

Bhagwan Das Vs. the State of Bihar

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Court : Patna

Decided On : Feb-05-2002

Judge : B.N.P. Singh, J.

Appeal No. : Criminal Appeal No. 265 of 1990

Appellant : Bhagwan Das

Respondent : The State of Bihar

Disposition : Appeal Dismissed

Judgement :

B.N.P. Singh, J.

1. The appellant was prosecuted along with one Ram Kishun Das for offences punishable under Section 307/34 of the Indian Penal Code and also under Section 3/5 of the Explosive Substance Act, 1908. As Ram Kishun Das died during pendency of trial, proceeding against him was dropped and it is how that the appellant alone was put on trial, who suffered conviction under Section 307 of the Indian Penal Code and also under Section 3 of the Explosive Substance Act and was sentenced to suffer rigorous imprisonment for ten years each under both counts with a direction that both the sentences shall run concurrently.

2. The factual matrix as appearing in the fardbeyan of Ram Bali Rai (P.W. 3), was that on 14th January, 1980, while he was scraping the leaf from the sugarcane in the field along with his brother Amar Nath Rai, Ram Kishun Das (deceased) came along with the appellant and resisted them pursuant to which there was altercation between them and it is alleged that shortly thereafter the appellant hurled bomb on him causing injury in his arm and hands when he dropped on the ground. It was alleged that Ram Kishun Das too hurled bomb on Amar Nath Rai (P.W. 1), but aim was lost, as it exploded on the ground. The injured was taken to Mairwan Hospital where his statement was recorded by the police at 19 hours on 14th January, 1980. After the police was set in motion, investigation commenced and on conclusion of investigation the police laid chargesheet before the Court and the appellant was eventually on commitment of the case to the Court of Session, was put on trial.

3. In the eventual trial, the prosecution examined altogether six witnesses which include Amar Nath Rai, P.W. 1, Baid Nath Singh, P.W. 2, Ram Bali Rai P.W. 3, Dr. Krishna Mohan Srivastava P.W. 4 and the rest witnesses, which were formal in nature. One witness namely Shashi Bhushan Dubey was also examined as court witness and he too was formal in nature who brought some documents on the record. Now advertng to the evidences placed on the record one would find Ram Bali Rai P.W. 3 reiterating his early version rendered before the police about the appellant having hurled bomb on him when he along with his brother Amar Nath Rai P.W. 1 was scraping leaf from the sugarcane. The narration made by P.W. 3 had received corroboration from the evidence of P.W. 1, who was working in the field with him, about P.W. 3, having sustained injury on his person by explosion of a bomb allegedly hurled by the appellant. Baid Nath P.W. 2 who too was working in the adjacent field, stated to have noticed appellant having hurled bomb on P.W. 3 for which latter sustained injury on his person. Dr. Krishan Mohan Srivastava P.W. 4, who examined the injured noticed lacerated wound on the upper part of the right arm and also multiple lacerated wound of various shapes and sizes on right side of the face. The doctor also noticed multiple lacerated wounds on the upper side of right arm. In estimation of doctor, while injury No.1 was grievous others were simple in nature caused by explosive substance. As has been discussed, volume of documents have been placed on the record on behalf of the

State which also include Ext. 4 series to suggest execution of deed of sale by Mst. Sahodari in favour of P.Ws. 1 and 3. The defence too examined three witnesses and while others are formal in nature who brought the documents including Ext. B series which are original deeds of mortgage, Bishwanath Das was also among them who countered the allegations attributed to the appellant stating inter alia, that while injured was carrying bomb it accidentally exploded causing injury to the carrier. The trial Court on appreciation of evidences placed on the record while negative the version of the appellant, rendered verdict of guilt finding the appellant guilty under Section 307 of the Indian Penal Code and also under Section 3 of the Explosive Substance Act and sentenced him in the manner stated above.

