

THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.397 of 2025

Arising Out of PS. Case No.-279 Year-2023 Thana- PARAIYA District- Gaya

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Basanti Devi Wife of Raghu Yadav Village -Tadma PS- Paraiya Distt -Gaya
... .. Appellant/s

Versus

1. The State of Bihar
2. Bacchu Yadav @ Sanjay Yadav son of Ramsevak yadav Village -Tadma PS- Paraiya Distt -Gaya

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Kunwar Narayan Jamuar, Advocate
For the State	:	Mr.Dilip Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 10-07-2025

The informant has preferred the present appeal under Section 413 of Bhartiya Nagrik Suraksha Sanhita, 2023 (hereinafter referred to as the BNSS) against the judgment of acquittal dated 15.01.2025 passed by the court of learned Addl. Sessions Judge-XVIth, Gaya in Sessions Trial No. 156 of 2024 (arising out of Paraiya P.S. Case No. 279 of 2023), whereby the learned Trial Court has acquitted respondent No. 2 of all the charges levelled against him.

2. The prosecution case, in a nut shell, is as under:-

2.1. The informant Basanti Devi, W/o- Late Raghu Yadav recorded her fardbeyan before Paraiya P.S. stating that on



19.07.2023 at about 08:00 p.m. she, her daughter-in-law, namely Arpan Devi, and husband Raghu Yadav were going to their new house from the old one. When they reached near the house of Bacchu Yadav @ Sanjay Yadav, Bacchu Yadav came there, threatened them and started assaulting them. He slapped her husband Raghu Yadav and started pressing his neck due to which blood started oozing out from the nose and mouth of her husband. Her husband succumbed to the injuries after sometime.

3. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions where it was registered as Sessions Trial No. 156 of 2024.

4. Before the Trial Court, prosecution examined eight witnesses, namely P.W. 1 Basanti Devi, P.W. 2 Arpan Devi, P.W. 3 Bhuneshwar Yadav, P.W. 4 Ramshila Devi, P.W. 5 Dhaneshar Yadav, P.W. 6 Dr. Sarvesh Kumar, P.W. 7 Abhishek Kumar and P.W. 8 Ajay Kumar.

5. Learned counsel for the appellant/informant



mainly contended that, in the present case, the informant is the eye-witness to the occurrence in question. She has been examined by the prosecution as P.W. 1. It is contended that P.W. 1 has specifically deposed before the trial court that accused Bacchu Yadav came on the road and started assaulting her husband Raghu Yadav (deceased). The accused caught hold of Raghu Yadav and assaulted him repeatedly, as a result of which he fell down. Thereafter, Bacchu Yadav started assaulting the deceased with kicks and fists on his face and nose due to which blood started oozing out of his mouth and nose. It is further submitted that because of the assault made by the accused, the deceased sustained injuries and thereafter he succumbed to the injuries. It is further submitted that P.W. 2 Arpan Devi has also supported the manner of occurrence as narrated by P.W. 1. In fact, P.W. 2 has specifically deposed that she could identify the accused in the light of electric bulb. Learned counsel has also referred the deposition given by P.W. 8 Ajay Kumar. Learned counsel submits that the prosecution has proved the case against the respondent accused beyond reasonable doubt, despite which the trial court has passed the impugned judgment of acquittal. Learned counsel, therefore, urged that the present appeal be allowed and thereby the impugned judgment be quashed and set



aside.

6. On the other hand, learned A.P.P. submits that the trial court has not committed any error while passing the impugned judgment and, therefore, this Court may not interfere with the same. It is also contended that till date the State has not preferred any Government/Acquittal Appeal against the impugned judgment rendered by the trial court.

7. We have reconsidered the submissions canvassed by the learned counsels for the parties and perused the material placed on record as also the documents exhibited. It is pertinent to note that the learned counsel for the appellant has provided the copy of the deposition of prosecution-witnesses as also the other evidence led by the prosecution. We have gone through the evidence led by the prosecution before the trial court and also re-appreciated the same.

8. At this stage, we would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court.

9. P.W. 1 Basanti Devi has deposed in her examination-in-chief that she is the informant of this case. The incident took place at 07:00 p.m. They were returning from the old house. When they reached near the house of Bacchu, this



incident took place. She was with her husband Raghu and her daughter-in-law Arpan Devi. Bacchu came on the road and started assaulting Raghu Yadav. He caught hold of Raghu and repeatedly assaulted him as a result of which he fell down. After he fell down, Bacchu Yadav started assaulting him with kicks and fists on his face and nose due to which blood started oozing out of his mouth and nose. When, after some time, Raghu Yadav was shaken he did not give any response. She has identified the accused, present in Court. The same day, she and her family members had gone to the police station and informed about the incident. She has identified her thumb impression on the statement given before the police. The dead body of her husband was sent for *post mortem* examination by the police.

