



THE HIGH COURT OF ORISSA AT CUTTACK

CRA No. 66 of 1996
CNR No. ODHC010-00864-1996

(In the matter of an application under Section 378 (4) of the Criminal Procedure Code, 1973)

Nandakishore alias *Appellant(s)*
Nandakishore Parida

-Versus-

Rajkishore Parida and others *Respondent(s)*

For the Appellant : Ms. Chetna Prakash, Amicus Curiae

For the Respondents: Ms. Heera Das, Amicus Curiae

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 30.07.2026 :: Date of Judgment: 25.08.2026

S.S. Mishra, J. The present appeal is preferred by the complainant/appellant challenging the judgment of acquittal dated 25.09.1995 passed by the learned JMSC, Jajpur in ICC Case No. 206/1993, whereby



respondents/accused persons have been acquitted under 427 of IPC.

2. The appellant had filed Criminal Misc. Case No. 34 of 1996 seeking leave of this Court to challenge the impugned judgment of acquittal. This Court, vide order dated 19.02.1996, granted leave to appeal to challenge the impugned judgment of acquittal. The appeal has remained pending for consideration before this Court since 1996.

3. When the appeal was taken up for hearing, continuously none appeared either for the appellant or for the respondents. Therefore, on 30.07.2026 this Court appointed Ms. Chetna Prakash and Ms. Heera Das, learned counsel, who are present in Court to assist the Court as Amicus Curiae on behalf of the appellant and respondents respectively. Both the counsel have obtained the soft copy of the trial court record and rendered effective assistance, for which this Court records appreciation.



4. The case of the appellant is that he has got record of right over the plot no.2829 under khata no.221 in mouza-Kacherigaon and has been in possession since 25.07.1977. The appellant had raised china variety of paddy crop over the said land. It is alleged that on 1.6.1993, all the accused persons forcibly entered into the subject land of the complainant and cut the eastern side ridge of the land and constructed a new ridge encroaching about an area of 80 links in length and 7 links in breadth as their land is adjacent to the land of the complainant. Thereafter, they ploughed the land of the complainant, as a result of which the paddy seedlings were destroyed. When the complainant protested their action, they abused him and also threatened to kill him. Thereafter, the complainant reported the matter at Baruan police outpost. As police did not take any step to investigate, the complainant filed the complaint case.



5. In order to substantiate his case, the complainant has examined four witnesses and also filed one document, whereas the defence while taking a stance of complete denial have examined one witness.

6. The learned trial court after analyzing the evidence on record, returned the following findings:-

“7. Apart from this, the prosecution has not called for the station diary entry or the FIR lodged in the Baruan outpost to substantiate its stand on the truth and veracity of this prosecution case. Another vital point raised by the defence counsels that P.W.1 has stated that besides accused persons, complainant and witnesses there are five to seven persons were present near the occurrence place on the case land and there are five to seven ploughs were being perated in nearby place of occurrence namely Dhaneswar Parida, Arjuna Nayak, Nakula Parida, Nrusingha Panda. None of the above persons have been examined. On the other hand prosecution has examined p.w.3 and p.w.4 who are interest witness in this case. The statement of p.w.1 clearly reflects the name of Biren Mohanty, Mukunda Nayak, and Sarat Nayak who have reached the occurrence place simultaneously with p.w.1. These persons are the eye witness to the occurrence but they have not been examined by the prosecution. Non examination of material witnesses by the



prosecution raised suspicion regarding the truth of the occurrence and credibility of the witnesses. Learned Justice D.M. Pattnaik of Orissa High Court observed that:-

“It is well settled that credibility of a witness should not be accepted merely because it is corroborated by the evidence of other witnesses but such credibility should be tested in the touchstone of the broad probabilities of the case. If doubt arises with regard to any material fact in a criminal case, the accused is always entitled to the benefit of such doubt (1995) OCR 231) in the case of Mangulu Kanhar and another vrs. State of Orissa.”

13. On thorough appraisal of evidence of prosecution and defence and considering the decision of Hon’ble High Court on the definition of beyond reasonable doubt the conclusion is irresistible that the prosecution witnesses could not be able to prove the case beyond reasonable doubt. In the result, the accused persons are found not guilty of the offence under 427 IPC and are acquitted of the same u/s 255(1) Cr.P.C.. They are set at liberty and their bail bonds do hereby stand cancelled.”

7. Aggrieved by the aforesaid findings leading to the acquittal order, the appellant has approached this Court by filing the present appeal.



8. Heard Ms. Chetna Prakash, learned Amicus Curiae for the appellant and Ms. Heera Das, learned Amicus Curiae for the respondents-accused.

