

IN THE HIGH COURT OF JUDICATURE AT PATNA
GOVT. APPEAL (DB) No.11 of 2000

The State of Bihar

... .. Appellant/s

Versus

1. Satya Narain Ram S/o Bali Ram R/o vill - Kujhi, P.S.- Nokha (Baghaila), Distt.- Rohtas
2. Bijay Ram S/o Harbansh Ram R/o vill - Kujhi, P.S.- Nokha (Baghaila), Distt.- Rohtas
3. Surajdeo Ram S/o Sangri Ram R/o vill - Kujhi, P.S.- Nokha (Baghaila), Distt.- Rohtas
4. Dukhi Chamar S/o Garju Chamar R/o vill - Kujhi, P.S.- Nokha (Baghaila), Distt.- Rohtas
5. Gopal Chamar S/o Bidhi Chamar R/o vill - Kujhi, P.S.- Nokha (Baghaila), Distt.- Rohtas

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Dilip Kumar Sinha, APP
For the Respondent/s : None.

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

Date: 14-07-2025

Heard Mr. Dilip Kumar Sinha, learned A.P.P. appearing
for the Appellant/State.

2. The present Government Appeal has been filed under Section 378(1) and (3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') challenging the judgment of acquittal dated 08.09.2000 passed by learned 6th Additional Sessions Judge, Rohtas at Sasaram (hereinafter referred to as 'Trial Court') in Sessions Trial No.48 of 1988 arising out of Nokha (Baghaila) P.S. Case No.98 of 1987 corresponding to



G.R. No.1295 of 1987, committed by learned C.J.M., Sasaram to the Court of Sessions on 21.01.1988.

3. The brief facts leading to the present appeal are as under:-

The case of the prosecution is that at about 10:00 P.M. on 25.05.1987 the informant Prahlad Paswan (PW-7) gave his *fardbeyan* at Nokha Police Station recorded by Bachcha Singh (PW-15), Officer-in-Charge, Nokha P.S. that on 25.05.1987 at about 7:00 P.M. the women of the informant party had gone to attend the call of nature towards western side of village. At that time Gopal Chamar (A-5) flashed his torch upon the said women with bad intention and the said fact was informed by the deceased Chander Dusadh and wife of Bigan. The nephew of the informant, namely, Chander Dusadh upon getting the said information went to enquire from Gopal Chamar (A-5) and upon this, there was altercation between them, however, the informant and others intervened and both were separated. It is further stated that in the meantime Dukhi Chamar (A-4) with small pistol, Surajdeo Master (A-3) with *lathi*, Gopal Chamar (A-5) with a three-cell torch, Satya Narain Chamar (A-1) with a gun, Bijay Chamar (A-2) with a small pistol came there and upon instigation of Surajdeo Master (A-3), Dukhi Chamar (A-4)



fired from pistol upon Chander Dusadh which hit him and he fell down. Bijay Chamar (A-2) and Satya Narain Chamar (A-1) fired upon the informant three to four times but the informant hide himself in the corner of wall and saved himself. Gopal Chamar flashed his torch and in that light the informant saw all the accused persons and identified them. On hearing the sound of firing, several women and male persons came there, then the accused persons ran away to their houses. The injured Chander Dusadh was brought to Nokha Hospital on a cot in unconscious state but he died on the way.

4. On the basis of *fardbeyan*, the police instituted Nokha P.S. Case No.98 of 1987 under Sections 302, 307/34 of I.P.C. and 27 of the Arms Act. The investigating agency carried out the investigation. During course of investigation, the Investigating Officer recorded the statement of witnesses under Section 161 Cr.P.C. and collected the relevant documents and after completion of the investigation, charge sheet was filed against all the accused persons/respondents under the aforesaid sections and since the case was exclusively triable by the Court of Sessions, it was committed to the Court of Sessions. The charges were framed against the respondents/accused persons.

