

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.65 of 2024

Arising Out of PS. Case No.-41 Year-2020 Thana- DORIGANJ District- Saran

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Pankaj Kumar, Son of Sri Krishna Prasad Nirala, Resident of Bhairapur, P.S.-
Doriganj, Distt-Saran

... .. Appellant/s

Versus

1. The State of Bihar
2. Sunil Mahto, Son of Asharfi Mahto, Resident of Bhairapur, P.S.- Doriganj,
Distt-Saran
3. Birendra Mahto Son of Asharfi Mahto Resident of Bhairapur, P.S.- Doriganj,
Distt-Saran

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Anjani Kumar Jha, Advocate
For the Respondent/s : Mr. Parmeshwar Mehta, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 06-08-2025

The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure against the judgment of acquittal dated 20.09.2023 passed by the learned Additional District & Sessions Judge- V, Saran at Chapra in Sessions Trial No. 325 of 2020, arising out of Doriganj P.S. Case No. 41 of 2020, whereby Respondent No. 2 has been acquitted by the learned trial Court from the charge under Sections 341, 323, 324, 307, 147, 148 and 149 of the Indian Penal Code and further to challenge the sentence awarded to



Respondent No. 3 by order dated 21.09.2023 to undergo rigorous imprisonment of 5 years and to pay a fine of Rs. 1000/- under Section 307 of the Indian Penal Code and in default of payment of fine additional two months simple imprisonment to be inadequate.

2. The prosecution case, in brief, is that the informant happens to be working in the Signal Unit of the 19th Division Badar-Srinagar at Jammu and Kashmir and he came to his home on leave for a month. On 31.03.2020, at about 7:00-7:15 P.M., when he was standing on the terrace of his newly constructed house, his neighbours Sunil Mahto (Respondent No. 2), Birendra Mahto (Respondent No. 3) and Asharfi Mahto came there and asked him to come down. When the informant came down, they along with other co-accused assaulted on the person of informant by means of knife and *lathi-danda*. When the informant tried to flee away from there and made *hulla*, the accused assaulted him by *lathi* and pelted stones on his back due to which he was badly injured and fell unconscious due to such injuries.

3. On the basis of written complaint of the informant, Doriganj P.S. Case No. 41 of 2020 was instituted under Sections 341, 323, 324, 307, 147, 148 and 149 of the I.P.C. and



investigation was taken up by the police. The police, after investigation, submitted charge-sheet against Respondent Nos. 2 and 3 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.

4. During the trial, the prosecution examined eight witnesses, namely, PW1 Chandrawati Devi, PW2 Ram Babu Mahto, PW3 Ram Ayodhya Mahto, PW4 Pankaj Kumar, PW5 Prem Kumar Tiwary, PW6 Ramjeet Das, PW7 Dr. Rishi Kapoor and PW8 Urmila Devi. The prosecution has also produced certain documents, which were marked as Exhibits: signature of informant on the *fardbeyan*, signature of the mother of the informant on the *fardbeyan*, noting with signature of the then SHO on the *fardbeyan*, requisition of the injury report of the injured, entire formal charge-sheet, supplementary injury report of the injured, true copy of the discharge summary of the injured issued by the Paras HMRI Hospital, Patna, true copy of the case summary of the injured issued by the Paras HMRI Hospital, Patna, true copy of the OPD follow-up card of the injured issued by the Paras HMRI Hospital, Patna, photocopies of the documents relating to the treatment of injured done at and



issued by the Military Hospital, Danapur Cantt., and photo copies of the opinion of Specialist regarding injured issued by the Military Hospital, Namkum. The defence has also examined two witnesses viz. DW1 Seema Devi and DW2 Chamcham Devi. 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 Respondent No. 2 and convicted the Respondent No. 3.

5. The trial Court for acquitting the Respondent No. 2 and convicting Respondent No. 3 with a sentence of 5 years rigorous imprisonment considered the following facts and assigned reasons as under:

- (i) From analysis of depositions of PW4 (injured witness) as well as PW1, PW2, PW3 and PW8, it is evident that accused Birendra Mahto (Respondent No.3) has hit Pankaj by knife.
- (ii) From Perusal of Exhibits-4 and 4/1 (injury report) it is clearly revealed that Pankaj Kumar has sustained the knife injuries.
- (iii) The prosecution has further failed to prove circumstances where the Court could rely that there was earlier meeting of minds between accused persons with regard to common object of unlawful assembly (to convict Respondent No. 2).
- (iv) No specific allegation of assault by Sunil Mahto (Respondent no. 2) is attributed either in



the *fardbeyan* or in the entire prosecution evidence.

(v) No sign of lacerated injury has been found on the injured person to prove that *lathi-danda* were used as weapon, as stated in F.I.R.

6. Learned counsel for the appellant has submitted that the learned trial Court has miserably failed to appreciate the evidence of the prosecution witnesses in totality. The learned trial Court also has not appreciated the injury reports produced on record as documentary evidence and passed the order impugned without proper adjudication of the materials available on record.

