

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.12 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- WESTCHAMPARAN(BETTIAH)

1. The State of Bihar through the District Magistrate West Champaran Bettiah having his office at Collectorate compound District West Champaran Bettiah.

.... Appellant/s

Versus

1. Guddu Singh son of Daroga Singh Village Katchari P.S. Bigha District West Champaran.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Mukteshwar Dayal, Advocate

For the Respondent/s : Mr. Anand Kishore Choudhary, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 05-04-2016

The present appeal under Sub-Sections (1) and (3) of 378 of the Code of Criminal Procedure, 1973 has been preferred by the State of Bihar putting to challenge the judgment and order, dated 30.07.2013, passed by the learned 3rd Additional Sessions Judge, Bagaha, West Champaran, in Bettiah Sessions Trial No. 528 of 2004, arising out of Bagaha P.S. Case No. 247 of 2000, whereby learned trial Court has recorded acquittal of the sole respondent, who stood charged of the offence punishable, under Section 376 of the Indian Penal Code, at the said trial.

2. The appeal is barred by limitation. I. A. No. 1080 of



2015 has been filed, under Section 5 of the Limitation Act, seeking condonation of delay of 150 days in filing the present appeal. For the reasons stated in the said application, seeking condonation of delay, the same is allowed, and accordingly, the delay in preferring the present appeal stands condoned. I.A. No. 1080 of 2015, thus, stands disposed of

3. We have heard Mr. Mukeshwar Dayal, learned Additional Public Prosecutor, appearing on behalf of the Appellant, State of Bihar at length.

4. A *fardbeyan* of the informant, recorded by the Assistant Sub-Inspector of Police of Bagaha Police Station, West Champaran, on 18.09.2000, at 6 P.M., is the basis for registration of the said Bagaha P.S. Case No. 247 of 2000. According to the *fardbeyan*, the occurrence had taken place at 10 A.M., on 10.09.2000, when wife of one Ram Nath Mallah had called the informant and taken her to the house of Hari Mallah (P.W.5) and asked her (the informant) to enquire whether there was someone in the house or not. The informant is said to have replied that no one was in the house. In the meanwhile, the appellant came, gagged her by putting his hand on her mouth tightly, untied her lower garment and committed “*Bura Kam*” with her. She is said to have gone back to her home, thereafter, and disclosed the occurrence to her parents, but she did not go to the



Police Station out of fear. It appears from the *fardbeyan* that it was recorded by the Police Officer, at the residence of the informant, on 18.09.2000. There is no indication in the *fardbeyan* as to what made the police officer to go to the residence of the informant to record her *fardbeyan*, on 18.09.2000, for an occurrence, which is said to have taken place on 10.09.2000.

5. The Police, on investigation, submitted charge-sheet against the respondent, whereafter cognizance was taken by the Court of learned A.C.J.M., Bagaha, and the case was committed to the Court of Sessions on 10.09.2004. The respondent was charged with the commission of offence under Section 376 of the Indian Penal Code. Since he pleaded not guilty, he was put on trial.

6. Apart from complete denial of the charge framed against the respondent, a plea was also taken in his defence by the respondent that he had been falsely implicated at the instance of the then Superintendent of Police of the district, who had been nurturing grudge against the brother of the respondent, and several cases had been filed against the family members of the respondent.

7. At the trial, prosecution examined seven witnesses. Same number of witnesses was examined for the defence.

8. We find from the records that out of seven witnesses examined, father of the informant was examined as P.W.-1, whereas

her mother was examined as P.W.3. The informant was examined as P.W.4, whereas her uncle was examined as P.W.-2. P.W.-5, Hari Mallah, was declared hostile to the case of the prosecution.

