

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1294 of 2018

Arising Out of PS. Case No.-561 Year-2010 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

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Lallan Jha @ Lalan Jha, son of Late Rajeshwar Jha, resident of Village-
Telhara Khurd, P.S. Kundwa Chainpur, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Amar Jha Son of Late Rajeshwar Jha,
3. Vimla Devi Wife of Amar Jha,
Both are resident of Village- Telhara Khurd, P.S.- Kundwa Chainpur,
District- East Champaran.

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Madhurendra Kumar, Advocate.
For the State	:	Mr. Nityanand, A.P.P.
For the O.P. Nos. 2&3	:	Mr. Zaki Haider, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

Date : 04-12-2025

1. Heard learned counsel for the parties.

2. The instant revision application is directed
against the judgment dated 21.07.2018 passed by learned
Sessions Judge, East Champaran, Motihari in Criminal Appeal
No. 39 of 2017, wherein the learned Sessions Judge dismissed
the appeal filed by the petitioner against the judgment dated
19.04.2017 passed by learned Sub-Divisional Judicial
Magistrate, Sikrahana at Dhaka (hereinafter referred to as “Trial
Court”) in Trial No. 1430 of 2017 arising out of Complaint Case



No. 561C of 2010, whereby and whereunder the learned Trial Court acquitted the accused persons (O.P. Nos. 2&3) from the charges under Section 323, 447, 427, 380, 341 and 34 of the Indian Penal Code, 1860.

3. The brief facts of the case as it emerges from the record are that a complaint petition was filed by the petitioner-complainant alleging that on 01.07.2010 at about 7:00 A.M., three named accused persons, namely Amar Jha (O.P. No.2), Vimla Devi (O.P. No.3), and Ramdeo Jha (since deceased) accompanied by their alleged Maoist associates armed with *Khanti* and *Hathaura*, forcibly entered the petitioner's house and commenced demolishing the dwelling house of the petitioner, which had been constructed with the aid of government funds. When the petitioner, along with his wife and daughter, objected to such acts, accused Ramdeo Jha (since deceased), Amar Jha and Vimla Devi purportedly assaulted them with slaps and fists, compelled them to sit at one place and wrongfully confined them. It is further alleged that the house was damaged and household articles valued at approximately Rs. 30,000/- were taken away by the accused persons. The petitioner asserts that he immediately informed at Kundwa Chainpur P.S. on the same day, but due to the alleged collusion



between the local police and the accused persons, no steps were taken. Thereafter, on the same day, i.e., 01.07.2010, the petitioner informed the Superintendent of Police, East Champaran in writing and subsequently submitted a written representation before the District Magistrate, East Champaran on 02.07.2010, but no action was initiated.

4. The petitioner- complainant filed a complaint on 12.07.2010 bearing Complaint Case No. 561C of 2010 before the learned Trial Court, and after inquiry, cognizance was taken under Sections 341, 323, 447, 380, 427 and 34 of the Indian Penal Code against the three above-named accused persons. Thereafter, the charge was framed under Sections 341, 323, 447, 427, 380 and 34 of the Indian Penal Code against the accused persons (O.P. Nos. 2&3).

5. The accused persons completely denied the charges levelled against them. In order to substantiate the charges levelled against O.P. Nos. 2 and 3, the complainant-petitioner examined altogether four witnesses, as under:

C.W.s	Names
C.W.-1	Renu Jha (wife of complainant)
C.W.-2	Birendra Jha (<i>samdhi</i> of complainant)
C.W.-3	Anmol Jha (son of C.W.-2)
C.W.-4	Lalan Jha (complainant)

However, no documentary evidence was adduced on



behalf of the petitioner.

6. The learned Trial Court appreciated the relevant evidence given by the witnesses on behalf of the complainant-petitioner as hereafter.

7. C.W.-1, namely Renu Jha, who is the wife of the complainant-petitioner Lalan Jha, has deposed that the alleged occurrence took place “about 10 months 25 days ago, on a Thursday at about 7:00 A.M.”. She stated that while she and her family members were at home, the accused persons, namely Ramdeo Jha, Amar Jha, Vimla Devi along with 6–7 unknown persons, arrived at their house armed with *hathaura* and *khanti*, and began demolishing the dwelling house which she had received under the *Indira Awaas Yojana*. When she and her family members objected, the accused persons allegedly slapped, assaulted and abused them. She further stated that the accused persons took away a box containing clothes and jewellery valued at approximately Rs. 30,000/- and caused damage to the house to the extent of about Rs. 35,000/-. She has also deposed that as the Police Station did not register her complaint, she was compelled to institute the present complaint case.

