

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.727 of 2017

Arising Out of PS. Case No.-117 Year-2014 Thana- BELAGANJ District- Gaya

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Bachhu Prasad, Son of Late Shivnandan Mahto, Resident of Village- Bhreti,
P.S.- Bajirganj, District- Gaya.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Uday Kumar, Son of Sri Dhramdeo Singh, Resident of Village- Belhari, P.S.-
Belaganj, District- Gaya.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Sri Bhim Sen Prasad
For the Respondent/s	:	Sri Ajay Mishra , A.P.P. Sri Y.C. Verma, Sr. Counsel Sri Anuj Kumar, Advocate

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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)

6 15-11-2017 The present Appeal under Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) along with leave petition vide I.A. No. 1971 of 2017 under section 378(3) of the Cr.P.C. , has been filed against judgment of acquittal dated 26.04.2017 passed by Sri Jay Ganesh Singh , learned Additional Sessions Judge -IV, Gaya (hereinafter referred to as “trial Judge”) in Sessions Trial No. 112 of 2015 / 365 of 2015 [arising out of Belaganj P.S. Case No. 117 of 2014]. By the said judgment the learned trial judge has acquitted the respondent no. 2 from the charge under section 304(B)/ 34 ,



201 /34 and 302 /34 of the Indian Penal Code, 1860 (hereinafter referred to as "I.P.C.") by extending benefit of doubt. The private respondent no. 2 was husband of daughter of appellant/ Bachhu Prasad , who was informant of the case.

In this appeal by order dt. 4.10.2017 we had called for record of Sessions Trial No. 112 of 2015 /365 of 2015 (arising out of Belaganj P.S. Case No. 117 of 2014) from the court of Addl. Sessions Judge , IVth, Gaya, which has been received. We have also examined entire record and evidences.

Short fact of the case is that on 11.8.2014 a written complaint addressed to the Officer -in -charge, Belaganj Police Station was received. The said complaint was neatly typed. It was alleged in the written complaint that daughter of informant -Bachhu Prasad namely, Nitu Kumari was married in the year 2011 with respondent no. 2 /Uday Kumar. After marriage his daughter went to her in- laws house. Subsequently, after about one year, son -in- law / Uday Kumar, Dhramdeo Singh (father), Ajay Kumar- s/o Dhramdeo Singh and wife of Ajay Kumar started demanding Rs. 2,00000/- for business and purchasing motorcycle. After getting such information from his daughter, the informant went to Gaya and tried to convince them and he also handed over Rs. 20,000/- to Ajay Kumar and requested



that subsequently he may help him, however at the moment, his financial condition was not appropriate. Thereafter, he returned, however, on 8.8.2014 at 8 P.M. in the evening he received information that his daughter was un-well. On 9.8.2014, the informant with his son Nitish Kumar and Upendra Kumar , son of Vijay Kumar Verma visited there where he was informed that his daughter died in course of treatment and cremation has already been done and the informant was asked to do whatever he wants to do. The informant suspected that all accused persons conniving with each other had killed his daughter and to save themselves they had disposed of the dead body.

On the basis of said written report, on 11.8.2014 at 17.15 hours (5.15 P.M.) a formal F.I.R. vide Belaganj P.S. Case No. 117 of 2014 was registered for offence under section 498(A) , 304(B), 201 /34 of the I.P.C. against respondent no. 2, his father- Dhramdeo Singh, brother / Ajay Kumar and mother-in-law. After investigation police found accusation against respondent no. 2 true and filed charge-sheet in the month of November, 2014 keeping investigation open against others. Subsequently, cognizance order was passed and case was committed to the court of sessions and thereafter, after commitment on 27.1.2016 charge under section 304B/34, 201 /



34 and 302/ 34 of the I.P.C. was framed against the private respondent and thereafter, to prove its case prosecution examined altogether ten witnesses ,however, save and except P.W. 8 , who was informant and P.W. 7 , other witnesses have not supported the prosecution case , rather P.Ws. 1 to 6 did not support the prosecution case and most of those witnesses stated that family members of deceased also participated in cremation, however, they were declared as hostile. They also indicated that deceased was a patient of Epilepsy, however those witnesses were declared hostile. P.W. 7 who is the own brother of the informant / Bachhu Prasad stating like informant has also admitted that information regarding ailment of deceased was received by him also.

In this case by order dated 04.10.2017 record of Sessions Trial No. 112 of 2015 / 365 of 2015 was summoned and same has been received.

