

IN THE HIGH COURT OF JUDICATURE AT PATNA
GOVT. APPEAL (DB) No.1 of 1999

The State of Bihar

... .. Appellant/s

Versus

1. Rajeshwar Singh S/o- Late Baijnath Singh Village- Bhagawalia Ps- Sheosagar Dist- Rohtas
2. Rajkeshwar Singh S/o- Sri Jagranath Singh Village- Bhagawalia Ps- Sheosagar Dist- Rohtas
3. Butai Singh S/o- Late Sheo Jagi Singh Village- Bhagawalia Ps- Sheosagar Dist- Rohtas
4. Kameshwar Singh S/o- Late Baij Nath Singh Village- Bhagawalia Ps- Sheosagar Dist- Rohtas
5. Deo Nath Singh S/o- Late Fateh Narayan Singh Village- Bhagawalia Ps- Sheosagar Dist- Rohtas
6. Shiv Kailash Raut S/o- Lakhan Raut Village- Bilari Ps- Kargahar Dist- Rohtas
7. Surendra Raut S/o- Sri Shiv Kailash Raut Village- Bilari Ps- Kargahar Dist- Rohtas
8. Bipin Raut S/o- Sri Shiv Kailash Raut Village- Bilari Ps- Kargahar Dist- Rohtas
9. Suresh Raut S/o- Sri Shiv Kailash Raut Village- Bilari Ps- Kargahar Dist- Rohtas
10. Ram Janam Singh S/o- Bhagat Singh Village- Fakila Ps- Kargahar Dist- Rohtas
11. Dukhi Singh S/o- Bhagat Singh Village- Fakila Ps- Kargahar Dist- Rohtas
12. Jai Ram Singh S/o- Dukhi Singh Village- Fakila Ps- Kargahar Dist- Rohtas
13. Girish Singh S/o- Dukhi Singh Village- Fakila Ps- Kargahar Dist- Rohtas

... .. Respondent/s

with

CRIMINAL REVISION No. 78 of 1999

Arising Out of PS. Case No.-93 Year-1991 Thana- SHIVSAGAR District- Rohtas

SUDARSHAN SINGH S/O RAMDAS SINGH R/O VILLAGE-
BHAGWALI,PS-SHEO NAGAR,DISTT-ROHTAS

... .. Petitioner/s

Versus

1. The State of Bihar
2. RAJESHWAR SINGH S/O LATE BAIJNATH SINGH R/O VILLAGE- BHAGWALI,PS-SHEO NAGAR,DISTT-ROHTAS
3. RAJKESHWAR SINGH S/O SRI JAGARNATH SINGH R/O VILLAGE-



- BHAGWALI,PS-SHEO NAGAR,DISTT-ROHTAS
4. BUTAI SINGH S/O LATE SHEOJAGI SINGH R/O VILLAGE-BHAGWALI,PS-SHEO NAGAR,DISTT-ROHTAS
 5. KAMESHWAR SINGH S/O LATE BAIJNATH SINGH R/O VILLAGE-BHAGWALI,PS-SHEO NAGAR,DISTT-ROHTAS
 6. DEONATH SINGH S/O LATE FATEH NARAYAN SINGH R/O VILLAGE-BHAGWALI,PS-SHEO NAGAR,DISTT-ROHTAS
 7. SHIV KAILASH RAUT S/O LAKHAN RAUT R/O VILLAGE-BILARI,PS-KAGAHAR,DISTT-ROHTAS
 8. SURENDRA RAUT S/O SRI SHIV KAILSH RAUT R/O VILLAGE-BILARI,PS-KAGAHAR,DISTT-ROHTAS
 9. BIPIN RAUT S/O SHIV KAILSH RAUT R/O VILLAGE-BILARI,PS-KAGAHAR,DISTT-ROHTAS
 10. SURESH RAUT S/O SRI SHIV KAILSH RAUT R/O VILLAGE-BILARI,PS-KAGAHAR,DISTT-ROHTAS
 11. RAM JANAM SINGH S/O BHAGAT SINGH R/O VILLAGE-FAKILI,PO-TORANI,PS-KARGAHAR,DISTT-ROHTAS
 12. DUKHI SINGH S/O BHAGAT SINGH R/O VILLAGE-FAKILI,PO-TORANI,PS-KARGAHAR,DISTT-ROHTAS
 13. JAI RAM SINGH S/O DUKHI SINGH R/O VILLAGE-FAKILI,PO-TORANI,PS-KARGAHAR,DISTT-ROHTAS
 14. GIRISH SINGH S/O DUKHI SINGH R/O VILLAGE-FAKILI,PO-TORANI,PS-KARGAHAR,DISTT-ROHTAS

