

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.640 of 2018

Arising Out of PS. Case No.-212 Year-2015 Thana- RAGHUNATHPUR District- Siwan
=====

Kedar Singh S/o- Late Nageshwar Singh, resident of Village- Siuri, P.S.-
Asson, District- Siwan.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 671 of 2018

Arising Out of PS. Case No.-212 Year-2015 Thana- RAGHUNATHPUR District- Siwan
=====

Haran Singh @ Harinarayan Singh S/o Late Nageshwar Singh, R/o Vill.-
Shiuri, P.S.- Asson, District- Siwan.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 675 of 2018

Arising Out of PS. Case No.-212 Year-2015 Thana- RAGHUNATHPUR District- Siwan
=====

Dhananjay Singh Son of Haran Singh, resident of Village- Siuri, Police
Station- Asson, District- Siwan.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

(In CRIMINAL APPEAL (DB) No. 640 of 2018)

For the Appellant/s : Mr. Ansul, Advocate
Mr. Rajgiri Singh, Advocate
Mr. Bijay Prasad, Advocate
Mr. Ram Binod Singh, Advocate

For the Informant : Mr. Ravindar Kumar, Advocate

For the State : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 671 of 2018)

For the Appellant/s : Mr. Bindhyachal Singh, Sr. Advocate
Mr. Ram Binod Singh, Advocate
Mr. Vipin Kumar Singh, Advocate

For the Informant : Mr. Ravindar Kumar, Advocate

For the State : Mr. Satya Narayan Prasad, APP

(In CRIMINAL APPEAL (DB) No. 675 of 2018)

For the Appellant/s : Mr. Bindhyachal Singh, Sr. Advocate
Mr. Ram Binod Singh, Advocate
Mr. Vipin Kumar Singh, Advocate



For the Informant : Mr. Ravindar Kumar, Advocate
For the State : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 28-06-2024

The present appeals have been preferred against the order of conviction and sentence dated 07.04.2018 and 09.04.2018 respectively passed by the learned Additional Sessions Judge-III, Siwan in Session Trial No. 411 of 2016, arising out of Raghunathpur P.S. Case No. 212 of 2015, corresponding to G.R. No. 5022 of 2015, whereby the appellants have been convicted for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code and Sections 27 read with Section 35 of the Arms Act, and all three appellants are sentenced to undergo life imprisonment and pay fine of Rs.1,000/- for offence punishable under Section 302 read with Section 34 of I.P.C. and to undergo imprisonment for three years and pay fine of Rs.500/- for offence punishable under Section 27 read with Section 35 of Arms Act, with default clause. Both the sentences are directed to run concurrently.

2. The FIR bearing Raghunathpur P.S. Case No. 212 of 2015 was registered on 14.11.2015 at 08.15 O'clock for offence punishable under Section 302 read with Section 34 of I.P.C. and



Section 27 of the Arms Act against three accused Persons who are appellants herein on the *fardbeyan* of one Rakesh Kumar Singh at 8.15 pm on 13.11.2015 before Police Officer, Nagar Thana at Sadar Hospital, Siwan.

3. The prosecution case as emerging from the *fardbeyan* is that at 4.30 pm on 13.11.2015, the informant was standing on the roof of his hardware shop along with his brother Rajesh Singh and talking to him. His father Premchand Singh was standing in front of the shop and talking to a vegetable vendor. The shop is situated at village Patar. All of a sudden, on a black coloured Passion Pro motorcycle, accused Kedar Singh, Haran Singh and Dhananjay Singh came. Kedar Singh was driving the motorcycle and other two co-accused were sitting as pillion riders. After stopping the motorcycle, all three accused took out pistols from their waist and shot at the head of his father and after sitting on the motorcycle, which was already in start condition, fled away towards Asaon. Further case of the informant is that he also saw three other persons on motorcycle in suspicious circumstances at the time of firing. At the time of firing, these persons were observing the situation and 2-3 other persons, who were on foot carrying pistol, were monitoring. Seeing the firing, the informant came down from the roof of his



shop along with his brother crying. But by the time, they came on the ground, accused persons had fled away. His father had fallen on the ground in an injured condition. Thereafter, the informant took out his Scorpio vehicle bearing No. JH-01V-7117 and took his father to Raghunathpur Primary Health Center, wherefrom he was referred to Sadar Hospital, Siwan. But on way to Siwan, he died and the doctor at Siwan declared him dead. It is further alleged that one year and nine months back, the informant had solemnized love marriage with one Sabya Singh, the daughter of appellant/Dhananjay Singh and since then they were extending threats to kill them saying “you have played with my honour, I will play with your blood”.

4. After registration of the F.I.R., investigation commenced and after investigation, charge-sheet No. 94 of 2016 dated 15.08.2016 was filed against all three appellants for offence punishable under Section 302 read with Section 34 of I.P.C. and Section 27 of Arms Act. After cognizance on 24.08.2016 by the A.C.J.M.-VIII, Siwan, the case was committed to the Court of Sessions on 31.08.2016.

5. Charges were framed against all three accused persons under Section 302 read with Section 34 of I.P.C. and Section 27 of the Arms Act. The same were read over and



explained to the accused persons, which they pleaded not guilty and claimed to be tried. Hence, the trial commenced.

