

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1451 of 2017

Arising Out of PS.Case No. -268 Year- 2009 Thana -MOHANIA District- BHABHUA (KAIMUR)

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Rajkeshwar Mishra @ Raj Kishor @ Rajeshwar Mishra, Son of Ramadhar Mishra,
Resident of Village- Atarwaliya, Police Station- Mohania, District- Kaimur.

.... Appellant/s

Versus

1. The State of Bihar.
2. Rakesh Tiwari,
3. Rajesh Lalit Tiwari @ Nekhru Tiwary, SI No.2 and 3 are sons of Durga Tiwari,
Resident of Village- Atarwaliya, Police Station- Mohania, District- Kaimur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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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: 31-01-2018

1. Heard learned counsel for the appellant and Mr.

Shivesh Chandra Mishra, learned Additional Public Prosecutor for the
Sate, on the point of admission as well as on Interlocutory Application
No. 2763 of 2017.

2. The appellant, the father of the deceased, has preferred
this appeal against the Judgment of acquittal dated 01.09.2017 passed
in Sessions Trial No. 147 of 2011 arising out of Mohania P.S. Case
no. 268 of 2009, by which, the learned Fast Track Court - I, Kaimur at
Bhabua, acquitted the respondent nos. 2 and 3 of the charge under



Section 302/34 of the Indian Penal Code.

3. Learned counsel appearing for the appellant submits that in course of trial, the prosecution witnesses stated that they had seen the respondent nos. 2 and 3 running from the place of occurrence and moreover, the learned court below failed to consider the testimony of P.W.5, who was present inside the house at the time of alleged occurrence and stated before the trial court that it were respondent nos. 2 and 3, who committed the murder of the deceased.

4. On the other hand, learned Additional Public Prosecutor supports the impugned Judgment arguing that the learned trial Judge has passed the well discussed Judgment and there is no scope to interfere into the findings of the learned trial court.

5. Having heard the contentions of both the parties, we went through the impugned Judgment and find that the First Information Report was lodged against unknown person. We also find that the First Information Report was lodged by the uncle of the deceased, who claimed to be present in the house at the time of alleged occurrence. The other family members of the deceased also claimed to be present in the house at the time of alleged occurrence as well as at the time of recording the Fradbeyan of uncle of the deceased, but it is surprising enough that if the family members of the deceased including P.W.5 had seen the respondent nos. 2 and 3



committing the alleged crime or running from the place of occurrence then what prevented them to disclose the name of respondent nos. 2 and 3 to uncle of the deceased before recording his Fradbeyan. Moreover, the impugned Judgment reflects that the learned trial Judge has applied his mind judiciously and discussed all pros and cons of the case and, therefore, we do not find any ground to interfere into the impugned Judgment.

6. In the aforesaid circumstance, Interlocutory Application No. 2763 of 2017 as well this criminal appeal stand dismissed on admission stage.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	
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