

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.872 of 2025

Arising Out of PS. Case No.-103 Year-2022 Thana- SIGAUDI District- Patna

Mritunjay Kumar, aged about 39 years (male), S/o Yamuna Singh Yadav, R/O
Village- Dhokahra Nagla Kinger, P.S.-Sigori, District- Patna

... .. Appellant/s

Versus

1. The State of Bihar
2. Pappu Kumar, Resident of Village- Dhokahra, P.S.-Sigori, District- Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Vijay Shankar Shrivastava, Advocate Mr. Ritesh Kumar Sinha, Advocate
For the Respondent/s	:	Mr.Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date: 23-09-2025

The present criminal appeal has been preferred under
Section 413 of the *Bhartiya Nagrik Suraksha Sanhita, 2023*
against the judgment of acquittal dated 02.06.2025 passed by
the learned Additional Sessions Judge- 1st, Danapur (Patna) in
Sessions Trial No. 1531/2022 arising out of Sigori P.S. Case No.
103/2022 whereby Respondent No. 2 has been acquitted from
the charge of Sections 302/34 and 201/34 of Indian Penal Code.

2. The prosecution case, in brief, is that on 06.06.2022
at about 12:30AM-1:00AM midnight, accused Pappu Kumar
and Rohit Kumar came in the house of the informant Mritunjay



Kumar and took away his minor son Uttam Kumar, aged about 15 years, and assaulted him with his accomplice Bhola Kumar and Surendra Singh by a lethal weapon, with a common intention to kill him. Being afraid, the informant concealed himself in his house in the night and on the next day morning searched for his son and found his dead body in the *Khalihan* of Rambilash Paswan of Village-Dhokhara, but there was no blood on the place of occurrence and the police was informed.

3. On the basis of written statement of the informant, Sigori P.S. Case No. 103/2022 was instituted under Section 302/34 of I.P.C. 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 Respondent No. 2 under Sections 302/34 and 201/34 of Indian Penal Code, to which he pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined altogether 10 witnesses i.e. PW1- Dhananjay @ Nipu, PW2- Ranju Devi, PW3- Saurabh Kumar, PW4- Neeraj Kumar, PW5- Yamuna Singh Yadav @ Yamuna Singh, PW6- Shushma Devi, PW7- Mritunjay Kumar (informant), PW8- Dr. Keshav Chandra



(Doctor), PW9-Manoj Kumar (Investigating Officer) and PW10- Zahra Bandi (Expert Witness). The prosecution also produced certain documents, which were marked as Exhibits; Ext. P1- Signature of PW1 on the seizure list, Ext. P2- Signature of PW4 on the seizure list, Ext. P3- Statement of the minor daughter of A1, Ext. P4- Written report as was given by PW7 in the police station, Ext. P5- Post mortem report, Ext. P6- Endorsement of PW9 on the written report given by PW7, Ext. P7- Formal F.I.R., Ext. P8- Chargesheet, Ext. P9- The photocopy of FSL report, Ext. P10- Signature of Dr. Ajay Kumar on the said report, Ext. P11- the report of Biology Department of FSL signed by Dr. Matlub Raza Khan, Ext. P12- Counter signature of Himanjay Kumar, In-charged Director of said Department. After closure of prosecution evidence, the statement of Respondent No. 2 was recorded under Section 313 Cr.P.C. and after conclusion of trial, learned trial court has acquitted him.

5. The learned trial court, on the basis of materials available on record and the evidence produced before the court, acquitted the accused observing that the prosecution case is based upon the last seen theory but the prosecution has failed to prove the last seen theory against the accused. On the basis of the information revealed by accused, *Ganji* was recovered



which was not sealed and signed at the place of recovery. Further, the statement of accused made to police can't be relied upon as the same is barred u/s 27 of the Evidence Act. The statement of the minor daughter of accused recorded u/s 164 Cr.P.C. can't be relied upon as she has not been examined before the court and it is inconsistent with the case of the prosecution. There is no other evidence to support her version that deceased came to meet her on the alleged date of occurrence. The prosecution has failed to prove the guilt of accused under Section 302/34 and 201/34 of the IPC beyond all reasonable doubts.

