

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.647 of 2024

Arising Out of PS. Case No.-104 Year-2019 Thana- SURSAND District- Sitamarhi

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Laxmeshwar Prasad Singh, male, aged about 73 years, Son of Late Bhavneshwar Prasad Singh, Resident of village.- Malahi, P.S.- Sursand, District- Sitamarhi, who is father of deceased and informant of this case.

... .. Appellant/s

Versus

1. The State of Bihar
2. Rajan Pathak @ Ranjan Pathak, aged about 29 years, Male, Son of Manoj Pathak.
3. Raju Kumar Thakur @ Raju Thakur @ Rajiv Kumar Thakur, aged about 24 years, male, Son of Bechan Thakur
Both are resident of village- Malahi , P.S.- Sursand, District- Sitamarhi.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Govind Mohan Thakur, Advocate Mr.Rajesh Kumar, Advocate
For the Respondent/s	:	Mr.Sujit Kumar Singh, APP

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

Date : 15-10-2025

The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure, 1973 against the judgment of acquittal dated 21.03.2024 passed by the learned 3rd Additional Sessions Judge, Sitamarhi in Sessions Trial No. 318 of 2019 arising out of Sursand P.S. Case No. 104 of 2019, whereby Respondent Nos. 2 and 3 have been acquitted from the charges of Sections 302/34 and 120B of Indian Penal



Code and Sections 25(1B)(a), 26 and 27 of the Arms Act.

2. The prosecution case, in brief, is that on 07.04.2019 at about 06:30 PM, Abhinandan Singh @ Abhay Singh, brother of the informant, was coming to his house on a motorcycle through Polytechnic College. When his brother reached near the bridge adjacent to the graveyard and Polytechnic College, accused persons namely, Ranjan Pathak, Raju Kumar Thakur and Ashish Pathak intercepted his motorcycle. It is alleged that accused Ranjan Pathak fired at him causing injury on his chest and in order to save his life, he ran away and went into the house of Sindhu Rai. The police, on receiving information, arrived at the house of Sindhu Rai and took him to the hospital, but he succumbed to his injuries on the way.

3. It is further alleged that there was a love affair between the informant's brother and one Ritu Pathak. She had threatened the informant's brother a few days prior to the occurrence to get him eliminated. When marriage negotiation of Ritu Pathak with some other person was going on, the informant's brother raised objection and out of annoyance, Ritu Pathak, in conspiracy with the accused persons, got him killed.

4. On the basis of the written statement of the informant, Sursand P.S. Case No. 104 of 2019 was instituted



under Sections 302 and 120B 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 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 Sections 302/34 and 120B of Indian Penal Code and Sections 25(1B)(a), 26 and 27 of the Arms Act, to which they pleaded not guilty and claimed to be tried.

5. During the trial, the prosecution examined altogether 13 witnesses i.e. PW1- Sindhu Rai, PW2- Krishna Kumar, PW3- Vijay Mandal, PW4- Ram Ashish Ram, PW5- Krishna Devi, PW6- Yogendra Sah @ Nunu Sah, PW7- Ranjan Kumar Kapar @ Feku Kapar, PW8- Laxmeshwar Kapar, PW9- Shanti Devi, PW10- Murari Prasad, PW11- Dr. Abdul Wasid, PW12- Sachin Kumar and PW13- Jitendra Kumar Singh. The prosecution also produced several exhibits i.e., Ext. P1- signature of PW1 on the seizurelist dated 08.04.2019, Ext. P2- signature of PW5 on the seizurelist, Ext. P3- signature of the informant Santosh Kumar (deceased) on the written report, Ext. P4- formal FIR, Ext. P5- attested copy of inquest report, Ext. P6- seizure lists dated 07.04.2019 prepared by PW10, Ext. P7-



seizure lists dated 08.04.2019 prepared by PW10, Ext. P8- attested copy of postmortem report prepared from the original report, Ext. P9- signature of PW12 on the attested copy of the inquest report, Ext. P10- signature of PW13 on the inquest report and Ext. P11- certified copy of charge sheet (final form) of Sursand PS Case No. 13 of 2021. The defence has neither examined any oral or documentary evidence. 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 Respondent Nos. 2 and 3.

