

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.511 of 2023

Arising Out of PS. Case No.-182 Year-2017 Thana- SISWAN District- Siwan

Ramji Soni @ Ramji Prasad @ Ramji Prasad Soni Son Of Late Jagdish Prasad Soni @ Late Jagdish Prasad Resident of Village- Ramgarh, P.S.- Siwan (Chainpur O.P.) District-Siwan

... .. Appellant/s

Versus

1. The State of Bihar
2. Chhoten Rai Son of Adalat Rai Resident of Village- Ramgadh, P.S- Siwan (Chainpur O.P.) District-Siwan
3. Adalat Rai Son of Dasai Rai Resident of Village- Ramgadh, P.S- Siwan (Chainpur O.P.) District-Siwan

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Manish Chandra Gandhi, Advocate
		Mr. Kumar Samarjeet Singh, Advocate
For the Respondent/s	:	Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

9 31-01-2024 We have heard Sri Manish Chandra Gandhi, learned Advocate for the informant/appellant, who has challenged the judgment and order of acquittal, passed by the learned 1st Additional Sessions Judge, Siwan in Sessions Trial No. 434/2018, arising out of Siwan (Chainpur O.P.) P.S. Case No. 182 of 2017, whereby the respondents no. 2 and 3 have been acquitted of all the charges.



2. We have also heard Ms. Kumari Anupama, learned Advocate for the respondents no. 2 and 3.

3. The case of the prosecution is based on the so called oral dying declaration.

4. According to the fardbeyan of the informant (P.W. 4), one of his sons was shot at by three persons, who ran away after the occurrence. The deceased, while still surviving for life, was taken to local hospital and from there, to bigger hospital in a police vehicle.

5. The police officer had met the father and the injured son on way. He is the investigator of the case who has told the Court during trial that when he saw the injured person, he was only imploring others to save his life as he had been shot at. The driver of the police vehicle, on which the deceased was taken to the hospital, has not been examined; nor any explanation has been offered for his non-examination.

6. The Trial Court, on a careful examination of the deposition of all the witnesses and P.W. 4 (informant) in particular, found that the averments in the fardbeyan;



his written application to the police (Ext. 6) and his deposition at the Trial were absolutely different, which made his version completely mendacious and therefore unacceptable.

7. In the fardbeyan, P.W. 4 has alleged that his son (deceased), in an injured condition, told him that he identified Respondent no. 2 but there were two others, whom he could not identify. Even then, the name of respondent no. 3 also was arraigned in the FIR in the column of the accused persons; for the reason that on an earlier occasion, P.W. 4 had been kidnapped, in which there was an active involvement of respondents no. 2 and 3.

8. Later, as noted above, a written application was also given to the police by P.W. 4 with the accusation that respondent no. 2 accosted the deceased and then shot at him. Lastly, at the trial, P.W. 4 disclosed that the deceased, before his death, had taken the name of both the respondents attributing the role of order-giver to appellant/Adalat and the role of shooting at the deceased



to respondent/Chhoten. On this account, P.W. 4 and rest others were disbelieved.

9. The Trial Court has further examined the deposition of another brother of the deceased; as well as of his mother and wife and culled out that if their deposition is to be believed, none of them would have accompanied the deceased to the hospital and therefore, the tall claim of P.W. 4 that the deceased had made a disclosure about respondents no. 2 and 3, is incorrect.

10. The Trial Court also has carefully examined the deposition of the investigator of this case (P.W. 6), whose statement has completely jolted the fulcrum of the prosecution case.

11. In ***Chandrappa v. State of Karnataka (2007) 4 SCC 415***, the Supreme Court has reiterated that even though an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded and that there are no limitations, restrictions or conditions for exercise of such power and as an Appellate Court which on evidence



before it may reach its own conclusion both on questions of law and of fact, but an order of acquittal is not to be lightly interfered with and the Appellate Court must give proper weight and consideration to the findings and reasonings of the Trial Court. (Also refer to **Ghurey Lal v. State of U.P. (2008) 10 SCC 450; State of Rajasthan v. Naresh (2009) 9 SCC 368; State of U.P. v. Banne (2009) 4 SCC 271** and **Dhanapal v. State (2009) 10 SCC 401**)

12. There was no way in which any other judgment could have been recorded by the Trial Court except acquitting respondents no. 2 and 3.

13. We do not find any reason to interfere with a well-reasoned judgment of acquittal.

14. The appeal is dismissed.

(Ashutosh Kumar, J)

(Nani Tagia, J)

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