

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.35 of 2018

In

SLA No.56 of 2017

Arising Out of PS. Case No.-22 Year-2007 Thana- BHAGWANPUR District- Begusarai

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{Against the Judgment of acquittal dated 14.07.2017 passed by the learned Additional Sessions Judge-VII, Begusarai, in Sessions Trial No.536 of 2011}.

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Ram Badan Chaudhary, son of Late Ram Swaroop Chaudhary, resident of village-Mamanpur, Police Station-Bhagwanpur, District-Begusarai.

... .. Appellant.

Versus

1. The State of Bihar.
2. Sitaram Chaudhary, son of Gaya Chaudhary.
3. Umesh Chaudhary, son of Gaya Chaudhary.
4. Mahesh Chaudhary, son of Gaya Chaudhary.
5. Ramesh Chaudhary, son of Gaya Chaudhary.
6. Gaya Chaudhary, son of Late Ragho Chaudhary.

All are resident of village-Mamanpur, Police Station-Bhagwanpur, District-Begusarai.

... .. Respondents.

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Appearance :

For the Appellant : Mr. Satish Kumar Singh, Advocate.
For the State : Mr. Abhimanyu Sharma, A.P.P.

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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 : 20-11-2018

I.A. No.2408 of 2018 has been filed under Section 378(3) of the Code of Criminal Procedure, praying therein for grant of leave to pursue this appeal .

2. The aforesaid I.A. No.2408 of 2018 is allowed



on the grounds mentioned in the petition itself.

3. Heard learned counsel appearing for the appellant as well as the learned Additional Public Prosecutor for the State on the point of admission and, in our view, this criminal appeal can be disposed of on the admission stage itself.

4. The appellant is informant and injured in Bhagwanpur P.S. Case No.22 of 2007, which was registered under Section 307 and other minor Sections of the Indian Penal Code as well as Section 27 of the Arms Act against the respondent nos.2 to 6.

5. The respondent nos.2 to 6 faced trial in connection with the above stated Bhagwanpur P.S. Case No.22 of 2007 and, in course of trial, the prosecution examined, altogether, 4 witnesses. However, the impugned Judgment goes to show that the learned trial court noticed that the prosecution could not succeed to bring injury report on record and also failed to examine doctor and Investigating Officer. The learned trial court also noticed that the statement of injured (P.W.4) was not corroborated by any other prosecution witnesses and taking note of the aforesaid facts, the learned trial court passed the impugned Judgment of acquittal dated 14.07.2017 passed in Sessions Trial No.536 of 2011.



6. The appellant being aggrieved by the aforesaid impugned Judgment of acquittal dated 14.07.2017 passed by the learned Additional Sessions Judge-VII, Begusarai, in Sessions Trial No.536 of 2011 has preferred this criminal appeal.

7. Learned counsel appearing for the appellant submits that the learned trial court failed to take initiative to procure the attendance of the doctor and Investigating Officer and in absence of the evidence of doctor and Investigating Officer, acquitted the respondent nos.2 to 6, which has caused serious prejudiced to the appellant because the appellant was not responsible for non-examination of Investigating Officer and doctor but we are not, at all, convinced with the aforesaid submissions of the learned counsel of the appellant.

8. The impugned Judgment goes to show that sufficient opportunity was given to the prosecution to examine its witnesses but the prosecution failed to examine the Investigating Officer and doctor. Furthermore, the impugned Judgment goes to show that the learned trial court even allowed the petition filed under Section 311 of the Code of Criminal Procedure and permitted the prosecution to examine the Investigating Officer, doctor and two other witnesses but the prosecution could not succeed to avail the aforesaid opportunity,



as a result whereof the learned trial court closed the prosecution evidence. Therefore, in the aforesaid fact, it cannot be said that the prosecution did not get sufficient opportunity to examine its witnesses.

9. On the basis of the aforesaid discussions, we are of the view that there is no need to interfere into the impugned Judgment of acquittal and, accordingly, this criminal appeal stands dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

**Pradeep
Srivastava/-**

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.11.2018.
Transmission Date	26.11.2018.

