

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.477 of 2023**

Arising Out of PS. Case No.-128 Year-2010 Thana- RAMGARHWA District- East
Champanan

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Bhagawan Ghi Jha @ Bhagawan Ji Jha, son of Late Rup Narayan Jha,
Resident of Village- Bhaishra, P.S. Ramgarhawa District- East Champanan
... .. Appellant/s

Versus

1. The State of Bihar
2. Jagdish Yadav, s/o Late Sajawal Rai, Resident of Village- Panchvidiya, P.S.
Ramgarhawa, Dist.- E. Champanan
... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Dhannjay Kumar No 2, Advocate
For the State	:	Mr.Sujit Kumar Singh, Addl.P.P.
For the R-2	:	Mr. Kamal Kant Tiwary, Advocate
		Mr. Kundan Rathore, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 19-03-2026

Heard learned counsel for the appellant, the respondent
no.2 and learned Additional Public Prosecutor for the State.

2. The appellant in this case is seeking setting aside of the
judgment of acquittal dated 15.02.2023 passed by learned
Additional District and Sessions Judge-XXII Court, Motihari in
the District of East Champanan in Sessions Trial No.343 of 2012,
G.R. No.568 of 2010 arising out of Ramgarhwa P.S. Case No.122
of 2010 dated 28.08.2010 registered under Sections 364, 302,
120B and 201/34 of the Indian Penal Code (in short 'IPC').



3. By the impugned judgment, the learned trial court has been pleased to hold and declare that the prosecution has failed to establish the charges under Sections 302, 120B and 201/34 IPC beyond all reasonable doubts against the accused. The learned trial court has acquitted the accused-respondent no.2 of all the charges giving him benefit of doubt.

4. The prosecution case is based on a written complaint petition giving rise to Complaint Case No.C336 of 2010 filed in the court of learned Sub-Divisional Judicial Magistrate, Raxaul which was later on referred to Ramgarhwa police station for lodging of a First Information Report and to file a police report after completion of investigation.

5. In the complaint petition, the complainant/informant alleged that the accused Soni Jha is the wife of the younger brother of the informant, namely, Jitendra Jha who was mentally retarded. The brother of the informant had been living separately from his wife Soni Jha since last five years. Soni Jha had developed illicit relationship with Jagdish Yadav (respondent no. 2). It is further stated that his brother came to know about this relationship and made protest and lived in fear because Jagdish Yadav is a man of criminal mentality. On 08.03.2010 in the morning, when Soni Jha with her children and husband (Jitendra Jha) were leaving the



house then the informant asked her where were you going then Soni Jha replied that she was going to her *Naihar* with her husband and from there Jitendra Jha (brother of the informant) will go with her brother and brother-in-law (*jija*) for work at Delhi. Thereafter, they went away. On 09.03.2010, she came to her village and started living there. On 29.06.2010 Soni Jha took all her belongings and left the house with children. On 08.07.2010, there was a marriage ceremony of younger brother of Soni Jha. It is alleged that in the said marriage ceremony all brothers and sisters were present but brother of the informant was not present there then the informant made inquiry to brother of Soni Jha and brother-in-law of Soni Jha to which they have not given any satisfactory reply. On 12.07.2010 when the sister of the informant, namely, Anita (PW-8) talked to Soni Jha over mobile phone, she came to know that his brother Jitendra Jha is no more. Soni Jha was missing from her *Naihar* since the evening of 12.07.2010 and her mobile phone was also coming switched off. The informant alleged that he had full confidence that Soni Jha and Jagdish Yadav along with other associates killed his brother under a conspiracy.

6. After investigation of the case, police submitted a charge-sheet against the respondent no.2 only, the investigation against the co-accused Soni Jha was kept pending further



investigation. Vide order dated 15.02.2012, the learned Chief Judicial Magistrate, Motihari, East Champaran took cognizance of the offence under Sections 366, 302, 120B and 201/34 IPC. Finding that Section 302 IPC is triable by the court of Sessions, the records were committed to the court of Sessions on 14.05.2012.

