

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.757 of 2024

Arising Out of PS. Case No.-70 Year-2017 Thana- MEHANDIA District- Jehanabad

Nand Kishore Singh, S/o- Late Saryu Singh, Resident of Village- Mahendia,
P.S. Mahendia, Dist. Arwal Appellant

Versus

1. The State of Bihar
2. Bimal Singh, Son of Late Ambika Singh, Resident of Village- Parsurampur
P.S.- Parashi Dist- Arwal
3. Pramila Devi, Wife of Vishwanath Singh, Resident of Village- Mahendia,
Dist- Arwal

... .. Respondents

Appearance :

For the Appellant	:	Mr. P.N. Shahi, Sr. Advocate Mr. Ashok Kumar, Advocate Mr. Ajay Kumar, Advocate
For the State	:	Mr. Satya Narayan Prasad, APP
For the Respondent Nos. 2 & 3	:	Mr. Bindhyachal Singh, Sr. Advocate Mr. Vipin Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 18-04-2025

Heard Mr. Pushkar Narayan Shahi, learned Senior Counsel assisted by Mr. Ashok Kumar, Advocate for the appellant; Mr. Bindhyachal Singh, learned Senior Counsel assisted by Mr. Vipin Kumar Singh, for the Respondent Nos. 2 & 3 and Mr. Satya Narayan Prasad, learned Additional Public Prosecutor for the State.

2. The present appeal has been preferred under proviso to Section 372 of the Code of Criminal Procedure (in short



‘Cr.P.C.) for setting aside the judgment of acquittal passed on 22.04.2024 (hereinafter referred to as the impugned judgment) by the learned 1st Additional Sessions Judge, Jehanabad in Sessions Trial No. 418 of 2018 arising out of Mahendia P.S. Case No. 70 of 2017 dated 14.08.2017 registered under Sections 341, 323, 307, 504, 506 and 34 of the Indian Penal Code (in short ‘I.P.C.’).

3. By the impugned judgment, the learned trial court has been pleased to acquit Respondent Nos. 2 & 3 of the charges under Sections 307/34, 341 and 504 of the Indian Penal Code. The Respondent No.2 has been further acquitted of the charge under Section 307 I.P.C.

Prosecution Case

4. The prosecution story is based on a written application submitted by the informant Nand Kishore Singh in the Mahendia Police Station (Arwal) (Ext.-1) on 14.08.2017. The formal FIR has been lodged on 14.08.2017 at 18:00 hrs in which the date and time of occurrence has been shown as 13.08.2017 at 05:00 P.M.

5. In his written application the informant alleged as under:-

“That on 13.08.2017 at about 05:00 P.M., Vishwanath



Singh, Deepak Kumar, Prabhat Kumar, Pramila Devi and Bimal Singh equipped with iron rod and *khanti* came at the paddy field of the informant and started ploughing the land with tractor. The son of the informant namely Niranjana Kumar (P.W.-3), who was irrigating the field protested the act of the accused persons upon which Pramila Devi ordered other accused persons to kill him and thereafter, Vishwanath Singh gave an iron rod blow on the chest of Niranjana Kumar. After that Prabhat Kumar and Deepak Kumar also assaulted Niranjana Kumar indiscriminately with iron rod and *khanti*. During the occurrence, when informant got knowledge, he came to the place of occurrence and raised *halla*, then Bimal Singh, finding the son of the informant still alive, moved the tractor over his chest twice and thereafter fled away. The informant got admitted his son at Paras Hospital, Patna and thereafter on 14.08.2017 submitted written report in the police station.”

6. Upon completion of investigation, police submitted a charge-sheet against some of the accused persons. The learned Magistrate took cognizance of the offences vide order dated 30.06.2018 and upon finding that the offences alleged are triable by the court of Session, the records were committed to the court of Session where the accused Respondent Nos. 2 & 3 were



explained the charges. Since they denied the charges and claimed to be tried, the learned trial court framed the charges against them on the above mentioned sections vide order dated 13.06.2019.

