

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.324 of 1994

Arising Out of PS.Case No. -56 Year- 1992 Thana -Amas District- GAYA

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1. Suresh Bhuiyan, Son of Saran Bhuiyan.
 2. Alakhdeo Bhuiyan, Son of Jageshwar Bhuiyan.
 3. Bhola Bhuiyan, Son of Jethu Bhuiyan.
 4. Dayal Bhuiyan, Son of Sumat Bhuiyan.
 5. Sharan Bhuiyan, Son of Tetar Bhuiyan.

.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance:

For the Appellant/s : Mr. Rampraveshnath Tiwary, Advocate.

For the Respondent/s : Mr. S. N. Prasad, APP.

Mr. Ajay Mishra, APP.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 11-11-2017

Heard the parties.

2. Five appellants stand convicted in Sessions Trial No. 66 of 1993 / 26 of 1993 arising out of Amas P.S. Case No. 56 of 1992 for the offence punishable under Sections 302, 149, 342, 448, 147 and 148 of the Indian Penal Code vide judgment and order of conviction and sentence dated 28.05.1994. They also stand sentenced to undergo R.I. for life. Therefore, the appeal.

3. Nine persons were examined as prosecution witnesses. PW-1 Nanhak Bhuiyan is the son of the deceased, PW-4 Mohri Devi is the informant i.e. wife of the deceased, PW-8 is the



doctor who performed post mortem, PW-9 is the formal witness who proved the F.I.R. and the signature of the I.O. and PW-2, PW-3, PW-5, PW-6 and PW-7 declared hostile.

4. As per the F.I.R., Mohri Devi (PW-4) made a fardbeyan that on 05.08.1992 at around 07:30 PM, all the accused persons variously armed entered into the house of the informant. When the informant enquired as to why they have barged into the house of the informant, accused persons were supposed to have told her that her husband was practicing black magic and he had killed the son of Dayal Bhuiyan. They did not find the husband of the informant in the house. They dragged her son Nanhak Bhuiyan (PW-1) out of the house. When they were coming out, they saw the husband of the informant running away, he was chased, surrounded and assaulted.

5. Son of Dayal Bhuiyan, namely, Ramashish Bhuiyan used to work in Haryana and he died in Haryana and somehow Dayal Bhuiyan held a grudge that Jitan Bhuiyan was responsible for his death by practicing black magic.

6. Death of the deceased by assault is not a matter of dispute. There were multiple injuries as proved by the Autopsy report, but the prosecution has miserably failed to bring home the charges levelled against the appellants successfully. PW-1 (son of the



informant) who was supposed to have been dragged away by the accused persons, in his deposition, submits that at the relevant time of occurrence, he was confined to his house and he did not see the occurrence in any manner. In the F.I.R., statement was made that he was dragged away by the accused persons, therefore, he should have been present with the accused persons involved in the violence against his father and he was vital and important witness.

7. So far as the informant is concerned, the informant in her examination and cross-examination does accept the position that it was a dark night, she did not really see the people who were involved in assault and death of her husband. Besides these two vital witnesses, there are no other witnesses who have supported the prosecution case. As already noticed above, majority of so called prosecution witnesses like PW-2, PW-3, PW-5, PW-6 and PW-7 all became hostile.

8. To bring home the charge of Section 302 of the Indian Penal Code and to sentence the person for life, there has to be cogent and valid evidence to link crime with that of the accused persons. In the present case, there seems to be complete failure both on the part of the prosecution as well as two important witnesses, namely, wife and son of the deceased who failed to categorically state in their oral evidence that they have seen the crime with their



own eyes and that people involved in the said crime who are the present appellants were the perpetrators.

9. Counsel for the prosecution has also been asked to go through the evidence of PW-1 and PW-4. Their evidences in every manner fail to instill confidence because they themselves are wavering in their statement with regard to people involved in the crime or the persons responsible for the death of Jitan Bhuiyan. If this be so, merely because the death has taken place and despite lack of evidence or clear evidence of that of any of the so called eye witnesses, involvement of the appellants in the crime is not established beyond doubt but still the Trial Court has jumped to a conclusion only on the fact that Jitan Bhuiyan was dead and his autopsy proved certain injuries on his body which resulted into his death. To hold the appellants culpable for their conduct or contribution in the death of Jitan Bhuiyan, the impeachable material is grossly missing.

10. In that view of the matter, the reason for conviction seems to be based on conjecture and surmises and only on the allegations made in the F.I.R. against the accused persons. Since the allegations do not stand proved, the conviction of the appellants by the Additional District and Sessions Judge, Gaya vide judgment and order of conviction and sentence dated 28.05.1994 is required to be



set aside and quashed. Appeal is allowed. Bails bonds executed by the appellants stand discharged.

(Ajay Kumar Tripathi, J)

(Vinod Kumar Sinha, J)

Mishra/-

AFR/NAFR	N.A.F.R.
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