

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.750 of 2021

Arising Out of PS. Case No.-483 Year-2018 Thana- UDWANTNAGAR District- Bhojpur

Ridu Kumar Singh Son of Late Pramod Singh Resident of Village - Tetariya,
P.S.- Udwanatnagar, Distt.- Bhojpur.

... .. Appellant

Versus

1. The State Of Bihar
2. Sujit Singh Son of Suresh Singh Resident of Village - Tetariya, P.S.-
Udawanatnagar, Distt.- Bhojpur.
3. Upendra Singh Son of Mannu Singh Resident of Village - Tetariya, P.S.-
Udawanatnagar, Distt.- Bhojpur.
4. Aditya Singh Son of Dharmendra Singh Resident of Village - Tetariya, P.S.-
Udawanatnagar, Distt.- Bhojpur.
5. Gajendra Singh Son of Mannu Singh Resident of Village - Tetariya, P.S.-
Udawanatnagar, Distt.- Bhojpur.
6. Nirala Singh Son of Late Harendra Singh Resident of Village - Tetariya, P.S.-
Udawanatnagar, Distt.- Bhojpur.
7. Mannu Singh Son of late Bhagwan Singh Resident of Village - Tetariya,
P.S.- Udawanatnagar, Distt.- Bhojpur.
8. Bijendra Singh Son of Mannu Singh Resident of Village - Tetariya, P.S.-
Udawanatnagar, Distt.- Bhojpur.
9. Rahul Singh Son of Dharmendra Singh Resident of Village - Tetariya, P.S.-
Udawanatnagar, Distt.- Bhojpur.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Ansul, Advocate Mr. Anuj Kumar, Advocate
For the State	:	Mr. Manish Kumar No2, APP
For the Respondents 2 to 9:		Mr. Rajani Ranjan Prasad Singh, Advocate Mrs. Vaishanavi Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

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

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)



8 19-07-2023 Heard learned counsel for the parties at the admission stage itself.

2. The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure against the judgment of acquittal dated 10.08.2021 passed in Sessions Trial No. 221 of 2019 arising out of Udwanthnagar P.S. case No. 483 of 2018 whereby and whereunder the learned 14th Addl. Sessions Judge, Bhojpur at Ara has been pleased to acquit the Respondent Nos. 2 to 9 from the charge of Section 302/149, 120B of Indian Penal Code and Section 27 of the Arms Act.

3. Vide order dated 14.12.2022, notices were issued to Respondent Nos. 2 to 9 upon which they appeared by filing Vakalatnama.

4. The prosecution case in brief is that at about 10:30 a.m. on 18.12.2018 when the informant's father (deceased) came at his house situated at Tetariya village from Ara, the accused persons armed with gun, country made pistol and rifles came near his house and started hurling abuse to which the informant's father (deceased) came out of his house and then, two of the accused persons instigated the rest to kill him upon which the other accused persons started firing, thereby, the gun shot caused by accused namely Sujit Singh (respondent No. 2)



hit the chest of the deceased due to which he died on the spot. Upon hearing the sound of firing, the nearby people assembled and the accused persons on seeing the death of deceased fled away with their arms towards their house. The reason behind the incident is that two days prior to the incident, the accused persons came to the house of the deceased in drunken state and started misbehaving on which the informant's father told them to go from there otherwise the matter will be reported to the police. Thereafter verbal altercation took place and the accused persons left the place giving threat to the informant's father.

5. On the basis of written report of the informant, Udwanthnagar P.S. case No. 483 of 2018 was registered and investigation was taken up by the police. The police after completion of investigation submitted charge-sheet vide Charge-sheet No. 45/2019 and accordingly cognizance of the offence was taken. 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.

6. During the trial, the prosecution examined altogether six witnesses viz. PW1 Ritesh Kumar Singh, PW2 Vinod Kumar, PW3 Redu Kumar Singh, PW4 Dr. Vikash Singh, PW5 Shyam Bahadur Yadav and PW6 Suresh Singh. The prosecution



has also produced certain exhibits. 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.

7. 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 versus 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.”

8. From perusal of the judgment of the learned trial Court, it appears that ‘facts in issue’ considered and decided by the learned Trial Court for acquittal of Respondent Nos. 2 to 9 are as under:

- (i) Presence of informant at the place of occurrence is doubtful.
- (ii) Place of occurrence has not been established.
- (iii) Neither the blood stains nor the bullet shells or blood spotted cloth were found by the investigating officer.
- (iv) Contradictions in the testimonies of prosecution witnesses.
- (v) Though several independent witnesses were present at the crime spot during the alleged occurrence but the prosecution has not examined any of them and no reason for their non



examination has been given.

