

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.24637 of 2013

Arising Out of PS.Case No. -6 Year- 2012 Thana -NAWANGAR District- BUXAR

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1. Saroj Kumar Singh @ Saroj Singh S/O Tangri Singh Resident Of
Village- Roopsagar, Police Station- Nawanagar, District- Buxar

.... Petitioner/s

Versus

1. The State Of Bihar
2. Satyendra Yadav S/O Lalmuni Yadav Resident Of Village- Budaila,
Police Station- Nawanagar, District- Buxar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Gopesh Kumar (App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
TRIVEDI
ORAL ORDER

6 09-05-2016 Heard learned counsel for the petitioner as well as
learned APP.

The petitioner has challenged order dated
30.04.2013 passed by learned Adhoc Additional Session Judge
II, Buxar, whereby and whereunder the learned lower court
rejected the prayer made on behalf of the petitioner under
Section 228 of the Cr.P.C.

As per written report, it is evident that the deceased
was crushed by Swaraj Tractor belonging to one Manoj Mahto
being driven by his driver and for that, initially, a case was
registered under Sections 302 and 120(B) of the I.P.C. Later on,
after concluding investigation, charge-sheet was submitted
under Sections 279/304(A) of the I.P.C. However, differing

therefrom, the learned lower court took cognizance of an offence punishable under Section 304 of the I.P.C. and that happens to be reason behind presence of the instant session trial before the court of sessions.

While considering the prayer of the petitioner in terms of Section 228 of the Cr.P.C in consonance with the impugned order, it is evident therefrom that learned lower court has taken into consideration para-5, further statement of the informant along with paras-27, 28 and 29, however, failed to construe whether from those statements, the conduct of the petitioner really could attract applicability of culpable homicide not amounting to murder. That being so, the crux of applicability of Section 304 of the I.P.C. is found lacking. Furthermore, the opinion of the learned lower court should have based upon the materials having been collected as well as having presence on the record and not beyond that.

That being so, order impugned is set aside. Petition is allowed. The matter is remitted back to the learned lower court for fresh appraisal in light of forgoing observations.

(Aditya Kumar Trivedi, J)

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