

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.253 of 2025

Arising Out of PS. Case No.-57 Year-2016 Thana- LAXMIPUR District- Jamui

Chote Lal tanti @ Chhote Lal Tanti Son of Late Kishun Tanti Resident of
Village- Gotajor, Chodparan, P.S.- Laxmipur, Distt.- Jamui

... .. Appellant

Versus

1. The State of Bihar
2. Chandan Rajak @ Chandu Rajak Son of Kalit Rajak Resident of Village-
Tetarya, P.S.- Barhat, Distt.- Jamui
3. Mukesh Rajak @ Karu Rajak Son of Kalit Rajak Resident of Village-
Tetarya, P.S.- Barhat, Distt.- Jamui
4. Raj Kumar Rajak Son of Kalit Rajak Resident of Village- Tetarya, P.S.-
Barhat, Distt.- Jamui
5. Pappu Rajak Son of Kalit Rajak Resident of Village- Tetarya, P.S.- Barhat,
Distt.- Jamui
6. Kalit Rajak Son of Late Mithu Rajak Resident of Village- Tetarya, P.S.-
Barhat, Distt.- Jamui

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Abdul Mamman Khan, Advocate Mr. Binay Kamal, Advocate
For the State	:	Mr. Sujit Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 12-09-2025

The present criminal appeal has been preferred under
Section 413 of the B.N.S.S., 2023 against judgment of acquittal
dated 24.01.2025 passed by the learned District & Additional
Session Judge-IV, Jamui in Sessions Trial No. 565 of 2017,
arising out of Laxmipur P.S. Case No. 57 of 2016, whereby



Respondent Nos. 2 to 6 have been acquitted by the learned Trial Court from the charge of Sections 302, 201, 120(B)/34 of Indian Penal Code.

2. The prosecution case, in brief, is that on 22.04.2016, at around 10 p.m., the informant's son Pramod Kumar Tanti had gone missing. All the family members of the informant were searching for him. On 25.04.2016, the informant got information that a dead body was floating in Tetariya Bahiyar village in a well. When he went there, he found that it was the dead body of his son Pramod. He firmly believed that the accused persons namely, Kalit Rajak, Mukesh Rajak @ Karu Rajak, Pappu Rajak, Nandu Rajak, Chandu Rajak and Raj Kumar Rajak have altogether killed his son and threw the dead body into the well. It was told by the villagers that his son was having love affair with Kalit Rajak's daughter and, to get rid of this, the accused persons have killed his son.

3. On the basis of written statement of the informant, Laxmipur P.S. Case No. 57 of 2016 was instituted under Sections 302, 201, 120(B)/34 of Indian Penal Code and investigation was taken up by the Police. The Police, after investigation, submitted charge-sheet against Respondent Nos. 2 to 6 and, accordingly, cognizance was taken. Thereafter, the case



was committed to the Court of Sessions. Charges were framed against the accused persons to which they pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined altogether seven prosecution witnesses i.e. PW1- Murari Tanti, PW2- Madan Tanti, PW3- Dharmendra Tanti, PW4- Chhote Lal Tanti (Informant), PW5- Dr. Arvind Kumar, PW6- Mahaveer Tanti and PW7- Devanand Paswan. The prosecution has also produced certain documents which were marked as 'Exhibits' i.e., Ext. 1- Signature of informant over written application, Ext. 2- Signature of Dr. Arvind Kumar on *post mortem* report, Ext. 3- Signature of I.O. on formal FIR and Ext. 4- Certified copy of Laxmipur P.S. Case No. 106/2019. Two witnesses have been examined on behalf of the defence i.e. DW1- Bhawesh Kumar and DW2- Ravindra Kumar. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 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 allegation against the accused persons has neither been



supported by the statement of any of the prosecution witnesses nor by any documentary evidence adduced by the prosecution. The statements of the witnesses are not reliable. There is no eye-witness to the occurrence and there is no credibility to the testimony of the witnesses. There is no any independent witness who had supported the case of the prosecution and, due to the lack of corroborative evidence, the statement of the prosecution witnesses became untrustworthy and doubtful.

6. Learned counsel for the appellant has submitted that the learned Trial Court has failed to consider that all the prosecution witnesses have fully supported the prosecution case and that the prosecution case has been fully proved by cogent evidence on record. Further, it has been submitted that, from the deposition of prosecution witnesses, it is apparent that the deceased was taken by the accused persons and, subsequently, killed by pushing him in a well after tying his hands and legs.

