

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.54 of 2006

Pradeep Kumar Singh, Son of Sri Sudin Prasad Singh, Resident of Village-
Rampur Kodarkatti, Police Station- Araria, District- Araria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Madhav Jha, Advocate
	:	Ms. Kanchan Jha, Advocate
For the Respondent/s	:	Mr. A.M.P Mehta, App.

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT

Date: 16-06-2025

Heard Mr. Madhav Jha, learned counsel for the
appellant assisted by Ms. Kanchan Jha and Mr. A.M.P Mehta,
learned APP for the State.

2. The present appeal has been filed under
Section 374 (2) of Code of Criminal Procedure, 1973
(hereinafter referred as ‘Cr.P.C’) challenging the Judgment of
conviction dated 16.12.2005 and order of sentence dated
19.12.2005 passed in Sessions Trial No. 471 of 1990 / 68 of
2004 in connection with Araria P.S. Case No. 265 of 1989
passed by learned Additional District and Sessions Judge, Fast
Track Court no.-V, Araria, whereby and where-under the
appellant has been convicted for offence punishable under
Sections 307 and 354 Indian Penal Code (hereinafter referred as



“IPC”) and has been sentenced to undergo rigorous imprisonment for 5 years for the offence punishable under Section 307 of the IPC and further undergo simple imprisonment for one year for the offence punishable under Section 354 of the IPC. However, both the sentence shall run concurrently.

3. The case of the prosecution in brief, is that on 02.11.1989 at about 6 am informant Ramanand Tatma sent his son Dinesh Tatma to call accused Pradip Kumar Singh for inquiring into the facts as to why he misbehaved with his daughter on last Saturday. It is alleged that his another son Indradeo Tatma accompanied with the other brother Dinesh Tatma. When the sons of the informant asked Pradip Kumar Singh to accompany with them to their house as his father has called him, accused refused to go there. Further, it is alleged that the informant went at the house of accused and he saw accused armed with pistol in his hand and pointing it towards his two sons. Informant asked the accused not to fire, but in the meantime, accused fired from his pistol but anyhow his sons escaped. It is alleged that informant along with his two sons caught the accused with pistol but accused after pushing them fled away. In the meantime, some villagers reached at the place



of occurrence. The motive assigned for the alleged occurrence is that on last Saturday at 10 am while daughter of the informant was returning back from the house of one Giranand Singh with pacey on her head and reached near plantain trees, accused caught hold of her hand and tried to molest her and outrage her modesty but anyhow she escaped from his clutches.

4. On the basis of fardbeyan of the informant on 02.11.1989 at 10 am case was instituted and after completion of investigation, police submitted charge-sheet. Later on cognizance was taken and case was committed to the Court of Sessions.

5. On behalf of the prosecution, total 7 witnesses were examined to substantiate the charges leveled against the accused/appellant, out of them, PW-1 Hare Krishan Das, PW-2 Nakachedi Tatma, PW-3 Panchanand Das @ Tatma, PW-4 Nirmala Devi (victim), PW-5 Indradeo Tatma, PW- 6 Dinesh Kumar Tatma and PW-7 Ramanand Tatma (informant). On behalf of defence 3 witnesses have been examined, DW-1 Jageshwar Mandal, DW-2 Uma Shankar Tatma and DW-3 Bhumi Yadav.

6. PW-1 in his examination-in-chief stated that the occurrence took place 11 years ago around 6-7 am and he



had gone in the east direction of the house for defecate and while returning from defecate he saw the accused going in the east direction. He saw both sons of Ramu Das chowkidar going to call the accused. When accused started to flee then both sons were chasing him. After some distance accused fell down on the ground then informant and his two sons caught him. He further stated that he saw a 3 nut in the hands of chowkidar. Chowkidar told him that he has recovered it from the possession of accused. In para-2 of his cross-examination, he stated that when he reached at the place of occurrence accused was not there. Informant and his sons told him about the alleged occurrence and also about the recovery of Pistol. At that time pistol was in the hand of chowkidar. Further he stated that time whatever statement he has made before this Court is on the basis of statement made by informant to him.

