

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1325 of 2018**

Arising Out of PS. Case No.-59 Year-2012 Thana- BAIKUNTHPUR District- Gopalganj

Satyendra Kumar Son of Niranjan Prasad, Resident of Village Muja, P.S.
Baikunthpur, District- Gopalganj.

... .. Appellant/s

Versus

1. The State of Bihar
2. Lalan Prasad, Son of Bachchu Prasad.
3. Bachchu Prasad Son of Late Bhawani Prasad,
4. Ranju Devi, wife of Lalan Prasad,
All Resident of Village Muja, P.S. Baikunthpur, District- Gopalganj.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Naresh Prasad, Advocate

For the Respondent/s : Mr. Shivesh Chandra Mishra, APP

**CORAM: HON'BLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and
HON'BLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HON'BLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)**

Date : 23-04-2019

Heard learned counsel appearing for the appellant and
learned Additional Public Prosecutor for the State on I.A. No.
3196 of 2018 and I.A. No. 3197 of 2018, filed under Section
378(3) of the Code of Criminal Procedure, as well as on the point
of admission.

Re. I.A. No. 3196 of 2018

I.A. No. 3196 of 2018 has been filed on behalf of the
appellant under Section 5 of the Limitation Act for condonation of
delay in filing this criminal appeal.



It is submitted on behalf of the appellant that prior to filing of the instant appeal, the appellant had filed Cr. Appeal No. 2535 of 2018 before the learned Single Judge, but since the appeal against the impugned judgment was not maintainable before the Single Judge, the aforesaid appeal was disposed of vide order dated 09.10.2018 and, thereafter, appellant has preferred the present appeal. It is submitted that appellant has filed Cr. Appeal No. 2535 of 2018 in good faith and, therefore, delay in filing the instant appeal should be condoned.

In view of the aforesaid submission, the delay in filing this Criminal Appeal is, hereby, condoned and, accordingly, I.A. No. 3196 of 2018 stands disposed of.

Re. I.A. No. 3197 of 2018

I.A. No. 3197 of 2018 has been filed under Section 378(3) of the Code of Criminal Procedure for grant of leave to file the appeal against the impugned judgment.

Since the appellant happens to be injured and comes under the definition of victim, therefore, he has statutory right to file an appeal against the impugned judgment.

Accordingly, I.A. No. 3197 of 2018 stands disposed of.

This criminal appeal has been preferred against the impugned judgment dated 17.05.2018 passed by the learned 2nd



Additional Sessions Judge, Gopalganj in Sessions Trial No. 43 of 2013 whereby and whereunder he convicted the respondent nos. 2, 3 and 4 for the offences punishable under Sections 341, 504 and 323 of the Indian Penal Code and released them giving benefit of Section 3 of Probation of Offenders Act. However, 2nd Additional Sessions Judge, Gopalganj acquitted respondent nos. 2, 3 and 4 from the charges framed against them for the offence punishable under Section 307 of the Indian Penal Code.

The grievance of the appellant is that the learned trial court ought to have convicted respondent nos. 2, 3 and 4 for the offence punishable under Section 307 of the Indian Penal Code.

Learned counsel appearing for the appellant assailed the impugned judgment and argued that the prosecution succeeded in proving the charge framed under Section 307 of the IPC against respondent nos. 2, 3 and 4 but even then the learned trial court acquitted the respondent nos. 2, 3 and 4 from the charge framed under Section 307 of the IPC.

He submitted that doctor was examined as P.W. 5 and the aforesaid doctor clearly proved the injury report of injured. He submitted that the injury report of the injured goes to show that injured had sustained fracture but learned trial court overlooked the aforesaid facts. He further submitted that the injured as well as



other witnesses have stated before the learned trial court that the injured remained in hospital for more than 20 days but the learned trial court wrongly observed in the impugned judgment that except father of the injured, none of the prosecution witnesses has stated that injured remained in hospital for near about 20 days and, therefore, the aforesaid fact clearly goes to show that the learned trial judge has not properly appreciated the evidence.

On the other hand, learned counsel appearing for respondent nos. 2, 3 and 4 supported the impugned judgment in respect of acquittal of respondent nos. 2, 3 and 4 from the charge framed under Section 307 IPC arguing that the learned trial court noticed that the C.T. scan was not done in presence of P.W. 5 and he based his opinion regarding the nature of the injury on the basis of the C.T. scan report. He submitted that learned trial court also noticed that doctor, who did C.T. scan, was not examined by the prosecution and, therefore, the learned trial court rightly observed that the prosecution could not succeed to prove charge framed under Section 307 of the IPC.

Having heard the contentions of both the parties, we went through the impugned judgment as well as lower court records. In our view, this criminal appeal can be disposed of at the admission stage itself.



The lower court records reveal that charges were framed against that respondent nos. 2, 3 and 4 for the offence punishable under Sections 341, 307/34 and 504 of the IPC and in order to prove the above stated charges, prosecution examined, altogether, six witnesses. Furthermore, the learned trial court record reveals that P.W.5 claimed before the trial court that at the time of alleged occurrence, he was posted at Primary Health Center, Baikunthpur and he examined injured Satendra Kumar and found one lacerated muscle deep wound (3"X 2") on skull of injured Satendra Kumar. He also found that blood was oozing out from the mouth of the injured and the injured was in un-conscious state. This witness further claimed that he referred injured to B.R.D. Medical Collage, Gorakhpur for further treatment. He has further stated that C.T. scan report was produced before him and on the basis of aforesaid C.T. scan report he found that the injury of injured Satyendra Kumar was grievous in nature. However, in cross examination, this witness has admitted that he had not worked with the concerned doctor who had issued C.T. scan report. This witness also admitted that C.T. scan was not done in his presence and he has based his opinion on the above stated C.T. scan report. Learned trial court noted the aforesaid fact and observed that since the doctor, who did C.T. scan, was not examined and C.T. scan



was not done in presence of P.W. 5, the P.W.-5 was not competent to give opinion regarding nature of injury. Therefore, we find that learned trial court has not committed any illegality in giving the aforesaid findings. It is well settled principle of law that if two views are possible on the same set of evidence, the view of learned trial court shall prevail unless the same is found to be absurd and without consideration of evidences.

In the present case, we find that learned trial court has considered the evidence of the prosecution in proper way and there is no scope for this appellate court to interfere into the findings of the learned trial court.

On the basis of aforesaid discussions, we do not find any merit in this criminal appeal and, accordingly, the criminal appeal stands dismissed at the admission stage itself.

(Hemant Kumar Srivastava, J)

sushma/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	26/04/2019
Transmission Date	

(Partha Sarthy, J)

