

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.531 of 2025

Arising Out of PS. Case No.-91 Year-2021 Thana- IMADPUR District- Bhojpur

Sanjay Kumar Singh @ Sanjay Singh, aged about 49 years, male, S/o Late Jagdev Singh, Resident of Village- Moap Kalan, PS- Imadpur, District- Bhojpur

... .. Appellant

Versus

1. The State of Bihar
2. Mantu Singh, aged about 52 years, male, S/o Late Judge Singh
3. Shesh Nath Singh, aged about 56 years, male, S/o Late Judge Singh
- Both R/o Village-Keshopur, P.S.-Barhara, District-Bhojpur
4. Vishwanath Singh, aged about 58 years, male, S/o Late Rajeshwar Singh
5. Satyanand Singh, aged about 55 years, male, S/o Late Rajeshwar Singh
6. Arun Kumar Singh, aged about 38 years, male, S/o Late Ramnath Singh
7. Banke Bihari Singh, aged about 22 years, male, S/o Satyanand Singh
8. Deepak Kumar Singh, aged about 35 years, male, S/o Late Ramnath Singh
- All R/o Village-Moap Kalan, P.S.-Imadpur, District-Bhojpur.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Ram Kumar Singh, Advocate
For the Respondents	:	Mr. Bimal Kumar, Advocate
For the State	:	Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 17-09-2025

The present criminal appeal has been preferred under Section 413 of the *Bhartiya Nagrik Suraksha Sanhita, 2023* against judgment of acquittal dated 14.02.2025, passed by the learned Additional Sessions Judge-III, Bhojpur at Ara in



Sessions Trial No.127 of 2023, arising out of Imadpur P.S. Case No.91 of 2001, whereby Respondent Nos.2 to 8 have been acquitted by the learned Trial Court from the charge of Sections 147, 148, 302, 504 & 506 of Indian Penal Code read with Section 149 of the Indian Penal Code and Section 27 of the Arms Act.

2. The prosecution case, in brief, is that on 18.07.2021 at about 06:00 A.M., informant Sanjay Singh along with his father and cousin went at their fields and when they reached there, the named accused persons along with other co-accused, all armed with rifle, pistol and country-made pistol, came and started firing on the informant, his father and his cousin. Respondent No.8 fired on the father of the informant, Jagdeo Singh which hit right side of his waist and he fell down. Respondent Nos.4 & 5 fired upon the informant and his cousin with intention to kill but they somehow managed to save themselves. The injured was taken to the local clinic at Babu Bazar, Ara where, during the course of treatment, the informant's father died. It is alleged in the *fardbeyan* that land dispute is the reason behind the alleged occurrence.

3. On the basis of written report of the informant, Imadpur P.S. Case No.91 of 2021 was instituted under Sections



147, 148, 149, 302, 504 & 506 of the Indian Penal Code and Section 27 of the Arms Act investigation was taken up by the police. The police, after investigation, submitted charge-sheet against Respondent Nos.2 to 8 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.

4. During the trial, the prosecution examined altogether ten prosecution witnesses, *i.e.*, PW-1 Golu Singh @ Rajeev Kumar, PW-2 Awadhesh Kumar, PW-3 Prabhash Kumar, PW-4 Satendra Singh, PW-5 Ayodhya Singh, PW-6 Dr. Ashok Kumar, PW-7 Ajay Kumar Singh PW-8 Pappu Singh, PW-9 Sanjay Kumar Singh & PW-10 Santosh Kumar Singh. The prosecution has also produced certain documents which were marked as 'Exhibits' *i.e.*, Ext. PW-1 Signature of I.O. Awadhesh Kumar at endorsement of FIR, Ext. PW-1/1 Handwriting and signature of I.O. Prabhash Kumar on fardbeyan, Ext. PW-1/2 Signature of informant Sanjay Kumar Singh on fardbeyan, Ext. PW-2 Handwriting and signature of I.O. Awadhesh Kumar on seizure list, Ext. PW-2/1 Signature of Chaukidar Satendra Singh on seizure list, Ext. PW-2/2 Signature of Chaukidar Ayodhya Singh on seizure list, Ext. PW-3 Signature of I.O. Awadhesh



Kumar on formal F.I.R., Ext. PW-4 Handwriting and signature of I.O. Prabhash Kumar on charge-sheet No.119 of 2021, dated:-10.10.2021, Ext. PW-5 Handwriting and Signature of Prabhash Kumar on charge-sheet No.150 of 2021, dated:-22.12.2021, Ext. PW-6 Post-mortem report of deceased Jagdeo Singh, Ext. PW-7, Forensic Science Laboratory Test Report, Ext. PW-X Signature of witness Ajay Kumar Singh on Xerox Copy of inquest report of deceased Jagdeo Singh (with objection) and Ext. PW-X/1 Signature of informant Sanjay Kumar Singh on Xerox copy of inquest report of deceased Jagdeo Singh. 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.

