

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.509 of 2022

Arising Out of PS. Case No.-48 Year-2010 Thana- BARHARIA District- Siwan

Ramashray Prasad Son of Late Singhashan Singh @ Late Sigansan Prasad
R/o Kail Mathiya, Kail, P.S.- Barharia, Distt.- Siwan, At Present Residing At
Mallick Tola, P.O. And P.S.- Barharia, Distt.- Siwan

... .. Appellant

Versus

1. The State of Bihar
 2. Nageshwar Singh Son of Late Khalifa Singh
 3. Chandrawati Devi Wife of Late Khalifa Singh
 4. Brajkishore Singh Son of Late Khalifa Singh
 5. Nand Kishore Singh Son of Nageshwar Singh
 6. Jaleshwar Singh Son of Hira Prasad
- Respondent Nos. 2 to 6 are Resident of Mallick Tola, P.O. And P.S.-
Barharia, Distt.- Siwan

... .. Respondents

Appearance :

For the Appellant/s : Mr. Ravi Prakash Dwivedi, Advocate
For the Respondent/s : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY)

Date : 17-12-2024

Heard Mr. Ravi Prakash Dwivedi, learned counsel for
the appellant and Ms. Shashi Bala Verma, learned Additional
Public Prosecutor for the State.

2. The present appeal has been preferred for setting
aside the judgment of acquittal dated 26.02.2020 (hereinafter
referred to as the 'impugned judgment') passed by learned 7th
Additional District and Sessions Judge, Siwan (hereinafter
referred to as the 'learned trial court') in Sessions Trial Case No.



01 of 2019 arising out of Barhariya P.S. Case No. 48 of 2010 wherein and whereunder the court below has acquitted Respondent Nos. 2 to 6 under Sections 324, 341 and 504/34 of the Indian Penal Code (in short 'IPC') whereas convicted Respondent Nos. 2 to 6 under Section 323/34 of the IPC and has released them after due admonition under Section 3 of the Probation of Offenders Act, 1958.

Prosecution Case

3. The case of the prosecution in short is that the informant who was raising a hut in his land with the help of his brothers and other members of the family, at that time accused persons (Respondent Nos. 2 to 6) arrived there, abused him and his family members and stopped the informant and his family from raising the hut on his land. The accused persons were armed with *bhala*, *lathi*, *danda* attacked the informant's side. Khalifa Singh attacked with *bhala* on Harikesh Prasad but he escaped. In the incident of attack, the informant and his brother Ram Prasad suffered head injury. The villagers who had assembled there saved the informant and his family. It is stated that where the hut which was being raised belonged to informant and they have the possession over the land.

4. On the basis of the above fardbeyan of the



informant/appellant, Barhariya P.S. Case No. 48 of 2010 under Sections 341, 323, 324, 307, 504/34 of the IPC was instituted. After investigation, Police submitted charge-sheet in above sections. The cognizance was also taken in the above sections. Vide order dated 09.03.2011 the FTC No.1, Siwan found that no offence under Section 307 IPC is made out against the accused persons/respondents and the rest offence are triable by the Magistrate. Accordingly, the case was sent back to the court of learned CJM, Siwan for trial. Charges were read over and explained to the accused persons in Hindi to which they pleaded not guilty and claimed to be tried. Accordingly, the charges were framed against the respondents under Sections 147, 148, 149, 448, 447, 323, 379 and 506 of the IPC.

5. In course of trial, the prosecution examined eleven witnesses. The description of the prosecution witnesses are being provided hereunder for a ready reference:-

List of Prosecution Witnesses

PW-1	Parmanand Yadav
PW-2	Satyanarayan Singh
PW-3	Ram Ji Prasad
PW-4	Krishna Prasad Yadav
PW-5	Sitaram Chaudhary
PW-6	Ramashray Prasad (the Informant)



PW-7	Dr. Ashraf Ali
PW-8	Kailash Prasad
PW-9	Lal Babu Yadav
PW-10	Jai Ram Singh
PW-11	Ram Prasad

6. After evidence of the prosecution, the accused persons were examined under Section 313 Cr.P.C. wherein they denied the evidence of the prosecution.

Findings of the Learned Trial Court

7. After analysing the evidences on the record, learned trial court found that all the witnesses have supported the prosecution case in their evidence. PW-6 has sated that the accused persons are his Patidars and they have also filed a case for the occurrence on the same day. PW-6 further stated that a title suit is going on over the disputed land. Learned trial court found that PW-8 deposed that his statement was not recorded by Police and a title suit being 90 of 2010 is going on and for the said land dispute a proceeding was fought under Section 144 Cr.P.C. before the S.D.O. Learned trial court took note of the evidence of PW-9 who stated that he has not received summon for evidence and he has come to depose as he had seen the occurrence. Further learned trial court found that PW-8 and PW-9 accepted about pendency of Sessions Trial No. 521 of 2010 in



which they were facing trial. Accordingly, learned trial court found that the present case is the counter blast of Sessions Trial No. 521/2010.

