

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1309 of 2018

Arising Out of PS. Case No.-51 Year-2002 Thana- KHUSRUPUR District- Patna

.....

{Against the Judgment of acquittal dated 21.07.2018 passed by the learned 6th Additional Sessions Judge, Patna City, Patna, in Sessions Trial No.769 of 2003}.

=====

Ravindra Yadav @ Ravindra Singh, son of Late Ram Parvesh Yadav, resident of village-Kohawan, Police Station-Daniawan, District-Patna, A/ present adopted son of Late Yadunandan Singh of village-Tilhar, P.S. Khushrupur, District-Patna.

... .. (Informant)... .. Appellant.

Versus

1. Dharmendra Yadav, son of Late Devnandan Yadav alias Late Dhanmitra Yadav.

2. Munarik Yadav.

3. Badri Yadav.

4. Asharfi Yadav.

Sons of Late Peyare Yadav.

All are resident of village-Tilhar, Police Station-Khushrupur, District-Patna.

... .. (Accused Persons).

5. The State of Bihar.

... .. Respondents.

=====

Appearance :

For the Appellant : Mr. Nand Kishor Prasad-II, Advocate.

For the State : Mr. Shiwesh Chandra Mishra, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR

MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 21-02-2019

Heard learned counsel for the appellant as well as
learned Additional Public Prosecutor for the State on I.A.
No.3442 of 2018, filed under Section 5 of the Limitation Act,



I.A. No.2 of 2019, filed under Section 378(3) of the Code of Criminal Procedure, as well as on the point of admission.

2. I.A. No.2 of 2019 has been filed on behalf of the appellant for grant of leave to file and pursue this criminal appeal.

The applicant-appellant claims himself to be adopted son of the deceased persons and Khushrupur P.S. Case No.51 of 2002 was lodged on the basis of his fardbeyan. Therefore, in the aforesaid circumstance, the applicant-appellant is permitted to file and pursue this criminal appeal and, accordingly, I.A. No.2 of 2019 stands disposed of.

3. I.A. No.3442 of 2018 has been filed on behalf of the appellant, under Section 5 of the Limitation Act, for condonation of delay of only one day in filing this criminal appeal.

The delay in filing this criminal appeal is condoned, on the grounds mentioned in I.A. No.3442 of 2018 itself.

Accordingly, the above stated I.A. No.3442 of 2018 stands disposed of.

4. This criminal appeal has been preferred against the Judgment of acquittal dated 21.07.2018 passed by the learned 6th Additional Sessions Judge, Patna City, Patna, in



Sessions Trial No.769 of 2003, by which and whereunder he acquitted the respondents no.1 to 4 from the charges framed against them for the offences punishable under Sections 302/34 of the Indian Penal Code.

5. Learned counsel appearing for the appellant submits that the learned trial court has committed error in acquitting the respondents no.1 to 4, particularly, in the circumstance, when the strong circumstantial evidence was available against the private respondents no.1 to 4 to prove their guilt. He submits that the private respondents no.1 to 4 are agnates of the deceaseds and, as a matter of fact, the deceased persons had adopted the appellant as son and wanted to give their entire properties to the appellant but prior to the alleged occurrence, the respondents no.1 to 4 had threatened both the deceased and, subsequently, they committed the murder of both the deceased. He submits that the learned trial court ignored the above stated circumstances, while writing the Judgment of acquittal.

6. On the other hand, learned Additional Public Prosecutor supports the impugned Judgment of acquittal, submitting that the prosecution could not succeed to bring the sufficient circumstantial evidence to prove the guilt of the



private respondents no.1 to 4 and, therefore, the learned trial court rightly acquitted the private respondents no.1 to 4.

7. From perusal of the impugned Judgment, we find that the informant claimed in his fardbeyan that his 'Phufa', namely, Yadunandan Singh, and 'Phua', namely, Punia Devi, were issueless and they had adopted him as adopted son. He further claimed that one year back to the alleged occurrence, the private respondents no.1 to 4, who happened to be the so-called agnates of his 'Phufa', had given threatening to kill him and pressurized the deceased Yadunandan Singh to adopt the respondent no.1 as adopted son but his 'Phufa' refused to buckle upon the pressure of the private respondents no.1 to 4 and, subsequently, he purchased one Katha land in the name of the informant. The informant further claimed that on the alleged date of the occurrence, he had gone to his native village and got information that his 'Phufa' and 'Phua' were killed, while they were sleeping on the roof of their house. The impugned Judgment further goes to show that, altogether, 9 prosecution witnesses were examined and almost all the material witnesses repeated the same story, as mentioned in the fardbeyan of the informant. Therefore, it is obvious that the prosecution claimed that prior to one year of the alleged occurrence, the respondents



no.1 to 4 had given threatening to kill the deceaseds and the private respondents no.1 to 4 wanted to grab the lands of the deceaseds and that was the reason, they committed the murder of the deceaseds. The learned trial court mentioned in the impugned Judgment that the aforesaid circumstances were sufficient to prove the guilt of the private respondents no.1 to 4.

8. We are of the opinion that the learned trial court rightly held that the above stated circumstances were not sufficient to prove the guilt of the private respondents no.1 to 4.

9. It is well settled principle of law that innocence of an accused is presumed and the aforesaid presumption becomes more stronger after the Judgment of acquittal. Furthermore, it is well settled principle of law that if two views are possible, the view taken by the trial court cannot be discarded, unless the said view is perverse and absurd as well as against the materials, available on the record.

10. In the present case, there is nothing on the record to come on this finding that the view taken by the learned trial court is absurd as well as perverse and against the materials, available on the record. Therefore, in the aforesaid circumstances, we do not find any ground to interfere into the impugned Judgment of acquittal.



11. Accordingly, this criminal appeal stands dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.02.2019.
Transmission Date	25.02.2019.

