

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.59 of 2024

Arising Out of PS. Case No.-40 Year-2013 Thana- KHAJAULI District- Madhubani

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Poonam Jaiswal @ Poonam Kumari, Daughter of Mukesh Kumar Chaudhary
Resident of Village- Pathalgadha, PS- Kumarkhat, Dist- Madhubani

... .. Appellant/s

Versus

1. The State of Bihar
2. Mahesh Chaudhary
3. Parikshan Chaudhary
4. Raj Kumar Chaudhary
5. Lal Bihari Chaudhary
All sons of Jiwachh Chaudhary, Resident of Village- Gaubrauda, PS- Kha-
jauli, Distt- Madhubani
6. Santosh Chaudhary, Son of Ram Dular Chaudhary, Resident of Village-
Gaubrauda, PS- Khajauli, Distt- Madhubani

... .. Respondent/s

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Appearance:

For the Appellant/s	:	Mr. Manoj Kumar Pandey, Advocate
For the Respondent/s	:	Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date: 05-08-2025

The present criminal appeal has been preferred under
Section 372 of the Code of Criminal Procedure against the
judgment of acquittal dated 17.12.2022 passed by the learned
Additional District & Sessions Judge- IX, Madhubani in
Sessions Trial No. 683 of 2013 and Sessions Trial No. 257 of
2014, arising out of Khajauli P.S. Case No. 40 of 2013, whereby
Respondent Nos. 2 to 6 have been acquitted by the learned Trial



Court from the charge of Sections 323, 341, 302/149 and 504 of the Indian Penal Code.

2. Vide order dated 22.10.2024, Trial Court Records was called for, which was received on 10.01.2025.

3. The prosecution case, in brief, is that on 28.05.2013 between 10-11 AM, Vishwanath Chaudhry, the brother of the informant, reached the field of the informant, which was at little distance from his house. There was a land dispute going on since long with the adjacent field and for this, Raj Kumar Chaudhary, Lal Bihari Chaudhary, Parikshan Chaudhary, Mahesh Chaudhary, Umesh Chaudhary, Rajan Chaudhary and others came armed with weapons, started abusing and assaulting the informant's elder brother Vishwnath Chaudhary due to which he got seriously injured and became unconscious. Thereafter, the brother of the informant was taken to Khajauli Hospital from where he was referred to DMCH, Darbhanga and then seeing his condition serious, he was referred to PMCH, Patna where he died during treatment on 01.06.2013.

4. On the basis of written complaint of the informant, Khajauli P.S. Case No. 40 of 2013 was instituted under Sections 147, 142, 149, 341, 323, 302, 504/34 of I.P.C. and investigation was taken up by the police. The police after investigation



submitted charge-sheet against Respondent Nos. 2 to 6 and, accordingly, cognizance was taken. Thereafter the case was committed to the Court of Sessions. Charges were framed against the accused persons to which they pleaded not guilty and claimed to be tried.

5. During the trial, the prosecution examined only one witness i.e. PW1 Manoj Kumar Chaudhary. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. and after conclusion of trial, learned trial Court has acquitted the accused persons.

6. Learned counsel for the appellant has submitted that the learned Trial Court has miserably failed to appreciate that the present case is a case of murder as he did not summon the witnesses cited in the charge-sheet for their depositions.

7. We have heard learned counsel for the appellant and have also gone through the records of the case.

8. The sole question that requires consideration by this Court is whether the impugned judgment of acquittal requires any interference by this Court.

9. Upon careful appraisal of the evidence on record and the arguments advanced by both parties, the attention of the Court is drawn towards the fact that the prosecution has



examined only one witness, i.e., Manoj Kumar Chaudhary who admittedly is a hearsay witness and has not witnessed the occurrence himself. His testimony is based on what he was informed by her sister-in-law as admitted by witness in cross-examination and does not constitute direct evidence. In the absence of any ocular account of the occurrence, the prosecution's case rests under shadow of unreasonable doubt. It is noteworthy that the Investigating Officer (IO), who is an important witness in any criminal trial regarding the manner, place, time of occurrence as well as the statements of the witnesses made during investigation and the materials, if any, incriminating or otherwise seized or recovered from the place of occurrence. The non-examination of Investigating Officer during trial is a significant lapse in the prosecution case, as the entire manner of investigation and credibility of the process undertaken remain unverified. Further, the doctor who conducted the postmortem examination has also not been produced as a witness. The medical evidence, which is often pivotal in corroborating or disproving the ocular version, remains unsubstantiated due to non-examination of the concerned medical expert. Further, it is noteworthy that the prosecution has failed to establish the place of occurrence



beyond doubt. No independent evidence, sketch map, seizure memo, or corroborative testimony has been brought on record to conclusively prove where the alleged incident took place. This raises serious doubt on the genesis and manner of the incident. At this point, it would be relevant to take note of the decision passed by Hon'ble Supreme Court in the case of ***Syed Ibrahim vs. State of Andhra Pradesh, reported in (2006) 10 SCC 601***, wherein it has been held that “when place of occurrence itself has not been established, it would not be proper to accept the prosecution side.”

10. It is also noted that certain material witnesses, who were named and available, have not been examined without any satisfactory explanation. The deliberate withholding of such witnesses raises an adverse inference against the prosecution under Section 114(g) of the Indian Evidence Act, 1872. The prosecution is duty-bound to present the best possible evidence to prove its case, which it has failed to do.

11. In a criminal appeal against the 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 in the case of ***Mrinal Das vs. State of Tripura (2011) 9 SCC 479***, paragraphs 13 & 14 of which read as under:

"13. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final court of fact, is fully competent to reappreciate, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal.

14. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived



at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference....."

12. In the case of ***Ghurey Lal versus State of Uttar Pradesh*** reported in ***(2008) 10 SCC 450*** in paragraph 75, the Hon'ble Supreme Court reiterated the said view and observed as under:

"75. 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."

13. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case if the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the Appellate Court must not take a different view only because another view is possible.



It is because the Trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its decision must not be upset in absence of strong and compelling grounds.

14. In view of the facts and circumstances, discussed above as also the above referred decisions rendered by the Hon’ble Apex Court, we hold that the findings recorded by the learned Trial Court do not suffer from any illegality and perversity. In a criminal case, the identity of the accused is to be established, so as to prove his guilt beyond the shadow of all reasonable doubts. Wherever, any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of doubt.

15. Accordingly, the present appeal is dismissed.

(Sudhir Singh, J)

(Ramesh Chand Malviya, J)

Sunnykr/Rajesh

AFR/NAFR	NAFR
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