

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.395 of 2024

Arising Out of PS. Case No.-179 Year-2019 Thana- CHAPRA MUFFASIL District- Saran

Mintu Mahto @ Lalbabu Mahto, Son of Birendra Mahto @ Khokha, Resident
of Village- Sandha, Police Station- Mufassil, District- Saran
... .. Appellant

Versus

1. The State of Bihar
2. Deepak Mahto, Son of Late Shivji Mahto, Resident of Village- Sandha,
Police Station- Mufassil, District- Saran
3. Kameshwar Mahto, Son of Late Chhedi Mahto, Resident of Village- Sandha,
Police Station- Mufassil, District- Saran
4. Shravan Mahto, Son of Late Shivji Mahto, Resident of Village- Sandha,
Police Station- Mufassil, District- Saran

... .. Respondents

Appearance :

For the Appellant	:	Mr. Sanjeet Kumar, Advocate Mr. Aditya Dev, Advocate Mr. Digvijay Narayan Singh, Advocate
For the State	:	Mr. Ajay Mishra, Addl PP
For the Resp Nos. 2 to 4	:	Mr. Bindhyachal Singh, Senior Advocate Mr. Vijay Kumar, Advocate Mr. Kumar Awnish Ankit, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 23-10-2024

Heard Mr. Sanjeet Kumar, learned counsel for the
informant-appellant, Mr. Bindhyachal Singh, learned Senior
Counsel assisted by Mr. Vijay Kumar, learned counsel for the
Respondent Nos. 2 to 4 and Mr. Ajay Mishra, learned Additional
Public Prosecutor for the State.

2. This appeal has been preferred for setting aside the
judgment of acquittal dated 19th Day of January, 2024 (hereinafter

referred to as the 'impugned judgment') passed by learned Additional Sessions Judge-IV, Saran at Chapra (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 694 of 2019 arising out of Mufassil P.S. Case No. 179 of 2019.

3. By the impugned judgment, the learned trial court has acquitted Respondent Nos. 2 to 4 of the charges under Sections 302 and 120B of the Indian Penal Code (in short 'IPC') and also of the charge under Section 27 of the Arms Act for allegedly committing murder of Pintu Kumar Mahto by shooting him with a firearm under a criminal conspiracy.

Prosecution Case

4. The prosecution case is based on fardbeyan of Mintu Mahto who is brother of the deceased and has been examined as PW-5 in course of trial.

On 14.05.2019 at 09:45 PM in the night hour at Sadar Hospital, Chapra, the informant gave his statement that on the same day at 09:15 PM (night hour), his brother Pintu Kumar Mahto aged about 28 years was on the rooftop then (1) Kameshwar Mahto (Respondent No. 3), (2) Kamal Deo Mahto, (3) Shravan Mahto (Respondent No. 4), (4) Deepak Mahto (Respondent No. 2), (5) Dhiraj Kumar and (6) Niraj Kumar all under a conspiracy came to his house and took away Pintu

Kumar Mahto on the pretext of celebrating a party. When they reached near the Budhiyamai Sthan temple in Bintoliya Ratanpura situated under Muffasil Police Station, the accused persons started abusing and assaulting Pintu Kumar Mahto. They caught hold of him and Kameshwar Mahto shot at him with his country made *katta* with intention to kill him which hit his left chest and blood started oozing out. In the meantime, Shravan Mahto also shot at him with his country made *katta* which hit his right thigh and he started bleeding. The informant's brother fell on the earth in injured condition and started shouting then some persons from the neighbouring area called his father and told him that his son Pintu Kumar Mahto has been shot at. On receiving information, the informant and his father along with other family members went to the place of occurrence and took Pintu Kumar Mahto to the Sadar Hospital, Chapra where he died. The informant alleged that the reason of incident is that earlier, there was a dispute with Kameshwar Mahto with regard to fishery and due to this reason, he has killed Pintu Kumar Mahto.

5. On the basis of the fardbeyan of PW-5, Mufassil P.S. Case No. 179 of 2019 dated 15.05.2019 was registered for the offences under Sections 302, 120B and 34 IPC and Section 27 of

the Arms Act. Upon investigation of the case, police submitted a chargesheet bearing No. 372 of 2019 dated 28.08.2019. The learned Magistrate took cognizance of the offences and on finding that the offences are triable by the Court of Sessions, the records were committed to the Court of Sessions for trial.

