IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.581 of 2024

Arising Out of PS. Case No.-96 Year-2013 Thana- GUTHANI District- Siwan

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Amrendra Singh @ Amar Singh, S/o Late Ram Ekbal Singh, Resident of Village Bellaur, P.S. Guthani, District Siwan

... ... Appellant/s

Versus

1. The State of Bihar
2. Satyadeo Ram S/o Late Rajbanshi Ram R/o vill - Kishunpali, P.S. - Darauli, Distt. - Siwan
3. Lorik Ram S/o Late Hemraj Ram R/o vill - Balod, P.S. - Guthani, Distt. - Siwan
4. Amarjeet Kushwaha S/o Muneshwar Kushwaha R/o vill - Khalwan, P.S. - Guthani, Distt.- Siwan
5. Udaybhan Ram S/o Sriniwash Ram R/o vill - Chilhamarwa, P.S.- Guthani, Distt. - Siwan
6. Chhotelal Sharma S/o Vidyasagar Sharma R/o vill - Belod, P.S. - Guthani, Distt. -Siwan
7. Ramkishun Ram @ Kishun Ram S/o Shivbachan Ram R/o vill - Chilhamarwa, P.S. - Guthani, Distt. - Siwan
8. Vishram Manjhi S/o Vindhyachal Manjhi R/o vill - Chilhamarwa, P.S. - Guthani, Distt. - Siwan
9. Dinesh Ram S/o Bhiki Ram R/o vill - Belaur, P.S.- Guthani, Distt. - Siwan

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Mukesh Kumar Thakur, Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma, APP Mr. Sriram Krishna, Advocate Mr. Madhukar Anand, Advocate Mr. Amarjeet, Advocate Mr. Shubham Kr. Singh, Advocate Mr. Amritanshu Udbhava, Advocate Mr. Prabhat Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 16-09-2025

The present criminal appeal has been preferred under

Section 372 of the Code of Criminal Procedure, 1973 against the judgment of acquittal dated 30.03.2024 passed by the learned Additional District & Sessions Judge-III-cum-Special Judge, MPs/MLAs/MLCs Court, Siwan in Sessions Trial No. 71 of 2017, arising out of Guthani P.S. Case No. 96 of 2013, whereby Respondent Nos. 2 to 9 have been acquitted by the learned trial court from the charge of Sections 148, 149, 120-B, 307, 302 of Indian Penal Code and Section 27 of the Arms Act.

2. Vide order dated 22.07.2025, trial court records were called for, which were received on 11.08.2025.

3. The prosecution case, in brief, as per the *fardbeyan* of the informant, is that on 06.07.2017 at 16:00 hours, when he along with his son Rajnarayan Singh @ Raju Singh arrived at the door of Santosh Tiwari of his *panchayat,* Mukesh Singh, Rajesh Kumar Singh, Ghanshwam Mishra, Dharmendra Singh, Laxman Sah and other villagers were present there. When the informant was getting information about the incident taken place on 05.07.2013, Maale leader Satyadeo Ram and others, namely, Amarjeet Kushwaha, Lorik Ram, Vishram Manjhi, Udaybhan Ram, Munna Ram, Ramkishun Ram, Dinesh Ram, Chhotelal Sharma, Anil Ram including 10-15 unknown persons armed with weapons also arrived at the door of Santosh Tiwari.

Satyadeo Ram ordered to kill and also fired two shots towards Rajnarayan Singh with his weapon. Amarjeet Kushwaha fired at Mukesh Singh with his weapon. Lorik Ram fired on Ghanslıwam Mishra on which he fell down on the ground. Thereafter, the persons accompanying Satyadeo Ram ran away from there by making indiscriminate firings upon the informant and other persons present there. The informant and the persons present there also ran away in order to save their lives. It is further alleged in the *fardbeyan* that the injured persons were carried to the Sadar Hospital, Siwan where the injured, namely, Mukesh was declared dead. The injured Rajnarayan Singh @ Raju was referred to Patna for better treatment and the treatment of injured Ghanshyam was made at Sadar Hospital, Siwan. It is also alleged in the *fardbyan* that the persons present there had seen the incident and when asked they will tell about it.

4. On the basis of the *fardbeyan* of the informant, Guthani P.S. Case No. 96 of 2013 was instituted under Sections 147, 148, 149, 447, 307, 302 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 9 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.

