

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1164 of 2018

Arising Out of PS. Case No.-135 Year-2013 Thana- TRIVENIGANJ District- Supaul

Chhotelal Sharma, Son of Late Munar Sharma, Resident of Village- Baderwa,
Ward No 15, P.S.- Triveniganj, District- Supaul.

... .. Appellant

Versus

1. The State of Bihar.
2. Pintu Sharma, Son of Jago Sharma, Resident of Village- Baderwa, Ward No. 15, P.S.- Triveniganj, District- Supaul (accused person).

... .. Respondents

Appearance :

For the Appellant/s : Mr. Arun Kumar Jha, Adv.
For the State : Mr. Dr. Mayanand Jha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR

MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 03-12-2018

1. Heard learned counsel for the appellant as well as learned A.P.P. for the State on I.A. No. 3053 of 2018, which has been filed under Section 378(3) of the Cr.P.C. for grant of leave to file this criminal appeal and also heard on the point of admission.

2. I.A. No. 3053 of 2018 has been filed on behalf of Chhotelal Sharma, who happens to be appellant in the present appeal. The appellant is admittedly father of the victim boy and, therefore, he comes under the ambit of victim and has right to file this criminal appeal. Accordingly, I.A. No. 3053 of 2018 stands



allowed and the appellant is permitted to pursue this criminal appeal.

3. This criminal appeal has been preferred against the judgment of acquittal dated 07.08.2018 passed by learned Presiding Officer, F.T.C.-2, Supaul in Sessions Trial No. 214 of 2013 by which and whereunder he acquitted the respondent no. 2 of the charge framed against him under Section 364 of the I.P.C.

4. The appellant was examined before the trial court as PW-5. The appellant lodged Triveniganj P.S. Case No. 135 of 2013 against the respondent no. 2 claiming that while his son was returning from school, he was kidnapped by the respondent no. 2.

5. In course of trial, altogether, six witnesses were examined on behalf of the prosecution but only PW-1, namely Ranjit Kumar claimed to have seen the respondent no. 2 taking away the victim boy. The learned trial court doubted the testimony of PW-1 on the ground that PW-1 happens to be nephew of the appellant and failed to disclose the correct name of school of the victim. Furthermore, it would appear from perusal of the impugned judgment that learned court below doubted the prosecution story on this ground also that much prior to institution of Triveniganj P.S. Case No. 135 of 2013, the wife of respondent no. 2 had lodged rape case against the informant (PW-5) and in



that case the informant (PW-5) was remained in jail custody for near about eight months. The impugned judgment goes to show that learned trial court having taken the above stated circumstances into consideration passed the impugned judgment of acquittal.

6. Learned counsel appearing for the appellant submits that learned trial court wrongly disbelieved the statement of PW-1 because mere failing to disclose the correct name of school of the victim boy was not sufficient ground to disbelieve the claim of PW-1. He further submits that victim boy is still missing.

7. Having heard the contentions of both the parties, we went through the impugned judgment and in our view, this appeal can be disposed of on admission stage itself. As we have stated that except PW-1, none had seen the respondent no. 2 taking away the victim and it is only PW-1 who claimed to have seen the respondent no. 2 taking away the victim. It is an admitted position that PW-1 is own nephew of PW-5(informant) and much prior to filing of Triveniganj P.S. Case No. 135 of 2013, the wife of respondent no. 2 had lodged rape case against the PW-5 (informant). Moreover, it is settled principle of law that if two views are possible in a case, the view taken by the trial court shall prevail unless the view taken by the trial court is perverse or without consideration of evidence available on the record.



Therefore, in the aforesaid circumstance, we do not find any ground to interfere into the impugned judgment of acquittal. Accordingly, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

shahzad/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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