IN THE HIGH COURT OF JUDICATURE AT PATNA
Govt. Appeal (DB) No. 5 of 2017

Arising Out of PS. Case No.-209 Year-2012 Thana- Bhabhua District- Bhabhua (Kaimur)

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State of Bihar (through D. M.) Kaimur, Bhabhua having his office at Collectorate compound, Kaimur at Bhabhua

... ... Appellant

Versus

1. Fikir Singh S/o Ram Dhani Singh
2. Sudharma Singh S/o Radhe Shyam Singh
3. Radhe Shyam Singh S/o Late Ram Adhar Singh
4. Munna Singh S/o Ram Dhani Singh
5. Charbansh Singh S/o Late Akalu Singh

All resident of Village Akhalaspur, P.S. Bhabua, District Kaimur (Bhabha).

... ... Respondents

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Appearance :
For the Appellant/s : Mr. Mukeshwar Dayal, A.P.P.
For the Respondent/s : Mr. Ramakant Sharma, Sr.Adv.
Mr. Ravi Shankar Sahay, Adv.

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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)

8. 18-09-2017 **I.A. No. 333 of 2017**

Heard Sri Mukeshwar Dayal, learned Addl. Public Prosecutor for the appellant/State and Sri Ramakant Sharma, learned senior counsel assisted by Sri Ravi Shankar Sahay, learned counsel for all the respondents on interlocutory application i.e. I.A. No. 333 of 2017, which has been filed for condoning the delay of 156 days in filing the appeal.

After hearing the parties and considering the ground set-forth in the limitation petition, the limitation petition i.e. I.A.

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No. 333 of 2017 stands allowed and delay in filing appeal is condoned.

Govt. Appeal (DB) No. 5 of 2017
with I.A. No. 837 of 2017

Heard Sri Mukeshwar Dayal, learned Addl. Public Prosecutor for the appellant/State and Sri Rama Kant Sharma, learned senior counsel assisted by Sri Ravi Shankar Sahay, learned counsel for respondent no. 1 to 5.

The present appeal has been preferred against the judgment of acquittal dated 16-05-2016 passed by Sri Shiv Dhyan Singh, learned Additional Sessions Judge – V, Kaimur at Bhabhua (hereinafter referred to as the 'Trial Judge') in Sessions Trial No. 109 of 2013 (arising out of Bhabua P.S. Case No. 209 of 2012). By the said judgment, the respondents have been discharged and acquitted from the offence under Sections 302, 34, 120(B) of the Indian Penal Code and Section 27 of the Arms Act, 1959.

Short fact of the case is that on 08-06-2012 at 8:45 AM, *fardbeyan* of informant Mahabir Singh was recorded in Sadar Hospital, Bhabhua. In the *fardbeyan*, it was disclosed by the informant that on the same date, the informant, his mother and brother Kamlesh Koeri (deceased) were going to Bhabhua

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from Akhlashpur for depositing tuition fee of his brother Krishna Kumar in the morning at 7:00 hrs. While on way, they stopped near a bridge, since they were required to some discussion with uncle Kauleshwar. While they were waiting, the informant stated that five accused persons, who are respondents herein, arrived and out of them, two persons namely Fikir Singh (respondent no. 1) and Sudharma Singh (respondent no. 2) fired from country-made pistol on his brother. Thereafter, other accused Charbansh Singh (respondent no. 5), Radhe Shyam Singh (respondent no. 3) and Munna Singh (respondent no. 4) started indiscriminate firing and threatened the informant not to inform the police. The reason for the occurrence was explained that about 5-7 years earlier, his brother Kamlesh Koiry (deceased) was made accused in respect of murder of one Fulbansh Singh, brother of respondent no. 5 Charbansh Singh.

Police after recording *fardbeyan,* started investigation and during investigation, accusation against two accused namely Sudharma Singh (respondent no. 2) and Charbansh Singh (respondent no. 5) was found not true and remaining three were forwarded as accused. Thereafter, the learned Magistrate, by order dated 29-10-2012, took cognizance of offences and summoned all the five accused persons, even

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against those, who were not forwarded as accused by the police. After completion of formalities under Section 207 of the Cr.P.C., the case was committed to the court of sessions and thereafter, the case was proceeded and charges were framed. The accused persons denied the charges, thereafter, the prosecution, to prove the case, examined altogether seven witnesses.

However, during the trial, the learned Trial Judge noticed several irregularities and illegalities committed during investigation. It was found that the investigating officer had recorded a station diary entry on the same date at 7:00 hrs and thereafter, he proceeded to the place of occurrence and reached at the place of occurrence at 7:20 hrs., thereafter, he prepared inquest report and dead-body was sent for *post-mortem* examination and after about one & half hours from the arrival of the police, *fardbeyan* was got recorded in the Hospital at 8:45 hrs. No explanation was given by the prosecution as to why once the police had got information regarding murder, the investigating officer had not recorded in station diary as to how he got the information, whether he got information through source or telephonically, nothing was recorded. The learned Trial Judge also noticed that in the case diary, certain

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interpolation was made by the investigating officer at two stages. Time of information, which was mentioned as 7:20 hrs was interpolated and made as 7:00, however; at one place due to inadvertence, the investigating officer failed to make correction. Those illegalities were also noticed. It has also come that the deceased was accused in altogether nine serious cases and he alongwith informant had come out from the jail recently. Meaning thereby that informant was also in jail with the deceased in relation to one another murder case. The learned Trial Judge had also noticed that prosecution had miserably failed to explain as to why Kauleshwar Mallah (uncle of the informant and deceased) was not examined, whereas, as per F.I.R., there was specific case of prosecution that while going to deposit tuition fee, they stopped on a bridge and they were waiting for Kauleshwar Mallah. Even during investigation, Kauleshwar Mallah had not come forward to record his statement under Section 161 of the Cr.P.C. However, during examination, the investigating officer had stated that he tried his level best to record his statement. Ofcourse, this statement of investigating officer was not accepted by the learned Trial Judge, but fact remains that even prosecution had not taken any step to examine him as a witness. It is true that after eight days

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from the F.I.R., a protest petition was filed by the informant on an allegation that the investigating officer had recorded incorrect information. The learned Trial Judge has had also noticed virtual misconduct on the part of the investigating officer and has recorded some observation against him, however; the State in the present appeal has not disclosed as to whether they had taken any action against the investigating officer or not.

Considering the judgment, which has been passed in detail, it is evident that learned Trial Judge, in view of inconsistent evidence, had doubted even presence of so called eye-witnesses at the time of occurrence. Moreover, considering the evidence and examining everything, the learned Trial Judge has extended the benefit of doubt to the respondents.

Sri Rama Kant Sharma, learned senior counsel appearing on behalf of the respondents has also argued that entire prosecution case appears to be doubtful on the basis of injuries, which were found on the person of the deceased.

Besides hearing learned counsel for the parties, we have minutely examined the materials available on record and we do not find any perversity in the order warranting interference by this Court.

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Accordingly, we do not find any ground to grant leave and as such, leave petition i.e. I.A. No. 837 of 2017 stands dismissed. Consequently, the appeal too is dismissed.

(Rakesh Kumar, J.)

(Mohit Kumar Shah, J.)

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