
(2019) 04 PAT CK 0023

In the Patna High Court

Case No : Criminal Appeal (Db) No. 898 Of 2013

Rajesh Sahni @ Shambhu Sahni

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 02-04-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 374(2)

Indian Penal Code, 1860 — Section 34, 302

Explosive Substances Act, 1883 — Section 3, 4

Citation : (2019) 4 PLJR 1081

Hon'ble Judges : Rakesh Kumar, J;Prakash Chandra Jaiswal, J

Bench : Division Bench

Advocate : Sagarika, Ansul, Ajay Mishra

Final Decision : Allowed

Judgement

Prakash Chandra Jaiswal, J

1. The sole appellant, who was put on trial along with other three accused, after being convicted and sentenced in Sessions Trial No. 468/125 of 2011/2012 is before us assailing the judgment of his conviction and sentence, by filing the present Appeal under Section 374 (2) of the Code Of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C."). The sole appellant by judgment dated 18.07.2013 was convicted for offence under Section 302/34 of the Indian Penal Code, 1860 (hereinafter referred to as the "I.P.C."). By order dated 25.07.2013 under Section 302/34 of the I.P.C. he has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/-. In case of default in payment of fine he was further directed to undergo rigorous imprisonment for one year. The appellant was tried by Sri Ajay Kumar Srivastava, learned 2nd Additional Sessions Judge, East Champaran, Motihari (hereinafter referred to as the "trial judge") in Sessions Trial No. 468/125 of 2011 /2012 [arising out of Harsidhi P.S. Case No. 228 of 2010].

2. Short fact of the case is that on 11.09.2010 at 9.15 P.M. in the clinic of one Dr.

Praveen Kishore Prasad Singh, fardbyan of Yogendra Sahni (P.W. 10) was recorded by Sri Manoj Kumar (not examined), Probationer Sub Inspector of Harsidhi Police Station. The fardbyan of informant was recorded near the dead body of his brother - Yadu Sahni @ Panna Lal Sahni in presence of Suresh Sahni (P.W. 9). In the fardbyan informant disclosed that on the same day in the evening his nephew -Sakal Sahni, S/o Jhawar Sahni for some work had come to Sonbarsa market, who was apprehended by: (1) Nawal Sahni, (2) Dhruv Sahni @ Baba, S/o Lal Bahadur Sahni; (3) Lal Bahadur Sahni and (4) Nandlal Rai, S/o Ramjee Rai of village: Panapur Babu Tola, P.S. - Harsidhi and they started slapping him and brought him near the block. Those accused persons were telling that 3-4 days back in Panapur Machwa Mela he had indulged in Mar-pit with them. After getting this information the informant with Suresh Sahni (P.W. 9), Ashok Sahni (P.W. 13) and 3-4 other villagers at about 6.45 in the evening reached near the block and enquired about the reason for interception of Sakal Sahni, whereupon Nawal Sahni and aforesaid accused persons became furious and started using filthy language. In the meanwhile, the nephew of the informant succeeded in fleeing away. After Sakal Sahni fled away, all the aforesaid four accused persons using filthy language asserted that they may not spare him. On jeep and two motorcycles the accused persons alongwith Nandlal Rai, Nawal Sahni, Dhruv Sahni @ Baba, Ram Autar Sahni, Shambhu Sahni, S/o Shivdhari Sahni and 4-5 unknown accused persons went in search of Sakal Sahni. Ten minutes after their departure the informant heard the sound of explosion of bomb and thereafter there was some hulla that aforesaid accused persons had lobbed bomb on Yadu Sahni. Runningly he went there and saw that Yadu Sahni was injured and lying in unconscious position. All the accused persons on motorcycle and jeep were fleeing away towards Areraj- Harsidhi metalled road. The said occurrence had taken place at about 8.20 in the evening. They lifted Yadu Sahni and it was noticed that on the right side below the waist muscles and anal portion had already blown and on the lower portion of both the legs number of injuries were noticed. The injured thereafter was carried to the clinic of Dr. P.K.P. Singh (not examined) where he was declared dead. The reason for the occurrence was explained by the informant that four days back in his village - Panapur near Machua Pul there was a function of Janmashtami and in the said Mela accused Nawal Sahni and others wanted to display orchestra programme which was opposed by the informant and his villagers and due to said reason there was scuffle in between villagers and Nawal Sahni. The said fardbyan was read over to informant and after finding it correct the informant put his L.T.I. As a witness to the fardbyan one Suresh Sahni (P.W. 9) also put his thumb impression. On the basis of the said fardbyan in the same night i.e. in between 11-12 September, 2010 at 00.15 Hours (12.15 Hours) a formal F.I.R. vide Harsidhi P.S. Case No. 228 of 2010 was registered for the offence under Section 302/34 of the I.P.C. and Section 34 of the Explosive Substances Act against:-

