

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1152 of 2023

Arising Out of PS. Case No.-182 Year-2021 Thana- ADAPUR District- East Champaran

Anil Kumar Pandey, son of Late Surendra Pandey, resident of Village-Ghorasahan, P.S.-Harpur, District-East Champaran.

... .. Appellant/s

Versus

1. The State of Bihar
2. Subham Ansari, son of Kari Mian, resident of Village-Ghorasahan, District.- East Champaran.
3. Satendra Mahto @ Satendra Kushwaha, son of Sarfdeo Mahto, resident of Village-Ghorasahan, District.- East Champaran.
4. Nirodha Mian @ Noor Hoda, son of Saheb Jaan Ansari, resident of Village-Ghorasahan, District.- East Champaran.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Binay Kumar, Advocate
For the Informant/s	:	Mr. Anil Kumar, Advocate
For the State	:	Mr. Satya Narayan Prasad, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
And
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 08-01-2025

The present appeal has been preferred for setting aside the judgment of acquittal dated 05.09.2023 passed by learned Additional District & Sessions Judge-XII, East Champaran at Motihari in Sessions Trial No. 46 of 2022, CIS No.46/2022, arising out of Adapur (Harpur) P.S. Case No. 182 of 2021. By the judgment under appeal, the accused-respondent Nos. 2 to 4 who were



facing trial for the charges under Sections 364(A), 302, 201, 120(B)/34 of the Indian Penal Code, have been acquitted.

2. The prosecution case, in brief, as per the written report of informant-appellant Anil Kumar Pandey is that on 03.07.2021 at about 1:00 P.M his son Jai Kishore Pandey (deceased) aged about 12 years was playing in his orchard. In the mean time, Satendra Mahato (respondent No. 3) called him and took him on his motorcycle. When son of the informant did not return till evening, he asked about his son to Satendra Mahto (respondent No. 3) but he did not give any reply. It is further alleged that one Kundan Singh had seen Satendra Mahto carrying Jai Kishore Pandey (deceased) on his motorcycle. It is alleged that one month before also the accused Satyendra Mahato (respondent No. 3) had taken his son and brought him back in the evening. The informant-appellant further alleged that Satendra Mahto (respondent No. 3) was chasing his son for the last 10



days and succeeded in kidnapping him.

3. On the basis of the written application of the informant-appellant, the police registered Adapur P.S. Case No. 182 of 2021 dated 05.07.2021 for the offences under Sections 363 and 365 of the Indian Penal Code against accused Satyendra Mahto (respondent No. 3).

4. After investigation, the police submitted charge-sheet under Sections 364(A), 301, 201, 120(B)/34 of the Indian Penal Code against Subhan Ansari (respondent No. 2), Satyendra Mahto (respondent No. 3) and Nishant Kumar@ Dabloo and kept the investigation continued against Nirodha Miyan @ Noor Hoda (respondent No. 4). Thereafter, cognizance was taken for the offences under Sections 364(A), 302, 201, 120(B)/34 of the Indian Penal Code. The case proceeded against accused Satyendra Mahato (respondent No. 3), Subhan Ansari (respondent No. 2 and Nishant Kumar@ Dabloo vide order dated 10.12.2021. The case was committed to the Court of Sessions on 23.12.2021.



5. The record of accused Nirodha Miyan @ Noor Hoda (respondent No. 4) was split up. After investigation, the Investigating Officer submitted supplementary charge-sheet against Nirodha Miyan @ Noor Hoda (respondent No. 4) under Sections 364(A), 302, 201, 120(B)/34 of the Indian Penal Code. Learned Judicial Magistrate, 1st Class, Motihari found *prima facie* case against him vide order dated 03.11.2022 and thereafter, the case was committed to the Court of Sessions on 05.11.2022.

6. The case record of Nishan Kumar @ Dabloo has been sent to J.J.B, Motihari vide order dated 24.08.2022 whereas at the time of final argument, Sessions Trial No. 1214 of 2022 (Nirodha Miyan @ Noor Hoda) has been amalgamated with the present Sessions Trial No. 46 of 2022 vide order dated 21.06.2023.

