

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1129 of 2016

Arising Out of PS.Case No. -107 Year- 2010 Thana -KHARIK District- BHAGALPUR

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Himanshu Kumar @ Chotu S/o Late Badri Nath Kumar, R/o Village-Dhrubganj, P.S.-Kharik, District-Bhagalpur

.... Appellant/s

Versus

1. The State of Bihar.
2. Md. Ansar S/o Md. Kare.
3. Md. Lalu, S/o Late Rahish.

Both R/o Village-Teldhi Tola, P.S-Kharik, District-Bhagalpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nachiketa Jha
Mr. Alok Kumar

For the State : Mr. Dilip Kumar Sinha

For the Respondent no. 2 : Mr. Rajesh Kumar Pandey

For the Respondent no. 3 : Mr. Ram Sevak Choudhary

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL

And

HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

5 28-02-2017

Ref: I.A. No. 2128 of 2016

Heard both sides.

The present appeal is preferred under Section 372 of the Cr.P.C. by P.W.4 (son of the deceased) against the judgment and order of acquittal dated 12.02.2016 recorded by the learned trial court in Sessions Trial No. 103 of 2011.

There is delay of 185 days in filing the appeal. The appellant has filed interlocutory application for condoning the delay. We have perused the statement made therein. They appear completely vague and do not explain the long delay in filing the appeal. The judgment of acquittal was passed on 12.02.2016 and



the present appeal has been filed on 11.11.2016. Even if we do not take a very pedantic view, we do not find any grave illegalities committed by the learned trial court in appreciation of evidence produced at the trial for recording the acquittal against the respondent(s) herein.

It was a case of circumstantial evidence. The deceased was sleeping at his *Basa* when he was done to death. One of the respondent(s) informed about the occurrence, whereafter the nephew of the deceased (P.W.5) lodged the case.

We have meticulously gone through the judgment. The learned trial court found that neither the informant who deposed as P.W.4 nor the wife of the deceased (P.W.3) or anyone supported the case as an eye witness. The son of the deceased was residing at Delhi and on information given by a person who is also not an eye witness. There are material contradictions in the statement of son and widow of the deceased as it appears from the impugned judgment. We, further, find from the impugned judgment that except the fact that the respondent(s) who were admittedly looking after the affairs of deceased were seen the previous day at the house of the deceased, there is no other proved circumstance which complete the chain and conclusively prove only the guilt of the accuseds. This Court does not find any patent illegality and/or perversity in the judgment under reference.

The I.A. No. 2128 of 2016 and the appeal are



rejected/dismissed.

(Kishore Kumar Mandal, J)

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(Sanjay Kumar, J)

