

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.662 of 2010

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1. Shambhu Ram, Son of Kushum Ram, resident of village – Jagdishpur, P.S. - Naubatpur, District – Patna.
 2. Sunita Devi, W/o Shambhu Ram, resident of village – Jagdishpur, P.S. - Naubatpur, District – Patna.

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mrs. Rishika Jha, *Amicus curiae*.
For the Respondent/s : Mr.S.N.Pd., APP.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
CAV JUDGMENT

Date : 24-03-2026

Learned counsel appearing for the appellants/accused failed to appear when the matter was taken up for final hearing. Therefore, this Court appointed Mrs. Rishikha Jha, learned Advocate, present in Court, as *Amicus Curiae* to assist this Court.

2. The criminal appeal has been preferred against the judgment and conviction dated 13.04.2010 and 16.04.2010 passed in Sessions Trial No. 1542/2008 and 1214/2009 by Addl. Sessions Judge-I, Danapur, Patna, whereby the learned trial court convicted the appellants under Section 364 of the Indian Penal Code and sentenced them to undergo 10 years R.I. and to pay a fine of Rs. 2,000 each, and in default of payment of the fine, to further undergo R.I. for six months; and further



sentenced to undergo 5 years R.I. under Section 120(B) of the Indian Penal Code and fine of Rs. 1,000 each, and in default of payment of fine, to further undergo R.I. for three months.

3. The prosecution case, in brief, is that the informant Vijay Mistri and his brother Gorakh Vishwakarma (victim) were working as carpenters at village Jagdishpur-Tola. It is alleged that on 07.01.2007, an altercation had taken place between the victim and accused Shambhu Ram regarding the alleged illicit relationship of the victim with the wife of the accused, which was later pacified by the villagers. According to the prosecution, on 03.04.2007 at about 11:00 A.M. the accused persons came to the house of the informant and asked the victim to accompany them to Mumbai for carrying luggage of their family members. The victim allegedly left the house with the accused persons after taking Rs. 9,000/- from his wife, but thereafter he did not return nor contact his family members. It is further alleged that when the victim did not return till 07.04.2007, the informant and his family members started searching for him but could not find any clue about his whereabouts. The matter was reported to Naubatpur Police Station, but no effective action was taken. Subsequently, the informant filed a complaint case before the learned ACJM Danapur, which led to registration of the FIR against the accused persons bearing Naubatpur P.S. Case No.



85/2007 under sections 364/201/120B of the IPC.

4. After investigation, charge-sheet was submitted under Sections 364, 201 and 120(B) of the IPC, and upon trial in Sessions Trial No. 1542/2008 / 1214/2009, the learned trial court convicted the appellants under section 364 of the IPC vide judgment dated 13.04.2010 and order of sentence dated 16.04.2010.

ARGUMENT ON BEHALF OF THE APPELLANTS

5. Mrs. Rishika Jha, learned Advocate appearing as *Amicus curiae*, submitted that the impugned judgment of conviction dated 13.04.2010 and order of sentence dated 16.04.2010 passed by the learned Addl. Sessions Judge-I, Danapur, Patna in Sessions Trial No. 1542/2008 / 1214/2009 is illegal and unsustainable in the eye of law, as the same has been passed without proper appreciation of the evidence on record. It was contended that the entire prosecution case is based on suspicion and there is no direct evidence to prove that the victim Gorakh Vishwakarma was abducted by the appellants. Learned counsel further submitted that P.W.-1 to P.W.-6 are close relatives of the victim and thus interested witnesses, yet the learned trial court has relied upon their testimonies without any independent corroboration. It was also argued that the matter was initially reported to the police on 07.04.2007 merely as a missing case



and a Sanha entry was made, which creates doubt regarding the prosecution story. He further submitted that there are material contradictions and improvements in the statements of the prosecution witnesses vis-à-vis their statements recorded under Section 161 Cr.P.C., thereby affecting their credibility. Learned counsel also contended that although the Investigating Officer stated that accused Shambhu Ram was arrested on 12.06.2007, no confessional statement was recorded at that time and the alleged confession relied upon by the prosecution is doubtful. It was further argued that the prosecution has failed to establish by reliable evidence that the victim had gone with the appellants on 03.04.2007, and the defence evidence suggests that accused Shambhu Ram had left for Bombay alone with his family members on the same night.

6. Learned counsel further submitted that the investigation is doubtful, as the claim of the Investigating Officer regarding his visit to Bombay is not supported by any documentary evidence. It was also contended that although a bag was allegedly recovered, no Test Identification Parade of the seized articles was conducted and the bag was directly shown to P.W.-5 and P.W.-6 for identification, which is contrary to law. On these grounds, it was submitted that the prosecution has failed to prove the charges beyond reasonable doubts and the



impugned judgment and order of sentence are liable to be set aside.

