

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.965 of 2024

Arising Out of PS. Case No.-149 Year-2018 Thana- CHAPRA TOWN District- Saran

Md. Mumtaz, aged about 30 years (Male), Son of Late Ahmad Hussain,
Resident of Mohalla-Bada Telpa Takiya, P.S. - Chapra Town, District - Saran
at Chapra.

... .. Appellant/s

Versus

1. The State of Bihar
2. Akbar Ali, Male, aged about 56 years, Son of Alim Mastan, Resident of
Mohalla- Bada Telpa Takiya, P.S. - Chapra Town, District - Saran at Chapra.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Amit Shrivastava, Sr. Advocate Mr. Girish Pandey, Advocate
For the Respondent/s	:	Mr. Satya Narayan Prasad, APP

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

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA)

Date: 23-08-2024

Re. Interlocutory Application No. 01 of 2024

Learned senior counsel for the appellant requested
that he may be permitted to correct the averments made in
paragraph no. 1 of the Interlocutory Application.

2. The present application has been filed under
Section 5 of the Limitation Act for condonation of delay of 77
days, caused in preferring the Criminal Appeal.

3. Heard Mr. Amit Shrivastava, learned senior counsel
and Mr. Girish Pandey, learned counsel for the appellant/



informant and Mr. Satya Narayan Prasad, learned A.P.P. for the Respondent/State.

4. We have considered the submission canvassed by the learned counsel appearing for the parties. We have also perused the averments made in this application. We are of the view that the appellant has shown sufficient cause for not preferring the Appeal within the period of limitation.

5. Accordingly, this Interlocutory Application No. 01 of 2024 is allowed.

6. Delay of 77 days, caused in preferring the Criminal Appeal is condoned.

7. The present appeal has been filed by the appellant/informant under proviso to Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Code”) against the judgment and order of acquittal dated 15.02.2024 passed by learned Additional District & Sessions Judge-VIII, Saran at Chapra in Sessions Trial No. 684/2018; G.R. No. 2331/2018 UT No. 149/18 (arising out of Town Police Station Case No. 149 of 2018), whereby the concerned Trial Court has acquitted the accused/private respondent of the charges levelled against him for the offence punishable under Section 302 of the Indian Penal Code.



8. Learned senior counsel for the appellant/ informant has placed on record the copy of deposition of the prosecution witnesses as well as the copy of the FIR. Learned counsel referred to the same and thereafter submitted that in the present case, the appellant/informant had lodged the FIR under Section 302 of the Indian Penal Code against the concerned accused including the present private-respondent.

9. It is further submitted that after investigation, the Investigating Officer filed the charge-sheet against the sole accused before the concerned Chief Judicial Magistrate, however, as the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same under Section 209 of the Code. It is further submitted that before the Sessions Court, the prosecution had examined seven witnesses along with one defence witness and the documentary evidence. Thereafter, the statement of the accused, under Section 313 of the Code, came to be recorded. After conclusion of the trial, the Trial Court has passed the impugned order, whereby the accused has been acquitted.

10. Learned Counsel for the appellant referring to ocular testimonies of the witnesses and also the documents sought to demonstrate that the prosecution has successfully



proved the guilt of the accused as PW-1 to PW-4 fully supported the case of the prosecution, their testimonies were duly corroborated by medical testimony of PW-5, who is the doctor, who had categorically stated that the cause of death is due to haemorrhage and shock by the injuries which was caused by sharp cutting weapon. Further, the above witnesses proved by their ocular testimonies that the accused gave lethal blow on the body of the deceased with sword.

11. On the other hand, learned APP for the Respondent/State has also referred to the deposition of the prosecution witnesses. Learned APP thereafter referred to the reasoning recorded by the Trial Court and contended that the Trial court has not committed any error while passing the impugned order and, therefore, this Court may not entertain the present appeal. However, learned APP also 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 today, the State has not preferred any acquittal appeal against the order passed by the Trial Court.

12. We have considered the submissions canvassed by the learned counsels appearing for the parties and also perused the material placed on record including the deposition of



prosecution witnesses. PW-1 has stated in his examination-in-chief that he is an eye witness of the occurrence, when the accused was giving sword blow to his deceased father, he chased the accused, but the accused fled away from the place of occurrence. According to PW-1, after this incident, other villagers including PWs- 2, 3 and 4 came at the place of occurrence. As per his deposition, he firstly saw his deceased father at the place of occurrence at about 5:30 AM. As per his cross examination, he stated that when he saw his father at the place of occurrence, no other person was there and when he started shouting, thereafter his family members and other villagers came at the place of occurrence at about 5:45 AM and later on, his family members arrived at the place of occurrence. PW-1 told the entire occurrence to his brother, namely, Md. Mumtaz (PW-4), who gave his statement to the police and when the police recorded the statement of his brother PW-4, PW-1 is stated to be present there.

13. According to the *fardbeyan*, the informant has stated that his name is Mohd. Mumtaz (PW- 4) and he is the son of late Ahmed Hussain (deceased). That, on 26.03.2018, at 7:00 AM, informant stated that his father had gone to the river bank for defecation at 4:30 AM, when at about 5:00 PM, some people



from the village shouted that someone had hit his father with a sword (*daab*), due to which he was injured and lying about 10 feet south of the graveyard. On getting this information, when informant and his family members and many people from the village reached there at 5:15 pm, they saw that informant's father was lying in a pool of blood, informant's face was cut and his right hand was cut from the elbow forward and his left hand was cut from the palm forward as well. He was immediately brought to Chapra Sadar Hospital for treatment, where he was declared dead by the doctor. Informant was told by some people from the village that Akbar Ansari has killed his father and they have seen the accused running towards *diyara* after hitting and cutting the deceased (father of the informant) with a knife.

