

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.947 of 2024

In
CRIMINAL APPEAL (SJ) No.3994 of 2023

Arising Out of PS. Case No.-124 Year-2017 Thana- UDWANTNAGAR District- Bhojpur

Anil Kumar @ Anil Kumar Yadav S/o Late Krishna Yadav R/o vill -
Akhtiyarpur, P.S. - Jagrajganj, Distt. - Bhojpur

... .. Appellant

Versus

1. The State of Bihar
2. Bikram Yadav S/o Shiv Keshwar Yadav R/o vill - Akhtiyarpur, P.S. - Jagrajganj, Distt. - Bhojpur
3. Sita Ram Yadav S/o Shiv Keshwar Yadav R/o vill - Akhtiyarpur, P.S. - Jagrajganj, Distt. - Bhojpur
4. Shiv Keshwar Yadav @ Fardha Yadav S/o Ramdat Yadav R/o vill - Akhtiyarpur, P.S. - Jagrajganj, Distt. - Bhojpur
5. Nirdha Devi W/o Shiv Keshwar Yadav R/o vill - Akhtiyarpur, P.S. - Jagrajganj, Distt. - Bhojpur
6. Rani Devi W/o Rajesh Yadav R/o vill - Akhtiyarpur, P.S. - Jagrajganj, Distt. - Bhojpur

... .. Respondents

Appearance :

For the Appellant	:	Ms. Malti Kumari, Advocate Mr. Rajendra Singh Shashtri, Advocate Mr. Rajesh Kumar, Advocate
For the State	:	Mr. Ramchandra Singh, A.P.P.
For Resp. No. 2-6	:	Mr. Anil Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 12-02-2026

Heard learned counsel for the appellant/informant,

learned A.P.P. for the State and learned counsel for the



Respondent Nos. 2 to 6.

2. The present appeal is directed against the judgment dated 16.05.2023 passed by the learned Additional District and Sessions Judge -17, Ara (Bhojpur) in Session Trial No. 424 of 2018 arising out Udwantnagar (Gajrajganj) P.S. Case No. 124 of 2017 (G.R. No. 1643 of 2017) registered under Sections 302/201/34 of the I.P.C. whereby and whereunder Respondent nos. 2 to 6 have been acquitted by the learned trial court from the charges levelled against them under Sections 302/34, 201/34 of the Indian Penal Code (hereinafter referred to as "I.P.C.").

3. According to the written report of the informant/PW4, i.e. Anil Kumar, the occurrence is of 28.04.2017. Informant unfolded the story of prosecution to the effect that informant's nephew Ankit Kumar @ Niraj Kumar was taking meal on the fateful day at about 8 hours. In the meanwhile, Rani Devi, wife of Rajesh Yadav of the village of informant made a call on the mobile of informant's nephew (victim) bearing mobile no. 8709831248 and asked the victim to come to her house and collect Rs. 55,000/- which was taken by her husband as debt. Thereafter, informant's nephew/victim left the meal and started going to her house upon which query



was made by the informant as to why the victim was leaving the house. The victim disclosed that wife of Rajesh Yadav has called him to pay him money and he was going to collect the said money. It is asserted by informant that victim did not return back after 5-6 hours then the informant made a call upon the mobile of the victim and the same was found to be switched off. It is further asserted by informant that he went to the house of Shiv Keshwar @ Fardu Yadav for making query where he saw that Vikram Yadav and Sitaram Yadav were talking with each other and when he asked them about the whereabouts of Niraj Kumar/victim, Vikram Yadav replied in abusive language that victim had not come here. It is further asserted by the informant that he went to search in the Samiyana (tent) of barat but he did not find the victim. On the next morning, when informant enquired from his wife, he learnt that the victim did not return home whole night. The victim was not traced out despite contact being made with his relatives on mobile. Further, case of the informant is that during the search, on 01.05.2017 at about 7AM when informant was going to grain yard (khaliyan), it was learnt from the villagers that a dead body kept in a sack had been thrown in a river. It is further asserted by informant that when



he reached there, he saw that sack was tied by iron wire and when the informant tried to untie the sack, villagers forbade the informant to do so as information was given to thana and on the arrival of police, sack was opened. It is further alleged that in-charge of police station reached there near about 4-5 PM and sack was untied and dead body was not in a position to be identified. It was found that dead body had been burnt by acid for disappearing the evidence. It is alleged that there was a key at the waist of the dead body, due to which informant suspected that it might be that of Neeraj and he stated to the SHO that the informant's nephew was untraceable from his house since last three days and it appears that the said key belongs to him, whereafter the SHO told him to open the lock of his house by using the recovered key and when he tried to open the lock using that key, the lock of the house opened. It has also been stated by informant that shirt and ganji was also recovered from the dead body upon which there was print of "Bol Bum" and the dead body was identified on the basis of key and attire of the deceased.

4. On the basis of written statement of the informant, Udwantnagar (Gajrajganj) P. S. Case No. 124 of 2017 dated 01.05.2017 was registered under Sections



302/201/34 of the I.P.C. and investigation was taken up by the police. The police after investigation submitted charge-sheet bearing number 54 of 2017 against respondent no. 2 and 4 under Sections 302/201/34 of the IPC. The police also submitted supplementary charge sheet bearing number 84 of 2017 against the respondent no. 3, 5, 6 and one Parvati Kumari. Accordingly, cognizance was taken under the aforesaid sections on 15.11.2017. By virtue of order dated 02.03.2019, case of the one of the co-accused Parvati Kumari has been separated as per the provisions of the Juvenile Justice Act. Thereafter, the case was committed to the Court of Sessions on 10.12.2018. Charges have been framed under Sections 302/34 and 201/34 of IPC against Respondent No. 2 to 6 to which they pleaded not guilty and claimed to be tried.

5. In order to bring home guilt of the accused/respondent no. 2 to 6, the prosecution examined altogether seven witnesses viz. PW-1 Savitri Devi (mother of the deceased), PW-2 Anjani Kumar (cousin of deceased), PW-3 Rakesh Kumar @ Ajit Kumar (elder brother of deceased), PW-4 Anil Kumar (informant), PW-5 Balram Singh, PW-6 Dr. Ashok Kumar Pandey, PW-7 Satyendra Kumar (Investigating Officer of the case).



6. At para 6 of the impugned judgment following documentary evidence has been shown as exhibits :-

Ext 1 :- Signature of informant on written statement

Ext 1/1:- Pagination done by S.H.O. on written statement.

Ext ½ :- Signature of the then S.H.O. on written statement

Ext. 2:- Post mortem report

Ext. 3 :- Signature of S.H.O. on Formal FIR

Ext. 4 :- Charge sheet no. 54 of 2017

Ext. 5 :- Charge sheet no. 84 of 2017

7. By virtue of impugned judgment, the seriatim of defence witnesses is as follows:-

DW1 - Sri Niwas Yadav, DW2 - Ram Pukar Yadav, DW3 - Jai Prakash Singh and DW4 - Ajit Kumar. No documentary evidence has been produced on behalf of the defence.