5. The accused persons completely denied the charges



levelled against them. In order to substantiate the charges levelled against the accused persons, the prosecution examined altogether 15 witnesses.

6. PW-1 is Ram Subhag Ram (son of Faudar Dusadh), PW-2 is Chhotelal Singh, PW-3 is Ram Brichh Dusadh, PW-4 is Kameshwar Ram, PW-5 is Rup Chandra Ram (son of Ram Subhag Ram), PW- 6 is Daulatia Devi, PW-7 is Prahlad Dusadh (informant), PW-8 is Janki Devi (wife of Deputy Dusadh), PW-9 is Simrikha Devi (wife of Majester Dusadh), PW-10 is Nathuni Ram (son of Bigan Ram), PW-11 is Nanku Ram, PW-12 is Munia Devi (wife of Prahlad Dusadh/informant), PW-13 is Dr. Naresh Prasad Rai, who performed *post-mortem* examination on the dead body of deceased Chander Dusadh. PW-14 is Dr. Rajesh Kumar Singh who examined Daulatia Devi (PW-6) and PW-15 is Bachcha Singh (then officer-in-charge, Nokha P.S.).

7. On behalf of prosecution altogether six documents were exhibited.

Ext.1 is signature of Bachcha Singh (then officer-in-charge, Nokha P.S.) on F.I.R.;

Ext.2 is Inquest Report (carbon copy);

Ext.2/1 is signature on the seizure list;

Ext.2/2 is signature of Rup Chandra on the seizure list;

Ext.3 *Post-mortem* Report of deceased Chander Dusadh;

Ext.4 is carbon copy of Injury Report of Daulatia Devi;

Ext.5 is F.I.R.; and



Ext.6 is Inquest Report of deceased Chander Ram.

8. The accused persons were examined under Section 313 of the Cr.P.C. wherein they denied all allegations and charges and pleaded innocence.

9. The learned Trial Court on considering the evidence on record held that:

(i) The witnesses examined in this case are highly interested witnesses and are relative to each other. The independent witnesses present at the place of occurrence, such as Ram Bilash Dusadh as well as persons available in the locality, have not been examined in this case.

(ii) The identification of accused persons in the torch light of the accused as mentioned in the F.I.R. as well as in the evidence of the witnesses is doubtful.

(iii) There is a contradiction in the medical evidence as well as ocular evidence.

(iv) Non-examination of I.O. without any reason, the defence has been highly prejudiced.

(v) There is improvement in the prosecution case that Daulatia Devi was injured in the occurrence and the same is doubtful.

(vi) The prosecution failed to prove the genesis of the occurrence that Gopal Chamar had flashed torch upon the ladies of the informant party with bad intention as the prosecution did not examine and withheld two material witnesses, namely i.e. wife of Chander and wife of Bigan.

10. The learned Trial Court on the basis of aforesaid findings came to the conclusion that prosecution has failed to



prove the charges levelled against the accused persons beyond shadow of all reasonable doubts. Hence, benefit of doubt was given to the accused persons and they were acquitted of the charges levelled against them.

11. Being aggrieved by the said judgment of acquittal, the State of Bihar preferred the present appeal.

12. Sh. Dilip Kumar Sinha, learned A.P.P. for the State submitted that in the present case, the prosecution has proved charges against the respondents/accused persons, despite which, the learned Trial Court has passed the impugned judgment, whereby the respondents/accused persons have been acquitted. It is further submitted that the learned Trial Court has not appreciated the case of prosecution in its proper perspective and has arrived at incorrect conclusion that the prosecution has not been able to bring home charges levelled against the accused persons on the basis of materials on record. He further submitted that the prosecution examined altogether 15 witnesses and when the eye-witnesses supported the case of prosecution, the learned Trial Court ought to have convicted the respondents/accused persons. It is submitted that Daulatia Devi (PW-6) was injured in the occurrence and is a reliable witness. The reasons given by the learned Trial Court for discarding their



evidence are not correct. It is further submitted that some minor discrepancies are bound to occur in the evidence of witnesses examined by the prosecution, therefore, the impugned judgment of acquittal may be set aside and the respondents/accused persons may be convicted and sentenced accordingly. He further stated that in appeal under section 378 of Cr.P.C., the High Court has full power to reappreciate, review and reconsider the evidence at large, the material on which the order of acquittal is found and to reach its own conclusion on such evidence. Both questions of fact and law are open for determination by the High Court in an appeal against an order of acquittal.

