

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1069 of 2023**

Arising Out of PS. Case No.-233 Year-1996 Thana- PANDAUL District- Madhubani

Md. Allauddin son of Late Md. Nasir Village- Mohanbariam PS- Sakari Dist-
Madhubani

... .. Appellant/s

Versus

1. The State of Bihar
2. Md. Tauhid son of Md. Ayub Village- Mohanbariam PS- Sakri Dist-
Madhubani

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Gagan Deo Yadav, Advocate Mr. Ravi Prakash, Advocate Mr. Vinod Kumar, Advocate
For the State	:	Mr. Dilip Kumar Sinha, APP
For the Resp. No. 2	:	Mr. P.K. Jha, Advocate Mr. Rajesh Kumar Jha, Advocate Ms. Meenakshi Priya, Advocate

**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 dated 19.07.2023 passed by Ld. Additional Sessions Judge-III, Madhubani in Sessions Trial No. 103 of 1999 (C.I.S. Regd. No. 3497 of 2014) arising out of Pandaul (Sakri) P.S. Case No. 233 of 1996, whereby the accused, who is respondent No. 2 herein, was acquitted of all the charges, though the rest accused who are not respondents herein, were convicted.

2. The prosecution case as emerging from the *fardebayan* of the informant/Md. Zilani to the Officer In-charge



of Sakri Police Station on 28.12.1996 is that at 6:00 O Clock in the morning, the informant had gone to Mahavir Chowk to take tea. But all of a sudden, the accused persons, viz., Md. TaufEEK, Md. Tauqeer, Md. Rafik, Md. Tauhid, Md. Tanveer, Mahmuddin and Md. Chote surrounded him, having lathi and *Garasa* in their hands and started assaulting him. Consequently, he received injury on his head. Md. Rafik had assaulted on his head by *Garasa* and other accused persons assaulted him by lathi. Md. Tauhid took away Rs. 5,000/- from his pocket. In the meantime, Md. Zafar, Md. Noor Alam, Md. Sadir, Md. Islam, Md. Manjoor, Md. Talim and Md. Nasir came to rescue him, but they were also assaulted by the accused persons, giving injury on their heads, legs and hands. The reason behind the occurrence has been stated to be registration of Sakri P.S. Case No. 35 of 1996 against Md. TaufEEK, Tauhid and others.

3. On the basis of the *fardebayan*, the FIR bearing Pandaul (Sakri) P.S. Case No. 233 of 1996 was lodged against eight accused persons including the Respondent No.2 for the offence punishable under Sections 147, 148, 149, 323, 324, 337, 338, 379, 307 and 302 of the Indian Penal Code.

4. After investigation, charge-sheet was submitted against all the FIR named accused persons including



Respondent No.2 herein. After taking cognizance, the case was committed to the Court of Sessions by the learned Magistrate.

5. Charge was framed against the accused persons on 26.11.1999. From the perusal of the charges framed, it transpires that charge under Section 307 read with Section 34 of the Indian Penal Code was framed against six accused persons, viz., Md. Taufeek, Md. Tauqeer, Md. Tanveer, Md. Din, Md. Sohail @ Chote and Md. Aiyub. Charges under Sections 302/149, 147 and 324 IPC were framed against Md. Taufeek, Md. Tauqeer, Md. Tanveer, Md. Din, Md. Sohail @ Chote and Md. Aiyub. Separate charges under Sections 302 and 148 IPC were also framed against Md. Rafik. But, against the respondent no. 2/Md. Tauhid, only charge framed was under Section 379 IPC and this charge against him was framed separately. No other charge was framed against him either under Sections 307, 302, 148 or 324 of the Indian Penal Code. As such, only charge against the respondent no. 2/Md. Tauhid is of committing theft of Rs. 5,000/- from the possession of the informant/Md. Zilani.

6. During trial, the following 13 witnesses were examined on behalf of the prosecution:-

- (i) P.W. -1 – Md. Manjoor
- (ii) P.W. -2 – Md. Alauddin
- (iii) P.W. -3 – Md. Sadiq
- (iv) P.W. -4 – Md. Zilani (Informant)



- (v) P.W. -5 – Md. Zafar
- (vi) P.W. -6 – Md. Noor Ali
- (vii) P.W. -7 – Md. Islam
- (viii) P.W. -8 – Dukhi Yadav
- (ix) P.W. -9 – Biltu Sah
- (x) P.W.-10 – Md. Abdul Kalam
- (xi) P.W.-11 – Md. Musa
- (xii) P.W.-12 – Sita Ram Yadav
- (xiii) P.W.-13 – Arvind Kumar Singh

