

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.513 of 2022

Arising Out of PS. Case No.-43 Year-2011 Thana- NOWKOTHI GARHPURA District-
Begusarai

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Indradip Thakur, S/o- Sri Rameshwar Thakur, Resident of Razakpur, P.S.-
Nowkothi, District- Begusarai.

... .. Appellant/s

Versus

1. The State of Bihar
2. Hari Nandan Sharma, S/o Late Jageshwar Sharma, Resident of Razakpur,
P.S.- Nawkothi, District- Begusarai.
3. Parmila Devi, W/o Harinandan Sharma, Resident of Razakpur, P.S.-
Nawkothi, District- Begusarai.
4. Bipin Sharma, S/o Harinandan Sharma, Resident of Razakpur, P.S.-
Nawkothi, District- Begusarai.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Pritish Kumar Lal, Advocate
For the Respondent/s : Mr. Manish Kumar No.2, APP

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

Date : 29-07-2025

The present criminal appeal has been preferred under
Section 372 of the Code of Criminal Procedure against the
judgment of acquittal dated 18.02.2022 passed by the learned
Additional District & Sessions Judge- XI, Begusarai in Sessions
Trial No. 935/2011 (Panjiyan Sankhyan 5755/2013) arising out
of Nowkothi P.S. Case No. 43/2011, whereby Respondent Nos.
2 to 4 have been acquitted by the learned Trial Court from the
charge of Sections 323, 341, 325, 307/34 of Indian Penal Code.



2. Vide order dated 03.12.2024/22.01.2025, notices were issued to the Respondent Nos. 2 to 4, upon which they appeared by filing Vakalatnama through learned Advocate, Mr Bipin Kumar.

3. The prosecution case, in brief, is that on 25.03.2011, at about 10:30 a.m., the informant was carrying on repairing of his hut, the accused persons came there and said that they would not allow him to carry the work. When the informant protested, the accused persons gave *lathi* blow to informant i.e. Indradeep Thakur and his wife Asha Devi causing, injury to them.

4. On the basis of written complaint of the informant, Nowkothi P.S. Case No. 43/2011 was instituted under Sections 323, 341, 307/34 of I.P.C. and investigation was taken up by the police. The police after investigation submitted charge-sheet against Respondent Nos. 2 to 4 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.

5. During the trial, the prosecution examined altogether eight witnesses viz. PW1 Md. Kasim, PW2 Ramchandra Thakur, PW3 Indradeep Thakur, PW4 Asha Devi,



PW5 Uma Devi, PW6 Anupam Kumari, PW7 Nitya Nand Sharma and PW8 Dr. Sidhant Kumar. The prosecution has also produced certain exhibits (signature of informant on written complaint and injury report prepared by Dr. Sidhant Kumar). The defence has also examined two witnesses *viz.* DW1 Ganesh Mahto and DW2 Ramchandra Poddar. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. and after conclusion of trial, learned trial court has acquitted the accused persons.

6. 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 ***Surajpal Singh & Ors. Versus The State*** reported in ***1952 SCR 193***, paragraph 13 of which reads as under:

"..the High court has full power to review the evidence upon which the order of



acquittal was founded. But it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

7. 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:

“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.”

8. From perusal of the judgment of the learned trial Court, it appears that “facts in issue” considered and decided by the learned Trial Court for acquittal of Respondent Nos. 2 to 4 are as under:

(i) There is a material contradiction between testimonies of witnesses regarding place of occurrence.

(ii) Injury report of victim reveals that injury is inconsistent with the weapon used in alleged offence as



mentioned in the FIR.

9. After hearing the arguments advanced by the learned counsel appearing for both the parties and upon examining the materials available on the record, the following issues arise for consideration before this Court:

(I) Whether the place of occurrence has been established by the prosecution?

(II) Whether the nature of injury sustained by victim is consistent with the type of weapon allegedly used by the accused as per FIR, and whether the prosecution has established the use of weapon beyond reasonable doubt?

