

(2006) 04 JH CK 0095
In the Jharkhand High Court
Case No : Criminal Appeal No. 523 of 1990P

Md. Wahab Mian	Vs	APPELLANT
The State of Bihar (Now Jharkhand)		RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Explosive Substances Act, 1908 — Section 3, 5
Penal Code, 1860 (IPC) — Section 148, 149, 302, 436

Citation : (2006) CriLJ 3938 : (2006) 3 JLJR 195 : (2006) 3 EastCriC 84 :
(2006) 2 AIRJharR 737

Hon'ble Judges : N. Dhinakar, C.J.; Rakesh Ranjan Prasad, J

Bench : Division Bench

Advocate : Satya Prakash Sinha, Amicus Curiae, for the Appellant; S.N. Rajgoria, APP, for the Respondent

Final Decision : Dismissed

Judgement

1. By the above appeal, the appellant, Md. Wahab Mian, challenges his conviction and sentence imposed upon him by the Trial Judge. He was tried and convicted u/s 302 read with Section 149 I.P.C, for which he was sentenced to life imprisonment and for the offence u/s 148 I.P.C, he was sentenced to one year R.I. On being found guilty u/s 436 I.P.C, he was sentenced to ten years R.I. He was also found guilty u/s 3 & 5 of Explosive Substance Act, for which he was sentenced to R.I. for two years with a direction that the sentences of imprisonment will run concurrently.

2. The facts leading to the charges and consequent conviction and sentence can be briefly summarized as follows:

Kadir Mian (D1) is the brother of P.W.13 Md. Taki Mian. Taslim Mian (D2) is the nephew of P.W.13. P.W.8 Saliman Bibi is the wife of P.W.13. Kasim Mian P.W.2 and Muslim Mian P.W.6 are sons of D1 Kadir Mian. Kulsun Bibi is the wife of the said D1 Kadir Mian. They were residing in village Raghunathpur. P.W.13 and D1 Kadir

Mian were police informants. They used to give information about the activities of anti-social elements. According to the prosecution, P.W.13 gave details as to the activities of Rafique Mian, who is one of the associates of the appellant, by complaining that they are preparing bombs and are indulging criminal activities. Sometime prior to the date of incident, which took place on the date of 6/7.1.1982, Rafique Mian and his nephew Alauddin Mian harvested paddy, for which a criminal complaint was given against them. There were also quarrels, before the date of incident, between P.W.13 and Rafique Mian regarding irrigation of land and the mother of Rafique Mian threatened P.W.13 with dire consequences.

3. After dinner on 6.1.1982, Md. Taki Mian was inside the house. The other family members were also in the house. At about 11.00 p.m., he heard some noise and woke up. He along with his nephew Kashim Mian P.W.2 came out of the house and at the courtyard they found 10-12 persons and in that mob, he identified Rafique Mian, Jakir Mian, Piyaaruddin Mian, Sagir Mian and the appellant who is the brother-in-law of Rafique Mian and one of them threw a bomb, which exploded. Thereafter, the above named persons and others who came with them entered the room which was on the southern side of the house in which Kadir Mian D1 was sleeping. D1 Kadir Mian was dragged out of the room and a bomb was thrown at him by Rafique Mian. Kadir Mian died at the place. Taslim Mian, who is another nephew of P.W.13, with a view to escape from the attack, attempted to climb over the roof; Rafique Mian exploded another bomb, as a result of which the said Taslim Mian fell down from the roof and died. All the accused persons including the appellant entered the room where Saliman Bibi, wife of P.W.13, was sleeping. They questioned her and Jakir Mian exploded a bomb, as a result of which she suffered injuries. On account of the explosion of bombs by the accused, Kasim Mian P.W.2, who is the son of D1 Kadir Mian, P.W.11 Kulsun Bibi, wife of D1, as well as P.W.8 Saliman Bibi, wife of P.W.13, suffered injuries. The accused including the appellant then set fire to the house which went up in flames. On hearing the cries, the villagers P.W.3 Md. Taiyab Ansari, P.W.4 Md. Halim Ansari, P.W.9 Md. Lukman and P.W. 12 Nayeem Ansari as well as others gathered at the place. P.W.13 proceeded to the police station and gave the fardbeyan, Ext.8, at 3.30 a.m. on 7.1.1982, on the basis of which a crime was registered at the police station. Investigation was taken up by the Police Officer, who reached the scene of occurrence, conducted inquest over the two dead bodies of D1 Kadir Mian and D2 Taslim Mian. Inquest reports are Ext. 10 and Ext. 10/1 respectively. P.Ws.2, 8 and 11, who had injuries, were sent to the hospital by the Police Officer. Two dead bodies were also sent to the hospital for the purpose of autopsy.

