

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.27 of 1994

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State of Bihar

.... Appellant/s

Versus

Sukhdeo Sah & Ors

.... Respondent/s
=====

Appearance :

For the Appellant/s : Mr. Dilip Kumar Sinha
For the Respondent/s Mr. Arvind Kr. Tiwary

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 19-01-2018

1. Heard learned Additional Public Prosecutor Sri Dilip Kumar Sinha for the appellant as well as learned counsel Sri Arvind Kumar Tiwary appearing for the respondents.

2. Originally, the present appeal was filed against 45 respondents, who were accused in Sessions Case No. 161 of 1983 but during pendency of this appeal, the respondent nos. 1, 3, 6, 8, 13, 14, 17, 19, 20, 25, 26, 27, 28, 29, 32, 38, 41, 42, 43, 21, 22 were died and accordingly, this appeal abetted against those deceased respondents.



3. This appeal has been preferred against the judgment of acquittal dated 23.01.1993 passed by 7th Additional Session Judge, Munger in Session Case No. 161 of 1983 by which and whereunder he acquitted all the original respondents of this appeal of the charges framed against them.

4. The brief fact, which lies to file Govt. Appeal (DB) is that PW 2, namely Md. Sirajuddin gave his fardbeyan on 03.07.1982 at 11 p.m to PW- 11, the then Officer in-charge of Dharhara Police Station to this effect that on the same day at about 2.30. p.m. while he was in his house, he heard noise coming out from eastern side and noticed that altogether, 52 F.I.R named accused persons being armed with lathi, bhala, pistol, bombs and gun etc were coming towards his house, he ran towards northern side of his house and got hide himself behind back of old house of one Md. Abbas Mian and from there he saw all the F.I.R named accused persons encircled his house. He heard four to five sound of firing and also noticed that the aforesaid F.I.R



named accused started committing loot and killing the inmates of the house. He also noticed that accused Bhaso Sao and Prasadi Sao were carrying double barrel gun and Arjun Sao and Prasadi Sao were leading the mob and some of the members of the aforesaid mob went towards south and east side of the village and started setting houses of the particular community on fire. However, at about 4.30.p.m police reached there and then the informant reached to his house with the help of local police and when he entered his house, he found his parents, wife, two sons and daughter were killed by the mob and the mob had also looted the belongings of his house.

5. On the basis of fardbeyan of PW-2, Md. Sirajuddin, Dharhara P.S.Case No. 76 of 1982 was registered under sections 147, 148, 149, 302, 380, 427 and 341 of the Indian Penal Code and after completion of the investigation charge sheet was submitted. Cognizance was taken and the case was committed to the court of session for trial.

6. After commitment, altogether, 45 accused persons



were put on trial and they were charged for the offences punishable under sections 302/149 of the Indian Penal Code and under sections 148, 380 of the Indian Penal Code. All 45 accused persons were charged for the offences punishable under sections 302/149, 148 and 380 of the Indian Penal Code. In order to prove the charges, the prosecution in course of trial, got examined, altogether, 12 witnesses and also got exhibited certain documents. The defence did not adduce any evidence. The statements of all the accused respondents were recorded under section 313 of the Cr.P.C in which they claimed their false implication. However, the learned trial court, having scrutinized the evidences available on the record, acquitted all the accused respondents of the charges passing impugned judgment of acquittal on the ground that the prosecution witnesses failed to prove the participation of the respondents in the alleged crime and the prosecution also failed to prove that the accused respondents had common object to commit the alleged crime.

7. Learned Additional Public Prosecutor while



assailing the impugned judgment of acquittal submits that the learned trial court committed error in appreciating the evidences available on the record. He submits that the learned court below failed to take note of this fact that PW-1, PW-2 and PW-3 were very clearly stated about the participation of the respondents in the alleged crime but the learned court below, having relied upon minor contradictions, acquitted the respondents which is not in accordance with law.

