

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1099 of 2017

Arising Out of PS. Case No.-78 Year-2011 Thana- NAUBATPUR District- Patna

Pappu Rai Son of Ram Narayan Rai, resident of Village- Ghanshyampur, P.S.-
Naubatpur, District- Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 1063 of 2017

Arising Out of PS. Case No.-78 Year-2011 Thana- NAUBATPUR District- Patna

Manoj Rai Son of Ram Narayan Rai, Resident of village- Ghanshyampur,
P.S.-Naubatpur, District- Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 1099 of 2017)

For the Appellant/s : Mr. Anil Singh, Amicus Curiae
Mr. Dharendra Kumar Singh, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 1063 of 2017)

For the Appellant/s : Mr. Anil Singh, Amicus Curiae

For the Respondent/s : Ms. Shashi Bala Verma, APP

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

Date : 22-08-2024

Heard Mr. Anil Singh, learned Amicus Curiae for the
appellants and Ms. Shashi Bala Verma, learned Additional Public
Prosecutor for the State in both the appeals.

2. These two appeals have been preferred for setting
aside the judgment of conviction dated 01.07.2017 (hereinafter

referred to as the 'impugned judgment') and the order of sentence dated 07.07.2017 (hereinafter referred to as the 'impugned order') respectively passed by learned Additional District and Sessions Judge-I, Danapur, Patna (hereinafter referred to as the 'trial court') in connection with Sessions Trial No. 1469 of 2011 arising out of Naubatpur P.S. Case No. 78 of 2011 whereby and whereunder the appellants have been convicted for the offences punishable under Sections 302, 307 and 34 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act and they have been ordered to suffer life imprisonment for the offence under Section 302/34 IPC with a fine of Rs.5,000/- each and in case of non-payment of fine, both of them would be liable to undergo simple imprisonment of six months each. They have been further directed to undergo rigorous imprisonment for a period of ten years for the offences punishable under Section 307/34 IPC with a fine of Rs.5,000/- each and in case of non-payment of fine, they would undergo a further imprisonment of six months each. Further, the appellants have been directed to undergo rigorous imprisonment for three years for the offences punishable under Section 27 of the Arms Act and to pay a fine of Rs.1,000/- each and in case of non-payment of fine, they would undergo a further imprisonment of three months each. All the sentences are to run concurrently.

Prosecution Story

3. The Prosecution case is based on the *fardbeyan* (Exhibit '1/1') of Sanjay Rai (PW-4) recorded by C.N. Singh, Sub-Inspector of Danapur Police Station on 25.04.2011 at 17:30 hours at Hi-Tech Hospital, Saguna More, Danapur. The informant has stated in his *fardbeyan* that on 24.04.2011 at about 09:15 pm, when he was sitting near Devi Temple in his village then accused persons, namely, (1) Ram Narain Rai, (2) Pappu Rai, (3) Manoj Rai, (4) Rajendra Rai, (5) Kamlesh Rai and (6) Akhilesh Rai reached there and accused Pappu Rai started abusing him and asked him to leave. When the informant forbade him to abuse, accused Pappu Rai and Manoj Rai took out pistol from their respective waist and with an intention to kill fired from the pistol but the informant bowed down and saved himself. He, however, claimed to have suffered pellet injuries on the right side of his abdomen. The informant cried "*Bachao Bachao*" on which accused Pappu Kumar assaulted him on his head with the butt of the pistol two-three times, as a result of which he sustained injuries. On *hulla*, Uday Rai (cousin uncle of the informant) and Kaushal Kumar came to save him. Accused Rajendra Rai instigated all the other accused persons by saying that firstly shoot down Uday Rai to which Pappu Kumar fired upon Uday Kumar

(cousin uncle of the informant) which hit in his abdomen, thereafter, Manoj Rai @ Puna Rai fired in his mouth as a result of which he fell down there. Then, Ram Narain Rai ordered to shoot down Kaushal Kumar but Kaushal Kumar ran towards his house and saved his life. Thereafter, all the accused persons fled away at their respective houses. On *hulla* and after hearing the sound of firing, co-villagers came and they took the informant and Uday Kumar on motorcycle for treatment at Bihta Hospital where Doctor referred them to PMCH, Patna for better treatment but considering their condition, their family members got them treated at Bihta Hospital.

4. After investigation of the case, Police submitted chargesheet bearing No. 182 of 2011 dated 29.08.2011 against (i) Pappu Rai; (ii) Manoj Rai; (iii) Rajinder Rai; (iv) Akhilesh Rai and (v) Ram Narayan Rai under Sections 324, 325, 307, 504, 506/34 IPC and Section 27 of the Arms Act. Accordingly the learned Magistrate took cognizance on 29.08.2011 and the case was committed to the court of session which resulted into registration of S.T. No. 1469 of 2011. Thereafter a supplementary chargesheet No. 281 of 2011 dated 30.11.2011 was filed under Sections 302/34 IPC and Section 27 of the Arms Act thereafter learned Magistrate again took cognizance on 30.11.2011 against the accused persons

and the supplementary case was committed to the court of sessions which resulted into registration of S.T. No. 482 of 2014 which amalgamated in Session Trial No. 1469 of 2011 *vide* order dated 24.11.2014. In Session Court charge was framed on 15.10.2011 under Sections 324,, 325, 307/34, 504, 506 IPC and Section 27 of the Arms Act. Upon submission of supplementary charge-sheet and commitment charge was again framed under Section 302/34 IPC on 24.02.2015 and explained to the appellants to which they pleaded not guilty and claimed to be tried.

5. On behalf of the prosecution, as many as ten witnesses were examined. The prosecution further brought on record a number of documentary evidences. The detail of the witnesses examined on behalf of the prosecution and the documents exhibited on their behalf are being shown hereunder in a tabular form:-

List of Prosecution Witnesses

PW-1	Sugia Devi
PW-2	Suresh Prasad
PW-3	Kaushal Kumar
PW-4	Sanjay Rai
PW-5	Deepak Kumar
PW-6	Rakesh Kumar
PW-7	Dr. Roshan Ahasan
PW-8	Sugriv Singh
PW-9	Shatrughan Kumar
PW-10	Dr. Ashik Kumar Sinha

