

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1176 of 2018

In
Criminal Appeal (SJ) No.2800 of 2017

Arising Out of PS. Case No.-137 Year-2008 Thana- ARA NAWADA District- Bhojpur

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Moinul Haque @ Md. Moinul Haq, Son of Late Md. Samsul Haque, Resident of Milki Anaith, P.S. Nawada, District- Bhojpur at Ara.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Mansoor Mistri, son of Savari Mian, Resident of Village Milki Anaith, P.S. Nawada, District Bhojpur at Ara.
3. Hannan Alam.
4. Bhuttu, Both are sons of Late Liyaquat Ali, residents of village Milki Anaith (Near Nawada Chauki) P.S. Ara Nawada, District- Bhojpur at Ara.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Manoj Kumar Singh, Advocate. Mr. Bhubneshwar Prasad, Advocate.
For the Respondent/s	:	Smt. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 11-01-2019

1. Heard learned counsel appearing for the appellant as well as learned Additional Public Prosecutor for the State on I.A. No. 2928 of 2018, which has been filed under Section 378(3) of the Code of Criminal Procedure for seeking grant of leave to file this criminal appeal and also on the point of admission.

2. I.A. No. 2928 of 2018 has been filed on behalf of the appellant, who happens to be the brother of the deceased as



well as informant of the case and, therefore, he has right to challenge the impugned Judgment of acquittal by filing this appeal. Accordingly, I.A. No. 2928 of 2018 stands disposed of and the appellant is permitted to pursue this appeal.

3. This criminal appeal has been preferred against the Judgment of acquittal dated 13.06.2017 passed by the learned Sessions Judge, Bhojpur at Ara, in Sessions Trial No. 07 of 2009, by which and whereunder, he acquitted the respondent nos. 2, 3 and 4 from the charges framed against them for the offence punishable under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

4. On 02.07.2008 at about 1 A.M., appellant gave his Fradbeyan to this effect that on 01.07.2018 at about 10.30 P.M., he heard sound of gunshot and having heard the aforesaid sound of firing, he along with his nephew went near the place of occurrence and saw three persons running from there but due to darkness he could not identify the aforesaid three persons. However, he found his brother lying dead on road. The appellant expressed his suspicion against the respondent nos. 2, 3 and 4 on the ground of previous land dispute and enmity.

5. On the basis of Fradbeyan of appellant, Ara Nawada P.S. Case No. 137 of 08 for the offence punishable under Section



302/34 of the Indian Penal Code was registered against respondent nos. 2, 3 and 4. After investigation, charge sheet was submitted and, accordingly, the respondent no. 2, 3 and 4 were put on trial. The respondent nos. 2, 3 and 4 stood charged for the offence punishable under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act and in course of trial, all, together, nine witnesses were examined and some documents were also exhibited on behalf of the prosecution. However, the learned trial court discarded the prosecution evidence and acquitted the respondent nos. 2, 3 and 4 passing the impugned Judgment of acquittal.

6. Learned counsel appearing for the appellant challenged the impugned Judgment of acquittal arguing that the learned trial court failed to appreciate the prosecution evidence in right perspective and erroneously rejected the prosecution evidence. He, further, submits that in course of trial, prosecution witnesses claimed that they had seen the respondent nos. 2, 3 and 4 running from the place of occurrence and the prosecution also brought material on record to show that respondent nos. 2, 3 and 4 had inimical term with deceased and, therefore, the aforesaid materials were sufficient to prove the guilt of respondent nos. 2, 3 and 4.



7. On the other hand, learned Additional Public Prosecutor supported the impugned Judgment of acquittal arguing that the learned trial court has rightly rejected the prosecution evidence, as admittedly none had seen the actual killing of the deceased and so far as the claim of prosecution witness to have seen the respondent nos 2, 3 and 4 running from the place of occurrence is concerned, the same was after thought story and that is the reason, the learned trial court disbelieved the prosecution evidence.

8. Having heard the contentions of the parties, we went through the record as well as impugned Judgment. In our view, this appeal can be disposed of on admission stage itself.

9. Admittedly, the Ara Nawada P.S. Case No. 137 of 2008 was registered on the basis of Fradbeyan within four hours of the alleged occurrence. It is also an admitted position that the appellant did not see the actual killing of the deceased and only claimed in his Fradbeyan that he as well as his nephew had seen three persons running hither and thither and appellant only raised suspicion against respondent nos. 2, 3 and 4 on the basis of previous enmity and land dispute. It is also obvious from the Fradbeyan of appellant as well as his deposition recorded in course of trial that it were appellant and his nephew, who reached first on the place of



occurrence and after that other witnesses arrived there. No doubt, one witness claimed that he had seen the respondent nos. 2, 3 and 4 running from the place of occurrence in the light of torch but admittedly, the aforesaid witness reached over the place of occurrence after arrival of the appellant and it is surprising enough that the aforesaid witness did not take pain to disclose the aforesaid fact before the appellant, as appellant has nowhere stated in his Fradbeyan that the said witness had identified the respondent nos. 2, 3 and 4 at the time of alleged occurrence.

10. Moreover, we find that the learned Sessions Judge has passed a well thought and well discussed Judgment and there is no need to interfere into the impugned Judgment.

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

(Hemant Kumar Srivastava, J)

Bhardwaj/-

(Rajendra Kumar Mishra, J)

AFR/NAFR	
CAV DATE	
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