7. In course of trial, prosecution examined as many as eight witnesses and got exhibited some documentary evidences which have been marked Ext.-1 to Ext.-9. List of Prosecution witnesses and the documents adduced on behalf of prosecution are mentioned hereunder in tabular form:-

List of Prosecution Witnesses

PWs	Name of witness	Nature of Evidence
PW 1	Chandrashekhar Singh	Eye Witness
PW 2	Shashi Kant Kumar @Pampam	Eye Witness
PW 3	Niranjan Kumar	Injured Witness
PW 4	Nand Kishore Singh	Informant
PW 5	Dr. Srinivash Sharma	Medical Witness
PW 6	Mithilesh Kumar rahi	First I.O.
PW 7	Bhola Sharma	Second I.O.
PW 8	Harendra Kr. Diwakar	Formal Witness

List of Exhibits

Exhibit	Description of the Exhibit
Ext-1	Written report of informant (Substituted)
Ext-2	Protest petition dated 30.8.17 with signature of informant (Substituted)
Ext-2/a	Signature of advocate Brajesh Kumar on Protest petition dated 30.8.17(Substituted)
Ext-3	Original Certificate given by Dr. Srinivash Sharma regarding X-ray of Niranjan done on 13.8.17 at 06:00 PM
Ext- 4	Ultra Sound report



Ext- 5	Formal FIR (Substituted)
Ext-6	Endorsement of registration on the written report
Ext- 7	Certificate given by Dr. Srinivash Sharma regarding the injury of Niranjana Kumar found by him on 13.8.17 at 06:00 PM (substituted)
Ext- 8	Discharge summary of Paras Hospital dated 1.9.17
Ext- 9	Certified copy of Judgment dated 5.2.20 passed in T.S. 92/16 passed by Sub Judge-1 Arwal
M.O.-I	X ray Plate

8. The Statement of the accused persons were recorded under Section 313 Cr.P.C. In their statement they claimed innocence and wish to adduce their evidence. The defence has examined six witnesses.

Findings of the Learned trial court

9. The learned trial court having examined and analyzed the evidences available on the record placed that there is an unexplained delay of more than 24 hours in lodging of the First Information Report and then there is further delay of two days in sending the FIR to the court of the learned Jurisdictional Magistrate.

10. The learned trial court further found that the I.O. recorded the restatement of the informant only on 24.10.2017, after two months of the alleged occurrence, but the reasons for not recording the statement of the informant of the date of the registration of the FIR or on 20.08.2017 when the first I.O. (P.W.-6) had visited the place of occurrence, has not been stated.



The court found that the statement of the injured (Niranjan Kumar) was recorded only on 05.09.2017. The place where the statement of the injured was recorded differs in the statement of the injured and that of the I.O. (P.W.-6) which gives an impression that the entire investigation is a table work only.

11. The learned trial court has found that P.W.-1 and P.W.-2 are the chance witnesses. The evidence of P.W.-2 and P.W.-3 who have been introduced as independent witnesses have not been found trustworthy, credible and reliable. As they appear to be an yes-man of the injured Niranjan Kumar and it was found doubtful as to whether they had actually witnessed the occurrence.

12. The learned trial court has further found that both the parties are *gotiyas* and there is a land dispute between them and a partition suit is also pending regarding the plot of the field where the alleged occurrence took place. Exhibit-9 and Exhibit-D/3, D/4 are found corroborating this fact. The learned trial court relied upon the judgment of the Hon'ble Supreme Court in the case of **Bhagwan Singh Vs. State A.P.** reported in **(2002) 4 SCC 85** in which it has been observed that the golden thread which runs through the web of administration of justice in criminal cases is that when two views are possible on the evidences adduced in a case, one is pointing to the guilt of the



accused and other to his innocence, the view which is favourable to the accused should be adopted.

Submissions on behalf of the Appellant

13. Mr. Pushkar Narayan Shahi, learned Senior Counsel for the informant-appellant submits that the learned trial court could not appreciate that the informant and other witnesses are the eye-witnesses of the occurrence who have supported the prosecution case. It is submitted that the victim is an injured witness who has stated about the date, time, place and manner of occurrence. The injured witness has withstood the test of cross-examination and no contradiction may be found in the testimonies of the prosecution witnesses.