List of Exhibits

प्रदर्श. 1	फर्दब्यान पर साक्षी कौशल कुमार का हस्ताक्षर	अभियोजन	29-4-15	बिना आपत्ति	
प्रदर्श.- 2	मृत्यु समीक्षा रिपोर्ट पर साक्षी श्री कौशल कुमार का हस्ताक्षर	"	"	"	
प्रदर्श. 2 / 1	मृत्यु समीक्षा रिपोर्ट पर बिनय प्रसाद का हस्ताक्षर	"	"	"	Sd/- 29-4-15
प्रदर्श. 3	पोस्टमोर्टम रिपोर्ट	"	05-05-16	"	Sd/- 05-05-16
प्रदर्श. 1 / 1	फर्दब्यान	"	30-08-16	"	
प्रदर्श. 4	औपचारिक प्राथमिकी	"	"	"	Sd/- 30-08-16
प्रदर्श. 5	Certificate issued by director Hi-Tech-emergency	Prosecution	14-12-16	Without objection	Sd/- ADJ 15.12.16
Ext- 6	Injury report of Sanjay Rai dt. 24.4.11	Prosecution	20.2.17	"	
Ext-7	Injury report of Udai Rai dt. 24.4.11	"	"	"	
Ext- 8	Discharge summary of Udai Rai written by Dr. Santosh on dictation of Dr. B. K. Singh	"	"	"	A.D.J. 20.02.17

Findings of the learned Trial Court

6. The learned trial court upon examining the evidence available on the record acquitted accused persons Kamlesh Rai, Rajendra Rai and Ram Narayan Rai of the charges under Sections 324, 325, 307/34, 504, 506 and 302/34 IPC and Section 27 of the Arms Act.

7. The learned trial court believed the evidence of PW-3, PW-4, PW-5 and PW-6 and found that the prosecution has successfully proved the charges under Sections 302, 307 and 34 IPC and Section 27 of the Arms Act against accused Pappu Rai and Manoj Rai. The learned trial court found that accused Pappu Rai gave gunshot injury in the abdomen of deceased Uday Rai and also attempted to kill PW-4 Sanjay Rai and accused Manoj Rai gave gunshot injury in the mouth of deceased Uday Rai and both shared common intention and in furtherance of that inflicted gunshot injuries and committed murder of Uday Rai and made attempt to kill Sanjay Rai.

8. The learned trial court found that Uday Rai died a homicidal death which is not in dispute and Medical Officer (PW-7), who prepared autopsy on the dead body of the deceased has mentioned in detail the injuries noticed by him, which further find support from the evidence of PW-10, doctor who examined deceased first time. Both PW-7 and P.W.10 stated about injuries sustained by the deceased. The learned trial court found that it is nobody's case that the injuries on the dead body were self inflicted, therefore, the doctor found the deceased died a homicidal death stands proved beyond reasonable doubts. The learned trial court found from the evidence of ocular witnesses PW-3, PW-4,

PW.5 and P.W.6 that accused Pappu Rai fired with pistol resulting into gun shot injury in the abdomen of Udai Rai and Manoj Rai fired with pistol resulting into gun shot injury in the mouth of Udai Rai finds support from the evidence of P.W.7 doctor who conducted postmortem examination on the dead body of Udai Rai and evidence of P.W.10 doctor who has treated both injured Udai Rai (since dead) and Sanjay Rai P.W.4. Evidence of P.W.4 informant who is himself injured stands on higher footing.

Submissions on behalf of the Appellants

9. Mr. Anil Singh, learned Amicus Curiae while representing the appellants has pointed out at first instance that in this case there is an allegation of exhortation against Rajender Rai and Ram Narayan Rai. PW-3 and PW-6 claimed that it was on the instigation of said Rajender Rai and Ram Narayan Rai that the accused Manoj Rai had fired upon the deceased Uday Rai. Contrary to the evidence of PW-3 and PW-6, PW-4 and PW-5 have levelled the allegation of exhortation against all the accused persons. The trial court has, however, not accepted the allegation of exhortation and accused Rajender Rai, Ram Narayan Rai and Akhilesh Rai have been acquitted by the learned trial court. It is submitted that this would go a long way to prove that a part of the prosecution case has not been believed by the trial court.

10. As regards the information given to police, the I.O. Sugreev Singh (PW-8) has stated that on receiving information that firing has taken place in village Ghanshyampur on 24.04.2011, he had recorded a Sanha bearing No. 780 of 2011 but the said Sanha has not been brought on record in evidence. PW-8 has stated that on 24.04.2011 no information about the occurrence was given. PW-3 has stated in paragraph '11' of his deposition that neither his family nor the family of Sanjay Rai (PW-4) gave any information to police station. It is submitted at this point of time that the conduct of the prosecution in not taking any effort to report the occurrence to the police station would result in drawing an adverse inference against prosecution case, the true version of the occurrence seems to have been suppressed. Sanjay Rai (PW-4) who claims himself an eye-witness has stated that he had not gone to Bihta Police Station rather police had come to Hi-Tech Hospital during his treatment. Similarly, PW-5 who is another son of the deceased has stated in paragraph '4' of his deposition that in the night of occurrence he had not gone to the police station and he cannot say whether any member of the family had gone to the police station or not.

11. Learned Amicus Curiae points out that while PW-3 has stated in his deposition that on the instigation of Rajender Rai

it was the appellant Manoj Rai who had fired twice upon his father Uday Rai which hit into his stomach and in the mouth respectively, PW-4 and PW-5 both have claimed that it was Pappu Rai who had fired upon Uday Rai (the deceased) in his stomach and the second shot was fired by Manoj Rai into the mouth of the deceased. The witnesses are, therefore, at variance in the matter of the manner of occurrence and the two different versions of the prosecution witnesses on this point would in fact amount to contradictions in their statements.

12. Learned Amicus Curiae submits that PW-3 and PW-5 both are sons of the deceased who claim themselves eyewitnesses to the part of the occurrence in which Uday Rai was shot at but on a careful scrutiny of their evidences it would appear that they cannot be believed as eyewitnesses. In this regard, it is pointed out that according to PW-3, he was in his house when he heard the sound of firing and shouting from Devi Mandir, after hearing the sound he along with his father had gone to Devi Mandir. PW-3 does not say that apart from him and his father any other family member had accompanied him. Further, the informant (PW-4), in his *fardbeyan* has taken name of only Udai Rai (deceased) and Kaushal Kumar (PW 3) who had come to save him after hearing his shouts. The distance between the temple from

where he heard the sound of firing is about 100 metres. It is situated at a distance of 150 metres from the house of Sanjay Rai (PW-4). He has stated that there are two temples in the village, one is situated in the west side and another is in the east side of the village and the temple situated in the west side is at a distance of about 100 metres from his house and 150 metres from the house of Sanjay Rai (PW-4). The temple situated towards east to the village is at a distance of 500 metres from his house and 400 metres from the house of PW-4. This witness has stated that the temple situated towards east side is also 'Devi Temple'.

