IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No. 11 of 2020

Arising Out of PS. Case No.-42 Year-2012 Thana- BIKRAM District- Patna

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Jitendra Yadav Son of Rohan Yadav Resident of Village- Pansari, Bharatpura, P.S.- Bikram, Distt- Patna.

... ... Appellant

Versus

The State of Bihar

... ... Respondent

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with

CRIMINAL APPEAL (DB) No. 68 of 2020

Arising Out of PS. Case No.-42 Year-2012 Thana- BIKRAM District- Patna

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Ravindra Gope @ Ravindra Yadav s/o Rajeshwar Yadav @ Rajeshwar Prasad Sinha r/o Village- Belhauri, P.S.- Dulhin Bazar, District- Patna

... ... Appellant

Versus

The State of Bihar

... ... Respondent

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with

CRIMINAL APPEAL (DB) No. 80 of 2020

Arising Out of PS. Case No.-42 Year-2012 Thana- BIKRAM District- Patna

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Vijay Kumar, Son of Baleshwar Ram Resident of Village- Indrapuri, P.S.- Patliputra, Distt- Patna.

... ... Appellant

Versus

The State of Bihar

... ... Respondent

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with

CRIMINAL APPEAL (DB) No. 155 of 2020

Arising Out of PS. Case No.-42 Year-2012 Thana- BIKRAM District- Patna

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Mukesh Roushan @ Mukesh Yadav, Son of Rajeshwar Yadav R/o- Selhauri, P.S.- Dulhin Bazar, District- Patna.

... ... Appellant

Versus

The State of Bihar

... ... Respondent

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with
CRIMINAL APPEAL (DB) No. 207 of 2020

Arising Out of PS. Case No.-42 Year-2012 Thana- BIKRAM District- Patna

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Sujit Kumar @ Sujeet Kumar, S/o Late Tej Narayan Yadav, R/o Yadav Lane Digha, P.S.- Digha, District- Patna

... ... Appellant

Versus

The State of Bihar

... ... Respondent

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Appearance :

(In CRIMINAL APPEAL (DB) No. 11 of 2020)

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Nilesh Kumar Advocate
For the Respondent/s	:	Mr. Ajay Mishra, APP
For the Informant	:	Mr. Patanjali Rishi, Advocate

(In CRIMINAL APPEAL (DB) No. 68 of 2020)

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Anuj Kumar, Advocate
For the Respondent/s	:	Mr. Dilip Kumar Sinha, APP
For the Informant	:	Mr. Patanjali Rishi, Advocate

(In CRIMINAL APPEAL (DB) No. 80 of 2020)

For the Appellant/s	:	Mr. Ansul, Sr. Advocate
For the Respondent/s	:	Ms. Shashi Bala Verma, APP
For the Informant	:	Mr. Patanjali Rishi, Advocate

(In CRIMINAL APPEAL (DB) No. 155 of 2020)

For the Appellant/s	:	Mr. P.N. Shahi, Sr. Advocate Mr. Ghanshyam Tiwary, Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma, APP
For the Informant	:	Mr. Patanjali Rishi, Advocate

(In CRIMINAL APPEAL (DB) No. 207 of 2020)

For the Appellant/s	:	Ms. Archana Sinha @ Archana Shahi, Sr. Advocate Mr. Nishikant, Advocate Mr. Alok Kumar Shahi, Advocate
For the Respondent/s	:	Mr. Dilip Kumar Sinha, APP
For the Informant	:	Mr. Patanjali Rishi, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SOURENDRA PANDEY)

Date : 08-04-2025

The present batch of appeals are directed against the judgment and order dated 04.12.2019/06.12.2019 passed in Sessions Trial No. 511/2013 (arising out of Bikram P.S. Case

No. 42 of 2012 registered for offences under Sections 302, 120(B) of the IPC and Section 27 of the Arms Act) by the learned Additional Sessions Judge-I, Danapur (hereinafter referred to as the 'learned trial court') whereby learned trial court has held the appellants guilty under Sections 302 read with 120(B) of the Indian Penal Code (in short 'IPC') and accordingly, has sentenced the appellants Sujeet Kumar, Jitendra Yadav, Rabindra Gope @ Ravindra Yadav, Vijay Kumar and Mukesh Roushan @ Mukesh Yadav to undergo imprisonment for life and imposed a fine of Rs. 20,000/- each under Section 302 read with Section 120(B) of IPC and in default of payment of fine, the convicts have to serve rigorous imprisonment for six months. In addition to the aforesaid, the appellant Jitendra Yadav was also sentenced to rigorous imprisonment of three years and fine of Rs. 2000/- under Section 27 of the Arms Act. In case of default of payment of fine, the convict was directed to undergo rigorous imprisonment for two months and all the sentences shall run concurrently. It was further directed by the learned Trial Court that out of the total fine amount, 50% amount will be paid to the children of the deceased who are the victim in this case.

Prosecution

2. The Short facts giving rise to the present appeals are that one Vijay Kumar son of Baleshwar Ram who happens to be the informant of this case, recorded his fardbeyan alleging therein that he is resident of village Indrapuri, P.S. Patliputra, District Patna and was presently posted as Peon in the P.N.B Branch, Bharathpur. It was alleged that on 05.03.2012 at 5.15 P.M., he along with the Branch Manager, namely, Fanindra Shekhar Kumar (since deceased) after closing the Branch went to the house of one Guddu Sharma @Dhananjay Kumar Bharti and after taking tea, both the informant and the Manager proceeded for Patna on the motorcycle at 06.00 P.M. At around 06.45 PM, when they reached near village Katari, two persons riding on a motorcycle came from behind and they dashed their motorcycle into the motorcycle of the Manager upon which both of them fell down and the pillion rider came down and shot at the Manager which hit him on the right side of the neck which led to profuse bleeding and later, he succumbed to the said injury. Thereafter, local people assembled there and even the police came and with the assistance of local people the Manager was taken to the hospital. The informant alleged that the murder was committed due to non-issuance of KCC loan as some brokers of KCC had been threatening the said Manager for doing illegal work. The informant named Rabindra Gope, Mukesh Gope, Rakesh Gope had alleged that all the three along with their associates used to procure KCC loans illegally. Lastly, the informant alleged that the accused Rabindra Gope, Mukesh Gope and Rakesh Gope with the help of their associates have committed the said incident.

3. On the basis of the said fardbeyan of the informant, a formal FIR bearing Bikram P.S. Case No. 42 of 2012 was registered for offences under Sections 302, 120(B) of the IPC and Section 27 of the Arms Act by the Officer-in-Charge of Bikram Police Station against three named accused persons Rabindra Gope, Mukesh Gope and Rakesh Gope along with unknown persons. After investigation and finding the case to be true against the appellants, police submitted charge sheet against the appellants Ravindra Yadav, Vijay Kumar, Lalu @ Ram Laddu Prasad and Dhiraj Pathak through charge sheet No. 78/2012 dated 30.05.2012 under Sections 302, 120(B) and 34 of IPC and 27 of the Arms Act and further against Rakesh Yadav @ Rakesh Gope, Mukesh Yadav, Raju Yadav, Sujeet Kumar and Jitendra Yadav through Charge Sheet no. 273 /2012 dated 21.12.2012 under Sections 302, 120(B)/34 of IPC and 27 of the

Arms Act. Thereafter, the learned A.C.J.M Danapur took cognizance under Sections 302, 120(B) of IPC and Section 27 of the Arms Act vide order dated 23.04.2013.

