

(2003) 04 JH CK 0101

In the Jharkhand High Court

Case No : Criminal Appeal No. 44 of 1996

Rambriksha Bhuian

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 02-04-2003

Acts Referred:

Arms Act, 1959 — Section 25A, 26, 27
Criminal Procedure Code, 1973 (CrPC) — Section 293(4)
Explosive Substances Act, 1908 — Section 3, 5
Penal Code, 1860 (IPC) — Section 304A

Citation : (2003) 51 BLJR 885 : (2003) 2 JCR 450

Hon'ble Judges : Vishnudeo Narayan, J; Lakshman Uraon, J

Bench : Division Bench

Advocate : T.R. Bajaj, for the Appellant; Md. Hatim, APP., for the Respondent

Final Decision : Allowed

Judgement

Lakshman Uraon, J.—The appellant has preferred this appeal against the judgment and order of conviction and sentence dated 9.2.1996 and 13.2.1996 respectively passed in ST No. 45/1983 by Shri R.N.R. Mahto, 1st Addl. Sessions Judge, Dhanbad, whereby and whereunder, the appellant has been convicted under Sections 3 and 5 of the Explosive Substances Act and sentenced to undergo imprisonment for life, u/s 25(1a) of the Arms Act to undergo rigorous imprisonment for five years and u/s 304A of the IPC to undergo rigorous imprisonment for two years. However, the learned 1st Addl. Sessions Judge directed that all the sentences shall run concurrently.

2. The prosecution case was initiated on the written information (Ext. 1) of Prabhunath Singh, ASI of Sonardih O.P., addressed to the Officer-in-Charge, Baghmara P.S., in which he informed that on 6.2.1981 at 9 a.m. he heard rumour that there was bomb-explosion at Dharmabandh colliery near Khilanghora Hospital in the house of Rambriksha Bhuian (appellant) causing injury to some inmates. He entered Sonardih O.P. S.D.E. No. 86/6.10.1981 and

alongwith police force went for verification and reached BCCL quarter of this appellant, Rambriksha Bhuian, situated at Dharmabandh Khilanghora. where he was living alongwith his family members. The informant found Muniya Bhuian, wife of the appellant, injured due to bomb-explosion on the back side of her right leg, right sole, right thumb, right little finger of the leg. He also found Gayatri Kumari injured which was bandaged. She had also sustained injury on her buttock and back side of leg. Bijay Bhuian, son of the appellant, had sustained injury on his right leg and on other parts of the body, oozing blood in the right heel and left leg. All the three inmates sustained injuries due to bomb-explosion. The informant sent all the injured for treatment to BCCL Regional Hospital, Katras. He found smell of bomb-explosion. He found door-flanks, window-panes and other household articles fallen down dueto bomb-explosion. He found that there was ditch towards the East-South corner of the room. The flanks of the cot were also thrown out due to bomb-explosion having spot of explosion and smoke on its bottom portion. He also found mark of explosion and smoke on the wall. He found that the bombs were kept under the cot which got exploded. In presence of Anirudh Prasad Singh and Adim Mian, he searched the house of this appellant. He found one heavy weapon wrapped and kept towards the Southwestern corner of a room facing towards West. When he opened that bundle, he found two country-made pistols. He seized both the pistols, splinters of bomb-explosion, blood-stained saree. small bent pillets which were fired due to bomb-explosion and prepared seizure-list (Ext. 3). On the basis of the written information (Ext. 1), formal FIR (Ext. 2) was drawn and case under Sections 3 and 4 of the Explosive Substance Act u/s 25A/26 of the Arms Act and u/s 326 of the IPC was registered. In course of treatment of injured, Bijay Bhuian, succumbed to his injuries on 8.10.2001.

