

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.724 of 2023

Arising Out of PS. Case No.-154 Year-2019 Thana- UDWANTNAGAR District- Bhojpur

Pawan Kumar Son of Suresh Prasad Resident of Village- Milki, PS-
Udwantnagar, District- Bhojpur

... .. Appellant/s

Versus

1. The State of Bihar
2. Laldhari Singh Son of Ram Laddu Singh Resident of Village- Milki, PS-
Udwantnagar, Distt- Bhojpur
3. Bachcha Singh @ Bachcha Babu Son of Late Sukhdeo Singh Resident of
Village- Milki, PS- Udwantnagar, Distt- Bhojpur
4. Panchraj Singh Son of Late Sukhdeo Singh Resident of Village- Milki, PS-
Udwantnagar, Distt- Bhojpur
5. Anil Singh Son of Late Lallu Singh Resident of Village- Milki, PS-
Udwantnagar, Distt- Bhojpur
6. Upendra Singh Son of Swarath Singh Resident of Village- Milki, PS-
Udwantnagar, Distt- Bhojpur
7. Jajan Singh Son of Late Sukhdeo Singh Resident of Village- Milki, PS-
Udwantnagar, Distt- Bhojpur
8. Dharmendra Kumar Son of Sri Parmanand Singh Resident of Village- Milki,
PS- Udwantnagar, Distt- Bhojpur

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Bajarangi Lal, Advocate
For the Respondent/s : Mr. Manish Kumar No.2, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date : 26-02-2024

Heard Mr. Bajrangi Lal, learned counsel for the
appellant/informant and Mr. Manish Kumar No.2, learned A.P.P.
for the private respondents/accused and the State.

2. The present appeal has been filed by the



appellant/original informant under Section 372 of the Code of Criminal Procedure, 1973 against the judgment and order of acquittal dated 08.06.2023 passed by learned Additional Sessions Judge 3rd, Bhojpur at Ara in Sessions Trial No.01 of 2020 (arising out of Udwanthnagar P.S. Case No.154 of 2019) whereby the concerned Trial Court has acquitted all the private respondent nos.2 to 8 of the charges for the offences punishable under Sections 341, 323, 307 and 302 read with Section 149 of the Indian Penal Code.

3. Learned counsel for the appellant/informant has supplied the copy of deposition of the prosecution witnesses and other documentary evidence. Learned counsel for the appellant has referred the same and thereafter submitted that in the present case the prosecution has proved the charges against all private respondents/accused, despite which, the Trial Court has passed the impugned order, whereby all the private respondents/accused have been acquitted. It is submitted that the prosecution has examined eleven witnesses including the Investigating Officer and the Medical Officer as PW-4 and PW-10 respectively and the witnesses have supported that the accused persons assaulted the deceased Mohan Singh, Munni Lal and Sakalpato Devi by means of *lathi*, *danda*, iron rod and *bhala*. He further submits that PW-9 and PW-11 being injured witnesses have also supported and



corroborated the occurrence and PW-10, Dr. Dharmendra Kumar who conducted the postmortem on the dead body of deceased, in his deposition found injuries on the head of the deceased which duly corroborated the prosecution story. He next submits that the learned Trial Court merely on the basis of the fact that disputed land did not belong to the informant disbelieved the prosecution case ignoring that the uncle of the informant died in the incident due to sustaining grievous injuries caused on his head by accused Laldhari Singh. Learned counsel for the appellant, therefore, urged that the present appeal requires consideration and, therefore, this appeal be admitted and thereafter the impugned order of acquittal be quashed and set aside.

4. On the other hand, learned A.P.P. has referred the deposition given by the prosecution witnesses and thereafter submitted that though there are injured eye witnesses to the occurrence in question, the doctor who had given the treatment to the injured witnesses has not been examined, nor medical certificates of the injured witnesses have been brought on record. He further submits that the Trial Court has passed the impugned judgment and order by considering the material on record and is a reasoned order. Learned A.P.P. thereafter submitted that the State has not preferred acquittal appeal against the impugned judgment rendered by the Trial Court. However, it has been



submitted by learned A.P.P. that this Court may pass appropriate order looking to the facts of the present case.

5. Having heard learned counsel appearing for the parties and having gone through the materials placed on record, it would emerge that PW-1, Pawan Kumar is the informant, who has given his written report, on the basis of which F.I.R. was registered. In the said written report, he has narrated about the occurrence which took place on 23.04.2019 at about 12:30 P.M. It is revealed from the record that in the written report, the allegations are levelled against the accused persons that they having armed with *lathi*, *bhala* and iron rod came at the land of the informant and started constructing wall on the land of the informant and on being objected Laldhari Singh assaulted Mohan Singh (deceased) upon his head by *bhala* and Bachcha Babu hit on the head of Munni Lal, all accused persons by means of *lathi* and *dab* assaulted the *fua* (sister of father) of informant causing injury to them and their treatment was done at Ara Sadar Hospital, Ara and for better treatment, Mohan Singh was referred to P.M.C.H., Patna where Mohan Singh died.

6. From the record, it would reveal that out of eleven prosecution witnesses, PW-3 has been declared hostile. PWs-5, 6 and 7 are hearsay witnesses, who have not seen the incident. PWs-1, 2, 8, 9 and 11 are interested witnesses. It is well settled



that the evidence of interested witness has to be examined with great care and caution to obviate possibility of false implication or over implication.

7. From the record, it would reveal that though it is a specific case of the informant that the treatment of injured was done at Ara Sadar Hospital, Ara but the doctor who had given treatment to the injured witnesses has not been examined by the prosecution. The injury reports/certificates of the injured in the occurrence were also not brought on record.

