

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1344 of 2024**

Arising Out of PS. Case No.-259 Year-2020 Thana- ALAMNAGAR District- Madhepura

Kuldeep Singh S/O Late Manchu Singh Resident of Village- Jhandapur Basa,
P.O- Gangapur Basa, P.S- Alam Nagar (Ratwara), Distt.- Madhepura.

... .. Appellant/s

Versus

1. The State of Bihar
2. Navin Kumar S/O Naresh Singh R/O Village- Gangapur Kachhari Tola, P.S- Alamnagar (Ratwara), Distt.- Madhepura.
3. Bikram Kumar S/O Dashrath Rai R/O Village- Gangapur Kachhari Tola, P.S- Alamnagar (Ratwara), Distt.- Madhepura.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Amrendra Kumar, Advocate
For the State : Mr. Abhimanyu Sharma, APP

**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)**

Date: 22-08-2025

The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure against the judgment of acquittal dated 09.08.2024 passed by the learned Additional District & Sessions Judge- 2, Madhepura in Sessions Trial No. 30 of 2022, arising out of Alamnagar P.S. Case No. 259 of 2020, whereby Respondent Nos. 2 and 3 have been acquitted by the learned Trial Court from the charge of Sections 363, 364, 302, 201/34 and 120(B) of the Indian Penal Code.

2. The prosecution case, in brief, is that on 19.12.2020



at about 2:00 PM, informant's son Pawan Kumar went with two persons on a motorcycle. When the informant's son did not return home that night, the informant made enquiries with relatives and other known persons, but was unable to obtain any information regarding his whereabouts and the mobile phone of the informant's son was found switched off. Based on these circumstances, the informant strongly suspected that his son has been kidnapped and murdered by the two unknown accused persons.

3. On the basis of written statement of the informant, Alamnagar P.S. Case No. 259 of 2020 was instituted under Sections 363, 304, 302, 201/34 and 120(B) of Indian Penal Code and investigation was carried out by the police. The police after investigation submitted charge-sheet against Respondent Nos. 2 and 3 and, accordingly, cognizance was taken. Thereafter the case was committed to the Court of Sessions. Charges were framed against the accused persons to which they pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined altogether six witnesses i.e. PW1- Raj Kishore Kumar Singh, PW2- Janglee Singh, PW3- Ajeet Kumar, PW4- Shambhu Singh/Shambhu Prasad Singh, PW5- Kuldeep Singh, PW6-



Ram Niwas Chaudhary. The prosecution has produced certain documents which are marked as Exhibits, namely Exhibit P1- Endorsement of case and Exhibit P2- Charge Sheet No. 19/21 dated 30.03.2021. 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.

5. Learned counsel for the appellant has submitted that the learned Trial Court has failed to consider the evidence of the prosecution witnesses and has passed the judgment in a very mechanical manner without due consideration of the facts of the case.

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

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

8. Upon scrutiny of materials on record, it is evident that the prosecution has relied on the fact that the dead body was recovered on the basis of the statement made by accused Naveen Kumar. Upon perusal of evidence on record, this Court finds that although such recovery is stated to have been made,



the statement itself was recorded by the police and not before a Magistrate under Section 164 of the Code of Criminal Procedure. As per Sections 25 and 26 of the Indian Evidence Act, 1872, a confession made to police cannot be admitted in evidence. Only such part of the information which distinctly relates to discovery of a fact under Section 27 of the Evidence Act can be used, but even such discovery, without independent corroboration, cannot establish the guilt of the accused. In the present case, there is nothing on record to show that apart from the alleged recovery, there is any reliable evidence connecting Naveen Kumar with the offences of kidnapping and murder. At best such statement of Naveen Kumar can be used only to prove the recovery of the dead body. Hence, while the prosecution may have shown recovery, it does not carry evidentiary force sufficient to hold the accused guilty of the charges.

