

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.937 of 2017**

Arising Out of PS. Case No.-40 Year-2015 Thana- CHARPOKHARI District- Bhojpur

Kamlesh Kumar Rai, Son of Late Umashankar Rai, R/o Village- Danwan,  
P.S.- Jagdishpur, District- Bhojpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

**Appearance :**

|                      |   |                                                                    |
|----------------------|---|--------------------------------------------------------------------|
| For the Appellant/s  | : | Mr. Ravindra Kumar, Advocate<br>Mr. Sandeep Kumar Pandey, Advocate |
| For the Respondent/s | : | Ms. Shashi Bala Verma, Addl. PP                                    |

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

**Date : 04-03-2024**

Heard Mr. Ravindra Kumar, learned counsel for the appellant and Ms. Shashi Bala Verma, learned Addl. PP for the State.

2. The instant appeal has been filed against the judgment of conviction and order of sentence dated 11.07.2017 and 17.07.2017 respectively passed by 4<sup>th</sup> Additional District & Sessions Judge, Bhojpur at Ara, in Sessions Trial Case No. 112 of 2015 arising out of Charpokhari P.S. Case No. 40 of 2015, whereby and whereunder the learned trial court has found the appellant guilty for the offence punishable under Section 302 of the Indian Penal Code (in short 'IPC') and sentenced him to



undergo imprisonment for life with a fine of Rs. 50,000/- and further directed Rs. 40,000/- out of the deposited fine be paid to the sons of the deceased (hereinafter referred to as 'victim').

**Prosecution Story:-**

3. The prosecution story in brief is that one namely, Manish @ Lav Kumar aged about 12 years, son of the victim, recorded his *Beyan* (statement) before Station House Officer of Charpokhari police station on 06.02.2015 at about 2:15 P.M. at Charpokhari police station, alleging therein that on 06.02.2015 he, his twin brother (PW-4) with their mother Rekha Devi (victim) had gone to family court at Ara as his mother had instituted a case against his father (appellant) in the year 2012 but his father did not appear in the court on that date, so the court fixed another date i.e. 19.03.2015 and thereafter he, his brother and mother went to Ara Railway Station at about 1:00 P.M to board a passenger train, then he noticed that his father (appellant), his uncles Ram Babu Ram, Mithlesh Rai and Sheo Chaudhary were also present at Ara Railway Station and they also boarded the same train and entered into an other coach, when the train stopped at Garhani station, he saw that his father and uncles while searching them entered into their coach and after that train started moving and reached at Garhani halt and the train again started moving at 1:45 P.M. from



Garhani halt then suddenly his uncles asked his father that there was a good opportunity to shoot the victim, on that instigation, his father pumped three bullets into the body of his mother (victim) by using a pistol and thereafter, all the accused managed to escape after jumping off the train when it became slow and thereafter, the train stopped at Charpokhari railway station and at that time he and his brother were afraid. He further alleged that at Charpokhari Railway Station he and his brother got down and started moving towards Charpokhari police station then they met their uncle and cousin maternal grandfather who accompanied them to Charpokhari police station where he recorded his beyan. The informant revealed the reason of the occurrence in his *fardbeyan* as appellant's illicit relationship with an another lady who belongs to Scheduled Caste which resulted in tense relation in between the appellant and the victim who was always physically tortured by the appellant and finally the victim left the appellant and started residing at her maternal home at Gopalpur village with her children and also filed a case at family court, Ara and according to the informant his mother (victim) died in the train at the spot.

4. The *Beyan* (statement) of Manish Kumar @ Lav Kumar (PW-5) was signed by him, his brother, uncle and cousin grandfather who accompanied the informant to Charpokhari police



station. On the basis of *Beyan* of the informant, formal FIR bearing Charpokhari P.S. Case No. 40 of 2015 was registered against four accused persons including the appellant under Sections 302, 120B/34 of IPC and Section 27 of the Arms Act.

