

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.752 of 2018**

Arising Out of PS. Case No.-90 Year-2013 Thana- BARH District- Patna

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Babita Devi W/o Roushan Yadav, R/o Vill.- Mokimpur, P.S.- Barh, District- Patna.

... .. Appellant/s

Versus

1. The State of Bihar
2. Ravi Kant Yadav S/o Late Jageshwar Yadav,
3. Jai Kant Yadav S/o Late Jageshwar Yadav,
Both are R/o Village Mokimpur, P.S. Barh, District Patna

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Kumar Singh
For the Respondent/s : Mr. Ajay Mishra

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

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

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

Date : 09-05-2019

Heard learned counsel appearing for the appellant,
learned counsel appearing for the respondent Nos. 2 and 3 as
well as learned Additional Public Prosecutor for the State on
I.A. No.1826 of 2018 (D.B.) as well as on the point of
admission and perused the record.

2. We are of the view that this appeal can be
disposed on Admission stage itself.

3. Respondent Nos. 2 and 3 faced trial in
Sessions Trial No. 1156 of 2013 (arising out of Barh P.S. Case



No. 90 of 2013) before the learned Additional District and Sessions Judge, 1st, Barh, who, by the impugned judgment dated 17.04.2018 acquitted that the respondent Nos. 2 and 3 from the charges framed against them for the offences punishable under Sections 447, 307, 34 and 504 and Section 27 of Arms Act. Being aggrieved by the impugned judgment, the appellant has preferred this appeal.

4. The grievances of the appellant is that the learned Trial Court committed error in acquitting the respondent Nos. 2 and 3 from the charges framed against them, as there was sufficient material to prove the guilt of respondent Nos. 2 and 3.

5. Learned counsel appearing for the appellant submits that the appellant appeared before the learned Trial Court as P.W. 4 and she, specifically, stated that both the respondents entered into her house and respondent No. 3 shot fire on her, which hit at her chest.

6. Learned counsel for the appellant further submits that P.W.-6 and P.W.-7 claimed in their respective statements that they examined the P.W.-4 after the occurrence and found injury on her person.

7. Learned counsel for the appellant further



submits that the aforesaid fact clearly goes to show that respondent Nos. 2 and 3 made attempt to commit the murder of the appellant, but could not succeed in their attempt. He further submits that to attract the offence under Section 307 of the I.P.C., the injury is not at all essential but learned trial court did not take note on the above stated fact.

8. On the other hand, learned counsel appearing for the respondent Nos. 2 and 3 supported the impugned judgment of acquittal, arguing that the learned Trial Court noted the contradictions occurred in the depositions of the appellant and other prosecution witnesses and also noted that the injury of the appellant was superficial in nature. He further submitted that the learned trial court doubted the prosecution case on various grounds, such as, the appellant remained in her house for near about two hours, even after having sustained injury of firearm and apart from this, the learned trial court also noted that the prosecution could not succeed to prove the place of occurrence beyond shadow of reasonable doubt. He, further, submits that in the aforesaid circumstance, the learned trial court rightly acquitted the respondent Nos. 3 and 4.

9. Having heard the rival contentions of the parties, we went through the lower court records and the perusal



of lower court records as well as the impugned judgment, goes to show that the learned trial court doubted the prosecution case on various grounds. The learned trial court also noticed that the prosecution witnesses have not supported the prosecution case and, furthermore, the injury of the appellant was superficial in nature. Furthermore, the trial court also noticed that Investigating Officer did not find any blood stained in the house of the appellant. Moreover, we are of the opinion that the learned trial court has taken all the aspects and, thereafter, learned trial court came to definite conclusion that prosecution could not succeed to prove the guilt of the respondent Nos. 2 and 3.

10. In view of the aforesaid discussions, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Partha Sarthy, J)

sudha/-

AFR/NAFR	NAFR
CAV DATE	NA
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