13. Learned counsel submits that on the other hand PW-4 has stated in paragraph '2' of the deposition that there are three temples in his village. Two temples are in west side. He did not know the owner of 10-15 houses which are situated between his house and the temple. He did not know the khata number or plot number on which the temple is situated. Both temples are facing east from the front. Near the temple houses of Sudama Mistri (west), Jai Mangal (north), Baijulal (south) and accused (east) are situated.

14. According to PW-3 after the occurrence about 100-150 persons from the village had assembled but he could not say the name of those persons. Sanjay Rai (PW-4) had suffered pellets

injuries onto his abdomen, the father of PW-3 as well as Sanjay Rai (PW-4) had fallen down on the earth. This witness has stated that both the injured were taken on a motorcycle which belonged to one Pintu Kumar (not examined) to the clinic of Dr. Lalit Mohan who has not been examined.

15. It is submitted that the evidence of PW-5 would further show that his testimony materially differs with that of PW-3. As stated above, according to PW-5 it was Manoj Rai who had fired twice upon the deceased Uday Rai. PW-5 has stated that the house of Sanjay Rai (PW-4) is situated at a distance of 400 metres from the temple. This witness nowhere says that Sanjay Rai (PW-4) was taken to the hospital. In paragraph '5' of his deposition, PW-5 has stated that Bihta Police Station is nearer to his house but he cannot say that at how much distance the police station is situated from the clinic of Dr. Lalit Mohan. His father had gone to the clinic on a motorcycle whereas Sanjay (PW-4) had gone by a four-wheeler. This witness cannot say the name of the person who was driving the motorcycle and the number of the motorcycle.

16. PW-5 has stated that Sanjay and his father had fallen at a distance of ten feet towards east to the temple but they were not unconscious. He has stated that Sanjay was bleeding from his head and stomach and his father was also bleeding from his

stomach and mouth. Learned Amicus Curiae submits that this witness claims in paragraph '7' of his deposition that in the morning police had come, he had not gone to the temple on the next day of the occurrence and he met police only after 2-3 days at his house. He had shown police the place of occurrence but at that time there was no blood at the place of occurrence. It is pointed out that while in paragraph '5' of his deposition this witness has stated that he, his mother and uncles of the village had gone to the clinic of Dr. Lalit Mohan by a four-wheeler, the same witness has stated in paragraph '7' of his deposition that he had not gone to the clinic of Dr. Lalit Mohan Sharma.

17. Learned counsel points out that while PW-3 has stated that when he reached the place of occurrence, his cousin brother Sanjay (PW-4) was in fit of unconsciousness and when they reached the clinic of Dr. Lalit Mohan, they were unconscious but PW-4 has himself stated that after receiving the gunshot injury, he was not unconscious and on reaching Hi-Tech Hospital both the injured were unconscious but he regained consciousness after one day and was discharged on the same day. The particulars of the hospital treatment and the discharge summary of PW-4 have not been proved in course of trial. As stated above, PW-5 has stated that when he had returned after running away from the place of

occurrence his father and Sanjay (PW-4) were not unconscious. Thus, the evidence with regard to the physical condition of the injured too are contradictory, it is submitted that the evidence of the prosecution witnesses on this point would not inspire confidence.

18. Learned Amicus Curiae submits that in this case the place of occurrence has not been duly proved. While PW-3 has stated in paragraph '10' that the blood had oozed from the body of both the injured and had fallen on the ground in a span of 2-3 hand length, PW-4 has stated that blood had oozed from the gunshot injury and PW-6 has also stated in paragraph '4' that he had seen blood towards fifteen feet to the east of the temple but the I.O. (PW-8) has stated that on 25.04.2011 no blood was found on the *verandah* since two days had passed by. It is submitted that the evidence of the I.O. (PW-8) shows that either the I.O. had not inspected the place in presence of the witnesses or that he had never visited the place of occurrence.

19. Learned Amicus Curiae submits that according to PW-4, who is the informant of this case, his *fardbeyan* was recorded on 25.04.2011 at 17:30 hours at Hi-Tech Hospital where he was getting treatment. He claims that Pappu Rai had abused him and both Pappu Rai and Manoj Rai fired from their pistol but

he bowed down and saved himself from that firing. The I.O. (PW-8) has, however, not found any mark/sign of firing at the place of occurrence, no fired cartridge has been seized and further while Sanjay Rai (PW-4) claimed that he had pellet injury on his stomach and then suffered injury on his head which was caused by butt of the pistol by Pappu Rai, the fact is that the injury report of PW-4 which has been marked as Exhibit '6' only shows a simple injury on his scalp. Dr. Ashok Kumar Sinha (PW-10) who has proved the injury report of the informant (PW-4) has not described the dimension of the wound and the nature of the weapon by which the injury has been caused. No X-ray report of the injury sustained by PW-4 has been proved and the fact that there is no document showing admission of PW-4 in the Hi-Tech Hospital would lead to doubt the evidence of PW-4 that he was injured and was admitted in hospital for treatment.

20. As regards the number of firing and distance from which the firing took place, it is stated that as per the evidence of PW-4 there was one firing upon him and two firings had been made on his uncle Uday Rai (the deceased), no other firing was made besides three firings. If PW-4 is believed, the firing was made from a distance of 8-10 steps but PW-5 has stated in paragraph '7' of his deposition that firing was made from a

distance of one hand length. It is also stated that while he was running towards south, the accused persons fled while firing one-two rounds. PW-6 has on the other hand stated in paragraph '1' that the accused ran away towards their house while opening fire. This witness in paragraph '4' has stated that altogether four firings were made. It is submitted that this assumes importance in view of the evidence of PW-7 in paragraph '3' wherein he has stated that he had not found any blackening on the injuries and in case of close range firing blackening would be found. Learned counsel, therefore, submits that the evidence on the point of firing or the distance from which it was fired too are contradictory.

21. Learned Amicus Curiae has also submitted that in this case the prosecution has failed to establish the source of identification. The occurrence took place at 9:15 PM at night. According to PW-3, there was electricity connection at the temple for which government approval was not there and the connection was taken directly from the transformer which was at a distance of 10 steps west of the temple. The I.O. (PW-8) has, however, stated that there was no mention of any transformer in the boundary of the temple and in paragraph '10' of his deposition, he has stated that the witnesses had not given the source of light in their statement. PW-4 and PW-5 in their evidence in paragraphs '2' and

‘4’ respectively shown their ignorance as to whether the night was lighted due to moonlight. PW-6 in paragraph ‘4’ has stated that it was a ‘*chandni raat*’. Learned Amicus Curiae relies upon the judgment of **State of M.P. vs. Ghudan** reported in **(2003) 12 SCC 485** to submit that due to omission to disclose the source of light, a vital factor for identification, the benefit would go to the defence.

