

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1392 of 2017

In
Criminal Appeal (SJ) No.2260 of 2017

Arising Out of PS. Case No.-161 Year-2011 Thana- GAURICHAK District- Patna

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{Against the Judgment of acquittal dated 28.06.2017 passed by the Additional Sessions Judge-III, Patna City, Patna, in Sessions Trial No.329 of 2013}.

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Bipul Kumar @ Rajesh Kumar (Victim), son of Madan Singh, resident of Chipura Khurd, P.S. Gaurichak, District-Patna.

... .. Appellant.

Versus

1. Mahesh Kumar, son of Ajit Singh.
2. Ramesh Singh, son of Late Harnandan Singh.
Both resident of Chipura Khurd, P.S. Gaurichak, District-Patna.
3. Dharmendra Kumar, son of Devi Lal Singh, resident of Sohgi, P.S. Gaurichak, District-Patna.
4. The State of Bihar.

... .. Respondents.

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Appearance :

For the Appellant	: Mr. Suraj Narain Prasad Sinha, Sr. Advocate. Mr. Jitendra Narain Sinha, Advocate. Mr. Rohit Kumar, Advocate.
For the State	: Smt. Abha Singh, A.P.P.
For the Respondent nos.1, 2 and 3:	Mr. Kanhaiya Prasad Singh, Sr. Advocate. Mr. Sanjay Kumar Verma, Advocate. Mr. Mukti Nath, Advocate.

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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 : 03-08-2018

Heard learned counsel appearing for the appellant as well as learned Additional Public Prosecutor for State. Also, heard learned counsel appearing for the respondents no.1, 2 and



3, on the point of admission as well as I.A. No.2453 of 2017.

2. The appellant has challenged the impugned Judgment of acquittal dated 28.06.2017 passed by the learned Additional Sessions Judge-III, Patna City, Patna, in Sessions Trial No.329 of 2013, by which and whereunder the learned trial court acquitted the respondents no.1, 2 and 3 of the charges framed under Sections 341, 325 and 307/34 of the Indian Penal Code and Section 27 of the Arms Act.

3. Learned counsel appearing for the appellant submits that the eye witnesses including the injured supported the prosecution story but the learned trial court acquitted the respondents no.1, 2 and 3 only on the ground of minor contradictions and non-examination of the doctor. He further submitted that the learned trial court failed to take note of this fact that the evidence of the eye witnesses shall prevail over the medical evidence. In support of his contention, he referred a decision, reported in **(2003) 12 Supreme Court Cases 395**, in which it has been held by the Apex Court that if medical opinion pointing to alternative possibilities, such opinion cannot be accepted as conclusive where eye witnesses' account is found credible and trustworthy. Taking support of the aforesaid decision of the Apex Court, learned counsel appearing for the



appellant submits that the learned trial court wrongly doubted about the credibility of the injured of the present case.

4. On the other hand, learned counsel appearing for the respondents no.1, 2 and 3 supported the impugned Judgment of acquittal, arguing that the learned trial court dealt with the evidences, available on the record, properly and judiciously and after analyzing the evidences doubted the genuineness of the prosecution case on several counts. He submitted that the injured as well as one eye witness were examined after a long delay when they were summoned under Section 311 of the Code of Criminal Procedure and, therefore, the learned trial court rightly doubted the evidence of the aforesaid witnesses. He also submitted that the doctor was not examined and non-examination of the doctor was fatal to the prosecution case and, moreover, in course of trial, the prosecution witnesses made contradictory statements not only on the point of the date of the occurrence but also on the point of the time of the occurrence. He further submitted that it is well settled principle of law that if two views are possible, the view, favourable to the accused, shall prevail over the other view.

5. Having heard the rival contentions of both the parties, we went through the record.



6. We find that on 27.10.2011, the informant gave written report before the concerned police station, mentioning therein that the respondents no.1, 2 and 3 shot fire on the injured Ranvijay Kumar causing firearm injury on his abdomen. In course of trial, only P.W.6 (informant) and P.W.9 Dilip Thakur claimed themselves to be eye witnesses of the alleged occurrence and so far as P.W.11 Ranvijay Kumar is concerned, he happens to be injured. Furthermore, we find that P.W.6 and P.W.9 made contradictory statements on the point of the date and the time of the alleged occurrence and the learned trial court has taken note of the aforesaid facts. Furthermore, we find that the doctor was not examined by the prosecution and only the injury report was brought into the evidence and the said injury report was proved by the formal witness (P.W.12). The aforesaid injury report goes to show that the said injury report was issued by the concerned doctor on 05.10.2012, whereas the alleged occurrence took place on 26.10.2011. Moreover, we find that the learned trial court on various other grounds doubted the genuineness of the prosecution story and acquitted the respondents no.1, 2 and 3. Therefore, in our view, there is no need to interfere into the impugned Judgment of acquittal.

7. Accordingly, this appeal as well as I.A. No.2453 of



2017 stand dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

**Pradeep Srivastava/-
Rahul Kumar Mishra**

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.08.2018.
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