In her cross-examination, she admitted that her



husband Lalan Jha and accused Amar Jha are real brothers and accused Vimla Devi is her *gotani* (sister-in-law). She deposed that as soon as the accused persons arrived, they began breaking the house. She further deposed that witnesses Birendra Jha, Anmol Jha and Ras Bihari Baitha were passing through the road at that time and, upon seeing the incident, they stopped. She stated that the accused persons broke the walls and completely demolished the house, which took around 10–15 minutes. She stated that all the household articles were kept in a room, and that there were two boxes inside, both of which were locked. She further stated that both boxes were taken away by the accused persons. She also deposed that information of the incident was given at the police station, and that upon receiving the information, the police did come to the spot. She stated that the Officer recorded her statement as well as her husband's statement.

8. C.W.-2, namely Birendra Jha, who is father-in-law of the petitioner's son, deposed that the incident took place about 17 months ago, on a Thursday at around 7:00 A.M. He deposed that while he was going towards Dhaka, he saw Ramdeo Jha, Amardeo Jha and the wife of Amardeo Jha engaged in a quarrel with the petitioner near his house. He



further stated that apart from them, there were 2–4 other persons present, whom he could not identify. He stated that the accused persons were demolishing the house of Lalan Jha. He deposed that Lalan Jha, his wife and their daughter were objecting to such acts, but the accused persons assaulted the three of them, made them sit down, and damaged their house. He also stated that the accused persons took away their belongings including a box. He further stated that he knows the accused persons.

In his cross-examination, C.W.-2 deposed that the petitioner and the accused are real brothers. He further stated that at the time of the occurrence, the accused persons were breaking the wall with the help of *khanti* and *hathauri*. He deposed that during the 15–20 minutes of the incident, 7–8 persons from the village were present there, but he does not know their names and had not seen them earlier in the village. He also stated that the accused took away a box from the house. He further stated that in the evening, when he met his *samdhiji*, he was informed that the box contained jewellery and also stated that upon asking whether the police had come, he was told that the police had not arrived.

9. C.W.-3, namely Anmol Jha, who is the son of C.W.-2 Birendra Jha, has deposed that the incident took place at



about 7:00 A.M. He stated that he was going towards Dhaka along with his father, and when they reached near the house of Lalan Jha, he saw the accused persons breaking the house with *chheni* and *hathauri*. He saw approximately 8–9 persons at the spot. He further stated that he identified Amar Jha, Ramdeo Jha and Vimla Devi among those who were involved. He stated that Lalan Jha, Renu Jha and Kanchan Kumari (daughter of complainant) were objecting to the demolition of the house, but upon their objection, the accused persons slapped and assaulted them. He further deposed that the three of them were surrounded and made to sit down by the accused. He stated that the house was damaged and demolished. He further stated that Amar Jha and Vimla Devi took away a box (*peti*) from their house. He also stated that Lalan Jha informed him that the box contained articles worth Rs. 30,000/-.

In his cross-examination, C.W.-3 deposed that Lalan Jha is the father-in-law of his sister, and that there is a land dispute between both the parties. He further deposed that at the time of the incident, he happened to be passing through that road by coincidence. He stated that when he reached the place of occurrence, he did not see anyone injured or lying fallen, and that he cannot say who was beaten or how much. He stated that



the scuffle lasted for about 10–15 minutes, but there were no cuts or wounds resulting from the assault. He further stated that the incident happened on the road, and around 15 persons were present there. In para 25 of the deposition, he stated that Lalan Jha informed him regarding the alleged theft.