22. It is submitted that according to the prosecution, there were independent witnesses at the place of occurrence. The prosecution has, however, withheld the independent witnesses. Relying upon the judgment of the Hon’ble Supreme Court in the case of **Takhaji Hiraji versus Thakore Kubersing Chamansingh and Others** reported in **(2001) 6 SCC 145** (paragraph ‘19’), learned Amicus Curiae submits that where the material witness which could unfold the genesis of incident or essential part of the prosecution case has been withheld, the prosecution case would be termed as suffering from deficiency leading to drawing adverse inference.

23. It is pointed out that in this case, there is an inordinate delay in not only lodging of the FIR but even in sending the FIR to the court of learned Chief Judicial Magistrate. The occurrence is said to have taken place on 24.04.2011 at 09:15 pm but no information was given to the police station by any of the

witnesses. The *fardbeyan* was recorded at Hi-Tech Hospital on 25.04.2011 at 05:30 pm by Danapur Police Station which was received by the I.O. (PW-8) himself. On that basis, formal FIR was prepared on 25.04.2011 at 11:45 pm and PW-8 was authorised to investigate but the I.O. states in paragraph '8' that he had gone to village Ghanshyampur on 25.04.2011 itself at 08:00 pm. A copy of the FIR was received in the court after a delay of three days on 28.04.2011. It is pointed out that column 15 which requires time of dispatch of FIR to the court is blank. Learned Amicus Curiae relies upon the judgment of the Hon'ble Supreme Court in the case of **Chotkau vs. State of U.P.** reported in (2023) 6 SCC 742 : AIR 2022 SC 4688 and **Ganesh Bhavan Patel and Anr. vs. State of Maharashtra** reported in (1978) 4 SCC 371 to submit that the delayed transmission of FIR to the court would be violative of Section 157 of the Code of Criminal Procedure and it would be a cause for creeping in by introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation and would thus, be fatal to the prosecution, at the same time, the delay in examination of witness after one day would create a serious doubt and it would cast a cloud of suspicion on the credibility of entire warp and woof of the prosecution story.

24. Learned counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **Jabir and Others versus State of Uttarakhand** reported in **AIR 2023 SC 1239** on the point that where all witnesses are related, there being serious inconsistencies in deposition of the witnesses as well as delay in lodging of the FIR, the sole reliance on the last seen circumstance, even if assumed to have been proved the conviction of the accused would not be justified.

25. Mr. Anil Singh, learned Amicus Curiae has strongly argued in this case that the investigation in this case is perfunctory and it is neither honest nor fair. In this connection, he has submitted that Sugriv Singh who is the I.O. and has deposed as PW-8 has stated in para 1 of his deposition that on 25.04.2011, he received information that on 24.04.2011 firing had taken place in village Ghanshyampur. The said information was recorded vide S.D.E no. 780 dated 25.04.2011 and upon orders of officer-in-charge, he proceeded to village Ghanshyampur along with A.S.I. Sanjay Kumar (not examined) and police party where he was informed that persons who had received gun shot injuries were admitted in Hi-Tech Hospital at Danapur then he proceeded to Hi-Tech Hospital and found that Uday Rai was admitted in I.C.U and Sanjay Rai was admitted in a cabin who informed that Danapur

Police had recorded his *fardbeyan*. The prosecution has not brought on record the said Sanha No. 780 dated 25.04.2011. In view of this fact, the First Information Report in the present case is hit by Section 162 of the Code of Criminal Procedure.

26. It is submitted that I.O. (PW-8) in paragraph '4' claims to have recorded the statement of Uday Rai who according to PW-4 never regained consciousness. Exhibit '8' is the discharge summary of Uday Rai. PW-8 in paragraph '10' has stated that Kaushal Kumar said that Uday Rai was admitted on 24.04.2011 and was discharged from Hi-Tech Hospital on 18.07.2011 and was admitted again on 04.09.2011 and died on 05.09.2011. PW-8 has stated in paragraph '5' that the first charge sheet was submitted on 29.08.2011 but later on, on 24.09.2011 he learnt about death of Uday while admitted in Hi-Tech Hospital on 05.09.2011 by Danapur Police Station and consequently, he submitted supplementary charge-sheet no 281/11 on 30.11.2011 under Section 302/34 IPC & Section 27 of the Arms Act after recording statement of Kaushal Kumar (PW-3) and Binay Prasad (not examined) and receiving the postmortem from Danapur Police station.

27. PW-8 has stated in paragraph '7' that he had not gone to Bihta Hospital during investigation and he had neither

received any call from Bihta Hospital nor any O.D Slip was received from Bihta Hospital. PW-8 initially stated that he had gone to village Ghanshyampur on 24.4.2011 but subsequently corrected himself in para 8 to the effect that he had gone to the village on 25.04.2011 at 8 P.M. It is pointed out that after receiving *fardbeyan* from Danapur, case was registered at Naubatpur at 11.45 PM and PW-8 was entrusted with the investigation. The I.O. admitted that no information of the occurrence was given at Police Station on 24.04.2011 and that he had not recorded statement of anybody on 25.04.2011. PW-8 has stated in paragraph '9' that there was no mention of transformer in the boundary and that he had not recorded the statement of witnesses whose houses are there in the boundary of the temple. I.O. had inspected the place of occurrence on 26.04.2011 at 1:15 PM. PW-8 has stated in paragraph '10' that the witnesses had not given details of source of light and further stated that he had not recorded the statement of any of the doctors at Hi-Tech Hospital who had given treatment to the injured. The inquest report too was not prepared by him. The supplementary diary as stated by him was opened on 24.09.2011 the day on which he received information from Danapur Police station regarding death of Uday Rai and charge sheet was filed on 30.11.2011.

28. Learned Amicus Curiae submits that the I.O. (PW-8) besides recording the statement of few witnesses has done nothing in this case, neither *fardbeyan* nor the inquest was prepared by him and inquest has not even been proved. It is pointed out that no objective findings at the place of occurrence have been collected by him, PW-8 has neither visited Bihta nor taken statement of Doctor at Bihta or at Hi-Tech Hospital where treatment of the injured was done. Learned Amicus Curiae submits that even Sanha entry no. 780 dated 25.04.2011 has not been brought on record nor the identity of the person who gave information on 25.04.2011 has been disclosed. PW-8 has stated in paragraph '8' that no information was given to police station on 24.04.2011 and that even on 25.04.2011 he had not recorded statement of any witness. The I.O. admits in paragraph '9' that he had not recorded the statement of witnesses in the boundary of temple.

