

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.939 of 2023**

Arising Out of PS. Case No.-41 Year-2008 Thana- JAMALPUR District- Darbhanga

MD. SALAUDDIN @ MD. SALAHUDDIN Son of Md. Zamiruddin
Resident of Village-Jhagarua, Ward No. 7, P.S.-Jamalpur, District-Darbhangha.

... .. Appellant

Versus

1. The State of Bihar
2. Farhana Khatoon Wife Of Md. Heera Resident Of Villager-Jhagarua, P.S.-Jamalpur, District-Darbhangha
3. Bablu Son Of Arif Hussain Resident Of Villager-Jhagarua, P.S.-Jamalpur, District-Darbhangha
4. Md. Heera Son Of Md. Mohsin Resident Of Villager-Jhagarua, P.S.-Jamalpur, District-Darbhangha
5. Shabbir Son Of Mustufa Resident Of Villager-Jhagarua, P.S.-Jamalpur, District-Darbhangha
6. Shahnaz Khatun Wife Of Md. Shabbir Resident Of Villager-Jhagarua, P.S.-Jamalpur, District-Darbhangha
7. Roksana Khatoon Wife Of Arif Hussain Resident Of Villager-Jhagarua, P.S.-Jamalpur, District-Darbhangha

... .. Respondents

Appearance :

For the Appellant/s : Mr. Vinay Kumar Mishra, Advocate
For the State : Mr. Bipin Kumar, APP
For the Respondents No.2 to 7: Mr. Pankaj Kumar Jha, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA)**

Date : 12-03-2026

Heard Mr. Vinay Kumar Mishra, learned counsel for the
appellant, Mr. Bipin Kumar, learned Additional Public Prosecutor
for the State and Mr. Pankaj Kumar Jha, learned counsel for the
Respondents No.2 to 7 .



2. The present appeal has been preferred under Section 372 (proviso) of the Code of Criminal Procedure, 1973 challenging the judgment and order dated 31.03.2023 passed by the Court of learned Additional Sessions Judge-1st, Benipur, Darbhanga in Sessions Trial No.421 of 2010 (arising out of Jamalpur P.S. Case No. 41 of 2008) whereby and whereunder the respondents no.2 to 7 have been acquitted by the learned trial court from the charges levelled against them under Sections 323, 324, 341, 447/34 and 307/34 of the Indian Penal Code (hereinafter referred to as 'IPC').

3. The records of this appeal have been placed before this Court for consideration of the prayer of the appellant for setting aside the impugned judgment and order of acquittal.

Prosecution Case

4. The prosecution case is based on written application of the informant, namely Md. Salahudddin (PW-4) that on 02.12.2008 at about 8 O'Clock while he was at the door of his house, 7 accused persons namely, Md. Arif Hussain, Bablu, Md. Heera, Md. Shabbir, Shahnaz Khatoon, Farhana Khatoon and Roksana Khatoon came to his house and surrounded him from all sides and at the exhortation given by Md. Arif Hussain to kill the informant, Bablu assaulted him on his head by means of *gada*



causing bleeding injury to him. It is further alleged that Md. Heera assaulted him on his head by a sword while Shabbir gave a blow by iron rod on his head which hit his nose. Further, Roksana Khatoon gave him a lathi blow near his left eye and the assault by Shahnaz Khatoon by means of *lathi* hit his right wrist and he fell down with the injuries, whereafter all accused persons kept on assaulting him indiscriminately. The villagers assembled and intervened on alarm being raised and the informant found himself in the hospital (DMCH) undergoing treatment after he regained consciousness. There is a further allegation that after assault, the accused persons also committed loot in the house of the informant and the reason for the dispute between the parties was throwing of faecal matter in the drain which was adjacent to the handpump of the informant and the occurrence took place on objecting to the same.

