

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.59 of 2021

Arising Out of PS. Case No.-62 Year-2012 Thana- KURSAKANTA District- Araria

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ALIJAN ANSARI SON OF LATE SANAULLAH R/o village- Nayatola
Siktiya, P.S.- Kursakata (Sonamani Gudam), District- Araria

... .. Appellant

Versus

1. The State of Bihar
2. Mansur Ansari S/o Imran Ansari @ Umar Ali Ansari R/o village- Nayatola Siktiya, P.S.- Kursakata (Sonamani Gudam), District- Araria
3. Majrul Ansari S/o Imran Ansari @ Umar Ali Ansari R/o village- Nayatola Siktiya, P.S.- Kursakata (Sonamani Gudam), District- Araria
4. Mahmud Ansari @ Mahbub Ansari S/o Imran Ansari @ Umar Ali Ansari R/o village- Nayatola Siktiya, P.S.- Kursakata (Sonamani Gudam), District- Araria
5. Serajuddin Ansari S/o Imran Ansari @ Umar Ali Ansari R/o village- Nayatola Siktiya, P.S.- Kursakata (Sonamani Gudam), District- Araria
6. Zamruddin S/o Imran Ansari @ Umar Ali Ansari R/o village- Nayatola Siktiya, P.S.- Kursakata (Sonamani Gudam), District- Araria
7. Mafizuddin S/o Imran Ansari @ Umar Ali Ansari R/o village- Nayatola Siktiya, P.S.- Kursakata (Sonamani Gudam), District- Araria
8. Abu Tale S/o Late Abdul Majeed R/o village- Nayatola Siktiya, P.S.- Kursakata (Sonamani Gudam), District- Araria

... .. Respondents

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Appearance :

For the Appellant	:	Md. Ziaul Quamar, Advocate
	:	Mr. Manish Kumar, Advocate
For the Respondents	:	Mr. Bipin Kumar, A.P.P.

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

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

13 07-03-2024 This appeal has been filed on behalf of the appellant under Section 372 (Proviso) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Code”) against the judgment of conviction and order of sentence dated 19.06.2020



rendered by the learned Additional District & Sessions Judge-V, Araria in Sessions Trial No. 28 of 2013 arising out of (Additional Trial no. 274 of 2013) CIS No. 2576 of 2013 arising out of Kursakanta P.S. Case No. 62 of 2012 whereby, the Additional District & Sessions Judge-V, Araria has been pleased to acquit the Respondent Nos. 2 to 8 of the charges under Sections 147, 148, 149, 341, 323, 324, 325, 307 and 379 of the Indian Penal Code giving benefit of doubt to them.

2. Heard Md. Ziaul Quamar assisted by Mr. Manish Kumar, learned Advocates for the appellant /original informant and Mr. Bipin Kumar, learned A.P.P. for the Respondents-State.

3. The prosecution case, in brief, is as under :-

“At about 6:00 AM, informant along with his elder brother Abdul Raheem was going to Araria market but on the way when they reached Brick Bhatta, half kilometer away from his house, all the accused persons surrounded them and brutally assaulted them with *lathi*, *farsa* and sword. Brother of the informant received head injury who fainted and fell on earth and the informant has also sustained head injury. It is further alleged that when informant and his brother started crying and yelling, several persons reached there from the maize field and nearby *mohalla*. It is further alleged that the accused persons snatched



Rs. 4,000/- and two mobile phones from the pocket of both the brothers and thereafter, they fled away.”

4. Learned Advocate for the appellant submitted that after the registration of the FIR against the present Respondents /original accused before Kursakanta Police Station for the offences punishable under Sections 147, 148, 149, 341, 323, 324, 325, 307 and 379 of the Indian Penal Code, the Investigating Officer carried out the investigation and thereafter filed the charge-sheet against the accused. The case was exclusively triable by a Court of Sessions. Therefore, the learned Magistrate committed the same to the Sessions Court where the same was registered as Sessions Trial No. 28 of 2013 arising out of (Additional Trial no. 274 of 2013).

5. It is pointed out by learned Advocate for the appellant from the record that before the Trial Court, the prosecution had examined six witnesses, including the two injured eye-witnesses and four eye-witnesses. It is contended that the informant, PW-6, is also an injured witness who has also narrated before the Court the manner in which the occurrence took place and the role played by each of the accused has been stated by him before the Trial Court. It is further submitted that brother of the informant has also



sustained injury in the occurrence in question. Learned Advocate would, therefore, submit that four independent eye-witnesses have also supported the case of the prosecution, despite which, the Trial Court has acquitted the original accused/private respondents herein, mainly on the ground that the prosecution has failed to examine the doctor, who had given the treatment to the injured, as well as the Investigating Officer who has carried out the investigation.

