

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.467 of 2018

Arising Out of PS. Case No.-132 Year-1999 Thana- CHANPATIA District- West Champaran

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{Against the Judgment of acquittal dated 31.01.2018 passed in Sessions Trial No.524 of 2002 by the learned Additional Sessions Judge-VI, Bettiah, West Champaran}.

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Vinod Arya, son of Late Gauri Shankar Prasad Arya, resident of village- Chanpatiya Bazar,P.S. Chanpatiya, District-West Champaran.

... .. Informant-Appellant.

Versus

1. The State of Bihar.
2. Bashisth Pandey, son of Babu Sahab Pandey, resident of village-Harsari, P.S. Shikarpur, District-West Champaran.
3. K.P. Sinha alias Munna Singh, son of Bijli Singh, resident of village-Hariwatika, P.S. Mufassil Bettiah, District-West Champaran.
4. Satish Dubey, son of Indrajeet Dubey, resident of village-Harsari, P.S. Shikarpur, District-West Champaran.
5. Guddu Choubey, son of Prabhu Nath Choubey, resident of village-Musharawa, P.S. Sathi, District-West Champaran.
6. Bablu Srivastava alias Rakesh Kumar Verma, son of Vijendra Kumar Verma, resident of village-Gawchari, P.S.Balthar,District-West Champaran.
7. Pankaj Barnwal, son of Kanhaiya Prasad, resident of village-Basantpur, P.S. Sathi, District-West Champaran.

... .. Respondents.

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with

Govt. Appeal (DB) No. 13 of 2018

Arising Out of PS. Case No.-132 Year-1999 Thana- CHANPATIA District- West Champaran

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The State of Bihar through the District Magistrate, West Champaran, Bettiah.

... .. Appellant.

Versus

1. Bashisht Pandey, son of Babu Saheb Pandey, resident of village-Harsari, P.S. Shikarpur, District-West Champaran.
2. K.P. Sinha alias Munna Singh, son of Bijali Prasad Singh, resident of village-Haribatika, P.S. Bettiah, District-West Champaran.
3. Pankaj Barnwal, son of Kanhaiya Prasad, resident of Basantpur, P.S. Sathi, District-West Champaran.
4. Satish Dubey, son of Indrajeet Dubey, resident of village-Harsar, P.S. Shikarpur, District-West Champaran.
5. Guddu Chaubey, son of Prabhunath Chaubey, resident of village-Mushakharwa, P.S. Sathi, District-West Champaran.



6. Babloo Shrivastava, son of Bijendra Kumar Verma, resident of village-Gauchari, P.S. Balthar, District-West Champaran.

... .. Respondents.

Appearance :

(In Criminal Appeal (DB) No. 467 of 2018):

For the Appellant : Mr. Dinu Kumar, Advocate.
For the Respondent Nos.2 to 7 : Mr. P.K. Shahi, Senior Advocate.
Mr. Ansul, Advocate.

(In Govt. Appeal (DB) No. 13 of 2018):

For the State : Mr. Ajay Mishra, A.P.P.
For the Respondent Nos.2 to 6 : Mr. Ansul, Advocate.

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

Both the above stated appeals have been preferred against the Judgment of acquittal dated 31.01.2018 passed in Sessions Trial No.524 of 2002, arising out of Chanpatiya P.S. Case No.132 of 1999, by which and whereunder the learned Additional Sessions Judge-VI, Bettiah, West Champaran, acquitted the respondent nos.2 to 7 of the charges framed against them for the offences punishable under Sections 120-B, 302/34, 386/34 of the Indian Penal Code and Sections 4 and 5 of the Explosive Substance Act.

2. The respondent nos.2 to 7 were put on trial in the above stated Sessions Trial No.524 of 2002 and, in course of



trial, the prosecution examined its witnesses and also got exhibited some documentary evidence. The learned trial court after evaluating the evidences adduced on behalf of the prosecution passed the impugned Judgment of acquittal against which the Government has preferred Government Appeal (DB) No.13 of 2018, whereas the informant has preferred Criminal Appeal (DB) No.467 of 2018.

3. In Criminal Appeal (DB) No.467 of 2018, the notices were issued to the respondent nos.2 to 7, who appeared by filing power in favour of their learned counsel and so far as the Government Appeal (DB) No.13 of 2018 is concerned, on the prayer of the learned Additional Public Prosecutor, the aforesaid Government Appeal (DB) No.13 of 2018 was ordered to be tagged with Criminal Appeal (DB) No.467 of 2018 and, accordingly, both the aforesaid appeals are taken for hearing on the point of admission.

4. During the pendency of Criminal Appeal (DB) No.467 of 2018, an Interlocutory Application bearing I.A. No.3151 of 2018 was filed on behalf of the appellant, praying therein to obtain opinion of the expert on Annexure/Ext.-3, which is said to be initial signature of the respondent no.4.

