IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.203 of 2025
Arising Out of PS. Case No.-198 Year-2004 Thana- MASHRAK District- Saran

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Jhalku Sah S/O Late Rangi Lal Sah Resident of Village- Madarpur, Police Station- Mashrakh, District- Saran. ... ... Appellant

Versus

1. The State of Bihar
2. Satinath Sah S/O Mewa Sah R/O Village- Madarpur, P.S- Mashrakh, Distt.- Saran.

... ... Respondents

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Appearance :

For the Appellant	:	Ms. Aashi Wats, Advocate
For the Respondent No. 2	:	Mr. Manoj Kumar Yadav, Advocate
For the State	:	Mr. Sujit Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 10-09-2025

The present criminal appeal has been preferred under Section 413 of *Bharatiya Nagarik Suraksha Sanhita, 2023* against judgment of acquittal dated 20.06.2024 passed by the learned Additional District and Sessions Judge-9th, Saran, Chapra in Sessions Trial No. 242 of 2010, arising out of Masrakh P.S. Case No. 198 of 2004, whereby Respondent No. 2 has been acquitted by the learned Trial Court from the charge of Sections 302/34, 201/34 of Indian Penal Code.

2. Vide order dated 03.04.2025, notices were issued to the Respondent No. 2, upon which he appeared by filing Vakalatnama through learned Advocate, Mr. Manoj Kumar Yadav.

3. The prosecution case, as per *fardbeyan* of the

informant, in brief, is that the informant used to sell fruits and vegetables in Siliguri. On 11.09.2004 at about 09:00 p.m., the daughter-in-law of the informant told the informant, that the father of the informant had gone with the wife of Respondent No. 2 to see her ailing buffalo last evening but had not returned. The informant and his mother came to their village from Siliguri and made a hectic search of his father(the deceased) but all the efforts went in vain. On 14.09.2004, at about 14:00 p.m., on the information about a foul smell near the *Baans-Kathi* of Heeralal Ram, the informant and others went there and found the dead body of his father in a decomposed condition, which was identified from the piece of *dhoti* and *chappal*. The informant raised suspicion that the wife of Respondent No. 2 with the help of others has committed the alleged occurrence and threw the dead body near the *Baans-Kathi.*

4. On the basis of *fardbeyan* report of the informant, Masrakh P.S. Case No. 198 of 2004 was instituted under Sections 302/34, 201/34 of Indian Penal Code and investigation was taken up by the Police. The Police after investigation submitted charge-sheet against Respondent No. 2 and, accordingly, cognizance was taken. Thereafter the case was committed to the Court of Sessions. Charges were framed

against the accused persons under Sections 302/34, 201/34 of Indian Penal Code to which they pleaded not guilty and claimed to be tried.

5. During the trial, the prosecution examined altogether eight prosecution witnesses i.e. PW1 Kamla Manjhi, PW2 Subhash Manjhi, PW3 Sudama Devi, PW4 Ganesh Sah, PW5 Ashrafi Sah, PW6 Jhalku Sah (informant), PW7 Champa Devi and PW8 Dr. Pankaj Kumar. The prosecution has also produced certain documents which were marked as 'Exhibits' i.e., Identification of Signature of the informant on *fardbeyan*, Identification of Signature of the informant on protest petition, Identification of Signature of the informant on application and Identification of Signature of the Doctor on Bone Injury Report. No witness has been examined on behalf of the defence. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. and after conclusion of trial, learned Trial Court has acquitted the accused persons.

6. The learned Trial Court on the basis of the materials available on record, and the evidence produced before the Court, acquitted the accused persons observing that the alleged occurrence is based on circumstantial evidence and, in

the cases of circumstantial evidence, it is most important that the links of the incident should be connected to each other. The Trial Court has further observed that no one has seen the deceased going with the accused and the accused has been implicated only due to past enmity. The relevant part of the impugned order under Paragraph-19 is reproduced as under:

> "प्रस्तुत घटना परिस्थितिजन साक्षय पर आधारित है। परिस्थितिजन साक्षय मे यह सबसे महत्वपूर्ण होता है कि घटना की कड़ी एक दुसरे से जुड़ी होनी चाहिए, यदि घटना की कड़ी एक दुसरे से नही जुड़ती है तो अभियोजन पक्ष मुकदमे को साबित करने में विफल होता है। मृतक को अभियुक्त के साथ जाते हुए किसी ने नही देखा है, मात्र पूर्व दुश्मनी के कारण अभियुक्त को फँसा दिया गया है। अभियोजन की ओर से परिक्षित साक्षियो के साक्षय मे न तो तारत्मया है और न ही बल है बल्कि एक दुसरे के विरोधाभाष है। ऐसी स्थिति में अभियोजन पक्ष अभियुक्तगण के विरुद्ध लगाए गए अंतर्गत धारा 302/34, 201/34 को सम्पूर्ण - युक्ति-युक्त संदेह से परे साबित नही कर सका है।"

7. Learned counsel for the appellant submits that the learned Trial Court has failed to consider the evidence of Champa Devi (PW-7) that the deceased was taken away by Respondent No. 2 and other on the pretext of seeing his ailing she-buffalo and thereafter, his dead body was recovered. He further submits that the learned Trial Court has also failed to consider that there is no motive for the informant to falsely

implicate Respondent No. 2.

