

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.743 of 2021

Arising Out of PS. Case No.-62 Year-2000 Thana- BIBHUTIPUR District- Samastipur

Lalan Singh, male, aged about 36 years, Son of Shankar Singh, Resident of Village- Shivnathpur, P.S.- Bibhutipur, District- Samastipur.

... .. Appellant

Versus

1. The State of Bihar
2. Lal Babu Singh
3. Ram Balak Singh

Both are sons of Ramjeevan Singh and both are residents of village Shivnathpur, P.S.-Bibhutipur, District-Samastipur.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Rajesh Ranjan, Advocate
For the Respondent	:	Mr. Ajay Kumar Thakur, Advocate
		Mr. Pravin Kumar, Advocate
		Mrs. Vaishnavi Singh, Advocate
		Mr. Ritwik Thakur, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP

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

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 25-08-2025

The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure, 1973 against judgment of acquittal dated 10.09.2021, passed by the learned Additional Sessions Judge-III/Spl. Court M.P./M.L.A., Samastipur, in Sessions Trial No. 943A of 2004, arising out of Vibhutipur P.S. Case No.62 of 2000, whereby Respondent Nos.2 & 3 have been acquitted by the learned Trial Court from the charge of Section 307 of the Indian Penal Code, but were



convicted under the charges of Sections 323, 324 and 341 of the IPC, and Section 27 of the Arms Act.

2. The prosecution case, in brief, is that on 04.06.2000 at 12:30 in night, the informant (Lalan Singh) went to attend the marriage of daughter of Ganga Singh and accused persons, Lal Babu Singh and Ram Balak Singh, were present there, and after seeing the informant they ordered to catch the informant upon which informant tried to run away towards the west side and when he reached Teenbatti near the house of Upender Singh, Lal Babu along with one person reached on motorcycle with pistol and Ram Balak Singh along with one person also reached on the other motorcycle and they opened fire to kill the informant. Two rounds of firing took place by Lal Babu Singh which hit the finger of the informant and it was blown and owing to this injury informant fell down.

3. On the basis of written report of the informant, Vibhutipur P.S. Case No. 62 of 2000 was instituted under Sections 341, 323 & 307 of the Indian Penal Code and Section 27 of the Arms Act and investigation was carried out by the police. The police, after investigation, submitted charge-sheet against Respondent Nos.2 & 3 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.

4. During the trial, the prosecution examined altogether twelve witnesses *i.e.* PW-1 Nageshwar Singh, PW-2 Chanchaliya Devi, PW-3 Rameshwar Singh, PW-4 Nanki Singh, PW-5 Upender Singh, PW-6 Lalan Singh (informant), PW-7 Usha Singh (wife of Upender Singh) PW-8 Ram Sharan Mahto, PW-9 Panvati Devi (wife of Ram Avatar Singh), PW-10 Ram Avtar Singh, PW-11 Dashrath Singh (I.O.), and PW-12 Dr. Gopal Mishra. The prosecution has also produced certain documents which were marked as 'Exhibits', *i.e.*, Ext. 1- Signature of PW-11 (I.O.) on FIR, Ext. 2- Formal FIR, Ext. 3- Injury Report. The defence has examined four witnesses, *i.e.*, DW-1 Chandrashekhar Jha, DW-2 Ashok Singh, DW-3 Ram Bishun Singh and DW-4 Arun Kumar Singh and the defence has also produced certain documents which were marked as 'Exhibits' *i.e.*, Ext. A- Copy of jail records, Ext. B- Certificate issued by Election Officer dated 27.02.2015, Ext. C- Compromise application filed in Vibhutipur P.S. Case No.62 of 2000, Ext. D- Application filed in Vibhutipur P.S. Case No.62 of 2000, Ext. E- Deposition of Rameshwar Singh in S.T. No.941 of 2004, Ext. E1- Deposition of Nageshwar Singh in 941 of 2004,



Ext. E2- Deposition of Chanchaliya Devi in 941 of 2004, Ext. E4- Ram Sharan Mahto in 941 of 2004, Ext. E5- Deposition of Nanhki Singh in 943 of 2004, Ext. E6- Deposition of Lalan Singh 941 of 2004, Ext. F- Order dated 24.07.2002 in S.T. No.940/2004, Ext. G- C.C. of FIR No.61 of 2000, P.S. Vibhutipur, Ext. H- C.C. of charge-sheet in FIR No.61 of 2000 P.S.-Vibhutipur, Ext. I- Deposition of Dharam Pal in 941 of 2004, Ext. J- C.C. of FIR of Vibhutipur P.S. Case No.141 of 1998. 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 acquitted the accused persons under the charge of Section 307 of the Indian Penal Code, but convicted them under the charges of Section 323, 324 and 341 of the IPC, and Section 27 of the Arms Act.

