

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.54 of 2015

Arising Out of PS.Case No. -98 Year- 2007 Thana -RAMGARH District- BHABHUA (KAIMUR)

Kashinath Choubey, son of Purushottam Choubey, Village- Bidamanchak, P.S.-
Ramgarh, District- Kaimur

.... Appellant

Versus

1. The State of Bihar
2. Mukesh Choubey, son of Rambriksha Choubey.
3. Trupurari Choubey, s/o- Muktinath Choubey.
4. Yas Narayan Choubey, son of Muktinath Choubey.
All resident of Village- Bidamanchak, P.S.- Ramgarh, District- Kaimur.
5. Bittu @ Vikash Choubey, son of Durga Shankar Choubey, resident of Village-
Bhagirathpur, P.S. and District- Gajipur, presently residing at Village- Fatehpur,
P.S. Dildarnagar, District- Gajipur (U.P.).
6. Bhawan Bhar, son of Algu Bhar, resident of Nirhupura, P.S.- Dildarnagar,
District- Gajipur (U.P.)

.... Respondent

Appearance :

For the Appellant : Mr. Ravi Shankar Sahay, Advocate.
Mr. Ajay Nandan Sahay, Advocate.
For the Respondent : Mr. A.K. Sinha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

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

Date: 20-01-2015

Informant, father of deceased of Ramgarh

P.S. Case No. 98 of 2007 has filed this appeal against
the judgment dated 17.11.2014, passed by Additional
Sessions Judge-5 Kaimur, Bhabhua in Sessions Case
No. 155 of 2009/Trial No. 4159 of 2014, whereunder
Respondent Nos. 2 to 6 have been acquitted of the
charge under Section 302/34 of the Penal Code and
Section 27 of the Arms Act.



2. Prosecution case, as set out in the *fardbeyan* of the informant is that in the night between 21/22.06.2007 his son was shot by the respondents at about 12:00 A.M. His dead body was seen by the daughter of the informant at around 4:00 A.M. when she had come out to ease herself. Alarm was raised, whereafter witnesses and others came and the *fardbeyan* was recorded at 7:30 A.M. During trial, the witnesses became eye-witness of the occurrence as they deposed that in their presence respondents resorted to firing. Aforesaid evidence has been disbelieved by the trial court as the accused persons specifically asked the witnesses that they had not narrated such fact before the Investigating Agency that the witnesses had seen the respondents firing at the deceased. The contradiction taken by the defence could not be tested as Investigating Officer of the case has not come to depose. In view of the suggestion made by the accused persons to the witnesses that they had not narrated the fact that they were the assailant of the deceased before the Investigating Agency, trial court has chosen to acquit the respondents which is evident from the discussion of

the evidence and the contradiction sought to be proved by the defence in Paragraphs 22, 23 and 24 of the judgment. In view of the findings recorded by the trial court in the three paragraphs, we are not inclined to interfere with the impugned judgment. The appeal is dismissed.

(V.N. Sinha, J)

(Rajendra Kumar Mishra, J)

P.K.P.

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