7. PW-2 in his examination-in-chief stated that the alleged occurrence took place 11 years back. At the time of alleged occurrence he was at his darwaza. On the hulla of Nirmala Devi, he along with Panchanand went near her and they saw Nirmala Devi weeping. Nirmala told them that while she was carrying paddy crops accused came there and caught her hands with bad motives. Accused wanted to take her towards



plantain trees but on her hulla accused fled away. Further he stated that after 2-3 days he came to know that Dinesh and Indradeo has gone to call Accused. When he went on hulla, he saw Ramu chowkidar snatching a pistol from the hands of accused. In his cross-examination, he stated that when he went at the place of occurrence he saw pistol in the hand of accused. Further he stated that whatever statement he has made before this Court is on the basis of statement made by Ramu chowkidar and Nirmala to him. He has no personal knowledge of the alleged occurrence.

8. PW-3 in his examination-in-chief stated that occurrence took place 11 years back around daytime. He was at his house and when he heard hulla of daughter of Ramanand Tatma, he went at the place of occurrence. He further stated that Nirmala told him accused was taking her towards plantain trees in order to commit rape. In his cross-examination, he stated that informant is his own brother and further stated that Ganesh, Baijnath, Bilash and Bhola have got their house near the place where hands of niece was caught by accused. He further stated that he has no personal knowledge of the alleged occurrence.

9. PW-4 in her examination-in-chief stated that occurrence took place 11 years back around 10 am. She was



carrying paddy from the house of one Ramanand Singh And reached near Kelabari when accused caught hold of her hands and wanted to take her towards Kelabari with bad intention. She started weeping then her uncle came there and took her away. Further she stated that this fact was stated by her parents then Dinesh was sent for calling accused. Accused fired from his pistol but Dinesh did not receive any injury. In her cross-examination, she stated that there are several houses of Rajput caste near the Kelabari. In para-3 she stated that all the Rajput families were at their doors at the time of alleged occurrence. Further she stated that she was going all alone and finding her alone accused without asking anything from her caught hold of her hands. On hulla accused fled away. She further stated that there used to be regular quarrel between his father and accused due to cutting of crops in accused field.

10. PW-5 in his examination-in-chief stated that occurrence is of dated 02.11.1989 and 3-4 days before the alleged occurrence his sister was coming from the house of one Ramanand Singh when accused teased her and after the alleged occurrence accused fled away from the village. When he came to know that accused is in village on 02.11.1989 then he along with his brother went to call him for Panchayat but he refused to



come and fired from his three nut pistol but he managed to escape. When accused started fleeing away but in the meantime his father came and all of them over powered him and snatched away the pistol, one rod and a towel was recovered from the possession of the accused.

10.i. In his cross-examination, he stated that he did not saw the misbehave done by the accused with his sister and after 4 days he met accused on 02.11.1989 and what day it was he did not remember. He further stated that police took his statement and he told them about the alleged occurrence. He further stated that Dev Narayan Tatma is his uncle and he was murdered for which Session Trial no. 484 of 2000 is pending in the Court of F.T.C-II, Araria and his aunt wanted to got this accused made an accused in that very case also. He further stated that he don't remember that there was cartilage in the pistol or not.

11. PW-6 in his examination-in-chief stated that occurrence took place more than 11 years ago and before the alleged occurrence while his sister Nirmala Devi was carrying paddy from the house of one Ghiranand Singh and reached near Banana trees accused Pradip Singh teased her. This fact was narrated by his sister to his mother, who told him about the



above facts after 2-3 days. When Pradip Singh came in the village after 3-4 days, his father asked him to call Pradip Singh and he along with his brother Inderdeo Tatma went for calling Pradip Singh. When they reached near a small bridge, Pradip Singh fired from his 3-nut, but did not hit them. After firing Pradip Singh started flying away, but anyhow, he was caught by them and 3-nut was recovered from his possession, but in the process Pradip Singh fled away. His father deposited 3-nut in the Araria Police Station. In para-3 of his cross-examination, he has stated that his sister was teased by accused before the alleged occurrence. In Para-5 of his cross-examination, he has stated that when Pradip Singh was caught, several villagers assembled there. In Para-7 he has stated that information was given to villagers that 3-nut was snatched away by his father from the hands of Pradip Singh.

