

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.629 of 2015

Arising Out of PS. Case No.-142 Year-2005 Thana- DAUDNAGAR District- Aurangabad

Mahendra Paswan Son of Chanarik Paswan Resident of village - Makhra, P.S. Sihari, P.S. Daudnagar, District - Aurangabad

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Paritosh Parimal, *Amicus Curiae*

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

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 06-08-2026

1. Heard the parties.

2. The present appeal preferred by appellant, namely, Mahendra Paswan under section 374(2) of the Code of Criminal Procedure (in short Cr.P.C.) against the judgment of conviction and order of sentence dated 15.09.2015 rendered by learned Additional Sessions Judge VI, Aurangabad in Sessions Trial Case No. 04 of 2006/ 64 of 2015 by which learned trial court has convicted the appellant for the offence punishable under Sections 324 of Indian Penal Code and sentenced the appellant to undergo simple imprisonment for two years.

3. As per prosecution case the informant on 14.08.2005 at about 8:30 P.M. alongwith his co-villager were returning home from Daudnagar after parking his pushcart and were proceeding towards village Makhra



Ayodhya Bigha. On the way, appellant alongwith Satyendra Paswan, and Rajendra Paswan, who were allegedly lying in wait, suddenly attacked them. Appellant fired at the informant with a pistol, and the bullet grazed him, causing an injury to his rib cage. Satyendra Paswan fired at Rajendra Yadav, causing a gunshot injury to his hand. It is further alleged that Raghvendra Paswan also fired from a pistol. The alleged motive behind the occurrence was a long-standing land dispute between the parties.

4. One the basis of aforesaid information, Daudnagar P.S. Case No. 142 of 2005 was lodged on 14.08.2005 for the offence under Section 324, 307/34 I.P.C. and 27 Arms Act, where after investigation police submitted charge-sheet accordingly.

5. To established its case before the learned trial court, the prosecution altogether examined total of seven witnesses, PW-1 namely, Birendra Paswan (informant), PW-2 namely, Panpati Devi (mother of the informant), PW-3 namely, Rameshwar Paswan (father of the informant), PW-4 namely, Ritu Kumari (daughter of the informant), PW-5



namely, Rajendra Yadav (one of the injured), PW-6 namely, Ram Sudin Mahato (independent witness declared hostile), PW-7 namely, Babulal Singh (independent witness declared hostile).

6. The prosecution also exhibited following document during the trial to substantiate its case which are as:-

Exhibit 1 -Signature of the informant on the *Fardbeyan*

7. On the basis of evidences, as surfaced during the trial, the appellant/convict was examined under Section 313 of the Cr.P.C., where he denied all the evidences as surfaced against him and claimed his complete innocence and false implication.

8. No witness was examined in defense, neither any documents were exhibited during trial by appellant-convict in his favour.

9. Upon the basis of evidences as surfaced during the trial and also by taking note of the argument as advanced by the learned counsel appearing on behalf of the



parties, the learned trial court convicted appellant/convict for the offence under Section 324 of IPC, where appellant-convict sentenced to undergo SI for two years.

10. Being aggrieved with aforesaid judgment of conviction and order of sentence, the appellant/convict preferred the present appeal.

11. Hence the present appeal.

12. Learned counsel while arguing on behalf of the appellant/convict submitted that the learned trial court has committed serious error in recording conviction against the appellant under Section 324 of the Indian Penal Code, without appreciating the evidence available on record in its correct perspective. It is submitted that the conviction has principally been recorded upon the testimony of PW-1, who is the informant as well as an ocular witness, but the said testimony, when tested in the light of the evidence of other prosecution witnesses, does not inspire such confidence as could safely form the basis of conviction.

13. It is submitted that PW-1 is an ocular witness to the alleged occurrence and has attributed the



firing upon him to the appellant. However, PW-5, who was also present at the relevant time and has been projected as an injured witness, has not stated that he had seen the appellant firing upon PW-1. Rather, his testimony creates uncertainty regarding the identity of the person who had fired and also regarding the number of firings alleged to have taken place.

14. Learned counsel further submitted that there are material contradictions in the testimonies of the prosecution witnesses regarding the manner of occurrence, number of firings and the role attributed to the appellant. It is submitted that these contradictions cannot be brushed aside as normal discrepancies arising out of lapse of time, as they relate to the very genesis of the occurrence and the specific overt act attributed to the appellant.

