

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1243 of 2024

Arising Out of PS. Case No.-135 Year-2019 Thana- RIGA District- Sitamarhi

Chulhai Mahto, male, aged about 40 years, Son of Late Shiyaram Mahto, R/o Vill.- Shahbajpur, Panchayat- Shahbajpur Bela, P.S.- Riga, Dist.- Sitamarhi.

... .. Appellant

Versus

- 1. The State of Bihar
- 2. Seth Mahto @ Shesh Mahto, S/o Siyaram Mahto
- 3. Govind Kumar, S/o Seth Mahto @ Shesh Mahto
Both resident of Bela Shahbajpur, Ward No.11, P.S.-Riga, District-Sitamarhi
- 4. Rukesh Kumar @ Rakesh Kumar, S/o Siyaram Mahto, resident of Village-Kharsan, P.S.-Riga, District-Sitamarhi
- 5. Narendra Kumar, S/o Lakshminarayan Mahto, resident of Village-Ratanpur, P.S.-Sursand, District-Sitamarhi.

... .. Respondents

Appearance :

For the Appellant : Mr. Prabhat Kumar, Advocate
For the Respondents : Mr. Satya Narayan Prasad, APP

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

Date : 20-08-2025

Heard Mr. Prabhat Kumar, learned counsel for the appellant and Mr. Satya Narayan Prasad, learned APP for the Respondent-State.

2. The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure, 1973 against judgment of acquittal dated 06.06.2024, passed by the learned Additional District & Sessions Judge-IX, Sitamarhi in Sessions Trial No.112 of 2021 arising out of Riga P.S. Case



No. 135 of 2019 whereby Respondent Nos. 2 to 5 have been acquitted by the learned Trial Court from the charge of Section 302 of Indian Penal Code.

3. The prosecution case, in brief, is that on 14.05.2019, at about 10:00 P.M., the informant's father (deceased), after having dinner, went to sleep at his outhouse. Thereafter, at about 03:00 A.M., informant's mother went there and saw that her husband was killed by cutting his neck with a sharp weapon. She raised alarm and the informant along with his family members went to the place of occurrence where he found his father dead.

4. On the basis of written report of the informant, Riga P.S. Case No. 135 of 2019 was instituted under Section 302/34 of the Indian Penal Code and investigation was taken up by the police. The police, after investigation, submitted charge-sheet against Respondent Nos.2 to 5 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.

5. During the trial, the prosecution examined altogether eight witnesses, *i.e.*, PW-1 Brijlal Mahto @ Bijulal Mahto, PW-2 Raghuvansh Paswan, PW-3 Ram Sufal Mahto,



PW-4 Kaushalya Devi @ Sushila Devi, PW-5 Arvind Kumar @ Arvind Mahto, PW-6 Chulhai Mahto (informant), PW-7 Dr. Md. Reza and PW-8 Subhash Mukhiya. The defence has also examined two witnesses, *i.e.*, DW-1 Krishna Mohan Mahto and DW-2 Krishnandan Kumar. The prosecution has also produced certain documents which were marked as Exhibits: complete written application given to SHO written by Mahesh Kumar, signature of Ramsakal Mahto and Katib Mahesh Kumar on written application, postmortem report, endorsement of SHO on the written application, formal FIR, Inquest report and charge-sheet No.321 of 2019 dated 27.11.2019. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 of the Cr.P.C. and after conclusion of trial, learned Trial Court has acquitted the accused persons.

6. The learned Trial Court acquitted the accused on the ground that there were no eye-witness evidence in the present case, and the entire prosecution case is only based on circumstantial evidence. The learned Trial Court further held that the circumstantial evidences were not linked with each other in a manner which would prove the guilt of the accused persons beyond a shadow of reasonable doubt. The learned Trial



Court observed that the weapon, which was used in the alleged murder, has not been recovered, and the presence of the accused persons at the alleged place of occurrence of the murder has not been established by the prosecution. The learned Trial Court also held that the motive behind the alleged occurrence, was said to be the refusal by the deceased to sign the sale deed of a land, which has not been proved before the learned Trial Court.

