

IN THE HIGH COURT OF JUDICATURE AT PATNA
Govt. Appeal (DB) No.1 of 2016

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

1. The State Of Bihar

.... Appellant

Versus

1. Sushil Kumar, Son of Sudhir Singh, Resident of Village- Pyarepur, Police Station Samsera, District Nalanda.

.... Respondent

Appearance :

For the Appellant : Mr. Dilip Kumar Sinha, APP

For the Respondent/s : NONE

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

AND

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 29-03-2016

The appellant herein, State of Bihar, has filed this application, under Section 378 (1) (3) of the Code of Criminal Procedure, against the acquittal of the sole respondent herein, under Section 302 read with Section 34 of the Indian Penal Code, by the judgment and order, dated 05.06.2015, passed, in Sessions Trial No. 919 of 2012, by learned Additional Sessions Judge V, Begusarai.

2. The case of the prosecution is, in brief, as follows:

(i) On 30.05.2012, at about 09:00 AM, Sonu Kumar @ Balram Singh (since deceased), younger son of the informant, Braj Nandan Singh, left his house, with a cash amount of Rs. 500/-, for Ajay Gas Agency with Gas Connection Card and went to the STD booth of one Bablu Rai @ Sanjeev



Kumar at Khorampur Dhala and from there, he (i.e., Sonu Kumar) proceeded towards Begusarai along with one Sushil Kumar (respondent herein), brother-in-law of Bablu Rai and he (i.e. deceased) was seen at Durga Asthan and Badalpura Wine Shop along with Sushil Kumar. When Sonu Kumar did not reach home, the informant, at 05:30 PM, talked to Sonu Kumar on his mobile phone and Sonu Kumar, in turn, informed his father (i.e., informant) that he was with Sushil Kumar at Badalpura and would return later on, but when Sonu Kumar did not return home till night, the informant, once again, tried to contact Sonu Kumar on his mobile phone, but this time, the mobile phone of Sonu Kumar was found switched off and on the following morning, i.e. on 30.05.2012, at 06:00 AM, the informant was informed that the dead body of his son, Sonu Kumar, was lying in Sihma Diyara and, thereafter, the informant went there and found the dead body of his son, Sonu Kumar, having marks of multiple injuries on his neck, nose, face, chest, stomach, waist, etc.

(ii) The reason behind the occurrence, as alleged by the informant, is that the deceased had executed sale deed of two katthas of land in favour of the father of the respondent herein, Sanjiv Kumar @ Bablu Rai and Mani Rai @ Sheo Shankar Rai, but the informant and his family members were not giving the possession of the said land to them and, thus,

the informant apprehended that Sanjiv Kumar @ Bablu Rai, Mani Rai @ Sheo Shankar Rai and Sushil Kumar (respondent herein) had killed his son, Sonu Kumar.

(iii) On receiving the information about a dead body lying near Sihma Diyara, police reached the place of occurrence and, on the oral statement of the informant, Braj Nandan Singh, Matihani Police Station Case No. 56 of 2012 was registered, under Section 302/34 of the Indian Penal Code, against accused Sushil Kumar.

(iv) During investigation, *inquest* was held on the dead body of Sonu Kumar, which was also subjected to *post mortem* examination. On completion of investigation, a *charge sheet* was laid, under Sections 302/120B/34 of the Indian Penal Code, against the sole accused, Sushil Kumar.

3. At the trial, when a charge, under Section 302 read with Section 34 of the Indian Penal Code, was framed against the accused, he pleaded not guilty thereto.

4. In support of their case, prosecution examined as many as 10 witnesses. The accused was, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in his examination aforementioned, the accused denied that he had committed the offence, which were alleged to have been committed by him, the case of the defence being that the deceased was killed by someone else with whom he was on

inimical terms and because of the land dispute with the family of the accused, the informant lodged the case falsely against him.

5. The learned trial Court, having reached the conclusion that the case, as against the accused, under Section 302 read with Section 34 of the Indian Penal Code, had not been proved beyond reasonable doubt, acquitted him accordingly.

