

IN THE HIGH COURT OF JUDICATURE AT PATNA
GOVT. APPEAL (DB) No.3 of 1999

The State of Bihar

... .. Appellant

Versus

1. Hardeo Mandal S/o- Lakhi Mandal Village- Makdumma Ps- Ammarpur Dist- Banka
2. Mahesh Mandal S/o- Hardeo Mandal Village- Makdumma Ps- Ammarpur Dist- Banka
3. Manoj Mandal S/o- Hardeo Mandal Village- Makdumma Ps- Ammarpur Dist- Banka

... .. Respondents

Appearance :

For the Appellant	:	Mr. Dilip Kumar Singh, A.P.P.
For the Respondents	:	Mr. Ranjan Kumar Jha, Advocate
		Mr. Subhash Kumar Jha, Advocate
		Mr. Sudhir Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 08-05-2025

This appeal under Section 378(1) and (3) of the Code of Criminal Procedure has been preferred by the State against the judgment dated 22.12.1998 passed by the 2nd Additional Sessions Judge, Banka, in Sessions Trial No.40/97, whereby the three respondents herein have been acquitted of the charges levelled against them.

FACTUAL MATRIX:

2. Amarpur P.S. Case No. 33 of 1996 came to be registered on 13.02.1996 at 10.15 AM by the Sub-Inspector of Police, Amarpur P.S., against three named accused persons,



respondents herein, under Section 302/34 of the IPC and Section 27 of the Arms Act, based on the *fard-beyan* of the informant, Chandeshwari Yadav (PW 5). The informant, in his *fard-beyan*, recorded in the premises of Sadar Hospital, Banka, has stated that his son, namely, Shankar Yadav (deceased) is the owner of a 'Tata Maxi' which is used to be plied by him on Amarpur to Banka Road. One Hardeo Mandal (respondent No. 1 herein) too used to ply a 'Tata Maxi' in the same route. It is further stated that on 12.02.1996 with regard to timing of plying of vehicles, Hardeo Mandal of village Makduma raised a dispute and threatened his son that he will get him lifted within 24 hours, which his son had told at the home. It is further stated in the *fard-beyan* that while, on 13.02.1996, at around 07:00 AM, he along with his son (deceased) was going to Makduma, in connection with some work Kanki Yadav, Arun Yadav of his village and brother-in-law of his son, namely, Tuntun Yadav, were also going, on the pitch road near Pasi-Yadav Tola, Hardeo Mandal, armed with country-made pistol, Mahesh Mandal, armed with pistol and Manoj Mandal armed with licensed gun had been waiting there, surrounded his son and Manoj Mandal opened one shot and said that whoever will come in the way will be shot. Out of fear, he, other persons of his village and the people grazing their cattle nearby stopped there. When his



son cried for help, then he saw that, with an intention to kill his son Hardeo Mandal and Mahesh Mandal, both abusing his son, fired point blank in the left side of his neck. The informant heard sound of two gun shots. It is also stated in the *fard-beyan* that Mahesh Mandal also abusively said that he will not die with two bullets and made another fire, upon which his son fell down and all the three fled away. When the informant and others reached nears his son, his son told that Hardeo and Mahesh Mandal have shot him. His son was soaked with blood. Three bullet marks were there on the neck of his son with charring mark and as the shot his his neck, the bullet exited from the middle of his head and more blood was oozing out from there. The informant has stated that Kanikmi Yadav, Arun Yadav, Anirudh Yadav, Soti Yadav and Tuntun Yadav have seen the occurrence. Thereafter, the injured was brought to Hospital at Banka in a vehicle, but the Doctor told that the injured has died. The informant has stated that with pre-planning and with an intention to kill his son, he was waylaid and has been shot dead.

2.1. On completion of investigation, charge-sheet was submitted against the respondents herein before the concerned Magistrate Court and as the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to



the Sessions Court under Section 209 of the Code, where the same was registered as Sessions Trial No. 40/97.

2.2. At the trial, the prosecution examined six witnesses and also produced documentary evidence. Thereafter, further statement of the accused was recorded under Section 313 of the Code and after completion of the trial, the Trial Court passed the impugned judgment and acquitted the accused of the charges framed against them against which the State has preferred the present appeal.

3. Heard Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor appearing on behalf of the appellant-State and Mr. Ranjan Kumar Jha, learned counsel appearing on behalf of the respondents-accused.