14. It is submitted that the Doctor has found corroborating injuries on the person of the victim, therefore, the trial court has committed error in giving the benefit of doubt to the Respondent Nos. 2 and 3.

Submissions on behalf of Respondent Nos.2 & 3

15. On the other hand, Mr. Bindhyachal Singh, learned Senior Counsel for the Respondent Nos. 2 and 3 submits that the learned trial court has analyzed the entire evidence both of the prosecution as well as the defence and it would appear from a reading of the impugned judgment that the trial court has



rightly taken a view that the guilt of the accused persons-respondent nos. 2 and 3 cannot be taken to have been proved beyond reasonable doubts.

16. It is submitted that the prosecution case is full of doubts, not only for the delay in lodging of the FIR and sending of the FIR to the jurisdictional court with an unexplained delay of two days, even the evidence of the prosecution witnesses are full of contradictions.

17. Learned Senior Counsel submits that it would appear from the evidence of the I.O. (P.W.-6) that he claims to have recorded the evidence of the victim at his house on 05.09.2017, i.e. after about 22 days of the occurrence. He has stated in his deposition that he had gone to Paras Hospital for recording of the statement of the victim but the victim was not in a position to give statement. This is in complete contradiction with the statement of the victim Niranjan Kumar (P.W.-3) who has stated that his statement was recorded by I.O. at Paras Hospital. It is also pointed out that from the discharge summary of the Paras Hospital which has been marked Exhibit-7 it would appear that at the time of admission of the patient, he was conscious and oriented. P.W.-3 was admitted in Paras Hospital on 13.08.2017, therefore, the claim of the I.O. that he had gone



to Paras Hospital for recording the statement of the injured but the injured was not in a position to give his statement is not correct.

18. Learned Senior Counsel further submits that the manner of occurrence as alleged by the prosecution witnesses including the injured (P.W.-3) is not supported/corroborated from the medical evidence. According to the informant, the Respondent No.2 had run the tractor over his son Niranjana Kumar (P.W.-3) twice, however, the injury report which has been brought on record as Exhibit-7 would not support this version of the prosecution case. One of the injury report (Ext.-3) has been prepared on 02.02.2018 by the Doctor (P.W.-5) which is much after the occurrence.

19. Learned Senior Counsel has relied upon the judgment of Hon'ble Supreme Court in the case of and **Murugesan vs. State** reported in **(2012) 10 SCC 383**. Reliance has been placed on paragraphs 19, 32 and 35 of the judgment to submit that in an appeal against an order of acquittal, the appellate court need not interfere with the acquittal unless the court comes to an irresistible conclusion as to the guilt of the accused.

20. It is submitted that the findings recorded by the



learned trial court are not required to be disturbed as no clinching evidence has been brought on record to support the prosecution case beyond all reasonable doubts. He has also relied upon the judgment of the Hon'ble Supreme Court in the case of **H.D. Sundara vs. State of Karnataka** reported in **(2023) 9 SCC 581** to point out the principles governing the case of appeal against acquittal.

Consideration

21. We have heard learned counsel for the appellant, learned Additional Public Prosecutor for the State and learned counsel for the Respondent nos. 2 and 3 as also perused the trial court records. At the outset, we find that that informant-appellant and the private respondents in this case are co-sharers. Exhibit 'P/8' is a certified copy of the judgment and decree dated 05.02.2020 passed by learned Sub-Judge-I, Arwal in Title Suit No. 92 of 2016 (Nand Kishore Singh versus Bishwanath Singh). The suit land is plot no. 1193 in Khata No. 112 measuring area 82 decimal in mauja-Mehandiyabad. The preliminary decree for partition of plaintiff's half share in the suit land has been passed in favour of the plaintiff against the defendant. There is no evidence that a survey knowing Advocate Commissioner was appointed to carve out separate takhta for



plaintiff's half share and the plaintiff was put in possession over his allotted takhta through the process of the court. Till date no final decree has been made in the partition suit.

22. From Exhibit 'D/4', it would appear that being aggrieved by and dissatisfied with the judgment dated 05.02.2020 and preliminary decree dated 14.02.2020 passed in Title Suit No. 92 of 2016, Bishwanath Singh has preferred a Title Appeal in the court of learned District & Sessions Judge, Jehanabad. The matter is sub-judiced in the Appellate Court.