1- Nawal Sahni [put on trial and acquitted]

2- Dhruv Sahni @ Baba [not sent up for trial in the present case]

3- Lal Bahadur Sahni [not sent up for trial along with present appellant]

4- Nandlal Rai [acquitted]

5- Ram Autar Sahni [not tried alongwith the appellant]

6- Shambhu Sahni @ Rajesh Sahni (appellant)

and four unknown accused persons. After investigation firstly on 22.03.2011 charge sheet was submitted against:- Nawal Sahni and Shambhu Sahni (not appellant) keeping investigation pending against others. After submission of charge sheet on 01.04.2011 learned Chief Judicial Magistrate took cognizance of the offence and thereafter on 28.06.2011 supplementary charge sheet was submitted against:- (1)- Rajesh Sahni @ Shambhu Sahni (appellant) and (2)- Nandlal Rai [acquitted], whereas accused :-

(1) Ram Autar Sahni, (2) Dhruv Sahni and (3) Lalbahadur Sahni were not sent up for trial. The case of Nawal Sahni and Shambhu Sahni (not appellant) was committed to the court of Sessions on 27.07.2011 and it was numbered as Sessions Trial No. 468 of 2011. Subsequently, the case of Nandlal Rai and Rajesh Sahni @ Shambhu Sahni (appellant) was also committed to the court of Sessions and it was numbered as Sessions Trial No. 717 of 2011. The case of Nandlal Rai and Rajesh Sahni @ Shambhu Sahni (appellant) was committed to the court of Sessions on 19.12.2011. Charge against Nawal Sahni and Shambhu Sahni was framed on 12.12.2011 under Section 302/34 of the I.P.C. and Section 3/4 of the Explosive Substances Act, whereas charge against Nand Lal Rai and Rajesh Sahni @ Shambhu Sahni (appellant) under Section 302/34 and Section 3/4 of the Explosive Substances Act was framed on 2.1.2012. Thereafter on 10.01.2012 Sessions Trial No. 717 of 2011 was amalgamated with Sessions Trial No. 468 of 2011, before commencement of evidence. After amalgamation of both the trials evidence commenced and to establish its case on behalf of the prosecution altogether nineteen witnesses were examined. Out of nineteen witnesses, P.W. 1 - Kirani Sahni [nephew of the deceased], P.W. 4 - Jhawar Sahni [brother of the informant], P.W. 6 - Vinod Sahni, P.W. 7 - Sakal Sahni [nephew of the deceased], P.W. 9 - Suresh Sahni, P.W. 10 - Yogendra Sahni [informant and brother of the deceased], P.W. 11 - Kalawati Devi [wife of the deceased] and P.W. 13 - Ashok Sahni [nephew of the deceased] were examined as eye witness to the occurrence whereas P.W. 14 - Dr. Nirbhay Kumar Singh conducted post mortem examination on the dead body of the deceased and P.W. 19 - Ram Pramod Singh, S.H.O. Harsidhi Police Station was the Investigating Officer of the case whereas P.W. 5 - Rajesh Sahni @ Rajeshwar Sahni, P.W. 8 - Lal Bahadur Sahni, P.W. 12 - Sundarpati Devi, P.W. 15 - Anil Sahni, P.W. 16 - Niranjan Sahni, P.W. 17 - Sheo Narayan Prasad and P.W. 18 - Sandeep Sahni since did not support the prosecution case were declared hostile. The prosecution besides oral evidence has also brought on record some documentary evidence. Signature of P.W. 8 - Lal Bahadur Sahni on seizure list, marked as Ext. 1, Post- Mortem report (Ext. 2), fardbyan (Ext. 3), signature and endorsement on the fardbyan (Ext.

3/1) and seizure list of blood, blood soaked soil and part of lungi marked as Ext. 4.

3. After examination of the prosecution evidence on 05.12.2012 statement of appellant under Section 313 of the Cr.P.C. was recorded which was completely perfunctory in nature without appellant being questioned on specific incriminating evidences and circumstances.