8. Learned trial court after considering the materials available on the record came to the conclusion that the injuries are simple in nature and held the accused guilty of the charges under Sections 323/34 IPC but acquitted them of the charges under Sections 324/34, 341/34 and 504/34 IPC. On the point of sentence under Sections 323/34 IPC, learned trial court considered the Social Investigation Report of the Probation Officer and has released the respondents after due admonition.

Submissions on behalf of the Appellant

9. In appeal before us, it has been argued by the learned counsel for the appellant that in the instant case, the prosecution has examined altogether 11 witnesses in support of its case. PW-6 to PW-11 have supported the case of the prosecution. PW-7 who is the Doctor has confirmed the injury suffered by Ramashray Prasad and Ram Prasad. The main grievance of the appellant is that the learned trial court has convicted the Respondent Nos. 2 to 6 only under Section 323/34 of the IPC whereas they have been acquitted in other sections. It has also been argued that the trial court failed to consider true



spirit of the case and has granted relief to the respondents under the Probation of Offenders Act, 1958 purely on the basis of a report of the Probation Officer. The report is fully biased and malafide as he has used different yardsticks for dealing with similar matter. It has also been argued that a false case was lodged by the respondents against the informant under Sections 147, 148, 149, 448, 447, 323, 379 and 506 of the IPC on 12.06.2019.

10. It is further submitted that the trial court has not appreciated the merit and background of the case and has relied blindly on the report of the Probation Officer who is apparently biased with the informant's family. The case of the prosecution is proved beyond all reasonable doubt. It has also been submitted that respondents are not entitled for relief under Section 3 of the Probation of Offenders Act, 1958. It has also been submitted that the impugned judgment is otherwise bad.

Submission on behalf of the State

11. Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State has stated that there is no illegality or irregularity in the impugned judgment and the order of sentence passed by learned trial court is well discussed and deserves no interference.



Consideration

12. This is an appeal which has been filed under Section 372 Cr.PC by the informant. The grievance of the informant is that the respondents were acquitted by the trial court for the offence under Section 324, 341, 504/34 of the IPC and were convicted only under Section 323/34 of the IPC and respondents were released after due admonition under Section 3 of the Probation of offenders Act, 1958. The grievance is two folds. The first is against acquittal under Section 324, 341, 504/34 of the IPC and the second is regarding inadequate sentence under Section 323/34 of the IPC.

13. We will consider the first grievance at this juncture and for this, we have gone through the evidence of the prosecution. It is clear from the record of the learned trial court that PW-1 to PW- 5 have turned hostile and they have not stated anything regarding the occurrence. As far as PW-6 is concerned who happens to be the informant of this case, he has stated that on the date of the occurrence, all the accused persons arrived while the informant along with his family members were raising a hut on his field and they assaulted with *lathi* on the head of the informant due to which he received head injury. It is further stated by this witness that Brajkishore Singh assaulted with



bhala which hit the palm of the right hand of the informant, Khalifa Singh assaulted with *farsa* and rest of the accused persons assaulted with *lathi*. Khalifa Singh assaulted with *lathi* to Ram Prasad due to which he received head injury. It has also been stated by this witness that the disputed land was his ancestral land. In cross-examination, this witness has admitted that the accused persons are his '*pattedar*' and that they have also filed a case for the occurrence on the same day. In cross-examination, this witness has also stated that he could not see as to who was assaulting from which direction.

14. PW-7 is the Doctor. This witness has stated that he examined Ram Prasad on 03.05.2010 and has found following injury:- Lacerated wound on right side of the upper scalp of size 1.5" X 1/6", deep to scalp muscles and on the body of informant Ramashray Prasad he has found following injuries:- First is lacerated wound over left frontal scalp of size 1x1/4" X 1/6" deep to skull muscles and second is lacerated wound over the palm measuring 3x4" X 1/6" deep to muscle. The Doctor has found the nature of injuries simple and were caused by hard and blunt substance. This witness has stated in his cross-examination that he does not remember whether he has to depose in Sessions Trial No.521 of 2010 before ADJ-VI.