6. During trial, following seven witnesses were examined on behalf of the prosecution:-

- (i) **P.W.-1 – Rajesh Kumar Singh** (son of the deceased)
- (ii) **P.W.-2 – Rabindra Singh** (brother of the deceased)
- (iii) **P.W.-3 – Panchanand Singh** (father of the deceased)
- (iv) **P.W. -4 – Rakesh Kumar Singh** (Informant and son of the deceased.)
- (v) **P.W. -5 – Saroj Kumar** (second Investigating Officer)
- (vi) **P.W.-6 – Dr. Ramesh Chandra Thakur** who conducted postmortem examination on the dead body of the deceased.
- (vii) **P.W.-7 – Abhijit Kumar** (first Investigating Officer)

7. Prosecution also brought on record the following documentary evidence:-

- (i) **Ext. 1** – Signature of Rajesh Kumar Singh (P.W.1) on the *fardebayan*;
- (ii) **Ext. 2** – Signature of Rajesh Kumar Singh (P.W.1) on the carbon copy of the inquest report;
- (iii) **Ext. 3** – Signature of the informant (P.W.-4) on the *fardebayan*;
- (iv) **Ext. 4** – Signature of the informant (P.W.-4) on the carbon copy of the inquest report;
- (v) **Ext. 5** – post mortem report;
- (vi) **Ext. 6** – Signature of Ram Ugrah Rai (Police Officer) on the *fardebayan*.
- (vii) **Ext. 7** – Formal FIR
- (viii) **Ext. 8** – Signature of Ram Ugrah Rai on the *fardebayan* recorded by him



(ix) **Ext. 9** – Seizure list

(x) **Ext. 10** – Carbon copy of the inquest report in writing of Ram Ugrah Rai with his signature.

8. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.PC confronting them with incriminating circumstances which came in the prosecution evidence, so as to afford them opportunity to explain those circumstances. During this examination, they stated that they had heard the evidence of the prosecution, but they have not explained those circumstances, but denied the charge. They have also claimed to be innocent.

9. However, accused/Kedar Singh in his statement under section 313 Cr.PC had also stated that he was not aware whether Premchand Singh had died. He is also not aware that some times prior to the occurrence, the informant/Rakesh Kumar Singh had married Sabya Singh, the daughter of Dhanjay Singh. He has also stated that when he was not aware of the marriage between Rakesh Kumar Singh and Sabya Singh, there was no question of his becoming angry with the marriage. He has also stated that there were many litigations between their side and the Informant side and that is why the informant has falsely implicated them.

10. Haran Singh in his statement under Section 313



Cr.PC has also stated that on the alleged date of occurrence, he was at the residence of his daughter, taking medical treatment in Hospital for kidney problem, heart and high-blood pressure. He had also stated that he was not aware whether the informant had married Sabya Singh.

11. Dhananjay singh in his statement under Section 313 Cr.PC had also stated that he was not aware whether Premchand Singh has died. He had also stated that he was not aware whether the informant had married his daughter Sabya Singh. He had also denied that he had extended any threat to the informant for the marriage.

12. The accused persons have, however, not examined any witness in their defence. But they have brought following two documents on record:

- (i) **Ext. A** – Certified copy of the FIR of Mairwa P.S. Case No. 129 of 2013.
- (ii) **Ext. B** – Certified copy of the statement of Ravipratap Singh under Section 164.

13. The learned Trial Court, after appreciating the evidence on record and considering the submissions of the parties, passed the impugned judgment of conviction and order of sentence, finding that the prosecution proved its case against the accused persons (appellants herein) beyond all reasonable



doubts.

14. We have heard the learned Counsel for the appellants and the learned APP for the State.

15. The learned counsel for the appellants submitted that the impugned judgment of conviction and order of sentence passed by the Trial Court are not sustainable in the eye of law or on facts. The Court below has not applied its judicial mind and has failed to properly appreciate the evidence on record. They claim that the prosecution has failed to prove its case against the appellants beyond all reasonable doubts. There is no cogent evidence on record to fasten the appellant with guilt as alleged by the Prosecution.

16. To substantiate their claim, they submitted that all the non-official prosecution witnesses are related and interested witnesses and hence they cannot be relied upon for conviction of the appellants. They also submitted that as per the prosecution case, the occurrence had taken place in a market, but no independent witnesses have been examined, which renders the Prosecution case doubtful. They further argued that there were two independent chargesheet witnesses viz. Rajendra Bhagat and Raj Kishore Bhagat, who were not examined. There are material contradictions and discrepancies in the statements of



the prosecution witnesses. It was argued that there are material contradictions between medical and ocular evidence. As per the prosecution evidence, all three accused shot at the alleged victim, whereas only two injuries were found on the person of the deceased and only one pellet was found from the dead body during the postmortem. As per the prosecution evidence, the shot was fired at the victim from a distance of 2 or 2.5 feet, but as per the postmortem report, there was no mark of *tattoo* on the deceased. The witnesses who have claimed to be the eye witnesses, were in fact, not witnesses to the occurrence. They are only hearsay witnesses and their evidence has no evidentiary value. There is also no evidence on record to show any common intention of the appellants to attract the mischief of Section 34 of the Indian Penal Code.

