IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.244 of 2024

Arising Out of PS. Case No.-53 Year-1993 Thana- KHARIK District- Bhagalpur

==========

Rajeev kumar Ray son of Madho Rai village- Telghi Police Station -Kharik District- Bhagalpur

... ... Appellant/s

Versus

1. The State of Bihar
2. Bharat Singh son of Late Chano Singh village- Telghi Police Station -Kharik District- Bhagalpur

... ... Respondent/s

==========

Appearance :

For the Appellant/s : Mr.Vikram Singh, Adv.
Mr.Rahul Kumar Singh, Adv.

For the Respondent/s : Mr.Bipin Kumar, APP

==========

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)
Date : 18-08-2025

The present criminal appeal has been preferred under section 372 of the Code of Criminal Procedure against the judgment of acquittal dated 06.11.2023 passed by the learned 1st Additional Sessions Judge, Naugachiya in Sessions Trial No. 336 of 2002 arising out of Kharik P.S. Case No. 53 of 1993, whereby and whereunder respondent no. 2/ Bharat Singh has been acquitted by the learned Trial Court from the charges of Sections 302/34 of the Indian Penal Code and 27 of the Arms

Act.

2. The prosecution case, in brief, is that on 12.03.1993, at about 12.00 PM the informant along with his two brothers, namely, Niro Rai and Shankar Rai as well as two cousin brothers, namely, Pankaj Kumar Rai and Lal Mistri had come to western field for cutting grass. Informant and Pankaj Rai were plucking *Arandi* leaves in the field of Pramod Choudhary and informant' brother Shankar Rai and Niro Rai along with Pramod Choudhary and Lal Mistri were going to *Basa* of Pramod Choudhary. Meanwhile, respondent no. 2 Bharat Singh armed with rifle, and co-accused Arun Singh armed with pistol, Babloo Singh armed with three-nut, Manoj Singh armed with Axe and Three-nut, Laxmi Singh armed with masket, Jharkhandi Singh armed with three-nut, Dhilo Singh armed with three-nut, Surendra Singh armed with sickle, Khagesh Singh armed with lathi, Buchhi Kumar (brother-in-law of respondent no. 2/Bharat Singh) armed with three-nut came and Bharat Singh (respondent no. 2) made firing and drove away the informant's brothers. It is alleged that informant's younger brother Shankar Rai fell down on the road and he was caught hold by Bharat Singh, Arun Singh and Surendra Singh. Arun Singh took sickle from the hands of Surendra Singh and

cut the neck from behind. It is further alleged that Bharat Singh caught hold of victim-Shankar Rai. Thereafter, co-accused Surendra Singh took sickle from co-accused Arun and assaulted on right palm of victim, causing injury to that part of the body and it is alleged that victim Shankar Rai died at the spot. It is further alleged that informant's brother Niro Rai was chased and caught hold by co-accused Manoj Singh, Laxmi Singh, Jharkhandi Singh, Dhelo Singh, Khagesh and Buchhi Kumar and thereafter, accused persons called Bharat (respondent no. 2). It is further alleged that after killing Shankar, accused Bharat Singh (respondent no. 2), co-accused Arun Singh and Surendra Singh ran to the field of Beda Singh. It is further alleged that informant also went behind them and started seeing the occurrence. It is further alleged that accused Bharat Singh (respondent no. 2) assaulted twice upon the neck of informant's brother Niro by means of sickle and co-accused Manoj after taking *pasiyani* from accused Bharat (respondent no. 2) assaulted on the chest of informant's brother Niro. Thereafter, Bharat Singh (respondent no. 2) cut the neck of Niro. It is further alleged that co-accused Laxmi, Babloo, Jharkhandi and Manoj had caught hold of Niro and some unknown persons were also present there.

