

Criminal Appeal (DB) No.1188 of 2018

Arising Out of PS. Case No.-22 Year-2000 Thana- SARMERA District- Nalanda

SATENDRA YADAV @ SATYENDRA PRASAD YADAV

... .. Appellant/s

Versus

State Of Bihar & Anr

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anil Chandra

For the Respondent/s : Mr. Sri Ajay Mishra

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

4 04-12-2018 1. Heard learned counsel appearing for the appellant
as well as learned Addl. Public Prosecutor appearing for the
State on IA No. 3131 of 2018.

2. IA No. 3131 of 2018 has been filed under Section 378(3) of the Cr.P.C on behalf of the appellant who is said to be injured and, therefore, in the aforesaid circumstance, IA No. 3131 of 2018 stands allowed.

3. This criminal appeal has been preferred against the impugned judgment dated 28.07.2018 passed by learned Fast Track Court 1, Nalanda at Bihar Sharif in Session Trial No. 975 of 2010 by and whereunder he acquitted respondent no.2



whereas convicted co-accused Karu Yadav for the offence punishable under Section 324 of the IPC and 27 of the Arms Act.

4. Sarmera (Nalanda) PS Case No. 22 of 2000 was registered on the basis of fardbeyan of the appellant who claimed that while he was sleeping on the roof of his house, respondent no.2 along with co-accused Karu Yadav and one Ramadhin Yadav came there and Karu Yadav opened fire of his gun which hit on his left thigh. The appellant claimed that respondent and co-accused Ramadhin Yadav were also present having firearm in their hand.

5. Learned trial court, after considering the evidences available on record, passed the impugned judgment in the manner as stated above. Learned trial court refused to convict co-accused Karu Yadav and respondent no. 2 for the offence punishable under Section 307 of the IPC and similarly, also refused to convict respondent no. 2 under Section 324 of the IPC and 27 of the Arms Act doubting the claim of the appellant in respect of respondent no. 2.

6. Learned counsel appearing for the appellant submits that appellant was examined before the learned trial court as prosecution witness and he, specifically, claimed that



respondent no.2 and Ramadhin Yadav having firearms in their hand were present along with convicted accused Karu Yadav at the time of alleged occurrence and the aforesaid fact clearly goes to show that respondent no.2 as well as accused Ramadhin Yadav had share their common intention to cause injury to the appellant along with convicted accused Karu Yadav but even then the learned trial court, without any valid reason, refused to convict respondent no. 2 for the offence punishable under section 324/34 of the IPC.

7. On the other hand, learned Addl. Public Prosecutor supported the impugned judgment arguing that only a bald statement regarding presence of respondent no. 2 was made by the appellant and admittedly, appellant and respondent no. 2 had inimical term and, therefore, learned trial court rightly doubted about participation of respondent no. 2 in the alleged crime.

8. Having heard the contentions of the parties, we went through the record. It is admitted position that the appellant sustained only one firearm injury on his upper portion of his left thigh and the aforesaid injury was found simple in nature. Furthermore, the appellant claimed that it was co-convict Karu Yadav who shot fire on him and no attempt to make fire was taken by respondent no. 2 or by co-accused Ramadhin



Yadav. The learned trial court, taking note of the aforesaid circumstances, doubted about participation of respondent no. 2 in the alleged crime and we do not find any absurdity in the impugned judgment and, therefore, in our view, there is no need to interfere into the findings of the learned trial court. Accordingly, this appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

s.hassan/-

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