

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.801 of 2024

Arising Out of PS. Case No.-301 Year-2021 Thana- JHAJHA District- Jamui

Shakuntala Devi W/o Late Devendra Prasad R/o Village- Dhamna, P.S.-
Jhajha, Dist.- Jamui

... .. Appellant/s

Versus

1. The State of Bihar
2. Vicky Mandal S/o Late Kamleshwasri Mandal R/o Village- Dhamna, P.S.-
Jhajha, Dist.- Jamui

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kr. Thakur, Advocate Mr. Prabhat Ranjan Singh, Advocate
For the Respondent No. 1	:	Mr. Parmeshwar Mehta, Advocates
For the Respondent No. 2	:	Mr. Sri Bidhyachal Singh, Sr. Advocates Mr. Vipin Kr. Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA)

Date : 07-08-2025

The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure (hereinafter referred as ‘Cr.P.C) against the judgment of acquittal dated 15.05.2024 passed by the learned Sessions Judge, Jamui, in Sessions Trial No. 95 of 2022 arising out of Jhajha P.S Case No. 301 of 2021, whereby Respondent No. 2 has been acquitted by the learned Trial Court from the charge of Sections 302/34, 380/34, 120B/34 of Indian Penal Code (hereinafter referred as ‘IPC).



2. Vide order dated 29.10.2024, notice was issued to the Respondent No. 2, upon which he appeared by filing *Vakalatnama* through learned Advocate, Mr Vipin Kr. Singh.

3. The prosecution case, in brief, is that in her written application (Exhibit 'P-2') the informant, who is wife of the deceased, has stated that on 13.10.2021 at 11:00 pm she heard the knocking sound at the main door and the person at the door introduced himself as Vicky Mandal, thereafter, the husband of the informant, namely, Devendra Prasad opened the door whereupon co-accused Vicky Mandal came inside the house along with Mantu Mandal (respondent no. 2) and two unknown persons. It is alleged that Vicky Mandal having *katta* in his hand, Mantu Mandal having an iron rod in his hand and the other two unknown persons having *katta* in their hands attacked her husband. When the informant protested, the accused persons tied the informant as well as her husband with rope and they assaulted the husband of the informant leading to his death. The accused persons, thereafter entered the room where they broke open the lock of godrej and looted gold and silver ornaments worth Rs. 20,00,000/- as also Rs. 2,00,000/- in cash. The accused persons also took away with them LED TV, two monitors, 4 mobile phones and several important



documents, such as passbook, ATM, LIC papers, land registry documents and Bolero-SLX documents, etc. According to the informant, the alleged incident took place at the instance of one Deosharan Singh and Jayanti Devi, the Bhaisur and the Gotni of the informant respectively because these two persons had threatened the informant and her husband of dire consequences over a land dispute.

4. On the basis of written complaint of the informant, Jhajha P.S Case No. 301 of 2021 was instituted under Sections 302/34, 380/34, 120B/34 of IPC 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 to which he pleaded not guilty and claimed to be tried.

5. During the course of trial, the prosecution examined altogether thirteen witnesses, out of them, PW1 Bikram Kumar, PW2 Shweta Kumari, PW3 Rajesh Kumar, PW4 Shakuntala Devi, PW5 Rakesh Ranjan, PW6 Rajiv Ranjan, PW7 Dr. Arvind Kumar, PW8 Rajesh Sharan (Investigating Officer), PW9 Pramod Kumar Singh (Store Incharge Jhajha P.S), PW10 Rajesh Paswan (ASI Khaira P.S), PW11 Krishna Kumar (Seizure-list witness), PW12 Dayanand



Kumar (Seizure-list witness), PW13 Mukesh Kumar Singh.

6. 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 *Surajpal Singh & Ors. Versus The State* reported in *1952 SCR 193*, paragraph 13 of which reads as under: “..the High court has full power to review the evidence upon which the order of acquittal was founded. But it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

7. 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 reiterated the said view and observed as under: “The trial Court has the advantage of



watching the demeanor 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.”

8. On meticulous examination of the evidences adduced, it is worth to note that the learned trial court has carefully examined the oral testimony of all the thirteen prosecution witnesses and recorded that PW4 who is the informant of the case is said to be the only eye witness and the rest other witnesses are only hearsay witnesses. The learned trial Court has noticed the cardinal principle of law that in a criminal trial, the prosecution has to succeed on its own leg and by pitching it's case beyond the shadow of all reasonable doubts. It must fall in the realm of 'must be true' category and not rest contented by leaving it in the domain 'may be true'. The learned trial Court has found that there are material inconsistencies and contradictions in the evidence of the sole eye witness, hence, she cannot be wholly relied upon. There is also an inordinate delay and unsatisfactory explanation for the delay of almost 21 hours in institution of the FIR. The prosecution case is suffering from mist of doubt about the manner and genesis of the occurrence and in such circumstances, the benefit of doubt has



to go to the accused. We find no reason to take any other view with regard to these findings of the learned trial Court.

