

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.844 of 2015

Arising Out of PS.Case No. -73 Year- 2012 Thana -SOHSARAI District- NALANDA
(BIHARSHARIFF)

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Prince Kumar, Son of late Sanjay Kumar, Resident of Singarhaat, P S Sohsarai,
Biharsharif, District Nalanda.

.... Appellant

Versus

1. The State of Bihar
2. Uday Kumar, son of Ram Chandra Prasad, Resident of Singarhaat, P.S Sohsarai,
Biharsharif, District Nalanda.
3. Ram Chandra Prasad, son of late Gopi Gope, Resident of Singarhaat, P.S
Sohsarai, Biharsharif, District Nalanda.

.... Respondents

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Appearance :

For the Appellant : Mr. Mayank Rukhaiyar, Advocate
For the State : Mr. S C Mishra, APP

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)
Date: 04-11-2015

This is an appeal preferred under the proviso to
Section 372 of the Code of Criminal Procedure, directed
against the judgment and order, dated 20.8.2015, passed by
the learned 1st Additional Sessions Judge, Nalanda, at
Biharsharif, in Sessions Trial No. 155 of 2013, whereby the
learned trial Court has recoded acquittal of respondent Nos. 2
and 3 of the charges framed against them for the offences

punishable under Sections 302 and 120(B) of the Indian Penal Code.

2. The appellant, who is the son of the deceased lady, has been examined as PW 13 at the trial. Respondent No. 3 is the father-in-law of the deceased, whereas respondent No.2 is son of respondent No.3 and brother of the pre-deceased husband of the deceased, Pushpa Devi. The First Information Report was got instituted by respondent No. 3, who was, later on, arraigned as an accused in the case on the basis of a petition filed by the appellant before the police implicating him in commission of the offences alleged.

3. Before referring to the prosecution's case as mentioned in the FIR, and the facts, as available on the basis of evidence, need to be taken into account at the very outset, that there was partition in the family amongst the sons of respondent No. 3. The deceased was, living separately in a flat and not in jointness with other family members, i.e. the informant/respondent No. 3 and his son (respondent No. 2). The partition had taken place in the year 1998 itself.

4. Respondent No. 3 got recorded his *fardebayan*, on 11.5.2015, with the police to the effect that the milkman, Ramji Gope (PW 6), who used to deliver milk to



the deceased every morning, informed him that the deceased was lying dead in her room. He, thereafter, went to the room of the deceased, where he found the dead body of his daughter-in-law lying in a pool of blood. He has also stated, in his *fardebayan*, that the deceased used to live in a separate house with four flats owned by her. She earned rent from the said flats and her sons were staying, in Delhi, for studies. He has further stated that during the last 15 days prior to the date of occurrence, he had had seen two persons, namely, Bouna Gope @ Mithun Gope and Ramesh Gope, discreetly entering the room of the deceased. He raised a suspicion in his *fardebayan* that these two persons might have been involved in the commission of the offence of killing his daughter-in-law.

5. In course of investigation, the police claimed to have recorded statement of one Mantu Kumar (PW 2), who named respondent Nos. 2 and 3 as persons involved in the commission of the offence.

6. The police submitted *charge sheet* against seven persons including respondent Nos. 2 and 3. The case of respondent Nos. 2 and 3 was separated for trial as other accused persons claimed juvenility and their cases were referred to the Juvenile Justice Board, Nalanda.

7. Charges were framed against the private

respondents, who pleaded not guilty and accordingly they were put on trial.

8. From the impugned judgment, we find that the prosecution examined altogether 17 witnesses in support of the charges. The learned trial Court, upon analyzing the evidence of the prosecution witnesses, arrived at the conclusion that the prosecution failed to establish beyond all reasonable doubt the charges framed against respondent Nos. 2 and 3. Having found that the prosecution could not prove the chain of events on the basis of which it could be said that respondent Nos. 2 and 3 were involved in commission of the offences beyond all reasonable doubt, the learned trial Court acquitted them of the charges. In these circumstances, the appellant, who is son of the deceased, has preferred this appeal under the proviso to Section 372 of the Code of Criminal Procedure, 1973.

