

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.367 of 2016

Arising Out of PS. Case No.-124 Year-2011 Thana- KOCHAS District- Rohtas

Vikash Ranjan Singh @ Golu, Son of Sri Devendra Kumar Singh, Resident of
Village - Jagdeo Nagar, Railway Gumti, P.S. - Nawada, District - Bhojpur
Ara.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance:

For the Appellant	:	Mr. Kanhaiya Prasad Singh, Senior Advocate Mr. Jay Prakash Singh, Advocate Mr. Shambhu Sharan Singh, Advocate
For the Respondent	:	Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date: 04-03-2022

This appeal is directed against the impugned judgment of conviction dated 15.03.2016 and order of sentence dated 21.03.2016 passed by the learned Additional Sessions Judge-VIII, Rohtas at Sasaram (hereinafter referred to as the 'Trial Court') in Sessions Trial No.243 of 2013 arising out of Kochas P.S. Case No.124 of 2011 whereby and whereunder the sole appellant has been convicted for the offences punishable under Sections 302/34, 394 and 411 of the Indian Penal Code (for short 'IPC') and consequently, sentenced to undergo rigorous imprisonment for life and a fine of Rs.10,000/- and in



default of payment of fine to undergo rigorous imprisonment for a further period of six months under Section 302/34 of the IPC, rigorous imprisonment for ten years and fine of Rs.5,000/- and in default of payment of fine to undergo rigorous imprisonment for a further period of three months for the offence punishable under Section 394 of the IPC and rigorous imprisonment for two years under Section 411 of the IPC. All the sentences have been ordered to run concurrently.

2. The prosecution case is based on the self-statement of one Rajiv Nayan Kumar Singh (P.W.8), the Officer-in-charge of Kochas Police Station recorded on 12.12.2011 at 3:30 pm at NH-31 alleging therein *inter alia* that on 12.12.2011 at about 2:30 pm while he was on patrolling duty along with Sitaram Bhagat, an Assistant Sub Inspector of Police and home guard jawans namely Lalan Ram, Fulendra Kumar, Sanjiv Kumar and Om Prakash, he heard sound of firing from the eastern side and a *hulla* was raised that someone has sustained injury in the firing. Immediately, he proceeded towards that direction and saw a person lying on the road in front of the Girl's High School. He got down from his jeep and on physical examination found the person lying on the road dead. He had sustained gunshot injury in his head. The local people disclosed that the



killers had come in a white Scorpio vehicle bearing Registration No. UP-67H-4188. They threw the body of the driver after killing him and sped away with the vehicle towards the eastern direction. He deputed the home guard, Sanjiv Kumar near the dead body and proceeded towards the direction in which the miscreants had gone. After reaching at some distance, near Nowan College turning, he saw that the villagers had blocked road and got the Scorpio vehicle stopped. They started assaulting the three occupants of the Scorpio vehicle. He rescued them with the help of the members of the patrolling party and interrogated them. The person occupying the driving seat disclosed his name as Vikash Ranjan @ Golu son of Devendra Kumar Singh (appellant) the other person occupying the front seat of the vehicle disclosed his name as Bittu Kumar son of Krishna Paswan and the person occupying the rear seat disclosed his name as Ritesh Kumar @ Chhotak son of Chitranjan Paswan. They disclosed that they all are residents of Jagdeo Nagar, P.S.-Nawada, Dist.-Bhojpur. Thereafter, on search, from the right pocket of the trouser of Bittu Kumar, a country-made pistol and a Samsung mobile was recovered, from the trouser of Ritesh Kumar @ Chotak, one loaded country-made pistol and a Tata Indicom mobile was recovered and from



the possession of the appellant Vikash Ranjan @ Golu, one old Nokia mobile, one ATM of State Bank of India and three tickets of the Bihar State Road Transport Corporation were recovered. He found the pistol recovered from the possession of Bittu Kumar to have been fired recently and was heated up. All the recovered articles from the possession of the miscreants were seized and a seizure list was prepared. From the documents available in the Scorpio vehicle as well as from the driving license and the mobile no. written on the note book, he came to know that the driver of the said vehicle Md. Mokhtar Ansari Ahmad had taken the vehicle to Kochas from Mohania on hire. He, thus, suspected that the aforesaid three persons had killed the deceased and thrown his body on the road and looted the Scorpio vehicle.

