

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.167 of 2019

Arising Out of PS. Case No.-208 Year-2015 Thana- SUPAUL District- Supaul

NASHIYA KHATOON Wife of Md Kasim Ansari @ Kasim Ansari, Resident
of Village - Kharaiyal Punarwas P.S. and District - Supaul

... .. Appellant

Versus

1. THE STATE OF BIHAR
2. Md. Jubed @ Md. Juber Son of Late Mir Yunus Resident of Village -
Punarwas, Ward No. 16, P.S. and District - Supaul.
3. Md. Islam Son of Late Mir Yunus Resident of Village - Punarwas, Ward No.
16, P.S. and District - Supaul.
4. Md. Sanaullah Son of Late Mir Yunus Resident of Village - Punarwas, Ward
No. 16, P.S. and District - Supaul.
5. Md. Khalid Son of Late Mir Yunus Resident of Village - Punarwas, Ward
No. 16, P.S. and District - Supaul.
6. Bibi Noorani @ Bibi Noorani Khatoon Wife of Md. Khalid Resident of
Village - Punarwas, Ward No. 16, P.S. and District - Supaul.
7. Bano Khatoon @ Bibi Bano Khatoon Wife of Md. Islam Resident of Village
- Punarwas, Ward No. 16, P.S. and District - Supaul.
8. Noorjahan Khatoon @ Bholiya @ Bholiya Khatoon Wife of Late Abdul
Quddees Resident of Village - Punarwas, Ward No. 16, P.S. and District -
Supaul.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Murari Narayan Choubey, Advocate Mr. Vijay Kumar, Advocate
For the State	:	Mr. Abhimanyu Sharma, A.P.P.
For Respondent Nos. 2 to 8 :		Mr. Arun, Advocate Mr. Kanika, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA)

12 07-11-2023 Heard Mr. Murari Narayan Chaubey, learned counsel
for the appellant, Mr. Arun, learned counsel for respondent nos.
2 to 8 and Mr. Abhimanu Sharma, learned A.P.P. for the State.



2. The present criminal appeal has been filed against the judgment and order dated 23.04.2018 passed by Shri Jhula Nand Jha, F.T.C-2, Supaul in S.T. No. 2019 of 2016 (Arising out of Supaul P.S. Case No. 208/2015) whereby the respondent nos. 2 to 8 have been acquitted by the learned Trial Court.

3. The prosecution case, as per the written report of the informant, namely, Bibi Nashiya Khatoon is that on 07.05.2015, at about 11:00 AM her husband was repairing his old house and all of a sudden the accused persons named in the First Information Report armed with *bhala, dabiya, farsa, rod and* three knot came to her house and started abusing and when her husband protested then on the command of Md. Islam, the accused gave a *farsa* blow on the head of her husband resulted in bleeding and injury. The informant further alleged that accused Juber assaulted to her husband by means of rod and fractured the arm of her husband. She further alleged that accused Sannaullah having three knot threatened of dire consequences and also demanded *rangdari* to consume liquor. The informant further alleged that accused snatched her *sari* and undressed her and Md. Khalid knocked her down on the ground at the instigation of Bibi Noorani, Bibi Bano and Bibi Bholiya and Md. Khalid attempted to commit rape upon her. The



informant further alleged that all the female accused persons entered into her house and took a Chandra box containing cash of Rs. 5,000/-. Thereafter, the informant took her injured husband for treatment. The informant further stated that the doctor of Supaul Hospital advised her to take her husband to Darbhanga or Patna for better treatment.

4. On the basis of written report of the informant, Supaul P.S. Case No. 208/2015 was registered and investigation was taken up. After completion of investigation, charge-sheet was submitted against the accused persons. Thereafter cognizance was taken and the case was committed to the Court of Sessions. Charges were framed against the accused persons on which they pleaded not guilty and claimed to be tried.

5. During the trial, the prosecution examined altogether eight (08) witnesses, namely, P.W.1 Nasin Ansari, P.W.2 Md. Halim Ansari, P.W.3 Shabnam Pravin, P.W.4 Masima Khatoon, P.W.5 Md. Alauddin, P.W.6 Md. Kasim Ansari, P.W.7 Lal Mohammad (I.O. of the case) and P.W. 8 Dr. Arun Kumar Singh. Two Court witnesses, namely, C.W. 1 Md. Kamruddin Ansari and C.W.2 Md. Ayub Ali were also examined on behalf of the prosecution. Certain Exhibits viz. Ext. 1, F.I.R , Ext. 2 Charge-sheet, Ext. 3- and Ext. 3/1 Injury reports of Md. Kashim



were also exhibited in support of the case. Neither the defence has examined any witness nor any document was produced in support of the case by the defence. After closure of the evidence, the statements of the accuseds were recorded under Section 313 Cr.P.C. and after conclusion of the trial, learned Trial Court has acquitted them.

