

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1321 of 2018

Arising Out of PS. Case No.-23 Year-2009 Thana- NALANDA District- Nalanda

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Ram Rati Devi Wife of Ramanand Bind @ Ramanandan Bind Resident of
Village- Beldaria, Police Station- Nalanda, District- Nalanda.

... .. Appellant

Versus

1. The State of Bihar
2. Raj Kumar Jamadar Son of Late Ram Nandan Jamadar Resident of Village-Beldaria, Police Station and District-Nalanda.
3. Chamaru Bind, Son of Late Ram Nandan Jamadar Resident of Village-Beldaria, Police Station and District-Nalanda.
4. Ranjeet Kumar, Son of Chamaru Jamadar, Resident of Village-Beldaria, Police Station and District-Nalanda.
5. Sultan Jamadar, Son of Janardhan Jamadar, Resident of Village-Beldaria, Police Station and District-Nalanda.
6. Pappu Jamadar, Son of Ramakant Jamadar Resident of Village-Beldaria, Police Station and District-Nalanda.
7. Shrawan Jamadar, Son of Kameshwar Jamadar, Resident of Village-Beldaria, Police Station and District-Nalanda.
8. Rajesh Jamadar, Son of Ram Kumar Jamadar, All resident of Village-Beldaria, Police Station and District- Nalanda.

... .. Respondents

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Appearance :

For the Appellant	:	Mr. Anil Kumar Singh, Advocate
For the State	:	Mr. Dilip Kumar Sinha, Addl Public Prosecutor
for respondent nos. 2 to 8	:	

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 01-10-2020

Heard learned counsel for the appellant, learned
Additional Public Prosecutor for the State and learned counsel for
the respondent nos. 2 to 8.



I.A. No. 3192 of 2018

The above mentioned Interlocutory Application has been preferred for grant of Special Leave to file appeal against the impugned judgment of acquittal, whereby the respondent nos. 2 to 8 have been acquitted of the charges under Sections 147,324,341 and 302/149 of the Indian Penal Code.

Proviso to Section 372 of the Code of Criminal Procedure (hereinafter referred to as the Code) introduced w.e.f. 31.12.2009 gives right to the victim to prefer appeal against any order passed by a Court acquitting the accused or convicting for lesser offence or imposing inadequate compensation. The proviso further stipulates that the appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

The word 'victim' has been defined under Section 2(wa) of the Code. The same was inserted by Act 5 of 2009 on 31.12.2009 which reads as follows:

“2(wa) “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused persons has been charged and the expression “victim” includes his or her guardian or legal heir.”

In the present case, the informant is Ramrati Devi, P.W.
11 the mother of the deceased Malik Bind. Hence, the informant



being guardian of the victim, comes within the definition of the victim as quoted above.

In view of the ratio laid down in the case of Mallikarjun Kodagali Vs. State of Karnataka, reported in (2019) 2 SCC 752, for maintaining an appeal under proviso of Section 372 of the Code, there is no requirement of seeking leave of the Court to appeal against the order of acquittal. Paragraph 9 of the judgment reads as follows:

“9. With this background, we need to consider the questions that arise before us consequent to the introduction of the proviso to Section 372 Cr.PC with effect from 31.12.2009. The questions are somewhat limited: Whether a “victim” as defined in Cr.PC has a right of appeal in view of the proviso to Section 372 Cr.PC against an order of acquittal in a case where the alleged offence took place prior to 31-12-2009 but the order of acquittal was passed by the trial court after 31-12-2009? Our answer to this question is in the affirmative. The next question is: Whether the “victim” must apply for leave to appeal against the order of acquittal? Our answer to this question is in the negative.”

Accordingly, I.A. No. 3192 of 2018 stands disposed of.

Cr. Appeal No. 1321 of 2018



The above mentioned appeal has been preferred on behalf of the appellant Ram Rati Devi, P.W. 11 the mother of the victim against the judgment dated 27.8.2018, passed by the learned Additional Sessions Judge-cum-FTC I, Nalanda at Biharsharif in Sessions Trial No. 318 of 2010 arising out of Nalanda P.S. Case No. 23 of 2009, whereby the respondent nos. 2 to 8 have been acquitted of the charges under Sections 147,324,341 and 302/149 of the IPC.

