

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1258 of 2019

Arising Out of PS. Case No.-27 Year-2013 Thana- PANDARAK District- Patna

MD. ZUBAIR ALAM @ ZUBAIR ALAM @ ZUBER ALAM, S/o
Mohammad Jalil Sah @ Late Jalalluddin, R/o village- Masudh Bigha, P.S.-
Barh, District- Patna

... .. Appellant/s

Versus

1. The State of Bihar
2. Sarwari Khatoon, W/o Late Naim @ Saina, R/o Village- Masud Bigha, P.S.-
Barh, District- Patna
3. Samin @ Bauna, S/o Qamruddin Sah, R/o Village- Masud Bigha, P.S.- Barh,
District- Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Tej Narayan Singh, Advocate
For the State	:	Mr. Abhimanyu Sharma, APP
For Respondents 2&3	:	Mr. Chandra Sen Prasad Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 22-10-2024

We have heard Mr. Tej Narayan Singh, the learned Advocate for the appellant/informant and Mr. Chandra Sen Prasad Singh, the learned Advocate for respondents No. 2 and 3, who have been acquitted by the impugned judgment. The State is represented by Mr. Abhimanyu Sharma, the learned APP.

2. One Islamuddin was shot dead. According to



the prosecution case, he was accompanied by respondent No. 2 on a motorcycle. The reason to suspect the hand of respondent No. 2 was the belief of the brothers of the deceased that the deceased had been carrying on an affair with respondent No. 2, a widow and related to the deceased also; but sometimes prior to the occurrence, the marriage of the deceased was fixed with some one which was not to the liking of respondent No. 2. This was the basis for suspecting the hands of respondent No. 2 primarily in the murder of the deceased.

3. The FIR was lodged by one of the brothers of the deceased, viz., Md. Zubair Alam who has been examined as PW-2. He had seen the deceased going out of his house along with respondent No. 2 on a motorcycle. It was only late in the night that the local *chowkidar* intimated him that his brother has been killed. He, thereafter, went to Pandarakh Police Station on the next day and saw the dead body of his brother.



4. On the issue of illicit affair, PW-2 was not at all certain. However, from his deposition, few facts emerged which perhaps weakened the prosecution case.

5. The deceased had five other brothers. The mother of the deceased, viz., Noorjahan Khatoon (PW-8) had distributed the family property in an unfair manner. The property at Patna had been gifted to the deceased. It was, therefore, argued on behalf of the respondents that perhaps the brothers were not happy with the distribution of the family property and that could be a reason for eliminating the deceased.

6. We have also seen from the records that though the witnesses have consistently spoken about respondent No. 2 having accompanied the deceased prior to his death, but the CDR proved nothing.

7. Even assuming that respondent No. 2 had accompanied the deceased to a marriage ceremony, that by itself would not be sufficient for the prosecution to conclusively bring home the charge of murder.



8. The deceased died of a gun shot in his neck.

9. Who killed him was not seen by any body.

10. Most of the witnesses, who are related to the deceased, are also related to the respondents. The mother of the deceased is closely related to respondents No. 2 and 3. Respondent No. 2 became a widow but from her marriage with her late husband, she had given birth to a child. The records is also replete with the evidence that there was no affair between the deceased and respondent No. 2 and in fact it was only the other filial relationship between them which made them interact with each other.

11. Respondent No. 2 at the relevant time was in her middle age. The deceased was not married for quite sometime and only recently his marriage had been fixed. Prior to that, the deceased had been working in a foreign country as a motor mechanic.

12. The Trial Court tested the entire evidence and based on the cardinal principles, chose to acquit the



respondents. According to him, two views were possible from the nature of evidence collected and, therefore, the benefit had to be given to the respondents.

13. With respect to the evidence of the deceased having been last seen with the respondents, the Trial Court applied the Panchsheel principle [***Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116 153***] that 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; the fact so established should be consistent only with the hypothesis of the guilt of the accused, that is to say that those should not be explainable on any other hypothesis except that the accused is guilty; the circumstances should be of conclusive nature and tendency; that it should exclude every possible hypothesis except the one to be proved and 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 that it must be shown that in all human probability, the act must have been done by the accused.

14. Testing the case on the aforementioned parameters, the Trial Court found the evidence to be lacking in great respect for conclusively holding that the respondents were responsible for the murder of the deceased.

15. Thus, benefit of doubt was given to them.

16. We find nothing wrong or perverse in the judgment of acquittal which has been challenged in the present appeal.

17. The appeal lacks merit and, therefore, is dismissed.

(Ashutosh Kumar, J)

(Rajesh Kumar Verma, J)

Rajesh/Manoj

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.10.2024
Transmission Date	23.10.2024