5. Learned counsel for the appellant submits that the learned Trial Court has failed to appreciate that there is much material on record to show complicity of Respondent Nos.2 & 3 for the offence under Sections 307 & 326 of the Indian Penal Code in the alleged occurrence but they have been convicted for lesser offence under Sections 324, 323 & 341 of the Indian Penal Code and Section 27 of the Arms Act which is completely



ignoring the materials on record. Learned Trial Court has committed a grave error by holding that since the accused persons did not repeat the firing and they chose to fire upon non-vital part of the appellant, therefore, no case under Section 307 of the Indian Penal Code is made out.

6. We have heard learned counsel for the appellant and have also gone through the records of the case.

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

8. Upon perusal of the evidence on record, it is evident that the F.I.R. names five persons as witnesses to the occurrence, namely, Upendra Singh, Ram Badan Singh, Jairam Singh, Raghunandan Singh, and the wife of Upendra Singh, *i.e.*, Usha Singh. Out of these, three main witnesses, namely, Raghunandan Singh, Ram Badan Singh, and Jairam Singh, were not examined by the prosecution, without any explanation. This omission itself weakens the prosecution case.

9. The F.I.R. named witness Upendra Singh (P.W.5), who was examined during trial, did not support the manner of occurrence as narrated in the F.I.R., nor did he name the accused persons as assailants. His wife (P.W.7), also an F.I.R. named



witness, categorically denied the presence of the accused at the place of occurrence and further stated that nobody received any injury during the alleged incident. Thus, two prime witnesses, who should have been the most natural witnesses, have failed to support the prosecution case.

10. Further, PW-3, an independent witness, clearly stated that on hearing *hulla*, he went to the place of occurrence but did not find the respondents present there. PW-10, in front of whose house the occurrence is alleged to have taken place, also did not support the prosecution case. PW-1, though examined as a witness, is the uncle of the informant and was not named in the F.I.R. PW- 2, the mother of Jairam Singh, was also not a named witness in the F.I.R., and her testimony was coloured by interested witness, since the informant himself deposed that Jairam Singh was a co- accused in other criminal cases with him. Such testimony, being that of interested witnesses, cannot form the sole basis of conviction.

11. PW-4, though she supported the case, is the wife of PW-10 and was not named in the F.I.R. Hence, her testimony, in absence of corroboration from natural and independent witnesses, cannot be relied upon to fasten criminal liability.

12. Further, the Investigating Officer (PW-11)



admitted in his deposition that there are two different places of occurrence in the present case, one in front of the house of Upendra Singh (PW-5) and another in front of the house of Ram Avatar Singh (PW- 10). Such inconsistency as to the very place of occurrence creates serious doubt about the truthfulness of the prosecution version.

13. PW-5, PW-7 and PW-10 are the material witnesses, as the alleged occurrence as per the evidence of Investigating Officer, has taken place outside of their house. But all these three material witnesses have neither supported the prosecution case in respect of manner of occurrence nor have mentioned the presence of accused at the place of occurrence during the commission of offence.

14. The informant (PW-6) deposed that after sustaining injury, he was taken to Vibhutipur Primary Health Centre for treatment. However, the prosecution failed to produce any injury report from the said Health Centre. On the contrary, the Doctor (PW-12), who was examined, did not prove any injury consistent with the allegation of attempt to murder. In a case under Section 307 of the Indian Penal Code, medical evidence is of vital importance to establish the nature and seriousness of injuries, but in the present case, such evidence is



completely absent.

15. The F.I.R. mentions that only one knife blow was inflicted on the informant. However, the medical report shows that two incised wounds caused by sharp cutting weapon. This contradiction goes to the root of the prosecution case. If indeed there were two knife blows, there is no explanation in the prosecution evidence as to why the F.I.R. refers to only one. Conversely, if the version in the F.I.R. is to be accepted, the medical evidence becomes doubtful. Such inconsistency between ocular evidence and medical report creates a serious doubt and the benefit of the same must go to the accused.

16. The occurrence is alleged to have taken place at about 12:30 in the night. However, no source of light or identification has been disclosed either by the informant or other witnesses. In absence of proper identification, the respondents cannot be conclusively connected with the alleged act. Moreover, the prosecution has not been able to establish any injury caused with the intention or knowledge of committing murder, which is a necessary ingredient of Section 307 of the Indian Penal Code.

17. This Court, after a detailed appreciation of evidence, found that the prosecution case suffers from material



contradictions, absence of corroboration from independent witnesses, failure to prove the place of occurrence, and lack of medical evidence and cannot be said to be perverse or unreasonable.

18. 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.

19. In criminal appeal against acquittal what the Appellate Court has to examine is whether the finding of the learned Trial Court 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.....”

20. 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.”

21. 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.

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

23. Accordingly, the present appeal stands dismissed.

(Sudhir Singh, J.)

(Rajesh Kumar Verma, J.)

*Gaurav Kumar
Ibrar/-*

AFR/NAFR	N.A.F.R.
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