

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.973 of 2018

Arising Out of PS. Case No.-124 Year-1997 Thana- SIKARPUR District- West Champaran

=====

Vinod Kumar Rao, S/o Late Paras Nath Rao, R/o Vill.- Khiria Mathia, P.S.-
Shikarpur, District- West Champaran.

... .. Appellant

Versus

1. The State Of Bihar,
2. Bichandi Raut @ Bichandi Bari S/o Kamekscha Raut,
3. Jang Bahadur Singh S/o Rang Lal,
4. Dharmendra Singh S/o Jang Bahadur Singh, All Residents of Vill.- Khiria
Mahtia, P.S.- Shikarpur, District- West Champaran.

... .. Respondents

=====

Appearance :

For the Appellant/s	:	Mr. Sandeep Kumar, Advocate Mr. Shivje Singh, Advocate, Mr. Rohit Ray, Advocate,
For the State	:	Smt. S.P. Verma, APP
For the Respondent/s	:	Mr. Uma Kant Shukla, Advocate
For the State	:	Mr. Dhananjay Kumar, Advocate

=====

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

6 01-04-2019 Heard learned counsel appearing for appellant,

learned counsel appearing for respondents No. 2, 3 and 4 as well

as learned Additional Public Prosecutor for the State on the

point of admission and on I.A. No. 2562 of 2018, which has

been filed under Section 378(3) of the code of Criminal

Procedure for grant of leave to file this appeal.

2. The appellant happens to be informant as

well as so-called injured of the case and, therefore, he has right



to challenge the Judgment of acquittal and, accordingly, I.A. No. 2562 of 2018 stands disposed of.

3. This criminal appeal has been preferred against the Judgment of acquittal dated 29.05.2018 passed by learned Additional Sessions Judge, Fast Track Court-II, Bettiah, West Champaran in Sessions Trial No. 446 of 2001, by which and whereunder, he acquitted the respondents No. 2, 3 and 4 from the charges framed against them for the offences punishable under Sections 302, 307, 148,147, 302/149 of the Indian Penal Code and Section 27 of the Arms Act.

4. The appellant (P.W.4) gave his fardbeyan on 14.08.1997 to this effect that on the alleged date of occurrence, while he along with deceased and others were going to their field, the respondent Nos. 2, 3, 4 and others having armed with firearm encircled them and respondent No.4 opened fire causing firearm injury to deceased Rajendra Barai as a result of which deceased Rajendra Barai died and, in course of occurrence, appellant, too, sustained firearm injury. However, after due investigation, Police found the accusation untrue and submitted Final Form, but the appellant filed protest petition, which was treated as Complaint Case and, accordingly, the case was proceeded. However, the respondents No. 2, 3 and 4 were



charged under Section 302/149 as well as various other sections of the Indian Penal Code as well as Section 27 of the Arms Act.

5. The prosecution examined six witnesses and also got exhibited certain documents. The learned trial Court, having considered the prosecution evidence and submissions of the parties, disbelieved the prosecution case assigning reasons in the impugned Judgment and, accordingly, acquitted the respondent Nos. 2, 3 and 4 passing the impugned Judgment of acquittal.

6. Learned counsel appearing for appellant submits that for the murder of deceased Rajendra Barai the respondent No. 3 Jang Bahadur Singh lodged Shikarpur P.S. Case No. 122 of 1997 against the appellant and others and in the aforesaid case, the appellant and others faced trial and convicted for the offence punishable under Section 302 and other sections of the I.P.C. He submits that learned trial Court was aware of this fact that for the murder of deceased Rajendra Barai, two cases were pending against different persons and in both the cases, the parties had made different claims, but learned trial Court decided both the cases, separately, though both the cases ought to have been decided on the same day by the learned trial Court. He, further, submits that learned trial Court committed



error while discarding and doubting the prosecution case as almost all the prosecution witnesses, specifically, stated that it were respondent Nos. 2, 3 and 4, who committed the murder of deceased Rajendra Barai and, therefore, the impugned Judgment cannot sustained in the eye of law.

7. On the other hand, learned counsel appearing for respondent Nos. 2, 3 and 4 supports the impugned Judgment of acquittal arguing that the learned trial Court has noted down several infirmities of the prosecution case and after noticing the infirmities passed the impugned Judgment of acquittal. He further submits that the appellant claimed that he had sustained injury in the alleged occurrence, but the concerned Doctor, who had examined the appellant, was not examined by the prosecution, though, an injury report was brought on the record. He, further, submits that the Judgment of the trial Court is a well discussed and reasoned Judgment and there is no need to interfere into the impugned Judgment of acquittal.

8. Having heard the contentions of both the parties, we went through the record as well as lower Court's record. In our view, this criminal appeal can be disposed of on admission stage itself.

9. From perusal of impugned Judgment, we



find that the learned trial court has given sound reasonings for writing the Judgment of acquittal. Furthermore, we find that the learned trial Court having noticed the infirmities of the prosecution case came to definite conclusion that prosecution could not succeed to prove its case beyond all shadow of reasonable doubt. It is well settled principle of law that if two view are possible, the view taken by the trial Court cannot be disturbed unless there is perversity, illegality or non-consideration of evidence. However, in the present case, there is nothing before us to show that the impugned Judgment suffers with perversity or illegality and, furthermore, there is also nothing before us to show that the learned trial Court has not considered the evidence of the prosecution. Therefore, in the aforesaid circumstance, we have no option, except, to dismiss this criminal appeal on admission stage itself.

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

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

manish/-

U		T	
---	--	---	--

