

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.624 of 2018

Arising Out of PS. Case No.-291 Year-2015 Thana- KATORIYA District- Banka

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{Against the Judgment of acquittal dated 17.11.2017 passed by the learned Presiding Officer, Fast Track Court-I, Banka, in Sessions Trial No.107 of 2016}.

Tej Narayan Yadav, son of Late Sona Yadav alias Late Shama Yadav, presently living at resident of village-Jharudih Beldiha More, P.S. Belhar, District-Banka, resident of village-Lakarkhaua, P.O. Ranga, P.S. Belhar, District-Banka.

... .. Appellant.

Versus

1. The State of Bihar.
2. Teklal Yadav, son of Baiju Yadav, resident of village-Bagra, P.S. Chandan, District-Banka.

... .. Respondents.

Appearance :

For the Appellant : Mr. Vikram Deo Singh, Advocate.
Mr. Sri Niwash Singh, Advocate.
For the State : Mr. Shivesh Chandra Mishra, A.P.P.
For the Respondent No.2: Mr. Ranjan Kumar Jha, Advocate.
Mr. Deepak Kumar alias Sanjeev Kumar, Advocate.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 20-02-2019

Heard learned counsel appearing for the appellant, learned counsel appearing for the respondent no.2 as well as the learned Additional Public Prosecutor for the State on I.A. No.1606 of 2018, filed under Section 5 of the Limitation Act, I.A. No.1605 of 2018, filed under Section 378(3) of the Code of Criminal Procedure, as well as on the point of admission.

2. I.A. No.1606 of 2018 has been filed on behalf of



the appellant under Section 5 of the Limitation Act for condonation of delay of 85 days in filing this criminal appeal.

The delay in filing this criminal appeal is condoned, on the grounds mentioned in I.A. No.1606 of 2018 and, accordingly, I.A. No.1606 of 2018 stands disposed of.

3. I.A. No.1605 of 2018 has been filed on behalf of the appellant under Section 378(3) of the Code of Criminal Procedure for grant of leave to file and pursue this criminal appeal.

The appellant happens to be the grandfather of the deceased and he has right to challenge the Judgment of acquittal and, accordingly, I.A. No.1605 of 2018 stands allowed and the appellant is permitted to pursue this criminal appeal.

4. This criminal appeal has been preferred against the impugned Judgment of acquittal dated 17.11.2017 passed in Sessions Trial No.107 of 2016 by the Presiding Officer, Fast Track Court-I, Banka, by which and whereunder he acquitted the respondent no.2 from the charges framed against him for the offences punishable under Sections 302/34 of the Indian Penal Code.

5. The appellant gave his fardbeyan on 20.12.2015 at about 10.00 A.M. before the Officer Incharge of Suiya O.P. to this effect that his grandson, namely, Pankaj Kumar alias Rahul, left his home in the evening of 19.12.2015 but, on 20.12.2015, the brother-in-law of his grandson gave information on telephone that Pankaj Kumar alias Rahul was killed near Suiya Kabariya Path by someone and having got the aforesaid information, he along with his other



family members went there, where the in-laws of his grandson disclosed that at about 08.00 P.M. on 19.12.2015, Pankaj Kumar alias Rahul had talked with his wife on mobile phone and had disclosed that he is at Katoriya. The mobile phone of Pankaj Kumar alias Rahul was lying near his dead body. The informant noticed that on the back side of the head of the deceased, one blow by sharp cutting weapon had been given. The motorcycle of the deceased was also lying there.

6. On the basis of the aforesaid fardbeyan, Katoriya (Suiya O.P.) P.S. Case No.291 of 2015 was registered against unknown persons.

7. In course of trial, the respondent no.2 was arrested and made his confessional statement before the Investigating Officer, leading to recovery of one blood stained dagger and, furthermore, one mobile phone was recovered from the possession of the respondent no.2. However, after completion of investigation, the Investigating Officer submitted charge-sheet against the respondent no.2, whereas investigation in respect of two persons was kept pending. The respondent no.2 was put on trial and stood charged for the offence punishable under Section 302/34 of the Indian Penal Code.

8. In course of trial, the prosecution examined several witnesses and got exhibited certain documents.

9. The learned trial court after evaluating the evidences, available on the record, passed the Judgment of acquittal



against which the present appeal has been preferred.

