

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.650 of 2018

Arising Out of PS. Case No.-171 Year-2001 Thana- SAHPUR District- Bhojpur

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Angad Rai S/o Sita Ram Rai, R/o Vill.- Bahoranpur, P.S.- Shahpur in the District of Bhojpur.

... .. Appellant

Versus

1. The State of Bihar.
2. Atal Rai @ Atal Bihari Rai S/o Late Mukteshwar Rai, R/o Vill.- Bahoranpur, P.S.- Shahpur in the District of Bhojpur.
3. Shrikant Rai son of Late Ramudar Rai, resident of village-Bahoranpur, Police Station- Shahpur in the district of Bhojpur.

... .. Respondents

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Appearance :

For the Appellant/s : Mr. Prabhu Narayan Sharma, Adv.
For the State : Mr. Dilip Kumar Sinha, 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 : 18-12-2018

1. Heard learned counsel appearing for the appellant as well as learned counsel appearing for the private respondents on the point of admission as well as on I.A. No. 1632 of 2018. Also heard learned A.P.P. for the State on the above stated points.



2. I.A. No. 1632 of 2018 has been filed on behalf of the appellant Angad Rai under Section 378(3) of the Cr.P.C. praying therein to grant leave to him to pursue this criminal appeal.

3. The appellant happens to be victim and uncle of the deceased and, therefore, he has right to pursue this criminal appeal. Accordingly, I.A. No. 1632 of 2018 stands allowed and the appellant is permitted to pursue this criminal appeal.

4. This criminal appeal has been preferred against the judgment dated 26.03.2018 passed by learned 2nd Additional Sessions Judge, Bhojpur at Ara in Sessions Trial No. 003 of 2003 by which and whereunder he acquitted the private respondents no. 2 and 3 from the charges framed against them but convicted the co-accused Ramji Rai for the offence punishable under Section 302 of the I.P.C.

5. Shahpur P.S. Case No. 171 of 2001 was registered on the basis of ferdbeyan of the appellant who claimed in his ferdbeyan that on 21.12.2001 at about 3:30 PM while he was going to Diara, the private respondents and others assaulted him but anyhow he returned to his home where he heard some noise and due to fear he got hide himself in the house of one Raj Narayan Rai. However, he claimed that private respondents and other F.I.R. named accused being armed with deadly weapons



entered into his house and assaulted the women of the house but in the meantime, his nephew, namely, Abhimanyu Rai came there and seeing him convicted accused Ramji Rai shot fire on him as a result of which he having sustained firearm injury died then and there.

6. The private respondents along with convict Ramji Rai were put on trial and respondent no. 2 stood charged for the offences punishable under Sections 148 and 302 read with Section 149 of the I.P.C. and similarly, respondent no. 3 stood charged for the offences punishable under Sections 147 and 302 read with Section 149 of the I.P.C.

7. The prosecution examined, altogether, ten prosecution witnesses and got exhibited certain documents. The statements of respondents no. 2 and 3 were recorded under Section 313 of the Cr.P.C. and after perusing the evidences available on the record, the learned trial court acquitted the private respondents no. 2 and 3 on the ground that prosecution failed to prove that private respondents no. 2 and 3 had shared common object with convicted accused Ramji Rai.

8. Learned counsel appearing for the appellant assailed the impugned judgment arguing that almost all the material prosecution witnesses specifically stated that private respondents



no. 2 and 3 had also participated in the alleged crime and furthermore, the material prosecution witnesses stated that private respondents no. 2 and 3 were member of unlawful assembly and shared common object with main assailant but the learned trial court ignored the testimonies of the prosecution witnesses and wrongly acquitted the respondents no. 2 and 3.

9. On the other hand, learned counsel appearing for the private respondents no. 2 and 3 supports the finding of acquittal arguing that the learned trial court has rightly acquitted the respondents no. 2 and 3 as no specific overt act had been attributed against the respondents no. 2 and 3. He further submitted that there was nothing before the learned trial court to form an opinion that the respondents no. 2 and 3 had shared common object with convicted accused Ramji Rai. He submitted that the learned trial court after perusing and scrutinizing the evidences of the prosecution witnesses came to conclusion that the act of commission of murder of deceased was an individual act of convict Ramji Rai and that is the reason the learned trial court acquitted the respondents no. 2 and 3.

10. Having heard the contentions of both the parties, we went through the record and in our view, this criminal appeal can be disposed of on admission stage itself.



11. It is obvious from perusal of ferdbeyan of the informant that it was convict Ramji Rai who shot fire on the deceased and according to ferdbeyan of informant, at the time of alleged occurrence, the private respondents no. 2 and 3 and other accused were also present at the place of occurrence.

12. The informant has been examined before the trial court as prosecution witness no. 1. This witness claims that when the respondents no. 2 and 3 and other accused came at his house, he got himself hide in the house of one Raj Narayan Rai and he witnessed the entire occurrence through a window. This witness claims that the private respondents no. 2 and 3 and other accused entered into his house and assaulted the women. Further this witness claims that the private respondents no. 2 and 3 and other accused came out of the house and started taking away of his calf but in the meantime, deceased Abhimanyu Rai came there and made protest upon which Dadan Rai, Atal Bihari Rai (respondent no. 2) and Sri Bhagwan Rai instigated convict Ramji Rai to assault and after that Ramji Rai shot fire on the deceased. The statement of this witness goes to show that respondent no. 2 as well as Sribhagwan Rai and Dadan Rai have never asked the convict Ramji Rai to shoot the deceased rather they uttered the word “मारो ”. The word “ मारो ” has two meanings in English dictionary.



According to English dictionary, “मारो” means assault as well as “मारो” means kill but it is not clear from the testimony of PW-1 as to in which sense the respondent no. 2 and two others gave order to main assailant Ramji Rai. Moreover, if in a particular circumstance two views are possible, then the view which is favourable to accused shall be read in evidence. Therefore, the aforesaid fact clearly goes to show that private respondents no. 2 and 3 had not shared common object of killing the deceased Abhimanyu Rai with main assailant Ramji Rai.

13. PW-2 Smt. Phool Kumari Devi and PW-3 Mira Devi also claim themselves to be eye witness but the testimonies of aforesaid prosecution witnesses also go to show that private respondents no. 2 and 3 had not shared common object with main assailant Ramji Rai and the killing of the deceased Abhimanyu Rai was an individual act of convict Ramji Rai.

14. The perusal of impugned judgment of learned trial court goes to show that the learned trial court has discussed each and every aspect of the prosecution case and we find that the learned trial court has passed a well thought judgment in respect of private respondents no. 2 and 3. Therefore, in our view, there is no need to interfere into the impugned judgment, at least, in respect of private respondents no. 2 and 3.



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

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

shahzad/-rajeev

AFR/NAFR	N.A.F.R
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