

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.886 of 2024

Arising Out of PS. Case No.-136 Year-2021 Thana- BANGAWON District- Saharsa

Roshan Kumar Thakur son of Ramesh Thakur Village- Chainpur W.No-13,
Ps- Bangaon Dist- SAharsa

... .. Appellant/s

Versus

1. The State of Bihar
2. Shankar Jha @ Kalia son of Late Uday Kant Jha @ Uday Jha Village-Chainpur Ps- Bangaon Dist- Saharsa
3. Laxman Jha @ Jitan Jha son of Maheshwar Jha Village- Chainpur Ps- Bangaon Dist- Saharsa
4. Suman Kumar Jha son of Shambhu Nath Jha Village- Chainpur Ps- Bangaon Dist- Saharsa

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Baxi S.R.P. Sinha, Sr. Advocate Mr.Prafull Chandra Thakur, Advocate
For the State	:	Mr.Manish Kumar No2, Addl.P.P.
For the Respondent Nos.2to4:	:	Mr. Binod Murari Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 10-02-2025

We have heard Mr. Bakshi S.R.P. Sinha, learned senior counsel assisted by Mr. Prafull Chandra Thakur, learned counsel for the appellant, Mr.Binod Murari Mishra, learned counsel for the respondent nos.2 to 4 and Mr. Manish Kumar Singh No.2, learned Addl.P.P. for the State as also perused the trial court records.

2. This appeal has been preferred for setting aside the judgment of acquittal dated 20.03.2024 (hereinafter referred to as



the 'impugned judgment') whereby and whereunder the learned Sessions Judge, Saharsa (hereinafter referred to as the 'learned trial court') has been pleased to acquit respondent nos. 2 to 4 of the charges under Sections 341, 323, 324, 302 and 120(B) of the Indian Penal Code (in short 'IPC') in connection with S.T. No. 11 of 2022 arising out of Bangaon P.S. Case No. 136 of 2021.

Prosecution case

3. The prosecution case is based on the *fardbeyan* of Roshan Kumar Thakur who has been examined as PW-6 in the present case. In his *fardbeyan*, recorded by S.H.O. of Bangaon Police Station, Saharsa on 13.10.2021, the informant has stated that (i) Shankar Jha, (ii) Lakshman Jha, (iii) Suman Kumar Jha and 4-5 unknown persons of Village-Chainpur, District-Saharsa hatched conspiracy and called his brother Deepak Kumar Thakur @ Parmoshan Thakur aged 30 years from his house and took him to the mango orchard of Pratap Narayan Thakur @ Phul Thakur which is at some distance from Neel Kanth Kanya Vidyalaya, Chainpur and there they committed murder of his brother by a dagger. The informant searched his brother for the whole night but could not find any trace. On 13.10.2021 at 5:30 AM, informant came to know from the villagers that his brother's dead body is lying in the mango orchard of Pratap Narayan Thakur. The informant believes



that his brother has been killed by the named and unknown persons.

4. On the basis of the written report of the informant Roshan Kumar Thakur (PW-6), the S.H.O., Bangaon P.S. registered Bangaon P.S. Case No.136 of 2021 dated 13.10.2021 under Sections 341, 323, 324, 302 and 120(B) IPC.

5. After completion of investigation of the case, the I.O. of the case has submitted a charge-sheet against all the three accused named in the FIR under Sections 341, 323, 324, 302 and 120(B) IPC. The learned A.C.J.M.-1, Saharsa vide his order dated 15.12.2001 took cognizance of the offence under Section 341, 323, 324, 302 and 120(B) IPC against all the three accused and thereafter having found the case triable by court of Sessions committed the case to the court of Sessions and the case was registered as S.T. No.11 of 2022.

6. The accused persons were explained the charges, they denied the same and claimed to be tried. On 07.02.2022, charges were framed against all the three FIR named accused persons under Sections 341, 323, 324, 302 and 120(B) IPC.

7. In course of trial, the prosecution examined as many as 9 witnesses and exhibited several documents in support of its



case. The list of witnesses and the documents exhibited on behalf of the prosecution are as under:-

List of prosecution witnesses

PW-1	Sanjiv Sharma
PW-2	Manoj Kumar Jha
PW-3	Ravindra Narayan Thakur
PW-4	Lalit Narayan Thakur
PW-5	Atul Kumar Anand
PW-6	Roshan Kumar Thakur
PW-7	Dr. Niraj Kumar Nirav
PW-8	Kanhaiya Kumar
PW-9	Kamlesh Kumar Singh

