

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.279 of 2020

Arising Out of PS. Case No.-182 Year-2009 Thana- DEEPNAGAR District- Nalanda

Manish Pandey Son of Upendra Pandey, Resident of Lala Toli, Mogalpura,
Nagla, Post- Jahuganj, P.S. Khajkalan, District- Patna.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Sujeet Kumar @ Jitendra Kumar Son of Rajendra Singh Resident of Village
- Maghara, P.S.- Deepnagar, Dist.- Nalanda, (Accused)

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Prakash Chandra Agrawal, Advocate.
	:	Mr. Prince Khatri, Advocate.
	:	Mr. Alok Kumar, Advocate.
For the State	:	Mr. Dilip Kumar Sinha, APP.
For the Res. No.2	:	Mr. Rama Kant Sharma, Sr. Advocate.
	:	Mr. Rabindra Kumar, Advocate.
	:	Mr. Rakesh Kumar Sharma, Advocate.

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

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

Date : 12-03-2024

Re:-I.A. No.02 of 2023

in Cr. Appeal (DB) No.279 of 2023

The present interlocutory application has been filed
for substitution of the appellant as the original appellant, namely,
Shanti Devi, died on 24.08.2022.

2. Heard Mr. Prakash Chandra Agrawal, learned



counsel for the appellant/applicant, Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor appearing on behalf of the Respondent-State and Mr. Rama Kant Sharma, learned Senior Counsel assisted by Mr. Rabindra Kumar and Mr. Rakesh Kumar Sharma, learned counsels for the private respondent no.2-original accused.

3. We have perused the averments made in this application. We have also considered the submissions canvassed by the learned counsels appearing for the parties. In view of the averments made in this application, the the I.A. No.02 of 2023 stands allowed.

4. Manish Pandey, who is son of the deceased Upendra Pandey is permitted to be brought on record in place of appellant late Shanti Devi.

Cr. Appeal (DB) No.279 of 2023

5. The present criminal appeal has been filed under Section 372 of the Code of Criminal Procedure, 1973 by the appellant-original informant who was the mother of deceased challenging the judgment and order of acquittal dated 09.07.2019 passed by learned Presiding Officer, Fast Track Court-I, Nalanda at Bihar Sharif (hereinafter referred to as 'the Trial Court') in S.T. No.202 of 2010 (arising out of Deep Nagar P.S. Case No.182 of 2009) whereby the Trial Court has acquitted



the present private respondent.

6. The brief facts leading to the filing of the present appeal are as under :

7. The present appellant-original informant gave her *fardbeyan* at her residence to the concerned police authority in which she has stated that on 29.08.2009 at about 5 p.m. her son Upendra Pandey was coming from tuition. When he reached in front of the house of Yogendra @ Chhoten Pandey, the accused gave blow of *bhala* (spear) in his abdomen, again he gave next blow of *bhala* (spear) but the same was caught by him, resulting hand injury. She has further alleged that the same accused had also assaulted Upendra Pandey prior to this occurrence.

8. After recording the *fardbeyan* of the informant, the Investigating Officer registered the formal F.I.R. and thereafter commenced the investigation. During the course of investigation he recorded the statement of the witnesses and collected the necessary evidence against the respondent-accused. After a period of six days, the injured Upendra Pandey died and, therefore, Section 302 of I.P.C. came to be added. After the investigation was over, the Investigating Officer filed the chargesheet against the present accused before the concerned Magistrate Court, the same was committed to the Sessions Court under Section 209 of the Code.



9. Before the Trial Court, the prosecution has examined ten witnesses, thereafter, statement of the accused under Section 313 of the Code came to be recorded.

10. Thereafter the Trial Court passed the impugned order of acquittal against which the appellant has preferred the present appeal.

11. Heard Mr. Prakash Chandra Agrawal, learned counsel for the appellant/applicant, Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor appearing on behalf of the Respondent-State and Mr. Rama Kant Sharma, learned Senior Counsel assisted by Mr. Rabindra Kumar and Mr. Rakesh Kumar Sharma, learned counsels for the private respondent no.2-original accused.

12. Learned counsel for the appellant-informant would mainly submit that there are three eye witnesses to the occurrence in question i.e. the father, mother and son of the deceased who have supported the case of the prosecution. It is further submitted that medical evidence also supports the version given by the eye witnesses. The Investigating Officer also found blood stains at the place of occurrence and the murder weapon i.e. *bhala* (spear) was also discovered at the instance of the accused, despite which the Trial Court has recorded the impugned order of acquittal in favour of the private respondent



herein. Learned counsel would further submit that though there are minor discrepancies in the deposition given by the prosecution witnesses and there are certain lacuna on the part of the Investigating Officer as well as the prosecution, the benefit of the same could not have been given to the respondent-accused. Learned counsel, therefore, urged that when the homicidal death of the deceased, Upendra Pandey has been duly proved and the manner in which the occurrence had taken place was also duly proved by the deposition of the eye witnesses which has been supported by the medical evidence, the Trial Court ought to have pass an order of conviction and, therefore, this appeal be admitted and thereafter the impugned order passed by the Trial Court be quashed and set-aside and thereby the private respondent-accused be convicted.

