

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.588 of 2024

Arising Out of PS. Case No.-118 Year-2014 Thana- JADIA District- Supaul

Md. Junaid @ Md. Juned son of Late Gyasuddin @ Md. Gayasuddin @ Md.
Giyasuddin Village- Baghaili Raghunathpur Ps- Jadia Dist- Supaul

... .. Appellant

Versus

1. The State of Bihar
2. Md. Junaid son of Late Md. Allauddin Village- Baghaili Ps- Jadia Dist- Supaul
3. Md. Saeed son of Late Md. Allauddin Village- Baghaili Ps- Jadia Dist- Supaul
4. Md. Sohail son of Late Md. Allauddin Village- Baghaili Ps- Jadia Dist- Supaul
5. Md. Tufel son of Md. Sohail Village- Baghaili Ps- Jadia Dist- Supaul

... .. Respondents

Appearance :

For the Appellant/s	:	Md. Ziaul Quamar, Advocate
	:	Ms. Puja Kumari, Advocate
For the State	:	Mr. Satya Narayan Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

4 18-09-2024 Heard learned counsel for the appellant and Mr. Satya
Narayan Prasad, learned Addl.P.P. for the State.

2. This appeal has been preferred by the informant for setting aside the judgment dated 18.03.2024 passed in Sessions Trial No. 151 of 2015 (hereinafter referred to as the ‘impugned judgment’) arising out of Jadia P.S. Case No. 118 of 2014 passed by learned Additional Sessions Judge-II, Supaul (hereinafter referred to as the ‘learned trial court’) by which the



learned trial court has been pleased to acquit the respondent nos. 2 to 5 for the offences punishable under Sections 147, 148, 341, 323, 302/149 of the Indian Penal Code (in short 'IPC').

Prosecution Case

3. The prosecution case is based on the *fardbeyan* (Exhibit '1/1') of Md. Junaid (PW-6) recorded by S.I. Prabhat Kumar Mishra, SHO of Jadia Police Station on 29.09.2014 at 15:00 hours at Sadar Hospital Compound, Supaul. The informant (PW-6) in his *fardbeyan* has alleged that on 29.09.2014 at 07:00 AM, the water from the hand pump of the informant was flowing on the land of his neighbour Md. Mansur and on this issue, an altercation took place between his father and Md. Mansur. In the meantime all the accused persons, namely, (1)Md. Shoeb, (2)Md. Junaid, (3) Md. Gulab, (4) Md. Johel, (5) Md. Saeed, (6) Md. Faizal, (7) Md. Babul, (8) Md. Shahnawaz and (9) Md. Tufel, armed with lathi/danda came there and started assaulting his father and his uncle, namely, Md. Jalaluddin with lathi/danda as a result of which his father got badly injured and fell down there on the ground and his uncle also sustained injuries. Thereafter, he brought his father and his uncle to Jadia Police Station from where the injureds were sent to Tribeniganj Referral Hospital. The informant stated that the



condition of his father was serious so he wanted to get his treatment first that is why he did not get any statement recorded at Jadia Police Station. When the informant reached at Tribeniganj Referral Hospital, the doctor referred his father to Darbhanga and on the way to Darbhanga, his father died. Thereafter, he brought the dead body of his father to Sadar Hospital, Supaul.

4. On the basis of this *fardbeyan*, Jadia P.S. Case No. 118 of 2014 was registered under Sections 147, 148, 341, 323, 302/149 IPC on 29.09.2014 at 18.30 Hrs against nine accused persons. After completing investigation, Police submitted chargesheet bearing Chargesheet No. 111 of 2014 dated 19.12.2014 against respondent nos. 2 to 5 and one Md. Shahnawaz Alam under Sections 147, 148, 149, 341, 323 and 302 IPC and kept the investigation pending against other accused persons. Since Md. Shahnawaz Alam was juvenile, his case was split off and was sent to the Juvenile Justice Board, Supaul. On the basis of the chargesheet, learned CJM, Supaul took cognizance on 11.06.2015 against respondent nos. 2 to 5. On finding that the case was triable by the court of sessions, learned Magistrate committed the records to the court of sessions on 20.07.2015 which was registered as Sessions Trial



No. 151 of 2015 in which the charges were framed on 04.08.2015 under Sections 147, 148, 341, 323, 302/149 IPC and explained to the respondent nos. 2 to 5 to which they pleaded not guilty and claimed to be tried.