SUBMISSIONS ON BEHALF OF THE APPELLANT-STATE :-

4. Learned APP appearing for the appellant-State would mainly submit that informant is the eye-witness of the occurrence in question and he is the father of the deceased. It is further submitted that there are five eye-witnesses to the occurrence in question and all the eye-witnesses supported the case of the prosecution. Learned APP, therefore, urged that when the eye-witnesses have supported the case of the prosecution, the trial



court ought to have convicted the respondents accused. Learned APP has also referred the deposition given by the IO (PW 6) and pointed out the manner in which the said IO has carried out the investigation and collected the evidence against the respondents accused. Learned APP urged that the impugned judgment be quashed and set aside and thereby the respondents accused be convicted for the alleged offence.

SUBMISSIONS ON BEHALF OF THE
RESPONDENTS-ACCUSED: -

5. On the other hand, learned Advocate Mr. Ranjan Kumar Jha appearing for the respondents accused has vehemently opposed the present appeal. It is submitted that there are major contradictions and inconsistencies in the deposition of the prosecution witnesses. It is further submitted that the prosecution has failed to examine the Doctor, who has conducted the post mortem examination of the dead body of the deceased, as a result of which the defence has lost the opportunity of cross-examining the Doctor and serious prejudice has been caused to the defence. Learned counsel appearing for the respondents accused has referred the post mortem report which has been produced before the trial court. It is submitted that, as per the so-called eye-witnesses, the accused fired three gun shots, as a result of which



the deceased sustained fire-arm injuries. However, from the post mortem report, it is revealed that the deceased sustained total six injuries and injury nos.4 to 6 were caused by hard and blunt substance. Learned counsel, therefore, urged that the medical evidence does not support the version given by the eye-witnesses. Learned counsel further submits that, in fact, the aforesaid witnesses are the chance witnesses. Learned counsel further submits that the trial court has not committed any error while passing the impugned judgment of acquittal. At this stage, learned counsel has placed reliance upon 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 and contended that even if two views are possible one view taken by the trial court cannot be retracted. He, therefore, urged that the acquittal appeal be dismissed.

**DISCUSSION WITH REGARD TO THE
DEPOSITION OF THE PROSECUTION WITNESSES :-**

6. At this stage, we would appreciate the relevant evidence given by the witnesses. PW 1, namely, Kanki Yadav, has mainly deposed in his examination-in-chief that the occurrence took place nearly two years ago. At around 07:00 AM, he and Arun Yadav were going to fetch labourers from Pasi Tola. Ahead of



them Chandeshwari Yadav, Shankar Yadav and Tuntun Yadav were also going. When they reached near Pasi Tola, they saw Mahesh Mandal, Hardeo Mandal and Manoj Mandal sitting by the side of the road. Manoj was armed with licensed gun, and Hardeo Mandal and Mahesh Mandal were armed with country-made pistols. When Chandeshwari Yadav and Shankar Yadav (deceased) reached near the road, Manoj, Hardeo and Mahesh surrounded them. Thereafter, Manoj exhorted that if anyone comes near, he will be shot and opened fire at Shankar Yadav, but the same missed the target and hit the wall of Chariter Mandal. Thereafter, Hardeo Mandal and Mahesh Mandal shot fire from point blank range on the left side of neck and left jaw of Shankar Yadav, upon which Shankar Yadav (deceased) fell down. Thereafter, Mahesh Mandal shot one fire in the neck. On *hulla* being raised by Chandeshwari and Shankar, people from village ran. Then the accused persons fled away. When they reached near Shankar, he was alive and soaked with blood. Shankar Yadav was brought to Banka Hospital by a vehicle, where the doctor declared him dead. He has further deposed that on the previous evening there was dispute on account of timing of plying of vehicles between conductor of the bus of Chandeshwari and Mahesh and Mahesh had threatened him to eliminate Shankar within 24 hours.



