

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.178 of 2022

Arising Out of PS. Case No.-257 Year-2014 Thana- KHAIRA District- Jamui

Prem Paswan, Son of Ram Khelawan Paswan, Resident of Village- Fatehpur,
P.S.- Khaira, District- Jamui.

... .. Appellant/s

Versus

1. The State of Bihar
2. Jagdambi Singh Son of Late Biranchi Singh
3. Indradeo Singh Son of Late Biranchi Singh
4. Sanjay Singh Son of Jagdambi Singh
5. Ranjay Singh Son of Jagdambi Singh
6. Ajay Singh Son of Jagdambi Singh
7. Vijay Singh Son of Jagdambi Singh, Sl. No.2 to 7 are residents of Village- Fatehpur, P.S.- Khaira, District- Jamui.

... .. Respondent/s

Appearance :

For the Appellant : Mr. Sunil Kumar Singh, Advocate

For Respondent Nos.

2 to 7 : Mrs. Poonam Singh, Advocate

For the State : Mr. Binay Krishna, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH
C.A.V. ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

7 19-08-2023 The present criminal appeal has been preferred against the judgment of acquittal dated 22.12.2021 passed by Shri Syed Mohammad Shabbir Alam, Additional Sessions Judge-I, Jamui in S.T. Case No.114/2016 (SC/ST Case No.145/2017) arising



out of Khaira P.S. case No.257/2014, G.R. Case No.2085/2014, whereby Respondent Nos.2 to 7 of the present criminal appeal have been acquitted by the learned Trial Court.

2. Vide order dated 22.09.2022, lower Court record was called for and notices were issued to the Respondent Nos.2 to 7, upon which they appeared by filing Vakalatnama.

3. The lower Court record has been received.

4. The prosecution case, in brief, is that on 06.12.2014, at about 9 a.m., the informant was paying labourers and during the course of distribution of money, the accused persons came there and demanded Rs.20,000/- as ransom. When the informant and Sukesh Singh protested, then all the accused persons started abusing by taking his caste name. Thereafter all the accused persons assaulted the informant and took out Rs. 20, 500/- from his pocket. One of the accused persons, namely, Jagdambi Singh tried to assault on the neck of the informant by sword, which hit on his head and another accused, namely, Indradeo Singh assaulted on the neck of Sukesh Singh, due to which his shoulder bone was fractured. Thereafter the witnesses of this case intervened and saved the informant and others.

5. On the basis of written complaint of the informant, Khaira P.S. case No.257 of 2014 was registered and



investigation was taken up by the police. The police after investigation submitted charge sheet against the accused persons and accordingly cognizance was taken. Thereafter the case was committed to the Court of Sessions. Charges were framed against the accused persons to which they pleaded not guilty and claimed to be tried.

6. During the trial, the prosecution examined altogether five witnesses viz. PW1 Sukesh Kumar Singh, PW2 Vikas Kumar Singh, PW3 Prem Paswan, PW4 Doctor Amit Anand and PW5 Doctor Amit Ranjan. The prosecution has also produced exhibits i.e. Ext.1 (signature of the informant on the written complaint), Ext.2 (injury report prepared by Dr. Amit Anand), Ext.3 (injury report prepared by Dr. Amit Ranjan). The defence has also examined four witnesses viz. DW1 Dayanand Pandey, DW2 Dumar Yadav, DW3 Murari Yadav and DW4 Jhanki Rajak. The defence has also produced one exhibit i.e. Ext.A (certified copy of Complaint case No.1072C of 2013). After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. and after conclusion of the trial, learned trial Court has acquitted the accused persons.

7. 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 ***Ghurey Lal v. State of Uttar Pradesh*** reported in ***(2008) 10 SCC 450*** in para no. 75, held 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.”