10. C.W.-4, namely Lalan Jha, who is complainant-petitioner in this case, deposed that the incident took place on a Thursday at around 7:00 A.M. He stated that at that time, his wife Renu Devi and his daughter were also present with him at their house. He further stated that Ramdeo Jha, Amar Jha, Vimla Devi along with 6–7 unknown persons came to his house, armed with *hathaura* and *khanti*. He stated that upon arriving, the accused persons forced him out of the house, made him sit at the doors, and then started demolishing the house. He further stated that when they objected, the accused persons slapped and punched them and again made them sit down. Moreover, he stated that the accused damaged the house and entered the house and took away articles worth about Rs. 30,000–35,000/-.

In his cross-examination, C.W.-4 stated that the accused is his real brother and they have separated by metes and bounds. He deposed that it took the accused about 15–20 minutes to demolish the house, and that the house was



constructed with brick and cement. He further stated that Ras Bihari, Birendra, Anmol and his own family members were present at the time of the incident. He stated that due to fear of Amar Jha, no villager spoke up. He deposed that the assault took place both inside and outside the house, and that they were beaten outside and made to sit down. He further stated that *mangteeka, payal, haar* and *kaan ki baali* were taken away by the accused, which were kept inside the box. He stated that he cannot say what the weight of the jewellery was. He also stated that all the witnesses are family members.

11. The accused persons were examined under Section 313 of the Cr.P.C. wherein they denied all allegations and charges and pleaded innocence. The O.P. Nos. 2 and 3 have examined four defence witnesses in favour of their case, as under:

D.Ws.	Names
D.W.-1	Jeevachh Devi
D.W.-2	Achey Lal Paswan
D.W.-3	Sakal Paswan
D.W.-4	Rameshwer Paswan

12. D.W.-1, namely Jeevachh Devi, who is the sister of both the parties deposed that Amar Jha works in a bank in Assam. She stated that there has been no partition in their



family and that Lalan Jha has remained the head of the house. She further stated that since the time Amar Jha has been in service, he has been living outside with his family. She further deposed that she came to know about the case only after it was filed, and according to her, no such incident had taken place. She stated that Lalan Jha has instituted a false case in order to grab the share of his siblings.

13. In her cross-examination, D.W.-1 stated that she does not remember the exact date, month or year of the alleged occurrence. She further stated that she has heard that Lalan Jha was constructing a house under the *Indira Aawas Yojana*.

14. D.W.-2, namely Achey Lal Paswan, who is a co-villager of both the parties deposed that Amar Jha works in a bank in Assam, and on the day of the alleged incident, Amar Jha was in Assam.

In his cross-examination, D.W.-2 stated that the *Indira Aawas* house was not being constructed by Lalan Jha, but it was the house of Amar Jha that was under construction. He further stated that his house is situated at some distance from the houses of both parties. He deposed that no incident had taken place. He also stated that he has come voluntarily to give his



testimony.

15. D.W.-3, namely Sakal Paswan, deposed that both the parties are his neighbours and that they are real brothers. He stated that there has been no partition of land among the brothers. He further deposed that Amar Jha works in a government bank. He stated that on 01.07.2010, Amar Jha was in Chennai. He also stated that Ramdeo Jha, one of the accused, has passed away. He deposed that Amar Jha always resides outside with his family and only occasionally visits home. He further stated that Lalan Jha has filed this false case in order to grab the land.

This witness was not present for cross-examination.

16. D.W.-4, namely Rameshwer Paswan, deposed that he knows both the parties to the case. He stated that there has been no partition in the family so far. He further stated that Amar Jha works in a government bank (UCO Bank) in Assam. He deposed that on 01.07.2010, Amar Jha was in Assam. He also stated that the accused Ramdeo Jha has passed away. He stated that Amar Jha always lives outside with his family and only occasionally comes home. He further deposed that Lalan Jha has filed this false case to grab the share of land belonging to his siblings. He also stated that the complainant always stays



at home.

In his cross-examination, D.W.-4 stated that he has been brought to testify today by the son of Amar Jha. He further stated that he does not know the details regarding how much property exists between the two brothers.

