

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1232 of 2023**

Arising Out of PS. Case No.-20 Year-2019 Thana- BHAGWANPUR District- Kaimur
(Bhabua)

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Jang Bahadur Singh Son of Late Gulab Singh Village - Pihara, P.S. -
Bhagwanpur, District - Kaimur, Bhabua

... .. Appellant/s

Versus

1. The State of Bihar
2. Lalu Kumar @ Lallu Kumar Son of Ram Bachan Singh R/o Vill - Pihara,
P.S. - Bhagwanpur, Distt. - Kaimur (Bhabua)
3. Kashi Singh Son of Late Ramji Singh R/o Vill - Ameth, P.S. - Mohania,
Distt. - Kaimur (Bhabua)
4. Paras Singh @ Paras Kumar Son of Late Ramji Singh R/o Vill - Ameth, P.S.
- Mohania, Distt. - Kaimur (Bhabua)

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Kumar Sunil, Advocate
For the Respondent/s : Ms. Kumari Shashibala Verma, APP

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

Date : 06-03-2024

Heard Mr. Kumar Sunil, learned counsel for the
appellant/informant and Ms. Kumari Shashibala Verma, learned
A.P.P. for the State.

2. The present appeal has been filed by the
appellant/informant under Section 372 of the Code of Criminal
Procedure, 1973 against the judgment and order of acquittal
dated 17.10.2023 passed by learned Additional Sessions Judge
XI, Kaimur (Bhabua) in Sessions Trial No.122 of 2019 (arising



out of Bhagwanpur P.S. Case No.20 of 2019) whereby the concerned Trial Court has acquitted all the private respondent nos.2 to 4 of the charges for the offences punishable under Sections 302/506/34 of the Indian Penal Code.

3. Learned counsel for the appellant/informant has supplied the copy of deposition of the prosecution witnesses and other documentary evidence. Learned counsel for the appellant has referred the same and thereafter submitted that in the present case the prosecution has proved the charges against all private respondents/accused, despite which, the Trial Court has passed the impugned order, whereby all the private respondents/accused persons have been acquitted. It is submitted that the prosecution has examined twelve witnesses including the Investigating Officer (PW-7) and the doctor (PW-6), who has conducted the postmortem examination on the dead body of deceased and the prosecution witnesses have clearly stated that the deceased was last seen in the company of private respondents and have also assigned the reason and motive to kill the deceased. It is further submitted that private respondents during the course of investigation confessed their guilt before the police vide Exhibit P-6 to 8 and bare perusal of the same, the prosecution case stands proved. However, he has not pressed this point conceding that there is no discovery of any fact in consequence of confessional



statement of accused persons. Learned counsel further submits that the instant case rests on circumstantial evidence and the prosecution has proved the circumstances from which an inference of guilt is sought to be drawn. In view of Section 106 of the Evidence Act, the accused/private respondents were under a burden to explain the circumstances leading to death of the deceased. Learned counsel for the appellant, therefore, urged that the present appeal requires consideration and, therefore, this appeal be admitted and thereafter the impugned order of acquittal be quashed and set aside.

4. On the other hand, learned A.P.P. submits that the ground for acquittal by the Trial Court is based on evidence and the reasons given are cogent for holding that the prosecution had failed to prove its case against the private respondents/accused. It was urged that a strong pointer to the falsity of the allegation is the fact that the deceased's father admitted during deposition that even when the deceased did not return for two-three days, he had not made any complaint. She has referred the deposition given by the prosecution witnesses and thereafter submitted that there is no eye witness to the incident and the case is based on circumstantial evidence, last seen theory and confessional statement of accused person. She has conceded that confessional statement of accused made before a police officer under Section



161 of Cr.P.C. in the course of investigation cannot be proved in the instant case against the accused in view of Section 25 of the Evidence Act and admittedly there is no discovery of any new fact which is dealt with under Section 27 of the Evidence Act. She further submits that the Trial Court has passed the impugned judgment and order by considering the material on record and is a reasoned order. Learned A.P.P. thereafter submits that the State has not preferred acquittal appeal against the impugned judgment rendered by the Trial Court. However, it has been submitted by learned A.P.P. that this Court may pass appropriate order looking to the facts of the present case.

