

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.714 of 2023

Arising Out of PS. Case No.-97 Year-2015 Thana- MIRGANJ District- Gopalganj

Lalita Devi, aged about 43 years, Gender-Female, W/O Shivnath Sah, R/O Village- Khushiha Chhapar, Kusauni, P.S- Mirganj, Distt.- Gopalganj, Bihar.

... .. Appellant

Versus

1. The State of Bihar
2. Ajit Sah @ Banti Sah, aged about 30 years, Gender-Male, S/O Anirudh Sah R/O Village- Khushiha Chhapar, P.S- Mirganj, Distt.- Gopalganj.
3. Sheonath Sah, aged about 65 years, Gender-Male, S/O Late Banka Sah R/O Village- Khushiha Chhapar, P.S- Mirganj, Distt.- Gopalganj.
4. Vidyawati Devi, aged about 62 years, Gender-Female, W/O Anirudh Sah R/O Village- Khushiha Chhapar, P.S- Mirganj, Distt.- Gopalganj.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Indrajeet Bhushan, Advocate
For the Respondent/s : Mr. Bipin Kumar, A.P.P

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

3 09-10-2023 The present appeal filed on behalf of the appellant under Section 372 of Code of Criminal Procedure, 1973 read with Section 14(A) of the SC/ST Act has been directed against the judgment dated 28.04.2023 and order of acquittal dated 24.04.2023 rendered by learned Additional Sessions Judge-III-cum- Special Judge SC/ST Act, Gopalganj in Session Trial No. 230/2017 (Reg. No. 230/2017) arising out of Mirganj P.S. Case No. 97 of 2015, whereby the concerned trial court has acquitted the present respondent nos. 2 to 4 i.e., private respondents.



2. Heard Mr. Indrajeet Bhushan, learned Advocate for the appellant/ victim/ mother of the deceased and Mr. Bipin Kumar, learned A.P.P. for the State-Respondents.

3.The prosecution story, in brief, is that the informant, namely, Sheonath Sah who is father of the victim/deceased girl has given a written report to the Mirganj Police Station, stating therein that on 06.04.2015 at night his daughter Sanam Kumari, aged about 14 years was taken away by Ajit Sah @ Banti Sah, Piyush Bhagat and Bidyawati Devi with intention to marry her. He fears that some untoward incident might take place. Therefore, suitable action might be taken against them.

4. On the basis of the aforesaid fardbeyan given by the informant i.e., father of the deceased, the Investigating Agency registered the FIR and thereafter carried out the investigation and during the course of investigation, it was found that the informant who was the father of the deceased himself, is the accused and he along with the two other accused have killed the deceased and, therefore, charge-sheet under Sections 302, 120(B) and 34 of the Indian Penal Code came to be filed against the accused persons before concerned Magistrate Court. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same under Section 209 of the



Code of Criminal Procedure to the concerned Sessions Court, where the same was registered as S.T. No. 230 of 2017.

5. During the course of the trial, prosecution examined nine witnesses and also produced documentary evidence. Thereafter, further statement of the accused came to be recorded, and after the trial was concluded, the trial court passed the impugned order whereby the present private respondents/ original accused have been acquitted. The appellant, who is mother of the deceased, has therefore preferred the present appeal under Section 372 of the Code of Criminal Procedure.

6. The learned Advocate appearing for the appellant has mainly contended that though the informant who is father of the deceased and husband of the present appellant has filed the FIR by stating that his daughter is missing and, therefore, the same was registered under Sections 366, 366(A) and 34 of the Indian Penal Code. During the course of investigation, it was found that the informant himself was in connivance with the other two accused who killed the daughter of the appellant and, therefore, charge-sheet under Sections 302, 120(B) and 34 of the Indian Penal Code came to be filed. The charge-sheet was also filed under Sections 3(i)(xi), 3(2-v) of the SC/ST Act. It is



submitted that there is ample material before the trial court, on the basis of which, the trial court ought to have convicted the private respondents. However, the trial court has passed the impugned order and, therefore, the appellant who is the mother of the victim is the aggrieved party and, therefore, she has preferred the appeal.

7. The learned Advocate would further submit that on the basis of the confessional statement of the accused, namely, Bablu Kumar who has been separately tried before the Juvenile Court, all the present private respondents have been implicated. However, the trial Court has not even exhibited the confessional statement of the co-accused and thereby, the trial court has committed a grave error. The learned Advocate, therefore, urged that the present appeal be admitted.

8. On the other hand, learned A.P.P. on the basis of the information received, submitted that till today, the State has not preferred appeal against the impugned judgment and order of acquittal recorded by the concerned trial court. The learned A.P.P. submitted that this Court may pass appropriate order looking to the facts and circumstances of the present case.

9. We have considered the submissions canvassed by the learned Advocates appearing for the parties. We have also



perused the material placed on record. It is not in dispute that PW-1 to PW-8 i.e., all the prosecution witnesses except PW-9, who is the Investigating Officer, have not supported the case of the prosecution and they have turned hostile. Further, it is also not in dispute that the confessional statement of co-accused, namely, Bablu Kumar who has been separately tried before the Juvenile Court has not been exhibited. It is also not in dispute that the present appellant who is mother of the deceased though shown as a witness in the charge-sheet papers for the prosecution. During the course of trial, she has not been examined as a witness by the prosecution.

10. We have gone through the discussion made by the learned trial court with regard to the deposition given by PW-9 (Investigating Officer). We have also gone through the relevant material from which it is revealed that the case of the prosecution rests on circumstantial evidence and except the so-called confessional statement recorded under Section 164 of the Code of Criminal Procedure, and that too, of the co-accused who has not been tried by the concerned trial court. There is no other material before the learned trial court connecting the present private respondents with regard to the murder of the deceased (daughter of the appellant). Thus, the prosecution has



failed to prove the case against the private respondents/ accused beyond reasonable doubt and, therefore, we are of the view that the learned trial court has not committed any error while passing the impugned order. Hence, no interference is required in the present appeal.

11. In view of the aforesaid discussion, the present appeal fails and is accordingly dismissed.

(Vipul M. Pancholi, J)

(Chandra Shekhar Jha, J)

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