

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.57 of 2025

Arising Out of PS. Case No.-21 Year-2021 Thana- NOWKOTHI GARHPURA District-
Begusarai

=====

Amresh Kumar Poddar @ Tuntun Poddar Son of Ganesh Poddar Resident of
Ward No. 2, Bishnupur, P.S. - Naokothi, Samsa, District - Begusarai

... .. Appellant

Versus

1. The State of Bihar
2. Amit Kumar Son of Ramashish Sahni Resident of Mauza - Dephra, P.S. -
Nawkothe, District - Begusarai
3. Sanjeev Singh @ Sanjiv kumar @ Sanjiv Singh Son of Late Surendra Singh
Resident of Mauza - Shekhpura, P.S. - Nawkothe, District - Begusarai
4. Shwet Kumar @ Mahantha @ Mahanth Shwet Das Son of Upendra Mahto
Resident of Mauza - Dephra, P.S. - Nawkothe, District - Begusarai
5. Saurav Kumar @ Sahgal Pratap Singh @ Saurabh Kumar Son of Sushil
Singh Resident of Mauza - Parihara, P.S. - Parihara O.P., Bakhri, District -
Begusarai
6. Raushan Kumar Son of Natho Mahto Amin Resident of Mauza - Rani
Sakarpura, P.S. - Gangaur, District - Khagaria
7. Dev Narayan Mahto @ Debu Mahto Son of Late Paltu Mahto Resident of
Mauza - Vishnupur, P.S. - Nawkothe, District - Begusarai
8. Nirmal Kumar Son of Ghanshyam Sah Resident of Mauza - Parihara, P.S. -
Parihara Bakhri, District - Begusarai

... .. Respondents

=====

Appearance :

For the Appellant	:	Mr. Yogesh Chandra Verma, Sr. Advocate Mr. Anuj Kumar, Advocate
For the Respondents	:	Mr. Manish Kumar No. 2, 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 : 03-09-2025

The present criminal appeal has been preferred under
Section 413 of the B.N.S.S. against the judgment of acquittal



dated 08.10.2024 passed by the learned Additional Sessions Judge-V, Begusarai in Sessions Trial No. 1027 of 2023, arising out of Nawkothi P.S. Case No. 21 of 2021, whereby Respondent Nos. 2 to 8 have been acquitted by the learned Trial Court from the charge of Sections 302/34 and 120(B) of Indian Penal Code and Section 27 of the Arms Act.

2. The prosecution case, as per the *fardbeyan* of the informant, is that on 16.02.2021, the informant, along with his father, Late Ganesh Poddar, and his brother, Chandan Kumar, reached the *kirana* shop of Bauelal Sahani at Devpura Chowk on a motorcycle, coming from Vishnupur Chowk. While they were sitting on chair and conversing, at about 4:45 p.m., two motorcycles arrived at the spot. On one motorcycle (a Glamour), Sanjeev Kumar Singh, Swet Kumar, and Amit Kumar were riding, and on the other, Subhakar Mishra, Vijay Shankar Mahto, and Alok Kumar were seated. All of them were armed with weapons. Sanjeev Singh opened fire with a pistol at the informant's father, who, after being hit, tried to run inside the shop. Thereafter, Swet Kumar and Amit Kumar fired indiscriminately at the informant's father, and the bullets struck him, causing him to collapse. When the informant attempted to save his father, the accused also fired at him, and the bullet



narrowly missed his temple. Following this, the accused persons, while waving their weapons and firing, fled the scene on their motorcycles towards Samsa. On hearing the gunshots, people from the locality gathered and rushed the injured Ganesh Poddar to a Doctor. However, on the way, at Saidpur Chowk, he succumbed to his injuries and died. The informant's further alleged that Ram Ashish Sahni, Kesari Nandan Mishra, Bhola Paswan, Dharmendar Bharti, and Bhavesh Kumar were also involved in the incident as they had previously conspired and issued threats to kill his father. It was also alleged that Sanjeev Singh had earlier demanded ransom from the informant and threatened him with dire consequences.

