

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1066 of 2018**

Arising Out of PS. Case No.-23 Year-2011 Thana- JEHANABAD COMPLAINT CASE
District- Jehanabad

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Chinta Devi W/o Narayan Pandit, R/o Vill.- Kumardih, P.S.- Makhdumpur,
District- Jehanabad.

... .. Appellant/s

Versus

1. The State Of Bihar
2. Krishna Chaudhary S/o Late Ruplal Chaudhary,
3. Mahesh Chaudhary S/o Krishna Chaudhary,
4. Anita Devi W/o Mahesh Chaudhary,
5. Krishna Pandit S/o Late Gurudayal Pandit , All are R/o Vill.- Kumardih,
District- Jehanabad.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Saroj Kumar
For the Respondent/s : Mr.Sri Shivesh Chandra Mishra

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

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

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

Date : 18-06-2019

Heard learned counsel appearing for the appellant,
learned counsel for the respondents no. 2 to 5 and learned
Additional Public Prosecutor for the State on the point of
admission and in our view, this criminal appeal can be disposed of
on admission stage itself.



2. The appellant is aggrieved by the judgment of acquittal dated 09.04.2018 passed by learned Presiding Officer, Fast Track Court II, Jehanabad in Sessions Trial No. 131 of 2012/428 of 2017 by which and where under he acquitted the respondents no. 2 to 5 from the charges framed against them for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code.

3. The grievance of the appellant is that the learned Trial Court failed to appreciate the prosecution evidence in its right perspective and passed the judgment of acquittal only on the ground that the prosecution could not succeed to examine the independent witness.

4. Learned counsel for the appellant submits that the approach of the learned Trial Court is not in accordance with law as it is well settled principles of law that the judgment of acquittal cannot be passed only on the ground of non-examination of the independent witness. He submits that in the present case eye witnesses have supported the prosecution case but in spite of that the learned Trial Court did not place reliance on the testimony of the aforesaid prosecution witnesses without assigning any valid reason.



5. On the other hand, learned counsel appearing on behalf of the respondents no. 2 to 5 supports the judgment of acquittal arguing that initially, Makhdumpur P.S. Case No. 118 of 2010 was lodged against 50-60 unknown persons and subsequently, after proper investigation, the police submitted final form showing no clue but the appellant filed complaint case bearing Complaint Case No. 23 of 2011 and the cognizance of the offence was taken and, accordingly, the respondents no. 2 to 5 were put on trial. He, further, submits that in course of trial, the witnesses cited in the complaint petition were not examined and except the family members of the complainant, not a single independent witness was examined by the prosecution. He submits that the learned Trial Court having taken into consideration the totality of the prosecution evidence, passed the impugned judgment of acquittal which does not need any interference by this Court.

6. Having heard the rival contentions of the parties, we went through the records. We find that initially, one police official lodged Makhdumpur P.S. Case No. 118 of 2010 against 50-60 unknown persons when he went to the place of occurrence and found the deceased of this case in injured condition. The aforesaid Makhdumpur P.S. Case No. 118 of 2010 was investigated by the



police and final form was submitted. It is pertinent to note here that the written report of Makhdumpur P.S. Case No. 118 of 2010 goes to show that the informant of the aforesaid case having got information about killing of one Umesh Chaudhary, went to the place of occurrence and brought the deceased to hospital. It is surprising enough that when the informant of Makhdumpur P.S. Case No. 118 of 2010 went to the place of occurrence, nobody gave information to him claiming the involvement of respondents no. 2 to 5.

7. No doubt, it is well settled principle of law that if a case is proceeded on the basis of protest-cum-complaint petition, the evidence collected by the Court in course of trial, shall only be taken into consideration but in the present case the above stated circumstance is very significant to create doubt about the complaint case. Moreover, we find that the learned Trial Court has noted in the impugned judgment that only interested witness were examined by the prosecution in course of trial and there was inconsistency in the statements of the prosecution witnesses. No doubt, it is true that a prosecution case cannot be thrown only on the ground of non-examination of independent witness but in the present case, the other circumstances, which are available on the record, also create doubt about the prosecution story and,



therefore, in our view, there is no need to interfere into the
impugned judgment of acquittal. Accordingly, this Criminal
Appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Partha Sarthy, J)

Prakash/ Sushma

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

