

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.327 of 2015

Arising Out of PS.Case No. -62 Year- 2007 Thana -SIMRA District- WEST CHAMPARAN (BETTIAH)

Shatrughan Prasad, Son of Late Saryug Prasad, Resident of Village - Laxmipur,
P.S. - Semra (Chiutaha), District - West Champaran. Appellant

Versus

1. The State of Bihar.
2. Sitaram Ram, Son of Bimal Ram,
3. Bikram Ram, Son of Bimal Ram,
4. Bimal Ram, Son of Late Khaki Ram,

Respondent No. 2 to 4 are residents of Village - laxmipur, P.S. - Semra (Chiutaha),
District - West Champaran. Respondents

Appearance :

For the Appellant/s : Mr. Zainul Abedin, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-08-2015

This appeal under proviso to Section 372 of the Code of Criminal Procedure is directed against the judgment and order dated 17.04.2014 passed by the learned 3rd Additional Sessions Judge, Bagaha, West Champaran in Sessions Trial No. 437 of 2011 arising out of Semra P.S. Case No. 62 of 2007 whereby and whereunder the trial Judge has acquitted the respondent nos. 2 to 4 of the charges framed against them under Sections 307/34, 379/34 and 504/34 of the Indian Penal Code.



2. The informant (appellant) has filed a written report before the Officer-in-charge, Semra Police Station stating therein that on 18.06.2007 at 7.00 p.m. accused persons came to his shop and abused him and on protest by the informant, they assaulted him by belt and Phatta. The informant sustained injuries on back and head during incident. It is further stated in the written report that the accused persons snatched Rs. 80,000/- which the informant had kept for making draft. The cause of action is said to be dispute over distribution of rice from P.D.S. shop of the informant.

3. On the basis of the aforesaid written report, Semra P.S. Case No. 62 of 2007 was registered against respondent nos. 2 to 4 for the offences under Sections 307, 379 and 504 of the Indian Penal Code and the police took up the investigation.

4. On completion of investigation, charge sheet was submitted against the accused persons upon which the learned A.C.J.M., Bagaha took cognizance of the offence and the case was committed to the Court of Sessions for trial. The trial Court framed charges under Sections 307/34, 379/34 and 504/34 IPC against accused persons to which they pleaded not guilty and claimed to be tried.

5. In course of investigation, altogether 8 witnesses were examined on behalf of the prosecution in order to prove the

charges. They are P.W. 1 Shankar Mahto, P.W. 2 Prabhu Prasad Jaiswal, P.W. 3 Asha Devi, P.W. 4 Sugandhi Devi wife of P.W. 1, P.W. 5 Bhagirathi Devi, P.W. 6 Janki Devi, P.W. 7 Shatrughan Prasad, the informant himself and P.W. 8 Dr. Ashok Kumar Tiwari.

6. The prosecution also proved certain documents in support of its case, such as, the signature of the informant on the written report which has been marked as Ext. 1, the injury report which has been marked as Ext. 2 and the supplementary opinion of the doctor which has been marked as Ext. 2/1.

7. The accused though denied the allegations in his statement recorded under Section 313 Cr. P.C., he did not adduce any evidence in support of his innocence.

8. The trial Court has considered the evidence led by the prosecution and noted down the following facts in the impugned judgment:-

“5. P.W. 8 is the Doctor who has found following injuries upon the person of the informant:-

- (i) Lacerated wounds over left side of head Occipito-temporal region 1.1/2 X 1/4 inch x scalp deep bleeding line one below other.
- (ii) Lacerated wound over little finger 1/2 inch x 1/4 inch x 1/4 inch.
- (iii) Mark of beat multiple over back more than 20 in numbers size varying from 2 inch x

½ inch to 4 inch x ½ inch differ in nature covering almost whole of the back.

On the basis of scanning report he has further opined that injury no. 1 was sufficient on ordinary circumstances to cause death.

During cross examination, he has admitted that the neither the city scan report not the x ray plates are present before him in the court.

6. P.W. 7 is the informant himself. He has said on oath that all the three accused came by motorcycle and accused Sita Ram assaulted him by phatta and accused Bikram assaulted him by belt. He has further said that accused Sita Ram snatched Rs. 80000/- and kept it in the dickey of the bike. No overt act is attributed to accused Bimal Ram. During cross examination the informant has said in para 3 that a lamp was lit by him because it was going to be dark. He has stated in the same vein that he was alone at that time. He has further stated in para 3 that there was no previous enmity with the accused. He himself has admitted that he had met an accident and had injured his legs. In para 4 he has admitted that at first he went to the P.S. and on direction of o/c he went to the hospital in the night and remained to hours in the hospital. It does not stand to reason as to why his Parchi was prepared in the next morning? And then he came to the police station and filed this case.