8. It is specific case of the informant and other so-called eye witnesses that Laldhari Singh assaulted Mohan Singh upon his head with *bhala* but from the postmortem report of deceased Mohan Singh, it is clear that no injury was found on the body of deceased by sharp weapon. PW-10 Dr. Dharmendra Kumar, who conducted autopsy on the dead body of deceased Mohan Singh, has found no injury caused by sharp weapon. Thus, it is clear from the record that there is no corresponding injury to the weapon used by accused Laldhari Singh on deceased; the medical evidence does not support the case of the so called eye witnesses and that would sufficient to discredit the entire prosecution case.

9. It is well settled that in case of a conflict between oral evidence and medical evidence, the former is to be preferred



unless the medical evidence completely rules out the oral evidence. But, when medical evidence specifically rules out the injury claimed to have been inflicted as per the eye witnesses' version, then the court can draw adverse inference that the prosecution version is not trustworthy.

10. The prosecution case is that the accused persons were constructing the wall on their land but the Investigating Officer stated that the place of occurrence belongs to Parmanand Singh (father of accused Dharmendra Singh) and accused Laldhari Singh. He has stated that the F.I.R. of this case is numbered as 154 of 2019 whose informant is Pawan Singh (PW-1) and other case bearing F.I.R. No.155 of 2019 whose informant is accused Dharmendra Kumar. He further stated that both parties were injured. In para 9 of his cross-examination, he has stated that he has not found any construction of wall on the place of occurrence. He has not found anything at the place of occurrence to show that any occurrence had taken place. This fact also creates doubt with respect to place of occurrence, genesis of incident as disclosed by the prosecution.

11. The I.O. (PW-4) in his cross-examination stated that in fardbeyan of witness Akhilesh Kumar and his re-statement he had not stated that accused persons were constructing wall and also not stated that Laldhari Singh came with *bhala* and given



bhala blow on the head of Mohan Singh causing head injury and when Munni Lal and *fua* had gone to save him, Bachcha Babu had assaulted on the head of Munni Lal and *fua* was assaulted with brick and *lathi*. He also stated that witness Akhilesh Kumar had not made any specific allegation against any accused with respect to committing assault. It reveals from the record that Akhilesh Kumar (PW-2), who is the son of deceased Mohan Singh, had given fardbeyan on 24.04.2019 on 11:15 A.M. before S.I. Shyam Singh at P.M.C.H. (T. O.P.) and inquest report (Ext.2) was prepared by the said S.I. Shyam Singh at 11:45 A.M. on 24.04.2019 at P.M.C.H., Emergency Ward, Patna on which witnesses were Akhilesh Kumar and Arun Kumar. The prosecution has not proved the said fardbeyan in trial. S.I. Shyam Singh was also not produced by the prosecution. No explanation has been offered in this regard. It appears that fardbeyan of PW-2 was purposely suppressed by the prosecution as it did not contain the specific allegation against any accused person with respect to committing assault. It creates a doubt as to whether the prosecution has brought on record the real genesis and manner of the incident.

12. In the instant case, the place of occurrence was not proved beyond all reasonable doubts by the prosecution and it is the settled proposition of law, as held by the Hon'ble Supreme



Court in **Syed Ibrahim vs. State of Andhra Pradesh**, reported in **JT 2006 (6) SC 597** that it would not be proper to accept the prosecution case when the place of occurrence itself has not been established.

13. It would further reveal that no alleged used weapons *like lathi, danda*, iron rod and *bhala* have been found during investigation. The Investigating Officer has not found any blood stain at the place of occurrence.

14. It is not in dispute that there is case and counter case between the parties due to same occurrence and in case of sudden fight between the two parties, provision of Section 149 I.P.C. for the purpose of imposing criminal liability cannot be invoked.

15. It is well established position of law that if the Trial Court has taken a view which is a possible view in a reasonable manner, then the same shall not be interfered. Only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be totally perverse or wholly unsustainable, the appellate Court can interfere with the order of acquittal. Presumption of innocence in favour of the accused further gets reinforced and strengthened by the acquittal of the Trial Court. The appellate Court cannot overturn acquittal only on the ground that after reappreciating evidence, it is of the view that the guilt of the accused was established beyond reasonable



doubt. Only by recording such a conclusion, an order of acquittal cannot be reversed unless the appellate Court also concludes that it was the only possible conclusion.

16. Recently, the Hon'ble Supreme Court in **H.D. Sundara and Others vs. State of Karnataka**, reported in **(2023) 9 SCC 581** has summarised the principles, which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 Cr.P.C. in paragraph 8 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."*

17. The Hon'ble Supreme Court in **Nikhil Chandra**



Mondal vs. State of West Bengal, reported in **(2023) 6 SCC 605**

has observed in paragraph 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. We have also gone through the reasoning recorded by the learned Trial Court while passing the impugned judgment and order and we are of the view that the Trial Court has not committed any error while passing the same. The view taken by the Trial Court could not be said to be either perverse, illegal or impossible to warrant interference. We are of the view that the prosecution has failed to prove the charges against the private respondents/accused persons beyond reasonable doubt and, therefore, the Trial Court has rightly given the benefit of doubt to the private respondents/ accused and thereby not committed any illegality as contended by the learned counsel for the appellant.



No interference with the impugned judgment and order of acquittal is warranted.

19. In view of the aforesaid discussion, the present Appeal fails. Accordingly, the same is dismissed.

20. Let the Trial Court Records of the instant appeal be returned forthwith to the learned Trial Court with a copy of this judgment and order.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

Harish/-

AFR/NAFR	NAFR
CAV DATE	N/A
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