

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.703 of 2023

Arising Out of PS. Case No.-83 Year-2017 Thana- BISFI (PATAUNA) District- Madhubani

Ram Chandra Sahu @ Ram Chandra Sah Son Of Late Babu Lal Sahu @ Late
Babu Lal Sah Resident Of Village - Bardaha, P.S. - Bisfi (Patauna Op),
District – Madhubani

... .. Appellant

Versus

1. The State of Bihar
 2. Pawan Kumar Sah Son of Satya Narayan Sah Resident of Village - Gouran,
P.S. - Nanpur, District - Sitamarhi
- Respondents

Appearance :

For the Appellant/s	:	Mr. Tej Pratap Singh, Advocate Mr. Yash Singh, Advocate
For the State	:	Mr. Ajay Mishra, APP
For the Informant	:	Mr. Deovind Kumar Singh, Advocate Mr. Devendra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 05-03-2025

Heard learned counsel for the appellant, the informant-
appellant, the respondent No.2 and the learned Additional Public
Prosecutor for the State.

2. This appeal has been preferred for setting aside the
judgment of acquittal dated 19.05.2023 (hereinafter referred to
as the ‘impugned judgment’) passed by the learned Additional
Sessions Judge- IXth court, Madhubani (hereinafter referred to
as the ‘learned trial court’) in connection with Sessions Trial
No. 36 of 2018, arising out of Bisfi (Patauna OP) P.S. Case No.
83 of 2017. The learned trial court has been pleased to acquit the



sole accused-respondent No.2 of the charges under Sections 302, 201 and 34 of the Indian Penal Code (in short 'I.P.C.').

Prosecution Case

3. The prosecution case is based on fardbeyan of Ram Chandra Shah who is father of the deceased Punil Shah. In his fardbeyan recorded on 13.04.2017 at 22:50 hrs, at the *parti* land of Vishwanath Shah, by the Sub-inspector of Police, Hanuman Chaudhary, the informant has alleged as under :-

“On 13.04.2017 at about 4.00 PM, his son was going by his bicycle towards Kataiya Bazar for bringing vegetables but till late evening he did not return, then he along with his entire family members had gone in search of his son. In course of search, near the house of his co-villager Bharosi Sahani, the bicycle and bag with vegetables were found. One women of Sarisaw village told him that an unknown person had taken away his son on a motorcycle towards ‘Maharji Bandh’. At the same time, little girl children of the village also told the informant that near the Maharaji Bandh Dhab 2-3 persons were involved in *Hathapai* (physical quarrel by hand and fist). On this information, the informant went near Maharaji Bandh Dhab where Vishwanath Sah told him that his son’s dead body was lying there. He had raised hulla and reached there, then he saw



that the neck of his son was slitted by sharp edge weapon and blood was oozing out. His son was residing in Lucknow where he was working in a sweets factory. 5-6 days before he had come and his marriage was fixed for 19.04.2017. His son has kept one mobile of which number is 9557414350, on which he had made call but the call was not received by his son and the mobile was later on switched off.”

4. Police registered a First Information Report on 14.04.2017 at 05:30 A.M. After investigation, a charge-sheet was filed vide charge-sheet No. 93 of 2017 for the offences under Section 302/201 I.P.C. and accordingly cognizance was taken. After following the procedures of law, the records were committed to the court of sessions for trial.

5. In the trial court the charges were explained to the accused-respondent No.2 who denied the charges and claimed to be tried.

6. On behalf of the prosecution as many as 10 witnesses were examined and some documentary evidences were laid which have been marked exhibits. A ‘hasua’ (sharp cutting weapon) which is said to be the crime of weapon and a mobile were seized. Those have been marked material exhibit 2 and 2/2 respectively. The list of the witnesses and the exhibits



marked on behalf of the prosecution are as under:-

List of Prosecution Witnesses:-

P.W.-1	Mauje Shah
P.W.-2	Anil Shah
P.W.-3	Niranjan Paswan
P.W.-4	Ramchandra Shah
P.W.-5	Upendra Shah
P.W.-6	Sunil Kumar Shah
P.W.-7	Hanuman Chaudhary
P.W.-8	Dr. D.S. Mishra
P.W.-9	Krishnakant Mandal
P.W.-10	Md. Faiyaz

List of Documentary Exhibits:-

Ext.-1	Seizure list of Hasua
Ext.-2	Signature of informant on the fardbeyan
Ext.-3	Signature of Upendra Shah on fardbeyan
Ext.-4	Seizure list of Motorcycle
Ext.-5 & 6	Seizure list of mobile
Ext.-7	Statement of confession of guilt
Ext.-8	Seizure list of boold and soil
Ext.-9	Seizure list of mobile
Ext.-10	Hasua
Ext.-11	Inquest report

List of material Exhibits:-

Ext.-M1	Hasua
Ext.-M2 & 2/2	Seizure list of mobile

7. The defence did not led any oral or documentary



evidence.

