

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.550 of 2023

Arising Out of PS. Case No.-343 Year-2019 Thana- BAGHA District- West Champaran

RADHE SHYAM MAHATO @ RADHESHWAR MAHTO Son of Prasad
Mahato Resident of Deurawa, P.S.- Bhairoganj, District - West Champaran.

... .. Appellant

Versus

1. The State of Bihar
2. Harikesh Sahani Son of Jagdish @ Bhashakar Sahani Resident of Jarlahiya
Sirisiya, P.S.- Bhairoganj, District - West Champaran.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Vijay Kr Singh No. 1, Advocate
	:	Mr. Ravishankar Sahay, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 10-01-2024

Heard Mr. Vijay Kr Singh No. 1 assisted by Mr.
Ravishankar Sahay, learned Advocate for the appellant /
informant and Mr. Bipin Kumar, learned A.P.P for the
Respondent-State.

2. This appeal has been filed on behalf of the
appellant / informant under Section 372 of the Code of Criminal
Procedure, 1973 (hereinafter referred as the Code) against the
judgment and order of acquittal dated 14.03.2023 rendered by



the learned IIIrd Additional Sessions Judge, Bagaha, West Champaran in Sessions Trial No. 122 of 2020 arising out of Bagha P.S. Case No. 343 of 2019 whereby, the concerned trial Court has acquitted the private respondent / accused from the charges levelled against him, for the offences punishable under Sections 302, 304(B), 201 read with 34 of the Indian Penal Code (hereinafter referred to as the IPC).

3. The prosecution case, in short, is based on the *fardbeyan* given by informant dated 18.06.2019 at 01:05 P.M. stating therein that previous night at 7:30 P.M., his son-in-law, namely, Harikesh with his friend had come to the house and said that his mother is ill and requested that his wife (deceased) should go with him, which was permitted and thereafter he went away with the victim. On the next day at 10:00 O'clock his son-in-law telephoned to his son and stated that the victim is not present in the house rather had gone towards Bhairoganj, so he should search. Upon this information, the informant's family went out in search of victim and in that continuation, they received the information that near Nadala on a railway track dismembered dead body of a female is lying. On searching there, they found that the dead body was of the victim, and thus they alleged that his son-in-law, with assistance of unknown one



under conspiracy after killing her dumped the dead body on the railway track as the accused wanted to marry with another lady.

4. After the registration of the FIR, the Investigating Agency commenced the investigation and thereafter during the course of the investigation, the Investigating Officer prepared the Inquest Report and sent the dead body of the deceased for the purpose of *post mortem*. Statements of the witnesses were also recorded by the Investigating Officer and thereafter the Investigating Agency filed the charge-sheet against the private respondent / accused for the offences punishable under Sections 302, 304(B), 201 read with 34 of the IPC. The concerned Magistrate committed the case under Section 209 of the Code to the concerned Sessions Court as the same was exclusively triable by the Court of Sessions.

5. Before the Sessions Court, the prosecution had examined nine witnesses and defence has also examined two witnesses, including the private respondent / accused as DW-1.

6. After the conclusion of the trial, the trial Court acquitted the private respondent / accused and, therefore, the informant has preferred the present appeal.

7. Learned Advocate for the appellant / informant has mainly contended that though it is a case of circumstantial



evidence, the prosecution has completed the chain of circumstance and thereby proved the case against the private respondent / accused beyond reasonable doubt, despite which the trial Court has passed the impugned order. Learned Advocate for the appellant / informant has separately provided the copy of the deposition of the witnesses. After referring to the same, learned Advocate would submit that PW-4, who is cousin of the deceased, in his cross-examination has stated that respondent was having relation with some lady. Thus, the prosecution has proved the motive on the part of the private respondent / accused to kill his wife. It is further submitted that the blood was not found near the railway track from where the dead body of the deceased was found. Thus, these are the circumstances from which it can be said that the private respondent / accused has committed the alleged offences. Learned Advocate, at this stage, has vehemently submitted that the parents of the deceased have specifically stated in their deposition that the private respondent / accused came with his friend at the house of the deceased and the deceased was taken by the private respondent / accused with him and thereafter the dead body of the deceased was found on the next morning. Thus, the prosecution has proved the theory of last seen together



despite which, the trial Court has acquitted the private respondent / accused. Learned Advocate, therefore, urged that the appeal requires consideration and, therefore, this appeal be admitted and thereafter the impugned order be quashed and set aside.

