

(2024) 12 PAT CK 1249
In the Patna High Court
Case No : Criminal Appeal No.1348 Of 2024

Indradeo yadav

APPELLANT

Vs

State of Bihar And Others

RESPONDENT

Date of Decision : 03-12-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 161, 209, 372
Indian Penal Code, 1860 — Section 147, 148, 149, 341, 323, 324, 307, 504
Arms Act, 1959 — Section 27

Citation : (2024) 12 PAT CK 1249

Hon'ble Judges : Vipul M. Pancholi, J; Anshuman, J

Bench : Division Bench

Advocate : Ranjan Kumar Jha, Mirtunjay Kumar Mishra, Binod Bihari Singh

Final Decision : Dismissed

Judgement

Vipul M. Pancholi, J

1. Heard Mr. Ranjan Kumar Jha, learned Advocate assisted by Mr. Mirtunjay Kumar, learned counsel for the appellant/ informant and Mr. Binod Bihari Singh, learned A.P.P for the Respondent-State.

2. The present appeal has been filed on behalf of the appellant/original informant/ victim under Section 372 of the Code of Criminal Procedure, 1973, against the order of acquittal dated 07.10.2024 rendered by the learned Additional Sessions Judge XIV, Bhagalpur, in Sessions Trial No. 503 of 2017, arising out of Jagdishpur P.S. Case No. 219 of 2014, whereby the present Respondent No. 2/Original accused has been acquitted.

3. The prosecution story, in short, based on the fardbeyan of the informant is that on 17.08.2014 at about 09.30 AM, the informant, his brothers Sagar Yadav, Indradeo Yadav, Bilash Yadav, Kailash Yadav, Budhan Yadav, and Sanjay Yadav were present in their field for planting paddy crop. In the meanwhile, the FIR named accused persons Binno Yadav, Inno Yadav, Horil Yadav, Jajjan Yadav, Billo

Yadav, Pankaj Yadav, Hapoo Yadav, Palati Yadav, Matu Yadav and Dhanji Yadav armed with deadly weapons reached there and asked them not to plant paddy in the said field, upon which the informant told that they will stop their planting work, but will call for administration and according to administration they will act, whereafter, the accused persons started abusing and assaulting them and also restrained them from planting. It is further alleged that Binno Yadav and Inno Yadav assaulted the informant with butt of musket on his head as a result whereof his head was ruptured. Sajjan Yadav and Pankaj Yadav assaulted Budhan Yadav with butt of pistol on his head causing rupture injury on his head. It is further alleged that Hippo Yadav assaulted Budhan Yadav on his back with sharp edged Khanti. It is further alleged that Pankaj Yadav assaulted Bablu Yadav with lathi and injured him. It is further alleged that Binno Yadav and Inno Yadav made firing with intention to kill them, upon which the informant and others hid themselves by laying on ground. It is further alleged that accused persons assaulted the members of their family and caused injuries to them. On hulla, that police is coming, the accused persons fled away. The reason of occurrence is land dispute. On the basis of fardbeyan of the informant, Jagdishpur PS. Case No 219/2014 came to be registered, on 17.08.2014, for the offences punishable under Sections 147, 148, 149, 341, 323, 324, 307, 504 of the Indian Penal Code (IPC) and Section 27 of Arms Act against all the named accused persons.

4. Upon completion of investigation, charge-sheet was submitted under Sections 147, 148, 149, 341, 323, 324, 307, 504 of the IPC and Section 27 of Arms Act and on the basis of charge-sheet dated 31.01.2016, cognizance was taken under Sections 147, 148, 149, 341, 323, 324, 307, 504 of the IPC and Section 27 of Arms Act against the accused persons.

5. The charges were framed on 10.05 2018 against the accused persons, namely, Inno Yadav, Horil Yadav, Bilash Yadav @ Billo, Jajjan Yadav, Bhairo Yadav (appellant herein), Patuli Yadav, Natu Yadav, Dhauji Yadav and Pankaj Yadav under Sections 147, 148, 341, 323, 324 of the IPC and under Section 307/149 IPC. The charges were read over and explained to the accused persons in Hindi, to which they have pleaded not guilty and claimed to be tried.

6. The concerned Magistrate committed the case under Section 209 of the Code to the concerned Sessions Court as the same was exclusively triable by the Court of Sessions.

7. Before the Sessions Court, the prosecution examined seven witnesses and defence has also examined one witness.

8. After the conclusion of the trial, the trial Court acquitted the private respondent/accused and, therefore, the informant has preferred the present appeal.

