IN THE HIGH COURT OF JUDICATURE AT PATNA

Manik Chand Prasad

vs.

The State of Bihar & Ors

Criminal Appeal (DB) No. 113 of 2023

01 September 2023

(Hon’ble Mr. Justice Sudhir Singh and Hon’ble Mr. Justice Chandra Prakash Singh)

Issue for Consideration

Whether the appellate court should interfere with the trial court's acquittal of respondents under Sections 352, 323, 504, 354, and 307/34 IPC, given the alleged contradictions in witness testimonies and investigative lapses.

Headnotes

Scope of Appellate Review in Acquittal Appeals [Paras 8, 14-15]: - Reiterated the limited scope of interference under Surajpal Singh (1952 SCR 193) and Ghurey Lal ((2008) 10 SCC 450), emphasizing that acquittal can only be overturned for "compelling and substantial reasons" if the trial court's view is "perverse" or "wholly unsustainable." - Held: The trial court's assessment of witness credibility (having observed demeanour) deserves deference unless demonstrably unreasonable.

Section 307 IPC: Attempt to Murder [Paras 10-11]: - Applied Parsuram Pandey ((2004) 13 SCC 189) to hold that: Mere misfiring of a weapon (no bullet discharge) cannot satisfy the *actus reus* under Section 307; Simple injuries (5 stitches) and medical evidence (PW 5) negated *mens rea* for murder.

Section 354 IPC: Outraging Modesty [Para 12]: - While "pulling pallu of saree" (PW 3's testimony) could constitute an offence,

the prosecution failed to: Specify which accused committed the act; Prove intent/knowledge to outrage modesty (general allegations insufficient per Fardbeyan).

Credibility of Witnesses [Paras 6, 13, 16]: - Material contradictions in testimonies of PW 1-PW 3 regarding: (i) Identity of assailants; (ii) Nature of injuries (leg injury falsely claimed); (iii) Sequence of events (PW 1 arriving late vs. eyewitness claim). - Relied on Sunil Kumar Shambhudayal Gupta ((2010) 13 SCC 657) to hold that major discrepancies render evidence unreliable.

Investigative Lapses [Para 13]: - Non-examination of independent witnesses (despite prior enmity); - Failure to establish ownership of seized mobile (Ext. 2); - Unexplained delay in FIR submission to court. - Cited Sidhartha Vashisht ((2010) 6 SCC 1) to condemn non-compliance with fair investigation norms under Articles 20-21, Constitution.

Case Law Cited

Surajpal Singh & Ors. v. The State (1952 SCR 193)

Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450

Parsuram Pandey v. State of Bihar (2004) 13 SCC 189

Sunil Kumar Shambhudayal Gupta v. State of Maharashtra (2010) 13 SCC 657

Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1

List of Acts

Indian Penal Code, 1860 (Sections 307, 354, 323, 504, 34)

Code of Criminal Procedure, 1973 (Section 372)

List of Keywords

Acquittal Appeal, Section 307 IPC, Witness Credibility, Investigative Lapses, Outraging Modesty

Case Arising From

Judgment dated 17.12.2022 by Additional Sessions Judge XXI, Patna (Sessions Trial No. 304/2012), acquitting respondents in Jakkanpur P.S. Case No. 68/2009.

Appearances for Parties

For the Appellant/Informant: Mr. Ravi Shankar Ganguli, Adv.

For the State: Mr. Dilip Kumar Sinha, A.P.P.

For the Respondents 2 & 3: Mr. Bikramdeo Singh, Adv. & Mr. Sadanand Paswan, Adv.

Headnotes Prepared by Reporter: Akanksha Malviya, Advocate

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.113 of 2023

Arising Out of PS. Case No.-68 Year-2009 Thana- JAKKANPUR District- Patna

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Manik Chand Prasad S/o Late Kirti Mahto, R/o Muhalla- Kannulal Road, PS- Jakkanpur, District- Patna.

... ... Appellant

Versus

1. The State of Bihar
2. Vivek Praksh
3. Vikash Prakash, Both are S/o Late Badri Narayan Gupta and both are R/o - Sita Saran Lane Mithapur, PO- G.P.O., PS- Jakkanpur, Patna.