... ... Respondent/s

Appearance :

(In GOVT. APPEAL (DB) No. 1 of 1999)

For the Appellant/s : Mr. Dilip Kumar Sinha, APP

For the Respondent/s : None

(In CRIMINAL REVISION No. 78 of 1999)

For the Petitioner/s : None

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 07-07-2025

The State has preferred the present appeal under
Section 378(1) and (3) of the Code of Criminal Procedure, 1973
(hereinafter referred to as the 'Code') against the judgment



dated 25.11.1998 passed by the court of learned Addl. Sessions Judge-VII, Rohtas, Sasaram in Sessions Trial No. 249 of 69 of 1992/92, whereby the learned Trial Court has acquitted all the respondents/accused of all the charges levelled against them.

FACTUAL MATRIX

2. Prosecution case, as per the fardbeyan dated 18.11.1991 given by Sudarshan Singh, S/o- Ramdas Singh given before S.H.O. of Shivsagar P.S., is that at 07:00 a.m. on 18.11.1991 the informant's son Lalan Singh along with Janardan Singh and Rameshwar Singh had gone for answering the call of nature when some of the accused persons were standing in the lane near the door of Baij Nath Singh. When they reached near the orchard of Tileshwar Singh, accused Rajeshwar Singh, Baijnath Singh, Rajkeshwar Singh and Butai Singh instigated Kameshwar Singh to kill them upon which accused Kameshwar Singh fired on Lalan Singh from the house which hit Lalan Singh on his jaw and he fell down and died. Then Janardan Singh and Rameshwar Singh raised alarm. After they raised alarm, so many persons opened fire from the roof of Deo Nath Singh's house out of whom he identified Deonath Singh, Shiv Kailash Raut, Surendra Raut, Vipin Raut, Suresh Raut, Ram Janam Singh, Dukhi Singh, Jairam Singh, Girish Singh firing



from the roof of Deonath Singh's house. The accused persons came out of the house of Deonath Singh and ran away towards their village. Deonath Singh also followed them. The reason behind the incident is a land dispute going on between Kameshwar Singh and Shivadhar Singh leading to Shiv Sagar P.S. Case No. 73/91 in which charge-sheet has been submitted against Kameshwar Singh and others. In that case, Babban Singh, brother of the deceased Lalan Singh, is a witness. Due to this previous enmity, accused persons have killed Lalan Singh by hatching a conspiracy.”

3. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions where it was registered as Sessions Trial No. 249 of 69 of 1992/92.

4. Before the Trial Court, prosecution examined ten witnesses, namely P.W. 1 Gopal Singh, P.W. 2 Janardan Singh, P.W. 3 Babban Singh, P.W. 4 Hari Shankar Singh, P.W. 5 Rameshwar Singh, P.W. 6 Ramadhar Singh, P.W. 7 Sudarshan



Singh, P.W. 8 Harinarayan Prasad, P.W. 9 Dr. Chandra Shekhar Prasad Singh and P.W. 10 Chandra Shekhar Prasad Singh. Defence has also examined one witness, namely Chhavinath Singh.

SUBMISSIONS

5. Mr. Dilip Kumar Sinha, learned A.P.P. appearing for the appellant State mainly submits that, in the present case, there are 4 eye-witnesses to the occurrence in question and the eye-witnesses have supported the case of the prosecution. It is further submitted that, as per the case of the prosecution, the respondents/accused opened fire in which the deceased sustained bullet injury. The doctor, P.W. 9 Dr. Chandra Shekhar Prasad Singh, who has conducted the *post mortem* on the dead body of the deceased, has supported the case of the prosecution. It is further submitted that the prosecution has also proved the motive on the part of the accused to commit the alleged offences and, therefore, the prosecution has proved the case against the respondents/accused beyond reasonable doubt, despite which the trial court has passed the impugned judgment of acquittal. Hence, the same is required to be quashed and set aside.