3. P.W.14 Dr. Narendra Mohan Sharma examined P.W.2 at 10.00 a.m. on 7.1.1982. He found as many as five lacerated wounds and two superficial burns on the person of Kasim Ansari. Thereafter he examined P.W.11 Kulsun Bibi and on her person, he found two lacerated wounds. P.W.8 Saliman Bibi was then examined and the Doctor found four lacerated wounds with superficial burn

injuries. Exts.6, 6/1 and 6/2 are the injury reports, respectively, issued by the Doctor for the injuries found on P.Ws.2, 11 and 8.

4. P.W.14 Dr. Narendra Mohan Sharma conducted autopsy on D1 Kadir Mian at 3.30 a.m. on the same day. He found the following injuries:

(i) Extensive lacerated wound over right thigh from hip joint upto knee with extensive damage of muscles, skin, blood vessels, bone(femur) broken into pieces marginal skin was lacerated and blackened;

(ii) Penetrating lacerated wound over abdomen right hypochondrium (a) 3" x 1" x abdomen deep, (b) 1 1/2" x 1/2" x abdomen deep (c) 1/2 x 1/2" x abdomen deep.

(iii) Lacerated wound on the front of right chest 2" x 1/2" x 1/2".

(iv) Lacerated wound over left elbow 2 1/2" x 1/2" x 1/2"

(v) Lacerated wound left thigh 2" x 1/2" x 1/2" margins of all these injuries were blackened and lacerated.

On dissection the Doctor found fracture of 10th and 11th ribs. Abdominal cavity was found to be full of blood. A metallic piece was lodged at abdominal wall. Liver, spleen were seen ruptured.

On opening skull, the Doctor found no fracture.

The Doctor issued Ext.5, the post mortem certificate, with his opinion that the death is on account of above injuries and that they could have been caused by some explosive substance and death must have occurred within 25 hours of the post mortem.

5. The Doctor conducted autopsy on the dead body of Taslim Mian and he found the following injuries:

(i) Extensive wound over lower part of left thigh with damage of skin and subcutaneous tissues, muscles femur. The femur was broken into pieces. Skin margin was blackened.

(ii) Incised wound over right leg below knee (a) 1" x 1/2" (b) 1/2" x 1/2" (c) 2" x 1/2" (d) 1 1/2" x 1/2" (e) 3/4" x 1/2" (f) 2" x 1/2" (g) 2 1/2" x 1/2" (h) 1/2" x 1/4" (i) 2" x 1/2" (j) 2" x 1/2" (k) 1/2" x 1/2" (l) 1" x 1/2" (m) 1" x 1/2"

(iii) Incised wound over right hip upto mid thigh (1) 1/2" x 1/2" (2) 1/2" x 1/2" (3) 1" x 1/2" (4) 3/4" x 1/2" (5) 1" x 1/2" (6) 1" x 1/2" (7) 3/4" x 1/2" (8) 1/2" x 1/2"

(iv) Lacerated wound over left fore-arm and hand (1) 1/2 x 1/4" (2) 3/4" x 1/4" (3) 1/2" x 1/2" (4) 3/4" x 1/2" (5) 1" x 1/2"

(v) Multiple tattoo marks over left arm

(vi) Incised wound over right knee 3" x 1"

(vii) Lacerated wound right calf 2 1/2" x 1 1/2".

The Doctor issued Ext.5/1, the post mortem certificate, with his opinion that the death is on account of shock and hemorrhage, as a result of the above injuries and death must have occurred within 24 hours of the post mortem.

6. The investigation continued, during which witnesses were examined. Sanction order, Ext.7, was obtained for prosecution of the appellant and the other accused u/s 3 and 5 of Explosive Substances Act. After the completion of investigation, final report was filed against the appellant and others by the Police Officer, Sarjug Pathak, who was In-charge of Mohanpur police station (he died before the trial).

7. From the materials we find that though final report was filed against five persons namely Rafique Mian, Piyaaruddin Mian, Sagir Mian, Makbool Mian and Waheb Mian (appellant), the appellant alone was committed to trial and others except Rafique Mian, who is said to have died pending investigation, were shown as absconders in column 2 of the final report.

