

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.768 of 2018

Arising Out of PS. Case No.-66 Year-2010 Thana- SURYAPUR District- Rohtas

=====

Bimla Devi, W/o Late Dinesh Singh, R/o Vill.- Bahuara, P.S.- Suryapura,
District- Rohtas.

... .. Appellant

Versus

1. The State of Bihar.
2. Lalan Singh S/o Juti Singh,
3. Ajit Singh,
4. Sunil Singh Both Sons of Sheomuni Singh,
5. Anil Singh,
6. Rajesh Singh
7. Saroj Singh All Sons of Indrama Singh,
8. Vijay Singh S/o Late Dhan Pratap Singh,
9. Barmeshwar Singh S/o Late Keshwar Singh, Appellant Nos. 2 to 9 are residents of Vill.-Bahuara, P.S.- Suryapura, District- Rohtas.

... .. Respondents

=====

Appearance :

For the Appellant	:	Mr. Sudama Singh, Advocate Mr. Surendra Kumar Mishra, Advocate
For the State	:	Mr. Ajay Mishra, APP

=====

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

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

4 11-09-2018 Heard learned counsel appearing for appellant as well as learned Addl. Public Prosecutor for State on the point of admission as well as I.A. No. 2241 of 2018, which has been filed under Section 378 (3) of the Code of Criminal Procedure.

The appellant is mother of deceased and she has sought leave of this Court to file the instant Criminal Appeal, accordingly, the I.A. No. 2241 of 2018 stands allowed and the



appellant is directed to pursue this appeal.

The appellant is aggrieved by the impugned Judgment dated 25.04.2018 passed by learned Addl. Sessions Judge-VIII, Rohtas at Sasaram in Sessions Trial No. 80 of 2012 by which and whereunder, he convicted one Sheo Muni Singh for the offence punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and sentenced him to undergo imprisonment for life and fine of Rs. 10,000/- for the offence punishable under Section 302 of the I.P.C. and undergo imprisonment for five years and fine of Rs. 5,000/- for the offence punishable under Section 27 of the Arms Act, whereas acquitted the private respondents No. 2 to 9 for the offences punishable under Sections 147, 148, 302, 149 and 307 read with Section 149 of the I.P.C.

Learned counsel appearing for appellant submits that the learned trial Court relied upon the prosecution witnesses and having relied on testimonies of the prosecution witnesses convicted accused Sheo Muni Singh, but discarded the testimonies of the prosecution witnesses in respect of the private respondent Nos. 2 to 9. He further submits that the learned trial Court acquitted the private respondents No. 2 to 9 only on the ground that no injury caused by Lathi and other weapons was



found on the person of deceased, except fire arm injury, which is attributed to co-accused Sheo Muni Singh. He further submits that the learned trial Court, illegally, discarded the evidence of P.W.4 and P.W.7, particularly, in the circumstance, when P.W.4, specifically, stated that all the private respondents No. 2 to 9 and convict Sheo Muni Singh were present on the place of occurrence and convict Sheo Muni Singh opened fire on deceased and when he made attempt to save the deceased, he was assaulted by means of lathi and the statement of P.W.4 was corroborated by the statement of P.W.7, who stated that on 23.07.2010, he had examined P.W.4 and found three injuries on his person said to be caused by hard and blunt substance. Learned counsel for the appellant, further, submits that P.W.7 also stated that on the same day, he examined Radhika Devi and found one injury on her person and, therefore, the aforesaid fact clearly goes to show that private respondents No. 2 to 9 had also participated in the alleged crime and they had shared common object to commit murder of deceased, but in spite of that the learned trial Court acquitted the private respondent Nos. 2 to 9.

On the other hand, learned Addl. Public Prosecutor supported the impugned Judgment submitting that the learned trial Court has passed a well discussed Judgment and having



relied upon a decision reported in *1995(1) East Cr. Case 539 (Supreme Court)*, the trial Court formed his opinion.

Having heard the contentions of both parties, we went through the record, we find that only one fire arm injury was found on the person of the deceased. Furthermore, we find that the prosecution claims that the private respondents No. 2 to 9 were present at the time of place of occurrence and they participated in the occurrence. Furthermore, the prosecution claims that P.W.4 and one Rakhika Devi sustained injury in the aforesaid occurrence, but the trial Court doubted the injury reports of P.W.4 and Radhika Devi. However, even if, it is assumed that P.W.4 and Radhika Devi had sustained injury in the alleged occurrence, then also, it is admitted case of the prosecution that convict Sheo Muni Singh opened fire on the deceased and after that P.W.4 and Radhika Devi got injury. Therefore, it cannot be said that private respondent Nos. 2 to 9 had common object to commit the murder of deceased. Moreover, the learned trial Court has doubted the injury reports of P.W.4 and Radhika Devi and we do not think it proper to differ with the opinion and finding of the trial Court. The learned trial Court has also noticed that there was case and counter case between the parties and taking note of the above



stated facts, the learned trial Court acquitted the respondent Nos. 2 to 9. We do not find any illegality or irregularity as well as ground to form different opinion and, therefore, we are not inclined to interfere into the findings given by the learned trial Court in the impugned Judgment dated 25.04.2018 so far as it relates to private respondents No. 2 to 9 and, therefore, on the basis of the aforesaid discussions, this Criminal Appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Manish/-

U		T	
---	--	---	--