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

- (i) Ext. 1 – Signature of the informant on *fardebayan*
- (ii) Ext. 2 – Signature of the doctor on postmortem report
- (iii) Ext. P 3 – C.C of injury report of Noor Alam
- (iv) Ext. P 3/1 – C.C of injury report of Jafar Alam
- (v) Ext. P 3/2 – C.C of injury report of Md. Manjur
- (vi) Ext. P 3/3 – C.C of injury report of Md. Nasir
- (vii) Ext. P 3/4 – C.C of injury report of Md. Islam
- (viii) Ext. P 3/5 – C.C of injury report of Md. Sadir.
- (ix) Ext. P 3/6 – C.C of injury report of Md. Talib.
- (x) Ext. P 3/7 – C.C of injury report of Md. Ayub.
- (xi) Ext. P 3/8 – C.C of injury report of Mohammadin

8. After closure of the prosecution evidence, the Respondent No.2/Accused was examined under Section 313 Cr.PC, during which he was confronted with incriminating circumstances which had come in the prosecution evidence, so as to afford him opportunity to explain those circumstances. During the examination, he admitted that he had heard the evidence of the prosecution witnesses against him, but he did not explain any circumstances though he denied every charge and claimed to be innocent.



9. Only one witness viz., Md. Tanvir **(D.W.-1)** has been examined on behalf of the defence. No documentary evidence has been brought by the Defence on record.

10. Learned Trial Court after appreciating the evidence on record and considering the submissions of the parties passed the impugned judgment whereby respondent no. 2/Md Tauhid was acquitted of all the charges though the co-accused persons, viz., Md. Taufik, Md. Taqueer, Md. Tanveer and Md. Rafik were convicted under Sections 147, 323 and 302/149 of the Indian Penal Code.

11. We have heard learned counsel for the appellant, learned APP for the State and learned counsel for the respondent no. 2.

12. 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.2 of all the charges, whereas he should have been also convicted as the other co-accused.

13. However, learned APP for the State and learned counsel for respondent no. 2 vehemently opposed the prayer of the appellant submitting that there is no illegality or infirmity in the impugned judgment. 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. 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 further submitted that only charge framed against the respondent no. 2 was under Section 379 of the IPC for committing theft of Rs. 5,000/- from possession of the informant and as per the evidence on record, no charge could be proved beyond reasonable doubt. Hence, the respondent no. 2 has been rightly acquitted of the charges.

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

15. Before we proceed to consider the rival submissions of the parties, it would be 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.



16. 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.

17. 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.

18. 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.



19. 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 reappraising 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)

20. 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)

21. Coming to the case on hand, we find from perusal of the evidence on record that out of 13 prosecution witnesses, P.W.-8 to P.W.-12 were only tendered by the prosecution. Even otherwise, they have deposed in their cross-examination that they have no knowledge about the prosecution case. Hence, their evidence is of no value for the prosecution.

22. We further find that only charge framed against respondent no. 2/Md Tauhid is under Section 379 of the Indian Penal Code. So without framing of charge under other Sections like 307, 302, 148 and 324 of IPC, there is no question of convicting the respondent no. 2 under those provisions of the IPC.

23. We also find that there was no specific allegation against the respondent no. 2 in regard to causing any injury to the alleged victim. No injury on the person of the informant or



anybody on the side of the prosecution, has been proved by examining the Doctor who had examined their injury. Even the postmortem report does not speak about the nature of the injury and weapons of offence used to cause the injury on the deceased. For want of such evidence on record regarding injury, it is not possible to determine what was the injury on the Informant and how was it caused. This fact along with the omnibus allegation against the respondent no. 2, it is not possible to attribute the injury caused on the Person of the victim to Respondent No2/Md. Tauhid. Such facts and circumstances creates reasonable doubts in the prosecution case against the Respondent No.2. It is trite to say that the benefit of doubts would go to the accused.

24. We also find that in regard to alleged commission of theft of Rs. 5,000/- from possession of the informant, there is material contradictions in the statements of the prosecution witnesses. **PW-5**, Md. Zafar, has deposed that respondent no.2/Md. Tauhid took Rs. 5,000/- from the pocket of Md. Zilani, whereas **PW-4** has deposed that it was Md. Taufik who committed theft of Rs. 5,000/- from the possession of the informant. PW-7, Md. Islam has deposed that it was Tauhid who took out Rs. 5000/- from his pocket. In view of such material



contradictions and discrepancies in the statements of prosecution witnesses, it is not safe to hold that respondent no. 2/Tauhid committed theft of Rs. 5,000/- from possession of the informant. Learned Trial Court has also disbelieved the allegation regarding theft on the ground that it is improbable that the informant had gone to take tea in the morning with Rs. 5,000/- in his pretext.

25. In view of the aforesaid facts and circumstances, we clearly find that the view taken by the learned Trial Court in regard to respondent no. 2 is based on proper appreciation of facts and law, warranting no interference in the impugned judgment by this Court with reference to the respondent no.2/Md. Tauhid.

26. Hence, the appeal, being bereft of any merit, is dismissed, upholding the impugned judgment with reference to the respondent no. 2/Md. Tauhid whereby Md. Tauhid has been acquitted of all the charges.

(Jitendra Kumar, J.)

I agree.

(Ashutosh Kumar, J.)

shoaib/Ravi shankar

AFR/NAFR	NAFR
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