

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.767 of 2015

Arising Out of PS.Case No. -62 Year- 2013 Thana -JIRADEI District- SIWAN

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1. Rashida Khatoon Wife of Imam Khan resident of village - Chanaur, P.S. Dhanauti, P.O. District - Siwan, At present resident of village - Chandpali, P.S. Jeeradai, District – Siwan Appellant

Versus

1. The State of Bihar
2. Akhtar Mian Son of Late Rais Miyan
3. Zahir Miyan Son of Late Sheikh Nathuni Both 2 and 3 are resident of village - Chandpali, P.S. Jeeradai, District - Siwan Respondents

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Appearance :

For the Appellant/s : Mr. Y. C. Verma, Sr. Advocate
Mr. Javed Aslam, Advocate
Mr. S. Rahman, Advocate

For the Respondent/s : Mr. Ajay Mishra, (App)

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

5 24-11-2016 Heard Sri Yogesh Chandra Verma, learned Senior Counsel, in support of this appeal against the judgment of acquittal passed in Sessions Trial No. 185 of 2014 by learned 3rd Additional Sessions Judge, Siwan.

The private respondents no. 2 and 3 to this appeal were charged for an offence punishable under Sections 364, , 302/34, 120B of the Indian Penal Code read with Section 27 of the Arms Act for allegedly, killing one Faiyaz Khan @ A.D. Khan. The prosecution case is based upon evidence of PW 2 and PW 4. PW 4 Rashida Khatoon is the informant. She alleged that in the night at about 9:30 p.m. the accused persons came and asked her son to accompany them. After



about ½ an hour to 45 minutes she heard a sound of gunshot. She immediately feared that her son might have been killed. She and PW 2 went out searching in the nearby locality from where they apparently heard the gunshot. She could not find. On way she met some persons and asked them but they denied the hearing any gunshot. Those persons have not been examined in course of trial. It is, then, alleged that next day at about 9:00 a.m. she informed the Police Station about the occurrence where the first information report was registered. The police and others, then, started searching for the body which was recovered from a place which is about 6-7 kilometers away from the house where the deceased is said to have been taken away. The body was found with a bullet injury on the chest lying on the land dividing two agriculture plots. The Investigating Officer does not disclose whether he had found blood on the place of occurrence. The trial court after examining the evidence, based on the principle of last seen, found that there was no unbroken chain of events, as there was no eye witness to the occurrence. He thus, acquitted the respondents.

We have heard learned Senior Counsel and perused the judgment in detail.

The first thing to be noted is if conviction is sought on the basis of last seen, the chain of events have to be unbroken chain of events, because no one has seen the actual occurrence. Here, the informant herself admits that she had asked some other people whether they had seen her son, those people had disclosed that they have not

even heard the gunshot, those people have not been examined. She says that within ½ an hour of her son being taken away, she had heard the gunshot but the body is found from a place which is 6-7 kilometers away. It is difficult for anyone to travel such distance in such short time. PW 2, who is the brother of the deceased, says that at the place there was blood implying that he was shot there. The Investigating Officer does not mention anything about blood being there. No one else heard the gunshot which is also difficult to believe because the gunshot fired 7 kilometers away cannot be heard. Thus, the trial court having come to a finding that the case was not proved beyond doubts as the chain of events was not so completely bound to come a irresistible conclusion that the accused persons had committed the offence, the trial court acquitted.

In view of the facts noted above, we are not inclined to interfere. This appeal is accordingly, dismissed.

(Navaniti Prasad Singh, J)

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(Jitendra Mohan Sharma, J)

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