13. We have considered the submissions canvassed by the learned A.P.P. for the State and perused the materials on record. It is well settled that this Court has power to reappreciate and reconsider the evidence in an appeal.

14. The prosecution has examined altogether 15 witnesses. At this stage, we would appreciate the relevant evidence given by the witnesses.

14.1. PW-1, namely, Ram Subhag Ram, in his examination-in-chief deposed that at about 7:30 P.M. on the day of occurrence, the women of his *gotia* had gone to attend call of nature, Munia Devi (wife of Prahlad Dusadh/informant) told



him that Gopal Chamar had flashed torch upon the women. Chander Dusadh went to Gopal Chamar and protested upon which there was altercation between them and this witness and others intervened and separated them, then he returned back to his *baithka*. He further deposed that he heard the sound of firing from the eastern side on which he went there and saw that Dukhi Chamar had a small pistol, Satya Narain had a gun, Bijay had a small pistol, Surajdeo had a *lathi* and Gopal had a three-cell torch in his hand. Surajdeo Chamar instigated other accused persons to kill, then Dukhi Chamar fired upon Chander Dusadh by which he fell down. Gopal Chamar was flashing torch and in that light he identified all the accused persons. Satya Narain also fired which hit Daulatia Devi (PW-6). Due to firing, there was sign of *chharra* (pellet) upon the wall of Kameshwar Dusadh. After returning back of the accused persons, he went to Chander Dusadh, who was taken to Nokha Hospital on a cot but he died on the way, then he went to Nokha Police Station with dead body. He further stated that besides him, Ram Brichh Dusadh (PW-3), Kameshwar Dusadh (PW-4), Rambilash Dusadh (not examined), Prahlad Dusadh (PW-7), Rup Chandra Dusadh (not examined), Janki Devi (PW-8), Simrikha Devi (PW-9) and Daulatia Devi (PW-6) had seen the occurrence.



14.2. In his cross-examination, PW-1 stated that when he heard the sound of firing then he went towards that side. When he reached the corner of house of Kameshwar then from that place he saw Chander was hit by firing. In para 16 he said that he had gone to the police station but he did not give statement to the police on that night that the murder had taken place in his presence. He further stated that he met with the police 4 days after the occurrence. He has admitted in para 17 that prior to this occurrence, he had gone to jail in a case instituted by Surendra Ram, son of Sohrai Ram, *gotia* of Dukhi Ram.

15. PW-2, Chhotelal Singh, is a formal witness who has proved the signature of officer-in-charge of Nokha P.S.

16. PW-3, namely, Ram Brichh Dusadh in his examination-in-chief stated that on the date of occurrence he was sitting with Subhag, Prahlad and Ram Chandra in the *baithka* of Subhag where wife of Prahlad came and told that Gopal had flashed torch upon her mouth on which Ram Chandra Dusadh went to Gopal and asked about the same. The altercation took place. He, Subhag (PW-1) and Prahlad (PW-7) went there and pacified them. Then they returned back to *baithka* of Subhag and Chander remained there. Thereafter, they heard firing from northern side. Then they went to *darwaja* of



Ram Bilas where Gopal was with a torch. On instigation of Surajdeo Master, Dukhi Chamar fired upon Chander which hit him on right arm and chest. Satya Narain also fired from his gun which hit on the wall of Kameshwar and Daulatia got injured. PW-3 in his cross-examination deposed that at the time of occurrence when he heard the sound of firing, then only one woman was present who came running to him. He further deposed that he had seen only his wife who was coming and had not seen any other. He further deposed that first of all three persons i.e., he, Subhag (PW-1) and Prahlad (PW-7) came out together from *baithka* after hearing the sound of firing.