ARGUMENT ON BEHALF OF THE STATE

7. *Per Contra*, learned APP appearing for the State while opposing the appeal submitted that the learned District court, after considering all the evidences on record and exhibits submitted on behalf of the parties during the course of trial, has rightly convicted the appellants for said offences as the offences alleged against the appellants appears to be serious in nature and also constitutes cognizable offence.

ANALYSIS AND CONCLUSION

8. Heard the parties.

9. I have perused the lower court records and proceedings and also taken note of the arguments canvassed by learned counsel appearing on behalf of the parties.

10. The learned trial court, on the basis of materials as collected during the course of investigation, passed the Judgment and Conviction dated 13.04.2010 and 16.04.2010 for the offences under Sections 364 and 120B of the IPC.

11. During the trial, the prosecution has examined altogether seven witnesses, namely:

P.W.-1 Sohrai Mistri (Fufa of the victim),

P.W.-2 Sanjay Mistri (cousin of the victim),



P.W.-3 Santosh Mistri (brother of the informant),
P.W.-4 Harendra Mistri (brother of the informant),
P.W.-5 Neelam Devi (wife of the victim),
P.W.-6 Vijay Mistri (informant), and
P.W.-7 Ram Chandra Ram (Investigating Officer).

12. The prosecution has also relied upon following documents exhibited during the course of trial:-

- (i) Signature of Vijay Mistry (Exhibit-1),
- (ii) Complaint petition (Exhibit-2),
- (iii) FIR(Exhibit-3),
- (iv) Statement of Shambhu Ram (Exhibit-4).
- (v) Seizure List (Exhibit-5)
- (vi) Sweater, Shawl, Chadar, Matress, Pant, T-shirt and Bag (Exhibit-I to VII)

13. On the basis of materials surfaced during the trial, the appellants/accused was examined under Section 313 of the Cr.PC by putting incriminating circumstances/evidences surfaced against him, which he denied and shows his complete innocence.

14. It would be apposite to discuss the oral/documentary evidences as available on record to re-appreciate the evidences for just and proper disposal of the present appeal.



15. From the perusal of records the statements of the prosecution witnesses are as under:

(i) P.W.1- Sohrai Mistri has deposed that on 03.04.2007 at about 11:00 A.M., while he was working at the shop of Akhilesh Mistri, he saw the accused Shambhu Ram, Sunita Devi and other co-accused persons talking with Gorakh Vishwakarma. After some time, Gorakh went to his house and later came out with a bag and left along with the accused persons, stating that he would return soon. However, he did not return thereafter. During cross-examination, no material contradiction could be elicited by the defence on the fact that the accused persons had come there and taken Gorakh along with them.

(ii) P.W.2- Sanjay Mistri has also supported the prosecution case and stated that on the same day and time the accused persons came to the house/shop of Gorakh, called him outside and talked with him. Thereafter, Gorakh went inside his house, came back with a bag and went away with the accused persons saying that he would return within a few hours, but he did not return. The defence cross-examined him at length but failed to shake his testimony regarding the fact that Gorakh went away with the accused persons.

(iii) P.W.3- Santosh Mistri, the brother of the victim,



has deposed that the accused persons came to their shop and talked with Gorakh, after which Gorakh went inside the house, changed his clothes, took a bag and left with them. He further stated that Gorakh did not return thereafter and efforts were made to search him. During cross-examination, he reiterated that he had also stated the same facts before the police and no contradiction could be brought out by the defence.

(iv) P.W.4- Harendra Mistri has corroborated the version of the earlier witnesses and stated that on the date of occurrence the accused persons came to the shop and talked with Gorakh, after which Gorakh went home, changed his clothes, took a bag and left with them saying that he would return in two or three days, but he never came back. The defence could not discredit his testimony in cross-examination on this material point.

(v) P.W.5- Neelam Devi, the wife of Gorakh Vishwakarma, has also supported the prosecution case and stated that the accused persons came to the shop and called her husband, after which he came inside the house, changed his clothes, took a bag and Rs. 9,000/- in cash and went away with them. She stated that her husband did not return thereafter and despite search he could not be traced. Her testimony remained consistent and no material contradiction could be elicited during



cross-examination.

(vi) P.W.6- Vijay Mistri, the informant and brother of the victim, has deposed that he saw the accused persons come to the shop and talk with Gorakh, after which Gorakh went inside his house, took a red coloured bag and went away with them stating that he would return within three to four days. When he did not return, the witness searched for him and even went to Bombay where the landlord identified the photograph of Gorakh and stated that he had come there along with the accused persons. His testimony also remained consistent during cross-examination and supports the prosecution case that Gorakh was last seen going with the accused persons.