4. On 21.002.2014 charges were read over and explained to all the aforesaid nine charge-sheeted accused persons who denied the charges and claimed to be tried, subsequently charges were framed under Sections 302, 34 and 120(B) of IPC and 27 of Arms Act.

5. During course of trial, altogether 21 prosecution witnesses have been examined and the statements of all the accused persons was recorded under Section 313 of the Cr.P.C on 20.01.2018 and further on 25.05.2018 statements under Section 313 Cr.P.C was again recorded of three accused namely, Rakesh Raushan @ Rakesh Yadav, Ravindra Yadav and Mukesh Raushan @ Mukesh Yadav. The defence has also examined one defence witness. The defence has completely denied the prosecution case.

6. It is relevant to mention here that during stage of argument out of total nine accused one accused namely, Rakesh Raushan @ Rakesh Yadav was absent despite several directions of the court, hence his bail bond was cancelled and non-bailable warrant had been issued against him on 31.05.2019 and further the case of the d persons and his case (Trial number) was separated as Sessions Trial no. 511A/2013.

7. During course of prosecution evidence, altogether 21 witnesses have been examined. The list of witnesses are provided hereunder :-

PW 1	Sita Ram Bind
PW 2	Shiv Kumari Devi
PW 3	Somari Devi
PW 4	Sitla Devi
PW 5	Nanki Devi
PW 6	Dharamsheela Devi
PW 7	Raju Kumar
PW 8	Sanjay Yadav @Sanjay Kumar
PW 9	Rajendra Yadav
PW 10	Chandra Shekhar Kumar Sinha
PW 11	Dr. Ajay Kumar
PW 12	Dr. Nawal Kishore Singh
PW 13	Dhananjay Kumar Bharti
PW 14	Chandra Prakash
PW 15	Ram Krishna Kumar
PW 16	Raj Kishore Singh
PW 17	Sobha Kant Paswan
PW 18	Laxman Kumar
PW 19	Satendra Kumar
PW 20	Das Ashok Kumar
PW 21	Shiv Kumar

8. Following documents have been produced on behalf of the prosecution during the course of trial which have been marked as Exhibits and are being produced hereunder:

Exhibit-1	Signature of Sanjay Yadav @ Sanjay Kumar on Seizure list dated 07.03.2012.
Exhibit-2	Postmortem report
Exhibit-2/1	Short signature of Dr. N.K. Singh on Postmortem report
Exhibit-3	Signature of Dhananjay Kumar Bharti on inquest report
Exhibit-3/1	Signature of Krishna Kumar on inquest report
Exhibit-3/2	Inquest Report
Exhibit-4	Fardbeyan
Exhibit-5	Seizure list dated 05.03.2012
Exhibit-5/1	Signature of Laxman Kumar on the Seizure list dated 05.03.2012
Exhibit-6	Memo No. 162 dated 14.03.2012 issued by ACJM, Danapur
Exhibit-7	Seizure list dated 07.03.2012
Exhibit-8	Requisition dated 15.03.2012 for recording statement under Section 164 Cr.P.C of Sheo Kumari Devi and others
Exhibit-9	Report of Forensic Laboratory with signature (Report FSL No. 421/12 dated 15.03.2012), with objection
Exhibit-10	Report of Forensic Laboratory with signature of Shiv Kumar (Report FSL No. 421/12 dated 19.03.2012)

9. The defence has examined one witness as D.W namely, Vijay Kumar, the informant of the present case and following documentary evidence has been produced on behalf of the defence:

Exhibit-A	Transfer-cum-releasing letter on behalf of accused Sujeet Kumar
Exhibit-B	Transfer-cum-posting statement with list
Exhibit-C	Original promotion letter dated 05.11.2011 of

	accused Sujeet Kumar
Exhibit-D	Letter dated 29.01.2018 with attendance sheet
Exhibit-E & E/1-	Achievement letters dated 16.01.2017 and 01.01.2018 respectively
Exhibit-F	Certified copy of F.I.R. of Khagaual P.S. Case No. 146/2016
Exhibit-G	Papers and information received through R.T.I. Act 2005 submitted by accused Ravindra Gope
Exhibit-H	Certified copy of deposition of Dharamshila Devi (P.W. 1) in Dulhin Bazar P.S. Case No. 71/2012
Exhibit-H/1	Certified copy of deposition of Sheo Kumari Devi (P.W. 2) in Dulhin Bazar P.S. Case No. 71/2012
Exhibit-H/2	Certified copy of deposition of Sitaram Bind (P.W. 3) in Dulhin Bazar P.S. Case No. 71/2012
Exhibit-H/3	Certified copy of deposition of Somari Devi (P.W. 4) in Dulhin Bazar P.S. Case No. 71/2012
Exhibit-H/4	Certified copy of deposition of Nanki Devi (P.W. 5) in Dulhin Bazar P.S. Case No. 71/2012
Exhibit-H/5	Certified copy of deposition of Sitali Devi (P.W. 6) in Dulhin Bazar P.S. Case No. 71/2012
Exhibit-I	Certified copy of order dated 11.12.2012 passed in Cri. Misc. No. 42529/2012
Exhibit-I/1	Certified copy of order dated 11.12.2012 passed in Cri. Misc. No. 43995/2012.

10. Apart from above, a letter dated 24.11.2011 issued by Planning and Development Circle Office, Patna (Ref:-

PNB/COP/PD) has been marked as 'X' for identification.

Findings of the Trial Court

11. The learned Trial Court after analyzing the evidence adduced on behalf of the prosecution as well as on behalf of the defence found that the accused namely, Ravindra Yadav and Mukesh Yadav were indulged in an illegal act of providing fictitious loan on forged and fabricated papers in connivance with the accused Jitendra who was his associate. The learned Trial Court has opined that they all have been doing this work since long in connivance with Bank staff Vijay Kumar and Sujeet Kumar which has come on record from the deposition of P.W. 10, P.W. 13 and P.W. 15. It has also come in the deposition of P.W. 10 that Sujeet Kumar and Vijay Kumar have remained absent when the deceased Manager started preventing the activities of illegal loan and made enquiry regarding previous sanctioned loan. The learned Trial Court has observed that during investigation the houses of Ravindra Gope, Mukesh Gope and Rakesh Gope were searched and there was a recovery of red motorcycle from their houses and blood was found on the headlight of the said motorcycle which was found to be human blood of Group-B as per the investigation conducted by the Forensic Science Laboratory, Patna.

12. The learned Trial Court also took note of the fact that accused Vijay Kumar was with the deceased at the time of occurrence but his conduct was also dubious because he, himself came in dock in his defence as DW-1, in his examination-in-chief, had stated that the police has forcibly taken his signature on two plain papers at the time of sending him to jail. However, during his statement recorded under Section 313 Cr.P.C he has stated before the learned Court that police has taken his thumb impression on two plain papers which are contradictory to each other.

13. The learned Trial Court has opined that the I.O has also proved the case in all respect hence, from the aforesaid evidences, the chain of circumstances is complete and the accused Ravindra Yadav, Mukesh Yadav, Jitendra Yadav, Vijay Kumar and Sujeet Kumar had been engaged in doing an illegal act i.e. illegal sanctioning of KCC loans and when the Manager (deceased) raised objections, they with pre-concert of mind, committed the murder of the deceased Manager. Thus, the learned Trial Court opined that there is clinching evidence against the accused Ravindra Yadav, Kumesh Yadav, Jitendra Yadav, Vijay Kumar and Sujeet Kumar that they earlier indulged in providing illegal KCC loans from the Bank and when the deceased Manager was not supporting them, he was done to death by the said accused persons in conspiracy among themselves. The learned Trial Court held that the chain of evidences are complete and it leads no reasonable ground for conclusion consistent with innocence of the aforesaid accused persons and thus, held Ravindra Yadav, Mukesh Yadav, Jitendra Yadav, Vijay Kumar and Sujeet Kumar guilty for the offence committed by them under Sections 302 read with 120(B) of the I.P.C and accordingly, convicted them under the aforesaid sections.

