

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.783 of 2018

Arising Out of PS. Case No.-410 Year-2014 Thana- BIDUPUR District- Vaishali

Manjeet Kumar Son of Arvind Singh, Resident of Village- Mohiuddinpur,
Police Station- Bidupur, District- Vaishali.

... .. Appellant

Versus

1. The State Of Bihar
2. Pranav Kumar @ Vikram Kumar @ Tuntun Kumar, Son of Rajendra Singh,
3. Janki Devi @ Shiv Janki Devi, Wife of Rajendra Singh,
4. Anshu Kumari, Wife of Arun Kumar,
5. Kavita Kumari,
6. Babita Kumari, Both Daughters of Rajendra Singh.

All Resident of Village- Mohiuddinpur, Police Station- Bidupur, District-
Vaishali.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Ramakant Sharma, Sr. Adv Mr. Rakesh Kumar Sharma, Adv. Mr. Amresh Kumar, Adv. Mr. Lakshmi Kant Sharma, Adv. Mr. Prakash Rai, Adv.
For the Respondents	:	Mr. Rajendra Narayan, Sr. Adv. Mrs. Shail Kumari Adv. Mr. Abhishek Kumar, Adv. Mrs. Rashmi Jha, Adv.
For the State	:	Dr. Mayanand Jha, APP

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 22-02-2019

1. Heard learned counsel appearing for the appellant,
learned counsel appearing for the respondent nos. 2 to 6 as well as
learned Additional Public Prosecutor for the State on I.A. No.
2078 of 2018 as well as on the point of admission.



2. I.A. No. 2078 of 2018 has been filed on behalf of applicant-appellant under Section 378(3) of the Cr.P.C for grant of leave to file and pursue this criminal appeal.

3. The applicant-appellant happens to be informant and victim of the present case and, therefore, I.A. No. 2078 of 2018 stands allowed and accordingly, applicant-appellant is permitted to pursue this criminal appeal.

4. This criminal appeal has been preferred against the impugned judgment of acquittal dated 27.04.2018 passed by learned Additional Sessions Judge-I, Vaishali at Hajipur in Sessions Trial No. 56 of 2016 by which and whereunder, he acquitted the respondent nos. 2 to 6 from the charges framed against them for the offences punishable under Sections 302/149, 307/149, 147, 148, 427/149, 429/149, 341/149, 448/149, 337, 338, 302, 307 of the IPC and 27 of the Arms Act.

5. Learned counsel appearing for the appellant assailed the impugned judgment of acquittal arguing that the findings given by the learned trial court are perverse and absurd. He further submits that the learned trial court failed to appreciate the prosecution evidence in its right perspective. Continuing his submission, he submitted that the learned trial court passed the judgment of acquittal on following grounds:-



(i) Prosecution witnesses changed the prosecution story as well as manner of occurrence in course of trial.

(ii) There was contradiction in medical reports of two doctors.

Pellet was found in abdomen of deceased Sujeet Kumar but prosecution witnesses claimed that firing on the deceased was made from pistol and, therefore, finding of pellet does not support the claim of prosecution witnesses.

(iii) The prosecution examined only interested witnesses and the testimonies of aforesaid prosecution witnesses do not inspire confidence to the court.

6. Learned counsel of the appellant submits that no doubt, in fardbeyan, the informant(appellant) claimed that the female accused came on the place of occurrence when the injureds were taken to hospital but in course of trial, when prosecution witnesses were examined, they claimed that female accused came over the place of occurrence along with male accused. He submits that even if the aforesaid change in prosecution story assumed to be true, then also, the aforesaid twist in prosecution case does not create any doubt because in both the manners prosecution claimed that heavy firing was made and in that firing several persons sustained firearm injury. He further submits that finding of pellet



in the abdomen of deceased Sujit Kumar is also not of much importance because the prosecution witnesses are rustic villagers and they could not understand the difference between pistol and other firearms. He further submits that so far as rejection of the prosecution case on the ground that only interested witnesses came to support the prosecution case is concerned, the same is not in accordance with law because it is well settled principle of law that the testimony of a witness cannot be rejected only on the ground being interested witness.