9. It is to be noted here that according to the *fardbeyan*, the wife of Ramnath Mallah had taken the informant to the house of P.W.-5, who, in his evidence at the trial, categorically denied of any occurrence having taken place in his house. It needs to be noticed, at this stage itself, that according to the *fardbeyan*, upon cry having been raised by the informant, one Ballram Mallah and several other co-villagers, who had come, seen the respondent fleeing away after committing the offence. The said Ballram Mallah was not made prosecution witness; rather, he has been examined on behalf of the defence as DW-1. He has not only denied the occurrence said to have taken place, rather, he has deposed that he was being coerced by the police and was being pressurized for giving false evidence to support the charge so much so that he was confined, in police lock up, without any reason and was threatened of being implicated in false criminal cases.

10. Upon evaluating the evidence of the witnesses on record, the learned trial Court concluded that the prosecution failed to prove the charge against the respondent beyond all reasonable doubt and, thus, giving the respondent benefit of doubt, acquitted him of the

charge of commission of the offence punishable, under Section 376 of the Indian Penal Code, by the impugned judgment and order, dated 30.07.2013.

11. Mr. Mukehswar Dayal, learned Additional Public Prosecutor, appearing on behalf of the appellant, has submitted in support of the appeal that testimony of the prosecutrix, who was examined as P.W.-4, was sufficient evidence for conviction of the respondent since, according to him, it is not required to corroborate it by evidence of any eye-witnesses. He has submitted that in the absence of any inconsistency in the evidence of the informant, the learned trial Court ought to have recorded conviction of the respondent. He has further submitted that the deposition of the informant gets corroborated by the evidence of other prosecution witnesses, i.e., P.W.1, father of the Informant, P.W.3, mother of the Informant, and P.W.2, the uncle of the informant.

12. Upon perusal of the records, we find that there is nothing in the First Information Report to the effect that after the said occurrence took place on 10.09.2000, the informant had gone to the Superintendent of Police. In her evidence, however, she has deposed that at about 6 P.M., on the same day, she had gone to the residence of the Superintendent of Police and had narrated the whole story, whereafter the Superintendent of Police had recorded her statement



and taken her thumb impression on a paper. She has further stated, at the trial, in cross-examination, that she was sent to the Bagha Police Station by the Superintendent of Police, where she stayed for the whole night and, on the next day she, was taken by the Police Officer to Bettiah. In her evidence, she has deposed that respondent was not known to her before the occurrence had taken place, whereas in the *fardbeyan*, the name of the respondent, with his parentage, has been given. There is no clue, in the evidence of the prosecution witnesses, as to how they could know that it was the respondent, who had committed the offence. We find from the evidence of the prosecution witnesses that P.Ws. 1, 2 and 4, i.e. father, uncle and mother of the informant respectively, are said to have learnt about the occurrence from the informant. In the *fardbeyan*, the informant had said that one Ballram Sahni and several other persons had reached immediately after the occurrence had taken place. No person, who is said to have reached the place of occurrence, immediately after the occurrence had taken place, has been examined by the prosecution. The said Ballram Sahni *alias* Ballram Mallah, who has deposed as D.W.-1, virtually demolished the entire case of the prosecution, denying any such occurrence to have taken place.

13. In view of the evidence of witnesses as discussed above, coupled with the fact that there is no plausible explanation of



delay of eight days in lodging of the First Information Report, we are of the view that the learned trial Court has rightly recorded acquittal of the respondent by the impugned judgment and order, dated 20.07.2013 by giving him benefit of doubt. The witnesses have not been found consistent in their evidence. Further, the prosecution witnesses are highly interested witnesses. No independent witnesses have supported the prosecution version. The independent witnesses, Hari Bin *alias* Hari Mallah, have been declared to be hostile to the prosecution as he has denied that any occurrence has taken place in his house. The informant has deposed, in her statement, that she had no concern with Ramnath Mallah, and/or with whose wife. She is said to have gone to the house of Hari Mallah. In such circumstance, why the informant went to the house of Hari Mallah with the wife of said Ramnath Mallah has no cogent explanation and it raises doubt over the prosecution version.

