

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1953 of 2023

Arising Out of PS. Case No.-4 Year-2014 Thana- SC/ST District- Sitamarhi

Sinki Kumari @ Sinku Kumari, Daughter of Jitu Paswan, Resident of Village - Bishnupur, P.S. Dumra, District- Sitamarhi, Pin Code- 843302 (Bihar).

... .. Appellant

Versus

1. The State of Bihar.
2. Junaid Kabari, Son of Samsuddin Kabari, Resident of Village- Bishanpur, P.S.- Dumra, Distt- Sitamarhi.
3. Md. Mustaki Kabari @ Mustakim Kabari, Son of Samsuddin Kabari Resident of Village- Bishanpur, P.S.- Dumra, Distt- Sitamarhi.
4. Shamsuddin Kabari, Son of Subdar Kabari, Resident of Village- Bishanpur, P.S- Dumra, Distt- Sitamarhi.
5. Md. Farukh Kabari, Grandson of Samsuddin Kabari, Resident of Village- Bishanpur, P.S.- Dumra, Distt- Sitamarhi.
6. Md. Mustak Kabari, Son of Samsuddin Kabari, Resident of Village- Bishanpur, P.S.- Dumra, Distt- Sitamarhi.
7. Fatima Khatoon, Wife of Samsuddin Kabari, Resident of Village- Bishanpur, P.S.- Dumra, Distt- Sitamarhi.
8. Mosima Khatoon, Wife of Jumaid Kabari, Resident of Village- Bishanpur, P.S.- Dumra, Distt- Sitamarhi.

... .. Respondents

Appearance :

For the Appellant/s : Mr.Uday Kumar, Advocate
For the Respondent/s : Mr.Usha Kumari 1, Spl. PP
For the Respondent nos. 2 to 8: Mr. Rishikesh Rajan, Advocate
Mr. Jainanda Kumar, Advocate
Mr. Abhinay Priyadarshi, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 22-08-2024

1. This appeal has been filed, being aggrieved
from the impugned Judgement dated 29.11.2022, by
appellant/informant/PW-8, as passed by learned
Additional Sessions Judge 1 Cum Special Judge,



Sitamarhi in Sessions Trial No.342 of 2016 / CIS No. 368 of 2016 arising out of Sitamarhi Scheduled Caste & Scheduled Tribe Police Station Case No. 04 of 2014, where learned trial court has exonerated/acquitted the Respondent Nos. 2 to 8 from the charges under Sections 341, 504, 506, 379 of the Indian Penal Code and Sections 3(1)(x)/3(1)(ii) of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocity) Act, 1989, where respondents were convicted only under Section 323 of the Indian Penal Code, where upon conviction a fine of Rs. 1,000/- was imposed each of them and in default of payment of fine, they ordered to undergo simple imprisonment for three months. This part of conviction not challenged.

2. The crux of prosecution case as springs through written information of informant, namely, Sinku Kumari/PW-8 daughter of Jitu Paswan given to the Station House Officer of Scheduled Caste & Scheduled Tribe Police Station that on 22.01.2014, when she went



to the Government Hand Pump for fetching water, in the meantime, her co-villager namely, Samsuddin Kabari (appellant no. 4), son of Sibdar Kabari told her why you a Dusadhin fetching water from the Hand Pump and snatched the filled bucket from her hand and throw it and when she told that this is a Government Hand Pump, why could not she fetch water, then family members of Samsuddin Kabari came and assaulted her with fists slap and Lathi, due to which, she fell down. Samsuddin Kabari gave a iron rod blow on her leg and back, due to which, she received injury on her person. Junaid Kabari (appellant no. 1) and Mustak Kabari (appellant no. 6) torn her cloths, due to which she became naked, they also assaulted her and on raising alarm when her mother and sister came there then by calling them Dusadhin, the accused persons assaulted them also and Mustak Kabari snatched golden earring worth Rs.20,000/- from the ear of her mother and when her co-villagers, namely Yugal Paswan, Rajesh Paswan



and others reached there then all the accused persons fled away and thereafter her brother in law (Jija) took her to Sitamarhi Government Hospital, where her treatment is going on.

3. On the basis of the aforesaid information, Sitamarhi Scheduled Caste & Scheduled Tribe Police Station Case No. 04 of 2014 was registered for the offences punishable under Sections 341, 323, 504, 506, 354, 379, 34 of the Indian Penal Code and Sections 3(1)(x)/3(1)(ii) of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocity) Act and subsequently converted in to Sections 341, 323, 504, 506, 354, 379, 34 of the Indian Penal Code and Section 3(1)(x)(xi) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocity) Act vide Order dated 13.07.2009.

4. After completion of investigation, Investigating Agency submitted the charge-sheet, for which the learned trial court took cognizance on 20.02.2016 for the offences under Sections 341, 323,



504, 506, 379, 34 of the Indian Penal Code alongwith Sections 3(1)(x)(xi) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act.