9. Learned Amicus Curiae appearing for the appellant submitted that the learned trial court has completely misread the provisions of law. In paragraph-6 and 7 of the judgment, it has been observed that the complainant could not prove intimidation, insult and annoy, which are not the ingredients required to be proved by the complainant to attract the offence under section 427 of IPC, rather those ingredients are required to bring the case under the sweep of Section 448 of IPC. This itself shows the complete non-application of mind on the part of the learned trial court. She further submitted that the learned trial court has ignored the evidence of the complainant and passed the impugned judgment of acquittal on the ground that the station diary entry or the FIR alleged to have been lodged



by the complainant in Baruan outpost was neither proved nor call for to substantiate his case. The delay in filing the complaint is remained unexplained. That finding is contrary to the record. It is further contended that although the complainant has stated in the complaint that the incident is witnessed by the eye witnesses, but since the eye witnesses are not examined by the prosecution/complainant, the narrative put forth by the complaint regarding the occurrence cannot be believed.

10. Ms. Heera Das, learned counsel for the respondents submitted that the judgment of the learned trial court under challenge is a very detailed judgment meticulously dealing with the evidence on record. Therefore, no fault could be found from the impugned judgment. She further submitted that even if the argument of the appellant is taken on its face value that could be a possible view gathered from the evidence on record, but that itself is not



sufficient to up-set the reasoned judgment of the learned trial court.

11. I have taken into consideration the rival submission made by both the counsel appearing for the parties and also meticulously analyzed the evidence on record with the help of the learned Amicus Curiae. Since allegation made by the appellant against the respondents is bereft of any credible evidence, the learned trial court had no other option rather to record an acquittal. Therefore, this Court at this belated stage after lapse of more than three decades refrain to interfere by re-appreciating the evidences only to find whether any other possible view could be elucidated from the evidence or not. Even if any other view could be inferred on the re-appreciation of available evidence on record, the same cannot be substituted by up-setting the judgment of the learned trial court.



12. It is apt to note that interfering with an order of acquittal, this Court is required to bear in mind the well-settled principles governing an appeal against acquittal. In ***Tulasareddi @ Mudakappa & Anr. v. State of Karnataka & Ors.***, reported in **2026 INSC 67**, the Hon'ble Supreme Court has reiterated that where 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. It has further been held that if the view taken by the trial Court is a possible view based on the evidence available on record, the appellate Court cannot overturn the order of acquittal merely because another view is also possible. Interference is warranted only when the judgment of acquittal suffers from patent perversity, is based on misreading or omission of material evidence, or where compelling and substantial reasons exist showing that the acquittal is clearly



unreasonable. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

“29. From the aforesaid decisions rendered by this Court, it can be said that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the Trial Court. Further, 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. The following principles have to be kept in mind by the Appellate Court while dealing with the appeals against an order of acquittal:

- (a) whether the judgment of acquittal suffers from patent perversity;*
- (b) whether the judgment is based on misreading/omission to consider the material evidence on record;*
- (c) 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.*
- (d) 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;*
- (e) 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*
- (f) 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.”

The aforesaid principle has also been reiterated by the Hon'ble Supreme Court in ***Ballu v. State of Madhya Pradesh***, reported in **(2024) 12 SCC 202**, wherein it has been observed that suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt and that an accused is presumed to be innocent unless proved guilty beyond reasonable doubt. The Hon'ble Supreme Court, while dealing with reversal of an acquittal, further held that interference by the appellate Court would not be warranted unless the finding of acquittal is found to be perverse or impossible. Even where two views are possible and the trial Court has adopted one of them, the appellate Court would not be justified in interfering unless the view taken by the trial Court is



shown to be perverse or impossible. The Hon'ble Supreme Court observed:

“12. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

13. Apart from that, it is to be noted that the present case is a case of reversal of acquittal. The law with regard to interference by the appellate court is very well crystallised. Unless the finding of acquittal is found to be perverse or impossible, interference with the same would not be warranted. Though, there are a catena of judgments on the issue, we will only refer to two judgments which the High Court itself has reproduced in the impugned judgment [State of M.P. v. Ballu, 2018 SCC OnLine MP 1924] , which are as reproduced below: (Ballu case [State of M.P. v. Ballu, 2018 SCC OnLine MP 1924] , SCC OnLine MP paras 13-14)

“13. In Sadhu Saran Singh v. State of U.P. [Sadhu Saran Singh v. State of U.P., (2016) 4 SCC 357 : (2016) 2 SCC (Cri) 275] , the Supreme Court has held that: (SCC pp. 365-66, paras 20-21)

‘20. ... In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the



paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. This Court, while enunciating the principles with regard to the scope of powers of the appellate court in an appeal against acquittal, ...

