

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.48 of 2023**

Arising Out of PS. Case No.-29 Year-2015 Thana- MURLIGANJ District- Madhepura

SHABNAM DEVI Wife of Late Jai Kumar Jwala R/o Ward No. 01, Nagar  
Panchayat, Murliganj, Police Station- Murliganj, District- Madhepura

... .. Appellant/s

Versus

1. The State of Bihar
2. MOHAN YADAV Son of Late Dunilal Yadav R/v- Murho Tola, Katharwa,  
Police Station- Madhepura (Bharrahi O.P.), District- Madhepura
3. SUSHIL YADAV Son of Late Mohan Yadav R/v- Murho Tola, Katharwa,  
Police Station- Madhepura (Bharrahi O.P.), District- Madhepura
4. KUNDAN YADAV Son of Mohan Yadav R/v- Murho Tola, Katharwa,  
Police Station- Madhepura (Bharrahi O.P.), District- Madhepura
5. GAJENDRA YADAV Son of Late Abhinandan Yadav R/v- Budhi, P.S.-  
Madhepura (Bharrahi O.P.), District- Madhepura

... .. Respondent/s

**Appearance :**

For the Appellant/s : Mr. Shailendra Kumar Singh, Advocate  
For the Respondent/s : Mr. Ajay Mishra, 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 : 21-06-2023**

The present appeal has been filed under Section 372 of the CrPC by the informant assailing the finding of acquittal recorded by learned Sessions Judge, Madhepura, vide judgment dated 30.11.2022, passed in Sessions Trial No. 03 of 2016/CIS No. 09 of 2016, arising out of Murliganj P.S. Case No. 29 of. By the



impugned judgment the respondent nos. 2, 3, 4 and 5 have been acquitted of the charge of offence punishable under Section 302/34 of the Indian Penal Code.

2. The case of the prosecution as disclosed in the written report of the informant Shabnam Devi, the wife of the deceased is that her father had executed a deed of gift in favour of her late husband on 05.05.1997. She alleged that the respondent nos. 2 to 5 who wanted to grab the land so gifted to the informant's husband and they were repeatedly pressurizing him to abandon the land, in respect of which her late husband had filed *Sanha*, bearing no. 325/2011 in the Court of learned Chief Judicial Magistrate, Madhepura. He is said to have also filed a petition in Bharrahi O.P. and a case was also pending in that regard. She alleged that out of animosity, respondents no. 2-5 kidnapped her husband and killed him by firing bullet shots and in order to conceal the dead body, the same was thrown adjacent to north of Dinapatti Hatt (N.H. 107).

3. Based on written report of the informant Murliganj P.S. Case No. 29 of 2015 came to be registered on 22.02.2015 levelling commission of offence punishable under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act. Upon completion of investigation police submitted chargesheet against



the accused persons for commission of the offences punishable under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act, whereupon cognizance was taken by the learned Chief Judicial Magistrate and the case was committed to the court of Sessions on 25.11.2015. The charges were framed against the aforesaid respondent nos. 2-5 for commission of the offences punishable under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act. The said respondents denied the charge and claimed to be tried. Accordingly, they were put to trial. At the trial altogether 14 witnesses were examined in support of the prosecution's case including the doctor, who had conducted the post-mortem examination and the investigating officer (PW-14). The prosecution brought on record documentary evidence also in support of the charge framed against respondent nos. 2-5. After closure of the evidence of the prosecution the accused persons were questioned by the trial court in accordance with the requirement under Section 313 of the CrPC. The trial court, after having analysed the evidence of prosecution's witness including the investigating officer came to a conclusion that the prosecution failed to establish at the trial, based on the evidence of the witnesses as to who had caused fire-arm injury to the deceased due to which he died.



4. Learned counsel appearing on behalf of the appellant has submitted that the learned trial court failed to appreciate that though there was no eyewitness to support the case of the prosecution there were strong circumstances pointing towards the guilt of respondent nos. 2-5. He has argued that the witnesses deposed at the trial that two days before the occurrence an altercation had taken place between the deceased and the accused persons, who had threatened the deceased to kill him. Two days after the said altercation the dead body of the deceased was found lying on the National Highway. He submits that this is strong circumstance, based on which the learned trial court ought to have convicted the private respondents for the offence punishable under Section 302/34 of the Indian Penal Code.

5. We have carefully gone through the impugned judgment and order of the trial court. It is not the case of the appellant that the evidence of the witnesses at the trial have not been duly noticed in the impugned judgment. In such circumstance, we have proceeded to decide this appeal based on the description of evidence as mentioned in the impugned judgment without calling for the records of the court below, at the stage of admission itself.



6. It can be easily discerned from the evidence of the prosecution's witnesses that no witness claimed to be an eyewitness and the case of the prosecution was entirely based on the animosity between the deceased and respondents no. 2-5 in respect of the land which was gifted to the informant's husband. It is settled legal principle that an Appellate Court is required to interfere with a judgment of acquittal recorded by the trial court only when the finding is found to be perverse and as a result of patent non-application of mind while dealing with the evidence of the prosecution's witnesses. A trial court has the added advantage of seeing the witnesses and their demeanor in course of the trial. In the present case the trial court has referred to evidence of PW-14, the investigating officer, who deposed in his cross-examination that he had not recorded statement of any eyewitness to the occurrence. PW-12 has been declared to be hostile. PW-11 is simply a witness to having seen the dead body lying on the national highway.

7. Learned counsel appearing on behalf of the appellant has referred to the evidence of PW-1 to submit that he had seen the deceased with 5-6 persons at 3:00 am on 21.02.2015 and had identified the respondents Mohan, Sushil, Kundan and Chandan in the moonlight and in the light of the motorcycle. He had also seen



that they were making a person ride on the motorcycle. The trial court has analyzed the evidence of PW-1 in the impugned judgment and has noted that PW-1 did not depose that it was the deceased who was compelled to sit in the motorcycle by the said accused persons.

8. Since in the present case there is no eyewitness and the prosecution cannot said to have proved that chain of circumstances was complete to point towards the guilt of respondent nos. 2-5 as the only hypothesis, with no other possible theory, we do not find any legal infirmity in the impugned judgment.

9. In such view of the matter, we do not find it to be a fit case for the Court’s interference with the finding of acquittal recorded by the trial court. This appeal is accordingly dismissed.

**(Chakradhari Sharan Singh, J)**

**(Nawneet Kumar Pandey, J)**

Nishant/Nirmal-

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