6. In the learned trial court, the accused persons- Respondent Nos. 2 to 4 were explained the charges which they denied and claimed to be tried. In course of trial, the prosecution examined as many as 8 witnesses and exhibited 16 documents in evidence whereas the defence did not adduce any oral evidence but adduced as many as 9 documentary evidences.

7. The complete description of the prosecution witnesses and the documentary evidences produced on behalf of the prosecution are as under:-

List of Prosecution Witnesses

PW-1	Prayumna Mahto
PW-2	Surendra Mahto
PW-3	Gautam Sharma
PW-4	Birendra Mahto
PW-5	Mintu Mahto
PW-6	Dr. Ajay Kumar Sharma
PW-7	Ram Vinay Singh
PW-8	Tinku Kumar Mahto

List of Documentary Evidences

Ext. P-1/PW5	Signature of informant on fardbeyan
Ext. P-2/PW6	Postmortem report
Ext. P-3/PW7	Fardbeyan
Ext. P-4/PW7	Endorsement on fardbeyan
Ext. P-5/PW7	Formal F.I.R.
Ext. P-6/PW7	Inquest report (with Objection)
Ext. P-7/PW7	Seizure list
Ext. P-8/PW7	Signature of witness on seizure list
Ext. P-9/PW7	Signature of witness on seizure list
Ext. P-10/PW7	Charge-sheet
Ext. P-11/PW7	Signature of witness on fardbeyan
Ext. P-12	C.C. of order-sheet in Bheldi P.S. 92/19
Ext. P-13	C.C. of order-sheet in Bheldi P.S. 92/19
Ext. P-14	C.C. of charge-sheet in Bheldi P.S. 92/19
Ext. P-15	C.C. of order-sheet in S.Tr. 698/11
Ext. P-16	C.C. of formal charge-sheet in Mufassil P.S. 111/11

8. The description of the documentary evidences produced on behalf of the defence are provided hereunder:

Ext. D-1	C.C. of formal F.I.R. of Mufassil P.S. 366/17
Ext. D-2	C.C. of seizure list in Mufassil P.S. 366/17
Ext. D-3	C.C. of formal FIR of Mufassil P.S. 782/22
Ext. D-4	C.C. of seizure list in Mufassil P.S. 782/22
Ext. D-5	C.C. of seizure list in Mufassil P.S. 782/22
Ext. D-6	C.C. of seizure list in Mufassil P.S. 782/22
Ext. D-7	C.C. of formal F.I.R. of Mufassil P.S. 143/20
Ext. D-8	C.C. of formal F.I.R. of Mufassil P.S.

	375/21
Ext. D-9	C.C. of protest petition in Mufassil P.S. 375/21

Findings of the Learned Trial Court

9. After examining the prosecution evidences and the documentary evidences brought on behalf of the defence, the learned trial court held that this case is based on circumstantial evidence. PW-1 and PW-4 had stated that there were enmity between the parties on account of fishery business and because of this, the occurrence took place but PW-2, PW-3 and PW-5 said that accused Deepak Mahto (Respondent No. 2) is behind this occurrence because in a police raid conducted in his house on the basis of the information furnished by the deceased, illicit liquors were recovered and for this reason, Deepak Mahto wanted to kill the deceased. The trial court observed that there is no evidence to show any enmity or competition between the parties in fishery business.

10. The learned trial court found that about Deepak Mahto (Respondent No. 2), the prosecution contended that he had hatched the conspiracy. It was alleged that Deepak was granted bail on 29.04.2019 but he did not come out of jail because he had vowed that he would not come out unless he kills the deceased but the learned trial court found from the prosecution evidence

(Exhibit-P13) that Deepak was released on 18.12.2021. The court, therefore, observed that it is not easily digestible that even after the death of the deceased, he waited for more than two years to come out.

11. The learned trial court has upon a close scrutiny of the prosecution evidences found that none of the witness had seen the occurrence. PW-2 said that he went to the place where the occurrence had taken place with the informant (PW-5) and his father (PW-4) but PW-4 said that he was at pond and PW-5 said that on call of his father (PW-4), he went there with Tinku Kumar Mahto (PW-8). PW-4 had not said before the police that he was at the pond.

