

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.780 of 2023

Arising Out of PS. Case No.-44 Year-2018 Thana- LAURIA District- West Champaran

Ramesh Dubey @ Ramesh Chandra Dwivedi Son of Late Sinhasan Dwivedi
Resident of Village-Gobraura, Police Station-Lauriya, District-West
Champaran

... .. Appellant/s

Versus

1. The State of Bihar
2. Haribansh Dubey Son of Bajrangi Dubey Resident of Village-Gobraura,
Police Station-Lauriya, District-West Champaran
3. Akhilesh Dubey Son of Bajrangi Dubey Resident of Village-Gobraura,
Police Station-Lauriya, District-West Champaran
4. Rajesh Dubey Son of Haribansh Dubey Resident of Village-Gobraura,
Police Station-Lauriya, District-West Champaran
5. Sumit Dubey @ Nitesh Kumar Dubey Son of Akhilesh Dubey Resident of
Village-Gobraura, Police Station-Lauriya, District-West Champaran

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Avinash Raj, Advocate
For the Respondent/s : Mr. Parmeshwar Mehta, APP

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

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

6 16-10-2023 The present appeal has been filed under Section 372
of the Code of Criminal Procedure, 1973 by the informant
against judgment and order dated 30.05.2023 rendered by the
learned Additional District & Sessions Judge-8th, West
Champaran at Bettiah, passed in Sessions Trial No. 101 of 2019
arising out of Lauriya P.S. Case No. 44 of 2018, whereby the
present private respondents/original accused have been



acquitted for the alleged offences punishable under Section 395 of the Indian Penal Code and Section 27 of the Arms Act.

2. Heard learned advocate Mr. Avinash Raj for the appellant/informant and Mr. Parmeshwar Mehta, learned APP for the respondent no.1-State.

3. Pursuance to the order dated 25.09.2023 passed by this Court, learned advocate for the appellant/informant has placed on record the deposition of the prosecution as well as defence witnesses and the other relevant materials, upon which, he has placed reliance. After referring to the same, learned counsel for the appellant has mainly contended that though the informant has specifically given the name of accused in the *fardbeyan* given by him before the police, the concerned Investigating Officer, after investigation, filed the final form. However, learned Magistrate did not accept the said report submitted by the investigating agency and as the case was triable by the Court of Sessions, the learned Magistrate sent the matter to the concerned Sessions Court, where same was registered as Sessions Trial No. 101 of 2019.

4. Learned counsel for the appellant further submitted that during the course of trial the prosecution had examined four witnesses and the defence has examined two witnesses and after



conclusion of the trial, the Trial Court passed the impugned order whereby the present private respondents have been acquitted and, therefore, the appellant has preferred the present appeal. At this stage, it is fairly submitted by learned counsel that till today, the State has not preferred any acquittal appeal against the order of acquittal passed by the concerned Trial Court.

5. Learned counsel for the appellant further submits that though the concerned prosecution witnesses have specifically deposed before the Trial Court against the private respondents/accused, the Trial Court has passed the impugned order, ignoring the said deposition and by observing that for commission of offence under Section 395 of the IPC, five or more accused are required, whereas in the present case, there are only four accused, who have been prosecuted by the prosecuting agency. Learned advocate for the appellant has also referred to the observations made by the Trial Court while passing the impugned order and contended that the Trial Court has committed grave error. This Court may admit the present appeal and, thereafter, allow the same and thereby quash and set aside the impugned order.

6. On the other hand, learned APP has also referred to



the depositions of the relevant witnesses and thereafter submitted that the Trial Court has not committed any error while passing the impugned order and, therefore, it appears that the State has not preferred any acquittal appeal against the impugned judgment. However, learned APP submitted that in the facts and circumstances of the present case this Court may pass appropriate order.

7. We have perused the depositions of the prosecution, as well as the defence witnesses and the other materials produced by the learned counsel for the appellant/informant. We have also considered the submissions canvassed by the learned counsels. It would emerge from the record that for the alleged occurrence which took place on 13.02.2018, the complaint was given on 15.02.2018. The F.I.R. came to be lodged for the offences punishable under Section 395 of the IPC and 27 of the Arms Act. It is not in dispute that after registration of the F.I.R. the Investigating Officer carried out the investigation and during the course of investigation, it was revealed that the F.I.R. filed by the informant is false and the accused have not committed alleged offences and, therefore, the investigating agency filed the final report. However, the learned Magistrate did not accept the same and as the case was triable by the Sessions Court, the



same was sent to the concerned Sessions Court. We have gone through the deposition given by P.W. 1 to P.W. 4. During the course of cross-examination, P.W. 1 has specifically stated that alleged goods, which have been looted by the accused have not been recovered by the investigating agency. It is also admitted by P.W. 1 that he and his family members sustained injuries and they did not take any treatment in the hospital. It is further revealed from the deposition of P.W. 2 that four other unknown persons have not been arrested by the investigating agency and the said witness is not aware about the name of the said four unknown persons. The said witness further stated that on hearing the sound of firing, one Mahendra Ram, Ripusudan Chaubey, Harinarayan Dubey, Murlidhar Dubey and the persons residing nearby gathered at the place of occurrence. However, from the record, it is revealed that the aforesaid independent persons have not been examined by the prosecution. It is also not in dispute that Investigating Officer of the case is also not examined by the prosecution before the Trial Court. It is also reflected from the record that the Trial Court had proceeded against four accused for the charges levelled under Section 395 of the IPC.

8. At this stage, we would like to refer the provisions



contained in Section 391 of the IPC, which provides as under :-

“When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit “dacoity”.

9. In the present case, as observed here-in-above, there were only four accused against whom the Trial Court has proceeded against. Therefore, the Trial Court has rightly observed that the ingredients of the aforesaid Section are not established by the prosecution. Further, there is no recovery or discovery of the goods. It is also revealed that though it is specifically alleged by the informant and one of the witnesses that firing had taken place at the place of occurrence, the empty cartridges were not recovered from the place of occurrence nor the alleged firearm has been recovered or discovered from the place of occurrence or at the instance of any of the private respondents/accused.

10. Thus, we are of the view that the prosecution had failed to prove the case against respondents/accused beyond reasonable doubt and, therefore, the Trial Court has rightly



passed the impugned order whereby present private respondents/accused have been acquitted.

11. 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 laid down guidelines while exercising powers under Section 378 of the Code of Criminal Procedure against the acquittal appeal filed by the State against the order of acquittal passed by the concerned Trial Court. It 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, reappraise 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."

12. 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.”

13. 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.

14. Keeping in view the aforesaid observations rendered by the Hon'ble Supreme Court, as the facts and circumstances of the present case as discussed here-in-above are carefully examined, we are of the view that in the present appeal filed by the informant against the order of acquittal deserves to be dismissed.

15. 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.)

S.Tripathi/-

U		T	
---	--	---	--