17. The learned Trial Court on hearing the parties and considering the evidence on record convinced with the argument of the defence *inter alia* that (i) all the prosecution witnesses are highly interested witnesses; (ii) one of the victim i.e. daughter of complainant alleged to be an eye witness was not examined; (iii) associates of accused persons were not disclosed; (iv) the things which were stolen are not clear and thus, contradictory; (v) delay of 16 days in institution of complaint has not been properly explained; (vi) C.W.-2 and C.W.-3 who are close relatives of complainant projected as chance witnesses and their conduct are unnatural; and (vii) there is land dispute between both the parties and O.P. No.2 is a government employee not residing at the place of occurrence and O.P. No.3 who is his wife resides with him have falsely been implicated to harass them, held as under:

“.....this Court finds that the complainant has failed to prove the case beyond reasonable doubt. This court is convinced with the argument of the defence;



though the prosecution witnesses have supported the prosecution story but in cross examination circumstances created doubts sufficient to disbelieve the prosecution story. It is, therefore, this court finds and holds, taking into the points raised by the defence in their argument, the accused persons Amar Jha and Vimla Devi as innocent and hence they are acquitted from the charges u/ss 323/447/427/380/341/34 IPC.....”

18. Being aggrieved by the said judgment/order of acquittal by the learned Trial Court, the petitioner filed appeal bearing Criminal Appeal No. 39 of 2017 before the learned Sessions Judge, East Champaran, Motihari, wherein it upheld the judgment/order of the learned Trial Court and held that the prosecution has not been able to substantiate the charges levelled against the accused persons beyond all probable and reasonable doubts. Hence, the present Revision.

19. Learned counsel for the petitioner submitted that the impugned order suffers from patent illegality and material irregularity, warranting interference by this Court in exercise of its revisional jurisdiction. It is submitted that the learned Trial Court and the Appellate Court failed to appreciate the evidence and materials available on record in their correct legal perspective, resulting in a miscarriage of justice. It is further submitted that the findings recorded by the learned Trial Court are perverse, contrary to the weight of evidence, and



unsupported by cogent reasons. It is submitted that the learned Trial Court has wrongly appreciated the fact that the daughter of the petitioner was not examined since she was not the victim of the occurrence. Also, the learned Trial Court has wrongly presumed the fact that the witnesses examined in favour of the petitioner are interested witnesses whereas C.W.-2 and C.W.-3 are chance witnesses who were passing by the place of occurrence at the time of incidence. Learned counsel submits that although the revisional Court does not ordinarily act as a second Appellate Court, interference becomes imperative where the decision under challenge reflects non-application of mind, misreading of evidence, or an apparent jurisdictional error. On these grounds, the impugned order deserves to be set aside and the accused be held convicted.

20. Per contra, learned A.P.P. appearing for the State, supported the impugned judgment/order and submitted that no ground has been made out for interference in revisional jurisdiction. It is submitted that the learned Trial Court has passed the order after due consideration of the materials on record and the findings arrived at are neither perverse nor contrary to law. Learned A.P.P. further submitted that the revisional Court is not expected to undertake a re-appreciation



of evidence as in an appeal, and unless there is a manifest illegality, gross irregularity, or failure of justice, the order of the learned Trial Court ought not to be disturbed. It is further submitted that the petitioner has failed to demonstrate any jurisdictional error or perversity in the impugned order, and hence the revision petition is wholly devoid of merit and liable to be dismissed.

21. Moreover, learned counsel for O.P. Nos. 2 and 3 also opposed the revision petition and submitted that the petitioner has raised no substantial ground that warrants interference by this Court. It is submitted that the impugned judgment/order is based on a fair appreciation of the facts and evidence, and no material has been brought on record to show that the learned Trial Court or the Appellate Court has committed any legal infirmity or procedural irregularity. Learned counsel further submitted that the revision petition is an attempt to reopen factual findings which are beyond the limited scope of revisional scrutiny. It is contended that the petitioner is merely dissatisfied with the outcome and is seeking a re-evaluation of the matter under the guise of revision, which is impermissible. Thus, the present revision is misconceived and deserves to be dismissed.



22. This Court has considered the submission canvassed by the learned counsel for both the parties and learned A.P.P. and perused the materials available on record.

23. In the instant revision, the petitioner has sought for setting aside the judgment of the Appellate Court. At this stage, it is relevant to analyse the revisional power of the High Court to convert the order of acquittal into conviction.

