

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1153 of 2023**

Arising Out of PS. Case No.-105 Year-1997 Thana- MANJHI District- Saran

Manan Ram Son of Late Nagina Prasad Kanauj R/o Shrirampur, P.S.- Manjhi,
Dist.- Saran

... .. Appellant

Versus

1. The State of Bihar Patna
 2. Sunil Ram Son of Ganesh Ram R/o Shrirampur, P.S.- Manjhi, Dist.- Saran
- Respondents

Appearance :

For the Appellant : Mr. Ajay Kr Singh No.1, Advocate
For the State : Mr. Satya Narayan Prasad, Addl PP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 13-11-2024

Heard Mr. Ajay Kumar Singh No. 1, learned counsel for the appellant and Mr. Satya Narayan Prasad, learned Additional Public Prosecutor for the State.

2. The present appeal against acquittal has been filed against the judgment dated 17.08.2023 passed by learned Additional Sessions Judge, IV, Chapra in Sessions Trial No. 488 of 2004, CIS No. 1178 of 2014 arising out of Manjhi P.S. Case No. 105 of 1997 whereby and whereunder the accused-Respondent No. 2 has been acquitted of the charges under Sections 302, 450 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act.



Prosecution Case

3. The prosecution case is based on the fardbeyan of Manan Ram (PW-6) recorded on 28.07.1997 at 12:30 pm by SI Bisheshwar Ram of Manjhi Police Station. In his fardbeyan (Exhibit 'P-2'), he has stated that on 27.07.1997 at about 10:00 pm, when it started dripping, he and his brother Chandrama came down from the roof and went to sleep in their respective rooms. At 11:00 pm, the informant woke up on hearing the sound of his brother that he has been shot at and when he came out opening his door, he saw his brother lying who was saying that someone has shot at him and fled away. The informant went outside and tried to see in torch light and found that the door was opened but nobody was present there. Thereafter, he immediately returned to his brother, in the meanwhile, his '*Bhabhi*', namely, Chanda Devi (PW-4) came crying and told him that when they were sleeping in the house, someone from the courtyard asked to open the door saying in the voice of her handicapped child that he had to go to attend the nature's call. She asked her husband to go with him. The informant's brother opened the door then unknown person fired from the *baramdah* of the courtyard which hit his chest and other body parts from chest to thigh due to which he got injured and fell down. The informant and his *Bhabhi* tried to lift him to get him



treated but at about 11:30 PM, he died on the spot. The informant and his *Bhabhi* started crying then someone informed the Chaukidar but no one from the village came there. The informant alleges that due to some old land dispute, someone copied the voice of his nephew and killed his brother.

4. On the basis of the fardbeyan, a formal FIR was registered being Manjhi P.S. Case No. 105 of 1997 dated 28.07.1997. After investigation, police submitted chargesheet on 05.08.2023 against Ganesh Ram and Sunil Ram and on 05.08.2023, Police submitted supplementary chargesheet against Braj Kishor Ram. Learned Magistrate took cognizance under Sections 302, 450 read with Section 34 IPC and Section 27 of the Arms Act. Finding that the offences of which cognizance was taken by the learned Magistrate are triable by the court of Sessions, the learned Magistrate committed the records to the court of Sessions *vide* order dated 02.07.2004. Accordingly, on receipt of the records, the learned trial court on 09.10.2004 framed the charges under Sections 302/34, 450/34 IPC and Section 27 of the Arms Act against Ganesh Ram, Sunil Ram and Brij Kishore Ram. Charges were explained to them to which they pleaded not guilty and claimed to be tried.