5. During the trial, the prosecution examined altogether ten witnesses i.e. PW1- Dharmendra Kumar Singh, PW2- Laxman Sah, PW3- Amar Singh, PW4- Dr. Md. Israil, PW5- Dr. A.A. Ghani, PW6- Chandra Prakash, PW7- Nirbhay Kumar Ray, PW8- Rakesh Singh, PW9- Shambhunath Singh and PW10- Ghanshyam Mishra. The prosecution has also produced certain documents which were marked as Exhibits, i.e., Ext. 1- Signature of informant on his *fardbeyan* recorded by Bhagwati Prasad, police sub-inspector of town police Station, Siwan; Ext. 1/1- Writing and signature of in-charge S.H.O. of Guthani Police Station on endorsement of the registration of FIR as Guthani P.S. Case No. 96/2013 dated 07.07.2013 on the back side of *fardbeyan* of the informant Amar Singh; Ext. 2- Charge-sheet bearing No. 1/2016 dated 08.01.2016 filed after completion of investigation; Ext. 3- Injury report of the injured Ghanshyam Mishra proved by PW-4 Dr. Md. Israil; Ext. 4- Postmortem report of the deceased Rajnarayan Singh @ Raju Singh prepared on 06.07.2017 by PW-4 Dr. Md. Israil; Ext. 5- Postmortem report of the deceased Mukesh Kumar Singh prepared on 06.07.2017 by PW-5 Dr. A. A. Ghani and Ext. 6-

Formal FIR lodged as Guthani P.S. Case No. 96/2013 dated 07.07.2013. The defence has also examined twelve witnesses, *viz*., DW1- Ranjeet Singh, DW2- Ramjee Prasad Kharwar, DW3- Sujeet Subhani, DW4- Jisan Ali, DW5- Brajesh Ram, DW6- Krishna Baitha, DW7- Bindo Kumar Singh, DW8- Rajendra Bhagat, DW9- Deepak Kumar, DW10- Majahan Singh, DW11- Maya Kushwaha and DW12- Malti Devi. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. and after conclusion of trial, the learned trial court has acquitted the accused persons.

6. 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 prosecution must prove its case beyond all reasonable doubts by legal, reliable and unimpeachable evidence that the accused had committed the offence with requisite *mens rea*. The burden to prove the case always rests on the prosecution from the beginning to the end of the trial but, in the instant case, the prosecution witnesses as a whole creates serious material discrepancies in the prosecution evidence and the prosecution evidence led during trial appears to be shaky and the defence

version of false implication happens to be worthy of belief.

7. Learned counsel for the appellant submits that the learned trial court has failed to appreciate the evidence of the prosecution witnesses in true perspective as the occurrence took place in the year 2013 and after lapse of about 10-11 years the statement of the witnesses were recorded and they were cross-examined, and hence, there may be some minor discrepancies. He further submits that the statement given before the police under Section 161 Cr.P.C. are the previous statement and therefore cannot be used to cross-examine a witness and it is only for a limited purpose to contradict such witness.

8. The learned counsel for the State submits that there is no perversity in the judgment of the learned trial court, and the prosecution had 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.

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

10. The sole question that requires consideration by this Court is whether the impugned judgment of acquittal requires any interference by this Court.

11. On careful scrutiny of the records and the

evidence brought on record, this Court finds certain material deficiencies which go to the root of the prosecution case. The most material witness, namely, Santosh Tiwary, in front of whose door the occurrence is alleged to have taken place, has not been examined. His testimony would have been the most natural and independent account to establish the occurrence, for the incident is stated to have happened at his very doorstep. At this juncture, reference may be made to the judgment of the High Court of Jammu & Kashmir & Ladakh in ***Yashvi Singh v. State, 2022 SCC OnLine J&K 915***, wherein it was observed as under:

> *"26. Eyewitnesses PWs 1&2 Atma Singh & Veena Rani have tendered evidence before the trial court that their clothes as well as the seat covers of the car in which deceased was shifted to Hospital at Vijaypur got stained with blood of the deceased, neither the clothes of the aforesaid witnesses nor the said car has been seized by the police during investigation and more importantly the person in whose car the injured (deceased) is stated to have been shifted to Hospital Vijaypur from the spot has neither been cited as witness in the chargesheet nor examined by the prosecution in the court otherwise. The said witness being most material witness of the prosecution who could have unearthed the true facts of the case has been willfully and intentionally withheld by the I/O and the prosecution to suppress the material facts*

regarding the genesis of the prosecution case…"

The principle laid down therein squarely applies to the facts of the present case. By withholding the evidence of Santosh Tiwary, whose testimony was vital as the incident is alleged to have taken place at his door, the prosecution has failed to discharge its burden, and such omission casts a serious doubt on its version.

