

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.793 of 2023

Arising Out of PS. Case No.-174 Year-2020 Thana- AGIAON District- Bhojpur

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HARIDWAR SINGH S/O LATE RAM PRASAD SINGH R/O VILLAGE-
BHERARI, P.S- AAYAR, DISTT.- BHOJPUR (BIHAR).

... .. Appellant/s

Versus

1. The State of Bihar
2. NIRMAL YADAV @ KUMAR NIRMAL S/O LATE VIJENDRA YADAV
R/O VILLAGE- NAHSI, P.S- AGAION (GARHANI), DISTT.- BHOJPUR.
3. BIBAHADUR RAWANI S/O SRI AYODHYA RAWANI R/O VILLAGE-
POSWA, P.S- AGION (GARHANI), DISTT.- BHOJPUR.
4. JIMI YADAV @ VIVEK KUMAR S/O SHRI RAMDEV SINGH @ BADRI
NARAYAN SINGH R/O VILLAGE- DEORHI, P.S- CHARPOKHRI,
DISTT.- BHOJPUR.
5. SUSHIL KUMAR @ SUSHIL SINGH S/O SRI RAMDEV SINGH @
BADRI NARAYAN SINGH R/O VILLAGE- DEORHI, P.S-
CHARPOKHRI, DISTT.- BHOJPUR.
6. DHARMADEO KUMAR SINGH @ GAJRAI S/O LATE AJAY KUMAR
SINGH R/O VILLAGE- AAJAMNAGAR, P.S- AGAION (GARHANI),
DISTT.- BHOJPUR.

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Surya Nilambari, Adv.
For the Respondent/s : Mr. S.B.K. Mangalam, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

10 27-03-2024 1. We have heard Ms. Surya Nilambari, the

learned Advocate for the appellant/ informant and Mr.

S.B.K. Mangalam, the learned Advocate for the

respondents nos. 2 to 6. The State has been represented

by the learned Additional Pubic Prosecutor.



2. This appeal is directed against the judgment dated 16.05.2023 passed by the learned Additional District and Sessions Judge -17, Ara, Bhojpur in Sessions Trial No. 51/2022 arising out of Agiaon (Garhani) P.S. Case No. 174 of 2020, whereby the respondent nos. 2 to 6 have been acquitted of all the charges under Sections 302/34 and 201/34 of the Indian Penal Code and Section 27 of the Arms Act. \

3. The F.I.R. was lodged by the appellant/Haridwar Singh on 24.12.2020 alleging that on the previous day, his son/ Saurabh Raj @ Ravi Yadav (deceased) had gone to Garhani and thereafter in the company of the respondents had attended a *shradh* ceremony. He had visited many places on that day. However when he did not return home till about 5 pm, his daughter-in-law/Priyanshu Devi (not examined) called his son, but it was picked up by others. This raised suspicion in the mind of the appellant that perhaps his son is in danger. For the whole night, the appellant and his associates tried to locate the whereabouts of his son. On



the next day at about 7 'O' clock, the dead body of the son of the appellant was found. He appeared to have been attacked by a sharp cutting weapon and was also shot at. Three spent cartridges were found near the dead body which were seized by the police. The informant/appellant, therefore, suspected that out of a well-hatched conspiracy, the deceased was killed.

4. On the basis of the afore-noted fardbeyan statement, Agiaon (Garhani) P.S. Case No. 174 of 2020 dated 24.12.2020 was registered for investigation under Section 302/34 IPC and 27 of the Arms Act against unknown.

5. Later, the complicity of the respondents could be gathered by the police and therefore they were chargesheeted.

6. During the trial, six witnesses were examined on behalf of the prosecution.

7. The Trial Court on finding that nobody had seen the occurrence and that the circumstances pointed out by the prosecution also did not form a



consistent/cogent chain to infer any criminality on the part of the respondents, acquitted them of all charges.