6. Learned counsel for the informant-appellant submits that specific allegation of assault is made on accused No. 2 that on the order of accused No. 1, accused gave a farsa blow on the head of her husband resulting in bleeding and injury. Learned counsel further submitted that accused Md. Juber had further assaulted the husband of the informant by means of rod and fractured the arm of informant's husband. Learned counsel has also submitted that the informant is an eye witness to the occurrence and she is wife of the victim. After the injury sustained by her husband, the informant immediately took her firstly to referral hospital, Supaul and thereafter for better treatment to Darbhanga Medical College and Hospital and Patna Medical College and Hospital. Learned counsel further submits that injury reports of her husband are exhibited as Ext. 3 series.

7. Learned counsel for the private respondent Nos. 2



to 8 and the state have submitted that the prosecution has not proved its case beyond all reasonable doubt and the impugned judgment of acquittal needs no interference by this Court. Learned counsel for the private respondents has drawn attention of the Court towards the deposition of P.W. 1 in which he has stated that accused Khalid assaulted the injured with *dabiya* but in the cross-examination, he has stated that at the time of occurrence, he was outside the house. Learned counsel for the private respondents has further drawn the attention of the Court towards the contradictory statement made by P.W. 6 (injured-victim) and the informant (his wife). While P.W. 6 has stated that he was assaulted by *dabiya* but in the F.I.R., the informant has stated that her husband was assaulted with *farsa*.

8. After hearing the arguments advanced by the learned counsels appearing for the parties and perusing the evidence available on record, it appears to us that in criminal appeal against acquittal what the appellate court has to examine is whether the finding of the learned court below is perverse and prima facie illegal. Once the appellate court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the



innocence of the accused is further strengthened by the finding of the court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court passed in the case of ***Surajpal Singh & Ors. v. The State*** reported in ***1952 SCR 193***, wherein it was observed that:

“... ... the High Court has full power to review the evidence upon which the order of acquittal was founded. But it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

8.1 In the case of ***Ghurey Lal v. State of Uttar Pradesh*** reported in ***(2008) 10 SCC 450*** in para no. 75, the Hon'ble Supreme Court re-iterated the said view and observed as under:

“The trial Court has the advantage of watching the demeanour of the witnesses who have given evidence; therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable.”

9. From perusal of the judgment of the acquittal passed by the trial Court, it appears that in paragraph No. 9 of the judgment, the trial Court has clearly stated that it is the case of the prosecution that the injured was sent to Sadar Hospital,



Supaul, D.M.C.H., Darbhanga and P.M.C.H., Patna but it is peculiar that the prosecution has not produced any chit of paper with respect to the treatment. The trial Court has also come to a finding on the basis of evidence of P.Ws. as also the investigating officer that the place of occurrence as described by the P.Ws. and the I.O. is not identical and thus the same is doubtful. Thereafter, on the basis of consideration of evidence and lack of paper of treatment, the trial Court has given the benefit of doubt to the accused persons and acquitted all of them. This Court is also of the view that when the injury reports of the victim were simple then what occasion arose to send him from Sadar Hospital, Supaul to D.M.C.H., Darbhanga and P.M.C.H., Patna for better treatment.

10. It is pertinent to note that we are dealing with the acquittal appeal filed by the informant. The Hon'ble Supreme Court in the case of ***Chandrappa and Ors. Vs. State of Karnataka***, reported in (2007) 4 SCC 415 has observed in paragraph no. 42 as under:-

*“42. From the above decisions, in our considered view, the following general principles regarding powers of 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 emphasize 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 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."

11. Recently, the Hon'ble Supreme Court in the case of ***Nikhil Chandra Mondal Vs. State of West Bengal***, reported in ***(2023) 6 SCC 605*** has observed in paragraph no. 22 as under:-

"22. Recently, a three-Judges Bench of this Court



in the case of Rajesh Prasad v. State of Bihar has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that 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 court. It has been further held that 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.”

12. From the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that there is double presumption in favour of the accused, when the order of acquittal has been accorded by the Trial Court, firstly, the presumption of innocence that 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 Court. Further, 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.

13. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court, with the facts of the present case as discussed herein-above are carefully examined, we are of the view that while passing the impugned order of acquittal, the learned Trial Court has not committed any error, as the prosecution has failed to prove the case against respondent Nos. 2 to 8/accused persons beyond reasonable doubt.

14. In view of the aforesaid discussions, we are not inclined to entertain the present appeal. Accordingly, the appeal against the judgment and order dated 23.04.2018, passed by Shri Jhula Nand Jha, F.T.C-2, Supaul in S.T. No. 2019 of 2016 (Arising out of Supaul P.S. Case No. 208/2015), is dismissed at the admission stage itself.

(Vipul M. Pancholi, J)

(Rudra Prakash Mishra, J)

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