

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.129 of 2022

In
CRIMINAL APPEAL (SJ) No.2679 of 2021

Arising Out of PS. Case No.-64 Year-2009 Thana- CHAINPUR District- Kaimur (Bhabua)

MANOJ KUMAR S/o Late Ram Hari Bind R/o village- Ramgarh, P.S.-
Chainpur, District- Kaimur at Bhabua

... .. Appellant

Versus

1. The State of Bihar
2. Dhiraj @ Dhiraj Bind @ Dhiraja Bind S/o Chandrika Bind R/o village-
Ramgarh, P.S.- Chainpur, District- Kaimur at Bhabua
3. Nandu Bind @ Nanhaku Bind @ Nanhaku S/o Chandrika Bind R/o village-
Ramgarh, P.S.- Chainpur, District- Kaimur at Bhabua

... .. Respondents

Appearance :

For the Appellant : Mr. Tribhuwan Narayan
For the Respondent : Mr. A.G.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 23-09-2022

By the judgment dated 27.01.2021 passed in Sessions Trial No. 289 of 2009/545 of 2017, Sessions Trial Regd. No. 2886 of 2014 arising out of Chainpur P.S. Case No. 64 of 2009 by the learned Fast Track Judge-1st, Kaimur at Bhabhua, respondents No. 2 and 3 have been acquitted of the charges for commission of the offences punishable under Section 302, 149, 147, 148, 304/149 of the Indian Penal Code and Section 27 of the Arms Act, which is



under challenge in the present appeal filed under Section 372 of the Code of Criminal Procedure.

2. We have heard Mr. Tribhuwan Narayan, learned counsel appearing on behalf of the appellant and learned Additional Public Prosecutor representing the State.

3. *Fard-beyan* of the appellant is the basis for registration of the concerned Chainpur P.S. Case No. 64 of 2009. He alleged in his *fard-beyan* that on 22.06.2009, in the afternoon, he was sitting at the doorway of his house when his father Ram Hari Bind (the deceased) was in his orchard, nearly 200 yards away, where the labourers of one Moti Sharma were cutting down trees. He witnessed that respondents No. 2 and 3, with other co-accused persons, came armed with guns. Respondent No. 2 and co-accused Munni Bind caught hold of the deceased and others surrounded him. In the meanwhile, the informant and his brother Shambhu Bind rushed towards the orchard with *lathi*. Five rounds were fired by the accused persons from the orchard which prevented the informant from moving further. Subsequently, certain persons, namely, Birbal Bind, Chandrika Bind, Chhotu Bind, Nandu Bind, Rudal Bind and Manoj Bind, also came armed with *lathi*. The informant's father was pushed down to the ground by respondent No.1, who pressed his neck thereafter, whereas



other accused persons had seized him. All the accused persons thereafter fled away to their respective homes and fields. The reason behind the occurrence, as disclosed in the First Information Report, was the then existing land dispute between the informant's family and the persons named in the First Information Report.

4. The police submitted charge-sheet upon completion of investigation. The case was committed to the court of sessions, where the respondents No.2 and 3 came to be charged for commission of offence punishable under Section 302/149 of the Indian Penal Code. At the trial, the prosecution examined altogether six witnesses, four of whom claimed to be eye witnesses. The Doctor, who had conducted the postmortem examination, came to be examined as PW-5 and proved the postmortem report as 'Exhibit-2'. PW-6, a formal witness, proved the contents and signatures on the First Information Report, exhibited as 'Exhibit-3'. Report from Forensic Sciences Laboratory came to be marked as 'Exhibit-4' by the court, the same being a public document.

5. The trial court, after having analyzed the evidence adduced at the trial, has recorded finding of acquittal noticing apparent inconsistencies between the ocular evidence and the medical evidence, animosity arising out of land dispute between



the parties since 2004 as also lodging of a criminal case by respondent No.2 against the informant (PW-4) registered as Chainpur P.S. Case No. 65 of 2009.

6. The prosecution's witnesses No. 1 to 4, who claimed to be eye witnesses, supported the prosecution's case that the deceased died of the assault made by respondents No. 2 and 3 and other persons named in the First Information Report.

7. From the impugned judgment of the trial court, we notice that no internal or external injury was found on the body of the deceased as disclosed in the postmortem report. As there was no internal or external injury found on the dead body of the deceased, the viscera was preserved and sent for forensic examination. In the report of the F.S.L., no presence of poison was noticed.

8. There were, thus, glaring inconsistencies between direct evidence and medical evidence before the trial court on the point of alleged assault made by the accused persons and the injury sustained by the deceased.

9. Responding to a question, during the cross examination, the informant accepted that respondent No.2 had, on the same day, filed a criminal case registered as Chainpur P.S. Case No. 65 of 2009 as he had sustained fire-arm injury in his leg.



The trial court, thus, noticed the admitted counter-case filed by respondent No.2, who himself had sustained fire-arm injury in which the appellant was arrested and sent to jail. PW-2, in his deposition, accepted that when he reached the orchard after the occurrence, he did not find any sign of injury on the person of the deceased.

10. Though, it is true that positive evidence in a case is that of an eye witness, who has seen the occurrence. The evidence of a Doctor or a medical expert is nothing more than an opinion, which lends corroboration to the direct evidence in a case. However, where there is glaring inconsistencies between the direct evidence and the medical evidence in relation to entire prosecution's story, the prosecution case undoubtedly suffers from a manifest defect.

11. In the present case, in our view, the medical evidence rules out the possibility of injuries taking place in the manner as disclosed by the eye witnesses. Heart attack has been found by the Doctor to be the proximate cause of death of the deceased. The variance between the medical evidence and oral evidence, in the present case, cannot be considered minor, rather significant, ruling out possibility of the manner of occurrence, in the absence of any external or internal injury found on the person of the deceased.



12. The above mentioned facts, coupled with the fact that the parties are on inimical terms, relevant aspect of which has been dealt with by the trial court, we do not find any infirmity in the impugned judgment and order. The view taken by the trial court appears to be a reasonable view based on the evidence adduced at the trial. We are not persuaded to interfere with the impugned judgment.

13. It is not the case of the appellant that the evidences of the witnesses have not been duly noted in the impugned judgment of the trial court.

14. After having perused the impugned judgment of the trial court, based on evaluation and appreciation of the evidence on record, we do not find any merit in this appeal.

15. This appeal is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

Pawan/-

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