

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 1089 of 2017

Arising Out of PS. Case No.-532 Year-2013 Thana- Bhabhua District- Bhabhua (Kaimur)

Gita Kunwar, wife of Late Ramlal Kharwar, R/o Village: Sonhan, P.S.:
Sonhan, District: Kaimur at Bhabua.

... .. Appellant

Versus

1. The State of Bihar
2. Kalendra Kharwar, S/o Late Vishwanath Kharwar, R/o Village: Rehi, P.S.:
Sheosagar, District: Rohtas.
3. Rinku Devi, W/o Ajay Kharwar, R/o Village & P.S.: Sonhan, District:
Kaimur.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Vikramdeo Singh, Adv. Mr. Pawan Kumar Singh, Adv.
For the Respondent/s	:	Mr. Abhay Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

6. 15-12-2017 Heard Sri Vikramdeo Singh, learned counsel assisted
by Sri Pawan Kumar Singh, learned counsel for the
appellant and Sri Abhay Kumar, learned Addl. Public
Prosecutor.

2. The present appeal under Section 372 of the Code
of Criminal Procedure, 1973 (hereinafter referred to as
'Cr.P.C.') has been preferred against judgment of acquittal
dated 02-05-2017. By the said judgment, learned Fast Track
Court-I, Kaimur at Bhabua (hereinafter referred to as the



‘Trial Judge’) has acquitted respondent no. 2 & 3 from charge under Sections 364/34 of the Indian Penal Code in Sessions Trial No. 74 of 2015, arising out of Bhabua (Sonhan) P.S. Case No. 532 of 2013.

3. The appellant is the informant and mother of the deceased, whereas, respondent no. 3 is the daughter-in-law of the informant. In the case, it was alleged that on 20-07-2013, the son of the appellant (i.e. husband of respondent no. 3) alongwith respondent no. 3 and respondent no. 2 Kalendra Kharwar informing the informant went outside in relation to some work of L.I.C. Subsequently, the daughter-in-law returned and she informed the informant that her husband will return back after 15-20 days. Even thereafter, the son of informant did not return. Subsequently, it was noticed that the wife of the deceased was moving on a motorcycle with Kalendra Kharwar, who is respondent no. 2. On suspicion, in the month of September, 2013, a complaint case was filed in the court of learned Chief Judicial Magistrate, which was referred to the police for its registration and investigation under Section 156 (3) of the Cr.P.C. and thereafter, a case,



vide Bhabua P.S. Case No. 532 of 2013, was instituted.

4. On examination of evidence of investigating officer, who has been examined as P.W.5, it is evident that though, the investigation was done in completely perfunctory manner, without taking any step to trace out the son of the informant, to the reasons best known to the investigating officer, chargesheet was submitted and respondent no. 2 & 3 were put on trial. Even charge under Sections 364/34 of the Indian Penal Code was framed. During trial, none of the independent witnesses were examined to establish as to whether the respondent no. 2 & 3 were seen together or not. Only brother of the deceased, his wife and mother of the deceased had stated regarding noticing the respondent no. 3 with respondent no. 2. Since the prosecution evidence indicated only suspicion about involvement of both private respondents, the learned Trial Judge, after examining the evidences on record, has passed the order of acquittal, which has been challenged before this Court.

5. Alongwith the memo of appeal, the appellant has also filed a petition under Section 378(3) of the Cr.P.C. for



grant of leave, vide I.A. No. 2204 of 2017.

6. Sri Vikramdeo Singh, learned counsel for the appellant tried to persuade the Court that there was specific material on record that the respondent no. 2 had persuaded the son of the informant to go somewhere else and the deceased had gone with the respondent no. 2 alongwith the wife of deceased (i.e. respondent no. 3). In any event, the learned Trial Judge was not required to pass order of acquittal.

7. However, learned Addl. Public Prosecutor supports the impugned judgment. He submits that it was not a case that forcibly the son of the informant was taken away, nor during investigation, any sincere effort was taken by the investigating officer to establish the case. He submits that it can be a case of circumstantial evidence, however; no chain has been shown to be connected and as such, the learned Trial Judge has rightly passed the order of acquittal.

8. Besides hearing learned counsel for the parties, we have also perused the material on record, particularly the judgment impugned. After examining the same, the Court is satisfied that investigation itself was perfunctory. Moreover,



none of the independent witness has come forward to support the prosecution case. Accordingly, the Trial Judge, while passing the judgment of acquittal, has committed no error. We do not find any ground to grant leave.

9. Accordingly, the leave petition i.e. I.A. No. 2204 of 2017 stands dismissed. Consequently, the appeal against acquittal too is dismissed.

(Rakesh Kumar, J.)

(Mohit Kumar Shah, J.)

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