

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.928 of 2012**

Arising Out of PS. Case No.-122 Year-2007 Thana- FATEHPUR District- Gaya

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Jagdish Prasad, S/O Khago Yadav, Resident of Village- Halimchak, P.S- Fatehpur, District- Gaya.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Parmeshwar Yadav, S/O Agnu Yadav, Resident of Village- Halimchak, P.S- Fatehpur, District- Gaya.
3. Bhuneshwar Yadav @ Karu Yadav, S/O Parmeshwar Yadav, Resident of Village- Halimchak, P.S- Fatehpur, District- Gaya.
4. Keshav Yadav S/O Parmeshwar Yadav, Resident of Village- Halimchak, P.S- Fatehpur, District- Gaya.
5. Manoj Yadav, S/O Parmeshwar Yadav, Resident of Village- Halimchak, P.S- Fatehpur, District- Gaya.

... .. Respondent/s

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**Appearance :**

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| For the Appellant/s  | : | Mr. R. K. Verma, Sr. Advocate.<br>Mr. Karuna Nath Sahay, Advocate. |
| For the Respondent/s | : | Mr. Ramashish, Advocate.                                           |
| For the State        | : | Ms. S. B. Verma (APP)                                              |

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

**Date : 01-11-2018**

1. Heard learned counsel for the appellant, learned Additional Public Prosecutor for the State as well as learned counsel appearing for the respondent nos. 2 to 5.

2. This appeal has been preferred against the Judgment of acquittal dated 09.05.2012 passed in Sessions Trial No. 206 of 2009 by the learned Additional Sessions Judge, F.T.C.-III, Gaya,



by which and whereunder, he acquitted the respondent nos. 2 to 5 under Section 232 of the Code of Criminal Procedure.

3. The submission on behalf of the appellant is that Annexure 1 to the memo of appeal goes to show that Officer-in-Charge of Fatehpur Police Station served a notice upon the appellant for evidence but in the aforesaid notice, the name of concerned court was wrongly mentioned as Additional Sessions Judge-III, Gaya whereas the Sessions Trial No. 206 of 2009 had already been transferred to the court of Fast Track Court No. III, Gaya and, therefore, the aforesaid notice was not legally served upon the appellant. He, further, submitted that as a matter of fact, the appellant as well as other witnesses did not get any information regarding pendency of the aforesaid case for evidence and that was the reason they could not appear before the learned trial court to depose in Sessions Trial No. 206 of 2006.

4. On the other hand, learned counsel appearing for the respondent nos. 2 to 5 points out that impugned Judgment goes to show that the impugned Judgment has been pronounced by the learned Additional Sessions Judge, F.T.C.-III, Gaya and Annexure 1 reveals that the name of concerned court in the aforesaid notice was correctly mentioned as Additional Sessions Judge-III, Gaya. He, further, submits that as a matter of fact, appellant and other prosecution witnesses were aware about the stage of Sessions Trial No. 206 of 2009 but they intentionally did not appear before the trial court to depose in Sessions Trial No. 206 of 2009.



5. Having heard the contention of both the parties, we went through the record. We find that charge against the respondent nos. 2 to 5 was framed on 12.08.2009 and after that summons and other process were issued against the prosecution witnesses. Further, Annexure 1 to the memo of appeal itself goes to show that the appellant got notice about the pendency of Sessions Trial No. 206 of 2009 for evidence but in spite of that appellant as well as other prosecution witnesses did not appear before the trial court. However, only on the ground of some clerical error in notice, in our view, it cannot be presumed that the appellant as well as his witnesses had no knowledge of pendency of Sessions Trial No. 206 of 2009 and, therefore, in the aforesaid circumstance, we do not find any merit in this criminal appeal and, accordingly, this criminal appeal stands dismissed on admission stage.

**(Hemant Kumar Srivastava, J)**

**(Rajendra Kumar Mishra, J)**

Bhardwaj/-

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