

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1339 of 2018

Arising Out of PS. Case No.-4749 Year-2012 Thana- PURNIA COMPLAINT CASE District-
Purnia

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Tasmina Khatoon @ Tasbina, wife of Late Aftab Alam, Resident of village
Bhag Tahir, P.S. Amour, District – Purnea.

... .. Appellant

Versus

1. The State of Bihar,
 2. Abdul Gaffar, son of Late Iltaf,
 3. Md. Mohail, son of Abdul Gaffar,
 4. Md. Sohail, Son of Abdul Gaffar,
 5. Bibi Rojaana, daughter of Abdul Gaffar,
 6. Bibi Kekani, daughter of Abdul Gaffar,
 7. Bibi Sahara, wife of Abdul Gaffar,
 8. Mahjabi, wife of Kutub Ali,
 9. Kutub Ali, son of Late Abdul,
 10. Bibi Shahjabi, wife of Late Aftab Alam,
- All are resident of village-Bhag Tahir, Haripur, P.S. Amour, District –
Purnea.

... .. Respondents

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Appearance :

For the Appellant	:	Mr. Pankaj Kumar Sinha, Advocate, Mr. Kamal Kishore Jha Mr. Raunak Kumar Singh Pankaj, Advocate
For the Respondents	:	Ms. Shashi Bala Verma, A.P.P.

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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)**

2 27-11-2018 Heard learned counsel for the appellant as well as

learned Addl. Public Prosecutor for the State on the point of

admission.

The appellant has challenged the Judgment of
acquittal dated 18.09.2018 passed by learned Sessions Judge,
Purnea in Sessions Trial No. 81 of 2016.



Learned counsel for the appellant submits that the learned trial Court has not, properly, appreciated the evidences adduced on behalf of the prosecution and, accordingly, committed error in acquitting the respondent Nos. 2 to 10. Learned counsel for the appellant, further, submits that the mother of the deceased had seen the respondent Nos. 2 to 10 assaulting the deceased and, subsequently, the dead body of deceased was buried. He further submits that the mother of the deceased as well as appellant approached the Police, but Police did not institute any case and, subsequently, the appellant filed compliant case, which was sent to Police station under Section 156(3) of Cr.P.C. for institution of the F.I.R. He further submits that, moreover, Police submitted Final Form against which protest petition was filed, which was treated as complaint case.

Learned counsel for the appellant, further, submits that in course of trial, the mother of deceased as well as some other witnesses claimed themselves to be eye-witness of the occurrence, but the learned trial Court disbelieved the testimonies of the aforesaid witnesses on flimsy grounds.

On the other hand, learned Addl. Public Prosecutor for the State supported the impugned Judgment of acquittal arguing that the learned trial Court has properly appreciated the prosecution evidences and, moreover, there is no perversity into



the impugned Judgment of acquittal.

Having heard the contentions of the parties, we went through the record. We find that the learned trial Court well discussed the evidences available on the record and disbelieved the claim of the prosecution witnesses on several grounds. The learned trial Court also doubted the prosecution case on the ground that the deceased was said to be killed and buried in presence of his mother, but his mother (P.W.1) did not raise any protest, rather, allowed the respondent Nos. 2 to 10 to commit the aforesaid occurrence. Moreover, it is well settled principle of law that if two views are possible, the view adopted by the trial Court shall prevail unless the aforesaid view is not perverse. In the present case, we do not find any perversity into the view adopted by the learned trial Court and, therefore, we do not think it proper to interfere into the impugned Judgment of acquittal. Accordingly, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

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