

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.737 of 2015

Arising Out of PS.Case No. -93 Year- 1998 Thana -BANMANKHI District- PURNIA

Md. Daud, S/o Chatkan Mian, R/o Village-Jatahar, P.S. -Abadpur, District -
Katihar.

.... Appellant

Versus

1. The State of Bihar

2. Md. Isha, S/o Late Illiyas, R/o Ekraha, P.S. - Jankinagar, District -Purnia.

3. Md. Shamsul, S/o Late Kamruddin, R/o Rahajagi Ganj, P.S. - Jankinagar,
District -Purnia.

.... Respondents

Appearance :

For the Appellant : Mr. Helal Ahmad, Advocate

For the State : Mr. G P Jaiswal, APP

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 03-11-2015

The present appeal has been filed by one Mohd. Daud for setting aside the judgment and order, dated 19.3.2015, passed in Sessions Trial No. 1384 of 2010 by learned Ad-hoc Additional Sessions Judge VIII, Purnea, whereby he has acquitted respondent nos. 2 and 3 of the charges framed against them under Sections 147 and 148, 302, 380, 452 read with Section 149 of the Indian Penal Code and Section 27 of the Arms Act giving them the benefit of doubt.

2. The appeal has purportedly been filed invoking



the proviso to Section 372 of the Code of Criminal Procedure, 1973, which confers upon a 'victim' a right to prefer an appeal against any order passed by the court acquitting the accused or convicting him for a lesser offence or imposing inadequate compensation, to a court to which an appeal ordinarily would lie against the order of conviction of such court. In order to invoke the said right to prefer an appeal against acquittal, it is condition precedent that the appellant must be a victim. Section 372 of the Code reads thus:-

"372. No appeal to lie unless otherwise provided. – *No appeal shall lie from any judgment or order of a criminal Court except as provided for by this Code or by any other law for the time being in force."*

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."

3. This is to be noted that the proviso came to be inserted in Section 372 of the Code by Section 29 of the Code of Criminal Procedure (Amendment) Act, 2008, notified with effect from 31.12.2009. Under the said Amendment Act, the

term '*victim*' came to be defined by inserting new Sub-Section 2(wa), which reads as follows:-

"2 (wa) *"victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir."*

4. As is evident from the language of Section 372 of the Code, no appeal can lie from any judgment or order of a criminal court except as provided for by the Code or by any other law for the time being in force. As has been noted, proviso to Section 372 of the Code permits a victim of an offence to prefer appeal raising a grievance against acquittal of an accused or his conviction for a lesser offence or imposing inadequate compensation.

5. Nowhere in the present petition of appeal, the appellant has mentioned that he is a *victim*, within the meaning of Section 2(wa) of the Code inasmuch as he has not mentioned as to how he has suffered any loss or injury caused by the reason of act of commission or omission for which the private respondents had been charged. There is no averment that the appellant was the guardian or is legal heir of the deceased.

6. The said Sessions Trial No. 1384 of 2010 arises out of Banmankhi PS Case No. 93/98 registered on the basis of



a *fardbeyan* of one Hizi Illiyas, recorded on 7.5.1998, to the effect that when the deceased Latif along with his grand-daughter, Rushat @ Guria (PW 3), was going to visit Muharram Mela, 41 named accused persons, armed with various weapons, surrounded the deceased and on the order of Md. Abbas, one Mohd. Nasiruddin opened fire with his musket, which hit Latif and the deceased fell down. Upon being asked by the accused Jamil that the deceased had not died, Md. Rafique, another accused, opened fire with his musket, whereafter the deceased died. The occurrence is said to have taken place out of land dispute.

7. The police submitted *charge sheet* against Md. Nasiruddin and Md. Rafique on 19.6.2010, while keeping the investigation pending against the other accused persons. The learned Chief Judicial Magistrate, Purnea, took cognizance of the offence by an order, dated 19.6.2010, and, separating the case against rest of the accused persons, committed the case to the court of sessions to the extent it related to accused Md. Nasiruddin and Md. Rafique. Charges under Sections 147, 148, 302, 380 and 452 read with Section 149 of the Indian Penal Code and Section 27 of the Arms Act, 1950, were framed against the said Md. Nasiruddin and Md. Rafique.

8. At the trial, after 16 prosecution witnesses had been examined, a petition was filed, on behalf of the



prosecution, to summon respondent nos. 2 and 3 under Section 309 of the Code. By an order, dated 4.5.2012, passed by the learned trial court, respondent nos. 2 and 3 were made accused in order to face trial. Charges against them were framed on 6.11.2012, on the same penal provisions as against other accused. It appears that the present appellant was examined as PW 8 at the trial.

9. From reading of the impugned judgment, we find that the two versions emerged on the basis of depositions of the prosecution witnesses. One set of witnesses including the grand-daughter of the deceased (PW 3), who was claimed to have been accompanying the deceased at the time of occurrence, named said Md. Nasiruddin as the assailant, whereas another set of witnesses, right from PW 8 to PW 16, in their evidence, have alleged that respondent Nos. 2 and 3 had killed the deceased.

10. Md. Helal Ahmad, learned counsel appearing for the appellant, has submitted that the learned trial court committed error by acquitting respondent nos. 2 and 3 despite their being clinching, definite and consistent evidence that they killed the deceased.

11. Admittedly, respondent nos. 2 and 3 were not named in the First Information Report instituted in the year 1998 nor were they charge-sheeted by the police in the year

2010. It further appears that till commencement of the trial, there was no material indicating complicity of respondent nos. 2 and 3 in alleged commission of the offences. Nearly 12-13 years after the date of occurrence, PW 8 (the present appellant), at the trial, took the name of the respondent nos. 2 and 3 as perpetrators of the crime.

12. From the records, it appears that the appellant was not the informant. He took the name of respondent nos. 2 and 3 to be the persons, who had committed the offence, while deposing as PW 8. There is nothing to indicate that he is a *victim* within the meaning of Section 2(wa) of the Code. The son of the deceased, it appears, was examined as DW 1 at the trial, who is said to have stated that respondent nos. 2 and 3 were the eye-witnesses and they are being wrongly dragged in the present case. Since the appellant is neither guardian nor legal heir of the deceased nor has he been able to show that he has suffered any loss or injury caused by the judgment and order under appeal, he cannot maintain the present appeal under Section 372 of the Code of Criminal Procedure. In the facts and circumstances as noted above, the appellant has no *locus standi* to maintain this appeal and, on merit, the belated evidence of PW 8 cannot be believed, particularly, when his evidence is belied by the evidence of PW 3, i.e., grand-

daughter of the deceased).

13. The appeal is accordingly dismissed with cost of Rs.10,000/ (Ten thousand) to be paid by the appellant by depositing the said amount, in the account of the Patna High Court Legal Services Committee, within three months from today.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

mrl

U		T	
---	--	---	--