

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.184 of 2019**

Arising Out of PS. Case No.-150 Year-2012 Thana- BEGUSARAI MUFFASIL District-
Begusarai

Indu Kumari Sinha @ Indu Devi @ Kumari Indu Sinha, wife of Late
Shivchandra Singh, resident of Village Mohanpur, P.S.- Mufassil, District-
Begusarai.

... .. Appellant.

Versus

1. The State of Bihar.
2. Amar Singh, son of Late Hari Singh, Resident of Village Mohanpur, P.S.-
Mufasil, District-Begusarai.
3. Navin Singh, son of Ram Akbal Singh, Resident of village Mohanpur, P.S.-
Mufasil, District-Begusarai.

... .. Respondents.

Appearance :

For the Appellant	:	Mr.Pankaj Kumar Sinha, Advocate. Mr. Hare Krishna Prasad, Advocate.
For the State	:	Mr. Dilip Kumar Sinha, 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 appearing for the appellant as
well as learned Additional Public Prosecutor for State on the
point of admission and, in our view, this criminal appeal can be
disposed of on admission stage itself.

2. The appellant has challenged the impugned
Judgment of acquittal dated 30.11.2018 passed by the learned
Additional Sessions Judge-II-cum-Special Judge, Excise Act,
Begusarai, in Sessions Trial No.893 of 2012, by which and



whereunder he acquitted the respondent nos.2 and 3 from the charges framed against them for the offences punishable under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

3. Learned counsel appearing for the appellant submits that the learned trial court failed to appreciate the prosecution evidence in its right prospective and also failed to take note of this fact that P.W.2 and P.W.3 were with the deceased when the occurrence took place and the aforesaid prosecution witnesses, specifically, stated that it were the respondent nos.2 and 3, who committed the murder of deceased. He further submits that, no doubt, the doctor found the wound of entry on the back of the deceased, but, admittedly, P.W.2 and P.W.3 as well as the informant, who was examined in trial court as P.W.6 claimed themselves to be eye witnesses of the alleged occurrence and, specifically, stated that when the deceased tried to flee from the place of occurrence, the respondent no.2 shot fire from the back of the deceased, which hit on the back of the deceased and, therefore, there was no contradiction in the statements of the prosecution witnesses as well as medical evidence but the learned trial court on flimsy ground doubted the claim of above stated eye witnesses.



4. Learned Additional Public Prosecutor supports the impugned Judgment of acquittal submitting that the learned trial court has passed a well discussed and well thought Judgment and there is no need to interfere into the impugned Judgment of acquittal.

5. From perusal of impugned Judgment, we find that P.W.6, namely, Indu Devi, the wife of the deceased, claimed that the deceased along with P.W.2 and P.W.3 had gone in connection with the agricultural work and while he was returning and reached near a small bridge, the respondent nos.2 and 3 intercepted him and the respondent no.2 caught hold her husband, whereas respondent no.3 shot fire, causing firearm injury on the chest of her husband, as a result of which he died then and there. P.W.6 claimed herself to be eye witness of the alleged occurrence.

6. The perusal of the impugned Judgment further goes to show that, in course of investigation, the statement of P.W.3 was recorded under Section 164 of the Code of Criminal Procedure and in the aforesaid statement, P.W.3, too, claimed that the deceased sustained firearm injury on his chest. However, the doctor, who did postmortem examination on the dead body of deceased, was examined as P.W.9 and stated that



he found wound of entry caused by firearm on the back of the right chest, just below scapular angle, in between 8th, 9th, intercoastal space with inverted margin and wound of exit over front of chest in between 3rd, 4th intercoastal space with inverted margin. Learned trial Court doubted the testimonies of the so- called eye witnesses on the ground of contradictions in their statements as well as the statement of P.W.9.

7. In our view, the learned trial court rightly doubted the claim of the so-called eye witnesses because from the very inception of the prosecution case, they claimed that the respondent no.3 shot fire on the chest of the deceased and the deceased sustained injury on his chest and apart from this, P.W.3 was examined under Section 164 of the Code of Criminal Procedure in course of investigation and in that statement also, he claimed that the deceased sustained injury on his chest. However, the learned trial court came to conclusion that the prosecution witnesses changed and improved their statements, in course of trial, when they came to know about the nature of injury found on the person of the deceased.

8. It is well settled principle of law that the prosecution is bound to prove its case beyond all shadow of reasonable doubts and even slightest doubt in the prosecution



case shall go in favour of the defence.

9. No doubt, in several decisions, it has been held by the Hon'ble Apex Court as well as this Court that if there is contradiction between ocular and medical evidence, the ocular evidence shall prevail over the medical evidence, if the ocular evidence inspires confidence to the Court. In the present case, the learned trial court rightly doubted the genuineness of ocular evidence because not only P.W.6 in her fardbeyan, rather P.W.3 in her statement, recorded under Section 164 of the Cr.P.C., stated the manner of occurrence, in which deceased sustained injury but, subsequently, both the aforesaid prosecution witnesses changed their previous statements. Therefore, in our view, there is no ground to interfere into the impugned Judgment of acquittal.

10. 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
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