17. They have also submitted that the investigation was defective, causing prejudice to the accused/appellants, claiming that the FIR was sent to the jurisdictional Magistrate after a long delay, as it was lodged on 14.11.2015, whereas it was sent to the Magistrate on 18.11.2015 thereby violating the Provisions of Section 157 Cr. PC. As per the evidence of the Investigating Officer (P.W.-7), *Sanha* was entered by him in the station Diary after getting information regarding the occurrence and before



proceeding to the place of occurrence for verification of the facts and seizing the cartridges and other materials from the place of occurrence. However, the *Sanha* has not been brought on record by the prosecution.

18. The place and manner of occurrence were also not proved.

19. They further argued that the deceased was a person of criminal background and he might have been killed by someone else on account of rivalry and the appellants were falsely implicated.

20. However, the learned Additional Public Prosecutor vehemently submitted that there is no illegality or infirmity in the impugned judgment and order of sentence. The appellants have been rightly convicted and properly sentenced.

21. In view of the submissions of the parties in regard to non – examination of two chargesheet witnesses/Rajendra Bhagat and Raj Kishore Bhagat either on the side of the Prosecution or the Defence, it would be pertinent to mention at the outset that as per record, it transpires that the Prosecution preferred not to examine these witnesses as they had been gained over by the accused persons. The accused persons had applied to the Trial Court for issuance of summons to these



chargesheet prosecution witnesses. However, the prayer of the accused was rejected by the Trial Court by order dated 04.03.2017. But this rejection order was never challenged before any higher Court and when the trial reached the stage of final argument, the accused persons again applied before the Trial Court to issue summons under Section 233 Cr.PC to these two witnesses for their examination as defence witnesses. However, the same was rejected by the Trial Court by the order dated 19.05.2017 which was challenged by the accused persons before this Court. But this Court upheld the order dated 19.05.2017 passed by the learned Trial Court finding that the application was vexatious and intended only to delay the trial. This order dated 01.12.2017 passed by this Court was never challenged before Hon'ble Apex Court. Hence the issue stands closed and the appellant can not claim to be prejudiced by non examination of these witnesses on their behalf, nor can the accused persons dictate the Prosecution regarding examination of the witnesses to prove its case. Under Section 231 (1), CrPC, it is for the Prosecution to decide how to prove its case. It is not bound to examine all the chargesheet witnesses.

22. As far as non-examination of independent witnesses by the Prosecution is concerned, it is relevant to



note that the people in general, more so, civilized people, are insensitive when crime is committed even in their presence. They keep themselves away from courts unless it is inevitable. This kind of apathy of the general public is indeed undesirable and unfortunate, but it is there everywhere, whether it is village, town or city. One can not ignore this handicap with which investigation agency has to discharge its duties. Moreover, the prosecution is not bound to produce all the witnesses. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need be produced without unnecessary and redundant multiplication of witnesses. Observations of Hon'ble Supreme Court in regard to non-examination of independent witnesses by the Prosecution may be referred to, to fortify our view.

23. In Appabhai & anr. Vs. State of Gujrat, AIR 1988 SC 696, Hon'ble Supreme Court has held as follows:

“10.It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there



everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner.”

[Also refer to **Darya Singh Vs. State of Punjab, AIR 1965 SC 328; Yogesh Singh Vs. Mahabeer Singh & Ors (2017) 11 SCC 195; Sheo Pujan Tiwari Vs. State of Bihar 2016 (2) PCCR 187 and Dalip Singh Vs. State of Punjab, AIR 1953 SC 364]**

24. With regard to **private witnesses of the Prosecution being relatives of the deceased**, it may be pointed out that there is no bar in law in examining family members or any other persons as witness who are related to the deceased. In fact some times, only family members are found to be witness to an offence. Moreover, evidence of any family members cannot be discarded only on account of his or her relationship with the deceased. The evidence of such evidence has to be weighed on the touchstone of truth and at most a court is required to take care and caution while appreciating their evidence. Here observations made by Hon’ble Apex Court may be referred to in support of our view:



25. In Abhishek Sharma Vs. State (NCT of Delhi),
2023 SCC OnLine SC 1358, Hon'ble Supreme Court has held
as follows:

“24. It is important to appreciate the law on interested witnesses as enunciated by this court. In **Hari Obula Reddy v. The State of Andhra Pradesh**, a three-judge Bench has held that evidence of interested witnesses is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. It cannot be laid down as an invariable rule that interested evidence can only form the basis of conviction if corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. Suppose on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable. In that case, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.”

26. In Yogesh Singh Vs Mahabeer Singh & Ors;
(2017) 11 SCC 195, Hon'ble Supreme Court has held as
follows:

“28. A survey of the judicial pronouncements of this Court on this point leads to the inescapable conclusion that the evidence of a closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon.....”

