

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1359 of 2018

Arising Out of PS. Case No.-198 Year-1991 Thana- BAKHTIYARPUR District- Patna

Ramjot Yadav son of Late Shiv Nandan Singh resident of Village- Mishi, P.S.
Bakhtiyarpur, District- Patna.

... .. Appellant/s

Versus

1. The State Of Bihar
2. Manoj Yadav S/o Late Ram Jatan Yadav Resident of Village-Mishi, P.S.-
Bakhtiyarpur, Dist.-Patna
3. Bachchu Yadav S/o Late Ram Bhajan Yadav Resident of Village-Mishi, P.S.-
Bakhtiyarpur, Dist.-Patna
4. Anil Yadav S/o Late Ram Jatan Yadav Resident of Village-Mishi, P.S.-
Bakhtiyarpur, Dist.-Patna
5. Rajendra Yadav S/o Late Janakdhari Yadav Resident of Village-Mishi, P.S.-
Bakhtiyarpur, Dist.-Patna
6. Arun Yadav S/o Kailash Yadav
7. Sukhnandan Yadav S/o Late Laldeo Yadav Resident of Village-Mishi, P.S.-
Bakhtiyarpur, Dist.-Patna
8. Nanhe Yadav @ Nande Yadav S/o Late Janakdhari Yadav Resident of
Village-Mishi, P.S.-Bakhtiyarpur, Dist.-Patna

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Raj Kishor Prasad
For the Respondent/s : Mr. Shivesh Chandra Mishra

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

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

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

Date : 26-04-2019

Heard learned counsel appearing for the appellant and
learned Additional Public Prosecutor for the State on I.A. No.
1 of 2019, I.A. No. 2 of 2019 as well as on the point of
admission.



Re. I.A. No. 1 of 2019

I.A. No. 1 of 2019 has been filed under Section 378(3) of the Code of Criminal Procedure seeking leave to file and pursue this appeal.

The appellant happens to be the nephew of the deceased and comes under the definition of victim and, therefore, in view of proviso to Section 372 of Code of Criminal Procedure the appellant has statutory right to prefer appeal against judgment of acquittal.

Accordingly, the appellant is permitted to pursue this criminal appeal.

In the aforesaid manner, I.A. No. 1 of 2019 stands disposed of.

I.A. No. 2 of 2019

I.A. No. 2 of 2019 has been filed under Section 5 of the Limitation Act for condonation of delay of 71 days in filing this criminal appeal.

For the reasons stated in the aforesaid I.A. No. 2 of 2019, the delay in filing this criminal appeal is, hereby condoned and, accordingly I.A. No. 2 of 2019 stands disposed of.

Re. Criminal Appeal (DB) No. 1359 of 2018

1. The appellant has preferred this criminal appeal against the judgment of acquittal dated 21.4.2018 passed by



Additional Sessions Judge 1st, Barh, Patna, in Sessions Trial No. 924/92 (arising out of Bakhtiyarpur P.S. Case No. 198 of 1991, by which and whereunder he acquitted the respondent Nos. 2 to 8 from the charges framed against them for the offences punishable under Sections 302/149/148/147 of the Indian Penal Code and 27 of Arms Act.

2. The grievance of the appellant is that there was sufficient material to convict the respondent Nos. 2 to 8 for the offence punishable under Section 302 read with Section 149 and other minor Sections of the Indian Penal Code as well as 27 of the Arms Act but the learned trial court failed to properly appreciate the evidence as result whereof learned trial court came to wrong conclusion.

3. Learned counsel appearing for appellant assailed the impugned judgment of acquittal arguing that almost all the eye witnesses supported the prosecution case claiming that the respondent Nos. 2 to 8 were also present on the place of occurrence and they took active part in the alleged crime but the learned trial court only on the basis of minor contradictions, acquitted the respondent Nos. 2 to 8 from the charges framed against them. He further submitted that the learned trial court failed to take note of this fact that the respondent Nos. 2 to 8



had common object to commit the murder of the deceased and, therefore, they were liable to be punished for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code.

4. On the other hand, learned Additional Public Prosecutor refuted the above stated submissions arguing that the learned trial court has well discussed the prosecution evidence and after that came to conclusion that prosecution failed to prove charges levelled against the respondent Nos. 2 to 8 and, therefore, there is no need to interfere into the impugned judgment of acquittal.

5. Having heard the rival contentions of both the parties, we went through the impugned judgment. In our view, this criminal appeal can be disposed of at the admission stage itself.

6. Bakhtiyarpur P.S. Case No. 198/1991 was registered on the basis of *fard-e-beyan* of the informant Bhagwat Yadav, who claimed in his *fard-e-beyan* that on 26.9.1991 at about 10 A.M. while he along with his son was at his house, the respondent Nos. 2 to 8 as well as other FIR named accused being armed with deadly weapons, such as, country-made rifle, pistol, *Bhala*, *Garasa*, *Lathi*, *Khanti* and



Kudal etc. came there and started demolishing the wall of his house and when informant forbade them to do so, FIR named accused Ramraj Yadav ordered FIR named accused Arjun Yadav to open fire and, thereafter, accused Arjun Yadav shot fire by country-made rifle but, luckily, the fire did not hit to any person and after that FIR named accused Sukhan Yadav made firing but again the firing did not hit any person. The informant further claimed that FIR named accused Awadhesh Yadav shot fire, which hit on the chest of the informant's son, namely, Rajbali, who having sustained firearm injury died then and there. Informant further claimed that FIR named accused made indiscriminate firing but, luckily, the firing did not hit to any other person.

7. The respondent Nos. 2 to 8 were put on trial in Sessions Trial No. 924 of 1992 and in course of trial, prosecution examined, altogether, seven prosecution witnesses but informant could not be examined as he died during pendency of the trial.

8. The learned trial court having analysed the evidence available on record passed the impugned judgment of acquittal.

9. The perusal of impugned judgment goes



to show that the learned trial court has taken note of contradictions occurred in the testimonies of prosecution witnesses and, accordingly, doubted about the credibility of the prosecution witnesses. The learned trial court has given sound reasons for doubting the credibility of the prosecution witnesses and there appears to be no absurdity in the findings given by the trial court. Therefore, in our view, it would not be proper to this appellate Court to interfere into the findings recorded by the trial court because it is well settled principle of law that unless the finding of trial court is absurd, illegal as well as without consideration of prosecution evidence, the appellate Court shall not interfere into the judgment of acquittal.

10. On the basis of aforesaid discussion, we do not find any merit in this criminal appeal and, accordingly, this criminal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Partha Sarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.05.2019
Transmission Date	03.05.2019

