

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.484 of 2022

Arising Out of PS. Case No.-241 Year-2018 Thana- BIHPUR District- Bhagalpur

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Gannu Ray S/o Late Chunchun Ray Resident of Village- Gauripur, P.S.-
Bihpur, District- Bhagalpur

... .. Appellant/s

Versus

1. The State of Bihar
2. Shankar Ray S/o Late Vilash Ray Resident of Village- Gauripur, Ps.- Bihpur,
District- Bhagalpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar Singh, Advocate

For the Respondent/s : Mr. Manish Kumar No2, A.P.P

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

4 02-08-2022 The appellant has filed this appeal under Section 372 of Criminal Procedure Code assailing a judgment dated 05.04.2022 passed by the learned Additional District and Sessions Judge 1st Naugachia, Bhagalpur in Sessions Trial Court 753/2018, Trial No. 10/2021 whereby, the respondent no. 2 has been acquitted of the charge of the offences punishable under Sections 302/34 and 120(B) of the Indian Penal Code and Section 27(1) of the Arms Act.

The appellant is the informant and the father of the deceased. It was the prosecution's case as disclosed in the



fardbayan of the informant that at 10:45 P.M on 08.06.2018, the appellant's son had gone with respondent no. 2. He, however, did not return. The dead body of the deceased was subsequently found on the next day.

The police upon completion of investigation submitted charge-sheet alleging commission of the offences by respondent no. 2 punishable under Section 302/120(B)/34 of the Indian Penal Code and Section 27 of the Arms Act. The Charge was framed against the respondent no. 2 for commission of offences punishable under the aforesaid sections of the Indian Penal Code and the Arms Act and was put on trial. It is noteworthy that, it was the case of the prosecution at the trial that respondent no. 2 had confessed commission of the offences in his statement made under Section 161 of the Criminal Procedure Code before the police.

The Trial Court, giving respondent no. 2 benefit of doubt, has recorded the judgment of acquittal, which is under challenge in the present appeal.

Learned counsel appearing on behalf of the appellant has submitted that the confessional statement of respondent no. 2 made before the police during the course of investigation stands corroborated by the medical evidence,



postmortem report, seizure list, inquest report and the evidence of witness adduced at the trial. He has, therefore, submitted that confessional statement of respondent no. 2 made before the police should have been admitted in evidence by the Trial Court and the Trial Court erroneously acquitted the respondent no. 2 giving him benefit of doubt. He has submitted that the impugned judgment of the Trial Court is perverse and, therefore, requires interference by this Court.

After having perused the impugned judgment passed by the Trial Court and considered the submissions advanced on behalf of the appellant as noted above, it is evident that the prosecution attempted to establish the case against respondent no. 2 based only on his confessional statement said to have been made before the police. It was not the case of the prosecution that any disclosure made by respondent no. 2 before the police in his so called confessional statement led to recovery of any incriminating material. In such view of the matter, applying the provisions under Sections 25 and 26 of the Evidence Act, in our opinion, the Trial Court has rightly refused to rely on the said confessional statement of respondent no. 2 for establishing charge against him of commission of offences punishable under Section 302 of the Indian Penal Code.



In our view, the impugned order suffers from no legal infirmity and, therefore, does not require any interference by this Court.

This appeal, in our view, does not deserve to be admitted and is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

Gaurav Kumar,
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