

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3530 of 2023**

Arising Out of PS. Case No.-194 Year-1996 Thana- MOTIHARI TOWN District- East
Champaran

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MOHAMMAD NESAR AHAMAD ANSARI @ NESAR AHMAD SON OF
LATE MOHAMMAD FARMAN ALI RESIDENT OF VILLAGE-
BALUWATAL, PS- MOTIHARI, DISTT- EAST CHAMPARAN

... .. Appellant/s

Versus

1. THE STATE OF BIHAR
2. MS. NASIR ANSARI SON OF LATE AZMAT ANSARI RESIDENT OF
VILLAGE-BALUATAL, PS- MOTIHARI TOWN, DIST- EAST
CHAMPARAN
3. BIBI RAUSHAN ARA WIFE OF MD. NESHAV AHMAD RESIDENT OF
VILLAGE-BALUATAL, PS- MOTIHARI TOWN, DIST- EAST
CHAMPARAN
4. MD. SAGIR ANSARI SON OF AZAMAT ANSARI RESIDENT OF
VILLAGE-BALUATAL, PS- MOTIHARI TOWN, DIST- EAST
CHAMPARAN
5. NOOR BANU KHATOON WIFE OF MD. NASIR ANSARI RESIDENT
OF VILLAGE-BALUATAL, PS- MOTIHARI TOWN, DIST- EAST
CHAMPARAN
6. SALMA ARA WIFE OF SAFIR ANSARI RESIDENT OF VILLAGE-
BALUATAL, PS- MOTIHARI TOWN, DIST- EAST CHAMPARAN

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Kundan Rathore@ Kundan Kumar, Advocate
For the Respondent/s : Mr. Zeyaul Hoda, APP

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 29-08-2024

I.A. No. 01 of 2023

This application is filed by the appellant under

Section 5 of the Limitation Act for condonation of delay of

55 days caused in filing the present appeal.



2. For the reason as mentioned in para-3 of the I.A., the delay of 55 days caused in filing the present appeal is condoned.

3. Accordingly, Interlocutory Application No. 01 of 2023 stands allowed and disposed of.

Cr. APP (SJ) No. 3530 of 2023

4. The present appeal filed on behalf of the appellant/informant/complainant/P.W. 4, under Section 372 of Code of Criminal Procedure, 1973, which has been preferred against the judgment of acquittal dated 17.08.2022 rendered by learned 20th Additional Sessions Judge, East Champaran, Motihari in Session Trial No. 66 of 1998, arising out of Motihari Town P.S. Case No. 194 of 1996, whereby the present five respondents/accused have been acquitted from the charges levelled against them.

5. Heard learned counsel appearing for appellant and learned APP appearing for the State.

6. Bring fact of prosecution case, as appears from complaint petition of the complainant Md. Neshar Ahmad Ansari/P.W. 4, which was sent for registration of F.I.R.



under Section 156 (3) of the Cr.P.C. is that the complainant Md. Neshar Ahmad Ansari/appellant, was married to Bibi Raushan Ara on 24.02.1996 as per Muslim rituals without any dowry and dower of Rs. 15,051/- was fixed for the marriage. The marriage was solemnized at Village Pareuwa, P.S.- Raxaul, where on 25.02.1996 Bibi Raushan Ara came to her in-laws house with the complainant. It is the case of the complainant that on the date of marriage all relatives of the complainant were present at his home and on 26.02.1996, walima was fixed. In the morning of, 26.02.1996 accused Md. Sagir Ansari and Md. Nasir Ansari came to the house of the complainant and stated that mother of the accused Raushan Ara is seriously ill and requested to send the Raushan Ara with them. The complainant/appellant, believing on their statement sent the co-accused Raushan Ara with co-accused Md. Sagir Ansari (respondent no. 4) and Md. Nasir Ansari (respondent no. 2). The complainant also requested to come with them, but accused persons were not desirous to follow him with them but somehow he managed to persuade them and also came



to his in-laws house/*sasural* and found her mother-in-law hale and hearty. The complainant wanted his wife to come with him but accused Md. Sagir Ansari and Md. Nasir Ansari in conspiracy with each other did not allow the complainant to meet her on the pretext that before donga the complainant cannot meet his wife at in-laws house/*sasural*. The complainant returned home. It is further case of the complainant/appellant that accused Md. Sagar Ansari is the owner of the house and accused Raushan Ara alongwith her father and mother lives at Patna with Md. Sagir Ansari. It is also the case of the complainant that on several occasions complainant requested his father-in-law, uncle and other relatives to sent his wife Raushan Ara with him but accused did not sent complainant's wife Raushan Ara with him. It is also the case of the complainant that the wife of accused Md. Sagir Ansari, ordinarily lives at Pareuwa and the accused Md. Sagir Ansari has kept the complainant's wife with him illegally with an ulterior motive. The complainant also apprehended that accused wanted to re-marry said Raushan Ara, the wife of the complainant. The complainant also



apprehended that his wife may be killed and thereafter complainant would may implicate in some false and frivolous criminal case. As per the complainant/appellant his wife Raushan Ara on the day when she went with her father and uncle took her all jewellery gifted to her and also did not return the jewellery back to his parents. The complainant tendered a legal notice also, which was not replied by the accused/respondents.

