

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1074 of 2023

Arising Out of PS. Case No.-124 Year-2020 Thana- BARGAINIA District- Sitamarhi

Shyam Sundar Kumar, male, aged about 23 years, Son of Manoj Patel, R/o
Vill - Pachtaki Ram, Ward No. 03, P.S. - Bairgania, Distt. - Sitamarhi (Bihar)

... .. Appellant

Versus

1. The State of Bihar
2. Suresh Thakur, son of Ram Padarath Thakur,
3. Guddu Thakur, son of Late Jagdish Thakur,
4. Pankaj Thakur, son of Late Jagdish Thakur,
5. Veena Devi, wife of Guddu Thakur

S.No. 2 to 5 are the resident of Village Pachtaki Ram, P.S.-Bairgania,
District-Sitamarhi, Bihar

... .. Respondents

Appearance :

For the Appellant	:	Mr. Uday Kumar, Advocate
For the Respondents	:	Mr. Ajay Mishra, APP

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

Date : 16-02-2024

Heard Mr. Uday Kumar, learned counsel for the
appellant/informant and Mr. Ajay Mishra, learned APP for the
private respondents/accused and the State.

2. The present appeal has been filed by the
appellant/original informant under Section 372 of the Code of
Criminal Procedure, 1973 (hereinafter referred to as “**Code**”)
against the judgment and order of acquittal dated 22.08.2023



passed by learned Additional Sessions Judge-XIIIth, Sitamarhi in Sessions Trial No. 01 of 2021/CIS No. 01 of 2021 (arising out of Bairganiya Police Station Case No. 124 of 2020) consequent to G.R. No. 2490 of 2020 whereby, the concerned trial court has acquitted all the private respondent nos. 2 to 5 of the charges levelled against them for offences punishable under Sections 302, 201, 34 of the Indian Penal Code.

3. Learned counsel for the appellant/informant has supplied the copy of the deposition of the prosecution witnesses and the other documentary evidence. Learned counsel referred to the same and thereafter submitted that the present case is the case of circumstantial evidence and the prosecution has proved the complete chain of circumstantial evidence against all the respondents/accused despite which, the Trial Court has passed the impugned order, whereby all the respondents/accused have been acquitted. It is submitted that there are five prosecution witnesses, who have seen the deceased in company of the respondents/accused on 16.07.2020 during the night hours and thereafter, the dead body of the deceased was found on the next day in the morning in the agricultural field. The information was given to the informant by the wife of one Brahmdeo Mahato at about 05:30 AM that the dead body of the father of the informant



is lying near the resident of Jay Narayan Thakur @ Murli Thakur. Therefore, the information was given to the police on 17.07.2020. It is submitted that though, the information was given to the police immediately, *fardbeyan* of the informant was recorded by the police at about 11:20 p.m. Learned counsel would further submit that two independent witnesses, who are the co-villagers also, specifically stated that they have seen the deceased lastly in company of the respondents/accused. Learned counsel would thereafter submit that the Doctor, who had conducted the *post mortem* of the dead body of the deceased, also stated that number of injuries were found on the dead body of the deceased. At this stage, it is pointed out that the Trial Court has believed the story of the prosecution *qua* accused Rahul Thakur and, therefore, he has been convicted. However, the Trial Court has not believed the story of the same prosecution witnesses *qua* the present respondents/accused. Learned counsel, therefore, urged that the present appeal requires consideration and, therefore, this appeal be admitted and thereafter, the impugned order be quashed and set aside.

4. On the other hand, learned APP has fairly submitted that this is the case of circumstantial evidence and there is no eye-witness to the occurrence in question. It is also pointed out that



there is delay in lodging the FIR. Learned APP further submits that out of five witnesses, three witnesses are near relatives of the deceased and even the prosecution has also failed to prove the motive on the part of the present respondents/accused to commit the alleged offences. It is also pointed out from the record that there is no recovery or discovery from the present respondents/accused and even their confessional statements are also not recorded by the Investigating Officer. Learned APP, therefore, submitted that Trial Court has not committed any error while passing the impugned order. However, it is contended by the learned APP that, in the facts and circumstances of the present case, this Court may pass appropriate order. At this stage, it is also submitted that till today, the State has not preferred the acquittal appeal against the impugned order passed by the Trial Court.

