

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 1183 of 2016

Arising Out of PS.Case No. -165 Year- 2004 Thana -SABAUR District- BHAGALPUR

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Yogendra Prasad Yadav, son of Late Umesh Prasad, Resident of
Mohalla- Purani Deoharhi, P.S. Barari in Town & District of
Bhagalpur.

.... Informant-Appellant
Versus

1. The State of Bihar

.....Respondent 1st Set.

2. Om Prakash Yadav, son of Late Kishun Yadav

3. Bhagawat Yadav, son of Late Mahabiri Yadav

4. Ram Deo Yadav, son of Late Kishun Yadav

5. Niranjana Yadav, son of Late Mahabir Yadav.

All resident of Mohalla- Purani Deohari, P.S.- Barari in the Town
and District of Bhagalpur.

.... Accused-Respondents IInd Set.

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Appearance :

For the Appellant/s : Mr. Ashutosh Jha

For the Respondent/s : Mr. Satya Narayan Prasad

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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)

7. 28-06-2017 Heard Sri Ashutosh Jha, learned counsel for the
appellant and Sri Satya Narayan Prasad, learned Addl. Public
Prosecutor.

2. The present appeal has been filed under Section
372 of the Code of Criminal Procedure, 1973 (hereinafter
referred to as 'Cr.P.C.') against judgment of acquittal dated 2nd
September, 2016 in Sessions Trial No. 458 of 2005 {arising out
of Sabour (Industrial) P.S. Case No. 165 of 2004} registered for



offence under Sections 302, 201/34 of the Indian Penal Code and Section 27 of the Arms Act, 1959. By the said judgment, the learned 1st Additional Sessions Judge, Bhagalpur (hereinafter referred to as 'Addl. Sessions Judge') has acquitted the respondent no. 2 to 5 and discharged them. The appeal has been filed alongwith an interlocutory application, vide I.A. No. 1267 of 2017 under Section 378 (3) Cr.P.C. for grant of leave to appeal.

3. Short fact of the case is that on the basis of *fardbeyan* of Yogendra Prasad Yadav (informant/appellant), who has been examined as P.W.-7, an F.I.R. was lodged on 05-08-2004, vide Sabour (Industrial) P.S. Case No. 165 of 2004 under Sections 302, 201/ 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959 against six accused persons, which include four respondents herein. The informant stated in his *fardbeyan* that on 04-08-2004 in night at about 8:00 P.M., six accused persons, which include respondent no. 2 to 5, reached the house of the informant and taken away his brother Bindeshwari Yadav (deceased) for doing some wood work. On 05-08-2004, in the morning at about 5:00 A.M., brothers of the informant namely Saryug Yadav and Sanjay Yadav informed that dead-body of Bindeshwari Yadav was lying on a field near Bhagalpur-Naugachia main road. The informant also disclosed



that his brother was having two injuries and his neck was cut. On the basis of *fardbeyan*, an F.I.R. was lodged and the case was investigated. After investigation, chargesheet was submitted against four accused persons, who are respondent no. 2 to 5, and against other, investigation remained continued. Thereafter, cognizance order was passed and after completion of process under Section 207 of the Cr.P.C., the case was committed to the court of sessions and charges were framed. Since the accused denied the charges, they were tried.

4. During trial to prove the charges from the prosecution side, 17 persons were examined as prosecution witnesses. Wife of deceased was examined as P.W.-1, who categorically stated that none had seen the occurrence. This statement was made in paragraph – 4 of her examination-in-chief, which has been noticed by learned Addl. Sessions Judge in paragraph – 10 of its judgment. The informant was examined as P.W.-7. In his examination before the trial court, he had tried to develop a case, as if, the occurrence was seen by the witnesses. Other two own brothers of the deceased were examined as P.W.-4 and P.W.-5. In their examination, they stated as if they had seen the occurrence and in the occurrence, they had stated regarding specific role played by accused persons. The learned



Trial Judge has noticed the evidence of P.Ws. 4 & 5 in its paragraph no. 13 & 14 of the judgment respectively. So far as evidence of P.W.-7 (informant) is concerned, it has been discussed in paragraph - 16 of the judgment. During trial, though defence had not examined any witness, but they got some important documents exhibited as **Ext. A**, **Ext. A/1** and **Ext. A/2**. During the trial, even prosecution witnesses, had accepted that the informant side and accused persons were own *Gotiya* and in between them, a partition suit was going on since long, vide Title Suit No. 154 of 1995. The learned Trial Judge has noticed that had there been a case of murder, witnessed by the eye-witness, there was no reason for the informant, who has been examined as P.W.-7, to say that in the preceding night i.e. on 04-08-2004, his brother was called by the accused persons and on the next date, he got information that his brother's dead-body was lying at a particular place. Even the learned Trial Judge had noticed that P.W.-1/wife of the deceased had categorically stated that in the preceding night i.e. on 04-08-2004, the informant (P.W.-7) Yogendra Prasad Yadav was not at residence, rather he had gone to Kahalgaon by motorcycle. The very initiation of the prosecution case is being doubted by the evidence of P.W.-1. There is only acceptable



evidence that accused persons had come to the residence of the informant and called his brother on 04-08-2004 in the night at about 8:00 P.M., whereas, the dead-body was noticed in the next morning at about 4:00 A.M. The learned Trial Judge has also rightly observed that even the principle of last seen may not be applicable in such case, since there was long difference of hours in between last seen and recovery of dead-body. The learned Trial Judge has also rightly noticed that the old land dispute was the reason for implication and the learned Trial Judge has extended the benefit of doubt to the accused persons.

5. Sri Jha, learned counsel for the appellant tried to persuade the Court that in view of recent judgment of the Apex Court, reported in **2015 (4) P.L.J.R. (SC) 468 (Satya Pal Singh vs. State of M.P.)**, this Court may not dismiss the leave petition and summon the record.

6. However, considering the detailed judgment of the learned Addl. Sessions Judge as well as evidence, which has been discussed in this judgment, there is no reason to summon the record. Mr. Jha, learned counsel for the appellant has not argued that the learned Trial Judge has recorded finding contrary to the evidence. In absence of such contention, in normal course, while hearing a petition for grant of leave filed



under Section 378 (3) of the Cr.P.C., if the Court is satisfied with the detailed reasons discussing evidences, there is no reason to unnecessarily call for the record, particularly; in a situation where there is no allegation that learned Addl. Sessions Judge has recorded any contrary finding.

7. In view of facts and circumstances, this Court does not find any merit in the memo of appeal as well as petition filed under Section 378 (3) of the Cr.P.C. for grant of leave against acquittal.

8. Accordingly, leave is refused and appeal stands dismissed.

(Rakesh Kumar, J.)

(Mohit Kumar Shah, J.)

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