

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.224 of 2025

Arising Out of PS. Case No.-373 Year-1998 Thana- HILSA District- Nalanda

Sanjay Kumar S/o- Late Vinod Prasad R/O- Village- Jagirdari, P.S- Ghosi,
Distt- Jehanabad

... .. Appellant/s

Versus

1. The State of Bihar
2. Nakul Prasad @ Nakul Yadav S/o- Late Rajendra Prasad Resident of
Village- Arhit Ps- Okari (OP Ghosi), Jehanabad

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rajesh Ranjan, Advocate
For the Respondent/s : Mr. Bipin Kumar, Spl. PP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 11-09-2025

The present criminal appeal has been preferred under Section 413 of the Bharatiya Nagarik Suraksha Sanhita, 2023 against the judgment of acquittal dated 24.12.2024 passed by the learned Additional Sessions Judge-III, Hilsa (Nalanda) in Sessions Trial No. 596 of 2003 (Reg. No. 8423 of 2014) arising out of Hilsa P.S. Case No. 373 of 1998, whereby Respondent No. 2 has been acquitted by the learned trial Court from the charge of Section 302, r/w 34 of the Indian Penal Code and Section 27 of the Arms Act.

2. The prosecution case, in brief, is that on



11.10.1998, informant along with his brother Binod Prasad (deceased), nephew Sanjay Kumar, brother-in-law Sudhanshu Kumar 'Vibhav' and a villager Tunnu Prasad went to the Yogipur market to buy some household articles. On the same day at around 4:00 p.m. while returning home when they reached near east side of Lokain river, all of a sudden the accused persons, namely, Rajdev Prasad, Ramnandan Prasad, Bhavsagar Prasad, Upendra Prasad, Nakul Prasad, Anugrah Prasad, Bablu Prasad and three other unknown miscreants, who were already assembled there armed with rifles and double barrel gun, emerged behind a '*Siris*' tree situated at the embankment of Lokain river and surrounded them. One of the accused named Anugrah Prasad, then instigated others, that their enemy and main opponent Binod Prasad (deceased) somehow came into clutch, shoot him to death. After that, the accused Anugrah Prasad, armed with a rifle fired a bullet which struck the deceased on the forehead, then the accused Bablu Prasad who was armed with rifle fired a shot that hit on the *kanpati* of the deceased, after that accused Rajdev Prasad who was armed with rifle fired a bullet which hit at the back of head and Nakul Prasad (accused in the present case) who was also armed with rifle fired a bullet which hit the deceased on the right side of the



chin. Consequently, the informant's brother Binod Prasad sustained severe injuries and died on spot. After that, the accused persons began indiscriminate firing upon the informant and his associates, but they rescued themselves by jumping into Lokain river and crossed over to Sohrapur village. Subsequently, the accused persons fled away from the scene. Hearing the spatter of gunfire the persons in vicinity gathered there. It is also alleged that earlier accused Ramnandan Prasad, Bhavsagar Prasad, Rajdev Prasad and others had killed his father Rajendra Prasad and brother Ashok Kumar. The cause of incident, as assigned by informant, was old rivalry and land dispute.

3. On the basis of written statement of the informant, Hilsa P.S. Case No. 373 of 1998 dated 12.10.1998 was instituted under Section 302 r/w Section 34 of Indian Penal Code and Section 27 of the Arms Act and investigation was taken up by the police. The police after investigation submitted charge-sheet against all the above named accused persons and, accordingly, cognizance was taken. Thereafter, the case was committed to the Court of Sessions. Charges were framed against the accused persons under Section 302 r/w Section 34 of Indian Penal Code and Section 27 of the Arms Act to which they pleaded not guilty



and claimed to be tried.

4. During the trial, the prosecution examined altogether seven witnesses i.e. PW1- Sanjay Kumar, PW2- Sudhanshu Kumar 'Vibhav', PW3- Tunni Prasad, PW4- Raju Kumar, PW5- Binni Bhagat @ Bindi Bhagat, PW6- Dr. Avadhesh Kumar Singh and PW7- Manmohan Prasad. The prosecution has also produced certain documents, which were marked as Exhibits: Exhibit 1- C.C. of post-mortem report of deceased Binod Prasad, Exhibit 2- Photocopy of *fardebayan* of informant Raju Kumar, Exhibit 3- Photocopy of formal F.I.R., Exhibit 4- Statement of Inquest Report (from case diary), Exhibit 5- Statement of Seizure List (from case diary), Exhibit 6- C.C. of judgment in S.T. No. 454 of 1999 dated 26.07.06, Exhibit 7- C.C. of charge-sheet in Hilsa P.S. Case No. 56 of 2017, under Section 341, 323, 504, 506/34 of I.P.C. and Exhibit 8- C.C. of charge-sheet in Hilsa P.S. Case No. 57 of 2002, under Section 302, 120(B)/34 of I.P.C. and Section 27 of Arms Act. The defence has examined altogether seventeen witnesses viz. DW1-Rajkishor Prasad, DW2-Upendra Prasad, DW3-Shailendra Prasad, DW4-Birendra Kumar Srivastava, DW5-Naval Prasad, DW6-Ramanand Prasad, DW7-Suresh Prasad, DW8-Krishna Ballabh Prasad, DW9-Nagina Prasad, DW10-



