

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1056 of 2018

Arising Out of PS. Case No.-51 Year-2008 Thana- DARAUNDA District- Siwan

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{Against the Judgment of acquittal dated 21.05.2018 passed by the learned 5th Additional Sessions Judge, Siwan, in Sessions Trial No.236 of 2009}.

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Krishna Mohan Sah, son of Late Shubhnath Sah, resident of village-Hathopur,
P.S. Daraunda, District-Siwan.

... .. Appellant.

Versus

1. The State of Bihar.
 2. Moti Chand Prasad, son of Late Kedar Prasad.
 3. Sheoratan Prasad, son of Late Kedar Prasad.
 4. Tuntun Prasad, son of Late Bachan Prasad.
 5. Mundrika Prasad, son of Dudhnath Prasad.
 6. Ramadhar Prasad, son of Late Ram Prasad.
 7. Shailendra Prasad, son of Ramanand Prasad.
 8. Harendra Prasad, son of Chhathu Prasad.
- All residents of village-Hathopur, P.S. Daraunda, District-Siwan.

... .. Respondents.

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Appearance :

For the Appellant	:	Mr. Ramadhar Shekhar, Advocate.
For the State	:	Mr. Ashwani Kumar Sinha, A.P.P.

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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 : 21-01-2019

Heard learned counsel appearing for the appellant
as well as learned Additional Public Prosecutor for the State on
I.A. No.2587 of 2018 as well as on the point of admission and
perused the records.

2. I.A. No.2587 of 2018 has been filed on behalf of



the appellant under Section 378(3) of the Code of Criminal Procedure, seeking leave to file this criminal appeal.

The appellant is the informant as well as the victim of the present case and, therefore, he does have right to challenge the Judgment of acquittal.

Accordingly, I.A. No.2587 of 2018 stands disposed of, permitting the appellant to pursue this criminal appeal.

3. This criminal appeal has been preferred against the Judgment of acquittal dated 21.05.2018 passed by the learned 5th Additional Sessions Judge, Siwan, in Sessions Trial No.236 of 2009, by which and whereunder he acquitted the respondent nos.2 to 8 of the charges framed against them for the offences punishable under Sections 147, 148, 307/149 and 302/149 of the Indian Penal Code.

4. Learned counsel appearing for the appellant submits that the learned trial court did not take appropriate steps to procure the attendance of the doctor and the Investigating Officer as well as two other private prosecution witnesses and the impugned Judgment goes to show that the learned trial court only issued summonses against the aforesaid prosecution witnesses. He submits that the learned trial court ought to have issued non-bailable warrant of arrest against the aforesaid



prosecution witnesses as they intentionally avoided to appear before the learned trial court to depose in support of the prosecution case. He submits that, no doubt, it is the duty of the prosecution to produce the prosecution witness but, similarly, the court is also duty bound to procure the attendance of the prosecution witness with an object to deliver fair and proper justice but, in the present case, the learned trial court failed to discharge his judicial liability in accordance with law.

5. Para-6 of the impugned Judgment goes to show that the learned trial court took several steps to procure the attendance of the Investigating Officer and the doctor including the private witnesses but all the steps of the learned trial court went in vain. There is nothing in the impugned Judgment to show that the learned Public Prosecutor sought any help from the court for procuring the attendance of the Investigating Officer and the doctor. So far as the two private prosecution witnesses are concerned, admittedly, they are family members of the informant and, therefore, the aforesaid fact goes to show that they were fully aware about the progress of Sessions Trial No.236 of 2009 but, even then, they did not appear before the learned trial court to depose against the respondent nos.2 to 8. Furthermore, the impugned Judgment goes to show that the



alleged occurrence took place in the year 2008 and the case of the respondent nos.2 to 8 was committed to the court of sessions in the year 2009 and, since then, the respondent nos.2 to 8 were facing trial. However, the learned trial court after discussing the evidences, available on the record, passed the impugned Judgment on 21.05.2018, i.e., after ten years of the alleged occurrence. Learned counsel of the appellant could not succeed to point out any other infirmities and perversity in the impugned Judgment and, therefore, we are of the opinion that this criminal appeal does not have any merit and is liable to be dismissed on the admission stage itself.

6. In view of the aforesaid discussions, this criminal appeal stands dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.01.2019.
Transmission Date	25.01.2019.