5. The learned Trial Court on the basis of the materials available on record, and the evidence produced before the Court, acquitted the accused persons and held that, no independent witnesses were produced before the learned Trial Court, and all the prosecution witnesses were near relatives of the accused persons, except the police officials and doctors. PW-8 and PW-10 have been declared hostile and have stated in their evidence that they have no knowledge regarding the alleged



occurrence. The learned Trial Court further relied on the evidence of the Investigating Officer (I.O.), whereby the I.O. had stated that at the time of the alleged occurrence, the accused Deepak Singh who is alleged to have shot the deceased persons was hospitalised, and which had been verified by the I.O. The learned Trial Court held that there were contradictions in the evidence of the accused persons, and the prosecution has failed to prove the charges levelled against the accused persons, and has been unable to prove the case beyond shadow of reasonable doubts. The relevant part of paragraph 22 of the impugned judgment is reproduced as under:

“22.The prosecution witness Nos. 08 and 09 are declared hostile by the prosecution and they were not about the incident and thus the testimonies of these witnesses are no evidentiary value in the eyes of law and these witnesses are also failed to corroborate the case against the accused persons. Now, I have come to the testimony of Prosecution witness no. 7 and he says in examination-in-chief that the accused Deepak Kumar Singh fired upon his uncle in which his uncle sustained gunshot injury but the I.O. of this case clearly says in his examination-in-chief as well as in his cross-examination that on the day of occurrence Deepak Singh was admitted in Bihiyan Hospital for treatment and he was suffering from loose motion and



vomiting and the same is clearly transpires from para no. 06 of prosecution witness no. 02. The witness further says at para no. 14 of his cross-examination that his uncle was sustained gunshot injury after twenty minutes of firing and the firing was done and all around the directions they how he could says that the bullet of Deepak Singh hit his uncle. The witness further says at para no. 16 of his cross-examination that he fled away from the occurrence to save his life and when he reached at the place of occurrence then he found that his uncle was lying which means the present witness does not see how fired on his uncle and from which firing he got sustained injured and thus the present witness has also not seen the occurrence from his own eyes and he also failed to corroborate the case against the accused persons and this court is also not fully reliable on the testimony of the present witness.”

6. Learned counsel for the appellant submits that the learned Trial Court has wrongly relied upon the plea of *alibi* of respondent No. 8 Deepak Kumar Singh that he was admitted in the Sadar Hospital, Bihiya at the time of occurrence though, there is no Sadar Hospital at Bihiya and there was no record to show that he was admitted in the said hospital at the time occurrence. It is further submitted that PWs 1 & 7 are the eye-witnesses to occurrence as they were present at the place of



incident but the learned Trial Court has wrongly observed that they were not the eye-witnesses. He further submits that the learned Trial Court has declared the informant (PW-9) as hostile witness though he is the eye-witness of the occurrence.

7. The learned counsel for the respondent-State has submitted that there is no perversity in the judgment of the learned Trial Court, and the prosecution has failed to prove the guilt of the accused before the learned Trial Court. Therefore, the order of the learned Trial Court requires no interference in the present case.

8. We have heard learned counsel for the appellant and the respondent-State and have also gone through the records of the case.

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

10. In the present case, PW-8 and PW-10 are the independent witnesses. The other prosecution witnesses namely, PW-2, PW-3, PW-4 & PW-5 are the police officials, and PW-6 is the Doctor, who has conducted the postmortem of the deceased. PW-1, PW-7, and PW-9 are the interested witness who claimed to be an eyewitness to the alleged occurrence.



Upon perusal of evidence on record, PW-8 and PW-10, who are independent witnesses, have been declared hostile in the present case, and have stated that they have no information about the alleged occurrence. The informant (PW-9) has stated that he was going to the field with his father (deceased), and his cousins, PW-1 and PW-7, and that they are an eye-witness to the alleged occurrence, and as such, their evidence is important for determination of the manner of the alleged occurrence.

11. PW-1 and PW-7 are the cousin of the informant who are said to have accompanied the deceased along with the informant. They state in their evidence that a huge quantity of firing took place in all directions at the place of occurrence. However, the prosecution has failed to satisfactorily explain how did three said persons, accompanying the deceased, escape from the indiscriminate firing which happened at the place of occurrence. Further, no blood-stains or bullet cartridges were found at the place of occurrence. PW-9, in his evidence, states that 15 rounds of firing were done at the place of occurrence, but no cartridges were recovered from the place of occurrence. Thus, the manner of occurrence, in the present case, has not been proved the prosecution beyond reasonable doubts.

12. Further, PW-9 has stated, in his evidence, that



when the alleged occurrence took place, he was lying on the ground, but the evidence of PW-1 and PW-7 suggests that the informant along with his cousins had fled the place of occurrence. Also, from the evidence of PW-1 and PW-7, it is clear that they fled from the scene of the alleged occurrence and did not witness the incident. As such, they cannot be eyewitness in the present case. It is also to be noted that PW-9, stated in his evidence that when his father was shot, the deceased fell on ground, but PW-7 in his evidence has stated that when the deceased was shot, the deceased was sitting on the ground. These discussions when viewed together, cast a serious doubt on the testimony of the prosecution witnesses, and the manner in which the alleged occurrence took place.

