

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1522 of 2024

Arising Out of PS. Case No.-66 Year-1993 Thana- PALIGANJ District- Patna

Indu Bhushan Upadhyay, S/O Late Tapeswar Upadhyay R/O Village-
Masaudha, P.S- Paliganj, District- Patna

... .. Appellant/s

Versus

1. The State of Bihar
2. Vipul Singh, S/O Late Laldeo Singh, R/O Village- Masaudh, P.S- Paliganj, District-Patna.
3. Shailendra Kumar, S/O Shiv Narayan Singh, R/O Village- Jalpura, P.S- Paliganj, District-Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Ms. Meena Singh, Advocate Mr. Bhaskar Shankar, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, APP

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

Date : 01-09-2025

The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure, 1973 against the judgment of acquittal dated 19.09.2024 passed by the learned Additional Sessions Judge-VII, Danapur, Patna in Sessions Trial No. 824 of 1993, arising out of Paliganj P.S. Case No. 66 of 1993, whereby Respondent Nos. 2 & 3 have been acquitted by the learned Trial Court from the charge of Sections 302, 364 and 201 of Indian Penal Code and Section 27 of the



Arms Act.

2. The prosecution case, in brief, is that on 18.05.1993 when the informant was at his residence, Vipul Singh came there and asked about the whereabouts of Manoj Upadhyay. Informant replied that Manoj Upadhyay is at his residence and on informant's call Manoj came there and both Manoj and Vipul had some conversation and thereafter both of them left the place. While departing from the house, informant asked his brother Manoj that where he was going whereupon, he replied that he was going to watch the Mangoes. When Manoj did not come to house till 09:00 PM, the informant thought that Manoj might have gone to Mathiya as he usually used to go there and might have stayed in the night. When Manoj did not return the next morning, the informant asked Vipul Singh about the whereabouts of Manoj to which Vipul Singh replied that he along with Manoj had come back at around 06:00 p.m. in the evening and thereafter Manoj Upadhyay left in company of two unknown persons near *Panchayat* Bhawan. When Manoj Upadhyay could not be found, the informant along with the villagers started searching for his brother and, he learnt that yesterday evening Manoj, Vipul Singh, Shailendra Singh with two unknown persons had been seen by one Babloo Singh and



one Gorakh Nath Tiwari proceeding towards north of Son river. On this information, the informant enquired about his brother from Vipul Singh to which he gave different replies which created doubt in informant's mind that his brother might have been abducted. The informant also stated that previously Vipul Singh had some altercation with his brother Manoj Upadhyay but only four days before the occurrence, they had patched up the difference. He also mentioned in the FIR that accused Shailendra Singh also had some difference on account of some previous altercation.

3. On the basis of *fardbeyan* of the informant, Paliganj P.S. Case No. 66 of 1993 was instituted under Sections 302, 364 and 201 of Indian Penal Code and Section 27 of the Arms Act and investigation was taken up by the police. The police after investigation submitted charge-sheet against Respondent Nos. 2 & 3 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.

4. During the trial, the prosecution examined altogether thirteen witnesses i.e. PW1- Chandra Bhushan Upadhyay, PW2- Rajeshwar Upadhyay, PW3- Lalan Kumar



Upadhyay, PW4- Mantu Kumar, PW5- Indu Bhushan Upadhyay, PW6- Chandra Bhushan, PW7- Bablu Kumar, PW8- Gorakh Nath Tiwari, PW9- Umeshi Singh, PW10- Ajay Singh, PW11- Dr. A. Warish, PW12- Lalit Narayan Pandey and PW13- Md. Naseem Ahamad. The prosecution has also produced certain documents which were marked as Exhibits: Ex.1- Signature mark of Rajeshwar Upadhyay over the *fardebayan* as a witness; Ex. 2- Signature mark of Rajeshwar Upadhyay over the *panchnama* of dead body as a witness; Ex. 2/1- Signature mark of Lalan Kumar Upadhyay over the *panchnama* of dead body as a witness; Ex. 3- Signature mark of Rajeshwar Upadhyay over the seizure-list of blood as a witness; Ex. 3/1- Signature mark of Rajeshwar Upadhyay over the seizure list of *fasuli* as a witness; Ex. 3/2- Signature mark of Lalan Kumar Upadhyay over the seizure-list of blood stained soil as a witness; Ex. 4- Signature mark of Rajeshwar Upadhyay over the confessional statement of accused Shailendra Kumar Singh as a witness; Ex. 4/1- Signature mark of Rajeshwar Upadhyay over the confessional statement of accused Vipul Singh as a witness; Ex. 4/2- Signature mark of Lalan Kumar Upadhyay over the confessional statement of accused Shailendra Kumar Singh as a witness; Ex. 4/2- Signature mark of Lalan Kumar Upadhyay over the



confessional statement of accused Vipul Singh as a witness; Ex. 5- postmortem report; Ex. 6- *fardbeyan* of Indu Bhushan Upadhyay; Ex. 6/1- Endorsement written by Sri Bipin Kumar Singh the then Officer-in-charge; Paliganj Police Station; Ex. 7- formal FIR written by constable Nityanand; Ex. 8- Confessional statement of Shailendra Kumar Singh written by Lalit Narayan Pandey as an IO; Ex. 8/1- Confessional statement of Vipul Singh written by Lalit Narayan Pandey as an IO, Ex. 9- Inquest Report; Ex. 10- Seizure-list of sand with blood stain; Ex. 11- Order for forwarding of dead body, Ex. 12- Requisition to FSL for examination of *fasuli*; Ex. 12/1- Reciept of FSL for examination of *fasuli*; Ex. 13- Requisition for material exhibit submitted before the Court and Ex. 14- FSL Report. 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. The learned trial court on the basis of the materials on record, and evidences produced before the court, acquitted the respondent Nos. 2 and 3. The learned trial court has come to the conclusion that the prosecution has not been able to prove the charges against the accused persons through cogent and



sufficient evidence, beyond reasonable doubt thus, giving benefit of doubt, acquitted them from the charges levelled against them.

