
(2012) 03 PAT CK 0096
In the Patna High Court
Case No : Criminal Appeal (SJ) No. 95 of 1999

Suraj Bhagat

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Explosive Substances Act, 1908 — Section 3, 4
Penal Code, 1860 (IPC) — Section 307, 34, 447

Citation : (2012) 03 PAT CK 0096

Hon'ble Judges : Mandhata Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mandhata Singh, J.—Heard learned counsel for the petitioner-appellants and learned counsel for the State.

2. Prosecution case initiated on written application of P.W.1 Rama Gond, in brief, is that on 28.04.1997 at about 05.00 pm. while he was at his door accused-appellants, Sabha Gond, Dharmendra Gond and Suraj Bhagat appeared there. They abused him and queried as why he was claiming any share in the property when same was partitioned already. He remained constant on his claim that he had got no share in the property. Thereupon accused appellant Sabha Gond exhorted to do away with his (informant's) life, complying thereon accused appellant Dharmendra and Suraj Bhagat hurled bomb causing injury on leg of the informant. There is mention about arrival of the Ashok Ram and Om Prakash Ram and to watch the incident.

3. After concluding trial, case is ended in conviction and sentence to accused-appellants for the offence under Sections 307/34, 447 of the I.P.C. and 3/4 Explosive Substance Act.

4. In all 3 witnesses are examined in the case. They are P.W.1 Rama Gond, P.W. 2 Ashok Ram and P.W.3 Om Prakash Ram.

5. P.W.2 and P.W.3 state to know nothing about the incident. Of them, P.W.3 has been declared hostile and cross-examined by the prosecution but any of both the witnesses is of no relevance for prosecution to establish its case. P.W.1 remains to discuss, though in his examination in chief he states about taking place of the incident in the manner stated in the F.I.R. that accused-appellants along with others came to his door abused and asked the reason for claiming share in the property and on reply to have his share, bomb was hurled upon the informant by accused-appellants Suraj Bhagat and Dharmendra but in cross-examination in para-9, he states that at the time of occurrence darkness of the night had set in. He had no torch or any means of light and could not notice as to who hurled bomb from which direction and he named the accused persons only on the basis of his guess work. This much is completely go by of this witness from his statement on the point of identification as made in the F.I.R.

6. This much is noticed by the Trial Court but ignored basing injury report and other materials on the point of taking place of the occurrence. In this case, material is lacking on the point of involvement of the accused-appellants. There can be no accusation proved in absence of identification of accused-appellants leading to their involvement in the case. So, the conclusion reached by the trial Court is not liable to be sustained.

7. With the observations made above, evidence on record and circumstance of the case, these appeals are allowed. The Judgment of conviction dated 15.04.1999 and Order of sentence dated 22.04.1999 passed by the Additional District & Sessions Judge-VI, Siwan are set aside.

8. Accused-appellants are acquitted of their respective charges, discharged from liabilities of their bail bonds and set at liberty.