

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.108 of 2021**

Arising Out of PS. Case No.-59 Year-1997 Thana- ARA MUFFSIL District- Bhojpur

Brij Bihari Ray Son of Late Dudh Nath Rai, Resident of Village- Chanda,  
Post Office- Gajrajganj, P.S.- Ara Mufassil, District- Bhojpur at Ara.

... .. Appellant/s

Versus

1. The State of Bihar
2. Manjharo Devi Wife of Sri Niwash Ray, Resident of Village- Chanda, P.S.-  
Ara Mufassil, Distt.- Bhojpur
3. Dularo Devi Wife of Late Saroj Ray, Resident of Village- Chanda, P.S.- Ara  
Mufassil, Distt.- Bhojpur
4. Phool Kumari Devi Wife of Nandji Ray, Resident of Village- Chanda, P.S.-  
Ara Mufassil, Distt.- Bhojpur

... .. Respondent/s

**Appearance :**

For the Appellant/s : Mr. Tej Pratap Singh, Advocate  
For the Respondent/s : Mr. A.G.

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD  
and  
HONOURABLE MR. JUSTICE JITENDRA KUMAR  
ORAL JUDGMENT  
(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)**

**Date : 12-11-2024**

The present appeal has been preferred against the judgment dated 16.01.2020 passed by learned Fast Track Court-II, Bhojpur at Ara, in Sessions Trial No. 341 of 1997, arising out of Ara Mufassil P.S. Case No. 59 of 1997, whereby the respondent Nos. 2 to 4 have been acquitted of all the charges as framed under Sections 147, 148, 149, 307 and 302 of the Indian Penal Code.

**Prosecution Case**

2. The prosecution case as emerging from the



*fardbeyan* of the informant/Munnilal Rai to Police Officer of Ara, Muffasil Police Station on 12.05.1997 at 7:30 AM at his door is that yesterday dated 11.05.1997 at 7:30 AM, there was altercation with Munishankar Rai and Srinivas Rai @ Malik Rai. In course of this altercation, Srinivas Rai, Nand Ji Rai and Anil Rai, who were carrying lathies in their hands, and Ashok Rai, who was carrying pieces of bricks, assaulted Munishankar Rai and Shivshankar Rai as well as Dudhnath Rai and badly injured them. All three injured persons got unconscious and fell down at their door. On raising *hulla*, when co-villagers Ganesh Yadav, Bilash Yadav and ladies of his family were taking the injured persons to hospital for their treatment, they were again assaulted by Rita Kumari, Ful Kumari, Dulari Devi, Jhanjharu Devi by pieces of bricks from the roof of the house of Srinivas, causing injury on the chest of Dudhnath Rai and oozing blood from his mouth. Munishankar Rai and Shivshankar Rai also got injury on their head. Those persons were also taken to Sadar Hospital, Ara. The condition of Dudhnath Rai and Munishankar Rai was found to be serious by the Doctor at Ara Hospital and hence, they were referred to Patna and were taken to Patna for treatment. Soon thereafter, it was informed by Gopal Rai that Dudhnath Rai had died. It has been also mentioned by the



informant that at the time of altercation regarding plucking of mangoes at 7:30 AM on 10.05.1997, Dudhnath Rai was not present at home. However, the matter was settled. But when Dudhnath Rai came back home next day, the occurrence had taken place on account of plucking of mangoes.

### **Factual Background**

3. On the basis of the *fardebayan*, Ara Muffasil P.S. Case No. 59 of 1997 was registered on 12.05.1997 against eight accused persons including the respondent Nos. 2 to 4 for the offences punishable under Sections 147, 148, 149, 323, 337 and 302 of the Indian Penal Code.

4. After investigation, charge sheet was submitted and cognizance was taken and thereafter, the case was committed to the Court of Sessions. Hence, Sessions Trial bearing No. 341 of 1997 commenced. Charges were framed under Sections 307/149, 302/149 and Section 147 of the Indian Penal Code and against accused Nand Ji Rai and additional charge under Sections 148 and 302 of the Indian Penal Code was also framed. During trial, three accused persons, namely, Nand Ji Rai, Sri Nivas Rai and Dinanath Rai died and hence, trial was conducted only against respondent Nos. 2 to 4.

5. During trial, the following eight witnesses were



examined on behalf of the prosecution:

- (i) **P.W. 1** :- Munishankar Rai
- (ii) **P.W.2** :- Rameshwar Rai
- (iii) **P.W. 3** :- Munnilal Rai (Informant)
- (iv) **P.W. 4** :- Sunita Devi
- (v) **P.W. 5** :- Singhasani Devi
- (vi) **P.W. 6** :- Brij Bihari Rai
- (vii) **P.W. 7** :- Sheoshankar Rai
- (viii) **P.W.8** :- Manju Singh (I.O.)

