

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.695 of 2022**

Arising Out of PS. Case No.-88 Year-2012 Thana- BUXAR INDUSTRIAL District- Buxar

Sandeep Shukla Son of Mahendra Shukla, Resident of village - Shuklapipra,
P.S. - Mohaniya, District - Kaimur (Bhabua)

... .. Appellant/s

Versus

1. The State of Bihar
2. Sandeep Chaubey @ Chintu Kumar Son of Late Vijay Sankar Chaubey
Resident of Village - Sapnautiya, P.S.- Sonhan, District - Kaimur.
3. Saroj Kumar Ojha Son of Late Hare Krishna Ojha Resident of village -
Mahila, P.S. - Itarhi, District - Buxar

... .. Respondent/s

Appearance :

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| For the Appellant | : | Mr. Ramchandra Singh, Advocate Mr. Shankar Kumar Mr. Radha Krishna, Advocates |
| For the Respondents | : | Mr. Sujit Kumar Singh, Addl. P.P. Mr. Mukesh Kumar Thakur, Advocate |

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA)

Date : 30-08-2025

The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure, 1973 against judgment of acquittal dated 28.02.2018 passed by the learned Additional District & Sessions Judge 6th, Buxar in Sessions Trial No. 45 of 2013, arising out of Industrial Area P.S. Case No. 88



of 2012, whereby Respondent Nos. 2 and 3 have been acquitted by the learned Trial Court from the charge of Sections 364/34, 302/34 and 120B of Indian Penal Code.

2. Vide order dated 31.07.2023, Trial Court records was called for, which was received on 09.08.2023.

Vide order dated 14.07.2023, notices were issued to the Respondent Nos. 2 and 3 upon which they appeared by filing Vakalatnama through learned Advocate, Mr. Mukesh Kumar Thakur.

3. The prosecution case, in brief, is that on 27.08.2012 while informant had departed from Bus, he saw his uncle Bhawnath Shukla @ Lallan Shukla, was having tea along with a person, when informant asked him that “what are you doing here, tomorrow i.e. on 28.08.2012 you have to appear in Bhabhua Court in relation to case no. 09/2011 and 35/2011”, upon which his uncle replied that today he is going to Village Purainiya with Sheo Mangal Dubey and also gave contact number of Shiv Mangal Dubey, so that his whereabouts will be known to informant, then he left toward Buxar. Further, informant also returned back to home after noting his result from College. On 28.08.2012, informant waited and tried to said number, while he was waiting for his uncle at Bhabhua



court premises. Again on 29.08.2012, he continuously tried to contact upon said number but he failed. On 31.08.2012 he investigated matter himself where he asked brother of Sheo Mangal Dubay who informed that his brother may be found either with Ramdarash Tiwari or Kedar Pandey at Rohtas, while he was investigating he came to know from Ramdarash Tiwari that his uncle was murdered, however when he reached the place of abduction, nearby people narrated story of abduction from Dalsagar. Informant has reason to believe that all named accused murdered his uncle and make his body disappeared out of previous enmity.

4. On the basis of written report of the informant, Industrial Area P.S. Case No. 88 of 2012 was instituted under Sections 364/34 and 302 of Indian Penal Code and investigation was taken up by the police. The police after investigation submitted charge-sheet against Respondent Nos. 2 and 3 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 eight witnesses i.e. PW1- Pappu Paswan, PW2-



Vinod Thakur, PW3-Lilawati Devi, PW4- Ramchandra Yadav, PW5- Paramhans Yadav, PW6- Raj Kumar, PW7- Madhukar Singh and PW8- Sudesh Kumar Singh. The prosecution has also produced certain documents which were marked as 'Exhibits' i.e., Statement under Section 164 of the Cr. P.C. of Saroj Kumar Ojha (Exhibit-1), C.J.M. Buxar signature on the statement recording request of P.W.-7 (Exhibit-2), Application before the CJM, Buxar for recording the Statement of P.W.7 (Exhibit 2/1), Signature of the S.P. Buxar on the application of Sandeep Shukla (Exhibit-3), P.W. 8 demarcation on the application of Sandeep Shukla (Exhibit-4) and Signature of P.W. 8 of formal FIR (Exhibit-4/1). 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.

6. Learned counsel for the appellant submits that all the prosecution witnesses have supported the case of the prosecution and apart from that the confession of accused persons under Section 164 of the Cr. P.C./Section 183 of BNSS, 2023 suggests that the accused persons have confessed their guilt and the same was recorded in presence of learned Magistrate and the learned Magistrate in his deposition submits



that he has recorded the 164 statement of the accused persons and there are corroborative evidence on record to suggest that the accused persons have committed the crime in question. Learned counsel for the appellant further submits that neither the summons nor Bailable Warrant have executed/served against the informant Sandeep Shukla and FIR prosecution witness Raju Shukla and without summoning the aforesaid persons, the evidence of this case was closed on 17.02.2018. The appellant was neither received any summon nor any kind of information for evidence from the learned Trial court concerned and without giving any opportunity for evidence, the present proceeding has been completed and the accused persons have been acquitted by the learned Trial court on 28.02.2018.