14. The learned Trial Court held that as far as accused Raju Yadav, Ram Laddu Prasad @ Lalu and Dhiraj Pathak are concerned, there is no reliable and cogent evidence on record to prove the charges under Sections 302 read with 120(B) of the IPC and Section 27 of the Arms Act beyond all reasonable doubt and hence, the accused Raju Yadav, Ram Laddu Prasad @ Lalu and Dhiraj Pathak were given benefit of doubt and were acquitted of all the charges leveled against them and accordingly, they were discharged from the liabilities of their bail bonds.

15. The learned Trial Court had also found accused Jitendra Yadav to be guilty under Section 27 of the Arms Act hence convicted him under Section 27 of the Arms Act also.

Submissions on behalf of the appellants

Re. Cr. Appeal (DB) No. 11 of 2020 and Cr. Appeal (DB) No. 80 of 2020.

16. Learned counsel Mr. Ajay Kumar Thakur, who appeared on behalf of two of the appellants namely, Jitendra Yadav and Vijay Kumar in the aforesaid criminal appeals, has assailed the impugned judgment on the ground *inter alia* that the learned Trial Court has failed to appreciate that out of total 21 prosecution witnesses P.W. 1 to P.W 7 have turned hostile. It has been submitted by Mr. Thakur that prosecution has miserably failed to prove its case beyond all shadow of reasonable doubt as the evidences available on record did not complete the chain of circumstances to prove the guilt of the accused persons. He has submitted that the present case is based on circumstantial evidence and there are severe contradictions in the statement of the prosecution witnesses and no satisfactory explanation before the Court was given which proved fatal to the case of prosecution.

17. Mr. Thakur has submitted that P.W. 8, Sanjay Yadav @ Sanjay Kumar who happens to be the seizure list witness has stated that he has given no statement to the police, no search was made in his presence while the signature was taken by force on a blank sheet by the police. He has drawn the attention of this Court to the statement of P.W. 9 namely, Rajendra Yadav who is also a seizure list witness and he has also stated that the police had not taken his statement, he had put his thumb impression on a blank paper and he was not aware that as to what was written on the said paper.

18. Mr. Thakur, further submitted that P.W. 10 Chandra Shekhar Kumar Sinha who happens to be the elder brother of the deceased Manager Fanindra Shekhar Kumar (deceased) has stated in paragraph no. 1 that his brother had disclosed that Ravindra Yadav, Mukesh Yadav, Rakesh Yadav as also Sujeet Kumar had been procuring loans on the basis of forged certificates of dead landless persons. P.W. 10 has also stated that his brother deceased Fanindra Shekhar Kumar (deceased) was being pressurized by the aforesaid accused persons and he had once disclosed to his elder brother that Ravindra Yadav had come to his house and stated that he should also earn from doing such illegal activities. He has also pointed out that P.W. 10, in his deposition, has stated that the accused persons had killed the previous Manager and had pressurized one another Manager earlier.

19. Mr. Ajay Kumar Thakur, has drawn our attention to the deposition of P.W. 10 wherein he has stated that his brother had informed him that Jitendra and Raju had given him threatening. This witness is himself a Dy.S.P. in police but he did not lodge any ‘Sanha’ in this regard. He has been examined by I.O. after three months. Mr. Thakur has asserted that P.W. 13 namely, Dhananjay Kumar Bharti who is a business facilitator at the Bank has stated in Para 2 of his examination -in -chief that prior to the said incident Ravindra Gope had gone to the Manager and had threatened him of dire consequences. The learned counsel has pointed out that in Para 6 of his cross-examination, P.W. 13 has stated that he cannot say that only Vijay had seen the occurrence. P.W. 13, in Para 8 of his cross-examination has stated that he did not know as to who had shot at the Branch Manager. Sanjay had not told him about the name of person who had shot the Branch Manager and when he reached the place of occurrence Sanjay Kumar was not present.

20. Mr. Thakur, has then drawn the attention of this Court towards the deposition of P.W. 17, Sobha Kant Paswan who was the I.O of the case and had registered the FIR and had proved the fardbeyan. He has submitted that the I.O in Para 8 of his deposition has stated that he had seized something like blood and in Para 9 he has stated that he did not seek permission from the Court to send the seized article for FSL examination. He also admitted that the seizure list was not produced before the Court.

21. Mr. Thakur, has pointed out from the deposition of P.W. 20 namely, Das Ashok Kumar, who was the Senior Scientist at FSL Patna that in Para 4 of his deposition he has stated that he had found blood on all the five marked packets which was of human but he could not tell the name of the person whose blood it was. The said P.W 20 had also stated that he had not collected the sample from the place of occurrence and he was not in a position to tell from where was the sample collected.

22. Mr. Thakur has taken us to the deposition of P.W 21 namely, Shiv Kumar who was the Senior Scientist at FSL Patna. In Para 4 of his deposition, PW 21 had stated that the cotton swab taken from the motorcycle had blood on it and the blood was of human and belong to Group-B. P.W. 21, in his cross examination, had stated that from the DNA test it could be ascertained that as to whom the seized blood belongs and has admitted that no DNA test was done by him.

23. Learned counsel, has argued that in the seizure list motorcycle was not mentioned and only pieces of helmet and blood stained, mud/soil was said to be found as stated in Para

29 of the deposition of PW 17.

24. Mr. Thakur, has drawn the attention of this Court towards seizure list wherein the I.O has stated in Para 29 that the samples were prepared at the Forensic Science Laboratory and he has stated such fact in Para 58 of the case diary.

25. He has further stated that on perusal of the deposition of the P.W 16 namely, Rajkishore Singh who was also I.O of the case has stated that no KCC loan papers were seized during the investigation. In Para '4' of his deposition, he had accepted that he had not taken out the CDR of the deceased Branch Manager. The I.O has admitted that during entire investigation he had not enquired about Dhananjay @Guddu Sharma, however, on last seen theory he ought to have enquired from Guddu Sharma.

26. This witness has accepted that he had not identified the motorcycle used in the crime and had not even enquired about the persons who were coming from behind to commit such crime.

27. Mr. Thakur, has drawn the attention of the Court towards the provisions of Section 102 (2) of the Code of Criminal Procedure wherein it is provided –

> "102…
> (1)…

(2) Such Police Officer, if subordinate to the Officer-in-Charge of a Police Station, shall forthwith report the seizure to that officer.
…..”

28. Mr. Thakur, has asserted that with the use of word “shall” and “forthwith” the intent of the legislature was to mandatorily follow the procedure, however, such requirement of statutory provisions had not been adhered and complied with.

29. Learned counsel for the appellant has relied upon a few judgments pronounced by the Hon’ble Supreme Court which are (i) **Mustkeem alias Sirajudeen vs State of Rajasthan** reported in **(2011) 11 SCC 724** (ii) **Ashish Jain vs. Makrand Singh and Ors.** reported in **(2019) 3 SCC 770** (iii) **Madhav vs. State of Madhya Pradesh** reported in **AIR 2021 SC 4031.**

30. Lastly, learned counsel for the appellant has summarized that the informant was known to the accused and despite direction for obtaining CDR by superior officer, the I.O had not collected the same and on account of none seizure of KCC loans paper, the motive is not proved and lastly, the blood stain which was said to be collected by the police was of the deceased or not has also not been proved and thus, the prosecution has not been able to prove the chain of circumstances in order to prove the guilt of the appellant in the present case.