6. The learned trial court, on the basis of materials available on record and the evidence produced before the court, acquitted the accused persons observing that the prosecution has miserably failed to bring home the guilt of the accused persons under Sections U/s 302/34, 120B IPC and U/s 25(1B)(a), 26, 27 of the Arms Act, beyond shadow of all reasonable doubts. In such circumstances, the above named accused persons are not held to be guilty of having committed any of the offences as referred to above and hence, they are liable to be acquitted of the charges levelled against them.

7. Learned counsel for the appellant submitted that the



learned trial court failed to consider the evidence of PW9 who had supported the 'last seen theory' and the motive for commission of instant crime was because of a love affair. It was further submitted that though PW1 to PW7 have, during the trial, turned hostile, but they have fully supported the prosecution version under section 161 Cr.P.C. The deceased, during investigation, had specifically stated the name of the assailant before PW1, PW3 and PW5. The place of occurrence has also been established by the Investigating Officer. But the learned trial court acquitted the respondent Nos. 2 and 3 holding that the prosecution has miserably failed to bring home the guilt of the accused persons. Hence, the judgment of acquittal is not sustainable.

8. The learned counsel for the 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.

9. We have heard the counsel for the appellant and the State, 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. From a perusal of the First Information Report, it is evident that the informant, who is none other than the brother of the deceased, claims to have witnessed the occurrence. However, the FIR itself records that the informant was at his residence at the time of the incident. There is no explanation in the FIR or in any other material on record as to how he reached the place of occurrence and under what circumstances he witnessed the alleged assault. The unexplained presence of the informant at the scene of crime creates serious doubt about the veracity of his claim.

12. The record reveals that during the pendency of the trial, the informant expired and hence could not be examined before the Court. As a result, his claim of being an eye-witness remains untested by cross-examination. The FIR, by itself, cannot be treated as substantive evidence. It can be used only to corroborate or contradict the maker under Section 157 or 145 of the Evidence Act. In absence of the informant's deposition, the foundational version of the prosecution remains unproved.

13. The prosecution has examined PW1 to PW7 as witnesses to the occurrence. However, PW1, in whose house the informant allegedly took shelter during the occurrence, has



categorically denied such claim and was declared hostile. Likewise, PW's 2, 3, 4, 5, 6 and 7 have also turned hostile and failed to support the prosecution case. It is well settled that the evidence of a hostile witness is not to be rejected in toto but must be accepted to the extent it is found to be credible. However, in the present case, the prosecution has not been able to extract any material portion from the cross-examination of these witnesses which could lend support to the prosecution version. In ***State of Rajasthan v. Bhawani and Another, (2003) 7 SCC 291***, the Supreme Court observed in para 10 of judgment which reads as under:

“10. The fact that the witness was declared hostile by the Court at the request of the prosecuting counsel and he was allowed to cross-examine the witness, no doubt furnishes no justification for rejecting en bloc the evidence of the witness. But the court has at least to be aware that prima facie, a witness who makes different statements at different times has no regard for truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to the same. The court should be slow to act on the testimony of such a witness and, normally, it should look for corroboration to his evidence...”

14. The prosecution has failed to establish any motive behind the alleged crime. In cases where direct evidence is weak or doubtful, motive assumes great evidentiary value. The complete absence of motive renders the prosecution story



further improbable.

