

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.671 of 2021

Arising Out of PS. Case No.-194 Year-2016 Thana- BEUR District- Patna

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Shyam Sundar Prasad Sinha Son of Late Bajir Mahto @ Late Wazir Mahto
Resident of Village- Mohammadpur, P.S.- Asthawan, Dist- Nalanda, At
Present Resident of Mohalla- Mahabir Nagar 70 Fit Saguna Path Police
Station- Beur, District- Patna.

... .. Appellant

Versus

1. The State of Bihar
2. Lakhan Prasad Son of Late Mangal Mahto Permanent Address- Mohalla Chandasi, P.S.- Noorsarai, District- Nalanda, Present Address Mahavir Nagar Principal Secretary, Beur District- Patna.
3. Sona Devi W/o Lakhan Prasad Permanent Address- Mohalla Chandasi, P.S.- Noorsarai, District- Nalanda, Present Address Mahavir Nagar Principal Secretary, Beur District- Patna.
4. Archana Sinha D/o Lakhan Prasad Permanent Address- Mohalla Chandasi, P.S.- Noorsarai, District- Nalanda, Present Address Mohalla Sri Nandan Path, P.S.- Town, Police Station- Chhapra, District- Saran, Bihar.
5. Shiv Nandan Prasad Son of Late Bandhu Mahto Permanent of Address- Budhijivi Colony, Mahavir Nagar, P.S.- Beur, District- Patna.
6. Sarawati Devi W/o Shiv Nandan Prasad Permanent of Address- Budhijivi Colony, Mahavir Nagar, P.S.- Beur, District- Patna.
7. Shashi Son of Shiv Nandan Prasad Permanent of Address- Budhijivi Colony, Mahavir Nagar, P.S.- Beur, District- Patna.
8. Suryakant Son of Shiv Nandan Prasad Permanent of Address- Budhijivi Colony, Mahavir Nagar, P.S.- Beur, District- Patna.

... .. Respondents

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Appearance :

For the Appellant	:	Mr. Mukesh Kumar Singh, Advocate Mr. Sudish Kumar, Advocate
For the Respondents	:	Km. Shashi Bala Verma, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT



(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 10-10-2022

This is an appeal preferred under Section 372 of the Code of Criminal Procedure, 1973 (Cr.P.C. for brevity) by the father of the deceased who is the informant of the case, assailing the judgment and order dated 13.08.2021 passed by the learned Additional Sessions Judge-XVI, Patna in Sessions Trial No. 190 of 2018, whereby respondents No. 2 to 8 have been acquitted of the charge for commission of offence punishable under Section 120B and 302 read with Section 149 of the Indian Penal Code (I.P.C. for brevity) and Section 27 of the Arms Act.

2. We have heard Mr. Mukesh Kumar Singh, learned counsel for the appellant and Ms. Shashi Bala Verma learned Additional Public Prosecutor for the State.

3. A copy of the deposition of the appellant (P.W.-4) at the trial has been brought on record by way of Annexure-1 to the memo of appeal which indicates that, according to the prosecution's case, the appellant and respondent No. 2 each had purchased 10 *Dhurs* of adjacent lands, in respect of which there were certain disputes between them. The two families were litigating with each other since long, over the dispute which, according to the informant was the reason behind the occurrence



in which the appellant's son was killed by respondents No. 2 to 8.

4. It is the prosecution's case as disclosed in *fardbeyan* of the appellant recorded by the Station House Officer, Beur Police Station at 11:15 pm on 29.04.2016 at a place on “70 feet road” that the deceased had gone to his workplace on a motorcycle at Mithapur. At about 9:00 pm, when the informant was returning after purchasing vegetables from market near *Devi Sthan* situate on the said “70 feet road”, he heard sound of gunshot firing. When he turned towards the direction of sound of firing, he saw his son (the deceased) surrounded by Lakhan Prasad (respondent No. 2), Deepak Prasad, Sona Devi (respondent No. 3), Archana Sinha (respondent No. 4), Shiv Nandan Prasad (respondent No. 5), Shashi Kumar (respondent No. 7), younger son of Shiv Nandan Prasad (respondent No. 8) and wife of Shiv Nandan Prasad (respondent No. 6). Respondent No. 7, accused Deepak Prasad and younger son of Shiv Nandan Prasad (respondent No. 8) who were carrying pistols. Respondent No. 7 shot at the deceased with his pistol causing firearm injury on his person. The informant, thereafter, brought his injured son to a private hospital, wherefrom he was referred to PMCH for better treatment. At PMCH, the doctor declared his



son, Sudhir Kumar, dead.

