

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.84 of 2024**

Arising Out of PS. Case No.-35 Year-2001 Thana- MANIYARI District- Muzaffarpur

Madan Ram, S/o Late Ram Sharan Ram, resident of Village- Ratnauli, Tole-
Lalpur, P.S. -Maniyari, Dist. Muzaffarpur.

... .. Appellant/s

Versus

1. The State of Bihar
2. Hriday Ram, R/o Village- Kinaru, P.S.- Maniyari, Dist. Muzaffarpur.
3. Naresh Ram, S/o Jamun Ram, R/o Village- Ratnauli, P.S.- Maniyari, Dist. Muzaffarpur.
4. Rajendra Ram, S/o Late Shivnandan Ram, R/o Village- Ratnauli, P.S.- Maniyari, Dist. Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sunil Kumar Pandey, Advocate
For the State	:	Mr. Satya Narayan Prasad, A.P.P

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE AJIT KUMAR**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 07-08-2025

Heard Mr. Sunil Kumar Pandey, learned counsel for the
appellant and Mr. Satya Narayan Prasad, learned Additional Public
Prosecutor for the State.

2. This appeal against acquittal has been preferred for
setting aside the Judgment dated 27.09.2023 (hereinafter referred
to as the impugned Judgment), passed by the learned Additional
Sessions Judge-XI, Muzaffarpur (in short the 'trial court'), in
Sessions Trial No. 53 of 2002, arising out of Maniyari P.S. Case



No. 35 of 2001, dated 04.05.2001, registered for the offences punishable under Sections 302,201/34 of the I.P.C.

3. The prosecution case is based on the fardbeyan of Madan Ram (P.W.-5), who alleged that on 03.05.2001, his aunt Gulpatiya Devi was stung by a Scorpion and informant's mother along with other family members had taken her for treatment. According to informant, despite search of his younger brother Sajjan Ram (deceased), he could not be found. The informant remained under impression that his brother must have gone to see a dance performance. His brother did not return even at the dinner time and he could not be found in the village, then informant came to know in the morning from some people, who had gone to attend the nature's call, that a person's dead body is lying in the Maize field of Md. Ayub. The informant along with other people of his locality went there and found that it was the dead body of his brother Sajjan Ram. The informant said that the Maize crops nearby were damaged and it appeared that some fighting had taken place there. The torch and slippers were lying there. There were black mark on the neck of his brother, due to which it appeared that somebody had strangulated him. Blood was coming out from the right ear. The informant expressed his apprehension that at least 3-4 persons may be involved in the brutal murder of his



brother. As regards the motive behind the killing of his brother, the informant did not disclose any motive. According to him, his brother was simple in nature. He had no enmity with anyone.

4. On the basis of fardbeyan of the informant (P.W.-9), Maniyari P.S. case No. 35 of 2001 was registered. On completion of investigation, Police submitted a charge-sheet, whereupon the learned Magistrate took cognizance of the offences under Sections 302,201/34 of the I.P.C.

5. It is worth mentioning that during investigation, the Investigating Officer did not find sufficient materials to proceed against Naresh Ram, therefore, he was not proceeded against.

6. After commitment of the records, step for framing of charges were taken before the learned Additional Sessions Judge, Muzaffarpur. Charges were explained to the respondent nos. 2 and 4, who denied the charges and claimed to be tried. Accordingly, a Sessions Trial case was registered.

7. It, however, appears from the records that during trial, the prosecution filed an application under Section 319 of the Code of Criminal Procedure. The said application was allowed and Naresh Ram (respondent no. 3) was summoned to face the trial. Subsequently, the charges were framed against Naresh Ram on



17.06.2015 for the offence under Sections 302/34 and 201/34 of the I.P.C.

8. In course of trial, the prosecution examined as many as 10 witnesses. Thereafter, statement of accused persons under Section 313 Cr.P.C. were recorded. They pleaded innocence. The defence did not adduce any oral or documentary evidence.

9. Upon perusal of the records and analysis of the evidences available on the record, the learned trial court found that there is no eye witness of the occurrence. None of the witnesses has said that they had last seen the deceased with the accused persons. The trial court has noticed that the entire prosecution case had been developed on the theory of last seen, but the prosecution has miserably failed to not only prove that the deceased was last seen in the company of the accused/appellant, the prosecution has in fact failed to establish any motive on the part of the appellant. The trial court has taken a view that the last seen evidence cannot be the sole basis of conviction. Finally, by the impugned Judgment, the learned trial court has acquitted the accused/appellant upon the charges.

10. Mr. Sunil Kumar Pandey, learned counsel for the appellant has submitted before this Court that in this case there is no eye witness of the occurrence. According to him, the most



material witness of this case are the informant Madan Ram (P.W.-9) and Sitabiya Devi (PW.-10). It is submitted that the learned trial court seems to have failed to analyse the evidence of the prosecution witnesses properly.

11. On the other hand, learned Additional Public Prosecutor for the State has defended the impugned Judgment. It is submitted that the learned trial court has duly discussed the evidences available on the record. It may be found from the evidence of P.Ws 2, 3, 4, 7 and 8 that they did not support the prosecution case, hence, they have been declared hostile by the prosecution. PW.-5 was tendered by the prosecution and P.W.-6 Haider Ali is not a witness of the facts and circumstances of the killing of the brother of the informant. P.W.-6 has only stated that his father is a Chowkidar in Mor Tisab Chauki. He has also stated that witnesses Ram Ashish Ram and Ram Charan Rai have died.