13. On the other hand, Mr. Rama Kant Sharma, learned Senior Counsel appearing on behalf of the private respondent has vehemently opposed this appeal. Learned senior counsel would submit that in fact there are no eye witness to the occurrence in question and P.W.1, P.W.2 and P.W.3 are near relatives of the deceased. Though independent witnesses were available at the place of occurrence, they have not been examined by the prosecution. It is further submitted that two independent witnesses have been examined, they have not



supported the case of prosecution and in fact P.W.1, P.W.2 and P.W.3 are chance witnesses and there are major contradictions in the deposition of the said witnesses. It is further submitted that their presence at the place of occurrence is also doubtful. Learned counsel has referred the deposition of the prosecution witnesses and thereafter pointed out the major contradiction in the deposition. It is also submitted that P.W.1, P.W.2 and P.W.3 are the near relatives and, therefore, their deposition is required to be scrutinized carefully.

14. Learned Senior Counsel further submits that even the medical evidence also does not fully support the version given by the eye witnesses. It is pointed out from the record that though it is alleged that murder weapon i.e. spear was discovered at the instance of the respondent-accused, the same was not signed by the concerned Officer of the Court nor there is any signature of the In-charge of *Malkhana*. It is further submitted that said weapon was not sent for necessary analysis to the F.S.L.

15. Learned counsel further submits that the person who have brought the injured to the hospital have not been examined by the prosecution, thus the prosecution has failed to prove the case against the respondent-accused beyond reasonable doubt and, therefore, no error is committed by the



Trial Court while passing the impugned judgment and order of acquittal.

16. Learned counsel for the private respondent at this stage has placed reliance upon the decision rendered by this Court on 10th January, 2024 in Cr. Appeal (DB) No.550 of 2023 wherein this Court has, after considering various decisions rendered by the Hon'ble Supreme Court has laid down the principle for entertaining the acquittal appeal. It is submitted that when there are two views possible on the basis of evidence on record, the appellant should not disturb the finding of acquittal recorded by the Trial Court. Learned counsel, therefore, urged that the present appeal be dismissed.

17. Learned Additional Public Prosecutor has also opposed the present appeal, however, learned A.P.P. has fairly submitted that looking to the present case, this Court may pass appropriate order. It is also submitted that till today the State has not preferred any acquittal appeal against the impugned judgment and order of acquittal.

18. We have considered the submissions canvassed by the learned counsels appearing for the parties, we have also perused the evidence i.e. the deposition of the prosecution witnesses supplied by learned counsel for the appellant. From the material placed on record, it would emerge that prosecution



had examined altogether ten witnesses before the Trial Court.

19. P.W.3, Shanti Devi is the mother of the deceased, her *fardbeyan* was recorded at her residence at about 09.00 p.m. on the date of occurrence i.e. 29.08.2009. In her examination-in-chief, she stated that on 29.08.2009 at about 5:00 P.M. while her son was returning from tuition and reached near the house of Yogendra Shashtri @ Chhotan Pandey, one Sujit Singh @ Jitendra Singh of her village inflicted bhala blow on left side of his abdomen. P.W.3, Shanti Devi has admitted that she along with her husband was present at the place of occurrence at that time. She further deposed that when her son tried to escape, another bhala blow was given which hit on his hand, her son screamed but none turned up to save him. P.W.3 further deposed that her son was brought to Bihar Sadar Hospital but he was referred to Patna for better treatment. Police recorded her statement at her home. In para 14 of her cross-examination, she had deposed that Manish Pandey is her grandson. She has denied the suggestion that Rajendra Singh (father of Sujit) had lodged a case of theft against her son and grandson Manish prior to the alleged occurrence. She herself stated that later on 3-4 cases were filed. She admitted in para 24 that her son was fallen in unconscious state, he had not told anything to her but P.W.3 neither caught nor touched her son. Meanwhile, none had turned



up.

20. P.W.2, Sheo Ratan Pandey, father of deceased has supported the version of his wife and stated that at the time of occurrence, his son was at the door of Yogendra Shashtri who was giving Khaini to his son, at that time accused gave Bhala blow to Upendra Pandey due to which he sustained injury on his abdomen as well as on his hand. In para 2, he has also stated that on hulla of his son none came there, injured was brought to Sadar Hospital, Bihar Sharif, but referred to Patna where he died during the course of treatment.

