

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.522 of 2025

Arising Out of PS. Case No.-196 Year-2018 Thana- DAGARUA District- Purnia

Md. Imtiyaz Alam, aged about 45 years (male) son of Md. Fajalur Rahaman,
Village -Gerki Dagarua, Police Station -Dagarua District- Purnea

... .. Appellant/s

Versus

1. The State of Bihar
 2. Md. Wasim, aged about 49 years (male), son of Idrish, Village -Gerki Dagarua, Police Station -Dagarua District- Purnea
 3. Md. Muzaffar, aged about 42 years (male), Son of Md. Shahabuddin, Village -Gerki Dagarua, Police Station -Dagarua District- Purnea
 4. Master Belal @ Md. Belal, aged about 40 years (male) Son of Md. Shahabuddin, Resident of Village/Mohalla -Gerki, Police Station -Dagarua District- Purnea
 5. Md. Ijaj, aged about 32 years (male), Son of Riyazuddin Resident of Village/Mohalla -Gerki, Police Station -Dagarua District- Purnea
 6. Md. Shamim, aged about 57 years (male), Son of Idrish, Resident of Village/Mohalla -Gerki, Police Station -Dagarua District- Purnea.
- Respondent No. (2) to (6) are resident of village -Gerki, Police Station -Dagarua District- Purnea.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Vikram Singh, Advocate

For the Respondent/s : Mr.Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 08-09-2025

The present criminal appeal has been preferred under
Section 413 of the *Bhartiya Nagrik Suraksha Sanhita, 2023*
against the judgment and order dated 11.03.2025 passed by the
learned Additional Sessions Judge- V, Purnea in Sessions Trial
No. 119/2022, arising out of Dagaruwa P.S. Case No. 196 of



2018, whereby Respondent Nos. 2 to 6 were convicted under Sections 147/149 and 323/149 of the Indian Penal Code. However, they were subsequently acquitted under Section 3 of the Probation of Offenders Act after due admonition.

2. The prosecution case, in brief, is that on 25.09.2018, the informant, after closing his shop, was returning to his home. When he reached near house, was surrounded by all the accused persons, namely, Md. Wasim, Md. Muzaffar, Master Belal, Md. Ijaj, and Md. Shamim. The accused persons were armed with sword, farsa, iron rod and other deadly weapons. The accused, Master Belal allegedly took Rs. 25,350/- from the informant's pocket and inflicted an iron rod blow on the head of the informant, due to which he sustained injury and fell down. When the father, mother and wife of the informant came to save the informant, Master Belal ordered to kill them. Upon which, accused Md. Wasim allegedly gave a sword blow on the head of the informant's father, Fazal Rahman, due to which he also sustained injury and fell down. Accused Md. Muzaffar assaulted the informant's mother with fists while accused Shamim and Md. Ajaj allegedly tore the clothes of the informant's wife and attempted to outrage her modesty. Thereafter, all the accused persons fled away from the place of



the alleged occurrence. The injured were taken to the police station by the informant's uncle with the help of the villagers, from where they were referred to Sadar Hospital Purnea for treatment. The father of the informant was referred to PMCH, Patna.

3. On the basis of the fardbeyan of the informant, Dagarua P.S. Case No. 196 of 2018 was instituted under Sections 147, 148, 149, 307, 323, 379 and 504/34 of the I.P.C. and investigation was taken up by the police. The police after completion of investigation submitted charge-sheet against Respondent Nos. 2 to 6 and, accordingly, cognizance was taken. Thereafter, the case was committed to the Court of Sessions. Charges were framed against the accused persons under Sections 147, 149, 307, 323, 341 and 504 of the Indian Penal Code, to which they pleaded not guilty and claimed to be tried.

4. During trial, the prosecution examined altogether 11 witnesses, namely PW1 Md. Fazallur Rahman, PW 2 Md. Manowar, PW3 Yasmin Khatoon, PW4 Md. Yunus, PW5 Md. Tanveer Alam, PW6 Md. Maskur Kalim, PW7 Md. Imtiyaza Alam, PW8 Dr. Abinash Kumar, PW9 Prem Prakash Sah, PW10 Vishnu Bhagwan Singh and PW11 Md. Wahid. The prosecution also produced certain documents, which were marked as



‘Exhibits’, i.e., the signature of the informant on the fardbeyan; Injury reports of informant and Fazlur Rahman; and the FIR.

