

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.685 of 2023

Arising Out of PS. Case No.-34 Year-2016 Thana- RAGHOPUR District- Vaishali

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Munna Kumar @ Munna Singh S/O Late Rajendra Prasad Singh @ Rajendra
Singh R/O Village- Fatehpur, P.S- Raghapur, Distt.- Vaishali.

... .. Appellant/s

Versus

1. The State of Bihar
2. Dharmendra Singh S/O Late Yogendra Singh R/O Village- Fatehpur, P.S-
Raghapur, Distt.- Vaishali.
3. Chandra Bhushan Singh @ Bhushan Singh S/O Late Yogendra Singh R/O
Village- Fatehpur, P.S- Raghapur, Distt.- Vaishali.
4. Pravind Singh S/O Late Yogendra Singh R/O Village- Fatehpur, P.S-
Raghapur, Distt.- Vaishali.
5. Indrasan Devi W/O Arvind Singh R/O Village- Fatehpur, P.S- Raghapur,
Distt.- Vaishali.
6. Vinita Devi W/O Pravind Singh R/O Village- Fatehpur, P.S- Raghapur,
Distt.- Vaishali.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ganesh Prasad Singh, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

and

**HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date : 09-10-2023



This appeal has been preferred under the *proviso* to Section 372 of the Code of Criminal Procedure, 1973 by the appellant, questioning the legality of the judgment dated 24.04.2023, passed by learned Additional District and Sessions Judge-VII, Vaishali at Hazipur in Sessions Trial No. 402 of 2016 and 137 of 2017, whereby the trial court has acquitted opposite Parties No. 2-6 of the charge of commission of the offence punishable under Section 302 of the Indian Penal Code. The appellant is the informant of Raghapur P.S. Case No. 34 of 2016 (CIS No.- BRVA010012782016) which gave rise to the aforesaid two sessions trials. The informant/appellant is the brother of the deceased and has, therefore, claimed to be a victim within the meaning of Section 2(wa) of the CrPC to maintain this appeal.

2. Briefly narrated, it was the prosecution's case as disclosed in the written application of the informant, addressed to the Officer-in-charge of Raghapur Police Station that on 16.04.2016 at around 03:00 pm, opposite party No. 3 and opposite party No. 4 came to the informant's house inquiring about his elder brother, Pappu Singh (the deceased). The said opposite parties No. 3 and 4 are said to have disclosed that father of the deceased was calling him for repayment of loan amount whereupon the deceased proceeded with them to their house. The informant (appellant) and



his uncle followed them. As soon as they reached near the house of Arvind Kumar Singh, i.e, the father of the opposite party No. 3, opposite party No. 3, his father Arvind Singh, opposite party No. 4, Pravin Singh, opposite party No. 2, Dharmendra Singh, opposite party No. 5, Indrashan Devi and opposite party No. 6, Vinita Devi started abusing and assaulting the deceased. The co-accused Arvind Singh is said to have taken out a double barrel gun and fired at the deceased. The deceased sustained firearm injury. Thereafter, they fled away. The deceased was thereafter taken to the Primary Health Center by the informant, with the help of Dhananjay Kumar Singh (PW-6), Dharendra Singh (not examined), Deepak Kumar Singh (PW-3) and Satish Kumar Singh (PW-2), where the deceased died during the course of treatment.

3. After completion of investigation, chargesheet was submitted on 30.06.2016 by police, whereupon cognizance was taken and the case was committed to the court of Sessions on 22.09.2016. The accused persons were charged of commission of offence punishable under Section 302 read with Section 34 of the IPC. As they denied the charge and claimed to be tried, they were put to trial. At the trial, the prosecution examined 10 witnesses. The doctor who had conducted the postmortem examination came to be examined as PW-8 and the Investigating Officer as PW 9.



PW 10 is a formal witness who produced material exhibits at the trial. Two uncles of the deceased, namely, Satish Kumar Singh and Deepak Kumar Singh deposited as PW-2 and PW-3 respectively. The grandfather of the deceased, Ramnandan Singh (PW-1) and wife of the deceased (PW-5) also deposited at the trial in support of the prosecution's case. The informant/appellant deposited as PW-7. Another family member of the deceased, Ajay Kumar Singh was examined at the trial as PW-4. In addition to the oral evidence of the prosecution's witnesses, the prosecution brought on record documentary evidence also, which included formal FIR, Inquest report of the deceased, postmortem report of the deceased and written application, which was the basis for the registration of the FIR.

