



**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.517 of 2023**

Arising Out of PS. Case No.-54 Year-2007 Thana- KOPA District- Saran

Renu Devi @ Renu Kunwar Wife Of Late Tarkeshwar Singh (Deceased)
Daughter-in-law of Late Ganesh Singh (PW-3 Informant since deceased) R/o
Village- Patila, P.S.- Kopa, District-Saran

... .. Appellant

Versus

1. The State of Bihar
2. Rajesh Ram Son of Heera Lal Ram R/o Village- Patila, P.S.-Kopa, District-Saran

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Sanjay Singh, Sr. Advocate Mr. Rudrank Shivam Singh, Advocate Mr. Ranvir Pratap Singh, Advocate
For the State	:	Mr. Satya Narayan Prasad, APP
For the Pvt. Respondent	:	Mr. P.N. Shahi, Sr. Advocate Mr. Anjani Parashar, Advocate Mr. Madhukar Anand, Advocate Mr. Shubham Kumar Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 02-04-2026

The present appeal has been preferred by the wife of the deceased and daughter-in-law of the informant under proviso to Section 372 of the Code of Criminal Procedure (in short 'CrPC'), 1973 (since repealed).

2. Challenge in this appeal is to the judgment of acquittal dated 28th March, 2023 (hereinafter referred to as the 'impugned judgment') passed by learned 3rd Additional Sessions Judge-cum-Special MP/MLA/MLC Court, Saran at Chhapra





(hereinafter referred to as the 'learned trial court') in Sessions Trial No. 552 of 2007 arising out of Kopa P.S. Case No. 54 of 2007 registered under Sections 302, 120B, 201/34 of the Indian Penal Code (in short 'IPC') by which the accused-respondent no.2 who was facing trial under Sections 302/34, 201/34 and 120B/34 IPC has been acquitted.

3. By the impugned judgment, the learned trial court has held that the prosecution has failed to prove the last seen theory against the accused Rajesh Ram, therefore, the onus of explaining special knowledge as envisaged under Section 106 of the Evidence Act (since repealed) would not arise. The learned trial court has further held that the prosecution has failed to prove the guilt of the accused by establishing the chain of circumstantial evidence and no motive of the accused to cause death of the accused has been proved. It has also been held that on the basis of medical evidence as well as the evidence on the facts, the homicidal death of the deceased Tarkeshwar Singh has not been proved.

4. In its ultimate analysis, the learned trial court declared that because of lack of evidence to prove the charges, the accused Rajesh Ram is given benefit of doubt and he stands acquitted of the charges framed against him under Sections 302/34, 201/34 and 120B/34 of the IPC.





Prosecution Case

5. The prosecution case is based on the *fardebayan* of Ganesh Singh (PW-3) recorded by Sub-Inspector of Police Laxman Prasad (PW-7) on 02.07.2007 at 11:30 Hrs. on the part land of Bali Thakur in Village Patila in the District of Saran.

In his *fardebayan*, the informant has alleged that in the morning at 08:30 AM when he was sitting at his *darwaja*, he heard *hulla* in the village that the dogs are pulling away a dead body which was buried under the land in between the plot of Bali Thakur and Gajnath Prasad. On receipt of this information, he took his grandson Rajan (PW-1) and Kundan Singh (PW-4) with him and reached at the plot of Bali Thakur where he found that towards southern ridge of the plot of Bali Thakur in the direction of West-East, a human skeleton of a dead body was lying on the land and the dogs were pouncing and eating the same. The informant further stated that the face and the upper part above the waist of the body had decomposed (सर गल गया था). On the bone of the neck, one chain and in the left hand one torn old red-blue and white color bushirt part and in the body one mairon and old full pant which were torn were there and he identified that it was his son Tarkeshwar Singh. The informant claimed that 200-250 villagers from neighboring places assembled there.