17. PW-4, namely, Kameshwar Ram, in his examination-in-chief has narrated the incident in the same terms as PW-1. In his cross-examination, PW-4 has stated in para 10 that when he was sitting on the *sahan* land he heard one sound of firing. There was darkness and he hide himself by the wall of Bilash, Chander had sustained one bullet which hit him on his arm and *panjara*. He further stated that he had gone with dead body at police station and alongwith him Bilash, Prahlad, Subhag and Ram Brichh were there and in that night only his statement was taken, not others. He has not remembered whether Daroga Jee had read over the statement to him or not or whether his thumb-



impression or signature was taken or not. The contradiction with his previous statement before police was put to him.

18. PW-5, namely, Rup Chandra Ram, who is son of PW-1 also in his examination-in-chief has narrated the incident in the same terms as PW-1. In his cross-examination, he has stated that after the occurrence, Ram Subhag Dusadh, Prahlad Ram, Ram Brichh, Deputy and Shiv Shankar came there.

19. PW-6, namely, Daulatia Devi in her cross-examination admitted that she is own sister of PW-1 and all prosecution witnesses are *gotia* and relative of informant Prahlad. She deposed that on hearing four to five firings, first of all she came out from her house and she was hit by firing and she was taken inside by her family members where she remained about one and a half hours. There was night and darkness. She had not stated anything to anyone. No one had told her about the incident in the night and she came to know about the occurrence on coming of Daroga Jee in village. She further admitted that she had no talk with Daroga Jee.

20. PW-7 who is Prahlad Dusadh (informant), has deposed in his examination-in-chief that at about 7:00 PM on the date of occurrence he was sitting at *baithka* of Subhag with Kameshwar, Subhag, Bilas and Ram Brichh. His wife and



daughter-in-law went to attend call of nature towards western side of the village. His wife came there and stated that Gopal Chamar with bad intention flashed torch light on her face. Chander was present there, and he went to ask Gopal where altercation between them started then they intervened and told them to return to their home and they came to their *baithka*. On the sound of firing, he, Subhag (PW-1), Ram Brichh (PW-3), Bilash and Kameshwar (PW-4) went there and between the wall of Kameshwar and Bilash, they saw that Dukhi Chamar and Satya Narain had *desi*-pistol, Surajdeo Master had a *lathi*, Bijay had taken *desi*-gun. Master told them what they are seeing, Gopal was flashing torch light, Dukhi fired from his *desi*-gun which hit on right *panjra* and arm. Satya Narain and Bijay also fired which hit in the leg of Daulatia and wall of Kameshwar. The accused persons fled away in the East. Thereafter, he went near Chander who was drenched with blood and was taken to Nokha Hospital by him along with Subhag, Kameshwar (PW-4), Ram Brichh (PW-3), Bilash, Nathuni Ram. Chander died on the way. The dead body was brought to Nokha P.S. where he had given his statement which was read over to him by Daroja Jee and he put his thumb impression on the same. The witnesses to the occurrence are Kameshwar, Bilash, Daulatia, Ram Brichh



and wife of Deputy and Majester who have seen the occurrence. He had seen the accused persons in the torch light of accused Gopal. In his cross-examination, he has stated that on hearing sound of firing all the persons sitting at *baithka* ran towards the firing. They also heard the firing three to four times. In para 22 of his cross-examination, he has stated that he told Daroga Jee that Satya Narain and Bijay had made firing which hit on the leg of Daultia Devi and wall of Kameshwar. He also stated in the *fardbeyan* that occurrence was seen by Daulatia (PW-6), Ram Brichh (PW-3), Subhag (PW-1), Kameshwar (PW-4), wife of Deputy (PW-8 Janki Devi) and wife of Majester (PW-9 Simrikha Devi).