... ... Respondents

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Appearance :
For the Appellant : Mr. Ravi Shankar Ganguli, Advocate
For the State : Mr. Dilip Kumar Sinha, A.P.P.
For Respondent Nos.2 & 3 : Mr. Bikramdeo Singh, Advocate
Mr. Sadanand Paswan, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

C.A.V. ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

6 01-09-2023 This appeal under section 372 of the Code of Criminal Procedure, 1973 has been filed by the informant of Jakkanpur P.S. case No.68 of 2009 against the judgment of acquittal dated 17.12.2022, passed by Shri Rajvijay Singh, Additional Sessions Judge XXI, Patna in Sessions Trial No.304 of 2012, CIS No.7087 of 2014, whereby and whereunder the learned trial Court has acquitted the respondent Nos.2 and 3 from the charges levelled under Sections 352, 323, 504, 354, 307/34 of the Indian Penal Code (referred to 'I.P.C.').

2. In the present criminal appeal, by order dated 22.03.2023, notices were issued to respondent Nos.2 and 3 under both processes and the lower Court record was called for.

3. In pursuance of the aforesaid order dated 22.03.2023, notices were issued to the respondent Nos.2 and 3 under both processes in time and Mr. Sadanand Paswan, Advocate is appearing on behalf of the respondent Nos.2 and 3. The lower Court record has already been received from the learned trial Court.

4. The prosecution's case in brief is that on 28.03.2009 at 08:40 A.M., accused Badri Narayan Gupta, his two sons alongwith other persons while abusing entered into the house of the informant and started beating the informant and his son Deepak with fists and slaps and they have also brought arms with them but could not use them. As per the F.I.R., the accused persons came with the intention to kill and hit with the butt of the pistol and also misbehaved with the wife and the daughter-in-law of the informant. The informant became unconscious and on arriving of neighbours the accused fled away while throwing flower pot etc. In this process their mobile phone was left at the spot. Later on, the informant and his son were taken to Gardanibagh Hospital, where the informant received five stiches

on his head and his son received four stiches on his head. The informant further stated that on 27.03.2009 at about 12.30 p.m. of day time, the accused persons had set the garbage on fire, which was lying within the compound wall situated on the northern side of the house of the informant, resulting the plastic pipes of the informant was being burnt The informant had informed the matter to the S.H.O., Jakkanpur verbally on 27.03.2009 at 3.13 p.m. acknowledging him about abusing of the informant by the accused.

5. On the basis of fardbeyan of the informant, Jakkanpur P.S. case No.68 of 2009 was registered and the police after investigation submitted charge sheet against the accused persons/respondent Nos.2 and 3. Thereafter cognizance was taken by the learned Jurisdictional Magistrate and then the case was committed to the Court of Sessions. Charges were framed against the respondent Nos.2 and 3, on which they pleaded not guilty and claimed to be tried.

6. During the trial, the prosecution examined as many as five witnesses, namely, Deepak Kumar (P.W.1), Manik Chandra (P.W.2), Mrinalini Ranjan (P.W.3), Ram Bilas Singh (P.W.4) and Dr. Anuradha (P.W.5). In support of its case, the prosecution has also produced exhibits as Ext.1 (signature of Manik Chand on

F.I.R.), Ext.2 (seizure list), Ext.3 and 3/1 (injury reports of Deepak and Manik Chand respectively). The defence has not produced any oral or documentary evidence in support of its case. Thereafter the statements of the respondent Nos.2 and 3 were recorded under Section 313 of the Cr.P.C. and after conclusion of the trial, the learned trial Court acquitted the respondent Nos.2 and 3.

7. Being aggrieved by the impugned judgment of acquittal dated 17.12.2022, the instant appeal has been filed by the informant.

8. In a criminal appeal against acquittal the appellate court has to examine: whether the finding of the learned court below is perverse and prima facie illegal at the stage of admission itself. Once the appellate court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court passed in the case of ***Surajpal Singh &Ors. v. The State*** reported in ***1952 SCR 193***, wherein it was observed that:

> *"13..the High Court has full power to review the evidence upon which the order of acquittal was founded. But it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."*

In the case of ***Ghurey Lal v. State of Uttar Pradesh*** reported in ***(2008) 10 SCC 450*** in para no. 75, the Hon'ble Supreme Court re-iterated the said view and observed,

> *"The trial Court has the advantage of watching the demeanour of the witnesses who have given evidence; therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable."*

Grounds considered by the learned Trial Court for acquittal are as under:

> (i) The testimonies of the eyewitnesses, namely PW 1, PW 2, and PW 3, are highly unsafe to rely on, as there are many contradictions regarding the material particulars that exist.

(ii) No independent witnesses were examined by the prosecution. All the prosecution witnesses are related witnesses and admittedly inimical to the appellants.

(iii) There is material improvement in the deposition of the informant (PW 2) when compared to his *Fardbeyan* (Ext.- 1) wherein general and omnibus allegation has been made.

