

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.745 of 2021

Arising Out of PS. Case No.-570 Year-2017 Thana- MADHEPURA District- Madhepura

BIPIN KUMAR S/o Late Deepnarayan Yadav Resident of Village- Bhelwa,
P.S.- Madhepura, Dist- Madhepura.

... .. Appellant/s

Versus

1. The State of Bihar
2. Ankur Kumar @ Ashutosh Kumar S/o Amrendra Yadav @ Kari Yadav Resident of Village- Bhelwa, P.S. and District- Madhepura
3. Amrendra Yadav @ Kari Yadav S/o Late Mansi Yadav Resident of Village- Bhelwa, P.S. and Dist- Madhepura.
4. Rita Devi W/o Amrendra Yadav @ Kari Yadav Resident of Village- Bhelwa, P.S. and District- Madhepura.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Surya Narayan Yadav, Advocate Mr. Kumar Vishoka Nand, Advocate Ms. Rajani Kumari, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 19-09-2023

In the present appeal, preferred under the *proviso* to Section 372 of the CrPC, the appellant has put to challenge a judgment and an order dated 03.03.2021, passed by learned Additional District and Sessions Judge-I, Madhepura, in Sessions Trial No. 139 of 2018, whereby the trial court has recorded acquittal of the opposite parties No. 2-4 who were



facing trial in respect of charge of commission of offence punishable under Sections 302/34, 354, 323 and 341 of the Indian Penal Code.

2. Heard learned counsel appearing on behalf of the appellant and learned Additional Public Prosecutor for the State.

3. Learned counsel appearing on behalf of the appellant has submitted that the trial court has not duly appreciated the evidence adduced by the prosecution at the trial to the effect that the deceased was assaulted with the butt of the pistol by Ankur Kumar (respondent No. 2). He has submitted that the trial court has wrongly disbelieved the evidence of prosecution's witnesses referring to minor contradictions in their depositions.

4. We have carefully perused the impugned judgment and order of the trial court. It is not the case of the appellant that the evidence adduced at the trial has not been properly described in the impugned judgment of acquittal. We have, therefore, considered the submissions advanced on behalf of the appellant on the basis of the evidence of the prosecution's led at the trial as mentioned in the impugned judgment.

5. It is the prosecution's case as disclosed in the *fardbeyan* of the informant, who is the appellant, that his



neighbour Amrendra Yadav @ Kari Yadav would allow his she-goat to graze in his field, which was caught by the informant. A *panchayat* was subsequently held for releasing the she-goat. Respondent No.2, son of the said Amrendra Yadav @ Kari Yadav, is said to have arrived thereafter with firearm and assaulted the informant's father with the butt of his gun, whereafter the deceased died of the injury caused by the said assault. From the impugned order, it transpires that at the trial the prosecution got examined eleven witnesses including three doctors, namely, Santosh Kumar (PW-8), Md. Zahid Akhter (PW-9), Vijay Shankar (PW-10) and the Investigating Officer (PW-11) of the case, in support of the charge of commission of offence punishable under Sections 302/34, 354, 323 and 341 of the IPC against Ankur Kumar @ Ashutosh Kumar (Respondent No.-2), Amrendra Yadav @ Kari Yadav (Respondent No.-3) and Rita Devi (Respondent No. 4). Respondent No. 2 is son of Respondent No. 3, whereas Respondent No. 4 is wife of Respondent No. 3.

6. It further transpires from the impugned judgment that the prosecution's witnesses; PW-1, PW-2, PW-3 and PW-5 deposed that co-accused Munna Kumar had opened fire with gun targeting one Deep Narayan Yadav, but the bullet misfired.



PWs-4, 6 and 7 did not depose at the trial about any firing made by Munna Kumar. PW-1 and PW-2 in their evidence deposed that respondent No. 4 had ordered to assault Deep Narayan Yadav, which fact has not been corroborated by other prosecution witnesses including the informant himself. PW-1 deposed that respondent No.2, Ankur Yadav @ Ashutosh Kumar, had assaulted Deep Narayan Yadav with *lathi* and Amrendra Yadav @ Kari Yadav had assaulted him with rod and Munna Kumar had assaulted him with the butt of his gun.

7. Considering patent contradictions in the evidence of the prosecution's witnesses, the trial court has doubted the case of the prosecution and has recorded acquittal by the impugned judgment.

8. After having carefully perused the impugned judgment of the trial court, we are of the opinion that the view taken by the trial court acquitting the respondents by giving them benefit of doubt in the background of conflicting depositions of the prosecution witnesses, appears to be a reasonably possible view. It is to be kept in mind that an appellate court while considering an appeal against acquittal is required to be guided by the well accepted legal principle that recording of acquittal by the trial court reinforces and



strengthens the legal presumption of innocence of an accused. Unless the finding of acquittal recorded by the trial court suffers from patent infirmity, the appellate court is not required to interfere with such finding. The trial court has an additional advantage of seeing the appearance and demeanor of the witnesses during their examination.

9. We are of the considered view that the reason assigned by the trial court for recording acquittal is based on sound legal principles, in the present case.

10. We do not find any merit in this appeal, which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Nishant/-

AFR/NAFR	NAFR
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