29. Learned Amicus Curiae relies upon the judgment in the case of **Santosh Kumar Singh vs State of Bihar** reported in **2023 (1) PLJR 245** (Para 28) to submit that in view of presumption of innocence of an accused of crime his interest cannot be completely overlooked rather the prosecuting agency is to ensure that all material evidence is collected during investigation to establish its case beyond all reasonable doubts

since the purpose of investigation is not confined to securing conviction.

30. Learned Amicus Curiae has placed before this Court an article published in Bar and Bench on 4th June, 2022 titled “Compensation for Wrongful Prosecution, Incarceration and Conviction”. He has placed before this Court the judgment of the Hon’ble Supreme Court in the case of **State of Gujarat versus Kishanbhai and Others** reported in **(2014) 5 SCC 108** (paragraphs ‘19’, ‘22’ and ‘23’). It is submitted that according to the judgment of the Hon’ble Supreme Court where it is found that the Investigating/Prosecuting Official(s) concerned responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. The Hon’ble Supreme Court has observed that each erring official must suffer consequences of the lapse, by appropriate departmental action whenever called for and taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibility permanently or temporarily, depending purely on his culpability. Accordingly, the Hon’ble Supreme Court had issued certain directions to the Home Department of every State Government to formulate a procedure for taking action against all erring

Investigating/Prosecuting Officials/Officers. It is submitted that in this case, the manner in which whole investigation has been done by PW-8 is liable to be deprecated.

31. In the light of the above submissions, learned Amicus Curiae submits that in this case, the learned trial court has committed grave error in appreciation of the evidences available on the record. The prosecution has miserably failed to prove its case. It is submitted that the impugned judgment of conviction and order of sentence are liable to be set aside and the appellants would deserve acquittal giving them benefit of doubt.

Submissions on behalf of the State

32. Ms. Shashi Bala Verma learned Additional P.P. for the State has opposed both the appeals and defended the judgment of the learned trial court. Learned Additional P.P. for the State submits that in this case the informant (PW-4) is an injured witness who has narrated the entire occurrence. The injury report of PW-4 has been brought on record as Exhibit '6' and on perusal of the same it would appear that this witness had suffered scalp injury. It is submitted that Doctor (PW-10) has stated that Dr. S. A. Khan had prepared the injury report on his dictation. He had also examined Uday Rai (the deceased) and had found firearm injuries on his body. The injury report of Uday Rai has been marked

Exhibit '7'. Learned Additional P.P. submits that there may be certain defects in investigation as the Investigating Officer (PW-8) had not recorded the statement of PW-10 in course of his investigation but that alone would not be a ground to disbelieve the prosecution story.

33. Learned Additional P.P. submits that so far as the place of occurrence is concerned, the prosecution has proved the place of occurrence. PW-4 has given the description and the boundary of the temple where he was sitting and where the occurrence had taken place.

34. Learned Additional P.P. further submits that PW-3 and PW-5, who are the sons of the deceased Uday Rai, are witnesses to the occurrence and they have also supported the prosecution case. Having submitted so, learned Additional P.P. submits that even as the Doctor (PW-10) has not found any charring or blackening on any of the injuries of the deceased, it may be because of the several operations conducted by Doctor during treatment of the deceased. Learned Additional P.P., however, submits that from the evidences on the record no specific genesis of the offence may be found. In her submissions, the delay in lodging of the FIR may have occurred because of the fact that PW-4 was admitted in the hospital and he could make his

statement only after he regained his consciousness. The last submission is that the impugned judgment and order do not suffer from any infirmity and no interference is required.

Consideration

35. We have heard learned Amicus Curiae for the appellants and learned Additional P.P. for the State as also perused the trial court records.

36. It is evident from the prosecution case that the occurrence took place on 24.04.2011 at about 9:15 PM when Sanjay Rai (PW-4) claims that he was sitting near Devi Temple in his village. In the first occurrence, in which both the appellants are said to have fired upon PW-4, he did not suffer any firearm injury but in his *fardbeyan* which was recorded on 25.04.2011 at 17:30 hours he claimed that he had suffered the splinter of the bullet on the right side of his abdomen and thereafter Pappu Kumar had assaulted him twice-thrice by butt of pistol on his head causing him serious injury. So far as the injury report (Exhibit '6') of PW-4 is concerned, it would not inspire confidence of this Court. All that is stated in Exhibit '6' is that there was an injury on the scalp which was simple in nature. The dimension of the injury has not been noted. The Doctor (PW-10) has simply stated that the injury of Exhibit '6' was simple. No X-ray plate or X-ray report of the

said injury has been proved. Charring or blackening was not found on any injury. PW-10 has also stated that police had not recorded his statement. He did not remember that patient arrived in hospital on private or on requisition of police. PW-10 has further stated in his cross-examination that this type of report is issued only on police requisition but in the injury report it is not mentioned that the patient came private or on police requisition.

37. PW-4 has in course of his evidence stated in his examination-in-chief that he had suffered splinter on his waist and he had fallen down whereas in his *fardbeyan* he has not stated that he had fallen down rather stated that he was taken to Bihta Hospital for treatment on a motorcycle. PW-4 has himself stated in paragraph '2' that at the time of occurrence no one from the village came at the temple. In his *fardbeyan* he has stated that after he shouted '*bachao bachao*', on hearing his shouts his cousin uncle Uday Rai (deceased) and his son Kaushal Kumar (PW-3) came running to save him but in course of evidence he has improved upon his statement and claimed that his uncle Uday and cousin brothers Kaushal and Deepak (PW-5) came to save him. He has stated that he had suffered the shot in the side of the stomach but he had not become unconscious. In his cross-examination, PW-4 has further stated that he cannot say who had carried him. At this

stage, he has stated that he was taken on a Bolero vehicle. Thus, his statement regarding the vehicle by which he was taken to Doctor materially differs. He has stated in paragraph '3' of his deposition that he and his uncle Uday Rai both were taken in the same vehicle which again differs from his earlier statement in the *fardbeyan*. This witness has stated in paragraph '3' that when both the injured persons reached Hi-Tech Hospital, they had been unconscious and he regained his consciousness after one day, he was discharged after a day whereas the treatment of Uday Rai (the deceased) continued in Hi-Tech Hospital for four months. This witness has in course of his evidence stated that his uncle Uday never returned home from the hospital and he was not in a position to speak. Contrary to his statement on this point PW-3, who is son of Uday Rai, has stated that his father Uday Rai was treated in Hi-Tech Hospital for about two and half-three months, the hospital authorities told him to take him back home and he was taken to home for a week but his condition worsened and he was again admitted in the hospital where he died. PW-3 has stated that about 100-150 persons from the village had assembled at the place of occurrence. He returned the place of occurrence and found that his father and cousin brother both had fallen down on the earth towards eastern side of the temple and blood were oozing out from

the body of both the injured which had spread in two-three palms distance. PW-3 has claimed that his brother was lying in unconscious condition. In course of trial, no evidence has been brought on record to show that PW-4 was admitted in Hi-Tech Hospital and that he was lying in unconscious condition for one day. The *fardbeyan* of Sanjay Rai (PW-4) was recorded by Sub-inspector C. N. Singh of Danapur Police Station who has not been examined by the prosecution. No Doctor of Hi-Tech Hospital has signed on the *fardbeyan*. This has definitely caused prejudice to the defence because the circumstances under which S.I. C. N. Singh had visited Hi-Tech Hospital, Danapur on 25.04.2011 and recorded *fardbeyan* of PW-4 could not be testified. The *fardbeyan* does not show that PW-4 was making his statement in injured condition and/or he was admitted in the Hi-Tech Hospital.

