

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 589 of 2018

Arising Out of PS. Case No.-512 Year-2015 Thana- Buxar District- Buxar

Urmila Mehta, Wife of Late Prem Prakash Sinha, Resident of Village-
Sohanipatti, P.S.- Buxar (T), District- Buxar.

... .. Appellant

Versus

1. Vivek Kumar @ Sunny Kumar Srivastava, Son of Sujit Srivastava.
2. Prakash Kumar Srivastava @ Monu, Son of Sujit Srivastava.
3. Gopal @ Shalu Srivastava, Son of Sujit Srivastava
4. Sujit Srivastava, son of Rameshwar Prasad Srivastava,
All residents of Village- Sohanipatti, P.S. Buxar (T), District- Buxar.
5. The State of Bihar.

... .. Respondents

Appearance :

For the Appellant/Informant	:	Sri S.N.P. Sinha, Sr.Adv. Miss Rashmi Bharti, Adv.
For the State	:	Sri Ajay Mishra, A.P.P.
For the Respondent No. 1 to 4	:	Miss Mayuri, Adv.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

6. 10-12-2018 Heard Sri S.N.P.Sinha, learned senior counsel assisted by Miss Rashmi Bharti, learned counsel for the appellant/informant, Sri Ajay Mishra, learned Addl. Public Prosecutor as well as Miss Mayuri, learned counsel appearing on behalf of private respondents i.e. respondent no. 1 to 4, who were tried together and acquitted by the impugned judgment.

The present appeal has been preferred under Section 372 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) by the appellant/informant against the judgment of acquittal dated 31-03-2018 passed in Sessions Trial No. 115 of 2016 {arising out of Buxar (T) P.S. Case No. 512 of 2015}. By



the said judgment, aforesaid four respondents have been acquitted from the charge under Section 302 & other allied sections of the Indian Penal Code.

Learned counsel for the appellant/informant tried to persuade the Court that learned Trial Judge has incorrectly passed the judgment of acquittal ignoring the evidence of eye-witness, who was none else but informant/wife of the deceased. It has been argued that while the informant (appellant) with her husband (deceased) and son were moving, they were intercepted by aforesaid four respondents and firing was made, which hit the husband of the informant. Thereafter, the private respondents chased the son of the informant (appellant) and one another firing was made. Anyhow, the son of the informant saved himself by concealing him in a nearby *masjid*. According to learned counsel for the appellant (informant), since it was specific case of ocular evidence, the learned Trial Judge was required to pass judgment of conviction and sentence instead of judgment of acquittal.

Learned Addl. Public Prosecutor as well as Miss Mayuri, learned counsel for the private respondents have argued that there is no apparent perversity in the judgment of acquittal. It has been argued by learned counsel for the private



respondents that presence of informant, who has claimed to be eye-witness to the occurrence, has come into cloud of doubt due to evidence of two independent witnesses i.e. P.W.1 and P.W.3. Miss Mayuri, learned counsel for the private respondents has argued that the husband of the informant was given shot of firing inside a bakery factory, where P.W.1 and P.W.3 were working. It is evidence of those witnesses i.e. P.W.1 and P.W.3 that they heard the sound of firing, thereafter, they noticed that injured had fallen, number of persons arrived and subsequently, family members of the deceased also arrived. It has been argued that those prosecution witnesses i.e. P.W.1 and P.W.3, though in categorical term had questioned the presence of the informant at the place of occurrence, the prosecution did not declare them as hostile. In such situation, the learned Trial Judge has rightly passed the judgment of acquittal, which requires no interference.

Besides hearing, we have also examined the material on record. Alongwith the present appeal on behalf of the appellant (informant), an interlocutory application, vide I.A. No. 1514 of 2018 was filed under Section 378(3) of the Cr.P.C. for granting leave to appeal.

In this case, a counter affidavit has also been filed on



behalf of the private respondents. On cursorily examining the evidence on record, it appears that though, informant has claimed that at the time of occurrence two firing was shot, the witnesses have asserted regarding hearing of only one sound of firing. P.W.3 is very much specific that at the time, when after getting fire-arm injury, the injured fell down, number of other persons assembled there and only thereafter, family members of deceased had arrived. This creates serious doubt regarding presence of the family member i.e. informant of the present case at the place of occurrence. Moreover, the investigating officer had also found only one fired cartridge.

After going through the impugned judgment, we do not find any perversity warranting interference. Accordingly, there is no need to grant leave.

The leave petition i.e. I.A. No. 1514 of 2018 stands dismissed. Consequently, the appeal too is dismissed.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

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