16. It would be appropriate to reproduce the provisions of Sections 364 and 120B of the IPC for the sake of convenience and better understanding of the facts, which are as under:-

“364. Kidnapping or abducting in order to murder.—

Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations(a) A kidnaps Z from India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.(b)A forcibly carries or entices B away from his



home in order that B may be murdered. A has committed the offence defined in this section.

120B. Punishment of criminal conspiracy.

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."

17. The record reveals that P.W.-1 to P.W.-6 are closely related to the victim and, therefore, fall within the category of interested witnesses. Their testimonies show that they are either family members or close relatives of the victim and thus have a direct interest in the outcome of the case. It is a settled principle of law that though the evidence of an interested witness cannot be discarded solely on that ground, the same requires careful scrutiny and cautious evaluation before being relied upon. In the present case, the conviction of the appellants has been primarily based upon the testimonies of these interested witnesses without adequate independent corroboration from any neutral or independent witness, which renders the prosecution case doubtful. Therefore, the evidentiary value of such testimonies requires strict scrutiny while assessing



the guilt of the accused/appellants.

18. In the instant case, it is evident that all the prosecution witnesses are interested witnesses, having direct or indirect stakes in the outcome of the matter. Their testimonies, therefore, cannot be accepted at face value without careful scrutiny. The courts have consistently held that interested witnesses are prone to exaggeration, omission, or distortion of facts to favor their own position. Consequently, their evidence cannot be deemed wholly reliable or sufficient on its own to establish the charges. It is imperative that such testimonies be corroborated by independent, credible, and unimpeachable evidence before any adverse inference or conviction is drawn. In this regard, reference can be drawn from the judgment passed by the Apex Court in para nos. 32 and 33 in the case of ***Nand Lal v. State of Chhattisgarh*, (2023) 10 SCC 470**, which are reproduced hereinafter:

“32. Undisputedly, the present case rests on the evidence of interested witnesses. No doubt that two of them are injured witnesses. This Court, in Vadivelu Thevar v. State of Madras [Vadivelu Thevar v. State of Madras, 1957 SCC OnLine SC 13 : 1957 SCR 981 : AIR 1957 SC 614] , has observed thus : (AIR p. 619, paras 11-12)

“11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:



(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”

33. It could thus be seen that in the category of “wholly reliable” witness, there is no difficulty for the prosecution to press for conviction on the basis of the testimony of such a witness. In case of “wholly unreliable” witness, again, there is no difficulty, inasmuch as no conviction could be made on the basis of oral testimony provided by a “wholly unreliable” witness. The real difficulty comes in case of the third category of evidence which is partly reliable and partly unreliable. In such cases, the court is required to be circumspect and separate the chaff from the grain, and seek further corroboration from reliable testimony, direct or circumstantial.”

19. What emerges from the settled principles of law is that the evidence of interested witnesses must be examined with caution but cannot be discarded merely on the ground of relationship or interest. Where such witnesses are found to be neither wholly trustworthy nor entirely unreliable, the Court must carefully scrutinize their testimony to determine its credibility and probative value. If the testimony of an interested witness is clear, cogent, consistent, and inspires confidence, it



can form the basis for conviction, even in the absence of independent corroboration. However, where the evidence is riddled with contradictions, improvements, or material gaps, its reliability may be doubtful, and conviction based solely on such testimony would be unsafe. The guiding principle remains that the Court must weigh the testimony of interested witnesses pragmatically and cautiously, ensuring that the conviction is founded on credible and trustworthy evidence.

20. Further, it is a settled principle of criminal law that a conviction can be sustained solely on circumstantial evidence, provided the circumstances are fully proved, consistent, and conclusive in pointing towards the guilt of the accused. The Hon'ble Supreme Court has repeatedly held that in cases based on circumstantial evidence, the chain of incriminating circumstances must be complete and leave no room for any reasonable hypothesis except the guilt of the accused. Each circumstance must be clearly established and linked so as to form a coherent and unbroken chain, which excludes the possibility of innocence. In such cases, conviction can only be recorded when the proven facts irresistibly lead to the conclusion that the accused, and no one else, committed the offence. In this regard reference can be drawn from the judgment passed by the Apex Court in case of *Akhtar Ali alias*



Ali Akhtar alias Shamim alias Raja Ustad vs State of Uttarakhand reported in **2025 SCC OnLine SC 1949** which is reproduced hereinafter:

