

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.524 of 2019
In
CRIMINAL APPEAL (SJ) No.720 of 2019

Arising Out of PS. Case No.-228 Year-2010 Thana- MOHANIYA District- Kaimur (Bhabua)

Nirbhay Kumar Singh @ Ashok Singh s/o Shri Kamla Singh Resident of village- Baghini Kala, P.O.- Badhupar, P.S.- Mohania, District- Kaimur at Bhabua.

... .. Appellant/s

Versus

1. The State of Bihar
2. Rajbansh Singh Son of Late Chandrika Singh Resident of Village- Chotka Katra, P.S.- Mohania, District- Kaimur at Bhabua
3. Rajgrih Singh Son of Late Chandrika Singh Resident of Village- Chotka Katra, P.S.- Mohania, District- Kaimur at Bhabua
4. Subhash Singh Son of Rajgrih Singh Resident of Village- Chotka Katra, P.S.- Mohania, District- Kaimur at Bhabua
5. Rajnesh Kumar Mourya Son of Shiv Parshan Singh Resident of Village- Baghinikala, P.S.- Mohania, District- Kaimur (Bhabua)
6. Chandrama Singh Son of Sita Ram Singh Resident of Hariharpur, P.S.- Bhabua, District- Kaimur (Bhabua)

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vikramdeo Singh, Advocate
Mr. Pawan Kumar Singh, Advocate
For the Respondent/s : Mr. Shiwesh Chandra Mishra, APP

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 17-07-2019

Heard learned counsel for the appellant as well as learned A.P.P for the State.

This Criminal Appeal has been preferred against judgement of acquittal dated 16.11.2018 passed by Presiding



Officer, Fast Track Court I, Bhabua in Sessions Trial No. 25/2012 arising out of Mohania P.S. Case No. 228/2010 whereby and whereunder the learned trial court acquitted the respondent nos. 2 to 6 from the charges framed against them for the offences punishable under Sections 341, 323, 307/34 of the Indian Penal Code.

Learned counsel appearing for appellant assailed the impugned judgement of acquittal mainly on two grounds. First, sufficient opportunity was not given to the prosecution by the trial court to produce the evidence in support of the prosecution case. Second, the evidence of P.W. 1 has not been properly appreciated by the trial court.

It is submitted on behalf of the appellant that the judgement of acquittal has not been passed in accordance with law and therefore this court should interfere into the impugned judgement of acquittal.

Learned Additional Public Prosecutor on the other hand, supported the impugned judgement of acquittal and it is submitted that perusal of impugned judgement would go to show that sufficient opportunity was given to the prosecution to examine its witnesses by the trial court, but the prosecution failed to avail the opportunity given by the trial court. It is also



submitted on behalf of learned Additional Public Prosecutor that the impugned judgement of acquittal is well discussed judgement and has been passed after having considered all the materials available on record and as such there is no need to interfere with the judgement of acquittal.

In this case respondent nos. 2 to 6 stood charged for offences punishable under Sections 341, 323, 327/34 of the Indian Penal Code. In order to prove the prosecution case, only one witness P.W. 1 namely, Sharda Devi has been examined on behalf of prosecution. The learned trial court after recording the statement of respondent nos. 2 to 6 under Section 313 of the Code of Criminal Procedure and after perusing the materials available on record passed the judgement of acquittal which is under challenge.

It is obvious from perusal of impugned judgement that in paragraph 8 of the impugned judgement, the trial court has discussed the evidence of P.W. 1 Sharda Devi, mother of the informant, who has supported the case of the prosecution and stated that she was also assaulted by Rajbanshi Mukhia by *Garasa* on her head, as a result of which she also sustained injury which is inconsistent with the story of *fard-e-beyan*. The evidence of P.W. 1 was taken on 09.08.12 by the trial court and,



thereafter, not a single witness was examined on behalf of prosecution. In this case, the informant and other alleged injured witnesses are family members of P.W. 1 but in spite of that none of them turned up to depose in support of prosecution case.

Moreover, in this case Investigating Officer and Doctor has also not been examined, as a result, place of occurrence as well as injuries were not brought on record.

From perusal of the impugned judgement, it is manifest that sufficient opportunity was given to prosecution but prosecution failed to avail the opportunities granted by the trial court. From the aforesaid discussion, it is apparent that the trial court after considering the evidence on record has come to a definite conclusion that the prosecution has failed to prove the case beyond all reasonable doubts.

Considering the aforesaid fact and circumstances, we are of the view that the prosecution utterly and miserably failed to substantiate the prosecution case and bring home the charges levelled against the appellant beyond all reasonable doubts by adducing cogent, consistent and reliable evidence. In the aforesaid facts and circumstances, the trial court has rightly passed judgement of acquittal.

It is well settled law that the finding of acquittal



recorded by trial court cannot be disturbed unless the said finding appears to be absurd and without consideration of evidence but in the present case, as we have stated that the learned trial court having considered the evidence as well as facts and circumstances of the case passed the impugned judgement and therefore, we are of the opinion that there is no need to interfere into the impugned judgement.

Accordingly, this Cr. Appeal stands dismissed at the admission stage itself.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

vinita/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.07.2019
Transmission Date	25.07.2019

