

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.196 of 2024

Arising Out of PS. Case No.-379 Year-2019 Thana- GRIYAK District- Nalanda

Foolo Paswan Son of Ram Balak Paswan Resident of Rupaspur, P.O.-
Pyarepur, P.S.- Giriak, District- Nalanda

... .. Appellant/s

Versus

1. The State of Bihar
2. Upendra Paswan @ Bhunna Son of Jalim Paswan Resident of Mauja -
Rupaspur, P.S.- Giriak, Dist.- Nalanda

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Maruth Nath Roy, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and

HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date : 13-03-2024

Heard Mr. Maruth Nath Roy, learned counsel for the
appellant/informant and Mr. Sujit Kumar Singh, learned A.P.P.
for the State.

2. The present appeal has been filed by the
appellant/informant under Section 372 of the Code of Criminal
Procedure, 1973 against the judgment and order of acquittal
dated 12.12.2023 passed by learned Additional Sessions Judge I-
cum-Special Judge at Biharsharif, Nalanda in Sessions Trial
No.184 of 2020 whereby the concerned Trial Court has acquitted



the private respondent no.2 of the charge for the offence punishable under Section 302 of the Indian Penal Code.

3. Learned counsel for the appellant/informant has supplied the copy of deposition of the prosecution witnesses and other documentary evidence. Learned counsel for the appellant has referred the same and thereafter submitted that in the present case the prosecution has proved the charge against private respondent/accused, despite which, the Trial Court has passed the impugned order, whereby the private respondent/accused person has been acquitted. It is submitted that the prosecution has examined eight witnesses including the Investigating Officer (PW-7) and the doctor (PW-8), who has conducted the postmortem examination on the dead body of deceased and the prosecution witnesses have clearly stated that during course of on going fight between Mantu Paswan and Upendra Paswan, the deceased (father of informant), who was trying to pacify the matter, was assaulted by Upendra Paswan by means of *lathi* on his head as a result of which the father of informant fell down and during course of treatment the father of informant died. P.W.8 (doctor), who had conducted postmortem examination on the dead body of deceased, stated that the cause of death was due to head injury and shock and the nature of violence was hard and blunt force impact which support the prosecution case. It is



further submitted that despite consistent evidence, the Trial Court acquitted the private respondent no.2 of the charge punishable under Section 302 of the I.P.C. Learned counsel for the appellant, therefore, urged that the present appeal requires consideration and, therefore, this appeal be admitted and thereafter the impugned order of acquittal be quashed and set aside.

4. On the other hand, learned A.P.P. submits that the ground for acquittal by the Trial Court is based on evidence and the reasons given are cogent for holding that the prosecution had failed to prove its case against the private respondent/accused. He further submits that the Trial Court has passed the impugned judgment and order by considering the material on record and is a reasoned order. Learned A.P.P. thereafter submits that the State has not preferred acquittal appeal against the impugned judgment rendered by the Trial Court. However, it has been submitted by learned A.P.P. that this Court may pass appropriate order looking to the facts of the present case.

5. Having heard learned counsel appearing for the parties and having gone through the materials placed on record, it would emerge that PW-3, Foolo Paswan is the informant/appellant, who is son of the deceased Ram Balak Paswan, had given his fardbeyan on 16.10.2019 before the Police Officer in P.M.C.H., on the basis of which, F.I.R. was registered. In the said



fardbeyan, he has stated that on 08.10.2019 at about 1:30 P.M. his father Ram Balak Paswan, aged 77 years, was sitting near a palm tree and some altercation was going on between Upendra Paswan @ Bhunna and Mantu Paswan. The deceased tried to resolve the matter, upon which Upendra Paswan assaulted the father of informant with *lathi* on his head due to which he fell down on the ground and became unconscious. Thereafter the informant came there and with the help of villagers took his father to Pawapuri Hospital for treatment but his father was referred to P.M.C.H., Patna on 10.10.2010 and he died during course of treatment on 16.10.2019.

6. Thereafter, inquest report of the deceased was prepared. After investigation, charge sheet was filed against the accused person/private respondent; learned Magistrate took cognizance and after compliance of Section 207 Cr. P.C. the case was committed to the Court of Sessions under Section 209 Cr.P.C. The charge against accused person was framed under Section 302 of I.P.C. and trial was held.