8. On the other hand, learned counsel appearing for the respondents refutes the above stated submissions arguing that the learned court below has properly discussed the evidence available on the record. Continuing his submission, he submits that the learned court below doubted the presence of PW-1 and similarly, the learned trial court also doubted the testimony of PW-2 on the ground of contradictory statements made by him and furthermore, the learned trial court also doubted about the genuineness of fardbeyan of the informant. Learned counsel for the respondents further



submits that the testimony of PW-3 has been discarded by the court below on the ground of contradictions occurred in his statements.

9. He further submits that PW-11 is investigating officer but he intentionally did not prepare the sketch of the place of the occurrence and also concealed the typography of the place of occurrence so that prosecution could say that PW-1, PW-2 and PW-3 had seen the occurrence. He further submits that admittedly, respondents are co-villagers of the informant and there was communal tension between the two communities at the relevant time and several cases were lodged. He further submits that it is also an admitted position that some other persons were also killed in the aforesaid communal violence and it was quite natural for the respondents and other villagers to assemble at one place for their safety and, even if, it assumed that, the villagers were carrying weapons, is not unnatural because every villager including respondents had right to save their life and moreover, the learned court below has considered the



prosecution case from all the four corners and, thereafter, held that the prosecution could not succeed to prove the charges leveled against the respondents and, therefore, there is no scope for interference into the impugned judgment of acquittal. Learned counsel further submits that it is well settled principles of law that the finding of acquittal given by the trial court cannot be set aside by the appellate court unless there is grave illegality, irregularity and perversity. Furthermore, the finding of acquittal given by the trial court can only be disturbed by the appellate court, if there is strong ground to interfere into the finding of trial court.

10. Having heard the contentions of both the parties, we went through the record as well as impugned judgment. We find that altogether, 12 prosecution witnesses have been examined. Out of them, PW-1, PW-2 and PW-3 claimed to have seen the occurrence. The learned trial court has mentioned in its judgment that the aforesaid witnesses made contradictory statements and furthermore, the investigating officer (PW-11) failed to disclose the place of occurrence and



apart from this the several other grounds were also taken by the learned court below for passing the impugned judgment of acquittal.

11. PW-1, Md. Alauddin claimed that he saw assemblage of several persons at Banglwa Chowk and, therefore, he went running to his house but he could not reach his house and hide himself in the house of Khalil Mian from where he saw some of the respondents carrying deadly weapons in their hands and furthermore, this witnesses stated that when he went to the house of PW-2, he saw that his six family members were killed inside the house.

12. PW-2, informant Md. Sirajuddin stated that when the mob came at his house, he fled away from his house and went in the back side of the house of Abbas Mian and, thereafter, went on the Kotha of the house. He claimed that he witnessed the entire occurrence from Kotha of the house of Abbas Mian through the window. PW- 3, Md. Fakruddin stated the name of some respondents and also stated that they were carrying arms and weapons in their



hands. PW-4 has been declared hostile whereas PW-5 identified respondents in the mob. PW-6 has not been cross-examined as he did not appear for cross –examination. PW-7 Zubair Ansari stated that he went on the roof of Md. Aslam from where he witnessed the occurrence. PW-8 has not supported the prosecution case and has been declared hostile. PW-9 and PW- 10 are doctors whereas PW-11 is investigating officer. PW-12 has also been declared hostile.

13. It would appear from perusal of the impugned judgment that the learned court below doubted the testimony of so called eye witnesses on the basis of their contradictory statements made before the court as well as before I.O and also on the ground of failure of prosecution to establish the place from where the so called eye witnesses claimed to have seen the occurrence.

14. No doubt, it is a serious case of killing of six persons in communal violence but it cannot be ignored that in cases of communal violence generally innocent persons are also implicated. In the present case, we find that the



investigating officer did the investigation of this case in a very casual manner and the concerned public prosecutor failed to bring sufficient evidence on record to prove the guilt of respondents.

15. In our view, the learned counsel appearing for the respondents rightly submitted that unless there is grave illegality, irregularity and perversity in the judgment of acquittal, the judgment of acquittal cannot be set aside and we find that the appellant failed to show the grave illegality, irregularity and perversity into the judgment of acquittal and, therefore, we are of the opinion that this Govt. Appeal is devoid of merit and is liable to be dismissed. Accordingly, this Govt. Appeal stands dismissed.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	
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