23. One of the contentions of the Respondent No.2 and Respondent No.3 is that the learned trial court could not appreciate that the defendant in suit placed a 'Yadast Batbara' in the court below and perusal thereof would clearly manifest that the partition had already taken place in the year 1956, accordingly, the parties have peacefully acquired their respective shares and since then there was no dispute before any court of competent jurisdiction. Since the defendant in suit applied for starting a petrol pump on the suit land and in this connection, he had obtained required approvals from the IOCL, the present dispute arose.

24. Be that as it may, the aforementioned two documents have been taken note of only to record that the



parties are co-shares and they are having a land dispute. So far as Respondent No.2 is concerned, he is *samadhi* of Bishwanath Singh, the defendant in the Title Suit. The informant of this case is the plaintiff, he had filed a Title Suit for his half share in the suit land. It is because of this fact, it has been contended on behalf of the defendant (Respondent No.2) that even plaintiff admits half share of the defendant in the suit land.

25. In this case, the occurrence took place on 13.08.2017 at 05:00 PM when the five named accused persons named in the written application (Exhibit '1') which is undated reached the place of occurrence which is said to be a paddy crop sowed land of the informant. Niranjana Kumar (PW-3), the injured son of the informant was engaged in irrigating the plot but the accused persons started ploughing the field. When he was objected to by Niranjana Kumar then allegedly Pramila Devi (respondent no. 3) ordered to kill him on which Bimal Singh (respondent no. 2) assaulted Niranjana Kumar by an iron rod on his chest whereafter it is alleged that the other accused persons named in the FIR had indiscriminately assaulted Niranjana Kumar by iron rod and khanti. The informant claimed that when he came to know about the occurrence, he reached there and raised hulla whereafter all the accused persons started fleeing



away but in the meantime, Bimal Singh (respondent no. 2) said that the injured was still alive, therefore, he should be assaulted more, then allegedly the tractor was run over twice on Niranjana Kumar and then they fled away.

26. The informant has stated that he was engaged in treatment of Niranjana Kumar in Paras Hospital, Patna and he submitted the written application on 14.08.2017. It is evident that the FIR was lodged on 14.08.2017 at 18:00 hours which is more than 24 hours. The distance of police station from the place of occurrence is only one and half kilometer. It has also come in evidence that the FIR registered on 14.08.2017, was sent to the learned Chief Judicial Magistrate only on 16.08.2017. It is for this reason that the defence has taken a plea that it is not only a case of delay in lodging of the FIR but is also a case in which the FIR was not sent within the statutory period as prescribed under Section 157 CrPC. The FIR does not contain the date and time of dispatch of the FIR to the Jurisdictional Court which is in violation of the statutory mandate. This Court is of the opinion that there is an apparent delay in lodging and sending of the FIR. Regarding delay, the Hon'ble Supreme Court has observed in paragraph '12' of its judgment in **Meharaj Singh (L/Nk.) versus State of U.P.**



reported in **(1994) 5 SCC 188** as under:-

“12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at



serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW-8.”

27. It is further evident that the I.O. (PW-6) has stated that he had taken charge of investigation on 14.06.2017 and proceeded for inspection of the place of occurrence. He has stated in paragraph ‘16’ of his deposition that after two months of the occurrence, he had recorded the re-statement of the informant. The delay of two months in recording of restatement of the informant would be another factor to be considered.

28. This Court finds that in paragraph ‘11’ of his deposition, the I.O. has stated that when he reached the place of occurrence, he found that the paddy crop plot was ploughed. He was not told that the paddy crop has been ploughed, he had seen that the plot was ploughed. He was suggested by defence that



in the description of the place of occurrence, he had not written that he had seen the plot which was found ploughed. He denied the suggestion. In paragraph '14' of his deposition, he has stated that he cannot say as to the size of the paddy plants. He has stated that little bit of water was there. P.W.-6 has given boundary of the plot of occurrence. According to him, in half portion of the land in dispute paddy crops were sowed.

