

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.756 of 2018

Arising Out of PS.Case No. -158 Year- 1992 Thana -BAKHTIYARPUR District- PATNA

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Raj Kishore Kumar @ Kishor Kumar aged about 50 Years S/o Late Bhawani Yadav, R/o Vill.- Madhopur, P.S.- Bakhtiyarpur, District- Patna (elder son of the deceased.)

.... Appellant

Versus

1. The State of Bihar.
2. Bocha Yadav, aged about 54 Years, son of Ramanki Yadav.
3. Singar Yadav, aged about 57 Years, S/o Siya Yadav.

Both are R/o Mohalla- Bakhtiyarpur, P.S.- Bakhtiyarpur, District- Patna.

.... Respondents

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Appearance :

For the Appellant : Mr. Ajit Kumar Sinha, Adv.

For the State : Mr. Ajay Mishra, APP

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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: 04-10-2018

Heard learned counsel appearing for the appellant as well as learned Additional Public Prosecutor for the State on the point of admission and on I.A. No. 2169 of 2018, which has been filed under Section 378(3) of the Cr. P. C for grant of leave to file this criminal appeal.

2. I.A. No. 2169 of 2018 has been filed on behalf of appellant, who happens to be son of the deceased, and the appellant comes under the ambit of victim and, therefore, he has right to file this



appeal against the judgment of acquittal. Accordingly, I.A. No. 2169 of 2018 stands allowed and the appellant is permitted to pursue this criminal appeal.

3. The appellant has challenged the impugned judgment of acquittal dated 28.04.2018 passed by learned Additional Sessions Judge-1st, Barh, Patna in Sessions Trial No. 47 of 1995 by which and whereunder he acquitted the respondents no. 2 and 3 of the charges framed against them under Section 302/34 of the Indian Penal Code.

4. The impugned judgment goes to show that the learned trial court doubted the credibility of so-called eye-witness and, furthermore, noticed that Investigating Officer and Doctor were not examined by the prosecution and taking note of the above stated facts, the learned trial court passed the impugned judgment of acquittal.

5. Learned counsel appearing for the appellant assailed the impugned judgment of acquittal arguing that the learned trial court failed to take notice of this fact that Bakhtiyarpur P.S. Case No. 158 of 1992 was registered on the basis of fardbeyan of the deceased and, therefore, the aforesaid fardbeyan of the deceased was his dying declaration. He further submits that mere non-examination of I.O. and doctor is not a ground of acquittal particularly, in the circumstance, if prosecution witnesses proved the prosecution case. He further submits that in the present case, the post-mortem report has been looked into



by the trial court while passing the impugned judgment of acquittal and the post-mortem report clearly corroborates the statement of prosecution witnesses.

6. On the other hand, learned Additional Public Prosecutor supports the impugned judgment of acquittal arguing that the learned trial court has passed a well discussed and well thought judgment. Learned Additional Public Prosecutor further submits that unfortunately, prosecution failed to prove its case beyond all shadow of reasonable doubts and so far as the fardbeyan of the deceased is concerned, learned Additional Public Prosecutor submits that the impugned judgment goes to show that the fardbeyan of the deceased has not been proved before the trial court and the police official, who recorded the fardbeyan of the deceased, has also not been examined and, therefore, the fardbeyan of the deceased has not been brought in evidence legally and, therefore, the learned trial court rightly ignored the aforesaid fardbeyan of the deceased.

7. Having heard the contentions of both the parties, we went through the record. From perusal of the impugned judgment, we find that, altogether, eight prosecution witnesses were examined and only signature of PW-8, namely, Kameshwar Prasad and signature of Ramasharaya Prasad on Inquest Report were exhibited and except the aforesaid documentary evidences, the prosecution did not produce any



other documentary evidence. Furthermore, the impugned judgment goes to show that the learned trial court discussed the statements of prosecution witnesses and after proper discussion, doubted the credibility of aforesaid prosecution witnesses.

8. Therefore, we do not find any ground to differ with the findings of the learned trial court because no perversity is found in the findings of the learned trial court and, therefore, we are of the view that this appeal is liable to be dismissed on admission stage itself.

9. Accordingly, this appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Rajeev/Abhijeet/-

AFR/NAFR	NAFR
CAV DATE	N/A
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