8. After closure of prosecution evidence, the statements of the accused/respondents were recorded under Section 313 Cr.P.C. and after conclusion of trial, learned trial court has acquitted the accused/respondents.

9. Learned counsel for the appellant/informant has submitted that the informant/PW-4 has categorically and specifically stated that the victim left the house upon receiving



call from Rani Devi, wife of Rajesh Yadav which is evident from the FIR itself. Learned counsel further submits that informant had made a query from the victim while leaving the house at the relevant time as to where he was going, upon which victim had replied that he was proceeding to collect money from Rani Devi, wife of Rajesh Yadav. Learned counsel further submits that victim left the house for collecting the money from Rani Devi, wife of Rajesh Yadav but he did not return and informant made hectic search but the victim could not be traced, however subsequently the dead body of victim kept in a sack was recovered from a river in a decomposed condition. Learned counsel further submits that statement of other prosecution witnesses are quite consistent on the point that informant's nephew/victim left the house upon call made by Rani Devi, wife of Rajesh Yadav and the statement of victim is quite relevant that he received call and went away to the said place for collecting the money, whereafter he could not be traced and on the said point, statement of PWs. 1, 2 and 3 are quite consistent that the victim had left the house for getting the money back from Rani Devi, wife of Rajesh Yadav. In support of his contention, learned counsel for the appellant/informant has cited judgment of *Pakala Narayana Swami vs. Emperor*,



reported in ***AIR 1939 Privy Council 47***, wherein it has been held as follows :-

The first question with which their Lordships propose to deal is whether the statement of the widow, that on March 20 the deceased had told her that he was going to Berhampur as the accused's wife had written and told him to go and receive payment of his dues, was admissible under Section 32(1) of the Indian Evidence Act, 1872. That section provides :

Statements written or verbal of relevant facts made by a person who is dead... are themselves relevant facts in the following cases : (I) when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

The circumstances must be circumstances of the transaction : general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused. "Circumstances of the transaction" is a phrase,



no doubt, that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence" which includes evidence of all relevant facts. It is on the other hand narrower than "res gestae". Circumstances must have some proximate relation to the actual occurrence though as for instance in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual fatal dose.

It will be observed that "the circumstances" are of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known transaction other than that the death of the declarant has ultimately been caused, for the condition for the admissibility of the evidence is that "the cause of (the declarant's) death comes into question".

As the point was argued however and as there seems to have been some discussion in the Indian Courts on the matter it may be useful to state that in their Lordships' view no statement that contains self exculpatory matter can amount to a confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. Moreover, a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not of itself a confession, e.g. an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession.



10. Learned counsel for the appellant/informant further submits that the relevant circumstances of the present case are that the victim left the house for getting the money back from Rani Devi, wife of Rajesh Yadav and since then he could not be traced out and on the said point, such circumstance is clearly reflected upon the fact that his dead body kept in a sack was recovered from a river in a decomposed condition. Learned counsel for the appellant/informant has further submitted that the doctor, who conducted post mortem examination of the dead body of the deceased, has found ante mortem injuries:-

(i) Incised wound :- 6.8 cm x 1/2 cm x bone deep on neck. On dissection of neck trachea was divided completely except 0.4 cm Posteriorly. Both the Jugular vein were divided. Anterior. neck muscle was divided.

11. Learned counsel for the appellant/informant has next submitted that in the opinion of doctor, cause of death was CR failure due to haemorrhage and shock due to aforesaid injury no. 1 and death was caused by sharp cutting weapon and in the light of aforesaid facts and circumstances of the case, there are sufficient materials to prove that victim was killed by none else than the persons against whom allegations have been



made to cause death. He further submits that I.O. has clearly supported the version of prosecution and there is no reason to disbelieve the version of all the prosecution witnesses, who have clearly stated that victim left the house for getting the money back from Rani Devi, wife of Rajesh Yadav but he did not return. In the light of aforesaid facts and circumstances of the case, it is submitted by the learned counsel for the appellant that the judgment of acquittal passed by the concerned court is neither tenable nor sustainable in the eyes of law or on facts, hence, the same is liable to be set aside.

12. Learned APP for the State has submitted that the very registration of the FIR clearly indicates as to how the prosecution story has been prepared. The dead body kept in a sack was recovered from a river in a decomposed condition and same was not in a position to be identified by any one which is evident from the FIR itself. He further submits that the Investigating Officer has stated that no steps were taken to ascertain whether the recovered dead body was that of a male or a female. The dead body was recovered in a decomposed condition, and in such circumstances, the alleged identification of the dead body by the witnesses is wholly unreliable, riddled with serious infirmities, and unsupported by any credible basis.



It has not come to fore as to why Panchat was not prepared at the place of recovery of dead body. Only inquest report was prepared and the whole prosecution story has set into motion after recovery of the dead body. If the said factum is taken into account then no chain of circumstances is available on record to prove the prosecution case. Basically, it is not a case of circumstantial evidence also. He further submits that the prosecution witnesses have adduced their evidence in a parrot-like manner and stated that victim left the house for getting the money back from Rani Devi, wife of Rajesh Yadav. However, it is nowhere the case of the prosecution that all these witnesses were present at the time when the victim allegedly left the house. This glaring inconsistency renders their statements highly doubtful and undermines the credibility of the prosecution case. Learned APP further submits that the statement of informant is quite contradictory with the FIR as the informant while adducing evidence has stated that he is not literate and apart from putting signature, he does not know how to read and write, as such, he did not read the contents of FIR nor the same was read over to him. In that circumstance, the whole prosecution story is demolished. In this way, no chain of circumstances has been proved by the prosecution and



concerned court while recording the judgment of acquittal has analyzed all the materials available on record and judgment of acquittal is justified and legal and no interference is needed.

13. Learned counsel for the respondent no. 2 to 6 has submitted that none of the prosecution witnesses has supported the case of the prosecution during cross examination. PW-1, in paragraph 4 of her cross-examination, had stated that she had no prior enmity with the respondents/accused. She has further stated that she does not know the mobile number of the accused persons from which the call was allegedly made to her son's mobile phone. PW-1 has also stated that the call was received at about 8:00 PM, but she has no knowledge of the conversation that took place on the phone. She has stated that immediately after the conversation, her son left the house and she herself left the house approximately one minute after departure of her son. She has further stated that she cannot specify as to for how many hours there was light or darkness during that night. Thus, PW-1 has not supported the initial version of the prosecution story, which alleges that the victim left the house to get the money back from Rani Devi, wife of Rajesh Yadav as PW-1 has admitted that she has no knowledge regarding the contents of the conversation that took place on