5. After investigation, the police submitted chargesheet against the accused Sheo Chaudhary @ Ramjee Rai and his case was separated from other co-accused persons and thereafter, committed to the court of Sessions. A supplementary chargesheet was submitted against the appellant and the investigation was kept pending against other two co-accused persons. The Sessions trial cases of the appellant and of the co-accused Sheo Chaudhary @ Ramjee Rai were amalgamated.

6. The appellant was charged for the offences punishable under Sections 302 read with 34 of IPC and 120B of IPC and also charged for the offence punishable under Section 27 of the Arms Act. Whereas co-accused Sheo Chaudhary @ Ramjee Rai was also charged for the offences punishable under Sections 302 read with 34 of IPC and 120B of IPC. The charges were explained to the appellant in Hindi to which he denied and claimed to be tried.

7. The prosecution examined the following witnesses in oral evidence:-

PW-1:- Deomuni Ram @ Deomuni Chaudhary



PW-2:- Mahendra Kumar

PW-3:- Vijay Chaudhary

PW-4:- Kush Kumar

PW-5:- Manish Kumar @ Lav Kumar

PW-6:- Arshad Raja (Investigating Officer)

PW-7:- Dhananjay Kumar Pandey ( Sub Inspector of police who made the inquest report)

PW-8:- Rudal Paswan (A.S.I. posted at Charpokhari Police Station)

PW-9:- Dr. Mithilesh Kumar (Doctor who conducted the postmortem examination on the body of the deceased)

**8.** The prosecution proved the following documents and got them exhibited which are as under:-

Ext.1:- Signature of Deomuni Ram on the *fardbeyan*.

Ext.2:- Signature of Deomuni Ram on the seizure list.

Ext.3:- Signature of Kush Kumar on the statement recorded under Section 164 of Cr.P.C.

Ext.4:- Signature of Manish Kumar @ Lav Kumar on the *fardbeyan*.

Ext.5:- Signature of Manish Kumar @ Lav Kumar on the statement under Section 164 of Cr.P.C.

Ext.6:- Fardbeyan.



Ext.7:- Inquest Report.

Ext.8:- Signature of a Police official over the seizure list.

Ext.9:- Postmortem Report.

9. The prosecution produced two empty cartridges and got them exhibited as material objects as under:-

Mat. Ext I and II- Empty Cartridges

10. After the completion of prosecution's evidence the statement of the appellant was recorded in which the main circumstances appearing against him from the prosecution's evidences were explained to him, which were denied by him and he mainly took the defence that at the time of alleged incident, he was on his duty in Jammu and victim's children deposed against him in the effect of wrong persuasion caused by their maternal family members with whom they were residing since the year 2012. The appellant claimed himself to be an innocent person.

11. In defence the appellant examined four witnesses and got the following documents exhibited in documentary evidence:-

Ext.A:- Mess Diet Register.

Ext.B:- Attendance Register dated 06.02.2015.

Ext.C:- Arrival Departure Register.



Ext.D:- Main Gate Duty Register.

Ext.E:- In Out Register's page 17 to 19.

Ext.F:- Duty Register.

Ext.G:- Final Form of Jagdishpur P.S. Case No. 149/12.

Ext.H:- Death certificate of Uma Shankar Pasi.

**Arguments on behalf of the appellant:-**

12. Mr. Ravindra Kumar, learned counsel for the appellant has argued that the prosecution examined the witnesses who are close relatives of the deceased, out of them, PW-4 and PW-5 who are sons of the deceased and claimed themselves to be eye-witnesses, are tutored witnesses and in their testimony, there is material variance also. The alleged occurrence is stated to have taken place in a compartment of the train which was full of the passengers but none of them was examined by the police nor any attempt was made by the prosecution to examine any of them before the trial court who were the best independent witnesses but they were intentionally withheld. It has been further argued that PW-1, PW-2 and PW-3 are relatives of the victim and also chance witnesses and there are serious contradictions in their evidence and they made contradictory statements regarding their presence at the relevant places and their evidence is not sufficient to show their presence at the relevant places by chance and credible and further



