

**Md. Wasir Vs. State of Bihar and ors**

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**SooperKanoon Citation :** [sooperkanoon.com/1028520](http://sooperkanoon.com/1028520)

**Court :** Patna

**Decided On :** Aug-29-2013

**Appellant :** Md. Wasir

**Respondent :** State of Bihar and ors

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Revision No.1070 of 2002

===== Md. Wasir, son of Abid Hussan, resident of village-Makdumpur Kuari, P.S.- Dariyapur, District-Saran. .... Petitioner/s Versus 1. The State of Bihar.

2. Bhupeshwar Shukla, son of Rajeshwar Shukla.

3. Suresh Rai, son of Hawaldar Rai.

4. Hari Shankar Rai, son of Bihari Rai.

5. Birendra Rai, son of Satya Narayan Rai. All resident of village-Makdumpur Kuari, P.S.-Dariyapur, District-Saran. .... Respondent/s

===== Appearance: For the Petitioner/s : Mr. Ravindra Kumar Tiwari, Adv. For the Opp. Party : Mr. Madhav Pd. Yadav, Adv. For the State : Mr. Md. Arif, A.P.P.

===== CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI C.A.V.

## JUDGMENT

Date:

29. 08-2013 1. Petitioner / informant being aggrieved by judgment dated 13.09.2002 passed by Additional Sessions Judge, Vth, Saran at Chapra in Sessions Trial No.269 of 1994 acquitting the Opposite Party Nos.2 to 6 from the charges framed against them for an offence punishable under Section 307, 149 and 452 of the Indian Penal Code, Section 4/5 of the Explosive Substance Act has challenged the same under instant revision petition.

2. While assailing the judgment impugned, it has been submitted that in this case altogether seven PWs have been examined out of whom PW-1 to 5 happens to be the material witness and from perusal of their evidence it is apparent that they have consistently supported the case of the prosecution. It has further been submitted that learned trial court had dealt with the evidence of these PWs in cryptic manner without discussing and appreciating that all of them have clearly stated with regard to the occurrence committed at the hands of Opposite Party Nos.2 to 6. It has also been submitted that non-examination of doctor did not suggest any sort of infirmity in the prosecution case on account of sustaining of injury by brick batting. In likewise manner, it has also been argued that non-examination of I.O. had not caused prejudice to the interest of Opposite Party Nos.2 to 6 on account of consistent version of the prosecution witnesses positively pinpointing the place of occurrence as well as having absence of material contradiction in the evidence of the PWs.

3. It has also been submitted that learned lower court had wrongly relied upon a decision reported in 1998 (3) PLJR 33 while dealing with legality of the sanction under paras-12, 13 of the judgment because of the fact that the aforesaid decision is found to be already overruled in 2002 (3) PLJR 36 whereunder it has been observed that there happens to be valid delegation of power in terms of Article 258 of the Constitution of India upon the State Government and in terms thereof, the delegation of power to the District Magistrate was in accordance with law. As such, it has been submitted that the learned lower court dealt with the matter contrary to the materials available on the record and on account thereof the judgment

impugned happens to be illegal, improper. Consequent thereupon is fit to be set aside.

4. The learned Additional Public Prosecutor endorsed the view.

5. The learned lawyer for Opposite Party No.2 to 6 while supporting the finding arrived at by the learned lower court had submitted that sanction is not the sole ground whereupon Opposite Party No.2 to 6 were acquitted. It was one of the provisions taking into account that finding recorded by the learned trial court on this very score happens to be contrary to the finding recorded by Division Bench in a case of Md. Ashad & Ors. Vs. The State of Bihar reported in 2002 (3) PLJR 366 that is going to reverse the finding recorded by the learned trial court. To support the same it has been submitted that on account of non-examination of I.O. the objective finding relating to the place of occurrence has not properly been brought up on record and that has certainly caused prejudiced to the Opposite Party No.2 to 6.

