

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1289 of 2024

Arising Out of PS. Case No.-142 Year-2017 Thana- TARIYANI CHOWK District- Sheohar

Braj Kishore Mishra @ Braj Kishor Mishra, S/O Late Hari Shankar Mishra @
Hari Shanker Mishra, R/O Village- Kushhar ward no. 2 @ Kushr @ Kursahar,
P. S.- Tariyani, Dist.- Sheohar.

... .. Appellant/s

Versus

1. The State of Bihar
2. Banarsi Devi, W/O Dharikshan Sahni, R/O Village- Kushahar, P.S- Tariyani,
Dist.- Sheohar.
3. Kusumi Devi, W/O Asharfi Sahni, R/O Village- Kushahar, P.S- Tariyani,
Dist.- Sheohar.
4. Tetri Devi, W/O Bachchu Sahni, R/O Village- Kushahar, P.S- Tariyani, Dist.-
Sheohar.
5. Chhathu Sahni, S/O Parichchan Sahni, R/O Village- Kushahar, P.S- Tariyani,
Dist.- Sheohar.
6. Asharfi Sahni, S/O Dharikshan Sahni, R/O Village- Kushahar, P.S- Tariyani,
Dist.- Sheohar.
7. Dharikshan Sahni, S/O Late Yugal Sahni, R/O Village- Kushahar, P.S-
Tariyani, Dist.- Sheohar.
8. Gulab Sahni, S/O Ashafi Sahni @ Asharfi Sahni, R/O Village- Kushahar,
P.S- Tariyani, Dist.- Sheohar.

... .. Respondent/s

Appearance :

For the Appellant	:	Mr. Santosh Kumar, 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 : 22-08-2025

Heard learned counsel for the appellant and learned

Additional Public Prosecutor for the State.



2. The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure, 1973 against the judgment of acquittal dated 22.07.2024 passed by the learned Sessions Judge, Sheohar in Sessions Trial No. 70 of 2018, arising out of Tariyani P.S. Case No. 142 of 2017, whereby Respondent Nos. 2 to 8 have been acquitted by the learned Trial Court from the charge of Sections 307/34, 504/34, 427/34, 379/34 of Indian Penal Code and further respondent Nos. 2 to 4 & 7 have been acquitted from the charge of Sections 323/34 and 341/34 of the I.P.C.

3. The prosecution case, in brief, is that on 21.08.2017, the informant was at his home when he saw the accused persons, namely, Ram Sahni, Laxman Sahni, Gulab Sahni and Santosh Sahni carrying branches of mango tree broken from his orchard and when he resisted them from doing so, all of them started creating nuisance. Thereafter, they called the other accused persons, namely, Dharikshan Sahni, Asharfi Sahni, Chhathu Sahni, Tetar Devi, Kusami Devi, Banarsi Devi and Arun Sahni, who arrived there armed with *lathi*, *danda* and bamboo sticks. It is alleged that all of them with intention to kill the informant, started assaulting him and in course of assault, they have stolen Rs. 5,000/- from his pocket as also a



gold chain worn by him. It is further alleged that all the accused persons tried to commit murder of the informant by strangulating him with a towel but his life was saved when his brother Chandra Kishore Mishra came in his rescue, who also was assaulted by the accused persons. It is further alleged that life of the informant and his brother was saved only on arrival of villagers and thereafter they were taken to the hospital for treatment.

4. On the basis of the *fardbeyan* of the informant, Tariyani P.S. Case No. 142 of 2017 was instituted under Sections 323, 341, 379, 427, 504/34 of I.P.C. and investigation was taken up by the police. The police after investigation submitted charge-sheet against Respondent Nos. 2 to 8 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 nine witnesses i.e. PW1- Sangita Devi, PW2- Bharti Devi, PW3- Ramavtar Sahni, PW4- Braj Kishor Mishra (Informant), PW5- Soni Devi, PW6- Dr. Sanjay Kumar, PW7- Dr. Anil Kumar, PW8- Dr. Tej Pratap Singh and PW9- Daya



Shankar Sah. The prosecution has also produced certain documents, which were marked as Exhibits: Ex. 1- Signature of the informant on the *fardbeyan*, Ex. 1/1- written petition, Ex. 2, 2/1, 2/2- signatures of Dr. Sanjay Kumaron X-ray plates, Ex. 3- injury report of the informant, Ex. 4- report of Medical Board, Ex. 5- C.T. Scan report, Ex. 6- formal FIR and Ex. 7- requisition for injury report of the informant. No witness has been examined on behalf of the defence. 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, the learned trial court has acquitted the accused persons.