In Cr. Appeal (DB) No. 207/ 2020

31. Mrs. Archana Shahi, learned Senior counsel appearing on behalf of the appellant, Sujeet Kumar has adopted the arguments forwarded by the learned Advocate, Mr. Ajay Kumar Thakur and has further pointed out that P.W 10 who was the own brother of the deceased has taken the name of the accused persons after three months of the incident which raises serious doubt upon the veracity of the prosecution case. The learned Senior counsel has also drawn the attention of this Court towards Para 33 of the statement of P.W 10 wherein he has said that he had heard about the news of the death of his brother and has stated that whatever his brother had told him about the threat, he had not taken any step by giving it in writing.

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32. Mr. Pushkar Narayan Shahi, learned Senior Advocate appearing on behalf of the appellant, Mukesh Raushan, has adopted the entire argument advanced by Mr. Ajay Kumar Thakur and has added only to the extent that PW 16 Rajkishore Singh who was also the I.O of the case, in his deposition, has accepted that he had not collected the CDR of the deceased which would have otherwise proved the prosecution story and moreover, the I.O i.e., P.W 17 has admitted that he had not enquired about the illegality being committed in KCC loans at PNB, Bharatpura Branch from the Assistant Manager, Cashier, Clerk of the Branch. Learned Senior counsel has also drawn our attention towards the statement made in Para 42 by the I.O that neither he had seen any loan files of PNB, Bharatpura nor had he investigated about the same. He has stated that the deceased's elder brother Chandra Shekhar Kumar Sinha had never stated about the threats being given by the accused persons to his brother, the Branch Manager (deceased).

Cr. Appeal (DB) No. 80/ 2020

33. Mr. Ansul, Learned Senior counsel, who appears on behalf of the appellant, Vijay Kumar has also adopted the arguments advanced by Mr. Ajay Kumar Thakur. Learned Senior counsel has only supplemented that this appellant was initially the informant of this case and subsequently on the protest petition filed by the brother of the deceased he was made an accused in the present case. Learned Senior counsel has stated that there is nothing on record to suggest his complicity in the present incident and merely because it was alleged that the appellant Vijay Kumar was in connivance with the other appellants namely Ravindra, Mukesh Yadav and Rakesh Yadav he has been made an accused. The learned Senior counsel has pointed out that from perusal of the examination-in-chief of P.W. 10, the elder brother of the deceased, it is evident that the said P.W. 10 has specifically named Ravindra Yadav, Mukesh Yadav and Rakesh Yadav to have been carrying rivalry and Sujeet Kumar had used Jitendra Yadav and Raju Yadav to abuse the Bank Manager earlier. The learned Senior counsel has drawn our attention to the fact that the only allegation upon this appellant by P.W. 10 is that Vijay Kumar went on leave after the incident. Apart from the above, there is nothing on record either through oral evidence or by way of documentary evidence to connect the present appellant with the said incident.

Learned counsels on behalf of all the appellants have summarized their arguments by submitting that the learned Trial Court has failed to appreciate that the prosecution witnesses including the most interested witness i.e. PW 10, the brother of the deceased has not been able to prove the manner of occurrence and the involvement of the appellants in the alleged incident. The learned counsels for the appellants have submitted that the prosecution miserably failed to prove the case beyond all reasonable doubt, as from the evidences available on record, the chain of circumstances to prove the guilt of the accused persons is not completed. They have unanimously stated that the family member of the deceased is not a reliable witness as he has been examined in this case after three months of delay and hence his statement cannot form the basis of conviction.

34. The learned counsels have also submitted that there are material contradictions in the statement of the prosecution witnesses and hence the prosecution has miserably failed to prove the case beyond all reasonable doubt and therefore, this Court may set aside the impugned judgment and pass a judgment of acquittal against all the appellants.

Submission on behalf of the victim

35. Mr. Patanjali Rishi, learned Advocate has appeared on behalf of the victim, as the informant had been made an accused during the trial. Mr. Patanjali Rishi has stated that P.W. 10, the brother of the deceased Branch Manager has, in his deposition, categorically stated that his brother had earlier told about these appellants to have been pressurizing him for approving KCC loans on basis of forged and fabricated documents and therefore, there is no iota of doubt that it was these appellants who were instrumental in the murder of the

Branch Manager (deceased) as the said Branch Manager was objecting to their illegal activity. Mr. Rishi has also pointed out that P.W. 10 has stated that earlier the appellants had threatened his brother of dire consequences if he did not concede to their illegal demands. Mr. Rishi has emphasized on the fact that minor discrepancy in the deposition of the prosecution witnesses is bound to occur and that itself should not be a reason for the acquittal of the appellants. Mr. Rishi has further argued that an unnatural death has occurred, as the Branch Manager was shot dead and the motive of the appellants is being proved from the very fact that they were instrumental in getting KCC loans passed earlier by giving threatening and using forged and fabricated documents. For the above illegal activities Ravindra Yadav had even offered the Branch Manager Rupees 2 Lacs however, the Manager had refused to concede to their illegal demand.

Submission on behalf of the State

36. All the memo of appeals have been opposed by the learned Additional Public Prosecutor Mr. Dilip Kumar Sinha for the State who has submitted that on bare perusal of the impugned judgment, it is clear that the prosecution has been able to prove the date, time, place of occurrence and the manner of occurrence. The genesis of occurrence has been proved beyond all shadow of reasonable doubt. He has further submitted that it is a case of circumstantial evidence and from the circumstance established by the evidences led by the prosecution witnesses which are fully consistent, indicate towards the guilt of the accused persons and minor contradictions do occur which is very natural and in the present case, the facts does not affect the substance of the deposition.

37. The learned Addl.PP has further submitted that from the deposition of the witnesses, it is clear that the appellants were giving threatening to the Branch Manager (deceased) for illegally approving KCC loans on the basis of forged and fabricated documents and since he did not concede to their demands he was done to death. The learned APP has further stated that the blood stain were collected by the police and samples prepared and the same was sent to the FSL which had after examination pointed out that the blood samples were of human, which proved the factum of the prosecution story and thus, the appellants do not deserve any mercy and their conviction should be upheld.

Consideration

38. We have already discussed the contents of the first information report in detail earlier however, it is relevant to mention again that the person namely Vijay Kumar, who was accompanying the deceased Branch Manager on the motorcycle was the informant and he had categorically stated that the person riding the motorcycle had got down with a pistol in his hand and fired upon the Manager, which led to profuse bleeding and later he succumbed to such injury. The informant has also stated that this murder was committed on account of the issuance of KCC loan through illegal means to which the deceased Manager was reluctant and he was very worried for some time.

39. The informant has stated that it was on account of the threats given by Ravinder Gope, Mukesh Gope and Rakesh Gope for issuance of KCC loan and the pressure which was being mounted by the aforesaid persons in connivance with each other and on account of non-acceptance of the same that all the three accused persons in criminal conspiracy has committed the said crime. The informant has not identified the actual assailant.

