

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.786 of 2023

Arising Out of PS. Case No.-75 Year-2018 Thana- TEYAR District- Bhojpur

Prabhavati Devi, female, aged about 50 years, Wife of Ramji Yadav, Resident of Village- Yogibir, P.S. Tiyar, Dist- Bhojpur

... .. Appellant

Versus

1. The State of Bihar
2. Manti Devi, Wife of Bharosa Yadav, Resident of Village- Yogibir, P.S.- Tiyar, Dist- Bhojpur
3. Bharosa Yadav, Son of Late Brija Yadav, Resident of Village- Yogibir, P.S.- Tiyar, Dist- Bhojpur
4. Vikash Yadav, Son of Bharosa Yadav, Resident of Village- Yogibir, P.S.- Tiyar, Dist- Bhojpur

... .. Respondents

Appearance :

For the Appellant	:	Md. Ataul Haque, Advocate
For the Respondents	:	Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL ORDER

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

4 04-09-2024 Heard Md. Ataul Haque, learned counsel for the appellant/informant and Mr. Binod Bihari Singh, learned A.P.P for the Respondents.

2. The present appeal has been filed on behalf of the appellant/informant under Section 372 of the Code of Criminal Procedure, 1973 against the judgment and order of acquittal dated 18.04.2023 passed by the learned 3rd Additional Sessions Judge, Bhojpur at Ara in Sessions Trial No. 08 of 2020, arising



out of Tiyar P.S. Case No. 75 of 2018, G.R. No. 5245 of 2018, whereby the concerned Trial Court has acquitted the accused/private respondents of the charges levelled against them for offences punishable under Sections 341, 323, 307 & 379/34 of the Indian Penal Code.

3. Learned counsel for the appellant/informant would mainly submit that in the present case, the appellant/informant, her husband and her son have sustained injury in the incident in question. All the said three prosecution witnesses have fully supported the case of the prosecution, despite which the Trial Court has recorded the order of acquittal only on the ground that there is a delay of seven days in lodging the FIR and the Doctor, who had given the treatment to the injured, has not been examined. Learned counsel has further submitted that even the Investigating Officer was not examined by the prosecution. However, it has been contended that once the injured eye-witnesses have supported the version of the prosecution, Trial Court ought to have convicted the private-respondents herein. Learned counsel, therefore, urged that the present appeal be allowed and impugned order passed by the Trial Court be quashed and set aside.

4. On the other hand, learned APP for the private



Respondents as also the State has opposed the request made by learned counsel for the appellant/informant. Learned APP has mainly submitted that the Trial Court has not committed any error while passing the impugned judgment and order of acquittal. It is also submitted under the instructions till date, State has not preferred any acquittal appeal against the impugned judgment and order passed by the Trial Court.

5. We have considered the submissions canvassed by the learned counsels appearing for the parties and we have also perused the material placed on record and the copy of the deposition of the prosecution witnesses supplied by learned counsel for the appellant/informant.

6. It would reveal from the record that informant/appellant has given the written complaint/report after the period of seven days from the date of incident, wherein she has stated that the incident took place on 13.11.2018 at about 12:00 hours. In the written complaint, she has named the present private-respondents/accused. Specific role has been attributed to all the accused that they gave blow with the weapons which they were carrying, on the vital part of the body of the husband of the informant. As a result of the injury sustained by her husband, he became unconscious and was immediately taken to



Bihiya. Thereafter, he was referred to Ara Sadar Hospital from where, he was referred to PMCH, Patna. However, in PMCH, Patna, Doctor was not available at the relevant time and, therefore, they were taken to Shri Ram Hospital, Patna where the treatment was given to the husband of the informant and because of the said reason, she could not file the complaint immediately. Thus, the written complaint was filed on 20.11.2018 for the offences punishable under Sections 307, 341, 323, 325, 504, 379 read with Section 34 of the Indian Penal Code.

7. It would further reveal that after the registration of the FIR, on the basis of the written report given by the informant, the Investigating Agency carried out the investigation and thereafter filed the charge-sheet against the concerned accused before the concerned Magistrate Court.

8. The case was triable by Sessions court and, therefore, the Magistrate Court committed the same to the concerned Sessions Court.

9. Before the Sessions Court, the prosecution had examined six witnesses. However, no documentary evidence was produced before the Trial Court by the prosecution.

10. After conclusion of the Trial, as observed



hereinabove, Trial Court passed the impugned judgment and order of acquittal, whereby the present private-respondents have been acquitted, against which the appellant/informant has preferred the present appeal.

11. We have gone through the deposition of the prosecution witnesses. At the outset, it is pertinent to note that PW-2, Sri Niwas Yadav, PW-3, Rajnath Singh and PW-6, Deen Dayal Singh have not supported the case of the prosecution and they have turned hostile. Therefore, the case of the prosecution is based on the deposition given by PW-1, Prabhavati Devi (appellant/informant), PW-4, Ramji Yadav (husband of the informant/injured), PW-5, Anand Yadav (son of the informant). Therefore, the case of the prosecution rests on the deposition given by the appellant/informant, her husband and her son, who are interested witnesses.

12. We have gone through the deposition of the said witnesses. It is true that during their depositions, the said witnesses have stated that in the incident in question, they sustained injuries. However, it is pertinent to note that the prosecution has failed to examine any independent witnesses. Further, the Doctor, who had given treatment to the husband of the informant, i.e., Ramji Yadav PW-4 or the Doctor, who had



given treatment to PW-1 & PW-5 (informant and her son), have not been examined by the prosecution. Therefore, the prosecution has failed to prove the injury sustained by the so-called injured witnesses. Further, in the present case, the prosecution has also failed to examine the Investigating Officer, who had carried out the investigation. It is also not in dispute that there is a delay of seven days in lodging the FIR. Because of the non-examination of the Investigating Officer, the prejudice has been caused as the defence did not get the chance to cross-examine the Investigating Officer.

13. We have gone through the reasoning recorded by the Trial Court. We are of the view that Trial Court has not committed any error while passing the impugned judgment and order of acquittal.

14. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the Case of *Chandrappa and Ors. Vs. State of Karnataka*, reported in *(2007) 4 SCC 415*. The Hon'ble Supreme Court has laid down the principle regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal. In paragraph 42 of the said decision, the Hon'ble Supreme Court has observed 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, reappreciate 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.”

15. Even, recently, in the case of ***Nikhil Chandra Mondal Vs. State of West Bengal***, reported in ***(2023) 6 SCC 605***. The Hon’ble Supreme Court 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.”

16. Thus, from the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that Appellate Court 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. Further, if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding recorded by the Trial Court.

17. Keeping in view of the aforesaid decisions rendered by the Hon'ble Supreme Court, if the facts of the present case as well as evidence led by the prosecution as discussed hereinabove are examined, we are of the view that Trial Court has not committed any error while recording the order of acquittal in favour of the present private-respondents and, therefore, no interference is required in the present appeal, which has been filed by the appellant/informant.



18. Accordingly, the appeal stands dismissed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

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