

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.186 of 2025

Arising Out of PS. Case No.-432 Year-2021 Thana- SUGAULI District- East Champaran

Shashi Bhushan Pandey @ Shashi Pandey, male, aged about 55 years, S/o Late Yugal Pandey, R/o Vill.- Ramgarhwa, P.S.- Ramgarhwa, Dist.- East Champaran.

... .. Appellant

Versus

1. The State of Bihar
2. Bhola Mishra, male, aged about 35 years, S/o Anil Mishra, R/o Vill.- Sugaon, P.S.- Sugauli, Dist.- East Champaran.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Sangeet Deokuliar, Advocate
For the Respondents	:	Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 09-09-2025

The present criminal appeal has been preferred under Section 413 of the *Bhartiya Nagrik Suraksha Sanhita* against the judgment of acquittal dated 25.11.2024, passed by the learned District & Additional Session Judge-19, East Champaran Motihari, in Sessions Trial No.1026 of 2022 arising out of Sugauli P.S. Case No.432 of 2021, whereby Respondent No.2 has been acquitted by the learned Trial Court from the charge of Sections 302/34, 201/34 & 120(B) of the Indian Penal Code.

2. The prosecution case, in brief, is that the marriage



of the informant's daughter was solemnized with respondent No. 2, namely, Bhola Mishra, on 22.05.2013. After about four years of marriage, the said Bhola Mishra, along with his father Anil Mishra, his mother Sobha Devi, his maternal grandfather Babu Pathak, and his maternal uncles Dilip Pathak and Pappu Pathak, allegedly started assaulting and torturing the informant's daughter for non-fulfillment of dowry demands. This fact was communicated to the informant by his daughter. On 06.10.2021, the informant received information that a *panchayati* was being convened, in which his presence was required. On the following day, *i.e.*, on 07.10.2021, at about 11:45 A.M., the informant was informed that his daughter had been killed and the accused persons had taken away her body in a tempo. On receiving this information, the informant rushed to the matrimonial house of his daughter, where he found the door of the house locked. On making further inquiries, he came to know that on 06.10.2021, accused Lal Babu Pathak and his two sons, Dilip Pathak and Pappu Pathak, along with their wives, had come there and that all the accused persons had assaulted his daughter. It has further been alleged by the informant that his daughter had earlier filed a complaint case, being Complaint Case No.473 of 2019, before the learned CJM, Motihari, for torture, and a Maintenance Case,



bearing Case No.513 of 2019, before the learned Principal Judge, Family Court, Motihari. From the Court itself, his daughter was sent back to her matrimonial house. The informant has lastly alleged that the occurrence in question was committed by the named accused persons, including respondent No.2, and the dead body of his daughter was concealed.

3. On the basis of written statement of the informant, Sugauli P.S. Case No.432 of 2021 was instituted under Sections 302, 201 and 120(B)/34 of the Indian Penal Code and investigation was taken up by the police. The police, after investigation, submitted charge-sheet against Respondent No.2 and, accordingly, cognizance was taken. Thereafter, the case was committed to the Court of Sessions. Charges were framed against the accused person under Sections 302, 201/34 and 120B of Indian Penal Code, to which he pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined altogether five prosecution witnesses, *i.e.*, PW-1- Mithilesh Kumar Pandey, PW-2- Vijay Kumar Ojha, PW-3- Subash Pandey, PW-4- Shashibhushan Pandey (informant) and PW-5- Sunil Kumar Tiwari (I.O.). The prosecution has also produced certain documents which were marked as 'Exhibits' *i.e.*, Ext.1/a-



Signature of the witness namely Subash Pandey on written application, Ext.2- Signature of the informant on written application, Ext.1- Charge-sheet No.10/2022 dated 01.10.2022, Ext.2- Signature of the I.O. namely Sunil Kumar Tiwari on written application, Ext.3- Formal F.I.R. The defence also examined altogether two witnesses, *i.e.*, DW1- Aditya Kumar and DW2- Bhola Mishra. After closure of prosecution evidence, the statement of the accused person was recorded under Section 313 of the Cr.P.C. and after conclusion of trial, learned Trial Court has acquitted the accused persons.

5. The learned Trial Court on the basis of the materials available on record, and the evidence produced before the Court, acquitted the accused persons observing that the prosecution has not been able to establish the chain of circumstances so as to make the accused liable for the offences charged against him. The Trial Court further observed that the prosecution has failed beyond all reasonable doubts that it was the accused who killed the deceased and has also failed to prove that he did so in conspiracy with others and had hidden the evidence and thus comes to the conclusion that the prosecution has failed to prove any of the charges levelled against the accused and acquitted the accused person.



6. Learned counsel for the appellant submits that the learned Trial Court has failed to appreciate the deposition of the prosecution witnesses who have fully supported the case of the prosecution. Learned Trial Court has also failed to appreciate the evidence of the Investigating Officer who has given a detailed picture of the occurrence and involvement of the accused persons. The learned Trial Court has also failed to appreciate the fact that the relationship between the wife and the husband was strained and two cases were pending between them.

7. Learned counsel for the state has submitted that there is no perversity in the judgment of the learned Trial Court, and the prosecution has failed to prove the guilt of the accused before the learned Trial Court. Therefore, the order of the learned Trial Court requires no interference in the present case.

8. We have heard the learned counsel for the appellant and the State and have also gone through the records of the case.

9. The sole question that requires consideration by this Court is whether the impugned judgment requires any interference by this Court.