mobile phone. Learned counsel further submits that PW-2 has also stated that he himself had not heard the conversation which took place on the mobile. He has further stated that he had not seen the occurrence with his own eyes, nor did he see anyone throwing the dead body. In this way, on the point of conversation his statement is quite relevant that he has not heard anything to the effect that that victim left the house for getting the money back from Rani Devi, wife of Rajesh Yadav. Learned counsel further submits that during the course of cross-examination, at para 5, PW3 has stated that despite being submerged in water for two or three days, the dead body had not been decomposed and was in good condition which is totally inconsistent with the initial version of prosecution story. Learned counsel for respondent no. 2 to 6 has submitted that during cross-examination PW-4/informant has stated in paragraph 5 that the dead body was not decomposed and was in good condition which is quite inconsistent with the initial version of prosecution story. PW4 has categorically stated that he is not literate and he can only affix his signature, hence he had neither read the contents of the FIR nor were the same read over to him; consequently, the very version attributed to PW-4 is under serious doubt as to who dictated the written statement,



thereby rendering the prosecution story highly doubtful and from the statement of PW-4 it is quite evident that respondents no. 2 to 6 have been falsely implicated in the present case and suitable prosecution story has been prepared to suit the prosecution case. At para 3 of his cross-examination, PW-5 has stated that he was not present at the time of occurrence and occurrence had not taken place in his presence. In this way, he is a hearsay witness. Learned counsel further submits that PW-7 is investigating officer of the case and he has stated that dead body was found in a decomposed condition and the statement of PW-7 is quite inconsistent with other prosecution witnesses as also FIR itself clearly reveals that the dead body was not identified though it is claimed that it was identified by virtue of key and attire. There was no seizure list of attire as well as key. In this way, whole prosecution story since the time of inception creates doubt and there is no chain of circumstance as the very prosecution story begins with the recovery of dead body which was in a decomposed condition and prosecution story has been prepared to suit the case of the prosecution. In the light of the aforesaid facts and circumstances of the case, the judgment of acquittal passed by the concerned court is justified and legal. Hence, it is submitted that no interference is required.



14. It is well settled law that in a criminal appeal against acquittal, what the Appellate Court has to examine is whether the finding of the learned trial court is perverse and *prima facie* illegal. Once the Appellate Court comes to a finding that the grounds on which the judgment is based is 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 ***Surajpal Singh & Ors. Versus The State*** reported in ***1952 SCR 193***, paragraph 13 of which reads as under:

“..the High court has full power to review the evidence upon which the order of acquittal was founded. But it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

15. In the case of ***Ghurey Lal versus 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:

“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.”

16. From perusal of the FIR, it is crystal clear that occurrence took place on 28.04.2017 and FIR was lodged on 01.05.2017, however there is no plausible explanation as to why the delay has been caused in lodging the FIR. While narrating the story of prosecution informant himself has stated that victim left the house on 28.04.2017 for getting the money back from Rani Devi, wife of Rajesh Yadav but he did not return. Even informant did not take any pain to register *sanha* with the concerned *thana* and after recovery of the dead body, the FIR was lodged. As per version of the informant, the victim left the house on 28.04.2017 and the dead body was recovered on 01.05.2017, however the gap in between of about four days



has not been explained by the informant. The manner in which the occurrence has been depicted by the informant creates doubt since no plausible explanation has been given. The dead body was recovered in a decomposed condition which is quite evident from the initial version of the prosecution story but informant has claimed that the dead body was identified by key as well as attire recovered from the dead body of the deceased. Even though dead body was identified on the basis of attire and key but there is no seizure list of attire and key on record nor there is any material exhibit with regard to seizure list related to attire and key. Even inquest report has not been exhibited as is evident from the judgment of the trial court itself. The informant/PW-4, who is the star witness of this case, has taken a U-turn while adducing evidence before the court as during the course of cross-examination in para-5 he has stated that he is not literate and apart from putting signature, he does not know how to read and write and as such, he did not read the contents of FIR nor the same was read over to him. In this way, whole prosecution story becomes doubtful.

17. The question which arises for consideration is :-

Whether the prosecution has proved the case



beyond the shadow of reasonable doubt ?

18. It is necessary to evaluate, analyze and screen out the evidence of the witnesses adduced before the trial court in the light of the offence punishable under Sections 302/201/34 of the IPC :-

19. PW4/ Anil Kumar is informant of the case. He has stated in examination-in-chief that the occurrence took place on 28.04.2017 and he was at his house and Niraj/victim was also at home and taking meal. He has further stated that he had asked victim where he was going, upon which victim replied that Rani Devi had called and asked him to come and receive Rs. 55,000/-, hence he was going to collect the same.

19.1. During the course of cross-examination, in para 4 PW-4 has admitted that he had not himself heard the conversation between Rani Devi and the deceased. He has also admitted that he has no knowledge that the wife of accused has any mobile and if she has any mobile phone, he has no knowledge regarding the mobile number. In paragraph 5, he has stated that he has no knowledge of the month or year in which any money was allegedly given by the informant's nephew to the wife of the accused. He has further stated that no monetary transaction ever took place in his presence. He has



also admitted that the dead body of his nephew was recovered on the fourth day and during this period, he neither made any *sanha* at the police station nor lodged any information regarding the recovery of the dead body. He further stated that the dead body was not decomposed and was in good condition. He further stated that he is not literate and he can only affix his signature and that neither did he read the contents of the FIR nor were the same read over to him.

19.2. From a perusal of evidence adduced by PW4/informant, it is crystal clear that in the initial version of prosecution story, he has pointed out the mobile number of victim upon which call was received but while deposing before the Court, he has not given detail of mobile number upon which call from other side was received. In initial version of prosecution story, he has stated that motive behind leaving the house was to get back the money from Rani Devi, wife of Rajesh Yadav but while adducing evidence before the court at para 5 of cross-examination he has stated that he has no knowledge regarding any monetary transaction. In initial version of prosecution story, it was stated that dead body was in a decomposed condition but in para 5 of cross examination PW-4 has stated that dead body was not in a decomposed



condition rather it was in good condition. In initial version of prosecution story, it is stated that as the dead body was in a decomposed condition, so dead body was identified on the basis of attire and key recovered from the deceased but on the said point, there is no seizure list and statement of Investigating Officer is also silent on the said point. During cross examination, PW-4 has stated that he is not literate and apart from putting his signature, he does know how to read and write and as such, he has not read the contents of FIR nor the same was read over to him. Keeping in view the statement of PW4, who is the star witness of the prosecution story, the same suffers from infirmities, inconsistencies and contradictions. In this way, the statement of PW4 is neither convincing nor trustworthy.

20. PW1/ Savitri Devi is mother of the victim/deceased. During the course of examination-in-chief, she has stated that the occurrence took place on 28.04.2017 at about 8:00 PM and she was at her house at the relevant time. She has further stated that her son was taking meal at house, meanwhile, a call was received on mobile number of her son. On query, her son replied that Rani Devi had made a call on phone and asked him to come and take back the due money and



he was going to get the due money. Thereafter, her son left the house for getting the due amount of money. Thereafter, PW-1 went outside to answer the nature's call. She has further stated that after her son went outside, she saw that the accused-respondents were at their door, where Niraj/victim had also arrived to collect his due amount and the victim entered their house and thereafter, she went to answer the nature's call. She has further stated that when she returned after 15 minutes, she called Niraj at Rani Devi's door to which Vikram Yadav replied that she should go and Niraj would leave later. Thereafter, she went home and after taking meal she fell asleep but Niraj did not return after 3-4 hours and when she woke up, she did not find Niraj at home and then, she woke her brother-in-law Anil/informant and told him that Niraj had gone to Shivkeshwar's house to collect the due money but has not returned yet. She further stated that she tried calling Niraj on his mobile phone, but his mobile was switched off. Later on, dead body kept in a sack was recovered from river.

