

(2014) 01 PAT CK 0028

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 184 of 1999

Md. Akil Ansari @ Md. Aquil Ahmad

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 20-01-2014

Acts Referred:

Explosive Substances Act, 1908 — Section 3
Penal Code, 1860 (IPC) — Section 148, 149, 153B, 307, 353

Citation : (2014) 01 PAT CK 0028

Hon'ble Judges : Akhilesh Chandra, J

Bench : Single Bench

Advocate : Praveen Kumar Agrawal in Cr. app SJ No. 184 of 1999, Mr. Krishna Mohan, Mr. Praveen Kumar, Mr. Nihar Nandan Ambasta in Cr. app SJ No. 188 of 1999 and Mr. Radha Raman Verma in Cr. app SJ No. 200 of 1999, for the Appellant; Sujit Kumar Singh, App for the State in Cr. App (SJ) No. 184, 193, 200 of 1999 and Mr. Abha Singh, App for the State in Cr. App (SJ) No. 188 of 1999, for the Respondent

Final Decision : Allowed

Judgement

Akhilesh Chandra, J.—Heard learned counsel for the appellants in these four appeals and learned Additional Public Prosecutor for the State. The four appellants have preferred these appeals against their conviction for the offences u/s 307 read with Section 149 of the Indian Penal Code to undergo rigorous imprisonment for five years, sections 148, 353, 153B of the Indian Penal Code sentenced to undergo rigorous imprisonment for one year each and Section 3 of the Explosive Substance Act, sentenced to undergo rigorous imprisonment for ten years, as awarded by learned 3rd Additional Sessions Judge, Bhagalpur, on 17th July, 1999, in Session Trial No. 147 of 1990 arising out of Kotwali P.S. Case No. 673/1989. By same judgment out of 26 accused facing trial, 20 accused have been acquitted, six were convicted including the appellant during appeal two have been dead and the respective appeals filed by them stand abated.

2. The prosecution has come out with the case on self-recorded statement of

P.W. 34 namely, K.C. Dubey, Officer Incharge of Kotwali Police Station as well the Investigating Officer for major part of the investigation is that on 24th October, 1989, as per direction of Dy.S.P. of 23rd October, 1989, in order to maintain law and order situation on 24th October 1989 at about 9.30 A.M. the informant arrived at Tatarpur Chowk, since one Ramsheela Shobha Yatra was to arrive and proceed but finding some objections by members of other community in good number including the appellants superior authorities were also informed who arrived, tried to pacify. Initially there appears everything will pass peacefully but under hand there was some instigation by the religious heads (Gaddinaseen) and suddenly the mob turned hostile and violent and started throwing explosive substance and firing from rifle, guns and also there was brick-batting causing injuries to several persons mainly police officers and personnel who in turn also resorted firing, during the period curfew was also imposed, and two of the miscreants died during such counter by police. After investigation charge-sheet was submitted and after commitment the case was tried. Initially around 500 persons were shown as miscreants but ultimately as stated earlier only 26 were sent up for trial and six could be convicted and sentenced.

3. During trial prosecution has examined altogether 46 witnesses besides producing following exhibits:

Exhibit - 1 - Written report

Exhibit - 2 - Formal F.I.R.

Exhibit - 3 - Signature of M.K. Alam on carbon copy of inquest report

Exhibit - 3/1 - Signature of M.K. Alam on carbon copy of inquest report

Exhibit - 4 - Firing order given by Magistrate Md. Abdul Sohrab to K.C. Dubey

Exhibit - 3/2 - Signature of Md. Abdul Sohrab Magistrate on carbon copy of inquest report

Exhibit - 3/3 - Signature of Md. Abdul Sohrab Magistrate on carbon copy of inquest report.

Exhibit - 5 - Accident report of M.V.I. in connection with Vehicle No. BEJ 55.

Exhibit - 5/1 - Accident report of M.V.I. in connection with Vehicle No. BAJ 8541.

Exhibit - 5/2 - Accident report of M.V.I. in connection with Vehicle No. BRJ 6759.

Exhibit - 5/3 - Accident report of M.V.I. in connection with Vehicle No. BRJ 909.

Exhibit - 6 - Production list dated 25.10.1989.

Exhibit - 7 - Seizure list.

Exhibit - 8 - signature of Yugal Kishore Singh on seizure list.

Exhibit - 9 - sanction order.

Exhibit - 10 - post mortem report No. 371/89 dt. 26.10.89.

Exhibit - 10/A - P.M. Report No. 372/89 dt. 26.10.89.

4. On behalf of the defence, following exhibits have been produced:

Exhibit - A - Signature of Abdul Sohrab, Magistrate on Zimmanama dt. 24.10.89 given to Majhar Shakil.

