

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.442 of 2023

Arising Out of PS. Case No.-108 Year-2020 Thana- TARARI District- Bhojpur

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Ram Vadan Singh, Son of Sri Bhagwan Singh, Resident of Azam Nagar, P.S.-
Garahani, District - Bhojpur (Arrah).

... .. Appellant/s

Versus

1. The State of Bihar
2. Gaj Bimal Singh, Son of Shiv Kumar Singh, Resident of Kishai Dih, P.S.-
Tarari, District - Bhojpur.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Chandan Kumar Verma, Advocate
For the State	:	Mr.Parmeshwar Mehta, APP
For the Respondent	:	Mr. Ashok Kumar Singh, Advocate
		Mr. Anant Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date: 13-08-2025

The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure against the judgment of acquittal dated 10.02.2023 passed by the learned Additional Sessions Judge- VII, Bhojpur, Ara in Sessions Trial No. 52 of 2022, arising out of Tarari P.S. Case No. 108 of 2020, whereby Respondent No. 2 has been acquitted by the trial court from the charge of Sections 304B and 201/34 of the Indian Penal Code.

2. The prosecution case, in brief, according to the



FIR, is that marriage of the sister of the informant, Prabhavati Devi, was solemnised with Gaj Bimal Singh in the year 2011. After marriage, Gaj Bimal Singh took the informant's sister to her Sasural Kishaidih. According to his ability, the informant had given dowry, but despite that, the family members of the victim's Sasural, namely, Shiv Kumar Singh, Kalawati Devi, Anjali Kumari, Gaj Bimal Singh, Ajendra Singh and Rina Devi used to taunt her for dowry. Gaj Bimal Singh used to demand a motorcycle, and his sister used to say that her father and brother are so poor that they cannot fulfill demand of motorcycle. The victim had no child from the wedlock and for this reason, she was harassed and threatened with her husband's remarriage. In the meantime, Gaj Bimal Singh solemnised a second marriage to Kanti Devi and used to abuse and beat the victim. One month earlier to the alleged occurrence, the informant took his sister to his home at Ajamnagar, and later on 10.06.2020 in the morning, he dropped his sister back to her Sasural. On 11.06.2020, at 7:00 a.m., the informant received information from the villagers of Kishaidih from mobile that his sister had been killed by her Sasural family. When he reached Kishaidih and enquired, the villagers told him that after killing his sister, the accused



persons had taken the dead body to Nasariganj Sone. Informant and others went to Nasariganj but could not find body. He then believed that, for the purpose of concealing evidence, the dead body of his sister had either been burnt or buried. The dead body was later found in the Sone River, as per the evidence of P.W. 4.

3. On the basis of the Farebeyan of the informant, Tarari P.S. Case No. 108 of 2020 was instituted under Sections 304B and 201/34 of the IPC, and investigation was taken up by the police. After investigation, the police 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 Respondent No. 2, to which he pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined four witnesses, i.e., PW1 Ghuni Lal Mandal, PW2 Vikas Singh, PW3 Krishna Singh and PW4 Ram Badan Singh. The prosecution has also produced certain documents which were marked as 'Exhibits', i.e., The signature of Ghuni Lal Mandal on the supplementary charge sheet; The signature of Vikas



Singh as witness on the FIR; The signature of Krishna Singh on the inquest report; The signature of Rambadan Singh (PW4) on the inquest report and The Fardbeyan. After the closure of the prosecution evidence, the statement of Respondent No. 2 was recorded under Section 313 Cr.P.C., and after conclusion of the trial, the trial court acquitted him.

5. The learned trial court, while acquitting the accused, gave reasoning that the depositions of all the prosecution witnesses were contradictory. There were no eyewitnesses of the alleged occurrence, and no one present at the alleged crime scene was examined. Thus, the prosecution was unable to prove the case beyond a shadow of reasonable doubt before the learned trial court.

6. The learned counsel for the appellant submitted that the learned trial court acquitted Respondent No. 2 merely on conjectures and surmises, without properly considering the oral and documentary evidence, which was fully corroborated by the evidence of PW2 to PW4. The application of the appellant filed under Section 311 Cr.P.C. for examination of witnesses who were essential for the just decision of the case, was rejected outrightly by the learned trial court and passed



the judgment of acquittal on an erroneous application of judicial mind and on appreciation of unreliable and unimportant evidence.

7. Per contra, the learned counsel for the respondent submitted that the learned trial court has delivered a well-reasoned judgment based on the facts and circumstances of the case, and therefore, the judgment of the learned trial court requires no interference.

8. We have heard learned counsel for the appellant 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 of acquittal requires any interference by this Court.

10. In the present case, we find that there is a lack of production of material witnesses before the learned trial court, namely, the Investigating Officer (I.O.) and the Doctor. The post-mortem report was never produced before the learned trial court, nor the doctor who conducted the post-mortem was ever examined. In the absence of post-mortem report and the evidence of the doctor, the cause of death cannot be ascertained. Thus, the cause of death has not been proved by



the prosecution during the trial. A charge under Section 304-B can only be framed if the cause of death is shown to be 'otherwise than under normal circumstances'.

11. After going through the facts on record of the present case, we also find that the prosecution has been unable to prove before the learned trial court that soon before the death of the alleged victim, she was subjected to any cruelty or harassment for demand of dowry by her husband or any relative of her husband.

12. We also find that the I.O. was not examined and the place from where the dead body of the deceased was recovered, has also not been proved. As per the deposition of PW-4/informant, on the information of police, the dead body of the deceased was recovered from the Sone River. Due to non-examination of the I.O., the place of recovery of the dead body has also not been proved.

13. As per the *Fradbeyan*, the marriage is alleged to have been solemnised in 2011 and the alleged incident is said to have taken place on 11.06.2020. Admittedly, the said incident has taken place after a period of seven years from the date of marriage. For an offence to be constituted under



Section 304-B of the IPC, the alleged occurrence needs to be committed within seven years of the marriage. Only then the presumption will be drawn against the accused and the burden will shift under Section 113B of the Indian Evidence Act upon the accused to explain the death. The relevant portion of Section 304-B is reproduced as under:

*“304B. Dowry death. - (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances **within seven years** of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called ‘dowry death’, and such husband or relative shall be deemed to have caused her death.”*

14. Since the death of the alleged victim has taken place beyond 07 years of marriage, therefore, in any case notwithstanding the nature of death, i.e., either natural, accidental or unnatural, the alleged occurrence of death, doesn't come within the purview of dowry death, especially considering the period of 9 years lapsed after the marriage of the alleged victim.

15. Even this Court may assume that it was a case of



homicidal death, in that case also, at best, it could be a case of 'Murder' and the entire burden of proof lies upon the prosecution to prove the charges beyond reasonable shadow of doubts. Here, the prosecution has not adduced any ocular or circumstantial evidence to make out an offence of Murder, and has failed to produce any evidence before the learned trial court. Therefore, the learned trial court had no occasion for alteration in charges framed against accused.

16. We find that the judgment of the learned Trial Court does 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.

17. In a criminal appeal against acquittal, what the Appellate Court has to examine is whether the finding of the learned trial court 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 v. 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.....”

18. In the case of ***Ghurey Lal v. State of Uttar Pradesh*** reported in ***(2008) 10 SCC 450*** in paragraph 75, the Hon’ble Supreme Court reiterated the said view and 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.”

19. 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 the absence of strong and compelling grounds.

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

21. Accordingly, the present appeal is dismissed.

(Sudhir Singh, J)

(Alok Kumar Pandey, J)

Sujit/-

AFR/NAFR	NAFR
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