

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.771 of 2023

In
CRIMINAL APPEAL (SJ) No.2862 of 2022

Arising Out of PS. Case No.-33 Year-2004 Thana- PATEPUR District- Vaishali

Rajesh Prasad Rai, male, age 46 years, Son of Hari Narayan Roy, R/o-
Chaksikandar, P.S.-Tajpur, Distt.-Samastipur

... .. Appellant

Versus

1. The State of Bihar
2. Nagdeo Rai, age 67 years, male, Son of Ammi Lal Rai
3. Harivansh Rai, age 62 years, male, Son of Dhanpat Rai
4. Soman Thakur, age 66 years, male, S/o Dular Chand Thakur
5. Naresh Rai, age 59 years, male, S/o Raja Rai

Respondent Nos.2 to 5 resident of Village-Chaksikandar, P.S.-Tajpur,
District-Samastipur

6. Dahaur Thakur, age 65 years, male, S/o Dhodhai Thakur, resident of
Village-Maura Buzurg, P.S.-Patepur, District-Vaishali
7. Sanjay Thakur, age 42 years, male, S/o Dahaur Thakur
8. Nanhaki Mahto, age 59 years, male, S/o Lakshmi Mahto
9. Tej Narayan Rai, age 46 years, male, S/o Lakhan Rai
10. Mahaveer Rai, age 79 years, male, S/o Rooplal Rai
11. Vakeel Rai, age 44 years, male, S/o Mahaveer Rai
12. Lalo Pandit, age 64 years, male, S/o Devaki Pandit
13. Shankar Mahto, age 44 years, male, S/o Lakshmi Mahto

Respondent Nos.7 to 13 resident of Village-Marui, P.S.-
Patepur, District-Vaishali

..... Respondents

Appearance :

For the Appellant	:	Mr. Narendra Kumar, Advocate
For the Respondents	:	Mr. Sunil Kumar Singh, Advocate
		Ms. Shyamli Kumari, Advocate
		Ms. Ayushi Gupta, Advocate
For the State	:	Mr. Zeyaul Hoda, APP

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



(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 09-10-2025

The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure, 1973 against judgment of acquittal dated 07.04.2022 passed by the learned Additional Sessions Judge-XI, Vaishali at Hajipur, in Sessions Trial No.406 of 2006 +392 of 2012, arising out of Patepur P.S. Case No.33 of 2004, whereby Respondent Nos.2 to 13 have been acquitted by the learned Trial Court from the charge of Sections 307/149, 447/149, 147, 379/149 & 504/149 of Indian Penal Code and Respondent No.3 has been acquitted from the charge of Section 27 of the Arms Act.

2. Vide order dated 11.10.2023, notices were issued to the Respondent Nos.2 to 13, upon which they appeared by filing *Vakalatnama* through learned Advocate, Mr. Sunil Kumar Singh.

3. The prosecution case, in brief, is that on 01.04.2004, in the morning hours, the informant Rajesh Prasad Rai was harvesting wheat crops in his own field and was waiting for a tractor to transport the harvested bundles. In the meantime, all the accused persons, accompanied by 30–35 unknown individuals and armed with rifles, pistols, lathis,



bhalas, and farsas, arrived at the scene. They allegedly began using abusive language and started picking up the bundles of harvested wheat. When the informant protested, accused Nagdeo Rai (Respondent No. 2) is said to have instigated the others to kill him. Acting upon this, Respondent No. 4 allegedly opened fire at the informant with the intention to kill, and the bullet is said to have struck the informant on his temporal region. The informant, in an attempt to save his life, ran towards the nearby field of his cousin, Surendra Prasad Rai, and narrated the incident to him. It is further alleged that while the informant was recounting the occurrence, the accused persons again arrived at the spot and resorted to indiscriminate firing with the intent to kill him. Somehow, the informant managed to escape and reached his home safely. It is also alleged that the accused persons took away the harvested wheat bundles, causing a loss of approximately Rs. 15,000/- to the informant.

