

IN THE HIGH COURT OF JUDICATURE AT PATNA
Govt. Appeal (DB) No.6 of 2018

Arising Out of PS. Case No.-22 Year-2001 Thana- PANCHRUKHI District- Siwan

The State of Bihar through the District Magistrate, Siwan, District- Siwan

... .. Appellant.

Versus

1. Rajeshwar Singh, Son of Nagnarayan Singh,
2. Sheo Sagar Singh, Son of Surendra Singh, Both are Resident of Village - Gopalpur, Police Station- Pachrukhi, District- Siwan.

... .. Respondents.

with

Criminal Appeal (DB) No. 381 of 2018

Arising Out of PS. Case No.-22 Year-2001 Thana- PANCHRUKHI District- Siwan

Vishwa Mohan Singh, Son of Late Raj Narayan Singh, Resident of Village - Gopalpur, Police Station - Pachrukhi, District - Siwan.

... .. Appellant.

Versus

1. The State of Bihar.
2. Rajeshwar Singh, Son of Nag Narayan Singh
3. Sheo Sagar Singh, Son of Surendra Singh Both are residents of Village - Gopalpur, Police Station - Pachrukhi, District - Siwan.

... .. Respondents.

Appearance :

(In Govt. Appeal (DB) No. 6 of 2018 and Criminal Appeal (DB) No. 381 of 2018)	
For the Government	: Mr. Ajay Mishra, Advocate.
For the Informant	: Mr. Bindhyachal Singh Advocate.
	Mr. Ram Binod Singh, Advocate.
For the Appellant/ Respondent	: Mr. Ravi Bhusan Verma, Advocate.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 09-08-2018

1. Both the above stated appeals have been preferred
against the Judgment of acquittal dated 14.12.2017 passed by



learned Sessions Judge, Siwan, in Sessions Trial No.324 of 2003, by which and whereunder, he acquitted the respondent nos. 1 and 2 of the charges framed against them for the offences punishable under Sections 302, 324, 353, 307/149 of the Indian Penal Code, 27 of the Arms Act and Sections 135, 136, and 171(F) of Representation of People's Act.

2. Pachrukhi P.S. Case No. 22 of 2001 for the offences punishable under Sections 147, 148, 149, 302, 353, 324 of the Indian Penal Code, Section 27 of the Arms Act and Sections 135, 136 and 171(F) of R.P. Act, was registered against the respondent nos. 1 and 2 and others on the basis of Fradbeyan of P.W.7, namely, Vishwa Mohan Singh, who got recorded his Faradbeyan, on 11.04.2001, at village Gopalpur, District - Siwan, to this effect that voting in Panchayat Election was going on at booth Nos. 242, 243, and 244 of village Gopalpur, but at about 1 P.M. altercation took place between accused persons and others, upon which, Ajay Singh intervened and pacified the dispute. However, F.I.R. named Lalit Singh called Wasim Akhtar @ Munna, who along with six others, came on motorcycles and talked with respondent No.1 and after that aforesaid Wasim Akhtar @ Munna, made indiscriminate firing of his stain-gun and similarly, the respondent nos. 1 and 2 and others also made indiscriminate firing from their respective



gun and Katta, as a result of which, Ajay Singh and some others sustained firearm injury. The aforesaid Ajay Singh died on the spot.

After investigation, charge sheet was submitted and accordingly, the respondent Nos. 1 and 2 were put on trial and stood charged for the offences punishable under Sections 302/149, 307/149 and 353 of the Indian Penal Code, Section 27 of the Arms Act and Sections 135, 136, and 171(F) of the R.P. Act. The respondent Nos. 1 and 2 denied the charges and claimed to be tried.

In course of trial, prosecution examined, altogether, 11 witnesses and also got exhibited certain documents. The statement of respondent nos. 1 and 2 was recorded under Section 313 of the Code of Criminal Procedure, in which, they claimed their false implication.