5. In course of trial, altogether eight witnesses were examined on behalf of the prosecution and several documentary evidences were exhibited. The defence has also examined two witnesses. The list of prosecution witnesses, defence witnesses and the exhibits on behalf of the prosecution are shown hereunder in tabular form for a ready reference:-

List of Prosecution Witnesses

Rank	Name	Nature of Evidence(Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
PW-1	Md. Shaukat	Other Witness
PW-2	Md. Sakur	Other Witness
PW-3	Md. Jamaluddin	Stated to be an Eye Witness/uncle of the Informant
PW-4	Md. Harun	Other Witness
PW-5	Subaida Khatun	Other Witness/Mother of the Informant
PW-6	Md. Junaid	Informant/stated to be an eye witness
PW-7	Dr. Kanhaiya Prasad Singh	Doctor(Medical Witness)
PW-8	Ajit Singh	Investigating Officer(Police Witness)

Defence Witnesses

Rank	Name	Nature of Evidence(Eye Witness, Police Witness,
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		Expert Witness, Medical Witness, Panch Witness, Other Witness)
DW1	Shafik Alam	Stated to be an Eye witness
DW2	Md. Gayasuddin	Stated to be an Eye witness

List of Exhibits on behalf of Prosecution

Sl. No.	Exhibit Number	Description
1	Exhibit-1	Signature of Informant on Fardbayan
2	Exhibit-2	Post Portem report of the deceased md. Gayasuddin
3	Exhibit-1/1	Fardbyan
4	Exhibit-1/2	endorsement
5	Exhibit-1/3	Carbon copy of the Inquest report of the deceased Md. Gayasuddin

Findings of the Learned Trial Court

6. On analysis of the evidences of the witnesses, learned trial court came to a conclusion that the testimonies of the examined witnesses are not getting corroboration of each other and there are vital contradictions in the testimony of the informant with his *fardbeyan* itself that renders the story of the prosecution doubtful.

7. Learned trial court found that the informant (PW-6) in his evidence has stated that his father gave statement in Jadiya Police Station but no such statement was placed on record by the prosecution rather the basis of the present case is the *fardbeyan* of the informant recorded at the Sadar Hospital, Supaul after the death of the informant’s father. Learned trial



court found from the evidence of DW-1 and DW-2 that they saw there was an altercation between Md. Gyasuddin and Md. Mansur and in the meanwhile Md. Gyasuddin slipped and fell down as a result of which he sustained injuries. The learned trial court took note of the evidence of Doctor (PW-7) who deposed that the injury as he found on the body of deceased may be caused if a person slips and fell down and his head is struck to any hard surface.

8. Learned trial court found from the evidence of I.O. (PW-8) who deposed that he inspected the place of occurrence on the very same date of the alleged occurrence but he did not find water on the place of occurrence and no blood stains were found there.

Submissions on behalf of Appellant

9. Learned counsel for the appellant has assailed the impugned judgment on various grounds. Learned counsel submits that in this case the learned trial court could not appreciate that the prosecution witnesses have fully supported the prosecution case and their testimonies are duly corroborated. It has come in evidence that the accused persons have assaulted the father and uncle of the informant as a result whereof they sustained injuries and father of the informant died. It is



submitted that the learned trial court has acquitted the accused-appellant holding that there are vital contradictions in the testimony of the informant with his fardbeyan which would render the story of prosecution doubtful. On a close scrutiny of the evidence of the prosecution witnesses it would be found that save and except some minor discrepancies, the prosecution witnesses are consistent in their testimony and they have withstood the test of cross-examination.

10. It is submitted that the learned trial court has committed an error in appreciation of the testimony of the informant on the point of injuries sustained by his father and it has been wrongly concluded by the learned trial court that the same is not getting corroborated from the medical examination and testimony of the medical witness (PW-7).

11. On these grounds, learned counsel for the appellant prays for admission of the appeal and setting aside of the impugned judgment after notice to respondent nos. 2 to 5.

Submission on behalf of the State.

12. On the other hand, learned Addl.P.P. for the State has submitted that the present appeal against acquittal of respondent nos. 2 to 5 does not merit admission and interference with the impugned judgment. Respondent nos.2 to 5 have been



acquitted of the charges on a well considered appreciation of the materials on the record by the learned trial court. It is submitted that in an appeal against acquittal this Court may interfere with the acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record is that the guilt of the accused has been proved beyond reasonable doubt and no other conclusion was possible. Reliance has been placed in this regard on the judgment of the Hon'ble Supreme Court in the case of **H.D. Sundara vs. State of Karnataka (2023) 9 SCC 581**. It is submitted that at this stage this Court has to first satisfy itself with the materials on the record to take a view as to whether it is a fit case for admission and issuance of notice to respondent nos.2 to 5. According to learned Addl.P.P., neither the appeal is fit to be admitted nor any notice is required to be sent to the private respondents.