(Also refer to **Mano Dutt and another Vs. State of Uttar Pradesh; (2012) 4 SCC 79; Daulatram Vs. State of Chhattisgarh, 2009 (1) JIJ 1; State Vs. Saravanan, (AIR 2009 SC 152); State of U.P. v. Kishanpal, (2008) 16 SCC 73; Namdeo Vs. State of Maharashtra, (2007) 14**



SCC 150; State of A.P. Vs. S. Rayappa, (2006) 4 SCC 512; Pulicherla Nagaraju Vs. State of A.P., (2006) 11 SCC 444; Harbans Kaur Vs. State of Haryana; (2005) 9 SCC 195; Hari Obula Reddy and Ors. Vs. The State of Andhra Pradesh, (1981) 3 SCC 675 and Piara Singh and Ors. Vs. State of Punjab, (1977) 4 SCC 452.

27. In regard to **contradiction and discrepancies** in the prosecution witnesses, it is again relevant to point out that it is the settled position of law that minor discrepancies on trivial matters, not touching the core of the case; hyper-technical approach by taking sentences taken out of context here or there from the evidence; attaching importance to some technical error committed by the investigating officer not going to the root of the matter, would not ordinarily permit rejection of the evidence as a whole. In the deposition of witnesses, there are always normal discrepancies, howsoever, honest and truthful they may be. These discrepancies are due to normal errors of observations, normal errors of memory due to lapse of time, mental disposition, shock and horror at the time of occurrence and threat to the life. Therefore, it is the duty of the court not to attach undue importance to minor discrepancies unless they go to the heart of the matter and shake the basic version of the prosecution witnesses as the mental ability of a human being cannot be expected to be attuned to absorb all the details of the incident. Minor discrepancies are bound to occur in statements



of witnesses. In fact minor discrepancies in deposition are indication that the witnesses are not tutored and they are truthful. In case of rustic witnesses coming from villages, court should not be oblivious of the fact that their behaviour pattern and perceptive habits are not attuned to sophisticated approaches familiar in courts. In this context, observations of Hon'ble Apex Court may be referred to:

28. In C. Muniappan & others Vs. State of T.N., (2010) 9 SCC 567, it was held by Hon'ble Apex Court as follows:

“71. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses.....”

[Also refer to **State of U.P. Vs. Krishan Master, (AIR 2010 SC 3071); Appabhai & Anr. Vs. State of Gujrat, AIR 1988 SC 696; Shivaji Sahebrao Bobade & Anr Vs. State Of Maharashtra (1973 AIR 2622); Sanjay Kumar Vs. State of Bihar 2019 SCC OnLine Pat 1077; State of Madhya Pradesh Vs. Dal Singh: (2013) 14 SCC 159; Smt. Shamim Vs. State (GNCT of Delhi), 2018 (4) PLJR 160; S. Govidaarju Vs. State of Karnataka, 2013 (10) SCALE 454; Narotam Singh vs. State Of Punjab And Anr. (AIR 1978 SC 1542); Leela Ram Vs. State of Haryana, (1999) 9 SCC 525; Subal Ghorai and Ors. Vs.**



State of West Bengal, (2013) 4 SCC 607 and Yogesh Singh Vs. Mahabeer Singh & Ors., (2017) 11 SCC 195].

29. With regard to **Inconsistency between Ocular and Medical Evidence**, it is a settled principles of law that the evidentiary value of medical evidence is only corroborative and not conclusive and, hence, in case of a conflict between oral evidence and medical evidence, the former is to be preferred unless the medical evidence completely rules out the oral evidence. Here, In this regard, **Yogesh Singh Vs Mahabeer Singh & Ors., (2017) 11 SCC 195**, may be referred to wherein **Hon'ble Apex Court** has held as follows:

“43. The learned counsel appearing for the respondents has then tried to create a dent in the prosecution story by pointing out inconsistencies between the ocular evidence and the medical evidence. However, we are not persuaded with this submission since both the Courts below have categorically ruled that the medical evidence was consistent with the ocular evidence and we can safely say that to that extent, it corroborated the direct evidence proffered by the eye-witnesses. We hold that there is no material discrepancy in the medical and ocular evidence and there is no reason to interfere with the judgments of the Courts below on this ground. In any event, it has been consistently held by this Court that the evidentiary value of medical evidence is only corroborative and not conclusive and, hence, in case of a conflict between oral evidence and medical evidence, the former is to be preferred unless the medical evidence completely rules out the oral evidence.....

44. In the present case, we do not find any major contradiction either in the evidence of the witnesses or any conflict in medical or ocular evidence which would tilt the



balance in favour of the respondents. The minor improvements, embellishments etc., apart from being far yield of human faculties are insignificant and ought to be ignored since the evidence of the witnesses otherwise overwhelmingly corroborate each other in material particulars.”

30. It is also relevant to point out that it is a settled position of law that the **defect in the Investigation** by itself cannot be a ground for acquittal unless the said defect causes prejudice against the accused. The conclusion of a trial in a case cannot be allowed to be dependent solely on provity of investigation. If primacy is given to such designed or negligent investigation or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would get eroded. Hence, criminal trials could not be made casualties for any lapses committed by the Investigating Officer. As such, in Criminal trials, even if the investigation is defective, the rest of the evidence must be scrutinized independently of the impact of the defects in the investigation, other wise the criminal trial will plummet to the level of the investigation. In this context, reliance is placed on the following authorities.