The learned Trial Court having analyzed the evidences available on record found that P.W.7 (informant) had given his Ferdbeyan at police station but the prosecution suppressed the aforesaid Ferdbeyan and furthermore, the Trial Court found several major contradictions in the statement of prosecution witnesses and on the aforesaid basis the learned Trial Court came to conclusion that respondent nos. 1 and 2 were not present on the



place of occurrence, when the occurrence took place and, accordingly, the learned Trial Court acquitted the respondent nos. 1 and 2 of the charges framed against them.

3. Learned Additional Public Prosecutor as well as learned counsel appearing for the informant challenged the impugned judgment of acquittal arguing that the learned Trial Court failed to appreciate the evidence of prosecution witnesses, particularly, the injured witnesses who very clearly stated about the participation of respondent nos. 1 and 2 who caused firearm Injury to deceased Ajay Singh, as a result whereof, deceased Ajay Singh died on the spot. They further submitted that it is well settled principle of law that on the ground of minor contradictions in prosecution evidence, the entire prosecution case cannot be thrown but the learned Trial Court failed to take note of above stated settled principle of law and based his conclusion only on the basis of minor contradictions which occurred in the deposition of prosecution witnesses.

4. On the other hand, learned counsel appearing for the respondent nos. 1 and 2 supported the impugned Judgment of acquittal pointing out that the learned Trial Court discussed the prosecution evidence in detailed and found several contradictions in the deposition of prosecution witnesses and on the basis of



aforesaid contradictions, the learned Trial Court doubted the participation of the respondent nos. 1 and 2 in the alleged occurrence. Learned counsel further points out that P.W.7, the informant of the case, clearly admitted in his examination-in-chief that after occurrence, he straightway went to the Police Station where his Fradbeyan was recorded and this witness proved his Fradbeyan as Ext.1 but P.W.10, the Investigating Officer of the case, stated that he got rumor of killing of a person in village Gopalpur and having got the aforesaid rumor, he went to village Gopalpur, where he recorded the statement of P.W.7. Learned counsel for the respondent nos. 2 and 3 submits that the learned Trial Court rightly raised a question what happened to that Ferdbeyan, which was given by P.W.7 to P.W.10 at Police Station and the aforesaid Ferdbeyan was intentionally suppressed by the prosecution. He further submitted that at para 30 of his cross-examination, P.W.7 admitted that the respondent nos. 2 and 3 were not present over the place of occurrence when occurrence took place and the aforesaid admission of P.W.7 is sufficient to prove the false implication of the respondent nos. 2 and 3. He further submits that P.W.5, P.W.6 and P.W.7 have supported the prosecution story but the aforesaid witnesses are interested witnesses as they belong to the family of the deceased. He further



submits that apart from the aforesaid circumstances, the prosecution also failed to prove the place of occurrence, because P.W.7 claims that occurrence took place at Primary School but the Investigating Officer (P.W.10) stated that the dead body of deceased was found in front of house of respondent no. 2. He further submits that moreover, unless perversity and illegality is proved the finding of learned Trial Court cannot be disturbed by this Appellate Court, even if, another view is possible on the basis of evidences adduced by the prosecution.

5. Having heard the rival contentions of both the parties, we went through the record. We find that the learned Trial Court acquitted the respondent nos. 2 and 3 holding that the prosecution could not succeed to prove the presence and participation of respondent nos. 2 and 3 in the alleged crime as well as the prosecution also failed to bring on record the Ferdbeyan which was lodged by P.W.7 at Pachrukhi Police Station. Furthermore, the learned Trial Court has found that the prosecution witnesses made contradictory statements in respect of manner of occurrence and the presence of one injured witness over the place of occurrence was also doubted by the learned Trial Court. We find that the learned Trial Court has passed a well discussed Judgment and the learned Trial Court has analyzed all evidences available on



the record and there is nothing on the basis of which this Court could interfere into the impugned Judgment of acquittal.

6. On the basis of the aforesaid discussions, we do not find any merit in the above stated appeals and, accordingly, both the above stated appeals stand dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	18.08.2018
Transmission Date	18.08.2018

