

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.793 of 2024

Arising Out of PS. Case No.-372 Year-2016 Thana- BIHTA District- Patna

=====

Mantu Rai, aged about 48 years, Male, son of Nagina Rai, Resident of
Village- Tikaitpur P.S.- Bihta District- Patna.

... .. Appellant/s

Versus

1. The State of Bihar
2. Guddu Kumar @ Upendra Kumar, aged about 35 years, Son of Shokhi Gope.
3. Ripu Rai @ Surendra Kumar, aged about 40 years, Son of Shokhi Gop.
4. Manish Kumar, aged about 29 years, Son of Shokhi Gop.
5. Bittu Kumar, aged about 27 years, Son of Vineshwar Prasad.
6. Vikash Kumar, aged about 25 years, Son of Vineshwar Prasad.

All are Resident of Village- Tikaitpur P.S.- Bihta District- Patna.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Sujeet Kumar Gupta, Advocate
For the State	:	Mr. Binod Bihari Singh, Additional P.P.
For the Respondent/s	:	Mr. Bikas Kumar Sharma, Advocate
		Ms. Madhuri Kumari, Advocate

=====

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

Date: 04-08-2025

The present criminal appeal has been preferred
under Section 372 of the Code of Criminal Procedure against
the judgment of acquittal dated 17.08.2023 passed by the
learned Additional District Judge-VII-cum-Special Judge



POCSO, Patna in Case No.: CIS No. Special (POCSO) Case No. 76 of 2016, arising out of Bihta P.S. Case No. 372 of 2016, whereby Respondent Nos. 2 to 6 were held guilty by the trial court under the charge of Sections 323 and 341 of Indian Penal Code, and after due admonition under Section 3 of the Probation and Offender Act, the accused were released. Although the accused were charged for trial under Sections 354 and 307 read with Section 149 of the Indian Penal Code and Section 12 of the POCSO Act, but they were not found guilty of these offences.

2. Vide order dated 05.10.2024, notices were issued to the Respondent Nos. 2 to 6, upon which they appeared by filing Vakalatnama through learned Advocate, Mr Bikash Kumar Sharma.

3. The prosecution case, in brief, is that on 04.06.2016 at about 9:15 AM in the morning when the informant was at his house, all of a sudden, Ripu Rai @ Surendra Kumar, Guddu Kumar @ Upendra Kumar, Manish Kumar, Bittu Kumar and Vikash Kumar came to his house armed with *lathi* and *danda* and abused him, and as soon as the informant came out of his house, they all started assaulting him with *lathi* and *danda* on his head, due to



which he sustained severe injuries and blood started oozing out from his head. The motive behind the occurrence is that he had purchased one katha of land, about 5-6 years ago, from one Ripu Rai @ Surendra Kumar, and in retaliation the accused namely, Guddu Kumar @ Upendra Kumar used to ask his daughter to talk with him while she was on her way to school, and it is also alleged that the accused would hold her hand and threaten to shoot her if she didn't talk with him.

4. On the basis of the written statement of the informant, Bihta P.S. Case No. 372 of 2016 dated 04.06.2016 was registered under Sections 147, 148, 149, 504, 506, 354 and 307 of the Indian Penal Code and Sections 8 and 12 of the POCSO Act, and the investigation was taken up by the police. The police, after investigation, submitted charge-sheet against the respondents under the said sections and, accordingly, cognizance was taken. Thereafter the case was committed to the Court of Sessions. Charges were framed against the accused persons, to which they pleaded not guilty and claimed to be tried.

5. During the trial, the prosecution examined altogether eight witnesses in this case. Out of which PW-1 the victim of the case, PW2 Buddh Deo Rai, PW3 Malti



Devi, PW4 Mantu Rai, PW5 grandfather of the victim, PW6 Kamlesh Kumar (I.O.), PW7 Dr. Digvijay Narayan Singh and PW8 Suresh Ram. No witness has been examined on behalf of the defence. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. and after conclusion of trial, trial court acquitted the accused persons.

6. From the perusal of the judgment of the trial court, the following ground was considered by the trial court while acquitting the Respondent Nos. 2 to 6 from the charge framed under Section 12 of the POCSO Act:

“From the analysis and appreciation of the aforesaid facts, circumstances and evidence available on record and as discussed above, in my view, the prosecution has failed to prove that the said accused had committed any sexual harassment upon the victim girl with any sexual intention or uttered any word or made any sound or made any gesture or exhibited any object or part of the body with the intention that said word or sound shall be heard or such gesture or object or part of the body shall be seen by the victim girl. The element of sexual intention has not been proved by the prosecution.”

