

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No 19 of 2017

Arising Out of PS.Case No. -225 Year- 2011 Thana -BUXAR District- BUXAR

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Sonu Chaubey @ Bishnu Shankar Chaubey, son of late Gorakh Chaubey, resident
of Mohalla – Civil Lines, Police Station – Buxar Town, District - Buxar

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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For the Appellant/s : Mr Kamal Nayan Choubey, Sr Advocate with
M/s Ashok Kr Garg, Dineshwar Pandey, Yogendra
Kr Dwivedy, Animesh Kr &
Ms Ritu Priyadershini, Ms Homa Yunus, Advocates

For the S t a t e : Ms Shashi Bala Verma, APP

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE MR JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 12-01-2017

We have heard Shri Kamal Nayan Choubey, learned
Senior Advocate in support of the appeal and Ms Shashi Bala Verma,
learned Additional Public Prosecutor for the State.

2 Normally, we should have admitted the appeal and,
after calling for the lower Court records, heard the matter but, on
perusal of the short judgment, we are satisfied that there is no case for
conviction of the appellant.

3 A first information report was lodged, inter alia,
stating that the informant's son, late in the evening, was called by
three persons, namely, Bhajan Singh, Kirtan Singh and one another
not named. The deceased went with them and next morning, his dead
body was recovered. In course of investigation, allegedly Bhajan



Singh confessed to the crime and upon his admission, the weapon, that is knife, was recovered. In his confession, as recorded by the police, it is alleged that the appellant was also in conspiracy with them. Thus, the Court assumes that the third person, who had come to call the victim, was the appellant. The materials against the appellant, thus, would be that he was allegedly last seen in the company of the victim or the victim was last seen in his company and the so-called confession of the co-accused implicating him.

4 So far as confession is concerned, in terms of Section 162 of the Code of Criminal Procedure, it cannot be used as evidence but in terms of Section 27 of the Evidence Act, only that part of conviction, which led to the recovery of murdered weapon, is relevant and could be proved. Thus, if we discard the inadmissible part of the confession, then there is nothing more as against the appellant. It is further pointed out that the appellant is the neighbour and had he been present there, he had been named along with the accused. We are satisfied that the confession itself cannot be sustained.

5 In view of the aforesaid fact, this appeal is allowed. The judgment of conviction and sentence are set aside. The appellant is directed to be released from custody forthwith.

(Navaniti Prasad Singh, J)

M.E.H./-

(Vikash Jain, J)

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