

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.93 of 2019

Arising Out of PS. Case No.-29 Year-2005 Thana- HARNAUT District- Nalanda

Ram Pravesh Paswan, Son of Late Lekha Paswan, Resident of Village-
Dedaur, P.O. and P.S.- Bakhtiyarpur, District- Patna.

... .. Appellant.

Versus

1. The State of Bihar.
2. Kanti Devi, Wife of Ram Nandan Paswan, Resident of Village- Noor Nagar,
P.S.- Telmar, District- Nalanda.
3. Ram Nandan Paswan, Son of Late Ram Roop Paswan, Resident of Village-
Noor Nagar, P.S.- Telmar, District- Nalanda.
4. Binod Paswan, Son of Ram Nandan Paswan, Resident of Village- Noor
Nagar, P.S.- Telmar, District- Nalanda.

... .. Respondents.

Appearance :

For the Appellant	:	Mr. Kamala Prasad Roy, Advocate. Mr. Satya Ranjan Sinha, Advocate. Ms. Seema Kumari, Advocate.
For the State	:	Mr. Abhaimanyu Sharma, 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 : 04-04-2019

Heard learned counsel for the appellant as well as
learned Additional Public Prosecutor for the State on I.A. No.1
of 2019, I.A. No.2 of 2019 as well as on the point of admission.

2. I.A. No. 2 of 2019 has been filed on behalf of
the appellant, under Section 5 of Limitation Act, for condonation
of delay in filing this criminal appeal on the ground that, earlier,



the appellant had filed Criminal Appeal (SJ) No.756 of 2018, which was disposed of, giving liberty to the appellant to file appeal before appropriate forum and, thereafter, immediately the appellant filed the instant appeal.

The delay in filing this criminal appeal is condoned on the grounds mentioned in Interlocutory Application No.2 of 2019 and, accordingly, I.A. No. 2 of 2019 stands disposed of.

3. I.A. No. 1 of 2019 has been filed on behalf of the appellant, under Section 378(3) of Cr.P.C., seeking leave to file and pursue this criminal appeal.

Since the appellant happens to be the father of deceased, he has statutory right to file appeal against the Judgment of acquittal.

In the aforesaid manner, I.A. No.1 of 2019, too, stands disposed of.

4. This criminal appeal has been preferred against the Judgment of acquittal dated 08.12.2017 passed by the learned Presiding Officer, Fast Track Court-I, Nalanda at Bihar Sharif, in Sessions Trial Case No.654 of 2005/Sessions Trial No.368 of 2006, by which and whereunder he acquitted the respondent nos.2, 3 and 4 from the charges framed against them for the offences punishable under Sections 304(B) and 201/34 of



the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act.

5. Learned counsel appearing for the appellant challenged the impugned Judgment of acquittal on two counts, firstly, he submitted that the prosecution case was closed by the learned trial court without sending any notice or summon to the informant, as a result whereof the informant could not be examined. He further submitted that when informant filed a petition before the learned trial court for allowing him to depose in the case, the learned trial court allowed the prayer of the informant but imposed the cost of Rs. 5000/- on him. He further submitted that the informant challenged the order of imposition of cost by filing revision before this Court, which is still pending, but even, during the pendency of the revision petition, the learned trial court passed the impugned Judgment of acquittal.

6. Learned counsel for the appellant further submitted that the learned trial court has not properly appreciated the prosecution evidence and only on the ground that the prosecution witnesses could not disclose the date of torturing as well as demand of dowry, passed the impugned Judgment of acquittal, which is not in accordance with law.



7. Learned counsel for the appellant further submitted that since the findings of the learned trial court are not in accordance with law, it is a failure of justice and therefore this Court should interfere into the impugned Judgment of acquittal.

8. On the other hand, learned Additional Public Prosecutor supports the impugned Judgment of acquittal arguing that the perusal of impugned Judgment of acquittal goes to show that much opportunity had already been given to the prosecution to examine its witnesses but prosecution failed to avail that opportunity given by the trial court. He further submits that the learned trial court has passed a well discussed Judgment and considered all the materials, available on the record, and, therefore, there is no need to interfere into the impugned Judgment of acquittal.

9. Having heard the contentions of the both the parties, we went through the impugned Judgment of acquittal.

10. It would appear from perusal of the impugned Judgment of acquittal that the appellant, who was informant in Harnaut (Telmar) P.S. Case No.29 of 2005, claimed that the marriage of his daughter was solemnized in the year 2003 with Subodh Paswan but her in-laws demanded illegal dowry and when the illegal demand could not be fulfilled, his daughter was



subjected to cruelty and, subsequently, she was killed in the year 2005, i.e. within two years of her marriage, and her dead body got disappeared by her in-laws.

11. The respondent nos.2, 3 and 4 being in-laws of the deceased stood charged for the offences punishable under Sections 304(B) and 201/34 of the Indian Penal Code and Sections 3/4 Dowry Prohibition Act on 02.06.2006. To prove the charges levelled against them, the prosecution examined, altogether, six witnesses. The learned trial court recorded the statements of respondent nos.2, 3 and 4 under Section 313 of the Code of Criminal Procedure and after perusing the materials, available on the record, passed the Judgment of acquittal, which is under challenge.

12. It is also obvious from perusal of the impugned Judgment that after closure of the prosecution case, prosecution filed a petition under Section 311 of the Code of Criminal Procedure on 29.08.2017 and the aforesaid petition was allowed, subject to payment of cost but prosecution did not deposit the cost, as a result whereof the learned trial court proceeded further in the case. Furthermore, the impugned Judgment goes to show that the learned trial court dealt with the prosecution evidences, available on the record, and came to definite finding that the



prosecution could not succeed to prove its case beyond all shadow of reasonable doubts.

13. It is well settled principle of law that if two views are possible on the same set of evidence, the view taken by the learned trial court cannot be discarded, unless the view of the trial court is absurd and perverse. The perusal of the impugned Judgment goes to show that there is no perversity or absurdity in the view taken by the learned Trial Court.

14. So far as not giving opportunity to the prosecution to examine its witnesses is concerned, the impugned Judgment speaks that much opportunity had already been given to prosecution to produce its witnesses but prosecution failed to avail that opportunity, given by the learned trial court.

15. So far as the failure of justice is concerned, there is nothing on the record to show that the learned trial court failed to consider the evidence produced by the prosecution and, therefore, it cannot be said that mere passing the Judgment of acquittal amounts to failure of justice.

16. On the basis of the aforesaid discussions, we do not find any merit in this criminal appeal and in our view, this criminal appeal can be dismissed on admission stage itself.

17. Accordingly, this Criminal Appeal stands



dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.04.2019.
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