

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.214 of 2020

Arising Out of PS. Case No.-135 Year-2013 Thana- KARAHGAR District- Rohtas

CHITRANJAN KUMAR S/O Late Suresh Singh @ Late Ram Suresh Singh
R/O Village - Tenduni Tola, P.S. - Kargahar (Barhari), District - Rohtas at
Sasaram.

... .. Appellant

Versus

1. The State Of Bihar
2. Shiv Kumar Singh @ Sheo Kumar Singh Son of Ram Prasad Singh R/O Village - Tenduni Tola, P.S. - Kargahar (Barhari), District - Rohtas at Sasaram.
3. Gorakh Nath Singh son of Ram Prasad Singh R/O Village - Tenduni Tola, P.S. - Kargahar (Barhari), District - Rohtas at Sasaram.
4. Sadhu Singh Son of Ram Prasad Singh R/O Village - Tenduni Tola, P.S. - Kargahar (Barhari), District - Rohtas at Sasaram.
5. Hari Narayan Singh @ Jaggu Son of Baban Singh R/O Village - Tenduni Tola, P.S. - Kargahar (Barhari), District - Rohtas at Sasaram.
6. Kameshwar Singh @ Ramu Singh @ Rameshwar Singh Son of Baban Singh R/O Village - Tenduni Tola, P.S. - Kargahar (Barhari), District - Rohtas at Sasaram.
7. Santosh Singh S/O Birendra Singh R/O Village - Tenduni Tola, P.S. - Kargahar (Barhari), District - Rohtas at Sasaram.
8. Birendra Singh @ Dharendra Singh S/O Bhukhan Singh R/O Village - Tenduni Tola, P.S. - Kargahar (Barhari), District - Rohtas at Sasaram.
9. Lal Babu Singh S/O Jagdish Singh R/o Barhutima, PS - Dhansoi, District - Buxar.
10. Dina Nath Singh @ Dinanath Singh S/O Samru Singh R/O Village - Sarema, P.S. - Dinara, District - Rohtas.
11. Manoj Singh S/O Kishori Singh R/O Village - Dokha Tola, P.S. - Dinara, District - Rohtas.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Amit Narayan, Advocate Mr. Nagendra Prasad, Advocate Mr. Brajesh Sahay, Advocate
For the Respondent/s	:	Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 03-01-2023

This criminal appeal under Section 372 of the Code of



Criminal Procedure, 1973 (in short Cr.P.C.) is directed against the judgment of acquittal date 18.09.2019 passed the learned Presiding Officer Fast Track Court-II, Sasaram at Rohtas in Sessions Trial No. 649 of 2013, arising out of Kargahar (Barhari) P.S. Case No. 135/2013. By the impugned judgment of the trial court the private respondent nos. 2 to 11 have been acquitted of the charges punishable under Sections 147, 148, 307/149, 302/149 of the Indian Penal Code and Section 27 of the Arms Act.

2. We have heard Mr. Amit Narayan and Mr. Nagendra Prasad, learned counsel for the appellant and Mr. Ajay Mishra Leaned Additional Public Prosecutor for the State.

3. The appellant is the son of the deceased and is, therefore, a victim within the meaning of Section 2 (wa) of the Cr.P.C.

4. A *fardbeyan* of PW-6, Ram Niwas Singh recorded by Sub-Inspector of the Police (PW-8) on 03.06.2013 at 03:15 P.M. is the basis for registration of FIR. According to the *fardbeyan*, an altercation had taken place a day prior to the date of occurrence i.e. 02.06.2013 on the point of filling a small irrigation channel (*karha*) by respondent No. 2 which was objected to by one Laxman Singh reacting to which the



respondent No. 2 is said to have warned him that he would give him a befitting reply on the next date.

5. On the date of occurrence i.e. 03.06.2013, a *Panchayat* was convened at 11:00 am for resolving the issue. However, respondent no. 2 summoned his relatives and others, who came with a JCB machine and were armed with various weapons and started filling up of the (*karha*) despite resistance. They also opened fires. The victim, it is said, attempted to persuade them but accused Bahadur Singh and Shri Bhagwan Singh shot at the deceased on the left side of his neck with a rifle. Vinod Singh shot at Krishna Kumar (another deceased) with a rifle licensed in the name of his uncle Panchanand. Thereafter, Mukesh Kumar, respondent no. 4, respondent no. 5, respondent no. 6 respondent no. 7, respondent no. 8, respondent no. 9, respondent no. 10 and respondent no. 11 fired at the informant and others as well as on the police which had reached on receiving information and fled away.

6. It is noted at this juncture that the accusations of firing leading to death of the deceased persons in the FIR was against co-accused Shree Bhagwan Singh and Vinod Singh who were not facing trial in the aforesaid Sessions Trial No. 649 of 2013.



