

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.537 of 2018

Arising Out of PS. Case No.-101 Year-2013 Thana- KADWA District- Katihar

Md. Marjan S/o Late Zahoor Ali, Resident of Totabari, P.S.-Kadwa,
District-Katihar.

... .. Appellant/s

Versus

1. The State of Bihar
2. Hasib S/o Late Kaimur
3. Md. Ainul S/o Saifuddin
4. Md. Vakils S/o Late Jamal
5. Ismail S/o Saifuddin
6. Jainul S/o Saifuddin
7. Saifuddin S/o Late Haji Lal Mohammad

2 to 7 are Resident of Totabadi, P.S.-Kadwa, District-Katihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Ashok Kumar
For the State	:	Ms.Shashi Bala Verma
For the Respondent	:	M/s Satish Chandra Mishra
Nos. 2 to 7		Md. Nurul Hoda

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

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)

Date : 05-04-2019

Heard learned counsel appearing for the appellant,
learned Additional Public Prosecutor for the State as well as



learned counsel appearing for respondent Nos. 2 to 7 on I.A. No. 1412 of 2018, I.A. No. 1546 of 2018 as well as on the point of admission.

Re. I.A. No. 1412 of 2018

I.A. No.1412 of 2018 has been filed under Section 378(3) of the Code of Criminal Procedure praying therein to grant leave to prefer the appeal.

The appellant-applicant happens to be the full brother of the deceased and, therefore, he does have right to prefer appeal against the judgment of acquittal.

Accordingly, I.A. No. 1412 of 2018 stands allowed.

Re. I.A. No. 1546 of 2018

I.A. No.1546 of 2018 has been filed under Section 5 of the Limitation Act for condonation of delay of eight days in filing this criminal appeal.

The delay in filing this criminal appeal is condoned on the grounds mentioned in I.A. No. 1546 of 2018.

In the aforesaid manner, I.A. No. 1546 of 2018 stands allowed.

Re. Criminal Appeal (DB) No. 537 of 2018

1. This criminal appeal has been preferred against the impugned judgment of acquittal dated 22.12.2017



passed by learned Additional Sessions Judge-II, Katihar in Sessions Trial No. 24 of 2014/ 238 of 2014, by which and whereunder the learned trial court acquitted the respondent Nos. 2 to 7 from the charges framed against them for the offences punishable under Sections 302, 149, 147, 148 and 504/149 of the Indian Penal Code.

2. The grievance of the appellant is that the learned trial court did not consider the prosecution evidence in right perspective and committed error in acquitting the respondent Nos. 2 to 7.

3. The perusal of the impugned judgment goes to show that the learned trial court doubted the prosecution case taking note of contradictions occurred in the statements of prosecution witnesses on the point of manner of occurrence. Furthermore, the learned trial court doubted the prosecution case on the ground that the presence of so-called eye witnesses on the place of occurrence was doubtful.

4. Kadwa P.S. Case No. 101 of 2013 was registered against respondent Nos. 2 to 7 on the *fard-e-beyan* of appellant, who claimed in his *fard-e-beyan* that on the alleged dated of occurrence his deceased brother had gone to the house of the *Samdhi*, namely, Qasim, where he was



assaulted by the respondent Nos. 2 to 7 and in that course, respondent No. 7 gave *Gupti* blow on the head of deceased as a result whereof the deceased fell down on the ground but even then respondent Nos. 2 to 7 badly assaulted him resulting his death then and there.

5. The respondent Nos. 2 to 7 stood charged for the offences punishable under Sections 341, 323, 302 and 504/34 of the Indian Penal Code and prosecution to prove the charges, examined, altogether, nine witnesses and also got exhibited some documents. The defence also got examined three witnesses as well as got exhibited some documents.

6. The learned trial court after evaluating the evidences available on record found that prosecution witnesses have made contradictory statements on the point of giving *Gupti* blow to deceased and, furthermore, on the basis of aforesaid contradiction, the learned trial court doubted about the presence of so-called eye witnesses over the place of occurrence when the occurrence took place. The learned trial court has mentioned at para 37 of the impugned judgment that P.W. 2 and P.W. 7 claimed before the trial court that the *Gupti* blow was given on the head of deceased by respondent No. 3, whereas other witnesses stated that the *Gupti* blow was given



by respondent No. 7. Furthermore, the learned trial court found that the informant as well as his brother claimed that only they were present on the place of occurrence when the occurrence took place, whereas P.W. 9 claimed that she along with her husband and daughter was, too, present over the place of occurrence. The learned trial court also noticed that two injuries were found on the person of the deceased in course of postmortem examination and both the aforesaid injuries were incised wound. The learned trial court, specifically, mentioned in the impugned judgment that no injury caused by hard and blunt substance was found on the person of the deceased and, therefore, the claim of the prosecution witnesses that the deceased was assaulted by respondent Nos. 2 to 7 by means of *Lathi* becomes doubtful.

7. The perusal of impugned judgment goes to show that the learned trial court has discussed all the evidences available on the record and came to definite finding that the prosecution could not succeed to prove its case beyond all shadow of reasonable doubts. We do not find any ground to interfere into the findings of the learned trial court and, therefore, in our view, this appeal is devoid of merit and liable to be dismissed on admission stage itself.



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

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	N/A
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