15. PW9, the mother of the deceased, has claimed herself to be a witness to the circumstance of “last seen.” However, her version in Court materially differs from that of the informant, who is the brother of the deceased. While PW9 deposed that the deceased was at home, received calls but did not respond, and that the accused thereafter came to the house and took him to the Chowk for refreshment, where she later heard sounds of gunfire, the informant in the FIR has alleged an entirely different sequence that the deceased was returning home on a motorcycle when the accused met him near the bridge and shot him there. Such a significant divergence between the statements of two closest family members regarding the place, time, and manner of occurrence creates a serious dent in the prosecution case. Hence, this contradiction cannot be treated as inconsequential and strikes at the very foundation of the prosecution case.

16. The Investigating Officer (PW10), in his deposition, admitted that the statements of PW1 and his family members were not recorded during investigation. This omission is significant because PW1 is claimed to be a material witness by the informant. Such an investigative lapse not only reflects a



perfunctory approach but also undermines the fairness and completeness of the investigation.

17. It appears from the record that the alleged occurrence took place near the Polytechnic College. Surprisingly, no independent witness from the locality or the college was examined by the prosecution. In such circumstances, withholding of natural witnesses without explanation gives rise to an adverse inference under Section 114(g) of the Evidence Act. In ***Takhaji Hiraji v. Thakore Kubersing Chamansing and Others, (2001) 6 SCC 145***, the Supreme Court observed that “non-examination of material independent witnesses, particularly when they are available, leads to an inference that their evidence would have been unfavourable to the prosecution, as observed in para 19 of the judgment, which reads as under:

“19. So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw



an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself — whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses. In the present case we find that there are at least 5 witnesses whose presence at the place of the incident and whose having seen the incident cannot be doubted at all. It is not even suggested by the defence that they were not present at the place of the incident and did not participate therein. The injuries sustained by these witnesses are not just minor and certainly not self-inflicted. None of the witnesses had a previous enmity with any of the accused persons and there is apparently no reason why they would tell a lie. The genesis of the incident is brought out by these witnesses. In fact, the presence of the prosecution party and the accused persons in the chowk of the village is not disputed. How the vanity of the Thakores was hurt leading to a heated verbal exchange is also not in dispute. Then followed the assault. If the place of the incident was the chowk then it was a sudden and not premeditated fight between the two parties. If



the accused persons had reached their houses and the members of the prosecution party had followed them and opened the assault near the house of the accused persons then it could probably be held to be a case of self-defence of the accused persons in which case non-explanation of the injuries sustained by the accused persons would have assumed significance. The learned Sessions Judge has on appreciation of oral and circumstantial evidence inferred that the place of the incident was the chowk and not a place near the houses of the accused persons. Nothing more could have been revealed by other village people or the party of tightrope dance performers. The evidence available on record shows and that appears to be very natural, that as soon as the melee ensued all the village people and tightrope dance performers took to their heels. They could not have seen the entire incident. The learned Sessions Judge has minutely scrutinised the statements of all the eyewitnesses and found them consistent and reliable. The High Court made no effort at scrutinising and analysing the ocular testimony so as to doubt, if at all, the correctness of the several findings arrived at by the Sessions Court. With the assistance of the learned counsel for the parties we have gone through the evidence adduced and on our independent appreciation we find the eyewitnesses consistent and reliable in their narration of the incident. In our opinion non-examination of other witnesses does not cast any infirmity in the prosecution case.”

18. In the totality of the facts and circumstances, this Court finds that the prosecution case suffers from multiple infirmities namely; doubtful presence of the informant at the place of occurrence, absence of his testimony due to death, all



material witnesses turning hostile, contradiction between family witnesses, lack of motive, major lapses in investigation, and non-production of independent witnesses. The cumulative effect of these deficiencies renders the prosecution version wholly unreliable and insufficient to bring home the guilt of the accused beyond reasonable doubt.

19. Accordingly, this Court finds that the prosecution has failed to prove its case beyond reasonable doubt. The accused is entitled to the benefit of doubt and consequent acquittal.

20. 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 all reasonable doubts. 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, (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....."

22. 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."

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 or 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)

Sujit/-

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