20.1. During the course of cross-examination, in Para 4 PW-1 has stated that she did not know regarding the conversation which took place on mobile. She has further stated that she cannot point out as to for how many hours there



was light and how many hours there was darkness on that night. In para 5, she has stated that after leaving her house, she did not meet anyone until she reached the accused-respondents' door. She has further stated that she returned to her house after 20 minutes and after returning home, she did not speak to any other family member and after taking meal she went to sleep. She has stated that she has no enmity with anyone, except the accused-respondents. She further stated that the dead body of victim was recovered after three days of the occurrence in a decomposed condition due to remaining in water and it is very difficult to identify the same. She has further stated that she did not see anyone killing her son or throwing the dead body of her son.

20.2. From a perusal of the evidence of PW1, it is clear from her statement in examination-in-chief that she saw that the accused-respondents were at their door, which is quite divergent from her statement in cross-examination in which she has stated that after leaving her house, she did not meet anyone until she reached the accused-respondents' door and after returning to her house, she did not speak to any other family member and after taking meal she went to sleep but during the course of examination-in-chief, she has stated that she talked



with her brother-in-law/informant. During the course of cross-examination, she has further stated that she cannot point out as to for how many hours there was light and how many hours there was darkness on that night. In this way, statement of PW1 during cross-examination is inconsistent with the statement made during the course of examination-in-chief. She has also stated in her cross-examination that her son went away from house on the call received by her son but she has no knowledge regarding the conversation which took place on the mobile between the accused as well as her son. The very initial version of prosecution story as stated by the informant is not corroborated even by the statement of PW1 as she has no knowledge regarding the contents of conversation which took place between the accused and the victim. She has also stated that she had not seen anybody killing her son or throwing dead body of her son. Prudently and pragmatically, it is inconceivable that P.W. 1 saw the entry of her son in the house of accused respondents, whereafter her son did not return back for three days but, surprisingly, no sanha has been registered and no steps were taken to get her son back. In this way, it is wholly beyond the realm of credibility that PW1, mother of the victim, despite allegedly having seen her son enter the house of



accused respondents and noticing that he did not return, neither took any step to recover him nor has made any averment in her evidence, explaining such unnatural and inexplicable inaction.

21. PW-2 / Anjani Kumar is cousin of the victim. He has stated that he was sitting on the terrace and studying, and Ankit/victim was having dinner there. Ankit said that he has received a call from Shivkeshwar Yadav's house, asking him to collect the dues amount. Ankit then ate a little and left. He has further stated that he asked Ankit where he was going, on which Ankit replied that he was going to Shivkeshwar Yadav's house. After a while, his elder mother (aunt) went outside and saw Ankit entering Shivkeshwar Yadav's house. She then returned home and went to sleep. Upon waking up four or five hours later, she realized that her son had not returned. She informed father of PW2, Anil Yadav, that Ankit had gone to Shivkeshwar Yadav's house and has not come back. Thereafter, father of PW2, went to Shivkeshwar Yadav's house, but the family members of Shivkeshwar Yadav abused him and ousted him. He has further stated that the next morning, he along with other began to search for the victim. He has further stated that on the 1st day of the month villagers



disclosed that a dead body tightly wrapped in a sack was lying in the river, upon which he informed Gajraiganj Police Station about the incident and upon opening the sack, it was found that the dead body was that of Ankit.

21.1. During the course of cross-examination, he has stated that on the night of the incident, he did not have any conversation with anyone regarding the incident. He has further stated that he did not have any conversation about the incident with any other person residing in between his house and the respondents' house. He has further stated that on the night of the incident, he did not see any person of the village. He has further stated that he knows the mobile number of the deceased on which conversation took place on the day of the incident but he does not remember from which mobile number the conversation was made. He has further stated that he himself had not heard the conversation that took place on the mobile. He has also stated that he had not seen the occurrence with his own eyes nor did he see anyone throwing the dead body of the deceased.

21.2. From a perusal of the evidence adduced by PW2, it is evident that he was unaware of the contents of the conversation that allegedly took place on mobile phone



between the accused and the victim as he himself admitted that he did not hear the said conversation and in the night of the incident, he did not see anyone of his village. Attention was drawn regarding the decomposition of dead body, which was denied by the said witness but it was admitted that the dead body was in a good condition. P.W. 2 has stated that though the dead body was recovered upon information given by villagers but he cannot point out the name of the villagers. It has been admitted by PW2 that neither he has seen the occurrence nor did he see anyone throwing the dead body of the victim. It is evident that he was unaware of the contents of the conversation that allegedly took place on mobile phone between the accused respondents and victim; he himself admitted that he did not hear the said conversation. PW2 himself has admitted that he was reading on the roof and the victim was taking meal. It is not evident from the FIR that while victim was taking meal, PW2 was also there and was reading on the roof. In this way, the claim of PW2 is without any substance. It is wholly unnatural and highly improbable that while victim was allegedly eating, PW2 was engaged in his work and the victim would have interacted with him at the time of departure and disclosed as to where he was going; such conduct does not



reflect the normal or natural behaviour of an ordinary or prudent person.

22. PW3/ Sri Rakesh Kumar @ Ajit Kumar is the elder brother of the victim. He has stated that the occurrence is of 28.04.2017 and 01.05.2017. He has further stated that on 28.04.2017, Rani Devi called his younger brother Neeraj Kumar on his mobile at 8.00 pm, whereafter he asked his brother where he was going upon which his brother replied that Rani Devi had called him to give Rs. 55,000/-. He has further stated that his brother went to the house of Rani Devi to collect the money. He has further stated that his mother also followed his younger brother and when his mother returned after answering the nature's call, she enquired from Vikram Yadav about Neeraj, to which Vikram replied that she should go and Neeraj would leave later. After that, his mother Savitri Devi came to his house. After 3-4 hours, when his mother Savitri Devi woke up, it was around 11:00-12:00 PM, and his uncle Anil Yadav asked why Neeraj hadn't returned yet. After that, he along with his uncle Anil Kumar went to look for the victim. He has further stated that he along with his uncle went to Shivkeshwar's door and asked Shivkeshwar Yadav upon which Shivkeshwar Yadav, Vikram Yadav, Nirda Devi, Rani Devi, and



Parvati Kumari while talking among themselves had ousted them while abusing. He has further stated that he along with his uncle began to search his brother/victim and called the relatives and found that the mobile phone of Neeraj was switched off. On 01.05.2017 at 5:00 PM, dead body of Neeraj Kumar, kept in a sack was recovered from river in presence of the in-charge police station and the *Mukhiya* of the village. He has further stated that he had no enmity with anyone including Shivkeshwar Yadav, but Neeraj (victim) had given Rs. 55,000/- to Shivkeshwar Yadav and the accused respondents committed the murder of victim with intention of not returning the said amount, destroyed the evidence, and disposed of the dead body by packing it in a sack and throwing it into river.

