

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.889 of 2017

Arising Out of PS. Case No.-142 Year-2003 Thana- SAHEBPUR KAMAL District-
Begusarai

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Umesh Kumar, Son of Shri Lal Mahto, R/o Village- Chauki, P.S.- Sahebpur
Kamal, District- Begusarai.

... .. Appellant/s

Versus

1. The State of Bihar
 2. Ajay Kumar, Son of Kamleshwari Mahto,
 3. Pawan Kumar, Son of Bishwanand Prasad,
 4. Pankaj Kumar, Son of Bishwanand Prasad,
 5. Niraj Kumar, Son of Bishwanand Prasad,
 6. Chhatanki Mahton, Son of Rambali Mahto,
 7. Ranjeet Mahton, Son of Nado Mahto,
 8. Ram Ratan Mahton, Son of Kamleshwari Mahto,
- All R/o Village- Chauki, P.S.- Sahebpur Kamal, District- Begusarai.

... .. Respondent/s

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Appearance :

For the Appellant/s : Sri Rakesh Kumar, Advocate
Sri Chandan Kumar Kashyap, Advocate
For the Respondent/s : Sri Abhimanyu Sharma, APP

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

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

7 10-01-2018 Heard Sri Rakesh Kumar, learned counsel, assisted by

Sri Chandan Kumar Kashyap, learned counsel for the

appellant and learned Additional Public Prosecutor.

The present Appeal has been preferred by the victim
/informant under Section 372 of the Code of Criminal
Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”)
against judgment of acquittal dated 26.05.2017 passed by



Shri Piyush Kamal Dixit, learned Additional Sessions Judge - I, Begusarai (hereinafter referred to as the “trial judge”) in Sessions Trial No. 723 of 2005 {arising out of S. Kamal P.S. Case No. 142 of 2003} . By the said judgment the learned trial judge has acquitted respondent no. 2 to 8 from charge under Section 307, 379 read with Section 149 of the Indian Penal Code, 1860 (hereinafter referred to as the “I.P.C.”) . Along with the memo of Appeal the appellant has also filed an interlocutory application vide I.A. No. 2153 of 2017 under Section 378(3) of the Cr.P.C. for grant of leave. Learned counsel for the appellant tried to persuade the court that the learned trial judge has passed judgment of acquittal ignoring the specific ocular evidence. He submits that in the case altogether four witnesses were examined including the informant /injured and they have supported the prosecution case, but the learned trial judge only on trivial issue has passed judgment of acquittal.

Besides hearing learned counsel for the parties, we have perused the materials available on record particularly the judgment impugned. On going through the same it is evident that the private respondents were own *pattidars* of



the appellant and in the case it was alleged that in odd hour in night at 2.00 P.M. the accused persons had entered into the house of the appellant. Firstly, they assaulted by fists and slaps and thereafter, one shot was fired from country made pistol which hit the thumb of the informant. He submits that it was a clear cut case of injury by fire arm, but the learned trial judge has passed judgment of acquittal. On examination of the judgment impugned, it further reveals that four witnesses who were examined on behalf of the prosecution were none else but father, mother and brother of the informant. Though it was alleged that firing was made in the night in a place which was densely populated, none of the independent witnesses had come forward to even whisper as to whether they heard any sound of firing or not. Apart from that in the case the the so- called doctor, who examined the injury was also not examined. In absence of any such material on record and after examining the evidences in detail the learned trial judge has passed judgment of acquittal assigning detailed reason. On examination of the same, we are satisfied that the learned trial judge has committed no error in passing



judgment of acquittal. Accordingly, there is no point to grant leave , and as such, leave petition i.e. I.A. No. 2153 of 2017 stands dismissed. Consequently, Appeal against acquittal too is dismissed.

(Rakesh Kumar, J)

(Arvind Srivastava, J)

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