

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3882 of 2022

Arising Out of PS. Case No.-23 Year-2017 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

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Ramayodhya Paswan, S/o Late Harihar Paswan R/o Village-Mansi Chapra,
P.S- Chakia, District- East Champaran

... .. Appellant

Versus

1. The State of Bihar
2. Shambhu Chaudhur S/o Late Rajendra Chaudhur, R/o Village-Ghanghti, P.S-
Chakia, District- East Champaran
3. Abhishek Kashyap, S/o Rajendra Chaudhur, R/o Village-Ghanghti, P.S-
Chakia, District- East Champaran
4. Kundan Singh @ Kundan Kashyap @ Anand Kashyap, S/o Shambhu
Chaudhur R/o Village- Ghanghti, P.S- Chakia, District- East Champaran
5. Ram Pravesh Chaudhur, S/o Late Rajendra Chaudhur R/o Village- Ghanghti,
P.S- Chakia, District- East champaran

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Madhu Prasun, Advocate
For the Respondent/s : Mr.Sadanand Paswan, Spl. P.P.

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 13-11-2024

At the outset, learned counsel for the appellant
seeks permission to remove the defect as pointed out by the
office during the course of day itself.

2. The same has been permitted to remove during
the course of day.

3. The present appeal is against acquittal.

4. Mr. Madhu Prasun, learned counsel appearing
for the appellant supplied the certified copy of the deposition



of prosecution witnesses and requested for final hearing, which was not objected by learned Spl. P.P.

5. The present appeal on behalf of the appellant/informant under Section 14A(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “SC/ST (POA) Act”), which has been preferred against the judgment of acquittal dated 06.08.2022 rendered by learned Special Judge, SC/ST Act, Motihari in connection with Complaint Case No.23 of 2017, SC/ST Trial No. 173 of 2019 whereby the present respondents/accused along with others have been acquitted from the charges levelled against them.

6. Brief facts of prosecution case, as appears from complaint petition of the complainant is that on 18.07.2015, at about 11 a.m., when he was on the way to his home from his fields reached to Kesariya road near Bodhi Devi Asthan, all the aforesaid accused persons/respondents with common intention equipped with *lathi*, *danda*, *Nalkati* reached there and surrounded him and started to abuse him by saying “sala, Bahanchod, Dusad, Harijan has become courageous now and



began to assault him with *lathi* and *danda*. In the meanwhile, respondent no.2, namely, Shambhu Chaudhur ordered other accused persons to shoot him. On getting order, respondent no.3, Abhishek Singh @ Abhishek Kashyap put 'Nalkat' (country made pistol) on his chest. When the complainant raised alarm, travelers and villagers, who were passing through road came there and intervened and save the life of complainant and took him to Referral Hospital, Chakia.

7. On the basis of aforesaid complaint, a complaint case bearing Complaint Case No. 23/2017 was filed in the court of learned Special Judge, SC/ST Act, East Champaran, Motihari. On the basis of complaint, S.A. of the complainant and evidence of inquiry witnesses, the then Special Judge, SC/ST Act, East Champaran finding *prima facie* cases made out against accused persons/respondents, namely, Shambhu Chaudhur, Abhishek @ Abhishek Kashyap, Kundan Singh @ Kundan Kashyap and Rampravesh Chaudhr took cognizance under Sections 323, 504 and 506 read with 34 of the Indian Penal Code (for short 'I.P.C.') as well as Sections 3(1)(x) of the SC/ST (POA) Act, 1989 against the respondent nos. 2 to



5 and ordered to issue summon against the accused persons.

8. The charges were framed against the accused persons on 05.03.2021 under the aforesaid sections, for which all the accused persons/respondents pleaded not guilty and claimed to be tried.

9. Before the Trial Court, the prosecution had examined four witness, namely, Rohit Kumar Sharma (PW-1), Manish Kumar (PW-2), Vishnu Kumar (PW-3) and Ramayodhya Paswan (PW-4/complainant of the case).

10. The statement of the respondents-accused were recorded under Section 313 of the Code, where all of them denied the evidences surfaced against them and claimed their complete innocence and false implication. After the conclusion of trial, the learned Trial Court acquitted the respondents/accused persons through impugned judgment from the charges levelled against them.

