

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.388 of 2017

Arising Out of PS. Case No.-85 Year-1989 Thana- NAUGACHIA District- Bhagalpur

Balkrishan Yadav son of Late Bisho Yadav, R/o Village- Dhobinia, P.S.-
Naugachia, District- Bhagalpur.

... .. Appellant/s

Versus

1. The State Of Bihar
2. Maheshwar Yadav, son of Late Yadunandan Yadav, R/o Dhobinya
3. Subodh Yadav, Son of Late Hakim Yadav, R/o Dhobinya
4. Prakash Singh, Son of Late Burmi Yadav, R/o Nawada
5. Kailash Yadav, Son of Late Hakim Yadav, R/o Dhobinya
6. Deepan Singh, Son of Late Barmi Singh, R/o Nawada
7. Subhash Singh, Son of Late Surjug Singh, R/o Nawada.
8. Rajendra Singh @ Jinda Singh, Son of Late Sujug Singh, R/o Nawada
9. Chandeshwari Singh, Son of Late Surjug Singh, R/o Nawada
10. Tiwari Singh, Son of Late Bhukhali Singh, R/o Shreepur
11. Faresh Malakar, Son of Tanuk Malakar, R/o Sreepur
12. Shambhu Singh, Son of Late Dasho Singh, R/o Nawada
13. Rajo Singh, Son of Late Madho Singh, R/o Nawada
14. Ram Swaroop Singh, Son of Late Barmi Singh, R/o Nawada
15. Uttam Prasad Yadav, Son of Late Mohan Yadav, R/o Dhobinya
16. Shikari Yadav, Son of Late Fusho Yadav, R/o Dhobinya
17. Raj Kumar Yadav, Son of Late Dashrath Yadav, R/o Dhobinya
18. Sattan Mandal, Son of Late Sanchin Mandal, R/o Nawada, All P.S.-
Naugachia, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sharda Nand Mishra
For the Respondents	:	Mr. Awadhesh Kumar Pandey
For the Respondent Nos. : 2 and 15	:	Mr. Ashok Kumar Yadav
For the State	:	Mr. Abhimanyu Sharma, A.P.P.

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

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 23-04-2019

Heard learned counsel appearing for the appellant, learned counsel appearing for the respondent Nos. 2 to 18 as well as learned Additional Public Prosecutor for the State on I.A. No. 797 of 20017, I.A. No. 1555 of 2017 as well as on the point of admission.

2. I.A. No. 797 of 2017 has been filed under Section 5 of the Limitation Act for condonation of delay of 163 days in filing this criminal appeal.

3. Learned counsel of the appellant submits that the appellant was informant in Naugachhiya P.S. Case No. 85 of 1989 but in course of trial, neither any notice nor any process was ever served upon him and due to that reason, he could not know about delivery of impugned judgment. It is further submitted that the appellant subsequently came to know about pronouncement of impugned judgment and, thereafter, he obtained certified copy of impugned judgment and preferred the present appeal and that is the reason, there is delay in filing this criminal appeal.

The delay in filing this criminal appeal is condoned on the above stated grounds and, accordingly, I.A. No. 797 of 2017 stands allowed.



4. I.A. No. 1555 of 2017 has been filed under Section 378(3) of Cr.P.C. for grant of leave to file this criminal appeal. The appellant happens to be cousin brother of deceased as well as informant of the case and, therefore, he does have statutory right to prefer appeal against judgment of acquittal and, accordingly, appellant is permitted to pursue this criminal appeal.

In the aforesaid manner, I.A. No. 1555 of 2017 stands allowed.

5. This criminal appeal has been preferred against impugned judgment of acquittal dated 18.7.2016 passed by learned Additional Sessions Judge-VI, Bhagalpur in Sessions Trial No. 370 of 1994 by which and whereunder, he acquitted the respondent Nos. 2 to 18 from the charges framed against them for offences punishable under Sections 364/34, 302/34 and 201/34 on the ground that prosecution could not succeed to prove charges against above stated respondents beyond all shadow of reasonable doubts.

6. Learned counsel appearing for appellant challenge the impugned judgment arguing that in course of trial P.W. 1 and P.W. 3 supported the prosecution case and they very clearly stated about involvement of respondent Nos. 2 to 18 in



the occurrence but the learned trial court ignored the testimonies of P.W. 1 and P.W. 3 and passed the impugned judgment.

7. On the other hand, learned counsel appearing for respondent Nos. 2 to 18 supported the impugned judgment of acquittal arguing that in course of trial only, three prosecution witnesses were examined and out of them P.W. 2 was not produced for cross-examination, as a result whereof, his statement became redundant and, so far as, P.W. 1 and P.W. 3 are concerned, the learned trial court doubted the testimonies of aforesaid witnesses on several grounds. He submitted that the learned trial court has passed well discussed and well thought judgment and there is no need to interfere into the impugned judgment of acquittal.

8. Having heard the rival contentions of the parties, we went through the record. Admittedly, the appellant was informant of Naugachhia P.S Case No. 85 of 1989 but he did not appear before the trial court to depose in the Sessions Trial No. 370 of 1994. The impugned judgment goes to show that only three prosecution witnesses were examined but P.W. 2 was not produced for cross-examination. The learned trial court while analyzing the testimonies of P.W. 1 and P.W. 3 gave sound reasons for doubting the testimonies of P.W. 1 and P.W. 3 and,



therefore, in our view, it would not be proper to interfere into the findings recorded by the learned trial court.

9. In view of the aforesaid discussions, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Partha Sarthy, J)

sudha/-santosh

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.04.2019
Transmission Date	26.04.2019

