

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1091 of 2018**

Arising Out of PS. Case No.-104 Year-2009 Thana- KUDRA District- Kaimur (Bhabua) *

Harihar Kumar, S/o Late Vindhyachal Kharwar, R/o Mohalla- Babuan, Kudra,
P.S.- Kudra, District- Kiamur.

... .. Appellant

Versus

1. The State of Bihar,
2. Pyare Lal Kharwar,
3. Seshbadan Kharwar,
4. Anil Kharwar
5. Chandan Kumar, All Sons of Sharda Prasad Kharwar, R/o Babuan, Mohalla-
Kudra, P.S.- Kudra, District- Kaimur.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Ravi Shankar Sahay
For the Respondent/s : Mr. Ajay Mishra

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

and

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL ORDER**

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

6 27-03-2019 Heard learned counsel appearing for appellant as well

as learned Additional Public Prosecutor appearing for the State

and learned counsel appearing for respondents No. 2 to 5 on I.A.

No. 2664 of 2018 as well as on the point of admission.

2. I.A. No. 2664 of 2018 has been filed under

Section 378(3) of the Criminal Procedure Code for grant of

leave to file and pursue this criminal appeal. The appellant

happens to be informant and son of deceased and, therefore, he

does have right to file and pursue appeal against Judgment of



acquittal. Accordingly, I.A. No. 2664 of 2018 stands allowed and the appellant is permitted to pursue the criminal appeal.

3. The appellant is aggrieved by the impugned Judgment of acquittal dated 04.07.2018 passed by learned Fast Track Court-I, Bhabua, Kaimur in Sessions Trial No. 295 of 2009, by which and whereunder, he acquitted the respondent Nos. 2, 3, 4 and 5 from the charges framed against them for the offences punishable under Section 323/34 and 302/34 of the Indian Penal Code.

4. Learned counsel appearing for appellant assailed the impugned Judgment of acquittal submitting that the learned trial Court based the finding of acquittal on the ground that the prosecution witnesses are interested witnesses and, furthermore, the learned trial Court took note of minor contradictions, which had occurred in the statements of prosecution witnesses. Learned counsel further submits that prosecution witnesses, very clearly, stated that the deceased was assaulted by respondent Nos. 2 to 5 and after the occurrence, he was examined by Doctor of Primary Health Centre (P.W.11) and, thereafter, deceased was taken to Banaras Hindu University, Varanasi for treatment, but, unfortunately, he died and the Postmortem examination of deceased was done at



Varanasi. He further submits that P.W.12 proved the Postmortem report and it is obvious from perusal of the Postmortem report that the intestine and other parts of the body of deceased were found ruptured and not only this but some ribs of the deceased were also found fractured and, therefore, in the aforesaid circumstances, the learned trial Court committed error in acquitting the respondent Nos. 2 to 5.

5. *Per contra*, learned counsel appearing for private respondents No. 2 to 5 refuted the above stated submissions of learned counsel of the appellant submitting that P.W.11 admitted in his deposition that he prepared injury report of deceased after one month of his examination and, furthermore, P.W.12, who held Postmortem examination on the dead body of deceased, admitted that the deceased died due to rupture of his intestine and other parts of the body. He further submits that no external injury was found by the P.W.12 at the time of Postmortem examination and, therefore, the aforesaid fact creates doubt about the claim of the prosecution witnesses and the learned trial Court, rightly, passed the Judgment of acquittal. He further submits that full sister of deceased was examined as defence witness and she, specifically, stated that the deceased had sustained injury, when he fell from a stair.



6. Having heard the contentions of both the parties, we went through the record as well as impugned Judgment. We find that the learned trial Court doubted the prosecution case on several grounds. The learned trial Court doubted the genuineness of injury report (Ext.4) prepared by P.W.11 on the ground that the aforesaid injury report was prepared by P.W.11 after one month of the alleged occurrence and the aforesaid injury report was never handed over to Police and all of a sudden, the aforesaid injury report was produced before the Court in course of trial. Furthermore, the learned trial Court also doubted the prosecution case on the ground that the cause of death of the deceased does not tally with the claim of the prosecution witnesses. Furthermore, the learned trial Court doubted the prosecution case that the prosecution did not discuss any motive of the accused as to why they committed murder of deceased. Furthermore, the learned trial Court observed that for the occurrence of the same day, one Kudra P.S. Case No. 105 of 2009 was registered against the deceased on the behest of respondents No. 2 to 5 and in that case, respondent No.3 and others had sustained injury, which was not explained by the prosecution in course of trial. We find that the learned trial Court has touched and discussed each and every aspect of



the case and after discussing the evidences available on the record came to conclusion that prosecution could not succeed to prove its case beyond all shadow of reasonable doubts. We do not find any ground to interfere into the impugned Judgment of acquittal because the findings given by the learned trial Court are neither perverse nor absurd and, therefore, in the aforesaid circumstances, we are of the opinion that this criminal is liable to be dismissed on admission stage itself.

7. Accordingly, this criminal appeal stands dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

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