6. At this stage, it is pertinent to note that nobody has remained present on behalf of the respondents/accused.



However, as the present appeal is pending since the year 1999, in the interest of justice, the same is taken up for final disposal.

DISCUSSIONS

7. We have reconsidered the submissions canvassed by the learned counsels for the parties. We have also re-appreciated the entire evidence led by the prosecution witnesses and also perused the documents exhibited.

8. At this stage, we would like to appreciate the relevant extract of entire evidence led by the prosecution as well as defence before the Trial Court.

9. P.W. 1 Gopal Singh has stated in his examination-in-chief that on the date of incident, he was in his orchard at 07:00 a.m. when he heard a commotion and went near that place. While running he saw Kameshwar Singh fired from the double storied building of Deonath Singh. The bullet hit the jaw of Lalan Singh and he fell down. Thereafter, the accused persons, namely Deonath Singh, Shiv Kailash Raut, Surendra Raut, Suresh Raut, Vipin Raut, Ram Janam Singh, Dukhi Singh, Jairam Singh, Girish Singh etc. were firing from the same place. While firing they came down from the roof of Deonath Singh's house and ran towards village Belari. Nobody from the village dared intervene as firing was going on. He has



identified the accused persons present in Court and has claimed to identify other accused also.

9.1. In his cross-examination, he has given the description of his family members and stated that Sudarshan Singh has two sons namely Lalan Singh (deceased) and Babban. He has further stated that he alone rushed to the place of occurrence. On the way he heard the sound of firing which hit Lalan and he fell down on the spot. He did not go ahead and hid himself at that very place. While he saw Lalan, the bullet hit him. He kept himself concealed behind the house of Ram Iqbal Paswan for 10 minutes. Nobody approached him while he was hidden. After 10 minutes, he went to the place where Lalan was fallen followed by Lakshman Singh, Sant Singh and Chhavinath Singh and 5-6 others. He had not talk with anyone. He had not lifted Lalan nor he had asked anybody to inform the police. He has also stated that the Choukidar, namely Ram Awdan had informed the police, but he is not aware whether he had visited the place of occurrence or not. He had not talked with the Choukidar. He has stated that the height of the roof is about 22-22 feet. The accused persons fired 12-14 round during 4-5 minutes, but he is not aware whether they were firing on any target or in the air. Darogaji visited the place of occurrence at



about 12:00-12:30 noon. His statement was recorded at 11/4-11/2 on the date of incident itself. He has further stated that police had come after the incident and he was called there through the Choukidar. Sudarshan Singh, father of deceased Lalan Singh, is his uncle. His uncle Sudarshan Singh, his cousin Satyendra Singh, Giriji Singh, Lakshman Singh and Basdev Singh, Gupteshwar Singh and Achhaibar Singh all have arms licence, but except Satyendra Singh he is not aware whether any of the above had a gun on the date of incident or not. He has specifically stated that first of all he reached the place of occurrence, but he did not raise alarm. He saw the dead body and came to his house and informed his family members. He had gone to the house of the deceased 2-3 hours after the incident. There is only one house between his house and that of Sudarshan Singh. When he went to the house of Sudarshan Singh, only female members were present. He met male members of the family only after two and a half hours of the incident when Darogaji had come. His statement was recorded there. He has specifically stated that the firing was made from the roof of a double storied 20-22 ft. high building. He has denied the suggestion that he has given false evidence against the accused persons due to previous enmity.



10. P.W. 2 Janardan Singh. He has supported the manner of occurrence as deposed by P.W. 1. He has identified the accused persons present in Court.

10.1. In his cross-examination he has stated that he happens to be the nephew of the informant. When they were going to answer the call of nature, none from the village was accompanying them nor anybody followed them. He has further stated that Darogaji had not seized any empty cartridges. Nor any cartridge or wad etc. was there. On recall, he has deposed that the deceased had died when he reached the place of occurrence. The dead body was at the place of occurrence till 06:00 p.m. Police had arrived there much before. They were not present when the police had come. He did not take effort to send the dead body. He has denied the suggestion that he was not present there on that date. He has denied the suggestion that he had not seen any occurrence and that the accused persons have been falsely implicated.

