
(2013) 11 PAT CK 0002
In the Patna High Court
Case No : Cr. Revision No. 870 of 2010

Azhar Hossain

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Citation : (2014) 2 PLJR 301

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Judgement

Aditya Kumar Trivedi, J.—Petitioner/informant has challenged the judgment dated 15.3.2010 passed by Additional Sessions Judge, FTC-II, Banka in Cr. Appeal No. 15 of 2002 as well as Cr. Appeal No. 2 of 2002 whereby and whereunder acquitted Opposite Party No. 4 Abdur Rahman, Opposite Party No. 5 Md. Salauddin while converted the conviction of Abdul Gani, Md. Badruzama u/s 324 of the Cr.P.C. and released them in terms of Section 4 of Probation of Offenders Act directing them to execute bond of Rs. 5,000/- with two sureties which was effective for a year during midst thereof directed to maintain peace and good behaviour. At the present juncture it is worth mention to note that vide judgment dated 5.1.2002 passed by Second Assistant Sessions Judge, Banka in Sessions Trial No. 165 of 1993 the learned trial court had convicted accused Badruzama as well as Abdul Gani for an offence punishable u/s 3/4 of the Explosive Substances Act as well as u/s 307/34 of the IPC and sentenced each of them to undergo R.I. for five years as well as also fined Rs. 1,000/- independently in default thereof to undergo R.I. for two months additionally under both count while Abdur Rahman and Md. Salauddin independently were convicted u/s 307/34 of the IPC and each of them were directed to undergo R.I. for five years as well as also slapped with fine appertaining to Rs. 1,000/- in default thereof to undergo R.I. for two months additionally with a further direction to run the sentences concurrently. Md. Azhar Hossain (P.W.-8) filed written report on 5.8.1981 at about 01:00 P.M. alleging inter alia that on the same day at about 9:00 A.M. he had gone to see his field which was being

ploughed. While he was standing there Sk. Rahman and his brother-in-law Salauddin came out from his house, abused and then brick-batted causing injury over eyebrow as well as back. He rushed there from towards his house and reached near a shop, where his younger brother Naimuddin was sitting with whom he proceeded towards his house. During midst of way Badruzama and Abdul Gani came running towards Rahman's Darwaja followed by Rahman and Salauddin and on the instigation of Rahman, Badruzama hurled bomb which struck over wall of Ibrahim, exploded causing injury to him. Abdul Gani threw another bomb which fell down on road and exploded causing injury to his brother Naimuddin. Md. Abbas was shown as a witness of first incident while Md. Kalimuddin, Md. Safik and Md. Sultan were cited witness of second incident.

2. On the basis of aforesaid, written report Dhoraiya P.S. Case No. 65 of 1981 was registered whereupon the investigation commenced and concluded by way of submission of charge-sheet. The trial commenced and concluded in a manner as disclosed above.. The finding of the trial was altered by the appellate court in a manner as indicated above which happens to be the subject matter of instant revision of the instance of informant.

3. It has been submitted on behalf of petitioner that the finding recorded by the learned appellate court happens to be wrong, perverse and is based upon flimsy grounds. It has further been submitted that from the judgment of the appellate court, it is apparent that learned appellate court was very much confused and that happens to be reason behind that in spite of accepting the prosecution version with regard to manner of occurrence, acquitted two of the opposite party, namely, Abdul Rahman as well as Md. Salauddin while modified the conviction and sentence relating to opposite parties Abdul Gani as well as Md. Badruzama.

4. It has further been submitted that non-examination of I.O. had not caused prejudiced to the defence because of the fact that all the witnesses happens to be consistent over participation of all the opposite parties during commission of occurrence whereunder Abdul Gani as well as Md. Badruzama hurled bomb at the informant Md. Ajhar Hussain as well as Naimuddin. Bomb is a fatal weapon and it was sheer chance that on account of missing of aim it could not struck over the body of both the injured, however, it had caused injuries to the injured on explosion. Two bombs were hurled one by Abdul Gani and another by Md. Badruzama who used in repeated manner clearly suggest that during course of occurrence the opposite parties have had carried the intention to cause death as well as was within conscious knowledge that by explosion the life (sic) ormant as well as Naimuddin may be at stake.