22.1. During cross examination PW-3 has stated that he can not specify date, month or year on which the victim allegedly gave Rs. 55,000/- to Rajesh Yadav nor was the said amount given in his presence. He has further stated that he also does not know as to whether the said money was given in cash or transferred through account. He has further stated that he cannot point out the number of other mobile phone which was used to call the deceased's mobile phone to collect the money. He has also stated that when a call came on Niraj's



mobile to collect the money, he was tying the buffalo and he cannot state as to how long the conversation with Neeraj and accused lasted. He has further stated that he did not see any of the accused committing the crime. At para 5, he has stated that the dead body had not decomposed despite remaining in water for two to three days and dead body was in good condition.

22.2. From the perusal of the evidence adduced by PW3, it is clear that he was not present when the call was received by Niraj. PW3 has also stated that he was tying buffalo and he has no knowledge as to how long the conversation between the victim and accused continued. Though, while leaving the house, the victim had intimated PW3 that he was going to collect money but PW3 has admitted that he had not disclosed the said fact to anyone. PW3 has himself admitted that he was engaged in the work of tying buffalo at the relevant time though in FIR it has not been mentioned that when victim was eating, PW3 was also present there and he himself claims that while departing, victim had stated that he was going to collect money from Rani Devi, wife of Rajesh Yadav. It is wholly unnatural and highly improbable that while victim was allegedly eating and PW3 was at a different place engaged in his work, the victim would have



interacted with him at the time of departure and disclosed where he was going; such conduct does not reflect normal or natural behaviour of ordinary or prudent person.

23. PW5 /Balram Singh at para 3 of his cross-examination, himself admits that he was not present at the time of occurrence and the occurrence had not taken place in his presence. In this way, he is a hearsay witness.

24. PW6 /Dr. Ashok Kumar Pandey has stated that on 01.05.2017 he was posted at Sadar Hospital, Ara and had conducted postmortem of dead body of Ankit Kumar @ Niraj and had found following ante mortem injuries:-

(i) Incised wound :- 6.8 cm x 1/2 cm x bone deep on neck. On dissection of neck trachea was divided completely except 0.4 cm Posteriorly. Both the Jugular vein were divided. Anterior neck muscle was divided.

(ii) Skull/Thorax- Brain paranchymma and meninges were pale and normal. All the viscera were pale and normal. Both the chamber of Heart was empty.

(iii) Abdomen- All the viscera were pale and normal. Stomach contain 180 ml. of semi digested food material.

(iv) Urinary bladder contain 185 ml. of formed urine.



(v) Cause of death :- CR failure due to haemorrhage and shock due to injury no. 1.

(vi) Weapon :- Sharp cutting.

(vii) Time since death-03 to 36 hrs.

24.1. From perusal of the evidence of PW6, it is clear that the death was caused on account of CR failure due to hemorrhage and shock due to injury no. 1.

25. PW7/ Satyendra Kumar is the investigating officer of the present case. He has stated that on 01.05.2017, he was in-charge of the Udwanthnagar Gajrajganj O.P. and he had himself taken charge of investigation of Udwanthnagar Gajrajganj O.P. P.S. Case no. 124 of 2017. He has further stated that he had inspected the place of occurrence and the place of occurrence is Bhanas (Kudhwa River) situated in the West Northern corner of Badkagaon Akhtiyar village under Gajrajganj O.P. He has further stated that he found the dead body of the victim in a decomposed condition. He has given the following description of the boundary of the place of occurrence :-

East :- Akhtiyapur villager

West :- Bhanas Dam on Kudhwa river

North :- Bhanas Dam

South :- Kudhwa River



25.1. PW7 has further stated that inquest report was prepared by ASI Pawan Kumar Paswan and the same bears signature of witness Anil Kumar Yadav and Pramod Kumar Yadav including the signature of ASI Pawan Kumar Paswan. He has further stated that he had recorded the re-statement of informant as well as statement of Anjani Kumar, Rakesh Kumar, Savitri Devi. He further states that he sent the dead body to the hospital for the post mortem. In para 4, he has stated that he was transferred to Rohtas District and he handed over the charge of investigation to Police Sub-Inspector Shankar Pandit but due to stay of transfer order, he again took charge of the investigation and submitted charge sheet and supplementary charge sheet against the accused/respondents. In para 5, he has stated that formal FIR bears the signature of the then Station House Officer, Udwanthnagar Police Station and he has identified the same which has been marked as Exhibit 3. He has further stated that written application bears his endorsement and he identifies the same, which has been marked as Exhibit 1/1. The written application bears the signature of the then Station House Officer, Udwanthnagar Police Station, Rajiv Kumar and he identifies the same, which has been marked as Exhibit ½. He has also stated that he put his signature on



charge sheet number 54 of 2017 and supplementary charge sheet number 84 of 2017, which he has identified and the same have been marked as Exhibits 4 and 5 respectively.

25.2. During the course of cross-examination, at para 7 he has stated that he did not prepare map of the place of occurrence. He has further stated that he has not written in the case diary that he had recorded the statement of any independent witness. He has also stated that he did not make any effort to conduct test on the decomposed dead body to ascertain whether it was that of a male or a female. He has also stated that he did not find anything except dead body of the deceased at the place of occurrence. In paragraph 8, he has stated that though witnesses have stated that the murder was committed on account of monetary transaction but he did not conduct detailed investigation on this point. He has further stated that he did not investigate regarding the date on which the money was allegedly taken or given. He did not record the statement of any person residing adjacent to the victim. He also did not conduct any investigation regarding whether actually money was given or not.

25.3. From perusal of evidence of PW7 (Investigating Officer), it is clear that investigation of I.O.



suffers from infirmity on the point of motive behind the occurrence and delay in lodging the FIR. There is no seizure list of attire or key by which the dead body was identified and I.O. has not conducted investigation regarding call detail report indicating conversation which took place between the accused respondents and the victim. The manner in which the investigation has been conducted reflects a lack of fairness, objectivity and due diligence expected from an investigating officer. The investigating officer has failed to adhere to the mandatory procedural safeguards, thereby rendering the investigation unreliable.

26. Defence has produced four witnesses who defended the accused-respondents and stated that they have been falsely implicated in the present case and they have nothing to do with the alleged occurrence.

27. 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.

28. In the case of ***H.D. Sundara and Others vs. State of Karnataka*** reported in ***(2023) 9 SCC 581***, Hon'ble Supreme Court, in paragraph 8, has held as follows :



“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;

2. The appellate court, while hearing an appeal against acquittal, is entitled to 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.”