12. Further, the prosecution has failed to establish the exact place of occurrence. The situs of the crime must be proved with certainty, as otherwise the very foundation of the prosecution case becomes shaky. In this regard, reliance may be placed on the judgment of the Hon'ble Supreme Court in ***Syed Ibrahim v. State of Andhra Pradesh, (2006) 10 SCC 601***, wherein it was held in para 11 as under:

"11.....But there is another significant factor which completely destroys the prosecution version and the credibility of PW 1 as a witness. He has indicated four different places to be the place of occurrence. In his examination-in-chief he stated that the occurrence took place in his house. In the cross-examination he stated that the incident took place at the house of his wife, the deceased's mother. This is a very important factor considering the undisputed position and in fact the admission of PW 1 that he and his wife were

> *separated nearly two decades ago, and that he was not on visiting terms with his wife. Then the question would automatically arise as to how in spite of strained relationship he could have seen the occurrence as alleged in the house of his wife. That is not the end of the matter. In his cross-examination he further stated that the incident happened in the small lane in front of the house of his wife. This is at clear variance with the statement that the occurrence took place inside the house where allegedly he, the deceased, his son, PW 2 and daughters, PWs 3 and 6 were present. That is not the final say of the witness. He accepted that in the FIR (Ext. P-1) he had stated the place of occurrence to be the house of the deceased. Though the FIR is not a substantive evidence yet, the same can be used to test the veracity of the witness. PW 1 accepted that what was stated in the FIR was correct. When the place of occurrence itself has not been established it would not be proper to accept the prosecution version."*

Applying the above ratio, it becomes evident that when the place of occurrence is itself doubtful, the prosecution story loses its credibility. In the present case also, the failure of the prosecution to prove the place of occurrence renders the case uncorroborated and unreliable.

13. Coming to the injuries of Ghanshyam Tiwary, the FIR specifically alleges that he had sustained gunshot injuries, but the medical evidence categorically rules out any such injury.

This contradiction strikes at the root of the prosecution case. The Hon'ble Supreme Court in ***Thaman Kumar v. State of U.T. Chandigarh, (2003) 6 SCC 380***, has observed in para 16 of judgment as under:

> *"16. The conflict between oral testimony and medical evidence can be of varied dimensions and shapes. There may be a case where there is total absence of injuries which are normally caused by a particular weapon. There is another category where though the injuries found on the victim are of the type which are possible by the weapon of assault, but the size and dimension of the injuries do not exactly tally with the size and dimension of the weapon. The third category can be where the injuries found on the victim are such which are normally caused by the weapon of assault but they are not found on that portion of the body where they are deposed to have been caused by the eyewitnesses. The same kind of inference cannot be drawn in the three categories of apparent conflict in oral and medical evidence enumerated above. In the first category it may legitimately be inferred that the oral evidence regarding assault having been made from a particular weapon is not truthful. However, in the second and third categories no such inference can straight away be drawn. The manner and method of assault, the position of the victim, the resistance offered by him, the opportunity available to the witnesses to see the occurrence like their distance, presence of light and many other similar factors will have to be taken into consideration in*

judging the reliability of ocular testimony."

The present case falls within the first category referred to above, as the medical evidence completely rules out the existence of gunshot injury alleged in the FIR. Hence, the prosecution version based on such allegation cannot be accepted as trustworthy.

14. In view of the above discussion, this Court is of the considered opinion that the prosecution has failed to discharge its burden of proving the charge beyond reasonable doubt. The non-examination of the material witness, the failure to prove the place of occurrence, and the contradiction between medical and ocular evidence, taken together, create a serious doubt about the prosecution case. Consequently, the benefit of doubt must enure to the accused.

15. 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 all reasonable doubts. Wherever, any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of doubt.

16. 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."*

17. 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.

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

19. Accordingly, the present appeal is dismissed.

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

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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