11. P.W. 3 Bawan Singh has also supported the manner of occurrence as stated by P.W. 1. He has further stated that the reason for the incident is Case No. 63/61 lodged in connection with the murder of Shivadhar Singh by Rameshwar Singh in which he was a witness. When the dead body of his



brother was being taken for *post mortem*, he had also gone with the dead body to Sasaram. He has claimed to identify all the accused persons.

11.1. In his cross-examination, he has deposed that he had seen his brother dead at about 07:15-07:30 p.m. He could not count the number of bullets fired nor any of them chased the accused persons while firing was going on. He had gone to the place of occurrence on hearing the commotion. He had gone alone to the place of occurrence. A few persons had gathered there, but he cannot name them. He remained there for five minutes during which he did not talk with anybody. Thereafter he came to his house and remained there until his statement was recorded. The wife of the deceased had not gone to the place of occurrence. The dead body was removed from the place of occurrence at about 04:00-05:00 p.m. when blood was oozing out. He was giving his blood stained clothes to the police but the police refused to accept the same. Now those clothes are torn. He has stated that he had disclosed everything before the police as deposed by him in the Court. He has denied the suggestion that he had not seen any occurrence and had given false evidence and had falsely implicated the accused persons due to previous enmity.



12. P.W. 4 Hari Shankar Rai has also supported the manner of occurrence as deposed by P.W. 1. he has further deposed in his examination-in-chief that when he was returning after answering the call of nature, he saw the incident. When Lalan Singh received the bullet injury, he was accompanied by two others, but he cannot tell their names. Lalan Singh died at the place of occurrence itself. He has claimed to identify the accused persons.

12.1. In his cross-examination, he has denied the suggestion that he has never visited the village in which the incident took place nor he or his nephew was present in that village on the date of incident. Nobody's statement was recorded by the police in his presence. His statement was recorded at the place of occurrence itself on the very date of occurrence at 03:00-04:00 p.m. He first heard the sound of instigation to kill and then the sound of firing. He had gone to the deceased after he had received the bullet injury and the firing had stopped. He has denied the suggestion that he had not seen the occurrence, rather he was informed about the death of the deceased by Janardan Singh in Muhalla Takia at Sasaram. He has also denied the suggestion that he, the informant and other relatives have implicated the accused persons by lodging a



false case under a conspiracy.

13. P.W. 5 Rameshwar Singh has deposed in his examination-in-chief that on the date of occurrence at 07:00 a.m. he was going to ease himself with Janardan Singh and deceased Lalan Singh. When they reached near the *khalihan* of Tileshshwar Singh, accused Baidyanath Singh, Butai Singh, Rajeshwar Singh and Rajkeshwar Singh instigated Kameshwar to kill the enemy upon which Kameshwar Singh fired from the roof of Deonath Singh's house which hit Lalan Singh who fell down injured. He and Janardan Singh raised alarm upon which firing started from the roof of Deonath Singh's house. Kameshwar Singh, Deonath Singh, Shiv Kailash Raut, Surendra Raut, Suresh Raut and Binit Rout were firing. Ram Janam Singh, Dukhi Singh, Girish, Narayan Singh and Jairam Singh were also firing from the said place. He claims to identify all the accused persons.

13.1. Upon firing, he and Janardan Singh hid themselves and came out after the firing stopped. He returned to his house and did not go the house of the deceased. He did not inform anybody about the occurrence. He has denied the suggestion that he had not seen the occurrence and has given false evidence. He has further stated that he had not seen any



empty cartridge or pellets at the place of occurrence. He has denied the suggestion that no incident in the manner and at the time as described by him had taken place. He has denied that he had not seen any occurrence and had given false evidence in connivance with the informant due to enmity with the accused persons.

