

IN THE HIGH COURT OF JUDICATURE AT PATNA
Govt. Appeal (DB) No. 12 of 2017

Arising Out of PS. Case No.-18 Year-2008 Thana- Raghunathpur District- Siwan

The State of Bihar

... .. Appellant

Versus

1. Rambilas Sah S/o Dwarika Sah,
 2. Lalbabu Sah @ Lal Babu Sharma, Son of Indradev Sharma @ Indrerdev Sharma
 3. Sanjay Sharma Son of Indradev Sharma @ Indrerdev Sharma
 4. Indrerdev Sharma @ Indradev Sharma S/o Nageshwar Sharma,
 5. Dwarika Sah S/o Butan Sah,
 6. Ramayan Sharma S/o Indradev Sharma @ Indrerdev Sharma.
- All residents of Village- Harpur, P.S.- Raghunathpur, District- Siwan.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Parmeshwar Mehta
For the Respondent/s : Mr.

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

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

5. 13-10-2017 Heard Sri Parmeshwar Mehta, learned Addl. Public
Prosecutor, who has appeared on behalf of appellant/State.

2. The State has preferred an appeal in a case, in which,
as noticed by the Trial Court, a criminal was murdered.

3. By judgment dated 01-04-2017, the learned 5th
Additional District & Sessions Judge, Siwan (hereinafter
referred to as the 'Trial Judge') has acquitted respondent no. 1
to 6 and they were discharged from offences under Sections
302/149, 120B of the Indian Penal Code.



4. The appeal was filed after delay of about 18 (eighteen) days and as such, alongwith the appeal, an interlocutory application i.e. I.A. No. 1477 of 2017 was filed for condoning delay. The delay in filing appeal has properly been explained and as such, the limitation petition i.e. I.A. No. 1477 of 2017 is allowed and delay in filing appeal stands condoned.

5. Short fact of the case is that on 02-04-2008 at 10:45 PM in the Referral Hospital, Raghunathpur, the informant namely Bikrama Yadav disclosed that on 02-03-2008 at about 7:00 PM, while his uncle Bijli Yadav (deceased) had gone to watch maize crop, he heard *hulla* of '*chor chor*' and thereafter, he alongwith other villagers rushed to the field and noticed that all the aforesaid respondents were returning back carrying *lathi* in their hands. Subsequently, the informant arrived in the field and noticed that there was a *bhala* injury on the neck of the deceased and blood was oozing out.

6. On the basis of *fardbeyan*, an F.I.R., vide Raghunathpur P.S. Case No. 18 of 2008, was lodged and after investigation, chargesheet was submitted. The prosecution, to prove the case, examined altogether eight witnesses. After closure of the prosecution evidence, the statement of accused under Section 313 of the Code of Criminal Procedure, 1973 (for



short “Cr.P.C.”) was recorded and thereafter, from accused side also, some documents were got exhibited and defence was taken that deceased was a dreaded criminal. Even his father was earlier killed, regarding which, no F.I.R. was lodged. During evidence, many witnesses, with criminal antecedent, had tried to develop a story, as if, the accused persons were seen carrying different types of weapons. The evidence of those witnesses was entirely inconsistent with the *fardbeyan* of the informant. Even during trial, no motive was established. The learned Trial Judge has noticed in the judgment that it was difficult to identify the weapon carried by the accused persons as well as accused persons. Even, it was not a prosecution case that any of the witnesses had witnessed the actual occurrence, save and except story developed, as if, accused persons were seen coming after committing murder. There was specific stand of the informant that accused persons were carrying *lathi* in their hands. This fact is itself demolished by the evidence of the doctor, who had conducted *autopsy* on the person of the deceased. The doctor had found following injuries:-

“(i) Incised wound on sub mandibular
region right side – bone deep.

(ii) Incised wound on right – region muscle



deep.

(iii) vertical cut on right lawful deep to skin.

(iv) Incised wound on right shoulder on outer part bone deep.

(v) Incised wound on right arm posterior aspect.

(vi) Incised wound on anterior surface of right lower limbs between ankle of knee joint.

(vii) Incised wound on left lower limb between ankle of knee joint and anterior aspect bone deep.

(viii) Abrasion on the right cheek beside eye.

(ix) Bruise on the right cheek near – joint.

(x) Multiple bruise all over the chest right side and upper part of abdomen right side.

(xi) Bruise on the right arm lower posterior part.”

7. The learned Trial Judge, in paragraph – 29 of the judgment on the basis of evidence, has observed as follows:-

“From the evidence of PWs it comes into the light that the deceased and his family had



criminal antecedents. Father of informant was also murdered. But no case was lodged for that murder. In 1995 several fire arms and ammunitions were recovered from the house of deceased and PWs 4 and 5. But, the PWs 4 and 5 including other witnesses have tried to suppress it. But by proving the Exhibit D, D/1 the defence has established their case. Even from the cross-examination of PWs it has come to the light that they have criminal antecedents. Therefore, the third hypothesis of the case may be that the deceased might be killed by some enemies due to his criminal antecedent.”

8. The learned Trial Judge has also noticed that seizure list witnesses were not in a position to see, even then, those persons were cited as seizure-list witnesses. Moreover, the learned Trial Judge has noticed that the respondents were having clean antecedent.

9. After discussing entire evidences, oral and documentary, the learned Trial Judge by assigning detailed reason has passed the judgment of acquittal. The learned Trial Judge has also noticed that deceased was a criminal.

10. Moreover, on examination of the material available



on record, we do not find any ground to grant leave to appeal.

11. Accordingly, the interlocutory application i.e. I.A. No. 1476 of 2017, which has been filed under Section 378(3) of the Cr.P.C. for grant of leave is dismissed. Consequently, the appeal against acquittal too stands dismissed.

(Rakesh Kumar, J.)

(Mohit Kumar Shah, J.)

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