7. The police upon completion of investigation submitted its charge-sheet against private respondent nos. 2 to 11 and others for the offences punishable under Sections 147, 148, 149, 307, 302/149 of the IPC and Section 27 of the Arms Act whereupon cognizance was taken on 09.11.2013 and the case was committed to the learned Court of Sessions by an order dated 29.11.2013. Charges were framed, thereafter, by the trial court for the offences punishable under Sections 147, 148, 307, 149, 302/149 of the IPC and Section 27 of the Arms Act.

8. At the trial the prosecutions examined eight witnesses and exhibited seven documentary evidence. After closure of the evidence of the prosecution's witnesses, statements of the persons put to trial were recorded by the trial court under Section 313 of the Cr.P.C.. They denied all the circumstances which according to the Court were appearing against them, based on the evidence of the prosecution's witnesses.

9. No evidence was adduced on behalf of the defence.

10. The trial court has recorded acquittal of the private respondent nos. 2 to 11 on the ground, *interalia*, that the prosecution failed to establish the place of occurrence. Further, according to the prosecution's case, the shots were fired from



the terrace which had hit the deceased persons, who died in the occurrence. The Investigating Officer (PW-8) in his evidence, however, denied that any witness had disclosed this fact to him during the course of investigation, when his attention was drawn to the demonstrate contradiction. The trial court noted that report of the Forensic Science Laboratory on the blood, said to have been seized from the place of occurrence, was not brought on record by way of evidence. According to the prosecution's case, firearms were seized but neither any seizure list was prepared nor report of forensic science laboratory in respect of such firearms were brought on record at the trial by way of evidence. Trial court also noted that according to the evidence of the prosecution's witnesses, firearms were recovered from nine persons but according to the Investigating Officer, a firearm was recovered from only Lal Babu Singh (respondent no. 9). The trial court, however, noted that the manner of occurrence as described by the prosecution's witnesses was not supported by the Investigating Officer. The trial court, thus, doubted the manner of occurrence also, as set out by the prosecution at the trial and accordingly reached a conclusion that he prosecution failed to establish its case beyond all reasonable doubts.



11. Mr. Amit Narayan, learned counsel appearing on behalf of the appellant has argued that the trial court has erroneously rejected the prosecution's evidence adduced at the trial and has recorded acquittal of the private respondents. He has contended that the bloodstained clothes were recovered from the place of occurrence and a seizure list was accordingly prepared which was proved (Exhibit-1 and 1/1). He contends that the trial court, without giving any reason has ignored the said exhibits 1 and 1/1 and wrongly concluded that no mark of blood was found at the place of occurrence. He has further submitted that the trial court has erroneously doubted the place of occurrence with another flimsy reasonings that no empty/used cartridge was recovered from the place of occurrence, unmindful of the definite case of the prosecution that the occurrence had taken place at 10:30 am, whereafter, the Investigating Officer had gone to the police station and had returned by 03:45 pm to record the *fardbeyan*. During this period in time, chance of the pellets getting displaced could not be ruled out and, therefore, that ought not to have been the reason for the trial court to doubt the place of occurrence. He has also argued that the acquittal recorded by the trial court on the ground that no independent witness was examined at the



trial is also erroneous as according to him the witnesses who supported the prosecution's case being the villagers of the village where the occurrence had taken place were the natural witnesses. He has submitted that non-production of the forensic report regarding the weapons seized from the accused persons at place of occurrence does not adversely affect the prosecution's case, there being consistent ocular evidence in support of the case that the private respondents had actively participated in commission of the occurrence. He has argued that the prosecution was able to establish the charge against respondent nos. 2 to 11 of commission of offence by them punishable under Section 302 of the Indian Penal Code read with Section 149 thereof. He has relied on the Supreme Court's decision in case of ***Susanta Das v. State of Orissa***, reported in **(2016) 4 SCC 371** in support of his submission. Referring to the Supreme Court's decision in the case of ***Sadhu Saran Singh v. State of U.P.*** in reported **(2016) 4 SCC 357**, he has submitted that prosecution's case, in any event, cannot be doubted only on the ground by non-examination of the independent witnesses. He has also placed reliance on another Supreme Court's decision in case of ***Ashok Rai v. State of U.P.*** reported in **(2014) 5 SCC 713** to submit that if evidence of the interested witnesses is not infirm,



even if it is not duly corroborated, the same could not be overlooked by the trial court while appreciating the evidence on record.

