

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 637 of 2012

Arising Out of PS. Case No.-150 Year-1998 Thana- Laukahi District- Madhubani

Amarendra Prasad Das S/O Sashinath Das R/O Village - Matahi, P.S.
Andhramath, District - Madhubani

... .. Appellant

Versus

1. The State of Bihar
2. Damodar Das S/O Negru Das
3. Jas Karan Das S/O Negru Das
4. Pandu Das @ Anuj Das S/O Balram Das
5. Negaru Das S/O Ram Das

All 2 to 5 are residents of Village - Matahi, P.S. Andhramath, District -
Madhubani

... .. Respondents

Appearance :

For the Appellant/s : Mr. Gagan Deo Yadav
For the Respondent/s : Ms. S. B. Verma (APP)

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 07-11-2017

Heard Sri Gagandeo Yadav, learned counsel for the
appellant and Ms. Shashi Bala Verma, learned Addl. Public
Prosecutor.

2. The present appeal was filed against the judgment of
acquittal dated 16-05-2012 passed by learned Additional
Sessions Judge, Fast Track Court – III, Madhubani (hereinafter
referred to as ‘Trial Court’) in Sessions Trial No. 334 of 1999,
arising out of Laukahi (Andhramath) P.S. Case No. 150 of 1998



registered for offence under Section 341, 342, 323, 324, 504/34 of the Indian Penal Code. By the judgment impugned, the learned Trial Court has acquitted respondent no. 2 to 5 from the charge under Sections 341, 323, 324, 302/34 and 307/34 of the Indian Penal Code.

3. Short fact of the case is that a written report was submitted by Amarendra Prasad Das (P.W.-3) before the officer incharge of Laukahi (Andhramath) Police Station, in which, he disclosed that on 13-12-1998 at about 11:00 A.M., while he was returning after providing breakfast to ploughmen, on way, he noticed Damodar Das (respondent no. 2), who started abusing and chasing the informant. Thereafter, the informant tried to flee away towards his house and while he arrived near his house, he was intercepted by Negaru Das (respondent no. 5) and Jas Karan Das (respondent no. 3), who were carrying *garasa* in their hands and Pandu Das (respondent no. 4) was carrying a 303 (three not three) gun in his hand. All the accused surrounded the informant. The informant further stated in the written report that when he wanted to flee away to the opposite side, Damodar Das (respondent no. 2) gave *farsa* blow on his head. Thereafter, he caught hold of the *farsa*, then Negaru Das (respondent no. 5) gave *farsa* blow on the left hand of the informant and thereafter,



he (informant) fell down and became unconscious. In the written report, the informant further stated that when his father raised alarm, on his head also, a *farsa* blow was given and he became unconscious. Thereafter, number of villagers assembled there and forcibly, took *farsa* from the hand of the accused and on the bamboo portion of *farsa*, name of his son Vijay Kumar was scribed. It has further been stated in the written report that land dispute with accused was going on, which was in relation to homestead land. The informant claimed that the occurrence was seen by Hareram Das (P.W.-1), Ramchandra Das (not examined) and number of villagers.

4. On the basis of said written information given by the informant, a formal F.I.R., vide Laukahi (Andharamath) P.S. Case No. 150 of 1998, was registered on 14-12-1998 against four accused, who are respondent no. 2 to 5 for offence under Sections 341, 342, 323, 324, 504, 34 of the Indian Penal Code. Subsequently, Section 307 of the Indian Penal Code was added on 29-12-1998 and thereafter, Section 304 of the Indian Penal Code was added on 07-01-1999. However, after the death of father of the informant, again provision of Indian Penal Code was added and Section 302 of the Indian Penal Code was added in the F.I.R. After registering F.I.R., investigation started. During



investigation, it was noticed that on 29-12-1998, father of the informant namely Shashinath Das died. In the case, thereafter, inquest report was prepared and dead body was sent for *post-mortem* examination and after obtaining *post-mortem* report, chargesheet was submitted against all the four F.I.R. named accused persons. Thereafter, the learned Magistrate took cognizance of the offences and case was committed to the court of sessions and finally, it was numbered as Sessions Trial No. 334 of 1999. In the case, charges were framed on 24-01-2001 against respondent no. 2 to 5 for offence under Sections 341, 323, 324, 302/34 and 307/34 of the Indian Penal Code. Since the accused persons denied charges and claimed to be tried, the prosecution, to prove its case, examined altogether four witnesses.

5. Out of four witnesses, P.W.- 4 namely Dr. Kedar Sinha has proved writing and signature of Dr. Naresh Prasad Sinha, who had conducted *post-mortem* examination on the dead body of the father of the informant namely Shashinath Das, whereas, P.W.-3 Amarendra Prasad Das (informant) and P.W.-1 Hareram Das have also claimed to be eye-witness to the occurrence. Except aforesaid four witnesses, the prosecution has miserably failed to produce any other witness, however; fact



remains that in the chargesheet, altogether nine persons were shown as witness.