7. The learned Trial Court explained the charges to the accused persons who denied them and claimed to be tried. After completion of trial, learned Trial Court has



acquitted all the accused persons/respondents of the entire charges.

8. It is submitted by learned counsel for the appellant that accused persons have committed heinous offence and witnesses have fully supported the prosecution case. Learned Trial Court has not analyzed the evidence on record in right perspective and failed to consider that there was no occasion to demand of ransom as the accused Subhan Ansari(respondent No. 1) had killed the victim in compelling circumstances in the night of 03.07.2021 on account of his high pitch cry. The accused persons have also confessed before the Police regarding killing of son of the informant which fact has not been appreciated by the learned Trial Court.

9. It is submitted on behalf of the respondent Nos. 2 to 4 that respondents are innocent and they have falsely been implicated in this case. There is major contradiction on the point of place of occurrence and manner of occurrence and further the witnesses have



admitted that there is no enmity between the parties and no demand of ransom was ever made after alleged kidnapping. The prosecution has failed to prove the motive which is very much essential in the cases based on circumstantial evidence.

10. In view of the rival contentions, evidences and the arguments adduced on behalf of both the parties, the main points for determination in this appeal are as follows:-

(i) Whether the prosecution has been able to prove the case against the accused persons(respondents) beyond all reasonable doubts before Trial Court.

(ii) Whether the impugned judgment is sustainable and tenable in the eyes of law or requires any interference.

11. Heard learned counsel for the appellant, respondents and learned Additional Public Prosecutor for the State and also perused the case record.

12. From perusal of the impugned judgment dated 5th September, 2023, it appears that accused



(respondent Nos. 2 to 4) have been tried in this case for committing the offences under Sections 364(A), 302, 201, 120(B)/34 of the Indian Penal Code arising out of Adapur (Harpur) P.S. Case No. 182 of 2021.

13. At the very outset, it is essential to note here that there is no eye witness to the alleged occurrence. There is neither any evidence for demand of any ransom nor any motive has been assigned against the accused persons to commit such crime nor the dead body of the deceased has been recovered.

14. The entire case has been evaluated and appreciated on the basis of circumstantial evidence in this case. The principle for deciding the cases based on circumstantial evidence has been laid down by the Hon'ble Apex Court in various cases/pronouncements. In this context, we could like to cite few decisions.

15. The Hon'ble Supreme Court in the case of Hanumant versus State of Madhya Pradesh reported in AIR 1952 SC 343, had observed thus:-



“12. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

16. In this context, we are tempted to quote the golden principles laid down by the Hon’ble Apex Court in the case of Sharad Birdhichand Sarda versus State of Maharashtra reported in 1984 AIR 162. Para 153 and 154 of the judgment are extracted hereunder:-

“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:

(1) 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 & Anr. v. State of Maharashtra](#)(') where the following observations were made:

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can 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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

17. On the anvil of the aforesaid principle laid down by the Hon’ble Supreme Court, when we analyze and minutely appreciate the evidence brought on the record during the course of the trial, we find the following



factual inconsistencies, discrepancies, contradictions, embellishment and exaggeration in the present case.

18. As per the prosecution case i.e. F.I.R, on the alleged date of occurrence i.e. 03.07.2021 at about 1:00 P.M, the informant's son namely Jai Kishore Pandey aged about 12 years was playing in the orchard. Meanwhile accused Satendra Mahto (respondent No. 3) came and took him on his motorcycle. Informant's villager Kundan Singh had seen the accused Satendra Mahto taking the informant's son on motorcycle. On the basis of aforesaid allegation made in the written report, F.I.R was registered against sole accused Satendra Mahto(respondent No. 3).

