

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.680 of 2025

Arising Out of PS. Case No.-547 Year-2022 Thana- SAHEBGANJ District- Muzaffarpur

Urmila Devi, aged about 46 years, Female, W/o Late Pramod Ray, R/O Vill.-
Madhopur Hazari, Ward no. 8, P.S.- Sahebganj, Dist.- Muzaffarpur.

... .. Appellant/s

Versus

1. The State of Bihar
 2. Sanoj Kumar, aged about 22 years, male S/O Babu Lal Ray R/O Vill.-
Madhopur Hazari, P
 3. Saheb Kumar aged about 27 years, male S/O Ramadhar Ray R/O Vill.-
Bashdevpur Mushari Tola, both P.s.- Sahebganj, District- Muzaffarpur.
- Respondent/s

Appearance :

For the Appellant/s : Mr.Nachiketa Jha, Advocate
For the Respondent/s : Mr.Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 22-09-2025

The present criminal appeal has been preferred under
Section 413 of the *Bharatiya Nagarik Suraksha Sanhita, 2023*
against the judgment of acquittal dated 23.11.2022 passed by the
learned Additional Sessions Judge-11, Muzaffarpur in Sessions
Trial No. 351/2023 arising out of Sahebganj P.S. Case No.
547/2022 whereby Respondent Nos. 2 and 3 have been
acquitted from the charge of Sections 302/34 of Indian Penal
Code and Section 27 of the Arms Act.

2. The prosecution case, in brief, is that on
22.11.2022 at about 5:30 PM, the informant Urmila Devi was at



her door step, talking to her husband Pramod Rai. Whereupon, the accused persons, namely, Sanoj Kumar, Sahib Kumar, Avdesh Ram and Rooplal Rai came there and asked the informant's husband to accompany them. The informant asked her husband not to go with the accused persons, however, the accused persons insisted and the husband of the informant went with the accused persons. Thereafter, the informant called her father-in-law and brother-in-law, and all three of them went after the husband of the informant. The informant alleged that she saw two persons, namely, Rooplal Rai and Sahib Kumar holding her husband and the other two accused persons, namely, Sanoj Kumar and Awadhesh Rai shooting her husband. When the informant with her father-in-law and brother-in-law reached at the spot, all the four accused persons pointed a pistol at them as well. However, till that time, few passers-by started gathering upon hearing the sound of gun fire, and subsequently, all the four accused persons ran towards the east direction. The informant further alleged that a few days before the alleged occurrence, one Amika Rai had threatened to kill her husband.

3. On the basis of statement of the informant Sahibganj P.S. Case No. 547/2022 was instituted under Section 302/34 of I.P.C and Section 27 of the Arms Act and



investigation was taken up by the police. The police, after investigation, submitted charge-sheet against Respondent Nos. 2 and 3 and, accordingly, cognizance was taken. Thereafter, the case was committed to the Court of Sessions. Charges were framed against the accused persons under Section 302/34 of I.P.C and Section 27 of the Arms Act, to which they pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined altogether 07 witnesses i.e. PW1 Vinod Kumar @ Vinod Rai, PW2 Dhora Rai, PW3 Urmila Devi, PW4 Purusottam Yadav, PW5 Dr. Kaushal Kishore, PW6 Vipin Narayan Sharma and PW7 Rakesh Kumar. The prosecution has also produced certain documents which were marked as 'exhibits', i.e. chargesheet, postmortem report, report of Dy. S.P., Muzaffarpur regarding seized arms. The defence has also examined three witnesses viz. DW1 Jugeshwar Rai, DW2 Lalan Prasad Yadav and DW3 Paras Nath. The defence has also produced a document which was marked as 'exhibit', i.e. Panchang. 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.

5. The learned trial court on the basis of materials



available on record, and the evidence produced before the court, acquitted the accused persons and held that the presence of eye-witnesses PW1, PW2 and PW3 at the scene was doubtful and had not been proved. The learned trial court further held that the evidence of PW7, who is an independent witness, had stated in his evidence that the informant and her family members came at the place of alleged occurrence 10 minutes after he came to the place of occurrence on hearing the commotion. Further, the learned trial court held that the story of the prosecution witnesses and their chasing of the accused persons could not be proved by the prosecution owing to the fact that the distance chased was approximately 01 km. The learned trial court had further pointed out the delay in institution of FIR had not been satisfactorily explained by the prosecution.

6. The learned counsel for the appellant submitted that the impugned judgment is perverse and lack of judicial mind and the learned trial court has failed to consider the evidence of the informant, her brother-in-law and father-in-law, being the eye-witness of the case. He further submitted that the learned trial court has passed the impugned judgment on the basis of surmises and conjecture.

7. The learned counsel for the respondent-State



submits that there is no perversity in the judgment of the learned trial court, and the prosecution had 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 the 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 of acquittal requires any interference by this Court.

10. Upon perusal of materials and evidence on record, it is evident that the FIR has been instituted after a delay of approximately 24 hours. No sufficient reasons have been provided by the prosecution explaining this delay in institution of FIR. Such delay weakens the case of the prosecution, if not explained satisfactorily.

11. Further, PW1, PW2 and PW3 claim to be an eyewitness to the alleged occurrence, and state in their evidence that they saw the accused persons firing at the deceased. However, the evidence of PW7, who is an independent witness in the present case, suggests otherwise. PW7 has stated in his



evidence that the informant (PW3) along with her father-in-law (PW2) and brother-in-law (PW1) came approximately 10 minutes after he had reached at the place of occurrence. Further, this has to be viewed in light of the evidence of PW1, PW2 and PW3 who have stated that they chased on foot the accused persons who were on a bike. The evidence of the I.O. suggests that the place of occurrence is at about 01 km away from the house of informant. The PW2, who is the father-in-law of the informant, is aged about 80 years, and his story of chasing the accused on foot is highly doubtful. Thus, the prosecution has been unable to prove the presence of the alleged eyewitness at the place of occurrence at the time of occurrence in the present case. PW1, who has stated in his evidence that he was present at the place of occurrence, and saw the accused persons, has failed to identify the accused, Saheb Kumar during his testimony. This further doubts the claim of PW1 of being an eyewitness to the alleged occurrence.

12. No other eye-witness has been produced by the prosecution who could've established that the accused persons were present either at the house of the informant or at the place of occurrence. PW7 who is an independent witness has also not identified any accused persons, and also doubted the presence of



PW1, PW2, and PW3 at the time of occurrence.

13. There is also a contradiction in the evidence of PW1, PW2 and PW3 on the point of who came to the house of the informant to take the deceased with them. PW1 and PW2 state in their evidence that only Sanoj Kumar and Avdhesh Ram came to the house of the informant, however, PW3 has stated in her evidence that Sanoj Kumar, Avdesh Ram, Rooplal Rai and Sahib Kumar, came to the her house to take her husband (the deceased).

14. The findings recorded by the 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 all reasonable doubts. Wherever, any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of doubt.

15. 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 v. 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.....”

16. In the case of ***Ghurey Lal v. 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.”

17. 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.

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

19. Accordingly, the present appeal is dismissed.

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

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
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