

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.372 of 2020

Arising Out of PS. Case No.-44 Year-2009 Thana- CHANDAUTI District- Gaya

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Phulan Das, Son of Late Bhunna Das, Resident of Village - Gannu Bigha,
P.S.- Chakand, Distt - Gaya.

... .. Appellant/s

Versus

1. The State of Bihar
2. Barho Paswan, Son of Late Ram Prasad Paswan Resident of Village - Gannu Bigha, P.S.- Chakand, Distt - Gaya.
3. Mahendra Paswan, Son of Late Ram Prasad Paswan, Resident of Village - Gannu Bigha, P.S.- Chakand, Distt - Gaya.
4. Pramod Paswan, Son of Barho Paswan, Resident of Village - Gannu Bigha, P.S.- Chakand, Distt - Gaya.
5. Sholok Paswan, Son of Barho Paswan, Resident of Village - Gannu Bigha, P.S.- Chakand, Distt - Gaya.
6. Prakar Paswan @ Om Prakash Paswan, Son of Ram Kishun Paswan, Resident of Village - Gannu Bigha, P.S.- Chakand, Distt - Gaya.
7. Gaina Choudhary, Son of Late Babu Lal Choudhary, Resident of Village - Gannu Bigha, P.S.- Chakand, Distt - Gaya.
8. Jeetan Paswan, Son of Bhudal Paswan, Resident of Village - Kuldaspur, P.S.- Chakand, Distt - Gaya.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. N.A. Shamshi, Advocate
		Mr. Syed Ehteshamuddin, Advocate
For the State	:	Ms. Shashi Bala Verma, APP
For Respondents 2 to 8	:	Mr. Vinod Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 08-09-2023

This appeal under the *proviso* to Section 372 of the



Code of Criminal Procedure,1973 has been filed by the informant assailing a judgment and an order of the learned Additional Sessions Judge-11, Gaya, dated 20.12.2019, passed in Sessions Trial No. 63 of 2019 (S.Tr. No. 360 of 2010) arising out of Chandauti (Chakand) P.S. Case No. 44 of 2009, whereby and whereunder the respondents No. 2 to 8 have been acquitted of the charge of commission of the offences punishable under Sections 307, 149 and 148 of the Indian Penal Code.

2. This appeal was earlier taken up on 12.07.2022 when notices were issued to the respondents No. 2 to 8, pursuant to which they have entered appearance through *Vakalatnama*. Records were also called for from the trial court, which have been received and are available for our perusal which we have gone through.

3. The criminal case was set in motion with the recording of *fardbeyan* of the appellant Phulan Das by an Assistant Sub-Inspector of Police J.K. Sharma of Magadh Medical Police Station, Gaya on 12.03.2009 at 4:00 PM in the Emergency Ward (Bed No. 9) of the said hospital. According to the informant, the occurrence had taken place two days ago on 10.03.2009 on the day of *Holika Dahan* at 9:30 PM when he and others were returning to their village singing Holi folk



songs and beating drums. In the meanwhile, near a *Dargah* in the middle of the village, Barho Paswan (respondent No. 2), Pramod Paswan (respondent No. 4), Shlok Paswan (respondent No. 5), both sons of respondent No. 2, Mahendra Paswan (respondent No. 3), full brother of respondent No. 2, Prakar Paswan @ Om Prakash Paswan (respondent No. 6), Gaina Paswan (respondent No. 7) and Jeetan Paswan (respondent No. 8) surrounded them and asked to hand over their drums as they (the aforesaid respondents) also wanted to beat the drum. The informant declined, whereafter all the aforesaid respondents went to their house and returned armed with *gandasa* (a sharp cutting weapon), *lathi* and *danda* and started assaulting them. Barho Paswan (respondent No. 2) is said to have given a *gandasa* (a sharp cutting weapon) blow in the head of the informant because of which he fell down. Later, when other villagers, namely, Vijnandan Das, Pradip Das, Hardeo Das came, they were also assaulted leading to head injuries.

4. The FIR was registered on 13.03.2009 at 3:00 PM giving rise to Chandauti (Chakand) P.S. Case No. 44 of 2009 for commission of the offences punishable under Sections 147, 148, 341, 323, 324, 307 and 504 of the IPC. The informant was medically examined on 12.03.2009 by Dr. Ashok Kumar Jha in



Patna Medical College and Hospital, Patna after he was shifted from the Magadh Medical College and Hospital, Gaya. The police upon investigation submitted charge-sheet for commission of the offences punishable under Sections 147, 148, 341, 323, 324, 307 and 504 of the IPC, whereafter cognizance was taken and later charge was framed for commission of the offences punishable under Sections 307/149 and 148 of the IPC against respondents No. 2 to 8.