He alleged that on 27.06.2007 during the night hours at 09:00 PM his co-villager Rajesh Ram, son of Hira Lal Ram had come to his house/darwaja and took away his son Tarkeshwar Singh with him on the pretext of attending the marriage ceremony of the daughter of a co-villager namely Bharat Shah. He claimed that he had also gone there with Rajan Singh and Munindra Singh but before he reached they had already left the place. Thereafter, the informant took his dinner and he left then he saw that at the door of Sudama Sah and Raghuvir Sah, three motorcycles were parked and about 8 to 10 people were having discussions. Thereafter the motorcycles started and the first motorcycle was being driven by Satyendra Yadav, the informant's son was sitting on this motorcycle between Satyendra Yadav and an unknown person. On second motorcycle, Dinesh Pandit, Sunil Sah and one unknown person were sitting and on the third motorcycle Rajesh Ram and two unknown persons were sitting. All the three motorcycles went away towards the western side of the village. It is alleged that when the informant's son did not return till 30.06.2007, informant sent his grandson to enquire about the victim upon which he was informed that the victim will return in 2-3 days. When the victim did not return till 30.06.2007, then informant himself went to the





house of Rajesh Ram where he was informed that his son will return on second or third.

On 02.07.2007, while the informant was sitting at his door he heard *hulla* that one dead body has been found buried in southern ridge in the village and dogs are pouncing and eating the dead body. When the informant went to that place there were 200-250 people there and on seeing the bushirt, pant and the chain in the neck, he identified that the dead body was of his son Tarkeshwar Singh. The informant believes that all the six persons have murdered his son Tarkeshwar Singh.

6. On the basis of the *fardebayan* of Ganesh Singh (PW-3), police registered Kopa P.S. Case No. 54 of 2007 dated 02.07.2007 against six named accused persons and four unknown accused persons but after investigation, police submitted Charge-sheet No. 74 of 2007 dated 26.10.2007 only against accused Rajesh Ram under Sections 302, 201, 120B/34 IPC. At this stage, the investigation against the other accused persons remained open.

7. Vide order dated 29.10.2007, the learned CJM, Saran took cognizance of the offences under above mentioned sections and on finding that the offences alleged against the accused are liable to be tried by a Court of Sessions, the records were committed to the Court of Sessions where the charges were





explained to the accused in Hindi who denied the same and claimed to be tried. Accordingly, vide order dated 12.01.2008, charges were framed under Sections 302/34, 201 and 120B IPC against the accused-respondent no.2 Rajesh Ram.

8. In course of trial, the prosecution has examined altogether seven witnesses and exhibited several documentary evidences. The description of the prosecution witnesses and the exhibits are given hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Rajan Kumar
PW-2	Munindra Singh
PW-3	Ganesh Singh
PW-4	Kundan Singh @ Kundan Kumar
PW-5	Dr. Umesh Sharma
PW-6	Dr. Shambhu Nath Singh
PW-7	Laxman Prasad

List of Exhibits on behalf of Prosecution

Exhibit '1'	Signature of informant Ganesh Singh on the fardbeyan
Exhibit '1/1'	Signature of witness Ganesh Singh on the carbon copy of Inquest Report
Exhibit '2'	Carbon copy of postmortem report of Tarkeshwar Singh
Exhibit '3'	Signature of Dr. Shambhu Nath Singh on the postmortem report of Tarkeshwar Singh
Exhibit '3/1'	Signature of Dr. S.K. Chakiar on postmortem report
Exhibit '4'	writing and signature of SHO Laxman Prasad on the fardbeyan of Ganesh Singh
Exhibit '5'	Signature of Rajan Singh on fardbeyan





Exhibit '6'	Signature of SHO Laxman Prasad on Formal FIR
Exhibit '7'	Carbon copy of Inquest Report
Exhibit '8'	Charge-sheet No. 74 of 2007 dated 26.10.2007
Exhibit '9'	S Tr 552 of 2007

9. Thereafter, the statement of the accused Rajesh Ram was recorded under Section 313 CrPC. He claimed innocence and in his defence, he submitted that he is engaged in agriculture work and he had been only on talking terms occasionally with the deceased. He claimed that at the instance of some other person, he has been falsely implicated in this case.

10. The defence did not adduce any oral or documentary evidence.

Findings of the learned Trial Court

11. The learned trial court has examined the oral and documentary evidences and recorded a finding leading to acquittal of the accused. The findings recorded by the learned trial court have been briefly stated by this Court at the top of this judgment, hence those are not reiterated at this stage.

Submissions on behalf of the appellant

12. Mr. Sanjay Singh, learned Senior Counsel representing the victim submits that the learned trial court has erred in assessing and considering the deposition of the prosecution witnesses, more particularly of the eyewitnesses PW-





1, PW-2 and PW-3. According to him, these witnesses are consistent and their testimonies have not been impeached in the process of cross-examination by the defence.

