

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.392 of 2023

Arising Out of PS. Case No.-322 Year-2018 Thana- SAHPUR District- Bhojpur

Janardan Pandey Son Of Late Jamuna Pandey R/O Village- Shiopur, P.S.-
Shahpur, District- Bhojpur

... .. Appellant/s

Versus

1. The State of Bihar
2. Mantu Pandey Son Of Surendra Pandey R/O Village- Shiopur, P.S.-
Shahpur, District- Bhojpur
3. Kallu Pandey Son Of Surendra Pandey R/O Village- Shiopur, P.S.- Shahpur,
District- Bhojpur
4. Munna Pandey Son Of Surendra Pandey R/O Village- Shiopur, P.S.-
Shahpur, District- Bhojpur
5. Surendra Pandey Son Of Mahendra Pandey R/O Village- Shiopur, P.S.-
Shahpur, District- Bhojpur

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ravindra Kumar, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP
For the Respondent No. 2 to 5	:	Mr. Amrendra Nr. Rai, Advocate
		Mr. Ashok Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 10-07-2024

The present appeal has been filed under Section 372(Proviso) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Code') challenging the judgment of conviction and order of sentence dated 12.01.2023 passed by learned Additional Sessions Judge-VIIth, Bhojpur, Ara in Sessions Trial No. 171 of



2019 arising out of Shahpur P.S. Case No. 322 of 2018, whereby the concerned Trial Court has acquitted Respondent Nos. 2 to 5 for the offences punishable under Section 307/323/34 of the Indian Penal Code.

2. The prosecution story, in short, is as under:-

2.1. On 10.10.2018, there was a meeting regarding distribution of ration in the village. Officials had come to the school. Two dealers, one from Etwa and another from Sikariya, pick up ration for the village. Regarding this, Mantu Pandey, Kallu Pandey, Munna Pandey, Surendra Pandey pressurized the informant's brother Jitendra Pandey to procure ration from the dealer of Etwa. When they refused to do the same, accused Mantu Pandey, Kallu Pandey, Munna Pandey started firing with the guns in their hands. Mantu Pandey fired bullets which hit the informant's sister-in-law Archana Devi on her head, arm and thigh. Kallu Pandey fired a bullet which hit his nephew. Munna Pandey fired a bullet which hit his buffalo and bounced back and hit him.

3. After registration of the F.I.R., the Investigating Officer started the investigation and, during the course of the investigation, he had recorded the statement of the witnesses and thereafter filed the charge-sheet against the respondent Nos. 2 to 5/accused before the concerned Magistrate Court. As the case was



exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Sessions Court where the same was registered as Sessions Trial No. 171 of 2019.

4. Heard Mr. Ravindra Kumar, learned counsel for the appellant, Mr. Sujit Kumar Singh, learned A.P.P. for the Respondent-State and Mr. Amrendra Nr. Rai assisted by Mr. Ashok Kumar, learned counsels for Respondent Nos. 2 to 5.

5. Learned counsel for the appellant/informant submits that the impugned judgment and order is bad in law as well as on facts. He has further stated that the learned Trial Court has failed to appreciate that there are ample materials on the record to establish the case of prosecution and to prove the guilt of respondents Nos. 2 to 5. There is no contradiction in the place of occurrence, manner of occurrence and time of occurrence and involvement of respondents and, as such, the acquittal of the respondents is based on erroneous and extraneous consideration and not the materials placed on record. The learned Trial Court has further failed to appreciate the facts of the eye-witnesses which is fully corroborated by the Medical Report. Neither the informant nor the injured nor the Doctor nor the Investigating Officer has been examined, nor the reason has been assigned by the learned Trial Court for non-examination. It is further stated that the learned



Trial Court has committed gross illegality as it has gone beyond the record of the case as the appellant herein has no reason to falsely implicate the accused persons. The impugned judgment and order of acquittal passed against the respondent Nos. 2 to 5 is, otherwise, bad in law as well as on facts and is fit to be set aside.

6. Learned A.P.P., has adopted the submissions advanced by the learned counsel for the appellant.

7. On the other hand, learned counsel for respondent Nos. 2 to 5 (accused), has opposed the appeal and submitted that the learned Trial Court has not committed any error while recording the judgment and order of acquittal as there are major contradictions, inconsistencies and discrepancies in the depositions given by the prosecution witnesses. He has further submitted that the prosecution has examined only four witnesses in support of the case. It has chosen not to examine the material witnesses i.e. the Doctor and the Investigating Officer. Prosecution has not been able to prove whether blood-stained clothes or blood-stained soil were seized by the Investigating Agency or not. Whether the bullets fired were sent for necessary analysis to the F.S.L. or not. As such, the prosecution has miserably failed to establish the place of occurrence, injuries sustained, number of bullets fired and motive behind the occurrence. Thus, when the prosecution has failed to



prove the guilt against the accused persons beyond reasonable doubt, the learned Trial Court has rightly acquitted the accused persons giving them the benefit of doubt. The State has rightly not preferred any appeal against acquittal. In view of the above, the impugned judgment and order does not warrant interference by this Hon'ble Court and the appeal deserves to be summarily dismissed.

8. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the evidence of prosecution witnesses and also perused the documentary evidence exhibited.

9. At this stage, we would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court.

10. Before the Trial Court, prosecution examined 4 witnesses.

11. PW-1 Deepak Pandey has stated, in his examination-in-chief, that the occurrence is of 10.10.2018 at 01:00 p.m. He was studying at his door. He saw that Mintu Pandey, Kavi Pandey, Munna Pandey, Surendra Pandey and Manoj Pandey came at the door, went to their house, came back with guns and started firing. Munna Pandey fired bullet which hit the horn, ear and back of the



buffalo and then hit the arm of Janardan Pandey. Bhola Pandey was shot at by Kallu Pandey which hit his chest. Archana Devi was shot at by Mintu Pandey hitting her temple and thigh. The bullet fired by Manoj Pandey hit the railing of his terrace. He has stated that the incident happened because of the ration card dispute. There was a meeting going on regarding ration card. Munna Pandey, Kallu Pandey, Manoj Pandey, Munna Pandey and Surendra Pandey came there and forbade his uncle Jitendra Pandey to take ration from the Sikariya dealer and asked him to take ration from Basudhar Singh, dealer of Etwa which was refused by his uncle. Then, the accused persons came to the house and started firing. The said incident was seen by the witness.

11.1. In his cross-examination, he has stated that the dispute over ration card was going on in the meeting. The B.D.O. of Bihiya had also attended the meeting. The dispute took place at 12:00 noon. There was a dispute among other people of the village whether ration should be taken from Sikariya or Etwa. The disputes among other people of the village was also not resolved. The women of his family did not attend the meeting. He was studying at his door from before the meeting. It is stated that Archana Devi is his mother who was spreading wheat on the terrace at that time. The accused persons started firing from a



distance of 60-65 feet from the north direction where his buffalo was tied. Some people fired towards the terrace, some towards the buffalo while some people fired towards Bhola Pandey. After that, they went away. The house of the accused persons is at a distance of 150 feet north from his door. It is also stated that only Bhola Pandey fell down and the blood spilled there.

12. PW-2 Rajni Kant Pandey @ Bittu Pandey has stated, in his examination-in-chief, that the occurrence is of 10.10.2018 at around 01:00 pm to 02:00 pm. At that time, he was sitting in the *verandah*. Mintu Pandey, Kallu Pandey, Munna Pandey, Surendra Pandey and Manoj Pandey came abusing from the south and then went to their home and came back with weapons. Krishnakant Pandey @ Bhola Pandey was shot at by Kallu Pandey on the right side of chest and on the left side of the abdomen. Archana Devi, his mother who was spreading wheat, was shot at in the right temple, thigh, rib-cage and arm. The bullet fired by Munna Pandey first hit his buffalo and then hit Janardan Pandey in his left arm. The terrace of *verandah* collapsed because of the firing of Manoj Pandey. Surendra Pandey fired in the air and ordered to kill everyone. It is stated that the witness was not hurt but he saw the whole incident with his own eyes. He recognizes all the accused persons.



12.1. In his cross-examination, he has stated that at the time of firing, he was lying on the cot at a distance of 3-4 feet from Krishnakant Pandey. Krishnakant was hit first. On being shot, Janardan Pandey and Krishnakant Pandey fell down. The blood spilled in the *verandah*. The people who were firing were standing outside the house. It is also stated that Archana Devi fell down on the spot where she was spreading wheat on the terrace and the blood also spilled out of her injury.

13. PW-3 Urmila Devi has stated, in her examination-in-chief, that she was at her home when the incident occurred. Manoj Pandey, Kallu Pandey, Mintu Pandey, Surendra Pandey came abusing at her door and then went to their home. They again returned with weapons and Manoj Pandey was holding revolver in his hand. Kallu Pandey shot on the chest of Bhola Pandey and blood started oozing out from his chest and abdomen. After that, Mintu fired which hit Archana Devi. Archana Devi shouted that Mintu Pandey had shot her which hit her head, abdomen and thighs. After that, Manoj Pandey fired a shot which caused the brick of the house to fall. On firing of Munna Pandey, the buffalo, which was tied outside, was hit. After that, all the injured persons were taken to the hospital.