6.1. In his cross-examination, PW 1 has deposed that when the altercation between conductor of the bus of Chandeshwari and Mahesh took place he was not there at the spot. He has deposed that he cannot say how long he stayed at the place where he saw Shankar being shot. He said that he did not see the gun of Manoj Mandal prior to the incident. The people at the place of incident were saying that the gun which the Manoj was holding was licensed one. On *hulla* being raised by Chandeshwari after the firing, many villagers gathered there. He has deposed in paragraph 7 of the cross-examination that he does not know in whose vehicle Shankar was taken to Banka Hospital nor does he identify the driver. He did not go to Banka in the said vehicle, rather he reached on foot subsequently straightaway to Hospital and he did not go to the police station. He said that *Darogaji* came to hospital and statement of Chandeshwari was recorded first. Thereafter that of Tuntun Yadav and then his statement was recorded. He admitted that he had said to the police about the altercation took place in the previous evening between the conductor of Chandeshwari and Mahesh with regard to timing of the vehicles. In paragraph 9 of the cross-examination, PW 1 has deposed that Manoj Mandal fired the shot from very close range and he did not fire again. He deposed that Manoj shot fire from a distance of 4-5 *haath* (approx. 6-7



feet), which did not hit Shankar, whereafter Shankar tried to escape, but he was caught hold of by the accused. He was not beaten by fists and slaps, not by the butt of the revolver or the gun. He has not tried to save him out of fear and he also made *hulla* along with Chandeshwari. He denied that he had not seen the occurrence and that the accused had not caused such an occurrence as described by him and that he is giving false evidence because he is neighbour of the informant.

7. In his examination-in-chief PW 2, Anirudh Prasad Yadav, has deposed that the occurrence took place around two years ago at about 07:00 AM, when he was grazing his buffalo near the Pasi Tola, he saw Hardeo Mandal, Mahesh Mandal, both armed with country-made pistol, and Manoj Mandal, armed with a gun, hiding in the bushes under a mango tree near the road. A little later, when Chandeshwari Yadav along with son Shankar Yadav were coming from south on the road, Hardeo, Mahesh and Manoj surrounded Shankar, as Shankar tried to escape, Manoj pointed his gun towards him and said if he tries to run away, he will be shot dead and Manoj shot a fire, which missed Shankar and hit the wall of Chartiter Pasi. Thereafter, Hardeo Mandal and Mahesh Mandal fired point blank in the left side of neck of Shanker, as a result of which Shankar Yadav fell down, then Mahesh Mandal said that he



will not die with two bullets and by catching hold of his hair Mahesh Mandal fired one more bullet in the left side of his neck. After firing, Chandeshwari, PW 2 and other raised *hulla*, whereafter, the accused persons fled away towards north for their home.

7.1. In his cross-examination, in paragraph 5, PW 2 has deposed that he was standing 40/50 feet west of the road and grazing buffaloes, he saw Shankar and Chandeshwari were coming from the south on the road, Shankar Yadav was 5/7 feet behind Chandeshwari. He saw them from a distance of about 30/32 feet that Shankar was surrounded by the accused person and tried to run away when Manoj fired a bullet from his gun at Shankar. When Shankar stood up and tried to run away, Mahesh and Hardev shot Shankar in the neck. No one from Pasi Tola came to the place until Shankar fell down. The third bullet was hit in his neck close to jaw. He has also deposed that he reached near Shankar within 2/3 minutes after the third bullet was fired. 18-20 men from Pasi Tola gathered at the place of the incident. A vehicle was coming from Amarpur, Shankar was brought to Banka by that vehicle.

8. PW 3, namely, Soti Yadav, has deposed in his examination-in-chief that the incident took place about 2 years ago, at about 7:30-8:00 in the morning, when he was grazing



buffaloes in Pasi Tola. He saw Mahesh Mandal, Hardev Mandal and Manoj Mandal hiding in a bush near a palm and a mango tree. Thereafter, he saw Shankar Yadav and Chandeshwari Yadav coming from the south. No sooner both of them reached near the bush, the three accused came out of the bush and surrounded Shankar and Chandeshwari. At that time, Manoj Mandal was holding gun in his hand and Hardev Mandal and Mahesh Mandal were holding country-made pistols in their hands. While abusing Shankar Yadav, Manoj Mandal fired shot from his gun, which hit the wall of Charitar Pasi. Hardev Mandal and Mahesh Mandal fired shot from point blank range in the left side of neck, as a result of which Shankar Mandal fell on the ground. Thereafter, Mahesh catching hold of the hairs of Shankar told that *babuji* he will not die of two bullets and fired one more shot near the same spot. On *hulla* being raised by the Chandeshwari and other witnesses, the people started gathering and the accused fled away towards north. PW 3 also went to the spot where Shankar was lying and saw the injuries. Shankar was alive at that time and when Chandeshwari lifted Shankar in his lap, he said that Mahesh and Hardeo have shot him. Shankar was taken to Banka Hospital. PW 2 has deposed that he has given his statement to *Daroga*.