5. It has further been submitted that for the purpose of application of Section 307 of the IPC nature of injury happens to be immaterial. Hence, once the appellate court had accepted the genuineness in the prosecution version then in such circumstance acquitting Opposite Party Abdul Rahman and Md. Salauddin as well as convicting Abdul Gani and Badruzama u/s 324 of the IPC and further releasing them giving benefit of Section 4 of Probation of Offenders Act was not

at all warranted.

6. The learned Additional Public Prosecutor endorsed the view and submitted that the finding of the appellate court happens to be cryptic one in the background of the fact that commission of an occurrence whereunder informant as well as Naimuddin have sustained injury by means of explosive substance has been found proved. It has further been argued that releasing them on giving benefit of Probation of Offenders Act was not at all befitting with the nature of allegation.

7. At the other hand, it has been pleaded on behalf of Opposite Party Nos. 2 to 5 that revision at the behest of informant should not be entertained in usual course rather the same should be accepted only in exceptional circumstances when glaring defect or wrong appreciation of the material fact is visualizing from the order impugned. It has further been submitted that after taking into account the evidence in its entirety, the appellate court had found sufficient reason to acquit O.P. Abdul Rahman as well as Md. Salauddin and accordingly, recorded so. If has further been submitted that learned appellate court had gathered from the evidence that there was no intention or knowledge on the part of the O.P. Abdul Gani as well as Md. Badruzama to commit murder and being so the appellate court was fully justified in altering and modifying the judgment of the trial court. Releasing of Abdul Gani and Md. Badruzama giving benefit of Probation of Offenders Act was equally sustainable in the facts and circumstances of the case.

8. In Venkatesan Vs. Rani and Another, , the Hon''ble Apex Court had an occasion to adjudicate upon the relevant consideration to be applied during course of appreciation of revision against acquittal and explained the same in following way:--

6. To answer the questions that have arisen in the present case, as noticed at the very outset the extent and ambit of the revisional jurisdiction of the High Court, particularly in the context of exercise thereof in respect of a judgment of acquittal, may be briefly noticed. The law in this regard is well settled by a catena of decisions of this Court. Illustratively, as also chronologically, the decisions rendered in Pakalapati Narayana Gajapathi Raju and Others Vs. Bonapalli Peda Appadu and Another, , Akalu Ahir and Others Vs. Ramdeo Ram, , Mahendra Pratap Singh Vs. Sarju Singh and Another, , K. Chinnaswamy Reddy Vs. State of Andhra Pradesh, and Logendra Nath Jha and Others Vs. Shri Polailal Biswas, may be referred to. Specifically and for the purpose of a detailed illumination on the subject the contents of paras 8 and 10 of the judgment in the case of Akalu Ahir v. Ramdeo Ram (supra) may be usefully extracted below:--

8. This Court, however, by way of illustration, indicated the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision:--

(i) Where the trial court has no jurisdiction to try the case, but has still acquitted the accused;

- (ii) Where the trial court has wrongly shut out evidence which the prosecution wished to produce;
- (iii) Where the appellate court has wrongly held the evidence which was admitted by the trial court to be inadmissible;
- (iv) Where the material evidence has been overlooked only (either) by the trial court or by the appellate court; and
- (v) Where the acquittal is based on the compounding of the offence which is invalid under the law.

These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of acquittal.

10. No doubt, the appraisal of evidence by the trial Judge in the case in hand is not perfect or free from flaw and a Court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to re-appraise the evidence for itself as if it is acting as a Court of appeal and then order a re-trial. It is unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village Mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court". The observation in para 9 in the case of Vimal Singh Vs. Khuman Singh and Another, would also be apt for recapitulation and, therefore, are being extracted below:--

9. Coming to the ambit of power of the High Court u/s 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial court has illegally shut out" the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial.

7. The above consideration would go to show that the revisional jurisdiction of the High Courts while examining an order of acquittal is extremely narrow and ought to be exercised only in cases where the Trial Court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Reappreciation of evidence is an exercise that the High Court must refrain from while examining an order of acquittal in the exercise of its revisional jurisdiction under the Code. Needless to say, if within the limited parameters, interference of the High Court is justified the only course of action that can be adopted is to order a re-trial after setting aside the acquittal. As the language of Section 401 of the Code makes it amply clear there is no power vested in the High Court to convert a finding of acquittal into one of conviction.