The prosecution case got initiated with the recording of fardbeyan of Ram Rati Devi, P.W. 11 by the S.I. of Police Rameshwar Paswan, Camp Police Station in the premises of the Sadar Hospital, Biharsharif on 14.3.2009 at 7.45 A.M., which is to the effect that on 12.3.2009 at about 8/9 P.M. Malik Bind, the son of the informant, went to call Sheodhari Jamadar for dinner at his house. On the way, respondent nos. 2 to 7 were standing. On seeing Malik Bind, respondent nos. 2 and 3 ordered to kill him, then respondent no. 3 Ranjeet Kumar gave a knife blow on the right side of the abdomen and rest of the accused persons assaulted him lathi, as a result, Malik Bind, the victim sustained bleeding injury. On alarm being raised by the son of the informant, the informant and neighbours of the informant, namely, Sunil Jamadar, Naulesh Jamadar, Lalindra Chouhan, Dharmendra Chouhan, Panna Lal Chauhan and Birmani Chauhan and others reached at the spot. In the



meantime, the son of the informant fell down with bleeding injury. Thereafter, the informant with the help of others took the victim to Sadar Hospital, Biharsharif where after preliminary treatment, the doctor referred the injured to PMCH, Patna, but on reaching Patna the victim died. Thereafter, the informant took the dead body of the deceased to Sadar Hospital, Biharsharif, where her statement was recorded leading to registration of Nalanda P.S. Case No. 23 of 2009 against eight accused persons including respondent nos. 2 to 7 under Sections 147,148,149,341,323,324,307 and 302 of the IPC.

On conclusion of investigation, charge sheet was submitted and consequently, the learned CJM, vide order dated 3.7.2009 took cognizance for the offences punishable under Sections 147,324,341 and 302 of the IPC on 17.11.2009 whereafter, the learned Magistrate committed the case to the Court of Sessions vide order dated 8.4.2010 for eventual trial.

The learned Additional Sessions Judge framed charges for the offences under Sections 147,324,341 and 302/149 of the IPC against eight accused persons.

The prosecution examined 13 witnesses apart from documentary evidence being adduced. No witness has been examined on behalf of the defence.



The learned trial court, on examination of witnesses, came to a finding that the informant P.W. 11 who claims to be the eye witness to the occurrence and reached on the spot first in point of time, has failed to prove that she witnessed the manner of occurrence. The doctor P.W. 12 Dr. Ram Nandan Prasad, and P.W. 13 the IO clearly stated in their evidence that there was none to identify the dead body which was identified by the Havildar. No medical report either of the Sadar hospital, Biharsharif or of any doctor was produced. However, during postmortem, three stitch wounds were found and hence, the learned trial court held that the prosecution has failed to prove the case beyond the shadow of reasonable doubt and as a result, the judgment of acquittal was recorded in favour of respondent nos. 2 to 8.

Learned counsel for the appellant submits that the learned trial court failed to consider the eye witness account of eight witnesses, the evidence of I.O. has not been appreciated in its true perspective and moreover, the judgment of acquittal has been recorded on the suggestion of the defence. It is further submitted that P.W. 11 the informant claiming herself to be the eye witness, saw the respondent nos. 2 to 8 surrounding the victim and on the order of respondent nos. 2 to 3 to kill, respondent no. 4 Ranjeet Kumar gave knife blow on the right side of the abdomen of the assailant victim



Malik Bind which ultimately caused his death and this eye witness account has been supported by other witnesses in their evidence.

Learned APP appearing for the State submits that from perusal of the FIR, it appears that P.W. 11 reached on the spot after the occurrence, which further gets corroborated from her evidence recorded in paragraph 25 of the evidence where she stated that when she reached on the spot, she found the victim with injuries. All the witnesses came at the place of occurrence, subsequent to the PW-11. Hence, the question of others witnessing the actual manner of occurrence does not arise.

Learned counsel for the respondent nos. 2 to 8 submits that the learned trial court has meticulously analyzed the evidence on record and has come to a definite conclusion that from the evidence of witnesses it does not appear that they witnessed the occurrence and since the case has not been proved beyond reasonable doubt, hence the judgment of acquittal does not require any interference.

Having heard learned counsels for the parties, from the perusal of the FIR, it appears that P.W. 11 who claims to have reached on the spot has stated that prior to the reaching of the informant and others, at the place of occurrence, her son after receiving injuries, had fallen down on the ground. Subsequently, the injured was taken to Sadar Hospital, Biharsharif from where he was



referred to PMCH, Patna but the victim died on the way. Then, he was again brought back to Sadar Hospital, Biharsharif where the informant's statement was recorded, this very conduct of the informant P.W. 11 does not inspire confidence.

