

IN THE HIGH COURT OF JUDICATURE AT PATNA
SLA No.40 of 2016

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Sk. Sagir, son of Late Sk. Shamshul, Resident of Village-Nayatola
Goaplpur, P. S. Amdabad, District-Katihar

.... Appellant/s

Versus

1. The State of Bihar

Prosecution- Respondent Ist Set.... Respondent/s

2. Sk. Makku alias Mako, son of late nSk. Kutumuddin, resident of village
Naya Toal Gopalpur P. S. Amdabad, District-Katihar
 3. Sk. Sukra son of Sk. Safid, resident of village-Naya Toal Gopalpur P. S.
Amdabad, District Katihar
 4. Sk. Farid alias Sk. Rafid son of Late Sk. Kutumuddin, resident of
village- Naya Tola Gopalpur, P. S. Amdabad, District Katihar
 5. Sk. Dubba son of Sk. Safid, resident of village Naya Toal Goaplpur, P.
S. Amdabad, District Katihar
 6. Sk. Ibral son of Sk. Khenari, resident of village Kewala Milik (Bairiya)
P.S. Amdabad, District Katihar
 7. Sk. Rabbul son of Sk. Khenari, resident of village Kewala Milik
(Bairiya) P.S. Amdabad, District Katihar
 8. Sk. Nafir son of Bholu, resident of village Narayanpur P. S. Manihari,
District Katihar
 9. Sk. Safid son of Late Sk. Kutumuddin, resident of village Naya Toal
Gopalpur, P. S Amdabad, District Katihar
 10. Sk. Tamur son of Late Sk. Kutumuddin, resident of village Naya Toal
Gopalpur P. S., Amdabad, District Katihar.
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Appearance :

For the Appellant/s : Mr. Rajesh Kumar Jha

For the Respondent/s : Mr. Sri Abhimanyu Sharma

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

4 19-12-2016

I. A. No. 2197 of 2016 has been filed for condoning

the delay in filing the present application for leave to appeal to
assail an order dated 06.04.2016 passed by learned Second
Additional Sessions Judge, Katihar in Sessions Trial No. 170/2008
arising out of Complaint Case No. CA-363 of 2005.

2. For the reasons mentioned in the application



seeking condonation of delay, the same is allowed.

3. Though the matter has been listed on the point of limitation, after having condoned the delay with the consent of the learned counsel for the petitioner, this application is being disposed of at this stage itself.

4. The present application for leave to appeal under Section 378(4) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code), has been filed to assail an order dated 06.04.2016 passed by learned Second Additional Sessions Judge, Katihar in Sessions Trial No. 170 of 2008 (arising out of Complaint Case No. CA-363/2005), whereby he has recorded acquittal of the respondents No. 2 to 10. The respondents were charged of commission of offence punishable under Sections 147,148,149 and 302 of the Indian Penal Code at the said trial.

5. The criminal prosecution was set in motion against the respondents with lodging of an F.I.R. being Amdabad P. S. Case No. 25 of 2004 on the basis of *fardbeyan* of the petitioner. According to him, he had purchased 3 kathas of a piece of homestead land from one Sulekha Khatoon over which Opposite party No.9 had unauthorizedly raised a house. The informant asked to remove the unauthorized structure. He flatly refused to vacate the land. A Panchayati was convened, which



failed. On 15.05.2004 in the night when the father of the petitioner was sleeping in Litchi garden, he heard the cry of his father and when he rushed, he found accused persons strangulating the father of the informant. It was alleged that respondents No. 2 and 6 were assaulting the informant's father and on hearing the cry of the informant, the accused persons fled away. When the father of the informant was being taken to Hospital, he died.

6. The police upon completion of investigation submitted final form treating the case to be of mistake of fact. The petitioner had filed a protest-cum complaint petition also just six days after filing of the First Information Report, on 22.05.2004. The Court below accepted the final form submitted by the police and proceeded for enquiry on the basis of the complaint case.

7. On the basis of the said protest-cum-complaint petition and the enquiry held, the respondents were put on trial on the charge of commission of the offence punishable under Sections 147, 148, 149 and 302 of the Indian Penal Code. Learned Court below has recorded acquittal of the said respondents on the grounds, *inter alia*, that no independent witness was produced to corroborate the case of the prosecution and all witnesses produced were highly interested witnesses. The Court below disbelieved the evidence of P. W.2, who claimed to be the witness of dying



declaration. The learned trial Court also took into account the fact that no other prosecution witnesses corroborated the existence of any dying declaration. The trial Court has also considered the evidence of P. W. 4, who claimed that he had witnessed that all the accused persons assaulting his father out of whom, respondent No.2 had stabbed the deceased and respondent No.6 had twisted his neck. P.W. 1 did not corroborate in her evidence that apart from said respondent Nos. 2 and 6, other accused persons were also there for committing the offence. No inquest report was exhibited.

8. Upon perusal of the impugned order, it cannot be said that conviction of the respondents would have the only possible view, which could have been taken on the basis of evidence on record. The judgment and order does not suffer from any perversity.

9. This application for leave to appeal has no merit and, is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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