

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.933 of 2022**

Arising Out of PS. Case No.-133 Year-2016 Thana- BENIPATTI District- Madhubani

Gulshan Khatoon W/O Md. Ansar Resident Of Village- Benipatti, P.S.-
Benipatti, District- Madhubani.

... .. Appellant/s

Versus

1. The State of Bihar
2. Md. Samim Akhtar S/O Late Sabir Resident Of Village- Paigamberpur, P.S.-
Kewati, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Md. Harun Quareshi, Advocate
For the State	:	Mr. Binod Bihari Singh, APP
For the Respondent	:	Mr. Anshul Aaryan, Advocate

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. Ramesh Chand Malviya)

Date : 29-07-2025

Heard Mr. Md. Harun Quareshi, learned senior
counsel for the appellant, Mr. Anshul Aaryan, learned counsel
for the Respondent and Mr. Binod Bihari Singh, learned APP
for the State.

2. This appeal has been filed on behalf of the
appellant/informant under Section 372 of the Code of Criminal
Procedure Act against the judgment and order of acquittal
dated 12.09.2022 rendered by learned Additional Sessions
Judge-IX, Madhubani in Sessions Trial No. 397 of 2017,



arising out of Benipatti P.S Case No. 133 of 2016 whereby, the concerned Trial Court has acquitted the Respondent No. -2- Samim Akhtar from the charges leveled against him, for the offences punishable under Section 364, 379, 302, 120B of the Indian Penal Code (hereinafter referred as IPC).

3. The prosecution case, in brief, is that the informant made a written complaint on 18.08.2016 at about 10.00 PM, after having dinner. The informant and her husband were walking on road and when she returned home then saw that her daughter, namely, Ulfat Parween was not present at home and all the household-articles were scattered in the house. Informant further stated that when she searched her daughter then one Md. Hira told him that Md. Samim Akhtar and three other unknown persons had come there in a four-wheeler and kidnapped her daughter in said vehicle with one briefcase. Informant further stated that Md. Samim Akhtar, Md. Jamil Akhtar and Md. Wasim the accused persons kidnapped her daughter with intention either to kill her or for the purpose of human trafficking.

4. On the basis of written statement of the informant, Benipatti P.S Case No. 133 of 2016 came to be registered under Sections 364, 379, 302 and 120B of the



Indian Penal Code and after investigating the case, the Investigating Officer submitted charge sheet under Section 364, 379, 302, 120B of the Indian Penal Code on 23.01.2017 against the accused persons. Accordingly, cognizance of offences under Sections 364, 379, 302, 120B of the IPC were taken and after taking the cognizance the case was committed to the Court of Sessions Judge, Madhubani on 01.11.2017.

5. Altogether seven prosecution witnesses have been examined PW1-Md. Gulzar Shekh, PW2- Md. Jamil Ansari, PW3- Abdul Wahab, PW4- Md. Ansar (husband of the informant), PW5- Md. Mobin, PW6- Md. Gulshan Khatoon (informant), PW7- Ranjit Kumar and no witness has been examined from the other side.

6. Learned counsel for the appellant submitted that the impugned judgment of acquittal is not sustainable in the eye of law or on facts. Learned trial Court has not applied judicial mind and erroneously recorded the judgment of acquittal. He further submitted that PW-1 and PW-3 who were present in Kasturba Hospital where the Judicial Magistrate, took the statement of deceased wherein it was stated that Md. Samim, Md. Jamil, Md. Salauddin and Md. Aftab Sprinkled the kerosene and put her on fire. He further submitted that the



prosecution failed to produce the *fardbeyan* of deceased which was recorded by the Judicial Magistrate in Kasturba Hospital before dying.

6.i. Learned counsel for the appellant submitted that trial Court failed to appreciate that statement of the eye witness categorically stated that the accused Md. Amim Akhtar kidnapped the deceased and also failed to appreciate the deposition of other witnesses and other evidences available on record which established the prosecution case beyond shadow of all reasonable doubts. He further submitted that Md. Gulzar Sheikh (PW-1) and Abdul Wahab (PW-3) clearly stated in their deposition that the accused Md. Samim Akhtar was taking the deceased and sprinkle the kerosene on her body and put him on fire but learned trial Court below failed to appreciate the evidence of independent witnesses.

7. Learned counsel for the respondent submitted that the accused is innocent and has not committed any crime and has been falsely implicated in this case. There is a huge contradiction in the deposition of the witnesses on the relevant facts examined on behalf of the prosecution. The doctor and the eyewitnesses have not been examined, which is fatal to the prosecution case. He further submitted that material witness,



Md. Hira, who is alleged to have seen the occurrence, was withheld by the prosecution thus not examined. His non-examination has caused prejudiced to the accused. All the other witnesses are hearsay in the present case. He further submitted that the First Information Report was lodged after the delay of two days from the alleged occurrence and there is no plausible explanation for the said delay. The doctor who conducted the postmortem report has not been examined by the prosecution. The inquest report was also not proved. He further submitted that the chain of circumstances have not been sufficiently connected and completed as to prove the guilt of accused. The learned Trial Court has rightly acquitted the accused and present appeal is devoid of merits.

8. On meticulous examination of the evidences adduced, it is worth to note that PW-2 in his examination-in-chief stated that on 18.08.2016 at 10 PM when he was going to eat *Paan* from *Paan* stall at Neem Chowk where he saw a vehicle parked there and Samim along with his brothers after abducting the Ulfat Pravin fled away in the said vehicle. But he did not disclose that how he identified the alleged accused in night at 10:00 PM, as it is natural that there cannot be sufficient light in the dark night especially at the small *Paan*



stall and anyother source of light was available there nor to be explained. PW-4 in para no. 8 of his deposition it has been admitted that whatever statement he has given regarding the alleged occurrence was told to him by other people. So, PW-4 is evidently a hearsay witness thus not reliable. Law on this point is very clear as provided in section 60 of Indian Evidence Act, 1872 (hereinafter referred as IEA), that the oral evidence must be direct and to become relevant must be given by the person who himself has heard or seen the occurrence.

