

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.629 of 2022**

Arising Out of PS. Case No.-21 Year-2007 Thana- PAKARIBARAW District- Nawada

Sunita Devi, female, aged about 34 years, W/o Late Upendra Yadav, Resident of Village- Belkunda, P.S.- Dhamoul, District- Nawada.

... .. Appellant

Versus

1. The State of Bihar
 2. Manoj Yadav, male, aged about 40 years, S/o Late Baleshwar Yadav Resident of Village- Belkunda, P.S.- Dhamoul, District- Nawada.
- Respondents

Appearance :

For the Appellant :	Mr. Rajendra Kumar, Advocate Mr. Abhinav Shrivastava, Sr. Advocate (Amicus Curiae)
For the State :	Mr. Parmeshwar Mehta, APP
For the Respondent No.2:	Mr. Rang Nath Choubey, Advocate

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

Date : 08-10-2025

Heard Mr. Rajendra Kumar, learned counsel for the appellant, Mr. Abhinav Shrivastava, learned *Amicus Curiae*, Mr. Rang Nath Choubey, learned counsel for the Respondent No.2 and Mr. Parmeshwar Mehta, learned APP for the State.

2. The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure, 1973 against the judgment of acquittal dated 28.02.2022 passed by the learned Additional Sessions Judge XI, Nawada, in Sessions Trial No.344 of 2007/CIS No.2076 of 2013, arising out of Pakribarawan P.S. Case No. 21 of 2007, whereby Respondent No.2 has been acquitted by the learned Trial Court from the



charge of Section 302/201 of the Indian Penal Code.

3. Vide order dated 22.07.2025, Trial Court records was called for, which was received on 25.08.2025.

4. Vide order dated 12.08.2024, notice was issued to the Respondent No.2, upon which he appeared by filing *Vakalatnama* through learned Advocate, Mr. Rang Nath Choubey.

5. The prosecution case, in brief, is that on 24.02.2007, the informant Baleshwar Yadav gave statement before the Police that two days before, his sons, namely, Manoj Yadav and Upendra Yadav quarreled on the issue of selling of paddy. Upendra Yadav had sold sixty mounds of paddy and on 22.02.2007, he went to *khalihan* for taking care of the paddy but when did not return till the next morning, the informant as well as his family members tried to search him but failed. On 23.02.2007, the purchaser of the paddy took away purchased paddy. On the next day, the informant and other villagers went towards *khalihan* and found the dead body of Upendra Yadav lying under straw. Manoj Yadav fled away and on suspicion, the informant lodged the F.I.R. against respondent No.2 and other unknown accused.

6. On the basis of the written report by the informant,



Pakribarawan P.S. Case No.21 of 2007 was instituted under Section 302/201 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 to which he pleaded not guilty and claimed to be tried.

7. During the trial, the prosecution examined altogether eight prosecution witnesses, *i.e.*, PW1- Sunita Devi, PW2- Trigun Kumar Yadav, PW3- Sadhu Yadav @ Sahdev Yadav, PW4- Sothi Prasad Mahto, PW5- Parwatiya Devi, PW6- Jamuna Yadav, PW7- Mukul Lal and PW8- Dr. Ramchandra Prasad. The prosecution has also produced certain documents which were marked as 'Exhibits', *i.e.*, Ext.1- Signature of Trigun Kumar Yadav on inquest report, Ext.2- Signature of Md. Nasim Ahmed on F.I.R., Ext.2/1- Writing and signature of Police Inspector Yogendra Baitha on fardbeyan, and Ext.3- Writing and signature of Dr. Ramchandra Prasad on Postmortem. No witness has been examined on behalf of the defence. 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 person.

8. The learned Trial Court on the basis of the materials available on record, and the evidence produced before the Court, acquitted respondent No.2 observing that the witnesses have not supported the case of the prosecution as the version in the evidence of the witnesses is contradictory. The FIR was lodged only on the basis of suspicion. Further, the deceased went to *khalihan* alone in the night. Hence, the story of the last seen principle projected by the prosecution cannot be believed. Hence, there is no other circumstantial evidence to suggest the participation of the accused.

9. Learned counsel for the appellant submits that learned Trial Court had not examined the informant Baleshwar Yadav as he died before the Trial although, he specifically alleged that Manoj Yadav had killed his elder son, Upendra Yadav and fled away. He further submits that the learned Trial Court has acquitted the accused persons without considering the depositions of PW-1 & PW-4, who have fully supported the case of the prosecution.

10. The learned counsel for the State as well as the learned counsel for Respondent No.2 have submitted that there is no perversity in the judgment of the learned Trial Court, and



that 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.

