

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.923 of 2023**

Arising Out of PS. Case No.-160 Year-2007 Thana- MOTIHARI TOWN District- East
Champan

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Ram Ekbal Raut @ Ram Ekbal Prasad @ Ekbal Prasad, son of Budhai Prasad
Resident of village - Agarwa, P.S. - Motihari Town, District - East
Champan, Motihari.

... .. Appellant/s

Versus

1. The State of Bihar
2. Mithu Raut @ Mithu Rai, son of late Mahendra Raut, Resident of village -
Agarwa, P.S. - Motihari Town, District - East Champan
3. Chhotan Raut, son of late Mahendra Raut Resident of village - Agarwa, P.S.
- Motihari Town, District - East Champan.
4. Pappu Raut, son of late Mahendra Raut, Resident of village - Agarwa, P.S. -
Motihari Town, District - East Champan
5. Lalan Raut, son of late Mahendra Raut, Resident of village - Agarwa, P.S. -
Motihari Town, District - East Champan.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Abhishek Kumar, Advocate Mr. Sagar Kumar, Advocate. Mr. Sharad Kumar Verma, Advocate Ms. Rashmi Jha, Advocate.
For the State	:	Mr. Manish Kumar No.2, APP
For the Respondent Nos. 2 to 5:	:	Mr. Karandeep Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 21-08-2024

The present appeal has been preferred by the informant



impugning the judgment of conviction and order of sentence dated 22.07.2023 passed by the learned Additional Sessions Judge-V, East Champaran at Motihari in Sessions Trial No. 573 of 2010 (CIS No. 2228 of 2016), arising out of Town P.S. Case No. 160 of 2007, whereby respondent No. 2 Mithu Raut, respondent No. 3 Chhotan Raut and Respondent No. 4 Pappu Raut have been convicted under Section 323 of the Indian Penal Code and respondent No. 5 Lalan Raut has been convicted under Section 324 of the Indian Penal Code, but all the respondents/accused have been acquitted of charge under Sections 307 and 379 of the Indian Penal Code and respondent Nos. 2 to 4 have been released under Section 3 of the Probation of Offenders Act whereas respondent No. 5 has been released on bond under Section 4 of the Probation of Offenders Act.

2. The prosecution case as emerging from the Fardbeyan of the informant/appellant Ram Ekbal Raut as recorded by ASI Mundrika Prasad of Town P.S. Motihari, on 19.06.2007 at Sadar Hospital, Motihari, is that at about 9:30 P.M. on 18.6.2007, the informant was sitting in the corridor of his house along with his family members. In the meantime, the appellants/accused Lalan Raut, Pappu Raut, Chhotan Raut and Mithu Raut carrying arms in their hands came there abusing them



and stating that they were not paying Rs.25,000/- despite their demand and while stating this, Lalan Raut attacked on the head of Arjun Kumar, son of the informant, by *Farsa* causing injury on his head and bleeding. Thereafter, respondent/accused Pappu Raut, Chhotan Raut and Mithu Raut caught hold of the informant and also called ones Shivji and Munna Raut. It is further alleged that Shivji Raut attacked the informant with spear (*Bhala*) with intent to kill him. However, he sustained injury on the elbow. They also assaulted him by *lathi*, *danda* and fists causing injury to him and bleeding from his nose. His son Arjun got unconscious and fell on the ground. Thereafter, all the accused/respondents entered into his house and took away ornaments by breaking the lock of his box. On hulla, the persons of the locality viz. Ajay Raut, Sanjay Raut, Adhikari Devi and other persons came on the place of occurrence. Seeing these local persons, all the accused/respondents fled away.

3. On the basis of the *fardebayan*, Town P.S. Case No. 160 of 2007 was registered against five accused persons namely, Lalan Raut, Pappu Raut, Chhotan Raut, Mithu Raut and Shiv Ji Raut, for the offence punishable under Sections 147, 148, 149, 448, 341, 323, 379, 504 and 307 of the Indian Penal Code.

4. After investigation charge-sheet bearing No. 285 of



2007 dated 30.06.2007 was submitted against the two respondents viz. Lalan Raut and Chhotan Raut. The accused Pappu Raut and Mithu Raut were not sent up for prosecution, whereas Shivji had died. However, cognizance of the offence was taken by the learned Magistrate not only against Lalan Raut and Chhotan Raut but also against Pappu Raut and Mithu Raut and the case was committed to the Court of Sessions and charges were framed under Sections 379, 323, 307 read with Section 34 of the Indian Penal Code against all four accused/respondent Nos. 2 to 5. The charges were read over to them, which they pleaded not guilty and claimed to be tried.

