

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1450 of 2018

Arising Out of PS. Case No.-146 Year-2009 Thana- DURGAWATI District- Kaimur (Bhabua)
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Khalil Ansari

... .. Appellant/s

Versus

State Of Bihar and Anr

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Rajani Kant Pandey
For the Respondent/s	:	Mr.Sri Ajay Mishra
		Mr. O.P.Pandey
		Mr. Shailendra Kumar Choubey
		Mr. Baban Prasad Singh

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

5 26-03-2019 Heard learned counsel for the appellant as well as learned Additional Public Prosecutor for the State and learned counsel for respondent no. 2 on I.A No 3493 of 2018 as well as on the point of admission.

I.A.No. 3493 of 2018 has been filed under section 378(3) of Cr. P.C for grant of leave to file this criminal appeal. The applicant in I.A.No. 3493 of 2018 happens to be father of deceased as well as informant of the case and, therefore, he has right to challenge the judgment of acquittal. Accordingly, applicant of I.A.No. 3493 of 2018 is permitted to pursue this



appeal and I.A.No. 3493 stands disposed of.

This criminal appeal has been filed against the judgment of acquittal dated 26.09.2018 passed by learned F.T.C 1st, Kaimur at Bhabhua in Session trial no.7 of 2011 arising out of Durgawati P.S.Case No. 146 of 2009 by which and whereunder the learned trial court acquitted the respondent no. 2 from the charges framed against him under section 302 of the Indian Penal Code and 27 of the Arms Act giving benefit of doubt to him.

Learned counsel appearing for the appellant assailed the impugned judgment of acquittal arguing that the learned trial court failed to appreciate the prosecution evidence in its right perspective. He submits that no doubt, the respondent no. 2 was not named in the fardbeyan but subsequently, the informant gave a petition to the concerned police officials naming the respondent no. 2 as assailant. He further submits that as a matter of fact, the police officials did not record the fardbeyan of informant properly and subsequently, when the informant learnt the above stated fact, the informant as well as several other co-villagers made attempt to reveal the real story before the police officials but the police officials did not pay any heed and, thereafter, the co-villagers made protest and after that the



statement of informant as well as other prosecution witnesses were recorded under section 164 of the Cr.P.C in which the informant and other witnesses specifically stated that it was respondent no. 2, who sought fire on the deceased and in course of trial, the witnesses stated the above stated fact but the learned trial court acquitted the respondent no. 2 only on the ground that the respondent no. 2 was not named in the fardbeyan of the informant and subsequently, his named was surfaced.

On the other hand, learned counsel appearing for the respondent no. 2 supported the impugned judgment of acquittal arguing that according to the prosecution case itself, the alleged occurrence took place on 18.10. 2009 at about 10.45 p.m and the fardbeyan of informant was recorded on 19.10.2009 at 8.15 a.m and till the recording of fardbeyan of the informant, the name of respondent no. 2 did not surface as the informant claimed in his fardbeyan that firing was made from a mob and he had not seen who had made firing on the deceased. He further submits that subsequently, the informant and his supporters got implicated the respondent no. 2 due to village politics and as a matter of fact, the local administration under pressure of informant and his supporters got recorded the statement of the informant and others under section 164 of the



Cr.P.C. Learned counsel further submits that the learned trial court has passed a well discussed judgment and there is no need to interfere into the impugned judgment.

Having heard the contentions of both the parties, we went through the record. We find that the learned trial court doubted the prosecution case from different angles after considering the prosecution evidences as well as other circumstances. The learned trial court also noted this fact that the informant did not disclose the name of respondent no. 2 neither in his fardbeyan nor in his further statement and for the first time, the name of respondent no. 2 came in the statement recorded under section 164 of the Cr.P.C.

Furthermore, the learned trial court noted in the impugned judgment that PW-4 had given information regarding the alleged occurrence in Durgawati police station but the aforesaid information was not brought on the record. The impugned judgment appears to be a well discussed judgment and it is settled principle of law that if two views are possible on same set of fact and evidence, the view taken by the trial court cannot be disturbed unless the view of the trial court is perverse and absurd. As we have already stated that the learned trial court has passed well discussed judgment, therefore, in our view,



there is not need to interfere into the impugned judgment.

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

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

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