

IN THE HIGH COURT OF JUDICATURE AT PATNA
Govt. Appeal (DB) No.21 of 2017

Arising Out of PS. Case No.-48 Year-1998 Thana- SIWAN MUFFASIL District- Siwan

The State of Bihar through the District Magistrate, Siwan District- Siwan.

... .. Appellant

Versus

1. Jagga Chaudhary, Son of Yamuna Chaudhary,
2. Gopal Chaudhary, Son of Ramesh Chandra Chaudhary.
3. Ashok Chaudhary, Son of Ramesh Chandra Chaudhary.

All are resident of village- Ramdeo Nagar Mahadeva, Police Station- Siwan
(Muffasil), District- Siwan.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Ajay Mishra
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

2 08-01-2018 Heard Sri Ajay Mishra, learned Addl. Public Prosecutor.

2. The present appeal has been preferred against the Judgment of acquittal dated 22.08.2017 passed in Sessions Case No.148 of 1999 arising out of Siwan (Muffasil) P.S. Case No.48 of 1998. By the said Judgment, learned 5th Addl. Sessions Judge, Siwan has acquitted three respondents from the charge under Section 302/34 of the Indian Penal Code.

3. Along with the appeal, the State has also filed a petition for grant of leave under Section 378(3) of the Code of Criminal Procedure vide I.A. No.2537 of 2017.

4. Learned counsel for the appellant submits that though



during trial there was ocular evidence, learned trial Judge has ignored the evidence primarily on the ground that during trial no source of identification was brought on record, whereas occurrence had taken place in the dark night. Learned trial Judge has also incorrectly noticed that though sound of cry was noticed by family members, none of the neighbours had noticed such cry and only on the aforesaid ground, learned trial Judge has passed order of acquittal. He further submits that the Investigating Officer as well as the doctor, who had conducted postmortem examination on the dead body of the deceased, have supported the prosecution case, even though the learned trial Judge in a cryptic manner has passed order of acquittal.

5. On perusal of the materials available on record, particularly the Judgment impugned, it is evident that occurrence had taken place in the dark night. Though it was claimed by the witnesses that after hearing cry, they reached at the place of occurrence and in the torch light they identified the accused persons in the dark night, during investigation neither any source of identification was taken note of nor any torch was produced during trial before the court below. The learned trial Judge has also correctly noticed that once the prosecution had claimed that relatives had heard cry and after hearing cry



they arrived at the place of occurrence, there was no reason for not hearing the cry of the injured by other persons of the locality, whose houses were situated near the place of occurrence. The learned trial Judge after discussing the entire evidence has rightly passed the Judgment of acquittal.

6. We do not find any apparent perversity in the Judgment impugned warranting interference. Accordingly, there is no ground to grant leave and, as such, leave petition i.e. I.A. No.2537 of 2017 filed under Section 378(3) of the Code of Criminal Procedure stands rejected. Consequently the appeal against acquittal too is dismissed.

(Rakesh Kumar, J)

(Arvind Srivastava, J)

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