7. In the court of Sessions, the charges were read over and explained to the accused-respondent no.2 who denied the charges and claimed to be tried. The learned trial court framed the charges under Sections 364/34, 302, 120B and 201 IPC vide order dated 28.05.2012.

8. The statement of the accused was recorded under Section 313 Cr.P.C. The accused, however, did not adduce any evidence in his defence.

9. The prosecution examined as many as eight witnesses and got exhibited three documents. The defence got exhibited one document which has been marked Exhibit-A. The description of the prosecution witnesses, the documentary evidences adduced on behalf of the prosecution as well as documentary evidences adduced on behalf of the defence are provided hereunder in tabular form:-

PW-1	Tripurari Jha
PW-2	Harish Chandra Jha
PW-3	Krishna Ji Jha
PW-4	Sunil Kumar Jha



PW-5	Gudiya Kumari
PW-6	Bibhakar Mishra
PW-7	Bhagwan Ji Jha (informant)
PW-8	Shakeel Ahmad

List of documents on behalf of prosecution

Exhibit-1	Signature of complainant/informant on the complaint petition
Exhibit-2	Signature of in-charge police station on formal FIR
Exhibit-3	Signature of in-charge police station on complaint petition

List of documents on behalf of the defence

Exhibit-A	Record of complaint Petition No.333 of 2010
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10. The learned trial court having examined the entire prosecution evidences recorded a finding in paragraph ‘19’ of the impugned judgment as under:-

(i) There is no independent witness in this case who has wholly supported the prosecution case of murder/death of Jitendra Jha, they have only expressed suspicion.

(ii) The prosecution had completely failed to establish the illicit relationship between the accused-respondent no.2 with the co-accused Soni Jha, the prosecution could not establish that the illicit relationship is the reason behind the killing of the husband of Soni Jha.



(iii) The prosecution had also failed to establish that there were telephonic talks between the accused and the co-accused. The I.O. had not taken out the print of the CDR.

(iv) The I.O. had not conducted any investigation on the complaint petition filed by Soni Jha in past against her sasural people.

(v) The learned trial court has not believed the evidence adduced by Gudiya Kumari (PW-5) who is a child witness being daughter of the deceased and the co-accused Soni Jha.

(vi) The learned trial court further found that the I.O. had not recorded the statement of the co-accused Soni Jha even as she had already been found when the investigation was going on. In such circumstance, the learned trial court returned the findings as recorded by this Court hereinabove.

11. The findings of the learned trial court has been assailed by learned counsel for the appellant. It is submitted that so far as the first finding of the learned trial court with regard to the non-availability of the independent witnesses is concerned, the same is correct. It is admitted that all the prosecution witnesses are related to each other and family members of the deceased. Learned counsel, however, submits that the witnesses have stated about the close/intimate relationship between the accused-respondent no.2



and the wife of the deceased. Heavy reliance has been placed on the deposition of the daughter of the victim Gudiya Kumari (PW-5) and it has been submitted that the evidence of PW-5 is required to be given due credence.

12. The appeal has been opposed by learned counsel for the accused-respondent no.2. It is submitted that on bare perusal of the complaint petition giving rise to present FIR, it would appear that the complaint case was filed on or about 19.07.2010. The complainant/informant claimed that the accused no.1 was having illicit relationship with accused no.2 who happened to be a man of criminal nature. It is submitted that according to the complainant/informant, the co-accused Soni Jha had left her house with her husband Jitendra Jha and the children on 08.03.2010. She told the complainant/informant that she was going to her Maikie from where they would go to Delhi with her brother and brother-in-law. It is stated that there was a marriage ceremony in the house of the accused no.1 on 08.07.2010 in which her all brothers and sisters had assembled but Jitendra Jha was not seen on the said occasion.

13. Learned counsel submits that it is evident from the statements made in the complaint petition and the deposition of the complainant/informant (PW-7) that he had no connection with his



brother Jitendra and after his brother left the house, the informant was not keeping in touch with him but it is an admitted position that the deceased brother of the informant was having some medical complications as he was suffering from mental retardation. The prosecution witnesses have stated that Soni Jha was taking her husband for treatment with the help of accused no.2. She being a lady having no other help from her house, it appears that she was taking help from accused no.2 in taking her husband to the doctor. Reference in this regard has been made to the deposition of Tripurari Jha (PW-1).

