

Mohammed YamIn Vs. State

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Court : Delhi

Decided On : Apr-04-1983

Reported in : 23(1983)DLT464

Judge : M.L. Jain, J.

Acts : Explosives Substances Act - Sections 4; [Indian Penal Code \(IPC\), 1860](#) - Sections 436

Appeal No. : Criminal Appeal No. 225 of 1982

Appellant : Mohammed Yamin

Respondent : State

Advocate for Pet/Ap. : B.B. Lal,; Akshay Bipin and; D.R. Sethi, Advs

Judgement :

M.L. Jain, J.

(1) Three persons, Mohd Yamin, Allauddin, and Abdul Aziz were tried for offences under Sections 120B and 436 Indian Penal Code and Sections 4, 5 and 6 of the Explosive Substances Act. The learned Additional Sessions Judge acquitted Allauddin and Abdul Aziz but convicted Mohd. Yamin under Section 4 and 5 of the Explosive Substances Act, 1908, and Section 120B I P.C. He sentenced him to rigorous imprisonment for ten years and to a fine of Rs.1000.00 in default rigorous

imprisonment for one year under Section 4 of the Explosive Substances Act and to rigorous imprisonment for seven years and a fine of Rs. 500.00 in default to rigorous imprisonment for six months. He did not award any sentence under Section 120-B. The substantive sentences were directed to run concurrently. Hence, this appeal.

(2) On 15-9-1980, bomb explosion took place in a room of the mosque Tyabji Maujpur. The explosion attracted the attention of Head Constable Raj Rumar (Public Witness 2), Bhurey Lal (Public Witness 1) and Ram Sarup (Public Witness 3). They went towards the spot and saw accused Mohd. Yamin coming out of the mosque and running away. They followed him. He jumped in a drain but was ultimately nabbed. He was brought back to the mosque. In the debris, one person Sajjauddin was found buried and groaning. He was removed from the debris when Si Balbir Singh (Public Witness 32) arrived from the police station Khazuri Khas accompanied by Asi Balbir Singh, Hg Raj Singh and Hg Brahmpal. Sajjauddin was unconscious and was sent for medical examination. But he was declared dead on reaching the hospital. On 16-9-1980 Mohd, Yamin was interrogated in the presence of witnesses Surrender Kumar (PW31) and Chaman Lal Si (Public Witness 37). He disclosed that he had purchased certain materials from one Jagdish Lal of Malhotra Bros, Katra Ishwari Bhavan, and he could point out the said shop. Inspector Barkat Ram (Public Witness 39) on 17-9-1980 and 18-9-1980 in the presence of Hg Ram Sarup and Si Girdhari Lal and Sukan Chand (Public Witness 30) took into possession some more material from the damaged room of the mosque showing that bombs were being made therein. On 22-9-1983 accused Mohd. Yamin in the presence of witnesses Sant Singh Si (Public Witness 23) and Raghunandan Singh (Public Witness 36) pointed out the said shop and also another shop opposite the said shop. Jagdish Lal (Public Witness 4) was examined. He proved a voucher, Ex. Pg showing sale of 2 kg. of Shora and 1 Kk. Barium Nitrate to Mohd. Yamin on 11-9-1980 and he also stated that 1 K.g. Sulphur of which no voucher was issued, was also sold to Yamin on that day. Abdul Aziz accused is stated to have purchased 18 iron pellets and 2 small katoris (iron. containers) from Abdul Jamil (Public Witness 29). After the occurrence accused Abdul Aziz had met Abdul Zahid (Public Witness 24) and Munna (Public Witness 25) near the dargah near the Oberoi Intercontinental Hotel and had

confessed to them that he had supplied Rs. 300.00 in cash and also some materials to Yamin for preparation of bombs for use in riots in Ballimaran and that bomb had exploded in trans Jamuna area in which a colleague of Yamin had died. On 21-9-1980 accused Abdul Aziz was interrogated by Inspector Barket Ram in the presence of Girdhari Lal (Public Witness 33) and he made the disclosure statement that he had purchased iron pellets for Rs 4.50 from a cycle repairman at Shastri Road, Nizamuddin. The accused Abdul Aziz led the police party and in the presence of witnesses Risat Ali (Public Witness 9) and Hg Kishan Lal (Public Witness 38) pointed out Abdul Jamil (Public Witness 29) at Shastri Road. The accused Allaiddin had also made a confession implicating himself and his co-accused before Salim Mirza (PW 26). Statement of Salim Mirza was recorded under Section 164 Cr.P.C. The property was sent to Cfsi and their reports Ex..PZ/17 and PZ/18 proved that the material could be used for preparing several country-made bombs and the deceased had received the injuries while in the process of preparing country-made bombs. The materials were prohibited explosives under the provisions of the Indian Explosives Act.