9. We examined the entire evidence available on the record and is of the considered opinion that not only there is an inordinate delay in submission of the written report by the informant, there is also ante-timing on the seizure list and the evidence of the sole eye witness (PW4) contains contradictions which are vital and would create a dent in the prosecution case. This Court further finds that in the written report which was lodged after 21 hours of the occurrence and in presence of her well educated son who had written the report and the informant has stated that Vicky Mandal had a '*Katta*' in his hand whereas other co-accused, namely, Mantu Mandal had an 'iron rod' in his hand, two unknown persons had '*Katta*' in their hand and all of them assaulted the husband of the informant. In her examination-in-chief also PW-4 stated that the accused were armed with '*Katta*' and '*iron rod*' but this time she has not stated that they started assaulting with those weapons. She has stated that all the four accused had taken her husband in their control, indulging physically and had brought him in the courtyard where he was slammed down and thereafter they tied the hands and legs of her husband and also tied his mouth by a towel and thereafter, all the four started assaulting the deceased by a



Kharka (a wooden tool used for closing the door). Thus, she has not stated in her examination-in-chief that this accused had assaulted her husband by *katta*. Her statement that the accused had tied her both hands and legs and that she was pushed to the stairs has been contradicted.

10. Further, this Court, therefore, finds that the credibility of PW4 is not that of a sterling witness and it would not be safe to convict the accused-respondent no. 2 on the basis of the sole testimony of PW4 as the same is not corroborated in material particulars from any independent evidence available on the record and at the same time there is an inordinate delay in submission of the written report (Exhibit 'P-2') which has remained unexplained. The conduct of PW4 in maintaining silence and not disclosing the name of the murderers even after arrival of her son and daughter coupled with the evidence of the I.O. that even after his asking the informant to give her fardbeyan or a written report, she did not say about the identity of the murderers would only lead to a conclusion that PW4 had not seen the occurrence. PW4 was fully conscious when she had talked to her son on mobile, she had also talked to the I.O. and had shown him the place of occurrence, still for no plausible reason she did not record her fardbeyan. Apparently, the FIR has been lodged after a lot of thought process after arrival of three



other sons of PW4 in the evening. All the sons and the daughter have deposed in stereotype version. Even as a large crowd of villagers were present at the place of occurrence, no independent person has been examined by the I.O.

11. While appreciating the kind of materials on the record, we keep in mind the ratio of the judgment of Hon'ble Supreme Court in *Sharad Birdhichand Sarda versus State of Maharashtra* reported in (1984) 4 SCC 116 and *Dilavar Hussain and Ors. v. State of Gujarat and Anr., (1991) 1 SCC 253*. Paragraph '153' of *Sharad Birdhichand Sarda (supra)* is quoted here-under for a ready reference:-

"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 Cri LJ 1783 where the following 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.”

12. Thus, on the basis of the evidence based on record and the ratio laid down by the hon'ble supreme court in various cases on circumstantial evidence, it is held that the charges against the accused/respondent is not proved beyond shadow all reasonable doubt and the necessary elements mentioned in the charged sections are lacking to hold them guilty under the charged sections. In the totality of the circumstances which are appearing from the evidences on the record, we are of the considered opinion that the learned trial Court has not committed any error in appreciation of the evidences.

13. We are dealing with an appeal against acquittal and shall keep in mind the principles governing the cases of appeal against acquittal. The principles have been reiterated by the Hon'ble Supreme Court in catena of decisions



and one of them is the case of ***H.D. Sundara and Others vs. State of Karnataka*** reported in ***(2023) 9 SCC 581***. Paragraph '8' whereof is recorded here-under 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. Mariyapp, 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 “Cr.P.C”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 Cr.P.C can be summarized 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 reappraise the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising 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.”

14. It is a case of acquittal in which the



presumption of innocence of the accused is, in fact, affirmed by the learned trial Court. In fact, this Court is of the opinion that the prosecution has failed before the learned trial Court to prove the charges leveled against the respondent as opined by the learned trial Court. In ultimate analysis of the entire materials and record, we find no reason to interfere with the judgment of the learned trial court.

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

(Sudhir Singh, J)

(Ramesh Chand Malviya, J)

Mayank/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	

