

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.763 of 2024

In
CRIMINAL APPEAL (SJ) No.1108 of 2024

Arising Out of PS. Case No.-90 Year-2011 Thana- MURAR District- Buxar

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Arvind Singh @ Gappu Singh @ Arvind Kumar Singh Son Of Paras Nath
Singh Resident Of Village - Amsari, P.S. - Murar, District - Buxar

... .. Appellant

Versus

1. The State Of Bihar
2. Hari Shankar Singh Son Of Late Kali Singh Resident Of Village - Amsari,
P.S. - Murar, District - Buxar
3. Rameshwar Singh Son Of Late Kali Singh Resident Of Village - Amsari,
P.S. - Murar, District - Buxar
4. Parmeshwar Singh Son Of Late Kali Singh Resident Of Village - Amsari,
P.S. - Murar, District - Buxar
5. Gauri Shankar Singh Son Of Late Kali Singh Resident Of Village - Amsari,
P.S. - Murar, District - Buxar

... .. Respondents

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Appearance :

For the Appellant	:	Ms. Mukul Kumari, Advocate
For the State	:	Mr. Anand Mohan Prasad Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY)

Date : 18-11-2024.

Heard Ms. Mukul Kumari, learned counsel for the
appellant and Mr. Anand Mohan Prasad Mehta, learned
Additional Public Prosecutor for the State.

2. The present appeal has been preferred for setting
aside the judgment of acquittal dated 19.12.2023 (hereinafter
referred to as the ‘impugned judgment’) passed by learned



Additional District and Sessions Judge-V, Buxar (hereinafter referred to as the 'learned trial court') in Sessions Trial Case No. 80 of 2014 arising out of Murar P.S. Case No. 90 of 2011. The only grievance of the informant is that though the accused persons- respondent nos. 2 to 5 were facing trial under Sections 323, 341, 504, 307/34 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act but they have been acquitted under Sections 307/34 of the IPC and respondent nos. 2 and 3 were acquitted of the allegations levelled against them and respondent no. 4 was convicted under Section 323 of the IPC whereas respondent no. 5 was convicted under Section 324 of the IPC and Section 27 of the Arms Act.

Prosecution Case

3. The prosecution case in brief is that on 15.11.2011 at 01.00 P.M., the informant namely, Arvind Singh @ Gappu Singh was irrigating his field by boring, in the meantime, his uncle namely Rajnath Singh has informed that the mustard field located in garden was being ploughed by Harishankar Singh with the help of tractor. It is further alleged that the informant and his uncle had gone to the same field and protested it, in the meantime, three to four accused persons came and started assaulting to the informant and his uncle by means of lathi and



danda. On raising hulla, co-villagers namely Pintu Singh and Jhunna Singh both came to rescue them then Gauri Shankar and Parmeshwar Singh came having arms and fired upon the informant due to which he sustained injury on his waist and thigh. When Rajnath Singh came to rescue him, he also sustained injury. It is also alleged that Harishankar Singh had fired by Katta and Sri Kamal Singh had assaulted to Rajnath Singh by means of lathi due to which he also sustained head injury. Thereafter, this case has been registered.

4. On the basis of the fardebyan (Exhibit-3) of the informant, namely, Arvind Singh(P.W.-5), Murar P.S. Case No. 90 of 2011 was registered under Sections 341, 323, 504, 307 and 34 of the IPC and Section 27 of the Arms Act on 15.11.2011 against the accused persons. After investigation, the I.O. (PW-6) submitted a chargesheet bearing no. 71 of 2012 dated 31.08.2012 under Sections 341, 323, 504, 307 and 34 of the IPC and Section 27 of the Arms Act against all the accused persons. Thereafter, on 09.01.2013, learned Chief Judicial Magistrate took cognizance of the offences under Sections 307, 323/34 of the IPC and Section 27 of the Arms Act and committed the records to sessions trial. Vide order dated 06.02.2015, charges were framed under Section 307/34 of the IPC and Section 27 of the



Arms Act against accused persons. Charges were read over and explained to the accused persons in Hindi to which they pleaded not guilty and claimed to be tried.