13.1. In her cross-examination, she had stated that she did not go to the hospital with the injured persons but stayed at her house. Inspector visited her house at 07:00 pm on the date of occurrence. She showed the brick that fell down from the wall to the Inspector. She also showed to him the place from where the bullet was fired. She told the Inspector that when there was an uproar and the people started gathering, the accused persons ran away. Archana Devi fell on the terrace and there were 2-4 drops of blood there. She told the Inspector that Kallu Pandey had fired on the chest and abdomen of Bhola Pandey. She had also told the Police that Archana Devi was hit by the firing of Mintu Pandey. It is also stated that no bullets were fired from their side on that day.

14. PW-4 Krishnakant Pandey @ Bhola Pandey has stated, in his examination-in-chief, that the occurrence is of 10.10.2018. There was a meeting regarding the dealer, who would lift the ration and, because of the meeting, the Officers had come there. Mintu Pandey said to give the ration card of his uncle Jitendra Pandey to Basudhar Singh, but he did not give it. After that, Surendra Pandey, Mintu Pandey, Kallu Pandey, Munna Pandey and Manoj Pandey came armed with firearms. Surendra Pandey asked them to kill him and he fired bullet which hit him. When Mintu Pandey fired the bullet, it hit his aunt Archana Devi.



When Munna Pandey fired the bullet, it hit both, the buffalo and Janardan Pandey. When Manoj Pandey fired from rifle, it hit the *chajja* of the house and it collapsed. After that, they went to Shahpur Hospital. His aunt and he himself were treated there and, after that, they came to Ara Sadar Hospital. Janardan Pandey was treated at Shahpur Hospital. His statement was taken at Sadar Hospital, Ara on 13.10.2018.

14.1. In his cross-examination, he has stated that an hour after the meeting ended, the accused persons started firing. The firing took place at a distance of 60-70 feet from his house. It is also stated that, when the bullet hit him, he fell on the spot. Archana Devi fell on the terrace. The empty cartridges of the countless bullets fired were not seen at the door. He did not see Archana Devi getting shot at. There is no railing around the terrace of his house. The balcony, which was broken, was broken in the middle.

15. We have considered the submissions canvassed by the learned counsels for the parties. We have re-appreciated the entire evidence led by the prosecution before the Trial Court and also perused the documentary evidence exhibited.

16. It would emerge from the record that, as per the *fardbeyan* given by Janardan Pandey, in the incident in question,



the sister-in-law of the informant i.e. Archana Devi sustained bullet injuries on her head, arm and thigh. Further, his nephew Krishnakant Pandey (PW-4) also sustained bullet injury and the informant also sustained injury on his left hand. However, during the course of the trial, the prosecution did not examine the informant Janardan Pandey. Further, the injured Archana Devi has not been examined by the prosecution. It would further reveal that the written complaint/written application came to be filed by the informant with the Police Station Officer, Shahpur on the basis of which, formal F.I.R. came to be registered. It would further reveal from the record that the prosecution has also failed to examine the Doctor, who had given treatment to the injured informant Janardan Pandey, Archana Devi and Krishnakant Pandey. It further transpires from the record that the Investigating Officer, who has carried out the investigation, has not been examined by the prosecution.

17. From the written report submitted by the informant, it is further revealed that there is no reference in the said written complaint with regard to the other eye-witnesses to the incident i.e. PW-1 Deepak Pandey, PW-2 Rajni Kant Pandey @ Bittu Pandey and PW-3 Urmila Devi. Further, it is a specific case of PW-4 (injured witness) that he along with his aunt Archana Devi took the



treatment initially at Shahpur Hospital and thereafter at Sadar Hospital, Ara whereas the informant Janardan Pandey was treated at Shahpur Hospital. However, as observed hereinabove, the Doctors, who had given treatment to the so-called injured witnesses, have not been examined by the prosecution.

18. Even otherwise, there are major contradictions and inconsistencies in the depositions given by the prosecution witnesses with regard to the manner in which the incident took place. Further, the alleged weapon from which the firing took place were also not recovered/discovered. As the Investigating Officer was not examined, the prosecution has not brought on record the Seizure List and what was the position at the place of incident. Thus, we are of the view that the prosecution has failed to prove the case against the present respondents/accused beyond reasonable doubt.

19. We have also gone through the reasoning recorded by the Trial Court and we are of the view that the Trial Court has not committed any error while passing the impugned judgment and order of acquittal.

20. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of



Chandrappa & Ors. Vs. State of Karnataka, reported in **(2007)**

4 SCC 415, wherein it has been held in **Para-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, reappraise 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 emphasise 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.”

21. Keeping in view the aforesaid guidelines issued by the Hon’ble Supreme Court, while considering the appeal against the order of acquittal, if the facts of the present case, as discussed hereinabove are examined, we are of the view that no interference is required in the present appeal.

22. Accordingly, the appeal stands dismissed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Sachin/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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