20.1. However, during course of cross-examination, he has stated that the police came at his house and recorded his statement on which he signed. In para 6, he had deposed that when the police came at this house, his injured son was in hospital. He admitted that after occurrence his son was brought to the hospital by his nephew, daughter-in-law and grandson and he along with his wife were present at his house and did not go to the hospital rather after 3-4 days, he went Patna to look after his son. In para 26, this witness has stated that he cannot say whether his son was brought to N.M.C.H. instead of P.M.C.H. and further to I.G.I.M.S. P.W.2 has denied the suggestion that he and his wife did not see any occurrence and no such occurrence took place and due to old enmity, the accused person has been



falsely implicated in this case.

21. P.W.1, Rajnish Kumar, who is son of deceased, has stated in his deposition that he was also present with his father at the door of Yogendra Shashtri, and his father was giving Khaini to Shashtri at that time accused gave bhala blow to his father due to which he sustained injury and he was brought to Sadar Hospital for treatment. In para 26, he has admitted that he did not go to Patna with his injured father for treatment and he has not seen any paper of Sadar Hospital regarding treatment and he cannot say who has brought his father to Patna for treatment and in para 35 he stated that he did not try to rescue his father and denied the suggestion that he was not present on the spot and he has stated such facts only to become an eye witness in this occurrence.

22. P.W.4, Krishna Nandan Pandey, P.W.5, Ashutosh Kumar and P.W.6, Ranjeet Kumar, who are the independent witnesses, have not supported the prosecution case. They have turned hostile.

23. P.W.7, Dr. Buddha Prakash, is the Doctor who had conducted the post-mortem on the dead body of the deceased. The said witness has deposed in his deposition as under:-

Rigor mortise present in all limbs.



Stitched wound left side of Axillary region and second stitched wound over antero lateral aspect of left rib cage over 10th and 11th ribs. After opening of stitched margin of both wound are sharp cut, and both are parallel to each other and diameter 4" x 1/2" x cavity deep.

Another stitched wound over palmar aspect of left forearms which was bandaged. After removing the bandage and stitch the diameter was 4" x 1" x 1/2" margin were sharp cut.

On dissection:

Cranial cavity – pale brain material.

Thoracic cavity – is full of blood and blood clot;

Heard camber cavity.

Lung- right side intact left side ruptured with clot inside it.

Abdominal cavity- All viscera are intact & pale.

Stomach empty; Liver pale; Urinary Bladder empty; External genitellian intact.

Cause of death- *shock & haemorrhage, injuries produced by sharp cutting weapons;*

Time since death between 12 to 24 hours.

The above injuries are sufficient to cause death.

This Postmortem report is in his pen & signature & the same is marked as Ext.2.

24. P.W.8 Deo Narain Paswan, who has deposed that on 29.08.2009 he had recorded the fardbeyan of Shanti Devi (P.W.3) on which she and her husband had signed. He has also



stated that he went to Patna on 01.09.2009 and recorded statement of Upendra Kumar in I.G.I.M.S. who was admitted in hospital and after read over & explain to him, he signed. In para 6 he has also stated that on 06.09.2009 he received information on phone about death of Upendra Pandey, he prepared inquest report after coming of dead body. He also stated that confessional statement of accused has been recorded and on the basis of confessional statement Bhala was recovered. In para 11 he has also stated that Bhala was brought by Jyot Ram, A.S.I. & Nanthan Gope from Malkhana of Deepnagar.

24.1. However, during the course of cross-examination, he has admitted that neither any P.S. case, nor any signature of Judicial Magistrate, nor signature of In-charge of Malkhana, nor any sign of blood present on Bhala and such type of Bhala is generally kept by public in his house. In para 14 he has also stated that Bhala was recovered from Parti land in forest and he did not record statement of owner of land, nor sent the alleged blood on Bhala for examination.

25. P.W.9 Jyot Ram, A.S.I., who has deposed that no letter has been given to him to bring Bhala to Malkhana.

26. P.W.10 Nandan Gope, Chaukidar, who has deposed that on 26.02.2018 he produced Bhala on the order of In-charge and he has also brought Bhala. He has also admitted



that on 10.10.2017 the same Bhala was produced by him along with Jyot Ram.