19. The informant has been examined during the course of trial as P.W. 1 in which he has deposed that on the alleged date and time of occurrence i.e. 03.07.2021 at about 1:00 P.M four accused persons namely Satendra Mahto (respondent No. 3), Nishant Kumar @ Dabloo, Nirodha Mian @ Noor Hoda (respondent No. 4) and Subhan Ansari(respondent No. 2) were talking to his



younger son Jai Kishore Pandey (deceased) in his orchard while at that time, his son was playing there. He asked his son to go and take meal. After taking meal his son went to the *Baithaka* and he went to take food. He has further deposed that Kundan, Ziyaul and Chandan disclosed him that Satendra Mahto (respondent No. 3), Nishant Kumar @ Dabloo, Nirodha Mian @ Noor Hoda (respondent No. 4) and Subhan Ansari (respondent No. 2) have taken his son away on a motorcycle. So in between the evidence and F.I.R, there is clear grave inconsistency and contradiction in the place of occurrence and manner of occurrence. As per F.I.R, the sole accused (Satendra Mahto) took his son away from the orchard while from his evidence as P.W. 1 the informant has deposed that his son was taken away from the *Baithaka* by the four accused persons.

20. As per F.I.R, the informant came to know about the aforesaid fact from one Kundan Singh while from his own evidence as P.W. 1, it appears that three



persons namely Kundan, Ziyaul and Chandan disclosed about the aforesaid occurrence. It is also relevant to state here that said Kundan Singh, who is the sole witness as per F.I.R has not been examined during the course of trial by the prosecution.

21. The informant has further deposed in cross examination that he got his F.I.R written from one Bizli Yadav and read over it and found it as correct and then he signed thereon. He has also deposed that he has mentioned the name of all accused persons as per disclosure of Kundan Singh but said Kundan Singh has not been examined in this case. So, there is major contradiction and embellishment between the F.I.R and the evidence of the informant on the point of place of occurrence and manner of occurrence.

22. In this context, the evidence of P.W. 2 Ziyaul Haque Ansari is also relevant who deposed that on the alleged date and time of occurrence, he along with Jai Kishore Pandey (deceased), Kundan Singh and others



were playing in the orchard of the informant. In the meantime, Satendra Mahto (respondent No. 3) came there on foot and took away Jai Kishore Pandey(deceased) and since then said Jai Kishore Pandey (deceased) did not return. He has not deposed that accused took the victim away on any motorcycle.

23. P.W. 8 Anjali Kumari @ Anjali Pandey who is the daughter of the informant has deposed that on the alleged date and time of occurrence, she and her brother Jai Kishore Pandey (deceased) were studying in the banglow. In the meantime, Satendra Mahto (respondent No. 3), Nishant Kumar @ Dabloo, Nirodha Mian @ Noor Hoda (respondent No. 4) and Subhan Ansari(respondent No. 2) started calling her brother from the road. Her brother(deceased) went there and they took him away. This fact has not been uttered by the informant either in his F.I.R or in his evidence that on the alleged date and time of occurrence, when the accused took his son away, his daughter was studying with his son. Contrary to that,



he has deposed that his son was playing in the orchard when the accused took him away. He has nowhere stated about the presence of his daughter (respondent No. 8) at the alleged date and time of the occurrence.

24. The evidence of P.W. 7 Kameshwar Pandey in this context is also relevant who is own elder brother of the informant. He has deposed that on the alleged date and time of occurrence, the informant was playing in the orchard alone when four accused persons came there and took him away.

25. The accused persons have been tried for the offences under Sections 364(A) of the Indian Penal Code.

Section 364(A) of the I.P.C reads as follows:-

“Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death to such person or by his conduct gives rise to reasonable apprehension that such person may be put to death or hurt or causes hurt or death to such person in order to compel the Government or



any foreign state or international inter governmental organization or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death or imprisonment for life and shall also be liable to fine”

26. Thus, in order to attract the application under Section 364(A) I.P.C, following ingredients must be fulfilled.

(i) Kidnapping or abduction of a person and keeping him in detention

(ii) Threat to cause death or hurt and demand to pay ransom

(iii) When the demand not fulfilled then causing hurt or death.

