

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.728 of 2017

Arising Out of PS. Case No.-64 Year-2014 Thana- ARER District- Madhubani

Vinod Chandra Thakur Son of Late Bhogendra Thakur, Resident of Village-
Ram Nagar, Police Station- Arer, District- Madhubani **... Appellant**
Versus

1. The State Of Bihar
2. Sunita Devi , W/o Vijay Jha,
3. Ramesh Jha, Son of Yogendra Narayan Jha, Both Resident of Village- Ram Nagar, Police Station - Arer, District- Madhubani.

... .. Respondents

Appearance :

For the Appellant : Mr. Bimal Kumar, Advocate
For the State : Mr. S N Prasad, Addl Public Prosecutor

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 07-11-2019

1. Heard learned counsel appearing for the appellant as well as learned Additional Public Prosecutor representing the State, on the point of admission and in our view, this appeal can be disposed of on the admission stage itself.

2. Appellant happens to be the son of the deceased as well as the informant and is aggrieved by the impugned judgment of acquittal dated 23.2.2017, passed by the Additional Sessions Judge-II, Madhubani in Sessions Trial No. 336 of 2015 by which and whereunder the learned Additional Sessions Judge-II,



Madhubani acquitted respondents no. 2 and 3 of the charge framed under sections 302/34 of the Indian Penal Code.

3. The informant, Manda Devi gave her *fard beyan* before the concerned police official on 7.6.2014 to this effect that on 5.6.2014 at about 6 PM her husband was badly assaulted by respondents no. 2, 3 and some other persons. On the basis of the *fard beyan* of the informant, Arer Police Station Case No. 64 of 2014 was registered against respondents no. 2, 3 and others on 17.6.2014. Investigation commenced and after investigation police submitted charge sheet against respondents no. 2 and 3 for the offence punishable under sections 302/34 of the Indian Penal Code, whereas remaining FIR named accused persons were not sent up for trial. However, the case of respondents no.2 and 3 was committed to the Court of session and accordingly respondents no.2 and 3 stood charged for the offence punishable under sections 302/34 of the IPC.

4. In the course of the trial, prosecution examined, altogether, six witnesses and also got exhibited certain documents. Statements of respondents no. 2 and 3 were recorded under section 313 of the Code of Criminal Procedure in which they claimed their false implication, but no evidence was adduced by respondents no. 2 and 3 in support of their defence. However, the learned trial



court after analyzing the entire prosecution evidence, came to conclusion that the prosecution failed to prove its case beyond all shadow of reasonable doubts, and accordingly, the learned trial court passed the impugned judgment of acquittal which is under challenge before this Court.

5. Learned counsel for the appellant challenged the impugned judgment of acquittal submitting that in course of the trial, the informant died, as a result of which she could not be examined and the aforesaid fact was brought to the notice of the learned trial court by a prosecution witness. Learned counsel further submitted that the learned trial court did not give proper opportunity to the prosecution to produce concerned doctor, who conducted post mortem examination, as a result of which the prosecution could not succeed to produce the post mortem report on record, but the learned trial court taking benefit of the above stated lacuna, passed the impugned judgment of acquittal, which is not in accordance with law. Learned counsel appearing for the appellant drew our attention to Annexure-A, which is the photo stat copies of different order sheets of the learned trial court and submitted that the aforesaid Annexure-A goes to show that the learned trial court did not take proper step to procure the attendance of the concerned doctor.



6. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of acquittal arguing that the learned trial court passed a well discussed and well thought judgment. He further submitted that ample opportunity was given to the prosecution to produce the doctor but the prosecution failed to examine the doctor, as a result whereof cause of death of the deceased could not be brought in evidence and the learned trial court took note of the aforesaid fact while passing the impugned judgment.

7. Having heard the rival contentions of the parties, we went through the record along with the impugned judgment of acquittal. From perusal of the impugned judgment of acquittal, we find that the charge against the respondents no.2 and 3 was framed on 7.12.2015 and the prosecution case was closed on 16.1.2017, meaning thereby, that more than a year was granted to the prosecution. Furthermore, we find that out of the 6 prosecution witnesses, PW 1 to PW 5 are witnesses on the point of occurrence, whereas PW 6 is the I.O. but it would appear from the impugned judgment of acquittal that PW 1 and PW 2 were declared hostile and they did not claim themselves to be the eye witness of the alleged occurrence. Furthermore, we find PW 3 and PW 4 (the appellant) although supported the prosecution case, but they fairly



admitted that they had not seen the alleged occurrence and they came to know about the alleged occurrence from their niece. Admittedly, niece of PW 3 and PW 4 was not examined by the prosecution in the trial. So far as PW 5 is concerned, the said witness is also not an eye witness to the occurrence, rather PW 5 appears to be formal witness, who proved the signature of the informant on the *fard beyan*. Therefore, in the aforesaid circumstances, even if it is assumed that the deceased died of some injuries, then also there is nothing in the entire prosecution evidence to prove that respondents no. 2 and 3 had caused injuries to the deceased.

8. No doubt, the doctor could not be examined by the prosecution as the prosecution evidence was closed, but the perusal of Annexure-1 goes to show that sufficient opportunity was given to the prosecution to produce its witnesses. Moreover, in the aforesaid backdrop, the examination of the doctor and production of the post mortem report in evidence, do not make any difference, because, admittedly, not a single prosecution witness has claimed himself to be eye witness to the alleged occurrence.

9. Therefore, in view of the aforesaid facts and circumstances, we are of the opinion that the impugned judgment of acquittal does not suffer from perversity, absurdity or illegality



and, therefore, taking note of the facts of the case, this appeal stands dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	NA
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