

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.699 of 2022

Arising Out of PS. Case No.-255 Year-2009 Thana- GOPALPUR District- Bhagalpur

OM PRAKASH SINGH Son of Late Jagat Narayan Singh R/V- Darhara, P.S-
Gopalpur, Dist- Bhagalpur

... .. Appellant

Versus

1. The State of Bihar
2. Vishundeo Singh Son of Late Kusho Singh @ Kushai Singh R/V- Darhar,
P.S- Gopalpur, Dist- Bhagalpur
3. Pankaj Kumar Singh Son of Vishundeo Singh R/V- Darhara, P.S- Gopalpur,
Dist- Bhagalpur
4. Nage @ Nago @ Nageshwar Singh Son of Late Moghul Singh R/V-
Darhara, P.S- Gopalpur, Dist- Bhagalpur

... .. Respondents

Appearance :

For the Appellant : Mr. Rajive Ranjan Singh, Advocate
For the Respondent State: Mr. Binod Bihari Singh, APP

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

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

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

Date : 02-01-2023

This appeal has been filed under *proviso* to Section 372 of the Cr.P.C., putting to challenge a judgment dated 23.02.2022 passed by the learned 3rd Additional District and Sessions Judge, Naugachia, Bhagalpur, in Sessions Trial No. 40 of 2010 (C.I.S. No.1593 of 2014), whereby the learned trial court has acquitted respondents No. 2 to 4 of the charges punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code and

Section 27(3) of the Arms Act, 1959. The appellant is the informant of the case and father of the deceased.

2. It was the prosecution's case that daughter of the Mukhiya of the informant's village was married to a person in Khagaria, who had left her matrimonial home without leaving any clue. It was suspected that the deceased might be involved in helping the said girl elope from her matrimonial home. Harboursing such suspicion in their minds, the accused persons including respondents No. 2 to 4 had caught hold of the deceased at his (the deceased's) maternal uncle's place. He was thereafter brutally assaulted and was killed by using fire arms. The dead body of the deceased was subsequently found lying in a maize crop field on 27.06.2009.

3. Based on the accusation made against the persons named in the FIR including the private respondents herein, Gopalpur P.S. Case No. 255 of 2009 came to be registered leveling offences punishable under Sections 302, 201 read with Section 34 of the IPC and Section 27 of the Arms Act.

4. The police, upon completion of investigation, submitted its charge sheet against the private respondents and others showing the accused Promod Kumar Singh as an absconder. Cognizance was taken thereafter by the learned Magistrate of

the aforesaid offences. Subsequently, charges were framed against the private respondents No. 2 to 4 by the learned trial court on 01.02.2010, upon commitment of the case.

5. At the trial, altogether 12 witnesses were examined including the informant as PW-2, the Doctor (PW-5) and Investigating Officers as PWs 11 and 12.

6. It is noteworthy that during the course of investigation, statements of two witnesses were recorded under Section 164 of the Cr.P.C.. After closure of the evidence of the prosecution's witnesses, the trial court had given the private respondents an opportunity to explain the circumstances emerging against them, based on the evidence of the prosecution's witnesses in conformity with the requirement under Section 313 of the Code of Criminal Procedure, 1973.

7. After having evaluated the prosecution's evidence adduced at the trial, the trial court recorded acquittal of the aforesaid respondents on the ground that the prosecution failed to prove the role of these respondents in inflicting fatal injuries, which finally resulted in the death of the victim, beyond all reasonable doubts.

8. Mr. Rajive Ranjan Singh, learned counsel appearing on behalf of the appellant has submitted that the trial court

miserably failed to appreciate the evidence of eye witness Rupesh Singh, who had fully supported the prosecution's case in his statement under Section 164 of the Cr.P.C. and subsequently resiled from his statement while deposing at the trial. He, accordingly, came to be declared hostile at the instance of the prosecution. He has submitted that in any view of the matter, based on the circumstantial evidence available before the trial court, the trial court ought to have convicted the private respondents of the charges framed against them. He has referred to Section 145 of the Indian Evidence Act to contend that the trial court ought not to have ignored the statement of the eye witness recorded under Section 164 of the Cr.P.C.

9. We have carefully perused the impugned judgment and order of the trial court and we have given our anxious consideration to the submissions made on behalf of the appellant. No ground has been taken nor any submission has been made on behalf of the appellant to the effect that the evidence of the prosecution's witnesses have not been correctly mentioned in the impugned judgment of the trial court. The trial court has noted that the informant claimed to have learnt about killing of his son on 26.06.2009 itself. He admitted that he had not given any information to the police on that day. On the next

morning, an oral information was given by him to the police to the effect that the accused had assaulted the deceased and that he was missing. PW-9, the uncle of the deceased, though claimed to be an eye witness to the occurrence, has been found by the trial court not to be an eye witness based on his testimony in his cross-examination. The trial court has noted that though PW-2 and PW-9 claimed that the deceased was injured by firearms, the doctor, in his evidence, proved the antemortem injuries to have been caused by hard and blunt substance, primarily based on the post-mortem report. The trial court has discussed evidence of PW-10, the mother of the victim, who was examined for the first time, five years after the occurrence, at the trial. Though she was examined in part, subsequently, she did not appear for her cross-examination and accordingly her cross-examination remained inconclusive.

10. Upon close scrutiny of the discussions made in the impugned judgment of the trial court, before recording judgment of acquittal, we are of the opinion that the view, which has been taken by the trial court, based on the evidence adduced at the trial, is a reasonably possible view. This is not in dispute that no witness at the trial has been found to be an eye witness. The learned trial court has duly appreciated and scrutinized the

prosecution’s evidence adduced at the trial and has recorded acquittal. We do not find any reason to interfere with the impugned judgment of the trial court.

11. This appeal, in our opinion, has no merit and is dismissed accordingly.

(Chakradhari Sharan Singh, J)

(Rajesh Kumar Verma, J)

Pawan-Gaurav

AFR/NAFR	NAFR
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