

(2019) 07 PAT CK 0028

In the Patna High Court

Case No : Criminal Appeal (DB) No. 876 Of 2016

Ajay Yadav

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 04-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 302, 307, 504
Arms Act, 1959 — Section 27

Citation : (2019) 07 PAT CK 0028

Hon'ble Judges : Hemant Kumar Srivastava, J;Prabhat Kumar Singh, J

Bench : Division Bench

Advocate : Ram Chandra Singh, Shankar Kumar, Lal Bahadur Singh, Dr. Maya Nand Jha, Rajendra Narayan

Final Decision : Dismissed

Judgement

1. Heard learned counsel appearing for the appellant, learned Additional Public Prosecutor for the State as well as learned Senior counsel appearing for the respondent Nos. 2 and 3 on the point of admission and perused the records.

2. In our view, this appeal can be disposed of on admission stage itself.

3. The appellant is aggrieved by the impugned judgment dated 22.06.2016 passed by learned Additional Sessions Judge III, Aurangabad (hereinafter referred to as "the trial court") in Sessions Trial No. 24/13/96/14 (arising out of Aurangabad (Muffasil) P.S. Case No. 151 of 2012) by which and whereunder the trial court acquitted the respondent Nos. 2 and 3 from the charges framed against them for the offences punishable under Sections 147, 148, 302/149, 307/149 and 504/149 of the Indian Penal Code. It is pertinent to note here that by the impugned judgment, the learned trial court convicted the other accused for the offence punishable under Section 302 of the Indian Penal Code and 27 of the Arms Act.

4. The appellant happens to be the informant of Aurangabad (Muffasil) P.S. Case

No. 151 of 2012 and claimed in his written complaint that the respondent Nos. 2 and 3 as well as others participated in committing murder of two persons and in that course the respondent Nos. 2 and 3 assaulted the informant causing injury to him.

5. The learned trial court after scrutinizing the prosecution evidence doubted the claim of appellant in respect of respondent Nos. 2 and 3 after noticing contradictions in the statement of prosecution witnesses and also on the ground that the injury report of the appellant does not support the claim of prosecution and taking note of the aforesaid facts, the learned trial court passed the judgment of acquittal in respect of respondent Nos. 2 and 3.

6. Learned counsel appearing for appellant assailed the impugned judgment arguing that in course of trial six prosecution witnesses claimed themselves to be eye witnesses and they, specifically, stated that the respondent Nos. 2 and 3 had participated in the alleged crime. He, further, submitted that the appellant was examined as P.W. 11 before the trial court and he, too, stated about the involvement of the respondent Nos. 2 and 3 in the aforesaid crime. He, further, submitted that the injury report of the appellant was proved by the doctor, who had examined the appellant. He submitted that when the prosecution succeeded to prove that the appellant had sustained injury in the alleged occurrence, the presence of appellant over the place of occurrence cannot be doubted but the learned trial court ignoring all the above stated facts passed the judgment of acquittal in favour of respondent Nos. 2 and 3. He, further, submitted that the prosecution, successfully, proved that the respondent Nos. 2 and 3 were member of unlawful assembly and they had participated in the alleged occurrence with common object to commit the murder of two persons and, therefore, the learned trial court committed error in not convicting the respondent Nos. 2 and 3 for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code. Learned counsel for the appellant referred a judgment passed by a Co-ordinate Bench of this Court rendered in the case of Dhruv Kumar Jaiswal @ Dhruv Prasad @ Dhruv Sao @ Dhruv Sah Versus The State of Bihar reported in 2019 (4) BLJ 95.

7. On the other hand, learned senior counsel appearing for respondent Nos. 2 and 3 supports the impugned judgment, which relates to respondent Nos. 2 and 3 and submits that in course of trial the appellant was examined as P.W. 11 and in his cross-examination, he admitted that he had not seen the respondent Nos. 2 and 3 near Devi Ashthan and on the aforesaid basis, the learned trial court doubted the presence of respondent Nos. 2 and 3 over the place of occurrence. Learned counsel appearing for respondent Nos. 2 and 3, further, submits that the learned trial court has found that the injury report of appellant did not corroborate his claim as the appellant claimed in his written complaint that he had sustained injury near his left eye as well as hand but doctor did not find any injury near his left eye as well as on his hand and, therefore, in the aforesaid circumstance, the learned trial court doubted the claim of appellant in respect of

respondent Nos. 2 and 3.

8. Learned Additional Public Prosecutor having gone through the lower court records seconded the submission advanced on behalf of the respondent Nos. 2 and 3.

9. Having heard the above stated contentions of the parties, we went through the impugned judgment along with the Lower Court Records.

10. We find that the learned trial court has discussed all the prosecution evidence and, furthermore, we find that the learned trial court came to conclusion that respondent Nos. 2 and 3 were not present over the place of occurrence after taking note of statement of P.W. 11 and, furthermore, the learned trial court also doubted the injury report of appellant as the injury report was not in consonance with the statement of the appellant.

11. It is well settled principle of law that if two views are possible on same set of evidence and fact, the view of the trial court is accepted unless the view taken by the trial court is absurd, perverse or without consideration of the prosecution evidence.

12. So far as the aforesaid decision cited on behalf of the appellant is concerned, the same is not applicable in the present case because in the present case, the learned trial court on the basis of materials available on record came to conclusion that the presence of respondent Nos. 2 and 3 over the place of occurrence was doubtful.

13. In the present case, learned counsel of the appellant could not succeed to prove any perversity or absurdity in the impugned judgment and, therefore, we are of the view that there is no need to interfere into the impugned judgment so far as it relates to respondent Nos. 2 and 3 and, accordingly, this criminal appeal stands dismissed on admission stage itself.