

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.943 of 2018

Arising Out of PS. Case No.-63 Year-1986 Thana- DEHRI TOWN District- Rohtas

Satrudhan Singh, Son of Nav Ratan Singh, resident of Village and P.O. Hurka, P.S. Ayarkotha, District Rohtas, Bihar. Present Address Mohalla Gandhi Nagar, Gali No. 12, Road No. 27, Trigun Dehri, P.O. Dehri, P.S. Dehri, District Rohtas, Bihar.

... .. Appellant

Versus

1. The State Of Bihar
2. Anuj Singh, Son of Late Karam Deo Singh.
3. Bhola Singh, Son of Late Mahesh Singh.
4. Shankar Singh, Son of Late Mahesh Singh.
5. Rajendra Singh, Son of Late Jasgarnath Singh.
6. Satya Narayan Singh, Son of Late Karan Singh.
7. Ram Pravesh Singh, Son of Late Kapil Deo Singh. All resident of Village-Hurka, P.O. Darihat, P.S. Ayarkotha, District Rohtas.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Rajesh Kumar Singh, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, A.P.P.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

And

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

7 05-03-2019 Heard learned counsel appearing for appellant and learned Addl. Public Prosecutor for the State on I.A. No. 3234 of 2018, I.A. No. 3235 of 2018 and on the point of admission.

2. I.A. No. 3234 of 2018 has been filed under Section 5 of the Limitation Act for condonation of delay of five months 13 days in filing this criminal appeal.



3. The I.A. No. 3234 of 2018 stands allowed on the grounds mentioned in the aforesaid Interlocutory Application itself and, accordingly, I.A. No. 3234 of 2018 stands disposed of.

4. I.A. No. 3235 of 2018 has been filed under Section 378(3) of the Code of Criminal Procedure for grant of leave to file this appeal. The appellant happens to be the informant and is said to be injured and, therefore, I.A. No. 3235 of 2018 stands allowed and, accordingly, appellant is permitted to file and pursue this criminal appeal.

5. This criminal appeal has been preferred against the Judgment dated 21.11.2017 passed by Presiding Officer, Fast Track Court-II, Rohtas, Sasaram in Sessions Trial No. 34 of 1987, by which and whereunder, learned trial Court acquitted the respondents No. 2 to 7 from the charges framed against them for the offences punishable under Sections 307, 148, 324 and 307/149 of the Indian Penal Code and Section 27 of the Arms Act.

6. Learned counsel appearing for appellant submits that, altogether, three persons, including the informant, sustained firearm injury and the injured persons supported the prosecution case in course of trial, but learned trial Court acquitted the respondents No. 2 to



7 only on the ground that Doctor and Investigating Officer were not examined. He submitted that it came, in course of trial, that the concerned Doctor, who had examined the injured of this case, had already died, but the learned trial Court failed to take note of the aforesaid fact. He, further, submitted that, no doubt, the Investigating Officer was not examined by the prosecution, but there was nothing before the learned trial Court to come on conclusion that non-examination of Investigating Officer had caused prejudice to the defence and, therefore, in the aforesaid circumstance, the impugned Judgment cannot sustain in the eye of law.

7. On the other hand, learned Addl. Public Prosecutor appearing for the State points out that the injury reports of injured were not brought on record and apart from this the Investigating Officer was also not examined and, therefore, non-examination of the Investigating Officer caused serious prejudice to the defence and, therefore, there is no ground to interfere into the impugned Judgment of acquittal.

8. Having heard the contentions of both the parties, we went through the record. No doubt, as per the prosecution case, firing was made and three persons sustained firearm injury, but, admittedly, the injury



reports of injured were not brought on the record by the prosecution nor the prosecution took any step to get the injury reports of injured exhibited by any other competent person. The learned trial Court noticed that non-examination of Investigating Officer has caused prejudice to defence as the prosecution witnesses improved their case in course of trial. Therefore, in our view, there is no ground to interfere into the impugned Judgment of acquittal. Hence, this appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

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