

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.372 of 2021

Arising Out of PS. Case No.-95 Year-2017 Thana- AANDAR District- Siwan

Gyanendra Nath Chaubey S/o Satyendra Nath Chaubey Resident of Village-
Barwa, P.S.- Andar, District- Siwan.

... .. Appellant/s

Versus

1. The State of Bihar
2. Nandeshwar Pathak @ Guddu Pathak S/o Virendra Pathak Resident of
Village- Barwa, P.S.- Andar, District- Siwan.
3. Bramheshwar Pathak S/o Virendra Pathak Resident of Village- Barwa, P.S.-
Andar, District- Siwan.

... .. Respondent/s

Appearance:

For the Appellant/s	:	Mr., D.K Sinha, Sr. Advocate Mr. Ajay Kumar Pandey, Advocate
For the Respondent No. 2	:	Mr. Satyendra Rai, Advocate
For the Respondent No. 3	:	Mr. Nityanand Mishra, Advocate Mr. Abhishek Mishra, Advocate Mr. Alok Abhinav, Advocate
For the State	:	Mr. Satya Narayan Prasad, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA)
Date: 23-07-2025

Heard Mr. D.K Sinha, learned senior counsel for
the appellant assisted by Mr. Ajay Kumar Pandey, Mr. Satyendra
Rai, learned counsel for the Respondent No. 2, Mr. Nityanand
Mishra, learned counsel for the Respondent No. 3 and Mr. Satya
Narayan Prasad, learned APP for the State.

2. This appeal has been filed on behalf of the
appellant/informant under Section 372 of the Code of Criminal
Procedure Act against the judgment and order of acquittal



18.12.2020 rendered by learned Sessions Judge, Siwan, in Sessions Trial No. 482 of 2018, arising out of Andar P.S Case No. 95 of 2017 whereby, the concerned Trial Court has acquitted the private respondents/respondent nos. 2 and 3 from the charges levelled against them, for the offences punishable under Sections 307/34 of the Indian Penal Code and Section 27 of the Arms Act.

3. As per the prosecution case, in short, is that on 19.05.2017 at about 11:30 P.M., the informant was sleeping at the door of his house, all of a sudden, Nandeshwar Pathak (Respondent No. 2) and Bramheshwar Pathak (Respondent No. 3) of village Barwan came and Respondent No. 2 shot the informant in his sleeping posture. The informant sustained injury in his left hand. It is further alleged that when the informant woke up, he identified the accused Nandeshwar Pathak, who shot him, in the solar light. It is further alleged that informant's brother was also sleeping by his side. Both the accused were holding gun and Nandeshwar Pathak also made fire in the air and both the accused threatened, if any case is lodged, they will shoot. It is further alleged that the informant is living at his Nani's house, the accused persons are the pattidar of the informant's Nana and both the accused persons have



committed the occurrence just to grab the property of his *Nana*.

4. On the basis of the *fardbeyan*, Andar PS. Case No. 95 of 2017 has been registered under Sections 307 read with 34 of IPC along with Section 27 of Arms Act. After due investigation, the Investigating Officer found the occurrence not true as lodged against the accused-persons, accordingly, the Investigating Officer submitted the charge-sheet with a request to initiate the proceeding of 182/211 of IPC against the informant. Later on, notice was sent to the informant for hearing on the charge-sheet. After hearing both the parties, A.C.J.M- IX, Siwan found the *prima facie* case against both the accused persons under Section 307 read with 34 of IPC along with Section 27 of Arms Act and accordingly, cognizance has been taken. Subsequently, the learned A.C.J.M-IX, Siwan committed the case to the Court of Sessions on 04.09.2018. After the commitment, this case is re-numbered as Sessions Trial No. 482 of 2018.

5. Altogether fourteen (14) witnesses including the doctor and the Investigating Officer who are namely PW-1 Mahesh Pathak, PW-2 Dhaneshwar Pathak, PW-3 Kaushalendra Kumar Pathak, PW-4 Munna Kumar Pathak, PW-5 Nathuni Yadav, PW-6 Upendra Pathak, PW-7 Virendra Pathak, P.W-8



Ritendra Nath Chaubey (brother of the informant), PW-9 Jyoti Pathak, PW-10 Sangeeta Chaubey (the mother of the informant), PW-11 Sudama Kumar, PW-12 Gyanendra Nath Chaubey (the injured informant), PW-13 Dr. Sunil Kumar and PW-14 Arvind Kumar (the Investigating Officer) were examined.