9. After hearing the arguments advanced by the learned counsels 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 place of occurrence is doubtful in the present case?

(II) Whether the prosecution has proved the presence of informant at the place of occurrence?

(III) Whether there is substantial evidence to hold the Respondent Nos. 2 to 9 guilty in the present case?

10. With reference to issue no. (I), it is found that there are material inconsistencies and uncertainties regarding the place of occurrence in the present case. It has been stated in the F.I.R. that the place of occurrence of the alleged crime is at the door of the house of the deceased person. In this regard, it is noteworthy that it has been deposed by informant (PW3) in para no. 3 of his examination- in- chief that the place of occurrence is the open field situated towards south of the house of the deceased person and this PW3 has further deposed a different place of occurrence in paragraph No. 16 of his cross-examination which



is 30 feet away of the road where the accused persons were standing. The attention of this Court has also been drawn towards the deposition of the investigating officer (PW5). This witness, in his examination in chief has deposed that the place of occurrence is the house of the deceased person and in his cross examination has deposed that the place of occurrence is the field which is five feet below from the road. Upon considering the above-mentioned facts, it is quite clear that there are lot of variations in the place of occurrence, thus in the present case, place of occurrence has not been established. At this juncture, it would be relevant to take note of the decision passed by the Hon'ble Supreme Court in the case of *Syed Ibrahim versus State of Andhra Pradesh*, reported in(2008) 10 SCC 601 wherein it has been held that “when the place of occurrence itself has not been established, it would not be proper to accept the prosecution version”.

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

11. With reference to issue no. (II), it is found that the presence of informant at the place of occurrence is doubted in light of the deposition of PW 2 who claims to be the eye witness. It was deposed by PW 2 that the informant has arrived at the place of occurrence when the deceased person had fallen



on the ground which clearly indicates that the informant was not present at the time of the alleged occurrence.

It is also pertinent to note that informant (PW 3) in his cross examination has deposed about firing, oozing of heavy blood and blood spotted cloth at the place of occurrence whereas the investigating officer has not found any blood stains, blood spotted cloth or empty bullet shells at the place of occurrence which also casts major doubt regarding the presence of informant at the place of occurrence. Thus, the above stated fact creates a grave cloud of doubt on the genuineness and genesis of the incident.

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

12. With reference to issue no. (III), in light of the discussions made above, this Court has taken into account the fact that the place of occurrence is itself found to be doubtful, therefore, we are of the view that the manner of occurrence is also not proved beyond all reasonable doubt. Furthermore, it is found that, there are discrepancies in the deposition of eye witnesses regarding their presence at the place of occurrence. As, the presence of PW 3 at the place of occurrence appears to be doubtful in light of the deposition of PW 2 that the informant has arrived at the place of occurrence when the deceased had



fallen on the ground. Even, the presence of PW 1 and PW 2 at the place of occurrence was not admitted by PW 3 either in the F.I.R. or in his deposition before the trial court. The above stated fact creates doubt on the credibility of the eye witnesses in the present case. At this juncture, it would be relevant to take note of the decision of the Hon'ble Supreme Court, in the case of ***Sunil Kumar Shambhudayal Gupta and others versus State of Maharashtra (2010) 13 SCC 657***, wherein para 16 of the following has been observed:

“The discrepancies in the evidence of eye witnesses, if found to be not minor in nature may be a ground for disbelieving and discrediting that evidence. In such circumstance, the witness may not inspire confidence if the evidence is found to be in conflict and contradictory to the other evidences and the statement already recorded. In such a case, it cannot be held that the prosecution proved its case beyond reasonable doubt.”

After considering the discussions made hereinabove, it appears that not only the presence of prosecution witnesses at the time and place of occurrence is highly doubtful but the place of occurrence itself is doubtful, thus, creating a serious doubt on the truthfulness of the case.

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

13. Thus, 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. In the result, the present criminal appeal preferred against judgment of acquittal dated 10.08.2021 passed in Sessions Trial No. 221 of 2019 arising out of Udwanthnagar P.S. case No. 483 of 2018 by learned 14th Addl. Sessions Judge is dismissed at the admission stage itself.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

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