

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2909 of 2019

Arising Out of PS. Case No.-1 Year-2014 Thana- SC/ST District- Khagaria

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Ramdas Rajak, Son of Late Bahru Rajak, Resident of Village- Khutiya, P.S.-
Mansi, District- Khagaria.

... .. Appellant/S

Versus

1. The State of Bihar.
2. Md. Kalam Azad, Son of Late Jafir, Resident of Village- Khutiya, P.S.-
Mansi, District- Khagaria.
3. Najmul Khatoon, Wife of Md. Kalam Azad, Resident of Village- Khutiya,
P.S.- Mansi, District- Khagaria.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Sheel Bhadra Jha, Advocate
For the Respondent/s : Mrs.Usha Kumari 1, Spl. PP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

5 02-09-2024

I.A. No. 01 of 2019

This application is filed by the appellant under

Section 5 of the Limitation Act for condonation of delay of

11 days caused in filing the present appeal.

2. For the reason as mentioned in para-3 of the

I.A., the delay of 11 days caused in filing the present appeal

is condoned.

3. Accordingly, Interlocutory Application No. 01 of

2019 stands allowed and disposed of.



Cr. APP (SJ) No. 2909 of 2019

1. The present appeal filed on behalf of the appellant/informant under Section 3(1)(X) of the SC/ST (POA) Act and Section 34 of the Indian Penal Code, which has been preferred against the judgment of acquittal dated 18.03.2019 rendered by learned Additional Sessions Judge 1st Cum Special Judge, Khagaria, in Session Trial No. 53 of 2016/Computer Registration No. 53/2016.

2. Brief fact of prosecution case, as appears from the written report of informant/applicant namely Ramdas Rajak/PW-4 that on 02.01.2013 at 11.00 AM, he purchased 1 katha 12 dhoor land about 30 years ago through registered sale deed beside of his house and since then he has right, title, possession over the said land. He further stated that since last 2-3 years Md. Kalam Azad, S/o Md. Jafir, (Respondent no. 2) who is his neighbour started disputing his right title and possession, by saying that the said land belongs to him. For this reason, on 28.12.2013 at about 1.30 PM the accused Md. Kalam and his wife namely Najmul Khatoon (Respondent No. 3) quarreled with him and



his sister-in-law namely Fulan Devi by abusing with their caste name. Thereafter, on same night at about 02.00 AM on 29.12.2013 they put house (Katghara) of the informant on fire and when he awoke, he saw in the light of fire, that accused Md. kalam Azad was running away from his house, after public alarm, several neighbour came and set down the fire.

3. On the basis of aforesaid written report Khagaria SC/ST P.S. Case No. 01/14 was registered on 02.01.2014 for the offences under Sections 504,427,34 of the IPC and Sections 3 (1) (X)(XI) of the SC/ST (Prevention of Atrocity) Act.

4. After registering the aforesaid case and concluding investigation, charge-sheet under Section 504/34 of the Indian Penal Code and Sections 3(1)(X) of the SC/ST (POA) Act was submitted before the court on 31.01.2014.

5. On the basis of aforesaid charge-sheet dated 31.01.2014, learned trial court took cognizance on 26.02.2014 and framed charges under Section 427 of the Indian Penal Code and Section 3(1)(X) of the SC/ST (POA)



Act.

6. To substantiate its case, the prosecution had examined five prosecution witnesses, as **PW-1** Tara Devi, **PW-2** Sonu Kumar, **PW-3** Fulan Devi, **PW-4** Ramdas Rajak (informant) and **PW-5** Ranjit Kumar Rajak (I.O. of this case).

7. The statement of the respondents-accused were recorded under Section 313 of the Code, where all of them denied the evidences surfaced against them and claimed their complete innocence and false implication. After the conclusion of trial, the learned Trial Court acquitted the respondents/accused through impugned judgment from the charges levelled against them. Being aggrieved, with aforesaid order of acquittal, appellant/informant preferred the present appeal.

8. Hence, the present appeal.

9. Learned counsel appearing on behalf of appellant submitted that impugned judgment of acquittal as passed by learned trial court is completely perverse as the fact surfaced during the trial was completely overlooked as



to record the present judgment of acquittal. It is submitted that despite of convincing evidence as appellant/informant was abused by his caste name, the respondents were acquitted during the trial merely on the ground that there was a property dispute between the parties. It is further submitted that the minor contradictions, which was bound to surfaced during the trial and on the basis of said contradictions, judgment of acquittal cannot be justified.

10. Learned Spl. PP while opposing the present appeal submitted that the finding of impugned judgment is well discussed and reasoned. He fairly conceded that the caste abuse is not appearing in public view.

11. I have perused the trial court records and proceedings 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.

12. It appears from the perusal of impugned judgment that there was a pending land dispute between the parties, which was pending as boundary demarcation case



no. 12/13. This case was brought by the informant/appellant against respondents which was rejected. It also appears from impugned judgment that there was major contradictions among the testimony of prosecution witnesses *qua* occurrence as well as abusing by caste name. It appears that no damaged/burnt materials was found on place of occurrence in support of allegation. This fact appears supported out of deposition of PW-5, Ranjit Kumar, who testified as I.O. of this case during the trial. It appears that contradictions which was observed by the learned trial court is well founded, which has been discussed in para-16 of the impugned judgment itself, which is quoted below:-

"16. अभियोजन द्वारा परीक्षित सभी साक्षियों के मुख्य परीक्षण, प्रतिपरीक्षण एवं सूचक के लिखित आवेदन में काफी विरोधाभास है। सूचक ने अपने आवेदन में सिर्फ धोबिन कहकर गाली देने की बात कहा है, जबकि अभियोजन साक्षी संख्या-4, जो स्वयं सूचक है, ने अपने मुख्य परीक्षण में बेटीचोद धोबिया कहने तथा पुतोह के साथ धक्का-मुक्की किये जाने की बात कहा है। जबकि अभियोजन साक्षी संख्या-3, जो कि सूचक का पुतोह है, ने अपने साक्ष्य में उसके साथ धक्का-मुक्की किये जाने की बात नहीं कहा है। उसी प्रकार अभियोजन साक्षी संख्या-4 सूचक ने अपने मुख्य परीक्षण में कहा है कि अभियुक्त उसके पुतोह से बोला कि तुम्हारे



छप्पर में आग लगा देंगे, जबकि इस तरह की बात किसी भी साक्षी ने अपने साक्ष्य में नहीं कहा है और न ही सूचक अपने लिखित आवेदन में ही कहा है। इस तरह अभियोजन द्वारा प्रस्तुत उपरोक्त साक्षियों के साक्ष्य एवं अभियोजन वाद में काफी विरोधाभास है, जिससे घटना संदेहास्पद होना प्रतीत होता है।

13. In this context, it would be appropriate to reproduce Para no. 42 of the legal report of Hon'ble Supreme Court as available through **Chandrappa and Others Vs. State of Karnataka [(2007) 4 SCC 415]**.

"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, 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 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.”

14. 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.

15. 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.

16. Hence, in view of aforesaid factual and legal discussions, the present appeal, which is preferred against acquittal, is dismissed herewith, at admission stage itself.

17. Copy of this judgment be sent to learned trial court, without delay.

(Chandra Shekhar Jha, J)

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