21. ... has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded.'

14. Similarly, in Harijan Bhala Teja v. State of Gujarat [Harijan Bhala Teja v. State of Gujarat, (2016) 12 SCC 665 : (2016) 4 SCC (Cri) 84] , the Supreme Court has held that: (SCC p. 668, para 12)

'12. No doubt, where, on appreciation of evidence on record, two views are possible, and the trial court has taken a view of acquittal, the appellate court should not interfere with the same. However, this does not mean that in all the cases where the trial court has recorded acquittal, the same should not be interfered with, even if the view is perverse. Where the view taken by the trial court is against the weight of evidence on record, or perverse, it is always open for the appellate court to express the right conclusion after reappreciating the evidence if the charge is proved beyond reasonable doubt on record, and convict the accused.' ”

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34. *The High Court could have interfered in the criminal appeal only if it came to the conclusion that the findings of the trial Judge were either perverse or impossible.*



As already discussed hereinbefore, no perversity or impossibility could be found in the approach adopted by the learned trial Judge.

35. *In any case, even if two views are possible and the trial Judge found the other view to be more probable, an interference would not have been warranted by the High Court, unless the view taken by the learned trial Judge was a perverse or impossible view.”*

The scope of such appellate scrutiny has also been summarised by the Hon'ble Supreme Court in ***H.R. Sundara v. State of Karnataka***, reported in **2023 INSC 858**. The Hon'ble Supreme Court has summarised the principles governing the exercise of appellate jurisdiction in an appeal against acquittal. It was held thus:-

“7. In this appeal, we are called upon to consider the legality and validity of the impugned judgment 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 of Cr.P.C. can be summarised as follows: -



- (a) The acquittal of the accused further strengthens the presumption of innocence;*
- (b) The Appellate Court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence;*
- (c) The Appellate Court, while deciding an appeal against acquittal, after re-appreciating 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;*
- (d) 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*
- (e) 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.”*

This principle has been further explained in ***Mallappa & Ors. v. State of Karnataka***, reported in ***2024 INSC 104***, the Hon'ble Supreme Court has held that the presumption of innocence, which every accused enjoys during trial, gets strengthened and concretized once the trial culminates in an order of acquittal. Consequently,



while exercising appellate jurisdiction against an acquittal, a higher threshold is required to rebut such reinforced presumption. Unless the findings recorded by the trial Court are manifestly unsustainable or perverse, the appellate Court ought to exercise great restraint in upsetting the acquittal. It was held thus:-

“24. We may firstly discuss the position of law regarding the scope of intervention in a criminal appeal. For, that is the foundation of this challenge. It is the cardinal principle of criminal jurisprudence that there is a presumption of innocence in favour of the accused, unless proven guilty. The presumption continues at all stages of the trial and finally culminates into a fact when the case ends in acquittal. The presumption of innocence gets concretized when the case ends in acquittal. It is so because once the Trial Court, on appreciation of the evidence on record, finds that the accused was not guilty, the presumption gets strengthened and a higher threshold is expected to rebut the same in appeal.”

Thus, the appellate jurisdiction in an appeal against acquittal, though undoubtedly wide enough to permit re-appreciation of the evidence, is not intended to facilitate a mere substitution of the opinion of the trial



Court. The appellate Court must first ascertain whether the findings recorded by the trial Court are vitiated by patent perversity, misreading or non-consideration of material evidence, or are so unreasonable that no prudent judicial mind could have arrived at such a conclusion. The strengthened presumption of innocence following an acquittal, as explained in ***Mallappa (supra)***, requires the appellate Court to exercise greater restraint before disturbing such finding. Therefore, unless the view taken by the learned trial Court is found to be perverse, impossible, clearly unreasonable or wholly unsustainable on the evidence available on record, the mere possibility of another view cannot constitute a sufficient ground for interference.

13. Testing the present case on the anvil of the aforesaid principles, this Court finds that the appreciation of evidence by the learned trial Court cannot be said to be



either perverse or wholly unreasonable. Merely because another view may also be possible, the same cannot furnish a ground to reverse the acquittal in exercise of appellate jurisdiction.

14. Accordingly, the Criminal Appeal stands dismissed.

15. This Court acknowledges the effective and meaningful assistance rendered by Ms. Chetna Prakash, learned Amicus Curiae for the appellant and Ms. Heera Das, learned Amici Curiae for the respondent. Learned Amicus Curiae are entitled to an honorarium of Rs.5,000/- (Rupees five thousand) each to be paid as a token of appreciation.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 25th August, 2026/ Ashok