14. P.W. 6 Ramadhar Singh has deposed in his examination-in-chief that the deceased Lalan Singh was his nephew. He has also supported the manner of occurrence as described by other prosecution-witnesses. He has further stated that Darogaji had gone to the place of occurrence and prepared the inquest report of the deceased through carbon process. He has identified his signature upon the copy of the inquest report (Ext.1). He has claimed to identify all the accused persons, including those who were not present.

14.1. In his cross-examination, he has stated that the land in dispute is in forceful possession of accused Baidyanath Singh etc. regarding which a title suit is going on since 1986. He is also a party to that title suit. He has further stated that prior to this incident, he had lodged a criminal case bearing Shiv Sagar P.S. Case No. 100/91 in which accused of this case Rameshwar, Rajeshwar, Baidyanath, Butai and



Rajkeshwar are accused. He does not know as to who others are witnesses in this case. He knows about himself only. He saw Lalan after the accused persons had fled away. He has denied the suggestion that neither he nor anybody else had seen the occurrence and that they had falsely implicated the accused persons in this case.

15. P.W. 7 Sudarshan Singh has deposed in his examination-in-chief that he is the informant of this case. The incident took place about a quarter to five years at 07:00 a.m. He was going towards north for attending the call of nature accompanied by Lalan, Janardan and Rameshwar. While on way, Baidyanath Singh, Rajkeshwar, Rajeshwar Singh and Butai Singh raised alarm at the door of Baidyanath Singh instigating Kameshwar Singh to kill the prosecution side. By that time Lalan, Janardan and Rameshwar had reached the orchard (khalihan) of Tileshwar. On such instigation, Kameshwar Singh fired from the roof of Deonath Singh's double storied building which hit Lalan Singh as a result of which he fell down there. Thereafter, upon the alarm raised by Janardan and Rameshwar he hid himself in a corner. Thereafter also the accused persons continued firing. He identified Kameshwar Singh, Deonath Singh, Shiv Kailash Raut, Surendra Raut, Suresh Raut, Vipin



Raut, Ramjanam, Dukhi, Girish and Jairam. Darogaji had gone to the place of occurrence and he had given his statement to Darogaji which Darogaji read over to him and he put his signature on the statement finding the same true (Ext.-2). Darogaji had also recorded his re-statement in which he reiterated his version. He claims to identify all the accused persons.

15.1. In his cross-examination, he has stated that Janardan Singh is the son of Shivadhar who is his full brother. Ramadhar Singh is also his full brother. On one side of the disputed land Deonath Singh and Baidyanath Singh have constructed a house for which a civil case is pending. He has admitted in his cross-examination that upon hearing the commotion raised by the accused persons, he did not raise any alarm rather he hid in a Koli (narrow lane) and remained there for 10-12 minutes. He remained at the place of occurrence with Darogaji from 12:00 noon to 04:00 p.m. He had also gone to the place of occurrence before Darogaji came. He had not informed the village people about the incident before Darogaji came. Once he went to the place of occurrence he remained there continuously till 04:00 p.m. The house of Choukidar Ram Awdan is situated 60-70 yards away from the place of



occurrence. He had also come to the place of occurrence immediately after the accused persons had left the place of occurrence, but neither he informed the Choukidar about the incident nor requested him to inform the police. He has denied the suggestion no incident in the manner stated by him had occurred and he was informed that the dead body of his son was lying at the place of occurrence upon which he went there. He has also denied the suggestion that due to enmity with the accused persons he implicated them by concocting a false case.

16. P.W. 8 Harinarayan Prasad has deposed that he took over the charge of investigation of Shiv Sagar P.S. Case No. 156/91 on 11.03.1992 from the then S.H.O. Chandra Shekhar Prasad Singh. After taking over the charge, he got the latest progress report of the case from A.S.I., Sasaram. Before he took over the charge of investigation, the investigation had completed on all aspects. On the wireless instruction of S.P., Rohtas to submit the charge-sheet, he submitted the charge-sheet in this case against the accused persons Baidyanath Singh, Rajkeshwar, Rajeshwar Singh, Butai Singh, Kameshwar Singh, Deonath Singh, Shiv Kailash Raut, Surendra Raut, Vipin Raut and Suresh Raut under Sections-147, 148, 149, 302 and 120B of I.P.C. and 27 of Arms Act.