9.1. In her cross-examination, she has stated that the police had recorded her statement. She has denied the suggestion that she was giving false deposition.

10. P.W. 2 Arpan Devi has also supported the manner of occurrence as stated by P.W. 1. She has further stated that she could identify the accused Bacchu Yadav in the light of electric bulb. The accused pushed her and her mother-in-law. She has identified the accused Bacchu Yadav, present in Court.

10.1. In her cross-examination, she has stated that



her husband and the maternal uncle of Bacchu are cousins. In para-12 she has stated that her family had no enmity with accused Bacchu Yadav's family. She has specifically stated that her father-in-law was not in the habit of taking liquor. Her father-in-law had no exchange of words with Bacchu Yadav on the date of occurrence. Blood was oozing out of nose and ears and hands and legs were swollen, but no mark of assault was there. At 10:00 p.m. police took the dead body. She had also gone with the dead body. Besides her, 200 more persons had gone to the police station. Police had interrogated her at the place of occurrence and at the police station also. She has also stated that blood had spilled over the ground which she had shown to the police and the police had also collected the clothes of the deceased. She has denied the suggestion that no incident as stated by her had taken place and that her father-in-law died of excessive drinking.

11. P.W. 3 Bhuneshar Yadav is a hearsay witness. He has stated that he was at his house. Dhaneshar Yadav, son of Raghu Yadav came to his house and informed that Bacchu Yadav has killed his father. He has stated that the cause of the incident is the piece of government land situated in front of the house of Bacchu Yadav. Bacchu Yadav had fenced the plot which was objected by Raghu Yadav. He has identified Bacchu Yadav,



present in Court.

11.1. In his cross-examination, he has stated that his house is situated 1 k.m. away from that of Bacchu. He had not seen the incident. He had seen blood on the ground in a radius of 1 ft. but had not seen any blood stains on the clothes of Raghu Yadav. He had taken Raghu to hospital and to the police station at about 10-10:30 p.m., but no paper-work was done there. At that time, no interrogation was done. He has denied the suggestion that he has deposed falsely. He has denied the suggestion that he is possessing the disputed land and that on his protest Basanti Devi has filed the false complaint/F.I.R.

12. P.W. 4 Ramshila Devi is a hearsay witness. She has deposed in her examination-in-chief that deceased Raghu Yadav was her father-in-law. He had died 7 months ago. She came about his death through the villagers. She was informed by Basanti Devi that Bacchu Yadav had killed the deceased by pressing his neck. She had seen that nose and mouth of the deceased were blood stained. Accused Bacchu Yadav was cultivating the field of Raghu Yadav and about 15 days ago had put fence around the plot due to which there was exchange of hot words between them. She identifies Bacchu Yadav as he is a co-villager.



12.1. In her cross-examination, she has deposed that her family had no enmity with Bacchu Yadav, however, they were not on visiting terms. She has specifically stated that she had not witnessed the incident. She had not seen any blood stains on the clothes of the deceased or on the ground. She had only seen blood on the mouth and nose of the deceased. She had gone to the police station but her statement was not recorded. She had not seen any cut mark on the dead body of the deceased. She has denied the suggestion that she was giving false deposition. She has further denied that Raghu Yadav died because of brain haemorrhage and not because of assault made by Bacchu Yadav.

13. P.W. 5 Dhaneshar Yadav is also a hearsay witness. He has deposed in his examination-in-chief that his father has been killed by Bacchu Yadav about 7 months ago. He has stated that at about 08:00 p.m. he was at his home. On hearing commotion he went to the house of Bacchu Yadav and saw that Bacchu had pressed his father's neck and he had fallen on the ground. He identified Bacchu Yadav in the street light. He has identified accused Bacchu Yadav, present in court.

13.1. In his cross-examination, he has stated that on the date of occurrence, he had not gone out for work. The house of accused Bacchu Yadav is situated at a distance of 2-3



bamboos. He was inside his house. The alarm was raised 10 minutes after the occurrence. He had taken the deceased to the police station, but he had not submitted any application there nor he disclosed anything to the police. He gave his statement to the police at his home a day after the incident. He has denied the suggestion of giving false evidence. He has also denied the suggestion that Raghu Yadav died because of brain haemorrhage and not due to the assault made by Bacchu Yadav.

14. P.W. 6 Dr. Sarvesh Kumar deposed before the court that on 20 July, 2023 he was posted at FMT department ANNMCH, Gaya. On that day he has conducted the *post mortem* of deceased Raghu Yadav S/o Late Vishun Yadav Aged 60 Years Approx, Male, Village Tadmā, P.S. Paraiya, District Gaya and found the following:

“Findings Changes after death

Rigor mortis present. Eyes Closed Mouth Closed.

