

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4310 of 2024
In
CRIMINAL APPEAL (DB) No.500 of 2024

Arising Out of PS. Case No.-151 Year-2012 Thana- CHAPRA TOWN District- Saran

Navin Kumar, Son of Late Ram Dayal Prasad, Resident of Village-
Dahiyawan Devi Mandir, Narain Chowk, P.S.- Chhapra Town, Distt.-
Saran. Appellant

Versus

1. The State of Bihar.
2. Chandan Kumar, Son of Mohan Prasad, Resident of Mohalla- Near
Dahiyawan Devi Mandir, P.S.- Chhapra Town, Distt.- Saran at
Chhapra.
3. Mohan Prasad Son of Gobind Prasad, Resident of Mohalla- Near
Dahiyawan Devi Mandir, P.S.- Chhapra Town, Distt.- Saran at
Chhapra.

... .. Respondents

Appearance :

For the Appellant/s : Mr.Yashraj Bardhan, Advocate
For the Respondent/s : Mr.Satya Narayan Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 10-12-2024

Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State.

2. The present memo of appeal has been filed
challenging the impugned judgment of acquittal dated
28.11.2022 as passed by learned Additional Sessions Judge-
IX, Saran, Chapra in connection with Chapra Town P.S. Case
No. 151 of 2012 corresponding to Sessions Trial No. 439 of
2013, whereby learned court has acquitted both the accused
persons (respondents herein) for the offences as charged
against them.



3. The brief facts of the case is that on 12.06.2012 at 7:30 p.m., while the appellant/informant (PW-7) was going towards Salempur through Sahebganj Post Office Street to purchase groceries items, two boys stopped him near Building No. 786, Kapda (cloth) committee and one of them pointed revolver to him, in the meantime, respondent nos. 2 and 3 came there and caught the neck of the appellant/informant and respondent no. 2 stabbed with knife in his stomach. The appellant/informant further alleged that both the respondents tried to snatch a bag containing a cash of Rs. 14,500/- from him and when he resisted, the respondent no. 3 took the knife from respondent no. 2 and stabbed again on appellant's stomach and snatched golden ornaments and cash of Rs. 2000/- alongwith one mobile phone, thereafter, all the accused persons fled away from the place of occurrence, by threatening to kill him alongwith family members, if he would approach police.

4. After recording the fardbeyan of the appellant/informant, a First Information Report being Chapra Town P.S. Case No. 151 of 2012 was registered for the



offences punishable under Sections 341, 323, 324, and 379/34 of the Indian Penal Code. Police, after completion of investigation, submitted charge-sheet No. 184/2012 under Sections 341/323/379/504/34 of the I.P.C.

5. The learned Chief Judicial Magistrate, Chapra took cognizance against the accused persons/respondents vide order dated 04.10.2012 under Sections 341/323/379/504/34 of the I.P.C. and committed the case to the court of session, where charges were framed against the accused persons under Sections 341/34, 323/34, 308/34, 379/34 and 504/34 of the I.P.C. vide order dated 18.05.2015, which the accused/respondent nos. 2 & 3 pleaded not guilty and claimed to be tried.

6. The prosecution has examined altogether eight witnesses, who are Tanvir Ahmad (**PW-1**); Arshad Parvez (**PW-2**); Ali Rashid (**PW-3**); Sanjay Singh (**PW-4**); Chandan Kumar (**PW-5**); Roshan Ahmed (**PW-6**); Navin Kumar (**informant/PW-7**) and Arvind Kumar Singh, Investigating **Officer/PW-8**.

7. The prosecution has also produced certain



documents, which are as under:

Exhibit -1 – Fardbeyan of Informant

Exhibit -2 – Signature of the then S.H.O. Nandu Sharma on the Formal F.I.R.

Exhibit -3 – Signature of Investigating Officer on Fardbeyan.

Exhibit -4 – Registration of case based on FIR and signature of SHO Nandu Sharma

Exhibit -5 – Charge-sheet.