3. On the basis of written complaint of the informant, Kharik P.S. Case No. 53 of 1993 was instituted under

Sections 147, 148, 149, 302 of the IPC and Section 27 of the Arms Act 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 ten witnesses viz. PW1 Subhash Singh, PW2 Navin Singh, PW3 Pankaj Kumar Rai, PW4 Subhash Mandal, PW5 Radhey Mandal @ Radhwa, PW6 Lal Mistri, PW7 Sanjay Kumar Singh, PW8 Mukesh Singh, PW9 Shiv Nandan Rai and PW10 Janardan Prasad Singh. No documentary evidence was adduced on behalf of the prosecution.

5. The defence has not adduced any oral or documentary evidence.

6. After closure of prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and after conclusion of trial, learned trial court has acquitted the accused persons.

7. Learned counsel for the appellant submitted that the impugned judgment of acquittal is not sustainable in the eye

of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgment of acquittal. Learned counsel submitted that informant, who is appellant in the present appeal, has not been examined. Learned counsel further submitted that in this case during trial altogether 10 witnesses have been examined and all of them have been declared hostile. The Doctor and the Investigating Officer of the case have not been examined as witness, which has caused serious prejudice to the appellant. It is further submitted that P.W.-3 and P.W. 6, who are said to be the eye witnesses to the occurrence as per the version of F.I.R., however they have retracted from their earlier statement and they have been declared hostile.

7(i). Learned counsel further submitted that the application under section 311 Cr.P.C. filed on behalf of the appellant during the trial was rejected by the trial Court on the ground that the informant was watching the proceedings but avoided his appearance during the trial. It is further submitted that considering the above, the order passed by the trial Court was affirmed by the Hon’ble High Court and further, the said order was tested before the Hon’ble Supreme Court where the Hon’ble Supreme Court has also declined to interfere with the

order passed by the trial Court as well as by the Hon'ble High Court.

8. In criminal appeal against acquittal what the Appellate Court has to examine is whether the finding of the learned trial court 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 & Ors. Versus The State*** reported in ***1952 SCR 193***, paragraph 13 of which reads as under:

> "..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."

9. 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 reiterated the said view and observed as under:

> "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."

10. In the present appeal, the point which is necessary for consideration in the light of the aforesaid judgments is :

> *"Whether the prosecution has proved the case beyond the shadow of reasonable doubt ?"*

11. The trial Court has analyzed the evidence of P.Ws. 1,2 3, 4, 5, 6, 7, 8, 9 and 10 and all these witnesses have been declared hostile as they are not supporting the case of prosecution. They have stated that their evidences were not recorded by the police and they did not know as to who has killed the deceased. Though as per the version of F.I.R. P.Ws. 3

and 6 are the eye witnesses of occurrence as per the version of F.I.R. but they have retracted from their earlier statement and they were also declared hostile.

12. After going through the statement of all the witnesses which have been recorded by the trial Court, it is evident that all the witnesses have not supported the version of prosecution and they failed to prove the story of prosecution.

13. We are dealing with an appeal against acquittal and shall keep in mind the principles governing the cases of appeal against acquittal. The principles have been reiterated by the Hon'ble Supreme Court in catena of decisions.

14. In the case of ***H.D. Sundara and Others vs. State of Karnataka*** reported in ***(2023) 9 SCC 581***, Hon'ble Supreme Court, in paragraph 8, has held as follows :

> *"8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment State of Karnataka v. H.K. Mariyapp, 2010 SCC OnLine Kar 5591 rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C"). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 Cr.P.C*

can be summarized as follows:

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

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

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating 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."

15. In **Chandrappa Vs. State of Karnataka, (2007) 4 SCC 415, Hon'ble Supreme Court** after referring to several authorities has held as follows:

"42. From the above decisions, in our considered view, the following general principles regarding

powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate 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 emphasise 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 is 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.”

(Emphasis Supplied)

16. In **Murugesan Vs. State, (2012) 10 SCC 383,**

Hon’ble Supreme Court has held as follows:

“ 18. Before proceeding any further it will be useful to recall the broad principles of law governing the power of the High Court under Section 378 CrPC, while hearing an appeal against an order of acquittal passed by a trial Judge.

