

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.483 of 2017

Arising Out of PS.Case No. -41 Year- 2006 Thana -KHAZANIHAT District- PURNIA

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Md. Ali , Son of Late Kasiruddin Resident of Lut Mohalla, Police Station -
Sahayak Kajanchi, (K.Hat), District - Purnea.

.... Appellant/s

Versus

1. The State of Bihar.
2. Md. Ezaz @ Ezaz Yusuf, Son of Md. Yusuf , Resident of Lut Mohalla,
Police Station - Sahayak Kajanchi, (K.Hat), District - Purnea.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Uday Chand Prasad

For the Respondent/s : Sri Ajay Mishra, A.P.P.

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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)

5 11-07-2017 1. Heard Sri Uday Chand Prasad, learned counsel for
the informant/appellant and learned Additional Public Prosecutor.

2. The present appeal, has been preferred against the
judgment of acquittal dated 22.3.2017 passed by Sri Kanhaiya Jee
Choudhary, learned Additional Sessions Judge -3, Purnea in
Sessions Trial No. 960 of 2010 / CIS No. 3718 of 2013 arising out
of K. Hat P.S. Case No. 41 of 2006. By the said judgment the
learned trial judge, has acquitted the sole accused , who was put
on trial i.e. the respondent no. 2 from charge under section 302,
201/34 of the Indian Penal Code.

3. Short fact of the case is that on the basis of fardbyan



of the appellant/ informant, who was examined as P.W. 12 an F.I.R. was lodged on 24.1.2006 in the morning by P.W. 14 /Arti Kumari Jayswal, who was at the relevant time Sub Inspector of Police and posted at K.Hat Police Station. In the fardbyan the informant disclosed that on 23.01.2006 at about 4.00 P.M. while he was at his bicycle repairing shop with his son , the respondent no. 2 with one black tall person arrived at his shop and asked his son namely Sarfaraz @ Chunna to accompany him for watching Disneyland fair. He disclosed that in the night his son did not return and subsequently, on the next day he got an information regarding a dead body lying in the ground of Zila School. Thereafter, he reached there and noticed that dead body was of his own son namely Sarfaraj @ Chunna. He noticed that he his neck was tied by a handkerchief and besides the dead body one bicycle was lying. After recording fardbyan of the informant an F.I.R. vide K. Hat P.S. Case No. 41 of 2006 was registered on 24.1.2006 at 10.30 A.M. ,whereas fardbyan, was recorded on the same day i.e. 24.1.2006 at 8.10 A.M. After registering F.I.R. Police investigated the case and recorded statement of number of witnesses and finally , on 29.06.2006 charge -sheet was submitted against respondent no. 2 on 10.07.2006. After submission of charge -sheet learned Chief Judicial Magistrate ,



Purnea took cognizance of offences and after compliance of provisions under Section 207 of the Cr.P.C. on 22.07.2010 the case was committed to the court of Sessions and finally, on 12.08.2010 charges were framed against respondent no. 2 under Sections 302/ 34 and 201 /34 of the Indian Penal Code. Since the respondent no. 2 denied charges, the prosecution thereafter to prove the case examined altogether 15 witnesses. Out of 15 witnesses, P.W. 1 to P.W. 8, who were reportedly independent witnesses turned hostile . P.W. 13 / Dr. Chandra Mohan Singh had conducted autopsy on the dead body of the deceased, whereas P.W. 14/ Arti Kumari Jayswal , Sub Inspector of Police was examined to prove the fardbyan, which was in her writing. She had also prepared inquest report. P.W. 15 / Ram Sundar Das was the Investigating Officer of the case, whereas P.W. 9 , P.W. 10, P.W. 11 and P.W. 12 ,who are own blood relation of deceased have only come forward to support the case. Out of aforesaid witnesses P.W. 9 and P.W. 10 were hearsay witnesses, whereas P.W. 11 namely, Sahida Khatoon @ Sugiya is the wife of the informant /P.W. 12 and mother of the deceased and P.W. 12 is the informant/ appellant before this court.

4. On going through the impugned judgment it is evident that two witnesses i.e. P.W. 11 and P.W. 12, who are



mother and father of deceased have said the story that respondent no. 2 along with one another accused had taken her son (deceased) for witnessing Disneyland fair. P.W. 11 during cross -examination had stated that subsequently she was told by some one that deceased was seen with the respondent no. 2 in the Disneyland , however on being asked about the name of the person who had disclosed this fact, she did not give reply. Meaning thereby, that she had not said the name of the person who had told her about noticing the deceased with the respondent no. 2. P.W. 12 in his examination has himself said that he was suspicious about the killing of his son by the respondent no. 2, however prosecution with a view to prove the case has developed a story as if the respondent no. 2 had taken about Rs. 10,000/- from the deceased , which was given to the informant from time to time out of profit of repairing of cycle. However, to prove the motive, from the prosecution side no other independent witness was examined nor any documentary evidence was brought on record. The motive which was developed by the prosecution was seriously doubted by the trial court. Even we are of the opinion that once the repairing shop was being run by the father of the deceased , who is informant and P.W. 12 , it is difficult to comprehend as to how the deceased , who was only aged about 15



years gave such huge amount to the respondent no. 2 nor any receipt has been brought on record. The prosecution case is also doubted on the point that though Investigating Officer had shown about eight persons as independent witnesses, but none of the independent witnesses have supported the prosecution case, rather they turned hostile. Those witnesses are P.W. 1 to P.W. 8 in the case. So far P.W. 10 is concerned, who was own brother of the deceased and in his cross-examination he categorically accepted that at the time of occurrence he was very small and as such, he was not in position to describe the detail. Considering the fact that during trial save and except family members of the deceased none other person had come forward to say that deceased was lastly seen with the respondent no. 2, there is serious doubt on the prosecution case. Moreover, it is the case of the informant that at about 4.00 P.M. the deceased along with respondent no. 2 and one another black and tall person had gone but nothing was traced during investigation regarding the second person i.e. the black and tall person. Though deceased had gone at about 4.00 P.M., the dead body was recovered in the next morning and only thereafter F.I.R. was lodged, which suggests that though a 15 year boy had not returned back in the night even thereafter his parents had not taken any effort to search for their son and F.I.R.



was lodged only after recovery of dead body . On going through the judgment in detail, which discusses entire evidence, the Court is of the opinion that since prosecution has failed to prove the case beyond all reasonable doubt, the learned trial judge has rightly given benefit of doubt to the respondent no. 2 . Accordingly, we do not find any ground to grant leave and as such, the leave petition i.e. I.A. No. 1365 of 2017 filed under Section 378(3) of the Code of Criminal Procedure,1973 is rejected and simultaneously, the Appeal against acquittal too stands dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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