7. On the other hand, learned counsel appearing for respondents, while defending the judgment of acquittal against Respondent No. 2 and conviction with 5 years imprisonment against Respondent No. 3 passed by learned trial Court, has contended that the learned trial Court has given sufficient reasons to reach the finding of acquittal against Respondent No. 2 and the 5 years imprisonment conviction against Respondent No. 3. It is further submitted that the judgment of learned trial Court does not require any interference by this Court.

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



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

10. Upon perusal of the FIR, the assault was made using a *lathi-danda*, and a knife. However, upon perusal of the injury report, it is evident that the injuries sustained by the victim are all incised wounds, which are typically caused by sharp edged weapons like a knife or blade. Notably, there is a complete absence of lacerated wounds or abrasions, which would ordinarily be expected in the event of an assault with blunt objects such as a lathi or danda.

11. This material inconsistency between the ocular account of the occurrence as in the FIR and the medical evidence on record creates a serious doubt regarding the actual weapons used in the alleged occurrence. While the injury report may support the use of a knife or other sharp-edged weapon, it does not corroborate the use of blunt objects like *lathi* or *danda*. Therefore, allegation of assault by means of *lathi* and *danda* attributed against the accused persons does not find corroboration.

12. In criminal jurisprudence, consistency between the medical evidence, the manner of occurrence as mentioned in the



FIR and evidence of witnesses is essential for the prosecution to establish its case beyond reasonable doubt. The failure to establish such consistency would weaken the credibility of the prosecution case and gives rise to doubt as to whether *lathi* and *danda* were, in fact, used in the alleged occurrence.

13. Further, the accused persons in the present case were charged under Sections 307/149 of the Indian Penal Code. However, on careful perusal of the FIR and other materials on record, this Court finds no substantive evidence to support the existence of any prior meeting of minds or common object between accused Sunil Mahto and Birendra Mahto in relation to the incident in question.

14. Section 149 of the Indian Penal Code provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, every member of that assembly is guilty of the offence. It is, therefore, a mandatory requirement under law that the prosecution establishes:

- (I) The existence of an unlawful assembly,
- (II) A common object as defined under Section 141 of the Indian Penal Code, and
- (III) That the offence was committed in prosecution of such object.



15. In the present case, there is no material to suggest that Sunil Mahto shared a common object with Birendra Mahto, nor is there evidence of any pre-concert or prior meeting of minds. The FIR is completely silent as to any such element of unlawful assembly or shared intention involving Sunil Mahto. Mere presence at the scene of occurrence or general association, in the absence of proof of shared common object, cannot be the basis to attract the rigour of Section 149 of the Indian Penal Code.

16. In the absence of cogent evidence to indicate Sunil Mahto's participation in furtherance of a common object or any overt act attributed to him in prosecution of the same, the invocation of Section 149 of the Indian Penal Code against him does not sustain in the eyes of law.

17. Accordingly, this Court finds that Section 149 of the Indian Penal Code is not attracted, so far as accused Sunil Mahto is concerned, and he cannot be held vicariously liable for the acts of the other accused persons under this provision.

18. So far the second challenge regarding inadequacy of sentence awarded to Respondent No. 3 is concerned, upon due consideration of the submissions advanced and the evidence on record, it is evident that Respondent No. 3 has been



convicted under Section 307 of the Indian Penal Code for attempting to commit murder. The incident, as proved, reflects that the convict was armed with a knife and inflicted multiple knife blows on the vital parts of the body of the informant. The injury report duly corroborates the prosecution version, clearly showing that the injuries were grievous and located on parts of the body where death could have been the natural consequence had timely medical assistance not been rendered.

19. Section 307 of the Indian Penal Code prescribes imprisonment which may extend to life, or imprisonment of either description for a term which may extend to ten years, and fine; and if hurt is caused, the punishment may extend to life or to the term aforementioned with fine. Thus, the punishment awarded must fall within the statutory limits while fulfilling the twin purposes of sentencing-deterrence and correction.

20. The doctrine of proportionality in sentencing mandates that the punishment should bear a rational nexus with the gravity of the offence, the manner of its commission and the culpability of the offender. In the present matter, the act was committed with premeditation, using a deadly weapon, and in a manner manifesting clear intention to cause death. These aggravating factors justify a stringent sentence.



21. At the same time, the Court must also weigh the overall circumstances, including the age of the convict, absence or presence of criminal antecedents, and possibility of reformation. In balancing these aspects, the sentence of rigorous imprisonment for five years awarded to Respondent No. 3 cannot be said to be either excessive or grossly inadequate. It lies well within the permissible range under Section 307 of the Indian Penal Code, proportionate to the severity of the act, and adequately serves the objectives of deterring such violent conduct in society while still allowing scope for the convict's eventual rehabilitation.

22. Accordingly, the sentence imposed reflects a judicious application of the principle of proportionality, keeping in view both the nature of the offence and the legislative intent behind the prescribed punishment.

23. We find 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.

24. 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 in the case of ***Mrinal Das vs. State of Tripura*** reported in ***(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....."

25. 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."

26. 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.

27. In view of the above, we do not find any illegality and perversity in the findings recorded by the learned trial Court.

28. Accordingly, the present appeal is dismissed.

(Sudhir Singh, J)

(Alok Kumar Pandey, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	19.08.2025
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