12. As regards the other witnesses, the learned Additional Public Prosecutor has submitted that they had never seen the deceased in the company of the accused persons/respondent no. 2. Pointing out the evidence of Sitabiya Devi (PW.-10), learned Additional Public Prosecutor has submitted that in course of trial, she had developed a completely different story. The trial court has discussed in detail the deposition of P.Ws



9 and 10 and has pointed out material contradictions which have been found in the evidences of P.Ws.- 9 and 10.

13. It is submitted that this is an appeal against acquittal. The Principles governing an appeal against acquittal has been laid down and reiterated by the Hon'ble Supreme Court in the case of *H.D. Sundara and Others Vs. State of Karnataka reported in (2023) 9 SCC 581* and the case of *Babu Sahebagouda Rudragoudar and Ors. Vs. State of Karnataka reported in (2024) 8 SCC 149*. Paragraph-8 of the Judgment in the case of *H.D. Sundara (supra)* has been relied upon to submit that unless an appellate court comes to an irresistible conclusion that the chain of criminalogical events has been duly established which points out to one and only one conclusion towards the guilt of the accused, an order of acquittal need not be interfered with.

Consideration

14. Having heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also on perusal of the records, we have noticed that in this case the appellant is himself referring to the deposition of only two witnesses namely P.Ws- 9 and 10, who are said to be the material witnesses on behalf of the prosecution. This Court has once again gone through the entire evidences on the record particularly that of



P.Ws.- 9 and 10. PW.-9 has stated in his examination-in-chief that when he was in search of his brother, then Rajendra Ram who was standing on the road told him that his brother had gone to watch the dance performance. Therefore, he should go for a sleep. Hriday Ram and Naresh Ram were also present with Rajendra Ram. He has further stated in paragraph-4 of his deposition that in the murder of his brother Rajendra Ram, Hriday Ram and Naresh Ram were involved. There was a quarrel between the accused persons and his brother about 8-10 days ago and after the murder of the brother the accused persons were saying in the village that he had died otherwise he would have played with the prestige of many girls. He has stated that Naresh Ram is the uncle of Mira Kumari and the said Mira Kumari had illicit relationship with his brother. He has stated that the uncle of Mira Kumari was not angry with Sajjan Ram. In his cross-examination, this witness has stated that he had no occasion to read any paper relating to love affair. He knew Sarita Devi with whom the deceased had visiting terms and affection. In paragraph-‘12’ of his cross-examination, this witness has categorically stated that on the day of murder he had not seen his brother in the company of Rajendra Ram. The defence suggested to this witness that Rajendra Ram had been falsely implicated as the deceased had love affairs with several girls and



for this reason he had been murdered. The witness denied the suggestions. This witness has further stated in his cross examination that the villagers never told his brother to keep illicit relationship with a girl. However, the accused persons had threatened him.

15. On going through the evidence of P.W.-9, we find that he has nowhere stated, who have seen the accused persons either with the deceased or following the deceased on the day of his murder. This witness has not claimed that in his presence any of the accused persons had threatened the deceased.

16. From the evidence of Sitabiya Devi (P.W.-10), we find that she had developed altogether a different story in her examination-in-chief. She was not in her house on the date of occurrence, still she has claimed in her examination-in-chief that Naresh Ram, Rajendra Ram and Hriday Ram had called her son Sajjan Ram and they had taken him away, whereafter her son did not return. We have noticed that P.W.-10 has come out with a completely different story and she has tried to develop the case on the theory of last seen, in course of trial.

17. The learned trial court has recorded its finding in paragraph-20 of the impugned Judgment, which we re-produce hereunder for a ready reference:-



“20. From the evidence discussed, it is evident that there are no eye witnesses to the occurrence. The prosecution has tried to build its entire case on the edifice of last scene evidence. However, none of the witnesses has said that they had last seen the deceased with the accused persons. It is imperative to observe that the informant in his Fardbeyan and also in his testimony before the court has clearly stated that on the day of occurrence his aunt was stung by Scorpion and therefore he and his mother had gone to Chhotki Mor for her treatment. He has said in this testimony that after he returned at about 10:30 PM he started searching for his brother on which the accused persons said that his brother had gone to see the dance and asked him to go and sleep. On the next day the dead body of Sajjan Ram was found in the filed of Ayub Mian. Thus, it is evident that the entire case was based on the suspicion of the informant and none of the witnesses had seen the accused take the deceased with them.

Even though Sitabiya Devi has said that the accused persons had come and taken the deceased with them but as per the testimony of the informant and the Fardbayan she was not present at her house and had gone with the informant to the doctor for treatment of informant's aunt. Therefore her testimony becomes doubtful.”

18. At this stage, we take note of the submissions of the learned Additional Public Prosecutor that this is an appeal against acquittal. The principles governing an appeal against acquittal has



been recently reiterated by the Hon'ble Supreme Court in the case of ***Babu Sahebagouda Rudragoudar and Ors.*** (*supra*).

19. Paragraph-8 of the Judgment in the case of ***H.D. Sundara*** (*supra*) is quoted hereunder for a ready reference:-

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment [State of Karnataka v. H.K. Mariyappa, 2010 SCC OnLine Kar 5591] rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC can be summarised as follows:

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.”

20. Keeping in view the principles governing an appeal against acquittal, when we analyse the evidences available on the record and take a view on the finding of the learned trial court, we are of the considered opinion that no perversity may be found in the findings of the learned trial court.

21. We find no reason to interfere with the impugned Judgment.

22. This appeal is, accordingly, dismissed.

(Rajeev Ranjan Prasad, J)

(Ajit Kumar, J)

pravinkumar/-

AFR/NAFR	NAFR
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