

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.874 of 2023

Arising Out of PS. Case No.-107 Year-2001 Thana- NAWADA District- Nawada

Praveen Kumar, S/O Sri Birendra Kumar Sharma @ Birendra, R/O Village-
Anti, PS. Nawada, Dist. Nawada, At Present Velocity Ke Piche, 248
Ramkrishna Bag Colony, P.S. Vijay Nagar, Dist. Indore

... .. Appellant/s

Versus

1. The State of Bihar
2. Bijendra Singh, S/O Late Keshari Singh, R/O Village- Anti, P.S. and Dist.
Nawada
3. Gautam Singh, S/O Bijendra Singh, R/O Village- Anti, P.S. and Dist.
Nawada

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Hansraj, Advocate
For the Respondent/s : Ms. Shashi Bala Verma, APP

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

Date : 27-08-2025

The present criminal appeal has been preferred under
Section 372 of the Code of Criminal Procedure, 1973 against
the judgment of acquittal dated 13.06.2023 passed by the
learned Additional District & Sessions Judge-II, Nawada in
Sessions Trial No. 124/2003/ 120/2009, arising out of Nawada
(Town) P.S. Case No. 107 of 2001, whereby Respondent Nos. 2
& 3 have been acquitted by the learned Trial Court from the
charge of Sections 302/34, 337 and 323 of Indian Penal Code.

2. The prosecution case, in brief, is that on 18.05.2001



at about 4:00 to 5:00 PM, Bijendra Singh, Gautam Singh and Chandan Singh assaulted the brother of the informant Vinod Kumar (deceased) by pelting bricks from their rooftop while the deceased was near the house of Bijendra Singh. In the meanwhile, the informant also came at the place of occurrence but the accused persons kept pelting bricks and stones. The informant somehow managed to drag his brother towards his house and took him to Sadar Hospital, Nawada for treatment.

3. On the basis of the *fardbeyan* of the informant, Nawada (Town) P.S. Case No. 107 of 2001 was instituted under Sections 323, 337 and 302/34 of I.P.C. 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 seven witnesses i.e. PW1 Sunil Pandey, PW2 Sita Devi, PW3 Rajan Pandey, PW4 Vijay Pandey, PW5 Praveen Kumar(Informant), PW6 Navin Kumar Pandey and PW7 Dr. Ashok Kumar Yadav. The prosecution has also produced certain



documents which were marked as Exhibits: signature of Praveen Kumar on fardbeyan and signature of the Doctor on postmortem report. The defence has also examined three witnesses, viz. DW1 Anirudh Prasad, DW2 Suresh Singh and DW3 Shashi Bhushan Pd. Singh. 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 has acquitted the accused persons.

5. The learned trial court on the basis of facts on record, and evidence produced before the court, acquitted the accused persons. The learned trial court found material inconsistency in the statement of the informant given in the *fardbeyan* for institution of F.I.R., and the *fardbeyan* given at PMCH, Patna. The informant, further improved his statement in the statement made under Section 161 CrPC, and later in his deposition before the learned Trial Court. The learned trial court further held that the IO was not examined, and as such the place of occurrence could not be proved by the prosecution. The relevant part of Paragraph 28 of the impugned judgment is reproduced as under:

“Here the informant of this case PW5 altogether gave entirely a different story in one of his fard-beyan which is the basis for the institution of the F.I.R and another



inconsistent story in his fard-beyan recorded by the police at PMCH. Further, in his deposition made before this court he made elaborate improvements in his statement which creates serious doubt about the truthfulness of this witness. Further, other witnesses also made material improvement in their statement made before this court to make their evidence acceptable and hence they are not reliable and this court can not rely upon their evidence to establish the case of the prosecution. Further, in the present case, non examination of the independent witness and non examination of the investigating officer lead to non proving of the place of occurrence and the claim of the so called eye witnesses to have seen the occurrence from different place and there were inimical relationship between the parties, particularly, when few days prior to the occurrence the dispute occurred between the parties as the comment has been made upon the son in law of the accused Bijendra Singh by the informant side create reasonable doubt over the entire prosecution case hence considering the entire fact and circumstances of the case as discussed above this court is of the view that the prosecution has failed to prove the case beyond the shadow of all reasonable doubt.”

