

(2022) 08 PAT CK 0009

Patna High Court

Case No: Criminal Appeal (DB) No. 1381 Of 2019

Smita Kumari @ Smita Devi

APPELLANT

Vs

State Of Bihar

RESPONDENT

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**Date of Decision:** Aug. 2, 2022**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 372, 378(2)
- Indian Penal Code, 1860 - Section 34, 147, 148, 149, 302, 304II, 307, 323, 341, 506
- Criminal Procedure Code (Amendment) Act, 2008 - Section 2(wa)
- Arms Act, 1959 - Section 27

**Hon'ble Judges:** Chakradhari Sharan Singh, J; Khatim Reza, J**Bench:** Division Bench**Advocate:** Rajendra Prasad, Pramod Kumar, Ritesh Kumar, Ajay Mishra**Final Decision:** Dismissed

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**Judgement**

1. Heard learned counsel for the appellant and learned counsel for the State.
2. This appeal has been filed under Section 372 of the Criminal Procedure Code against the judgement and order dated 16.09.2019 passed by the learned Sessions Judge Sheikhpura in Sessions Trial No. 118 of 2016 arising out of Mehus P.S. Case No. 03/2015 whereby the learned Sessions Judge has acquitted respondent nos. 2 to 5 of the offences punishable under Sections 323/34 and 302/34 of the Indian Penal Code.
3. The informant (P.W.-5) who happened to be the brother of deceased is no more. Accordingly, the widow of the deceased has filed this appeal against acquittal of the accused persons (Respondent Nos. 2 to 5). The statutory right to file the appeal to the widow of the deceased flows from

Section 2(wa) of the Criminal Procedure Code (Amendment) Act, 2008.

4. The brief facts of the case are that on 13.03.2015 at about 02:00 pm, when the informant was engaged in the business in his shop, located near

college gate, Mehus, the informant's brother namely, Bablu Prasad Singh @ Suresh Kumar came out of his house and was proceeding towards

Barbiga Bazar. At that point of time, accused Rishi Kumar was waiting with hoe (kudal) in his hand, accused Manoj Kumar was armed with lathi,

Murari Kumar was carrying pistol in his hand, Rampravesh Singh also had pistol in his hand, Shashi Bhushan Singh had crow-bar (khanti) in his hand

and Kanhaiya Kumar had a rod and they all attacked the informant's brother. On a call being raised, the informant rushed towards the spot. The

accused persons assaulted the informant also. However, the informant saw his brother being attacked and wounded and who felt unconscious with his

nose, ear and mouth bleeding. The accused persons fled away after committing the offence. The informant took his brother to referral hospital,

Barbiga where, doctors referred to Patna. However, the next day at Patna, the informant's brother died.

5. The incident led to filing of Mehus P.S. Case No. 03 of 2015 for the offences punishable under Sections 147, 148, 149, 341, 323, 307 and 506 of the

Indian Penal Code and Section 27 of the Arms Act against respondent nos. 2 to 5 and others and on the death of Suresh Kumar (brother of the

informant) Sections 323 and 302/34 of the Indian Penal Code were added.

6. The police after completion of investigation submitted charge-sheet no. 13 of 2015 for the offences punishable under Section 323/34 and 302/34

against the accused Rishi Kumar and the investigation with regard to respondents no. 2 to 5 was kept pending. Later on, charge-sheet no. 01 of 2016

under Section 323, 302/34 of the Indian Penal Code was submitted against Shashi Bhushan, Kanhaiya Kumar, Rampravesh Singh and Murari Kumar.

7. The Sessions Trial No. 84 of 2015 commenced against Rishi Kumar on 23.11.2015 and Sessions Trial No. 118 of 2016 started against respondent

no. 2 to 5 on 15.05.2017 and the charges in both the Sessions Trials, charges were framed under Section 323/34, 302/34 of the Indian Penal Code

respectively.

8. On assessing the evidences, the Trial Court found commission of offence under Section 304 part-II of the Indian Penal Code proved against Rishi

Kumar who on sudden provocation was found to have given single blow by Kudal and that there was no evidence to suggest that he had repeated the

blow. The medical evidence also corroborates one comminuted fracture at 2½ X 2½ involving left parietal and left temporal bone and nature of

injury suggested by the doctor caused by heavy sharp cutting weapon. The P.W.-1. P.W.-2 deposed in their evidence that there was altercation

between the deceased and the accused persons that in the meanwhile Rishi Kumar gave a deadly blow. The trial court noticed the depositions of

P.Ws-3, 4 and 5 full of contradiction, on or scrutinizing of the evidence.

9. The medical evidence clearly suggest that there is no other injury on the body of the deceased save and except the head injury by sharp cutting

weapon caused by the blow given by Rishi Kumar. The evidences of prosecution witnesses no. 1 to 5 are contradictory to each other regarding

allegation against respondent nos. 2 to 5 and in absence of any injury received by the informant, the allegation of assault against respondent nos. 2 to 5

has rightly not been sustained.

10. It is worth being mentioned that the right of filing appeal under Section 372 of Criminal Procedure Code has accrued on account of the insertion of

the proviso to Section 372 Criminal Procedure Code which came to be inserted by Act 05 of 2009 with effect from 31.12.2009 conferring upon victim

right to prefer an appeal against any order passed by the Court acquitting the accused or convicting an accused for a lesser offence or imposing

inadequate compensation and as per the said proviso, such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction

of such Court. It has been laid down in case of Mallikarjun Kadagali Vs. State of Karnataka, (2019) 2 SCC 752, that a victim has absolute right to

prefer an appeal against the order of acquittal and therefore he/she is not required to even seek leave to appeal as required in case of

“complainant” while preferring the appeal under Section 378(4) Criminal Procedure Code. We have kept this legal principle in mind while

considering this appeal.

11. The principles which are germane for considering an appeal against acquittal are well settled in various decisions of the Supreme Court.

Illustratively, in case of Ramanand Yadav Vs. Prabhunath Jha, (2003) 12SCC 606 the Supreme Court has held as under:-

“There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of

acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden

thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in

the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be

adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may

arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is

cast upon the appellate Court to re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining

as to whether any of the accused committed any offence or not.”

Yet in another leading decision in Kallu Vs. State of M.P., (2006) 10 SCC 313, the Hon<sup>ble</sup> Supreme Court held thus:

“While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals

against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an

order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view

taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate

court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit

of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court”. (emphasis

supplied) From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while

dealing with an appeal against an order of acquittal emerge;â€

12. Applying the above principles to the case at hand we are of the considered view that the prosecution has failed to establish the allegation against

the respondents nos. 2 to 5 beyond reasonable doubt. The Trial Court, in our opinion has rightly discarded the evidence of P.W. 1 to 5, there being

apparent inconsistency as has been noticed in paragraphs 12, 14, 15, 17 and 19 of the judgement of the Trial Court. The finding recorded by the trial

court does not suffer from any legal infirmity requiring this Courts interference.

13. We do not find merit in this appeal, which is accordingly dismissed.