IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.875 of 2023

Arising Out of PS. Case No.-427 Year-2012 Thana- BARACHATTI District- Gaya

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Arti Kumari D/o Badhan Mandal R/o Village - Bumuar, P.S. - Mohanpur, District-Gaya.

... ... Appellant

Versus

1. The State of Bihar
2. Subedar Yadav S/o Late Badho Yadav
3. Mukesh Yadav S/o Surendra Yadav
4. Yogesh Yadav S/o Surendra Yadav

Respondent Nos. 2 to 4 are the resident of Village-Bumuar, P.S.-Mohanpur, District-Gaya.

... ... Respondents

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Appearance :

For the Appellant : Mr. Yugal Kishore, Advocate
Mr. J.P. Singh, Advocate

For the Respondents-State: Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 11-12-2023

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 15.05.2023 rendered by learned Special Judge, SC/ST (POA) Act, Gaya in G.R. No.1220 of 2012, SC/ST Trial No.101 of 2015 arising out of Barachatti (Mohanpur) P.S. Case No.427 of 2012 for the offences punishable under Sections 302 read with 34 of the Indian Penal Code (for short 'IPC') as well as Section

3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as 'the Act') whereby the present prime respondents have been acquitted from the charges levelled against them.

2. Heard Mr. Yugal Kishore, learned advocate for the appellant-informant and Mr. Sujit Kumar Singh, learned APP appearing on behalf of the respondent-State.

3. The prosecution story, in brief, is as under:-

> One Sahdev Manjhi gave his *fardbeyan* that the marriage of his daughter Futuk was solemnized 20 years back with Badhan Manjhi of village-Bumuuar. Futuk has two sons and three daughters. Her eldest daughter aged about 15 years used to study at Bodhgaya. Two sons and daughters used to live with Futuk in Bamuwar. On 06.10.2012 at about 11 pm, Subedar entered in the house of his daughter and set his daughter Futukwa at fire by pouring kerosene and run away. When his daughter raised alarm, his *natni* namely, Arti Kumari started shouting. Subedar again came and extinguished the fire and went away. After sometime, Nephews of Subedar namely, Yogesh and Mukesh came and took her at the doors of Subedar. Thereafter, Subedar took Futuk to ANMCH, Gaya for treatment

on his vehicles. He further stated that he was informed by his *natni* on telephone. His *natni* is the eye witness of the incident. He visited ANMCH, Gaya. On 07.10.2012 at about 11 am his daughter Futuk and Natni told him the whole incident and in the meanwhile his daughter died in the course of treatment. He claimed that his daughter Futuk was set at fire pouring kerosene by Subedar owing to old enmity due to which his daughter Futuk died.

4. After the *fardbeyan* of the informant was recorded, the formal FIR came to be registered before the concerned police station 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 302 read with section 34 of the Indian Penal Code (in short ‘IPC) as well as Section 3(1)(v) of the Act.

5. Before the Trial Court, the prosecution had examined eleven prosecution witnesses, whereas the defence had examined two witnesses.

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

7. 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-1, who is the mother of the deceased, is the eyewitness to the occurrence and though she has supported the case of the prosecution, the Trial Court has not properly considered her deposition and thereby passed the impugned judgment. It is also submitted that other prosecution witnesses have also supported the case of the prosecution, despite which, the Trial Court has recorded the order of acquittal. Learned advocate for the appellant, at this stage, has referred to the deposition given by PW-8 Dr. P.N. Sinha, who has conducted the postmortem on the dead body of the deceased. It is pointed out that the deceased sustained 85% burn injuries, as a result of which, she died. Thus, 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 therefore urged that

the present acquittal appeal be allowed and, thereby, the impugned order passed by the concerned Trial Court be quashed and set aside.

8. 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.

9. We have considered the submissions canvassed by the learned counsel appearing for the appellant as well as learned APP. We have also perused the copy of the deposition of the prosecution witnesses. Learned counsel for the appellant has provided the typed copy of the deposition of the witnesses. From the record, it would emerge that PW-1 is the mother of the deceased and as per the case of the prosecution, she is the eye-witness to the occurrence, whereas PW-2 to PW-7 are the near relatives of the deceased and it is the case of the prosecution that the aforesaid witnesses have supported the case of the prosecution. PW-8 is the doctor who had conducted the postmortem on the dead body of the deceased, whereas PW-9 and PW-10 have not supported the case of the prosecution. PW-

11 is the informant and grand-father of the deceased. The said witness has not supported the case of the prosecution. Despite which, he was not declared hostile. It is not in dispute that the prosecution has failed to examine the Investigating Officer, who has carried out the investigation.

10. As observed hereinabove, we have perused the deposition of the prosecution witnesses. From which, it is revealed that there are major contradictions in the deposition of the prosecution witnesses. It is pertinent to note that though the occurrence in question took place on 06.10.2012 at about 11:00 PM, the FIR was lodged after lapse of a period of two days. Initially, the victim-injured was admitted in the hospital, where she survived for a period of two days, despite which, her dying declaration has not been recorded by the Executive Magistrate nor her statement was recorded by the police. It is specific case of the prosecution witnesses that "Furtuwa came crying saying Subedar is running setting her at fire". Thus, from the deposition of the said prosecution witnesses i.e., PW-2 to PW-7, the victim-injured was in a position to give her statement despite which, her statement was not recorded by the concerned police. There is no evidence on record to show that the injured was not fit to give her statement when she was admitted in the hospital. The

prosecution has also failed to produce the medical papers of the victim.

11. From the deposition given by PW-8, the doctor, who conducted the postmortem on the body of the deceased, it is further revealed that in the cross-examination, the said witness has specifically stated that it may be possible to accidental burn. The said witness further stated that there was no other smell except the smell of ointment. Thus, from the aforesaid deposition of the doctor, it is clear that smell of kerosene was not found from the dead body of the deceased. At this stage, it is also pertinent to note that the *panchnama* of the place of occurrence has also not been produced before the court nor there is *panchanama* seizure of the clothes of the deceased placed on record. It is specific case of the prosecution that the private respondents poured kerosene on the deceased and, thereafter, set her on fire. However, from the record produced before the concerned Trial Court, the prosecution has failed to point out any material that kerosene was found at the place of occurrence or any smell of kerosene was found from the cloth of the deceased.

12. We have also gone through the reasoning recorded by the Trial Court and we are 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.

13. At this stage, we 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."

14. 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.

15. 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, and examined, we are 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.

16. Accordingly, the appeal is dismissed.

(Vipul M. Pancholi, J.)

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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