

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.843 of 2015

Arising Out of PS.Case No. -147 Year- 2005 Thana -NAUGACHIA District- BHAGALPUR

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1. Rabindra Kumar Yadav Son of Late Hiya Lal Yadav Resident of village -
Gosain Goan, P.S. Gopalpur, District - Bhagalpur

.... Appellant/s

Versus

1. The State of Bihar
2. Dam Dam Yadav @ Dhananjay Yadav Son of Yamuna Prasad Yadav Resident
of village - Gosain Goan, P.S. Gopalpur, District - Bhagalpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar Singh, Advocate

For the Respondent/s : Mr. Ajay 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 under proviso to Section 372 of the Code of Criminal Procedure, 1973, against acquittal of respondent No.2 vide judgment and order, dated 30.06.2015, passed by learned 4th Additional Sessions Judge, Naugachia, Bhagalpur, in Sessions Trial No. 212 of 2007, giving him benefit of doubt. He stood charged of commission of offence of murder under Section 302 of the Indian Penal Code before the trial Court.

2. The appellant is the brother of the deceased and the informant of Naugachia (Prabatta) P.S. Case No. 147 of 2005, registered on the basis of his *fardbeyan* recorded, on

07.06.2005, with reference to an occurrence, which had taken place on 06.06.2005. He was examined as P.W.8 at the trial.

3. According to the prosecution's case as narrated by the appellant in his *fardbeyan*, one Rinku Jha had come to his house at 6.30 P.M on 06.06.2005 and had taken, along with him, informant's brother, Pankaj Yadav (the deceased), on the pretext that they were going for some party. Nearly 10 o'clock at night, the informant received the information that said Rinku Jha, Jeevan Prakash, and Rajiv Kumar were assaulting his brother. The informant, thereafter, went to the house of Rinku Jha, where he learnt that said persons had taken away his brother to some unknown place. On the next day, at about 9 A.M, the informant learnt that a *corpse* was lying at Kalbalia Dhar near Tetri, the appellant claims to have gone there and identified the said dead body as the dead body of his brother, who appeared to have been brutally assaulted and strangled to death. The informant stated, in his *fardbeyan*, that the deceased had enmity with the family of respondent No.2.

4. Upon completion of investigation, the police submitted *charge-sheet* against respondent No.2, whereupon cognizance was taken and case was committed to the Court of Sessions. Charges were framed for the offences under Sections 364,302 and 201 read with Section 34 of the Indian Penal Code. Since respondent No.2 treated not guilty to the charges, trial

commenced.

5. Altogether 9 witnesses were examined including the informant (P.W.8), Awdhesh Kumar, brother of the informant and Prakash Chandra Yadav (P.W.1), who proved the *fardbeyan*.

6. From the impugned judgment, we find that out of 9 prosecution witnesses, 5, namely, P.W.2 (Ramesh Yadav), P.W.3 (Mantu Rai), P.W.4 (Yugal Kishore Misha), P.W.5 (Rajesh Jha) and P.W.7 (Bhola Yadav) were declared hostile to the prosecution. No submissions had been advanced that the witnesses, who were declared hostile, made any statement, which could be used as proof of accusation against respondent No.2.

7. The Investigating Officer was examined as P.W.9. There were, thus, only three witnesses, namely, P.W.1, P.W.6 and P.W.8, to prove the charges against respondent No.2, apart from the Investigating Officer (P.W.9). Evidently, P.W.6 and P.W.8 being full brothers were highly interested witnesses. This apart, they were not eye-witnesses to the occurrence or commission of offences by respondent No.2. It also transpires from the impugned judgment that P.W.1, P.W.6 and P.W.8 consistently stated that the occurrence had taken place in the house of one Basant Jha. There was no eye-witness to the occurrence. The said Basant Jha was, admittedly, neither examined by the police during course of investigation nor the

house of Basant Jha was stated to be the place of occurrence. The Investigating Officer attempted to suggest at the trial that house of Rinku Jha and Basant Jha were the same, which stood contradicted by the evidence of P.W.6, who, in his deposition, had described boundaries of the house of Rinku Jha and Basant Jha differently.

8. Learned Additional Sessions Judge, Naugachia, disbelieved the evidence of P.W.1, P.W.6 and P.W.8 as they were not eye-witnesses and were highly interested witnesses, particularly, in the background of the fact that according to them, they had learnt that the deceased was assaulted by respondent No.2 and others on 06.06.2005 and was taken by them to an unknown place, yet they did nothing till they identified the dead body of the deceased. Further, the doctor was not examined at the trial and, therefore, cause and time of death could not be proved.

9. Learned counsel, appearing on behalf of the appellant, assailing the impugned judgment, has submitted, *inter alia*, that notwithstanding charge under Section 302 of the Indian Penal Code, not having been established beyond all reasonable doubt, there was enough evidence before the Court below to convict respondent No.2 for commission of the offence under Sections 364 and 201 of the Indian Penal Code. He has submitted that the prosecution was able to fairly establish that



the deceased was taken away from the house of the informant, whereafter his dead body was found on the next day. Proof of these facts, according to him, was sufficient for conviction of respondent No.2 on the charge under Sections 364 and 201 of the Indian Penal Code. He has also submitted that the learned trial Court wrongly recorded that the cause of death could not be proved in the absence of examination of the doctor overlooking Section 294 of the Code of Criminal Procedure and the fact that the *post-mortem* report was proved. He has also submitted that the learned Court below wrongly took into account the minor discrepancies in the statements of the witnesses, which were quite natural, as material contradiction and, erroneously, acquitted respondent No.2, by giving him benefit of doubt.

10. We have perused the materials on record and have considered the submissions made on behalf of the appellant. No material has been brought to our notice by the learned counsel for the appellant, which could be said to be so clinching and definite as to have proved beyond all reasonable doubt that it was respondent No.2, who had committed the offence. The evidence of witnesses are based on *hearsay*. The deceased had not gone with respondent No.2 nor was he last seen with respondent No.2. At least, no such evidence has been pointed out by the learned counsel for the petitioner to us, during course of hearing of this appeal, at the time of admission.

11. We would be just reiterating that the legal presumption of innocence of an accused stands strengthened after his acquittal by the trial Court. The appellate Court, in an appeal against acquittal, is supposed to interfere only when some clinching evidence establishing guilt of the accused is brought to the notice, which was overlooked or not duly appreciated by the trial Court. The view, taken by the trial Court acquitting respondent No.2, in our considered view, cannot be said to be wholly unreasonable. The learned trial Court has considered the evidence and materials on record. No evidence has been shown to us by the learned counsel for the appellate to prove beyond all reasonable doubt involvement of respondent No.2 in the commission of the offence.

12. The impugned judgment does not require interference and this appeal does not deserve to be admitted, which is, accordingly, dismissed.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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