8. Learned Counsel for the appellant, who was appointed as Amicus Curiae, submits that since the witnesses have mentioned only the names of above five persons in the fardbeyan, Ext.8, their evidence cannot be accepted. He submits that as there were ill-feelings between the deceased and Rafique Mian, the appellant, who is the brother-in-law of Rafique Mian, would have been implicated falsely in the case. Under the above circumstances, the appellant is entitled to acquittal. On the above submission, we have heard Mr. S.N. Rajgoria, learned counsel appearing for the State.

9. The prosecution through P.W.13 established the motive for the occurrence as, according to him, P.W.13 as well as Kadir Mian were passing information to the police about the anti-social activities of several criminals in the locality and that he had also given information that Rafique Mian is illegally manufacturing bombs. There were also disputes regarding harvesting of paddy between Rafique Mian and P.W.13. P.W.13 and his family members were also threatened by the mother of Rafique Mian that they will face dire consequences, if they continue to quarrel with them. On the evidence of P.W.13, we are satisfied that Rafique Mian was inimically disposed towards P.W.13 and his family members. It had also come out in the evidence that the appellant is the brother-in-law of the said Rafique Mian. At about 11.00 p.m. on 6.1.1982, P.W.13 was sleeping in his house; D1 Kadir Mian, D2 Taslim Mian as well as P.Ws.2, 6, 7, 8 and 11 were also present in the house. It could be seen from their evidence that on hearing some noise, P.W.13 and Kadir Mian came out of the house and found the appellant in the company of the other named person in the fardbeyan, Ext.8, and that there were also other unknown persons with them. According to the witnesses, Rafique Mian exploded a bomb leading to the death of Kadir Mian and thereafter another bomb was exploded, as a result of which Taslim Mian, who was trying to climb over the roof

to escape the attack, fell down and died. P.Ws.2, 8 and 11 also suffered injuries due to the explosion of bombs. On hearing the distressing cries of the witnesses, the appellant and other accused ran away from the place; before they left, they set fire the house of P.W.13 which went up in flames. After the arrival of P.Ws.3, 4, 9 and 12, P.W.13 went to the police station and gave fardbeyan, Ext.8, at 3.30 a.m., i.e. within four hours of the incident. We have perused the evidence of the witnesses including the witnesses who have suffered injuries. The witnesses are consistent in their version. Rafique Mian, who is the brother-in-law of the appellant, was also present along with the named five persons and other unnamed persons, when they entered the house and threw country made bombs, thereby killing two persons and causing injuries to three others. We find no reason to reject the evidence of any of the witnesses. In fact, their evidence is supported by the medical evidence. The Doctor, P.W.14, examined P.Ws.2, 8 and 11 and found lacerated injuries with burns. He issued Exts.6, 6/1 and 6/2, the injury reports, with his opinion that those injuries could have been on account of explosion of bombs. It is, therefore, clear that all the witnesses suffered injuries due to explosion of bombs. We have already noticed that the fardbeyan, Ext.8, was given at the police station immediately after the incident mentioning the name of the appellant and other five persons and it is not in dispute that the appellant is the brother-in-law of Rafique Mian. It is also not in dispute that the appellant was not residing in the village where the witnesses were residing. In the above circumstances, it is for the appellant to offer the possible reasons for which he had come to the village of his brother-in-law, Rafique Mian, and to be present with him in the house of P.W.13 at the odd hour, namely, at 11.00 p.m. This aspect we are specifically mentioning, since a faint attempt was made by the counsel that since no specific overt act was attributed to the appellant, he cannot be found guilty u/s 149 I.P.C. There is no need for us to mention that if a person is a member of an unlawful assembly and an offence is committed by a member of the unlawful assembly, every member of the unlawful assembly is also guilty of the offence committed by the other member. As we have already held that the evidence of the eye-witnesses including those who have suffered injuries are trust worthy and that their evidence is supported by the medical evidence, we accept their evidence.

10. The contention of the counsel that because of enmity, the appellant must have been implicated is to be stated to be only rejected on the facts of this case. The statement of the appellant, when he was questioned u/s 313 Cr.P.C, that the witnesses have suffered injuries when they were making bombs, is also not supported by any material and the statement can only be termed as pretentious. On going through the materials placed before us, we find no reason to interfere with the judgment of the trial court. The conviction and sentence imposed upon the appellant are accordingly upheld. It is reported that the appellant is on bail. His bail bonds stand cancelled. The Sessions Judge is directed to take steps to commit the appellant to prison for serving the sentence.

This appeal is dismissed.