

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.898 of 2017

Arising Out of PS. Case No.-14 Year-2014 Thana- Mehandia District- Jehanabad

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Suraj Kumar, Son of Late Narendra Kumar, Resident of Village- Bambhai,
P.S. Karpi, (Sahar Telpa O.P.), District- Arwal.

... .. Appellant

Versus

1. The State of Bihar.
2. Santosh Kumar, Son of Late Baliram Sharma,
3. Shailendra Kumar, Son of Late Hari Shankar Singh,
4. Shekhar Kumar, Son of Late Hari Shankar Singh,
5. Dharendra @ Dhiraj, Son of Late Hari Shankar Singh,
6. Deenanath Sharma, son of Suresh Singh

All are residents of Village- Bambhai, P.S. Karpi, District- Arwal.

... .. Respondents

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Appearance :

For the Appellant/s : Mr. Nawal Kishore Singh, Adv.

For the Respondent/s : Mr. Shivesh Chandra Mishra, 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 30-10-2017 Heard Sri Nawal Kishore Singh, learned counsel for the

appellant and Sri Shivesh Chandra Mishra, learned Addl. Public

Prosecutor.

2. The present appeal has been preferred by the informant and son of the deceased against the Judgment of acquittal dated 20.05.2017 passed in Sessions Trial No.07 of 2016/168 of 2016 and Sessions Trial No.08 of 2016/02 of 2016 (arising out of Mehandia P.S. Case No.14/2014). By the said Judgment, the learned Addl. Sessions Judge-II, Jehanabad has acquitted respondent nos.2 to 6 from the charges under Sections 302, 120(B) of the Indian Penal Code and Section 27(1) of the Arms Act.



3. Short fact of the case is that a written petition was filed by the informant disclosing therein that his father Narendra Kumar was done to death. He disclosed that on 10.02.2014, while the informant was in Patna, at about 8.45 P.M. he received information over telephone that his father died in accident and he has been taken to Kaler Government Hospital for his medical treatment. After getting such information, the informant arrived at Kaler Hospital and found that his father and a pillion rider, namely, Surendra Kumar Sharma had died by fire-arm injury. He asserted that at the first instance, it appeared that bike of his father was dashed from back side and, thereafter, they were shot dead. The reason for the incident was alleged that election of Up-Mukhiya was held prior to the said incident, in which Ex Mukhiya Raj Kumari Devi supported by his father was removed by 'no confidence motion' and in her place, accused Santosh Kumar (respondent no.2) was elected as Up-Mukhiya. The informant/appellant raised suspicion against newly elected Up-Mukhiya (Respondent no.2) and alleged that in conspiracy with others, the occurrence had taken place.

4. On the basis of written information, an F.I.R. vide Mehandia P.S. Case No.14/2014 under Sections 302/34 and Section 27 of the Arms Act was registered. The case was investigated and after investigation respondents were put on



trial. During trial, to establish the case, the prosecution examined altogether 14 (fourteen) witnesses and out of fourteen witnesses, witness nos.1,2,4,6,7,8,9, 10 and 11 are hearsay witness. The occurrence was not seen by anyone, rather the case proceeded on circumstantial evidence. Even though the motive was alleged in the F.I.R. that one Mukhiya was defeated and in her place respondent no.2 was got elected as Up-Mukhiya, *prima facie* it appears that no sufficient material was found to draw inference for committing such offence. Once respondent no.2 had already been elected as Up-Mukhiya, there was no reason to take any further action against the father of the informant. Moreover, during trial some inconsistent evidences were brought on record to show that there was animosity between the deceased and the respondents. However, even such allegation was not substantially proved.

5. P.W.5, namely, Baliram Sharma during trial deposed, as if, prior to the occurrence he was present with the deceased in the court premises of Arwal and at 5.00 P.M. he had left the court premises. He asserted that he had seen the respondents in the court premises. However, this witness had made categorical statement that after the occurrence, he received an information regarding murder of Narendra Kumar and Surendra Kumar Sharma. He reached Police Station as well as hospital. Meaning



thereby that he was present at the place of occurrence, but he did not give any information as to whether accused persons were seen in the court premises or not. During investigation, in his statement recorded under Section 161 of the Code of Criminal Procedure, no such fact was disclosed by him but the fact that he had seen lastly the accused persons in the court premises was stated during trial itself. In the case, one another witness (P.W.3) was introduced by the prosecution to establish as if accused persons were seen at the place of occurrence. During investigation, statement of said witness Dudhnath Sharma (P.W.3) along with statement of Satyendra Kumar was got recorded under Section 164 of the Code of Criminal Procedure, but witness Satyendra Kumar was not produced for his examination during trial as prosecution witness and a plea was taken that he was gained over by the defence. In the case, Dudhnath Sharma (P.W.3) tried to develop a case that accused persons were seen at the place of occurrence. However, fact remains that the informant had received information at Patna, went to the Police Station as well as hospital. Though P.W.5 was present, he did not disclose anything as to whether accused persons were seen in the court premises or not. The case was based purely on circumstantial evidence.

6. We have perused the entire material on record as well as



the impugned Judgment. The learned trial court has discussed each and every aspect of the matter and has found that the prosecution has miserably failed to establish the connected chain of circumstance to prove its case. In a case based on circumstantial evidence, one can be held guilty only if all the circumstances point out to the guilt of an accused. If there is any suspicion or doubt, in that event, benefit of doubt is required to be given to the accused persons. The learned trial Judge has rightly passed the Judgment of acquittal.

7. We do not see any reason to interfere with the impugned Judgment and, as such, the petition for grant of leave to appeal i.e. I.A. No.1702 of 2017 filed under Section 378(3) of the Code of Criminal Procedure stands dismissed. Consequently, the appeal too is dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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