9. Learned counsel for the present appellant/original informant/victim has supplied the copy of the deposition of the prosecution witnesses as well as other relevant documents. Learned counsel referred the same, and thereafter,

contended that all the prosecution witnesses, including two injured witnesses, specifically deposed before the Trial Court that respondent No. 2 herein is the order giver and when the order was given by respondent No. 2 to kill the concerned persons, firing was made by the other accused, in which two of the prosecution witnesses sustained injuries. It is further submitted that the Trial Court has convicted eight accused for commission of the offence punishable under Section 307 read with Sections 147, 148 and 149 of the IPC. However, the Trial Court has acquitted the present Respondent No.2, and therefore, the appellant has filed the present appeal against the order of acquittal passed against Respondent No. 2 herein. It is contended that there is ample material on record from which it could be said that Respondent No. 2 is also involved in the alleged incident. Learned counsel further submits that even two injured witnesses have also specifically deposed before the Court and levelled allegation against Respondent No. 2 that he gave the order, upon which the other accused started firing, in which they sustained injury. Learned counsel, therefore, urged that the present appeal be admitted and thereafter the order of acquittal passed by the Trial Court against the Respondent No. 2 be quashed and set aside and Respondent No. 2 be convicted.

10. On the other hand, learned APP has fairly submitted that till date, the State has not preferred any appeal against the order of acquittal passed by the Trial Court against Respondent No. 2. However, learned APP submits that looking to the facts and circumstances of the present case, this Court may pass appropriate order.

11. We have gone through the material placed on record as well as the deposition of the prosecution witnesses and the material supplied by learned counsel for the appellant. From the material placed on record, it would emerge that as per the case of the prosecution, the incident took place at about 9:30 AM on 17.08.2014 and the FIR was lodged by PW-2. However, it is not in dispute that, in the FIR, the informant did not name Respondent No. 2 and he had levelled allegation against all other accused who are named in the said FIR. It would further reveal from the record that PW-2 has deposed before the Court in which he had leveled allegation against the present Respondent No. 2 that Respondent No. 2 commanded "Goli Maaro" and thereafter the other accused assaulted with the weapons which they were carrying. It would further reveal from his deposition that PW-2 has admitted that he has prior enmity with the Respondent No. 2 [Bhairo Yadav (Mukhiya)].

12. It would further reveal from the record that PW-6, the Investigating Officer, Birendra Kumar Singh, has also deposed before the court, wherein he has admitted that he had recorded the statement of independent witnesses, namely, Amit Yadav, Pappu Yadav and Arjun Yadav and the said persons, in their statement given under Section 161 of the Code of Criminal Procedure, has specifically stated that Bhairao Yadav has been falsely implicated by Indradeo Yadav due to prior enmity. At this stage, it is pertinent to note that though

statements of aforesaid independent witnesses has been recorded, the prosecution has failed to examine the independent witnesses.

13. It would further reveal that the informant and the witnesses, in their further statement given before the police, have implicated Respondent No. 2 herein. Thus, the plea taken by Respondent No. 2 before the Trial Court about his false implication was accepted by the Trial Court. It has been specifically observed by the Trial Court that doubt has been raised with regard to presence of Respondent No.2 at the place of occurrence and giving order to kill the persons who were present at the place of occurrence.

14. At this stage, it is pertinent to observe that the Trial Court has convicted all the other eight accused for commission of the offence punishable under Section 307 read with Sections 147, 148 and 149 of the IPC. However, when the prosecution had failed to prove the case against Respondent No. 2 beyond reasonable doubt, Trial Court thought it fit to acquit him for the charges leveled against him.

15. Having gone through the deposition of the prosecution witnesses and the other material, we are of the view that the view taken by the Trial Court, while acquitting Respondent No. 2, is a plausible view.

16. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of Chandrappa and Ors. Vs. State of Karnataka, reported in (2007) 4 SCC 415, wherein it has been 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, reappraise 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.”

17. From the aforesaid observation made by the Hon’ble Supreme Court, it can be said that if two reasonable conclusions are possible on the basis of the evidence placed on record, the Appellate Court should not disturb the finding of acquittal recorded by the Trial Court and the Appellate Court 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 principles of criminal jurisprudence that every person shall be 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.

18. Keeping in view of the aforesaid decision rendered by the Hon’ble Supreme Court, if the facts of the present case and the evidence led by the prosecution, as observed herein above, are examined, we are of the view that the Trial Court has not committed any error while passing the order of acquittal against Respondent No. 2, and therefore, in the present acquittal appeal filed by the informant under Section 372 of the Code of Criminal Procedure, 1973, no interference is required.

19. Accordingly, the present appeal stands dismissed.