Dilip Kumar, DW11-Awdhesh Paswan, DW12-Khayali Gope, DW13-Shiv Nandan Prasad, DW14-Manoranjan Kumar, DW15-Karu Prasad, DW16-Mithilesh Prasad and DW17-Ashok Prasad. The defence has also produced certain documents which were marked as Exhibits: Exhibit A- Original copy of Panchayatnama dated 11.10.98, Exhibit B- C.C. of *fardbeyan* and formal F.I.R. in Ghoshi P.S. Case No. 78 of 08.04.1997, under Section 302/201/34 of I.P.C. and 27 of Arms Act, Exhibit C- C.C. of *fardbeyan* and formal F.I.R. in Okari (Ghoshi) P.S. Case No. 240 of 30.08.2000, under section 302/34 of I.P.C. and 27 of Arms Act, Exhibit D- C.C. of *fardbeyan* and formal F.I.R. in Ghoshi P.S. Case No. 87 of 07.04.1993, under Section 147, 148, 149, 342, 307, 302 of I.P.C. and 27 of Arms Act, Exhibit E- C.C. of a page of cognizance register of C.J.M. Court Jehanabad, to show cognizance has been taken in Ghoshi P.S. Case No. 149 of 18.07.1993, against accused Binod Das, Brahmdev Das and Raju Das under Section 148, 149, 302, 341 of I.P.C. and 27 of Arms Act, Exhibit F- C.C. of Complaint Case No. 24 of 1992, Rajendra Prasad v/s Sohavan Singh and Others and Exhibit G- C.C. of order of acquittal under Section 232 of Cr.P.C. of accused Bhavsagar dated 15.12.2016 in S.T. No. 662 of 2000 (Hilsa P.S. Case No. 373 of 1998). 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.

5. The learned trial Court on the basis of the materials available on record and the evidence produced before the Court, acquitted the accused persons observing that the improbability of prosecution story, doubtful presence of interested eye witnesses, delay in lodging of the F.I.R., unnatural conduct of the informant and other family members, inimical witnesses and necessity of corroboration by independent witnesses coupled with lapses in investigation has led it to irresistible conclusion that the prosecution has failed to prove the charges levelled against accused person beyond reasonable doubt and benefit of doubt goes in favour of the accused.

6. Learned counsel for the appellant has submitted that the learned trial Court has miserably failed to appreciate the evidence on record in proper prospective and acquitted the Respondent No. 2 on mere conjecture and surmise. Learned trial Court has committed a grave error of law by observing that the non-examination of independent witnesses has caused prejudice to the Respondent No. 2 and benefit of doubt goes in favour of the Respondent No. 2, which is against the established principle



of law.

7. The learned counsel for the State has submitted that there is no perversity in the judgment of the learned trial Court, and the prosecution has 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.

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. On scrutiny of the evidence available on records, this Court finds that the prosecution case is not free from doubt. The F.I.R. alleges that four gunshot injuries were caused to the deceased by the accused persons, but the postmortem report shows only three entry wounds. This clear mismatch between the medical evidence and the version in the F.I.R. weakens the prosecution case.

11. Further, though the charge-sheet named five independent witnesses, only two were examined at trial. Both of them (PW3 and PW5) did not support the case of the prosecution and were declared hostile. The remaining three



independent witnesses were not produced at all, without any explanation. The incident is said to have happened in broad daylight on a public road. In such a situation, non-examination of independent witnesses raises serious doubt on the fairness of the prosecution. At this juncture, it is noteworthy that Hon'ble Supreme Court while deciding the case of ***Takhaji Hiraji vs. Thakore Kubersing Chamansing & Others*** reported in (2001) 6 SCC 145, observed 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, which 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.....”

12. The witnesses who supported the prosecution are PW1, PW2 and PW4. It is clear from the record that they are all close relatives of the deceased, PW1 being the son, PW2 the brother-in-law, and PW4 the brother (informant). Law is clear that the evidence of related witnesses cannot be rejected only because of their relation, as observed in ***Dalip Singh & Others vs. State of Punjab*** reported in ***AIR 1953 SC 364***. However, in the absence of corroboration from independent or medical evidence, such testimony requires close scrutiny. Here, their statements stand contradicted by the medical evidence and are not supported by neutral witnesses, so cannot be relied upon.

13. The learned trial Court has also taken note of these infirmities. In Paragraph Nos. 33 to 37 of the judgment, the trial Court has specifically observed that the prosecution story does not inspire confidence as there is variance between the ocular and medical evidence, independent witnesses were either not examined or turned hostile, and the remaining witnesses are close relatives whose testimony is not corroborated by other



reliable evidence. The learned trial Court, therefore, held that the prosecution failed to discharge its burden of proving the charge beyond reasonable doubt and extended the benefit of doubt to the accused.

14. This Court finds itself in agreement with the above view. The principle that the prosecution must prove its case beyond reasonable doubt is the foundation of criminal law. In ***Kali Ram vs. State of H.P.*** reported in (1973) 2 SCC 808, the Supreme Court held that if two views are possible, one pointing to guilt and the other to innocence, the Court must adopt the view which favours the accused, as observed in Paragraph No. 25 of the judgment:

“25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the



guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by report to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of State of Punjab v. Jagir Singh a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.”

15. Applying these principles, this Court holds that the prosecution case suffers from serious contradictions and omissions. The mismatch between medical and ocular evidence, the withholding of independent witnesses, and the reliance only on related witnesses without corroboration, all combine to make the case doubtful. The findings recorded by the trial Court are, therefore, justified and call for no interference.

16. 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.

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*** reported in ***(2011) 9 SCC 479***, Paragraph Nos. 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....."

18. In the case of ***Ghurey Lal vs. State of Uttar Pradesh*** reported in ***(2008) 10 SCC 450*** in Paragraph No. 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 stand disposed of.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Anushka/-

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CAV DATE	
Uploading Date	16.09.2025
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