

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.271 of 2025**

Arising Out of PS. Case No.-70 Year-1993 Thana- MADHUBANI TOWN District-
Madhubani

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Sunayna Devi, female, aged about 60 years, Wife of Late Jaynath Singh @ Jagannath Singh, Resident of Hospital Road, Bhupnarayan Singh Colony, Madhubani, P.S. - Town, District - Madhubani

... .. Appellant

Versus

1. The State of Bihar
2. Kripa Jha @ Kripanand Jha, male, aged about 68 years, Son of Mukti Nath Jha, Resident of Mauza - Nawkarhi, P.S. - Arer (Benipatti), District - Madhubani

... .. Respondents

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Appearance :

For the Appellant : Mr. Ravindra Kumar Singh, Advocate
Mr. Ashok Kumar Karna, Advocate
For the Respondents : Mr. Binod Bihari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)**

Date : 15-09-2025

The present criminal appeal has been preferred under Section 413 of the *Bhartiya Nagarik Suraksha Sanhita, 2023* against judgment of acquittal dated 07.12.2024, passed by the learned 5th Additional Sessions Judge, Madhubani, in Sessions Trial No. 174(A) of 1993 (CIS No.01 of 2015), arising out of Nagar P.S. Case No.0070 of 1993, whereby Respondent No.2, namely, Kripa Jha @ Kripanand Jha has been acquitted by the learned Trial Court from the charge of Section 302/34 of the Indian Penal Code.



2. The prosecution case, in brief, is that the informant along with Jagannath Singh used to work as an agent at private bus stand, Madhubani. It is alleged that Jagannath Singh had some previous dispute with regard to agentship of the bus stand with Jhagru Jha, Kripa Jha, Pramod Purbey and Raman Jha. On 03.03.1993, Jhagru Jha, Kripa Jha, Pramod Purbey and Raman Jha came at a tea stall where Jagannath Singh was present, caught him and stabbed knife on his stomach, chest and back, due to which he got injured and fell down and then the informant and others came at the place of occurrence, took the injured to hospital but on the way, he succumbed to the injuries.

3. On the basis of written report of the informant, Nagar P.S. Case No.0070 of 1993 was instituted under Section 302/34 of the Indian Penal Code 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 accused person to which he pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined altogether five prosecution witnesses, *i.e.*, PW-1 Phul Singh, PW-2 Ram Nath Yadav, PW-3 Bipin Kumar Singh, PW-4 Ram



Kripal Yadav and PW-5 Sanjay Kumar Singh. The prosecution has not produced any documents. No witness has been examined on behalf of the defence. The defence has also produced certain documents which were marked as 'Exhibits' i.e., Ext-A, certified copy of the FIR of Madhubani Town P.S. Case No.379 of 1986, Ext.-B certified copy of the F.I.R. of Rajnagar P.S. Case No.58 of 2000 and Ext.-C certified copy of the F.I.R. of Madhubani Town P.S. Case No.400 of 1991. After closure of prosecution evidence, the statements of the accused person was recorded under Section 313 of the Cr.P.C. and after conclusion of trial, learned Trial Court has acquitted the accused person.

5. The learned Trial Court, on the basis of the materials available on record, and the evidence produced before the Court, acquitted the accused person observing that no documentary evidence was placed before the Court and *fardebayan*, FIR, charge-sheet and inquest report has not taken in evidence. The Doctor, who has conducted the *postmortem* of the dead body of the deceased, has not been examined by the prosecution and the *postmortem* report has also not been taken into evidence. The I.O. has also not been examined. The prosecution has failed to prove the charges levelled against the



accused beyond any reasonable doubts.

