

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.19 of 2022

Arising Out of PS. Case No.-315 Year-2019 Thana- BEUR District- Patna

DILEEP KUMAR Son of Mahabir Prasad Resident of Village - Aakupur
Nagama, P.s.- Janipur, Distt.- Patna.

.. ... Appellant

Versus

1. The State of Bihar
2. Rishi Kumar Singh Son of Late Gopal Singh Resident of Village - Hasanpur,
P.s.- Shahjahanpur, Distt.- Patna, Bihar.
3. Shammi Anand Son of Dharmendra Kumar @ Vimal Sharma Resident of
Village - Mewa, P.S.- Pipara, Distt.- Patna, Bihar.

... ... Respondent

Appearance :

For the Appellant/s	:	Mr. Vikramdeo Singh, Advocate
For the State	:	Mr. Abhimanyu Sharma, APP
For Respondent Nos. 2	:	Mr. Ashok Kumar Choudhary, Sr. Advocate
		Mr. Prakash Kumar, Advocate
For Respondent No. 3	:	Mrs. Nivedita Nirvikar, Advocate
		Mr. Deovind Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH
ORAL ORDER
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

6 11-07-2023 Heard learned counsel for the parties at the stage of admission itself.

2. The present criminal appeal is preferred against the judgment of acquittal dated 15.11.2021 passed by learned Additional Sessions Judge-XXV, Patna in Sessions Trial No. 224 of 2020, arising out of Beur P.S. case No. 315 of 2019 whereby Respondent Nos. 2 and 3 of the present criminal appeal have been acquitted by the learned Trial Court for the charge under Sections 302/34, 120B of Indian Penal Code and Section



27(1) of Arms Act.

3. Vide order dated 20.07.2022, lower Court records was called for and notices were issued to Respondent Nos. 2 to 5 upon which they appeared on filing Vakalatnama.

4. The lower Court records has been received.

5. The prosecution case in brief is that on 23.08.2019 at 7:00 p.m., Rishi Kumar Singh and his brother Raushan Kumar left their house in a vehicle with registration number BR-06-AW-9730. Rishi Kumar Singh took his brother to a room situated at Harischandra Nagar, Agricultural Farm where Shammi Anand, Bittu, and Vijay were present. Shammi Anand, Bittu, and Vijay then took Raushan Kumar in the aforesaid vehicle, pretending to receive someone there. However, they shot and killed Raushan Kumar in the vehicle. Raushan Kumar had a business relationship with Neeraj Singh, and on 20.07.2019, they settled their account with a heated exchange of words in the presence of one Ashish. The informant further stated that Neeraj Singh owed Rs. 4 lakhs to Raushan Kumar for which he gave him a cheque from his father's account. Neeraj Singh assured Raushan Kumar that the cheque would be honoured within 1-2 days, but even after 10-15 days, the cheque remained unpaid. Raushan Kumar was pressurizing Neeraj



Singh for the money, which allegedly led to the pre-planned shooting orchestrated by Neeraj Singh, along with Shammi Anand, Rishi Kumar, Bittu, Vijay, and Ashish.

6. On the basis of written report of the informant, Beur P.S. case No. 315 of 2019 has been registered under Sections 302, 120B and 34 of the Indian Penal Code and Section 27 of the Arms Act. The police after completion of investigation submitted charge-sheet against the accuseds. The cognizance of the offence was taken and thereafter the case was committed to the Court of Sessions. Charges were framed against the accuseds on which they pleaded not guilty and claimed to be tried.

7. During the trial, the prosecution examined altogether five witnesses viz. PW1 Deepak Kumar, PW2 Dev Kumar @ Devendra Kumar, PW3 Dilip Kumar, PW4 Awadhesh Prasad and PW5 Dr. Shiv Ranjan Kumar. The prosecution has also produced exhibits as Ext. 1 written report, Ext. 2 inquest report, Ext. 3 Formal FIR, Ext. 4, 4/1 and 4/2 signature of I.O. on the seizure lists, Ext. 4/3 signature of I.O. on dead body challan, Ext. 5 Charge-sheet, Ext. 6. post mortem report. After closure of prosecution evidence, the statements of accused persons were recorded under Section 313 Cr.P.C. and



after conclusion of the trial, learned trial Court has acquitted the accused persons.

8. 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 passed in the case of ***Surajpal Singh & Ors. versus The State*** reported in ***1952 SCR 193***,

“..the High Court has full power to review the evidence upon which the order of acquittal was founded. But it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

In the case of ***Ghurey Lal v. State of Uttar Pradesh*** reported in ***(2008) 10 SCC 450*** in para no. 75, the Hon'ble Supreme Court re-iterated the said view and observed as follow:



“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.”

