

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.379 of 2023

Arising Out of PS. Case No.-68 Year-2019 Thana- VISHAMBHARPUR District- Gopalganj

Maheshwar Prasad Son of Santlal Prasad, Resident of village - Khem
Mathinia, P.S.- Bisambharpur, District- Gopalganj

... .. Appellant

Versus

1. The State of Bihar
2. Shailesh Prasad Son of Harishankar Prasad, Resident of village - Khem
Mathinia, P.S.- Bisambharpur, District- Gopalganj

... .. Respondents

Appearance :

For the Appellant	:	Mr.Ramchandra Singh, Advocate Mr.Panchanand Prasad, Advocate
For the State	:	Mr.Satya Narayan Prasad, APP
For Respondent No.2	:	Mr.Abhimanyu Sharma, Advocate Mr.Harendra Prasad, Advocate Mr.Adesch Raj Singh, Advocate

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

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

4 26-09-2023 This appeal under Section 372 of the Code of Criminal Procedure, 1973 has been filed by the informant of Vishambharpur P.S. case No.68 of 2019 against the judgment of acquittal dated 14.02.2023, passed by Shri Dilip Kumar Singh, Additional District & Sessions Judge IX, Gopalganj in Sessions Trial No.143 of 2020, arising out of Vishambharpur P.S. case No.68 of 2019, whereby and whereunder the learned trial Court



has acquitted the respondent No.2 from the charges levelled under Section 302 of the Indian Penal Code (referred to 'I.P.C.') and Section 27(1) of the Arms Act.

2. In the present criminal appeal vide order dated 10.07.2023, notice was issued to respondent No.2 under both process, accordingly, Mr. Abhimanyu Sharma, Advocate is appearing on behalf of the respondent No.2. The lower Court record has already been received from the learned trial Court.

3. The prosecution case in brief is that on 08.07.2019 arrangement of stay of Barat party was made at the field of Jagdish Prasad High School and an orchestra was going on, in which, the son of the informant Mukesh Prasad and accused Shailesh Prasad were watching orchestra and dance. In the meanwhile on 09.07.2019 at 12:15 a.m. Respondent No.2 opened fire upon the son of the informant by his unauthorised pistol, due to which he died on the spot. Reason behind the occurrence is that the deceased refused to look after the live stock of (accused) respondent No.2. It is further stated that at the time of occurrence the informant was present there and after firing the viewers and the orchestra party fled away by riding over their bikes. Thereafter local men informed the police and police came there and took further action.



4. On the basis of fardbeyan of the informant, Vishambharpur P.S. case No.68 of 2019 was registered and the police after investigation submitted charge sheet against the accused/respondent No.2. Thereafter cognizance was taken by the learned Jurisdictional Magistrate and then the case was committed to the Court of Sessions. Charges were framed against the respondent No.2, on which he pleaded not guilty and claimed to be tried.

5. During the trial, the prosecution examined as many as eight witnesses, namely, Kusum Devi (PW 1), Hareram Prasad (PW 2), Sipahi Singh (PW 3), Subash Prasad (PW 4), Ramesh Singh (PW 5), Maheshwar Prasad (PW 6), Dr. Ashok Kumar Chaudhary (PW 7) and Ashok Kumar (PW 8). In support of its case, the prosecution has also produced exhibits as Ext.1 (signature of witness No.4 on postmortem report), Ext.1/1 (signature of witness No.4 on written report), Ext.2 (inquest report), Ext.3 (formal F.I.R.) and Ext.4 (postmortem report). The defence has not produced any oral or documentary evidence in support of its case. Thereafter the statement of the respondent No.2 was recorded under Section 313 of Cr.P.C. and after conclusion of the trial, the learned trial Court acquitted the respondent No.2.



6. Being aggrieved by the impugned judgment of acquittal dated 14.02.2023, the instant appeal has been filed by the informant.

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 ***Prandas v. State***, reported in **1950 SCC 62**, wherein it was observed that:

15. In our opinion, the true position in regard to the jurisdiction of the High Court under Section 417 of the Criminal Procedure Code in an appeal from an order of acquittal has been stated in Sheo Swarup v. King Emperor [Sheo Swarup v. King Emperor, (1933-34) 61 IA 398 : 1934 SCC OnLine PC 42] , in these words : (IA p. 404)

“Sections 417, 418 and 423 of the Code [Ed. : Code of Criminal Procedure, 1898.]



give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice.”