9. We have noticed that no ground has been taken in the petition of appeal nor any submission has been advanced on behalf of the appellant that evidence of any prosecution witness has been incorrectly described by the learned trial Court in the judgment under appeal. Evidently, there is no eye-witness to the occurrence and the prosecution attempted to prove the charges on the basis of circumstantial evidence. The question, therefore, is as to

whether the learned trial Court, on the basis of the evidence on record, could have held the charges to have been conclusively proved beyond all reasonable doubts, that is to say, the chain of circumstances lead to one and the only conclusion that respondent Nos. 2 and 3 had committed the offences alleged.

10. Upon having heard learned counsel for the appellant and perused the impugned judgment, we find that the basis of framing charge against respondent Nos. 2 and 3 is the alleged confessional statement of Mantu Kumar, who has been examined as PW 2, and has been declared hostile to the prosecution as he did not support the prosecution's case. On the date and at the time of occurrence, sons of the deceased, namely, Prince Kumar (PW 13) and Piyush Kumar (PW 12) were in Delhi. In his evidence, PW 13 said that he learnt that the accused persons had murdered his mother and, accordingly, filed a petition before the police claiming that his grandfather (respondent No. 3) and his uncle Uday Gope (respondent No. 2), had got murdered his mother. He subsequently learnt that a tenant in the flat of his mother, namely, Mantu Kumar, and one Alka had killed his mother and they had been given money for such killing. PW 12 and PW 13 have also defined that they were being threatened by their grandfather and uncle (respondent Nos. 3 and 2) in

order to get some property transferred in their favour. PW 11 is the uncle of the deceased, who has corroborated the fact that the deceased used to reside alone in her flat and her sons used to live in Delhi for studies.

11. PW 10 is the brother of the deceased, who also was in Delhi on the date of occurrence. According to him, he learnt that the accused persons including the respondents had killed his sister. These are the only witnesses, who have stated that they received information to the effect that respondent Nos. 2 and 3 were involved in commission of the crime.

12. The Investigating Officer, in his deposition as PW 16, has stated that accused Mantu Yadav had disclosed involvement of other persons in the crime and, on the basis of whose statement, he had recovered certain articles including mobile phone of the deceased and golden bangles. He is said to have also recovered the blade used in the crime purchased from the shop of one Suraj Prakash, whose statement was recorded under Section 164 of the Code of Criminal Procedure. The said Suraj Prakash has not been examined as a prosecution witness. Seizure of the articles is said to have been made in the presence of seizure list witnesses, Raghubir Prasad and Ravi Ranjan. One motorcycle was also seized allegedly in the presence of two



independent witnesses Amarjeet Kumar (PW 5) and Ranjeet Kumar (PW 14). There is no evidence on record to show that any incriminating material was recovered from respondent Nos. 2 and 3. From the evidence, it appears that the witnesses, including Mantu Kumar (PW 2) did not mention involvement of these private respondents in commission of the offences and they were implicated only on the basis of suspicion raised by the sons of the deceased (PW 12 and PW 13), her uncle (PW 11) and her brother (PW 10). There appears to be absolutely no evidence on record to indicate that respondent Nos. 2 and 3 conspired in any manner in the commission of the offences alleged.

13. None of the witnesses, i.e. PW 1, PW 3, PW 4, PW 6, PW 7, PW 8 and PW 9, has even whispered showing complicity of respondent Nos. 2 and 3 in commission of the offence.

14. In view of what has been discussed above, we do not find any infirmity in the impugned judgment, whereby the learned trial Court has recorded acquittal of respondent Nos. 2 and 3. The prosecution has miserably failed to prove the complicity of respondent Nos. 2 and 3 in the commission of the offences in any manner whatsoever. There is no evidence, which has been pointed out to us, adduced at the trial, to suggest that respondent

Nos. 2 and 3 entered into any kind of conspiracy with any other person for killing of the deceased. No motive is attributable to respondent Nos. 2 and 3 behind killing of the deceased.

15. In such view of the matter, we find no infirmity in the impugned judgment acquitting respondent Nos. 2 and 3 of the charges framed against them. We do not find any merit in this appeal. The appeal is accordingly dismissed.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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