PW-4 and PW-5 who are sons of the victim deposed in the persuasion and effect of PW-1 and PW-2 and their conduct since after the commission of the alleged occurrence and till reaching at Charpokhari police station remained highly un-beliveable. It has been further submitted that the alleged occurrence took place inside a coach of a passenger train but the investigation was not made by railway police rather the same was made by general police regarding which no explanation was given by the prosecution and one police official, who made the seizure of the recovery of the used empty cartridges, was not produced and examined by the prosecution. It has been argued that in view of the nature and description of firearm injuries found on the body of the deceased, the manner of the alleged occurrence of firing as narrated by the victim's son (PW-5) was not probable as the firing must have been made from two different positions by the assailant in view of the doctor's opinion and furthermore, the investigating officer did not seize the blood stains which are said to have been found at the place of occurrence. It has been further submitted that the appellant was on duty at his posting place in Jammu on the alleged day of occurrence, so it was not possible for him to commit the alleged occurrence of murder of his wife and in this



regard, sufficient evidences in the form of oral and documentary were given by him.

**Arguments on behalf of the State:-**

13. On the contrary, Ms. Shashi Bala Verma, learned APP appearing for the State has vehemently opposed the appeal and submitted that the appellant was the main assailant who committed the murder of his wife and PW-4 and PW-5, who are sons of the victim were present with the victim in the coach of the concerned train wherein the alleged occurrence took place and they saw the entire incident by their own eyes and fully supported the prosecution's story before the Judicial Magistrate while recording the statement under Section 164 of Cr.P.C. as well as before the trial court while recording their evidence and the presence of PW-1, PW-2 and PW-3 was quite natural at the alleged places regarding which they gave sufficient explanation and their evidence cannot be discarded merely on the ground of them being chance witnesses. It has been further submitted that the allegation of inflicting three gun-shot injuries to the victim by the appellant gets fully corroboration from the external injuries of the deceased described in the postmortem report and there are sufficient evidences to justify the conclusion of the trial court and the instant appeal has no merit so it is liable to be dismissed.



**Analysis:-**

14. We have heard learned counsels for both the sides, perused the materials and evidences available and also gone through the statement of the accused/appellant.

15. The first and foremost contention made by appellant's counsel is that the presence of Deomuni Ram @ Deomuni Chaudhary (PW-1), Mahendra Kumar (PW-2) and Vijay Chaudhary (PW-3), who have been shown as chance witnesses, was planted and manufactured as there is serious inconsistency and contradiction amongst the statements of these witnesses regarding their presence at the relevant places where they claimed to be present.

16. Hon'ble Apex Court in the case of **Rajesh Yadav and Another vs. State of Uttar Pradesh** reported in (2022) 12 SCC 200 ruled that *"the evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence. Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded"*.

17. In order to examine the above contention, we have gone through the testimony of these witnesses.



**18.** Though, these witnesses are not said as an eye-witness but their evidence is very relevant to prove the credibility of the allegation levelled against the appellant by PW-4 and PW-5 who claimed themselves as eye-witnesses of the alleged occurrence of murder. The alleged occurrence took place in a coach of a passenger train at Garhani Halt around 1:45 P.M. and as per the allegation, the appellant who happens to be husband of the victim, boarded the train at Ara railway station and the victim also boarded the same train from the same station and the appellant was accompanied by his own brothers Ram Babu Rai, Mithilesh Rai and uncle Sheo Chaudhary who also boarded the train with him and when the train reached at Garhani halt, the appellant, at the instigation of co-accused persons pumped three bullets into the body of his wife from close range by using a pistol and thereafter, he and co-accused persons managed to escape and when the train reached at Charpokhari Railway Station, the victim's minor twin sons aged about 12 years at that time who were also traveling with the victim became terrified badly after seeing the incident and got down at Charpokhari railway station and thereafter, started moving towards Charpokhari police station but in the meantime, they met PW-1, who happens to be grandfather in relation and also met PW-2 Mahendra Kumar who happens to be brother of the victim and