19. An early but exhaustive consideration of the law in this regard is to be found in the decision of Sheo Swarup v. King Emperor [(1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] wherein it was held that the power of the High Court extends to a review of the entire evidence on the basis of which the order of acquittal had been passed by the trial court and thereafter to reach the necessary conclusion as to whether order of acquittal is required to be maintained or not. In the opinion of the Privy Council no limitation on the exercise of power of the High Court in this regard has been imposed by the Code though certain principles are required to be kept in mind by the High Court while exercising jurisdiction in an appeal against an order of acquittal…….

20. The principles of law laid down by the Privy Council in Sheo Swarup(supra) have been consistently followed by this Court in a series of subsequent pronouncements …….

21. A concise statement of the law on the issue that had emerged after over half a century of evolution since Sheo Swarup (Supra) is to be found in para 42 of the Report in **Chandrappa v. State of Karnataka [(2007) 4 SCC 415** ……

32. In the above facts can it be said that the view taken by the trial court is not a possible view? If the answer is in the affirmative, the jurisdiction of the High Court to interfere with the acquittal of the appellant-accused, on the principles of law referred to earlier, ought not to have been exercised. In other words, the reversal of the acquittal could have been made by the High Court only if the conclusions recorded by the learned trial court did not reflect a possible view. It must be emphasised that the inhibition to interfere must be perceived only in a situation where the view

taken by the trial court is not a possible view. The use of the expression “possible view” is conscious and not without good reasons. The said expression is in contra23. Having dealt with the principles of law that ought to be kept in mind while considering an appeal against an order of acquittal passed by the trial court, we may now proceed to examine the reasons recorded by the trial court for acquitting the accused in the present case and those that prevailed with the High Court in reversing the said conclusion and in convicting and sentencing the appellant-accused.

33. The expressions “erroneous”, “wrong” and “possible” are defined in Oxford English Dictionary in the following terms:
“erroneous.— wrong; incorrect.
wrong.—(1) not correct or true, mistaken.
(2) unjust, dishonest, or immoral.
possible.—(1) capable of existing, happening, or being achieved.
(2) that may exist or happen, but that is not certain or probable.”

34. It will be necessary for us to emphasise that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement. But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the arena of a possible view. The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The fundamental distinction between the two situations have to be kept in mind. So long as the view taken by the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be interdicted and that of the High Court supplanted over and above the view of the trial court.

> 35. A consideration on the basis on which the learned trial court had founded its order of acquittal in the present case clearly reflects a possible view. There may, however, be disagreement on the correctness of the same. But that is not the test. So long as the view taken is not impossible to be arrived at and reasons therefor, relatable to the evidence and materials on record, are disclosed any further scrutiny in exercise of the power under Section 378 CrPC was not called for."
>
> (Emphasis Supplied)

17. In **Hakeem Khan Vs. State of M.P., (2017) 5 SCC 719 , Hon'ble Supreme Court** has held as follows:

> " 9 [Ed. : Para 9 corrected vide Official Corrigendum No. F.3/Ed.B.J./29/2017 dated 13-7-2017.] . Having heard the learned counsel for the parties, we are of the view that the trial court's judgment is more than just a possible view for arriving at the conclusion of acquittal, and that it would not be safe to convict seventeen persons accused of the crime of murder i.e. under Section 302 read with Section 149 of the Penal Code…."
>
> (Emphasis Supplied)

18. In **Babu Sahebagouda Rudragoudar Vs. State of Karnataka, 2024 SCC Online SC 561,** Hon'ble Supreme Court, after referring to relevant precedents, has observed as follows:

> "39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the **following principles:**
>
> (a) That the judgment of acquittal suffers from

> patent perversity;
>
> (b) That the same is based on a misreading/omission to consider material evidence on record;
>
> (c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.
>
> 40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court."