40. Out of the total 21 prosecution witnesses, who were examined by the prosecution in its favour, it is relevant to mention that the prosecution witnesses Nos. 1 to 7 were declared hostile. PW8, namely, Sanjay Yadav @ Sanjay Kumar, who is a witness to the seizure list of the articles recovered from the joint house of accused Ravindra Gope, Mukesh Gope and Rakesh at village Belhauri, in his examination in chief, has stated that the police had not recorded his statement and had forcefully taken his signature on the seizure list. He has also stated in the cross-examination that the House of the accused was not searched in his presence and while his signature was being taken on the seizure list, the page was blank. Another witness of the seizure list, Rajendra Yadav, who was examined as PW9, has also stated that the police had taken his thumb impression on the seizure list and the police had not recorded any statement of his. He has further stated that he had also put his thumb impression on a blank sheet of paper.

41. PW 10, who is the brother of the deceased Branch Manager, namely, Chandra Shekhar Kumar Sinha in his deposition has stated that the PNB Branch of Bharatpura was under the grip of the middlemen and the accused persons, namely, Ravindra Yadav, Mukesh Yadav and Rakesh Yadav were instrumental in issuance of KCC loans on the basis of forged revenue receipts and forged land possession certificates prepared by them, and they used to pressurize the Bank Managers and got the loans issued. PW10 has also stated that the previous Manager, namely, Sudhhanshu Shekar Sinha, did not concede to their demands, and as such, he was shot dead. PW 10, in his deposition, has stated that his brother had informed that Ravindra, Mukesh and Rakesh Yadav were pressurizing him to do the same kind of illegal work in issuance of KCC loan however, he had suggested to his brother that he should be upright and do the work honestly. PW 10 has also stated that his brother had informed that as he was not doing the work of the middlemen, the said accused persons, namely, Ravindra Yadav, Mukesh Yadav, and Rakesh Yadav were agitated, and they had sent one Jitendra Yadav and Raju Yadav to the Bank, who had abused the brother of the PW 10. He further stated that when his brother used to travel from Patna to the Bank, even on the way, the accused, namely, Jitendra and Raju used to threaten him. PW 10 has stated that the accused Sujeet Kumar had taken a long leave while Vijay Kumar (Informant) was constantly absent from the office. PW 10 in his deposition had stated that one Ram Vinay Tiwari had informed that Ravindra Yadav and Sujeet Kumar had offered a Contract / 'Supari' of Rs. 1 Lakh to kill the brother of the PW10.

Though PW 10 had suggested the Branch Manager to file a 'Sanha' (Informatory) before the police, but the same was not filed as the deceased brother of PW 10 had informed that Sujeet Kumar had apologized and hence he had not filed this Sanha. PW 10 has further stated that the wife of his deceased brother had told him that during Dushehra, the accused Ravindra Yadav had come to the house of his deceased brother and had threatened his brother describing himself as an eccentric and he would not hesitate in killing him, if he does not concede to the demands of issuance of KCC loan. PW 10 has further stated that he learnt about the death of his brother through a call, which he received on his mobile at around 6:30 in the evening, however, he has stated that the person who was informing had not disclosed his identity. The PW 10 has also stated that one Dhananjay Kumar Bharti had stated that while he was coming with the brother of PW 10 he had seen one Raju Yadav to be following the Branch Manager. He has further stated that Dhananjay Bharti has disclosed that Raju Yadav was seen on a red motorcycle going behind the Branch Manager on the day he was killed.

42. PW 10, in his cross-examination, has stated that the previous talks he had made with his brother were during the month of July, 2011 and he had asked his brother to give the information to the police. However, his deceased brother had not given any information to the police. PW10 admitted that neither had he given any information to the local police station nor had the wife of his deceased brother given any information to the police station. PW 10 has further stated in the cross examination that he had reached the place of occurrence and the police was present at the place. However, his presence was not recorded by the police nor his signature was taken on the inquest report or the seizure list. PW 10 has next stated in his cross-examination that the postmortem was conducted on the next day and he has stated that he had not given any written report to the police even after the 'Sraadh' ceremony and he has further stated that his statement was taken by the police after three months of this said occurrence.

43. PW11, Dr. Ajay Kumar is the doctor who had conducted the postmortem upon the deceased Fanindra Shekhar Kumar Sinha. The PW11 has stated that the brother of the deceased had accompanied the dead body. There were two other doctors along with him, who were there in the postmortem and he has identified the postmortem report, which contained the following injuries and opinion :

> "External Examination
> (i) Lacerated wound size 1/2" x 1/2" into cavity deep with blood clot circular in shape

inverted margin interior to left ear at the level of left Temporomandibular joint. Margin of wound was blackened (wound of entry).

(ii) Lacerated wound 6" x 4" x bone deep at the level of below chin and front of neck with blood and blood clot mandible was fractured and tongue was lacerated. All the great vessels were lacerated. Margin of wound was everted (wound of exit) subcutaneous and deep tissue in connecting with above mentioned injury contact. However X ray of skull C neck AP view done at SDH, Danapur vide X Ray plate No. R-3995 dated 06.03.12 revealed no foreign body. X Ray plate has been handed over to the I.O. of the case.

On dissection - After opening the skull brain matters was pale. After opening the neck hyoid bone was fractured. Trachea was lacerated and contained blood and blood clot. After opening the chest both lungs were pale. Both chambers of heart were empty. After opening the abdomen, liver, spleen, both kidney were found pale. Stomach contained approx 2 to 3 ounce semi-digested food material, Urinary bladder found empty. All the above mention injury were antemortem in nature caused by firearm. Time elapsed since death within twenty four hours of P.M examination.

In our opinion death due to haemorrage and shock leading to cardio respiratory failure due to above mentioned antemortem injury caused by firearm."

44. PW 11 has not elaborated much upon the postmortem report, however, he has admitted that there were two wounds on the body of the deceased, of which one was exit wound, and the another one was an entry wound and there was no other wound on the body of the deceased branch Manager.

45. PW12, Dr. Naval Kishore Singh is the other Doctor who had conducted the postmortem and he has identified the postmortem report, which was marked as Exhibit –1 and had also identified the signature on the same.

46. PW 13, Dhananjay Kumar Bharti has stated that he was a business facilitator at PNB Bharatpura Branch at the time of occurrence and he had rushed to the place of occurrence when he received the information that the Branch Manager was shot dead and when he reached, he found the peon of the Bank, namely, Vijay Kumar, who happens to be the informant of the present case, present there and he had informed that two persons riding a motorcycle had first dashed with the motorcycle of the Branch Manager and subsequently the miscreant shot upon the Branch Manager, killing him on the spot. PW 13 had identified the inquest report and on his identification the inquest report was marked as exhibit- 3/2. PW 13 has further stated that the

Branch Manager had told him that Ravindra Gope was offering Rs. 2 lacs to grant the KCC loan, however, the Branch Manager had declined to accept such offer on which the said Ravindra Gope had threatened him. PW 13 had also stated that Ravindra Gope had on earlier occasion threatened the Branch Manager at his house that he would kill him. PW 13 has further stated that the threat given by Ravindra Gope was reported to the Senior Management of the Bank and he has also stated that he had stated to the investigating authorities that it was the accused persons who had shot upon the Manager as one Raju Yadav, who runs the generator for supply of electricity to the Bank had stated that he had seen Jitender Yadav on the motorcycle going behind the said Branch Manager. PW 13 had also stated that on the fateful day, the Branch Manager had come to his house and had even taken tea at his house. PW 13, in the cross examination, has categorically stated that Sanjay Kumar, who had informed him about the shooting of the Branch Manager did not disclose as to who had shot at the Branch Manager and when he reached the place of occurrence, the said Sanjay Kumar was not there. PW 13 has, during the cross-examination, also stated that the accused persons had not given threatening in front of him, nor had they offered money to the Branch Manager in his presence and he could not tell when the accused persons had threatened the Branch Manager or had offered the amount for doing illegal work. Thus, PW-13 does not corroborate PW-10 who claims that it was PW-13 who had disclosed him that Raju was following the Branch Manager and was seen in a red motorcycle behind him on the date of occurrence.

