

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.644 of 2019

Arising Out of PS. Case No.-697 Year-2013 Thana- BHAGALPUR KOTWALI District-
Bhagalpur

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Prem Kumar (Male), aged about 68 years, Son of Late Govind Prasad,
Resident of Sekhawat Hussain Lane, Khalifabagh, P.S.- Kotwali, District-
Bhagalpur.

... .. Appellant

Versus

1. The State of Bihar
2. Ramesh Kumar Patel Son of Arjun Bhai Patel
3. Arjun Bhai Patel Son of Late Beljibhai Patel
4. Ashok Kumar Patel Son of Arjun Bhai Patel, All residents of Sekhawat
Hussain Lane, P.S.- Kotwali, District- Bhagalpur.

... .. Respondents

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Appearance :

For the Appellant	:	Mr. Praveen Kumar, Advocate
For the State	:	Mr. Shiwesh Chandra Mishra, A.P.P.
For the Respondent		
Nos.2 to 4	:	Mr.s. Sushmita Mishra, Advocate
		Mrs. Surya Narayan Sah, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE CHANDRA PRAKASH
SINGH

C.A.V. ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

8 18-07-2023 Heard learned counsels for the parties at the stage of
admission itself.

2. This appeal under section 372 of the Code of Criminal
Procedure, 1973 has been filed by the informant of Kotwali P.S.
Case No.697 of 2013 against the judgment of acquittal dated



26.03.2019 passed by Shri Jai Prakash, 2nd Additional District & Sessions Judge, Bhagalpur in Sessions Trial No.717 of 2017, whereby and whereunder the learned trial Court has acquitted the respondent Nos.2 to 4 from the charges levelled under Sections 326/34 and 302/34 of the Indian Penal Code (referred to 'I.P.C.').

3. In the present criminal appeal, by order dated 09.01.2020, notices were issued to respondent Nos.2 to 4 under both processes and the lower Court record was called for from the learned Court below.

4. In pursuance of the aforesaid order dated 09.01.2020, notices were issued to the respondent Nos.2 to 4 under both processes in time and Mrs. Sushmita Mishra, Advocate is appearing on behalf of the respondent Nos.2 to 4. The lower Court record has already been received from the learned trial Court.

5. The prosecution's case in brief according to the fardbeyan of informant, namely, Prem Kumar is that on 18.11.2013, at about 04:30 pm, he heard some commotion and came outside the house and saw that his son namely Gurudev @ Piyush had been burning. Thereupon, with the help of co-villagers, the fire was set off and in the meantime, the traffic



police came and the informant's son was taken to the hospital, where he died during the course of treatment. It has further been stated that the informant came to know that on account of old enmity, his tenant Arjun Patel had sprinkled petrol on the body of informant's son and set him on fire. The F.I.R. was thereafter lodged with other sundry details.

6. On the basis of fardbeyan of the informant, Kotwali P.S. case No.697 of 2013 was registered under Sections 326/34 and 302/34 of I.P.C. and the police after investigation submitted charge sheet against the accused persons/respondent Nos.2 to 4. 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 Nos.2 to 4 on which they pleaded not guilty and claimed to be tried.

7. During the trial, the prosecution examined as many as seven witnesses, namely, Bala Kumari (P.W.1), Munmun Kumari (P.W.2), Ramesh Kumar @ Vishwanath (P.W.3), Prem Kumar (P.W.4), Dr. Atul Kumar Mallik (P.W.5), Rajesh Kumar (P.W.6) and Sanjeev Kumar (P.W.7). In support of its case, the prosecution has also produced exhibits as Ext.1 (signature of informant Prem Kumar on fardbeyan), Ext.2 (protest petition), Ext.3 (postmortem report) and Ext.4 (formal F.I.R.). The



defence has not produced any oral or documentary evidence in support of its case. Thereafter the statements of the respondent Nos.2 to 4 were recorded under Section 313 of the Cr.P.C. and after conclusion of the trial, the learned trial Court acquitted the respondent Nos.2 to 4.

8. Being aggrieved by the impugned judgment of acquittal dated 26.03.2019, the instant appeal has been filed by the informant.

9. While assailing the impugned judgment, the learned counsel for the appellant submitted that the trial Court has not appreciated the evidence on record in correct perspective. It has been submitted that the learned trial Court has disbelieved the prosecution case merely because there was a pre-existing enmity between the parties. As such, the impugned judgment is fit to be set aside.

10. On the other hand, learned counsels for the respondent Nos.2 to 4 and the State have submitted that there is no error in appreciation of fact or law by the trial Court. It has been contended that none of the family members of the deceased are eye witness to the incident. Furthermore, the PW 6, who is the sole eye witness of the occurrence, has not raised any allegation against the respondents herein in any farfetched



manner. As such, there is no infirmity in the finding of the learned trial Court.

11. After hearing the arguments advanced by the learned counsels for both the parties and upon thorough examination of the material available on the record, the following issue arises for consideration in the present appeal:

(I) Whether there is any evidence to prove the participation of the respondents herein in the occurrence?

12. With reference to issue no. I, it is apparent from perusal of the entire material available on the record that no family member of the deceased, including the informant, is an eye witness to the occurrence. Furthermore, it has been deposed by PW 7 (S.I. of traffic police) that while patrolling, he saw the victim (now deceased) wrapped in a blanket and upon questioning, the said victim told him that while he was taking out petrol from his motorcycle, a spark came out of nowhere and it set him ablaze. Thereupon, the victim was taken to the Hospital by the PW 7 in police jeep along with the help of other policemen and the victim specifically stated to PW 7 that no person was involved in setting him on fire. Such statement of PW 7 gets further corroborated by the testimony of the PW 5 (i.e. the Doctor who conducted the post-mortem report) who has



given medical opinion that the injuries received on the body of the deceased are possible by self- immolation done with a view to commit suicide. We have also taken into consideration the testimony of PW 6, who is the sole eye witness to the occurrence. It has been deposed by PW 6 that the victim sprinkled petrol all over his body and in the meantime, a spark came from the *chaat thela*, which set ablaze the body of the victim.

In light of the discussions made above, we are of the considered opinion that there is absence of any evidence to prove the participation of the respondent Nos.2 to 4 in the occurrence.

Accordingly, the issue no. I is answered in the negative.

13. While deciding an appeal against acquittal in a criminal case, the primary task with which the appellate Court is entrusted is to find out whether the findings in the impugned judgment are perverse, illegal, irrational and against the principles of natural justice. Once the appellate Court comes to the conclusion that the grounds on which the judgment is based are not perverse, the scope of appeal against acquittal is limited, considering the fact that the presumption of innocence which is available with an accused, gets further strengthened by the



finding of a Court. In the case of ***Mrinal Das versus State of Tripura***, reported in ***(2011) 9 SCC 479***, it has been observed that:

“13. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final court of fact, is fully competent to reappreciate, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of



acquittal.

14. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. ...
...”

In the case of ***Ghurey Lal v. State of Uttar Pradesh*** reported in ***(2008) 10 SCC 450***, it has been observed in para no. 75 that:

“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.”

Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case if the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the appellate Court must not take a different view only because another view is possible. It is because the trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its decision must not be upset in absence of strong and compelling grounds.

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 26.03.2019 passed by Shri Jai Prakash, 2nd



Additional District & Sessions Judge, Bhagalpur in Sessions
Trial No.717 of 2017 is dismissed at the admission stage itself.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

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