

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.859 of 2018

Arising Out of PS. Case No.-52 Year-2010 Thana- KHAGARIA RAIL P.S. District- Khagaria

Ramadhar Singh S/o Sursekhar Singh, R/o Ward no. 9 Mohanpur, P.S.-
Begusarai, District- Begu Sarai, Bihar.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Ram Babu Singh S/o Late Kaushal Singh, R/o Vill.- Parra, P.S.- Birpur, Distt.- Begusarai.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sudha Chandra Mr. Tulika Singh, Adv Mr. Surendra Kumar Singh, Adv.
For the State	:	Mr. Shashi Bala Verma, APP.

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

ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

5 03-12-2018 Heard learned counsel for the appellant as well as learned Additional Public Prosecutor for the State on I.A.No. 3078 of 2018 which has been filed under section 378(3) of the Code of Criminal Procedure as well as on the point of admission and perused the record.

The appellant is applicant in I.A.No. 3078 of 2018. Admittedly, the appellant is father of the deceased and comes under the ambit of victim as defined under section 2(wa) of the Criminal Procedure Code and ,therefore, the appellant has right



to challenge the judgment of acquittal. Accordingly, I.A.No. 3078 of 2018 stands allowed.

The appellant has challenged the judgment of acquittal dated 23.03.2018 passed by F.T.C 1st, Khagaria in Session trail no. 38A of 2015/331/170 of 2018 by which and whereunder the learned trial court acquitted the respondent no. 2 of the charges framed against him.

The impugned judgment goes to show that one Gigridhar Gopal lodged Khagaria Rail P.S.Case No. 52 of 2010 against unknown persons on the basis of information gathered by injured Gopal Singh, who subsequently died in course of his treatment. The above stated Gopal Singh disclosed in his fardbeyan that when he got information that his employee namely, Gopal Singh sustained firearm injury, he rushed to the hospital, where the said Gopal Singh was admitted for treatment. The said Gopal Singh disclosed him about the occurrence and stated that while he was going on a train some miscreants snatched his mobile phone and while he made attempt to chase them, one of the miscreants opened fire on him, as a result whereof he sustained firearm injury.

It would further appear from perusal of the impugned judgment that PW-5 took charge of investigation and claimed to



have recorded the fardbeyan of deceased Gopal Singh which has been marked before the trial court as Exhibit-4.

Learned counsel appearing for the appellant submits that the learned trial court wrongly discarded Exhibit-4, particularly, in the circumstance when Exhibit-7 was dying declaration of the deceased and in the aforesaid dying declaration deceased specifically named the appellant and others.

On the other hand, learned Additional Public Prosecutor supports the impugned judgment of acquittal arguing that the learned trial court has passed well versed and well discussed judgment and there is no need to interfere into the impugned judgment.

Having heard the above stated contentions of the parties, we went through the entire impugned judgment and in our view, this appeal can be disposed of on admission stage itself.

Admittedly, the entire prosecution case was based on the so called dying declaration of the deceased and it is also an admitted case of the prosecution that the aforesaid so called dying declaration of the deceased was recorded after 17 days of the alleged occurrence. It is further an admitted case of the



prosecution that the respondent no. 2 is relative of the deceased and a matrimonial dispute was going on between deceased and respondent no. 4. It is obvious from perusal of the impugned judgment that the informant of the present case claimed to have lodged the present case on the basis of information gathered from the deceased itself but it is surprisingly enough that the deceased did not disclosed the name of his assailant when he disclosed the entire occurrence before the informant of the present case and after 17 days of the alleged occurrence, prosecution claimed that the dying declaration of the deceased was recorded by PW-5. However, the impugned judgment goes to show that the learned trial court disbelieved the above stated so-called dying declaration of the deceased on the ground that there was no certificate of the doctor that the deceased was in mental condition and improper health to make his statement and on the aforesaid fact, the learned trial court doubted about the genuineness of the so-called dying declaration.

In our view, apart from the aforesaid ground the non disclosure of name of his assailant by the deceased before the informant of the present case just after the alleged occurrence is also additional ground of doubt about the so-called dying declaration of the deceased and, therefore, there is no need to



interfere into the impugned judgment of acquittal.

Accordingly, this appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

N.K/-

(Rajendra Kumar Mishra, J)

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