

IN THE HIGH COURT OF JUDICATURE AT PATNA
Govt. Appeal (DB) No.11 of 2017

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The State Of Bihar

.... Appellant/s

Versus

1. Amarjeet Singh , S/o Dular Singh
2. Bhim Singh, s/o Jang Singh
3. Tarkeshwar Singh, s/o Nageshwar Singh

All residents of village – Intwa, P.S. – Pachrukhi, District – Siwan

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Parmeshwar Mehta

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

4 11-08-2017

1. Heard Sri Parmeshwar Mehta , learned Additional

Public Prosecutor .

2. The present Appeal has been filed against the judgment of acquittal whereby respondent no. 1 to 3 were acquitted from the charges for the offence under Section 302/34 of the Indian Penal Code , 1860.

3. The present Appeal was filed belatedly and as such along with the Appeal an interlocutory application vide I.A. (Cr.) No. 1297 of 2017 , has been filed for condoning delay . In filing Appeal delay of one month eight days has occurred and delay has appropriately been explained in the petition. Accordingly, the limitation petition is allowed and delay in filing Appeal stands



condoned.

4. The Appeal has been preferred against the judgment of acquittal dated 6.3.2017 passed by Mr. Md. Ajazuddin, Vth Additional District and Sessions Judge, Siwan in Sessions Case No. 34 of 1997 (arising out of Pachrukhi P.S. Case No. 168 of 1995) registered for the offence under Section 302 / 34 of the Indian Penal Code , 1860.

5. Short fact of the case is that one Shiv Balak Singh (P.W. 6) gave his fardbyan before the Sub Inspector of Police Sri Bachchan Mishra on 31.12.1995 at 7.00 P.M. In his fardbyan he stated that on the same date at about 4.00 P.M. while he was working on fire place (*Chulha*)for preparing brown sugar (*gur*) the three respondents along with Babulal Singh -accused came and asked the informant regarding dispute in between the son of the accused side as well as informant's side and thereafter , they started assaulting the informant. As per fardbyan of the informant to save him one Bachcha Singh who was also preparing brown sugar near the place of occurrence tried to save the informant . Thereafter, all the four accused persons instead of assaulting the informant started assaulting Bachcha Singh by fist and slap. Due to the said injury Bachcha Singh fell down and died. It was claimed that besides the informant the occurrence was seen by



other witnesses also. After recording fardbyan an F.I.R. vide Pachrukhi P.S. Case No. 168 of 1995 was registered and investigation commenced. After investigation charge sheet was submitted against four accused person, which includes the respondents. After cognizance and completion of formalities under Section 207 of the Cr.P.C. the case was committed to the court of Sessions and as such, case was numbered as Sessions Case No. 34 of 1997. In the case charges were framed against all the four accused persons for the offence under section 302 /34 of the Indian Penal Code, 1860 . However, during trial one of the accused-Babulal Singh died, and as such his case abated. Since accused persons had denied charges , the prosecution to prove the case examined altogether total seven witnesses. P.W. 1 is a formal witness and rest of the witnesses except the Investigating Officer were close relatives of informant and deceased. Out of seven witnesses, five witnesses have claimed to be eye witness to the occurrence. It was noticed by the learned trial judge that all the witnesses who had claimed to be eye witness, were non else but close relatives of the informant and the deceased. Learned trial judge has also noticed that there was complete inconsistency in the evidence of eye witnesses even on the manner of occurrence . It was noticed that none of the independent witness had come



forward to support the prosecution case except five witnesses, who were close relatives and one witness who was Investigating Officer . During the trial from the defence side a plea was taken that deceased was leprosy patient and after his natural death a false case was concocted and they were made accused. Learned trial judge has noticed the fact that there was inconsistency in the evidence of eye witnesses as well as the fact that number of witnesses, who were not stated to be present at the time of occurrence in the fardbyan of the informant had come forward with a view to support the prosecution case that too with inconsistent stand. During the trial to the reasons best known to the prosecution side doctor, who conducted post -mortem examination report on the dead body of Bachcha Singh was not produced for examination nor post -mortem examination report was got proved . The court is of the opinion that in a case in which there was allegation of death by causing injury by fist and slap as well as the defence that deceased was a leprosy patient, non -examination of the doctor who conducted post -mortem examination report on the dead body of the deceased as well as non- production of the post- mortem examination report was certainly fatal for the prosecution case. The informant has said that in the occurrence he had also received injury but he had not



bothered as to whether his injuries were examined by the doctor or not nor any doctor was produced for examination.

6. We have considered the entire judgment and materials available on record and we are of the opinion that the learned sessions judge rightly in view of the fact that all the witnesses were close relatives of the informant and the deceased and the fact that doctor who had conducted post-mortem examination report has not been examined, has rightly passed the impugned judgment of acquittal, which requires no interference.

7. The appeal stands dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

Praful/-

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