IN THE HIGH COURT OF JHARKHAND AT RANCHI

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Acquittal Appeal (D.B.) No. 4 of 2019

(Arising out of judgment of acquittal dated 24.03.2018, passed by learned Additional Sessions Judge-IV Giridih in S.T. No.368 of 2015)

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Kedar Yadav, aged about 61 years, S/o Late Horil Yadav, R/o Village-Udmandari, PO & PS-Dhanwar, Dist-Giridih.

….. Appellant

Versus

1. State of Jharkhand
2. Hemraj Yadav, aged about 55 years, S/o Late Barhan Yadav, R/o Village-Udmandari, PO & PS-Dhanwar, Dist-Giridih.

…. Respondent

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For the Appellant(s) : Mr. Malay Chakrapani, Advocate
Mr. H.K. Shikarwar, Advocate
For the Respondent(s) : Mr. Saket Kumar, Advocate
Mr. Shree Niwas Roy, Advocate

PRESENT
Sri Ananda Sen, J.
Sri Pradeep Kumar Srivastava, J.
J U D G M E N T

30.09.2026
***By Court.*:**

This acquittal appeal is preferred against the judgment of acquittal passed in S.T. No.368 of 2015 passed by Additional Sessions Judge-IV, Giridih, whereby and whereunder the respondent No.2 has been acquitted.

2. As per the FIR filed on 05.08.2015, at about 3.00 p.m. the informant (Kedar Yadav) and his brother-Suresh Yadav, were returning home after working in their field. When his brother reached near his house, all of sudden accused persons, allegedly armed with axes, iron rods, lathis, bricks and stones, assaulted him with a premeditated plan due to which Suresh Yadav fell down and was further assaulted, resulting in his death at the spot. When the informant raised an alarm and attempted to save his brother, firing took place, after which the accused persons fled. The alleged motive was a land dispute.

3. The police on investigation, submitted chargesheet against the accused-persons, including respondent No.2 namely, Hemraj Yadav. Thereafter cognizance was taken and case was committed to the Court of Sessions where charge was framed u/s 147, 148, 341/149, 323/149/, 324/149/, 337/149 and 302/149 of IPC as well as under Section 27 of the Arms Act.

4. Altogether nine witnesses have been examined in this case by the prosecution, who are as follows:-

(i) P.W.-1 Gouri Shankar Yadav
(ii) P.W.-2 Prayag Singh Yadav
(iii) P.W.-3 Manoj Yadav
(iv) P.W.-4 Purshottam Yadav
(v) P.W.-5 Anita Devi
(vi) P.W.-6 Chhotu Yadav
(vii)P.W.-7 Dr. Pradeep Baitha
(viii) P.W.-8 Kedar Yadav (Appellant)
(xi)P.W.-9 Niraj Kumar Singh

5. The following documentary evidences were exhibited by the prosecution:-

Exhibit-1- signature of Gauri Shankar Yadav upon carbon copy of the inquest report.
Exhibit-1/1 signature of Prayag Singh Yadav upon carbon copy of the inquest report.
Exhibit- 2 P.M. report.
Exhibit-3 written report
Exhibit-3/1 endorsement on written report
Exhibit-4 formal FIR
Exhibit-5 carbon copy of the original inquest report.
Marks Ext. X to X/20 are the photographs of the deceased.

6. Learned counsel for the appellant submits that the Trial Court has not properly appreciated the evidence on record and acquitted the respondent No.2. He submits that there are many eye-witnesses to the occurrence like PW-1, PW-2, PW-3, PW-4 and PW-5 who have taken name of the respondent No.2. These witnesses have stated that the respondent No.2 was also present there armed with lathi who also assaulted the deceased. He submits that the trial Court has also failed to appreciate that the oral evidence is corroborated by the oral evidence. He further

submits that the ingredient of Section 149 of IPC was also proved by the evidence adduced by the prosecution.

7. Learned counsel for the State submits that the trial Court has properly appreciated the evidence of the prosecution and came to the conclusion that the respondent No.2 has not assaulted the deceased and giving benefit of doubt has acquitted the respondent No.2 from the charges. Thus, the judgment passed by the Trial Court cannot be interfered with.

