

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1212 of 2023

Arising Out of PS. Case No.-43 Year-2010 Thana- JANKINAGAR District- Purnia

PHUL KUMARI DEVI WIFE OF JIVACHH PANDIT RESIDENT OF
VILLAGE - MURLIGANJ, P.S. - MURLIGANJ, DISTRICT -
MADHEPURA

... .. Appellant/s

Versus

1. The State of Bihar
2. MAHENDRA MANDAL SON OF LATE BINDESHWAR MAANDAL
RESIDENT OF VILLAGE - RATANPATTI, P.S. - MURLIGANJ,
DISTRICT - MADHEPURA
3. ARUN MANDAL SON OF SATAN MANDAL RESIDENT OF VILLAGE
- RATANPATTI, P.S. - MURLIGANJ, DISTRICT - MADHEPURA
4. KISHOR MANDAL SON OF LATE MADAN MANDAL RESIDENT OF
VILLAGE - RATANPATTI, P.S. - MURLIGANJ, DISTRICT -
MADHEPURA
5. BAHADUR MANDAL SON OF LATE DEV DUTT MANDAL
RESIDENT OF VILLAGE - RATANPATTI, P.S. - MURLIGANJ,
DISTRICT - MADHEPURA
6. RAM CHANDRA MANDAL SON OF LATE PARMESHWARI MANDAL
RESIDENT OF VILLAGE - RATANPATTI, P.S. - MURLIGANJ,
DISTRICT - MADHEPURA
7. KRISHNADEV MANDAL SON OF LATE MUSHARU RESIDENT OF
VILLAGE - RATANPATTI, P.S. - MURLIGANJ, DISTRICT -
MADHEPURA
8. BISHUNDEV MANDAL SON OF LATE MUSHARU RESIDENT OF
VILLAGE - RATANPATTI, P.S. - MURLIGANJ, DISTRICT -
MADHEPURA
9. MADAN MANDAL SON OF LATE CHHUTAHARU MANDAL
RESIDENT OF VILLAGE - RATANPATTI, P.S. - MURLIGANJ,
DISTRICT - MADHEPURA
10. SATAN MANDAL SON OF LATE CHHUTAHARU MANDAL
RESIDENT OF VILLAGE - RATANPATTI, P.S. - MURLIGANJ,
DISTRICT - MADHEPURA
11. KAMESHWAR MANDAL SON OF LATE CHHUTAHRU MANDAL
RESIDENT OF VILLAGE - RATANPATTI, P.S. - MURLIGANJ,
DISTRICT - MADHEPURA
12. MANTU MANDAL SON OF KRISHNADEV MANDAL RESIDENT OF
VILLAGE - RATANPATTI, P.S. - MURLIGANJ, DISTRICT -
MADHEPURA
13. PRASHANT MANDAL SON OF KRISHNADEV MANDAL RESIDENT
OF VILLAGE - RATANPATTI, P.S. - MURLIGANJ, DISTRICT -
MADHEPURA



14. SANTOSH MANDAL SON OF KRISHNADEV MANDAL RESIDENT OF VILLAGE - RATANPATTI, P.S. - MURLIGANJ, DISTRICT - MADHEPURA
15. RAJ KUMAR MANDAL SON OF MADAN MANDAL RESIDENT OF VILLAGE - RATANPATTI, P.S. - MURLIGANJ, DISTRICT - MADHEPURA

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Uday Chand Prasad, Advocate Mr. Manoj Kumar, Advocate Ms. Pooja Prasad, Advocate
For the Respondent/s	:	Mr. Sujit Kumar Singh, APP

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

Date : 09-04-2024

The present appeal has been filed under Section-372 of Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) by the appellant, who is sister-in-law (Bhabhi) of one of the deceased against the judgment of acquittal dated 04.10.2023, passed by learned Additional Sessions Judge 2nd, Purnea, in Sessions Trial No. 701 of 2011, Sessions Trial No. 1393/2012, C.I.S. No. 2780/2013, arising out of Janki Nagar P.S. Case No. 43 of 2010, whereby all the present private respondents/accused have been acquitted by the Trial Court for of the charges levelled against them under Sections- 302, 201, 414 and 120B of I.P.C.