12. PW-7 is the informant of the case stated in examination-in-chief that occurrence took place 11 years ago, his daughter name is Nirmala Devi and her mother sent her to Giranand house to collect paddy. When she was returning from the Giranands house then accused caught her hands and she narrated the same to her mother. After 3 days, he send his both son to call accused Pradip Singh. In para-4 he has admitted that



no one of his family member saw the occurrence committed with his daughter by accused Pradip Singh. In para-5 he stated that he sent his two sons for calling Pradip Singh in order to convene a panchayat. He stated in para-7 that he reached near Pradip Singh after hearing the sound of firing. He snatched away 3-nut from the possession of Pradip Singh, but he did not see as to whether, the above pistol contained any cartridge or not. He can not say the seize, length and number of 3-nut.

13. Learned counsel for the appellant submits that the impugned judgment of conviction and order of sentence are not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgment of conviction and order of sentence from the perusal of the evidences adduced on behalf of the prosecution it is crystal clear that alleged occurrence took 3 days ago from lodging the FIR and no reason for delay has been made by prosecution. He further submitted that informant and his sons are chowkidar who snatched 3nut from the appellant/accused but fail to caught him which creates great doubt behind the allegation and there are no eye witness who supported the prosecution story during their deposition. Learned counsel further submitted that no khokha was recovered by the



investigating officer from the place of occurrence and investigating officer also failed to collect cogent material which shows the complicity of this appellant in the alleged occurrence.

13.i. Learned counsel further submitted that all the witnesses are interested witnesses and no independent witness has been examined by the prosecution. It is admitted fact that there is dispute going on between the appellant and informant due to which he has been made accused in false concocted case due to that dispute. As this appeal is of the year 2006 and occurrence is of the year 1989, where, the appellant has suffered and undergone persistent agony on the account of the same and are struggling for the defence since last 23-24 years. So, the appellant should have been acquitted from the conviction as sentenced against him.

14. However, learned APP for the State defends the impugned judgment of conviction and the order of sentence submitting that there is no illegality or infirmity in the impugned judgment and order of sentence, because prosecution has proved its case against the appellants beyond all reasonable doubts. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the present appeal should not be entertained



15. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution and defence before the Trial Court.

16. On deeply studied and scrutinized all evidences, it is evident to note that the instant case is a case of no evidence and is not sustainable in the eye of law. The prosecution version does not seem to be true in the background of the facts of the case as there are many contradictions in the deposition of the prosecution witnesses with respect to the manner of occurrence and there was prior dispute between the appellant and the informant related to agricultural land. Prosecution has also failed to give proper explanation as to why there was three days delay in lodging of the FIR.

17. Further, the contents of the FIR has also not been proved as the IO has not been examined during the course of trial and non-examination of Investigating Officer is fatal to the case of the prosecution. The Supreme Court in ***Habeeb Mohammad vs The State of Hyderabad 1954 AIR 51, 1954 SCR 475*** pointed out that-

“It was the duty of the prosecution to examine all material witnesses who could give an account of the narrative of the events on which the prosecution is essentially based and that the question



depended on the circumstances of each case. In our opinion, the appellant was considerably prejudiced by the omission on the part of the prosecution to examine Biabani and the other officers in the circumstances of this case and his conviction merely based on the testimony of the police jamedar, in the absence of Biabani and other witnesses admittedly present on the scene, cannot be said to have been arrived at after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this omission. A police Jamedar, in the absence of Biabani and other witnesses admittedly present on the scene, cannot be said to have been arrived at after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this omission.”