5. During trial, the following six witnesses were examined on behalf of the prosecution:

- (i) **P.W.-1**- Arjun Prasad (son of informant)
- (ii) **P.W.-2**- Radhika Devi (wife of informant)
- (iii) **P.W.-3**- Santosh Kumar (son of informant)
- (iv) **P.W.-4**- Jagdish Prasad (son of informant)
- (v) **P.W.-5**- Ram Ekbal Prasad (informant)
- (vi) **P.W.-6**- Dr. Alok Kumar.

6. The prosecution brought on record the following documentary evidences:

- (i) **Ext.-1**- Signature of the informant on the fardbeyan;
- (ii) **Ext.-1/1 & 1/2** are the signature of the witnesses on the fardbeyan;
- (iii) **Ext.-2** is the injury report of injured no.1;
- (iv) **Ext.-2/a** is the supplementary injury report;
- (v) **Ext.-3** is the injury report of injured no.2;
- (vi) **Ext.-3/a** is the supplementary injury report;



(vii) **Ext.-4** is the C.C. of judgment of Tr. No. 603 of 2016;
(viii) **Ext.-5** is the C.C. of order dated 20.02.2016 of Tr. No. 603 of 2016.

7. After closure of the prosecution evidence, the accused persons were examined under Section 313 Cr.PC, during which they were confronted with incriminating circumstances which had come in the prosecution evidence, so as to afford them opportunity to explain those circumstances. During the examination, they admitted that they had heard the evidence of the prosecution witnesses against them, but they did not explain any circumstances though they denied every charge and claimed to be innocent.

8. No witness has been examined on behalf of the defence. However, the following documents have been exhibited on behalf of the defence:-

- (i) **Ext.-A** is the C.C. of F.I.R. of Town P.S. Case No. 161 of 2007;
- (ii) **Ext.-B** is the C.C. of charge-sheet of Town P.S. Case No. 161 of 2007;
- (iii) **Ext.-C** is the C.C. of cognizance order;
- (iv) **Ext.-** is the C.C. of judgment.

9. Learned Trial Court, after appreciating the evidence on record and considering the submissions of the parties, passed the impugned judgment and order whereby respondent No. 2 Mithu Raut, respondent No. 3 Chhotan Raut and respondent No. 4 Pappu Raut have been convicted under Section 323 of the



Indian Penal Code and respondent No. 5 Lalan Raut has been convicted under Section 324 of the Indian Penal Code. But all the respondents/accused have been acquitted of charge under Sections 307 and 379 of the Indian Penal Code. All the convicts/respondents have been also granted benefits of the Probation of Offenders Act, 1958, instead of being sentenced to imprisonment.

10. We have heard learned counsel for the appellant and learned counsel for the State as well as learned counsel for the respondents no. 2 to 5.

11. Learned counsel for the appellant submits that learned Trial Court has not properly appreciated the evidence on record and has erroneously acquitted the respondents no.2 to 5 of charges under Sections 307 and 379 of the Indian Penal Code. He also submits that the convicts/respondents have been also wrongly given benefit of Probation of Offenders Act. They should have been appropriately sentenced to imprisonment.

12. Learned APP for the State and learned counsel for the respondents no. 2 to 5 defend the impugned judgment and order submitting that as per the evidence on record, charge under Sections 307 and 379 of the Indian Penal Code could not be proved. Hence, there is no illegality or impropriety in the



impugned judgment. They further submit that in case of appeal against acquittal, the principles required to be applied by the Appellate Court are somewhat different from those which are applied in case of appeal against conviction. In case of acquittal, Appellate Court is required to interfere only when the view taken by learned Trial Court is not reasonable one as per the evidence on record. Even if two views are possible and learned Trial Court has taken one view, the Appellate Court is not required to supplant the view of the learned Trial Court by another view. Moreover, the view taken by learned Trial Court is based on proper appreciation of law and facts requiring no interference by the Appellate Court.

13. They also submit that the informant/appellant has no right to question the impugned order whereby the respondents/convicts have been granted benefits under the Probation of Offenders Act. Under the proviso to Section 372 Cr.PC, the victim has no right to file appeal against the impugned order. Only State can file appeal under Section 377 of Cr.PC against inadequacy of sentence or grant of benefits to the victim under the Probation of Offenders Act.

