

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.630 of 2025

In
CRIMINAL APPEAL (SJ) No.3845 of 2023

Arising Out of PS. Case No.-215 Year-2017 Thana- PARBATTa District- Khagaria

Usha Kumari D/O Nityanand Singh R/O Village- Shiromani Tola, P.S-
Pabatta, Distt.- Khagaria.

... .. Appellant

Versus

1. The State of Bihar.
2. Boudhu Singh S/O Narayan Singh R/O Village- Nayagaon Shromani Tola,
P.S- Parbatta, Distt.- Khagaria.
3. Narayan Singh S/O Late Bachchi Singh R/O Village- Nayagaon Shromani
Tola, P.S- Parbatta, Distt.- Khagaria.
4. Kanhaiya Singh S/O Narayan Singh R/O Village- Nayagaon Shromani Tola,
P.S- Parbatta, Distt.- Khagaria.

... .. Respondents

Appearance :

For the Appellant : Mr. Chandan Kumar Kashyap, Advocate

For the Respondent-State: Mrs. Anita Kumari Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE PRAVEEN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 16-02-2026

Re. I.A. No. 01 of 2025: -

This application under Section 5 of the Limitation Act
has been filed for condonation of delay of 36 days occurred in
preferring this appeal.

2. Learned counsel for the appellant submits that when
the appellant saw the respondents No. 2 to 4 moving free in the
village, on enquiry she came to know that they have been
acquitted. Thereafter she went to the learned court below and after
enquiry she filed *chirkut* through her local counsel on 07.07.2013



and could procure the certified copy of the judgment 14.07.2023. Therefore, the delay has occurred in preferring this appeal, which were incidental and not because of any lapse on the part of the appellant.

3. Considering the averments made in this application and the submissions of learned counsel for the appellant, the delay of 36 days occurred in filing the appeal is condoned.

4. This application is allowed.

Cr. Appeal (D.B.) No. 630 of 2025: -

5. With the consent of the parties, this appeal is taken up for final hearing though it was listed under the heading 'For Orders (On Petition)'.

6. Heard learned counsel for the appellant and learned Additional Public Prosecutor for the State and also perused the trial court records.

7. The present appeal has been preferred by the appellant under proviso to Section 413 of Bhartiya Nagrik Suraksha Sanhita, 2023, seeking setting aside the judgment of acquittal dated 05.04.2023 (hereinafter referred to as the 'impugned judgment') passed by learned Additional Sessions Judge Vth court, Khagaria (hereinafter referred to as the 'learned trial court'), in Sessions Trial No. 200 of 2019, arising out of Parbatta P.S. Case No. 215 of 2017. By the impugned judgment



under appeal, the learned trial court has been pleased to acquit the accused persons-the respondents no. 2 to 4, holding them not guilty of the charges punishable under Sections 323, 341, 307, 448, 504, 590/34 of the Indian Penal Code (in short 'IPC').

8. On perusal of the trial court records, it appears that the prosecution case is based on a written report of the informant Usha Kumari, who alleged that on 20.06.2017 at about 04:00 PM, the accused persons, who are her neighbours, abused her and when she restrained them, they assaulted her with butt of firearm due to which she sustained head injury. Thereafter, when her brother Dhiraj Kumar came to her rescue, then the accused persons also assaulted him with the butt of the firearm.

9. Based on the said written report, Parbatta P.S. Case No. 215 of 2017 dated 20.06.2017 was registered against the accused persons.

10. Upon completion of the investigation, charge-sheet was filed on 31.12.2017 against the accused persons for the offences under Sections 341, 323, 504, 448, 307, 509/34 IPC.

11. On the basis of the police report, cognizance was taken vide order dated 04.07.2019 under Sections 341, 323, 504, 448, 307, 509/34 IPC against the accused-respondents No. 2 to 4. It further appears that finding that the offences alleged against the accused persons were exclusively triable by the court of Sessions,



the records were committed to the court of Sessions where it was registered as Sessions Trial No. 200 of 2019 vide order dated 18.07.2019.

12. Charges were read over and explained to the accused persons in Hindi to which they pleaded not guilty and claimed to be tried and accordingly vide order dated 13.09.2019 charges were framed under Sections 341, 323, 504, 448, 307, 509/34 IPC.

13. In course of trial out of seven charge-sheet witnesses, only two witnesses, namely, Dr. Shweta Kumari (PW 1) and Ramapati Singh (PW 2) could be examined. On behalf of the prosecution only the injury report has been brought on record by way of an exhibit and the same has been proved by PW 1.