We also place reliance on the decision of the Hon’ble



Supreme Court rendered in the case of ***Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471***, wherein the Hon'ble Apex Court has summarized the principles relating to the power of the appellate court when dealing with an appeal against an order of acquittal as follows:

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , SCC p. 432, para 42)

“42. From the above decisions, in our considered view, the following general principles regarding powers of the 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 Criminal Procedure Code, 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.”

8. Grounds considered by the learned Trial Court for



acquittal are as under:

(i) There is a major contradiction between the testimony of PW 4 i.e. eye-witness and the medical evidence, with the medical evidence.

(ii) The evidence of PW 4, who is a related and interested witness, lacks credibility due to vital contradictions in his testimony.

(iii) The presence of the informant (PW 6) at the place of occurrence at the time of incidence is highly doubtful in light of his own evidence as well as the evidence adduced by PW 1 and an independent witness PW 5.

(iv) The written statement submitted by the informant (PW 6), upon which the FIR was registered by the SHO-cum-Investigating Officer (PW 8), lacks substantiation. This uncertainty arises because PW 6 explicitly stated during the trial that he did not provide a written complaint to the police; instead, he gave an oral statement which was recorded, and he placed his mark on it. In contrast, PW 8 asserted that PW 6 had given him a written complaint. Adding to the inconsistency, PW 8, during cross-examination, admitted that it was not recorded where he received the written complaint from the informant, where the complaint was written, and by whom it was written. Consequently, the very authenticity of the written complaint is clouded



with suspicion.

(v) The investigating officer recorded a '*sanha*' before proceeding to the scene of the incident. However, the source of the information that led to the recording of this '*sanha*' was not documented, nor was it assigned a number. Furthermore, during the trial, despite repeated requests from the defence, this '*sanha*' was never produced. The defence contended that the '*sanha*' had been recorded against an unknown individual.

(vi) The perfunctory investigation carried out by the Investigating Officer had severely hampered the prosecution's case. The investigating officer initiated the investigation well before the FIR was recorded, resulting in a delay in both lodging the FIR and sending it to the relevant Magistrate. The prosecution failed to provide any explanation for this delay. Furthermore, the investigating officer did not document statements from any family members of the wedding parties or the Orchestra personnel who were present at the time of the incident. Additionally, there is no record in his case diary regarding whether he found any blood at the scene of the occurrence.

(vii) That the charge under section 27 of the Arms Act has not been proven, as none of the witnesses specified the firearm from which the bullet was fired. Additionally, the investigating officer neither recovered any arms from the appellant nor



found any bullets or cartridges at the scene of the incident, nor did he seize the bullet recovered from the deceased's body during the post-mortem, let alone consider sending it for forensic examination.

9. After hearing the arguments advanced by the learned counsel appearing for both the parties and upon examining the material available on the record, the following issues arise for consideration before this Court:

(I) Whether the manner and circumstances in which the written complaint came to be registered cast doubt or diminish the value or credibility of the FIR?

(II) Whether the evidence adduced by PW 4, who claims to be an eyewitness, can be relied upon to base the conviction of the appellant?

(III) Whether the prosecution has established the presence of the informant (PW 6) at the place of occurrence at the time of the incident beyond a reasonable doubt?

(IV) Whether laches on part of the Investigating Officer (PW 8), if any, be fatal for the prosecution in the present case?

10. With regard to the first issue, we have carefully reviewed the testimonies of the informant (PW 6) and the Investigating Officer (PW 8) of this case. It is evident that PW



6, during his examination-in-chief, unequivocally stated that he had provided an oral statement which was recorded by the police, after which he placed his mark on it. He further stated in his cross-examination that he did not provide anything in writing to the SHO (PW 8). In contrast, PW 8 (I.O.) mentioned in his examination-in-chief as well as cross-examination (as extracted below) that the FIR was registered by him based on the written complaint submitted by PW 6.

“1. दिनांक 09.07.2019 को मैं विशम्भरपुर में थानाअध्यक्ष के पद पर पद स्थापित था | उस दिन इस वाद का सूचक महेश्वर प्रसाद एक लिखित आवेदन मुझे दिया | उसके आवेदन पर उसका निशान है | मैंने आवेदन ग्रहण किया | आवेदन के आलोक में विशम्भरपुर थाना कांड 68/2019 दिनांक 09.07.2019 अंतर्गत धारा 302 भा0 द 0 वि0 एवं 27 आर्म्स एक्ट दर्ज कर कांड का अनुसंधान का भार स्वयं ग्रहण किया |