13. Learned Senior Counsel further submits that it was the accused, Rajesh Ram, who had called the deceased from his house, later, he was seen with the other accused persons leaving the place on a motorcycle, whereafter the deceased did not return. These are the circumstances which ought to have been taken into consideration by the learned trial court.

14. Learned Senior Counsel further submits that the fact that on the inquiries by witnesses from the accused Rajesh Ram as to the whereabouts of the deceased, the accused answered them in affirmative that he would return soon indicates to the fact that he had knowledge about the circumstances after the deceased had left with the accused persons on the motorcycle.

15. Learned Senior Counsel submits that the learned trial court further failed to appreciate that at least three of the six named accused persons had admitted that they were on inimical terms with the deceased and therefore they had strong motive to kill him. The court also failed to consider that the dead body was recovered within one kilometer from the village and the trial court could not appreciate that the chain of circumstantial evidence was





complete, which the accused had not explained as required under Section 106 of the Evidence Act.

Submissions on behalf of the State and Respondent No. 1

16. On the other hand, learned Senior Counsel for the accused-respondent and learned Additional Public Prosecutor for the State have submitted that the learned trial court has meticulously examined the entire evidences on the record. It is only after examination of the entire evidences, the learned trial court concluded that the chain of circumstantial evidence has not been proved in this case.

17. It is submitted that in this case there is no eyewitness and the circumstantial evidence present on the record are not completing the chain of criminological events. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in **(1984) 4 SCC 116**, learned counsel submits that in a case based on circumstantial evidence, the prosecution is required to prove motive behind the killing, but in this case, the prosecution has completely failed to demonstrate any motive on the part of the accused.

18. It is submitted that the present case is based on last seen theory. The Hon'ble Supreme Court has settled the legal





position in this regard by holding that conviction of an accused cannot be made solely on the basis of last seen together theory. The circumstances preceding the last seen theory and the circumstances following the point of being so last seen are to be connected and established as a chain of events. It is submitted that in the present case, the prosecution has not brought on record any evidence regarding the events and circumstances followed from the point of deceased Tarkeshwar Singh having been called by the accused Rajesh Ram from his house and then being seen with other accused persons. The time gap between the last seen and the recovery of the dead body must be so proximate that any other possibility than the accused being the perpetrator of the crime be excluded. It is submitted that in this case there is a long gap of five days and the prosecution has not brought on record the intervening circumstances of those five days which connect or establish the chain of evidence. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda** (supra).

Consideration

19. We have heard the rival submissions and carefully perused the trial court's records.





20. The informant, Ganesh Singh (PW-3), has deposed that the deceased was his son. On 27.06.2007 at about 9:00 PM, marriage of the daughter of Bharat Sah was scheduled in his village and for attending said marriage, the accused had come to his house and took his son with him. PW-3 claimed that he along with his two grandsons, Rajan Kumar (PW-1) and Munindra Singh (PW-2), had also visited the place of marriage. According to him, after taking dinner, he found that his son and this accused went to the door of Sudama Sah, which is situated about 10 to 15 yards west from the house of Bharat Sah. This witness has stated that Rajesh Ram, Tarkeshwar Singh, Satyendra Yadav, Raghubir Sah, Sudama Sah, Dinesh Pandit and Sunil Sah were seen on three motorcycles at the door of Sudama Sah and all of them proceeded on those motorcycles. This witness has stated that on one motorcycle Satyendra Yadav, Tarkeshwar Singh and one unknown persons were seated, which was driven by Satyendra Yadav. He has accordingly narrated that who were sitting together on other two motorcycles. This witness has stated that when his son did not return in the night, **he went to the house of Rajesh Ram on 28.06.2007**, who informed him that he would return back within two to three days. He again visited house of Rajesh Ram on 30.06.2007 and this time Rajesh Ram is said to have informed him





that his son would return by second or third July. This witness went on to depose that his son did not return and on 02.07.2007 he got information that in the field of Bali Thakur one buried dead body was found upon which the dogs were pouncing and eating. This witness and his grandson Rajan went there and identified the dead body on the basis of the chain in the neck. He further deposed that police inspector arrived at the place where the dead body was found. His *fardebayan* was recorded and he put his signature thereon. The signature has been marked Exhibit '1' on his identification. This witness has further proved his signature on the inquest report as Exhibit '1/1'.

