

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.861 of 2017

Arising Out of PS. Case No.-205 Year-2013 Thana- ALOULI District- Khagaria

Niraj Kumar, Son of Late Bhantu Yadav, Residing at Village- Alouli, P.S.-
Alouli, District- Khagaria.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Rajesh Yadav, Son of Nago Yadav.
3. Anil Yadav, Son of Nago Yadav.
4. Nago Yadav, Son of Late Lal Bahadur Yadav, All 2 to 4 are residing at
Village- Alauli, P.S. - Alauli, District- Khagaria.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Deovind Kumar Singh, Advocate.
For the Respondent/s : Mr. Sri Shivesh Chandra Mishra, APP

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 20-11-2018

1. I.A. No. 1536/861 of 2017 has been filed under
Section 5 of the Limitation Act for condonation of delay of 146
days in filing this Criminal Appeal.

2. The above stated Interlocutory Application stands
allowed on the ground mentioned in the above stated Interlocutory
Application and, accordingly, the delay in filing this Criminal
Appeal stands condoned and I.A. No. 1536/861 of 2017 stands
disposed of.



3. The leave petition filed on behalf of the appellant under Section 378(3) of the Criminal Procedure Code stands allowed, as appellant happens to be the son of deceased and comes under the ambit of victim.

4. Heard learned counsel appearing for the appellant, learned counsel appearing for the respondent nos. 2, 3 and 4 as well as learned Additional Public Prosecutor for the State on the point of admission and we are of the view that this criminal appeal can be disposed of on admission stage itself.

5. The appellant is aggrieved by the Judgment of acquittal dated 23.11.2016 passed by the Additional Sessions Judge-III, Khagaria, in Sessions Trial No. 133 of 2014, by which and whereunder, he acquitted the respondent nos. 2, 3 and 4 of the charges framed against them for the offences punishable under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

6. On 10.09.2013, deceased Mantu Yadav is said to have given his Fradbeyan before the S.I. Sunil Kumar of Alouli Police Station at Primary Health Centre, Alouli to this effect that on the same day while he had gone to Alouli Old Petrol Pump and he was returning from there on foot, the respondent nos. 2, 3 and 4 came there on motorcycle and stopped him and after that



respondent no. 2 shot fire at him, which caused injury to him and after that all the aforesaid persons fled away from there.

7. On the aforesaid Fradbeyan, Alouli P.S. Case No. 205 of 2013 was initially registered under Sections 341 and 307/34 of the Indian Penal Code and Section 27 of the Arms Act and subsequently, after death of aforesaid Mantu Yadav, Section 302 of the Indian Penal Code was added. The police after investigation submitted the charge sheet against respondent nos. 2, 3 and 4 and accordingly, the above stated respondents were put on trial.

8. In course of trial, prosecution examined, altogether, nine witnesses and got exhibited certain documents. The respondent nos. 2 to 4 claimed their innocence in the statements recorded under Section 313 of the Cr.P.C. However, the learned trial court after analyzing the evidences available on record acquitted the respondent nos. 2, 3 and 4 of the charges framed against them passing impugned Judgment of acquittal, which has been challenged by the appellant in this appeal.

9. Learned counsel appearing for the appellant assailed the impugned Judgment of acquittal arguing that the learned trial court failed to take note of this fact that the Fradbeyan of deceased was his dying declaration and furthermore, the learned trial court also failed to appreciate the testimonies of prosecution



witnesses in its right perspective, as a result whereof, the learned trial court came to wrong conclusion and committed error in acquitting the respondent nos. 2 to 4.

10. On the other hand, learned counsel for the respondent nos. 2, 3 and 4 supports the impugned Judgment of acquittal arguing that the learned trial court has dealt with each and every evidence available on the record and there is no perversity or illegality in the impugned Judgment of acquittal and hence, there is no need of interference into the impugned Judgment of acquittal.

11. Having heard the rival contentions of the parties, we went through the record along with the Lower Court Records . No doubt, prosecution claimed that the Fradbeyan of deceased was recorded by S.I. Sunil Kumar of Alouli Police Station on 10.09.2013 and the signature of deceased on the aforesaid Fradbeyan has been proved by P.W.4 in course of trial as Ext.1/1 but admittedly, the above stated S.I. Sunil Kumar was not examined by the prosecution in course of trial nor prosecution took any pain to get the contents of Fradbeyan of deceased Mantu Yadav exhibited and, therefore, it is obvious that the aforesaid Fradbeyan of Mantu Yadav has not been brought in evidence legally. The impugned Judgment goes to show that before trial court, the defence raised objection about treating the Fradbeyan of



deceased as dying declaration on the ground that at the time of giving Fradbeyan deceased was not in eminent danger of death and there was no apprehension in the mind of deceased that he may die on account of injuries sustained by respondent nos. 2 to 4.

12. In our view, the above stated argument raised by the defence before the trial court was not in accordance with law because in Indian Law, even, if, the statement maker does not have any apprehension of death but subsequently, if, he dies, his statement shall be treated as his dying declaration. However, in the present case, we have already noticed that the Fradbeyan of deceased Mantu Yadav has not been brought in evidence in accordance with law and the respondent nos. 2, 3 and 4 did not get any opportunity to cross-examine the person who had recorded the statement of deceased Mantu Yadav. It is also pertinent to note here that except P.W.4, not a single prosecution witness claims that the deceased Mantu Yadav had made statement in his presence. So far as P.W.4 is concerned, he has only stated that the deceased Mantu Yadav had made his statement before the police in his presence but P.W.4, too, has nowhere disclosed the name of assailants of the deceased.

13. So far as appreciation of evidences available on the record is concerned, the impugned Judgment goes to show



that the learned trial court has well discussed the evidences and after discussing the evidences came to conclusion. Therefore, in our view, there is no need to interfere into the impugned Judgment of acquittal.

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

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
Uploading Date	27.11.2018
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