
(2010) 12 JH CK 0018

Jharkhand High Court

Case No: Criminal Appeal No. 795 of 2007

Mathura Sao

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: Dec. 8, 2010

Acts Referred:

- Explosive Substances Act, 1908 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 109, 324

Citation: (2011) 1 JCR 329 : (2011) 8 RCR(Criminal) 1811

Hon'ble Judges: Jaya Roy, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Jay Roy, J.

Both These appeals are directed against the judgment of conviction and order of sentence dated 16.6.2007 passed by Sri Kamlesh Mishra, Additional Sessions Judge/Fast Track Court-VII Giridih in Sessions Trial No. 288 of 1992 (T.R. No. 150 of 2005), whereby and whereunder, he convicted the Appellants, namely, Mathura Sao (Appellant in Cr. Appeal No. 795/2007) and Badri Sao (Appellant in Cr. Appeal No. 692/2007) u/s 324/109, IPC and Badri Sao further u/s 3/4 of the Explosive Substance Act and sentenced the Appellant, namely. Mathura Sao to undergo rigorous imprisonment for 2 years for offence u/s 324/109, IPC and Appellant, namely, Badri Sao to undergo rigorous imprisonment for two years for the offence u/s 324/109 IPC and rigorous imprisonment for 10 years for the offence u/s 3 of the Explosive Substances Act and rigorous imprisonment for 7 years for the offence u/s 4 of the Explosive Substances Act. Aft the sentences will run concurrently.

2. The prosecution story, in brief, is that the fardbeyan of the informant was recorded by the Sub Inspector of Sariya Police Station on 16.5.1991 at about 8.30 a.m. to the effect that in the evening of 15.5.1991 at about 8 p.m., the informant

Basudev Singh was sitting in his angan with his family members. In the mean while, Mathura Sao, Badri Sao, Teko Sao and Dilo Sao came near the western wall of his angan which was 4 ft. high and after looking to the informant, Mathura Sao said-"Basudev Singh Baitha Hai Maro Sale Ko". Then accused Teko Sao and Badri Sao threw two bombs on him due to which heavy sound was created and Jaswa Devi, the mother of the informant and Hukum Singh, the brother of the informant sustained injuries. Thereafter, all the persons fled away. On hearing the sound of the explosion, Dewki Mistry and Munshi Mistry, Kartik Singh, Parmeshwar Singh and others came there. The informant has further stated in his fardbeyan that there is an enmity between him and Badri Saw and Dilo Sao regarding the land dispute and due to which the aforesaid persons threw bomb to them.

3. On the basis of the said fardbeyan, the Officer-in-Charge of Bagodar Police Station has drawn a formal F.I.R. and investigated the case and after investigation, submitted charge-sheet for the offence under Sections 3/4 of the Explosive Substances Act read with Section 324, IPC against all the aforesaid accused persons, namely, Mathura Sao, Badri Sao. Teko Sao and Dilo Sao.

4. Defence of the accused persons is totally denial of the alleged occurrence. They had further stated that only due to enmity, they have been falsely implicated in this case.

5. The prosecution has examined four witnesses and one Court witness to prove its case. P.W. 1, Hukum Singh, one of the injured of the said occurrence, P.W. 2, Wakil Narayan Singh, son of the informant, both of them claimed to be eye-witness of the alleged occurrence. P.W. 3, Sobhit Jha who is a Police Officer and I.O. of this case. P.W. 4, Dr. Pranay Mohan, who examined both the injured. The Court witness, namely, Chandra Moleshwar Prasad who is an Advocate Clerk has proved the sanction order.

6. The learned Counsel of the Appellants submits that P.W. 1 stated in his evidence that the aforesaid four persons came to the place of occurrence and Mathura Saw said-"Basudeo Singh Baitha Hai Maro Sale Ko". According to the P.W. 1, thereafter Teko Sao and Badri Sao threw bomb on him due to which two persons, namely, his mother and he himself were injured. Thus, no doubt he is an eye-witness of the alleged occurrence. Thereafter P.W. 2 who has also claimed himself as an eye-witness, has stated before the Court that the four aforesaid persons came to the place of occurrence and threw bomb, however, he has not stated the name of any of the persons either who has threw the bomb or who has given the order to throw the bomb to the said persons.

He has further submitted that according to the F.I.R., a number of persons were present at the place of occurrence at the time of alleged occurrence but surprisingly, not a single witness except the aforesaid two, was examined by the prosecution. Furthermore, the person, who recorded the fardbeyan was also not

examined by the prosecution even the informant was not examined by the prosecution.

The learned Counsel of the Appellants has further contended that P.W. 4, the Medical Officer who had examined both the injured persons on the next day of the occurrence, opined that injuries received by both the persons are simple in nature. In his evidence before the Court, he has stated that such injuries may be caused by explosion from some distance, but in his cross examination he has stated that there was no burn injury on the person of the injured and he has not found any explosive material from the person of the injured. Learned Counsel of the Appellants has further stated that thus the evidence of the Doctor casts a doubt on the explosion of the bomb, result of which the aforesaid persons had received injury. The counsel of the Appellants rightly pointed out that P.W. 4 in his statement has very specifically stated that though he has examined both the injured on the next day of the alleged occurrence i.e. on 16.5.1991, but he prepared the injury report on 20.6.1991. Thus, he has prepared the injury report after one month of his examination of the injured persons which also casts a doubt on the prosecution case.

The P.W. 3, the I.O. has accepted that on 19.9.1991 he received the charge of the investigation of this case which shows that part of the investigation was done by any other Police Officer. The prosecution has not assigned any reason for not examining the said Investigating Officer who has investigated the major part of the case.

The learned Counsel of the Appellants has also contended that fardbeyan was recorded by the Police Officer on the basis of which the F.I.R. was drawn by the prosecution but the said Police Officer who has recorded the fardbeyan has not been examined by the prosecution and no reason has been assigned by the prosecution for the same.

7. The learned Counsel of the State has submitted that P.W. 1 who is eye-witness of the occurrence has supported the prosecution case, therefore, the accused persons can be convicted on the basis of his statement only.

8. No doubt a person can be convicted even on the evidence of a single witness/ but the said witness should be trustworthy. Admittedly, both the persons who have claimed to be eye-witness have contradicted each other. Furthermore, there is enmity between the parties and not only that, the injury report is also not free from doubts.

9. On overall consideration in my opinion, the prosecution has not been able to prove the charges levelled against the accused beyond shadow of all reasonable doubt. Accordingly, giving the benefit of doubt to the Appellants, I set aside the judgment of conviction dated 16.6.2007 and order of sentence dated 18.6.2007 passed by Sri Kamlesh Mshra, Additional Sessions Judge, Fast Track Court-VII, Giridih in Sessions Trial No. 288 of 1992 (T.R. No. 150 of 2005). The Appellants are acquitted from the charges levelled against them and they are discharged from the liability of

the bail bonds.

10. Both these appeals are allowed.