P.W. 11 the informant in paragraph 7,9 and 10 of the cross examination, stated that after the occurrence, Malik Bind was brought to the house and thereafter to Sadar Hospital, Biharsharif but no medical assistance was provided to him at Parwalpur Hospital, as he was brought to Parwalpur Hospital for treatment and from Biharsharif hospital he was referred to PMCH and thereafter he died on way to PMCH. No medical certificate has been brought on record to prove that he was taken to Sadar Hospital, Biharsharif or to any other hospital and contrary to that, P.W. 12 Dr. Ram Nandan Prasad who conducted postmortem at Sadar Hospital, Biharsharif, has stated that the body was identified by Havildar Mojibur Rahman, as per details mentioned in the inquest report. Three stitched injuries were found on the body of the victim. Had the informant been at the place of occurrence or with the injured, there was no occasion for any other person to identify the dead body which lends credence to the defence version that the victim was a notorious criminal and he received injuries while committing some offence. He was being



treated at some hospital and after the death, this FIR was lodged with false and concocted version.

The informant P.W. 11 while deposing, at paragraph 18 of the deposition stated that her son was standing, when he was being abused and assaulted, whereas in paragraph 25 she stated that when she reached at the spot, her son was unconscious after receiving the injury and he never gained consciousness. Hence, in view of her statement in paragraph 25 she cannot be treated to be eye witness.

The specific case of the informant P.W. 11 and other witnesses is that first of all on the order of two accused persons, accused Ranjeet Kumar gave knife blow at the right abdomen area and rest of the accused assaulted with lathi and bamboo stick. The claim of P.W. 1 Panna Lal to be an eye witness, becomes meaningless in view of the evidence of P.W. 11 that everyone reached at the place of occurrence after she reached there. P.W. 2 Sanjay Bind though claims to be eye witness but P.W. 3 Birmani Prasad has clearly admitted in paragraph 9 of his cross-examination that this witness did not say about accused Chamru and Raj Kumar to have given order to kill the victim. P.W. 3 has admitted that he reached on the place of occurrence and found the victim in injured condition. Similar is the evidence of P.W. 8 Jaiprakash Bind and P.W. 9 Saraswati Devi, wife of the victim.



Though the prosecution has not alleged any motive or genesis of the occurrence, but P.W. 11 in paragraph 21 of her cross-examination stated that she was Secretary of School Committee but since there was accusation of misappropriation of fund and using sub-standard material in the construction of the school building, she left the school on complain being made by the accused side.

The entire evidence of so called eye witnesses falls to the ground, since no medical report of Sadar Hospital, Biharsharif or doctor was produced, though three stitched wounds were found on the body of the deceased, which suggests that the prosecution has not come out with clean hands.

The cardinal principle of criminal jurisprudence pertaining to burden of proof is that, the same is on the prosecution. The guilt of accused must be proved beyond reasonable doubt. However, the burden on the prosecution is only to establish his case beyond reasonable doubt and not all doubts. The reasonable doubt has been defined by the Hon'ble Supreme Court in the case of State of U.P. Vs. Krishna Gopal and Anr., reported in (1988) 4 SCC 302. Paragraph 25 of the judgment reads as follows:

“25. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no



absolute standard. What degree of probability amounts to “proof” is an exercise particular to each case. Referring to the interdependence of evidence and the confirmation of one piece of evidence by another a learned Author says [See: “The Mathematics of Proof-II” : Glanville Williams: Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342)] :

“The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other.”

Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over-emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary,



trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice.”

In the present case, on meticulous examination of the evidence, it appears that the prosecution has not been able to prove the case beyond reasonable doubt. Hence, from evaluation of materials on record, we do not find any perversity in the appraisal of evidence or documentary evidence. The prosecution has miserably failed to prove the manner of occurrence, place of occurrence, rather, none of the prosecution witnesses has come forward to depose truth. Eight persons indiscriminately assaulted with lathi and bamboo stick



and only three injuries have been found. The victim died on the way or on reaching Patna but he was not taken to any hospital or to any doctor.

There is no doubt that the appellate court has the power to review the evidence upon which the order of acquittal has been recorded. The Hon'ble Supreme Court in the case of Sanwat Singh and Ors. Vs. State of Rajasthan, reported in AIR 1961 SC 715 lays down the parameters for exercise of jurisdiction by the appellate court when judgment of acquittal is under challenge. Paragraph 9 of the judgment reads as follows:

“9. The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in *Sheo Swarup case* [LR 61 IA 398] afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) “substantial and compelling reasons”, (ii) “good and sufficiently cogent reasons”, and (iii) “strong reasons”, are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court



below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified.”

It is trite view that the judgment of acquittal further re-inforces the innocence of the accused.

In view of the discussions made above, we are not inclined to interfere with the judgment impugned. This appeal is, accordingly, dismissed.

(Dinesh Kumar Singh, J)

(Prabhat Kumar Singh, J)

Ashwini/Anil/

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

