

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.321 of 2025

Arising Out of PS. Case No.-702 Year-2023 Thana- ARA NAGAR District- Bhojpur

Shankar Chouhan, aged about 56 years, male, son of Jagdish Prasad, resident of village- Dharhara, P.S.- Ara town, District- Bhojpur

... .. Appellant/s

Versus

1. The State of Bihar
2. Gautam Kumar, aged about 21 years, son of Sri Raj Mahal Yadav @ Rajmahal Prasad, resident of village- Ahirpurwa, P.S.- Ara Town, Dist.- Bhojpur

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Khushi Awadh, Advocate
For the Respondent/s	:	Mr.Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 16-09-2025

The present criminal appeal has been preferred under Section 413 of the *Bhartiya Nagrik Suraksha Sanhita, 2023* against the judgment of acquittal dated 03.01.2025 passed by the learned Additional Sessions Judge- III, Bhojpur at Ara in Sessions Trial No. 250 of 2024, arising out of Ara Town P.S. Case No. 702 of 2023, whereby Respondent No. 2 has been acquitted by the learned Trial Court from the charge of Sections 307 and 326 of the Indian Penal Code and Section 27 of the Arms Act.

2. The prosecution case, according to the *fardbeyan*



of the informant, in brief, is that on 28.08.2023, the informant admitted his daughter Anjani Kumari in Vindhya wasini Hospital for the purpose of delivery, where she gave birth and the doctor suggested to keep his daughter for about ten days. On 31.08.2023 at about 19:00 O'clock, when informant was talking to his son-in-law Rangnath Chauhan, at the hospital, suddenly accused Gautam Kumar came and fired three shots from his pistol upon the informant's son-in-law, causing him injury and heavy bleeding. The informant tried to catch the accused person, but he fled away towards station. Thereafter, the informant admitted his son-in-law in Shanti Memorial Hospital, Babu Bazar.

3. On the basis of the *fardbeyan* of the informant, Ara Town P.S. Case No. 702 of 2023 was instituted under Sections 307 and 326 of the I.P.C. and 27 of the Arms Act and investigation was taken up by the police. The police after investigation submitted charge-sheet against Respondent No. 2 and, accordingly, cognizance was taken. Thereafter, the case was committed to the Court of Sessions. Charges were framed against the accused person under Sections 307 and 326 of the I.P.C. and 27 of the Arms Act to which he pleaded not guilty and claimed to be tried.



4. During the trial, the prosecution examined altogether 08 witnesses i.e. PW1 Shankar Chauhan (informant), PW2 Santra Devi, PW3 Dr. Vikash Singh, PW4 Shashikant Chauhan, PW5 Sarvesh Kumar (I.O.), PW6 Kanchan Kumari, PW7 Anjali Kumari and PW8 Rangnath Chauhan. The prosecution also produced certain documents which were marked as 'Exhibits', i.e. Signature of informant on *fardbeyan*; Signature of SHO Sanjeev Kumar on endorsement of FIR; Injury Report of victim Rangnath Chauhan; Seizure-list; signature of Kanchan Kumari on seizure-list; L.T.I. of Shashi Kant Chauhan on seizure-list; Signature of S.H.O. Sanjeev Kumar on formal FIR; and Charge sheet No. 881 of 2023 dated 17.11.2023. The defence did not examine any witness. After closure of prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and after conclusion of trial, learned trial court has acquitted the accused/respondent No. 2.

5. The learned trial court found material contradiction in the evidence of the informant in the trial and the records of the FIR. The learned trial court held that the information regarding the alleged occurrence was received by the police 15 minutes prior to the happening of the alleged occurrence, if



evidence of PW 1 is considered, and the prosecution has not explained this contradiction. The relevant part of paragraph 20 of the impugned judgment is reproduced as under:

“20.The informant of this case is the most important witness and P.W. 1 Shankar Chauhan is the informant of this case who says about the occurrence that on 31.08.2023 his son-in-law Rangnath Chauhan was sustained gunshot injury at about 07:30 in the evening by the above named accused person but from perusal of FIR, it transpires that the information received at the police station about the occurrence at about 19:15 (07:15 p.m.) and in this regard the prosecution has failed to explain about it.....”

6. The learned trial court further found discrepancy in the evidence, which was produced before the learned trial court, with respect to the arms and ammunitions used in the alleged occurrence. The relevant part is reproduced as under:

“20.The informant further says in his examination-in-chief that the accused came with a rifle but the informant clearly says in his fardbeyan that the accused person came and shot his son-in-law by a pistol and the informant's son-in-law sustained three gunshot injuries but at the place of occurrence only two



used cartridges have been recovered which also clears from the Ext. 3 (seizure-list) and thus there are many material contradictions in the statements of the informant as well as his fardbeyan and thus, the testimony of the present witness is not fully trustworthy and reliable in the eyes of law.....”