21. PW-8 is Janki Devi, wife of Deputy Dusadh and PW-9 is Simrikha Devi, wife of Majester Dusadh (daughter-in-law of Prahlad). Both witnesses have been tendered by the prosecution for cross-examination by the defence. PW-8 in her cross-examination, deposed that she was at her house on the date of occurrence. She further deposed that she did not visit the house of Chander on the date of occurrence and she only met her husband Deputy Dusadh.

22. PW-9 Simrikha Devi in her cross-examination deposed that after occurrence she met Prahlad and on her saying



Prahlad and Subhag were called by the villagers. She also stated that she told Prahlad about the incident and after discussion, they went to police station.

23. PW-10 is Nathuni Ram who is a witness on Inquest Report.

24. PW-11 Nanku Ram is a witness of the seizure list.

25. PW-12 Munia Devi, wife of Prahlad Dusadh (PW-7) is a hearsay witness with respect to the occurrence.

26. PW-13 is Dr. Naresh Prasad who had conducted *post-mortem* on the dead body of Chander Ram. He found the following *ante-mortem* injuries on the person of the deceased:-

(1)....

(i) wound of entry 1"x1" above right elbow, lacerated with inverted margins with surrounding skin blackened deep into the muscle of right upper arm at lower part in outer side.

(ii) wound of exit 1½"x 1½" at inner side of right upper arm with lacerated and averted margin.

(iii) wound of entry 1½"x 1½" at right border of chest in lower part corresponding to the injury no.(ii) with lacerated and inverted margins deep into the lower part of chest cavity.

(2) On dissection the right chest cavity and abdomen was found filled with blood and blood clot, about 1 litre in each compartment . Right lung was found with lacerated injuries and was collapsed. There was lacerated injury of liver and diaphragm. Bullet was found impacted in diaphragm and was preserved.

(3) Injury was ante-mortem, grievous and was caused



by firearms, may be caused by country-made pistol.

(4) The death was caused due to shock and haemorrhage resulting from above injuries which were sufficient to cause death in normal course of nature.

(5) Time elapsed since death 6 to 24 hours.

(6) Nothing was found in the stomach of the dead body.

(7) The *post-mortem* report is in his handwriting and it bears his signature which he identified, marked at Ext.3.

(8) In cross-examination, he deposed that the shots were fired from very close range as regard injury no.1 is concerned. Injury no.3 was probably from some distance. Injury no.1 and 3 were probably by different two shots. It may be by one person but it was definitely by two different shots.

(9) The preserved bullet was sent by him to the office. He had found one bullet. He cannot say the shape and size of the bullet found by him as it has not been mentioned. The death was not before 6 hours and not after 24 from the time of examination. He has not given the dimension of the wound.

27. PW-14 is Dr. Rajesh Kumar Singh who had examined

Daulatia Devi and found following injuries on her person:-

(i) Small abrasion 1/20" x 1/2 " on the back of upper part of leg below knee joint. The nature of injury is simple caused by a pellet of the firearm.

28. In his cross-examination, he deposed that he did not find any pellet. He has admitted that this sort of injury can also be caused by fall. He further deposed that he has not mentioned in his injury report (Ext.4) that the above injury can be caused



by firearm.

29. PW-15 is Bachcha Singh, who proved the F.I.R. (Ext.5) and Inquest Report (Ext.6).

30. We have re-appreciated the entire evidence on record led by the prosecution. At the outset, it is pertinent to note that in the F.I.R., it is stated that Dukhi Chamar fired one shot upon the deceased Chander Dusadh. PW-1 and PW-3 have stated that Dukhi Chamar assaulted with his pistol by which the deceased fell down. Satya Narain had also fired but it hit the wall of Kameshwar. Similar is the statement of other witnesses and all of them have said that deceased got only one firing.