2. Heard Mr. Uday Chand Prasad, assisted by Mr.



Manoj Kumar and Ms. Pooja Prasad, learned counsels for the appellant and Mr. Sujit Kumar Singh, learned A.P.P. for the respondent State.

3. Learned counsel for the appellant would mainly submit that F.I.R. was lodged on 22.06.2010 at about 08:00 a.m. in the morning by one Ramanuj Pandey before Janki Nagar Police Station for the offences punishable under Sections- 302/201 of I.P.C. In the said F.I.R., it has been stated that the dead body of one unknown person is lying near a ditch towards north side of the road in Islampur Tola, village- Chandpur. On the basis of the said information given by the informant, the aforesaid F.I.R. came to be lodged against unknown persons. It is further submitted that on the next day another dead body was also found in another ditch and, therefore, with regard to the same also the investigation was carried out by the Investigating Agency. It is submitted that during the course of investigation, the Investigating Agency recorded the statement of the witnesses and from the statement of the witnesses it was revealed that the present private respondents gave threats to both the deceased that they will be killed if they do not compromise the land-dispute. It is submitted that decree was passed in favour of the deceased Ramanand and another



deceased, who is brother-in-law of Ramanand. Thus, the accused were having motive to commit the alleged crime and, therefore, on the basis of the statement of the witnesses, all the accused persons came to be arrested and thereafter the Investigating Agency filed charge-sheet against them.

4. Learned counsel would further submit that during the course of trial, the prosecution had examined five witnesses. However, it is fairly submitted by the learned counsel that though it was the duty of the Public Prosecutor to examine the Investigating Officer and the Doctor who had performed the *post mortem* of the deceased, they have not been examined. It is further submitted that from the evidence led by the prosecution, it is proved by the prosecution that because of the land-dispute between the parties, the threats were given by the accused to the deceased at the tea stall and two prosecution witnesses have heard about the same and immediately thereafter on the next day dead body of Ramanand was found. Thus, the prosecution has proved the case against the accused beyond reasonable doubt, despite which the Trial Court has recorded the order of acquittal in favour of the private respondents herein. Learned counsel, therefore, urged that the present appeal be admitted and thereafter the same be allowed and the impugned order be



passed by the Trial Court be quashed and set aside.

5. On the other hand, learned A.P.P. submitted that the Trial Court has not committed any error while passing the impugned order and, therefore, this Court may not interfere with the same. However, learned A.P.P. further submits that looking to the facts and circumstances of the present case, this Court may pass appropriate orders. It is also submitted by the learned A.P.P. that the State has not preferred any acquittal appeal against the impugned judgment and order of acquittal passed by the Trial Court.

6. We have considered the submissions canvassed by the learned counsel for the parties. We have also perused the materials placed on record, including the paper-book in the form of the depositions of the prosecution-witnesses supplied by the learned counsel for the appellant.

7. From the evidence led by the prosecution before the Trial Court, it would emerge that the F.I.R. was lodged by one Ramanuj Pandey as he had seen the dead body of one unknown person near the ditch towards north side of the road in Islampur Tola, village- Chandpur. He, therefore, informed to the police on telephone about the dead body which was lying at a particular place. On the basis of the aforesaid information given



by him, the F.I.R. came to be lodged against unknown persons with regard to the death of one unknown person. It would further reveal from the record that on the next day dead body of another person was also found. It is revealed that during the course of investigation, the Investigating Agency collected the material from which it was revealed that the dead body was of one Ramanand Mandal and another dead body which was found on the next day was of his brother-in-law, namely Domi Mandal. The Investigating Officer collected the evidence and thereafter he filed charge-sheet against the accused, present respondents.

8. It is pertinent to note that during the course of trial the prosecution had examined five witnesses.

9. P.W. 1 Abhinandan Kumar is the nephew of deceased Ramanand Mandal, who has stated that Ramanand had gone to Madhepura Court on the date fixed with Domi Mandal on a Bike on 21.06.2010 and was returning from there. While returning they stopped at the tea stall at Murliganj to take tea where Chandreep saw him taking tea. Chandraeep also took tea. Four persons, namely Krishnadeo Mandal, Bishundeo Mandal, Bahadur Mandal and Ram Chandra Mandal came there and said that they will settle the score that day and bring the land dispute



to an end. They had threatened for life previously also. Next morning the dead body of Domi Mandal was recovered from the side of Chandpur Mangha canal. One day after that day the dead body of Ramanand Mandal was recovered from Naulakhi Panchayat. The bike on which the deceased had gone was recovered from the Murliganj Middle Chowk. Police had recovered it from Mukesh Kumar. He claims to identify all the accused. He identifies the accused Mahendra Mandal and Kameshwar Mandal present in the Court and claims to identify others also who are absent.

