

A SHIVNATH PRASAD  
v.  
THE STATE OF BIHAR  
(Criminal Appeal No. 1892 of 2008)

B NOVEMBER 28, 2008

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM  
SHARMA, JJ.]**

C *Penal Code, 1860 – ss.279 and 304A – Conviction under  
– Revision petition filed by accused – Dismissed by High  
Court by a cryptic order – On appeal, held: High Court did  
not notice various submissions made by the accused – Matter  
remitted to High Court for consideration afresh.*

D **The appellant was convicted by the trial court and the  
appellate Court under ss.274 and 304A IPC. The revision  
petition filed by appellant was dismissed by the High  
court on the ground that there was no scope for  
interference.**

E **In the instant appeal, it was contended for the  
appellant that while dismissing the revision petition, the  
High Court did not notice several infirmities in the  
prosecution version i.e. the I.O., the doctor and the  
informant were not examined; the postmortem report was  
F not exhibited; the trial court and the appellate court relied  
upon the evidence of PW-3, who was not the informant  
and was not even named as an eye-witness; and out of  
the five eye-witnesses, three did not support the  
prosecution version while one eye-witness was not  
G examined during investigation.**

**Disposing of the appeal and remitting the matter to  
the High Court, the Court**

**HELD: The High Court, by a cryptic order, dismissed the revision petition, without noticing the various submissions made by the appellant. In the circumstances, the impugned order of the High Court is set aside. [Para 7] [768-E-F]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1892 of 2008.

From the Judgment and final Order dated 30.6.2008 of the High Court of Judicature at Patna in Crl. Revision No. 572 of 2008.

Manish Kumar Saran and Nirmal Kumar Ambastha for the Appellant.

Gopal Singh and Shweta Kumari Singh for the Respondent.

The Judgment of the Court was delivered by

**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 learned Additional District and Sessions Judge, Fast Track Court No. II, Bettiah, West Champaran affirmed the

A conviction and sentence. The revision filed was dismissed by the impugned order on the ground that there was no scope for interference.

B 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.

D 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.

E 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.

F 8. The appeal is accordingly disposed of.

B.B.B:

Appeal disposed of.