

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1293 of 2018**

Arising Out of PS. Case No.-4 Year-2013 Thana- KUSHESHWARASTHAN District-
Darbhanga

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Jageswar Mukhiya, Son of Late Sube Mukhiya, Resident of Village-Morkahi,
Police Station-Kusheswar Asthan and Distt.-Darbhanga.

... .. Appellant.

Versus

1. The State Of Bihar.
2. Nageswar Yadav, S/o Lakho Yadav, resident of village-Morkahi, P.S.-
Kusheswar Asthan, District-Darbhanga.
3. Ram Babu Yadav, S/o Uttim Lal Yadav, Resident of Village-Morkahi, P.S.
Kusheswar Asthan, Distt.-Darbhanga.

... .. Respondents.

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Appearance :

For the Appellant	:	Mr. Kedar Jha, Advocate.
For the State	:	Mr. Satya Narayan Prasad, 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 : 01-04-2019

Heard learned counsel appearing for the appellant as well as the learned Additional Public Prosecutor for the State on the point of admission as well as on I.A. No.3470 of 2018, which has been filed on behalf of the appellant under Section 378(3) of the Code of Criminal Procedure for grant of leave to file this criminal appeal.

2. The appellant happens to be the father of the deceased and, therefore, he has right to file the appeal against



the Judgment of acquittal and, accordingly, I.A. No.3470 of 2018 stands disposed of.

3. This criminal appeal has been preferred against the Judgment of acquittal dated 18.08.2018 passed by the learned Additional Sessions Judge-II, Benipur, Darbhanga, in Sessions Trial No.376 of 2013, by which and whereunder he acquitted the respondent nos.2 and 3 from the charges framed under Sections 302/34 and 201 of the Indian Penal Code and Section 27 of the Arms Act.

4. Kusheshwar Asthan P.S. Case No.4 of 2013 was registered on the basis of the fardbeyan of the appellant, who claimed in his fardbeyan that in the night of 05.01.2013, his son Pappu Mukhiya, at about 09.00 P.M., received a mobile call and, thereafter, left the home. In the morning of 06.01.2013, the appellant inquired about the whereabouts of Pappu Mukhiya from his daughter-in-law, who disclosed that Pappu Mukhiya had not returned. However, on 06.01.2013 at about 07.00 A.M., the appellant came to know that a dead body was lying near Nasi Nala and having got the aforesaid information, he went there and found that the dead body of his son Pappu Mukhiya was lying there. The appellant noticed that Pappu Mukhiya had sustained firearm injuries at two places and one empty cartridge



was also lying there. The appellant claimed that the respondent nos.2 and 3 had taken Rs.1,50,000/- from the deceased as loan and the deceased used to demand the aforesaid money from the respondent nos.2 and 3 and that was the reason, the respondent nos.2 and 3 committed the murder of the deceased.

5. Both the respondent nos.2 and 3 were put on trial and, accordingly, they were charged for the offences punishable under Sections 302/34 and 201 of the Indian Penal Code and Section 27 of the Arms Act.

6. In course of trial, the prosecution examined, altogether, 9 witnesses and also got exhibited certain documents. However, the learned trial court having evaluated the evidences, available on the record, passed the Judgment of acquittal in favour of the respondent nos.2 and 3.

7. Learned counsel appearing for the appellant assailed the impugned Judgment of acquittal, arguing that the learned trial court failed to appreciate the prosecution evidence in its right perspective. He submitted that there was complete chain of circumstances to show the guilt of the respondent nos.2 and 3 but, even then, the learned trial court passed the Judgment of acquittal.

8. On the other hand, learned Additional Public



Prosecutor supports the impugned Judgment of acquittal, arguing that the learned trial court has passed a well discussed Judgment of acquittal and there is no need to interfere into the impugned Judgment of acquittal.

9. Having heard the contentions of the parties, we went through the impugned Judgment.

10. We find that not a single prosecution witness claimed to have seen the actual killing of the deceased and the respondent nos.2 and 3 have been made accused only on the ground that prior to the alleged occurrence, they had taken loan of Rs.1,50,000/- from the deceased. However, the learned trial court discussed the aforesaid aspect in the impugned Judgment and came to the conclusion that the prosecution failed to prove the factum of taking loan by the respondent nos.2 and 3 from the deceased beyond all shadow of reasonable doubts. The learned trial court also came to the conclusion that the prosecution could not succeed to prove the complete chain of circumstance, showing the guilt of the respondent nos.2 and 3. Therefore, we are of the view that the learned trial court has rightly passed the impugned Judgment of acquittal and there is no need to interfere into the impugned Judgment of acquittal.

11. Accordingly, 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
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