5. Accordingly, charges were framed on 25.07.2016

6. In support of its case, prosecution altogether examined 12 witnesses, namely, **PW-1** Ashma Khatoon, **PW-2** Yugal Paswan, **PW-3** Devki Devi, **PW-4** Shankar Mahto, **PW-5** Janu Baitha, **PW-6** Rajesh Paswan **PW-7** Indrajeet Thakur, **PW-8** Sinku Kumari/informant of the case, **PW-9** Rinku Devi, **PW-10** Lalita Devi, **PW-11** Pramod Kumar Paswan/Investigating officer of the case and **PW-12** Dr. Himanshu Shekhar, who examined the injured.

7. The prosecution also relied upon the following exhibits:

Exhibit 1 -Signature of the informant Sinku Kumari on written application.

Exhibit 2 – Formal First Information Report.



Exhibit -2/1 Formal First Information Report.

Exhibit -3- Endorsement on written application.

Exhibit –Carbon copy of the Medical Report.

8. The defence also examined two witnesses, namely, DW-1 Gagan Baitha and DW-2 Kdai Baitha.

9. After conclusion of trial, the learned trial court through impugned order convicted respondent nos. 2 to 8 for the offence under Section 323 of the Indian Penal Code and acquitted from the rest of the charges. Upon conviction, respondent nos. 2 to 8 were ordered to paid a fine of Rs. 1000/- in failure of which to undergo three months simple imprisonment.

10. Being aggrieved with the impugned judgment informant/PW-8 preferred the present appeal.

11. It is submitted by learned counsel appearing on behalf of appellant that from the deposition of prosecution witnesses and also of the informant, it



appears that the prosecution established its case beyond reasonable doubt. It is submitted that despite of specific deposition that the respondents abused informant by her caste name, the learned trial court acquitted the respondents, which is nothing but a perverse finding and therefore same requires to be interfered. It is submitted that occurrence took place at government tubewell which is a public place, therefore, the legal ingredients appears satisfied as to established the offence under Section 3(x) of SC/ST Act.

12. While concluding the argument, learned counsel submitted that the informant also received injury during the course of occurrence, in view of deposition of PW-12 and therefore, occurrence cannot be denied outrightly

13. Heard learned APP for the State.

14. The learned counsel appearing on behalf of the respondents submitted that there is difference between the public place and public view and merely as



occurrence took place at government tube-well, it cannot be said that same same was committed in public view. It is further submitted that even from the deposition of PW-8/informant namely, Sinku Kumari, it is nowhere appears that she was abused by her caste name or alleged occurrence took place in public view, therefore, the finding of learned trial court cannot be said perverse and therefore, there is no occasion as to interfere with present finding of trial court.

15. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

16. It appears from perusal of record that PW-1, PW-2, PW-4 and PW-5, who were claimed to be the eye-witnesses of the occurrence turned hostile during the course of trial, where nothing surfaced out of their cross-examination on behalf of the State, which may



used for contradicting or corroborating the evidences of those prosecution witnesses which appears to support the case of prosecution, hence same appears not relevant.

17. It appears from the deposition of almost all prosecution witnesses, who appears to be supported the case of prosecution that none of them stated during the trial that informant is the member of scheduled caste community, neither any document in support of same was exhibited during the trial. This fact was also observed by learned trial court while authoring the impugned judgment which is available at page 15, paragraph-2.

18. I have also gone through the reasoning recorded by the Trial Court and I am of the view that the Trial Court has rightly given the benefit of doubt to the respondents-accused, as the prosecution has failed to prove the case against the respondents-accused beyond reasonable doubt.



19. At this stage, I 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 the Hon'ble Supreme Court in Para-42 has laid down the general principles regarding powers of the appellate court while dealing with the appeal against the order of acquittal. It observed 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, reappreciate 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."

20. From the aforesaid observation made by the Hon'ble Supreme Court, it can be said that an appellate court must bear in mind in a 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 is presumed to be innocent unless he



is proved guilty by 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. Further, if two reasonable conclusions are possible on the basis of the evidence on the record, the appellate court should not disturb the finding of acquittal recorded by the Trial Court.

21. Keeping in view of the aforesaid principles laid down by the Hon'ble Supreme Court to the facts of the present case, as discussed hereinabove, and examined, I am of the view that the Trial Court has not committed any error while passing the impugned order and, therefore, no interference is required.

22. Accordingly, the appeal stands dismissed.

23. It is made clear that dismissal of present appeal shall be of no bearing *qua* conviction and sentence of respondents under Section 323 of the Indian penal Code. Respondents have all legal right to challenge



said conviction and order of sentence, in accordance with
law, if so advised.

(Chandra Shekhar Jha, J.)

Veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.08.2024
Transmission Date	24.08.2024

