

IN THE HIGH COURT OF JUDICATURE AT PATNA
Govt. Appeal (DB) No.46 of 1994

The State Of Bihar

... .. Appellant/s

Versus

1. Alimuddin @ Dillo, son of Maniruddin
2. Samim @ Bhudhan, son of Sk. Hasan
3. Sk. Azam, son of Sk. Rahmuddin
4. Sk. Mozim, son of Sk. Rahmuddin
5. Sk. Hahani, son of Sk. Liyakat
6. Sk. Sattan, son of Sk. Liyakat
7. Sk. Yunish @ Yunisiya, son of Manaf
8. Sk. Yusuf, son of Sk. Manaf
9. Aziz, son of Raif Quddin
10. Anzo, son of Sk. Aziz
11. Mansoor Alam alias Mansur son of Moin
12. Sk. Jasimuddin alias Jasim, son of Safur
13. Sabib Sah, son of Sk. Gafar Sah
14. Sk. Ismail, son of Kare
15. Sk. Banka alias Banku son of Jamaluddin
16. Sk. Ansar alias Md. Ansar son of Sk. Nathu
17. Sk. Samsul, son of Sk. Jahani
18. Sk. Majbul, son of Alibuk
- All residents of village Jabe P.S. Bhawanipur, District – Purnea
19. Taslim, son of Samid, resident of village – Madho Nagar, P.S. Bhawanipur District – Purnea
20. Aslam, son of Sk. Mannu, resident of village -Bela, P.S.- Rupauli, District – Purnea

... .. Respondent/s

Appearance :

For the Appellant/s : Sri Ajay Mishra, A.P.P.

For the Respondent/s : Sri Ajay Kumar Thakur

Mr. Md.Imteyaz Ahmad

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 03-11-2017

The present appeal was preferred by the State of Bihar under

Section 378(1) &(3) of the Code of Criminal Procedure, 1973



against judgment and order of acquittal dated 14.2.1994 passed by learned 2nd Additional Sessions Judge, Purnea (hereinafter referred to as the "trial judge") in Sessions Trial No. 432 of 1989 (arising out of Bhawanipur P.S. Case No. 30 of 1989). By the said judgment the learned trial judge has acquitted all the accused i.e. respondent no. 1 to 20 from charges under section 302 /34 of the Indian Penal Code, 1860 (hereinafter referred to as "I.P.C.").

Short fact of the case is that on the basis of fardbyan of Sk. Safique / P.W. 7, which was recorded at 4.30 P.M. by the officer-in-charge of Bhawanipur Police Station a formal FIR vide Bhawanipur P.S. Case No. 30 of 1989) was registered at 7.15 P.M. on 17.4.1989 for offence under Sections 147, 148, 149, 341, 302 and 379 of the I.P.C. against all the respondents herein. In the fardbyan it was alleged by the informant that he along with his co-villager Habib Shah (P.W. 4) and the two deceased namely Nasim (Bhagna of the informant) and Sahid (informant's nephew) were returning to their home from Bhawanipur Bazar. It is said that as soon as they came ahead about five hundred yards from Kusha middle school near the BASA of Bosik, they saw a tractor of the accused Alimuddin which was standing near the BABUL trees and the tractor started proceeding towards them. It is said that as soon as the tractor came beside them all of a sudden 8



to 10 persons jumped down from trailer and it is said that they were about to run away from there but in the meantime, Mukhiya of Jawe namely, accused Alimuddin and accused Samim and 7 to 8 persons came out of BASA of Bosik and surrounded them and Mukhiya ordered to see that no one should escape from there and let their hands and legs be chopped off so that they may not compete with them. It has been further said that Mukhiya Alimuddin was holding GARASA in his hand, Samim was having country made pistol, Mansoor was having gun, Azim, Sk. Jahani, Mozim, Jasim and Taslim were having GARASA in their hand. The accused Ansar and Sk. Aslam were having country made pistol and the accused Sk. Ismail, Sk. Bouku, Sk. Anno were having Bhala in their hand. It is further said that the accused Sk. Sattan and Yunisiya were having Tengari and rest of the accused were having lathi in their hand. It is further alleged that on getting order from Mukhiya, the aforesaid persons rushed towards them and upon this, the informant and others started running away. It is said that the informant ran away towards the eastern direction and the other three ran towards western side. It is said that the informant while fleeing was assaulted by Yusuf with lathi on his leg but any how he got his life saved by hiding in orchard of LICH. It is said that the accused persons followed Nasim and



