

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1458 of 2024**

Arising Out of PS. Case No.-93 Year-2023 Thana- BENIPATTI District- Madhubani

Sunita Devi, W/O Nathuni Yadav, R/o Village - Kerwa, P.S. - Saharghat,
Distt.- Madhubani

... .. Appellant/s

Versus

1. The State of Bihar
2. Dukhi Yadav, S/o Rambriksh Yadav, R/o Village - Kerba, P.S. - Saharghat,
Distt.- Madhubani

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Murari Narain Chaudhary, Advocate Mr. Brahmanand Kumar, Advocate Mr. Vijay Kumar, Advocate
For the Respondent/s	:	Mr.Abhimanyu Sharma, APP

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

Date : 27-08-2025

The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure against the judgment of acquittal dated 07.10.2024 passed by the learned Additional Sessions Judge- III, Madhubani in Sessions Trial No. 633 of 2023, arising out of Benipatti P.S. Case No. 93 of 2023, whereby Respondent No. 2 has been acquitted from the charge of Sections 302 and 201/34 of the Indian Penal Code.

2. The prosecution case, in brief, is that the accused



persons, namely, Amit Kumar, Arun Kumar Safi, Sita Saran Yadav, Dukhi Yadav, Bhima @ Vijay Kumar Mahto used to run illegal liquor business in the village of the informant. One Pradeep Kumar who was the son of the informant used to object to the illegal business done by the accused persons. However, from several days before the alleged occurrence, Pradeep Kumar developed a friendship with the accused persons, irrespective of the warnings given by the informant. On 07.05.2023, around 10:00 PM, all the five accused persons named above came to the house of the informant on two motorcycles, and called her son to go to the *Barati* of the son of Kishan Ram. The son of the informant went to the *Barati*, and he sat along with Amit and Arun Safi on a motorcycle. On the very next morning, the informant saw that every person had returned from *Barati* except her son Pradeep and she called on his *Mobile No.* 7070783883, which was switched off. Thereafter, she enquired about her son from the neighbouring people and also from Amit and Arun Safi, but they said that they had no knowledge about Pradeep. Thereafter, she heard that a dead body of an unknown person has been found by the police, and she rushed to Benipatti Police Station. The informant was shown the photograph of the deceased person, and she identified that the photograph was of



her son Pradeep. Then informant having strong suspicion that her son was killed by Amit Kumar, Arun Kumar Safi, Sita Saran Yadav, Dukhi Yadav and Bhima @ Vijay Kumar Mahto, registered an F.I.R. against all the accused persons.

3. On the basis of the application of the informant, Benipatti P.S. Case No. 93 of 2023 was instituted under Sections 302, 201 and 120B/34 of the I.P.C. and investigation was carried out by the police. The police after investigation submitted charge-sheet against Respondent No. 2 and, accordingly, cognizance was taken. Thereafter the case was committed to the Court of Sessions. Charges were framed against the respondent No. 2, to which he pleaded not guilty and claimed to be tried.

4. During trial, the prosecution examined altogether nine witnesses i.e. PW1 Manoj Yadav, PW 2 Umesh Yadav, PW3 Dr. Kunal Ahand, PW4 Sunita Devi, PW5 Lalu Kumar Yadav, PW6 Bipin Kumar Yadav, PW7 Praveen Kumar, PW8 Sitaram Prasad and PW9 Suraj Kumar. The prosecution has also produced certain documents which were marked as Exhibits, i.e., Signature of Manoj Yadav on the seizure list, Postmortem report, Seizure list of mobile phone of deceased, Endorsement over the typed application, Formal FIR, Seizure list of Apache Motorcycle, and the chargesheet. No witness has been examined



on behalf of the defence. After closure of prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and after conclusion of trial, learned trial court acquitted the accused.

5. The learned trial court acquitted the accused on the ground that the entire prosecution was based on circumstantial evidence, and the evidence was not linked together in a manner sufficient to prove the guilt of the accused beyond the shadow of reasonable doubt. In paragraph 12 of the impugned judgment, the learned trial court held as under:

“It is evident after going through the ocular account of the testimonies of the witnesses that the present case is totally based upon the circumstantial evidence and the golden principle of the circumstance based case is that the chain of incident must be connected with each other but contrary to that principle in the present case there is complete lack of interconnection of the chains of circumstances because the informant has stated that she saw the five accused persons gathered at her house including Dukhi Yadav and her son left for barat sitting alongwith Amit and Arun on their motorcycle at about 10:00 PM. The P.W 1 & 2 has stated that they saw Amit, Arun, Dukhi at Brahamasthan but later on according to the P.W 5 that Amit and Arun went towards the house of Pradeep Kumar and Dukhi Yadav was remained there at Brahamasthan and it was about 08:00 PM.