27. From the aforesaid deposition given by the prosecution witnesses, it would emerge that P.W.1, P.W.2 and P.W.3 have claimed that they are the eye witness to the occurrence, however, if the deposition of P.W.1 who is the son of the deceased is carefully seen in examination-in-chief itself, the said witness has stated that he was present alongwith his father and none else was present at the said place. There is a reference with regard to one Yogendra Shashtri who was also present at the place of occurrence, however, it is pertinent to note that Yogendra Shashtri has not been examined by the prosecution. The said witness is an independent witness. It is further revealed from the record that though P.W.1, P.W.2 and P.W.3 have claimed that they are eye witness to the occurrence in question, the injured was taken to the hospital by another son of the injured and not the P.W.1. It is not the case of prosecution that the another son was present at the place of occurrence, thus it appears that the so called eye witnesses present at the place of occurrence who are near relatives of the deceased have not taken the injured to the hospital and some other persons including the villagers have brought the injured to the hospital, thus the conduct of the so called eye witnesses is doubtful. It is also



reflected from the record that the Investigating Officer has recorded the statement of the injured on 31.08.2009 when he was in the hospital, however, the Investigating Officer has specifically admitted that he had not obtain the endorsement of the doctor that whether the patient was in a position to give statement or not ?

28. The said Investigating Officer also did not inform to the Executive Magistrate for recording the dying declaration of the said injured. It further transpires from the record that the injured was admitted in the hospital on 29.08.2009 and he succumbed to the injuries on 06.09.2009. However, the prosecution has failed to bring on record the treatment given to the injured during the said period. The doctor who had given the treatment to the injured has not been examined by the prosecution.

29. It is a case of the prosecution that on the basis of confessional statement of the accused spear i.e. *Bhala* was discovered, however, the Investigating Officer specifically admitted during cross-examination that he had not sent the said weapon for necessary analysis to the F.S.L. The seizure list is not duly proved. The Investigating Officer has also admitted that there is no signature of any Judicial Officer on the said weapon nor there is any signature of the In-charge of *Malkhana*. He has



not recorded statement of the owner of the land from where the said weapon was discovered. Thus, the so called discovery of the weapon at the instance of the accused is also not duly proved.

30. At this stage it is also pertinent to note that the statement of the injured Upendra Pandey was recorded by the Investigating Officer. Learned counsel for the appellant has read the said statement from the case diary. Even from the said statement of the injured, it would reveal that only the mother of the said injured was present at the place of occurrence alongwith other villagers and not the P.W.1 and P.W.2 as projected by the prosecution.

31. As observed herein-above, P.W.4, Krishna Nandan Pandey, P.W.5 Ashutosh Kumar Pandey as well as P.W.6 Ranjeet Kumar Pathak are independent witnesses, however, they have not supported the case of prosecution and were declared hostile.

32. At this stage we would like to refer the deposition given by P.W.7, Doctor who had conducted the post-mortem of the dead body of the deceased which is set out herein-below:-

- 4. If a person falls on penetrating sharp cut weapon such type of injuries are possible.*
- 5. Shock and haemorrhage lead to cardio respiratory failure i.e. death.*



33. At this stage it is also relevant to note that the defence has submitted that deceased i.e. Upendra Pandey fell from roof and sustained sharp edged cut injury. The documentary evidence to that effect i.e. Ext.H/1 was produced before the Court, in which the attending doctor was told by the family member of Upendra Pandey that the injury caused due to fall of patient on sharp object, thus it appears that the aforesaid important aspect was suppressed by the prosecution. At this stage it is also required to be observed that the doctor who had conducted the post-mortem of the dead body of the deceased has stated in examination-in-chief that the cause of death was due to shock and haemorrhage, injury is produced by sharp cutting weapon, however, from the documentary evidence produced by the defence vide Ext.H/2 i.e. the death certificate dated 06.09.2009 issued by the concerned hospital, the cause of death is given as cardio respiratory failure.

34. In view of the aforesaid facts and circumstances of the present case, it appears that the prosecution has only placed reliance upon the deposition of so called three eye witnesses who are near relatives of the deceased i.e. father, mother and son of the deceased. We are of the view that the deposition of the said witnesses is not trustworthy and credible in view of the aforesaid discussion.



35. At this stage we would like to refer the decision rendered by this Court on 10th January, 2024 in Cr. Appeal (DB) No.550 of 2023, the Division Bench of this Court has, after considering the decisions rendered by the Hon'ble Supreme Court has observed in paragraph no.21 & 22 as under :-

*21. At this stage, it is also pertinent to note that we are dealing with the acquittal appeal filed by the informant against the order of acquittal rendered by the concerned trial court. 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-42** as under:-*

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

(1) An appellate court has full power to review, re appreciate 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 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 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.”

22. 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.”

36. From the aforesaid observations it can be said that there is double presumption in favour of the accused when the order of acquittal has been recorded by the Trial Court, firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence is 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.

37. Keeping in view the aforesaid decisions rendered by this Court as well as the Hon'ble Supreme Court, if the evidence laid by the prosecution and the reasoning recorded by the Trial Court are examined, we are of the view that trial



court has not committed any error while passing the impugned order of acquittal in favour of the private respondent-accused herein. Thus, looking to the overall facts and circumstances of the present case, we are not inclined to interfere with the impugned order.

38. Accordingly, the present appeal stands dismissed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	NA
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