5. At the trial, the prosecution examined altogether eight witnesses including the doctor who had examined the informant at PMCH, Patna as PW-8. The Investigating Officer deposed at the trial as PW-7. Mathura Das (PW-1), Pradip Das (PW-2), Lalan Das (PW-3), Vishun Das (PW-4) and Vinandan Das (PW-5) and the informant Phulan Das (PW-6) in their evidence at the trial fully supported the prosecution's case. The *fardbeyan* came to be marked as Exhibit-1, the formal FIR as Exhibit-2 and the injury report as regards the injuries sustained by the informant was marked as Exhibit-3 at the trial.

6. After closure of the evidence of the prosecution's witnesses, the learned trial court questioned the respondents No. 2 to 8 under Section 313 of the CrPC on 26.10.2015 explaining the incriminating circumstances emerging against them based on



the evidence of the prosecution's witnesses. From the records which have been produced it can be easily seen that following were the questions put by the court and the response of the persons facing trial. By way of illustration, we are reproducing the recording of examination of respondent No. 2, Barho Paswan, under section 313 of the Cr.P.C., which is as under :-

"प्रश्न - आपने साक्षियों का ब्यान सुना है ?

उत्तर- जी हाँ

प्रश्न - आपके विरुद्ध यह साक्ष्य है कि आपने दिनांक १० मार्च 2009 को रात्रि में ग्राम गन्नू विगहा, थाना चंदौती, जिला गया में दरगाह के पास नाजायज मजमा बनाकर लाठी, गड़ता से लेस होकर फूलन दस पर जान मारने की नियत से प्रहार किया था। क्या कहना है

उत्तर - जी नहीं

प्रश्न - सफाई में क्या कहना है

उत्तर - मैं निर्दोष हूँ

प्रश्न आपको इस वाद में क्यों फसाया गया है

उत्तर - कारन पता नहीं है"

7. The defence did not examine any witness but they brought on record a certified copy of complaint petition No. 507 of 2009 as Exhibit-B and the order-sheet of Complaint Case No. 507 of 2009 as Exhibit-A. The said complaint petition was apparently filed before the court of learned Chief Judicial Magistrate, Gaya on 25.03.2009 by the wife of respondent No. 2, much after the date of registration of the present FIR on



13.03.2009, in relation to an occurrence which had allegedly taken place on 10.03.2009 at about 10.30 PM.

8. According to the said complaint case, at about 9:30 PM when the family members of the complainant had gone for *Holika Dahan* and the complainant was standing near her house, she saw a group of persons singing and dancing. In the meanwhile, at 10:30 in the night, she heard her daughter-in-law screaming from inside the house and when they entered into the house they saw this appellant armed with *fasuli* (a sharp edged weapon) and her daughter-in-law weeping. She complained that the appellant had attempted to commit rape upon her. On an outcry having been raised by the complainant, others came and caught the appellant red-handed. The villagers assaulted him and decided him to bring to the police station. In the meanwhile, other persons named as accused in the complaint petition came and pressurized for the release of the appellant Phulan Das. There is allegation of stone pelting between the two groups. She alleged that she had informed Chakand Outpost about the occurrence and the Officer-in-Charge had assured to register FIR but he did not do so. Later when she learnt that the FIR had not been registered, he filed the complaint petition, thus explaining the delay in lodging of the complaint petition.



9. The learned trial court, after having appreciated the evidence of the prosecution's witnesses and other materials on record, reached a conclusion by the impugned judgment dated 20.12.2019 that the prosecution miserably failed to prove the charge against the accused persons beyond all reasonable doubts and they, therefore, deserved acquittal.

10. We have heard Mr. N.A. Shamsi, learned counsel for the appellant and Mr. Vinod Kumar, learned counsel representing the private respondents No. 2 to 8. Ms. Shashi Bala Verma, learned Additional Public Prosecutor is present for the State.

11. Mr. N.A. Shamsi has submitted that all the prosecution's witnesses except the IO and the doctor are the eye-witnesses who have fully supported the prosecution's case. He has placed heavy reliance on the medical evidence to contend that the medical report fully corroborates the prosecution's case of respondent No. 2 having assaulted the appellant in his head with *farsa*. He has referred to bed-head ticket in the name of the appellant Phulan Das, of PMCH, Patna which has been brought on record by way of Annexure-1 to the Memo of Appeal to convince this Court that the appellant had sustained head injury and had remained at PMCH for treatment



