

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.843 of 2018

In
CRIMINAL APPEAL (SJ) No.1069 of 2018

Arising Out of PS. Case No.-8 Year-2007 Thana- PURAINI District- Madhepura

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Sudhir Kumar, S/O Late Rajendra Prasad Yadav, R/o Village-Bala Tola, P.S-Puraini, District-Madhepura, presently resident of Ward no.2, Anand Vihar, PS-Madhepura, Dist-Madhepura

... .. Appellant/s

Versus

1. The State of Bihar.
2. Chandeshwari Yadav, Late Uday Ram Yadav R/o Village-Bala Tola, P.S-Puraini, District-Madhepura
3. Mithlesh Yadav Chandeshwari Yadav, R/o Village-Bala Tola, P.S-Puraini, District-Madhepura

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Binay Kumar Pandey, Advocate.
For the State : Mr. S. N. Pd., APP

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

Date : 08-04-2019

1. Heard learned counsel for the appellant as well as learned Additional Public Prosecutor for the State on I.A. No. 2039 of 2018, I.A. No. 2040 of 2018 and on the point of admission.



2. I.A. No. 2039 of 2018 has been filed under Section 378(3) of the Criminal Procedure Code for grant of leave to file and pursue this criminal appeal.

3. The appellant happens to be informant and brother of injured of this case and, therefore, he has statutory right to file this criminal appeal. Accordingly, I.A. No. 2039 of 2018 stands disposed of.

4. I.A. No. 2040 of 2018 has been filed under Section 5 of the Limitation Act for condonation of delay on the ground that earlier the present appeal was preferred before the learned Single Judge but subsequently, the office pointed out defect and with permission of the Hon'ble Single Judge, this appeal was converted and preferred before this Division Bench.

5. In view of the averments made in I.A. No. 2040 of 2018, the delay in filing this criminal appeal stands condoned and, accordingly, I.A. No. 2040 of 2018 stands disposed of.

6. This criminal appeal has been preferred against the impugned Judgment dated 16.09.2017 passed by the Additional Sessions Judge, Fast Track Court No. II, Madhepura, in Sessions Trail No. 185 of 2008, by which and whereunder, he acquitted the respondent nos. 2 and 3 from the charges framed under Sections 147, 148, 504 and 379 of the Indian Penal Code and further



acquitted the respondent no. 2 from the charge framed under Sections 307/149 of the Indian Penal Code and similarly, respondent no. 3 was not found guilty for the offence punishable under Section 307 of the Indian Penal Code. However, the learned trial court convicted the respondent no. 3 for the offence punishable under Section 324 of the Indian Penal Code and sentenced him to undergo simple imprisonment for two years for the offence punishable under Section 324 of the Indian Penal Code.

7. The grievance of the appellant is that there was sufficient material to convict the respondent nos. 2 and 3 for the offence punishable under Sections 307 read with Section 149 of the Indian Penal Code but in spite of that the learned trial court did not convict the respondent no. 2 and 3 for the offence punishable under Section 307 read with Section 149 of the Indian Penal Code. Furthermore, the grievance of the appellant is that inadequate punishment was awarded by the trial court to appellant no. 3, even, for the offence punishable under Section 324 of the Indian Penal Code.

8. Learned counsel appearing for the appellant submits that the learned trial court came to conclusion that the injured had sustained injuries but only on the ground that the complete injury



report could not be produced by the prosecution in course of trial, learned trial court passed the impugned Judgment assuming that the injured had sustained simple injury, though, it was apparent on the face of record that the injured had sustained injury on his face which is vital part of the body and the aforesaid fact goes to show that respondent nos. 2 and 3 had intention to commit the murder of brother of the informant of the present case.

9. On the other hand, learned Additional Public Prosecutor supports the impugned Judgment arguing that the learned trial court has discussed all the materials available on the record and furthermore, the learned trial court has rightly presumed that the injured had sustained simple injury as the complete injury report could not be produced by the prosecution before the learned trial court.

10. Having heard the contentions of both the parties, we went through the impugned Judgment. In our view, this criminal appeal can be disposed of on admissions stage itself.

11. The prosecution claims that respondent nos. 2 and 3 along with other F.I.R. named accused assaulted the injured by means of Farsa as well as lathi choosing vital part of the body of injured.



12. The respondent nos. 2 and 3 were put on trial before the trial court and in course of trial, prosecution examined its witnesses and also got exhibited injury report. Furthermore, the impugned Judgment goes to show that the injured was referred to Government Hospital, Madhepura but he got admitted himself in private hospital for treatment. However, it is apparent from perusal of the impugned Judgment that the Doctor, who had initially examined the injured, kept his opinion reserved in respect of injuries sustained by injured and no further injury report containing the opinion of Doctor regarding nature of injury was produced before the trial court. It is obvious that in the aforesaid circumstance, the learned trial court presumed that the injured had sustained simple injury. We do not find any illegality and perversity in the above stated approach of the learned trial court while discussing and evaluating the evidence of prosecution so far as it relates to acquittal of respondent nos.2 and 3 from the charge framed under Section 307 read with Section 149 of the I.P.C. Furthermore, so far as the sentence order is concerned, the learned trial court has awarded adequate sentence to respondent no.3 for the offence of Section 324 of the I.P.C.

13. Therefore, we are of the considered opinion that there is no need to interfere into the impugned Judgment.



Accordingly, this criminal appeal stands dismissed on admissions stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	NAFR
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