

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1436 of 2018

In
Criminal Appeal (SJ) No.787 of 2018

Arising Out of PS. Case No.-41 Year-1991 Thana- DEHRI TOWN District- Rohtas

Kabutari Devi, wife of late Bhagwan Singh, resident of Village-Kaua Khonch,
P.S. Dehri, District-Rohtas at Sasaram.

... .. Appellant

Versus

1. The State Of Bihar
2. Nathuni Singh, son of late Jagrnath Singh
3. Jasia Devi, wife of Nathuni Singh, both residents of Village-Kaua Khonch
P.S. Dehri, District-Rohtas at Sasaram.

... .. Respondents

Appearance :

For the Appellant/s : Mr.Jai Prakash Singh
For the Respondent/s : Mr. Bipin Kumar

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

and

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA**

ORAL JUDGMENT

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

Date : 03-01-2019

1. Heard learned counsel appearing for the appellant as well as learned Additional Public Prosecutor for the State on the point of admission and on I.A. No. 3449 of 2018, which has been filed under Section 378(3) of the Cr.P.C. seeking leave to file and pursue the present criminal appeal.

2. The applicant in I.A. No. 3449 of 2018 is wife of the deceased as well as informant of the present case and, therefore, she comes under the purview of victim and she has right to



challenge the judgment of acquittal. Accordingly, she is permitted to pursue the instant criminal appeal and I.A. No. 3449 of 2018 stands disposed of.

3. This criminal appeal has been preferred against the judgment dated 06.01.2018 passed by learned Presiding Officer, F.T.C. No. 1, Rohtas at Sasaram in Sessions Trial No. 454 of 1991 by which and where under he acquitted the respondents no. 2 and 3 whereas convicted the co-accused Ram Narayan Singh for the offence punishable under Section 304 Part II of the I.P.C. and accordingly, sentenced him to undergo rigorous imprisonment for three years and also imposed fine of Rs. 10,000/- upon him. This appeal is only confined to the finding of acquittal given by the trial court in respect of respondents no. 2 and 3.

4. The grievance of the appellant is that there was sufficient evidence to prove the guilt of respondents no. 2 and 3 but the learned trial court ignored the aforesaid evidences and wrongly acquitted the respondents no. 2 and 3. Learned counsel appearing for the appellant submits that appellant was examined as prosecution witness and claimed herself to be eye witness of the alleged occurrence. He, further, submits that the appellant very clearly stated in her deposition that the respondents no. 2 and 3 also participated in the alleged crime and respondents no. 2 and 3



along with convict Ram Narayan Singh repeatedly and badly assaulted the deceased as a result of which deceased sustained severe injury and died in course of treatment but the learned trial court acquitted the respondents no. 2 and 3 only on the ground that prosecution could not succeed to bring injury report as well as post mortem report in evidence. He, further, submits that oral statement of appellant as well as other witnesses was sufficient to prove that deceased sustained severe and grievous injury caused to him by the respondents no. 2, 3 and convict Ram Narayan Singh but in spite of that the learned trial court passed the judgment of acquittal in favour of respondents no. 2 and 3 which is not in accordance with law.

5. On the other hand, learned Additional Public Prosecutor supported the impugned judgment arguing that learned trial court rightly acquitted the respondents no. 2 and 3 and convicted the co-accused Ram Narayan Singh because in ferdbeyan of the appellant as well as in course of trial, it came to light that it was convict Ram Narayan Singh who assaulted the deceased.

6. Having heard the rival contentions of both the parties, we went through the record and in our view, this appeal can be disposed of on admission stage itself.



7. The appellant (informant) lodged Dehri Town P.S. Case No. 41 of 1991 against the respondents no. 2, 3 and convict Ram Narayan Singh. The appellant specifically stated in her ferdbeyan that convict Ram Narayan Singh and respondent no. 2 Nathuni Singh assaulted her husband but before court in her deposition, she specifically stated that it was convict Ram Narayan Singh who assaulted on the head of her husband. So far as respondent no. 3 is concerned, the appellant has stated in her ferdbeyan that respondent no. 3 along with respondent no. 2 as well as her two daughters caught and assaulted her (appellant).

8. In course of trial, altogether, eight prosecution witnesses were examined and appellant was examined as PW-2. The impugned judgment goes to show that in course of trial PW-2 (informant) clearly stated that it was convict Ram Narayan Singh who assaulted her husband by means of lathi whereas respondent no. 3 and two other female accused assaulted her with fists and slaps. The impugned judgment goes to show that PW-2 has, nowhere, stated that it was respondent no. 2 who assaulted her husband. Moreover, the impugned judgment further goes to show that injury report as well as post mortem report of the deceased were not brought on record and for want of the aforesaid documents, it was very difficult to trial court to ascertain the



nature of injury of deceased. Moreover, we find that learned trial court has well discussed the evidences of the prosecution and in our opinion, there is no need to interfere into the findings given by the learned trial court in respect of respondents no. 2 and 3 and, therefore, in the aforesaid circumstance, we do not find any force in this criminal appeal and accordingly, this criminal appeal stands dismissed on admission stage itself and the impugned judgment, so far as it relates to respondents no. 2 and 3 is concerned, the same is, hereby, confirmed.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

shahzad/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	11.01.2019
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