

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.999 of 2023

In
CRIMINAL REVISION No.1086 of 2017

Arising Out of PS. Case No.-275 Year-2013 Thana- CHOUTARWA District- West
Champaran

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Rakesh Kumar Srivastava Son Of Late Brahmmbha Prasad Srivastava @
Brahma Prasad Srivastava Resident Of Village - Siktour, P.S. - Chautarwa,
District - West Champaran.

... .. Appellant/s

Versus

1. The State Of Bihar
2. Sheshnath Chaudhary Son Of Sri Chhathu Chaudhary Resident Of Village -
Siktour, P.S. - Chautarwa, District - West Champaran
3. Baijnath Chaudhary Son Of Sri Chhathu Chaudhary Resident Of Village -
Siktour, P.S. - Chautarwa, District - West Champaran

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Vijay Kumar Sinha, Advocate
For the State	:	Mr. Anuj Kumar Shrivastava, APP
For the Resp. No. 2 & 3	:	Mr. Rajesh Ranjan, Advocate
		Mr. Shakti Sumar Kumar, Advocate
		Ms. Kanika, 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 : 23-07-2024

The present appeal has been preferred against the
impugned judgment and order of sentence dated 08.09.2017 and
12.09.2017 respectively passed by Ld. 1st Additional Sessions
Judge Bagha, West Champaran in Sessions Trial No. 178 of
2015 (C.I.S. No. 2826 of 2015) arising out of Chautarwa P.S.
Case No. 275 of 2013, whereby only respondent no. 2 viz.,
Sheshnath Chaudhary has been found guilty only under Section



304 Part II of the Indian Penal Code and other accused including the respondent no. 3 were acquitted of all the charges. By the impugned order of sentence, the sole convict, who is respondent no.2/Sheshnath Chaudhary, was sentenced to the period undergone during trial and during trial, the respondent no. 2 suffered incarceration for 3 years 7 months and 11 days.

2. The prosecution case as emerging from the written report of the informant (PW-6) is that on 09.11.2013 at 12:30 AM, the informant had come to his village with all the family members on the occasion of *chhath puja*. As per the allegation, all the accused persons including the respondent nos. 2 and 3 started dismantling the tarpaulin (*tat*) from the land of the informant. Brahma Prasad Srivastava, father of the informant, ran towards them and protested to the dismantling of the tarpaulin (*tat*). The accused persons abused him and assaulted him by fists and slaps. The accused respondent no. 2/Sheshnath Chaudhary inflicted *lathi* blow on his head. On crying of his father, the informant along with his younger brother Rajesh Kumar Shrivastava ran towards the place of occurrence and found that his father was lying on the ground. The accused persons also assaulted the informant by *farsa* by which, his right thumb was injured. It is also alleged that the accused respondent



no. 2/Sheshnath Chaudhary also took away a golden chain and Rs. 2,000/- from the possession of the brother of the informant.

3. On the basis of the written report of the informant, an FIR was lodged against the accused persons including the respondent nos. 2 and 3 under Sections 147, 148, 149, 341, 323, 324, 325, 307, 302 read with Section 34 of the Indian Penal Code.

4. After completion of the investigation, charge-sheet was filed against three accused persons including the respondent nos. 2 and 3. After taking cognizance, the case was committed to the Court of Sessions by learned Magistrate. Charge under Sections 147, 148, 149, 341, 323, 324, 325, 307, 302 read with Section 34 of the Indian Penal Code was framed against respondent nos. 2 and 3 and co-accused Chhathu Chaudhary who was also impleaded as respondent in the appeal but on account of his death during pendency of this appeal, his name has been deleted from the array of the respondents.

5. During trial, the following 10 witnesses were examined on behalf of the prosecution:-

- (i) P.W. -1 – Jagan Gond
- (ii) P.W. -2 – Skh. Manjoor
- (iii) P.W. -3 – Rubi Devi
- (iv) P.W. -4 – Nitu Devi
- (v) P.W. -5 – Rajesh Kumar Srivastava
- (vi) P.W. -6 – Rakesh Kumar Srivastava (informant)



- (vii) P.W. -7** – Dr. Surendra Prasad Agrawal
- (viii) P.W. -8** – Dr. Pankaj Kumar
- (ix) P.W. -9** – Nagendra Singh (retired S.I.)
- (x) P.W.-10** – Prakash Kumar Srivastava

6. The prosecution has also brought on record the following documentary evidence:-

- (i) Ext. 1** – Signature of Prakash Kumar Srivastava on the written report.
- (ii) Ext. 2** – Injury report of Rajesh Kumar Srivastava
- (iii) Ext. 3** – Injury report of Rakesh Kumar Srivastava
- (iv) Ext. 4** – Injury report of Brahma Prasad Srivastava
- (v) Ext. 4/1** – The supplementary injury report
- (vi) Ext. 5** – Postmortem report of Brahma Prasad Srivastava.
- (vii) Ext. 6** – Formal FIR
- (viii) Ext. 7** – Endorsement on the written report
- (ix) Ext. 8** – Carbon copy of the inquest report
- (x) Ext. 8/1** – Signature of P.W.-10 on the inquest report.

