

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.321 of 2024

Arising Out of PS. Case No.-396 Year-2018 Thana- BIHTA District- Patna

Pushpa Devi, Wife of Santosh Kumar, Resident of Village- Bishambaharpur,
P.S.- Bihta, Dist- Patna

... .. Appellant

Versus

1. The State of Bihar
2. Nirbhay Rai, Son of Dharampal Rai, Resident of Village- Bishambaharpur,
P.S.- Bihta, Dist- Patna
3. Bhim Rai, Son of Raj Kumar Rai, Resident of Village- Bishambaharpur,
P.S.- Bihta, Dist- Patna
4. Atal Bihari, Son of Raj Kumar Rai, Resident of Village- Bishambaharpur,
P.S.- Bihta, Dist- Patna
5. Prakash Kumar @ Fuku, Son of Bindeshwari Rai, Resident of Village-
Bishambaharpur, P.S.- Bihta, Dist- Patna
6. Lallan Rai, Son of Shiv Prasad Rai, Resident of Village- Bishambaharpur,
P.S.- Bihta, Dist- Patna

... .. Respondents

Appearance :

For the Appellant	:	Mr. Amit Pandey, Advocate
For the Respondent No.2:		Mr. Arun, Advocate
		Mr. Md. Anwar, Advocate
For the Resp. No.3 to 6	:	Mr. Rajesh Ranjan, Advocate
		Ms. Maria Nazir, Advocate
For the State	:	Mrs. Usha Kumari 1, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)

Date : 25-09-2024

The present criminal appeal has been filed under Section 14A (1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short ‘ SC/ST Act’) and under Section 372 of the Code of Criminal Procedure, 1973 (in short ‘ Cr.P.C.’)



against the judgment and order dated 18.01.2024 passed by the learned Exclusive Special Judge SC/ST Act, Patna in Trial Special Case No. 176 of 2018 arising out of Bihta P.S. Case No. 396 of 2018 by which the respondent no. 2 to 6 (hereinafter referred to as 'respondents') have been convicted for the offences punishable under Sections 341 and 323 read with Section 34 of IPC and also convicted for the offence under Section 3(2)(va) of SC/ST Act. The respondents have however been acquitted of the charges under Sections 307 and 379 of IPC and also acquitted of the charge under Section 27 of the Arms Act and Section 3(1)(r) of SC/ST Act. Being dissatisfied and aggrieved by the acquittal part of the judgment, the appellant who is the daughter-in-law of the informant and also an injured, has preferred the instant appeal claiming herself to be one of the victims of the alleged occurrence.

Prosecution's Story:-

2. The prosecution story in brief is that on 18.04.2018 when the appellant's father-in-law, namely, Lal Das, was leveling the disputed land and filling the same with soil by using a hired J.C.B. Machine, then the respondents/accused Nirbhay Rai, Bhim Rai, Atal Bihari, Prakash Kumar, Lallan Rai and some others who belonged to appellant's village, came and hurled caste based abuses/abusive words at the informant, father-in-law of the



appellant, with saying that the land upon which the prosecution party had started the work of filling it with soil, belonged to the government and forbade them from filling the land with soil and thereafter, all the respondents and others, who were armed with weapons at that time, assaulted the informant, appellant and appellant's physically challenged daughter and thereby caused injuries to them and during the occurrence, a chain wore by the appellant was also snatched by the accused and when the local people came, the accused fled away. As per the informant, the land upon which the work of leveling and filling with soil was going on, had been allotted to him by the government in the year 1976.

3. The informant, Lal Das, filed a written report (Ext.- 1) at Bihta Police Station describing the above-mentioned occurrence and on that basis, the formal FIR bearing Bihta P.S. Case No. 396 of 2018 was registered under Sections 341, 323, 379 and 307 read with Section 34 of IPC and also under Sections 3(1)(r)/3(2)(va) of the SC/ST Act against the respondents which set the criminal law in motion.

4. After the completion of investigation, the respondents were chargesheeted for the alleged offences of the FIR and thereafter, the trial court took the cognizance of the above-mentioned alleged offences.



