

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.647 of 2018

Arising Out of PS. Case No.-81 Year-2002 Thana- NAUTAN District- West Champaran

Saral Yadav, son of Late Bal Kishun Yadav resident of village - Bhagwanpur, Police Station - Nautan, District - West Champaran, presently residing at Ward No. 13, Maruhan Police Station - Nautan in the district of West Champaran.

... .. Appellant

Versus

1. The State of Bihar.
2. Ramakant Yadav son of Late Fuleshwar Yadav resident of Mauja Safiha Tala, Police Station - Bishambharpur, District - Gopalganj.
3. Harendra Yadav son of Fuleshwar Yadav resident of Mauja Safiha Tala, Police Station - Bishambharpur, District - Gopalganj.
4. Rudal Yadav son of Late Fuleshwar Yadav resident of Mauja Safiha Tala, Police Station - Bishambharpur, District - Gopalganj.
5. Surajee Yadav son of Late Fuleshwar Yadav resident of Mauja Safiha Tala, Police Station - Bishambharpur, District - Gopalganj.
6. Bandhu Yadav son of Late Fuleshwar Yadav resident of Mauja Safiha Tala, Police Station - Bishambharpur, District - Gopalganj.
7. Mohan Yadav son of Late Fuleshwar Yadav resident of Mauja Safiha Tala, Police Station - Bishambharpur, District - Gopalganj.
8. Kanhaiya Yadav son of Ramakant Yadav resident of Mauja Safiha Tala, Police Station - Bishambharpur, District - Gopalganj.
9. Hridya Yadav son of Bishwanath Yadav resident of Mauja Safiha Tala, Police Station - Bishambharpur, District - Gopalganj.
10. Bali Mukhiya son of Late Laxman Mukhiya resident of Mauja Bara Parsauni, Police Station - Nautan in the district of West Champaran.
11. Ram Hari Mukhiya son of Late Maharaj Mukhiya resident of Mauja Bara Parsauni, Police Station - Nautan in the district of West Champaran.
12. Narain Mukhiya, son of Late Laxman Mukhiya resident of Mauja Bara Parsauni, Police Station - Nautan in the district of West Champaran.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Prabhu Narayan Sharma
For the Respondent/s	:	Mr. Ashwani Kumar Sinha

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

5 01-11-2018

Heard learned counsel for the appellant, learned



Addl. Public Prosecutor for the State as well as learned counsel appearing for respondents No. 2 to 12 on I.A. No. 1627 of 2018, which has been filed for grant of special leave to file this criminal appeal, as well as on the point of admission.

I.A. No. 1627 of 2018 has been filed by appellant Saral Yadav, who happens to be informant in Nautan P.S. Case No. 81 of 2002, as well as brother of deceased and, therefore, it is obvious that he comes under the purview of victim and has right to file this criminal appeal. Accordingly, special leave is granted to him to pursue the present appeal.

In the aforesaid manner, I.A. No. 1627 of 2018 stands allowed.

This appeal has been preferred against the Judgment of acquittal dated 10.04.2018 passed by Additional Sessions Judge, Fast Track Court No.II, Bettiah, West Champaran in Sessions Trial No. 107 of 2003, by which and whereunder, he acquitted the respondent Nos. 2 to 12 from the charges framed against them for the offences punishable under Sections 302/34 and 201/34 of the Indian Penal Code and Section 27 of the Arms Act.

Learned counsel appearing for appellant challenged the impugned Judgment of acquittal arguing that the learned



trial Court failed to take notice of this fact that P.W.1 as well as informant (P.W.4) claimed to have seen the occurrence and they, specifically, stated that respondent Nos. 2 to 12 committed the murder of the deceased. He, further, submits that the learned trial Court passed the Judgment of acquittal on flimsy ground, which is not in accordance with law.

On the other hand, learned counsel appearing for respondents No. 2 to 12 supports the impugned Judgment of acquittal pointing out that the prosecution could not succeed to examine the Investigating Officer and Doctor and, therefore, it is obvious that the prosecution could not succeed to prove its case beyond reasonable doubts as noted by the learned trial Court in impugned Judgment. He, further, submits that moreover, the findings of learned trial Court could not be disturbed only on this ground that on the basis of evidences adduced by prosecution, another view is also possible.

Learned Addl. Public Prosecutor fairly conceded this fact that non-examination of Investigating Officer and Doctor was fatal to the prosecution case and learned trial Court rightly acquitted the respondents No. 2 to 12 of the charges framed against them.

Having heard the aforesaid contentions of the



parties, we went through the record.

P.W.4 (Informant) claimed in his fardbeyan that deceased was killed by respondents No. 2 to 12 in the evening of 16.04.2002 and in the next morning on 17.04.2002, he lodged the above stated Nautan P.S. Case No. 81 of 2002. Furthermore, we find that in course of trial, P.W.1 and P.W.4 (Informant) claimed themselves to be eye-witnesses of the alleged occurrence and the remaining witnesses were, admittedly, hearsay witnesses. Furthermore, we find that the prosecution could not succeed to examine the Investigating Officer and Doctor. Due to non-examination of Investigating Officer, the defence was deprived of to draw attention of so called eye-witnesses towards their previous statements recorded under Section 161 of the Cr.P.C.

The perusal of deposition of P.W.1 goes to show that at para 27, 28 and 29 of his deposition, the attention of P.W.1 was drawn towards his previous statement recorded under Section 161 of Cr.P.C. and this witness denied the suggestion of the defence that he had not made statement before the Police in the manner as stated in course of trial. P.W.1, admittedly, claimed himself as eye-witness in course of trial, but Para 27, 28 and 29 of the case diary go to show that according to



defence, he had not claimed himself as eye-witness before the Investigating Officer. All most similar position in respect of the other witnesses. Admittedly, the Investigating Officer has not been examined and, therefore, the learned trial Court rightly observed that non-examination of I.O was fatal to the prosecution case, as the defence deprived of bringing the contradictions on record by making question from the Investigating Officer. Apart from this the learned trial Court has taken other circumstances for writing the Judgment of acquittal. Moreover, the perusal of impugned Judgment goes to show that the learned trial Court has passed a well thought Judgment and we do not think it proper to interfere into the findings given by the learned trial Court in impugned Judgment. Accordingly, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

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