

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1128 of 2024**

Arising Out of PS. Case No.-1 Year-2011 Thana- BISHANPUR District- Darbhanga

Sajarun Nisha W/o Late Shalim R/o Mohalla - Bhingo, P.S. - Lahariasarai,
Distt. - Darbhanga

... .. Appellant

Versus

1. The State of Bihar
2. Md. Guddu S/o Md. Mustaque R/o Chakrahmat Bhingo, P.S. - Lahariasarai,
Distt. - Darbhanga

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Baidyanath Prasad, Advocate
For the State	:	Ms. Shashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and**

HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 02-04-2026

Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State.

2. This appeal has been preferred by mother of the deceased taking recourse of the provisions 372 of Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.').

3. By filing the present appeal, the appellant is seeking setting aside the judgment of acquittal dated 18.06.2024 (hereinafter referred to as 'impugned judgment') passed by the learned Additional Sessions Judge-Ist, Darbhanga (hereinafter referred to as 'the learned Trial Court') in S.Tr. No. 305 of 2011 (R. No. 572 of 2014), arising out of Bishanpur P.S. Case No.01 of 2011, dated 04.01.2011.

4. By the impugned judgment, the learned Trial



Court has held that the prosecution has not been able to prove the guilt of the accused (R-2), beyond all shadow of reasonable doubts. The learned Trial Court has relied upon one of the fundamental principles of criminal jurisprudence that an accused is presumed to be innocent until he is proved guilty.

Prosecution Case

5. The prosecution case is based on the *fardbeyan* of Abdul Salam (PW-10), who is the brother of the deceased. In his *fardbeyan* made before the Sub-Inspector of Police of Bisanpur Police Station on 04.01.2011 at about 08:00 hours near Chhotki Dilahi Bridge, the informant alleged that his brother Md. Rizwan (deceased), who was having a Bolero vehicle bearing registration no. BR-7P-1859 through which he earned his livelihood, on 03.01.2011 at 10:00 a.m. went with the Child Development Programme Officer to her office at Keoti with his vehicle but did not return till 08:00 p.m. He was being contacted on his mobile phone, although the phone was ringing but none picked up the phone. On the next day in the morning, the informant went to the residence of the CDPO at Laxmisagar, who told him that yesterday his brother dropped her at 6:30 p.m. Thereafter, the informant again contacted his brother on his mobile phone which was picked this time by Bada Babu of Laheriasarai Police Station, Darbhanga, who told him that



Vehicle No. BR-7P-1859 was standing near the police station having blood-stains inside and outside of the vehicle. The informant along with his brother-in-law Md. Kalamuddin went to Laheriasarai Police Station and identified the vehicle and there he came to know that one dead body was lying at the bank of river near a bridge of Chhotki Dilhai, P.S.- Bishanpur, then they went there and identified the dead body of Md. Rizwan and injuries were seen over his head, throat and face. He further disclosed that there was a land dispute between their family member and one Saif Ansari, who once threatened them by calling outsiders who in-turn abused and threatened them. The informant further alleged that accused Guudu and his brother-in-law Asharf were seen with the deceased Rizwan prior to occurrence on the last night and thereafter Rizwan was missing. He further alleged that some persons had also seen blood on the clothes of accused Md. Guddu along with other persons. In the end, the informant claimed that his brother was killed by accused Guudu along with other persons and after murdering his brother his dead body was found near the river.

6. After completion of investigation, the police submitted charge-sheet bearing Charge-sheet No.19/2011, against the sole accused, Md. Guddu (hereinafter referred to as 'R-2') under Section 302 and 201/34 of the Indian Penal Code



(hereinafter referred to as ‘IPC’). Based on the charge-sheet filed against R-2, the learned Magistrate took cognizance of the offences under Sections 302 and 201 of IPC vide order dated 08.04.2011. Finding that the offences alleged is triable by a Court of Sessions, the records were committed to the Court of Sessions and the charges were explained to the accused person in Hindi, which he denied and claimed to be tried. The learned Trial Court framed charges under Sections 302 and 201 of IPC vide order dated 27.03.2012.

7. On behalf of prosecution, altogether 11 witnesses have been examined and some documents were marked exhibits. Keeping in view the judgment of the Hon’ble Supreme Court, recently rendered, in the case of **Manojbhai Jethabhai Parmar (Rohit) vs. State of Gujarat** reported in **2025 INSC 1433**, we provide the list of prosecution witnesses and the exhibited documents hereunder for ready reference in a tabular form:

List of Prosecution Witnesses

Prosecution Witness No.	Name of witness	Description
1	Pankaj Kumar Rai	Other witness
2	Naseema Khatoon (sister of the deceased)	Interested witness
3	Nasreen Khatoon (sister of the deceased)	Interested witness
4	Md. Nisar	Other witness
5	Rubina Khatoon	Other witness



6	Muzibur Rahman	Other witness
7	Faiyaz Ahmed	Other witness
8	Dr. P.K. Das	Medical Officer
9	Abdul Kalam (brother of the deceased)	Interested witness
10	Abdul Salam	Informant
11	Shashank Bhushan Saran	Investigating Officer