9.1. In his cross-examination, he has stated that he had not seen anybody killing Ramanand and Domi. Chandradeo Mandal had told him that both the deceased had gone to Murliganj from Madhepura. Chandradeo Mandal is his co-villager. He has further stated that threat was given about ten days ago. However, he does not remember the exact date. He had, however, not complained about the same. He cannot say whether date was fixed in Madhepura Court or not.

10. P.W. 2 Sheo Narayan Mandal is the father of deceased Ramanand. The said witness has stated that Ramanand was his son who has been killed. The other deceased Domi Mandal was the brother-in-law of Ramanand Mandal. He has



stated that his son had gone to Madhepura on a motorcycle and from there to Murliganj where Chandradeo and Munga Lal were also present with other accused persons. When his son did not return, he searched for him and came to know that Munga Lal Mandal and Chandradeo Mandal had threatened to settle the score. Next morning, he heard that he has been killed. A dead body was recovered from Janki Nagar. He went there and found that it was the dead body of his son. He claims to identify all the accused persons. He identifies Mahendra Mandal and Arun Mandal present in the Court.

10.1. In his cross-examination he has stated that he cannot tell the Khata or Khesra numbers of the land in dispute. He had not gone to Madhepura, only Domi and Ramanand had gone. Whatever he has stated about the accused persons regarding Murliganj was informed by Munga Lal and Chandradeo Mandal. He had not seen himself. He had stated about recovery of the dead body. He had not seen any accused killing the deceased. He had not seen as to who and in what manner had killed Domi and Ramanand. The motorcycle did not belong to Ramanand. It belonged to Domi. His son and Domi had no criminal antecedents.

11. P.W. 3 Phul Kumari Devi is the present



appellant. She is sister-in-law (Bhabhi) of deceased Ramanand. The said witness has stated in examination-in-chief that the incident took place about seven years ago. Her brother-in-law (Dewar) Ramanand Mandal had a land-dispute with accused Kishundeo and Bishundeo Mandal. Domi Mandal was the brother-in-law (Sala) of Ramanand. The court decreed in favour of Ramanand followed by a Panchayati in his favour. The accused did not honour the decision of the Panchayat and pressurized to compromise, else he will be finished. She has further stated that her brother-in-law (Dewar) Ramanand Mandal had gone to Madhepura Court on the date accompanied by Domi but did not return. On search, Manish informed that yesterday Ramanand was seen taking tea at Murliganj. Manish requested Ramanand to go home, but Kishundeo, Bishundeo and Ram Chandra said that Ramanand will not go home. He will go after deciding the dispute. Next day the dead bodies of Domi and Ramanand from village Mangha and Naulakhi. Her statement was recorded before the Police and learned Magistrate. She identifies all the accused persons, including accused Mahendra Mandal present in the Court.

11.1. In her cross-examination she has stated that the land in dispute is in her possession. She does not remember



the date of Panchayati and she was not present in the Panchayat. She does not know the names of the Panches. There were proceedings pending in Madhepura Court for the said land-dispute, including criminal case. Due to this very dispute, Ramanand used to live in his in-laws family and rarely came to his house. She is not aware whether Ramanand had been jailed ever. She had gone to Murliganj. Manish is her brother-in-law. She has further stated that the police had recorded her statement about five months after the incident. She has denied the suggestion to have given false deposition.