29. This Court finds that while passing preliminary decree in suit the survey knowing pleader/advocate was appointed to carry on "Takhtabandi" whereafter only final decree was to be passed. It is not the case of the informant who is the plaintiff in the suit that final decree was passed, he was allotted half of the land and was put in possession of his share by following the process of law. This Court, therefore finds that if the prosecution case is believed, during pendency of the suit, the plaintiff's son had gone at the plot for sowing the paddy crops in half of the land and that seems to be the reason of occurrence. I.O. (P.W.-6) has not examined the boundary raiyats.

30. P.W.-6 had taken statement of Chandrasekhar Singh (P.W.-1), Shashikant Kumar @ Pampam (P.W.2) and Ajit Kumar @ Pintu Singh (not examined) at the place of occurrence but none of them is a boundary raiyat and their presence at the



place of occurrence, when I.O. visited there seems to be highly doubtful. P.W.-1 claims that he was taking tea at the line hotel and P.W.-2 claims that he was passing through the line hotel when they saw the occurrence. The evidence of P.W.-1 and P.W.-2 are materially divergent. P.W.-1 has stated that Bimal Singh (Respondent No.2) is *samdhi* of Bishwanath Singh who is the co-sharer of the informant. P.W.-2 has not said that Pramila (Respondent No.3) ordered to kill and Bimal Singh (Respondent No.2) assaulted Niranjana by iron rod. Both have stated that Bimal Singh had run the tractor over body of Niranjana. P.W.-1 has gone to the extent of saying that Bimal Singh had run over the tractor twice but the evidence of PW-1 and PW-2 would not inspire confidence of this Court. Had the tractor been run over twice over Niranjana, he would have suffered crush injuries and the kind of injuries would have been totally different. PW-2 is a resident of village Phulwaria in District of Aurangabad, so he is another chance witness. He has stated to have seen three persons assaulting Niranjana. He is an employee of the petrol pump of Niranjana. Niranjana admitted this in his evidence.

31. The I.O. (PW-6) has stated that he had gone to Paras Hospital to record the statement of the injured son of the informant (PW-3) but the injured was not in a position to speak,



therefore, he returned and after he recovered and got well then his statement was recorded on 05.09.2017. This statement of the I.O. (PW-7) is, however, in complete contradiction with the evidence of the injured Niranjana Kumar (PW-3). He has stated in his deposition that he did not remember on which date his statement was recorded by police. He has stated that 10-12 days after the occurrence, his statement was recorded in Paras Hospital. In this regard, the evidence of the Doctor (PW-8) who has proved the discharge summary dated 01.09.2017 of Paras Hospital (Exhibit '7') would show that "the patient came to Paras Hospital Emergency Department with the complaints following alleged physical assault on 13.08.2017. Initially treated at local hospital. He got admitted for further evaluation and management...." In the same discharge summary, it is recorded that "at the time of admission patient conscious, oriented".

32. From the evidence of PW-7 read with Exhibit '7', it appears that the injured was admitted in Paras Hospital at Patna after his initial treatment at local hospital and at the time of admission, he was conscious and oriented, therefore, the statement of the I.O. (PW-6) that he had gone to Paras Hospital but could not record the statement of the injured because he was



not in a position to speak is not getting support from the Hospital document (Exhibit '7') and the evidence of PW-8. PW-6 has stated that he recorded statement of PW-3 on 05.09.2017 but he does not disclose the place where he recorded the statement of PW-3. On the other hand, PW-3 states that his statement was recorded in Paras Hospital. Exhibit '7'. The fact is that PW-3 had already been discharged from Paras Hospital on 01.09.2017, therefore, either PW-3 or PW-6 is suppressing the truth. If statement was recorded on 05.09.2017 i.e. after 22 days of the occurrence after discharge of PW-3, it is evident that the I.O. (PW-6) did only a paperwork as per convenience of PW-3 outside Paras Hospital.

33. The I.O. (PW-6) has stated in his deposition that he had received the injury report of Arwal Sadar Hospital through writer of the police station but he had not taken statement of any doctor who had treated the injured.