5. I.A. No.1256 of 2018 has been filed under



Section 378(3) of the Code of Criminal Procedure, praying therein to grant leave to the appellant to pursue Criminal Appeal (DB) No.467 of 2018.

Since the appellant happens to be the son of the deceased and the informant of the above stated Chanpatiya P.S. Case No.132 of 1999, accordingly, he is permitted to pursue Criminal Appeal (DB) No.467 of 2018 and, accordingly, I.A. No.1256 of 2018 stands disposed of.

6. Heard learned counsel appearing for the appellant assisted by the learned Additional Public Prosecutor appearing in Government Appeal (DB) No.13 of 2018 and also heard Mr. P.K. Shahi, learned Senior counsel appearing for the respondent nos.2 to 7 on the point of admission as well as I.A. No.3151 of 2018.

7. Learned counsel Sri Dinu Kumar, appearing in Criminal Appeal (DB) No.467 of 2018 assailed the impugned Judgment of acquittal, referring paragraphs-11 and 13 of the impugned Judgment and argued that, in course of trial, the initial signature of the respondent no.4 was proved and the prosecution successfully proved this fact that the respondent no.4 had written a letter demanding ransom and had also made call of ransom, prior to the alleged occurrence and when the



aforesaid demand of ransom could not be fulfilled, the respondent no.4 and other respondents committed the alleged crime. Learned counsel Sri Kumar further submitted that from very inception it was the case of the prosecution that the alleged occurrence took place due to non-fulfillment of the ransom demand and, in course of investigation, the appellant produced a letter written by the respondent no.4 asking for ransom and the aforesaid document was rejected by the learned trial court only on the ground that the handwriting expert did not examine the aforesaid initial signature of the respondent no.4. He further submitted that even if this Court comes at this conclusion that the non-examination of the expert was fatal to the prosecution case, then also, this Court being the appellate court has got ample power to take the additional evidence by examining the handwriting expert and that is the reason, the appellant has filed I.A. No.3151 of 2018.

8. Learned Additional Public Prosecutor Sri Ajay Mishra seconded the submission of Sri Dinu Kumar but added that the learned trial court has not properly appreciated the evidence, available on record, as a result whereof, the learned trial court came to wrong conclusion.

9. On the other hand, learned Senior counsel Sri



P.K. Shahi, appearing for the respondent nos.2 to 7 in Criminal Appeal (DB) No.467 of 2018 supports the impugned Judgment of acquittal, submitting that the learned trial court has well discussed the evidences, available on the record and passed a well thought Judgment and, therefore, there is no need for this appellate court to interfere into the impugned Judgment of acquittal. Learned Senior counsel Sri Shahi refers paragraphs- 15, 16 and 18 of the impugned Judgment and submits that the aforesaid paragraphs of the impugned Judgment make the entire picture clear and the aforesaid paragraphs go to show that the learned trial court discussed each and every evidence, available before the trial court. He further submits that, no doubt, Section 391 of the Code of Criminal Procedure gives power to the appellate court to take additional evidence but that power cannot be exercised freely to fulfill the lacuna of the prosecution case. He submits that the learned trial court has based his finding on sound reasons and unless the reasoning of the trial court is perverted, the finding of the learned trial court cannot be overturned only on this ground that another view is also possible.

10. Having heard the rival contentions of all the parties, we went through the record along with the Lower Court



Records.

11. It is an admitted position that the appellant lodged Chanpatiya P.S. Case No.132 of 1999 against unknown persons. Although the appellant claimed in his fardbeyan that the occurrence took place on account of non-fulfillment of the ransom demand but in his fardbeyan, he has, nowhere, stated about the involvement of the respondent nos.2 to 7, nor disclosed that prior to the alleged crime, a threatening letter as well as threatening call was given by the respondent no.4.

12. It is informed on behalf of the respondent nos.2 to 7 that even in course of investigation, when the statement of the appellant was recorded under Section 161 of the Code of Criminal Procedure, the informant did not disclose the factum of telephonic call as well as threatening letter.

13. In the aforesaid circumstance, it is obvious that the fact of giving threatening letter as well as telephonic call is subsequent development in course of trial. However, the learned trial court considered the aforesaid fact in his impugned Judgment. Furthermore, the informant in his examination accepted that he had no any other proof to show that Ext.3 (the signature) was of P.W.4. The learned trial court rejected the Ext.3 on the ground that the prosecution did not take any step to



get examined Ext.3, with an admitted initial signature of the respondent no.4 by an expert and, furthermore, the learned trial court expressed his inability to believe upon the prosecution case on several other grounds.

14. In Criminal Jurisprudence, the innocence of an accused is always presumed before his conviction and the aforesaid presumption becomes more stronger after acquittal.

15. Therefore, in view of the aforesaid facts and circumstances as well as submissions of the parties, we do not think it proper to interfere into the impugned Judgment of acquittal and, accordingly, both the above stated appeals stand dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

**Pradeep
Srivastava/-**

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.11.2018.
Transmission Date	26.11.2018.

