

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1262 of 2018

Arising Out of PS. Case No.-75 Year-2010 Thana- SIWAN MUFFASIL District- Siwan

Liyakat Khan S/o Hafiz Khan Resident of Village-
Chanaur, P.S. Siwan, Muffasil, Distt.-Siwan Appellant/s
Versus

1. State Of Bihar
2. Hasmat Khan S/o Late Phulman Khan Resident of Village-Chanaur, P.S.
Dhanauti O.P., Distt.-Siwan
... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Prabhakar Singh
For the Respondent/s : Mr. Sri Shivesh Chandra Mishra

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

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

Date : 01-05-2019

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 criminal appeal can be disposed of on admission stage itself.

The respondent no. 2, faced trial before learned Additional Sessions Judge II, Siwan, in Sessions Trial No. 358 of 2010 arising out of Siwan Mufassil P.S. Case No. 75 of 2010 for charges framed against him under Sections 341/34, 324/34, 504/34, 307/34 of the Indian Penal Code and 27 of the Arms Act. However, the learned Trial Court after analyzing the prosecution evidences acquitted the respondent no. 2 from the offences punishable under Sections 307/34 and 504/34 of the Indian Penal Code but convicted him for the offences



punishable under Section 341/34, 324/34 of the Indian Penal Code and 27 of the Arms Act.

The grievance of the appellant is that the learned Trial Court committed error in not convicting the respondent no. 2 for the charge of Section 307/34 of the Indian Penal Code.

Learned counsel appearing for the appellant assailed the impugned judgment submitting that the appellant sustained injury on his head as well right forearm and the injury of forearm was found grievous in nature. He further submitted that prosecution witnesses including appellant, specifically, stated before the Trial Court that the respondent no. 2 repeated his blows and also made firing but even then the learned Trial Court acquitted the respondent no. 2 from the charge framed under Section 307/34 of the Indian Penal Code. He took us through para 17 as well as other relevant paragraphs of the impugned judgment to fortify his contentions.

On the other hand, learned Additional Public Prosecutor has supported the impugned judgment of conviction arguing that the learned Trial Court has passed a well discussed and well thought judgment. He further submitted that the learned Trial Court after analyzing the prosecution evidence came to definite conclusion that respondent 2 had no intention to commit murder



of appellant as well as others and furthermore, the injury found on the person of injured goes to show that there was only a simple 'marpit' between the parties and therefore, there is no need to interfere into the findings recorded by the learned Trial Court.

Having heard the contentions of both the parties, we went through the impugned judgment. From perusal of para 17 of the impugned judgment, we find that the appellant had sustained two injuries. One injury was on his scalp. The aforesaid injury is simple in nature and another injury is on right forearm and the aforesaid injury was found grievous in nature. However, both the aforesaid injuries were caused by hard and blunt substance. The fard-e-beyan of appellant was recorded on 16.04.2010 and in the said fard-e-beyan he, specifically, stated that the respondent no. 2 gave farsa blow causing injury on his head whereas F.I.R., named accused Irsad Khan, assaulted him by Lathi causing injury on his right hand as a result whereof he sustained fracture on his ulna. Furthermore, perusal of the impugned judgment shows that in course of trial, prosecution witnesses developed their case and stated that the respondent gave twice farsa blow to appellant. However, the Trial Court noticed the above stated improvement and after taking note of



the facts and circumstances of the case convicted the respondent no. 2 for the offence punishable under Sections 324/34, 341/34 of the Indian Penal Code and 27 of the Arms Act and acquitted the respondent 2 for the offence punishable under Sections 307/34 and 504 of the Indian Penal Code as there was lack of intention and knowledge.

It is well settled principle of law that findings of acquittal recorded by Trial Court cannot be disturbed unless the said finding appears to be absurd, perverse or without consideration of evidence but in the present case as we have already stated that the learned Trial Court having considered the evidence as well as facts and circumstances of the case passed the impugned judgment and therefore, we are of the opinion that there is no need to interfere into the impugned judgment. Accordingly, this Criminal Appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Partha Sarthy, J)

Prakash/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	