13. In view of the submissions of the learned Addl.P.P. for the State, we have proceeded to hear the matter at this stage to take a view as to whether it is a fit case for admission and issuance of notice to respondent nos.2 to 5.

Consideration

14. Having heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also on perusal of the trial court records, we find that initially when the



fardbeyan of Md. Junaid (PW-6) was recorded, he came out with a case that the occurrence took place with Md. Mansoor, son of late Md. Basir at 7:00 AM on the issue of drainage of water of the hand pump of the informant into the land of said Md. Mansoor. According to him, during this hot exchange of words between his father and Md. Mansoor, altogether eight named accused persons came there armed with lathi, danda and weapons and they started assaulting his father and uncle Md. Jamaluddin indiscriminately, as a result whereof, his father sustained injury on his head and he fell down in the pool of blood. According to the informant, his uncle had also sustained injuries. Contrary to his case disclosed in the fardbeyan, when the informant (PW-6) was examined in course of trial, he deposed in his examination-in-chief that when he was sitting at his door, water was flowing from the drainage of Shoeb towards the house of the informant, whereupon the father of the informant told him that dirty waters are coming which should be stopped. On this Shoeb came first with lathi and started assaulting his father, thereafter, Jubaid, Gulab, Sayeed and Suhel, came and all of them together started assaulting his father, as a result whereof, his father started profusely bleeding. In his cross-examination, when the attention of this witness was



drawn towards his statement in the fardbeyan, he denied to have stated in his fardbeyan that in the morning at 7.00 AM, the water of his hand pump was flowing into the land of Md. Mansoor and for that reason, there was hot exchange of words between his father and Md. Mansoor. The I.O., who has been examined as PW-8 in this case, has stated that he had not made an investigation as to why Mansoor was not made an accused, however, he has stated that the quarrel had taken place with Md. Mansoor due to flowing of water of the hand pump in the plot of Md. Mansoor. We, therefore, find that the informant has been contradicted on the point of genesis of the occurrence itself.

15. We have further noticed from the deposition of the wife of the deceased, who has been examined as PW-5, that in her examination-in-chief, she has stated that the dirty water of Junaid was coming to her door on which her husband had objected to whereafter Junaid, Md. Suhel, Md. Gulam, Md. Saeed, Md. Faizal and Md. Shahnawaz, altogether 9 persons came armed with *Phatta* and assaulted her husband as a result of which her husband fell down at his door. She claimed that she was also assaulted and her dewar Jamaluddin (PW-3) and Chand (not made a witness) were also assaulted. She claimed that her son Junaid (PW-6) was also assaulted whereafter the villagers



assembled there. Thus, in her examination-in-chief, while she has not taken name of Shoeb, in course of her cross-examination, she has stated that Shoeb had assaulted her husband, she became unconscious and she cannot say as to who assaulted him. She has stated in her cross-examination about two names, namely, Md. Shoeb and Md. Junaid but has stated that she cannot say all the names. Her attention was also drawn towards her previous statement made before the I.O. wherein she had stated that water was flowing in the plot of Mansoor from her hand pump and for that reason there was hot exchange of words between her husband and Mansoor. In her cross-examination, she has stated that on the date of occurrence, there was no quarrel with Mansoor and on that day Shoeb was sitting at the door of Mansoor, her husband went there to tell Shoeb not to drain the dirty water and at this time Mansoor was in his courtyard. She has stated that at the door of Mansoor, at that time apart from her husband and Shoeb, there was no other person. She has stated that nine persons were involved in causing assault, but when she first saw her husband, she found that brain matter of her husband had come out whereafter she became unconscious. She had not seen any person besides her. We, therefore, find that PW-5 has given a different place of



occurrence and according to her, it was the door of Mansoor, where her husband had gone to tell him and there Shoeb was sitting, no other person was there and when she first saw her husband, his brain matter had come out. She has made a complete departure from her previous statement and the place of occurrence given by the I.O. (PW-8) is not the same and one which has been stated by PW-5. According to the I.O., the place of occurrence is in front of the door of the informant but he had not found any blood mark at the place of occurrence and he could not say as to who had shown him the place of occurrence. We find from the analysis of the evidence of PW-5 and PW-6 who are the wife and son of the deceased that they have not only departed from their previous statements but their evidence would also create doubt as to the place of occurrence in this case.