31. PW-13 Dr. Naresh Prasad Rai who had performed the *post-mortem* on the dead body of Chander Ram found three ante-mortem injuries on the person of deceased. Injury no.(i) is the wound of entry above right elbow, Injury no.(ii) is wound of exit over inner side of right upper arm. Injury no.(iii) is wound of entry at right border of chest in lower part. In his cross-examination, he has stated that the shots were fired from very close range as regard injury no.(i) is concerned and injury no. (iii) was from some distance. Injury nos.(i) and (iii) were by two different shots. The case of prosecution in the F.I.R. as well as in the evidence of witnesses is that only Dukhi Chamar fired upon



the deceased which hit whereas the medical evidence shows that the deceased had received two shots of bullets. There is a great contradiction in medical evidence and ocular evidence making the prosecution case doubtful.

32. It is pertinent to note that *fardbeyan* of the informant (PW-7) in which he projected himself as eye-witness to the occurrence in question. In his *fardbeyan* he has narrated the manner in which the incident took place. As per his *fardbeyan*, his specific case is that after hearing the sound of firing, many villagers came at the place of occurrence then the accused persons fled away. If the deposition of informant (PW-7), Prahlad, which we have discussed hereinabove, is carefully examined, it reveals that PW-7 also projected Kameshwar, Bilas, Daulatia, Ram Brichh, wife of Deputy and wife of Majester as eye-witnesses of the occurrence.

33. PW-6 Daulatia Devi has been projected as injured eye-witness. However, in her cross-examination, she has deposed that on the sound of four to five firings, first of all she came out from her house and she was hit by firing. She further stated that she had come to know about the incident on coming of Daroga Jee in village. From her deposition, it is clear that she had no knowledge about the incident and was not an eye-



witness or injured witness as projected.

34. It is also relevant to note that there is no mention in the F.I.R. that on the firing by the accused persons Daulatia Devi was injured. The witnesses said that by the firing of other accused persons, Daulatia also got pellet injury. This is an improvement in the prosecution case. At this stage, we would like to discuss the deposition of PW-14, Dr. Rajesh Kumar Singh, who has admitted that in the injury report (Ext.4) of Daulatia Devi he had not mentioned that the injury (small abrasion) can be caused by fire arm.

35. PWs-1, 3, 4 & 7 narrated in detail the manner in which the incident took place and projected themselves as eye-witnesses. In their cross-examination, PW-1, PW-3, PW-4 and PW-7 categorically admitted that after hearing the firing they went towards the place of occurrence. PW-5 in his cross-examination also admitted that after the occurrence PW-1, PW-3, PW-7, Deputy and Shiv Shankar came there. The evidence of the alleged eye-witnesses raises serious doubts on the point of their presence at the time of actual occurrence of firing on the deceased. It can be said that they are not the eye-witnesses of the occurrence. The prosecution witnesses, through their own deposition, have rendered themselves unworthy of complete



reliance. The deposition given by them cannot be accepted.

36. At this stage, we would like to observe that the prosecution witnesses developed the case in evidence as made out in F.I.R. and there are so many contradictions in the statement before the police under Section 161 of Cr.P.C. and the statement before the Court and those contradictions have been taken by the defence in their cross-examination. The defence could not get the opportunity to substantiate those contradictions by examining the I.O. At this point, it is pertinent to determine whether in the present case, non-examination of the I.O. is fatal to the prosecution case and on that account, the impugned judgment is required to be set-aside.

