

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.270 of 2023

Arising Out of PS. Case No.-80 Year-2018 Thana- BELSAND District- Sitamarhi

Md Shamse Alam son of Atiur Rahman, Village -Dariyapur, PO- Kansar, P.S.
Belsand, District- Sitamarhi

... .. Appellant/s

Versus

1. The State of Bihar
2. Safidul son of Md. Chulhai, Village- Dariyapur, PS- Belsand, Dist-
Sitamarhi
3. Ansarul Haque son of Md. Chulhai, Village- Dariyapur, PS- Belsand Dist-
Sitamarhi

... .. Respondent/s

Appearance :

For the Appellant/s	: Mr. Shiv Kumar Prasad, Advocate
For the State	: Mr. Sujit Kumar Singh, APP
For the Respondent nos. 2 & 3	: Mr. Dinesh Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date : 25-04-2024

Heard Mr. Shiv Kumar Prasad, learned counsel for the informant/appellant, Mr. Sujit Kumar Singh, learned A.P.P. for the State and Mr. Dinesh Jha, learned counsel for private respondent nos.2 and 3.

2. The present appeal has been filed by the informant/appellant under Section 372 of the Code of Criminal Procedure, 1973 against the judgment and order of acquittal dated 24.01.2023 passed by learned Additional Sessions Judge



XIII, Sitamarhi in Sessions Trial No.337 of 2019 arising out of Belsand P.S. Case No.80 of 2018 (G.R. No.1964 of 2018) whereby the concerned Trial Court has acquitted the private respondents/accused persons of the charges for the offences punishable under Sections 341, 326 and 307/34 of the Indian Penal Code.

3. Learned counsel has provided all the relevant documents and the deposition of witnesses. We have gone through the lower court records.

4. The Prosecution story in brief, as per the statement of the informant/appellant, namely, Shamse Alam which was recorded on 11.05.2018 at 13:22 hrs. by Sub-Inspector Bigau Ram of Sitmarhi P.S. at Doctor Barun Kumar Hospital, Sitamarhi, on 10.05.2018 is that a *panchayati* was being proceeded in the village at 08:00 p.m. but during the *panchayati* proceeding accused persons, namely, Safidul, Anwarul and Raza started abusing and rushed to their residence and came out with knife, *dabiya* and the accused Safidul tried to assault with *dabiya* which was avoided by Nazre Alam (brother of the informant) then the accused Anwarul tried to assault with knife which was again avoided by Nazre Alam then accused Raza assaulted the informant with knife over right side of his chest



causing cut injury and bleeding. It is further alleged that Raza had pistol also in his hand who was apprehended by village people but Anwarul fled away.

5. On the basis of aforesaid *fardbeyan*, the F.I.R. was registered as Belsand P.S. Case No.80 of 2018 under Sections 341, 326 and 307/34 of I.P.C. against three accused persons.

6. During investigation, all the three accused persons were arrested and the accused Raza was forwarded to the Juvenile Justice Board, Sitamarhi after separating his record. After investigation, final form was submitted against all the three accused persons but cognizance was taken against all three accused persons and a copy of cognizance was sent to Juvenile Justice Board, Sitamarhi in which the Board separated the record of accused Raza @ Md. Firdos. Thereafter the case of two accused persons, namely, Safidul and Anwarul was committed to the Court of Sessions. The charges against two accused persons/private respondents under Sections 341, 326 and 307/34 of I.P.C. were framed to which both the accused persons denied and claimed trial. After production of prosecution witnesses, the statements under Section 313 Cr.P.C. of both the accused persons/private respondents were recorded in which they claimed to be innocent and denied the allegations



levelled against them.

7. Before the Trial Court, the prosecution had examined seven witnesses and also produced documentary evidence. No oral evidence on behalf of the defence was produced. Two documentary evidences were produced and exhibited on behalf of the defence.

8. Learned counsel for the appellant has referred the depositions of prosecution witnesses and submitted that the Trial Court did not properly consider the oral and documentary evidence led by the prosecution. The Trial Court ought to have considered the evidence of PW.4 (informant), who was injured and had supported the prosecution case. Even the Trial Court has not considered the injury found on the body of the informant which was supported by the medical evidence. The Trial Court also did not consider the evidence of PW.1 who had deposed that the informant had sustained knife injury in his chest and blood was oozing. Despite sufficient evidence on record, the Trial Court has acquitted the private respondents of the charges punishable under Sections 341, 326 and 307/34 of the I.P.C. Learned counsel for the appellant, therefore, urged that the impugned judgment of acquittal be quashed and set aside.