17. P.W.-9 Dr. Chandra Shekhar Prasad Singh has deposed that he was posted as Medical Officer at Sadar Hospital, Sasaram on 19.11.1991. On the same date, at 08:30 p.m., he conducted the *post mortem* examination of the dead body of Shri Lalan Singh and found the following *ante mortem* injuries:-

“(1) A lacerated wound on right angle of mouth extending to right mandibular region about 2” in diameter margin everted.

(2) A lacerated wound margin inverted 1/2” in diameter about middle of back of the neck in midline.

On dissection:- Fracture of 3rd and 4th cervical vertebra spinal cord lacerated the large vessels in right side of neck lacerate. Fracture of right side of mandibula. Lung and heart is normal. Stomach is empty. Above injuries were caused by fire arms.

In my opinion, the cause of death injury vital organ spinal cord and large vessels in neck and time elapsed since death is within 24 hours.”

17.1. In his cross-examination, he has stated that both the injuries found on the dead body were about in a straight line. The track of injuries shows that the deceased and the assailant at the time of firing must have been on even ground.



The track of injuries shows that if the deceased was on the ground and the assailant was on the elevated from or on the roof. If the assailant at the time of firing would have been on the roof and the deceased on the ground, then in that situation the track injuries would have been from above to downward. Injury no. 1 is the wound of exit and injury no. 2 is the wound of entrance.

18. P.W. 10 Chandra Shekhar Prasad Singh has deposed that on 12.11.1991 he was S.H.O. of Shiv Sagar P.S. and at 12:00 noon had recorded the fardbeyan of Sudarshan Singh, read it over to him and got his signature on the same. He has identified the same to be in his pen and signature (Ext-5). He has further stated that the formal F.I.R. has been written by Munshi Lalan Singh and it bears his (deponent's) signature, Ext-6). The place of occurrence is village Bhagwalia. He recorded the re-statement of informant Sudarshan Singh. He found the dead body of deceased Lalan Singh in blood soaked condition with a bullet injury on the right jaw which had come out from the back side of the head.

18.1. In his cross-examination, he has deposed that village Bhagwalia is situated 12 k.ms. north from Shiv Sagar P.S. He had not mentioned in the case diary as to on whose



information he had gone to the place of occurrence. He had mentioned the time of recording the *fardbeyan* at 12:00 noon, but he had not mentioned the time of recording the re-statement of the informant. He had recorded the statements of the witnesses, but had not mentioned the place and time of the same in the case diary. He had mentioned the time of sending the dead body for *post mortem* in the dead body challan but had not mentioned the same in the diary. He had not even mentioned in the case diary whether he had collected the blood stained soil and sent the same to the F.S.L. or not. He has further stated that P.W. 2 Gopal Singh had not disclosed the whereabouts of witnesses Ram Janam, Dukhi, Girish etc. This witness had not disclosed before him the names of the villages of the accused persons. Witness Baban Singh had stated before him that he went to the place of occurrence on hearing commotion and found Lalan Singh fallen on the ground with bullet injury. He had not stated that he was at his door and when he went running to the field of Tileshwar, he found that Lalan had received bullet injury. This witness had used the term firing, but had not mentioned rifle. He had not stated that when Lalan received bullet injury, he was accompanied by two others. Witness Rameshwar Singh had stated before him that he had met the



deceased and Janardan Singh when at 07:00 a.m. he was on way to attend the call of nature. He has denied the suggestion that the investigation was not carried out impartially and in connivance with the informant false evidence was collected. He has denied the suggestion that he made antedated entries in the diary and distorted the statements of the witnesses.

19. DW-1 Chhabinath Singh has not supported the prosecution case. He has stated that the incident took place seven years ago. He was taking out his cattle in the early morning when the Sun had not dawned. He heard the commotion when he was tying his cattle and went to that place and saw the dead body of Lalan Singh in the *Khalihan* of Tileshwar Singh with injury on his jaw. Sant Singh, Kamla Paswan and Ram Ekbal Paswan were already present there when he reached. After some time, Sudarshan Singh, Pawan Singh and Shiv Aadhar Singh also came there, but none disclosed as to who had killed Lalan Singh. He enquired of the family members, but they also did not give any information. In the meanwhile, Choukidar also came there, but he also did not tell anything.

