

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.474 of 2023

Arising Out of PS. Case No.-59 Year-2016 Thana- SIDHWALIYA District- Gopalganj

Rajkishore Ram @ Rajkishor Ram Son of Late Lagan Ram Resident of
Village- Bucheya Kabraj Tola, P.S.- Sidhwalia, District- Gopalganj

... .. Appellant/s

Versus

1. The State of Bihar
2. Madan Mahto Son of Late Vokil Mahoto Resident of Village- Bucheya
Kabraj Tola, P.S. Sidhwaliya, District- Gopalganj

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Satish Kumar Sinha, Advocate Mr. Javed Aslam, Advocate
For the Respondent-State	:	Mr. Dilip Kumar Sinha, APP
For the Respondent Nos. 2	:	Mr. Prasoon Shekhar, Advocate

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

Date : 02-12-2025

Heard learned counsel for the appellant, learned counsel
for the respondent no. 2 and the learned Additional Public
Prosecutor for the State as also perused the learned trial court
records.

2. The present appeal has been preferred for setting aside
the judgment of acquittal passed on 17.01.2023 (hereinafter
referred to as the 'impugned judgment') by the learned Additional
Sessions Judge-III, Gopalganj (hereinafter referred to as the
'learned trial court') in Sessions Trial No. 173 of 2017, arising out
of Sidhwaliya P.S. Case No. 59 of 2016.



3. By the impugned judgment, the learned trial court has been pleased to record a finding that the prosecution has not been able to prove its case. According to the learned trial court, the place of occurrence, manner of occurrence or the participation of the accused persons in the alleged occurrence could not be proved beyond all reasonable doubts, therefore, the materials present on the record are insufficient to warrant a conviction.

Prosecution Case:

4. As per FIR, the prosecution case in brief is that on 31.07.2016 in the evening, informant Raj Kishore Ram went to demand the wages at the door of Verma Mahato, in the meanwhile, hot conversation took place in between the informant and Verma Mahato. Thereafter, Verma Mahato told that how dare he came at his door to demand wages being '*Chamar-Siyar*', which was narrated to the informant by his son on coming home. Thereafter, Verma Mahato along with whole family namely Madan Mahato, Harendra Mahato, Bhalu Mahato, Munna Mahato and other unknown came and assaulted the informant's son by fists and kicks. Informant and his aunty tried to save but they did not succeed in saving him, then nearby people came and made their interference. Thereafter, informant brought his son at Sidhwaliya



Hospital for treatment but during the course of treatment his son died.

5. The allegations were investigated and police submitted a charge-sheet against the accused persons under Sections 341, 323, 302, 504/34 of the Indian Penal Code (in short 'IPC') and Sections 3(2)(1), 3(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (in short 'SC/ST Act').

6. On the basis of charge-sheet dated 02.02.2017 cognizance was taken on 03.04.2017 under Sections 341, 323, 302, 504/34 of the IPC and Sections 3(2)(1), 3(x) of the SC/ST Act.

7. The charges were framed on 13.06.2017 against the accused. The charges were read over and explained to the accused in Hindi to which he has pleaded not guilty and claimed to be tried.

8. In course of trial, the prosecution examined as many as eight witnesses and exhibited several documents to prove the prosecution case.

List of Prosecution Witnesses:

P.W. 1	Geeta Devi
P.W. 2	Bhajan Ram
P.W. 3	Nand Lal Ram
P.W. 4	Dewanti Devi



P.W. 5	Raj Kishor Ram
P.W. 6	Motilal Sah
P.W. 7	Dr. Rakesh Kumar Singh
P.W. 8	Niranjan Sinha

List of Exhibits on behalf of the Prosecution:

Ext. P1	Post-mortem report of the deceased Mithun Kumar
Ext. P1/1	Signature of Dr. S. Kumar on the Post-mortem report

List of Defence Witnesses:

D.W. 1	Budhan Ram
D.W. 2	Santosh Sah

Findings of the Trial Court:

9. The learned trial court after analyzing the evidences available on the record found that it is evident that prosecution has miserably failed to avail opportunity and has not supported any substantive piece of evidence to prove its case beyond shadow of all reasonable doubts against the accused and he cannot be convicted and no offence against him is made out and liable to get the benefit of reasonable doubt and deserves clean acquittal.

