

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.496 of 2015

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1. Md. Golden Son of Md. Tajiuddin resident of Zulfazal Road, Buxar, P.S.
P.O. Buxar Town, District - Buxar

.... Petitioner/s

Versus

1. The State of Bihar
2. Munna Khan Son of Late Nizamuddin Khan
3. Raja Khan Son of Md. Munna Khan Both resident of Sarai Fatak,
Buxar, P.S. Buxar Town, P.O. Buxar, District - Buxar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nikesh Kumar

For the Respondent/s : Mr. Shailendra Kumar-II(App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

8 06-09-2018 This revision application has been preferred against the judgment dated 27.2.2015 passed by Sri Arun Kumar Srivastava, Additional District and Sessions Judge-5th , Buxar, in Cr.Appeal No.87/ 2010 / CIS No.45 of 2014 arising out of Buxar Town P.S.Case No.152 of 2007, G.R.No.1195 of 2007 and P.R.No.6 of 2016 by which he has allowed the appeal filed by the O.P. Nos.2 & 3 and acquitted them from the charges under Sections 341, 323, 325 and 379/34 of the Indian Penal Code leveled against them.

2. Submission of the learned counsel for the petitioner is that the petitioner has assailed the Judgment on the ground that the learned trial court has well discussed and he has found



sufficient materials available and on that ground convicted the appellant and the same has been set aside by the learned appellate court only on the basis of surmises and conjectures and the learned appellate court has considered that no independent witness has been examined but failed to consider that evidence of the prosecution witnesses cannot be thrown out simply on the ground that they are related to the victim rather their evidence which is quashed to be scrutinized with care and caution and minor contradiction hither and thither will not make the Judgment of the trial court suffers from infirmities and learned appellate court has failed to appreciate that there is contradiction between the finding of the doctor and injury report given but the ocular witness has to be given priority over medical evidence.

3. Heard the learned A.P.P. also who has submitted that there is no illegality in the impugned Judgment and as it does not suffer from any infirmity.

4. Having heard both sides from perusal of the materials available on the record it appears that O.P.No.2 and 3 have been convicted under Sections 341, 325, 279/34 of the Indian Penal Code by the Judgment and order passed by the



learned trial court against which the appellant (present O.P.No2. and 3) preferred appeal before the appellate court which has been allowed by the appellate court and he has set aside the judgment of conviction and order passed by the trial court. It appears that the learned appellate court considering the fact that the occurrence occurred at 10 O' clock but the injury report shows that the evidence of the doctor show that he treated the injured at 9.30 P.M. and injury report was prepared at that time and that falsify the prosecution story that occurrence occurred at 10 P.M. and that creates a doubt the prosecution evidence. Moreover, doctor in his evidence at paras 15 and 16 has stated that injuries which were found on the persons of the injured are not of the mar pit and it may be caused due to the accident and that also makes the story unbelievable. Apart from that there is delay of ten days in lodging the F.I.R. and that has not been explained by the prosecution. Learned appellate court has also considered that in the F.I.R. there is no story of Section 379 of the I.P.C. but later on charge sheet has also been submitted under Section 379 of the I.P.C. and that also falsify the prosecution story.

5. Considering the discussions made above and the



aforesaid infirmities and inconsistencies it appears that the learned appellate court has rightly acquitted O.P.Nos.2 and 3 and set aside the judgment of conviction passed by the trial court. In such view of the matter, I find no material illegality in the impugned judgment. Hence, this revision application is dismissed.

(Vinod Kumar Sinha, J)

AnilKrSinha/-

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