4. Learned counsel for the appellant, after placing entire evidence, has argued that it is a case of false implication. It has been argued that it appears that the Officer - in-charge of Harsidhi Police Station, as if, had guided the informant to institute the case in a particular manner. According to learned counsel for the appellant the suspicious act of S.H.O., Harsidhi is corroborated only on examination of evidence of informant who has been examined as P.W. 10 - Yogendra Sahni. He submits that in the evidence the informant has deposed that at the time of occurrence he was inside his house. After hearing the sound of explosion of bomb he came out and rushed to the place where bomb was exploded. After reaching he found that his brother - Yadu Sahni was lying in injured condition. In his injured condition he disclosed the name of accused persons including the name of appellant. It has been emphasized that as per evidence of the informant, he was inside his house at the time when he heard sound of explosion of bomb however in the fardbyan it has been depicted as if informant had received information that his nephew - Sakal Sahni was apprehended by four accused persons, not the appellant. He got information that four accused persons had caught hold of his nephew - Sakal Sahni. They were slapping him and his nephew was brought by the accused persons near the block. The informant alongwith his brother Suresh Sahni (P.W. 9), Ashok Sahni (P.W. 13) and 3-4 other villagers rushed near the block where hot exchange of words in between the parties took place. In the meanwhile in presence of informant Sakal Sahni succeeded in fleeing away. The informant in the fardbyan disclosed that accused persons thereafter on a jeep and two motorcycles including the appellant, total about ten accused persons, proceeded towards the direction where Sakal Sahni had fled away. It is specific case of P.W. 10 in the fardbyan that after ten minutes they heard the explosion of bomb and thereafter they rushed to the place where bomb was exploded. He saw his brother (deceased) lying in injured condition and he was unconscious. In the deposition during the trial this witness P.W. 10 deposed that after seeing his brother in injured condition and knowing the name of accused persons from the mouth of injured he went to Police Station where he was asked to stay in Police Station and Officer -in-charge went towards the place of occurrence. Thereafter there is a big gap as to how subsequently the story developed. On perusal of the fardbyan it appears that after deliberation a story was built up in which six persons were named as accused in the F.I.R. and four accused were shown as unknown. On examination of fardbyan, which according to the prosecution is the first version of the informant who has been examined as P.W. 10 and his evidence, there is every reason to draw an inference that prosecution case was

fabricated. Learned counsel for the appellant has further argued that this is the reason that though four accused persons in similar circumstances were put on trial, three accused persons were acquitted by the learned trial judge. It has further been argued that on examination of the evidence of other so-called eye witnesses it is evident that none of the witnesses have deposed regarding the presence of other witnesses at the time of occurrence or while they reached near the place of occurrence. Informant in his evidence has stated that after hearing the sound of explosion of bomb he came out and saw his brother in injured condition. On being asked he offered water to the injured and then the injured disclosed the name of accused persons. The informant has not at all whispered regarding presence of any other witnesses at that very time, however P.W. 11 - Kalawati Devi, wife of deceased, in her evidence has stated that she heard the sound of explosion then came out and reached at the place of occurrence. Her injured husband was offered water by her and to her the injured disclosed the name of the accused persons. According to learned counsel for the appellant had there been presence of informant, wife of deceased would have certainly whispered vis-a-vis, the informant in his evidence would have also stated regarding the presence of the wife of deceased (P.W. 11) which has not at all been done by the witnesses. Similarly presence of P.W. 9 at the place of occurrence, where bomb was exploded, comes into cloud of doubt due to the simple reason that in the fardbyan he was shown present at the block where nephew of the informant was being assaulted by the accused persons whereas in his evidence P.W. 9 - Suresh Sahni has deposed as if he was moving with Yadu Sahni (deceased) and in his presence bomb was lobbed on him. Accordingly his evidence may also not be considered as credible. P.W. 1 - Kirani Sahni (nephew of the deceased) though has claimed to be eye witness but on examination of his evidence particularly in paragraph no. 1 wherein he has stated that he heard only the sound of explosion of bomb. Of course he has given name of number of accused persons including the name of appellant with his parentage. In paragraph 11 of his cross examination he was asked about the number of cases in which deceased was accused, though he has vented his unawareness, but in paragraph no. 13 of his cross examination he accepted that deceased -Yadu Sahni was often going and coming from jail. This indicates that deceased was having criminal antecedent but in any event P.W. 1 is not eye witness to the occurrence. He has also argued that Jhawar Sahni (P.W.4), brother of the informant and deceased, in paragraph no. 1 of his examination in chief has stated that at the time of occurrence he was in his house however, contrary to his earlier statement in paragraph no. 2 of his examination -in- chief he deposed as if he was coming with his deceased brother - Yadu Sahni from Harsidhi Bazar. In view of his own admission there is no reason to place any reliance on his evidence.