38. From the statement of PW-4 in course of his deposition (paragraph '3') it would appear that he has changed his version as regards the number of firing which took place upon him. Contrary to his statement in the *fardbeyan* PW-4 has stated in his deposition in course of trial that only one shot was fired upon him while two shots were fired upon his uncle (the deceased). He has stated that no other firing except three shots had taken place.

Thus, PW-4 himself puts in doubt as regards the manner of occurrence.

39. From the evidence of PW-4, we find that even as he claims himself an injured witness, his testimony would not be reliable because he is making false statements. He has made a false statement that initially both Pappu Rai and Manoj Rai had fired upon him from their pistol. He further made contradictory statements regarding his consciousness and he has made two different statements with regard to the vehicle by which he was brought to hospital. Neither any injury report showing any firearm injury suffered by PW-4, if any, nor his discharge summary of the Hi-Tech Hospital, Danapur showing his admission in the Hospital and discharge from the hospital has been brought on record in course of trial. PW-4 has claimed in his *fardbeyan* that he was assaulted twice-thrice on his head forcibly by butt of the pistol as a result whereof he had become badly injured but the Doctor (PW-10) has simply recorded one scalp injury which is simple in nature. The manner in which Exhibit '6' has been prepared and proved does not inspire confidence of the Court. The Doctor (PW-10) was not examined by the I.O. (PW-8). In the case of **V.C. Shukla versus State Delhi (Administration)** reported in **AIR 1980 SC 1382** (paragraph '24'), the Hon'ble Supreme Court has observed

that a witness who makes deliberate false statements is unreliable. In the case of **Sharad Birdhichand Sarda versus State of Maharashtra** reported in (1984) 4 SCC 116 (paragraph '118'), the Hon'ble Supreme Court has held that no confidence may be reposed in a witness who makes a wrong statement. This Court arrives at a conclusion that PW-4 has made deliberate false statements regarding his injuries and other relevant facts, therefore, he is not a reliable witness.

40. In this case, the defence has raised an issue as to the place of occurrence and source of identification at the said place of occurrence. It appears from the evidence of PW-3 that according to him, there are two temples in the village. One is situated in the west side and the another is situated in the east side of the village. The west side temple is at a distance of about 100 meters from his house and 150 meters from the house of PW-4. The east side temple is at a distance of 500 meters from his house and 400 meters from the house of PW-4. This witness has stated that the temple situated towards east side is also known as 'Devi Temple'. Thus, from his deposition, it appears that in the village, the east and west side temples both are known as 'Devi Temple'. On the other hand, PW-4 has stated in paragraph '2' of his deposition that there are three temples in his village. Two temples are in the west

side and one in the east side. Neither PW-3 nor PW-4 is categorically stating as to which temple in the west side is the place of occurrence. PW-5, has stated in paragraph '4' of his deposition that the house of Sanjay Rai (PW-4) is situated at a distance of 400 meter towards east from the temple. He also says that there are two temples in the village. PW-3 has stated that when he returned, he found that his brother had fallen on the earth towards east of the temple, therefore, there is no evidence that the firing took place at the *verandah* of the temple. The I.O. had visited the place of occurrence on 25.04.2011 and 26.04.2011. PW-5 has claimed that he had taken the I.O. to the place of occurrence but he describes that the place of occurrence is a '*kuchcha rasta*' and the said '*rasta*' is going North-South. When he went to the place of occurrence with the I.O., there was no blood mark. The I.O. (PW-8) has stated in his evidence that in course of investigation, he had gone to the place of occurrence and according to him, the place of occurrence is the temple of Jai Maa Bhawani in village Ghanshyampur and the occurrence took place when the informant was sitting in the *verandah* of the temple. In paragraph '3' of his deposition, PW-8 has given description of the place of occurrence but in the boundary, no '*kuchcha rasta*' has been shown. There is no map of the place of occurrence and it is

evident that the I.O. (PW-8) was acting in a most casual manner. The I.O. has stated that no information as to the occurrence was given to the police station and he had not recorded the statement of any witness on 25.04.2011. In paragraph '9' of his deposition, the I.O. has stated that in the vicinity of the temple, he did not find any sign of firing, empty cartridge or blood mark at the *verandah* of the temple. If this evidence of PW-3 and PW-8 are read with the evidence of PW-4 who claims that there were two temples in the west side of the village, it is liable to be concluded that the prosecution has also failed to prove the place of occurrence in this case.

41. This Court further finds that the occurrence took place during night hours at 9:15 pm. Although PW-3 has stated that there was electricity connection at the temple for which no government approval was there and the connection was taken directly from the transformer which is at a distance of ten steps west of the temple but on this point, the I.O. (PW-8) has not made any mention as to presence of the transformer in the boundary of the temple. PW-8 has in fact stated in paragraph '10' of his deposition that the witnesses had not given any statement with regard to the source of light. He has categorically stated that the witnesses had not given any statement with regard to the source of

light and he had not mentioned about presence of any transformer near the temple. On this point, PW-4 has stated that he did not remember whether the night on which the occurrence had taken place was a moon night or '*andheria*' night. He has not stated about the source of light at the temple. It is evident from the evidence of PW-4 and PW-8 that they are not corroborating the statement of PW-3 who has claimed that there is an electricity connection in the temple and at a distance of ten steps only there is a transformer and from the transformer only the temple is lighted.