27. In this case, no prosecution witness has deposed that the abducted informant's child was detained anywhere or a particular place. It has also not come on the record that any demand to pay ransom was ever made by any of the accused persons from the informant or his family members.

28. On perusal of the prosecution evidence, it



appears that P.W.1, P.W. 6, P.W.7 and P.W. 8 belonging to the same family who are informant's son, brother and informant's daughter have been examined in this case. They have not whispered anywhere in the entire evidence that any ransom was demanded from anywhere regarding victim's release. They have not stated anywhere in their evidence about any enmity between the accused persons and the informant. P.W. 6 has clearly deposed in his cross-examination in para 15 that in his knowledge, there was no enmity between the family of accused persons and his family and no demand of ransom was ever made from his family after disappearance of Jai Kishore Pandey (deceased). So this fact clearly dispels the involvement of accused/respondents for the offence under Section 364(A) of the Indian Penal Code.

29. So far as the allegations under Sections 302 and 201 I.P.C are concerned, there is a complete lack of evidence in this case as to who murdered the victim or caused him disappeared and by what means or on which



place. The dead body of the victim (informant's son) has not been recovered by the Investigating Officer. Therefore, for want of proof of this fact, the confessional statement made before the police regarding any fact of any co-accused is of no avail to prove the prosecution case.

30. The Investigating Officer, who has been examined as P.W. 4 has deposed that as per confessional statement made before the police, he investigated and enquired the room of accused where no objectionable article was found. The Investigating Officer has also deposed in para 27 that he had investigated this case on the basis of restatement of the informant. He has not visited the orchard of the informant as per F.I.R. He has also deposed in para 20 that he traced the criminal history of all the accused persons and found no criminal history against them. The Trial Court, therefore, has rightly held that confession of co-accused recorded by the police officer while they were in police custody leading no



recovery have no legal evidentiary value in this case.

31. There is virtually no evidence against accused persons except the confessional statement of co-accused recorded by the police after arrest, which have got no legal sanctity in the eye of law, particularly in view of Sections 25 and 26 of the Evidence Act.

32. From perusal of the entire prosecution evidence, it clearly transpires that there was no enmity or motive behind the alleged occurrence against the accused persons. Since this case has to be decided on the basis of circumstantial evidence, the motive will play an important role to fulfill and complete the chain of circumstances.

33. The Hon'ble Apex Court in various judgments has clearly held that in a case of direct evidence, motive would not be relevant but in the case of circumstantial evidence, motive plays an important link to complete the chain of circumstances. Thus, lack of motive or enmity in this case goes against the prosecution.

34. So, after close and careful scrutiny of the



evidence of the entire prosecution witnesses, it clearly and conspicuously reveals that on the point of manner of occurrence and place of occurrence, there are embellishment, exaggeration and vital contradictions in the evidence of prosecution witnesses. All the above embellished and exaggerated evidence will go against the prosecution because the prosecution has not proved the complete chain of circumstances from which the conclusion of guilt of the accused is to be drawn and to be fully established. Hence, the learned Trial Court has rightly acquitted the accused persons finding the case not proved beyond all reasonable doubts.

35. In the case of H.D. Sundara and Others versus State of Karnataka reported in (2023) 9 SCC 581, while dealing with an appeal against acquittal, the Hon'ble Supreme Court has laid down the broad principles in paragraphs '8.1' to '8.5' which are to be kept in mind and we reproduce the same hereunder for a ready reference:-

"8. In this appeal, we are called



upon to consider the legality and validity of the impugned judgment 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 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."

36. In view of the aforesaid discussions made hereinabove, what has transpired from the evidence available on the record, we find no reason to take a different view from what has been held by the learned Trial Court. Hence, the impugned judgment is upheld and the appeal is dismissed.

(Rajeev Ranjan Prasad, J)

(S. B. Pd. Singh, J)

Shageer/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	14/02/2025
Transmission Date	14/02/2025

