

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.16 of 2015

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

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Krishna Singh, son of Late Tulsi Singh, R/o village - Bishunpur, P.S. - Jammo,
District - Siwan. Appellant

Versus

1. The State of Bihar.
 2. Bachcha Singh son of Laxmi Ram Singh
 3. Madan Bind son of Kariman Bind
 4. Kavleshwar Bind son of Mitu Bind
 5. Jaleshwar Bind son of Horil Bind
 6. Mangal Bind son of Kariman Bind
 7. Pushpendra Singh, son of Bachcha Singh
- All R/o village - Bishunpur, P.S. - Jammo, District - Siwan.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Yogendra Prasad Sinha, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 17-08-2015

This application under Section 378(4) of the Code of Criminal Procedure (For short 'the Code') is directed against the judgment and order dated 2.3.2015 passed by the learned Adhoc Additional District & Sessions Judge-III, Siwan in Sessions Trial No. 95/2012/Complaint Case No. 935 of 1998 whereby the opposite party nos. 2 to 7 have been acquitted of the charge under Section

302 read with 34 of the Indian Penal Code.

The criminal law was set into motion on the basis of a complaint filed by P.W. 1 Krishna Singh on 06.08.1998 in respect of an occurrence which is said to have taken place on 21.07.1998. It has been stated in the complaint that on 21.07.1998 at about 8:00 p.m. son of the complainant, namely, Anil Kumar Singh had gone to purchase flashlight cells and after purchasing the cells, when he reached near “chah” (a particular place of the village), the accused persons, namely, Bachcha Singh, Pushpendra Singh, Jatin Bind, Kavleshwar Bind, Suresh Bind, Birendra Bind, Mangal Bind, Ramchandra Bind, Rajaram Choudhary, Dara Chaudhary and Madan Bind being armed with *lathi* and danda indiscriminately assaulted him as a result of which he died. When the complainant tried to intervene, the accused persons chased him with pistol. The motive behind the occurrence is stated to be an altercation which had taken place between the accused Pushpendra Singh and the deceased three days prior to the alleged occurrence. It is stated that the matter was reported to the police and the doctor had conducted postmortem examination on the dead body of the deceased. However, when the complainant came to know that the police had taken no action on the information given to them, the complainant filed a complaint case on 06.08.1998 after performing the last rites.



Initially, the Magistrate had dismissed the complaint in exercise of power conferred under Section 203 of the Code after conducting inquiry under Section 202 of the Code but the complainant went in revision and the revisional court set aside the order passed by the Magistrate under Section 203 of the Code and, thereafter, summons were issued against the accused persons by the learned Magistrate under Section 204 of the Code. Subsequently, the case was committed to the court of sessions for trial. The trial court framed charges under Section 302 read with 34 of the Indian Penal Code against the accused persons to which they pleaded not guilty and claimed to be tried. Accordingly, the trial commenced.

Let it be noted here that in course of trial, the accused Surendra Bind, Bipendra Bind, Ramchandra Bind, Rajaram Choudhary and Dara Choudhary died and, as such, the prosecution case as against them got abated.

In course of trial, in all, three witnesses were examined on behalf of the prosecution. They are P.W. 1 Krishna Singh, the complainant himself, P.W. 2 Arjun Singh, an agnate of the complainant and P.W. 3 Om Prakash Shahi, a formal witness, who had identified the signature of the advocate Kishore Narayan Singh on the complaint which has been marked as Ext. 1/1.

In cross-examination, the complainant has admitted that



his son was made accused in some other cases of serious nature. He has also admitted that the police had instituted Jamo P.S. Case No. 73 of 1998 under Sections 394 and 412 of the Indian Penal Code and Sections 25 and 27 of the Arms Act against one Mohan Bind and his son Anil Kumar Singh and in the said case, his son Anil Kumar Singh was shown as deceased. Though P.W. 1 states that his son was falsely implicated in the said case, it would appear from the evidence on record that the deceased Anil Kumar Singh was killed by a mob after being caught while committing dacoity in the house of appellant no. 4 Kavleshwar Bind and aforesaid Jamo P.S. Case No. 73 of 1998 was instituted in that regard. It would further appear from the judgment of the trial court that P.W. 2 Arjun Singh has admitted in cross-examination that when he himself and P.W. 1 Krishna Singh reached at the place of occurrence, the victim Anil Kumar Singh was already dead.

In view of the evidence led during trial, the trial court has given a finding that neither P.W. 1 Krishna Singh nor P.W. 2 Arjun Singh would have witnessed the actual assault caused to the victim as a result of which he died. The trial court disbelieved the story of the prosecution on account of the following facts:- (i) that there was inordinate delay in institution of complaint; (ii) that the post mortem report of the deceased was not brought on record; (iii)

that the facts of Jamo P.S. Case No. 73 of 1998 were deliberately withheld; (iv) that the witnesses examined during trial were related and interested witnesses; (v) that there were material contradictions in the testimonies of the witnesses examined during trial; and, (vi) that a copy of the report submitted to the police was not brought on record.

I find that the trial court has correctly appreciated the evidence on record. It has given clear, cogent and convincing reasons for disbelieving the prosecution version.

In that view of the matter, I find no merit in this application. Accordingly, the application for grant of leave to file an appeal, being devoid of any merit, is hereby rejected.

(Ashwani Kumar Singh, J.)

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