Section 60 of Indian Evidence Act read as follow:-

60. Oral evidence must be direct. Oral evidence must, in all cases, whatever, be direct; that is to say, -

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

If it refers to a fact which could be perceived by any sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds :

Provided that the opinions of experts expressed in any treatise commonly offered



for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable.

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

8.i. We further find that PW- 6 in her deposition has stated that the information regarding the alleged occurrence was communicated her by one Heera, but the prosecution has not examined the said eyewitness Heera. In para no. 24 of her deposition she stated that, at the relevant time the complainant's son Rafat and daughter Ulfat were awake at home. In para no. 28 of her deposition she stated that, her father-in-law and brother-in-law woke up on hearing the cries of her son and daughter. But, the above-mentioned eyewitnesses Rafat, Ulfat, the complainant's father-in-law and brother-in-law have also not been examined by the prosecution. PW- 7 in para no. 13 of his deposition stated that a death certificate was made in Mumbai in the name of Puja Mukesh Sahu which is of Ulfat Praveen. It is clear from this



that the deceased was living in Mumbai as husband and wife with Mukesh Sahu in the name of Puja. PW-7 in para no. 9 of his deposition, stated about the call details of the accused and the deceased, from which it was clear that there was conversation between the two till 24.08.2016.

8.ii. We further observe that PW-7 in para no. 63 and 64 of his deposition stated that he had taken the statement of the landlord in Mumbai in which landlord told that Ulfat Praveen and Mukesh were living together as husband and wife for a month by telling her name as Pooja and when Pooja got burnt and while trying to save her Mukesh also got burnt and both of them were admitted to the hospital together by the landlord's son. It is clear from the above facts that Ulfat Praveen was in touch with Mukesh Sahu and on his advice she went to Mumbai of her own will, there both lived as husband and wife and in altercation with Mukesh, Ulfat Praveen set herself on fire and while trying to save her Mukesh Sahu also got burnt and both were admitted to the hospital together and the accused did not kidnap Ulfat Praveen by criminal conspiracy and the prosecution has completely failed to prove its case through evidence.



9. Further, it is evident that immense inconsistency has appeared in the deposition of prosecution witnesses as most of them are hearsay and not reliable and the prosecution has not examined any eyewitness. This brings the present case in the facet of circumstantial evidence as no direct evidence or ocular witness is produced by the prosecution to prove its case beyond shadow of all reasonable doubts. In circumstantial evidence the chain of circumstance should clearly establish the guilt of accused and no other probability, which is not established in the instant case. 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, which is not established in the present case.

10. Moreover, Exhibit-C the confessional statement of Mukesh Kumar Sah in which he has stated that he met the deceased Ulfat Praveen while running a mobile shop in front of Benipatti Post Office. Due to his separation from her husband, the friendship between them developed. He went to Mumbai for livelihood and the deceased Ulfat Praveen also came to Mumbai with her own will and both started living as



husband and wife in a rented house 9/2.2.2. Ulfat Praveen told her name as Pooja and one day in a dispute over cooking food, Ulfat Praveen set herself on fire by sprinkling kerosene on herself and while trying to save her, he also got burnt and both were admitted together in the same hospital for treatment. On the basis of the above statement, the offence of murder of deceased Ulfat Praveen was found not true against the present accused.

11'. Further, the prosecution has not examined the only eyewitness of the alleged kidnapping, Heera, the victim's siblings who were living with her at the time of kidnapping, the complainant's uncle and brother-in-law, and any witness within the boundary of the crime scene. The FIR has been registered two days after the alleged occurrence and no reasonable explanation has been given by the prosecution for such delay. The post-mortem report, dying declaration and Panchnama of the deceased have not been proved. The doctor and the witnesses of the Panchnama have also not been examined. In this way, it seems justified to give the benefit of the above shortcomings of the prosecution to the defense.



12. Thus, on the basis of the evidence available on record, it is held that the charges against the accused is not proved beyond shadow of all reasonable doubt and the necessary elements mentioned in the charged sections are lacking to hold him guilty under the charged sections. In the totality of the circumstances which are appearing from the evidences on the record, we are of the considered opinion that the learned trial Court has not committed any error in appreciation of the evidences.

13. We are dealing with an appeal against acquittal and shall keep in mind the principles governing the cases of appeal against acquittal. The principles have been reiterated by the Hon'ble Supreme Court in catena of decisions and one of them is the case of H.D. Sundara and Others vs. State of Karnataka reported in (2023) 9 SCC 581. Paragraph "8" whereof is recorded here-under for a ready reference:-

"8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment State of Karnataka v. H.K. Mariyapp, 2010 SCC OnLine Kar 5591 rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C"). The principles which govern the exercise of appellate



jurisdiction while dealing with an appeal against acquittal under Section 378 Cr.P.C can be summarized 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 re appreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after re appreciating 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."

14. It is a case of acquittal in which the presumption of innocence of the accused is, in fact, affirmed by the learned trial Court. In fact, this Court is of the opinion that the prosecution has failed before the learned trial Court to prove the charges levelled against the respondent as opined by



the learned trial Court. In ultimate analysis of the entire materials and record, we find no reason to interfere with the judgement of the learned trial court.

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

(Sudhir Singh, J)

(Ramesh Chand Malviya, J)

Mayank/-

AFR/NAFR	NAFR
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