Findings of the learned trial court

8. The learned trial court having examined and analyzed the evidences available on the record found that the deceased was last seen going with an unknown person by a motorcycle towards the ridge (*bandh*). He was seen by a woman of Sarisaw village. The said woman who had seen the unknown person has not been examined on behalf of the prosecution.

9. The trial court further noticed that in his fardbeyan the informant disclosed that in course of search he found the bicycle and the bag of his deceased son near the house of his co-villager Bharosi Sahani and a woman of Sarisaw informed him that the deceased was going on a motorcycle with one person towards *Maharaj ji bandh*. The informant came in the witness box as PW-4. In his evidence PW-4 has stated that the woman of Sarisaw told him that his son was going on a red colour motorcycle but the seizure list of the motorcycle (Exhibit-4) would show that the police has seized a black and brown colour motorcycle. There is no mention of the registration number of the motorcycle and there is a fundamental contradiction with regard to Exhibit-4.

10. The learned trial court has recorded that Mauje



Shah (PW-1) has stated in paragraph '4' of his evidence that police had seized the '*hasua*' from a distance of 150 meters west to the place of occurrence and had kept the same in their bare hand. Upendra Shah (PW-5) has, on the other hand, stated in his examination-in-chief that the '*hasua*' was seized on the second day of the occurrence. In paragraph-14 of his cross-examination this witness has then stated that he had found the '*hasua*' on the next day and it was not touched by anyone. He has stated that he had not seen the '*hasua*' in anybody's hand. Contrary to this evidence of PW-5, the seizure list of '*hasua*' has been shown prepared on 26.04.2017 i.e. after 13 days of the occurrence and according to prosecution this '*hasua*' was recovered by police after arrest of Respondent No.2 and on the basis of his disclosures made in the confessional statement.

11. The learned trial court further found that the blood-stained soil and the '*hasua*' which are Exhibit 8 and 10 respectively were not sent to the Forensic Science Laboratory (in short 'FSL') to conduct a scientific test, therefore, the submission is that not only the manner of recovery of '*hasua*' is highly doubtful, the prosecution could not obtain a scientific opinion that there was any blood mark of a human being on the said '*hasua*'. On the face of it, it is found that the recovery of



weapon as claimed by the prosecution on the disclosure of the accused is not duly proved and the prosecution evidence in this regard would suffer from several infirmities.

12. It is pointed out that the learned trial court has further recorded that the FIR was lodged against unknown person, police arrested the accused person on suspicion and thereafter charge-sheeted him on the basis of his confessional statement. Even the motive of occurrence has not been proved by the prosecution.

13. The learned trial court has further observed that the prosecution has failed to prove the circumstantial evidence and the chain of criminological event is not complete. In these circumstances the respondent No. 2 has been acquitted.

Submissions on behalf of the appellant

14. Mr. Tej Pratap Singh, learned counsel assisted by Mr. Yash Singh, learned counsel for the informant-appellant has assailed the impugned judgment. It is his submission that the learned trial court could not appreciate that the victim/deceased was seen while being taken away on a motorcycle.

15. Learned counsel has further submitted that the 'hasua' was recovered by police on the basis of the disclosures made in the confessional statement of the accused which has



been marked Exhibit-7. It is submitted that no doubt under Section 25 of the Indian Evidence Act, 1872 (now Bharatiya Sakshya Adhiniyam, 2023) a confessional statement made before the police would not be admissible in evidence but at least this part of the statement which led to the recovery of the material object would be an admissible piece of evidence.

16. It is lastly submitted that the learned trial court could not appreciate that the motive behind the occurrence has also been proved by the prosecution by taking help of the confessional statement before police (Exhibit-7).

Submissions on behalf of the informant and the State

17. On the other hand Mr. Deobind Kumar Singh, learned counsel assisted by Mr. Devendra Kumar, learned Advocate has submitted that the learned trial court has rightly appreciated the entire evidence on the record and came to a conclusion that the prosecution was not able to prove its case beyond all reasonable doubts.

18. Learned counsel submits that the solitary witness who had seen the deceased going on a motorcycle with an unknown person is a woman of Sarisaw village who has not been investigated by the I.O. and she could not be made a charge-sheet witness in this case. The whole prosecution case is based on the information said to have been supplied by the said



woman.

19. Learned counsel further submits that the informant (PW-4) has himself stated that at the time of writing of the application he had raised suspicion over unknown persons. He has further stated that he had not seen any part of the occurrence from his own eyes. Learned counsel submits that the prosecution has not been able to prove any motive on the part of the respondent No.2 leading to the alleged occurrence.

