

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.908 of 2024**

Arising Out of PS. Case No.-33 Year-2004 Thana- SUGAULI District- East Champaran

Amit Kumar S/o Shree Nand Kishor Prasad R/o vill - Kaswa Kadamwa, P.O -
Kadamwa, P.S. - Ghorasahan, Distt. - East Champaran, Bihar

... .. Appellant

Versus

1. The State of Bihar
2. Krishna Mishra S/o Late Ramdeo Mishr R/o vill - Santpur, P.S. - Muffasil,
Distt. - East Champaran
3. Munna Pandey S/o Late Raghuwar Pandey R/o vill - Santpur, P.S. - Muf-
fasil, Distt. - East Champaran

... .. Respondents

Appearance :

For the Appellant/s : Mr. Bipin Bihari, Advocate
For the Respondent/s : Mr. Bipin Kumar, Addl PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 17-03-2025

Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State as also perused the
learned trial court's records.

2. The present appeal against acquittal has been
preferred by the appellant for setting aside the judgment of



acquittal dated 21.05.2024 (hereinafter referred to as the 'impugned judgment') passed by learned Additional Sessions Judge-5th, East Champaran at Motihari (hereinafter referred to as the 'learned trial court') in Session Trial No. 231 of 2005/CIS No. 1719 of 2016 (Arising out of Sugauli P.S. Case No. 33 of 2004) registered for the offences under Sections 302 and 201 of the Indian Penal Code (in short 'IPC'). By the impugned judgment, the learned Trial Court has been pleased to acquit the two accused, i.e., Respondent Nos. 2 and 3 namely Krishna Mishra and Munna Pandey who were facing trial for murder of one Vicky.

Prosecution Case

3. The police case was registered on the basis of an information furnished by the local Chowkidar Jhunjhun Raut (P.W. 11) who made his *fardbeyan* before police that on 15.03.2004 he had found a dead body on a *pakki* road at a distance of 200 yards East from Dhangawan Pokhra. According to the informant (P.W.11), the dead body was found thrown on the road. P.W. 11 had noticed several injuries on the body of the deceased but the identity of the deceased was not established till the time of recording of the *fardbeyan* of P.W. 11.

4. It appears that after investigation police submitted a charge-sheet no. 118 dated 05.09.2004 against the accused persons



under Sections 302 and 201/34 IPC. The learned Chief Judicial Magistrate, Motihari took cognizance of the offences on 05.09.2004 and after appearance of the accused, finding that the offences are triable by a Court of Sessions, the learned Magistrate submitted the records to the Court of Sessions on 14.03.2005, thereafter Sessions Trial No. 231 of 2005 was registered.

5. The accused persons were explained the charges, they denied the charges and claimed to be tried. Accordingly, charges were framed under Sections 302 and 201/34 IPC. These were explained in Hindi to the accused persons and as the accused persons pleaded not guilty, the trial began.

6. In the trial Court, prosecution examined altogether twelve witnesses and marked some documentary evidences as exhibits. The list of witnesses and the description of the exhibits are fully detailed hereinbelow in a tabular form :-

List of Prosecution Witnesses

PW-1	Jagdev Ram
PW-2	Sunil Kumar Pandey
PW-3	Jokhu Sah
PW-4	Lalan Prasad
PW-5	Chandan Kumar
PW-6	Nand Kishore Prasad
PW-7	Geeta Devi @ Usha Devi
PW-8	Vasudev Yadav
PW-9	Anil Kumar
PW-10	Radheshyam Kumar



PW-11	Jhunjhun Raut (informant)
PW-12	Dr. Praveen Kishore Prasad Singh

List of Documents Exhibited on behalf of Prosecution

Exhibit-1	Signature of the officer-in-Charge of Sugauli P.S. Case No. 33 of 2004
Exhibit-2	Signature of the Informant on <i>fardbeyan</i>
Exhibit-3	postmortem report

Findings of the Learned Trial Court

7. The learned Trial Court analysed the evidences on the record and found that in this case only two circumstantial evidences have been brought on the record. The first circumstantial evidence was that the accused persons had given threat to the prosecution side just one week before the date of the killing of the deceased because of a love affair said to have developed between the deceased and daughter of one of the accused. The second circumstantial evidence as has been noticed by the learned trial Court is that the deceased along with some accused persons was seen at the bus stand, Chhatauni Chowk.

