

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1226 of 2017

Arising Out of PS.Case No. -1 Year- 2016 Thana -THAKRAHA District-
WESTCHAMPARAN(BETTIAH)

.....

{Against the Judgment of acquittal dated 18.07.2017 passed by the 1st Additional Sessions Judge, Bagaha, District-West Champaran, in Sessions Trial No.362 of 2016}.

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Raimul Khatoon, D/o Ekuf Ansari @ Yakub Ansari, resident of Village- Rerha, P.S.- Bhitaha (Thakaraha), District- West Champaran.

.... Daughter of Informant/Appellant.

Versus

1. The State of Bihar.
2. Quadir Ansari, S/o Late Nasib Ansari, resident of Village- Rerha, P.S.- Bhitaha O.P. (Thakaraha), District- West Champaran.

.... Opposite Parties/Respondents.

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Appearance :

For the Appellant : M/s. Baxi S.R.P. Sinha, Senior Advocate & Vijay Kumar Singh No.I, Advocate.
For the State : Mr. Satya Narayan Prasad, A.P.P.
For the Respondent No.2 : Mr. Anand Kishore Chaudhary, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

AND

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 13-03-2018

Heard learned counsel for the appellant as well as learned counsel appearing for the respondent no.2. Also heard Mr. Satya Narayan Prasad, learned Additional Public Prosecutor for the State.

2. This criminal appeal has been preferred by the appellant, who happens to be the daughter of the deceased Ekuf Ansari alias Yakub Ansari, against the Judgment of acquittal dated 18.07.2017



passed by the learned 1st Additional Sessions Judge, Bagaha, District-West Champaran, in Sessions Trial No.362 of 2016, by which and whereunder he acquitted the respondent no.2 of the charge framed against him.

3. I.A. No.2437 of 2017 has been filed on behalf of the appellant seeking leave of this Court to file the present criminal appeal.

4. Learned counsel appearing for the appellant challenged the impugned Judgment of acquittal, submitting that Thakraha P.S. Case No.01 of 2016 for the offences punishable under Sections 147, 341, 323, 447, 325, 307 and 504 of the Indian Penal Code was registered on 02.01.2016 on the basis of the written report of the deceased Ekuf Ansari and, subsequently, the informant Ekuf Ansari died in course of his treatment and, accordingly, Section 302 of the Indian Penal Code was added on 14.01.2016. Learned counsel for the appellant further submits that the learned trial court failed to take note of this fact that the written report of the deceased was his dying declaration and was admissible under Section 32(1) of the Evidence Act. He further submits that the learned trial court has nowhere considered the above stated aspect and acquitted the respondent no.2. He further submits that the learned trial court wrongly disbelieved the injured of this case and also passed the impugned Judgment of



acquittal only on the basis of surmises and conjectures.

5. On the other hand, learned counsel appearing for the respondent no.2 supports the impugned Judgment of acquittal, arguing that the learned trial court has passed a well discussed Judgment and, as a matter of fact, there were several lacunas in the prosecution case, which create doubt and that was the reason, the learned trial court passed the Judgment of acquittal.

6. No doubt, the above stated Thakraha P.S. Case No.01 of 2016 was registered on the basis of the written report of the informant-deceased Ekuf Ansari but it is admitted position that the aforesaid written report was prepared by another person and the aforesaid person has not been examined before the trial court. Furthermore, we find that the prosecution failed to prove the contents of the written report in course of trial as not a single witness on behalf of the prosecution came before the trial court and claimed that the written report in question was written in his presence and the contents of the written report were read over to the informant, who, subsequently, having understood the contents of the written report put his thumb impression. Although, learned counsel appearing for the appellant tried to convince this Court by placing argument that it was incumbent duty of the court below to summon the person, who had drafted the written report, but we are unable to accept the aforesaid



contention of the learned counsel for the appellant because it is not the duty of the trial court to fill up the lacuna of the prosecution case. Furthermore, having perused the impugned Judgment of acquittal, we find that the learned trial court based his finding of acquittal on reasonable grounds and there is no scope for this Court to interfere into the impugned Judgment of acquittal.

7. On the basis of the aforesaid discussions, this criminal appeal along with I.A. No.2437 of 2017 stands dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.03.2018
Transmission Date	15.03.2018

