

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.914 of 2019

Arising Out of PS. Case No.-111 Year-2014 Thana- DHANARUA District- Patna

Shambhu Nath, aged about 70 years, Male, Son of Late Tej Narayan Das,
Resident of Mohalla – Baniya Tola, Durgapur, Katihar, P. S. and District –
Katihar.

... .. Appellant

Versus

1. The State of Bihar
2. Mahendra Prasad, Son of Late Mohan Gope, Resident of Village – Sohan
Bigha, P. S.- Masaurhi, District – Patna.
3. Babloo Kumar, Son of Shri Krishna Prasad, Resident of Village – Taregana,
P.S.- Masaurhi, District – Patna.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Mukesh Kumar Jha, Adv.
For the State : Mr. Abhimanyu Sharma, A.P.P.

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

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

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

3 26-09-2019 Heard learned counsel appearing for the appellant as

well as learned Additional Public Prosecutor for the State on the

point of admission and in our view, this appeal can be disposed

of on admission stage itself.

This criminal appeal has been filed under the Proviso
of Section 372 of the Cr. P. C against the impugned judgment of
acquittal, dated 28.06.2019, passed by the learned Additional
Sessions Judge-XXIII, Patna in Session Trial No. 917 of 2014
by which and whereunder, learned Additional Sessions Judge-



XXIII, Patna acquitted the respondent nos. 2 and 3 from the charges framed against them under Sections 302/34 and 201/34 of the Indian Penal Code.

Dhanarua P.S. Case No. 111 of 2014 was lodged on the basis of fardbeyan of PW-2, Shambhu Nath, who got recorded his fardbeyan on 25.04.2014, to this effect that his son namely, Saurabh Kumar was preparing for Bank P. O. examination at Patna and in that course, on several occasions, he used to visit his house and on 13.04.2014, the above stated Saurabh Kumar talked the informant Shambhu Nath on mobile phone and gave information that he was going to his friend's house at Patna but on 14.04.2014, the informant tried to contact on the mobile phone of Saurabh Kumar but he could not succeed to contact Saurabh Kumar on his mobile phone and, thereafter, on 16.04.2014, the informant PW-2 lodged a missing report in Katihar Police Station. However, on 24.04.2014, PW-3 Dr. D.N.Sadhu, informant's brother-in-law, gave information to him that a dead body has been recovered under the jurisdiction of Dhanarua Police Station and having got the aforesaid information, he along with family members went to the place where the said dead body was recovered and identified the dead body of Saurabh Kumar as his son. PW-2 further claimed in his



fardebayan that while deceased Saurabh Kumar was preparing for Bank P.O examination in Patna, he was in contact of one Sundari Kumari. In course of investigation, the police claimed the involvement of respondent no. 2 and 3 in the alleged occurrence and, accordingly, submitted charge sheet against them and others for the offences punishable under Sections 302/34, 201/34 of the Indian Penal Code.

After cognizance of the offence, the respondent nos. 2 and 3 were put on trial and accordingly, they stood charged for the offence punishable under Sections 302/34, 201/34 to which they denied and claimed to be tried. In course of trial, prosecution examined, altogether, six prosecution witnesses and also got exhibited some documents. The statements of respondent nos. 2 and 3 were recorded under section 313 of the Cr.P.C in which they reiterated their innocence. Learned trial court after evaluating the prosecution evidence came to the conclusion that prosecution could not succeed to prove its case beyond all shadow of reasonable doubts and accordingly, passed the impugned judgment of acquittal, which is under challenge in this criminal appeal.

Learned counsel appearing for the appellant submits that admittedly, none had seen the actual killing of the deceased



but there was strong circumstantial evidence available on the lower court record against the respondent nos. 2 and 3 but the learned trial court ignored and misinterpreted the above stated circumstantial evidence. He, further, submitted that Sundari Kumari, was daughter of respondent no. 2 and the aforesaid girl was missing prior to the alleged occurrence and when the respondent no. 2 was arrested by the police, he claimed that he killed his daughter and threw her dead body but the dead body of the aforesaid Sundari Kumari was not recovered and as a matter of fact, the respondent nos. 2 and 3 as well as others committed the murder of deceased as deceased was entangled with the aforesaid Sundri Kumari. He, further, submitted that in course of trial, the location of mobile phones of respondent nos. 2 and 3 as well as others were found near the place of occurrence. He submitted that the aforesaid circumstances are sufficient to prove the involvement of respondent nos. 2 and 3 in the alleged crime.

On the other hand, learned Additional Public Prosecutor for the State refuted the above stated submission arguing that no C.D.R of mobile phones of respondent nos. 2 and 3 were not brought on record legally and the C.D.R of mobile phones were only produced which were marked as



Exhibit 'X' for identification only. He, further, submitted that as a matter of fact, the learned trial court dealt with the prosecution evidences as well as other materials available on the record properly and having considered all the things passed the impugned judgment of acquittal which does not need any interference by this court.

Having heard the contentions of both the parties, we went through the impugned judgment and lower court record. Admittedly, none had seen the actual killing of the deceased and also, not a single witness, claimed to have seen the respondent nos. 2 and 3 in the company of deceased prior to the alleged occurrence. Furthermore, so far as the so-called C.D.Rs of mobile phones of respondent nos. 2 and 3 are concerned, the same were not brought in evidence by the prosecution in accordance with law and the learned trial court rightly declined to take notice of so-called call details of respondent nos. 2 and 3. Furthermore, the perusal of impugned judgment goes to show that there was nothing on the record to show that the deceased had relation with the aforesaid Sundri Kumari. Moreover, except suspicion against the respondent nos. 2 and 3, there was nothing against them and in our view, the learned trial court has rightly passed the judgment of acquittal. It is well settled principle of



law that if on the same set of facts and evidences, two views are possible, the view of trial court cannot be disturbed unless the said view appears to be perverse and absurd and without consideration of evidence. In the present case, as we have already noticed that the learned trial court having considered all the materials available on the record passed the impugned judgment of acquittal and furthermore, we do not find any perversity, absurdity and illegality in the impugned judgment of acquittal, therefore, on the basis of aforesaid discussion, we are of the view that this criminal appeal is devoid of merit. Accordingly, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

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