29. In **Chandrappa Vs. State of Karnataka, (2007) 4 SCC 415, Hon’ble Supreme Court** after referring to several authorities has held as follows:

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court



to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

(Emphasis Supplied)

30. In **Murugesan Vs. State, (2012) 10 SCC 383,**

Hon’ble Supreme Court has held as follows:

“ 18. Before proceeding any further it will be useful to recall the broad principles of law governing the power of the High Court under Section 378 CrPC, while hearing an appeal against an order of acquittal passed by a trial Judge.

19. An early but exhaustive consideration of the law in this regard is to be found in the decision of Sheo Swarup v. King Emperor [(1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] wherein it was held that the power of the High Court extends to a review of the entire evidence on the basis of which the order of acquittal had been passed by the trial court



and thereafter to reach the necessary conclusion as to whether order of acquittal is required to be maintained or not. In the opinion of the Privy Council no limitation on the exercise of power of the High Court in this regard has been imposed by the Code though certain principles are required to be kept in mind by the High Court while exercising jurisdiction in an appeal against an order of acquittal.....

20. The principles of law laid down by the Privy Council in Sheo Swarup(supra) have been consistently followed by this Court in a series of subsequent pronouncements

21. A concise statement of the law on the issue that had emerged after over half a century of evolution since Sheo Swarup (Supra) is to be found in para 42 of the Report in **Chandrappa v. State of Karnataka [(2007) 4 SCC 415]**

.....
32. In the above facts can it be said that the view taken by the trial court is not a possible view? If the answer is in the affirmative, the jurisdiction of the High Court to interfere with the acquittal of the appellant-accused, on the principles of law referred to earlier, ought not to have been exercised. In other words, the reversal of the acquittal could have been made by the High Court only if the conclusions recorded by the learned trial court did not reflect a possible view. It must be emphasised that the inhibition to interfere must be perceived only in a situation where the view taken by the trial court is not a possible view. The use of the expression “possible view” is conscious and not without good reasons. The said expression is in contra²³. Having dealt with the principles of law that ought to be kept in mind while



considering an appeal against an order of acquittal passed by the trial court, we may now proceed to examine the reasons recorded by the trial court for acquitting the accused in the present case and those that prevailed with the High Court in reversing the said conclusion and in convicting and sentencing the appellant-accused.

33. The expressions “erroneous”, “wrong” and “possible” are defined in Oxford English Dictionary in the following terms:

“erroneous.— wrong; incorrect.

wrong.—(1) not correct or true, mistaken.

(2) unjust, dishonest, or immoral.

possible.—(1) capable of existing, happening, or being achieved.

(2) that may exist or happen, but that is not certain or probable.”

34. It will be necessary for us to emphasise that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement. But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the arena of a possible view. The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The fundamental distinction between the two situations have to be kept in mind. So long as the view taken by the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be



interdicted and that of the High Court supplanted over and above the view of the trial court.

35. A consideration on the basis on which the learned trial court had founded its order of acquittal in the present case clearly reflects a possible view. There may, however, be disagreement on the correctness of the same. But that is not the test. So long as the view taken is not impossible to be arrived at and reasons therefor, relatable to the evidence and materials on record, are disclosed any further scrutiny in exercise of the power under Section 378 CrPC was not called for.”

(Emphasis Supplied)

31. In **Hakeem Khan Vs. State of M.P., (2017) 5**

SCC 719 , Hon’ble Supreme Court has held as follows:

“ 9 [Ed. : Para 9 corrected vide Official Corrigendum No. F.3/Ed.B.J./29/2017 dated 13-7-2017.] . Having heard the learned counsel for the parties, we are of the view that the trial court's judgment is more than just a possible view for arriving at the conclusion of acquittal, and that it would not be safe to convict seventeen persons accused of the crime of murder i.e. under Section 302 read with Section 149 of the Penal Code....”

(Emphasis Supplied)

32. In **Babu Sahebagouda Rudragoudar Vs.**

State of Karnataka, 2024 SCC Online SC 561, Hon’ble Supreme Court, after referring to relevant precedents, has observed as follows:

“39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for



reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the **following principles:**

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”

(Emphasis Supplied)

33. It is a well-settled law that unless and until the finding of the learned Trial Court is found to be perverse or illegal / impossible, it is not permissible for the appellate Court to interfere with the same and in order to reverse a finding of acquittal, the view taken by the learned Trial Court must be held to be completely unsustainable and not a probable view. Reference in this connection be had to a judgment rendered by the Hon'ble Apex Court in the case of *Nikhil Chandra Mondal vs. State of West Bengal*, reported in (2023) 6 SCC 605 as also to the one rendered by the Hon'ble Apex Court in the case of



Vijay Singh @ Vijay Kumar Sharma vs. The State of Bihar,
reported in ***2024 SCC Online SC 2623.***

34. It would be apt to refer to yet another judgment rendered by the Hon'ble Apex Court in the case of ***Rajesh Prasad vs. State of Bihar & Anr.***, reported in ***(2022) 3 SCC 471***, paragraphs No. 22, 25, 27 to 29 and 31 whereof are reproduced herein below:-

“22. In Atley v. State of U.P. [AIR 1955 SC 807], the approach of the appellate court while considering a judgment of acquittal was discussed and it was observed that unless the appellate court comes to the conclusion that the judgment of the acquittal was perverse, it could not set aside the same. To a similar effect are the following observations of this Court speaking through Subba Rao, J. (as his Lordship then was) in Sanwat Singh v. State of Rajasthan [AIR 1961 SC 715]:-

“9. The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : AIR 1934 PC 227 (2)] afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) “substantial and compelling reasons”, (ii) “good and sufficiently cogent reasons”, and (iii) “strong reasons” are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record



having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified.”

The need for the aforesaid observations arose on account of observations of the majority in Aher Raja Khima v. State of Saurashtra [AIR 1956 SC 217] which stated that for the High Court to take a different view on the evidence “there must also be substantial and compelling reasons for holding that the trial court was wrong.

25. This Court in Ramesh Babulal Doshi v. State of Gujarat [(1996) 9 SCC 225], spoke about the approach of the appellate court while considering an appeal against an order acquitting the accused and stated as follows:-

“7. ... While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then — and then only — reappraise the evidence to arrive at its own conclusions.”

The object and the purpose of the aforesaid approach is to ensure that there is no miscarriage of justice. In another words, there should not be an acquittal of the guilty or a conviction of an innocent person.



27. This Court in Ramesh Babulal Doshi v. State of Gujarat [(1996) 9 SCC 225] observed vis-à-vis the powers of an appellate court while dealing with a judgment of acquittal, as under:

“7. ... While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then — and then only — reappraise the evidence to arrive at its own conclusions.

