

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.292 of 2021

Arising Out of PS. Case No.-634 Year-2011 Thana- ARARIA District- Araria

Md Isa Son of Late Abdur Rahman @ Rahman Resident Of Village -
Mainapur, P.S.- Araria (Bairgachhi), District - Araria.

... .. Appellant

Versus

1. The State of Bihar
2. Md Ashique Son of Shafiqur Rahman @ Md Shafiqur Rahman Resident of
Village - Mainapur, P.S.- Araria (Bairgachhi), District - Araria.
3. Shafiqur Rahman @ Md Shafiqur Rahman Son of Late Abdur Rahman @
Rahman Resident of Village - Mainapur, P.S.- Araria (Bairgachhi), District -
Araria.

... .. Respondents

Appearance :

For the Appellant : Mr. Md. Ziaul Quamar, Advocate
For the State : Mrs. Km. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY)

Date : 10-07-2025

Heard Mr. Md. Ziaul Quamar, learned counsel for the
appellant and Mrs. Km. Shashi Bala Verma, learned Additional
Public Prosecutor for the State as also perused the trial court
records.

2. This appeal has been preferred by the appellant
(informant) under Section 372 of the Code of Criminal Procedure
(in short 'CrPC') against the judgment and order dated 09.02.2021
(hereinafter referred to as the 'impugned judgment and order')
passed by learned Additional Sessions Judge-V, Araria (hereinafter



referred to as the 'learned trial court') in Sessions Trial No. 1196 of 2012 arising out of Araria (Bairgachhi) P.S. Case No. 634 of 2011 whereby and whereunder the learned trial court has been pleased to acquit the respondent nos. 2 to 3 from the charges under Sections 341, 324, 323, 307, 504 and 34 of the Indian Penal Code (in short 'IPC').

3. The case of the prosecution in short is that one Md. Isa (PW-8) gave *fardbeyan* at *Bairgachhi* O.P. on 21.12.2011 at 7 PM in emergency ward Sadar Hospital, Purnea stating therein that on 19.12.2011 at about 3 PM his wife Sahida Parween and his son were in his house. Suddenly, respondent nos. 2 and 3 and co-accused Biwi Kausari entered in the house and took the key of the *almirah*, on protest by his wife, the respondent no. 2 caught hold of his wife on *farsa* point and respondent no. 3 took away golden ornament and cash of Rs. 15,000/- and handed over the same to his wife Biwi Kaushari. It is further alleged that in the meantime, informant's son, namely, Mehtab Alam called the informant on mobile, informant came there on bike from his grocery shop. When he arrived at his house, respondent no. 2 assaulted on his head by means of *farsa* with intention to kill him on the order of respondent no. 3 as a result of which, he sustained head injury.



Villagers came there and took the informant to Sadar Hospital, Araria.

4. On the basis of above *fardbeyan*, the FIR was registered under sections 341, 342, 323, 324, 307, 448, 354, 380, 504 and 34 of the Indian Penal Code (in short 'IPC').

5. Upon completion of investigation, police submitted a charge sheet against the respondent nos. 2 and 3 under Sections 341, 323, 324, 307, 504 and 34 of IPC. Thereafter, the learned Magistrate took cognizance of the offences. The case was committed to the court of sessions for trial.

6. Charges were explained to the respondent nos. 2 and 3 in Hindi to which they denied and claimed to be tried, accordingly, charges against them for the offences under Sections 341, 323, 324, 307, 504 and 34 of the IPC were framed.

7. In this case, prosecution has examined altogether ten witnesses and has also exhibited certain documentary evidences which are being provided hereunder for ready reference:-

List of Prosecution Witnesses

P.W.-1	Md. Helal
P.W.-2	Md. Asfaque Alam
P.W.-3	Md. Farooque
P.W.-4	Md. Shoaib Alam
P.W.-5	Tahsin
P.W.-6	Rafique Alam



P.W.-7	Bibi Sahidi Parween
P.W.-8	Md. Isa (informant)
P.W.-9	Dr. Vimal Kumar Singh
P.W.-10	Md. Shazzad Hussain (I.O.)