Submissions on behalf of the appellant:

10. Learned counsel for the appellant has submitted that the death of the deceased was unnatural and besides the external



injury internal injury also found on the dead body. Although the doctor did not give specific opinion with respect to cause of death but the post-mortem report shows that the deceased died due to assault. As per post-mortem report the heart of the deceased was full of blood which shows that the deceased was assaulted by hard and blunt substance. The witnesses fully proved the place of occurrence, time of occurrence and manner of occurrence without reasonable doubt and the learned trial court erred in acquitting the appellant.

Submission on behalf of the respondent no. 2:

11. Learned counsel for respondent no. 2 has submitted that the learned trial court has rightly acquitted the accused, after analyzing the evidence on record.

The Additional Public Prosecutor has defended the judgment under appeal.

Consideration:

12. Having heard learned counsel for the appellant, learned Additional Public Prosecutor for the State and learned counsel for the respondent no. 2 as also on perusal of trial court records, we find that in this case the prosecution has examined as many as eight witnesses. The informant namely Raj Kishor Ram (P.W. 5) has stated in paragraph-4 of his examination-in-chief that



the occurrence took place when his son went outside the house to urinate. The occurrence is said to have taken place according to the prosecution at 10:00 P.M., and it has come in the evidence of the prosecution witness no. 2 that it was a dark night. In paragraph-18 of his evidence P.W. 5 has stated that at the time of occurrence he was sleeping. In paragraph-19 he has stated that his son Mithun had gone outside his house to urinate, alone and in paragraph-20 he has stated that after the noise (*Shorgul*) of the occurrence nobody from the neighbourhood came. In paragraph-21 he has stated that on the body of the deceased there was no mark of any kind. This witness has stated that he did not know Jhagru Mahto, who is brother of the accused. The defence suggested that the deceased had established illicit relationship with the daughter of Jhagru Mahto and for this the people were reprimanding the informant on which the informant had scolded his son, his son was a heart patient who died.

13. It is evident that P.W. 5 has stated that the occurrence took place when his son had gone outside the house to urinate and he had gone alone. Contrary to this claim of P.W. 5, the prosecution case as stated in the written information (not exhibited) is that the accused persons had come at the door of the deceased searching him and as soon as the deceased came outside



his house he found the accused persons and some other persons whom the informant could not identify, started assaulting the deceased son of the informant by hand and fist blow. In fact in the written information the informant (P.W. 5) claimed that when his mother, aunt and some other persons from the neighbourhood came and tried to intervene, the accused persons left the place threatening that if they will go to the police station then the whole family would be ruined. This Court finds that the case set up by the informant (P.W. 5) in his written information at the earliest stage materially differed from that of his depositions in course of trial.

14. We have further noticed that in paragraph-12 of his deposition, P.W. 5 has stated that he was asked by *Daroga Ji* to lodge this case and whatever he had stated were recorded by *Daroga Ji* in the application but contrary to this statement of P.W. 5, we find that the scribe of the written application is one Prabhu Nath Gupta @ Jitendra Kumar Gupta, who is husband of the Mukhiya (*Mukhiyapati*) of Gram Panchayat Raj Kuchwan. The statement of P.W. 5 in paragraph-12 and 13 give an impression that what was recorded by the *Daroga Ji* has been suppressed by the prosecution and in place of the application said to have been written by Daroga Ji, another application which is written by



Prabhu Nath Gupta @ Jitendra Kumar Gupta (not examined) has been made basis of lodging the F.I.R.

15. This Court has noticed from the evidence of the neighbour Geeta Devi, wife of Nand Kishor Ram that the accused persons had allegedly pulled out the deceased from his house and brought him at the door of his house, where he was assaulted and his neck was also pressed. She claims that to save him his mother, father, she (P.W. 1) and her husband had gone and they were also beaten. This witness has stated that it was night hours. It is evident from the deposition of P.W. 1 that though she claims to have gone to save the deceased but according to P.W. 5 no one from the neighbourhood had come on hearing the '*Shorgul*', therefore presence of P.W. 1 at the spot at the time of occurrence becomes highly doubtful.