47. PW 14, Chandra Prakash, was the Circle Inspector on 22.3.2012 and he was one of the I.O of the present case and he has stated in his examination-in-chief that he had received the application made by the deceased Fanindra Shekhar Kumar Sinha, the Branch Manager of Bharatpura Branch, Dulhin Bazar and the Bank officials who were inquiring about the same. The motorcycle was seized however, he had not prepared any of the seizure list on which his signature was made. He has further stated in his cross examination that he had taken over the investigation on 22.3.2012. However, he had handed over the charge to SI R.K. Singh on 4.5.2012 and he has categorically stated that he had not received any application with respect to the said incident.

48. PW15, Ram Krishna Kumar was posted at Patna in the Inspection Audit Section of the Bank and he has stated that he had talked to the deceased Fanindra Shekhar Kumar

Sinha at 4 o'clock and then he received a call from an unknown person informing about the death of the Branch Manager. He has further stated that the deceased Branch Manager had informed him about the threats being given by Ravindra Gope and also the fact that Ravinder Gope had come over and offered Rs. 2 lakh to issue the KCC loans.

49. PW 14 has also stated that during audit, the said Branch Manager had gone out and when he came back after half an hour, he had stated that he had learnt that 'Supari' was given to kill him as he was told by somebody and lastly, PW 14 stated that he had no other information with regard to the said incident. PW 14 in his cross examination has also stated that when he reached at the place of occurrence, he cannot tell who were the people standing there and has also stated that he cannot tell whether the Bank staff namely, Vijay Kumar was present there or not. PW 14 has stated that the Circle Officer or the LDM had not registered any information and he has further deposed that he had not seen police taking the statement of the bank staff, namely, Vijay Kumar regarding the incident.

50. He has also stated that he had given the statement to the police that Ravindra was threatening the Branch Manager. In his cross examination, PW 14 has accepted that he had not told the police during the preparation of the inquest report that ‘Supari’ was given for killing the Branch Manager.

51. PW16, namely, Rajkishore Singh was the SHO of Bikram Police Station and had taken over the investigation of the case on 4.5.2012 and he has stated that he had taken the statements of the brother of the deceased and also Dhananjay Bharti and had subsequently submitted the charge sheet in the present case. During his cross examination, the PW 16 has accepted that he had not inquired as to the closeness of Guddu Sharma @ Dhananjay Bharti with the deceased Branch Manager. He has stated that he was not aware of the fact that the Manager, Fanindra Shekhar used to visit daily at the house of Dhananjay Bharti . The PW 16 has also stated that he had not inquired about the same and had also not inquired about the call details of the deceased during investigation in his cross-examination.

52. PW16 has stated that despite the instructions of the superior officers to get the CDR of the deceased, he had not taken the CDR of the deceased. PW16 has also stated that he was not aware of the theory of “last seen” and he accepted that he had not inquired into the relationship of Dhananjay @ Guddu Sharma with the deceased and on the theory of last scene he had to investigate and inquire from Guddu Sharma, however, he had not done the enquiry from that angle. The PW 16 has also accepted that he had not inquired about the persons on the motorcycle who were behind the deceased.

53. We have observed that the I.O of the case was an important witness in the present case and thus, reference to his deposition in details was imperative in order to arrive at a finding of guilt or otherwise.

Role Played by the S.H.O. -
Inaction amounting to Culpable Negligence

54. PW 17, Shobha Kant Paswan was the S.H.O of Bikram Police Station on 5.3.2012 and he has stated in his examination- in-chief that he received an oral information that someone has been shot dead upon which he reached the place of occurrence and there he met a person namely, Vijay Kumar, who narrated the identity of the person who was dead and disclosed that it was the body of Fanindra Shekhar Kumar Sinha, who was the Branch Manager at Bharatpura Branch of Punjab National Bank. PW 17 has accepted that he had recorded the fardbeyan of the said Vijay Kumar, which was written in his own handwriting which he has identified and the same was marked as Exhibit-4. In Para-7 of his examination-in-chief, PW 17 has stated that the FSL team from Patna had visited the place of occurrence and the letter was sent to the A.C.J.M., Danapur in which he identifies the signature of the Director of the FSL Patna and the contents, which was marked as Exhibit-6.

55. In his cross examination, PW 17 has stated that the informant of the case was made an accused in the present case on 8.3.2012. He has further stated that he had not inspected the premises of the P.N.B Bank and had never entered the premises. He has further stated that he was not aware that there is CCTV camera in the premises of the Bank. He has also not inquired as to how many employees were there at the relevant time in the Bank, and he had not taken statement of any of the employees of Bharatpura branch during the course of investigation. PW 17 has denied the suggestion that he had gone to the Branch, along with the officials of the Bank, as also the brother of the deceased and had inspected the entire premises. PW 17 has stated that he had not inquired about the person who had called and informed the brother of the deceased about the death of the Branch Manager and he has not taken the call details from Krishna Kumar and has also not recorded the reasons for not procuring the call details in the case diary.

56. PW17 has stated that the fardbeyan is the edifice of the present case and he could have identified the assailant on the basis of the fardbeyan, however, he has admitted that he had not conducted TIP in order to identify any assailant. PW 17 has admitted that barring the person who was driving the motorcycle and the informant there is nobody who had seen the incident and everybody has stated on the basis of hearsay statements. In Para 26 of his cross-examination, the PW 17 has specifically stated that he had not sought any document related to the KCC loan from the Bank, and he had not seized any such document. He has also admitted that he had not investigated in this regard.

57. PW 17 has categorically stated that during the investigation, he was not informed about any pressure being given to the Branch Manager for issuance of KCC loan. PW17 in his cross examination in Para - 19 has stated that he had not sealed the items seized from the house of Ravindra Gope. He has further stated that he had not produced the seized items before the Trial Court and he had also not taken permission of the learned ACJM before sending the seized materials for FSL examination in Para 33 of his cross-examination, the PW 17, the I.O of the case has stated that the motorcycle was sent for FSL examination however, he has not got any certificate to such effect and he has denied that he had not sent the motorcycle for

FSL examination.

58. PW 17 in his cross-examination has admitted that though the formal FIR was drawn on 5.3.2012 at around 9 PM the same was seen by the A.C.J.M, Danapur on 8.3.2012 and he has further accepted that the seizure list prepared with regard to the seizure of motorcycle from the accused Ravindra Gope on 7.3.2012 was not annexed with the FIR. PW 17 in Para 40 of his deposition has also stated that the FSL team had reached the place of occurrence and the motorcycle of the accused on which there was some blood stains was not collected by the FSL and the motorcycle was sent to the FSL Patna. In Para 42 of his cross-examination, PW 17 has stated that in view of the statements given by Krishna Kumar, Dhananjay Kumar Bharti and Namita Dev, he had not recorded any statement of the Assistant Manager, cashier or the peon of the P.N.B, Bharatpura Branch. PW17 has admitted that he had not seized any loan file from P.N.B., Bharatpura Branch after the murder of the Branch Manager. PW17 has also accepted that the brother of the deceased Chandra Shekhar Kumar Sinha had not shown him any 'Sanha' being given on account of the threats which was forwarded to his brother.