6. Learned counsel for appellant submits that the impugned judgement of acquittal and order is not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgement of acquittal and order. He further submits that from perusal of the evidences adduced on behalf of the prosecution it is crystal clear that witnesses P.W-8, P.W-10, P.W-11, P.W-12 and P.W-13 have fully supported the prosecution case and also doctor examined in this case has also proved the injury report. He further submits that learned Trial has not considered that informant P.W-12 is the eye-witness of the occurrence and fully supported the case but giving the benefit of doubt opposite party no. 2 and 3 have been acquitted from the charges. Learned counsel for the appellant further submits that impugned judgement is illegal, erroneous, unjustified and fit to be set aside.

7. Learned counsel for the respondents submitted that the informant (P.W. 12) himself does not give any



convincing evidence as the informant himself does not admit his brother was also sleeping by his side in his evidence. However, he asserted the same in his *fardbeyan*. Moreover, the informant claims he has identified the accused in the solar light, but the Investigation Officer, who investigated the place of occurrence, did not find any solar light and there is not any source of light produced by the informant or his family members to the Investigating Officer as admitted by the Investigating Officer himself in his evidence. The Informant admits that he is living in his *Nanihal* at village Barwan, but he does not admit that his mother was also there and this witness also tried to show that the accused-persons wanted to grab his land as they are pattidar of his *nana*, but the statement of other witnesses shows that the accused-persons had purchased a land in front of the house of the informant and the informant wanted to grab the land of the accused-persons. So, the informant was annoyed with the accused. So, the motive is not at all proved by the informant. He has lodged a case against Shailesh Yadav, Anuj Yadav, Anil Yadav. He further submitted that learned Trial Court has rightly acquitted the respondents and present appeal should not be entertained.

8. Learned APP for the State has also supported



the submissions made by the learned counsel for the respondents. Further it is submitted that in view of the aforesaid statements and the evidence on record, learned trial Court has rightly acquitted the respondents and the present appeal should not be entertained.

9. On deeply studied and scrutinized all evidences mentioned in impugned judgement, it is evident to note that the informant (PW-12) himself admits that no case is pending against the accused, so annoyance regarding the land dispute is not at all proved, rather the informant was himself annoyed with the accused-persons. Moreover, informant admits in his cross-examination that he has given blood-stained clothes and bedsheet to the Investigating Officer, but the Investigating Officer (PW-14) categorically stated in his deposition that he neither found any blood-stained clothes nor any blood over the land of the place of occurrence and no blood-stained clothes and bed-sheet was given by the informant and his family members. According to the informant, he has sustained the bullet injury while he was sleeping in *karwat* posture which shows that he has attributed a false allegation against the accused-persons as it is clearly established that if they had any intention to kill the informant in sleeping posture, they might have shoot in the back



or vital part of the body as the informant was sleeping. The allegation as attributed by the informant against the accused-persons/respondents looks not convincing and believable as the independent witnesses PW-1 Mahesh Pathak, PW-2 Dhaneshwar Pathak, PW-3 Kaushalendra Kumar Pathak, PW-4 Munna Kumar Thakur, PW-5 Nathuni Yadav, PW-6 Upendra Pathak and PW-9 Jyoti Pathak in their depositions categorically stated that the informant himself inflicted bullet injury just to put pressure upon the bhabhi to make physical contact. So their statement looks convincing as the informant had sustained a simple injury over his left hand as per the injury report.

10. We further finds that Ritendra Nath Pathak (PW-8), younger brother of the informant was sleeping by the side of the informant on the alleged night as per the F.I.R, but PW-8 himself did not admit this fact rather he stated otherwise, he was sleeping in verandah and he saw Nandeshwar and Bramheshwar were coming towards his darwaza. But PW-8 did not admit any threaten or any overt act done by the accused-persons. So, the deposition of PW-8 also looks not believable at all as he is not an eye witness to the alleged occurrence and he arrived at the place of occurrence only after self-injury inflicted by the informant. Moreover, PW-8 also did not admit that



Investigating Officer has taken the blood-soaked bed sheet. Moreover, PW-8 admits that there was blood spilled over the land but the Investigating Officer did not mentioned about the same while investigating the place of occurrence. Further, PW-8 also admits that Jagriti Devi his *bhabhi* and his brother Raghvendranath Chaubey is working in Saudi Arabia. So, the deposition made by PW- 8 also looks not convincing, reliable and believable at all and the allegation as attributed against the accused-persons/respondents cannot be proved beyond shadow of all reasonable doubt.