8. On the other hand, learned A.P.P. has submitted that the trial Court has not committed any error while passing the impugned order and, in fact, till date the State has not preferred any acquittal appeal against the impugned order passed by the trial Court. However, learned A.P.P. submitted that this Court may pass appropriate order, looking to the facts and circumstances of the present case.

9. We have considered the submissions canvassed by the learned Advocates appearing for the parties. We have also perused the materials placed on record, including the depositions, copy of which has been supplied separately, by learned Advocate for the appellant. From the evidence led by the prosecution, it would emerge that the prosecution had examined nine witnesses and it is not in dispute that there is no eye-witness to the occurrence in question and the case of the prosecution rests on circumstantial evidence. None of the prosecution witnesses have alleged that there was a demand of



dowry made by the private respondent / accused and the deceased was subjected to cruelty immediately prior to the occurrence in question. The relevant prosecution witnesses have stated that the private respondent / accused along with his friend came to the house of the deceased and deceased was taken with them on the pretext that mother of the private respondent / accused was ill. Thus, the private respondent / accused was lastly seen in company of the deceased at about 8:00 P.M. and thereafter on the next morning at 7:30 A.M., the dead body of the deceased was found near the railway track and the charge was framed under Sections 302, 304(B), 201 read with 34 of the IPC.

10. At this stage, we would like to refer to the deposition given by PW-8, namely, Dr. Surendra Prasad Agrawal who has stated in his deposition in examination-in-chief as under :-

1.) I was posted at Sub-Divisional Hospital Bagha as D.S. on 18.06.2019 at 4.15 PM and on the same day I did P.M examination on the dead body of Puja Devi D/O Radheshyam aged 19 years vill- Dewarva, PS – Bhairoganj, Dist - W Champaran recognized wise Chaukidar Harendra Ram and found followings on her person -



External

Crushed of neck leading to separation of head. Bruise on right forearm 4 cm x 3 cm multiple bruises on body size 10 cm x 3 cm to 3 cm x 1 cm.

Internal-Brain is separated from trunk, pale and intact. Heart intact pale and all chambers are empty. Liver, spleen, kidney and lungs are intact and pale. Stomach contain partial digested food. Urinary bladder is empty.

Time since death- within 4 to 6 hours.

Cause of death- hemorrhagic shock due to cut by rail.

2. This P.M report was written by me and bears my signature. This P.M report is Ext- 1.

10.1) Thereafter, during the course of cross-examination, the said doctor has specifically stated that from the injuries found on the dead body of the deceased it can be said that it was a suicidal death. Thus, the concerned expert, i.e. the doctor, has specifically opined that it was a case of suicidal death.

11. Learned Advocate for the appellant has though contended that PW-9, the Investigating Officer has stated in his examination-in-chief that call details of the mobile phone of the private respondent / accused was obtained from which it can be



said that location of the said mobile was found near the place of occurrence, however, the required certificate under Section 65 (B) of the Evidence Act has not been produced. It is further relevant to note that even original copy of the Inquest Report was not produced before the trial Court and only photocopy was produced.

12. From the evidence led by the prosecution, it appears that the prosecution as well as the present appellant has mainly placed the circumstances of last seen together and on the basis of which it is alleged that the private respondent / accused has killed his wife, i.e. the deceased, and thereby has committed the alleged offences.

13. We are of the view that prosecution has also failed to prove the motive on the part of the private respondent / accused to kill his wife. It is well settled that motive assumes importance in case of circumstantial evidence.