34. In these circumstances, this Court finds that Dr. Srinivas Sharma (PW-5) who was posted as Medical Officer at Sadar Hospital, Arwal was not examined in course of investigation but the I.O. received the injury report through the writer of the police station. From where the 'writer' received the injury report? Who submitted the injury report to the writer of



the police station is not known. The I.O. has not verified the source of the injury report. PW-5 has stated in paragraph '19' of his deposition that the injury report (Exhibit '7') was not handed over to police by him. This injury report was demanded earlier hence he gave it on another page. All injuries are mentioned in Emergency register, he copied it from the register and issued it. The Emergency register was not before him and the injury report does not bear the seal and serial number. PW-5 admits that generally, injury reports are written on a format. The defence suggested him that he had fabricated a false certificate in collusion with the father of the injured. According to this witness, he had found the following injuries on the person of the injured:-

- “i) Lacerated wound of size $\frac{3}{4}$ ” x $\frac{1}{2}$ ” x $\frac{1}{4}$ ”
on left cheek.
- ii) Lacerated wound of size 2cm x 1cm x 1cm on left supra orbital ridge.
- iii) Lacerated wound of size 1” x $\frac{1}{2}$ ” x $\frac{1}{4}$ ”
on right pinna.
- iv) Complaint of chest pain”

35. It is stated that the injured was referred to PMCH. He has stated that police station is about three kilometers from Sadar Hospital, Arwal and when any person is brought in Hospital in injured condition, the police is informed but in this case, the injured was referred to PMCH because he was serious,



hence, police was not informed. He has admitted that he had issued certificate, not an injury report. He has also stated that he had not given the detail injury report. He further admitted that the report was prepared on 02.02.2018 and later on in course of his re-examination, he has proved the injury report (Exhibit '7') which he claims to have been prepared on the basis of injuries mentioned in the Emergency register.

36. This Court finds that the injury reports were not submitted to police in course of investigation, as according to PW-5 it was not demanded by police. A perusal of Exhibit '7' would show that it is in form of "To Whom it may Concern" and it has been shown prepared on 20.08.2017. Exhibit '5' has been later on corrected as Exhibit '7'. Exhibit '3' and Exhibit '7' both are in form of a certificate. Exhibit '7', in fact, records that the injured was admitted and treated at Sadar Hospital, Arwal on 13.08.2017 at 06:00 PM. It is evident that Exhibit '3' and Exhibit '7' have been brought in evidence through backdoor method. I.O. neither verified the correctness of Exhibit '3' and Exhibit '7' from the emergency register nor he examined PW-5 in course of investigation.

37. The evidence of Niranjana Kumar (PW-3) would show that he has attributed the assault by iron rod and *khanti* to



other accused persons not to Bimal Singh (Respondent No. 2) and Pramila Devi (Respondent No. 3). PW-3 has alleged that respondent no.2 had run over the tractor on to his chest and he moved the tractor and backed the tractor over his chest whereafter he became unconscious and on regaining consciousness, he found himself in ICU of Paras Hospital.

38. This Court finds much exaggeration in the evidence of PW-3. His statement that respondent no.2 had run the tractor over him on his chest and crossed over, thereafter he backed the tractor again over his chest is simply unbelievable. Perhaps it looks more probable that in such a case PW-3 would have vomited blood at the spot and it may have caused instant death then and there. He has alleged assault on his chest by iron rod by another accused. It is evident that presence of respondent no.3 has been shown as an order giver but considering the kind of enmities between the parties, in absence of any independent witness, this Court would not take it safe to rely on the statement of PW-3 to convict respondent nos.2 and 3.

39. I.O. (PW-6) has not made any verification as to whether Vishwanath Singh had a tractor? If yes then why the said tractor was not seized by police during investigation? All these facts appearing from records only show that the story that



PW-3 was run over by a tractor on to his chest did not get support by adducing cogent evidence.

