

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.31 of 2016

Arising Out of PS.Case No. -279 Year- 2012 Thana -MOTIHARI MUFASIL District-
EASTCHAMPARAN(MOTIHARI)

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Renu Devi wife of Uday Singh, resident of village- Rupdih, P.S.- Motihari
Muffassil, District- East Champaran

.... Appellant/s

Versus

1. The State of Bihar
2. Sonu Singh @ Sonu Kumar Singh, son of Rameshwar Singh
3. Madan Singh @ Santosh Kumar Singh, son of Rup Narain Singh, both
are residents of village- Jasauli Patti, P.S.- Kotwa, District- East Champaran
.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vijay Shankar Shrivastava

For the Respondent/s : Mr. Ajay Mishra(APP)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

2 08-03-2016

By the judgment and order, dated 06.10.2015,
passed, by the learned 3rd Additional Sessions Judge, East
Champaran at Motihari, in Sessions Trial No. 925 of 2013,
respondent Nos. 2 and 3 herein have been acquitted of charges
under Sections 396, 201, 412 and 120(B) of the Indian Penal
Code and Section 27 of the Arms Act, 1959.

2. The case of the prosecution, as unfolded by the
informant, in the First Information Report, may, in brief, be
described as under:

(i) On 29.08.2012, the informant, namely, Hari Om
Sah, lodged a written report with the Muffasil Police Station,
Motihari, stating therein that, on 27.08.2012, the informant had



sent wheat, worth Rs. 3,50,000/-, to a flour Mill at Muzaffarpur from Village- Pataura, by hiring a truck, bearing Registration No. BR- O6G-3557, from its owner, namely, Umesh Rai and Pramod Rai and when the wheat did not reach Muzaffarpur, at the scheduled time, i.e., at about 10:00-11:00 P.M, the informant tried to contact the driver of the truck, namely, Udai Singh, on his Mobile No. 8651150588, but the same was found to be switched off and, then, he (informant) contacted the owners of the said truck to know the whereabouts of the truck, but the owners of the truck, in question, threatened the informant to implicate him in a false case. Thus, the informant came to believe that the owner of the truck, in collusion with the driver, had embezzled the wheat of the informant.

(ii) On receiving the information, in writing, describing the occurrence, as mentioned hereinbefore, Motihari Mufassil P.S. Case 279 of 2012 was registered against the two owners and the driver of the truck, initially, under Sections 420/406/120B/506 of the Indian Penal Code, but later on, Sections 396, 201, 412/120B of the Indian Penal Code and Section 27 of the Arms Act, 1959 was added.

(iii) On 31.08.2012, the Investigating Officer of the case recovered the truck, in question, in an abandoned condition from near a railway crossing and, in course of investigation, on

03.09.2012, apprehended two persons, namely, Sonu Kumar Singh and Santosh Kumar Singh, and, from their possession, a sum of Rs.90,000/- in cash, one motorcycle and one mobile phone were recovered and a seizure list was, accordingly, prepared in presence of independent witnesses.

(iv) On interrogation, Sonu Kumar made a statement before the police, which led to recovery of the dead body of the driver of the truck.

(v) On completion of investigation, a *charge sheet* was laid, under Sections 396/201/412 /120(B) of the Indian Penal Code read with Section 27 of the Arms Act, 1959, against two accused persons, namely, Sonu Kumar Singh and Santosh Kumar Singh, keeping the investigation pending against the accused persons named in the First Information Report.

3. At the trial, charges, under Sections 396, 201, 412 and 120(B) of the Indian Penal Code, were framed against both the accused. The accused pleaded not guilty to their respective charges.

4. In support of their case, prosecution examined altogether 8 (eight) witnesses. Accused were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examinations aforementioned, the accused denied that they had committed the offences, which were alleged to have

been committed by them, the case of the defence being that of denial. However, no evidence was adduced by the defence.

