

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1035 of 2018

Arising Out of PS. Case No.-309 Year-2015 Thana- PURNEA SADAR District- Purnia

Md. Nasim Akhtar S/o Late Abdul Latif, R/o Vill.- Joka Alamganj, P.S.- Sadar
Purnea, District- Purnea.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Md. Sakirul S/o Anisur Rahman, R/o Vill.- Mirzapur, P.S.- Sadar, District- Purnea.
3. Manirul S/o Late Maizal, R/o Vill.- Joka Alamganj, P.S.- Sadar, District- Purnea.
4. Md. Babar S/o Late Humayu R/o Miya Bazar, P.S. - Sadar, District- Purnea.
5. Md. Saiful S/o Md. Babar, R/o Miya Bazar, P.S.- Sadar, District- Purnea.
6. Md. Ishtiyag S/o Hazrat, R/o Vill.- Joka Alamganj, P.S.- Sadar, District- Purnea.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur

Mr. Shashank Shekhar

For the Respondent/s : Mr. Ashwani Kumar Sinha

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA**

ORAL ORDER

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

5 18-12-2018 Heard learned counsel for the appellant as well as

learned Addl. Public Prosecutor for State on I.A. No. 3292 of

2018 as well as on the point of admission.

I.A. No. 3292 of 2018 has been filed on behalf of

appellant under Section 378(3) of Cr.P.C for grant of leave to

pursue this criminal appeal. In the present case, father of the

appellant has been killed and, therefore, he has right to file



appeal against the judgment of acquittal and accordingly, he is permitted to pursue this criminal appeal. In the aforesaid manner, IA No. 3292 of 2018 stands disposed.

This criminal appeal has been preferred against impugned judgment dated 10.07.2018 passed by learned 5th Addl. Sessions Judge, Purnea in Sessions Trial No. 562 of 2015/368 of 2016 by which and whereunder he acquitted the respondent nos. 2 to 7 whereas convicted some co-accused for the offences punishable under section 302 and other minor section of the IPC.

The respondent nos. 2 to 7 were put on trial along with convicted accused and they were charged for the offence punishable under section 302 read with section 149 of the IPC. The learned trial court, after considering the evidence available on the record, found that the respondent no. 2 had not assaulted the deceased nor had played any role in the alleged occurrence and the prosecution also failed to prove as to what weapons were being carried by respondent nos. 2 to 7 at the time of alleged occurrence and accordingly, learned trial court, vide para 24 of the impugned judgment, held that the respondent nos. 2 to 7 could not be convicted even for the offence punishable under section 302 read with section 149 of the IPC.



Learned counsel appearing for appellant submits that in course of trial the prosecution examined, altogether, ten prosecution witnesses and also got exhibited several documents and the learned trial court found all the prosecution witnesses trustworthy and relied upon their testimonies but even then the learned trial court acquitted respondent nos. 2 to 7 without any valid reason. He submitted that on the same set of evidence, learned trial court convicted the other accused.

On the other hand, learned Addl. Public Prosecutor supports the impugned judgment arguing that the learned trial court has passed a well discussed and well thought judgment and there is no need to interfere into impugned judgment. He, further, submits that this appeal is liable to be dismissed on admission stage itself.

Having heard the contentions of the parties, we went through the record. The prosecution witnesses claimed that it was convicted accused Md. Muslim who at the instigation of Md. Anisur Rahman gave Hasua blow on the neck of the deceased. It is also obvious from the depositions of prosecution witnesses that there was land dispute between the parties and furthermore, it is obvious that not a single witness claimed that the respondent nos. 2 to 7 had also taken part in assault of the



deceased. Although prosecution witnesses claimed that all the FIR named accused assaulted the injured persons but the aforesaid statement is not specific in respect of respondent nos. 2 to 7. In several decisions, it has already been set at rest by the Apex Court of this country that mere presence of a person over the place of occurrence is not sufficient to make a person an accused for the offence with the aid of section 149 of the IPC. In the present case, the learned trial court has well discussed the evidence of prosecution and, in our view, there is no need to interfere into the impugned judgment, particularly, in respect of the portion which relates to respondent nos. 2 to 7.

On the basis of aforesaid discussions, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

s.hassan/abhijeet

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