5. In course of trial, the prosecution examined as many as eight witnesses and exhibited three documents. The list of prosecution witnesses and documents exhibited on behalf of prosecution are mentioned hereinbelow in tabular form:-

List of Prosecution Witnesses

PW-1	Gopal Ram
PW-2	Hari Narayan Ram
PW-3	Harendra Ram
PW-4	Chanda Devi
PW-5	Rajkumari Devi
PW-6	Manan Ram
PW-7	Dr. Suresh Prasad
PW-8	Girish Kumar Singh

List of Exhibits

Ext. P-1	Signature of witness on seizure list
Ext. P-2	Signature of informant on written report
Ext. P-3	Postmortem report

Findings of the Learned Trial Court

6. The learned trial court analysed the evidences on the record and found that PW-1, PW-2 and PW-3 are villagers who are hearsay witnesses and have not seen the occurrence, PW-4 is the wife of the deceased, PW-5 is the sister-in-law of the deceased and PW-6 is the brother of the deceased and informant of this case. Learned trial court found that the FIR is against unknown but in



the re-statement, the informant cast doubt on the accused and in his evidence before the court he said that he had seen the accused in the light of torch and had actually seen the accused firing at the deceased.

7. Learned trial court found that PW-4 had also cast doubt on the accused in her statement before the police and had said that she did not see the assailants but in her evidence before the court, she claimed to have seen the occurrence. Learned trial court also found that PW-5 who claims to be present at the place of occurrence with her husband (PW-6) was inquired by police after six months of the occurrence, she claimed to have seen the occurrence. Learned trial court held that though the informant and the witnesses claimed to have seen the accused firing but the informant did not give the names in the fardbeyan. Learned trial court observed that the three witnesses PW-4, PW-5 and PW-6 are the family members of the deceased who are natural witnesses of the incident that took place in the night inside the house and their evidence cannot be brushed aside on the ground that they are family members but the deviation in their statements and improbability of not naming the accused at the first instance if they saw the accused at the time of occurrence are the grounds which make their evidence unreliable.



8. Learned trial court in this regard relied upon the judgments in the case of **Md. Yunus vs. State of Bihar** reported in b, **Kishori Mahto vs. State of Bihar** reported in **2017 (2) PLJR 441** and **Putul Jha and Others vs. State of Bihar** reported in **2019 (4) PLJR 218**.

9. As stated above, the learned trial court acquitted the accused-respondent no. 2 giving him benefit of doubt.

Submissions on behalf of the Appellant

10. Mr. Ajay Kumar Singh No. 1, learned counsel for the appellant has assailed the impugned judgment. It is submitted that learned trial court has committed gross error in appreciation of the evidences on the record.

11. It is his submission that the occurrence took place at about 11:00 PM during the night hours. The brother of the deceased who is the informant of this case and the appellant before this Court has deposed as PW-6. He has stated that the accused Braj Kishor Ram, Sunil Ram and Ganesh Ram entered into his house from the 'dhadha' available from the backside of his house leading to the roof. He has stated that the accused persons got opened the door by his *bhabhi* and brother, both had come outside, she had seen all the three accused and called PW-6 whereafter he came in the courtyard but before he could have reached, they had



shot at his brother. This witness has stated that the accused persons abused him and placed the pistol upon him. He had identified all the three accused persons in the torch light. He has stated that when he had started shouting then villagers came there. This witness has proved his signature on his *fardbeyan* and the same has been marked Exhibit '1'.

12. Learned counsel submits that other witnesses, namely, Gopal Ram (PW-1), Hari Narayan Ram (PW-2), Harendra Ram (PW-3), Chanda Kunwar (PW-4) all have supported the prosecution case. Chanda Kunwar (PW-4) who is the wife of the deceased has claimed to have identified the accused persons. It is submitted that similarly Rajkumari Devi (PW-5) has also supported the prosecution case. Learned counsel submits that in these circumstances, the learned trial court has failed to appreciate that the prosecution had been able to prove the guilt of the accused-respondent no. 2 beyond all reasonable doubts.