X X----- X
X----- X X

13. लिखित आवेदन के आधार पर एफ 0आई 0आर 0 समय 8 बजकर 5 मिनट सुबह दर्ज किया गया | सी 0जे 0म 0 साहब को 10.07.2019 प्राप्त हुआ | दिनांक 09.07.2019 को एफ 0आई 0आर 0 नहीं भेजने का कोई कारण मैं नहीं बता सकता हूँ |

Furthermore, during his cross-examination, PW 8 stated that there was no record of where he received the written complaint from the informant, where the complaint was written, or by whom it was written. Despite this, PW 8 claimed that the



mark on the written complaint belonged to PW 6. Moreover, the informant has not proven that the mark on the written complaint is his own. Additionally, we have taken note of the fact that neither the informant (PW 6), PW 8 nor PW 4, who signed the written complaint, mentioned the author or scribe of the written complaint in their depositions. Furthermore, there is no reference in the written complaint to it being read over to the informant, and no mention of his understanding of its contents before placing his mark on it. Thus, in light of the aforementioned evidence on record, it is evident that the testimonies of PW 6 and PW 8 in this regard are wholly contradictory to each other. When the informant has not established the contents of the FIR in Court, these contents cannot be used as substantive evidence to establish the guilt of the appellant. Furthermore, from the records, it is apparent that the incident occurred at 12:15 a.m. on 09.07.2019, and the FIR was not filed until 8:05 a.m. on the same day, resulting in a delay of approximately 7 hours. While PW 8 arrived at the scene during the night and prepared the inquest report at around 2:12 a.m., neither the informant (PW 6), PW 1, nor PW 4 provided the first information, nor did PW 8 record the first information at that time. Moreover, the copy of the FIR was forwarded to the



magistrate on the subsequent day, i.e., 10.07.2019, and no explanation whatsoever was provided regarding this delay. In the case of ***Satpal Singh v. State of Haryana, (2010) 8 SCC 714*** the Hon'ble Supreme Court has observed:

“...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 consultation, 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 of 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...”

Therefore, in light of the aforesaid evidence available on record, it is evident that the manner and circumstances in which the written complaint came to be registered raise doubts about the authenticity of the FIR.

Accordingly, the first issue is decided in ***affirmative***.

11. With regard to the second issue formulated above, this Court has closely examined the testimony of PW 4, who claims to be an eyewitness. Also from the record, it is evident that he is



grand-uncle of the deceased and an interested witness as well. It is a well-settled legal principle that the testimony of related or interested witnesses should be subjected to careful scrutiny and accepted with caution. The credibility of such testimony hinges on whether it withstands close scrutiny. PW 4, in his deposition, stated that he, along with the deceased and the informant (PW 6), was sitting on the ground and watching an orchestra dance. He further deposed that the accused, Shailesh Prasad, approached and shot the deceased in the face at point-blank range. In his deposition, he also stated that blood was spilled over the mat. However, upon scrutinizing the post-mortem report (Ext. 2) as well as the testimony of PW 7 (the doctor), it becomes abundantly clear that there is no evidence indicating that the shooting was perpetrated from point-blank or close range, as notably, there is no presence of tattooing, blackening, or charring over and around the wound. Thus, it is evident that the projectile was not fired from a short range. This discrepancy raises doubts about the claim of PW 5 being seated near the deceased, as such a contradiction would not have arisen if he had been in close proximity during the incident. Furthermore, it is important to highlight that the investigating officer (PW 8) neither found nor seized any blood at the place of occurrence.



Consequently, the manner of the assault as narrated by PW 4 does not align with the medical evidence on record. The Hon'ble Supreme Court in the case of **Subhash v. State of U.P.**, reported in **(1976) 3 SCC 629**, has observed:

“13. While we are on the medical evidence it would be appropriate to mention that there was no tattooing or charring on any of the firearm injuries which, according to the doctor, shows that the firing was done from a distance of more than 4 feet. In the first information report Bal Kishore has stated that as soon as he, his father and sister, reached the culvert, Subhash “touching the chest” of Ram Sanehi “with the barrel of his gun” said that he shall not leave him alive; Shyam Narain thereupon exhorted Subhash not to delay and fire immediately; Subhash then fired three shots in quick succession, one of which misfired. The trend of the FIR is that Subhash fired the first two shots at Ram Sanehi from a point blank range, in which event, indisputably, there would have been tattooing and charring around the injuries. Bal Kishore has attempted to offer an explanation that what he meant to say in his complaint was that Subhash trained his gun “towards” Ram Sanehi's chest and not “on” his chest. This explanation is an afterthought and in the



circumstances difficult to accept. Thus in another important respect, the medical evidence falsifies the case of the prosecution.

