

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3470 of 2025

Arising Out of PS. Case No.-153 Year-2020 Thana- BEERPUR District- Begusarai

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Mina Devi W/O Mantun Sah @ Mantu Sah @ Tuntun Sah Resident of Vill.-
Saraunja @ Saraunjha, P.S.- Birpur, Dist.- Begusarai

... .. Appellant/s

Versus

1. The State of Bihar
2. Ranjeet Sah S/O Nevi Saah Resident of Vill.- Saraunja @ Saraunjha, P.S.-
Birpur, Dist.- Begusarai
3. Sudha Devi W/O Ranjeet Sah Resident of Vill.- Saraunja @ Saraunjha, P.S.-
Birpur, Dist.- Begusarai

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Arvind Kumar, Adv.
For the Respondent/s : Mr.Ramchandra Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 23-09-2025

The present criminal appeal has been preferred under section 389 of B.N.S.S. (earlier section 372 of the Code of Criminal Procedure) against the judgment of acquittal dated 27.05.2025 passed by the learned District & Additional Sessions Judge II-cum-Special Judge, MP/MLA, Begusarai in Sessions Case No. 303 of 2022, CIS No. 303 of 2022, G.R. No. 3849 of 2020 arising out of Birpur P.S. Case No. 153 of 2020, whereby and whereunder respondent nos. 2/ Ranjeet Sah and respondent no. 3/ Sudha Devi have been acquitted by the learned Trial Court from the charges of Sections 307, 341, 323, 337, 338, 504, 506/34 of the Indian Penal Code.



2. According to fardbeyan of the informant, the occurrence is of 16.11.2020 at about 2:30 PM. The informant unfolded the story of prosecution that she, her daughter and son were at their residence and at the relevant time, respondent no. 2/ Ranjeet Sah, respondent no. 3/ Sudha Devi and other came there and they are alleged to have abused. When same was protested, respondent no. 2 assaulted the informant with khanti on head as a result of which she and her daughter sustained injury. It is further alleged that respondent no. 3 threw bricks and stones. On raising alarm, people of nearby came there and informant and others' life were saved. It is claimed that all the three injureds were admitted at Dhiriti Jeevan Hospital for treatment.

3. On the basis of fardbeyan of the informant (appellant), Birpur P.S. Case No. 153 of 2020 was instituted under Sections 341, 323, 337, 338, 307, 504, 506/34 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 & 3 to which they pleaded not guilty and claimed to be tried.



4. During the trial, the prosecution examined altogether four witnesses viz. PW1 Chandan Kumar Singh, PW2 Mina Devi (informant), PW3 Bijli Devi and PW4 Ramchandra Paswan. No documentary evidence was adduced on behalf of the prosecution.

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

6. 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.

7. Learned counsel for the appellant submitted that the concerned court failed to appreciate the fact that altogether four witnesses including the informant and injured witness have been examined and they have supported the prosecution case. He has also submitted that the trial court failed to exhibit the document and without appreciating the evidence of injured witness passed the judgment of acquittal. Learned counsel further submitted that though charges have been framed under Section 307 of the IPC but the court has not perused the material available on record and passed the judgment of acquittal without application of judicial mind. Learned counsel for the appellant



has submitted that trial court has failed to scrutinize the evidence on the record, which proved the manner of occurrence as well as place of occurrence, erroneously reached on wrong findings. It has been specifically submitted that the concerned 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 the respondents no. 2 and 3. Learned counsel further submits that the Doctor and the Investigating Officer of the case have not been examined as prosecution witness, which has caused serious prejudice to the appellant. In support of his contention, learned counsel for the appellant has placed reliance on a decision of the Hon'ble Supreme Court rendered in the case of ***Babu Sahebagouda Rudragoudar & Ors. Vs. State of Karnataka*** in Criminal Appeal No(s). 985 of 2010 (***2024 INSC 320***). In the light of aforesaid facts and circumstances of the case, the judgment of acquittal passed by the concerned court is neither tenable nor sustainable in the eye of law or on facts and hence, same is liable to be set aside.