6. Being aggrieved by the acquittal of the accused, the State of Bihar has, as indicated above, preferred this appeal.

7. We have heard Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor, appearing for the State of Bihar. We have also perused the judgment and order, under challenge, and have also scrutinized the materials available on record.

8. Mr. Sinha, learned Additional Public Prosecutor, has submitted that though there is no eye-witness to the alleged killing of the deceased and though all the prosecution's witnesses are closely related to each other, yet what is noticeable is that the learned trial Court has failed to appreciate the fact that the deceased was last seen in the company of the accused-respondent herein as all the prosecution's witnesses have deposed to this effect and, thus,

the learned trial Court was in error, while acquitting the respondent herein of the charge framed against him under Section 302 read with Section 34 of the Indian Penal Code.

9. From the judgment and order, under challenge, it transpires that there are contradictions in the deposition of the prosecution's witnesses. While PW 8 (Braj Nandan Singh, the informant), has deposed that the deceased, accompanied by the respondent herein and Puranjay Rai, went to Ranjeet Hotel to enjoy, PW 8 did not disclose as to how he came to know that the accused, along with his brother, had gone to Ranjeet Hotel. PW 8 has also deposed that the deceased was the informant of Birpur Police Station Case No. 07 of 2010 and his daughter was made accused in that case and that his daughter, Khusboo, had filed an anticipatory bail application before the learned Sessions Judge; whereas the documents, filed on behalf of the defence, clearly shows that the deceased had lodged Birpur Police Station Case No. 07 of 2010 with regard to murder of his brother-in-law, Ritu Raj, implicating therein the daughter of the informant, Khusboo. PW 8 has further deposed that at 8-9 PM, he, along with Pramod and Niranjana, went at Khorampur Chowk, where he found two beetel shops being opened and he (PW 8) returned from the Chowk and went to sleep; whereas PW 6 (Pramod Kumar, full brother of the informant) has deposed that when the deceased



did not return home, he (PW 6), at 11:00 PM, had gone to the house of accused Sushil, but he did not find the accused in the house. PW 1, PW 2 and PW 4 have deposed that when they saw the deceased, he was in drunken state; whereas PW 5 and PW 8, in their deposition, have stated that the deceased did not take wine. PW 3 has deposed that he was present at the bank of river Ganges, when one teacher came and told him that a dead body was lying and when he (PW 3) reached the place of occurrence, he identified the dead body, on the basis of the identity card, as the dead body of Sonu Kumar, and then he (PW 3) informed the informant, but it is strange that the informant (PW 8) has, nowhere, mentioned that PW 3 had informed him about the dead body of Sonu Kumar found lying at Diyara.

10. Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor, has not been able to show any clinching evidence available on record, on the basis of which it could be held, confidently and boldly, that charge framed against the respondent herein has been brought home and the learned trial Court has overlooked any relevant piece of evidence.

11. What needs to be pointed out is that the informant and his deceased son were well aware of the fact that they were on inimical terms with the respondent herein; and yet the deceased accepted the company of the respondent

herein and also took wine in a hotel. It is also worth pointing that when PW 6, who is the full brother of the informant, heard that Sonu Kumar was taking wine with the accused Sushil Kumar, he (PW 6) did not even go to verify this fact. All these facts, when considered together, leave no room for doubt that the accusation, brought against the sole respondent herein, was not trustworthy and the learned trial Court has rightly acquitted the respondent herein.

12. It is settled principle of law that the judgment and order recording acquittal of an accused by a trial Court can be interfered with only when it is shown that the findings of the trial Court are perverse and/or the view taken by the learned trial Court could not be reasonably possible view.

13. In the result and for the foregoing reasons, we are of the considered view that the impugned judgment and order do not suffer from any such infirmity, legal or factual, requiring interference by this Court.

14. This appeal is, therefore, not admitted and stands accordingly dismissed.

(I. A. Ansari, ACJ.)

Prabhakar Anand/-

(Chakradhari Sharan Singh, J.)

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