10. Learned counsel appearing for the appellant submits that the learned trial court failed to take note of this fact that on the basis of the confessional statement of the respondent no.2, blood stained dagger, which had been used in committing the murder of the deceased, was recovered and the recovered blood stained dagger was sent to the Forensic Science Laboratory for chemical examination and the F.S.L. report was sent by the Forensic Science Laboratory and the said report disclosed that the blood was found on the seized dagger. He further submits that the prosecution also brought in evidence that prior to the alleged occurrence, respondent no.2 had talked with the deceased. He further submitted that all the above stated circumstantial evidences were sufficient to come on conclusion that it was the respondent no.2, who committed the murder of the deceased but the learned trial court erroneously passed the Judgment of acquittal.

11. On the other hand, learned counsel appearing for the respondent no.2 supported the impugned Judgment of acquittal, submitting that the aforesaid two circumstances were not sufficient to prove the charge of Sections 302/34 of the Indian Penal Code against the respondent no.2. He submitted that, no doubt, F.S.L. report discloses that there was blood stain on the seized dagger but the prosecution did not bring any evidence to show that the aforesaid blood was of the deceased or human blood. He further submitted that, according to the prosecution case itself, the mobile, which is



said to have been seized from the possession of the respondent no.2, stood in the name of other person but the prosecution did not disclose the name of that person in whose name, the SIM of the mobile was standing. He further submitted that the learned trial court discussed each and every aspect of the case and having discussed the entire evidences of the prosecution, passed the Judgment of acquittal, which does not need any interference by this Court.

12. Having heard the contentions of the parties, we went through the record along with the Lower Court Records.

13. In our view, this criminal appeal can be disposed of on the admission stage itself.

14. Admittedly, the First Information Report was lodged on 20.12.2015 and the respondent no.2 was arrested on 24.12.2015. The learned trial Judge has observed at paragraph-7 of the impugned Judgment that the informant as well as Investigating Officer did not give the name of the respondent no.2 in the First Information Report but, in our view, the aforesaid finding of the learned trial Judge is perverted and absurd because it is specific case of the prosecution that at the time of institution of the First Information Report, the informant was not aware of this fact as to who had killed his grandson and, therefore, in the aforesaid circumstance, the finding given by the learned trial Judge at paragraph-7 of the impugned Judgment is completely perverted. However, even if the aforesaid finding is excluded from the impugned Judgment, then also, we find that the circumstances as



brought by the prosecution against the respondent no.2 were not sufficient to convict the respondent no.2. According to the prosecution case, the mobile phone was recovered from the possession of the respondent no.2, when he was apprehended by the Investigating Officer and the prosecution claimed that the respondent no.2 had talked with the deceased, prior to the alleged occurrence through the aforesaid mobile phone but no call details report was brought on the record to show that any call was made to the deceased from the mobile phone, which is said to have been seized from the possession of the respondent no.2. However, it is evident from perusal of the Lower Court Records that the mobile, which is said to have been seized from the possession of the respondent no.2, does not stand in the name of the respondent no.2. It is surprising enough that the Investigating Officer did not bring the name of the person in whose name the SIM of the aforesaid mobile stands. Furthermore, the Investigating Officer claimed that on the basis of the confessional statement of the respondent no.2, blood stained dagger was recovered and the aforesaid dagger was used in committing the murder of the deceased. Furthermore, the F.S.L. report has been exhibited and the F.S.L. report reveals that the blood was found on the seized dagger but there is nothing on the record to show that the blood stain, found on the dagger, was of human blood. Moreover, the prosecution did not bring any serological report to prove that the blood, found on the dagger, was of human blood. Furthermore, there is nothing on the record to show that the blood, seized from the place of the



occurrence, was of the same blood group, which was found on the dagger, seized on the basis of the so-called confessional statement of the respondent no.2. Apart from the aforesaid facts, we noticed that while recording the statement of the respondent no.2 under Section 313 of the Code of Criminal Procedure, the learned trial court did not make any question regarding the so-called confessional statement as well as the recovery of the dagger on the basis of the aforesaid confessional statement. Therefore, even if there are some perversity in the impugned Judgment of acquittal, then also, in our view, the learned trial court came to right conclusion after evaluating the evidences of the prosecution. Hence, we do not find force in this criminal appeal and, accordingly, this criminal appeal stands dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.02.2019.
Transmission Date	22.02.2019.