5. P.W. 6 - Vinod Sahni though in his evidence stated as if he had seen the occurrence but in his cross examination in paragraph- 6 he stated that due to darkness he could not identify any of the accused persons.

6. Similarly, P.W. 7 - Sakal Sahni (nephew of the deceased) in paragraph - 1 has claimed himself to be one of the eye witness but in paragraph no. 3 of his evidence he stated that he could gather information that Yadu Sahni died due to injury caused by lobbing of bomb. In paragraph no. 4 of his examination- in-chief he has denied the association of F.I.R. named accused Nandlal Rai, Shambhu Sahni and Nawal Sahni. This witness has deposed contrary to the prosecution case, however, he was not declared hostile and as such, the prosecution evidence on the basis of evidence of P.W. 7 itself appears to be not credible.

7. P.W. 13 - Ashok Sahni (another nephew of the deceased) though in his evidence has claimed to be eye witness to the occurrence but in paragraph no. 5 of his examination- in- chief he himself admitted that he did not identify any of the accused persons.

8. The evidence of doctor who conducted post mortem examination is also necessary to be noticed. Dr. Nirbhay Kumar Singh (P.W. 14) on 12.09.2010 was posted as Civil Assistant Surgeon, Sadar Hospital, Motihari and on the same day he conducted post mortem examination on the dead body of the deceased which was having anti mortem injuries. On examination he noticed the following facts:-

"On external examination

(i) Lacerated wound over the whole back of right thigh that is extending from gluteal fold to the popliteal fossa with charring of skin margin. (ii) Lacerated wound on full of serotum with avulsion of skin.

(2) This injury may be caused by bomb blast.

Internal examination after dissection

Head - Meninges pale, Neck -NAD Chest cavity - Lung pale

Heart - Both chamber empty

Abdomen - Stomach- semi digested food present.

Cause of death - Above mentioned injuries led to haemorrhage and shock leading to death.

Time since death - within 24 hours."

This doctor has deposed that the post motem examination report was in his writing and signature, marked as Ext. 2. On examination of the evidence of P.W. 14 it is evident that injury on the person of the deceased was caused by bomb blast however his cross -examination was declined by the defence. In any event, evidence of P.W. 14 as well as post mortem examination report is itself indicative of the fact regarding the seriousness of the injuries found on the person of the deceased which had also been corroborated by the witnesses particularly informant - P.W. 10 who in his fardbyan has stated that when he rushed to the place of occurrence he found his brother lying in injured condition and he was unconscious. Regarding unconsciousness of the injured other witnesses have also

deposed in similar manner.

9. Learned counsel for the appellant has also drawn our attention to the fardbyan to persuade the court that it appears that on blank paper L.T.I. of informant was obtained otherwise there was no reason to notice the L.T.I. on the contents of the fardbyan. The L.T.I. was obtained without recording fardbyan. Obviously had the thumb impression been obtained after recording the fardbeyan it would have appeared in the bottom of the fardbyan and not on the contents of the fardbyan.

10. On the basis of aforesaid facts which have been brought on record, it was argued on behalf of the appellant that prosecution case prima facie appears to be doubtful and the learned trial judge has incorrectly passed judgment of conviction and sentence.

11. Sri Ajay Mishra, learned Additional Public Prosecutor has opposed the appeal and tried to persuade the court that evidence of informant as well as wife of the deceased is truthful and those oral evidence has also been supported by medical evidence since in the post -mortem report injuries received on the person of the deceased were found as it was caused due to lobbing of bomb.

12. Besides hearing learned counsel for the parties we have minutely examined entire evidence on record.

13. On examination of the evidence on record which we have already discussed in the submission of learned counsel for the appellant, there is no reason to approve the judgment of conviction and sentence. Right from very beginning in the case it appears that something incorrect was done either by the witnesses or by the Officer- in- charge of the case himself. However without affording any opportunity to the Officer- in- charge (Investigating Officer of the present case) we may not indict him but certainly we can ask the authority concerned to examine the act played by the Investigating Officer namely- Sri Ram Pramod Singh who has been examined as P.W. 19 in the present case. On 11.09.2010 P.W. 19 was posted as S.H.O., Harsidhi Police Station.

