

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (DB) No.45 of 2016**

Arising Out of PS.Case No. -129 Year- 2013 Thana -HARNAUT District-  
NALANDA (BIHARSHARIFF)

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Rajiv Kumar, Son of Late Sanjit Prasad, Resident of Village & P.O.  
: Lohra, P.S. : Harnaut, District : Nalanda.

**.... .... Appellant/s**

Versus

1. The State of Bihar.
2. Ram Balak Yadav @ Barahil, Son of Late Ram Swarup Yadav,  
Resident of Village : Mirzapur, P.S. : Rahui, District : Nalanda.
3. Satyendra Yadav, Son of Late Sunder Yadav.
4. Rajiv Yadav, Son of Shlok Yadav.  
Both resident of Village : Jagnandanpur, P.S. : Rahui, District :  
Nalanda.
5. Munni Devi, Wife of Ram Nandan Prasad, Resident of Village :  
Lohra, P.S. : Harnaut, District : Nalanda.
6. Praveen Kumar, Resident of Village : Barandi, P.S. : Rahui,  
District : Nalanda.
7. Heera @ Harinandan Prasad, Son of Sidheshwar Mahto,  
Resident of Village : Mahvachak, P.S. : Harnaut, District :  
Nalanda.

**.... .... Respondent/s**

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**Appearance :**

For the Appellant/s : Mrs. Rekha Prasad, Advocate  
For the State : Mr. Ajay Mishra, PP  
For the Respondent/s : Mr. Binit Kumar, Advocate  
Mr. Raj Kishore Prasad, Advocate

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE**

**And**

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN  
SINGH**

JUDGMENT AND ORDER

(ORAL)

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI  
SHARAN SINGH)**

**Date: 29-06-2016**

This appeal has been preferred, under the proviso to Section 372 of the Code of Criminal Procedure, 1973, by the appellant, who is full brother of the deceased, namely, Laxmi Prasad, and who had filed a protest-cum-complaint petition, after submission of *charge-sheet* by the police, in Harnaut P.S. Case No.129 of 2013, which was registered for the offences punishable under Section 302 read with Sections 120 B and 34 of the Indian Penal Code and Section 27 of the Arms Act. The appellant is aggrieved by the judgment and order, dated 30.06.2015, passed by learned Additional District and Sessions Judge-VI, Nalanda at Biharsharif, in Sessions Trial No.854 of 2013, which arose out of aforesaid Harnaut P.S. Case No.129 of 2013, whereby learned trial Court has recorded acquittal of respondent Nos.2 to 7, giving them the benefit of doubt.



**2.** The aforesaid Harnaut P.S. Case No.129 of 2013 was registered on the basis of the *fardbeyan* of respondent No.5, namely, Munni Devi (informant), on 28.06.2013. The informant (respondent No.5) is married to brother of the deceased, a resident of village-Lohra, in the district of Nalanda. On the fateful day, she is said to have gone to her sister-in-law's (sister of her husband) place at Bind in the morning and was supposed to return back to village-Lohra on the same day in the evening. While returning back from Bind, she came to Shaksohra in a bus, where she reached at 6.30 P.M. and, thereafter, called the deceased on phone so that he could take her on a motorcycle back to village-Lohra. While they were on the way to village-Lohra, near a brick-kiln, the informant received a telephonic call, whereafter she got the motorcycle stopped and stepped down from it and began to talk on her cell phone. She alleged that while she was talking on her cell phone, 2 - 3 unknown miscreants came and shot at the deceased with pistol on his right occipital region from point blank range, whereafter the deceased fell down from the motorcycle. The deceased died instantly. She, thereafter, went to nearby Gonama Chowk and returned back along with some villagers at the place, where the dead-body was lying. The police party also



reached there in the meanwhile. She claimed before the police that she could identify those unknown miscreants, who had killed the deceased, if they were produced before her. On the basis of the *fardbeyan* to this effect, the First Information Report of said Harnaut P.S. Case No.129 of 2013 came to be registered.

**3.** Nearly 1 and ½ months, thereafter, the appellant filed a protest-cum-complaint petition in the Court of learned Chief Judicial Magistrate, Nalanda at Biharsharif, alleging therein that the informant had developed illicit relationship with the deceased, who was younger brother of the husband of the informant. She had greedy eyes on the property of the deceased, who was unmarried. Marriage of the deceased was fixed for 14.07.2013, which was being opposed by the informant and she was pressurizing the deceased not to agree for the said marriage. The appellant alleged in the said protest-cum-complaint petition that since the informant was not able to succeed in her design to prevent the marriage of the deceased, she conspired with a gang of criminals and gave a contract to kill the deceased. Allegedly, the informant entered into conspiracy with her brother-in-law, namely, Heera @ Harinandan Prasad (respondent No.7), to eliminate the deceased. The

appellant also alleged in the protest-cum-complaint petition that a sum of Rs.45,000/- was agreed to be paid to the criminals for killing the deceased and out of this amount, Rs.28,000/- was paid to them as advance.

**4.** It was asserted in the protest-cum-complaint petition that during the course of investigation, one Satyendra Yadav (respondent No.3) was arrested by the police for killing the deceased, who, allegedly, confessed his guilt before the police and on the basis of his alleged confessional statement, Heera @ Harinandan Prasad (respondent No.7) and the informant, Munni Devi (respondent No.5), were arrested, who also allegedly gave their confessional statements before the police. On the basis of their alleged confessional statements, Rajeev Yadav, (respondent No.4), Praveen Kumar (respondent No.6) and Ram Balak Yadav @ Barahil (respondent No.2) were made accused.