14. In the case of ***Sharad Biridhichand Sarda V. State of Maharashtra***, reported in ***AIR 1984 SC***, the Hon'ble Supreme Court has observed in paragraph nos. 152 to 159 as under:

“152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused



can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

*It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in **Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra()** where the following observations were made:*

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty,
(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the



innocence of the accused and must show that in all human probability the act must have been done by the accused.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

154. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in The King v. Horry, (l) thus:

"Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for."

155. Lord Goddard slightly modified the expression, morally certain by 'such circumstances as render the commission of the crime certain'.

156. This indicates the cardinal principle' of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry's case (supra) was approved by this Court in



Anant Chintaman Lagu v. The State of Bombay(2) Lagu's case as also the principles enunciated by this Court in Hanumant's case (supra) have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases Tufail's case (supra), Ramgopals case (supra), Chandrakant Nyalchand Seth v. The State of Bombay (Criminal Appeal No. 120 of 1957 decided on 19.2.58), Dharmbir Singh v. The State of Punjab (Criminal Appeal No. 98 of 1958 decided on 4.11.1958). There are a number of other cases where although Hanumant's case has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration(1). Mohan Lal Pangasa v. State of U.P.,(2) Shankarlal Gyarsilal Dixit v. State of Maharashtra (3) and M.C. Agarwal v. State of Maharashtra(4)-a five-Judge Bench decision.

157. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor-General relying on a decision of this Court in **Deonandan Mishra v. The State of Bihar**(5), to supplement this argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor General we are unable to agree with the interpretation given by him of the aforesaid



case, the relevant portion of which may be extracted thus:

"But in a case like this where the various links as started above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation-such absence of explanation of false explanation would itself be an additional link which completes the chain."

158. *It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can be used as additional link, the following essential conditions must be satisfied:*

(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved. (2) the said circumstance point to the guilt of the accused with reasonable definiteness, and (3) the circumstance is in proximity to the time and situation.

159. *If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case.*



This aspect of the matter was examined in Shankarlal's case (supra) where this Court observed thus:

"Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused."

15. In the case of **Anjan Kumar Sarma & Ors Vs. State of Assam**, reported in **(2017) 14 SCC 359**, the Hon'ble Supreme Court has observed in paragraph nos. 13, 16 and 21 as under:

*"13. Jit Kakati was acquitted for committing an offence under Section 366-A and his acquittal was confirmed by the High Court. Jit Kakati died during the pendency of the Criminal Appeal before this Court and the appeal filed by him abated. The acquittal of the Appellants under Section 376(2) (g) was confirmed by the High Court which remains unchallenged. The point that falls for our consideration is whether the conviction of the Appellants by the High Court under Section 302, 201 read with 34 IPC is justified. The High Court was conscious of the fact that interference with the judgment of an acquittal by the Trial Court is unwarranted except when it suffers from the vice of perversity (See: **Brahm Swaroop v. State of U.P.**, (2011) 6 SCC 288 ¶ 38). There*



is neither a discussion nor finding recorded by the High Court about any perversity in the judgment of the Trial Court. The only ground on which the High Court reversed the judgment of the Trial Court is that the prosecution proved that the accused and the deceased were last seen together and there was no explanation which led to the presumption of guilt of the Accused.

*16. It is no more res integra that suspicion cannot take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and the legal proof. At times it can be a case of “may be true.” But there is a long mental distance between “may be true” and “must be true” and the same divides conjunctures from sure conclusions. (See: **Jaharlal Das v. State of Orissa, (1991) 3 SCC 27 para 11**)*

*21. This Court in **Bharat v. State of M.P., (2003) 3 SCC 106**, held that the failure of the accused to offer any explanation in his statement under Section 313, Cr.P.C. alone was not sufficient to establish the charge against the accused. In the facts of the present case, the High Court committed an error in holding that in the absence of any satisfactory explanation by the accused the presumption of guilt of the Accused stood un-rebutted and thus the Appellants were liable to be convicted.*