3. On the basis of the aforesaid *self-statement*, the Station House Officer (for short 'SHO') of Kochas Police Station, Sanjiv Nayan Kumar Singh (P.W.8) registered Kochas P.S. Case No.124 of 2011 on 13.12.2011 at 1:30 am under Sections 302, 394 and 411/34 of the IPC as well as Section 27 of the Arms Act and handed over the investigation of the case to Nitish Kumar (P.W.7).

4. On completion of investigation, the Investigating



Officer submitted charge-sheet against the three accused persons named in the First Information Report (for short 'FIR') under Sections 302, 394, 411/34 of the IPC and Section 27 of the Arms Act.

5. On receipt of the police report submitted under Section 173(2) of the Code of Criminal Procedure (for short 'CrPC'), the learned Chief Judicial Magistrate, Sasaram took cognizance of the offences under which the charge-sheet was submitted vide order dated 12.03.2012.

6. After complying with the statutory requirements of Section 207 of the CrPC, the learned Chief Judicial Magistrate, Sasaram committed the case to the Court of Sessions vide order dated 01.05.2013. Since the accused Ritesh Kumar @ Chhotak and Bittu Kumar were found juvenile on the date of commission of the offence, their case was sent to Juvenile Justice Board, Sasaram for inquiry.

7. The learned Sessions Judge, Sasaram initially, transferred the case of the appellant to the court of the learned Additional Sessions Judge-IV, Rohtas at Sasaram, who charged the appellant for the offences punishable under Sections 302/34, 394/34, 411 of the IPC as well as Section 27 of the Arms Act vide order dated 13.06.2013. Since the appellant did not plead



guilty, the trial commenced. Subsequently, the case was transferred to the court of learned Additional Sessions Judge-VIII, Sasaram, who completed the trial and passed the impugned judgment of conviction and order of sentence.

8. During trial, the prosecution examined altogether ten witnesses. They are Muneer Ansari (P.W.1), Vinay Kumar Tiwari (P.W.2), Izhar Ansari (P.W.3), Sirajul Ansari (P.W.4), Riyazuddin Ansari (P.W.5), Irfan Ansari (P.W.6), Nitish Kumar (P.W.7), Rajeev Nayan Kumar Singh (P.W.8), Fulendra Kumar (P.W.9) and Rajeshwar Singh (P.W.10).

9. **Sanjeev Nayan Kumar Singh (P.W.8)**, who is the informant of the case, has corroborated his initial version on the basis of which the FIR was registered in his examination-in-chief. He stated that the personal search of the miscreants and the seizure of the articles were made in presence of two local persons, namely, Hussain Ansari (not examined) and Dinanath Dubey (not examined). He proved his own writing and signature, the signature of the witnesses Hussain Ansari and Dinanath Dubey and the signature of the accused persons on the seizure list, which was marked as Exhibit 2 by the Trial Court. He stated that when he contacted on the telephone number mentioned in the notebook found in the Scorpio vehicle, he



came to know the name of the driver of the vehicle. He had taken the vehicle to Kochas from Mohania. He stated that he prepared the inquest report, recorded his self-statement and paginated it. He proved his writing on his self-statement, which was marked as Exhibit 3. He also proved his own writing on the formal FIR, which was marked as Exhibit 4. He stated that he had arrested the miscreants. He identified the appellant in the dock and claimed to identify the other miscreants.

