

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (DB) No.405 of 2016**

Arising Out of PS.Case No. -8 Year- 2002 Thana -DANIYAWA District- PATNA

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1. Sandhya Kumari Wife of Late Vijay Kumar resident of village - Nesara, P.S. Karai Parshurai, District - Nalanda

.... **Appellant**

Versus

1. The State of Bihar
 2. Binod Kumar Son of Sri Sarju Prasad
 3. Virendra Prasad @ Brind Son of Sri Sarju Prasad Both residents of village - Nesara, P.S. Karai Parshurai, District – Nalanda

.... **Respondents****Appearance :**

For the Appellant/s : Mr. Mnoj Kumar, Advocate

For the Respondent/s : Mr. S.N. Prasad, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE**and****HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH****ORAL JUDGMENT****(Per: HONOURABLE THE CHIEF JUSTICE)****Date: 16-09-2016**

The instant appeal filed by the wife of the deceased is directed against the judgment and order, dated 30.11.2015, passed by the Additional District & Sessions Judge-VII, Patna City, Patna in Sessions Trial No.1193 of 2004, whereby respondent Nos.2 and 3 have been acquitted of charge under sections 302/34/120B of the Indian Penal Code and Section 27 of the Arms Act.

2. The prosecution case was set to motion on the written statement of Chaukidar Parmanand Paswan made to Officer-Incharge of Daniyawan P.S. on 12.2.2002 at 11.30 AM. In his written report, the Chowkidar (informant) stated that on 12.2.2002, he came to learn that one person has been shot on N.H.30A, near Chiraiya Bridge, the



boundary of P.S. Daniyawan and Nagarnausa. On receiving the information, the informant proceeded to Chiraiya bridge, where he learnt that the injured is one Vijay Kumar of Village Nesara, who was appointed as a teacher on compassionate ground in Middle School Mohammadpur, Chandi, district Nalanda and he used to daily travel from his village to the school. On the fateful day, he was coming to the school by a tracker No.9093 with three unknown criminals, who pulled him down from the carrier and shot him from the pistol at about 11 AM. There were two pellets injuries on his back and one pellet had entered from the frontal side. The police of the Nagarnausa P.S. had arrived and had taken him to the Primary Health Centre, Nagarnausa for his treatment.

3. The written report of the informant gave rise to Daniyawan P.S. Case No.08 of 2002 initially under sections 307/324/34 of the Indian Penal Code and Section 27 of the Arms Act, to which section 302/120B of the Indian Penal Code was added as the injured succumbed to the injuries.

4. After investigation, the police submitted charge sheet under section 302/34/120B of the Indian Penal Code and Section 27 of the Arms Act and cognizance of offence was taken by the A.C.J.M., Patna City and the case was committed to the Court of Sessions for trial. Charges were framed to which the accused pleaded

not guilty and claimed to be tried.

5. The prosecution has examined altogether five witnesses in support of its case. P.W. 1 Parmanand Paswan, who is Chowkidar of Daniyawan P.S., is the informant of the case. P.W. 2 Rajendra Ram and P.W. 3 is Kameshwar Prasad are labourers of the village and P.W.4 Ram Naresh Prasad is a teacher and resident of Lalganj, Chandi, District Nalanda and P.W.5 Jagdish Prasad is resident of village Nagarnausa of district Nalanda. However, no witness was examined on behalf of the defence nor any document was produced as an exhibit.

6. The defence of the accused in statements under section 313 Cr.P.C. was complete denial of their involvement in the crime. The Trial Court after consideration of the materials on record, acquitted the accused persons of charge holding that the prosecution has utterly failed to substantiate the charge. While coming to the aforesaid finding, the learned Trial Court observed that 3 out of 5 witnesses; namely P.Ws. 2, 3 and 5 did not support the prosecution case and have been declared hostile. However, two witnesses, namely, P.W. 1 Parmanand Paswan, the Chaukidar, who is the informant of the case and P.W. 4 Ram Naresh Prasad, the Principal Incharge of the Primary School, are not the eye witnesses to the occurrence. The Trial Court while recording its findings, further

observed that neither the Doctor nor the Investigating Officer were examined, nor the post mortem report was brought on record, which cut at the root of the prosecution case. On consideration of the circumstances aforesaid, the Trial Court acquitted the accused persons of the charge.

7. Being aggrieved, the appellant who is the wife of the deceased, has filed the instant appeal assailing the impugned judgment. The appellant submits that the Trial Court has failed to take into consideration that though P.Ws. 2, 3 and 5 were declared hostile, they supported the factum of murder of the deceased. Furthermore, P.W. 1, the informant, has in his evidence stated that the deceased was going to the school by a Tracker and he was pulled down and shot dead by the three miscreants. P.W. 4 Ram Naresh Prasad, who was the Head Master Incharge of the Primary School, stated that the victim was a teacher in his school. He further deposed in his evidence that the deceased used to come to the school by vehicle or horse. He stated that he had no brother and had sufficient land in his name.

8. On the basis of aforesaid evidence, the appellant submits that the land owned by the deceased was the cause and motive for the respondent Nos.2 and 3, who are his agnates and who stand to gain from the death of her husband to commit the murder. The appellant

as such submits that the Trial Court ought to have convicted respondent Nos.2 and 3, as there were strong circumstances against them to suggest their involvement in the crime. Lastly, it was submitted on behalf of the appellant that the Trial Court ought to have got recorded further evidence under section 391 Cr.P.C.

9. We have perused the materials on record and have heard learned counsel for the appellant at length. The prosecution case is based on the report of P.W.1, who is Chaukidar of the village, who himself is not an eye witness to the occurrence. P.Ws.2, 3 and 5 who are the local witnesses and have feigned ignorance, as to who actually killed the deceased, were declared hostile. The other witnesses, namely, P.W.s 1 and 4, as noticed in the earlier paragraphs, are not the eye witnesses to the occurrence. Besides this, neither the Investigating Officer nor the Doctor, who conducted the post mortem of the deceased, has been examined. The post mortem report too has not been brought on record. Apart from suspicion that the accused persons being agnate may have killed the deceased, there is no legal evidence or chain of circumstances, to come to the conclusion that the accused persons have committed the murder. The appellant has not claimed that she or any one of her family members had seen the occurrence.

10. Considering the materials on record, we are in

agreement with the findings of the Trial Court that the prosecution has utterly failed to bring home the charge against the accused persons. Further more, no useful purpose would be served in remitting the case for additional evidence as the informant has not claimed to be the eye witness to the occurrence. She has not even asserted that anyone else had seen the respondent Nos. 2 and 3 committing the crime.

11. We find no merit in this appeal and it is, accordingly, dismissed.

(I. A. Ansari, CJ)

(Samarendra Pratap Singh, J)

Md.Jamaluddin Khan

AFR/NAFR	NAFR
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