42. This Court has noticed from the evidence of prosecution witnesses that their conduct are highly doubtful. PW-4 claims that he was not unconscious but PW-3 claims that he found PW-4 had fallen down from the *chabutra* and PW-4 had become unconscious, he was lifted by Satendra Kumar (not examined), Binod Kumar (not examined) and Deepak Kumar (PW-5) and had been taken on a motorcycle. Both the injured are said to have been taken to the clinic of Dr. Lalit Mohan by a motorcycle but PW-3 gives name of one Pintu Kumar (not examined) whose motorcycle was used. On this point, PW-5 has a different statement as he has stated that Sanjay (PW-4) and his father (deceased) were not unconscious. The family members of Sanjay are there, his wife and children were present in the house but surprisingly nobody

came to the place of occurrence. No one from amongst the prosecution witnesses, namely, PW-3, PW-5 and PW-6, who are the sons of Uday Rai (deceased), informed Naubatpur Police Station within whose jurisdiction the place of occurrence was falling. The I.O. has categorically stated that no information about the occurrence was given to Naubatpur Police Station on 24.04.2011 and he had come to know about this case from Danapur Police Station on 25.04.2011. The prosecution witnesses have stated that they had neither gone to the police station nor had informed the police station about the occurrence.

43. From the evidence of PW-3, PW-5 and PW-6 it is evident that they are not at all consistent and even as they claimed themselves to have seen the second part of the occurrence in which their father Uday Rai was shot at, they are not eyewitnesses. Kaushal Kumar (PW-3) has stated in his examination-in-chief that it was Manoj Rai who had fired twice upon the deceased causing injuries to him in his abdomen and mouth. Contrary to his evidence, PW-5 has stated that Pappu Rai and Manoj Rai both had fired upon his father. He has stated that when he reached the place of occurrence he found that Sanjay Rai, who was his cousin brother, had suffered a shot but from the prosecution evidence it is evident that Sanjay Rai had not suffered any firearm injury. PW-5

and PW-6 both have been introduced as eyewitnesses to this case at a belated stage. PW-6 has claimed that when he reached the place of occurrence, he found that his cousin brother Sanjay had suffered splinter of the bullet in his abdomen and he was bleeding but this part of the evidence of PW-6 is not getting corroborated even from the evidence of PW-4 and the evidence of the Doctor (PW-10). Exhibit '6' which is the injury report of PW-4 nowhere shows any injury on his abdomen. PW-6 has stated that Ram Narayan Rai had ordered to fire upon Kaushal Kumar (PW-3) whereafter Kaushal Kumar fled away and the accused persons went towards their house firing. PW-6 claims that he had taken his father Uday Rai and brother Sanjay Rai for treatment to the clinic of Dr. Lalit Mohan. Dr. Lalit Mohan has not been examined. He has stated that his brother Deepak (PW-5) had gone with Sanjay Rai by a tempo. From the evidence of this prosecution witness it is evident that while PW-3 says that injured were taken by motorcycle, PW-4 claims that he was taken in a Bolero and then PW-6 says that Sanjay Rai (PW-4) was taken by a tempo. This Court therefore doubts presence of PW-3, PW-4, PW-5 and PW-6 at the place of occurrence and according to this Court, these witnesses cannot be put in the category of eyewitnesses.

44. This Court finds from the evidence on the record that in this case neither the persons residing in the boundary of the place of occurrence have been interrogated by I.O. nor any other independent witness has been examined on behalf of the prosecution. PW-4 has stated in his evidence that at the time of occurrence, no one from the village came at the temple and after he was shot at it was his uncle Uday and cousin brother Kaushal and Deepak came. In his *fardbeyan* he has stated that only Uday and Kaushal had come to save him. Thus, he does not talk of presence of any independent witness at the place of occurrence but PW-3 has stated in his evidence that after he reached the place of occurrence, people from village had not come. Contrary to this, PW-5 has stated that when he reached the temple, people from the surrounding areas were present at some distance. It is evident from these materials that there is no independent witness in this case.

45. On the point of delay in lodging of the First Information Report, the conduct of the prosecution witnesses would show that they were reluctant in passing on the information about the occurrence to local police station at the earliest opportunity. In fact, no information was given to Naubatpur Police Station by the prosecution party and only on 25.04.2011 at 5:30 pm, a Sub-Inspector from Danapur Police Station recorded the

statement of PW-4 in the Hi-tech Hospital. A reading of the *fardbeyan* does not show that PW-4 was admitted in the hospital or that he was recording his statement in injured condition. The delay has occasioned not only in lodging of the FIR but even in sending the FIR to the court of learned Additional Chief Judicial Magistrate, Danapur. It has been received in court after three days. PW-8 has stated in his deposition that he had visited village Ghanshyampur on 25.04.2011 at 8:00 pm but had not recorded statement of anybody and on the next day on 26.04.2011 he had gone to the place of occurrence at 1:15 pm but did not find any sign of firing, empty cartridge or blood mark. It is evident from the evidence of PW-8 that although he claims to have received the copy of *fardbeyan* on 25.04.2011 from Danapur Police Station, returned with the same to Naubatpur Police Station and registered the FIR on 25.04.2011 at 23:45 hours but the same was not sent to the court of learned jurisdictional Magistrate. In the case of **Meharaj Singh (L/Nk.) vs. State of U.P. with Kalu vs. State of U.P. and Others** reported in (1994) 5 SCC 188. Paragraph '12' of the judgment of **Meharaj Singh** (*supra*) reads as under:-

“12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding

the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and

that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.”

46. The Hon’ble Supreme Court has observed in the case of **Chotkau** (*supra*) that unexplained inordinate delay in sending the copy of FIR to the Magistrate may affect the prosecution case adversely. An adverse inference may be drawn against the prosecution when there are circumstances from which an inference can be drawn that there were chances of manipulation in the FIR by falsely roping in the accused persons after due deliberations. Delay provides legitimate basis for suspicion of the FIR, as it affords sufficient time to the prosecution to introduce improvements and embellishments. It has been held that a delay in dispatch of the FIR by itself is not a circumstance which can throw out the prosecution’s case in its entirety, particularly when the prosecution furnishes a cogent explanation for the delay in dispatch of the report or prosecution case itself is proved by leading unimpeachable evidence. The Hon’ble Supreme Court has held in the case of **Balram Singh & Anr vs State of Punjab** reported in (2003) 11 SCC 286 that while considering the

complaint in regard to the delay in the FIR reaching the Jurisdictional Magistrate, we will have to also bear in mind the creditworthiness of the ocular evidence adduced by the prosecution and if we find that such ocular evidence is worthy of acceptance, the element of delay in registering a complaint or sending the same to the Jurisdictional Magistrate by itself would not weaken the prosecution case.

47. This Court has already discussed in detail the evidence of the prosecution witnesses which are not trustworthy. Taking note of the materials on the record and finding that the prosecution witnesses are not only untrustworthy, there is also an inordinate delay in lodging of the FIR and in sending the same to the court of learned Judicial Magistrate which remain unexplained, in fact the relevant column in the FIR where date of dispatch is to be mentioned has been left blank, this Court is of the considered opinion that the learned trial court has not properly appreciated the materials on the record.

