

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1046 of 2018**

Arising Out of PS. Case No.-46 Year-2009 Thana- MASAUDHI District- Patna

Laldeo Yadav, S/o Late Bhagwan Yadav, resident of Village- Chandchak, P.S.-
Masaurhi, District- Patna.

... .. Appellant/s

Versus

1. The State of Bihar
2. Arjun Yadav, S/o Late Jagdish Yadav, resident of Village- Chandchak, P.S.-
Masaurhi, District- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Dhirendra Kumar Sinha, Advocate.
For the State : Mr. Abhimanyu Sharma, 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 : 08-04-2019

1. Heard learned counsel for the appellant as well as
learned Additional Public Prosecutor for the State assisted by the
learned counsel for the informant on I.A. No. 2825 of 2018 as well
as on the point of admission and perused the record.

2. I.A. No. 2825 of 2018 has been filed on behalf of
the appellant under Section 378(3) of the Criminal Procedure Code
for grant of leave to file this appeal. Admittedly, the appellant is
the father of the deceased and under proviso of Section 372 of the
Criminal Procedure Code, he has statutory right to prefer appeal



against the Judgment of acquittal and, accordingly, I.A. No. 2825 of 2018 stands disposed of.

3. This criminal appeal has been preferred against the impugned Judgment of acquittal dated 05.07.2018 passed by the learned Fast Track Court No.- I, Patna, in Sessions Trial No. 570 of 2011/46 of 2018, by which and whereunder, he acquitted the sole appellant for the offence punishable under Sections 302 and 376/511 of the Indian Penal Code on the ground that the prosecution failed to prove its case beyond all shadow of reasonable doubts.

4. Learned counsel for the appellant submits that in course of trial, appellant was examined as P.W.8 as well as two other eye witnesses were examined and not only appellant but two other eye witnesses also claimed themselves to be eye witness of the alleged occurrence and they have, specifically, stated that having heard cry of the deceased they went running near the place of occurrence and saw the respondent no.2, who was cutting the neck of the deceased. Learned counsel for the appellant, further, submits that the learned trial court failed to appreciate the testimonies of P.W.8 and other eye witnesses, as a result whereof, the learned trial court came to wrong conclusion.



5. On the other hand, learned counsel appearing for the respondent no. 2 supports the impugned Judgment of acquittal arguing that the impugned Judgment goes to show that the learned trial court has well discussed evidences available on record and taking note of the evidences as well as surrounding circumstances, the learned trial court passed a well discussed Judgment.

6. Having heard the contention of both the parties, we went through the impugned Judgment and in our view, this appeal can be disposed of on admission stage itself.

7. P.W.8, who happens to be informant (appellant) of Masaurhi P.S. Case No. 46 of 2009 claimed in his Fradbeyan that on 03.02.2009, his daughter aged about 13 years, had gone to cut grass in *Badhar* but she did not return and thereafter, he along with his nephew, Lalan Yadav and Om Prakash Yadav went in search of his daughter and reached near a field where he saw the respondent no.2 who was cutting the neck of his daughter by means of *Hasua* and having seen the aforesaid incident, he as well as others reached to the place of occurrence and seeing them the respondent no.2, started fleeing towards southern side. However, the respondent no.2 was chased by Lalan Yadav and Om Prakash Yadav and subsequently, apprehended but he was got released by his brother.



8. On the basis of aforesaid Fradbeyan of P.W.8, Masaurhi P.S. Case No. 46 of 2009 was registered and thereafter, the case was investigated and the charge sheet was submitted against the respondent no.2 for the offence punishable under Sections 376/511 and 302 of the Indian Penal Code. The respondent no. 2 stood charged for the offence punishable under Section 376 read with Section 511 of the Indian Penal Code as well as Section 302 of the Indian Penal Code.

9. The prosecution examined, altogether, ten witnesses and also got exhibited some documents in course of trial and some defence witnesses were also examined. The respondent no.2 denied the prosecution story and claimed his innocence in the statement recorded under Section 313 of the Cr.P.C.

10. The learned trial court having evaluated the evidences available on the record came to conclusion that the prosecution failed to prove its case beyond shadow of reasonable doubts on the ground that none had seen the alleged occurrence and circumstances speak otherwise.

11. Learned counsel appearing for the appellant assailed the impugned Judgment of acquittal submitting that the appellant (informant) P.W.8, P.W.1 and P.W.2 claimed in their statements that they had seen the respondent no. 2 cutting the neck



of the deceased and apart from this, some witnesses also claimed before the trial court that they had seen the respondent no. 2 fleeing from the place of occurrence. He, further, submitted that the Doctor found cut injury on the neck of deceased and, therefore, all the aforesaid materials clearly establish that it was respondent no. 2, who committed the murder of 13 years old girl, when he failed in his attempt to commit rape on her. He submits that the learned trial court failed to appreciate the evidences available on the record in right perspective, as a result whereof, learned trial court committed error in acquitting the respondent no.2.

12. On the other hand, learned counsel appearing for the respondent no. 2 supports the impugned Judgment of acquittal submitting that no doubt, informant as well as some other prosecution witnesses, who happens to be the family members of informant, claimed themselves to be eye witnesses before the learned trial court but the above stated claim of the prosecution witnesses has been doubted by the learned trial court on genuine grounds. He points out that the above stated prosecution witnesses claimed that having heard the cry of deceased, they went running near the place of occurrence and saw the respondent no. 2 cutting the neck of deceased but learned trial court observed that the injury found on the neck of the deceased goes to show that the



deceased was not in a position to cry and furthermore, the learned trial court doubted the claim of aforesaid witnesses on the ground that the above stated witnesses were far away from the place of occurrence and P.W.8 has admitted in his cross-examination that the place of occurrence was not visible from the place, where he had heard the cry of the deceased. Learned counsel for the respondent no.2, further, submits that the investigating Officer found blood fallen at two places and according to prosecution case, the deceased was killed in the field where her dead body was found. He submits that learned trial court having taken the aforesaid fact into consideration and other circumstances, passed the Judgment of acquittal which does not need any interference by this appellate Court.

13. Having heard the aforesaid contentions of the parties, we went through the impugned Judgment along with Lower Court Records. We find force in contention of learned counsel of the respondent no. 2. The perusal of the impugned Judgment goes to show that the learned trial court has discussed the evidences of all the prosecution witnesses in detailed and gave sound reasonings for disbelieving the claim of so-called eye witnesses. Furthermore, we find that the Investigating Officer found blood at two different places and taking note of the aforesaid



fact the learned trial court held that prosecution failed to prove the place of occurrence beyond shadow of all reasonable doubts. It is well settled principle of law that the view taken by the trial court cannot be disturbed unless the view of the trial court is perverse, illegal and is based on account of none consideration of prosecution evidence. However, in the present case, we find that the learned trial court has passed a well discussed Judgment and has considered all the prosecution evidences available on the record and, therefore, the view taken by the learned trial court cannot be disturbed. Therefore, we are of the view that this criminal appeal can be disposed of on admission stage itself. Accordingly, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	NAFR
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