16. From the aforesaid decisions rendered by the



Hon'ble Supreme Court, the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established. Further the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and tendency. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

17. In the case of ***Ravi v. State of Karnataka***, reported in ***(2018) 16 SCC 102***, the Hon'ble Supreme Court has observed in paragraph nos. 3 and 4 as under:

"3. The appellant-accused and the deceased along with Suma (PW 1) and Rama Nayak (PW 2) were together on 26-12-2004, the precise time being around 1.30 p.m. The dead body was recovered after a gap of four (4) days i.e. on 30-12-2004. The post-mortem report indicated that the death had occurred 30 hours prior to the time of post-mortem examination. The medical evidence, therefore, would be suggestive of the fact that the dead body was recovered



after about two (2) days from 1.30 p.m. of 26-12-2004.”

“4. The question that confronts the Court is whether on the basis of the aforesaid evidence the conviction of the appellant-accused is sustainable in law.”

18. In the case of ***Reena Hazarika v. State of Assam***, reported in **(2019) 13 SCC 289**, the Hon’ble Supreme Court has observed in paragraph no. 9 as under:-

“9. The essentials of circumstantial evidence stand well established by precedents and we do not consider it necessary to reiterate the same and burden the order unnecessarily. Suffice it to observe that in a case of circumstantial evidence the prosecution is required to establish the continuity in the links of the chain of circumstances, so as to lead to the only and inescapable conclusion of the accused being the assailant, inconsistent or incompatible with the possibility of any other hypothesis compatible with the innocence of the accused. Mere invocation of the last-seen theory, sans the facts and evidence in a case, will not suffice to shift the onus upon the accused under Section 106 of the Evidence Act, 1872 unless the prosecution first establishes a prima facie case. If the links in the chain of circumstances itself are not complete, and the prosecution is unable to establish a prima facie case, leaving open the possibility that the occurrence may have



taken place in some other manner; the onus will not shift to the accused, and the benefit of doubt will have to be given.”

19. Thus, from the aforesaid decisions rendered by the Hon’ble Supreme Court it can be said that there must be chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused alone.

20. In the present case, as discussed hereinabove, the prosecution has failed to prove the complete chain of circumstances against the respondent / accused.

21. At this stage, it is also pertinent to note that we are dealing with the acquittal appeal filed by the informant against the order of acquittal rendered by the concerned trial court. The Hon’ble Supreme Court in the case of ***Chandrappa and Ors. Vs. State of Karnataka***, reported in (2007) 4 SCC 415 has observed in **Paragraph-42** as under:-

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate



court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the



accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If 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.”

22. Recently, the Hon’ble Supreme Court in the case of ***Nikhil Chandra Mondal Vs. State of West Bengal***, reported in **(2023) 6 SCC 605** has observed in **Paragraph No. 22** as under:-

“22. Recently, a three-Judges Bench of this Court in the case of Rajesh Prasad v. State of Bihar has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the court. It has been further held that if 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.”

23. From the aforesaid decisions rendered by the Hon’ble Supreme Court, it can be said that there is double presumption in favour of the accused. When the order of acquittal has been recorded by the Trial Court, firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence is that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the court. Further, if 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.

24. From the aforesaid decisions rendered by the Hon’ble Supreme Court it can be said that scope of interference in the order of acquittal passed by the trial Court while dealing with the acquittal appeal is governed by the principles laid down in the case of ***Chandrappa***



(supra).

25. We have also considered the reasoning recorded by the trial Court while passing the order of acquittal in favour of the respondent / accused and we are of the view that trial court has not committed any error while passing the impugned order. Thus, looking to the overall facts and circumstances of the present case, we are not inclined to interfere with the impugned order.

26. Accordingly, the present appeal is dismissed.

(Vipul M. Pancholi, J)

(Rudra Prakash Mishra, J)

GKS/-

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