

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3294 of 2025

In
CRIMINAL APPEAL (DB) No.1067 of 2024

Arising Out of PS. Case No.-301 Year-2011 Thana- GOPALPUR District- Bhagalpur

Arvind Mandal @ Arvind Kumar Mandal Son of Late Shil Varan Mandal,
Resident of Village + Post- Sadhua, PS- Gopalpur, (Rangra O.P.), Dist-
Bhagalpur.

... .. Appellant/s

Versus

1. The State of Bihar
2. Sikandar Mandal son of Wakil Mandal Village- Bhaishdiyara, PS- Barari,
Dist- Katihar
3. Nanki Devi Wife of Shankar Mandal Village and Post- Sadhua, PS-
Gopalpur, (Rangra Op), Dist- Bhagalpur
4. Shankar Mandal son of Late Shil Varan Mandal Resident of Village + Post-
Sadhua, PS- Gopalpur, (Rangra O.P.), Dist- Bhagalpur

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajesh Kumar Pandey, Adv.
For the State	:	Mr. Anita Kumari Singh, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 13-10-2025

Heard both sides.

2. The present appeal is directed against the judgment dated 15.06.2024 passed by the learned Additional District and Sessions Judge, 2nd, Naugachia, District-Bhagalpur in Sessions Trial No. 1349 of 2012, G.R. No. 1100 of 2011, Vicharan Sankhya 121 of 2021, C.I.S. No. 2464 of 2024 arising out Gopalpur Rangra P.S. Case No. 301 of 2011 registered under Sections 147, 148, 149, 448 504, 506, 323, 379 of the IPC whereby and whereunder Respondent nos. 2 to 4 have been



acquitted by the Trial Court from the charges under Sections 323, 331, 447, 504, 506/34 of the I.P.C.

3. As per prosecution case, all the accused persons including respondent nos. 2 to 4 armed with lathi, danda and bricks entered in the courtyard of the informant and started abusing. It is alleged that all the accused persons started assaulting the informant with lathi-danda. It is further alleged that when the informant's brother Manoj Mandal, mother Laxmi Devi and Bhabhi came to rescue him then all the accused persons assaulted them. It is further alleged that the informant's Bhabhi was pregnant and they pulled her sari and assaulted. It is further alleged that they also looted the box containing an amount of Rs.5,000/- and other articles of Rs.10,000/-

4. On the basis of allegation made in the FIR in Sessions Trial No. 1349 of 2012, G.R. No. 1100 of 2011, Vicharan Sankhya 121 of 2021, C.I.S. No. 2464 of 2024 arising out Gopalpur Rangra P.S. Case No. 301 of 2011 registered under Sections 147, 148, 149, 448 504, 506, 323, 379 of the IPC and investigation was taken up by the police. The police after investigation submitted charge-sheet and, accordingly, cognizance was taken. Thereafter, the case was committed to the Court of Sessions. Charges were framed against the respondent



nos. 2 to 4 to which they pleaded not guilty and claimed to be tried.

5. During the trial, the prosecution examined altogether four witnesses viz. PW-1 Ramesh Mandal, PW-2 Pinku Mandal, PW-3 Md. Suleman and PW-4 Manoj Mandal. No documentary evidence was adduced on behalf of the prosecution.

6. The defence has not adduced any oral or documentary evidence.

7. After closure of prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and after conclusion of trial, learned trial court has acquitted the accused persons.

8. Learned counsel for the appellant submits that prosecution has proved the case against the accused persons beyond the shadow of reasonable doubt as the prosecution witnesses have supported the prosecution case. It is submitted that as they are eye witnesses of the alleged occurrence and knows the true fact of the case and they have deposed and given description of the appellant. It is submitted that the concerned court has failed to appreciate the materials available on record and has given a wrong finding and passed the impugned



judgment of acquittal. Learned counsel for the appellant during course of argument has admitted that PW-1, PW-2 and PW-3 have become more or less hostile and PW-4 during the examination-in-chief has supported the prosecution case.

9. Learned APP appearing for the State submits that in the present case prosecution has examined altogether four witnesses. Out of the four witnesses, PW-1 and PW-2 have been declared hostile, PW-3 has been declared tendered on the ground that he has not supported the case of prosecution. Learned counsel submits that though PW-4 has given evidence before the court but his evidence during cross-examination reflects that his statement was not recorded by the police. It is further submitted that the evidence of PW-4 has not been supported by any other other witnesses who have been examined. It is evident that PW-4 has given evidence first time before the Court and therefore his evidence is not reliable. Learned counsel further submits that from perusal of the impugned judgment of acquittal, it is evident that the Investigating Officer and the informant of the case have not been examined by the prosecution. It is submitted that on the point of place of occurrence, there was none to support the specific place of occurrence and in absence of Investigating



Officer the place of occurrence cannot be established. Further, the informant, who has set the prosecution into motion, has not been examined. It is further submitted that the trial Court has recorded the finding that necessary process has been issued for producing prosecution witnesses, but for the reasons best known to the prosecution no evidence was produced. From perusal of the impugned judgment, it is evident that the same has been passed on the basis of material available on record and there is no reason to differ from the finding of concerned court.

