

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.866 of 2015

(Against the Judgment and Order of acquittal dated 22.07.2015 passed by the 4th Additional Sessions Judge, Bhojpur, Ara, in Sessions in Sessions Trial No.389 of 2013, arising out of Behea P.S. Case No.180 of 1997/G.R. No.2859 of 2007).

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Ran Vijay Singh, son of Sri Nand Kishore Singh, resident of village- Hetampur, Police Station.- Tiyar, District- Bhojpur at Ara

.... Informant/Appellant.

Versus

1. The State of Bihar.
2. Subash Chandra Singh @ Subash Master, son of late Ram Niwas Singh @ Ramnewaj Mahto, resident of village- Baurahwa Baba (Shobha Tola), Police Station.- Jagdishpur, District- Bhojpur at Ara.
3. Raj Kishore Mahto @ Budha Mahto, son of late Saryu Singh, resident of village- Saraiya Tola, Police Station.- Jagdishpur, District- Bhojpur at Ara
4. Suresh Mahto, son of Late Uma Shanker Singh, resident of village- Bahor Tola @ Bahoran Tola Police Station.- Jagdishpur, District- Bhojpur at Ara.
5. Prayag Mahto, son of Sheo Bachan Singh, resident of village- Munshi Tola, Police Station- Jagdishpur, District- Bhojpur at Ara.
6. Ajay Singh, son of Late Ram Niwas Singh @ Ramnewaj Mahto, resident of village- Baurahwa Baba (Shobha Tola), Police Station-Jagdishpur, District- Bhojpur at Ara.
7. Ajay Mahto, son of Late Ram Nath Singh, resident of village- Ganpat Tola, Police Station.- Jagdishpur, District- Bhojpur at Ara.
8. Dhanraj Mahto, son of Ram Briksh Mahto, resident of village- Bahor Tola @ Bahoran Tola, Police Station- Jagdishpur, District- Bhojpur at Ara.
9. Aappu Mahto, son of Manohar Singh, resident of village- Bahor Tola @ Bahoran Tola, Police Station- Jagdishpur, District- Bhojpur at Ara.

.... Accused Persons/Respondents.

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Appearance :

For the Appellant : M/s. Prem Kumar Jha, Ram Chandra Singh, Jitendra Kumar Singh and Shankar Kumar, Advocates.

For the State : Mr. A.K. Sinha, A.P.P.

For the Respondents : M/s. Rajendra Narayan, Senior Advocate and Om Prakash Singh, Advocate.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 21-06-2016

The Appellant, who is the Informant of Behea P.S. Case

No.180 of 1997/G.R. No.2859 of 1997, seeks to set aside the Judgment and Order dated 22.07.2015, passed by the 4th Additional Sessions' Judge, Bhojpur, Ara, in Sessions Trial No.389 of 2013, whereunder the Respondent Nos.2 to 9 have been acquitted.

2. It appears that the trial court acquitted the Respondent Nos.2 to 9 since he did not find any evidence to establish that the Respondent Nos.2 to 9 had caused the death of the deceased.

3. The case of the prosecution, according to the Informant, is that on 24.11.1997, his younger brother Rana Singh alongwith his brother-in-law Suresh and Hari Narayan Mahto had gone to the garage of Alizan Mistri for repairing the tractor. In the meanwhile, at about 05.30 P.M., the Accused Subash Master came to the garage and went alongwith Rana Singh to the shop of Prayag Mahto where they ate and drunk liquor till 08.00 P.M. In this period, Suresh Singh and Hari Narayan Mahto were seated nearby having tea so they knew that Subash Master had gone to the house-cum-shop of Prayag Mahto alongwith Rana Singh. Thereafter, Suresh Singh and Hari Narayan Mahto went and asked Prayag Mahto about the deceased but no satisfactory reply was given and, hence, the present case.

4. It has been submitted on behalf of the Appellant that the police had all along been in connivance with the Accused-Respondents. In fact, they were reluctant even to institute a case since

the Accused were renowned criminals as also no proper investigation was done which alone would have concluded that that it was the Accused who were involved in committing the murder of the deceased of Rana Singh, whose dead body was recovered about two weeks later from a well.

5. During trial, the prosecution examined altogether 10 witnesses.

6. P.W.1 Sajjan Singh is a formal witness, who proves his signature on the Inquest Report as Ext.1 whereas P.W.2 Ajay Kumar has been declared hostile.

7. P.W.3 Suresh Singh is on the point of having seen the deceased drinking with some of the Accused where the rest of the Accused were seated on an Amabassdor car standing outside the shop variously armed. Later, the deceased went missing and his dead body was recovered 15 days later from the well wrapped in a gunny bag.

8. P.W.4 Birendra Singh, P.W.5 Ashok Singh and P.W.6 Baban Chaudhary have been declared hostile.

9. P.W.7 Ran Vijay Singh is the Informant, who corroborated his Fardbeyan to the extent what he had stated therein and also that there was incriminating material against the Accused persons to deduce that it was they who had taken away the deceased after which his dead body was recovered.

10. P.W.8 is Dr. Rajiv Ranjan, who conducted the Post-Mortem Examination of the deceased on 09.12.1997 but could not opine conclusively about the cause of the death of the deceased and stated that it was between 7-35 days.

11. P.W.9 Umesh Kumar Singh is the Investigating Officer, who confirms the fact that the Informant had instituted case against the Accused. He inspected the place of occurrence and found the same to be a shop of Prayag Mahto. He also confirms the factum of recovery of the dead body and preparation of Inquest Report and Post-Mortem Examination Report.

In his cross examination, there is nothing which is of note,

12. P.W.10 Ramesh Dubey is a Police Officer, who is on the point of recovery of the dead body of the deceased on 08.12.1997. He appears to be a formal witness.

13. On going through the evidence of the aforesaid witnesses, we find that even though, subsequently, the prosecution has developed its case that the rest of the Accused were seen standing outside the house where the deceased was drinking seated in an Ambassdor car with arms but this fact was not stated in the First Information Report. Also, it appears to be a case of the deceased having been at best last seen with some of the Accused on which sole evidence the Trial Court rightly acquitted the Respondent Nos.2 to 9

holding it insufficient for conviction.

14. In view of the aforesaid discussions, finding no merit in this appeal, the same is dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

A.B. Bhardwaj/Pradeep Srivastava.

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