

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.574 of 2017

Arising Out of PS. Case No.-23 Year-2002 Thana- ALAMGANJ District- Patna

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Arun Sharma

... .. Appellant/s

Versus

The State Of Bihar and Ors

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Deepak Kumar Singh
For the Respondent/s : Smt. Abha Singh

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 15-01-2019

1. Heard learned counsel appearing for the appellant as well as learned Addl. Public Prosecutor appearing for the State on IA No. 1918 of 2017 as well as on the point of admission.

2. IA No. 1918 of 2017 has been filed on behalf of the appellant under section 378(3) of the Cr.P.C seeking leave to file this criminal appeal. The appellant happens to be injured of the present case and he has right to file appeal against the impugned judgment. Accordingly, IA No. 1918 of 2017 stands disposed of.

3. This criminal appeal has been preferred against the judgment and sentence dated 09.02.2017 passed by learned Addl. Sessions Judge V, Patnacity in Session Trial No. 685 of 2003 by



which and whereunder he convicted respondent nos.2, 3 and 4 for the offences punishable under sections 341, 323 read with section 34 of the IPC and released them after due admonition under section 3 of Probation of First Offenders Act. However, learned Addl. Sessions Judge V, Patnacity acquitted respondent nos.2, 3 and 4 for the offences punishable under sections 324, 325 and 307/34 of the IPC.

4. The grievance of the appellant is that respondent nos.2, 3 and 4 ought to have been convicted for the offences punishable under sections 324, 325 and 307/34 of the IPC and ought to have been punished severely but the learned trial court convicted the above stated respondents for the lesser offences and has sentenced them for lesser punishment.

5. The perusal of the impugned judgment goes to show that respondent nos.2, 3 and 4 stood charged for the offences punishable under sections 341, 323, 324, 325 and 307/34 of the IPC but in course of trial, prosecution failed to produce x-ray report and x-ray plate on the basis of which PW 5 had recorded his opinion regarding injury of the appellant. The learned trial court, having taken note of the aforesaid fact as well as materials available on record, passed the impugned judgment.



6. Learned counsel appearing for the appellant submits that in course of trial, appellant being injured, supported the prosecution case and PW5 who had examined the injury of the appellant proved injuries found on the person of the appellant but even then the learned trial court did not convict respondent nos. 2, 3 and 4 for the offence punishable under section 307/34 of the IPC though the materials available on record clearly proved that respondent nos. 2, 3 and 4 had assaulted the appellant with intention to kill him. He, further, submits that the learned trial court has taken lenient view in awarding sentence to respondent nos. 2, 3 and 4 which is not in accordance with law.

7. Having heard the aforesaid contentions and having perused the impugned judgment, we are of the view that this appeal can be disposed of on admission stage itself.

8. From perusal of the impugned judgment, we find that the learned trial court has passed a well discussed and well thought judgment. Further, we find that PW 5 found only one grievous injury on the person of the appellant and he gave his opinion regarding nature of the aforesaid injury on the basis of x-ray report and x-ray plate but in course of trial, x-ray report and x-ray plate were not produced and the learned trial court noted the aforesaid laches of the prosecution. Furthermore, we find that the learned



trial court took the age and other circumstances while awarding sentence to respondent nos. 2, 3 and 4 and we do not find any perversity in the findings of the learned trial court. Therefore, we are of the view that this appeal is liable to be dismissed on admission stage itself. Accordingly, this appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
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