10. In cross-examination, he stated that from the Girl's High School where the dead body of the victim was lying, Nowan turning distance can be covered within 5 to 7 minutes. He stated that he does not know whether public carrier buses passing through the Nowan turning stops there or not. He admitted that at that place, there is a college and a rice mill and Nowan turning is a busy place. He admitted that the seized articles as per the seizure list were not available with him. He further admitted that after preparing the seizure list and the inquest report, he recorded his self-statement and handed over the investigation of the case to Nitish Kumar (P.W.7) at 5:00 pm on the date of incident itself. He admitted that the investigating officer had recorded his subsequent statement in which he had stated that about fifty persons had assembled at the place of



occurrence and they had assaulted the three accused persons with fists, slaps and belt. He denied the defence suggestion that the appellant had gone to the house of his relatives Sanjay Singh in village-Indore. He further denied the defence suggestion that the appellant had going to catch bus at Nowan more and, on seeing the crowd assaulting two persons, he went to prevent them but, on suspicion, he was also arrested. He further denied his knowledge that the seized mobile phones and the ATM card from the possession of the appellant belonged to his mother and father respectively.

11. **Muneer Ansari (P.W.1)** is the father of the deceased. In his examination-in-chief, he has stated that his son Mokhtar Ansari was a driver of a Scorpio vehicle, which was hired by some persons for going from Mohania to Kochas and while trying to run away with the vehicle, they killed his son by causing gunshot injury. He further stated that the appellant Vikash Ranjan @ Golu had caused gunshot injury to his son. He stated that local villagers chased and apprehended the miscreants whereafter the police came and made an inquiry from them. He stated that when he got information on phone about the incident, he came at the place of occurrence. He identified the appellant in the dock.



12. In cross-examination, P.W.1 categorically admitted that he had not witnessed the occurrence. He admitted that he came at the place of occurrence after receiving information. He stated that he had told the police that it was the appellant who had fired at his son and threw him out of the vehicle. He admitted that he had not stated before the police that when the appellant started fleeing away, he was apprehended by the police. He denied the defence suggestion that he had falsely deposed before the court.

13. **Izhar Ansari (P.W.3) and Sirajul Ansari (P.W.4)** have categorically stated in their evidence that they do not know anything about the incident and their statement was never recorded by the police. They were declared hostile by the Trial Court at the instance of the prosecution. They were cross-examined by the prosecution after being declared hostile but, nothing relevant transpired in their cross-examination.

14. **Riyazuddin Ansari (P.W.5)** is a formal witness. In his deposition, he has stated that he received information that Mokhtar Ansari has been killed. Thereafter, he went to the Kochas Police Station where he saw his dead body. The inquest report was prepared in his presence on which he had also put his signature. In cross-examination, he admitted that he had not



witnessed the occurrence. He further admitted that he does not identify any of the accused persons.

15. **Irfan Ansari (P.W.6)** is the brother of the deceased Mokhtar Ansari and son of Muneer Ansari (P.W.1). He is also a formal witness, who had signed on the inquest report. He admitted in cross-examination that the occurrence did not take place in his presence. He admitted that he does not identify any of the accused persons.

16. **Fulendra Kumar (P.W.9)** is a home guard Jawan. In his examination-in-chief, he has stated that the incident took place in the year 2011. On that day, at about 4:00 pm, he was on patrolling duty along with an Assistant Sub Inspector of Police. He stated that after ten minutes of the incident, the Assistant Sub Inspector of Police who was on patrolling duty with him was informed by someone on telephone about the incident and when they reached at the place of occurrence, they found a dead body which was brought by him at the police station. He stated that he does not know anything about the incident.

17. In cross-examination, he stated that he cannot say as to who had called the Assistant Sub Inspector of Police. He admitted that when he along with others was on patrolling duty on the date of occurrence, the SHO of the police station was



present at the police station. He admitted that the Investigating Officer made no inquiry from him regarding the incident.

18. **Rajeshwar Singh (P.W.10)** is also a formal witness. He is an advocate clerk. He has proved the writing and signature of Rajeev Nayan Kumar Singh, SHO of Kochas Police Station (P.W.8), the signature of Irfan Ansari and Riyazuddin Ansari on the inquest report, which was marked as Exhibit 5.

