

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.968 of 2019

Arising Out of PS. Case No.-207 Year-2009 Thana- BIKRAM District- Patna

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Jai Kumar, son of Late Baijnath Prasad Singh @ Baijnath Sharma, resident of Village-Shahjahanpur, Police Station-Bikram, District-Patna. At present Mainpura, Rajapur Pul, Gat No.41, Babhantoli, Patna-800001.

... ..Informant/ Appellant

Versus

1. The State of Bihar
2. Satya Narayan Sharma, son of Late Jeshari Singh, resident of Village-Shahjahanpur, Police Station-Bikram, District-Patna.
3. Ravish Kumar 'Mani' @ Ravish Kumar @ Tinku, son of Satya Narayan Sharma, resident of Village-Shahjahanpur, Police Station-Bikram, District-Patna.

... .. Respondents

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Appearance:

For the Appellant : Mr. Ram Naresh Sharma, Advocate
For the Respondent : Mr. Satya Narayan Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)
Date: 31-08-2021

Being aggrieved by and dissatisfied with the order of sentence dated 1st July, 2019 passed by the learned Fast Track Court No.2, Patna in Sessions Trial No.1188 of 2010/16 of 2018 arising out of Bikram P.S. Case No.207 of 2009, the appellant has preferred the present appeal under the proviso to Section 372 of the Code of Criminal Procedure (for short 'CrPC').



2. The appellant herein Jai Kumar submitted a written report to the Officer-in-charge of Bikram Police Station on 24th November 2009 alleging therein that in the evening, at about 4 p.m., when he and his younger brother Luv Kumar were going to their paddy field situated behind the school, the respondent no.2 Satya Narayan Sharma asked them not to use the approach road made for going to the school. When he asked from him the reason for the same, Satya Narayan Sharma abused him and exhorted his sons, namely, Ravish Kumar @ Mani @ Ravish Kumar @ Tinku (respondent no.3) and Manish Kumar, who were sitting near temple to kill him and his brother. When his sons did not open fire, he himself took out his pistol shot at his brother Luv Kumar. Thereafter, Ravish Kumar shot at Luv Kumar. Immediately, thereafter, Manish Kumar also shot at his brother Luv Kumar causing injury to him. They assaulted him and his mother too. When his elder brother came running, the accused persons fled away riding motorcycle. His brother died on the spot after receiving three injuries caused by firearm. In his written report, the informant Jai Kumar stated that the accused persons wanted to block the approach road leading to his land by raising boundary wall.

3. On the basis of the aforesaid information, the



SHO Bikram Police Station registered Bikram P.S. Case No.207 of 2009 dated 24th November 2009 under Sections 302, 307, 324, 323/34 of the Indian Penal Code (for short 'IPC') as well as 27 of the Arms Act. He himself took up investigation of the case. During investigation, he recorded the subsequent statements of the informant, inspected the place of occurrence, prepared the inquest report, sent the corpse for post mortem examination and the injured persons for treatment to the Sadar Hospital Bikram, received the post mortem report and on completion of investigation submitted charge-sheet against the accused Satya Narayan Sharma and Ravish Kumar and kept the investigation pending as against the accused Manish Kumar.

4. On receipt of the charge-sheet, the learned ACJM, Danapur took cognizance of the offences and transferred the case to the court of Judicial Magistrate, 1st Class. The learned Judicial Magistrate after complying with the mandatory requirement of Section 207 of the CrPC committed the case to the court of sessions for trial.

5. The sessions court (for short 'the Trial Court') framed charges under Sections 302, 307/34 of the IPC and 27 of the Arms Act against the accused Satya Narayan Sharma and Ravish Kumar to which they pleaded not guilty and



claimed to be tried.

6. During trial, the prosecution examined altogether 10 witnesses and proved certain documents in support of the charges.

7. After closure of the prosecution case, the circumstances appearing in evidence against the accused persons, respondent nos.2 and 3 were explained to them and their statements were recorded under Section 313 of the CrPC.

8. The defence also examined two witnesses in order to prove the innocence of the accused persons.

9. After closure of the defence case, arguments advanced on behalf of the parties were heard and vide impugned judgment dated 1st July, 2019, the accused Satyan Narayan Sharma (respondent no.2) was convicted for the offences punishable under Sections 302 and 324 of the IPC as well as 27 of the Arms Act and the accused Ravish Kumar (respondent no.3) was convicted for the offences punishable under Sections 324 of the IPC and 27 of the Arms Act. The Trial Court held that the prosecution had failed to prove the case beyond reasonable doubt against the accused Ravish Kumar for the offence punishable under Section 302 of the IPC.

10. After hearing the respondent nos. 2 and 3 on



the point of sentence, the Trial Court, vide order dated 1st July, 2019 sentenced the respondent no. 2 to undergo imprisonment for life and a fine of Rs.1,00,000/- and in default of payment of fine, to further undergo imprisonment for six months, imprisonment for two years for the offence under Section 324 of the IPC and imprisonment for one year under Section 27 of the Arms Act. All the sentences were ordered to run concurrently. The Trial Court sentenced the respondent no.3 to undergo imprisonment for two years under Section 324 of the IPC and imprisonment for one year under Section 27 of the Arms Act. All the sentences were ordered to run concurrently and the period of detention already undergone by the respondent no. 3 was directed to be set off against the term of imprisonment imposed on him.