5. The respondents were charged with the offences under Sections 341, 323/34, 379 and 307 of IPC and also charged with the offence under Section 27 of the Arms Act and the offences under Sections 3(1)(r) and 3(2)(va) of SC/ST Act.

6. The above charges were read over and explained in Hindi to the respondents to which they pleaded not guilty and claimed to be tried.

7. During the trial, altogether five prosecution witnesses were examined who are as under:-

PW-1:- Santosh Kumar (informant's son)

PW-2:- Pushpa Devi (An injured/Appellant)

PW-3:- Lal Das (Informant)

PW-4:- Abhishek Pratap Singh (Investigating Officer)

PW-5:- Dr. Digvijay Narayan Singh (Medical Officer)

8. In documentary evidence the prosecution produced and proved the following documents and got them marked as exhibits which are as under:-

Ext.1:- Signature of the Informant on the written application

Ext.1/1:- Formal FIR

Ext.2:- Charghesheet No.449/2018 dated 10.10.2018



Ext.3:- Injury Report of Lal Das (informant)

Ext.3/1:- Injury Report of Pushpa Devi (appellant)

Ext.4:- A certified copy of *Jamabandi* No. 78 issued by the Office of Circle Officer, Bihta

Ext.5:- A certified copy of revenue receipt dated 02.04.2022 issued by the Office of Circle Officer, Bihta

Ext.6:- A certified copy of L.P.C. of Khata No. 361, page no. 78 issued by the Office of Circle Officer, Bihta

Ext.7:- A certified copy of an order dated 09.10.2020 passed by the In-charge Officer, Human Rights Legal Cell

Ext.8:- The certified copy of the application dated 14.02.2020 of one Arvind Paswan, S.I., Bihta Police Station, issued by the Human Rights Legal Cell

Ext.9:- The copy of Unique Disability I.D. Card of Anita Devi

9. After the completion of prosecution's evidence the statements of the respondents were recorded under Section 313 of Cr.P.C. giving them an opportunity to explain the incriminating evidences appearing against them from the prosecution's evidences which were denied by them and they claimed themselves to be innocent. The respondents did not take any specific defence in their statements.



Arguments on behalf of the Appellant:-

10. Mr. Amit Pandey, learned counsel appearing for the appellant has argued that the judgment impugned by which the respondents have been convicted for the lesser offences and acquitted of the offences under sections 307 and 379 of IPC, Section 3(1)(r) of SC/ST Act and Section 27 of the Arms Act is completely bad in law. It is submitted that in the facts and circumstances of the case of prosecution, to attract the said offences, there are sufficient evidences, particularly the ocular evidence of PW-1, PW-2 and PW-3, are getting support from the medical opinion given by the Doctor (PW-5) in regard to the injuries sustained by PW-2 and PW-3 in the occurrence of assault which was committed with them by the respondents and in this regard, the learned trial court appreciated the evidence of the prosecution witnesses in a very casual manner.

11. Learned counsel further submits that PW-1 clearly stated before the trial court that the appellant and others were assaulted and abused in full public view and while assaulting them, the respondents abused them by calling them in their caste name and in this regard, the evidence of PW-2, PW-3 and PW-4 is also relevant. PW-5, the Doctor, who examined the appellant and her father-in-law (informant), found three abrasions on the person



of PW-3 (informant) and swelling on left elbow of the appellant which is also corroborative to the allegations levelled against the respondents in the FIR. It has been further submitted that during the occurrence, the respondent, Bhim Rai, assaulted the informant with the butt portion of the pistol and in this regard, the evidence of PW-3 is relevant, hence, the respondents' acquittal of the offence under section 27 of the Arms Act is completely bad in the eye of law. When the occurrence was being committed, several co-villagers of the appellant gathered, in their presence, the occurrence of *marpit* and abusing took place and in this respect, the evidence of PW-2 is relevant and the same is sufficient to prove the occurrence of using caste based abusive words with the appellant and her family members by the respondents having been committed in full public view which is sufficient to attract the offence under section 3(1)(r) of SC/ST Act but the learned trial court did not appreciate the prosecution's evidences properly in respect of the said offence.