4. On the basis of written statement of the informant, Patepur P.S. Case No.33 of 2004 was instituted under Sections 147, 447, 379, 504 & 307 of the Indian Penal Code and Section 27 of the Arms Act and the investigation was taken up by the police. The Police, after investigation, submitted charge-sheet against Respondent Nos.2 to 13 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 six prosecution witnesses in S.T. No.392 of 2012, *i.e.*, PW-1- Subodh Prasad Rai, PW-2- Harinarayan Rai, PW-3- Gajendra Rai, PW-4- Bhagwan Rai, PW-5- Rajesh Prasad Rai (victim/ informant) and PW-6 Ramsewak Prasad Yadav (I.O.) and in S.T. No.404 of 2006, the prosecution has examined six witnesses in this case, *i.e.*, PW-1 Harinarayan Rai, PW-2 Subodh Prasad Rai, PW-3 Gajendra Rai, PW-4 Bhagwan Rai, PW-5 Rajesh Prasad Rai (victim/ informant) and PW6- Brahmdeo Thakur (formal witness). The prosecution has also produced certain documents in S.T. No.392 of 2012 which were marked as 'Exhibits', *i.e.*, Ext.1- written report, Ext.2- endorsement which bears writing and signature of A.S.I. R.S.P. Yadav made on written report and Ext.3- formal F.I.R. Further, the prosecution has also produced certain documents in S.T. No.404 of 2006 which were marked as 'Exhibits', *i.e.*, Ext.1- written report, Ext.2- endorsement which bears writing and signature of A.S.I. R.S.P. Yadav made on written report and Ext.3- paragraph no.1 to 88 of the case diary. Further, the



prosecution has also produced certain documents in S.T. No.404 of 2006 + S.T. No. 392 of 2012 after amalgamation which were marked as 'Exhibits', i.e., Ext.3- Original sale deed, Ext.4- chakbandikhatian of khata no. 294 and Ext.5- certified copy of R.S Katian of khata no. 294. No witness has been examined on behalf of the defence. The defence has also produced certain documents in this case which were marked as 'Exhibits', i.e., Ext.A- original map of mauza Maura Buzurg bearing Thana No.574, Ext.B- certified copy of Sanha Harivansh Rai v. Jaiprakash Rai and others and Ext.C- certified copy of the khatian in the name of Banarasi Devi bearing khata No. 162 plot No. 888. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 of the Cr.P.C. and after conclusion of trial, learned Trial Court has acquitted the accused persons.

6. The learned Trial Court on the basis of the materials available on record, and the evidence produced before the Court, acquitted the accused persons observing that on the basis of the oral as well as documentary evidence, the prosecution has failed to prove the charges levelled against the accused persons. Further, there is a major contradiction with regard to the injury sustained by the informant. Except the Investigating Officer, all



the witnesses are the interested witness in this case.

7. Learned counsel for the appellant submits that the learned Trial Court has not appreciated the deposition of the prosecution witnesses, who have fully supported the case of the prosecution. It was further submitted that non recovery of incriminating articles from the place of occurrence should not affect the prosecution case.

8. The learned counsel for the State and the learned counsel for the respondents have submitted that there is no perversity in the judgment of the learned Trial Court, and the prosecution has failed to prove the guilt of the accused before the learned trial court. Therefore, the order of the learned Trial Court requires no interference in the present case.

9. We have heard learned counsel for the appellant, learned counsel for the respondents and learned APP for the State and have also gone through the records of the case.

10. The sole question that requires consideration by this Court is whether the impugned judgment requires any interference by this Court.

11. After a comprehensive consideration of the materials available on record and the testimonies of the witnesses, this Court finds that the prosecution has failed to



establish the charges levelled against the accused persons beyond reasonable doubt.

12. The charge against the accused primarily rests on allegations of firing with an intention to cause death, thereby attracting Section 307 of the IPC and Section 27 of the Arms Act. However, upon careful scrutiny, serious deficiencies in the prosecution evidence emerge, which casts shadow of reasonable doubt on the entire prosecution case.

13. The prosecution's case suffers from a major infirmity *i.e.* no cartridge or firearm has been recovered from the alleged place of occurrence. The Investigating Officer did not seize any bullet, empty cartridge, or weapon of offence, nor was any forensic or ballistic examination conducted. Such non-recovery strikes at the very root of the prosecution version, particularly when the case is one of alleged firing. In the case of ***State of Maharashtra vs. Kashirao & Ors. reported in (2003) 10 SCC 434***, the Hon'ble Supreme Court held that in a prosecution under Section 307 of the IPC, the prosecution must establish an overt act done with such intention or knowledge that, if death had ensued, it would amount to murder, and that absence of material proof linking the accused with the weapon or act severely undermines the charge as observed in para 20 of



the judgment which reads as under:

“20. So far as the assaults on PW 1 are concerned, the nature of the assaults and the injuries found clearly bring in application of Section 307 IPC. The trial court was therefore justified in convicting accused-Respondent 1 under Section 307 IPC. The essential ingredients required to be proved in the case of an offence under Section 307 are:

(i) that the death of a human being was attempted;

(ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and

(iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as : (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.”

14. Applying the same principle, the prosecution's failure to recover the alleged weapon of offence renders its case doubtful and unworthy of credence.