6. Learned counsel for the appellant has submitted that the trial court has failed to consider the evidence of the prosecution witnesses, especially the informant who was mercilessly assaulted by the accused person by *lathi*, *danda* and bamboo sticks and also tried to strangle him with a towel with intention to kill him. He further submits that the trial court has also failed to consider the injury received by the informant which was corroborated by the injury report marked as Exhibit- 3.

7. We have heard the learned counsel for the



appellant and have also gone through the records of the case.

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

9. Upon scrutiny of evidence on record, it is evident that the accused persons were charged under Sections 307/34 IPC along with other allied provisions. There was also a separate allegation under Section 379 IPC. The prosecution case rests mainly on the injuries said to have been caused to the informant. No other person is shown to have received injury in the incident.

10. The medical evidence of the informant has been considered in the impugned judgment in paragraphs 10, 11 and 12 which deal with the injury report and evidence of Doctors as given in the Trial Court. Upon perusal of the same, it is noted by this Court that, from the statement made by PW-6 in his examination- in- chief, it is clear that the injured had multiple bruises and abrasions on different parts of his body. Though at that stage no fracture was found, the injuries clearly showed that he was subjected to physical assault with blunt objects and that injuries were simple in nature. Later, the CT scan examination (PW-7 and PW-8) revealed a fracture in the



cervical spine region (C1 and C7 vertebrae). This injury was said to be grievous in nature by both doctors. The consistency between PW-7 and PW-8, both members of the medical board, and the independent radiological report (Dr. Amrit Ranjan, MD Radiology) gives strong credibility to the evidence. Their depositions mutually support each other and confirm that the injuries were not superficial but grievous. Therefore, while the initial medical examination by PW-6 noted only simple injuries, the later detailed diagnostic examination through CT scan proved the grievous nature of injury. This progression is natural in medical examination, as sometimes fractures are not visible in X-ray but are revealed in advanced imaging like CT scan. Thus, the Court accepts the opinion of the medical board (PW-7 and PW-8) and holds that the victim indeed suffered grievous injury caused by blunt force.

11. Further, on perusal of the evidence given by the Doctors in their cross-examination, it is noted that the injury report of the informant is marked as Exhibit-3. The informant was examined on 21.08.2017 at 02:46 PM. On examination, the doctor observed five injuries on the informant, including multiple linear bruises (about seven in number) on the right hand, forearm, and scapular area. In addition, there



were abrasions on the chest, lips, and near the eye. The doctor, who prepared Exhibit-3, also noted that an X-ray was conducted, which showed no bone injury. The nature of injuries was clearly described as simple. The report does not state that the injured was referred for admission to hospital, advanced treatment, or further medical check-up. This shows that the injuries were not serious or life-threatening. The record also contains the Medical Board's report (Exhibit-4), but on perusal, it becomes clear that the Board members did not personally examine the informant. They prepared their findings only on the basis of a diagnostic report from Bhawani Diagnostic Center, Muzaffarpur (Exhibit-5). That report does not mention the age of injury and does not clarify whether the injuries were related to the incident of 21.08.2017. In cross-examination, the doctors admitted that they had no direct knowledge of the injuries and did not examine the injured themselves. In contrast, the first injury report (Exhibit-3) was prepared immediately after the occurrence, and it clearly described the injuries as simple in nature. It is this report which gives the correct and reliable picture of the injuries. Later reports, based only on diagnostic findings without direct examination, cannot override the original medical opinion. At this juncture, it is



noteworthy, that for an offence under Section 307 IPC (attempt to murder), the law requires proof that the accused intended to cause death or at least knew that their act was so dangerous that it could cause death. For this, the court looks at factors like; the nature and seriousness of the injury, the part of the body where it was caused, the weapon used and the doctor's opinion.

In the present case, the medical evidence (Exhibit-3) shows that the injuries were simple. There is no mention of any injury on a vital part of the body that could endanger life. The X-ray report also showed no bone injury. Importantly, the first treating doctor did not advise referral, hospital admission, or advanced care. These facts together make it clear that the injuries were not of the kind that would support a charge under Section 307 IPC. At best, the offence disclosed is causing simple hurt punishable under Section 323 IPC.

12. Further, for the offence under Section 379 IPC, learned Trial Court has discussed the same in paragraph 33 of the impugned judgment, wherein the trial court has taken plausible view that because the record does not show recovery of stolen property, nor independent evidence to prove dishonest removal of property. Without these basic elements, the charge of theft cannot stand.



13. In these circumstances, the charge of attempt to murder under Section 307 IPC cannot be sustained. The evidence at best supports a case of simple hurt under Section 323 IPC. Similarly, the charge of theft is not proved.

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

15. 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) 9SCC 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....."

In the case of ***Ghurey Lal versus State of UttarPradesh*** 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."

16. 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.

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



18. Accordingly, the present appeal is dismissed.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Rajesh/-

AFR/NAFR	NAFR
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