9. On the other hand, learned counsel for private



respondent nos.2 and 3 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 respondents/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. After considering the facts that the specific allegation of inflicting knife blow over the chest of the informant was against accused Raza (who is not facing trial in this case), no sufficient corroboration for restraining of the informant by both accused persons, Nazre Alam (brother of informant) was not produced before the Court to corroborate the prosecution case and in view of contradictory statement of prosecution witnesses, the Trial Court acquitted the accused persons/private respondents of the charges under Sections 341, 326 and 307/34 of I.P.C. Therefore, it is urged that this appeal is liable to be dismissed.

10. Having heard learned counsel appearing for the parties and having gone through the materials placed on record, it would emerge that the prosecution in support of its case produced seven witnesses out of which PW-4 Md. Shamse Alam is informant/appellant, PW-3 Md. Dilshad @ Saood has been declared hostile who did not support the prosecution case, PW-5



is Subhash Prasad (I.O.), PW-6 is doctor of private hospital and PW-7 is doctor of Sadar Hospital, Sitamarhi where the informant was treated. PW-1 is Habibur Rahman who is a seizure list witness and PW-2 is Md. Zafir who claims to be an eye witness of the incident.

11. The prosecution has produced and exhibited following documents:

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| Ext.1 | Signature of PW-1 on seizure list |
| Ext.1/1 | Signature of Md. Zafir over seizure list |
| Ext.2 | Signature of informant on <i>fardbeyan</i> |
| Ext.2/1 | Signature of Md. Nazre Alam over <i>fardbeyan</i> |
| Ext.2/2 | Protest petition |
| Ext.3 | Original agreement dated 19.06.2013 |
| Ext.4 | Formal FIR |
| Ext.5 | Endorsement of Officer-in-charge of P.S. Belsand marked over the <i>fardbeyan</i> dated 11.05.2018 |
| Ext.6 | Seizure List |
| Ext.7 | Arrest Memo |
| Ext.8 | Injury report of the informant prepared by Dr. Varun Kumar (PW-6) |
| Ext.9 | Injury report of the informant prepared by Kamleshwari Prasad Dev of Sadar Hospital, Sitamarhi |
| Ext.X | C.D. |

12. Defence has produced only two documentary evidences which are as under:

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| Ext.A | Khesra Paper dated 09.05.2017 regarding money dispute |
| Ext.A/1 | Signature of Tammann over Khesra Paper dated 09.05.2017 |

13. PW-1 Habibur Rahman is not an eye witness of



occurrence and he deposed that on the day of occurrence a *panchayati* proceeding was started between the parties but it was adjourned and both the parties went to their home. After 10-15 minutes, he heard the *hulla* that someone has inflicted knife blow to someone. He had seen that Shamse Alam had been inflicted knife blow on his right chest and was being carried on motorcycle. The police had taken statement of the villagers of village Dariyapur who had told that Raza had given knife blow to the informant. Knife and *dabia* were given by *Chaukidar* to *Darogajee* who prepared seizure list on which he had signed. In his cross-examination, he has admitted that knife or *dabia* was not recovered in his presence from any accused persons. It appears from his deposition that he has not named the private respondents in the occurrence.

13.1. PW-2 Md. Zafir, who is cousin brother-in-law of the informant, has deposed that after close of *panchayati* proceeding both parties were engaged in verbal fighting. He tried to pacify both parties. Safidul had *dabia* in his hand and Anwarul had knife in his hand who had assaulted on Nazre Alam. Raza @ Firdos assaulted Shamse Alam with knife over his chest. He (PW-2) carried away the injured Shamse Alam to Belsand Hospital from where he was referred to Sadar Hospital.



The injured was then taken to Dr. Varun Kumar, Sitamarhi where his treatment was done. He has stated that the reason for incident was money dispute between Tammne and Nazre Alam. In his cross-examination, he has admitted that blood was present on knife and not on *dabia*.