7. We have heard learned counsel for the appellant and have also gone through the records of the case.

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

9. From a bare perusal of the record of the present case, it appears that there is no eye witness to the alleged abduction which had taken place. P.W. 1 to P.W. 5 have been declared hostile. The Investigating Officer has not named the



accused persons in respect to their participation in the alleged crime in question. The dead body of the abducted person has not been recovered. The informant and his brother have not been examined during the trial. Now the question in the present case: whether the exculpatory confession made by the accused persons before the Magistrate under Section 164 of the Cr. P.C./Section 183 of BNSS, 2023 can be used against co-accused. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court in the case of **Pancho Vs. State of Haryana, reported in (2011) 10 Supreme Court Cases 165**, paragraph nos. 23 and 24 of which read as under :

“23. As against A-2, Pancho, the prosecution is relying mainly on the extra-judicial confessional statement of A-1, Pratham. The question which needs to be considered is what is the evidentiary value of a retracted confession of a co-accused?

24. The law on this point is well settled by a catena of judgments of this Court. We may, however, refer to only two judgments to which our attention is drawn by Mr Lalit, learned Senior Counsel. In Kashmira Singh v. State of M.P. , referring to the judgment of the Privy Council in Bhuboni Sahu v. R. and observations of Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerbutty, this



Court observed that the proper way to approach a case involving confession of a co-accused is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then it is not necessary to call the confession in aid”.

Apart from that, a decision of this Court in the case of **State of Bihar Vs. Deepak Kumar and another, reported in 2016 SCC Online Patna 3150**, paragraph nos. 12 to 15 of which read as under :

“12. The law with regard to the use of confession of a co-accused is fairly well settled.

13. The present one is one of those very few cases, wherein the prosecution's case rests entirely on the confession of a co-accused. As regards the acquitted accused, we need to bear in mind that it is Section 30 of the Evidence Act, which makes the confession of a co-accused relevant. There is a marked difference between the probative value of the confession of an accused vis-à-vis the confession of a co-accused and this difference appears to have, quite often,



created confusion and incorrect approach, though the law on the use of the two kinds of judicial confession is very well settled.

14. The confession made by an accused, if found voluntary and true, can be made basis for his own conviction. Though corroboration of such a confession is not a condition precedent for making use of the confession as basis for conviction, prudence requires that some corroboration of the material particulars of the confession is received from the evidence on record. As against such use of confession against the maker of the confession, the confession of a co-accused is no evidence at all and it cannot be used as a foundation for conviction of the accused, who is not maker thereof, though the same can, indeed, be used as a supporting piece of evidence against the accused, who is not the maker thereof.

15. The reasons for not treating the confession of a co-accused as evidence are, broadly speaking, that the confession of a co-accused is not given on oath, it is neither given in the presence of the accused against whom the confession is sought to be relied upon nor is the maker's version is tested by cross-examination by his co-accused. In fact, such a confession is a weaker type of



evidence than the evidence of an approver, for, the approver is cross-examined by the accused; whereas the confession of a co-accused is not subjected to cross-examination and brought on record without allowing the accused, against whom such a confession is sought to be proved, any opportunity of cross-examining the co-accused and testing the veracity or otherwise of the confession of the co-accused”.

A leading judgment in the aforesaid subject, this case of *Kashmira Singh Vs. State of Madhya Pradesh*, reported in (1952) 1 SCC 275, paragraph nos. 7 to 10 of which read as under :

*“7. Gurubachan's confession has played an important part in implicating the appellant, and the question at once arises, how far and in what way the confession of an accused [sic co-accused-] person can be used against a co-accused [sic accused-]? It is evident that it is not evidence in the ordinary sense of the term because, as the Privy Council say in *Bhuboni Sahu v. R.* :*

“... It does not indeed come within the definition of ‘evidence’ contained in Section 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the



accused, and it cannot be tested by cross-examination.”

8. Their Lordships also point out that it is: (Bhuboni Sahu case, IA pp.155-56):

“... obviously evidence of a very weak type. ... It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities.”

They stated in addition that such a confession cannot be made the foundation of a conviction and can only be used in “support of other evidence”.

9. In view of these remarks it would be pointless to cover the same ground, but we feel it is necessary to expound this further as misapprehension still exists. The question is, in what way can it be used in support of other evidence? Can it be used to fill in missing gaps? Can it be used to corroborate an accomplice or, as in the present case, a witness who, though not an accomplice, is placed in the same category regarding credibility because the Judge refuses to believe him except insofar as he is corroborated?

10. In our opinion, the matter was put succinctly by Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerbutty, where he said that such a confession can only be used to “lend assurance to other



evidence against a co-accused” or, to put it in another way, as Reilly, J. did in Periyaswami Moopan, In re:

“... the provision goes no further than this— where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence.”

10. 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.

11. 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 reappraise, 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 reiterated the said view and 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.”

12. 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.



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

14. Accordingly, the present appeal is dismissed.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

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