External Injury:- No obvious External Injury Present.

Internal Injury after dissection of body:-

Bony Cage appear Normal, Lungs, Liver, Spleen, Kidney Normal.

Heart Enlarge (Cardiomegaly with blood clot present)

Stomach Empty-Pale

Respiratory Tract - Pale

Brain-Normal

Viscera Preserved for FSL and HPE.

Opinion- Final Opinion reserved till FSL. and HPE reporting.

Time Since death-12 to 15 Hrs. since P.M. does.



This P.M. report is written by him and bears his signature which was marked exhibit as PW6/1.”

14.1. In his cross examination, he has stated that he has not found any external injury on the body. Heart was found enlarged and clotting is also possible in case of heart attack. No marks on neck were found.

15. P.W. 7 Abhishek Kumar is also a hearsay witness and has supported the manner of occurrence as stated by P.W. 5. He has further stated that the fardbeyan of Basanti Devi bears his signature (Ext.-PW7/1). He also identifies the signature of Vikas Kumar on the inquest report as he is his cousin brother (Ext.PW7/2). He has identified Bacchu Yadav, present in Court.

15.1. In his cross-examination, he has stated that the fardbeyan is not in his pen and he is now aware of the contents of the same. Whatever he has deposed in Court is also mentioned in the fardbeyan. He has further stated that he had not seen any quarrel between the parties. He had seen Basanti Devi, Dhaneshar Yadav, Ramshila Devi, Arpan Devi and Bhuneshar Yadav, but had not seen anyone else present there. Raghu Yadav was not taken to hospital as he had already died. Police took the dead body of his grandfather. He had also gone with the police. He was also present at the time of Panchnama. Panchnama bears the signature of Vikas Kumar, but not his. No mark of injury was present on the neck of his grandfather. No mark of assault or cut



was there on his body. He has denied the suggestion of giving false evidence. He has also denied the suggestion that Raghu Yadav died because of brain haemorrhage and not due to the assault made by Bacchu Yadav. He has also denied the suggestion that he has lodged a false case due to previous enmity.

16. P.W. 8 Ajay Kumar has deposed in his examination-in-chief that on 19.07.2023 he was posted as S.H.O. of Paraiya P.S. He registered the present case based on the fardbeyan of the informant Basanti Devi. Fardbeyan is in the pen and signature of S.I. Pramod Kumar which he identifies. Fardbeyan has been paginated by him and bears his signature which he identifies. Fardbeyan bears the signature of Abhishek Kumar (Ext.PW 8/1). Formal F.I.R. is in the pen of writer Minu which he identifies (Ext. PW 8/2). Thereafter, he took over the charge of investigation of Paraiya P.S. Case No. 279 of 2023, recorded the re-statement of the informant, Arpan Devi, Bhuneshar Yadav and Ramshila Devi in para Nos. 8, 9, 10 and 11 respectively. He inspected the place of occurrence which is situated 30 kms. south of the police station. He raided the house of accused Bacchu Yadav who was absconding. He recorded the statement of witness Dhaneshar Yadav who supported the



incident. He arrested the accused and obtained the post mortem report of the deceased and mentioned it in the case diary. He took the statement of the accused who did not give any satisfactory reply. He sent the viscera to F.S.L. for examination. He received the supervision note and on completion of investigation, submitted charge-sheet against accused Bacchu Yadav @ Sanjay Yadav. The inquest report of the deceased Raghu Yadav is in the pen and signature of S.I. Pramod Kumar which he identifies (Ext. PW8/3). He has identified the accused arrested by him, present in Court.

16.1. In his cross-examination, he has deposed that he had gone to the place of occurrence at 12:30 a.m. in the night of 20.07.2023. In course of investigation, he has gone through the contents of the inquest report. He had not seen the dead body as it was sent for post mortem. He had recorded the statements of all the witnesses, but he did not mention it in the case diary. P.W. 5, not P.W. 2, had stated before him that he identified Bacchu Yadav in the street light in his statement recorded under Section-161 Cr.P.C. He had not recorded the statement of Abhishek Kumar. As per inquest report, no injury was found on the dead body. He had arrested the accused before receiving the supervision note. He has admitted that when cause of death could



not be ascertained from post mortem, the viscera was sent to F.S.L. on three points, but he had not gone through the F.S.L. report as it was sealed. On the instruction of his superior official, he submitted the charge-sheet. He had not found any blood stains on the place of occurrence. He had not collected any clothes of the deceased during investigation. He has denied the suggestion that his investigation is defective and that accused Bacchu Yadav is innocent. He has also denied the suggestion that he has filed a false charge-sheet.

