

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.64 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- MUZAFFARPUR

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Bhulan Choudhary @ Bhulan Paswan, s/o late Shibo Paswan, r/v-Misrauli, P.S.-
Simari, District-Darbhanga.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nachiketa Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 23-08-2018

By judgment and order dated 21.01.2009 passed by learned Additional District & Sessions Judge, F.T.C. Vth, Muzaffarpur in S. T. No. 86/1994, arising out of Gaighat P.S. Case No. 20/1992, the appellant has been convicted under Section 201 of the Indian Penal Code. He has been sentenced to undergo R.I. for seven years with fine of Rs. 7,000/- and in default of payment of fine further undergo S.I. for one month. The appellant has been acquitted from the charges under Sections 302, 379/34 and 411 of the Indian Penal Code as well as Sections 25 and 26 of the Arms Act.

Heard the learned counsel for the appellant as well as the State.

Learned counsel for the appellant has submitted that in the instant case, appellant has been acquitted from other charges including the charge under Section 302 of the Indian Penal Code.



Learned Additional P.P. has submitted that three witnesses have supported the case. It is further submitted that appellant was found carrying the dead body and after seeing the police, the dead body was thrown. The appellant tried to escape from there. It is further submitted that incriminating articles like rope, sickle etc. was recovered from possession of the appellant.

On the basis of aforesaid written report, Gaighat P.S. Case No. 20/1992 was registered for the offences punishable under Sections 302, 201, 379/34 and 411 of the Indian Penal Code.

In this case altogether six witnesses have been examined on behalf of the prosecution.

P.W. 4 has not supported the case of prosecution.

P.Ws. 1, 2 and 3 have stated in their evidence that while they were on patrolling duty with other police party, they saw four persons on motorcycle. They have further stated that seeing the police party, accused persons tried to run away after leaving the motorcycle. They apprehended three persons including this appellant and also recovered a dead body, which was being carried by the appellant on the motorcycle and prepared seizure-list.

P.W. 4 is seizure-list witness. He has stated in his evidence that three persons were arrested but he is unable to identify the present appellant.

P.W. 5, Vinod Kumar, has been declared hostile.



P.W. 6 is doctor. He has conducted post-mortem of the dead body. He has found that death was caused due to strangulation on account of Asphyxia. He has stated in his evidence that strangulation was sufficient to cause death.

Learned counsel for the appellant has submitted that petitioner has already remained in custody for about five years and six months during trial, which also found mentioned in the impugned judgment.

This Court, on the basis of the evidence of prosecution witnesses does not find any illegality in the judgment of conviction passed by learned Additional District & Sessions Judge, F.T.C. Vth, Muzaffarpur.

The sentence is modified to the extent period already undergone by appellant in custody during trial. The amount of fine is modified to the extent that appellant is directed to pay a fine of Rs. 1,000/- in place of Rs. 7,000/- and in default of payment of fine, he will be required to undergo S.I. for one month.

This Criminal Appeal is accordingly dismissed with modification in sentence as indicated above.

(Sanjay Priya, J.)

Rakhi

AFR/NAFR	
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