6. Learned Advocate for the appellant thereafter submitted that the Investigating Officer and the doctor could not be examined because of the prevailing situation during Covid-19. It is submitted that the Trial Court passed the impugned order in June, 2020 during lock-down period and, therefore, the aforesaid witnesses could not be examined. Thus, there was no fault on the part of the prosecution for non-examination of the aforesaid witnesses and the Trial Court ought to have considered the important aspects of the matter. It is contended that when the injured witnesses have supported the case of the prosecution, it was the duty of the Trial Court to consider the deposition and convict the original accused for the offences committed by them. Learned Advocate for the appellant/ informant, therefore, urged that the present appeal be allowed and the impugned order



passed by the Trial Court be quashed and set aside.

7. Learned A.P.P., on the other hand, has submitted that the Trial Court has not committed any error while passing the impugned order as the Investigating Officer and the doctor were not examined by the prosecution. However, learned A.P.P. submitted that, looking to the facts and circumstances of the present case, this Court may pass appropriate order. At this stage, it is also submitted that till date the State has not preferred any acquittal appeal against the impugned order passed by the Trial Court.

8. We have considered the submissions canvassed by the learned Advocates appearing for the parties. We have also perused the LCR and the materials placed on record by the learned Advocates appearing for the parties.

9. It would emerge from the record that the prosecution has examined six witnesses before the Trial Court. The informant, PW-6, is the injured witness as per the version of the prosecution. Similarly, PW-5, who is brother of the informant, has also sustained injury as per the contentions taken by learned Advocate for the appellant.

10. At this stage, we would like to re-appreciate the entire evidence led before the Trial Court by the prosecution.



11. PW-1 is Abdul Rahim. He has stated in his deposition that he was ploughing his field. His daughter came to him running and informed that some people have attacked and killed the brother of paternal uncle (Fufa). The daughter described Alijan as Fufa and the name of the brother as Rahim Ansari. He rushed to the place of occurrence and witnessed that both Alijan and Rahim were in pool of blood and unconscious. The people assembled there informed that Sirajuddin, Mafijuddin, Jamiruddin, Majrul and Mahmood have assaulted them with Gadansa, Sword, Lathi and Farsa. He has stated in para-8 that, with the aid of the villagers, he took the injured in an Ambulance to Kursakanta Hospital. He claims to identify accused Mansoor present in the Court and he can identify other accused also by face. In his cross-examination at para-13, he has stated that he had not witnessed the incident with his own eyes.

12. P.W. 2 is Md. Shamshad Ansari. In his examination-in-chief he has stated that the incident took place about three years ago. However, he does not remember the exact date and month. It was 6:00 a.m. He was ploughing his Maize field. The accused persons had started scuffle with Alijan. When he went nearer, he saw that Mansoor assaulted Alijan with a sword on his head. When he fell down, Jamruddin gave a Farsa



blow. When Abdul Rahim came to his rescue, he too was assaulted by Mansoor with a sword by which he sustained injury followed by blows with lathi. When we started raising Hulla, accused persons started fleeing from the place of occurrence. He has named all the accused persons. He claims to identify Mansoor Alam present in the Court and can identify other accused by face. He had given the same statement before the police.

12.1. In his cross-examination at para-18, he has stated that he had gone to the place of occurrence on hearing the commotion. In para-19 he has claimed to have reached the place of occurrence first of all. He has stated that when he reached the place of occurrence, Alijan and his brother had not fallen unconscious in a pool of blood, rather they were assaulted before his eyes. He has stated that he is not aware of any cross-case filed against the prosecution side. He has stated in para-28 that he is not aware about any civil case pending for 25-30 years between the parties. He has denied the suggestion of giving false deposition as he is the cousin brother of the informant.

13. P.W. 3 is Hasibul Ansari. He has stated in his examination-in-chief that he was in his field and went to the place of occurrence on hearing Hulla. Anil Yadav had called



him. He saw that Mansoor, Sirajuddin, Mahfoozuddin, Jamiruddin, Mahmood etc. had together assaulted Abdul Rahim and Alijan. He has also described the place of occurrence and named the persons present at the scene. He has claimed to identify accused Mansoor present in the Court and claims to identify other accused persons also by face.