List of Exhibits

Ext-PW-1/P.W.-3	Signature of PW-3 Ravindra Nr. Thakur on Inquest Report
Ext-P-2/P.W.-4	Signature of Lalit Narayan Thakur in in-quest report
Ext-P-3/P.W.-5	Signature of PW- 5 Atul Kr Anand on seizure list this case on
Ext-P-4/P.W.-6	Written Petition
Ext- P-5/ P.W.- 7	Post-Mortem report
Ext-P-6/P.W.-8	Signature of PW-8 Dr. Kanhaiya Kr on Post- Mortem Report
Ext- P-7/P.W.-9	Endorsement on written petition
Ext-P-8/ P.W- 9	Signature of P.W.- 9 on Formal FIR
Ext- P-9/ P.W- 9	Seizure list

8. On completion of the prosecution evidence, the statement of the accused persons were recorded under Section 313 Cr.P.C. in which all of them claimed that they were falsely implicated in this case. The defence did not adduce any oral or documentary evidence.



Findings of the learned trial court

9. As stated above, after examining the evidences available on the record, the learned trial court found that the prosecution has not been able to prove its case based on circumstantial evidence beyond the shadow of all reasonable doubts and, therefore, acquitted the appellants of the charges under Sections 341, 323, 324, 302 and 120(B) IPC.

Submissions on behalf of the appellants

10. Learned senior counsel for the appellant submits that no doubt the whole prosecution case is based on the principle of last seen theory, but the learned trial court despite there being cogent and sufficient materials to prove guilt of the accused beyond all reasonable doubts failed to appreciate the evidence on the record and acquitted all the accused persons of the charges levelled against them.

11. Learned senior counsel submits that the informant (PW-6) has stated in his examination-in-chief that when he was passing through Nilkanth temple at 8.00 PM, he had seen Suman Kumar Jha, Shankar Jha @ Kaila and Laxman Jha @ Jitan Jha talking to his brother at the 'pan shop'. He had also seen Kaila having a red colour plastic torch in his hand.



12. Lalit Narayan Thakur (PW-4) who is uncle of the deceased has stated in his examination-in-chief that when he was passing through Nilkanth temple, he had seen Deepak Thakur @ Promotion Thakur (the deceased), Suman Jha, Shankar Jha and Jitan Jha going towards the east. It was about 8.00 PM in the night.

13. Learned senior counsel further submits that the doctor (PW-7) has proved the postmortem report of the deceased which has been marked Exhibit-P5. PW-7 had found as many as 9 external injuries on the body of the deceased and he had opined that cause of death was due to hemorrhage, shock due to injury to vital organ left lung. All the injuries were caused by hard and blunt substance as well as sharp object. The Investigating Officer (in short 'I.O.') of the case has been examined as PW-9 who had seized the plastic torch from the place of occurrence and had recorded the statement of the prosecution witnesses. It is submitted that on a cumulative reading of the evidence on the record, it may be found that the prosecution has duly proved his case beyond all reasonable doubts.

Submissions on behalf of the respondents and State

14. On the other hand, respondent nos.2 to 4 as well as learned Addl.P.P. for the State have defended the impugned judgment of acquittal. It is submitted that in this case the deceased



was missing since last day from the date on which his dead body was found in a mango orchard which was situated at a distance of 1-1.25 kms from the house of the informant. The information with regard to death of Deepak Thakur @ Promotion Thakur was very much received by the informant at 5.30 AM on 13.10.2021, the I.O. also arrived at the place of occurrence in the morning and demanded written application or to record the fardbeyan by the family members of the deceased but they refused to record the fardbeyan or to submit a written application at the place of occurrence. It is pointed out from the deposition of the I.O. (PW-9) in paragraph '6' that the I.O. had demanded written application or fardbeyan from the family members of the deceased at the place of occurrence but it was not provided.

15. Learned counsel submits that only at 3.15 PM i.e. after about ten hours from the time of recovery of the dead body, a written application was submitted by the informant who is the brother of the deceased and has been examined as PW-6. Therefore, the FIR has been lodged at a much belated stage which will raise huge doubt over the authenticity and genuineness of the allegations made in the FIR.

16. It is submitted that in this case inquest report has been prepared on 13.10.2021 at 7.13 AM. Ravindra Narayan Thakur and



Lalit Narayan Thakur, the two villagers of the deceased, stood witness to the inquest report. They have been examined as PW-3 and PW-4 respectively, however, they are not witnesses to the facts and circumstances of the case. So far as PW-4 is concerned, he happens to be the uncle of the deceased and has stated that he had not seen the commission of murder from his own eyes. In paragraph '15' of his deposition, PW-4 has clearly stated that on the date of occurrence he had not seen anybody in the Nilkanth temple.

