

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.987 of 2018

Arising Out of PS. Case No.-75 Year-2014 Thana- AAJAM NAGAR District- Katihar

Subhash Sharma, S/o Late Atkali Sharma, resident of Village- Mukuriya,
Police Station- Azamnagar (Salmari O.P.) District Katihar.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Vikram Mahaldar, S/o Chichwa Mahaldar
3. Chichwa Mahaldar @ Sudama Mahaldar, S/o Khokhai Mahaldar
Both resident of Village- Mukuriya, Police Station- Azamnagar (Salmari
O.P.), District- Katihar.

... .. Respondent/s

Appearance :

For the Appellant/s : M/S Jagdish Prasad,
Md. Ziaul Quamar
For the State : Mr. Abhimanyu Sharma, A.P.P.

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

and

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA**

ORAL JUDGMENT

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

Date : 09-01-2019

Re. I.A. No. 2713 of 2018

Heard learned counsel appearing for the appellant as
well as learned Additional Public Prosecutor for the State on
I.A. No. 2713 of 2018 as well as on the point of admission.

I.A. No. 2713 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 father 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. 2713 of 2018 stands disposed of.

Re. Criminal Appeal (DB) No.987 of 2018

1. This criminal appeal has been preferred against the judgment of acquittal dated 10.6.2018 passed by learned Additional Sessions-IV, Katihar in Sessions Trial No. 14 of 2015, by which and whereunder he acquitted the respondent Nos. 2 and 3 from the charges framed against them for the offences punishable under Sections 302/201/34 of the Indian Penal Code, whereas convicted the co-accused Fudan Mahaldar for the offences punishable under Sections 302 and 201 of the Indian Penal Code.

2. Azamnagar P.S. Case No. 75 of 2014 was registered on the basis of *fardebeyan* of the appellant, who claimed in his *fardebeyan* that his son had sweet relation with one Varsha Kumari and his son had gone to meet Varsha Kumari, but went missing. Subsequently, the dead body of his son was recovered from a pond.

3. The respondent Nos. 2 and 3 as well as



convict Fudan Mahaldar were put on trial and, accordingly, they were charged for the offences punishable under Sections 302/201/34 of the Indian Penal Code.

4. In course of trial, altogether eight prosecution witnesses were examined but not a single witness claimed to have seen the actual killing of the deceased and taking note of the evidences available on the record, the learned trial court passed the judgment of acquittal in respect of respondent Nos. 2 and 3, whereas convicted the co-accused Fudan Mahaldar in the manner, as stated above.

5. Learned counsel appearing for the appellant submitted that in course of trial, P.W. 2 Renu Devi stated that the mother of aforesaid Varsha Kumari admitted before her that the deceased was killed by respondent Nos. 2 and 3 and Fudan Mahaldar and his dead body was thrown in a pond, which was, subsequently, recovered on the basis of the aforesaid disclosure. He has further stated that the learned trial court completely ignored the aforesaid fact.

6. On the other hand, learned Additional Public Prosecutor supported the impugned judgment, arguing that there was nothing before the learned trial court to convict the respondent Nos. 2 and 3 and there is no need to interfere into



the impugned judgment.

7. Having heard the contentions of both the parties, we went through the impugned judgment.

8. We find that not a single prosecution witness claimed to have seen the actual killing of the deceased and we also find that there was nothing before the learned trial court to convict the respondent Nos. 2 and 3. Moreover, it is settled principle of law that if two views are possible on the basis of evidence and facts, the view adopted by the learned trial court cannot be disturbed unless the view is absurd.

9. Therefore, in the aforesaid circumstance, we are of the opinion that there is no need to interfere into the impugned judgment of acquittal, which relates to respondent Nos. 2 and 3.

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

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.01.2019
Transmission Date	NA