5. In course of trial, the prosecution examined seven witnesses and exhibited several documentary evidences. The description of the prosecution witnesses and the documents brought in evidence are being provided hereunder for a ready reference:-

List of Prosecution Witnesses

PW-1	Vimal Singh
PW-2	Paras Nath Singh
PW-3	Dr. Nitendra Kumar
PW-4	Raj Narayan Singh
PW-5	Arvind Singh @ Gappu Singh (informant)
PW-6	Yogendra Kumar (I.O.)
PW-7	Ram Dayal Dubey

List of Exhibits produced on behalf of the Prosecution

Exhibit 1 & 1/1	Signatures on written report
Exhibit 2 to 2(B)	Injury Report
Exhibit 3	Fardbeyan
Exhibit 3/A	Indorsement on fardbeyan
Exhibit 4	Signature of P.Ws on formal F.I.R
Exhibit 5	Formal F.I.R.
Exhibit 6	Chargesheet



Exhibit 7	Sale deed dated 10.11.1997
Exhibit 7/A	Sale deed dated 03.02.1999
Exhibit 7/B	Sale deed dated 17.07.2000
Exhibit 7/C	Sale deed dated 14.06.2004
Exhibit 7/D	Sale deed dated 06.07.2002
Exhibit 7/E	Sale deed dated 06.07.2002
Exhibit 7/F	Sale deed dated 06.07.2002
Exhibit 7/G	Sale deed dated 26.10.2010
Exhibit 7/H	Original sale deed dated 10.05.2011
Exhibit 8	Khatiyani Khata No. 147

6. Apart from this, defence has also examined three witnesses, namely, (i) Parmeshwar Singh (DW-1), (ii) Baijnath Singh (DW-2) and (iii) Ramashankar Singh (DW-3).

Findings of the learned trial Court

7. The learned Trial Court while discussing the evidence of the case has held that from the perusal of the FIR, it is clear that the appellants were armed with deadly weapons but from the perusal of the injury report, it has been proved by the Doctor (PW-3), by which it transpires that Arvind Singh (PW-5) has received following injuries: Injury No. 1 is multiple tiny bleeding wound seinging of neighbouring tissue on the right waist, right eliac region and right thigh and second is tenderness over the chest and one Rajnarayan Singh has received two injuries one is abrasion of 1x1.5 cm on right elbow and



tenderness over chest. X-ray report of Arvind Singh shows that multiple foreign body(pellet) was seen. It simply goes to show that only Arvind Singh has received pellet injury as there was no entry and exit wound.

8. The learned trial court has held that the nature of the injuries of the victims of this case itself is sufficient to prove that the intention of the respondent nos. 2 to 5 was not to kill any of the victims. If they had intention to kill, there must have been repetition of the fire arm blow. This finding of the learned trial court is well discussed.

Submissions on behalf of the appellant

9. The learned counsel for the appellant has assailed the impugned judgment on the ground that the trial court has failed to consider the case that the prosecution has proved the place of manner of occurrence beyond all doubts and that all the witnesses have supported the case of the appellant and there is no contradiction or inconsistency in their depositions. It has also been argued by the learned counsel of the appellant that Arvind Singh, the informant who is also PW-5 in this case has received gun shot injury and the said injury was given by respondent no. 2, whereas respondent No.3 is the order giver. Respondent nos. 2 and 3 have been acquitted without considering the evidence on



record. It has also been argued that PW-6 (I.O.) and PW-3 (Doctor) have supported the case of the prosecution and PW-3 (Doctor) has found gun shot injury on the person of the informant (PW-5).

Submission of the State

10. On the other hand, learned Additional Public Prosecutor for the State has submitted that learned court has not committed any error and the judgment of the learned court is well discussed and is based on the evidences available on the record.

Consideration

11. We have gone through the evidence available on the record and from the perusal of the evidence of the PWs, it is clear that there was land dispute between the parties. PW-1 has stated in his examination-in-chief that Gauri Shankar Singh fired with his gun at Gappu @ Arvind Singh(informant), Parmeshwar and Harishankar Singh assaulted with the butt of the gun to Rajnarayan Singh. It is further stated by PW-1 that after this, Rameshwar Singh and Kamal Singh arrived and they ordered to kill Arvind. From his examination-in-chief itself, it is clear that despite that order, accused persons have not given any other blow to Gappu @ Arvind Singh.



12. PW-2, who is the father of the Arvind Singh (PW-5), has also stated that Arvind Singh and Rajnarayan Singh forbade Harishankar Singh from ploughing their fields. It is further stated that after this, Gauri Shankar Singh and Parmeshwar Singh arrived and Gauri Shankar Singh was armed with a licenced double barrel gun whereas Parmeshwar Singh was having a country made rifle and Gauri Shankar fired at his son. It is further alleged that after this, Parmeshwar Singh assaulted Arvind Singh with the butt of the rifle. When Rajnarayan Singh came to rescue, he was also assaulted with the butt of the rifle.