5. On the basis of the written application, a formal F.I.R. was registered, being Jamalpur P.S. Case No.41 of 2008. The police, after completion of investigation, filed charge-sheet bearing no. 14 of 2009 dated 23.04.2009 against four accused persons namely Md. Bablu, Md. Heera, Shahnaz Khatoon and Roksana Khatoon, while the other three accused persons were not sent up for trial. However, learned Magistrate took



cognizance against all the F.I.R. named accused persons under Sections 447, 321, 323, 324 and 307/34 of IPC by an order dated 05.03.2010, whereafter the case was committed to the court of sessions vide order dated 06.07.2010 putting the accused persons on trial. On receipt of the records, the learned trial court framed charges against all the accused persons including respondent no.2 to 7 under Sections 323, 324, 341, 447/34 and 307/34 of the IPC vide order dated 07.03.2011. Charges were explained to them to which they pleaded not guilty and claimed to be tried. However, in course of trial, one accused, namely Md. Arif Hussain died and his named was expunged on 28.09.2015.

6. The prosecution, in order to substantiate its case during trial, has examined as many as nine witnesses in its favour, while the defence has not examined any witness. However, both the prosecution and the defence have exhibited several documents. The list of prosecution witnesses and documents exhibited on behalf of the prosecution and the defence are mentioned hereinbelow in a tabular chart:

List of Prosecution Witnesses

PW-1	Tripurari Singh
PW-2	Md. Alumuddin
PW-3	Md. Jiyauddin
PW-4	Md. Salauddin (Informant)
PW-5	Dr. Awadh Kumar



PW-6	Najim Hussain
PW-7	Haseen Ahmad
PW-8	Abdul Hafiz
PW-9	Ishrat Begam

List of Exhibits on behalf of Prosecution

Exhibit ‘1’	Signature of informant on <i>fardbeyan</i>
Exhibit ‘2’	Signature of writing of Dr. Awad Kumar on the injury report of injured Md. Salauddin
Exhibit ‘3’	Signature of the then SHO of Jamalpur PS namely NH Khan on formal FIR being No.41/08

List of Exhibits on behalf of Defence

Exhibit ‘A’	CC of order-sheet dt. 23.06.2010 passed in Jamalpur P.S. Case No.35/08
Exhibit ‘B’	CC of FIR of Jamalpur P.S. Case No.35/08
Exhibit ‘C’	CC of charge-sheet of Jamalpur P.S. Case No.35/08
Exhibit ‘D’	CC of deposition of Naushad Ali
Exhibit ‘E’	CC of deposition of PW-2 namely Md. Heera
Exhibit ‘F’	CC of deposition of PW-3 Rukshna Khatoon
Exhibit ‘G’	CC of deposition of PW-4 Sahnaz Begum

Findings of the Learned Trial Court

7. Learned trial court after considering and analyzing the materials available on record, including the evidence of witnesses, found that all the witnesses examined in this case are either related and interested or are having animosity with the accused persons. The trial court has also found contradictions in the statement of witnesses with regard to the place of occurrence. The injury report has also been found doubtful as the primary



injury report was never brought on record by the prosecution and the doctor who first examined the injured, i.e. the informant, was also not produced for examination.

8. The learned trial court has also expressed its opinion that the injuries received by the injured do not appear to have been caused by sword and *gadasa* blows and has also considered that the said injury report was prepared 75 days after the date of the alleged incident making the same highly suspicious. As such, the accused persons (respondent no.2 to 7) were acquitted from all the charges levelled against them by giving them benefit of doubt.

Submissions on behalf of the Appellant

9. Learned counsel for the appellant submits that in support of the prosecution case, as many as, nine witnesses have been examined and they all have supported the case of the prosecution and have even given details of assault, attributing the same to different accused persons. It has further been submitted that serious injuries were caused to the informant for which he was treated at Govt. Hospital at Kiratpur, from where he was referred to DMCH. It has also been submitted that a false case bearing Jamalpur P.S. Case No. 35 of 2008 (Exhibit-B) was lodged by the accused persons against the informant in order to



save their own skin. Learned counsel has thus submitted that the judgment of the trial court acquitting the accused persons (respondents 2 to 7) is based on erroneous consideration of facts and law.