List of Exhibits on behalf of Prosecution

Ext.-1	Signature of the informant on the fardbeyan
Ext. 01/A	Complete Fardbeyan
Ext.-02	Injury Report
Ext.-02/A	Signature of the doctor on injury report
Ext.-3	Complete Formal First Information Report
Ext.-4	Request letter for injury report
Ext.-5	Memo of arrest of respondent nos. 2 and 3
Ext.-6	Chargesheet

8. After the evidence of prosecution, statement of the respondent nos. 2 and 3 was recorded under Section 313 CrPC wherein they denied the evidence of prosecution and pleaded innocence.

Findings of the learned trial Court.

9. Learned trial court has held that PW-8 is the informant and he is the star witness of this case. This witness has made contradictory statement. In his examination-in-chief, he has stated that he reached at the place of occurrence on a bike whereas



PW-8 has stated that he reached there with PW-5 Tahsin. This witness has also admitted that there is land dispute between the parties. This witness has also stated that before him, there were 20-30 persons on the place of occurrence. PW-7 is the wife of informant and this witness has also stated that there is a land dispute between the parties. PW-1 has also stated that when he reached at the place of occurrence, there were 30-40 persons at the place of occurrence. The trial court has found that this witness is hearsay witness. PW-2 has also been found to be hearsay witness. Learned trial court has found that most of the witnesses are interested witness and they have deposed in favour of the informant due to land dispute between them. Doctor has found the nature of injury to be simple and on being suggested, PW-9 (doctor) has stated that such kind of injury is possible after falling on a hard surface. PW-10 (I.O.) has also found that there is a land dispute between the parties. Learned trial court has found that prosecution has not been able to prove its case beyond all reasonable doubts.

Submissions on behalf of the appellant

10. Learned counsel for the appellant has submitted that the judgment and order of acquittal is bad in law and the same has been passed on the basis of surmises and conjectures. Trial court



has discarded the strong circumstantial evidence leading to complicity of accused in alleged occurrence. Trial court has brushed aside the testimonies of all the material witnesses in the present case who have fully corroborated each other. It has also been submitted by the learned counsel for the appellant that the learned trial court has passed its judgment relying on the dispute between the appellant and respondents and counter case. Learned trial court has unnecessarily doubted the witnesses of the prosecution. In this case, informant was brutally injured and witnesses have seen the occurrence. It has also been submitted by the learned counsel for the appellant that PW-8 who is the informant of this case, is also an injured witness, his statement is of trustworthy nature but the trial court has not considered that this witness is injured witness who has suffered the occurrence and who has witnessed the occurrence, cannot lie.

Submissions on behalf of the respondents

11. Learned counsel for the respondents has submitted that the judgment of the trial court is well discussed. Trial court has rightly appreciated the evidence on record and has also appreciated that though the allegation is that informant PW-8 was assaulted with *farsa* but doctor has found that informant PW-8 has received simple injury caused by hard and blunt substance, this



goes to show that the allegation and the oral version of the prosecution are not supported by the evidence of the expert. It is also an admitted fact that there is land dispute between the parties.

Consideration

12. Before discussing the evidence of the prosecution witnesses, we would like to reproduce the view of the Hon'ble Supreme Court in the case of *H.D. Sundra vs. State of Karnataka (2023) 9 SCC 581* regarding jurisdiction of Appellate Court in appeal against acquittal. The Hon'ble Supreme Court has reiterated the principles in paragraph '8' of the judgment which are being reproduced hereunder 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 reappreciate 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;

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.”

13. Recently, the Hon'ble Supreme Court in the case of *Nikhil Chandra Mondal v. State of West Bengal*, reported in *(2023) 6 SCC 605* has observed in paragraph no. '22' which is being reproduced hereunder for ready reference:-

"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."

14. From the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that there is double presumption of innocence in favour of the accused when the order of acquittal has been



accorded by the Trial Court, firstly, the presumption of innocence, that is, available to them under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless they are proved guilty by a competent court of law. Secondly, the accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the court.

15. PW-1 is Md Helal and this witness has stated in his examination-in-chief that he arrived at the house of Md. Isa after hearing the noise and he saw that Md. Ashique (respondent no. 2) assaulted with *farsa* on the head of the informant Md. Isa due to which he received bleeding injury.

16. In cross-examination, this witness has stated that there is land dispute between the parties for years. A civil case is pending in the court of Munsif. He has also stated in his cross-examination that at the time of occurrence, he was in the field, when he arrived, he heard about the occurrence, as he reached at the place of occurrence, he found 30-40 persons were already present there.