8.1. In his cross-examination, PW 3 has deposed that he saw the entire incident from 25/30 feet west of the place of incident, where he was grazing the buffalo. He heard four sounds of gun shots. Accused did not fire at Chandeshwari. Manoj had fired one shot. Firstly, Hardeo and Mahesh, both simultaneously fired at the same spot with point blank range. After Shankar fell down, one more shot was fired near the same spot and Chandeshwari was watching the incident from a distance of 15/20 feet. In paragraph 5 of his cross-examination, PW 3 has deposed that after the accused fled away, he reached at the place of occurrence and saw the blood oozing out from the body of Shankar and Shankar became unconscious after saying to Chandeshwari that he has been shot by Hardeo and Mahesh. He has further deposed that his statement was recorded by Daroga in the evening on the same day at the door of Chandeshwari. He also deposed that leaving his buffalo, he went running to village Ratapur raising *hulla* about the incident, from where many persons rushed to the place of occurrence, including Kanika Lal, Tuntun and Arun Yadav.

9. PW 4, namely, Tuntun Yadav, has deposed in his examination-in-chief that he is brother-in-law of Shankar Yadav and he is living at Ratanpur village for 4-5 years and used



to work as a conductor of the vehicle. The incident took place on 13.02.1996 at about 06:00-07:00 AM, when he was coming from Ratanpur to Makduma. Ahead of him Shankar Yadav and his father Chandeshwari Yadav were coming. When PW 4 reached near Pasi Tola Makma, he saw Mahesh Mandal, Hardev Mandal having pistols in their hand and Manoj Mandal having gun in his hand coming out of the bushes from the east side of the road. They surrounded Shankar Yadav and started abusing him. When Shankar Yadav tried to run away, Mahesh Mandal started fighting with him and shot a fire, which missed Shankar and hit the wall of Ramcharitar Pasi. Manoj said that if anyone moves forward, he will be shot. Thereafter, Hardev Mandal and Mahesh Mandal shot Shankar Yadav near the neck and jaw, as a result of which he fell on the ground whereafter, Mahesh Mandal said that he will not die of two bullets and fired one more shot near the left side of the neck. All the accused fled away towards north on *hulla* being raised. When he came near Shankar, he saw him writhing and said that he has been shot by Mahesh Mandal and Hardev Mandal. Shankar Yadav was taken to Banka Hospital in a Tata Maxi 407, but he died on the way and the doctor declared him dead. He has further deposed that a day before this incident, i.e., on 12.02.1996, in his presence, a quarrel had taken place between Hardev Mandal



and Shankar Yadav near Banka Gandhi Chowk bus stand regarding the timing of the vehicle and Hardev Mandal had threatened Shankar that he would be lifted within 24 hours.

9.1. In his cross-examination, PW 4 has deposed that at the bus stand, drivers and conductors of other buses and tempos were also present when the altercation took place. Hardev did not threaten him. Shankar did not report the incident to the police. After the incident of altercation, the vehicle went to Amarpur and then returned to Ratanpur. Neither Amarpur police station was informed about the said threat nor any FIR was lodged with Ratanpur Police Station nor he discussed about the incident with anyone in the village. He has further deposed that his statement was taken in the evening of 13.02.1996 by *Daroga* at Ratanpur. The dead body was brought to the village after *post-mortem* and cremation took place on 14.02.1996 at Barari Ghat (Bhagalpur), in which he also participated. The statements of Chandeshwari Yadav, Kanak Lal alias Kanki Yadav, Soti Yadav, Anarudh Yadav and Arun Yadav were also recorded in the evening along with him and he met *Daroga* at Pasi Tola at 04:30 PM on 13.02.1996. In paragraph 7 of his cross-examination, PW 4 has deposed that when Mahesh shot Shankar for the third time, they raised *hulla*. On hearing their *hulla*, Kanki Yadav, Anirudh Yadav,



Arun Yadav and Soti Yadav and others came. He has deposed that no one asked Shankar as to who shot him, but when they reached near him, he himself told them. When Shankar described the incident, there were many people other than the above mentioned six persons, but he does not remember the name of any of them. In paragraph 8 of his cross-examination, PW 4 has deposed that Shankar Yadav had sustained one bullet injury on the left side between the jaw and throat, and two bullet injuries on the left side of the throat and the third bullet hit the left side of the throat. He denied that Shankar Yadav himself had collected the crowd and fired bullets at Pasi Tola and people of Pasi Tola also fired in retaliation and around 150 rounds of bullets were fired from both the sides.