10. 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 ***Surajpal Singh & Ors. Versus The State*** reported in ***1952 SCR 193***, paragraph 13 of which reads as under:

“..the High court has full power to review the evidence upon which the order of



acquittal was founded. But it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

11. 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:

“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.”

12. The trial court has analyzed the evidence of PW-1 Ramesh Mandal, PW-2 Pinku Mandal, PW-3 Md. Suleman and PW-4 Manoj Mandal. Except PW-4, other witnesses have not supported the story of prosecution. The trial court has also recorded the finding that necessary process has been issued for



producing the witnesses of prosecution but the prosecution has failed to produce the witnesses. It is recorded by the trial court that PW-4 in his evidence has deposed that he has not given his statement before the police. In this way, the statement of PW-4 does not carry any weightage as he was adducing his evidence first time before the court. The statement of P.W. 4 has not been corroborated by any of the witnesses. It has been rightly submitted by the learned APP for the State that the Investigating Officer and the informant of the case have not been examined as examination of four prosecution witnesses clearly reflects that the Investigating Officer and informant have not been examined and from the finding of court it is quite evident that process has been issued to produce all the prosecution witnesses but for the reason best known to prosecution, the informant and the Investigating Officer have not been examined. In this way, the prosecution has failed to prove its case beyond reasonable doubt.

13. On the point of non-examination of Investigating Officer, it is necessary to cite some decisions rendered by the Hon'ble Apex Court.

14. In *Behari Prasad Vs. State of Bihar* reported in (1996) 2 SCC 317, the Hon'ble Supreme Court held that though



non-examination of the Investigating Officer may not always be fatal where it causes prejudiced to the accused, it becomes a significant infirmity, as observed in the judgment which reads as under:-

"We may also indicate here that it will not be correct to contend that if an Investigating Officer is not examined in a case, such case should fail on the ground that the accused were deprived of the opportunity to effectively cross examine the witnesses for the prosecution and to bring out contradictions in their statements before the police. A case of prejudice likely to be suffered by an accused must depend on the facts of the case and no universal straight jacket formula should be laid down that non examination of investigating Officer per se vitiates a criminal trial. These appeals, therefore, fail and are dismissed. The appellants who have been released on bail should be taken into custody to serve out the sentence."

15. In the case of ***Syed Ibrahim versus State of Andhra Pradesh***, reported in ***(2008) 10 SCC 601***, it has been held that wherein it has been held that,

"when place of occurrence itself has not been established, it would not be proper to accept the prosecution side."



16. I am dealing with an appeal against acquittal and shall keep in mind the principles governing the cases of appeal against acquittal. The principles have been reiterated by the Hon'ble Supreme Court in catena of decisions.

17. In the case of ***H.D. Sundara and Others vs. State of Karnataka*** reported in ***(2023) 9 SCC 581***, Hon'ble Supreme Court, in paragraph 8, has held as follows :

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment State of Karnataka v. H.K. Mariyapp, 2010 SCC OnLine Kar 5591 rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 Cr.P.C can be summarized as follows:

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

2. The appellate court, while hearing an appeal against acquittal, is entitled to the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to



consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and 8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

18. In **Chandrappa Vs. State of Karnataka, (2007) 4 SCC 415, Hon’ble Supreme Court** after referring to several authorities has held as follows:

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient



grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

(Emphasis Supplied)

19. In **Murugesan Vs. State, (2012) 10 SCC 383,**

Hon’ble Supreme Court has held as follows:

“ 18. Before proceeding any further it will be useful to recall the broad principles of law governing the power of the High Court under Section 378 CrPC, while hearing an appeal against an order of acquittal passed by a trial Judge.

19. An early but exhaustive consideration of the law in this regard is to be found in the decision of Sheo Swarup v. King Emperor [(1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] wherein it was held that the power of the High Court extends to a review of the entire evidence on the basis of which the order of acquittal had been passed by



the trial court and thereafter to reach the necessary conclusion as to whether order of acquittal is required to be maintained or not. In the opinion of the Privy Council no limitation on the exercise of power of the High Court in this regard has been imposed by the Code though certain principles are required to be kept in mind by the High Court while exercising jurisdiction in an appeal against an order of acquittal.....

