

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.327 of 2025

Arising Out of PS. Case No.-54 Year-1990 Thana- GUTHANI District- Siwan

Manki Devi, aged about 79 years, Gender-Female, Wife of Late Gulab Chandra, Resident of Village - Guthani, P.S.- Guthani, District - Siwan.

... .. Appellant/s

Versus

1. The State of Bihar
2. Ramchandra Singh, Son of Late Singhasan Singh
3. Dhruv Singh, Son of Late Yogendra Narayan Singh
4. Ragho Singh, Son of Late Janardan Singh
5. Dharmraj Singh, Son of Late Singhasan Singh
6. Prabhu Kamkar, Son of Late Shrikishun Kamkar
7. Bharat Singh, Son of Late Singhasan Singh
All resident of Village - Guthani, P.S.- Guthani, District - Siwan.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Dhananjay Kumar Tiwary, Advocate
For the Respondent/s	:	Mr.Sujit Kumar Singh, APP

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

Date : 17-09-2025

The present criminal appeal has been preferred under Section 413 of the *Bhartiya Nagrik Suraksha Sanhita, 2023* against the judgment of acquittal dated 20.01.2025 passed by the learned Additional Sessions Judge- IX, Siwan in Sessions Trial No. 399 of 1997, arising out of Guthani P.S. Case No. 54 of 1990, whereby Respondent Nos. 2 to 7 have been acquitted from the charges of Sections 302/34, 324 and 326 of the Indian



Penal Code and Sections 3 and 5 of the Explosive Substance Act.

2. The prosecution case, as per the *fardbeyan* of the informant, in brief, is that the informant and Gulab Chand Prasad(deceased) were eating *Bhuja* at a cloth shop, in the meantime, Ragho Singh, Prabha Kamkar, Gulab Kamkar, Bharat Singh along with 4-5 accused persons came there and Ragho Singh thrown bomb upon Gulab Chand Prasad, causing injury on the upper shoulder, Bharat Singh & Prabhu Kamkar thrown bomb upon Gulab Chand Prasad, which caused injury upon the lower part of the body. Upon *hulla*, the villagers came there and taken the injured to the Guthani Hospital from where he was taken to Siwan Hospitl for better treatment where he died.

3. On the basis of the *fardbeyan* of the informant, Guthani P.S. Case No. 54 of 1990 was instituted under Sections 147,148,149,302,307 and 324 of the I.P.C. and Sections 3 and 5 of the Explosive Substance Act and investigation was taken up by the police. The police, after investigation, submitted charge-sheet against Respondent No. 2 to 7 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 04 witnesses i.e. PW1- Kailash Prasad, PW2- Manoj Kumar, PW3- Vidya Prasad and PW4- Dr. Prabhat Kumar Singh. The prosecution has produced certain documents which were marked as exhibits; Ext. 1- Postmortem report (carbon copy), Ext. 2- Inquest Report, Ext. 3- Formal F.I.R. The defence did not examine any witness. The defence has also produced certain documents which were marked as Exhibits, namely Ext. A- carbon copy of Guthani P.S. Case No. 83/1986, Ext. B- carbon copy of complaint letter no. 245/1988, Ext. C- carbon copy of complaint letter no. 370/1989, Ext. D, D/1, D/2- notice of 107, Ext. E- carbon copy of order of SIR case no. 30/1972. 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/respondent Nos. 2 to 7.

5. 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 bring home the charges against the accused persons beyond reasonable doubt.

6. The submission of the learned counsel for the



appellant is that the trial court committed an error in not placing reliance on the statements of PW1 and PW2 and relied upon the statement of PW 3 who had been declared hostile, while holding him to be the sole eye witness. It is further submitted that the trial court failed to appreciate that the postmortem report of the deceased clearly suggests that the death was caused due to bomb injury, which was also supported by the evidence of PW4.

7. The learned counsel for the 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 persons before the learned trial court. Therefore, the order of the learned trial court requires no interference in the present case.

8. We have heard the 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 of acquittal requires any interference by this Court.

10. On an anxious consideration of the evidence available on record and the submissions advanced, this Court notices serious legal and evidentiary deficiencies in the prosecution case, which go to the very root of the matter.

11. At the threshold, it is to be observed that no



sanction as required under Section 7 of the *Explosive Substances Act, 1908* was obtained from the competent authority.

12. The law is well settled that sanction under the Act is a condition precedent for taking cognizance of the offence. In *State of Karnataka v. C. Nagarajaswamy, (2005) 8 SCC 370*, the Hon'ble Supreme Court in para 16 observed as under:

“16. Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. ..”

13. In the present case, the failure to obtain sanction goes to the root of the maintainability of the prosecution itself.

14. Coming to the evidence, the informant was projected as the sole eye-witness to the occurrence. However, it is not in dispute that during trial he turned hostile and did not support the case of the prosecution. The Hon'ble Supreme Court in *Ramesh Harijan v. State of U.P., (2012) 5 SCC 777*, held that the testimony of a hostile witness cannot be treated as wholly effaced, but in absence of corroboration, it cannot be made the sole basis of conviction, as observed in para 24 of the judgment:

“24. In State of U.P. v. Ramesh Prasad Misra [(1996) 10 SCC 360: 1996 SCC (Cri) 1278:



AIR 1996 SC 2766] (SCC p. 363, para 7) this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in Balu Sonba Shinde v. State of Maharashtra [(2002) 7 SCC 543: 2003 SCC (Cri) 112], Gagan Kanojia v. State of Punjab [(2006) 13 SCC 516: (2008) 1 SCC (Cri) 109]; Radha Mohan Singh v. State of U.P. [(2006) 2 SCC 450: (2006) 1 SCC (Cri) 661: AIR 2006 SC 951], Sarvesh Narain Shukla v. Daroga Singh [(2007) 13 SCC 360 : (2009) 1 SCC (Cri) 188: AIR 2008 SC 320] and Subbu Singh v. State [(2009) 6 SCC 462: (2009) 2 SCC (Cri) 1106].”

15. In the present case, no such corroboration has been forthcoming.

16. It is further pertinent to note that apart from the informant, no independent eye-witness has been examined. The occurrence thus remains unsupported by any trustworthy ocular testimony. The absence of independent evidence assumes greater significance in the backdrop of the hostile stand of the sole eye-witness.



17. In the instant case, in absence of sanction, coupled with the lack of credible ocular evidence, the prosecution has miserably failed to discharge the burden cast upon it.

18. 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.

19. 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.....”

20. 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.”

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.

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

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

sujit/-

AFR/NAFR	NAFR
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