from 12.03.2009 to 30.03.2009. He has also referred to C.T. Scan of brain of the appellant conducted at Udayan Scan Centre, Patna in support of his submission that the appellant had sustained serious head injuries. We may however, notice at this juncture that neither of the two documents were brought on record by way of evidence at the trial. It is his submission that the appellant was found to have suffered comminuted depressed fracture of parietal bones at the vertex, which is in tune with the prosecution's case of the appellant having being assaulted in his head by respondent No. 2 with *gandasa* (sharp cutting weapon). He has further submitted that all the prosecution's witnesses have consistently supported the case of the prosecution as regards the place, time and manner of occurrence. Since, the oral evidence of the prosecution's witnesses stood fully corroborated by the medical evidence, it was not proper for the trial court to have acquitted the respondents No. 2 to 8 on flimsy grounds. He has submitted that the trial court has discarded the consistent evidence of the prosecution's witnesses without due application of mind and has wrongly held that the evidence of the prosecution's witnesses was not worthy of reliance. He has also argued that the trial court apparently got unnecessarily swayed away by the allegations made in the complaint petition



of wife of respondent No. 2 which was an afterthought and was filed after much delay, more than 10 days after lodging of the present FIR. He has accordingly submitted that the impugned finding of acquittal recorded by the trial court deserves interference and the respondents No. 2 to 8 deserve to be convicted of the charges and sentenced accordingly by this Court for the proved offences.

12. Mr. Vinod Kumar, learned counsel appearing on behalf of the private respondents No. 2 to 8 has submitted that the delay of two days in recording of the *fardbeyan* by the police, in the background of the fact that the victim was admitted in a government medical college and hospital, itself creates serious suspicion about the prosecution's case. He has submitted that as is evident from the *fardbeyan*, the appellant's *fardbeyan* was recorded in ANMCH, Gaya by a police official posted in the same hospital. There is no explanation at all justifying delay of two days in recording of *fardbeyan* and three days in lodging of the FIR. He has further submitted that the trial court has rightly disbelieved the case of the prosecution about the occurrence having taken place over a petty dispute, i.e., refusal by the appellant to hand over the drum. He has also submitted that the doctor, who had examined the appellant at



ANMCH, Gaya, was not examined and his non-examination is fatal to the prosecution's case.

13. We have perused the impugned judgment and order of the trial court and we have given our thoughtful consideration to the rival submissions made on behalf of the parties as noted-above. Before we address the rival submissions made on behalf of the parties as noted-above, we must keep in mind the salient principles in deciding an appeal against acquittal. It is settled principle that the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be more probable one. It is true that while dealing with a judgment of acquittal, the appellate court is required to consider the evidence on record so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable.

14. In case of *Chandrappa v. State of Karnataka*, reported in (2007) 4 SCC 415, while reiterating the legal position, the Supreme Court has held in paragraph 42 as under:-

“42. X X X

(1) *An appellate court has full power to review, reappreciate 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 emphasise 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 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 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.” (underscoring for emphasis)

15. **Chandrappa** (supra) lays down in no uncertain terms that an appellate court is required to bear in mind that in case of acquittal, there is double presumption in favour of the accused. Presumption of innocence is available to him under the



fundamental principle of criminal jurisprudence that every person has to be presumed to be innocent unless he is proved guilty. Secondly, once the trial court acquits him, the said presumption of innocence is reinforced, reaffirmed and strengthened by the trial court.

16. Further, it is also settled principle of law reiterated by several pronouncements that if two reasonable conclusions are possible on the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

17. In case of **Ghurey Lal v. State of U.P.**, reported in **(2008) 10 SCC 450**, the Supreme Court observed that the appellate court should bear in mind that the trial court's acquittal bolsters the presumption that the accused is innocent and the appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanor of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

18. In case of **State of Rajasthan v. Naresh**, reported in **(2009) 9 SCC 368**, the Supreme Court after having analyzed the precedence on the principles on appeal against acquittal has



succinctly observed that an order of acquittal should not be lightly interfered with even if the Court believes that there is some evidence pointing out the finger towards the accused. [see para. 20]

19. After having noticed the legal principles as laid down by the Supreme Court, we are proceeding to deal with the issue of delay in recording of the *fardbeyan* and registration of the FIR. From the *fardbeyan* (Exhibit-1) it can be easily seen that the same was recorded by an Assistant Sub-Inspector of Police Shri J.K. Sharma, who was posted at Magadh Medical Police Station (MMPS) on 12.03.2009 at 4:00 PM. The occurrence had taken place on 10.03.2009 at 9:30 PM, according to the prosecution's witnesses, in their presence. According to their depositions, the injured (the informant) was immediately taken to Magadh Medical College hospital whereafter, he was referred to PMCH, Patna. There is no explanation as to why the FIR was not registered on 11.03.2009 and *fardbeyan* of the victim could not be taken in the hospital on 11.03.2009. Further, according to the case of the prosecution, LTI of the informant was obtained on the *fardbeyan*. There is no reason appearing from the record as to why the eye-witnesses did not get the case registered. In nutshell, we find no justifiable



explanation for delayed recording of *fardbeyan* and registration of FIR.