(3) Yamin in his statement under Section 313 Cr.P.C. admitted that he had gone to the said mosque at the relevant time to meet the Iman MusthaqAhmed(PWII). As he entered the room of the Imam he had heard the explosion and rushed out of fear. While running he fell into a drain and certain public persons cried thief and caught hold of him and gave him beating. Later on he was falsely implicated in this case. Accused Abdul Aziz in his statement under Section 313 Gr.P.G. denied all the facts appearing against him in the evidence and took up the plea that there is a rivalry and enmity between him and certain Peers of a Dargah located opposite to the Dargah of his mother Fatima Bi with regard to the displaying of hoardings, which the Peers had been demolishing.

(4) The learned trial Judge found that there was no doubt that Sajjauddin met his end while he was in the process of manufacturing country made bomb in the room of the said mosque. Mustaq Ahmed (Public Witness

11) was stated to be sleeping in his own room when the explosion took place in the second room of the mosque. Bhurey Lal (Public Witness 1) is a labourer,

while Ram Sarup (Public Witness

3) is a mason and on that particular day, they were working in a building near the said mosque. Hc Raj Kumar (Public Witness

32) has his residential house near the mosque and he was on sick leave on that day. On hearing the explosion in the mosque, these three witnesses along with other public persons rushed to the mosque and saw accused Mohd. Yamin coming out of the mosque and running away. They nabbed Yamin and Yamin told them that the injured lying in the debris of the damaged room was his companion Sajjauddin. But Bhurey Lal (Public Witness

1) displayed confusion in identifying the appellant in the witness box. Raj Kumar (Public Witness

2) deposed that Yamin when brought to the mosque told about Sajjauddin being buried in the debris and that he was his companion. Ram Sarup (Public Witness

3) also gave the same details. The learned Judge found that Yamin had disclosed the identity of Sajjauddin and that he was his companion at that time. He held that the disclosure statement of Yamin and pointing of the shop of Jagdish Lal have no evidentiary value because Shora and Barium Nitrate alleged to have been purchased by Yamin from him on 11-9-1980 were not discovered at the spot. The Cfsi reports make reference only to Chlorate and Arsenic Sulphide. He further disbelieved Jagdish Lal because he had not given any Explanationn any Sulphur was not mentioned in the voucher while the other two items were mentioned. The disclosure statement was made on 16-9-1980 and the pointing out took place on 22-9-1980. The learned Judge doubted that Yamin had purchased any Chemicals from Jagdish Lal at any time. So the only evidence proved against the accused Yamin beyond any shadow of doubt is that soon after the bomb had exploded in the mosque he was seen coming out of the mosque and running away and was nabbed. He had disclosed that the person lying underneath the debris was his companion Sajjauddin. Mustaq Ahmed (Public Witness

11) Imam of the mosque turned hostile and refused to support the prosecution.

(5) He denied that accused Yamin used to visit the said mosque to meet him off and on. The learned Judge, however, held that the word companion used by Yamin while disclosing the identity of Sajjauddin is very illuminating and in the circumstances in which this statement was made by Yamin, the only inference to be drawn is that he had conspired with Sajjauddin for manufacturing the country-made bombs in that particular mosque and that is why he was also present there when the explosion took place. Accordingly, the learned Judge convicted and sentenced him as aforesaid.

(6) I have heard the learned counsel for the appellant and the learned Addl. Public Prosecutor. The case of the prosecution briefly was that Yamin Allauddin Abdul Aziz and Sajjauddin conspired together to manufacture country-made bombs. The bomb exploded in which Sajjauddin lost his life. The learned Judge acquitted the rest of the accused while convicted Yamin. The only evidence against Yamin is that he was seen fleeing the scene of the explosion and that he said that the deceased was his colleague. All this is not sufficient to convict the appellant for possession or use of explosive substances nor does it prove the charge of conspiracy to manufacture bombs along with Sajjauddin, deceased. Indeed, the learned counsel for the appellant is right in his submission that from the evidence on record it cannot even be said that the deceased himself was involved in the manufacture of bombs. The medical officer Dr. Bharat Singh (Public Witness -14) was of the opinion that injuries were possible by bursting of grenade. The Central Forensic Science Laboratory report that the examination of site of explosion and examination of contents indicated that the deceased was in the process of manufacturing country made bombs cannot be accepted as evidence because this part of their opinion cannot be acted upon under Section 293 of the Code of Criminal Procedure. To prove these opinions, their Scientific Officer should have entered the witness box. How can they say that the deceased was in the process of preparing a bomb They could only say what the Chemicals were. By mere examination of the site or explosion) they could not have said what the deceased was doing. He may himself have been a victim of the explosion. One has, therefore, to hold that the prosecution has failed to prove its case against the appellant.

(7) I, thereforee) accept this appeal and acquit the appellant and set aside his sentence. Fine if paid shall be refunded.

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