17. Learned counsel submits that in the written application, the informant came out with a case that the respondent nos.2, 3 and 4 had taken away Deepak Thakur @ Promotion Thakur (the deceased) from his house but it would appear that he did not mention the date and time when the deceased was called and taken away from his house by the accused persons. In his written application, he has not stated to have seen the accused persons with his brother at the 'Pan Shop'. The written application has been marked Exhibit-P4 at the instance of the informant (PW-6). It is pointed out that in his examination-in-chief, PW-6 has materially differed. He has not stated in his examination-in-chief that his brother Deepak Thakur @ Promotion Thakur was called and taken away from his house. His case is that he had seen his brother talking to the accused persons at the 'Pan Shop'. In



paragraph '5' of his deposition, PW-6 has stated that he reached to the place of occurrence at 5.30 AM and his father was also present with him. He had given information of the occurrence to the police from the place of occurrence. He has stated in paragraph '7' of his evidence that the place of occurrence he had stated before the police that his brother Deepak Thakur @ Promotion Thakur was working in Brajesh Automobile and he was regularly going at work from his house and was returning home. In paragraph '8', he has stated that he had given the name of the accused persons on suspicion and he had not seen the occurrence.

18. Learned counsel, therefore, submits that the statement of the informant (PW-6) would not inspire confidence of this Court. It would appear that it is a case of blind murder and only at a belated stage with much deliberations and talks the FIR was lodged falsely implicating the accused persons on mere suspicion.

Consideration

19. On perusal of the entire evidences on the record, we find much substance in the submissions of learned Addl.P.P. for the State as well as learned counsel for the respondent nos.2 to 6. Admittedly, in this case, the informant and his father both had gone to the place of occurrence after hearing about the presence of dead body of Deepak Thakur @ Promotion Thakur in the orchard



at 5.30 AM on 13.10.2021, PW-6 had informed the I.O. (PW-9) who had arrived at the place of occurrence but at that time no fardbeyan was recorded. The I.O. has stated that he had asked the family members to submit written application or to record their fardbeyan but they did not do so. We find that the written application was submitted at a much belated stage after about ten hours and FIR has been lodged on 13.10.2021 at 15.15 hours.

20. In the case of Meharaj Singh (L/Nk.) vs. State of U.P. with Kalu vs. State of U.P. and Others reported in (1994) 5 SCC 188, the Hon'ble Supreme Court has considered the case laws on the subject and the impact of registration of FIR with substantial delay. We reproduce relevant paragraph '12' as under:-

“12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been



recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.”

21. Keeping in mind the aforementioned view of the Hon’ble Supreme Court when we examine the evidences available on the record, it is found that in his written application the informant (PW-6) has come out with a definite case that three



named accused persons and 4-5 unknown persons, all of village-Chainpur, P.S.-Bangaon, District-Saharsa hatched a conspiracy and they called his brother Deepak Thakur @ Promotion Thakur from his house, they took him to the mango orchard of Pratap Narayan Thakur which is at some distance from Nilkanth Kanya Madhya Vidyalaya, Chainpur and there they committed the murder of his brother by dagger but when the informant came to depose in course of evidence, he has changed the prosecution case. He does not say that his brother was called and taken away from his house. In cross-examination, PW-6 has clearly stated that he cannot say that as what time his brother had left the house but when he searched his brother in the afternoon, he was not present in the house and he did not return till 11.00 PM. He has stated that he had given the name of the accused persons on suspicion. From his statement in paragraph '7', it appears that he had informed the police at the place of occurrence that his brother was working in Brajesh Automobile and was going at work from his house and was returning everyday. It is evident that he did not inform the I.O. at the place of occurrence that his brother was either called and taken away by the accused persons previous day or that he had seen his brother talking to the accused persons at the 'Pan Shop'.



22. In the present case, there is no independent witness who could have seen the accused persons and the deceased together in the evening. PW-4 who is one of the inquest report witnesses and uncle of the deceased though stated in his examination-in-chief that he had seen the four persons including the deceased going towards Nilkanth temple but in his cross-examination, he has stated that on the date of occurrence he had not seen anyone in the Nilkanth temple. He had not talked to Deepak Thakur @ Promotion Thakur (the deceased) prior to the date of occurrence and could not say that how many days before he had a talk with him.

23. From the evidence of the doctor (PW-7), it appears that the following external injuries were found on the body of the deceased:-

“Injury report

On External Examination :-

Average built, hair black, Rigor mortis present in all four limbs. Both eyes partially open, mouth partially open, both hand claw hand.

