

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1335 of 2017

Arising Out of PS. Case No.-35 Year-2015 Thana- CHHABILAPUR District- Nalanda

Rajnandan Prasad age about 47 years, Son of Shri Shiv Yadav, resident of
Village- Goraur, Police Station Chhabilapur, District- Nalanda.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Ashok Yadav, aged about 39 years, son of Late Basant Yadav, resident of
Village- Goraur, Police Station Chhabilapur, District- Nalanda.
3. Suresh Rajwanshi aged about 56 years, Son of Chhotelal Rajwanshi, resident
of Village- Chorama Banganga, Police Station Nardiganj, District- Nawada.

... .. Respondent/s

Appearance :

For the Appellant/s : Sri Dhirendra Kumar Sinha, Advocate

Sri Chandra Shekher Prasad, Advocate

For the Respondent/s : Sri Ajay Mishra , A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

3 10-01-2018 Heard Sri Dhirendra Kumar Sinha, learned counsel,

assisted by Sri Chandra Shekhar Prasad, learned counsel for

the appellant and Sri Ajay Mishra, learned Additional Public

Prosecutor.

The present Appeal under section 372 of the Code of
Criminal Procedure, 1973 (hereinafter referred to as the
“Cr.P.C.”) has been filed against judgment of acquittal. Along
with the Appeal the appellant has also filed an interlocutory



application i.e. I.A. No. 2373 of 2017 under Section 378(3) of the Cr.P.C. for grant of leave.

The appellant is the informant / victim. The Appeal has been preferred against judgment dated 28.08.2017 passed in Sessions Trial No. 309 of 2015 { arising out of Chhabilapur (Nalanda) P.S. Case No. 35 of 2015, registered for the offence under Section 396 of the Indian Penal Code, 1860 (hereinafter referred to as the “I.P.C.” and Section 27 of the Arms Act, 1959} by Shri Ram Pratap Asthana, Presiding Officer, Fast Track Court -1, Nalanda at Biharsharif (hereinafter referred to as the “trial judge”) . By the said judgment the learned trial judge has acquitted respondent no. 2 and 3 from charge under Section 396 of the I.P.C.

Learned counsel for the appellant has argued that it was a case of committing murder while committing dacoity. After the occurrence at least one of the family inmate namely Sunaina Devi, whose husband was killed had disclosed the name of respondent no. 2 /Ashok Yadav as one of the culprits, however, learned trial judge ignoring those evidences, has passed judgment of acquittal. According to learned counsel for the appellant even during investigation statement of witnesses under Section 164 of the Cr.P.C. was got recorded in which



they categorically disclosed the name of accused persons including the two respondents and they have supported the prosecution case, but the learned trial judge, in a perfunctory manner, has over-looked those evidences and has passed order of acquittal primarily on the ground that in the case F.I.R. was lodged against unknown. He submits that the reason for acquittal, which has been assigned by the learned trial judge is not sustainable and the judgment of acquittal is fit to be set aside.

Sri Ajay Mishra, learned Additional Public Prosecutor has supported the judgment of acquittal and he has argued that though in the F.I.R. it was alleged that about 20 accused persons had committed dacoity and in course of dacoity one of the members of the informant's side namely Mohi Yadav was killed by gun shot injury, the informant has not at all disclosed name of any of the accused persons and F.I.R. was lodged against unknown. He further submits that at least respondent no. 2, who was subsequently arrayed as accused, was a witness in a criminal case which was instituted against Mohi Yadav for offence under Section 376 and 511 of the I.P.C. He submits that once the respondent no. 2 was known to the informant's side, there was every possibility that at the time of lodging F.I.R.



the informant would have disclosed the name of respondent no. 2, however, besides this, it is not the case of prosecution that any of the accused had covered their face . He submits that in a case of dacoity, that too, committed by known persons, the dacoits would have covered their face or tried to conceal their face, however, none of the witnesses have stated that any of the accused persons had covered their face . He further submits that the learned trial judge has assigned specific reason for passing judgment of acquittal.