28. This Court in Chandrappa v. State of Karnataka [(2007) 4 SCC 415], highlighted that there is one significant difference in exercising power while hearing an appeal against acquittal by the appellate court. The appellate court would not interfere where the judgment impugned is based on evidence and the view taken was reasonable and plausible. This is because the appellate court will determine the fact that there is presumption in favour of the accused and the accused is entitled to get the benefit of doubt but if it decides to interfere it should assign reasons for differing with the decision of acquittal.

29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]:-

“42. From the above decisions, in our considered



view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court



should not disturb the finding of acquittal recorded by the trial court.

31. The circumstances under which an appeal would be entertained by this Court from an order of acquittal passed by a High Court may be summarised as follows:

31.1. Ordinarily, this Court is cautious in interfering with an order of acquittal, especially when the order of acquittal has been confirmed up to the High Court. It is only in rarest of rare cases, where the High Court, on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case, ignoring some of the most vital facts, has acquitted the accused, that the same may be reversed by this Court, exercising jurisdiction under Article 136 of the Constitution. [State of U.P. v. Sahai, (1982) 1 SCC 352] Such fetters on the right to entertain an appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. [Arunachalam v. P.S.R. Sadhanantham, (1979) 2 SCC 297] An appeal cannot be entertained against an order of acquittal which has, after recording valid and weighty reasons, has arrived at an unassailable, logical conclusion which justifies acquittal. [State of Haryana v. Lakhbir Singh, 1991 Supp (1) SCC]

31.2. However, this Court has on certain occasions, set aside the order of acquittal passed by a High Court. The circumstances under which this Court may entertain an appeal against an order of acquittal and pass an order of conviction, may be summarised as follows:

31.2.1. Where the approach or reasoning of the High Court is perverse:



(a) Where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic. [State of Rajasthan v. Sukhpal Singh, (1983) 1 SCC] For example, where direct, unanimous accounts of the eyewitnesses, were discounted without cogent reasoning. [State of U.P. v. Shanker, 1980 Supp SCC 489]

(b) Where the intrinsic merits of the testimony of relatives, living in the same house as the victim, were discounted on the ground that they were “interested” witnesses.[State of UP v Hakim Singh, (1980)3SCC 55]

(c) Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no axe to grind in the said matter. [State of Rajasthan v. Sukhpal Singh, (1983) 1 SCC 393]

(d) Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons present at the site of occurrence of the crime. [Arunachalam v. P.S.R. Sadhanantham, (1979) 2 SCC 297]

(e) Where the High Court applied an unrealistic standard of “implicit proof” rather than that of “proof beyond reasonable doubt” and therefore evaluated the evidence in a flawed manner. [State of U.P. v. Ranjha Ram, (1986) 4 SCC 99]

(f) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused; [State of Maharashtra v. Champalal Punjaji Shah, (1981) 3 SCC 610] or where acquittal rests merely in



exaggerated devotion to the rule of benefit of doubt in favour of the accused. [Gurbachan Singh v. Satpal Singh, (1990) 1 SCC 445]

(g) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence, although, in the said case, there was strong direct evidence establishing the guilt of the accused, thereby making it unnecessary on the part of the prosecution to establish "motive". [State of A.P. v. Bogam Chandraiah, (1986) 3 SCC 637]

31.2.2. Where acquittal would result is gross miscarriage of justice:

(a) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a perfunctory consideration of evidence, [State of U.P. v. Pheru Singh, 1989 Supp (1) SCC 288] or based on extenuating circumstances which were purely based in imagination and fantasy [State of U.P. v. Pussu, (1983) 3 SCC 502].

(b) Where the accused had been acquitted on ground of delay in conducting trial, which delay was attributable not to the tardiness or indifference of the prosecuting agencies, but to the conduct of the accused himself; or where accused had been acquitted on ground of delay in conducting trial relating to an offence which is not of a trivial nature. [State of Maharashtra v. Champalal Punjaji Shah, (1981) 3 SCC 610]

35. In the present case, the occurrence took place on 28.04.2017 and nothing was done to recover the victim from the house of the accused respondents, even Sanha was not



registered and only after recovery of the dead body, apparently the prosecution has cooked up a story to falsely implicate the respondents accused. The time gap between the leaving of the victim from his house i.e. 28.04.2017 and recovery of dead body i.e. 01.05.2017 has not been explained by any of the prosecution witnesses and only the initial version of the prosecution story has been reiterated just to show that the victim had left the house upon informing the prosecution witnesses that he was going to get the money back from Rani Devi, wife of Rajesh Yadav. It is intriguing as to why nothing was done by the prosecution witnesses to recover the victim, though all the prosecution-witnesses claim to have the knowledge that the victim had gone to the house of Rani Devi, wife of Rajesh Yadav who is residing adjacent to the house of informant. PW-4 is informant of the case, who while narrating the story of prosecution he has given a graphic detail as to how the occurrence has taken place. He has tried to build up a story to suit the facts and circumstances of the circumstantial evidence but the story as narrated by the informant originates with the recovery of the dead body in a decomposed condition. Even the story of leaving the house by the victim for getting the money back from Rani Devi, wife of Rajesh Yadav is not



proved by any of the prosecution witnesses. Since the inception, the prosecution story has become doubtful as the informant during the course of cross-examination has stated that he is not literate and apart from putting his signature, he does know how to read and write, as such he has not read the contents of FIR nor the same was read over to him. The very initial version of the prosecution story reflects that dead body was found in a decomposed condition and dead body has been identified on the basis of attire as well as key but there is no seizure list of attire and key on record nor there is any material exhibit with regard to seizure list related to attire and key. Even inquest report has not been exhibited as is evident from the judgment of the trial court itself. The very deposition of PW-4/informant is full of doubt keeping in view the delay in lodging the FIR coupled with the statements of witnesses which are quite divergent. There is question mark regarding the very motive behind the victim leaving the house and the conversation which had taken place between the victim and the accused, as there is nothing on record which gives details regarding the conversation between the accused and victim. In the initial version of the prosecution story, only the informant has stated that the victim had left the house for getting the



money back from Rani Devi, wife of Rajesh Yadav and never returned. There is no cogent evidence regarding conversation between victim and accused-respondents, leading to the victim leaving the house and never returning back, thereafter. The initial version of prosecution story is merely an afterthought as the same originates after recovery of the dead body.

