

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

**HON'BLE JUSTICE CHITTA RANJAN DASH
AND
HON'BLE JUSTICE PARTHA SARATHI SEN**

G.A No. 23 of 1988

**THE STATE OF WEST BENGAL
Vs.
MAHESWAR JADAV**

For the Appellant/State : **Mr. S.G. Mukherji, Ld. P.P.
Ms. Z. N. Khan, Adv.
Mr. A. Das, Adv.**

For the Respondent : **Mr. Alope Kr. Mitra, Adv.**

Heard on : **29.07.2022 and 09.09.2022.**

Judgment on : **14.09.2022.**

PARTHA SARATHI SEN, J. : –

1. The present appeal at the instance of the State arises out of a judgement and order of acquittal dated 18.06.1988 passed by Learned Additional Sessions Judge, 3rd Court, Howrah, in S.T. case no. XXI (July)1987 (arising out of Howrah GRPS Case No. 32 dated 27.02.1983).

2. By the impugned judgement the learned trial court found the accused (respondent herein) not guilty under Section 307 IPC and thus acquitted him under Section 235(1) of the Code of Criminal Procedure.

3. The State felt aggrieved with the impugned judgement dated 18.06.1988 and thus preferred the instant appeal.

4. It is pertinent to mention herein that in spite of several orders as passed by this Court the whereabouts of the respondent could not be ascertained by the appellant authority and accordingly the presence of the respondent Maheswar Jadav could not be ensured in this appeal and thus this appeal was heard in absence of the respondent.

5. In order to dispose of the instant appeal fairly and effectively the facts leading to the initiation of ST Case No. XXI (July) 1987 against the respondent is to be dealt with in a nut shell.

6. On 27.02.1983, one Bhagaban Pandey, son of Ramdeo Pandey of 13,S.D Mukherjee Lane, Rishra , P.S Serampore, Dist. Hooghly, lodged an oral complaint with the Officer-in-Charge of Howrah GRPS Police Station to the effect that on the said fateful day at about 2:00 p.m he along with one Narad Pandey remained seated on a bench before the sweetmeat shop of one Domen Saa. It was his further version that at that time two persons arrived at that place and out of those two persons; one Maheswar Jadav (the respondent herein) took out a Bhojali and assaulted the said Narad Pandey on his neck by the said weapon. It is his further version that he tried to resist the said assailant as a result whereof he sustained injuries over the rings of his left and right hands. It has been

stated by the de facto complainant further that immediately thereafter the assailant and his associate fled away from the P.O and at that time blood was profusely oozing out from the neck of the victim. He further stated that thereafter he took the victim to the P.S. In his statement he further mentioned that though he knows the name of assailant Maheswar Jadav and could recognize him later on but he cannot identify the associates of the original assailant. It has been further stated by the de-facto complainant that besides him two or three other persons witnessed the incident.

7. The aforesaid oral version of the de-facto complainant was reduced into writing and thereafter the aforesaid PS Case was started followed by investigation. On completion of the investigation charge sheet was submitted under Sections 326/307/34 IPC. Learned SDGM, Howrah, found that the case is triable by the Court of Sessions and accordingly by his order dated 03.08.1987 committed the case record to the learned Sessions Judge, Howrah, from where the case record was transferred to the learned Trial Court for trial and disposal.

8. Lower Court Record reveals that by an order dated 09.01.1988, learned trial court framed charges against the accused under Section 307 IPC and since the accused pleaded his innocence, the trial as against the present respondent before the Learned Trial Court proceeded. Lower Court Record reveals further that in order to bring home the charges against the accused the prosecution has examined seven witnesses in all and some documents have been exhibited on behalf of the prosecution.

Lower Court Records reveals further learned trial court after scrutinizing the evidence of the prosecution witnesses; both oral and documentary and also after examining the accused under Section 313 of the Code of Criminal Procedure found the present respondent not guilty and thus acquitted him from the said case giving rise to the instant appeal at the instance of the State.