21. In his cross-examination, PW-3 could not tell the date of his deposition and the date which would fall day after tomorrow, but he could not tell the name of the month. He deposed that on 27.06.2007, he got registered this case and gave statement to the police on which the police had taken his LTI on 27.06.2007. He further deposed that the field of Bali Thakur where the dead body was found is about half kilometre from his house. He denied having knowledge that his son was involved in cases of dacoity, robbery, etc. or not. PW-3 has stated in paragraph '18' that he had not given information of missing of his son to any police officer or to any court. He has also stated that





there was no previous enmity between his son and the accused persons. He claimed that he had attended the marriage ceremony at the door of Bharat Sah which is situated west to his own house and the house of Raghuvir Sah is situated about 20 to 30 yards further west and also that the house of Rajesh Ram is situated 100 to 200 yards further west. This witness could not recall the colour, number or company of any of the motorcycles. He has stated that he went to the house of Rajesh Ram alone to enquire about the whereabouts of his deceased son and he has further deposed that the face of the dead body was completely decomposed and the dogs had eaten up most parts of the body. The chain had remained in the neck but the police officer did not make the seizure list of the same. The inquest reports were prepared in between 12 o'clock and 1:00 PM and till then the dead body remained there. This witness has stated that he could identify the dead body on the basis of chain found in the neck. This witness denied the suggestion of the defence that the dead body was not identifiable and neither anybody else could have identified that the dead body was of deceased Tarkeshwar Singh. The defence further suggested that Rajesh Ram was selected in police department and this witness was jealous about that and for that sake, he falsely deposed in this case.





22. On examining the evidence of PW-3, it is evident that he did not give the correct date of registration of the FIR, he claims to have gone to the house of Rajesh Ram alone to enquire about the whereabouts of his deceased son which seems to be highly unnatural.

23. This Court further finds that this witness himself states that the dead body was completely decomposed and the dogs had eaten up most parts of the body. He clearly stated that he could identify the dead body of his son on the basis of chain found in the neck but it is also admitted that the police officer did not make any seizure list of the same. Thus, on the point of identification of the dead body, the only source of identification being the chain said to have been found in the neck of the deceased has not been brought in evidence as no seizure list of the same was prepared.

24. This Court finds that in this case Bharat Sah whose daughter's marriage was fixed on the said day has not been examined by the prosecution. He would have been a material witness to say as to whether the informant, his two grandsons and the deceased son had attended the marriage ceremony of his daughter. Thus, there is no evidence on the record to show that the informant and his two grandsons namely Rajan Kumar and





Munindra Singh had gone to attend the marriage ceremony of the daughter of Bharat Sah.

25. The S.H.O. of Kopa Police Station has been examined as PW-7 in this case. He has deposed that he had inspected the place of occurrence and he had found that a five feet wide in length and three feet in width with two and half feet deep ditch was created and the human skeleton of the dead body was lying in a decomposed condition. He has given the description of the place of occurrence. He has stated in paragraph '6' that he had recorded the statement of several witnesses including Bharat Sah and they had supported the prosecution story. This witness has stated that it is not mentioned in the case diary as to whether there is any criminal antecedent of the accused and he was not aware of any prior enmity between the deceased and Rajesh Ram. He has stated that there was no muscle on the human skeleton and nobody told him that he had seen the occurrence.

26. This Court finds that so far as the I.O. (PW-7) is concerned, he has not brought on record any oral or documentary evidences so as to provide the proof of the circumstances that the deceased had gone with the accused to attend the marriage ceremony at the house of Bharat Sah and then he had left in the company of the accused from the house of Sudama Sah.





27. In this case, Dr. Umesh Sharma (PW-5) and Dr. Shambhu Nath Singh (PW-6) have been examined on behalf of the prosecution. PW-5 found the following ante-mortem injuries on the dead body.

“Body is in advanced stage of decomposition, Skull is present without any skin or muscles. Only bones were present. The body could not be recognised by face. It was recognised by Chaukidar 3/9 Kapil Manjhi, Rajan Singh S/o Tarkeshwar Singh and other relative present there as on inquest. Right fore arms absent. Right arms without any skin or muscles. In neck only cervical bones present no muscle or skin. Left arms only muscles attached, left fore arm only bone present. Both hands are absent. Upper half of the body almost turned into skeleton, ribs present, lungs and heart absent, lower half of the body has skin and muscle in abdomen. Only kidney and stomach was present. That too in putrefied state. Stomach empty.”

