

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.737 of 2016

Arising Out of PS.Case No. -82 Year- 1990 Thana -BIHTA District- PATNA

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Amresh Kumar, son of Late Ram Vijay Sharma, resident of Village- lMauza-Nathupur, P.S. Bihta, District Parna, presently resident of Village- Akhtiyarpur P.S.- Bihta, District- Patna

.... Appellant

Versus

1. The State of Bihar
2. Vivekanand Sharma
3. Nityanand Sharma
4. Sachidanand Sharma

All son of Sri Sukhdeo Sharma, Resident of village- Akhtiyarpur P.S.- Bihta, District- Patna

.... Respondents

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Appearance :

For the Appellant : Mr. Ashutosh Singh, Advocate.

For the Respondents : Mr. S.N.P. Sinha, Sr. Advocate.

Mr. Rohit Kumar

Mr. Rashmi Bharti, Advocates.

For the State : Mr. S.C. Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 15-02-2017

We have heard learned counsel for the appellant and Sri Suraj Narayan Prasad Sinha, learned senior counsel appearing for the three private respondents at length on more than one occasion.

2. We have examined the records, as produced by the learned counsel for the appellant. The trial court being Additional Sessions Judge-V, Danapur, Patna has acquitted the three respondents in Sessions Trial No. 12 of 1991 (Trial No. 14 of 2016) arising out of



Bihta P.S. Case No. 82 of 1990, wherein, the respondents were charged for the offence under Section 302/34 of the Indian Penal Code read with Section 27 of the Arms Act for allegedly murdering one Ram Bijay Sharma, the father of the informant Amresh Kumar.

3. The prosecution case was that the informant Amresh Kumar and his father Ram Bijay Sharma were sleeping on the cot outside the house within their compound which was bounded by boundary wall. Towards midnight, the informant heard some people climb over the boundary wall and enter the compound. He then found that the accused persons had surrounded his father and they shot him on the chest killing him instantly. Upon alarm being raised, the accused persons managed to escape. On hearing the gun shot, the lady inmates of the house, like the mother of the informant and two sisters of the informant, who were sleeping inside, came out and saw the incident.

4. The prosecution in order to establish its case examined witnesses i.e. the informant, his two sisters and two other witnesses who had allegedly seen the accused persons escape outside the compound of the house. The prosecution has further examined the investigating officer, as well as the doctor who conducted the post mortem. There has been suggestion given that the occurrence is not correctly reported and the place of occurrence is also not correctly alleged or proved. The true occurrence, though reported, appears to



have been suppressed. The defence has examined a large number of witnesses. The witnesses are independent witnesses being of the immediate neighbouring village. They have deposed that the body of the deceased was found lying in the agricultural field. They were not confronted with the inquest report or by the statement recorded of other prosecution witnesses. The father of one of the accused persons was also examined as a defence witness, who clearly stated that the deceased had been shot in the night in the agricultural field where he had seen the body. The wife of the deceased had first made statement to the police. The informant, being the son of the deceased, was not in the village but was working and staying at Arrah and had been called. It is subsequently when he reached the village, his fardbeyan was recorded and replaced the statement made by the wife of the deceased.

5. It may be noted here that wife of the deceased Lalmati Devi as shown as a charge sheet witness in spite of such suggestion as made to the prosecution witnesses, was not produced for examination because the allegation of the defence was that she had given the first statement before the police with regard to the occurrence. It may be noticed here that one Sri Prakash was also an F.I.R. witness named in the fardbeyan who is said to have seen the occurrence. He was an independent witness but he was not examined in course of trial, there being no explanation why. Thus, the independent witnesses being



available but not examined has thus prejudiced the defence.

6. On the basis of the aforesaid, the trial court has held that the prosecution has failed to establish its case beyond reasonable doubt and thus giving the benefit of doubt has acquitted the respondents. We see no reason to interfere. This appeal is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

B.T/Ibrar

(Vikash Jain, J)

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