

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.952 of 2018

Arising Out of PS. Case No.-72 Year-2002 Thana- BARH District- Patna

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Deepak Kumar @ Deepak Kumar Chakarwari, Son of Bijendra Paswan
Resident of Village Chero, P.S. Hanaut, District Nalanda.

... .. Appellant

Versus

1. The State of Bihar.
2. Ramdeo Paswan, son of Late Sukhdeo Paswan
3. Bipin Paswan, son of Ramdeo Paswan
4. Kalindra Paswan, son of Naurangi Paswan
5. Navendu Paswan, son of Naurangi Paswan
6. Ghanshyam Paswan, son of Naurangi Paswan
7. Sumitra Devi @ Sunita Devi, Wife of Ramdeo Paswan
8. Naurangi Paswan, son of Late Chottan Paswan
9. Nageshwar Paswan, son of Naurangi Paswan All residents of village Budhni Chak, P.S. Barh, District Patna.

... .. Respondents

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Appearance :

For the Appellant : Mr. Manoj Kumar Sinha, Advocate
For the Respondents : Mr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

3 26-09-2018 Heard learned counsel appearing for appellant as well as learned Addl. Public Prosecutor for the State on I.A. No. 2547 of 2018 as well as on the point of admission.

I.A. No. 2547 of 2018 has been filed on behalf of the appellant under Section 378(4) of the Code of Criminal Procedure praying therein for grant of leave to file this criminal



appeal. The appellant happens to be informant and brother of the deceased and, therefore, he has *locus standi* to file this criminal appeal against Judgment of acquittal. Accordingly, I.A. No. 2547 of 2018 stands allowed.

The appellant is aggrieved by the impugned Judgment of acquittal dated 25.04.2018 passed by learned 1st Addl. Sessions Judge, Barh, Patna in Sessions Trial No. 1137 of 2004 by which and whereunder, he acquitted the respondents No. 2 to 9 of the charges framed against them for the offences punishable under Sections 364(A), 302 and 342 of the Indian Penal Code.

The appellant lodged Barh P.S. Case No. 72 of 2002 for kidnapping and murder of his brother and, accordingly, respondents No. 2 to 9 were put on trial. In course of trial, the prosecution examined, altogether, 12 witnesses and also got exhibited some documents. However, the learned trial Court acquitted the respondent Nos. 2 to 9 disbelieving the evidences adduced on behalf of the prosecution.

Learned counsel appearing for appellant submits that learned trial Court did not give opportunity to prosecution to examine the Doctor, who had conducted Postmortem examination as well as prepared the forensic report, though, the aforesaid Doctor appeared several times before the trial Court,



but since the report of the FSL was missing the aforesaid Doctor could not be examined.

From perusal of the impugned Judgment, we find that the learned trial Court disbelieved the testimony of appellant as well as other prosecution witnesses and, moreover, it would appear from perusal of the impugned Judgment that the appellant lodged Barh P.S. Case No. 72 of 2002 after three days of the alleged occurrence. Though, he himself claims to be eye-witness of the occurrence and, therefore, in our view, even if, the Postmortem report as well as forensic report are brought on record, then also, there is nothing on the basis of which the participation of respondent Nos. 2 to 9 in the alleged crime could be established and in the aforesaid circumstances, we do not think it proper to interfere into the findings recorded by the trial Court while passing the Judgment of acquittal. Accordingly, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

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