

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1006 of 2017

Arising Out of PS.Case No. -154 Year- 2000 Thana -EKANGARSARAI District- NALANDA
(BIHARSHARIFF)

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Renu Sinha Wife of Late Bachchu Prasad, Resident of Village- Badalpur,
P.S. Ekangarsarai, District Nalanda.

.... Appellant

Versus

1. The State of Bihar.
2. Nawal Prasad Son of Late Ram Pyare Mahto, Resident of Village- Badalpur, P.S. Ekangarsarai, District Nalanda.
3. Suresh Prasad @ Surendra Prasad Son of Late Ram Pyare Mahto, Resident of Village- Badalpur, P.S. Ekangarsarai, District Nalanda.
4. Munna Prasad Son of Late Deep Narayan Ram, Resident of Village- Faridpur, P.S.- Ekangarsarai, District- Nalanda.
5. Chunnu Prasad, Son of Late Deep Narayan Ram, Resident of Village- Faridpur, P.S.- Ekangarsarai, District- Nalanda.
6. Dinesh Prasad Son of Late Manik Chand Mahto, Resident of Village- Badalpur, P.S. Ekangarsarai, District Nalanda.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Alok Kumar Sinha, Adv.
Mr. Bhola Kumar, Adv.
For the Respondent/s : Mr. Binoy Kumar, Adv.
For the State : Mr. Ashwani Kumar, A.P.P

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

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

5 10-09-2018 Heard learned counsel for the appellant and learned Additional Public Prosecutor for the private respondent nos. 2 to 6 as well as for State on the point of admission along with I.A. No. 2057 of 2017 and I.A. No. 2058 of 2017.

I.A No. 2058 of 2017 has been filed under Section 5 of Limitation Act for condonation of delay in filing the aforesaid criminal appeal. There appears to be delay of eight months in



filing this criminal appeal but it has, specifically, been averred in I.A. No. 2058 of 2017 that prior to filing of the present appeal, the informant of this case filed Criminal Appeal (DB) No. 625 of 2016 which was disposed of as withdrawn with liberty to take recourse to appropriate provision of law and, thereafter, the present appeal has been filed by the appellant, who happens to be wife of the deceased.

In view of the aforesaid averments, the delay in filing this criminal appeal is, hereby, condoned and, accordingly, I.A. No. 2058 of 2017 stands disposed of.

I.A. No. 2057 of 2017 has been filed under Section 378(3) of the Cr.P.C praying therein to grant leave to file this criminal appeal. In view of the averments made in the aforesaid interlocutory application, the leave to file and pursue, this appeal is granted.

The appellant is wife of deceased and is aggrieved by impugned judgment of acquittal dated 30.04.2016 passed by 1st Additional Sessions Judge, Hilsa (Nalanda) in Sessions Trial No. 764 of 2000/ Trial No. 03 of 2005, by which and whereunder the respondent nos. 2 to 6 have been acquitted of the charges framed against them for the offences punishable under Section 302/34 of the Indian Penal Code and 27 of the Arms Act.

Learned counsel appearing for appellant submits that the learned trial court has not properly appreciated the evidence



available on the record and discarded the statements of, altogether, five eye witnesses and relied upon the statements of those witnesses whose statements were recorded under Section 161 of the Cr.P.C. in course of investigation though they were not examined before the trial court in course of trial but their statements were brought in evidence, as Exhibit-6 series by exhibiting certain paragraphs of case diary. Learned counsel further submits that the learned trial court relied upon the evidence which was not admissible in accordance with law.

On the other hand, learned counsel appearing for private respondent nos. 2 to 6 supported the impugned judgment of acquittal arguing that the learned trial court disbelieved the testimony of prosecution witnesses on valid grounds and, therefore, even if, the Exhibit-6 series is excluded, then also, there was nothing on the record to convict the private respondents. He further submits that the learned trial court after scrutinizing the evidence available on the record came to the conclusion that none of the prosecution witnesses had seen the actual killing of the deceased. He further submits that the court below found vital contradictions between ocular and medical evidence and the so-called eye witnesses claimed that several persons shot fire on the deceased but only two firearm injuries were found on the person of the deceased and, therefore, the aforesaid circumstance created doubt in the mind of the learned trial court. He further submits that



it would not be proper for this court to discard the aforesaid finding of the learned trial court.

Learned Additional Public Prosecutor also supported the impugned judgment submitting that the learned trial court has passed well discussed and well thought judgment and there is no scope to interfere into the impugned judgment of acquittal.

Having heard the contentions of both the parties, we went through the record. The informant claims that on 19.05.2000, at about 06.00 a.m., he along with his cousin brother Bachchu Prasad @ Chandra Shekhar Prasad, Judagi Rawat, Moti Prasad, Satish Prasad and Jodhi Prasad had gone to ease himself and while they were returning to their village, the private respondents and some unknown persons came there and made indiscriminate firing. The deceased Bachchu Prasad tried to flee from there but having sustained firearm injury, he fell down in the field of Visheshwar Mahto and, thereafter all the above stated private respondents and unknown persons went near the deceased and started firing touching his body. The informant also disclosed that there was title suit between the deceased and private respondent nos. 2 and 3 and that is the reason the private respondents along with unknown persons committed murder of the deceased. The informant claims that when he went near the dead body of the deceased, he noticed that the blood was oozing out from 7 to 8 places of the body of the deceased.



The perusal of impugned judgment goes to show that in course of trial, the prosecution examined altogether 10 witnesses and PW-1, PW-2 PW-3, PW-4 and PW-10 claimed themselves to be eye witnesses of the alleged occurrence. The prosecution also got examined Dr. Shashi Bhushan (PW-8) who proved the post mortem report as Exhibit-2. The post mortem report of the deceased goes to show that two fire arm injuries were found i.e one is on temporal region whereas another is on chest of the deceased but so-called eye witnesses stated in course of trial that private respondents and unknown persons made indiscriminate firing on the deceased and firing of 3 to 4 persons hit the deceased. The learned trial court noted the above stated vital contradictions between the statements of so-called eye witnesses as well as post mortem report. Furthermore it is an admitted position that there was long standing litigation between the parties. Furthermore, in course of trial, PW- 6 claimed that on the alleged date of occurrence, while he was at his Dalan, he heard the sound of firing and went near the house of the deceased, where female members of the family of the deceased disclosed that deceased was killed by activists of MALE and after that he along with informant Anil Kumar and others went near the dead body of the deceased.

No doubt, the defence got exhibited various paragraphs of the case diary in which the statements of some



witnesses, who were examined in course of investigation, were recorded and the learned trial court took into consideration the above stated statements of those witnesses while passing the impugned judgment of acquittal but in our view, the learned counsel appearing for private respondent nos. 2 to 6 rightly submitted that even if, the statements of aforesaid witnesses, which have been exhibited as Exhibit-6 series, is discarded, then also, it is clear that prosecution could not succeed to prove its case beyond all shadow of reasonable doubts. Furthermore, we find that learned trial court has passed well discussed and well thought judgment and, therefore, we do not think it proper to interfere into the impugned judgment of acquittal.

Accordingly, this Criminal Appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

N.K/-

(Rajendra Kumar Mishra, J)

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