

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1420 of 2018**

Arising Out of PS. Case No.-27 Year-2016 Thana- KONCH District- Gaya

Kanhai Yadav Son of Late Mukhlal Yadav, Resident of Village- Laxman
Bigha, Police Station-Konch in the District of Gaya **... Appellant**
Versus

1. The State Of Bihar
2. Anil Yadav, Son of Late Shiv Nandan Yadav, Resident of Village- Laxman
Bigha, Police Station-Konch in the District of Gaya.
3. Laldip Yadav, Son of Satyendra Yadav, Resident of Village-Dihuri, Police
Station-Konch in the District of Gaya.

... .. Respondents

Appearance :

For the Appellant : Mr. Sunil Kumar, Advocate
For the Respondents : Mr. Ajay Mishra, Addl Public Prosecutor

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

and

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT**

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

Date : 10-04-2019

Heard learned counsel for the appellant, learned counsel
for the State as well as learned counsel appearing for respondents
no. 2 and 3, on the point of admission as well as I.A.No.43 of
2019 which has been filed under Section 378(3) of the Code of
Criminal Procedure on behalf of the appellant for grant of leave to
file this appeal.

The appellant happens to be brother of deceased and,
therefore, he has statutory right to file appeal against the judgment
of acquittal. Accordingly, I.A.No. 43 of 2019 stands disposed of.



The appellant is aggrieved by the judgment of acquittal dated 11.09.2018, passed by the learned Additional Sessions Judge, Fast Track Court-I, Gaya in Sessions Trial No. 151 of 2017/212 of 2017 arising out of Konch Police Station Case No. 27 of 2016 acquitting respondents no. 2 and 3 from the charges framed against them for the offence punishable under sections 302/34 and 120(B) of the Indian Penal Code and Section 27 of the Arms Act.

The above stated Konch Police Station Case No. 27 of 2016 was instituted on 16.2.2016 at 7.45 AM on the basis of written report of PW 3 (the appellant), who claimed in his written report that on 15.2.2016 at about 7.30 PM respondents no.2 and 3 as well as one unknown person assaulted his brother by means of Danda and in that course respondent no.2 shot fire on his brother as a result whereof his brother fell down on the ground. Respondents no. 2 and 3 as well as their associates were chased by the informant and his family members but they managed to escape.

Respondents no. 2 and 3 were put on trial and in course of the trial, prosecution examined its witnesses and also got exhibited some documents.

The learned trial court after evaluating the evidences available on the record doubted the prosecution story noticing



several infirmities in the prosecution case and passed the judgment of acquittal which has been challenged by the appellant before this Court.

From perusal of the impugned judgment we find that the learned trial court discussed the prosecution evidences properly and doubted the prosecution case on several grounds. Furthermore, we find that PW 3 happens to be sole eye witness and this witness claims that the occurrence took place on 15.02.2016 at about 7.30 PM and he went to Police Station in the same night and remained with police for whole night but it is surprising that PW 3 gave written report to police in the next morning, i.e., 16.02.2016. In course of hearing, learned counsel appearing for the appellant tried to explain the aforesaid circumstance by arguing that as a matter of fact the appellant had given a written report in the night of 15.02.2016 but the police registered the case on 16.02.2016 and asked the PW 3 to put the date 16.02.2016 below his signature on written report. Therefore, even if it assumed that the written report was given on 16.02.2016, then also, it was only the fault of the police but we are not at all convinced with the aforesaid submission because the learned trial court has not only doubted the prosecution case on the aforesaid ground but has also taken several other grounds for doubting the prosecution case. Moreover, we do



not find any ground to interfere with the impugned judgment of acquittal because the impugned judgment of acquittal is well discussed and well thought. Therefore, in the aforesaid facts and circumstances, this Cr. Appeal is dismissed at the admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.04.2019
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