7. The 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 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 materials available on record, and on consideration of the rival submissions advanced by both the parties before this Court, it becomes clear that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt.

11. To begin with, the alleged occurrence is said to have taken place on 22.04.2016, whereas the FIR was lodged on 25.04.2016. The delay of three days in the institution of FIR has not been explained by the prosecution by way of any satisfactory evidence. It is well settled that delay in lodging of FIR is not always fatal, but when such delay remains unexplained, it gives rise to a presumption of afterthought or embellishment. At this juncture, it is noteworthy, that the Hon'ble Supreme Court while deciding the case of **Thulia Kali vs. The State of Tamil Nadu**, reported in **AIR 1978 SC 501**, it was observed that:-

“First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the report can hardly be



overestimated from the standpoint of the accused. The object of Insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation, It is therefore, essential that the delay in lodging of the first information report should be satisfactorily explained. When an occurrence is not reported for more than 20 hours after the occurrence even though the police station is only two miles from the place of occurrence it is unsafe to base conviction upon the evidence.”

In the present case, the unexplained delay casts a shadow of reasonable doubt on the genuineness of the prosecution case.

12. Further, on perusal of the lower court records, it is evident that the Inquest Report has not been produced during trial. The inquest is a basic requirement in cases of suspicious or unnatural death, and its absence deprives the Court of contemporaneous details regarding the condition of the body and the surrounding circumstances. Such omission goes to the root of the matter and weakens the prosecution case materially.



13. On careful examination of the evidence adduced, it is further revealed that there is no eye-witness to the alleged occurrence. None of the prosecution witnesses have stated that they saw the incident taking place. The entire case is, thus, resting on what the witnesses heard afterwards or assumed to be the cause. In criminal trials, especially in serious charges, direct and reliable testimony of eye-witnesses plays a vital role. The absence of any eye-witness, therefore, creates a major gap in the prosecution case.

14. The evidence of PW-4, who was presented as a material witness, has been found to be inconsistent and contradictory. His deposition does not inspire confidence of this Court and cannot be safely relied upon. In addition, no independent witnesses have been examined to support the prosecution version. The occurrence is alleged to have taken place in circumstances, where independent persons could have been made witnesses but the prosecution has chosen not to produce any. This omission creates further doubt about the reliability of the case.

15. As per the prosecution, the deceased's hands were tied with a saree and a piece of saree was recovered from the house of one of the accused. However, it is admitted that the



alleged piece of saree was never seized by the Investigating Officer in accordance with law nor was it produced before the Court as a material exhibit. The failure to seize and produce such an important object, which could have had evidentiary value, is fatal to the prosecution case. Without such material corroboration, the allegation remains unsubstantiated.

16. On the cumulative consideration of these aspects namely, unexplained delay in lodging of FIR, non-production of inquest report, absence of eye-witness, untrustworthy testimony of PW-4, failure to examine independent witnesses, and non-production of the alleged saree piece, this Court is of the opinion that the prosecution case suffers from serious infirmities.

17. The Hon'ble Supreme Court in **Kali Ram v. State of Himachal Pradesh**, reported in (1973) 2 SCC 808 has observed that where two views are possible on the basis of the evidence adduced, one pointing towards the guilt of the accused and the other towards innocence, the Court must adopt the view favourable to the accused, as observed in Para-25 of the judgment:

“25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the



other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by report to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of State of Punjab v. Jagir Singh [(1974) 3 SCC 227 : 1973 SCC (Cri) 886] a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the



nature of conjectures.”

Applying this principle to the present case, the circumstances appearing on record are not conclusive of the guilt of the accused. At best, they create suspicion, but suspicion, however strong, cannot be the basis for conviction.

18. On an overall assessment of the evidence and circumstances, this Court finds that the prosecution has miserably failed to discharge its burden of proving the case beyond reasonable doubt. The reasoning and findings recorded by the learned Trial Court appear to be sound, well-founded, and in conformity with settled principles of law. There is no illegality, perversity, or infirmity in the judgment under appeal which may call for interference by this Court.

19. 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.

20. 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 (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 reappraise, 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....."

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."

21. 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.

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

23. Accordingly, the present appeal is dismissed.

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

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Sachin/-

AFR/NAFR	N.A.F.R.
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