11. We have heard learned counsel for the appellant, learned APP for the State and the learned counsel appearing for the Respondent No.2 and have also gone through the records of the case.

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

13. Upon a comprehensive evaluation of the evidence available on record, this Court finds that the entire prosecution case is founded solely on suspicion and circumstantial evidence, without any direct proof connecting the accused with the commission of the offence.

14. The First Information Report (FIR) was admittedly lodged only on the basis of suspicion, as there was no eye-witness to the incident nor any direct knowledge of the accused's involvement. It is a well-settled proposition of law that "suspicion, however strong, cannot take the place of proof" as held by the Hon'ble Supreme Court in ***Basheera Begam vs. Mohammed Ibrahim and Ors.*** reported in (2020) 11 SCC 174,



in paragraph 189 of the judgment which reads as under:

“189. It is well settled, suspicion however strong cannot substitute proof beyond reasonable doubt. Enmity as a result of property related disputes may give rise to suspicion. However, conviction can never be based on suspicion unless the prosecution clearly proves circumstances conclusively and all circumstances proved should only point to the guilt of the accused. Possibility of any conclusion other than the conclusion of guilt of the accused would vitiate a conviction.”

15. In the present case, the FIR, being based on mere suspicion, cannot by itself form the foundation of a conviction unless supported by credible and cogent evidence.

16. The prosecution has sought to rely on circumstantial evidence, but the chain of circumstances necessary to establish guilt beyond reasonable doubt remains incomplete and inconsistent. It has come on record that there was a quarrel between the deceased and the accused regarding the sale of paddy; however, no material has been produced to show that such quarrel led to the death of the deceased. The existence of motive alone, without any connecting link between the accused and the act of killing, is insufficient to convict.

17. In ***Sharad Birdhichand Sarda v. State of***



Maharashtra reported in ***(1984) 4 SCC 116***, the Hon'ble Supreme Court laid down the five golden principles governing cases based on circumstantial evidence, that the circumstances must be fully established, consistent only with the guilt of the accused, and must exclude every hypothesis of innocence, as observed in paragraphs 152 and 153 of the judgment which reads as under:

“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 [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . 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 [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

“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.”

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.”

18. In the present case, the circumstances do not form such a complete chain. On the contrary, they leave open several gaps and possibilities consistent with the innocence of the accused.

19. Further, the “last seen” theory is not attracted in this case. The evidence shows that the deceased went alone to the *Khalihan* on the night of the occurrence. No witness has



deposed to having seen him in the company of the accused either before or after the incident. In ***Bodhraj @ Bodha v. State of Jammu & Kashmir*** reported in (2002) 8 SCC 45, the Hon'ble Apex Court observed in paragraph 31 as under:

“31. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases...”

20. It is also pertinent to note that the testimonies of the prosecution witnesses are contradictory and inconsistent. Some witnesses have exaggerated facts beyond the FIR, while others have contradicted their earlier statements before the Police. One witness stated that the accused left the village in anger and went to Rajasthan, another claimed that they caught hold of accused in another village, where he admitted that he



has got the deceased kidnapped. Such discrepancies and contradictions severely affect the credibility of the prosecution's version.

21. In criminal jurisprudence, the presumption of innocence of the accused is a cardinal principle, and the burden of proof lies entirely on the prosecution. The Hon'ble Supreme Court *in Kali Ram v. State of Himachal Pradesh*, reported in *(1973) 2 SCC 808*, observed that if two views are possible, one pointing towards guilt and the other towards innocence, the view favourable to the accused must be adopted, as observed in paragraph 25 of the judgment, which reads as under:

“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...”

22. In the present case, the prosecution has not been able to prove the charge beyond all reasonable doubts. The chain of circumstances is broken, the witnesses are unreliable, and the foundational FIR is based only on suspicion. The possibility that some other person or factor might have been responsible for the death cannot be ruled out.

23. Accordingly, this Court finds that the learned Trial Court has correctly observed that the prosecution failed to establish the guilt of the accused beyond reasonable doubt and that the accused is entitled to the benefit of doubt.

24. 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.

25. 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....."

26. 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."

27. 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.

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

29. Accordingly, the present appeal is dismissed.

30. Pending applications(s), if any, shall stand disposed of.

31. This Court records the appreciation for the able and articulate submissions made by Mr. Abhinav Shrivastava, senior advocate acting as *amicus curiae* in the present case. The clarity and depth of the arguments have significantly contributed to the comprehensive understanding of the complex legal issues involved in this matter.

(Sudhir Singh, J.)

(Rajesh Kumar Verma, J.)

Gaurav Kumar/-

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