

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1086 of 2019**

Arising Out of P.S. Case No.-165 Year-2005 Thana- BARUN District- Aurangabad

Uday Kumar Singh @ Udai Kumar Singh, Male, aged about 45 years, S/o
Shree Narayan Singh, Resident of- 37, Near Devi Mandir, P.S.- Barun,
District- Aurangabad

... .. Appellant

Versus

1. The State of Bihar
2. Kail Baitha S/o Raman Baitha R/o village- Irana Khurd, P.S.- Bistrampur,
District- Palamu (Jharkhand)

... .. Respondents

Appearance :

For the Appellant	:	Mr. Deepak Kumar, 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)**

2 25-09-2019 Heard learned counsel appearing for the appellant as well as learned Additional Public Prosecutor for the State on the point of Admission and, in our view, this appeal can be disposed of on Admission stage itself.

2. The appellant is informant of Barun P.S. Case No.165 of 2005 and has filed this criminal appeal against judgment of acquittal dated 11.06.2019 passed by learned Additional Sessions Judge-XII, Aurangabad, Bihar in Sessions Trial No.302-C of 2006/01 of 2019 by which and whereunder,



he acquitted the respondent no.2 (Kail Baitha) from the charges framed against him for the offences punishable under Sections 364A/34, 302/34, 201/34 and 120(B)/34 of the Indian Penal Code.

3. The above stated Barun P.S.Case No.165 of 2005 was registered against unknown when the son of the informant, namely, Tejpratap @ Teju went missing. However, in course of investigation, one Yogendra Singh was arrested and confessed his guilt leading to recovery of dead body of informant's son (Tejpratap @ Teju). The name of the respondent no.2 surfaced in the confessional statement of aforesaid accused Yogendra Singh. It is also pertinent to note here that the police installed caller identification machine and on the basis of call identified by the caller identification, police raided STD booth and seized the roater machine, mobile etc. and the owner of aforesaid STD booth, disclosed that co-accused persons, namely, Upendra Singh, Yogendra Singh, Kameshwar Singh and Manoj Singh had come to his booth and had made call.

4. The appellant was put on trial and stood charged for the offences punishable under Sections 364A/34, 302/34, 201/34 and 120B/34 of the Indian Penal Code. The appellant denied the charges and claimed to be tried.



5. In course of trial, prosecution examined altogether eight prosecution witnesses and also got exhibited several documents including confessional statement of accused Yogendra Singh which was marked as Ext-5.

6. Learned trial Court after evaluating the prosecution evidence, passed the judgment of acquittal holding that prosecution failed to prove the charges levelled against the respondent no.2 (Kail Baitha) beyond all shadow of reasonable doubts as except confessional statement of co-accused Yogendra Singh, there was no legal evidence against the respondent no.2 (Kail Baitha).

7. Learned counsel appearing for the appellant challenged the impugned judgment of acquittal arguing that the trial Court while passing the judgment of acquittal, considered the findings given by this Court in separate case. To fortify the above contentions, the learned counsel for the appellants drew our attention towards the impugned judgment of acquittal. Learned counsel of the appellant further submitted that there was strong circumstantial evidence against the respondent no.2 (Kail Baitha) to show his involvement in such a heinous crime. He, further, submitted that the prosecution witnesses claimed to have seen the respondent no.2 (Kail Baitha) roaming near the



house of the informant (Uday Kumar Singh) prior to the alleged occurrence and, subsequently, co-accused Yogendra Singh was arrested and the said co-accused Yogendra Singh confessed his guilt, disclosing the involvement of the respondent no.2 (Kail Baitha) in the alleged crime. Therefore, the aforesaid circumstances were sufficient to come on conclusion that the respondent no.2 (Kail Baitha) had also taken active part in the alleged crime, and, therefore, the impugned judgment cannot sustain in the eye of law.

8. On the other hand, learned Additional Public Prosecutor submits that admittedly, except confessional statement of co-accused, namely, Yogendra Singh, there was no legal and cogent evidence against respondent no.2 (Kail Baitha). Learned Additional Public Prosecutor further submits that the learned trial Court noticed this fact that the aforesaid co-accused Yogendra Singh had already been acquitted by this Court though the aforesaid co-accused Yogendra Singh had faced trial separately from the appellant. Learned Additional Public Prosecutor, further submits that the learned trial Court has passed a well discussed judgment which does not require any interference by this Court.

9. Having heard the contentions of the parties, we



went through the record. From perusal of impugned judgment, we find that the name of respondent no.2 (Kail Baitha) came in confessional statement of co-accused Yogendra Singh. Furthermore, we find that the confessional statement of co-accused Yogendra Singh was brought on record by prosecution as Ext-5. Furthermore, we find that some of the prosecution witnesses claimed to have seen the respondent no.2(Kail Baitha) and some others roaming in the village of appellant (Uday Kumar Singh @ Udai Kumar Singh) prior to alleged kidnapping of informant's son (Tejpratap @ Teju) and except the aforesaid two materials, there is nothing against the respondent no.2 (Kail Baitha).

10. It is obvious from perusal of the impugned judgment, that the other accused faced trial separately from the respondent no.2 (Kail Baitha) as against the appellant supplementary chargesheet was submitted and prior to submission of supplementary chargesheet, the other co-accused had already been chargesheeted, as a result whereof, they faced trial separately from the respondent no.2 (Kail Baitha). The impugned judgment goes to show that co-accused persons were convicted by the learned trial Court after full-fledged trial but they were acquitted by this Court when they challenged their



conviction by filing appeal before this Court.

11. The perusal of impugned judgment further goes to show that the learned trial Court discussed all the materials available before the trial Court and also considered this fact that the other co-accused had already been acquitted by this Court and while acquitting the other co-accused, this Court observed that there was no legal evidence against the co-accused persons.

12. No doubt, the learned trial Court took notice of the observation given by this Court in the case of other co-accused but even if the aforesaid observation is excluded, then also admittedly except confessional statement of co-accused Yogendra Singh as well as this aspect of the matter that the respondent no.2 (Kail Baitha) was seen roaming near the house of the appellant prior to the alleged kidnapping, there was nothing against the appellant. Furthermore, we are of the view that the Court can take judicial notice of any admitted fact and it is an admitted fact that co-accused persons including co-accused Yogendra Singh have already been acquitted by the Court, and, therefore, in our view, when the person in whose confessional statement, the name of respondent no.2 (Kail Baitha) surfaced, has already been acquitted, there is no scope to pass judgment of conviction against respondent no.2 (Kail Baitha). Therefore, on



the basis of aforesaid discussions, we are of the view that there is no need to interfere into the impugned judgment of acquittal. Accordingly, this criminal appeal stands dismissed on Admission stage itself.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

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