

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.24 of 2016

Arising Out of PS.Case No. -159 Year- 1995 Thana -GIRIYAK District- NALANDA
(BIHARSHARIFF)

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1. Rajendra Sharma Son of Late Ramjee Sharma, resident of Village- Maira,
P.S.- Katrisarai (Giriyak), District- Nalanda.

.... Appellant/s

Versus

1. The State of Bihar
2. Rajendra Pd. S/o Late Basudeo Mahto
3. Ram Prasad S/o Late Govind Mahto
4. Md. Sahood Alam, S/o Late Abdul Rashid,
5. Binod Prasad S/o Late Bankey Mahto
6. Pramod Prasad
7. Manohar Prasad Both sons of Gurushay Mahto All are resident of
Village- Maira, P.S.- Katrisarai, District- Nalanda
8. Shiv Yadav S/o Late Bhattu Yadav
9. Mani Yadav S/o Shiv Yadav Both resident of Village- Barith, P.S.-
Katrisarai, District- Nalanda

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anil Kumar No.1

For the Respondent/s : Mr. D.K. Sinha (App)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

4 03-03-2016 By the judgment and order, dated 09.10.2015,

passed, in Sessions Trial No. 240 of 1998 (arising out of Giriyak

P.S. Case No. 159 of 1995), by the VIth Addl. Sessions Judge,

Nalanda, at Biharsharif, the learned trial Court has acquitted the

respondent Nos. 2 to 9 of the charges framed under Section 302

read with Section 149 of the Indian Penal Code and Section 27 of

the Arms Act, 1959.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be described as under:

(i) On 13.11.1995, at about 10.00 A.M., the informant and his wife were going to *baghar*, towards the north of the village, for cutting grass. As soon as they reached the *Bikri Khandha*, accused Rajendra Sharma, who had formed an unlawful assembly in *Pantarwa Khandha*, fired a bullet from his rifle, hitting the informant's wife in her stomach through her right arm and as a result thereof, she fell down and started writhing in pain. When the informant, along with co-villagers, reached near the village school, while taking his wife for treatment, she (deceased) succumbed to her injuries.

(ii) On the basis of the written report of the informant, Giriyak P.S. Case No. 159 of 1995, under Sections 147, 148 and 302 read with Section 149 of the Indian Penal Code and Section 27 of the Arms Act, 1959, was registered. The Investigating Officer prepared inquest report and sent the dead body for *post mortem* examination. On completion of investigation, a *charge sheet* was laid, under Sections 147, 148 302 and 34 read with Section 149 of the Indian Penal Code and under Section 27 of the Arms Act, 1959, against six accused persons aforementioned and two of them have not been sent up for

trial.

3. At the trial, charges, under Section 302 of the Indian Penal Code and Section 27 of the Arms Ac, 1959, were framed against accused Rajendra Sharma and charges, under Section 302 read with Section 149 of the Indian Penal Code and Section 27 of the Arms Act, 1959, against the rest of the accused persons. The accused pleaded not guilty to their respective charges.

4. In support of their case, prosecution examined altogether 9 (nine) witnesses. Accused were, then, examined under Section 313(1)(b) of the Code of Criminal Procedure and, in their examinations 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 that of denial. No evidence was adduced by the defence.

5. Having, however, arrived at the finding that the charges against the accused-respondent Nos. 2 to 9, under Section 302 read with Section 149 of the Indian Penal Code and Section 27 of the Arms Act, 1959, had not been proved, the learned trial Court acquitted them accordingly.

6. Aggrieved by the acquittal of the respondent Nos. 2 to 9 and their release from custody, the informant of the case

has preferred this appeal.

7. Heard Mr. Anil Kumar No. 1, learned Counsel for the appellant, and Mr. D.K. Sinha, learned Additional Public Prosecutor for the State.

8. It is submitted by learned Counsel for the appellant that though there were no discrepancies in the evidence of the parties, yet the learned trial Court failed to appreciate the same and, on the contrary, held the prosecution's case as having not been proved. Learned Counsel for the appellant has contended that there were no discrepancies or inconsistencies in the evidence of the witnesses and though they had, in their depositions, supported the prosecution's case, the learned trial Court misappreciated the evidence.

9. Having heard learned Counsel for the appellant and learned counsel for the State, it transpires from the evidence, which have been adduced, at the trial, that though an attempt has been made to project P.W. 1 as an eye-witness, the learned trial Court has found that he was actually not an eyewitness. P.W. 1 (Upendra Yadav), in his examination, has stated that it is only after the wife of one Chottu Chaudhary came rushing on seeing Mina Devi lying in injured condition that P.W. 1 went there to pick her up. He has stated that apart from himself and the wife of

Chotu Choudhary, there was no other person present, at that point of time, at the place of occurrence.

10. It appears from the discussion of the evidences that P.W. 1 was not an eyewitness to the occurrence and that the two persons, who had first reached the place of occurrence, were P.W. 1 himself and the wife of Chotu Chaudhary.

11. It is, thus, evident from the evidence of P.W. 1 that he had not seen the occurrence as to how the deceased Mina Devi had sustained gunshot injury. Thus, it appears that the story of the informant that he went to cut paddy and was present at the place of occurrence is not entirely correct as Rajendra Sharma had not gone to the place of occurrence; rather, the deceased had gone to tie her she-goat. The learned trial Court has also found that most of the prosecution witnesses are those, who have heard regarding Mina Devi's death from one source or the other. Another witness, P.W. 3 (Surendra Prasad), has deposed that he has given a different version that the deceased was cutting grass in the field of Rajendra Prasad, but when she did not listen, on being asked not to do so, the deceased was fired at by one Chotu Mahto, which hit the person of the wife of Ranju Tahkur.

12. It, thus, appears from the perusal of the evidence dealt with by the learned trial Court that there are inherent

contradictions in the theory of the informant and also in the statements of the witnesses and, accordingly, the learned trial Court rightly proceeded to acquit the accused persons.

13. As such, from the discussions held above and keeping in view the findings arrived at by the learned trial Court, we find no anomaly in the rationale adopted by the learned trial Court.

14. Having perused the entire appraisal of evidence made by the learned trial Court, we, too, find and hold that there is no lacuna in the reasonings arrived at by the learned trial Court calling for any interference at the appellate stage.

15. This appeal is, therefore, not admitted and is accordingly dismissed.

(I.A. Ansari, ACJ)

(Anjana Mishra, J)

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