14. Learned counsel submits that there is no independent witness of the village who has come to depose as to the relationship between the accused no.1 and accused no.2. Even PW-1 has admitted that he had not seen them in any illicit relationship.

15. Be that as it may, it is submitted that the complaint petition was filed directly in the court and in this regard the compliances required to be made in terms of the judgment of the Hon'ble Supreme Court in the case of **Priyanka Srivastava & Another Vs. State of Uttar Pradesh & Others (2015) 6 SCC 287** has not been done. No affidavit was enclosed and no compliance with Section 154(3) Cr.P.C. has been done.



16. Learned counsel submits that the evidence of the informant (PW-7) would only show that Soni Jha was on talking terms with Jagdish Yadav (R-2) but save and except that there is nothing on the record to show that they were in any illicit relationship. He has deposed that he got information regarding the marriage ceremony in the house of Soni Jha from some people but he has not disclosed the name of that person who had informed him about the said marriage ceremony. Soni Jha has not been interrogated by the I.O., therefore, even this aspect of the matter remained without investigation. It is further submitted that in course of his cross-examination, the defence suggested that Soni Jha had lodged a case against the informant, his wife, his brother-in-law and others and she had alleged that her husband had been made to disappear and then there was an attempt to rape, the informant (PW-7) denied to have any information regarding this but the defence has brought on record a certified copy of the complaint petition filed by Soni Jha which has been marked Exhibit-A.

17. In paragraph '16' of his deposition, PW-7 has stated that after six months of the lodging of this case Soni Jha met him, he took her to his house where she stayed for about 3-4 months but thereafter she fled away with Jagdish Yadav. He has stated that



both the children of Soni Jha were living with him as he had not sent the children to their maternal grand-parents. This witness has accepted that there was partition in the year 2005 and Soni Jha was satisfied with the said partition. Learned counsel submits that on a complete reading of the evidence of the informant (PW-7), it would appear that he has not given any reason as to why Soni Jha would indulge in killing of her husband and if it was so then how the informant took her to his house to stay there with her children.

18. Learned counsel further submits that so far as the evidence of child witness Gudiya Kumari (PW-5) is concerned, the learned trial court has rightly held that her deposition is not reliable. She is a child witness and she was in the custody of the informant for about three years prior to her deposition. Her statement under Section 164 Cr.P.C. was not recorded and she has stated what she was being told by her *Bare Papa* (the informant). The competence of the child witness (PW-5) to depose has not been fully established and for these reasons no error has been committed by the learned trial court in not relying upon the evidence of the child witness Gudiya Kumari (PW-5).

19. It is lastly submitted that this being an appeal against acquittal, unless this Court comes to an irresistible conclusion that the accused no.2-respondent no.2 is guilty of commission of the



offence alleged, the finding of the learned trial court need not be disturbed.

20. We have heard the rival contentions and perused the trial court records. In the present case, it is an admitted position that there is no independent witness to prove the murder/death of Jitendra Jha. The whole prosecution case clusters around the suspicion that Soni Jha, the wife of the deceased, had illicit relationship with Jagdish Yadav (R-2) but save and except the statement that she was on talking term with Jagdish Yadav (R-2) and sometimes she was taking her husband for treatment to a doctor with the help of Jagdish Yadav on his motorcycle and in course of that she was sitting closely to Jagdish Yadav, no other and further facts have been proved. The materials available on the record, in our considered opinion, no way proves the prosecution case that the wife of the deceased was having illicit relationship with Jagdish Yadav (R-2). We find no error in appreciation of the evidence in this regard on the part of the learned trial court.