14. We find substance in the submission of learned APP for the State and learned counsel for the Respondents No. 2 to 5 that the informant/victim has no right to file appeal against



inadequacy of sentence or grant of relief to the convicts under the Probation of Offenders Act, 1958. Right to file appeal for enhancement of sentence has been provided only to State under Section 377 of the Cr.PC. The right of the victim to prefer an appeal has been provided under the proviso to Section 372 Cr.PC which reads as follows:-

“372. No appeal to lie unless otherwise provided.- No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

15. The proviso to Section 372 Cr.PC clearly provides that the victim has right to prefer an appeal only under the following three situations:

- (i)** if the accused has been acquitted, or
- (ii)** the accused has been convicted for a lesser offence, or
- (iii)** inadequate compensation has been imposed upon the convict.

16. Hence, it transpires that no right has been provided to the victim to file an appeal against inadequacy of sentence. Appeal for enhancement of sentence has been provided under Section 377 Cr.PC giving right to State to file such appeal. Moreover, right to appeal is statutory right. Unless a right to



appeal has been created by statutory provision, the appeal cannot be maintainable. Here, it would be apposite to refer to **Parvinder Kansal Vs. State (NCT of Delhi), (2020) 19 SCC 496**, wherein **Hon'ble Supreme Court** has held as follows:-

“8.A reading of the proviso makes it clear that so far as victim's right of appeal is concerned, same is restricted to three eventualities, namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate compensation. While the victim is given opportunity to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision for appeal by the victim for questioning the order of sentence as inadequate, whereas Section 377 CrPC gives the power to the State Government to prefer appeal for enhancement of sentence. While it is open for the State Government to prefer appeal for inadequate sentence under Section 377 CrPC but similarly no appeal can be maintained by victim under Section 372 CrPC on the ground of inadequate sentence. It is fairly well-settled that the remedy of appeal is creature of the statute. Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable.....”

17. Similarly, grant of benefits under the Probation of Offenders Act is also not provided as a ground for filing an appeal by the victim/informant under the proviso to Section 372 Cr.PC, perhaps because sentencing the convicts to imprisonment or fine and grant of benefits under the Probation of Offenders Act to the victims are alternative choices for the Court.

18. Hence, the appeal of the victim against grant of benefits under the Probation of Offenders Act is not maintainable. Therefore, this Court cannot look into legality/ illegality or



propriety/impropriety of the impugned order whereby the benefit of the Probation of Offenders Act has been granted by learned Trial Court to the convicts.

19. We also agree with the submission of learned APP for the State and learned counsel for the private Respondents that in case of appeal against acquittal, the principles required to be applied by the Appellate Court are drastically different from those which are applied in case of appeal against conviction.

20. In **Harbans Singh v. State of Punjab, 1961 SCC OnLine SC 40, Hon'ble Supreme Court** has held that a court must examine not only questions of law and fact in all their aspects but must also closely and carefully examine the reasons which impelled the lower courts to acquit the accused and should interfere only if satisfied, after such examination that the conclusion reached by the lower court that the guilt of the person has not been proved is unreasonable.

21. In **Chandrappa Vs. State of Karnataka, (2007) 4 SCC 415, Hon'ble Supreme Court** after referring to several authorities has held that an appellate court, must bear in mind that in case of acquittal, the presumption of his innocence is reinforced, reaffirmed and strengthened by the trial court and 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. In Murugesan Vs. State, (2012) 10 SCC 383, Hon'ble Supreme Court has held that so long as the view taken by the Trial Court is not impossible to be arrived at and reasons therefor, relatable to the evidence and materials on record, are disclosed any further scrutiny in exercise of the power under Section 378 Cr.PC was not called for.

23. In H.D. Sundara v. State of Karnataka, (2023) 9 SCC 581, Hon'ble Supreme Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows:

“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.”



(Emphasis Supplied)

24. In Babu Sahebagouda Rudragoudar Vs. State of Karnataka, 2024 SCC Online SC 561, Hon'ble Supreme Court, after referring to relevant precedents, has observed as follows:

“39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the **following principles**:

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”

(Emphasis Supplied)

25. Now coming to the prosecution evidence, we find that the **informant Ram Ekbal Raut** has been examined as **P.W.-5**. In his **examination-in-chief**, he has deposed in consonance with his fardbeyan. In his **cross-examination**, he has testified that at the time of the occurrence, only he himself along with his family members were present. No neighbours were present there. He has further deposed that he was assaulted only once. The convicts/respondents have also lodged a criminal case against him. However, he has denied the suggestion that he had lodged the



present case as a counter blast to the criminal case lodged by the respondents against him.