In the case of ***Muralidhar @ Gidda & Anr. v. State of Karnataka***, reported in ***(2014) 5 SCC 730*** the Hon'ble Supreme Court reiterated the said view in para no. 12 and observed as under:

“12. ...in dealing with appeals against



acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an Accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The Accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of



the appellate court in interfering with such conclusions is fully justified; and (iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.

8. The “facts in issue” considered and decided by the learned Trial Court for acquittal are as under:

(I) The informant and the witnesses both are closely related in the present case and none of the independent witnesses such as the labourers were examined.

(II) The medical evidence in light of the deposition of doctors (PW4 and PW5) has created serious doubt on the case of prosecution.

(III) X-ray report regarding the injury of hair line fracture of skull has not been exhibited.

(IV) There exists reasonable doubt as to the genuineness of the manner of occurrence.

(V) The present case is full of coincidences and



the prosecution has failed to prove the charges beyond all reasonable doubts.

9. After hearing the arguments advanced by the learned counsel appearing for both the parties and upon examining the materials available on the record, this Court has considered the fact that examination of independent witness is not of much relevance when the prosecution witnesses are not closely related and when no independent witnesses are present at the place of occurrence, but in the case at hand, it is quite evident from the FIR and from the deposition of PW1 and PW2 that the labourers and other persons were present at the alleged place of occurrence, but none of them has been examined by the prosecution. In the case of ***Parminder Kaur vs. State of Punjab*** reported in ***(2020) 8 SCC 811***, it has been held by the three-judge Bench of the Hon'ble Supreme Court that non examination of independent witness is also a noticeable lapse which adversely affects the case of prosecution. Therefore, in the light of the aforesaid discussions, we are of the considered opinion that non examination of independent witnesses in such circumstance, where several independent witnesses were present at the place of occurrence, impaired the credibility of the prosecution case. This Court has further taken into account the



fact that the prosecution has not even examined the Investigating Officer in the present case and failure to examine such material witness has also created a lacuna in the fair trial of the accused persons.

10. Further, as per the FIR, it was stated that the informant has sustained the injury with sword on his head but PW4, the doctor, who has examined the informant, has deposed that it is difficult to say whether such injury is caused by the sword or caused due to falling as no cut in the hair root or the hair bulb was present. Also, in regard to such injury, no X- ray report was exhibited. Moreover, it was also stated in the FIR that the accused persons had assaulted one Sukesh Singh, due to which his shoulder bone got fractured, but PW5, the doctor who has examined Sukesh Singh, has found no loss of function in his right shoulder. Thus, the medical evidence on record is not proving the manner of occurrence and participation of respondents-accused persons in regard to the alleged injuries mentioned in the FIR, which is totally hampering the credibility of the prosecution case.

11. The attention of this Court has further drawn towards the fact that prior to this FIR, a complaint case (Exhibit A) was lodged against the appellant by the respondent-accused persons,



in which the appellant and other persons have also threatened the respondent-accused persons that they will implicate them in a false case of Harijan (SC) atrocities. Thus, in the light of the aforesaid reasons and considering the factual matrix of case where the medical evidence is at total variance, it clearly appears that the entire allegation made in the FIR is false and concocted and has been made only with the intention to falsely implicate the respondents-accused persons into a false case relating to SC/ST Act.

12. We are thus of the considered view that the prosecution has failed to discharge its burden of proving the guilt of the respondents-accused persons and on a thorough examination of the entire evidence on record and the judgment of the trial Court, we are of the considered view that the judgment of acquittal by the learned trial Court is justified which ought not to be interfered with as the learned trial Court has taken a plausible view based on the evidence available on the record.

13. Accordingly, the present appeal, preferred against the judgment of acquittal dated 22.12.2021 passed by Shri Syed Mohammad Shabbir Alam, Additional Sessions Judge-I, Jamui in S.T. Case No.114/2016 (SC/ST Case No.145/2017) arising



out of Khaira P.S. case No.257/2014, G.R. Case No.2085/2014,
is dismissed at the admission stage itself.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Narendra/ AFR

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