4. The finding recorded by the trial Court was sought to be assailed by earned Counsel appearing for the appellant on the premises that the witnesses examined in trial were interested persons and they had been examined entirely to the exclusion of the independent witnesses. Contentions were raised that there had been emphatic assertion of D.W. 3 about there being land dispute between the parties and the disputed land which is R.S. Plot No. 3552 happens to be in possession of the appellant. It is sought to be urged that Ram Kishun Das father of the appellant Bhagwan Das, had executed a deed of mortgage in favour of Ram Bali Rai which was eventually redeemed in the year 1976, pursuant to which delivery of possession was also restored to the owner and on these premises, it is urged that it was the prosecution party who was aggressor on the land. Non-examination of the Investigating Officer was also taken to be a ground to assail the finding recorded by the trial Court. The belated receipt of First Information Report in the office of the Chief Judicial Magistrate after lapse of the three days was also highlighted at bar to suspect the bona fide of the -document. Earned Counsel for the State has resisted submissions canvassed at bar on behalf of the appellant.

5. The occurrence took place at about 10.00 a.m. on 14th January, 1980 and it seems from the First Information Report that village Kabirpur lies at a distance of four miles from the police station, and it was only at 19 hours on the date of incident that the fardbeyan of the injured was recorded by the police officer in Mairwa Hospital, and in that view of the matter, it must be held that the prosecution case was launched with all promptitude by the injured. Though

endorsement of the Chief Judicial Magistrate on the body of the fardbeyan had been recorded on 18th January, 1980, some endorsement appears to have been made by the office on the First Information Report on 15th January, 1980 itself which obviously shows receipt of the First Information Report in the office on that date, and in view of this, the prosecution cannot be said to be guilty of belated prosecution. Though Investigating officer was not examined at trial, rightly some question remain unanswered but that was not a ground to discredit the bona-fide of the prosecution case. The narration made in the F.I.R. about Ram Bali Rai sustaining bomb injury on his person, as has been discussed, had received corroboration from the evidence of P.Ws. 1, 2 and 3 and also the objective finding recorded by the doctor who found corresponding injury on the person of the injured. It is no longer *res Integra* that ocular version of a reliable witnesses did not deserve rejection simply on the score of interestedness, unless the evidences suffer from blemishes and I must say that the evidence of ocular witnesses do not suffer from serious infirmity, and that Baidnath Singh P.W. 2 was in no way interested person in the affairs of the prosecution. Though assertion was made by P.W. 2 about Amar Nath Rai having deposed in his favour at some point of time, that did not necessarily lead to the conclusion that he had come to oblige him.

6. Even the defence taken by the appellant was not consistent, for the reason that while suggestions were given to the prosecution witnesses that the bomb was hurled by members of the prosecution party in course of which Ram Bali Rai sustained injury on his person, there was emphatic assertion of D.W. 3 that Ram Bali Rai sustained injury on accidental explosion of bomb which he was carrying with him. Certain facts are admitted in view of volumes of document placed on the record on behalf of the parties and it is admitted that a civil suit for declaration of title and confirmation of possession in respect of the disputed land was pending in Civil Court bearing Title Suit No. 149 of 1984 instituted by the informant against the appellant. It would be explicit from the evidence of D.W. 3 that he was pattidar of Bhagwan Das and he had appeared in a proceeding under Section 107 Cr.P.C. against P.W. 3. Even assuming the case of the appellant which has been strongly resisted by the State, that after redemption of mortgage deed, the land came in possession of the appellant, in view of ocular testimony of the witnesses about the appellant having resisted their action and hurled bomb on the person of Ram Bali

Rai, the entire case cannot be thrown to the wind about the appellant having resorted to violence. It is urged at bar that both, as under trial prisoner and also during post conviction period, the appellant has remained in custody for one and half months. The trial Court, as has been discussed, has found the appellant guilty under Section 307 of the Indian Penal Code and also under Section 3 of the Explosive Substance Act in view of the injury sustained by the victim. However, this fact cannot be lost sight of that the prosecution was launched against the appellant in the year 1980 which culminated in trial in the year 1990 and after about efflux of 22 years, the appeal has come up for hearing. It is urged that the appellant has suffered agony of protracted trial for about 22 years.

7. In that view of the matter, while conviction of the appellant is converted under Section 326 of the Indian Penal Code, he is sentenced to the period already undergone by him both under Sections 326 of the Indian Penal Code and 3 of the Explosive Substance Act. However, the appellant is also sentenced to pay a fine of Rs. 2500/- (two thousand and five hundred) under Section 326, I.P.C., in default of which he would suffer rigorous imprisonment for six months and with this modification, the appeal is dismissed.

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