

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.121 of 2019

In
SLA No.36 of 2018

Arising Out of PS. Case No.-175 Year-1993 Thana- Rosera District- Samastipur

Shyam Kumar Jha Son of Late Surya Narayan Jha Resident of Rosera Badi
Durga Sathan Chowk, P.S.- Rosera, District- Samastipur ... Appellant
Versus

1. The State of Bihar and
2. Birendra Mishra @ Balla Mishra Son of Ram Chandra Mishra Resident of
Rosera Badi Durga Sathan Chowk, P.S.- Rosera, District- Samastipur.
... .. Respondents

Appearance :

For the Appellant	:	Mr.Md. Ataul Haque, Advocate
For the State	:	Mr.Zeyaul Hoda, Addl Public Prosecutor

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

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

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

Date : 01-08-2019

Interlocutory Application No. 1 of 2019 has been filed on behalf of the appellant under section 378(3) of the Code of Criminal Procedure for grant of leave of this Court to file and pursue this appeal.

2. Appellant happens to be son of the informant who is said to have died and therefore, in our view, the appellant has statutory right to file this Criminal Appeal against the judgment of acquittal. Accordingly, Interlocutory Application No.1 of 2019 stands disposed of.



3. Heard learned counsel for the appellant and learned Additional Public Prosecutor appearing for the State on the point of admission.

4. The appellant is aggrieved by the judgment of acquittal dated 10.5.2018, passed by the learned Additional Sessions Judge, Rosera, Samastipur in Sessions Trial No. 451 of 2000 by which and whereunder he acquitted respondent no.2 Birendra Mishra @ Balla Mishra from the charges framed against him for the offence punishable under section 436 read with section 34 of the Indian Penal Code.

5. Learned counsel appearing for the appellant submits that in course of the trial, prosecution witnesses, categorically, stated that respondent no.2 Birendra Mishra @ Balla Mishra along along with co-accused Hari Madhav Mishra went to the place of occurrence and set the house of the informant on fire and, therefore, the aforesaid fact clearly goes to show that respondent no.2 had shared the common intention with co-accused Hari Madhav Misra. He submits that the learned trial court failed to take notice of the aforesaid fact and passed an erroneous judgment of acquittal.

6. On the other hand, learned Additional Public Prosecutor appearing for the State supports the impugned judgment of



acquittal submitting that the learned trial court has passed a well discussed judgment and furthermore, the learned trial court found that the informant was not in possession of the disputed land and there was civil litigation between the parties. Learned APP further submitted that moreover, learned trial court came to the conclusion that it was co-accused Hari Madhav Mishra and not respondent no.2, who set the informant's hut on fire and aforesaid act of Hari Madhav Mishra was his individual act.

7. Having heard contentions of both the parties we went through the record and the impugned judgment. We find that respondent no.2 stood charged only for the offence punishable under section 436 of the Indian Penal Code and no charge for the offence punishable under sections 436/34 of the Indian Penal Code was framed against him. However, it is well settled principle of law that even in absence of framing of charge, for sharing common intention, if the Court finds material to come on a conclusion that a particular accused shared common intention along with other accused, it can convict the accused for the offense of sharing common intention.

8. In the present case, prosecution examined, altogether, five witnesses and several documents were exhibited. However, learned trial court after analyzing the statements of the prosecution



witnesses and after perusing the documents exhibited on behalf of the prosecution, found that the prosecution could not succeed to prove the fact that the informant was in possession of the disputed land at the time of alleged occurrence and furthermore the leaned trial court also found that the prosecution failed to prove the fact that respondent no.2 had shared common intention with co-accused Hari Madhav Mishra. The impugned judgment does not appear to be perverse or absurd.

9. Therefore, we are of the view that there is no need to interfere with the impugned judgment of acquittal and accordingly, this criminal appeal stands dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	NA
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