

(1999) 07 PAT CK 0059

In the Patna High Court

Case No : Criminal Appeal No. 78 of 1987

Mundrika Chamar and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 23-07-1999

Acts Referred:

Explosive Substances Act, 1908 — Section 3, 5
Penal Code, 1860 (IPC) — Section 149, 302

Citation : (1999) 3 BLJR 1854 : (1999) 3 PLJR 636

Hon'ble Judges : R.N. Prasad, J;M.L. Visa, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.L. Visa, J.—Mundrika Chamar, Budhan Bhuian, Bhola Bhuian and Ram Swaroop Bhuian @ Swarup Bhuian, the four appellants before us, have in this appeal assailed the Judgment and order dated 29-11-1986 passed by the 1st Additional Sessions Judge, Aurangabad, in Sessions Trial No. 7 of 1984/37 of 1984 convicting and sentencing the appellants to undergo R.I. for life under Sections 302/149, I.P.C, Appellant Bhola Bhuian has further been convicted and sentenced to undergo R.I. for five years u/s 3 of Explosive Substances Act but the sentences passed against him have, however, been ordered to run concurrently.

2. The brief facts of the case are that on 3.5.82 at about 6 a.m. deceased Ramadhar Singh along with Overseer and Amin had gone to Hazari Bandh, P.S. Kutumba, District Aurangabad, for measurement of soil. At about 8 a.m., informant Kuldeep Singh (P.W. 3), who is the brother of deceased also went there. On the same day at about 10 a.m. the appellants along with others came from the side of village Jaura and Bhola Bhuian hurled a bomb on deceased Ramadhar Singh causing injuries to him. The informant and deceased then, in order to save themselves, ran towards north-west whereas the Overseer and Amin ran towards eastern side. The appellants and their companions after chase caught hold of deceased and the informant could not see who amongst the

appellants assaulted the deceased but he heard sound of explosion of two bombs and he came running to Bhaluari and after some time when the appellants and their companions returned back, he went to the place where he had left his brother and found the dead body of his brother lying on the ground with number of injuries on his body. It is said that occurrence was witnessed by Sadhu Sharan Singh (not examined), Ram Punja Singh (P.W. 1) and Bhim Singh (not examined). The fardbeyan (Ext. 3) of informant was recorded by S.I. R.N. Chaubey at Amba Out Post and the case was registered against the appellants, namely, Mundrika Chamar, Budhan Bhuian and Bhola Bhuian as well as against Krit Bhuian & Jagdish Bhuian, who all were named in the fardbeyan and 15 unknown persons,. After investigation, police submitted charge-sheet, in parts, against all the appellants including appellant Ram Swaroop Bhuian (a) Swarup Bhuian, who was not named, in the F.I.R., four others, namely, Mahadeo Bhuian, Dargahi Bhuian, Suresh Ram, Awadesh Ram and against others showing them absconders. The cognizance of the case was taken and the case was committed to the Court of Session where the appellants along with Dargahi Bhuian, Suresh Ram, Mahadeo Bhuian and Awadhesh Ram were put on trial and charges against all of them was framed u/s 302/149, I.P.C. Appellant Bhola Bhuian was further charged u/s 3 of the Explosive Substances Act and the Court: below after trial found Awadhesh Ram, Suresh Ram, Mahadeo Bhuian and Dargahi Bhuian not guilty and acquitted them but so far the case of appellants is concerned, all the four appellants have been convicted and sentenced to undergo rigorous imprisonment for life under Sections 302/149, I.P.C. and Bhola Bhuian has further been convicted and sentenced to undergo R.I. for five years u/s 3 of the Explosive Substances Act but both the sentences passed against him have, however, been ordered to run concurrently.

3. The case of appellants is total denial of the charges against them. According to them, they have been falsely implicated in this case.

