

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5240 of 2024

Arising Out of PS. Case No.-284 Year-2016 Thana- HAJIPUR SADAR District- Vaishali

Panchu Rai S/O Late Kaali Rai @ Late Kalicharan Rai R/O Village-
Lalpokhar Dighi @ Dighi Kalan, Kalan, P.S- Hajipur Sadar, Distt.-
Vaishali.

... .. Appellant

Versus

1. The State of Bihar
2. Veer Chandra Rai S/O Ram Ekbal Rai R/O Village- Lal Pokhar Dighi,
PS- Hajipur Sadar, Distt.- Vaishali.
3. Sharnbhoo Rai S/O Ram Ekbal Rai R/O Village- Lal Pokhar Dighi,
PS- Hajipur Sadar, Distt.- Vaishali.
4. Mithlesh RAi S/O Ram Ekbal Rai R/O Village- Lal Pokhar Dighi, PS-
Hajipur Sadar, Distt.- Vaishali.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr.Ashok Kumar Sinha
For the Respondent/s	:	Mr.Zeyaul Hoda

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 09-01-2025

Heard learned counsel appearing on behalf of the
appellant/informant and learned Additional Public Prosecutor
for the State.

2. The present appeal has been filed on behalf of
the appellant/informant under Section 372 of Code of
Criminal Procedure, 1973, which has been preferred against
the judgment of acquittal dated 18.09.2024 rendered by



learned Sessions Judge, Vaishali at Hajipur in connection with Sessions Trial No. 569/2017 arising out of Hajipur Sadar P.S. Case No. 284 of 2016 whereby the present respondents/accused have been acquitted from the charges levelled against them.

3. Brief facts of prosecution case, as appears from written report of the informant/appellant, is that on 06.08.2016 at 7:30 P.M. when he reached near his old house from his new house, which was near the police camp, co-villagers Virchandra Rai, Shambhu Rai, Mithilesh Rai, Avishek Kumar @ Raja Kumar and five unknown persons armed with traditional weapons started talking themselves to kill him, thereafter, Virchandra Rai gave a sickle blow upon his left foot, due to which he got injured and fell down. Shambhu Rai, who was armed with lathi, started assaulting him, due to which, the hand and leg of the informant/appellant got fractured. When the son and wife of the informant tried to save the informant/appellant, Virchandra Rai started assaulting them by lathi. The informant further stated that co-accused Mithilesh Rai, who was armed with pistol, entered in



his house and when the daughter-in-law of informant opposed, then, another unknown person slammed her by holding her hair, and taken away her mangalsutra and chain from her neck. The aforesaid accused persons also taken away Rs. 5000/- from his son Arvind Kumar. When neighbours gathered there, all the accused persons fled away. The informant/informant further stated that the reason behind the occurrence is to demand the extortion money because the electric tower was installed in the land of the informant/appellant.

4. On the basis of aforesaid written report of the informant/appellant, Hajipur Sadar P.S. Case No. 284 of 2016 was registered for the offence under Sections 341, 323, 325, 308, 354, 379, 504, 448/34 of the Indian Penal Code against the four named persons and five unknown co-accused persons. Police, after investigation, submitted charge-sheet vide Charge-Sheet No. 340/2016 dated 31.08.2016 under Section 341, 323, 324, 325, 308, 504, 447 & 342 of the I.P.C. Thereafter, cognizance was taken on 18.10.2016 under the aforesaid sections of the I.P.C.



5. Before the Trial Court, the prosecution had examined eight (8) witnesses. They are PW-1 Narayan Bhagal; PW-2 Panchu Rai (the informant); PW-3 Ajay Rai; PW-4 Indu Devi; PW-5 Chunnu Singh @ Ashutosh Kumar; PW-6 Amita Devi; PW-7 Dr. Pranay Punj and PW-8 Kamesh Pd. Singh, Investigating Officer.

6. The statement of the respondents-accused were recorded under Section 313 of the Code, where all of them denied the evidences surfaced against them and claimed their complete innocence and false implication. After the conclusion of trial, the learned Trial Court acquitted the respondents/accused through impugned judgment from the charges levelled against them. Being aggrieved, with aforesaid order of acquittal, appellant/informant preferred the present appeal.

7. Hence, the present appeal.

8. The main submissions, which raised challenging the impugned judgment of acquittal by learned counsel appearing for the appellant/informant is that learned trial court completely overlooked the testimony of three injured



witnesses, where the first injured is PW-2 Panchu Rai (the informant) and second and third injured were Arvind Kumar and Parveshswari Devi, who are none but the son and wife of the informant/injured namely, Panchu Rai. It is pointed out that there is no apparent reason to disbelieve the version of these injured witnesses and, therefore, the impugned judgment of acquittal appears perverse on its face and same required to be set-aside.