59. It is evident from the deposition of PW-17 that his conduct has been completely blameworthy. He did nothing to properly investigate the case.

60. We would now like to refer to the depositions of PW 18 and PW 19, who were the formal witnesses who had put their signatures on the seizure list. One important fact came out from their statement wherein they have stated that the police had not asked them any specific questions with regard to the case however, they have identified the signatures on the seizure list, which was marked as Exhibit 5/1. The PW 18 has stated that the SHO of the Police Station had taken his thumb impression on plain paper and he did not recall the exact date when his thumb impression was taken and he was also not narrated as to what was written on the said paper.

61. PW20, Ashok Kumar happens to be the Senior Scientist Officer at the FSL Patna and he had conducted the examination of the blood stain which was sent for examination in the present case and he has identified the applications and the samples, which were marked from A to E and he has also stated that he had made the coding and there was a counter signature of the director FSL namely, Umesh Kumar Sinha and he had also identified his signature on the same, however PW 20 has stated in his examination in chief that he can't tell as to the identity of the person to whom the seized blood belonged. PW 20 has also stated during his cross-examination that he had not collected the sample from the place of occurrence and it was the other team which had collected the sample and he was not aware as to from where and when the said sample was collected.

62. PW 21, namely Shiv Kumar was Senior Scientist at the FSL, Patna and he has also identified the memo, which was sent from the office of A.C.J.M, Danapur and had identified the five exhibits which had come for the examination. He has identified the report and has stated that the report was prepared by him and there was a signature of Umesh Kumar Sinha also on the same, and the said report was marked as Exhibit 10. In Para 17 of his cross-examination, PW 21 has categorically stated that it is only through the DNA test that it would be verified as to the identity of the person to whom the said blood sample belonged and he has admitted that the blood sample which had come to him he had not performed any DNA test.

63. We would now like to refer to the deposition of the only defence witness, namely Vijay Kumar, who interestingly was initially the informant of the case and subsequently was made an accused in the present case. Vijay Kumar, deposed himself in defence. He had stated that on the date of incident, he was along with the Branch Manager and he had stayed at the house of Guddu Sharma and then had proceeded towards Patna. This DW 1 Vijay Kumar has stated that he did not know the assailant from before. The DW 1 Vijay Kumar has categorically stated that the accused persons had come on a red motorcycle and the police had not shown him that motorcycle nor had he disclosed any name to the police with regard to who was involved in the said incident. DW 1 Vijay Kumar has also stated in his cross-examination that he had not called the family of the Branch Manager from the phone of the Branch Manager who had fallen down after he was hit by the bullet.

64. It would be relevant now to consider the judgments referred by Mr. Ajay Kumar Thakur, learned counsel for the appellants, who has primarily argued that mere recovery of blood on the motorcycle would not *ipso facto* enable the prosecution to arrive at the conclusion that the said blood was of the deceased and it related to the present case. Mr. Thakur has relied upon a judgment in case of **Mustkeem** (supra), wherein the Hon'ble Supreme Court had made the following observations –

> "15. The other circumstance found against the appellants by the High Court was that, on the basis

of the disclosure statements of the appellants, weapons alleged to be used in the commission of offence and clothes stained with human blood were recovered. In its judgment, the High Court has discussed in extenso the effect of Section 27 of the Evidence Act (hereinafter shall be referred to as "the Act") and subsequent discovery of the material objects thereafter.

16. On the basis of the report of the serologist, it has come on record that traces of AB blood group were found on the pants and baniyan of the deceased. The prosecution has also averred that a sword and clothes stained with human Blood Group AB were also recovered at the instance of the appellants, from the places shown by them and known only to them and none others. On account of the aforesaid circumstances, the High Court was of the opinion that the chain of circumstances was complete and the completed chain of circumstances pointed the finger for commission of the said offence only by the appellants.

19. The AB blood group which was found on the clothes of the deceased does not by itself establish the guilt of the appellant unless the same was connected with the murder of the deceased by the appellants. None of the witnesses examined by the prosecution could establish that fact. The blood found on the sword recovered at the instance of Mustkeem was not sufficient for test as the same had already disintegrated. At any rate, due to the reasons elaborated in the following paragraphs, the fact that the traces of blood found on the deceased matched those found on the recovered weapons

> cannot ipso facto enable us to arrive at the conclusion that the latter were used for the murder."

65. Learned counsel, Mr. Ajay Kumar Thakur has relied upon another judgment rendered in the case of **Ashish Jain** (supra), wherein the Hon'ble Supreme Court had taken note of the fact that the mere recovery of blood stain weapons at the instance of the accused will not point to the guilt of the accused.

66. We think it proper to quote Paragraph 31, 32 and 33 of the said judgment herein to enable us to appreciate that in the present case also, the mere identification of the blood that it belonged to a human will not suffice for the guilt of the accused persons unless it was corroborated by the fact that the DNA report would otherwise suggest that the blood belonged to the deceased Branch Manager.

> "**31.** Another circumstance which has been contended to point to the guilt of the accused is the recovery of bloodstained weapons at the instance of the accused. A pointed suja and a chisel were recovered from the houses of Accused 2 and 1, respectively, at their instance. However, the prosecution has not established that these are the weapons which were used for the commission of the crime. The medical evidence indicates that the injuries that were found on the bodies of the deceased persons could not have been caused with the weapons seized, and the likelihood of the seized weapons causing the present injuries are very slim, as all the injuries, except one, were lacerations

caused by a hard and blunt object.

32. The bloodstained clothes of the accused persons were also recovered from the houses of the accused at their instance. However, the veracity of the said recovery is doubtful in light of the fact that the said recovery was made two days after the arrest of the accused and the recovery of the stolen articles from the houses of the accused, which the investigating officer had thoroughly searched previously. From Accused 3, Shyam Sunder, clothes were recovered hanging from a hook inside his one-room house, which had also been searched previously and from where ornaments had also been seized before. All these apparent infirmities create nothing but doubts in our minds regarding the guilt of the accused.

33. All the bloodstained items (including the weapons, clothes of the deceased and the flooring and tiles of the spot where the bodies were found) were sent to the FSL for examination, however the reports do not, in any way, help the case of the prosecution. The bloodstains were found to be of human blood, however, only the stains on the clothes of Accused 2 and Accused 3 were found to be of the blood group 'O'. Identification of the rest of the stains was opined to be inconclusive. Although it is argued that the blood group of the deceased persons is 'O', there is nothing conclusive to prove the same. Therefore, no reliance can be placed on the recovery of the bloodstained weapons or clothes of the accused."

67. In this context, it is also relevant to refer to a judgment passed in the case of **Madhav (supra),** wherein the Hon'ble Supreme Court had observed that the bloodstain seized from the place of occurrence or on the weapons matched with the deceased or not, was not on record and holding the accused guilty on such a report without ascertaining that the blood belonged to the deceased would be detrimental.

68. We think it proper to quote the relevant paragraphs being 27, 28 and 29 herein which would suffice that convicting the accused persons on evidence which is dented substantially as the blood stains, though found to be of human source, could not be linked with the blood of the deceased.