Submissions on behalf of the State

13. On the other hand, learned Additional Public Prosecutor for the State has defended the impugned judgment. It is submitted that the learned trial court has rightly appreciated the entire evidences available on the record. It is submitted that the occurrence took place in the night hours of 27.07.1997 whereas the



fardbeyan of the informant (PW-6) was recorded on 28.07.1997 at 12:30 pm at his residence in the village. Even though the *fardbeyan* was recorded after more than 12 hours of the occurrence, the informant did not disclose the name of the accused persons in his *fardbeyan*. His statement in the examination-in-chief gives a completely different story. In his *fardbeyan*, he has stated that when he got awoken on hearing the voice of his brother Chandrama, he came outside after opening the door of his room and found that his brother was lying in front of the door of his room and he was saying that someone had shot at him and fled away, the informant has further stated in his *fardbeyan* that when he tried to see outside in the torch light, there was none. In his *fardbeyan*, the informant has stated that his *bhabhi* informed him that when someone called in the voice of her handicapped son and asked her husband to open the door so that the handicapped son may go outside to defecate, the victim opened the door whereafter someone fired from the *Verandah* situated in the courtyard. It is submitted that neither the informant nor his *bhabhi* had seen any of the accused persons. In course of trial, they drastically improved upon their case and claimed that they had seen the accused persons at the place of occurrence.



14. Learned Additional Public Prosecutor for the State submits that Gopal Ram (PW-1) and Hari Narayan Ram (PW-2) both have stated that they heard about the murder of Chandrama and only after hearing hulla, they had reached his house. In his cross-examination, PW-1 has stated that the wife of Chandrama or any other person had not disclosed the name of the assailant. Similarly, PW-2 has stated in his cross-examination that his house is adjacent to the place of occurrence. He could not know the reason behind the occurrence and the persons involved in the murder of Chandrama. It is submitted that Harendra Ram (PW-3) has stated in his examination-in-chief that his statement was not recorded by the police. This witness has been declared hostile as he did not support the prosecution case. It is submitted that PW-4 is the *bhabhi* of the informant who has for the first time deposed in her examination-in-chief that she had seen the accused persons. Her attention was also drawn towards her previous statement made before the police in which she had given a different statement.

15. Learned Additional Public Prosecutor has also submitted that so far as the informant (PW-6) is concerned, he has also come out with a different statement in his examination-in-chief and in his cross-examination, he has stated that all the three accused persons are his co-sharers. No one had gone to the police



station prior to the arrival of the Daroga. He has stated that after the arrival of Daroga, Braj Kishor Ram and his father, namely, Ruplal Ram had not come. He has stated that the police had prepared the paper and he had put his signature thereon but in his presence, Braj Kishor Ram had not signed on that paper. Attention of this witness was drawn towards his *fardbeyan* in which he had not disclosed the name of any of the accused. His attention was also drawn towards his re-statement made before the police in which he had not stated to have seen anyone killing his brother or fleeing away.

16. Learned Additional Public Prosecutor points out that so far as PW-5 is concerned, she had made her statement before police after seven months. Her attention was also drawn towards her previous statement made before police in which she had stated that her husband and *dyadin* had told her that Sunil Ram had killed her *bhaisur*. Learned Additional PP, therefore, submits that not only the informant (PW-6) is falling in the category of wholly unreliable witness, even the wife of the deceased cannot be believed. So far as other witnesses are concerned, the depositions of PW-1 and PW-2 would show that when they reached the house of the deceased, the wife of the deceased had not told them about the persons who were involved in the murder of her husband. It



has been submitted that the judgment of the learned trial court is based on proper appreciation of the evidences.

17. Learned Additional PP has relied upon the judgment of the Hon'ble Supreme Court in the case of **H.D. Sundara and Others Vs. State of Karnataka** reported in (2023) 9 SCC 581 to submit that acquittal of the accused strengthens the presumption of his innocence and the Appellate Court while deciding an appeal against acquittal must come to a finding that only conclusion which could be recorded on the basis of the evidence on record is that the accused is guilty of committing offence. In this case, however, it would not be possible to reach a conclusion that the prosecution has proved the guilt of the accused.

