

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1271 of 2024

Arising Out of PS. Case No.-54 Year-2014 Thana- VISHAMBHARPUR District- Gopalganj

Tribhuwan Choubey Son of Late Nag Narayan Choubey Resident of Village
-Vinod Matihaniya Baliwan Sagar, PS- Bishambharpur District -Gopalganj
... .. Appellant/s

Versus

1. The State of Bihar
2. Sudama Tiwary Son of Late Ramadhar Tiwary Village -Vinod Matihaniya,
Baliwan Sagar, Ps- Bishambharpur, Dist- Gopalganj
... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Nawnit Kumar Tiwary, Advocate
For the Respondent/s	:	Mr. Sujit Kumar Singh, A.P.P.

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

Date : 21-08-2025

The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure, 1973 against the judgment of acquittal dated 11.09.2024 passed by the learned Additional District & Sessions Judge-X, Gopalganj in Sessions Trial Case No. 42 of 2015, arising out of Vishambharpur P.S. Case No. 54 of 2014, whereby Respondent No. 2 has been acquitted by the learned Trial Court from the charge of Sections 447, 427, 387, 385, 307 of Indian Penal Code and Section 27 of the Arms Act.

2. The prosecution case, in brief, is that on 01.07.2014 at 08:00 p.m., when the informant along with his



son was at his rice mill, then Sudama Tiwary and Uttam Tiwary came there and started dismantling his rice mill. On protest made by the informant, the accused persons threatened to kill him and Sudama Tiwary fired shots, but somehow the informant escaped and came to his house along with his son. The reason behind the said occurrence is that six months before, both the accused had demanded extortion money of Rs. 1 lakh from the informant.

3. On the basis of *fardbeyan* of the informant, Vishambharpur P.S. Case No. 54 of 2014 was instituted under Sections 447, 427, 387, 385, 307 of Indian Penal Code and Section 27 of the Arms Act of Indian Penal Code and investigation was taken up by the police. The police after investigation submitted charge-sheet against Respondent No. 2 and, accordingly, cognizance was taken. Thereafter the case was committed to the Court of Sessions. Charges were framed against the Respondent No. 2 to which he pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined altogether eight prosecution witnesses i.e. PW1- Munni Lal Sah @ Bunni Lal Sah, PW2- Dharmendra Choubey, PW3- Gokhul Sah, PW4- Pankaj Choubey, PW5- Tribhuvan Choubey, PW6-



Sugriv Tiwari, PW7- Ravindra Sah and PW8- Siddheshwar Mistri. The prosecution has also produced certain documents which were marked as 'Exhibits' i.e., Exhibit 1- Signature of Pankaj Choubey on the application given by the informant to register the FIR, Exhibit 01/1- Signature of the informant on the application given for lodging the FIR, Exhibit 1/2- Endorsement made by the SHO and Exhibit 2- Formal FIR. 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 Cr.P.C. and after conclusion of trial, learned Trial Court has acquitted the accused persons.

5. Learned counsel for the appellant has submitted that the learned Trial Court has failed to consider the evidence of the prosecution witnesses and also the documentary evidence produced by the prosecution and has wrongly acquitted Respondent No. 2. He further submits that the learned Trial Court has wrongly arrived at his finding that the offence under Section 307 cannot be proved without any injury and examination of Doctor, who treated the injured.

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 evidence on record, it is evident that the occurrence is alleged to have taken place at 8:00 p.m. in the night. However, the First Information Report lodged by the informant makes no disclosure whatsoever as to how the accused were identified in the dark. No mention has been made of any light source, distinctive features, prior acquaintance, or any circumstance enabling recognition. This omission in the very first version is a serious lacuna. In criminal jurisprudence, when the entire prosecution case rests on identification, the failure to mention the manner of such identification in the FIR renders the case inherently doubtful.

9. Further, PW2 and PW4, though projected as eye-witnesses, have also not explained in their evidence that how they have identified the accused in the night hours. Neither the visibility conditions nor the proximity and duration of the occurrence have been established. In such circumstances, the possibility of mistaken identity is strong and the credibility of their testimony is seriously undermined. It is pertinent to refer to the decision of the Hon'ble Supreme Court in *State of M.P. vs. Ghudan* reported in (2003) 12 SCC 485, wherein it was held



that if any source of light was available at the place of occurrence, the investigating agency would have produced evidence showing the existence of such source, and failure to do so entitles the accused to the benefit of doubt. Applying the aforesaid principle to the facts of the present case, it becomes evident that the prosecution has not even mentioned any source of light in FIR, also the eyewitnesses have not mentioned any source of light and neither during trial it was submitted as evidence by Investigating Officer. Altogether, the prosecution has not been able to establish or prove the source of identification under which the accused are alleged to have been identified.

