

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1120 of 2018**

Arising Out of PS. Case No.-52 Year-2011 Thana- NOORSARAI District- Nalanda

Shailendra Chauhan, son of Banwari Chauhan, Resident of Village-Bishunpur, Police Station-Noorsarai, District-Nalanda.

... .. Appellant.

Versus

1. The State of Bihar.
2. Ramdeo Yadav, son of Ram Lakhan Yadav, Resident of Village-Bishunpur, Police Station-Noorsarai, District-Nalanda.
3. Kapil Deo Yadav @ Kapil Yadav, son of Late Ram Pravesh Yadav, Resident of Village-Bishunpur, Police Station-Noorsarai, District-Nalanda.
4. Binod Yadav, son of Mahendra Yadav, Resident of Village-Bishunpur, Police Station-Noorsarai, District-Nalanda.
5. Sanjay Yadav @ Sanju, son of Jagdeo Yadav, Resident of Village-Bishunpur, Police Station-Noorsarai, District-Nalanda.
6. Puran Yadav @ Ashok Yadav, Resident of Village-Bishunpur, Police Station-Noorsarai, District-Nalanda.
7. Bijendra Yadav, son of Mahendra Yadav, Resident of Village-Bishunpur, Police Station-Noorsarai, District-Nalanda

... .. Respondents.

Appearance :

For the Appellant	: Mr. Rabi Bhushan Prasad No. 1, Advocate. Mr. Vijay Prakash Bhargava, Advocate. Mrs. Binita Singh, Advocate.
For the State	: Mr. S.N. Prasad, A.P.P.
For the Respondent Nos.2 to 7	: Mr. Rajeev Kumar, Advocate.

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

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR

MISHRA

ORAL JUDGMENT

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

Date : 08-04-2019

Heard learned counsel appearing for the appellant
and the learned Additional Public Prosecutor for the State
assisted by the learned counsel of respondent nos.2 to 7 on I.A.



No. 47 of 2019 as well as on the point of admission.

2. I.A. No. 47 of 2019 has been filed on behalf of the appellant seeking leave to file and pursue this criminal appeal.

The appellant happens to be the nephew of the deceased and has statutory right to file and pursue this criminal appeal and, therefore, there is no need to seek leave of this Court for filing the appeal against the Judgment of acquittal and, accordingly, I.A. No.47 of 2019 stands disposed of.

3. This criminal appeal has been preferred against the impugned Judgment of acquittal dated 02.07.2018 passed by the learned Presiding Officer, Fast Track Court-I, Nalanda at Bihar Sharif, in Sessions Trial Case No. 396 of 2011, by which and whereunder he acquitted the respondent nos. 2 to 7 from the charges framed against them for the offences punishable under Sections 148, 302/149 and 504 of the Indian Penal Code.

4. The grievance of the appellant is that the learned trial court did not apply his judicial mind, while perusing the evidence of the prosecution. To fortify the above contention, he drew our attention towards paragraph-8 of the impugned Judgment and submitted that the learned trial court has referred the statements of P.W.9. at the aforesaid paragraph, but, as a



matter of fact, P.W.9 has, nowhere, stated in his cross-examination as mentioned in paragraph-8 of the impugned Judgment. He submits that the aforesaid fact goes to show that while passing the impugned Judgment, the learned trial court did not apply his judicial mind.

5. On the other hand, leaned counsel appearing for respondent nos.2 to 7 as well as learned Additional Public Prosecutor support the impugned Judgment of acquittal submitting that even if paragraph-8 of the impugned Judgment is excluded from consideration, then also, there is nothing in the impugned Judgment on the basis of which this Court could set aside the impugned Judgment. Learned counsel of respondent nos.2 to 7 submits that the learned trial court has discussed the prosecution evidences and vide paragraph-27 of the impugned Judgment came to a definite conclusion giving reasons that the prosecution failed to prove its case beyond all shadow of reasonable doubts and, therefore, there is no need to interfere into the impugned Judgment of acquittal.

6. Having heard the contentions of both the parties, we went through the Lower Court Records as well as the impugned Judgment of acquittal. Here, we would like to reproduce paragraph-8 of the impugned Judgment, which runs



as follows:

“This witness has been cross examined by the learned counsel for defence and in his cross examination he has further stated that he could not say whether two injuries found on dead body were caused by two different weapon or by same weapon, the injury No.1 may be possible by a light sharp cutting weapon & injury No.2 must have been caused by heavy sharp cutting weapon, Garasa, sword, axe are the heavy sharp cutting weapons, butcher knife is also a heavy sharp cutting weapon. He has also stated that in normal course of nature if either of the injury found on the deceased will be inflicted, he will cry if he is not asleep or over powered or unconscious at the time of infliction of blows & after infliction of one injury the deceased may wake up and he has not found any intoxicating substance in the stomach of deceased. He has also stated that decomposition full set in withing 3-5 days within the climate of our State. The death of deceased Sandeep Kumar @ Pintu was due to hemorrhage & shock due to sharp cutting weapons, hence the death is homicidal.”

7. From bare perusal of paragraph-8 of the impugned Judgment, it is obvious that the learned trial court referred paragraph- 8 in respect of death of one Sandeep Kumar



@ Pintu. Admittedly, in the present case, the death of Sandeep Kumar @ Pintu is not in issue, rather according to the prosecution case, one Hari Prasad was killed in the present case. Moreover, we also perused the deposition of P.W.9 and find that P.W.9 has, nowhere, stated regarding the death of Sandeep Kumar @ Pintu, nor the facts, which have been mentioned in paragraph-8 of the impugned Judgment. Therefore it is obvious that the learned trial court, while writing the Judgment of acquittal, considered the materials beyond the records, which is not permissible in the eye of law. Therefore, in the aforesaid circumstance, we have no option except to set aside the impugned Judgment of acquittal and remit the case back to the trial court for rehearing.

8. Accordingly, this criminal appeal is allowed on the admission stage itself and the impugned Judgment of acquittal dated 02.07.2018 passed by the learned Presiding Officer, Fast Track Court-I, Nalanda at Bihar Sharif, in Sessions Trial Case No. 396 of 2011 is, hereby, set aside and the case is remitted to the learned trial court for rehearing and passing a fresh Judgment on the basis of materials available on the record.

9. It is made clear that this order shall not cause any prejudice to the learned trial court, while passing the Judgment



on merit.

10. Furthermore, the respondent nos.2 to 7 are directed to surrender before the learned trial court within six weeks and if they do so, the learned trial court shall release them on bail on furnishing bail bonds of Rs. 10,000/- (Rupees Ten Thousand) each with sureties of the like amount each, till pronouncement of Judgment in Sessions Trial Case No.396 of 2011. Furthermore, the learned trial court is directed to dispose of Sessions Trial Case No. 396 of 2011 within eight weeks from the date of surrender of respondent nos. 2 to 7.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.04.2019.
Transmission Date	12.04.2019.