7. With respect to the offence charged under Section 307 of the IPC, the trial court observed the



following:

“The doctor has opined that both the injuries are simple in nature. Considering the materials and evidences available on record, in my opinion ingredients necessary to constitute an offence under section 307 of the Indian Penal Code are wanting in the present case. The prosecution has failed to prove the same.”

“Although the prosecution has failed to prove charge under section 307 of the Indian Penal Code but the prosecution has well been successful in bringing home that the accused-persons had assaulted the informant and inflicted simple injury and in due course of their assault they had wrongfully restrained the informant constituting the offence punishable under section 323 and 341 of the Indian Penal Code. Thus, the accused-persons deserve to be punished in lesser sections for the offences committed by them which are punishable under Sections 341 and 323 of the Indian Penal Code. Thus, in my considered view the prosecution has well proved that on the date and time of the occurrence, the accused-persons with common object had restrained and assaulted the informant. The prosecution has been successful in bringing home the guilty of the accused-persons for the offences punishable under Sections 341 and 323 of the Indian Penal Code beyond the shadow of all reasonable doubts.”

8. The learned counsel for the appellant submitted that the learned court below has wrongly held that forcibly



catching the victim girl's hand and threatening her to talk with the accused, does not come under the purview of sexual harassment; as such, Section 12 of the POCSO Act and Section 354 of the IPC do not attract. The learned counsel had further submitted that the trial court wrongly held that the informant/appellant has sustained only one injury on his head; as such, Section 307 of the IPC does not attract though he has got two injuries on his person which was fully supported by the doctor (PW-7). The learned counsel for the appellant further submitted that the learned court below has wrongly held that the main genesis of the occurrence is a land dispute and the convicts are first offenders and the charges established against them are not serious in nature and hence, they are released by giving the benefit of Section 3 of the Probation of Offenders Act.

9. The learned counsel for the respondents submitted that the trial court has rightly acquitted the respondents and gave sufficient reasons for acquittal. Therefore, the judgment of the trial court requires no interference.

10. After going through the submissions made by the parties and the facts available on record, the sole question



that requires consideration by this Court is whether the impugned judgment of acquittal requires any interference by this Court.

11. As per the prosecution, no dangerous weapon had been used, nor was there any repetition of blows. The alleged injury inflicted on the person of the informant is not sufficient to be causing death. The entire prosecution evidence nowhere suggests that there was any intervening circumstance which might have saved the life of the injured. The nature of the injury as opined by the doctor is simple. Therefore, in the totality of the circumstances, as discussed above, no offence punishable under Section 307 is made out against the accused. Rather, at best, it could be a case of simple hurt punishable under Section 323 of the IPC.

12. After going through the evidence available on record, we do not find that there is sufficient evidence to make out an offence of sexual harassment punishable under Section 12 of the POCSO Act. Except for the daughter of the informant, there is none who had witnessed the occurrence. So far the informant (P.W. 4) and the wife of the informant (P.W. 3) are concerned, they are not eyewitnesses to the occurrence. They have narrated the incident as told by their



daughter (P.W. 1). However, P.W. 1, namely, Radha Kumari, nowhere disclosed in her deposition that the Respondent No. 2 used to catch her hand with sexual intention. In the absence of sexual intent, the offence of sexual harassment does not make out.

13. At this juncture it is worth referring to the explanation of Section 11 of the POCSO Act, which says that any question which involves sexual intent shall be a question of fact. The expression 'fact' has already been defined under Section 3 of the Indian Evidence Act, which says that anything, state of things or relation of things capable of being perceived by the senses and any mental condition of which any person is conscious. Therefore, it is the victim girl who was only competent to say whether the Respondent No. 2 used to catch hold of her hand with sexual intent or not, because such intention could be perceived by the senses of the victim girl, whereas she has not deposed regarding the intention of the accused. Therefore, in the absence of evidence to prove the sexual intent, no offence defined under Section 11 and punishable under Section 12 of the POCSO Act is made out.

14. The appellant has not been able to prove the



finding of the acquittal of the trial court, under Section 12 of the POCSO Act and Section 307 of the IPC, has been perverse or erroneous.

15. In our view, 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 beyond the shadow of a reasonable doubt. Wherever any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of doubt.

16. In a 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 are 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....."

17. In the case of ***Ghurey Lal versus State of Uttar Pradesh*** reported in ***(2008) 10 SCC 450*** in paragraph 75, the Hon'ble Supreme Court reiterated the said view and observed as under:

"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."

18. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case 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 the absence of strong and compelling grounds.

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



court.

20. Accordingly, the present appeal is dismissed.

(Sudhir Singh, J)

(Ramesh Chand Malviya, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.08.2025
Transmission Date	