15. It is further submitted that the independent witnesses examined by the prosecution have not supported its case and have been declared hostile. The prosecution, therefore, has failed to bring on record any independent corroboration of the allegation made by PW-1 against the



appellant. It is submitted that although the evidence of a hostile witness is not to be discarded in toto, the same cannot be treated as corroborative evidence when no dependable portion thereof supports the prosecution version.

16. Learned counsel further submitted that the Doctor, who could have objectively established the nature and character of the alleged injury, has not been examined. Similarly, the Investigating Officer has also not been examined, though his evidence was material in view of the contradictions and omissions appearing in the depositions of the prosecution witnesses. The appellant has thereby suffered prejudice, particularly when the prosecution case itself is not free from material infirmities.

17. Learned counsel has placed reliance upon the judgment of the Hon'ble Supreme Court in ***Munna Lal v. State of Uttar Pradesh***, reported in ***(2023) 18 SCC 661***, and submitted that though non-examination of the Investigating Officer is not invariably fatal but where the ocular evidence is not wholly reliable having conspicuous gaps which could have been explained by the Investigating



Officer, his non-examination assumes significance and may create a material lacuna in the prosecution case.

18. It is further submitted that the prosecution has failed to produce the weapon of offence or any other dependable scientific evidence connecting the appellant with the alleged firing. The learned trial court has itself not accepted the prosecution case in its entirety and has acquitted the appellant of the more serious allegations levelled against him. It is submitted that the same evidence could not have been selectively relied upon for recording conviction under Section 324 IPC without considering the material contradictions appearing therein.

19. Learned counsel further submitted that the prosecution is required to establish the guilt of the appellant beyond all reasonable doubt and that the burden never shifts upon the accused to prove his innocence. It is submitted that the learned trial court has proceeded substantially on the basis of probability and suspicion rather than legally admissible and reliable evidence sufficient to satisfy the rigorous standard applicable in a criminal trial.



20. Learned counsel accordingly submitted that the evidence available on record, when considered cumulatively, creates a reasonable doubt regarding the specific overt act attributed to the appellant and, therefore, the appellant deserves to be acquitted by extending to him the benefit of doubt.

21. Learned Additional Public Prosecutor for the State, while opposing the appeal, submitted that PW-1 is the informant and ocular witness to the occurrence and has specifically attributed the act of firing to the appellant. It is submitted that the testimony of an injured witness ordinarily carries great evidentiary value and minor discrepancies appearing in the statements of witnesses cannot be made a ground for discarding the prosecution case in its entirety.

22. It is further submitted that the evidence of the prosecution witnesses, if read as a whole, establishes the occurrence as well as the involvement of the appellant. It is submitted that the discrepancies pointed out by learned counsel for the appellant are minor in nature and do not affect the substratum of the prosecution case.



23. Learned APP further submitted that non-examination of the Investigating Officer or the Doctor by itself cannot be made a ground for acquittal when there is ocular evidence available on record. It is submitted that the learned trial court has considered the evidence in its entirety and has rightly recorded conviction under Section 324 IPC.

24. I have perused the trial court records carefully and gone through the evidences available on record as also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

25. PW-1 namely, Birendra Paswan, who is the informant and is also projected as an ocular witness of the occurrence. From his deposition, it appears that he has specifically attributed the act of firing to the appellant and has stated regarding the injury allegedly sustained by him. His evidence, therefore, is direct evidence regarding the occurrence. However, merely because a witness claims to have witnessed the occurrence, his testimony does not become beyond judicial scrutiny. The Court is required to examine whether such testimony is consistent, cogent and



trustworthy and whether it derives assurance from the other circumstances appearing on record.

26. The testimony of PW-1, therefore, has to be examined not in isolation but along with the evidence of PW-5 and other prosecution witnesses. PW-5 is also stated to have been present at the place of occurrence. However, his deposition does not provide clear identification of the person who had fired. The said witness has also spoken regarding only one firing. Thus, the testimony of PW-5 does not furnish the necessary assurance to the specific allegation made by PW-1 against the appellant. He was also declared hostile by the prosecution.

27. This assumes significance because the prosecution case is not founded upon an occurrence in which the identity of the assailant is admitted or otherwise established by unimpeachable evidence. The specific question before the Court is whether it has been established beyond reasonable doubt that it was this appellant who voluntarily caused hurt to PW-1 in the manner alleged. The evidence of PW-5 does not advance the prosecution case on



this material aspect.