- i) Abrasion 4” x 3/2” over left forearm.
- ii) Incised wound 1/3’ linear over left eyeball, left lower 1/3rd of cornea, with subconjunctival haemorrhage and echymosis.
- iii) Right eye mildly congested.
- iv) Bruise 3” x 5/2” over right maxillary region.
- v) Multiple bruises, size varies from 1/2” x 2 “ over forehead, nose, left maxillary and periorbital region.



vi) 1" x ½" swelling over upper and lower lips.

vii) Incised wound 1" x ½" chest cavity deep, over left scapular region of back, blood ooze through the wound.

viii) incised wound 1" x ½" peritoneal cavity deep over left side, over middle part of left side of back, blood oozes through the wound.

ix) Incised wound 1" x ½" peritoneal cavity deep over left side, lower back.

On External examination "

On skull-Pale NAD

On opening of chest cavity-Lungs- two rent found in left lung with blood collection in left pleural cavity, Right lung pale and NAD.

Heart-Left side of chambers empty, right side of chambers few amount of blood found.

On opening of abdomen-Other viscera found pale and NAD.

On opening of stomach- Semi digested food material found in stomach.

Cause of death- Haemorrhagic shock due to injury to vital organ left lung. "

24. This Court further finds that the I.O. (PW-9) has clearly deposed that when he arrested Kaila Thakur, he could not find anything more than the clothes which he was wearing. He had not recovered anything from Suman Kumar Jha and Jitan Jha @ Laxman Jha. PW-9 could not recover the dagger. In his cross-examination, he has stated that all the witnesses had stated before him that they got the information regarding the occurrence in the morning and no witness had said before the I.O. that they had seen anyone committing the offence.



25. In the kind of materials present on the record, we are of the opinion that the learned trial court has not committed any error in appreciation of the evidences. The prosecution witnesses in this case have deviated during trial and there being no independent evidence on the record, it would not be safe to convict the accused persons on the basis of the testimonies which are not wholly reliable.

26. In the case of **Satpal Vs. State of Haryana** reported in **(2018) 6 SCC 610** based on ‘last seen theory’, the Hon’ble Supreme Court has contended that unless the fact of last seen is corroborated by some other evidence, the fact that the deceased was last seen in the vicinity of the accused, would by itself, only be a weak kind of evidence.

27. In the case of **Kanhaiya Lal Vs. State of Rajasthan** reported in **(2014) 4 SCC 715**, the Hon’ble Supreme Court has observed in paragraphs ‘11’, ‘12’ and ‘15’ as under:-

“**11.** The primary, if not the solitary basis of the conviction of the appellant is on the theory of last seen, as the deceased Kala along with accused Kanhaiya Lal visited the house of PW 4 Hurma at 9.00 p.m. on 31-8-2003. PW 4 Hurma did not fully support the prosecution case and was declared hostile. In his examination-in-chief he has stated that on the occurrence night he returned home at 8.00 p.m. and at about 9.00 p.m. accused Kanhaiya Lal and Kala came



to his house and demanded daru and he gave one bottle and received a sum of Rs 15 from accused Kanhaiya Lal and they returned together and the next day morning the wife of Kala, PW 10 Shantibai came and inquired from him about her husband Kala and he told her about the visit of Kala with accused Kanhaiya Lal to his house the previous night. It is the testimony of PW 10 Shantibai that her husband Kala did not return home on the night of the occurrence and in the morning she went to the house of PW 4 Hurma and inquired and came to know from him about the visit of her husband along with accused Kanhaiya Lal to his house in the night. Though PW 4 Hurma was treated as a hostile witness, the above testimony of him is corroborated by the testimony of PW 10 Shantibai.

12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.

15. The theory of last seen—the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and



the deceased for a long time. The fact situation bears great similarity to that in *Madho Singh v. State of Rajasthan*².”

28. 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 hereunder 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: (I) 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*¹⁹ 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

2. (2010) 15 SCC 588 : (2012) 4 SCC (Cri) 767

19. (1973) 2 SCC 793: 1973 SCC (Cri) 1033: 1973 Cri LJ 1783



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.”

29. We are of the considered opinion that the learned trial court has rightly held that the prosecution failed to prove the chain of criminological events in this case.

30. We keep in mind the principles governing the appeal against the acquittal. In the case of **H.D. Sundara vs. State of Karnataka (2023) 9 SCC 581**, the Hon’ble Supreme Court has laid down the guidelines which are required to be kept in mind. We reproduce paragraph ‘8’ thereof hereunder:-

“ 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

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



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;
- 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.”

31. In the light of the discussions made hereinabove, we find no merit in this appeal. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

arvind/-

AFR/NAFR	
CAV DATE	
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