

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.549 of 2024

Arising Out of PS. Case No.-111 Year-2021 Thana- DAUDPUR District- Saran

Md Badsah Ansari @ Ansari, Son of Md. Barik Ansari @ Mohd. Barik @ Abdul Barik, Village- Gali No. 29, House No. 2699 and PS- Tughlakabad Extn Kalkaji District- South Delhi New Delhi Appellant
Versus

1. The State of Bihar
 2. Md Murtaza Ansari @ Murtaza Ansari, Son of Wakil Ansari Village- Barwa Lahmari Daudpur, P.S.- Daudpur, Dist- Saran
- Respondents

Appearance :

For the Appellant : Mr. Pravashankar Mishra, Advocate
For the State : Ms. Shashi Bala Verma, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 05-08-2025

The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure, 1973 against the judgment of acquittal dated 20.01.2024 passed by the learned Additional District & Sessions Judge- IX, Saran, Chapra in Sessions Trial No. 652 of 2021, arising out of Daudpur P.S. Case No. 111 of 2021, whereby Respondent No. 2 has been acquitted by the learned Trial Court from the charge of Sections 302/34 of Indian Penal Code and Section 27 of the Arms Act.

2. Vide order dated 27.03.2025, notice was issued to the Respondent No. 2, upon which he appeared by filing *Vakalatnama* through learned Advocate, Mr. Satyendra Kumar



Sinha.

3. The prosecution case, in brief, is that marriage of the informant's sister was solemnized with Murtaza Ansari in the year 2013. Soon after marriage, Murtaza Ansari and his family members started torturing her by harassing and assaulting her. It has also been alleged that on previous occasion, when her sister had been assaulted by her in-laws, she went to AIIMS, Delhi for treatment. Two months before the incident, they assaulted his sister and its information was given to the police but after counselling, she went to her matrimonial house. It has also been alleged that two days prior to *Eid*, again they assaulted her, whereafter his sister came to her parental house and, after persuasion, she again went to her matrimonial house. She was ousted from her matrimonial house and started living in the courtyard along with her children. It is further alleged by the informant that on 16.05.2021, at about 01:15 hrs., he received a phone call of the neighbor of his sister that his sister had been shot dead. Soon after, he along with his family went there and saw that, his sister was killed by fire arm injury.

4. On the basis of written statement of the informant, Daudpur P.S. Case No. 111 of 2021 was instituted under Sections 302/34 of Indian Penal Code and Section 27 of the



Arms Act and investigation was taken up by the police. The police after investigation submitted charge-sheet against Respondent No. 2, accordingly, cognizance was taken. Thereafter the case was committed to the Court of Sessions. Charges were framed against Respondent No. 2 to which he pleaded not guilty and claimed to be tried.

5. During the trial, the prosecution examined altogether seven witnesses, viz. PW1 Anwar Ali, PW2 Md. Shamsher Ansari, PW3 Alauddin Ansari @ Awaldin, PW4 Mansoor Ansari, PW5 Raja Alam, PW-6 Dr. Surendra Mahto and PW7 A.S.I. Umesh Pandey. The prosecution has also produced certain documents which were marked as 'Exhibits' (Signature of the informant on the FIR and statement made to police; Signature of medical officer on postmortem report; Identification of signature of Investigating Officer on written report; Identification of written report and identification of signature of the Investigating Officer on formal F.I.R.). After closure of prosecution evidence, the statement of Respondent No. 2 was recorded under Section 313 Cr.P.C. and after conclusion of trial, learned Trial Court has acquitted Respondent No. 2.

6. The learned Trial court passed the order of acquittal



on the ground that the witnesses who were examined before the court did not support the case of the prosecution. The informant in this case (PW-5) has also not supported the case of the prosecution. The trial Court further held that the witnesses which were examined by the prosecution gave contradictory statements. Therefore, the prosecution was unable to prove their case beyond reasonable doubts.

7. Learned counsel for the appellant has submitted that the trial Court has not appreciated the evidence of the witnesses that only bullet was recovered by the police from the place of occurrence. It is further submitted on behalf of the appellant that the story of *dacoity* has come for the first time during trial and important witnesses have not been examined during the trial.

8. Learned counsel for the respondent has submitted that the learned Trial Court has rightly acquitted the accused and the judgment of acquittal requires no interference by this Court.

9. We have heard learned counsels for the parties and have also gone through the records of the case.

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



11. It is evident from the records of the trial Court that no prosecution witness had supported the case of the prosecution before the learned trial Court. The informant of the case was examined as PW-5. During the trial, he had stated that in course of *dacoity* in the house of deceased, she had sustained fire-arm injury on her head. Due to the said injury, she succumbed to death. The informant himself retracted from his first version made in F.I.R., and got declared hostile.

The Investigating Officer was examined as PW-7, who in Paragraph-8 of his deposition, has categorically stated that number of witnesses, during the course of investigation, had stated that the death had taken place in course of a *dacoity* which was committed by some unknown persons. The other prosecution witnesses PW-2, PW-3 & PW-4 were also declared to be hostile as they had not supported the case of the prosecution. Considering the aforesaid facts, the Trial Court had rightly come to the conclusion that it is the case of no evidence and has passed the order of acquittal in favour of the Respondent-husband.

12. 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



guilt 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.

13. 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 (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....."

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.”

14. 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.

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

16. Accordingly, the present appeal is dismissed.

(Sudhir Singh, J)

(Ramesh Chand Malviya, J)

Sachin/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.08.2025
Transmission Date	11.08.2025