The learned trial court further held that no independent witnesses were examined by the prosecution, who witnessed the occurrence as per the evidence of the prosecution. The relevant part of Paragraph 29 of the impugned judgment is



reproduced as under:

“Further, from the perusal of the evidence of PW1, PW2, PW3, PW4, PW5 and PW6, it is found that several independent persons of the locality witnessed the occurrence but non of them were examined in the court by the prosecution. Further, two of the charge-sheeted witnesses Suresh Kumar and Anirudh Prasad has not been examined by the prosecution for the reasons best known to the prosecution. The prosecution witnesses PW6 in para 20 of his cross-examination clearly stated that they came on the spot at the time of occurrence. The other witnesses also stated the house of Anirudh Prasad and Suresh Kumar are also situated near the house of the accused persons and the house of the deceased persons.”

6. Learned counsel for the appellant submits that the learned trial court has failed to appreciate the evidence of PWs. 1, 2, 3 and 5 who are the eye-witnesses of the occurrence and have fully supported the prosecution case. He further submits that the learned trial court has also failed to appreciate the medical evidence of the doctor (PW-7), who had done the autopsy and had also found injuries on the head of the deceased caused by hard blunt substance and according to him cause of death was concussion, haemorrhage and shock.

7. The learned counsel for the respondents submitted



that there is no perversity in the judgment of the learned trial court, and the prosecution had 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.

8. We have heard the counsel for the appellant and the respondents, and have also gone through the records of the case.

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

10. As per the prosecution case, the place of occurrence is said to be the road but DW-1 and DW-2 who were examined on the behalf of defence are none-else but the charge-sheeted witnesses of the prosecution itself who has stated that the occurrence has taken place inside the house of Gautam Kumar @ Gautam Singh, who is the accused in the prosecution case. Further in the cross-examination of these witnesses, no material contradiction has been brought forward by the prosecution. Considering the fact that the defence witnesses are none else but the charge-sheeted witnesses of the prosecution, there is no reason to disbelieve their statement made during trial and if the same is accepted, the place of occurrence itself is disputed.



11. In the present case, the Investigating Officer has not been examined, which causes prejudice to the case of the defence. The non-examination, creates a lacunae in the case of the prosecution, as the place of the alleged occurrence can not be proved before the learned trial court. The burden of proving the case beyond the shadow of reasonable doubt lies on the prosecution, and the establishing the place of the alleged occurrence is an important step in proving the guilt of the accused.

12. There are four statements of the informant (PW-5). 1st Statement was recorded at PHC, Nawada, 2nd at PMCH, Patna, 3rd statement made during the investigation, under Section 161 of CrPC, and 4th is the statement made during the trial. The first statement was the basis for the FIR, which provided an allegation against the accused persons regarding the alleged murder of his brother. The 2nd statement of the informant was recorded at PMCH. Patna, as the deceased was shifted from Nawada to Patna for further treatment. The informant in his 2nd statement has changed the manner of occurrence and made a specific allegation against accused Gautam Singh for assaulting the deceased as to when in his 1st statement, he has made a general and omnibus allegation in respect to the assault to the



deceased by Gautam Singh and Bijendra Singh. Thereafter, the 3rd statement of the informant was recorded during the investigation under Section 161 Cr.P.C. Subsequently, the informant in his statement made under Section 161 Cr.P.C, further made general and omnibus allegation of assault upon the accused persons and a similar statement was made during the trial. Admittedly, the evidence of informant is not consistent on the point of manner of occurrence. Hence, it would be difficult to rely on such statement. In his deposition before the learned trial court, the informant further improved his evidence in line with the postmortem report of the deceased.

13. There are four eye witnesses to the alleged occurrence i.e., PWs-1, 2, 3 and 5 and these witnesses are related to the informant and the deceased. No independent witness has been produced by the prosecution. So far as the deposition made by PWs 1, 2, 3 are concerned, during trial, they have tried to further develop the prosecution case, in line with the medical evidence, and in contradiction to the statement made under Section 161 Cr.P.C. For the said reason, the trial Court had rightly disbelieved the statements made by PWs-1, 2 and 3.

14. Also, at the first instance, the deceased was treated



at Nawada Sadar Hospital (PHC, Nawada) where he was examined by the Medical Officer on duty but there is nothing on record to show that the deceased was treated at Nawada Sadar hospital, which creates a vital lacunae in the prosecution case because the primary nature of injuries inflicted upon the deceased cannot be ascertained due to the absence of any medical report of the deceased from Nawada Sadar, Hospital.

15. 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 all reasonable doubts. Wherever, any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of doubt.

16. 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 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 ***Babu Sahebagouda Rudragoudar Vs. State of Karnataka, 2024 SCC Online SC 561***, Hon’ble Supreme Court, after referring to relevant precedents, has observed as follows:

“41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

42. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”

18. 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.

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)

(Rajesh Kumar Verma, J)

Rajesh/-

AFR/NAFR	NAFR
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