

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.683 of 2019

Arising Out of PS. Case No.-75 Year-2010 Thana- MOHAMMADPUR District- Gopalganj

PRABHAWATI DEVI, aged about 47 years, Gender-Female, Wife of Late Nand Kishore Rai, Resident of Village-Mangalpur, Dhobi Tola, P.S-Mohammadpur, District-Gopalganj.

... .. Appellant

Versus

1. The State of Bihar
2. Shatrughan Rai Son of Late Wakil Rai Resident of Village-Mangalpur, Gaddi Tola, P.S.-Mohammadpur, District-Gopalganj.

... .. Respondents

Appearance :

For the Appellant	:	Mr.Indrajeet Bhushan, Advocate
For the Respondents	:	Mr.Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

2 05-07-2019 Heard learned counsel for the appellant as well as learned Additional Public Prosecutor for the State on the point of admission. In our view, this appeal can be disposed of on admission stage itself.

2. The appellant happens to be the informant of Mohammadpur P.S.Case No.75 of 2010 and she claimed in her fardbeyan that the respondent no.2 as well as others badly assaulted her husband who, subsequently, died in course of treatment.



3. The respondent no.2 was put on trial and charged for the offence punishable under Sections 302/34 of the Indian Penal Code to which he denied and claimed to be tried. In course of trial, prosecution examined, altogether, six prosecution witnesses but failed to examine the investigating officer and doctor who conducted the postmortem examination on the corps of the deceased and furthermore, the prosecution failed to bring the postmortem report in evidence.

4. Learned trial Court after scrutinizing the prosecution evidence passed the judgment of acquittal on the ground that due to non-examination of doctor as well as non-production of postmortem report in evidence, the prosecution could not succeed to prove the cause of death of the deceased. Furthermore, the learned trial Court held that non-examination of investigating officer caused serious prejudice to the defence.

5. Learned counsel appearing for the appellant submits that the eye witnesses very clearly stated that it was respondent no.2 who assaulted the deceased. He, further, submit that the death of the deceased is not in dispute and, therefore, even if prosecution failed to bring the postmortem report in evidence, the learned trial Court ought to have convicted the respondent no.2. He further submit that sufficient opportunity



was not given to the prosecution to produce the investigating officer as well as the doctor.

6. On the other hand, learned Additional Public Prosecutor submits that the trial Court has rightly acquitted the respondent no.2 as the prosecution could not succeed to prove the cause of death of the deceased.

7. Having heard the contentions of both the parties and going through the record, we find that the charge against respondent no.2 was framed on 15.03.2011 and, thereafter, the learned trial Court kept the matter pending for recording the prosecution evidence for near about seven years. Furthermore, we find that the learned trial Court issued all the processes to procure the attendance of prosecution witnesses including the doctor and investigating officer but all went in vain. Therefore, it is not correct to say that the prosecution did not get sufficient opportunity to produce its witnesses.

8. Furthermore, we find that the learned trial Court has observed that due to non-examination of doctor as well as non-production of postmortem report, the prosecution could not succeed to establish that deceased died of the injuries, allegedly, caused by respondent no.2 and others. In our view, the learned trial Court has given correct finding. Moreover, the learned trial



Court also noted that non-examination of the investigating officer caused serious prejudice to the witness. Therefore, we do not find any perversity or absurdity in the finding of the trial Court and, in our view, there is no need to interfere into the findings of the learned trial Court. Accordingly, this appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

B.Kr./-

U			
---	--	--	--

