

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.971 of 2024

Arising Out of PS. Case No.-42 Year-2011 Thana- DURGAWATI District- Kaimur (Bhabua)

Sunil Kumar @ Sunil Kumar Singh son of Nathuni Singh Kushwaha Village-
Nuaon Po- Kabilashpur Ps- Durgawati Dist- Kaimur

... .. Appellant

Versus

1. The State of Bihar
2. Rajendra Kushwaha son of Siggan Kushwaha Village- Nuaon Ps- Durgawati Dist- Kaimur
3. Balwant Kushwaha son of Gauri Kushwaha Village- Nuaon Ps- Durgawati Dist- Kaimur
4. Shyama Kushwaha (Deleted Vide Hon'ble Court Order dated 04.04.2025) son of Late Tengri Kushwaha Village- Nuaon Ps- Durgawati Dist- Kaimur
5. Rama Kushwaha son of Late Tengri Kushwaha Village- Nuaon Ps- Durgawati Dist- Kaimur
6. Gauri Kushwaha son of Late Ramji Kushwaha Village- Nuaon Ps- Durgawati Dist- Kaimur

... .. Respondents

Appearance :

For the Appellant	:	Mr. Manish Kumar No 13, Advocate Mr. Rohit Kumar, Advocate
For the Respondent	:	Mr. Rajani Kant Pandey, Advocate
For the State	:	Mr. Bipin Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 18-08-2025

The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure, 1973 against the order dated 12.03.2024 passed by the learned Additional Sessions Judge- IX, Kaimur at Bhabhua in Sessions Trial No. 4591 of 2014, arising out of Durgawati P.S. Case No. 42 of



2011, whereby the learned Trial Court has been pleased to release the accused persons by giving them benefits of Probation of Offenders Act.

2. Vide order dated 23.04.2025, Trial Court records was called for, which was received on 07.05.2025.

3. The prosecution case, in brief, is that on 13.04.2011 at about 07:00 a.m., due to a land dispute between the parties, the accused persons, namely, Shyama Kushwaha and Rama Kushwaha assaulted the informant Sunil Kumar with *lathi* and *danda*. When the victim raised alarm about the alleged occurrence, the victim's father and uncle came in his rescue where upon the accused Rajendra Kushwaha, Gauri Kushwaha and Balwant Kushwaha assaulted them with *lathi* and *danda*. On hearing the scream, villagers gathered there and intervened.

4. On the basis of written statement of the informant, Durgawati P.S. Case No. 42 of 2011 was instituted under Sections 341, 323, 307, 325/34 of Indian Penal Code and investigation was taken up by the police. The Police after investigation, submitted charge-sheet against Respondent Nos. 2 to 6 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 prosecution witnesses i.e. PW1 Basgit Singh Kushwaha, PW2 Nathuni Singh Kushwaha, PW3 Sushil Kumar, PW4 Sunil Kumar (informant), PW5 Chandrama Singh, PW6 Yamuna Kushwaha, PW7 Dr. Dineshwar Kumar and PW8 Parshuram Singh. The prosecution has also produced certain documents which were marked as 'Exhibits' i.e., signature of informant on the written statement and the injury reports. 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, learned Trial Court held the accused guilty for offence punishable under Section 323/34 and Section 341/34 of IPC, and thereafter released the accused persons providing benefits of Section 3 of the Probation of Offenders Act.

6. The learned Trial Court held that the alleged occurrence was a case of free-fight and both parties suffered injuries as per the statement of the witnesses, and no serious injuries were found on any of the victim. The Doctor had opined that injuries inflicted upon P.W. 1 and P.W. 2 were grievous injury based on the C.T. Scan Report and X-Ray Report.



However, both of these documents were not available on record and the concerned Radiologist was not examined by the prosecution. Therefore, the learned trial court held that in absence of these reports, the evidential value of the Injury Report is diminished, and only the charges under Section 323/34 of IPC are proved. The learned Trial Court further found the accused persons guilty under Section 341/34 of the IPC, as the accused persons had wrongfully restrained the movement of the victims, as per the evidence of the witnesses before the Court.

