

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1130 of 2017

Arising Out of PS. Case No.-57 Year-1995 Thana- LALGANJ District- Vaishali

Ajay Kumar Mishra, Son of Late Ramashish Mihara, Resident of Village Kharauna, P.S.- Lalganj, District- Vaishali.

... .. Appellant

Versus

1. The State of Bihar.
2. Anil Kumar Mishra, Son of Haridwar Mishra,
3. Veena Devi, W/o Haridwar Mishra
4. Kumud Mishra, Son of Haridwar Mishra,

All the respondent nos.2 to 4 are resident of Village- Kharauna, P.S.- Lalganj, District- Vaishali.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Murari Narain Chaudhary, Adv.
For the Respondent/s : Mr. Dilip Kumar Sinha , A.P.P.

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

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

5 05-01-2018 Heard Sri Murari Narain Chaudhary, learned counsel for the appellant and Sri Dilip Kumar Sinha, learned Addl. Public Prosecutor.

2. The present appeal has been preferred against the Judgment of acquittal dated 27.01.2017 passed in Sessions Trial No.106 of 1996 arising out of Lalganj P.S. Case No.57 of 1995. By the said Judgment, learned Addl. Sessions Judge-V, Vaishali at Hajipur has acquitted respondent nos. 2 to 4 from the charge under Section 302/34 of the Indian Penal Code.

3. Along with the appeal, the appellant has filed limitation



petition vide I.A. No.2405 of 2017 and also a petition vide I.A. No.2406 of 2017 for grant of leave under Section 378(3) of the Code of Criminal Procedure. In filing the appeal, about 54 days delay has occurred, which has properly been explained in the petition. Accordingly, the limitation petition i.e. I.A. No.2405 of 2017 is allowed and the delay in filing the appeal stands condoned.

4. Sri Murari Narain Chaudhary, learned counsel for the appellant has argued that the learned trial Judge has incorrectly passed Judgment of acquittal, even though there was evidence of eye witness, who has supported the prosecution case. He submits that the learned trial Judge has primarily passed acquittal order on the ground that in the case, neither Investigating Officer nor the doctor, who conducted postmortem examination on the dead body of the deceased, were produced by the prosecution. It has been argued that in view of evidence of P.Ws.2,3,4 and 5, it was a fit case for passing Judgment of conviction. Accordingly, he makes a prayer for allowing the leave petition.

5. Sri Dilip Kumar Sinha, learned Addl. Public Prosecutor has opposed the prayer and argued that the prosecution had not produced any independent witness nor postmortem examination



report was brought on record. During trial, the Investigating Officer and the Doctor were also not produced.

6. Besides hearing learned counsel for the parties, we have also perused the materials available on record. On going through the impugned Judgment, it is evident that there was a long land dispute in between the parties and Title Suit was also pending between them. In the case, it was alleged that two teeth of father of the informant were broken and he was carried to the hospital and subsequently he died. Though it was a case that the injured was carried to a Nursing Home, where he was firstly treated, during trial no medical report regarding examination of his injury was brought on record. Even the doctor, who firstly examined the injured, was not produced by the prosecution. During trial, injury report or postmortem examination report was also not brought on record nor even the Investigating Officer and the doctor were examined by the prosecution. In the case, only photo copy of the inquest report was brought on record, which has not been relied upon by the learned trial Judge. The learned trial Judge has discussed entire evidence and he noticed that in the case, though the occurrence had taken place in between 8.00 and 9.00 in the morning on 16.05.1995, the prosecution case was not supported by any of the



independent witnesses. There was only one independent witness, who was P.W.1, namely, Suresh Kumar Singh. Since he did not support the prosecution case, he was declared hostile and other witnesses were none else, but close relative of the deceased. P.W.2 is the son of the deceased and full brother of the informant. P.W.3 is nephew of the informant and P.W.5 is the informant and son of the deceased. One witness (P.W.4), namely, Savitri Devi was only tendered for evidence. Even in the evidence of P.W.5/ informant, this fact has come that there was long land dispute in between the parties and the dispute was coming since last three years and Title Suit was also pending. This witness had deposed that the injured was earlier treated by one Dr. Patel, doctor of Referral Hospital, Lalganj. The injury was examined in between 1.00 and 2.00 P.M. on the date of occurrence itself. However, such injury report was not produced by the prosecution. This witness, though, had stated regarding treatment and arrival of the police at the house of the informant, where he recorded his statement, but nothing was stated before the Investigating Officer regarding his treatment. This fact has been noticed by the learned trial Judge while referring to paragraph-12 of the evidence of the informant. The learned trial Judge, after discussing entire evidence and considering the fact



that apart from non-examination of the Investigating Officer and the Doctor, postmortem report was also not brought on record, by a detailed reason has passed the Judgment of acquittal. On going through the same, it appears that there is no apparent perversity in the Judgment of acquittal.

7. Accordingly, there is no ground to grant leave and, as such, leave petition i.e. I.A. No.2406 of 2017 stands dismissed. Consequently the appeal against acquittal too is dismissed.

(Rakesh Kumar, J)

(Arvind Srivastava, J)

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