14. The learned trial court has recorded in the impugned judgment that the prosecution has not been able to produce the rest of the prosecution witnesses including the informant and other independent witnesses as also the IO of the case. As regards the evidence of PW 2, the learned trial court has found that he is admittedly an interested witness. The trial court has found that both the parties are agnates. Due to lack of evidence on the record, the trial court took a view that the prosecution has miserably failed to establish the charges levelled against the accused persons.

15. Before this Court, learned counsel for the appellant has made two fold submissions. It is submitted that Dr. Shweta



Kumari (PW 1) has stated that she was posted at Alexia Hospital, Begusarai, on 28.07.2017 and on that day, she had examined the patient named Dhiraj Kumar, who was brought by his relations to her on 21.06.2017 at 04:30 PM with history of physical assault.

16. PW 1 has given the sight of the injuries as under: -

“Sight of injury-head 6.5cm antero posterior cut over the lt. parietal region linear cut. No evidence of laceration, end was not tapered. C.T. head suggest non displaced fracture of parietal bone. Multiple focal and patchy hypodense area involving cortex and sub-cortical edema suggestive of hemorrhagic contusions epidural hemorrhage in lt. fronto parietal bone, subdural haematoma along the tentorium and in the lt temporal region.

Age of injury was less than 6 hours.

There was scalp haematoma surrounding this linear cut.

Nature of injury grievous.”

17. The next submission of learned counsel for the appellant is that PW 2. who is the uncle of the informant, has supported the prosecution case, but the learned trial court has not relied upon his evidence by giving a finding that he is an interested witness. It is submitted that the evidence of an interested witness is not to be discarded outrightly.

18. On the other hand, learned Additional Public Prosecutor for the State has pointed out from the evidence of the



Doctor (PW 1) that in paragraph 4 of her cross-examination, PW 1 has stated that the injured was brought to her by his relations, police had not brought him and at the time of his medical treatment there was no police with the injured. The Doctor has further stated that she had herself informed the police whereafter Begusarai Police had come. In paragraph 5, she has stated that her hospital is a private hospital and the CT-Scan report was not annexed with her injury report.

19. Learned Additional Public Prosecutor has further pointed out that so far as the evidence of PW 2 is concerned, he has stated in his examination-in-chief that at the time of occurrence he was inside his house and he was taking his breakfast. The said witness is uncle of the informant. In paragraph 7 of his deposition, he has given all the description of the various cases in which Usha Devi is a party. This witness though has not given the number of cases against him, but he has admitted that in connection with the cases lodged against him, he had gone to jail.

20. Learned Additional Public Prosecutor submits that the learned trial court has recorded in its order that despite execution ofailable warrants and non-ailable warrants, the informant and other independent witnesses have not been brought. This assertion of the trial court is not being contested by the learned counsel for the appellant.



21. Having regard to the entire submissions recorded hereinabove and the evidences which we have taken into consideration, it is found that in this case neither the informant nor Dhiraj Kumar, who is said to be the injured witness, has been examined. The Doctor (PW 1) has categorically stated that Dhiraj Kumar was brought in her private hospital and he was brought by the relation not by the police and it was she who had informed the Begusarai Police and, on such information, Begusarai Police had arrived. It is, therefore, evident that after the occurrence, no step was taken by the informant's side to inform the police station with regard to the occurrence. Non-appearance of the informant and the injured witness as well as the other independent witnesses would definitely prove fatal to the prosecution case. The prosecution has not even exhibited the FIR of this case and there is no otherwise contest with regard to the finding of the learned trial court. The trial Court has categorically recorded that despite service ofailable warrant and non-ailable warrant, the prosecution witnesses have not been produced.

22. This is an appeal against acquittal and we are aware of the principles governing an appeal against acquittal. The broad principles on which an appeal against acquittal is to be considered may be found in the judgment of the Hon'ble Supreme Court in the case of *H.D. Sundara and Ors. vs. State of Karnataka*,



reported in (2023) 9 SCC 581 and *Babu Sahebagoada Rudragoudar and Ors. vs. State of Karnataka*, reported in (2024) 8 SCC 149. Paragraph '8' of the judgment in the case of *H.D. Sundara* (supra) is being reproduced hereunder for a ready reference:-

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment¹ rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC can be summarized as follows:

8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record



was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

23. Keeping in view the above proposition and the evidences available on record, we find no reason to take irresistible view against the accused persons. No interference is required with the impugned Judgment.

24. The appeal has no merit. It is, accordingly, dismissed.

25. Let the trial court’s record together with a copy of this judgment be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Praveen Kumar, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
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