

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.977 of 2019

Arising Out of PS. Case No.-121 Year-2016 Thana- BIHPUR District- Bhagalpur

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Laxman Sharma @ Laxman Kumar, aged about 31 years, Male, Son of Late Upendra Sharma Resident of Village - Asha Tola, P.S.- Bihpur (Bhawanipur O.P.), Distt - Bhagalpur.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Jagdambi Sharma @ Jagdamb Sharma, aged about 37 years, Male, Son of Parmanand Sharma Resident of Village - Asha Tola, P.S.- Bihpur, Distt - Bhagalpur.
3. Parmanand Sharma, aged about 75 years, Male, Son of Late Jainath Sharma Resident of Village - Asha Tola, P.S.- Bihpur, Distt - Bhagalpur.
4. Mithilesh Sharma, aged about 25 years, Male, Son of Late Nand Kishore Sharma Resident of Village - Asha Tola, P.S.- Bihpur, Distt - Bhagalpur.
5. Niranjana Sharma, aged about 22 years, Male, Son of Late Nand Kishore Sharma Resident of Village - Asha Tola, P.S.- Bihpur, Distt - Bhagalpur.
6. Prakash Sharma, aged about 39 years, Male, Son of Parmanand Sharma Resident of Village - Asha Tola, P.S.- Bihpur, Distt - Bhagalpur.
7. Shankar Sharma, aged about 35 years, Male, Son of Parmanand Sharma Resident of Village - Asha Tola, P.S.- Bihpur, Distt - Bhagalpur.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Ranjan Kumar Jha, Adv. Mr. Vikash Kumar, Adv.
For the Respondent/s	:	Mr.Manish Kumar No. 12, APP

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
and
HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 18-11-2019

Heard learned counsel for the parties.

In this case, the appellant is challenging the judgment and order dated 15.7.2019 passed by the learned 2nd Additional Sessions Judge, Naugachia in S.Tr. No. 200 of 2017 arising out of



Bihpur (Bhawanipur O.P.) P.S. Case No. 121 of 2016, whereby and whereunder, the court below has not found the charge proved against the respondents who have been allegedly made accused of causing death of the father of the Informant.

As per prosecution case, the Informant, on 2.5.2016 at 5.30 AM at Primary Health Center, Narayanpur, gave a statement that on 1/2.05.2016 at about 12.30 hrs. in the night, his father, namely, Upendra Sharma was sleeping on Chouki along with his uncle Bouku Sharma at his Basa and the Informant was sleeping in the eastern side of Basa on Machan. Suddenly, he heard the sound of gun shot followed by alarm raised by his father who had received fire-arm injury on his thigh. He instantly went to his father who stated that the son of Parmanand Sharma namely Jagdamb Sharma had fired upon him, whereafter, the Informant saw five accused persons were fleeing from there, whereafter, he gave call to his uncle Ankaj Sharma on phone who brought his private car at the place of occurrence and carried the deceased on the said vehicle at Primary Health Center, Narayanpur. The doctor visited the patient but, during treatment, he died.

The police, after investigation, submitted the charge-sheet for offence under Sections 302/34 of the Indian Penal Code



and Section 27 of the Arms Act appertaining to Bihpur (Bhawanipur O.P.) P.S. Case No. 121 of 2016.

After submitting the charge-sheet, the cognizance was taken, on commitment, the accused persons were put to trial. After considering all the materials available on record, the court below found that the prosecution has miserably failed to prove the charge beyond reasonable doubt that the accused persons have committed the said incident.

Learned counsel for the appellant submits that the material on record is the statement of the Informant, wife of the deceased as also the uncle of the Informant and all the three persons, in one word, have supported the prosecution story and have claimed that the name of the accused persons have been disclosed by the deceased himself whereas the Informant has categorically stated that he has given the call on mobile to his uncle to bring his private vehicle to carry his father to the nearest hospital for treatment. The evidence of wife of deceased shows that she received the call from her husband and same statement has been repeated by uncle of the Informant.

The doctor has said that the injury reflects that a higher velocity arms has been used to cause injury and the injury is of such a nature that the person, who has received the injury, cannot



survive for more than five to ten minutes whereas all the witnesses have said that the information of the incident and name of the accused persons was given by the deceased himself.

On consideration of the postmortem report, it is doubtful that the deceased was in a position to be able to narrate the story of incident to family members in view of the fact, as per doctor, the victim would not survive more than five to ten minutes on account of nature of injuries. Admittedly, there was enmity which cuts both ways after death of the victim but, there is also a possibility that the accused persons have wrongly been implicated.

The material on record suggests that the statement of the witnesses itself is not compatible to each other rather they are in contradiction. At the same time, the postmortem report itself shows that the person having such an injury will not remain conscious for more than five to ten minutes. In such circumstances, there was no occasion for the deceased to say about the cause of death to his wife and his brother. Further the source of identification has been said about the torch which has not been brought as material exhibit for identification of the accused persons in the fact that the offence has been committed in the dead-night and without proper light, it is very difficult to identify the accused persons.



In such view of the matter, we do not find any ground to interfere with the impugned judgment of acquittal as because the findings, given by the learned trial court, are neither perverse nor absurd and, therefore, in the aforesaid circumstance, we are of the opinion that this criminal appeal is liable to be dismissed.

In the result, this criminal appeal stands dismissed on the admission stage itself.

(Shivaji Pandey, J)

(Prabhat Kumar Singh, J)

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AFR/NAFR	NAFR
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