

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.903 of 2015

Arising Out of PS.Case No. -8 Year- 2007 Thana -NAGARNAUSA District- NALANDA
(BIHARSHARIFF)

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1. Naresh Pandit S/o Late Saudagar Pandit, Resident of Village- Muradali Chak,
PS- Nagarnausa, Distt.- Nalanda.

.... Appellant/s

Versus

1. The State of Bihar.
2. Raj Kumar Pandit S/o Late Brahmdeo Pandit, Resident of Village- Muradali
Chak, PS- Nagarnausa, Distt.-Nalanda.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Chandra Mohan 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: 15-01-2016

The present petition for appeal under the proviso to
Section 372 of the Code of Criminal Procedure, 1973, has been
preferred by the appellant, who was the informant of Nagarnausa PS
Case No. 08/2007, feeling aggrieved by the judgment and order, dated
12.08.2015, delivered in Sessions Trial No. 234 of 2008, by learned 6th
Additional Sessions Judge, Nalanda, at Biharsharif, whereby the
learned trial Court has recorded acquittal of the respondent No.2.

2. Respondent No.2 stood charged with the offence
punishable under Section 302 of the Indian Penal Code, the deceased
being father of the appellant.



3. The *fardbeyan* of the appellant, recorded by the police Officer, on 10.08.2007, at 9 A.M., is the basis for registration of Nagarnausa P.S. case No. 08/2007 aforesaid. According to the prosecution's case, as narrated in the *fardbeyan*, on the previous evening, at 6 P.M., on 09.08.2007, the appellant's father had gone to the field to answer the call of the nature. While returning back, he met with the respondent No.2 herein, who is a cousin of the deceased. There occurred some altercation between the two, whereupon respondent No.2 is said to have gave *lathi* blows on the person of the deceased causing grievous injuries on his head. The deceased is said to have fell down and become unconscious. One Saroj Devi, who was working in the nearby field, is said to have informed the informant about the occurrence, whereafter the informant rushed to the place of occurrence. As per the *fardbeyan*, Jagdish Prasad, Jamum Mahto and few others had attempted to intervene between the informant's father, and his wives, in order to stop the quarrel. The deceased was taken to a nearby hospital, where he was provided with first aid and, thereafter, when he was being taken to Patna for further treatment, he breathed his last. In order to explain the delay in institution of the First Information Report, it has been stated in the *fardbeyan* that since it was quite late and night, the informant did not inform the police and came back to his village.

4. The police, upon completion of investigation, submitted *charge-sheet* against respondent No.2 for the offence punishable under Section 302 of the Indian Penal Code. Learned Chief Judicial Magistrate took cognizance of the offence, on 29.03.2008, on the basis of the *charge-sheet* and material available in the case diary of the

offence under Section 302 of the Indian Penal Code. The case was committed to the Court of Sessions, where charge, under Section 302 of the Indian Penal Code, was framed against respondent No.2. Since he pleaded not guilty, trial against him commenced.

5. At the trial, altogether four witnesses were examined including the appellant as P.W.1.

6. Learned trial Court, upon analyzing the evidence adduced at the trial, came to a conclusion that the charge against respondent No.2 could not be proved beyond all reasonable doubts and, accordingly, recorded his acquittal by the impugned judgment. He, while analyzing the evidence and considering as to whether the charge against respondent No.2 could be said to have been proved beyond all reasonable doubt, noticed that there was no eye-witness to fully support the prosecution's case and even the doctor was not examined to corroborate the evidence adduced at the trial.

7. Mr. Chandra Mohan Singh, learned counsel, appearing on behalf of the appellant, has submitted that learned trial Court committed an error by wrongly appreciating the evidence, adduced at the trial in support of the prosecution's case, and recorded acquittal merely on the ground that the doctor was not examined. He has submitted that the prosecution witnesses fully supported the case and the evidence adduced at the trial was sufficient to arrive at the conclusion of the guilt of the Respondent No.2.

8. We have also heard Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing for the State and have perused the materials on record.



9. Upon perusal of the materials on record, we find that the informant is certainly not an eye-witness of the occurrence. According to the *fardbeyan* and deposition of the informant/appellant (P.W.1) at the trial, he was informed about the occurrence by one Saroj Devi. According to the prosecution's case, the said Saroj Devi was working in the nearby field and, on having seen the occurrence, she proceeded and had informed the informant/appellant. The said Saroj Devi has not been examined as a witness. The evidence of P.W. 1 is, therefore, nothing, but hearsay. P.W.2 (Dinesh Pandit) is also not an eye-witness as is evident from the materials on record and the impugned judgment. He has also stated that said Saroj Devi had seen the occurrence and informed others. The deposition of P.W.3 (Rajendra Prasad) also refers to Saroj Devi, who is said to have informed him about the occurrence, which is the basis of his evidence at the trial.

10. Evidently, thus, no eye-witness supported the prosecution's case at the trial. All the witnesses have described Saroj Devi to be the eye-witness of the occurrence, who had informed others about the occurrence, but Saroj Devi was not examined as a prosecution witness at the trial.

11. Taking the above facts into account, coupled with the fact that the doctor was not examined, we do not find any error in the impugned judgment and order passed by learned VIth Additional Sessions Judge, Nalanda, at Biharsharif, in Sessions Trial No. 234 of 2008, recording acquittal of the respondent No.2.

12. The view, taken by the trial Court on the basis of evidence adduced at the trial, as discussed above, is a reasonably

possible view, which does not require interference in the present appeal against acquittal.

13. This appeal is, therefore, not to be admitted and stands accordingly dismissed.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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