

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1233 of 2017

Arising Out of PS.Case No. -7 Year- 1989 Thana -TIYAR District- BHOJPUR

Bishu Bind son of Late Sardar Bind resident of village Deorath P.S. Tiyar
District Bhojpur

.... Appellant/s

Versus

- 1. The State of Bihar
 - 2. Lallan Bind son of Ram Sarup Bind
 - 3. Kaushal Bind son of Uma Shankar Bind
 - 4. Ram Ashish Bind son of Jagannath Bind
 - 5. Gudari Bind son of Jagdam Bind
 - 6. Shionarayan Bind son of Butan Bind
 - 7. Mannan Bind son of Ram Kishor Bind
 - 8. Kamleshwar Bind son of Late Jagannath Bind
 - 9. Motilal Bind son of Kishun Bind
 - 10. Prahlad Bind son of Musafir Bind
 - 11. Jawahir Bind son of Jamuna Bind
 - 12. Sheoratan Bind son of Butan Bind
 - 13. Hridaya Bind of Ram Saroop Bind
 - 14. Ram Sagar Bind son of Ramdhani Bind
- Resident of village Deorath P.S. Tiyar Dist Bhojpur

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ashok Kumar Singh
For the Respondent/s : Mr. Ashwani Kumar Sinha
For the respondents Mr. Rajendra Nath Sinha

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA

ORAL ORDER
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)

0620.04.2018

1. Heard learned counsel appearing for the
appellant, learned counsel appearing for respondents and
also learned Addl. Public Prosecutor for the State on the
point of admission. Lower court record has already been
received and, in our opinion, this criminal appeal can be



disposed of on admission stage itself.

2. This criminal appeal has been preferred against the impugned judgment of acquittal dated 27.7.2017 passed by the Presiding Officer FTC I, Bhojpur at Ara in Sessions Trial no. 648 of 1989 by which and whereunder the Presiding Officer FTC I, Bhojpur at Ara acquitted the respondent nos.2 to 14 of the charges framed against them for the offences punishable under sections 302/149, 302 of the Indian Penal Code and 27 of the Arms Act.

3. PW4, Lakhiya Devi on 5.2.1989 gave her fardbeyan before the concerned police officer to this effect that on the same day at about 7 p.m. her son namely, Dinesh Bind, after taking meal, went to sleep. She followed him and when her son reached near the shop of Fula Bind, he screamed and having heard his scream, she went running near the shop of Fula Bind. PW3 and PW5 as well as her daughter, namely, Manti Kumari also came running there. She saw the respondents who were carrying arms in their hands. Respondents caught her son and started taking him towards southern side and in that course, respondents Lallan Bind and Kaushal Bind instigated others and thereafter, Shionarayan Bind shot fire of his rifle hitting



chest of her son and after that respondent Ram Ashish Bind, too, fired on her son as a result whereof her son died then and there.

4. On the basis of the aforesaid fardbeyan, present case was lodged for the offence punishable under section 302 and other minor sections of the Indian Penal Code and 27 of the Arms Act against the respondents and others. After investigation, police submitted charge sheet and subsequently, respondents were put on trial. Respondents stood charged for the offences punishable under sections 147 342 of the Indian Penal Code whereas respondent Shionarayan Bind was separately charged for the offence punishable under section 302 of the Indian Penal Code and 27 of the Arms Act and similarly, respondent Ram Ashish Bind was separately charged for the offence punishable under section 302 of the Indian Penal Code and 27 of the Arms Act whereas respondent Lallan Bind was separately charged for the offence punishable under section 302 read with section 149 of the Indian Penal Code and 27 of the Arms Act whereas respondents and other accused, who died in course of trial, were charged for the offence punishable under section 302 read with section 149 of the Indian Penal



Code. Respondent Kaushal Bind was separately charged for the offence punishable under section 302 read with section 149 of the Indian Penal Code and 27 of the Arms Act. They denied the charges and the prosecution examined, altogether, six witnesses to prove the charges levelled against the respondents and others.

5. The statements of the respondents were recorded under section 313 of the Code of Criminal Procedure in which they denied the prosecution story and claimed their false implication. No evidence was adduced on behalf of the respondents but trends of cross-examination as well as statements recorded under section 313 of the Code of Criminal Procedure goes to show that the defence of the respondents was total denial of the prosecution story.

6. The learned trial court, after scrutinizing the evidences available on record, found several contradictions in the depositions of the prosecution witnesses and after taking note of this fact that Investigating officer as well as doctor had not been examined, acquitted respondent nos.2 to 14.

7. Being aggrieved by the judgment of acquittal, appellant who happens to be brother of the deceased, filed



the present appeal as well as I.A. no. 2168/2017 for grant of leave to file this criminal appeal.

8. Learned counsel appearing for the appellant submitted that the learned court below failed to take note of this fact that PWs 3, 4, 5 and 6 supported the prosecution case and, specifically, stated about involvement of respondent nos.2 to 14 in the alleged crime but the learned trial court, on the basis of surmises and conjectures, passed the judgment of acquittal. He, further, submitted that no doubt, investigating officer as well as doctor were not examined by the prosecution in course of trial but defence could not show what prejudice had been caused to them due to non-examination of Investigating officer and doctor and accordingly, it is prayed that the impugned judgment of acquittal be set aside.

9. On the other hand, learned counsel appearing for respondent nos.2 to 14 refuted the above stated submissions arguing that the prosecution witnesses made contradictory statements on material point as PW3 claimed that the deceased was killed near the shop of Fula Bind whereas PW4, informant of the case claimed that the deceased was killed inside the house of Fula. He, further, submitted that



PW3 stated that son of the informant was going to sleep and when he reached near the shop of Fula, occurrence took place whereas PW5 stated that the deceased was taken by Fula and Gudari from his house. Furthermore, witnesses made contradictory statements on the point of assault also because PW3 claimed that Shionarayan Bind opened fire of rifle causing firearm injury on the chest of the deceased and thereafter, Ram Asish Bind fired of rifle on the deceased but PW4 stated that the deceased sustained firearm as well as Garasi injury and moreover, PW5 stated that Shionarayan Bind gave **chura** blow to the deceased whereas respondent Lallan Bind shot fire on the deceased. He, further, submitted that alleged occurrence took place in the dark night but the prosecution failed to prove source of identification. He, further, submitted that although PWs 3 and 4 claimed that they had identified the respondents in the light of torch but the said torch was never produced before the Investigating officer nor the above stated statement was made before Investigating officer and, as a matter of fact, non-examination of Investigating officer caused serious prejudice. He, further, submitted that admittedly, doctor was not examined and non-examination



of doctor was also fatal because there was nothing before the court below to form opinion as to how the deceased died.

10. Having heard the contentions of both parties, we went through the record. We find that the court below doubted the prosecution case on the ground of contradictory statements of the witnesses, failure to prove the place of occurrence and failure to bring evidence regarding source of identification. We also find that the learned trial court has passed well discussed judgment and there is no need to interfere into the impugned judgment of acquittal.

11. On the basis of the aforesaid discussions, this criminal appeal along with I.A. no. 2168/2017 stand dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

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