

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.299 of 2014

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Saudagar Singh @ Dhana Singh S/o Late Rabbi Singh, Resident of village-
Etharua, P.S.- Alauli, District- Khagaria

.... Appellant

Versus

1. The State of Bihar
2. Paro Singh, S/o Late Deoki Singh,
3. Ramashish Singh, S/o Late Bhado Singh No. 2 and 3 are resident of
Village- Etharua, P.S.- Alauli, District- Khagaria
4. Fulchand Yadav @ Kapil Yadav @ Mukul Yadav, S/o Ramashish Yadav,
Resident of Village- Srinagar, P.S.- Sahebpur Kamal, District- Begusarai
.... Respondents

Appearance :

For the Appellant : Mr. N.K. Agrawal, Sr. Advocate.
Mr. Vijay Anand.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)


2 02-05-2014 Heard learned counsel for the appellant
and the State.

2. Informant of Morkahi P.S. Case No. 47
of 2012 is the appellant. By filing this appeal he
has assailed the judgment dated 07.02.2014,
passed by 1st Ad hoc Additional Sessions Judge,
Khagaria, in Sessions Trial no. 337 of 2012, as
thereunder Private Respondent Nos. 2 to 4 have
been acquitted of the charge under Section 302/34
of the Penal Code.

3. It appears, the prosecution case as set
out in the *fardbeyan* of Saudagar Singh (P.W.10) is

that on 17.04.2012 at about 7.30 P.M. he was at his Basa along with his son Pandav Singh, situate in Amausi Bahiyar (outer area of Amausi village). The three respondents along with two others came to the Basa of the informant armed with country made pistol and *lathi*, abused the informant and asked as to why did he not give Rs. 50,000/- (fifty thousand) for making *Pairvi* in Amausi murder case. Informant pleaded his inability to pay on the ground of being poor. Respondents forcibly caught his son Pandav Singh and dragged him towards the outer area of the village threatening both would be killed. It is further alleged in the *fardbeyan* that informant attempted to save his son. The accused persons, however, threatened to kill both father and son but dragged the son of the informant Pandav Singh to Modo Bahiar. Informant also followed from behind and saw that the accused persons throttled his son by tying thin Gamcha (towel) in his neck. During trial aforesaid version has been supported by Raj Kumar Singh (P.W.1) and Satya Narayan Singh (P.W.2) as it is said that on the date, time of occurrence P.W. 1 was

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thrashing his wheat crop near the place of occurrence and P.W.2 was also present along with him. Umesh Singh (P.W.8) has also supported the occurrence. Hare Ram Singh (P.W.9) has deposed that there was alarm raised in the village (Icharua) that Pandav Singh has been killed and on hearing the alarm he along with villagers including informant (P.W.10) went to the place of occurrence.

4. The trial court has disbelieved the prosecution case as set out by the informant in the *fardbeyan* as also in Court that on the date, time of occurrence he along with his son was at his hut (Basa in Amausi Bahiar) and in his presence son of the informant was dragged and taken by the accused persons and that the informant also followed the accused persons and in his presence his son was strangulated with the help of a thin Gamcha (towel) in the light of the evidence of P.W.9 in paragraph 2 that there was alarm raised in the village (Icharua) that Pandav Singh has been killed and on hearing the alarm P.W.9 along with villagers including informant had gone to the place of occurrence, which is indicative of the fact that at

the time of occurrence informant was not at his Basa in Amausi Bahiar but was at his village Icharua.

5. Informant has further been disbelieved on the ground that in the First Information Report he has claimed that he even attempted to save his son but in paragraph 3 of his deposition informant stated that he did not try to save his son nor did he raise any alarm. The trial court has chosen not to place reliance on the evidence of P.Ws. 1, 2 as they failed to disclose any source of identification though P.W.2 admitted that it was a dark night and in the adjoining field there was maize crop of the height of 6 ft., as such, according to the trial court, it would not have been possible for P.Ws. 1,2 to identify the miscreants in the dark night as in paragraph 2 P.W.2 has deposed that he was also under fear of death and that in paragraph 3 he has stated that he did not dare to light his torch. P.W.8 has been disbelieved as he has admitted that he did not make any statement in respect of the occurrence before any authority earlier.

6. Placing reliance on the evidence of



informant (P.W.10), the Investigating Officer (P.W.12) the trial Court has concluded in paragraph 14 of the impugned judgment that on 17.04.2012 there was a police camp established in Amausi village but the police camp was not informed about the occurrence in the night of the occurrence, which is indicative of the fact that the prosecution party came to know about the incident in the morning and thereafter lodged the First Information Report on 18.4.2012 at 8:15 A.M.

7. In paragraph 18 of the impugned judgment, the trial Court has disbelieved the claim of the informant that he is an eye-witness of the occurrence with reference to the evidence of P.W. 2, which appears to be a mistake for P.W. 9 as in the earlier paragraph 13 of the judgment the trial Court with referenced to the evidence of P.W. 9 paragraph 2 has concluded that P.W. 9 and other villagers including informant went to the place of occurrence from their village after hearing alarm and thereby held that informant is not an eye-witness.

8. From our discussion above, it would

appear that the trial Court has taken a plausible view of the evidence led by the prosecution party and there does not appear any perversity in appreciation of such evidence. In the circumstances, we are not inclined to proceed with the appeal any further, which is dismissed.

(V.N. Sinha, J)

(Jitendra Mohan Sharma, J)

Singh/Rajesh/P.K.P.