5. Having, however, arrived at the finding that the charges against the accused-respondent Nos. 2 and 3, under Sections 396, 201, 412 and 120(B) of the Indian Penal Code, had not been proved beyond reasonable doubt, the learned trial Court acquitted them accordingly.

6. Being aggrieved by the acquittal of the respondent Nos. 2 and 3 herein, under Sections 396, 201, 412 and 120(B) of the Indian Penal Code read with Section 27 of the Arms Act, 1959, the widow of the deceased driver has preferred this appeal.

7. Heard Mr. Vijay Shankar Srivastava, learned Counsel for the appellant, and Mr. Ajay Mishra, learned Additional Public Prosecutor for the State.

8. It has been submitted by Mr. Vijay Shankar Srivastava, learned Counsel, for the appellant, that the findings, reached by the learned trial Court, leading to the acquittal of the respondent Nos. 2 and 3 herein, are perverse inasmuch as the learned trial Court has not, according to Mr. Srivastava, correctly appreciated the evidence available on record.

9. On the other hand, Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing for the State, has

submitted that the learned trial Court has assigned good and sufficient reasons for coming to the finding that the charges against the respondent Nos. 2 and 3 herein could not be proved and, therefore, warranted their acquittal.

10. Coming to the merit of the case, we, first, take note of the evidence of PW 5, who is informant. According to PW 5, he, having loaded wheat, worth Rs. 3,50,000/-, at the *darwaza* of one *Chandrika Sah*, on a truck, taken on hire from its owner, namely, Umesh Rai and Pramod Rai, sent it to a flour Mill at Muzaffarpur. When the wheat did not reach its destination at Muzaffarpur within the scheduled time, the informant contacted the owners of the truck, who told that the wheat would be delivered. Thereafter, on 28.08.2012, PW 5 lodged a written report with the police in this regard. PW 5 has deposed that Udai Singh was the driver and Sonu Kumar Singh was the *khalasi* (i.e., cleaner) of the said truck.

11. PW 5 has further deposed that that 2-3 days after institution of the case, he came to know from the police that the wheat had been sold after killing the driver of the truck and the abandoned truck had been recovered near Mehshi Gumti. PW 5 has further deposed that he was informed by the police about the recovery of Rs. 90,000/- from Sonu Kumar, which was a part of the price of looted wheat and that the rest of the sale proceeds



were distributed amongst the miscreants. PW 5 was also apprised of the statement of Sonu Kumar, on whose disclosure, the dead body of the driver was recovered. The informant further claimed to have seen the dead body of the Udai Singh (driver). PW 5 identified Sonu Kumar Singh, who was present in Court, as *khalasi* (i.e., cleaner) of the said truck; however, he (PW 5) was unable to identify co-accused Santosh Kumar Singh, who was also present in Court.

12. In their evidence, the witnesses, namely, PW 1, PW 2, PW 3 and PW 4 have deposed that they saw, about two years back, wheat of Hari Om Sah being lifted from the door of Chandrika Sah and the loaded truck moving towards Muzaffarpur. P.W. 1 (Aslam Ansari) has deposed that Sonu was *khalasi* (i.e., cleaner) of the truck and has claimed to identify Sonu Singh, but he has no information about the owner of the truck and the quantity of wheat loaded on the truck.

13. PW 2 (Jitendra Kumar) has deposed that he saw the truck being driven towards Muzaffarpur and, later on, he got the information about the loot of wheat.