19. In cross-examination, he admitted that the inquest report was not prepared in his presence. He admitted that he does not know about the person whose inquest report was prepared. He further admitted that he does not know at which place the inquest report was prepared. He also admitted that he had no knowledge as to whether the person, who had prepared the inquest and the person who had put their signature on the inquest report are dead or alive and he does not know about the contents of the inquest report.

20. **Vinay Kumar Tiwari (P.W.2)** is the doctor, who conducted the postmortem examination on the body of the deceased Mokhtar Ansari. He has stated in his examination-in-chief that on 12.12.2011, he was posted at the Sadar Hospital, Sasaram as a Medical Officer. He has further stated that the body was identified by the Chaukidar Ramayan Nonia. He



found lacerated wound of ½” diameter which was cavity deep. He noticed blackening of skin around the wound. According to him, margin was inverted in right occipital region (entry wound) on the body of the deceased. He disclosed that the cause of death was shock and hemorrhage due to above noted injury caused by firearm. According to him, the time elapsed since death was 6-24 hours. He identified his handwriting and signature on the postmortem report, which was marked as Exhibit 1.

21. In cross-examination, he admitted that no violence mark was found around the wound. He further admitted that the fire was opened from 3-5 meters. He denied the defence suggestion that the postmortem report is not scientific.

22. **Nitish Kumar (P.W.7)** is the Investigating Officer of the case. He has stated in his examination-in-chief that on 12.12.2011, he was posted as a Sub Inspector of Police in the Kochas Police Station. On that day, he took over the charge of investigation of the case. In the process of investigation, he recorded the subsequent statement of the informant, inspected the place of occurrence, which was situated at Kochas-Dinara main road in front of Girl's High School. He found blood mark on the road, recorded the statements of witnesses, namely, Izhar



Ansari, Sirajul Ansari, Riyazuddin Ansari, Irfan Ansari, Muneer Ansari, Hasina Parwin (the owner of the vehicle). The Forensic team seized the sample of blood mark from the place of occurrence but, the FSL report was not received by him during investigation. He stated that the finger print and palm print of the accused Ritesh Kumar, Vikash Ranjan @ Golu and Bittu Kumar were taken before the learned Magistrate on paper and were sent to the Forensic Science Laboratory, Patna. He stated that he received the postmortem examination report and in the light of the order received by him from his superior officers, he submitted charge-sheet before the court. He stated that the witnesses, Riyazuddin Ansari, Irfan Ansari, Sirajul Ansari and Izhar Ansari had fully supported the prosecution case in their statements made before him. They had stated that it was the appellant Vikash Ranjan, who had killed the driver Mokhtar Ansari and threw his body on the road.

23. In cross-examination, he admitted that he has not recorded in the diary that blood mark was taken from the place of occurrence. He admitted that the report of finger prints and palm prints of the accused persons were not received by him. He further admitted that he made no investigation regarding the tickets of Bihar State Road Transport Corporation seized from



the possession of the appellant. He admitted that the SIM card found in the mobile seized from the possession of the appellant was issued in the name of Asha Devi, wife of Devendra Kumar. He further admitted that Devendra Kumar is the father of the appellant Vikash Ranjan. He also admitted that ATM card seized from the possession of the appellant was issued in the name of his father Devendra Kumar Singh. He admitted that during investigation no criminal antecedent of the appellant was found. When his attention was drawn towards the previous statement of Riyazuddin Ansari (P.W.5), he admitted that he had not stated before him that the appellant opened fire causing death of Mokhtar Ansari and threw his body from the Scorpio vehicle. He further admitted that Irfan Ansari (P.W.6) had also not stated him in his previous statement that the appellant had killed the driver Mokhtar Ansari and threw his dead body.

