

(2007) 03 PAT CK 0116

In the Patna High Court

Case No : Criminal Appeal No. 391 of 2003

Dilip Kumar and Awadhesh Prasad Yadav

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 09-03-2007

Acts Referred:

Explosive Substances Act, 1908 — Section 3, 5, 7
Penal Code, 1860 (IPC) — Section 307, 34, 379

Citation : (2007) 2 BLJR 1772 : (2007) PLJR 810 Supp

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : R.C. Sinha, for the Appellant; J. Upadhyay, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The appeal was initially preferred by the two appellants herein and one Anand Prasad Yadav, the brother of appellant No. 1 and son of appellant No. 2, but as he expired during the pendency of the appeal his name was deleted from the Memo of Appeal and the appeal is now being pursued by the two appellants abovenamed.

2. This appeal at the Instance of the three appellants is directed against the Judgment of conviction and order of sentence dated 30.07.03 passed by Sri Chandra Shekhar Sharma, Presiding Officer, Additional Court I, Patna, Adhoc Sessions Judge, Fast Track Court I, Patna in Sessions Trial No. 98/137 of 1993/2001 arising out of Chowk P.S. Case No. 8/89. By the aforesaid Judgment and order appellants, Dilip Kumar and Awadhesh Prasad Yadav, were convicted u/s 307/34 of Indian Penal Code and each of them were sentenced to undergo rigorous imprisonment for a period of five years each and appellant, Dilip Kumar, was further convicted u/s 379 of Indian Penal Code and sentenced to undergo rigorous imprisonment for two years. Accused Anand Prasad Yadav was sentenced to undergo rigorous imprisonment for a period of five years for the offence u/s

307 of I.P.C.

3. The prosecution case can be noticed with relative brevity from the fardbeyan of injured Ramautar Prasad recorded at 20.30 hours on 08.01.1989 in the Emergency Ward of Patna City Hospital and was in respect of an incident which took place earlier that day around 7.15 P.M. According to the informant at the relevant time he having closed his readymade garment shop, located in Murcha Road, Purab Darwaja, went to Kirana Shop of Shahdeo Jaiswal to purchase soap when suddenly Anand Prasad Yadav and Dilip Kumar Yadav arrived and Anand Prasad Yadav allegedly hurled a bomb at him which resulted in injuries on the back portion of his right leg and he fell to the ground and in the meanwhile Dilip Kumar Yadav snatched the bag from his hand which contained Rs. 650/- from the sale proceeds of the day and thereafter, they fled away towards the south. It is said that the informant also saw Awadhesh Prasad Yadav who was standing near the electric pole also taking to his heels. A minor pandemonium of sorts erupted and people started running and shops were quickly closed. The informant claims to have gone to the nearby medicine shop out he was advised to go to the hospital. It is said that. Krishna Prasad, Raj Bahadur Prasad, Raj Kumar Yadav and others of the vicinity had seen the occurrence and Krishna and Raj Kumar carried the informant on an Auto Rickshaw to the hospital for treatment. It is said that the cause for the occurrence was the longstanding litigation between him and accused Awadhesh Prasad Yadav in respect of the house and landed property.

4. On the basis of the aforesaid fardbeyan a formal F.I.R. was drawn up and Chowk P.S. Case No. 8 of 1989 under Sections 307 and 379 of I.P.C. as also under Sections 3/5 of the Explosive Substance Act was registered against the aforesaid three persons. After due investigation chargesheet was submitted against the three accused and after commitment of the case to the court of Sessions charges u/s 307/34 of the I.P.C. was framed against accused Dilip Kumar and Awadhesh Prasad Yadav and accused Anand Prasad Yadav was charged u/s 307 of I.P.C. and Section 3 of the Explosive Substance Act and accused Dilip Kumar was further charged for offence u/s 379 of I.P.C.

5. The prosecution in support of its case sought to examine as many as 9 witnesses including Ramautar Prasad, informant (P.W.7), his brothers, Krishna Prasad (P.W.1) and Raj Bahadur (P.W.2), Jagarnath Thakur (P.W.3) who is a witness of the seizure, and Dipak Kumar (P.W.9) who is a formal witness who has formally proved the fardbeyan (Ext.2) and the formal F.I.R. (Ext.3). That apart Ram Babu Yadav (P.W.4) is a witness to the occurrence whereas Chandradip Singh (P.W.5) and Raj Kumar Pateshwari (P.W.6) have been tendered and Shahdeo Kumar (P.W.8) have been declared to be hostile.