19.1. In his cross-examination, he has stated that accused Butai Singh is his uncle. Deonath Singh had lodged a



case regarding the incident in which he had deposed. He has denied that Deonath Singh had lodged a false case. The case filed by Deonath in C.J.M. Court has not been rejected, rather it is pending. He had not heard the sound of firing on the date of incident. He has denied the suggestion that he had not gone to the place of occurrence and had not heard anything and had given false evidence to save his uncle Butai.

DISCUSSION

20. We have considered the arguments canvassed by the learned counsels appearing for the parties, re-appreciated the entire evidence led by the prosecution as well as defence and perused the trial court records and exhibits.

21. From the *fardbeyan* given by P.W. 7, Sudarshan Singh, father of the deceased, it transpires that the alleged occurrence took place at 07:00 a.m. for which F.I.R. was lodged at 12:00 noon. If the *fardbeyan* of the informant is carefully seen, it is revealed that, as per the case of the informant, one Janardan Singh and Rameshwar Singh had gone with his son (deceased) for answering the call of nature and at that time when they reached near the orchard (khalihan) of Tuleshwar, the accused persons opened fire on Lalan Singh from the house which hit Lalan Singh on his jaw and he fell down injured.



From the fardbeyan it further transpires that the informant has also projected himself as an eye-witness to the occurrence in question.

21.1. Keeping in view the aforesaid fardbeyan, if the deposition given by P.W. 1 Gopal Singh, who is also shown as an eye-witness in the *fardbeyan* itself, it transpires that P.W.1 has said in the examination-in-chief that he had seen the occurrence from his orchard. It is required to be observed that P.W. 1 is the nephew of the informant and is a near relative of the deceased. In para-13 of his cross-examination, he has admitted that when he heard the sound of firing, he saw that the bullet hit Lalan Singh. Lalan Singh fell down at the said place. He hid himself where he remained hidden for 10 minutes. He has further stated that after 10 minutes, when he reached near the dead body of Lalan Singh, Lakshman Singh, Sant Singh and Chhavinath Singh and 5-6 others reached at the said place. He further stated that Ram Awdan, Choukidar, did not come at the said place. Further, he has admitted that the firing was made from the roof of a double storied building of Kameshwar Singh which is 20-25 ft. high from the ground. The said witness thereafter admitted during cross-examination that first of all he reached to the place of occurrence, but he did not raise alarm.



He saw the dead body and came to his house and informed his family members. He had gone to the house of the deceased 2-3 hours after the incident. There is only one house between his house and that of Sudarshan Singh. When he went to the house of Sudarshan Singh, only female members were present.

21.2. Thus, from the aforesaid deposition given by P.W. 1, it can be said that P.W. 1 reached at the place of occurrence. At that time, nobody else was present. His conduct was unnatural. Though his cousin, i.e. the deceased, died in the incident in question, he went to his house, remained there for 2-3 hours and thereafter only he went to the house of the deceased to inform about the incident. It can be further said from the aforesaid deposition that even the informant was not present at the place of occurrence.

21.3. P.W. 2 Janardan Singh is also projected as an eye-witness by the informant. It is pertinent to note that P.W. 2 is also a nephew of the informant. From the deposition given by the said witness, it is revealed that, as per his case, he and Rameshwar Singh were present at the place of occurrence. As per his case also, the accused started firing from their roof. As per his version, he along with Rameshwar Singh stayed at the place of occurrence near dead body of Lalan Singh for five



minutes and thereafter went to their house. In para-10 of his cross-examination, he has further stated that when he reached to the house, he did not inform Sudarshan Singh and Ramadhar with regard to the incident in question. Further, his statement was recorded by the police at 04:00 p.m. The said witness has also stated that the height of the roof was 25-30 feet.

