

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1334 of 2017

Arising Out of PS. Case No.-5 Year-1995 Thana- NATHNAGAR District- Bhagalpur

Sikander Rajak, Son of Late Vishnudeo Rajak, Resident of Village-
Ramchandarpur, Navtoliya, Police Station- Nathnagar, District- Bhagalpur.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Mojwa Mian @ Mojamil @ Mojamil Mian, Son of Late Md. Sajjad Mian,
3. Ali Imam, Son of Late Md. Sajjad Mian,
Both residents of Village- Champanagar, Police Station- Nathnagar, in the
district of Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Sri Akhileshwar Prasad Singh, Sr. Advocate Sri Bimal Kumar
For the Respondent/s	:	Sri Satya Narayan Prasad , APP

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

5 08-01-2018 Heard Sri Akhileshwar Prasad Singh, learned senior
counsel, assisted by Sri Bimal Kumar No. 2, learned counsel
for the appellant and Sri Satya Narayan Prasad, learned
Additional Public Prosecutor.

The present Appeal has been preferred under Section 372
of the Code of Criminal Procedure, 1973 (hereinafter referred
to as “Cr.P.C.”) against the judgment of acquittal of respondent
no. 2 and 3. The respondent no. 2 and 3 were put on trial in
Sessions Trial No. 04 of 1997, in a case in which occurrence
had taken place in the year 1995 vide Nathnagar P.S. Case No.



05 of 1995. By the said judgment the learned Additional Sessions Judge IV, Bhagalpur (hereinafter referred to as the “trial judge”) has acquitted the two private respondents from charge under Section 307/ 34/452 and 380 of the Indian Penal Code, 1860 (hereinafter referred to as the “I.P.C.”). Along with Appeal the appellant (injured)/informant has also filed a petition for grant of leave under Section 378 (3) of the Cr.P.C. vide I.A. No. 2371 of 2017 and limitation petition i.e. I.A. No. 2370 of 2017. In filing Appeal delay of 563 days has occurred.

Initially, four accused persons were put on trial, however, during trial one accused died and another remained traceless, thereafter, his case was separated and finally, respondent no. 2 and 3 were tried and during the trial since the doctor who examined the injury died, he could not be examined and the investigating officer being traceless also was not examined, however, the injury report was marked, but with objection . Learned trial judge during evidence has noticed that there were old animosity between the informant and accused side and it has also been noticed by the trial judge that the informant of the present case was also convicted in a case which was instituted by the wife of the accused. The learned trial judge considering the fact that no corroborative evidence so far



offence under Section 452, 380 / 34 of the I.P.C. was brought on record, has passed order of acquittal. Similarly, the learned trial judge has noticed that in absence of investigating officer, the accused persons were seriously prejudiced and considering such fact the learned trial judge has passed order of acquittal.

Sri Akhileshwar Prasad Singh, learned senior counsel for the appellant has argued that there were consistent evidences to show that in the case the appellant had received fire arm injury on his leg and even then, the learned trial judge has passed order of acquittal. He further submits that the evidence of P.W. 1 and P.W. 3 was not contradicted during the trial. It appears that only close relatives of the informant's side were examined. Total four witnesses were examined and one P.W. 4 was not cited in the charge -sheet as a witness but was examined as a formal witness. The learned trial judge has noticed that the Investigating Officer had not been examined. It is evident that though the doctor, who had examined the injury died during the trial, in normal course injury report was required to be proved by any other Medical Officer, which has not been done in the present case. Apart from this it is evident that occurrence had taken place long back in the year 1995 and trial continued in between 1995 and 2016. Even though judgment



of acquittal was passed on 30th March, 2016, after expiry of about 563 days the present Appeal has been filed with limitation petition. Of -course, learned senior counsel for the appellant tried to persuade the Court regarding the reasons for delay in filing the Appeal, we are not satisfied with the reasons assigned in the petition. Moreover, considering the fact that occurrence had taken place in the year 1995, the fact that investigating officer was not examined and also whatever reason may be, the doctor who examined the injury was not examined, after such a long time there would be no purpose in entertaining the Appeal after expiry of such a long period of limitation. Accordingly, it would be futile exercise to allow the limitation petition and as such, the limitation petition stands dismissed. Consequently, the Appeal as well as leave petition too are dismissed.

(Rakesh Kumar, J)

(Arvind Srivastava, J)

praful/-

U		T	
---	--	---	--