Besides hearing learned counsel for the parties, we have perused the materials available on record particularly the judgment impugned. It is evident that F.I.R. was lodged against unknown . It is also not in dispute that respondent no. 2/ Ashok Yadav was a witness against Mohi Yadav (deceased) who was an accused in a case of attempting to commit rape. Accordingly, had he been involved in the case, the informant would have categorically disclosed his name in the F.I.R. itself. It has also come that number of witnesses have subsequently come forward with a plea that they had identified accused persons with their name and their statement under Section 164 of the Cr.P.C. was got recorded. This also creates serious doubt on the prosecution case. Besides this, the reason which has been assigned for



acquittal is well sounded. We must appreciate that the learned trial judge namely Sri Ram Pratap Asthana, Presiding Officer, Fast Track Court -1, Nalanda at Bihar Sharif has passed a well reasoned and sound judgment. It would be appropriate to quote paragraph no. 29 of the impugned judgment, which will clarify that the learned trial judge has applied its judicial mind and examined the entire evidences and has finally come to the conclusion that prosecution has not proved its case and passed judgment of acquittal.

“29. Thus, considering the materials on record as discussed above, the following points have been found to discard the case of prosecution case on the point of involvement of both accused in commission of offence;

1. It is admitted fact that occurrence took place in the night of 23-03-2015 in the house of informant and during the course of commission of offence deceased Mohi Yadav was shot fired, who died in way to hospital for treatment;

2. The F.I.R. was lodged by informant against 20 unknown persons;

3. It is also admitted fact that Police reached there during the course of occurrence and witnesses were interrogated by Police on spot as well as regularly for several days Police visited spot, but no witness come forward to say the name of accused before Police;

4. It is also found from the evidence of witnesses that family members of both victim family had interaction at the time of occurrence and they shared about the occurrence;

5. The informant, after fifteen days of occurrence, filed protest petition on 07-04-2015 before the court of A.C.J.M. Bihar Sharif in which for the first time name of one of the accused Ashok Yadav came in this case;

6. Another accused Suresh Rajwanshi of other village was arrested by Police during the course of investigation and did not found any indiscriminate article from house and he was



brought to Police Station, the family members of victim were called by I.O. of this case and accused was shown to all the family members in Police Station, thereafter statement of witnesses were recorded in Court U/s. 164 Cr. P.C.;

7. It is admitted fact that deceased Mohi Yadav & his brother (witness Subodh Kumar) are accused in attempt to rape case, bearing Rajgir (Chhabilapur) P.S. Case No. 48 of 2008 in which accused of this case namely Ashok Yadav is witness, hence has been falsely implicated in this case;

8. The witnesses have stated that criminals face was open at the time of occurrence and they identified the accused in spite of that none come to say the name of accused to Police and nothing prevented them to disclose the name of accused at the time of occurrence;

9. It is admitted fact that accused Ashok Yadav is Gotia of victim family and his house is just adjacent to their house and there is dispute in between both parties, in spite of that his name was not give in F.I.R.;

10. All the prosecution witnesses have stated the name of both accused in the said occurrence and all have claimed to be eye witness, but there are vital contradiction in their evidence regarding manner of occurrence;

11. All the witnesses have stated the name of both accused for the first time before the Court, which are not believable & reliable;

12. There is no dispute on the fact of commission of offense of dacoity in the house of informant & murder of Mohi Yadav during that period, but involvement of both accused in the said commission of offence is in dispute which has not been proved by the evidence of prosecution;

13. It is indeed difficult to believe that witnesses should have not disclosed the name of accused to Police and should have waited till filing of protest petition after fifteen days as well as accused was shown by Police in Police station for giving out their name. This is very serious infirmity which destroys the credibility of the evidence of witnesses, hence evidence of all witnesses are rejected on the point of identification as well as involvement of both accused in the commission of offence;

14. It is well found that both accused have been falsely implicated in this case & I.O. of this case did not investigate on the point of false implication of accused as one of the accused



Ashok Yadav is witness in attempt to rape case against deceased and F.I.R. was lodged against unknown; The I.O. did not discharge his duty properly in this case;

15. The evidence of prosecution witnesses are not found to be reliable, believable & trustworthy and are not sufficient to prove the charge against both accused;”

In normal course in such cases we would have imposed cost on the informant's side for falsely implicating the private respondents, however, we are avoiding from passing such order. We do not find any ground to interfere. Accordingly, there is no reason to allow the leave petition, and as such, the interlocutory application i.e. I.A. No. 2373 of 2017 filed for grant of leave stands rejected. Consequently, Appeal against acquittal too is dismissed.

(Rakesh Kumar, J)

(Arvind Srivastava, J)

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