11. Being aggrieved with aforesaid judgment of acquittal, appellant/informant preferred the present appeal.

12. Hence, the present appeal.

13. It is submitted by learned counsel appearing



for appellant that considering the minor contradictions surfaced during the trial, the learned trial court acquitted the respondent nos. 2 to 5. It is pointed out that the complainant is an illiterate person and, therefore, the minor contradictions are bound to be surfaced. It is submitted that from the testimony of complainant and other prosecution witnesses, who are claiming to be an eye-witness of the occurrence, it is apparent that appellant/informant was abused by his caste name during the occurrence. It is submitted that abuse in caste name was made at public place and before several persons gathered during the course of occurrence itself and, therefore, it can be safely said that same was made in public view but, aforesaid fact was completely ignored by the learned trial court. In support of his submission, learned counsel relied upon the legal report of Hon'ble Supreme Court as reported in the matter of **State of Karnataka vs. Appa Balu Ingale and ors. [AIR 1993 SC 1126]**.

14. Learned Special P.P. appearing on behalf of the State while making his submission pointed out that the present complaint was lodged after two years of occurrence.



It is pointed out that for the same occurrence, which took place on 18.07.2015 one FIR was lodged being Chakia P.S. Case No.55 of 2015, where the police after investigation, submitted final form, against which, a revision was preferred by the appellant but, same was dismissed by the concerned Sessions Judge and only after dismissal of revision, the present complaint was lodged. It is further submitted by learned Spl.P.P. that regarding the occurrence major contradiction surfaced out of testimony of complainant/PW-4 and other eye-witnesses and, therefore, the judgment of acquittal is not required to be interfered with.

15. We have considered the submissions canvassed by the learned counsel appearing for the parties. We have also examined the entire evidence produced by the prosecution before the trial court.

16. It would be apposite to discuss evidences, which are available on record as to appreciate the same, which appears necessary for just disposal of present appeal.

17. It appears that most important witness of present occurrence is PW-4, who is complainant himself



namely, Ramayodhya Paswan. It appears from his examination-in-chief that he lodged present complaint case for the reason that he was assaulted by respondents while he was returning from field after completing his agricultural work. It was deposed by him that while returning home, when he reached near to Bodhi Devi temple, the respondent 2/Shambhu Chaudhur, respondent no.5/Rampravesh Chaudhur abused him by his caste name and also assaulted with sleeper whereafter, respondent no.4, namely, Kundan Singh assaulted him with *Fattha* (bamboo plate) as a result of which, he received injury on his head. Thereafter, one Manish came over there, who taken him to hospital. He visited the police station but, his case was not accepted, whereafter, he lodged the present complaint case.

18. Upon cross-examination, it was stated by him that he did not lodge the case in police station but, subsequently, he stated that it was police who took him from hospital for police station. He also stated that he lodged Chakia P.S. Case No.55 of 2015 but, police did not favour him and after investigation, final form was submitted against



respondents which was accepted by concerned jurisdictional Magistrate. He also shows his ignorance, whether final form was submitted or not in present case but, subsequently, he stated that against final form submitted by police, which was subsequently accepted by concerned jurisdictional Magistrate, he preferred the revision petition before the concerned Sessions Judge, which was dismissed and only for that reason, he filed the present complaint case. It also appears from his cross-examination that there was a land dispute regarding a piece of land having Khata No.411. He denied that the mutation petition was dismissed by Circle Officer, Chakia on 23.06.2015. However, he stated that he preferred appeal before A.D.M. He categorically admitted that there is land dispute with respondents/accused persons.

19. **CW-1** is **Rohit Kumar Sharma**. It appears from his testimony that he supported the occurrence of physical assault and found that one person received injury and he was taken to hospital by 3-4 persons. He did not disclosed the name of any persons and except the occurrence, he did not supported anything out of complaint petition,



which is the basis of present prosecution.

20. **PW-2** is **Manish Kumar**. It appears from his deposition that he also supported the occurrence and the fact that respondent no.3, namely, Abhishek Kashyap put country-made pistol on the chest of complainant/PW-4 during the occurrence. He also supported the abuse by caste name.

20.1. During cross-examination, it was stated by him that when he reached at the place of occurrence, he found that injured was surrounded by several persons and he has no personal knowledge that what happened at place of occurrence before his arrival.

