

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1394 of 2018**

Arising Out of PS. Case No.-139 Year-2015 Thana- DURGAWATI District- Kaimur (Bhabua)

Sarfraj Khan

... .. Appellant

Versus

The State Of Bihar and Ors

... .. Respondents

Appearance :

For the Appellant/s : Mr. Uday Pratap Singh

For the Respondent/s : Mr. Abhimanyu Sharma

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

and

**HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER**

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

7 08-08-2019 1. Heard learned counsel appearing for the appellant, learned counsel for the respondent nos. 2 to 5 as well as learned Additional Public Prosecutor on behalf of the State, on the point of admission.

2. The Lower Court Record has already been received and in our view, this criminal appeal can be disposed of on admission stage itself.

3. On the basis of fardbeyan of the appellant, namely, Sarfraj Khan, Durgawati P. S. Case No. 139 of 2015 for the offences punishable under Sections 147, 148, 149, 341, 307, 302, 504, 506 of the Indian Penal Code and Section 27 of the Arms Act was registered. The appellant Sarfraj Khan claimed in



his fardbeyan that on 02.07.2015, at about 10 p.m., while he was taking rest at his door, the respondent nos. 2 to 5 being armed with deadly weapons such as rifle and Katta came there and made indiscriminate firing and furthermore, the firing of FIR named accused Sartaz Khan hit on the neck of Md. Masaud Khan as a result whereof, he died then and there whereas firing of respondent no. 2 Tonhid Khan hit to Nasaruddin Khan as a result whereof, he sustained grievous injury. Furthermore, the appellant claimed that the remaining persons assaulted others with butt of rifle as well as lathi and Katta.

4. After investigation, charge-sheet was submitted and accordingly, respondent nos. 2 to 5 were put on trial in Sessions Trial No. 345 of 2015 and they stood charged for the offences punishable under Sections 307/149, 504/149, 506/149, 302/149, 147 and 148 of the Indian Penal Code as well as Section 27 of the Arms Act. However, but co-accused Sartaz Khan was separately, charged for the offence punishable under Section 302 of the Indian Penal Code. The charges were denied by the respondent nos. 2 to 5. In course of trial, prosecution examined, altogether, 14 witnesses and also got exhibited some documents as documentary evidence. The statements of respondent nos. 2 to 5 and other co-accused Sartaz Khan were recorded under



Section 313 of the Cr. P. C in which they denied the prosecution story. No evidence was adduced by the respondent nos. 2 to 5 in support of their defence. However, the learned trial court after evaluating the evidences available on the record, convicted the co-accused Sartaz Khan for the offence punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and also convicted the respondent no. 2 for the offence punishable under Section 307 of the Indian Penal Code and Section 27 of the Arms Act and, accordingly, co-accused Sartaz Khan was sentenced to undergo life imprisonment with fine of Rs. 20,000 for the offence punishable under Section 302 of the Indian Penal Code and to undergo rigorous imprisonment for five years with fine of Rs. 10,000 for the offence punishable under Section 27 of the Arms Act and similarly, respondent no. 2 Tonhid Khan was sentenced to undergo rigorous imprisonment for ten years with fine of Rs. 20,000 for the offence punishable under Section 307 of the Indian Penal Code and to undergo rigorous imprisonment for five years with fine of Rs. 10,000 for the offence punishable under Section 27 of the Arms Act. However, the learned trial court acquitted the respondent nos. 3, 4 and 5 from all the charges framed against them.

5. Learned counsel appearing for the appellant



assailed the impugned judgment submitting that the learned trial court has awarded inadequate sentence to respondent no. 2, especially, in the circumstance when the prosecution successfully proved that respondent no. 2 opened fire causing firearm injury to injured of this case. He further submitted that so far as respondent nos. 3, 4 and 5 are concerned, the learned trial court failed to appreciate the evidences in right perspective. Continuing his submission, he submitted that almost all the material prosecution witnesses claimed that the respondent nos. 3, 4 and 5 along with other accused having formed unlawful assembly came at the house of the appellant and made indiscriminate firing and they assaulted the injureds but the learned trial court wrongly came to the conclusion that the respondent nos. 3, 4 and 5 were not the member of the unlawful assembly.

6. On the other hand, learned counsel appearing for respondent nos. 2 to 5 submitted that the learned trial court has passed a well discussed judgment. He further submitted that the present appeal is not maintainable against respondent no. 2 and so far as remaining respondents are concerned, there is no perversity or absurdity in the impugned judgment as the learned trial court doubted about the presence of respondent nos. 3, 4



and 5 over the place of occurrence when the occurrence took place and, therefore, there is no need to interfere into the impugned judgment.

7. Having heard the rival contentions of the parties, we went through the record.

8. Admittedly, the appellant has preferred this criminal appeal against the impugned judgment of acquittal of respondent nos. 3, 4 and 5 as well as against award of sentence to respondent no. 2. However, proviso of Section 372 of the Cr. P. C does not permit to victim of the case to file appeal against the sentence order and the aforesaid right has been given to state under Section 377 of the Cr. P. C. Therefore, we are of the view that present appeal is not maintainable in respect of respondent no. 2. So far as respondent nos. 3, 4, and 5 are concerned, the learned trial court after evaluating the prosecution evidences came to diffinite conclusion that the presence of respondent nos. 3, 4, 5 over the place of occurrence at the time of occurrence was doubtful. The learned counsel of the appellant could not succeed to point out any perversity or absurdity in the aforesaid finding of the learned trial court. It is well settled principal of law that innocence of an accused is presumed and the aforesaid presumption becomes more stronger, if the accused gets



acquittal in his favour. It is also settled principal of law that the finding of acquittal passed by the learned trial court cannot be disturbed by the appellate court unless the finding of the trial court found to be absurd, perverse as well as without consideration of the evidence. However, in the present case, we find that the learned trial court discussed all the evidences available on the record and after that came to the finding that presence of respondent nos. 3, 4 and 5 over the place of occurrence was doubtful. Therefore, we are of the view that there is no need to interfere into the impugned judgment.

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

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

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