

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.753 of 2021

Arising Out of PS. Case No.-23 Year-2020 Thana- MAKHDUMPUR District- Jehanabad

Kundan Kumar Son of Akchay Thakur Resident of Village- Makhdumpur,
Tehta O.P., P.S.- Makhdumpur, District- Jehanabad.

... .. Appellant/s

Versus

1. The State of Bihar
2. Birendra Kumar @ Pappu Son of Bhushan Yadav Resident of Village- Kanchak, P.S.- Kako, District- Jehanabad.
3. Baljeet Kumar Son of Kaushal Kishore Thakur Resident of Village- Kohra, P.S.- Makhdumpur, District- Jehanabad.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ashhar Mustafa, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, A.P.P

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE KHATIM REZA)

Date : 16-09-2022

This appeal has been filed under Section 372 of the Criminal Procedure Code, putting to challenge the judgment and order dated 29.09.2021 passed in Sessions Trial No. 13 of 2021 arising out of Makhdumpur (Tehta O.P) P.S. Case No. 23 of 2020 by learned Additional Sessions Judge-V, Jehanabad who has recorded acquittal of respondent nos. 2 and 3 of charge of the offence punishable under Sections 302, 201, 120(B) and 34 of the Indian Penal Code.



We have heard Mr. Ashhar Mustafa, learned counsel on behalf of the appellant and Mr. Abhimanyu Sharma, learned Additional Public Prosecutor on behalf of the State.

The charges were framed against three accused persons by the learned Additional Sessions Judge-V, Jehanabad for commission of the offences punishable under Section 302/34, 328/34, 201/34 and 120(B) of the Indian Penal Code. Respondent no. 2, namely, Birendra Kumar @ Pappu and respondent no. 3, namely, Baljeet Kumar have been acquitted of all charges by the impugned judgment and order dated 29.09.2021 of the trial court.

The appellant, hereunder is the informant (PW-2) of Makhdumpur (Tehta O.P) P.S. Case No. 23 of 2020 registered on 15.01.2020 based on a *fardbeyan* addressed to the officer incharge, Makhdumpur (Tehta O.P) police station, Jehanabad.

Briefly narrated, it was the prosecution's case as disclosed in the *fardbeyan* that on 14.01.2020 at about 06:00 pm, accused Birendra Kumar @ Pappu (respondent no. 2) invited the brother of the informant, namely, Guddu Kumar @ Chandan on the occasion of Makar Sakranti who went to the house of Birendra Kumar at Mela road, Tehta but he did not return in the night. During the course of search, informant went to the house of Birendra Kumar @ Pappu and asked about his brother Guddu



Kumar @ Chandan, Birendra Kumar (accused) said that Guddu Kumar had left his house during the night. It was further alleged that informant had seen the motorcycle and mobile phone of his brother in the house of Birendra Kumar @ Pappu and thus he claimed that Birendra Kumar @ Pappu after committing murder of the informant's brother with the help of his accomplices and they concealed the dead body of the informant's brother with an intention to disappear the evidence. It was further alleged that Respondent No. 2 Birendra Kumar had killed the deceased because there was some amount due to the deceased payable by the Respondent No. 2. The informant also alleged that accused persons had threatened of killing the brother of the informant.

With these allegations in the *fardbeyan*, the F.I.R. came to registered against Pappu Kumar @ Birendra Kumar (Respondent No. 2), Suman Kumar, Baljeet Kumar (Respondent No. 3), Santosh Kumar, Tuli Yadav @ Tulsi, Binod Yadav and Mantu Yadav.

Upon completion of investigation, the police submitted charge-sheet for commission of the offences punishable under Sections 328, 302, 201, 120(B) read with Section 34 of the Indian Penal Code against Birendra Kumar @ Pappu (Respondent No. 2), Suman Kumar and Baljeet Kumar (Respondent No. 3) whereas,



investigation was kept pending against Santosh Kumar, Tuli Yadav @ Tulsu, Binod Yadav and Mantu Yadav. Thereafter, upon taking cognizance, the case was committed to the Court of sessions for trial. The charges were framed for commission of the offence punishable under Sections 302/34, 328/34, 201/34 and 120(B) of the Indian Penal Code. The prosecution examined at the trial altogether six witnesses, namely, Shashikant Kumar (P.W.-1) brother of the deceased, the informant Kundan Kumar (P.W.-2) another brother of the deceased, Ravindra Kumar (P.W.-3) uncle of the deceased, Chandra Bhushan Sharma (P.W.-4) uncle of the deceased, Dr. Aftab Alam (P.W.-5), Baristar Paswan (P.W.-6- Investigating Officer). The statements of the persons (respondent no. 2 and 3) put on trial were recorded by the trial court under Section 313 of the Criminal Procedure Code who denied the allegation levelled against them stating that they had never invited the deceased nor had they shown any video of the deceased to anyone and that the allegation of concealment of the dead body is false and fabricated. They pleaded innocence and that they stated that they had been falsely implicated.

The learned trial court after weighing the prosecution evidences has come to the conclusion that it does not warrant conviction of the accused as the evidences brought by the



prosecution were not sufficient to prove the guilt beyond reasonable doubt, it being a case of circumstantial evidence. There is lack of chain from being complete to hold accused guilty of the offences.

Mr. Ashhar Mustafa, learned counsel appearing on behalf of the appellant, assailing the judgment under appeal has submitted that the learned trial court has not appropriately and correctly evaluated the evidences and, therefore, the impugned judgment needs to be interfered with. He has argued that the learned trial court has erred in acquitting the accused-respondents in a mechanical manner, without duly appreciating the circumstance that the accused, Birendra Kumar @ Pappu (Respondent No. 2) had called the deceased to his house on the occasion of Makar Sankranti on 14.01.2020 and that the dead body of the deceased was recovered from the house of respondent no. 2 Birendra Kumar @ Pappu. He further submits that the learned trial court has also not properly assessed the evidence of witnesses to the effect that respondent no. 3 Baljeet Kumar had helped respondent no. 2 in removal of the dead body.

