

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.304 of 2017

Arising Out of PS.Case No. -57 Year- 2015 Thana -UCHAKAGAON District- GOPALGANJ

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Vidyanti Devi, W/o Late Nandji Sharma, resident of village - Haraiya, P.S. Unchkagaon, District - Gopalganj

.... Appellant

Versus

1. The State of Bihar

2. Pankaj Yadav, S/o Mahatam Yadav,

3. Krishna Yadav, S/o Rajendra Yadav,

Both 2 & 3 are resident of village - Haraiya, P.S. Unchkagaon, District - Gopalganj

.... Respondents

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Appearance :

For the Appellant/s : Mr.Rama Kant Sharma, Sr.Adv.

Mr. Satyendra Rai, Adv.

For the Respondent/s : Mr. Mayanand Jha, A.P.P.

Mr. Prashant Kumar, 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)

6 07-07-2017

Heard Sri Rama Kant Sharma, learned Senior

Counsel, assisted by Sri Satyendra Rai, learned counsel for the appellant/informant, Sri Mayanand Jha, learned Addl. Public Prosecutor as well as Sri Prashant Kumar, learned counsel, who has appeared on behalf of respondents no. 2 and 3.

2. The present appeal has been preferred by the informant/appellant against the Judgment of acquittal dated 17.01.2017 passed by Sri Shobha Kant Mishra, learned Addl. Sessions Judge-VIII, Gopalganj in Sessions Trial



No.500/2015/CIS No.500/2015. By the said Judgment, learned trial Judge has acquitted respondents no.2 and 3 from the charge under Section 302/34 of the Indian Penal Code.

3. Short fact of the case is that on the basis of information given by the informant/appellant, an F.I.R. was lodged. In the F.I.R. it was alleged that on 25.04.2015, while the informant was sleeping with her 18 years old daughter, namely, Sanjana Kumari @ Muni Kumari on the roof of her house, her daughter felt natural call. Thereafter, her daughter with the informant got down for easing. The informant has stated that she sat in Bathan and her daughter went for easing in a field along with Solar light. Subsequently, she noticed that Solar Light was switched off after few minutes, she moved towards the place, where her daughter was found lying in injured condition. She stated that respondents no.2 and 3 along with two others were seen fleeing away. On the basis of fardbeyan of the appellant/informant Unchkagaon P.S. Case No.57/15 was registered under Section 302/34 of the Indian Penal Code against accused persons. After registering F.I.R. the case was investigated and thereafter, accused persons were chargesheeted. After cognizance was taken, the case was committed to the court of Sessions. Since respondents denied, the charges, they were tried.



4. During trial to prove the charge from the prosecution side, altogether seven witnesses were examined. However, in the case only the informant has come forward to be eye witness and she was examined as P.W.4. In the case, the Investigating Officer, namely, Jwala Kumar Singh was examined as P.W.6. Save and except P.W.4, none had claimed to be eye witness, During trial, after examination of prosecution witnesses, statement of accused persons was recorded under Section 313 of the Code of Criminal Procedure. The defence also examined three witnesses, out of them D.W.2 Ram Balak Sharma, who was own uncle of the deceased Sanjana Kumari, had deposed in favour of accused. In the evidence of P.W.4, it was categorically stated that her toilet was not in running condition and this was the reason that they used to go outside of the house for easing , whereas Ram Balak Sharma (D.W.2) , own uncle of the deceased, admitted in his evidence that toilet in the house of the informant was in running condition.

5. Learned trial Judge has also noticed that on the date of occurrence, at about 11 – 12 P.M., there was earth-quake and this fact was stated by number of witnesses and, as such, due to earth-quake, they were sitting outside the house at the time of occurrence. During investigation, the place of occurrence was also



doubted since at the place of occurrence, the Investigating Officer had not found any blood, whereas it was consistent case of the informant that the deceased was done to death due to assault of knife. Learned trial Judge has noticed the deposition as well as fardbeyan of P.W.4 that in the occurrence, tongue of the deceased was chopped, whereas in the post-mortem, the tongue of the deceased was found intact. Since there was number of inconsistency in the evidence, the learned trial Judge has doubted the case and passed order of acquittal

6. Sri Rama Kant Sharma, learned Senior Counsel appearing on behalf of the appellant has tried to persuade the Court that evidence of P.W.4 was sufficient for holding respondents no.2 and 3 guilty, but the learned trial Judge has committed perversity in passing the Judgment of acquittal. According to him, the Judgment of acquittal is required to be interfered with, whereas learned Addl. Public Prosecutor and learned counsel for respondents no.2 and 3 have argued that for convicting an accused, there must be consistency in the evidence. If there is any doubt and there is possibility of two views in the evidence, respondents are entitled to the benefit of reasonable doubt.

7. In view of facts and circumstances and after



examining the impugned Judgment, whereby the learned trial Judge has found inconsistency in the evidence and acquitted the accused, the Court is of the opinion that it is not a fit case for granting leave to appeal against the acquittal. Accordingly, Interlocutory Application i.e. I.A. No.1348 of 2017 filed under Section 378(3) of the Code of Criminal Procedure for grant of leave is dismissed and simultaneously the appeal against acquittal too stands dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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