

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.15 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- VAISHALI(HAJIPUR)

1. The State of Bihar

.... Appellant/s

Versus

1. Ram Kishore Singh @ Rama Singh son of Kapileshwar Singh, resident of village Kumbarkol, P.S. Desari, District- Vaishali

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Anjani Kumar, AAG-6
With Mr. Dilip Kumar Sinha, APP

For the Respondent/s : Mr.

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date: 02-12-2015

The respondent herein stood charged of the offence punishable under Sections 302/120B of the Indian Penal Code in Sessions Trial No. 445 of 2004 and has been acquitted by the judgment and order, dated 21.04.2015, passed by learned Sessions Judge, Vaishali at Hajipur.

2. The State of Bihar, aggrieved by the acquittal of the respondent, have preferred this appeal under Section 378(1) (3) of the Code of Criminal Procedure, 1973. It is evident from the charge itself, framed against the respondent, that on the date of occurrence, he was lodged, in Hajipur Jail, in connection with some other case.

3. Before we refer to the prosecution's case as narrated in the First Information Report and the evidence adduced at the trial, we consider it apt to quote the charge framed against respondent:-

"25th day of August 04 agreed to do an illegal act by illegal means and same act was done in pursuance of the agreement made in Hajipur District-Jail, Murder of Chandrama Singh was committed by some of the conspirators at Village-Chakyaz near Kali Durga Asthan, P.S.- Desari, (Sahdei O.P.) District-Vaishali at thereby committed an offence punishable U/s 302/120B of the IPC."

4. A *fardbeyan* of the informant, Birendra Prasad Singh, recorded by the Incharge of Sahdeyi Police Out Post in Vaishali District, dated 25.08.2004, was the basis for registration of Desari (Sahdei OP) PS case No. 147 of 2004, which finally gave rise to the aforesaid Sessions Trial No. 445 of 2004.

5. Chandrama Singh is the deceased, who, according to the First Information Report, was killed by Shailu Singh and Subhash Singh with the aid of other co-accused persons. When the deceased was travelling as a pillion rider in a motorcycle with Anil Rai (PW-12), the aforesaid accused persons shot at the deceased from close range leading to his death. Political rivalry, arising out of election to the post of Pramukh of Sahdei Bujurg Prakandh, was described to be the reason behind the occurrence. A few days before the occurrence, election for the post had taken place, wherein the deceased is



said to have supported one Upendra Kumar Rai, who was finally elected, whereas the respondent was supporting the candidature of someone else for the said post. Angered by the act of the deceased supporting said Upendra Kumar Rai, the respondent is said to have conspired, with other persons, to get the deceased killed. It was mentioned in the First Information Report that the named accused persons had met the respondent, in Hajipur Jail, in order to chalk out a plan to kill the deceased.

6. The police, upon completion of investigation, submitted *charge sheet* against the accused persons including the present Opposite party. The charge, as quoted above, was subsequently framed for offences punishable under Sections 302/120B of the Indian Penal Code.

7. At the trial, altogether 13 witnesses were examined and out of them, P.Ws. 1 to 6 were declared to be hostile to the prosecution. Informant could not be examined as he had died out of illness, much before the commencement of the trial. P.W.13, the Investigating Officer, was also declared hostile to the prosecution. The doctor was examined as P.W.10, who proved the *post-mortem* report.

8. Sons of the deceased, namely, Deepak Kr. Singh and Abhishek Kr. Singh, were examined as P.Ws. 7 and 11 respectively. The widow of the deceased was examined as P.W.8. One Anil Rai was examined as P.W.12, whereas his

maternal uncle, Madan Rai, was examined as P.W.12, who supported the prosecution case of involvement of the respondent as conspirator in commission of the offence.

9. The learned trial Court, upon analysis of the evidence on record, both oral and documentary, arrived at the conclusion that the prosecution could not establish the charge of conspiracy in commission of the offences against the respondent and the learned trial Court, accordingly, recorded his acquittal by the impugned judgment.

10. Mr. Anjani Kumar, learned Additional Advocate General No.6, appearing on behalf of the State of Bihar, has submitted that the respondent is a dreaded criminal and, out of fear, many of the prosecution witnesses, who could have thrown light on the true state of affairs, turned hostile to the prosecution. He has further submitted that the learned Sessions Judge failed to take into account the evidence of P.Ws. 7,8,9,11 and 12 in their correct perspective and acquitted the respondent of the charge of conspiracy. He has submitted that the evidence of these witnesses indicate that the respondent was seriously opposed to the deceased favouring candidature of said Upendra Kumar Rai for election to the post of Pramukh of the Sahdei Bujuarg Prakandh and that there was meeting of mind between the respondent and the actual perpetrators of the murder of the deceased. He has also submitted that there cannot be

definite evidence of charge of conspiracy as conspiracies are hatched up in clandestine manner and added that the learned Sessions Judge ought to have considered the facts and circumstances in their entirety before arriving at his conclusion, but he failed to do.