12. The learned trial court further noticed from the evidence of the I.O. that he had not found any blood or blood stained soil at the alleged place of occurrence where the deceased was shot at twice in the body and the witnesses had seen him injured and squirming there. The I.O. claimed that during investigation, he had recovered two cartridge cases from the place of occurrence but those two cartridge cases were not sent for any examination nor were produced in the court. The bullet recovered from the body of the deceased during post-mortem was also not sent for any examination nor was produced before the court. In

view of the evidences on the record, the learned trial court was of the considered opinion that the chain of events was not complete in this case, hence, taking note of the previous enmity between the parties, the learned trial court held that the same was the reason for implication of the accused in this case.

Submissions on behalf of the Appellant-Informant

13. Mr. Sanjeet Kumar, learned counsel for the appellant has argued the matter at length. He has taken us through the prosecution evidences, particularly, that of the father of the deceased (PW-4), the informant (PW-5), the I.O. (PW-7) and the cousin brother of the deceased (PW-8). Learned counsel submits that the learned trial court has grossly erred in appreciating the evidence of the prosecution witnesses who have stated that the named accused persons had taken away the deceased on the pretext of a party and then they killed him. It is submitted that the motive behind the occurrence is the ongoing enmity between the parties and the learned trial court should have been satisfied on this score.

14. Learned counsel has further submitted that the I.O. (PW-7) seems to have acted as a defence witness and even though there may be some discrepancy and shortcomings in the investigation of PW-7, the prosecution in this case has been able to

prove the guilt of the accused persons (R-2 to R-4) beyond all reasonable doubts.

Submissions on behalf of the Respondents

15. On the other hand, Mr. Vindhyachal Singh, learned Senior Counsel as well as Mr. Ajay Mishra, learned Additional Public Prosecutor for the State jointly submit that the judgment of the learned trial court does not suffer from any infirmity. According to them, the prosecution witnesses, particularly, PW-4 and PW-5 tried to set up a case that the deceased was taken away from his house on the pretext of a party by the accused persons. They further attempted to place themselves as eye-witnesses to the occurrence but in course of trial, it has been found from their own cross-examination that they are materially inconsistent in their statement on almost all counts and had improved upon their earlier statement made before the I.O. (PW-7). Several vital contradictions have been taken by the defence in course of their evidence and the I.O. (PW-7) has also contradicted the prosecution witnesses on material aspects of the matter which would prove fatal to the prosecution.

16. Learned Senior Counsel submits that the falsity of the prosecution case would appear from the fardbeyan itself

wherein the informant (PW-5) has named Deepak Mahto as one of the persons who had visited the house of the deceased on 14.05.2019 at 09:15 PM to call him for celebrating the party. It is submitted that this Deepak Mahto was in jail and it is the prosecution case that even though he had been granted bail on 29.04.2019 but he had not come out of jail. It is, thus, submitted that the learned trial court has not committed any error in appreciation of the evidences available on the record.

17. Learned Senior Counsel for the respondents has relied 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 (Paragraph '152'); **Dilavar Hussain and Others versus the State of Gujarat and Another** reported in (1991) 1 SCC 253; **Rajesh and Another Vs. State of Madhya Pradesh** reported in 2023 SCC Online SC 1202 (Paragraphs '14' and '15') to submit that in a case of circumstantial evidence, the criminological chain of events must be established by the prosecution. In the present case, the prosecution has failed to establish the chain of circumstantial evidence, hence, the learned trial court has rightly held that the prosecution could not prove the guilt of the accused persons, namely, R-2 to R-4 beyond all reasonable doubts.

Consideration

18. We have heard learned counsel for the parties, learned Additional Public Prosecutor for the State and also perused the learned trial court's records. The informant of this case is the brother of the deceased who has stated in his fardbeyan recorded on 14.05.2019 at 09:45 PM in Sadar Hospital, Chapra that the six named accused persons had visited his house at about 09:15 PM and had called his brother Pintu Kumar Mahto from his house on the pretext of celebrating the party. He has stated that after taking his brother towards the Ratanpura Budhiyamai Temple north to the road side, the accused persons assaulted his brother and accused Kameshwar Mahto fired from a *katta* on the chest of his brother whereafter blood started oozing out, in the meantime Shravan Mahto fired from a country made *katta* on his brother which hit on his right thigh and he started bleeding. According to him, the injured brother of the informant fell down and started shouting whereafter people from the neighbouring areas informed his father on his mobile that his son Pintu Kumar Mahto has been shot at whereafter all of them reached the place of occurrence and brought him to Sadar Hospital, Chapra for treatment where his brother died. The informant alleged in his fardbeyan that earlier, there was an enmity with the family of Kameshwar Mahto on account of