24. After the examination of the aforesaid ten witnesses on behalf of the prosecution, one Ram Hulas Dubey was summoned by the court to testify as a court witness. He produced the material exhibits in the court, i.e., country-made pistol, two cartridges, three mobile phones, one ATM card and three bus tickets, which were marked as Materials Exhibits. In cross-examination, he admitted that he has not brought the



malkhana register along with the material exhibits. He further admitted that the material exhibits produced before the court in the present case were also produced before the court in a separate proceeding. He admitted that he does not have any personal knowledge about the proceedings of the case. He admitted that he is not an arms expert. He further admitted that the material exhibits were not in sealed condition. They do not contain the *malkhana* register number. He admitted that he does not have any personal knowledge about the bus tickets and the ATM card presented before the court. He denied the defence suggestion that the material exhibits produced before the court are not in any way related to the present case and they have not been brought from the *malkhana*.

25. After the closure of the prosecution case, the Trial Court recorded the statement of the appellant under Section 313 of the CrPC in which he has pleaded his innocence.

26. Since the defence did not lead any evidence, the Trial Court closed the defence case, heard the arguments advanced on behalf of the parties and pass the impugned judgment convicting the appellant and sentencing him in the manner stated hereinabove.

27. Assailing the impugned judgment, Mr. Kanhaiya



Prasad Singh, learned senior counsel for the appellant submitted that the Trial Court has erred in law as well as on facts in the present case. He contended that there is complete lack of legal evidence on the basis of which the Trial Court could have reached at a conclusion that the prosecution has been able to prove its case beyond reasonable doubt. He submitted that neither the Scorpio vehicle was seized during investigation nor the same was exhibited during trial nor any witness has stated that he saw the appellant in the vehicle in question. He submitted that the Trial Court has not given any finding regarding the stolen property and its recovery from the possession of the appellant and, on this ground alone, the impugned judgment of conviction under Section 394 and 411 of the IPC is fit to be set aside. Mr. Singh further submitted that none of the witnesses examined during trial claimed to have seen the appellant committing the crime. The Assistant Sub Inspector of Police and the Home Guard Jawans except Fulendra Kumar (P.W.9), who were on patrolling duty have not been examined during trial. The seizure list witnesses have also not been examined during trial. The FSL report pertaining to the blood sample collected from the place of occurrence and the finger prints and palm prints of the appellant was not obtained



by the Investigating Officer. He contended that the medical evidence is also inconsistent with the prosecution case. He contended that the conviction of the appellant is based on conjecture and surmises.

28. On the other hand, Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State submitted that the witnesses examined during trial are consistent on the point that the accused persons including the appellant looted the Scorpio vehicle, killed its driver and threw his dead body on the road in front of Girl's High School. She contended that it has come in evidence that the appellant was caught by the villagers when he was trying to escape with the looted vehicle and at the time of his arrest, he was sitting on the driver's seat of the alleged Scorpio vehicle. The two other accused persons possessing illegal firearms were also found present in the vehicle with him. She contended that the evidence of the SHO and the Investigating Officer would also suggest that the appellant and his two accomplices had looted the Scorpio vehicle, killed its driver and threw his dead body on the road. Hence, the conviction of the appellant for the offences under Sections 302, 394 and 411 of the IPC is fully justified.

29. We have heard the submissions made on behalf of



the parties and carefully perused the materials available on record.

30. From the testimonies of the witnesses, it would be evident that Muneer Ansari (P.W.1), father of the deceased Mokhtar Ansari is a hearsay witness. He has admitted that he had not witnessed the occurrence and had come at the place of occurrence after the incident had taken place. Izhar Ansari (P.W.3), Sirajul Ansari (P.W.4) have not supported the prosecution case. They have been declared hostile by the court at the request of the prosecution. In their cross-examination, by the prosecution also, nothing relevant came out warranting conviction of the appellant. We further find that Riyazuddin Ansari (P.W.5) and Irfan Ansari (P.W.6) are formal witnesses. They are witnesses to the inquest. In their cross-examination, they have admitted that they had not witnessed the occurrence. They admitted that they did not identify any of the accused persons involved in the crime. Similarly, Rajeshwar Singh (P.W.10), an advocate clerk, is also a formal witness, who has identified the writing and signature of the SHO of Kochas Police Station and the signature of Irfan Ansari and Riyazuddin Ansari on the inquest report. In his cross-examination, he has denied any knowledge about the case. He further denied any



knowledge about the contents of the inquest report as well as the place where the inquest report was prepared.