11. We further find that PW-10 Sangeeta Chaubey (mother of the informant) and PW-11 Sudama Kunwa (*nani* of the informant) are not eye witnesses of the alleged occurrence rather they arrived at the place of occurrence after listening *hallah* and cry of the Gyanendranath Chaubey. PW-10 also admits that Investigating Officer did not take the blood-soaked bed-sheet and she also admits that there was land dispute between the informant against the accused-persons. This court finds that PW-10 is merely a hearsay witness and she herself fails to establish that she was present in the house of Sudama Kunwar on the alleged date as Sudama Kunwar (PW-11), *nani* of the informant did not admitted in her deposition that her



daughter was present in the house and she arrived after hearing the noise of Gyanendranath Chaubey. This court further finds that PW-11 Sudama Kunwar stated that on listening noise of fire, no one came there which is also not convincing and acceptable. PW-10 Sangeeta Chaubey, the mother of the informant stated in her deposition that Jagriti Devi is the wife of her son Raghwendra Chaubey and she has a daughter, who lives with her and her son Raghwendra Chaubey is working at abroad. This court further finds that the informant though denied this fact that he wanted to make physical contact with Jagriti Devi and for the same he self-inflicted the bullet injury in his hand but this is duly admitted by the prosecution witness and Jagriti Devi herself turned before the court as DW-1 and stated in her deposition that Gyanendra Nath Chaubey is his brother-in-law (*dewar*). On 19.05.2017 at about 11:30 PM, Gyanendranath Chaubey was forcibly tried to make physical contact with her and rather she protested, then to put pressure upon her. Gyanendranath himself inflicted the bullet injury in his hand and at that time, Gyanendranath Chaubey was in *Angan* and therefore, he comes to *Darwaza*, she also admits that her *saas* and *nanai-saas* were also in the house. In cross-examination, Jagriti Devi (DW-1) clearly admits that she has



lodged the case against her husband and Gyanendranath Chaubey and she categorically denied that she has illicit relation with Bramheshwar Nath. However, the informant, the brother (PW-8), *Nani* (PW-11) and mother (PW-10) did not admit any case has been lodged by Jagriti Devi. The deposition of DW-1 and of other prosecution witnesses PW-1 to PW-7 and PW-9 thoroughly establishes this fact that the informant has projected a fabricated case by self-inflicting the bullet injury that is why a simple injury he sustained that also gets corroboration from the doctor's report. The Investigating Officer after due investigation, found the case not true for the allegation attributed against the accused-persons.

12. While appreciating the kind of materials on the record, we keep in mind the ratio of the judgment of Hon'ble Supreme Court in ***Sharad Birdhichand Sarda versus State of Maharashtra reported in (1984) 4 SCC 116*** and ***Dilavar Hussain and Ors. v. State of Gujarat and Anr., (1991) 1 SCC 253***. Paragraph '153' of *Sharad Birdhichand Sarda (supra)* is quoted here-under for a ready reference:-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established (1) the circumstances from which the



conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793: 1973 SCC (Cri) 1033: 1973 Cri LJ 1783 where the following observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047] “Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

13. Thus, on the basis of the evidence based on

record and the ratio laid down by the Hon’ble Supreme Court in various cases on circumstantial evidence, it is held that the



charges against the accused/respondent is not proved beyond shadow all reasonable doubt and the necessary elements mentioned in the charged sections are lacking to hold them guilty under the charged sections. In the totality of the circumstances which are appearing from the evidences on the record, we are of the considered opinion that the learned trial Court has not committed any error in appreciation of the evidences.

14. We are dealing with an appeal against acquittal and shall keep in mind the principles governing the cases of appeal against acquittal. The principles have been reiterated by the Hon'ble Supreme Court in catena of decisions and one of them is the case of *H.D. Sundara and Others vs. State of Karnataka* reported in (2023) 9 SCC 581. Paragraph '8' whereof is recorded here-under for a ready reference:-

"8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment State of Karnataka v. H.K. Mariyapp, 2010 SCC OnLine Kar 5591 rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C"). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 Cr.P.C can be summarized as follows:



*“8.1. The acquittal of the accused further strengthens the presumption of innocence;
8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;
8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;
8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and
8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”*

15. It is a case of acquittal in which the presumption of innocence of the accused is, in fact, affirmed by the learned trial Court. In fact, this Court is of the opinion that the prosecution has failed before the learned trial Court to prove the charges leveled against the respondent as opined by the learned trial Court. In ultimate analysis of the entire materials and record, we find no reason to interfere with the judgment of the learned trial court.



16. This appeal has no merit. It is dismissed accordingly.

(Sudhir Singh, J)

(Ramesh Chand Malviya, J)

Mayank/-

AFR/NAFR	NAFR
CAV DATE	N/A
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