5. Having heard learned counsel appearing for the parties and having gone through the materials placed on record, it would emerge that PW-5, Jang Bahadur Singh is the informant, who is father of deceased, had given his written report on 15.02.2019, on the basis of which, F.I.R. was registered at 1:00 P.M. against unknown. In the said written report, he has stated that on 13.02.2019 at 9:00 A.M. his son Dilip Singh (deceased) went on his duty and on 14.02.2019 at 6:00 P.M. he came to know that the dead body of his son was lying at Sukul Mariya Temple adjacent to Bhagwanpur. By the time he reached there, police brought the dead body to the police station. On careful scrutiny, it appears that his neck was twisted.



6. After investigation, charge sheet was filed against the accused persons/private respondents; learned Magistrate took cognizance and after compliance of Section 207 Cr.P.C. the case was committed to the Court of Sessions. The charges against accused persons were framed under Section 302/506/34 of I.P.C. and trial was held.

7. The learned Trial Court concluded that prosecution could not successfully prove its case beyond all reasonable doubts and the accused persons were held not guilty for the offence charged and accordingly, they were acquitted. From perusal of impugned judgment, it is evident that the learned Trial Court considering the evidence on record held that the claim of prosecution that deceased was last seen with the company of accused person has not been proved and no chain of circumstance could be established.

8. In the present case, there is no eye witness to the occurrence and admittedly, the case is based on circumstantial evidence. The main principle to be satisfied in a case based on circumstantial evidence is that it must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and the circumstances should exclude every possible hypothesis except the one to be proved.

9. The law is well settled that failure to prove a single



circumstance cogently can cause a snap in the chain of circumstances. When the conviction is based on circumstantial evidence solely then there should not be any snap in the chain of circumstances. If there is a snap in the chain, the accused is entitled to benefit of doubt. If some of the circumstances in the chain can be explained by any other reasonable hypothesis, then also the accused is entitled to the benefit of doubt.

10. It reveals from the evidence of prosecution that the informant (PW-5), who is father of deceased and other two witnesses, namely, PW-1 Soni Kuer (wife of deceased) and PW-2 Mahendra Singh (maternal uncle of deceased) have deposed that deceased was last seen in company of accused/private respondents. PW-1 deposed that on 13.02.2019 at 9:00 A.M. her husband (deceased) was at this house and accused Paras, Rangnath, Dholan, Kashi, Lalu (Pihra), Ram Bachan and Lalu (Manikpur) came and had conversation with her husband and taken him along with them. This fact was supported by PW-5 (informant), who deposed that on asking from PW-1 she had stated this fact to him also. However, PW-7 (I.O.) in his cross-examination admitted that PW-1 had not stated this fact in her statement. It is relevant to mention here that the informant had not disclosed this fact in his written statement that accused persons had taken the deceased with him. The evidence of such



witnesses regarding the said improved fact is of no significance.

In this regard, a three-Judge Bench of Hon'ble Supreme Court in **Darshan Singh vs. State of Punjab (2024) 2 BLJ 66** in paragraph 26 observed as under:

“26. If the PWs had failed to mention in their statements under Section 161 Cr.P.C. about the involvement of an accused, their subsequent statement before Court during trial regarding involvement of that particular accused cannot be relied upon. Prosecution cannot seek to prove a fact during trial through a witness which such witness had not stated to police during investigation. The evidence of that witness regarding the said improved fact is of no significance.”

11. PW-2, claiming chance witness, deposed that on 13.02.2019 when he was returning at 2:00 to 2:30 P.M. he had seen that accused Paras Singh was taking the deceased on his bike towards Mundeshwari Temple. However, in his cross-examination, he has admitted that he had not stated this fact to the police. He also admitted that he met the informant (PW-5) who is brother-in-law but he did not say this fact to him. The conduct of PW-2 is highly improbable and unnatural on his part and cannot be relied safely.

