

(2012) 09 BOM CK 0009

In the Bombay High Court

Case No : Criminal Appeal No. 882 of 2005

Sarwarlaram Bakridankhalipa Shaikh

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:

Explosive Substances Act, 1908 — Section 4, 5, 6
Income Tax Act, 1961 — Section 143(3), 147(a), 16(3), 80C, 80L
Penal Code, 1860 (IPC) — Section 120B, 307, 34

Citation : (2013) ALLMR(Cri) 1998

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : V.V. Mane, for the Appellant; G.P. Mulyekar, APP, for the Respondent

Final Decision : Allowed

Judgement

R.C. Chavan, J.—This appeal is directed against appellant's conviction by the learned Additional Sessions Judge, Sewree, Mumbai for the offence punishable u/s 307 read with Section 34 of the Indian Penal Code and sentence of simple imprisonment for three years with a fine of Rs. 1000/- or in default simple imprisonment for six months on conclusion of joint trial in Session Case Nos. 465 of 1993 and 432 of 1995 before him. Facts which are material for deciding this appeal are as under:-

The first informant, Rajwansh Singh had some dispute with the original accused No. 1 Awadhnarayan Vishwanath Upadhyay. On 31st October, 1991 at about 11:45 p.m. when the first informant Rajwansh Singh had come to R.J. Hotel at Dahisar check naka and was having a word with PW-2 Dinesh Rambhujarak Pandey and PW-5 Sunil Singh Kishan Singh, the appellant along with an unknown person were noticed by them. They felt that something fell near the feet of Rajwansh Singh which injured Rajwansh Singh as well as Dinesh. It was alleged that the appellant was armed with revolver and fired two rounds towards Rajwansh Singh, The appellant and accomplice ran away. Police reached the spot

immediately, took injured person to hospital, performed panchanama of the spot, arrested the appellant on 1st November, 1991, seized such incriminating articles as could be found and sent charge sheet to the Court of the learned Metropolitan Magistrate, 26th Court, Borivali, Mumbai. Accused No. 1 Sarovar Hasanali Khan in Session Case No. 432 of 1995, who was absconding was arrested on 19th June, 1994 and was charge sheeted separately by filing Session Case No. 432 of 1995. He seems to have again absconded and his case is now separated. Said Sarovar Hasanali Khan was possibly the person, who had thrown same article at the feet of Rajwansh Singh and others.

2. Upon commitment of the case by the learned Metropolitan Magistrate to the Court of Sessions, the learned Additional Sessions Judge to whom the case was made over, charged the appellant and co-accused Awadhnarayan Vishwanath Upadhyay and Lallan Sankathaprasad Upadhyay for the offences punishable u/s 307 read with Sections 120B and 34 of the Indian Penal Code and Sections 4, 5 read with Section 6, 9B(b) read with Section 12 of the Explosive Substances Act, 1908. Since accused persons pleaded not guilty, they were put on trial at which the prosecution examined in all ten witnesses in its attempt to bring home guilt of the accused persons. After considering the prosecution evidence in the light of defence of false implication, the learned Judge convicted the appellant and sentenced him as aforementioned while he acquitted the other two accused persons of the offences charged. Aggrieved thereby, the appellant is before this Court.

3. I have heard the learned counsel for the appellant the learned Additional Public Prosecutor for the respondent - State. With the help of both the learned counsel I have gone through the evidence on record. PW-1 Rajwansh Jaganarayan Singh and PW-2 Dinesh are the persons, who had suffered injuries in the incident. PW-5 Sunil Singh Kishan Singh was also present and had witnessed the incident. The injuries sustained by the witnesses were treated by PW-7 Dr. Ramesh Kantilal Talati, who proved his Medical Certificates at Exhibit Nos. 30 to 33. The injuries observed were multiple abrasion. The Medical Officer was candid in admitting that it was his first occasion to examine a person injured in a bomb blast but it is not clear as to how he came to the conclusion that abrasions noted by him were the result of a bomb blast. However, this need not detain further inquiry into complicity of the appellant, since it is not the appellant, who is alleged to have thrown bombs at the witnesses. Even according to them, it was the person, who accompanied the appellant, who had thrown some article at their feet which exploded and injured them. The appellant is alleged to have fired two rounds from his revolver or fire arm. PW-6 Head Constable, Maruti Kisanrao Ghule was on duty at police outpost which is 20 feet from the spot and rushed immediately. PW-9 Senior Police Inspector, Namdeo Hari Bagul conducted investigation in parts. PW-10 Assistant Police Inspector, Laxman Bhausaheb Kale registered report. PW-8 Major Vasant Laxman Jadhav of Bomb Squad furnished his opinion on the basis of material submitted to him to the effect that there was explosion of bombs at the spot.

4. Though police rushed to the spot immediately, in course of the panchanama of the spot, there is nothing to show that any round had been fired from any revolver. No such thing could be noticed at the spot. No such article or fire arm was seized in course of investigation though the police arrested the appellant on the very next day of the incident. At the cost of repetition, it may have to be observed that it was not the appellant, who had thrown any bomb at the prosecution witnesses. The only role attributed to the appellant is firing from revolver for which there is absolutely no evidence. Empties of the rounds fired should have been found at the spot. In view of this, though the learned APP tried to support the Judgment, there is nothing to indicate complicity of the appellant in an offence to commit murder of Rajwansh Singh. Since the appellant had no personal enmity with Rajwansh Singh, there was absolutely no reason why he should fire at Rajwansh Singh. The appeal is, therefore, allowed. Conviction of the appellant for the offence punishable u/s 307 read with Section 34 of the Indian Penal Code and sentence of simple imprisonment for three years with a fine of Rs. 1000/- or in default simple imprisonment for six months is set aside. He is acquitted of the charges. He shall be set at liberty, if not wanted in any case.