

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.57 of 2016

Arising Out of PS.Case No. -52 Year- 1993 Thana -CHHATAPUR District- SUPAUL

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1. Mustaque Ahmad son of Late Md. Idrish Resident of Village -
Bhagwatpur, P.S. - Chhatarpur, District - Supaul.

.... Appellant

Versus

1. The State of Bihar.
2. Md. Safi-ur Rahman Khan @ Heera Khan S/o - Late Ataur
Rahman Khan
3. Muslim Khan S/o - Late Janis Khan
4. Noor Hasan S/o - Late Md. Ishaque
All are resident of village - Bhagwatpur, P.S. Chhatapur, District -
Supaul.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Vikramdeo Singh, Advocate

Mr. Nafiuzzoha, Advocate

For the Respondent/s : Mr. Ajay Mishra, A.P.P.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

JUDGMENT AND ORDER

ORAL

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 17-02-2016

The appellant herein has filed this appeal, under the
proviso to Section 372 of the Code of Criminal Procedure,
against the acquittal of respondent Nos. 2, 3 and 4 herein, by
judgment and order, dated 04.01.2016, passed, in Sessions
Trial No. 79 of 1994/80 of 1994, by 1st Additional Sessions
Judge, Supaul.

2. The prosecution's case, as described correctly in
the judgment and order of the learned Trial Court, is as under:



(i) On 06.08.1993, in the evening, father of the informant, Md. Idrish (since deceased) had gone to Mohaddipur Hat to purchase some domestic articles and, on the same day, the informant, Mustaque Ahmad (PW 5), too, had gone to Chhatapur to attend a meeting and when the informant (PW 5) returned home at about 10 PM, he came to know from his mother that Md. Idrish had not returned home from Mohaddipur Hat. The informant did not pay any heed as his father, Md. Idrish, used to go, even without informing his family members, from Hat to Mohanpur, where he had some agricultural land.

(ii) On the next day (i.e., on 07.08.1993), at about 2:00 PM, when the cousin of the informant, Ayub, came to the house of the informant from Mohanpur, the informant came to know from Ayub that his father, Md. Idrish, had not gone to Mohanpur and it was then that the informant started searching his father and, in course of search, he was informed by Md. Safeed (PW 7) and Md. Sakeem (PW 8) that on 06.08.1993, in the evening, they (i.e., PW 7 and PW 8) were also with informant's father till 08:00 PM, when the informant's father was returning home from Hat and reached near Madhopur Chamrahi West Tola.

(iii) On 08.08.1993, PW 7 and PW 8 further disclosed that on 06.08.1993, when the informant's father,



Md. Idrish, reached at Madhopur Chamrahi West tola, they (i.e., PW 7 and PW 8) had noticed Safi-Ur Rahman Khan @ Heera Khan, Mustaqeem Khan @ Kari Khan, Muslim Khan, Noor Hasan, Ataur Rahman and five unknown persons following informant's father and they also offered their company to Md. Idrish to his house, but Md. Idrish refused their company by saying that his house is not very far from that place and, thereafter, Md. Idrish proceeded to his house. After about 05 (five) minutes, PW 7 and PW 8 heard the cries of Md. Idrish and when both of them went to the place wherefrom the cries were heard, they saw that Md. Idrish was lying on the ground and accused, Mustaqeem and Muslim, had caught hold of Md. Idrish's legs, accused Ataur Rahman and two unknown persons had caught hold of his hands and accused, Safi-Ur Rahman and Noor Hasan, were throttling him by placing his neck between two *lathis* and three other unknown persons were also standing there having sword in their hands. When PW 7 and PW 8 requested the accused persons to set free Md. Idrish, the accused persons also caught hold of PW 7 and PW 8 and, thereafter, the accused persons fled away in the north direction with the dead body of Md. Idrish and the accused persons also threatened them not to disclose the matter; or else, they would also be killed.

(iv) After the disclosure of the matter to the



informant by PW 7 and PW 8 as indicated above, the informant and his co-villagers again started a search for Md. Idrish and while searching Md. idrish, they found some blood marks on the ground indicating that someone had been dragged and when the informant and his co-villagers went to the bank of river Surser, they found blood marks lying in a larger area and, as such, the informant inferred that the dead body of his father, Md. Idrish, had been disposed of in the river by cutting it into pieces.

(v) The reason, assigned for the occurrence, was that one Mannan had filed a case against the accused persons in which Md. Idrish was one of the witnesses and a civil litigation with the accused Noor Hasan was also pending.

(vi) On the basis of the oral statement of the informant, Mustaque Ahmad, Chhatapur Police Station Case No. 52 of 1993 was registered, under Sections 302/201/120B of the Indian Penal Code, against Safi-Ur Rahman Khan, Mustaqueem, Muslim Khan, Noor Hasan, Ataur Rahman and 05 (five) unknown persons.