37. The Co-ordinate Bench of this Court in the case of **Subodh Yadav & Ors. v. State of Bihar** reported in **2024 (3) BLJ 653**, considering various judgments of the Hon'ble Supreme Court, has observed in para 50 to 58 as under:

“50. It is well settled that statement given to police during investigation under Section 161 Cr.P.C. cannot be read as an ‘evidence’. It has a limited applicability in a court of law as prescribed under Section 162 Cr.P.C. It is ‘previous statement’ under Section 145 of the Evidence Act and, therefore, can be used to cross-examine a witness for limited purpose to ‘contradict’ such a witness. The contradiction in two statements would not always result in totally discredit the witness. Section 145 read with Section 155 of the Evidence Act, have to be applied carefully in a given case. In



Rammi vs. State of M.P. (1999) 8 SCC 649, the Hon'ble Supreme Court had held as under:-

“24. When an eye-witness is examined at length it is quiet possible to him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But Court should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence. But too a serious view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

51. If any of the prosecution witnesses give any evidence contrary to their previous statement recorded under Section 161 Cr.P.C. or if there is any omission of certain material particulars, the previous statement of these witnesses could be proved only by examining the I.O. who must have recorded the statement of these witnesses under Section 161 Cr.P.C. A Court has to see whether the evidence of I.O. is essential for the case of prosecution to succeed or not. It is contended and pointed out that there is material contradiction in the statements of the prosecution witnesses before the Court and recorded by the I.O. and as such, the valuable right of the accused has been prejudiced.

*52. In **Tahsildar Singh vs. State of U.P. AIR 1959 SC 1012**, it was held that to contradict a witness would mean to ‘discredit’ a witness. Therefore, unless and until the former statement of the witness is capable of ‘discrediting’ a witness, it*



would have little relevance. A mere variation in the two statements would not be enough to discredit a witness. The purpose of the cross-examination of a witness in terms of Section 145 and 155 of the Evidence Act is to bring contradictions in the two statements of the witness.

53. In **Ambika Prasad vs. State (Delhi Admn)** (2000) 2 SCC 646 the Hon'ble Supreme Court held that the criminal trial is meant for doing justice and not just to the accused but also to the victim and the society so that law and order is maintained. It was held that a Judge does not preside over the criminal trial merely to see that no innocent man is punished. It was held that a Judge presides over criminal trial also to see that a guilty man does not escape. It was held that both are public duties which the Judge has to perform. It was held that it was unfortunate that the I.O. had not stepped into the witness box without any justifiable ground. It was held that non-examination of I.O. could not be a ground for disbelieving eye witnesses.

54. In the case of **Bahadur Naik vs. State of Bihar** (2000) 9 SCC 153 it was held by the Hon'ble Supreme Court that non-examination of I.O. was of no consequence when it could not be shown as to what prejudice had been caused to the appellant by such non-examination.

55. In a criminal case, the evidence of the I.O. has its own importance, but non-examination of the I.O. is not fatal in all the cases. It is well settled that mere non-examination of I.O. does not in every case cause prejudice to the accused or affects the credibility of the prosecution version.

56. The Hon'ble Supreme Court in **Ram Dev vs. State of U.P.** [1995 Supp (1) SCC 547] observed that non-examination of I.O. does not in any way create any dent in the prosecution case, much less affect the credibility of otherwise trustworthy testimonies of the eye witnesses. It was, however, indicated that it is always desirable for the prosecution to examine the I.O.

57. In **Behari Prasad vs. State of Bihar**



(1996) 2 SCC 317 it was held that a case of prejudice likely to suffer mostly depends upon facts of each case and no universal straitjacket formula should be laid down that non-examination of I.O. per se vitiate the criminal trial.

58. Admittedly, the I.O. has not been examined in this case. As stated above, it is well settled that non-examination of I.O. ipso facto does not discredit the prosecution version. The right of bringing on record the contradictions in the statement of witnesses made before the I.O. is a very valuable right of the accused and by showing that, the witness has made improvements or has given evidence, which contradicts his earlier statement, the accused is able to satisfy the Court that the witness is not a reliable witness. It is a valuable right of the accused.”

38. In our view, in the facts and circumstances of the case, I.O. is a material witness and non-examination of I.O. has definitely prejudiced the respondents since they lost opportunity to cross-examine the I.O. and to substantiate the contradictions in the evidence of PWs with respect to their earlier statement before police under Section 161 of Cr.P.C. and the statement before the Court. In view thereof, the defence has been highly prejudiced by the non-examination of the I.O. since no reason has been assigned for his non-examination by the prosecution. This is a great laches on the part of the prosecution.