20. A First Information Report in a criminal case is an extremely vital and valuable piece of evidence for corroborating the oral evidence adduced at the trial. The delay in lodging the FIR may result in embellishment and may be a creature of afterthought.

21. In case of *Thulia Kali v. State of T.N.*, reported in **(1972) 3 SCC 393**, the Supreme court has noted that on account of delay, an FIR not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. The object of insisting upon prompt lodging of the FIR is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as names of the eye-witnesses present at the scene of occurrence. The aforesaid view has been reiterated by the Supreme Court in case of *Meharaj Singh v. State of U.P.*, as reported in **(1994) 5 SCC 188**.

22. In case of *Satpal Singh v. State of Haryana*,



reported in **(2010) 8 SCC 714**, the Supreme Court held in paragraph 15 as under:-

“15. This Court has consistently highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety. (Vide State of A.P. v. M. Madhusudhan Rao [(2008) 15 SCC 582 : (2009) 3 SCC (Cri) 1123] .)”

23. Further, in case of **Kishan Singh v. Gurpal Singh**, reported in **(2010) 8 SCC 775**, the Supreme Court again reiterated that in the cases where there is a delay in lodging an FIR, the Court has to look for a plausible explanation for such delay and in absence of such an explanation, the delay may be fatal.

24. The promptness in lodging the FIR is an assurance regarding the truth of the informant's version, the Supreme



Court remarked in case of *Jai Prakash Singh v. State of Bihar*, reported in (2012) 4 SCC 379, (see para 12). This view has again being reiterated in case of *Manoj Kumar Sharma v. State of Chhattisgarh*, reported in (2016) 9 SCC 1.

25. What emerges from the law laid down by the Supreme Court in various cases as noticed above is that the delayed registration of FIR itself creates a doubt about the prosecution's case and an unexplained delay becomes fatal to the prosecution's case. Such delay corrodes the credibility of the prosecution's case and creates a doubt if the delay is not explained.

26. The trial court, in its impugned judgment, has noticed absence of any explanation for delayed recording of the *fardebayan* and registration of FIR three days after the occurrence in a circumstance when the prosecution's witnesses claimed to be the eye-witnesses to the occurrence. Nothing prevented them from informing the police about the occurrence for registration of FIR, soon after the occurrence. Was the *fardebayan* of the informant got recorded only after the prosecution's side learnt about the wife of respondent No. 2 having approached the police for registration of FIR which,



according to the complaint petition, could not be registered and she was compelled to file complaint case later? This can be a probable circumstance for delayed recording and registration of FIR in the present case.

27. In any view of the matter, we are of the considered view that the delay of nearly three days in lodging the FIR has remained unexplained by the prosecution in the present case.

28. There is yet another aspect of the matter. The doctor who had examined the appellant at ANMCH, Gaya was not examined at the trial. Doctor Ashok Kumar Jha (PW-8) deposed at the trial that as the patient was referred from ANMCH, Gaya, Department of Surgery, Dr. A.K. Barnwal Unit Central Casualty. The primary nature, mode and time of injury might be obtained from the doctor who had attended the patient at ANMCH, Gaya. In his cross-examination PW-8 deposed that it was not mentioned in the report as to who had brought the injured to the hospital and who had identified him.

29. The prosecution, in the background of the above-noted facts and on the basis of evidence adduced at the trial, cannot be said to have proved that the appellant had sustained injuries in his head caused by *gandasa* blow given by



respondent No. 2. It is also relevant to mention that there is no injury report as regards the injuries sustained by other witnesses, who, according to the prosecution's case, were also assaulted by respondents No. 2 to 8.

30. On careful perusal of the evidence of the prosecution's witnesses, we notice that all of them are consistent in their depositions as regards the reason why the occurrence had taken place and the manner in which the appellant and others were assaulted by respondents No. 2 to 8. However, delay in registration of FIR as noted-above and non-examination of the doctor, who had treated the appellant first in ANMCH, Gaya, renders the prosecution's case doubtful.

31. Situated thus, the view, which the trial court has taken while recording acquittal of respondents No. 2 to 8, cannot be said to be not a reasonably possible view. It is trite that if two reasonable conclusions are possible on the basis of evidence on record, the finding of acquittal recorded by the trial court should not be disturbed.

32. For the reasons noted-above, we do not find any reason to interfere with the impugned judgment of the trial court.

33. We do not find any merit in this appeal against



acquittal, which stands dismissed.

(Chakradhari Sharan Singh, J)

I agree
Nawneet Kumar Pandey, J:

(Nawneet Kumar Pandey, J)

Rajesh/Suraj

AFR/NAFR	NAFR
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