(vii) On completion of investigation, a *charge sheet* was laid, under Sections 364 read with Section 34 of the Indian Penal Code, only against four accused persons, namely, Safi-Ur Rahman Khan, Mustaqueem, Muslim Khan and Noor Hasan. Accused Ataur Rahman was not sent up for trial by the

police, but differing with the findings arrived at by the police, the learned Court below took cognizance of the offences punishable under Sections 201 and 302 read with Section 34 of the Indian Penal Code against five accused persons, namely, Safi-Ur Rahman Khan, Mustaqeem, Muslim Khan, Noor Hasan and Ataur Rahman.

3. Before the trial could commence, one of the accused, namely, Mustaqeem, died and further proceedings of the case against Mustaqeem stood abated. During the trial, another accused, namely, Ataur Rahman, also died and his case was also dropped as having abated and, thus, remained only three accused persons, namely, Safi-Ur Rahman Khan, Muslim Khan, and Noor Hasan.

4. At the trial, when charges, under Sections 364 and 302 read with Section 34 of the Indian Penal Code, were framed against the accused, they pleaded not guilty thereto.

5. In support of their case, prosecution examined as many as 09 (witnesses). Accused were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examination 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 false implication due to previous enmity. The defence, too, adduced evidence by examining one witness.

6. The learned trial Court, having reached the conclusion that the case, as against the accused, under Sections 364 and 302 of the Indian Penal Code, had not been proved beyond reasonable doubt, acquitted them.

7. Being aggrieved by the judgment and order, dated 04.01.2016, acquitting thereunder respondent Nos. 2, 3 and 4 herein, the informant, as appellant, has, as indicated above, preferred this appeal.

8. We have heard Mr. Vikramdeo Singh, learned Counsel, for the appellant, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

9. It has been submitted by Mr. Vikramdeo Singh, learned Counsel, for the appellant, that the findings, reached by the learned trial Court, leading to the acquittal of the respondent Nos. 2, 3 and 4 herein, is perverse inasmuch as the learned trial Court has not, according to Mr. Singh, correctly appreciated the evidence available on record. On the other hand, it is the submission of Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing for the State, that the learned trial Court has assigned good and sufficient reasons for coming to the conclusion that the charges against the respondent Nos. 2, 3 and 4 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 the two eye-witnesses, PW 7 and PW 8. It is the evidence of PW 7 (Md. Safeed) that on 06.08.1993, he had gone to Mohaddipur Hat, where he met with Sakeen and Idrish and at about 07:30 PM, while returning from Mohaddipur Hat, when all three of them reached near the house of PW 7, situated in village Madhopur, he (PW 7) saw Safi-Ur Rahman Khan, Mustaqeem, Muslim Khan, Noor Hasan and Aatur Rahman, along with five unknown persons, overtaking them and, then, both, he (PW 7) and PW 8, offered their company to Md. Idrish upto his house, but Md. Idrish, after refusing their company by saying that his house was not very far, proceeded towards his house and within five minutes thereafter, he (PW 7) heard the cries of Md. Idrish, whereupon he along with PW 8 went to the place, wherefrom the cries were heard, and saw that Md. Idrish was lying on the ground and accused, Mustaqeem and Muslim, had caught hold of Md. Idrish's legs, accused Aatur Rahman and two unknown persons had caught hold of his hands and accused, Safi-Ur Rahman and Noor Hasan, were throttling him by pressing his neck between two *lathis* and three other unknown persons were standing there having sword in their hands. When PW 7 requested the accused persons to set free Md. Idrish, the accused persons caught hold of him (PW 7) and, thereafter, the accused persons fled away in the north direction with the dead body of Md. Idrish and the

accused persons also threatened PW 7 not to disclose the matter; otherwise, he would also be killed.

11. It is the further evidence of PW 7 that on the next day of the occurrence, when the informant came to him to know about the whereabouts of his father, Md. Idrish, he (PW 7), out of fear, had not disclosed the entire occurrence and it is only after the persuasion of his co-villagers that he had narrated the entire occurrence to the informant, who, thereafter, started searching his father and, at last, reached near the bank of river Surser and found blood marks in a larger area and, thus, they inferred that the dead body of Md. Idrish had been disposed of in the river by cutting it into pieces. Thereafter, PW 7, along with informant and his co-villagers, had gone to the police station where the informant got his *fardbayan* recorded and he (PW 7) had also signed the same as a witness. It is also in the evidence of PW 7 that his statement, under Section 164 of the Code of Criminal Procedure, was recorded.