> "27. Apart from the fact that the witnesses in whose presence the seizure of the weapons was allegedly affected, had turned hostile, there was also one more thing. There is nothing on record to show that the blood stains said to have been present in those weapons, matched with the blood of the deceased. Unfortunately, the High Court proceeded on a wrong premise that there was scientific evidence to point to the guilt of the accused, merely because as per Exhibit P25 (FSL Report), the knife and lathis said to have been seized by the police, contained stains of human blood. The prosecution has not established either through the report of FSL or otherwise, that the blood stains contained in the knife and lathis were that of the deceased.
> 28. We are conscious of the fact that there is a divergence of views on this aspect. In Raghav Prapanna Tripathi v. The State Of Uttar Pradesh[2], a Constitution Bench of this Court by a majority held that, "...that it would be far-fetched to conclude from the mere presence of blood-stained earth that that earth was stained with human blood and that the human blood was that of the victims...". In Kansa Behera v. State of Orissa[3], this Court

2. AIR 1963 SC 74
3. (1987) 3 SCC 480 : (AIR 1987 SC 1507)

acquitted the appellant on the ground that though the Serologist report found the shirt and dhoti recovered from the possession of the appellant to be stained with human blood, there is no evidence to connect the same with the blood of the deceased. In Surinder Singh v. State of Punjab[4], the bloodstains found on the knife allegedly used for the commission of the offence, were established to be human blood. But this Court rejected the prosecution theory on the ground that those bloodstains on the knife were not shown to be of the same group as the blood of the deceased. In Raghunath, Ramkishan and Ors. vs. State of Haryana[5], this Court held that the bloodstain, though of human blood, is not conclusive evidence to show that it belongs to the blood group of the deceased. In Sattatiya v. State of Maharashtra[6], this Court found the credibility of the evidence relating to the recovery of the object used for the commission of the crime, substantially dented, on account of the fact that the bloodstains, though found to be of human source, could not be linked with the blood of the deceased.

29. In contrast, this Court held in State of Rajasthan v. Teja Ram and Others[7], that at times the Serologist may fail to deduct the origin of the blood, either because the stain is too insufficient or because of hematological changes and plasmatic coagulation. After referring to the Constitution Bench decision in Raghav Prapanna Tripathi (supra), this Court held in Teja Ram (supra) that it is not as though the circumstances arising from the recovery of the weapon would stand relegated to disutility, in all cases where there was failure of detecting the origin of the blood. This Court indicated in Teja Ram (supra) that, "...the effort of the Criminal Court should not be to prowl for imaginative doubts..." and that the doubts should be of reasonable dimension, which a judicially conscientious mind entertains with some objectivity."

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4 (1989) SUPP (2) SCC 21 : (AIR OnLine 1989 SC 147)
5. (2003) 1 SCC 398 : (AIR 2003 SC 165)
6. (2008) 3 SCC 210 : (AIR 2008 SC 1184)
7. (1999) 3 SCC 507 : (AIR 1999 SC 1776)

69. This Court finds that the S.H.O. (PW-17) has acted completely negligently. Either he had no training to conduct investigation or he was acting for extraneous consideration. We are not recording any opinion for the present. His conduct may be found from the fact that despite the directions of Superior Officers for collecting the CDR of the deceased, the I.O had not done the same which has resulted in non establishment of the connection whatsoever with regard to the accused persons being in touch with the deceased or with regard to the location of the deceased. Non-seizure of KCC loans documents, which was said to be the main reason for the said incident, no recording of statement of the cashier and staffs of the Bank are fatal to the prosecution. It will lead to a presumption that the motive has not been proved because in absence of any such documents, which would suggest that the deceased Branch Manager was being coerced by the accused persons/appellants, the allegation of the appellants being behind such incident is bound to fail and as we have seen and discussed above, the tests done with respect to blood stains has also not proved beyond doubt that it belonged to the deceased. Here, it is relevant to mention that non-compliance of the mandatory provisions of Section 102(2) of Cr.P.C. of reporting the seizure forthwith to the superior officer also raises doubt over the manner and credibility of the seizure made, which had enough contradictions otherwise also in the oral testimony of the IO of the case.

70. Thus, after due consideration of the entire prosecution evidence and its careful analysis, we can safely conclude that right from the beginning the Investigating Officers in this case did not take interest in collection of material evidences. There is a delay of three months in recording of statement of PW-10, the blood sample of the deceased was not taken, there was no 'DNA' test and matching with the blood stains found on the motorcycle. On several counts, investigation has failed itself. There are serious infirmities in proving the prosecution case, which has not been able to prove the guilt of the appellants.

71. There is a solitary eye witness of the case, namely, Vijay Kumar (DW-1) but he has not identified the assailants. No TIP was conducted after arrest of the accused persons. The prosecution has sought to establish its' case through circumstantial evidences but in absence of scientific and credible investigation, the chain of criminological events have not been proved.

72. We refer a few judgments passed by the Hon'ble Supreme Court of India that underscore the principle that the benefit of doubt must be extended to the accused when the prosecution fails to establish guilt of the accused beyond reasonable doubt.

73. In the case of **Jitendra Kumar Mishra @ Jittu v. State of Madhya Pradesh** reported in **(2024) 2 SCC 666**, the Hon'ble Supreme Court observed as under:-

> "**16.** ...where the evidence on record indicates the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and that a plausible view, different from the one expressed by the courts below can be taken, the appellate court should not shy away in giving the benefit of doubt to the accused persons".

74. The Hon'ble Supreme Court in the case of **State of Uttar Pradesh vs. Wasif Haider** reported in **(2019) 2 SCC 303** emphasized that in cases marred by investigative deficiencies, the benefit of doubt must favor the accused, regardless of the crime's gravity. The Court observed that the accused cannot be expected to forfeit their innocence due to an ineffectual prosecution. Para '22' of the said judgment is relevant to quote here –

> "22. In the instant appeals before us, the prosecution has failed to link the chain of circumstances so as to

> dispel the cloud of doubt about the culpability of the respondents-accused. It is a well settled principle that a suspicion, however grave it may be cannot take place of proof, i.e., there is a long distance between “may be” and “must be”, which must be traversed by the prosecution to prove its case beyond reasonable doubt [See Narendra Singh v. State of M.P.[5].]”

75. These judgments reinforce the principle that in criminal jurisprudence, the prosecution bears the burden of proving the guilt of the accused beyond reasonable doubt. Any reasonable doubt arising from the evidence should benefit the accused, ensuring the protection of individual rights and the integrity of the justice system.

76. In result, the impugned judgment and order dated 04.12.2019/06.12.2019 passed in Sessions Trial No. 511/2013 (arising out of Bikram P.S. Case No. 42 of 2012 are set aside.

77. Accordingly, the appellants are entitled to be acquitted giving them benefit of doubt. The appellants are on bail. They and their sureties are discharged from the liability of the bail bonds.

78. The appeals are allowed.

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5. (2004)10 SCC 699]

79. At this stage, we remind ourselves of the observations of the Hon'ble Supreme Court in the case of **State of Gujarat versus Kishanbhai and Others** reported in **(2014) 5 SCC 108** in paragraph '19', '22', and '23' which are being reproduced hereunder:-

> "**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.”

80. We have discussed in detail the manner in which investigation of this case has been carried out. The role played by PW-17 the SHO and others are required to be examined by the Department of Home, Government of Bihar. Whether the officer(s) has acted with culpable negligence and are liable to be dealt suitably in administrative side must be examined at appropriate level in accordance with law within a reasonable period. An action taken report shall be sent to the Registrar General of this Court within three months from the date of receipt/communication of a copy of this judgment. The report shall be placed before this Court for perusal.

81. A copy of this judgment with the trial court records be sent down to learned trial Court.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	06.05.2025
Transmission Date	06.05.2025