9. Learned Additional Public Prosecutor for the State submitted that there is no occasion to interfere with the impugned judgment, as the same is well reasoned and duly discussed. It is pointed out that even the injured son and wife of the informant/appellant did not come forward and testified themselves before the court during trial against respondents.

10. From perusal of the record and certified copy of testimony of prosecution witnesses, which is also available with record, it appears that informant of this case, his son Arvind Kumar and wife Parveshswari Devi had received injuries during occurrence. Though injured son and wife of the informant was examined medically and their injury report was



also proved by the doctor (PW-7), but both of them could not examined during the trial. Land dispute is an admitted position. It further appears from deposition of DW-1 and DW-2 that informant/injured received injuries, while shifting the goods from old house to new house on bicycle. As per case of the prosecution, informant/appellant was admittedly using bicycle for shifting house hold articles from old house to new house. The appellant/informant could not contradicted the version of defence witnesses as to received injuries from his bicycle, while shifting the house hold items.

11. For better understanding of judgment of acquittal, it would be apposite to reproduce para 21 of the impugned judgment, which reads as under:

“21. On a bare perusal of the prosecution’s evidence as referred above it appears that P.W.2 and P.W.3 have stated that informant Panchu Rai was going to his old house from his new house but P.W.4 has stated that informant Panchu Rai was going to his new house from his old house. P.W.2 and P.W.3 have stated that occurrence took place near old house of the informant but P.W.4 has stated that occurrence took place on the way of new house of informant. PW-2 Panchu Rai (informant) has stated that accused Mithlesh Rai armed with *Danda* entered into the house of informant whereas PW-4 stated that Mithlesh Rai armed with *Katta* entered into the house of informant. PW-2 in para 4 stated that all the accused persons are his relatives and there are land dispute between the informant and accused persons. A case had been proceeded in the Court of Deputy Director during Chakbandi and Decree had



been passed in favor of accused Veerchandra Rai, its means land dispute is also found between the parties. He further stated in para 6 that distance between new house to old house is 2-3 *Rassi*. One *Rassi* is equal to 20 hand. At 6 o'clock he proceeded from his new house and reached his old house at 7 o'clock, it takes one hour, whereas he went by cycle, it is unbelievable. In para 12 he stated that on alarm his wife, son and daughter-in-law came at the place of occurrence and no villagers reached there, how its possible that no villagers heard the alarm. He stated in para 20 that occurrence took place near his old house, there are 20-25 houses are situated near his house. House of Ramakant Singh, Mahesh Singh and Sanjay Singh are situated there but neither they interrogated by the police nor produced and examined by the prosecution, they would have been important witness for the prosecution. PW-3 has stated in para 5 that distance between new house to old house is 2 kilometer whereas PW-2 the informant has stated that its distance only 2-3 *Rassi* and PW-4 has stated in para 10 that distance between old house and new house is 1 kilometer. He further stated that he alongwith his father (informant) were in their new house at the time occurrence. He further stated in para 11 and 12 that occurrence took place due to installation of tower. Land dispute found between the parties. PW-4 has stated in para 4 that her father-in-law (informant) were in unconscious state after assaulting but PW-2 the informant himself stated in para 10 that he did not get unconsciousness. PW-4 has stated in para 10 that she can not say that whose *lathi* and sickle hit whom and where, whereas she stated in para 4 that she reached to the place of occurrence at the time of occurrence. PW-8 who is the Investigating Officer of this case, has stated that house of Chandrama Rai, Ramakant Singh and Sailesh Singh are situated near the place of occurrence, but he has not recorded the statement of these persons, who would have been important witness for the prosecution. He further stated that he did not find any article, from which it can prove that occurrence took place there. He stated in para 15 that no witness has been stated about assault from the sickle.”

12. It would further be appropriate to reproduce

Para no. 42 of the legal report of Hon'ble Supreme Court as



available through **Chandrappa and Others Vs. State of Karnataka [(2007) 4 SCC 415]**, which are as under:

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

(1) An appellate Court has full power to review, reappraise 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 emphasize 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 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.”



13. From the aforesaid observation made by the Hon'ble Supreme Court, it can be said that an appellate court must bear in mind in a 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 is presumed to be innocent unless he is proved guilty by 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. Further, if two reasonable conclusions are possible on the basis of the evidence on the record, the appellate court should not disturb the finding of acquittal recorded by the Trial Court.

14. Keeping in view of the aforesaid principles laid down by the Hon'ble Supreme Court to the facts of the present case, as discussed hereinabove, and examined, I am of the view that the Trial Court has not committed any error while passing the impugned order and, therefore, no



interference is required.

15. Hence, in view of aforesaid factual and legal discussions, the present appeal, which is preferred against acquittal, is dismissed herewith, at admission stage itself.

16. Copy of this judgment be sent to learned trial court, immediately.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	10.01.2025
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