13. Likewise, Rajnarayan Singh (PW-4) has also stated that Rameshwar, Parmeshwar and Gauri Shankar were having weapons. Gauri Shankar fired at Arvind Singh. It is further stated that Arvind Singh was assaulted by Parmeshwar Singh with the butt of rifle. This witness is also injured witness and he has stated that when he went to rescue, he was assaulted by Kamal Singh on his head.

14. Arvind Singh (PW-5), according to the case of prosecution, he has received gun shot injury and in his examination-in-chief, he has stated that Gauri Shankar Singh who was having a licenced gun, fired at him. In his cross-



examination, this witness has stated that certain unknown persons have also come, they have also assaulted him with *lathi* on his back but this part of the statement is not substantiated by the injury report which are Ext.-2 and Ext. 2/A. So, it is also clear from the cross examination of the witnesses of the prosecution that both the parties are claiming the disputed land. Since the appellant is aggrieved as conviction is not there under Section 307 of the IPC, we would like to reproduce Section 307 of the IPC for the ready reference:-

“ 307. Attempt to murder-

Whoever does any act with such intentions or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment for either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to ¹[imprisonment for life], or to such punishment as is hereinbefore mentioned.”

15. From bare perusal of Section 307 of the IPC, it is clear that it is only the intention which is punished. The injury is not at all essential. In the case of *State of M.P. v. Saleem*, reported in *(2005) 5 SCC 554*, the Hon'ble Apex Court has held that determinative question is intention to kill or knowledge that death will be caused by the act of accused, irrespective of the result, **hence nature of injury is irrelevant though helpful in**



deducing the intention. It is said that even devil cannot know the intention. Intention is always gathered from the acts. In this case, it is alleged that the accused persons were armed with weapon. Two victims have suffered superficial injuries. In this case, the allegation of firing is only against respondent no. 5 and from perusal of the injury report which is Ext 2 to 2(B), it is clear that Arvind Singh (P.W.-5) has received pillet injury it means that bullets were not used in the firing and the fire was not made from a short range. This shows the intention that the accused is alleged to have been armed with gun and if he had the intention to kill, he must have made second fire. So, as far as the allegations under Sections 307 are concerned, they are not attracted in view of the facts and circumstances of this case.

16. It is pertinent to note here that we are dealing with the acquittal appeal filed by the informant. The Hon'ble Supreme Court in the case of *Chandrappa v. State of Karnataka*, reported in *(2007) 4 SCC 415* has laid down guidelines while exercising powers under Section 378 of the Code of Criminal Procedure against the acquittal appeal filed by the State against the order of acquittal passed by the concerned trial court. It observed in paragraph no.42 as under :-



“42. From the above decisions, in our considered view, the following general principles regarding powers of 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 Criminal Procedure Code, 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 emphasize 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 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."

17. Recently, the Hon'ble Supreme Court in the case of *Nikhil Chandra Mondal v. State of West Bengal*, reported in (2023) 6 SCC 605 has observed in paragraph no. 22 as under:

"22. Recently, a three-Judges Bench of this Court in the case of Rajesh Prasad v. State of Bihar has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that 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 court. It has been further held that 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."

18. From the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that there is double presumption of innocence in favour of the accused when the order of acquittal has been accorded by the Trial Court, firstly, the presumption of innocence, that 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 court.

19. Further, 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. Keeping in view the aforesaid observations rendered by the Hon'ble Supreme Court, as the facts and circumstances of the present case as discussed here-in-above are carefully examined, we are of the view that in the present appeal filed by the informant against the order of acquittal deserves to be dismissed.

21. Further, learned trial court has convicted accused Gauri Shankar Singh (respondent no.5) for the offences under Section 324 of the IPC and Section 27 of the Arms Act. Learned trial court has also found that there was no previous meeting of the mind between respondents and as such, has acquitted the respondents regarding allegation of common intention under Section 34 of the IPC.



22. The impugned judgment of the learned trial court is well discussed and it needs no interference by this Court.

23. In view of the aforesaid discussions, we are not inclined to entertain the present appeal. Accordingly, this appeal is dismissed.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Shubham/-
Durgesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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