

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1413 of 2018

Arising Out of PS. Case No.-414 Year-2015 Thana- DEHRI TOWN District- Rohtas

Ramashray Singh, son of Late Shiv Bachan Singh, resident of village – Ratibigha, P.S. Dihri Nagar, District – Rohtas.

... .. Appellant

Versus

1. The State of Bihar,
2. Dilip Singh, son of Late Parmeshwar Singh,
3. Pran Singh, son of Late Chhedi Mahto,
4. Bharat Singh, son of Dilip Singh, both resident of village-Balasti Bigha, P.S. Dihri, District-Rohtash.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Diwakar Prasad Singh, Advocate
For the Respondent/s : Mr. Mayanand Jha, A.P.P.

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

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

3 25-02-2019 Heard learned counsel for the appellant and learned Addl. Public Prosecutor for the State on the point of admission as well as on I.A. No. 3412 of 2018, which has been filed under Section 378(3) of the Code of Criminal Procedure.

2. Perused the record.

3. I.A. No. 3412 of 2018 has been filed on behalf of the appellant, who happens to be the son of deceased and, therefore, he is permitted to pursue this criminal appeal. Accordingly, I.A. No. 3412 of 2018 stands disposed of.

4. The appellant, being aggrieved by impugned Judgment of acquittal dated 21.09.2018 passed by the learned 2nd



Addl. Sessions Judge, Rohtash at Sasaram in Sessions Trial No. 3 of 2016, has preferred this criminal appeal.

5. The learned 2nd Addl. Sessions Judge, Rohtash at Sasaram vide impugned Judgment acquitted the respondents No. 2, 3 and 4 from the charge framed against them for the offence punishable under Sections 302/34 of the Indian Penal Code, giving benefit of doubt.

6. Learned counsel appearing for the appellant submits that the learned trial Court committed error in acquitting the respondents No. 2, 3 and 4, particularly, in the circumstance when overwhelming evidence was available on the record to prove the guilt of respondent Nos. 2, 3 and 4. He further submits that P.W.4, namely, Parwati Devi, claimed herself to be eye-witness of the alleged occurrence and she, specifically, stated that it were respondent Nos. 2, 3 and 4, who committed murder of her husband and, apart from this, prior to his death, the deceased had written the names of appellants on a paper, but learned trial Court discarded the aforesaid evidences on flimsy grounds. He, further, submitted that learned trial Court disbelieved the said paper (Ext.4) on the ground that the witnesses had made contradictory statements in respect of Ext.4. He further submits that the learned trial Court disbelieved the testimony of P.W.4 on the ground that there was no source of light at the time of alleged occurrence. He submitted

trial Court failed to take note of this



fact that respondent Nos. 2, 3 and 4 are co-villagers of P.W.4 and they were known to P.W.4 from before and, therefore, even if it assumed that there was no source of light, then also, it was not difficult for P.W.4 to identify the respondent Nos. 2, 3 and 4.

7. On the other hand, learned Addl. Public Prosecutor appearing for the State supported the impugned Judgment of acquittal, pointing out that the learned trial Court has passed a well thought and well discussed Judgment and there is no ground to interfere into the impugned Judgment of acquittal.

8. Admittedly, informant is not an eye-witness of the alleged occurrence and he came to know about the alleged occurrence from P.W.4. The informant claimed that before his death, the deceased had written the names of his assailants on a paper.

9. Paragraph Nos. 23 and 24 of the impugned Judgment go to show that the learned trial Court has discarded Ext.4 after discussing the prosecution evidences. The aforesaid para 23 of the impugned Judgment goes to show that the prosecution witnesses made contradictory statements in respect of Ext.4 and the learned trial Court took notice of the above stated contradiction of prosecution witnesses while disbelieving the Ext.4. Furthermore, it is also obvious from perusal of the aforesaid paragraphs that the prosecution did not take any step to get Ext.4 expert with admitted handwriting of the



deceased. No doubt, the Judgment of conviction can be based solely on the basis of dying declaration of deceased, if the aforesaid dying declaration inspires confidence to the Court and the said dying declaration is free from any suspicion, but in the present case, the learned trial Court raised suspicion regarding Ext.4 on several grounds and we do not find any perversity or absurdity in the finding given by the learned trial Court. Furthermore, we find that, admittedly, the alleged occurrence took place in mid night and the prosecution witnesses failed to disclose the source of light in which they claimed to have identified the respondent Nos. 2, 3 and 4.

10. It is well settled principle of law that innocence of accused is presumed and the aforesaid presumption becomes very stronger, if the accused gets acquittal. Therefore, in the aforesaid circumstances, we do not find any ground to interfere into the impugned Judgment of acquittal and, accordingly, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

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