

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.621 of 2023

Arising Out of PS. Case No.-1084 Year-2019 Thana- ARA NAWADA District- Bhojpur

PURUSHOTTAM SINGH, Son of Hare Ram Singh, R/o village - Kewatiya,
At present R/o Village - Building no. 7, 4th Floor, Flat no. 5, 2/C, N.S. Road,
Howarah, Liluah, Haora, West Bengal.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Bhanjan Singh @ Bhanjan Kumar Singh, Son of Vidyasagar Singh @ Hira Singh R/o village - Mahuar, P.S. - Karnamepur (Shahpur), Distt. - Bhojpur,
At present - R/o Chandwa More (Krishnagar), P.S. - Ara Nawada, Distt. - Bhojpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Nitya Nand Tiwary, Advocate
For the Respondent/s : Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

5 12-09-2023 The present appeal has been filed by the informant

under Section 372 of the Criminal Procedure Code, 1973 against

judgment and order of acquittal dated 25.04.2023 rendered by

the learned Addl. Sessions Judge-IIIrd, Bhojpur at Ara, passed

in S.Tr. No. 120/2020 arising out of Ara Nawada P.S. Case No.

1084 of 2019, whereby the respondent no. 2/accused has been



acquitted by the learned trial court.

2. Heard learned Advocate Mr. Nitya Nand Tiwary for the appellant and learned APP Mr. Ajay Mishra for the respondent no.1/State.

3. At the outset, it is relevant to note that looking to the facts and circumstances of the present case, we had requested learned counsel appearing for the parties to provide the copy of the deposition of the prosecution witnesses and the documents upon which reliance is placed by the learned counsel appearing for the appellant.

4. Learned counsel has provided all the relevant documents and the deposition of witnesses. We have gone through the entire prosecution evidence.

5. The Prosecution story in brief is that as per the statement of the informant, namely, Purushottam Singh that on the alleged date of occurrence i.e., on 21.12.2019, the informant went to his shop along with his uncle namely, Harendra Singh (deceased) to open his shop at about 10:00 A.M. and at the evening the informant after closing the shop at 05:05 P.M. proceeded to his home but in the way, his uncle Harendra Singh started talking with one Shailendra Singh but after some time, it was learnt by the informant that a person has been shot at near



Gayatri Hotel and when the informant reached there, he found his uncle Harendra Singh fallen with his motorcycle pulled with blood and hence, the present case was instituted.

6. After the registration of the FIR, the Investigating Officer carried out the investigation and during the course of the investigation, he had recorded the statement of the witnesses, collected necessary evidence and the dead body of the deceased was sent for conducting the *post mortem*. After the investigation was over, the Investigating Officer filed the charge-sheet against the respondent no. 2/accused before the concerned Magistrate Court, however, as the case was exclusively triable by court of Sessions, the same was committed to the concerned Sessions Court.

7. Before the Trial Court, the prosecution had examined seven witnesses and also produced documentary evidence. Thereafter, further statement of the accused was recorded under Section 313 of the Code of Criminal Procedure and after conclusion of the trial, the Trial Court passed the impugned order, whereby the respondent no. 2/accused has been acquitted on the ground that the prosecution has failed to prove the case against the respondent/accused beyond reasonable doubt. Against the said order of acquittal, the appellant, who is



the first informant, has preferred the appeal.

8. Learned counsel for the appellant has referred to the deposition of the prosecution witnesses and mainly placed reliance upon the deposition given by PW-2, who is son of the deceased. The said witness PW-2 Radhe Shyam Singh @ Chunnu has stated in his examination-in-chief that when he got the news with regard to the death of his father, immediately came from Daman to Patna and from Patna, he reached to his house at Ara. The said witness further stated that the respondent no. 2, who is residing near to his house did not participate in the funeral and, therefore, he had inquired about the respondent no. 2/accused. The said witness further stated that the deceased i.e. father of the witness had given the name of the respondent no. 2/accused in a case of theft of a motorcycle six months prior to the incident and because of the said reason, the respondent no. 2/accused was having motive to kill the father of the said witness and, therefore, the incident in question took place. Learned counsel further submitted that when PW-2 had verified the CCTV footage from the CCTV cameras which were installed in his house, he came to know that on the date of incident and at the time of the incident, the respondent no. 2 and some other persons were moving near to the place of incident



and, therefore, it is stated that the respondent no. 2 has killed the father of the said witness. Learned counsel has also referred to the deposition given by PW-6 Dr. Kumar Nitish, who had conducted the *post mortem* of the dead body of the deceased. It is submitted that father of PW-2 died an unnatural death and as a result of firearm injury sustained by him. Learned counsel, therefore, urged that when the prosecution has proved the case against the respondent no. 2/accused beyond reasonable doubt, the Trial Court ought to have convicted the accused. Learned counsel, therefore, urged that the matter requires consideration and, therefore, this appeal be admitted and thereafter, appropriate order be passed.