List of Exhibits on behalf of Prosecution

Exhibit No.	Description of the Exhibit	Proved by/Attested by
P-1	Xerox copy of postmortem report of deceased	PW-8
P-2	Signature of the informant on the <i>Fardbeyan</i>	PW-10
P-3	Signature of witness A. Subhan on fardbeyan	
P-4	Formal F.I.R	PW-11
P-4/1	Signature of I.O on fardbeyan	PW-11
P-5	Charge-sheet	PW-11

8. Thereafter, the statement of accused (R-2) was recorded under Section 313 of the CrPC, in which he pleaded innocence.

9. The defence has not adduced any oral or documentary evidence. The general plea of the defence is that he had been falsely implicated in this case.

Findings of the Learned Trial Court

10. The learned Trial Court examined the evidences adduced by the prosecution, briefly discussed the deposition of



the prosecution witnesses and the documents which were marked exhibits. The Additional Public Prosecutor of the State assisted by learned private counsel for the informant submit that the matter relates to a young person who was earning his livelihood through driving, he had been murdered brutally by the accused. It was pleaded by the prosecution that the accused (R-2) was seen with the injuries and blood-stains by the villagers and upon asking about the injuries on his body, he kept on changing his stand, therefore, the accused (R-2) was suspected to be involved in the killing of the brother of the informant. It was also submitted that in view of the corroborative evidences on the record, the chain of circumstantial evidence could stand established, hence the accused (R-2), deserves conviction and sentence.

11. The defence took a plea that the prosecution case was false, frivolous and baseless. The accusation against the accused (R-2) was false. None of the articles seized by the police had been sent to the Forensic Science Laboratory (hereinafter referred to as 'FSL') for examination and nothing was recovered from the possession of the accused so as to connect him with the crime in question. It is the case of defence that even as the prosecution has proved the death of the deceased but it has miserably failed to connect the accused (R-2) with the alleged



crime. There is no eye-witness of the occurrence and the prosecution had failed to connect the accused to the alleged murder. In sum and substance, the stand of the accused (R-2) is that the prosecution must stand on its own leg and in the case of circumstantial evidence unless the chain of chronological events is established, conviction cannot be placed. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Sharad Birchand Sarda vs. State of Maharastra**, reported in (1984) 4 SCC 116 and in the case of **Shivaji Sahabrao Bobade & Anr. vs. State of Maharashtra**, reported in (1973) 2 SCC 793.

12. As stated above, having examined the prosecution evidences available on the record, the learned Trial Court was not convinced with the prosecution. In ultimate analysis, the learned Trial Court held that the prosecution had miserably failed to establish the charges, hence, the accused (R-2) has been acquitted.

Submission on behalf of appellant

13. In this Court, learned counsel for the appellant has once again taken this Court through the evidences of the prosecution witnesses. The emphasis of the learned counsel for the appellant is on the circumstance immediately present after the occurrence which has been stated by the witnesses saying that



this appellant was seen in an injured condition and regarding the injuries, he kept on changing his stand. Learned counsel submits that the accused (R-2) had received treatment from one Pankaj Kumar Rai (PW-1) who has deposed that between 10:00-10:30 p.m. in the night, Md. Guudu (R-2) was brought to him by his *Nani* in injured condition, there was a fracture in his hand and there were a cut injuries and he had put bandage on that. In his cross-examination, he has stated that he was not a doctor but at the local level he was doing the medicine practice.

14. It is submitted that in this case the Investigating Officer (PW-11) has also stated that he had arrested Md. Guddu and at the time of his arrest he had found Md. Guddu (R-2) in injured condition.

15. Learned counsel further submits that the I.O. of this case had not conducted the investigation properly, he claimed that he had visited the place of occurrence, there were blood-stained soil but he had not taken the sample of the blood-stained soil. The I.O. (PW-11) had seized a *dabiya* from near the dead body of Rizwan and had also found one sword at some distance from the *dabiya*, both of them having blood marks, but he had not sent those weapons of crime to the FSL and those were not produced before the learned Trial Court. It is thus submitted that the I.O. of this case did not perform his duties well



but for the lapses on the part of the I.O., the prosecution case would not suffer.

16. It is submitted that in this case even as there is no eye-witness of the occurrence, the evidence of informant (PW-10) goes on to prove that there was some land dispute between the family of the informant and one Md. Samad Ansari on account of dispute over a drainage. This was protested by the deceased- brother of the informant. He has stated that Guddu (R-2) was in the company of Ashraf Saif and Sadik Ansari, who is the son of Md. Samad Ansari and in course of quarrel Ashraf Saif and Sadik Ansari were saying to brutally cut the body of his deceased brother. After few days, the occurrence had taken place.

17. Learned counsel submits that the informant has though stated that Md. Guddu (R-2) had not quarreled with Rizwan and his family and he was on visiting term, however, the involvement of Md. Guddu (R-2) is evident from the fact that he was unable to explain his injuries.