10. PW 5, Chandeswari Yadav, who is the informant of the case and the father of the deceased, has mainly deposed in his examination-in-chief that the occurrence took place around 2-2 ½ years ago at around 07:00-08:00 AM, when he and his son Shankar were coming to agricultural field from their house reached on the pucca road near Pasi Tola, Hardeo Mandal, Mahesh Mandal and Manoj Mandal came from east and surrounded his son Shankar Yadav (deceased), at that time Shankar Yadav was 50 steps ahead of him. Before surrounding Shankar, Manoj Mandal



had fired a shot, which missed Shankar and hit the wall of Chaliter Mandal. Hardeo and Mahesh were holding pistols in their hands and they shot Shankar from point blank range in the middle of left jaw and neck, as a result of which Shankar fell on the ground. He was alive till then, upon which Hardeo said that he is still alive. Then Mahesh Mandal caught hold of the hairs of Shankar and shot one more fire under the left neck of Shankar. Thereafter, all the accused persons fled away towards north. After the accused persons fled away from the place of occurrence, PW 5 reached near Shankar and Shankar was alive at that time and told him that Hardeo and Mahesh had shot him. His son was lying 12-13 *haath* (approx. 18-20 feet) west from the pucca road. After he reached there, Kanik Lal Yadav, Soti Yadav, Anirudh Yadav, Tuntun Yadav, Arun Yadav and other persons came there. Shankar was brought to the Banka hospital and after seeing him, the doctor declared him dead. At the hospital, his statement was recorded by the *Daroga* of Banka Police Station, which was signed by him after the same was read over to him. He has deposed that on the evening previous to the date of occurrence, an altercation took place between his son Shankar and Hardeo Mandal and at that time Hardeo Mandal had threatened his son that he will be eliminated within 24 hours. His son had narrated about the said incident to him.



10.1. In his cross-examination, PW 5 has deposed that while he was returning after visiting his crops in the field near Pasi Tola along with his son Shankar, the occurrence took place. Shankar was moving around 25-30 *haanth* ahead of him. No attempt was made by the accused to either surround or assault PW 5. He also did not try to flee away. Manoj fired at Shankar from a distance of 10-15 *haath* from east and did not fire any shot again. Kanik Lal Yadav, Soti Yadav, Anirudh Yadav, Tuntun Yadav and other persons had arrived at the place of occurrence so also the wife of PW 5 and the wife of the deceased. He reached first near Shankar and immediately after him Kanik Lal reached there. Thereafter Soti Lal reached there. Shankar had stopped speaking before Soti reached there.

11. PW 6, Ghasiya Uraon, is the Investigating Officer of the case. He has deposed in his examination-in-chief that on 13.02.1996, he was posted as Junior Police Officer in Amarpur Police Station. He had obtained the *fard-beyan* of the present case from Banka Police Station. He has deposed that on receipt of *fard-beyan* and the inquest report, he prepared formal FIR and himself took over investigation of the case. In course of investigation, he recorded re-statement of the informant and inspected the place of occurrence. He found blood spread at the



place of occurrence, but did not seize the same as the same was not in proper state. He also found mark of bullet on the northern wall of Ramcharitra Mandal, but did not find anything worth seizing and did not prepare the seizure list nor did he find any material of any worth at the place of occurrence.

11.1. He has deposed in his cross-examination that he received the information about the occurrence of killing of Shankar Yadav at 11:50 AM at Katoriya More on 13.02.1996. He could not ascertain the name of the assailants at that time. He has deposed that he reached at the place of occurrence at 12:45 PM on the same day and upon enquiry from many villagers came to know that Chandeshwari Yadav and his opponent have been shot. He also learnt that Shankar Mandal has been taken to Banka Hospital by the villagers of Ratanpur for treatment. At that time, it was not known who had shot Chandeshwari Yadav nor did anyone tell the names of the opponents. He did not find any blood mark or blood at the place of occurrence where bullets were said to have been fired. He stayed there till 1:00 pm and then went to Banka Hospital, where he came to know that the FIR and the inquest report has been prepared by S.P. Singh, Sub Inspector of Banka Police Station. He received the said FIR and the inquest report from Banka Police Station at 02:00 PM and made entry in the case