15. From the perusal of the evidence on record, it is manifest that the prosecution has failed to prove the precise place of occurrence beyond reasonable doubt. The testimonies of the prosecution witnesses are not only inconsistent but mutually contradictory on the point of boundary and identification of the alleged place of incident. PW-2, PW-4, and PW-5 have each given different versions regarding the boundaries of the field in question. PW-4 stated that the place of occurrence was related to plot No.888 having an area of 6 Bighas, bounded by the fields of Subodh Rai and Suryanarain Rai, while PW-5 deposed that plot Nos.888 and 889 were two separate fields having an area of 2 *Katha* and 18 *Katha* respectively, with two other plots situated in between. The Investigating Officer (PW-6) further failed to clarify or corroborate the exact boundary of the field alleged to be the place of occurrence. Such contradictions create a grave doubt regarding the prosecution version and render the place of occurrence uncertain. It is a well-settled principle that when the place of occurrence is doubtful or not established with certainty, the entire prosecution case becomes highly suspect. In this regard, reliance may be placed on the judgment of the Hon'ble Supreme Court in *Syed Ibrahim vs. State of Andhra Pradesh*



reported in (2006) 10 SCC 601, wherein it was held in para 11 as under:

“11.....But there is another significant factor which completely destroys the prosecution version and the credibility of PW 1 as a witness. He has indicated four different places to be the place of occurrence. In his examination-in-chief he stated that the occurrence took place in his house. In the cross-examination he stated that the incident took place at the house of his wife, the deceased's mother. This is a very important factor considering the undisputed position and in fact the admission of PW 1 that he and his wife were separated nearly two decades ago, and that he was not on visiting terms with his wife. Then the question would automatically arise as to how in spite of strained relationship he could have seen the occurrence as alleged in the house of his wife. That is not the end of the matter. In his cross-examination he further stated that the incident happened in the small lane in front of the house of his wife. This is at clear variance with the statement that the occurrence took place inside the house where allegedly he, the deceased, his son, PW 2 and daughters, PWs 3 and 6 were present. That is not the final say of the witness. He accepted that in the FIR (Ext. P-1) he had stated the place of occurrence to be the house of the deceased. Though the FIR is not a substantive evidence yet, the same can be used to test the veracity of



the witness. PW 1 accepted that what was stated in the FIR was correct. When the place of occurrence itself has not been established it would not be proper to accept the prosecution version.”

16. Applying the above ratio, it becomes evident that when the place of occurrence is itself doubtful, the prosecution story loses its credibility. In the instant case, as reflected from Ext. A (the map of Maura Buzurg), both plots in question are adjacent, yet the prosecution witnesses have failed to identify which of them is the actual scene of occurrence. The I.O. also did not demarcate or verify the boundary of the plot in question. Therefore, in light of these contradictions and omissions, this Court finds that the prosecution has not succeeded in proving the place of occurrence beyond reasonable doubt. Consequently, this casts a serious doubt upon the veracity of the prosecution version and entitles the accused to the benefit of doubt.

17. Turning to the ingredients of Section 307 of the IPC, it is well-settled that the prosecution must prove: (i) that the accused did an act with such intention or knowledge as would make it murder if death had resulted, and (ii) that such act was done towards the commission of the offence. As explained in *Sarju Prasad v. State of Bihar* reported in *AIR 1965 SC 843*, it is not essential that a bodily injury capable of



causing death should have been inflicted, but the *intention to commit murder* must be clearly proved by the act done. The nature of the weapon, the manner of its use, and the part of the body targeted are relevant factors, as observed from para 6 onwards of the judgment, which reads as under:

“6....Even so, the assailant Gogte was held by the court to be jointly under Section 307 because his act of firing a shot was committed with a guilty intention and knowledge and in such circumstances that but for the intervening fact it would have amounted to murder in the normal course of events. This view was approved by this Court. Therefore, the mere fact that the injury actually inflicted by the appellant did not cut any vital organ of Shankar Prasad is not by itself sufficient to take the act out of the purview of Section 307.

7. Having said all this we must point out that the burden is still upon the prosecution to establish that the intention of the appellant in causing the particular injury to Shankar Prasad was of any of the three kinds referred to in Section 300 of the Indian Penal Code. For, unless the prosecution discharges the burden the offence under Section 307 IPC cannot possibly be brought home to the appellant. The state of the appellant's mind has to be deduced from the surrounding circumstances and as Mr Kohli rightly says the existence of a motive to cause the death of Shankar Prasad would have been a



relevant circumstance. Here, the prosecution has led no evidence from which it could be inferred that the appellant had a motive to kill the victim of his attack.....It seems to us that from the facts established it cannot be said that the appellant had the intention of causing the death of Shankar Prasad or of any one who went to Madan Mohan's rescue. If such were his intention then another significant fact would have possibly, though not necessarily deterred him and that is that Madan Mohan and Shankar Prasad were not the only persons there at that time but were accompanied by some other persons. Moreover the incident occurred in broad daylight in a chowk which must be a well-frequented area. It is not easy to assume that in such circumstances the appellant could have intended to commit a crime for which the law has provided capital punishment.