9. In support of the instant appeal, learned advocate for the appellant/State at the very outset draws attention of this Court to the impugned judgment. Attention of this Court is also drawn to the evidence of the PWS both oral and documentary as recorded by the learned trial court. It is contended on behalf of the appellant/State that the impugned judgement is absolutely faulty since the learned trial court has miserably failed to appreciate the evidence of the prosecution witnesses in its proper perspective. It is contended further that learned trial court while appreciating the evidence of PW 1 being the ocular witness and PW 2 being the victim ought to have come to a finding that their evidence gets due corroboration from the evidence of PW 5 and PW 6 as well as from Exhibit 3 (bed ticket) and Exhibit 'A' (injury report of the victim). It has been thus contended on behalf of the appellant/State that it is a fit case for allowing the instant appeal by setting aside the judgement as passed by the learned trial court and at the same time the present respondent be held guilty for the offence committed by him under Section 307 of the Indian Penal Code.

10. This Court has meticulously gone through the entire materials as available in the trial court record. This Court has perused the evidence of the prosecution witnesses including the exhibited documents. This Court has also minutely gone through the impugned judgment. This Court has also given its anxious consideration over the submissions of the learned advocate for the appellant/State.

11. On perusal of the impugned judgement it reveals to us that while passing the impugned judgement the learned trial court expressed its views that the evidence of PW1 is not at all trustworthy since the same is full of contradiction. In the impugned judgment it has been stated that in his Examination-in-Chief PW1 stated that just before the alleged incident he and the victim (PW2) were sitting face to face in two separate benches while in his FIR it has been stated that both of them were sitting in a single bench.

12. It has further been noticed by the learned trial court that the manner and nature of injuries as alleged to have been suffered by PW1 while rescuing PW2 on the fateful day and hour contradicts with each other i.e as stated in the FIR and as stated in the Examination-in-Chief. In the impugned judgement learned trial court also found that though in his Examination-in-Chief PW1 categorically stated that he along with some other police officials took the victim to hospital; even then before the attending doctor (PW5) PW1 did not disclose the name of the assailant for the reason best known to him though from the FIR it reveals that he was well aware of the name of the assailant and thus mentioned his name in

the FIR itself. In view of the facts as discussed above, learned trial court in its impugned judgement seriously doubted the credibility of PW 1 and thus practically disbelieved the testimony. From the impugned judgement it reveals further that learned trial court expressed the view that since there exists a political rivalry between PW1 and PW2 and the present respondent, the chance of false implication cannot be ruled out.

13. In order to come to a logical conclusion as to whether learned trial court is at all justified in passing the impugned judgement or not, a duty is cast upon us to look to the settled position of law with regard to the duty of a superior court while dealing with an order of acquittal.

14. In this context we think it appropriate to have a look to a reported decision in '**State of Rajasthan vs. Naresh**' reported in **(2010)1 C CrLR (SC)8** wherein the Hon'ble Apex Court expressed the following view:-

"There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The

paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from the acquittal of the guilty is no less than from the conviction of innocence.”

15. The same view is taken in the following reported decisions:

- i. Anil Kumar Vs. State of U.P reported in (2004) 13 SCC 257;**
- ii. Chandrappa Vs. State of Karnataka reported in (2007) 4 SCC 415;**
- iii. State of U.P vs. Gambhir Singh reported in (2005) 11 SCC 271;**
- iv. State of Punjab vs. Soham Singh (2009)6 SCC 444.**
- v. Babu Vs. State of Kerala (2010)3 C CrLR (5c) 657.**

16. Keeping in mind the aforesaid proposition of law as enunciated by the Hon’ble Apex Court of India, we once again propose to look to the trial court’s record. On further perusal of the entire material of the trial court’s record it reveals to us that admittedly the evidence of PW 1 and PW2 with regard to the alleged incident of assault on the person of PW2 on the relevant day and hour gets same corroboration from the evidence of PW 5 and PW 6 vis-a-vis Exhibit 3 and Exhibit A but the contradiction of evidence as found by the learned trial court while passing the impugned judgement and as discussed above by us are equally pertinent.

17. Since it is settled position of law that the view which is favourable would get predominance over the view as against the accused in an appeal against an order of acquittal, we are of the view that in the instant

appeal the present respondent must get the benefit of presumption of innocence as per dictum of the Hon'ble Supreme Court of India in the aforementioned reported decisions.

18. In view of such, the instant appeal fails. The impugned judgement dated 18.06.1988 passed by learned trial court is hereby affirmed.

19. Let a copy of this judgement along with LCR be sent down at once.

20. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)