

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1169 of 2023**

Arising Out of PS. Case No.-400 Year-2015 Thana- MADHUBANI TOWN District-
Madhubani

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RUPESH KUMAR Son of Late Rajesh Choudhary R/o vill - Dumariya
Bujurg, P.S. - Parbatta, Distt. - Khagaria

... .. Appellant/s

Versus

1. The State of Bihar
2. Hari Narayan Singh @ Bhola Singh Son of Late Jainarayan Singh R/o vill -
Dumariya Bujurg, P.S. - Parbatta, Distt. - Khagaria
3. Nirmala Devi Wife of Hari Narayan Singh @ Bhola Singh R/o vill -
Dumariya Bujurg, P.S. - Parbatta, Distt. - Khagaria

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Ms. Vaishnavi Singh, Advocate
For the State	:	Smt. Shashi Bala Verma, APP

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**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

Date : 13-02-2024

Heard learned counsel Ms. Vaishnavi Singh for
the appellant/original informant and Smt. Shashi Bala Verma
for the Respondent-State.

2. The present appeal has been filed by the
appellant/original informant under Section 372 of the Code of
Criminal Procedure, 1973 (hereinafter referred as the 'Code')
against the order of conviction dated 20.09.2023 and order of
sentence dated 26.09.2023 passed by learned 3rd Additional



Sessions Judge, Madhubani Sessions Trial No. 40 of 2018 arising out of Madhubani Town P.S. Case No. 400 of 2015, whereby the Trial Court has acquitted the present private respondents of the charges levelled against them punishable under Sections 364, 302 and 201/34 of the I.P.C.

3. The prosecution case, in brief, is as under:-

“The father of the informant was abducted by the accused Shyam Nandan Singh (Tinku Singh) at 10.30 pm on 30.08.2015 from Watson School on a black color scooty and he told the *havildar* that they will return within 10 minutes but he did not get any information about his father till 02.09.2015. The informant also stated that Harinarayan Singh received money from his father to register the land but he did not want to register it but his son Shyam Nandan Singh registered the land in the name of informant's mother Bibha Devi which caused friction in accused person's family and thereafter, they abducted his father.”

4. Learned counsel for the appellant/informant submitted that the present private respondents hatched the conspiracy with their son, namely Shyam Nandan Singh (Tinku Singh) and, as a part of the said conspiracy, the father of the informant was abducted by Shyam Nandan Singh at 10.30 pm on 30.08.2015 from Watson School on a black color scooty. However, father of the informant did not returned and,



therefore, written application was filed by the informant on 02.09.2015. However, in the meantime, the dead body of the father of the informant was recovered and, therefore, one *chowkidar* filed an F.I.R. with regard to the dead body which was recovered within the jurisdiction of Chakmahesi Police Station. Therefore, the F.I.R. for the offence punishable under Section 302 of I.P.C. came to be registered. Hence, both the cases were clubbed and after investigation, the Investigating Officer filed the charge-sheet against Shyam Nandan Singh and the present private respondents for the offences punishable under Sections 364, 302 and 201/34 of I.P.C.

5. It is further submitted that the Magistrate committed the case to the Sessions Court under Section 209 of the Code and, before the Sessions Court, the prosecution had examined 13 witnesses and also produced documentary evidence. It is submitted that, though the prosecution has proved the case against all the accused beyond reasonable doubt, the Trial Court has acquitted the present private respondents whereas accused Shyam Nandan Singh has been convicted for the alleged offences. It is submitted that there was a land dispute between the parties and, therefore, there was a motive on the part of the present private respondents to



kill the deceased and, therefore, in connivance with their son, the private respondents have committed the alleged offences. Learned counsel, therefore, urged that the present appeal requires consideration and, therefore, the same be allowed and the impugned order passed by the Trial Court be set aside.

6. Learned A.P.P. has referred the reasoning recorded by the Trial Court and thereafter submitted that, on the basis of the evidence produced before the Trial Court, the Trial Court has passed the impugned order and the Trial Court has not committed any error while passing the same and, therefore, this Court may not interfere with the same. It is also submitted that the State has not preferred any acquittal appeal against the impugned order passed by the Trial Court. However, learned A.P.P. submitted that, in the facts and circumstances of the present case, this Court may pass appropriate order.

7. We have considered the submissions canvassed by the learned counsels appearing for the parties. We have also perused the deposition of the prosecution witnesses, the copy of which has been supplied by the learned counsel for the appellant. It transpires from the evidence led



before the Trial Court that the case of the prosecution rests on circumstantial evidence. It is a specific case of the prosecution that accused Shyam Nandan Singh, who is the son of the present private respondents, abducted the father of the informant on 30.08.2015 at 10.30 pm from Watson School on a black color scooty. However, it is pertinent to note that, at that time, the present private respondents were not in company with the other co-accused. Nobody has seen the present private respondents in company with the deceased on 30.08.2015 or thereafter. None of the prosecution witnesses has stated that the present private respondents were in company of the deceased after he was abducted by the co-accused. The only allegation against the private respondents is that they hatched conspiracy with the co-accused Shyam Nandan Singh and thereby all the accused have committed the alleged offences. The prosecution has also contended that there was a motive on the part of the private respondents because of the land dispute to kill the deceased and, therefore, it has been presumed by the prosecution that the present private respondents were also involved in the alleged occurrence. However, we are of the view that the prosecution has failed to prove by leading cogent evidence with regard to



the involvement of the private respondents in commission of the alleged offences. Even charge-sheet was not filed by the Investigating Officer under Section 120(B) of I.P.C., nor the Trial Court has framed the charge under Section 120(B) of I.P.C. The Trial Court has not believed the story of the prosecution with regard to the sharing common intention to commit the offence and, therefore, the Trial Court has acquitted the present private respondents.

8. We have gone through the reasoning recorded by the Trial Court and we are of the view that the Trial Court has not committed any error while passing the impugned order in favour of the present private respondents.

9. At this stage, it is also pertinent to note that we are dealing with the acquittal appeal filed by the informant against the order of acquittal rendered by the concerned trial court. The Hon'ble Supreme Court in the case of *Chandrappa and Ors. Vs. State of Karnataka*, reported in (2007) 4 SCC 415 has observed in **Paragraph-42** as under:-

“42. From the above decisions, in our considered view, the following general principles regarding powers of the 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 emphasise 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 is 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.”

10. Recently, the Hon'ble Supreme Court in the case of ***Nikhil Chandra Mondal Vs. State of West Bengal***, reported in **(2023) 6 SCC 605** has observed in **Paragraph No. 22** as under:-

“22. Recently, a three-Judges Bench of this Court in the case of Rajesh Prasad v. State of Bihar has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that is 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 court. It has been further held that 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.”

11. From the aforesaid decisions rendered by the Hon’ble Supreme Court, it can be said that there is double presumption in favour of the accused. When the order of acquittal has been recorded by the Trial Court, firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence is 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 court. Further, 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.

12. From the aforesaid decisions rendered by the Hon’ble Supreme Court it can be said that scope of interference in the order of acquittal passed by the trial Court while dealing with the acquittal appeal is governed by the principles laid down in the case of ***Chandrappa***



(supra).

13. The appeal is, accordingly, dismissed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

Sachin/-

AFR/NAFR	
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