3. The prosecution has examined 8 witnesses in order to prove its case. PW 1, Janardhan Singh, PW 2, Ramraj Singh PW 3, Adim Mian and PW 4, Lakshman Singh went to the BCCL quarter, occupied by the appellant, Rambriksha Bhuian, on hearing the sound of bomb-explosion. The doors and windows of the quarter were found broken. They found Muniya Bhuian, Bijay Bhuian and Gayatri Kumari, injured due to bomb-explosion. PW 5, Prabhunath Singh, is the informant and the I.O. of this case. PW 6. Dr. Sudhir Kumar Singh, conducted the postmortem examination on the dead body of Bijay Bhuian, aged three years, on 9.10.1981 at 4 p.m. and submitted the report in his pen and signature (Ext. 8). PW 7, Parsuram Prasad had gone alongwith the informant to the P.O. where the informant searched the house of Rambriksha Bhuian and recovered two country-made pistols and two cartridges. He seized them and prepared the seizure-list. PW 8, Akbarali Mian, a formal witness, has proved the sanction order (Ext. 9) to prosecute the appellant u/s 3/5 of the Explosive Substances Act and u/s 25A of the Arms Act. In this case there is no eyewitness of the alleged occurrence. The appellant, Rambriksha Bhuian, was admittedly on his duty at his place of work and he was not present in his house at the time of the occurrence. When he was informed then he came to his quarter and found his wife, son and step-daughter

injured who were sent for treatment. The nearby occupants of the quarter rushed to the quarter of the appellant and saw smoke in the room. There was smell of bomb-explosion and they saw the wife, son and step-daughter of the appellant in injured condition. The cot on which Muniya Bhuian, Gayatri Kumari and Bijay Bhuian were taking snacks, was found broken into pieces. The doors and flanks were also found broken and fallen. There was a ditch under the cot due to pressure of bomb-explosion. The walls were also found having black spot and mark of explosion. All the injured had sustained bleeding injuries due to bomb-explosion. The 1st Addl. Sessions Judge, Dhanbad relied the evidence of the informant and I.O. PW 5, and the materials found at the P.O. and opined that the explosive materials and country-made pistols were concealed in the house under a cot. The inmates of the appellant were in conscious possession of those explosive materials, country-made pistols and cartridges which exploded due to negligence endangering human life resulting the death of Bijay Bhuian and causing injury to Muniya Bhuian and Gayatri Kumari. PW 6, Dr. Sudhir Kumar Singh, held the postmortem examination on the dead body of Bijay Bhuian and found blackish burn injuries over the dorsum of both feet and anterior lateral aspect of both legs, blackish burn injuries of neck and left axilla, blackish burn injuries over both sides of buttocks, blackish burn injuries over both hands and left side of the scalp. The cause of death was shock as a result of bomb injuries due to explosion of bomb within 24 hours from the time of postmortem examination. Considering the evidence that although the informant is the I.O. of this case, the appellant was not prejudiced as the informant was the only Sr. Police Officer posted at the outpost and in absence of any plea that the bombs and arms were kept by any other person other than the appellant, the learned 1st Addl. Session Judge, Dhanbad convicted and sentenced the appellant.

4. Assailing the order of conviction and sentence passed by the learned 1st Addl. Sessions Judge, Dhanbad, the learned counsel for the appellant has submitted that no prudent man will keep bomb under a cot to kill his own wife, minor son and minor daughter. Some enemies had kept the bomb and country-made pistols with cartridges in order to kill the family members of the appellant. The appellant was on duty at BCCL colliery at the time when bomb exploded. The room in question was not in exclusive possession of this appellant. He had no knowledge about the bomb and country-made pistols which were kept in that room under the cot and in the corner of the room. The informant should not have investigated this case; and has relied upon a case reported in 1995 Criminal Law Journal, Page 3988 Megha Singh v. State of Haryana. It was also submitted that the sanction, which requires under the Indian Arms Act and the Explosive Substances Act, has not been accorded by the competent authority and besides that there is nothing to show that the relevant facts had been placed before the District Magistrate who had accorded the sanction. The material exhibits seized by the informant I.O. were also not produced in the Court in course of trial. None of the witnesses has stated that the appellant is responsible for keeping the bomb and country-made pistols in his house. It was also submitted that without

examination of experts in the Court as contained u/s 293 of the Cr PC the report of the expert should not have been taken into evidence by the learned 1st Addl. Sessions Judge, Dhanbad. It was also argued that the prosecution has failed to prove that the bombs and country-made pistols with cartridges were in conscious possession of the appellant and has relied upon a case reported in 1976 Criminal Law Journal, Page 205 Guljar Singh and Ors. The State of Maharashtra. On these grounds it was submitted that the appellant is innocent who has falsely been implicated in this case only on suspicion.