21. This Court has further found that the private complaint case was filed by PW-7 but without complying with the directions of the Hon'ble Supreme Court in the case **Priyanka Srivastava** (supra). The informant (PW-7) admits in his deposition that six months after filing of the complaint, Soni Jha met him and he had



brought her with the children in the home where she stayed for 3-4 months. PW-7 has admitted partition in the year 2005 and that Soni Jha was satisfied with the partition but PW-7 has not whispered anything as to why Soni Jha would indulge in killing of her husband or to make him to disappear. If it could have been shown then there was no reason for her to take her husband for his treatment with the help of Jagdish Yadav (R-2) as has been stated by PW-1.

22. We further find that the learned trial court has rightly discussed the deposition of Gudiya Kumari (PW-5) who was ten years old at the time of her deposition in the year 2013. At the time of occurrence, she was about 7 years old, her statement was not recorded under Section 164 Cr.P.C. and this witness remained in the custody of the informant for about three years before she deposed in the court room. Her deposition would go a long way to suggest that she was tutored by the informant and in our considered opinion, it would not be safe to rely upon the testimony of the child witness to record an order of conviction against the accused.

23. The case is based on the circumstantial evidence. We are reminded of the judgments of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda vs. State of Maharashtra**



reported in **(1984) 4 SCC 116** and **Dilavar Hussain and Others versus the State of Gujarat and Another** reported in **(1991) 1 SCC 253**.

24. The relevant Paragraph ‘152’ of the judgment in the case of **Sharad Birdhichand Sarda** (supra) is being reproduced hereunder for a ready reference:-

“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh¹. “This case has been uniformly followed and applied by this Court in a large number of later decisions up-to- date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh¹⁷ and Ramgopal v. State of Maharashtra¹⁸. It may be useful to extract what Mahajan, J. has laid down in Hanumant case¹ :

“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

1. 1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129

17. (1969) 3 SCC 198 : 1970 SCC (Cri) 55

18. AIR 1972 SC 656 : (1972) 4 SCC 625



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.”

25. The relevant Paragraphs ‘3’ and ‘4’ of the judgment in the case of **Dilavar Hussain** (supra) are quoted hereunder for a ready reference:-

“3. All this generated a little emotion during submissions. But sentiments or emotions, howsoever strong, are neither relevant nor have any place in a court of law. Acquittal or conviction depends on proof or otherwise of the criminological chain which invariably comprises of why, where, when, how and who. Each knot of the chain has to be proved, beyond shadow of doubt to bring home the guilt. Any crack or loosening in it weakens the prosecution. Each link, must be so consistent that the only conclusion which must follow is that the accused is guilty. Although guilty should not escape (sic). But on reliable evidence, truthful witnesses and honest and fair investigation. No free man should be amerced by framing or to assuage feelings as it is fatal to human dignity and destructive of social, ethical and legal norm. Heinousness of crime or cruelty in its execution however abhorrent and hateful cannot reflect in deciding the guilt.

4. Misgiving, also, prevailed about appreciation of evidence. Without adverting to submissions suffice it to mention that credibility of witnesses has to be measured with same yardstick, whether, it is ordinary crime or a



crime emanating due to communal frenzy. Law does not make any distinction either in leading of evidence or in its assessment. Rule is one and only one namely, whether depositions are honest and true. Whether the witnesses, who claim to have seen the incident in this case, withstand this test is the issue? But before that some legal and general questions touching upon veracity of prosecution version may be disposed of.”

26. On re-appreciation of the entire evidences available on the record, we find no reason to take a different view from that of the learned trial court. By no stretch of imagination the findings of the learned trial court may be said to be perverted. The principles governing an appeal against the acquittal are well settled. We place our reliance on the judgment of the Hon’ble Supreme Court in the case of **H.D. Sundara and Ors. vs. State of Karnataka**, reported in **(2023) 9 SCC 581**. Paragraph ‘8’ of the said judgment is being reproduced hereunder for a ready reference:-

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment¹ 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 summarized as follows:

8.1. The acquittal of the accused further strengthens the presumption of innocence;

1. Karnataka v.H.K. Mariyappa, 2010 SCC OnLine Kar 5591



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.”

27. In ultimate analysis, we find no reason to interfere with the impugned judgment.

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

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

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CAV DATE	
Uploading Date	25.03.2026
Transmission Date	25.03.2026

