

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.94 of 2019**

Arising Out of PS. Case No.-165 Year-2010 Thana- HUSSAINGANJ District- Siwan

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Ehteshamul Haque @ Estajul Haque Son of Ainul Haque Resident of Village-
Aranda, P.S.- Hussainganj (M.H. Nagar) District- Siwan , Bihar.

... .. Appellant/s

Versus

1. The State of Bihar
2. Tufail Ahmad Son of Late Akhtar Resident of Village-Aranda, P.S. M.H. Nagar, District- Siwan
3. Tazbul Nesha @ Talbun Nesha Wife of Tufail Ahmad Resident of Village-Aranda, P.S. M.H. Nagar, District- Siwan
4. Alimullah Son of Tufail Ahmad Resident of Village-Aranda, P.S. M.H. Nagar, District- Siwan
5. Anjum @ Sandal Daughter of Tufail Ahmad Resident of Village-Aranda, P.S. M.H. Nagar, District- Siwan
6. Matiullah Son of Tufail Ahmad Resident of Village-Aranda, P.S. M.H. Nagar, District- Siwan

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Prashant Kumar, Advocate Mr. Animesh Kumar, Advocate
For the Respondent/s	:	Mr. S.B.Verma(APP137) Mr. Ranjeet Kumar, Advocate Mr. Kundan Kumar, Advocate Mr. Ayush Kumar, Advocate

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

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH)

Date : 06-08-2019

Heard learned counsel for the appellant as well as
learned A.P.P for the State.

2. This Criminal Appeal has been preferred against
judgement of acquittal dated 03.12.2018 passed by Additional



Sessions Judge-cum-Fast Track Court -II, Siwan in Sessions Trial No. 446/2011 arising out of Hussainganj P.S. Case No. 165/2010 whereby and whereunder the learned trial court acquitted the respondent nos. 2 to 6 from the charges framed against them for the offences punishable under Sections 341, 323, 307, 379, 324, 337/34 of the Indian Penal Code.

3. Learned counsel for the appellant assailing the judgment submitted that the sole reason for acquittal of the respondents by the trial court is that the injury reports have not been proved by the Doctor who prepared it, without considering the fact that the same has been proved by his Peon who was familiar with the handwriting, signature and in whose presence the same was prepared and therefore, become admissible in evidence in view of Section 32(2) of Evidence Act and in this connection he has placed reliance upon the decision of Supreme Court reported in **AIR 1989 SC 702**. It is further submitted by learned counsel for the appellant that the impugned order is manifestly unjust and unreasonable and the trial court has passed the impugned judgment on erroneous view of law. It is further submitted by learned counsel for the appellant that the trial court has not considered the fact that all the prosecution witnesses including the injured witness have fully supported the



prosecution case and their deposition is corroborated by injury reports exhibits. It is next submitted by the learned counsel for the appellant that in view of the Ext. A of the defence, presence of accused persons at the time and place of occurrence has been admitted and the trial court committed error of law by not considering the same. Hence, the impugned judgment of acquittal passed by the trial court is fit to be set aside and respondent nos. 2 to 6 are liable to be convicted for the offence charged against them.

4. On the other hand, learned counsel for the respondent nos. 2 to 6 while supporting the impugned judgment has submitted that the order of trial court is well reasoned and considered order and there is no need to interfere into the same. He further submitted that the trial court has passed the order of acquittal in view of the fact that the prosecution has failed to legally prove the injury report. It has further been submitted that even other injury reports of injured witness and X-Ray report have not been proved by the prosecution. It is further submitted that the trial court has rightly ignored the medical report. In support of his contention, he referred decision reported in **2000 (1) PLJR 387** and another decision cited by him reported in the same journal at page 392 in which a Division Bench of this



court has held that the injury reports proved by advocate clerk has no importance. On consideration of the aforesaid decision, learned counsel for the respondents submitted that in the present case admittedly, the injury report has been proved by a Peon. So far other injury reports, x-ray reports are concerned, same has not been proved and as such the respondents could not have been convicted under Section 307/324 of the Indian Penal Code. He further submitted that according to the prosecution case several villagers assembled on the place of occurrence, but not a single independent witness has been examined in this case. Learned counsel for the respondents further submitted that in view of the aforesaid infirmities the trial court has rightly passed the impugned order and hence the same is liable to be upheld.

5. In this case the respondent nos. 2 to 6 stood charged for the offences punishable under Section(s) 323, 307/34, 337 and 448 of the Indian Penal Code. To prove the charges levelled against them, the prosecution examined altogether six prosecution witnesses apart from documentary evidence. The learned trial court recorded the statement of respondent nos. 2 to 6 under Section 313 of the Code of Criminal Procedure and after perusing the materials available on



record passed the Judgment of acquittal which is under challenge in this criminal appeal.

6. Having considered the submission on behalf of the parties, I went through the judgment of the trial court as well as records of the case. On perusal of the impugned order it is apparent that the trial court after taking into consideration the fact that the injury reports has not been proved by any expert rather by a Peon who does not have the expertise to explain the injuries, has ignored the medical evidence and in this connection the reliance placed by counsel for appellant on a decision reported in AIR 1989 SC 702 is misplaced. As the same is quite distinguishable on facts. It further appears that the trial court has also taken into consideration, the evidences of witnesses and noticing the material inconsistencies and discrepancies in the deposition of the witnesses with regard to manner of occurrence and place of occurrence has passed impugned order. On perusal of the impugned order, I do not find any perversity, absurdity in the impugned order. Considering the material discrepancies in the testimonies of the witnesses as well as the fact that the injury report has not been legally proved the trial court has rightly passed the order of acquittal.

7. It is well settled principle of law that the finding of



acquittal, recorded by trial court cannot be disturbed unless the said finding appears to be absurd, perverse or without consideration of evidence, but in the present case I have already stated that the trial court having considered the evidence as well as facts and circumstances of the case passed the impugned Judgment and therefore, I am of the opinion that there is no need to interfere into the impugned Judgment. Accordingly, this criminal appeal stands dismissed on admission stage itself.

(Prabhat Kumar Singh, J)

(Hemant Kumar Srivastava, J) :- I agree.

(Hemant Kumar Srivastava, J)

vinita/-

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