5. Based on the aforesaid *fardbeyan*, Beur P.S. case No. 194 of 2016 came to be registered on 29.04.2016 for the offences punishable under Sections 147, 148, 149 and 302 of the I.P.C.. The police submitted its charge-sheet against respondent No. 2 on 26.10.2016 and a second charge-sheet was submitted against rest of the private respondents on 25.08.2017, for commission of the offences punishable under Sections 302, 120B and 34 of the I.P.C. and Section 27 of the Arms Act. Investigation, however, remained pending as against accused Deepak Kumar.

6. After taking cognizance of the aforesaid offences, the case was committed to the Court of Sessions for trial. During the course of trial, the prosecution examined seven witnesses. Out of the aforesaid seven witnesses, P.W.-4 (the appellant) claimed to be an eyewitness. P.Ws. 1, 2 and 3 were admittedly hearsay witnesses who had heard about the incident from P.W.-4. P.W.-5 happened to be the police officer who had submitted the charge-sheet. The first Investigating Officer was examined as P.W.-6. The doctor who had conducted the postmortem of the deceased had died. The writing and signature over the postmortem report of the doctor who had conducted the



postmortem was identified by a Doctor (P.W.-7), who was posted at PMCH when the postmortem was conducted.

7. From the impugned judgment of the Trial Court, we notice that the learned Trial Court has doubted the presence of P.W.-4 at the place of occurrence at the time of incident. The Trial Court, upon scrutiny and analysis of the evidence of the prosecution witnesses, more particularly the evidence of the appellant (P.W.-4) himself has noted that since he claimed to be an eyewitness of the case as a chance witness, his evidence was required to be scrutinized cautiously and carefully. The Trial Court has further noticed in its judgment, material contradictions in respect of the point of entry of bullet in the body of the deceased. Whereas in the inquest report, the entry of bullet was found in the back of the head of the deceased, the postmortem report disclosed one entry wound 2.5 cm x 1 cm on left side back of upper part of the chest, 7cm left from mid line and 16 cm from the shoulder (left) tip margin lacerated, inverted and blackened and a taboo mark present in 31 cm x 27 cm area surrounding the entry wound.

8. After having considered these and other aspects emerging from the evidence adduced at the trial, the Trial Court has also taken note of the fact that no F.I.R. was registered prior



to preparation of the inquest report inasmuch as the inquest report did not bear the case number and other essential details. Accordingly, the Trial Court concluded in its impugned judgment that the prosecution could not prove its case against the persons put on trial beyond all reasonable doubts. After having given the accused persons benefit of doubt, the Trial court acquitted the private respondents of the charges in respect of which they were put to trial.

9. Learned counsel appearing on behalf of the appellant has submitted that the Trial Court committed gross error in doubting the evidence of P.W.-4, who was an eyewitness to the occurrence and had given a vivid description of time, place and manner of occurrence. He has submitted that the ocular evidence of P.W.-4, the father of the deceased ought not to have been disbelieved by the Trial Court, as he had seen the occurrence. He has submitted that nothing emerged even during the course of cross-examination of P.W.-4 based on which his evidence could have been doubted.

10. We have carefully gone through the impugned judgment and order of the Trial Court. We have also perused the evidence of P.W.-4 which has been brought on record by way of Annexure-1 to the memo of appeal. It is evident from his



deposition that it is an admitted fact that the appellant and the respondents were on inimical terms and the members of the two families had filed cases against each other. Animosity between the appellant and the private respondents is said to be the reason behind the occurrence. During the course of his cross-examination, he deposed in paragraph 15 that he had heard the sound of fire soon before he was about to reach the place of occurrence. The body of the deceased, in injured condition, was lifted by P.W.-4 and other unknown persons for being put on a cart in which course his (appellant's) clothes had also become blood stained. He further deposed that blood stained clothes of P.W.-4 were not seized by the police whereas blood stained clothes of the deceased were seized by the police.

11. Contrary to the deposition of P.W.-4, the Trial Court has noticed that blood stained clothes of the deceased were in fact not seized by the police.

12. In our opinion, in the facts and circumstances of the present case, the Trial Court rightly doubted the presence of P.W.-4 at the place of occurrence who claimed to have witnessed the occurrence taking place in front of him, he being a chance witness whose evidence required deeper scrutiny with reference to other witnesses adduced at the trial.