8. The learned Trial Court having gone through the judgments of the Hon’ble Supreme Court in the case of **Hanumant vs. State of Madhya Pradesh** reported in **1952 SCR 1091: AIR 1952 SC 343: 1953 Cri LJ 129** and also in the case of



Sharad Birdhi Chand Sarda Vs. State of Maharastra reported in **(1984) 4 SCC 116** took a view that in this case there is no exact date and time when the accused and the deceased were seen together.

9. There is no evidence at all that on spot the accused persons were seen at the place of occurrence and there is also no evidence at all that who took away the deceased from his residential house situated at Motihari. In ultimate analysis, the learned Trial Court held that the prosecution was required to establish the chain of chronological events and this being a case of circumstantial evidence, the prosecution has failed to establish the same beyond all reasonable doubts.

Submissions on behalf of the appellant

10. Learned counsel for the victim has submitted that in this case the learned Trial Court has misread the prosecution evidence and this itself is a good ground to set aside the impugned judgment of acquittal. It is submitted that the learned Trial Court could not appreciate that the prosecution had established that the accused Krishna Mishra was seen at the Bus stand by Jagdev Ram (P.W. 1). P.W. 1 had also seen the deceased and another accused Deepak Mishra at the Bus stand.



11. Learned counsel submits that the impugned judgment suffers from non-consideration of the evidences on the record and this being a serious infirmity in the judgment of the learned Trial Court, this Court sitting in appeal may interfere with the same.

Submissions on behalf of the State

12. On the other hand, learned Additional Public Prosecutor for the State has opposed the appeal. It is submitted that the learned Trial Court has not committed any error in appreciation of the evidences on the record. It is submitted that in course of trial, the prosecution developed a case that the deceased had been taken away from his rental house at Rajendra Nagar, Motihari on 14.03.2004 and thereafter, he was murdered. Submission is that there is no witness at all on this point that the deceased was taken away by the accused persons from his rental house.

13. Learned counsel further submits that in this case the appellant has relied upon the evidence of P.Ws. 1, 3, 4 and 7, but on bare perusal of evidences of these prosecution witnesses, it would appear that none of them is an eye-witnesses to the occurrence. Jagdev Ram (P.W. 1) has stated in his examination-in-chief that Krishna Mishra was standing at the Bus stand and thereafter, he heard that Vicky has been murdered. In his cross-



examination, this witness has stated in Paragraph '7' that his statement was recorded by police after 3-4 days and in paragraph '8' of his deposition P.W. 1 stated that he had not taken the name of Krishna Mishra before Police. It is thus submitted that from the deposition of P.W. 1, this Court may find that he had not seen Munna Pandey at the Bus stand and so far as his claim that he had seen Krishna Mishra at the Bus stand is concerned, this is only an afterthought because he had not made such statement before police in course of investigation. Learned counsel has further pointed out from the evidence of P.W. 3 that he had seen only Deepak Mishra and Vicky going together. In his cross-examination, this witness has clearly stated that at Chhatauni Chowk he had seen only Vicky and Deepak.

14. Learned Additional Public Prosecutor has further pointed out that so far as P.W. 4 is concerned, he has deposed in paragraph '6' of his deposition that threat was given on 08.03.2004 at his *darwaja* but he had not recorded any 'sanha' in this regard and had only told this to his brother (father of the deceased) and not to anyone else. He has stated that at the time of threat given by the four accused persons, he was alone at his *darwaja*. Contrary to the claim of P.W. 4, P.W. 7 has stated that when accused persons came at her *darwaja* and asked her to convince her nephew who



was in love with the daughter of one of the accused, she was threatened that Vicky would be killed. In course of her cross-examination, she has stated that when the accused persons came at her *darwaja*, her *devar* was at the *darwaja* and the fact that threat was given was told to her by her *devar*. It is submitted that this witness (P.W. 7) has stated that Krishna Mishra was a Bus conductor. It is thus submitted that presence of Krishna Mishra at the Bus stand is not an unusual matter and this alone cannot lead to a conclusion that he was involved in murder of Vicky. Moreover, no evidence has come that Vicky was in affair with the daughter of Krishna Mishra or Munna Pandey.