7. Learned counsel for the appellant submits that the learned Trial Court has failed to appreciate the evidence of PW-4 i.e. the wife of the deceased, who has categorically stated that when she went to the outhouse, her husband was alive and she had seen all the accused persons going towards the outhouse. The learned Trial Court has also failed to appreciate the evidence of the son of the deceased, who had also heard his father (deceased) saying that accused Seth and Govind had injured him and has wrongly acquitted the accused persons saying that there is no eye-witness to the occurrence.

8. Learned counsel for the Respondent-State submits that the judgment of the learned Single Judge requires no interference and was passed rightly, based on facts and circumstances of the case.

9. We have heard learned counsel for the appellant



and have also gone through the records of the case.

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

11. The facts disclosed by the deceased before the witnesses, before his death, at best it can be treated to be a dying declaration before public. In the present matter, there are contradictions in the statements of witnesses produced by the prosecution regarding time, place and manner of the dying declaration made by the deceased before the public, that the accused persons had killed him. A conviction cannot be merely based on a dying declaration made before the public, especially in absence of any other corroborative evidences. The principles related to the Dying Declaration, as laid down in *Athir vs Govt. Of N.C.T Of Delhi* reported in (2010) 9 SCC 1, have to be followed; whereunder the Hon'ble Apex Court had held, "*Where dying declaration is suspicious, it should not be acted upon without corroborative evidence.*" as one of the principles for the consideration of dying declaration.

12. PW-4 is nonetheless but the wife of the deceased and as per the prosecution case, she is the first one to reach the place of occurrence but in her examination-in-chief, itself, she



has made a contradictory statement. In the FIR, she has stated that she had seen the manner of the occurrence and in the examination-in-chief, she had stated that she only reached after the occurrence had taken place and the deceased made his statement regarding cause of death before her. This witness has further stated that on her hulla (alarm), Biju Lal Mahto, Pawan Sah, Prem Lal, Dewansh Paswan had come to the place of occurrence and out of four persons, only Biju Lal Mahto has been examined as PW-1 and rest of the persons have not been examined by the prosecution. Though, this Biju Lal Mahto's name does not appear in the statement of the informant made in the FIR.

13. The informant (PW-6), during the trial in his evidence, has given altogether a different version of the alleged occurrence. Many new facts were added. Specially, in respect to the time of occurrence, manner of occurrence and further in respect to the dying declaration made before the public. These facts do not find place in the FIR. The information of the dying statement, for the first time, has come during the trial. Admittedly, from the record, it is apparent that the story of the dying declaration made before the public has come at a belated stage during the trial and further there is no circumstantial



evidence or a corroborative evidence to support this extra judicial dying declaration made by the accused.

14. From perusal of the *postmortem* report, it appears that the injury has been sustained on the neck of the victim. The injury on the left side of the neck is said to be 6"x4" inches deep and on the left hand, the injury is said to be 4"x3" inch deep. This injury is said to have been caused by sharp cutting weapon. Further the Doctor, in his deposition, has categorically stated in page-24 of the judgment that in the nature of injury which was sustained by the deceased, the deceased would have died immediately. In this light of facts, we find that the victim could not have given a statement regarding cause of his death before the alleged witnesses, considering the nature of injury inflicted upon him.

15. 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.

16. 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....."

17. In ***Babu Sahebagouda Rudragoudar Vs. State of Karnataka***, reported in **2024 SCC Online SC 561**, Hon'ble Supreme Court, after referring to relevant precedents, has observed as follows:

"41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.



42. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”

18. 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.

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

20. Accordingly, the present appeal stands dismissed.

(Sudhir Singh, J.)

(Rajesh Kumar Verma, J.)

Gaurav Kumar,
Suruchi/-

AFR/NAFR	NAFR
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