9. The grounds considered by the learned Trial Court for acquitting Respondent Nos. 2 and 3 are as under:

- (i) There is no eyewitness in the present case.
- (ii) No call detail records were produced and marked as exhibits in this case, as the investigating officer claimed that nothing suspicious was found in the call detail records. Thus, the best evidence that could have been presented was withheld.
- (iii) The ownership/possession of the vehicle, as well as the authenticity of its registration number, found with the body, have not been verified.
- (iv) The room situated at Harishchandra Nagar where it is alleged that the deceased was last present has not been verified. Additionally, the presence of other accused persons in the room has not been established.
- (v) The purse/wallet of one of the accused found in the dais of the said vehicle has no FSL report. and verification report.
- (vi) The FIR was written after the preparation of the inquest report and seizure list.



(vii) Prosecution has not established in a full proof manner the motive to murder the deceased by any evidence.

(viii) Except for the seizure list, none of the articles have been produced before the court.

10. After hearing the arguments advanced by the learned counsel appearing for both the parties and upon marshalling the materials available on the record, the only issue arise for consideration before this Court is that whether the prosecution has been able to prove the chain of circumstances which unerringly points towards the guilt of the accused?

11. Upon careful perusal of the available records, it becomes evident that no eyewitness account is present in this case, and the prosecution's case rests solely on circumstantial evidence. The prosecution witnesses had alleged that the accused, Sammi Anand, frequently made calls to the mobile phone of the deceased. Consequently, both the mobile phones belonging to the deceased and the accused persons, namely Sammi Anand and Rishi Kumar Singh, were duly seized. However, it came to light that no Call Detail Record (CDR) had been attached to the case diary, and there was an absence of any mention of incoming or outgoing calls from the seized mobile phones. Conversely, PW 4 had explicitly stated that no suspicious activity was discovered during the examination of the



seized mobile phones. Consequently, it is evident from the records that the prosecution had deliberately withheld material evidence. Moreover, in cases involving circumstantial evidence, establishing motive becomes crucial in providing a plausible explanation for the prosecution's claims and enables the court to draw reasonable inferences. In this regard, it becomes imperative to take into account the pronouncement of the Hon'ble Supreme Court in the case of ***Surinder Pal Jain vs. Delhi Administration***, reported in ***AIR 1993 SC 1723***, wherein it was astutely observed:

“In a case based on circumstantial evidence, motive assumes pertinent significance as existence of the motive is an enlightening factor in a process of presumptive reasoning in such a case. The absence of motive, however, puts the court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof.”

12. Furthermore, the prosecution alleged that the accused transported the deceased to a room in Harischandra Nagar from the clinic of the informant, marking the last known sighting of the deceased. However, significant discrepancies emerge among the testimonies presented by the prosecution regarding the presence of prosecution witnesses in the clinic



wherefrom the deceased went with the accused (Rishi Kumar Singh) in the vehicle. It is found that PW 1 remains silent regarding the arrival of Rishi Kumar Singh in a vehicle to pick the deceased, whereas PW 2 and PW 3 assert in their depositions that the accused arrived in a vehicle. Astonishingly, PW 4 (Investigating Officer) failed to investigate the ownership of the vehicle or establish any link between the accused and its possession. Even if we consider the fact that the deceased was last seen with the accused to be true, it is only one chain in the whole circumstances on the basis of which conviction cannot be upheld. In this context, it is relevant to refer to the decision in ***Arjun Marik v. State of Bihar***, reported in ***1994 Supp (2) SCC 372***, wherein it was established in paragraph 385:

“.. ... it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded..”

Also, the Hon’ble Apex Court in ***Jaswant Gir v. State of Punjab*** reported in ***(2005) 12 SCC 438*** observed that:

“5. ... In the absence of any other links in the chain of circumstantial evidence, it is not possible to convict the appellant solely on the basis of the ‘last seen’ evidence, even if the version of PW 14 in this regard is believed..”



13. Additionally, the prosecution claimed that accused persons subsequently took the deceased to another location, where they allegedly perpetrated the shooting. However, it is found that the law enforcement authorities failed to conduct a visit to the said room in Harischandra Nagar to verify this assertion that the deceased was brought here and to establish the fact that the accused persons were present at the alleged place beforehand (room in Harishchandra Nagar). Further, it is found that no forensic examination of the blood-stained purse, which was found in the vehicle, was brought on record. These discrepancies undermine the prosecution's case as they were unable to substantiate these facts and establish the connection between the chains of circumstances. In this context, it is relevant to refer to the decision in ***Trimukh Maroti Kirkan v. State of Maharashtra*** reported in (2006) 10 SCC 681 in paragraph 12, wherein it was observed that:

“... ..The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the



accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.”

14. Therefore, in light of the presented facts and the observations of the Hon’ble Supreme Court, it is evident that the chain of circumstances has not been sufficiently proven to establish the guilt of the accused. Hence, the issue is decided in the negative.

15. Having regard to the entire material available on record and having carefully and closely considered the judgments of the learned trial Court, it appears that the view taken by the learned trial Court was reasonable and plausible.

16. Accordingly, the appeal against the judgment of acquittal dated 15.11.2021 passed by learned Additional Sessions Judge-XXV, Patna in Sessions Trial No. 224 of 2020, arising out of Beur P.S. case No. 315 of 2019, is dismissed at the admission stage itself.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

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