7. Learned counsel for the appellant has submitted that the learned Trial Court has failed to consider the evidence of all the prosecution witnesses who have supported the prosecution case and has given undue sympathy to the accused persons by releasing Respondent Nos. 2 to 6.

8. The learned counsel for the respondents submitted that the learned Trial Court had rightly considered all the evidence on record, and the judgment of the trial court requires no interference.

9. We have heard learned counsel for the appellant and the respondents 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 requires any interference by this Court.

11. In the present case, the charges were framed against all the five accused for the offences punishable under Sections 341, 323, 325, 307/34 of IPC. The conviction of the accused persons has been made under sections 323/34 & 341/34 of IPC by the learned Trial Court. After holding the accused guilty of the offence, as referred above, the convicts were directed to be released from judicial custody forthwith in light of the provision under Section 3 of the Probation of Offenders Act.

12. Admittedly, as per the evidence of P.W. 1, there is a case and counter-case between the parties due to a land dispute with regard to the measurement and irrigation of the land. As per the facts available on the record, a free-fight is alleged to have taken place and both the sides have sustained injuries during the occurrence. The injuries, as per the evidence of Doctor who was examined as P.W. 7, are not serious injuries. Hence, no offence under Section 307 of IPC is attracted in the present case.

The Paragraph-11 of the Judgment shows that the Injury Report with respect to CT Scan and X-Ray Report were



never brought on record. Hence, in absence of such evidence, it was difficult for the learned Trial Court to come to the conclusion whether the injury sustained was grievous or simple in nature. The Paragraph 11 of the impugned judgment is reproduced as under:

“From the above discussion as per statement of witnesses it is evident that no serious injury is caused any of the injured. There is no repeated blow of any vital part of the body of any accused. This is case of free-fight. Both the parties have received injuries. Doctor has opined injury no. 1 & 2 of PW-1 Basgit Singh Kushwaha to be grievous. Injury no. 1 of PW-2 Nathuni Singh Kushwaha has also grievous in nature of the injury to be grievous in nature based on opinion drawn the C.T. scan report and X-ray report. Both these report are not available on the record and the radiologist has also not examined by the prosecution. Therefore, in the absence of these report the evidentiary value of injury report (Ex-2, 2/A, 2/B and 2/C) is diminished. Accused persons are found not guilty for offence under section 325/34 IPC. Therefore sufficient material on record to show the case U/s 323/34 IPC which is proved by the prosecution beyond all reasonable doubts and the accused persons are hold guilt for the same.”

The Evidence of the witnesses further shows that during the alleged occurrence, the rightful movement of the victims was obstructed, and they were restrained. P.W. 4 has stated that when he tried to flee the place of occurrence, he was surrounded and assaulted by the accused persons. Similarly, P.W. 2 has also given evidence that the victims were surrounded



and assaulted by the accused persons. Therefore, the charge under Section 341/34 has been rightly made out against the accused persons and proved by the prosecution before the learned Trial Court.

Hence, the learned Trial Court has rightly found the accused guilty under only Section 323/34 and 341/34 in the present case, as per the evidence available on record.

13. On the point of sentence, and perusal of facts and evidence available on record, it is evident that no criminal antecedent has been brought forward by the prosecution, against the accused persons. The accused are therefore, eligible for consideration of admonition of sentence under Section 3 of the Probation of Offenders Act. The learned Trial Court, considering the nature of the offence and circumstances in which the alleged occurrence took place, admonished the accused.

14. 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 a reasonable doubt. Wherever, any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of doubt.

15. In criminal appeal against acquittal what the



Appellate Court has to examine is whether the finding of the learned court below is perverse and *prima facie* illegal. Once the Appellate Court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the Court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court in the case of **Mrinal Das 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 reappraise, 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.....”

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.”

16. 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.

17. In view of the above, we do not find any illegality and perversity in the findings recorded by the Trial Court.

18. Accordingly, the present appeal is dismissed.

(Sudhir Singh, J)

(Alok Kumar Pandey, J)

Sachin/-

AFR/NAFR	N.A.F.R.
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