31. In **Ranjeet Kumar Ram @ Ranjeet Kumar Das Vs. The State of Bihar [2015 (2) PCCR 416]**, Hon'ble



Supreme Court has held as follows:

“21. It is well settled that in criminal trials even if the investigation is defective, the rest of the evidence must be scrutinized independently of the impact of the defects in the investigation otherwise the criminal trial will plummet to the level of the investigation. Criminal trials should not be made casualties for any lapses committed by the investigating officer. In **State of M. P. vs. Mansingh & Ors., (2003) 10 SCC 414**, it was held that even if there was deficiencies in the investigation that cannot be a ground for discrediting the prosecution version. The same view was reiterated in **Sheo Shankar Singh vs. State of Jharkhand And Anr., (2011) 3 SCC 654** and **C. Muniappan & Ors. vs. State of Tamil Nadu, (2010) 9 SCC 567.**”

(Also refer to **C. Muniappan & others Vs. State of T.N. (2010) 9 SCC 567** and **Sukhdeo Yadav & Ors. Vs. State of Bihar, [(2001) 8 SCC 86]**)

32. The learned Counsel for the appellants has also submitted that there is no evidence on record to show common intention of the appellants attracting the application of Section 34 of the Indian Penal Code.

33. Here it would be pertinent to refer to Section 34 of the Indian Penal Code which reads as follows:

“34. Acts done by several persons in furtherance of common intention.- When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

34. Section 34 of the IPC is an exception to the general principle of criminal liability that the person who commits an offence is responsible for that and only he can be held guilty. It lays down a principle of joint liability in doing of



a criminal act. The essence of that liability is to be found in the existence of common intention, emanating from the accused leading to the doing of a criminal act in furtherance of such intention. In such situation, each person is liable for the result of that as if he had done that act himself. To attract principle of joint liability under Section 34 of the IPC, there should be:

- (a) Criminal act is done by several persons;
- (b) Such act is done in furtherance of the common intention of all and;
- (c) Each of such persons is liable for that act in the same manner as if it were done by him alone.

35. Observations of Hon'ble Supreme Court in regard to meaning and import of Section 34 of the IPC would be required to be refereed to for clarity on the legal position in regard to Section 34 of the Indian Penal Code.

36. In Surendra Chauhan Vs. State of M.P., (2000)

4 SCC 110, Hon'ble Supreme Court has held as follows:

“**11.** Under Section 34 a person must be physically present at the actual commission of the crime for the purpose of facilitating or promoting the offence, the commission of which is the aim of the joint criminal venture. Such presence of those who in one way or the other facilitate the execution of the common design is itself tantamount to actual participation in the criminal act. The essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result. Such consensus can be developed at the spot and thereby intended by all of them. [(*Ramaswami Ayyangar v. State of T.N.* (1976) 3 SCC 779)]. The existence of a common intention can be inferred from the attending circumstances of the case and the conduct of the parties. No direct evidence of common intention is



necessary. For the purpose of common intention even the participation in the commission of the offence need not be proved in all cases. The common intention can develop even during the course of an occurrence. [(*Rajesh Govind Jagesha v. State of Maharashtra* (1999) 8 SCC 428)] . To apply Section 34 IPC apart from the fact that there should be two or more accused, two factors must be established: (i) common intention, and (ii) participation of the accused in the commission of an offence. If a common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and a common intention is absent, Section 34 cannot be invoked. In every case, it is not possible to have direct evidence of a common intention. It has to be inferred from the facts and circumstances of each case.”

[Also refer to **Suresh Vs. State of U.P., (2001) 3 SCC 673; Rajesh Kumar Vs. State of H.P., (2008) 15 SCC 705; Chhota Ahirwar Vs. State of M.P., (2020) 4 SCC 126 and Gulab Vs. State of U.P., (2022) 12 SCC 677]**

37. Now, before we proceed to consider whether the prosecution was successful to prove its case against the accused / appellants beyond reasonable doubts, it would be pertinent to find out what is “proof beyond reasonable doubts” and when the accused is entitled to get benefit of doubt.

38. In this context, in **Kali Ram Vs. State of HP (1973) 2 SCC 808**, Hon’ble Apex court has observed as follows:

“23. One of the cardinal principles which has always to be kept in view in our system of administration of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production



of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused.

.....
25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by report to surmises, conjectures or fanciful considerations.In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.

26. It needs all the same to be re-emphasised that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld from the accused. The Courts would not be justified in withholding that benefit because the acquittal might have an impact upon the law and order situation or create adverse reaction in society or amongst those members of the society who believe the accused to be guilty. The guilt of the accused



has to be adjudged not by the fact that a vast number of people believe him to be guilty but whether his guilt has been established by the evidence brought on record.....

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

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

39. In regard to proof, Hon’ble Supreme Court in Collector of Customs Vs. D. Bhoormal (1972) 2 SCC 544,

has also observed as follows:

“30. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus,



legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case.

.....

32..... On the principle underlying Section 106 of the of the Evidence Act, the burden to establish those facts is cast on the person concerned; and, if he fails to establish or explain those facts, an adverse inference of fact may arise against him, which coupled with the presumptive evidence adduced by the prosecution or the Department would rebut the initial presumption of innocence in favour of that person, and in the result, prove him guilty. However, this does not mean that the special or peculiar knowledge of the person proceeded against will relieve the prosecution or the Department altogether of the burden of producing some evidence in respect of that fact in issue. It will only alleviate that burden, to discharge which, very slight evidence may suffice.”