14. In this case, there are three Investigating Officers. The 1st Investigating Officer of the case (P.W. 6) has stated that on receiving information, he had visited the place of occurrence and had taken the statement of P.W. 1, P.W. 3 and



P.W. 4 and, on 31.08.2012, he had also recovered the truck, in an abandoned condition, near railway Gumti, at Mohabbat Chapra, within Mehsi Police Station and, on suspicion, he apprehended two persons, namely, Sonu Kumar Singh and Santosh Kumar Singh, and also recovered Rs. 90,000/- from joint possession of Sonu Kumar Singh and Santosh Kumar Singh and a seizure list was accordingly prepared in presence of independent witnesses. On the basis of the statement of accused Sonu Kumar Singh, he (PW 6) had recovered the dead body of the driver, Udai Singh. P.W. 6 has clarified, in his deposition, that the dead body of the driver of the said truck was recovered by Modipur Police. PW 6 has further deposed that he had not investigated as to whether a Khalasi was present in the truck or not. P.W. 6 has stated at Paragraph 41 of his evidence that the prosecution witnesses, including the informant (PW 5), had not disclosed before him about the presence of Santosh Kumar Singh as the cleaner of the said truck. Further, he had also not informed the Chakia police including the Dy. Superintendent of Police about the arrest of the accused.

15. P.W.7 is the Second Investigating Officer. His role was confined to the submission of the *charge sheet* against both the apprehended accused persons after receiving the supervision note of the Deputy Superintendent of Police.

16. P.W. 8 is the third Investigating Officer and he has only proved the reports of Forensic Science Laboratory as well as the *post mortem* report.

17. From the judgment and order, under challenge, it transpires that on the basis of the statement of the accused Sonu Kumar Singh, the dead body of the driver of the truck was recovered; whereas the truck, in question, was already recovered by the police before Sonu Kumar Singh allegedly made his statement. It is also clear that the Investigating Officers had not recovered the dead body of the driver of the said truck; rather, according to the deposition of PW 6, the dead body was recovered by Modipur Police and, thus, it cannot be held that the dead body of the driver of the said truck was recovered on the basis of the statement of accused Sonu Kumar Singh inasmuch as the police personnel, who had recovered the said dead body, had not been examined, at the trial, and the said piece of evidence remained, therefore, not proved. The prosecution has also failed to bring on record any material with regard to the place, date and time of the recovery of the dead body of the driver of the said truck. The prosecution has further failed to bring on record the inquest report, if any.

18. As such, in our considered view, the learned trial Court has rightly come to the finding that it could not be

conclusively proved that the dead body of the driver of the truck had been recovered on the disclosure of the co-accused Sonu Kumar Singh, in his alleged statement made to the police.

19. So far as co-accused, Santosh Kumar Singh, is concerned, the prosecution witnesses have not said anything except the Investigating Officer, and as per the evidence of the Investigating Officer (PW 6), he apprehended, on suspicion, accused Sonu Singh, whereas accused Santosh Kumar Singh was also present with accused Sonu Singh and Rs. 90,000/- in cash, one motorcycle and one mobile phone were alleged to have been recovered from their possession and a seizure list was accordingly prepared. Yet another anomaly in the trial is that the two independent seizure list witnesses have not been produced before the learned trial Court in order to prove beyond reasonable doubt the factum of seizure list. The prosecution has totally failed to produce at the trial the seized items including the cash amount of Rs. 90,000/-. Even recovery and seizure aforementioned could not be proved beyond reasonable doubt. This apart, there is not even an iota of evidence to show that the said amount of Rs.90,000/- were the sale proceeds of wheat.

20. Considering the facts and circumstance of the present case, the learned trial Court came to the conclusion that the evidence available on record are not so strong, complete,

consistent and connected with each other so as to prove the guilt of the accused persons in the alleged commission of offences. Furthermore, it could not be held that the accused were in agreement for committing the offence and there is no direct or indirect admissible evidence against them to prove the charges of conspiracy. Accordingly, the learned trial Judge acquitted them of the charges framed against them.

21. In view of the facts, as discussed above, we hold that the prosecution has miserably failed to establish their case beyond reasonable doubt and, as such, we find no infirmity, legal or factual, in the reasoning of the trial Court, while acquitting the accused persons.

22. We, thus, find no merit in this appeal. It is accordingly dismissed.

(I.A. Ansari, ACJ)

(Anjana Mishra, J)

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