13.2. PW-4 Shamse Alam is the informant of this case. In his deposition, he deposed that there was money dispute between Tammne Alam and Nazre Alam (brother of informant) who are *shadhu* (brother-in-law) themselves and *panchayati* in this regard could not succeed. This witness, his brother Nazre Alam and their father were going through the road and reached in front of residence of Safidul, immediately thereafter Safidul attacked over Nazre Alam with *dabiya* and Anwarul attacked over Nazre Alam with knife and Raza attacked over this witness inflicting knife blow on his right chest. Thereafter, Noor Mohammad assaulted him (informant) with *lathi* over his head which could not hurt and the informant received injury over his left shoulder. He further stated that thereafter Zafir and Nazre Alam brought him to police station from where he was sent to Belsand Government Hospital where he was given first aid and was referred to Sadar Hospital, Sitamarhi from where he was referred to Muzaffarpur but he was brought to the hospital



of Dr. Varun Kumar where he was kept in I.C.U. for eight days. He also stated that his statement was recorded on 11.05.2018 by Sub-Inspector of Belsand P.S. He further deposed that his statement was not properly recorded by police therefore, he had filed protest petition (Ext.2/2) in the Court because the police had not submitted charge sheet against Noor Mohammad and Tamanne. In his cross-examination, in para 14 he has admitted that for the same occurrence Anwarul has lodged a case which is pending in Belsand and the same is false.

13.3. PW-7 is Dr. Manoj Kumar, who has identified the writing and signature of Dr. Kamleshwari Prasad Dev, who had given medical treatment to the injured.

13.4. PW-6 is Dr. Varun Kumar, who is a doctor in private hospital, Sitamarhi and he stated that he found stabbed injury over the right side of chest valve below clavicle in 2nd intercoastal space medial to nipple piercing the lungs. He has prepared the injury report (Ext.8). In his cross-examination, he has stated that he had got no paper with respect to the previous treatment of the patient.

13.5. PW-7 Dr. Manoj Kumar, Medical Officer of Sadar Hospital, Sitamarhi is a formal witness who proved Ext. 9 (injury report of informant prepared by Dr. Kamleshwari Prasad



Dev of Sadar Hospital, Sitamarhi).

13.6. PW-5 Subhash Prasad is the I.O. who has proved Exts.2/3 (signature of Bigau Ram on *fardbeyan*), Ext.4 (formal FIR), Ext.5 (endorsement of Officer-in-charge of P.S. Belsand marked over *fardbeyan*), Ext.6 (seizure list), Ext.7 (Arrest Memo). He has deposed that the place of occurrence was the road in front of the house of accused Md. Safidul. He has collected injury report, received supervision report and on completion of the investigation, submitted charge sheet in the Court against Safidul, Anwarul and Raza @ Firdos. In his cross examination, he has admitted that he had not sent blood of injured and the blood mark over the seized knife for F.S.L. examination. He also admitted that blood stained clothes were neither given by the informant nor the same were seized. He also admitted that he is the Investigating Officer of Belsand P.S. Case No.79 of 2018 whose informant is Anwarul Haque.

14. From perusal of the evidences and materials available on record, it would reveal that Nazre Alam, who is material witness, was not produced by the prosecution to corroborate the allegation that he was attacked by the private respondents. The prosecution has not explained the reason for not producing Nazre Alam before the Court. The I.O. deposed



that knife was handed over by the father of informant but PW-1 stated that knife and *dabia* were given by *Chaukidar* to I.O. The knife was not recovered by the I.O. rather it was handed over by the *Chaukidar* to the I.O. on the next day of the occurrence. The said *Chaukidar* was also not produced by the prosecution. The seized knife was not sent to F.S.L. examination. The allegation of inflicting knife blow on the informant is not against the private respondents rather it is on the accused Raza @ Firdos whose trial is separated being juvenile.

15. In **H.D. Sundara and Others vs. State of Karnataka**, reported in (2023) 9 SCC 581 the Hon'ble Supreme Court 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.”*

16. 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.

17. In **Nikhil Chandra Mondal vs. State of West Bengal**, reported in **(2023) 6 SCC 605** the Hon'ble Supreme Court 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.”

18. 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.

19. We are of the view that the prosecution has failed to prove the charges against the private respondents/accused persons beyond reasonable doubt and, therefore, the Trial Court has rightly given finding that prosecution has not been able to prove its case against both accused persons/private respondents beyond shadow of all reasonable doubts 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.

20. In view of the aforesaid discussions, the present Appeal fails. Accordingly, the same is dismissed.



21. In the result, the impugned judgment of acquittal to the private respondents is confirmed.

22. The Trial Court records of the instant appeal be returned to the Trial Court forthwith.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

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CAV DATE	
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