8. Learned APP appearing for the State has submitted that the learned trial court has rightly considered all the evidence on record and the judgment of acquittal requires no



interference. Learned APP further submitted that appellant/informant, who has given fardbeyan with regard to the occurrence, has alleged that she, her son and her daughter sustained injury, but during cross examination her evidence is quite contradictory with the evidence adduced during examination in chief. She admitted that accused persons has no any intention rather there was only commotion and both sides are living in a conducive atmosphere. In the light of aforesaid fact, she has not supported the initial version of prosecution story. She has not supported the factum of serious assault upon her, her son and daughter. He further submits that other witness i.e. PW-1 has admitted during cross examination that when he reached at the place of occurrence, the incident had already taken place which means that he is not an eye witness of the occurrence. The trial court has recorded finding that evidence of P.W. 1 during examination in chief is quite contradictory with his evidence during cross-examination. Learned APP further submitted that other witness, namely, PW-3/ Bijli Devi admitted that she came to know that earlier there was an scuffle between the respondent no. 2, 3 and Mina Devi, meaning, thereby, she is also not an eye witness of the occurrence, her knowledge is purely derivative and second hand. It means that the information



of PW-3 is based on hearsay evidence and trial court has also remarked that PW-3 is a hearsay witness. He further submitted that PW-4 has already been declared hostile. In this way, judgment of acquittal passed by the trial court is based on the material available on record and there is no reason to interfere with the impugned judgment.

9. 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.”

10. 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.”

11. The trial Court has analyzed the evidence of P.Ws. 1, 2 3, and 4 and out of these four witnesses; P.W. 3 is a hearsay witnesses and P.W. 4 has turned hostile. The trial court has recorded the finding that P.W. 1/ Chandan Kumar Sah, during examination-in-chief claimed himself to be eye witness of the occurrence but during cross examination his statement is quite contradictory as PW-1 has stated that by the time he reached at the place of occurrence, the incident had already



taken place. In this way, his statement during examination in chief and his statement during cross examination are quite contradictory. The trial court has recorded that P.W. 2/Mina Devi, who is the informant, in her examination-in-chief has given details of assault but in cross-examination she has stated that there was no pre-meditated assault with common intention and there was a simple scuffle. Her statement during examination in chief is quite contradictory with her statement during cross-examination and hence her statement is neither convincing nor trustworthy.

12. Apart from that, the Investigating Officer of this case has not been examined who is the material witness on the point of identifying the place of occurrence.

13. 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."

14. Applying this principle to the present matter, this Court finds that the omission to examine the Investigating Officer has, in fact, caused serious prejudice to the defence. The prosecution version suffers from contradictions and omissions in the statements of the witnesses and the only person who could have clarified or explained such contradictions was the Investigating Officer.

15. The failure to examine the Investigating Officer also means that the place of occurrence has not been duly established. At this point, it would be relevant to take note of the decision passed by the Hon'ble Supreme Court in the case of *Syed Ibrahim versus State of Andhra Pradesh*, reported in *(2008) 10 SCC 601*, 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. Apart from that, doctor, who is an expert witness, has not been examined in the present case and injury sustained by the injured has not been brought on record. In absence of examination of doctor, it is difficult to prove the injury of injured who are claiming that they have sustained injury and charges were framed under section 307 of the I.P.C.

17. After going through the statement of all the witnesses which have been recorded by the trial Court, it is evident that one witness is hearsay, one witness has turned hostile and other two witnesses have retracted from their earlier statements.

18. 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.

19. 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.”*

20. 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)

21. 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)

22. 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)

23. 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:

“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)

24. In the present case, neither investigating officer nor the doctor has been examined. The evidence of informant (PW-2) is quite contradictory with the initial version of prosecution story. PW-3 is hearsay witness and PW-4 has turned hostile. P.W. 1, during examination-in-chief claimed himself to be eye witness of the occurrence but during cross examination his statement is quite contradictory as he has stated that by the time he reached at the place of occurrence, the incident had already taken place. In this way, his statement during examination in chief and his statement during cross examination are quite contradictory. Apart from that, the decision cited by the



learned counsel for the appellant is not applicable in the facts and circumstances of the present case and it cannot be taken into account.

25. Thus, in the opinion of this Court, the trial Court has taken a plausible view based on the evidence available on the record. 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.

26. In the result, the present criminal appeal preferred against the judgment of acquittal dated 27.05.2025 passed by the learned District & Additional Sessions Judge II-cum-Special Judge, MP/MLA, Begusarai in Sessions Case No. 303 of 2022, CIS No. 303 of 2022, G.R. No. 3849 of 2020 arising out of Birpur P.S. Case No. 153 of 2020 is dismissed at the admission stage itself.

(Alok Kumar Pandey, J)

mcv/shahzad

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