

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.72 of 2019**

Arising Out of PS. Case No.-163 Year-2002 Thana- AMARPUR District- Banka

Chitaranjan Kumar Jha Late Anil Kumar jha Resident of Village - Surihari  
P.S.- Amarpur, District- Banka.

... .. Appellant

Versus

1. The State of Bihar
  2. Ajit Kumar Jha, son of Late Alkah Narayan Jha
  3. Ajay Kumar Jha, son of Late Alkah Narayan Jha
  4. Sujit Kumar Jha, son of Late Alkah Narayan Jha
  5. Arun Kumar Jha, son of Late Alkah Narayan Jha
- Respondent Nos. 2 to 5 are resident of village Sudihari, P.S.- Amarpur,  
District-Banka.

... .. Respondent/s

**Appearance :**

|                      |   |                                           |
|----------------------|---|-------------------------------------------|
| For the Appellant/s  | : | Mr.Ranjeet Kumar, Advocate                |
| For the Respondent/s | : | Mr.Kamal Kishore Jha, Advocate            |
|                      |   | Mr. Rounak Kumar Singh 'Pankaj', Advocate |
| For the State        | : | Mr. Satya Narayan Prasad, APP             |

**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH**  
**and**

**HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH**  
**C.A.V. ORDER**

**(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)**

9      19-07-2023

**Re. I.A. No. 1 of 2019**

The present interlocutory application has been filed  
for condonation of delay of 4 days in filing the instant criminal  
appeal against the judgment of acquittal dated 28.09.2019  
passed in Sessions Trial No. 764/2004.

2. For the reasons stated in the interlocutory  
application and submissions made on behalf of the appellant in



support thereof, I.A. No. 1 of 2019 is allowed. The delay in filing the instant appeal is condoned.

**Cr. Appeal (DB) No. 72 of 2019**

Heard learned counsel for the parties at the stage of admission itself.

2. The present criminal appeal is preferred against the judgment of acquittal dated 28.09.2018 passed by learned Additional District and Sessions Judge-2nd, Banka in Sessions Trial No. 765/2004 arising out of Amarapur P.S. case No. 163 of 2002 whereby Respondent Nos. 2 to 5 of the present criminal appeal have been acquitted by the learned Trial Court.

3. Vide order dated 09.04.2019, lower Court records was called for and notices were issued to Respondent Nos. 2 to 5 upon which they appeared on filing Vakalatnama.

4. The lower Court record has been received.

5. The prosecution case in brief is that on 30.07.2002, the informant gave a fardbeyan stating that he along with his father (deceased) was returning from Banka Civil Court, in the meantime the informant and his father took cycles and proceeded to their village. As soon as they reached near the Referral Hospital, Amarapur, the informant saw his brother (Manoranjan Kumar Jha) standing there and his brother got



upon the cycle of the informant from where they departed for their village. It has been stated that when the father of informant was 100 yards ahead from the informant, the FIR named accused persons who were armed with different weapons came and surrounded his father, and co accused named Alakh Narayan Jha and Radha Kant Jha gave order to all accused persons as to kill and upon such order, Deep Narayan Jha fired shot by pistol due to which father of informant fell down from his cycle and there after Vijay Kumar Singh also shot fire upon informant's father and the remaining accused persons assaulted the deceased. The reason behind the alleged occurrence is the land dispute for which case is pending in Banka Civil Court.

6. On the basis of fardbeyan of the informant, Amarpur P.S. case No. 163 of 2002 was registered under sections 302, 120(B) of the Indian Penal Code and Section 27 of the Arms. The police after completion of investigation submitted charge-sheet against the accuseds. The cognizance of the offence was taken and thereafter the case was committed to the Court of Sessions. Charges were framed against the accuseds on which they pleaded not guilty and claimed to be tried.

7. During the trial, the prosecution examined



altogether 17 witnesses viz. PW1 Sikender Jha, PW2 Mani Yadav, PW3 Chotu Singh, PW4 Laxmi Kant Jha, PW5 Bablu Paswan, PW6 Sikander Jha, PW7 Ujarann Singh, PW8 Sadanand Choudhary, PW9 Anjan Kumar Jha, PW10 Ranjan Kumar Jha @ Ghanshyam Jha, PW11 Chitranjan Kumar Jha (informant), PW 12 Palan Kumar Jha, PW13 Sunil Kumar Jha, PW14 Manoranjan Kumar Jha, PW15 Bipin Kumar Jha, PW16 Dr. Mustfa Ansari and PW17 Bhartendu Prasad Deo (I.O.). The prosecution has also produced exhibits as Ext. 1 post mortem report, Ext. 2 signature on formal F.I.R. and Ext. 3 inquest report marked with objection, Ext. 4 dead body challan, Ext. X signature of the informant and Ext. x/1 signature of Manoranjan Kumar Jha on fardbeyan. After closure of prosecution evidence, the statements of accused persons were recorded under Section 313 Cr.P.C. and after conclusion of the trial, learned trial Court has acquitted the accused persons.