3. On the basis of *fardbeyan* of the informant, Nawkothe P.S. Case No. 21 of 2021 was instituted under Sections 302/34 and 120(B) 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 to 8 under Sections 302/34, 120(B) of I.P.C. and Section 27 of Arms Act 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 six prosecution witnesses i.e. PW1- Chandan Kumar, PW2- Amresh Kumar Poddar @ Tuntun Poddar, PW3- Bauelal Sahani, PW4- Dr. Rajesh Kumar, PW5- Md. Fakhre Alam & PW6- Tribhuwan Kumar Thakur. The prosecution has also produced certain documents which were marked as 'Exhibits' i.e., Ext. 1- Signature of PW-1 Chandan Kumar as a witness on *fardbeyan*, Ext. 2- Signature of PW-2 Amresh Kumar @ Tuntun Poddar on *fardbeyan*, Ext. 3- Signature of PW-3 Bauelal Sahani on seizure list, Ext. 4- *post mortem* report, Ext. 5- FIR and signature of PW-5 Md. Fakhre Alam (IO) on FIR, Ext. 1/2- Writing and Signature of Tribhuwan Thakur (PW-6) on *fardbeyan*, Ext. 1/3- Writing and Signature of endorsement by Md. Fakhre Alam (PW-5) on *fardbeyan* and Ext. 3/1- Writing and Signature of Tribhuwan Thakur (PW-6) on seizure list of two *khokha* and three live cartridges and Ext. 6- Charge Sheet No. 45/21 dated 11.05.2021 and writing and signature of PW-5 Md. Fakhre Alam. . 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. The learned Trial Court, on the basis of the materials available on record and the evidence produced before the Court, acquitted the accused persons observing that the investigation is not proper and there are so many ambiguities and defects in the investigation and the prosecution has not adduced cogent, consistent and sufficient evidence against the accused persons. The Trial Court further observed that the prosecution has miserably failed to prove the case beyond the shadow of reasonable doubts against the accused persons under trial.

6. Learned counsel for the appellant has submitted that the learned Trial Court has failed to consider the evidence adduced by the prosecution witnesses as they have proved the place, time and the manner of occurrence. He further submits that the trial court has also failed to appreciate that, as per section 134 of the Evidence Act, it is the quality of evidence and not the quantity of evidence and that conviction can be based on the sole testimony of a witness.

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 persons 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 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. Upon scrutiny of the materials available on record and the evidence of the witnesses, this Court is of the considered view that the prosecution case suffers from material infirmities which go to the root of the matter. The place of occurrence, as alleged, was the shop of PW-3. In his examination-in-chief, PW-3 has indeed spoken of the incident but has not named any of the accused persons. He has further stated that after the occurrence, upon his intimation, PW-1, who is the son of the deceased, reached the spot. His evidence makes it clear that he alone was the witness to the occurrence. In such a situation, the claim of the other prosecution witnesses to be the eye-witnesses becomes doubtful, and their version cannot be accepted when tested against the testimony of PW-3. It is also relevant that PW-3 is an independent witness and there is no reason brought on record to doubt his deposition.



11. The medical evidence also casts a serious shadow upon the case of the prosecution. Pw-4, the doctor, who conducted the *post mortem* examination, has categorically opined that the firing injuries were caused from a long distance. The records, however, show that the consistent case of the prosecution has been that the firing took place from a close range. Such inconsistency between medical opinion and ocular evidence strikes at the very foundation of the prosecution case. Added to this, while the allegation is of indiscriminate firing, the *post mortem* report shows as many as six entry wounds on the body of the deceased, yet from the place of occurrence only two empty cartridges and three live cartridges were recovered. No firearm was recovered either from the spot or from the possession of the accused. This inconsistency between the number of injuries and the recovery made renders the prosecution case improbable and creates a serious doubt as to the manner of occurrence.

12. Further, the evidence of PW-2, the informant, also weakens the prosecution case. In his evidence, he has clearly admitted that he did not mention the name of Raushan in the FIR. It has come on record that the Police themselves inserted the name of Raushan in the FIR. Such an addition, without the



support of the informant, makes the involvement of Raushan in the case doubtful. This Court finds it unsafe to rely upon such doubtful evidence for fixing criminal liability on the accused. Moreover, the prosecution has failed to examine material witnesses who were specifically named in the charge-sheet, namely Rahul Kumar and Dr. Hemchandra Mahto. The non-examination of these material witnesses has created a serious gap in the prosecution case, which further weakens its case.

13. In view of the aforesaid infirmities, namely, the doubtful presence of witnesses claiming to be the eye-witness, the contradiction between medical and ocular evidence, the absence of recovery of firearm, the doubtful introduction of the accused in the FIR, and the non-examination of material witnesses, this Court is of the considered opinion that the prosecution has not been able to prove its case beyond all reasonable doubt. The view taken by the Trial Court, therefore, appears to be a plausible and reasonable view which is based upon proper appreciation of the evidence on record.

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 a reasonable doubt.



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) 9 SCC 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 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."



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.

19. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Sachin/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	10.09.2025
Transmission Date	10.09.2025

