

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.349 of 2023

Arising Out of PS. Case No.-199 Year-2012 Thana- BIHAR District- Nalanda

Nirja Yadav W/O Birendra Kumar Yadav R/O- Navinchandra Ganguli Lane,
Bari Khanjarpur, P.S.- Barari, District- Bhagalpur

... .. Appellant/S

Versus

1. The State Of Bihar
2. Sukhi Kewat S/O Late Bhagirath Kewat R/V- Balnat, P.S.- Islampur,
District- Nalanda
3. Anjani Kumar S/O Arjun Kewat R/V- Purandarpur, P.S.- Tharathari, District-
Nalanda
4. Sanjay Kumar S/O Rajeshwar Prasad R/V- Panchwa, P.S.- Neemchak
Bathani, District- Gaya

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rakesh Kumar Shrivastava, Advocate
For the Respondent/s : Mrs. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 09-01-2024

I.A. No. 01 of 2023

This application is filed by the appellant under Section 5 of the Limitation Act for condonation of delay of 54 days caused in filing the present appeal.

2. For the reason as mentioned in para-4 of the I.A., the delay of 54 days caused in filing the present appeal is condoned.

3. Accordingly, Interlocutory Application No. 01 of 2023 stands allowed and disposed of.



Cr. APP(SJ) No. 349 of 2023

4. The present appeal filed on behalf of the appellant under Section 372 of Code of Criminal Procedure, 1973 has been directed against the order of acquittal dated 17.08.2022 rendered by learned Additional District and Sessions Judge-II, Bihar Sharif, Nalanda in Session Case No. 292/2014, arising out of Bihar P.S. Case No. 199 of 2012, whereby the present three respondents/accused have been acquitted from the charges levelled against them.

5. Heard learned counsel appearing for appellant and learned APP appearing for the State.

6. That the prosecution story is in brief that on 24.07.2022 at 12:25 P.M, informant made statement before the police that Geeta Devi and Dheeraj Kumar has given Rs. 3 lakhs to Sukhi Kewat alongwith other criminals for killing informant at Registry Office, Bihar Sharif. On the basis of this information police blocked Registry Office and started to search Sukhi Kewat and others where, Subodh Kumar and Sanjay Kumar were standing with motorcycle after identification by informant, Sukhi Kewat and one other person were caught by the police in the meantime Sanjay Kumar and Subodh Kumar tried to fled away. Sanjay Kumar was caught by the police and Subodh



Kumar succeeded fled away. Sukhi Kewat sustained minor injuries during the arrest. It is further alleged that reason for the incident was that Minta Devi @ Gita Devi, the second wife of Late K.D. Singh has suspicion that her step daughter Nirja Devi and Soutan Ram Payari Devi has executed 54 decimal land situated at Rajgir Nahar.

7. After recording aforesaid information, the formal FIR came to be registered before the concerned police station and the Investigating Officer carried out the investigation, during the course of which, the Investigating Officer has recorded the statement of witnesses and collected the documentary evidence. After the investigation was concluded, the Investigating Officer filed charge-sheet against the respondents-accused for the offences punishable under Sections 115, 116 and 120-B of the Indian Penal Code (in short 'IPC').

8. Before the Trial Court, the prosecution had examined only one prosecution witness, namely, Nirja Yadav.

9. The further statement of the respondents-accused under Section 313 of the Code came to be recorded. After the conclusion of trial, the Trial Court acquitted the respondents/accused through impugned judgment from the charges levelled against them. Being aggrieved, with aforesaid



order of acquittal, appellant preferred the present appeal.

10. Learned counsel appearing on behalf of appellant submitted that learned trial court without examining the important witnesses concluded the trial. It is submitted that only one prosecution witness namely, Nirja Yadav was examined in this case who specifically stated before the Court that Mahendra Yadav called her on mobile that criminals were hired by Dhiraj Kumar and Geeta Devi against cash of Rs. 3 lakh to kill her. She also stated that respondent no. 2 Sukhi Kewat, respondent no. 3 Anjani Kumar and respondent no. 3 Sanjay Kumar were conspiring to kill them in registry office of Bihar Sharif. She also stated about pending litigation between the parties. It is submitted that said witness supported the occurrence but it was not relied upon by the Court, therefore, judgment of acquittal as recorded by learned trial court is bad in the eyes of law. It is also submitted that learned trial court ignored the testimony of said prosecution witness only for the reason that fact was supported during trial by only one witness, which is apparent from the impugned judgment itself as it is mentioned in para 12 itself: “इस तरह से एकमात्र साक्षी का साक्ष्य का कोई साक्ष्यिक मूल्य नहीं है।”

11. In view of above, it is submitted that the finding of



learned trial court is bad in the eyes of law.

12. Heard learned APP appearing on behalf of the State also.

13. It appears from the perusal of records that the trial was pending before the learned trial court for long seven years where only one prosecution witness PW-1, namely, Nirja Yadav was examined. It also appears from the record that sufficient opportunities were given to prosecution as to procure its witnesses to substantiate its case during the trial but prosecution failed to produce them. On the basis of the testimony of only witness, namely, Nirja Yadav (PW-1), it appears, from her examination-in-chief that she was present in registry office of Bihar Sharif district, where respondents Sukhi Kewat, Anjani Kumar and Sanjay Kumar were conspiring to kill them. It also appears from her deposition that as respondents came near to this witness to kill her, police chased them and arrested, where one of the co-accused Subodh ran away. It was deposed that occurrence was to grab her property. She specifically deposed that one Geeta Devi and Dhiraj Kumar to grab property of her mother which also belongs to her, hired respondent persons against cash of Rs. 3 lakh. She also stated as to lodge a case against respondent persons by her mother Ram Pyari Devi on



05.06.2012 in Islampur Police Station but interestingly, during cross-examination, she stated that she came to know about the occurrence from one Mahendra Yadav, who called her to come at Bihar Police Station, where she came from Bhagalpur. She failed to disclose the mobile no. from which she received call of Mahendra Yadav. She also stated in her cross-examination that no occurrence took place before her.

14. It would be appropriate to reproduce **Para-42** of the report of Hon'ble Supreme Court as reported in the matter of **Chandrappa and Others Vs. State of Karnataka (2007) 4 SCC 415.**

“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."

15. No doubt conviction can be recorded on the basis of testimony of single witness but same must inspire such confidence and appears trustworthy. In present case the only witness, which was examined on behalf of prosecution



contradicts her own version as deposed during examination-in-chief by stating in cross-examination that she came to know about the occurrence from one Mahendra Yadav by reducing his claim as an eye witness as deposed in examination-in-chief to that of hearsay witness. She also categorically stated that nothing happened before her. Merely on the basis of this much evidence, finding of acquittal cannot be disturbed.

16. Hence, in view of aforesaid factual and legal discussions, the present appeal, which is preferred against acquittal, is dismissed herewith, at admission stage itself.

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	NAFR
CAV DATE	NA
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