12. Learned counsel further submits that the punishment awarded upon the respondents for the offence under Section 3(2) (va) of SC/ST Act is not legal as only a fine of Rs. 1,000/- was imposed upon them with a condition that in default of payment of the imposed fine amount, they would have to undergo simple



imprisonment for 15 days additionally and the said punishment is not in accordance with the penal provisions of Section 3(2)(va) of SC/ST Act.

Arguments on behalf of the Respondents:-

13. On the contrary, Mr. Arun, learned counsel appearing for respondent no. 2 as well as Mr. Rajesh Ranjan, learned counsel appearing for respondent nos. 3 to 6 have submitted that the alleged occurrence relates to simple quarrel and the prosecution failed to prove the fact as to the so-called victims having been assaulted by the respondents in full public view and in view of the injuries which are said to have been found on the person of informant and PW-2, it is clearly evident that the alleged occurrence relates to simple quarrel in connection with a land dispute. The prosecution has not succeeded to prove the main ingredients of the Section 27 of the Arms Act. As such, the learned trial court has rightly acquitted the respondents of the offences under Sections 307 and 379 of IPC, Section 27 of the Arms Act and Section 3(1)(r) of SC/ST Act. Learned counsels have further submitted that in the light of the contradictions appearing among the testimonies of the prosecution witnesses and in view of the genesis of the occurrence, the conviction of the respondents for the offences under Sections 341 and 323 of IPC and under Section



3(2)(va) of SC/ST Act is also completely illegal and the same has been challenged by the respondents by way of Criminal Appeal (SJ) Nos. 719 of 2024 and 1185 of 2024.

Observation and Conclusion:-

14. Heard both the sides and perused the evidences and relevant materials available on the case record of the learned trial court. As the appellant has challenged the respondents' acquittal of the offences under Sections 307 and 379 of IPC, acquittal of the offence under Section 27 of the Arms Act and under Section 3(1) (r) of the SC/ST Act, so, we are only confined to appreciate the prosecution's evidences mainly on the grounds taken by the appellant in respect of the respondents' acquittal of the said offences. As per the allegation, the prosecution party was leveling a land, which was under dispute in between both the parties and also filling it with soil by using a J.C.B. Machine and then the respondents allegedly came and committed the alleged occurrence. From this allegation it is evident that in between both the parties there was a land dispute at the relevant time of the occurrence. The informant, who is said to be an injured as well as victim of the occurrence, simply mentioned in the FIR that caste based abusive words/language was being used by the respondents in the occurrence, but the informant did not explain the particular alleged



abusive words in the FIR and in this regard, his allegation remained vague completely. Further, as per the prosecution story narrated by the informant in the FIR, local people also gathered at the place of occurrence when the occurrence was being committed, but he did not disclose the names of the local people who were the best and independent person to prove the alleged occurrence. Further, before the trial court, the informant stated only the fact that the accused fled away from the place of occurrence when the *hulla gulla* started. He stated in the cross-examination that there were residences of several people including his agnates near his house but none of them became a witness in the case. Similar evidence was given by PW-2 who is said to be an injured and she deposed in the cross-examination that none of her co-villagers was a witness in this case and all the non-official witnesses are her family members. PW-1, who happens to be the husband of PW-2 also did not reveal the name of any person other than his family members as being present at the place of occurrence at the time of commission of the alleged offences. Accordingly, the prosecution failed to produce any independent person as a prosecution witness belonging to the village of the informant with a claim that he witnessed the alleged use of caste based abusive language by the respondents, hence, the prosecution failed to prove that the alleged



