

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.571 of 2025

Arising Out of PS. Case No.-139 Year-2020 Thana- DARIYAPUR District- Saran

Munna Singh, aged about 55 years, male, S/o Shiv Sagar Singh, Resident of Village- Darihara Bhual, P.S.- Dariyapur, Dist.- Saran at Chapra.

... .. Appellant

Versus

1. The State of Bihar
2. Dharmendra Singh, aged about 42 years, female, S/o Late Ram Sevak Singh
3. Ranju Devi, aged about 42 years, female, W/o Dharmendra Singh
4. Abhay Kumar Singh, aged about 24 years, male, S/o Kedar Singh
5. Ankit Kumar, aged about 22 years, S/o Deo Mohan Singh
6. Rahul Kumar @ Bittu, aged about 19 years, male, S/o Basant Singh

All (respondent Nos.2 to 6) are resident of Village-Darihara Bhual, Police Station-Dariyapur, District-Saran at Chapra.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Bindhyachal Singh, Sr. Advocate with Mr. Aakash Singh, Advocate Mr. Vipin Kumar Singh, Advocate
For the Respondents	:	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 : 19-09-2025

The present criminal appeal has been preferred under Section 413 of the *Bhartiya Nagrik Suraksha Sanhita, 2023* against judgment of acquittal dated 21.02.2025 passed by the learned Additional Sessions Judge-IV, Saran at Chapra in Sessions Trial No.493 of 2021, arising out of Dariyapur P.S.



Case No.139 of 2020, whereby Respondent Nos.2 to 6 have been acquitted by the learned Trial Court from the charge of Sections 302/34 & 120B of the Indian Penal Code and Sections 27 & 35 of the Arms Act.

2. The prosecution case, in brief, is that on 16.05.2020 at about 07:30 A.M., the informant's son Amit Anand went to the field for attending the natural call and bringing vegetables. After attending the natural call, the informant's son was going to the vegetable field and when he reached at the mango orchard of the informant, Aditya Kumar Singh, Abhishek Kumar Singh, Dharmendra Singh, Ankit Kumar, Abhay Kumar Singh waylaid him and Aditya Kumar Singh told that as to why he used to interfere in his work. Thereafter, respondent No.2 ordered Aditya Kumar Singh to shoot him, upon which Aditya Kumar Singh shot the informant's son due to which he died. On hearing the sound of firing, the informant rushed towards the orchard with his family members and saw the accused fleeing away by firing in the air and threatening him. It is further alleged that the accused are involved in smuggling of arms and other illegal activities.

3. On the basis of the *fardbeyan* of the informant, Dariyapur P.S. Case No.139 of 2020 was instituted under



Sections 302/34 & 120B of the Indian Penal Code and Sections 27 & 35 of the Arms Act and investigation was taken up by the police. The police, after 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 to which they pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined altogether eight prosecution witnesses, *i.e.*, PW-1 Deepak Kumar Singh, PW-2 Nitesh Kumar Singh, PW-3 Nitesh Kumar Singh, PW-4 Anand Kumar Singh, PW-5 Munna Singh (informant), PW-6 Md. Nasim Khan (I.O.), PW-7 Md. Belal (I.O.) and PW-8 Dr. Amit Verma (Doctor). The prosecution has also produced certain documents which were marked as 'Exhibits', *i.e.*, Ext. P-1/PW-1 Signature of witness on *fardbeyan*, Ext. P-2/PW3 Signature of witness on inquest report, Ext. P-3/PW4 Signature of witness on *fardbeyan*, Ext. P-4/PW4 Signature of witness on inquest report, Ext. P-5/PW6 Endorsement by S.H.O. on *fardbeyan*, Ext. P-6/PW7 Charge-sheet, Ext. P-7/PW7 Signature of S.H.O. on charge-sheet & Ext. P-8/PW8 Postmortem report. 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 observing that all the witnesses are the family members of the informant and deceased and in course of deposition before the Court, the prosecution witnesses have stated before the Court that they went to attend the call of nature with the deceased but during the investigation, all the witnesses had given their statements before the Police that they came at the place of occurrence on hearing the sound of the firing. Thus, there is major contradiction in the statements given by the prosecution witnesses before the Investigating Officer and before the Court. The witnesses, who are claiming to be eye-witnesses to the occurrence in question, have said that they had seen the injury on left side of the chest of the deceased but the Doctor found the injury on the right side of the chest of the deceased. Thus, the *postmortem* is not corroborating with the deposition of the prosecution witnesses. Further, the Investigating Officer neither found any blood stains nor recovered the cartridges from the place of occurrence. The learned Trial Court has further observed that the prosecution has



