

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.289 of 2025

Arising Out of PS. Case No.-71 Year-1991 Thana- DHANARUA District- Patna

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Bijay Prasad @ Lalu Prasad S/o- Late Bhuneshwar Prasad Resident of
Village- Manjhauli, P.S.- Dhanarua, District- Patna

... .. Appellant

Versus

1. The State of Bihar
2. Upendra Prasad S/o- Late Chamru Prasad Village- Manjhauli Ps- Dhanarua
Dist- Patna
3. Shivpujan Yadav S/o- Late Chamru Prasad Village- Manjhauli Ps- Dhanarua
Dist- Patna

... .. Respondents

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Appearance :

For the Appellant : Mr. Nagendra Kumar, Advocate
For the State : Mr. Dilip Kumar Sinha, A.P.P.

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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 : 15-09-2025

The present criminal appeal has been preferred under Section 413 of the B.N.S.S. against judgment of acquittal dated 20.12.2024 passed by the learned Additional District and Session Judge-1st, Masaurhi, Patna in Sessions Trial No. 158 of 1992, arising out of Dhanarua P.S. Case No. 71 of 1991, whereby Respondent Nos. 2 & 3 have been acquitted by the learned Trial Court from the charge of Sections 148 and 302/34 of Indian Penal Code.

2. The prosecution case, in brief, is that on 25.04.1991 at about 06:00 a.m., when the informant's father Late



Bhuvaneshwar Prasad came to his house after defecating, then Chamru Prasad, Shiv Prasad, Upendra Prasad, Brijlala Prasad, Santlal Prasad and Yadunandan Prasad all came to his house. Chamru Prasad was carrying a *lathi*, Shiv Prasad a spade, Upendra Prasad a *khanti*, Brijlal Prasad and Santlal Prasad a stick and Yajunandan an iron rod. As soon as they arrived, they started abusing his father and, upon resistance, they started hitting him with the weapons in their hands. The spade hit his head and blood started oozing. He was hit on his head, back and chest by *khanti* and *lathi*. His father became unconscious and fell at the door. He was then taken to Dhanarua Police Station. The Police Inspector told to take him to Block Hospital. He was then referred to P.M.C.H from the Block Hospital, where he died during his treatment.

3. On the basis of *fardbeyan* of the informant, Dhanarua P.S. Case No. 71 of 1991 was instituted under Sections 147, 148, 149, 323, 302/34 of Indian Penal Code and investigation was taken up by the police. The Police, after investigation, submitted charge-sheet against Respondent Nos. 2 & 3 under Sections 148, 149 and 302/34 of Indian Penal Code and, accordingly, cognizance was taken. Thereafter, the case was committed to the Court of Sessions. Charges were framed



against the accused persons under Sections 148, 302/34 of Indian Penal Code to which they pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined altogether nine prosecution witnesses i.e. PW1- Ramuna Devi, PW2- Rajkumari, PW3- Kamlesh Prasad, PW4- Kanti Devi, PW5- Vijay Prasad (informant), PW6- Nawal Yadav, PW7- Siyasaran Prasad, PW8- Subalal and PW9- Jainandan Prasad @ Jainath. No witness has been examined on behalf of the defence. 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 there is no uniformity in the evidence presented by the witnesses. There is a considerable difference in the evidence regarding the presence of witnesses at the place of incident. Allegedly, there was a land dispute between the deceased and the accused persons. The learned Trial Court also observed that there is a lack of corroborative evidence.



6. Learned counsel for the appellant has submitted that PW-1, PW-2, PW-3, PW-4 and PW-5 are the eye-witnesses who have fully supported the prosecution case. He has further submitted that the prosecution has failed to prove its case while the evidence is sufficient enough to prove the case.

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. He has further submitted that PW-6, PW-7 and PW-8 have been declared hostile and PW-9 has not supported the case of the prosecution. The Investigating Officer and the Doctor have not been examined and the place of occurrence also could not be proved because of the non-examination of the Investigating Officer. 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 the State 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 requires any interference by this Court.