7. The learned Trial Court concluded that prosecution has not succeeded to prove the offence charged against the accused Upendra Paswan @ Bhunna for committing murder of deceased victim Ram Balak Paswan beyond all reasonable doubt and accordingly he was acquitted. Being not satisfied by the



impugned judgment of acquittal, the present appeal has been filed by the informant.

8. In the present case, it would reveal from the record that out of eight prosecution witnesses PW-2 Mantu Paswan is a material witness who has been declared hostile. He has deposed that his statement was not recorded by the police. PW-3, Foolo Paswan is the informant of the case who is not the eye witness. In the F.I.R. he clearly stated that he came to the alleged place of occurrence after getting information. PW-6 Bharat Paswan also deposed that at the time of incident, he was at Khanda and came at the place of occurrence on hearing hulla. When he reached the place of occurrence he saw the deceased Ram Balak Paswan was lying unconscious on the ground and he made hulla and 8 to 10 villagers as well as family members of informant namely Radhe Paswan (PW-5), Foolo Paswan, informant (PW-3), Shiv Kumar Paswan (PW-1) and Teju Paswan, son of informant (PW-4) came at the place of occurrence after 15 minutes of hulla. This shows that prosecution witnesses PW-1, PW-3, PW-4, PW-5 and PW-6 are hearsay witnesses and are not the witnesses of the incident.

9. PW-8, the doctor who has conducted postmortem of deceased deposed that there was no external injury on the deceased and opined the cause of death due to head injury and shock. In his cross-examination, he has admitted that age of



deceased was 77 years and such death may be caused due to shock. PW-5 deposed that deceased was assaulted with *lathi* on his leg and not supported the allegation of assault on head of deceased which contradicts the cause of death as head injury and shock. Thus, it is clear that medical evidence does not support the prosecution case.

10. It further transpires that during course of the treatment, the father of the informant died. However, the doctor who had given the treatment to the deceased was not examined by the prosecution which also creates doubt in the prosecution version.

11. It also reveals that the incident took place on 08.10.2019 and deceased was firstly taken to Government Hospital for treatment and then admitted to P.M.C.H., Patna on 10.10.2019 but neither the informant nor any witnesses informed about the incident to police station. The F.I.R. was registered on 01.11.2019 which also creates doubt in the prosecution case.

12. It is well established position of law that if the Trial Court has taken a view which is a possible view in a reasonable manner, then the same shall not be interfered. Only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be totally perverse or wholly unsustainable, the appellate Court can interfere with the order of



acquittal. Presumption of innocence in favour of the accused further gets reinforced and strengthened by the acquittal of the Trial Court. The appellate Court cannot overturn acquittal only on the ground that after reappreciating evidence, it is of the view that the guilt of the accused was established beyond reasonable doubt. Only by recording such a conclusion, an order of acquittal cannot be reversed unless the appellate Court also concludes that it was the only possible conclusion.

13. Recently, the Hon'ble Supreme Court in **H.D. Sundara and Others vs. State of Karnataka**, reported in **(2023) 9 SCC 581** has summarised the principles, which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 Cr.P.C. in paragraph 8 as under:

- "8.1. The acquittal of the accused further strengthens the presumption of innocence;*
- 8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;*
- 8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;*
- 8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and*



8.5. *The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”*

14. The Hon’ble Supreme Court in **Nikhil Chandra Mondal vs. State of West Bengal**, reported in **(2023) 6 SCC 605** has observed in paragraph 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.”

15. We have also gone through the reasoning recorded by the learned Trial Court while passing the impugned judgment and order and we are of the view that the Trial Court has not committed any error while passing the same. The view taken by the Trial Court could not be said to be either perverse, illegal or impossible to warrant interference. We are of the view that the



prosecution has failed to prove the charge against the private respondent/accused person beyond reasonable doubt and, therefore, the Trial Court has rightly given the benefit of doubt to the private respondent/accused and thereby not committed any illegality as contended by the learned counsel for the appellant. No interference with the impugned judgment and order of acquittal is warranted.

16. In view of the aforesaid discussion, the present Appeal fails. Accordingly, the same is dismissed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

Harish/-

AFR/NAFR	NAFR
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