11. Mr. Ram Naresh Sharma, learned counsel for the appellant submitted that the Trial Court has failed to appreciate that in the present case, there are four eye witnesses to the occurrence. It has erroneously observed in its judgment that the informant is the only one eye witness to the incident. He submitted that the Trial Court has not properly appreciated the antemortem injuries on the body of the deceased and the injuries which were proved legally by P.W.6 and P.W.7. He further



submitted that the Trial Court has not considered the common intention of the accused persons to kill the deceased, who were waiting near the place of occurrence for killing the informant and his younger brother. He contended that all the four eye witnesses, P.W.1, P.W.2, P.W.3 and P.W.4 have fully supported the prosecution case. He argued that it is a fit case for enhancement of sentence of life imprisonment awarded to the respondent no.2 by the Trial Court to death sentence and to set aside the judgment of acquittal of respondent no.3 under Section 302 of the IPC giving him benefit of doubt.

12. Mr. Satya Narayan Prasad, learned counsel for the State submitted that there is no error in the judgement passed by the Trial Court. He contended that the respondent no. 2 has already been convicted. Hence, the appeal against him is not maintainable in view of the proviso to Section 372 CrPC.

13. We have heard learned counsels for the appellant and the State and perused the materials on record.

14. Chapter XXIX of the CrPC deals with ‘Appeals’. Section 372 of the CrPC as it originally stood in Chapter XXIX reads as under:

“No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law



for the time being in force”.

15. By the Act 5 of 2009, with effect from 31st December 2009, a right to appeal has been conferred for the first time to the ‘victim’ by inserting a proviso to Section 372 of the CrPC.

16. The proviso inserted by the Act 5 of 2009 with effect from 31st December 2009 to Section 372 of the CrPC reads as under:

“Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

17. A reading of the proviso makes it clear that so far as the victim’s right to appeal is concerned, the same can be invoked only under the following circumstances:

- (a) acquittal of the accused;
- (b) conviction of the accused for a lesser offence; or,
- (c) in case of imposition of inadequate compensation.



18. There is no provision under the CrPC for an appeal by the 'victim' against the order of an inadequate sentence.

19. Against an order of inadequate sentence, the only provision prescribed under Chapter XXIX is Section 377 which provides for filing of appeal by the State Government for enhancement of sentence.

20. The victim has no right to maintain an appeal under the proviso to Section 372 of the CrPC on the ground of inadequate sentence.

21. Thus, so far as the respondent no.2 is concerned, the appeal against him is misconceived.

22. So far as the respondent no.3 is concerned, he has been convicted for the offences punishable under Sections 324 of the IPC and 27 of the Arms Act. Since he has been acquitted of the charge framed against him under Section 302 of the IPC, though his appeal against the judgment of acquittal would be maintainable, it is to be seen as to whether the Trial Court has properly appreciated the evidence on record or it has given an erroneous and perverse finding while acquitting the respondent no.3 for the offence under Section 302 of the IPC.



23. In this regard, when we closely look at the evidences adduced and the findings recorded by the Trial Court, we find that it has rightly been held that it was Satya Narayan Sharma, who had opened fire when his sons did not respond to his call to kill the deceased and his brother. The Trial Court has also given cogent reason to come at the conclusion that both the gun shot injuries found on the person of the deceased were caused by one firearm. We further find that the Trial Court has also rightly concluded from appreciation of evidence that P.W.3 Sumitra Devi was not a witness to the occurrence as she herself admitted that when the incident took place, she was at her residence. Similarly, there is reasonable doubt regarding P.W.4 Jai Kumar being a witness to the occurrence because P.W.3 has stated in her deposition that Jai Kumar came behind her after the incident. The Trial Court has also taken into consideration the fact that no blood was found at the place of occurrence and even the blood marks were not found on the clothes of the persons claiming themselves to be present at the place of occurrence after the incident.

24. The legal position for interfering with a judgment of acquittal is well settled. The mere fact that a view other than one taken by the Trial Court can be legitimately



arrived at by the appellate court on reappraisal of evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal. The interference can be made only if the appellate court comes to the conclusion that the entire approach of the Trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Moreover if two reasonable conclusions are possible on the basis of evidence on record, the appellate court would not be justified in disturbing the finding of acquittal recorded by the Trial Court. It has repeatedly been held by the Hon'ble Supreme Court that in case of acquittal, there is double presumption in favour of the accused. The presumption of innocence is available to him under the principles of criminal jurisprudence that every person shall be presumed to be innocent unless he is proven guilty. Having secured the acquittal, the presumption of the innocence of an accused is further strengthened by the Trial Court.

25. In the instant case, we find that the Trial Court has recorded clear, cogent and convincing reasons in recording the acquittal under Section 302 of the IPC insofar as respondent no.3 Ravish Kumar @ Tinku is concerned.

26. In that view of the matter, we see no merit in



this appeal. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

(Arvind Srivastava, J)

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AFR/NAFR	NAFR
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