6. In the aforesaid background, the further submission is that it is evident from the evidence of the PWs including the informant himself that he was chased from boring by the Opposite 4. Party No.2 to 6, even taking into account the prosecution version that they were armed with bomb, more particularly against Bhupeshwar Shukla and Suresh Rai, having not hurled bomb during the intervening situation. In likewise manner the informant was not assaulted by means of pelting stone during midst of way. The deficiency in the prosecution case is to be taken into account in the background of admitted factual position persisting amongst the parties since long having at daggers drawn. All the witnesses so cited and examined on behalf of prosecution happens to be inimical one and series of litigation, as is admitted are pending in between. No independent witness has been examined. Apart from this during course of cross-examination having belied their own testimony. Therefore, taking into account, totality of the event, the prosecution case is found to be deficient one whereupon the judgment of acquittal recorded by the learned trial court happens to be just legal and proper.

7. PW-3 filed Complaint Case No.887 of 1992 on 17.07.1992 showing the date of occurrence as 16.07.1992 at about 01:00 PM divulging the fact that while he was

engaged in planting paddy seedling by irrigating through boring, Opposite Party No.2 to 6 armed variously proceeded towards him on account of which he became apprehensive and rushed towards his house. He had gone 5. inside his house, closed the door. Thereafter, the accused persons brick batted upon his house as well as also hurled bomb. Accused Umanath Shukla had ordered to apprehend after breaking open the door and on account thereof, the accused persons began to strike over western door. The informant thereafter gone over roof and raised alarm during course of which Bhuneshwar Shukla and Suresh Rai hurled bomb which striked upon the wall of the house. On account of brick batting, the complainant had sustained in jury over back as well as hand. After arrival of witnesses, the accused persons left the place and during said course they have threatened that in case police is reported then thereafter he will be murdered. It has also been alleged that a day prior to the occurrence the accused persons had indulged in similar kind of overt act for which father of informant had informed the S.P., Saran by telegram. The motive for occurrence has been shown on account of institution of a case by the nephew of informant against Bhuneshwar Shukla.

8. The aforesaid complaint was sent to the local police for registration and investigation of the case in terms of Section 156(3) Cr.P.C. on the basis of which Dariyapur P.S. Case No.102 of 1992 was registered whereupon investigation commenced and concluded by way of submission of charge sheet. The trial commenced and concluded in a manner so brought up under challenged at the 6. instance of informant.

9. PW-3 the complainant/informant had deposed that while he was engaged in planting of paddy seedlings he found the Opposite Party coming towards him. Some were armed with lathi, some were by brick particles and Bhuneshwar Shukla and Suresh Rai were armed with bomb. He rushed towards his house. The accused persons also chased. He thereafter gone over roof. The accused persons began to pelt stone. On an order of Umanath Shukla, Bhuneshwar Shukla and Suresh Rai have hurled bomb which striked over wall. He had sustained injury at back as well as at hand on account of pelting of stone. Then had narrated the motive for the occurrence. During cross-examination from para-6, para-7, it is apparent that they are on litigating term since before. It is also evident from para-9

of his cross-examination that he was unable to say who were armed with lathi. He also stated that he had not seen the bomb since before the occurrence and so he guessed that it was a bomb. The accused persons had not tried to apprehend him during midst of way. At para-10 he had stated that after closing the door he had gone over roof. The accused persons were one lagga from his house. They pelted stone over roof. The accused persons had not hurled bomb at the roof. Further he stated that the accused persons indulged in criminal action after he gone over roof. In para-12 he 7. had stated that he come to Chapra for filing of a case through Parsa but he had not gone to Parsa P.S. He had not informed the local Chowkidar, Surpanch and Mukhiya. In para-10 of his attention has been drawn with regard to averments made in the complaint petition. After conjoint reading of the written report as well as his evidence it is manifest that he could be an eye witness to occurrence because of the fact that the whole occurrence had taken place while he was inside the house. Moreover this witness had not spoken a word that bomb had ever exploded. From his evidence it is also apparent that an earlier occasion a telegram was sent to the Superintendent of Police by his father but no chit of paper has been produced to support the same. Apart from this, it is evident that this witness while coming to Chapra had passed through the Parsa where Police Station lies but he failed to register any case and for that no explanation has been furnished.