28. PW-2, PW-3 and PW-4 namely, Panpati Dev, Rameshwar Paswa, Ritu Kumar respectively have also been examined by the prosecution and their evidence has been relied upon by the learned trial court. On careful appreciation, however, their testimonies do not provide a consistent and unimpeachable account regarding the manner of occurrence and the specific role attributed to the appellant. The variations appearing in their evidence become material when examined along with the testimony of PW-5.

29. It is settled that minor discrepancies which do not affect the core of the prosecution case may ordinarily be ignored, for witnesses cannot be expected to reproduce an occurrence with photographic precision. At the same time, a contradiction touching the identity of the assailant, the number of firing or the manner in which the injury was caused cannot be mechanically characterized as a minor discrepancy. Where the inconsistency affects the very foundation of the prosecution case, the same requires careful judicial consideration.



30. PW-6 and PW-7 namely, Ram Sudin Mahato and Babulal Singh are independent witnesses and they have not supported the prosecution case and have been declared hostile. The settled position of law is that evidence of a hostile witness is not effaced from the record merely because such witness has been declared hostile and the Court may rely upon the portion of his evidence which, upon scrutiny, is found to be reliable. However, in the present case, the evidence of these witnesses does not furnish any dependable corroboration to the specific allegation against the appellant.

31. The absence of independent corroboration, by itself, would not be sufficient to discard an otherwise wholly reliable ocular account. The law does not prescribe any particular number of witnesses for proving a fact. But where the principal ocular evidence is not of such sterling quality as to be accepted without corroboration and the independent witnesses do not support the prosecution, the Court is required to exercise greater caution before sustaining a conviction.

32. It is further noticeable that the Doctor has



not been examined by the prosecution. The Court is conscious of the settled principle that non-examination of a Doctor is not invariably fatal where the ocular evidence is otherwise cogent and trustworthy. Nevertheless, in the facts of the present case, the medical evidence had considerable relevance as the prosecution case relates to an alleged firearm injury and the nature and character of the injury could have furnished objective corroboration to the ocular version. The absence of such evidence, therefore, assumes significance when the ocular evidence itself is not free from doubt.

33. The Investigating Officer has also not been examined. The law on this aspect is well settled that mere non-examination of the Investigating Officer does not invariably result in acquittal. However, the question is whether such non-examination has caused prejudice to the accused in the facts of the particular case. In ***Munna Lal v. State of Uttar Pradesh, (2023) 18 SCC 661***, the Hon'ble Supreme Court has reiterated that where the ocular evidence is not wholly reliable and the Investigating Officer was



material for explaining the conspicuous gaps in the prosecution case, his non-examination may constitute a material lacuna and give rise to reasonable doubt.

34. The aforesaid principle assumes importance in the present case. The prosecution evidence suffers from material variations regarding the number of firings and the identity of the person responsible for the alleged firing. PW-5, who was allegedly present at the relevant time, does not identify the appellant as the person who fired. The independent witnesses have not supported the prosecution case. The Doctor has not been examined. In such circumstances, the Investigating Officer could have thrown light upon the relevant omissions and contradictions appearing in the evidence of the prosecution witnesses. His non-examination, therefore, cannot be viewed as an isolated defect but forms part of the cumulative circumstances which affect the reliability of the prosecution case.

35. At this juncture, it would be apposite to remind oneself of the foundational principles of criminal jurisprudence. The presumption of innocence is a cardinal



principle of criminal law. Every person accused of an offence is presumed to be innocent unless his guilt is established by the prosecution through legally admissible evidence beyond reasonable doubt. The burden of proving the charge rests throughout upon the prosecution and does not shift merely because the defence taken by the accused may not appear wholly convincing.

36. The aforesaid principle has a constitutional dimension as well. Article 21 of the Constitution protects an individual against deprivation of life or personal liberty except according to a procedure established by law, and such procedure, as judicially developed, must be fair, just and reasonable. A criminal conviction carrying penal consequences, therefore, cannot rest upon conjecture, surmise or a process of reasoning which permits material doubts in the prosecution evidence to be disregarded. The guarantee of equality and non-arbitrariness embodied in Article 14 also requires that criminal adjudication be founded upon rational appreciation of evidence and not upon selective acceptance of portions of an otherwise doubtful prosecution



case.