*“10. It is a well-established principle of criminal jurisprudence that a conviction may be based purely on circumstantial evidence, provided that such evidence is deemed credible and trustworthy. In cases based purely on circumstantial evidence, it is imperative to ensure that the facts leading to the conclusion of guilt are fully established and that all the established facts point irrefutably to the accused person's guilt. The chain of incriminating circumstances must be conclusive and should exclude any hypothesis other than the guilt of the accused. In other words, from the chain of incriminating circumstances, no reasonable doubt can be entertained about the accused person's innocence, demonstrating that it was the accused and none other who committed the offence. The law with regard to conviction based on circumstantial evidence has been crystallised by this Court in the case of *Sharad Birdhichand Sharda v. State of Maharashtra* 30, wherein the following golden principles, governing cases based on circumstantial evidence, were laid down:*

“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 v. State of Maharashtra*, [(1973) 2 SCC 793] where the observations were made: [SCC para*



19, p. 807]

“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.*

(emphasis supplied)

11. Having noted the principles governing a case based purely on circumstantial evidence, we now proceed to discuss the evidence led by the prosecution in order to bring home the charges against the accused-appellants. The prosecution portrayed the following circumstance in its endeavour to establish the charge of murder against the accused-appellants:—

- (i) “**Motive**”, i.e., to say that the accused-appellants harboured an intention to satisfy their lust upon the young girl, Ms. K, and that this depraved motive formed the basis of the brutal assault which ultimately led to her death.*
- (ii) “**Last Seen Theory**”, i.e., to say that the accused-appellants were seen in close proximity to the victim girl, shortly before the time when she went missing, and that in the absence of any plausible explanation from the accused-appellants, the burden lies*



upon them to account for the fate of the victim girl. The prosecution, therefore, relies on this circumstance as an important link in the chain of events connecting the accused-appellants to the crime.

(iii) Scientific Evidence (including DNA and FSL Reports), i.e., to say that the scientific analysis of samples collected from the body and clothes of the victim girl established a match with the DNA profile of the accused-appellant No. 1-Akhtar Ali, thereby providing direct forensic corroboration of his involvement in the offence. The prosecution argues that such evidence, being objective and scientific in nature, lends strong support to its case and completes the chain of circumstances.”

21. Upon a careful consideration of the entire evidence on record and law laid down by the Apex Court as referred hereianbove, this Court finds that the prosecution case rests solely on circumstantial evidence, primarily the “last seen” theory as deposed by P.W.-1 to P.W.-6, who are all closely related to the victim and thus interested witnesses. Although their testimonies are broadly consistent to the effect that the victim was last seen leaving with the accused persons on 03.04.2007, they cannot be said to be eye witnesses and in absence of any independent corroboration from neutral witnesses renders such evidence unsafe to rely upon as the sole basis of conviction. Moreover, the prosecution has failed to establish the proximity of time between the alleged last seen occurrence and the disappearance of the victim so as to form a



conclusive link. The alleged motive arising out of prior dispute has also not been proved by cogent evidence. Further, the initial information given to the police was only in the nature of a missing report, and the delay in instituting the formal complaint remains unexplained, thereby casting doubt on the prosecution story.

22. It also appears that the investigation suffers from serious infirmities, including the doubtful recovery of articles without conducting any Test Identification Parade and the unsubstantiated claim of the Investigating Officer regarding his visit to Mumbai. No reliable evidence has been brought on record to establish the fate of the victim, and there is neither recovery of the dead body nor any scientific or forensic evidence connecting the accused with the alleged offence. In such circumstances, the chain of incriminating circumstances is clearly incomplete and does not unerringly point towards the guilt of the appellants, leaving room for reasonable doubt. It is a settled principle of criminal law that suspicion, however strong, cannot substitute proof beyond reasonable doubt. Accordingly, this Court is of the considered opinion that the conviction recorded by the learned trial court is unsustainable in law.

23. Accordingly, the present appeal is allowed.

24. The impugned judgment of conviction dated



13.04.2010 and order of sentence dated 16.04.2010, passed by the learned Addl. Sessions Judge-I, Danapur, Patna is hereby set aside. Consequently, the above-named appellants/accused are acquitted from all the charges levelled against them. Since the appellants are on bail, as such, they are discharged from the liability of their bail bonds. The fine deposited by the appellants, if any, shall be refunded to them.

25. The Patna High Court, Legal Services Committee is, hereby, directed to pay a sum of Rs. 5,000/- (Rupees Five Thousand) to Mrs. Rishika Jha, learned *Amicus Curiae*, as consolidated fee, for rendering her valuable professional service for disposal of the present appeal.

26. Office is directed to send back the lower court records along with a copy of the judgment to the learned District Court forthwith.

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	10.03.2026
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