21.4. At this stage, we would also like to examine the deposition given by P.W. 5 Rameshwar Singh who is also projected as an eye-witness in the *fardbeyan*. As per the version given by P.W. 5, he and Janardan Singh remained at the place of occurrence for 7-8 minutes. He has stated that when they were present at the place of occurrence, some of the village people came at the said place. Thus, from the aforesaid deposition given by P.W. 5, it can be said that there is no reference of informant Sudarshan Singh or P.W. 1 Gopal Singh in his deposition. It is not the case of the said witness that Sudarshan Singh, who is father of the deceased, also came at the place of occurrence immediately. Similarly, it is not his case that P.W. 1 reached at the said place. Further, the conduct of the said witness is also unnatural. This witness has admitted in para-2 that he did not raise alarm and thereafter he went towards the village. When he was going towards the village, number of



villagers met him, however, he did not inform them about the incident.

21.5. P.W. 7 Sudarshan Singh is the father of the deceased and informant. The said witness has stated altogether a different story before the Court. In his examination-in-chief, the said witness has stated that he had seen the occurrence in question and when he along with Janardan Singh and Rameshwar Singh raised alarm, he hid himself. He has admitted in para-14 that after the alleged occurrence took place he remained at the place of occurrence till 04:00 P.M. In the meantime, Darogaji came at the said place. He has also admitted that Choukidar, whose house is situated near the place of occurrence, also came at the said place. The said Choukidar immediately came after the accused fled away from the place of occurrence.

22. Thus, from the deposition given by the aforesaid eye-witnesses, it transpires that there are major contradictions, improvement and inconsistencies in the story put forward by the so called eye-witnesses and the eye-witnesses are interested and related witnesses. It is true that merely because a witness is an interested or related witness, his deposition cannot be discarded solely on the said ground. At the



same time, the deposition given by such a witness is required to be scrutinized closely.

23. Keeping in view the aforesaid version given by the eye-witnesses that the firing took place from the roof of a double storied building and, that too, from a height of 20-25 ft., now the deposition given by P.W. 9, Dr. Chandra Shekhar Prasad is examined, it is revealed that the said doctor had conducted the *post mortem* on the dead body of the deceased. P.W. 9 has admitted during cross-examination that both the injuries found on the dead body were about in a straight line. The track of injuries shows that the deceased and the assailant at the time of firing must have been on even ground. The track of injuries shows that if the deceased was on the ground and the assailant was on the elevated from or on the roof. If the assailant at the time of firing would have been on the roof and the deceased on the ground, then in that situation the track injuries would have been from above to downward. Injury no. 1 is the wound of exit and injury no. 2 is the wound of entrance.

24. Thus, from the medical evidence produced before the trial court, it transpires that the medical evidence does not support the version given by the eye-witnesses who are near relatives of the deceased. The story put forward by the eye-



witnesses that firing took place from a roof, that too, from a height of 20-25 ft. does not inspire confidence.

25. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Chandrappa and Ors. Vs. State of Karnataka**, reported in **(2007) 4 SCC 415** in which the Hon'ble Supreme Court has laid down the principle regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal. In Para-42 of the said decision, the Hon'ble Supreme Court has observed as under:-

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseology are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate



court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

26. In the case of **Nikhil Chandra Mondal Vs. State of West Bengal**, reported in **(2023) 6 SCC 605**, the Hon’ble Supreme Court has observed, in Para-22, as under:-

“22. Recently, a three-Judge Bench of this Court in Rajesh Prasad v. State of Bihar [Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31] has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced,



reaffirmed and strengthened by the court. It has been further held that if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

27. Thus, from the aforesaid decisions rendered by the Hon’ble Supreme Court, it can be said that Appellant Court must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. Further, if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding recorded by the Trial Court.

FINDINGS

28. Now, keeping in view the aforesaid decisions rendered by the Hon’ble Supreme Court (supra), if the evidence led by the prosecution and discussed hereinabove, is carefully examined, we are of the view that the prosecution has failed to



prove the case against the respondents/accused beyond reasonable doubt. Further, we have also gone through the reasoning recorded by the trial court while passing the impugned judgment. We are of the view that the trial court has not committed any error while passing the impugned judgment of acquittal.

29. The appeal stands dismissed.

30. Accordingly, the criminal revision also stands disposed of.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

K.C.Jha/-

AFR/NAFR	N.A.F.R.
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