5. On behalf of the defence, three witnesses were examined, namely DW1 Md. Jahangir, DW2 Md. Arif and DW3 Alamgir. On behalf of the defence, certain documents were also produced, which were marked as ‘Exhibits’, i.e., Certified copy of FIR of Dagarua P.S. Case No. 198 of 2018; certified copy of the order dated 06.11.2020 of Dagarua P.S. Case No. 198 of 2018 and certified copy of chargesheet of Dagarua P.S. Case No. 198 of 2018. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. and upon conclusion of trial, the learned trial court convicted the accused persons, under Sections 147/149 and 323/149 of the Indian Penal Code. However, they were subsequently acquitted under Section 3 of the Probation of Offenders Act after due admonition.

6. The learned trial court held that, according to evidence available on record, the present case was a free-fight occurrence between the informant side and the accused side. The learned trial court in the relevant part of Paragraph 25 of the impugned judgment held the same and is reproduced as under:

*“25. Heard both sides, and perused evidences on record.
Perusal of statement of witnesses, either on behalf of*



prosecution, or on behalf of defence, shows that there was a dispute regarding lock on toilet built, near mosque. Regarding this dispute, free fight took place between both sides. This is quite apparent from exhibit-A, which is FIR lodged by accused persons of the instant case, on the informant side. That the FIR shows that it is a counter case of the instant case, regarding the same occurrence. Hence, it is an admitted fact of the case, that free fight took place between both sides.”

7. Further, the learned trial court held that since it is a case of free fight between both the sides, Section 307 would not be attracted in the present case, as neither intention nor knowledge is made out against the accused persons. Paragraph 26 of the impugned judgment is reproduced as under:

“26. From analysis of evidence on record, it is quite clear that free fight took place between informant, his family members on one side, and accused persons on other side. Fight took place, on dispute regarding use of toilet. Since, from between both sides becomes clear. Hence, section 307 of I.P.C is not attracted against accused persons. Neither intention nor knowledge on behalf of accused persons is apparent. So, prosecution has failed in proving offence u/s 307 of I.P.C against accused persons. Since, it is a free fight, there is no application of section 341 of I.P.C. Nor any witness had stated regarding abuse. So, section 504 of I.P.C is also not proved. In the instant case, accused persons in a mob of five persons had assaulted informant, and his family members, and thus committed an act of riot. Further, each member of the unlawful assembly in furtherance of common intention had assaulted



informant, and his family members. So, accused persons are also held guilty for offence committed under section 323 of I.P.C.”

8. The learned counsel for the appellant has submitted that the learned trial court has wrongly convicted the accused of a lesser offence under Section 323 of I.P.C. and the accused persons ought to have been convicted under Section 307 of I.P.C. Learned counsel for the appellant further submitted that the learned trial court has failed to consider the consistent testimony of the prosecution witnesses, who had fully supported the prosecution case. The learned counsel further submitted that even though some of the witnesses have not seen the alleged occurrence, they have fully supported the prosecution case through their consistent deposition before the learned trial court. It has been urged that the impugned judgment and order is based on conjectures and surmises and, therefore, the same is liable to be set aside.

9. Learned counsel for the respondents submits that the judgment of the learned Single Judge requires no interference and was passed rightly, based on facts and circumstances of the case.

10. We have heard learned counsel for the appellant and the respondent, and have also gone through the records of



the case.

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

12. As per the FIR, the assault was made using sword, farsa, iron rod and other deadly weapons, and the informant was allegedly injured with an iron rod, and the father of the informant was injured with a sword. Upon perusal of injury report and evidence of the doctor, the nature of the injury inflicted upon the informant is simple injury.