failed to prove the charges levelled against the accused persons.

6. Learned counsel for the appellant submits that the learned Trial Court has failed to appreciate the deposition given by PWs-1, 2, 3, 4 & 5 that they were the eye-witnesses to the occurrence in question. They have specifically deposed before the Court that they were present nearby the place of occurrence from where they had seen the incident. He further submits that the learned Trial Court has also failed to appreciate that the place of occurrence has been successfully established by the prosecution being mango orchard.

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. Upon anxious consideration of the records and the evidence adduced, this Court finds that there exist material infirmities which strike at the very root of the prosecution case.

11. At the threshold, it is manifest that none of the witnesses, including the informant, can be regarded as an eye-witness to the actual occurrence. The informant himself has categorically admitted that he rushed to the place only after hearing the sound of firing and did not see the assailant inflicting the fatal injury. His subsequent version is based entirely on what was narrated to him by the villagers after he regained consciousness. Such testimony is clearly hearsay and, therefore, cannot assume the status of direct ocular evidence. The other witnesses, though seeking to project themselves as eye-witnesses during trial, stand contradicted by their own statements recorded under Section 161 of the Cr.P.C., wherein no such claim was advanced. Their evidence, thus, suffers from inherent infirmity and cannot be safely relied upon to bring home the charge. In *Namdeo v. State of Maharashtra* reported in (2007) 14 SCC 150, the Hon'ble Supreme Court has reiterated that a conviction cannot be sustained on testimony which does not inspire confidence and stands riddled with contradictions, as observed in paragraph 28 of the judgment



which reads as under:

“28....Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence....”

12. This Court further notes serious lapses in the handling of material evidence. The cartridge and bullet, alleged to have been recovered from the body of the deceased, were neither sent for FSL examination nor produced before the Court as material exhibits. Such omission cannot be brushed aside as a mere irregularity. Forensic examination of the bullet would have provided vital corroboration as regards the weapon used, the range of firing, and the nexus of the accused with the offence. In the absence of such scientific evidence, the prosecution version loses substantial assurance.

13. Equally significant is the inconsistency between the ocular version and the medical evidence. While the prosecution witnesses have deposed that the deceased sustained injury on one side of the chest, the medical evidence



unequivocally records the wound on the opposite side of the chest. Further, whereas the witnesses alleged that the firing took place from a distance of several feet, the Doctor has opined that the injury bore charring marks which could only result from close-range firing within a few inches. These contradictions are irreconcilable and casts a shadow of reasonable doubt on the prosecution case. In ***Thaman Kumar v. State of U.T. Chandigarh*** reported in (2003) 6 SCC 380, it was held that when ocular and medical evidence are in direct conflict and incapable of reconciliation, the prosecution case cannot be accepted with confidence, as observed in para 16 of judgment which reads as under:

“16. The conflict between oral testimony and medical evidence can be of varied dimensions and shapes. There may be a case where there is total absence of injuries which are normally caused by a particular weapon. There is another category where though the injuries found on the victim are of the type which are possible by the weapon of assault, but the size and dimension of the injuries do not exactly tally with the size and dimension of the weapon. The third category can be where the injuries found on the victim are such which are normally caused by the weapon of assault but they are not found on that portion of the body where they are deposed to have been caused by the eyewitnesses. The same



kind of inference cannot be drawn in the three categories of apparent conflict in oral and medical evidence enumerated above. In the first category it may legitimately be inferred that the oral evidence regarding assault having been made from a particular weapon is not truthful. However, in the second and third categories no such inference can straight away be drawn. The manner and method of assault, the position of the victim, the resistance offered by him, the opportunity available to the witnesses to see the occurrence like their distance, presence of light and many other similar factors will have to be taken into consideration in judging the reliability of ocular testimony.”