Submissions on behalf of the Respondents

10. It has been emphatically submitted by the learned counsel for the respondents that the judgment of the trial court is based on proper consideration of evidence available on the record and as such, is a well-reasoned judgment. Learned counsel for the respondents has submitted, at the outset, that there is an inordinate delay in lodging of the First Information Report regarding which no plausible explanation has been tendered by the prosecution. While the occurrence is said to have taken place on 02.12.2008, the *fardbeyan* of the informant was recorded on 12.12.2008 at the DMCH and the formal FIR was instituted as late as on 17.12.2008, and such inordinate and unexplained delay leads to the inference that the FIR has been lodged after due thought and deliberation.

11. Learned counsel for the respondents has further submitted that land dispute between the parties is an admitted fact and it has also been admitted by the witnesses that the accused side had lodged a case against the present appellant. The



plea taken by the prosecution that the same was lodged by the accused persons in order to save their skin is totally false and baseless as the case was lodged on behalf of the respondents with due promptness, and was much earlier than the present case, in point of time. It is further submitted that all the prosecution witnesses are either interested or are at inimical terms with the accused persons and besides, the place of occurrence has also not been conclusively established by the prosecution as no objective evidence seems to have been collected from the place of occurrence.

12. The learned counsel has next invited the attention of this court to the fact that neither the doctor, who first treated the informant/injured, has been examined nor the primary injury report, if any, has been brought on record. The doctor of DMCH who was examined as PW-5 has found stitched wounds and some injuries in the nature of abrasion, swelling etc., however, with regard to nature of injury he has stated that the same could be given by the first treating doctor at Kiratpur. It has thus been submitted that the so called injuries received by the informant do not appear to be caused by dangerous weapons like *gadasa* and sword and in absence of the primary injury report, the nature of injuries and other details do not get established. It has been



emphasized that there is virtually no record of treatment in the period between 02.12.2008 i.e., the date of occurrence to 17.02.2009, when he was examined by the second doctor (PW-5). Thus, on the strength of these facts it has been submitted that the very existence of injuries on the person of the informant (PW-4) seems to be extremely doubtful and such a belated injury report issued by the doctor (not being the first treating doctor), renders the entire case of the prosecution doubtful.

Analysis and Consideration

13. Having heard learned Counsel for the appellant, learned APP for the state and the learned Counsel for the respondent No. 2 to 7, as also on the perusal of the records we find that the appellant and the respondents are on inimical and litigating terms, arising out of a land dispute and the same has been admitted by all the prosecution witnesses. The immediate cause for the alleged occurrence, as narrated by the prosecution, was a petty dispute with regard to throwing of faecal matter in the drain adjacent to hand pump of the informant by one of the respondents, which was objected to by him, whereafter the quarrel ensued between the parties and the acts of assault allegedly took place.



14. Although, the prosecution witnesses have tried to put forth a case that assault was made by means of *gada*, sword, rod etc., but there is complete dearth of evidence to show that there was any pre-meditation or meeting of minds for such act of assault and there was no occasion for the accused persons to be armed with such weapons. The evidence rather discloses that the incident, if any, happened at the spur of the moment, upon a petty dispute.

15. However, upon perusal of records, we further find that although the occurrence is said to have taken place on 02.12.2008, the *fardbeyan* with respect to the same, was recorded on 12.02.2008 and the formal FIR was instituted on 17.12.2008, and the prosecution has not come forward with any plausible explanation for such inordinate delay. Moreover, even as per the prosecution case, it was only the informant who got injured and there is no circumstance to show as to what deterred other witnesses of the case, who are mostly the family members of the informant, from promptly lodging an FIR.

