

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1345 of 2017

Arising Out of PS. Case No.-118 Year-1999 Thana- FATEHPUR District- Gaya

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Tetari Devi, Wife of Late Manager Yadav, resident of Village Katiaundh Tola
Vijay Nagar, P.S. Fatehpur, District Gaya

... .. Appellant

Versus

1.The State Of Bihar

2. Rohan Yadav, son of Late Pati Yadav

3. Ratu Yadav, son of Late Pati Yadav

4. Arjun Yadav, son of Late Pati Yadav

5. Puna Yadav, son of Late Pati Yadav

6. Vijay Yadav, son of Sri Sacho Yadav

7. Ram Bilas Yadav, son of Sri Narain Yadav

All residents of Vijay Nagar, P.S. Fatehpur, District Gaya.

8. Prabhu Yadav, son of Sonu Yadav, resident of Chhotki Dharahara, P.S.
Fatehpur, District Gaya.

.. ... Respondents

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Indian Penal Code – Sec. 302/34 and 201/34

This Criminal Appeal has been preferred against the Judgment of acquittal passed by Ld. Addl. Sessions Judge-I, Gaya.

Held that Appellant who happens to be mother of the deceased and she comes under the purview of victim, hence she has right to file appeal against the judgment of acquittal.

Further held that prosecution failed to examine the I.O. as well as doctor, and also failed to bring the post-mortem report, inquest report etc on the record through ample opportunity was given. Ld. Trial court made attempt to procure the attendance of I.O. and doctor by issuing non-bailable warrant etc, but all went in vain.

Held further that Ld. Trial court also noticed other infirmities of the prosecution cases and Ld. Trial court rightly passed the judgment of acquittal – Appeal dismissed on admission stage itself.

[Para 2,6,7 and8]

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Fatehpur, District Gaya.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Sheikh Arkan Ahmad, Adv.
For the State	:	Mr. Ashwani Kumar Sinha, 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 : 09-01-2019

1. Heard learned counsel appearing for the appellant as well as learned Additional Public Prosecutor for the State on I.A. No. 152 of 2018 as well as on the point of admission and in our view, this criminal appeal can be disposed of on admission stage itself.

2. I.A. No. 152 of 2018 has been filed on behalf of appellant-applicant, who happens to be mother of the deceased



and she comes under the purview of victim. Hence, she has right to file appeal against judgment of acquittal. Accordingly, I.A. No. 152 of 2018 stands allowed and the appellant-applicant is permitted to pursue this criminal appeal.

3. In the aforesaid manner, I.A. No. 152 of 2018 stands disposed of.

4. This criminal appeal has been preferred against the judgment of acquittal dated 06.07.2017 passed by learned Additional Sessions Judge-1st, Gaya in Sessions Trial No. 121 of 2005 (S.J.)/ 198 of 2016 by which and whereunder he acquitted the respondents no. 2 to 8 from the charges framed against them for the offences punishable under Sections 302/34 and 201/34 of the I.P.C.

5. Fatehpur P.S. Case No. 118 of 1999 was registered on the basis of ferdbeyan of appellant and accordingly, respondents no. 2 to 8 were put on trial. The charge for the offences punishable under Sections 302/34 and 201/34 of the I.P.C. was framed against them and one other co-accused on 03.03.2005. In course of trial, prosecution examined, altogether, four prosecution witnesses and also got exhibited certain documents. The statements of respondents no. 2 to 8 were recorded under Section 313 of the Cr.P.C. and subsequently, the learned trial court having perused the



materials available on the record passed the impugned judgment of acquittal against which this criminal appeal has been preferred.

6. It is pertinent to note here that charge against the respondents no. 2 to 8 was framed on 03.03.2005 and the prosecution evidence was closed sometime in the year 2017 i.e. after more than 12 years. However, it would appear from perusal of the impugned judgment that prosecution failed to examine the investigating officer as well as doctor and also failed to bring the post mortem report, inquest report etc. on the record though ample opportunity was given to the prosecution to produce the aforesaid documents and furthermore, the learned trial court made attempt to procure the attendance of investigating officer and doctor by issuing non bailable warrant etc. but all went in vain.

7. It is obvious from perusal of the impugned judgment that PW-1 is a formal witness whereas remaining three prosecution witnesses supported the prosecution case before the trial court but they improved their statement in course of trial as they had not claimed before the investigating officer in respect of the statements which have been made by them before the trial court and taking note of the aforesaid fact, the learned trial court passed the judgment of acquittal. Furthermore, the learned trial court also noticed other infirmities of the prosecution case and in our view,



the learned trial court rightly passed the judgment of acquittal and there is no need to interfere into the impugned judgment of acquittal.

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

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

shahzad/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	11.01.2019
Transmission Date	11.01.2019