10. With reference to issue No. (I), it is found that there are material inconsistencies and uncertainties regarding the place of occurrence in the present case. It has been stated in the F.I.R. that the place of occurrence of the alleged crime is outside the house. In this regard, it is noteworthy that it has been deposed by the eye witness(PW6), the daughter of the informant in her examination- in- chief that the place of occurrence is inside the house of the informant. The attention of this Court has also been drawn to deposition of wife of the informant (PW4), who in her examination-in-chief has deposed that the place of occurrence is inside the house. Upon considering the above-



mentioned facts, it is quite clear that there is variation in place of occurrence. Thus, in the present case, place of occurrence has not been established. At this point, it would be relevant to take note of the decision rendered by the Hon'ble Supreme Court in the case of *Syed Ibrahim versus State of Andhra Pradesh*, reported in *(2008) 10 SCC 601* wherein it has been held that “when place of occurrence itself has not been established, it would not be proper to accept the prosecution side.”

Accordingly, the issue no. I is decided in negative.

11. With reference to issue No. (II), it has been stated in the F.I.R. that the weapon used during the occurrence is *lathi* and *danda*. In this regard, it is noteworthy to consider the injury report which states injury No. 1 sustained by Indradeep Thakur as “one sharp cut wound on left Parietal area of scalp”. The attention of this Court has also been drawn to deposition of investigating officer (PW7). This witness, in his examination-in-chief, has deposed that the wife of the informant during her statement under Section 161 of Cr.P.C. had not mentioned that *farsa* was used in course of occurrence. The attention of this Court has also been drawn to deposition of the prosecution side, which has introduced *farsa* being used as weapon in the occurrence, for the first time during trial. At this point, it would



be relevant to take note that *lathi* can cause a lacerated wound (wound the edges of which, are irregular and not clean cut and are produced by blows from blunt objects) and cannot cause a sharp cut injury or incised wound (orderly solution of skin and tissue by a sharp cutting weapon drawn across the skin, it can either be produced by light sharp cutting instrument like knife, razor or heavy sharp cutting weapon like sword or *farsa*). At this point, it would be relevant to take note of the decision rendered by Hon'ble Supreme Court in the case of ***Ganga Prasad v State of Uttar Pradesh, (1987) 2 SCC 232***, the prosecution case was that spade was used as instrument of an offence. The victim had sustained three lacerated wounds and one contusion. The Court held that injuries in the nature of lacerated wound or contusion could not be caused by the use of sharp-edged weapon unless blunt side of it is used. Such injuries are only possible by use of a hard and blunt object.

In the case of ***Kartarey v State of Uttar Pradesh, (1976)1 SCC 172***, the Supreme Court held that:

“we take this opportunity of emphasizing the importance of eliciting the opinion of the medical witness, who had examined the injuries of the victim, more specifically on this point, for proper administration of justice particularly in a case where injuries found are forensically of



same species, e.g., stab wounds, and the problem before court is whether all or any of those injuries could be caused with one or more than one weapon. It is the duty of prosecution, and no less of the Court, to see that the alleged weapon of the offence, if available, is shown to medical witness and his opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so may sometime cause aberration in course of justice.”

In *Ishwar Singh v State of Uttar Pradesh*, (1976) 4

SCC 355, Hon’ble Supreme Court observed that:

“it is duty of the proescution, and no less of Court, to see that the alleged weapon of the offence, if available, is hown to the m,edical witness and his opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so may sometimes, cause aberration in the course of justice.”

In the case of ***Narayan Laxman Mhatre v State of Maharashtra (1984) 1 Crimes 18 (Bom)***, where there was inconsistency about weapon of offence, i.e. medical evidence showed that murder might not have been committed with the file (instrument) as alleged by the prosecution, casts a doubt as to whether really the instrument (weapon) as alleged by prosecution was used in this case or not.



Accordingly, the issue No. II is decided in negative.

12. Thus, in the opinion of this Court, the trial Court has taken a plausible view based on the evidence available on the record. The view taken by the trial Court cannot be held to be bad or perverse. Under such circumstances, no case for interference with the impugned judgment is made out.

13. In the result, the present criminal appeal preferred against the judgment of acquittal dated 18.02.2022 passed in Sessions Trial No. 935/2011 (Panjiyan Sankhyan 5755/2013) arising out of Nowkothi P.S. Case No. 43/2011 by learned Additional District and Sessions Judge- XI, Begusarai is dismissed at the admission stage itself.

(Sudhir Singh, J)

(Ramesh Chand Malviya, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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