

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 936 of 2017

Arising Out of PS. Case No.-91 Year-1986 Thana- Patahi District- East Champaran

Ram Bishwash Prasad Yadav, S/o Late Amrit Prasad Yadav, R/o Village – Parsauni Kapoor, P.S. Patahi, District – East Champaran.

... .. Appellant

Versus

1. The State of Bihar
2. Sunil Kumar
3. Silwant Kumar, both sons of Dineshwar Kumar.
4. Jitendra Kumar, S/o Bachchu Kumar

All resident of Village – Parsauni Kapoor, P.S. Patahi, District – East Champaran.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Anshuman Singh
Mr. Ramakant Yadav

For the Respondent/s : Mr. Syed Ashfaq Ahmad
Mr. Ajay Kumar Singh

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

8. 11-12-2017 Heard Sri Anshuman Singh, learned counsel assisted by Sri Ramakant Yadav, learned counsel for the appellant, Mr. Syed Ashfaq Ahmad, learned Addl. Public Prosecutor as well as Sri Ajay Kumar Singh, learned counsel, who has appeared on behalf of respondent no. 2 to 4.

2. The present appeal under Section 372 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) has been preferred against judgment of acquittal dated 20th of May, 2016 passed by Sri Dhruwa Narain Yadav, learned 14th Additional



Sessions Judge, East Champaran at Motihari (hereinafter referred to as the 'Trial Judge') in Sessions Trial No. 264 of 1989. The learned Trial Judge by the impugned judgment has acquitted the private respondents from charge under Sections 307 & 341/34 of the Indian Penal Code, primarily on the ground that during the trial, neither victim (Uma Shankar Rai) nor investigating officer or doctor, who examined the injured, were examined as prosecution witnesses. The learned Trial Judge has also further noticed that in the case, most of the witnesses had turned hostile.

3. The present appeal has been filed alongwith a petition for grant of leave under Section 378(3) of the Cr.P.C., vide I.A. No. 2146 of 2017 and also a limitation petition, vide I.A. No. 1676 of 2017. In filing appeal, delay of about one year has occurred.

4. At the very outset, Mr. Syed Ashfaque Ahmad, learned Addl. Public Prosecutor as well as Sri Ajay Kumar Singh, learned counsel for the private respondents have raised preliminary objection on the point of maintainability of the appeal. By way of referring to Section 372 of the Cr.P.C., it has been argued that normally, against acquittal, appeal is not maintainable, except the provision as prescribed in the Cr.P.C., it



is filed by the injured or the victim. It has been argued by them that the appellant in the present case is neither victim nor injured and as such, he is not entitled to maintain the present appeal.

5. Before going into such dispute, we have also examined the impugned judgment. On perusal of the judgment, it is evident that in the present case, occurrence had taken place long back on 26-10-1986. Ofcourse, Sri Anshuman Singh, learned counsel for the appellant on merit tried to persuade the Court that it is a fit case for remitting back the matter to the court below, since during the trial, neither investigating officer nor doctor, who examined the injuries on the person of the victim, were examined.

6. Considering the fact that occurrence had taken place long back in the year 1986, it would be a futile exercise to remit back the matter for securing attendance of the investigating officer or the medical officer, who had examined the injury. Moreover, in the present case, the injured himself has not appeared before the trial court for being examined as prosecution witness.

7. In such situation, the Court is of the opinion that allowing limitation petition, which has been filed for condoning



delay of about one year in filing the appeal, would be a futile exercise and as such, there is no reason to pass favourable order either on limitation petition or on leave petition and as such, both petitions i.e. limitation petition, vide I.A. No. 1676 of 2017 and leave petition, vide I.A. No. 2146 of 2017 stand dismissed. Consequently, the appeal against acquittal too is dismissed.

(Rakesh Kumar, J.)

(Mohit Kumar Shah, J.)

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