

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1248 of 2017

Arising Out of PS. Case No.-492 Year-2011 Thana- SITAMARHI District- Sitamarhi

Arvind Kumar Singh, son of Late Lakshmi Singh, Resident of village -
Rampur Parori, P.S. Sitamarhi, District-Sitamarhi.

... .. Appellant

Versus

1. The State of Bihar,
2. Ravindra Singh, son of Kushnandan Singh,
3. Prem Shanker Singh @ Shashinath Singh, Son of Lakhandeo Singh,
4. Tarun Singh @ Dhunna Singh, Son of Ravindra Singh,
5. Arun Singh, son of Late Ram Prabodh Singh,
6. Varun Singh, son of Late Ram Prabodh Singh,

All are resident of village-Rampur Parori, P.S. Sitamarhi, District-
Sitamarhi.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Amarnath Singh, Advocate Mr. Uday Kumar, Advocate
For the Respondent No.3	:	Mr. Talib Mustafa, Advocate
For the State	:	Mr. S.C. Mishra, APP

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

11 05-09-2018 Heard learned counsel appearing for appellant,

learned counsel for respondent Nos. 2 to 6 as well as learned

Addl. Public Prosecutor for the State on the point of admission

as well as on I.A. No. 2212 of 2017 filed under Section 378(3)

the Cr.P.C. praying therein to grant leave to prefer this appeal.

The appellant is injured of Sitamarhi P.S. Case No.



492 of 2011 and is aggrieved by the impugned Judgment of acquittal dated 08.08.2017 passed by the learned Fast Track Court No. II, Sitamarhi in Sessions Trial No. 108 of 2012 / 264 of 2017 by which and whereunder, the learned Fast Track Court acquitted the private respondent Nos. 2 to 6 from the charges framed under Sections 307, 307/115, 326 and 379 of the Indian Penal Code and Section 27 of the Arms Act finding several infirmities in the prosecution case.

Learned counsel appearing for appellant assailed the impugned Judgment of acquittal arguing that the appellant was examined as P.W.4 before the trial Court and he, specifically, stated the name of private respondent Nos. 2 to 6 and apart from this P.W.2 also claimed himself to be eye-witness of the alleged occurrence and stated about the involvement of private respondent Nos. 2 to 6 in the alleged crime, but in spite of that the learned trial Court doubted about the prosecution case and passed the impugned Judgment of acquittal. He, further, submits that the statements of P.W.4 and P.W.2 are corroborated with the injury reports, which has been brought on record in accordance with law.

On the other hand, learned counsel appearing for private respondent Nos. 2 to 6 refuted the above stated



submissions and submitted that P.W.4 (Appellant) admitted in his evidence that he regained his consciousness at Rajeshwar Hospital, Patna and at that time, his family members were present there, but he did not disclose anything to his family members nor made any statement before the Police. He, further, submitted that, subsequently, P.W.4 was shifted to P.M.C.H. Patna, where he gave his fardbeyan before Officer-In-Charge, Pirbahor Police Station, but the aforesaid statement of the appellant has not been brought on record by the prosecution. He further submitted that so far as P.W.2 is concerned, in his statement, P.W.2 stated that having seen the occurrence, he gave information to a female member of family of the appellant on the same night, but P.W.2 failed to disclose the name of aforesaid female. He, further, submitted that, however, P.W.2 did not take pain to give information to the Police or to informant of the present case and moreover, the Investigating Officer has admitted in his evidence that P.W.2 had not claimed himself to be eye-witness of the alleged occurrence before him and, therefore, it is obvious that P.W.2, for the first time, claimed himself to be eye-witness on 04.08.2011 and the aforesaid delay was noticed by the trial Court while writing the Judgment of acquittal and, therefore, there is no scope to interfere into the



impugned Judgment of acquittal.

Having heard the contentions of both parties, we went through the impugned Judgment and lower Court's record. The Sitamarhi P.S. Case No. 492 of 2011 was lodged by Lakshmi Singh, who happens to be the father of appellant. Admittedly, informant Lakshmi Singh was not an eye-witness of the alleged occurrence, even then, he claimed that F.I.R. named accused Ravindra Singh (Respondent No.2) committed the alleged occurrence. It is admitted position that informant had inimical term with the private respondent Nos. 2 to 6. Moreover, we find that P.W.2 claimed himself to be eye-witness of the alleged occurrence, but P.W.7 the Investigating Officer at para 14 of his cross-examination admitted that P.W.2 had not claimed himself to be eye-witness of the alleged occurrence before him.

So far as P.W.4 is concerned, he has admitted at para 4 of his Examination-in-Chief that he regained his consciousness at Rajeshwar Nursing Home, Patna and when he regained his consciousness at Rajeshwar Nursing Home, his family members were present, as evident from perusal of para-7 of his deposition. Furthermore, the aforesaid paragraph of his deposition goes to show that P.W.4 had admitted that he had not made any statement while he was admitted at Rajeshwar



Hospital. Therefore, in the aforesaid circumstance, we find substance in the contention of learned counsel of private respondent Nos. 2 to 6. Moreover, it is admitted by P.W.4 that his statement was recorded by Police of Pirbahor, but admittedly, the aforesaid statement of P.W.4 has not been brought on record, in evidence. Therefore, in our view, the learned trial Court rightly passed the Judgment of acquittal and there is no need to interfere into the finding recorded by learned court below while passing the impugned Judgment of acquittal.

On the basis of the aforesaid discussions, this criminal appeal along with I.A. No. 2212 of 2017 stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

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