40. The informant (PW-4) has stated that there was a 144 CrPC proceeding initiated after sowing paddy crops in which police had not submitted any report. He has stated that he did not know in whose favour land possession certificate was issued. He admits that in 144 CrPC case decision had gone in favour of Vishwanath Singh. PW-4 had filed partition suit in which injunction petition was rejected by the Court. In paragraph '20', PW-4 states that when he reached the place of occurrence, the accused persons were fleeing away and his son was lying down on the earth and mud of the tractor was present on his body. He states that he had shown the place of occurrence to the I.O. later on, on 20.08.2017 but this Court finds that the I.O. (PW-6) has not stated about presence of PW-4 when he had gone for inspection of the place of occurrence after taking charge of investigation. If PW-4 had gone to show the place of occurrence on 20.08.2017 and why his restatement was recorded after two months remains unexplained.

41. PW-4 admits that from place of occurrence, Arwal P.S. is situated at fourteen kilometer and on way to Arwal firstly hospital comes and thereafter police station. Mehandia is one



and half kilometer but on the date of occurrence, he had not given any written information in Mehandia or Arwal Police Station. This witness was suggested that there was no occurrence at place as alleged. The occurrence had taken place somewhere else but after the occurrence, he had falsely fabricated a story and implicated the accused persons.

42. On a close scrutiny of the evidence of PW-4, it is evident that he is not an eye-witnesses of the occurrence (paragraph '20' of his deposition). He has four petrol pumps and he came to the police station only after due deliberations as to who are to be named in the FIR. Thus, the FIR has been lodged with an afterthought. Neither he nor the two hospital authorities where PW-3 is said to have been taken for treatment, informed local police. PW-4 being a businessman could have lodged a zero FIR at Arwal or Patna but that was not done. He tried to place himself as an eye-witnesses but his own deposition in paragraph '20' makes it clear that at the time of occurrence, he was not at the spot.

43. This Court has, discussed the prosecution evidences hereinabove. In ultimate analysis, this Court finds that the informant (PW-4) is not an eyewitness to the occurrence. So far as PW-1 and PW-2 are concerned, they claim themselves



chance witnesses. PW-2 is an employee in the petrol pump of PW-4, therefore, he would fall in the category of a partisan witness. His presence near the place of occurrence is highly doubtful. The manner of occurrence as alleged by the victim (PW-3), informant (PW-4) and the two chance witnesses (PW-1 and PW-2) stating that respondent no.2 had run over the tractor over the chest of PW-3 and had moved the tractor over the chest and then backed it, cannot be believed because in such circumstance, the injuries caused to PW-3 would have been altogether different one and it would not have been possible for PW-2 to take the injured (PW-3) to a hospital alone. There is no witness saying that he was present with PW-4 and had helped PW-4 in carrying his son to Arwal Hospital. PW-4 himself admits that he had got information regarding the occurrence from one Dr. Bindeshwari Singh in Mehandia Bazar.

44. This Court finds that Dr. Bindeshwari Singh has not been examined in this case.

45. The defence has also examined six witnesses and the learned trial court has delved into the evidence of the defence witnesses. It has been found that DW-1, DW-3 and DW-4 are the witnesses who claimed to have seen the injured (PW-3) at NH-139 in injured condition. They had given their statement



to this effect to the Dy.S.P., Arwal and Dy.S.P., CID. Shashi Sekhar Sharma (DW-5) is a retired Dy.S.P., Arwal and retired Dy.S.P., CID. He has stated that he was directed by Letter No.1237/Crime Department dated 16.07.2018 to submit a report after conducting inquiry regarding the genuineness of Mehandia P.S. Case No.8 of 2016 and 70 of 2017 which were lodged by Nand Kishore Singh (informant PW-4). After inquiry, he had submitted his report to SP, Arwal vide Letter No.118 dated 25.08.2018 which has been marked Exhibit 'D/1' on his identification. The trial court has found that from deposition of DW-5 it appears that this witness had upon inquiry found that no occurrence as alleged in FIR being Mehandia P.S. Case No.70 of 2017 had taken place at the alleged place of occurrence rather son of Nand Kishore Singh met with an accident at road near village Maraila.