6. Learned counsel for the appellant submits that the learned trial court did not consider the evidence of the prosecution witnesses which are on the records, and on that basis Respondent No. 2 must have been convicted by the learned trial court under Section 302/34 of the IPC. He further submits that the learned trial court has not appreciated the fact that in the present case, there is an eye witness to the occurrence in question and there is a chain of circumstances which suggest that Respondent No. 2 along with his associates kidnapped Uttam Kumar and killed him.

7. The learned counsel for the State submits that there



is no perversity in the judgment of the learned trial court, and the prosecution had 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 the 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 of acquittal requires any interference by this Court.

10. Upon meticulous consideration of the evidence brought on record, this Court is constrained to observe that the prosecution version suffers from fundamental infirmities which go to the very root of the case.

11. At the outset, on perusal of the F.I.R., it is noticed that no clear and reliable source of identification of the accused has been disclosed. The incident is alleged to have occurred in the intervening night of 06.06.2022 between 12:00 A.M. and 01:00 A.M. during complete darkness and the body of the deceased was subsequently recovered from the *khaliyan* of one Rambilash Paswan. As per the prosecution, the deceased's brother was sleeping alongside him when the accused persons purportedly came and took the deceased away on the pretext of



attending an invitation. He has named the accused on the assertion that he saw and enquired from them. However, the very occurrence having taken place in the dead of night raises serious doubt regarding the visibility at that hour. Significantly, PW-2 in his deposition has admitted that there was an electricity cut at the time of occurrence and that the night was completely dark. In such circumstances, the prosecution has failed to satisfactorily explain what was the source of visibility which enabled such identification of the accused at that odd hour.

12. The Hon'ble Supreme Court in the case of ***Ashoksinh Jayendrasinh v. State of Gujarat*** reported in (2019) 6 SCC 535, in para 12 has observed as under:

“12. The occurrence was of 23-11-1997 at 9.00 p.m. in the agricultural field of complainant-Somabhai Rupabhai (PW 3), where it was dark. The panchnama of the scene of occurrence (Ext. P-73) shows no indication of the electric light either in the animal shed situated behind the house of complainant or that there is any electric pole anywhere in the vicinity or that there is a light on the well which is supplying water. Case of prosecution is that the appellant and six other co-accused surrounded the complainant party and there were three gunshots fired. The injured witness (PW 6) in his cross-examination has admitted that he had not stated anything about the burning light either in the animal shed or anywhere in the



vicinity. In the absence of any evidence as to the light aspect, the possibility of identifying the accused in the darkness of the agricultural field of the complainant, particularly at 9.00 p.m. becomes doubtful. It is also to be pointed out that there is no evidence as to whether there was moonlight on 23-11-1997 and complainant has also not stated that he has identified the appellant or other co-accused with the help of moonlight. In the absence of evidence as to the availability of sufficient light, the identification of the accused and the overt act attributed to the appellant becomes doubtful.”

13. In the present case, the prosecution’s failure on this count creates a serious dent in its version.

14. It is pertinent to note that there is no direct evidence to show that the accused persons assaulted or caused the death of the deceased. The entire prosecution case is based on circumstantial evidence. It is a settled principle that when a case rests solely on circumstantial evidence, the circumstances relied upon must be fully established, and the chain of circumstances must be so complete as to exclude every hypothesis except the guilt of the accused. This principle was laid down in ***Hanumant v. State of Madhya Pradesh*** reported in ***AIR 1952 SC 343***, in para 12 of judgment which reads as under:

“12. 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. In spite of the forceful arguments addressed to us by the learned Advocate General on behalf of the State we have not been able to discover any such evidence either intrinsic within Ext. P-3A or outside and we are constrained to observe that the courts below have just fallen into the error against which warning was uttered by Baron Alderson in the abovementioned case.”

15. And further, this principle was elaborated in ***Sharad Birdhichand Sarda v. State of Maharashtra*** reported in ***(1984) 4 SCC 116*** (para 153), where the Supreme Court propounded the five golden principles (panchsheel) governing circumstantial evidence, as observed in para 124 of the judgment, which reads as under:

“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.”