fishing in the '*Pokhara*' and the occurrence had taken place because of that reason. It is evident from the fardbeyan of PW-5 himself that he is not an eye-witness to the occurrence and he is said to have reached the place of occurrence after his father was informed by neighbouring people over telephone. In course of trial, this witness has stated that the occurrence is of 14.05.2019 at about 07:30 PM whereas in his fardbeyan, he has stated that the accused persons had come to his house at 09:15 PM. This witness has for the first time in his evidence stated that the conspirator of this occurrence is Deepak Mahto who had been granted bail by court on 29.04.2019 but he had not come out of jail even as there was a marriage in his family on 06.05.2019. In paragraph '8' of his deposition, the informant denied the suggestion that he had not stated before the Investigating Officer that on the date of occurrence, the accused persons had taken away his brother from his house at 09:00 PM. This witness stated that he had stated about 07:30 PM. In paragraph '12' of his deposition, he has stated that accused persons had lodged a case against him and his family members but he is not aware of it. He has, however, stated in paragraph '13' of his deposition that Kamaldeo Mahto was abducted and in this connection, Mufassil Case No. 143 of 2020 was registered in which he and Bittu were the accused. He has

submitted in paragraph '14' that for the last one month, there was an enmity with the accused. His attention was also drawn towards his previous statement made before police in which he had not stated that Shravan Mahto had fired on the right thigh of his brother and he had not stated in his fardbeyan that he got information of the occurrence from his father and when he reached the place of occurrence, his brother was in restless condition and in course of treatment, his brother died.

19. So far as PW-4 who is the father of the deceased is concerned, he has stated in his examination-in-chief that he got information about the occurrence from one Mohan Rai (not examined) at about 09:00 PM. He was at a distance of 100 yards from the place of occurrence and when he reached there, he had seen the accused persons fleeing away from the place of occurrence. He has stated that when he reached there and went near his son and lifted him in his hand, his son told him that the accused persons had called him to celebrate a party and he also told that Kamaldeo Mahto, Dhiraj and Niraj had caught hold of him whereas Kameshwar Mahto had shot at his chest and Shravan Mahto had shot at his thigh. In course of his cross-examination, the attention of this witness was drawn towards his previous statement made before the I.O. wherein he had not stated that he

was engaged in fishing work in '*Pokhara*' and had got information over his phone from Mohan Rai. He had also not stated before the I.O. that he had gone to the place of occurrence at about 100 yards running and had seen that Kameshwar Mahto, Dhiraj Mahto, Shravan Mahto, Niraj Mahto and Kamaldeo Mahto were fleeing away and Kameshwar Mahto and Shravan Mahto had revolvers in their hands. He was also suggested by the defence referring to his previous statement before the police that he had not stated that he had lifted his son in his hand then his son had told him that he was called to celebrate a party and Kamaldeo Mahto, Niraj Mahto and Dhiraj Mahto caught hold of him and Kameshwar Mahto fired at his chest and Shravan Mahto fired at his thigh. He had also not stated before the I.O. that after the firing, his younger son Mintu Mahto (PW-5) and *Bhatija* Tinku Mahto (PW-8) had arrived and had taken Pintu Mahto to Sadar Hospital. In paragraph '18' of his deposition, PW-4 has admitted that he had stated before the police that after hearing phone, he had reached to his son at about 09:00 PM and found that his son was lying in pool of blood whereafter he started weeping, then his second son Mintu and other villagers came and took Pintu to Sadar Hospital for treatment. He reached hospital from behind and found that his son was declared dead. This witness was suggested that he was an accused in the

abduction case of Kamaldeo Mahto and for this reason, he had falsely implicated Kameshwar Mahto and others. He was also advised that he and his sons Pintu Mahto and Mintu Mahto are of criminal nature and against them, more than 50 cases of involvement in sale of illicit liquors are pending. This witness denied the suggestion.

20. The I.O. (PW-7) has thoroughly contradicted PW-4 as well as PW-5. In paragraphs '19', '20' and '23' of his deposition, the I.O. has stated about the statements made before him in course of investigation by PW-4 which was recorded in paragraph '14' of the case diary and the statement made by PW-5 which was recorded in paragraph '13' of the case diary. We find that after drawing attention of these two witnesses towards their previous statements, when they denied the suggestions, the defence has been able to take contradictions from the I.O. by proving the previous statement of the PW-4 and PW-5 both. This Court, therefore, finds that the learned trial court is absolutely correct in holding that the prosecution witnesses are not eye witnesses to the occurrence.