6. The defence plea is one of innocence and false implication due to enmity. Accused Anand Prasad Yadav took the plea of ali bi for which one D.W., Vijay Kumar Singh, was examined and he sought to prove driving licence of Anand Kumar Yadav (Ext.A), Insurance Papers (Exts. B and B/1) and a receipt of fine

(Ext.C).

7. Having considered the materials available on record the learned trial Judge recorded a finding of acquittal in respect of the charge u/s 3 of Explosive substance Act against accused Anand Prasad Yadav as consent of the Central Government for prosecution of the said accused under the Explosive Substance Act as envisaged u/s 7 of the Explosive Substance Act had not been obtained, but the respective charges against the three accused under the Penal Code were held to have been proved.

8. The fact of the existence of enmity between the informant and the accused over house and landed property is not in serious dispute and has been spelt out very lucidly in the fardbeyan as the Immediate cause for the occurrence. In course of his cross-examination, the informant (P.W.7), though denying the defence suggestion of the building wherein the shop and residence of the informant were located had been purchased by accused Awadhesh, Prasad, he did admit that a lis in respect of the said building between him and Awadhesh was pending in the court of Subordinate Judge III. He also admitted that prior to the instant occurrence there had been several cases between him on the one hand and Awadhesh on the other. Even the two brothers of the informant, Krishna Prasad (P.W.1) and Raj Bahadur (P.W.2) have admitted about the enmity. But then enmity is a double edged sword which cuts both ways.

9. It is in this backdrop that the defence seeks to question the validity of the Judgment and order of the learned trial court. Manifold contentions were raised on behalf of the appellants to assail the findings recorded by the learned trial court, the primary one being the prejudice caused to the defence due to the non examination of the doctor and the Investigating Officer. It has been contended that the factum of the Informant having sustained injuries resultant of the alleged explosion of a bomb has not been proved as neither the injury report of the Informant has been brought on record nor the doctor who examined the informant has been examined and as such the nature of the alleged injury, the situs thereof and the cause therefore have remained a matter of surmises. Even the informant in course of his testimony in court did not make any attempt to display his injuries. On this premise it was contended that except for the oral statement of the injured informant there was no evidence before the learned court to hold that the informant had sustained the injuries as a result of a bomb blast and that the offence was such as to fall within the ambit of Section 307 of I.P.C. That apart there is no corroborative medical evidence in support of the oral allegations made, against the appellants that they caused the injuries.

10. The non examination of the Investigating Officer, it was contended, too has caused prejudice to the defence inasmuch as the objective findings of the Investigating Officer at the P.O. and in course of investigation has not seen the light of the day. By annexing a copy of the report of the Forensic Science Laboratory, Patna, with the Memorandum of Appeal, it was sought to be submitted that certain items seized by the Investigating Officer from the P.O. had

been sent to the Laboratory for testing and on examination of the said items the Laboratory reported that no explosive could be detected in the extract of contents. On this premises it was submitted that had the Investigating Officer been examined in court he could have been confronted with the report moreso when the prosecution chose to withhold the same and had misled the trial court to arrive at a wrong finding so as to convict the appellants for the offence of attempting to murder the informant by way of explosion of bomb.

11. There is yet another aspect of the matter. The allegation of hurling bomb is against accused Anand Prasad Yadav. He has since expired and his name has been deleted from the Memo of Appeal and the proceeding against him has been dropped. The allegation against appellant Dilip Kumar is of his having snatched the bag containing money from the hand of the informant. However, the informant does not appear to press this allegation in course of his testimony in court and none of the other witnesses examined have sought to corroborate the same. According to the fardbeyan, the allegation against accused Awadhesh Prasad is of standing near an electric pole at some distance. P.W.1, Krishna Prasad, the brother of the informant does not in the least corroborate the story narrated in the fardbeyan and has built up a fresh story of having seen the accused persons loitering around their shop about an hour before the occurrence. Even Sahdeo Jaiswal (P.W.8) in whose shop the occurrence allegedly took place does not support the prosecution story.

12. Having given my anxious considerations to the submissions made on behalf of the appellants and also regard being had to the evidence available on record, I am of the considered opinion that, the benefit of doubt, in all fairness, should be extended to the appellants as the prosecution has failed to establish the charges beyond all reasonable doubts.

13. In the result the appeal is allowed. The impugned conviction and sentence is hereby set aside and the appellants are discharged from the liabilities of their respective bail bonds.