(iv) The expert evidence of the doctor (PW 5) is in contradiction with the ocular evidence with regard to the injury sustained by the injured persons (PW 1 & PW 2) and the facts and the circumstances of this case thus falsifies the testimony of the witnesses with regard to the injuries.

(v) The medical report suggests simple injury to the injured persons but the manner in which the injury is caused highly doubtful.

(vi) As far as charges under section 354 IPC are concerned, merely general statement of witnesses that indecent act was done is not sufficient without specifying what indecent act accused persons did and who specifically did it.

(vii) The evidence of the Investigating Officer has failed to remove the shadows of doubt created by the prosecution witnesses and on the contrary has further brought out contradictions which clearly goes in favour of accused persons.

(viii) There is nothing in the deposition of Investigating Officer (PW 4) to show that the mobile which was seized belonged to the accused persons as claimed by the prosecution.

9. After hearing the arguments advanced by the learned counsel appearing for both the parties and upon examining the material available on the record, the following issues arise for consideration before this Court:

I. Whether the prosecution has proved beyond all reasonable doubt the offence under section 307 of I.P.C. as alleged against the accused persons?

II. Whether the prosecution has made out a case under section 354 of the IPC to hold the accused guilty?

III. Whether the statement of eye-witnesses namely PW 1, PW 2 and PW 3 can be relied upon in light of the material contradictions in their evidence?

IV. Whether the latches on the part of the prosecution, if any, be fatal for the prosecution in the present case?

10. Before we advert ourselves to the appreciation of evidence with reference to the first issue, it is imperative to state the essential ingredients outlined in Section 307 of the Code. The Hon'ble Supreme Court in the case of ***Parsuram Pandey v.***

State of Bihar, reported in ***(2004) 13 SCC 189***, in para 15 of the judgment has observed as following:

> *"15. To constitute an offence under Section 307 two ingredients of the offence must be present:*
>
> *(a) an intention of or knowledge relating to commission of murder; and*
>
> *(b) the doing of an act towards it.*
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> *For the purpose of Section 307 what is material is the intention or the knowledge and not the consequence of the actual act done for the purpose of carrying out the intention. The section clearly contemplates an act which is done with intention of causing death but which fails to bring about the intended consequence on account of intervening circumstances. The intention or knowledge of the accused must be such as is necessary to constitute murder. In the absence of intention or knowledge which is the necessary ingredient of Section 307, there can be no offence "of attempt to murder". Intent which is a state of mind cannot be proved by precise direct evidence, as a fact it can only be detected or inferred from other factors. Some of the relevant*

> *considerations may be the nature of the weapon used, the place where injuries were inflicted, the nature of the injuries and the circumstances in which the incident took place…"*

Now, in light of the aforementioned legal precedent, and after a careful examination of Section 307 of the Code, we shall assess the oral and documentary evidence available on record. The informant (PW 2) in his deposition stated that accused Vivek Prakash shot at him but bullet did not discharge. On the other hand, PW 1, in his deposition, stated that accused Vikash Prakash attempted to fire at him and accused Vivek Prakash attempted at PW 2, but the bullets did not discharge. Thus, there is contradiction in the testimony of PW 1 and PW 2. Additionally, PW 3 in her deposition has stated that accused Vivek Prakash had fired upon PW 2 but bullet did not discharge. However, on scrutinizing these depositions, we find that PW 2 and PW 3 despite being the eyewitness to alleged incident did not state in their testimonies that accused Vikash Prakash had shot fired upon PW 1. Furthermore, from perusal of the *Fardbeyan (Ext. 1),* it appears that PW 2 did not specify what arms the assailants were carrying nor did he provide the names of the assailants who attempted to fire the arms. Only during the

trial did the prosecution witnesses endeavour to address these noticeable gaps by identifying the accused individuals who were purportedly involved in the firing. These serious omissions cast doubt on the prosecution's claim. Even if we assume that the accused individuals did attempt to fire the pistols but it did not actually fire. Thus, it is a case of misfiring. In case of misfiring, Section 307 of I.P.C. does not apply. It can be safely gleaned from the bare reading of Section 307 of the Indian Penal Code in conjunction with Illustration (c), that the essential element for invoking the provisions of Section 307 IPC is the actual discharge of a projectile, such as a bullet or pellet, from the firearm. If no firing occurs, and there is no ejection of any bullet or pellet when a firearm is used by the accused, Section 307 IPC cannot be applied. This interpretation is reinforced by the Illustration (c) of Section 307 of I.P.C., which is as under:

> "(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of [the first paragraph of] this section."