9. Further, this Court notices that no post-mortem of the dead body was conducted. The law is well settled that post-mortem examination is the best medical evidence to ascertain the cause of death. In absence of post-mortem, the prosecution has not been able to prove whether the death was homicidal, suicidal, or accidental. Without proof of cause of death, the very foundation of the prosecution case remains un-established. The



omission to hold post-mortem, without any explanation, is a serious lapse which goes to the root of the matter.

10. Further, this Court finds that the First Information Report has not been proved in the present case. The FIR is the earliest version of the alleged occurrence, and though not substantive evidence, it serves as an important corroborative document. Since the FIR has not been proved in the present case, therefore, it weakens the case of the prosecution.

11. The Court also finds that the under trial accused were not identified by the witnesses during the trial, and also prosecution has not conducted any test identification parade during investigation. No witness has identified the accused persons in a manner known to law. Identification of the accused is an important step in investigation to connect the offenders with the crime. When no test identification parade is held and no proper identification is made, it is unsafe to hold that the persons arraigned as accused are the actual culprits.

12. Thus, this Court finds that the prosecution has failed to prove the charge beyond reasonable doubt. The absence of post-mortem, reliance on confession which is admissible to the extent of recovery of the dead body and not beyond that, unproved FIR, and lack of identification of the accused are



serious lapses which go to the very root of the prosecution story. In such circumstances, the benefit of doubt must go to the accused.

13. Further, this Court believes that the principle of “last seen” cannot be invoked in the present case, as the very foundation for its application is absent. As per the written statement made by the informant, the deceased was last seen leaving with two unknown persons and at no stage during investigation or trial has the prosecution established the identity of those persons or connected the accused with them. The law is clear that before the inference of last seen can be drawn, it must be proved that the deceased was last in the company of the accused, and such identity must be established beyond reasonable doubt. In the absence of any corroborative evidence, conviction cannot be made on mere conjecture of last seen. As such, the “last seen” theory has no application here.

14. The deficiencies highlighted above are not minor irregularities but fatal defects striking at the root of the prosecution case. It is a cardinal principle of criminal jurisprudence that the burden is always on the prosecution to prove its case beyond reasonable doubt, and if any doubt arises, the accused is entitled to the benefit thereof. This principle was



emphatically laid down in *Kali Ram vs. State of Himachal Pradesh* reported in (1973) 2 SCC 808, where the Supreme Court observed that it is better that ten guilty persons escape than one innocent suffers, it was observed in Paragraph No. 27 as under:

“27. It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilized society. Suppose an innocent person is convicted of the offence of murder and is hanged, nothing further can undo the mischief for the wrong resulting from the unmerited conviction is irretrievable. To take another instance, if an innocent person is sent to jail and undergoes the sentence, the scars left by the miscarriage of justice cannot be erased by any subsequent act of expiation. Not many persons undergoing the pangs of wrongful conviction are fortunate like Dreyfus to have an Emile Zola to champion their cause and succeed in getting the verdict of guilt annulled. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice. Such a risk can be minimised but not ruled out altogether. It may in this connection be apposite to refer to the following observations of Sir Carleton Allen quoted on page 157 of "The Proof of Guilt" by Glanville Williams, 2nd Edn...:



I dare say some sentimentalists would assent to the proposition that it is better that a thousand or even a million, guilty persons should escape than that one innocent person should suffer; but no responsible and practical person would accept such a view. For it is obvious that if our ratio is extended indefinitely, there comes a point when the whole system of justice has broken down and society is in a state of chaos.”

15. We find that 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.

16. 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 *H.D. Sundara and Others vs. State of*



Karnataka reported in (2023) 9 SCC 581 in Paragraph No. 8, the Hon'ble Supreme Court, has held as under:

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC can be summarised as follows:

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

8.2. 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.”



17. In the case of *Ghurey Lal vs. State of Uttar Pradesh* reported in (2008) 10 SCC 450 in Paragraph No. 75, the Hon'ble Supreme Court had the same view and observed as under:

“75. 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.”

18. 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 demeanour of witnesses and, therefore, its decision must not be upset in absence of strong and compelling grounds.

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

20. Accordingly, the present appeal is dismissed at the admission stage itself.



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

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Anushka/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.09.2025
Transmission Date	