10. On scrutiny of the material available on record, this Court finds that the marriage of the deceased with



respondent No.2, Bhola Mishra, was solemnized on 22.05.2013, whereas the alleged occurrence took place on 07.10.2021, *i.e.*, after more than eight years of marriage. Therefore, the provision of Section 304B of the Indian Penal Code, which specifically requires that the death should occur within seven years of marriage, are not applicable. Since the present case was registered under Sections 302 and 201/34 of the I.P.C. and not under Section 304B of the I.P.C., no adverse presumption under Section 113B of the Indian Evidence Act can be drawn against the accused.

11. Further, the prosecution alleged that the deceased was subjected to cruelty and harassment for dowry by her husband (respondent No.2) and other family members. It was further alleged that the deceased had earlier instituted a complaint under Section 498A of the I.P.C. as well as a maintenance case before the competent Court. However, it is significant to note that no such complaint petition or any judicial record thereof has been exhibited during trial. In absence of such documentary evidence, the allegation of earlier cruelty remains uncorroborated and cannot be accepted merely on oral assertions.

12. The prosecution case further suffers from fatal



weaknesses. There is no eye-witness account of the alleged incident. The entire case rests upon the circumstantial evidence. However, the circumstances do not form a complete chain pointing only to the guilt of the accused. The FIR vaguely mentions demand of dowry but fails to disclose what specific articles or amounts were demanded. During deposition also, the prosecution witnesses have not been able to explain the nature of the alleged demand. Such general and unparticularised allegations cannot sustain the serious charge of murder.

13. The most fundamental aspect of the case namely, the place of occurrence has not been proved. The prosecution has alleged that the incident took place in the matrimonial home of the deceased. However, the Investigating Officer did not open the lock of the house nor prepared a proper site plan. No seizure of incriminating material was made from the alleged place of occurrence. In these circumstances, it cannot be said with certainty that where the death actually occurred.

14. Moreover, the body of the deceased was never recovered, and no *postmortem* examination was conducted. Consequently, the cause of death has not been proved. It remains uncertain whether the death was homicidal, suicidal, or accidental. Without proof of *corpus delicti*, the charge under



Section 302 of the I.P.C. becomes highly doubtful.

15. The prosecution has also withheld material and natural witnesses. The tempo driver, who allegedly carried the deceased, was not produced, nor were the local people examined, who are said to have informed the informant about the death of his daughter. No independent witness has supported the case of the prosecution. The failure to examine such witnesses casts serious doubt on the prosecution version.

16. The defence, on the other hand, has examined DW-1, the minor son of the deceased and the accused, who stated that his mother had committed suicide by hanging. Being a natural witness, his testimony carries weight and lends support to the defence version.

17. It is settled law, as held in ***Sharad Birdhichand Sarda v. State of Maharashtra*** reported in (1984) 4 SCC 116, that in a case based on circumstantial evidence, the chain of circumstances must be complete and consistent only with the hypothesis of guilt, para 153 of the judgment observes as under:

“153. 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 v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“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.”

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

18. In the present case, the chain is clearly



incomplete. Likewise, in ***Kali Ram v. State of Himachal Pradesh*** reported in (1973) 2 SCC 808, the Hon'ble Supreme Court has emphasized that suspicion, however strong, cannot take the place of proof. If two views are possible, the one favourable to the accused must be adopted, as observed in paragraph 23 is as under:

“23.....There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of facts which have to be present before the presumption can be drawn. Once those facts are shown by the prosecution to exist, the Court can raise the statutory presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal.”

19. In view of these serious infirmities, *i.e.*, non-proof



of earlier complaint under Section 498A of the I.P.C., inapplicability of Section 304B of the I.P.C., absence of eye-witnesses, vague allegations of dowry demand, non-establishment of the place of occurrence, non-recovery of the dead body of the deceased and absence of medical evidence, non-examination of material witnesses, and serious lapses in investigation, this Court holds that the prosecution has failed to bring home the charges under Sections 302 and 201/34 of the I.P.C.

20. We find that the findings recorded by the learned Trial Court do not suffer from any illegality and perversity. In a criminal case, it is incumbent upon the prosecution to prove the guilt of the accused beyond the shadow of a reasonable doubt. Wherever, any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of doubt.

21. In criminal appeal against acquittal what the Appellate Court has to examine is whether the finding of the learned Court below is perverse and *prima facie* illegal. Once the Appellate Court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further



strengthened by the finding of the Court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court in the case of ***Mrinal Das vs. State of Tripura*** reported in ***(2011) 9 SCC 479***, paragraphs 13 & 14 of which read as under:

"13. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final court of fact, is fully competent to reappreciate, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal.

14. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the



entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference....."

22. In the case of ***Ghurey Lal versus State of Uttar Pradesh*** reported in (2008) 10 SCC 450 in paragraph 75, the Hon'ble Supreme Court has observed as under:

"75. The trial Court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable."

23. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case if the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the Appellate Court must not take a different view only because another view is possible. It is because the Trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its decision must not be upset in absence of strong and compelling grounds.



24. In view of the above, we do not find any illegality and perversity in the findings recorded by the Trial Court.

25. Accordingly, the present appeal is dismissed.

26. Pending application(s), if any, shall stand disposed of.

(Sudhir Singh, J.)

(Rajesh Kumar Verma, J.)

Gaurav Kumar/-

AFR/NAFR	NAFR
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