

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.248 of 2017

Arising Out of PS. Case No.-21 Year-2012 Thana- KOCHAS District- Rohtas

Most. Lal Muni Kuer, w/o Late Ram Kishun Sah, resident of village –
Bharadih, P.S. -Kochas (Prsathua) , District -Rohtas

... .. Appellant/s

Versus

1. The State Of Bihar
2. Ajay Sah
3. Santosh Sah, both sons of Baban Sah
4. Satyendra Sah, s/o Siv Murat Sah,
All residents of village- Bharadih, P.S. Kochas (Parsathua) District- Rohtas

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Atul Kumar Pandey
For the Respondent/s	:	Sri Abhimanyu Sharma , A.P.P. Sri Raghunandan Kumar Singh

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

6 01-09-2017 Heard Sri Atul Kumar Pandey, learned counsel for the appellant , Sri Abhimanyu Sharma, learned Additional Public Prosecutor as well as Sri Raghunandan Kumar Singh , learned counsel, who has appeared on behalf of the respondent nos. 2 to 4.

The present appeal has been preferred against the judgment of acquittal dated 9th May, 2016 in Sessions Trial No. 342 of 2012. The appeal has been filed along with an interlocutory application i.e. I.A. No. 865 of 2017 u/s 378(3) of Cr.P.C. and I.A. No. 423 of 2017 for condonation of delay in



filing appeal. By the judgment impugned the learned trial judge has acquitted all the three respondents from the charges under section 302/ 34 of the Indian Penal Code 1860 (hereinafter referred to as “IPC”) and Section 27 of the Arms Act. He has also acquitted appellant / Santosh Sah from the charge under Section 302 of the IPC.

Short fact of the case is that on the basis of fardbyan of Sitaram Sah /P.W. 1 on 11.03.2012 an F.I.R. vide Kochas (Parsathua) P.S. Case No. 21 of 2012 was registered for offence under Section 302/ 34 of the IPC and Section 27 of the Arms Act against all the three respondents on an allegation that while husband of P.W. 2 / late Ram Kishun Sah was milking his cow all the three respondents killed him by fire arm. The informant had claimed to be eye witness to the occurrence. After investigation police submitted charge -sheet. After cognizance and commitment, finally trial was initiated and the case was numbered as Sessions Trial No. 342 of 2012 and charges were framed against the respondents. Since they denied charges the prosecution to prove the case examined altogether five witnesses. Out of five witnesses only two persons were cited as eye- witness to the occurrence whereas, doctor who had conducted post -mortem examination on the



dead body was examined as P.W. 4 , whereas Sri Randhir Kumar Singh/ the investigating officer has been examined as P.W. 3, whereas P.W. 5 was examined as formal witness. Since during the trial both the eye witnesses i.e. P.W. 1 / informant and P.W. 2 /wife of the deceased failed to corroborate the charges, the learned trial judge in absence of any cogent evidence extending the benefit of doubt acquitted all the three respondents and thereafter the widow who was examined as P.W. 2 has filed the present appeal. Along with the appeal a petition under section 378 (3) of the Code of Criminal Procedure 1973 vide I.A. No. 865 of 2017 and petition for condoning delay in filing appeal has been filed.

Learned counsel for the appellant submits that both the eye witnesses in their examination - in- chief have categorically stated regarding the act committed by all the three respondents. According to him , in view of evidence of those witnesses, the learned trial judge has incorrectly ignored their evidences and passed order of acquittal.

Sri Abhimanyu Sharma , learned Additional Public Prosecutor as well as Sri Raghunandan Kumar Singh , learned counsel for the respondents opposing the appeal by way of referring to the impugned judgment submits that it is true that



both witnesses i.e. P.W. 1 and P.W. 2 who had claimed to be eye witnesses in their examination -in- chief have stated regarding participation of the respondents but truth has come in their cross- examination. He submits that P.W. 1 in his cross- examination has categorically stated that at the time of occurrence there was deep dark and accused persons had covered their faces and as such, he did not identify any of the miscreants . Similarly P.W. 2 / widow of the deceased in her cross- examination herself has stated that after an hour she heard sound of firing and thereafter she went there. Meaning thereby, that this witness has also not claimed to witness the occurrence.

Earlier, notice was issued on limitation petition i.e. I.A. No. 423 of 2017 . We have heard and perused the limitation petition, which explains the reason for delay in filing appeal. Accordingly, the limitation petition is allowed and delay in filing appeal stands condoned.

Considering the fact that both the witnesses who in their examination- in- chief had supported the prosecution case, in their cross -examination truth has come to the fore regarding non identification, and as such, the learned trial judge has rightly extended the benefit of doubt to all the three



respondents.

In this case, lower court record was earlier summoned, which has been received. We have examined the record and after examining the same, we are of the considered opinion that the learned trial judge has committed no error nor in the judgment there is any perversity warranting interference.

In view of the facts and circumstances, the leave petition stands dismissed and consequently the appeal too stands dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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