9. On the other hand, learned APP has fairly submitted that till today, the State has not preferred any appeal against the order of acquittal passed by the concerned Trial Court. Learned APP has also referred to the deposition of the witnesses and, thereafter, submitted that looking to the facts and circumstances of the present case, this Court may pass appropriate order.

10. We have considered the submissions canvassed by learned counsel appearing for the parties. We have also perused the materials placed on record including the copy of the depositions of the prosecution witnesses and the other materials



provided by the learned counsel appearing for the parties. It is not in dispute that till today, the State has not preferred any appeal against the impugned order of acquittal recorded by the Trial Court.

11. From the materials placed on record, it would emerge that the appellant as well as the prosecution have placed reliance upon the deposition of PW-2 Radhe Shyam Singh @ Chunnu, who is son of the deceased, who in his deposition has fairly stated that when the incident in question took place, he was not present at the place of incident and he was in Daman. After he got the news of the death of his father, he reached to his village. Thereafter, he met Superintendent of Police and he came to know that police has also seized and collected CCTV footage in which the culprits are seen. The said witness also observed the CCTV footage of his house and CCTV footage given by the police to the brother of the witness in his Laptop. The said witness further stated that one boy was seen going to Bhanjan Singh's house and after some time Bhanjan Singh had also gone behind and, thereafter, Bhanjan Singh is seen coming back with the said boy from the house. They left on white colour Apache bike, whereas the two other boys with him appeared on a black splendor motorcycle. Thereafter, the accused Bhanjan Singh is



seen hovering on a white colour Apache bike at the scene of occurrence. On the basis of the said CCTV footage, the said witness, it appears, has presumed that the respondent no. 2/accused Bhanjan Singh has killed his father. At this stage, it is also pertinent to note that the said witness, PW-2, in examination-in-chief further pointed out about the motive on the part of the accused to kill his father by stating that there was a dispute with accused Bhanjan Singh and father of the said witness which was of the theft of a motorcycle in which Bhanjan Singh was arrested and father of the said witness left to be accused because of the said incident, which took place six months ago.

The said witness has categorically admitted that in CCTV footage around 1:00 PM, boys were seen coming to the house of Bhanjan Singh and lot of other people were also seen on the road in front of the house of the witness. He had further stated that there are 6-7 houses on both the sides between the house of the witness and house of the accused Bhanjan Singh.

12. PW-1 Amit Singh, PW-3 Sonu Kumar Singh, PW-4 Pratima Devi and PW-5 Purushottam Singh (present appellant/the informant) are admittedly not the eye-witnesses to the incident in question. PW-6 Dr. Kumar Nitish, who had



conducted the *post mortem* of the dead body of the deceased whereas PW-7 Vijay Kumar Singh is the Investigating Officer, who had carried out the investigation. It is pertinent to note that the Investigating Officer has clearly stated in his cross-examination that he had neither seized the CCTV footage nor the same was sent to FSL. Thus, the prosecution has simply placed reliance upon the CCTV footage of the house of the deceased. It is relevant to note at this stage that the place of occurrence is near Chandwa More and the said place is not visible from the house of the deceased. The said fact can be established from the deposition of PW-4, namely, Pratima Devi.

13. Thus from the aforesaid evidence produced by the prosecution, it is revealed that the present is the case of circumstantial evidence and admittedly there is no eye-witness to the incident in question. All the prosecution witnesses are hearsay witnesses and the only materials upon which the reliance is placed by the prosecution is CCTV footage which were collected from the house of the deceased. However, as observed herein-above, the place of incident is not visible from the house of the deceased and, therefore, merely because the respondent no. 2/accused was moving near to the house of the deceased or at the place of incident, it cannot be said that the



respondent no. 2/accused only has committed the alleged offence. It is also relevant to note that the weapon used in murder is also not discovered or recovered by the Investigating Agency. Further, the motive as suggested by the PW-2 about the incident which took place prior to six months from the date of present incident, it cannot be said that because of the said reason, the appellant must have committed the alleged offence.

14. In the case of ***Sharad Biridhichand Sarda V. State of Maharashtra***, reported in ***AIR 1984 SC***, the Hon'ble Supreme Court has observed in paragraph nos. 152 to 159 as under:

152. "A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

*It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in ***Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra()*** where the following observations were*



made:

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

154. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in The King v. Horry,(1) thus:



"Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for."

155. Lord Goddard slightly modified the expression, morally certain by 'such circumstances as render the commission of the crime certain'.