16. In the case of Munuwa @ Satish and Others Vs. State of Uttar Pradesh (2023) 1 SCC 714, the Hon'ble Supreme Court has while pointing out the importance of the proof of place of occurrence opined in paragraphs '20' and '21' as under:-

“**20.** Another observation made on perusal of the evidence is that PW 1 stated that he reached Aliganj Police Station on foot, remained there for about 25-30 minutes, and after that returned to Village Giani by 8-9 p.m. This statement is



curious, as the FIR itself was registered at 8.30 p.m. It is surprising then that PW 1, who walked the distance of 3 km to the police station, reached there well in time and observed the deceased write the FIR, allegedly signed it himself, had his statement recorded by the SI, and after that, concluded the return journey as well, all by 8-9 p.m. It is also curious that he did not accompany the deceased to the railway station and eventually the hospital when he was in a critical condition, given that he resided with the deceased within the campus and had been working there for 10-12 years.

21. Cumulatively, the abovementioned contradictions give rise to suspicions about the eyewitness testimony of PW 1. Whether he was present at the place of occurrence or accompanied the deceased to the police station at all, are in doubt as his statements relating to the circumstances surrounding the place of occurrence and the recording of the FIR have been found to be untrue, and his conduct unnatural.”

17. The prosecution case is that the wife of the deceased and his brothers were also assaulted, Mohd. Harun who is one of the brothers of the deceased has deposed as PW-4. He has stated in his examination-in-chief that when he was in his house at the hand pump, his brother Gayasuddin (deceased) was engaged in hot exchange of words with Mansoor but thereafter he went away. According to him, again Shoeb, Saeed, Gulam and others altogether nine persons came armed with Lathi and started assaulting Gayasuddin which caused him head injury and when this witness went to save him then he was also



assaulted. In his cross-examination, he has stated that when he came out, he found that 20-25 persons had surrounded his brother and all were his co-villagers but he cannot say their names. We have noticed that though this witness claims that he was also assaulted but no injury report of this witness or any other prosecution witness has been proved in course of trial. From his statement, it would be evident that he had not seen the occurrence as according to him when he came outside his house, he found 20-25 co-villagers were there and had surrounded his brother. This is a post-occurrence circumstance.

18. The postmortem report of the deceased Gayasuddin has been marked Exhibit-2 and it has been proved by Dr. Kanhaiya Prasad Singh, who has been examined as PW-7. He had found lacerated wound stitched previously open, of size 3"x1"x skull deep in the right parietal region. Skull cavity contained blood and blood clot. The opinion of the doctor recorded in the postmortem report are being reproduced hereunder for a ready reference:-

“All the above mentioned injuries are antimortem in nature caused by hard blunt substance.

Cause of death -Death caused by hemorrhage and shocked as caused by above mentioned head injury.

Time lapse since Death – between 6 to 24 hrs.”

19. The doctor opined that all the injuries were anti-



mortem in nature caused by hard blunt substance. In his cross-examination, the doctor (PW-7) has stated that the anti-mortem injuries which he found and mentioned in column no.7, is not that the brain material has come out and if a person sleeps and hit a tube-well forcefully, such injury would be caused. We have noticed from the evidence of the prosecution witnesses and the postmortem report that while the prosecution witnesses have stated that nine accused persons had been indiscriminately assaulting the deceased by Lathi, the doctor has found injury only over the skull and no corresponding injuries which may be caused by nine persons in an indiscriminate assault by lathi has been noticed by the doctor on any other part of the body. Thus, the manner of occurrence as suggested by the prosecution witnesses is being completely ruled out by the postmortem report and the evidence of the doctor (PW-7).