16. Besides the delay in lodging of FIR, another glaring fact which caught the attention of this court was that the injury report (Exhibit - 2) of the informant (PW-4) was prepared on 17-02-2009, which is after about 75 days of the date of the



alleged incident and although it is the case of the prosecution that the injured was first treated at Govt. Hospital Kiratpur, from where he was referred to DMCH, there is no evidence whatsoever, either in the form of any injury report or by way of examination of the treating doctor or any other person from the Govt. Hospital to lend support to the factum of his treatment at the said Hospital. In absence of the initial injury report and the evidence of the first treating doctor, no sanctity can be attached to an injury report which was prepared 75 days after the occurrence and the least that can be inferred is that such an injury report would not be relatable to an incident which took place more than two months back. Moreover, the Doctor (PW-5) has refrained from expressing any opinion on the nature of injuries as the same are either stitched wounds or in the nature of abrasion and swelling and the fact which virtually snaps the connection between the injuries as disclosed in Exhibit- 2 dated 17.02.2009 with the alleged incident dated 02.12.2008 is that the Doctor has given the time of injury to be more than 8 hours.

17. There is no doubt on the fact that the informant is the injured witness and the evidence of an injured witness has a greater evidentiary value and cannot be discarded or brushed aside lightly unless strong and compelling grounds exist,



however, even for accepting the testimony of an injured witness, there has to be a *prima-facie* satisfaction that he is a truthful witness and has no reason to falsely implicate the accused persons. It has been laid down in the case of **Santosh Vs. State of Bihar** reported in **(2020) 3 SCC 443**, that ordinarily, an injured witness would not lie as to actual assailants but there can be no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishments or exaggeration. In the present fact scenario, it needs to be considered that the parties are on litigating terms having a long-standing land dispute and as such it cannot be said that there is no reason to falsely implicate the accused persons. Moreover, the medical evidence being totally insufficient to lend any support or credence to the testimony of the prosecution witnesses, leads us to a finding that the prosecution has not been able to prove its case beyond all reasonable doubts.

18. The law is well settled that in cases of appeals against acquittal, unless and until the finding of the learned trial court is found to be palpably perverse or illegal, the appellate court would not interfere with the same for the purposes of reversing the finding of acquittal. This proposition has been clearly laid down by the Hon'ble Apex Court in the case of



Nikhil Chandra Mondal vs. State of W.B., reported in (2023) 6 SCC 605 and also in a case of **Vijay Singh @ Vijay Kr. Sharma vs. State of Bihar**, reported in 2024 SCC OnLine SC 2623.

19. Further, in the case of **Rajesh Prasad vs. State of Bihar**, reported in (2022) 3 SCC 471, which also took note of the case of **Chandrappa v. State of Karnataka**, reported in (2007) 4 SCC 415, the Hon'ble Apex Court specifically held that an appellate court must bear in mind that in cases of acquittal, there is double presumption in favour of the accused, one being the presumption of innocence available to him under the principles of criminal jurisprudence and the second being, acquittal of the accused, thereby reinforcing the presumption of his innocence. Paragraph-29 of **Rajesh Prasad** (supra) is being quoted hereunder:

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words : (Chandrappa case [(2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , SCC p. 432, para 42)

“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 Criminal Procedure Code, 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. Upon consideration of all the above-mentioned facts and circumstances and after having examined and analyzed the evidence led by the prosecution which is infested with some



glaring deficiencies shaking the very foundation of the case, the view of the trial court acquitting the accused giving them benefit of doubt appears to be a probable view which cannot be held to be unsustainable and even if two reasonable conclusions are possible on the basis of evidence on record, in view of the settled law, this Court does not find any reasonable ground to disturb the finding of acquittal recorded by the trial court.

21. Therefore, considering that the impugned judgment and order of acquittal is based on sound reasons, the same warrants no interference as we do not find any illegality or perversity in the findings recorded by the learned trial court in the impugned judgment dated 31.03.2023 passed by learned Additional Sessions Judge-1st, Benipur, Darbhanga in Sessions Trial No.421 of 2010 (arising out of Jamalpur P.S. Case No. 41 of 2008).

22. Accordingly, the present appeal stands dismissed.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

anand/-

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