

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (SJ) No.1411 of 2023

Arising Out of PS. Case No.-154 Year-2010 Thana- CHANDI District- Bhojpur

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Samahut Sharma S/o Late Sahab Sharma R/o Village-Piro, Gandhi Chowk, P.S-Piro, Distt- Bhojpur.

... ... Appellant

Versus

1. The State of Bihar
2. Dhanji Singh S/o Late Dinesh Singh R/o Village- Mohan Tola, P.S- Piro, Distt.- Bhojpur.
3. Kamlesh Singh S/o Late Mahesh Singh R/o Village- Mohan Tola, P.S- Piro, Distt.- Bhojpur.
4. Nagendra Singh S/o Late Durga Singh R/o Village- Nathmalpur, P.SBarhara, Distt.- Bhojpur.

... ... Respondents

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*Acts/Sections/Rules:*

- *Sections 307, 341, 323, 325 read with 34 of the Indian Penal Code*
- *Section 27 of the Arms Act*

*Cases referred:*

- *Chandrappa & Ors. vs. State of Karnataka reported in (2007) 4 SCC 415*

***Appeal*** - *filed against judgement of acquittal by which the accused persons have been acquitted from the charges of the offence under Sections 307, 341, 325 read with 34 of the Indian Penal Code and Section 27 of the Arms Act. However, one of the accused was found guilty for the offence under Section 323 of the IPC and accordingly, he was acquitted on admonition.*

**Held** - Injury report does not support the deposition of the informant.

(Para 14)

One of the prosecution witness (brother of the informant) turned hostile and did not support the occurrence. (Para 16)

Investigating Officer of this case was not examined during the trial (Para 17)

Trial Court has rightly given the benefit of doubt to the respondent-accused, as the prosecution has failed to prove the case against the respondents-accused beyond reasonable doubt. (Para 18)

An appellate court must bear in mind in a 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 is presumed to be innocent unless he is proved guilty by 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. Further, if two reasonable conclusions are possible on the basis of the evidence on the record, the appellate court should not disturb the finding of acquittal recorded by the Trial Court. (Para 20)

Appeal is dismissed. (Para 22)

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... .. Respondents

Appearance :

For the Appellant : Mr. Manoj Kumar, Advocate  
Mr. Shashi Shankar Singh, Advocate  
For the Respondents-State: Mr. Mukeshwar Dayal, APP  
For the Informant : Mr. Manoj Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA  
ORAL JUDGMENT  
Date : 09-07-2024

The present appeal has been filed under Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') by the appellant-original informant against the impugned judgment and order of acquittal dated 22.11.2022 passed by learned 17<sup>th</sup> Additional Sessions Judge, Ara, Bhojpur in Sessions Trial No.320 of 2011/58 of 2013 arising out of Chandi P.S. Case No.154 of 2010 by which the accused persons-respondent nos. 2 to 4 have been



acquitted from the charges of the offence under Sections 307, 341, 325 read with 34 of the Indian Penal Code (for short 'IPC') and Section 27 of the Arms Act levelled against them by giving them benefit of doubt. However, accused-respondent no.4, Nagendra Singh was found guilty for the offence under Section 323 of the IPC and accordingly, he was acquitted on admonition.

2. Heard Mr. Manoj Kumar, learned advocate for the appellant-informant and Mr. Mukeshwar Dayal, learned APP appearing on behalf of the respondent-State as well as Mr. Manoj Kumar Singh, learned counsel appearing on behalf of private respondent Nos. 2 to 4.

3. The prosecution story, in brief, is that the informant-appellant/PW-3 had given statement on 10.07.2010 at 14.40 P.M. in Primary Health Centre, Piro during course of treatment stating therein that he was coming after watching the tree near Gatar Bridge, Piro and at about 14.15 P.M., accused-private respondents, namely, Kamlesh Singh, Dhanjee Singh, Shishukant @ Chhotu, Nagendra Singh come on motorcycle and surrounded the



informant-appellant and Dhanjee Singh shot fire on right chest and Kamlesh Singh also shot fire but, the same could not hit the informant-appellant. The accused, namely, Chhotu, Nagendra Singh assaulted with fist and slaps. Thereafter, they fled away on motorcycles. After the information, Piro police reached there and brought the informant-appellant in Piro Hospital, where his treatment was going on and his statement was recorded there.

