

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1143 of 2019**

Arising Out of PS. Case No.-130 Year-2010 Thana- AMARPUR District- Banka

=====

PRAKASH YADAV Son of Late Hari yadav Resident of Village - Puranchak,
P.S.- Amarpur, Dist.- Banka.

... .. Appellant.

Versus

1. THE STATE OF BIHAR
2. Ajay Choudhary Son of Ram Chariter Choudhary Resident of Village -
Puranchak, P.S.- Amarpur, Dist.- Banka.
3. Kaju Choudhary Son of Ajay Choudhary Resident of Village - Puranchak,
P.S.- Amarpur, Dist.- Banka.

... .. Respondents.

=====

Appearance :

For the Appellant : Mr. Bachan Jee Ojha, Advocate.
For the State : Ms. S.B. Verma, A.P.P.

=====

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

Date : 13-02-2020

Heard learned counsel appearing for the appellant as well as the learned Additional Public Prosecutor for the State on the point of admission and, in our view, this criminal appeal can be disposed of on the admission stage itself without calling for the Lower Court Records.

2. The appellant has brought the certified copies of the statements of the prosecution witnesses on record by filing the supplementary affidavit.



3. This criminal appeal has been preferred by the father of the deceased (informant) against the Judgment of acquittal dated 25.06.2019 passed by the learned Presiding Officer, Fast Track Court-I, Banka, in Sessions Trial Case No.715 of 2013/Trial No.37 of 2018 by which and whereunder the learned Presiding Officer, Fast Track Court-I, Banka, acquitted the respondents no.2 and 3 from the charges framed under Sections 302/34 and 201 of the Indian Penal Code.

4. The appellant, who was examined before the trial court as P.W.4, gave his fardbeyan to the S.I. Binod Kumar of Amarpur Police Station on 29.07.2010 in the night at 21.30 hours to this effect that in the previous night between 28/29.07.2010, the respondent no.2 Ajay Choudhary came at his house and after getting him awaken, he asked about his son Suman and, thereafter, he disclosed that his son Suman was sleeping on the roof. The aforesaid respondent no.2 Ajay Choudhary went on the roof and, thereafter, came down along with his son Suman and went towards his house. The appellant (P.W.4) further claimed in his fardbeyan that after sometime, when his son did not return to his home, he went to the house of the respondent no.2 Ajay Choudhary and inquired about his son but he did not give any satisfactory answer. The appellant



(P.W.4) noticed that the respondents no.2 and 3 were wearing “Gamchcha” at that time. However, he returned to his home and gave information to his family members and, thereafter, on hectic search, the dead body of the deceased was found in an orchard. The appellant (P.W.4) also noticed that the private part (penis) of the deceased was cut and the same had been put into the mouth of the deceased. The appellant (P.W.4) claimed that the alleged occurrence took place on account of previous enmity.

5. On the basis of the aforesaid fardbeyan of the appellant (P.W.4), Amarpur P.S. Case No.130 of 2010 for the offences under Sections 302 and 201/34 of the Indian Penal Code was registered against the respondents no.2 and 3 as well as some others. However, after investigation, charge-sheet was submitted against the respondents no.2 and 3 and, accordingly, after cognizance and commitment, they were put on trial before the sessions court.

6. The respondents no.2 and 3 stood charged for the offences punishable under Sections 302/34 and 201 of the Indian Penal Code but they denied the charges.

7. In order to prove its case, the prosecution examined, altogether, 10 witnesses and also got exhibited certain



documents.

8. The statements of the respondents no.2 and 3 were recorded under Section 313 of the Code of Criminal Procedure, in which they reiterated their innocence and claimed their false implication. No evidence was adduced by the respondents no.2 and 3 in support of their defence. However, the learned trial court, after evaluating the entire prosecution evidences and the materials, available on the record, acquitted the respondents no.2 and 3 from the charges passing the impugned Judgment of acquittal against which this criminal appeal has been preferred.

9. Learned counsel appearing for the appellant assailed the impugned Judgment of acquittal arguing that the learned court below failed to appreciate the evidence in its right perspective. He further submits that, in course of trial, several witnesses stated that the deceased had love affair with one Guriya Kumari, who happens to be the daughter of the respondent no.2, and, furthermore, the prosecution witnesses claimed that the respondent no.2 came at the house of the deceased and took him towards his house and after that the deceased was found missing. He further submits that several incriminating articles were seized from the place of the occurrence as well as from the house of the respondent no.2 but



the learned court below completely ignored the aforesaid seized articles as well as the above stated circumstances. He further submits that the dead body of the deceased was recovered on the basis of the information given by one Rajesh Kumar, who was an eye witness of the actual killing of the deceased. He further submits that the above stated Guriya Kumari had also sent the telephonic message to the above stated Rajesh Kumar about the killing of the deceased but it is surprising enough that the Investigating Officer did not take pain to examine the aforesaid Guriya Kumari and Rajesh Kumar and, therefore, due to the above stated faulty investigation, the prosecution case could not have been rejected.

10. On the other hand, the learned Additional Public Prosecutor supported the impugned Judgment of acquittal arguing that, admittedly, the materials, available on the record, go to show that none had seen the actual killing of the deceased and the prosecution put forward its case on the basis of the circumstantial evidence but the learned trial court noticed that the chain of events was not complete to indicate or point out the guilt of the respondents no.2 and 3 and the links of chain of circumstances were found missing.

11. Having heard the contentions of the parties, we



went through the impugned Judgment as well as the records.

12. Admittedly, the appellant has brought on the record the certified copies of the depositions of the prosecution witnesses by filing the supplementary affidavit. The statements of the prosecution witnesses go to show that none had seen the actual killing of the deceased and the entire prosecution case was based on the circumstantial evidence. In course of trial, some of the prosecution witnesses claimed that the daughter of the respondent no.2 was in love with the deceased and that was the reason of the murder of the deceased but the aforesaid fact was never disclosed by the informant in his fardbeyan rather the informant claimed in his fardbeyan that the cause of the alleged occurrence was previous enmity. Moreover, the said Guriya Kumari was neither examined by the police nor by the concerned court. Furthermore, the appellant (P.W.4) claimed in his fardbeyan that only the respondent no.2 came to his house and took the deceased with him but P.W.3, who happens to be the wife of P.W.4, claimed that the respondents no.2 and 3 both came to her house and took the deceased with them. Therefore, on the above stated points also, there was material contradiction in the statements of the prosecution witnesses. Moreover, the learned trial court noticed that several important links were



found missing in the prosecution case either due to fault of Investigating Officer or the concerned Public Prosecutor, who conducted the prosecution case on behalf of the prosecution. However, it is well settled principle of law that on the same set of facts and evidence, if two views are possible, the view of the trial court shall prevail, unless the same is absurd or without consideration of the evidence. In the present case, we find that the learned trial court has well considered the evidence and there is no absurdity into the impugned Judgment. Therefore, in the aforesaid circumstances, we do not find any ground to interfere into the impugned Judgment of acquittal.

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

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

**Pradeep Srivastava/-
Bhardwaj/-**

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.02.2020.
Transmission Date	18.02.2020.