4. In order to prove its case, the prosecution has examined 11 witnesses. Pradeep Kumar Venna (P.W. 1) is a formal witness who has proved fardbeyan (Ext. 1) and formal F.I.R. (Ext. 2). Kuldeep Singh (P.W. 3) is the informant. Dr. K. K. Singh (P.W. 2) is the doctor who had conducted autopsy. Gauri Shankar Lal (P.W. 7) and Jai Govind Singh (P.W. 9) are Judicial Magistrates who had held T.I. parade of suspects. Ajay Kumar Mishra (P.W. 4) has proved sanction of prosecution granted by the District Magistrate, Aurangabad, for prosecution u/s 3 of Explosive Substances Act. Ram Niwas Chaubey (P.W. 8) is the I.O. of the case. Ragho Narayan Singh (P.W. 4) is a hearsay witness. Kamta Prasad Singh (P.W. 5) is also witness on the point of sanction of prosecution granted by the District Magistrate for prosecution u/s 3 of Explosive Substances Act, Upendra Singh (P.W. 10) is a formal witness who has proved the requisition (Ext. 7) sent by the police to District Magistrate, Aurangabad with a prayer for grant of sanction for prosecution under Sections 3 and 5 of the Explosive Substances Act. It appears that the trial Court examined Pradip Kumar Verma (P.W. 1), Dr. K.K. Singh (P.W. 2) and the informant Kuldeep Singh (P.W. 3) when four accused-persons, namely,

Suresh Ram, Awadhesh Ram, Mahadeo Bhuian and Dargahi Bhuian, who have been acquitted and appellants Bhola Bhuian, Mundrika Chamar and Ram Swaroop Bhuian @ Swarup Bhuian were put on trial. After it, when appellant Budhan Bhuian was arrested and forwarded to Court, he was also put on trial with the aforesaid appellants and other accused-persons and as stated above, by the time appellant Budhan Bhuian was put on trial along with other accused-persons, the Court had already examined P. Ws. 1, 2 and 3. The Court, therefore, again examined P.W. 2 Dr. K.K. Singh and P.W. 3 Kuldeep Singh, the informant and again depositions of these witnesses were given the same number as P.Ws. 2 and 3 in the series of prosecution witnesses. The Court did not recall P.W. 1 Pradeep Kumar Verma probably because he was a formal witness. Ram Pujan Singh was examined as a witness after Budhan Bhuian was also put on trial with other accused persons but his deposition has been numbered as P.W. 1 whereas the Court had already given this number to Pradeep Kumar Verma examined earlier. The Court after putting Budhan Bhuian on trial with other accused-persons should have recalled the witnesses who were already examined earlier for their examination-in-chief and cross-examination but instead of doing so it examined two witnesses, namely, Dr. K.K. Singh and informant, Kuldeep Singh afresh giving them same prosecution witnesses number already given earlier but this procedure which is merely an irregularity has not caused any prejudice to defence because on both occasions the defence got opportunity to cross-examine these witnesses. Therefore, I find that, it has not adversely affected the case of the prosecution.

5. Dr. K.K. Singh (P.W. 2), in his evidence, has stated that on 4-5-82 at 5.30 a.m. he held post-mortem examination on the body of deceased Ramadh Singh and found five incised wounds and eight lacerated wounds with burnt black margins of different dimensions on different parts of the body of the deceased and the death was caused due to massive haemorrhage leading to cardiac arrest and shock due to these injuries particularly injury Nos. 1 and 2 which were incised wounds on left at the level of 2nd and 3rd cervical vertebrae in the anterior aspect of neck and a wound extending from outer aspect of one Sternomastoid muscle at the level of junction of 5th and 6th cervical vertebra in the anterior part of neck.