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. However, no witness was examined on behalf of the defence, but the following documents were brought on



record on behalf of the accused persons (respondent nos. 2 and 3):-

Ext. A – Certified copy of FIR of Chautarwa P.S.
Case No. 274/13

Ext. B – Certified copy of order sheet along with map prepared by Anchal Office Bagaha-1

Ext. C – Notice of a proceeding under Section 107 Cr.PC.

9. Learned Trial Court after appreciating the evidence on record and considering the submissions of the parties passed the impugned judgment and order. Learned Trial Court found that there was admittedly dispute between the informant and the accused side in regard to homestead land. But there was no preparation for the altercation which took place in regard to dismantling the tarpaulin (*tat*) on the land. The altercation took place on the spur of the moment and the accused/Sheshnath Chaudhary (respondent no. 2) assaulted the victim by *lathi* on his head causing lacerated wound on left parietal region of the size 4 cm x ½ cm with no bony lesion, besides causing swelling and tenderness on left shoulder and lacerated wound on right ear of the size ½ cm x ½ cm x 2 cm. The other injured persons Rajesh Kumar Srivastava had got wound on left index finger and abrasion on left knee. Rakesh Kumar Srivastava has received lacerated wound on his left thumb caused by hard and blunt substance. Allegation of assault by *farsa* was not found to



be corroborated by medical evidence. The injured Brahma Prasad Chaudhary died after two months of the occurrence and during this period of two months, he was treated at Gorakhpur. Hence, learned Trial Court found respondent no. 2 guilty for culpable homicide, not amounting to murder and sentenced him to imprisonment for 3 years 7 months and 11 days which he had already served during the trial.

10. We heard learned counsel for the appellant (informant), learned APP for the State and learned counsel for the respondent nos. 2 and 3.

11. Learned counsel for the appellant has submitted that learned Trial Court has failed to properly appreciate the evidence on record and erroneously acquitted the respondent no.3 of all the charges. He has also submitted that respondent no. 2 should have been also found guilty under Section 302 and not under Section 304 Part II of the Indian Penal Code. Alternatively, he has submitted that sentence awarded against respondent no. 2/Sheshnath Chaudhary is also not adequate under Section 304 Part II of the IPC. The sentence awarded against him requires to be enhanced.

12. However, learned APP for the State and learned counsel for respondent nos. 2 and 3 vehemently opposed the



prayer of the appellant submitting that there is no illegality or infirmity in the impugned judgment and order of sentence. They have further submitted that the view taken by learned Trial Court is based on proper appreciation of law and the evidence on record and there is no reason for interference by this Court in the impugned judgment and order. It is settled principle of law that in an appeal against acquittal, if two views are possible as per the evidence on record and the Trial Court taking one view, the Appellate Court is not required to supplant the view of the Trial Court by another view unless there is perversity of finding of law and fact and needless to say that there is no such perversity in the judgment. They have also submitted that the informant, who has filed this appeal, has no right to question the adequacy of sentence awarded against the convict. Under the proviso to Section 372, no such right has been provided to the victim/informant to file appeal for enhancement of sentence.

13. We perused the materials on record and considered the submissions advanced by the parties.

14. We are in agreement with the submission of learned APP for the State and learned counsel for the respondent nos. 2 and 3 that the informant/victim has no right to file appeal against inadequacy of sentence because right to file appeal for



enhancement of sentence has been given 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. 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/given to the party, the appeal preferred by the party cannot be maintained. 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. It is also pertinent to note 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.

18. 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.

19. 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.

20. 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.

21. 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 reappraise 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)

22. In Babu Sahebagoada 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)



23. Coming to the case on hand, we find from perusal of the evidence on record that there was dispute between the informant side and the accused side in regard to homestead land and in regard to dismantling of tarpaulin (*tat*) on the land, the altercation took place between the two sides in which the victim/Brahma Prasad Srivastava received assault by respondent no. 2/Sheshnath Chaudhary on his head by *lathi* and after this injury, he died after two months in course of treatment. It is also not proved that the other injured persons have got the injury as mentioned above in the alleged occurrence because the evidence of the witnesses are not corroborated by medical evidence and the said injury of those victims could have been caused, as opined by the doctor, in any road accident.

24. In view of the aforesaid facts and circumstances and nature of the injury received by Brahma Prasad Srivastava and the weapons of assault, we find that there is no pre-meditation or intention on the part of the accused/respondent no. 2 to cause death of the victim. The altercation took place on the spur of the moment and even the injury caused does not show that the respondent no. 2 had any intention to commit murder. At most, knowledge could be imputed to the respondent no. 2/Sheshnath Chaudhary that such bodily injury as he inflicted on



the victim, could have resulted into his death.

25. Hence, the conviction of the respondent no. 2 under Section 304 Part II of the Indian Penal Code cannot be held to be unreasonable or perverse. We also find that he has been rightly acquitted of other charges. We also do not find any material to hold respondent no. 3 guilty of any charge.

26. Hence, the impugned judgment and order require no interference by this Court.

27. Hence, the appeal, being bereft of any merit, is dismissed, upholding the impugned judgment and order.

(Jitendra Kumar, J.)

I agree.

(Ashutosh Kumar, J.)

shoaib/chandan

AFR/NAFR	AFR
CAV DATE	NA
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