31. Thus, it would be evident that from the evidence of P.Ws.1, 3, 4, 5, 6, and 10, no inference of guilt against the appellant can be drawn.

32. The remaining witnesses, namely, Vinay Kumar Tiwari (P.W.2), Nitish Kumar (P.W.7), Rajeev Nayan Kumar Singh (P.W.8) and Fulendra Kumar (P.W.9) are official witnesses. The evidence of Vinay Kumar Tiwari (P.W.2) would simply suggest that on 12.12.2011 while being posted at the Sadar Hospital, Sasaram as a Medical Officer, he had conducted the postmortem examination on the body of the deceased Mokhtar Ansari and had found one entry wound in his right occipital region caused by firearm. Though, no one has claimed to have seen the occurrence, the case projected by the prosecution is that the accused persons had hired the Scorpio vehicle for going from Mohania to Kochas and they killed the driver of the vehicle and threw his body on the road. However, the medical evidence is not consistent. The doctor has admitted in cross-examination that no violence mark was found around the wound. According to him, the fire was opened from 3-5 meters, which would be equivalent to 9 feet 10.11 inches to 16



feet 4.85 inches. The medical evidence completely rules out the possibility of firing on the deceased from point blank range.

33. When we look at the testimonies of Rajeev Nayan Kumar Singh, the informant (P.W.8) and Fulendra Kumar (P.W.9), we notice that they have contradicted each other. P.W.8 has stated that on 12.12.2011 at 2:30 pm, when he was on patrolling duty along with Assistant Sub Inspector of Police, Sitaram Bhagat and home guards, namely, Lalan Ram, Fulendra Kumar, Sanjeev Kumar and Om Prakash Singh, he heard sound of firing and proceeded towards the said direction and found a person lying on the road in front of Girl's High School, but the home guard, Fulendra Kumar (P.W.9) stated in his deposition that on the date of occurrence, at about 4:00 pm, he was on patrolling duty with an Assistant Sub Inspector of Police and the three constables. At that time the Assistant Sub Inspector of Police received a telephone call regarding the incident whereafter the patrolling party reached at the place of occurrence and brought the dead body to the police station. He categorically stated in his cross-examination that at the relevant time, the SHO of Kochas Police Station was at the police station. Thus, if P.W.9 is to be believed, the story narrated by the informant (P.W.8) in his self-statement is completely falsified.



Moreover, neither P.W.8 nor P.W.9 claims to be a witness to the incident.

34. The only other witness examined on behalf of the prosecution is Nitish Kumar (P.W.7), the Investigating Officer of the case. He has not stated that he seized the Scorpio vehicle. He has stated about only one place of occurrence where the dead body was lying. He admitted that he did not obtain FSL report of blood sample collected from the place of occurrence. He further admitted that he did not obtain the FSL report of finger print and palm print of the appellant from the Forensic Science Laboratory. He also admitted that the SIM card of the seized mobile and the seized ATM card from possession of the appellant belonged to his mother and father. From his evidence also, no inference can be drawn regarding the involvement of the appellant in the alleged offence.

35. We notice that the material exhibits produced by the court witness lead the prosecution case to no definite conclusion. The court witness has admitted that those materials exhibits were not in sealed condition and they do not carry the *malkhana* register number or the case number in which they were seized. He had not even produced the *malkhana* register to corroborate that the seized materials were seized in connection



with the case in question.