6. The informant, Kuldeep Singh (P.W. 3) in his evidence has stated that on 3-5-82 at about 6 a.m. his brother Ramadhar Singh along with Overseer and Amin had gone to Hazari Bandh for measurement of soil and he also followed him there at about 8 a.m. and on the same day at about 10 a.m. he saw 20 persons coming from the direction of village Jaura out of whom he identified appellants Bhola Bhuian, Mundrika Chamar, Budhan Bhuian and two others namely Kirit Bhuian and Jagdish Bhuian and first of all appellant Bhola Bhuian hurled a bomb on the deceased causing injury on his leg and thereafter, he and deceased started running away towards north-west direction, but the appellants and their companions chased them and appellant Bhola Bhuian caught hold of deceased and then he heard sound of explosion of bomb and firing from gun and

thereafter, the deceased was taken to Bhuian tola of village Bhaluari and two hours thereafter when he went to Bhabhna Nala he found the dead body of deceased Ramadhar Singh with a number of injuries and the neck and right hand of the body were found cut. He has also stated that thereafter he came to Amba Police Station where he got his fardbeyan recorded on which Ram Pujan Singh (P.W. 1) put his signature and thereafter he along with police again came to the place where dead body of the deceased was lying and the police prepared inquest report (Ext. 4) and subsequently, he identified five more persons in T.I. parade. Ram Pujan Singh (P.W. 1) has simply stated that at the time of occurrence when he was going to Hazari Bandh for meeting with deceased and when he was about 6-7 bamboos away from Hazari Bandh he heard the sound of explosion of bomb and firing from gun and he saw that 15 persons were chasing the deceased who was running away towards north direction along with the informant. He has stated that he then ran from there and came to his house and two hours thereafter, he along with others went to Babhna Nala where he saw the dead body of deceased with a number of injuries and the neck and hand of the body were cut. He has proved his signature (Ext. 5) on the inquest report. He has clearly stated that he could not identify anyone amongst those 15 persons who were chasing the deceased. He has been declared hostile by the prosecution Ragho Narayan Singh (P.W. 4), in his evidence, has stated that he heard about the occurrence from the informant and after receiving information of the death of the deceased he went to the place where the dead body of deceased was lying and saw the dead body of deceased with a number of injuries and the neck of deceased was found cut.

7. From the evidence adduced on behalf of the prosecution, it is apparent that there is no eye-witness on the point of murder of the deceased. It is true that the informant in his evidence has stated that appellant Bhola Bhuian hurled a bomb on the deceased causing injury on the leg of the deceased but admittedly, this injury was not the cause of death of deceased because according to the evidence of informant even after receiving injury on his leg caused by bomb hurled by appellant Bhola Bhuian the deceased started running away towards north west. According to informant when the appellants caught hold of his brother deceased Ramadhar Singh he fled away from there and two hours thereafter, he saw the dead body with injuries at Babhna Nala. Admittedly, he had not seen the infliction of those injuries to the deceased which, according to doctor, were responsible for the death of deceased. About the evidence of informant that appellants caught hold of deceased after chase and took him away to Bhuian tola, I find that this evidence is contradictory to earlier statements of informant given at the time of recording the fardbeyan because in the fardbeyan he has stated that when he was at Hazari Bandh he saw all the appellants and their companions coming from the direction of village Jaura and thereafter, appellant Bhola Bhuian caused injury on the leg of the deceased by throwing a bomb and when he and deceased started running the appellants and their companions caught hold of deceased and he then came running to Bhaluari