So far as the injury on the vital part of the body is concerned, the records indicate that both the informant (PW 2)

and his son (PW 1) sustained injuries to their heads from the butt of the pistols. PW 2, in his testimony, has stated that as a result of the injury he fell unconscious and only regained his consciousness in the Hospital. However, upon scrutinizing the testimony of PW 5 (doctor) as well as the of injury reports (Ext. 3 & Ext. 3/1) of PW 1 and PW 2 respectively, it is apparent that the injuries caused to them were simple in nature. From perusal of Ext.3, it is amply clear that there is no injury found on the leg of P.W.1. Furthermore, PW 5 in her deposition has categorically stated in paragraphs 8 & 9 about the injury of PW 2, which is reproduced as hereunder:

> *"8. उनके शरीर पर ऐसा कोई चोट नहीं थी, जिससे वह बेहोश हो सकते थे /*
>
> *9. दो नंबर चोट skin deep है, उससे बेहोश होना संभव नहीं है / "*

Thus, it can be safely gleaned from these facts, that had the intent of the accused individuals been to kill PW 1 and PW 2, they would have inflicted more grievous injuries capable of causing death. Furthermore, as is apparent from the evidence of PW 5, she has emphatically stated that the nature of the injury to PW 2 was not even sufficient to induce unconsciousness. Therefore, it would be entirely misplaced to consider that the accused individuals had the culpable intent to cause the death of

the appellant.

Therefore, in the light of the factual matrix of the case and considering the legal position as discussed above, the issue no. I is decided in ***negative***.

11. With reference to the second issue at hand, we have carefully perused the evidence of PW 1, PW 2, PW 3 and PW 4 (I.O). We find that PW 3 has stated in her deposition that accused persons pulled the *pallu* of her *saree* and committed indecent acts with her and thrashed her on the floor. This is not in dispute that "*pulling the pallu of a saree*" may constitute an act that outrages the modesty of a woman under Section 354 I.P.C., however, it must be shown that the assault was made intending to outrage or knowing it to be likely to outrage the modesty of a woman. Intention and knowledge are inherently states of mind, but they are nevertheless factual elements that can be established. However, they cannot be directly proven; rather, they must be inferred from the specific circumstances of each case. If a quarrel takes place suddenly, it cannot reasonably be concluded that, during the ensuing scuffle between these disputing parties, the accused individuals had either the intention or the knowledge that they would thereby insult the modesty of a woman. Moreover, upon scrutinizing the

deposition of PW 3, along with the depositions of PW 1 and PW 2, it is apparent that which of the accused individuals allegedly committed the indecent act with PW 3 and Devwanti Devi (wife of PW 2) has not been stated either in the *Fardbeyan* or in the depositions. Furthermore, it is noteworthy that none of the eyewitnesses have specified what sort of the indecent act that was committed. Except for PW 3, no other eyewitnesses stated that accused individuals thrashed her on the floor. Moreover, PW 4 (I.O) in para 26 of his deposition, has clearly stated, which is reproduced as hereunder:

> *"26.सूचक के द्वारा दिए गए अपने पुन:ब्यान में किसी भी अभियुक्त का नाम लेकर के उस पर विशिष्ट अपराध कारित करने का आरोप नहीं लगाया गया है /साक्षी दिपक ने भी पुलिस के समक्ष दिए गए अपने ब्यान में किसी भी अभियुक्त पर उसका नाम लेकर विशिष्ट अपराध कार्य करने का आरोप नहीं लगाया है,अन्य साक्षियों ने भी पुलिस के समक्ष दिए गए अपने ब्यान में किसी भी अभियुक्त का नाम लेकर उस पर विशिष्ट अपराध कार्य करने काआरोप नहीं लगाया है /"*

Thus, from the testimony of PW 4, it is clear that the statements provided by the witnesses, no allegations of committing a specific crime have been made against any individual. Therefore, we are in agreement with the finding of the learned trial court that merely the general statement of the witnesses that indecent act was done is not sufficient to attract

Section 354 of IPC.

Thus, in the light of the facts and circumstances of the case, the issue no. II is decided in ***negative.***

