

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.125 of 2020

In
SPECIAL LEAVE APPLICATION No.31 of 2019

Arising Out of PS. Case No.-93 Year-1989 Thana- SAHPUR District- Patna

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Vinod Kumar Singh @ Vinod Prasad, Son of Late Jagdish Singh, Resident of
Village - Laxmi Chak, P.S.- Shahpur, District- Patna

... .. Appellant/s

Versus

1. The State of Bihar
2. Sushil Singh Son of Late Munglal Singh Resident of Village - Mauli Nagar,
P.S.- Maner, District- Patna
3. Ramjiwan Singh Son of Late Munglal Singh Resident of Village - Mauli
Nagar, P.S.- Maner, District- Patna
4. Kameshwar Singh Son of Late Parmanand Singh Resident of Village -
Laxmichak, P.S.- Shahpur (Danapur), District- Patna
5. Raj Kumar Singh Son of Sadhu Saran Singh Resident of Village -
Laxmichak, P.S.- Shahpur (Danapur), District- Patna
6. Mohan Singh Son of Late Ganauri Singh Resident of Village - Laxmichak,
P.S.- Shahpur (Danapur), District- Patna
7. Umesh Singh Son of Mohan Singh Resident of Village - Laxmichak, P.S.-
Shahpur (Danapur), District- Patna
8. Sarvjeet Singh Son of Late Rajendra Singh Resident of Village - Laxmichak,
P.S.- Shahpur (Danapur), District- Patna
9. Girija Nand Singh @ Girija Singh Son of Ramswoop Singh Resident of
Village - Laxmichak, P.S.- Shahpur (Danapur), District- Patna
10. Brajnandan Singh Son of Ramswoop Singh Resident of Village -
Laxmichak, P.S.- Shahpur (Danapur), District- Patna
11. Yadunandan Singh Son of Late Chhatri Singh Resident of Village -
Laxmichak, P.S.- Shahpur (Danapur), District- Patna
12. Lilu Singh @ Anil Singh Son of Yadunandan Singh Resident of Village -
Laxmichak, P.S.- Shahpur (Danapur), District- Patna
13. Pradeep Singh Son of Yadunandan Singh Resident of Village - Laxmichak,
P.S.- Shahpur (Danapur), District- Patna
14. Rajdeo Singh Son of Late Rajendra Singh Resident of Village - Laxmichak,
P.S.- Shahpur (Danapur), District- Patna
15. Ranjeet Singh Son of Late Rajendra Singh Resident of Village - Laxmichak,
P.S.- Shahpur (Danapur), District- Patna

... .. Respondent/s

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Appearance :



For the Appellant/s : Mr. Niranjana Kumar, Advocate
Mr. Gautam Sah, Advocate
For the State : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 13-10-2025

The present criminal appeal has been preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against the judgment of acquittal dated 29.03.2019 passed by the learned Additional Sessions Judge-I, Danapur, Patna in Sessions Trial No. 374 of 1990, arising out of Shahpur P.S. Case No. 93 of 1989, whereby Respondent Nos. 2 to 15 have been acquitted by the learned Trial Court from the charge of Sections 148, 201 of the Indian Penal Code, accused Mohan Singh, Umesh Singh, Sarvajeet Singh, Girja Nand Singh, Brajnandan Singh, Yadunandan Singh, Lili Singh, Pradeep Singh, Rajdeo Singh and Ranjeet Singh from the charge of Section 302/149 IPC and accused Sushil Singh, Ramjiwan Singh, Raj Kumar Singh and Kameshwar Singh from the charge of Section 302 IPC and Section 27 of the Arms Act.