There is complete contradiction in the statement made by the PW 5 & 4 where PW 4 has stated that the accused Dukhi Yadav was also arrived at her house along with other accused persons but PW 5 has stated that he saw only Arun and Antit were going towards the house of Pradeep. Further the PW 4 has although stated that her son went away alongwith Arun, Amit and other accused persons but after departure from the place of the informant none of the witness had seen the accused persons alongwith Pradeep in the way, at the barat or near the PO. Land where the dead body was found and therefore the chains of circumstances are not connected at all”

6. Learned counsel for the appellant has submitted that the impugned judgment of acquittal is illegal and passed by the learned trial court without application of judicial mind properly. He further submitted that the learned trial court has not taken into consideration that PW8, who was the Investigating Officer of the case, had done a very defective investigation as he had seized the dead body of the deceased hanging from a tree and from whose possession, a mobile phone was recovered, but the IO did not try to obtain even the call details from it. Learned counsel further submitted that it was a case of circumstantial evidence in which after recovery of dead body, the chain of circumstance was fully completed. Learned counsel for the appellant further submitted that as per the allegation, the



deceased had accompanied the accused persons including Respondent No. 2 and even his bike was also used for this purpose, but unfortunately, without assigning any reason, this fact has not been considered by the learned trial court. Learned counsel submitted that the learned trial court has completely overlooked the evidence of the prosecution witnesses like PW2, PW 4 and PW6, as from perusal of their evidences, it would be apparent that the son of the appellant was killed only for the reason that the accused persons were treating him as the informer of the police and for his elimination, the Respondent No. 2 had played a major role, in which his bike was also used for carrying the deceased for his killing.

7. On the other hand, the learned counsel for the respondents submitted that there is no perversity in the judgment of the learned trial court, and the prosecution had failed to prove the guilt of the accused before the learned trial court. Therefore, the judgment of the learned trial court requires no interference in the present case.

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

9. The sole question that requires consideration by this



Court is whether the impugned judgment of acquittal requires any interference by this Court.

10. The entire prosecution case is built on circumstantial evidence, that there was an enmity between the deceased and the accused persons earlier and that the deceased was allegedly last seen together with the accused persons. However, it should be noted that the deceased accompanied the accused persons with his own will, and there is nothing on record to show the contrary. The evidence of witnesses are not consistent, rather contradictory, as none of the prosecution witnesses have stated in their evidence that all five persons, who were named in the F.I.R. by the informant, were seen together going to the *Barat*. The learned trial court, in Paragraph 12 of the impugned judgment, held the following:

“The P.W 1 & 2 has stated that they saw Amit, Arun, Dukhi at Brahamasthan but later on according to the P.W 5 that Amit and Arun went towards the house of Pradeep Kumar and Dukhi Yadav was remained there at Brahamasthan and it was about 08:00 PM. There is complete contradiction in the statement made by the P.W 5 & 4 where P.W 4 has stated that the accused Dukhi Yadav was also arrived at her house along with other accused persons but P.W 5 has stated that he saw only Arun and Amit were going towards the



house of Pradeep. Further the P.W 4 has although stated that her son went away alongwith Arun, Amit and other accused persons but after departure from the place of the informant none of the witness had seen the accused persons along with Pradeep in the way, at the barat or near the P.O. Land where the dead body was found.”

11. We find that there are material contradictions in the evidence of the prosecution witnesses and the informant in the present case. The chain of circumstances leading to the death of the informant's son has not been completed.

12. At best, this can be a case of 'last seen together'. However, for proving an offence under these circumstances, the time gap between the point when the deceased was last seen alive and the point where the deceased was found dead, should not be so long. Also, it should be conclusively proved by the prosecution that the accused were last seen alive with the deceased. The same as been observed by the apex court in ***Bodhraj v. State of J&K*** as reported in ***(2002) 8 SCC 45***, the relevant paragraph of which is reproduced as under:

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

13. The apex court further in ***Ramreddy Rajesh Khanna Reddy v. State of AP***, reported in ***(2006) 10 SCC 172***, held the following:

“27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration.”

14. In the present case, no such conclusive evidence has been produced by the prosecution that the son of the informant was last seen alive with Respondent No. 2, Dukhi Yadav. Even if the allegations of the informant may be taken into account, there is a time gap of 12 hours, between, when her son allegedly accompanied the accused persons and when the dead body was recovered. Further, no corroborative evidence has been produced by the prosecution to prove the last seen



theory. Therefore, the prosecution has not been able to prove the guilt of accused beyond the shadow of reasonable doubts in the present case.

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 are 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 reappraise, 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 the case of ***Ghurey Lal v. 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."

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 criminal appeal is dismissed.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Sujit/-

AFR/NAFR	NAFR
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