(Emphasis Supplied)

40. In Narender Kumar Vs. State (NCT of Delhi), (2012) 7 SCC 171, Hon’ble Supreme Court observed as follows in regard to proof:

“29. The prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. However great the suspicion against the accused and however strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt.

.....

31. The court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in the isolation.”



(Emphasis Supplied)

41. Hon'ble Supreme Court in the case of **Dharm Das Wadhvani v. State of U.P., (1974) 4 SCC 267**, has again held as follows:-

“14. The question then is whether the cumulative effect of the guilt-pointing circumstances in the present case is such that the Court can conclude, not that the accused *may* be guilty but that he *must* be guilty. We must here utter a word of caution about this mental sense of “must” lest it should be confused with exclusion of every contrary possibility. We have in *S.S. Bobade v. State of Maharashtra* [(1973) 2 SCC 793] explained that proof beyond reasonable doubt cannot be distorted into a doctrine of acquittal when any delicate or remote doubt flits past a feeble mind. These observations are warranted by frequent acquittals on flimsy possibilities which are not infrequently set aside by the High Courts weakening the credibility of the Judicature. The rule of benefit of reasonable doubt does not imply a frail willow bending to every whif of hesitancy. Judges are made of sterner stuff and must take a practical view of legitimate inferences flowing from evidence, circumstantial or direct. At the same time, it may be affirmed, as pointed out by this Court in *Kali Ram v. State of Himachal Pradesh* [(1973) 2 SCC 808] that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld from him.”

(Emphasis Supplied)

[Also refer to **Shivaji Sahabrao Bobade Vs. State of Maharashtra, (1973) 2 SCC 793** and **Dilavar Hussain Vs. State of Gujarat, (1991) 1 SCC 253**]

42. Hence, it emerges that legal proof is not necessarily a perfect proof. Prosecution is not required to prove its case to mathematical precision, nor is it possible to do so. The prosecution is required to prove its case only beyond



reasonable doubts to the estimate of a prudent man. The principle of “proof beyond reasonable doubts” could not be stretched to embrace every hunch, hesitancy and doubt, otherwise, every guilty person is bound to escape from the punishment, leading to cynical disregard of law and public demand for harsh legal presumption against the suspects/accused which may go against fundamental rights/human rights. The accused are entitled to benefit of only reasonable doubts and not all doubts.

43. Now coming to the Prosecution evidence, we find that the **informant/Rakesh Kumar Singh (PW-4)** in his examination-in-chief has supported the prosecution case. In his cross-examination, he has deposed that near his shop, vegetables market is organized on both sides of the road on every Tuesdays and Fridays and on the day of occurrence, there was a market. People had come to purchase vegetables. He has also deposed that at the time of occurrence, his father/victim was standing 10-15 feet away from his shop facing south and the person with whom he was talking, was not visible to him and at that time the accused persons had come there on motorcycle. He has also deposed that at the time of occurrence, his father/victim was wearing trousers and shirt which got soaked in blood and blood



had fallen at the P.O also. However, he was not aware whether the police had taken blood soaked soil from the place of occurrence or not. But the police had surrounded the place of occurrence by bricks. He was also not aware that blood soaked garments of victim/father was seized by the police or not. He has denied the suggestion of kidnapping of Sabya Singh or any other person.

44. Rajesh Kumar Singh (PW-1), another son of the victim in his examination-in-chief has also deposed consistently regarding the place and manner of occurrence and taking the victim to the hospital where he was declared dead. In his cross-examination, he has deposed that the hardware shop is a joint shop of the family. On the date of occurrence, there was a huge crowd in the vegetables market. He has also deposed that at the time of occurrence, the face of father was towards south-west and he was hit by gunshot from the back. The accused persons, just after coming at the place of occurrence, started shooting at his father/victim who consequently fell down on the ground. All the three accused/appellant herein had fired one shot each and after his father/victim fell down, the accused persons fled away to the North. The accused persons shot at him from the distance of 2-3 feet. At that time, the face of one accused



was towards West and that of other two accused to the South.

45. Rabindra Singh (PW-2) is the brother of the deceased. In his examination-in-chief, he has also deposed the same thing as stated in the *fardebayan* with regard to place and manner of occurrence and about taking of the victim to the hospital where he was declared dead. In his examination-in-chief, he has also deposed that he and his father/Panchanand Singh were also rushed away by the accused persons while firing, but they could be saved. Prior to the occurrence, Dhananjay Singh and others had extended the threat. In his cross-examination, he had deposed that he could not see with whom victim/Premchand Singh was talking and he was not acquainted with him. He has further deposed that the accused persons/appellants had fired at victim from the distance of two and half feet. When the victim/Premchand Singh fell down, the accused persons fired towards him and at that time, he was ten to fifteen feet away from the accused persons and hence, he could escape from their firing. At the time of that firing, he was at his main counter of the shop. Hence, the firing done by the accused persons at him hit the wall of the shop. At the distance of 5-6 feet from the shop, Pellets/bullets were recovered by the Police.