2. The prosecution case, as per the *fardebayan* of the informant is that at 2:00 AM on 28.02.1989, when he was sleeping with his brother Ruka Singh, Lal Babu Singh, Vijay



Kumar Singh, Vinod Singh and Jhulan Singh in the hut near the well in his field, all of a sudden, 15-20 persons armed with country-made pistol, *bhala*, *garasa* and '*chhura*' came near the hut, out of them he identified Parmanand Singh, Kameshwar Singh, Raj Kumar Singh, Mohan Singh, Umesh Singh, Rajendra Singh, Ranjeet Singh, Sarvjeet Singh, Ramanand Singh, Girjan Singh, Yadunandan Singh, Pradeep Singh, Lilu Singh @ Anil Singh, Mahendra Singh, Sushil Singh, Ramjivan Singh and 2-3 unknown. Accused Kameshwar Singh, Raj Kumar Singh, Sushil Singh and Ramjivan Singh had pistols in their hand, accused Parmanand Singh had *chhura* and accused Ramanand Singh had *garasa* and others had *bhala* in their hands. Accused Brijnandan Singh ordered to kill, on which accused Kameshwar Singh and Raj Kumar Singh fired on Ruka Singh and accused Ramjivan Singh and Sushil Singh fired on Vijay Singh. Both of them sustained firearm injuries and fell down. Thereafter, accused Ramanand Singh assaulted Ruka Singh with *garasa* and accused Parmanand Singh assaulted Vijay Kumar Singh with *chhura*. Other accused persons assaulted with *lathi* fitted in *bhala*. They threw both of them into well. The informant further alleged in his *fardbeyan* that he had seen the occurrence from a little distance because it was a moonlight night. When the accused



persons saw them, they also chased them but somehow they saved their life and reached their house. Accused persons also came to their house and surrounded the house of the informant and scolded Shankar Singh, Heeraman Singh and other persons who were standing there. In the morning, the informant went to police station and informed about the occurrence. The informant has further stated that the reason behind the alleged occurrence is the earlier pending case of land dispute with Parmanand Singh, Kameshwar Singh and others.

3. On the basis of *fardbeyan* of the informant, Shahpur P.S. Case No. 93 of 1989 was instituted under Sections 302/201/120-B of I.P.C. and Section 27 of the Arms Act and investigation was taken up by the police. The police after investigation submitted charge-sheet against Respondent Nos. 2 to 15 and others 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 altogether five witnesses i.e. PW1- Lal Babu Singh, PW2- Vinod Kumar Singh, PW3- Dr. Md. Afzal, PW4- Braj Bihari Singh and PW5- Pitambar Paswan. The prosecution has also



produced certain documents which were marked as Exhibits i.e. Ext.6- Certified copy of judgment passed in case no. 118 (c)/85, Ext.7- Certified copy of order dated 18.05.1989 passed u/s 145 Cr.P.C., Ext.8- Certified copy of order dated 10.08.1997 passed by Sri R.K. Ravidas, J.M., Danapur, Ext.9- Certified copy of F.I.R. of Shahpur P.S. Case No. 307/97 dated 18.07.1997, Ext.10- Certified copy of application given by A.S.I. Dhanajay Jha to the then A.C.J.M., Danapur to add some sections in Shahpur P.S. Case No. 307/97 dated 18.07.1997, Ext.11- Certified copy of an application dated 30.06.2006 given by prosecution in the Court of Sri R.K. Ravidas, J.M., Danapur, Ext.12- Certified copy of order-sheet dated 07.09.1994 of Case no. 108 c2/94 of the Court of S.D.J.M., Danapur and Ext. 13- Certified copy of complaint filed in the Court of the then A.C.J.M., Danapur.

5. The defence has also examined twelve witnesses i.e. DW1- Deena Nath Sao, DW2- Nagendra Prasad, DW3- Darbesh Paswan, DW4- Jagdambi Prasad Yadav, DW5- Baccha Prasad Singh, DW6- Dilip Kumar, DW7- Rajesh Kumar Yadav, DW8- Ravindra Kumar, DW9- Devnandan Singh, DW10- Chandeshwar Rai, DW11- Sri Ganesh Prasad and DW12- Lali Bhusan Ranjan. 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. The learned trial court on the basis of materials available on record, and the evidence produced before the court, acquitted the accused persons observing that the prosecution has not been able to substantiate the charge against the accused persons beyond all reasonable doubts.