The point for determination which arises in the present appeal is whether the learned trial court has taken reasonable view based on evidence of the prosecution adduced at the trial in the



light of the facts and circumstances and whether there is any reason to reverse the finding of acquittal recorded by the learned trial court?

It is well settled principle of criminal jurisprudence that the presumption of innocence of the accused is further reinforced by his acquittal by trial court and the finding of trial court, which had the advantage of seeing the witnesses and hearing their evidences, can be reversed only for very substantial and compelling reasons. [**Basayya Prabhayya Hallur v. State of Karnataka, (2009) 17 SCC 55; Ghurey Lal v. State of U.P., (2008) 10 SCC 450**]. In a recent decision, in the case of **Ravi Sharma Vs. State (NCT of Delhi)** reported in **2022 SCC online SC 859**, the Supreme Court has reaffirmed the principle laid down in the aforesaid decision.

We have perused the impugned judgment and order of the learned trial court and we have given our anxious consideration to the submissions made on behalf of the appellants. We find from the evidence of the prosecution as noted in the impugned judgment that P.W.-1, P.W.-2, P.W.-3 and P.W.-4 have deposed that Birendra Kumar (Respondent No. 2) had called the deceased by his mobile on 14.01.2020 at 06:00 pm. On scrutiny, we find that no description of the particulars of the mobile phones possessed by



the deceased has been disclosed by any of the witnesses of the prosecution in their evidences to prove the fact that the deceased possessed any mobile on the alleged date and time when the call was made P.W.-6, the Investigating Officer has stated in his evidence that he had obtained details of C.D.R. (Call Details Report) of the mobile phone of the respondent no. 2 but there is no call detail report relating to any communication between the respondent no. 2 Birendra Kumar @ Pappu and the deceased. The trial court in its impugned judgment has noted that call detail record though does not bear seal and signature of the Issuing Authority and was not exhibited at the trial. It is, therefore, unambiguous that prosecution has not been able to prove the fact that phone call of the respondent no. 2 was received by the deceased on the alleged date and time.

P.W.-1, P.W.-2 and P.W.-4 have claimed that they had seen the dead body of the deceased being removed by Birendra Kumar @ Pappu. However, the learned trial court has dealt with and has recorded in its impugned judgment that this crucial fact does not find mentioned in the *fardebyan* by P.W.-2 who is the informant. Further, Investigating Officer, P.W.-6 in paragraph 24 of his evidence has clearly deposed that informant (P.W.-2) had not told him during the investigation that he had heard the sound of the



gate of the house of accused (Birendra Kumar @ Pappu) and seen the accused removing the dead body of the deceased.

The post-mortem report is exhibit-2 and it mentions that dead body of the deceased was received at 12:05 pm on 16.01.2020 and the post-mortem was conducted at 12:30 pm and time elapsed since death mentions within 12 hours. Thus, the death occurred in between 12:30 am on 16.01.2020 to 12:30 pm on 16.01.2020, whereas the evidences of P.W.-1 to P.W.-4 show that they have seen the accused removing dead body of the deceased on 15.01.2020 in the evening, much prior to 12:30 am of 16.01.2020.

The witnesses, namely, Sanjay Kumar and Shashikant Kumar are the witnesses of the inquest report. Out of these two witnesses of the inquest report, Sanjay Kumar has not been examined and Shashi Kumar, P.W.-1 (brother of the deceased) was not able to mention the place where the inquest report was prepared and has not deposed that the dead body was recovered on disclosure by the accused.

The evidence of P.W.-3 and P.W.-2 with regard to the recovery of body from the house of accused Birendra Kumar @ Pappu is not worthy of reliance for they are not properly acquainted with the house. However, P.W.-6 (I.O) has deposed that



the house, wherefrom, the recovery of the dead body has taken place was given on rent to a carpenter. It is stated by Investigating Officer P.W.-6 that P.W.-3 Ravindra Kumar had not stated to him that dead body was found in the house of the accused. We take note of the fact that the place from where the dead body has been recovered was occupied by a carpenter but the said carpenter has neither been made witness nor accused.

Considering the above, the finding of acquittal recorded by the learned trial court giving respondent nos. 2 and 3 benefit of the doubt cannot be said to be erroneous suffering from any legal infirmity. In our considered view, the learned trial court has correctly taken all aspects of the evidence on record into consideration in arriving at the conclusion.

It is trite that in an appeal against acquittal, if two reasonable views are possible and the trial court has taken one view, then the High Court would not interfere even if the other view appears more appealing. In **Shyamal Sahu Vs. State of West Bengal (2014) 12 SCC 321**, the Supreme Court has observed that High Court is obliged to consider whether the trial court judgment suffers from such gross illegality so as to warrant interference. It was held that if two reasonable conclusions are possible on the



basis of evidence on record, Appellate Court should not interfere with the acquittal recorded by the trial court.

In our view on complete analysis of all the facts and circumstances noted hereinabove, the finding of acquittal recorded by the Court below by giving respondent no. 2 and 3 benefit of doubt cannot be said to be suffering from such legal infirmity, as would require this Court to interfere with the same. The view of Court below appears to be reasonable and not unfounded.

Situated thus, we do not find any merit in this appeal which is accordingly, dismissed.

(Khatim Reza, J)

I agree
Chakradhari Sharan Singh, J:

(Chakradhari Sharan Singh, J)

Gaurav Kumar/-

AFR/NAFR	NAFR
CAV DATE	02.09.2022
Uploading Date	
Transmission Date	