20. The principles of law laid down by the Privy Council in Sheo Swarup(supra) have been consistently followed by this Court in a series of subsequent pronouncements

21. A concise statement of the law on the issue that had emerged after over half a century of evolution since Sheo Swarup (Supra) is to be found in para 42 of the Report in **Chandrappa v. State of Karnataka [(2007) 4 SCC 415**

.....
32. In the above facts can it be said that the view taken by the trial court is not a possible view? If the answer is in the affirmative, the jurisdiction of the High Court to interfere with the acquittal of the appellant-accused, on the principles of law referred to earlier, ought not to have been exercised. In other words, the reversal of the acquittal could have been made by the High Court only if the conclusions recorded by the learned trial court did not reflect a possible view. It must be emphasised that the inhibition to interfere must be perceived only in a situation where the view taken by the trial court is not a possible view. The use of the expression “possible view” is conscious and not without good reasons. The said expression is in contra23. Having dealt with the principles of law that ought to be kept in mind while considering an appeal against an order of acquittal passed by the trial court, we may now proceed to examine the reasons recorded by the trial court for acquitting the accused in the present case and those that prevailed with the High Court in reversing the said conclusion and in convicting and sentencing the appellant-accused.

33. The expressions “erroneous”, “wrong” and “possible” are defined in Oxford English



Dictionary in the following terms:

“erroneous.— wrong; incorrect.

wrong.—(1) not correct or true, mistaken.

(2) unjust, dishonest, or immoral.

possible.—(1) capable of existing, happening, or being achieved.

(2) that may exist or happen, but that is not certain or probable.”

34. It will be necessary for us to emphasise that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement. But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the arena of a possible view. The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The fundamental distinction between the two situations have to be kept in mind. So long as the view taken by the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be interdicted and that of the High Court supplanted over and above the view of the trial court.

35. A consideration on the basis on which the learned trial court had founded its order of acquittal in the present case clearly reflects a possible view. There may, however, be disagreement on the correctness of the same. But that is not the test. So long as the view taken is not impossible to be arrived at and reasons therefor, relatable to the evidence and materials on record, are disclosed any further scrutiny in exercise of the power under Section 378 CrPC was not called for.”

(Emphasis Supplied)

20. In **Hakeem Khan Vs. State of M.P., (2017) 5**



SCC 719 , Hon'ble Supreme Court has held as follows:

“ 9 [Ed. : Para 9 corrected vide Official Corrigendum No. F.3/Ed.B.J./29/2017 dated 13-7-2017.] . Having heard the learned counsel for the parties, we are of the view that the trial court's judgment is more than just a possible view for arriving at the conclusion of acquittal, and that it would not be safe to convict seventeen persons accused of the crime of murder i.e. under Section 302 read with Section 149 of the Penal Code....”

(Emphasis Supplied)

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

“39. 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.

40. 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.”

(Emphasis Supplied)

22. In the present case, from perusal of the



impugned judgment of acquittal, it is evident that prosecution has examined altogether four witnesses. Out of the four witnesses, PW-1 and PW-2 have been declared hostile, PW-3 has been declared tendered on the ground that he has not supported the case of prosecution. PW-4 has given evidence before the court but his evidence during cross-examination reflects that his statement was not recorded by the police. It means that PW-4 has given evidence first time before the Court and therefore his evidence is not reliable. Further, the evidence of PW-4 has not been supported by any other witnesses who have been examined. The contention of the learned counsel for the State is quite relevant that the Investigating Officer and the informant of the case have not been examined by the prosecution and on the point of place of occurrence, there was none to support the specific place of occurrence and in absence of Investigating Officer the place of occurrence cannot be established and the informant, who has set the prosecution into motion, has not been examined. From perusal of the impugned judgment of acquittal, it is evident that the trial Court has recorded the finding that necessary process has been issued for producing prosecution witnesses, but no evidence was produced by the prosecution side.



23. Thus, in the opinion of this Court, the trial Court has taken a plausible view based on the evidence available on the record. The prosecution has failed to prove the case beyond the shadow of reasonable doubt. The view taken by the trial Court cannot be held to be bad or perverse. Under such circumstances, no case for interference with the impugned judgment is made out.

24. In the result, the present criminal appeal preferred against the judgment of acquittal dated judgment dated 15.06.2024 passed by the learned Additional District and Sessions Judge, 2nd, Naugachia, District-Bhagalpur in Sessions Trial No. 1349 of 2012, G.R. No. 1100 of 2011, Vicharan Sankhya 121 of 2021, C.I.S. No. 2464 of 2024 arising out Gopalpur Rangra P.S. Case No. 301 of 2011 is dismissed at the admission stage itself.

(Alok Kumar Pandey, J)

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