14. The prosecution has also failed to establish the place of occurrence beyond reasonable doubt. The consistent version of the witnesses that blood had fallen on the ground and that the deceased was lying in a pool of blood is contradicted by the Investigating Officer, who categorically stated that no bloodstains were found at the alleged place. No cartridge, no incriminating article, nor any other sign indicative of the occurrence was recovered. In this regard, reliance may be placed on the judgment of the Hon'ble Supreme Court in ***Syed Ibrahim v. State of Andhra Pradesh***, reported in (2006) 10 SCC 601, wherein it was held in paragraph 11 as under:



“11.....But there is another significant factor which completely destroys the prosecution version and the credibility of PW 1 as a witness. He has indicated four different places to be the place of occurrence. In his examination-in-chief he stated that the occurrence took place in his house. In the cross-examination he stated that the incident took place at the house of his wife, the deceased's mother. This is a very important factor considering the undisputed position and in fact the admission of PW 1 that he and his wife were separated nearly two decades ago, and that he was not on visiting terms with his wife. Then the question would automatically arise as to how in spite of strained relationship he could have seen the occurrence as alleged in the house of his wife. That is not the end of the matter. In his cross-examination he further stated that the incident happened in the small lane in front of the house of his wife. This is at clear variance with the statement that the occurrence took place inside the house where allegedly he, the deceased, his son, PW 2 and daughters, PWs 3 and 6 were present. That is not the final say of the witness. He accepted that in the FIR (Ext. P-1) he had stated the place of occurrence to be the house of the deceased. Though the FIR is not a substantive evidence yet, the same can be used to test the veracity of the witness. PW 1 accepted that what was stated in the FIR was correct. When the place of occurrence itself has not been established it



would not be proper to accept the prosecution version.”

15. Applying the above ratio, it becomes evident that when the place of occurrence is itself doubtful, the prosecution story loses its credibility.

16. Lastly, the allegation of conspiracy under Section 120B of the Indian Penal Code remains wholly unsubstantiated. The prosecution has not adduced any evidence, direct or circumstantial, to demonstrate a meeting of minds between the accused persons to commit the alleged offence. Mere suspicion, however strong, cannot take the place of legal proof. The law on this point has been lucidly laid down in ***Kehar Singh v. State (Delhi Administration)*** reported in (1988) 3 SCC 609, where it was held that conspiracy must be proved by cogent evidence establishing an agreement to commit an unlawful act; vague allegations cannot sustain such a serious charge, as observed in paragraph 275 of the judgment which reads as under:

“275. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence.



The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand explains the limited nature of this proposition: [1974 Criminal Law Review 297, 299]

“Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties ‘actually came together and agreed in terms’ to pursue the unlawful object; there need never have been an express verbal agreement, it being sufficient that there was ‘a tacit understanding between conspirators as to



what should be done'.”

17. In view of the aforesaid infirmities namely, the absence of reliable ocular testimony, the non-production of crucial material evidence, the contradiction between ocular and medical evidence, the failure to establish the place of occurrence, and the complete lack of proof regarding the allegation of conspiracy, this Court is constrained to hold that the prosecution has failed to establish its case beyond the pale of reasonable doubt. The settled principle of criminal jurisprudence is that suspicion, however grave, cannot substitute proof, and the benefit of doubt must enure to the accused.

18. 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.

19. 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....."

20. 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."

21. 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.

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

23. Accordingly, the present appeal is dismissed.

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

25. This Court records the appreciation for the able and articulate submissions made by Mr. Akash Singh, learned counsel for the appellant. His thorough preparation, clarity of argument, and assistance to the Court have been of considerable value in the adjudication of this matter.

(Sudhir Singh, J.)

(Rajesh Kumar Verma, J.)

Gaurav Kumar/-

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