**5.** The police, upon completion of investigation, submitted *charge-sheet* against the informant (respondent No.5), Heera @ Harinandan Prasad (respondent No.7), Satyendra Yadav (respondent No.3), Rajeev Yadav (respondent No.4), Praveen Kumar (respondent No.6) and Ram Balak Yadav @ Barahil (respondent No.2) for commission of offences punishable under Section 302 read



with Sections 120 B and 34 of the Indian Penal Code and Section 27 of the Arms Act. Respondent No.2, namely, Ram Balak Yadav @ Barahil, was shown as absconder. The Court took cognizance of the offences punishable under the aforesaid sections of the Indian Penal Code and Arms Act. Charges were, accordingly, framed under Sections 302/34 and 120 B/34 of the Indian Penal Code and Section 27 of the Arms Act, 1959, against the accused persons. Since the respondents denied accusation, trial against them commenced.

**6.** At the trial, altogether seven witnesses were examined by the prosecution including the Investigating Officer as P.W.-7, and the Doctor, who had conducted *postmortem*, as P.W.-6. Out of rest five witnesses, P.W.-5, namely, Dayanand Prasad, and P.W.-4, namely, Ajay Kumar, did not support the case of the prosecution and they were, accordingly, declared hostile at the instance of the prosecution. The other three witnesses, namely, Sidheshwar Prasad, P.W.-1, Pappu Kumar, P.W.-2 and Nawal Prasad, P.W.-3, supported the case of the prosecution.

**7.** From the evidence of the said three prosecution witnesses, namely, P.W.-1, P.W.-2 and P.W.-3, it appears that they consistently deposed that the



deceased was got killed at the instance of the informant (respondent No.5), since she had illicit relationship with the deceased and had greedy eyes on the property of the deceased and that she was opposing the solemnization of the marriage of the deceased. This is to be kept in mind that the informant (respondent No.5) is the only person, who had claimed to have witnessed the occurrence and none of the prosecution witness is the eye-witness of the occurrence. The evidence of the prosecution witness Nos.1, 2 and 3, to the effect that informant (respondent No.5) had illicit relationship with the deceased, is based on mere rumor, which they had heard. There is no evidence to establish the allegation that the informant (respondent No.5) had hired criminals for killing the deceased. From the evidence of P.W.-1, it appears that his deposition is based on mere hearsay. Evidence of P.W.-2 has been found, by learned trial Court, to be inconsistent with respect to his own location at the time of occurrence inasmuch as he had, in his *examination-in-chief*, deposed that he was working in his field near the place of occurrence, whereas in *cross-examination*, he deposed that he did not have any land to cultivate. Further, P.W.-3, in his evidence, specifically deposed that his evidence was based only on the basis of rumor, which

he had heard in the village in relation to murder of the deceased.

**8.** Upon analysis of the evidence on record, learned trial Court came to a conclusion that the prosecution had failed to establish charge against the respondents beyond all reasonable doubts.

**9.** We have heard Mrs. Rekha Prasad, learned Counsel, appearing on behalf of the appellant, Mr. Ajay Mishra, learned Public Prosecutor, appearing on behalf of the State, and Mr. Binit Kumar, learned Counsel, appearing on behalf of the private respondents.

**10.** Learned Counsel, appearing on behalf of the appellant, has argued that though there was adequate evidence, adduced at the trial, to establish charge under Section 302 read with Sections 120 B and 34 of the Indian Penal Code and Section 27 of the Arms Act, learned trial Court erroneously gave respondent Nos.2 to 7 benefit of doubt and recorded their acquittal.

**11.** It is evident from the records that there is no direct evidence to support the case of the prosecution adduced at the trial. The case of the prosecution is based on circumstantial evidence. It is well established legal principle that where case of the prosecution is based on circumstantial evidence, circumstantial evidence of the



highest order can only satisfy the test of proof in a criminal prosecution. Unless prosecution establishes a complete unbroken chain of events so that only one inference can be drawn on the basis of circumstantial evidence put forth by it and it is only why the inference is that it is the accused, who had committed the offences alleged to have been committed by him, can a conviction be based on such circumstantial evidence.

**12.** As has been noticed above, it is difficult, on the basis of the evidence, adduced at the trial, that conviction of respondent Nos.2 to 7 was the only inference, which could have been drawn. If more than one inferences can be drawn, an accused is certainly entitled to the benefit of doubt. It is also very well accepted principle that in an appeal against the order of acquittal, the appellate Court interferes with the findings of the trial Court, if the same could not have been possibly arrived at and conviction would have been the only conclusion.

**13.** As has been noticed above, neither there is complete unbroken chain of events nor is there any clinching material to establish the guilt of respondent Nos.2 to 7. In such circumstances, recording of their acquittal, by learned trial Court, now the impugned

judgment and order, cannot be said to be erroneous or suffering from any legal infirmity.

**14.** We do not find any merit in this appeal, which does not deserve admission.

**15.** This appeal is, accordingly, dismissed.

**(I. A. Ansari, ACJ.)**

**(Chakradhari Sharan Singh, J.)**

Praveen-II/-

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