IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.382 of 2023

Arising Out of PS. Case No.-21 Year-2002 Thana- MANPUR District- West Champaran

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Yogendra Yadav, aged about 50 years, Son of Late Ganga Yadav, Resident of Village-Chouhatta, P.S.- Manpur, Distt.-West Champaran.

... ... Appellant

Versus

1. The State of Bihar
2. Raj Kishore Mahto, aged about 69 years, S/o Late Hemant Mahto,
3. Govind Mahto, aged about 46 years, S/o Radha Mahto,
4. Brajkishore Mahto, aged about 48 years, S/o Late Samsubhag Mahto
5. Tarkeshwer Mahto, aged about 53 years, S/o Ram Chandra Mahto,
6. Anand Mahto @ Nandu Mahto, aged about 24 years, S/o Late Laxmi Mahto
7. Ramchandra Mahto @ Chandra Mahto, aged about 62 years, S/o late Bhogari Mahto,
8. Lal Bahadur Mahto, aged about 43 years, S/o Ramchandra Mahto,
9. Yogendra Mahto, aged about 41 years, S/o Rajkishore Mahto,
10. Brajesh Mahto, aged about 55 years, S/o Ramjanam Mahto,
11. Rajesh Mahto, aged about 49 years, S/o Ramanam Mahto,
12. Laljee Mahto, aged about 54 years, S/o late Bhogari Mahto,
13. Jitendra Mahto, aged about 45 years, S/o Rajkishore Mahto,
14. Thag Mahto, aged about 63 years, S/o late Bechu Mahto,
15. Prem Mahto, aged about 63 years, S/o late Bandh Mahto

... ... Respondents

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Appearance :

For the Appellant	:	Mr. Shashi Bhushan Singh, Advocate
For the Respondents	:	Mr. Sanjeev Kumar, Advocate
For the State	:	Mr. Abhimanyu Sharma, APP

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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 : 13-08-2025

Heard Mr. Shashi Bhushan Singh, learned counsel for the appellant, Mr. Sanjeev Kumar, learned counsel for the

Respondent Nos.2 to 15 and Mr. Abhimanyu Sharma, learned APP for the State.

2. The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure against the judgment of acquittal dated 04.01.2023, passed by the learned District & Sessions Judge, West Champaran, Bettiah, in Sessions Trial No.2573 of 2014, arising out of Manpur P.S. Case No.21 of 2002, whereby Respondent Nos.2 to 15 have been acquitted by the learned Trial Court from the charge of Sections 147, 148, 452, 436 & 307/149 of the Indian Penal Code and Sections 25(1-b)a, 26 & 27 of the Arms Act.

3. The prosecution case, in brief, is that the father of the appellant/informant purchased a plot from Ghanshyam Mahto and constructed a residential house, flour mill and threshing floor on it. On 29.09.2002, at about 07:00 A.M., three tractors, one of which was a DI Mahindra tractor belonging to Ram Janam Mahto, while the other two had registration numbers of Nepal, arrived at the place of occurrence. Several named accused were reportedly sitting on the tractors, armed with fire-arm, spear and *lathi* and about 25 to 30 unknown persons, armed with weapons, came at the place of occurrence and made indiscriminate firing. On the orders of Rajesh Mahto

and Rajkishore Mahto, Braj Kishore Mahto and Prem Mahto had set the house and flour mill of the informant on fire. Thereafter all the miscreants made indiscriminate firing with intent to kill the family members of the informant. The informant's brother managed to inform the police and upon arrival of the police, the family of the informant and local villagers advanced towards the accused. It is alleged that Rajkishore Mahto allegedly fired from a single-barrel gun with intention to kill the informant's cousin Naresh Yadav, injuring him above the left eye and he fell down. With the help of police and villagers, Rajesh Mahto, Jitendra Mahto, Yogendra Mahto, Lalji Mahto, Govind Mahto, Ramchandra Mahto, Anand Mahto and Rajkishore Mahto were overpowered, their weapons were seized and handed over to the police.

4. On the basis of written complaint of the informant, Manpur P.S. Case No.21 of 2002 was instituted under Sections 147, 148, 452, 436 & 307/149 of the I.P.C. and Sections 25(1-b)a, 26 & 27 of the Arms Act and the investigation was taken up by the police. The police after investigation submitted charge-sheet against Respondent Nos.2 to 15 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.

5. During the trial, the prosecution has examined altogether three witnesses, i.e., PW-1 Naresh Yadav @ Naresh Prasad, PW-2 Ajay Prasad Yadav & PW-3 Prabhu Yadav. The defence has produced certain Exhibits (certified copy of ordersheet dated 08.02.2018, certified copy of protest petition, certified copy of order dated 11.10.1999 in Case No. 1063 m/99, *patta* in the name of Basmati Devi and rent receipt). After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 of the Cr.P.C. and after conclusion of trial, learned Trial Court has acquitted the accused persons.

