

19. DW-4 has also stated similar facts regarding the occurrence of the incident.



20. It is evident that the three other accused namely Harihar Singh, Shahdev Singh and Girish Nandan Singh, was named in the FIR, but in furtherance of the trial, their names were purposely removed from the deposition of the witnesses stating that they were not seen at the place of occurrence and the informant along with other witnesses that were examined during the trial have stated that they did not saw Shakal Dev Singh, Krishna Nandan Singh and Harihar Singh, who are co-accused in this present matter. It is evident from the entire trial proceeding, the witnesses have willfully denied to give a deposition against the persons who were acquitted in the trial Court stating that the informant and other witnesses have not seen those accused persons, but the Fardbyan clearly states the names of those persons.

21. Another fact appears from the deposition of the defence witnesses that informant himself along with his brother threw bomb at Harihar Nath Singh, krishna Nandan Singh and appellants enduring that altercation, the informant sustained injuries. The informant had sustained injuries only on the hand and palm of his body, it is not acceptable that a person who is injured by an explosion of a bomb would only get injury on his hand rather he would get injured on splash area of the explosion



i.e., whole body or the part which is facing the bomb explosion.

22. It has also been specifically stated by the informant that case was filed by the accused persons and appellant having similar facts and circumstances which was settled out of Court between the informant and Harihar Nath Singh, Krishna Nandan Singh and Shakal Deep Singh and on that pretext, the names of acquitted accused person of the trial case were purposely removed from this matter, and only the above appellants were made accused. It can be seen that the informant himself did not come with clean hands before the Court seeking justice. It is the power and duty of the court that when the witnesses of prosecution makes false statement or suppresses the material facts and the trial is also prejudiced, the case cannot be proved to be true. The informant firstly filed an FIR against all the named accused persons, counter case was filed and thereafter appellant compromised out of court between the three accused persons and specifically stated that the FIR was filed after knowing the names of the other three appellants through co-villagers, but the informant has himself stated that he is the eye witness of the incident along with his brother and he sustained injuries and his father also sustained injuries, but he said that he has not seen the other three accused persons at the place of occurrence, which



cannot be accepted. If a material witness itself does not come with a clean hand and with an ulterior motive to incriminate only the persons who is stated to have enmity with the accused, the witnesses thereafter, along with the informant cannot be considered wholesome and absolute. Their depositions and evidences are doubtful and the witnesses are not reliable witnesses.

23. Further, it is surprising to note here that the father of the informant was also injured during the altercation, but, he was not made a witness before the Trial Court and has not given his deposition before the trial Court and it is further worth mentioning here that the doctor has stated in his deposition before the Trial Court that the injured father of the informant was given treatment by him, but the informant himself has stated that his father was treated by a local doctor (Quack), which shows that there are serious and substantive discrepancies in the statement of witnesses.

24. Considering this fact, prosecution has failed to establish this case beyond all reasonable doubt therefore, the judgment of conviction and order of sentence in this present matter is fit to be set aside.

25. In the fact and circumstances of this case, I find and



hold that the prosecution has failed to substantiate the prosecution case and prove the case beyond all reasonable doubts. Hence, Judgment of conviction dated 28.05.2013 and order of sentence dated 29.05.2013 passed by learned Ad-hoc Additional Sessions Judge-VI, Sitamarhi in Sessions Trial No.271 of 2001/ 64 of 2006, arising out of Bathnaha P.S. Case No. 92/2000 convicting both the appellants under Sections 148, 323,324, 504 and 307 of the Indian Penal Code is hereby set aside and the appellant is acquitted from the charge levelled against him. As the appellant is on bail, he is discharged from the liability of the bail bond.

26. Accordingly, the appeal is allowed.

(Ramesh Chand Malviya, J)

Sunnykr/-

AFR/NAFR	AFR
CAV DATE	
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