Furthermore, another noteworthy contradiction emerges from the testimony of PW 4. He stated during the trial that they were watching the dance while seated on the ground; however, during the investigation, he informed PW 8 that they were seated on chairs. Therefore, in light of such contradictions, it is legally prudent to question the reliability of PW 4's evidence. His conflicting statements undermine the confidence of the court in the accuracy and truthfulness of his testimony.

Therefore, considering these discrepancies, we are hesitant to accord full credence to his evidence.

Accordingly, the second issue is decided in ***negative***.

12. Now, in order to analyze the third issue, which pertains to the presence of the informant (PW 6) at the scene during the time of the incident, it is imperative to scrutinize the testimonies of PW 1, PW 5, and PW 6. The informant (PW 6) stated in his deposition that at the time of the incident, he was in the veranda of the school, where the baraat had gathered, and the orchestra dance was taking place. However, during the cross-examination in para 7 and 8, he deposed that at the time of the arrival of the baraat, he was at his own house and went there



only at the time of the feast. He further stated that after having the wedding feast, he returned home. However, PW 6 did not specify when he returned to the school to watch the orchestra dance. Furthermore, if PW 6 had indeed been present at the scene, his natural conduct would have prompted him to take action to apprehend the accused or intervene in some way. However, we do not observe any such conduct on his part. Furthermore, PW 6 categorically deposed that his wife (PW 1) accompanied him to the place of occurrence. However, PW 1, in her evidence, stated that upon learning of the occurrence, she rushed from her house to the scene. Thus, she had not stated that PW 6 accompany her. This clear contradiction between the testimonies of PW 1 and PW 6 raises doubts about their accounts of the events. Moreover, on the contrary, PW 5, an independent witness, stated in his deposition that when he arrived at the place of occurrence, nobody from the deceased's family was present, and PW 1 and PW 6 arrived after the incident when everyone had already left. Therefore, considering the profound contradictions and inconsistencies within the testimonies of PW 1, PW 5, and PW 6, the prosecution's assertion that PW 6 was present at the place of occurrence at the time of the incident appears doubtful.



Accordingly, the third issue is decided in *negative*.

13. Now, turning to the last issue for consideration, it becomes evident from the case records that the cursory investigation conducted by Investigating Officer (PW 8) has significantly impeded the prosecution's case. PW 8 explicitly stated in his testimony that before proceeding to the crime scene, he recorded a '*sanha*' in the station diary without assigning any entry number. Moreover, the source of information that prompted the recording of this '*sanha*' was never documented or disclosed during the trial. Furthermore, during the trial, despite repeated requests from the defense, this '*sanha*' was never produced in the Court. The learned counsel for the respondent accused contended that the '*sanha*' was registered against the unknown. It is found that when PW 8 proceeded to the spot he did not record the first information immediately and started the investigation even before recording the FIR. Furthermore, no explanation furnished for the delay in dispatch of the copy of FIR. Additionally, during the on-site inspection, PW 8 did not document anything regarding whether an orchestra dance was indeed taking place or not. Also, he did not consider it necessary to take the statements of the members of the wedding parties or the orchestra personnel who were



present at the scene and could have provided an accurate account of the incident. Furthermore, the *pillet* which was recovered in the postmortem was never seized nor sent for examination. When investigating police's default is so flagrant that it speaks volumes about their irresponsible attitude and utter disregard for established cannons of criminal procedure, the same cannot be brushed aside. Nevertheless, we are mindful of the fact that the accused cannot be acquitted solely on account of some lacunae or fault in the investigation conducted by the Investigating Officer. However, in the absence of any cogent eyewitness account, and when the integrity of the investigation impairs crucial pieces of evidence, it does raise reasonable doubts, and in such cases, the accused may be entitled to the benefit of doubt.

Accordingly, the fourth issue is decided in *affirmative*.

14. In light of the discussions made above, we are of the considered opinion that the trial court has taken a plausible view based on the evidence available on the record. The view taken by the trial court cannot be held to be perverse. Under such circumstance, no case for interference with the impugned judgment is made out.

15. Accordingly, the appeal against the judgment of



acquittal dated 14.02.2023, passed by Shri Dilip Kumar Singh, Additional District & Sessions Judge IX, Gopalganj in Sessions Trial No.143 of 2020, arising out of Vishambharpur P.S. case No.68 of 2019, is dismissed at the admission stage itself.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Narendra/-

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