7. On the other hand, learned counsel appearing for respondent nos. 2 to 6 supports the impugned judgment of acquittal submitting that the learned trial court has passed a well discussed and well thought judgment. He submits that apart from the grounds taken by the learned trial court for writing the judgment of acquittal, there are several other grounds available on record to doubt the prosecution case. He further submits that informant in his fardbeyan admitted that 40 to 50 Nexalites came on the place of occurrence and they made indiscriminate firing causing injuries to deceased and others but in course of trial, prosecution witnesses improved the case and stated that it was respondent no. 2, namely, Pranav Kumar @ Vikram Kumar @ Tuntun Kumar who shot fire on the deceased Sujit Kumar. He



submits that several prosecution witnesses, who happened to be family members of informant, claimed before investigating officer in course of investigation that unknown persons had made firing and the attention of aforesaid prosecution witnesses as well as investigating officer was drawn towards the statements of the witnesses and the investigating officer fairly admitted this fact that the above stated witnesses had not stated before him that it was respondent no. 2, who shot fire on the deceased. He further submitted that no doubt, the testimony of a witness cannot be rejected only on the ground that said witness is an interested witness but the testimony of aforesaid witness has to be seen with care and caution and the learned trial court rejected the testimony of prosecution witnesses taking note of improvement in their statements as well as other surrounding circumstances. He further submits that so far as respondent nos. 3 to 6 are concerned, no specific overt-act has been attributed against them and it is only stated that they pelted stones. However, the prosecution witnesses failed to prove the manner of occurrence and that is why the learned trial court having taken all the above stated facts and circumstances into consideration passed the judgment of acquittal and therefore, there is no need for this appellate court to interfere into the impugned judgment of acquittal.



8. Having heard the contentions of both the parties, we went through the record along with lower court records and in our view, this criminal appeal can be disposed of on admission stage itself.

9. On the basis of fardbayan of P.W-6 Manjit Kumar, Bidupur P.S. Case No. 410 of 2014 was registered for the offences punishable under Section 307 and other minor sections of the IPC as well as 27 of the Arms Act. However, after institution of the aforesaid case, Section 302 of the IPC was added on account of death of injured Sujit Kumar.

10. P.W-6 claimed in his fardbayan that on 07.12.2014 at about 1.00 P.M, while he along with his other family members was sitting at his door and his cattles were tied in front of his door, FIR named accused including respondent no. 2 along with 40 to 50 unknown Nexalites being armed with deadly weapons came there and after untying the cattles they started taking away the cattles and when he as well as his other family members tried to stop them, the FIR named accused Arun Kumar, Ravishankar Singh, Sushil Kumar, Sanjay Kumar, Rohit Kumar, Vikash Kumar and respondent no. 2 started making indiscriminate firing from their respective firearms. P.W 6 also claimed that at the time of alleged occurrence, respondent no. 2 was armed with pistol whereas



remaining FIR named accused were armed either with katta or with rifle and other weapons. This witness further claimed that Ranjeet Prasad Singh, Sujeet Kumar, Amarjeet Kumar, Gautam Kumar and Anil Kumar sustained firearm injury. Deceased Sujeet Kumar sustained firearm injury on his abdomen. Some cattles also sustained firearm injury.

11. In course of trial, altogether, 18 prosecution witnesses were examined and some documents were got exhibited by the prosecution. The statements of respondent nos. 2 to 6 were recorded under Section 313 of the Cr.P.C. Although, the respondent nos. 2 to 6 did not produce any witness but they got exhibited some documents in support of their defence. The learned trial court having analyzed the evidences available on the record passed the impugned judgment of acquittal on the grounds as we have already stated while narrating the arguments advanced on behalf of the appellant.

12. On perusal of the impugned judgment, we find that the learned trial court discussed all the prosecution evidences and noted the infirmities in the prosecution case. Furthermore, we also perused the lower court records and we find that learned counsel appearing for the respondent nos. 2 to 6 rightly submitted that the prosecution witnesses improved their statements in course of trial.



It is settled principle of law that innocence of an accused is presumed till his conviction and the aforesaid presumption becomes more stronger after acquittal. Furthermore, it is well settled principle of law that if two views are possible on the same set of evidence and fact, the view taken by the trial court shall prevail, unless the view of trial court is absurd and perverse. In the present case, we find that the learned trial court having discussed the prosecution evidence refused to place reliance upon the prosecution evidence. There is nothing to show that the view taken by the learned trial court is absurd and perverse and, therefore, we are of the view that there is no need to interfere into the impugned judgment of acquittal.

13. Accordingly, on the basis of aforesaid discussions, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

shahzad/-
abhijeet

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	02.03.2019
Transmission Date	02.03.2019