6. Learned counsel for the appellant has submitted that the learned trial court has failed to appreciate the evidence of the prosecution witnesses that respondent No. 2 had called the deceased on the date of occurrence and respondent Nos. 2 and 3 were last seen with the deceased near Son river. He further submits that the learned trial court has also failed to consider that the dead body of the deceased was recovered on the confessional statement of respondent Nos. 2 and 3 and that the *fasuli* which was used in the occurrence was recovered from the house of respondent No. 2.

7. The learned counsel for the State has submitted that there is no perversity in the judgment of the learned trial court, and the prosecution has failed to prove the guilt of the accused before the learned trial court. Therefore, the order of the learned trial court requires no interference in the present case.

8. We have heard the learned counsel for the appellant and the State, and have also gone through the records of the case.

9. The sole question that requires consideration by this



Court is whether the impugned judgment requires any interference by this Court.

10. On careful consideration of the evidence on record, this Court finds several infirmities which go to the root of the prosecution case. Firstly, the FSL report, which has been relied upon, does not indicate whether the blood mark seized from the sand and the alleged weapon was that of human blood. In absence of such finding, the link between the seized article and the crime remains unproved.

11. The prosecution case further suffers from the fact that the alleged weapon of offence, namely, *Fasuli*, though claimed to have been used in the alleged occurrence, was never produced before the Court during trial. The non-production of such material exhibit weakens the prosecution case materially.

12. Further, from paragraph 31 of the impugned judgment of the trial court, it is evident that there is contradiction with respect to the time of recording of the confession of the accused. The findings of learned Trial court on this point is correct, as on perusal of evidence of record, it has come to the notice of this Court as well that the time noted on the confessions of Vipul Singh and Shailendra Singh is 2:15 p.m. and 2:30 p.m. respectively, whereas PW-1 has deposed that



the confession was recorded after 3:00 p.m., PW-3 has stated that it was recorded after 12:30 p.m. but before 1:00 p.m., and further that between 1:00 p.m. and 3:30 p.m. the Investigating Officer was engaged in recording other statements. PW-2 has further deposed that his signature was obtained on the confession at the police station after 5:30 p.m. and that the accused persons had not confessed in his presence. These contradictions, going to the root of the matter, make the very recording of confession highly doubtful. The confession itself has been disputed and its authenticity is doubtful.

13. Further, it is evident that the person whose signature is on the confession, namely Vipin Kumar, Officer-in-Charge, Paliganj, has not been examined. The Investigating Officer himself has admitted that the confessions were written by him at the dictation of Vipin Kumar. Thus, the statements were not recorded in the words of the accused but were dictated by a police officer.

14. The trial court has also correctly noted, as reflected in paragraph 33, that there is contradiction in the evidence regarding the place of recovery of the dead body. While PW-1 has deposed that the body was recovered 30 meters west of river Son, whereas PW-12, the Investigating Officer, has



stated that the recovery was made from the eastern side of the river. The seizure list, inquest report and deposition of PW-12 read conjointly also suggest recovery from 25 to 30 feet east of the place of occurrence. When such fundamental contradictions exist on the place of recovery itself, the benefit of doubt must go to the accused. In *State of Rajasthan v. Raja Ram* reported in *(2003) 8 SCC 180*, the Supreme Court observed that when the chain of circumstances is broken or recovery is doubtful, conviction cannot be sustained.

15. Further, the trial court has taken a plausible view in paragraph 35 of the impugned judgment and this Court finds no reason to defer from same. On perusal of evidence on record, it is evident that, while the witnesses have deposed that the accused bore no injuries, PW-12 has admitted that they were referred to Paliganj Referral Hospital. The medical report dated 21.05.1993 reveals 5 injuries over body of Vipul Singh and 10 injuries over body of Shailendra Singh. The defence plea that they were assaulted in custody and forced to sign papers, therefore, appears probable. The presence of injuries lends assurance to the defence version and casts a shadow of reasonable doubt on the voluntariness of the alleged confessions. In *State of Punjab v. Harjagdev Singh* reported in



(2009) 16 SCC 91, the Supreme Court reiterated that a confession must be voluntary and free from any element of compulsion; otherwise, it cannot be the basis of conviction.

16. Thus, the confessions, besides being inadmissible under law, stand vitiated by contradictions and coercion. The other circumstantial evidence projected by the prosecution are neither consistent nor complete. It is a settled principle that when two views are possible, the one favourable to the accused must be adopted. The trial court, having analysed each of these infirmities, has rightly extended benefit of doubt to the accused.

17. 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.

18. 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 ***Surajpal Singh v. State, as reported in 1951 SCC 1207***, paragraph 13 of which reads as under:

“13. It is well established that in an appeal under Section 417 of the Criminal Procedure Code, 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.”

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 has 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.”

19. 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.

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

21. Accordingly, the present appeal is dismissed.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Rajesh/Suruchi

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