village and thereafter, when he went back to that place, he found the dead body of the deceased. In the fardbeyan, he has not stated that the appellants and their companions caught hold of deceased and took him to Bhuian tola. Apart from this development, on the point of taking away the deceased to Bhuian tola, he in his evidence has stated that he found the dead body of the deceased lying near Babhna Nala, So, it is clear that dead body was neither found at Hazari Bandh where the deceased was caught nor at Bhuian tola where the deceased as alleged now was taken by the appellants and their companions but at a third place which is Babhna Nala. Ram Niwas Chaubey (P.W. 8) the I.O. of the case, in his evidence has stated that he did not find any blood stain at Hazaribandh and at the place where dead body was lying blood stains for the name sake only were found which created doubt that the murder had been committed somewhere else but the dead body thereafter had been brought to Babhna Nala and kept there and he mentioned this fact in the case diary. The evidence of Dr. K.K. Singh (P.W. 2) shows that deceased had five incised injuries besides some lacerated burn injuries. The evidence of informant, P.W. 1 and P.W. 4 is that they saw the dead body and found the neck and hand cut. The evidence of these witnesses coupled with the evidence of Dr. K.K. Singh (P.W. 2) suggest that at the place where the deceased was inflicted injuries, sufficient blood must have fallen on the ground but as stated earlier the I.O. did not find any blood at Hazari Bandh where the deceased was caught by the appellants and their companions and only name sake blood was seen where the dead body was lying. This creates doubt about the location of place of occurrence because, it is not established by the evidence of informant who is the only witness of the occurrence on which the prosecution is relying upon. As stated earlier, two other witnesses who have been examined by the prosecution besides the informant, have not full, supported the case of the prosecution because Ragho Narayan Singh (P.W. 4) is hearsay witness and Ram Pujan Singh (P.W. 1) has simply stated that he found 15 persons chasing the deceased. He has not stated that the deceased was caught by those persons and was assaulted there or was taken away anywhere. In this view of the matter, the only evidence which remains on record is of the informant which does not appear convincing and trustworthy because of departure in his evidence from his earlier statements made at the time of getting his fardbeyan recorded where he has not stated that the appellants and their companions caught hold of the deceased and took him to Bhuian tola which is a subsequent development. The evidence of informant that from Hazaribandh, he came running to village Bhaluari where he remained for two hours and thereafter, he went to Babhna Nala does not seem convincing because for these two hours he did not inform anyone about the occurrence and remained silent. Besides: this, Sadhu Sharan Singh and Bhim Singh who are named in the fardbeyan as eye-witnesses of the occurrence and the Amin and Overseer with whom the deceased is said to have gone Hazaribandh for measurement of soil and who were present at the time of occurrence and had started running away after the arrival of appellants and their companions at Hazaribandh have not been examined by the prosecution In view of these facts I find that only the informant has named the appellants in his

evidence but then his evidence against them is only to the effect that deceased was taken by the appellants to Bhuian tola but as this fact was not stated by him in the earlier statements recorded in the fardbeyan and it is only a subsequent development at the time of giving evidence in Court which is not supported by the evidence of any other witness, it cannot be accepted. This statement becomes more doubtful considering the situation that when the appellants and their companions, as alleged, were armed with bombs and guns and one of them namely, Bhola Bhuian had already hurled a bomb on the deceased there was no occasion for the appellants and their companions to take the deceased to a different place for committing his murder instead of finishing him at the place itself where he was caught by them. About the charge against Bhola Bhuian that he hurled a bomb on the deceased causing injury on his leg as stated earlier, only the informant has stated on this point. But then, it is the own admission of the informant that in spite of receiving injury on the leg caused by hurling a bomb by Bhola Bhuian, the deceased was in a position to run away along with him towards north. It is true that the doctor had found 4 irregular burn black lacerated wounds on both legs but then admittedly, all these injuries were not caused by the bomb hurled by appellant Bhola Bhuian because, it is not the case of informant that the deceased received injuries on his both legs by this action of appellant Bhola Bhuian. The evidence of informant is that deceased received injury on his leg without specifying whether it was right leg or left leg. The evidence of informant that appellants and their companions caught hold of deceased after chase and took him to Bhuian tola has not been found trustworthy. Therefore, it will not be safe to place reliance on his solitary evidence on the point of hurling bomb on the deceased by appellant Bhola Bhuian and causing injury on his leg because admittedly the deceased subsequently received number of injuries some of them caused by explosion of bomb. In absence of any evidence that particular injury was caused by the bomb thrown by appellant Bhola Bhuian it will not be proper to rely upon the evidence of the informant who is the only witness on this point particularly when he has not been found trustworthy.

8. So considering the entire evidence on record, I find that prosecution has not been able to prove the charges against the appellants beyond all reasonable doubts and, in this view of the matter the conviction and sentence of the appellants cannot be upheld.

9. In the result, this appeal is allowed. The judgment and order of the Court below convicting and sentencing the appellants is hereby set aside and the appellants who are on bail are discharged from the liability of their bail bonds.

R.N. Prasad, J.

10. I agree.