13. Further, the occurrence is said to have taken place on a road in a populated area. The factum of prior dispute between the prosecution and accused is a double edged sword. Whereas such animosity can be a motive behind commission of an offence, the same may also be the reason for false implication. In the present case, according to the prosecution's version, as disclosed in the *fardbeyan* of the appellant and his deposition at the trial, respondent No. 2, his wife (respondent No. 3), his daughter (respondent No. 4), Shiv Nandan Prasad (respondent No. 5), wife of respondent No. 5 (respondent No. 6), sons of respondent No. 5 (respondents No. 7 and 8) and one Deepak Prasad had surrounded the deceased and he had seen respondent No. 7 shooting at the deceased with a firearm.

14. There is vital contradiction in the inquest report and the postmortem report as has been noted above.

15. As has already been noted, P.Ws 1, 2 and 3 are hearsay witnesses who deposed that they received the information about the occurrence from P.W.-4. In the wake of the admitted fact that the appellant's family and the family of private respondents were on litigating terms, whether it would have been safe for the Trial Court to have held the private respondents guilty of the charges framed against them based on



the evidence of sole eyewitness, P.W.-4 is the only issue which requires consideration.

16. Learned Trial Court has doubted his (PW-4's) presence at the place of occurrence after having scrutinized his oral evidence and other attending circumstances emerging on evaluation and analysis of evidence adduced at the trial.

17. There is no gainsaying that a Trial Court has its own advantages of seeing the witnesses in person while deposing before it, in reaching its conclusion of guilt or otherwise. There being apparent contradiction in the inquest report and the postmortem report, the Trial Court has rightly given the private respondents benefit of doubt, which in the Court's opinion, is a possible view. It is settled legal position that it is only when the conclusion of acquittal recorded by the Trial Court is found by the Appellate Court not to be a possible view that the Appellate Court should interfere and reverse the judgment of acquittal.

18. We, at this juncture, consider it useful to notice the law laid down by the Supreme Court on the approach which an appellate court need to adopt while considering an appeal against a judgment of acquittal recorded by the trial court. It is settled law that the court of appeal has as wide powers of



appreciation of evidence in an appeal against an order of acquittal as in the case of appeal against the order of conviction. In case of *Atley v. State of U.P.* (AIR 1955 SC 807), the Supreme Court, after having noticed the decisions in case of *Surajpal Singh v. State* (AIR 1952 SC 52) and *Wilayat Khan v. State of U.P.* (AIR 1953 SC 122) has held that the aforesaid powers of the appellate court are 'subject to the riders that the presumption of innocence with which the accused persons starts in the trial court continues up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal'.

19. In case of *Umedbhai Jadavbhai v. State of Gujarat*,^c reported in (1978) 1 SCC 228, the Supreme Court has laid down (see paragraph 10) that the High Court is entitled to reappreciate the entire evidence independently and come to its own conclusion in an appeal against acquittal. However, ordinarily, the High Court should give due importance to the opinion of the trial court if the same were arrived at after proper appreciation of the evidence.

20. In case of *K. Gopal Reddy v. State of A.P.*, reported in (1979) 1 SCC 355, the Supreme Court observed that where the trial court allows itself to be beset with fanciful



doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule.”

21. In case of ***Ramesh Babulal Doshi v. State of Gujarat***, reported in (1996) 9 SCC 225, the Supreme Court, disapproving the approach of the Gujarat High Court, reiterated the law that the mere fact that a view other than the one taken by the trial court can be legitimately arrived at by the appellate court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it 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 was wholly untenable. While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the infirmities it can then — and then only —



reappraise the evidence to arrive at its own conclusion. [See Para 7 of ***Ramesh Babulal Doshi*** (supra)].

22. The said Supreme Court's decision in case of ***Ramesh Babulal Doshi*** (supra) has been subsequently followed in case of ***Sambasivan v. State of Kerala***, reported in (1998) 5 SCC 412 and ***K. Ramakrishnan Unnithan v. State of Kerala***, reported in (1999) 3 SCC 309.

23. Further, relying on the Supreme Court's decision in case of ***Kuldeep Singh v. Commr. of Police***, reported in (1999) 2 SCC 10, the Supreme Court, in case of ***Babu v. State of Kerala***, reported in (2010) 9 SCC 189, has held that the finding of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality, the Supreme Court held.

24. The law enunciated by the Supreme Court, as noted above, on the point of relevant considerations to be taken into account by an appellate court considering an appeal against the order of acquittal have been consistently followed by the



subsequent decisions some of which are being referred to and dealt with in the following paragraphs.

