

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1108 of 2024

Arising Out of PS. Case No.-299 Year-2019 Thana- AAJAM NAGAR District- Katihar

Mithun Kumar Mandal, S/o- Dilip Prasad Mandal, Resident of Village-
Hansopara PS- Azamnagar District- Katihar

... .. Appellant

Versus

1. The State of Bihar
2. Kshetish Mandal, Son of Late Maheshwar Mandal, Resident of Village-
Hansopara PS- Azamnagar District- Katihar
3. Tetar Mandal, Son of Kshetish Mandal, Resident of Village- Hansopara PS-
Azamnagar District- Katihar
4. Lakhan Mandal, Son of Kshetish Mandal, Resident of Village- Hansopara
PS- Azamnagar District- Katihar

... .. Respondents

Appearance :

For the Appellant	:	Mr. Shahnawaz Khan, Advocate
For the State	:	Mr. Sujit Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 19-08-2025

The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure, 1973 against the judgment of acquittal dated 08.07.2024 passed by the learned District and Sessions Judge, Katihar in Sessions Trial No. 149 of 2021, arising out of Azamnagar P.S. Case No. 299 of 2019, whereby Respondent Nos. 2 to 4 have been acquitted by the learned Trial Court from the charge of Section 302/34 of Indian Penal Code.



2. The prosecution case, in brief, is that on 14.11.2019 at about 04:30 a.m. the informant's father Dilip Prasad Mandal had left home for defecation but he did not return home. The informant searched him but failed. On 16.11.2019, at around 10:00 p.m., it was discovered that his father's dead body was hanging from a banyan tree near Pasol cremation ground. Thereafter, when the informant and other villagers reached there, they saw and felt that the body had been beaten to death and thereafter hanged with a tree. It also appeared that hot water was poured on the body and an attempt was made to crack the left eye. His father was having a domestic land dispute with the accused persons, namely, Kshetis Mandal, Tetar Mandal and Lakhan Mandal and they had threatened to kill his father. The informant was sure that all the accused persons had killed his father and thereafter hanged the dead body with a tree.

3. On the basis of written complaint of the informant, Azamnagar P.S. Case No. 299 of 2019 was instituted under Section 302/34 of Indian Penal Code and investigation was taken up by the police. The police after investigation submitted charge-sheet against Respondent Nos. 2 to 4 and, accordingly, cognizance was taken. Thereafter the case was committed to the



Court of Sessions. Charges were framed against the accused persons to which they pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined altogether seven prosecution witnesses i.e. PW1 Dr. Ramrekha Suman, PW2 Pandav Kumar Mandal, PW3 Gultan Mandal, PW4 Shiv Narayan Mandal, PW5 Jyotish Prasad Mandal, PW6 Mithun Kumar Mandal & PW7 Manish Kumar Rajak. The prosecution has also produced certain documents which were marked as 'Exhibits' i.e., *postmortem* report, written application, signature of Mithun Mandal on Inquest Report, signature of Sudarshan Mandal on Inquest Report, Inquest Report (carbon copy), endorsement on written application, formal FIR and *panchnama*. Two defence witnesses have also been examined i.e. DW1 Basanti Devi and DW2 Rinki Devi. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. and after conclusion of trial, learned Trial Court has acquitted the accused persons.

5. It has been submitted by the learned counsel for the appellant that the learned trial court has miserably failed to consider that due to land dispute respondents had threatened to kill the father of the informant and after few months committed murder. He further submits that the learned trial court has also



failed to consider that the doctor has opined that the cause of death was asphyxia as a result of strangulation and there was bleeding mark on the body of the deceased and the skin of his body had separated due to pouring of hot water on it.

6. We have heard learned counsel for the appellant and have also gone through the records of the case.

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

8. Upon careful examination of the materials available on record, it emerges that three accused persons have been named in the FIR only on the ground of suspicion. It is well settled that suspicion, however strong, cannot substitute legal proof and cannot form the sole basis of conviction in a criminal trial. At this juncture, it would be relevant to take note of the decision rendered by the Hon'ble Supreme Court in the case of ***Basheera Begam Vs. Mohammed Ibrahim and Ors.*** reported in ***2020 INSC 116*** wherein, in paragraph 192, following has been observed:

“192. 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.”

9. It further appears that there is no ocular evidence of the alleged occurrence of murder. The entire case of the prosecution rests upon circumstantial evidence. The deceased was last seen on 14.11.2019 at 04:30 AM and his body was recovered on 16.11.2019 at around 10:00 PM, hanging from a banyan tree situated outside the village. The prosecution has not been able to place any convincing evidence to establish that the death was caused at the hands of the accused persons. At this juncture, it is noteworthy that the Hon'ble Supreme Court, while deciding the case of ***Shailendra Rajdev Pasvan & Ors. Vs. State of Gujarat & Ors.*** reported in (2020) 14 SCC 750, observed that:

“12. Thus the entire case of the prosecution is based on circumstantial evidence. It is well settled that in a case which rests on circumstantial evidence, law postulates two fold requirements:-

(i) Every link in the chain of the circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond



reasonable doubt.

(ii) All the circumstances must be consistent pointing only towards the guilt of the accused.

13. This court in the case of Sharad Birdichand Sharda v/s State of Maharashtra has enunciated the aforesaid principle as under:-

“The normal principle in a case based on circumstantial evidence is that the circumstance from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the Accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the Accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the Accused and inconsistent with his innocence”.

14. Another important aspect to be considered in a case resting on circumstantial evidence is the lapse of time between the point when the accused and deceased were seen together and when the deceased is found dead. It ought to be so minimal so as to exclude the possibility of any intervening event involving the death at the hands of some other person. In the case of Bodh Raj Alias Bodha v/s State of Jammu and Kashmir, Rambraksh v/s State of Chhattisgarh, Anjan Kumar Sharma v/s State of Assam following principle of law, in this regard, has



been enunciated:-

“The last seen theory comes into play where the time gap between the point of time when the Accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the Accused being the author of 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 Accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases”.

.....

16. It is well settled by now that in a case based on circumstantial evidence the Courts ought to have a conscientious approach and conviction ought to be recorded only in case all the links of the chain are complete pointing to the guilt of the accused. Each link unless connected together to form a chain may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused.”

10. The prosecution has also relied upon the fact that there had been previous disputes between the deceased and the accused persons and that accused had given threats to the deceased. While prior enmity may supply motive, it cannot, in



absence of corroborating evidence, be treated as sufficient proof of guilt. Motive, by itself, without any chain of circumstances linking the accused to the crime, does not establish culpability beyond reasonable doubt.

11. With regard to the witnesses examined in the case, it is evident that except the Investigating Officer and the doctor who conducted the post-mortem examination, all other witnesses are close relatives of the deceased and the informant. Though their evidence is not to be discarded merely on the ground of relationship, the settled principle of law requires such testimony to be scrutinized with great caution. On close scrutiny, the statements of these witnesses do not provide independent corroboration so as to conclusively establish the prosecution version.

12. In the totality of circumstances, it is clear that the prosecution has failed to bring on record any direct evidence or reliable chain of circumstances pointing to the guilt of the accused persons. The case rests substantially on suspicion, prior dispute, and interested testimony, which in law, cannot be made the basis for recording a finding of guilt.

13. 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.

14. 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 (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....."

15. 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:

"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.”

16. 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.

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

18. Accordingly, the present appeal is dismissed.

(Sudhir Singh, J.)

(Rajesh Kumar Verma, J.)

Sachin/-

AFR/NAFR	N.A.F.R.
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