both PW-1 and PW-2 were coming together at that time. PW-1 stated that he and PW-2 met both the children of the victim at Varni Mor which is situated in eastern side about 500 *gaj* away from the Charpokhari railway station. The alleged occurrence took place at about 1:45 P.M. at *Garhani* halt and thereafter the train reached at Charpokhari railway station after covering 8-10 kilometers and as per PW-1, Varni Mor is situated 500 *gaj* away from the railway station. PW-2 deposed in the paragraph no. '9' of his cross-examination that he reached at Varni Mor at 2:00 P.M. As per PW-1, PW-2 accompanied him when they reached at Varni Mor, so both these witnesses arrived at Varni Mor at 2:00 P.M. After the occurrence, the train might have taken at least 10 to 15 minutes in arriving at Charpokhari railway station and thereafter, for covering a distance of 500 *gaj* on foot by two children, at least half an hour time is required. So, in view of this fact, victim's children's meeting with PW-1 and PW-2 at Varni Mor at 2:00 P.M. appears to be not probable. Furthermore, PW-1 deposed that at that time, he and PW-2 were going to Charpokhari market. But he did not disclose the reason why they were going to Charpokhari market while PW-2 is a resident of an other district. When one claims to be present at a particular place by chance then he is bound to show the reason of his presence at such place. But in this



regard PW-1 and PW-2 remained silent. Here it is relevant to mention that PW-1 and PW-2 both are relative of the victim. PW-1 deposed in the paragraph no. '4' of his cross-examination that there were several passengers in the train who also got down from the train along with the children of the victim and several persons were coming and going at/from station but none of them made any attempt to console the victim's children who were weeping at that time and no one was talking with the children at that time. Whereas PW-2 deposed a contrary fact and he stated that people were inquiring from the children. The contradiction rises a doubt regarding the presence of PW-1 and PW-2 at Varni Mor. As per PW-1, both the children were taken to Charpokhari police station by him and PW-2 where the Station House Officer (in short 'S.H.O.') recorded the statement (*Beyan*) of both the children and thereafter, the S.H.O. asked them to go at Piro railway station where the dead body of the victim was lying. The witness further deposed in the paragraph no. '11' of his cross-examination that they went to Piro railway station by two motorcycles along with some other persons namely, Lalmurti Paswan and Bodh Narayan Singh and on each motorcycle there were three riders. From this statement, it is clearly evident that both the children of the victim were taken to Piro railway station on motorcycle. But PW-4,



victim's son, deposed in the examination-in-chief that after recording the *Beyan* (statement) of him and his brother, they went to Piro by a police vehicle and his uncle and grandfather went to Piro by a motorcycle. The contradiction regarding the mode of journey in respect of victim's children from Charpokhari station to Piro station casts a serious doubt in relation to the presence of PW-1 and PW-2 at Charpokhari railway station. Furthermore, PW-2 deposed that he stayed at police station for five hours and thereafter, went to Kathrai village and he returned to police station in the next morning. PW-1, who was accompanying PW-2 at the relevant time, did not state any fact to support the said statement of PW-2. PW-1 revealed the name of some persons namely, Chandra Narayan and Bhikhari Ram whom he met during the course of going to Charpokhari police station with the victim's children and the said persons are residents of the village of PW-1 but none of them was produced and examined by the prosecution. As per PW-1, two persons namely, Lalmurti Paswan and Bodh Narayan Singh also went with him to Piro station on two motorcycles along with the others but neither Lalmurti Paswan nor Bodh Narayan Singh was produced and examined by the prosecution and it has not been revealed by the prosecution regarding any step having been taken to record the statement of these persons during investigation by the



investigating officer. PW-1 deposed that when they reached at Piro station, the police were already present there but no any type of proceeding was being made by the police and at that time no known passenger was present there at Piro railway station and after their reaching (PW-1 and PW-2 along with victim's children), the police *chowkidar* said that the suitable persons had come so proceeding could be started and thereafter, police started its proceeding. But PW-2 stated in the examination-in-chief that the moment when they reached at Piro railway station, the dead body of the victim was being removed from the train. Thus, PW-2 contradicted the statement of PW-1 regarding non-action of police before reaching of PW-1 and PW-2 at Piro railway station.