6. Learned counsel for the appellant submits that the learned Trial Court has failed to appreciate the evidence of the prosecution witnesses in proper perspective and the settled proposition of law. The learned Trial Court has also failed to consider the settled principles of law to the extent that the chain of evidence and link in the circumstances are firm, definite and conclusive to hold the accused guilty beyond all reasonable doubts. He further submits that the learned trial court has failed to peruse the original case record of S.T. No.174 of 1993 despite the petition filed by the prosecution for its perusal which was already attached with the present trial by the order of the Trial Court dated 10.09.2018/16.01.2019 containing the deposition of the Doctor, I.O. *postmortem* report and other Exhibits.

7. The learned counsel for the State has submitted that there is no perversity in the judgment of the learned trial court, and the prosecution has 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.

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

9. The sole question that requires consideration by this



Court is whether the impugned judgment requires any interference by this Court.

10. Upon a careful appraisal of the evidence on record, this Court finds that the prosecution case suffers from serious infirmities which strike at its root and render the conviction unsustainable.

11. At the very outset, it is noted that the prosecution has failed to examine the Investigating Officer and the Doctor who conducted the *post-mortem*. Both are material witnesses whose testimony could have shed light on the fairness of the investigation, the place of occurrence, and the medical cause of death. In *Behari Prasad v. State of Bihar reported in (1996) 2 SCC 317*, the Hon'ble Supreme Court held that non-examination of the Investigating Officer is not in every case fatal to the prosecution, but whether prejudice is caused to the accused must be judged in the facts of each case, as observed in paragraph 23 of the judgment, which reads as under:

“23...Hence, for non examination of investigating Officer, the prosecution case should not fail. We may also indicate here that it will not be correct to contend that if an Investigating Officer is not examined in a case, such case should fail on the ground that the accused were deprived of the opportunity to effectively cross examine the witnesses for the



prosecution and to bring out contradictions in their statements before the police. A case of prejudice likely to be suffered by an accused must depend on the facts of the case and no universal straight jacket formula should be laid down that non examination of investigating Officer per se vitiates a criminal trial....”

12. Similarly, in ***Lahu Kamlakar Patil v. State of Maharashtra*** reported in (2013) 6 SCC 417, it was reiterated that while such omission does not automatically vitiate the prosecution, where the I.O.’s testimony is essential to prove the substratum of the case and no other evidence is forthcoming, the defect may prove fatal, as observed in paragraph 18 of the judgment, which reads as under:

“18. Keeping in view the aforesaid position of law, the testimony of PW 1 has to be appreciated. He has admitted his signature in the FIR but has given the excuse that it was taken on a blank paper. The same could have been clarified by the investigating officer, but for some reason, the investigating officer has not been examined by the prosecution. It is an accepted principle that non-examination of the investigating officer is not fatal to the prosecution case. In Behari Prasad v. State of Bihar [(1996) 2 SCC 317 : 1996 SCC (Cri) 271] , this Court has stated that non-examination of the investigating officer is not fatal to the prosecution case, especially, when no prejudice



is likely to be suffered by the accused. In Bahadur Naik v. State of Bihar [(2000) 9 SCC 153 : 2000 SCC (Cri) 1186] , it has been opined that when no material contradictions have been brought out, then non-examination of the investigating officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused. It is worthy to note that neither the trial Judge nor the High Court has delved into the issue of non-examination of the investigating officer. On a perusal of the entire material brought on record, we find that no explanation has been offered. The present case is one where we are inclined to think so especially when the informant has stated that the signature was taken while he was in a drunken state, the panch witness had turned hostile and some of the evidence adduced in the court did not find place in the statement recorded under Section 161 of the Code. Thus, this Court in Arvind Singh v. State of Bihar [(2001) 6 SCC 407 : 2001 SCC (Cri) 1148] , Rattanlal v. State of J&K [(2007) 13 SCC 18 : (2009) 2 SCC (Cri) 349] and Ravishwar Manjhi v. State of Jharkhand [(2008) 16 SCC 561 : (2010) 4 SCC (Cri) 50] , has explained certain circumstances where the examination of investigating officer becomes vital. We are disposed to think that the present case is one where the investigating officer should have been examined and his non-examination creates a lacuna in the case of the



prosecution.”