46. Panchanand Singh (PW-3) is father of victim/Premchand Singh. In his examination-in-chief, he has stated that at the time of occurrence, he was in the Patar market near his shop. At the time of occurrence, he and his younger son (Ravindra Singh) was in the shop and his grand son, Rajesh Kumar Singh (P.W.-1) and Rakesh Singh (P.W.-4) were on the roof top. With regard to the place and manner of occurrence, he has deposed in consistence with the *Fardbeyan*. He has further deposed in his examination-in-chief that at that time, the accused persons were moving towards the victim/Premchand Singh and they shot at him by their pistols. Thereafter, he himself, his grand sons and his son came to the victim/Premchand Singh running. Then the three accused persons fled away. Thereafter, the witness and other family members brought the victim to Raghunathpur hospital wherefrom he was referred to Siwan Sadar hospital. But the doctor at Siwan Sadar hospital declared the victim dead. With regard to the motive behind the occurrence, this witness has deposed that the informant/Rakesh Kumar Singh had entered into love marriage with one Sabya Kumari, daughter of accused/Dhananjay Singh. In his cross-examination, he has deposed that at the time of occurrence, there was no customer in



his shop and his son Rabindra Singh(PW-2), was in the shop. He has further deposed in his cross-examination that at the place of occurrence, blood had fallen at the distance of 15-16 feet to the south from the shop. After the occurrence, there was a sensation in the market. After the occurrence, he had lifted the victim/Premchand Singh in the vehicle with the help of others and at that time, this witness was wearing *Dhoti, Kamij* and *Ghamcha*. Consequently, he got blood stains on his garments. Police had seen his blood stained garments.

47. P.W.-6, Dr. Ramesh Chandra Thakur is Medical Officer, Sadar Hospital, Siwan, who had **conducted postmortem examination** on the dead body of the deceased/Premchand Singh. As per this witness, the autopsy on the dead body of the deceased was conducted by a Medical Board as per the order of the Deputy Superintendent, Sadar Hospital, Siwan and members of the Board were Dr. Ravi Ranjan, Dr. Birendra Prasad and he himself. He has deposed that other two members of the Board had also signed on the postmortem report. In his examination-in-chief, PW 6 has deposed that prior to the postmortem, the head and face of the deceased were X-rayed for detecting any foreign particle or any trauma for medical evidence. In the post mortem examination, it



was found as follows:

“Rigor mortis developing in body from upwards to downwards.

2- His mouth and eyes were closed,

(i) **lacerated wound of size 1/2" diameter at left side of his face** at mandibular region was found **with some blackish area around wound (entry wound)** with inverted margins),

ii) Another **lacerated wound - found at right side of the face 1" anterior to tragus of right ear** slightly increased diameter, circular in shape- found **(exit wound)**

iii) **lacerated wound of 1/2" diameter at occipital region on left side** - found with inverted margin **with some blackish area around the wound (about 1" around) with some singeing of hairs (entry wound).**

On dissection - **a yellow coloured metallic body was found at neck** of mandible of size 1/2" long and 1/2" diameter at left side of his face- 1" below left ear pinna, outside the neck of mandible and externally to bone-found, it was given packed in a phial to one of the police personnel accompanying the dead body.

Maxillary bones – fractured in both sides, nasal bone fractured (with bruise) at external skin at tip of nose, on right side,

fracture of occipital bone, brain showing lacerated injury traversed by the bullet with fracture at skull base, blood and clots were present in his cranial cavity, his right side of heart contained little blood and left side of heart was empty, his lungs was pale and intact,

Abdomen - liver, spleen, kidneys were pale and intact, semi-digested food material was found in his stomach and his urinary bladder was full of urine.

3. The cause of death - due to above mentioned head and brain injuries leading to shock and hemorrhage and death was caused by firearm injury.

The time elapsed from the time of postmortem -four hours to ten hours of the time of examination.

Enclosure – the X-ray plate taken just previously to PM exam.”

48. According to his testimony, the cause of death was due to head and brain injuries leading to shock and haemorrhage



due to firing by the firearm. He has deposed that rigor mortis was found developing in the corpse from upwards to downwards and the time of death from the time of the postmortem was within four hours to ten hours. In his cross-examination he has deposed that the postmortem was conducted at 10 p.m. although generally postmortem is conducted between sunrise and sunset but he did not mention the reason for conducting the postmortem in the night. He did not remember as to whether he had received any order of the District Magistrate or the Superintendent of Police to conduct the autopsy in the night. The Injury no. (iii) showed that the barrel of the firearm was in straight upward side and then fired from the back. Injuries no. (i) and (ii) were corresponding to each other and entry exit wounds. He has denied the suggestion of the defence that the postmortem report is defective. In response to court question he has stated that as per his opinion, firearm injuries of the deceased were caused by two pellets, but only one foreign body was found. His testimony corroborates with the exhibit 5, the postmortem report.