46. The another witness Birendra Kumar Sinha (DW-6) is also a retired Dy.S.P. On 19.02.2018, he was posted in Magadh Range, CVTM, Gaya. He was asked to inquire into Mehandia P.S. Case No.70 of 2017 by the Superintendent of Police. DW-6 had conducted inquiry in which he found that in the FIR five persons were named accused but in police investigation and supervision, the case was found true against



three and against two accused, the allegations were not correct as their mobile tower location were found as that of 'Kota' and 'Haryana'. The prosecution, however, suggested DW-5 and DW-6 that they had prepared the inquiry report in collusion with the accused persons as the witnesses of the occurrence were not called by them while conducting inquiry. With regard to the inquiries conducted by DW-5 and DW-6, it has been contended by learned Senior counsel for the appellant that once the police had submitted charge-sheet, thereafter DW-5 was asked to conduct an inquiry which was not in accordance with law. In this regard, this Court has noticed from the ordersheets of the learned trial court that on 21.09.2019 the defence filed an application under section 311 CrPC. The said application has been heard and disposed of by the learned trial court vide order dated 03.03.2020. A reading of the order shows that the defence had filed the application under section 311 CrPC along with photocopy of report of inquiry conducted by Dy.S.P. Headquarter, Arwal submitted by Letter No. 118 dated 25.08.2018 and also photocopy of report submitted by Birendra Kumar Sinha, Dy.S.P. CID Magadh Range obtained under Right to Information (RTI). The defence wanted to demonstrate from these reports that the occurrence had not taken place at village



Maraila and they prayed for calling of the documents and issuance of summons against both the Dy.S.Ps. The learned trial court took a view that at this stage, the case was pending for defence evidence and not even a single witness had been examined on behalf of the defence. The court was of the view that without examining a single witness, filing of a petition under section 311 CrPC would not be appropriate. The petition was held not maintainable but at the same time the learned trial court observed in its order that the defence would have an opportunity to adduce any evidence which may be in their support. Referring to section 233 CrPC, the learned trial court held that if the accused applies for the issue of any process for compelling the attendance of any witness or production of any document or thing, the court shall issue such process unless he considers for reasons to be recorded that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.

47. In the aforementioned background, an application under section 233 CrPC was filed on 20.02.2022 which was contested by the prosecution. The learned trial court vide its order dated 04.03.2021 found that it was expedient to give chance to the defence to produce the defence evidence. The trial



court directed for issuance of summons for calling the documents and the witnesses. The order dated 04.03.2021 was not challenged by the prosecution, hence it attained finality. This explains the entry of DW-5 and DW-6 as defence witnesses. The legality and validity of the order by which they were allowed to appear as defence witnesses is not subject matter of challenge in the present appeal.

48. On a complete reading of the evidences on the record, the learned trial court has taken a view in paragraph '25' and '26' of the impugned judgment as under:-

“**25.** All the above mentioned circumstances combined together castes serious cloud of suspicion over the whole prosecution story and makes it highly doubtful. Having regard to the cumulative effect of the circumstances mentioned above, on the basis of the wholly interested and partisan nature of the testimonies of the witnesses examined by the prosecution who are also not worthy of credit, in the background of land dispute between the parties without any corroborative independent piece of evidence, Prosecution can not claim to have proved its case beyond shadow of all reasonable doubts and accused persons are liable to be given benefit of doubt.

26. After encompassing all the materials available on the record, I am of the considered view that materials on the record are not sufficient enough to reach at the conclusive



finding of the guilt of the accused persons and prosecution has failed to prove the charges against the accused persons beyond shadow of all reasonable doubts and the accused persons are entitled to be acquitted by giving him benefit of doubt.”

49. We are hearing an appeal against acquittal. The principles governing an appeal against acquittal have been reiterated times and again by the Hon’ble Supreme Court. We quote paragraph ‘8’ of the judgment in case of **H.D. Sundara vs. State of Karnataka** reported in **(2023) 9 SCC 581** hereunder:-

“38. Further, in the case of *H.D. Sundara v. State of Karnataka*² this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows:-

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the



appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and”

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

50. In the light of the discussions made hereinabove, this Court is of the considered opinion that there is no perversity in the views expressed by the learned trial court. No reason for interference has been shown to this Court and therefore, this Court declines from interfering with the impugned judgment.

51. This appeal is dismissed.

52. Let the trial court records along with a copy of the judgment be sent down to learned trial court.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

durgesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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