Consideration

18. We have heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also perused the trial court's records. In fact, this Court has gone through the entire evidences available on the record and has reappreciated the prosecution evidences.

19. In this case, police submitted a charge-sheet in which 17 witnesses were cited on behalf of the prosecution but in course of trial, only 8 witnesses could be produced. Out of these 8 witnesses, P.W. 8 happened to be an advocate clerk who was produced as a formal witness to identify handwriting of the then S.H.O. in



endorsement on the fardebyan and the handwriting of the S.I. Mustaq Ahmad and Tapeswar Yadav. PW-1, PW-2 and PW-3 are the villagers who are hearsay witnesses. They had not seen the occurrence and are completely unaware of the culprits. In this connection, we find that from the inception itself, the prosecution did not disclose the name of the accused. Fardbeyan of the informant (PW-6) (Exhibit 'P-2') would show that his statements are based on what he was told by his *bhabhi* (PW-4.). In the fardbeyan, it is stated that his *bhabhi* told him about the occurrence saying that an unknown person had fired from the *Baramdah* of the courtyard and killed her husband.

20. We find that neither in the fardbeyan nor in his re-statement, the informant implicated the private Respondent No. 2. The attention of the informant and other prosecution witnesses were drawn towards their previous statements made before the Investigating Officer. The defense suggested to the informant that in his fardbeyan he had not given name of any accused. Further suggestion was made that in his re-statement also, he had not stated that he had either seen anyone firing upon the deceased or fleeing away from the place of occurrence. The informant (PW-6) denied the suggestions. The wife of the deceased has come to depose as PW-4. Her attention was also drawn towards her previous statements made before the I.O. She was suggested that in her statement before the



I.O., she had not given name of any of the accused. She had also not stated before the I.O. that on the order of Brij Kishor, Sunil had fired from pistol. PW-4 though denied both the suggestions but she has stated in paragraph '3' of her deposition that she did not know as to whether Brij Kishor was in his house on the said date. He has stated that Brij Kishor Ram is her co-sharer. She was specifically suggested by the defence that she has not stated before the I.O. that Sunil had killed her husband by his pistol. These suggestions had though been denied by PW-4 but the fact is that the I.O. of this case has not been examined in course of trial.

21. The learned trial court has rightly concluded that non-examination of the I.O. in a case where major contradictions or improvements have been made by the witnesses would cause prejudice to the defence and the benefit would go to the accused.

22. From the entire evidences on the record, we find that it is a case of blind murder and only at the stage of trial, the prosecution witnesses had changed their version and came out with a story which they had never disclosed in course of investigation of the case. The wife of the deceased (PW-4) and the informant (PW-6) both are wholly unreliable witnesses. We further find that even the sister-in-law of the deceased who has been examined as PW-5 was produced before the I.O. after six months of the occurrence. PW-5



claimed that she had not seen the accused persons fleeing away. Such belated examination of PW-5 would not inspire confidence.

23. We are dealing with a case of appeal against acquittal. The scope of interference in such matters have been succinctly dealt with by the Hon'ble Supreme Court in the case of **H.D. Sundara** (supra). Paragraph '8' of the said judgment is being produced hereinunder for a ready reference.

“**8.** In this appeal, we are called upon to consider the legality and validity of the impugned judgment¹ rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC can be summarised 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;

(**1** *State of Karnataka v. H.K. Mariyappa*, 2010 SCC OnLine Kar 5591)



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.”

24. On re-appreciation of the entire evidences on the record, we are unable to reach to an irresistible conclusion that the Respondent No. 2 is liable to be held guilty for the charged offence, in such circumstance, it would not be appropriate to interfere with the judgment of the acquittal.

25. This appeal has no merit. It is dismissed.

(Rajeev Ranjan Prasad, J)

(G. Anupama Chakravarthy, J)

Manish/Lekhika/-

AFR/NAFR	
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