

(2024) 02 PAT CK 0016

Patna High Court

Case No: Criminal Appeal (DB) No. 856 Of 2023

Kiran Devi

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Feb. 7, 2024

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 209, 313, 372
- Indian Penal Code, 1860 - Section 147, 148, 149, 302, 307

Hon'ble Judges: Vipul M. Pancholi, J; Rudra Prakash Mishra, J

Bench: Division Bench

Advocate: Harsh Anuj, Bipin Kumar

Final Decision: Dismissed

Judgement

1. The present appeal has been filed on behalf of the appellant/wife of the deceased, under Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred as the Code) against the judgment and order of acquittal dated 06.06.2023 rendered by the learned Additional District and Sessions Judge, IXth, Saran at Chapra in Sessions Trial No. 116 of 2020 (Registration No. 116 of 2020) arising out of Sahajitpur P.S. Case No. 66 of 2019, whereby, the concerned Trial Court has acquitted the private respondents/accused from the charges levelled against them, for the offences punishable under Sections 147, 148, 307/149, 302/149 of the Indian Penal Code (hereinafter referred to as the IPC).

2. The prosecution case, in short, is based on the fardbeyan given by the Informant/Rohit Kumar Singh dated 22.05.2019 at about 06.30 A.M. at Sadar Hospital, Chapra stating therein that on 21.05.2019 at about 8.30 P.M. accused Pawan Singh, son of Prithvi Singh, Mithun Pratap Singh @ Katiman Singh, Rajesh Kumar Singh, son of late Dharmnath Singh, all three belongings to the village Naziba, in a conspiracy, came to his house and called his cousin brother Sanjeev Kumar Singh. After some time, his uncle Jitendra Singh @ Jitu Singh came when then he told his uncle that the aforesaid three persons brought his brother. They moved towards Manipali More in search of his brother where he saw that Chandan Singh, Pintu Singh assaulted by Farsa with an intention to kill him due to which Sanjeev Kumar Singh sustained serious injury. When his uncle Jitendra Singh and brother Ravi Kumar Singh tried to save him, Ajeet Singh and Uma Shankar Tiwari @ Bhuar of Village Dhawani instigated the accused persons to kill him without any loss of time. Thereafter, Pawan Singh assaulted with Farsa and Mithun Pratap Singh by iron rod due to which his uncle sustained injury on his forehead and started bleeding and his uncle died at the place of occurrence. When his brother and the Informant tried to save him, they injured them. On hulla, Rajesh Singh

@ Guddu reached there and saw the occurrence. 4-5 unknown persons were there. The Informant identified all the accused persons as there was electricity. All the injured persons brought to the Sadar Hospital, Chapra for their treatment. His brother was referred to Patna for his better treatment. The fight happened due to demand of dues in a conspired way.

3. After registration of the F.I.R., the Investigating Officer carried out the investigation. During the course of the investigation, he had recorded the statement of the witnesses, also collected the documentary evidences and, thereafter, filed the charge-sheet against the private respondents/accused for the offences punishable under Sections 147, 148, 149, 307, 302 of the Indian Penal Code before the concerned Magistrate Court. As the case was exclusively triable by Court of Sessions, the learned Magistrate committed the same under Section 209 of the Code to the concerned Sessions Court where the same was registered as Sessions Trial No. 116 of 2020.

4. Before the Trial Court, the prosecution had examined altogether 11 witnesses and also produced documentary evidences. Thereafter, the statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court passed the impugned order whereby the present private respondents/accused persons have been acquitted against which the appellant/wife of the deceased has preferred the present appeal.

5. Heard Mr. Harsh Anuj, learned Advocate for the appellant and Mr. Bipin Kumar, learned A.P.P for the Respondent-State.

6. Learned counsel for the appellant has separately supplied copy of the depositions and the relevant materiel produced before the Trial Court. Learned counsel referred the deposition of the eye-witnesses including the injured witnesses and, thereafter, submitted that in the present case, there are more than four injured witnesses who sustained injuries in the occurrence, in question, despite which the Trial Court has not believed the story of the injured eye-witnesses and, thereby, acquitted the private respondents/accused. It is further submitted that even the prosecution had examined the Doctor who had conducted the postmortem on the dead-body of the deceased as well as the Doctor who had given treatment to the injured witnesses. From the deposition of the said Doctor, it can be said that the prosecution has proved the case against the respondents/accused beyond reasonable doubt despite which the Trial Court has passed the impugned order. Learned counsel for the appellant, therefore, urged that the impugned order be set aside and the respondents/accused be convicted for the charges levelled against them.

7. On the other hand, learned A.P.P. has submitted after taking instruction that till date the State has not preferred any acquittal appeal against the impugned order passed by the Trial Court. He submitted that looking to the material placed before the Trial Court, the Trial Court has rightly passed the order of acquittal in favour of the private respondents/accused. However, looking to the facts of the present case, this Court may pass appropriate order.

8. We have considered the submissions canvassed by the learned counsel for the parties. We also perused the deposition of the prosecution witnesses and the documents supplied by the learned counsel appearing for the parties. From the evidence led before the Trial Court, it would emerge that as per the case of the Informant, who has claimed that he is an eye-witness to the occurrence, has stated that the occurrence, in question, took place at about 8 PM on 21.05.2019 and the fardbeyan of the said Informant was recorded at about 6.30 AM on 22.05.2019. As per the case of the Informant in the fardbeyan, in the occurrence, in question, one Jitendra Singh @

Jittu died because of the assault made by the accused persons and the Informant and three others also sustained injuries in the said occurrence. Thus, as per the case of the prosecution, there are four injured eye-witnesses of the occurrence, in question.