28. Shambhu Nath Sharma (PW-6) is a formal witness who has identified his signature on the postmortem report which is marked Exhibit ‘3’ and also identified the signature of Dr. S.K. Chakhyar which has been marked Exhibit ‘3/1’.





29. From a bare reading of the evidence of PW-5 it is evident that he could not give any opinion as to the cause of death and the dead body was in advanced stage of decomposition. The skull was without any skin or muscles and only bones were present. He has clearly stated that the body could not be recognised by face. It was recognised by the Chowkidar 3/9 Kapil Manjhi but said Kapil Manjhi has not been examined in this case. It has already been noted that the informant claims to have identified the body only on the basis of the chain present on the neck but that chain has not been seized and very presence of the said chain in the neck becomes highly doubtful.

30. We find that so far as PW-1, PW-2 and PW-4 are concerned, they are the close family members of the deceased and they have only deposed on the line of PW-3.

31. In a case based on circumstantial evidence it is evident that motive behind the occurrence has not at all been stated by the prosecution witnesses. In the case of **Sharad Birdhichand Sarda** (supra), the Hon'ble Supreme Court has considered as to how a case based on circumstantial evidence is required to be proved. We reproduce the relevant paragraphs of the said judgment 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 :

“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.”

1. 1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129

17. (1969) 3 SCC 198 : 1970 SCC (Cri) 55

18. AIR 1972 SC 656 : (1972) 4 SCC 625





32. In the case of **Kanhaiya Lal vs. State of Rajasthan** reported in **(2014) 4 SCC 715**, the Hon'ble Supreme Court while dealing with a case of “last seen theory” observed in paragraphs ‘11’, ‘12’ and ‘15’ as under:-

“**11.** The primary, if not the solitary basis of the conviction of the appellant is on the theory of last seen, as the deceased Kala along with accused Kanhaiya Lal visited the house of PW 4 Hurma at 9.00 p.m. on 31-8-2003. PW 4 Hurma did not fully support the prosecution case and was declared hostile. In his examination-in-chief he has stated that on the occurrence night he returned home at 8.00 p.m. and at about 9.00 p.m. accused Kanhaiya Lal and Kala came to his house and demanded daru and he gave one bottle and received a sum of Rs 15 from accused Kanhaiya Lal and they returned together and the next day morning the wife of Kala, PW 10 Shantibai came and inquired from him about her husband Kala and he told her about the visit of Kala with accused Kanhaiya Lal to his house the previous night. It is the testimony of PW 10 Shantibai that her husband Kala did not return home on the night of the occurrence and in the morning she went to the house of PW 4 Hurma and inquired and came to know from him about the visit of her husband along with accused Kanhaiya Lal to his house in the night. Though PW 4 Hurma was treated as a hostile witness, the above testimony of him is corroborated by the testimony of PW 10 Shantibai.

12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.

15. The theory of last seen—the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him.





The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in *Madho Singh v. State of Rajasthan*²”

33. On a complete analysis of the evidences available on the record, the detailed discussions made by the learned trial court and on reconsideration and reappraisal of the entire materials on the record, this Court is of the considered opinion that there is no perversity in the judgment of the learned trial court. This Court cannot reach to an irresistible conclusion with regard to the guilt of the appellant.

34. We are conscious that this is an appeal against acquittal and the principles governing an appeal against acquittal have been reiterated times and again by the Hon'ble Supreme Court. Reference in this regard is made to the judgment in the case of **H.D. Sundara and Others Vs. State of Karnataka** reported in **(2023) 9 SCC 581**. We quote paragraph '8' from the said judgment of the Hon'ble Supreme Court is being reproduced hereunder for a ready reference:-

“ 8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment¹ 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

2. (2010) 15 SCC 588 : (2012) 4 SCC (Cri) 767

1. State of Karnataka v. H.K. Mariyappa, 2010 SCC OnLine Kar 5591





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 reappraise the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising 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.”

35. In result, we find no merit in this appeal, it is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

I agree

(Shailendra Singh, J)

Rishi/-

AFR/NAFR	
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