

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1103 of 2018

In
Criminal Appeal (SJ) No.2217 of 2018

Arising Out of PS. Case No.-456 Year-2015 Thana- GOPALGANJ TOWN District-
Gopalganj

{Against the Judgment of acquittal dated 20.02.2018 passed by the learned Additional Sessions Judge-VIII, Gopalganj, in Sessions Trial No.161 of 2016}.

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Mithun Kumar Singh @ Mithun Kr., son of Keshav Singh, resident of Majiyapur, Ward No.26, P.S. Gopalganj, District-Gopalganj.

... .. (Informant)-Appellant.

Versus

1. The State of Bihar.
2. Dileep Kumar Singh, son of Nagendra Singh, resident of village-Bhuwali Tola, P.S. Jadopur, District-Gopalganj.
3. Harikesh Kumar, son of Ram Nath Yadav, resident of village-Nauranga Tola, Manikpur, P.S. Gopalganj, District-Gopalganj.
4. Anand Kumar Singh, son of Ramadhar Singh, resident of village-Bhuwali Tola, P.S. Jadopur, District-Gopalganj.
5. Ravi Shankar Singh, son of Manoj Singh, resident of village-Bhuwali Tola, P.S. Jadopur, District-Gopalganj.

... .. Respondents.

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Appearance :

For the Appellant	:	Mr. Harsh Anuj, Advocate.
For the State	:	Mr. Zeyaul Hoda, A.P.P.

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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 : 28-11-2018

Heard learned counsel appearing for the appellant as well as the learned Additional Public Prosecutor for the State on I.A. No.2716 of 2018, which has been filed under Section 5 of the Limitation Act, I.A. No.2717 of 2018, which has been filed under



Section 378(3) of the Code of Criminal Procedure, as well as on the point of admission. Also, heard learned Additional Public Prosecutor for the State.

2. I.A. No.2716 of 2018 has been filed for condonation of delay of 27 days in filing this criminal appeal, which is condoned on the grounds mentioned in the aforesaid petition itself and, accordingly, I.A. No.2716 of 2018 stands disposed of.

3. I.A. No.2717 of 2018 has been filed on behalf of the appellant under Section 378(3) of the Code of Criminal Procedure, seeking permission to file and pursue this criminal appeal.

The appellant happens to be the brother of the victim of the case and, therefore, he is permitted to file and pursue this appeal and, in the aforesaid manner, the aforesaid I.A. No.2717 of 2018 stands disposed of.

4. The appellant has challenged the impugned Judgment of acquittal dated 20.02.2018 passed by the learned Additional Sessions Judge-VIII, Gopalganj, in Sessions Trial No.161 of 2016, by which and whereunder he acquitted the respondent nos.2, 3, 4 and 5 of the charges framed against them for the offences punishable under Sections 364A and 120B of the Indian Penal Code.

5. Learned counsel appearing for the appellant submits that the learned trial court failed to appreciate the evidences, available on the record, in its rights perspective as the learned trial court wrongly disbelieved the deposition of the victim as well as



discarded the scientific evidence collected by the Investigating Officer in course of investigation.

6. On the other hand, learned Additional Public Prosecutor supports the impugned Judgment of acquittal, arguing that the learned trial court has properly discussed the evidences and passed a well thought Judgment and, therefore, there is no need to interfere into the impugned Judgment of acquittal and this appeal is liable to be dismissed on the admission stage itself.

7. Having heard the above stated contentions of both the parties, we went through the impugned Judgment.

8. The appellant lodged Gopalganj (Town) P.S. Case No.456 of 2015 in respect of kidnapping of his brother. The aforesaid Gopalganj (Town) P.S. Case No.456 of 2015 was lodged against unknown persons. However, after registration of the above stated Gopalganj (Town) P.S. Case No.456 of 2015, the prosecution claimed that the victim got released himself from the clutches of his kidnappers and, thereafter, his statement was recorded under Section 164 of the Code of Criminal Procedure but out of fear, he could not disclose the name of the respondent nos.2, 3, 4 and 5. Furthermore, the prosecution claimed that, in course of trial, the victim not only disclosed the involvement of the respondent nos.2, 3, 4 and 5 but also identified the aforesaid respondents in dock. The learned trial court disbelieved the statement of the victim, who was examined before the trial court as Prosecution Witness No.9, on the ground that the victim



had not disclosed the name of the respondent nos.2, 3, 4 and 5 when his statement under Section 164 of the Code of Criminal Procedure was recorded, particularly, in the circumstance, when the respondent nos.2, 3, and 4 are his co-villagers and respondent no.5 is the neighbour of the informant and, furthermore, the learned trial court also based his finding that the call details were not sufficient to show the involvement of the respondent nos.2, 3, 4 and 5 in the present crime.

9. We find that the learned trial court has discussed each and every evidence adduced in course of trial and, in our view, the learned trial court rightly doubted about the claim of the victim because, admittedly, after the occurrence, his statement under Section 164 of the Code of Criminal Procedure was recorded but in the aforesaid statement, he did not disclose the name of the respondent nos.2, 3, 4 and 5, particularly, in the circumstance, when the aforesaid respondents are his co-villagers and, therefore, it is obvious that had the respondent nos.2, 3, 4 and 5 participated in the alleged crime, they would have certainly been named by the victim in his statement recorded under Section 164 of the Code of Criminal Procedure. Moreover, if two views are possible in a case, the view taken by the trial court cannot be disturbed, unless the same is perverse and not based on the evidence available on the record. Therefore, we think that it would not be proper to interfere into the impugned Judgment of acquittal. Hence, we do not find any merit in



this appeal.

10. On the basis of the aforesaid discussions, this criminal appeal stands dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep
Srivastava/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.12.2018.
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