

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1292 of 2018**

Arising Out of PS. Case No.-120 Year-2011 Thana- MOHANIYA District- Kaimur (Bhabua)

ARVIND RAI @ ARVIND KUMAR RAI, Son of Ram Dular Rai, R/o
Village Bharkhar, P.S. Mohania, Distt.,-Kaimur at Bhabua

... .. Appellant/s

Versus

1. The State Of Bihar
2. Dau Yadav Son of Nasuri Yadav
3. Ram Awadh Yadav Son of Murahy Yadav
Both Resident of Village-Bharkhar, P.S. Mohania, Distt.-Kaimur at Bhabua

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Tribhuwan Narayan

For the Respondent/s : Mr. Abhimanyu Sharma

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

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

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

Date : 03-05-2019

Heard learned counsel appearing for the appellant,
learned counsel appearing for the respondent Nos. 2 and 3 as
well as learned Additional Public Prosecutor for the State on
I.A. No. 3143 of 2018 as well as on the point of admission.

2. I.A. No. 3143 of 2018 has been filed under
Section 5 of the Limitation Act for condonation of delay of 164
days in filing this criminal appeal.

The delay in filing this criminal appeal is condoned
on the grounds mentioned in the aforesaid Interlocutory
Application itself and, accordingly, I.A. No. 3143 of 2018
stands disposed of.



3. This criminal appeal has been preferred against impugned judgment of acquittal dated 2.4.2018 passed by learned Fast Track Court-I, Kaimur at Bhabua in Sessions Trial No. 453 of 2012/ Trial No. 189 of 2017, arising out of Mohania P.S. Case No. 120 of 2011, by which and whereunder, learned trial court acquitted the respondent Nos. 2 and 3 from the charges framed against them for the offences punishable under Sections 447, 307/34 of the Indian Penal Code and Section 25 (1-b) a, 26(1) and 27 of the Arms Act.

4. In our view, this appeal can be disposed of on admissions stage itself.

5. The perusal of impugned judgment goes to show that Mohania P.S. Case No. 120 of 2011 was registered on the basis of written statement of appellant on 14.4.2011. The informant (appellant) claimed in his written statement that on 14.4.2011 at about 4.00 P.M., while he along with others was sitting at his door, seven persons riding on three separate motorcycles came there and out of them informant identified the respondent Nos. 2 and 3 and one Bindu Yadav. Informant further claimed that respondent No. 3 and above stated Bindu Yadav opened fire on him but, luckily, he escaped un-hurt. However, the aforesaid culprits were chased by the villagers and after



chasing, they were caught by villagers. Informant further claimed that loaded country-made pistol was recovered from possession of Bindu Yadav and, similarly, one pistol and two live cartridges were recovered from possession of respondent No. 3 and, apart from this, two motorcycles were also seized. The unknown miscreants managed to escape from there. The police was informed and, subsequently, all the aforesaid three persons including recovered firearm, cartridges and motorcycles were handed over to police.

6. Respondent Nos. 2 and 3 stood charged for the offences punishable under Sections 447, 307/34 of the Indian Penal Code and Section 25 (1-b) a, 26(1) and 27 of the Arms Act.

7. In course of trial, the prosecution examined, altogether, 14 prosecution witnesses and also got exhibited some documents as documentary evidence. The statements of respondent Nos. 2 and 3 were recorded under Section 313 of the Cr.P.C., in which they reiterated their innocence.

8. The learned trial court while analyzing the evidences of prosecution witnesses found sufficient infirmities in the prosecution case and taking note of the aforesaid infirmities, the learned trial court acquitted the respondent Nos.



2 and 3 from the charges.

9. Learned counsel appearing for the appellant assailed the impugned judgment of acquittal, arguing that admittedly, altogether, 14 prosecution witnesses were examined, and out of them, P.W. 1, P.W. 2, P.W. 3, P.W. 6, P.W. 7, P.W. 8 and P.W. 9 claimed themselves to be eye witnesses of the alleged occurrence and they, specifically, stated that the respondent Nos. 2 and 3 along with others came on three motorcycles and made firing with an object to commit the murder of the appellant but they failed in their attempt. However, they were chased and caught by the villagers and, in that course, villagers assaulted them, as a result of which, one of the culprits, namely, Bindu Yadav sustained serious injury and died in course of his treatment. He, further, submitted that the seizure list witnesses clearly proved the recovery of firearm, cartridges as well as motorcycles but in spite of that learned trial court acquitted the respondent Nos. 2 and 3 ignoring the above stated materials.

10. On the other hand, learned counsel appearing for respondent Nos. 2 to 3 supported the impugned judgment of acquittal arguing that, as a matter of fact, on the alleged date of occurrence Bindu Yadav was killed by appellant



and others for which Mohania P.S. Case No. 120 of 2011 was lodged. He submitted that present case was filed by the appellant with an object to save his skin from Mohania P.S. Case No. 120 of 2011. He further submitted that moreover, the learned trial court found sufficient infirmities in the prosecution case and after analyzing prosecution evidence doubted about the genuineness of the case and, therefore, there is no need to interfere into the impugned judgment of acquittal.

11. Having heard the rival contentions of the parties, we went through the impugned judgment.

12. We find that learned trial court dealt with prosecution evidence in detail and recorded his findings at para 12 of the impugned judgment. The learned trial court noticed at para 11 of the impugned judgment that in fardbeyan, appellant claimed that the recovery of firearm and cartridges was made by the villagers and, subsequently, the same was handed over to police but in course of trial, prosecution witnesses claimed that recovery of firearm and cartridges was made by the police. The trial court also noticed that according to prosecution case, respondent Nos. 2 and 3 were caught at the spot and, subsequently, they were handed over to police but they were produced before the court below on 3.8.2012 when production



warrant was issued against them as they were in custody in connection with Mohania P.S.Case No. 120 of 2011. The learned trial court also noticed that the first Investigating Officer was not examined by the prosecution, as a result of which, the question of non-production of respondent Nos. 2 and 3 before the Court within 24 hours of their arrest remained unanswered and taking all the aforesaid circumstances into consideration, the learned trial court doubted about the genuineness of the prosecution.

13. We do not find any illegality, perversity and absurdity in the findings recorded by the learned trial court while writing the judgment of acquittal and, therefore, in our view, there is no need to interfere into the impugned judgment of acquittal.

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

(Hemant Kumar Srivastava, J)

(Partha Sarthy, J)

sudha/-santosh

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.05.2019
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