diary. He has deposed that he recorded the statement of six witnesses in the premises of Banka hospital 02:30 PM, left for the place of occurrence again and reached there at 02:50 PM, but nobody indicated the place of occurrence, however, he saw blood spilled 10 feet west of the road, which place was shown to him earlier by the villagers as to where Chandeshwari Yadav was shot by his opponents and where he had not seen any blood stain or mark earlier. The blood was so much trampled by the movement of people that it was not worth analysis for which reason it was not seized. It is not written how much of the bullet mark was found on the wall. He has deposed that when he visited first time at 12:45 PM, he did not find any bullet mark on the wall. Chandeshwari Yadav does not have any land within the boundary of the alleged place of occurrence. In paragraph 11 he has deposed that in course of investigation, he had also recorded the statements of Ramcharitra Mandal and Shambhu Mandal. The statements of both the witnesses are mentioned in paras 34 and 35 respectively. He has deposed that he did not receive the pellet or bullet described in the *post mortem* report nor did he enquire about it when they did not reach the police station. He has deposed in paragraph 14 that witness Kanki Yadav has not given statement before him that in the evening previous to the date of occurrence any altercation took



place between the conductor of Chandeshwari and Mahesh with regard to plying timing of the vehicle.

12. The Doctor, who conducted the *post mortem* examination of the dead body of the deceased, has not been examined by the prosecution. However, the *post mortem* report has been brought on record by way of Exhibit-5.

OBSERVATIONS AND REASONING: -

13. From the evidence led by the prosecution, it transpires that the prosecution has projected PW 1 to PW 5 as eye-witnesses. PW 1, Kanki Yadav has deposed that when Chandeshwari Yadav (informant) and Shankar Yadav (deceased) shouted, the village people came at the place of occurrence. The said witness has further admitted that he along with Chandeshwari has raised *hulla* after the deceased sustained fire-arm injury. However, PW 2, Anirudh Prasad Yadav, who has deposed before the court that he was grazing his cattle. At that time, he had seen the occurrence in question. After the firing took place, he along with Chandeshwari raised *hulla*. The said witness, in paragraph 5 of the cross-examination, he has deposed that he saw Shankar and Chandeshwari coming from the south on the road. Shankar Yadav was 5/7 feet behind Chandeshwari. He saw them from a distance of about 30/32 feet. Shankar was surrounded by the accused



persons and when he tried to run away, Manoj fired a bullet from his gun at Shankar, Shankar stood up and tried to run away when Mahesh and Hardev shot Shankar in the neck. No one from Pasi Tola came to the place until Shankar fell down. The third bullet was hit in his neck close to jaw. He has also deposed that he reached near Shankar within 2/3 minutes after the third bullet was fired.

13.1. So far as PW 3, Soti Yadav, is concerned, the said witness has deposed during cross-examination that he saw the entire incident while he was grazing his cattle near the place of occurrence. He has admitted that after the accused fled away from the place of occurrence, he reached near Chandeshwari and Shankar and thereafter he went running to Ratanpur village raising *hulla* about the incident, from where many persons rushed to the place of occurrence including Kanika Lal (PW 1), Arun Yadav (not examined) and Tuntun Yadav (PW 4). Thus, from the deposition of this witness, it is revealed that Kanki Yadav (PW 1), Arun Yadav and Tuntun Yadav (PW 4) reached at the place of occurrence subsequently.

13.2. PW 4, Tuntun Yadav, is the brother-in-law of the deceased Shankar Yadav. He had stated in his deposition that Shankar Yadav and his father were going to Makduma from



Ratanpur and reached near Pasi Tola Makma. He saw Mahesh Mandal, Hardev Mandal having pistols in their hand and Manoj Mandal having gun in his hand coming out of the bushes from the east of the road. They surrounded Shankar Yadav and started abusing him. When Shankar Yadav tried to run away, Mahesh Mandal started fighting with him and shot a fire, which missed Shankar and hit the wall of Ramcharitar Pasi. Manoj said that if anyone moves forward, he will be shot. Thereafter, Hardev Mandal and Mahesh Mandal shot Shankar Yadav near the neck and jaw, as a result of which he fell on the ground. Whereafter, Mahesh Mandal said that he will not die of two bullets and shot him again near the left side of the neck. All the accused fled away towards north on *hulla* being raised. When he came near Shankar he saw him writhing and said that he has been shot by Mahesh Mandal and Hardev Mandal. Shankar Yadav was taken to Banka Hospital in a Tata Maxi 407, but he died on the way and the doctor declared him dead. The said witness has admitted during cross-examination that when Chandeshwari Yadav and he raised *hulla* Kanki Yadav (PW 1), Soti Yadav (PW 3), Anirudh Yadav (PW 2) and Arun Yadav (not examined) and other persons came at the place of occurrence. Thus, from the deposition of the said witness, it



appears that Kanki Yadav (PW 1), Soti Yadav (PW 3) and Anirudh Yadav (PW 2) came at the place of occurrence subsequently.

