

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1033 of 2015

Arising Out of PS.Case No. -280 Year- 2003 Thana -GORADIH District- BHAGALPUR

Savita Devi, Wife of Late Ravi Shankar, resident of Village –
Rattichauk, P.S. – Goradih, District – Bhagalpur.

.... Appellant

Versus

1. The State of Bihar.
2. Shailendra Kr. Singh, Son of Kishori Singh, resident of Village –
Jitodih, P.S. – Gouradih, District – Bhagalpur.

.... Respondents

Appearance :

For the Appellant : Mr. Devendra Kumar Pandey, Adv.

For the Respondents (State) : Mr. S.C. Mishra, A.P.P.

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

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

Date: 19-02-2016

This appeal, under proviso to Section 372 of the
Code of Criminal Procedure, 1973, has been filed against the
judgment and order, dated 21.09.2015, passed in Sessions
Trial No.1092 of 2004, arising out of Goradih (Sabour) P.S.
Case No.280 of 2003, whereby learned Additional Sessions

Judge-III, Bhagalpur, has recorded acquittal of respondent No.2, namely, Shailendra Kumar Singh, of the offence punishable under Section 120(B) of the Indian Penal Code and Section 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959.

2. Heard Mr. Devendra Kumar Pandey, learned Counsel, appearing on behalf of the appellant, and learned Additional Public Prosecutor, appearing on behalf of the respondent-State of Bihar.

3. The appellant, namely, Savita Devi, who is the informant and also widow of the deceased, was examined, at the trial, as P.W.-4.

4. Briefly stated, the case of the prosecution is that on the date of occurrence, i.e., 11.11.2003, the appellant saw her husband fleeing away and he was being chased by respondent No.2 and other co-accused persons, who were armed with fire arms. Respondent No.2 and a co-accused, namely, Doma Singh, are said to have opened fire, which hit the deceased, and as a result thereof he fell down. Another unidentified accused is said to have come close to the deceased thereafter and shot at him. The informant, then, came near the deceased, whereafter all the three accused persons fled away from the place of occurrence. The dispute between the deceased and respondent No.2, with regard to



repair work of a local school, is said to be the reason behind the occurrence. On the basis of the *fardbeyan* of the informant to the said effect, the said Goradih (Sabour) P.S. Case No.280 of 2003 came to be registered. The police, upon completion of investigation, submitted *charge sheet* against respondent No.2 and one Doma Singh for commission of offences punishable under Section 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959. Cognizance of the offence was, thereafter, taken and the case was committed to the Court of *Sessions* for trial. Co-accused, namely, Doma Singh, died during the pendency of the trial. Respondent No.2 was, thus, put on trial after framing of charges under Section 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959, and as he pleaded not guilty, the trial proceeded.

5. From the materials available on the record, it transpires that altogether 14 (fourteen) prosecution witnesses were examined. The father of the deceased, namely, Jugal Kishore Das, was examined as P.W.-1, whereas, sister of the informant, namely, Lalita Devi, was examined as P.W.-2. The mother of the deceased, namely, Maheshwary Devi, was examined as P.W.-3 and the informant, namely, Savita Devi, who is the wife of the deceased, was examined as P.W.-4. P.W.-5, namely, Virchand Patel, is a formal witness and has



proved the *inquest* report. According to him, when he reached the place of occurrence at 11.00 A.M., he saw there a *Chaukidar* only. P.W.-6, namely, Hare Kishore Singh, P.W.-7, namely, Lalan Harijan, P.W.-10, namely, Md. Himmat Laldhar, P.W.-11, namely, Shankar Mandal, and P.W.-12, namely, Mina Devi, have been declared hostile. The doctor, namely, Sandip Lal, who had conducted *post-mortem*, was examined as P.W.-13. P.W.-14, namely, Md. Nishad, is another formal witness, who proved the *fardbeyan*. P.W.-8, namely, Ramakant Keshari, and P.W.-9, namely, Krishndeo Manjhi, are independent witnesses. The Investigating Officer of the case was not examined.

6. Learned trial Court, on considering the evidence adduced, at the trial, arrived at the conclusion that the prosecution had failed to prove the charges levelled against respondent No. 2 beyond all reasonable doubts and, accordingly, recorded his acquittal.

7. Mr. Devendra Kumar Pandey, learned Counsel, appearing on behalf of the appellant, has submitted that the evidence of the prosecution witnesses adduced, at the trial, were sufficient to prove beyond all reasonable doubt that respondent No.2 was the perpetrator of the crime. He has submitted that learned trial Court had recorded acquittal of respondent No.2 on erroneous ground that Investigating

Officer was not examined, ignoring thereby the fact that the witnesses were consistent in their deposition to establish the case of the prosecution.

8. We have perused the impugned judgment and order, dated 21.09.2015, passed by the learned trial Court, and the materials available on the record. We have given our anxious consideration to the submissions advanced on behalf of the appellant.

9. We find from the records that all the witnesses other than the formal witnesses, except P.Ws.-8 and 9, were closely related to the deceased and, thus, highly interested witnesses. It is true that the evidence of witnesses cannot be brushed aside solely on the ground that the witnesses are closely related to the deceased and, therefore, highly interested. However, much care and caution will have to be taken, while appreciating and scrutinizing the evidence of such witnesses before holding an accused guilty of offence beyond all reasonable doubts. We find that the witnesses, who supported the prosecution's case, were father, mother, wife and sister of the wife. The evidence of the independent witnesses does not corroborate; rather, contradict the evidence of these witnesses. P.W.-8, in his evidence, has deposed, on being cross-examined, that people assembled near the place of occurrence nearly half-an-hour after the



occurrence had taken place. This witness has further deposed that those persons, who had assembled at the place of occurrence, identified the deceased and one of them informed the family members of the deceased. This is apparent contradiction with the statement of the informant in her *fardbeyan* and in her evidence recorded at the trial, wherein she claimed to have seen her husband fleeing away and the accused persons, including respondent No.2, chasing him with fire-arms. P.W.-9 has also not supported the prosecution version that the wife of the deceased (P.W.-4) was the, first, to see the occurrence. He has also deposed that when he learnt about the occurrence, he went to the place of occurrence and, thereafter, got the information communicated to the police station.

10. In view of the facts and the circumstances of the case and the evidence, as discussed in the impugned judgment and order, dated 21.09.2015, passed by the learned trial Court, we do not find any perversity. It cannot be said that the view of the learned trial Court, as taken in the judgment and order, under challenge, could not be a reasonably possible view.

11. In such circumstances, this Court, in exercise of appellate jurisdiction in an appeal, preferred against an order of acquittal, is not required to interfere with

the judgment and order of the learned trial Court. Nothing has been brought to our notice, which can be said to be clinching and concrete evidence, on the basis of which it could be held that respondent No.2 was proved guilty, beyond all reasonable doubts, of the commission of offence under Section 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959.

12. The appeal does not deserve admission and is, accordingly, dismissed.

(I. .A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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