11. We have perused the impugned judgment and order passed by the learned Sessions Judge and other materials on record. We have given our anxious consideration to the submission made on behalf of the appellant, State of Bihar as well.

12. As has been noticed above, 7, out of 13 witnesses, were declared hostile to the prosecution and, in our opinion, nothing is available, in their evidence, to support, in any manner, the prosecution's case of the respondent having conspired to get the deceased killed. This takes us to consider the evidence of other prosecution witnesses, namely, P.Ws. 7,8,9,11 and 12 to test the correctness of the impugned judgment.

13. All these witnesses (P.Ws.7,8,11 & 12) are consistent in their deposition that respondent was opposed to the candidature of said Upendra Kumar Rai for election to the post of Pramukh, whereas the deceased was supporting Upendra Kumar Rai's candidature. This witness has deposed that much after the date of occurrence, the said Upendra Kumar Rai and Madan Rai



(P.W.9) were lodged in the same Hajipur jail in connection with some case and he had gone to meet them in jail. According to him, he heard the respondent telling some other persons that he had got killed the deceased. At the cross-examination, however, this witness said that he had not filed any application for meeting the aforesaid persons, namely, Upendra Kumar Rai and Madan Rai in jail nor had he taken permission from the jail authority for said meeting. It further appears that he did not specify the names of the persons to whom the respondent was talking and saying that he was instrumental in getting the deceased killed. The wife of the deceased, P.W.8, in her deposition, has said that she was receiving threatening calls, on her phone, from henchmen of the respondent. She has also stated that the deceased used to tell her that the henchmen of the respondent were threatening him. At the cross-examination, however, she said that she was never threatened by the respondent and she learnt about threats being given by the respondent from her co-villagers. P.W.9, who is said to have met the respondent in Hajipur Jail, where both of them were lodged, in his deposition, has said that the respondent had told him that he was instrumental in getting him arrested and lodged him in the said jail. According to him, the respondent also told him that he would also have been killed along with the deceased on that date, had he not stayed back. P.W.11, another son of

the deceased, has merely stated that respondent and his henchmen used to threaten the deceased, because he was instrumental in the election of Upendra Kumar Rai as Pramukh of the said block, which he used to discuss. P.W.12 is the maternal nephew of said Upendra Kumar Rai, who has deposed that the henchmen of respondent used to torture him and pressurize him to not give evidence against him at the trial.

14. Section 120A of the Indian Penal Code defines criminal conspiracy as under:-

- "120A. Definition of Criminal Conspiracy- When two or more persons agree to do, or cause to be done,*
- (1) an illegal act, or*
 - (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:*

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

15. In order to prove criminal conspiracy, prosecution is required to prove that the accused had agreed to do or cause to be done, an act; and that the said overt act was done by one or more of the accused persons in pursuance of the said agreement. Evidently, in order to prove a charge under Section 120B of the Indian Penal Code read with a substantive provision (in the present case under Section 302 IPC), onus is upon the prosecution to prove beyond reasonable doubt that there was meeting of mind between the respondent and the assailants in

order to establish charge of conspiracy for commission of the offence of murdering the deceased and that the offence was committed pursuant to the conspiracy.

16. In the present case, we find that there is no evidence to substantiate the fact that the persons, who were instrumental in the commission of the actual offence of murdering the deceased, had conspired with the respondent. The limited evidence, which are available on record to prove the charge of conspiracy against the respondent, are the depositions of PWs 7 and 9 only. P.W.7 has deposed that he had gone to Hajipur jail to meet Madan Rai (P.W.9), who was also in jail custody and, in course of meeting with Madan Rai, the respondent was found telling someone that he had got the deceased killed. This witness has not specified the name of the person to whom the respondent is claimed to have said this fact. P.W.9 has deposed that respondent had told him, when both were in custody in the same jail, that he had got the deceased killed. The evidence of these witnesses is not sufficient to prove beyond reasonable doubt criminal conspiracy punishable under Section 120B of the Indian Penal Code.

17. In order to prove a criminal conspiracy, there must be direct or circumstantial evidence to show that there was meeting of mind between the two or more persons to commit the offence.

18. In our opinion, the circumstances, available on the basis of evidence on record, do not give rise to an inference of meeting of mind between the respondent and actual perpetrators of the crime. It is well settled principle that for circumstantial evidence to furnish proof of guilt, it has to be such that it cannot be explained in any other reasonable hypothesis except the guilt of the accused.

19. Further, the view, taken by the learned trial Court recording acquittal of the respondent, is a reasonably possible view, which need not be interfered with, in the facts and circumstances of the case and materials available on record, as discussed above.

20. We do not find any merit in this appeal.

21. This appeal does not deserve admission and stands dismissed accordingly.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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