24. With regard to the revisional power of the High Court in converting an order of acquittal into conviction, Sub-section (3) of Section 401 has clearly barred such jurisdictional power. It reads as hereunder:

“401.(3) *Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.”*

25. It is well settled that this Court is vested with the power to examine the correctness, legality and propriety of any finding, sentence or order passed by the inferior criminal Courts in exercise of its revisional jurisdiction under Sections 397 and 401 of the Cr.P.C. The revisional jurisdiction, though limited, enables this Court to intervene where there is a manifest illegality, material irregularity, jurisdictional error or a patent miscarriage of justice. While the scope of revision does not extend to a full-fledged re-appreciation of evidence as in an



appeal, the Court is nevertheless empowered to satisfy itself that the proceedings before the Subordinate Court are in accordance with law and that the impugned order does not suffer from perversity or arbitrariness warranting interference.

26. The Hon'ble Supreme Court in the case of *State of Kerala v. Puttumana Illath Jathavedan Namboodiri*, reported in (1999) 2 SCC 452 has held on the point of scope of revisional jurisdiction of High Court as under:

“5.In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.....”
(emphasis supplied)

27. Moreover, the Hon'ble Supreme Court relied on



the view of ***Puttumana Illath (supra)*** with respect to scope of Sections 397 and 401 of Cr.P.C and the ground for exercising the revisional jurisdiction by the High Court in the case of ***Kishan Rao v. Shankargouda*** reported in ***(2018) 8 SCC 165*** in para 12.

28. The principle with regard to sub-section (3) of Section 401 Cr.P.C. has been well laid down in ***Joseph Stephen and Others v. Santhanasamy and Others*** reported in ***2022 SCC OnLine SC 90*** as under:

“10. Applying the law laid down by this Court in the aforesaid decisions and on a plain reading of sub-section (3) of Section 401CrPC, it has to be held that sub-section (3) of Section 401CrPC prohibits/bars the High Court to convert a finding of acquittal into one of conviction. Though and as observed hereinabove, the High Court has revisional power to examine whether there is manifest error of law or procedure, etc. however, after giving its own findings on the findings recorded by the court acquitting the accused and after setting aside the order of acquittal, the High Court has to remit the matter to the trial court and/or the first appellate court, as the case may be.

12. Therefore, in the present case, the High Court has erred in quashing and setting aside the order of acquittal and reversing and/or converting a finding of acquittal into one of conviction and consequently convicted the accused,



while exercising the powers under Section 401CrPC. The order of conviction by the High Court, while exercising the revisional jurisdiction under Section 401CrPC, is therefore unsustainable, beyond the scope and ambit of Section 401CrPC, more particularly sub-section (3) of Section 401CrPC. Issue (i) is answered accordingly.”

29. Furthermore, considering the point of presumption of innocence and if two reasonable conclusions are possible, the Hon’ble Supreme Court in ***Nikhil Chandra Mondal v. State of West Bengal***, reported in ***(2023) 6 SCC 605*** has observed in para 22 as under:

*“22. Recently, a three-Judge Bench of this Court in ***Rajesh Prasad v. State of Bihar*** [***Rajesh Prasad v. State of Bihar***, (2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31] has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the court. It has been further held that if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should*



not disturb the finding of acquittal recorded by the trial court.”

30. This Court has looked into the entire evidence on record led by both the parties. At the outset, in the present case, the impugned judgment/order has been examined in the light of the settled principles to ascertain whether the conclusion reached by the learned Trial Court and the Appellate Court suffer from such infirmities warranting re-appreciation of the evidence and materials available on record.

31. From perusal of record, I find the learned Trial Court has considered the evidence of the witnesses and also taken note of their contradictory statements. On examination of the deposition of the witnesses, the learned Trial Court recorded its finding that there are a number of contradictions and inconsistencies in the statement of the prosecution witnesses. Having regard to the reasoning adopted by the learned Trial Court, if learned Trial Court arrived at a finding considering the probability of false accusation against the opposite parties on the basis of evidence before it and the learned Appellate Court also upheld the same. This Court under its revisional jurisdiction would not like to intervene into the decisions of the learned Trial Court and the Appellate Court. There is no need of re-appreciation of evidence by this Court.



32. In view of the aforesaid discussions, the present revision fails. Accordingly, the same is dismissed.

(Sunil Dutta Mishra, J)

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