5. The learned APP in course of argument has submitted that the bomb exploded inside the quarter in a room which was occupied by this appellant. The bomb was kept under the cot which accidentally exploded causing injuries to three family members of the appellant. The appellant was in association with antisocial elements who used to possess these bombs and pistols only to commit crime. But accidentally the bomb exploded causing injuries to Muniya Bhuian, Gayatri Kumari and Bijay Bhuian resulting the death of Bijay Bhuian. The I.O. has found splinters of bomb-explosion, blood-stained saree and soil, doors and flanks broken, smell of explosives where there was no possibility that any other person might have entered and exploded explosive substance under the cot. Considering these facts the learned 1st Addl. Sessions Judge has rightly convicted and sentenced the appellant who was in occupation of that quarter.

6. The appellant, Rambriksha Bhuian, was not present at his quarter at the time of the alleged occurrence as he was on duty at BCCL colliery. At that time his wife, Muniya Bhuian. son, Bijay Bhuian and step daughter, Gayatri Kumari were taking snacks sitting on the cot. Bomb exploded under the cot as a result of which the cot on which they were sitting, broken into pieces. They sustained bomb splinters injuries. The appellant was informed by his neighbour. He came to his quarter and took the injured to Tilatand Hospital for treatment and from there they were referred to Central Hospital, Jagjivan Nagar. Bijay Bhuian, aged about 3 years, who succumbed to his injuries. Gayatri Kumari, step daughter of the appellant and Muniya Bhuian, wife of the appellant, were present and sitting on the cot. When the bomb exploded there were no outsiders to witness the alleged occurrence. There is no eye-witness to corroborate the prosecution case that this appellant had kept bombs under the cot. Muniya Bhuian, wife of the appellant, who sustained injuries, was also not examined by the prosecution alongwith her step-daughter, Gayatri Kumari. The I.O. found that the bomb was exploded inside the quarter of this appellant where he seized splinters of bomb-explosion, seized pistols and cartridges, broken materials, door-flanks and prepared seizure-list, Ext. 3 and also prepared inquest-report in carbon process. Ext. 5, in presence of the witnesses. Thus, the P.O. is not in dispute and is well proved.

7. PW 6. Dr. Sudhir Kumar Singh, on 9.10.1981, conducted the postmortem examination on the dead body of Bijay Bhuian, aged about three years, son of the appellant, and found blackish burn injuries, 5 numbers. The death was within

24 hours since postmortem examination and the cause of death was due to shock as a result of burn injuries. He prepared postmortem examination report in his pen and signature, Ext. 8. It is clear that Bijay Bhuian, aged about three years, died due to bomb-explosion which exploded at a close range resulting blackish burn injuries on his person. The injuries were ante-mortem in nature. Thus, the death of Bijay Bhuian due to bomb-explosion is also not in dispute.

8. Now the only pertinent point for consideration is as to whether this appellant is responsible for keeping bombs under the cot to cause danger to his family members due to explosion. Generally a prudent man would not keep bomb under a cot on which the members of his family used to sit and sleep. The injured is the wife and step daughter of the appellant who have not been examined by the prosecution or even there is no injury-report of any doctor who examined or treated them. His son, Bijay Bhuian, aged about 3 years, succumbed to bomb-explosion injuries. Considering these facts no sane person will act negligently in keeping bombs under a cot. The room was easily accessible to the outsiders also. Another wife of this appellant is also alive and was residing in the same quarter. There is no eye-witness as to who planted the bomb and kept pistols and cartridges inside the room of the quarter of this appellant. PW 1, Janardhan Singh, PW 2, Ram Raj Singh and PW 3, Adim Mian, went to the quarter of this appellant on hearing the sound of bomb-explosion. They saw the room in smoke. The cot was blown into pieces. The door-flanks were also broken. There was spot of black carbon on the walls. They saw Bijay Bhuian, Gayatri Kumari and Muniya Bhuian injured. These witnesses have not stated anything against this appellant that he had kept bombs under the cot and has also concealed two pistols with cartridges in the said room. PW 4, Laxman Singh, also went to the house of the appellant, Rambriksha Bhuian, after the bomb-explosion. The Police seized broken door-flanks, splinters of bomb-explosion, other materials and searched the room. The police recovered two pistols and cartridges. They were seized and seizure-list was prepared. All these neighbouring witnesses have deposed that the injured were taken to hospital for treatment where Bijay Bhuian died. PW 5 is the informant-cum-I.O. of this case. On 6.10.1981 at 9 a.m. on alarm that bomb exploded at Dharmabandh colliery quarter of Rambriksha Bhuian, he went there and found three persons injured. He sent them hospital for treatment. He searched the room and recovered two pistols with cartridges. He seized the other broken door-flanks and prepared seizure-list. Ext. 3, in presence of the witnesses. He sent the seized remains of bomb-explosion and splinters for experts opinion to Controller of Explosives, Asansol. The Deputy Controller of Explosives. Asansol submitted report on examination of the sealed packet, marked as A, B, C and D. Packets A and B contained two number of bent cartridges and three number of pillets respectively. Packet contained number of small metal balls and packet D contained pieces of polythene paper, waste cotton threads, glass and metal. After examination he found packets C and D to be the remains of one or more exploded turned down type home-made bombs. It contained mixture of Chlorate, Potassium and Sulphide of Arsanic. The report of