9. We have also gone through the depositions of the prosecution witnesses. It is revealed from the record that the fardbeyan was recorded at about 6.30 AM on 22.05.2019. Prior to that, all the injured were sent to the Hospital by the Sahajitpur police station.

10. P.W.8/Doctor/Ajay Kumar Sharma stated in his deposition that on 21.05.2019 at about 10.20 PM, one Sanjeev Singh was brought to the Hospital on the requisition of Sahajitpur police station. Similarly, on 22.05.2019 at about 5.20 AM, Rohit Kumar Singh (the Informant) was brought to the Hospital on the requisition of the aforesaid police station and the nature of injuries of the said Informant was simple. Similarly, on 22.05.2019 at 5.30 AM, one Ravi Kumar Singh was examined by the said Doctor on the requisition of the Sahajitpur police station. Thus, from the deposition of the said witness, it is revealed that the Informant sustained simple injury.

11. In Para-7 of the cross-examination of the Doctor, the Doctor has specifically stated that in the copy of P.M.C.H., it has been written that the injured sustained injury on 21.05.2019 at about 8 PM in the road accident. In Para-18 also, the said witness has stated that in Para-46 of the Case Diary, there is reference of P.M.C.H., Patna wherein it has been written "patient is alleged case of Multiple injury due to Road Traffic Accident (R.T.A.) at 8 P.M. on 21.05.2019 at Sahijitpur Saran. Patient was initially taken to Sadar Chhapra where he was given initial treatment and was referred to P.M.C.H." In Para-24 of the cross-examination, the Doctor has further stated "Polytrauma and multiple injury may be caused by road traffic accident (R.T.A.)"

12. P.W.9 Dr. Ravi Shankar Singh, who had conducted postmortem on the dead-body of the deceased, has also specifically stated that the cause of death was shock and hemorrhage specially head injury due to the injuries mentioned in the postmortem and the nature of violence as hard and blunt substance and sharp cutting weapon also. However, during cross-examination, in Para-12, the said Doctor has admitted that such type of injury may be caused by Road Traffic Accident (R.T.A.).

13. P.W.11 Sanjay Prasad, who had carried out the investigation and an Investigating Officer, has also stated in the examination-in-chief that during course of investigation, he had visited the place of occurrence and he had found blood-stained knife and Gupti from the bush situated near the medical shop of the accused /Mithun Pratap Singh @ Katiman Singh and he had prepared the seizure list. However, it is pertinent to note that the aforesaid blood-stained weapons recovered by the Investigating Officer were not sent for necessary analysis to the Forensic Science Laboratory and the F.S.L. report has not been produced before the Trial Court. In Para-21 of the cross-examination, he has specially stated that he got the information about the occurrence on 21.05.2019 at 9.30 PM and therefore, he immediately rushed to the place of occurrence. However, he is not aware whether he referred about the same in the station diary. He has also not mentioned about the information which he got in the station diary or in the case diary. He has further admitted in Para-22 that on the date of occurrence, he had enquired from Rohit Kumar Singh about the occurrence and Rohit Kumar informed him about the occurrence. However, he did not record the fardbeyan as the said person was not in a position to give the same.

14. However, it is required to be noted at this stage that the Informant/Rohit Kumar sustained only simple injury and, therefore, as per the case of P.W.8, the Doctor, who has given the treatment to the said witness, such witness (injured) was brought before

him at about 5.20 AM on the next date.

15. Thus, we are of the view that though the police reached at the place of occurrence immediately on receipt of the information about the occurrence but, the same was not registered as F.I.R. and the fardbeyan of the injured was recorded after approximately ten hours.

16. It is further pertinent to note that P.W.11/I.O. has specifically admitted in Para-37 of the cross-examination that the prescription of P.M.C.H. with regard to the injured/Sanjeev Kumar was given to him by father of Sanjeev Kumar. The said witness has further stated in Para-50 that the statement of witness Sunil Rai was recorded in Para-164 of the case diary. The said witness has not stated that at the time of occurrence, accused/Pintu Singh was armed with Gupti.

17. We also examined the deposition given by the injured witnesses and the Investigating Officer/P.W.11.

18. From the materials placed on record, it is found that there are major contradiction in the deposition of the witnesses. Even the medical evidence also does not support the case of the prosecution. In the first version of the eye-witness i.e. P.W.3, Upendra Singh, who is the father of the injured Sanjeev Singh, he has stated that the said injured sustained injury in the road traffic accident (RTA).

19. We also gone through the reasoning recorded by the learned Trial Court. The Trial Court, after considering the documentary as well as oral evidence adduced by the prosecution, has rightly given the benefit of doubt to the accused.

20. At this stage, it is also pertinent to note that we are dealing with the acquittal appeal filed by the appellant against the order of acquittal rendered by the concerned Trial Court. The Hon'ble Supreme Court in the case of Chandrappa and Ors. Vs. State of Karnataka, reported in (2007) 4 SCC 415 has observed in Paragraph-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."

21. Recently, the Hon'ble Supreme Court in the case of Nikhil Chandra Mondal Vs. State of West Bengal, reported in (2023) 6 SCC 605 has observed in Paragraph No. 22 as under:-

"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."

22. From the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that there is double presumption in favour of the accused. When the order of acquittal has been recorded by the Trial Court, firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence is 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. 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.

23. From the aforesaid decisions rendered by the Hon'ble Supreme Court it can be said that scope of interference in the order of acquittal passed by the Trial Court while dealing with the acquittal appeal is governed by the principles laid down in the case of Chandrappa (supra).

24. We have also considered the reasoning recorded by the Trial Court while passing the order of acquittal in favour of the private respondents / accused persons and we are of the view that Trial Court has not committed any error while passing the impugned order.

25. Thus, looking to the overall facts and circumstances of the present case, we are not inclined to interfere with the impugned order.

26. Accordingly, the present appeal stands dismissed.