25. In case of ***Chandrappa v. State of Karnataka***, reported in (2007) 4 SCC 415, the Supreme Court has laid down lucidly the general principles regarding the powers of the appellate court while dealing with an appeal against the order of acquittal. Paragraph 42 of the said decision is of immense significance and is accordingly being reproduced hereinbelow: -

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong



circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

26. Further, the Supreme Court’s decision rendered in case of **Murugesan v. State**, reported in **(2012) 10 SCC 383**,



succinctly and clearly lays down the subtle distinction between the expressions, “possible view”, “erroneous view” and “wrong view” and has held that the expressions may seem to convey a similar meaning, a fine and subtle difference is clearly discernible. Paragraphs 32 to 34 of the decision, in case of **Murugesan** (supra), are useful and are being reproduced hereinbelow:-

“32. In the above facts can it be said that the view taken by the trial court is not a possible view? If the answer is in the affirmative, the jurisdiction of the High Court to interfere with the acquittal of the appellant-accused, on the principles of law referred to earlier, ought not to have been exercised. In other words, the reversal of the acquittal could have been made by the High Court only if the conclusions recorded by the learned trial court did not reflect a possible view. It must be emphasised that the inhibition to interfere must be perceived only in a situation where the view taken by the trial court is not a possible view. The use of the expression “possible view” is conscious and not without good reasons. The said expression is in contradistinction to expressions such as “erroneous view” or “wrong view” which, at first blush, may



seem to convey a similar meaning though a fine and subtle difference would be clearly discernible.

33. *The expressions “erroneous”, “wrong” and “possible” are defined in Oxford English Dictionary in the following terms:*

“erroneous.— wrong; incorrect.

Wrong.— (1) not correct or true, mistaken.

(2) unjust, dishonest, or immoral.

Possible.—(1) capable of existing, happening, or being achieved.

(2) that may exist or happen, but that is not certain or probable.”

34. *It will be necessary for us to emphasise that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement. But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the arena of a possible view. The correctness or otherwise*



of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The fundamental distinction between the two situations have to be kept in mind. So long as the view taken by the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be interdicted and that of the High Court supplanted over and above the view of the trial court.”

27. In case of ***Hakeem Khan v. State of M.P.***, reported in **(2017) 5 SCC 719**, the Supreme Court again considered the power of the appellate court for interference in cases where acquittal is recorded by the trial court. It has been held in the said decision that if the ‘possible view’ of the trial court is not agreeable for the High Court, even then such ‘possible view’ recorded by the trial court cannot be interdicted. The Supreme Court reiterated that so long as the view of the trial court can be reasonably formed, regardless of the High Court agrees with the same or not, verdict of the trial court cannot be interdicted and



the High Court cannot supplant over the view of the trial court.

28. The principles laying down the approach which an appellate court should adopt while considering an appeal against acquittal, as laid down in case of ***Murugesan*** (supra), have been followed in recent decisions of Supreme Court in case of ***N. Vijayakumar v. State of T.N.***, reported in (2021) 3 SCC 687 and ***Mohan v. State of Karnataka***, reported in (2022) 12 SCC 619. In case of ***Mohan*** (supra), the Supreme Court emphasized that when the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the appellate court. As a consequence, the prosecution becomes more burdensome as there is double presumption of innocence. The Supreme Court again emphasized that a trial court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The Supreme Court reiterated that when two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty alongwith the advantage of having seen the witnesses.

29. In a recent decision, in case of ***Jafarudheen v. State of Kerala***, reported in (2022) 8 SCC 440, the Supreme Court has again echoed the views expressed by the Supreme



Court in above noted cases in relation to the appellate courts' approach while dealing with an appeal against a judgment of acquittal.

30. Conscious of the principles enunciated by the Supreme Court in various decisions as noted above, particularly the decisions in case of *Murugesan* (supra) and *Chandrappa* (supra), we have examined the sustainability of the impugned judgment of the trial court and we have considered the grounds taken in the memo of appeal to assail the same and the submissions advanced on behalf of the appellant. The trial court has duly dealt with the evidence of the prosecution witnesses including that of PW-4 and material contradictions in his deposition and other evidence at the trial has doubted the presence of PW-4 on the place of occurrence. The opinion formed by the trial court cannot be said to be palpably erroneous and suffering from perversity, warranting this Court's interference.

31. We, therefore, do not find any occasion to take a different view than what has been taken by the trial court while recording the acquittal of the respondents No. 2 to 8. The impugned finding recorded by the trial court does not require any interference by this Court exercising appellate power under



Section 372 of the Cr.P.C.

32. This appeal is devoid of merit and is accordingly dismissed.

(Chakradhari Sharan Singh, J)

I agree.
Khatim Reza, J:

(Khatim Reza, J)

K.K.RAO/-

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