*156. This indicates the cardinal principle' of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry's case (supra) was approved by this Court in **Anant Chintaman Lagu v. The State of Bombay**(2) Lagu's case as also the principles enunciated by this Court in Hanumant's case (supra) have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases Tufail's case (supra), Ramgopals case (supra), Chandrakant Nyalchand Seth v. The State of Bombay (Criminal Appeal No. 120 of 1957 decided on 19.2.58), Dharmbir Singh v. The State of Punjab (Criminal Appeal No. 98 of 1958 decided on 4.11.1958). There are a number of other cases where although Hanumant's case has*



not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration(1). Mohan Lal Pangasa v. State of U.P.,(2) Shankarlal Gyarsilal Dixit v. State of Maharashtra (3) and M.C. Agarwal v. State of Maharashtra(4)-a five-Judge Bench decision.

*157. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor-General relying on a decision of this Court in **Deonandan Mishra v. The State of Bihar(5)**, to supplement this argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus:*

"But in a case like this where the various links as started above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation-such absence of explanation of false explanation would itself be an additional link which completes the chain."

158. It will be seen that this Court while taking into account the absence of



explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier; viz., before a false explanation can be used as additional link, the following essential conditions must be satisfied:

(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved. (2) the said circumstance point to the guilt of the accused with reasonable definiteness, and (3) the circumstance is in proximity to the time and situation.

159. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal's case (supra) where this Court observed thus:

"Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused."

15. In the case of **Anjan Kumar Sarma & Ors Vs. State of Assam**, reported in (2017) 14 SCC 359, the Hon'ble Supreme Court has observed in paragraph nos. 13, 16 and 21 as



under:

*“13. Jit Kakati was acquitted for committing an offence under Section 366-A and his acquittal was confirmed by the High Court. Jit Kakati died during the pendency of the Criminal Appeal before this Court and the appeal filed by him abated. The acquittal of the Appellants under Section 376(2) (g) was confirmed by the High Court which remains unchallenged. The point that falls for our consideration is whether the conviction of the Appellants by the High Court under Section 302, 201 read with 34 IPC is justified. The High Court was conscious of the fact that interference with the judgment of an acquittal by the Trial Court is unwarranted except when it suffers from the vice of perversity (See: **Brahm Swaroop v. State of U.P., (2011) 6 SCC 288 ¶ 38**). There is neither a discussion nor finding recorded by the High Court about any perversity in the judgment of the Trial Court. The only ground on which the High Court reversed the judgment of the Trial Court is that the prosecution proved that the accused and the deceased were last seen together and there was no explanation which led to the presumption of guilt of the Accused.*

16. It is no more res integra that suspicion cannot take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and the legal proof. At times it can be a case of



“may be true.” But there is a long mental distance between “may be true” and “must be true” and the same divides conjunctures from

*sure conclusions. (See: **Jaharlal Das v. State of Orissa, (1991) 3 SCC 27 para 11**)*

*21. This Court in **Bharat v. State of M.P., (2003) 3 SCC 106**, held that the failure of the accused to offer any explanation in his statement under Section 313, Cr.P.C. alone was not sufficient to establish the charge against the accused. In the facts of the present case, the High Court committed an error in holding that in the absence of any satisfactory explanation by the accused the presumption of guilt of the Accused stood un-rebutted and thus the Appellants were liable to be convicted.*

16. From the aforesaid decisions rendered by the Hon’ble Supreme Court, it can be said that the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned “must” or “should” and not “may be” established. Further the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and tendency. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and



must show that in all human probability the act must have been done by the accused.

17. It is settled law that inference drawn by the Court have to be on the basis of established facts and not on conjectures.

18. It is pertinent to note that we are dealing with the acquittal appeal filed by the informant, the Hon'ble Supreme Court in the case of ***Chandrappa and Ors. Vs. State of Karnataka***, reported in ***(2007) 4 SCC 415*** has observed in paragraph no. 42 as under:-

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(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 emphasize 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 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."

19. Recently, the Hon'ble Supreme Court in the case of ***Nikhil Chandra Mondal Vs. State of West Bengal***, reported in ***(2023) 6 SCC 605*** has observed in paragraph no. 22 as under:-

"22. Recently, a three-Judges



Bench of this Court in the case of Rajesh Prasad v. State of Bihar has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that 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 court. It has been further held that 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.”

20. From the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that there is double presumption in favour of the accused, when the order of acquittal has been accorded by the Trial Court, Firstly, the presumption of innocence that 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 court.



Further, 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.”

21. Keeping in view the aforesaid decisions rendered by the Hon’ble Supreme Court, with the facts of the present case as discussed herein-above are carefully examined. We are of the view that while passing the impugned order of acquittal, the learned Trial Court has not committed any error, as the prosecution has failed to prove the case against respondent/accused beyond reasonable doubt.

22. In view of the aforesaid discussions, we are not inclined to entertain the present appeal. Accordingly, this appeal is dismissed.

(Vipul M. Pancholi, J.)

(Chandra Shekhar Jha, J.)

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