

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.763 of 2019

Arising Out of PS. Case No.-151 Year-2005 Thana- GOH District- Aurangabad

Usha Kuwar, aged about 46 years, Female, Wife of Late Yatindra Bhushan Prasad, Resident of Village-Fag, P. S.- Goh, District – Aurangabad.

... .. Appellant

Versus

1. The State of Bihar
2. Girija Das, S/o Binod Das.
3. Satendra Mahto, S/o Ramanju Mahto.
4. Alok Mahto, S/o Baleshwar Mahto.

All residents of Village – Fag, P. S.- Goh, District – Aurangabad.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Krishna Pd. Singh, Sr. Adv. Mr. Saket Kumar Singh, Adv.
For the State	:	Mr. Shiwesh Chandra Mishra, APP

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

3 17-09-2019 Heard learned counsel appearing for the appellant as well as learned Additional Public Prosecutor for the State on the point of admission and, in our view, this appeal can be disposed of on admission stage itself.

The appellant is mother of deceased and she is aggrieved by the impugned judgment of acquittal, dated 08.04.2019 passed by learned Additional Sessions Judge, 7th, Aurangabad in Sessions Trial No. 308 of 2007 by which and whereunder, he acquitted respondent nos. 2, 3 and 4 from the



charges framed against them for the offences punishable under Sections 364/34, 302/34 and 201/34 of the Indian Penal Code.

The prosecution case is that on 30.11.2005, the son of appellant went to his field but did not return to his home till evening and after that appellant and others started searching for the deceased but they could not succeed to trace him out and thereafter, on 01.12.2005, the husband of the appellant gave information to police about the missing of the deceased and having got the aforesaid information, police reached to the village of the appellant and made search of deceased but police also could not succeed to trace the deceased out. However, on 02.12.2005 informant (father-in-law of appellant) learnt that respondent no. 2, Girija Das as well as Binod Das and Ramavtar Das had kidnapped the deceased and had kept the deceased in the house of Arun Mahto. Furthermore, the informant also learnt that Srikant Mahto, Alok Mahto (respondent no. 4) and Satendra Mahto (respondent no. 3) had helped the Girija Das (respondent no. 2) and others in concealing the deceased in the house of Arun Mahto. Subsequently, the dead body of deceased was recovered from a ditch.

The respondent nos. 2, 3 and 4 were charge-sheeted and, accordingly, they were put to trial and stood charged for the



offences punishable under Sections 364/34, 302/34 and 201/34 of the Indian Penal Code.

In course of trial, prosecution examined, altogether, 17 prosecution witnesses and also got exhibited some documents including postmortem report of the deceased.

The learned trial court, having evaluated the prosecution evidence, came to the conclusion that prosecution could not succeed to prove the charges against respondent nos. 2, 3 and 4 beyond all shadow of reasonable doubt.

Learned counsel appearing for the appellant submits that almost all the prosecution witnesses, except those prosecution witnesses, who were declared hostile, supported the prosecution case and have, categorically, stated that respondent nos. 2, 3 and 4 did not allow the villagers to search their respective houses. Learned counsel of the appellant further submits that the postmortem report of the deceased goes to show that he was brutally killed by his kidnappers and the aforesaid circumstance clearly suggests that respondent nos. 2, 3 and 4, not only, kidnapped the four year old boy but also killed him in brutal manner.

On the other hand, leaned Additional Public Prosecutor supported the impugned judgment of acquittal



arguing that the learned trial court having considered the materials available on the record came to the conclusion that there was nothing on the record to prove the guilt of respondent no. 2, 3 and 4.

Having heard the rival contentions of the parties, we went through the record and perused the impugned judgment of acquittal. We find that some prosecution witnesses claimed before the trial court that the respondent nos. 2, 3 and 4 did not allow the villagers to search their respective houses just after the alleged occurrence but learned trial court noticed that the aforesaid fact was not mentioned in the F.I.R. and, moreover, learned trial court observed that the aforesaid circumstance was not sufficient to prove the guilt of respondent nos. 2, 3 and 4.

It is well settled principal of law that the finding of trial court cannot be disturbed by the appellate court unless the finding is found to be perverse, absurd and without consideration of evidence. In the present case, the learned trial court reached to the above stated finding after considering the entire evidence adduced on behalf of the prosecution. We do not find any ground to interfere into the above stated findings of the trial court because admittedly, none had seen the kidnapping and murder of deceased and except the above stated circumstances, there



appears to be nothing against the respondent nos. 2, 3 and 4. It is also well settled principal of law that the suspicion, however, may be strong cannot take place of evidence. Therefore, in the aforesaid circumstance, we are of the view that this appeal is devoid of merit and accordingly, this appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

Rajeev Kumar/-

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