7. After recording aforesaid information, the formal FIR came to be registered before the concerned police station and the Investigating Officer carried out the investigation, during the course of which, the Investigating Officer has recorded the statement of witnesses and collected the documentary evidence. After the investigation was concluded, the Investigating Officer filed charge-sheet against the respondents-accused for the offences punishable under Sections 406/34, 420/34, 366/34, 497/34 and 498/34 of the Indian Penal Code (in short 'IPC).

8. Before the Trial Court, the prosecution had examined six prosecution witness **P.W. 1** Dil Mohammad,



P.W. 2 Md. Karim, **P.W. 3** Allaudin, **P.W. 4** Neshar Ahmad (complainant), **P.W. 5** Md. Anish and **P.W. 6** Shivnath Ram.

9. 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/complainant/P.W. 4 preferred the present appeal.

10. Hence, the present appeal.

11. Learned counsel appearing on behalf of appellant submitted that impugned judgment of acquittal as passed by learned trial court is completely perverse and therefore, same is required to be interfered as depositions of several prosecution witnesses including complainant/informant/P.W. 4 supported the occurrence in issue, which was completely ignored and overlooked by



learned trial court without assigning any reason. It is submitted that marriage of appellant namely Neshar Ahmad is admitted with Raushan Ara, who is the daughter of respondent no. 2. It is submitted that it appears from deposition of appellant/P.W. 4 that he tried his best to meet his wife but he was not allowed to meet with her by respondents. It also appears from the depositions that respondents intentionally took bride with them for Patna. Learned counsel further pointed that learned trial court failed to appreciate the fact that the wife of complainant/appellant/P.W. 4 went under care of his uncle (respondent no. 4) and while leaving the house of appellant took her all jewellery and did not return the same, gifted by complainant/appellant and his family members. It is submitted that the depositions of prosecution witnesses supported the legal ingredients for the offences, which has been alleged and therefore, the judgment of acquittal is bad in the eyes of law and same is fit to be quashed and set aside.

12. Heard learned APP appearing on behalf of the



State, who upon assailing the impugned judgment submitted that judgment is well discussed on every aspects. It is submitted that marriage of appellant is admitted with the daughter of respondent no. 2 and he himself allowed to go her with respondents. It is further submitted that alleged jewellery in view of own submissions of learned counsel appearing for the appellant was gifted jewelleries and therefore the allegation of cheating is unfounded. It is also submitted that the allegation of illicit relationship of respondent no. 4 with Raushan Ara is baseless and purely imaginary and only to aggravate allegation, where respondent no. 4 is none but the own uncle of wife of the appellant with whom she was allowed to visit her paternal home. There is no documentary evidence or any, *prima facie* material, which was brought on record during the trial, in support of the allegation qua illicit relationship as alleged. This case, which is based upon complaint, appears to counter the Alamganj P.S. Case No. 262 of 1996 which was registered against the complainant/appellant by his wife, who is the daughter of respondent no. 2 under Section 498



(A), 323 and 379/34 of the IPC read with Section 3/4 of the Dowry Prohibition Act, where vide judgment dated 23.05.2008 the appellant was convicted under Section 498(A) of IPC and Section 3/4 of the Dowry Prohibition Act. It is submitted that allegation of kidnapping is also unfounded and as such there is no reason to interfere with present impugned judgment, which is under appeal.

13. Upon assailing impugned judgment, it appears that marriage of appellant is admitted with daughter of respondent no. 2, whereas respondent no. 4 is uncle with whom illicit relation was alleged. It appears from the impugned judgment also that P.W. 4 himself allowed his wife Raushan Ara to visit her paternal home as her mother suffered from heart attack. It also appears from the deposition of P.W. 2 that on the date of walima (*vidai*) father and uncle of wife of appellant came and took her with them. It appears from the deposition of P.W. 3 that Sakil Ahmad and Sagir Ahmad/respondent no. 4 came together and took wife of appellant with them alongwith appellant. P.W. 4 also affirmed the illness of the mother-in-law of



appellant i.e., mother of his wife/Raushan Ara. P.W. 5 & P.W. 6 also stated that on 26.02.1996 Raushan Ara went with her father and uncle. There is no evidence, in support of the fact that there was any fraudulent action on part of respondents to cause harm in body, mind, reputation or the property of the appellant.

14. As far allegation *qua* offence under Section 366 of the IPC is concerned, it nowhere appears from the impugned judgment that wife of appellant was compelled to marry someone against her will, rather complainant/appellant himself mentioned in his complaint petition that on 26.02.1996 his wife went with her father and uncle as per her will and therefore, learned trial court rightly held that this is not a case of kidnapping or abduction of the wife of appellant and same is also the position for the offences alleged under Sections 497 and 498 of the IPC, as alleged by complainant/appellant/P.W. 4, where allegation raised that respondent no. 4 is in illicit relationship with his wife but apart from allegation of committing adultery nothing appears on record by way of documentary or oral evidence,



which may suggest that respondent no. 4 had sexual intercourse with wife of appellant or having any illicit relationship.

15. In view of above it is sufficient to gather from the impugned judgment itself, that none of the alleged offences appears to be proved during trial, qua respondents.

16. 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.”

17. 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.

18. 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.

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

20. Copy of this judgment be sent to learned trial court, immediately.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	02.09.2024
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