7. Learned counsel for the appellant has submitted that the learned trial court has failed to appreciate the evidence of Dr. Md. Afzal (PW3) who had done the *post mortem* of the dead body of the deceased and found several external and internal injuries with sharp and blunt weapons sustaining bullet and *barud* and opined that the death was caused on account of haemorrhage and shock due to above injuries. He further submits that the learned trial court has further failed to appreciate the evidence of PW2, who is the sole surviving eye-witness of the occurrence and fully supported the case of the prosecution and also did not appreciate the circumstances proving the brutal murder of two deceased at the same time by the accused persons.

8. The learned counsel for the respondent-State



submits that there is no perversity in the judgment of the learned trial court, and the prosecution had failed to prove the guilt of the accused before the learned trial court. Therefore, the order of the learned trial court requires no interference in the present 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. We have carefully perused the record of the case and considered the arguments advanced by the learned counsel for the appellants as well as the learned Additional Public Prosecutor appearing for the State. Upon a meticulous examination of the evidence, it appears that the prosecution case rests primarily upon the testimony of PW2-Vinod Kumar Singh, son of the informant and brother of one of the deceased, since the informant himself had expired during the pendency of the trial and his evidence could not be recorded. The death of the informant deprived the prosecution of its most material witness.

11. From the record, it is evident that PW2 has not been consistent in his narration of occurrence. In his examination-in-chief, he named the accused persons and claimed to have seen them involved in the occurrence. However,



his cross-examination reveals a marked departure from that version. He admitted that, during investigation, he had not disclosed the names of the accused to the police. This fact has also been corroborated by the Investigating Officer (PW4), who stated that PW2 never mentioned the names of the accused during the course of investigation. It thus appears that for the first time during trial, the witness introduced new facts and implicated the accused amounting to a clear improvement in his version. Such conduct of the witness renders his testimony doubtful and unreliable.

12. Another serious flaw in the prosecution case is the non-examination of independent witnesses, though several such witnesses were admittedly available. The record shows that persons like Shankar Singh, Heerman Singh, and Hiramal Singh were said to have scolded the accused persons after the incident and were present near the village. Their names find place in the testimony of PW2, yet none of them were examined by the prosecution. Even Jhulan, who was stated to have been sleeping nearby and allegedly witnessed part of the incident, was not produced before the Court. It is well-settled that where independent witnesses, who are easily available and could have thrown light on the actual occurrence, are not examined without



any plausible explanation, creates a serious doubt regarding the prosecution case. The failure to examine such witnesses, especially when the principal witness is related to the deceased and has given contradictory statements, further erodes the credibility of the prosecution version. In ***Takhaji Hiraji v. Thakore Kubersing Chamansing, (2001) 6 SCC 145***, the Supreme Court held that non-examination of independent witnesses available at the scene creates doubt on the veracity of prosecution evidence, especially when the witnesses examined are related to the deceased, as observed in Para-19 of the judgment which reads as under:

“19. So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and



examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself — whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses. In the present case we find that there are at least 5 witnesses whose presence at the place of the incident and whose having seen the incident cannot be doubted at all. It is not even suggested by the defence that they were not present at the place of the incident and did not participate therein. The injuries sustained by these witnesses are not just minor and certainly not self-inflicted. None of the witnesses had a previous enmity with any of the accused persons and there is apparently no reason why they would tell a lie. The genesis of the incident is brought out by these witnesses. In fact, the presence of the prosecution party and the accused persons in the chowk of the village is not disputed. How the vanity of the Thakores was hurt leading to a heated verbal exchange is also not in dispute. Then followed the assault. If the place of the incident was the chowk then it was a sudden and not premeditated fight between the two parties. If the accused persons had