4. On the basis of aforesaid statement, the formal FIR came to be registered as Piro P.S. Case No.154 of 2010 and the Investigating Officer carried out the investigation, during the course of which, the Investigating Officer has recorded the statement of witnesses and collected the documentary evidence. After the investigation was concluded, the Investigating Officer filed charge-sheet against the respondents-accused for the offences punishable under Section 307, 323, 325 of the IPC as well as Section 27 of the Arms Act against the respondent nos. 2 to 4.

5. The learned Trial Court on the basis of materials collected during investigation, framed charges against the



accused-respondent nos. 2 to 4 on 08.02.2013 for the offences under Sections 307, 323, 325 read with 34 of the IPC and Section 27 of the Arms Act.

6. Before the Trial Court, the prosecution had examined five prosecution witnesses. They are:-(i) PW-1 Kameshwar Sharma (brother of the informant); (ii) PW-2 Vijay Sharma (son of the informant); (iii) PW-3 Samahut Sharma (informant of this case); (iv) PW-4, Shyamanand Sharma (son of the informant); and (v) Dr. Rajeev Kumar.

7. The prosecution has also exhibited the following documents/exhibits in support of his case:-

Sl. No.	List of Exhibits/documents	Name of documents
1.	Exhibit-1	Signature of informant on <i>fardebayan</i> .
2.	Exhibit-2	Injury report of informant.

8. The further statement of the respondents-accused under Section 313 of the Code came to be recorded. After the conclusion of trial, the Trial Court acquitted the private respondents herein from the charges levelled against them except respondent no.4 namely,



Nagendra Singh. Against which, the appellant- informant has preferred the present appeal.

9. Hence, the present appeal.

10. It is submitted by learned counsel appearing on behalf of the appellant that except PW-1 Kameshwar Sharma (brother of the informant), the other witnesses, namely, PW-1, PW-3 (informant) and PW-4 have supported the case of prosecution.

11. Learned counsel for the appellant has mainly assailed the impugned judgment and order of acquittal rendered by the Trial Court on the ground that PW-3, who is the informant and injured specifically deposed before the trial court that he received gun injury from respondent/accused no.2. It is further submitted that nothing surfaced during the course of cross-examination as to doubt his aforesaid statement. This important aspect was completely ignored by the trial court while recording the order of acquittal. It is submitted that beside informant/injured/PW-3, PW-2 namely, Vijay Sharma, who is the son of informant also supported the occurrence and



stated that his father i.e. PW-3 received gun-shot injury on his chest. It is further submitted by learned counsel that PW-4 who is also the son of informant/PW-3 specifically deposed during trial through his examination-in-chief that his father/PW-3 said him while admitting in hospital that all three respondents-accused persons surrounded him while he went to purchase wooden log and, thereafter, respondent no.2 Dhanji Singh fired on his right chest. It is also submitted that the doctor has been examined as PW-5, who proved the injury report, which was marked as Exhibit-2 during the trial. It is submitted that in view of depositions of prosecution witnesses "**intention to cause death**", which is prime consideration to make out a case under Section 307 of the IPC was clearly established during the trial, as the firing was made on the right chest of the informant/PW-3 but, said fact was completely ignored by the trial court and, therefore, the present acquittal appeal be allowed and thereby, the impugned order passed by the concerned trial court be quashed and set aside.

12. On the other hand, learned APP has also





supported the submissions canvassed by learned counsel for the appellant/informant. However, learned APP has submitted that till date the State has not preferred acquittal appeal against the impugned judgment and order of acquittal passed by the concerned Trial Court.