14. We have already discussed the evidence as referred to by learned counsel for the appellant and there is no difficulty to come to conclusion that some incorrect act has been played by the Investigating Officer in the present case.

15. The Investigating Officer -Ram Pramod Singh who was examined as P.W. 19 on 11.09.2010 was posted as S.H.O., Harsidhi Police Station and he proved the fardbyan, which was marked as Ext. 3. He also proved the signature and endorsement on the fardbyan, which has been marked as Ext. 3/1. Though he deposed that he had seized blood stained soil and some pieces of lungi and seizure list was prepared which was marked as Ext. 4 but on examination of his evidence it is evident that he had not bothered to send those seized articles for its chemical examination to Forensic Science Laboratory. In paragraph no. 45 of his cross -examination he stated that on the point of occurrence all the witnesses who had deposed had disclosed that they heard that Yadu Sahni was killed by

lobbing of bomb. Evidence of this witness goes to show that there was no eye witness to the occurrence rather all the witnesses were hearsay witnesses. In paragraph no. 21 of his cross -examination he stated that case was lodged against Rajesh Sahni @ Shambhu Sahni and Shambhu Sahni. In paragraph -22 of his cross- examination he stated that in the FI.R Shambhu Sahni, S/o Shivdhari Sahni was named as accused, whereas in the charge sheet name of another accused Rajesh Sahni @ Shambhu Sahni, S/o Sudarshan Sahni, resident of village- Belbanwa was found figured. It is necessary to note here that appellant is son of Shivdari Sahni, resident of village - Belbanwa Machua Toli, Police Station- Motihari (Town), District:-East Champaran. He further accepted in paragraph no. 23 of his cross examination that in the case one Shambhu Sahni of village-Dhankharaiya was also there. In paragraph no. 25 of his cross examination he stated that he had filed an application in the court of learned Chief Judicial Magistrate for issuance of warrant of arrest of Shambhu Sahni, S/o Shivdhari Sahni, resident of Panapur Ranjita, Police Station -Harsidhi however on the strength of said warrant of arrest he had arrested one Shambhu Sahni of village Dhankharaiya. This fact is itself depictive of the act of the Investigating Officer. It appears that he was in the habit of remanding of accused persons contrary to the facts disclosed in the warrant of arrest. Many things can be inferred against such Investigating Officer in such situation, which is required to be examined by competent authority. Again in paragraph no. 28 of his cross examination he was suggested that due to ill will with the name of Shambhu Sahni, S/o Sudarshan Sahni of Dhankharaiya he had added himself an alias name of his father as Shivdhari Sahni. Simultaneously, with the name of Rajesh Sahni (appellant) of Belbanwa he had added the name of Shambhu Sahni, S/o Sudarshan Sahni and charge sheet was submitted whereas name of father of Shambhu Sahni of Dhankhairaya was only Sudarshan Sahni and there was no alias name of Rajesh Sahni with the name of Shambhu Sahni of village Belbanwa. In paragraph 40 of his cross examination he has admitted regarding none sending of the seized blood stained soil and pieces of lungi stained with blood for its forensic examination.

16. On examination of entire evidence as we have discussed above there is no reason to approve the judgment of conviction and sentence. Accordingly, in view of the facts and circumstances as discussed hereinabove, the judgment of conviction dated 18.07.2013 and sentence dated- 25.07.2013 passed by Sri Ajay Kumar Srivastava, learned 2nd Additional Sessions Judge, East Champaran, Motihari in Sessions Trial No. 468 of 2011 / 125 of 2012 (arising out of Harsidhi P.S. Case No. 228 of 2010 , G.R. Case No. 2861 of 2010) is hereby set aside and the Appeal is allowed.

17. The appellant is in custody and since judgment of conviction and sentence has been set aside, he is directed to be released forthwith, if not wanted in any other case.

18. Before parting with the judgment, since in preceding paragraphs we have

already noticed the conduct of the Investigating Officer, the Home Secretary, Government of Bihar, Patna is directed to enquire regarding the conduct of Sri Ram Pramod Singh, the then S.H.O. Harsidhi Police Station, District - East Champaran, after affording him opportunity of hearing and take appropriate action in accordance with law.

19. Let a copy of this order be sent to the Secretary (Home), Government of Bihar, Patna.

20. It is made clear that since on request Ms. Sagarika, learned counsel, besides Sri Ansul, learned counsel for the appellant has rendered assistance as Amicus Curiae, Patna High Court Legal Service Committee is required to ensure payment of prescribed fee to her.