reached their houses and the members of the prosecution party had followed them and opened the assault near the house of the accused persons then it could probably be held to be a case of self-defence of the accused persons in which case non-explanation of the injuries sustained by the accused persons would have assumed significance. The learned Sessions Judge has on appreciation of oral and circumstantial evidence inferred that the place of the incident was the chowk and not a place near the houses of the accused persons. Nothing more could have been revealed by other village people or the party of tightrope dance performers. The evidence available on record shows and that appears to be very natural, that as soon as the melee ensued all the village people and tightrope dance performers took to their heels. They could not have seen the entire incident. The learned Sessions Judge has minutely scrutinised the statements of all the eyewitnesses and found them consistent and reliable. The High Court made no effort at scrutinising and analysing the ocular testimony so as to doubt, if at all, the correctness of the several findings arrived at by the Sessions Court. With the assistance of the learned counsel for the parties we have gone through the evidence adduced and on our independent appreciation we find the eyewitnesses consistent and reliable in their narration of the incident. In our opinion non-examination of other witnesses does not cast any infirmity in the prosecution case.”

The same principle was reiterated in ***Hem Raj and Others v. State of Haryana, (2005) 10 SCC 614***, where the



Court observed that withholding material witnesses without plausible reason leads to an adverse inference under Section 114(g) of the Evidence Act, as observed in Para-9 of the judgment which reads as under:

“9. Non-examination of independent witness by itself may not give rise to adverse inference against the prosecution. However, when the evidence of the alleged eyewitnesses raises serious doubts on the point of their presence at the time of actual occurrence, the unexplained omission to examine the independent witness Kapur Singh, would assume significance. This Court pointed out in Takhaji Hiraji v. Thakore Kubersing Chamansing [(2001) 6 SCC 145 : 2001 SCC (Cri) 1070] : (SCC p. 155, para 19)

“[I]f already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself — whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses. In the present case we find that



there are at least 5 witnesses whose presence at the place of the incident and whose having seen the incident cannot be doubted at all. It is not even suggested by the defence that they were not present at the place of the incident and did not participate therein.”

13. The evidence of the Investigating Officer (PW4) further casts serious doubt on the fairness and thoroughness of the investigation. He admitted that during investigation, PW2 had not named the accused persons. This shows that the investigation lacked coherence and that the identification of the accused was not spontaneous but an afterthought developed during trial. The Court cannot base conviction on such vacillating and improved statements. As held in ***Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116***, every link in the chain of circumstances must be firmly established before drawing any inference of guilt. In the instant case, the prosecution has miserably failed to establish such a consistent chain, as observed in Para-153 and 154 of the judgment which reads as under:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully



established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807; SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

14. Having considered the totality of the evidence, it



becomes apparent that the prosecution has not been able to prove its case beyond reasonable doubt. The contradictions between the investigation and trial versions, the non-examination of material witnesses, the death of the informant, and the hostility of witnesses collectively create serious doubts regarding the prosecution story. The principle that the prosecution must stand on its own legs, and that the benefit of doubt must go to the accused, stands fully attracted here.

15. In view of the above discussion, we are of the considered opinion that the prosecution has failed to establish the guilt of the appellants beyond reasonable doubt. The learned Trial Court has rightly appreciated the evidence and recorded acquittal, which calls for no interference by this Court. The contradictions in the testimony of PW2, coupled with non-examination of independent witnesses and death of the informant, have rendered the prosecution story wholly unreliable.

16. We find that the findings recorded by the learned Trial Court do not suffer from any illegality and perversity. In a criminal case, it is incumbent upon the prosecution to prove the guilt of the accused 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.

17. 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 (2011) 9 SCC 479***, Paragraphs 13 & 14 of which reads 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 reappraise, 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....."

18. 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 has 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."

19. 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.

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

21. Accordingly, the present appeal is dismissed.

22. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Rajesh/-

AFR/NAFR	NAFR
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