

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.572 of 2017

Arising Out of PS.Case No. -239 Year- 2010 Thana -PIRPAINTI District- BHAGALPUR

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Md. Shobil, son of Late Sk. Kitab Ali, resident of Mohalla- Ghanichak,
Murgia Chak, Police Station-Pirpainty, District-Bhagalpur

.... Appellant

Versus

1. The State of Bihar

2. Sajjan Tulsian, son of Late Thethal Lal Tulsian, Sitaram Tulsian

3. Md. Afsar, son of Md. Hadis

Both residents of Mohalla- Ghanichak, Murgia Chak, Police
Station-Pirpainty, District-Bhagalpur

.... Accused/Respondents

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Appearance :

For the Appellant/s : Mr.Abdul Manan Khan, Adv.

Mr.Md. Najmul Hodda, Adv.

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

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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)

4 21-08-2017

Heard Mr. Abdul Manan Khan, learned counsel,

assisted by Mr.Md. Najmul Hodda, learned counsel for the
appellant and Sri Mayanand Jha, learned Addl. Public Prosecutor.

2. The present appeal has been preferred against the
Judgment and order of acquittal dated 28.03.2017 passed in
Sessions Trial No. 1270 of 2011/ Tr.No. 572 of 2015 arising out of
Pirpainty P.S. Case no.239/2010. By the said Judgment,
Respondent nos.2 and 3 have been acquitted from the charges
under Section 302/34 of the Indian Penal Code.

3. Short fact of the case is that on the basis of
fardbeyan(Ext.5) of Md. Shobil (P.W.6), an F.I.R. vide Pirpainty



P.S. Case No.239 of 2010 was lodged. In the fardbeyan, the informant/appellant stated that on 14.11.2010 at about 7.15 p.m. his brother, namely, Md. Hasnain was seen going with Md. Afsar. Respondent no.3 along with 2 to 4 others. In the next morning at about at about 4.00 A.M. dead body of Md. Hasnain was thrown near the door. Thereafter, informant's fardbeyan was got recorded on 15.11.2010 at about 6.40 A.M. After registering F.I.R. the police investigated the case and finally submitted chargesheet against Respondent nos. 2 and 3 for the offence under Section 302/34 of the Indian Penal Code. After cognizance the case was committed to the court of Sessions and, thereafter the case was numbered as Sessions Trial No.1270/2011.

4. During trial to prove the charges, from the prosecution side altogether nine witnesses were examined, out of them Mr. Sk. Minhaj (P.W.4) and Bibi Samila Khatoon (P.W.5) turned hostile. P.W.1- Md. Mobin (brother of the deceased), P.W.2- Bibi Ajgun (wife of the deceased), P.W.3-Md. Matim(brother of the deceased and P.W.6- Md. Shobin, who is the informant of the case and brother of the deceased supported the prosecution case and all the witnesses have stated that the deceased was lastly seen with the accused persons. P.W.7- Dr. Binod Kumar Jaiswal had conducted the postmortem examination,



P.W.8- Jagdish Prasad Sharma was the Investigating Officer of the case and P.W.9- Jagdanand Thakur is the C.O. Naugachia. In the case, to disprove the charges, from the defence side also, seven witnesses were examined. Besides seven defence witnesses, certain relevant documents were got exhibited, out of them certified copy of F.I.R. of Pirpainty P.S. Case No. 240/10 was marked as Ext.B, original copy of Sanha application attached with case record was marked as Ext.A/1, and Sanha application No.2317/2010 in the writing of Jagdanand Thakur attached with case diary dated 29.09.2016 was marked as Ext.A.

5. Learned counsel for the appellant has argued that despite the fact that it was a case of last seen of the deceased with the accused, the learned trial judge giving the benefit of doubt has illegally acquitted the accused persons. He submits that since the informant and other witnesses are consistent witness regarding last seen of the deceased with the accused persons, ignoring the evidence of the prosecution witnesses amounts to perversity and is liable to be interfered with. He submits that P.W.7- Dr. Binod Kumar Jaiswal, who had conducted the postmortem examination, has also supported the prosecution case.

6. Learned Addl. Public Prosecutor submits that on perusal of the impugned Judgment, the learned trial judge has



categorically discussed the evidence of the doctor as well as the Investigating Officer and on the basis of those evidence, the learned trial judge has found that there was no certainty regarding involvement of the accused persons and, as such, learned trial judge has rightly acquitted Respondent nos.2 and 3.

7. Besides hearing learned counsel for the parties, we have also perused the materials available on record, particularly the impugned Judgment. On perusal of the impugned Judgment, it is evident that in relation to the death of brother of the informant, besides the present case, there was also one another case, which indicates that death had occurred in an accident. Regarding claim of death in an accident, a specific question was put to the doctor (P.W.7) and in paragraph-3 of his cross-examination, he admitted that injury no.3 multiple abrasion was found in several parts of the body and such type of injury may be caused if any vehicle commits accident loaded with stone or coal or boulder and if any person comes under these boulder, coal or stones then such type of injury may cause. Similarly, the Investigating Officer has also noticed the same thing and has stated regarding same thing which has been noticed by the learned trial Judge in the impugned Judgment. Besides this, the learned trial Judge has considered it was a case of circumstantial evidence.



and was onus on the prosecution to establish the chain of circumstances. Since in this case, save and except the story of lastly seen of the deceased with the accused, no other chain of evidence has been brought on record, the learned trial Judge has granted the benefit of doubt to accused persons and acquitted them.

8. Considering the fact that the learned trial judge has not found sufficient evidence and extended the benefit of doubt, there is no reason to interfere with the impugned Judgment. Moreover, we do not find any perversity in the Judgment. Accordingly, the appeal against acquittal stands dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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