

IN THE HIGH COURT OF JUDICATURE AT PATNA
Govt. Appeal (DB) No. 20 of 2016

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The State of Bihar

.... Appellant

Versus

1. Sanjay Rai S/o Late Rameshwar Mahto @ Late Ram Lagan Rai
 2. Manoj Rai S/o Late Rameshwar Mahto @ Late Ram Lagan Rai
- Both residents of village – Tajpur, Tole-Chaur, P.S. – Tariyani,
District-Sheohar.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Parmeshwar Mehta

For the Respondent/s : Mr.

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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)

12. 17-07-2017

Heard Sri Parmeshwar Mehta, learned Addl. Public

Prosecutor.

In this appeal, earlier lower court record was called for, which has been received.

The appeal has been preferred under Section 378 (1) and (3) of the Code of Criminal Procedure, 1973 against the judgment of acquittal dated 12-01-2016 passed by Sri Gangotri Ram Tripathi, learned District & Sessions Judge, Sheohar (hereinafter referred to as 'Trial Judge') in Sessions Trial No. 414 of 2011 (arising out of Tariyani P.S. Case No. 148 of 2010). By the impugned judgment, the learned Trial Judge has acquitted respondent no. 1 & 2 from the charges under Sections 341, 148,



149, 504, 302 of the Indian Penal Code and Section 27 of the Arms Act, 1959.

Sri Parmeshwar Mehta, learned Addl. Public Prosecutor has argued that despite the fact that during the trial, three eye-witnesses had given consistent evidence, their evidence was ignored and the learned Trial Judge has acquitted both the respondents.

The prosecution case in short is that on 03-12-2010 at about 3:30 P.M., while the nephew of the informant and others were ploughing the field, four F.I.R.-named accused persons surrounded the nephew of the informant and brutally killed him giving fire-arm injury on his chest, head and also injuries by *tangi*. Though, the informant, who has been examined as P.W.-8, had claimed to be eye-witness to the occurrence, no explanation was given regarding giving *fardbeyan* in the next morning, that too in the field, where dead-body of the nephew of the informant was found.

Sri Mehta, learned Addl. Public Prosecutor has argued that three witnesses, claiming to be eye-witness to the occurrence, had made consistent statement during the trial and nothing could be extracted from them in the cross-examination to draw any inference about false implication. He candidly accepted that



prosecution has not at all explained regarding delay in lodging the case. It is also an admitted fact that in between accused and informant side, a suit relating to partition was already going on.

The Court is of the opinion that once the informant, who was own uncle of the deceased, had witnessed the occurrence on 03-12-2010, which occurred at 3:30 P.M., in normal course, there was no reason for the informant not to inform the police immediately about the occurrence. Surprisingly, on the next date in the field, where the nephew of the informant was done to death, the informant gave his *fardbeyan* claiming to be eye-witness to the occurrence.

We have examined the impugned judgment and after going through the same, we are convinced that there is no perversity in the judgment. Accordingly, there is no need to pass any favourable order.

The appeal stands dismissed.

(Rakesh Kumar, J.)

(Mohit Kumar Shah, J.)

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