**19.** In the instant matter, as per PW-3, police officials of Piro police station, prepared the inquest report of the deceased(victim) at Piro railway station and the S.H.O. of Piro police station also made a report. The witness claimed himself to be a witness of the inquest proceeding and stated that he and an other person namely, Deepak, who was also accompanying him at that time, made their signature upon the inquest report. PW-3 is also stated to be a chance witness whose relevancy is only to the extent of proving the inquest report of the deceased. The witness deposed that at Piro railway station, he and his companion Deepak



were waiting for a train but in the meantime, they heard about a murder having taken place in a train then they also saw the inquest of dead body and then they found the victim being his a relative. But the witness did not disclose the presence of PW-1 and PW-2 at the Piro railway station when the inquest report was being prepared by the police officials of Piro police station. Whereas as per PW-1, the police started proceeding at Piro railway station upon their reaching at the said station. PW-3 is known and a relative of PW-1 and PW-2, so if PW-3 was present at Piro railway station when the police were preparing the inquest then definitely the presence of PW-3 must have been recognized by PW-1 and PW-2 but in this regard both remained silent in their evidence. Hence, the presence of PW-3 at Piro railway station also appears to be suspicious.

**20.** Here it is important to mention that the alleged occurrence of murder by causing firearm injuries to the victim took place in a passenger train and it has come out in the evidence of prosecution witnesses that there were several passengers in the train as well as at Piro Station where the dead body was taken out of the train but none of the passengers was made a witness by the police and in this regard, no explanation was given by the prosecution during trial. It is further relevant to mention that when



an offence is committed in a running or standing train then some report regarding such offence is definitely made by Train Guard or other railway official but in the present matter, any of the railway officials who were present either in the capacity of Train Guard or otherwise in the concerned train in which the alleged occurrence took place or present at Charpokhari and Piro railway station was not examined nor none of them was made a witness by the police and this conduct of the investigating officer casts a serious doubt in the prosecution's story and rises a strong suspicion about plantation and manufacturing of PW-1, PW-2 and PW-3 as chance witnesses.

**21.** The second important contention made by appellant's counsel is that the conduct of the victim's minor sons just after the happening of the alleged occurrence of murder, remained un-probable and in respect of the allegation levelled by them against the appellant, they made their statements like a tutored witness from the very beginning when they first recorded their *fardbeyan* and thereafter, recorded their statements before the Judicial Magistrate and during trial before the trial Judge. This Court finds substance in the said argument as from the very beginning after the commission of the alleged occurrence and till the recording of evidence in the trial court, victim's both minor



sons remained in the contact of PW-1 and PW-2 whose presence was doubtful at the relevant places as discussed above. In the instant matter, the alleged occurrence of firing took place at Garhani Halt and thereafter the train started moving and reached at Charpokhari railway station which is about 10 to 12 kilometers away from Garhani halt. As per the evidence of PW-4 and PW-5 who happen to be children of the victim, they got down at Charpokhari railway station upon reaching the train at the said railway station and both alone started moving towards Charpokhari police station. The said conduct of the victim's children appears to be some suspicious as they left the body of their mother unattended and thereafter, they alone started moving towards Charpokhari police station. Accordingly, we find force in the above contention of the appellant's counsel.

**22.** The third important argument made by appellant's counsel is that the initial and first version of the victim's sons made before Charpokhari police was suppressed and withheld by the prosecution and in this regard the statement made by PW-5 in paragraph no. '21' of his cross-examination is important. In the light of this contention, we have perused the testimony of PW-5, who deposed in paragraph no. '21' of his cross-examination that the *Beyan* was taken on a blank paper and his grandfather and



uncle did not make their signatures upon his first *Beyan*. The exhibit '4' which is said to be the *fardbeyan* of PW-5 on that basis the FIR was registered, contains the signature of PW-1, PW-2 as well as of PW-5 and his brother. But as per statement made by this witness in the cross-examination the first *beyan* which was given by him was not signed by PW-1 and PW-2. The said circumstance was not explained by the prosecution which shows that the prosecution intentionally withheld the initial and first *Beyan* (version) of PW-5 who is said as an eye-witness of the alleged occurrence. Accordingly, this Court finds substance in the above contention.