(Emphasis Supplied)

19. In the present case, contention has been raised by the learned counsel for the appellant that informant, who is appellant in the present appeal, has not been examined. The doctor and the Investigating Officer has also not been examined. The appellant filed an application under section 311 Cr.P.C. during trial, which was rejected by the trial Court on the ground that informant was watching the proceedings and avoided his appearance during trial. The order of the trial Court, on the said point, was affirmed by the High Court and further said order has been tested before the Hon'ble Supreme Court where Hon'ble Supreme Court also declined to interfere with the order passed by the trial Court as well as the High Court.

20. Further, from perusal of the record, it transpired that occurrence is of 12.03.1993 thereafter F.I.R. was lodged. Cognizance was taken and the case was committed to the Court

of Sessions on 22.04.2002. The statement of the accused under section 313 Cr.P.C. was recorded on 09.06.2017. Finally, the judgment of acquittal was passed by the trial Court on 06.11.2023.

21. After perusing the list of dates and events, it is crystal clear that more than two decades has already elapsed since initiation of the prosecution proceeding and sufficient time was available for the prosecution to produce witnesses but for the reasons best known to the prosecution side for not producing remaining witnesses of prosecution, informant has not made himself available as a witness.

22. We are aware of the fact that the trial Court recorded the statement of witnesses and it has been observed by the trial Court that appellant was watching the proceeding, as contended by the counsel of appellant, and informant has not made himself available as a witness before the trial Court. The order passed by the trial Court has already been upheld by the High Court as well as the Hon’ble Supreme Court. It is not a pragmatic approach to take advantage of his own fault wherein trial Court recorded presence of witness who is none other than informant himself. In view of the above, the contention of the learned counsel for the appellant is neither tenable nor

sustainable in the light of the fact that where 10 witnesses have already been examined on behalf of prosecution side then, it cannot be presumed that informant or any other witness had no reasonable opportunity to get themselves examined as a witness. It is unfathomable to seek remedy at any stage where sufficient opportunity was available during course of trial at the stage of examination of witnesses on behalf of the prosecution. It is beyond perception of any stretch of imagination that any remedy would not be available for all times to come where substantial objective to seek remedy practically not viable where prosecution proceeding was put into motion by lodging the F.I.R. in 12.03.1993 and the judgment of acquittal was delivered on 06.11.2023 covering almost 30 years.

23. It is inconceivable that appellant has not pointed any reason as to why remaining witnesses have not been examined during course of trial proceeding, despite being availability of informant, who is one of the witnesses watching the proceeding. The defence taken by the appellant is bereft of any merit in the light of the fact that 10 witnesses have been examined during the course of trial. From the contention of the appellant, it is evident that the trial Court has recorded the finding that informant was watching the proceedings but for the

reasons best known to him he did not present himself as a witness and for the said score he cannot blame others for non-examination of others as witnesses. Where duty is cast upon the prosecution to produce witnesses in support of prosecution story, on the issue of examination of witness under section 311 Cr.P.C. the finding of trial Court is affirmed by the High Court and the said order was tested before the Hon'ble Supreme Court where the Supreme Court has declined to interfere with the order passed by the trial Court as well as by the High Court, as contended by the learned counsel for the appellant in the foregoing paragraph 7(i) of the present judgment. The trial Court after mentioning the conduct of the informant has passed the order.

24. Thus, in the opinion of this Court, the trial Court has taken a plausible view based on the evidence available on the record. The view taken by the trial Court cannot be held to be bad or perverse. Under such circumstances, no case for interference with the impugned judgment is made out.

25. In the result, the present criminal appeal preferred against the judgment of acquittal dated 06.11.2023 passed in Sessions Trial No. 336 of 2002 arising out of Kharik P.S. Case No. 53 of 1993 by learned 1st Additional Sessions

Judge, Naugachiya is dismissed at the admission stage itself.

(Alok Kumar Pandey, J)

I agree.

(Sudhir Singh, J)

mcverma/-

AFR/NAFR	AFR
CAV DATE	06.08.2025
Uploading Date	18.08.2025
Transmission Date	18.08.2025