13.3. Thus, from the aforesaid evidence led by the prosecution, it transpires that there are major contradictions and inconsistencies in the version of the prosecution with regard to the presence of the so-called eye-witnesses at the scene of the occurrence. We are of the view that the aforesaid witnesses can be termed as chance witnesses.

13.4. At this stage, it is also relevant to observe that the prosecution has failed to examine the Doctor, who had conducted the post mortem of the dead body of the deceased. It is the specific contention taken by the learned counsel for the respondents-accused that because of non-examination of the Doctor, the defence has lost the opportunity to cross-examine him, as a result of which, serious prejudice has been caused to the defence. It is also pertinent to observe at this stage that post mortem report of the dead body of the deceased is exhibited. We have gone through the said post mortem report. In the post mortem report, in column No. 33, it has been observed as under: -

“G:- Detailed description of injuries, burns ligature marks at neck, if any. Mention Ante or Post Mortem and nature of probable weapons used: -

“The following ante mortem injuries were present on the body of the deceased:-



1. *Lacerated oval wound 1/4" x 1/3" x cavity deep on middle and left portion of neck with inverted and ...(illegible) margin.*

2. *Blackened skin (Superficial Burn) 6" x 1/4" from lower and left portion of neck to the left angle of mandible.*

3. *Lacerated wound 1/4" x 1/3" cavity deep with inverted margin below left armpit.*

4. *Lacerated wound 1/4" x 1/4" muscle deep on posterolateral portion of left side of neck.*

5. *Lacerated wound 1/4" x 1/4" bone deep on anterior portion of vault of skull.*

6. *Lacerated wound 1/4" x 1/4" x bone deep on vault of skull.*

On dissection:-

(1) *Rupture of major vessels of neck beneath injury no.1*

(2) *Thoracic cavity full of blood.*

(3) *Lacerated injury to the upper & middle portion of the left lung extensively.*

Two metallic pieces were removed; one from the pool of blood in the thoracic cavity and other from thoracic wall underneath right scapular being sent with the P.M. Report.

Cause of death- In my opinion, death had been caused by shock and hemorrhage due to injury no. 1 & 3.

Weapon- Injury Nos. 1 to 3 by fire arm; injury no. 4 to 6 by hard and blunt substance.

Time elapsed since death- within 24 hours."

13.5. From the aforesaid post mortem report, it transpires that six injuries were found on the dead body of the deceased. It further transpires that the Doctor, who had signed the said post mortem report, has specifically observed that injuries No. 1 to 3 have been caused by fire-arm and injuries No. 4 to 6 have been caused by hard and blunt substance. Thus, it is clear from the said post mortem report that injuries No.4 to 6 have been caused



by hard and blunt substance. At this stage, it is required to be recalled that all the five so-called eye-witnesses have deposed before the court that the accused have fired three rounds and three bullet injuries were sustained by the deceased. There is no reference with regard to the blow given by any of the accused by any other weapon/hard and blunt substance. We are, therefore, of the view that the medical evidence does not support the case of the so-called eye-witnesses.

13.6. 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**. 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 phraseologies 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.”

13.7. 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.”

13.8. Thus, from the aforesaid decisions rendered by the Hon’ble Supreme Court, it can be said that Appellate 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.

CONCLUSION: -

14. Keeping in view the aforesaid decisions rendered by the Hon’ble Supreme Court, we have carefully



examined the evidence led by the prosecution as well as the impugned judgment of acquittal rendered by the trial court, we are of the view that the prosecution has failed to prove the case against the accused beyond reasonable doubt and the trial court has not committed any error while passing the impugned judgment of acquittal.

15. In view of the aforesaid discussion, we are of the view that no interference is required in the impugned judgment rendered by the trial court

16. Accordingly, this appeal is dismissed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

Pawan/-

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