20. It is further submitted that the seizure of the weapon of crime has been shown on 13.04.2017, whereas PW-5 has stated that on the next day of the occurrence police came. He had found the '*hasua*' on the next day. It is, therefore evident that the seizure list has been fabricated after the arrest of respondent No.2 and the '*hasua*' has been shown to be the weapon of crime recovered on the basis of the disclosure made by the respondent No.2. The said '*hasua*' was not sent to FSL and there is no evidence that there was any blood mark on the said '*hasua*' much less that it was human blood.

21. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in (1984) 4 SCC 116, learned counsel submits that in a case of circumstantial evidence unless



the entire criminological chain of event is complete and the court comes to an irresistible conclusion about the guilt of the accused, no conviction should take place.

22. Learned counsel further submits that the learned trial court has not committed any error in appreciation of the evidence, although the confessional statement of the accused has been marked exhibit but the learned trial court has rightly observed in its judgment that Section 25 of the Indian Evidence Act would make it inadmissible and the same cannot be relied upon.

23. Mr. Ajay Mishra, learned Additional Public Prosecutor for the State has also endorsed the submissions of learned counsel for the respondent No.2. It is submitted that the whole prosecution case is based on the circumstantial evidence but very important witness i.e. woman of Sarisaw village who had perhaps seen the deceased in the company of the accused going on a motorcycle has not been examined. This has resulted fatal to the prosecution case and the judgment of the learned trial court does not suffer from any infirmity.

Consideration

24. We have heard learned counsel for the parties and learned Additional Public Prosecutor for the State as also



perused the trial court's records.

25. It is evident from the materials on the record that the basis of the prosecution case is the fardbeyan of the informant (PW-4). In his fardbeyan, he has stated that his son was going on his bicycle to Kataiya Bazar for bringing vegetables but he did not return till late evening whereafter he along with his entire family members started search of his son and in course of that search, he found the bicycle and the bag with vegetables near the house of Bharosi Sahani who is a co-villager. It is, therefore, evident from his fardbeyan itself that the deceased son of the informant had gone to the market and after purchasing vegetables, he had returned to his village but from near the house of his co-villager Bharosi Sahani, he had gone missing. At this stage, the informant was told by one women of Sarisaw village that the deceased had gone with a person by a motorcycle towards Maharaji Bandh Dhab. At the same time, little girl children of the village also told the informant that near the Maharaji Bandh Dhab 2-3 persons were involved in *Hathapai* (physical quarrel by hand and fist). On this information, the informant went near Maharaji Bandh Dhab where Vishwanath Sah told him that his son's dead body was lying there.



26. This Court finds that the prosecution has not examined the women of Sarisaw village and it is evident that the women of Sarisaw village had not identified the another person with whom the deceased was going on the motorcycle, otherwise she would have disclosed the name etc. She had also not disclosed the colour of the motorcycle. The little girl children who were said to have given information to the informant have not been identified and they have not been examined. Who were those 2-3 persons near Maharaji Bandh Dhab with whom quarrels were taking place is not known. The informant came to know in course of search of his son that his son was killed and his dead body was there in the field of Vishwanath Sah and it was Vishwanath Sah who told that his son's dead body was lying there but again Vishwanath Sah has not been examined by the prosecution.

27. The informant did not raise any suspicion against the respondent no.2 in the fardebayan (Exhibit-2).

28. Upendra Sah is one of the witnesses on the farbdeyan who has been examined as PW-5 in this case. A close perusal of his evidence would show that he was present with the dead body for the whole night. He has stated that Viswhanath Sah had first found the dead body. He has further stated that the



dead body was lifted from the place of occurrence and was taken to the house from where it was brought to Madhubani. The police had arrived at the place where the dead body was found and the '*Hasua*' was found on the next day. Contrary to the evidence of PW-4, the seizure list of '*Hasua*' (Exhibit-10) has been shown prepared on 13.04.2017 i.e. after 13 days of the occurrence. The CDR of the mobile phone of three mobile numbers, namely, 7654302518, 7654239520 and 9557414350 were sought to be proved by producing one Krishnakant Mandal (PW-9) who claimed that he was posted in the Technical Cell, Madhubani and was told by the I.O. of this case to provide the CDR of the three mobiles which he had made available to the I.O. in 19 pages vide memo no.73 dated 18.04.2017. In his cross-examination, this witness has stated that his statement was not recorded under Section 161 Cr.P.C. He has further stated that the company does not provide any certificate and apart from giving the CDR he had not done any other things.

29. This Court, therefore, finds that even the CDR which was obtained by the I.O. has not been proved. The I.O. (PW-7) had prepared a '*Nazri Naksha*' of the place of occurrence but even that '*Nazri Naksha*' has not been proved in course of trial.



