

Abdul Rauf and Others Vs. the State of Bihar

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Court : Patna

Decided On : Mar-24-2014

Judge : Dharnidhar Jha

Appeal No. : Criminal Appeal (SJ) No. 71 of 2002

Appellant : Abdul Rauf and Others

Respondent : The State of Bihar

Judgement :

1. Three appellants were charged by the learned 3rd Additional Sessions Judge, Aurangabad with commission of offences under Sections 3 and 4 of the Explosive Substances Act (hereinafter referred to as the Act) in Sessions Trial No. 42 of 1993 and by judgment of conviction dated 15.02.2002 they were held guilty of committing the offences. After being heard on sentence, each of the appellants was directed to suffer rigorous imprisonment for ten years as also to pay a fine of Rs. 2,000/- due to being convicted under Section 3 of the Act while they were individually to suffer rigorous imprisonment for seven years as also to pay a fine of Rs. 2,000/- each for being convicted under Section 4 of the Act. The order of sentence directed that in case of not paying up the fine of Rs. 2,000/-, each of the appellants should have suffered rigorous imprisonment for another period of six months. The order of suffering imprisonment in case of making default in payment of fine, appears passed only as part of the sentencing order in respect of conviction of the appellants under Section 4 of the Act. The appellants have

chosen to challenge the impugned judgment of conviction and order of sentence through the present appeal.

2. Binda Yadav (P.W.

2) gave his Fardbeyan (Ext.

3) on 01.06.1990 at 3.30 P.M. stating that he had gone to graze his buffaloes and in that connection he was sitting at the saw mill and was gossiping with persons. He heard sound of explosion as also fumes bellowing out of the house of appellant Abdul Rauf and with others rushed to that place. P.W. 2 found that appellant Abdul Rauf was running out of his house and was attempting to enter into another, but he was caught by the informant and others while his son appellant Farook succeeded in making good his escape. The third appellant Jaituna Khatoon succeeded in entering a house.

3. On receipt of Ext. 3, the Officer-in-Charge of Aurangabad Town Police Station drew up the First Information Report (Ext. 4). The investigation was taken up by Sub-Inspector Md. Ilyas Ansari, who after concluding the same, sent up the three appellants for their trial.

4. Eight witnesses were produced before the Court below during trial out of whom Md. Muslim (P.W. 4) was a witness to seizure memo and had signed the same. In cross-examination P.W. 4 stated that he had in fact not witnessed any seizure and had rather appended his signature to the document only after being requested to do so and that too at the house of one Dr. Rahman. The other witness P.W. 6 was tendering the sanction order passed by the District Magistrate under Section 7 of the Act in evidence. The sanction order for prosecuting the three appellants was marked Ext. 2. Ram Lal Singh (P.W. 7) had identified the writings and signatures of Md. Ilyas Ansari the Investigating Officer on the Fardbeyan and the document has been marked Ext. 3. Ram Jatan Singh (P.W. 8) who was yet another formal witness, identified the writings of the case diary and the signatures of Sub-Inspector Md. Ilyas Ansari as the said officer who was the Investigating Officer of the case was not produced for his evidence. Other witnesses like Ragho Mistri (P.W. 1), Binda Yadav (P.W. 2) the informant, Sishupal (P.W. 3) and Bindu