15. Learned Additional Public Prosecutor further submits that in fact it is a case of no evidence and the learned Trial Court has not committed any error in appreciation of the evidence on record.

Consideration

16. We have heard learned counsel for the appellant and the learned Additional Public Prosecutor for the State and have perused the Trial Court records.

17. We are of the considered opinion that the whole prosecution case is based on circumstantial evidence. The dead body was found by the Choukidar (P.W 11) who is not a witness to



the facts and circumstances of the case. He has clearly stated in his deposition that he did not know the accused persons and he had not seen the accused who had executed the murder of Vicky. So far as the deposition of P.W. 1, P.W. 3, P.W. 4 and P.W. 7, on which learned counsel for the appellant has relied upon, are concerned, we find that they do not establish any circumstance much less a chronological chain of events to complete the chain of circumstantial evidences.

18. As discussed above P.W. 1 had not even disclosed the name of Krishna Mishra before police. P.W. 3 has not taken name of Krishna Mishra or Munna Pandey either in examination-in-chief or in his cross-examination. He has clearly stated that he had only seen Vicky and Deepak at Chhatauni Chowk. P.W. 4 has given a different angle to the prosecution case by saying that on 14.03.2004 Vicky was at Rajendra Nagar, Motihari in his rented house and from there he was taken away by Deepak Mishra, Ashok Mishra, Krishna Mishra and Munna Pandey. This witness has not stated that he had seen the accused persons taking away the victim. In paragraph '4' of the deposition, he has stated that he had met the deceased in between the day when the threat was given and before he was murdered. Thus, he is not an eye witness. He



has made it clear in paragraph '6' of his deposition that Vicky was not taken away in front of him.

19. Chandan Kumar (P.W 5) has been declared hostile. Nand Kishore Prasad (P.W. 6) is the father of the deceased who had come only after receiving information over telephone that his son had been killed. He has stated that after arrival at his house he came to know that his son has been murdered. It is evident from the deposition of P.W. 6 that he is only a hearsay witness, neither threat was given in his presence nor he had seen the occurrence.

20. We further find from the evidence of Geeta Devi (P.W. 7) that she has stated that the accused persons had come to her house and had given threat but in cross-examination, she has stated that when accused persons came, she was in her house and her *devar* was at the door and accused persons had a talk with her *devar* who told her about the threat given by the accused persons. In paragraph '10' of her cross-examination, she has stated that she was not aware of any love affair between the deceased and the girl prior to the day of threat given by the accused persons. In paragraph '12' she has stated that she had not seen the accused persons taking away Vicky or killing him. She has stated that she did not remember that after how many days police has recorded her statement.



21. We further find that Vasudev Yadav (P.W. 8) has been declared hostile. Anil Kumar (P.W. 9) is the brother of the deceased. He had come to know about the death of Vicky from a photo which was published in the newspaper. He had gone to Motihari postmortem house and had brought the dead body. It is evident that he is not an eye witness to the occurrence and even the information as to the death of the deceased surfaced through the newspaper report.

22. Radheshyam Kumar (P.W. 10) (wrongly mentioned as P.W. 11 in the impugned judgment and the deposition sheet) was declared hostile as he did not support the prosecution case.

23. We have already taken note of the evidence of informant (P.W. 11) hereinabove. Dr. Praveen Kumar Singh (P.W. 12) has proved the postmortem report as Exhibit '3'. He had found several injuries on the body of the deceased which are mentioned in the Exhibit '3'.

24. Upon analyzing the entire evidence on the record, we find that there is no witness at all on the point of taking away of the victim boy and nobody has seen the occurrence. In an appeal against judgment of acquittal, unless the appellate Court comes to an irresistible conclusion that the evidences are such that the accused are required to be convicted, the judgment of acquittal



should not be interfered with lightly. We take note of the principles governing a case of appeal against acquittal is also well settled in the case of **H.D. Sundara vs. State of Karnataka** reported in **(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 378 CrPC 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 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.”

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



25. Having regard to the aforementioned views of the Hon’ble Supreme Court and the evidences which we have dealt with hereinabove, we are of the considered opinion that the judgment of acquittal needs no interference.

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

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

Vikash/Prakash

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