

IN THE COURT OF THE SESSIONS JUDGE, AURANGABAD

Present :- Rajeev Ranjan Kumar,
Sessions Judge,
Aurangabad (Bihar)

Criminal Appeal No. 62/2024

Uphara P.S case no.53/2012

Dated, the 06th Day of August, 2026

Arvind Mishra, age 51, S/o Late Ramakant Mishra, R/o Hameednagar, P.S-Uphara,
Aurangabad, BiharAppellant

Versus

1. Ashok Mishra, age 50 years, S/o Late Shrikant Mishra, R/o Hameed Nagar, P.S-Uphara, Aurangabad, Bihar
2. State of Bihar

.....Respondents

For the Appellant :- Sri Ashok Kumar Sinha Id. Adv.

For the Respondent :- Sri Ajay Kumar, Id. P.P.

J U D G M E N T

1. The present Criminal Appeal has been preferred against the judgment dated 22.07.2024 passed by the learned Judicial Magistrate, First Class, Daudnagar in G.R. No. 798 of 2012, Trial No. 2050 of 2024, arising out of Uphara P.S. Case No. 53 of 2012, whereby the learned Trial Court has acquitted Respondent No. 1, named as Ashok Mishra, of the charges punishable under Sections 380 and 461 of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC").

2. The brief facts giving rise to the present appeal are that the informant, Arvind Mishra, was serving as an Inspector in the National Disaster Response Force (NDRF). During the course of his service, he was posted outside his native place. Taking advantage of his absence, Respondent No. 1, who is the cousin of the informant, allegedly committed house-breaking by forcibly entering the informant's residential house and removing various household articles, including utensils made of

brass, steel, and pewter plate, as well as wearing apparel and other valuable belongings. It is further alleged that one of the doors of the house was also removed from its hinges. The occurrence took place on dated 02.10.2012. Thereafter, on dated 03.10.2012, the informant's elder brother, Dev Muni Mishra, submitted a written report before the SHO, Uphara Police Station, requesting registration of an FIR against the accused. However, despite the submission of the written report, no FIR was registered by the police. Consequently, the informant approached the Superintendent of Police, Aurangabad, by filing a representation seeking appropriate action. Pursuant to the intervention of the Superintendent of Police, the present FIR was registered as Uphara P.S. Case No. 53 of 2012 against Respondent No. 1, Ashok Mishra.

3. Learned counsel appearing on behalf of the appellant has submitted that the impugned judgment dated 22.07.2024 passed by the learned trial Court is contrary to law and is therefore liable to be set aside. The learned trial Court has committed a grave error in holding that the IO had not recorded the statements of PW-2, PW-4, and PW-6 under Section 161 of the Cr.P.C, despite the fact that their statements form part of the case diary. The said finding is factually incorrect and has resulted in a serious miscarriage of justice. It is further submitted that all the prosecution witnesses have consistently and materially supported the prosecution case. Their testimonies inspire confidence and establish the guilt of the accused beyond reasonable doubt. The learned trial Court has failed to properly appreciate the oral as well as documentary evidence adduced by the prosecution. The impugned judgment is based on conjectures, surmises, and erroneous assumptions rather than on the evidence available on record. The learned trial Court has also proceeded on the assumption that there existed a land dispute between the parties and has treated the criminal case as a consequence of such alleged dispute. However, the defence failed to produce even a single document or any cogent evidence to establish the existence of any land dispute or any previous litigation between the parties. In the absence of any such evidence, the learned trial Court was not justified in disbelieving the prosecution case on that ground alone. The findings recorded by the learned Trial Court are perverse, contrary to the evidence on record, and unsustainable in law. The acquittal of Respondent No. 1 has resulted in a grave miscarriage of justice and it is prayed to set aside the impugned judgment of acquittal dated 22.07.2024 and to

convict the Respondent No. 1 for the offences punishable under Sections 380 and 461 of the IPC, in accordance with law.

4. Learned P.P for the State and learned counsel for the Respondent no.1 have supported the impugned judgment of acquittal and submitted that the learned Trial Court has rightly appreciated the evidence available on record and recorded a well-reasoned finding. It is submitted that the prosecution has failed to establish the charges against Respondent No. 1 beyond reasonable doubt. Accordingly, it is prayed that the present appeal, being devoid of merit, be dismissed and the judgment of acquittal dated 22.07.2024 be affirmed.

5. Heard and perused the record.

6. Before entering into the merits of the case and examining the correctness and legality of the findings recorded by the learned Trial Court, it would be appropriate to briefly notice the background in which the present appeal has been arisen.