8. In criminal appeal against acquittal what the appellate Court has to examine is whether the finding of the learned Court below is perverse and *prima facie* illegal. 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. versus The State*** reported in ***1952 SCR 193***, in paragraph 13, held as under:

*"..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 as under:

*"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."*

9. The 'facts in issue' considered and decided by the learned Trial Court for acquittal are as under:

(i) The participation of accused persons in the



commission of the crime has not been proved.

(ii) Eye witnesses to the incident have not deposed about the overt act which was done by the accused persons leading to the death of the deceased.

(iii) Neither the cycle of the deceased nor the empty cartridge or any material exhibit too have been seized by the police or even produced by the prosecution during trial before the learned Trial Court.

(iv) The witnesses examined on behalf of the prosecution are not reliable and their deposition is not sufficient to convict the accused persons.

(v) The prosecution has not proved its case against the accused persons beyond reasonable doubt.

10. 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 the participation of the respondent Nos. 2 to 5 in the commission of the crime in light of the evidence of PW 11 and PW 14?

(II) Whether in light of the factual matrix of the case,



the deceased person was in a fit condition to make the oral dying declaration?

11. With reference to issue no. (I), it is apparent from perusal of entire material available on the record that none of the prosecution witnesses including the two eye witnesses has testified that which accused has assaulted with which weapon leading to the death of the deceased person. The attention of this Court is also drawn towards the fact that PW 11 and PW 14 who claimed to be the eye witnesses to the incident have specifically raised the allegation of firing against Deep Narayan Jha, Bijay Kumar Singh and Karu Singh. The said witnesses i.e. PW 11 and PW14 in their evidence have not disclosed the participation of the respondent Nos. 2 to 5 in the commission of the crime as to when they claim to be the eye witnessess to the alleged occurrence. But they still fail to explain the participation of the respondent Nos. 2 to 5 in the said crime. It would be relevant to take into account that during the investigation the allegation against the respondent Nos. 2 to 5 were found to be false and the respondent Nos. 2 to 5 were not sent up for trial. The said police report was accepted by the court and no cognizance was taken against the respondent Nos. 2 to 5. The name of these were figured in the present case when they were summoned under



Section 319 of Code of Criminal Procedure (Cr.P.C.).

It is furthermore found that eight prosecution witnesses have turned hostile and they have not supported the case of prosecution even in any far-fetched manner.

Accordingly, the issue no. I is decided in the negative.

12. With reference to issue no. (II), it is found that the deceased has sustained twelve injuries out of which four injuries were caused by the fire arms. As such, the question that arose before this court is that whether in the factual matrix as stated above, the deceased person would have been in a fit condition to make the oral dying declaration or not. In this regard, we have taken into consideration the landmark case of ***Atbir versus Govt. of NCT of Delhi*** reported in ***(2010) 9 SCC 1***, Division Bench of the Hon'ble Supreme Court propounded the guidelines as to evidentiary value of dying declaration. It was held that:

*“(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the Court.*

*(ii) The Court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.*

*(iii) Where the Court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.*



*(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.*

*(v) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence.*

*(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.*

*(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.*

*(viii) Even if it is a brief statement, it is not to be discarded.*

*(ix) When the eye-witness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.*

*(x) If after careful scrutiny, the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration.”*

And in the case of ***State of Gujarat versus Jayrajbhai Punjabhai Varu*** reported in ***(2016) 14 SCC 151***, the following



was observed by the Hon'ble Supreme Court:

*“A mechanical approach in relying upon a dying declaration just because it is there, is extremely dangerous. The court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the dying declaration. ... .. The courts must bear in mind that each criminal trial is an individual aspect. It may differ from the other trials in some or the other respect and, therefore, a mechanical approach to the law of dying declaration has to be shunned.”*

Considering the parameters which has been laid down by the Hon'ble Supreme Court, this Court finds it difficult to accept that after sustaining twelve injuries out of which four injuries were caused by the fire arms, the deceased person was in a position to disclose the name of the accused person and to tell that which accused has assaulted with which weapon leading to his death. Thus, there are sufficient doubts as to the credibility of the alleged oral dying declaration and the same does not inspire confidence of this Court. Therefore, it cannot be made the sole basis of conviction.

Accordingly, the issue no. II is decided in the negative.

13. In the opinion of this Court, 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 bad or perverse. Under such circumstance, no case for interference with the impugned judgment is made out.

14. Accordingly, the appeal against the judgment of acquittal dated 28.09.2018 passed by learned Additional District and Sessions Judge-2nd, Banka in Sessions Trial No. 765/2004 arising out of Amarpur P.S. case No. 163 of 2002 is dismissed at the admission stage itself.

15. Pending interlocutory applications, if any, also stand disposed of.

**(Sudhir Singh, J)**

**( Chandra Prakash Singh, J)**

Pankaj/-AFR

|   |  |   |  |
|---|--|---|--|
| U |  | T |  |
|---|--|---|--|

