

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1169 of 2018

Arising Out of PS. Case No.-11 Year-2003 Thana- GOPALGANJ GRP CASE District-
Gopalganj

Shiv Nath Prasad, Son of Ram Swaroop Prasad, Resident of Village- Nai
Bazar Garh-Manjha, P.S.- Manjha Garh, District- Gopalganj.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Manoj Sharma, Son of Late Sharda Sharma,
3. Mukesh Sharma,
4. Dinesh Sharma, Nos. 3 to 4 are sons of Jaglal Sharma,
5. Vijay Sharma, Son of Babu Lal Sharma,
6. Khedu Sharma, Son of Raghu Nandan Sharma,
7. Nurain Mian, Son of Kurban Mian,
8. Umesh Sharma, Son of Jaglal Sharma,
9. Jaglal Sharma, Son of Late Raghu Nangan Sharma,
10. Sri Ram Mahto, Son of Sheo Nandan Mahto,
11. Munna Sharma, Son of Late Sharda Sharma, Nos. 2 to 11 are resident of
Village- Karanpura, P.S.- Manjha Garh, District- Gopalganj.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Yogendra Prasad Sinha
For the Respondent/s : Mr. Satya Narayan Prasad

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

ORAL ORDER

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

4 18-12-2018 Heard learned counsel for the appellant as well as

learned Addl. Public Prosecutor for State on I.A. No. 1169 of

2018 as well as on the point of admission.

I.A. No. 1169 of 2018 has been filed on behalf of
appellant under section 378(3) of Cr.P.C for grant of leave to
pursue this criminal appeal. Appellant happens to be father of



the deceased and has every right to file appeal against the judgment of acquittal and accordingly, he is permitted to pursue this criminal appeal. In the aforesaid manner, IA No. 1169 of 2018 stands disposed.

This criminal appeal has been preferred against impugned judgment dated 23.07.2018 passed by learned Presiding Officer, FTC II, Gopalganj in Sessions Trial No. 31 of 2004 by which and whereunder he acquitted respondent nos. 2 to 11 from the charge framed against them for the offence punishable under section 302/34 of the IPC.

Learned counsel appearing for appellant submits that in course of trial, prosecution witnesses, specifically, stated that respondent nos. 2 to 4 took the deceased from his house and the remaining respondents, too, accompanied the above stated respondent nos. 2 to 4 on the way while respondent nos. 2 to 4 were taking away the deceased. He, further, submits that subsequently, dead body of deceased was recovered on a railway track. He, further, submits that almost all material witnesses claimed to have seen the deceased in the company of respondent nos. 2 to 11 prior to recovery of his body and, therefore, there was strong circumstantial evidence to prove the guilt of respondent nos. 2 to 11 but even then the learned trial



court acquitted respondent nos. 2 to 11.

Learned Addl. Public Prosecutor supports the impugned judgment and submits that the learned trial court has discussed the prosecution evidence in very elaborate manner and there is nothing in the impugned judgment to show that prosecution succeeded to prove the chain of circumstance to show the involvement of respondent nos. 2 to 11 in the alleged crime. He, further, submits that no person can be convicted only on the ground that he was last seen in the company of the deceased. He, further, submits that even if it assumed that respondent nos. 2 to 11 were seen in the company of deceased prior to recovery of his dead body, then also, the aforesaid circumstance is not sufficient to convict the respondent nos. 2 to 11 and the learned trial court rightly gave benefit of doubt to respondent nos. 2 to 11.

Having heard the contentions of both the parties, we went through the record. Admittedly, prosecution case was based on circumstantial evidence and no person claimed to have seen the actual killing of the deceased. Prosecution tried to place two circumstances, before the trial court. Firstly, respondent nos. 2 to 4 went to the house of the deceased and took him and secondly, respondent nos. 5 to 11 were seen in the company of



the deceased prior to recovery of his dead body. In our view, Addl. Public Prosecutor rightly submitted that the aforesaid circumstances were not sufficient to form an opinion regarding guilt of respondent nos. 2 to 11. We are also of the view that trial court has rightly given the benefit of doubt to respondent nos. 2 to 11 and there is no need to interfere into the impugned judgment of acquittal.

On the basis of the aforesaid discussions, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

s.hassan/-

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