36. Thus, we find that the evidences of the official witnesses are also of no consequence.

37. In sum and substance, the evidences adduced during trial on behalf of the prosecution prove only one fact that one Mokhtar Ansari was killed by gunshot injury in his head. They do not prove the manner of occurrence and the persons involved in the commission of the offence. There is neither any direct nor any circumstantial evidence to connect the appellant with the alleged offence. The SHO of the Kochas Police Station on whose self-statement, the FIR was recorded has been contradicted in material particular by P.W.9 Fulendra Kumar. The private witnesses examined during trial had either no knowledge of the incident or they claimed to have reached at the place of occurrence after the incident took place. The local villagers, who are said to be about fifty in number and, who had allegedly intercepted the Scorpio vehicle and caught the accused persons including the appellant were neither made witness in the case nor they were examined during trial. The seizure list witnesses in whose presence, the miscreants were searched and recoveries were made have been withheld. The Chaukidar, who identified the body of the deceased at the time of postmortem



examination has also been withheld. Hasina Parvin, who is said to be the owner of the looted Scorpio vehicle and, whose statement was recorded by the Investigating Officer during investigation, was not examined during trial. Thus, there are glaring loopholes in the prosecution case.

38. We are of the opinion that the Trial Court has completely failed to appreciate the evidences adduced during trial. We fail to understand on what basis the Trial Court arrived at a conclusion that the prosecution has proved the charges beyond reasonable doubt in the absence of any direct or circumstantial evidence adduced on behalf of the prosecution. It appears that the Trial Court presumed the appellant guilty until proven innocent. It failed to comprehend that in Indian criminal jurisprudence, an accused is presumed to be innocent until prove guilty.

39. For all these reasons, the appeal is allowed. The impugned judgment of conviction dated 15.03.2016 and the consequent order of sentence dated 21.03.2016 passed by the learned Additional Sessions Judge-VIII, Rohtas at Sasaram in connection with Sessions Trial No.243 of 2013 arising out of Kochas P.S. Case No.124 of 2011 are, accordingly, set aside.

40. The appellant, Vikash Ranjan @ Golu is acquitted



of the charges levelled against him. He is directed to be released from jail forthwith, if he is not required in any other case.

41. Before we part with this case, we are constrained to observe that in recent times, this Court has come across several judgments of conviction in absence of legally admissible evidence. The Hon'ble Supreme Court has time and again reiterated the importance of legal evidence and has held that in absence of legal evidence, the Court cannot reach at a particular conclusion.

42. In *Ghuran Yadav vs. State of Bihar* since reported in *(1971) 1 SCC 311*, the Supreme Court observed as under:

“Normally this Court, of course, does not examine for appraisal under Article 136 of the Constitution the evidence on questions of fact decided by the courts below. But when there are reasons to think that the conclusions may be based on no evidence, then this Court is not only entitled but it has an obligation in the larger interests of justice to examine the evidence to see if there is legal evidence on which those conclusions can be sustained. In this case we find that there is no legal evidence on which the courts below could base their conclusions. The appeal accordingly succeeds and allowing the same we acquit the appellant.”.

(emphasis supplied)



43. In *Shrawan Singh vs. State of Punjab* since reported in *AIR 1957 SC 637*, a three Judge Bench of the Hon'ble Supreme Court observed: "*In a criminal case, mere suspicions however, strong cannot take the place of proof*". The Supreme Court further in the said case in para 12 observed: "*.... considered as a whole, the prosecution story may be true; but between "may be true" and "must be true" there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence before an accused can be convicted*".

44. Further, in *Narendra Kumar vs. NCT of Delhi* since reported in *(2012) 7 SCC 171*, the Hon'ble Supreme Court observed: "*.... However great the suspicion against the accused and however strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence....*".

45. We would like to remind the Trial Judges that times without number, the Hon'ble Supreme Court has stated with her approval the saying of eminent English Jurist William Blackstone: "*It is better that ten guilty persons escape, than one innocent suffer*".