8. The only other question then is whether the appellant intended to cause such injury as he knew to be likely to cause death or intended to inflict an injury which was sufficient in the ordinary course of nature to cause death or that he knew that his act was so imminently dangerous that it must in all probability cause death or cause an injury as is likely to cause death.

9...The chhura could not be recovered but the prosecution should at least have elicited from the witnesses particulars about its size. We are therefore, unable to say with anything near



certainty that the appellant had such intention or knowledge. Incidentally we may point out that Shankar Prasad does not say that after he released the wrist of Sushil the appellant inflicted or even tried to inflict any further injury on him.

10. In this state of the evidence we must hold that the prosecution has not established that the offence committed by the appellant falls squarely under Section 307 IPC. In our opinion, it amounts only to an offence under Section 324 IPC.”

18. In the present case, the evidence does not show that the accused had any such intention or knowledge. The injuries, if any, are simple in nature, and no medical evidence suggests that the act was sufficient in the ordinary course of nature to cause death. Thus, the essential ingredients of Section 307 are not satisfied.

19. The difference between Section 302 and Section 307 of the IPC lies not in the intention or knowledge, which may be identical in both, but in the result and degree of execution. Section 302 applies when death actually ensues, whereas Section 307 applies when the attempt fails due to *intervening circumstances*, such as prompt medical aid or chance. However, since the prosecution has failed even to prove



the overt act or intention to cause death, the charge under Section 307 of the IPC cannot be sustained.

20. As regards the allegation of common object under Section 149 IPC, the evidence on record is entirely insufficient. The witnesses have made omnibus and generalized allegations against all the accused without specifying any distinct role or act attributable to each. There is no evidence of prior meeting of minds or concerted action. In ***Kuldip Yadav v. State of Bihar reported in (2011) 5 SCC 324***, the Hon'ble Supreme Court held that mere presence in an assembly does not attract Section 149 unless it is shown that the accused shared a common object and acted in furtherance of it, as observed in para 39 of the judgment which reads as under:

“39. It is not the intention of the legislature in enacting Section 149 to render every member of unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to attract Section 149, it must be shown that the incriminating act was done to accomplish the common object of unlawful assembly and it must be within the knowledge of other members as one likely to be committed in prosecution of the common object. If the members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of the common object,



they would be liable for the same under Section 149 IPC.”

21. In the present case, there is no proof of such common object; hence, the invocation of Section 149 is untenable.

22. The Court further notes that the prosecution witnesses have given contradictory and inconsistent testimonies on crucial aspects such as the location of the incident, the weapon used, injury inflicted, manner and mode of alleged theft, and sentence used by accused during the alleged offence. These inconsistencies are material and not mere embellishments. No independent witness from the vicinity has been examined to corroborate the prosecution version, although the occurrence allegedly took place in an open area. The law is well-settled that where the prosecution evidence suffers from contradictions and no satisfactory explanation is offered, the accused is entitled to the benefit of doubt. This Court finds that the contradictions in the present case strike at the root of the prosecution story.

23. In totality of circumstances, this Court finds that the prosecution has failed to prove the ingredients of offences under Sections 307, 447, 147, 379, 504/149 of the IPC and Section 27 of the Arms Act. The non-recovery of weapon and cartridge, the uncertain place of occurrence, absence of evidence



showing intention to kill, lack of proof of common object, and contradictory testimonies collectively create a serious doubt as to the truth of the prosecution case.

24. Applying the cardinal rule of criminal jurisprudence reiterated in ***Kali Ram v. State of Himachal Pradesh reported in (1973) 2 SCC 808***, that if two views are possible i.e. one pointing to the guilt of the accused and the other to innocence, the view favourable to the accused must be adopted, this Court concludes that the prosecution has failed to prove its case beyond reasonable doubt, as observed in para 25 of the judgment which reads as under:

“25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an



accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by report to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of State of Punjab v. Jagir Singh [(1974) 3 SCC 227 : 1973 SCC (Cri) 886] a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on



grounds which are fanciful or in the nature of conjectures.”

25. Accordingly, the accused are entitled to the benefit of doubt.

26. Hence, this Court holds that the trial court has rightly observed that the offences charged were not proved in accordance with law.

27. 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.

28. 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*



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 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.....”

29. 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 has observed as under:

“75. The trial Court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable.”

30. 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.

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



32. Accordingly, the present appeal is dismissed.

33. Pending application(s), if any, shall stand disposed
of.

(Sudhir Singh, J.)

(Rajesh Kumar Verma, J.)

Gaurav Kumar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	14.10.2025
Transmission Date	14.10.2025