occurrence particularly, the use of abusive language by the respondents with the informant and his family members took place in full public view and as such, the acquittal of the respondents for the offence under Section 3(1)(r) of SC/ST Act appears to be proper and legal. So far as the offences under Sections 307 and 379 of IPC and under Section 27 of the Arms Act are concerned, before the trial court the injury reports of the informant and PW-2 were produced and the same were proved by PW-5 and his evidence shows that upon the person of PW-3, only three abrasions were found in which two were found on forearm and one on left eyebrow and on the person of PW-2, only swelling over the left elbow was found and all these injuries were opined to be simple in nature by the PW-5. In view of the evidence of PW-1, PW-2 and PW-3, it cannot be deemed that the alleged occurrence was pre-planned and their evidence shows that the occurrence took place in the spur of the moment due to a land dispute and in the totality of the facts and circumstances appearing from the evidence of these witnesses, it does not appear that the respondents had an intention to kill the prosecution party. The informant did not disclose the type of weapons which were allegedly used by the respondents at the time of the occurrence. PW-1 made a vague statement in the examination-in-chief regarding the alleged weapons and stated that



the accused/respondents were carrying *lathi*, *danda* and pistol but did not disclose the name of the specific respondent who was carrying the pistol. Similar statement was made by PW-2 in her examination-in-chief, though, PW-3 stated in the examination-in-chief that respondents Nirbhay Rai and Bhim Rai were carrying the pistol and they assaulted him by the butt portion of the pistol but such statement was not made by other so-called eyewitnesses and further, the investigating officer, PW-4, did not find any incriminating material during investigation to substantiate the allegation of the use of pistol by the respondents in assaulting the prosecution party.

15. So far as the allegation of snatching of chain by the respondents from the daughter-in-law (PW-2) of the informant during occurrence is concerned, in this regard, the evidence of PW-3 who claimed to have witnessed the occurrence concerned to the said offence remained vague and the allegation appears to be a super addition. So far as the legality of the punishment awarded for the offence under Section 3(2)(va) of SC/ST Act is concerned, we find no illegality in the punishment awarded by the learned trial court for the said offence as the provision of Section 3(2)(va) of SC/ST Act says that the accused who has committed an offence specified in the schedule shall be punishable with such punishment



as specified under the Indian Penal Code for such offence and shall also be liable to fine. The respondents have been convicted and sentenced for the offences under Sections 341 and 323 of IPC and for both the said offences, the prescribed punishment is simple imprisonment or fine, so, the learned trial court has taken a correct approach in awarding the punishment of fine for the offence under Section 3(2)(va) of SC/ST Act as such punishment is in accordance with the provision of Section 3(2)(va) of SC/ST Act and also serving the object of the penal provision of Section 323 and 341 of IPC.

16. It is a well settled that a judgment of acquittal need not be upturned unless the appellate court comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record would be that the guilt of the accused is proved beyond reasonable doubt and no other conclusion may be possible. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in the case of **H.D. Sundara and Others Vs. State of Karnataka** reported in **(2023) 9 SCC 581**. In the said case the Hon'ble Supreme Court has laid down the broad principles in paragraphs '8.1' to '8.5' which are to be kept in mind and we reproduce the same hereunder for a ready reference:-

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment¹

¹ *State of Karnataka v. H.K. Mariyappa*, 2010 SCC OnLine Kar 5591



rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short "CrPC"). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC can be summarised as follows:

"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."

17. Accordingly, we are of the considered view that the learned trial court has rightly acquitted the respondents of the offences punishable under Sections 307 and 379 of IPC and Section 27 of the Arms Act and Section 3(1)(r) of SC/ST Act and there is no perversity and illegality in the findings of the learned trial court regarding these offences, as such, we find no merit in this appeal, so, it stands dismissed.

18. It is clarified that the observations made hereinabove in the present appeal shall not affect the merit of the Criminal Appeal (SJ) No. 719 of 2024 preferred by convict Nirbhaya Rai



and Criminal Appeal (SJ) No. 1185 of 2024 jointly preferred by the convicts, Bhim Ray, Prakash Kumar @ Fuku Ray, Atal Bihari and Lalan Ray and either of both the parties of the present appeal shall not be entitled to take any benefit from the above discussions in the Criminal Appeal (SJ) Nos. 719 of 2024 and 1185 of 2024.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

maynaz/-

AFR/NAFR	NAFR
CAV DATE	N/A
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