

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.52 of 1994

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

=====

The State of Bihar

.... Appellant/s

Versus

1. Nanda Kumar Rai, son of Jiwnandan Rai
2. Kishori Rai, son of Deo Lal Rai
3. Narendra Kumar, son of Rajnandan Rai
resident of Village Daudatpur, P.S. Sahpur, District Patna
4. Lal Babu Rai, son of Late Yugal Rai, resident of Kashim Chak, P.S. Akilpur, at
present Bus Stand Tea Shop of Danapur, District Patna
5. Upendra Kumar, son of Rajnandan Rai
6. Driver Rai, son of Ramayan Rai
all residents of village Daudatpur, P.S. Sahpur, District Patna

.... Respondent/s

=====

Appearance :

For the Appellant : Mr. A.K. Sinha, APP

For the Respondents : Mr. Nand Kishore Prasad No. 2, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 03-07-2015

This Government Appeal has been placed under the heading “For Orders (On Office Notes)” informing us that the connected lower court records do not contain list of defence exhibit. It is, however, submitted that the defence Exhibits A, B and C are available on record. The exhibits being available on record prayer is to direct the office to include the same in the paper book. Appeal was filed on 22.06.1994, as such, instead of directing for preparation of fresh paper book, with the assistance, consent of the counsel for the

appellant and respondents, we went through the lower court records, defence Exhibits- A, B, C as also the paper book and proceed to dispose of the appeal.

2. Instant Government Appeal has been filed assailing the judgment/ order dated 24.02.1994, passed by 6th Additional Sessions Judge, Patna, in Sessions Trial No. 205 of 1990 whereunder the trial court acquitted the respondents from the charge levelled against them under Section 302/34 of the Penal Code and Section 3/5 of the Explosive Substance Act.

3. Prosecution case, as set out in the fardbeyan of informant (P.W. 5), recorded by Sri Indramani Singh (P.W. 7), A.S.I. Sahpur Police Station, is that on the date, time of occurrence deceased along with his son (P.W. 5) was present in the market place purchasing vegetables when the miscreants including the respondents appeared there and shot at him. As the shot did not hit the target and the deceased began to run away from the market place, Accused No. 1 Nand Kumar Rai shot at him but the said shot also did not hit the target, the other miscreants hurled bomb as also shot at him and because of the bomb, fire-arm injury father of the informant fell down whereafter assailants again shot at him causing injury in his back.

4. Aforesaid prosecution case has been disbelieved by the trial court in the light of the evidence of P.Ws. 3, 6, 7, as



according to them while the deceased was purchasing vegetables in the market place constable Birendra Pandey was also present but said Birendra Pandey has not been examined as prosecution witness though it is admitted by A.S.I. Indramani Singh (P.W. 7) in paragraph 3 of his evidence that Birendra Pandey served as constable in Maner Police Station on the date of occurrence. Birendra Pandey has been examined as D.W. 5 and he has given a contrary version about the occurrence. According to the Investigating Officer (P.W. 7), he was the first official witness, who arrived at the place of occurrence and saw the assailants running away towards the river front. He also found the persons available at the market place assaulting two persons, whom they claimed were the assailants and he forwarded them. In this connection, trial court has also noticed the evidence of Officer-in-Charge, Maner Police Station (P.W. 6) in paragraph 9 that on the date of occurrence he examined Shambhu Das, Bhuneshwar Das and Sajiwan Das in front of the clinic of Dr. Ajay Kumar of Maner about the occurrence but the aforesaid three most natural witnesses of the occurrence, who were present at the market place at the time of occurrence, have not been examined by the prosecution for the reasons best known to them.

5. The trial court has given credence to the evidence of constable Birendra Pandey (D.W. 5) as his presence at the place of

occurrence is accepted by P.Ws. 3, 6, 7 and considered the aforesaid aspect of the matter in paragraphs 14, 15 of the impugned judgment. Besides trial court also noted that the prosecution version, as set out in the fardbeyan and deposed in court, does not match the injury found on the person of the deceased, as according to the prosecution version narrated in the fardbeyan and deposed in court the deceased was attacked from behind after he fell down sustaining bomb, fire-arm injury but post mortem report clearly indicate that the deceased suffered only one injury, that too on the forehead, which could not have been caused from behind.

6. Trial court having considered the aforesaid aspect of the matter granted benefit of doubt to the respondents, we are of the view that at this distance of time, it may not be in the interest of justice to take a contrary view. Appeal is dismissed.

(V.N. Sinha, J.)

(Nilu Agrawal, J.)

Rajesh/-

U		T	
---	--	---	--