5. We have considered the submissions canvassed by learned counsels appearing for the parties. We have also perused the deposition of the prosecution witnesses and the documents which are supplied by the learned counsel for the appellant. From the material placed on record, it transpired that there is no eye-witness to the occurrence in question, and admittedly, the present is the case of circumstantial evidence. It is the case of the informant and the other four witnesses that they have seen the



deceased lastly in company of the respondents/accused and one convicted accused, during night hours on 16.07.2020 and thereafter, the dead body of the deceased was found in the early morning at about 05:30 AM on 17.07.2020. It would reveal from the record that the informant has given the *fard beyan* at about 11:20 PM, on 17.07.2020, though, he came to know about the death of his father at 05:30 AM, in the morning when, wife of Brahamdeo Mahato informed about his father (deceased) to him. In the *fard beyan* itself, the informant has stated that when he came to know about the fact that the dead body of his father is lying near the house of one Jay Narayan Thakur, he informed to the police on telephone. From the deposition of PW-6, Investigating Officer, Amita Singh, who has carried out the investigation, it transpired that she had received the information on telephone about the occurrence in question and, therefore, she immediately rushed to the place where the dead body of the deceased was lying. She specifically stated that she reached the said place within 15-20 minutes and she also informed to the Superintendent of Police about the aforesaid occurrence. The Investigating Officer further admitted that during the course of cross-examination, she made necessary entry in the station diary about the said information which, she got on telephone from the informant.



6. Thus, from the aforesaid evidence produced before the trial court, it would reveal that the informant himself was aware about the death of his father at about 05:30 AM and the police has also reached to the place of occurrence within 15-20 minutes. Surprisingly, the *fard beyan* of the informant was recorded after about 19-20 hours i.e. at 11:20 PM in the night. The prosecution has failed to explain the aforesaid gross delay in lodging the FIR. It is also relevant to note at this stage that the entry made by the Investigating Officer in the station diary, is also not brought on record.

7. Now, it is the submission canvassed by the learned counsel for the appellant/informant that there are two other independent witnesses, who have seen the deceased lastly in company with the respondents-accused during night hours on 16.07.2020 and thereafter, immediately, the dead body of the deceased was found on the next morning and, therefore, they have also supported the case of the prosecution. However, from the record, it is revealed that PW-3, Vighu Rai, specifically stated in his examination-in-chief that he got the information about the murder of Manoj Rai at 06:00 AM when his wife Manju Devi informed him. The said witnesses has further stated in para 7 of his cross-examination that the police has recorded his statement after



3 to 4 days of the occurrence. Thus, from the aforesaid deposition of the PW-3, who is an independent witness, it can be said that though he was aware about the fact that the deceased was lastly seen in company with the respondents/accused during night hours and on the next day in the morning about 06:00 AM, he got the information about the murder of the deceased and when the police was present at the place of occurrence why had he not given statement to the police that the deceased was lastly seen in company of the accused. Thus, the conduct of the said witnesses is also doubtful.

8. As discussed hereinabove, admittedly, the present is the case of circumstantial evidence and the only evidence led by the prosecution before the trial court is with regard to the theory of last seen together and there is no other material connecting the present respondents-accused with the occurrence in question.

9. At this stage, we would like to refer to the decision rendered by the Hon'ble Supreme Court in the case of **Anjan Kumar Sharma & Ors. vs. State of Assam** reported in **2017 (14) SCC 359** wherein, the Hon'ble Supreme Court has been observed in paragraphs 13, 16 & 21 as under:

“13. Jit Kakati was acquitted for committing an offence under Section 366-A IPC 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 Sections 302, 201 read with Section 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.* [*Brahm Swaroop v. State of U.P.*, (2011) 6 SCC 288 : (2011) 2 SCC (Cri) 923], SCC para 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 conjectures from sure conclusions. (See *Jaharlal Das v. State of Orissa* [*Jaharlal Das v. State of**



*Orissa, (1991) 3 SCC 27 : 1991 SCC (Cri) 527] ,
SCC p. 37, para 11.)*

21. This Court in Bharat v. State of M.P. [Bharat v. State of M.P., (2003) 3 SCC 106 : 2003 SCC (Cri) 738] held that the failure of the accused to offer any explanation in his statement under Section 313 CrPC 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 unrebutted and thus the appellants were liable to be convicted.”

10. From the aforesaid decision, it can be said that the circumstances from which, the conclusion of guilt is drawn should be fully established. The circumstances concerned “*must*” or “*should*” and not “*may be*” established. The circumstances should be of a conclusive nature and tendency and 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. It is further observed by the Hon’ble Supreme Court that in absence of proof of other circumstances, the only circumstance of last seen together and absence of satisfactorily explanation cannot be made the basis for conviction.



11. In the case of *Ravi & Another vs. State of Karnataka* reported in **2018 (16) SCC 102**, the Hon'ble Supreme Court has observed in paragraphs 3 & 5 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.

