

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.845 of 2018

Arising Out of PS. Case No.-20 Year-2007 Thana- KALER District- Jehanabad

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Md. Mosharf Husain @ Md. Musarraff Hussain @ Mosarph Hussain Son of
Late Shah Nazar Khan, resident of Village- Purakothi, P.S. Kaler District-
Arwal.

... .. Appellant/s

Versus

1. The State Of Bihar
2. Nasrullah Khan, Son of Late Ainul Khan
3. Chhotan Khan, Son of Salahuddin Khan.
4. Habib Khan, Son of Maqsuood Khan
5. Md. Khalil Khan, Son of Habib Khan,
6. Mahboob Khan, Son of Maqsood Khan,
7. Shamina Khatoon @ Shibi Khaton, Wife of Irshad Alam,
8. Biku Khan, Son of Omar Khan,
9. Shivali Khan, Son of Late Ismail Khan
10. Julfikar Khan, Son of Late Mansoor Khan
11. Lakhu Khan, Son of Omar Khan.
12. Akhter Khan, Son of Late Azim Khan
13. Ibrahim Khan, Son of Late Raja Khan

All residents of Village Pura Kothi, P.S.- Kaler, District- Arwal.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Md. Rashid Alam
For the State	:	Mr.Sri Ajay Mishra
For the Informant	:	Mr. Ansul

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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 : 11-02-2019

Re. I.A. No. 2413 of 2018

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 13 on I.A. No. 2413 of 2018 as well as on the point of admission.

I.A. No. 2413 of 2018 has been filed under Section 378(3) of the Code of Criminal Procedure seeking leave to file and pursue this appeal.

The appellant-applicant happens to be son of the deceased and comes under the purview of victim and, therefore, he has right to challenge the judgment of acquittal.

Accordingly, the appellant-applicant is permitted to pursue this criminal appeal.

In the aforesaid manner, I.A. No. 2413 of 2018 stands allowed.

Re. Criminal Appeal (DB) No. 845 of 2018

1. This criminal appeal has been preferred against the impugned judgment dated 11.4.2018 passed by learned Presiding Officer, Fast Track Court No.-I, Jehanabad in Sessions Trial No. 109 of 2009/ 451 of 2017, by which and whereunder the learned trial court acquitted the



respondent Nos. 2 and 13 from the charges framed against them for the offences punishable under Sections 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, whereas convicted the co-accused Farid Khan for the offences punishable under Sections 302 of the Indian Penal Code and Section 27 of the Arms Act.

2. The appellant being aggrieved by the acquittal of respondent Nos. 2 to 13 has preferred this criminal appeal on the ground that the learned trial court wrongly discarded the statement of P.W. 2 and P.W. 4, who are injured and claimed to have seen the alleged occurrence.

3. Learned counsel appearing for the appellant submits that P.W. 2 and P.W. 4, specifically, stated that respondent Nos. 2 to 13, too, had participated in the alleged crime but the learned trial court discarded their testimony on flimsy ground. He further submitted that, as a matter of fact, the Investigating Officer did not make a fair investigation and did not record the proper statement of prosecution witnesses. He further submitted that the learned trial court wrongly relied upon the testimony of Investigating Officer because, admittedly, from the very inception of the prosecution case, the prosecution claimed that all the named



accused having entered into the house of the deceased committed the alleged crime.

4. On the other hand, learned counsel appearing for the private respondent Nos. 2 to 13 supports the impugned judgment of acquittal arguing that P.W. 2 and P.W. 4 claimed before the Investigating Officer, in course of investigation, that the private respondent Nos. 2 to 13 were standing near a tree at the time of alleged occurrence and only convicted accused Farid Khan and two other persons had entered into the house of the deceased and committed the alleged crime but in course of trial P.W. 2 and P.W. 4 improved their statements and claimed that private respondent Nos. 2 to 13 along with convicted accused Farid Khan having entered into the house of deceased committed the alleged crime. Learned counsel further submitted that P.W. 2 and P.W. 4 claimed that respondent Nos. 5, 6 and others assaulted them but there are several contradictions in their statements on the point of assault and taking note of all the aforesaid facts, the learned trial court passed the judgment of acquittal in favour of private respondent Nos. 2 to 13. Learned counsel further submits that presumption of innocence is always in favour of the accused till conviction



and the aforesaid presumption becomes more stronger, if accused gets acquitted. He further submits that in cases of acquittal unless the findings of trial court is found absurd and perverted, the appellate court, generally, never interferes into the findings of the acquittal passed by the trial court. He, submits, that there is nothing before this appellate court to interfere into the findings of acquittal given by the learned trial court.

5. Learned Additional Public Prosecutor, too, supports the impugned judgment of acquittal.

6. Having heard the contentions of both the parties, we went through the impugned judgment as well as Lower Court Records.

7. We find that the learned trial court at paragraph 23 of the impugned judgment has observed that the P.W. 2 and P.W. 4 improved their statement in course of trial and taking note of the aforesaid fact the trial court gave benefit of doubt to respondent Nos. 2 to 13.

8. We do agree with the submissions of learned counsel of the opposite party Nos. 2 to 13 that there is no ground to interfere into the aforesaid judgment of acquittal and, therefore, in our view, this appeal is liable to



be dismissed at the admission stage itself.

9. Accordingly, this appeal stands dismissed
on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
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