In the present case the informant was the main witness and as such, it is necessary to examine the evidence of P.W. 8 /Bachhu Prasad, who is the informant of the case. On examination of evidence of P.W. 8 it is evident that in examination -in -chief he has reiterated the story, which was made in the F.I.R., however, during cross- examination in



paragraph no. 3 he accepted that from 8.8.2014 i.e. the date of receiving information regarding ailment of his daughter till information of death of his daughter, he was regularly talking with the accused persons, however no plausible explanation has been given as to under what circumstances a neatly typed written information was submitted to the Officer- in- charge of police station belatedly on 11.8.2014 . In normal course once the informant, who was father of the deceased, had gathered information that on 9.8.2014 his daughter was done to death and dead body was disposed of, he would have immediately rushed to the police station, but, in the present case a neatly typed copy was filed in the police station in the evening of 11.8.2014. Moreover, P.W. 10 who was cousin of the deceased in his evidence had categorically stated that there were never any complaint regarding ill treatment of his sister. He stated that after marriage she was regularly visiting her parents' house. Surprisingly, cousin of the deceased and nephew of the informant/ P.W. 10 -Upendra Kumar Verma was also declared as a hostile witness. The investigating officer/ Kapildeo Pandey, who was examined as P.W. 9 stated that witnesses had disclosed that the deceased died due to ailment. He also reiterates that on the date of occurrence no information



was given to the police and only written application dated 11th August 2014 was filed in the police station and no explanation was given regarding delay. He further stated that none of the witnesses had said that in between deceased and her husband/ respondent no. 2 there was any dispute. In this case, to disprove the prosecution case the respondent no. 2 also produced two witnesses and certain documents were got exhibited such as prescription to show that deceased was suffering with the disease "Epilepsy". The said D.W. 1 / Dr. Paras Nath Chaudhary stated that he had treated the deceased and he also disclosed that the "Epilepsy" can be also cause of death in case of young person.

Sri Bhim Sen Prasad, learned counsel for the victim has argued that evidence of P.Ws. 7 and 8 was sufficient for holding the respondent no. 2 who was husband of the deceased guilty, but the learned trial judge erroneously passed the acquittal order. He further tried to justify the delay in filing the FIR and he argued that immediately after getting information regarding death, he firstly went to a police station but that police station did not accept his complaint and this was the reason that belatedly complaint was filed in the police station on 11.8.2014. He further submits that there is consistency in the



evidence of P.Ws. 7 and 8 and as such, it is a fit case for interference with the impugned judgment.

In this case, Sri Ajay Mishra , learned Additional Public Prosecutor and Sri Y.C. Verma, learned senior counsel, assisted by Sri Anuj Kumar, learned counsel, who had appeared on behalf of respondent no. 2 have argued that there is no apparent perversity in the judgment impugned requiring any interference.

Besides hearing learned counsel for the parties, we have also perused the entire evidences, which were brought on record. On examination of the evidences, it is evident that prosecution has not proved its case beyond all reasonable doubt, and as such, the learned trial judge has committed no error in passing the judgment of acquittal. Moreover, witnesses six in number, who were examined as prosecution witnesses i.e. P.Ws. 1 to 6 have not at all supported the prosecution case, rather they disclosed the fact that in cremation of the deceased, her family members had also participated and the deceased was suffering from the disease “Epilepsy”. Even from the evidence of informant /P.W. 8 it is clear that immediately after noticing that daughter of the informant was in ailing condition the information was given to the informant. The informant in



paragraph no. 3 of his cross -examination has accepted that he was in regular touch with the accused persons. Once it was a case that death occurred on 9th August, 2014 , there was no reason for the informant not to immediately rush to the police station or to consult Superintendent Of Police, but belatedly a neatly typed written information was given to the police station in the evening i.e. 5.15 P.M. on 11.8.2014. Even nephew of the appellant / informant P.W. 10 has not supported the prosecution case, rather he stated that relation in between the deceased and her husband was cordial and earlier there was no complaint. Even in the evidence of informant /P.W. 8 it appears that he had stated that money was demanded by brother of respondent no. 2. No specific accusation was made against respondent no. 2 regarding demand of dowry and moreover, the allegation of demanding money appears to be not as demand of dowry, rather it appears that the accused side wanted to get some monetary help for doing business. Moreover, the learned trial judge after examining entire evidences has come to a finding that prosecution had failed to prove its case beyond all reasonable doubt. We have also examined the impugned judgment. Prima facie we are satisfied that there is no perversity in the judgment of acquittal. Normally, judgment of



acquittal may not be interfered with in appeal unless it is a case of perversity or the learned trial judge has passed order contrary to the evidences on record whereas, in the present Appeal there is no complaint that learned trial judge has passed order contrary to the evidences on record. Accordingly, we do not find any merit in the Appeal. There is no need to grant leave to Appeal and as such, leave petition i.e. I.A. No. 1971 of 2017 stands dismissed. Consequently, the Appeal against acquittal too is dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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