

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.905 of 2017

Arising Out of PS. Case No.-42 Year-2013 Thana- INDUSTRIAL District- Bhagalpur

Vinay Kumar Diwana, son of Sri Krishna Chourasiya, resident of Srinagar Colony Navtoliya Chowka, P.S.- Industrial Area, District- Bhagalpur.
(Informant)

... .. Appellant/s

Versus

1. The State of Bihar.
2. Pravin Mandal, S/o Jai Prakash Mandal
3. Vishwajeet Mandal, S/o Jai Prakash Mandal
4. Amarjeet Mandal, S/o Jai Prakash Mandal,
5. Jai Prakash Mandal, S/o Late Mohan Mandal

All residents of Navtoliya, Chowka, P.S.- Industrial Area, District- Bhagalpur.
(Accused)

... .. Respondent/s

Appearance :

For the Appellant/s	:	M/s. Yogesh Chandra Verma, Sr. Advocate Diwakar Upadhyaya, Advocate
For the Respondent/s	:	Ms .Shashi Bala Verma, 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 : 15-02-2019

Heard learned counsel appearing for the appellant and learned Additional Public Prosecutor for the State on I.A. No. 1701 of 2017, filed under Section 378(3) of the Code of Criminal Procedure, as well as on the point of admission.

Re. I.A. No. 1701 of 2017

I.A. No. 1701 of 2017 has been filed under Section



378(3) of the Code of Criminal Procedure seeking leave to file and pursue this appeal.

The appellant-applicant happens to be the informant as well as victim and, therefore, he has right to challenge the judgment of acquittal.

Accordingly, the appellant-applicant is permitted to pursue this criminal appeal.

In the aforesaid manner, I.A. No. 1701 of 2017 stands allowed.

Re. Criminal Appeal (DB) No. 905 of 2017

1. This criminal appeal has been preferred against the impugned judgment dated 30.5.2017 passed by learned Additional District and Sessions Judge-I, Bhagalpur in Sessions Trial No. 564 of 2015/ Tr. No. 92 of 2016, by which and whereunder the learned trial court acquitted the respondent Nos. 2 to 5 from the charges framed against them for the offences punishable under Sections 307/34, 436, 458, 427, 341 of the Indian Penal Code and Section 27 of the Arms Act.

2. The learned counsel appearing for appellant assailed the impugned judgment of acquittal arguing that the learned trial court has passed his judgment of acquittal on two grounds. First, the independent witnesses were not examined



and, second, there was enmity between the parties.

3. Learned counsel appearing for the appellant submits that now, it has already been set at rest by Apex Court of this country in several decisions that the above stated two grounds alone are not sufficient to disbelieve the prosecution case.

4. On the other hand, learned Additional Public Prosecutor supports the impugned judgment of acquittal arguing that the learned trial court has dealt with prosecution evidence in very detail and found several infirmities in the prosecution case. Learned Additional Public Prosecutor further submits that taking note of the infirmities of the prosecution case with the aid of above stated two grounds, the learned trial court passed the judgment of acquittal.

5. Having heard the contentions of both the parties, we went through the impugned judgment as well as Lower Court Records. In our view, this criminal appeal can be disposed of at the admission stage itself.

6. The prosecution claimed that on the alleged date of occurrence respondent Nos. 2 to 5 having entered into the house of the informant assaulted the inmates of the house and also made indiscriminate firing and set his house on fire and,



furthermore, they also snatched the belongings of inmates of his house.

7. The police after investigation submitted charge-sheet and, accordingly, respondent Nos. 2 to 5 were put on trial.

8. The impugned judgment goes to show that the prosecution examined its witnesses and also got exhibited certain documents. However, learned trial court after seeing the prosecution evidence came to conclusion that prosecution could not succeed to prove its case beyond all shadows of reasonable doubt. The learned trial court formed his opinion due to several infirmities of the prosecution case, such as, non-seizure of the articles including cartridges found on the place of occurrence, non-finding of any sign of burn on the house of the informant as well as non-production of injury report and non-examination of doctor. Furthermore, we find that the learned trial court noticed that there was long standing enmity between the parties and except the interested witnesses, not a single independent prosecution witness came forward to support the prosecution case and taking all the aforesaid circumstances, the learned trial court passed the judgment of acquittal, which, in our view, does not need any interference



and, accordingly, on the basis of aforesaid discussions, this criminal appeal stands dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.02.2019
Transmission Date	18.02.2019