48. In the present case, Uday Rai (deceased) has been killed but neither the place of occurrence nor the presence of PW-3, PW-4, PW-5 and PW-6 are believable, hence this Court would conclude that the prosecution in this case has not proved the guilt of the appellants beyond all reasonable doubts. In these

circumstances, we are of the opinion that the impugned judgment and order of the learned trial court are liable to be set aside giving benefit of doubt to the appellants. We accordingly set aside the impugned judgment and order of the learned trial court and acquit the appellants of the charges under Sections 302, 307 and 34 of the IPC and Section 27 of the Arms Act giving them benefit of doubt.

49. Before this Court parts with this judgment, it would be necessary to address the submissions of learned Amicus Curiae on the role of the Investigating Officer in the present case. On going through the evidences on the record, it has been noticed that in this case, the I.O. (PW-8) has not taken any interest in finding out the truth. He came to know about the occurrence on 25.04.2011 and claims that he had gone to Village-Ghanshyampur on 25.04.2011 at 8:00 PM but he did not do anything and returned without recording statement of any of the witnesses. He did not visit even the place of occurrence and no step was taken to protect the crime scene. The I.O. (PW-8) collected the copy of *fardbeyan* of Sanjay Rai (PW-4) from Danapur Police Station on 25.04.2011. The said *fardbeyan* was recorded by S.I. C.N. Singh of Danapur Police Station but the I.O. (PW-8) did not record the statement of S.I. C.N. Singh in course of investigation and while filing the charge-sheet, said C.N. Singh was not made a charge-sheet

witness. The I.O. (PW-8) did not examine the treating Doctors in Hi-Tech Hospital, Danapur. Dr. S.A. Khan was made a charge-sheet witness but Dr. Roshan Ahsan who had conducted the autopsy on the dead body of Uday Rai and Dr. Ashok Kumar Sinha (PW-10) who has stated that he had examined Uday Rai on 24.04.2011 was not made a charge-sheet witness. In his deposition, he has claimed that he had recorded the statement of Uday Rai which is nothing but a lie. Sanjay Rai (PW-4) has stated that Uday Rai was admitted in Hi-Tech Hospital where he remained under treatment for four months and ultimately died. In paragraph '13' of his deposition, PW-4 has categorically stated that his uncle Uday Rai was not able to speak for months and he could not speak till his death. PW-5 who is one of the sons of the deceased has also stated that his father died in course of treatment. In fact, in paragraph '61' of the case diary, the I.O. (PW-8) has recorded that he had visited Hi-Tech Hospital, Saguna More for recording statement of Uday Rai where he found that Uday Rai had sustained bullet injury in his mouth and was unable to speak, therefore his statement could not be recorded. Contrary to this, when he deposed in the trial court, he has stated that in course of investigation, he had recorded statement of Uday Rai. The I.O. was aware that the occurrence had taken place during night hours

but did not record about presence of any electricity pole or transformer near the place of occurrence and no investigation was done on the point that there was any electricity supply in and around the temple. He did not record statement of Jai Mangal Rai, Dhanu Rai and Sudama Mistry who are said to be the persons residing in the boundary of the place of occurrence. In view of the aforesaid materials on the record, this Court is of the considered opinion that the I.O. (PW-8) has seriously messed up the prosecution case and the lapse on the part of PW-8 is blameworthy. In the case of **Kishanbhai (supra)**, the Hon'ble Supreme Court has observed in paragraphs '19', '22' and '23' as under.

“19. Every time there is an acquittal, the consequences are just the same, as have been noticed hereinabove. The purpose of justice has not been achieved. There is also another side to be taken into consideration. We have declared the respondent-accused innocent, by upholding the order of the High Court, giving him the benefit of doubt. He may be truly innocent, or he may have succeeded because of the lapses committed by the investigating/prosecuting teams. If he has escaped, despite being guilty, the investigating and the prosecution agencies must be deemed to have seriously messed it all up. And if the accused was wrongfully prosecuted, his suffering is unfathomable. Here also, the investigating and prosecuting agencies are blameworthy. It is therefore necessary, not to overlook even the hardship suffered by the accused, first during the trial of the case, and then at the appellate stages. An innocent person does not deserve to suffer the turmoil of a long-

drawn litigation, spanning over a decade or more. The expenses incurred by an accused in his defence can dry up all his financial resources — ancestral or personal. Criminal litigation could also ordinarily involve financial borrowings. An accused can be expected to be under a financial debt, by the time his ordeal is over.

22. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore essential that every State should put in place a procedural mechanism which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A Standing Committee of senior officers of the police and prosecution departments should be vested with the aforesaid responsibility. The consideration at the hands of the above Committee, should be utilised for crystallising mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of refresher training programmes for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials should be vested in the same Committee of senior officers referred to above. Judgments like the one in hand (depicting more than ten glaring lapses in the investigation/prosecution of the

case), and similar other judgments, may also be added to the training programmes. The course-content will be reviewed by the above Committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of courts, and on the basis of experiences gained by the Standing Committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence when they are made liable to suffer departmental action for their lapses.

23. On the culmination of a criminal case in acquittal, the investigating/prosecuting official(s) concerned responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly, we direct the Home Department of every State Government to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of

culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.”

50. We are of the opinion that this is high time that this Court must understand the spirit of the observations of the Hon’ble Supreme Court in the abovementioned backgrounds. We, therefore direct the Home Department, Government of Bihar to take appropriate action, identify the erring official for the failure of the prosecution and find out whether it is a case of sheer negligence or the lapse on the part of the I.O. in the nature of culpable lapses as envisaged by the Hon’ble Supreme Court in the case of **Kishanbhai (supra)**. If it is found that it is a case of culpable lapses, the consequences in terms of the judgment of the Hon’ble Supreme Court shall follow.

51. Both the appeals are allowed. The appellant Manoj Rai in Cr. Appeal (DB) No. 1063 of 2017 is on bail, hence he is discharged from the liability of his bail bonds.

52. The appellant Pappu Rai in Cr. Appeal (DB) No. 1099 of 2017 is in custody and has spent about thirteen years in jail. He is directed to be released forthwith if not wanted in any other case.

53. We acknowledge the assistance rendered by Mr. Anil Singh, learned Advocate as learned Amicus Curiae. A consolidated sum of Rs. 15,000/- shall be paid to the learned Amicus Curiae by the Patna High Court Legal Services Authority within one month from the date of receipt of a copy of this judgment.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

Rishi/Sushma-

AFR/NAFR	
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