8. While assailing the judgment of acquittal, Ms. Nilambari, the learned Advocate has pointed out that the Trial Court, in a hurry, disposed of the matter as nobody had seen the occurrence. However, the Trial Court forgot that two of the persons, namely, the father-in-law of the deceased (P.W. 1) and one Deepak Kumar (P.W. 5) had seen the deceased in the company of the respondents. This was a circumstance which the Trial Court ought to have taken into account as according to the information of the informant and others, the deceased was all along in company of respondents and his dead body was recovered on the next day which was bullet-ridden and it also appeared that the deceased had been assaulted by sharp cutting weapons. The inference, therefore, is clear that the respondents, because of definite motive, had killed the deceased.

9. From the deposition of the witnesses especially the parents of the deceased, it further got



clarified that perhaps the deceased had some unholy alliance with the daughter of one of the respondents viz., Nirmal Yadav @ Kumar Nirmal and about which afore-noted respondent had told the father of the deceased that he should forbid his son from continuing with that relationship. This was one of the most impelling motives for respondent no. 2, in association with other respondents, to have killed the deceased.

10. These facts, it has been argued, were given a complete short-shrift by the Trial Court and the judgment of acquittal was recorded only for the reason that the circumstances are not complete and that nobody had seen the occurrence.

11. As opposed to the afore-noted contention, Mr. Manglam has argued that even if it is assumed that the deceased was seen in the company of respondents by P.W 1 and 5, that itself would not lead to any inescapable conclusion that the murder was committed by the respondents only. The prosecution case is based only on suspicion and that also an unfounded one. Under



such circumstances, the Trial Court was not left with any alternative but to reject the prosecution case.

12. After having heard the learned counsel for the parties and having perused the records, we find that in the beginning, the appellant/informant did not have any suspicion on anybody, much less the respondents, even when he knew that his son had been in the company of the respondents a day before his dead body was recovered. Later, during trial, the appellant/informant and his wife both have stated about the vocation of the deceased. He was dabbling in politics but was a green-horn. There was a rumour about his entanglement with the daughter of respondent no. 2 and about which a complaint also had been lodged by respondent no. 2 before the appellant; but there is no concrete evidence regarding the afore-noted motive of the respondents to kill the deceased.

13. We have examined the deposition of the I.O.(P.W. 6) rather carefully. Most of the statements made by the appellant, his wife and another witnesses were not



spoken of during the course of investigation. In fact, the father-in-law of the deceased has categorically stated during the trial that he learnt about the death of the deceased while he was at home. Though, he has also claimed that he had seen the deceased in the company of the respondents in the evening before the dead body was recovered, but such statement appears to be an afterthought as no such statement was made by him before the Investigator. In fact, the Investigator has denied to have recorded any statement of any of the witnesses regarding either the unholy relationship between the daughter of respondent no. 2 and the deceased or of the deceased being in the company of the respondents allthrough, a day prior to his dead body was recovered.

14. We have also found that P.W. 5, who claims to have seen the deceased in the company of the respondents is a chance witness who had deposed before the Trial Court for the first time after the occurrence. Though, during the course of trial, he had stated that he had given the statement to the police and had also signed



some documents but there is no reference of any such statement having been made by him before the Investigator.

15. The law with respect to circumstantial evidence does not require to be restated.

16. The circumstances should be such that it should point unerringly towards the guilt of the accused and that there should be an inescapable conclusion that from the circumstances cited, only the accused persons are guilty and none else. Even if it is assumed that the deceased was seen in the company of the respondents, a day before, such chain of circumstance leaves a wide chink left open for the prosecution case to be believed.

17. We do not find any perversity in the judgment of the Trial Court in acquitting the respondents on account of no evidence having been brought on record by the prosecution.

18. The prosecution has miserably failed to prove the case of the respondents and therefore they were acquitted of the charges.



19. Finding no fault with the judgment of
the acquittal, we dismiss this appeal.

(Ashutosh Kumar, J)

(Khatim Reza, J)

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