6. Learned counsel for the appellant submits that the learned Trial Court has failed to appreciate the evidence of the prosecution witnesses, who are the eye-witnesses and has wrongly disbelieved their depositions. The learned Trial Court had also disbelieved the evidence of PW-1 Naresh Yadav, who is the injured witness. It has been submitted by the learned counsel for the appellant that the informant, Investigating Officer and the Doctor have not been examined in this case causing serious prejudice to the prosecution.

7. We have heard learned counsel for the appellant

and have also gone through the records of the case.

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

9. Upon meticulous examination of the records and the impugned judgment, this Court is of the view that the prosecution has failed to establish the charges against the accused beyond reasonable doubt, primarily on account of serious lacunae in the manner of conducting the trial and in the presentation of evidence.

10. The Hon'ble Supreme Court while deciding the case of ***State of U.P. v. Jaggo*** *reported in* ***(1971) 2 SCC 42*** that the prosecution is obliged to examine all material witnesses whose testimony is necessary to unfold the narrative of the case, read as under:

> *"**15.** This Court in Habeeb Mohammad case referred to the observations of Jenkins, C.J., in Ram Ranjan Roy v. Emperor [ILR 42 Cal 422 : 19 CWN 28 : 27 IC 554] that the purpose of a criminal trial is not to support at all costs a theory but to investigate the offence and to determine the guilt or innocence of the accused and the duty of a Public Prosecutor is to represent the administration of justice so that the testimony of all the available eyewitnesses should be before the court. Lord Roche in Stephen Senivaratne v. King [AIR 1936 PC 289 : 39 Bom LR 1 : 164 IC 321] referred to the*

observations of Jenkins, C.J. and said that the witnesses essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution whether the effect of their testimony is for or against the case for the prosecution. That is why this Court in Habeeb Mohammad case said that the absence of an eyewitness in the circumstances of the case might affect a fair trial. On behalf of the appellant it was said that Ramesh Chand was won over and therefore the prosecution could not call Ramesh. The High Court rightly said that the mere presentation of an application to the effect that a witness had been won over was not conclusive of the question that the witness had been won over. In such a case Ramesh could have been produced for cross-examination by the accused. That would have elicited the correct facts. If Ramesh were an eyewitness the accused were entitled to test his evidence particularly when Lalu was alleged to be talking with Ramesh at the time of the occurrence."

11. In the present case, the Doctor who allegedly examined the victim and who only could have proved the nature, and extent of injuries, has not been examined. Consequently, the injuries, as alleged to have been sustained by the victim, remains unproved.

12. Similarly, the Investigating Officer, being the principal witness to prove the steps taken in the course of investigation and to establish the place of occurrence, has also not been examined. The absence of such testimony has created a material

gap in the chain of evidence, which casts doubts on the prosecution case.

13. Further, the prosecution has failed to prove the alleged recovery of the arm said to have been seized in connection with the offence. No sanction order for prosecution under the Arms Act has been produced before the Trial Court. The seizure list relating to the said arm has neither been exhibited during trial nor proved through the testimony of the seizure list witness. Such omission strikes at the admissibility and credibility of the alleged recovery under Sections 61 and 100 CrPC read with Sections 65 and 67 of the Evidence Act.

14. At this juncture, it is notweworthy that the informant of the case, being a direct witness to the occurrence, was the most competent person to depose regarding the genesis of the incident. The failure to examine the informant, without assigning valid reasons, has deprived the defence of the opportunity to test the veracity of the prosecution case through cross-examination. Such omission amounts to withholding of the material evidence, thereby attracting an adverse inference under Illustration (g) to Section 114 of the Evidence Act, which reads as:

> *"114. Court may presume existence of certain facts.*

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume –

(a)*that a man, who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession ;*

(b)*that an accomplice is unworthy of credit, unless he is corroborated in material particulars ;*

(c)*that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration*

(d)*that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence ;*

(e)*that the judicial and official acts have been regularly performed ;*

(f)*that the common course of business has been followed in particular cases ;*

(g)*that evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it ;*

> (h)*that if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him ;*
>
> (i)*that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged."*

15. Further, the record reveals that out of 13 charge-sheet witnesses, only 3 have been examined. The material witnesses cited in the charge-sheet have not been produced before the Court, and no explanation was given for same. The non-production of material witnesses, particularly those who could have corroborated the prosecution case, casts shadow of reasonable doubt on the prosecution.

16. Criminal jurisprudence mandates that the prosecution must prove its case beyond all reasonable doubt, and the benefit of every reasonable doubt must go to the accused. In the present matter, the cumulative effect of the non-examination of material witnesses, the failure to prove the seized arms, and the withholding of primary evidence has rendered the prosecution case wholly unreliable. These omissions are not mere irregularities but go to the root of the matter, thereby causing grave prejudice to the accused.

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*** *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………."

19. 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 reiterated the said view and 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.”

20. 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.

21. In view of the above, we do not find any illegality and perversity in the findings recorded by the Trial Court.

22. Accordingly, the present appeal stands dismissed.

(Sudhir Singh, J.)

(Alok Kumar Pandey, J.)

Gaurav Kumar,
Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
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