13. Mr. Manoj Kumar Singh, learned counsel appearing on behalf of the respondents-accused while opposing the present appeal submitted that PW-2 and PW-3 are son of injured/informant i.e. PW-3 and they appears to be an interested witness. It is further submitted that both these witnesses are hearsay in nature and they are not the eye-witness of the actual occurrence. It is submitted that if the deposition of PW-3/informant be believed on its face, then certainly, exit and entry wounds of firearm injury must be available on his right chest but, same is not appearing from the injury report (Exhibit No.2). It is submitted that said injury report, which proved during the trial by PW-5 i.e. Dr. Rajiv Kumar, it nowhere appears that even the alleged injury was caused by firearm and, therefore, the entire implication is unfounded and, thus, by recording of acquittal



by learned trial court is not suffered by any ambiguities and, as such, the same is not required to be interfered with.

14. I have considered the submissions canvassed by the learned counsel appearing for the appellant as well as learned APP and also by learned counsel appearing on behalf of respondents. I have also perused the copy of the deposition of prosecution witnesses. From the record, it would emerge that PWs-1 and 2 are the son of informant/injured/PW-3 and they not appears to be an eye-witness of the real occurrence of firing as alleged. It appears from the deposition of PW-3/informant/injured that firing was made on his right chest by accused/respondent no.2 but, from perusal of Exhibit-2 as proved by PW-5, it nowhere appears that any such bullet injury was fired upon his right chest.

15. It would be apposite to reproduce the injury report (exhibit-2) as issued by PW-5, which is as under:-

***"(i) Lacerated wound at right scapular region 2 inch x ½ inch x ½ inch.***

***(ii) Lacerated wound near right axillary region 3 inch x ½ inch x ½ inch.***



***(iii) Mark of identification- A mole over chest.***

***(iv) Age of injury-within 1 hour.***

***(v) Opinion- Opinion no. 1 and 2 reserved patient referred to Sadar Hospital Ara to needful treatment. So, opinion reserved till the further report comes from Sadar Hospital, Ara."***

16. It is further important to mention that PW-1, who is the full brother of PW-3 turns hostile during the trial and did not support the occurrence.

17. From the perusal of record, it appears that Investigating Officer of this case was not examined during the trial. PW-5, doctor, nowhere reported through exhibit no.2 i.e. injury report of PW-3 that any firearm injury was found upon right chest, rather it appears that a lacerated wound was found on right scapular region and right axillary region. The said wounds not appears to be caused by firearm injury, negating the entire allegation that PW-3 received gun injury by accused/respondent no.2 on his right chest. Thus, to attract the basic ingredients of **"intention to cause death"** for securing conviction of the offence under Section



307 of IPC is not appearing available.

18. I have also gone through the reasoning recorded by the Trial Court and I am of the view that the Trial Court has rightly given the benefit of doubt to the respondent-accused, as the prosecution has failed to prove the case against the respondents-accused beyond reasonable doubt.

19. At this stage, I would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Chandrappa & Ors. vs. State of Karnataka** reported in **(2007) 4 SCC 415** wherein the Hon'ble Supreme Court in Para-42 has laid down the general principles regarding powers of the appellate court while dealing with the appeal against the order of acquittal. It observed 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."***

20. From the aforesaid observation made by the Hon'ble Supreme Court, it can be said that an appellate court must bear in mind in a 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 is presumed to be innocent unless he is proved guilty by 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. Further, if two reasonable conclusions are possible on



the basis of the evidence on the record, the appellate court should not disturb the finding of acquittal recorded by the Trial Court.

21. Keeping in view of the aforesaid principles laid down by the Hon'ble Supreme Court to the facts of the present case, as discussed hereinabove, I am of the view that the Trial Court has not committed any error while passing the impugned order and, therefore, no interference is required in the present appeal.

22. Accordingly, the appeal is dismissed.

23. LCR, if any, be returned to learned trial court along with copy of this judgment.

**(Chandra Shekhar Jha, J.)**

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
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