8. The learned counsel for the respondent has submitted that there is no perversity in the judgment of the learned trial court, and the prosecution has failed to prove the guilt of the accused before the learned Trial Court. Therefore, the order of the learned Trial Court requires no interference in the present case.

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

10. The sole question that requires consideration by this Court is whether the impugned judgment requires any interference by this Court.

11. As per the evidence of PW-1, the occurrence is said to have been taken place approximately 8-10 years back at around 08:00 p.m. in the night. PW-2 in his evidence has stated that the alleged occurrence is of about 12-13 years ago, and he saw the deceased at around 10:00 p.m. in the night. PW-3 in his evidence has stated that the alleged occurrence is said to have taken place 11 years back at around 09:00 p.m. in the night. Therefore, there is a material inconsistency in the evidence of the prosecution witnesses regarding the date and time of occurrence.

12. As per the FIR, the date of the alleged occurrence is between 10.09.2004 (when the accused was last seen) and 14.09.2004 (when the body of the deceased has been found). The FIR was instituted on the date of recovery of the body, i.e., on 14.09.2004, and the *post mortem* examination was conducted on the same day. In his evidence, the Doctor (PW-8) had opined that the soft tissue of the body that was received was decomposed, and death had taken place 1-2 months back from the date of examination of the dead body. If the opinion of the Doctor with regard to the death of the deceased is accepted, the date of occurrence itself is not proved. Thus, from the evidence of the Doctor, it can be said that no case was instituted for a period of 1-2 months from the date of missing of the deceased. In light of these facts, we find that the date of the alleged occurrence has not been established by the prosecution in this case.

13. Further, the Doctor opined that the cause of death could not be ascertained by the him. In his evidence, PW-3 has stated that the body of the deceased was found in a gunny bag, which were cut into pieces. PW-4 has also stated in his cross-examination that the body of deceased was found in pieces, with legs and throat cutoff. However, from the *post*

mortem report and the evidence of the Doctor, it is evident that a decomposed body was recovered which was intact and not in pieces. Thus, the manner of occurrence has also been not proved by the prosecution in the present case.

14. In the present case, the sole independent witness (PW-2) has been declared hostile, however he has stated in his evidence that the he only saw the deceased going around 10 P.M. and has no further information regarding the alleged occurrence. It is also important to note that in his statement before the Trial Court, PW 2 has stated that he never made any statement before Police. Further, the Investigating Officer has also not been examined in the present case, and as such serious doubts are cast on the date and the manner of the alleged occurrence.

15. The present case is a case of circumstantial evidence where the accused persons have been put to trial, solely on basis of the fact that the deceased was last seen with the wife of the respondent No. 2. However, PW-2 in his evidence stated that he only saw the deceased going at 10:00 p.m. No other corroborative evidence has been conclusively proved by the prosecution and the chain of circumstances have not been completed and proved by the prosecution. In cases of

circumstantial evidence, the prosecution needs to complete the chain of circumstance in a manner where no gap is left. The apex court in **C. Chenga Reddy v. State of A.P.**, as reported in **(1996) 10 SCC 193** held the following:

> *"21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence……"*

In the present case, the prosecution has been unable to establish the date of the alleged occurrence, as the prosecution witnesses have stated multiple date of occurrences and the doctor has also opined a different date of alleged occurrence in his evidence. Further, there are material inconsistencies in the statements made regarding the recovery of the body of the deceased, and as such the manner of occurrence has not been proved. Thus, the prosecution has been unable to prove the case beyond the shadow of reasonable doubts.

16. The findings recorded by the learned Trial Court do not suffer from any illegality and perversity. In a criminal

case, it is incumbent upon the prosecution to prove the guilt of the accused beyond the shadow of a reasonable doubt. Wherever, any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of doubt.

17. In criminal appeal against acquittal what the Appellate Court has to examine is whether the finding of the learned court below is perverse and *prima facie* illegal. Once the Appellate Court comes to the finding that the grounds on which the judgment is based 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 v. State**, as reported in **1951 SCC 1207**:-

> *"13. It is well established that in an appeal under Section 417 of the Criminal Procedure Code, 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."

18. In **Chandrappa v. State of Karnataka**, as reported in **(2007) 4 SCC 415**, the Supreme Court reiterated this view and laid down the general principles to followed while dealing with appeal against an order of acquittal. The relevant paragraph of the judgment is reproduced as under:

> *"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 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."

19. The Apex Court further reaffirmed this view in **Mrinal Das v. State of Tripura**, as reported in **(2011) 9 SCC 479**, Paragraphs 13 & 14 of which read as under:

"13. *It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final court of fact, is fully*

> *competent to reappreciate, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal.*
>
> ***14.*** *There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference……."*

20. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case if the order is clearly unreasonable, it is a compelling reason for

interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the Appellate Court must not take a different view only because another view is possible. It is because the trial Court has the privilege of seeing the demeanor of witnesses and, therefore, its decision must not be upset in absence of strong and compelling grounds.

21. In view of the above, we do not find any illegality and perversity in the findings recorded by the Trial Court.

22. Accordingly, the present appeal is dismissed.

23. Pending application(s), if any, shall stand disposed of.

24. Before parting from this order, we would like to mention that Ms. Aashi Wats has assisted this Court with her best ability and full sincerity.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Sachin/-

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