13.1. In his cross-examination, he has stated that Alijan is his cousin (Fufera) brother. He has stated in para-27 that he is not aware of any land dispute going on between the parties for 15 years. He has denied the suggestion that accused Mahfoozuddin has filed Kursakanta P.S. Case No. 63/2012 which is pending and to circumvent the same, this false case has been filed.

14. P.W. 4 is Mohd. Shabir. He has stated in his examination-in-chief that at the relevant time he was in his Maize field. On hearing that Abdul Rahim has been attacked, he rushed to the place of occurrence and saw that Mansoor inflicted a blow with sword on Abdul Rahim. The sword hit his head and he fell down. At this, his brother Alijan came to his rescue who too was assaulted by Sirajuddin, Mahfuddin, Jamruddin, Mansoor, Mahmood and Mazrul. The uncle of Mansoor, namely Abu Talib Ramzan, was present there, but he did not intervene.



The witness and others took Abdul Rahim and Alijan to the Kursakanta Hospital for treatment.

14.1. In his cross-examination, he has stated that Abdul Rahim and Alijan are his cousin (Fufera) brothers. He denies to be aware of the land-dispute going on between the parties. He has stated in para-30 that for the occurrence of the same date, accused persons have also filed a case against the prosecution side. He has denied the suggestion that they were ploughing the field of accused persons and when Mahfuzuddin, Mahmuddin and Mazrul came to stop, they assaulted and injured them and to circumvent the said case, the informant has filed this false case.

15. P.W. 5 is Abdul Rahim, in his examination-in-chief has stated that the incident took place on 07.06.2012 at 6:00 a.m.. At that time, he and his brother Alijan Ansari were coming to Araria from their house. When they reached near the brick kiln situated about 1 k.m. away from the village, accused Mansoor, Mazrul, Mahmood, Sirajuddin Ansari, Nasruddin Ansari, Jamiruddin Ansari, Abu Talib Ramzan, in all 8 persons, had assembled there. When they reached near them, they, all on a sudden, came to the front and cornered them. Out of them Mahfuzuddin was armed with a Farsa, Mansoor with a sword



and others were having Lathis in their hands. Sirajuddin was the order-giver. On his instruction, all the accused persons started inflicting blows. Mahfuzuddin assaulted with Farsa, which he tried to ward off with his right hand, as a result of which his right hand was broken. One accused inflicted a lathi blow. At the same time, Mansoor inflicted a sword blow which hit his head breaking his head. His brother was also assaulted by Manzoor with the sword breaking his head. His leg was also broken with a lathi blow. We cried for help loudly upon which, first of all Shamshad reached, followed by Ashok Yadav, Dinesh Yadav and Anil Yadav and others. Seeing them, accused persons fled away. Villagers reached them to Hospital. Police came there and recorded their statements. The informant of the present case is his elder brother. He claims to identify Mansoor who is present in Court and can identify others also by face. He has stated that a land dispute is going on between the parties which has gone upto the High Court, Patna. For the same day's incident, accused persons have also lodged a case against the witness and others. Nobody except J.C.B. driver was present at the brick-kiln. Police had recorded his first statement at the place of occurrence.

15.1. In para-10 of his cross-examination, he has



stated that whether the statement of accused was recorded in the police station or not, he is not aware. In para-11, he has denied to have informed the police that Mahfuzuddin was armed with a Farsa. He accepted to have stated before the police that Mansoor had inflicted a sword blow on the head of his brother Alijan, which broke his head. He has denied the fact that the accused had come to the field to stop them from ploughing the field when they were assaulted by the prosecution-side. In retaliation, they have filed a false case against the prosecution side.

16. P.W. 6 Alijan Ansari, informant, admits to have filed the present case. He has stated that the incident took place more than four years ago. It was morning. He was coming to Araria. Accused Sirajuddin, Mahmood, Mansoor, Mazrul, Jamiruddin etc. came to the north of the village brick-kiln and blocked the path, assaulted him and his brother Hafiz Abdul Rahim. Mansoor assaulted him with a sword hitting his head and hand in which his hand was cut. He had gone to Hospital where police had also arrived. He had given a written complaint and he identifies the same to be in his handwriting, which was accepted as Exhibit-1.