17. The evidence of this prosecution witness is not believable as this witness has in his cross-examination stated that he had heard about the occurrence while in examination-in-chief, he has posed himself as an eye witness.



18. PW-2 is Asfaque and this witness has stated that Md. Isa is his brother-in-law and as the goat had grazed the field there had been dispute between the parties. All the accused persons entered in the house and started assaulting. Md. Isa (informant) was informed by his son and Md. Isa arrived and Shafiqur Rahman (respondent no. 3) ordered to kill, on his order, Md. Ashique assaulted with *farsa* on the head of the Md. Isa due to which, he received bleeding injury on his head.

19. In cross-examination, this witness has stated that Md. Isa and Shafiqur Rahman are separate for the last twenty five years and civil dispute is going on between them. This witness has also stated that his house is 18-19 kilometers away from the house of Md. Isa. He has reached at the house of Md. Isa day before the occurrence.

20. From the evidence of this witness, it is clear that he is a chance witness. The manner of the occurrence which has been given in the FIR is entirely different from the version of this witness. This witness has only stated that Md. Isa was called by his son and when he arrived, he was being assaulted by Md. Ashique on exhortation of Shafiqur Rahman.

21. PW-3 is Md. Farooque and this witness has stated that on alarm being raised, he reached at the house of Md. Isa and he saw that Md. Ashique assaulted with *farsa* on the head of Md. Isa.



22. In cross-examination, this witness has stated that the informant and the accused are cousins and there is land dispute between them.

23. More or less, same version is reproduced by PW-4 and PW-5.

24. PW-6 has been declared hostile on the prayer of prosecution.

25. PW-7 is the wife of Md. Isa (informant) and this witness has stated that the accused persons entered in her courtyard and it is further stated that they took the key of the *almirah*, they also took away the cash of Rs, 15,000/- and the jewellery. It is also stated by her that her son made a call to Md. Isa and when Md. Isa arrived, Md. Ashique assaulted him with *farsa*. It is further stated by this witness that Md. Isa fell unconscious from the *farsa* blow.

26. This witness has admitted in her cross-examination that her husband and her accused persons are own brothers. This witness has also stated that she had not received any injury. Her husband had gone unconscious due to the *farsa* blow.

27. PW-8 is Md. Isa (the informant) himself and he has reiterated the *fardbeyan* and his examination-in-chief.

28. In cross-examination, this witness has stated that the accused persons are also the member of his family and there is a land



dispute between them. He has further stated in his cross-examination that he got unconscious due to *farsa* blow and he regained his consciousness at Purnea. He has further stated that police had not taken his re-statement, it means, this witness has deposed in the court for the first time.

29. PW-9 is the doctor and he has found following injuries on the person of Md. Isa.

- (i) Incised wound frontal of scalp approximately 3/2" x 1/2 cm depth.
- (ii) Generalised bodyache.

30. This witness has also stated that the nature of injury is simple caused by hard and blunt substance.

31. PW-10 is the I.O. and this witness has stated that he is the I.O. and he has conducted the investigation.

32. In cross-examination, this witness has stated that neither the informant nor his family members have given any written information to the O.P. rather the information was oral. There is no entry in the case diary regarding oral information. This witness has also stated that informant Md. Isa and Shafiqur Rahman are own brothers and land dispute is there between them.

33. In this case, it is pertinent to note that in *fardbeyan*, the informant has stated that when the accused persons entered in his house, they took away the key of the *almirah* and also took the cash and jewellery but this version has only been supported by the wife of the



informant who is PW-7. The informant has stated that he was being assaulted by Md. Ashique with *farsa*, this statement has been supported by her wife as well and other witnesses have also supported that a *farsa* blow was given by Md. Ashique to Md. Isa but the medical evidence which has come, goes to show that the injuries were caused by hard and blunt substance. The injuries which have been found by the doctor on the person of Md. Isa, does not correlate with the oral version which has been brought before by the prosecution considering the entire evidence on the record the learned trial court has held that the prosecution has not proved it's case beyond all reasonable doubts. We do not find any perversity in the judgment under appeal.

34. The impugned judgment of the learned trial court is well discussed and it needs no interference by this Court.

35. In view of the aforesaid discussions, we do not find any good ground to entertain the present appeal. Accordingly, this appeal is dismissed.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Shubham/-

AFR/NAFR	
CAV DATE	
Uploading Date	18.07.2025
Transmission Date	18.07.2025

