IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1079 of 2017

Arising Out of PS. Case No.-124 Year-1983 Thana- NOKHA District- Rohtas

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Brij Bihari Roy, S/o Late Ram Naresh Roy, Resident of Village- Vatoli, P.S.-Nokha, P.O.-Chatewana, District- Rohtas.

... ... Appellant/s

Versus

1. The State of Bihar
2. Brij Bihari Roy, S/o Ram Janam Roy
3. Ram Janam Roy , S/o Kewal Roy
4. Bundel Roy, S/o Ram Bali Roy
5. Bihari Roy, S/o Moti Roy
6. Sushil Roy , S/o Raj Bali Roy
7. Surendra Roy, S/o Baijnath Roy
8. Dudhnath Roy, S/o Ramsakal Roy

All Resident of Village-Vatoli, P.S.-Nokha, Distt.-Rohtas.

... ... Respondent/s

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Appearance :
For the Appellant/s : Sri Ashutosh Jha
For the Respondent/s : Sri Shivesh Chandra Mishra
Sri Raghunandan Kumar Singh

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

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

3 13-11-2017 Heard Sri Ashutosh Jha, learned counsel for the informant / appellant, Shri Shivesh Chandra Mishra , learned Additional Public Prosecutor as well as Sri Raghunandan Kumar Singh, learned counsel for respondent no. 2 to 8.

The present Appeal, along with a petition for grant of leave, under section 378(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) vide I.A. No. 1897 of 2017, has been preferred against the judgment of acquittal dated

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7th July, 2017 passed in Sessions Trial No. 497 of 1985 by learned Sessions Judge , Rohtas at Sasaram (hereinafter referred to as "trial judge"). By the said judgment the learned trial judge has acquitted respondent no. 2 to 8 from charge under section 396 and 412 of the Indian Penal Code, 1860.

Short fact of the case is that on the basis of fardbyan of Brij Bihari Rai / P.W. 1 an F.I.R. vide Nokha P.S. Case No. 124 of 1983 was registered against unknown accused persons in which it was disclosed that accused persons entered in the night into the house of the informant and committed dacoity. While committing dacoity, dacoits fired, which hit father of the informant and his nephew Ram Pravesh Sharma and father of informant namely Ram Naresh Rai due to gun shot injury died. In the fardbyan the informant had specifically given description of accused persons such as dark, tall etc. however, subsequently, witnesses came forward as if dacoity was committed by their pattidar / co-villager and thereafter, private respondents were arrayed as accused. Thereafter, they were forwarded to face trial. Finally, the learned trial judge after noticing the fact that dispute in between the informant's side and private respondents were going on since long and even Section 144 Cr.P.C. proceeding was also continuing as

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well as the fact that in the F.I.R. informant, though claiming to identify all the accused persons with their description had not named any of the private respondents as accused involved in the crime and discussing entire evidences on record has passed order of acquittal on the ground that prosecution has not proved its case beyond all reasonable doubt. In this Appeal , by order dated 01.09.2017 while directing for issuance of notice to respondent no. 2 to 8, this court had summoned the lower court record, which has been received. We have perused the entire record and heard the parties. Primarily the Court is of the opinion that had it been a case of committing dacoity and killing in course of dacoity, in normal course , co- villager rather pattidar, would have covered their faces, however, in the First Information Report itself it was not indicated as to whether any accused had tried to conceal their face, rather the informant has made specific statement that he identified accused persons with their faces by way of giving description of their physical status. Had the co– villager / pattidar participated in the occurrence, there was no reason for not identifying any of the accused persons, whereas, land dispute in between the parties was admitted during trial.

After examining the entire evidence on record as well as

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judgment impugned, we are of the considered opinion that the learned trial judge has not committed any error in passing judgment of acquittal. Accordingly, we do not find any ground to grant leave to Appeal, and as such, leave petition i.e. I.A. No. 1897 of 2017 stands dismissed. Consequently, the Appeal against acquittal too is dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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