9. Proceeding within the periphery of the above referred principle laid down by the Hon'ble Apex Court, the successive judgments as well as the materials available on the record has been gone through. From paras-7, 16, 17 of the judgment, it is evident that learned appellate court had scrapped the finding of the learned trial court with regard to application of Sections 3, 4 of the Explosive Substance Act. Section 3 attracts when there happens to be explosion of explosive substances endangering the life or causing serious injury to property while Section 4 applies where there happens to be intention to cause explosion of a nature as well as having in possession thereof. O.P. Badruzama and Gani were not apprehended with the explosive substance but explosion was caused at their end and for that the consistent evidence happens to be there that it was hurled at the informant as well as Naimuddin. Furthermore, from the evidence of doctor P.W.-9, it is apparent that he had found following injuries over the person of informant:--

I. Cut injury $1/4 \times 1/8 \times$ skin deep on the outer corner of left eyebrow.

II. Cut injury $1/2 \times 1/4 \times 1$ on the right thigh.

III. Cut injury $1/8 \times 1/8 \times$ skin deep on the scalp with a small portion of glass attached on the wound.

The glass piece sent to police sealed vial.

All the above injuries were simple in nature. Injury No. 1 caused by any hard and blunt substance. Injury Nos. 2 and 3 caused by any explosive substance such as bomb.

10. And had found following injuries over the person of Naimuddin:--

(1) Bruise with multiple boils $1 \times 1/2$ " on the right side of chest.

Injury has been found simple in nature and caused by hot substance may be by explosion.

Genuineness of injury has been found by the Appellate Court with contain explanation under para-12 of the judgment.

11. The finding over Section 307 of the IPC, the learned appellate court had recorded the same under para-14, para-15 of the judgment and concluded it under para-20 thereof and during said course had accepted the evidence of both two injured that means to say Naimuddin examined as P.W.-6 as well as informant P.W.-8 in consonance with the evidence of doctor P.W.-9 and affirmed the finding of the trial court that both the injured have sustained injuries caused by explosive substance when the appellate court concurred with the finding, regarding nature of injuries caused by explosive substance, that means to say hurling of bomb was - accepted, then in that circumstances, application of Section 3 of Explosive Substances Act does come into play. The decision so relied upon by the learned lower court also held like so.

12. From the perusal of the aforesaid relevant paragraphs it is apparent that the learned appellate court had misconstrued application of Section 307 of the IPC by way of explaining and observing that its application is permissible only in those cases where there happens to be nature of injury grievous one or endangering the life of injured. The aforesaid recording of reasons assigned by the learned lower court happens to be wrong, perverse and away from the spirit of Section 307 of the IPC.

13. In State of M.P. Vs. Mohan and Others, , the same has been taken into account and explained in following way:--

15. High Court, in our view, while reducing the sentence, has not properly appreciated the scope of Section 307, IPC under which the respondents were found guilty.

The relevant portion of Section 307 reads as follows:--

307. Attempt to murder.--Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned....

16. High Court was of opinion that injuries has not been caused on vital parts of the body. In order to attract Section 307, the injury need not be on the vital parts of the body. In order to attract Section 307, causing of hurt is sufficient. If anybody does any act with intention or knowledge that by his act he might cause death and hurt is caused, that is sufficient to attract life imprisonment. Section 307 uses the word "hurt" which "has been explained in Section 319, IPC and not "grievous hurt" within the meaning of Section 320, IPC. Therefore, in order to attract Section 307, the injury need not be on the vital part of the body. A gun shot, as in the present case, may miss the vital part of the body, may result in a lacerated wound, that itself is sufficient to attract Section 307. High Court is, therefore, in error in reducing the sentence, holding that the injury was not on

the vital part of the body. Period undergone by way of sentence also in our view is not commensurate with the guilt established.

14. In terms of Section 401(3) the High Court is precluded from converting the finding of acquittal into one of conviction. The sub-section 3 speaks in following way:-- (3) Nothing in this section shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

Thus, having the successive judgment juxtaposed with the material available on the record, it is apparent that the learned appellate court had chosen the wrong methodology during course of appreciation of evidence as well as law and on account thereof needs reappraisal. Consequent thereupon, the judgment of appellate court is set aside. Petition is allowed. Matter is remitted back to the learned appellate court to hear both the parties and pass judgment afresh in accordance with law.