6. The prosecution also brought on record the following documentary evidence:

- (i) **Ext.-1**- Signature of Munishankar Rai on the fardbeyan
- (ii) **Ext.-1/1**- Signature of Munilal Rai on the fardbeyan
- (iii) **Ext.-1/2**- Signature of Shivshankar Rai on statement given to the Danapur Police Station
- (iv) **Ext.-2**- Signature of Brij Bihari Ram on the inquest report
- (v) **Ext.-2/1**- Signature of Ram Badan Singh on the inquest report
- (vi) **Ext.-3**- Complete fardbeyan
- (vii) **Ext.-4**- F.I.R.
- (viii) **Ext.-5**- Seizure List.

7. Ext.-1 to 2 were exhibited with objection, whereas Ext.-3, 4 and 5 were exhibited without objection.

**Statements under Section 313 Cr.PC.**

8. After closure of the prosecution evidence, respondent Nos. 2 to 4/Accused were examined under Section 313 Cr.PC, during which they were confronted with incriminating circumstances which had come in the prosecution



evidence, so as to afford them opportunity to explain those circumstances. During the examination, they admitted that they had heard the evidence of the prosecution witnesses against them, but they did not explain any circumstances though they denied every charge and claimed to be innocent.

9. No evidence, oral or documentary, has been adduced by the Accused/Respondent No.2 to 4.

#### **Finding of the Trial Court**

10. Learned Trial Court after appreciating the evidence on record and considering the submissions of the parties passed the impugned judgment whereby respondent Nos. 2 to 4 have been acquitted of all the charges finding material contradictions in the statements of the prosecution witnesses.

11. We have heard learned counsel for the appellant, learned APP for the State and learned counsel for the respondent Nos. 2 to 4.

#### **Submissions of the Parties**

12. Learned counsel for the appellant has submitted that learned Trial Court has failed to properly appreciate the evidence on record and erroneously acquitted the respondent Nos. 2 to 4 of all the charges.

13. However, learned APP for the State and learned



counsel for respondent Nos. 2 to 4 vehemently opposed the prayer of the appellant submitting that there is no illegality or infirmity in the impugned judgment. They have further submitted that the view taken by learned Trial Court is based on proper appreciation of law and the evidence on record and there is no reason for interference by this Court in the impugned judgment. It is settled principle of law that in an appeal against acquittal, if two views are possible as per the evidence on record and the Trial Court taking one view, the Appellate Court is not required to supplant the view of the Trial Court by another view unless there is perversity of finding of law and fact and needless to say that there is no such perversity in the judgment.

**14.** Substantiating their submissions, they have submitted that the prosecution witnesses are not reliable in view of the material contradictions in their statements. Moreover, the I.O. of the case has not been examined, causing prejudice to the Accused/Respondent Nos.2 to 4. They have also submitted that the prosecution has also failed to prove the homicidal death of the victim at the hands of the Accused/Respondent Nos.2 to 4, because the nature of the injury allegedly caused by the Respondent Nos.2 to 4 and sufficiency of such injury to cause death of the victim have not been proved by the prosecution,



because the doctor who conducted the autopsy on the deceased has not been examined. The postmortem or any other injury report has not been even brought on record even by a formal witness. Hence, they have submitted that the Respondent Nos.2 to 4/Accused have been rightly acquitted by learned Trial Court of all the charges framed against them.

15. We perused the materials on record and considered the submissions advanced by the parties.

**Principles applicable to the appeals against acquittal**

16. Before we proceed to consider the rival submissions of the parties, it would be pertinent to note that in case of appeal against acquittal, the principles required to be applied by the Appellate Court are drastically different from those which are applied in case of appeal against conviction.

17. In **Harbans Singh v. State of Punjab, 1961 SCC OnLine SC 40, Hon'ble Supreme Court** has held that a court must examine not only questions of law and fact in all their aspects but must also closely and carefully examine the reasons which impelled the lower courts to acquit the accused and should interfere only if satisfied, after such examination that the conclusion reached by the lower court that the guilt of the person has not been proved is unreasonable.



**18. In Chandrappa Vs. State of Karnataka, (2007) 4 SCC 415, Hon'ble Supreme Court** after referring to several authorities has held that an appellate court, must bear in mind that in case of acquittal, the presumption of his innocence is reinforced, reaffirmed and strengthened by the trial court and 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.