30. This Court further finds that at the instance of I.O. (PW-7) the seizure list of motorcycle bearing Reg. No. BR30A 5837 has been prepared and marked Exhibit-4. One red-black colour mobile set was produced by someone and a production-cum-seizure list has been prepared which have been marked Exhibit-5 and another production-cum-seizure list of a black colour Zem company touchscreen mobile has been marked Exhibit-6 but who had produced the two sets of mobile to the I.O. (PW-7) has not been disclosed.

31. We are dealing with a case in which the prosecution sought to prove the guilt of the accused by producing circumstantial evidence. The principles governing the case of circumstantial evidence have been well discussed in a Constitution Bench Judgment of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in (1984) 4 SCC 116. Paragraph '152' of the said judgment is being reproduced hereunder for a ready reference:-

“**152.** Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic



decision of this Court is *Hanumant v. State of Madhya Pradesh*¹. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh*¹⁷ and *Ramgopal v. State of Maharashtra*¹⁸. It may be useful to extract what Mahajan, J. has laid down in *Hanumant case*¹:

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

1.(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129

17. (1969) 3 SCC 198 : 1970 SCC (Cri) 55

18. (1972) 4 SCC 625 : AIR 1972 SC 656



32. Similar views have been taken by the Hon'ble Supreme Court in all subsequent judgments and what have been held in the case of **Sharad Birdhichand Sarda** still holds the field.

33. In the case of **Dilavar Hussain and Others versus the State of Gujarat and Another** reported in (1991) 1 SCC 253, the Hon'ble Supreme Court has observed as under:-

“3. All this generated a little emotion during submissions. But sentiments or emotions, howsoever strong, are neither relevant nor have any place in a court of law. Acquittal or conviction depends on proof or otherwise of the criminological chain which invariably comprises of why, where, when, how and who. Each knot of the chain has to be proved, beyond shadow of doubt to bring home the guilt. Any crack or loosening in it weakens the prosecution. Each link, must be so consistent that the only conclusion which must follow is that the accused is guilty. Although guilty should not escape (*sic*). But on reliable evidence, truthful witnesses and honest and fair investigation. No free man should be amerced by framing or to assuage feelings as it is fatal to human dignity and destructive of social, ethical and legal norm. Heinousness of crime or cruelty in its execution however abhorrent and hateful cannot reflect in deciding the guilt.”



34. In this case not only the seizure of the crime of weapon has been in serious doubt, the fact that crime of weapon was seized on the basis of disclosure made by the accused in his confessional statement is equally doubtful. The confessional statement leading to recovery of material object would be admissible in evidence but subject to the safeguards which have been laid down by the Hon'ble Supreme Court in the case of **Subramanya v. State of Karnataka** reported in **2022 SCC Online SC 1400**, the Hon'ble Supreme Court held as under:-

78. If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes, etc. then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence, etc. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch



witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

79. In the aforesaid context, we may refer to and rely upon the decision of this Court in *Murli v. State of Rajasthan*⁴⁶, held as under : (SCC p. 425, para 34)

“34. The contents of the panchnama are not the substantive evidence. The law is settled on that issue. What is substantive evidence is what has been stated by the panchas or the person concerned in the witness box.”

(emphasis supplied)

86. Thus, in the absence of exact words, attributed to an accused person, as statement made by him being deposed by the investigating officer in his evidence, and also without proving the contents of the panchnama, the High Court was not justified in placing reliance upon the circumstance of discovery of weapon.

35. We further find that the weapon of crime ‘Hasua’ was allegedly having blood mark but the police did not send the said ‘Hasua’ to the FSL as a result whereof the prosecution is not able to prove that those were human blood or blood at all on the said ‘Hasua’. Even if it would have been a human blood, for a safe conviction, it was necessary to match the blood present on the ‘Hasua’ with that of the deceased which has not been done in the present case.

46. *Murli v. State of Rajasthan*, (2009) 9 SCC 417 : (2010) 1 SCC (Cri) 12

* **Ed.** : Para 34 corrected vide Official Corrigendum No. F.3/Ed.B.J./141/2009 dated 14-9-2009.



36. In the entire facts and circumstances of the case and after re-appreciating the entire evidences on the record, we do not find any infirmity on the part of the learned trial court in appreciation of the evidence. The principles governing a case of appeal against acquittal is also well settled in the case of **H.D. Sundara vs. State of Karnataka (2023) 9 SCC 581**. The Hon'ble Supreme Court has reiterated the principles in paragraph '8' of the judgment which are being reproduced hereunder for a ready reference:-

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment¹ 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;

1. State of Karnataka v. H.K. Mariyappa, 2010 SCC OnLine Kar 5591



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.”

37. At the end, we find no reason to interfere with the impugned judgment of acquittal.

38. This appeal has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Durgesh/Arvind-

AFR/NAFR	NAFR
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