39. It is pertinent to note that PW-8 and PW-9 have been tendered by the prosecution for cross-examination by defence without their examination-in-chief by the prosecution. The procedure of tendering witness has been deprecated by the



Hon'ble Supreme Court in **Sukhwant Singh v. State of Punjab** reported in **(1995) 3 SCC 367** wherein it was held that after amendment in Cr.P.C., tendering of witness for cross-examination is not permissible. Under the old Code such tendering of witnesses was permissible, while committing Magistrate used to record the statement of witnesses, which could be treated at the discretion of the Trial Court as substantial evidence. The Hon'ble Supreme Court further held that Section 138 of the Evidence Act envisages that a witness would first be examined-in-chief and then subjected to cross-examination and for seeking any clarification, the witness may be re-examined by the prosecution. There is no meaning in tendering a witness for cross-examination only. Tendering of a witness for cross-examination, as a matter of fact, amounts to giving up of the witness by the prosecution as it does not choose to examine him in chief.

40. In consonance with Sukhwant Singh (*supra*), according to prosecution case itself, PW-8 and PW-9 were eye-witnesses of the occurrence and their evidence was of a material nature which was necessary for unfolding of the prosecution story. The effect of their being tendered only for cross-examination amounts to the failure of the prosecution to



examine them at the trial. Their non-examination-in-chief, in our opinion, seriously affects the credibility of the prosecution case and detracts materially from its credibility.

41. Looking the entire evidence led by prosecution and considering the facts and circumstances of the case, as discussed above, we are of the view that the prosecution has failed to prove the case against the accused persons beyond reasonable doubt.

42. It is well established position of law that if the Trial Court has taken a view which is a possible view in a reasonable manner, then the same shall not be interfered. Only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be totally perverse or wholly unsustainable, the appellate Court can interfere with the order of acquittal. Presumption of innocence in favour of the accused further gets reinforced and strengthened by the acquittal of the Trial Court. The appellate Court cannot overturn acquittal only on the ground that after reappreciating evidence, it is of the view that the guilt of the accused was established beyond reasonable doubt. Only by recording such a conclusion, an order of acquittal cannot be reversed unless the appellate Court also concludes that it was the only possible conclusion.

43. Recently, the Hon'ble Supreme Court in **H.D.**



Sundara and Others vs. State of Karnataka, reported in **(2023) 9 SCC 581** has summarised the principles, which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 Cr.P.C. in paragraph 8 as under:

- “8.1. The acquittal of the accused further strengthens the presumption of innocence;*
- 8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;*
- 8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;*
- 8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and*
- 8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”*

44. The Hon’ble Supreme Court in **Nikhil Chandra Mondal vs. State of West Bengal**, reported in **(2023) 6 SCC 605** has observed in paragraph 22 as under:

“22. Recently, a three-Judges Bench of this Court in the case of Rajesh Prasad v. State of Bihar 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.”

45. We have re-appreciated the entire evidence on record before the learned Trial Court, we have also gone through the reasoning recorded by the learned Trial Court while passing the impugned judgment and order and we are of the view that the learned Trial Court has not committed any error while passing the same. The view taken by the learned Trial Court could not be said to be either perverse, illegal or impossible to warrant interference. The view taken by the learned Trial Court for acquitting the accused persons was possible and plausible. We are of the view that the prosecution has failed to prove the charges against the respondents/accused persons beyond reasonable doubt and, therefore, the learned Trial Court has rightly given the benefit of doubt to the respondents/accused persons and thereby not committed any illegality as contended by the learned A.P.P. for the State/appellant. No interference with the impugned judgment and order of acquittal is warranted.



46. In view of the aforesaid discussions, the present appeal fails. Accordingly, the same is **dismissed**.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

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