**19. In Murugesan Vs. State, (2012) 10 SCC 383, Hon'ble Supreme Court** has held that so long as the view taken by the Trial Court is not impossible to be arrived at and reasons therefor, relating to the evidence and materials on record, are disclosed any further scrutiny in exercise of the power under Section 378 Cr.PC was not called for.

**20. In H.D. Sundara v. State of Karnataka, (2023) 9 SCC 581, Hon'ble Supreme Court** summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows:

**“8.1.** The acquittal of the accused further strengthens the presumption of innocence;

**8.2.** The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence;

**8.3.** The appellate court, while deciding an appeal



against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

**8.4.** If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

**8.5.** The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

(Emphasis Supplied)

**21. In Babu Sahebagouda Rudragoudar Vs. State of Karnataka, 2024 SCC Online SC 561, Hon’ble Supreme Court,** after referring to relevant precedents, has observed as follows:

“39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the **following principles:**

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”

(Emphasis Supplied)



**Appreciation of the Evidence**

22. From perusal of the evidence on record, we find that the main allegation of causing injury by *lathi* is against the Accused persons who have already died during the course of the trial. We further find that the only allegation against the Accused/Respondent Nos.2 to 4 is that they had thrown pieces of bricks on the injured persons.

23. But we find that there are material contradictions in the evidence of the prosecution witnesses on material points, like genesis and manner of the occurrence. The informant who has been examined as P.W.-3 has deposed in his examination-in-chief that there is land dispute between the Accused and the prosecution side and on account of which the occurrence had taken place. He has denied that any altercation in regard to plucking of mango had taken place, whereas the informant in his fardbeyan has stated that the occurrence had taken place on account of altercation in connection with plucking of mangoes.

24. We further find that the informant in his fardbeyan has not stated that Dinanath Rai was exhorting his son to kill the deceased, whereas in his examination-in-chief he has deposed that Dinanath Rai was exhorting his son to kill the



deceased and thereafter, he caught hold of the deceased Dudhnath and thereafter assaulted the deceased by *sabal* (iron rod).

25. We further find that in the fardbeyan, the informant has never stated about any assault by any lady Accused by means of lathi. But in his examination-in-chief, he has deposed that the mother of Anil had also assaulted Muni Shankar.

26. We further find that in regard to allegation against the Accused/Respondent Nos. 2 to 4, the informant has stated in his fardbeyan that they had thrown pieces of bricks from the roof of a house. But in his examination-in-chief he has deposed that the brick batting was being done by the Respondent Nos.2 to 4 from a distance of five hands.

27. We further find that P.W.-2, Rameshwar Rai has only deposed that Respondent Nos.2 to 4 were throwing *dhela* (pieces of soil) but he has not deposed anything about who got injured and what injuries were caused by such assault.

28. We further find that P.W.-7, Sheoshankar Rai has only deposed that the ladies/Respondent No.2 to 4 were having pieces of bricks in their hands. He has not deposed that



they were throwing such pieces of bricks on the injured.

**29.** We further find that the I.O could not turn up for his full cross-examination. At the stage of cross-examination, the I.O, P.W.-8 did not turn up for further cross-examination. Hence, there is no evidentiary value of her incomplete evidence.

**30.** Above all, we find that the doctor who conducted the autopsy of the deceased has not been examined. Even no formal witness has been examined to bring the postmortem report or any injury report of the deceased on record by making such reports as exhibits. For want of evidence of medical expert regarding nature of injury and the connection between the injury and the death of the deceased, homicidal death of the victim at the hands of Respondent Nos. 2 to 4 could not be proved. Oral evidence of general witnesses is not sufficient to prove the homicidal death on account of the alleged assault. It is only by a witness, expert in medical science, can opine regarding the nature of the injury and whether the death of the deceased was caused by such injury. But there is no such medical evidence on record and hence, the prosecution has failed to prove beyond reasonable doubts the homicidal death on account of the alleged injury.



31. We also find that there is enmity between the prosecution and the Accused side and on account of such enmity, false implication of Respondent Nos.2 to 4 cannot be ruled out.

**Finding of this Court/Conclusion**

32. Considering the aforesaid facts and circumstances, the view taken by learned Trial Court that the prosecution has failed to prove its case against Respondent Nos.2 to 4 beyond reasonable doubts is reasonable and possible view. Therefore, there is no requirement to interfere in the impugned judgment of acquittal for want of any illegality or infirmity in it.

33. The appeal is, accordingly, dismissed upholding the impugned judgment.

34. The records of the case be returned to the Trial Court forthwith.

35. Interlocutory application/s, if any, also stand disposed of.

**(Rajeev Ranjan Prasad, J.)**

**(Jitendra Kumar, J.)**

Ravishankar/Shoaib

AFR/NAFR	AFR
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