46. Recently, on 08.11.2021, in ***Bijender @ Mandar vs. State of Haryana (in Criminal Appeal No.2438 of 2010)***, a three-Judge Bench of the Hon'ble Supreme Court held: *"The doctrine of extending benefit of doubt to an accused, notwithstanding the proof of a strong suspicion, holds its fort on the premise that "the acquittal of a guilty person constitutes a miscarriage of justice just as much as the conviction of the innocent". In the said judgment, the Supreme Court further observed: "It may not be wise or prudent to convict a person only because there is rampant increase in heinous crimes and victims are oftenly reluctant to speak truth due to fear or other extraneous reasons. The burden to prove the guilt beyond doubt does not shift on the suspect save where the law casts duty on the accused to prove his/her innocence"*.

47. In ***Paramjeet Singh vs. State of Uttarakhand***, since reported in ***(2010) 10 SCC 439***, the Supreme Court while holding in a case that where the offence alleged to have been committed is a serious one, the prosecution must provide greater assurance that its case has been proved beyond reasonable doubt observed :

"A criminal trial is not a fairy tale wherein one is free to give flight to one's imagination and fantasy. Crime is an event in



real life and is the product of an interplay between different human emotions. In arriving at a conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case, in the final analysis, would have to depend upon its own facts. The court must bear in mind that “human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions”. Though an offence may be gruesome and revolt the human conscience, an accused can be convicted only on legal evidence and not on surmises and conjecture. The law does not permit the court to punish the accused on the basis of a moral conviction or suspicion alone. “The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence.” In fact, it is a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused. The fact that the offence was committed in a very cruel and revolting manner may in itself be a reason for scrutinising the evidence more closely, lest the shocking nature of the crime induces an



*instinctive reaction against dispassionate
judicial scrutiny of the facts and law”.*

48. Unmindful of these well established principles of law and the dictum of the Hon’ble Supreme Court, there appears to be a growing tendency amongst some of the trial Judges to disregard the well established principles of law and the judgments of the superior courts and mechanically convict the accused treating the prosecution case as narrated in the FIR to be the gospel truth ignoring the evidences adduced during trial. If that would have been the requirement of law, there would have been no need to hold the trial.

49. We would like to remind the trial Judges that in order to arrive at a just conclusion with regard to the guilt or innocence of the accused, a proper appreciation of evidence is the most important part of their judicial functioning during the trial of a criminal case. The evidence on record has to be properly and carefully weighed and valued. A mechanical approach of conviction in absence of legally admissible evidence or acquittal or flimsy or inconsequential grounds would entail in serious consequences. In a criminal case, as life and liberty of the person facing trial is involved, a strict standard of proof is required to prove the guilt. The accused facing trial



can be convicted only if the court comes to the conclusion that the prosecution story must be true and not may be true.

50. We would also remind the trial Judges that the first and foremost duty and responsibility is to safeguard the rights of the accused and interests of the public in the administration of criminal justice during trial. The very object of criminal trial is to determine whether the prosecution has established the guilt of the accused or not. While holding trial, the trial judge is required to conduct himself in a manner that promotes public confidence in the impartiality of the judiciary. One can understand the possibility of two diametrically opposite views on appreciation of evidence in a given case, but in a case of complete lack of cogent evidence like the present one there is no scope of any conclusion other than that the conclusion that the prosecution has miserably failed to prove the guilt against the appellant. In such a case, a wrongful conviction apart from causing grave injustice and consequential injury to the innocent leads to decline of public confidence in our criminal justice system. We would expect that in future while holding trials, the trial Judges would conduct themselves in a manner that would promote public confidence in the impartiality of the Judiciary.

51. Registry is directed to circulate a copy of this



judgment to all the District Judges of the State of Bihar, who shall be required to circulate a copy of the judgment to all the Judicial Officers in their respective districts.

(Ashwani Kumar Singh, J.)

(Rajeev Ranjan Prasad, J.)

Sanjeet/-

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