21. **PW-3** is **Vishnu Kumar**. It appears from his testimony that occurrence took place on 18.07.2015 at about 11.00 am. He witnessed the occurrence while he was returning from Shitalpur and found the respondents/accused persons were quarreling with complainant/PW-4, namely, Ramayodhya Paswan. It was stated by him that respondent no.3, namely, Abhishek Kashyap during the occurrence put country-made pistol on the chest of complainant, Ramayodhya Paswan, who is the son of respondent no.5,



namely Ram Pravesh Chaudhur. He stated that he is not aware that what is the reason behind the occurrence. He did not discuss anything with people who were present over there who were 20-25 in numbers.

22. All four witnesses, who were examined in defence supported the factum of land dispute and also identified the documents pertaining to land, which was in favour of respondents.

23. It is apparent from the aforesaid discussed evidence that occurrence took place due to land dispute. The version of complainant is also not appearing reliable and trustworthy for the reason that present complaint case was filed only after two years of the occurrence when his revision petition was dismissed by Court of Sessions. Rather to approach the higher forum, petitioner chose to file complaint petition on the same ground for the same occurrence. The testimony of all the complainant/prosecution witnesses, nowhere disclose *prima facie* that occurrence took place due to atrocities as defined within the meaning of the SC/ST Act. It is apparent from the deposition that the caste name not



appears to be made in public view. The major contradiction regarding occurrence also appears out of the deposition of PW-4 as no country-made pistol was said to be put on his chest as it was supported by other prosecution witnesses, like PW-3 and PW-5. It is almost admitted position that despite of the claim that complainant admitted in hospital, no prescription or medical documents as issued from concerned hospital was made available on record during the trial.

24. As the occurrence took place out of land dispute, it would be apposite to reproduce para-34 of the the judgment of Hon'ble Supeme Court as available through **Gulam Mustafa vs. State of Karnataka and Anr. [2023 SCC OnLine SC 603]**, which reads as under:-

“34. Insofar and inasmuch as interference in cases involving the SC/ST Act is concerned, we may only point out that a 3-Judge Bench of this Court, in *Ramawatar v. State of Madhya Pradesh*, 2021 SCC OnLine SC 966, has held that the mere fact that the offence is covered under a ‘*special statute*’ would not inhibit this Court or the High Court from exercising their respective powers under Article 142 of the Constitution or Section 482 of the Code, in the terms below:

“15. Ordinarily, when dealing with offences arising out of special statutes such as the SC/ST Act, the Court will be extremely circumspect in its approach. The SC/ST Act has been specifically enacted to deter acts of indignity, humiliation and harassment against members of Scheduled Castes and Scheduled Tribes. The SC/ST Act



is also a recognition of the depressing reality that despite undertaking several measures, the Scheduled Castes/Scheduled Tribes continue to be subjected to various atrocities at the hands of upper-castes. The Courts have to be mindful of the fact that the SC/ST Act has been enacted keeping in view the express constitutional safeguards enumerated in Articles 15, 17 and 21 of the Constitution, with a twin-fold objective of protecting the members of these vulnerable communities as well as to provide relief and rehabilitation to the victims of caste-based atrocities.

16. On the other hand, where it appears to the Court that the offence in question, although covered under the SC/ST Act, is primarily civil or private where the alleged offence has not been committed on account of the caste of the victim, or where the continuation of the legal proceedings would be an abuse of the process of law, the Court can exercise its powers to quash the proceedings. On similar lines, when considering a prayer for quashing on the basis of a compromise/settlement, if the Court is satisfied that the underlying objective of the SC/ST Act would not be contravened or diminished even if the felony in question goes unpunished, the mere fact that the offence is covered under a 'special statute' would not refrain this Court or the High Court, from exercising their respective powers under Article 142 of the Constitution or Section 482 Cr. P.C."

25. It is well settled law under criminal jurisprudence that in case of acquittal, the innocence of accused becomes double and it should not be interfered in casual manner until and unless it is appearing perverse on its face.

26. In this context, it would be appropriate to reproduce Para no. 42 of the legal report of Hon'ble Supreme



Court as available through **Chandrappa and Others Vs. State of Karnataka [(2007) 4 SCC 415]**, which is 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 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.”

27. 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 persons. Firstly, the presumption of innocence is available to them 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 their acquittal, the presumption of their 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.

28. 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, 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.

29. Hence, in view of aforesaid factual and legal



discussions, the present appeal, which is preferred against acquittal, is dismissed herewith at admission stage itself.

30. Copy of this judgment be sent to learned trial court, immediately.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22-11-2024
Transmission Date	22-11-2024

