

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.421 of 2019

Arising Out of PS. Case No.-177 Year-1996 Thana- TARAPUR District- Munger

Pappu Yadav @ Pappu Kumar Yadav Son of Late Chamak Lal Yadav
Resident of Village- Navtolia (sondiha), P.S.- Tarapur, District- Munger

... .. Appellant

Versus

1. The State of Bihar
2. Banbari Yadav Son of Kamleshwari Yadav Resident of Village- Pyarpur,
P.S.- Tarapur, District- Munger.
3. Anil Yadav Son of Late Badri Yadav Resident of Village- Madhura, P.S.-
Tarapur, District- Munger Respondents

Appearance :

For the Appellant : Mr. Ajit Kumar Singh, Advocate

For the Respondents : Mr. Satya Narayan Prasad, 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 : 05-11-2019

1. Heard learned counsel appearing for the appellant as well as learned Additional Public Prosecutor representing the State on the point of admission.

2. In our view, this criminal appeal can be disposed of at the admission stage itself.

3. The appellant is aggrieved by the impugned judgment of acquittal dated 2.5.2019, passed by the learned Fast Tract Court-I, Munger in Sessions Trial No. 316 of 2006 along with Sessions Trial No. 316A of 2006 by which and whereunder he acquitted respondents no. 2 and 3 of the charges framed against them for the offences punishable under section 302 of the Indian Penal Code and under section 27 of the Arms Act.



4. It is an admitted case that Tarapur Police Station Case No. 177 of 1996, for the offence punishable under section 302 of the Indian Penal Code and under section 27 of the Arms Act, was registered on 22.10.1996 against unknown person on the basis of the *fard beyan* of the appellant. The police, after investigation, submitted charge sheet against respondents no. 2 and 3 and some other persons. Cognizance of the offence was taken and respondents no. 2 and 3 were put to trial before the Sessions Court and accordingly, they stood charged for the offences punishable under section 302 of the Indian Penal Code and section 27 of the Arms Act. It is pertinent to note here that the case of respondent no.2 was earlier committed to the court of sessions and subsequently, the case of respondent no.3 was committed to the Court of sessions and Sessions Trial No. 316 of 2006 and Sessions Trial No. 316A of 2006, respectively were registered. However, the learned trial court recorded the evidence in both the sessions trials separately but before pronouncement of the judgment, the learned trial court amalgamated both the cases and pronounced common judgment in both the above stated sessions trial cases. In course of the trial, in Sessions Trial No. 316 of 2006 prosecution examined, altogether, 8 witnesses, whereas in Sessions Trial No. 316A of 2006 prosecution examined, altogether, 4 witnesses.



5. Learned trial court, after perusing the evidence available in both the sessions trials, passed the impugned judgment of acquittal noticing this fact that none had seen actual killing of the deceased nor there was any substantive evidence to prove the guilt of respondents no.2 and 3.

6. Learned counsel appearing for the appellant assailed the impugned judgment of acquittal arguing that in course of the trial in Sessions Trial No. 316 of 2006, PW 1 Bachu Yadav was examined and the aforesaid Bachu Yadav claimed himself to be the eye witness of the alleged occurrence and apart from this appellant, and some other witnesses claimed before the trial court that the deceased was taken from his house prior to the alleged occurrence by respondents no. 2 and 3 and other persons and subsequently, the dead body of the deceased was recovered. He, further, submitted that PW 1 in Sessions Trial No. 316 of 2006 was an eye witness to the alleged occurrence and apart from the said eye witness, there was circumstantial evidence also to show the involvement of respondents nos. 2, 3 and some other persons in the occurrence but the learned trial court without appreciating the aforesaid evidence passed erroneous judgment of acquittal.

7. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of acquittal arguing



that admittedly, the FIR was lodged against unknown person as the appellant did not claim to have seen the actual killing of the deceased nor the appellant expressed his suspicion against any person at the time of recording of the *fard beyan*. But, subsequently, in course of the trial, the appellant as well as other prosecution witnesses changed their stand claiming that respondents no.2, 3 and other persons took the deceased from his house prior to the alleged occurrence. Learned Additional Public Prosecutor further submitted that no doubt, PW 1 Bachu Yadav (Sessions Trial No. 316/2006) claimed before the learned trial court to have seen the actual killing of the deceased but the statement of the aforesaid witness, under section 161 of the Code of Criminal Procedure, was recorded on 26.11.1996, i.e., after more than one month of the alleged occurrence. Furthermore, the learned trial court noticed several contradictions and improvements in the statements of the aforesaid Bachu Yadav and declined to rely upon the statement of Bachu Yadav. He further submits that so far as the remaining prosecution witnesses are concerned, the learned trial court refused to place reliance upon the statements of the above stated witnesses on reasonable grounds, and therefore, it would not be proper for this Court to interfere into the findings of the learned trial court.



8. No doubt, the appellate court can re-appreciate the evidence recorded in course of the trial and can reverse the findings of the trial court, if the findings of the trial court is found to be unreasonable and perverse, but it is well settled that if two views on the same set of evidence are possible and the view accepted by the trial court appears to be reasonable, then the appellate court generally does not interfere into the findings of the trial court. In the present case, we find that the learned trial court has passed a well discussed and well thought judgment of acquittal. In our view, the learned trial court has considered all the evidences, available on the record. We also find that PW 1 Bachu Yadav, claimed himself to be eye witness of the occurrence, but, in our view, also no reliance could have safely been placed upon the aforesaid Bachu Yadav as the aforesaid Bachu Yadav is a co-villager of the appellant but he did not disclose about the alleged occurrence to the appellant after the alleged occurrence, rather he came before the police after more than one month of the alleged occurrence and claimed himself to be the eye witness. Therefore, in our view, the learned trial court has rightly refused to rely upon the claim of PW 1 Bachu Yadav. So far as the remaining prosecution witnesses including the appellant are concerned, it is obvious from the impugned judgment that they improved their



statements in course of the trial. The appellant did not claim in his *fard beyan* that respondents no. 2, 3 and other persons took the deceased from his house prior to the alleged occurrence but he improved his statement before the learned trial court and claimed that respondents no. 2, 3 and other persons took the deceased from the house. Almost similar position is in respect of other witnesses. It is obvious from perusal of the impugned judgment having taken note of the aforesaid fact refused to rely upon the claim of the appellant and other prosecution witnesses and, therefore, we do not find any perversity or absurdity in the findings of the trial court.

9. On the basis of the aforesaid discussions, we are of the view that this appeal is devoid of merit and is liable to be dismissed on the admission stage itself. Accordingly, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	NA
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