

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1186 of 2019

Arising Out of PS. Case No.-94 Year-2017 Thana- NAGARNAUSA District- Nalanda

Deoratan Singh Gender Male, aged about 65 years, Son of Late Tulsi Charan Singh Resident of Village-Ahiyatpur Police Station-Nagarnousa, District-Nalanda.

... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. Mundrika Yadav @ Munarik Yadav Son of Late Jagdish Yadav Resident of Village-Ahiyatpur, Police Station-Nagarnousa, District-Nalanda.
3. Amit Yadav, aged about 23 yrs, Son of Mudrika Yadav Resident of Village-Ahiyatpur, Police Station-Nagarnousa, District-Nalanda.
4. Santosh Yadav, Male, aged about 26 years, Son of Nageshwar Yadav Resident of Village-Ahiyatpur, Police Station-Nagarnousa, District-Nalanda.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Nitya Nand Tiwary
For the Respondent/s : Mr.Ashwani Kumar Sinha

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 21-10-2019

Heard learned counsel appearing for appellant as well as learned Additional Public Prosecutor for the State on the point of admission and in our view, this criminal appear can be disposed of at admission stage itself.

The appellant has challenged the impugned judgment of acquittal dated 13.8.2019 passed by learned 2nd Additional Sessions Judge, Hilsa, Nalanda in Sessions Trial No.



745 of 2017 by which and whereunder learned trial court acquitted respondent Nos. 2, 3 and 4 from the charges framed against them for the offences punishable under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

Nagarnausa P.S. Case No. 94/2017 was registered on the basis of written report of appellant. Appellant claimed in his written report that on 11.9.2017 while his brother Subodh Kumar was returning his home by his motorcycle from Nagarnausa, the respondent Nos. 2, 3 and 4 stopped him at Kathiool and respondent Nos. 3 and 4 shot fire twice on his brother as a result of which, his brother sustained injury at several places on his person and fell down there. Appellant, further, claimed that Udai Yadav (PW 4) was pillion rider with his brother but P.W. 4 fled from there out of fear and got hide himself in a field from where he gave information to him about the alleged occurrence and having got the aforesaid information, he went to the place of occurrence, where he found his brother Subodh Yadav in injured condition and his brother Subodh Yadav disclosed that respondent Nos. 2, 3 and 4 shot fire on him and fled away from there on their motorcycle.

On the basis of aforesaid allegation, respondent Nos. 2, 3 and 4 were put to trial and stood charged for the



offences punishable under Section 302/34 of the IPC and Section 27 of the Arms Act.

In course of trial, altogether, 11 prosecution witnesses were examined and some documents were also got exhibited by the prosecution. The statements of respondent Nos. 2, 3 and 4 were recorded under Section 313 of the Cr.P.C. in which they claimed their false implication.

Learned trial court after evaluating the entire materials available on record declined to rely upon the testimony of sole eye witness (PW 4) as well as so-called dying declaration of the deceased and acquitted the respondent Nos. 2, 3 and 4 passing the impugned judgment of acquittal.

Learned counsel appearing for appellant submits that the learned trial court failed to appreciate the evidence in right perspective. He, further, submitted that the learned trial court discarded the testimony of P.W. 4 only on the ground that his statement was recorded by the police after three days of the occurrence and his statement under Section 164 of the Cr.P.C. was recorded after one and half months of the occurrence. He submits that, no doubt, the delay in recording the statement of an important witness creates some doubt about the claim of said witness but that should not be the sole ground to discard the



statement of the eye witness. He, further, submits that the learned trial court also committed error in discarding the dying declaration of the deceased, specially, in the circumstance when appellant (PW 7) claimed that within four to five minutes of the occurrence, he reached on the place of occurrence. He, further, submits that PW 7 claimed in his statements that he has seen the respondent Nos. 2, 3 and 4 going towards the place of occurrence and some of the prosecution witnesses, specifically, stated that they heard sound of firing and, therefore, the aforesaid circumstances also indicate that it were respondent Nos. 2, 3 and 4, who committed the murder of the deceased but the learned trial court did not take into consideration, the above stated circumstances, as a result whereof, learned trial court came to wrong conclusion.

On the other hand, learned Additional Public Prosecutor submits that, admittedly, only PW 4 claimed himself to be eye witness of the alleged occurrence but the learned trial court disbelieved the testimony of PW 4 on several grounds. Learned Additional Public Prosecutor, further, submits that, no doubt, PW 7 and some of the prosecution witnesses claimed that deceased disclosed the name of assailants but the nature of injury of the deceased goes to show that he was not in position



to speak and, moreover, the prosecution witnesses have made contradictory statements on the point of so-called dying declaration of the deceased and the learned trial court has taken the aforesaid fact into consideration while writing the judgment of acquittal.

Having heard the contentions of the parties, we went through the impugned judgment. Admittedly, except PW 4, not a single prosecution witness claimed to have seen the actual killing of the deceased. PW 4 claimed that he was present at the place of occurrence when the alleged occurrence took place and, furthermore, PW 7 claimed that he got information about the alleged occurrence from PW 4 who informed him through his mobile phone just after the alleged occurrence but, admittedly, no call details of mobile phones of either PW 4 or PW 7 were brought on the record. Furthermore, PW 4 claimed that after the occurrence, he along with informant had gone to the hospital and, therefore, it is obvious that at the time of preparing written report, the PW 4 was present but it is surprising enough that his statement was recorded by the police after three days of the alleged occurrence and, similarly, his statement under Section 164 of the Code of Criminal Procedure was recorded after one and half months of the occurrence. Therefore, in our view the



learned trial court rightly looked the testimony of PW 4 with suspicious eyes.

So far as so-called dying declaration of the deceased is concerned, learned trial court noticed that the prosecution witnesses have made contradictory statements in respect of so-called dying declaration of the deceased. Furthermore, it is admitted case of the prosecution that PW 4 was present over the place of occurrence when occurrence took place but PW 4 has, nowhere, claimed in his statement that deceased had disclosed the name of assailants before PW 4 as well as other prosecution witnesses.

In the aforesaid circumstance, we are of the view that the learned trial court rightly declined to accept the testimony of PW 4 as well as so called dying declaration of the deceased. Moreover, it is well settled principle of law that the finding of the trial court cannot be disturbed unless the finding of the trial court appears to be perverse, absurd and without consideration of evidence. In the present case, we do not find any perversity and absurdity in the findings of the learned trial court and, admittedly, the learned trial court passed the impugned judgment of acquittal after consideration of the entire evidence available on record. Therefore, we do not think it



proper to interfere into the judgment of acquittal.

On the basis of aforesaid discussion, this criminal
appeal stands dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

Spd/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.10.2019
Transmission Date	24.10.2019