37. The jurisprudential essence of the rule of benefit of doubt is not that every fanciful or imaginary possibility should operate in favor of an accused. Reasonable doubt is a doubt founded upon reason and arising from the evidence itself. Where two views of the evidence are reasonably possible, and one points towards the guilt of the accused while the other supports his innocence, the latter view must ordinarily receive judicial preference. The Hon'ble Supreme Court in ***Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808***, has authoritatively recognized that the benefit of reasonable doubt must go to the accused and that suspicion, however strong, cannot take the place of proof.

38. Equally, in an appeal against conviction, the appellate Court is required to independently examine the entire evidence and determine whether the finding of guilt recorded by the trial court is sustainable in law. The principle that an accused cannot be convicted merely because the prosecution story appears probable assumes particular



importance here. The prosecution has to establish the charge beyond reasonable doubt and not merely prove that its version is one of the possible versions of the occurrence. As observed by the Hon'ble Supreme Court in ***Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116***, the distance between "may be true" and "must be true" is considerable and must be traversed by the prosecution before a conviction can follow.

39. It would be appropriate to reproduce the Paragraph No. 23 of ***Kali Ram Case (supra)***, which read as:-

"23. Observations in a recent decision of this Court, Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033] to which reference has been made during arguments were not intended to make a departure from the rule of the presumption of innocence of the accused and his entitlement to the benefit of reasonable doubt in criminal cases. One of the cardinal principles which has always to be kept in view in our system of administration of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused. There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of facts which have to be present before the



presumption can be drawn. Once those facts are shown by the prosecution to exist, the Court can raise the statutory presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal."

40. It would be further appropriate to reproduce the Paragraph No. 153 of ***Sharad Birdhichand Sarda case (supra)***, which read as:-

"153. *A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,



(3) the circumstances should be of a conclusive nature and tendency,
(4) they should exclude every possible hypothesis except the one to be proved, and
(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

41. Applying the aforesaid principles to the facts of the present case, this Court finds that the prosecution has not been able to establish the specific overt act attributed to the appellant with the degree of certainty required in a criminal trial. PW-1 is an ocular witness, but his testimony does not receive adequate corroboration from PW-5; the independent witnesses have not supported the prosecution; the Doctor has not been examined; the Investigating Officer has not entered the witness box; and material variations exist in the prosecution evidence concerning the occurrence. These circumstances, when considered cumulatively and not in isolation, create a reasonable doubt which cannot be characterized as fanciful or imaginary. PW-2, PW-3, PW-4 are immediate family members of PW-1 and as such their testimony cannot be said "wholly reliable", being interested witness, who are admittedly not the eye witness of the



actual occurrence of firing. The benefit of such doubt must necessarily go to the appellant. The criminal justice system, in its constitutional and jurisprudential essence, would rather permit an accused to go free where the evidence leaves a reasonable doubt than sustain a conviction upon evidence which does not cross the threshold of proof beyond reasonable doubt. The principle is not founded upon misplaced sympathy for the accused but upon the fundamental requirement that penal consequences must follow only when guilt is proved in accordance with law.

42. Accordingly, the conviction of the appellant, as recorded by the learned trial court under Section 324 of the Indian Penal Code, is hereby set-aside. The impugned judgment of conviction and order of sentence dated 15.09.2015 passed by learned Additional Sessions Judge VI, Aurangabad in Sessions Trial Case No. 04 of 2006/ 64 of 2015, are hereby set-aside. The appellant/accused is acquitted of the charge levelled against him under Section 324 of the Indian Penal Code by extending to him the benefit of reasonable doubt.



43. Since the appellant is on bail, he is discharged from his liabilities of respective bail bonds. Sureties stand discharged.

44. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs. 10,000/- (Rupees Ten Thousand Only) to Mr. Paritosh Parimal, learned *Amicus Curiae* in Criminal Appeal (SJ) No. 629 of 2015 as consolidated fee for rendering his valuable professional service for the disposal of present appeal, upon production of copy of this judgment.

45. Fine, if any paid, be returned to the appellant henceforth. The appeal stands allowed.

46. TCR, if any, be sent back to the learned trial court along with a copy of this judgment immediately.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	AFR
CAV DATE	NA
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