14. It is well settled law, which has been followed right from the case of *Shiv Swarup Vs. King Emperor* (AIR 1934 Privy Council 227), that an appellate Court, while hearing an appeal against acquittal, is required to keep in mind the principle that presumption of innocence, in favour of the accused, is strengthened after his acquittal at his trial and he has a right to the benefit of doubt. Further, the appellate Courts are loath in disturbing the findings of facts arrived at

by the learned trial Judge, while recording acquittal of an accused, who had the advantage of seeing the witnesses and their demeanor. The said principle has been followed consistently in catena of decisions of Supreme Court including in cases of *Surajpal Singh V. State*, (AIR 1952 SC 52), *Tulsiram Kanu V. State* (AIR 1954 SC 1), *Madan Mohan Singh V. State of U.P.* (AIR 1954 SC 637), *Atley V. State of U.P.* (AIR 1955 SC 807), *Aher Raja Khima V. State of Saurashtra* (AIR 1956 SC 217), *Balbir Singh V. State of Punjab* (AIR 1957 SC 216), *M. G. Agarwal V. State of Maharashtra* (AIR 1963 SC 200), *Noor Khan V. State of Rajasthan* (AIR 1964 SC 286), *Khedu Mohton V. State of Bihar*, reported in (1970) 2 SCC 450, *Shivaji Sahabrao Bobade V. State of Maharashtra*, reported in (1973) 2 SCC 793, *Lekha Yadav V. State of Bihar*, reported in (1973) 2 SCC 424, *Kehm Karan V. State of U.P.*, reported in (1974) 4 SCC 603, *Bishan Singh V. State of Punjab*, reported in (1974) 3 SCC 288, *Umedbhai Jadavbhai V. State of Gujarat*, reported in (1978) 1 SCC 228, *K. Gopal Reddy V. State of A.P.*, reported in (1979) 1 SCC 355, *Tota Singh V. State of Punjab*, reported in (1987) 2 SCC 529, *Ram Kumar V. State of Haryana*, reported in (1995) Supp (1) SCC 248, *Madan Lal V. State of J.& K*, reported in (1997) 7 SCC 677, *Sambasivan V. State of Kerala*, reported in (1998) 5 SCC 412, *Bhagwan Singh V. State of M. P*, reported in (2002) 4 SCC 85,

Haijana Thirupala V. Public Prosecutor, reported in (2002) 6 SCC 470, *C. Anotony V. K. G. Raghavan Nair*, reported in (2003) 1 SCC 1, *State of Karnataka V. K. Goaplakrishna*, reported in (2005) 9 SCC 291, *State of Goa V. Sanjay Thakran*, reported in (2007) 3 SCC 755 and *Chandrappa V. State of Karnatka*, reported in (2007) 4 SCC 415.

15. The Supreme Court, in a recent decision, in case of *Muralidhar V. State of Karnataka*, reported in (2014) 5 SCC 730, has held that unless conclusions reached by the trial Court are palpably wrong and based on erroneous view of the law or if such conclusion is allowed to stand, they are likely to result in grave injustice, interference with the conclusion of the trial Court would not be justified. Reference may also be made in this regard to yet another Supreme Court decision in case of *Ghurey Lal V. State of U.P.*, reported in (2008) 10 SCC 450.

16. Considering the judicial pronouncements, the Supreme Court in case of *Murlidhar* (supra), has held in paragraph 12 as follows:-

“12. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed

in his favour by the trial court;

- (ii) *The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;*
- (iii) *Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial Court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial Court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate Court in interfering with such conclusions is fully justified; and*
- (iv) *Merely because the appellate Court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial Court is a possible view. The evenly balanced*

views of the evidence must not result in the interference by the appellate court in the judgment of the trial Court.”

17. Considering the above, we are of the view that the judgment and order of the learned trial Court under appeal need no interference as the view taken by the learned trial Court, while recording acquittal of the respondent giving him benefit of doubt, cannot be said to be not a reasonably possible view.

18. We do not find any legal or factual infirmity in the impugned judgment and order requiring our interference in an appeal against acquittal.

19. This appeal has no merit and is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

I.A. Ansari, ACJ:- I agree.

(I.A. Ansari, ACJ)

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ArunKumar/-

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