Exhibit - B - A Certificate granted by Shib Das Singh O/c Tatarpur P.S. to Majhar Shakil.

Exhibit - B/1 - A Certificate granted by O/c Tatarpur P.S. to Md. Kamar Aanam.

Exhibit - C - Petition dt. 28.6.93 written by Sri K.C. Dubey.

Exhibit - D - Forwarding report dt. 26.10.89 in the pen of D. Sahay S.I. consisting the names of accused persons.

Exhibit - D/1 - Forwarding report dt. 28.10.89 consisting the names of 19 accused.

Exhibit - E - signature of accused Raisuddin dt. 24.10.89 on the Register of Muslim High School.

Exhibit - F - certificate dtd. 19.9.98 of Asstt. Head Master Muslim High School.

Exhibit - G -certified copy of chargesheet of G.R. 2083/89.

Exhibit - H - Certificate of Diploma of the Takmilutib college, Lucknow of Md. Ibrahim (father of accused Aqueel Ahmad).

Exhibit - Matriculation certificate of accused Aqueel Ahmad.

Exhibit - J - C.C. of Judgment of S.T. No. 122/90.

5. A good number of witnesses such as P.Ws. 5, 8, 9, 18, 22 to 27, 36, 40 and 41 are tendered. P.Ws. 3, 6 and 43 are formal witnesses and P.Ws. 37 & 39 have been declared hostile since did not support the prosecution version. P.W. 28 is the doctor who conducted the post mortem examination of the dead bodies of two miscreants since admittedly by police firing, hence, there is no necessity to discuss the evidence of the above witnesses.

6. The documents produced by the prosecution as stated above do not contain any report of forensic science laboratory or any competent authority indicating either of the seized articles were in any way part and partial of explosive substance in spite of seizure list (Exhibit - 6 & 7) indicating seizure of some nails, sutli and papers said to have been used in such explosive substance, but for the reasons best known to the prosecution, though, P.W. 34 the informant-cum-Investigating Officer has tried to explain the work load behind non transmission of such materials for examination. Thus, as rightly contended by learned counsel representing the appellants, in absence of any material substantiating allegation

of exploding explosive substances in spite of the statement of the witnesses in this regard, none of the appellants can be held guilty for the offences u/s 3 of the Explosive Substance Act.

7. At this juncture, it is relevant to mention that prosecution has also not produced and proved the injury reports of even a single injured in spite of assertion that good number of police personnel including the Superintendent of Police (P.W.20) sustained some injuries barring this P.W. 20 all other injured witnesses P.Ws. 21, 31, 33, 35, 38, 41 stating about sustaining injuries inflicted by explosive substance and being treated by the doctors. None production of such injury reports to substantiate the assertion brings the conviction u/s 307 read with 149 of the Indian Penal Code also under great cloud which is to be removed by the prosecution which remains uncleared.

8. P.W. 1 Digambar Prasad Verma, P.W. 2 Barjeshwar Prasad Singh, P.W. 4 Sita Ram Mandal, P.W. 11 Shiv Das Singh, P.W. 20 K.S. Dwevedi, P.W. 34 K.C. Dubey, are the persons claiming to identify the appellants, out of whom P.W. 1 has only been able to identify all the four appellants whereas P.W. 2 could identify remaining three except Md. Mustaque alias Larle and P.W. 4 is the person identifying only Md. Mustaque alias Larle, P.W. 11 & 34 identified Md. Zahiruddin and Akil Ansari, whereas P.W. 20 has identified only appellant Md. Zahiruddin, but none of these witnesses except stating about their presence in the mob and some protest at the initial stage of the occurrence has said nothing specific about them.

9. In this background, submission made on behalf of all the appellants that P.W. 34 (informant) has taken command of investigation right from beginning and almost concluded. Though as per his own statement since his superiors subsequently raised objection about his being investigating officer. He handed over remaining part of the investigation to P.W. 30 namely, Pradeep Kumar, only on 16.12.89, though, the occurrence took place on 24th October 1989 and this witness was also at the place of occurrence along with other police personnel including the informant and main Investigating Officer.

10. This gave room to learned counsels representing the appellant to submit that entire investigation becomes doubtful and they rely upon decision of the Apex Court in cases of Bhagwan Singh Vs. The State of Rajasthan, Megha Singh Vs. State of Haryana, . In both these cases the Apex Court has not only deprecated investigation by the informant but also granted the benefits of doubt to the convicts. Having regard to the facts and circumstances, conviction of the appellants for the offences under Sections 148, 353, 153B of the Indian Penal Code also cannot be held sustainable. Accordingly, all these four appeals are hereby allowed, conviction and sentence of all the appellants are set aside, they are set free from the liabilities of the bail bonds furnished on their behalf.