7. P.W. 1 is Shankar Mahto who has said on oath that he was sitting at the shop of informant when the



accused came. On the point of assault he has stated that Sitaram used belt and Bikram used phattta. During cross examination he has admitted in para 3 that he is an employee of the informant. Although the informant has stated in para 3 that the accused came from western side, this witness has stated in para 9 that the accused came from south side. The informant has said that the accused came, abused and then assaulted where as this witness has said that the accused came and assaulted the informant. Evidently, being an employee of the informant he is bound to depose in his favour. This witness can not be relied upon.

8. P.W. 2 is Prabhu Prasad Jaiswal. He has clearly stated that accused Sitaram and Bikram came and assaulted the informant and accused Bimal Ram took away Rs. 80000/-. On the point of theft a new story has been narrated by him implicating accused Bimal Ram. Needless to say that it is not the case of the prosecution. During cross examination he has stated in para 4 that darkness had not arrived and witness Shankar was present at the place of occurrence prior to his arrival. In para 10 he has admitted his business relationship with the informant.

9. P.W. 3 Asha Devi has stated that the accused assaulted the informant by belt and fists and slaps. She has not supported the story of theft. She has further stated that it was a bazaar day and the people were present but not one rescued the informant.

During cross examination in para 2 she has even denied to say the reason as to whether it was summer or winter. From bare perusal of her evidence, it becomes candid clear that she is a tutored witness. She can not be relied upon.

10. P.W. 4 Suganti Devi is the wife of P.W.1 who is an employee of the informant. She has stated in para 1 that the accused assaulted the informant by fists and slaps and then by belt. She has further said that the accused assaulted the informant and went away. No use of Phatta has been claimed by her. During cross examination she has admitted the fact that her husband works for the informant.

11. P.W. 5 Bhagirathi Devi has simply stated that Sitaram and his brother assaulted the informant. No criminal act is attributed to accused Bimal Ram nor theft has been supported by her. During cross examination she herself has claimed to be a hearsay witness but has not named the person from whom she got the information. As such, her evidence is not admissible.

12. P.W. 6 Janki Devi has said on oath that only Sitaram and his brother assaulted the informant by belt and phatta. She has not named accused Bimal Ram and has not supported the story of theft. During cross examination she has admitted that she was with P.W. 5 at the time of occurrence.”

9. Having considered the evidence led on behalf of the prosecution, the trial court came to a conclusion that there are major

contradictions in the statements of the witnesses on the point of manner of occurrence and means of assault. The trial court has held that the witnesses are neither consistent nor reliable. It has further held that on the point of theft of Rs. 80,000/-, the witnesses have implicated different persons and some of them have even denied to support such allegation.

10. On the basis of these findings, the trial court recorded that the prosecution has failed to prove its case beyond reasonable doubt. The finding of the trial court seems to be correct. It has given clear, cogent and convincing reasons for recording the judgment of acquittal.

11. It is well-settled that an order of acquittal is to be interfered with only when there are compelling and substantial reasons for doing so.

12. The Supreme Court in **Allarakha K. Mansuri vs. State of Gujarat [(2002) 3 SCC 57]** referring to earlier decisions held in para 7 as under:-

“7. The paramount consideration of the court should be to avoid miscarriage of justice. A miscarriage of justice which may arise from the acquittal of guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view based upon conjectures and hypothesis and not on the legal evidence, a duty is cast upon the High Court to

reappreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether the accused has committed any offence or not. Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence. Only because the accused has been acquitted by the trial court, cannot be made a basis to urge that the High Court under all circumstances should not disturb such a finding.”

13. Similar view was expressed by the Supreme Court in **State of Goa Vs. Sanjay Thakran and Another [(2007) 3 SCC 755]**.

14. In **Chandrappa and Others vs. State of Karnataka [(2007) 4 SCC 415]**, the Supreme Court, after looking into many earlier judgments has laid down parameters in which interference can be made in judgment of acquittal by observing as under:-

“.....Hence, even though we are of the opinion that in an appeal against acquittal, powers of the appellate court are as wide as that of the trial court and it can review, reappreciate and reconsider the entire evidence brought on record by the parties and can come to its own conclusion on fact as well as on law, in the present case, the view taken by the trial court for acquitting the accused was possible and plausible. On the basis of evidence, therefore, at the most, it can be said that the other view was

equally possible. But it is well established that if two views are possible on the basis of evidence on record and one favourable to the accused has been taken by the trial court, it ought not to be disturbed by the appellate court.”

15. Similarly, in the case of **State of Rajasthan vs.**

Shera Ram alias Vishnu Dutta [(2012) 1 SCC 602], the Supreme Court has observed in para 7 and 8 as under:-

“7. A judgment of acquittal has the obvious consequence of granting freedom to the accused. This Court has taken a consistent view that unless the judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the court of competent jurisdiction keeping in view the settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquittal.

8. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate

court would be within its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for.”

16. In view of the discussions made hereinabove, I find no merit in this appeal.

17. Accordingly, the appeal is dismissed.

(Ashwani Kumar Singh, J.)

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