

(2018) 10 PAT CK 0025
In the Patna High Court
Case No : Criminal Appeal (DB) No.1039 of 2018
Maya Lal Singh @APPELLANT@Hash State of Bihar

Date of Decision : 11-10-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302
Code Of Criminal Procedure, 1973 — Section 378(3)

Citation : (2018) 10 PAT CK 0025

Hon'ble Judges : Hemant Kumar Srivastava, J;Rajendra Kumar Mishra, J

Bench : Division Bench

Advocate : Dhananjay Kumar Shahi, Ajay Mishra

Final Decision : Dismissed

Judgement

1. I.A. No.2743 of 2018 has been filed on behalf of the appellant Maya Lal Singh, under Section 378(3) of the Code of Criminal Procedure, seeking leave to file this appeal. The appellant happens to be the informant and the son of the deceased and, therefore, he has right to file the appeal against the Judgment of acquittal. Accordingly, I.A. No.2743 of 2018 stands allowed and leave is granted for pursuing this criminal appeal.
2. 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 appeal can be disposed of on the admission stage itself.
3. The appellant is aggrieved by the Judgment of acquittal dated 25.05.2018 passed by the learned Fast Track Court-II, Gopalganj, in Sessions Trial No.81 of 2002, by which and whereunder he acquitted the respondent no.2 of the charge framed under Section 302/34 of the Indian Penal Code.
4. Learned counsel appearing for the appellant challenged the impugned Judgment of acquittal, arguing that the learned trial court failed to appreciate the evidences, available on the record, in its right perspective. He submits that,

in course of trial, viscera report of the deceased was produced before the trial court and the viscera report reveals that the deceased was poisoned to death as Thimate was detected in the viscera of the deceased but the learned trial court did not give any finding on the aforesaid viscera report.

He further submits that the informant and other witnesses, specifically, stated that the deceased was assaulted by lathi but the doctor in collusion with the accused gave false post-mortem report. He further submits that it is well settled principle of law that the ocular evidence shall prevail over the medical evidence and, therefore, in the aforesaid circumstance, the learned trial court committed error in acquitting the respondent no.2. He further submits that the learned trial court wrongly held that due to non-examination of the Investigating Officer, the prejudice was caused to the defence.

5. On the other hand, learned Additional Public Prosecutor supports the impugned Judgment of acquittal, arguing that the impugned Judgment of acquittal reflects that the learned trial court discussed each and every point and came to the right conclusion. He further submits that the impugned Judgment goes to show that the prosecution miserably failed to prove its case and, therefore, there is no need to interfere into the impugned Judgment of acquittal. He submits that the appellant has wasted a valuable time of this Court and, therefore, heavy cost should be imposed upon the appellant.

6. Having heard the rival contentions of both the parties, we went through the impugned Judgment.

7. We find force in the contentions of the learned Additional Public Prosecutor. Furthermore, we find that the learned trial court has discussed the evidence, at length, and passed a well thought Judgment.

8. So far as the imposition of cost is concerned, we do not think it proper to impose cost upon the appellant because every person has right to come before this Court for redressal of his grievance in accordance with law.

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