

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.481 of 2018

Arising Out of PS. Case No.-94 Year-2009 Thana- SURSAND District- Sitamarhi

Most. Lalita Devi, Wife of Late Ram Kishore Pandey, Resident of Village-
Bisapatti, P.S. Sursand, District- Sitamarhi.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Sanjeev Kumar Pandey, Son of Jay Kishore Pandey, Resident of Village-
Bisapatti, P.S. Sursand, District- Sitamarhi.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ritesh Kumar Narain Singh, Advocate.
For the Respondent/s : Mr. Sri Mayanand Jha, APP

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA**

ORAL JUDGMENT

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

Date : 23-04-2018

1. Heard learned counsel for the appellant as well as
learned Additional Public Prosecutor for the State on the point of
admission as well as Interlocutory Application No. 1294 of 2018,
which has been filed for grant of leave to file this criminal appeal.

2. The appellant is aggrieved by the Judgment of
acquittal dated 07.02.2018 passed by the Fast Track Court No. II,
Sitamarhi, in Sessions Trial No. 553 of 2009/ 03 of 2018, by
which and whereunder, the learned trial court acquitted the
respondent no. 2 of the charge framed against him for the offence



punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act.

3. The appellant, who happens to be the informant of Sursand P.S. Case No. 94 of 2009, claimed that, in the night of 23.06.2009, she was sleeping in her house and her son, namely, Sunil Pandey, was sleeping in another room in her house, whereas her Devar, namely, Bipin Pandey, was also sleeping at the roof of the house. She claimed that in the morning, on 24.06.2009, she woke up and proceeded to ease herself and when she reached near the stair of her house, she saw respondent no. 2 and other two accused as well as some unknown persons climbing over the roof through stair having small pistol in their hands. Thereafter, she went in the room of her son and awoke her son. She along with her son, namely, Sunil Pandey (P.W.2) came out of the house and saw the respondent no. 2 and others climbing down from the roof and thereafter the respondent no. 2 and others fled away towards south. She as well as her son and others went on the roof and found her Dever, namely, Bipin Pandey, lying dead having firearm injury on his head.

4. The respondent no. 2 was put on trial before the trial court and in course of trial, altogether, six witnesses were examined on behalf of the prosecution. Out of them, appellant



(P.W.1), her son (P.W.2) supported the prosecution case and so far as P.W.3, Rajeev Pandey, is concerned, he was tendered and similarly, P.W.4 proved the postmortem report, whereas P.W.5 and P.W.6 are the Investigating Officers.

5. Learned trial court having noticed the contradictory statements of P.W.1 and P.W.2 and also on the ground that no independent witness came to support the prosecution case acquitted the respondent no. 2.

6. Learned counsel appearing for the appellant assailed the impugned Judgment of acquittal arguing that P.W.1 and P.W.2 proved the prosecution case and furthermore, P.W.4 found firearm injury on the person of the deceased and similarly, P.W. 5 and 6 proved the place of occurrence, but even then, the learned trial court acquitted the respondent no. 2.

7. Having heard the aforesaid contention of learned counsel for the appellant, we went through the impugned Judgment of acquittal. We find that the learned trial court examined the evidences properly for acquitting the respondent no. 2. The learned trial court found that none had seen the actual killing of the deceased and P.W.1 and P.W.2 claimed only to have seen the respondent no. 2 and others while they were climbing on the roof and climbing down from the roof. Furthermore, the



learned trial court noticed the contradictory statements of P.W.1 and P.W.2 and also doubted the prosecution case on the ground of non-examination of important witnesses. Admittedly, the alleged occurrence took place, at about 4 A.M., and at the time of alleged occurrence, there was complete dark and the prosecution witnesses do not disclose as to how they could able to identify the respondent no. 2 and others as there was no means for identification. Therefore, in our view, the learned trial court rightly acquitted the respondent no. 2 giving benefit of doubt to him.

8. On the basis of the aforesaid discussions, we do not find any ground to interfere into the impugned Judgment of acquittal. Accordingly, this criminal appeal as well as Interlocutory Application No. 1294 of 2018 stand dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	28.04.2018
Transmission Date	28.04.2018