26. The injured **Arjun Prasad** has been examined as **P.W.-1**. In his **examination-in-chief**, he has also deposed in consonance with the fardbeyan as given by his father/informant. In his **cross-examination**, he has deposed that there is no land dispute between his family and family of the respondents/accused. He has denied the suggestion that this criminal case has been lodged as a counter blast to the case lodged by the convicts against them.

27. P.W.-2 is **Radhika Devi**. She is wife of the informant and mother of the injured Arjun Prasad. In her **examination-in-chief**, she has also deposed in consonance with the fardbeyan. In her **cross-examination**, she did not remember that police had recorded her statement. It shows that she has made statement before the Trial Court for the first time. She has also admitted that there is no land dispute between her family and accused side.

28. P.W.-3 Santosh Kumar is son of the informant. In his **examination-in-chief**, he has also deposed in consonance with the fardbeyan of the informant. However, in his **cross-examination**, he has deposed that when he reached the place of



occurrence, the accused persons had fled away and his brother had been lying on the ground. He has also admitted that the accused persons had also lodged a criminal case against his family. From the **cross-examination**, it transpires that **P.W.-3** is not an eye-witness to the occurrence.

29. P.W.-4 is Jagdish Prasad and son of informant. In his **examination-in-chief**, he has also supported the prosecution case, but in his **cross-examination**, he has admitted that when he came to the place of occurrence, accused persons were fleeing away and his brother had sustained injury and fallen down on the ground. He has also admitted that respondent/Lalan Raut had lodged criminal case against him and his family members for the occurrence taken place on the same day.

30. P.W.-6 is Dr. Alok Kumar, who had examined the injured informant and his son Arjun Kumar. As per his testimony, injured Arjun Kumar had sustained incised wound caused by sharp instrument on the mid of scalp measuring 3"x0.25"x skin deep and as per X-ray examination, there was no bony leagon in his head. However, the injury received by Arjun Kumar was found to be simple in nature. As per his testimony, the informant Ram Ekbal Prasad had lacerated wound on the upper part of the right side of his face measuring 1"x.025"x Skin deep,



caused by hard and blunt substance which was also found to be simple in nature. In his **cross-examination**, he has deposed that injury sustained by Arjun Kumar may be caused by a sharp edged stone and only one injury was found on his body. He has also deposed that skin deep injury is also called superficial injury. He has also deposed that injury of the informant/Ram Ekbal is also superficial, which may be caused by falling on the ground.

31. Here, it would be apposite to refer to **Sagayam Vs. State of Karnataka, (2000) 4 SCC 454**, where **Hon'ble Supreme Court** has held that to justify conviction under Section 307 IPC, it is sufficient in law if there is present an intent coupled with some overt act in execution thereof, if the attempt has gone so far that it would have been complete but for the extraneous intervention which frustrated its consummation.

32. In **Pulicherla Nagaraju @ Nagaraja Reddy Vs. State of A.P, (2006) 11 SCC 444**, **Hon'ble Supreme Court** has held as follows in regard to how to form opinion regarding intention to cause death:

“29..... The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden



quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.”

33. In the case on hand, we find that the injuries suffered by the informant and his son were not only simple in nature but even superficial, which clearly shows that there was no intention on the part of the convicts/respondents to cause murder of the informant and his son. The presence of requisite *mens rea* is *sine qua non* for making out any offence. Hence, respondents no. 2 to 5 have been rightly acquitted of charge under Section 307 of the Indian Penal Code. The allegation of theft also appears to be superfluous. No detail of the property stolen was given by the prosecution in evidence. Hence, charge under Section 379 of the Indian Penal Code is also not proved beyond reasonable doubts.

34. As such, we find that the view taken by learned Trial Court in the case on hand is based on proper appreciation of law and evidence on record. In such situation, there is no scope for this Court to interfere in the impugned judgment supplanting the view



of learned Trial Court by any other view. This appeal is, therefore, liable to be dismissed.

35. Hence, for want of any merit, this appeal is dismissed upholding the impugned judgment of conviction and order of sentence dated 22.07.2023 passed by the learned Additional Sessions Judge-V, East Champaran at Motihari in Sessions Trial No. 573 of 2010 (CIS No. 2228 of 2016), arising out of Town P.S. Case No. 160 of 2007.

36. The records of the case be returned to the Trial Court forthwith.

37. Interlocutory application/s, if any, also stand disposed of accordingly.

(Jitendra Kumar, J.)

I Agree.

(Ashutosh Kumar, J.)

ravishankar/S.Ali

AFR/NAFR	AFR
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