

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1335 of 2018

Arising Out of PS. Case No.-34 Year-2016 Thana- DARAUNDA District- Siwan

Vidyawati Devi Wife of Rajdeo Sharma, Resident of Village- Pipra, P.S. Daraunda, District- Siwan.

... .. Appellant

Versus

1. The State Of Bihar
2. Vivek Kumar Singh @ Lala Son of Dhaneshwar Chaudhary, Resident of Village- Pipra, P.S. Daraunda, District- Siwan.
3. Jaikant Singh, Son of Late Ramji Singh. Resident of Village- Pipra, P.S. Daraunda, District- Siwan.
4. Rajan Kumar Singh, Son of Srikant Singh. Resident of Village- Pipra, P.S. Daraunda, District- Siwan.
5. Rani Devi, Wife of Vivek Kumar Singh @ Lala. Resident of Village- Pipra, P.S. Daraunda, District- Siwan.
6. Chandan Kumar, Son of Dinesh Rai. Resident of Village- Pipra, P.S. Daraunda, District- Siwan.
7. Sonu Kumar @ Akhileshwar Kumar, Son of Srikant Singh. Resident of Village- Pipra, P.S. Daraunda, District- Siwan.
8. Suman Devi, Wife of Raj Kumar Thakur. Resident of Village- Pipra, P.S. Daraunda, District- Siwan.
9. Sanjay Kumar Singh, Son of Birendra Thakur. Resident of Village- Pipra, P.S. Daraunda, District- Siwan.
10. Raj Kumar Thakur, Son of Birendra Thakur. Resident of Village- Pipra, P.S. Daraunda, District- Siwan.
11. Prem Prakash Singh, Son of Binda Bihari Singh, All residents of Village- Pipra Daraunda, P.S.- Daraunda, District- Siwan.

... .. Respondents

Appearance :

For the Appellant : Mr.Shakil Ahmad Khan, Advocate
For the Respondents : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

6 27-06-2019 Heard learned counsel appearing for the appellant as



well as learned Additional Public Prosecutor on the point of Admission as well as on I.A.No.01 of 2019, which has been filed under Section 378(4) of the Cr.P.C. for grant of leave to file this criminal appeal.

I.A.No.01 of 2019 has been filed on behalf of the appellant, who happens to be mother of the deceased and, therefore, she has statutory right to prefer appeal against judgment of conviction. Therefore, I.A.No.01 of 2019 stands disposed of permitting the appellant to pursue this matter.

This Criminal Appeal has been preferred against the judgment of acquittal dated 31.08.2018 passed by learned III Additional Sessions Judge, Siwan, in Sessions Trial No.58 of 2017, arising out of Daraunda P.S.Case No.34 of 2016, in which he acquitted the respondent nos.2 to 11 from the charges framed against them for the offenses under Sections 364, 302 and 120B of the Indian Penal Code.

The above stated Daraunda P.S.Case No.34 of 2016 was lodged on the basis of written report of appellant and in her written report, the appellant claimed that his son was kidnapped by the respondent nos.2 to 11 as his son was made accused in kidnapping case of daughter of respondent no.2 and his son was sent to jail in connection with the above stated case, but when



he got bail and came out from the jail, the respondent nos.2 to 11 having entered into conspiracy committed the alleged occurrence.

In course of the investigation, the dead body of appellant's son was recovered and after completion of investigation, I.O. submit chargesheet against respondent nos.2 to 11 for the offences of kidnapping and murder of appellant's son.

The respondent nos.2 to 11 were put on trial before the learned Additional Sessions Judge, Siwan in Sessions Trial No.58 of 2017 and in course of trial, prosecution examined several witnesses including the appellant. The learned trial Court, after analyzing the evidence of prosecution, passed the impugned judgment of acquittal, which is under challenge before this Court.

Learned counsel for the appellant submits that the learned trial Court did not appreciate the prosecution evidence in its right perspective. He submits that the appellant as well as some other witnesses claimed to be an eye witness of taking away of appellant's son by the respondent nos.2 to 11, but the learned trial Court completely ignored the aforesaid fact. He further submits that the prosecution came with definite case that



the appellant's son was kidnapped and murdered by respondent nos.2 to 11, as prior to the alleged occurrence, the appellant's son was made accused in kidnapping case of daughter of respondent no.2 and that was the reason the appellant's son was kidnapped and murdered.

On the other hand, learned Additional Public Prosecutor supports the impugned judgment pointing out that in course of trial several witnesses, barring a few including appellant, were declared hostile and so far as appellant and some other witnesses, who claimed themselves to be an eye witness of the alleged occurrence, are concerned, they developed their statement in course of trial, which has been noticed by the learned trial Court and taking note of the aforesaid fact, the learned trial Court doubted about the claim of appellant as well as other prosecution witnesses.

Having heard the above stated contentions of the parties, we find that appellant as well as some other witnesses have claimed to be an eye witnesses to the alleged occurrence but the appellant, neither in her written report nor in her further statement, claimed herself to be an eye witness of the alleged occurrence and further more, we find that the learned trial Court noticed several contradictions and omissions in the statement of



other prosecution witnesses, who claimed themselves to be an eye witness and on the basis of aforesaid contradictions and omissions, the learned trial Court disbelieved the testimonies of the prosecution witnesses. It is settled law that if two views are possible on the same set of evidence, the view favourable to the accused shall go into the evidence. Moreover, the view taken by the learned trial Court does not appear to be perverse or absurd and, therefore, we are of the opinion that there is no need to interfere into the impugned judgment of acquittal.

On the basis of aforesaid discussions, this criminal appeal stands dismissed at admission stage itself.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

B.Kr./-

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