20. We find from the evidence of the I.O. (PW-8) that the fardbeyan was recorded by one Prashant Kumar Mishra, the then officer in-charge of the Police Station. He had prepared the inquest report (Exhibit-1/3). This witness has identified his signature and writing on the fardbeyan which have been marked as Exhibit-1/1 and 1/2 respectively. This witness has also proved the inquest report which was a carbon copy of the original and



it has been marked as Exhibit-1/3. PW-8 had assumed the investigation of the case and had gone to the place of occurrence for verification. According to him, the place of occurrence is butted and bounded as under:-

“घटनास्थल का चौहद्दी पूरब में कच्ची सड़क जो मोहरमपुर की ओर जाती है। पश्चिम में कच्ची सड़क जो बालू टोला की ओर जाती है। उत्तर में मो० गुलाब का घर एवं कच्ची सड़क, दक्षिण में मृतक गयासुद्दीन का घर। ”

21. This witness has stated in his examination-in-chief that he recorded the re-statement of the informant Md. Junaid in Paragraph ‘64’, statement of Md. Jamaluddin in Paragraph ‘65’ and the statement of Md. Junaid, Md. Saeed, Md. Suhel, Md. Shahnawaz and Md. Tufel in Paragraph ‘70’. He had filed the charge-sheet against them. In his cross-examination, this witness has stated that the place of occurrence is a densely populated village but in this case except the family members of the deceased, no other witness could be found by him in course of investigation. He has stated that in the FIR no name of any eye witness is mentioned. He has stated in paragraph ‘24’ of his cross-examination that the witnesses who came to him claimed themselves eye witnesses, they were the neighbours of the informant but the family members of the informant did not come in front of him in course of investigation because they



were accused in Jadia P.S. Case No. 119 of 2014. For this reason, he could not record the statement of the family members of the informant. He was also I.O. of Jadia P.S. Case No. 119 of 2014 and, according to him, as per paragraph '18', the accused of Jadia P.S. Case No.119 of 2014 was arrested by the officer incharge in course of his treatment. He was brought to police station from hospital in injured condition and thereafter his defence statement was recorded. This witness has stated that in course of investigation, he had not investigated on the point as to how the informant of Jadia P.S. Case No. 119 of 2014 had suffered injuries. According to him, the doctor had found the injuries on the body of the deceased but as per the FIR nine persons were the assailants. He has stated that a road intervenes in between the house of the accused and the informant and there is no question of flowing of dirty water either from the house of the accused to the house of informant or from the house of informant to the house of the accused. We find from the evidence of the I.O. (PW-8) that there was a counter case being Jadia P.S. Case No. 119 of 2014 in which the members of the family of the informant of this case were made accused and the informant of the said case had sustained injuries. Neither the First Information Report of the counter case nor the injury of the



accused or family members of the informant have been brought on record in course of trial. The prosecution has not even whispered about any injury caused to the informant of Jadia P.S. Case No. 119 of 2014.

22. We have also noticed that Md. Jamaluddin (PW-3) who is another brother of the deceased and has been examined as PW-3 has claimed in his examination-in-chief that a quarrel had been taking place between his brother and Mansoor, he had intervened and got him pacified whereafter he had gone to his house and this witness had gone to his own courtyard. According to him, his brother remained at the door and he found that Junaid, Shoeb, Gulab, Suhel, Saeed altogether started assaulting his brother. When he went to intervene, he was also assaulted and his left hand was fractured whereafter he became unconscious. Unfortunately, no injury report of this witness PW-3 has been proved. His another brother Md. Chand who is also said to have been assaulted in the said occurrence and happened to be a witness to the inquest report has not been made a charge-sheet witness, hence not examined in this case. We have already noticed above that the wife of the deceased (PW-5) has stated that it was her husband who had gone at the door of Mansoor where the occurrence had taken place and at that time except



Shoeb and her husband nobody else was there. We therefore, find that in this case not only the genesis of the occurrence, even the place of the occurrence and the manner of occurrence have not been proved beyond all reasonable doubts.

23. We are also conscious of the fact that we are dealing with an appeal against acquittal in which the appellate court has to be very cautious and a judgment of the learned trial court need not be interfered with on mere asking unless this Court comes to a conclusion that one and only one conclusion which may be reached on the basis of evidence is that the prosecution has proved its case beyond all doubts.

In the case of **H.D. Sundara (supra)**, the Hon'ble Supreme Court has laid down the broad principles which are required to be kept in mind while entertaining an appeal against acquittal. We reproduce paragraph '8.1' to '8.5' of the judgment in case of **H.D. Sundara (supra)** 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.”

24. In ultimate analysis of the entire materials available on the record, we are of the view that the findings of the learned Trial Court are based on proper appreciation of the evidences on the record and this Court finds no reason to interfere with the judgment of the learned Trial Court.

25. This appeal is dismissed.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

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