7. The present FIR was registered as Uphara P.S. Case No. 53 of 2012 under Sections 461 and 379 of the IPC against Respondent No. 1, Ashok Mishra. The prosecution case is that the respondent committed house-breaking and removed household articles from the house of informant. It is evident from the record that initially the informant's elder brother, Dev Muni Mishra (PW-3), submitted a written application before the SHO on dated 03.10.2012. As no FIR was registered, the informant approached the Superintendent of Police, Aurangabad, whereupon the present FIR came to be instituted. After completion of investigation, the respondent faced trial before the learned Trial Court and, after appreciation of evidence, was acquitted of the charges under Sections 380 and 461 of the IPC. The said order of acquittal has been challenged in the present appeal.

8. The law clearly states that when appellate court reviews a case where someone was found not guilty, the appellate court must exercise caution and restraint. If the view taken by the Trial Court is a possible view based on the evidence available on record, the same should not be interfered with merely because

another view may also be possible. The order of acquittal can be reversed only when the findings recorded by the Trial Court are perverse, manifestly illegal, or contrary to the evidence on record. In the present case, upon reappraisal of the evidence available on record, it appears that the prosecution has examined seven witnesses. PW-1, the informant Arvind Mishra, admittedly was not present at the place of occurrence at the relevant time. He stated that he came to know about the alleged occurrence from his brother, Dev Muni Mishra. He further admitted that he had not seen Respondent No. 1 breaking open the lock or removing any articles from the house. Thus, his evidence is based upon information received from others and is not direct evidence of the alleged occurrence. PW-3, Dev Muni Mishra, who had submitted the initial application before the police, also admitted that he had not witnessed the occurrence and came to know about the incident through Rakesh Mishra. Therefore, his evidence is also hearsay in nature. PW-5, Sheoshankar Mishra, similarly admitted that he was not present at the place of occurrence and had received information from Rakesh Mishra.

9. The prosecution mainly relied upon PW-2, PW-4, and PW-6, who claimed to be eye-witnesses to the occurrence. However, the learned Trial Court noticed that their statements were not recorded by the IO under Section 161 of the Cr.P.C. The Investigation Officer (I.O) (PW-7) admitted that he had recorded the statements of only Dev Muni Mishra and Sheoshankar Mishra. The I.O had failed to explain as to why the statements of the said eye-witnesses were not recorded during investigation or why their statements were not incorporated in the case diary. The learned Trial Court, relying upon the said circumstance, found that the prosecution could not subsequently improve its case by introducing witnesses whose statements were not recorded during investigation. The evidence of PW-2, PW-4, and PW-6 also do not inspire confidence. Their conduct during the alleged occurrence appears unnatural. PW-2 admitted that he did not raise any alarm after allegedly witnessing the occurrence. PW-4 also stated that she did not raise any shouting at the time of incident. PW-6, though claiming to be an eye-witness, admitted that her statement was not recorded by the police. These circumstances create doubt regarding their presence at the place of occurrence.

10. Another important aspect of the case is that no any stolen articles were recovered either from the possession or the house of Respondent No. 1. The alleged broken lock was also not seized by the IO. No photograph of the place of occurrence was taken, and no independent witness from the locality was examined. The absence of recovery and failure of investigation to collect corroborative evidence creates a serious doubt regarding the prosecution version. It is also evident from the evidence of the prosecution witnesses that there was previous litigation and dispute between the parties. Witnesses had admitted the existence of proceedings under Sections 107 and 144 of the Cr.P.C and previous disputes between the parties. Though the testimony of related or interested witnesses cannot be discarded merely on the ground of relationship, such evidence requires careful scrutiny. In the present case, the material witnesses are closely connected with the informant and their testimony do not inspire confidence either from any independent source or recovery of stolen articles. The learned Trial Court has considered all these aspects, including the contradictions in the evidence, the nature of the testimony of witnesses, the delay in lodging the FIR, the lapses in investigation, non-recovery of stolen articles, and previous disputes between the parties. The Trial Court has recorded a finding that the prosecution has failed to establish the charges beyond reasonable doubt.

11. This Court finds that the view taken by the learned trial Court is a possible view based on the evidence available on record. The reasons assigned by the learned trial Court cannot be said to be perverse, unreasonable, or contrary to law. The prosecution evidence suffers from material deficiencies and does not establish the guilt of Respondent No. 1 beyond reasonable doubt. Therefore, this Court does not find any sufficient ground to interfere with the well-reasoned judgment of acquittal dated 22.07.2024 passed by the learned Judicial Magistrate, First Class, Daudnagar. Accordingly, the present Criminal Appeal, being devoid of merit, is hereby dismissed, and the judgment of acquittal passed by the learned Trial Court is affirmed.

Dictated & corrected by me

Dictated by me

(Rajeev Ranjan Kumar)
Principal District &
Sessions Judge
Aurangabad
06.08.2026

(Rajeev Ranjan Kumar)
Principal District &
Sessions Judge
Aurangabad
06.08.2026