10. The remaining witnesses, though during course of examination-in-chief had tried to support the case of the prosecution but again their inconsistency is found revealed from their cross- examination. When the evidence of PW-1 is gone through, it is apparent that PW-3, after coming inside his house, closed the door and thereafter brick batting as well as hurling of bomb had taken place. Subsequently, thereof, his son had gone at the roof. Para-3, 8. Para-4 is with regard to animosity prevailing amongst the parties. He was not at all aimed. In para-8 he had stated that at the time of occurrence he had gone to mosque lying South to his house. Para-9 happens to be the contradiction.

11. PW-2 in likewise manner had narrated the prosecution version during course of his examination-in-chief. From paras-4,6, and 7 it is apparent that he is a professional witness whose help has been taken by the prosecution party at every

occasion against the Opposite Party No.2 to 6 . In para-8 he failed to disclose the names of labourers. In para-9 there happens to be material contradiction.

12. PW-4 is the relative of the informant and on account thereof was at the house of informant. At the time of occurrence, he was sitting inside mosque. He had named four accused including Bhuneshwar Shukla and Suresh Rai who were armed with bomb while rest had brick batted. The informant on being chased rushed inside his house closed the door. The accused persons brick batted as well as also hurled bomb over wall of the house. After appearance of assembly of persons accused persons took their heels. His status to be an eye witness of occurrence has become doubtful because of the fact that he had named all the accused contrary to his previous statement as is evident from paras-7, 8 of the cross-examination. Furthermore, from para-9 of his cross-examination he had given a 9. different story than that of PW-1, 2 & 3 by stating that during course of chase, the accused persons were pelting stone over informant (PW-3). He had further stated that though pelting of stone was there but none of the accused had hurled bomb. He had further stated that on account of hurling of bomb there was crack at the wall.

13. PW-5 during course of examination-in-chief has reiterated the narration of the prosecution. During cross-examination he had admitted that he happens to be nephew of informant. From para-3, para-4 the animosity prevailing since before the date of occurrence is apparent. He had further stated that he arrived at the place of occurrence after hearing alarm of Md. Wasir. In para-7 he had stated that Wasir had sustained injury during course of occurrence at his hand and back. He has seen the injury, blood was oozing out. In para-8 he had stated that when Wasir had reached near his house at that moment he had sustained injury. PW-6 and 7 are formal witness who have had exhibited the sanction order as well as case diary.

14. Defence had also examined three DWs as well as had also exhibited the document which, in the background of the admitted position that the parties are on litigating term since before the occurrence on one pretext or other, gives only supportive link. DW-2 was examined on the factum of occurrence. Though during

10. cross-examination it is apparent that his evidence had not been sacked but as this DW has not been examined during course of investigation by the Investigating Officer therefore loses his status to some extent.

15. After scrutinizing the evidence available on the record, as discussed above it is evident that inconsistency prevailing amongst the evidence of PWs with regard to manner of occurrence discredits their testimony and on account thereof became untrustworthy, unreliable.

16. With regard to application of Explosive Substance Act, it is apparent that none of the PWs have stated that bomb had exploded and they have seen explosion thereof. Informant himself is not static on this score. PW-1 himself shown his absence by having at mosque. While PW-2, 4 & 5 did not match with.

17. Once a judgment of acquittal is passed then the basic principle of criminal jurisprudence relating to innocence of accused till is held guilty, gets further strength. It is also to be noted down that by series of judicial pronouncement, the Honble Apex Court had settled at rest that in case, from the evidence two views are possible out of which one view has been adopted by the trial court resulting acquittal of the accused, then in that event, the alternative view should not be taken into account. In the aforesaid 11. background, even taking into account that the finding recorded by the learned trial court under para-12 and 13 of the judgment by referring overruled decision while rejecting the legal sanctity of sanction order (Ext.-2) is not going to change the scenario.

18. Consequent thereupon, I do not find any sort of perversity in the judgment impugned hence instant revision is dismissed. (Aditya Kumar Trivedi, J.) Patna High Court Dated, the 29th day of August, 2013 PRAKASH NARAYAN / A.F.R

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