

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1205 of 2017**

Arising Out of PS. Case No.-100 Year-2012 Thana- NARDIGANJ District- Nawada

Bipin Yadav S/o Late Balmiki Prasad, R/o Village- Ange, P.S.- Nardiganj,
District- Nawada.

... .. Appellant

Versus

1. The State Of Bihar
2. Sharwan Yadav @ Sharawan Yadav @ Sharwan Kumar, S/o Arjun Yadav,
R/o Village- Ange, P.S.- Nardiganj, District- Nawada.

... .. Respondents

Appearance :

For the Appellant : None

For the State : Mr. Abhimanyu Sharma, A.P.P.

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

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

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

Date : 04-07-2019

1. No one appears either on behalf of the appellant or
respondent no. 2. Learned A.P.P. is present.

2. The perusal of record goes to show that on
previous date i.e. on 02.07.2019 when this appeal was taken up for
hearing on the point of admission, on that date also, learned
counsels of appellant as well as respondent no. 2 failed to appear
before this court. Therefore, in the aforesaid circumstance, we
have no option except to hear learned Additional Public Prosecutor
and pass appropriate order in this appeal.



3. Heard learned Additional Public Prosecutor for the State and perused the record.

4. This appeal has been preferred against the judgment of acquittal dated 11.08.2017 passed by learned Additional Sessions Judge-III, Nawada (hereinafter referred to as “trial court”) in Sessions Trial No. 137 of 2015/22 of 2016 by which and whereunder the learned trial court acquitted respondent no. 2 from the charge framed against him for the offences punishable under Section 302/149, 148 of the I.P.C. and 27 of the Arms Act.

5. The respondent no. 2 and several others were made accused in Nardiganj (Nawada) P.S. Case No. 100 of 2012 for the offences punishable under Section 302 and other minor sections of the I.P.C. as well as 27 of the Arms Act on the basis of ferdbeyan of appellant who claimed that while he along with his father and one Mahendra Yadav was going to his home, respondent no. 2 and eleven other accused encircled them and respondent no. 2 as well as others made indiscriminate firing as a result whereof his father sustained several bullet injuries and died then and there.

6. In course of trial, prosecution examined several witnesses and the learned trial court having scrutinized the statements of prosecution witnesses came to conclusion that none



had seen the actual killing of the deceased and thereafter, the learned trial court acquitted the respondent no. 2 giving benefit of doubt to him.

7. The memo of appeal goes to show that appellant has challenged the impugned judgment on several grounds. The appellant has claimed in his memo of appeal that some co-accused, namely, Arjun Yadav, Sahdeo Yadav and Chhote @ Chhotan Yadav and four others were convicted in Sessions Trial No. 216 of 2014/27 of 2016 but the learned trial court failed to appreciate the prosecution evidence in its right perspective.

8. The learned Additional Public Prosecutor submits that learned trial court has passed well discussed and well thought judgment. He further submits that so far as conviction of other co-accused is concerned, admittedly, the aforesaid co-accused were not tried with respondent no. 2 and they faced trial in another sessions trial in which separate evidence was recorded and, therefore, even if it is taken into consideration that some co-accused persons have been convicted, then also, it does not make any difference and only on the above stated basis the finding of acquittal cannot be reversed by this appellate court.

9. Having heard the above stated contentions of learned Additional Public Prosecutor we went through the lower



court record as well as memo of appeal. We find that the learned trial court well discussed the prosecution evidence and has rightly come to conclusion that presence of appellant over the place of occurrence was doubtful. Furthermore, we find that there is no perversity in the impugned judgment. It is not the case of appellant that prosecution evidence was not considered by the trial court and, therefore, it is also not a case of non-consideration of prosecution evidence. The presumption of innocence of accused is presumed prior to his conviction and if accused gets judgment of acquittal in his favour, the above stated presumption becomes more stronger. Therefore, in our view, this appeal does not have any merit and is liable to be dismissed on admission stage itself. Accordingly, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

shahzad/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	05.07.2019
Transmission Date	05.07.2019

