
(2010) 09 JH CK 0008

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 57 of 2003

Suresh Mistry and Kapileshwar Harijan

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Explosive Substances Act, 1908 — Section 3, 4
Penal Code, 1860 (IPC) — Section 304, 323, 34

Citation : (2010) 09 JH CK 0008

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Advocate : Afaq Ahmad and Altaf Hussain, for the Appellant; Tapas Roy, Assistant Public Prosecutor, for the Respondent

Judgement

Pradeep Kumar, J.

By Court:

1. Heard the learned Counsel for the Appellants and the learned Counsel for the state.

2. The instant appeal is directed against the judgment of conviction dated 10.12.2002 and order of sentence dated 11.12.2002 respectively

passed in S.T/S.C. No. 134 of 2002/140 of 1991 by Shri Rajesh Kumar Pandey, 5th Additional Sessions Judge, FTC-II, Godda by which

judgment he found the Appellants guilty under Sections 307/34 of the Indian Penal Code and Section 3 of the Explosive Substance Act and and

sentenced them to undergo R.I. for seven years under Sections 307/34 of the Indian Penal Code and R.I. for five years u/s 3 of the Explosive

Substance Act. Both the sentences shall run concurrently.

3. It is submitted by learned Counsel for the Appellants that although the

prosecution witnesses have stated in Court that bomb was hurled by the Appellants alongwith seven others, but no seizure of any explosive substance has been proved nor Investigating Officer has been examined in the case. Moreover, learned Counsel stated that there is no evidence as to whether the son of the informant received injury by any bomb or injury by a gun shot. Doctor has found a linear abrasion and injury caused by partially sharp and irregular object, was simple in nature. In that view of the matter, the prosecution case of hurling bomb and causing injury by firearm has not been proved and as such, conviction of two Appellants u/s 3 of the Explosive Substance Act is bad in law and fit to be set aside.

4. On the other hand, learned Counsel for the State opposed the prayer and admitted that doctor found simple injury caused by sharp cutting weapon.

5. After hearing both the parties and going through the records, I find that prosecution case was started on the basis of written report given by

Indra Dev Sharma on 10.01.1990, wherein, he had stated that at about 10.00 A.M. some extremists armed with illegal weapons, attack at his

house and threw five bombs in his garden. As a result of which, his brother Mohan Sharma got slightly hurt. He identified these extremists as two

Appellants Suresh Mistry and Kapileshwar Harijan along with seven others.

6. On the basis of the said F.I.R., police registered a case under Sections 307/34 of the Indian Penal Code and Section 3 of the Explosive

Substance Act and after investigation, police submitted charge-sheet in the case. Since, the case was exclusively triable by the court of Sessions,

after taking cognizance learned Magistrate committed the case to the court of Sessions and subsequently, the case was tried by learned 5th

Additional Sessions Judge, FTC-II, Godda, who found the Appellants guilty under Sections 307/34 of the I.P.C. and Section 3 of the Explosive

Substance Act and sentenced them as aforesaid.

7. It appears that in the course of the trial, the prosecution has examined as many as nine witnesses.

P.W. 1, Sk, Mobin

P.W.2, Satnarain Mistry @ Sharma.

P.W.3, Dasrath Mistry.

P.W.4, Satnarain Yadav

P.W. 5, Ashnu Yadav

P.W. 6, Mohan Prasad Sharma

P.W. 7, Indradeo Sharma, is the formal witness proved the F.I.R.

P.W.8. Dr. Ashok Kumar.

P.W.9. Shiv Prasad Jha.

P.W. 1, Sk. Mobin, turned hostile. He stated that he does not know about the occurrence.

P.W.2, Satnarain Mistry @ Sharma, father of the informant, P.W.3, Dasrath Mistry, uncle of the informant, both have supported the prosecution

case and stated that on the date of occurrence about 8 to 10 years ago at 8.30 A.M. when they were in the house then nine accused parsons

entered in the Premises and threw bombs in garden in which Mohan Prasad Sharma received injury by pellets. P.W.3, Dasrath Mistry stated that

he cannot say that the injury caused on injured was by bomb or bullet.

The two independent witnesses P.W.4 Satnara in Yadav and P.W. 5 Ashnu Yadav, have supported the fact that some bombs were thrown in the

garden of the informant.

P.W. 6, Mohan Prasad Sharma, has supported the prosecution case and stated that on the date of occurrence they were standing near the well,

where bombs were thrown by the accused by which he received injury. In his cross-examination, he stated that he does not know about any case

pending between the accused and his father.

P.W. 7, Indradeo Sharma, stated that on the date of occurrence at about 8.30 A.M. all the miscreants including these two Appellants threw three

bombs causing injury on his younger brother in his right leg. He has proved his signature on the written report as Ext.-2. He admitted that there was

land dispute between his family and accused persons. He also admitted in his cross-examination that a correction case is pending in the Court of

Commissioner and also a Title Suit No. 03/77/69/79 is pending in the Court of A.S.O. Godda.

P.W.8. Dr. Ashok Kumar, who examined the injured Mohan Prasad Sharma and found one linear injury on dorsal aspect of right leg- 5''' x 1/5''' x

skin deep, which is simple in nature caused by partially sharp and irregular

object.

Investigating Officer is not examined in this case.

P.W.9. Shiv Prasad Jha, is the formal witness.

8. Thus, after going through the evidences, I find that although all the witnesses have supported the prosecution case and stated that bomb was

hurled in the house and injury was caused to Mohan Prasad Sharma, brother of the informant, by bomb, but no injuries caused by any explosive

material was found by the doctor, who stated that injury was caused by sharp irregular object. Investigation Officer has not been examined in this

case and even allegation of firing done by Suresh Mistri, has not been proved. Since, injury caused to Mohan Sharma by partially sharp and cutting

object and the injury was superficial, in that view of the matter, the conviction of two Appellants u/s 307/34 of the Indian Penal Code and also

Section 3 of the Explosives Substance Act is set aside. However, these two Appellants, since they have hurled explosive substance in the garden

of Indra Dev Sharma causing some simple injuries on the person of the informant's brother, they are found guilty u/s 323 of the Indian Penal Code

and convicted therein. The sentence against the Appellants is modified and reduced to the period of one month, which the Appellants have already

undergone during trial and appeal.

9. With the aforesaid alteration in the sentence, this appeal is allowed in part. Since, the Appellants are on bail, they are released from the bondage

of bail.