deputy Controller of Explosives was proved by the informant, I.O. PW 5, Prabhunath Singh, instead of examining the Deputy Controller of Explosives, Asansol. The report of the Chief inspector of Explosives can not be admitted in evidence without examining him as provided u/s 293(4)(b) of the Cr PC. In this present case the report was submitted by the Deputy Controller of Explosives, Asansol which was wrongly considered by the learned Court below without examining that officer. On the other hand, the informant is the I.O. of this case who himself seized the remains of the bomb-explosion, splinters etc. and sent for its opinion. The report of the Deputy Controller of Explosives (Ext. 6) was also proved by him which can not be considered in view of the law laid down in 2000 (3) ECC 982 (SC) Para 41. The prosecution has not taken care to ascertain whether the appellant was in conscious possession of the explosive substance, pistols and ammunition. The witnesses have not alleged anything against this appellant that he used to possess or had consciously possessed explosive substance, pistols and cartridges in room in his quarter. There is no evidence that he is associated with criminals in possessing explosive substance, unlicensed fire arms, pistols etc. for committing some offences. The learned counsel for the appellant on this point relied upon a case reported in *Guljarsing and Others Vs. The State of Maharashtra*, . It was also submitted that the informant himself has taken up the entire investigation and submitted charge-sheet. He arrested the appellant. recovered the remains of bomb-explosion, pistols and cartridges, seized broken flasks and other materials, informed in writing, addressed to the Officer-in-Charge, Ext. 1, Baghmara P.S. case was registered and formal FIR Ext. 2, was drawn. The informant himself investigated the case which has caused prejudice to the appellant. The learned counsel for the appellant has relied upon a case reported in *Megha Singh Vs. State of Haryana*, Para 4 and urged that the informant being the complainant should not have proceeded with the investigation of this case. The learned Court below has erroneously appreciated the evidence of this witness that he was the senior most Police Officer of the P.S. hence he took up the case which can not be sustained in the eye of law. Lastly the sanction order, Ext. 9, to prosecute this appellant under the Arms Act and proved by PW 8, Akbar Ali Mian, a clerk of the Law Section in the office of D.C. Dhanbad. The learned counsel for the appellant has stated that the sanction order to prosecute this appellant u/s 3 and 5 of the Explosive Substances Act and u/s 27 of the Arms Act has not been accorded by the competent authority and has relied upon a case reported in 1993 ECC 340 (P) has submitted that the President of India in exercise of his power under Article 258 of the Constitution has delegated the power to grant sanction to the State Government. He further submits that the sanction accorded by the District Magistrate does not tantamount to be a sanction accorded by the State Government. It was submitted that the sanction which is required to be given by the State Government, must be either expressed in the name of the Government or must at least be given by an Officer not below the rank of the Secretary to the Government to whom the power may be delegated under the rules of Executive Business framed under Article 166 of the Constitution. In view of the authority

relied by the learned counsel for the appellant, the sanction order, Ext. 6 proved by a formal witness, to prosecute this appellant under Sections 3 and 5 of the Explosive Substances Act, is not a legal order of sanction. In view of my above considered opinion I find that the learned Court below has not correctly appreciated the oral and documentary evidence adduced by the prosecution and came to an erroneous finding in convicting and sentencing this appellant. Rambriksha Bhuian, which can not be sustained.

9. According, I find merit in this appeal which succeeds. The appeal is allowed and the appellant, Rambriksha Bhuian, is acquitted. The order of conviction and sentence passed by the learned 1st Additional Sessions Judge, Dhanbad in ST No. 45/83 is, hereby, set aside. The appellant is on bail hence he is discharged from the liability of his bail-bond.

Vishnudeo Narayan, J.

10. I agree.