

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.856 of 2018

In

Criminal Appeal (SJ) No.1118 of 2018

Arising Out of PS. Case No.-20 Year-2009 Thana- NAUTAN District- Siwan

Pasupati Nath Pandey @ Jailor Pandey @ Paspati Pandey, son of Late Ram Nagina Pandey alias Nagina Pandey, resident of village-Sikuara, Police Station-Nautan, District-Siwan.

... .. Appellant.

Versus

1. The State of Bihar.
2. Tarkeshwar Pandey, son of Late Nand Ji Pandey.
3. Bankey Pandey, son of Rabindra Pandey.
4. Rama Shankar Pandey, son of Rabindra Pandey.
5. Ram Sarikhan Pandey, son of Late Ram Nagina Pandey. (dead).
6. Badashah Pandey, son of Ram Sarikhan Pandey.
7. Rabindra Pandey, son of Late Bhagwati Pandey.
8. Shyam Narayan Pandey alias Shyam Nr. Pandey, son of Late Bhagwati Pandey.

All are resident of village-Sikuara, P.O. Semaria, Police Station-Nautan, District-Siwan.

... .. Respondents.

Appearance :

For the Appellant : Mr. Bijay Prakash Singh, Advocate.

For the State : Mr. Shyed Ashfaq Ahmad, A.P.P.

For the Respondent Nos. : Mr. Shyam Narayan Pandey, Advocate.
2, 3, 4, 7 and 8.

For the Respondent No.6: Mr. Rajesh Kumar Chaudhary, Advocate.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 13-02-2019

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 4 and



respondent nos.6 to 8 on the point of admission as well as I.A. No.2076 of 2018, which has been filed under Section 378(3) of the Code of Criminal Procedure for grant of leave to file and pursue this criminal appeal.

2. I.A. No. 2076 of 2018 has been filed on behalf of the appellant, who happens to be the informant and comes under the ambit of victim. Accordingly, he is permitted to file and pursue this criminal appeal and, accordingly, I.A. No. 2076 of 2018 stands disposed of.

3. The office has reported that according to the report of the Process Server, respondent no.5 is no more.

4. Learned counsel appearing for the appellant seeks permission for deleting the name of respondent no.5 from the memo of this appeal. Accordingly, he is permitted to do so within the course of the day.

5. This Criminal appeal has been preferred against the Judgment of acquittal dated 23.02.2018 passed by the learned Fast Track Court No.I, Siwan, in Session Trial No. 24 of 2010, by which and whereunder he acquitted the private respondents from the charges framed against them for the offences punishable under Sections 147, 148, 149, 323 and 307/149 of the Indian Penal Code.



6. Learned counsel appearing for the appellant drew our attention towards the impugned Judgment, pointing out that the learned trial court at paragraph 14 of the impugned judgment observed that altogether 9 prosecution witnesses were examined and the Investigating Officer as well as doctor were not examined and on the aforesaid ground, the learned trial court passed the Judgment of acquittal. He further submits that the learned trial court mentioned paragraph-12 at two places in the impugned judgment and in one place of paragraph-12, the learned trial court, subsequently, inserted that the doctor was examined as P.W. 10 and proved the injury report. Learned counsel submits that, admittedly, at paragraph-14 of the impugned Judgment, the learned trial court has mentioned that only nine prosecution witnesses were examined but when a new paragraph-12 was, later on, inserted, the learned trial court observed that 10 prosecution witnesses were examined and, therefore, the aforesaid fact clearly goes to show that the learned trial court inserted paragraph-12, subsequently. He further submits that, moreover, the Judgment of acquittal is based upon non-examination of Investigating Officer and doctor but, admittedly, the doctor was examined by the prosecution and, therefore, the aforesaid fact goes to show the complete non-



application of judicial mind of the learned trial court and apart from this, the aforesaid fact also indicates that the learned trial court has given its finding against the materials available on the record. He submitted that in the aforesaid circumstance, the impugned Judgment cannot sustain in the eye of law.

7. On the other hand, learned counsel appearing for the private respondents tried to justify the findings of the learned trial court, arguing that at paragraph-12 of the impugned Judgment, the learned trial court has discussed the evidence of doctor and, therefore, it cannot be said that the impugned judgment has been passed without application of judicial mind.

8. Learned Additional Public Prosecutor, too, fairly submits that there is glaring and apparent illegality in the impugned Judgment and, therefore, the impugned Judgment cannot sustain in the eye of law.

9. Having heard the contentions of all the parties, we went through the impugned Judgment as well as Lower Court Records and, in our view, this appeal can be disposed of on admission stage itself.

10. The perusal of the impugned Judgment goes to show that the learned trial court based the finding of acquittal on the ground of non-examination of the Investigating Officer and



doctor as well as non-production of injury report of injured of the present case but the perusal of paragraph-12 of the impugned Judgment itself goes to show that not only the concerned doctor was examined by the prosecution but also injury report was got exhibited by the prosecution and the learned trial court completely ignored the aforesaid fact by giving its finding of acquittal and, therefore, in our view, the learned counsel of the appellant as well as learned Additional Public Prosecutor rightly submitted that the impugned Judgment is a glaring example of non- application of judicial mind of the learned trial court and the impugned Judgment cannot sustain in the eye of law.

11. On the basis of the aforesaid discussions, this criminal appeal stands allowed and, accordingly, the impugned Judgment of acquittal dated 23.02.2018 passed by the learned Fast Track Court No.I, Siwan, in Sessions Trial No.24 of 2010, is, hereby, set aside and the matter is remitted to the learned trial court for retrial as well as for passing a fresh Judgment, after giving sufficient opportunity of hearing to the parties within six months from the date of receipt or production of copy of this Judgment as well as receipt of Lower Court Record.

12. The private respondent nos.2, 3, 4, 6, 7 and 8



are directed to surrender before the trial court within six weeks and if they do so, the learned trial court shall release them on bail, fixing the amount of bail bonds on its own level.

13. Let the photostat copy of the Lower Court Records as well as X-ray plate, sent by the learned court below, be returned immediately to the learned court below.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.02.2019.
Transmission Date	18.02.2019.