15. PW-8 is Kailash Prasad who has stated that while they were raising the hut at their land the accused persons arrived and assaulted. This witness has also stated that Ramashray Prasad and Ram Prasad have received head injuries. This witness has also stated that Harikesh attempted to assault with *bhala* but he escaped. It is further alleged that he has received a *lathi* blow. In cross-examination, this witness has stated that he knows that there is a counter version of this case which is pending in the court of ADJ-VII and that case is also regarding occurrence of the same day. This witness has also stated that his statement was not taken by the police. It has also been admitted by this witness that a land dispute is pending between the parties.

16. PW-9 is Lal Babu Prasad. This witness has also supported the statement made by the informant. PW-10 is Jay Ram Singh. This witness has stated that all the accused persons assaulted with *lathi* and *danda* due to which Ramashray Prasad received head injury. He has stated that he was assaulted by Nageshwar. This witness has stated that Khalifa made a *farsa* blow which hit the left temple of Harikesh. There is a land dispute between the parties. This witness has also admitted in his cross-examination that the accused persons are his cousins.



17. PW-11 and PW-6 are the injured witnesses. PW-6 has stated that he was being assaulted with lathi. Brajkishore assaulted with bhala which hit the palm of the informant (PW-6). This witness has also stated that Khalifa was having a *farsa* but this witness has not stated regarding assault by Khalifa with *farsa* whereas PW-11 has stated that Khalifa assaulted with *farsa* to Harikesh which hit in the left temple of Harikesh.

18. From perusal of the FIR, it is clear that the weapon of assault is majorly *lathi*. It is alleged against Khalifa that he attempted *bhala* blow on Harikesh whereas in evidence, this blow has been attributed to Brajkishore and Khalifa has been given altogether new weapon i.e. *farsa*. From the perusal of the evidence of the Doctor, it is clear that he has found that all the injuries were simple in nature and were caused by hard and blunt substance. So far as the allegation under Section 324 IPC is concerned, the sharp cutting weapon which is said to be used in the FIR has not been supported by the witnesses. Altogether new weapon has been introduced and the Doctor has opined that all the injuries were caused by hard and blunt substance. Section 341 IPC is regarding wrongful confinement. Since the informant was at his door and there is no allegation that anybody has confined them rather, it is stated that the accused persons arrived



and started assaulting, so this offence is also not made out. As far as Section 504 IPC is concerned, it is only stated that the accused persons arrived and started abusing. The words which were used is not being referred either in the FIR or in the evidence. From the evidence of the prosecution, only, this much is clear that the accused persons have assaulted the informant and one Ram Prasad received simple injury and for that, learned trial court has convicted the respondents under Section 323/34 of the IPC.

19. It is pertinent to note here that we are dealing with the acquittal appeal filed by the informant. The Hon'ble Supreme Court in the case of *Chandrappa v. State of Karnataka*, reported in *(2007) 4 SCC 415* has laid down the guidelines while exercising powers under Section 378 of the Code of Criminal Procedure against the acquittal appeal filed by the State against the order of acquittal passed by the concerned trial court. It observed in paragraph no.42 as under :-

“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, reappreciate and reconsider the evidence upon which the order of acquittal is founded;



(2) The Criminal Procedure Code, 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."

20. Recently, the Hon'ble Supreme Court in the case of *Nikhil Chandra Mondal v. 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."

21. In an appeal against acquittal, there is double presumption of innocence against the accused. In our criminal jurisprudence, accused is deemed to be innocent unless he is proven guilty. This is the first presumption of innocence and after trial, the trial court has found the accused innocent and has acquitted them. This is the second presumption of innocence. So unless and until there is clinching material against the accused persons, the Appellate Court should not interfere with the judgment of acquittal in appellate stage.



22. Second grievance of the appellant is that of releasing the accused persons under **Section 3** of the **Probation of Offenders Act** after due admonition. In this regard, we would like to refer Section 3 of the Probation of Offenders Act, 1958:-

“3. Power of Court to release certain offenders after admonition:-

When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code (45 of 1860) or any offence punishable with imprisonment for **not more than two years, or with fine, or with both**, under the Indian Penal Code, or any other law, and no previous conviction is proved against him and the Court by which the person is found guilty is **of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do**, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, **release him after due admonition**. Explanation. - For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.”

23. From perusal of Section 3 of the Probation of Offenders Act, it is clear that the trial court has to see the age and character of the accused persons, relation with the informant and the nature of the injury while considering to award the benefit of this Act.



24. From perusal of the impugned judgment, it is clear that the trial court has found simple injuries which were caused by the accused persons. They are the cousins of the informant, there is no previous conviction against them and considering the Social Investigation Report (‘SIR’) of the Probation Officer, the court below has released the respondents after due admonition.

25. From above discussions, it is crystal clear that the impugned judgment is well discussed and requires no interference by this Court.

26. As such, we do not find any merit in this appeal. In result, this appeal is dismissed.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

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