10. The prosecution case is that firearms were used during the occurrence. On perusal of evidence on record, it is evident that the Investigating Officer has candidly admitted that no empty cartridges or other ballistic materials were recovered from the spot. In a case involving allegations of gunfire, such complete absence of corroborative physical evidence creates a serious doubt about the very incident alleged. At this juncture, it is noteworthy that Hon'ble Supreme Court while deciding the case of ***Jai Prakash Tiwari vs. State of M.P.*** reported in **2022 SCC OnLine SC 966**, observed in Paragraph No. 17 as under:-

“17. It also needs to be noted that



there has been no recovery of any pellet, empty cartridge, or any remains of the gunpowder from the spot. In the absence of a ballistic report, there is no clear connection between the seized weapon and the alleged incident.....”

11. The FIR itself records that no injury was caused to the informant or any other person. While this admission means that the prosecution was not required to prove any injury, it nonetheless creates a significant gap in the overall case. In an allegation involving firearm use, one would ordinarily expect either injuries, or at least corroboration through recovery of empty cartridges, bullet marks, or medical confirmation. The total absence of such corroboration, coupled with the admitted absence of injury, renders the prosecution version doubtful and materially weakens its credibility.

12. The evidence on record further, discloses that there is a long-standing land dispute between the parties. Enmity is a double-edged weapon: it may provide motive for the crime, but equally it provides strong ground for false implication. In the present case, where the identification of the accused is itself doubtful and independent corroboration is lacking, the possibility of false implication due to enmity cannot be ruled out. At this juncture, it is noteworthy that Hon’ble Supreme Court while deciding the case of ***Kailash Gour and Ors. vs.***



State of Assam reported in ***(2012) 2 SCC 34***, it was observed as under:

“38.12. Even regarding the motive for commission of the crime the prosecution case is that the incident had its genesis in the demolition of the mosque and the large scale disturbances that followed. While it is evident that large scale disturbances had indeed taken place in the area including an incident of a house being set on fire in the neighbourhood of the place of occurrence, the previous enmity between some of the Appellants and Taheruddin on account of a land dispute between them could be a possible reason for Taheruddin naming Appellants and Ors. close to him as assailants. Enmity between the complainant party and the accused being a double-edged weapon there could be motive on either side for the commission of offence as also for false implication.”

13. Further, it is evident from material on record, that the distance between the place of occurrence and the Police Station is merely 7 kilometers, yet the FIR was lodged after more than 12 hours. No convincing explanation for this delay has been offered. Such unexplained delay creates a suspicion that the prosecution version was the result of deliberation and consultation, and thus detracts from its spontaneity and truthfulness. At this juncture, it is noteworthy, that the Hon’ble Supreme Court while deciding the case of ***Thulia Kali vs. State of T.N.*** reported in ***(1972) 3 SCC 393***, it was observed that:-

"First information report in a criminal



case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets benefits of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or connected story as a result of deliberation and consultation. It is therefore, essential that the delay in lodging of the first information report should be satisfactorily explained.

In the present case there was delay more than 20 hours in lodging the FIR through the police station was only at a distance of two miles. Hence the circumstance would raise considerable doubt regarding the veracity of the case and it is not safe to base the conviction upon it"

14. Upon appreciation of all the evidence on record, this Court finds that the prosecution has failed to prove its case beyond reasonable doubt. The material infirmities; non-disclosure of the source of identification in the FIR, unreliable testimony of so-called eye-witnesses, absence of recovery of cartridges or forensic evidence, absence of injury and medical corroboration, admitted enmity between the parties, and



unexplained delay in FIR taken together, casts shadow of reasonable doubts on the prosecution case.

15. 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.

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*** reported in ***(2011) 9 SCC 479***, Paragraph Nos. 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 the case of ***Ghurey Lal vs. State of Uttar Pradesh*** reported in (2008) 10 SCC 450 in Paragraph No. 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.”

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)

Sachin/-

AFR/NAFR	N.A.F.R.
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