6. After completion of the prosecution evidence, statement of accused persons under Section 313 of the Cr.P.C. was got recorded on 08-08-2011. The defence, though examined no witness, got certain documents exhibited to demolish the case of the prosecution. The defence has also got proved a copy of F.I.R., in which, respondent no. 2 (Damodar Das) was informant and informant side of the present case were made accused. The defence has also brought on record a document to show that informant, who is son of the deceased, has received compensation of Rs. 10,000/- (ten thousand) from the government claiming death of his father as natural death. After examining entire evidence, the learned Trial Judge has concluded that prosecution has completely failed to prove its case beyond all reasonable doubt and thereafter, by the impugned judgment, respondent no. 2 to 5 were acquitted and discharged from the liabilities of their bail-bonds, which has been assailed in the present appeal.

7. Sri Gagandeo Yadav, learned counsel for the appellant/informant has argued that it is true that in this case, neither investigating officer nor the doctor, who conducted the



post-mortem examination, was examined, but fact remains that informant (P.W.-3) and P.W.-1, who were eye-witnesses to the occurrence, had disclosed truthfully the fact showing involvement of all the private respondents. He further submits that besides oral evidence, there was one very important evidence i.e. recovery of *garasa* and on the body of the bamboo of the *garasa* name of son of respondent no. 2 (Damodar Das) was scribed. He submits that recovery of *garasa*, on which, there was name of son of the respondent coupled with the oral evidence was itself sufficient to held all the private respondents guilty, but the learned Trial Judge, ignoring all those aspects only on minor contradictions, has passed the order of acquittal.

8. Despite the fact that private respondents have appeared, at the time of hearing, there was non-appearance on their behalf. However, Ms. Shashi Bala Verma, learned Addl. Public Prosecutor is present for State. After examining entire evidences, she has argued that on going through the judgment impugned, it is evident that there is no apparent perversity and in absence of any perversity, in normal course, the High Court may refrain from interfering with the judgment of acquittal.

9. Besides hearing learned counsel for the parties, we have minutely examined entire evidence i.e. oral and



documentary. It is peculiar case that the informant, who is P.W.-3, in his evidence, has stated that after he and his father received such serious injuries, instead of rushing to the hospital, which was only about 4-5 km away from his house, had preferred to move to the police station, which was about 15 km away from the place of occurrence. In the evidence of informant, it was stated that firstly, he was abused, chased, intercepted and assaulted by the accused persons, but his own witness i.e. P.W.-1 Hareram Das, who is also relative of the informant, has given a different story. In the evidence of P.W.-1, it has come as if the accused persons firstly started assaulting Shashinath Das, father of the informant (P.W.-3) and thereafter, while informant arrived there, he was also assaulted and thereafter, both the persons had received grievous injury. P.W.-1 in paragraph – 25 of his cross-examination, has stated as if firstly Shashinath Das was assaulted. He stated that Amarendra was assaulted by Damodar and none else, whereas, informant (P.W.-3) had made contrary statement. Inconsistency of evidence of P.W.-1 and P.W.-3 is further evident from the fact that in examination-in-chief, P.W.-1 had made specific statement that at the time of occurrence, accused respondent no. 4 Pandu Das was having no arm, whereas, P.W.-3 as well as P.W.-2 both have stated that Pandu



Das was carrying a three not three gun. Besides this, the P.W.-1 in paragraph – 28 of his cross-examination has stated that against Shashinath Das (deceased) and Amarendra Das, the respondent no. 2 Damodar Das had filed a case in relation to the occurrence of the same date. This fact has further been substantiated on perusal of Ext. 'A', which was got marked on behalf of the defence side i.e. certified copy of the F.I.R. in Laukahi (Andhramath) P.S. Case No. 151 of 1998, in which, Damodar Das was informant and informant side of the present case were made accused. The prosecution case is further liable to be disbelieved on the fact that informant/P.W.-3 had made specific statement that after receiving injury, his father was admitted in hospital and he remained in hospital for about 17 days and died in hospital itself, however; on perusal of the inquest report, ofcourse, it was not got proved properly, it is evident that inquest report was prepared in the house of the informant itself. Had it been a case of death in hospital, obviously, inquest report was required to be prepared in the hospital itself. All these circumstances create serious doubt on the prosecution case. Besides this, the prosecution has miserably failed to produce either investigating officer or the doctor, who had conducted *autopsy* on the dead body of the deceased. Instead of



summoning/producing the doctor, who conducted the *post-mortem* examination, one Dr. Kedar Sinha was examined as P.W.-4, however; this witness in cross-examination has admitted that he was not in a position to read what was stated in *post-mortem* examination report. Meaning thereby that though the *post-mortem* examination report was got exhibited, the said *post-mortem* examination report has got no evidentiary value. Since the doctor himself, who had tried to prove the *post-mortem* examination report i.e. writing and signature of the doctor who conducted *post-mortem*, has failed to decipher as to what was stated in *post-mortem* examination report. Meaning thereby that the defence was prejudiced in absence of any evidence of the doctor or the *post-mortem* examination report. Apart from this, it is case of the informant that he was assaulted by *garasa*, however no injury report in respect of injury sustained by the informant has been brought on record, nor any further evidence has been brought to substantiate the same.

10. In view of facts and circumstances, the learned Trial judge has rightly come to the conclusion that the prosecution has not proved its case beyond all reasonable doubt. The Court is in agreement with the submission of Ms. Shashi Bala Verma, learned Addl. Public Prosecutor that there is no



apparent perversity in the judgment impugned and the same requires no interference.

11. Accordingly, the appeal against acquittal stands dismissed.

(Rakesh Kumar, J.)

(Mohit Kumar Shah, J.)

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