

# SUPREME COURT OF INDIA

Shivnath Prasad

Vs.

State of Bihar

Crl.A.No....of 2008

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

28.11.2008

## JUDGMENT

**Dr.Arijit Pasayat, J.**

1. Heard
2. Leave granted.
3. Challenge in this appeal is to the judgment of a learned Single Judge of the Patna High Court dismissing the revision petition filed by the appellant.
4. Background facts in a nutshell are as follows:

“The appellant was convicted for offences punishable under Sections 279 and 304-A of the *Indian Penal Code, 1860* (in short `the IPC') by the learned Judicial Magistrate, Bettiah, West Champaran. He was sentenced to undergo simple imprisonment for six months and one year respectively. Both the sentences were directed to run concurrently. An appeal was filed and the leaned Additional District and Sessions Judge, Fast Track Court No.II, Bettiah, West Champaran affirmed the conviction and sentence. The revision filed was dismissed by the impugned order on the ground that there was no scope for interference.”

5. Learned counsel for the appellant submitted that the prosecution version has not been established. There were several infirmities which the High Court unfortunately did not notice. The I.O., the Doctor and the informant were not examined. The post-mortem report was also not exhibited. PW-3, who claimed to be the son of the deceased was not the informant. The Trial Court and the First Appellate Court relied upon his evidence. Significantly, he was also not named as an eye witness in the FIR. PW-4 claimed to be an eye-witness. But, he was not examined during investigation. Out of the five witnesses, who were stated to be eye- witnesses, three did not support the prosecution version.

6. According to learned counsel for the appellant, all these factors have not been considered by the High Court. Learned counsel for the respondent-State supported the impugned order of the High Court.

7. We find that the High Court has, by a cryptic order, dismissed the revision petition. It has not noticed the various submissions made by the appellant, as noticed above. In the circumstances, we set aside the impugned order of the High Court and remit the matter to it for fresh consideration in accordance with law.

8. The appeal is accordingly disposed of.