Submission on behalf of State

18. The appeal has been contested by learned Additional Public Prosecutor for the State. It is submitted that the learned Trial Court has not committed any error in appreciation of the evidences on the record. Referring to the evidence of prosecution witnesses, the learned APP for the State submits that



in this case all the prosecution witnesses are only hear-say witnesses. PW-5, has gone on to evidence of saying that he did not identify the deceased and earlier his statement was not recorded. He had also been declared hostile as he denied to have seen Guddu in injured condition. Similarly, PW-6 and PW-7 have been declared hostile for not supporting the prosecution case.

19. Learned Additional Public Prosecution for the State submits that in fact the informant (PW-10) has himself damaged the whole prosecution case and this may be found from his statement present in paragraph no.6 of his deposition wherein he has clearly stated that Guddu (R-2) was named in the murder case of Rizwan on suspicion. It is thus submitted that the suspicion howsoever strong may be, cannot take place of proof.

20. In her submission, the learned APP for the State submits that the learned Trial Court has not committed any error in appreciation of the evidences.

Analysis and Consideration

21. We have heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also perused the records.

22. It is evident that, in the present case, the informant (PW-10) has himself stated in paragraph-6 of the deposition that he had given the name of this accused (R-2) on



suspicion. The informant has clearly stated that neither the deceased nor his family had any prior enmity with the appellant and the appellant was on visiting term with his family. On the date of occurrence, the accused (R-2) was not seen with the deceased.

23. This Court further finds that the I.O. of the case claimed to have seized the *dabiya* and sword nearby the dead body but these two weapons were never produced in the Court. The weapons were never sent to the FSL, therefore, the prosecution case saying that those weapons were having blood stains and were recovered near the dead body are not proved. We have also noticed that this was a major incriminating circumstance but when the statement of the accused was recorded under Section 313 Cr.P.C., the prosecution did not bring it to the notice of the accused that there was recovery of *dabiya* and sword near the dead body of deceased and that those were having blood-stains. In absence of the production of those material objects and there being no proof of the fact that there was any blood on the weapon and the blood were that of the deceased or the accused, it would not be possible to accept the prosecution case as framed.

24. The I.O. of the case has definitely not done his duty diligently. While it is true that for every lapse of the I.O., the



prosecution case cannot be allowed to suffer but in a case of the present nature where the whole prosecution case rests upon circumstantial evidences, the prosecution is required to establish the chain of chronological evidence in such a manner that it should irresistibly results in a conclusion that the appellant is guilty of commission of the offence. The principles of Panchsheel as enunciated in the case of **Hanumant vs. State of Madhya Pradesh** reported in **AIR 1952 SC 343**, which has been discussed by the Hon'ble Constitution Bench in **Sharad Birdhichand Sarda** (*supra*), the relevant Paragraph '152' of the judgment in the case of **Sharad Birdhichand Sarda** (*supra*) is being reproduced hereunder for a ready reference:-

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

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“It is well to remember that in cases where the evidence is of a circumstantial nature, the



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

25. We would also refer a judgment of the Hon’ble Supreme Court in the case of **Dilavar Hussain and Others versus the State of Gujarat and Another** reported in (1991) 1 SCC 253, wherein the Hon’ble Supreme Court has held that the questions as to who, why, when, where and how are required to be explained by the prosecution while establishing the chain of criminological evidence. The relevant observation of the paragraphs no. ‘3’ and ‘4’ are being extracted hereunder:-

“3. All this generated a little emotion during submissions. But sentiments or emotions, howsoever strong, are neither relevant nor have any place in a court of



law. Acquittal or conviction depends on proof or otherwise of the criminological chain which invariably comprises of why, where, when, how and who. Each knot of the chain has to be proved, beyond shadow of doubt to bring home the guilt. Any crack or loosening in it weakens the prosecution. Each link, must be so consistent that the only conclusion which must follow is that the accused is guilty. Although guilty should not escape (sic). But on reliable evidence, truthful witnesses and honest and fair investigation. No free man should be amerced by framing or to assuage feelings as it is fatal to human dignity and destructive of social, ethical and legal norm. Heinousness of crime or cruelty in its execution however abhorrent and hateful cannot reflect in deciding the guilt.

4. Misgiving, also, prevailed about appreciation of evidence. Without adverting to submissions suffice it to mention that credibility of witnesses has to be measured with same yardstick, whether, it is ordinary crime or a crime emanating due to communal frenzy. Law does not make any distinction either in leading of evidence or in its assessment. Rule is one and only one namely, whether depositions are honest and true. Whether the witnesses, who claim to have seen the incident in this case, withstand this test is the issue? But before that some legal and general questions touching upon veracity of prosecution version may be disposed of.”



26. On going through the entire materials on the record, we are of the considered opinion that the findings of the learned Trial Court are based on the appreciation of the evidences on the record, cannot be found fault with. In an appeal against acquittal, unless the judgment of learned Trial Court is found to be perverted, no interference would be required.

27. We, therefore, find no merit in the present appeal and is, accordingly, dismissed.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

Harsh/ Anand-

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