12. P.W. 4 is Manish Kumar Mandal @ Manish Kumar. He has stated on 21.06.2010 he had gone to Murliganj Gudri Bazar at 05:00 p.m. in the evening. His neighbours Munga Lal Mandal and Chandradeo Mandal had also gone with him. They were taking tea at a tea stall where Rama Mandal @ Ramanand Pandit and Domi Mandal, Bahadur Mandal, Ram Chandra Mandal and Kishore Mandal also came of to take tea. He requested Ramanand to go home with him, but Ram Chandra Mandal forbade him and said that he will go only after deciding the dispute. He, Chandradeo Mandal and Munga Lal Mandal proceeded towards Gudri Bazar. At a distance from the Bazar under a Peepal tree accused Krishnadeo Mandal,



Bishundeo Mandal, Biren Mandal, Madan Mandal, Sattan Mandal, Kameshwar Mandal, Mantu Mandal, Santosh Kumar, in all 10-12 persons were present. He came back home. Next day he heard that Ramanand Pandit and Domi Mandal have been killed. He had seen the dead body of Ramanand Pandit at Janki Nagar P.S. He identifies the accused Arun Mandal and Mahendra Mandal and claims to identifies the other accused.

12.1. In his cross-examination, he has stated that there are so many tea stalls at Murliganj Bazar. Every stall was crowded. It would have taken them 10-12 minutes in taking tea. Wife and sister-in-law (Bhabhi) of Ramanand Pandit had told him about the killing of Ramanand Pandit next morning. He had visited Janaki Nagar P.S. next morning and seen a dead body there. He also came to know about filing of a murder case after a day or two. He does not remember how many days after the incident the police had recorded his statement. He had given his statement, as stated in the Court, before the Dy. S.P. and not before Darogaji. He had not told Darogaji that he had seen Krishnadeo Mandal etc. under the Peepal tree. Ramanand Pandit was his neighbour and he had brotherly relationship with him. He has denied the suggestion to have given false deposition, as tutored.



13. P.W. 5 is Ramdev Mandal. He has supported the version as deposed by P.W. 4 Manish Kumar Mandal. He has further added that he had gone to see the dead body, 3 k.ms. away in the northern side of Bhagha main road. The tongue of the dead body was cut and dragged. Police came and sent the dead body for *post mortem* examination. He has identified accused Arun Mandal present in Court. He also identifies the other accused (Mahendra Mandal), but not by his name.

13.1. In his cross-examination he has stated that he only knows to mark his signature. He is a student of a Primary School and studies in Std-II. He has further stated that he has deposed as informed by Manish. He has further stated that he has no knowledge at all as to who murdered the deceased and how.

14. From the evidence led by the prosecution, it is revealed that P.W. 1, P.W. 2 and P.W. 3 are the near relatives of the deceased, whereas P.W. 4 Manish Kumar Mandal is an independent witness. P.W. 5 is the hear-say witness to whom P.W. 4 Manish Kumar Mandal gave the information.

15. From the aforesaid evidence led by the prosecution, it can be said that there is no eye-witness to the occurrence and the case of the prosecution rests on the



circumstantial evidence.

16. It is also required to be noted that the prosecution did not examine the Doctor who had performed the *post mortem* of the dead body of the deceased nor the Investigating Officer who had carried out the investigation has been examined by the prosecution.

17. From the evidence led by the prosecution in the form of P.W.1 to P.W. 4, at the most it can be said that two witnesses have seen the accused giving threats to the deceased at the tea stall because of the land-dispute between the parties. Except the aforesaid, there is no other material available in the form of evidence of prosecution against the respondents/accused. Even the prosecution has failed to prove the homicidal death of the deceased and even inquest report or the *post mortem* report are also not part of the record. The case of the death of the deceased is also not proved by leading cogent evidence before the Trial Court. Even the weapon from which the death of the deceased was caused also not discovered or recovered.

18. It is well settled that in a case of circumstantial evidence, the chain of circumstances shall be complete and it is the duty of the prosecution to prove the case against the accused



beyond reasonable doubt by producing relevant evidence.

19. At this stage, it is relevant to note that the Hon'ble Supreme Court in the case of **Chandrappa Vs. State of Karnataka**, reported in **(2007) 4 SCC 415**, has observed at para-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.”

20. From the aforesaid decision rendered by the Hon'ble Supreme Court, it can be said that the Appellate Court while considering the case of acquittal, an appellate court 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. 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.



21. We have re-appreciated the entire evidence led by the prosecution before the Trial Court. We have also 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. Hence, no interference is required with the findings recorded by the Trial Court in the present appeal.

22. This appeal is, accordingly, dismissed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

K.C.Jha/-

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