

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.45 of 2023

Arising Out of PS. Case No.-18 Year-2009 Thana- JALALGARH District- Purnia

CHITRANGAT TIWARI @ CHITRAGAT TIWARI S/o Late Narayan Tiwari
(Thiwari) R/o Village- Ekamba, P.S.- Jalalgarh, Distt- Purnea.

... .. Appellant/s

Versus

1. The State of Bihar
2. Md. Mustafa @ Bahara S/o Late Safique R/o village- Ekamba, P.S.-
Jalalgarh, Distt- Purnea.
3. Prakash Mishra S/o Late Khagesh Mishra R/o village- Ekamba, P.S.-
Jalalgarh, Distt- Purnea.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Raj Kumar, Advocate Mr. Neeraj Kumar, Advocate
For the Respondent/s	:	Mr. Satya Narayan Prasad, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 12-07-2023

The appellant in the present appeal preferred under the *proviso* to Section 372 of the CrPC is the informant of Jalalgarh PS Case No. 18 of 2009 which gave rise to the Sessions Trial No. 271 of 2010/CIS No. 2281 of 2013 in the Court of learned Additional District & Sessions Judge Sessions-III, Purnea. Respondents No. 2 and 3 in the present appeal were charged of commission of the offence punishable under Section 302/34 of

the Indian Penal Code. By the impugned judgment and order dated 20.10.2022, the learned Trial Court has recorded acquittal of the said respondents No. 2 and 3 which is under challenge in the present appeal against acquittal.

2. The *fardbeyan* of the informant/appellant was the basis for registration of the said Jalalgarh P.S. Case No. 18 of 2009 alleging therein that on 15.02.2009 at about 04:00 pm, a co-villager of the informant, namely, Ashok Shukla had come to him and told him that the body of his brother Shyam Tiwari (the deceased) had been seen hung from a jackfruit tree in the field of one Pankaj Mishra. On the said information, the informant, his brother Sajan Tiwari, Ashok Shukla, Sudhir Yadav and many others went to the field of Pankaj Mishra when they found the dead body of his brother (the deceased) hanging from the jackfruit tree. The dead body was brought down from the tree and when it was being taken to his house with the help of his co-villagers, the informant saw the respondent Md. Mustafa @ Bahara coming out from the maize field and going towards the house of Pankaj Mishra. He alleged that few days back said Pankaj Mishra had fought with the deceased in relation to cutting of bamboo tree and that Pankaj Mishra had threatened the deceased of dire consequences. He further alleged that a land dispute was going on

between the deceased and Pankaj Mishra, Prakash Mishra and Deepak Mishra since long and they had threatened him earlier. The informant raised a suspicion that the said accused persons might have killed the deceased and hanged him on the jackfruit tree situated in the field of Pankaj Mishra. It is not in dispute that based merely on suspicion of the informant disclosed in his *fardbeyan*, the FIR was registered. The police submitted the chargesheet on 30.09.2009 against respondents No. 2 and 3 and found the allegations against the accused Pankaj Mishra and Deepak Mishra to be false. Cognizance was taken of the offence and the case was committed to the Court of Sessions on 18.02.2010. The charge was framed against the respondents No. 2 to 3 on 14.05.2022 of the offence punishable under Section 302/34 of the IPC.

3. At the trial, altogether 12 witnesses came to be examined on behalf of the prosecution. After closure of the evidence of the prosecution's witnesses, the respondents No. 2 to 3 were questioned under Section 313 of the CrPC. The Trial Court after having appreciated the evidence adduced at the trial came to a conclusion that the prosecution could not establish the charge against the said respondents beyond all reasonable doubts and, accordingly, acquitted them of the charge of the offence punishable under Section 302/34 of the IPC.

4. Mr. Raj Kumar, learned counsel appearing on behalf of the appellant has submitted that though it is a case of circumstantial evidence, the prosecution was able to prove at the trial the chain of circumstances pointing towards guilt of the respondents No. 2 and 3 as the only hypothesis. He has submitted that the killing of the deceased was given colour of suicide by hanging the dead body of the deceased with the tree, as is evident from the evidence of the Doctors PW-9, 10 and 11 who had either conducted the post-mortem examination or were present during such examination and deposed at the trial that the death was caused by asphyxia due to strangulation. He has accordingly submitted that the deceased had not committed suicide, rather he was killed by strangulation and then his body was hanged. He has further submitted that majority of the prosecution's witnesses had supported the prosecution's case and the finding recorded by the trial court of acquittal is erroneous and unsustainable, in the facts and circumstances of the case.

5. We have carefully perused the impugned judgment and order of the trial court. No submission has been advanced on behalf of the appellant that the depositions of the witnesses have been incorrectly mentioned in the impugned order and, therefore,

the present appeal has been heard on the basis of description of the depositions noted in the impugned order, at the stage of admission.

6. The trial court has noted that two prosecution's witnesses, namely, Md. Nazam (PW-3) and Hanif (PW-4) did not support the prosecution's case. Md. Hasim (PW-6) and Gautam Kumar (PW-7) deposed that the accused persons were present with them in the meeting on the alleged date of occurrence from 11:00 am in the morning to 04:00 pm in the evening and he was informed about the death of the informant's brother telephonically. PW-6 and PW-7 have also not supported the prosecution's case.

7. A plea was taken on behalf of the defense at the trial that the respondents No. 2 and 3 were falsely implicated because of the land dispute between the informant and the accused. PW-8, Ramanand Singh deposed at the trial that he had acted as a *panch* in relation to the land disputed between the informant and the accused.

8. Further, according to the prosecution's case, Ashok Shukla (PW-5) had informed the informant about death of his brother for the first time. In his deposition, Ashok Shukla (PW-5) testified that he was told by some females that the dead body of the deceased was hanging from the jackfruit tree when he had reached near a canal. He did not disclose the names of the females

who had informed him about the death of the deceased. Ashok Shukla (PW-5) is apparently, thus, a hearsay witness. The evidence of the informant is only to the extent that the respondents Nos. 2 and 3 and others have threatened the deceased in relation to some dispute between them.

9. The trial court has disbelieved the testimony of the informant to the effect that the deceased was assaulted by the accused persons prior to his death.

10. The Investigating Officer (PW-12) in his evidence deposed that the witnesses had told him that the deceased had committed suicide because of a failed love affair with a girl, whom he wanted to marry.

11. The trial court has noted that not even a single witness deposed against the private respondents No. 2 and 3 which could be the basis for drawing a conclusion that any offence was committed by them leading to the death of the deceased.

12. It is settled legal principle that an appellate court in an appeal against acquittal should not interfere with the finding of the trial court, if the finding of the trial court appears to be a reasonably possible view. In the present case, we notice that there was absolutely no evidence before the trial court to have reached a

conclusion that any offence was committed by respondents No. 2 and 3.

13. For the reasons noted above, we do not find any merit in this appeal which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Nishant/Sachin-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.07.2023
Transmission Date	17.07.2023