

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.13 of 1995

Arising Out of PS.Case No. -null Year- null Thana -null District- SIWAN

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State of Bihar

.... Appellant/s

Versus

Ali Hussain son of Sakir Mian (deceased)
Pan Mohammad Alias Ghurul son of Ishaha que Mian
Taj Mohammad son of Ishahaque Mian
Nakir Mian son of Rahman Mian (deceased)
Abdul Gafoor son of Raja Mian

All are residents of village Uoadhi, P.S- Siswan, Dist- Siwan

.... Respondent/s

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Appearance :

For the State : Mr. Dilip Kumar Sinha (APP)
For the Respondent/s : Mr. Neeraj Kumar @ Sonidh
Mr. Raghav Prasad
Mr. Neeraj Punali

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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: 03-07-2018

1. This Government Appeal has been preferred by the State of Bihar against the judgment of acquittal dated 02.08.1994 passed by learned 2nd Additional Sessions Judge, Siwan in Sessions Trial No. 72/83/41/92 by which and where under learned Additional Sessions Judge, acquitted the respondent nos. 1 to 5 of the charge framed against them under section 302/34 of the Indian Penal Code.

2. It is pertinent to note here that at the time of filling of present appeal respondent no. 1, namely, Ali Hussain and respondent



no. 4, namely, Nakir Mian were shown deceased in the memo of appeal and during pendency of this appeal respondent no. 5 died and, accordingly, the present appeal stood abated against respondent nos. 1, 4 and 5.

3. PW-7, namely, Abdul Zalil, gave his fardbeyan to ASI of Siswan Police Station on 21.05.1982 at about 3 p.m. at village Uoadhi to this effect that on 20.05.1982 at about 3 p.m., his brother Abdul Hamid and Salim were going towards their field and reached near boring of Ramajee, in the mean time, respondents and other FIR named accused encircled his brother, Abdul Hamid and at the instigation of Abdul Gafoor and Sakoor Mian, the remaining accused started assaulting his brother by means of lathi, as a result of which his brother sustained injury and fell down on the ground. The reason behind the alleged occurrence is said to be dispute of demand of utensils etc. The above stated Salim also sustained injury in the aforesaid occurrence. The above stated occurrence was witnessed by Md. Khalil (PW-3), Md. Islam (PW-9) and Md. Ibrahim (PW-2)

4. On the basis of aforesaid fardbeyan, Siswan P.S. Case No. 48 of 1982 was registered and formal FIR was drawn up against the respondents and others. The case was investigated by the police and after investigation, police submitted charge sheet for the offences punishable under Sections 302, 323, 325/34 of the Indian Penal Code



The cognizance of the offence was taken and, accordingly, the respondents were put on trial before the court below in Sessions Trial No. 72/83/41/92. The respondents stood charged for the offence punishable under section 302/34 of the Indian Penal Code and in course of trial, prosecution examined, altogether, 9 prosecution witnesses and got exhibited some documents. The learned Trial Court recorded the statements of respondents under section 313 of the Indian Penal Code. The respondents did not produce any witness in support of their defence. The learned trial court, having considered the material available on the record, came to conclusion that prosecution could not succeed to prove charge levelled against the respondents. The impugned judgment goes to show that the learned trial court came to above stated findings on the ground that prosecution failed to bring post mortem report on the record and, accordingly, cause of death of the deceased could not be established.

5. Learned counsel appearing for appellant submitted that in course of trial, PW-3 and PW-7 supported the prosecution case and specifically, stated that the respondents and others committed murder of deceased by assaulting him by means of lathi but the learned trial court completely over-looked the aforesaid fact and passed the impugned judgment.

6. On the other hand, learned counsel appearing for



respondent nos. 2 and 3 submitted that except PW-7 not a single prosecution witness claimed to have seen the actual killing of the deceased and apart from this, the doctor as well as I.O were not examined nor the post mortem report of deceased was brought on the record and, therefore, the learned trial court rightly held that the prosecution could not succeed to establish the cause of death of the deceased.

7. Having heard the contentions of both the parties, we went through the record. Admittedly, altogether, 9 prosecution witnesses were examined by the prosecution but PW-1, PW-4 and PW-6 were tendered by the prosecution whereas PW-2, PW-5 and PW-9 were declared hostile. PW-8 proved the injury reports of Jalil Minya (PW-7) as well as deceased Abdul Hamid and, therefore, it is obvious that in course of trial only PW-3 and PW-7 claimed themselves to be eye-witnesses of the alleged occurrence. PW-3 has admitted at para-2 of his cross-examination that before his arrival of the place of occurrence, the occurrence had already taken place and, therefore, the aforesaid admission of PW-3 goes to show that he had not seen the actual assault. So far as PW-7 is concerned, admittedly, PW-7 is brother of the deceased and in his fardbeyan, he has not claimed to be eye-witness of the alleged occurrence. Moreover, only on the basis of deposition of PW-7, it was unsafe to pass judgment of



conviction against respondents. Furthermore, neither I.O nor doctor was examined, nor post mortem report of the deceased was brought on the record and, therefore, we are of the opinion that the court below rightly held that the prosecution could not succeed to establish the cause of death of the deceased and, in our view, the learned trial court rightly acquitted the respondent nos. 2 to 5 we do not find any ground to interfere into the impugned judgment of acquittal.

8. Accordingly, on the basis of aforesaid discussions, this Government Appeal stands dismissed and the impugned judgment of acquittal is, hereby, confirmed.

9. Let the lower court record be sent to the concerned court.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.07.2018
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