12. The principle with respect to circumstance of last seen and shift of onus on the accused has been settled in catena of judgment of Hon'ble Supreme Court. In case of **Kanhaiya Lal vs. State of Rajasthan, (2014) 4 SCC 715** it was noted that



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. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.

13. In **Nizam vs. State of Rajasthan (2016) 1 SCC 550** it was observed that “only if the prosecution has succeeded in proving the facts by definite evidence that the deceased was last seen alive in the company of accused, a reasonable inference would be drawn against the accused and then only onus can be shifted on the accused under Section 106 of the Evidence Act.

14. The last seen theory can be invoked only when the same stands proved beyond reasonable doubt. A 3-Judge Bench in **Chotkau vs. State of Uttar Pradesh, (2023) 6 SCC 742** opined as under:

“15. It is needless to point out that for the prosecution to successfully invoke Section 106 of Evidence Act, they must first establish that there was “any fact especially within the knowledge of appellant”.....’

15. The Hon’ble Supreme Court in **R. Sreenivasa vs. State of Karnataka (2023) SCC OnLine SC 1132** reiterated the said principle by observing that the burden on the accused would



kick in only when the last seen theory is established. It is also important to quote the observation made in paragraph 17 of the judgment which is as under:

“17. In the present case, given that there is no definitive evidence of last seen as also the fact that there is a long time-gap between the alleged last seen and the recovery of the body, and in the absence of other corroborative pieces of evidence, it cannot be said that the chain of circumstances is so complete that the only inference that could be drawn is the guilt of the appellant. In Laxman Prasad v. State of Madhya Pradesh, (2023) 6 SCC 399, we had, upon considering Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 and Shailendra Rajdev Pasvan v. State of Gujarat, (2020) 14 SCC 750, held that “.....In a case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime. It would be unsafe to sustain the conviction of the accused on such evidence, where the chain is clearly incomplete. That apart, the presumption of innocence is in favour of the accused and when doubts emanate, the benefit accrues to the accused, and not the prosecution. Reference can be made to Suresh Thimppa Shetty vs. State of Maharashtra, 2023 INSC 749 (2023 SCC OnLine SC 1038).”

16. It is well established position of law that if the Trial Court has taken a view which is a possible view in a reasonable manner, then the same shall not be interfered. Only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be totally perverse or wholly unsustainable, the appellate Court can interfere with the order of acquittal. Presumption of innocence in favour of the accused



further gets reinforced and strengthened by the acquittal of the Trial Court. The appellate Court cannot overturn acquittal only on the ground that after reappreciating evidence, it is of the view that the guilt of the accused was established beyond reasonable doubt. Only by recording such a conclusion, an order of acquittal cannot be reversed unless the appellate Court also concludes that it was the only possible conclusion.

17. Recently, the Hon'ble Supreme Court in **H.D. Sundara and Others vs. State of Karnataka**, reported in **(2023) 9 SCC 581** has summarised the principles, which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 Cr.P.C. in paragraph 8 as under:

- "8.1. The acquittal of the accused further strengthens the presumption of innocence;*
- 8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;*
- 8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;*
- 8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and*
- 8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the*



only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

18. The Hon'ble Supreme Court in **Nikhil Chandra Mondal vs. State of West Bengal**, reported in **(2023) 6 SCC 605** has observed in paragraph 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.”

19. We have also gone through the reasoning recorded by the learned Trial Court while passing the impugned judgment and order and we are of the view that the Trial Court has not committed any error while passing the same. The view taken by the Trial Court could not be said to be either perverse, illegal or impossible to warrant interference. We are of the view that the prosecution has failed to prove the charges against the private respondents/accused persons beyond reasonable doubt and,



therefore, the Trial Court has rightly given the benefit of doubt to the private respondents/ accused and thereby not committed any illegality as contended by the learned counsel for the appellant. No interference with the impugned judgment and order of acquittal is warranted.

20. In view of the aforesaid discussion, the present Appeal fails. Accordingly, the same is dismissed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

Harish/-

AFR/NAFR	
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