

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.963 of 2016

Arising Out of PS. Case No.-184 Year-2004 Thana- DHANARUA District- Patna

Lal Bahadur Singh son of Late Deep Narayan Singh Resident of Village-
Anjani, P.S.- Dhanarua, District-Patna

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. Gyaneshwar Sharma son of Shiyasharan Singh

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Surendra Kumar Mishra
For the Respondent/s	:	Mr.Sri Dilip Kumar

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 13-02-2023 This revision application has been filed on behalf of the petitioner for setting aside the judgment dated 16.06.2016 passed by Additional Sessions Judge-VI, Patna in Session Trial No. 480/2007/C-4768, whereby learned court has been pleased to acquit Opposite Party Nos. 2 to 5 from offences punishable under section 302/34, 120B of the IPC and 27 of the Arms Act.

The prosecution case in brief is that, while the deceased along with PW5 Satyanand Prasad, were returning home on motorcycle, and reached near Charpolwa at about 7:30 pm, 4-5 unknown persons armed with pistols and rifles, made indiscriminate firing as a result of which the deceased sustained fire arm injuries and died on the spot. This led to registration of first information report against unknown.

On the basis of the farbayan of the informant PW5 Satyanand Prasad, Dhanarua P.S. Case No. 184 of 2004 was registered for the offences punishable under sections 302/34,120(B) and section 27 of the arms act. After



investigation police submitted charge sheet no 124 / 2004 dated 7.12.04 against accused Kripa Narayan Singh and Gyaneshwar Sharma and thereafter IO submitted supplementary charge sheet no. 85/2007 dated 26.03.2007 against accused Din Dayal Sharma and Chandeshwar Singh.

The court below took cognizance against the accused persons and committed the case of Ganeshwar Sharma and Kripa Narayan Singh on 10.01.2006 and the case of the accused Chandeshwar Singh and Din Dayal Sharma on 19.09.2007 to the Court of Sessions and the same were numbered as S.T. NO. 480/2007 and S.T. No. 1764/2008 and subsequently both the cases were amalgamated with the originals T. No. 480/2007. And thereafter trial commenced together after framing the charge against all the accused persons.

To substantiate the charges, the prosecution altogether examined 8 witnesses and also got exhibited some documents. Out of 8 witnesses, PW3- Ramadhar Singh, PW4- Krishnandan Sharma and PW7- Madan Kumar alias Madan Paswan, were declared hostile. PW1 is Lal Bahadur Singh who is father of the deceased and is a hearsay witness. PW2, Bijendra Singh alias Bijendra Sharma who claims to be eye witness and identified accused Kripa Narayan Sharma and his son Din Dayal Sharma in the light of bulb of Motorcycle. PW5, Satyanand Prasad is the informant of the case. PW6, Vishundeo Prasad is the doctor who conducted postmortem of the body of deceased and PW8 is Vani Mishra who was IO of the case who completed the investigation and submitted charge sheet against the accused persons.

Learned counsel appearing on behalf of the petitioner submits that in this instant case, court below has failed to appreciate the genesis of the crime. He further submits that there



was long standing enmity between the deceased and accused persons and due to that the alleged occurrence took place. He next submits that court below has failed to appreciate the evidence of PW3 who is eyewitness of the occurrence and has also identified two of the accused persons on the spot.

On the other hand, learned APP representing the state has supported the judgment of the acquittal and has further submitted that perusal of the impugned order goes to show that the Trial Court has dealt with the evidence of the prosecution in details and after extensive consideration of the same had passed the impugned judgment of acquittal and hence there is no need to interfere with the judgment of acquittal passed by the Trial Court.

From perusal of the record it is apparent that except PW2 Bijendra Singh @ Bijendra Sharma, none of the witness named the accused persons or deposed about the role played by them in the alleged occurrence. PW5, Satyanand Prasad who claims to have accompanied the deceased on the motorcycle on the date of occurrence have not identified or named any of the accused persons. PW2 who claims to have identified the witness but PW8, who is the IO of the case, in his cross examination has stated that after two months of the alleged occurrence that is on 08.12.2004 he recorded the statement of the PW2, Bijendra Singh @ Bijendra Sharma. PW2 has not explained the delay in his examination before the police after two and a half months from the date of the alleged occurrence which makes the statement of the PW2 doubtful, untrustworthy and unreliable. In the entire evidence, no reason has been assigned as to why Bijendra Singh @ Bijendra Sharma who claims to be eye witness of the occurrence has not reported the incident



immediately before the IO.

In this case, no other point has been raised by the petitioner to assail the order of acquittal.

It is well settled that the High Court will not interfere with an order of acquittal merely because it opines that a different view is preferable. It is only where the appreciation of witness by the Trial Court is capricious or its conclusion are without evidence that High Court may reverse an order of acquittal. High Court may be justified in interfering in interfering where it finds that the order of acquittal is not in accordance with law and that approach of the Trial Court has led to miscarriage of justice. In an appeal against acquittal the presumption of innocence gets fortified by the acquittal of the accused by the trial court.

Considering the aforesaid facts and circumstances of the case, legal precedents as discussed above, I find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case and bring home the charges leveled against the accused persons beyond all reasonable doubt by adducing convincing, cogent, consistent evidence. Hence, the impugned judgment of acquittal does not require any interference by this court. This court does not find any infirmity or illegality in the impugned order of acquittal.

Thus the criminal revision application is dismissed.

(Prabhat Kumar Singh, J)

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