13. Further, upon perusal of the injury report of the father of the informant, Fajlu Rehman, it is evident that the injury sustained by him is a lacerated wound, which is typically caused by blunt weapons like a *lathi* or rod. Notably, there is a complete absence of any incised wound, which would ordinarily be expected in the event of an assault with sharp-edged weapons such as a sword. This material inconsistency between the account of the alleged occurrence as in the FIR and the medical evidence on record creates a serious doubt regarding the actual weapons used in the alleged occurrence. While the injury report may support the use of a blunt objects like *lathi* or rod, it does not corroborate the use of a sharp weapon like sword. Therefore,



allegation of assault by means of sword attributed against accused persons does not find corroboration.

14. In criminal jurisprudence, consistency between the medical evidence and the manner of occurrence as mentioned in the FIR and evidence of witnesses is essential for the prosecution to establish its case beyond reasonable doubt. The failure to establish such consistency would weaken the credibility of the prosecution case and gives rise to doubt as to whether a sword was, in fact, used in the alleged occurrence.

15. In order to make out an offence under Section 307 of the IPC, the ingredients of Section 307 needs to be proved. In ***Parsuram Pandey v. State of Bihar***, as reported in (2004) 13 SCC 189, the apex court laid out the essential ingredients for the commission of an offence under Section 307 of IPC. The relevant part of the judgment is reproduced as under:

“15. To constitute an offence under Section 307 two ingredients of the offence must be present:

(a) an intention of or knowledge relating to commission of murder; and

(b) the doing of an act towards it.

For the purpose of Section 307 what is material is the intention or the knowledge and not the consequence of the actual act done for the purpose of carrying out the intention. The section clearly contemplates an act which is done with intention of causing death but which fails to bring about the intended consequence on account of intervening circumstances. The intention or knowledge



of the accused must be such as is necessary to constitute murder. In the absence of intention or knowledge which is the necessary ingredient of Section 307, there can be no offence “of attempt to murder”. Intent which is a state of mind cannot be proved by precise direct evidence, as a fact it can only be detected or inferred from other factors. Some of the relevant considerations may be the nature of the weapon used, the place where injuries were inflicted, the nature of the injuries and the circumstances in which the incident took place.....”

16. From the perusal of the above mentioned judgment, for an offence to be committed under Section 307, an ‘intention or knowledge relating to commission of murder’ should be there, and the intent could be detected or inferred from the circumstances of the alleged occurrence. In the present case, the altercation had taken place between the parties, due to a dispute of construction and lock of the toilet near the mosque. Regarding this dispute the free-fight between both the parties took place. After going through the material available on record, we do not find any element to prove “intention or knowledge relating to commission of murder” on part of the accused persons, and as such an offence under Section 307 of IPC cannot be said to be committed.

17. The evidence of the doctor and the injury report suggests that a simple injury was caused upon the informant. The injury upon the father of informant as per the evidence of



the doctor was grievous, however, the doctor had further opined that it could have been caused by falling on ground, or falling on a bamboo bait. In the instant case, the accused persons had assaulted the informant and his family members, and from the perusal of the facts and material available on record, it is evident that the ingredients of Section 323 are fulfilled. Thus, the accused were rightly convicted under Section 323 of I.P.C.

18. On the point of sentence, we find that no criminal antecedent has been brought forward by the prosecution, against the accused persons. The accused are, therefore, eligible for consideration of admonition of sentence under Section 3 of the Probation of Offenders Act. The learned trial court, considering the nature of the offence and circumstances in which the alleged occurrence took place, has rightly admonished the accused.

19. The findings recorded by the learned trial court do not suffer from any illegality and perversity. In a criminal case, the identity of the accused is to be established, so as to prove his guilt 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.

20. 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 are 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.....”

21. In ***Babu Sahebagouda Rudragoudar v. State of Karnataka*** reported in ***(2024) 8 SCC 149***, the Hon’ble Supreme Court, after referring to relevant precedents, observed as follows:

“41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:

41.1. That the judgment of acquittal suffers from patent perversity;

41.2. That the same is based on a misreading/omission to consider material evidence on record; and

41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

42. The appellate court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse



the judgment of acquittal rendered by the trial court.”

22. 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.

23. In view of the above, we do not find any illegality and perversity in the findings recorded by the trial court.

24. Accordingly, the present appeal is dismissed.

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

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Sujit/-

AFR/NAFR	NAFR
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