

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.481 of 2019

In
CRIMINAL APPEAL (SJ) No.740 of 2019

Arising Out of PS. Case No.-228 Year-2009 Thana- BETTIAH CITY District- West
Champaran

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Nand Kishore Rai S/O Late Yogendra Rai R/O Vill Karghiya P.S. Bettiah
Town, District- West Champaran.

... .. Appellant/s

Versus

1. The State of Bihar
2. Ashish @ Ashish Soni S/O Umesh Sah R/O Vill Karghiya P.S. Bettiah
Town, District- West Champaran.
3. Amit @ Amit Soni @ Nanhki Soni S/o Umesh Sah R/O Vill Karghiya P.S.
Bettiah Town, District- West Champaran.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Dhannjay Kumar No 2
For the Respondent/s : Mr. Sujit Kumar Singh

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

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

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

Date : 09-05-2019

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

In our view, this appeal can be disposed of on
admission stage itself.

Respondents no. 2 and 3 along with four others stood
charged for the offences punishable under Sections 448/34,



341/34, 342/34, 323/34, 307/34 and 504/34 of the Indian Penal Code in Sessions Trial No. 80 of 2012 and to bring guilt home to respondents no. 2 and 3 as well as others, prosecution examined its witnesses and also got exhibited some documents. The learned trial court vide impugned judgment dated 27.10.2018 acquitted the respondents no. 2 and 3 from the charges, whereas, convicted the remaining accused for the offences punishable under Sections 448/34, 307/34 and 323/34 of the Indian Penal Code and, accordingly, sentenced them for the aforesaid offences.

The grievance of the appellant is that the respondents no. 2 and 3 had also participated in the alleged crime and they not only shared the common intention with other accused but also took active part in the alleged crime. Learned counsel for the appellant submits that the learned trial court committed error in acquitting the respondents no. 2 and 3, particularly, in the circumstance when the learned trial court found the prosecution case true.

On the other hand, learned Additional Public Prosecutor supported the impugned judgment arguing that the learned trial court has passed a well discussed judgment and, as a matter of fact, the perusal of impugned judgment goes to show



that no specific overt act was attributed against the respondents no. 2 and 3 and there was nothing on record to prove that the respondents no. 2 and 3 had shared common intention with the other convicted accused.

Having heard the contentions of both the parties, we went through the impugned judgment, we find that according to prosecution case, it was co-convict Pappu Sah, who gave *Farsa* blow to injured Manorama and, thereafter, co-convict Pappu Sah and Banti assaulted the informant. So far as, the respondents no. 2 and 3 are concerned, a general and omnibus allegation of assault has been levelled against them and the learned trial court having taken the note of the aforesaid fact doubted about the participation of respondents no. 2 and 3 in the alleged crime and that is the reason, the learned trial court acquitted the respondents no. 2 and 3, giving them benefit of doubt. It is well settled principle of law that the findings of the trial court cannot be disturbed by the appellate court in the case of acquittal, unless the finding of the trial court is perverse as well as without consideration of the evidence.

In our view, in the present case, there is no perversity or absurdity in the findings of the learned trial court and, therefore, we are of the view that this appeal is devoid of merit



and, accordingly, this criminal appeal stands dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Partha Sarthy, J)

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CAV DATE	-----
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