36. Now the question as raised by the appellant's counsel is that whether the statement of victim is relevant in the present case or not. From the perusal of records, it transpires that there is a gap of four days between leaving the house and recovery of dead body and the said gap has not been explained by the prosecution, thus by virtue of Section 32 of the Evidence Act, only those statements which have direct and proximate nexus with death are admissible. Here, the very prosecution story starts with recovery of dead body and prior to the recovery of dead body, even, no *sanha* was registered by the prosecution side. It is evident from the prosecution story that victim left the house when call was received but no call detail report regarding the conversation between the accused-respondents and victim is available on record. It is asserted by the informant that motive behind the occurrence was that the victim gave Rs. 55,000/- to Rajesh Yadav. Even the said motive



has not been proved by any of the prosecution witnesses. All of the prosecution witnesses have stated that while victim left the house, he had interacted with the informant (PW4) and others, such as PW 1, 2 and 3 but in initial version of prosecution story it is asserted that when the victim was leaving his house, he had interacted only with the informant and upon query being made, the victim stated that he was going to collect money from Rani Devi, wife of Rajesh Yadav. The statement of PW4 is quite contradictory as he himself has stated that he is not literate and he can only affix signature and that neither he had read the contents of the FIR nor were the same read over to him. Consequently, the written report of PW4 is under serious doubt, as to who dictated the written report, thereby rendering the prosecution story highly doubtful. It is wholly unnatural and highly improbable that while victim was allegedly eating and other prosecution witnesses were engaged in their respective work, victim would have interacted with each of them, informing them of his departure and about his destination; such conduct is not what a prudent man or ordinary person would exhibit in normal course of human behaviour coupled with the fact that victim left the house at 8 PM. The evidence of the informant as also other prosecution



witnesses are neither trustworthy nor convincing, as discussed in foregoing paragraphs, thus suspicion, however strong cannot substitute legal proof and in cases based on circumstantial evidence, every link must be conclusively established and remote and general statements of deceased are not admissible under Section 32 of the Evidence Act. In view of the aforesaid discussions, we find that the statement of victim is not relevant as the facts and circumstances of the present case are totally different from the facts and circumstances of the case as cited by learned counsel for the appellant and on the contrary the contention of the learned A.P.P. for the State as well as learned counsel for the Respondent Nos. 2 to 6 is quite convincing.

37. After analyzing the evidence of the present case, we find that this case is not based on direct evidence as there is no eye witness account, which is evident from the FIR itself. PW-4 who is narrator of the initial version, as stated in the written report has unfolded the story of prosecution in a sequence of events. In the first sequence, he reveals that the victim left the house for getting the money back from Rani Devi, wife of Rajesh Yadav alone and no one was seen going along with him and in the same breath, it is told by the informant that victim left the house for getting the money back



from Rani Devi, wife of Rajesh Yadav and did not return back, whereafter search was made but from perusal of record it is found that the houses of respondents no. 2 to 6 are situated adjacent to the house of the victim, in the same village but no step was taken to recover the victim nor *sanha* was registered to the effect that the victim left the house and never returned. From perusal of the record it is found that a decomposed dead body was recovered, which could not be identified but it is claimed that by virtue of key and attire the dead body was identified. The statement of PW-4 is full of contradictions, infirmities and the question of raising finger against the respondents-accused is merely a ballpark assessment as the prosecution story has originated only after recovery of dead body and no one has explained the time gap in between leaving the house of victim and the recovery of dead body i.e. a huge gap of about 4 days and the story of prosecution has been prepared and cooked in order to implicate the respondents-accused falsely.

38. We have to, in the present case, take into account the circumstantial evidence, if any since there is no eye-witness account of the alleged occurrence but each circumstance (which may be relevant facts or fact in issue) should be proved



beyond reasonable doubt and the proved circumstance must form complete chain. The chain of circumstances must unerringly point towards the guilty of the accused i.e. it should be only reasonable probability of causation of offence. Upon analyzing the evidence of present case, it is found that neither the statement of PW-4 nor the statement of any other prosecution witnesses indicate that respondent nos. 2 to 6 were last seen with the deceased at any point of time. From the version of prosecution witnesses, victim was not seen with any of the respondents-accused when he left his house for getting the money back from Rani Devi, wife of Rajesh Yadav. In this way, even the present case is not the case of last seen with the deceased.

39. In the present scenario, Section-3 of the Indian Evidence Act is relevant and first part thereof covers belief which relates with direct evidence and the second part covers the supposition relating to circumstantial evidence and moreover, Section-3 of the said Act gives guidelines regarding how to appreciate direct evidence and it is clearly mentioned as to how the fact is proved. Section 3 of the said Act defines 'Proved' as follows:-

“Proved”-*A fact is said to be proved when, after considering the matters before it, the*



Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

It is a clear cut guideline how to appreciate the direct evidence and how to appreciate the circumstantial evidence. In the first portion it is mentioned that a fact is said to be proved when, after considering the matters before it, the court; either believes it to exist and in the second part it is mentioned that how a prudent man can make his supposition towards a particular case. Thus, the words used in the section are-“a fact is said to be proved when after considering the matter before it”- the section does not warrant a court to consider only evidence. For example a weapon of offence- a knife or gun- is not evidence, oral or documentary but it still has to be considered by the court. Again take for example, matters of which judicial notice can be taken. These things are not to be proved, but are matters permitted to be considered by the court. Now, Section 3 talks about belief of a judge for a fact to be proved and second part of section talks about probability of such a degree that a prudent man would act upon supposition that the fact exists. Thus a Judge should step into the shoes of a prudent man. A common man would have many suppositions



for the cause of occurrence in a case which is based on circumstantial evidence. There are several circumstances which are placed before the court but it is only based on supposition. Then the court evaluates each supposition and when the court has ruled out the suppositions, it is only such suppositions which has the highest probability, should be relied upon and taken as proved. This is how the fundamental principle in respect of circumstantial evidence evolves.

40. Now coming back to the present case, we find upon having examined the evidence led by the prosecution that none of the witnesses are eye-witness to the alleged killing of the deceased, hence we have to rely upon circumstantial evidence. As discussed hereinabove in the preceding paragraphs, none of the material circumstances, from which the conclusion of the guilt of the accused/respondents no. 2 to 6 is to be drawn have stood proved much less established and the evidence on record do not lead us to draw an inference with respect to the chain of circumstances being complete and all the facts/evidence, as discussed above cumulatively attached together do not lead to the sole hypothesis of the guilt of the respondent nos. 2 to 6 and we do not find that the chain is to complete as not to lead to any reasonable ground for the



conclusion consistent with the innocence of the accused. We also find that the text laid down by the Hon'ble Apex Court in the case of *Sharad Birdichand Sarda Vs. State of Maharashtra*, reported in (1984) 4 SCC 116 is not satisfied so as to warrant interference in the impugned judgment of acquittal and that too on the basis of scratchy and disjointed evidence. Thus, the prosecution has failed to establish its case beyond all reasonable doubts.

41. Therefore, in the opinion of this Court, the trial court has taken a plausible view based on the evidence available on the record. The prosecution has failed to prove its case beyond the shadow of reasonable doubt. The view taken by the trial court cannot be held to be either perverse or impossible nor there is any occasion to consider material evidence on record nor the findings of the learned trial court are manifestly erroneous much less demonstrably unsustainable nor there are substantial and compelling reasons much less good and sufficient grounds for interfering with the impugned judgment of acquittal. Under such circumstances, no case for interference with the impugned judgment is made out.

42. In the result, the present criminal appeal, preferred against the judgment of acquittal stands dismissed.



43. Let the learned trial court records be sent back to
the concerned court.

(Mohit Kumar Shah, J)

(Alok Kumar Pandey, J)

alok/shahzad

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	12.02.2026.
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