18. The Hon’ble Apex Court in the case of ***Munna Lal Vs. State of Uttar Pradesh, reported in 2023 SCC OnLine SC 80***, whose relevant paragraph Nos.- 28 and 39 of the said judgment are reproduced here-in-below:

“28. Before embarking on the exercise of deciding the fate of these appellants, it would be apt to take note of certain principles relevant for a decision on these two appeals. Needless to observe, such principles have evolved over the years and crystallized into ‘settled principles of law.’ These are:

(a).....

(b).....

(c). A defective investigation is not always fatal to the prosecution where ocular



testimony is found credible and cogent. While in such a case the court has to be circumspect in evaluating the evidence, a faulty investigation cannot in all cases be a determinative factor to throw out a credible prosecution version.

(d). Non-examination of the Investigating Officer must result in prejudice to the accused; if no prejudice is caused, mere non-examination would not render the prosecution case fatal.

(e).....

“39. Secondly, though PW-4 is said to have reached the place of occurrence at 1.30 p.m. on 5th September, 1985 and recovered a bullet in the blood oozing out from the injury at the hip of the dead body, no effort worthy of consideration appears to have been made to seize the weapons by which the murderous attack was launched. It is true that mere failure/neglect to effect seizure of the weapon(s) cannot be the sole reason for discarding the prosecution case but the same assumes importance on the face of the oral testimony of the so-called eye- witnesses, i.e., PW-2 and PW-3, not being found by this Court to be wholly reliable. The missing links could have been provided by the Investigating Officer who, again, did not enter the witness box. Whether or not non-examination of a witness has caused prejudice to the defence is essentially a question of fact and an inference is required to be drawn having regard to the facts and circumstances obtaining in each case. The reason why the Investigating Officer could not depose as a witness, as told by PW-4, is that he had



been sent for training. It was not shown that the Investigating Officer under no circumstances could have left the course for recording of his deposition in the trial court. It is worthy of being noted that neither the trial court nor the High Court considered the issue of non-examination of the Investigating Officer. In the facts of the present case, particularly conspicuous gaps in the prosecution case and the evidence of PW-2 and PW-3 not being wholly reliable, this Court holds the present case as one where examination of the Investigating Officer was vital since he could have adduced the expected evidence. His non-examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case.”

emphasis applied

19. Further, Investigating Officer has also not been examined during the course of trial as it was fatal since he could have adduced the expected evidence and his non-examination creates a material lacuna in the effort of the prosecution to nail the appellant, thereby creating reasonable doubt in the prosecution case and the learned trial Court failed to scrutinize the evidence brought on record regarding deficiencies, drawbacks and infirmities crept during course of trial and passed the impugned judgment in complete ignorance of criminal jurisprudence. Further, there is no eyewitnesses to the said occurrence.



20. The learned trial Court failed to scrutinize the evidence brought on record regarding deficiencies, drawbacks and infirmities crept during course of trial and passed the impugned judgment in complete ignorance of criminal jurisprudence and passed absurd judgment. Moreover, there are discrepancies regarding the sequence of events and the presence of individuals at the place of occurrence. Considering this fact, prosecution has failed to establish this case beyond all reasonable doubt, therefore, in such circumstances, it may not be proper to convict the appellant/accused on the materials available on record. Hence, the judgment of conviction and order of sentence in this present matter is fit to be set aside.

21. Hence, the Judgment of conviction dated 16.12.2005 and order of sentence dated 19.12.2005 passed in Sessions Trial Case No. 471 of 1990 / 68 of 2004 arising out of Araria P.S. Case No. 265 of 1989 passed by the learned Additional District and Sessions Judge (FTC)-V, Araria, is set aside and the accused/appellant is acquitted from the charges leveled against him. As the appellant is on bail, he is discharged from liability of his bail bonds.

22. Accordingly, this appeal stands allowed.

23. Office is directed to send back the trial court



records and proceedings along with a copy of this judgment to
the trial court, forthwith, for necessary compliance, if any.

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.06.2025
Transmission Date	18.06.2025