Sharma @ Bindu Mistri (P.W. 5) who happened to be the owner of the saw mill, had given accounts of the occurrence by narrating that after hearing the sound of explosion and finding fumes coming out of the house of appellant Abdul Rauf, they ran towards his house and found appellant Abdul Rauf running away from there but he was captured by them. The witnesses also stated that appellant Farook ran away from there while appellant Jaituna Khatoon entered into another house. As regards the evidence of Ragho Mistri (P.W. 1), he after stating the above facts admitted in cross-examination at paragraph 13 that he had never given any statement to any authority thus making it very difficult to accept his evidence and to act upon it. So far as the evidence of Bindu Yadav (P.W. 2), Sishupal (P.W. 3) and Bindu Sharma @ Bindu Mistri (P.W. 5) is concerned, they consistently stated the facts, I have just noticed, but during their cross-examination what came from them was that they had never gone to the house of appellant Abdul Rauf nor had entered into it neither they could give the description of surrounding structures or whatever of the house of appellant Abdul Rauf. In fact Bindu Sharma @ Bindu Mistri (P.W. 5) stated that the house of appellant Abdul Rauf was in another Mohalla and that the distance between the place where they were sitting, i.e., the saw mill and where they were gossiping together was intervened by a Nala and was separated by 3-4 houses. The distance between his saw mill and the house of Abdul Rauf is 500-700 meters and the witnesses could reach the place after 5-10 minutes. Other witnesses like P.Ws. 2 and 3, namely, Bindu Yadav and Sishupal respectively have also narrated almost the same facts that the distance between the place where they were sitting, i.e., the saw mill, and where they were gossiping together was intervened by a Nala and was separated by 3-4 houses. As appears stated by Sishupal (P.W. 3) and as appears from their individual evidence none of the appellants ever visited the house of appellant Abdul Rauf or had entered into it and had not even gone there earlier. Thus, it could be very difficult for any Court to say that the house about which the witnesses were stating during trial was exactly the house of appellant Abdul Rauf. If they were not knowing and identifying any house as really belonging to appellant Abdul Rauf, as appears from their individual evidence, then their claim that the house from which the fumes were coming out, could indeed be the house of Abdul Rauf. The evidence is consistent that Abdul Rauf was never found in that house. He had been found running away from there

and he was captured. In that view it becomes very doubtful that the act of detonating an explosion could be attributable to the appellant Abdul Rauf.

5. The other part of the evidence of witnesses was that they were again consistent on the other aspect of the case that they had not seen any marks of explosion or injury caused either to any human being or to any property on account of that explosion. If this is the evidence which appears consistently coming from P.Ws. 2, 3 and 5 then again the Court may be very slow in holding any of the three appellants as the person who had committed the act of detonating an explosion and that too with an intent of endangering human life or causing danger to any property. The other most important aspect of the application of the provisions of Sections 3 and 4 of the Act is that the act of detonating an explosion has to be with a particular purpose, that is to say, that it should be with a purpose which is unlawful and malicious both. For coming to a conclusion that the act was unlawful and malicious both, the Courts have to find some evidence to indicate that indeed there was any purpose which could be unlawful by the nature of the act as also the purpose being as malicious as to be indicated by the subsequent commission of the act and its ultimate result of posing danger to any human life or, else, of causing some injury to any property. P.W. 5 Bindu Sharma did state in his evidence that he had gone to see the house of the appellant Abdul Rauf and found the roof of his house blow off with tiles which were laid to protect the inhabitants from sunlight and rain. That evidence appears completely contradictory to his own statement that he had never visited that house or had entered that house.

6. Thus, the evidence which appears led by the prosecution during the trial of the case appears not constituting the important ingredients of the offences which are made punishable under Sections 3 and 4 of the Act, especially the one ingredient which is completely uncommon ingredient as regards commission of acts which are designated criminal. Criminology points out that there are four stages of committing an offence like intent (*mens rea*), preparation, attempt and commission of the act, but by formulating the provisions of Sections 3 and 4 of the Act, the legislature appears laying down one of the unknown criminal behaviour of a person, like, the purpose with which he was to commit the act of detonating an explosion and was laying it down as the most important ingredient of the two

offences that the act must be done with an intent and with purpose and that purpose should be both unlawful and malicious at one time. This ingredient of offences under Sections 3 and 4 or may be 5 of the Act separates the offences from others and creates a new generation of offence.

7. Regard being had to the evidence available on record and considering the discussion which I have just made, I am of the view that it could not be said that the prosecution had succeeded in bringing the charges home to the accused. They were entitled to benefit of doubt and accordingly, that benefit is extended to them.

8. In the result, the appeal is allowed. The judgment of conviction and the order of sentence are hereby set aside. The appellants are acquitted of the charges they had been found guilty of. The appellants are on bail. They shall stand discharged from the liabilities of their respective bonds.

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