8. Heard, learned counsel for the appellant, learned counsel for the State and learned counsel for the respondent and we have gone through the impugned judgment and records.

9. This is an appeal against acquittal. It is well settled principal of law that when two views are possible the acquittal should not be interfered with.

10. The Hon'ble Supreme Court in the case of ***Mallappa v. State of Karnataka***, reported in ***(2024) 3 SCC 544***, at paras 26 and 27 has held as under:-

> *"26. No doubt, an order of acquittal is open to appeal and there is no quarrel about that. It is also beyond doubt that in the exercise of appellate powers, there is no inhibition on the High Court to reappreciate or re-visit the evidence on record. However, the power of the High Court to reappreciate the evidence is a qualified power, especially when the order under challenge is of acquittal. The first and foremost question to be asked is whether the trial court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the trial court is illegal or affected by an error of law or fact. If not, the third consideration is whether the view taken by the trial court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.*
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> *27. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The "two-views theory" has been judicially recognised by the courts and it comes into play when the appreciation of evidence results into two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. And therefore, when two views are possible, following the one in favour of innocence of the accused is the safest course of action. Furthermore, it is also settled that if the view of the trial court, in a case of acquittal, is a plausible view, it is not open for the High Court to convict the accused by reappreciating the evidence. If such a course is permissible, it would make it practically impossible to settle the rights and liabilities in the eye of the law."*

Further, the Hon'ble Supreme Court in the case of ***State of Odisha v. Banabihari Mohapatra, (2021) 15 SCC 268*** at para 32 has held as under:-

> *"32. As held by this Court in Sadhu Saran Singh v. State of U.P. [Sadhu Saran Singh v. State of U.P., (2016) 4 SCC 357 : (2016) 2 SCC (Cri) 275] an appeal against acquittal has always been on an altogether different pedestal from an appeal against conviction. In an appeal against acquittal, where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity. In this case, it cannot be said that the reasons given by the High Court [State of Odisha v. Banabihari Mohapatra, 2020 SCC OnLine Ori 936] to reverse the conviction of the accused are flimsy, untenable or bordering on perverse appreciation of evidence."*

11. In the instant case, we find that there are eye-witnesses to the occurrence who has stated that respondent No.2 was present at the place of occurrence and he assaulted the deceased with lathi. From the fact of this case, we find that there is a land dispute between both the parties and this incident occurred as result of such dispute. On the point of assault by lathi by respondent No.2 is concerned, we find that PW-7, Dr. Pradeep Baitha has opined in para 4 of this cross-examination that injury no.5 could not be inflicted with lathi as well as iron rod. The Ext. 2 (P.M. report) reflects that there is no bruise injuries were found on the body of the deceased. Thus, in this situation, it is not proper to say that the accused, Hemraj Yadav assaulted the deceased with lathi. Further, we find that it is important to note that sharp cutting injuries as well as abrasions were found the body of the deceased. In para 11 of his cross-examination the informant has pointed out that first of all attack was by the accused on the road and thereafter, the deceased fell down on the bari land. Thus, in this situation on account of falling down on the ground abrasions resulting from friction against a rough surface during a fall is possible. There is one fracture injury on the head of the deceased but the same was caused by sharp cutting weapon. Thus, it is doubtful that the respondent no.2 has assaulted the deceased with lathi. In our opinion, he might present there but has not assaulted the deceased.

12. Further, on the point of application of Section 149 of IPC is concerned, we find that mere presence of offender at the scene of

crime without any participation to facilitate the offence is not enough to hold him liable under Section 149 of IPC. The Trial Court after appreciating all the evidence has correctly come to a conclusion that Section 149 of IPC is not applicable in this case.

13. Considering the fact of this case, we have no hesitation to hold that no offence is proved against the accused-respondent No.2. In these circumstances respondent No.2 deserve benefit of doubt. From the fact of this case, we find that the Trial Court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The Trial Court has correctly acquitted the respondent No.2 from the charges. Thus, we find no merit in this appeal. Accordingly, this Acquittal Appeal stands **dismissed**.

14**.** Let the Trial Court Record be transmitted to the Court concerned along with a copy of this judgment.

(Ananda Sen, J.)

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand, Ranchi
Dated 30/09/2026
R.S./S.K.D. Cp 03.
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