

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1193 of 2016

Arising Out of PS.Case No. -14 Year- 2000 Thana -DURAULI District- SIWAN

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Sri Niwas Rai son of Late Sachidanand Rai resident of village Kewatalia
P.S. Daroli District Siwan

.... Appellant/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ramakant Sharma

For the State : Mr. S. N. Prasad

For respondent nos.2 to 10 Mr. Ajay Kumar Thakur

Mr. Imteyaz Ahmad

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA**

ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

8 04-07-2018 1. Heard learned senior counsel Shri Ramakant Sharma,

appearing for the appellant, learned counsel Shri Ajay Kumar

Thakur appearing for respondent Nos. 2 to 10 as well as learned

Additional Public Prosecutor Shri S. N. Prasad appearing for State

on the point of admission.

2. This criminal appeal has been preferred by appellant,

who was prosecution witness no. 7 in Session Trial No. 146 of

2004, against the judgment of acquittal dated 01.10.2016 passed

by learned 5th Additional Sessions Judge, Siwan in the aforesaid

stated Session Trial No. 146 of 2004 by which and whereunder, he

acquitted the respondent nos. 2 to 10 of the charges framed against



them for the offences punishable under section 147, 148, 323, 324, 307, 149, 302/149 of the Indian Penal Code and 27 of the Arms Act.

3. PW-6, Prasant Rai lodged Daroli P. S. Case No. 14 of 2000 against respondent nos. 2 to 10 claiming in his fardbeyan that on 16.03.2000, he along with his villager, Niwas Rai was returning from Dumrahar and at about 9 a.m. reached near the Orchard of Jagarnath Babu. Respondent nos. 2 to 10 armed with lethal weapons such as lathi, revolver, gun, etc., came out from Arhar field and started assaulting him. On noise and cry, the uncle of PW-6, namely, Ramanuj Rai came there but he was shot by rifle as a result whereof he sustained injury. Father of PW-6 also sustained injury. The injured persons were taken to hospital but in course of treatment aforesaid Ramanuj Rai died. PW-6 claimed that his brother Rajiv Rai was murdered on 16.03.1999 and in the murder of Rajiv Rai, the respondent nos. 2, 7 and others were accused.

4. The above stated Daroli P. S. Case No. 14 of 2000 was investigated by the police and after completion of investigation, police submitted charge-sheet against the respondent nos. 2 to 10 and, accordingly, after cognizance and commitment, respondent nos. 2 to 10 were put on trial before the learned trial



court. The learned trial court, after recording the evidence of prosecution and having considered the evidences available on record, passed the impugned judgment of acquittal doubting the presence of PW-7 on the place of occurrence.

5. Learned counsel appearing for appellant submits that, as a matter of fact, the respondent no. 2 lodged false case against the informant (PW-6) of the present case and others for the occurrence of the same day with an object to save his as well as skin of other accused of Daroli P. S. Case No. 14 of 2000 from the present case that is Daroli P. S. Case No. 12 of 2000 and the informant (PW-6) of the present case went into the camp of respondent no. 2 for getting acquittal in the Daroli P. S. Case No. 12 of 2000 and that is the reason, informant (PW-6) of present case retreated from his statement and subsequently, he was declared hostile by the prosecution. He, further, submitted that appellant (PW-7) supported the prosecution case and the statement of PW-7 was corroborated by the doctor and the I.O but the learned trial court failed to take note of the aforesaid fact. He, further, submitted that the learned trial court found the part of statement of PW-7 trustworthy but even then learned trial court rejected the entire deposition of PW-7 which is against the settled principle of law.



6. On the other hand, learned counsel appearing for respondent nos. 2 to 10 supported the impugned judgment of acquittal arguing that almost all the prosecution witnesses except PW-7 were declared hostile as they did not support the prosecution case and so far as PW-7 is concerned, the learned trial court noted down several contradictions and improvements in the statement of PW-7 and on that ground the learned trial court doubted the presence of PW-7 over the place of occurrence. He, further, submitted that the impugned judgment is a well discussed judgment and there is no need to interfere into the findings recorded by learned trial court while passing the impugned judgment of acquittal.

7. Having heard the contentions of all the parties, we went through the record.

8. We find that, altogether, 10 prosecution witnesses were examined in course of trial and several documents were got exhibited on behalf of the prosecution.

9. Admittedly, PW-6 (informant) was declared hostile by the prosecution as he did not support the prosecution case. Similarly, PW-2, 3, 4 and PW-5 were also declared hostile as they did not support the prosecution case. It is pertinent to note here that three persons sustained injury in the alleged occurrence



and out of the aforesaid three persons, one died whereas remaining two injured did not support the prosecution case in course of trial. Furthermore, we find that PW-7 supported the prosecution case in course of trial. Learned trial court noted several improvements in his deposition and doubted the credibility of the aforesaid witnesses. We do not find any ground to disturb the findings of learned trial court in respect of PW-7. We do agree with the submissions of learned counsel appearing for respondent no. 2 to 10 that the learned trial court has passed a well discussed judgment which does not need any interference by this court and therefore, in our view, this appeal can be dismissed on admission stage itself.

10. Accordingly, this appeal stands dismissed on admission stage itself and the impugned judgment of acquittal is, hereby, confirmed.

(Hemant Kumar Srivastava, J)

Shahid/-

(Rajendra Kumar Mishra, J)

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