14. PW-4 in his deposition has stated that he was walking near *Kabristan* and he saw that the accused was giving sword blow to his father and he chased to capture the accused, but he fled away from the place of occurrence. At the time of incident, along with him Abul Hasan and Shamshudeen were also there and there were total five persons present there including the accused and the deceased. PW-4 further stated that only five person were present there, but not his brother and he himself saw the incident besides Abul and Shamshudeen



whereas PW-1 has not stated a single word about the presence of his brother or Abul and Shamshudeen at the place of incidence. PW-1 claims to be the sole eye-witness and he specifically stated that he was alone at the place of occurrence.

15. PW-2 has stated in her statement that she saw the incident that accused was giving sword blow to deceased and she fled away from the place of occurrence after making shouting. In her cross examination, she stated that the police recorded her statement at 5:00 AM on the same day of the incident and she stated further that there were no other person at the place on incidence except her and while she saw the accused giving sword blow to the deceased, she did not try to save the deceased and thereafter she made noise and came to her house, then, thereafter PW-1, PW-3 and PW-4 came at the place of incident.

16. The testimony of PW-3 is also not reliable and fails to inspire confidence as her testimony is contradicted by her own son. PW-4, whom she claims that he was present with her and they were walking when the accused gave multiple blows to her husband however, further, she stated that there were only four persons i.e., she herself, PW-4, Abul and Shamshudeen. Whereas her son PW 4 categorically deposed that



there were five persons i.e. he, deceased, the accused, Abul and Shamshudeen.

17. The evidence of PW-1 to PW-4 does not inspire confidence as they themselves contradict each other and there are glaring contradictions in their statements. PW-1 and PW-4, both stated that they have seen the incident and they chased the accused, but accused fled away from the place of occurrence. PW-4 also stated that he saw that the accused also took away the sword. PW-1 categorically claims that after the incident, he started shouting and thereafter his family members, i.e., PW 3 and PW-4 came at the place of occurrence and PW-1 disclosed the entire incident to them and on the basis of that, PW-4 gave *fardbeyan* to the police.

18. PW-2 has contradicted the statements, stating that except the deceased and accused, there was no other person present at the place of occurrence and when she started shouting, after the incident, then PW-1, PW-3 and PW-4 and other villagers reached at the place of occurrence at about 5.45 AM. The statement of PW 3, who is the wife of the deceased and mother of PW-1 and PW-4, also stands falsified that all the three above stated witnesses, that at the time of incident, she along with her son (PW-4) were walking beside the Kabirstan



and Abul and Shamshudeen were walking separately and all of them have seen the incident, whereas PW-4 has stated that he, Abul and Shamshudeen have seen the occurrence and there were only five persons including his father and the accused. Nowhere, PW-4 has stated about the presence of PW-1, PW-2 and PW-3. On the other hand, PW-1 deposed that he alone has seen the incident and when he started shouting, then his family member, i.e., PW-2, PW-3 and PW-4, came at the place of occurrence.

19. PW-1 did not utter a single word about the presence of the PW-2 or PW-3 or PW-4. It is clear that PW-4 was not an eye witness to the alleged occurrence, so the evidence of PW-1 does not inspire confidence and liable to be discarded as his testimonies is belied by the FIR as well as the other testimonies of the prosecution witnesses. As discussed above, the evidence of PW-2 is also not trustworthy and fails to inspire confidence due to her improvement in the statements before the Court.

20. It is apparent that their testimonies are not supplementary, but are inconsistent with each other. From the statements of these witnesses, it emerges that there are major inconsistencies in the depositions of the aforesaid witnesses as



to who have seen the incident and who were present at the place of occurrence at the time of incident.

21. All these witnesses have made several improvements in their testimonies before the trial Court and contradicted each other, so it seems that none of them was present at the place of occurrence and none of them has seen the occurrence. The evidence of the alleged eye witnesses raise serious doubts on the point of their presence at the time of occurrence. Another major discrepancy is that the co-villagers, Abdul and Shamsudeen, were also not examined, who are said to have been present at the time of occurrence.

22. There is also contradictions among the witnesses about where the sword, which was used to inflict injuries to the deceased, was lying. PW-1 has stated in his cross-examination that police did not recover anything from the place of occurrence, but PW-3, in her examination-in-chief, has stated that the accused left the sword at the place of occurrence and the police came and seized the sword from the place of occurrence itself. Whereas PW-4, who has also stated that he was an eye witness of the incident, stated in his cross-examination that the accused left the place of occurrence with the sword in his hand. PW-6, who allegedly recovered the sword near the house of the



accused, has stated in his cross examination that he did not state as from where the sword was recovered, i.e., either from inside of the house or from the outside the house.

23. The Hon'ble Supreme Court in the case of ***Nikhil Chandra Mondal Vs. State of West Bengal, reported in (2023) 6 SCC 605*** as laid down in para-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.”

24. We have also considered the reasoning recorded by the trial Court while passing the order of acquittal in favour of the respondent / accused and we are of the view that the trial court has not committed any error while passing the impugned order. Thus, looking to the overall facts and circumstances of the present case, we are not inclined to interfere with the impugned order.

25. Accordingly, the present appeal is dismissed at the stage of admission itself.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Brajesh Kumar/-
Anand Kr/-

AFR/NAFR	NAFR
CAV DATE	N/A
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