

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.182 of 2018

Arising Out of PS.Case No. -135 Year- 2016 Thana -BIKRAMGANJ District- SASARAM
(ROHTAS)

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1. Binay Kumar @ Binay Kumar Yadav, aged about 23 Years S/o Late Vinktesh Singh, R/o Village- Baruna, P.S.- Bikramganj, District- Rohtas, Sasaram.

.... Appellant/s

Versus

1. The State of Bihar.
2. Sashi Kant Rai S/o Shiv Kumar Rai,
3. Jot Rai S/o Late Ghanshyam Rai, Both R/o Village- Baruna (S) Bikramganj, District- Rohtas, Sasaram.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar Pathak
For the Respondent/s : Mr. Bikramdeo Singh
Mr. Satish Chaurisa
For the State : Mr. Abhimanyu Sharma, APP

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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 13-07-2018 Heard learned counsel for appellant as well as learned counsel appearing for respondent nos. 2 and 3 on the point of admission. In our view, this appeal can be disposed of on admission stage itself.

The appellant was informant of Bikramganj P. S. Case No. 135 of 2016 and claimed that on 12.07.2016, his father, namely, Vinktesh Singh, had gone to his field but did not return till 8 p.m and, therefore, he went there taking meal for his father



who eat his meal but in the meantime, respondent nos. 2 and 3 shot fire on his father, as a result, whereof he died then and there. The occurrence is said to be taken place on account of animosity due to Panchayat Election.

On the basis of aforesaid statement of Vinktesh, Bikramganj P. S. Case No. 135 of 2016 was registered and the case was investigated and after cognizance and commitment, respondent nos. 2 and 3 were put on trial. Respondent nos. 2 and 3 stood charged for the offence punishable under Section 302/34 of Indian Penal Code and 27 of the Arms Act. The prosecution examined, altogether, six witnesses and got exhibited certain documents to prove the charges levelled against respondents nos. 2 and 3. The statement of respondent nos. 2 and 3 were recorded under Section 313 of the Cr. P. C, in which they claimed their false implication. The learned court below after considering the evidences available on the record doubted the prosecution case and acquitted the respondent nos. 2 and 3, finding contradictions in the deposition of prosecution witnesses.

Learned counsel appearing for appellant challenged the impugned judgment of acquittal, arguing that the learned court below acquitted the respondent nos. 2 and 3 on the basis of minor contradictions and, as a matter of fact, the so-called minor



contradictions do not go to the root of prosecution case as PW-1, specifically, claimed that it were respondents 2 and 3 who shot fire on the deceased.

On the other hand, learned counsel appearing for respondent nos. 2 and 3 supported the impugned judgment of acquittal, arguing that the learned trial court has discussed all the evidences available on the record and, thereafter, doubted the prosecution case. He submitted that except PW-4 (informant), none of the prosecution witnesses claimed themselves to be eye-witness of the alleged occurrence and so far as the deposition of PW-4 is concerned, the same is full of contradictions. He further submitted that the PW-4 has claimed in his fardbeyan that the respondent nos. 2 and 3 fired on the deceased when the deceased had taken his meal but the doctor found the stomach of the deceased empty, therefore, the aforesaid fact goes to show that PW-4 had also not seen the actual killing of the deceased. He further submitted that the first information report was lodged after much delay and no explanation regarding the aforesaid delay was given by the prosecution. He submitted that all the above stated facts were taken into consideration by the learned trial court while writing the judgment of acquittal.

Having heard the contentions of both the parties, we



went through the impugned judgment. We find that except PW-4, not a single prosecution witnesses claims himself to be an eye-witness of the alleged occurrence. So far as PW-4 is concerned, the learned trial court has discussed the evidence of PW-4 and doubted the credibility of the statement of PW-4 on various grounds. Furthermore, we find that the doctor found the stomach of the deceased empty whereas the claim of PW-4 is that his father had taken meal just before the occurrence. The learned trial court has taken into consideration all the above stated facts and then doubted the prosecution case and acquitted the respondent nos. 2 and 3. There is nothing on the record on the basis of which, we should take a different opinion from the learned trial court and, therefore, we do not find any legality, irregularity and perversity 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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