13. Further, PW-9, has stated, in his evidence, that there were sugarcane fields around the place of the alleged occurrence, however, in the evidence of PW-2, who is the I.O. of this case, no sugarcane field was found around the place of the alleged occurrence. The informant has further stated, in his evidence, that on the day of the alleged occurrence, no work was going in the field. However, PW-7 has stated, in his evidence, that on the day of the alleged occurrence, irrigation was being done in the said field. Thus, the place of occurrence



also seems to be doubtful.

14. The prosecution has also been unable to prove the motive of the alleged occurrence. PW-1, in his evidence, has stated that the motive of the alleged occurrence is a land dispute between the parties. However, no evidence has been adduced by the prosecution which would support such motive behind the alleged occurrence.

15. The informant (PW-9), in his evidence, before the learned Trial Court has stated that the accused (Respondent No.- 8) fired from a rifle in his hand. In the investigation, a Rifle was seized from the house of one of the accused. The said weapon was sent for forensic examination. However, the F.S.L. report has not proved that the weapon which has been used in the alleged occurrence is this same weapon. As such, the weapon, used in the alleged occurrence, has also not been exhibited in the present case. The learned Trial Court in paragraph 22 of the impugned judgment held the following:

“22.The witness (P.W.-2, i.e., the I.O.) further says at para no. 02 of his cross-examination that he has not found blood stains at the place of occurrence. In para no. 03 the witness further says that he has also not found any empty cartridges and bat from the place of occurrence and in Para no. 04 of his cross-examination the witness says that he has not



recovered any incriminating articles from the possession of the arrested persons. From further perusal of case record it transpires that the I.O. of this case has failed to recover the used weapons which connect the case to accused persons either during the course of investigation or during the trial and there is many contradictions in the statements of all the witnesses and there is gap of consistency in the statements of all the witnesses which further reflects that a casual approach adopted by the prosecution to take appropriate steps to prove their case.”

16. In the present case, the accused Deepak Singh (Respondent No.-8) was charged under Section 302 of the I.P.C., and is alleged to have shot the deceased. However, the evidence of the I.O. (PW-2) suggests that the accused person was not at the place of the alleged occurrence. The relevant part of the impugned judgment is reproduced as under:

“22.P.W.-2 Awadhesh Kumar is the I.O. of this case and he says in his examination-in-chief that on 03.09.2021 he got an application from the mother of accused Deepak Singh and for verification of it, he went to the Bihiyan Sadar Hospital from where he came to know that on the day of occurrence i.e. on 18.07.2021 in the night at about 03:00 o'clock the accused Deepak Singh was admitted



in that hospital and he was discharged from there on the same day at about 07:30 a.m. and his Registraion Number is 9268, dated-18.07.2021 which also clearly transpires from para no. 94 of case diary and the doctor concerned of that hospital supported the factum that on the alleged day of occurrence the accused Deepak Singh was admitted in his hospital and he was under treatment which clearly transpires from para no. 6 of cross-examination of the present witness.”

17. The I.O. (PW-2) has clearly stated, in his evidence, that Deepak Singh (Respondent No.8), was at the hospital at the time of alleged occurrence. Further, the said information has been verified by him and has been brought on record in this case. The learned Trial Court has also relied on the same. But it should be noted that no additional evidence or competent witness have been produced before the learned Trial Court to support the evidence of the I.O. that the Respondent No.8 was in hospital at time of occurrence. The learned Trial Court could have further verified this information under Section 165 of the Indian Evidence Act.

18. However, it is not a case that the defence has produced witness or exhibited a witness taking the plea of ‘*alibi*’, but it is a case where the I.O., who himself, is a



Prosecution Witness has stated in his evidence that the accused (Respondent No.8) was not present at the place of the alleged occurrence. Such statement was made before the learned Trial Court after making verification from doctor and hospital records. Since, the prosecution, specifically the I.O. himself suggests otherwise regarding the presence of accused at the place of occurrence, therefore, such statement should not be discarded. Such evidence of the I.O. clearly weakens the case of the prosecution. It should also be noted that an acquittal cannot be solely based on this fact, but when viewed together with the material contradictions in the evidence of the witnesses we find that the prosecution has been unable to prove the case beyond the shadow of reasonable doubts.

19. In light of the materials available on record and the discussions made above, we find that the ingredients for commissions of an offence under Section 302 of the I.P.C. has not been fulfilled. Intention on part of the accused persons has been proved by the prosecution in the present case, and the presence of the accused person (Respondent No.8), at the place of occurrence, is doubted. The place and the manner of occurrence is also doubtful in the present case. Further, no additional facts have been proved in the instant case which



would show the involvement of the accused persons in the alleged occurrence. This casts serious doubts on prosecution case, and consequently, the involvement of the accused persons in the alleged occurrence has not been proved by the prosecution beyond reasonable doubts.

20. 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.

21. 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 in 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.....”

22. 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 has 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.”

23. 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.

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

25. Accordingly, the present appeal is dismissed.



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

(Sudhir Singh, J.)

(Rajesh Kumar Verma, J.)

Gaurav Kumar/-

AFR/NAFR	N.A.F.R.
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