21. The whole case is based on circumstantial evidence. In the case of **Sharad Birdhichand Sarda** (Supra), the Hon'ble Supreme Court has laid down the cardinal principles and has taken

note of the principles of ‘*panchsheel*’ while considering the case based on circumstantial evidence. We quote paragraph ‘152’ of the judgment in the case of **Sharad Birdhichand Sarda** (Supra) 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 Pradesh*¹.

“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 Pradesh*¹⁷ and *Ramgopal v. State of Maharashtra*¹⁸. It may be useful to extract what Mahajan, J. has laid down in *Hanumant case*¹: “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

22. In the case of **Dilavar Hussain** (Supra), once again, the Hon'ble Supreme Court reiterated the earlier view of the Hon'ble Constitution Bench of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda** (Supra) and observed in paragraphs '3' and '4' as under:-

“**3.** All this generated a little emotion during submissions. But sentiments or emotions, howsoever strong, are neither relevant nor have any place in a court of law. Acquittal or conviction depends on proof or otherwise of the criminological chain which invariably comprises of why, where, when, how and who. Each knot of the chain has to be proved, beyond shadow of doubt to bring home the guilt. Any crack or loosening in it weakens the prosecution. Each link, must be so consistent that the only conclusion which must follow is that the accused is guilty. Although guilty should not escape (*sic*). But on reliable evidence, truthful witnesses and honest and fair investigation. No free man should be amerced by framing or to assuage feelings as it is fatal to human dignity and destructive of social, ethical and legal norm. Heinousness of crime or cruelty in its execution however abhorrent and hateful cannot reflect in deciding the guilt.

4. Misgiving, also, prevailed about appreciation of evidence. Without adverting to submissions suffice it to mention that credibility of witnesses has to be measured with same yardstick, whether, it is ordinary crime or a crime emanating due to communal frenzy. Law does not make any

distinction either in leading of evidence or in its assessment. Rule is one and only one namely, whether depositions are honest and true. Whether the witnesses, who claim to have seen the incident in this case, withstand this test is the issue? But before that some legal and general questions touching upon veracity of prosecution version may be disposed of.”

23. Keeping in view the principles laid down by the Hon’ble Supreme Court in the aforementioned judicial pronouncements when we examine the prosecution evidences on the record, we find that the prosecution in this case is not able to prove the various circumstances which are required to be placed together to complete the chain of criminological events. As noticed above, PW-4 came with a statement in the fardebyan that the accused persons had come to call the deceased to accompany them for celebrating a party. The evidences on the record are crystal clear that for last one month, there were some enmity between the family. The deceased’s father and brother were accused in the case of Kamaldeo Mahto. In such circumstance, it is not believable that the accused persons who were inimical to the deceased would come to his house to call him to accompany them to celebrate a party and then the deceased would follow them happily. The learned trial court is correct in its finding that the prosecution is not even consistent with the motive behind the occurrence. Some of the witnesses have stated that the occurrence took place on account of

enmity between the parties due to fishery business whereas some of the prosecution witnesses doubted Deepak saying that because his house was raided on the basis of an information furnished by the deceased in connection with sale of illicit liquors, he had vowed to take revenge from the deceased. No evidence has been brought on the record by the prosecution to show that the deceased had given any information to the police with regard to Deepak resulting in his incarceration in jail. No evidence has been brought on record by the prosecution to demonstrate that Deepak was granted bail on 29.04.2019 but he had knowingly not come out of jail. The learned trial court has recorded that, in fact, Deepak was released from jail on 18.12.2021. A case of false implication of Deepak is evident from the materials on the record. The informant named Deepak also as one of the persons who had visited his house on 14.05.2019 whereas Deepak was in jail on that day.

24. Considering the entire materials on the record, we are of the considered opinion that the learned trial court has not committed any error in appreciation of the evidences. In a case of acquittal, the High Court is not supposed to interfere with the judgment of acquittal on mere asking. The principles in this connection laid down by the Hon'ble Supreme Court in the case of **H.D. Sundara and Others Vs. State of Karnataka** reported in

(2023) 9 SCC 581 are being reproduced hereunder for a ready
reference:-

“**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.”

25. In result, this appeal stands dismissed.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

lekhi/-durgesh/-

AFR/NAFR	
CAV DATE	
Uploading Date	28.10.2024
Transmission Date	28.10.2024