16. Bhajan Ram (P.W. 2) has stated that the villagers had intervened and stopped the quarrel but his evidence is not wholly reliable for the reason that according to this witness the occurrence took place at his door whereas the I.O. (P.W. 8) has given the description of the place of occurrence in paragraph-5 of his deposition and according to the I.O. the place of occurrence is in front of the *Karkatnuma Palani* of Nand Kishor Ram in village Bucheya Kabraj Tola. In paragraph-6 of his deposition P.W. 8 has



stated that Raj Kishor Ram, son of Lagan Ram (the informant) is in the north side of the place of occurrence. Thus even with regard to the place of occurrence the prosecution is not able to prove it beyond all reasonable doubt. No one from amongst the villagers has deposed in support of the prosecution case.

17. Nand Lal Ram, who is the uncle of the deceased has been examined as P.W. 3, who has stated that the occurrence took place at 10:00 O' Clock in the night, his house is situated in front of the house of the deceased Mithun Kumar. He has given name of four persons *i.e.* Verma Mahato, Harendra Mahto, Madan Mahto and Munna Mahto and alleged that they had assaulted the deceased by hand and fist and when he went to save him then they had assaulted him also. This witness has stated in his cross-examination that there was no mark of violence or injury on the body of the deceased Mithun Kumar. He has also stated that no case was registered between the deceased and the accused persons. From the deposition of P.W. 3, it is evident that he has named some of the accused persons but he has not named Bhallu Mahto, son of Madan Mahto who is named in the FIR, this witness has also not stated about the presence of any other person. Although, he claims to have been assaulted but no injury report of any of the



witnesses has been brought on record. It is not their case that they got any treatment at any level.

18. Dewanti Devi (P.W. 4) is the mother of the deceased, contrary to the statement of her husband P.W. 5 she has stated that the accused persons had pulled out her son from his house and he was beaten to death.

19. The learned Trial Court has meticulously examined the entire evidence available on the record. The trial court has taken note of the material contradictions in the prosecution case. It has been found that the testimony of P.W. 6, who has been declared hostile narrates a second story of the incident. The testimony of P.W. 6 is supported by the evidence of P.W. 8, who is the I.O. of this case. P.W. 8 has stated in his cross-examination that during the supervision of the case, SDPO has found that the deceased Mithun Kumar had love affairs with the daughter of the accused persons and he was caught hold of that very night of the occurrence during entering into the house of accused or doing some ill-will act with the girl and there the occurrence of *Maarpit* was committed with him. The Trial Court has also noticed the evidence of the defence witnesses, whose deposition also supported the testimony of P.W. 6 and P.W. 8. D.W. 1 (Budhan Ram) has stated in his testimony that the deceased Mithun Kumar



had illicit relationship with the minor daughter of Jhagru Mahto. On the date of occurrence Mithun Kumar was caught hold of at the house of said girl and the villagers committed *Maarpit* with Mithun Kumar by fists and slaps due to which he died, accused had not committed anything. D.W. 2 has stated that neither Mithun Kumar nor his mother worked at the house of the accused.

20. We are of the considered opinion that no perversity may be found with the judgment of the learned Trial Court.

21. The principles governing an appeal against acquittal have been laid down by the Hon'ble Supreme Court in case of ***H.D. Sundara and Others Vs. State of Karnataka*** reported in ***(2023) 9 SCC 581***. It has again been reiterated by the Hon'ble Supreme Court in the case of ***Babu Sahebagouda Rudragoudar and Ors. Vs. State of Karnataka*** reported in ***(2024) 8 SCC 149***.

22. Paragraph-8 of the said judgment reads as under:

“ 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 378 CrPC 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

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



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.”

23. In the light of the aforesaid principles, we are of the considered opinion that in this case, the manner of occurrence as alleged by the prosecution and the presence of the witnesses at the place of occurrence as also the place of occurrence itself are doubtful. This Court cannot reach to an irresistible conclusion that the accused – respondent no. 2 is guilty of the commission of the offences as alleged.

24. In the result, this Court finds no reason to interfere with the impugned judgment.

25. This appeal has no merit and the same is accordingly dismissed.

26. Let the trial court’s records along with this judgment be sent down to learned trial court.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
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