**23.** The fourth important contention made by the appellant's counsel is that the prosecution did not succeed to prove the place of occurrence beyond reasonable doubt. After having gone through the evidences of the prosecution, we find substance in the said contention. As per the FIR, the place of occurrence is stated to be inside a coach of a passenger train. But there are some circumstances which do not inspire the confidence of this Court to believe the place of occurrence as being inside a coach of a passenger train. Firstly, as per prosecution's story, the alleged occurrence took place inside a train when it stopped at Garhani Halt. When a criminal offence is committed in a train or within the



premises of a railway station or at any other railway property then investigation must be made by Government Railway Police (GRP) or Railway Protection Force (RPF) but in this matter, no action was taken by the railway police despite the alleged occurrence of murder having been committed in a coach of a passenger train and neither the guard nor any other railway employee who was deputed in the train in which the alleged occurrence took place came forward to take any legal action in respect of the alleged incident nor none of the railway officials posted at Piro Railway Station took any action when the dead body of the victim was removed from the coach of the passenger train. Even none of them was examined by the investigating officer. It has come in the evidence of the prosecution witnesses that several passengers were travelling and sitting in the coach in which the victim was also travelling and when the victim's dead body was taken out of the coach at Piro railway station, several passengers might be present at that station but none of these passengers was examined by the investigating officer and during trial, the prosecution did not give any explanation for non-examination of any of them. Second circumstance is that as per the evidence of PW-4 and PW-5, sons of the victim who were travelling along with the victim in the same coach, the appellant and co-accused persons were seen at Ara



railway station from where they boarded the train and the victim with her sons also boarded the same train from the same station. Ara railway station is a big railway station and it is a common thing of knowledge that almost all the railway stations, particularly, the stations of district headquarters have been equipped with CCTV cameras at all platforms and other public places. If the appellant came at Ara railway station and boarded the train along with other co-accused persons then definitely his activity would have been captured in the CCTV cameras but the investigating officer did not take any pain to examine the CCTV footage of the day of the alleged incident. The third circumstance is that the investigating officer remained silent in respect of the presence of relevant materials with the body of the deceased such as victim's railway ticket, purse, etc. whereas the victim's son PW-5 deposed that his mother (victim) had railway ticket with her. The fourth circumstance is that the investigating officer did not seize the blood stains which were found in the coach and in this regard, his statement made in paragraph no. '9' of his cross-examination is relevant. Here, it is relevant to mention that as per prosecution, two used cartridges were recovered and seized from the coach in which the alleged occurrence of firing was committed and in this regard, the seizure was made by one namely, Pitambar Chaudhary,



a police official, posted at Charpokhari police station. But the said Pitambar Chaudhary was not produced and examined by the prosecution before the trial court. Furthermore, the seized two cartridges were produced before the trial court in unsealed condition and in this regard, the evidence of PW-8 is relevant. The fifth circumstance is that the conduct of the sons of the victim, just after the commission of the alleged occurrence, remained some unbelievable as they got down from the train at Charpokhari railway station leaving behind victim's dead body in the coach and thereafter, started moving alone towards Charpokhari police station that was not believable as victim's sons were only twelve years old at that time. The sixth circumstance is that PW-1, PW-2 and PW-3, who have some kind of relationship with the victim, were shown as chance witnesses but in view of the circumstances discussed in preceding paragraphs, their presence at the places where they claimed to be, was not natural and they made contradictory statements also and did not remain consistent.

**24.** In view of the above discussed circumstances relating to the alleged place of occurrence, we are in agreement with the above contention of appellant's counsel.