49. P.W.-7 Abhijeet Kumar is the **first Investigating Officer** of the case. In his examination-in-chief, he has deposed that on 14.11.2015, he had registered the F.I.R. of Raghunathpur P.S. Case No. 212 of 2015 and on the date of occurrence, he had



gone to the P.O and had recovered two empty cartridges of 9 mm, two empty cartridges of 7.6 mm, one live cartridge of 7.6 mm and one pellet of cartridge and he had also seized sample of blood soaked soil from the spot. The seizure list was prepared by another Sub Inspector/Lalan Ram in his presence. He has described the place of occurrence to be situated in front of hardware shop/Sri Laxmi Traders of Panchanand Singh situated at Patar village. The surrounding of the place of occurrence has been described as house of Mahesh Sharma to the East, pitch road going to Asaon to the West and Patar bazar of the South and shop of Panchanand Singh to the North and government land of the vegetables market to the South. There was huge quantity of blood found on the P.O. In his cross-examination, he has deposed that he had lodged F.I.R. at 8:15 O'clock on 14.11.2015. The Raghunathpur Police Station is 32-35 km. away from Siwan. He had not mentioned in the FIR as to when was it sent to the court of Chief Judicial Magistrate nor any reason has been shown. He has denied the suggestion that formal F.I.R. was changed and then the new F.I.R. was sent to the Court. He further deposed that at 17:15 O'clock on 13.11.2015, he got information regarding the occurrence and after lodging the *Sanha*, visited the P.O. The said *Sanha* was not before him nor a copy of that was



attached with the case diary. He had seized cartridges and other articles at the P.O. He did not send empty cartridges and pellets for examination and seized articles was not before him. He also could not send the blood soaked soil for forensic examination. He did not prepare the map of the P.O. Rakesh Kumar Singh had stated to him that at the time of occurrence, he was on the roof top. Ravindra Singh had also told him that at the time and place of occurrence, he was in his shop.

50. P.W.-5 Saroj Kumar is the **second Investigating Officer**, who took charge from Abhijeet Kumar (P.W.-7). In his cross-examination, he has deposed that no seized material was handed over to him at the time of his taking over the charge of investigation of the case. There was no mention in the case diary regarding sending of any seized items to Forensic Laboratory.

51. As such, we find that besides the informant (PW-4), PWs 1 to 3 are eye-witnesses. We also find that as per the evidence on record, the P.O. is vegetable market situated in patar and in the same market, the informant and his family members were running a hardware shop and at the time of occurrence, the informant and Rajesh Kumar Singh (P.W-1), who were on the roof top wherefrom the vegetable market was visible, where the victim/Prem Chand Singh was standing and



talking to a vegetable seller, when the accused persons came on motorcycle and shot at him. At that time, P.W.-3 (Panchanand Singh) was also in the market whereas P.W.-2 (Rabindra Kumar Singh) was at the main counter of the hardware shop and as per their evidence, all of them had witnessed the alleged occurrence. All of these witnesses are related by blood. P.W.-1 (Rajesh Kumar Singh) is son of the deceased and brother of the informant. P.W.-2 (Rabindra Kumar Singh) is brother of the deceased/Prem Chand Singh and P.W.-3 Panchanand Singh is father of the deceased.

52. We further find that all the eye-witnesses, (PWs 1 to 4) have supported the prosecution case. Their evidence is in consonance with the *fardbeyan*. All are natural witnesses and consistent in their evidence. There is no material contradiction in their deposition before the Court. The motive behind the occurrence has been stated to be the love marriage about one year and nine months back between the informant and Sabya Singh, the daughter of accused/Dhananjay Singh. It has been deposed by these witnesses that threat was extended by Dhananjay Singh to kill Rakesh Kumar Singh who had played with his honour by marrying his daughter. Their evidence is corroborated by the medical evidence and the evidence of the



investigating officer with regard to the manner and place of occurrence. The manner of the offence also shows that all the appellants had committed the criminal act in furtherance of their common intention. They had come together on motorcycle and had fired at the victim which resulted in his death.

53. No prejudice has been pointed out by the appellants which could have been caused to them on account of any lapses on the part of the Investigating Officer, if any. There is no truth in the submission of the appellants that FIR was sent to the office of jurisdictional magistrate on 19.11.2015. The fact is that formal FIR, as it transpires from Exhibit-7, was lodged on 14.11.2015 and it was sent to the office of the Jurisdictional Magistrate on 15.11.2015 and on the same day, the GR No. was marked by the office. However, the FIR was put up before the the learned Magistrate on 19.11.2015 for his perusal.

54. Even the plea of *alibi* taken by the appellant, Haran Singh, is not proved by the appellant, despite the burden of proof lying on him to prove it. On the other hand, as per the prosecution evidence, the presence of all the appellants including Haran Singh on the place of occurrence is well proved beyond reasonable doubts. As such, the appellants have failed to create any reasonable doubt in the prosecution case against



them.

55. Hence, we clearly find that prosecution has been able to prove its case against the appellants beyond all reasonable doubts and the Trial Court has rightly convicted them for offence punishable under Section 302 read with Section 34 of IPC and Section 27 of Arms Act. There is no illegality or infirmity in the impugned judgment of conviction of the appellants. The impugned order of sentence against the appellants have been also appropriately passed by Ld Trial Court.

56. The Appeals are accordingly dismissed.

(Jitendra Kumar, J.)

I agree.

(Ashutosh Kumar, J.)

Shoaib/Ravi Shankar

AFR/NAFR	NAFR
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