Sahid and caught hold of them and Mukhiya Alimuddin assaulted Sahid with his GARASA on the left side of his head and as a result of which he fell down and thereafter, the accused Azim Jahani and Mojib with their GARASA and Ismail with his Bhala kept on assaulting and after a while he died. It is further said that in the meantime, the accused Samim, Aziz, Sabib, Samsul and Majbul made Nasim to fall on the ground and broke the neck of Nasim by pressing with lathi. It is also said that the accused Anno gave a Bhala blow on the leg of Nasim. The accused Mansoor is said to have taken money from the pocket of Nasim and the accused Aslam is said to have taken watch from the hand of the deceased Nasim. In the meantime, it is said that some one amongst the accused shouted that the police has come and on hearing this, the accused persons fled away with the tractor towards village. The motive of the said occurrence has also been assigned in the first information report which is that they had lodged a complain against Mukhiya before the public grievance cell which was being enquired by B.D.O., Bhawanipur and on the last Saturday (15.4.89) the B.D.O. took evidence in that case and on that day, the Mukhiya and his men had threatened them of dire consequences.



After registering F.I.R., inquest report in respect of dead bodies of two persons namely, Nasim and Sahid was prepared and marked as Exhibit -5/1 and Exhibit – 5 respectively. The dead bodies were sent for post -mortem examination and after receipt of post -mortem examination report and completing investigation charge -sheet was submitted against all the private respondents and they were put on trial. During trial prosecution to establish its case examined altogether eleven witnesses. The learned trial judge during evidence has noticed that prosecution had miserably failed to establish the presence of witnesses who had claimed to be eye witness at the place of occurrence and discussing each and every evidence passed a detailed judgment and acquitted all the accused persons who are respondents no. 1 to 20 in the present appeal. After the judgment of acquittal, besides the State, the victim preferred revision vide Cr. Revision No. 206 of 1994. The said Revision was heard at length by a Bench of this Court and by judgment dated 07th April, 1997 the Revisional Court dismissed the Revision primarily on the ground that learned trial judge after appreciating entire evidence had passed judgment of acquittal and as such, in revisional jurisdiction it was difficult to re-appreciate the evidence.



In the present case it is necessary to incorporate that the original lower court record has already been misplaced. Earlier, in Cr. Revision No. 206 of 1994 lower court record was summoned and after dismissal of the Cr. Revision the said record was remitted back to the court of Sri R.R. Prasad, learned 2nd Additional Sessions Judge, Purnia but it appears that the said record never reached to the court below. In this appeal Postal Department was directed to conduct enquiry regarding the Parcel. However, the Postal Department submitted its report that since parcel was seventeen years old, it was difficult to get any information and old records were already destroyed. Accordingly, this Court felt difficulty to examine the original records. However, in the present appeal at least certified copy of depositions are on record.

Sri Ajay Mishra, learned Additional Public Prosecutor while pressing the Appeal has argued that the learned trial judge has not appreciated the evidence in its right perspective, and as such, judgment of acquittal requires to be interfered with. However, Sri Ajay Kumar Thakur, learned counsel, assisted by Sri Imtiyaz Ahmad, learned counsel for all the private respondents i.e. respondent no. 1 to 20 submits that once Revision which was filed by the informant against judgment of acquittal has already been



dismissed by assigning detailed reason by judgment dated 7.4.1997 in Cr. Revision No. 206 of 1994 by this Court, it would not be advisable for this court to re-examine the same. Moreover, he has argued that on examination of entire evidence once learned trial judge has come to conclusion that presence of eye witnesses was itself doubtful, while hearing Appeal against acquittal it would be not proper to examine the same evidences in a different way. Moreover, he has argued that in criminal matter if on the basis of evidence there are two possibilities one indicating guilt and another showing innocence, the Court may prefer to accept innocence of the accused persons instead of holding them guilty on the same evidence. He has also argued that it is not the case of the appellant /State that the judgment of acquittal was passed contrary to the evidence on record. It is simply question of appraisal of evidence, which was appraised by the learned trial judge and thereafter, judgment of acquittal has been passed.

Besides hearing learned counsel for the parties, we have examined the judgment impugned, judgment passed by the Revisional Court, copy of depositions which are on record. After going through the same, we are of the considered opinion that in the judgment impugned there is no perversity and moreover, Revision against the same judgment has already been dismissed by



this Court and as such, it would not be appropriate for this court to interfere with the judgment impugned. Accordingly, Appeal against acquittal stands dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

praful/-

AFR/NAFR	AFR
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