**25.** As per allegation, the appellant pumped three bullets into the body of the victim from very close range when the victim



was in sitting position and it is not the case of prosecution that the appellant fired at the victim from two different positions. As per postmortem report, three gun-shot injuries were found on the body of the deceased. As per PW-9 Dr. Mithilesh Kumar, who conducted the postmortem examination over the dead body, two gun-shot injuries were caused from left side to right side while the third injury was caused from right side. The evidence of this witness shows that the assailant used two different positions in causing firearm injuries to the victim but the said circumstance does not get corroboration from the evidence of PW-4 and PW-5 who are said to be eye-witnesses of the alleged occurrence.

**26.** Here, it is important to mention that PW-4 and PW-5 are star witnesses of the prosecution upon whom the trial court highly placed reliance while convicting the appellant and the trial court considered their evidence to be reliable in respect of the accusation levelled against the appellant but the same evidence of these witnesses was not relied by the trial court in respect of the accusation levelled against the co-accused Sheo Chaudhary @ Ramjee Rai who faced trial along with the appellant and it was observed by the trial court that the evidence of child-witness needs corroboration in respect of the allegation levelled by them against



the said co-accused. This approach of the trial court does not appear to be proper.

27. The appellant has taken the plea of *alibi* and according to him, he was present at his posting place at Kishtwar in Jammu. In support of this defence, the appellant examined 4 witnesses and produced documentary evidence such as Mess Diet, attendance Register, Arrival-Departure Register, Main Gate Duty Register etc. and got them exhibited with the help of defence witnesses. The learned trial court did not place reliance upon the appellant's plea of *alibi*. In this regard, the approach of trial court appears to be correct as DW-1, who was posted as Sub-Inspector in C.R.P.F. at Kishtwar in Jammu, deposed that the appellant arrived on 31.01.2015 after having spent 20 Earned Leave but thereafter, became absent and it was not clear whether he again proceeded on leave or not. DW-1 is an important witness of defence as he saw the relevant registers concerned to the attendance of the appellant at his posting place. Accordingly, we do not find any force in the above defence taken by the appellant.

**Conclusion:-**

28. After having discussed the evidences available on the record and taking into account the aforesaid discussed circumstances, this Court forms the opinion that though the victim,



who was on litigating term with her husband (appellant) at the relevant time of the alleged occurrence, was killed by inflicting gun-shot injuries to her but PW-1, PW-2 and PW-3, who are important witnesses of the prosecution, seem to have been planted as chance witnesses at the relevant places and their presence at such places as shown by the prosecution does not inspire confidence of this Court and the victim's sons, PW-4 and PW-5 who are said to be eye-witnesses of the occurrence remained under the control of PW-1 and PW-2 during the period between just after the happening of the incident till the examination of them before the police and court and they appear as tutored witnesses and the place of occurrence which is said to be an inside place of a coach of passenger train could not have been established by the prosecution and there are several circumstances discussed in the preceding paragraphs raising strong suspicion about the alleged place of occurrence and the prosecution did not give explanation as to why the investigation was not conducted by the railway police despite the alleged occurrence having taken place in a train and none of the passengers, who were present at the relevant places was examined by the police regarding which no explanation was given. So, in the light of these circumstances and for the reasons discussed above, the appellant is entitled to the benefit of



doubt and this Court is not persuaded to uphold the appellant’s conviction and we find sufficient materials to interfere in the judgment and order impugned. As such, the impugned judgment and order convicting and sentencing the appellant for the offences charged are hereby set aside and the instant appeal stands allowed.

29. Let the appellant be released forthwith in the present matter, if his custody is not required in any other case.

30. Let the LCR be sent back to the trial court concerned forthwith.

31. Let the judgment's copy be sent to the trial court as well as jail authority concerned for needful.

( Shailendra Singh, J)

*I agree.* (Rajeev Ranjan Prasad, J)

maynaz/-

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|-------------------|------------|
| AFR/NAFR          | AFR        |
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