12. Before we address the grounds which have been taken on behalf of the appellant as noted above by Mr. Amit Narayan, we must remind ourselves that an appellate court considering an appeal against the judgment of acquittal recorded by the trial court is primarily required to consider as to whether the view taken by the trial court is a reasonably possible view or not. Further, a trial court has an added advantage of looking at the demeanor of the witnesses during the course of trial. It is settled legal principle that in an appeal against acquittal the greater weight is attached to the appreciation of evidence made by the trial judge having the occasion to watch demeanor of the witnesses. There is no gainsaying that in an appeal against acquittal the High Court is not bereft of the powers to re-access the evidence and reach its own conclusion. The power of the appellate court against on judgment of acquittal is, as extensive as, against judgment of conviction. As a rule of prudence, however, weightage needs to be given to the view of the trial court unless it is found to be patently erroneous, perverse and not a reasonably possible view. Furthermore, once the finding of



acquittal is recorded by the trial court, the legal presumption of innocence stands fortified and strengthened. Even if the High Court, upon reappraisal of the evidence and other materials on records forms an opinion that there can be another reasonable view also, the view which favours the accused needs to be adopted. It will be useful at this juncture to notice distinction elucidated between the expressions, possible view *vis-a-vis* an erroneous view/wrong view in the case of ***Murugesan v. State*** reported in ***(2012) 10 SCC 383***. The Supreme Court has held that the expression “possible view” is conscious and not without good reasons. The expression “possible view” is in contradistinction to the expressions such as “erroneous view” or “wrong view” though they may seem to convey the similar meaning, at the first blush. The Supreme Court in case of ***Murugesan*** (*supra*) has then laid down fine and subtle distinction in paragraphs 33 to 35, which read as under:

“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.



35. A consideration on the basis on which the learned trial court had founded its order of acquittal in the present case clearly reflects a possible view. There may, however, be disagreement on the correctness of the same. But that is not the test. So long as the view taken is not impossible to be arrived at and reasons therefor, relatable to the evidence and materials on record, are disclosed any further scrutiny in exercise of the power under Section 378 CrPC was not called for.”

13. In the present case the trial court has held, upon analysis of the evidence adduced at the trial that the place of occurrence and the manner of occurrence as set out by the prosecution were not free from doubts. The trial court has recorded reasons therefor firstly to the effect that no empty cartridge was found at the place of occurrence nor any mark was found at the place of occurrence to support the prosecution's case of the firing having taken place. The trial court has further dealt with evidence of the Investigating Officer (PW-8) that according to him one rifle and two cartridges were recovered from him, which were sent to Forensic Science Laboratory of examination. There was no evidence adduced at the trial to support either recovery of the firearm from respondent no. 9 or



any report received from the Forensic Science Laboratory. The trial court has also taken note of substantial inconsistency in the prosecution's case as according to the prosecution's witnesses eleven accused persons were arrested and from nine of them firearms (guns and rifles) were recovered. Dealing with the manner of occurrence the trial court has dealt with the fact that, though, according to the persons who claimed to be the eye-witnesses deposed that the fires were shot from the terrace but the Investigating Officer in his evidence deposed that no such statement was ever made before him by any of the witnesses.

14. The submission made on behalf of the appellant with reference to the Supreme Court's decision in case of ***Sadhu Saran Singh*** (*supra*) and ***Ashok Rai*** (*supra*) for assailing the impugned judgment is untenable in the present case as finding of acquittal is not based merely on non-examination of independent witnesses. The trial court has noticed major lacunae in the prosecution's case arising out of failure to prove the seizure of firearms, material evidence and manifest contradictions in the evidence of the Investigating Officer and other prosecution's witnesses.

15. It is pertinent to mention here that so far as the present respondents no. 2 to 11 are concerned, it was not the



case of the prosecution that the shots fired by them had killed the two deceased persons. It is the case of the appellant that their active participation having been established at the trial, they ought to have been convicted by the trial court for the offence punishable under Section 302 read with Section 149 of the IPC. The said submission of the learned counsel for the appellant with reference to the Supreme Court's decision in case of ***Susanta Das*** (*supra*) is also not acceptable in the present set of facts where the finding of the trial court is based on its conclusion that the prosecution could not establish beyond all reasonable doubts the place of occurrence as well as the manner of occurrence. The said finding recorded by the trial court upon scrutiny and appreciation of evidence on record to the effect that the prosecution failed to prove the place of occurrence and manner of occurrence, in our opinion, is a reasonably possible view. This opinion we have formed upon careful perusal of the impugned judgment of the trial court wherein the evidences of the witnesses have been elaborately mentioned. No ground has been taken in the memo of appeal that the trial court has incorrectly recorded the oral evidence of the prosecution's witnesses.

16. Before we part with the present judgment, we take



notice of an aspect which is of no less significance and is manifest from the evidence of the witnesses. The occurrence is said to have taken place at 10:30-10:45 am in the morning of 03.06.2013. It is the specific case of the prosecution that the police had also arrived at the place of occurrence, during the course of occurrence and the accused persons had fled away, after opening fire on the police party also. There does not appear to be any justifiable reason why the *fardbeyan* was recorded much thereafter at 03:45 pm, which is the basis for registration of FIR. Considering combined reading of the evidence of the prosecution's witnesses which have been duly discussed and appreciated by the trial court in its impugned judgment, the finding of acquittal appears to be a reasonably possible view. The impugned judgment of the trial court does not warrant interference.

17. This appeal is devoid of any merit and is accordingly, dismissed.

(Chakradhari Sharan Singh, J)

(Rajesh Kumar Verma, J)

anand/manish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.02.2023
Transmission Date	02.02.2023