16. Applying these principles to the present case, it is manifest that the prosecution has failed to fulfill the requirements. Firstly, identification of the accused in complete darkness is highly doubtful. Secondly, the *ganji* and *banyan* allegedly recovered from the deceased were never produced as material exhibits. Thirdly, the Investigating Officer admitted that no blood stains were found at the alleged place of occurrence, weakening the evidentiary chain. Fourthly, there is a significant unexplained delay in lodging the FIR, despite the police station being merely 15 kms away. Fifthly, the alleged motive of a land dispute has not been proved by any documentary evidence. Lastly, reliance on the “last seen theory” is unsafe, as there exists a substantial time gap between the deceased being last seen alive and the recovery of the dead body.

17. The “last seen theory” itself cannot form the sole basis for conviction unless the time gap is so short that the possibility of another person being the author of the crime is completely ruled out. In ***Bodhraj v. State of J&K*** reported in ***(2002) 8 SCC 45***, the Court held that last seen evidence is a weak link unless corroborated, as observed in para 31 of



judgment, which reads 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. In this case there is positive evidence that the deceased, A-1 and A-2 were seen together by witnesses i.e. PWs 14, 15 and 18; in addition to the evidence of PWs 1 and 2.”

18. Similarly, in ***Navaneethakrishnan v. State*** reported in ***(2018) 16 SCC 161*** (para 14), it was held that last seen evidence must be supported by other circumstances to complete the chain, as observed in para 22 of the judgment, which reads as under:

“22. PW 11 was able to identify all the three accused in the court itself by recapitulating his memory as those persons who came at the time when he was washing his car along with John Bosco and further that he had last seen all of them



sitting in Omni van on that day and his testimony to that effect remains intact even during the cross-examination in the light of the fact that the said witness has no enmity whatsoever against the appellants herein and he is an independent witness. Once the testimony of PW 11 is established and inspires full confidence, it is well established that it is the accused who were last seen with the deceased specially in the circumstances when there is nothing on record to show that they parted from the accused and since then no activity of the deceased can be traced and their dead bodies were recovered later on. It is a settled legal position that the law presumes that it is the person, who was last seen with the deceased, would have killed the deceased and the burden to rebut the same lies on the accused to prove that they had departed. Undoubtedly, the last seen theory is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the accused with some certainty. However, this evidence alone cannot discharge the burden of establishing the guilt of the accused beyond reasonable doubt and requires corroboration.”

19. In the present case, the prosecution has failed to establish a proximate and continuous link, rendering reliance on this theory unsafe.

20. The cumulative effect of these infirmities clearly demonstrates that the prosecution has not established the



essential elements of circumstantial evidence. The circumstances proved are neither consistent exclusively with the guilt of the accused nor do they exclude all other reasonable hypotheses. As held in ***Kali Ram v. State of Himachal Pradesh*** reported in ***(1973) 2 SCC 808***, if two views are possible on the evidence, one pointing to the guilt of the accused and the other to his innocence, the view favorable to the accused must be adopted, as observed in para 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. 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.”

21. In addition to the above, the unexplained delay in informing the police, absence of material exhibits, lack of credible motive and the doubtful identification at night



cumulatively erode the prosecution's case. The prosecution has thus failed to establish a complete, unbroken, and conclusive chain of circumstances required to sustain conviction.

22. In view of the foregoing, this Court finds that the prosecution has miserably failed to establish its case beyond reasonable doubt. The circumstantial evidence, on which the entire case is predicated, falls short of the strict requirements laid down by the Hon'ble Supreme Court in ***Sharad Birdhichand Sarda*** (supra) and subsequent rulings.

23. Accordingly, in exercise of the powers vested in this Court and in accordance with settled law, the benefit of doubt must necessarily be extended to the accused, and they cannot be held guilty of the alleged offence.

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 all reasonable doubts. 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 are 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** 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 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.....”

26. 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 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 application(s), if any shall stand disposed of.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Sujit/-

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