

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 587 of 2017

Arising Out of PS.Case No. -13 Year- 2014 Thana -GAURICHAK District- PATNA

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Pintu Kumar, S/o Sudama Prasad Resident of Village-Musnapur, P.S. Gaurichak, District-Patna.

.... Appellant

Versus

1. The State of Bihar
2. Jai Shankar Prasad S/o Harkhu Prasad
3. Sudhir Kumar @ Pandit, S/o late Bhola Prasad,
Sl. No. 2 and 3 resident of Village-Musanapur P.S.Gaurichak, Dist. Patna.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Pramod Singh
Mr. Rudal Singh

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)

3. 05-07-2017 Heard Sri Pramod Singh, learned counsel assisted by Sri Rudal Singh, learned counsel for the appellant and learned Addl. Public Prosecutor.

The present appeal has been preferred against judgment of acquittal in Sessions Trial No. 1072 of 2014 (arising out of Gaurichak P.S. Case No. 13 of 2014) dated 20th February, 2017 passed by learned 3rd Addl. Sessions Judge, Patna City (hereinafter referred to as 'Trial Judge'). The respondent no. 2 & 3 were put on trial in respect of charge of Section 302, 201, 120B/34 of the Indian Penal Code and Section 27 of the Arms Act, 1959.

F.I.R. in the case was lodged on the basis of *fardbeyan* of Pintu Kumar (appellant). In his *fardbeyan*, he has stated that on



14-01-2014 in the morning at 10-11 A.M., he received telephonic information that his brother Indrajeet @ Chandrajit Kumar was killed due to fire-arm injury. When he reached his house, he was informed that on 13-01-2014 in the night at about 9:00 P.M., his deceased brother had gone out of house saying that he will be returning back within 10 minutes, however; he did not return and on 14-01-2014, he received information that villagers saw blood-stain in the field, which was up-to a well. Subsequently, with the help of villagers, a dead-body was recovered from the well, which was of brother of the informant. Thereafter, on 15-01-2014, an information was given to the police and F.I.R. was lodged. In the F.I.R., the respondent no. 2 & 3 were not made accused, however; they were made accused during investigation and chargesheet was submitted. Accused persons were put on trial. Since they denied allegation during trial, altogether 8 witnesses were examined to prove the prosecution case, however; none of the witnesses had claimed to be eye-witness to the occurrence.

In this case, nor any other material was shown to show as if deceased was seen lastly with the accused persons. However, during trial, mother of the deceased was examined under Section 313 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") and she disclosed that in the night of 13-01-2014, her deceased son had gone for taking dinner with accused persons including



both the respondents and she also stated regarding motive for the occurrence. Even, it was not a case of circumstantial evidence save & except subsequently, a case was developed as if deceased was seen lastly with the accused persons.

The learned Trial Judge has noticed that P.W.-9 (mother of the deceased), who was not chargesheeted witness and examined as witness under Section 311 of the Cr.P.C., in her cross-examination in paragraph – 24, had accepted that there was litigation with respondent no. 3 (Sudhir Kumar @ Pandit) regarding a village land. Since during the trial no plausible evidence was brought on record either to establish a case of ‘last seen’ with the deceased or chain of circumstances, the learned Trial Judge by the impugned order has acquitted both the respondents from the charges.

We have perused the entire judgment and of the opinion that there is no perversity in the order impugned and as such, the leave petitioner i.e. I.A. No. 1321 of 2017 is rejected and consequently, the appeal too stands dismissed.

(Rakesh Kumar, J.)

(Mohit Kumar Shah, J.)

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