

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1403 of 2019

Arising Out of PS. Case No.-795 Year-2010 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

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Shambhu Prasad, Son of Late Meena Devi, Resident of Village-Pakari Dayal,
Jagatiya Pola, P.S.-Pakari Dayal, District-East Champaran.

... .. Appellant/s

Versus

1. The State of Bihar
2. Srikant Prasad @ Chirkut Sah, Son of Late Ram Prasad Sah, Resident of Village-Pakri Dayal, Tola Jagatiya, P.S.-Pakaridayal, District-East Champaran.
3. Anil Sah, Son of Ram Prasad Sah, Resident of Village-Pakri Dayal, Tola Jagatiya, P.S.-Pakaridayal, District-East Champaran.
4. Vinod Sah, Son of Ram Prasad Sah, Resident of Village-Pakri Dayal, Tola Jagatiya, P.S.-Pakaridayal, District-East Champaran.
5. Ajay Sah @ Ajay Kumar, Son of Late Yogendra Sah, Resident of Village-Pakri Dayal, Tola Jagatiya, P.S.-Pakaridayal, District-East Champaran.
6. Rajan Kumar, Son of Uma Shankar Prasad, Resident of Village-Pakri Dayal, Tola Jagatiya, P.S.-Pakaridayal, District-East Champaran.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Umesh Chandra Verma, Advocate Mr. Abhishek Kumar, Advocate
For the Respondent/s	:	Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 24-11-2022

This appeal has been preferred under Section 372 of the Cr.P.C. putting to challenge a judgment dated 25.07.2019, passed by the learned Additional Sessions Judge-VIII, East Champaran at Motihari in Sessions Trial No. 554 of 2014, whereby the learned trial court has acquitted respondents No. 2 to 6 of the charge of commission of offences punishable under Section 302 read with



120-B of the Indian Penal and Section 27 of the Arms Act.

2. A complaint petition filed by one Meena Devi before the learned Sub-Divisional Judicial Magistrate ('SDJM' for short), Sikrahna, Motihari, East Champaran on 14.09.2010 had given rise to the said Sessions Trial No. 554 of 2014. The appellant is the son of the complainant Meena Devi, who is said to have died on 02.07.2019. The date of occurrence, as disclosed in the complaint petition, was 15.10.2008. Apparently, the complaint petition was filed eleven months after the date of occurrence. The deceased was the daughter of the complainant and apparently thus, the sister of the present appellant and, therefore, a victim within the meaning of Section 2(wa) of the Code of Criminal Procedure., 1973.

3. We have heard Mr. Umesh Chandra Verma, learned counsel for the appellant and Mr. Binod Bihari Singh, learned Additional Public Prosecutor for the State.

4. The prosecution's case, as unfolded by the complainant in her complaint petition, is that on 15.10.2008 respondent No. 6 (Rajan Kumar) came to the house of respondent No. 2 (Srikant Prasad) on a motorcycle with two other persons carrying some luggage in a bag. On the same day, a bomb exploded at the doorway of the complainant. When the complainant and her daughter Mira Devi (the deceased) came out of their house they



noticed that four accused persons were threatening the complainant to kill her. Respondent No. 2 thereafter fired a shot with his pistol which hit the eyes of the deceased, consequent upon which she fell down and subsequently succumbed to injuries. The respondent No. 2 had also sustained injuries caused by splinters of the bomb explosion. When the police reached the place upon hearing the sound of bomb explosion, the complainant narrated them about the entire occurrence. The Station House Officer (the SHO for short) is said to have told her to reach the police station for lodging a case. The complainant went to the police station for lodging the case but after hearing the narration of the incident the SHO did not register the FIR and after scolding the complainant, he ousted her from the premises of the police station. She is said to have thereafter approached the Sub-Divisional Police Officer, Pakaridayal for registration of the criminal case. The SDPO convinced her that the case was registered and she would get due justice. It was further alleged in the complaint petition that despite efforts made by her the police did not do anything and subsequently she learnt that respondent No. 2 is the informant of Pakaridayal P.S. Case No. 66 of 2008 registered for an occurrence of the same date, time and place. There being no option open to her she filed the complaint petition before the learned SDJM.



5. Based on the said written complaint and the evidence adduced by the complainant under Section 202 of the Cr.P.C. the learned Magistrate found a *prima facie* case made out under Section 302, 120-B of the IPC and Section 27 of the Arms Act and accordingly took cognizance of the aforesaid offences. The case was subsequently committed to the Court of Sessions on 07.08.2014. The charges were thereafter framed. As the private respondents denied the charges, they were put to trial.

6. At the trial, four prosecution's witnesses were examined, namely, Meena Devi, the complainant (PW-1), Shyam Sunder Prasad, the brother of the deceased (PW-2), Mahesh Sah, a chance witness (PW-3) and a doctor, namely, Awadhesh Kumar (PW-4) who had conducted the postmortem of the deceased.

7. Upon closure of the prosecution's witnesses, in conformity with the requirement of Section 313 of the Cr.P.C. the persons put to trial were asked to explain the circumstances emerging against them from the evidence of the prosecution's witnesses.

8. The defence examined seven witnesses. It is not in dispute that the FIR registered at the instance of respondent No. 2 as Pakaridayal P.S. Case No. 66 of 2008 was in connection with the same incident in which the informant of the said case had sustained



injuries.

9. From the judgment of the trial court it can be easily seen that the evidence of the prosecution's witnesses and the defence witnesses have been elaborately dealt with and evaluated. The trial court has also evaluated in its judgment the documentary evidence adduced at the trial by the prosecution in support of its case.

10. The trial court, while recording its finding of acquittal in its impugned judgment, has noticed material contradictions in the evidence of the prosecution's witnesses and the inordinate delay in filing of the complaint case and has found the prosecution's case to be doubtful and improbable. As can be easily noticed from the prosecution's case, as disclosed in the complaint petition, that non-registration of FIR by the police regarding the incident was explained as the reason why the complaint petition came to be filed by the complainant eleven months after the date of occurrence. In fact Pakaridayal P.S. Case No. 66 of 2010 was already registered in connection with the said incident. The trial court has noticed the evidence of PWs.- 1 and 2 who deposed that many persons had seen the occurrence but most of them were not produced by the prosecution as witnesses. Non-production of material witnesses at the trial weakened the



prosecution’s case, the trial court opined in its judgment. The trial court has further noticed absence of due explanation as regards the injuries on the person of respondent No. 2.

11. Upon careful scrutiny of the impugned judgment of the trial court, we are of the view that the finding recorded by the trial court acquitting respondents No. 2 to 6 of the charge is a reasonably possible view. The trial court has taken into account all relevant materials and the evidences adduced at the trial and has duly analysed them before reaching a conclusion that the prosecution failed to establish its case beyond all reasonable doubts.

12. In the facts and circumstances noted above, we are of the view that the impugned judgment of the trial court does not warrant interference by this Court.

13. We do not find any merit in this appeal against acquittal, which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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