17. We have considered the arguments canvassed by the learned counsels appearing for the parties, re-appreciated the entire evidence led by the prosecution and perused the trial court records and the documents exhibited.

18. From the evidence led by the prosecution, it transpires that informant Basanti Devi that in her *fardbeyan* she has specifically stated that when she, her daughter-in-law and her husband Raghu Yadav were going to their house from the old house, the accused came there and started assaulting them. It is also alleged that accused slapped her husband Raghu Yadav and started pressing his neck due to which blood started oozing out of his mouth and nose. Therefore, her husband succumbed to the injuries after some time.



18.1. At this stage, if the deposition given by P.W. 1 before the trial court is carefully examined, it transpires that she has changed her story before the trial court and deposed that the accused caught hold of the deceased and repeatedly assaulted him, as a result of which he fell down. Thereafter, accused started assaulting the deceased with kicks and fists on his face and nose due to which blood started oozing out of his mouth and nose. Similar is the version of P.W. 2 Arpan Devi who has also claimed herself as an eye-witness. Thus, from the aforesaid material/evidence led by the prosecution before the trial court, it can be said that there are major contradictions and inconsistencies as well as improvement in the deposition of the prosecution-witnesses. The so called eye-witnesses have changed their version before the trial court. It is also pertinent to note that P.W. 3 to 5 and 7 are hearsay witnesses.

19. At this stage, we would also like to examine the deposition given by P.W. 6 Dr. Sarvesh Kumar who has conducted the *post mortem* of the dead body of the deceased. The said doctor has stated that “final opinion reserved till F.S.L. and H.P.E. report”. During cross-examination, the said witness has specifically admitted that he had not found any external injury on the dead body. Further, heart was found enlarged and



clotting is also possible in the case of heart attack. He has also stated that no marks on neck were found. Thus, from the aforesaid medical evidence placed before the trial court, it can be said that no injury was found on the dead body of the deceased. Therefore, allegation with regard to making assault by the respondent accused and giving kicks and fist blows to the deceased is not corroborated by the medical evidence. It is also required to be observed that even in the *fardbeyan* it is the specific case of the appellant that the accused pressed the neck of the deceased due to which blood started oozing out of his mouth and nose. However, from the medical evidence it is revealed that no marks were found on the neck of the dead body. Thus, we are of the view that medical evidence does not support the version given by the so called eye-witnesses.

20. At this stage, it is also to be observed that P.W. 8 Ajay Kumar, I.O., has admitted during cross-examination that, as per the inquest report, no injuries were found on the dead body. Further, the said witness has admitted that when cause of death could not be ascertained from the *post mortem*, viscera was sent to F.S.L. on three points, however, he had not gone through the F.S.L. report. Further, from the report, it transpires that F.S.L. report goes to rule out the presence of poison.



21. Thus, we are of the view that medical evidence does not support the version given by the eye-witnesses. Further, the eye-witnesses are interested and related witnesses. It is well settled merely because the witness is an interested or related witness, his/her deposition cannot be discarded only on that ground, however, the version given by the said witness is required to be scrutinized closely.

22. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Chandrappa and Ors. Vs. State of Karnataka**, reported in **(2007) 4 SCC 415** in which the Hon'ble Supreme Court has laid down the principle regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal. In Para-42 of the said decision, the Hon'ble Supreme Court has observed 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, reappraise 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 phraseology 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.”

23. In the case of **Nikhil Chandra Mondal Vs. State of West Bengal**, reported in **(2023) 6 SCC 605**, the Hon’ble Supreme Court has observed, in Para-22, as under:-

“22. Recently, a three-Judge Bench of this Court in Rajesh Prasad v. State of Bihar [Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31] has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is



double presumption in favour of the accused. Firstly, the presumption of innocence that 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 court. It has been further held that 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.”

24. Thus, from the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that Appellant Court 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. Further, if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding recorded by the Trial Court.

25. We have closely scrutinized the evidence of



P.W. 1 and P.W. 2 who are near relatives of the deceased, i.e. wife and daughter-in-law of the deceased. As observed hereinabove, medical evidence does not support the case of the said eye-witnesses. Further, there are major contradictions, inconsistencies and improvement in the version given by the so called eye-witnesses and, therefore, we are of the view that the prosecution has failed to prove the case against the respondent/accused beyond reasonable doubt. Further, we have also gone through the reasoning recorded by the trial court while passing the impugned judgment. We are of the view that the trial court has not committed any error while passing the impugned judgment of acquittal.

26. Accordingly, the appeal stands dismissed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

K.C.Jha/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	19.07.2025
Transmission Date	19.07.2025