4. After closure of the prosecution's evidence, the accused persons were questioned under Section 313 of the CrPC, so as to give them an opportunity to explain the incriminating circumstances emerging against them, based on the evidence of the prosecution's witnesses. The persons facing the charge, denied the incriminating circumstances.

5. The defense brought on record the following documentary evidence in their defense:-



S. No.	Exhibit Number	Description
1.	Exhibit A	FIR of Raghopur PS 67/97
2.	Exhibit A/1	FIR of Raghopur PS 79/97
3.	Exhibit B	Charge sheet of Raghopur PS 79/97
4.	Exhibit B/1	Charge sheet of Raghopur PS 79/97
5.	Exhibit B/2	Charge sheet of Raghopur PS 61/97
6.	Exhibit C	Bail of Pappu Singh on 16-10-2020
7.	Exhibit D	Order sheet dated 16-10-2020
8.	Exhibit D/1	Order sheet
9.	Exhibit E	Lost report

6. The trial court, after having appreciated the evidence adduced at the trial, reached a conclusion that the prosecution was able to prove successfully the charge under Section 302 of the IPC against the co-accused Arvind Singh only. In the absence of cogent evidence, the trial court recorded acquittal as regards the rest of the persons who were put to trial. As has been noted above, this appeal is confined to the Judgment of acquittal of opposite parties No. 2 to 6.

7. Learned counsel appearing on behalf of the appellant has submitted that it is evident from the evidence of the prosecution's witnesses that the opposite parties No. 2 to 6 had actively participated in commission of the offence. The trial court reached at a conclusion that the deceased died in the said occurrence after having sustained gunshot injury caused by the convict Arvind Singh. He submits that the witnesses have been



consistent in their depositions as regards the respective roles of the opposite parties No. 2 to 6 in commission of the offence.

8. We have carefully perused the impugned judgment and order of the trial court and have given our thoughtful consideration to the rival submissions advanced on behalf of the parties. No submission has been advanced on behalf of the appellant that depositions of the witnesses have been incorrectly recorded in the impugned judgment by the learned trial court. Accordingly, we have noticed the evidence of the prosecution's witnesses as recorded in the impugned judgment.

9. It can be easily inferred from the evidence of the prosecution's witnesses that there was some dispute between both the parties on account of certain previous financial transactions between them. The deceased is said to have given on loan some money to Arvind Singh for performing marriage of his sister. The two accused persons, namely, Chandra Bhushan Singh (opposite Party No. 3) and Pravin Singh (opposite Party No. 4) had gone to tell the deceased that Arvind Singh was calling him, in connection with repayment of loan amount. The prosecution's witnesses deposed that it was the convict Arvind Singh, who had shot at the deceased.



10. We find no evidence in the depositions of the prosecution's witnesses that there was any premeditation amongst the accused persons for killing the deceased. The trial court, upon appreciation of evidence, reached a definite conclusion that the prosecution failed to prove the meeting of mind between the accused persons. Accordingly the trial court reached a conclusion that the charge of murder against opposite Parties No. 2 to 6 cannot be said to have been established.

11. On careful scrutiny of the evidence on record, we do not find the finding of acquittal of opposite Parties No. 2 to 6 as recorded by the trial court to be suffering from such legal infirmity as would require this Court's interference in an appeal against acquittal. The view which has been taken by the trial court is a reasonably possible view. Further, on careful reading of the evidence of the witnesses as recorded in the impugned judgment, we find that prosecution cannot be said to have been established the charge against the opposite Parties No. 2 to 6. The impugned judgment, to the extent it records acquittal of opposite Parties No. 2 to 6, requires no interference.

12. This appeal has no merit and is accordingly dismissed.



13. Before we part with, we make it clear that this judgment is confined to the challenge made by the informant to the finding of acquittal of opposite Parties No. 2 to 6 by the trial court and any observation made in the present judgment shall not prejudice the case of convict Arvind Singh, for consideration of considering his appeal, if any, against the said judgment of his conviction.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Nishant/HR-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.11.2023.
Transmission Date	06.11.2023.