16.1. In his cross-examination, the witness has stated in para-2 that Shabir is his cousin (Fufera) brother so also



Shamshad. Abdul Rahim is the brother-in-law of his brother. In para-3 he has stated that he had disclosed to the police that Mafijuddin had assaulted Rahim on his head. In para-4 he has stated that Mafijuddin has lodged a case in the police station against them. He has also stated that they are on bail in the same. In para-5 he has admitted pendency of land-dispute between the parties. Both the brothers were assaulted and taken to hospital for treatment. He cannot describe the manner in which the prosecution side was assaulted. Their clothes had been soaked in blood and they had shown the blood-stained clothes to the police personnel. He has denied the suggestion that they had gone to forcibly plough the field of the accused persons and on protest by them they had also assaulted the accused persons for which the accused persons had filed Kursakanta P.S. Case No. 63 of 2012, to circumvent which, the present case has been filed.

17. Upon going through the evidence of the above witnesses, it is not in dispute that in the present case, the prosecution has failed to examine the Investigating Officer, who has carried out the investigation, as well as the doctor who has given the treatment to the injured witnesses. It is pertinent to note at this stage that it is the specific contention of learned



Advocate for the appellant that the Trial Court has passed impugned order in June, 2020 during lock-down period and because of the lock-down and prevailing situation in the country because of Covid-19, doctor as well as the Investigating Officer were not examined by the prosecution. However, we have perused the order-sheet as well as the record of the Trial Court. It would emerge from the said order-sheet that PW-6 (informant) was examined by the prosecution on 05.11.2016, thereafter the Court has waited for sufficient time/reasonable time and thereafter on 16.12.2019, the prosecution evidence was closed and statement of the accused under Section 313 of the Code came to be recorded on 22.01.2020. Thus, from the aforesaid dates and events, it is clear that the submission of the learned Advocate for the appellant is misconceived. Thus, fact remains that the prosecution did not examine the Investigating Officer and the doctor. Thus, the prosecution has failed to prove the nature of so-called injury sustained by the informant and his brother.

18. It would further emerge from the record that it is the specific case of the prosecution that immediately after the occurrence took place, the informant and the injured were taken to the concerned Primary Health Centre, Kursakanta. However,



it is pertinent to note that, though police was present in the said hospital, the informant did not give his *fardbeyan* before the police and, surprisingly, the written complaint was submitted by the informant in the police station wherein, the accused persons have been implicated.

19. Thus, in absence of any injury report/certificate produced by the prosecution on record, we are of the view that the prosecution has failed to discharge its burden to prove the case against the accused that they have made an assault on the informant and his brother with deadly weapons. Further in absence of the examination of the Investigating Officer, prosecution has also not brought on record whether the alleged weapons were recovered/discovered from the accused or not and whether the Investigating Officer had visited the place of occurrence or collected any blood stained soil etc. from the place of occurrence.

20. Thus, in view of the aforesaid facts and circumstances of the present case, we are of the view that prosecution has failed to prove the case against the respondents beyond reasonable doubt. We have also gone through the reasoning recorded by the Trial Court and we are of the view that Trial Court has not committed any error while passing the



impugned order.

21. At this stage, we would like to refer to the decision rendered by this Court on 10th January, 2024 in Criminal Appeal (DB) No. 550 of 2023. In the said decision, Division Bench of this Court has considered the decisions rendered by the Hon'ble Supreme Court wherein the Hon'ble Supreme Court has laid down guidelines/general principles regarding powers of the Appellate Court while dealing with an Appeal against the order of acquittal. This Court has also observed in Paragraphs 21 and 22 as under :-

“21. At this stage, it is also pertinent to note that we are dealing with the acquittal appeal filed by the informant against the order of acquittal rendered by the concerned trial court. The Hon'ble Supreme Court in the case of ***Chandrappa and Ors. Vs. State of Karnataka***, reported in (2007) 4 SCC 415 has observed in **Paragraph-42** as under:-

“42. From the above decisions, in our considered view, the following general principles regarding powers of the 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 emphasise 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 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 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.”

22. Recently, the Hon’ble Supreme Court in the case of **Nikhil Chandra Mondal Vs. 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.”

22. From the aforesaid decisions rendered by this Court, it can be said that there is double presumption in favour of the accused when the order of acquittal has been recorded 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. 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.

23. Keeping in view the aforesaid decision, if the facts and circumstances of the present case are examined coupled with the judgment and order passed by the learned Trial Court, we are of the view that Trial Court has not committed any error while passing the impugned order. Hence, no interference is required in the present appeal.

24. Accordingly, this Appeal stands dismissed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

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