

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.697 of 2015

Arising Out of PS.Case No. -56 Year- 2005 Thana -KHUSRUPUR District- PATNA

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Kumar Nagendra, Son of Dr. Kumar Indradeo, Resident of Village Rafipur, P.S.-
Khusrupur, District- Patna.

.... Appellant/Informant

Versus

1. The State of Bihar
2. Sanjay Chai, Son of Late Shiv Narayan Chai, Resident of Village- Rafipur, P.S.-
Khusrupur, District- Patna.
3. Pradeep Prasad, Son of Rangala Prasad, Resident of Village- Rafipur, P.S.-
Khusrupur, District- Patna.
4. Ranglal Chai, Son of Late Shiv Narayan Chai, Resident of Village- Rafipur, P.S.-
Khusrupur, District- Patna.
5. Ajay Prasad, Son of Harihar Prasad Resident of Village- Rafipur, P.S.-
Khusrupur, District- Patna.
6. Sakalpdeep Chai, Son of Ranglala Prasad, Resident of Village- Rafipur, P.S.-
Khusrupur, District- Patna.
7. Uday Kumar, Son of Harihar Prasad, Resident of Village- Rafipur, P.S.-
Khusrupur, District- Patna.
8. Naresh Prasad, Son of Late Shiv Narayan Chai, Resident of Village- Rafipur,
P.S.- Khusrupur, District- Patna.

.... Respondents/Accused Persons

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Appearance :

For Appellant	:	Mr. Ajay Thakur, Advocate Mr. Sanjeet Kumar, Advocate
For the State	:	Mr. Ajay Mishra, APP

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 21-01-2016

This is an appeal, under the proviso to Section 372 of the Code of Criminal Procedure, 1973, preferred against the order, dated 27.05.2015, passed by the learned Additional Sessions Judge-I, Patna City, in Sessions Trial No. 1081/2010, whereby the learned trial Court has recorded acquittal of respondent Nos. 2 to 8 herein. The said respondents were put on

trial on the charge of commission of offences under Sections 148, 380 and 364A read with Section 34 of the Indian Penal Code. The appellant is the informant of the concerned Khusrupur PS Case No. 56 of 2005, registered on 22.07.2005, which gave rise to the said Sessions Trial No. 1081/2010.

2. We have heard Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellant, and Mr. Ajay Mishra, learned Additional Public Prosecutor, representing the State of Bihar. We have perused the materials on record and have given our anxious consideration to the submissions made on behalf of the appellant and the learned APP.

3. On the basis of *fardebayan* of the appellant (PW 1), Khusrupur PS Case No. 56/2005, alleging commission of offences punishable under Sections 147/148/149/354/479/364A/448 IPC and Section 27 of the Arms Act, 1959, came to be registered. According to the prosecution's case, on 22.07.2005, at about 8 A.M., the accused persons, including respondent Nos. 2 to 8, entered into the informant's house. They were variously armed with rifle and other weapons. Allegedly, whereas respondent No. 4 was busy looting the valuables; his sons, namely, Pradeep Prasad (respondent No.3) and Sakaldeep Chai (respondent No.6) resorted to firing. Allegedly, one of them beat up *Munshi* Pashupati Lal, his wife and children. They are said to have abducted the Manager of the informant, Neeraj (PW 2). It was further alleged that the accused persons snatched away gold chain from the possession of the wife of the informant's

Munshi. They had been demanding Rs. One lakh as ransom from before also for which Khusrupur PS Case No. 24/2005 and Khusrupur Case No. 28/2005 were registered, according to the prosecution's case.

4. The police, upon completion of investigation, submitted *charge sheet* against all the accused persons including respondent Nos. 2 to 8. Cognizance of the offences was taken vide order, dated 18.02.2006, and the case was committed to the court of sessions vide order, dated 01.07.2006. Charges were framed against the accused persons, on 18.08.2008, for the offences punishable under Sections 148, 380 and 364A read with Section 34 of the Indian Penal Code against altogether nine persons including the private respondents. Since they pleaded not guilty, trial against them commenced.

5. It appears from the records that during the trial, two accused persons, namely, Harihar Chai and Ramji Gope, died and proceeding as against them came to be dropped accordingly.

6. At the trial, altogether seven witnesses were examined. The appellant was examined as PW 1, whereas Neeraj Kumar, his Manager, was examined as PW 2. *Munshi* of the appellant, Pashupati Lal @ Parash, was examined as PW 5; whereas his wife, Geeta Devi, was examined as PW 3. PW 5 is a formal witness, who has proved the statement of PW 2 recorded under Section 164 of the Code of Criminal Procedure. PW 6 and PW 7 are the Investigating Officers, who had investigated the

case.

7. The learned trial Court, upon scrutinizing the depositions of the witnesses and the documents exhibited at the trial, found material contradictions in the statements of the witnesses and the prosecution's case as disclosed by the informant/appellant in his *fardbeyan*. In the absence of any evidence adduced at the trial to establish that there was any demand of ransom made, the learned trial Court arrived at the conclusion that charge, under Section 364A read with Section 34 of the Indian Penal Code, could not be said to have been proved beyond reasonable doubt.

8. Upon analyzing the evidence adduced at the trial, the learned trial Court came to a conclusion that though there was an allegation that the accused persons had snatched away a gold chain from the possession of the wife of the informant's *Munshi*, there was no evidence to establish as to who had snatched away the gold chain.

9. As has been noted above, we find that out of altogether seven witnesses examined, three witnesses, namely, PWs 5, 6 and 7, are formal witnesses. PW 1 is the informant himself, whereas PW 2 and PW 4 are his employees (Manager and *Munshi*, respectively). PW 3 is the wife of PW 4. Apparently thus, all these witnesses are highly interested witnesses and their evidence were evidently required to be dealt with great care and circumspection. The occurrence is said to have taken place at 8 A.M. Allegedly, the accused persons had opened fire,

but we find that no independent witness was produced in support of the prosecution's case to prove that there was any sound caused by fire-arms.

10. Further, on perusal of records, we find that the learned trial Court has rightly recorded that there are contradictions in the evidence of prosecution witnesses. The informant, in his deposition, at the trial, has said that the accused persons had abducted PW 2 in an ambassador car, whereas he had not made such statement in his *fardbeyan*. Besides the informant, PW 3, who is also said to have sustained injury, has deposed, at the trial, that she was taken to PMCH for treatment where she was treated, whereas her husband, PW 4, in his evidence, has deposed that PW 3 was treated by a local doctor. In addition, we notice that there are major discrepancies in the statement made by PW 2 under Section 164 of the Code of Criminal Procedure and his evidence adduced at the trial.

11. Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellant, has attempted to convince us that the discrepancies, in the evidence of prosecution witnesses, are minor and, therefore, the learned trial Court has committed an error by acquitting the accused persons on the basis of such discrepancies in the evidence. He has also submitted that conclusions, drawn by the learned trial Court, are perverse and, therefore, require interference by this Court.

12. We are not convinced with the submissions advanced on behalf of the appellant in view of the nature of

discrepancies in the evidence of witnesses as noticed and recorded by the learned trial Court in the impugned judgment and order. We find that no independent witness has been examined in support of the prosecution’s case to corroborate the evidence of witnesses, who are highly interested witnesses. In such circumstances, keeping in view the nature of discrepancies in the evidence, if the learned trial Court has acquitted respondents No. 2 to 8, giving them benefit of doubt, such a finding cannot be said to be perverse and/or not a reasonably possible view.

13. The impugned judgment and order do not, therefore, require interference. This appeal does not merit admission and is, accordingly, dismissed.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

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