10. On a comprehensive consideration of the materials



available record, this Court finds that the testimony of the prosecution witnesses suffers from contradictions, and such inconsistencies go to the root of the case. It is well settled that minor discrepancies may not discredit the testimony of a witness, but material contradictions which affect the core of the prosecution case render the evidence unreliable. In **State of U.P. v. M.K. Anthony**, reported in **(1985) 1 SCC 505**, the Hon'ble Supreme Court has reiterated that contradictions of a material nature cannot be ignored, as they shake the foundation of the case, as observed in Para-10 of the judgment, which reads as under:

“10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the : root of the matter would not ordinarily permit rejection of the evidence as a whole.”



11. The evidence is further weakened by the fact that PW-6, PW-7, and PW-8, who were cited as important witnesses, have been declared hostile. Although the law permits reliance on the testimony of a hostile witness to the extent it is corroborated by other reliable evidence, such corroboration is wholly absent in the present case. The Supreme Court in **Ramesh Harijan v. State of U.P.**, reported in **(2012) 5 SCC 777** has held that the testimony of a hostile witness by itself cannot be the basis of conviction, as Para-19 of judgment reads as under:

“19.....Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence...”

12. To compound this, PW-9 has also not supported the prosecution case, and it is a settled position of law, as seen in **Lallu Manjhi v. State of Jharkhand**, reported in **(2003) 2 SCC 401**, that when material witnesses resile, the prosecution story loses its credibility unless supported by strong corroborative evidence, as observed in Para-10 of the judgment which reads as under:

“10. The Law of Evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single



witness, the Court may classify the oral testimony into three categories, namely (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon testimony of a single witness.”

13. Another serious infirmity lies in the non-examination of the Investigating Officer. The omission has caused prejudice to the accused as the defence was deprived of the opportunity to confront the officer with contradictions and omissions in the witnesses' statements. In **Behari Prasad v. State of Bihar**, reported in (1996) 2 SCC 317, the Hon'ble Supreme Court held that though non-examination of the Investigating Officer may not always be fatal where it causes prejudice to the accused, it becomes a significant infirmity, as observed in the judgment which reads as under:

“We may also indicate here that it will not be correct to contend that if an Investigating Officer is not examined in a case, such case should fail on the ground that the accused were deprived of the opportunity to effectively cross examine the witnesses for the prosecution and to bring out contradictions in their statements before the police. A case of prejudice likely to be suffered by an accused must depend on the facts of the case and no



universal straight jacket formula should be laid down that non examination of investigating Officer per se vitiates a criminal trial. These appeals, therefore, fail and are dismissed. The appellants who have been released on bail should be taken into custody to serve out the sentence.”

Applying this principle to the present matter, this Court finds that the omission to examine the Investigating Officer has, in fact, caused serious prejudice to the defence. The prosecution version suffers from contradictions and omissions in the statements of the witnesses and the only person who could have clarified or explained such contradictions was the Investigating Officer.

14. The failure to examine the Investigating Officer also means that the place of occurrence has not been duly established. At this point, 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 place of occurrence itself has not been established, it would not be proper to accept the prosecution side.”

15. Equally significant is the fact that the Doctor has not been examined and the *post-mortem* report has not been brought on record. The cause of death, therefore, remains



unproved.

16. On an overall assessment of the evidence, this Court finds that the prosecution case suffers from inherent infirmities and lacks the assurance of credibility. The defects noticed herein are substantial and go to the very root of the matter, rendering the prosecution case wholly unreliable. In such a situation, this Court is of the considered view that the prosecution has not succeeded in proving the charge to the standard required in law.

17. 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 a reasonable doubt. Wherever, any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of doubt.

18. 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 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....."

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)

(Alok Kumar Pandey, J)

Sachin/-

AFR/NAFR	N.A.F.R.
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