7. Further, with respect to the electronic evidence of CCTV footage, which is the source of identification of the accused person, the learned trial court found that the CCTV footage has not been filed complying with the mandatory requirements of law in the present case. The learned trial court held as under:

“This court is also not unmindful about the fact that the most of the witnesses came to know about the incident on the basis of CCTV footage, but the prosecution of this case has not filed the same CCTV footage complying the mandatory requirements of law as per section 65-B of Indian Evidence Act and the prosecution has also failed to marked the CCTV footage as an exhibit and the benefit of doubt is given to the accused person.”

8. On the basis of materials available on record and the evidence produced before the court, the learned trial court



had acquitted the accused, observing that the prosecution has not been able to bring home the charges against the accused person and proved its case beyond reasonable doubt.

9. The learned counsel for the appellant submitted that the trial court has not analysed the evidence on record in right perspective and the judgment of acquittal has been passed on conjecture and surmises. The trial court has not discussed the evidence of PW3, Dr. Vikas Singh who examined the injured Rangnath Chauhan, which could fully corroborate the prosecution case. The learned counsel for the appellant further submitted that the trial court recorded in his findings about only two bullets have been recovered though altogether four bullets have been recovered, 02 from the body of the injured and 02 from the place of occurrence. The learned counsel further submitted that the trial court held that most of the witnesses identified the accused from CCTV Footage but except PW4, all other witnesses were the eye witness of the occurrence.

10. The learned counsel for the respondent-State submitted 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.

11. We have heard the counsel for the appellant and the respondent-State, and have also gone through the records of the case.

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

13. In the present case, the time of the alleged occurrence has not been proved by the prosecution. In his *fardbeyan*, the informant (PW-1) has stated that the alleged occurrence took place at 7:00 PM. However, later, in his evidence before the learned trial court, the informant has stated that the alleged occurrence took place at 7:30 PM. Further in the FIR, the time of occurrence is 7:00 PM, and the time at which the police received the information is 7:15 PM. PW-6, who was present in the Hospital, where the alleged occurrence took place, stated in her evidence that the incident took place at about 6:00 PM. Thus, from perusal of records of this case, there is clearly a discrepancy with respect to the time of occurrence. This discrepancy has not been satisfactorily explained by the prosecution and, as such, this seriously weakens the prosecution case.



14. PW-1 is the sole eyewitness in the present case, however, the testimony of PW-1 is doubtful considering the discrepancy between his evidence before the learned trial court and the statement made before the police in the FIR. Further, there are no eyewitness to the present case, and all of the other witnesses have stated in their evidence that they have not seen the alleged occurrence. PW-2, PW-4, PW-6 and PW-7 have stated in their evidence before the learned trial court that they came after the alleged occurrence took place. Although they were present in the vicinity of the hospital where the alleged occurrence is said to have taken place, but they have not witnessed the occurrence, which is clear from their evidence. It is also important to note that except PW-4, all prosecution witnesses are interested witness, as such their statement should be viewed by this court with caution. PW-4 is not an eyewitness to the alleged occurrence as he has stated in his evidence that he saw the incident in the footage only, and has no further information about the alleged occurrence.

15. The appellant has submitted that two bullets were recovered from the place of occurrence (P.O.) and two bullets were recovered from the body of the injured. However, it is clear upon perusal of records of the case that two cartridges



were recovered from the P.O. and two bullets were removed from the body of the injured as per the evidence of the doctor. This is also in contradiction to the statement of PW-1 recorded in the FIR and before the learned trial court, whereby PW-1 has stated that three shots were fired on his son-in-law (the injured).

16. Further, the CCTV footage which is being relied upon by the prosecution for identification of the accused persons has not been proved in compliance with the provisions of the Section 65-B of the Indian Evidence Act. Also, the said CCTV footage has also not been marked as an Exhibit, and placed on record before the learned trial court. This has to be viewed with the fact that there are material contradiction in the evidence of PW-1, and there are no other eyewitness to the alleged occurrence who've supported the prosecution case. Therefore, in light of the facts and evidence before us, we find that the prosecution has failed to prove the allegations against the accused person, and such, the learned trial court has rightly acquitted the accused person.

17. 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.

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 are 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 ***Surajpal Singh v. State***, reported in **1951 SCC 1207**

“13. It is well established that in an appeal under Section 417 of the Criminal Procedure Code, the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

19. In ***Chandrappa v. State of Karnataka***, reported in



(2007) 4 SCC 415, the Hon'ble Supreme Court reiterated this view and laid down the general principles to be followed while dealing with appeal against an order of acquittal. The relevant paragraph of the judgment is reproduced as under:

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the



court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

20. In ***Babu Sahebagouda Rudragoudar v. State of Karnataka***, reported in ***(2024) 8 SCC 149***, the Hon’ble Supreme Court, after referring to relevant precedents, has observed as follows:

“41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to



be exercised within the four corners of the following principles:

41.1. That the judgment of acquittal suffers from patent perversity;

41.2. That the same is based on a misreading/omission to consider material evidence on record; and

41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

42. The appellate court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial court.”

21. 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.

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

23. Accordingly, the present appeal is dismissed.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.09.2025
Transmission Date	22.09.2025