12. In order to deal with the third issue, scrutinization of the ocular evidence of PW 1, PW 2 and PW 3 is necessary. PW 1, in his deposition, unequivocally stated that when he intervened to protect his father (PW 2), accused Vikash Prakash struck him on the head with the pistol butt, resulting in an injury. In sharp contradiction to such testimony of PW 1, it has been deposed by the PW 2 (informant) that both he and PW 1 were assaulted on the head by the accused Vivek Prakash with the pistol butt. Additionally, PW 3 deposed that accused Vivek Prakash assaulted PW 2 with the pistol butt on his head, while accused Vikash Prakash assaulted her husband (PW 1) on his head with the pistol butt. However, from perusal of the *Fardbeyan,* it is found that general and omnibus allegation of assault has been made against the accused individuals. It was only during the trial the prosecution witnesses disclosed the names of the accused individuals who had allegedly assaulted whom. Furthermore, it is found that PW 1 has specifically stated in paragraph 21 of his deposition that when he reached the scene after hearing the cries, by that time the accused persons have

fled away. Thus, the assertions of PW 1 sustaining injuries to his head and leg, and witnessing the assailants assaulting PW 2 and engaging in indecent and shameful acts with his mother and wife (PW 2) are highly inconsistent with the circumstances described. Notably, the injury report (Ext. 3) of PW 1 also indicates no injury on the leg as such. These inconsistencies naturally cast doubt on the overall credibility and truthfulness of these eyewitnesses. It is well established legal principle that the testimony of an eyewitness should be coherent and without significant inconsistencies or contradictions. It must stand firm, devoid of any blemish, ambiguity, uncertainty, or loopholes. Within the realm of criminal law, vague, contradictory, and uncorroborated statements cannot be relied upon, much less than forming the basis of conviction. At this juncture, we would gainfully rely on the decision rendered by the Hon'ble Supreme Court in the case of ***Sunil Kumar Shambhudayal Gupta and others versus State of Maharashtra*** reported in ***(2010) 13 SCC 657,*** wherein the Hon'ble Apex Court observed the following:

> *"The discrepancies in the evidence of eye witnesses, if found to be not minor in nature maybe a ground for disbelieving and discrediting that evidence. In such circumstances witnesses may not inspire confidence if the evidence is found to be in*

> *conflict and contradiction with the other evidences and the statement already recorded. In such a case, it cannot be held that the prosecution proved its case beyond reasonable doubt."*

In the light of the factual matrix of the case and considering the legal position, we are of the considered opinion that owing to the material discrepancies, the testimony of the eyewitnesses cannot be relied upon. Accordingly, the issue no. III, is decided in ***negative***.

13. Now adverting to the fourth issue as formulated above, this Court's attention was drawn to the prosecution's failure to examine independent witnesses. It is evident from the records that the appellant did not have harmonious or cordial relations with the accused persons, making examination of the independent witnesses crucial. The Investigating Officer (PW 4) did not state in his deposition whether he followed the proper procedure prescribed under the law to take the statement of the independent witnesses who had gathered there within few minutes of the incident. Further, it is found that PW 4 has categorically stated in para 16 of his deposition that he did not proceed to the said house of the appellant, where allegedly the garbage was thrown by the accused persons. Moreover, PW 4

did not make any effort to investigate the allegation of attempted firing by the accused, nor did he record the informant's restatement regarding the same in his case diary. Most importantly, there is nothing in the record to indicate that the Investigating Officer made efforts to ascertain the owner of the phone seized vide seizure memo (Ext. 2). As such, the causative link required to connect the appellant to the present offence is found to be missing. Furthermore, it is found that there was delay in sending the copy of FIR to the court and as such no explanation whatsoever has been offered. Such conduct, on part of the Investigating Officer, speaks volumes about the latches on his part. The investigating police primarily serve as guardians of individuals' liberty. Entrusted with the responsibility of handling criminal investigations, they must conduct themselves in alignment with principles such as equity, justice, good conscience, reasonableness, non-arbitrariness, fairness, and in accordance with the fundamental principles of natural justice. Where the default on part of the investigating police is so flagrant that it speaks volumes of an irresponsible attitude with utter disregard to established cannons of criminal procedure, the same cannot be brushed aside.

In the case of ***Sidhartha Vashisht @ Manu Sharma***

versus State (NCT of Delhi) reported in ***(2010) 6 SCC 1***, the Hon'ble Supreme Court observed that:

> *"The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance to the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India."*

Accordingly, issue no. IV is decided in ***affirmative***.

14. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case if the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the appellate court must not take a different view only because another view is possible. It is

because the trial Court has the privilege of seeing the demeanour of witnesses and therefore, its decision must not be upset in absence of strong and compelling grounds.

15. In light of the discussions made above, we are of the considered opinion that the trial court has taken a plausible view based on the evidence available on the record. The view taken by the trial court cannot be held to be perverse. Under such circumstance, no case for interference with the impugned judgment is made out.

16. Accordingly, the appeal against the judgment of acquittal dated 17.12.2022 passed by Shri Rajvijay Singh, Additional Sessions Judge XXI, Patna in Sessions Trial No.304 of 2012, CIS No.7087 of 2014, is dismissed at the admission stage itself.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

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