13. In the present case, the very *place of occurrence* is under doubt. Only the I.O. could have clarified whether the alleged spot was inspected, whether blood-stained earth or other incriminating material was seized, and whether the recovery was consistent with the prosecution story. His absence deprives the defence of the opportunity to test the fairness of the investigation and leaves the Court without reliable evidence on where and how the incident actually took place. Further, the prosecution has relied on oral witnesses who allege assault, but without the Doctor's testimony, there is no medical corroboration of whether the injuries were *ante mortem*, whether they were sufficient in the ordinary course of nature to cause death, or whether they matched the alleged weapon. The omission of these two witnesses is not a minor irregularity but a substantive defect. Both the I.O. and the Doctor are not just formal witnesses, but material ones whose evidence could have either confirmed or contradicted the prosecution version.

14. It is further noticed that the inquest report was not exhibited. Though not substantive evidence, the inquest is a contemporaneous document recording the initial circumstances of discovery of the body. In *Pedda Narayana v. State of*



Andhra Pradesh reported in (1975) 4 SCC 153, the Hon'ble Supreme Court explained that the purpose of an inquest under Section 174 of the Cr.PC is limited to ascertaining whether a person has died under suspicious circumstances and to record the apparent cause of death, as observed in paragraph 10 of the judgment which reads as under:

“10...Furthermore, proceedings for inquest under Section 174 of the CrPC have a very limited scope. Section 174 of the Code as it then stood read as follows :

174. Police to enquire and report on suicide, etc.

(1) The officer in charge of a police station or some other officer specially empowered by the State Government in that on receiving information that a person-

(a) has committed suicide; or

(b) has been killed by another, or by an animal, or by machinery, or by an accident; or

(C) has died under circumstances raising a reasonable suspicion that some other person has committed an offence; shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is and there, in the presence of two or more respectable



inhabitants of the neighbourhood, shall make an investigation and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any) such marks appear to have been inflicted.

*(2) * * **

(3) When there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

11. A perusal of this provision would clearly show that, the object of the proceedings under Section 174 is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death.”

15. Nevertheless, when such a record is withheld, the prosecution case loses an important foundation.



16. The prosecution has relied substantially on ocular testimony. The law is clear that ocular testimony, however credible, must be tested against medical and scientific evidence. In *Thaman Kumar v. State of U.T. Chandigarh* reported in (2003) 6 SCC 380, the Hon'ble Supreme Court held that where medical evidence contradicts or fails to support the ocular account, it would be unsafe to rest conviction solely on such testimony, as observed in paragraph 16 which reads 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 eye-witnesses. 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 category no such inference can straightway 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.”

17. In the present case, the failure to produce any medical evidence at all means that the oral accounts of witnesses stand wholly uncorroborated.

18. Another serious infirmity is the failure to prove the place of occurrence. Ordinarily, this is established through the testimony of the Investigating Officer supported by site plans and seizure memos. In the absence of such proof, the prosecution case remains uncertain. At this juncture it is noteworthy, that Hon'ble Supreme Court while deciding the case of *Syed Ibrahim vs. State of A.P.* reported in (2006) 10 SCC 601, in paragraph 11 has observed 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.”

19. Further, the alleged weapon of offence has neither been produced nor proved.

20. Thus, on cumulative appraisal, this Court finds



that the prosecution has failed to establish its case beyond reasonable doubt. The combination of non-examination of the I.O. and the Doctor, non-production of the inquest report, absence of medical evidence, failure to prove the place of occurrence, and non-production of the weapon, has left the case without corroborative support. The settled principle of criminal law is that where doubt arises from the evidence, it must enure to the benefit of the accused.

21. 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.

22. 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* reported in 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.....”

23. 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.”

24. 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.



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

26. Accordingly, the present appeal is dismissed.

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

(Sudhir Singh, J.)

(Alok Kumar Pandey, J.)

Gaurav Kumar/-

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