12. Broadly in tune with the evidence of PW 7 is the evidence of PW 8.

13. In their cross-examinations, PW 7 and PW 8 admitted that on 17.12.1991, their maternal uncle had got a criminal case registered against Muslim and Mustaqeem, accused of the present case, and the deceased Md. Idrish was

one of the witnesses in that case. These witnesses also admitted, in their cross-examination, that Muslim, one of the accused in the present case, had also got a criminal case registered against them (i.e., PW 7 and PW 8).

14. It is the evidence of PW 7 and PW 8 that on the day of the occurrence, the entire area of the locality was flooded with water and that they, along with Md. Idrish, were returning from Hat through a *pagdandi* (i.e., katchi road), though there was a road from the Hat to their house.

15. It is the evidence of PW 7 and PW 8 that out of fear, they did not disclose the entire occurrence to the informant; but after the persuasion being made by their co-villagers, they narrated the entire occurrence to the informant. It is the evidence of the Investigating Officer (PW 10) that PW 7 and PW 8 had not stated before him (PW 10) that they, out of fear, did not disclose the occurrence to the informant and after persuasion by their co-villagers, they disclosed the entire occurrence to the informant.

16. It is the evidence of PW 8 that he and PW 7 had filed a joint petition, on 16.08.1993, in the learned trial Court, with a prayer that their statements may be recorded under Section 164 of the Code of Criminal Procedure; but it is the evidence of PW 7 that he did not file any joint petition, on 16.08.1993, in the learned trial Court, praying therein for

getting their statements recorded under Section 164 of the Code of Criminal Procedure.

17. Coupled with the above, for the purpose of determining the guilt of the accused, we take note of the observations made and the conclusions reached by the learned trial Court, at paragraph 21 of the judgment, which read as under:

"21. From perusal of record and having regard to the evidence available on record and the submissions raised on behalf of the parties, it is apparent that in this case, except PW 7 and PW 8, no other prosecution witnesses including the informant has claimed to be an eye-witness to the occurrence. They all have stated that they knew as to the occurrence only from PW 7 and PW 8. They have claimed themselves to be eye-witnesses only to this fact that after disclosure of the occurrence, being made by these two witnesses, when they went to the P.O., they found blood lying there on the ground and also some marks of corpse being dragged away and following the blood marks when they reached near river Surser, they found blood lying there in large quantity which was indicative of this fact that corpse of the father of the informant must have been disposed of there in the river. But as the prosecution has brought nothing on record to prove that the blood found on the P.O. was of the father of the informant so this



portion of the statements of the prosecution witnesses is of no use for the prosecution. Further, as the accused persons are not facing trial for the charge punishable under Section 201 of the Indian Penal Code, so also there is no need to discuss this point in detail. It is the prosecution version also that just next day after the alleged date of occurrence when the informant, in search of his father, had gone to the house of PW 7 and PW 8, they did not say to him that they are eye-witnesses to the occurrence and in their presence, the accused had killed his father, rather, they disclosed this fact one day further thereafter. These two witnesses have tried to justify their delayed disclosure of the occurrence by saying that as the accused had asked them not to disclose the occurrence so due to fear they remained silent for two days and did not disclose the occurrence but in my view this explanation for delayed disclosure given by the witnesses does not inspire confidence because they have admitted that they were on inimical and litigating terms with the accused from before. Exhibit-A also contradicts the version of these witnesses that they were under the fear of threat given by the accused because if they had been under fear of threat they would not have filed a petition (Exhibit-A) before the court praying for getting their statement recorded under Section 164 of the Code of Criminal Procedure. Thus, I agree with the submissions raised on behalf of the defence that PW 7 and



PW 8 have seen nothing and have given an afterthought delayed false version as to the occurrence claiming themselves to be eye-witnesses to the occurrence and as such their statement given regarding the occurrence as also their being eye-witnesses to the occurrence do not inspire confidence and as such the same are fit to be discarded and accordingly the same is discarded. I further find that as after the statement of PW 7 and PW 8 being discarded, there remains nothing on record in support of the prosecution version of occurrence as also regarding the involvement of the accused therein so it can well be said that the prosecution has not been able to prove its version, hence, I find and hold that the prosecution has not been able to prove charge punishable under Sections 364 and 302 of the Indian Penal Code against the accused persons beyond all reasonable doubts."

18. Considering the fact that the finding recorded by the learned trial Court is a possible and reasonable view, we do not find that any case for interference with the acquittal of the accused-respondents could be made on behalf of the appellant.

19. We do not find that the conclusions reached by the learned trial Court was perverse or was a finding which could not have been reached on the basis of the materials on record.

20. In view of the above, we do not find any ground to admit this appeal and this appeal is dismissed accordingly.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

Prabhakar Anand/-

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