8. The statement of the respondent nos. 2 & 3 was recorded under Section 313 of the Code, where they denied the evidences surfaced against them and claimed their complete innocence.

9. After the conclusion of trial, the learned Trial Court acquitted both the accused/respondents through impugned judgment from the charges levelled against them. Being aggrieved, with aforesaid **order of acquittal**, appellant/informant (PW-7) preferred the present appeal.

10. Hence, the present appeal.

11. I have perused the impugned judgment and gone through the evidences available on record and also considered the rival submissions as canvassed by the



learned counsel appearing on behalf of the parties.

12. As to re-appreciate the evidence, while disposing the present appeal, it appears apposite to discuss the impugned judgment and available documents, which are as under:-

13. From the perusal of impugned judgment itself, it appears that out of eight prosecution witnesses, six prosecution witnesses i.e. PW-1 to PW-6 turns hostile during the course of trial and did not supported the case of prosecution, hence the discussions of their testimonies not appears relevant *qua* crime in question. Almost all aforesaid witnesses, who turns hostile were independent witnesses. The informant of this case, namely Navin Kumar examined as PW-7. From the perusal of judgment under appeal, it transpires that the informant himself stated during the trial that at the time of occurrence no one was present there, contrary to his statement as raised through FIR. The learned trial court categorically found that during cross-examination, the informant did not supported his case, even investigation officer/PW-8, not appears to supported crime in question



through his cross-examination. As far injury of informant/PW-7 is concerned, in this connection it transpires that Dr.S. Shankar was not examined during the trial, whereafter one petition moved under Section 311 of the Cr.P.C. as to recall said witness but the informant himself despite of giving several opportunities did not appeared before the trial court to press said petition, resultantly, said petition was dismissed as not pressed.

14. In this context, it would be apposite to reproduce para-14 of the impugned judgment itself, which is as under:

“14. उभय पक्ष के विद्वान अधिवक्ता को सुना तथा अभिलेख का अवलोकन किया। अभिलेख अवलोकन से स्पष्ट होता है कि इस धारा के तहत पंजीकृत किया गया है। अभियोजन की ओर से कुल 8 साक्षियों का साक्ष्य कराया गया है जिसमें 6 साक्षियों ने विरोधाभासी साक्ष्य दिया है। सूचक अपने मुख्य परीक्षण में घटना का समर्थन किया है परन्तु प्रतिपरीक्षण में घटनों का समर्थन नहीं किया है। विवेचनाधिकारी द्वारा भी प्रतिपरीक्षण में घटना का समर्थन नहीं किया गया है। अभियोजन की ओर से डा०. एस शंकर का साक्ष्य कराने हेतु धारा 311 सी.आर.पी.सी. के अन्तर्गत आवेदन दिया गया था परन्तु अभियोजन को बार-बार सुनवायी का मौका देने के बावजूद भी अभियोजन की ओर से सुनवाई नहीं किया गया तत्पश्चात दिनांक 18.10.2022 को अभियोजन की ओर से दायित्व आवेदन को खारिज करते हुए



निष्ठारित किया गया। अभियोजन की ओर से परिक्षित साक्षियों के साक्ष्य के अवलोकन से प्रतीत होता है कि अभियोजन पक्ष अभियुक्तगण के विरुद्ध लगाए गए आरोपों के सम्पूर्ण युक्ति-युक्त संदेह से परे साबित नहीं कर पाया है। अतएव अभियुक्तगण को धारा 341/34,323/34,308/34,379/34,504/34 भा.द.वि. के आरोप से दोषमुक्त किया जाना न्यायोचित प्रतीत होता है। अतः"

15. In this context, it would be apposite to reproduce para-39 of the of the legal report of Hon'ble Supreme Court as available through **Babu Sahebagouda Rudragoudar (supra)**, which reads as under:

"**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 followed 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."

16. In this context, it would further be appropriate



to reproduce **Para '42'** of the legal report of Hon'ble Supreme Court as available through **Chandrappa and Others (supra)** which reads 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, 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 judgment 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 alongwith TCR, if any.

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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