5. “Last seen together” is certainly a strong piece of circumstantial evidence against an accused. However, as it has been held in numerous pronouncements of this Court, the time-lag between the occurrence of the death and when the accused was last seen in the company of the deceased has to be reasonably close to permit an inference of guilt to be drawn. When the time-lag is considerably large, as in the present case, it would be safer for the court to look for corroboration. In the present case, no corroboration is forthcoming. In the absence of any other circumstances which could connect the appellant-accused with the crime alleged except as indicated above and in the absence of any corroboration of the circumstance of “last seen together” we are of the view that a reasonable



doubt can be entertained with regard to the involvement of the appellant-accused in the crime alleged against them. The burden under Section 106 of the Evidence Act, 1872 would not shift in the aforesaid fact situation, a position which has been dealt with by this Court in Malleshappa v. State of Karnataka [Malleshappa v. State of Karnataka, (2007) 13 SCC 399 : (2009) 2 SCC (Cri) 394] wherein the earlier view of this Court in Mohibur Rahman v. State of Assam [Mohibur Rahman v. State of Assam, (2002) 6 SCC 715 : 2002 SCC (Cri) 1496] has been extracted. The said view in Mohibur Rahman [Mohibur Rahman v. State of Assam, (2002) 6 SCC 715 : 2002 SCC (Cri) 1496] may be profitably extracted below: (Malleshappa case [Malleshappa v. State of Karnataka, (2007) 13 SCC 399 : (2009) 2 SCC (Cri) 394] , SCC p. 408, para 23)

“23. ... ‘10. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. There may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. In the present case there is no such proximity of time and place. As already noted the dead body has been recovered about 14 days after the date on which the deceased was last seen in the company of the accused. The distance



between the two places is about 30-40 km. The event of the two accused persons having departed with the deceased and thus last seen together (by Lilima Rajbongshi, PW 6) does not bear such close proximity with the death of the victim by reference to time or place. According to Dr Ratan Ch. Das the death occurred 5 to 10 days before 9-2-1991. The medical evidence does not establish, and there is no other evidence available to hold, that the deceased had died on 24-1-1991 or soon thereafter. So far as the accused Mohibur Rahman is concerned this is the singular piece of circumstantial evidence available against him. We have already discussed the evidence as to recovery and held that he cannot be connected with any recovery. Merely because he was last seen with the deceased a few unascertainable number of days before his death, he cannot be held liable for the offence of having caused the death of the deceased. So far as the offence under Section 201 IPC is concerned there is no evidence worth the name available against him. He is entitled to an acquittal.’ (Mohibur Rahman, SCC pp. 720-21, para 10)”

12. From the aforesaid observation made by the Hon’ble Supreme Court, it can be said that “last seen together” is certainly a strong piece of circumstantial evidence against an accused. However, the other circumstances and corroboration with regard to the same, is also required to be examined.

13. Keeping in view of the aforesaid decisions rendered by the Hon’ble Supreme Court, if the facts of the present case as discussed in hereinabove are carefully examined, we are of the view that except putting the theory of last seen together, there is no



material produced by the prosecution before the Trial Court connecting the present respondents-accused with the occurrence in question.

14. The learned Trial Court has discussed in detail about the evidence led by the prosecution against the present respondents-accused and thereafter observed that the prosecution has failed to prove the complete chain of circumstance against the respondents-accused and thereby, the Trial Court has given the benefit of doubt to the private-respondents.

15. Recently, the Division Bench of this Court has passed the order on 10.01.2024 in *Criminal Appeal (DB) No. 550 of 2023* wherein, this Court has considered the scope of interference in the appeal filed against the order of acquittal. This Court has referred to the decision rendered by the Hon'ble Supreme Court in the case of ***Chandrappa and Ors. vs. State of Karnataka*** reported in **2007(4) SCC 415** This court has also considered the decision rendered in the case of ***Nikhil Chandra Mondal vs. State of West Bengal*** reported in **2023 (6) SCC 605** and thereafter observed in paragraphs 21 to 23 as under:

“21. The scope of interference in an appeal against acquittal is very well crystallised. Unless such a finding is found to be perverse or illegal/impossible, it is not permissible for the appellate court to interfere with the same.



22. Recently, a three-Judge Bench of this Court in Rajesh Prasad v. State of Bihar [Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31] 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. We find that the view taken by the trial court could not be said to be either perverse or illegal/impossible to warrant interference. The High Court has grossly erred in interfering with the well-reasoned judgment and order of acquittal passed by the trial court.”

16. Thus, from the aforesaid decision, it can be said that there is a 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 fundamental principle of criminal jurisprudence that every person



shall be presumed to be innocent unless he is proved guilty by the competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced and reaffirmed. 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.

17. Keeping in view of the aforesaid decisions rendered by this Court as well as the Hon’ble Supreme Court, if the facts as discussed in hereinabove are examined, we are of the view that Trial Court has not committed any error while passing the impugned order against the respondents-accused whereby they have been acquitted. Thus, in the facts of the present case, no interference is required in the impugned order.

18. Accordingly, the present appeal is dismissed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

Gaurav Kumar/-

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